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February 19, 2021

**MEMORANDUM TO:** Christian Marsh  
Acting Assistant Secretary  
for Enforcement and Compliance

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

**SUBJECT:** Issues and Decision Memorandum for the Final Results of the  
Antidumping Duty Administrative Review of Certain Aluminum  
Foil from the People's Republic of China; 2017-2019

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## I. SUMMARY

The Department of Commerce (Commerce) has analyzed the case and rebuttal briefs submitted by interested parties and finds that mandatory respondents: (1) Xiamen Xiashun Aluminum Foil Co., Ltd. (Xiashun); and (2) Jiangsu Zhongji Lamination Materials Co., (HK) Ltd.; Jiangsu Zhongji Lamination Materials Stock Co., Ltd.; Jiangsu Zhongji Lamination Materials Co., Ltd.; and, Jiangsu Huafeng Aluminum Industry Co., Ltd. (collectively, Zhongji) both made sales of aluminum foil at less than normal value (NV) during the period of review (POR) November 2, 2017, through March 31, 2019. We also continue to find that nine other companies that were not selected for individual examination are eligible for a separate rate.

Based on our analysis, we made certain changes to the final dumping margins calculated for Xiashun and Zhongji and the margin assigned to the nine separate rate companies that were not selected for individual examination.

We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of issues in this review for which we received comments from interested parties:

- Comment 1: Proper Sources for Certain Zhongji Surrogate Values
- Comment 2: Allocation of Factory Overhead Expenses
- Comment 3: Modification of Liquidation Instructions for Certain Zhongji Sales
- Comment 4: Zhongji Double Remedies Adjustment
- Comment 5: Application of an Adverse Inference to Xiashun for 14 Non-Metal Inputs

- Comment 6: Xiashun Run-Around Scrap  
Comment 7: Xiashun Market Economy Inputs  
Comment 8: Separate Rate Assigned to Non-Examined Companies

## II. BACKGROUND

On June 24, 2020, Commerce published the *Preliminary Results* of this review in the *Federal Register*.<sup>1</sup> In August 2020, the following interested parties submitted case briefs: (1) Zhongji; (2) Xiashun; (3) Dingsheng Industries Hong Kong Trading Co., Ltd., Hangzhou Dingsheng Import & Export Co., Ltd., Hunan Suntown Marketing Limited, and Suntown International Trade Limited (collectively, Dingsheng and Suntown); (4) ProAmpac Intermediate Inc., Ampac Holdings, LLC, JenCoat Inc., and DBA Prolamina (collectively, ProAmpac); and (5) the Aluminum Trade Enforcement Working Group and its individual members<sup>2</sup> (the petitioners).<sup>3</sup> Also in August 2020, the following interested parties submitted rebuttal briefs: (1) Zhongji; (2) Xiashun; (3) Dingsheng and Suntown; 4) ProAmpac, and 5) the petitioners.<sup>4</sup>

On September 2, 2020, we issued a post-preliminary decision memorandum concerning our analysis of the double remedies responses submitted by Zhongji and Xiashun, and provided an opportunity for interested parties to submit additional case briefs and rebuttal briefs on the issue of Commerce's application of section 777A(f) of the Tariff Act of 1930, as amended (the Act).<sup>5</sup> On September 15, 2020, Zhongji submitted its double remedies case brief.<sup>6</sup> On September 22, 2020, the petitioners submitted its double remedies rebuttal brief.<sup>7</sup> On July 24, 2020, Zhongji

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<sup>1</sup> See *Certain Aluminum Foil from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Determination of No Shipments, and Partial Rescission; 2017-2019*, 85 FR 37829 (June 24, 2020) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

<sup>2</sup> Individual members are: JW Aluminum Company; Novelis Corporation; and Reynolds Consumer Products, LLC.

<sup>3</sup> See Zhongji's Letter, "Administrative Review of the Antidumping Duty Order on Aluminum Foil from the People's Republic of China: Case Brief," dated August 3, 2020 (Zhongji Case Brief); see also Xiashun's Letter, "Aluminum Foil from the People's Republic of China: Case Brief," dated August 3, 2020 (Xiashun Case Brief); Dingsheng and Suntown's Letter, "Administrative Case Brief on behalf of GDLSK Respondents: Antidumping Duty Order on Aluminum Foil from the People's Republic of China (A-570-053)," dated August 3, 2020 (Dingsheng and Suntown Case Brief); ProAmpac's Letter, "Aluminum Foil from the People's Republic of China; 2017-2019: Letter in Lieu of Case Brief," dated August 3, 2020 (ProAmpac Case Brief); and Petitioners' Letter, "Certain Aluminum Foil from the People's Republic of China: Petitioners' Case Brief," dated August 3, 2020 (Petitioners Case Brief).

<sup>4</sup> See Zhongji's Letter, "Administrative Review of the Antidumping Duty Order on Aluminum Foil from the People's Republic of China: Rebuttal Case Brief," dated August 17, 2020 (Zhongji Rebuttal Brief); see also Xiashun's Letter, "Aluminum Foil from the People's Republic of China: Rebuttal Brief," dated August 17, 2020; Dingsheng and Suntown's Letter, "Letter in Lieu of Rebuttal Brief on behalf of GDLSK Respondents: Antidumping Duty Order on Aluminum Foil from the People's Republic of China (A-570-053)," dated August 17, 2020; ProAmpac's Letter, "Aluminum Foil from the People's Republic of China; 2017-2019: Letter in Lieu of Rebuttal Brief," dated August 17, 2020; Petitioners' Letter, "Certain Aluminum Foil from the People's Republic of China: Petitioners' Rebuttal Brief," dated August 17, 2020 (Petitioners Rebuttal Brief).

<sup>5</sup> See Memorandum, "Decision Memorandum for the Post Preliminary Results of the Antidumping Duty Administrative Review of Certain Aluminum Foil from the People's Republic of China; 2017-2019," dated September 2, 2020 (Preliminary Double Remedies Memorandum).

<sup>6</sup> See Zhongji's Letter, "Administrative Review of the Antidumping Duty Order on Aluminum Foil from the People's Republic of China: Case Brief," dated September 15, 2020 (Zhongji Double Remedies Case Brief).

<sup>7</sup> See Petitioners' Letter, "Certain Aluminum Foil from the People's Republic of China: Petitioners' Supplemental Rebuttal Brief on Double Remedies," dated September 22, 2020.

requested a hearing on the issues raised in this administrative review,<sup>8</sup> and on September 30, 2020, Zhongji withdrew its hearing request.<sup>9</sup>

On July 21, 2020, Commerce tolled all deadlines for administrative reviews by 60 days.<sup>10</sup> On December 15, 2020, Commerce extended the deadline for the final results of this administrative review by 60 days, until February 19, 2021.<sup>11</sup> The deadline for the final results of this review is now February 19, 2021.

### **III. 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 covered by 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 this proceeding may also be entered into the United States under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3045, 7606.12.3055, 7606.12.3090, 7606.12.6000, 7606.91.3090, 7606.91.6080, 7606.92.3090, and 7606.92.6080.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

### **IV. CHANGES SINCE THE PRELIMINARY RESULTS**

Based on a review of the record and our analysis of the comments received from interested parties, Commerce has made two changes to the *Preliminary Results*. First, for Zhongji, we have revised our calculation of ash/dross to account for the metal content of the ash/dross (*see* Comment 1). Second, we have revised our calculation of an adverse inference with regard to Xiashun based on the comments we received from Xiashun and the petitioners (*see* Comment 5).

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<sup>8</sup> See Zhongji Letter, “Administrative Review of the Antidumping Duty Order on Aluminum Foil from the People’s Republic of China: Hearing Request,” dated July 24, 2020.

<sup>9</sup> See Zhongji Letter, “Administrative Review of the Antidumping Duty Order on Aluminum Foil from the People’s Republic of China: Withdrawal of Hearing Request,” dated September 30, 2020.

<sup>10</sup> See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,” dated July 21, 2020.

<sup>11</sup> See Memorandum, “Certain Aluminum Foil from the People’s Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review,” dated December 15, 2020.

For a more detailed discussion of these changes, *see* the Final Analysis Memoranda for Zhongji and Xiashun.<sup>12</sup>

## V. DISCUSSION OF THE ISSUES

### Comment 1: Proper Sources for Certain Zhongji Surrogate Values (SVs)

#### *Zhongji Comments*<sup>13</sup>

- Commerce must reexamine its selection of SVs for certain factors of production (FOPs), specifically, coke gas,<sup>14</sup> the dross/ash by-product,<sup>15</sup> scrap,<sup>16</sup> refining oil and refining oil additives,<sup>17</sup> chalybeate agents, copper agents,<sup>18</sup> pipe packing inputs,<sup>19</sup> drying agents,<sup>20</sup> and other packing materials.<sup>21</sup>
- The eight-digit or ten-digit HTS classifications for by-products, rolling oil and rolling oil additives, chalybeate agent, copper agent, manganese agent, pipes used for packing, and drying agent inputs more closely approximate Zhongji's production operations than do the four-digit, six-digit, or eight digit HTS classification numbers selected by Commerce in the *Preliminary Results*.<sup>22</sup>
- The Xeneta shipping data more accurately reflect shipping rates because the Xeneta data reflect actual shipping charges, whereas the Maersk data utilized by Commerce reflect estimated shipping charges.<sup>23</sup>
- Based upon the foregoing, Commerce should revise its SV source for coke gas, the dross/ash by-product, chalybeate agents, copper agents, Zhongji's pipe packing input, drying agents, other packing materials, and shipping rates, replacing the data used in the *Preliminary Results* with the SV data advocated by Zhongji.<sup>24</sup>

#### *Petitioners Comments*<sup>25</sup>

- Commerce should correct the programming language implemented in the *Preliminary Results* to cap the valuation of the ash SV, based on a percentage of the value of aluminum scrap.<sup>26</sup>

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<sup>12</sup> *See* Memorandum, "Final Analysis Memorandum for Zhongji," dated concurrently with this memorandum; *see also* Memorandum, "Final Analysis Memorandum for Xiashun," dated concurrently with this memorandum (Xiashun Final Analysis Memorandum).

<sup>13</sup> *See* Zhongji Case Brief at 5-23.

<sup>14</sup> *Id.* at 6-8.

<sup>15</sup> *Id.* at 8-10.

<sup>16</sup> *Id.* at 9-10.

<sup>17</sup> *Id.* at 10-12.

<sup>18</sup> *Id.* at 12-15.

<sup>19</sup> *Id.* at 16-18.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 23.

<sup>22</sup> *See, generally,* Zhongji Case Brief at 6-18 and 23.

<sup>23</sup> *Id.* at 18.

<sup>24</sup> *Id.* at 5-23.

<sup>25</sup> *See* Petitioners Case Brief at 2-7.

<sup>26</sup> *Id.* at 5-7.

*Zhongji Rebuttal Comments*<sup>27</sup>

- If Commerce does adopt the petitioners' proposed cap of the SV for ash, Commerce must select an SV that is 100 percent aluminum, as the calculation is designed to capture that part of the ash which is wholly aluminum.<sup>28</sup>

*Petitioners Rebuttal Comments*<sup>29</sup>

- Commerce should continue to use the SV sources for coke gas, dross/ash by-product, chalybeate agents, copper agents, Zhongji's pipe packing input, drying agents, other packing materials, and shipping rates that it used in the *Preliminary Results*.<sup>30</sup>
- Regarding coke gas, there is no available GTA data from Bulgaria, and the Eurostat data proposed by Zhongji reflects a value for natural gas rather than coke gas.<sup>31</sup>
- Regarding, the ash/dross by-product, the 2620 HTS heading utilized by Commerce appropriately reflects the value of the output value of ash generated by Zhongji, rather than the value of the scrap input.<sup>32</sup> Commerce also appropriately selected the value of scrap rather than the value of aluminum ingot.<sup>33</sup> Scrap is generated as a by-product from the production output process rather than as a production input.<sup>34</sup> Because scrap is generated as part of the production output process and contains waste products as well as recoverable aluminum, Zhongji is incorrect that the metallurgical content of virgin aluminum properly represents the value of Zhongji's scrap output.<sup>35</sup>
- Zhongji has failed to demonstrate that the HTS values utilized by Commerce to value refining oils and additives, chalybeate agents, copper agents, Zhongji's pipe packing input, drying agents, and other packing materials, are more specific to Zhongji's production process than the values utilized by Commerce.<sup>36</sup>
- The Xeneta international freight data advocated by Zhongji are proprietary and can incorporate shipments from NME sources. In contrast, the Maersk data are publicly available.<sup>37</sup>

**Commerce Position:** When evaluating SV data, Commerce considers several factors including whether the SV data are publicly available, contemporaneous with the POR, representative of a broad market average, tax and duty-exclusive, and specific to the inputs being valued.<sup>38</sup> As the Court noted in *United Steel Fasteners*:

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<sup>27</sup> See Zhongji Rebuttal Brief at 1-2.

<sup>28</sup> *Id.*

<sup>29</sup> See Petitioner Rebuttal Brief at 5-47.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 7-8.

<sup>32</sup> *Id.* at 11-16.

<sup>33</sup> *Id.* at 11-13.

<sup>34</sup> *Id.* at 13-16.

<sup>35</sup> *Id.* at 13-16.

<sup>36</sup> *Id.* at 17-32.

<sup>37</sup> *Id.* at 32-37.

<sup>38</sup> See *Policy Bulletin 04.1*; see also, e.g., *Electrolytic Manganese Dioxide from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 48195 (August 18, 2008), and accompanying Issues and Decision Memorandum (IDM) at Comment 2.

{U}pon review of Commerce’s choice of certain surrogate values as the best available information, the court will not determine whether the data used were actually the best available, but whether a reasonable mind could conclude that Commerce chose the best available information.<sup>39</sup>

We have reexamined our selection of SVs in the *Preliminary Results*.<sup>40</sup> In these final results, we continue to use the SVs selected in the *Preliminary Results*, because these SVs are publicly available and reasonably reflect the FOPs that parties have reported in this proceeding. Thus, as further explained below, we continue to maintain that our valuation of Zhongji’s coke gas, dross/ash by-product, scrap, chalybeate agents, copper agents, pipe packing input, drying agents, other packing materials, and shipping rates reasonably represent the best available information, pursuant to section 773(c)(1) of the Act.

With regard to coke gas, we valued this input with GTA data from Malaysia for HTS category 2705.00 in the *Preliminary Results*.<sup>41</sup> Zhongji argues that we should, instead, value the coke gas input with Eurostat data for natural gas in these final results, because Eurostat data equate to a Bulgarian value for the production input, consistent with Commerce’s selection of Bulgaria as the primary surrogate country.<sup>42</sup> While Commerce normally seeks to value SVs from a single surrogate value source pursuant to 19 CFR 351.408(c)(2), we find that the Malaysian value utilized by Commerce in the *Preliminary Results* reflects a value specific to coke gas, whereas the Eurostat value advocated by Zhongji reflects a natural gas value, and no Bulgarian SV specific to coke gas is available on the record. Further, Zhongji argues that the Malaysian data under HTS category 2705.00 contain data from Singapore, which are unusable because they show a higher average unit value (AUV) than the other three countries within the Malaysian data. However, we disagree that the Singapore data renders the Malaysian GTA data unusable. Zhongji has offered no evidence explaining why the AUV of the Singapore data less accurately reflects the Malaysian GTA value for coke gas than the other AUVs that comprise the Malaysian GTA value for coke gas.<sup>43</sup> Moreover, the fact that Singapore AUVs are higher than the other AUVs does not render the Singapore AUV unusable. Based on the above, we continue to find that the Malaysian GTA data for imports of coke gas represent the best publicly available information on the record for valuing the coke gas input. However, we do agree with Zhongji that a conversion was missing for the valuation of coke gas in the *Preliminary Results*, and we have made that correction for these final results.<sup>44</sup>

Regarding dross/ash by-product, in the *Preliminary Results*, we valued this input with Bulgarian GTA data under HTS category 2620 (*i.e.*, “Ash and Residues (Except from Iron Or Steel

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<sup>39</sup> See *United States Steel and Fasteners v. United States*, 469 F. Supp. 3d 1390, 1395 (CIT 2020) (citing *Jiaying Brother Fastener Co. v. United States*, 822 F.3d 1289, 1302 (Fed. Cir. 2016); *Zhejiang Duntan Heitan Metal Co. v. United States*, 652 F.3d 1333, 1341 (Fed. Cir. 2011); and *Maverick Tube Corp. v. United States* 857 F.3d 1353, 1359 (Fed. Cir. 2017)).

<sup>40</sup> See PDM at 8.

<sup>41</sup> *Id.*

<sup>42</sup> See Zhongji Case Brief at 8.

<sup>43</sup> *Id.*

<sup>44</sup> See Zhongji Analysis Memorandum at 2 for discussion of the conversion value associated with coke gas.

Manufacture) Containing Arsenic, Metals Or Their Compounds”).<sup>45</sup> Zhongji argues that we should value the dross/ash by-product using Bulgarian GTA data under HTS category 7602.00.19 (*i.e.*, aluminum waste and scrap), because that HTS classification is specific to aluminum waste items, whereas HTS 2620 may contain other metallurgic content, such as zinc or copper.<sup>46</sup> We find that, although HTS category 7602.00.19 covers aluminum waste, the broader HTS category 7602 under which it falls describes scrap, cuttings, and other such by-products, not ash. Because Zhongji reported this by-product as dross/ash, we find that the HTS 7602 categories that cover scrap, cuttings, and other by-products are not as specific to Zhongji’s dross/ash by-product as compared to other information on the record for this review. Furthermore, as Commerce explained in the *Preliminary Results*, metallurgic content is not the sole factor in determining the value of a by-product; thus, we find that the inclusion of ash containing other metallurgic content in the 2620 HTS category does not preclude its use as the most appropriate surrogate value for ash.<sup>47</sup> Although HTS 2620.40 (Aluminum Ash & Aluminum Dross) is more specific to aluminum ash than HTS 2620, HTS 2620.40 contains no data from Bulgaria for the POR. Because there are no data from Bulgaria for the HTS category 2620.40 during the POR, we have continued to use the most specific category for ash that is available, *i.e.* HTS 2620.

In the *Preliminary Results*, Commerce stated its intention to isolate the percentage of ash that consisted of aluminum input. We agree with the petitioners that the programming language should be revised to cap the valuation of the aluminum that Zhongji recovers in the dross/ash aluminum recovery process. We have corrected programming language in Zhongji’s antidumping margin program which incorrectly overstated the amount of the capped aluminum output realized by Zhongji. Based upon the foregoing, we have revised our calculation as described above. Furthermore, as discussed below, we disagree that the HTS category 7601.10.00 for aluminum ingots (Aluminum, Not Alloyed, Unwrought) reflects the value of Zhongji’s scrap. The aluminum product that can be recovered from dross/ash by-product requires value-added processes before it is ready to be added to a melt, which makes it more comparable to scrap than to ingot inputs. Therefore, we have relied on scrap to assign a value to the capped aluminum content recovered from dross/ash.

Regarding Zhongji’s scrap, Zhongji argues that Commerce’s use of the HTS heading 7602.00 (*i.e.*, aluminum waste and scrap) in the *Preliminary Results* is incorrect. Specifically, Zhongji argues that the aluminum input used in its production process contains a very high aluminum content, and that the scrap recovered during production has the same metallurgic content and should be valued using the HTS category 7601.10 (*i.e.*, aluminum ingot).<sup>48</sup> We disagree that HTS category 7601.10 for aluminum ingots accurately reflects the value of Zhongji’s scrap. As stated above, metallurgic content is not the sole factor in determining the most appropriate surrogate value of a by-product. Similar to dross/ash, scrap requires value-added processes before it is ready to be added to a melt. We find that HTS 7602.00, which covers aluminum

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<sup>45</sup> See Memorandum, “Administrative Review of Certain Aluminum Foil from the People’s Republic of China: Surrogate Values for the Preliminary Determination,” dated June 18, 2020 at 4.

<sup>46</sup> See Zhongji Case Brief at 10.

<sup>47</sup> See *Certain Aluminum Foil from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 9282 (March 5, 2018), and accompanying IDM at Comment 11.

<sup>48</sup> *Id.*

waste and scrap, more closely matches the description of Zhongji's scrap. Therefore, we find that HTS category 7601.10, which covers aluminum ingots, is not the best information available on the record with which to value Zhongji's scrap, and we have continued to value scrap with data under HTS heading 7602.00 (*i.e.*, aluminum waste and scrap).

Also, we find unpersuasive Zhongji's argument that the eight-digit HTS classifications that it has offered to value refining oils and additives, chalybeate agents, copper agents, Zhongji's pipe packing input, drying agents, and other packing materials are more specific to Zhongji's inputs used in its production process than the four- or six-digit HTS classifications that Commerce selected in the *Preliminary Results*. Commerce's normal practice is to select SVs that are the best information available on the record, including those SVs that are most specific to the inputs being valued. However, we find that Zhongji's description of these inputs available on the record is not sufficiently detailed to support selection of the eight-digit HTS categories for these inputs in this case.<sup>49</sup> As such, we have continued to value these inputs with the most specific SV information available which is supported by record evidence. As a result, we have made no changes to the SVs used to value refining oils and additives, chalybeate agents, copper agents, Zhongji's pipe packing input, drying agents, and other packing materials in the *Preliminary Results*.

Finally, we disagree with Zhongji's argument that the Xeneta shipping data reflect a better SV source for international freight than do the Maersk data that Commerce relied upon in the *Preliminary Results*. We continue to find Maersk to be a superior SV source as compared to Xeneta. First, the Xeneta data are proprietary, whereas the Maersk data are publicly available. As such, we continue to find that the Maersk data better meet the factors Commerce considers in selecting SVs, including public availability and that the Xeneta data can reflect shipping data from China which is an impermissible source for valuing SVs.<sup>50</sup> Based on the above, we have continued to value international freight using data from Maersk for these final results.

## **Comment 2: Allocation of Factory Overhead Expenses**

### *Zhongji Comments*<sup>51</sup>

- Zhongji disputes Commerce's allocation to factory overhead the expenses shown at Note 10 of Alcomet AD (Alcomet's) 2018 financial statements.<sup>52</sup>
- The information contained in Note 10 of Alcomet's financial statements is inconsistent with information contained elsewhere in Alcomet's financial statement (*e.g.*, Note 5).

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<sup>49</sup> See *Certain Aluminum Foil from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 9282 (March 5, 2018), and accompanying IDM at Comment 1; see also Petitioner Rebuttal Brief at 10-23

<sup>50</sup> See Petitioner Rebuttal Brief at 32-37.

<sup>51</sup> See Zhongji Case Brief at 3-5.

<sup>52</sup> See PDM at 27-28; see also Zhongji Case Brief at 19-22.

*Petitioners Rebuttal Comments*<sup>53</sup>

- Allocation of the expenses outlined in Note 10 is necessary in order not to overstate inappropriately the materials, labor, and energy (MLE) denominator used in the calculation of factory overhead.

**Commerce Position:** We agree with the petitioners. In our allocation of factory overhead expenses, we have allocated factory overhead expenses to the MLE in a manner that reasonably matches Alcomet’s operations for these production activities to the production activities that are undertaken by the respondents.<sup>54</sup> We find that our allocation of factory overhead is consistent with 19 CFR 351.408(c)(4), because it reasonably allocates the activities specified in Alcomet’s financial statements to materials, labor, energy, or factory overhead. We also continue to find that adjustment to the factory overhead amount for the information shown in Note 10 of Alcomet’s 2018 financial statements is necessary in order to prevent overstatement of the MLE denominator. Zhongji’s proposed allocation of factory overhead expenses would impermissibly confine Alcomet’s reported changes in traded goods and services to finished goods inventory. Such an allocation would unreasonably reduce the MLE denominator, since it would allocate no such expenses to either Alcomet’s reported amounts for raw materials or work in process inventories.

**Comment 3: Modification of Liquidation Instructions for Certain Zhongji Sales**

*Zhongji Comments*<sup>55</sup>

- Commerce should modify its standard liquidation instructions for Zhongji’s sales wherein the merchandise was subsequently invoiced prior to the sale of the merchandise in the United States.
- Zhongji sold the merchandise with knowledge that it was destined for the United States. However, another entity acted as the U.S. importer of record for these sales.
- Commerce’s standard liquidation methodology would list each customer of Zhongji, along with an ‘importer-specific’ rate for each customer, and then instruct U.S. Customs and Border Protection (CBP) to liquidate any importations of merchandise exported by Zhongji by importers not listed at the China-wide rate. Such an approach would result in the “erroneous” liquidation of the merchandise at the China-wide rate.
- Commerce should, instead, modify its standard liquidation instructions by adding the phrase “resold or imported” into the instructions that Commerce issues to CBP.<sup>56</sup>

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<sup>53</sup> See Petitioner Rebuttal Brief at 37-47.

<sup>54</sup> See Zhongji Letter, “Administrative Review of the Antidumping Duty Order on Aluminum Foil from the People’s Republic of China: Section D Questionnaire Response,” dated October 4, 2019 at D3-D4 and Exhibits D-2 and D-3; see also Xiashun Letter, “Aluminum Foil from the People’s Republic of China: Section D Questionnaire Response,” dated October 6, 2019 at D4-D5 and Exhibits D-3 and D-4.

<sup>55</sup> See Zhongji Case Brief at 3-5.

<sup>56</sup> *Id.* at 4.

### *Petitioners Rebuttal Comments*<sup>57</sup>

- Commerce should adhere to its standard liquidation methodology, because it is unclear how the circumstances outlined by Zhongji are differentiable from numerous other instances before CBP where the ultimate U.S. customer did not act as the importer of record.

**Commerce Position:** We agree with the petitioners. Because the importer of record is information that is available to CBP, our practice is to issue liquidation instructions on the basis of entered value rather than by U.S. customer.<sup>58</sup> In this case the importer of record was unknown to Zhongji.<sup>59</sup> Consistent with our standard practice, we, therefore, based our intended liquidation of Zhongji's entries on the entered value calculated for Zhongji in our margin program.<sup>60</sup>

Moreover, we agree with the petitioners that Zhongji's U.S. customer is commonly different from the identity of the U.S. importer.<sup>61</sup> Further, we find unpersuasive Zhongji's contention that liquidation by entered value would result in an "erroneous" assessment of the Zhongji entries at issue, as we have based our calculation of entered value (which serves as the importer-specific basis over which we will liquidate Zhongji's entries) on the data that Zhongji provided in its U.S. sales listing.<sup>62</sup> Based on the foregoing, we have adhered to this standard practice in this review and based our intended liquidation instructions on the importer-specific entered value information calculated in our margin programming.<sup>63</sup>

### **Comment 4: Zhongji Double Remedies Adjustment**

#### *Zhongji Comments*<sup>64</sup>

- Zhongji disputes the conclusion reflected in the Preliminary Double Remedies Memorandum that it is ineligible for a double remedies adjustment concerning its primary aluminum, aluminum plate, and electricity production inputs.
- Under section 777A(f) of the Act, Commerce is directed to "reduce the antidumping duty by the amount of the increase in the weighted average dumping margin" which results from a countervailable subsidy program that "has been demonstrated to have reduced the average price of imports of the class or kind of merchandise during the relevant period."
- To implement these provisions, Commerce considers: (1) whether a countervailable subsidy (other than an export subsidy) has been provided with respect to a class or kind of merchandise; (2) whether such countervailable subsidy has been demonstrated to have reduced the average price of imports of the class or kind of merchandise during the relevant period; and (3) whether Commerce can reasonably estimate the extent to which that countervailable subsidy, in combination with the use of NV determined pursuant to section 773(c) of the Act, has increased the weighted-average dumping margin for the class or kind of merchandise.

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<sup>57</sup> See Petitioner Rebuttal Brief at 5.

<sup>58</sup> See, e.g., Commerce's Letter to Zhongji, dated August 15, 2019.

<sup>59</sup> See Zhongji September 30, 2019 Section C Questionnaire Response at C-37-C38.

<sup>60</sup> See Zhongji Preliminary Analysis Memorandum at Attachment II.

<sup>61</sup> See Petitioner Rebuttal Brief at 5.

<sup>62</sup> See Zhongji September 30, 2019 Section C Questionnaire Response at Exhibit C-1.

<sup>63</sup> See Memorandum, "Antidumping Administrative Review of Certain Aluminum Foil from the People's Republic of China (China)," dated June 18, 2020 (Zhongji Preliminary Analysis Memorandum) at Attachment II.

<sup>64</sup> See Zhongji Double Remedies Case Brief at 2-16.

- In order to analyze the second prong of this statutory test, Commerce analyzes whether there is: (1) a subsidies-to-cost link, *i.e.*, a subsidy effect on the cost of manufacturing (COM) of the merchandise under consideration; and (2) a cost-to-price link, *i.e.*, respondent’s prices were dependent on changes in the COM.
  - Commerce preliminarily found countervailable less than adequate remuneration (LTAR) subsidies with respect to three production inputs that Zhongji utilized in its production of aluminum foil: primary aluminum, aluminum plate, and electricity.<sup>65</sup>
  - In *Quartz from China*, Commerce determined that the LTAR subsidy for electricity impacted the COM.<sup>66</sup>
  - Zhongji’s response to Commerce’s double remedies questionnaire establishes that Zhongji’s aluminum prices declined during the POR (as demonstrated by London Metal Exchange (LME) prices), thereby establishing a subsidy-to-cost link.
  - As shown in Zhongji’s double remedies questionnaire response,<sup>67</sup> changes in Zhongji’s COM were incorporated in the prices that Zhongji offered to its U.S. customers.
  - Based upon the foregoing, Commerce should make an adjustment for double remedies pursuant to Section 777A(f) of the Act.

*Petitioners Rebuttal Comments*<sup>68</sup>

- Commerce determines eligibility for a double remedy adjustment on a case-by-case basis.
- In determining whether there has been a monthly decline in import prices, Commerce’s practice is to examine average unit value (AUV) import data, rather than an individual respondent’s sales prices.
- LME prices reflect the average price of primary aluminum, which is distinctly separate from the price Zhongji paid for Jumbo Rolls.
- Zhongji has not established a “subsidy-to-cost link” and a “cost-to-price link.” Regarding the “subsidy-to-cost link,” Zhongji has merely explained how it accounts for the cost of materials in its accounting records, but Zhongji has not demonstrated a link between the subsidies at issue and the COM of the merchandise. The LME information cited by Zhongji offers no connection to the prices paid by Zhongji and fails to establish a “subsidy-to-cost link.”

**Commerce Position:** We continue to find that Zhongji has failed to establish either a “subsidy-to-cost link” or a “cost-to-price link,” pursuant to section 777A(f) of the Act. Accordingly, we have made no double remedies adjustment for Zhongji’s primary aluminum, aluminum plate, and electricity production inputs.

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<sup>65</sup> *Id.* (citing *Certain Aluminum Foil from the People’s Republic of China: Preliminary Results of the Countervailing Duty Administrative Review and Rescission of Review, in Part 2017-2018*, 85 FR 38861 (June 29, 2020) (*CVD Preliminary Results*)).

<sup>66</sup> *Id.* (citing *Certain Quartz Surface Products from China: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances* 84 FR 23767 (May 23, 2019) (*Quartz from China*), and accompanying IDM at 12).

<sup>67</sup> See Zhongji’s Letter, “Administrative Review of the Antidumping Duty Order on Aluminum Foil from the People’s Republic of China: Double Remedies Questionnaire Response,” dated February 18, 2020 (Zhongji Double Remedies Response).

<sup>68</sup> See Petitioners Double Remedies Rebuttal Brief at 2-10.

As noted in *Wooden Cabinets and Vanities from China*, a “subsidy-to-cost link” occurs where there exists a subsidy effect to the COM regarding the merchandise under consideration.<sup>69</sup> Additionally, a “cost-to-price link” occurs where a change in the COM results in a change to the prices charged to the customer.” Here, Zhongji has not demonstrated that the programs discussed in its double remedies response have led to a decrease in COM or that any such decrease (if it had occurred) would have resulted in a change in prices charged to the customer.

We find unpersuasive Zhongji’s claim that LME prices establish the existence of a “subsidy-to-cost link” for its aluminum inputs.<sup>70</sup> As noted in *Glass Containers from China*, in determining whether there has been a monthly decline in import prices, Commerce typically looks to AUV data rather than to respondent’s specific price data.<sup>71</sup> Moreover, Zhongji has offered no convincing explanation of how quoted LME prices for primary aluminum ingot establish a monthly decline in the prices of aluminum jumbo rolls which comprise Zhongji’s aluminum inputs and a distinctly different production input than primary aluminum ingot.<sup>72</sup>

Additionally, we find Zhongji’s reliance on *Quartz from China* to be inapposite. The subject merchandise in *Quartz from China* encompassed a distinctly different production process than does aluminum foil, and Commerce conducts its analysis for double remedies adjustments on a case-by-case basis.<sup>73</sup> Furthermore, in *Quartz from China*, Commerce found that the respondent established: 1) a subsidies-to-cost link by demonstrating that subsidies received for LTAR impacted the cost for producing subject merchandise; and 2) a cost-to-price link by demonstrating that it directly adjusted the sales price of subject merchandise when the raw material costs changed substantially.<sup>74</sup> Based on that finding, Commerce concluded that the respondent provided adequate information to establish a link between subsidies, costs, and prices.<sup>75</sup> In this review, we have based our analysis on the information that Zhongji provided concerning its primary aluminum, aluminum plate, and electricity production inputs.<sup>76</sup> Here, we continue to find that Zhongji has failed to establish that the prices for the inputs in question established a monthly decline, or in COM, and thus failed to establish a subsidies-to-cost link.

We also continue to find that Zhongji failed to establish a “cost-to-price link,” as set forth in section 777A(f) of the Act. As noted in *Wooden Cabinets and Vanities from China*, to establish such a “cost-to-price link,” a company must demonstrate a connection between subsidies received and COM,<sup>77</sup> and how a change in the COM is transferred to the price of the subject merchandise. Zhongji’s demonstration of its system for tracking tracks primary aluminum,

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<sup>69</sup> See *Wooden Cabinets and Vanities and Components Thereof from the People’s Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures*, 84 FR 54106 (October 9, 2019), and accompanying PDM at 48, unchanged in *Wooden Cabinets and Vanities and Components Thereof from the People’s Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 85 FR 11953 (February 28, 2020) (*Wooden Cabinets and Vanities from China*).

<sup>70</sup> See Zhongji Double Remedies Response at Exhibit DR-1.

<sup>71</sup> See *Glass Containers from China* IDM at 27.

<sup>72</sup> See Zhongji October 6, 2019 DQR at D-3 through D-4 and Exhibits D-2 and D-3 (Zhongji October 6, 2019 DQR).

<sup>73</sup> See, e.g., *Glass Containers from China* IDM at 22.

<sup>74</sup> See *Quartz from China* IDM at 12.

<sup>75</sup> *Id.*

<sup>76</sup> See, generally, Zhongji Double Remedies Response

<sup>77</sup> See *Wooden Cabinet Vanities from China*.

aluminum plate, and electricity in its accounting records<sup>78</sup> merely establishes how Zhongji tracks its usage of these three consumption inputs. This accounting information, however, fails to establish a link between the subsidies received by Zhongji, the COM of the subject merchandise, and the price of the merchandise. Based on the foregoing, we have continued to deny Zhongji's claim for a double remedies adjustment.

### **Comment 5: Application of an Adverse Inference to Xiashun for 14 Non-Metal Inputs**

#### *Xiashun Comments*<sup>79</sup>

- Xiashun properly reported fourteen non-metal production inputs (*i.e.*, cleaning agents, control rods, diatomite, dilution agent, foaming agent, grinding fluid, ink, refining agent, light white oil, rolling oil additives, distillate oil, lauric acid, lubricating oil, and mineral oil) as overhead items rather than as direct material inputs.
- Xiashun provided a proper cost reconciliation for each of its “overhead items” including each of the non-metal production inputs for which Commerce made an adverse inference in its *Preliminary Results*.
- Xiashun considers lubricating oil, and mineral oil to be overhead items because these items are used to lubricate machinery. Xiashun intended to report its consumption of lauric acid, but unintentionally excluded this item.
- Even if Commerce disputes Xiashun's classification of lubricating oil or mineral oil, it can easily reclassify these items as direct materials, rather than as production items.
- The fourteen non-metal items in question comprise a minuscule percentage of Xiashun's COM as recorded in Xiashun's books and records.<sup>80</sup> However, these fourteen items comprise a disproportionately large value of the COM that Commerce calculated for Xiashun.
- Xiashun never intended to withhold information from Commerce which Commerce requested.<sup>81</sup> It was only in the *Preliminary Results* that Xiashun discovered that Commerce disputed its classification of the 14 production inputs in question as overhead items rather than as direct material inputs.<sup>82</sup> As established in *Hyundai Heavy Industries*, application of an adverse inference is unwarranted where Commerce's request for information is “ambiguous.”<sup>83</sup>
- Commerce's reclassification of Xiashun's production items is inconsistent with that employed for Zhongji because Commerce classified far fewer Zhongji production inputs as overhead items than it did for Zhongji.<sup>84</sup>

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<sup>78</sup> See Zhongji Double Remedies Case Brief at 7-9.

<sup>79</sup> See Xiashun Case Brief at 1-14.

<sup>80</sup> *Id.* at 9-10.

<sup>81</sup> *Id.* at 10.

<sup>82</sup> *Id.* at 11.

<sup>83</sup> *Id.* at 11 (citing *Hyundai Heavy Industries Co., Ltd. v. Unites States*, 393 F. Supp. 3d 1293, 1299 (CIT 2019) (*Hyundai Heavy Industries*)).

<sup>84</sup> *Id.* at 13.

*ProAmpac Comments*<sup>85</sup>

- Noting the comments raised by Xiashun on this matter, ProAmpac asserts Commerce improperly applied AFA to the inputs in question.

*Dingsheng and Suntown Comments*<sup>86</sup>

- Commerce’s application of AFA to cooperative separate rate respondents is unlawful and unsupported by substantial evidence.<sup>87</sup>

*Petitioners Rebuttal Comments*<sup>88</sup>

- Consistent with the criteria discussed in *Bridgestone Arms*, the 14 inputs in question are direct materials because they are: (1) required for a particular segment of the production process; (2) essential for production; (3) not used for incidental purposes; or (4) otherwise a significant input into the manufacturing process rather than miscellaneous or occasionally used materials.<sup>89</sup>
- Each respondent is required to report its SV usage according to its own production experience.<sup>90</sup> Xiashun has failed to offer any arguments based on its own production experience which challenge the four direct material criteria set forth in *Bridgestone Arms*.<sup>91</sup>
- Xiashun has failed to reconcile the consumption quantities for the 14 inputs in question, because Xiashun’s cost reconciliation is confined to the “values” which Xiashun reported as overhead.<sup>92</sup>
- In both the Xiashun Supplemental Section D questionnaire and the Xiashun Second Supplemental Section D questionnaire, Xiashun was instructed to reconcile both the consumption quantity and the consumption value for the fourteen inputs in question.<sup>93</sup>
- On this basis, Commerce should continue to rely on partial AFA with regard to the 14 inputs in question.<sup>94</sup>

**Commerce Position:** We continue to find both that the 14 inputs in question are properly classified as direct materials, and that an adverse inference is warranted with respect to their valuation, because Xiashun failed to reconcile the consumption quantities of these 14 inputs.<sup>95</sup> However, as discussed below, for purposes of these final results, we have modified our application of partial AFA so that our AFA inference is more specific to the inaccuracies in Xiashun’s reconciliation of the consumption values for the non-metal inputs in question.

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<sup>85</sup> See ProAmpac Case Brief at 2.

<sup>86</sup> See Dingsheng and Suntown Case Brief at 2-9

<sup>87</sup> *Id.* at 2.

<sup>88</sup> See Petitioners Rebuttal Brief at 52-67.

<sup>89</sup> *Id.* at 54-55 (citing *Bridgestone Arms v. United States*, 710 F. Supp. 2d 1359, 1363-1364 (CIT 2010) (*Bridgestone Arms*)).

<sup>90</sup> *Id.* at 56.

<sup>91</sup> *Id.* at 57.

<sup>92</sup> *Id.* at 58-60 (citing Xiashun Case Brief at 4-5, January 28, 2020 Supplemental Section D at Exhibits SD-3 and SD-5 (Xiashun Supplemental D) and March 19, 2020 Xiashun Second Supplemental Section D Response Questionnaire Response (Xiashun Second Supplemental D) at SSD-5 and SSD-6).

<sup>93</sup> *Id.* at 61.

<sup>94</sup> *Id.* at 63-67.

<sup>95</sup> See PDM at 15-17.

We continue to find unpersuasive Xiashun's argument that the materials in question are properly classified as overhead items.<sup>96</sup> As noted in *Bridgestone Arms*, each of these inputs meets Commerce's classification as direct material inputs because they are: (1) required for a particular segment of the production process; (2) essential for production; (3) not used for incidental purposes; or (4) otherwise a significant input into the manufacturing process rather than miscellaneous or occasionally used materials.<sup>97</sup> Additionally, we continue to find that in both the Xiashun Supplemental Section D questionnaire response and the Xiashun Second Supplemental Section D questionnaire response, and the screenshots provided by Xiashun from its internal cost accounting system fail to demonstrate how the 14 inputs reconcile to the consumption values reported by Xiashun.<sup>98</sup> Based on the nature of these 14 inputs, and Xiashun's inability to reconcile the consumption value of these 14 inputs, we continue to find that we cannot accept the consumption data as reported by Xiashun.<sup>99</sup> As such we continue to find that necessary information is missing from the record, such that it is appropriate to apply adverse facts available, pursuant to section 776(b) of the Act.

As the basis of the adverse inference in the *Preliminary Results*, we used the highest FOP consumption value on the record for a Xiashun non-metal input.<sup>100</sup> For these final results, in applying an adverse inference with respect to the inputs in question, however, we have considered that Xiashun attempted to report these 14 FOPs based upon the information available within Xiashun's accounting system.<sup>101</sup> In addition, in reviewing our preliminary analysis, we note that two consumption amounts are much larger than the average consumption amounts that Xiashun reported for the other 12 production materials in question.<sup>102</sup> We, therefore, conclude that application of the highest consumption rate as AFA, which would assign a disproportionately large consumption amount to the other twelve Xiashun production FOPs at issue, is not appropriate in this case.

Based on the foregoing, we have modified our application of partial AFA for Xiashun in these final results. For the 12 inputs with reported consumption rates below the average consumption rate of the 14 FOPs in question, we have used the average rate of the fourteen consumption rates rather than the highest consumption rate. For the two remaining non-metal inputs with reported consumption rates above the average for these 14 inputs, we will continue to use the reported highest consumption rate.<sup>103</sup>

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<sup>96</sup> See Xiashun Case Brief at 4-13.

<sup>97</sup> See Xiashun Supplemental D at 23-25; see also *Bridgestone Arms*, 710 F. Supp. 2d at 1363-1364.

<sup>98</sup> See, e.g., Xiashun Supplemental D at Exhibits SD-3 and SD-5; see also Xiashun Second Supplemental D at SSD-5 and SSD-6.

<sup>99</sup> See PDMat 15.

<sup>100</sup> See PDM at 17.

<sup>101</sup> See, e.g., Xiashun Supplemental D at Exhibits SD-3 and SD-5; see also Xiashun Second Supplemental D at SSD-5 and SSD-6.

<sup>102</sup> Xiashun Final Analysis Memorandum at Attachment 2.

<sup>103</sup> *Id.*

## Comment 6: Xiashun Run-Around Scrap

### *Xiashun Comments*<sup>104</sup>

- Xiashun disputes Commerce’s capping of its claimed scrap offset by the amount of Xiashun’s reported scrap input. Xiashun properly reported its claimed by-product scrap offset in its January 28, 2019 Supplemental Section D Response.<sup>105</sup> Xiashun based this calculation on production order information, which is how Xiashun tracks the recovery of scrap in its accounting records.<sup>106</sup> Further, Xiashun asserts that it recovers scrap across the company’s entire operations and that its claimed scrap offset reconciles on the basis of Xiashun’s overall operations.<sup>107</sup>
- Because Commerce did not initially instruct Xiashun to report scrap on an alloy-specific basis,<sup>108</sup> and because Xiashun does not track scrap on an alloy-specific basis within its accounting records,<sup>109</sup> Commerce should accept Xiashun’s claimed scrap offset.

### *Petitioners Rebuttal Comments*<sup>110</sup>

- The amount of run-around output scrap must, over time, equate with the amount of run-around input scrap which is consumed in the production process.<sup>111</sup>
- There is a strong incentive for manufacturers to segregate their scrap by specific alloy in order to meet the specific chemistry alloy required by the manufacturer’s customer.<sup>112</sup>

**Commerce Position:** We agree with the petitioners. Xiashun has continued to claim that that it has reported scrap in the manner in which it tracks scrap within its accounting system. However, Xiashun has failed to demonstrate how such a broad company-wide scrap recovery amount tracks to the production of the CONNUM-specific products described by Xiashun in its Section D responses.<sup>113</sup> As the affidavit submitted in the petitioners’ Section D Rebuttal submission (Rudisill affidavit) notes, in order to meet specific “customer profiles” and to fulfill the requisite product requirements that the manufacturer will meet in subsequent production melts, that manufacturer must know with certainty the alloy and chemistry content of the scrap which it generates in the production process.<sup>114</sup> The Rudisill affidavit also notes that all aluminum producers with which Rudisill is familiar segregate their scrap by alloy content.<sup>115</sup> Failure to track scrap by alloy content would potentially distort the valuation of the scrap and render the scrap difficult to resell.<sup>116</sup> Additionally, as we noted in the *Preliminary Results*, we continue to

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<sup>104</sup> See Xiashun Case Brief at 14-18.

<sup>105</sup> *Id.* at 15 citing Xiashun Supplemental D at Exhibit SD-1

<sup>106</sup> *Id.* at 15-17.

<sup>107</sup> *Id.* at 16-17.

<sup>108</sup> *Id.* at 17.

<sup>109</sup> *Id.* at 17-18.

<sup>110</sup> See Petitioner Rebuttal Brief at 77-80.

<sup>111</sup> *Id.* at 78.

<sup>112</sup> *Id.* at 78-79 (citing Petitioners’ Letter, “1<sup>st</sup> Administrative Review of the Antidumping Duty Order on Certain Aluminum Foil from the People’s Republic of China—Petitioners’ Submission of Rebuttal Factual Information Concerning Respondents’ Supplemental D Questionnaire Responses,” dated February 7, 2020 (Petitioners’ Section D Rebuttal) at Exhibit 1 (containing affidavit from Murray G Rudisill)).

<sup>113</sup> See Xiashun Case Brief at 14-18; see also Xiashun Supplemental D at Exhibit SD-1 and Rudisill affidavit.

<sup>114</sup> See Petitioners’ Section D Rebuttal at Exhibit 1.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

find that Xiashun has offered no credible explanation of why, for certain CONNUMs, Xiashun claims to generate more scrap run-around output than the scrap run-around input reported by Xiashun.<sup>117</sup> Based upon the foregoing, in these final results, we continue to find it appropriate to cap Xiashun's claimed scrap offset by the amount of Xiashun's reported scrap input.

### **Comment 7: Xiashun's Market Economy Inputs**

#### *Petitioners Comments*<sup>118</sup>

- Commerce should modify the *Preliminary Results* to account for Xiashun's market economy purchases of aluminum titanium boron wire and steel tube.

No other interested parties submitted comments.

**Commerce Position:** We agree with the petitioners. We find that we erred by not making this adjustment in the *Preliminary Results*, and we have corrected this for the final results.<sup>119</sup>

### **Comment 8: Separate Rate Assigned to Non-Examined Companies**

#### *Dingsheng and Suntown Comments*<sup>120</sup>

- Because the non-individually examined separate rate respondents have been fully cooperative in this review, it is unlawful for Commerce to use the 106.21 percent rate preliminarily calculated for Xiashun as the basis for the separate rate.<sup>121</sup>
- The rate for Xiashun was punitive and aberrational,<sup>122</sup> and exceeded the 105.80 percent rate assigned to the China-wide entity.<sup>123</sup>
- The Court has determined that an AFA rate may not serve as the basis of the rate for cooperative non-examined respondents.<sup>124</sup>
- *SKF USA* and *Bestpak* establishes that Commerce may not apply punitive rates to cooperative non-examined respondents.<sup>125</sup>
- Commerce must base the rate for the non-examined separate rate companies exclusively on the zero percent rate that was preliminarily calculated for Zhongji.<sup>126</sup>

#### *Petitioners Rebuttal Comments*<sup>127</sup>

- Any company-specific rate calculated for Xiashun is applicable to the non-examined separate rate respondents.

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<sup>117</sup> See PDM at 17 (citing Xiashun Second Supplemental D at SSD-3).

<sup>118</sup> See Petitioner Case Brief at 7-9.

<sup>119</sup> See Final Analysis Memorandum for Xiashun.

<sup>120</sup> See Dingsheng and Suntown Case Brief at 2-14.

<sup>121</sup> *Id.* at 2-9.

<sup>122</sup> *Id.* at 13-14.

<sup>123</sup> *Id.* at 6-8 (citing *Certain Aluminum Foil from The People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 83 FR 17362 (April 1, 2019)).

<sup>124</sup> *Id.* at 11 (citing *SKF USA Inc. v. United States* 675 F. Supp. 2d 1464 (CIT 2009) (*SKF USA*)).

<sup>125</sup> *Id.* at 11-12 (citing *Yangzhou Bestpak Gifts & Crafts Co., v. United States* 716 F.3d 1370, (Fed Cir. 2013) at 1380 (*Bestpak*)).

<sup>126</sup> *Id.* at 13-14.

<sup>127</sup> See Petitioner Rebuttal Brief at 80-86.

- Commerce’s calculated rate for Xiashun is based on information that is on the record of this review and the separate rate is, therefore, neither punitive nor aberrational.<sup>128</sup>
- Commerce’s practice, pursuant to section 735(c)(5)(B) of the Act, is to calculate the rate for non-examined respondents based upon the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins and any margins determined *entirely* on the basis of AFA.<sup>129</sup>
- Because Commerce calculated a zero margin for Zhongji in the *Preliminary Results*, and because the rate for Xiashun was a calculated rate which was not based entirely on AFA, Commerce properly based the rate for the non-examined respondents on the rate calculated by Commerce for Xiashun.<sup>130</sup>
- The Court cases cited by Dingsheng and Suntown are inapposite, as none relate to the calculation of a separate rate in a situation where one or more of the mandatory respondents have rates that are not zero, *de minimis*, or based on total AFA. In *Xiamen Int’l Trade*,<sup>131</sup> the Court confirmed Commerce’s use of rates based on partial AFA in calculating the rates for non-examined companies as a reasonable interpretation of the statute.

**Commerce Position:** Pursuant to section 735(c)(5) of the Act, Commerce’s practice is to calculate the rate for non-individually examined separate rate companies based upon the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins and any margins determined entirely on the basis of AFA.<sup>132</sup>

Although in the *Preliminary Results*, the margins of the mandatory respondents included one rate that was above *de minimis* and another rate that was zero, as a result of the changes to the calculations discussed above, in these final results, the margins for both mandatory respondents are above *de minimis*, and neither rate is determined based entirely on the basis of AFA. In accordance with section 735(c)(5) of the Act, we have assigned a rate of 35.60 percent to the non-examined companies for the final results, which represents the simple average of the margins calculated for Zhongji and Xiashun, consistent with our normal practice.<sup>133</sup>

We find Dingsheng and Suntown’s attempt to characterize Xiashun’s rate as either “punitive” or “aberrational” unpersuasive, as no part of Dingsheng and Suntown’s argument establishes that our calculation of the separate rate for non-examined companies was inconsistent with 735(c)(5) of the Act. In the *Preliminary Results*, we used the data provided by Xiashun, and limited our

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<sup>128</sup> *Id.* at 81.

<sup>129</sup> *Id.* at 82 (citing Section 735(c)(5)(B) of the Act (Petitioners’ emphasis)).

<sup>130</sup> *Id.*

<sup>131</sup> *Id.* at 84 (citing *Xiamen Int’l Trade & Indus. Co. v. United States*, 2014 CIT LEXIS 108 (CIT August 28, 2014) (*Xiamen Int’l Trade*)).

<sup>132</sup> See, e.g., *Xanthan Gum From the People’s Republic of China: Preliminary Results of the Antidumping Duty Administrative Review, and Preliminary Determination of No Shipments; 2016-2017*, 83 FR 40229 (August 14, 2018), unchanged in *Xanthan Gum from the People’s Republic of China: Final Results of the Antidumping Duty Administrative Review, Final Determination of No Shipments and Partial Discontinuation of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 65143 (December 19, 2018).

<sup>133</sup> As we noted in the *Preliminary Results*, we have used a simple average because publicly available data is unavailable for Xiashun. See PDM at fn 46.

application of AFA to those inputs for which Xiashun was unable to reconcile its reported consumption quantities. Moreover, in these final results, we have continued to rely on a calculated rate for Xiashun which incorporates the majority of the information provided by Xiashun and is based on partial, not total, AFA.<sup>134</sup>

Additionally, we find that Dingsheng and Suntown's reliance on both *Bestpak* and *SKF USA* to argue that Commerce may not apply adverse rates to cooperative separate rate respondents is misplaced.<sup>135</sup> The cases cited by Dingsheng and Suntown involved calculation of a rate for non-examined separate rate respondents based upon mandatory respondent rates that were zero, *de minimis*, or based *entirely* on AFA,<sup>136</sup> whereas in this review, Commerce has calculated above-*de minimis* margins for both mandatory respondents. One of those mandatory respondents' rates included the use of partial AFA, but neither respondent's rate was based entirely on AFA. Additionally, *SKF USA* concerned whether Commerce properly applied AFA in a situation where an unrelated supplier failed to provide cost of production information, which differs from the situation in this review.<sup>137</sup> Further, we agree with the petitioner that our inclusion of Xiashun's margin in the non-examined companies' separate rate calculation was consistent with the statute and Commerce's normal practice, and that the Court has affirmed Commerce's use of rates based on partial AFA in calculating the rates for non-examined companies as a reasonable interpretation of the statute.<sup>138</sup> Based on the above, for the final results, we have calculated the separate rate applicable to non-examined companies as the average of the margins calculated for Zhongji and Xiashun, consistent with section 735(c)(5) of the Act.

## VI. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the positions set forth above. If this recommendation is accepted, we will publish the final results of the administrative review in the *Federal Register*.

<input checked="" type="checkbox"/>	<input type="checkbox"/>
Agree	Disagree
	2/19/2021
X 	
Signed by: CHRISTIAN MARSH	

Christian Marsh  
Acting Assistant Secretary  
for Enforcement and Compliance

<sup>134</sup> See PDM at 13-15.

<sup>135</sup> See Dingsheng and Suntown Case Brief at 10-11.

<sup>136</sup> See, generally, *Bestpak*.

<sup>137</sup> See, generally, *SKF USA*.

<sup>138</sup> See *Xiamen Int'l Trade*.