



C-570-091
Investigation
Public Document
E&C/III: EH/KAH

July 1, 2019

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Determination in
the Countervailing Duty Investigation of Certain Steel Wheels 12
to 16.5 Inches in Diameter from the People's Republic of China

I. SUMMARY

The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of certain steel wheels 12 to 16.5 inches in diameter (certain steel wheels) from the People's Republic of China (China), as provided in section 705 of the Tariff Act of 1930, as amended (Act). Commerce also determines that critical circumstances exist with respect to imports from Xingmin Intelligent Transportation System Co., Ltd.'s (Xingmin), Zhejiang Jingu Company Limited (Zhejiang Jingu) and all-others exporters from China. The period of investigation (POI) is January 1, 2017 through December 31, 2017.

We analyzed the comments received from interested parties regarding our *Preliminary Determination*.¹ We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this investigation for which we received comments from interested parties.

List of Comments

- Comment 1: Calculation of the Total AFA Rate
- Comment 2: Appropriate All Others Rate
- Comment 3: Whether Critical Circumstances Exist

¹ See *Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 84 FR 5989 (February 25, 2019) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).



Separately, we analyzed comments received from interested parties regarding the scope of this investigation and the accompanying antidumping duty (AD) investigation. As a result of this analysis, we have clarified the scope of the investigations. The full discussion of this clarification can be found in the accompanying Final Scope Decision Memorandum.²

II. BACKGROUND

On February 25, 2019, we published the *Preliminary Determination*. On March 19, 2019, we initiated new subsidy and uncreditworthy allegations based upon timely filed allegations from Dexstar Wheel, a division of Americana Development, Inc. (the petitioner).³ On April 2, 2019, we received a timely new subsidy allegation (NSA) questionnaire response from the Government of China (GOC).⁴

On March 22, 2019, Zhejiang Jingu Company Limited (Zhejiang Jingu), the only cooperating mandatory respondent, withdrew its participation from this investigation and requested its business proprietary information (BPI) be removed from the record.⁵ On March 28, 2019, we removed and destroyed all copies of Zhejiang Jingu's BPI submissions relating to the above referenced investigation, except information related to critical circumstances and the scope of the order.⁶ However, we have retained public versions of Zhejiang Jingu's submissions, as well as Zhejiang Jingu's public documents as part of the public record of this investigation.⁷ We did not conduct verification because all mandatory respondents withdrew from the investigation.

We invited parties to comment on the *Preliminary Determination*. On April 8, 2019, we received case briefs from Zhejiang Jingu, HiSpec Wheel & Tire, Inc. (HiSpec), Trans Texas

² See Memorandum, "Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People's Republic of China: Final Scope Comments Decision Memorandum," dated concurrently with this memorandum (Final Scope Decision Memorandum).

³ See Memorandum, "Countervailing Duty Investigation of Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People's Republic of China: Decision Memorandum on New Subsidy Allegation and Uncreditworthy Allegation," dated March 19, 2019 (NSA Decision Memorandum); see also PDM at 3.

⁴ See GOC's letter, "Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People's Republic of China, case No. C-570-091: Government of China's New Subsidies Allegation Questionnaire Response," dated April 2, 2019.

⁵ See Zhejiang Jingu's letter, "Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People's Republic of China: Notice of Withdrawal from Participation," dated March 22, 2019 (Zhejiang Jingu's Withdrawal Letter).

⁶ See letter to Zhejiang Jingu, "Antidumping and Countervailing Duty Investigations of Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People's Republic of China: Removal of Zhejiang Jingu's Business Proprietary Information (BPI) from the Records," dated March 28, 2019.

⁷ See Memorandum, "Countervailing Duty Investigation of Certain Steel Wheels 12 to 6.5 Inches in Diameter from the People's Republic of China: Removal of Certain Business Proprietary Information from the Record," dated March 28, 2019.

Tire, LLC (TTT), and the petitioner.⁸ On April 15, 2019, we received rebuttal briefs from Zhejiang Jingu, HiSpec, TTT, and the petitioner.⁹

We received request for hearings in this investigation.¹⁰ However, all parties subsequently withdrew their hearing requests.¹¹

Additionally, as explained in its *Preliminary Determination*, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), we have aligned the final determination of this investigation with the corresponding AD investigation.¹² Consequently, the deadline for the final determination was rescheduled to July 1, 2019.

III. PERIOD OF INVESTIGATION

The POI is January 1, 2017 through December 31, 2017.

⁸ See Zhejiang Jingu's letter, "Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People's Republic of China: Case Brief," dated April 8, 2019 (Zhejiang Jingu's Case Brief); see also HiSpec's letter, "HiSpec's Case Brief: Countervailing Duty Investigation of Certain Steel Wheels 12 to 16.5 Inch in Diameter from the People's Republic of China," dated April 8, 2019 (HiSpec's Case Brief); TTT's letter, "TTT's Case Brief: Countervailing Duty Investigation of Certain Steel Wheels 12 to 16.5 Inch in Diameter from the People's Republic of China," dated April 8, 2019 (TTT Case Brief); and Petitioner's Letter, "Certain Steel Wheels 12 to 16.5 Inches in Diameter from China: Case Brief Submitted on Behalf of the Petitioner, Dexstar Wheel, a division of Americana Development, Inc.," dated April 8, 2019 (Petitioner's Case Brief).

⁹ See Zhejiang Jingu's letter, "Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People's Republic of China: Rebuttal Case Brief," dated April 15, 2019 (Zhejiang Jingu's Rebuttal Brief); see also HiSpec's letter, "HiSpec's Rebuttal Brief: Countervailing Duty Investigation of Certain Steel Wheels 12 to 16.5 Inch in Diameter from the People's Republic of China," dated April 15, 2019 (HiSpec's Rebuttal Brief); TTT's letter, "TTT's Rebuttal Brief: Countervailing Duty Investigation of Certain Steel Wheels 12 to 16.5 Inch in Diameter from the People's Republic of China," dated April 15, 2019 (TTT's Rebuttal Brief); and Petitioner's Letter, "Certain Steel Wheels 12 to 16.5 Inches in Diameter from China: Rebuttal Brief Submitted on Behalf of the Petitioner, Dexstar Wheel, a division of Americana Development, Inc.," dated April 15, 2019 (Petitioner's Rebuttal Brief).

¹⁰ See Petitioner's Letter, "Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People's Republic of China (C-570-091) – Petitioner's Hearing Request," dated March 27, 2019; see also Petitioner's Letter, "Certain Steel Wheels (12 to 16.5 Inches in Diameter) from China: Petitioner's Request for a Hearing on Scope," dated May 21, 2019; Zhejiang Jingu's letter, "Certain Steel Wheels (12 to 16.5 Inches in Diameter) from the People's Republic of China: Scope Hearing Request," dated May 22, 2019; and TTT's letter, "TTT's Hearing Request: Countervailing Duty Investigation of Certain Steel Wheels 12 to 16.5 Inch in Diameter from the People's Republic of China," dated May 22, 2019.

¹¹ See Petitioner's Letter, "Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People's Republic of China (C-570-091) – Petitioner's Withdrawal of Request for Hearing," dated April 1, 2019; see also Petitioner's Letter, "Certain Steel Wheels (12 to 16.5 Inches in Diameter) from China: Petitioner's Withdrawal of its May 21, 2019, Request for a Hearing on Scope," dated June 7, 2019; Zhejiang Jingu's letter, "Certain Steel Wheels (12 to 16.5 Inches in Diameter) from the People's Republic of China: Withdrawal of Hearing Request," dated June 7, 2019; Zhejiang Jingu's letter, "Certain Steel Wheels (12 to 16.5 Inches in Diameter) from the People's Republic of China: Withdrawal of {Scope} Hearing Request," dated June 7, 2019; and TTT's letter, "TTT's Hearing Request Withdrawal: Antidumping and Countervailing Duty Investigations of Certain Steel Wheels 12 to 16.5 Inch in Diameter from the People's Republic of China," dated June 7, 2019.

¹² See PDM at 6.

IV. SCOPE COMMENTS

During the course of this investigation, and the concurrent AD investigation, Commerce received scope comments from interested parties. Commerce issued a Preliminary Scope Decision Memorandum to address these comments and set aside a period of time for parties to address scope issues in scope case and rebuttal briefs.¹³ We received comments from interested parties regarding the scope of the investigations from the petitioner, TTT, HiSpec, and Allied Wheel Components, Inc. (Allied Wheel),¹⁴ and rebuttal scope briefs from the petitioner, Zhejiang Jingu, and TTT.¹⁵ We address these comments in the Final Scope Decision Memorandum. As a result, for this final determination, we made certain changes to the scope of these investigations from that published in the *Preliminary Determination*. For a full description of the scope of this investigation, see this memorandum's accompanying *Federal Register* notice at Appendix I.

V. AFFIRMATIVE FINAL DETERMINATION OF CRITICAL CIRCUMSTANCES

Section 705(a)(2) of the Act provides that Commerce will determine that critical circumstances exist if: (A) the alleged countervailable subsidy is inconsistent with the World Trade Organization (WTO) Subsidies and Countervailing Measures (SCM) Agreement;¹⁶ and (B) there have been massive imports of the subject merchandise over a relatively short period. A final determination with respect to critical circumstances may be affirmative even if critical circumstances were found not to exist in the preliminary determination.¹⁷ In determining whether there are "massive imports" over a "relatively short period," pursuant to section 705(a)(2)(B) of the Act and 19 CFR 351.206(h) and (i), Commerce normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, the base period) to a comparable period of at least three months following the filing of the petition (*i.e.*, the comparison period). However, the regulations also provide that if Commerce finds that importers, or exporters or producers, had reason to believe,

¹³ See Memorandum, "Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People's Republic of China: Preliminary Scope Decision Memorandum," dated April 15, 2019 (Preliminary Scope Decision Memorandum).

¹⁴ See Petitioner's Letter, "Case Brief on the Scope of the Investigations Submitted on behalf of the Petitioner, Dexstar Wheel," dated May 22, 2019; see also Zhejiang Jingu's letter, "Certain Steel Wheels (12 to 16.5 Inches in Diameter) from the People's Republic of China: Scope Comments," dated May 22, 2019; TTT's letter, "TTT's Scope Case Brief: Antidumping and Countervailing Duty Investigations of Certain Steel Wheels 12 to 16.5 Inch in Diameter from the People's Republic of China," dated May 22, 2019; HiSpec's letter, "HiSpec's Scope Case Brief: Antidumping and Countervailing Duty Investigations of Certain Steel Wheels 12 to 16.5 Inch in Diameter from the People's Republic of China," dated May 22, 2019; and Allied Wheel's letter, "Certain Steel Wheels (12 to 16.5 Inches in Diameter) from the People's Republic of China: Scope Comments," dated May 22, 2019.

¹⁵ See Petitioner's Letter, "Certain Steel Wheels 12 to 16.5 Inch in Diameter from China – Petitioner's Rebuttal Brief," dated May 30, 2019; see also Zhejiang Jingu's letter, "Certain Steel Wheels (12 to 16.5 Inches in Diameter) from the People's Republic of China: Rebuttal Scope Case Brief," dated May 30, 2019; and TTT's letter, "TTT's Scope Rebuttal Brief: Antidumping and Countervailing Duty Investigations of Certain Steel Wheels 12 to 16.5 Inch in Diameter from the People's Republic of China," dated May 30, 2019.

¹⁶ Commerce limits its critical circumstances findings to those subsidies contingent upon export performance or use of domestic over imported goods (*i.e.*, those prohibited under Article 3 of the SCM Agreement). See, e.g., *Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Carbon and Certain Alloy Steel Wire from Germany*, 67 FR 55808, 55809-10 (August 30, 2002) (*Steel Wire from Germany*), and accompanying Issues and Decision Memorandum (IDM).

¹⁷ See section 705(a)(2) of the Act.

at some time prior to the beginning of the proceeding, that a proceeding was likely, Commerce may consider a period of not less than three months from the earlier time.¹⁸ Imports must increase by at least 15 percent during the comparison period to be considered massive.¹⁹

In the *Preliminary Determination*, based on Xingmin's decision to withdraw its participation in this investigation, we preliminarily determined that the application of adverse facts available (AFA) was warranted pursuant to section 776(b) of the Act and, as AFA, preliminarily determined that critical circumstances existed for Xingmin.²⁰ Also in the *Preliminary Determination*, after factoring in and adjusting for yearly seasonal trends in import volumes of certain steel wheels from China, we found that critical circumstances existed for Zhejiang Jingu and all other producers or exporters of certain steel wheels.²¹ In this final determination, we continue to find that critical circumstances exist for Xingmin and Zhejiang Jingu and all other producers or exporters of certain steel wheels. For further discussion of the existence of critical circumstances, *see* Comment 3.

Xingmin

In this final determination, based on AFA as a result of Xingmin's decision to withdraw its participation in this investigation, we continue to find that Xingmin has benefitted from subsidies inconsistent with the SCM Agreement and entered "massive imports" of certain steel wheels over a "relatively short period"; thus, critical circumstances continue to exist for Xingmin, pursuant to sections 703(e) and 776(a) and (b) of the Act and 19 CFR 351.206.²²

Zhejiang Jingu

As Zhejiang Jingu was a cooperating mandatory respondent at the time of the *Preliminary Determination*, we found, based on record evidence, that Zhejiang Jingu received countervailable benefits under several programs that are inconsistent with the SCM Agreement and entered massive imports of certain steel wheels over a relatively short period (as adjusted for yearly seasonal trends) and, thus, determined that critical circumstances existed for Zhejiang Jingu, pursuant to section 703(e)(1)(A) of the Act.²³

As Zhejiang Jingu has since withdrawn its participation from this investigation, our final determination with respect to Zhejiang Jingu is to assign a subsidy rate based on AFA under section 776(b) of the Act. Thus, we based our final critical circumstances determination for Zhejiang Jingu on AFA, in accordance with sections 776(a) and (b) of the Act and 19 CFR 351.308(c). As AFA, because we find, pursuant to sections 776(a)-(b) of the Act, that Zhejiang Jingu used programs that are export contingent, we find that the criterion under section 703(e)(1)

¹⁸ See 19 CFR 351.206(i).

¹⁹ See 19 CFR 351.206(h)(2).

²⁰ See PDM at 9.

²¹ *Id.* at 7-10; *see also* Memorandum, "Monthly Shipment Quantity and Value Analysis for Critical Circumstances," dated February 14, 2019 (Preliminary Critical Circumstances Memorandum).

²² These include such programs as Export Seller's Credit, Export Buyer's Credit, and Export Contingent Grants Provided by the Fuyang City Government.

²³ See PDM at 8-9.

of the Act has been met.²⁴ In addition, for the purposes of the “massive imports” analysis, we determine, pursuant to sections 776(a)-(b) of the Act, that Zhejiang Jingu shipped certain steel wheels in “massive” quantities during the comparison period, thereby fulfilling the criteria under section 703(e)(1)(B) of the Act. As a result, we determine that critical circumstances continue to exist regarding Zhejiang Jingu.

All-Other Exporters or Producers

In the *Preliminary Determination*, we found that because there is evidence of the existence of countervailable subsidies that are inconsistent with the SCM Agreement ((i.e., Export Seller’s Credit, and Export Contingent Grants Provided by the Fuyang City Government), an analysis was warranted as to whether there was a massive increase in shipments by the “all other” companies, in accordance with section 703(e)(1)(B) of the Act and 19 CFR 351.206(h). Therefore, we analyzed, in accordance with 19 CFR 351.206(i), monthly shipment data for the period March through July 2018 (i.e., base period), compared with August through December 2018 (i.e., comparison period), using the most recent shipment data available from the U.S. International Trade Commission DataWeb (ITC Dataweb).²⁵ Based on record evidence, we found that “all other” companies had massive imports of certain steel wheels over a relatively short period, factoring in yearly seasonal trends and, thus, determined that critical circumstances existed for “all others,” pursuant to section 703(e)(1)(A) of the Act.

Consistent with the *Preliminary Determination*, because we find, pursuant to sections 776(a)-(b) of the Act, that certain programs are export-contingent, we find that the criterion under section 705(a)(2)(A) of the Act has been met with regard to companies covered by the all-others rate.²⁶ Regarding our “massive imports” analysis, consistent with prior determinations, we have not imputed the adverse inference of massive imports that we applied to the mandatory respondents to the companies receiving the all-others rate.²⁷ Because we have no verifiable shipment data from Chinese producers/exporters of subject merchandise on the record, we continue to rely on monthly data from ITC DataWeb, updated to an expanded five-month base and comparison period (reflecting the addition of import data through December 2018) subsequent to the issuance of the *Preliminary Determination*.²⁸ It is Commerce’s practice to base the critical

²⁴ *Id.* These include such programs as Export Seller’s Credit, Export Buyer’s Credit, and Export Contingent Grants Provided by the Fuyang City Government.

²⁵ See PDM at 10. Per our practice, we subtracted the shipment data reported by Zhejiang Jingu from the ITC import data.

²⁶ *Id.*

²⁷ See, e.g., *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the People’s Republic of China: Preliminary Affirmative Determination, Preliminary Partial Affirmative Critical Circumstances Determination, and Alignment of Final Determination with Final Antidumping Duty Determination*, 80 FR 79558 (December 22, 2015), and accompanying PDM at 17-20 (unchanged in *Certain Cold-Rolled Steel Flat Products from the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Partial Affirmative Critical Circumstances Determination*, 81 FR 32729 (May 24, 2016)).

²⁸ See Petitioner’s Case Brief at 12. We note that the petitioner contends these 5-month base and comparison periods are the most probative periods for use in Commerce’s analysis of massive imports with respect to “all other” companies for the final determination, as it reflects the period between the month the petition was filed in August 2018 and the last full month before the preliminary determination was originally due (early January 2019) prior to the federal government shutdown. See Petitioner’s Case Brief at 11. No party specifically disputes the suitability of

circumstances analysis on all available data, and to limit the comparison period by the month that Commerce began suspension of liquidation resulting from an affirmative preliminary determination.²⁹ We note that the import data used for Commerce’s analysis of whether massive imports exist for all other exporters or producers represents the most recent data available on the record (*i.e.*, no party provided updated data subsequent to the *Preliminary Determination*, nor has any party disputed the suitability of the base and comparison periods used or suggested a different period be used in the alternative). In so doing, we find that entry volumes increased 33.7 percent between the base and comparison periods, a “massive” increase in a “relatively short period” of time (*i.e.*, the periods March 2018, through July 2018, compared with August 2018, through December 2019) within the meaning of 19 CFR 351.206(h) and (i). In light of this result, we find it unnecessary to consider seasonal trends for this final determination.³⁰ Therefore, we determine that companies covered by the all-others rate shipped certain steel wheels in “massive” quantities during the comparison period, and that critical circumstances exist for all other producers and exporters of subject merchandise, pursuant to section 703(e)(1)(A) of the Act.³¹

VI. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

A. Legal Standard

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” 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.

this base and comparison window with respect to Commerce’s analysis of whether the increase in imports from “all other” companies has been massive, and such data reflects the most up-to-date information available on the existing record. As such, we have used this information as a basis for our finding with respect to massive imports for “all other” companies in our final determination. See Memorandum, “Monthly Shipment Quantity and Value Analysis for Critical Circumstances,” dated concurrently with this memorandum (Final Critical Circumstances Memorandum). Because we are finding critical circumstances based on AFA for Zhejiang Jingu, we have not subtracted the shipment data reported by Zhejiang Jingu from the ITC import data.

²⁹ See, *e.g.*, *Certain Quartz Surface Products From the People’s Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances*, 84 FR 23767 (May 23, 2019) (*Quartz China LTFV*), and accompanying IDM at Comment 2 (citing *Truck and Bus Tires from the People’s Republic of China: Final Affirmative Determinations of Sales at Less Than Fair Value and Critical Circumstances*, 82 FR 8599 (January 27, 2017) (*Truck and Bus Tires from China LTFV*), and accompanying IDM at Comment 28.

³⁰ See Final Critical Circumstances Memorandum.

³¹ The petitioner has alleged seasonality in the import data, and we relied on such an analysis in our *Preliminary Determination*. However, because the ITC import data demonstrated that the base period compared to the comparison period imports were massive (*i.e.*, 33.7 percent) notwithstanding any such seasonal trends, we have not employed any such analysis of seasonality for the purposes of our final affirmative finding of critical circumstances for all others.

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 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.”³² 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.”³³

In a CVD investigation, Commerce requires information from both the foreign producers and exporters of the merchandise under investigation and the government of the country where those producers and exporters are located. When the government fails to provide requested and necessary information concerning alleged subsidy programs, Commerce, applying AFA, may find that a financial contribution exists under the alleged program and that the program is specific.³⁴ However, where possible, Commerce will rely on the responsive producer’s or exporter’s records to determine the existence and amount of the benefit conferred, to the extent that those records are useable and verifiable.³⁵

Otherwise, 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 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 section 776(c) of the Act, or any other purpose, to estimate what the countervailable subsidy rate would have been if the non-cooperating interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.³⁶

B. Application of Total AFA: Xingmin and Zhejiang Jingu

As we determined in the *Preliminary Determination*, because the mandatory respondent Xingmin withdrew its participation, we have relied on facts available with an adverse inference in selecting from among the facts otherwise available, pursuant to sections 776(a)(2)(A)-(C) and

³² 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); 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).

³³ See Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. I at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199 at 870.

³⁴ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2015*, 83 FR 34828 (July 23, 2018) (*Crystalline Silicon Photovoltaic Cells*), and accompanying IDM at 6-7.

³⁵ *Id.*

³⁶ See section 776(d)(3) of the Act.

776(b) of the Act, as discussed further below.³⁷ Furthermore, as an extension of our application of AFA, we have assigned Xingmin's rate to all entities named in its affiliation questionnaire response.³⁸

In the *Preliminary Determination*, we determined that countervailable subsidies were being provided to mandatory respondent Zhejiang Jingu for certain programs under investigation, and that Zhejiang Jingu either did not use or did not receive a measurable benefit for the remaining programs under investigation.³⁹ Since the *Preliminary Determination*, Zhejiang Jingu has withdrawn its participation in this investigation and requested the return of its BPI submitted on the record of this investigation.⁴⁰ Consequently, as a result of its withdrawal from the investigation, which prevented Commerce from verifying Zhejiang Jingu's responses, we find that Zhejiang Jingu has significantly impeded this proceeding and has provided unverifiable information, in accordance with section 776(a)(2)(C) and (D) of the Act. In addition, we find that because Zhejiang Jingu has withdrawn from the investigation, it has failed to cooperate to the best of its ability. Thus, pursuant to section 776(b) of the Act, we have relied on facts available with an adverse inference in selecting the facts otherwise available, as discussed further below. Additionally, as an extension of our application of AFA, we have assigned Zhejiang Jingu's rate to all of its cross-owned companies (*i.e.*, Shanghai Yata Industry Co., Ltd.; Shandong Jingu Auto Parts Co., Ltd.; An'Gang Jingu (Hangzhou) Metal Materials Co., Ltd.; Zhejiang Wheel World Co., Ltd.; and Hangzhou Jingu New Energy Development Co., Ltd.).⁴¹

In light of the above, as AFA, we find that countervailable subsidies are being provided to Zhejiang Jingu and Xingmin for all programs identified in the Initiation Checklist, *Preliminary Determination*, and NSA Decision Memorandum, as appropriate.⁴² Accordingly, as AFA, Commerce finds the programs identified in the Appendix to be countervailable – that is, the programs provide a financial contribution within the meaning of sections 771(5)(B)(i) and (D) of the Act, confer a benefit within the meaning of sections 771(5)(B) and (E) of the Act, and are specific within the meaning of section 771(5A) of the Act.⁴³

Selection of AFA Rate

It is Commerce's practice in CVD proceedings to determine an 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

³⁷ See PDM at 9; *see also* Comment 1.

³⁸ See PDM at 15.

³⁹ *Id.* at 43-58.

⁴⁰ See Zhejiang Jingu's Withdrawal Letter at 1-2.

⁴¹ See PDM at 13.

⁴² See "Countervailing Duty Investigation Initiation Checklist: Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People's Republic of China," dated August 28, 2018 (Initiation Checklist). The Initiation Checklist identified certain company-specific alleged subsidy programs that would only be investigated to the extent that they appear in the financial statements of the named company if it was chosen as a respondent. See Initiation Checklist at 46-49. Thus, we have not included these company-specific alleged subsidy programs, if any, that are not related to either Zhejiang Jingu or Xingmin in their respective AFA rates.

⁴³ See Initiation Checklist; *see also* PDM at 43-58.

involving the same country.⁴⁴ When selecting AFA rates, section 776(d) of the Act provides that Commerce may use a countervailable subsidy rate applied for the same or a similar program in a CVD 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.⁴⁵ Accordingly, when selecting AFA rates, if we have cooperating respondents (which we do not in this investigation), we first determine if there is an identical program in the investigation and use the highest calculated rate 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 for the identical program (excluding *de minimis* rates).⁴⁶ If no such rate exists, we then determine if there is a similar/comparable program (based on the treatment of the benefit) in any 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.⁴⁷

In the instant case, the record does not suggest that we should apply a rate other than the highest rate envisioned under the appropriate step of the hierarchy pursuant to section 776(d)(1) of the Act for all programs included in the AFA rate for Zhejiang Jingu and Xingmin. As explained above, Zhejiang Jingu and Xingmin withdrew their participation in the investigation, and, as such, they have failed to cooperate to the best of their ability. As a result, we are applying AFA. Therefore, we find that the record does not support the application of an alternative rate, pursuant to section 776(d)(2) of the Act.

⁴⁴ 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) (*Certain Tow-Behind Lawn Groomers*), and accompanying PDM (unchanged in *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 29180 (June 19, 2009), and accompanying IDM 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 "VI. Use of Facts Otherwise Available and Adverse Inferences: Application of Adverse Inferences: Non-Cooperative Companies."

⁴⁵ See, e.g., *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*), 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") (*Essar Steel Ltd.*).

⁴⁶ 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."

⁴⁷ See *Shrimp from China* IDM at 13-14.

Commerce relied on AFA regarding several findings, including the AFA finding concerning Xingmin, in the *Preliminary Determination*.⁴⁸ Commerce made no changes to our decisions in the *Preliminary Determination* to use AFA with regard to Xingmin. Interested parties commented on the AFA rates preliminarily assigned to Xingmin for certain programs. For further discussion regarding our selection of program specific AFA rates, *see* Comment 1.

The standard income tax rate for corporations in China in effect during the POI was 25 percent.⁴⁹ Thus, the highest possible benefit for income tax programs which we have included in our AFA rate for both Zhejiang Jingu and Xingmin is 25 percent. Accordingly, we are applying the 25 percent AFA rate on a combined basis (*i.e.*, the five programs, combined, provide a 25 percent benefit). Consistent with past practice, application of this AFA rate for preferential income tax programs does not apply to tax credit, tax rebate, or import tariff and VAT exemption programs because such programs may provide a benefit in addition to a preferential tax rate.⁵⁰ Interested parties commented on our application of AFA regarding direct income tax programs; *see* Comment 1.

For all other programs not noted above, we are applying, where available, the highest above *de minimis* subsidy rate calculated for the same or comparable programs in a CVD proceeding involving China. For this final determination, we are able to match, based on program names, descriptions, and treatment of the benefit, to the same or similar programs from other CVD proceedings involving China.⁵¹

Additionally, in the NSA Decision Memorandum, we initiated an investigation on one additional program, “Provision of International Ocean Shipping Services for Less Than Adequate Remuneration (LTAR).” We find, based on AFA, and guided by the methodology detailed above, that both Xingmin and Zhejiang Jingu used this program. We selected an AFA rate for this program using the AFA hierarchy, and included the program in the determination of the net subsidy rate applied to Xingmin and Zhejiang Jingu. Consequently, based on the methodology described above, we determine the AFA net countervailable subsidy rate to be 386.45 percent *ad valorem* for Xingmin, 388.31 percent *ad valorem* for Zhejiang Jingu, and 387.38 percent *ad valorem* for all other producers and exporters.⁵²

Corroboration of the AFA Rate

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

⁴⁸ *See* PDM at 23-24.

⁴⁹ *Id.* at 29.

⁵⁰ *See, e.g., Aluminum Extrusions from China Final IDM* at “Application of Adverse Inferences: Non-Cooperative Companies.”

⁵¹ *See* Appendix.

⁵² Because the record did not include public information with which to weight average Xingmin and Zhejiang Jingu’s total AFA rates, we used a simple average of Xingmin and Zhejiang Jingu’s total AFA rates as the rate assigned to all-other producers and exporters.

investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”⁵³ It is Commerce’s practice to consider information to be corroborated if it has probative value.⁵⁴ In analyzing whether information has probative value, it is Commerce’s practice to examine the reliability and relevance of the information to be used.⁵⁵ However, the SAA emphasizes that Commerce need not prove that the selected facts available are the best alternative information.⁵⁶

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.⁵⁷ Furthermore, Commerce is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.⁵⁸

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.⁵⁹

Because Xingmin and Zhejiang Jingu failed to provide information concerning their usage of the subsidy programs due to their decision not to participate in the investigation, we have reviewed the available record information as well as information concerning Chinese subsidy programs in other cases. Where we have a program-type match, we find that, because these are the same or similar programs, they are relevant to the programs in this investigation. The relevance of these rates is that they are actual calculated subsidy rates for Chinese programs, from which the non-responsive companies could receive a benefit. Due to the lack of participation by these companies and the limited record information concerning these programs, we have corroborated the rates we selected to use as AFA to the extent practicable.

C. Application of AFA: “Massive” Imports for Xingmin and Zhejiang Jingu

As noted above, Xingmin and Zhejiang Jingu have withdrawn their participation in this investigation. Consistent with the *Preliminary Determination*, we continue to find as AFA that

⁵³ See SAA at 870.

⁵⁴ *Id.*

⁵⁵ *Id.* at 869.

⁵⁶ *Id.* at 869-870.

⁵⁷ *Id.*

⁵⁸ See section 776(d) of the Act.

⁵⁹ See, e.g., *Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People’s Republic of China: Final Affirmative Determination*, 82 FR 8405 (January 25, 2017) (*Amorphous Silica Fabric*), and accompanying IDM at 14 (citing *Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996)).

Xingmin shipped massive imports.⁶⁰ In addition, upon Zhejiang Jingu’s withdrawal from the investigation, Zhejiang Jingu requested that Commerce retain its BPI critical circumstances shipment data on the record of this proceeding.⁶¹ Because Zhejiang Jingu withdrew from this investigation, we are unable to verify Zhejiang Jingu’s critical circumstances information, which remains on the record of this investigation, pursuant to section 782(i)(1) of the Act for this final determination. As we stated in the *Preliminary Determination*, “Commerce is not required to consider record information that cannot be verified, or where the party has demonstrated that it failed to act to the best of its ability in providing the information requested, and meeting the requirements established, by Commerce.”⁶² Accordingly, we find that Zhejiang Jingu has not cooperated to the best of its ability and has significantly impeded this proceeding. As such, we have applied an adverse inference to determine that Zhejiang Jingu had “massive imports” over a short period of time.

VII. DISCUSSION OF THE ISSUES

Comment 1: Calculation of the Total AFA Rate

*Petitioner’s Comments*⁶³

- Because Xingmin and Zhejiang Jingu have withdrawn their participation in this investigation, they have significantly impeded these proceedings, provided information that cannot be verified, and failed to act to the best of their ability. Commerce should apply total AFA to both non-cooperating mandatory respondents.
- Commerce can no longer rely on the *Preliminary Determination* rates calculated for Zhejiang Jingu and should select the highest overall rate for the same or similar programs for those programs it had calculated for Zhejiang Jingu and used in the AFA rate, as well as for the program initiated on in the NSA Decision Memorandum.⁶⁴
- To calculate the total AFA rate, Commerce should utilize the individual program rates provided by the petitioner based on Commerce’s prior treatment of the individual programs in other investigations.⁶⁵
- For income tax reduction programs, Commerce’s practice is to apply an adverse inference that the non-cooperating company paid no income taxes during the period of investigation.⁶⁶
- Commerce should apply a 25 percent rate covering the following programs: Income Tax Reduction for High- and New-Technology Enterprises and Income Tax Reduction for Advanced-Technology Foreign-Invested Enterprises (FIEs).⁶⁷

⁶⁰ See PDM at 9.

⁶¹ See Zhejiang Jingu’s Withdrawal Letter.

⁶² See PDM at 9.

⁶³ See Petitioner’s Case Brief at 2-8.

⁶⁴ *Id.* at 4 (citing *Certain Tow-Behind Lawn Groomers*, 73 FR at 70975 (November 24, 2008), and accompanying IDM at “IV. Application of Facts Available, Including the Application of Adverse Inferences”).

⁶⁵ *Id.*

⁶⁶ *Id.* at 5-6 (citing *Calcium Hypochlorite from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 74064 (December 15, 2014) (*Calcium Hypochlorite*), and accompanying IDM at Issue 2).

⁶⁷ *Id.* at 6-7 (citing *Countervailing Duty Investigation of Stainless Steel Sheet and Strip From the People’s Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*,

- Consistent with past practice, Commerce should apply individual AFA rates for 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.⁶⁸

*TTT's Comment's*⁶⁹

- The preliminary AFA rate is unlawful and should be reduced in the final determination. Notwithstanding the Trade Preferences Extension Act (TPEA) amendment, Commerce cannot assign aberrational rates, nor can it select the highest rates without conducting the requisite evaluation of the rate.⁷⁰
- Section 776(d)(2) of the Act does not require Commerce to use the highest CVD rate calculated for every alleged program. The Act recognizes that there are other considerations when selecting AFA rates, *e.g.*, the rates may not be punitive. Commerce should exercise its discretion under the Act and refrain from applying a CVD rate that is many times higher than any calculated CVD rate.⁷¹
- Additionally, certain program-specific adjustments for loans, indirect taxes, land, hot-rolled steel (HRS) for LTAR, and self-reported grants should be made to the AFA rate to determine a final AFA rate that is consistent with Commerce's practice.⁷²

*Petitioner's Rebuttal Comments*⁷³

- Consistent with the statute and Commerce's established practice, Commerce should compute a total AFA rate for the non-cooperating mandatory respondent companies using the highest calculated program-specific rates for identical or similar programs from a prior China CVD proceeding.⁷⁴
- Such a calculated AFA rate is not absurdly high or unlawfully punitive. The Court of Appeals for the Federal Circuit (CAFC) has noted that "{a} decision based on adverse facts is not punitive when determined in accordance with the statutory requirements" and stated that an AFA rate that "was on par with similar subsidy programs" was "therefore not punitive."⁷⁵

82 FR 9714 (February 8, 2017) (*Stainless Steel Strip*), and accompanying IDM at Appendix (applying individual rates for the Enterprise Income Tax Law, R&D Program, Income Tax Credits for Domestically-Owned Companies Purchasing Domestically-Produced Equipment, Reduction in or Exemption from Fixed Assets Investment Orientation Regulatory Tax, and Preferential Income Tax Policy for Enterprises in the Northeast Region programs; *see also Certain Magnesia Carbon Bricks From the People's Republic of China: Final Results and Final Rescission, in Part, of Countervailing Duty Administrative Review; 2012*, 79 FR 62101 (October 16, 2014), and accompanying IDM at A-5).

⁶⁸ *Id.*

⁶⁹ *See* TTT's Case Brief at 1-8.

⁷⁰ *Id.* at 1-4 (citing *De Cecco*, 216 F.3d 1027, 1032 (Fed. Cir. 2000); SAA H.R. Doc. No. 103316, vol. 1, at 870, reprinted in 1994 U.S.C.C.A.N 4040, 4090).

⁷¹ *Id.* at 2 (citing *Tai Shan City Kam Kiu Aluminum Extrusion Co. v. United States*, 58 F. Supp. 3d 1384, 1391 (CIT 2015) (*Ta Shan City Kam Kiu Aluminum Extrusion Co.*); *see also Hyundai Steel Co. v. United States*, 319 F. Supp. 3d 1327, 1348-49 (CIT 2018) (*Hyundai Steel Co.*)).

⁷² *Id.* at 4-8 (citing *Tai Shan City Kam Kiu Aluminum*, 58 F. Supp. 3d at 1391; *see also* SAA at 4199).

⁷³ *See* Petitioner's Rebuttal Brief at 2-14.

⁷⁴ *Id.* at 3 (citing *POSCO v. United States*, 296 F. Supp. 3d 1320 (CIT 2018)).

⁷⁵ *Id.* (citing *Essar Steel Ltd.*, 678 F.3d at 1276).

- Several of the cases cited by TTT to support its claim that the preliminary AFA rate is unlawful predate the relevant changes to the statute under the TPEA.⁷⁶
- Contrary to TTT's assertion, Commerce need not corroborate the aggregate subsidy rate as the statute's corroboration requirement is program-specific. Even so, the aggregate AFA rate applied to Xingmin is within the range of rates that Commerce has applied in prior China CVD proceedings for the same and similar programs using its AFA hierarchy.⁷⁷
- Commerce should reject TTT's requests to reduce or eliminate the program-specific AFA rates for the HRS for LTAR, land, loan, export credit insurance subsidies, indirect tax, and grant programs. Commerce should select AFA rates for each of the relevant programs consistent with its AFA hierarchy and established practice.⁷⁸

*TTT's Rebuttal Comments*⁷⁹

- Commerce should not increase the already unreasonably and unlawfully high AFA rate as the petitioner requests. Assignment of this *prima facie* punitive rate cannot be reconciled with the applicable legal requirements. Courts have held that Commerce is required by recent statutory amendments to provide a sufficiently detailed explanation before selecting the highest program-specific rates.⁸⁰
- The petitioner's efforts to increase this rate improperly ask Commerce to separately countervail programs that should be grouped together with a single rate and/or use a rate that is neither reliable nor probative.⁸¹

*Zhejiang Jingu's Rebuttal Comments*⁸²

- The purpose of AFA is to provide respondents with an incentive to cooperate, not to impose punitive damages.⁸³ The petitioner's proposed AFA rate is more than three times higher than any calculated rate and serves no purpose other than to be punitive. Such a punitive rate may discourage respondents from participating because it indicates that respondents may be subject to punitive measures even if they participate and receive partial AFA.
- Any subsidy rate higher than its *Preliminary Determination* rate ensures that Zhejiang Jingu does not benefit from non-participation. The petitioner's proposed rate, six times more than Zhejiang Jingu's calculated preliminary rate, serves no purpose other than to be punitive.
- The petitioner's request that Commerce artificially inflate the total AFA rate by listing certain programs in a duplicative manner is inconsistent with Commerce's prior practices and leads to aberrational results. Specifically, certain program-specific adjustments for loans,

⁷⁶ *Id.* at 5-8 (citing *Essar Steel Ltd.*; see also *POSCO*, 296 F. Supp. 3d at 1352 n.47; and *POSCO v. United States*, 335 F. Supp. 3d 1283, 1286 (CIT 2018) (*POSCO II*)).

⁷⁷ *Id.* at 6 (citing *POSCO*, 296 F. Supp. 3d at 1352 n.47 (distinguishing *Ta Shan City Kam Kiu Aluminum Extrusion Co.*)).

⁷⁸ *Id.* at 7 (citing *POSCO*, 296 F. Supp. 3d at 1349-50).

⁷⁹ See TTT's Rebuttal Brief at 1-3.

⁸⁰ *Id.* at 1-2 (citing *Hyundai Steel Co.*, 319 F. Supp. 3d at 1348-49; *POSCO*, 296 F. Supp. 3d at 1349; see also *De Cecco*, 216 F.3d at 1032).

⁸¹ *Id.* at 2-3 (citing *Ta Shan City Kam Kiu Aluminum Extrusion Co.*).

⁸² See Zhejiang Jingu's Rebuttal Comments at 2-7.

⁸³ *Id.* at 2 (citing *Hyundai Steel Co.*, 319 F. Supp. 3d at 1355-56; see also *POSCO*, 296 F. Supp. 3d at 1349-50; *De Cecco*, 216 F.3d at 1032; *Essar Steel Ltd.*, 678 F.3d at 1276).

indirect taxes, land, HRS for LTAR, and self-reported grants should be made to the AFA rate to determine a final AFA rate that is consistent with Commerce's practice.⁸⁴

Commerce's Position: We are revising the total AFA rate for this final determination. Because Zhejiang Jingu withdrew participation in this investigation after the *Preliminary Determination*, as noted, Commerce was unable to verify Zhejiang Jingu's responses. Therefore, we have not relied on the preliminary rates calculated for Zhejiang Jingu in determining the total AFA rates for this final determination. We agree with the petitioner and have assigned the total AFA rate to both non-cooperating mandatory respondents.

With regard to whether the high AFA rate is punitive, we agree with the petitioner that while the total AFA rate may be high, such a rate would not be absurdly high or unlawfully punitive, as contended by TTT.⁸⁵ First, several of the cases relied upon by TTT are based on the prior version of the Act, before the amendments enacted by the TPEA. Further, the TPEA explicitly does away with Commerce's responsibility to select a rate that reflects the respondent's commercial reality, thus granting Commerce the flexibility to select a rate that best achieves its objective when applying section 776 of the Act, incentivizing future respondents to participate fully in Commerce's proceedings.⁸⁶ *POSCO* also makes it clear that *De Cecco* does not speak to the issue of whether Commerce's reliance on its AFA hierarchy results in impermissibly punitive or uncorroborated rates.⁸⁷ With regard to *Hyundai Steel*, we agree with the petitioner that the issues raised in that case are irrelevant to this instant investigation.⁸⁸

Additionally, we agree with the petitioner that *POSCO* rejected the contention that Commerce must corroborate the aggregate subsidy rate in addition to corroborating individual program-specific rates.⁸⁹ However, we do note that the AFA rate calculated in the *Preliminary Determination*, and the suggested AFA rate calculated by the petitioner, both fall within the range of total AFA rates calculated by Commerce in prior China CVD proceedings.⁹⁰ We find not only are TTT's arguments regarding the unlawful nature of the total AFA unpersuasive, but factually inconsistent with Commerce's prior determinations.

⁸⁴ *Id.* at 7 (citing *Certain Plastic Decorative Ribbon From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 83 FR 29096 (June 22, 2018), and accompanying IDM, at Attachment I (assigning a single AFA rate to eight separate alleged tax programs); see also *Certain Plastic Decorative Ribbon From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 84 FR 1064 (February 1, 2019) (unchanged in final)).

⁸⁵ See TTT's Case Brief at 4 (citing *De Cecco*, 216 F.3d 1027, 1032 (Fed. Cir. 2000)); see also SAA H.R. Doc. No. 103316, vol. 1, at 870, reprinted in 1994 U.S.C.C.A.N 4040, 4090).

⁸⁶ See section 776(d)(3)(B) of the Act.

⁸⁷ See Petitioner's Rebuttal Brief at 6 (citing *POSCO*, 296 F. Supp. 3d at 1352 n.47).

⁸⁸ *Id.* (citing *Hyundai Steel Co.*, where the issue was based on aberrational transactions, a claim no interested party is making in this CVD investigation).

⁸⁹ See *POSCO*, 296 F. Supp. 3d at 1352 and n.47.

⁹⁰ See, e.g., *Certain Steel Wheels from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 84 FR 11744 (March 28, 2019) (*Steel Wheels*), and accompanying IDM; see also *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); *Aluminum Extrusions from China Final*; and *Certain Steel Nails from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination*, 80 FR 28962 (May 20, 2015).

On remand, in *POSCO*, Commerce justified its selection of the highest rates, explaining that within each prong of the AFA hierarchy, Commerce strikes a balance between inducement, industry relevancy, and program relevancy.⁹¹ Further, Commerce explained that section 776(d)(2) of the Act constitutes an exception to the selection of AFA under section 776(d)(1) of the Act, such that after an “evaluation by the administration authority of the situation that resulted in the administering authority using an adverse inference in selecting among the facts otherwise available,”⁹² Commerce may decide that given the facts on the record, the highest rate may or may not be appropriate.⁹³ Commerce’s explanation was upheld by the Court of International Trade, which stated that “Commerce explained, with citations to supporting evidence, why this case did not merit a deviation from the highest calculated rate selected pursuant to Commerce’s hierarchical methodology.”⁹⁴ In this instant investigation, no mandatory respondent has provided unique or unusual facts or justifications that would lead Commerce to deviate from selecting the highest calculated rate pursuant to our hierarchical methodology. In the *Preliminary Determination*, we clearly evaluated the situation that led us to apply AFA, namely that Xingmin withdrew its participation in the investigation.⁹⁵ For the same reasons detailed in the *Preliminary Determination*, we find that it is appropriate to apply AFA to Zhejiang Jingu because it too withdrew its participation from this investigation. As such, we have continued to utilize our AFA hierarchy to determine the AFA rate applied to both non-cooperating mandatory respondents.

As noted above, we have recalculated the total AFA rate to exclude rates calculated in the *Preliminary Determination* for Zhejiang Jingu. We followed our AFA hierarchy as outlined in the *Preliminary Determination* to determine the appropriate final rate to assign to each program for which we had preliminarily calculated a rate for Zhejiang Jingu.⁹⁶

The petitioner and interested parties also commented on program-specific rates Commerce should use as the AFA rates for the final determination. We have addressed these comments as follows.

First, interested parties claim that Commerce improperly assigned individual AFA rates to all of the alleged lending and land for LTAR programs.⁹⁷ We disagree. Specifically, TTT claims that if Commerce applies the 10.54 percent AFA rate used for lending programs to each of the ten lending programs, the resulting rate would be absurd and would never occur in reality. TTT argues that respondents report all loans received, regardless of the program under which they were received, in one loan template, and that Commerce calculates one rate for loans found to be domestic subsidies, and another rate for loans found to be export subsidies. Therefore, to determine the appropriate AFA rate for the lending programs, TTT contends that Commerce should group together all domestic subsidy loans and all export subsidy loans, and assign an AFA rate to each of the two groups of lending programs. In addition, TTT maintains that the Export Credit Insurance Subsidies is not a lending program, but rather an export insurance

⁹¹ See *POSCO II*, 335 F. Supp. 3d at 1286.

⁹² See section 776(d)(2) of the Act.

⁹³ See *POSCO II*, 335 F. Supp. 3d at 1286.

⁹⁴ *Id.* at 1287.

⁹⁵ See PDM at 9.

⁹⁶ *Id.* at 26 and n.144.

⁹⁷ See, e.g., TTT’s Case Brief at 4-6.

program, such that the most similar program is a grant program. Similarly, TTT alleges that respondents report all land purchases over the average useful life (AUL), regardless of the program under which they fall, in one template, and that Commerce does not calculate specific land program rates, but instead calculates a single rate for land for LTAR. TTT asserts that Commerce should therefore combine the four land grants for LTAR programs and assign a single AFA rate to land for LTAR, consistent with how land for LTAR is normally calculated.

As an initial matter, TTT misinterprets the questions in Commerce’s initial questionnaire, and our practice with regard to the reporting of loans and land for LTAR programs. In the initial questionnaire, for each lending program, respondents are asked either to report the loans associated with the program in question in a separate worksheet (*i.e.*, Government Policy Lending Program, Preferential Loans to State-Owned Enterprises (SOEs)), or to indicate which of its reported loans were made through another program (*i.e.*, Preferential Loans for Key Projects and Technologies, Treasury Bond Loans).⁹⁸ Similarly for land for LTAR programs, respondents are required to indicate under which program(s) their reported land purchases fall.⁹⁹ Commerce calculates a program rate for each program used during the POI and/or over the AUL.¹⁰⁰ Commerce’s practice is therefore not to calculate one domestic lending rate and one export lending rate, or one land for LTAR rate, but to calculate a program-specific rate for each program used by a respondent.

We also agree with the petitioner that the cases referenced by TTT do not support TTT’s assertions. First, in *Cast Iron Soil Pipe Fittings*, while we did apply one AFA rate to six loan programs (including both domestic and export subsidy loans), no rationale was provided.¹⁰¹ It is not at all clear from that proceeding that Commerce intended to apply one rate to domestic lending programs and one rate to export lending programs. Based on our analysis in *Large Diameter Welded Pipe*, we applied one rate to Government Policy Lending and Preferential Loans to SOEs because we found that such a rate would apply to the same loans provided by state-owned commercial banks (SOCBs).¹⁰² For the three other lending programs alleged in

⁹⁸ See letter to the GOC, “Countervailing Duty Investigation of Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People’s Republic of China: Countervailing Duty Questionnaire,” dated September 21, 2018 (Initial Questionnaire) at Section III at 8-12.

⁹⁹ *Id.* at 13-14.

¹⁰⁰ See, e.g., *Steel Wheels* IDM at Appendix I (applying separate AFA rates to each of four land programs); *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), and accompanying IDM at 11 (where we used a calculated rate from a cooperating respondent for one land program, and an AFA rate for another land program that was not used by the cooperating respondent).

¹⁰¹ See *Cast Iron Soil Pipe Fittings from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 82 FR 60178 (December 19, 2017), and accompanying PDM at 8 and 43 (unchanged in *Cast Iron Soil Pipe Fittings from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 83 FR 32075 (July 11, 2018) (*Cast Iron Soil Pipe Fittings*), and accompanying IDM at Appendix).

¹⁰² See *Large Diameter Welded Pipe from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Determination*, 83 FR 30695 (June 29, 2018), and accompanying PDM at 9, footnote 42 (unchanged in *Countervailing Duty Investigation of Large Diameter Welded Pipe from the People’s Republic of China: Final Affirmative Determination*, 83 FR 56804, 56804-05 (November 14, 2018) (*Large Diameter Welded Pipe*)).

Large Diameter Welded Pipe, we applied separate AFA rates to each program.¹⁰³ Commerce has routinely applied separate AFA rates to each loan program investigated, except as parties note, when the programs at question are Government Policy Lending and Preferential Loans to SOEs. When dealing with these two programs only do we routinely combine the programs and assign a single AFA rate to the combined programs because we have found that the two allegations in this investigation encompass the same loans provided by state-owned commercial banks.¹⁰⁴ More importantly, as both respondents have withdrawn from the investigation, there is no verifiable record evidence indicating that the non-cooperating respondents could not have conceivably benefited from each alleged land program, as well as each alleged loan program, individually. For these same reasons, we continue to treat the Export Credit Insurance Subsidy as a loan, consistent with our practice.¹⁰⁵ Thus, as Commerce has done in prior proceedings, in the absence of verifiable record evidence about the use of these programs by the respondents, and to the extent to which the respondents may have benefited from them, we are continuing to assign individual rates to all alleged land and loan programs.¹⁰⁶

The petitioner requests that Commerce only apply the 25 percent standard corporate income tax rate to the following programs: Income Tax Reduction for High- and New-Technology Enterprises, and Income Tax Reduction for Advanced-Technology FIEs.¹⁰⁷ For the remaining six direct tax programs, the petitioner recommends that Commerce apply separate AFA rates to each program, based in part on the fact that in prior proceedings, Commerce has applied such separate rates to these same programs.

Consistent with the *Preliminary Determination*, we have combined all of the programs that are a preferential income tax program, and assigned an AFA rate of 25 percent to the combined programs.¹⁰⁸ As we stated in the *Preliminary Determination*, “application of this AFA rate for preferential income tax programs does not apply to tax credit, tax rebate, or import tariff and VAT exemption programs, because such programs may provide a benefit in addition to a preferential tax rate.”¹⁰⁹ For those direct tax programs that were identified as a “tax credit” program, we have followed our AFA hierarchy and found a same or similar calculated rate from a prior China CVD proceeding, which we have assigned to these respective programs.¹¹⁰

¹⁰³ *Id.*

¹⁰⁴ See *Calcium Hypochlorite* IDM at 3; see also *Countervailing Duty Investigation of Certain Biaxial Integral Geogrid Products from the People’s Republic of China: Final Affirmative Determination and Final Determination of Critical Circumstances, in Part*, 82 FR 3282 (January 11, 2017) (*Certain Biaxial Geogrid*), and accompanying IDM at Attachment; and *Stainless Steel Strip* IDM at Appendix.

¹⁰⁵ See, e.g., *Steel Wheels* IDM at Appendix I; *Stainless Steel Strip* IDM at Appendix.

¹⁰⁶ See, e.g., *Stainless Steel Strip* IDM at Attachment; *Amorphous Silica Fabric* IDM at Appendix I; *Certain Biaxial Geogrid* IDM at Attachment. As noted, we have applied a single AFA rate to Government Policy Lending program and Preferential Loans to State-Owned Enterprises (SOEs) only.

¹⁰⁷ See Petitioner’s Case Brief at 6.

¹⁰⁸ See PDM at 28-29. In this instant investigation, we have relied on record information that indicates whether these programs should be treated as preferential income tax programs (*i.e.*, an “above the line” deduction or a reduced tax rate); see also Initiation Checklist at 22-28.

¹⁰⁹ *Id.*

¹¹⁰ See *Certain Steel Grating from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 32362 (June 8, 2010) (*Steel Grating*), and accompanying IDM at 14, “Income Tax Credits for Domestically Owned Companies Purchasing Domestically Produced Equipment.”

Regarding the program-specific rate we are assigning to each of the four land for LTAR programs, we agree with the petitioner that, following our AFA hierarchy, the highest calculated rate for the same or similar program is 13.36 percent.¹¹¹ We have therefore assigned this rate to each of the alleged land for LTAR programs.

Furthermore, consistent with past practice, for the final determination, we have continued to apply separate AFA rates for each of the indirect income tax exemption and reduction programs.¹¹² Specifically, we have applied an AFA rate of 9.71 percent, a rate we calculated in a prior China CVD proceeding.¹¹³ TTT argues that this rate is based on AFA because the GOC did not participate, and thus the rate is not probative.¹¹⁴ We disagree. As stated by TTT, the 9.71 percent rate is based partially on AFA; however, AFA was only applied to find the program countervailable (*i.e.*, provides a financial contribution and is specific).¹¹⁵ Commerce calculated the 9.71 percent rate using actual data provided by a respondent.¹¹⁶ The rate is, in fact, probative of rates above *de minimis* for a similar program, and in accordance with Commerce's AFA hierarchy.¹¹⁷

With regard to the following programs, we agree with the rates as indicated by the petitioner, which follow our AFA hierarchy: Provision of HRS for LTAR, Provision of Electricity for LTAR, and Provision of International Shipping Services for LTAR.¹¹⁸ TTT proposes that Commerce apply its methodology, and for the provision of HRS for LTAR, use a rate from the same program in a different proceeding involving the same country, namely the 0.02 percent rate recently determined in *High Pressure Steel Cylinders*.¹¹⁹ While we agree with TTT on the next step in our AFA hierarchy, we note that the highest calculated rate for this same program is 44.91 percent.¹²⁰ While 0.02 percent was a rate calculated for a same or similar program, we

¹¹¹ See *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), and accompanying IDM.

¹¹² See PDM at Attachment.

¹¹³ 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) (*New Pneumatic Off-the-Road Tires from the People's Republic of China AR*), and accompanying PDM (unchanged in *New Pneumatic Off the-Road Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*, 76 FR 23286 (April 26, 2011)).

¹¹⁴ See TTT's Case Brief at 6 (citing *Tai Shan*, 58 F. Supp. 3d at 1391; see also SAA at 4199).

¹¹⁵ See *OTR Tires* IDM at 62-63.

¹¹⁶ *Id.*

¹¹⁷ See, e.g., *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35308 (June 2, 2016) and accompanying IDM at Appendix; see also *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) and accompanying IDM at 12.

¹¹⁸ See Petitioner's Case Brief at Appendix.

¹¹⁹ See TTT's Case Brief at 7-8 (citing *High Pressure Steel Cylinders from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2016*, 83 FR 63471 (December 10, 2018) (*High Pressure Steel Cylinders*)).

¹²⁰ See, e.g., *Steel Grating* IDM.

find it is not sufficient to induce cooperation, and assigning it as the AFA rate for this program would allow Zhejiang Jingu to benefit by not cooperating as it received 37.77 percent calculated rate in the *Preliminary Determination*.¹²¹

Lastly, as discussed above, we have applied AFA rates to all programs, so long as the producer of the subject merchandise, or the industry to which it belongs, could have used the program for which we calculated rates. Thus, we find TTT's assertion regarding Commerce's use of information reported by another respondent concerning certain unalleged programs unpersuasive. Specifically, Xingmin withdrew from the investigation, informing Commerce it would no longer participate.¹²² Accordingly, Commerce was under no obligation to issue an unverifiable supplemental questionnaire to Xingmin regarding the programs reportedly used by Zhejiang Jingu. Moreover, Zhejiang Jingu, a manufacturer of subject merchandise, did in fact use the programs; as a result, following our application of AFA, we find that Xingmin could have also used the same programs.¹²³ TTT failed to provide any legal authority to support this assertion. Therefore, consistent with our practice, we have included the reported programs within our total AFA calculation.¹²⁴

Comment 2: Calculation of the All-Others Rate

*Petitioner's Comments*¹²⁵

- The rate assigned to all other producers and exporters should be the weighted average of the total AFA rate assigned to the non-cooperating mandatory respondents.
- Section 776(5)(A)(ii) of the Act allows Commerce to use "any reasonable method" to calculate the all others rate, including the use of a weighted-average rate of non-responsive mandatory respondents.
- In other cases where all mandatory respondents have failed to cooperate during an investigation, Commerce has routinely applied the weighted average of the total AFA rate to all other producers and exporters of subject merchandise.¹²⁶

*HiSpec's Case Brief*¹²⁷

- In the event that both mandatory respondents are assigned AFA rates, the all-others rate of 58.30 percent calculated for Zhejiang Jingu in the *Preliminary Determination* should prevail.

¹²¹ See PDM at 47-48.

¹²² See Xingmin's Withdrawal Letter.

¹²³ See PDM at Appendix; see also Zhejiang Jingu's Prelim Analysis Memo at Attachment 2.

¹²⁴ See *Steel Wheels* IDM at Appendix I.

¹²⁵ See Petitioner's Case Brief at 7-8.

¹²⁶ *Id.* (citing 19 USC 1671d(c)(5)(A)(i); see also *Certain Potassium Phosphate Salts from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Termination of Critical Circumstances Inquiry*, 75 FR 30375 (June 1, 2010) (*Certain Potassium Phosphate Salts*), and accompanying IDM (in an investigation where all of the mandatory respondents received a rate based on AFA, Commerce used the AFA rate assigned to the mandatory respondents as the all-others rate)).

¹²⁷ See HiSpec's Case Brief at 1-2.

- Basing an all-others rate entirely on AFA is unreasonable, as those companies have not failed to cooperate. The CAFC has in a variety of contexts recognized the impropriety of transposing AFA to entities other than the respondents who cease cooperating.¹²⁸

*Petitioner’s Rebuttal Comments*¹²⁹

- When all mandatory respondents are non-cooperating, Commerce’s established practice is to use the total AFA rate as the all-others rate.
- The CAFC cases referenced are not controlling in the instant case. One of the cases relied on a commercial reality requirement that had been superseded by the TPEA and was for a non-market economy (NME) AD case.¹³⁰ Moreover, in this investigation the only subsidy rate available would be the same total AFA subsidy rate for each of the two non-cooperating mandatory respondents. In the other CAFC case referenced, the case also predated the TPEA, and involved two cooperating voluntary respondents whose rates could be relied upon in determining an appropriate all-others rate.¹³¹ Here, by contrast, there are no voluntary respondents, and, therefore, no verifiable information exists on the record to suggest other levels of subsidy utilization.
- In *Diamond Sawblades*,¹³² Commerce recalculated the China-wide entity rate based on information from a cooperating respondent whom it had previously granted a separate rate; thus, the information used to recalculate the China-wide rate was probative. By contrast, in the instant case, the rate for Zhejiang Jingu that was calculated in the *Preliminary Determination* is no longer probative, as it was determined using unverifiable information from a non-cooperating respondent that has removed its BPI from the record. Furthermore, nothing in *Diamond Sawblades* permits Commerce to rely on a non-cooperating respondent’s unverified rate.

*HiSpec’s Rebuttal Comments*¹³³

- Assigning an AFA rate to respondents other than those who have declined to cooperate is *prima facie* unreasonable and cannot be reconciled with applicable judicial precedent.¹³⁴ To comply with its statutory obligation to assign a reasonable all-others margin, Commerce should maintain the 58.30 percent that it calculated using the actual data for program usage reported by Zhejiang Jingu.

Commerce’s Position: Commerce continues to apply the weighted average of the total AFA rates of the non-cooperating mandatory respondents as the all-others rate in this investigation.

¹²⁸ *Id.* at 2 (citing *Yangzhou Bestpak Gifts & Crafts Co. v. United States*, 716 F.3d 1370, 1377-81 (Fed. Cir. 2013) (*Yangzhou Bestpak Gifts & Crafts Co.*); *MacLean-Fogg Co. v. United States*, 753 F.3d 1237, 1240-56 (Fed. Cir. 2014) (*MacLean-Fogg Co.*); Final Second Remand Redetermination, *Diamond Sawblades Mfrs. Coal. v. United States*, CIT Case No. 16-00124 (Apr. 1, 2019); and *Diamond Sawblades Mfrs. Coal. v. United States*, 866 F.3d 1304, 1310-1315 (Fed. Cir. 2017) (*Diamond Sawblades Mfrs. Coal.*)).

¹²⁹ See Petitioner’s Rebuttal Brief at 15-18.

¹³⁰ *Id.* at 16 (citing *Yangzhou Bestpak Gifts & Crafts Co.*, 716 F.3d at 1378).

¹³¹ *Id.* at 16 (citing *MacLean-Fogg Co.*, 753 F.3d at 1240-46).

¹³² *Id.* at 17 (citing *Diamond Sawblades Mfrs. Coal.*, 866 F.3d at 1308-09).

¹³³ See HiSpec’s Rebuttal Brief at 1-2.

¹³⁴ *Id.* (citing *MacLean-Fogg Co.*; and *Yangzhou Bestpak Gifts & Crafts Co.*).

Section 705(c)(5)(A) of the Act mandates that Commerce determine an estimated all-others rate for companies not individually examined. Generally, the Act instructs Commerce to calculate the all-others rate as the weighted average of the estimated subsidy rates established for those companies individually examined that are not zero and *de minimis* or determined entirely under section 776 of the Act. However, when all countervailable subsidy rates established for the mandatory respondents are zero, *de minimis* or determined entirely under section 776 of the Act, then section 705(c)(5)(A)(ii) of the Act instructs Commerce to use “any reasonable method” to assign an all-others rate, including averaging the weighted-average countervailable subsidy rates determined for the exporters and producers individually investigated. Moreover, the SAA also explains that a reasonable method to establish an all-others rate when all countervailable subsidy rates established for the mandatory respondents are zero, *de minimis* or determined entirely under section 776 of the Act is averaging countervailable subsidy rates that are zero, *de minimis* or determined entirely under section 776 of the Act.¹³⁵

In this investigation, all rates for the individually investigated respondents are determined entirely under section 776 of the Act. Specifically, both selected mandatory respondents have withdrawn from the investigation.¹³⁶ Furthermore, because both selected respondents withdrew from the investigation, and withdrew their BPI submissions, we do not have verified information on the record that we can use to determine the all-others rate. Thus, we find the arguments urging Commerce to continue to use unverified information as the final all-others rate during an investigation unpersuasive. Section 782(i)(1) of the Act explicitly requires that Commerce verify all information relied upon in making its final determinations in an investigation. As such, we find the interested parties’ suggested approach to establishing the final all-others rate unreasonable, and inconsistent with Commerce practice.¹³⁷ Particularly when all rates for individually investigated respondents are based entirely on section 776 of the Act, we have consistently used the weighted average of the countervailable subsidy rates of the non-cooperating respondents to establish the all-others rate.¹³⁸ Thus, consistent with our practice, we find that it is reasonable to rely on a weighted average of the total AFA rates computed for Xingmin and Zhejiang Jingu as the all-others rate in this final determination.

We disagree with HiSpec that *Yangzhou Bestpak* prevents us from relying on AFA in determining an “all others” rate.¹³⁹ First, the *Yangzhou Bestpak* decision involved the determination of a separate rate for a non-selected respondent in an antidumping duty investigation involving an NME country. In that case, Commerce averaged a *de minimis* dumping margin with the AFA-based NME entity rate to arrive at the non-selected separate

¹³⁵ See SAA at 873.

¹³⁶ See Xingmin’s Withdrawal letter; see also Zhejiang Jingu’s Withdrawal Letter.

¹³⁷ See, e.g., *Countervailing Duty investigation of Stainless Steel Flanges from the People’s Republic of China: Preliminary Affirmative Determination*, 83 FR 3124 (January 23, 2018), and accompanying PDM at “Calculation of the All Others Rate” (unchanged in *Countervailing Duty Investigation of Stainless Steel Flanges from the People’s Republic of China: Final Affirmative Determination*, 83 FR 15790 (April 12, 2018)); see also *Countervailing Duty Investigation of Ammonium Sulfate from the People’s Republic of China: Preliminary Affirmative Determination*, 81 FR 76332 (November 2, 2016), and accompanying PDM at “Calculation of the All Other Rates” (unchanged in *Ammonium Sulfate from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 82 FR 4850 (January 17, 2017)).

¹³⁸ *Id.*

¹³⁹ See *Yangzhou Bestpak Gifts & Crafts Co.*, 716 F.3d 1370.

rate. The Federal Circuit found that Commerce’s methodology was reasonable, but the results in that given case were unreasonable.¹⁴⁰ The present investigation is entirely different. This is a CVD, not antidumping duty, investigation. There is no separate rate or NME entity, and therefore the statute and SAA (as noted above) speak directly to the question here. Moreover, unlike in *Yangzhou Bestpak*, no respondent in this investigation is receiving a *de minimis* rate. Most importantly, the *Yangzhou Bestpak* decision relied substantially on notions of “economic reality” in finding Commerce’s determination unsupported.¹⁴¹ However, the Act now makes clear that Commerce is not required to demonstrate that the subsidy rate reflects an “alleged commercial reality” of the interested party.¹⁴²

We also disagree with HiSpec that *Maclean-Fogg* finds that it is improper for Commerce to apply the AFA rate to entities other than the non-cooperating mandatory respondents.¹⁴³ The record evidence in this instant investigation is dissimilar to the *MacLean-Fogg* circumstances. In *MacLean-Fogg*, there were two cooperating voluntary respondents which Commerce could rely upon to determine an appropriate all-others rate. In this investigation, not only does Commerce not have voluntary respondents to consider, but the non-cooperating mandatory respondents’ BPI submissions have been withdrawn from the record.¹⁴⁴ We, therefore, find these arguments unpersuasive in this instant investigation.

Comment 3: Whether Critical Circumstances Exist

*Petitioner’s Comments*¹⁴⁵

- As total AFA, Commerce should find that Xingmin and Zhejiang Jingu benefited from all countervailable subsidy programs under investigation that they could have used, which include a large number of programs that are inconsistent with the SCM Agreement, and that both companies had massive imports over a short period of time.¹⁴⁶
- Commerce should also determine that all other producers and exporters had massive imports because, using a five-month base and comparison period, imports were over Commerce’s 15 percent threshold required for imports to be found massive.

¹⁴⁰ See *Yangzhou Bestpak Gifts & Crafts Co.*, 716 F.3d at 1377-78.

¹⁴¹ *Id.* at 1377-79.

¹⁴² See section 776(d)(3)(B) of the Act; see also *Xanthan Gum from the People’s Republic of China: Issues and Decision Memorandum for the Final Results of the First Antidumping Duty Administrative Review*, 82 FR 11428, 11431 (Feb. 13, 2017).

¹⁴³ See *MacLean-Fogg Co. v. United States*, 753 F.3d 1237 (Fed. Cir. 2014).

¹⁴⁴ See letter to Zhejiang Jingu, “Antidumping and Countervailing Duty Investigations of Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People’s Republic of China: Removal of Zhejiang Jingu’s Business Proprietary Information (BPI) from the Records,” dated March 28, 2019; see also Letter to Xingmin, “Countervailing Duty Investigation of Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People’s Republic of China: Removal of Xingmin’s Business Proprietary Information (BPI) from the Record,” dated December 19, 2018.

¹⁴⁵ See Petitioner’s Case Brief at 8-14.

¹⁴⁶ *Id.* at 9-10 (citing *Drill Pipe from the People’s Republic of China*, 75 FR 49891, 49892 (August 16, 2010); see also *Common Alloy Aluminum Sheet From the People’s Republic of China: Preliminary Affirmative Countervailing Duty (CVD) Determination, Alignment of Final CVD Determination With Final Antidumping Duty Determination, and Preliminary CVD Determination of Critical Circumstances*, 78 FR 17651, 17652 (April 23, 2018), and accompanying PDM at 7-8 (unchanged in *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 3-4, 22-23)).

*HiSpec's and TTT's Comments*¹⁴⁷

- Commerce's *Preliminary Determination* ignored imports of subject merchandise entering with tires under HTSUS subheading 8716.90.50.59, which are expressly covered by the scope of these investigations.
- Commerce's seasonality adjustment to determine imports were massive was based on flawed data considerations. Commerce should not have restricted its analysis to a single HTS subheading and a three-year period. Record data for the other applicable HTS subheadings and an earlier time period refute the basis for Commerce's seasonality adjustment.
- Commerce's analysis further disregarded record evidence that the increase was a result of imminent tariffs pursuant to section 301 of the Trade Act of 1974, an effort to obtain subject merchandise prior to the Chinese New Year, and/or the seasonality for one of the many industries that use subject merchandise. Applicable precedent compels Commerce to consider these reasons.¹⁴⁸
- TTT argues that Commerce improperly disregarded import data provided establishing that TTT had not imported a massive amount of subject merchandise over a relatively short period of time following the petition. Commerce should have considered the record evidence to determine that TTT's entries were precluded from a critical circumstances finding.

*Zhejiang Jingu's Comments*¹⁴⁹

- The quantity and value data submitted by Zhejiang Jingu before and since the *Preliminary Determination* demonstrates that it did not have massive imports over a relatively short period of time.
- Substantial evidence does not support an adjustment for seasonality because: (1) there is no clear pattern demonstrating any trend; and (2) there is no theoretical basis to support a seasonality adjustment.¹⁵⁰ Specifically, the import data does not demonstrate a clear and consistent predictable pattern, and the increase in imports at the end of 2018 is just as plausibly due to reasons other than the initiation of this investigation.¹⁵¹
- Commerce did not provide any reason for limiting its analysis to only data from 2015 through 2018 even though data prior to 2015 was publicly available and submitted onto the record.

¹⁴⁷ See HiSpec's Case Brief at 2-5 and TTT's Case Briefs (identical in content) at 8-12 (citing *Gerald Metals v. United States*, 132 F.3d 716 (Fed. Cir. 1997); see also *Wax and Wax/Resin Thermal Transfer Ribbons from Japan: Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 69 FR 11834 (March 12, 2004) (*Thermal Transfer Ribbons Final*), accompanying IDM at Comment 2).

¹⁴⁸ See HiSpec's Case Brief at 5 and TTT's Case Briefs (identical in content) at 11 (citing *Zhejiang Native Produce & Animal By-Products Imp. & Exp. Corp. v. United States*, 432 F.3d 1363, 1367 (Fed. Cir. 2005) (*Zhejiang Native Produce & Animal By-Products Imp. & Exp. Corp.*)).

¹⁴⁹ See Zhejiang Jingu's Case Brief at 1-11.

¹⁵⁰ *Id.* at 3, 11 (citing *Crystalline Silicon Photovoltaic Cells* IDM at Comment 4).

¹⁵¹ *Id.* at 4, 7, 10, 11 (citing *Certain Passenger Vehicles and Light Truck Tires from the People's Republic of China*, 80 FR 4250 (January 27, 2015) (*PVLT Preliminary Determination*), and accompanying IDM at n.144; see also *Shandong Rongxin Imp. & Exp. Co. v. United States*, 163 F. Supp. 3d 1249, 1252-53 (CIT 2016) (*Rongxin Imp. & Exp. Co.*)).

- If Commerce reviewed a longer time period, *i.e.*, from 2012, or analyzed data under other HTS subheadings that cover subject merchandise, it is clear that there is no seasonality pattern.¹⁵²

*Petitioner's Rebuttal Comments*¹⁵³

- The mandatory respondents' shipment data should not be relied upon. Both Xingmin and Zhejiang Jingu have withdrawn from participating in this investigation. Consistent with Commerce's practice, their shipment data should be found unverifiable and unusable.¹⁵⁴
- Following its practice, Commerce should continue to decline to rely on importer-specific shipment data.¹⁵⁵
- The record evidence now supports an affirmative final critical circumstances determination without regard to seasonality when using a five-month comparison period.
- Regardless, Commerce's seasonality finding was proper. Commerce is not required to dismiss every conceivable explanation for an import surge, and should dismiss the speculations posited by importing parties.¹⁵⁶
- Commerce should continue to rely on import data under HTS 8716.90.5035. The other HTS subheadings parties have requested that Commerce use to determine if massive imports exist are overbroad and include out-of-scope merchandise.

*HiSpec's and TTT's Rebuttal Comments*¹⁵⁷

- Commerce improperly based its critical circumstances determination on imports of a single HTS subheading (*i.e.*, 8716.90.5035), ignoring record data for the other HTS subheading explicitly covered by the scope of the investigation (*i.e.*, 8716.90.5059). Although HTS subheading 8716.90.5059 includes non-scope tires, Commerce is required to consider evidence on the record.¹⁵⁸
- Moreover, the petitioner asks Commerce to disregard facts presenting alternative theories for increases in importation of subject merchandise during the comparison period. However, Commerce is compelled by law and precedent to consider these reasons, *i.e.*, reasons which

¹⁵² *Id.* at 6.

¹⁵³ See Petitioner's Rebuttal Brief at 18-25.

¹⁵⁴ *Id.* at 19 (citing *Certain Uncoated Paper from Australia: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances, In Part*, 81 FR 3108 (January 20, 2016), and accompanying IDM at 14).

¹⁵⁵ *Id.* at 20 (citing *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) (*Circular Welded Carbon Quality Steel Pipe Final*), and accompanying IDM at Comment 10).

¹⁵⁶ *Id.* at 22 (citing *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Countervailing Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (October 17, 2012), and accompanying IDM at Comment 4 (p. 28 n.90); see also *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers from the People's Republic of China*, 69 FR 20594 (April 16, 2004), and accompanying IDM at 24 (citing *Asociacion Colombiana Exportadores de Flores v. United States*, 40 F. Supp. 2d 466, 472 (CIT 1999) (holding that speculation cannot constitute substantial evidence))).

¹⁵⁷ See HiSpec's Case Brief at 2-3; see also TTT's Case Brief at 4-5.

¹⁵⁸ See HiSpec's Rebuttal Brief at 2; see also TTT's Rebuttal Brief at 4 (citing *Gerald Metals*, 132 F.3d at 720)

undermine any nexus between the petition filing and any increase of imports of subject merchandise in late 2018.¹⁵⁹

*Zhejiang Jingu's Rebuttal Comments*¹⁶⁰

- Commerce should continue to rely on the shipment data submitted by Zhejiang Jingu.
- Commerce should consider the other factors parties have presented that explain alternative reasons for the increase in imports.

Commerce's Position: We continue to find that critical circumstances exist for Xingmin, Zhejiang Jingu, and all other exporters and producers.

In accordance with section 705(a)(2) of the Act, Commerce will determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A) the alleged countervailable subsidy is inconsistent with the SCM Agreement;¹⁶¹ and (B) there have been massive imports of the subject merchandise over a relatively short period.

In determining whether there are “massive imports” over a “relatively short period,” pursuant to section 703(e)(1)(B) of the Act, Commerce normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, the “base period”) to a comparable period of at least three months following the same date (*i.e.*, the “comparison period”). Commerce’s regulations provide that, generally, imports must increase by at least 15 percent during the “comparison period” to be considered “massive.”¹⁶² Additionally, Commerce’s regulations state that, in determining whether imports of the subject merchandise have been massive under section 735(a)(3)(B) of the Act, the Secretary normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports.¹⁶³

As discussed, we find that because both mandatory respondents have withdrawn their participation in this investigation, they have significantly impeded this proceeding and have provided unverifiable information, in accordance with sections 776(a)(2)(C) and (D) of the Act, and have failed to cooperate to the best of their ability. Thus, pursuant to section 776(b) of the Act, we have relied on facts available with an adverse inference in selecting the facts otherwise available. As AFA, we find that the following subsidy programs are contingent upon export, and, therefore, inconsistent with the SCM Agreement pursuant to section 705(a)(2)(A) of the Act: the Export Seller’s Credit, Export Buyer’s Credit, and Export Contingent Grants Provided by the Fuyang City Government.¹⁶⁴ We reach this finding with regard to these programs, which have the lowest rates in the *Preliminary Determination* among the programs alleged to be

¹⁵⁹ See HiSpec’s Rebuttal Brief at 3; see also TTT’s Rebuttal Brief at 5 (citing *Zhejiang Native Produce & Animal By-Products Imp. & Exp. Corp.*, 432 F.3d at 1367).

¹⁶⁰ See Zhejiang Jingu’s Rebuttal Comments at 8-9.

¹⁶¹ Commerce limits its critical circumstances findings to those subsidies contingent upon export performance or use of domestic over imported goods (*i.e.*, those prohibited under Article 3 of the SCM Agreement). See, e.g., *Steel Wire from Germany*.

¹⁶² See 19 CFR 351.206(h)-(i).

¹⁶³ See 19 CFR 351.206(h)(1).

¹⁶⁴ See PDM at 7-10.

inconsistent with the SCM Agreement. In so doing, we intend to limit the corresponding offset to the AD margin (if one is found) in the companion AD investigation, which best fulfills our statutory mandate “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully,” and induce future cooperation by companies in investigations where the petitioners allege the existence of programs potentially inconsistent with the SCM Agreement.¹⁶⁵

Additionally, as discussed above, as AFA, we find that there was a massive increase in the volume of imports of the subject merchandise from Xingmin and Zhejiang Jingu during the comparison period pursuant to section 705(a)(2)(B) of the Act. For the purposes of the “massive imports” analysis, Commerce’s long-standing practice is to rely on respondent-specific shipment data to determine whether imports were massive in the context of critical circumstances determinations.¹⁶⁶ Where such verified information does not exist because of a respondent’s failure to cooperate to the best of its ability in the course of the investigation, Commerce normally makes an adverse inference that imports were massive during the relevant time period.¹⁶⁷ Here, Xingmin and Zhejiang Jingu each withdrew their participation in this investigation. Therefore, we are unable to rely on their shipment data. Thus, as stated above, in accordance with sections 776(a)-(b) of the Act, we have drawn an adverse inference in applying facts available and determine that there were massive imports from Xingmin and Zhejiang Jingu over a relatively short period. As a result, we determine, based on AFA, that critical circumstances exist for Xingmin and Zhejiang Jingu.

While TTT argues that its import data demonstrated that it had not imported a massive amount of subject merchandise over a relatively short period of time, consistent with the *Preliminary Determination*, Commerce continues to find that it is not appropriate to consider such data.¹⁶⁸ Regarding TTT’s comments that we must turn to company-specific data, we make critical circumstances determinations on a company-specific basis for participating, fully cooperative mandatory respondents only. This is consistent with the Commerce’s past practice and with section 777A(e) of the Act.¹⁶⁹ No party has identified a statutory or regulatory provision that would require Commerce to make importer-specific critical circumstances determinations for companies not selected for individual examination. Additionally, Commerce has previously determined that an investigation and a critical circumstances determination are both part of the same proceeding and are intricately linked such that Commerce cannot verify only shipment

¹⁶⁵ See SAA at 870.

¹⁶⁶ See, e.g., *Certain Carbon and Alloy Cut-to-Length Plate from Italy: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 82 FR 16345 (April 4, 2017) (*CTL Plate from Italy*) and accompanying IDM at 7-8; see also *Steel Concrete Reinforcing Bar from Mexico: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, and Postponement of Final Determination*, 79 FR 22802 (April 24, 2014) (unchanged in *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014), and accompanying IDM at 6-7).

¹⁶⁷ *Id.*

¹⁶⁸ See PDM at 9.

¹⁶⁹ See, e.g., *Circular Welded Carbon Quality Steel Pipe Final IDM* at Comment 10-11; see also *Crystalline Silicon Photovoltaic Cells IDM* at 10.

data, as the record is missing information relevant to the completeness and reliability of the shipment data.¹⁷⁰

Interested parties also claim that Commerce excluded HTS numbers under which subject merchandise is classifiable in its critical circumstances analysis. However, consistent with our practice, we collect data based on the non-basket category HTS numbers listed in the scope, and we do not generally evaluate imports listed in secondary “may {also} enter under” HTSUS headings listed in the scope unless such headings are exclusive to subject merchandise, which is not the case with the HTSUS headings in question, as discussed *infra*.¹⁷¹ Indeed, while interested parties have suggested we examine the other HTS subheadings included in the scope, parties acknowledge that these subheadings include non-subject merchandise. Specifically, with respect to imports under HTSUS subheadings 8716.90.5030 and 8716.90.50.59, we note that the former category includes all types of wheels, both steel and aluminum, and wheels for commercial semi-trailers which are much larger than the wheels covered in this investigation, whereas the latter covers all trailer wheels with tires (other than off-highway wheels) — again including all steel and aluminum wheels, and wheels for large commercial semi-trailers. As such, both categories potentially reflect significant imports of out-of-scope merchandise, and are thus inappropriate for any such analysis of import trends. No party suggested how we could adjust the data reported under these other subheadings to remove shipments of non-subject merchandise. Thus, we continue to use data from the non-basket category HTS number listed in the scope.

Additionally, with respect to the interested parties’ assertions that Commerce’s preliminary critical circumstances finding fails to account for increases in imports unrelated to the anticipation of CVD tariffs, such as 301 duties and the Chinese New Year, we find such arguments speculative and lacking in adequate factual support. Additionally, we note that the apparent surge in imports occurred much closer to the filing of the petition compared to these events, which predated the import surge by several months. Moreover, interested parties otherwise fail to quantify any such increases related to the alleged intervening events, listed above and, thus, provide no basis to quantify any such events for the purposes of the necessary analysis. Thus, due to interested parties’ failure to support or quantify increases related to the alleged intervening events, as well as both mandatory respondents withdrawing from the investigation, we decline to amend our existing analysis, as requested.

In addition, because we continue to find critical circumstances exist for mandatory respondents based on an adverse inference and, as discussed in “Section V. Affirmative Determination of Critical Circumstances,” *supra*, our final affirmative determination of critical circumstances for all other companies reflects a massive increase between the base and comparison periods pursuant to the standard analysis regardless of the seasonal trends, we find interested parties’ arguments with respect to considerations of seasonality, and rebuttal arguments regarding the deficiencies of any such proposed analysis, to be moot.

¹⁷⁰ See, e.g., *Thermal Transfer Ribbons Final IDM* at Comment 2

¹⁷¹ See, e.g., *Solar Cells from the China IDM* at 10; see also *Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 80 FR 34888 (June 18, 2015), and accompanying IDM at Comment 24.

VIII. RECOMMENDATION

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

Agree

Disagree

7/1/2019

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

APPENDIX

Total AFA Rate

Program Name	Rate	Source
Preferential Lending		
Government Policy Lending Program	10.54%	<i>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).</i>
Preferential Loans to State-Owned Enterprises (SOEs)		
Discounted Loans for Export-Oriented Enterprises	10.54%	<i>Coated Paper from China</i>
Preferential Loans for Key Projects and Technologies	10.54%	<i>Coated Paper from China</i>
Treasury Bond Loans	10.54%	<i>Coated Paper from China</i>
Loans & Interest Subsidies Provided Pursuant to The Northeast Revitalization Program	10.54%	<i>Coated Paper from China</i>
Export Credit Subsidies		
Export Seller's Credit	10.54%	<i>Coated Paper from China</i>
Export Buyer's Credit	10.54%	<i>Coated Paper from China</i>
Export Credit Insurance Subsidies	10.54%	<i>Coated Paper from China</i>
Export Credit Guarantees	10.54%	<i>Coated Paper from China</i>
Provision of Goods and Services for Less Than Adequate Remuneration (LTAR)		
Provision of Hot-Rolled Steel For LTAR	44.91%	<i>Certain Steel Grating From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 75 FR 32362 (June 8, 2010), and accompanying IDM at "Government Provision of Hot-Rolled Steel for Less Than Adequate Remuneration" (the underlying rate was calculated in Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order, 73 FR 42545 (July 22, 2008)).</i>

Provision of Land-Use Rights to Steel Wheel Producers	13.36%	<i>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).</i>
Government Provision of Land to SOEs	13.36%	<i>Sacks from China</i>
Provision of Land for LTAR To Foreign-Invested Enterprises (FIEs)	13.36%	<i>Sacks from China</i>
Provision of Land-Use Rights in Certain Industrial and Other Special Economic Zones	13.36%	<i>Sacks from China</i>
Provision of Electricity For LTAR	20.06%	<i>Chlorinated Isocyanurates from the People's Republic of China: Final Affirmative Countervailing Duty Determination; 2012, 79 FR 56560 (September 22, 2014), and accompanying IDM at “Electricity for LTAR.”</i>
Provision of International Shipping Services for LTAR	5.34%	<i>Calcium Hypochlorite and accompanying IDM at 10 (where we used this as the AFA rate for the same program. The underlying rate was for “Provision of Electricity for LTAR” calculated in Certain Oil Country Tubular Goods from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2011, 78 FR 49475 (August 14, 2013), and accompanying IDM at 19).</i>
Direct Tax Exemptions and Reductions		
Income Tax Credits on Purchases of Domestically-Produced Equipment by FIEs	1.68%	<i>Steel Grating).</i>
Income Tax Credits for Domestically-Owned Companies Purchasing Domestically-Produced Equipment	1.68%	<i>Steel Grating and accompanying IDM at 14.</i>

Fixed Assets Investment Orientation Regulatory Tax Reduction or Exemption	9.71%	<i>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) (“C. VAT and Import Duty Exemptions on Imported Material”), unchanged in New Pneumatic Off-the-Road Tires from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review, 76 FR 23286 (April 26, 2011) (OTR Tires from China).</i>
Income Tax Reductions for High- And New-Technology Enterprises (HNTEs)	25.00%	The standard income tax rate for corporations in China during the period of investigation was 25 percent. Thus, the highest possible benefit for all income tax reduction or exemption programs combined is 25 percent. Accordingly, we are applying the 25 percent AFA rate on a combined basis (<i>i.e.</i> , finding that the three programs, combined, provide a 25 percent benefit)
Enterprise Income Tax Law, Research and Development (R&D) Program		
Income Tax Reduction for Advanced Technology FIEs		
Preferential Income Tax Policy for Enterprises in The Northeast Region		
Forgiveness of Tax Arrears for Enterprises Located in The Old Industrial Bases of Northeast China		
Indirect Tax Exemptions and Reductions		
Import Duty Exemptions for Imported Equipment	9.71%	<i>OTR Tires from China</i>
VAT Exemptions for Imported Equipment	9.71%	<i>OTR Tires from China</i>
VAT Refunds for FIEs On Purchases of Chinese-Made Equipment	9.71%	<i>OTR Tires from China</i>
VAT Exemptions and Deductions for Northeast Region	9.71%	<i>OTR Tires from China</i>
Deed Tax Exemption for SOEs Undergoing Mergers or Restructuring	9.71%	<i>OTR Tires from China</i>
Grants		
Famous Brands Program	0.62%	<i>See Chlorinated Isocyanurates from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review; 2014, 82 FR</i>

		27466 (June 15, 2017) (<i>Isos from China-2014</i>).
SME International Market Exploration Fund	0.62%	<i>Isos from China-2014</i>
Export Assistance Grants	0.62%	<i>Isos from China-2014</i>
Grants for Export Credit Insurance	0.62%	<i>Isos from China-2014</i>
Export Interest Subsidies for Enterprises Located in Zhejiang Province	0.62%	<i>Isos from China-2014</i>
Foreign Trade Development Fund Program Grants	0.62%	<i>Isos from China-2014</i>
Special Fund for Energy-Saving Technology Reform	0.62%	<i>Isos from China-2014</i>
The Clean Production Technology Fund	0.62%	<i>Isos from China-2014</i>
Emission Reduction Award	0.62%	<i>Isos from China-2014</i>
State Special Fund for Promoting Key Industries and Innovation Technologies	0.62%	<i>Isos from China-2014</i>
State Key Technology Renovation Project Fund Program	0.62%	<i>Isos from China-2014</i>
Initial Public Offering (IPO) Grants from the Hangzhou Prefecture	0.62%	<i>Isos from China-2014</i>
Initial Public Offering (IPO) Grants from the City of Fuyang	0.62%	<i>Isos from China-2014</i>
Fuyang City Government Grant for Enterprises Paying Over RMB 10 Million in Taxes	0.62%	<i>Isos from China-2014</i>
Fuyang And Hangzhou City Government Grants for Enterprises Operating Technology and Research and Development Centers	0.62%	<i>Isos from China-2014</i>
Hangzhou City Government Grants Under the Hangzhou Excellent New Products/Technology Award	0.62%	<i>Isos from China-2014</i>
Fuyang City Government Grants Under the Export of Sub-Contract Services Program	0.62%	<i>Isos from China-2014</i>
Export Contingent Grants Provided by the Fuyang City Government	0.62%	<i>Isos from China-2014</i>

Investment Grants from Fuyang City Government for Key Industries	0.62%	<i>Isos from China-2014</i>
Self-Reported Subsidies		
Year 2017 Fuyang Fund - Industrial Projects	0.62%	<i>Isos from China-2014</i>
Year 2016 Fuyang Top Ten Emerging Enterprises Bonus	0.62%	<i>Isos from China-2014</i>
Year 2016 Zhejiang Govt' Bonus - Green Enterprise	0.62%	<i>Isos from China-2014</i>
Year 2017 Fuyang Fund - Standardization and Brand	0.62%	<i>Isos from China-2014</i>
Year 2016 Hangzhou Fund - Introducing foreign intelligence	0.62%	<i>Isos from China-2014</i>
Year 2017 Hangzhou Fund - Financing in Capital Markets	0.62%	<i>Isos from China-2014</i>
High-tech Subsidy	0.62%	<i>Isos from China-2014</i>
Year 2016 Fuyang Fund - Finance & others	0.62%	<i>Isos from China-2014</i>
Year 2106 Hangzhou Fund - Factory Internet of Things	0.62%	<i>Isos from China-2014</i>
Year 2013 Fuyang Fund - Industry upgrade and tech renovation	0.62%	<i>Isos from China-2014</i>
Benefit derived from land-use tax relief	0.62%	<i>Isos from China-2014</i>
Year 2015 Hangzhou Fund - key and innovative projects	0.62%	<i>Isos from China-2014</i>
Year 2017 Fuyang Fund - R&D Funding	0.62%	<i>Isos from China-2014</i>
Year 2015 Fuyang Industrial Enterprise Tax Payers Award	0.62%	<i>Isos from China-2014</i>
Year 2015 Fuyang Fund - key industries and robotics projects	0.62%	<i>Isos from China-2014</i>
Year 2016 Fuyang Industrial Enterprise Tax Payers Award	0.62%	<i>Isos from China-2014</i>
Year 2013 Hangzhou Fund - key and innovative projects	0.62%	<i>Isos from China-2014</i>
Fuyang Fund - Patent	0.62%	<i>Isos from China-2014</i>
Fuyang Fund - Subsidy to Innovation Voucher	0.62%	<i>Isos from China-2014</i>
Year 2016 Hangzhou Fund - patent	0.62%	<i>Isos from China-2014</i>

Fuyang Fund - Energy Consumption Online Monitor	0.62%	<i>Isos from China-2014</i>
2008 Award	0.62%	<i>Isos from China-2014</i>
2008 Bonus	0.62%	<i>Isos from China-2014</i>
2008 High-tech Subsidy	0.62%	<i>Isos from China-2014</i>
2008 Patent Subsidy	0.62%	<i>Isos from China-2014</i>
2008 Tech Upgrade Subsidy	0.62%	<i>Isos from China-2014</i>
2008 Town Gov't Direct Grants	0.62%	<i>Isos from China-2014</i>
2009 Clean Production Fund	0.62%	<i>Isos from China-2014</i>
2009 Cycle Economy Award	0.62%	<i>Isos from China-2014</i>
2009 Employment Award	0.62%	<i>Isos from China-2014</i>
2009 High-tech Product Award	0.62%	<i>Isos from China-2014</i>
2009 HNTE Award	0.62%	<i>Isos from China-2014</i>
2009 Industrial Performance Award	0.62%	<i>Isos from China-2014</i>
2009 Patent Subsidy	0.62%	<i>Isos from China-2014</i>
2009 R&D Subsidy	0.62%	<i>Isos from China-2014</i>
2009 Tech Award	0.62%	<i>Isos from China-2014</i>
2009 Tech Renovation Award	0.62%	<i>Isos from China-2014</i>
2010 Direct grant	0.62%	<i>Isos from China-2014</i>
2011 Auto Industry Development Fund	0.62%	<i>Isos from China-2014</i>
2011 Direct grant	0.62%	<i>Isos from China-2014</i>
2011 Employment Award	0.62%	<i>Isos from China-2014</i>
2011 Environment Protection Subsidy	0.62%	<i>Isos from China-2014</i>
2011 Patent Subsidy	0.62%	<i>Isos from China-2014</i>
2011 Project Development Subsidy	0.62%	<i>Isos from China-2014</i>
2011 Surcharge Subsidy	0.62%	<i>Isos from China-2014</i>
2012 Employment Subsidy	0.62%	<i>Isos from China-2014</i>
2012 Energy Award	0.62%	<i>Isos from China-2014</i>
2012 Environment Protection Subsidy	0.62%	<i>Isos from China-2014</i>
2012 Patent Award	0.62%	<i>Isos from China-2014</i>
2012 Patent Subsidy	0.62%	<i>Isos from China-2014</i>
2012 Surcharge Subsidy	0.62%	<i>Isos from China-2014</i>
2013 Deferred income	0.62%	<i>Isos from China-2014</i>
2013 Employment Subsidy	0.62%	<i>Isos from China-2014</i>
2013 Export Credit Insurance Subsidy	0.62%	<i>Isos from China-2014</i>
2013 Fair Trade Fund	0.62%	<i>Isos from China-2014</i>
2013 High-tech performance subsidy	0.62%	<i>Isos from China-2014</i>
2013 Introducing foreign intelligence subsidy	0.62%	<i>Isos from China-2014</i>

2013 IPO Award	0.62%	<i>Isos from China-2014</i>
2013 Key Industries & High-tech Innovation Subsidy	0.62%	<i>Isos from China-2014</i>
2013 Leading Enterprises Award	0.62%	<i>Isos from China-2014</i>
2013 Marketing subsidy	0.62%	<i>Isos from China-2014</i>
2013 Oversees Investment Award	0.62%	<i>Isos from China-2014</i>
2013 Patent Subsidy	0.62%	<i>Isos from China-2014</i>
2013 Project Development Subsidy	0.62%	<i>Isos from China-2014</i>
2013 R&D Subsidy	0.62%	<i>Isos from China-2014</i>
2013 Surcharge Subsidy	0.62%	<i>Isos from China-2014</i>
2013 Tax Payer Award	0.62%	<i>Isos from China-2014</i>
2013 Tech Upgrade Subsidy	0.62%	<i>Isos from China-2014</i>
2014 Credit Insurance Subsidy	0.62%	<i>Isos from China-2014</i>
2014 Deferred income	0.62%	<i>Isos from China-2014</i>
2014 Employment Subsidy	0.62%	<i>Isos from China-2014</i>
2014 Income tax deduction	0.62%	<i>Isos from China-2014</i>
2014 Land-use tax subsidy	0.62%	<i>Isos from China-2014</i>
2014 Leading Enterprises Award	0.62%	<i>Isos from China-2014</i>
2014 Marketing subsidy	0.62%	<i>Isos from China-2014</i>
2014 Patent Subsidy	0.62%	<i>Isos from China-2014</i>
2014 Project Development Subsidy	0.62%	<i>Isos from China-2014</i>
2014 Safe Production Award	0.62%	<i>Isos from China-2014</i>
2014 Service outsourcing award	0.62%	<i>Isos from China-2014</i>
2014 Surcharge Subsidy	0.62%	<i>Isos from China-2014</i>
2015 Deferred income	0.62%	<i>Isos from China-2014</i>
2015 Employment Subsidy	0.62%	<i>Isos from China-2014</i>
2015 Financing Award	0.62%	<i>Isos from China-2014</i>
2015 Introducing foreign intelligence subsidy	0.62%	<i>Isos from China-2014</i>
2015 Leading Enterprises Award	0.62%	<i>Isos from China-2014</i>
2015 Marketing subsidy	0.62%	<i>Isos from China-2014</i>
2015 Project Development Subsidy	0.62%	<i>Isos from China-2014</i>
2015 R&D Subsidy	0.62%	<i>Isos from China-2014</i>
2015 Safe Production Award	0.62%	<i>Isos from China-2014</i>
2015 Surcharge Subsidy	0.62%	<i>Isos from China-2014</i>
2016 Deferred income	0.62%	<i>Isos from China-2014</i>
2016 Employment Subsidy	0.62%	<i>Isos from China-2014</i>
2016 Financing Award	0.62%	<i>Isos from China-2014</i>
2016 Fuyang Fund - heating equipment subsidy	0.62%	<i>Isos from China-2014</i>

2016 High-tech development subsidy	0.62%	<i>Isos from China-2014</i>
2016 Leading Enterprises Award	0.62%	<i>Isos from China-2014</i>
2016 Open Economy Subsidy	0.62%	<i>Isos from China-2014</i>
2016 Patent Subsidy	0.62%	<i>Isos from China-2014</i>
2016 R&D Subsidy	0.62%	<i>Isos from China-2014</i>
2016 Surcharge Deduction/Exemption	0.62%	<i>Isos from China-2014</i>
2017 Employment Subsidy	0.62%	<i>Isos from China-2014</i>
40703 Project Tech Upgrade Fund	0.62%	<i>Isos from China-2014</i>
42674 Surcharge Refund	0.62%	<i>Isos from China-2014</i>
42699 Surcharge Refund	0.62%	<i>Isos from China-2014</i>
42704 Surcharge Refund	0.62%	<i>Isos from China-2014</i>
Fuyang Fund - heating equipment subsidy	0.62%	<i>Isos from China-2014</i>
Fuyang Fund - Industry cycling projects	0.62%	<i>Isos from China-2014</i>
Fuyang Fund - Pollution control	0.62%	<i>Isos from China-2014</i>
Year 2011 Hangzhou Funds - key industries	0.62%	<i>Isos from China-2014</i>
Year 2015 Fuyang Fund - Industry and Information Development	0.62%	<i>Isos from China-2014</i>
Project Tech Upgrade Fund	0.62%	<i>Isos from China-2014</i>
Total of Non-Company Specific Programs:	385.83%	
Direct Government Grants to Xingmin Intelligent Transportation	0.62%	<i>Isos from China-2014</i>
Total AFA Rate for Xingmin:	386.45%	
Fuyang Gov't Grant Specific to Zhejiang Jingu in 2017	0.62%	<i>Isos from China-2014</i>
Fuyang Gov't Direct Grant to An'Gang Jingu	0.62%	<i>Isos from China-2014</i>
2012 Direct Grant to Shandong Jingu	0.62%	<i>Isos from China-2014</i>
Total AFA Rate for Zhejiang Jingu:	388.31%	
Total AFA Rate for All Others	387.38%	