



C-570-054
Administrative Review
POR: 8/14/17 – 12/31/18
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June 17, 2020

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

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

SUBJECT: Decision Memorandum for the Preliminary Results of the
Countervailing Duty Administrative Review of Certain Aluminum
Foil from the People's Republic of China; 2017-2018

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the countervailing duty (CVD) order on certain aluminum foil (aluminum foil) from the People's Republic of China (China). The period of review (POR) is August 14, 2017 through December 31, 2018. We preliminarily find that the respondents received countervailable subsidies during the POR.

If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), we will issue the final results no later than 120 days after publication of these preliminary results.

II. BACKGROUND

A. Case History

On April 19, 2018, Commerce published in the *Federal Register* a CVD order on aluminum foil from China.¹ On April 30, 2019, the petitioners in the underlying CVD investigation² requested a review of 30 producers and/or exporters of subject merchandise.³ From April 19, 2019, through April 30, 2019, the following foreign producers or exporters of subject merchandise each requested a review of the CVD Order: Dingsheng;⁴ Zhongji;⁵ Manakin Industries, LLC (Manakin Industries);⁶ Suzhou Manakin Aluminum Processing Technology Co. (Suzhou Manakin), Ltd; Hunan Suntown Marketing Limited (Hunan Suntown);⁷ Shandong Yuanrui Metal Material Co., Ltd. (Shandong Yuanrui);⁸ SNTO International Trade Limited (SNTO);⁹ Shanghai Shenyang Packaging Materials Co., Ltd. (Shenyang);¹⁰ and Xiamen Xiashun Aluminum Foil Co., Ltd. (Xiashun).¹¹

On June 13, 2019, Commerce initiated an administrative review of the Order for the period August 14, 2017 through December 31, 2018.¹² In the “Respondent Selection” section of the *Initiation Notice*, Commerce stated that, if necessary, it intended to select respondents based on U.S. Customs and Border Protection (CBP) data for entries of aluminum foil from China made

¹ See *Certain Aluminum Foil from the People’s Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 83 FR 17360 (April 19, 2018) (*Order*).

² The petitioners in the underlying CVD investigation include: JW Aluminum company, Novelis Corporation, and Reynolds Consumer Products LLC.

³ See Petitioners’ Letter, “Countervailing Duty Order on certain Aluminum Foil from the People’s Republic of China – Petitioners’ Request for 2018/2019 Administrative Review,” dated April 30, 2019.

⁴ We note that Dingsheng (*i.e.*, Hangzhou Dingsheng Import & Export Co. Ltd.) requested a review of itself, Hangzhou Dingsheng Import & Export Co. Ltd., Jiangsu Dingsheng New Materials Joint-Stock Co. Ltd, Hangzhou Teemful Aluminum Co., Ltd., Hangzhou Five Star Aluminum Co., Ltd., Dingsheng Aluminum Industries (Hong Kong) Trading Co, Ltd., Walson (HK) Trading Co., Ltd., Hangzhou DingCheng Aluminum Co., Ltd., Hangzhou Dingsheng Industrial Group Co., Ltd., and Inner Mongolia Liansheng New Energy Material Joint-Stock Co., Ltd. (collectively, Dingsheng Group).

⁵ We note that Zhongji (*i.e.*, Jiangsu Zhongji Lamination Materials Co., Ltd.) requested a review of itself, Shantou Wanshun Package Material Stock Co., Ltd., Jiangsu Huafeng Aluminum Industry Co., Ltd., and Jiangsu Zhongji Lamination Materials Co., (HK) Ltd. (collectively, Zhongji).

⁶ See Manakin Industries’ and Suzhou Manakin’s Letter, “Request for Administrative Review,” dated April 30, 2019.

⁷ See Hunan Suntown’s, Shandong Yuanrui’s, and SNTO’s Letter, “Request for Administrative Review of the Countervailing Duty Order on Aluminum Foil from the People’s Republic of China (C-570-054),” dated April 30, 2019.

⁸ *Id.*

⁹ *Id.*

¹⁰ See Shenyang’s Letter, “Certain Aluminum Foil from the People’s Republic of China – Request for Administrative Review,” dated April 30, 2019.

¹¹ See Xiashun’s Letter, “Aluminum Foil from the People’s Republic of China: Request for Administrative Review,” dated April 19, 2019.

¹² See *Initiation of Antidumping and Countervailing Duty Administrative Reviews* at 84 FR 27587, 27595 June 13, 2019) (*Initiation Notice*). On July 15, 2019, we corrected the POR to August 14, 2017, through December 31, 2018. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 33739 (July 15, 2019).

during the POR.¹³ Accordingly, on June 28, 2019, Commerce released the CBP data to all interested parties under an administrative protective order, and requested comments regarding the data and respondent selection.¹⁴ We timely received comments from the petitioners regarding respondent selection.¹⁵ On July 12, 2019, the petitioners withdrew their requests for review with respect to 14 entities.¹⁶ On July 31, 2019, we selected Zhongji and Xiashun as mandatory respondents in this review.¹⁷

On August 5, 2019, Commerce issued the initial questionnaire to the Government of China (the GOC).¹⁸ From August 22, 2019, through September 22, 2019, Commerce received timely responses from the GOC, Zhongji, and Xiashun.¹⁹ On August 23, 2019, the petitioners timely filed a new subsidy allegation.²⁰ Commerce initiated an investigation into this new subsidy allegation on November 6, 2019.²¹ Between September 23, 2019, and May 7, 2020, Commerce issued supplemental questionnaires to the GOC, Zhongji, and Xiashun, as well as questionnaires

¹³ See *Initiation Notice* at 84 FR 27587.

¹⁴ See Memorandum, “Aluminum Foil from the People’s Republic of China: Release of U.S. Customs and Border Protection Import Data,” dated June 28, 2019.

¹⁵ See Petitioners’ Letter, “First Administrative Review of the Countervailing Duty Order on Certain Aluminum Foil from the People’s Republic of China – Petitioners’ Comments on CBP Data and Respondent Selection,” dated July 10, 2019.

¹⁶ See Petitioners’ Letter, “First Administrative Review of Countervailing Duty Order in Certain Aluminum Foil from the People’s Republic of China – Petitioners’ Withdrawal of Certain Requests for Administrative Review,” dated July 15, 2019. On September 11, 2019, the petitioners withdrew their request for review with respect to 13 entities; however, all these entities were also listed in the petitioners’ July 15, 2019 withdrawal request. See Petitioners’ Letter, “First Administrative Review of Countervailing Duty Order in Certain Aluminum Foil from the People’s Republic of China – Petitioners’ Partial Withdrawal of Review Requests,” September 11, 2019.

¹⁷ See Memorandum, “RE: Countervailing Duty Administrative Review of Aluminum Foil from the People’s Republic of China: Respondent Selection,” dated July 31, 2019.

¹⁸ See Commerce’s Letter, “Administrative Review of the Countervailing Duty Order on Aluminum Foil from the People’s Republic of China: Initial Questionnaire,” dated August 5, 2019 (Initial CVD Questionnaire).

¹⁹ See Zhongji’s Letter, “Certain Aluminum Foil from the People’s Republic of China: Affiliated Companies Questionnaire Response,” dated August 26, 2019 (Zhongji’s AFFR); Xiashun’s Letter, “Aluminum Foil from the People’s Republic of China: Affiliation & Cross-Ownership – Xiamen Xiashun Aluminum Foil Co., Ltd.,” dated August 22, 2019; GOC’s Letter, “Certain Aluminum Foil from China; 1st CVD Administrative Review; GOC Initial Questionnaire Response,” dated September 20, 2019 (GOC IQR); Zhongji’s Letter, “Certain Aluminum Foil from the People’s Republic of China: Section III Questionnaire Response by Jiangsu Zhongji Lamination Materials Co., Ltd. and Affiliates,” dated September 20, 2019 (Zhongji Initial QR); and Xiashun’s Letter, “Aluminum Foil from the People’s Republic of China: Xiashun Section III Questionnaire Response,” dated September 20, 2019 (Xiashun Initial QR). Daching Enterprises Ltd. (Daching) is the Hong Kong-based parent company of Xiashun, and it also provided a response to Section III of the initial questionnaire. See Daching Letter “Aluminum Foil from the People’s Republic of China: Daching – Section III Questionnaire Response,” dated September 20, 2019.

²⁰ See Petitioners’ Letter, “1st Administrative Review of the Countervailing Duty Order on Certain Aluminum Foil from the People’s Republic of China – Petitioners’ New Subsidy Allegation,” dated August 23, 2019.

²¹ See Memorandum, “New Subsidy Allegation,” dated November 6, 2019 (NSA Memorandum).

covering the new subsidy allegations.²² Commerce received timely responses to these questionnaires between October 7, 2019, and May 11, 2020.²³

²² See Commerce's Letter, "Countervailing Administrative Review of Aluminum Foil from the People's Republic of China: Request for Additional Information Regarding Jiangsu Zhongji Lamination Materials Co., Ltd.'s Response to "Other Producers/Exporters Subject to Review" dated September 23, 2019, 2019; Commerce's Letter, "Administrative Review of the Countervailing Duty Order on Aluminum Foil from the People's Republic of China: Supplemental Questionnaire for Xiashun," dated October 2, 2019; Commerce's Letter, "Countervailing Administrative Review of Aluminum Foil from the People's Republic of China: First Supplemental Questionnaire," dated October 8, 2019 (GOC Supp October 8, 2019); Commerce's Letter, "Countervailing Administrative Review of Aluminum Foil from the People's Republic of China: Request for Additional Information Regarding Jiangsu Zhongji Lamination Materials Co., Ltd.'s Response to Section III of the Initial Questionnaire," dated October 31, 2019; Commerce's Letter to the GOC, "Administrative Review of the Countervailing Duty Order on Aluminum Foil from the People's Republic of China: New Subsidy Allegation Questionnaire," dated November 7, 2019 (GOC NSA Questionnaire); Commerce Letters to Xiashun and Zhongji, "Administrative Review of the Countervailing Duty Order on Aluminum Foil from the People's Republic of China: New Subsidy Allegation Questionnaire," dated November 7, 2019 (GOC November 7, 2019 NSA Questionnaire), Commerce's Letter, "Countervailing Administrative Review of Aluminum Foil from the People's Republic of China: Request for Additional Information Regarding Jiangsu Zhongji Lamination Materials Co., Ltd.'s Response to Section III of the Initial Questionnaire," dated January 9, 2020; Commerce's Letter, "Administrative Review of the Countervailing Duty Order on Certain Aluminum Foil from the People's Republic of China: Supplemental Questionnaire for Xiashun," dated January 15, 2020; Commerce Letter, "Countervailing Administrative Review of Aluminum Foil from the People's Republic of China: New Subsidy Allegation (NSA) Supplemental Questionnaire," dated January 21, 2020; Commerce's Letter, "Countervailing Administrative Review of Aluminum Foil from the People's Republic of China: Second Supplemental Questionnaire," dated January 24, 2020 (GOC Supp January 24, 2020); Commerce's Letter, "Countervailing Administrative Review of Aluminum Foil from the People's Republic of China: Request for Additional Information Regarding Jiangsu Zhongji Lamination Materials Co., Ltd.'s Response to Section III of the Initial Questionnaire," dated January 28, 2020; Commerce's Letter, "Administrative Review of the Countervailing Duty Order on Aluminum Foil from the People's Republic of China: Third Supplemental Questionnaire for Xiashun," dated February 24, 2020; Commerce's Letter, "Countervailing Administrative Review of Aluminum Foil from the People's Republic of China: Request for Additional Information Regarding Jiangsu Zhongji Lamination Materials Co., Ltd.'s Fourth Supplemental Questionnaire Response," dated March 4, 2020 (Commerce's March 4, 2020 Supplemental); Commerce's Letter, "Administrative Review of the Countervailing Duty Order on Aluminum Foil from the People's Republic of China: Third {sic.} Supplemental Questionnaire for Xiashun," dated March 10, 2020 (Commerce's March 10, 2020 Supplemental); Commerce's Letter, "Countervailing Administrative Review of Aluminum Foil from the People's Republic of China: Request for Additional Information Regarding Jiangsu Zhongji Lamination Materials Co., Ltd.'s Third Supplemental Questionnaire Response," dated March 18, 2020; Commerce's Letter, "Administrative Review of the Countervailing Duty Order on Aluminum Foil from the People's Republic of China: Fifth {sic.} Supplemental Questionnaire for Xiashun," dated April 8, 2020 (Commerce's April 8, 2020 Supplemental); and Commerce's Letter, "Countervailing Administrative Review of Aluminum Foil from the People's Republic of China: Request for Additional Information Regarding Jiangsu Zhongji Lamination Materials Co., Ltd.'s Supplemental Questionnaire Response," dated May 7, 2020.

²³ See Zhongji's Letter, "Certain Aluminum Foil from the People's Republic of China: Supplemental Affiliated Companies Questionnaire Response," dated October 7, 2019 (Zhongji Supp AFFR); GOC's Letter, "Certain Aluminum Foil from China; 1st CVD Administrative Review; GOC First Supplemental Questionnaire Response," dated October 11, 2019 (GOC October 11, 2019 SQR); Xiashun's Letter, "Aluminum Foil from the People's Republic of China: Xiashun Supplemental CVD Questionnaire Response," dated October 21, 2019 (Xiashun October 21, 2019 SQR); Xiashun's Letter, "Aluminum Foil from the People's Republic of China: Xiamen Xiashun Aluminum Foil Co., Ltd. - New Subsidy Allegation Questionnaire Response," dated November 18, 2019 (Xiashun's NSA QR); GOC's Letter, "Certain Aluminum Foil from China; 1st CVD Administrative Review; GOC New Subsidy Allegation Questionnaire Response," dated November 25, 2019 (GOC November 25, 2019 NSA QR); Zhongji's Letter, "Certain Aluminum Foil from the People's Republic of China: Second Supplemental Section III Questionnaire Response," dated November 25, 2019; Zhongji's Letter, "Certain Aluminum Foil from the People's Republic of China: New Subsidy Allegation Questionnaire Response," dated November 25, 2019 (Zhongji's NSA

B. Postponement of Preliminary Results

On December 2, 2019, Commerce fully extended the deadline for these preliminary results until April 29, 2020.²⁴ On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days, thereby further extending the deadline for these results until June 18, 2020.²⁵

C. Period of Review

The period of review (POR) is August 14, 2017 through December 31, 2018.

III. RESCISSION OF ADMINISTRATIVE REVIEW, IN PART

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation of the requested review.

QR); GOC's Letter, "Certain Aluminum Foil from China; 1st CVD Administrative Review; GOC New Subsidy Allegation Questionnaire Response," dated November 25, 2019 (GOC NSA QR); Zhongji's Letter, "Certain Aluminum Foil from the People's Republic of China: Third Supplemental Section III Questionnaire Response," dated February 3, 2020; Zhongji's Letter, "Certain Aluminum Foil from the People's Republic of China: New Subsidy Allegation Response," dated February 6, 2020; Xiashun's Letter, "Aluminum Foil from the People's Republic of China: Xiashun Supplemental Questionnaire Response," dated February 12, 2020 (Xiashun February 12, 2020 SQR); Zhongji's Letter, "Certain Aluminum Foil from the People's Republic of China: Fourth Supplemental Section III Questionnaire Response," dated February 14, 2020; GOC's Letter, "Certain Aluminum Foil from China; 1st CVD Administrative Review; GOC Second Supplemental Questionnaire Response," dated February 20, 2020 (GOC February 20, 2020 SQR); Xiashun's Letter, "Aluminum Foil from the People's Republic of China: Xiashun Third Supplemental Questionnaire Response," dated March 5, 2020 (Xiashun March 5, 2020 SQR); Zhongji's Letter, "Certain Aluminum Foil from the People's Republic of China: Fifth Supplemental Section III Questionnaire Response," dated March 16, 2020 (Zhongji's March 16, 2020 Supplemental); Xiashun's Letter, "Aluminum Foil from the People's Republic of China: Xiashun Fourth Supplemental Questionnaire Response," dated March 17, 2020 (Xiashun March 17, 2020 SQR); Zhongji's Letter, "Certain Aluminum Foil from the People's Republic of China: Sixth Supplemental Section III Questionnaire Response," dated March 30, 2020; Xiashun's Letter, "Aluminum Foil from the People's Republic of China: Xiashun Fifth Supplemental Questionnaire Response," dated April 10, 2020 (Xiashun April 10, 2020 SQR); and Zhongji's Letter, "Certain Aluminum Foil from the People's Republic of China: Seventh Supplemental Section III Questionnaire Response," dated May 11, 2020; and Zhongji's Letter, "Certain Aluminum Foil from the People's Republic of China: Benchmark Submission," dated April 1, 2020 (Zhongji's Benchmark Submission); Zhongji's Letter, "Certain Aluminum Foil from the People's Republic of China: Rebuttal Benchmark," dated April 13, 2020; and Xiashun's Letter, "Aluminum Foil from the People's Republic of China: Final – Benchmark Submission," dated April 1, 2020 (Xiashun's Benchmark Submission).

²⁴ See Memorandum, "Certain Aluminum Foil from the People's Republic of China: Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review; 08/14/2017 - 12/31/2018," dated December 2, 2019.

²⁵ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19," dated April 24, 2020.

On June 24, 2019, Shandong Yuanrui withdrew its request for administrative review.²⁶ On July 15, 2019, the petitioners withdrew their requests for review of the following companies: Alcha International Holdings Limited (Alcha International); Baotou Alcha Aluminum Co., Ltd. (Baotou Alcha); Granges Aluminum (Shanghai) Co., Ltd. (Granges); Guangxi Baise Xinghe Aluminum Industry Co., Ltd. (Guangxi Baise); Huafon Nikkei Aluminium Corporation (Huafon Nikkei); Jiangsu Alcha Aluminum Co., Ltd. (Jiangsu Alcha); Jiangyin Dolphin Pack Ltd. Co. (Jiangyin Dolphin); Luoyang Longding Aluminium Industries Co., Ltd. (Luoyang Longding); Shandong Yuanrui; Suntown Technology Group Limited (Suntown Technology); Yantai Donghai Aluminum Foil Co., Ltd. (Yantai Donghai); Yantai Jintai International Trade Co., Ltd. (Yantai Jintai); Yinbang Clad Material Co., Ltd. (Yinbang); Zhejiang Zhongjin Aluminum Industry Co., Ltd. (Zhejiang Zhongjin).²⁷ On September 11, 2019, the petitioners again withdrew their review request for the following companies: Alcha International, Baotou Alcha, Granges, Guangxi Baise, Huafon Nikkei, Jiangsu Alcha, Jiangyin Dolphin, Luoyang Longding, Suntown Technology, Yantai Donghai, Yantai Jintai, Yinbang, and Zhejiang Zhongjin.²⁸ Because all parties that requested a review of these companies timely withdrew their requests for a review, we are rescinding the review with respect to these fourteen companies pursuant to 19 CFR 351.213(d)(1).

IV. NON-SELECTED COMPANIES UNDER REVIEW

The statute and Commerce's regulations do not directly address the establishment of rates to be applied to companies not selected for individual examination where Commerce limits its examination in an administrative review pursuant to section 777A(e)(2) of the Act. However, Commerce normally determines the rates for non-selected companies in reviews in a manner that is consistent with section 705(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation.

For the companies for which a review was requested that were not selected as mandatory company respondents, and for which we did not receive a timely request for withdrawal of review, and which we are not finding to be cross-owned with the mandatory company respondents, we are preliminarily basing the subsidy rate for these companies on a weighted-average of the subsidy rates calculated for Xiashun and Zhongji (and their cross-owned companies), using their publicly-ranged sales data for exports of subject merchandise to the United States during the POR. For a list of these non-selected companies, please see the Appendix to this Preliminary Decision Memorandum.

²⁶ See Shandong Yuanrui's Letter, "Withdrawal of Review Request and Withdrawal as Counsel in the Administrative Review of the Countervailing Duty Order on Aluminum Foil from the People's Republic of China (C-570-054)," dated June 24, 2019.

²⁷ See Petitioners' Letter, "First Administrative Review of Countervailing Duty Order on Certain Aluminum Foil from the People's Republic of China – Petitioners' Withdrawal of Certain Requests for Administrative Reviews," dated July 15, 2019.

²⁸ See Petitioners' Letter, "1st Administrative Review of the Countervailing Duty Order on Certain Aluminum Foil from the People's Republic of China – Petitioners' Partial Withdrawal of Review Requests," dated September 11, 2019.

V. SCOPE OF THE ORDER

The merchandise covered by the *Order* is aluminum foil having a thickness of 0.2 mm or less, in reels exceeding 25 pounds, regardless of width. Aluminum foil is made from an aluminum alloy that contains more than 92 percent aluminum. Aluminum foil may be made to ASTM specification ASTM B479, but can also be made to other specifications. Regardless of specification, however, all aluminum foil meeting the scope description is included in the scope.

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

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

VI. DIVERSIFICATION OF CHINA'S ECONOMY²⁹

Concurrently with this decision memorandum, Commerce is placing the following excerpts from the *China Statistical Yearbook* from the National Bureau of Statistics of China on the record of this review:³⁰ Index Page; Table 14-7: Main Indicators on Economic Benefit of State owned and State-holding Industrial Enterprise by Industrial Sector; Table 14-11: Main Indicators on Economic Benefit of Private Industrial Enterprise by Industrial Sector. This information reflects a wide diversification of economic activities in China. The industrial sector in China alone is comprised of 37 listed industries and economic activities, indicating the diversification of the economy.

VII. SUBSIDIES VALUATION

A. Allocation Period

Under 19 CFR 351.524(b), non-recurring subsidies are allocated over a period corresponding to the Average Useful Life (AUL) of the renewable physical assets used to produce the subject merchandise. Pursuant to 19 CFR 351.524(d)(2), there is a rebuttable presumption that the AUL will be taken from the IRS Tables, as updated by the U.S. Department of the Treasury. For the subject merchandise, the IRS Tables prescribe an AUL of twelve years. Commerce notified the

²⁹ In accordance with Section 701(f) of the Act, Commerce continues to apply the CVD law to China.

³⁰ See Memorandum, "2017 Countervailing Duty Administrative Review of Certain Aluminum Foil from the People's Republic of China: China Statistical Yearbook Information," dated concurrently with this memorandum.

respondents of the AUL in the initial questionnaire and requested data accordingly. No party in this proceeding disputed this allocation period.

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

B. Attribution of Subsidies

In accordance with 19 CFR 351.525(b)(6)(i), Commerce normally attributes a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provides additional rules for the attribution of subsidies received by respondents with cross-owned affiliates. Subsidies to the following types of cross-owned affiliates are covered in these additional attribution rules: (ii) producers of the subject merchandise; (iii) holding companies or parent companies; (iv) producers of an input that is primarily dedicated to the production of the downstream product; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to a respondent. Further, 19 CFR 351.525(c) provides that benefits from subsidies provided to a trading company which exports subject merchandise shall be cumulated with benefits provided to the firm producing the subject merchandise that is sold through the trading company, regardless of affiliation.

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

{T}he interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a “golden share” may also result in cross-ownership.³¹

Thus, Commerce’s regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists. The U.S. Court of International Trade (CIT) upheld Commerce’s authority to attribute subsidies based on whether a company could use

³¹ See *Countervailing Duties*, 63 FR 65348, 65401 (November 25, 1998) (*CVD Preamble*).

or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.³² Based on information on the record, we preliminarily determine that cross-ownership exists, in accordance with 19 CFR 351.525(b)(6)(vi), among the companies identified by the respondent.

Zhongji

Zhongji responded to Commerce's original and supplemental questionnaires on behalf of itself and four affiliates involved in the production or sale of subject merchandise: Jiangsu Zhongji Lamination Materials Co., (HK) Ltd. (Zhongji HK), Jiangsu Huafeng Aluminum Industry Co., Ltd (Jiangsu Huafeng), Shantou Wanshun Material Stock Co., Ltd. (Shantou Wanshun), and Anhui Maximum Aluminum Industries Company Limited (Anhui Maximum) (collectively, Zhongji).

Pursuant to 19 CFR 351.525(b)(6)(i), we attributed subsidies received by Zhongji to the sales of Zhongji. As explained in Zhongji's Preliminary Calculation Memorandum, we find that Shantou Wanshun is the parent company of Zhongji and maintains its own operations.³³ Therefore, we are attributing subsidies received by Shantou Wanshun to its sales, consolidated with the sales of its subsidiaries, pursuant to 19 CFR 351.525(b)(6)(iii).

Zhongji reported that during the POR export sales to the United States were made through Zhongji HK, a wholly owned trading company.³⁴ As such, we are examining Zhongji HK together with Zhongji as a cross-owned trading company. Pursuant to 19 CFR 351.525(c), for subsidies provided to a trading company that exports subject merchandise, the benefits are cumulated with benefits from subsidies provided to the firm that is producing subject merchandise that is sold through the trading company, regardless of whether the trading company and the producing firm are affiliated. Thus, we are cumulating the benefits from subsidies received by Zhongji HK with the benefits from subsidies received by Zhongji based on the relative share, by value, of Zhongji HK's exports to the United States of subject merchandise that was produced by Zhongji during the POR.

Lastly, Jiangsu Huafeng and Anhui Maximum reported selling to Zhongji inputs dedicated to the production of downstream merchandise (*i.e.*, aluminum foil stock and coil), including Zhongji's production of the subject merchandise.³⁵ Pursuant to 19 CFR 351.525(b)(6)(iv), for subsidies received by an input supplier whose production of inputs is primarily dedicated to the production of the downstream merchandise by a cross-owned producer, Commerce attributes the benefit to the combined sales of the input and downstream products produced by both corporations, excluding the sales between the two corporations. We have therefore preliminarily found Jiangsu Huafeng and Anhui Maximum to be cross-owned input suppliers to Zhongji.³⁶ Due to

³² See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

³³ See Zhongji's AFFR at 4 and Exhibit 1.

³⁴ See Zhongji Initial QR at Volume II, page 7.

³⁵ See Zhongji Initial QR at Volume III, pages 7-8 and Volume V, pages 7-8; see also Zhongji's Supp AFFR at 4.

³⁶ See Zhongji Initial QR at Volume III, pages 7-8 and Volume V, pages 7-8; see also Zhongji's Supp AFFR at 4.

the proprietary nature of Zhongji's corporate structure and affiliations, we have included further analysis in Zhongji's Preliminary Calculation Memorandum.³⁷

Entered Value Adjustment

Commerce has, in the past, adjusted the calculation of the subsidy rate when the sales value used to calculate that subsidy rate does not match the entered value of the merchandise, *e.g.*, where subject merchandise is exported to the United States with a mark-up from an affiliated company, and where the respondent can demonstrate that six criteria are met. These criteria are: (1) the price on which the alleged subsidy is based differs from the U.S. invoiced price; (2) the exporters and the party that invoices the customer are affiliated; (3) the U.S. invoice establishes the customs value to which the CVD duties are applied; (4) there is a one-to-one correlation, except for the difference in price, between the invoice for which subsidies are received and the invoice that accompanies the shipment; (5) the merchandise is shipped directly to the United States; and (6) the invoices can be tracked as back-to-back invoices that are identical except for price.³⁸

In its initial questionnaire response, Zhongji explained that it sold subject merchandise to the United States during the POR *via* its cross-owned trading company, Zhongji HK.³⁹ Therefore, Zhongji requested that Commerce make an entered value adjustment (EVA) to the calculation of the subsidy rate to account for the mark-up between the export value from China and the entered value of subject merchandise produced by Zhongji entering into the United States.⁴⁰ On March 4, 2020, we issued a supplemental questionnaire to Zhongji and requested certain additional sales documentation needed to substantiate its claim that it qualified for an EVA.⁴¹ Specifically, we requested that Zhongji provide: (1) the invoice from Zhongji to Zhongji HK; (2) the invoice issued from Zhongji HK to the United States customer; (3) the bill of lading and the packing lists; and (4) the CBP 7501.⁴² We note that this is the same documentation that Zhongji provided in its September 20, 2019 IQR to demonstrate that it met Commerce's six EVA criteria. Further, this is the information Commerce must examine to determine whether such an adjustment is appropriate. In its response, Zhongji was unable to provide the CBP 7501s for the majority of sales in 2017 and 2018.⁴³ As indicated above, the CBP 7501 "entry summary" documentation is necessary to demonstrate that the U.S. invoice establishes the customs value to which CVD duties are applied.

³⁷ See Preliminary Results Calculations for Jiangsu Zhongji Lamination Materials Co., Ltd., Jiangsu Zhongji Lamination Materials Co., (HK) Ltd., Jiangsu Huafeng Aluminum Industry Co., Ltd, Shantou Wanshun Material Stock Co., Ltd., and Anhui Maximum Aluminum Industries Company Limited, dated concurrently with this memorandum at 2-3 (Zhongji's Preliminary Calculation Memorandum).

³⁸ See *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 59212 (September 27, 2010), and accompanying Issues and Decision Memorandum (IDM) at Comment 32.

³⁹ See Zhongji Initial QR at Volume II pages 9-10.

⁴⁰ *Id.*

⁴¹ See Commerce's March 4, 2020 Supplemental at 3-4.

⁴² *Id.* at 3.

⁴³ See Zhongji's March 16, 2020 Supplemental at 1-2 and Exhibits SQ5-1 and 2.

In *Solar Cells from China*, Commerce declined to grant an EVA because it found information on the record did not demonstrate all six criteria had been met for all sales.⁴⁴ Here, Commerce requested that Zhongji demonstrate all six criteria had been met for a sample of sales. In response to our request, Zhongji requested an additional seven days, until March 18, 2020, to provide information requested by Commerce, which included the CBP 7501s.⁴⁵ As a result, we provided five more days, until March 16, 2020, for Zhongji to provide its response, based on the reasons stated in its extension request.⁴⁶ Despite the extension, Zhongji explained in its March 16, 2020 EVA Response that it does not maintain the CBP 7501 forms and not all of its customers were able to provide this documentation by Commerce's deadline.⁴⁷ Zhongji provided e-mail documentation between itself and one U.S. customer in support of this statement.⁴⁸

To grant an EVA, respondents must provide all necessary information requested to demonstrate that such an adjustment is warranted. In its September 20, 2019 IQR, Zhongji provided documentation from one sale to demonstrate EVA was appropriate. However, when asked for documentation for additional sales, Zhongji was unable to provide such information (*i.e.*, CBP 7501 forms), and failed to prove that an EVA is warranted. Based on the record evidence, for these preliminary results we find, consistent with *Solar Cells from China*, that due to Zhongji's failure to provide necessary documentation, it has not established its entitlement to an EVA, and therefore Commerce is not making any adjustments to Zhongji's sales denominators.

Xiashun

Xiashun responded to Commerce's original and supplemental questionnaires on behalf of itself, a producer and exporter of the subject merchandise during the POR, its cross-owned Hong Kong-based holding company, Daching, and, at Commerce's request, three other affiliates, the identities of which are business proprietary. Xiashun reported being affiliated with 23 companies in total. In addition to being Xiashun's holding company, Daching is also a trading company that exported Xiashun's subject merchandise to the United States. However, based on record information, we preliminarily determine that Daching did not receive countervailable subsidies from China.⁴⁹ Regarding the three other affiliates for which Xiashun provided a complete response, based on record information, we preliminarily determine that none received countervailable subsidies from China, none were involved in the production of the subject merchandise, none have transferred subsidies to Xiashun, and none have provided inputs to

⁴⁴ 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 and Rescission of Review, in Part; 2016*, 84 FR 45125 (August 28, 2019) (*Solar Cells from China*), and accompanying IDM at Comment 12.

⁴⁵ See Zhongji's Letter, "Certain Aluminum Foil from the People's Republic of China: Request for Extension to Submit the 5th Supplemental Questionnaire Response," dated March 6, 2020. Zhongji explained that it needed additional time to collect invoices, bills of lading, packing lists, and CBP 7501 forms because many of the documents were not in Zhongji's office.

⁴⁶ See Commerce's Letter, Response to Zhongji's Extension Request, dated March 9, 2020.

⁴⁷ See Zhongji's March 16, 2020 Supplemental at 1-2.

⁴⁸ *Id.* at Exhibits SQ5-1, 2, 4, and 5.

⁴⁹ See Xiashun's Letter, "Aluminum Foil Form the People's Republic of China Daching - Section III Questionnaire Response," dated September 20, 2019.

Xiashun.⁵⁰ Regarding Xiashun’s remaining 19 affiliates, based on record information, we preliminarily determine that none are holding companies of Xiashun, none are involved in the production of the subject merchandise, none have transferred subsidies to Xiashun, and none have provided inputs to Xiashun.⁵¹ Therefore, for these preliminary results, while we are attributing subsidies received by Xiashun to its own sales in accordance with 19 CFR 351.525(b)(6)(i), we are making no other subsidy benefit attributions under 19 CFR 351.525(b)(6) or 351.525(c) with regard to Xiashun’s affiliates.

C. Denominators

In accordance with 19 CFR 351.525(b)(1)-(5), Commerce considers the basis for a respondent’s receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondent’s export or total sales. As discussed in further detail below in the “Programs Preliminarily Determined to be Countervailable” section, where the program has been found to be countervailable as a domestic subsidy, we used the recipient’s total sales as the denominator. For any program found to be countervailable as an export subsidy, we used the recipient’s total export sales as the denominator. As noted above, we have preliminarily determined not to grant Zhongji an EVA. For a further discussion of the denominators used, *see* the preliminary calculation memoranda.⁵²

VIII. INTEREST RATES, DISCOUNT RATES, AND INPUT, LAND, AND ELECTRICITY BENCHMARKS

We are examining loans received by the respondents from Chinese policy banks and state-owned commercial banks (SOCBs), as well as certain non-recurring, allocable subsidies.⁵³ The derivation of the benchmark interest rates and discount rates used to measure the benefit from these subsidies are discussed below.

Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the “difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market.” Normally, Commerce uses comparable commercial loans reported by the company as a benchmark.⁵⁴ If the firm did not have any comparable commercial loans during the period, Commerce’s regulations provide that we “may use a national average interest rate for comparable commercial loans.”⁵⁵

⁵⁰ *See* the respective affiliated companies’ complete Section III responses, provided under separate cover under the title “Aluminum Foil from the People’s Republic of China: Xiashun Supplemental CVD Questionnaire Response – Complete Response of. { }” and dated October 21, 2019.

⁵¹ *See* Xiashun Affiliation Response at 1-3 and Exhibit 1; *see also* Xiashun 1st SQR at 1 and Exhibit 1.

⁵² *See* Zhongji’s Preliminary Calculation Memorandum at 2-3 and Memorandum, “Administrative Review of the Countervailing Duty Order on Aluminum Foil from the People’s Republic of China: Preliminary Determination Calculation Memorandum for Xiamen Xiashun Aluminum Foil Co., Ltd.,” dated concurrently with this memorandum (Xiashun’s Preliminary Calculation Memorandum) (collectively, Preliminary Calculation Memoranda).

⁵³ *See* 19 CFR 351.524(b)(1), 19 CFR 351.524(c) and, 19 CFR 351.524(d).

⁵⁴ *See* 19 CFR 351.505(a)(3)(i).

⁵⁵ *See* 19 CFR 351.505(a)(3)(ii).

As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate. For the reasons explained in *CFS from China*,⁵⁶ loans provided by Chinese banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market. On July 21, 2017, Commerce conducted a re-assessment of China's financial system for CVD benchmarking purposes.⁵⁷ Pursuant to our re-assessment, we determined that there continues to be significant government intervention in the financial sector such that interest rates within China cannot be used for CVD loan rate benchmarking or discount rate purposes.⁵⁸ Consequently, we preliminarily find that any loans received by the recipients from private Chinese or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). For the same reasons, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, Commerce is selecting an external market-based benchmark interest rate. The use of an external benchmark under these circumstances is consistent with Commerce's practice.⁵⁹

In past proceedings involving imports from China, we calculated the external benchmark using the methodology first developed in *CFS from China*,⁶⁰ and later updated in *Thermal Paper from China*.⁶¹ Under that methodology, we first determine which countries are similar to China in terms of gross national income, based on the World Bank's classification of countries as: low income; lower-middle income; upper-middle income; and high income. As explained in *CFS from China*,⁶² this pool of countries captures the broad inverse relationship between income and interest rates. For 2003 through 2009, China fell in the lower-middle income category.⁶³ Beginning in 2010, however, China was classified in the upper-middle income category and remained there through 2011 to 2017.⁶⁴ Accordingly, as explained below, we are using the interest rates of lower-middle income countries to construct the benchmark and discount rates for the years 2003 through 2009, and the interest rates of upper-middle income countries to construct the benchmark and discount rates for the years 2010 through 2017. This is consistent with

⁵⁶ See *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (*CFS from China*), and accompanying Issues and Decision Memorandum at (*CFS from China* IDM) at Comment 10.

⁵⁷ See Memorandum, "Countervailing Duty Administrative Review of Aluminum Foil from the People's Republic of China: Analysis of China's Financial System Memorandum," dated July 29, 2019.

⁵⁸ *Id.*

⁵⁹ See, e.g., *Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2015*, 82 FR 46754 (October 6, 2017), and accompanying PDM at 21, unchanged in *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2015*, 83 FR 16055 (April 13, 2018).

⁶⁰ See *CFS from China* IDM at Comment 10.

⁶¹ See *Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) (*Thermal Paper from China*), and accompanying IDM at 8-10.

⁶² See World Bank Country Classification, <http://data.worldbank.org/about/country-and-lending-groups> (World Bank Country Classification); see also Memorandum, "Countervailing Duty Administrative Review of Aluminum Foil from the People's Republic of China: Interest Rate Benchmark Memorandum," dated July 29, 2019 (Interest Rate Benchmark Memorandum).

⁶³ See Interest Rate Benchmark Memorandum.

⁶⁴ See World Bank Country Classification.

Commerce's calculation of interest rates for recent CVD proceedings involving Chinese merchandise.⁶⁵

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

In each year from 2003 through 2009, and 2011 through 2016, the results of the regression-based analysis reflected the intended, common sense result: stronger institutions meant relatively lower real interest rates, while weaker institutions meant relatively higher real interest rates.⁶⁶ For 2010, however, the regression does not yield that outcome for China's income group.⁶⁷ This contrary result for a single year does not lead us to reject the strength of governance as a determinant of interest rates. Therefore, we continue to rely on the regression-based analysis used since *CFS from China* to compute the benchmark for the years from 2003 through 2009, and 2011 through 2017. For the 2010 benchmark, we are using an average of the interest rates of the upper-middle income countries.

Many of the countries in the World Bank's upper-middle and lower-middle income categories reported lending and inflation rates to the International Monetary Fund, and they are included in that agency's International Financial Statistics (IFS). With the exceptions noted below, we used the interest and inflation rates reported in the IFS for the countries identified as "upper-middle income" by the World Bank for 2010 through 2017, and "lower-middle income" for 2001 through 2009.⁶⁸ First, we did not include those economies that Commerce considers to be non-market economies for antidumping purposes for any part of the years in question, for example: Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS for those years. Third, we removed any country that reported a rate that was not a lending rate or that based its lending rate on foreign-currency denominated instruments. Finally, for each year Commerce calculated an inflation-adjusted short-term benchmark rate we excluded any countries with aberrational or negative real interest rates for the year in question.⁶⁹ Because the resulting rates are net of inflation, we adjusted the benchmark rates to include an inflation component.⁷⁰

⁶⁵ See, e.g., *Certain Frozen Warmwater Shrimp from the People's Republic of China: Preliminary Countervailing Duty Determination*, 78 FR 33346 (June 4, 2013), and accompanying PDM at the section "Benchmarks and Discount Rates," unchanged in *Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) (*Shrimp from China*).

⁶⁶ See Interest Rate Benchmark Memorandum.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

Long-Term RMB-Denominated Loans

The lending rates reported in the IFS represent short-and medium-term lending, and there is not sufficient publicly available long-term interest rate data upon which to base a robust benchmark for long-term loans. To address this problem, Commerce developed an adjustment to the short-and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates.⁷¹

In *Citric Acid from China*, this methodology was revised by switching from a long-term markup based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where ‘n’ equals or approximates the number of years of the term of the loan in question.⁷² Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.⁷³

Foreign Currency Denominated Loans

To calculate benchmark interest rates for foreign currency-denominated loans, Commerce is following the methodology developed over a number of successive proceedings regarding China.⁷⁴ For U.S. dollar short-term loans, Commerce used as a benchmark the one-year dollar London Interbank Offering Rate (LIBOR), plus the average spread between LIBOR and the one-year corporate bond rates for companies with a BB rating. Likewise, for any short-term loans denominated in other foreign currencies, we used as a benchmark the one-year LIBOR for the given currency plus the average spread between the LIBOR rate and the one-year corporate bond rate for companies with a BB rating.

Discount Rates

Consistent with 19 CFR 351.524(d)(3)(i)(A), we are using as the discount rate, the long-term interest rate calculated according to the methodology described above for the year in which the GOC provided non-recurring subsidies.⁷⁵

Benchmarks to Determine the Adequacy of Remuneration

The adequacy of remuneration for government-provided goods or services is determined pursuant to 19 CFR 351.511(a)(2). Under 19 CFR 351.511(a)(2), Commerce measures the remuneration received by a government for goods or services against comparable benchmark prices to determine whether the government provided goods or services for less than adequate

⁷¹ See, e.g., *Thermal Paper from China* IDM at 10.

⁷² See *Citric Acid and Certain Citrate Salts from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 16836 (April 13, 2009) (*Citric Acid from China*), and accompanying IDM at Comment 14.

⁷³ See Interest Rate Benchmark Memorandum for the resulting inflation adjusted benchmark lending rates.

⁷⁴ See, e.g., *Aluminum Extrusions from the People’s Republic of China: Final Results, and Partial Rescission of Countervailing Duty Administrative Review; 2013*, 80 FR 77325 (December 14, 2015), and accompanying IDM at 14.

⁷⁵ See Preliminary Calculation Memoranda.

remuneration (LTAR). These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (e.g., actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As provided in our regulations, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation (i.e., tier one). This is because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation.

Land Benchmark

As explained in detail in previous investigations, we cannot rely on the use of “tier one” and “tier two” benchmarks to assess the benefits from the provision of land for LTAR in China. Specifically, in *Sacks from China*, we determined that “Chinese land prices are distorted by the significant government role in the market,” and hence, no usable “tier one” benchmarks exist.⁷⁶ Furthermore, we found that “tier two” benchmarks (world market prices that would be available to purchasers in China) are not appropriate.⁷⁷

On October 2, 2018, Commerce completed a memorandum analyzing developments in China’s land market since 2007.⁷⁸ The Land Benchmark Analysis was prepared to assess the continued application of Commerce’s land for LTAR benchmark methodology, as established in 2007 in *Sacks from China*.⁷⁹ As discussed in the Land Benchmark Analysis, although reforms in China’s land markets have improved the use-rights of some landholders, such improvements have not been comprehensive, and reforms have been implemented on an *ad hoc* basis.⁸⁰ The reforms to date have not addressed the fundamental institutional factors that underlie the Chinese government’s monopoly control over land-use, which precludes landholders from putting their land to its best use and realizing the market value of their landholdings.⁸¹ The GOC still owns all land in China, and exercises direct control over the sale of land-use rights and land pricing in the primary market and indirect control in the secondary market.⁸²

As a result, and consistent with our methodology established in *Sacks from China*, we determine that we cannot use a first-tier, domestic Chinese land price for benchmarking purposes. We also determine that because land is generally not simultaneously available to an in-country purchaser

⁷⁶ See, e.g., *Laminated Woven Sacks from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination; Preliminary Affirmative Determination of Critical Circumstances, In Part; and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 74 FR 67893, 67906-08 (December 3, 2007) (*Sacks from China*).

⁷⁷ *Id.*

⁷⁸ See Memorandum, “Countervailing Duty Administrative Review of Aluminum Foil from the People’s Republic of China: Land Analysis Memo,” dated July 29, 2019 (Land Analysis Memo) (containing a memorandum titled, “Benchmark Analysis of the Government Provision of Land-Use Rights in China for Countervailing Duty Purposes,” dated October 2, 2018).

⁷⁹ *Id.* at 2.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

while located and sold out-of-country on the world market, we cannot use second tier world prices as a benchmark for land-use rights. Finally, because land prices in China are not consistent with market principles, and reflect the government's control and allocation of land-use on an administrative basis, we will continue to use land-use prices outside of China as a third tier benchmark. Accordingly, consistent with our past practice, we are relying on the use of so-called "tier three" benchmarks for purposes of calculating a benefit for this program.

On July 29, 2019, we placed on the record benchmark information to value land from "Asian Marketview Reports" by CB Richard Ellis (CBRE) for Thailand 2010.⁸³ We used this benchmark in prior segments of this proceeding, and in other proceedings such as the CVD investigation of certain iron mechanical transfer drive components from China.⁸⁴ We initially selected this information in the *Sacks from China* investigation after considering a number of factors, including national income levels, population density, and producers' perceptions that Thailand is a reasonable alternative to China as a location for Asian production. We find that this benchmark, appropriately indexed, continues to be suitable for these preliminary results, and we relied on it for our calculation of benefits relating to the company respondents' land purchases.

Zhongji submitted a proposed land benchmark that contains CBRE world market land prices from locations such as Warsaw, Poland; Stockholm, Sweden; and Atlanta, Georgia.⁸⁵ We find that locations such as these are not reasonable alternatives to China as locations for Asian production. And while Zhongji included consumer price index data collected by the World Bank in its benchmark submission, its submission does not include data that allows us to evaluate these locations' economic comparability with respect to China. We also note that there is no explanation of the methodology used to collect the data used in the Nexus Report.⁸⁶ Consequently, we cannot evaluate the scope and quality of the data. Finally, as noted above, Commerce has normally relied on CBRE land benchmark data specific to Thailand to determine the adequacy of remuneration for land in China, and we continue to rely on such data for economic comparability purposes with regard to land in China for these preliminary results.

We will continue to examine benchmark prices on a case-by-case basis, and will consider the extent to which proposed benchmarks represent prices in a comparable setting (*e.g.*, a country proximate to China; the country's level of economic development, *etc.*). Therefore, we invite parties to submit alternative benchmark data that is consistent with the guidance provided in *Sacks from China* and the Land Benchmark Analysis.⁸⁷ Interested parties have seven days from the publication of these preliminary results in the *Federal Register* to provide information to

⁸³ See Memorandum, "Countervailing Duty Administrative Review of Aluminum Foil from the People's Republic of China: Asian Marketview Report," dated July 29, 2019 (Land Benchmark Data Memorandum) (containing "Asian Marketview Report" pricing data).

⁸⁴ See *Countervailing Duty Investigation of Certain Aluminum Foil From the People's Republic of China: Final Affirmative Determination*, 83 FR 9274 (March 5, 2018) (*Aluminum Foil from China Investigation Final Determination*); see also *Countervailing Duty Investigation of Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Preliminary Affirmative Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 81 FR 21316 (April 11, 2016), and accompanying IDM at 13.

⁸⁵ See Zhongji's Benchmark Submission at Exhibits 12-14.

⁸⁶ *Id.* at Exhibit 14.

⁸⁷ See Land Benchmark Analysis at 30-31.

rebut, clarify, or correct information in the Land Benchmark Analysis or the Land Benchmark Data Memorandum.

Input Benchmarks

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

We received data submissions from certain parties for Commerce to consider using as “tier two” benchmarks for primary aluminum and aluminum plate and/or sheet and strip. Zhongji and Xiashun submitted a summary table of primary aluminum prices from the London Metal Exchange (LME).⁸⁸ Further, Xiashun also submitted United Nations International Trade Statistics Database (Comtrade) data specific to several tariff numbers for primary aluminum.⁸⁹ Specifically, Xiashun submitted Comtrade 2017 and 2018 monthly pricing data for HTS subheadings 7601.10 (aluminum not alloyed) and 7601.20 (aluminum alloys) as potential benchmarks for primary aluminum. In comparison, the petitioner submitted GTA 2017 and 2018 monthly pricing data for HTS subheadings 7601.10 (aluminum not alloyed) and 7601.20 (aluminum alloys) as potential benchmarks for primary aluminum.⁹⁰

In prior cases, Commerce has declined to use these prices because the LME “contains only a cash price for primary aluminum (*i.e.*, unalloyed ingots) with a minimum aluminum content of 99.7 percent.”⁹¹ Instead, Commerce has found the GTA or Comtrade data better captures a range of products that have a minimum aluminum content of 99 percent.⁹² Therefore, for these preliminary results, we are not using the LME prices submitted by parties; instead, we are relying on a weighted-average of the raw GTA and Comtrade pricing data from the petitioner

⁸⁸ See Zhongji’s Benchmark Submission at 2-3 and Exhibit 4; and Xiahsun’s Benchmark Submission at 2 and Exhibit 4.

⁸⁹ See Xiashun’s Benchmark Submission at Exhibit 2-3 and Exhibit 5.

⁹⁰ See Petitioner’s Letter, “First Administrative Review of the Countervailing Duty Order on Certain Aluminum Foil from the People’s Republic of China – Petitioners’ Submission of Factual Information to Measure Adequacy of Remuneration,” dated April 1, 2020 at 4-6 (Petitioner’s Benchmark Submission).

⁹¹ See *Aluminum Extrusions from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 78788 (*Aluminum Extrusions from China 2012 Final Results*), and accompanying Issues and Decision Memorandum (IDM) at 28.

⁹² See *Tool Chests and Cabinets from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 82 FR 56582 (November 29, 2017) (*Tool Chests from China*), and accompanying IDM at Comment 5; and *Order* at 17360, and accompanying IDM at 45-46.

and Xiashun related to HTS subheadings 7601.10 and 7601.20, which reflect the primary aluminum purchased by the respondents to use in the production of subject merchandise. This approach is consistent with *Aluminum Extrusions from China 2012 Final Results* and *Aluminum Extrusions from China 2013 Review*.⁹³

In terms of benchmark data to value aluminum plate and/or sheet and strip, Zhongji provided 2017 and 2018 GTA data from certain European countries specific to one HTS number (*i.e.*, 7606.12).⁹⁴ In comparison, the petitioner provided 2017 and 2018 Trade Data Monitor (TDM) data pertaining to all countries, also under the same HTS number.⁹⁵ Xiashun did not provide data, but stated that its purchases are classified under the same HTS number 7606.12.⁹⁶ Zhongji also provided a CRU report on aluminum alloyed grade 1050 rolled product prices based on LME data.⁹⁷

Zhongji contends that its input purchases relate more closely to the specific grade 1050 pricing data in the CRU report, rather than the broader range of products that may enter under tariff number 7606.12.⁹⁸ Thus, Zhongji requests that we apply a ratio of the LME pricing data in the CRU report to the broader GTA data in establishing a benchmark.⁹⁹ However, we find the record does not support the assertion that Zhongji's aluminum sheet purchases correspond more closely to aluminum alloy grade 1050 rolled products. Further, as indicated above, Commerce has found that LME data contains only a cash price for primary aluminum. Therefore, for these preliminary results, we are relying on the TDM data for 2017 and 2018 for HTS subheading 7606.12 provided by the petitioner to value the aluminum plate and/or sheet and strip purchased by respondents used in the production of subject merchandise.

Ocean Freight

With respect to ocean freight expenses, Zhongji submitted ocean freight data for shipping a twenty-foot container to Shanghai from various ports around the world from Xeneta, a freight rate market intelligence firm.¹⁰⁰ The petitioners and Xiashun submitted ocean freight data for shipping a twenty-foot container to Qingdao from various ports around the world from Maersk Shipping Line (Maersk).¹⁰¹

⁹³ See *Aluminum Extrusions from China 2012 Final Results* IDM at 28; see also *Aluminum Extrusions from the People's Republic of China: Final Results, and Partial Rescission of Countervailing Duty Administrative Review*; 2013, 80 FR 77325 (December 14, 2015) (*Aluminum Extrusions from China 2013 Final Results*), and accompanying IDM at 55. We note that the petitioner submitted a data summary table, however, we utilized the raw data in our benchmark calculation.

⁹⁴ See Zhongji's Benchmark Submission at 3-6 and Exhibits 5, 6, and 7.

⁹⁵ See Petitioner's Benchmark Submission at 5-6 and Attachment 1.

⁹⁶ See Xiashun Benchmark Submission at 3.

⁹⁷ See Zhongji's Benchmark Submission at 2-3 and Exhibit 4.

⁹⁸ See Zhongji's Benchmark Submission at 3-6.

⁹⁹ *Id.* at Exhibit 7.

¹⁰⁰ *Id.* at 2 and Exhibits 1-3.

¹⁰¹ See Petitioner's Benchmark Submission at 6-7 and Attachment 2; and Xiashun's Benchmark Submission at 3 and Exhibits 8 and 9.

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier two, Commerce will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. The Xeneta data submitted by Zhongji includes either origin or destination terminal handling charges, but not both.¹⁰² Due to this inconsistency in including handling charges, we are not using the Xeneta data to value freight for these preliminary results. Instead, we are relying on the Maersk data submitted by the petitioners and Xiashun, for routes that are inclusive of both origin and destination handling charges. For further information, please see Zhongji's and Xiashun's preliminary calculation memoranda.¹⁰³

Inland Freight Charges

Regarding inland freight, Zhongji separately calculated freight costs for transporting primary aluminum and aluminum plate and/or sheet and strip by dividing the freight cost (*i.e.*, transportation fees) for delivering goods to the exportation port by the total quantity of exports multiplied by the distance to the port of export to derive the average unit inland freight from the port.¹⁰⁴ We used this freight expense in the benchmark calculations for Zhongji's inland freight costs for these inputs. Xiashun calculated freight costs for transporting primary aluminum by dividing the freight cost for delivering one standard shipping container loaded with primary aluminum from the nearest port by the capacity of a standard shipping container, in metric tons, to derive the average unit inland freight to the port.¹⁰⁵ We used this freight expense in the benchmark calculations for Xiashun's imports of primary aluminum and aluminum plate, sheet and strip.

Provision of Electricity for LTAR

As discussed below in the section, "Use of Facts Otherwise Available and Adverse Inferences," we are relying on adverse facts available (AFA) to select the highest electricity rates that are on the record of this review as our benchmark for measuring the adequacy of remuneration.

IX. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

Section 776(a) of the Act provides 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.

Where Commerce determines that a response to a request for information does not comply with

¹⁰² See Zhongji's Benchmark Submission at Exhibit 3.

¹⁰³ See Zhongji's Preliminary Calculation Memorandum at 4; *see also* Xiashun's Preliminary Calculation Memorandum at 2-3.

¹⁰⁴ See Zhongji's Preliminary Calculation Memorandum at 4.

¹⁰⁵ See Xiashun's Preliminary Calculation Memorandum at 3.

the request, section 782(d) of the Act provides that Commerce will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, Commerce may disregard all or part of the original and subsequent responses, as appropriate.

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. In so doing, Commerce is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.¹⁰⁶ Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the CVD investigation, a previous administrative review, or other information placed on the record.

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”¹⁰⁷ It is Commerce’s practice to consider information to be corroborated if it has probative value.¹⁰⁸ In analyzing whether information has probative value, it is Commerce’s practice to examine the reliability and relevance of the information to be used.¹⁰⁹ However, the Statement of Administrative Action emphasizes that Commerce need not prove that the selected facts available are the best alternative information.¹¹⁰ Moreover, under section 776(c)(2) of the Act, Commerce is not required to corroborate any CVD rate applied in a separate segment of the same proceeding.

Finally, under section 776(d) of the Act, Commerce may use any countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a CVD rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates. 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

¹⁰⁶ See section 776(b)(1)(B) of the Act.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. I (1994) (SAA) at 869.

¹¹⁰ See SAA at 869-870.

accurate information in a timely manner.”¹¹¹ 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.”¹¹²

For purposes of these preliminary results, we are applying AFA as outlined below:

A. Application of AFA: Distortion in the Primary Aluminum Market and the Aluminum Plate and/or Sheet and Strip Market

In order to determine the appropriate benchmark with which to measure the benefit from the provision of primary aluminum and aluminum plate and/or sheet and strip for LTAR in accordance with 19 CFR 351.511(a)(2), Commerce asked the GOC several questions concerning the structure of the primary aluminum industry and the aluminum plate and/or sheet and strip industry in China, as well as the government’s role in this field.¹¹³ Specifically, Commerce requested that the GOC provide the following information for each input:

- a. The total number of producers.
- b. The total volume and value of Chinese domestic *consumption* of primary aluminum and aluminum plate and/or sheet and strip and the total volume and value of Chinese domestic *production* of primary aluminum and aluminum plate and/or sheet and strip.
- c. The percentage of domestic consumption accounted for by domestic production.
- d. The total volume and value of imports of primary aluminum and aluminum plate and/or sheet and strip.
- e. The percentage of total volume and (separately) value of domestic production that is accounted for by companies in which the government maintains a majority ownership or a controlling management interest, either directly or through other government entities. Please also provide a list of the companies that meet these criteria.
- f. If the share of total volume and/or value of production that is accounted for by the companies identified in paragraph “e”, above, is less than 50 percent, please provide the following information:
 - i. The percentage of total volume and value of domestic production that is accounted for by companies in which the government maintains some, but not a majority, ownership interest or some, but not a controlling, management interest, either directly or through other government entities.
 - ii. A list of the companies that meet the criteria under sub-paragraph “i”, above.
 - iii. A detailed explanation of how it was determined that the government has less than a majority ownership or less than a controlling interest in such

¹¹¹ 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).

¹¹² See SAA at 870.

¹¹³ See Initial Questionnaire at II-5, II-6; see also NSA Questionnaire at 3-5.

companies, including identification of the information sources relied upon to make this assessment.

- g. A discussion of what laws, plans or policies address the pricing of primary aluminum and aluminum plate and/or sheet and strip, the levels of production of primary aluminum and aluminum plate and/or sheet and strip, the importation or exportation of primary aluminum and aluminum plate and/or sheet and strip, or the development of primary aluminum and aluminum plate and/or sheet and strip capacity. Please state which, if any, central and sub-central level industrial policies pertain to the primary aluminum and aluminum plate and/or sheet and strip industries.

Commerce requested such information to determine whether the GOC is the predominant provider of this input in China and whether its presence in the market distorts all transaction prices.

In its responses, the GOC provided only the total volume and value of imports of primary aluminum and aluminum plate and/or sheet and strip in China, stated that the provision of primary aluminum and aluminum plate and/or sheet and strip is dictated by market forces, and stated that it does not maintain the data needed to answer the remaining questions.¹¹⁴

Commerce preliminarily determines that the GOC's refusal to provide the information requested constitutes a lack of cooperation. The GOC has previously provided, and Commerce has verified, information from other government databases concerning the value and volume of production by enterprises producing input products.¹¹⁵ Moreover, Commerce has verified the operation of the GOC's "Enterprise Credit Information Publicity System," which requires that the administrative authorities release detailed information of enterprises and other entities and is intended to bring clarity to companies registered in China.¹¹⁶ Based on this experience, Commerce is aware that this system is a national-level internal portal that holds certain information regarding any Chinese-registered company. Among other information, each company must upload its annual report, make public whether it is still operating, and update any changes in ownership. The GOC has stated that all companies operating within China maintain a profile in the system, regardless of whether they are private or state-owned. Therefore, we preliminarily determine that the GOC withheld necessary information that was requested of it related to the to the operation and ownership of companies within the primary aluminum and aluminum plate and/or sheet and strip industries, and, thus, we must rely on facts available in these preliminary results.¹¹⁷

¹¹⁴ See GOC Initial Questionnaire Response at 30-32; see also GOC NSA QR at 19-21.

¹¹⁵ See, e.g., *Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review*; 2013, 80 FR 77318 (December 14, 2015) (*Citric Acid from China 2013 Final Results*).

¹¹⁶ See *Countervailing Duty Investigation of Stainless Steel Sheet and Strip From the People's Republic of China: Preliminary Affirmative Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 81 FR 46643 (July 18, 2016), and accompanying Preliminary Decision Memorandum at 21-22 (unchanged in *Countervailing Duty Investigation of Stainless Steel Sheet and Strip From the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 82 FR 9714 (February 8, 2017)).

¹¹⁷ See section 776(a)(2)(A) of the Act.

Additionally, regarding a discussion of what laws, plans or policies address the pricing of primary aluminum and aluminum plate and/or sheet and strip, the levels of primary aluminum and aluminum plate and/or sheet and strip, the importation or exportation of primary aluminum and aluminum plate and/or sheet and strip, and the development of primary aluminum and aluminum plate and/or sheet and strip capacity, the GOC stated that the provision of these inputs is dictated by market forces and not by any plan that sets the levels of production or development of these inputs.¹¹⁸ Further, the GOC provided documentation which it claims demonstrated that there are no limits, economic or legal in nature, placed on the various industries in China that may purchase primary aluminum and aluminum plate and/or sheet and strip.¹¹⁹ While the GOC placed on the record some information in relation to economic and business activities in China, it failed to respond to other requests for information necessary to our analysis, as noted above.

Because the GOC refused to provide requested information regarding the primary aluminum and aluminum plate and/or sheet and strip industries in China, *e.g.*, information regarding the total volume and value of domestic production that is accounted for by companies in which the government maintains an ownership or management interest either directly or through other government entities, we determine that the GOC withheld necessary information, within the meaning of section 776(a)(2)(A) of the Act, with regard to the Chinese primary aluminum and aluminum plate and/or sheet and strip industries and markets for the POR.¹²⁰ Further, because the GOC refused to respond to Commerce's request for information regarding the information described above, we find that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information necessary for our analysis of primary aluminum and aluminum plate and/or sheet and strip in China, despite the fact that it was able to provide similar information in another proceeding. Consequently, we find that an adverse inference is warranted in the application of facts available, pursuant to section 776(b) of the Act.¹²¹

Accordingly, as adverse facts available, we preliminarily determine that the GOC's involvement in the primary aluminum market and aluminum plate and/or sheet and strip market in China results in significant distortion of the prices of primary aluminum and aluminum plate and/or sheet and strip such that they cannot be used as a tier one benchmark and, hence, the use of an external benchmark, as described under 19 CFR 351.511(a)(2)(ii), is warranted to calculate the benefit for the Provision of Primary Aluminum for LTAR and the Provision of Aluminum Plate and/or Sheet and Strip for LTAR.

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

B. Application of Total AFA: Whether Certain Primary Aluminum and Aluminum Plate and/or Sheet and Strip Producers Are "Authorities"

As discussed below under "Programs Found to Be Countervailable," Commerce examined whether the GOC provided primary aluminum and aluminum plate and/or sheet and strip for

¹¹⁸ *See* GOC IQR at 32; *see also* GOC November 25, 2019 NSA QR at 21.

¹¹⁹ *Id.*

¹²⁰ *See* Initial CVD Questionnaire, at Section II, "Input Producer Appendix."

¹²¹ *See* section 776(b) of the Act.

LTAR to Zhongji and Xiashun. We asked the GOC to provide information regarding the specific companies that produced the primary aluminum and aluminum plate and/or sheet and strip purchased by Zhongji and Xiashun during the POR. Specifically, we sought information from the GOC that would allow us to analyze whether the producers are “authorities” within the meaning of section 771(5)(B) of the Act.¹²² In prior CVD proceedings involving China, Commerce has determined that when a respondent purchases an input from a trading company or non-producing supplier, a subsidy is conferred if the producer of the input is an “authority” within the meaning of section 771(5)(B) of the Act and if the price paid by the respondent for the input was for LTAR.¹²³

In addition to the Initial CVD Questionnaire, Commerce issued supplemental questionnaires to the GOC regarding its response to the alleged subsidy programs. In Commerce’s Initial Questionnaire, NSA Questionnaire, and supplemental questionnaires, we asked the GOC to respond to the specific questions regarding the producers of primary aluminum and aluminum plate and/or sheet and strip, and to respond to the *Input Producer Appendix* for each producer that produced the primary aluminum and aluminum plate and/or sheet and strip purchased by Zhongji and Xiashun.¹²⁴ We instructed the GOC to coordinate with Zhongji and Xiashun to obtain a complete list of such producers, including the producers of these inputs purchased through a supplier.¹²⁵ In response to the Initial and NSA Questionnaires, Zhongji and Xiashun identified certain of the companies that produced and supplied them these inputs during the POR,¹²⁶ which the GOC confirmed in its questionnaire responses.¹²⁷

While the GOC ultimately provided the identities of certain of the producers that supplied these inputs to Zhongji and Xiashun, the GOC did not provide all of the information requested in the Initial Questionnaire, NSA Questionnaire, or supplemental questionnaires. Commerce made multiple requests for the GOC to provide the articles of incorporation and capital verification reports of all such producers that are majority government-owned enterprises.¹²⁸ In response, while the GOC provided partial information (*i.e.*, the corporate profile and shareholder structure)

¹²² See SQR at 27-28.

¹²² See Memorandum, “Countervailing Duty Administrative Review of Aluminum Foil from the People’s Republic of China: Placing Documents on the Record,” dated July 29, 2019 (Public Body Memorandum).

¹²³ See, *e.g.*, *Circular Welded Carbon Quality Steel Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008), and accompanying IDM at “Hot-Rolled Steel for Less Than Adequate Remuneration”; *Kitchen Shelving and Racks from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 37012 (July 27, 2009), and accompanying IDM at “Provision of Wire Rod for Less than Adequate Remuneration.”

¹²⁴ See Initial CVD Questionnaire, at Section II, “Provision of Primary Aluminum for LTAR,” GOC NSA at Provision of Aluminum Plate and/or Sheet and Strip for Less Than Adequate Remuneration (LTAR),” GOC Supp October 8, 2019 at 1, and GOC Supp January 24, 2020 at 6; see also GOC NSA Questionnaire; and GOC February 20, 2020 SQR at 27-28.

¹²⁵ See Initial CVD Questionnaire, at Section II, “Provision of Goods or Services for LTAR.”

¹²⁶ See Zhongji Initial QR at Volume I, pages 16-18 and Exhibit I-12; Volume III, pages 14-15 and Exhibit III-11, and Volume V, pages 14-15 and Exhibit V-10; and Xiashun’s Initial QR at 20-21 and Exhibit 15.

¹²⁷ See GOC IQR at 17-18; see also GOC NSA QR at 7-8.

¹²⁸ See GOC IQR at 17-18; see also GOC NSA QR at 7-8; GOC October 11, 2019 SQR at 2-3; and GOC February 20, 2020 SQR at 27-28.

for some, it failed to provide the articles of incorporation and capital verification reports for any of the supplying producers that are majority government-owned enterprises.

As explained in the Public Body Memorandum,¹²⁹ record evidence demonstrates that producers in China that are majority-owned by the government possess, exercise, or are vested with, governmental authority.¹³⁰ Record evidence demonstrates that the GOC exercises meaningful control over these entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector.¹³¹ Therefore, in light of our prior findings and the GOC's failure to provide rebuttal information to the contrary, we determine that these enterprises are "authorities" within the meaning of section 771(5)(B) of the Act.

With respect to the reportedly non-majority government-owned primary aluminum and aluminum plate and/or sheet and strip producers that supplied these inputs to Zhongji and Xiashun during the POR, while the GOC provided website screenshots of the business registrations for some, the GOC failed to provide other relevant documentation specifically requested by Commerce, such as company by-laws, annual reports, and tax registration documents, and articles of association.¹³²

Moreover, the GOC also failed to provide other producer information specifically requested by Commerce. For instance, in the initial and NSA questionnaires, Commerce requested certain information regarding the scope and level of involvement of the various organs of the Chinese Communist Party (CCP) in the ownership, control and governance of the primary aluminum and aluminum plate and/or sheet and strip producers that supplied these inputs to the respondents. In its responses, the GOC claimed it was unable to require the CCP, the People's Congress, the CPPCC or the rest of the entities to provide the requested information. Commerce reiterated these information requests in a supplemental questionnaire, but the GOC again refused to provide a complete response.¹³³

As discussed above, the GOC did not provide complete responses to our numerous requests for information with respect to reportedly non-majority government-owned primary aluminum and aluminum plate and/or sheet and strip producers that supplied these inputs to the respondents. Such information is necessary to our determination of whether the input producers are authorities within the meaning of section 771(5)(B) of the Act. Therefore, we determine that necessary

¹²⁹ See Public Body Memorandum at Attachments "Section 129 Determination of the Countervailing Duty Investigation of Circular Welded Carbon Quality Steel Pipe; Light-Walled Rectangular Pipe and Tube; Laminated Woven Sacks; and Off-the-Road Tires from the People's Republic of China: An Analysis of Public Bodies in the People's Republic of China in Accordance with the WTO Appellate Body's Findings in WTO DS379" and "The relevance of the Chinese Communist Party for the limited purpose of determining whether particular enterprises should be considered to be 'public bodies' within the context of a countervailing duty investigation."

¹³⁰ *Id.* at 35-36 and sources cited therein.

¹³¹ *Id.*

¹³² See GOC IQR at 17-18; see also GOC NSA QR at 7-8; GOC October 11, 2019 SQR at 2-3; GOC February 20, 2019 SQR at 27-28.

¹³³ See GOC IQR at 21-30; see also GOC NSA QR at 9-19; GOC October 11, 2019 SQR at 2-3; GOC February 20, 2019 SQR at 27-28.

information is not available on the record, and that the GOC withheld information that was requested of it with regard to such producers.¹³⁴ Accordingly, Commerce must rely on “facts otherwise available” in determining the status of these producers. Further, we find that by withholding the requested information, the GOC failed to cooperate by not acting to the best of its ability regarding these producers.¹³⁵ Consequently, we find that an adverse inference is warranted in the application of facts available.¹³⁶

Accordingly, as AFA, we determine that the reportedly non-government-owned or non-majority government-owned producers of the primary aluminum and aluminum plate and/or sheet and strip purchased by Zhongji and Xiashun during the POR are “authorities” within the meaning of section 771(5)(B) of the Act.

C. Application of AFA: Specificity of Aluminum Plate and/or Sheet and Strip

In the November 7, 2019, NSA questionnaire, Commerce asked the GOC to provide a list of industries in China that purchase aluminum plate and/or sheet and strip directly, using a consistent level of industrial classification. Commerce also asked the GOC to provide the amounts (volume and value) purchased by the industry in which the mandatory respondent companies operate, as well as the totals purchased by every other industry. In identifying the industries, the GOC was asked to use whatever resource or classification scheme the government normally relies upon to define industries and to classify companies within an industry. The GOC was asked to provide the relevant classification guidelines to ensure the list provided reflected consistent levels of industrial classification, and to clearly identify the industry in which the companies under investigation are classified.¹³⁷ The GOC provided no response to these questions.¹³⁸

Commerce requests such information for purposes of its *de facto* specificity analysis. Because the GOC did not respond to these questions,¹³⁹ we preliminarily determine that necessary information is not available on the record and that the GOC has withheld information that was requested of it, and, thus, that Commerce must rely on “facts available” in making our preliminary determination, in accordance with sections 776(a)(1) and 776(a)(2)(A) of the Act. Moreover, we preliminarily determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available pursuant to section 776(b) of the Act. Drawing an adverse inference, we find that the GOC’s provision of aluminum plate and/or sheet and strip is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.

¹³⁴ See sections 776(a)(1) and (a)(2)(A) of the Act.

¹³⁵ See sections 776(a) and (b) of the Act.

¹³⁶ See section 776(b) of the Act.

¹³⁷ See GOC November 25, 2019 NSA QR at 5.

¹³⁸ See GOC NSA QR.

¹³⁹ See *Utility Scale Wind Towers from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 75978 (December 26, 2012), and accompanying IDM at Comment 13.

D. Application of AFA: Provision of Electricity for LTAR

The GOC did not provide complete responses to Commerce's questions regarding the provision of electricity for LTAR. These questions solicited information needed to determine whether the provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D) of the Act, whether such a provision provides a benefit within the meaning of section 771(5)(E) of the Act, and whether such a provision is specific within the meaning of section 771(5A) of the Act.

In order for Commerce to analyze the financial contribution and specificity of this program, we requested that the GOC provide information regarding the roles of provinces and the National Development and Reform Commission (NDRC), and cooperation between the provinces and the NDRC in electricity price adjustments. Specifically, Commerce requested that the GOC provide detailed explanations to questions including, but not limited to: (1) how increases in the cost elements in the price proposals led to retail price increases for electricity; (2) how increases in labor costs, capital expenses, and transmission and distribution costs are factored into the price proposals for increases in electricity rates; and (3) how the cost element increases in the price proposals and the final price increases were allocated across the province and across tariff end-user categories.¹⁴⁰ Commerce requested this information in order to determine the process by which electricity prices and price adjustments are derived, to identify the entities that manage and impact the price adjustment process, and to examine the cost elements included in the derivation of electricity prices in effect throughout China during the POR.

In its initial questionnaire response, the GOC did not adequately address these questions.¹⁴¹ The GOC responded by stating that since 2015, a number of market reforms occurred in China's electricity market and that the responsibility of setting electricity sale prices within each province has moved from the NDRC to the provincial governments.¹⁴² According to the GOC, the "Notice of the NDRC on Completing Price Linkage Mechanism Between Coal and Electricity (NDRC 2015-3169)" went into effect on January 1, 2016 which, according to the GOC, added a market-oriented character of electricity pricing.¹⁴³ The GOC stated that electricity prices are classified by end-user categories such as residential prices, agricultural use prices, large industrial use prices, and/or industrial and commercial prices. The GOC also contends that within each category for each province in question, the electricity prices are equally applied to all end users and that no specificity exists with regard to electricity prices.¹⁴⁴

The GOC reported that since January 1, 2016, all of the provincial governments have been given the authority to prepare and to publish electricity tariff rates in their own jurisdictions, and that notices regarding the adjustment of electricity sale prices issued by the NDRC since then has required provincial pricing departments to set specific electricity prices and to report the

¹⁴⁰ See CVD Questionnaire at Electricity Appendix.

¹⁴¹ See GOC IQR at 46-56.

¹⁴² *Id.*

¹⁴³ *Id.* at 47-48.

¹⁴⁴ *Id.*

electricity tariff after adjustment to the NDRC for the record.¹⁴⁵ The GOC reported that the creation of this new structure has eliminated the need for the provincial price proposals that had previously been used by the NDRC to set the prices for each province.¹⁴⁶ The GOC continued by stating that because the provinces now set their own prices, the provincial price proposals are no longer needed. As such, the GOC argues, Commerce’s question asking the GOC to provide Provincial Price Proposals for each province in which a mandatory respondent (or cross-owned affiliate) was located during the POR is no longer applicable.¹⁴⁷

Despite the GOC’s claims that provincial authorities have more authority in setting their own electricity tariff rates, the NDRC’s “Notification on Lowering Coal-fired Electricity On-grid Price and General Industrial and Commercial Electricity Price, FGJF {2015} No. 3105” (Notice 3105) provides general guidelines for changing electricity price, including calculation formulas and selling price adjustments.¹⁴⁸ Notice 3105 states that provincial price authorities “shall formulate and release specific regulation plan of on-grid price and sales price in the province (Region, Municipality) according to average regulation standard regulated in the appendix, and report to National Development and Reform Commission for filing.”¹⁴⁹ Further, the NDRC’s notice on “Adjusting Schedule of Coal-fired Power Generation Grid Purchase Price and Sale Price of Industrial and Commercial Electricity of Each Province (District or City) FaGai JiaGe No. {2015} 748” (Notice 748) is based upon consultations between the NDRC and the National Energy Administration, and states that provinces “develop and issue specific adjustment plan of electricity price and sales price in accordance with the average price adjustment standard of Annex 1, and reported to our Commission for the record.”¹⁵⁰

Contrary to the GOC’s claims, the record does not support the GOC’s claims that the relevant provincial pricing authorities determine and issue electricity prices within their own jurisdictions. Rather, record information such as Notices 748 and 3105 indicate that the NDRC continues to play a seminal role in setting and adjusting electricity prices. Specifically, the NDRC mandates an average price adjustment target for each province. As a result of this mandate, each province is obligated to set electricity prices within the range mandated by the NDRC.¹⁵¹

And while the GOC claims that the Provincial Price Proposals have been eliminated due to the new structure that has been put into place since 2016, none of the documentation the GOC submitted to support its claim explicitly eliminates the Provincial Price Proposals. Commerce additionally requested that the GOC explain, for each province in which a respondent or cross-owned company is located, how increases in labor costs, capital expenses, and transmission and distribution costs are factored in Provincial Price Proposals, and how cost element increases, and final price increases were allocated across the province and across tariff end-user categories. The GOC failed to provide a complete response to this request. The GOC stated that price

¹⁴⁵ *Id.* at 49.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* at Exhibit II.D.16.

¹⁴⁹ *Id.*

¹⁵⁰ *See* at Exhibit II.D.15.

¹⁵¹ *See, e.g.* Notice 748 at Article 10 and Notice 3105 at Articles II and X.

proposals were not involved in adjustments during the POR, and that this question related to the proposal is not applicable.¹⁵²

As discussed above, the GOC failed to fully explain the roles and nature of the cooperation between the NDRC and provincial authorities in deriving electricity prices adjustments. The information provided by the GOC indicates that despite its claims that the responsibility for setting prices within each province has moved from the NDRC to the provincial governments, the NDRC continues to play a major role in setting and adjusting prices. Further, the GOC failed to explain both the derivation of the price reductions directed to the provinces by the NDRC and the derivation of the prices by the provinces themselves. Consequently, we preliminarily find, in accordance with sections 776(a)(1), (2)(A), and (C) of the Act, that information necessary to our analysis of financial contribution and specificity is not available on the record because the GOC withheld information requested by us, thereby significantly impeding this proceeding. Thus, we must rely on “facts available” in making our determination for these preliminary results.¹⁵³

Moreover, we preliminarily determine, in accordance with section 776(b) of the Act, that the GOC failed to cooperate to the best of its ability to comply with our request for necessary information. As a result, application of facts otherwise available with an adverse inference is warranted.¹⁵⁴ Based on AFA, we find that the GOC’s provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act. We are also relying on AFA in selecting the benchmark for determining the existence and amount of any benefit provided to the respondents.¹⁵⁵ The benchmark rates selected are derived from the record of this administrative review and are the highest electricity rates on the record for the applicable rate and user categories. For details regarding the remainder of our analysis, *see* the section “Provision of Electricity for LTAR,” below.

E. Foreign Trade Development Fund Grants

As discussed in further detail in the “Programs Preliminarily Found to be Countervailable” section below, Zhongji reported receiving benefits under the Foreign Trade Development Fund.¹⁵⁶ Commerce requested information from the GOC regarding these grants in the initial questionnaire and again in a supplemental questionnaire.¹⁵⁷ The GOC did not provide a complete response regarding any of these self-reported grants. Rather, the GOC stated that Commerce should “refer to the responses of Zhongji for additional information.”¹⁵⁸

In order to conduct the analysis of whether a program is specific and provides a financial contribution under sections 771(5A) and 771(5)(D) of the Act, respectively, it is essential that the government provide a complete response to the questions that are contained in the Standard Questions Appendix to enable Commerce to conduct statutory analyses to determine if an

¹⁵² *See* GOC IQR at 54.

¹⁵³ *See* section 776(a)(2)(A) of the Act.

¹⁵⁴ *See* section 776(b) of the Act.

¹⁵⁵ *See* section 776(b)(4) of the Act.

¹⁵⁶ *See* Zhongji Initial QR at Volume I, pages 25-27.

¹⁵⁷ *See* Initial CVD Questionnaire at II-8; *see also* GOC Supp October 8, 2019 at 8.

¹⁵⁸ *See* GOC IQR at 65.

alleged program is countervailable. To that end, government cooperation is essential because the government has sole access to the information required for a complete analysis of specificity and financial contribution with respect to government subsidy programs. By failing to provide complete responses to the Standard Questions Appendices as requested, Commerce finds that the record is missing necessary information because the GOC withheld necessary information and significantly impeded this administrative review within the meaning of section 776(a)(1) and (2)(A), (C) of the Act and also failed to cooperate by not acting to the best of its ability to comply with our requests within the meaning of section 776(b) of the Act. Based on application of AFA regarding these grants, we preliminarily determine that the Foreign Trade Development Fund program provides a financial contribution under section 771(5)(D)(i) of the Act and is specific under section 771(5A) of the Act.

F. Application of AFA: Provision of Land for LTAR

As discussed below in the section “Programs Preliminarily Determined to be Countervailable,” Commerce is examining the provision of land-use rights programs for LTAR. We requested information from the GOC regarding the program.

Our review of the GOC’s questionnaire response shows that the GOC did not respond fully to certain sections regarding this program.¹⁵⁹ Specifically, we asked the GOC to identify all instances in which it provided land or land-use rights to the mandatory respondents during the AUL, to answer questions regarding the eligibility for and the actual use of the assistance provided, and to provide at least one completed application and approval package (*i.e.*, agreements for the company respondents’ land-use rights).¹⁶⁰ Rather than responding directly to these questions, the GOC instead referred Commerce to the respondents’ questionnaire responses.¹⁶¹

The information requested regarding the provision of land and land-use rights to the company respondents and the basis for which they were provided is necessary for our analysis to determine whether an alleged subsidy constitutes a financial contribution and is specific. This type of information has been provided and verified in previous investigations.¹⁶² Thus, we preliminarily find that while the requested information was available to the GOC, the GOC chose not to provide it.

Pursuant to section 776(a) of the Act, we preliminarily determine that information regarding the provision of land and land-use rights is not on the record of this proceeding. Furthermore, given that the GOC has provided information regarding the provision of land and land-use rights in previous CVD proceedings involving China, we preliminarily determine that the GOC has access

¹⁵⁹ See GOC IQR at 45.

¹⁶⁰ See GOC IQR at 45, GOC October 11, 2019 SQR at 2-4.

¹⁶¹ *Id.*

¹⁶² See, e.g., *Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 72 FR 71360, 71363 (December 17, 2007), and accompanying PDM at 10 (“we examined these companies’ land-use rights agreements and discussed the agreements with the relevant government authorities”), unchanged in *Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances*, 73 FR 40480 (July 15, 2008).

to the necessary information that was requested of it and, thus, that the GOC withheld this information within the meaning of section 776(a)(2)(A) of the Act. Accordingly, Commerce must rely on “facts otherwise available” in issuing its preliminary determination, pursuant to section 776(a)(2)(A) of the Act. Moreover, because the GOC withheld information that it could otherwise provide, we preliminarily find that the GOC did not act to the best of its ability to comply with our request for information. Consequently, we find that an adverse inference is warranted in the application of facts available pursuant to section 776(b) of the Act. Thus, drawing an adverse inference, we find that the GOC’s provision of land-use rights constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act.

The respondent companies each reported that they acquired land-use rights during the AUL. To measure the extent to which the respondent companies benefitted from this program during the POR, we are using the respondents’ own pricing data for comparison to the land benchmarks discussed earlier to determine adequacy of remuneration.

G. Application of AFA: Other Self-Reported Programs

As discussed in further detail in the “Programs Preliminarily Found to be Countervailable” section below, Zhongji and Xiashun (and their cross-owned companies) reported receiving benefits under certain other grant programs.¹⁶³ Commerce requested information from the GOC regarding these grants in the initial questionnaire and again in a supplemental questionnaire.¹⁶⁴ The GOC did not provide a complete response regarding any of these self-reported grant programs. Rather, the GOC stated that “no reply to {Commerce supplemental question} is warranted or required.”¹⁶⁵

In order to conduct the analysis of whether a program is specific and constitutes a financial contribution under sections 771(5A) and 771(5)(D) of the Act, respectively, it is essential that the government provides a complete response to the questions that are contained in the Standard Questions Appendix to enable Commerce to conduct statutory analyses to determine if an alleged program is countervailable. To that end, government cooperation is essential because the government has sole access to the information required for a complete analysis of specificity and financial contribution with respect to government subsidy programs. By failing to provide complete responses to the Standard Questions Appendices as requested, Commerce finds that the record is missing necessary information because the GOC withheld necessary information and significantly impeded this administrative review within the meaning of section 776(a)(1) and (2)(A), (C) of the Act and also failed to cooperate by not acting to the best of its ability to comply with our requests within the meaning of section 776(b) of the Act. Based on application of AFA regarding these programs, we preliminarily determine that the self-reported grants listed in the “Self-Reported Grants Programs” section below constitute a financial contribution under section 771(5)(D)(i) of the Act. Moreover, applying AFA, we preliminarily determine that these

¹⁶³ See Zhongji Initial QR at Volume 1, page 28 and Exhibit I-17; Volume III, page 22 and Exhibit III-15; Volume IV, page 24 and Exhibit IV-12, and Volume V, page 23 and Exhibit V-17; and Xiashun September 20, 2019 IQR at 30 and Exhibit 24.

¹⁶⁴ See Initial CVD Questionnaire at II-8; see also GOC Supp October 8, 2019 at 3.

¹⁶⁵ See GOC IQR at 66.

programs are specific under section 771(5A)(A)-(B) or 771(5A)(D) of the Act.

H. All Other Programs Previously Found to be Countervailable

For the programs that Commerce has previously found to be countervailable, in part because these programs constituted a financial contribution by an authority and were specific, we are continuing to find these programs to constitute a financial contribution by an authority and to be specific.¹⁶⁶ It is Commerce’s practice not to revisit financial contribution and specificity determinations made in a prior segment of the same proceeding, absent the presentation of new facts or evidence.¹⁶⁷ The United States Court of Appeals for the Federal Circuit (CAFC) has affirmed this practice, under section 751(a)(1)(A) of the Act.¹⁶⁸ In this administrative review, the GOC withheld information requested of it, including new information regarding the financial contribution and specificity of these programs. In light of the lack of new information on the record, and consistent with our practice and *Magnola*, we are continuing to find these programs to be countervailable.

X. ANALYSIS OF PROGRAMS

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

A. Programs Preliminarily Found to be Countervailable

1. Policy Loans to the Aluminum Foil Industry

Commerce determined in the investigation that this program was countervailable.¹⁶⁹ Specifically, we found a program of preferential policy lending specific to producers of aluminum foil within the meaning of section 771(5A)(D)(i) of the Act.¹⁷⁰ We also found that loans from State-Owned Chinese Banks (SOCBs) under this program constitute financial contributions, pursuant to sections 771(5)(B)(i) and 771(5)(D)(i) of the Act, because SOCBs are “authorities.” We found the loans provide a benefit equal to the difference between what the

¹⁶⁶ See, e.g., *Chlorinated Isocyanurates from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*; 2012, 79 FR 56560 (September 22, 2014), and accompanying IDM; and *Chlorinated Isocyanurates From the People’s Republic of China: Final Results of Countervailing Duty Administrative Review*; 2015, 83 FR 26954 (June 11, 2018).

¹⁶⁷ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (October 17, 2012) (*Solar Cells from China Investigation*), and accompanying IDM at 27 n.130 (“In a CVD administrative review, we do not revisit past determinations of countervailability made in the proceeding, absent new information.”).

¹⁶⁸ See *Magnola Metallurgy, Inc. v United States*, 508 F. 3d 1349, 1353-56 (CAFC 2007) (*Magnola*).

¹⁶⁹ See *Certain Aluminum Foil from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 82 FR 37844 (August 14, 2017) (*Aluminum Foil from China Investigation Preliminary Determination*), and accompanying PDM at 42-44 (unchanged in the final determination).

¹⁷⁰ *Id.*

recipients paid on their loans and the amount they would have paid on comparable commercial loans.¹⁷¹

In this review, we preliminarily determine that the GOC did not submit any new information or argument that warrants reconsideration of Commerce’s prior determination in the investigation concerning the countervailability of the program.¹⁷² Therefore, consistent with our practice not to revisit financial contribution and specificity determinations made in a prior segment of the proceeding, absent the presentation of new facts or evidence,¹⁷³ we preliminarily continue to find that this program is specific within the meaning of section 771(5A)(D)(i) of the Act and confers a financial contributions, pursuant to sections 771(5)(B)(i) and 771(5)(D)(i) of the Act.

Both Zhongji and Xiashun reported benefiting from this program during the POR.¹⁷⁴ The loans provide a benefit equal to the difference between what Zhongji and Xiashun paid on their loans and the amount they would have paid on comparable commercial loans.¹⁷⁵ To calculate the benefit from this program, we used the benchmarks discussed above under the “Subsidy Valuation” section. To calculate the net countervailable subsidy rate under this program we divided the benefit by the appropriate sales denominator, as described in the “Subsidies Valuation” section above.

On this basis, we preliminarily determine net countervailable subsidy rates for Zhongji of 3.16 percent in 2017 and 2.27 percent in 2018, and for Xiashun of 2.59 percent in 2017 and 1.93 percent in 2018.

2. Income Tax Reduction for High or New Technology Enterprises (HNTEs)

Commerce determined in the investigation that this program was countervailable.¹⁷⁶ Specifically, we found that this tax incentive constitutes a financial contribution in the form of revenue forgone by the GOC and confers a benefit in the amount of tax savings, as provided under sections 771(5)(D)(ii) and 771(5)(E) of the Act.¹⁷⁷ We further determined that the income tax reduction afforded by this program is limited as a matter of law to certain enterprises whose products are designated as being in “high-tech fields with state support,” and, hence, is *de jure* specific, under section 771(5A)(D)(i) of the Act.¹⁷⁸

¹⁷¹ *Id.*

¹⁷² *See* GOC IQR at 4.

¹⁷³ *See Solar Cells from China Investigation* IDM at 27 n.130; *see also* Commerce’s Initial CVD Questionnaire at I-1 (stating “[a]bsent new information or evidence of changed circumstances, however, we do not intend to reexamine the countervailability of programs previously found to be countervailable, or not countervailable”).

¹⁷⁴ *See* Zhongji Initial QR at Volume I, page 11, Volume III, pages 11-12, Volume IV, page 11, and Volume V, pages 11-12; and Xiashun Initial QR at 10 and Exhibit 10.

¹⁷⁵ *See* 19 CFR 351.505(a).

¹⁷⁶ *See Aluminum Foil from China Investigation* PDM at 45-46, unchanged in the final determination.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

In this review, we preliminarily determine that the GOC did not submit any new information or argument that warrants reconsideration of Commerce’s prior determination in the investigation concerning the countervailability of the program.¹⁷⁹ Therefore, consistent with our practice not to revisit financial contribution and specificity determinations made in a prior segment of the proceeding, absent the presentation of new facts or evidence,¹⁸⁰ we preliminarily continue to find that this tax incentive program confers a financial contribution as provided under sections 771(5)(D)(ii) and 771(5)(E) of the Act and is *de jure* specific, under section 771(5A)(D)(i) of the Act.

Both Zhongji and Xiashun reported benefiting from this program during the POR.¹⁸¹ We calculated the benefit as the difference between taxes Jiangsu Dingsheng, Zhongji and Shantou Wanshun would have paid under the standard 25 percent tax rate and the taxes that the companies actually paid under the preferential 15 percent tax rate.¹⁸² We treated the tax savings, or the difference between the amount of taxes that would have been due under each tax rate, as a recurring benefit consistent with 19 CFR 351.524(c)(1). To calculate the net countervailable subsidy rate under this program we divided the benefit by the appropriate sales denominator, as described in the “Subsidies Valuation” section above.

On this basis, we preliminarily determine net countervailable *ad valorem* subsidy rates for Zhongji of 0.36 percent in 2017 and 0.46 percent in 2018 and for Xiashun of 0.53 percent in 2017 and 0.72 percent in 2018.

3. Income Tax Deductions for Research and Development (R&D) Expenses under the Enterprise Income Law

Commerce determined this program to be countervailable in the original investigation.¹⁸³ Specifically, we determined that this income tax deduction is a financial contribution in the form of revenue forgone by the government, and it provides a benefit to the recipients in the amount of the tax savings, pursuant to section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also found that the income tax deduction afforded by this program is limited as a matter of law to certain enterprises, *i.e.*, those with R&D in eligible high-technology sectors and, thus, is *de jure* specific under section 771(5A)(D)(i) of the Act.

In this review, we preliminarily determine that the GOC did not submit any new information or argument that warrants reconsideration of Commerce’s prior determination in the investigation concerning the countervailability of the program.¹⁸⁴ Therefore, consistent with our practice not to revisit financial contribution and specificity determinations made in a prior segment of the

¹⁷⁹ See GOC IQR at 4.

¹⁸⁰ See *Solar Cells from China Investigation* IDM at 27 n.130; see also Commerce’s Initial CVD Questionnaire at I-1 (stating “[a]bsent new information or evidence of changed circumstances, however, we do not intend to reexamine the countervailability of programs previously found to be countervailable, or not countervailable”).

¹⁸¹ See Zhongji Initial QR at Volume I, page 11-13 and Volume IV, pages 11-13; and Xiashun Initial QR at 10-14 and Exhibit 11.

¹⁸² *Id.*

¹⁸³ See *Aluminum Foil from China Investigation* PDM at 46-47, unchanged in the final determination.

¹⁸⁴ See GOC IQR at 7.

proceeding, absent the presentation of new facts or evidence,¹⁸⁵ we preliminarily continue to find that this program confers a financial contribution pursuant to section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1) and is *de jure* specific under section 771(5A)(D)(i) of the Act.

Both Zhongji and Xiashun reported benefiting from this program during the POR.¹⁸⁶ To calculate the benefit for the two companies, we treated the tax deduction as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To compute the amount of the tax savings, we calculated the amount of tax each company would have paid absent the tax deductions at the standard tax rate of 25 percent (*i.e.*, 25 percent of the tax credit). Next, we took the difference between the amount of taxes that would have been due under each tax rate to determine the benefit. We then divided the tax savings by the appropriate total sales denominator for each company, respectively.

On this basis, we preliminarily determine net countervailable *ad valorem* subsidy rates for Zhongji of 0.16 percent in 2017 and 0.12 percent in 2018, and for Xiashun of 0.20 percent in 2017 and 0.21 percent in 2018.

4. Import Tariff and VAT Exemptions on Imported Equipment for Encouraged Industries

Commerce determined this program to be countervailable in the original investigation.¹⁸⁷ In the original investigation, we determined that the import tariff and VAT exemptions constitute a financial contribution in the form of revenue forgone by the GOC and they provide a benefit to the recipient in the amount of VAT and tariff savings, pursuant to section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also found that the VAT and tariff exemptions afforded by the program are specific under section 771(5A)(D)(i) of the Act, because the program is limited to certain enterprises, *i.e.*, domestic enterprises involved in “encouraged” projects.

In this review, we preliminarily determine that the GOC did not submit any new information or argument that warrants reconsideration of Commerce’s prior determination in the investigation concerning the countervailability of the program.¹⁸⁸ Therefore, consistent with our practice not to revisit financial contribution and specificity determinations made in a prior segment of the proceeding, absent the presentation of new facts or evidence,¹⁸⁹ we preliminarily continue to find that the exemptions constitute a financial contribution pursuant to section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1) and are specific under section 771(5A)(D)(i) of the Act.

¹⁸⁵ See *Solar Cells from China Investigation* IDM at 27 n.130; see also Commerce’s Initial CVD Questionnaire at I-1 (stating “{a}bsent new information or evidence of changed circumstances, however, we do not intend to reexamine the countervailability of programs previously found to be countervailable, or not countervailable”).

¹⁸⁶ See Zhongji Initial QR at Volume I, page 13-15 and Volume IV, pages 13-15; and Xiashun Initial QR at 15-19, Exhibit 12, and Exhibit 13.

¹⁸⁷ See *Aluminum Foil from China Investigation* PDM at 47-48, unchanged in the final determination.

¹⁸⁸ See GOC IQR at 10.

¹⁸⁹ See *Solar Cells from China Investigation* IDM at 27 n.130; see also Commerce’s Initial CVD Questionnaire at I-1 (stating “{a}bsent new information or evidence of changed circumstances, however, we do not intend to reexamine the countervailability of programs previously found to be countervailable, or not countervailable”).

Both Zhongji and Xiashun reported benefiting from this program during the AUL period.¹⁹⁰ With regard to the VAT exemptions in particular, we are countervailing only the exemptions received prior to 2009 when China’s VAT regime changed.¹⁹¹ Because these exemptions are provided for, or tied to, the capital structure or capital assets of a firm, Commerce treated them as non-recurring subsidies and applied our standard methodology for non-recurring grants to calculate the subsidy rate.¹⁹² Specifically, where the benefits exceeded 0.5 percent of the relevant sales of that year, we allocated the amount of the VAT and/or tariff exemptions over the AUL.¹⁹³ In the years that the benefits received by each company under this program did not exceed 0.5 percent of relevant sales for that year, we expensed those benefits in the years that they were received, pursuant to 19 CFR 351.524(b)(2). We used the discount rates described in the section “Subsidies Valuation” above to calculate the amount of the benefit allocable to the POR. Those benefits expensed or allocated to the POR were then used as the basis for calculating the net subsidy rate by dividing the total POR benefit by the total sales denominator.

On this basis, we preliminarily determine net countervailable *ad valorem* subsidy rates for Zhongji of 0.56 percent in 2017 and 0.17 percent in 2018, and for Xiashun of 0.91 percent in 2017 and 0.54 percent in 2018.

5. VAT Rebates on Domestically-Produced Equipment

Commerce determined this program to be countervailable in the original investigation.¹⁹⁴ Specifically, we determined that the rebates under this program are a financial contribution in the form of revenue forgone by the GOC and they provide a benefit to the recipients in the amount of the tax savings.¹⁹⁵ Further, we determined that the VAT rebates are contingent upon the use of domestic over imported equipment and, hence, specific under section 771(5A)(A) and (C) of the Act.

In this review, we preliminarily determine that the GOC did not submit any new information or argument that warrants reconsideration of Commerce’s prior determination in the investigation

¹⁹⁰ See Zhongji Initial QR at Volume I, page 15-16 and Exhibit I-1; and Xiashun Initial QR at 19 and Exhibit 14.

We note that Zhongji reported receiving these same AUL benefits during the investigation.

¹⁹¹ Effective 2009, China’s VAT regime transformed from a “production-based” system into a “consumption-based” system. See *Certain Frozen Warmwater Shrimp from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) and accompanying IDM at 31, footnote 104. Under the production-based system, China did not allow VAT paid on purchases of capital goods and fixed assets to be credited when remitting VAT to GOC tax authorities. Therefore, firms exempted from VAT before 2009 under the production-based system were relieved from a tax they otherwise would have had to pay, thus receiving an actual benefit from the exemption. However, with regard to a consumption-based VAT, we have previously determined that under such a system, the VAT is a consumption tax that “the company merely conveys to the government, ultimately paying nothing because it is the final consumer who actually shoulders the tax burden,” and thus it is Commerce’s policy not to investigate exemptions under a consumption-based VAT system. See *Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 68 FR 37122 (June 23, 2003) and accompanying IDM at Comment 34.

¹⁹² See *Aluminum Foil from China Investigation* PDM at 48; and 19 CFR 351.524(b).

¹⁹³ See 19 CFR 351.524(c)(2)(iii) and (d)(2).

¹⁹⁴ See *Aluminum Foil from China Investigation* PDM at 48-49, unchanged in the final determination.

¹⁹⁵ See section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1).

concerning the countervailability of the program.¹⁹⁶ Therefore, consistent with our practice not to revisit financial contribution and specificity determinations made in a prior segment of the proceeding, absent the presentation of new facts or evidence,¹⁹⁷ we preliminarily determine that the rebates under this program are a financial contribution in accordance with section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1) and are specific under section 771(5A)(A) and (C) of the Act.

Zhongji reported benefiting from this program during the AUL period.¹⁹⁸ As noted earlier, we are countervailing only the VAT exemptions received prior to 2009 when China's VAT regime changed.¹⁹⁹ Because these indirect tax refunds are provided for, or tied to, the capital structure or capital assets of a firm, we are treating them as non-recurring subsidies and allocated the benefit over the AUL, consistent with the methodology from the investigation.²⁰⁰ Thus, for those years in which the VAT rebates were greater than or equal to 0.5 percent of sales, we allocated the rebate amount over the AUL. We used the discount rates described above in the "Subsidies Valuation" section to calculate the amount of the benefit allocable to the POR. We then divided the benefit amounts by the appropriate sales denominator.

On this basis, we preliminarily determine net countervailable *ad valorem* subsidy rates for Zhongji of 0.05 percent in 2017 and 0.03 percent in 2018.

6. Foreign Trade Development Fund Grants

For the reasons explained in the "Application of AFA: Various Programs" section, our preliminary determination regarding the GOC's Foreign Trade Development Fund Grants program is based on AFA. As AFA, we preliminarily find that this grant program confers a financial contribution within the meaning of section 771(5)(D)(i) of the Act because it is a direct transfer of funds and is specific within the meaning of 771(5A) of the Act.

¹⁹⁶ See GOC IQR at 12.

¹⁹⁷ See *Solar Cells from China Investigation* IDM at 27 n.130; see also Commerce's Initial CVD Questionnaire at I-1 (stating "{a}bsent new information or evidence of changed circumstances, however, we do not intend to reexamine the countervailability of programs previously found to be countervailable, or not countervailable").

¹⁹⁸ See Zhongji Initial QR at Volume I, page 16 and Exhibit I-1. We note that Zhongji reported receiving these same AUL benefits during the investigation.

¹⁹⁹ Effective 2009, China's VAT regime transformed from a "production-based" system into a "consumption-based" system. See *Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) and accompanying IDM at 31, footnote 104. Under the production-based system, China did not allow VAT paid on purchases of capital goods and fixed assets to be credited when remitting VAT to GOC tax authorities. Therefore, firms exempted from VAT before 2009 under the production-based system were relieved from a tax they otherwise would have had to pay, thus receiving an actual benefit from the exemption. However, with regard to a consumption-based VAT, we have previously determined that under such a system, the VAT is a consumption tax that "the company merely conveys to the government, ultimately paying nothing because it is the final consumer who actually shoulders the tax burden," and thus it is Commerce's policy not to investigate exemptions under a consumption-based VAT system. See *Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 68 FR 37122 (June 23, 2003) and accompanying IDM at Comment 34.

²⁰⁰ See *Aluminum Foil from China Investigation* PDM at 49; and 19 CFR 351.524(c)(2)(iii) and (d)(2).

Zhongji reported benefiting from this program during the POR.²⁰¹ We preliminarily determine that this grant program confers a benefit equal to the amount of the grant provided in accordance with 19 CFR 351.504(a), subject to the standard allocation methodology for non-recurring subsidies under 19 CFR 351.524(b) and (d).

We examined the grants reported for each POR year to determine whether they exceeded the 0.5 percent of the company's sales in the year of approval to determine whether the benefits should be allocated over time or to the year of receipt. Because the grants received by Zhongji did not pass the 0.5 percent test, the grants received in each year are appropriately expensed in the year of receipt. Consequently, the benefit to Zhongji under this program during the POR is equal to the total amount of the grants received in both years of the POR.

On this basis, we preliminarily determine net countervailable *ad valorem* subsidy rates for Zhongji of 0.02 percent in 2017 and 0.03 percent in 2018.

7. Electricity for LTAR

In the original investigation, Commerce determined this program to be countervailable based, in part, on the application of AFA.²⁰² Likewise, for this review, as explained in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we are preliminarily basing our determination regarding the GOC's provision of electricity, in part, on AFA. For these preliminary results, we determine that Zhongji and Xiashun received a countervailable subsidy from electricity provided for LTAR.

As discussed above, the GOC did not provide the information requested by Commerce regarding its provision of electricity to the company respondents and, as a result, we find, as AFA, that the GOC is providing a financial contribution that is specific within the meaning of sections 771(5)(D)(iii) and 771(5A)(D) of the Act, respectively. To determine the existence and amount of any benefit from this program, we relied on the respondents' reported information on the amounts of electricity used, and the rates the respondents paid for that electricity, during the POR. We compared the rates paid by the respondents for their electricity to the highest rates that they could have paid in China during the POR.

To calculate the benchmark, we selected the highest rates in China for the type of user (*e.g.*, "General Industry," "Heavy Industry," "Base Charge/Maximum Demand") for the high peak, peak, normal, and valley ranges, as provided by the GOC.²⁰³ The electricity rate benchmark chart is included in the Preliminary Benchmark Memoranda. This benchmark reflects an adverse inference, which we drew as a result of the GOC's failure to act to the best of its ability in providing requested information about its provision of electricity in this review.

To measure whether the mandatory respondents received a benefit under this program, Commerce first calculated the electricity prices the respondents paid by multiplying the monthly kilowatt hours or kilovolt amperes consumed for each price category by the corresponding

²⁰¹ See Zhongji Initial QR at 25-27.

²⁰² See *Aluminum Foil from China Investigation* PDM at 52-53, unchanged in the final.

²⁰³ See GOC IQR at Exhibit II.D.25 and 26.

electricity rates charged for each price category. Next, we calculated the benchmark electricity cost by multiplying the monthly consumption reported by the respondents for each price category by the highest electricity rate charged for each price category, as reflected in the electricity rate benchmark chart. To calculate the benefit for each month, we subtracted the amount paid by the respondents for electricity during each month of the POR from the monthly benchmark electricity price. We then calculated the total benefit for each company during the POR by summing the monthly benefits for each company.²⁰⁴

To calculate the subsidy rate under the program, we divided the benefit amount calculated for each respondent by the appropriate total sales denominator, as discussed in the “Subsidies Valuation” section above. On this basis, we preliminarily determine net *ad valorem* countervailable subsidy rates for Zhongji of 1.46 percent in 2017 and 1.27 percent in 2018, and for Xiashun of 1.94 percent in 2017 and 1.86 percent in 2018.²⁰⁵

8. Government Provision of Aluminum Plate and/or Sheet and Strip for LTAR

Commerce is examining whether the GOC or other “authorities” within China provided Xiashun or Zhongji with aluminum plate and/or sheet and strip for LTAR. Both Zhongji and Xiashun reported purchasing aluminum plate and/or sheet and strip during the POR.²⁰⁶

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

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

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

²⁰⁴ See Preliminary Calculation Memoranda.

²⁰⁵ *Id.*

²⁰⁶ See e.g., Zhongji’s NSA QR at 1-2 and Exhibits NSA-1 through 3; and Xiashun’s NSA QR at 1-2 and Exhibit 1.

As explained in the “Use of Facts Otherwise Available and Adverse Inferences” section of this memorandum above, we preliminarily find that the aluminum plate and/or sheet and strip market was distorted during the POR.

In order to determine the existence and amount of any benefit conferred by the producers to the respondent companies pursuant to section 771(5)(E)(iv) of the Act, we followed the methodology described in 19 CFR 351.511(a)(2) to identify a suitable benchmark for aluminum plate and/or sheet and strip. Commerce’s regulations at 19 CFR 351.511(a)(2) set forth the basis for identifying appropriate market determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services. The potential benchmarks listed in the regulation, in order of preference, are: (1) market prices from actual transactions within the country under review for the government-provided good (e.g., actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under review (tier two); or (3) prices consistent with market principles based on an assessment by Commerce of the government-set price (tier three).

As discussed above, because Commerce is finding that the market for aluminum plate and/or sheet and strip was distorted by government involvement, we are selecting external benchmark prices, *i.e.*, “tier two” or world market prices, consistent with 19 CFR 351.511(a)(2)(ii) and the CVD Preamble. Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under “tier two,” Commerce will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Accordingly, to derive the benchmark prices we included ocean freight and inland freight that would be incurred to deliver inputs to the respondents’ production facilities. We then added to the benchmark prices the appropriate import duties applicable to imports of aluminum plate and/or sheet and strip, as provided by the GOC.²⁰⁷ Additionally, we added the appropriate VAT of 16 or 17 percent to the benchmark prices, as appropriate.

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

Consistent with the above discussion, we preliminarily determine net countervailable *ad valorem* subsidy rates for Zhongji of 33.15 percent in 2017 and 31.21 percent in 2018 under the program. The benefit to Xiashun is less than 0.005 percent *ad valorem*. Therefore, in accordance with Commerce’s normal practice, we have not included benefits from this program in Xiashun’s CVD rate.²⁰⁸

²⁰⁷ See GOC NSA QR at 22.

²⁰⁸ See Xiashun’s Preliminary Calculation Memorandum; *see also, e.g., Large Residential Washers From the Republic of Korea: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Determination*, 77 FR 33181 (June 5, 2012) (*Large Residential Washers from Korea*), and accompanying IDM at 10 (unchanged in final) (*Large Residential Washers From the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 75975 (December 26, 2012) (*Large Residential Washers From Korea: Final*)).

9. Provision of Primary Aluminum for LTAR

Commerce determined this program to be countervailable in the investigation based on AFA.²⁰⁹ In its questionnaire response in the instant review, the GOC indicated that certain producers that provided primary aluminum to the respondents are majority-owned by the government.²¹⁰ As explained in the Public Body Memorandum, majority state-owned enterprises in China possess, exercise, or are vested with governmental authority.²¹¹ The GOC exercises meaningful control over these entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector. Therefore, we preliminarily determine that these entities constitute “authorities” within the meaning of section 771(5)(B) of the Act and that they provided the respondents with a financial contribution in the form of a provision of a good, pursuant to section 771(5)(D)(iii) of the Act.²¹²

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

In the underlying investigation, we determined that this program is specific on the basis of AFA.²¹³ The GOC provided no new information concerning the specificity of this program. Therefore, we continue to find that the provision of primary aluminum for LTAR is specific.

A benefit is conferred to the extent that primary aluminum is being provided for LTAR. As discussed above under the “Subsidies Valuation Information” section, we are basing the benchmark on the GTA and Comtrade pricing data for primary aluminum under HTS subheadings 7601.10 and 7601.20 submitted by the petitioner and Xiashun. We adjusted the benchmark price to include delivery charges, import duties, and VAT pursuant to 19 CFR 351.511(a)(2)(iv). We added import duties and VAT as reported by the GOC.²¹⁴ In calculating VAT, we applied the applicable VAT rate to the benchmark after first adding amounts for ocean freight and import duties. We then compared these monthly benchmark prices to the respondents’ reported purchase prices for individual transactions, including VAT and delivery charges.

Based on this comparison, we preliminarily determine that primary aluminum was provided to respondents for LTAR and that a benefit exists to the extent that the benchmark prices were

²⁰⁹ See *Aluminum Foil from China Investigation* PDM at 30-37 (unchanged in final).

²¹⁰ See, e.g., GOC IQR at 17.

²¹¹ See Public Body Memorandum.

²¹² See, e.g., *Certain Oil Country Tubular Goods from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 52301 (September 3, 2014) (*OCTG from China 2012 AR*) and accompanying IDM at 48-50.

²¹³ See *Aluminum Foil from China Investigation* PDM at 30-37 (unchanged in final).

²¹⁴ See GOC IQR at 33.

higher than the prices paid by the respondents.²¹⁵ We divided the company respondents' total benefits by the appropriate total sales denominator, as discussed in the "Subsidies Valuation Information" section above, and in the preliminary calculation memoranda. On this basis, we preliminarily determine net countervailable *ad valorem* subsidy rates for Zhongji of 3.96 percent in 2017 and 10.69 percent in 2018, and for Xiashun of 8.65 percent in 2017 and 13.29 percent in 2018.²¹⁶

10. Provision of Land for LTAR to State-Owned Enterprises (SOEs) and/or Companies in Special Economic Zones

In the original investigation, Commerce determined this program to be countervailable based on the application of AFA.²¹⁷ For the reasons explained in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we are basing our determination regarding the GOC's provision of land in part on AFA. For these preliminary results, we determine that both respondents received a countervailable subsidy through land provided for LTAR.

As discussed above in the "Use of Facts Otherwise Available and Adverse Inferences" section, Commerce continues to determine as AFA that the land was provided to the respondents by "authorities" within the meaning of section 771(5)(B) of the Act and, thus, constitutes a financial contribution within the meaning of section 771(5)(D) of the Act, and is also specific pursuant to section 771(5A)(D) of the Act.

To measure the benefit, we are relying on the Thailand industrial land benchmarks discussed above under the "Land Benchmark" section. For the calculation, we first multiplied the benchmark price by the total area of land reported by Zhongji and Xiashun. We then subtracted the price paid for each tract of land to derive the total unallocated benefit. Next, we conducted the "0.5 percent test," as instructed by 19 CFR 351.524(b)(2), for the year of the relevant land-use agreement by dividing the total unallocated benefit for each tract by the appropriate sales denominator. If more than one tract was provided in a single year, we combined the total unallocated benefits from the tracts before conducting the "0.5 percent test." As a result, we found that the benefits were greater than 0.5 percent of relevant sales and that allocation was appropriate for all tracts found to be countervailable. We allocated any benefit amounts across the terms of the land-use agreements, using the standard allocation formula of 19 CFR 351.524(d), and determined the amount allocable to the POR. We then summed all of the benefits allocable to the POR and divided this amount by the appropriate total sales denominator, as discussed in the "Subsidies Valuation Information" section above, and in the Preliminary Calculation Memoranda, to derive net countervailable *ad valorem* subsidy rates for Zhongji of 1.40 percent in 2017 and 1.19 percent in 2018. The benefit to Xiashun is less than 0.005 percent *ad valorem*. Therefore, in accordance with Commerce's normal practice, we have not included benefits from this program in Xiashun's CVD rate.²¹⁸

²¹⁵ See 19 CFR 351.511(a).

²¹⁶ *Id.*

²¹⁷ See *Aluminum Foil from China Investigation* PDM at 29 (unchanged in Final).

²¹⁸ See *Large Residential Washers from Korea, and accompanying IDM at 10*, (unchanged in final).

11. Export Seller's Credits from China Export-Import Bank (China EXIM Bank)

Commerce determined this program to be countervailable in the original investigation.²¹⁹ Specifically, we found that the receipt of loans under this program constituted a financial contribution within the meaning of section 771(5)(B)(i) and 771(5)(D)(i) of the Act. The loans also provided a benefit under section 771(5)(E)(ii) of the Act in the amount of the difference between what the recipient paid for the loans and what it would have paid on comparable commercial loans. Further, we determined that this program is specific pursuant to sections 771(5A)(A)-(B) of the Act.²²⁰

In this review, we preliminarily determine that the GOC did not submit any new information or argument that warrants reconsideration of Commerce's prior determination in the investigation concerning the countervailability of the program.²²¹ Therefore, consistent with our practice not to revisit financial contribution and specificity determinations made in a prior segment of the proceeding, absent the presentation of new facts or evidence,²²² we preliminarily continue to find that the receipt of loans under this program constitutes a financial contribution within the meaning of section 771(5)(B)(i) and 771(5)(D)(i) of the Act, the loans provided a benefit under section 771(5)(E)(ii) of the Act, and the program is specific pursuant to sections 771(5A)(A)-(B) of the Act.²²³

Xiashun reported benefiting from this program during the POR.²²⁴ To calculate the benefit in the POR under this program, we compared the amount of interest paid on the export loans to the amount of interest that would have been paid on a comparable commercial loan using the benchmark lending rates described above in the "Subsidies Valuation" section.

On this basis, we preliminarily determine a net countervailable *ad valorem* subsidy rates for Xiashun of 2.04 percent in 2017 and 1.10 percent in 2018.

12. Other Subsidies

Zhongji and Xiashun reported receiving various other grants from the GOC during the AUL.²²⁵ For the reasons explained in the "Application of AFA: Other Subsidies" section above, we are basing our preliminary determination regarding these grants on AFA, in part. Therefore, we determine that the following grants confer a financial contribution as a direct transfer of funds

²¹⁹ See *Aluminum Foil from China Investigation* and accompanying PDM at 23-25 and 44-45, (unchanged in the final).

²²⁰ *Id.*

²²¹ See GOC IQR at 61.

²²² See *Solar Cells from China Investigation* IDM at 27 n.130; see also Commerce's Initial CVD Questionnaire at I-1 (stating "[a]bsent new information or evidence of changed circumstances, however, we do not intend to reexamine the countervailability of programs previously found to be countervailable, or not countervailable").

²²³ See *Aluminum Foil from China Investigation* PDM at 44-45.

²²⁴ See Xiashun Initial QR at 28 and Exhibit 10.

²²⁵ See Zhongji Initial QR at Volume 1, page 28 and Exhibit I-17, Volume III, page 22 and Exhibit III-15; Volume IV, page 24 and Exhibit IV-12, and Volume V, page 23 and Exhibit V-1; Xiashun Initial Questionnaire Response at 30 and Exhibit 24; Xiashun Second SQR at Exhibit 11; and Xiashun 4th SQR at Exhibit 1.

under section 771(5)(D)(i) of the Act, and are specific either under sections 771(5A)(A)-(B) or 771(5A)(D) of the Act (as appropriate, depending on whether the respondent reported the grant as export-related or as a domestic subsidy).

With regard to benefit, we preliminarily find that these grants constitute non-recurring subsidies within the meaning of 19 CFR 351.524(b). To measure the benefit, we followed the methodology described in 19 CFR 351.524(b) and (d). In accordance with 19 CFR 351.524(b)(2), we determined whether to allocate the benefit over the AUL by dividing the approved grant amount by the company's total sales in the year of approval. If the approved amount was less than 0.5 percent of the company's total sales, we expensed the amounts received under the grants in the respective years received. For approved amounts received during the POR that are less than 0.005 percent of the company's total sales, we determined there is no measurable benefit. To calculate the POR *ad valorem* subsidy rates for these grants, Commerce divided the benefit allocable to the POR by Zhongji's or Xiashun's total POR sales, as applicable.

Based on the methodology outlined above, we calculated net countervailable *ad valorem* subsidy rates for Zhongji of 1.03 percent in 2017 and 0.82 percent in 2018, and for Xiashun of 0.18 percent in 2017 and 0.22 percent in 2018.²²⁶

C. *Programs Preliminarily Determined to be Not Used by Zhongji and Xiashun During the POR*

Commerce preliminarily determines that the following programs were not used by Zhongji and Xiashun during the POR:

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

²²⁶ See Preliminary Calculation Memoranda.

XI. DISCLOSURE AND PUBLIC COMMENT

Commerce intends to disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the publication of these preliminary results.²²⁷ Interested parties may submit written comments (case briefs)²²⁸ within 30 days of the issuance of the preliminary results and rebuttal comments (rebuttal briefs) within five days after the time limit for filing case briefs.²²⁹ Rebuttal briefs must be limited to issues raised in the case briefs.²³⁰ Parties who submit case or rebuttal briefs are requested to submit with the argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.²³¹

Interested parties who wish to request a hearing must do so within 30 days of publication of these preliminary results by submitting a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, using Enforcement and Compliance's ACCESS system.²³² Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230, at a time and location to be determined.²³³ Parties should confirm by telephone the date, time, and location of the hearing. Issues addressed at the hearing will be limited to those raised in the briefs.²³⁴ All briefs and hearing requests must be filed electronically and received successfully in their entirety through ACCESS by 5:00 p.m. Eastern Time on the due date.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, Commerce intends to issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days after publication of these preliminary results.

²²⁷ See 19 CFR 351.224(b).

²²⁸ See generally 19 CFR 351.303 (for general filing requirements).

²²⁹ See 19 CFR 351.309(c)(1)(ii)(d)(1).

²³⁰ See 19 CFR 351.309(d)(2).

²³¹ See 19 CFR 351.309(c)(2), (d)(2).

²³² See 19 CFR 351.310(c).

²³³ See 19 CFR 351.310.

²³⁴ See 19 CFR 351.310(c).

XII. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

Agree

Disagree

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance