



C-570-054
Administrative Review
POR: 08/14/2017 – 12/31/2018
Public Document
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February 24, 2021

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

FROM: James Maeder
Deputy Assistant Secretary
for Enforcement and Compliance

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

I. SUMMARY

The Department of Commerce (Commerce) analyzed the case and rebuttal briefs submitted by interested parties in the administrative review of the countervailing duty (CVD) order¹ on certain aluminum foil from the People's Republic of China (China) covering the period of review (POR) August 14, 2017, through December 31, 2018.

As a result of this analysis, we made changes to the *Preliminary Results*.² We recommend that you approve the positions described in the "Analysis of Comments" section of this memorandum.

II. LIST OF ISSUES

Below is the complete list of issues for which we received comments and rebuttal comments from interested parties.

- Comment 1: Whether the Government of China (GOC) Provided Sufficient Evidence to Find That Producers of Aluminum Inputs Were Not Government Authorities
- Comment 2: Whether Chinese Communist Party (CCP) Affiliations or Activities by Company Officials Make a Company a Government Authority

¹ See *Certain Aluminum Foil from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 76 FR 17360 (April 19, 2018) (*Order*).

² See *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) (*Preliminary Results*), and accompanying Preliminary Results Memorandum (PDM).



- Comment 3: Whether Commerce Must Use a Tier-One Benchmark for the Aluminum for Less Than Adequate Renumeration (LTAR) Programs
- Comment 4: Whether the Aluminum for LTAR Programs are Specific
- Comment 5: Whether Commerce Should Revise Its Aluminum Plate and/or Sheet and Strip for LTAR Benchmark
- Comment 6: Whether Commerce Should Use London Metal Exchange (LME) Data to Calculate the Primary Aluminum Benchmark
- Comment 7: Whether Commerce Should Average Maersk and Xeneta Data to Calculate the Ocean Freight Benchmark
- Comment 8: Whether Commerce Should Include Zhongji's CBRE and Nexus Data in the Land Benchmark
- Comment 9: Whether Commerce Should Make an EVA for Zhongji
- Comment 10: Whether Commerce Should Correct Certain Alleged Minor Calculation Errors With Regard to Zhongji and Xiashun
- Comment 11: Whether Electricity Constitutes General Infrastructure and the Provision of Electricity Confers a Financial Contribution
- Comment 12: Whether Commerce Should Apply Adverse Facts Available (AFA) to the Electricity for LTAR Program
- Comment 13: Whether the Policy Loans Reported by Respondents During the POR are Countervailable
- Comment 14: Whether Commerce's Loan Benchmark Interest Rates are Arbitrary, Unlawful, and Unsupported by the Record
- Comment 15: Whether Commerce's Investigation of Uninitiated Programs is Lawful

III. BACKGROUND

On June 29, 2020, we published the *Preliminary Results* of this review.³ Jiangsu Zhongji Lamination Materials Co., Ltd. (Zhongji), Xiamen Xiashun Aluminum Foil Co., Ltd. (Xiashun), the GOC, and the petitioners⁴ submitted timely filed case briefs,⁵ and the petitioners submitted a timely-filed rebuttal brief.⁶ Further, ProAmpac submitted timely filed letters in lieu of a case brief and rebuttal brief on August 10 and August 31, 2020, respectively.⁷ Certain parties

³ See *Preliminary Results*.

⁴ The petitioners in this review are the Aluminum Association Trade Enforcement Working Group and its individual members: JW Aluminum Company, Novelis Corporation, and Reynolds Consumer Products LLC.

⁵ See Zhongji's Letter, "Certain Aluminum Foil from the People's Republic of China: Case Brief," dated August 10, 2020 (Zhongji Case Brief); see also Xiashun's Letter, "Aluminum Foil from the People's Republic of China: Case Brief," dated August 10, 2020 (Xiashun Case Brief); GOC's Letter, "Aluminum Foil from China; CVD Administrative Review GOC Case Brief," dated August 10, 2020 (GOC Case Brief); and Petitioners' Letter, "Aluminum Foil from the People's Republic of China: Petitioners' Case Brief," dated August 10, 2020 (Petitioners' Case Brief).

⁶ See Petitioners' Letter, "Aluminum Foil from the People's Republic of China: Petitioners' Rebuttal Brief," dated August 31, 2020 (Petitioners' Rebuttal Brief).

⁷ See ProAmpac's Letter, "Aluminum Foil from the People's Republic of China; 2017-2019: Letter in Lieu of Case Brief," dated August 10, 2020 (ProAmpac Letter); see also ProAmpac's Letter, "Aluminum Foil from the People's Republic of China; 2017-2019: Letter in Lieu of Rebuttal Brief," dated August 31, 2020.

requested a public hearing, but subsequently withdrew their requests; thus, we did not conduct a public hearing in this administrative review.⁸

On July 21, 2020, Commerce tolled the due date for these final results by 60 days.⁹ On December 16, 2020, Commerce extended the period for issuing these final results of review by 60 days, until February 24, 2021.¹⁰

IV. CHANGES SINCE THE *PRELIMINARY RESULTS*

The “Analysis of Programs” section below contains summaries of the comments and Commerce’s positions on the issues raised in the briefs. We have made certain changes since the *Preliminary Results*.

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 this *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 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.

⁸ See Xiashun’s Letter, “Aluminum Foil from the People’s Republic of China: Withdrawal of Request for Hearing,” dated January 20, 2021; and Zhongji’s Letter, “Certain Aluminum Foil from the People’s Republic of China: Withdrawal of Hearing Request,” dated January 21, 2021.

⁹ See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,” dated July 21, 2020.

¹⁰ See Memorandum, “Certain Aluminum Foil from the People’s Republic of China: Extension of Deadline for Final Results of Countervailing Duty Administrative Review; 8/14/2017 – 12/31/2018,” dated December 16, 2020.

VI. PERIOD OF REVIEW

The POR is August 14, 2017, through December 31, 2018. Because the POR covers several months in 2017 and calendar year 2018, we have calculated *ad valorem* subsidy rates covering calendar years 2017 and 2018.

VII. NON-SELECTED COMPANIES UNDER REVIEW

The Tariff Act of 1930, as amended (the Act) and Commerce's regulations do not directly address the establishment of rates to be applied to companies not selected for individual examination where Commerce limited 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 administrative 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. We also note that section 777A(e)(2) of the Act provides that "the individual countervailable subsidy rates determined under subparagraph (A) shall be used to determine the all others rate of under section {705(c)(5) of the Act}." Section 705(c)(5)(A) of the Act instructs Commerce to calculate an all others rate using the weighted average of the subsidy rates established for the producers/exporters individually examined, excluding zero, *de minimis*, or facts available rates.

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 withdrawal of the request for review, and which we are not finding to be cross-owned with the mandatory company respondents, we are basing the subsidy rate on a weighted average of the subsidy rates calculated for Zhongji and Xiashun, using their publicly-ranged sales data for exports of subject merchandise to the United States during the POR. For a list of these companies, please see the Appendix to this memorandum.

VIII. SUBSIDIES VALUATION INFORMATION

A. Allocation Period

Commerce has made no changes to the allocation period and the allocation methodology used in the *Preliminary Results* and no issues were raised by interested parties in case briefs regarding the allocation period or the allocation methodology. For a description of the allocation period and the methodology used for these final results, see the *Preliminary Results* PDM.¹¹

B. Attribution of Subsidies

Commerce has made no changes to the methodologies used in the *Preliminary Results* for attributing subsidies. However, we have made a correction with respect to the calculation of

¹¹ See *Preliminary Results* PDM at 7.

Anhui Maximum’s “input supplier” denominator for 2018. For a description of this correction for this final determination, *see* Comment 10 and Zhongji’s Final Calculation Memorandum.¹²

C. Denominators

In accordance with 19 CFR 351.525(b), Commerce considers the basis for the respondent’s receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondent’s export or total sales, or portions thereof. The denominators we used to calculate the countervailable subsidy rates for the various subsidy programs described below are explained in the calculation memorandum prepared for these final results.¹³

IX. BENCHMARKS AND INTEREST RATES

Interested parties submitted comments regarding the benchmarks and interest rates used in the *Preliminary Results* in their case and rebuttal briefs.¹⁴ Commerce has considered these comments and has determined not to make any changes to the benchmarks used previously. However, we have made certain adjustments to correct Zhongji’s inland freight charges used in calculating the primary aluminum and aluminum plate and/or sheet and strip benchmarks. We have also corrected certain electricity benchmark rates used in calculating benefits for Jiangsu Huafeng under the government provision of electricity for LTAR program. No changes were made to any of the other input benchmarks. With respect to the discount rates, we have corrected the interest rates used for certain loan control numbers under policy loans to the aluminum foil industry. For a more in-depth discussion of the comments and Commerce’s analysis, as well as the changes made to the benchmarks and discount rates, *see* Comment 10. For a description of all other unchanged benchmarks and discount rates used for these final results, *see* the *Preliminary Results* PDM.¹⁵

X. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

A. Legal Standard

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

¹² *See* Memorandum, “Countervailing Duty Administrative Review of Certain Aluminum Foil from the People’s Republic of China: Final 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 (Zhongji’s Final Calculation Memorandum) at 2.

¹³ *Id.*

¹⁴ *See* Zhongji Case Brief; Xiashun Case Brief; GOC Case Brief; Petitioners’ Case Brief; and Petitioners’ Rebuttal Brief.

¹⁵ *See Preliminary Results* PDM at 12-20.

Where Commerce determines that a response to a request for information does not comply with 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 with 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 provides that Commerce may use an adverse inference in applying 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.¹⁶ Furthermore, 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.¹⁷

Finally, under section 776(d)(1)(A) of the Act, when applying an adverse inference, 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, Commerce may 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.¹⁸ The TPEA also makes clear that, when selecting facts available with an adverse inference, Commerce is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.¹⁹

Moreover, under our CVD AFA methodology, we strive to assign AFA rates that are the same in terms of the type of benefit, (*e.g.*, grant to grant, loan to loan, indirect tax to indirect tax) because these rates are relevant to the respondent. Additionally, by selecting the highest rate calculated for a cooperative respondent we arrive at a reasonably accurate estimate of the non-cooperative respondent’s actual rate, and a rate that also ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”²⁰ Finally, Commerce will not use information where circumstances indicate that the information is not appropriate as AFA.

¹⁶ See section 776(b)(1)(B) of the Act.

¹⁷ See 19 CFR 351.308(c).

¹⁸ See section 776(d)(1) and (2) of the Act.

¹⁹ See section 776(d)(1) of the Act; and section 502(3) of the TPEA.

²⁰ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. I (SAA) at 870 (1994).

B. Application of Facts Otherwise Available and AFA

Commerce relied on “facts otherwise available,” including AFA, for several findings in the *Preliminary Results*.²¹ For a description of these decisions, *see* the *Preliminary Results*. Commerce has not made any changes to its decisions in the *Preliminary Results* to use facts otherwise available and AFA. We also address AFA in Comments 1, 2, 4, 11, and 12 below.

XI. ANALYSIS OF PROGRAMS

A. Programs Determined to Be Countervailable

1. Policy Loans to the Aluminum Foil Industry

The GOC, Zhongji, and the petitioners submitted comments in their case or rebuttal briefs regarding this program and the calculation methodology. These are addressed in Comments 10, 13, and 14. As discussed in Comment 10, Commerce has made certain changes to the *Preliminary Results* with regard to the methodology used to calculate Zhongji’s subsidies under this program.

Zhongji: 2.56 percent *ad valorem* in 2017
1.81 percent *ad valorem* in 2018

Xiashun: 2.60 percent *ad valorem* in 2017
1.94 percent *ad valorem* in 2018

2. Export Seller’s Credit

No parties commented on this program. Commerce has made no changes to the methodology used to calculate or attribute subsidies under this program since the *Preliminary Results*.

Xiashun: 2.04 percent *ad valorem* in 2017
1.10 percent *ad valorem* in 2018

3. Income Tax Reduction for High and New Technology Enterprises

No parties commented on this program. Commerce has made no changes to the methodology used to calculate or attribute subsidies under this program since the *Preliminary Results*.

Zhongji: 0.36 percent *ad valorem* in 2017
0.46 percent *ad valorem* in 2018

Xiashun: 0.53 percent *ad valorem* in 2017
0.72 percent *ad valorem* in 2018

²¹ See *Preliminary Results* PDM at 20-33.

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

No parties commented on this program. Commerce has made no changes to the methodology used to calculate or attribute subsidies under this program since the *Preliminary Results*.

Zhongji: 0.16 percent *ad valorem* in 2017
0.12 percent *ad valorem* in 2018

Xiashun: 0.20 percent *ad valorem* in 2017
0.21 percent *ad valorem* in 2018

5. Import Tariff and Value Added Tax (VAT) Exemptions on Imported Equipment for Encouraged Industries

No parties commented on this program. Commerce has made no changes to the methodology used to calculate or attribute subsidies under this program since the *Preliminary Results*.

Zhongji: 0.56 percent *ad valorem* in 2017
0.17 percent *ad valorem* in 2018

Xiashun: 0.91 percent *ad valorem* in 2017
0.54 percent *ad valorem* in 2018

6. VAT Rebates on Domestically-Produced Equipment

No parties commented on this program. Commerce has made no changes to the methodology used to calculate or attribute subsidies under this program since the *Preliminary Results*.²²

Zhongji: 0.05 percent *ad valorem* in 2017
0.03 percent *ad valorem* in 2018

7. Government Provision of Land for LTAR

Zhongji and the petitioners commented on this program regarding the selection of the land benchmark in their case or rebuttal briefs. Commerce has made no changes to the methodology used to calculate or attribute subsidies under this program since the *Preliminary Results*.

Zhongji: 1.40 percent *ad valorem* in 2017
1.19 percent *ad valorem* in 2018

Xiashun: <0.005 percent *ad valorem* in 2017 (*de minimis*)
<0.005 percent *ad valorem* in 2017 (*de minimis*)

²² Xiashun reported not using this program.

8. Government Provision of Primary Aluminum for LTAR

The petitioners, the GOC, Zhongji, and Xiashun commented on this program in their case or rebuttal briefs. As explained below in Comments 3 and 6, Commerce has made no changes with respect to the benchmark used to calculate or the methodology used attribute subsidies under this program since the *Preliminary Results*. However, as discussed in Comment 10, Commerce has revised the inland freight value used in the calculation of benefits to Zhongji under this program.

Zhongji: 4.26 percent *ad valorem* in 2017
11.10 percent *ad valorem* in 2018

Xiashun: 8.65 percent *ad valorem* in 2017
13.29 percent *ad valorem* in 2018

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

The petitioners, the GOC, and Zhongji submitted comments in their case or rebuttal briefs regarding this program. As explained below in Comments 3 and 5, Commerce has made no changes with respect to the benchmark used to calculate or the methodology used attribute subsidies under this program since the *Preliminary Results*. However, as discussed in Comment 10, Commerce has revised the inland freight value used in the calculation of benefits to Zhongji under this program.

Zhongji: 33.36 percent *ad valorem* in 2017
31.41 percent *ad valorem* in 2018

Xiashun: <0.005 percent *ad valorem* in 2017 (*de minimis*)
<0.005 percent *ad valorem* in 2017 (*de minimis*)

10. Government Provision of Electricity for LTAR

The petitioners, the GOC, and Zhongji submitted comments in their case or rebuttal briefs regarding this program. As explained below in Comments 11 and 12, Commerce has made no changes with respect to the methodology used to attribute subsidies under this program since the *Preliminary Results*. However, as discussed in Comment 10, in determining the benefits to Zhongji, Commerce has corrected the electricity benchmark rate to applied certain electricity purchases made by Jiangsu Huafeng under this program during the POR.

Zhongji: 1.46 percent *ad valorem* in 2017
1.28 percent *ad valorem* in 2018

Xiashun: 1.94 percent *ad valorem* in 2017
1.86 percent *ad valorem* in 2018

11. Foreign Trade Development Fund grants

No parties commented on this program. Commerce has made no changes to the methodology used to calculate or attribute subsidies under this program since the *Preliminary Results*.²³

Zhongji: 0.02 percent *ad valorem* in 2017
0.03 percent *ad valorem* in 2018

12. “Other Subsidies”

The GOC and Zhongji commented on this program in their case or rebuttal briefs. As explained below in Comment 10, in determining the benefits to Zhongji for these final results, Commerce has made a revision to the methodology used to calculate or attribute subsidies under these programs.

Zhongji: 1.03 percent *ad valorem* in 2017
0.76 percent *ad valorem* in 2018

Xiashun: 0.18 percent *ad valorem* in 2017
0.22 percent *ad valorem* in 2018

B. Programs Determined to Be Not Used by, or Not to Confer a Measurable Benefit to, Zhongji and/or Xiashun

1. Government Provision of Steam Coal for LTAR
2. Export Buyer’s Credit from China EXIM Bank
3. Preferential Loans for SOEs
4. Export Loans from 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 Renovation 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 for Nanshan Aluminum

²³ Xiashun reported not using this program.

XII. ANALYSIS OF COMMENTS

Comment 1: Whether the GOC Provided Sufficient Evidence to Find That Producers of Aluminum Inputs Were Not Government Authorities

GOC's Case Brief:

- Information on the record does not warrant a finding that all private producers of aluminum inputs are government authorities because all inputs are bound by the *Company Law of China*.²⁴
- The GOC also provided ownership and business registration information from the Enterprise Credit Information Publicity System (ECIPS) pertaining to all aluminum inputs producers and suppliers of Zhongji and Xiashun demonstrating these companies are not authorities.²⁵

Petitioners' Rebuttal Brief:

- In addition to the ECIPS registration information, Commerce requested additional corporate information that the GOC failed to provide.²⁶
- The *Company Law of China* fails to support the GOC's assertion that non-majority government-owned input producers operate independently.²⁷

Commerce's Position: As explained in the *Preliminary Results*,²⁸ we asked that the GOC provide information regarding the specific companies that produced primary aluminum and aluminum plate and/or sheet and strip that Zhongji and Xiashun purchased during the POR. Specifically, we sought information from the GOC which would allow us to analyze whether the producers are "authorities" within the meaning of section 771(5)(B) of the Act. In our initial questionnaire, new subsidy allegation (NSA) questionnaire, and supplemental questionnaires to the GOC, Commerce requested that certain information be provided with respect to both the majority government-owned and non-majority government-owned enterprises.²⁹

²⁴ See GOC Case Brief at 3-4.

²⁵ *Id.* at 4-5 (citing *Preliminary Results* PDM at 25-26; and section 771(5)(B) of the Act).

²⁶ See Petitioner's Rebuttal Brief at 4-6 (citing *Preliminary Results* PDM at 25-26; and section 776(b) of the Act).

²⁷ *Id.* at 6 (citing *QVD Food Co., Ltd. v. United States*, 658 F.3d 1318, 1324 (Fed. Cir. 2011) (*QVD Food*); and Memorandum, "Public Bodies Memorandum," dated July 29, 2020 at Attachments 1 and 2 (Public Bodies Memorandum)).

²⁸ See *Preliminary Results* PDM at 48-50.

²⁹ 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 at Section II, "Government Provision of Primary Aluminum for LTAR," and Input Producer Appendix; Commerce's Letter, "Countervailing Administrative Review of Aluminum Foil from the People's Republic of China: First Supplemental Questionnaire," dated October 8, 2019 at 1; Commerce's Letter, "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 at "Provision of Aluminum Plate and/or Sheet and Strip for Less Than Adequate Remuneration (LTAR)," and Input Producer Appendix (NSA Questionnaire); and Commerce's Letter, "Countervailing Administrative Review of Aluminum Foil from the People's Republic of China: Second Supplemental Questionnaire," dated January 24, 2020 at 6.

With respect to primary aluminum producers within China, Commerce previously analyzed the same comments raised by the GOC in the original investigation.³⁰ In the investigation, based on the evidence provided by the GOC, we determined that majority government-owned producers of primary aluminum were “authorities” within the meaning of section 771(5)(B) of the Act because the Public Bodies Memorandum establishes that such producers possess, exercise, or are vested with government authority within China.³¹ Record evidence demonstrates that the GOC exercises meaningful control over these entities and uses them to effectuate its goals of upholding the socialist non-market economy, allocating resources, and maintaining the predominant role of the state sector.³² Further, in the investigation, we found that non-majority government-owned producers of primary aluminum were “authorities” within the meaning of section 771(5)(B) of the Act, because the GOC failed to act to the best of its ability and provide information needed for Commerce’s analysis.³³ The same fact pattern and argument raised by the GOC exists in this review. As such, for the reasons addressed in the investigation, we continue to find that these primary aluminum producers are “authorities” within the meaning of section 771(5)(B) of the Act.

With respect to the provision of aluminum plate and/or sheet and strip for LTAR, of which we initiated an investigation in this review,³⁴ we likewise requested that the GOC provide the same information that we requested regarding the respondents’ producers of primary aluminum. Regarding those producers of aluminum plate and/or sheet and strip that the GOC identified as majority government-owned, we explained in the *Preliminary Results* PDM that Commerce made multiple requests for the GOC to provide the articles of incorporation and capital verification reports of all majority government-owned enterprises.³⁵ Despite Commerce’s requests, the GOC did not provide the articles of incorporation and capital verification reports for any of the majority government-owned enterprises. Rather, the GOC provided partial information (*i.e.*, the corporate profile and shareholder structure) for some majority government-owned enterprises.³⁶

As explained in the Public Bodies Memorandum, record evidence demonstrates that producers in China that are majority-owned by the government possess, exercise, or are vested with, governmental authority.³⁷ 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.³⁸ Therefore, in light of our prior findings and the GOC’s failure to provide rebuttal information to

³⁰ 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) (*Aluminum Foil from China INV*), and accompanying Issues and Decision Memorandum (IDM) at Comment 17.

³¹ See Public Bodies Memorandum at Attachments 1 and 2.

³² *Id.*

³³ *Id.*

³⁴ See Memorandum, “Countervailing Duty Administrative Review of Aluminum Foil from the People’s Republic of China: New Subsidy Allegation,” dated November 6, 2019.

³⁵ See *Preliminary Results* PDM at 25.

³⁶ *Id.*; see also GOC’s Letter, “Certain Aluminum Foil from China; 1st CVD Administrative Review; GOC New Subsidy Allegation Questionnaire Response,” dated November 25, 2019 at 5-7; and Exhibit NSA-2 and NSA-3 (GOC NSA QR; and GOC’s Letter, “Certain Aluminum Foil from China; 1st CVD Administrative Review; Second Supplemental Questionnaire Response,” dated February 20, 2020 at 27-28 (GOC Second SQR).

³⁷ See Public Bodies Memorandum at Attachments 1 and 2.

³⁸ *Id.*

the contrary, we determine that these enterprises are “authorities” within the meaning of section 771(5)(b) of the Act.

With respect to those producers of aluminum plate and/or sheet and strip purchased by the respondents and that were reported as being non-majority government-owned,³⁹ while the GOC provided website screen shots of business registrations and ownership structure charts of these producers, the GOC did not provide other relevant documentation requested by Commerce, including articles of incorporation, capital verification reports, articles of groupings, company by-laws, annual reports, articles of association, business licenses, and tax registration documents.⁴⁰ Additionally, when Commerce made further attempts to collect this information, the GOC stated that it “has cooperated to the best of its ability and provided a full response to each question under the Input Producer Appendix: Provision of Plate and/or Sheet and Strip for LTAR {, }”⁴¹ but did not provide the information Commerce had requested. As such, the GOC again refused to provide a complete response to the requested documentation regarding these producers of aluminum plate and/or sheet and strip.

As discussed above, the GOC did not provide complete responses to our numerous requests for information with respect to aluminum plate and/or sheet and strip producers that the GOC claimed to be non-majority government-owned enterprises, including requests for information pertaining to ownership or management by CCP officials. Such information is necessary to determine whether the input producers are “authorities” within the meaning of section 771(5)(B) of the Act. Therefore, we continue to determine that necessary information is not available on the record, and that the GOC withheld information that was requested of it with regard to the aluminum plate and/or sheet and strip purchases of Zhongji and Xiashun.⁴² Accordingly, we must rely on “facts otherwise available” in reaching a determination in this respect. Further, we find that the GOC failed to cooperate by not acting to the best of its ability to comply with requests for information regarding the producers of aluminum plate and/or sheet and strip purchased by Zhongji and Xiashun during the POR because the GOC did not provide the requested information.⁴³

At Comment 2, below, we further address the GOC’s argument concerning the *Company Law of China* and explain why it does not provide a basis to determine that the respondent’s input suppliers are not government authorities.

In sum, as AFA, we determine that all of the domestic Chinese producers that produced 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 that provided a financial contribution pursuant to section 771(5)(D)(iii).⁴⁴

³⁹ See, e.g., GOC NSA QR at 5-7 and Exhibits NSA-1, NSA-2, and NSA-3.

⁴⁰ See *Preliminary Results* PDM at 26 and Exhibit II.D.2.; and NSA Questionnaire at Input Producer Appendix and Exhibit NSA-2.

⁴¹ See *Preliminary Results* PDM at 26; and GOC Second SQR at 27.

⁴² See sections 776(a)(1) and (a)(2)(A) of the Act.

⁴³ See section 776(b) of the Act.

⁴⁴ See, e.g., *Aluminum Foil from China* INV IDM at Comment 17; see also *Aluminum Extrusions from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 75 FR 54302 (September 7, 2010)

Comment 2: Whether CCP Affiliations or Activities by Company Officials Make a Company a Government Authority

GOC's Case Brief:

- The record establishes that the CCP is not a government authority.⁴⁵ The *Company Law of China* and the *Civil Servant Law* clearly stipulate the company shall operate independently without being subject to any governmental intervention.⁴⁶
- Commerce's finding in *PC Strand from China* is an insufficient basis for the finding in this proceeding because *PC Strand from China* did not address the issue whether Chinese law permits owners, members of the board of directors, and managers of companies to be CCP officials. Instead, *PC Strand from China* concerned general membership in the CCP and the National Party Conference. This is a distinction explicitly made by Commerce in its questionnaires to the GOC, in that Commerce sought information about CCP officials and CCP committees but not information about general membership in the CCP or participation in the National Party Conference.⁴⁷ In *PC Strand from China*, Commerce concluded that membership in the CCP or National Party Conference was insufficient to conclude government control.⁴⁸
- Provisions of the *Company Law of China* demonstrate that the shareholders, directors and managers of a company are solely responsible for the company's internal operations and that it is unlawful for CPP organizations to interfere.⁴⁹ Commerce previously found that the *Company Law of China* demonstrates the absence of legal state control over privately-owned Chinese companies.⁵⁰
- The GOC provided detailed efforts it undertook to try to obtain the requested information, and reasons to explain why it was unable to provide certain requested information.⁵¹ To have fully responded to Commerce's questionnaires, the GOC would have been required to provide information as to the CCP involvement in the management and operations of producers of aluminum inputs of hundreds, perhaps thousands, of natural persons serving as

at 54306, unchanged in *Aluminum Extrusions from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011); *Aluminum Extrusions from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2010 and 2011*, 78 FR 34649 (June 10, 2013), and accompanying PDM at "Provision of Primary Aluminum for Less Than Adequate Remuneration (LTAR)," unchanged in *Aluminum Extrusions from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010 and 2011*, 79 FR 106 (January 2, 2014); and *Aluminum Extrusions from China: Preliminary Results of Countervailing Duty Administrative Review; 2012*, 79 FR 36009 (June 25, 2014), and accompanying PDM at "Provision of Primary Aluminum for LTAR," unchanged in *Aluminum Extrusions from the People's Republic of China: Final Results of Countervailing duty Administrative Review*, 79 FR 78788 (December 31, 2014).

⁴⁵ See GOC Case Brief at 6.

⁴⁶ *Id.*

⁴⁷ *Id.* at 7 (citing *Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 28557 (May 21, 2020) (*PC Strand from China*), and accompanying IDM at Comment 8).

⁴⁸ *Id.* at 7 (citing *PC Strand from China* IDM at 72).

⁴⁹ *Id.* at 7-8.

⁵⁰ *Id.* (citing *Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China: Final Results of the 2007-2008 Administrative Review of the Antidumping Duty Order*, 75 FR 8301 (February 24, 2010) (*CTL Plate from China 07-08 AR*), and accompanying IDM at Comment 2).

⁵¹ *Id.* at 8-9 (citing *Preliminary Results PDM* at 26).

owners, members of the board of directors and managers of suppliers. Further, the line of inquiry is deeply intrusive, demanding information at the individual level as to a person's political activities.⁵²

- Commerce cannot penalize a party for not being able to provide information that it does not have.⁵³
- The GOC has provided documents, including business registration documents and shareholding registrations of the input producers to demonstrate the ownership status and changes, if any, of the input producers reported by the respondent companies during the POI. Commerce has consistently said such documents can demonstrate the absence of state control of an entity.⁵⁴
- Commerce has failed to establish the relevance of CCP affiliations or activities of these input producers, and the evidence on the record in this investigation affirmatively demonstrates that CCP affiliations or activities are in fact not relevant to the statutory analysis of “government authorities.”⁵⁵
- There is no information missing from the record.⁵⁶ To the extent that a gap exists, an adverse inference is unwarranted because the GOC responded to the best of its ability concerning the input suppliers.⁵⁷

Petitioners' Rebuttal Brief:

- Commerce has repeatedly rejected the GOC's argument that the CCP is not a government authority, including in the prior segment of this proceeding (*i.e.*, in the investigation).⁵⁸
- Commerce has also rejected the GOC's argument that the *Company Law of China* and the *Civil Servant Law*: (1) require companies to operate independently without government intervention; and (2) prohibit “government officials from concurrently holding a position in an enterprise or any other profit-making organization.”⁵⁹
- Commerce's prior finding of a lack of *de jure* GOC control through the *Company Law of China* does not equate to the GOC's sweeping contention that “CCP officials and committees have no decision-making authority in privately-owned enterprises, such as the producers of primary aluminum and aluminum plate and/or sheet and strip in this administrative review.”⁶⁰

⁵² *Id.*

⁵³ *Id.* at 9-10 (citing *Olympic Adhesives, Inc. v. United States*, 899 F.2d 1565, 1572 (Fed. Cir. 1990); *AK Steel Corporation v. United States*, 21 CIT 1204, 1223 (CIT November 14, 1997); and *NSK Ltd. v. United States*, 416 F. Supp. 2d 1334, 1341 (CIT January 31, 2006)).

⁵⁴ *Id.* at 10-11 (citing *CTL Plate from China 07-08 AR IDM* at 11).

⁵⁵ *Id.* at 11-12 (citing section 771(5)(B) of the Act; and *Preliminary Results PDM* at 16).

⁵⁶ *Id.* at 12-13 (citing section 776(a)(1), (a)(2)(A) and (a)(2)(B) of the Act; and *Zhejiang Dunan Hetian Metal Co., Ltd. v. United States*, 652 F.3d 1333, 1348 (Fed. Cir. 2011)).

⁵⁷ *Id.* at 13 (citing section 776(b) of the Act).

⁵⁸ See Petitioners' Rebuttal Brief at 7-8 (citing *Aluminum Foil from China INV IDM* at Comment 18; and *Polyester Textured Yarn from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 84 FR 63845 (November 19, 2019) (*Yarn from China*), and accompanying IDM at Comment 5a).

⁵⁹ *Id.* at 8-9 (citing *PC Strand from China IDM* at Comment 8; and *Aluminum Foil from China INV IDM* at Comment 18).

⁶⁰ *Id.* at 9 (citing *Aluminum Foil from China INV IDM* at Comment 18).

- In past cases, including in the prior segment of this proceeding, the GOC has argued that it attempted to the “best of its ability” to collect certain ownership information, but collection of such information was unreasonably burdensome and that there is no central database to search for this information.⁶¹

Commerce’s Position: Commerce continues to find, based on AFA, that non-government owned domestic producers of primary aluminum and aluminum plate and/or sheet and strip for which the GOC failed to provide information about CCP membership are “authorities,” and that the goods provided by them are financial contributions within the meaning of section 771(5)(D)(iii) of the Act. In the previous segment of this proceeding (*i.e.*, the investigation), Commerce analyzed this same argument and comments provided by the GOC.⁶² Additionally, in prior proceedings, Commerce has addressed this same argument in great detail, and clearly stated that understanding the role and functions of CCP officials within Chinese enterprises is relevant to Commerce’s analysis.⁶³ Thus, Commerce’s requests for such information from the GOC are based on Commerce’s established policy and practice, pursuant to Commerce’s statutory and regulatory obligations. In the absence of new argument or record evidence, we find no cause to reevaluate this issue for these final results.

For these reasons, we continue to find that all domestic producers in China of primary aluminum and aluminum plate and/or sheet and strip purchased by the respondents, and for which the GOC failed to provide information about CCP membership, are “authorities” within the meaning of section 771(5)(B) of the Act.

Comment 3: Whether Commerce Must Use a Tier-One Benchmark for the Aluminum Inputs for LTAR Programs

GOC’s Case Brief:

- Commerce should find that the Chinese aluminum input markets are not distorted, and its calculation must use a tier-one benchmark for the final results.⁶⁴
- Commerce used a tier-two benchmark because it claimed the GOC did not provide necessary information. However, the GOC provided sufficient information and Commerce did not conduct the necessary analysis to determine that the aluminum inputs market is distorted.⁶⁵

Petitioners’ Rebuttal Brief:

⁶¹ *Id.* at 9-12 (*Aluminum Foil from China INV IDM* at Comment 18; *High Pressure Steel Cylinders from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 26738 (May 7, 2012) (*High Pressure Steel Cylinders from China*), and accompanying IDM at 13; *PPG Industries, Inc. v. United States*, 978 F.2d 1232, 1238 (Fed. Cir. 1992); *Ningbo Dafa Chemical Fiber Co., Ltd. v. United States*, 577 F. Supp. 2d 1304, 1309 (CIT September 2, 2008), affirmed in *Ningbo Dafa Chemical Fiber Co., Ltd. v. United States*, 580 F.3d 1247 (Fed. Cir. 2009); and sections 775(b) and 771(5)(B) of the Act).

⁶² See *Aluminum Foil from China INV IDM* at Comment 18.

⁶³ *Id.*

⁶⁴ See GOC Case Brief at 13-14 (citing *Preliminary Results PDM* at 23-24 and 41; and 19 CFR 351.511(a)(2)).

⁶⁵ *Id.* at 14-15 (citing *Preliminary Results PDM* at 23-24 and 41).

- Commerce correctly determined that Chinese domestic markets for primary aluminum and aluminum plate and/or sheet and strip were significantly distorted, based on AFA.⁶⁶
- The GOC's reliance on a finding by the World Trade Organization (WTO) Appellate Body that government ownership alone is not sufficient to find market distortion is misplaced. Further, there is additional information absent from the record that is needed for Commerce's market distortion analysis.⁶⁷ As such, Commerce should reject the GOC's claims and continue to use tier-two benchmarks.⁶⁸

Commerce's Position: Consistent with the *Preliminary Results*,⁶⁹ we determine, relying on AFA, that the GOC's involvement in the primary aluminum and aluminum plate and/or sheet and strip markets in China results in distortion of the domestic prices of these inputs such that they cannot serve as a tier one benchmark for respondents' purchases. Therefore, the use of an external benchmark, as described under 19 CFR 351.511(a)(2)(ii), is warranted to calculate benefits for the provision of primary aluminum for LTAR and provision of aluminum plate and/or sheet and strip for LTAR programs. This determination stems from the GOC's refusal to provide requested information regarding the primary aluminum and aluminum plate and/or sheet and strip industries in China.⁷⁰ For these final results, we continue to find an adverse inference is warranted in the application of facts available.

As explained in the *Preliminary Results*,⁷¹ Commerce requested information from the GOC for each input in order to determine the extent of the GOC's market involvement as a provider of these inputs in China and whether this presence in the market distorts the domestic prices for these inputs. In its responses, the GOC provided only the total volume and value of imports of each input, stating that it did not maintain any of the other data requested.⁷² Further, the GOC maintained that the provision of primary aluminum and aluminum plate and/or sheet and strip is dictated by market forces.⁷³ However, the GOC has previously provided, and Commerce has verified, similar information in past proceedings.⁷⁴ Moreover, because the GOC failed to provide this same information in the investigation of aluminum foil from China, Commerce made the same finding, based on AFA, with respect to finding market distortion for steam coal in China.⁷⁵ As such, we find that the GOC has failed to cooperate to the best of its ability, which has precluded Commerce from conducting its market distortion analysis for these inputs. Thus,

⁶⁶ See Petitioners' Rebuttal Brief at 15-16.

⁶⁷ *Id.* at 16-17 (citing *Countervailing Duties: Final Rule*, 63 FR 65348, 65377 (November 25, 1998); and *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Countervailing Duty Order*, 74 FR 46973 (September 14, 2009)).

⁶⁸ *Id.* at 17.

⁶⁹ See *Preliminary Results* PDM at 22-24.

⁷⁰ *Id.*

⁷¹ *Id.* at 22-23.

⁷² *Id.* at 23 (citing Letter the GOC, "Certain Aluminum Foil from China; 1st CVD Administrative Review; GOC Initial Questionnaire Response," dated September 20, 2019 at 30-32; and GOC NSA QR at 19-21).

⁷³ *Id.*

⁷⁴ *Id.* (citing *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*)).

⁷⁵ 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 INV Prelim*), and accompanying PDM at 34-37, unchanged in *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 INV Final*)).

relying on AFA, we continue to find that the primary aluminum and aluminum plate and/or sheet and strip markets are distorted, such that Commerce cannot use an in-country tier one benchmark and, hence, must rely on the use of an external benchmark for these final results.

Comment 4: Whether the Aluminum for LTAR Programs are Specific

Zhongji's Case Brief:

- Commerce made no attempt to engage in its specificity analysis and instead relied on AFA to find that recipients of aluminum plate and/or sheet and strip were limited in number.⁷⁶

Petitioners' Rebuttal Brief:

- In the *Preliminary Results*, Commerce appropriately determined that application of AFA was warranted because the GOC failed to provide certain requested information regarding aluminum input producers/industries in China. Further, this finding is consistent with Commerce's decision to apply AFA in finding the primary aluminum for LTAR program specific in the aluminum foil investigation.⁷⁷
- Zhongji argues that Commerce did not attempt to engage in a specificity analysis; however, Zhongji fails to cite to any information on the record indicating that this program is non-specific, because such information was largely absent from the record due to the GOC's failure to comply with Commerce's requests.⁷⁸
- Because the GOC failed to act to the best of its ability and provide Commerce with requested information, it is Commerce's practice in applying AFA to select among such information that is sufficiently adverse to ensure that a party does not obtain a more favorable result than if it had fully cooperated.⁷⁹

Commerce's Position: It is Commerce's practice not to revisit specificity determinations made in a prior segment of the same proceeding, absent the presentation of new facts or evidence.⁸⁰ The United States Court of Appeals for the Federal Circuit (CAFC) has affirmed this practice,

⁷⁶ See Zhongji Case Brief at 23-24 (citing *Bethlehem Steel Corporation v. United States*, 223 F. Supp. 2d 1372, 1378 (CIT August 27, 2002) (*Bethlehem Steel*); section 771(5)(A) – (B) and (5A)(D)(iii)(I)); *Preliminary Results* PDM at 27; *Changzhou Trina Solar Energy Co. v. United States*, 352 F. Supp. 3d 1316, 1342 (CIT November 30, 2018) (*Changzhou Trina 3AR*); and SAA at 4242).

⁷⁷ See Petitioners' Rebuttal Brief at 12-13 (citing *Preliminary Results* PDM at 27 and 42; *Aluminum Foil from China INV* IDM at Comments 18 and 19; and *Yarn from China* IDM at Comment 5a).

⁷⁸ *Id.* at 13-14 (citing *Preliminary Results* PDM at 27; sections 776(a)(1)-(2) and (d)(1)-(2) of the Act; *Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362, dated June 29, 2015; see also *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015); and *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003) (*Nippon Steel*)).

⁷⁹ *Id.* at 14-15 (citing *Notice of Final Determination of Sales at Less Than Fair Value: Large Residential Washers from the Republic of Korea*, 77 FR 75988, 75990 (December 26, 2012); and SAA at 870).

⁸⁰ 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, 2012*, 80 FR 41003 (July 14, 2015), and accompanying IDM at 27; *Dynamic Random Access Memory Semiconductors from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 74 FR 7395* (February 17, 2009), and accompanying IDM at "Programs Previously Determined to Confer Subsidies."

under section 751(a)(1)(A) of the Act.⁸¹ The GOC has provided no new evidence in this administrative review to warrant reconsideration of our affirmative specificity finding in the investigation. Therefore, consistent with the investigation,⁸² we continue to find that the government provision of primary aluminum for LTAR is specific on the basis of AFA, because the GOC failed to provide information needed to analyze whether this program is specific.⁸³ As such, consistent with *Magnola* and Commerce's practice, we continue to find this program specific for these final results.

With respect to the provision of aluminum plate and/or sheet and strip for LTAR, as explained in the *Preliminary Results*,⁸⁴ Commerce requested that the GOC provide certain information about the industries that purchase aluminum plate and/or sheet and strip. Such information is necessary for purposes of Commerce's *de facto* specificity analysis. Requested information includes the following:

Provide a list of the industries in China that purchase aluminum plate and/or sheet and strip directly, using a consistent level of industrial classification. Provide the amounts (volume and value) purchased by the industry in which the mandatory respondent companies operate, as well as the totals purchased by every other industry. In identifying the industries, please use whatever resource or classification scheme the Government normally relies upon to define industries and to classify companies within an industry. Please provide the relevant classification guidelines, and please ensure the list provided reflects consistent levels of industrial classification. Please clearly identify the industry in which the companies under investigation are classified.⁸⁵

In its response, the GOC omitted this question and did not provide any of the requested information.⁸⁶ Nevertheless, in its case brief, Zhongji claims that Commerce had an obligation to engage in a specificity analysis, rather than relying on AFA. Here, again, Zhongji is unable to point to any information that Commerce should analyze, because the GOC failed to provide any of the information necessary for Commerce's *de facto* specificity analysis.⁸⁷ Therefore, consistent with past proceedings,⁸⁸ we determine that necessary information is not available on the record and that the GOC has withheld information that was requested of it. Thus, Commerce must rely on "facts available" for these final results, in accordance with sections 776(a)(1) and 776(a)(2)(A) of the Act. Moreover, as discussed above, we 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

⁸¹ See *Magnola Metallurgy, Inc. v United States*, 508 F. 3d 1349, 1353-56 (CAFC 2007) (*Magnola*).

⁸² See *Aluminum Foil from China INV Prelim PDM* at 34-34, unchanged in *Aluminum Foil from China INV Final*.

⁸³ See *Preliminary Results PDM* at 27.

⁸⁴ See *Preliminary Results PDM* at 27.

⁸⁵ See NSA Questionnaire at 5.

⁸⁶ See GOC NSA QR at 22.

⁸⁷ Please note Zhongji filed an additional specificity case brief on August 10, 2020, which was subsequently rejected for containing new factual information.

⁸⁸ See, e.g., *Utility Scale Wind Towers from the People's Republic of China: Final Affirmative Countervailing Duty Determination Wind Towers from China*, 77 FR 75978 (December 26, 2012), and accompanying IDM at Comment 13; and *China Aluminum Foil INV IDM* at Comment 19.

section 776(b) of the Act. In drawing an adverse inference, we find that the provision of aluminum plate and/or sheet and strip is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act. Further, we took account of the diversification of economic activities in China and the length of time during which this subsidy program has been in operation.

Comment 5: Whether Commerce Should Revise Its Aluminum Plate and/or Sheet and Strip for LTAR Benchmark

Zhongji's Case Brief:

- Commerce should not use the Trade Data Monitor (TDM) data used to value aluminum plate and/or sheet and strip in the *Preliminary Results* because it is not representative of the input used by Zhongji during the POR to produce aluminum foil.⁸⁹
- Instead, Commerce should use Commodities Research Unit (CRU) Report and Global Trade Atlas (GTA) data provided by Zhongji, because it represents the specific type of aluminum sheet used by Zhongji to produce aluminum foil.⁹⁰
- Commerce did not provide Zhongji with the opportunity to rectify any deficiencies in its original benchmark submission.⁹¹ When Commerce tolled deadlines on April 24, 2020, it should have been afforded additional opportunities to file benchmark comments/rebuttal comments because the tolling extended the deadline for the preliminary results by 50 days.⁹²
- Finally, should Commerce continue to use the TDM data, it must use the data from countries that produce and export aluminum plate/sheet.⁹³

Petitioners' Rebuttal Brief:

⁸⁹ See Zhongji Case Brief at 24-26 (citing *Preliminary Results* PDM at 19; *Changzhou Trina 3AR* at 1335; *Borusan Mannesmann Boru Sanayi Ve Ticaret A.S. v. United States*, 61 F. Supp. 3d 1306, 1337 (CIT April 22, 2015) (*Borusan Mannesmann*) (citing *Rhone Poulenc, Inc. v. United States*, 899 F. 2d 1185, 1191 (Fed. Cir. 1990) (*Rhone Poulenc*)); *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules Final Results of Countervailing Duty Administrative Review; 2013*, 81 FR 46906 (July 19, 2016), and accompanying IDM at Comment 6; *Magnesia Carbon Bricks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 45472 (August 2, 2010), and accompanying IDM at Comment 7; and *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); and accompanying IDM at Comment D.7).

⁹⁰ *Id.* at 26-30 (citing *Common Alloy Aluminum Sheet from the People's Republic of China: Affirmative Final Determination of Sales at Less-Than-Fair-Value*, 83 FR 57421 (November 15, 2018), and accompanying Memorandum, "Common Alloy Aluminum Sheet from the People's Republic of China: Scope Comments Final Decision Memorandum," dated November 5, 2019 at 2; and *Preliminary Results* PDM at 19).

⁹¹ *Id.* at 30-32 (citing section 782(d) of the Act; and 19 CFR 351.511(a)(2)(ii)).

⁹² *Id.*; see also Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19," dated April 24, 2020.

⁹³ *Id.* at 32-34 (citing *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 Partial Rescission of Countervailing Duty Administrative Review: 2014*, 82 FR 32678 (July 17, 2017) (*Solar Cells from China 2014 AR*), and accompanying IDM at Comment 5).

- In terms of the benchmark for aluminum plate and/or sheet and strip, contrary to Zhongji's claims, prices for aluminum alloy 1050 rolled products, contained in the CRU Report, are not more reliable than the TDM data used in the *Preliminary Results*.⁹⁴
 - The CRU Report data represent just one subset of aluminum foil and not most of the product covered by the *Order*.⁹⁵
 - The CRU Report data is not specific to the actual input used by Zhongji or Xiashun.⁹⁶
 - Zhongji's claim that only certain countries produce aluminum sheet with the same physical characteristics as the aluminum sheet used in its production of subject merchandise is not supported by substantial evidence.⁹⁷
 - Zhongji's reliance on *Solar Cells from China* is misleading and does not support its contention that data from certain countries should be excluded from Commerce's benchmark compilation.⁹⁸
 - Zhongji's claims that: (1) the period to submit benchmark comments was reopened by Commerce's tolling of deadlines; and (2) Commerce was obligated to notify Zhongji of any deficiencies in its benchmark comments lack any statutory or regulatory basis.⁹⁹

Commerce's Position: We disagree with Zhongji's proposed revisions to the aluminum plate and/or sheet and strip benchmark. With respect to the CRU Report data, Commerce explained in the *Preliminary Results* that the record does not support Zhongji's contention that the CRU Report data correspond more closely to Zhongji's aluminum sheet purchases than the TDM data, which cover HTS subheading 7606.12.¹⁰⁰ Specifically, the record does not support Zhongji's claims that Commerce should use the aluminum alloyed grade 1050 rolled product prices based on LME data in the CRU Report as the aluminum plate and/or sheet and strip since this product grade is similar to the types of inputs it purchased. Although aluminum alloyed grade 1050 rolled products are a specific type of aluminum categorized under the broader HTS subheading 7606.12, in its NSA QR, the GOC explained that Zhongji and Xiashun purchased aluminum sheet under a variety of HTS subheadings, including 7606.1220, 7606.1230, 7606.1259, and 7606.1290.¹⁰¹ Further, Zhongji did not purchase aluminum alloyed grade 1050 rolled product during the POR. Rather, Zhongji and its cross-owned companies purchased aluminum sheet produced to certain different specifications, as discussed in Zhongji's Calculation Memorandum.¹⁰²

⁹⁴ See Petitioners' Rebuttal Brief at 17-19.

⁹⁵ *Id.* at 19-20 (citing *Preliminary Results* PDM at 7).

⁹⁶ *Id.* at 20-21.

⁹⁷ *Id.* at 21 (citing *Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and the Republic of Turkey: Initiation of Less-Than-Fair-Value Investigations*, 85 FR 19444 (April 7, 2020) (*Aluminum Sheet Initiation FR*)).

⁹⁸ *Id.* at 21-22 (citing *Solar Cells from China 2014 AR* at 32679).

⁹⁹ *Id.* at 22-23 (citing 19 CFR 351.301(c)(3)(iv); 19 CFR 351.511(a)(2); sections 782(d) and 771(5)(E)(iv); *Preliminary Results* PDM at 19; and *QVD Food* at 1324).

¹⁰⁰ See *Preliminary Results* PDM at 19.

¹⁰¹ See GOC NSA QR at 20.

¹⁰² See Memorandum, "Countervailing Duty Administrative Review: Certain Aluminum Foil from the People's Republic of China: Final Results Calculations for Jiangsu Zhongji Lamination Materials Co., Ltd., Jiangsu Zhongji Lamination Materials Co., (HK) Ltd., Jiangsu Huaffeng Aluminum Industry Co., Ltd, Shantou Wanshun Material

Regarding the specific types of aluminum sheet purchased by Zhongji, record evidence also does not demonstrate that Zhongji's purchases are more comparable to 1050 alloy than the TDM data covering HTS subheading 7606.12. First, Zhongji's claim that the 1050 alloy has an aluminum alloy content close to some of the types of aluminum sheet it purchased is not dispositive because there is variation in the aluminum content of the product purchased by Zhongji.¹⁰³ In addition, there is wider variation between 1050 alloy and the products Zhongji purchased with respect to the chemical composition of other elements included in one or the other product.¹⁰⁴ Therefore, based on the information on the record, we continue to find that the TDM data covering HTS subheading 7606.12 are more representative of all the types of aluminum purchased by the respondents. As explained in the *Preliminary Results*:

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.” Instead, Commerce has found the GTA or Comtrade data better captures a range of products that have a minimum aluminum content of 99 percent.¹⁰⁵

The same fact pattern exists here with respect to aluminum plate and/or sheet and strip. In this instance, based on the record evidence, we also find that the TDM data better capture the different aluminum plate and/or sheet and strip input products purchased by respondent during the POR. As such, we find that use of the CRU report data alone or averaged with the GTA data is not appropriate.

In addition to its comparability claims, Zhongji raises procedural arguments with respect to its ability to submit benchmark comments in light of the tolling that extended deadline for issuing the preliminary results.¹⁰⁶ Pursuant to 19 CFR 351.301(c)(3)(ii), in administrative reviews, “all submissions of factual information to measure the adequacy of remuneration under 19 CFR 351.511(a)(2) are due no later than 30 days before the scheduled date of the preliminary results of review.” Moreover, under 19 CFR 351.301(c)(3)(iv), “an interested party is permitted one opportunity to submit publicly available information to rebut, clarify, or correct factual information to measure the adequacy of remuneration, and such comments must be submitted within 10 days after the date such factual information is served on the interested party.” Zhongji

Stock Co., Ltd., and Anhui Maximum Aluminum Industries Company Limited,” dated concurrently with this memorandum (Zhongji Final Calculation Memorandum).

¹⁰³ See Zhongji Case Brief at 30-31.

¹⁰⁴ See *e.g.*, Zhongji Final Calculation Memorandum; and Zhongji's Letter, “Certain Aluminum Foil from the People's Republic of China: New subsidy Allegations Supplemental Questionnaire Response,” dated February 6, 2020 at Exhibits NSAS-1 and NSAS-2.

¹⁰⁵ See *Preliminary Results* PDM at 18 (citing *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 AR*), and accompanying IDM at 28; *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).

¹⁰⁶ See Zhongji Case Brief at 30-31.

exercised its opportunity to submit benchmark comments and rebuttal comments on April 1 and 13, 2020, respectively.¹⁰⁷

On April 24, 2020, Commerce tolled certain deadlines in response to operational adjustments due to the COVID-19 epidemic.¹⁰⁸ Commerce's Tolling Memorandum stated the tolling applied to "pending deadlines for actions by parties to administrative reviews." On May 18, 2020, Zhongji filed additional benchmark comments claiming that Commerce's Tolling Memorandum reset the benchmark comment deadline because the preliminary results had been extended until June 18, 2020.¹⁰⁹ Commerce's Tolling Memorandum, however, did not apply to the benchmark comment deadline because the 30-day deadline to file benchmark comments had already passed prior to Commerce's tolling of deadlines, and therefore was no longer pending.¹¹⁰ Thus, we continue to find that Zhongji was not entitled to additional opportunities to submit and clarify its benchmark comments.¹¹¹ As such, we reject Zhongji's argument that the 30-day deadline to submit benchmark comments was reopened or reset by Commerce's April 24, 2020, tolling of deadlines. Therefore, we continue to find that Zhongji's May 18, 2020, submission was untimely filed and, thus, will not be used in determining which benchmark data (*i.e.*, the TDM data, CRU Report data, and/or GTA data) to use to value aluminum plate and/or sheet and strip.

Next, Zhongji argues that if Commerce determined Zhongji's new subsidy allegation questionnaire and supplemental responses did not contain sufficient information regarding the alloy used by Zhongji to produce aluminum foil, Commerce had a duty to inform Zhongji of any deficiencies and provide an opportunity to remedy them under section 782(d) of the Act.¹¹² However, Commerce issued supplemental questions to clarify Zhongji's reporting of its aluminum sheet purchases.¹¹³ Further, the issue here is not the clarity of Zhongji's new subsidy allegation questionnaire response, but rather which benchmark information best represents the aluminum plate and/or sheet and strip purchased by the respondents during the POR. For the reasons discussed above and in the *Preliminary Results*, we find that the TDM data best represent the respondents' purchases.¹¹⁴

Finally, Zhongji argues that if Commerce determines that it cannot rely on the CRU Report data, we should use the TDM data only from the countries that produce and export aluminum

¹⁰⁷ See Zhongji's Letter, "Certain Aluminum Foil from the People's Republic of China: Benchmark Submission," dated April 1, 2020 (Zhongji's Benchmark Submission); and Zhongji's Letter, "Certain Aluminum Foil from the People's Republic of China: Rebuttal Benchmark," dated April 13, 2020.

¹⁰⁸ 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 (emphasis added) (Commerce's Tolling Memo).

¹⁰⁹ See Commerce's Letter, "Countervailing Duty Administrative Review of Aluminum Foil from the People's Republic of China," dated May 22, 2020 (Commerce's May 22, 2020 Rejection Letter); and Commerce's Letter, "Countervailing Duty Administrative Review of Aluminum Foil from the People's Republic of China," dated June 2, 2020 (Commerce's June 2, 2020 Rejection Letter).

¹¹⁰ See Commerce's Tolling Memo.

¹¹¹ See Commerce's June 2, 2020 Rejection Letter.

¹¹² See Zhongji Case Brief at 30-31.

¹¹³ See Commerce's Letter, "Countervailing Administrative Review of Aluminum Foil from the People's Republic of China: New Subsidy Allegation (NSA) Supplemental Questionnaire," dated January 21, 2020 at 3.

¹¹⁴ See *Preliminary Results* PDM at 19.

plate/sheet.¹¹⁵ However, the only information on the record concerning countries that produce and export aluminum foil stock similar to the type used in Zhongji's production of subject merchandise is contained in an affidavit.¹¹⁶ There is, thus, nothing else on the record to substantiate the claims made in the affidavit and to analyze the specific types of aluminum foil produced and/or exported by each of the countries included in the TDM data, CRU Report data, or GTA data. As a result, Commerce cannot conclusively determine which data represent the relevant producers and the different types of aluminum foil made in each country.

Other proceedings have also demonstrated that aluminum sheet is widely traded and produced and, as discussed above, using a benchmark that captures the different types of aluminum produced by the respondents is most appropriate here.¹¹⁷ Lastly, Zhongji cites to *Solar Cells from China 2014 AR*, in which Commerce determined to narrow its solar glass benchmark by removing non-solar glass producing countries from its benchmark.¹¹⁸ That case is distinguishable from this review. Here, narrowing the aluminum plate and/or sheet strip benchmark is not appropriate, because Zhongji indicates that there are additional countries (*i.e.*, other than those listed in the affidavit) that produce and supply aluminum inputs. As such, there are even more types of aluminum sheet being traded which the information in the affidavit does not cover. Therefore, we find that for these final results, it is not appropriate to use the benchmark information provided by Zhongji, because the record evidence does not support Zhongji's claims. Consequently, we continue to find that the TDM data best reflect the variety of aluminum plate and/or sheet and strip products purchased by the respondents during the POR.

Comment 6: Whether Commerce Should Use LME Data to Calculate the Primary Aluminum Benchmark

Zhongji's Case Brief:

- Commerce should rely on the LME data provided by Zhongji to value primary aluminum in these final results because these data are more representative of the type of primary aluminum used by Zhongji to produce aluminum foil than either the GTA or United Nations Comtrade (Comtrade) data.¹¹⁹
- Zhongji attempted to provide information regarding the purity of the primary aluminum used to produce aluminum foil, but Commerce rejected this information.¹²⁰
- Should Commerce use the averaged GTA and Comtrade data for these final results, it must only rely on HTS subheading 7601.10 because this HTS subheading is more specific to the

¹¹⁵ See Zhongji Case Brief at 32-33.

¹¹⁶ *Id.*

¹¹⁷ See, e.g., *Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and the Republic of Turkey: Initiation of Less-Than-Fair-Value Investigations*, 85 FR 19444 (April 17, 2020). See, e.g., *Aluminum Sheet Initiation FR*.

¹¹⁸ See *Solar Cells from China 2014 AR* IDM at Comment 5.

¹¹⁹ See Zhongji Case Brief at 34-35 (citing *Changzhou Trina 3AR* at 1335; *Aluminum Foil from China INV* IDM at Comment 15; and *Preliminary Results PDM* at 18).

¹²⁰ *Id.* at 35.

primary aluminum used to produce aluminum foil and the purity level is closer to the level used by Zhongji.¹²¹

Xiashun's Case Brief:

- Commerce should use LME prices to value Xiashun's aluminum ingot purchases during the POR because the record is clear that the LME price data is grade-specific, and hence the most appropriate, benchmark to value these purchases.¹²²
- Section 351.511(a) of Commerce's regulations provides that in choosing LTAR benchmarks, Commerce will consider all factors affecting "comparability," including "product similarity."¹²³
- It is Commerce's practice to derive benchmark prices on a grade – (*i.e.*, product type) specific basis "when such data are available and when the record evidence indicates that the respondent firm purchases the good in question on a grade specific basis."¹²⁴
- The LME price data on the record are both reliable and authoritative and hence a particularly suitable benchmark source.¹²⁵

Petitioners' Rebuttal Brief:

- Commerce has repeatedly rejected using the LME pricing data for benchmark purposes.¹²⁶
 - Commerce has compared GTA and LME data in previous CVD cases and found that the GTA data serve as a more appropriate benchmark because it reflects the larger universe of aluminum ingots that could be purchased by respondents.¹²⁷
 - The record does not establish that the LME prices or type of aluminum covered in the LME data are more comparable than the GTA data to the primary aluminum purchased by respondents.¹²⁸

¹²¹ *Id.* at 35-36 (citing *Aluminum Foil from China INV* IDM at Comment 16).

¹²² See *Xiashun Case Brief* at 1-2.

¹²³ See *Xiashun Case Brief* at 2.

¹²⁴ See *Countervailing Duty Order on Certain Passenger Vehicle and Light Truck Tires from China: Final Results of Countervailing Duty Administrative Review*; 2016, 84 FR 17382 (April 25, 2019), and accompanying IDM at 6; *Certain Uncoated Paper from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of final Determination with Final Antidumping Duty Determination*, 80 FR 36968 (June 29, 2015), and accompanying PDM at 26; *Certain Steel Wheels from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 77 FR 17017 (March 23, 2012), and accompanying IDM at Comment 15; *Certain Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 4936 (January 28, 2009), and accompanying IDM at Comment 15; *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Countervailing Duty Administrative Review*, 73 FR 40295 (July 14, 2008), and accompanying IDM at "Sale of High-Grade Iron Ore for LTAR;" and *Notice of Final Results of Countervailing duty Administrative Review: Certain Softwood Lumber Products from Canada*, 70 FR 73448 (December 12, 2005), and accompanying IDM at "Calculation of Provincial Benefit" and "Methodology for Adjusting the Unit Prices of the Crown Stumpage Program Administered by the GOBC."

¹²⁵ See *Xiashun Case Brief* at 4.

¹²⁶ See *Petitioners' Rebuttal Brief* at 24.

¹²⁷ *Id.* at 24 (citing *Preliminary Results PDM* at 18-19; and *Aluminum Extrusions from China 2012 AR* IDM at Comment 9).

¹²⁸ *Id.* at 24-25 (citing *Aluminum Foil from China INV* IDM at Comment 16).

- Further, Zhongji’s suggestion that Commerce exclude certain pricing data should be rejected because Zhongji has not provided concrete evidence to substantiate its claim that all primary aluminum purchased by it exceeds 99 percent purity.¹²⁹

Commerce’s Position: Consistent with the *Preliminary Results*,¹³⁰ we continue to find that relying on the weighted average of the raw GTA and Comtrade pricing data from the petitioner and Xiashun, covering HTS subheadings 7601.10 and 7601.20, to value primary aluminum is appropriate. Zhongji and Xiashun argue that Commerce should rely on the LME data it submitted because such data are more representative of the input it used to produce aluminum foil. In the alternative, if Commerce decides not to utilize the LME data, Zhongji claims that Commerce should only weight-average the GTA and Comtrade data under HTS subheading 7601.10, because this subheading is specific to the inputs used by Zhongji.¹³¹ We determine that the record evidence does not support these assertions.

With regard to the LME data, Commerce has repeatedly declined to use these prices because the LME data “contains only a cash price for primary aluminum (*i.e.*, unalloyed ingots) with a minimum aluminum content of 99.7 percent.”¹³² Additionally, there is no information on the record which demonstrates that either Zhongji or Xiashun used only primary aluminum with a minimum aluminum content of 99.7 percent.¹³³ In contrast, in the original investigation, Commerce revised the primary aluminum benchmark to include only unalloyed aluminum ingot under HTS subheading 7601.10 because it had verified information demonstrating that the respondents’ purchases were limited to unalloyed aluminum ingots.¹³⁴ As such, based on the information on the record, we continue to find that the GTA and Comtrade data better reflect the range of inputs the respondents purchased.

Similarly, we find that there is no evidence to support Zhongji’s claim that Commerce should weight-average only the GTA and Comtrade data under HTS subheading 7601.10. For the reasons explained above, there is no evidence demonstrating that the respondents only purchased primary aluminum under HTS subheading 7601.10, and not under HTS subheading 7601.20. Therefore, we continue to weight average the GTA and Comtrade data under HTS subheadings 7601.10 and 7606.20, which captures both aluminum not alloyed and alloyed with a broader minimum aluminum content on 99 percent.¹³⁵

As discussed above, Zhongji also raises a procedural argument concerning whether the period to submit benchmark comments was reopened due to Commerce’s tolling of deadlines on April 24, 2020.¹³⁶ Based on our analysis of this argument in Comment 5 and in Commerce’s June 2, 2020,

¹²⁹ *Id.* at 26 (citing *Preliminary Results* PDM at 18-19 and 22-24).

¹³⁰ *See Preliminary Results* PDM at 18-19.

¹³¹ *See Zhongji Case Brief* at 34-36.

¹³² *See Preliminary Results* PDM at 18 (citing *Aluminum Extrusions from China 2012 AR* IDM at 28; *Tool Chests from China* IDM at Comment 5; and *Order* at 17360; and *China Aluminum Foil INV* IDM at Comment 15).

¹³³ *See, e.g.*, 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 at Exhibits I-12, III-11, and V-10.

¹³⁴ *See China Aluminum Foil INV* IDM at Comment 16.

¹³⁵ *See Preliminary Results* PDM at 18.

¹³⁶ *See Zhongji Case Brief* at 35.

Rejection Letter, we continue to find that Zhongji's May 18, 2020, submission constitutes untimely factual information.¹³⁷ As such, we will not consider that submission for these final results.

Comment 7: Whether Commerce Should Average Maersk and Xeneta Data to Calculate the Ocean Freight Benchmark

Zhongji's Case Brief:

- The Xeneta data provided by Zhongji are contemporaneous with the POR and, therefore, are more suitable than the Maersk data, which do not cover the entire POR. The Xeneta data also more accurately reflect the freight rates Zhongji would have paid.¹³⁸
- In addition, the Xeneta data represent freight rates from nine global origin ports, while the Maersk data are from only seven global ports. As such, the Xeneta data are more representative of world market prices.¹³⁹
- In past CVD cases, Commerce has averaged Xeneta and Maersk data – or relied solely on Xeneta data.¹⁴⁰
- Commerce is not bound by the U.S. Court of International Trade's (CIT) decision to sustain Commerce's rejection of the Xeneta data in the previous segment of this proceeding (*i.e.*, the investigation), because here the Maersk data are non-contemporaneous.¹⁴¹
- If Commerce continues to find flaws in both the Xeneta and the Maersk data for these final results, it should average both sources to calculate its ocean freight benchmark.¹⁴²

¹³⁷ See Commerce's June 2, 2020 Rejection Letter; *see also* Commerce's May 22, 2020 Rejection Letter.

¹³⁸ See Zhongji Case Brief at 15-17 (citing 19 CFR 351.511(a)(2)(i), (ii), and (iv); section 771(5)(E)(iv); *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2013*, 81 FR 46904, 46906 (July 19, 2016) (*Solar Cells from China 2013 AR*), and accompanying IDM at Comment 7; *Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 80 FR 51775 (August 26, 2015), and accompanying IDM at 19; and *Carbon and Alloy Steel Threaded Rod from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 85 FR 8833 (February 18, 2020), and accompanying IDM at Comment 5).

¹³⁹ *Id.* at 17-18 (citing *Changzhou Trina Solar Energy Co. v. United States*, 255 F. Supp. 3d 1312, 1323 (CIT August 18, 2017) (*Changzhou Trina*); 19 CFR 351.511(a)(2); and *Borusan Mannesmann* at 1337 (citing *Rhone Poulenc*).

¹⁴⁰ *Id.* at 18-19 (citing *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 2016 AR*), and accompanying IDM at 6; and *Ceramic Tile from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination, and Alignment of Final Determination with Final Antidumping Duty Determination*, 84 FR 48125 (September 12, 2019), and accompanying IDM at 12-13).

¹⁴¹ *Id.* at 19-21 (citing *Jiangsu Zhongji Lamination Materials Co., Ltd. v. United States*, 405 F. Supp. 3d 1317, 1340 and 1341 (CIT 2019) (*Zhongji*) (citing *Changzhou Trina* at 1323); *Certain Carbon and Alloy Steel Cut-to-Length Plate from the People's Republic of China: Final Results of Countervailing Duty Expedited Review*, 83 FR 34115 (July 19, 2018), and accompanying IDM at Comment 5; *Changzhou Trina 3AR* at 1342; and 19 CFR 351.511(a)(2).

¹⁴² *Id.* at 21 (citing 19 CFR 351.511(a)(2)(ii); *Preliminary Results PDM* at 20; and *United States Steel Corporation v. United States*, Slip-Op. 09-152, 2009 WL 5125921 1935, 1943 (CIT December 30, 2009)).

- Commerce must also explain why it found the Xeneta data so flawed that it could not average them with the Maersk data, which it failed to do in the *Preliminary Results*.¹⁴³

Petitioners' Rebuttal Brief:

- Contrary to Zhongji's claim, averaging the Xeneta data will not resolve the inconsistencies that Commerce has identified in this information.¹⁴⁴ Specifically, in the *Preliminary Results*, Commerce found the Xeneta data did not include certain expenses (*i.e.*, origin or destination terminal handling charges), which make these data unreliable.¹⁴⁵ The Xeneta data also do not reflect the price trends and market conditions cited by Zhongji in the United Nations Conference on Trade and Development (UNCTAD) report, and thus the UNCTAD data cannot be used to create a discrepancy with the Maersk data.¹⁴⁶
- Moreover, the reliability of the Maersk ocean rates is well-established. In fact, the CIT confirmed Commerce's use of the Maersk data and finding with respect to this issue in the original investigation.¹⁴⁷

Commerce's Position: When measuring the adequacy of remuneration under tier two of 19 CFR 351.511(a)(2), Commerce will adjust the benchmark price to reflect the price that a firm actually paid or would pay if the product, including delivery charges and import duties, under 19 CFR 351.511(a)(2)(iv). In the original investigation, Commerce rejected using Xeneta data to compute the ocean freight benchmark because those data did not consistently include terminal handling charges, in accordance with Commerce's regulations.¹⁴⁸ The same fact pattern exists here.

In the *Preliminary Results*,¹⁴⁹ we explained that the "Xeneta data submitted by Zhongji includes either origin or destination terminal handling charges, but not both." As such, this inconsistency prevented Commerce from using these data and, instead, Commerce relied on Maersk data provided by the petitioners and Xiashun for routes that included both origin and destination terminal handling charges.¹⁵⁰ This fact distinguishes this review from *Solar Cells from China 2016 AR* and *Ceramic Tile from China Prelim*. Specifically, in *Solar Cells from China 2016 AR*, we found that the Xeneta shipping rates submitted by parties did consistently include terminal

¹⁴³ *Id.* at 22-23 (citing *Habas Sinai Ve Tibbi Istihsal Endustria A.S. et. al. v. United States*, 413 F. Supp. 3d 1347, 1360 (citing *CS Wind Vietnam Co., Ltd. v. United States*, 832 F. 3d 1367, 1373 (Fed. Cir. 2016)); 19 CFR 351.511(a)(2)(ii); *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2015*, 83 FR 34828 (July 23, 2018) (*Solar Cells from China 2015 AR*), and accompanying IDM at Comment 3; and *Essar Steel Limited v. United States*, 721 F. Supp. 2d 1285, 1294 (CIT August 19, 2010) (*Essar Steel*).

¹⁴⁴ See Petitioners' Rebuttal Brief at 27.

¹⁴⁵ *Id.* at 27-28 (citing *Preliminary Results PDM* at 20; and *Solar Cells from China 2015 AR IDM* at Comment 3).

¹⁴⁶ *Id.* at 28-29.

¹⁴⁷ *Id.* at 29-30 (citing *Changzhou Trina 3AR; Zhongji* at 1339-1341; *Yarn from China IDM* at Comment 5.c. (referencing *Steel Propane Cylinders from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 84 FR 29159 (June 21, 2019) (*Steel Cylinders from China*), and accompanying IDM at Comment 8; and *Preliminary Results PDM* at 20)).

¹⁴⁸ See *Aluminum Foil from China INV IDM* at Comment 26.

¹⁴⁹ See *Preliminary Results PDM* at 20.

¹⁵⁰ *Id.*

handling charges.¹⁵¹ Meanwhile, in *Ceramic Tile from China Prelim*, the Xeneta data were the only data available on the record to value ocean freight.¹⁵²

In its case brief, Zhongji does not dispute this inconsistency in the Xeneta data, but argues that the Maersk data are not contemporaneous with the POR and fail to capture changing market conditions in the international freight industry, while the Xeneta data are contemporaneous and more accurate because they reflect more freight routes.¹⁵³ We find that the Maersk data are contemporaneous with the POR. As previously explained, in this review, Commerce calculated subsidy rates covering calendar years 2017 and 2018.¹⁵⁴ The Maersk data provided by the petitioners and Xiashun covered 2017, or about half of the period for which Commerce calculated subsidy rates.¹⁵⁵ Further, contrary to Zhongji's claim, there is no evidence on the record demonstrating that the Maersk data fail to reflect changing market conditions. In fact, the one piece of evidence referenced by Zhongji (*i.e.*, the UNCTAD report) simply indicated that international shipping rates were volatile in 2017.¹⁵⁶ Finally, the reliability and use of Maersk freight rates in CVD proceedings is well documented.¹⁵⁷

Moreover, although the Xeneta data contain several more freight routes than the Maersk data, the CIT has affirmed Commerce's decision not to rely on them in calculating the ocean freight benchmark because they did not consistently include delivery charges.¹⁵⁸ Further, the CIT has rejected arguments similar to those raised by Zhongji concerning the Maersk data being non-contemporaneous and not representative of prevailing market conditions.¹⁵⁹ As such, we continue to find that it is not appropriate to use the Xeneta data in this segment of the proceeding because they do not include both origin and destination terminal handling charges. Accordingly, for these final results, Commerce continued to rely on the Maersk data to value ocean freight.

Comment 8: Whether Commerce Should Include Zhongji's CBRE and Nexus Data in the Land Benchmark

Zhongji's Case Brief:

¹⁵¹ See *Solar Cells from China 2016 AR* IDM at Comment 7.

¹⁵² See *Ceramic Tile from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination, and Alignment of Final Determination With Final Antidumping Duty Determination*, 84 FR 48125 (September 19, 2019) (*Ceramic Tile from China Prelim*), and accompanying PDM at 13, unchanged in *Ceramic Tile from the People's Republic of China: Final Affirmative Countervailing Duty Determination, and final Negative Critical Circumstances Determination*, 85 FR 19440 (April 7, 2020).

¹⁵³ See Zhongji's Case Brief at 15-23.

¹⁵⁴ See, e.g., Memorandum, "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 June 17, 2020 (Zhongji Prelim Calc Memo).

¹⁵⁵ *Id.* at Attachment 2.

¹⁵⁶ See Zhongji Case Brief at 28-29.

¹⁵⁷ See, e.g., *Yarn from China* IDM at Comment 5c; and *Steel Cylinders from China* IDM at Comment 8.

¹⁵⁸ See Zhongji at 1341.

¹⁵⁹ *Id.* at 1340-1341.

- In the *Preliminary Results*, Commerce improperly relied on a tier three benchmark (*i.e.*, the 2010 CBRE Report) to calculate benefits under the land for LTAR program.¹⁶⁰ Commerce should instead use Zhongji’s tier two benchmark (*i.e.*, the 2016-2018 CBRE Reports), or, alternatively, Zhongji’s tier three benchmark (*i.e.*, Nexus Reports).¹⁶¹
- The 2016-2018 CBRE Reports represent world-market prices available to purchasers in the country in question, and are thus preferable to the 2010 CBRE Report, which is a tier-three benchmark representing industrial land in Thailand.¹⁶²
- Commerce’s reason for selecting the 2010 CBRE Report over the 2016-2018 CBRE Reports is also flawed.¹⁶³ Commerce rejected the latter because it did not include data that would allow us to evaluate the economic comparability of certain locations to China. However, Mexico and Brazil were included in these data and are used for surrogate countries in non-market economy antidumping duty cases.¹⁶⁴
- Because the 2010 CBRE Report data are outdated and need to be adjusted through the use of a consumer price index (CPI) inflator, they are highly flawed.¹⁶⁵ In comparison, the 2016-2018 CBRE Reports contain pricing data contemporaneous with the POR.¹⁶⁶
- If Commerce continues to rely on a tier three benchmark, it can rely on the Mexico and Brazil data in the 2016-2018 CBRE Reports or the data in the Nexus Reports which are contemporaneous with the POR.¹⁶⁷
- In comparison to the 2010 CBRE Report, the Nexus Reports contain Thai land prices and do not require CPI indexing.¹⁶⁸ Further, the Nexus Reports contain price information for “ready built factory” and “ready built warehouse” land prices in different regions in Thailand.¹⁶⁹ As such, these data are superior to that in the 2010 CBRE Report.

¹⁶⁰ See Zhongji Case Brief at 3-4 (citing *Preliminary Results* PDM at 17-18; and 19 CFR 351.511(a)(2)).

¹⁶¹ *Id.* (citing *Preliminary Results* PDM at 17-18; and 19 CFR 351.511(a)(2)).

¹⁶² *Id.* at 5 (citing *Royal Thai Government v. United States*, 441 F. Supp. 2d 1350, 1359 (CIT 2006) (*Royal Thai*)).

¹⁶³ *Id.* at 6 (citing *Preliminary Results* PDM at 17).

¹⁶⁴ *Id.* (citing *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) (*Aluminum Foil from China AD 17-19 AR Prelim*), and accompanying IDM at 11).

¹⁶⁵ *Id.* at 6-9 (citing *Preliminary Results* PDM at 17; *Changzhou Trina* at 1322-1323; *Laminated Woven Sacks from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination; Preliminary Affirmative Determination of Critical Circumstances, in Part; and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 72 FR 67893, 67908-67909 (December 3, 2007) (*LWS from China Prelim*); *Essar Steel* at 1294; and *Changzhou Trina* at 1323).

¹⁶⁶ *Id.*

¹⁶⁷ *Id.* at 9-10 (citing *Preliminary Results* PDM at 17; *Aluminum Foil AD 17-19 AR* PDM at 11; *Certain Uncoated Paper from Indonesia: Final Affirmative Countervailing Duty Determination*, 81 FR 3104 (January 20, 2016), and accompanying IDM at 16; and *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination (CRS from Russia)*, 81 FR 49935 (July 29, 2016), and accompanying IDM at Comment 7).

¹⁶⁸ *Id.* at 11-12 (citing *Preliminary Results* PDM at 17; 19 CFR 351.511(a)(2); *Habas Sinai* at 1349 (referencing *CRS from Russia*)).

¹⁶⁹ *Id.* at 12-13 (citing *Preliminary Results* PDM at 17; and *LWS from China Prelim*).

- Zhongji tried to submit additional background information about the Nexus Report to “rebut, clarify, or correct information on the record, but Commerce incorrectly rejected this as new factual information (NFI).¹⁷⁰

Petitioners’ Rebuttal Brief:

- For these final results, Zhongji claims Commerce should: (1) rely on the 2016-2018 CBRE data it submitted; or (2) on Mexico and Brazil data from the 2016-2018 CBRE reports or data from the Nexus Reports. These data, however, are not superior to the land benchmark used by Commerce in the *Preliminary Results* and should be rejected.¹⁷¹ In fact, Commerce has relied on this same benchmark in numerous proceedings.¹⁷²
- First, Zhongji’s argument regarding contemporaneity is flawed because Zhongji’s land purchases were all made prior to the POR and would require CPI adjustments.¹⁷³
- Second, the 2016-2018 CBRE Reports include rental rates on logistics space, but not industrial production facilities and, therefore, are not more representative of land use rights for industrial land in China.¹⁷⁴
- Finally, regarding the Nexus Report data, these data also need to be indexed to cover the first two and a half months of the POR and there is no information on the record to evaluate the methodology used to collect these data. As a result, there is no basis to determine whether these data are superior.¹⁷⁵

Commerce’s Position: We disagree with Zhongji that Commerce should rely on the 2016-2018 CBRE Reports as tier two benchmarks or, in the alternative, use the 2016-2018 CBRE Reports data for Mexico and Brazil or the Nexus Reports data as tier three benchmarks.¹⁷⁶ In the *Preliminary Results*, we stated that we cannot rely on the use of tier one or tier two benchmarks to assess the benefits from the provision of land for LTAR in China.¹⁷⁷ As explained in *LWS 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.¹⁷⁸ We also explained in the *Preliminary Results* that because “land is generally not simultaneously available to an in-country purchaser while located and sold out-of-country on the world market, {we} cannot use second-

¹⁷⁰ *Id.* at 13-14 (citing *Grobtest & I-Mei Indus. (Vietnam) Co. v. United States*, 815 F. Supp. 2d 1342, 1365 (CIT 2012) (citing *NTN Bearing Corp. v. United States*, 74 F. 3d 1204, 1206-1207 (Fed. Cir. 1995)); and *Timken United States Corp. v. United States*, 434 F. 3d 1345, 1353 (Fed. Cir. 2006)).

¹⁷¹ See Petitioners’ Rebuttal Brief at 39-40.

¹⁷² *Id.* at 39 (citing *Laminated Woven Sacks from the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008) (*LWS from China*), and accompanying IDM at 14-18 and Comments 10 and 11; *Countervailing Duty Investigation of Common Alloy Aluminum Sheet from the People’s Republic of China: Final Affirmative Determination*, 83 FR 57427 (November 15, 2018) (*Aluminum Sheet from China*), and accompanying IDM at Comment 7; and *Solar Cells from China 2016 AR IDM* at Comment 6).

¹⁷³ *Id.* at 40-41 (citing *Preliminary Results PDM* at 16-18).

¹⁷⁴ *Id.* at 41 (citing *Preliminary Results PDM* at 17; and *Solar Cells from China 2016 AR IDM* at Comment 6).

¹⁷⁵ *Id.* at 41-42 (citing *Preliminary Results PDM* at 17).

¹⁷⁶ See Zhongji Case Brief at 3-15.

¹⁷⁷ See *Preliminary Results PDM* at 16 (citing *LWS from China IDM* at Comment 6); see also Memorandum, “Countervailing Duty Administrative Review of Aluminum Foil from the People’s Republic of China: Land Analysis Memo,” dated July 29, 2019 at Attachment 1 (Land Benchmark Memorandum)).

¹⁷⁸ *Id.*

tier world prices as a benchmark for land-use rights.”¹⁷⁹ As a result, consistent with other CVD proceedings involving China, we utilized benchmark information from “Asian MarketView Reports” by CBRE for Thailand 2010 (2010 CBRE Report) as a tier three benchmark.¹⁸⁰

Further, we explained in the *Preliminary Results* that “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’s geographic proximity to China and the level of economic development comparable to China).¹⁸¹ With respect to using the 2016-2018 CBRE Reports data for Mexico and Brazil as tier three benchmarks, information on the record does not demonstrate this data source is superior to the 2010 CBRE Report for Thailand. Specifically, unlike Thailand, Mexico and Brazil are oceans apart from, and thus not geographically proximate to, China. In terms of economic comparability, other than the fact that Commerce relies on Mexico and Brazil as surrogate countries for deriving certain cost values in antidumping duty proceedings, Zhongji provides no information demonstrating that these countries are more economically comparable to China than Thailand. As explained in *LWS from China*, Commerce has conducted an in-depth analysis of the economic comparability in the context of a CVD proceeding and finds Thailand and Vietnam comparable in terms of e.g., industrial land prices, per capita income, population density, stages of economic development, etc.¹⁸² Additionally, the 2016-2018 CBRE Reports data provided by Zhongji pertain to “logistics rent” but not “manufacturing facilities,”¹⁸³ while the 2010 CBRE Report contains industrial land prices in Thailand. Therefore, we do not consider the use of the 2016-2018 CBRE Reports data for Mexico and Brazil appropriate for benchmark purposes.

With respect to the Nexus Report, we explained in the *Preliminary Results* that it provides no explanation of the methodology used to collect the data.¹⁸⁴ Thus, we are unable to analyze which data are included in this report, how they were compiled, what the data table headings refer to, etc.¹⁸⁵ Next, Zhongji argues that the Nexus Report data is contemporaneous, while the 2010 CBRE Report data are outdated.¹⁸⁶ First, the 2010 CBRE Report data correspond more closely to the years in which Zhongji and its cross-owned affiliates purchased land-use rights than do the Nexus Report data from 2018.¹⁸⁷ Second, as discussed above, the reliability of the 2010 CBRE Report data are well-established, such data having been consistently utilized for benchmark purposes in many other China CVD proceedings.¹⁸⁸ Finally, even though Commerce must adjust the data with a consumer price inflator, this alone does not render the data unreliable. Moreover, Commerce would be required to make similar adjustments if it relied on the Nexus Report data.

¹⁷⁹ *Id.* at 16-17.

¹⁸⁰ *Id.* at 17; see also e.g., *Solar Cells from China 2016 AR IDM* at Comment 6.

¹⁸¹ *Id.* at 17; see also e.g., *Solar Cells from China 2016 AR IDM* at Comment 6.

¹⁸² See *Preliminary Results* PDM at 16 (citing *LWS from China IDM* at Comment 6); see also Memorandum, “Countervailing Duty Administrative Review of Aluminum Foil from the People’s Republic of China: Land Analysis Memo,” dated July 29, 2020 at Attachment 1.

¹⁸³ See Zhongji’s Benchmark Submission at Exhibit 13, page 18.

¹⁸⁴ See *Preliminary Results* PDM at 17.

¹⁸⁵ See Zhongji’s Benchmark Submission at Exhibit 14.

¹⁸⁶ See Zhongji Case Brief at 7-8 and 11.

¹⁸⁷ See Zhongji Prelim Calc Memo at Attachment 2.

¹⁸⁸ See *Preliminary Results* PDM at 16 (citing *LWS from China IDM* at Comment 6); see also Memorandum, “Countervailing Duty Administrative Review of Aluminum Foil from the People’s Republic of China: Land Analysis Memo,” dated July 29, 2020 at Attachment 1; and *Solar Cells from China 2016 AR IDM* at Comment 6).

For these reasons, we continue to find that it is appropriate to rely on the 2010 CBRE Report data to value land-use right in China for the final results.

Zhongji also raises a procedural argument concerning whether it was afforded the opportunity to submit new factual information following the issuance of the *Preliminary Results*.¹⁸⁹ Commerce specifically noted in the *Preliminary Results* that parties may “provide information to *rebut, clarify, or correct* information in the Land Benchmark Analysis or the Land Benchmark Data Memorandum.”¹⁹⁰ However, because Commerce had placed no new factual information on the record in reaching our preliminary results concerning the land benchmark, we recognized there was no basis for permitting parties to submit new factual information to rebut, clarify, or correct the 2010 CBRE Report data, and we explained this to Zhongji in our letters of July 6, and 17, 2020.¹⁹¹ Commerce had placed the Land Benchmark Analysis and the Land Benchmark Data Memorandum on the record on July 29, 2019, months before the *Preliminary Results*, and Zhongji did not, at that time, provide comments or factual information to rebut, clarify, or correct the information therein.¹⁹² Nevertheless, following the *Preliminary Results*, Zhongji submitted land benchmark comments that consisted entirely of new factual information. Moreover, pursuant to 19 CFR 351.301(c)(3)(ii), in administrative reviews, all submissions of factual information to measure the adequacy of remuneration under 19 CFR 351.511(a)(2) are due no later than 30 days before the scheduled date of the preliminary results of review. Thus, we continue to find that we cannot consider the new factual information submitted by Zhongji regarding its land benchmark submission for these final results.¹⁹³

Comment 9: Whether Commerce Should Make an EVA for Zhongji

Zhongji’s Case Brief:

- Contrary to Commerce’s claim, it does not need all Customs and Border Protection (CBP) forms to grant an EVA.¹⁹⁴
- Zhongji provided sufficient support to demonstrate that an EVA is warranted.¹⁹⁵

Petitioners’ Rebuttal Brief:

- Because Zhongji was unable to provide all of the requested CBP forms, Commerce should continue not to grant an EVA.¹⁹⁶

¹⁸⁹ See Zhongji Case Brief at 13-14.

¹⁹⁰ See *Preliminary Results* PDM at 17-18 (emphasis added).

¹⁹¹ See Commerce’s Letter, dated July 6, 2020; and Commerce’s Letter, dated July 17, 2020 (collectively, Commerce’s July 6 and 17, 2020 Letters).

¹⁹² See Land Benchmark Memorandum.

¹⁹³ See Commerce’s July 6 and 17, 2020 Letters; see also 19 CFR 351.301(c)(3)(ii).

¹⁹⁴ See Zhongji Case Brief at 36-37 (citing *Preliminary Results* PDM at 10; and *Coated Free Sheet Paper from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (*CFS Paper from China*), and accompanying IDM at Comment 21).

¹⁹⁵ *Id.* at 37-38 (citing *Preliminary Results* PDM at 10).

¹⁹⁶ See Petitioner’s Rebuttal Brief at 52-53 (citing *Preliminary Results* PDM at 10).

- Zhongji’s statements regarding the relevance of the missing evidence are without merit. In the absence of such information, Commerce is unable to analyze whether an EVA is appropriate.¹⁹⁷

Commerce’s Position: We disagree with Zhongji that the record evidence demonstrates that an EVA is warranted. To grant an EVA, respondents must provide all necessary information requested to demonstrate that such an adjustment is warranted. In the *Preliminary Results*,¹⁹⁸ we explained that Commerce requested certain sales documentation, including the CBP 7501 entry summary forms, for a subset of Zhongji’s total sales of subject merchandise to the United States during the POR to analyze whether granting Zhongji an EVA was appropriate. We also clarified that the CBP 7501 documentation “is necessary to demonstrate that the U.S. invoice establishes the customs value to which CVD duties are applied.”¹⁹⁹ Because Zhongji failed to provide such information, Commerce cannot conduct its EVA analysis; the absence of this information prevents Commerce from determining whether certain criteria for granting an EVA have been met.²⁰⁰ As such, because the CBP 7501 forms are needed to demonstrate that the U.S. invoice establishes the customs value to which countervailing duties are applied, Commerce is unable to make an EVA for these final results. This finding is consistent with Commerce’s decision in *Solar Cells from China 2016 AR*.²⁰¹

Comment 10: Whether Commerce Should Correct Certain Alleged Minor Calculation Errors for Zhongji and Xiashun

Zhongji’s Case Brief:

- Commerce should correct the benchmark interest rate for one of Zhongji’s loans.²⁰²
- Commerce should correct Shantou Wanshun’s loan benefit amounts for 2017 and 2018.²⁰³
- Commerce should correct Zhongji’s other grant value in 2018.²⁰⁴

Petitioners’ Case Brief:

- Commerce used an incorrect VAT rate in its calculations for the provision of primary aluminum for LTAR and aluminum plate and/or sheet and strip for LTAR.²⁰⁵ The appropriate VAT rate for January through April 2018 was 17 percent; however, Commerce used the 16 percent rate in place from May through December 2018 for the entire POR.²⁰⁶
- Commerce used an incorrect inland freight value in its calculation of primary aluminum and aluminum plate and/or sheet and strip for LTAR.²⁰⁷

¹⁹⁷ *Id.* at 53-54 (citing *Preliminary Results PDM* at 11; and *Solar Cells from China 2016 AR IDM* at Comment 12).

¹⁹⁸ See *Preliminary Results PDM* at 10.

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.* (citing *Solar Cells from China 2016 AR IDM* at Comment 12).

²⁰² See Zhongji Case Brief at 39.

²⁰³ *Id.* at 39.

²⁰⁴ *Id.* at 39.

²⁰⁵ See Petitioners’ Case Brief at 3-4.

²⁰⁶ *Id.*

²⁰⁷ *Id.* at 4-6 (citing *Preliminary Results PDM* at 41).

- Commerce should amend the sales denominator for Anhui Maximum for the final results to exclude all intercompany sales.²⁰⁸
- Commerce should include all of Xiashun’s financing in calculating the countervailable benefits from policy loans to the aluminum foil industry.²⁰⁹
- Commerce’s should revise the electricity benchmark rate used for certain purchases by Jiangsu Huafeng during the POR.²¹⁰

Commerce’s Position: We agree with Zhongji and have corrected the benchmark interest rates for the loan control numbers identified, the loan benefit amounts covering 2017 and 2018 for Shantou Wanshun, and the value of Zhongji’s other grants for 2018.

We disagree with the petitioners’ comment that we used an incorrect VAT rate for the first four months of the POR. There is no record evidence from the GOC that demonstrates that the VAT rates applicable to the aluminum inputs in question changed during 2018. As such, we continued to apply the 16 percent VAT rate for calendar year 2018.

We agree, however, with the petitioners’ comments regarding certain other revisions. We note we used an incorrect inland freight value for the calculation of benefits under the primary aluminum and aluminum plate and/or sheet and strip programs for Zhongji and its cross-owned affiliates and have made revisions to correct the values.

We agree with the petitioners’ comment that we should amend the 2018 sales denominator for Anhui Maximum for the final results to exclude all intercompany sales, and thus, we have made this revision.

Regarding the petitioners’ comment that we should include all of Xiashun’s financing in calculating the countervailable benefits from policy loans to the aluminum foil industry, we agree with the petitioners and have made this revision.

We also agree with the petitioners’ comment that Commerce should revise the electricity benchmark rate used for certain purchases by Jiangsu Huafeng during the POR, and have made the necessary revisions.

For further details on all of the above changes, please *see* Zhongji’s Final Calculation Memorandum and Xiashun’s Final Calculation Memorandum.

Comment 11: Whether Electricity Constitutes General Infrastructure and Provides a Financial Contribution

GOC’s Case Brief:

- Commerce may not lawfully countervail the provision of electricity because this alleged program constitutes general infrastructure and, therefore, there is not a financial contribution

²⁰⁸ *Id.* at 6-7 (citing *Preliminary Results* PDM at 9; and 19 CFR 351.525(b)(6)(iv)).

²⁰⁹ *Id.* at 7-8 (citing *Preliminary Results* PDM at 33-34).

²¹⁰ *Id.* at 8-9 (citing *Preliminary Results* PDM at 39).

under U.S. CVD law or the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement). Further, there is no evidence on the record that the provision of electricity by the GOC in this case is “specific” to the aluminum foil industry.²¹¹

- Commerce should follow its precedent and reject the petitioners’ attempt to claim “infrastructure subsidies.”²¹²
- Record evidence fails to demonstrate that the GOC has given aluminum foil producers preferential rates or greater access to the power grids.²¹³

Petitioners’ Rebuttal Brief:

- Contrary to the GOC’s claim, Commerce has determined the provision of electricity does not constitute “general infrastructure” within the meaning of CVD law.²¹⁴
- The CIT has found that “although electricity service may be available to the public, the subsidy at issue is the electricity provided by the GOC at LTAR to respondents.”²¹⁵

Commerce’s Position: We agree with the petitioners. As defined by 19 CFR 351.511(d), general infrastructure is “infrastructure that is created for the broad societal welfare of a country, region, state or municipality.” However, the CIT has previously addressed this exact question in *Zhongji*, finding that while the infrastructure used to transmit electricity may be considered “general infrastructure, the provision of electricity itself to specific respondents is not “general infrastructure.”²¹⁶ There the CIT stated explicitly: although the electricity service may be available to the public, the subsidy at issue is the electricity provided by the GOC at LTAR to respondents. Accordingly, Commerce properly concluded that the provision of electricity at LTAR, the subsidy at issue, was not general infrastructure.”²¹⁷ Indeed, Commerce has a longstanding practice of treating electricity not as general infrastructure but as a good that confers a financial contribution when provided by a government authority, within the meaning of section 771(5)(D)(iii) of the Act,²¹⁸ and the *Preamble* concerning 19 CFR 351.511 includes ample discussion of the provision of electricity as the provision of a good subject to CVD analysis.²¹⁹

²¹¹ See GOC Case Brief at 15-16 (citing section 771(5)(A) and (5)(D)(iii) of the Act and WTO SCM Agreement, Art. 1.1(a)(1)(iii)).

²¹² *Id.* at 16-17 (citing *Bethlehem Steel* at 1379-1380; *Carbon Steel Wire Rod from Saudi Arabia; Final Results of Countervailing Duty Administrative Review*, 52 FR 4206, 4210 (February 3, 1986); and *Final Affirmative Countervailing Duty Determination: Industrial Phosphoric Acid from Israel*, 52 FR 25447 (July 7, 1987)).

²¹³ *Id.* at 17.

²¹⁴ See Petitioners Rebuttal Brief at 30-31 (citing section 771(5)(D)(iii) of the Act; 19 CFR 351.511(d); and *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand*, 66 FR 50410 (October 3, 2001) (*Hot Rolled from Thailand*), and accompanying IDM at Comment 10; *Aluminum Foil from China INV* IDM at Comment 25; and *Yarn from China* IDM at Comment 6a).

²¹⁵ *Id.* at 31-32 (citing *Royal Thai* at 1356-1357 (quoting HRS from Thailand IDM at 35); and *Zhongji* at 1335-1339).

²¹⁶ See *Zhongji* at 1335-1337.

²¹⁷ *Id.* at 1337.

²¹⁸ See, e.g., *Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment With Final Antidumping Duty Determinations: Certain Hot-Rolled Carbon Steel Flat Products from Thailand*, 66 FR 20251 (April 20, 2001), “Provision of Electricity for Less Than Adequate Remuneration,” or *Lightweight Thermal Paper from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008), and accompanying IDM at 22-24.

²¹⁹ See *Countervailing Duties; Final Rule*, 63 FR at 65377-65402 (November 25, 1998) (*Preamble*).

Moreover, as explained in detail in Comment 12 below, our decision regarding financial contribution for the electricity for LTAR program was based on AFA. The information which the GOC failed to provide includes certain information related to our decision on whether the program constitutes a financial contribution. We also note that our decision regarding financial contribution is consistent with prior decisions regarding electricity in China CVD cases.²²⁰ For these reasons, we continue to find that the provision of electricity for LTAR constitutes a financial contribution.

Comment 12: Whether Commerce Should Apply AFA for Electricity

GOC's Case Brief:

- Commerce's preliminary conclusions flatly contradict the record evidence.²²¹ The GOC has acted to the best of its ability to provide Commerce with substantial record evidence, including information regarding the role of the National Development and Reform Commission (NDRC) in electricity price setting and of the provinces in deriving electricity price adjustments.
- The GOC stressed in its responses that electricity prices are determined by the provincial governments within their jurisdictions and that the NDRC only requires that the established electricity schedules be placed on the record of the NDRC.²²² The GOC also submitted evidence to confirm that the NDRC has delegated authority to the provincial agencies to prepare, establish and publish the price adjustment schedules of the electricity sales prices within the respective provincial jurisdiction.²²³
- Commerce has not demonstrated that Notice 748 and Notice 3150 explicitly mandate specific electricity tariffs for the provinces or alters the Provincial Price Proposals.²²⁴
- The GOC has demonstrated that since 2015 it has proactively promoted electricity market reform and that Chinese electricity prices are based on market principles.²²⁵ Further, the GOC confirmed that provincial authorities independently publish their own electricity schedules.²²⁶
- Contrary to Commerce's assertion, the GOC has provided necessary information as requested by Commerce regarding the roles and nature of cooperation between the NDRC and the provinces in deriving electricity price adjustments.²²⁷
- Commerce should determine the adequacy of remuneration by examining whether the respondents received a preferential rate compared to those entities receiving a rate by the standard pricing mechanism. No record evidence indicates that the producers of aluminum foil received a preferential rate when compared to other entities. The record evidence indicates that in all the provinces in which the mandatory respondents and their reported

²²⁰ See, e.g., *Hot Rolled from Thailand* IDM at Comment 10; *Aluminum Foil from China INV* IDM at Comment 25; and *Yarn from China* IDM at Comment 6a; and *Royal Thai* at 1356-1357.

²²¹ See GOC Case Brief at 17-18 (citing *Preliminary Results PDM* at 29-30).

²²² *Id.* at 18.

²²³ *Id.*

²²⁴ *Id.* at 18-19 (citing *Preliminary Results PDM* at 29).

²²⁵ *Id.* at 19.

²²⁶ *Id.* at 20.

²²⁷ *Id.* at 20-21.

cross-owned affiliates are located all large-scale industrial enterprise users enjoy the same electricity tariff rates.²²⁸

ProAmpac's Letter:

- In order to apply AFA to this program, Commerce must first determine whether necessary information is not on the record or that an interested party has failed to provide such information.²²⁹
- If Commerce makes a finding of non-cooperation, it must explain the adverse inference and cannot skip the analysis of the program's elements by simple explanation.²³⁰
- In this review, Commerce erroneously determined applied AFA to find this program specific.²³¹
- Commerce's claims regarding the benefit of allegedly lower electricity prices is nowhere alleged to be specific to one province or industry.²³²

Petitioners' Rebuttal Brief:

- In the original investigation, the GOC made these same arguments, which Commerce and the Court rejected. As a result, in this proceeding, Commerce should continue to rely on AFA in the final results for the provision of electricity for LTAR.²³³
- Further, the GOC concedes that there have been no changes to this program since Commerce examined it in the investigation and no new information was provided by the GOC on the record of this proceeding. Commerce has also analyzed the same information provided here in past cases and determined it does not support the GOC's assertion of market determined prices in the Chinese electricity system.²³⁴
- In terms of specificity, the CIT evaluated NDRC Notices 748 and 3105, which the GOC submitted on the record of this review, and properly concluded that these notices undermine the GOC's claim that the NDRC no longer controls electricity prices.²³⁵
- The "best of the ability" standard requires that a party provide complete and accurate responses to Commerce's requests for information, and the GOC has failed to meet this standard.²³⁶

²²⁸ *Id.* at 21 (citing section 771(5)(D) and (5A) of the Act; *Maverick Tube Corporation v. United States*, Slip Op. 17-146 (CIT 2017) at 20 (*Maverick*)).

²²⁹ See ProAmpac Letter at 2 (citing section 776(a) of the Act).

²³⁰ *Id.* (citing *Changzhou Trina Solar Energy Co., Ltd. v. United States*, 352 F. Supp 3d 1316, 1342 (CIT 2018) (*Changzhou Trina 3AR*); and *Changzhou Trina Solar Energy Co., Ltd. v. United States*, 195 F. Supp 3d 1334, 1349 (CIT 2016) (*Changzhou Trina 2016*)).

²³¹ *Id.* at 2-3 (citing *Preliminary Results PDM* at 31-32).

²³² *Id.* at 3 (citing *Changzhou Trina Solar Energy Co., Ltd. v. United States*, 264 F. Supp 3d 1325, 1330 (CIT 2017) (*Changzhou Trina 2017*)).

²³³ See Petitioners' Rebuttal Brief at 32-33.

²³⁴ *Id.* at 33-34 (citing *Preliminary Results PDM* at 28-29; *Aluminum Foil from China INV* and accompanying IDM at Comment 25; and *Yarn from China* IDM at Comment 6a) at 33-34 (citing *Preliminary Results PDM* at 28-29; *Aluminum Foil from China INV* IDM at Comment 25; and *Yarn from China* IDM at Comment 6a).

²³⁵ *Id.* at 34-35 (citing *Zhongji* at 1338).

²³⁶ *Id.* at 34-35 (citing *Nippon Steel* at 1382; and *Preliminary Results PDM* at 28-30; *Fine Furniture (Shanghai) Limited v. United States*, 748 F. 3d 1365, 1368, and 1372 (Fed. Cir. 2014); and *Hebei Jiheng Chemicals Co., Ltd. v. United States*, 161 F. Supp. 3d 1322, 1326-1333 (CIT 2016)).

- The GOC’s claim that an adverse inference should not apply to Commerce’s finding of the existence or amount of the benefit under this program is meritless because the GOC has not provided information regarding how the derivation of prices hindered Commerce’s ability to select a benchmark. Further, the CIT affirmed Commerce’s selection of a benchmark in the original investigation.²³⁷
- The GOC’s claim that there is no record evidence that subject producers receive a preferential rate compared to other entities misses the point of applying an adverse inference, because an AFA rate is meant to induce cooperation from a company that acted to the best of its ability to provide Commerce with necessary information.²³⁸
- ProAmpac claims that: (1) Commerce failed to properly analyze the specificity of this program; and (2) must make a specificity finding even when applying AFA. These claims should be rejected for these final results.²³⁹
 - Commerce requested information needed to analyze specificity twice and the GOC failed to provide such information.²⁴⁰
 - ProAmpac’s reliance on *Changzhou Trina 2017* is misplaced, because the CIT has distinguished between this case and the *Aluminum Foil from China INV*, where the CIT upheld application of AFA with regard to the specificity of this program.²⁴¹

Commerce’s Position: We agree with the petitioners. We are continuing to apply AFA to the GOC with respect to the provision of electricity. In the *Preliminary Results*, we determined that the GOC withheld information that was requested of it for our analysis of financial contribution and specificity and, thus, we relied on “facts available.”²⁴² As detailed in the *Preliminary Results*, the GOC either repeatedly failed to adequately respond, or made no attempt to respond, to the following requests:

- 1) Requests to explain the roles and nature of the cooperation between the NDRC and provincial authorities in deriving electricity prices adjustments;
- 2) Requests to explain how increases in the cost elements in the price proposals led to retail price increases for electricity;
- 3) Requests to explain how increases in labor costs, capital expenses, and transmission and distribution costs are factored into the price proposals for increases in electricity rates;
- 4) Requests to explain 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;
- 5) Requests to explain the derivation of the price reductions directed to the provinces by the NDRC;
- 6) Requests to explain the derivation of the prices by the provinces themselves;
- 7) Requests to explain how increases in labor costs, capital expenses, and transmission and distribution costs are factored in Provincial Price Proposals; and

²³⁷ *Id.* at 35-36 (citing *Maverick* at 1306-1307; *Preliminary Results PDM* at 29-30; *Zhongji* at 1338-1339 (citing *Changzhou Trina 3AR* at 1343)).

²³⁸ *Id.* at 36-37 (citing *Solar Cells from China 2014 AR IDM* at Comment 10).

²³⁹ *Id.* at 37 (citing *Changzhou Trina 2017* at 1330).

²⁴⁰ *Id.* at 37-38 (citing *Preliminary Results PDM* at 28-30).

²⁴¹ *Id.* at 38-39 (citing *Zhongji* at 1338; and *Preliminary Results PDM* at 28-30).

²⁴² See *Preliminary Results PDM* at 28-30.

- 8) Requests to explain how cost element increases, and final price increases were allocated across the province and across tariff end-user categories.²⁴³

We also noted that the GOC did not ask for additional time to gather and provide the requested information. Consequently, we drew an adverse inference in the application of facts available.²⁴⁴

In drawing an adverse inference, we found 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. The GOC failed to provide certain requested information, as explained above. Therefore, we also drew an adverse inference in selecting the benchmark for determining the existence and amount of the benefit.²⁴⁵

Contrary to the GOC's arguments, Commerce is not required to demonstrate that Notices 748 and 3150 mandate specific electricity tariffs. As noted by the petitioners, contrary to the GOC's claims none of the NDRC notices submitted by the GOC explicitly demonstrate that the GOC eliminated provincial pricing proposals, nor fully defined the NDRC's and the provinces' roles in setting electricity prices.²⁴⁶ Rather, record information, such as Notices 748 and 3105, indicates 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.²⁴⁷ This finding is consistent with Commerce's past practice and with the CIT's decision in *Zhongji*.²⁴⁸

We also disagree with the GOC's argument that Commerce should determine the adequacy of remuneration by examining whether the respondents received a preferential rate compared to those entities receiving a rate by the standard pricing mechanism. As we explained in the *Preliminary Results*, the GOC failed to provide information necessary to evaluate the adequacy of remuneration using the totality of record information and was uncooperative. Our application of an AFA rate with respect to the benchmark used is therefore necessary to induce cooperation. This finding is also consistent with Commerce's past practice and with the CIT's decision in *Zhongji*.²⁴⁹

Regarding ProAmpac's argument that we erred because we must make a specificity finding even when applying AFA, we disagree. We used the facts otherwise available to make a specificity determination because the GOC failed to provide the information necessary to make a specificity

²⁴³ See *Preliminary Results* PDM at 28-30; see also 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 at Electricity Appendix; GOC IQR at 46-54; and GOC Second SQR at 6-7.

²⁴⁴ See *Preliminary Results* PDM at 28-30.

²⁴⁵ *Id.* at 30.

²⁴⁶ See Notice 748 at Article 10 and Notice 3105; see also *Petitioner's Rebuttal Brief* at 34-35; and *Zhongji* at 1338.

²⁴⁷ See, e.g., Notice 748 at Article 10 and Notice 3105 at Articles II and X.

²⁴⁸ See *Aluminum Foil from China INV* IDM at Comment 23; and *Zhongji* at 1337-1338 (where, with respect to almost identical circumstances, the court stated the following: "Given that record evidence suggests that the GOC controls electricity pricing, the GOC's failure to provide information regarding how electricity pricing is set prevented Commerce from determining specificity. Accordingly, Commerce's use of AFA to find specificity is supported by substantial evidence.")

²⁴⁹ See *Aluminum Foil from China INV* IDM at Comment 23; and *Zhongji* at 1337-1338.

determination based entirely on record evidence.²⁵⁰ Furthermore, as explained above, we relied on an adverse inference because the GOC failed to cooperate to the best of its ability to provide information necessary to make a specificity finding based on record evidence.²⁵¹

We also disagree with ProAmpac's argument that we erred because we must explain the adverse inference and cannot skip the analysis of the program's elements and must separately make financial contribution, specificity, and benefit findings even when applying AFA. ProAmpac implies that Commerce has a duty to explain how its AFA findings are based on record evidence. However, we used the facts otherwise available to make our financial contribution, benefit, and specificity determinations precisely because the GOC failed to provide the information necessary to make financial contribution, specificity, and benefit determinations based on record evidence.²⁵² Furthermore, as explained above, we relied on an adverse inference because the GOC failed to cooperate to the best of its ability to provide information necessary to make a specificity finding based on record evidence.²⁵³ Thus, our decision to use facts otherwise available and to make an adverse inference with respect to financial contribution, specificity, and benefit is entirely consistent with Commerce's established practice. Further the CIT responded to these arguments in *Zhongji* where the specific facts were almost identical. There, the CIT found that "{g}iven that record evidence suggests that the GOC controls electricity pricing, the GOC's failure to provide information regarding how electricity pricing is set prevented Commerce from determining specificity. Accordingly, Commerce's use of AFA to find specificity is supported by substantial evidence."²⁵⁴

For the reasons explained above, we continue to find that the GOC withheld information that was requested of it and failed to cooperate by not acting to the best of its ability to comply with our request for information. Therefore, we continue to apply AFA for this program with respect to financial contribution, specificity, and benefit.

Comment 13: Whether the Policy Loans Reported by Respondents During the POR are Countervailable

GOC's Case Brief:

- Commerce reiterated its findings from the underlying investigation, *i.e.*, that this program is countervailable because it is specific to aluminum foil producers and that loans from State-Owned Commercial Banks (SOCBs) constitute a financial contribution because SOCBs are authorities.²⁵⁵
- The record, however, demonstrates that this program is not specific. The *Working Capital Loans Measures* provide that industrial policy is not a consideration for loans made to the applicant companies and, as such, commercial banks do not require any policy information in the process of issuing capital working loans.²⁵⁶ Further, the GOC provided information indicating that interest rates in China fluctuated in line with market economic conditions

²⁵⁰ See *Preliminary Results* PDM at 28-30.

²⁵¹ *Id.*

²⁵² See *Preliminary Results* PDM at 28-30.

²⁵³ *Id.*

²⁵⁴ See *Zhongji* at 1338.

²⁵⁵ See GOC Case Brief at 22-23 (citing *Preliminary Results* PDM at 33-34).

²⁵⁶ *Id.* at 23-24 (citing 19 CFR 351.505(a)(2); *Preamble*, 63 FR at 65363).

during the POR. For these final results, Commerce should find that no policy for preferential lending to aluminum foil producers exists.²⁵⁷

- Commerce’s finding that Chinese commercial banks are “government authorities” fails to meet the WTO Appellate Body’s requirement.²⁵⁸ Further, Commerce’s finding that ownership alone indicates that an entity is a “government authority” also fails to meet U.S. WTO obligations.²⁵⁹ The record evidence in this proceeding demonstrates that the GOC exercises no meaningful control over certain commercial banks from which the respondents received loans during the POR. As a result, Commerce should cease its practice of treating all banks in China as government authorities.²⁶⁰

Petitioners’ Rebuttal Brief:

- In its initial questionnaire response, the GOC acknowledged that there have been no changes to this program since the original investigation but continues to object to Commerce’s original findings.²⁶¹
- In lieu of providing new evidence, the GOC simply states that this program does not exist.²⁶²
- The GOC also argues that the *Interim Measures for the Administration of Working Capital Loans* proves this program does not exist; however, Commerce has concluded that the issuance of these measures has little impact on the GOC’s control over the Chinese banking sector or the GOC’s use of this sector to implement its industrial goals.²⁶³
- Commerce has previously analyzed the GOC’s influence on interest rates in China and found that interest rate trends during the POR are not relevant in determining whether interest rates in China fluctuate in line with market economic conditions.²⁶⁴
- Because there have been no substantial changes to this program since the investigation, Commerce should continue to find it countervailable.²⁶⁵
- Regarding Commerce’s finding that Chinese commercial banks are government authorities, the GOC incorrectly states that Commerce’s preliminary finding was on the 2007 investigation of *CFS Paper from China*.²⁶⁶
- The GOC did not provide requested information needed to analyze whether Chinese banks are controlled by the government. As a result, Commerce should continue to find that Chinese banks are government controlled. This decision is consistent with Commerce’s finding in the original investigation, which has been upheld by the CIT.²⁶⁷

²⁵⁷ *Id.* at 24-25.

²⁵⁸ *Id.* at 25-26 (citing sections 771(5)(B)(i) and 771(5)(D)(i) of the Act; and *CFS Paper from China*).

²⁵⁹ *Id.* at 26.

²⁶⁰ *Id.* at 27 (citing section 771(5)(B) of the Act).

²⁶¹ *See* Petitioners’ Rebuttal Brief at 42-43.

²⁶² *Id.* at 43-44.

²⁶³ *Id.* at 43-44.

²⁶⁴ *Id.* at 44-45.

²⁶⁵ *Id.* at 45 (citing *Aluminum Foil from China INV* and accompanying IDM at Comment 2; and *Zhongji* at 1343-1345).

²⁶⁶ *Id.* at 46-47 (citing section 771(5)(B) of the Act; and *CFS Paper from China*).

²⁶⁷ *Id.* at 46-48 (citing *Zhongji* at 1344-1345; sections 771(5)(b) and (D)(i) of the Act; and *Preliminary Results PDM* at 33-34).

Commerce’s Position: We agree with the petitioners. The GOC did not present evidence indicating that there were changes to this program since the investigation, and explicitly claimed that there were no such changes.²⁶⁸ The GOC explicitly stated in its IQR that “{t}here were no developments that constitute changes to the alleged ‘Policy Loans to Aluminum Foil Industry’ program during the {POR} as was investigated in the underlying investigation. Accordingly, the GOC provided no response to the *Standard Questions Appendix*.”²⁶⁹ Consistent with *Magnola*²⁷⁰ and its established practice, Commerce did not further investigate the financial contribution or specificity of this program because the GOC claims there are no changes to a program and no other record evidence indicates that there were changes to a program, . Thus, the GOC’s arguments are addressed at overturning Commerce’s previous decision as to the facts on the administrative review record which have existed substantially unchanged since the investigation, nor is there any record information which would warrant such a change. Accordingly, there is no basis for re-addressing Commerce’s earlier decision regarding the countervailability of this program.

Comment 14: Whether Commerce’s Loan Benchmark Interest Rates are Arbitrary, Unlawful, and Unsupported by the Record

GOC’s Case Brief:

- The application of external interest rates as benchmarks is unsupported in this review based on record evidence.²⁷¹ As a result, Commerce should use an in-country benchmark.
- In addition, the multi-country short-term interest rate benchmarks used by Commerce in the *Preliminary Results* rely on an arbitrary collection of International Monetary Fund rates and arbitrarily include or exclude certain data.²⁷²
- For these reasons, Commerce should rely on information submitted in the GOC’s questionnaire responses and in other factual responses submitted on the record of this review.²⁷³

Petitioners’ Rebuttal Brief:

- The GOC argues that Commerce’s use of an external benchmark is not supported by the record because there have been certain changes in banking regulations including the deregulation of floor interest rates. Commerce previously analyzed this claim in the original

²⁶⁸ See GOC IQR at 2.

²⁶⁹ *Id.*

²⁷⁰ See *Magnola*, 508 F. 3d at 1353-56 (affirming that Commerce does not re-examine the countervailability of a program in an administrative review absent new evidence).

²⁷¹ See GOC Case Brief at 27-28 (citing *Preliminary Results* PDM at 15).

²⁷² *Id.* at 28.

²⁷³ *Id.* at 28-29.

investigation, as well as in other cases, and should again reject it here because no new information has been provided.²⁷⁴

- As in the original investigation, the GOC continues to challenge Commerce’s regression analysis used to determine the external benchmark interest rate; however, the GOC has provided no new evidence.
- The CIT has affirmed Commerce’s use of the regression-based external benchmark.²⁷⁵

Commerce’s Position: We agree with the petitioners. Commerce has repeatedly found interest rates in China to be distorted in prior proceedings regarding China, including recent segments covering calendar year 2018.²⁷⁶ The GOC has provided no evidence of significant changes in banking regulations and the banking system in China.²⁷⁷ The GOC explicitly stated in its IQR that “{t}here were no developments that constitute changes to the alleged ‘Policy Loans to Aluminum Foil Industry’ program during the {POR} as was investigated in the underlying investigation. Accordingly, the GOC provided no response to the Standard Questions Appendix.”²⁷⁸ Thus, as is Commerce’s established practice, when the GOC claims there are no changes to a program and no other record evidence indicates that there were changes to a program, we did not further investigate the issue of whether interest rates in China continue to be distorted. Nor is there any record information which would warrant such a change. Accordingly, there is no basis for re-addressing Commerce’s earlier decision, so we continue to find that the use of Commerce’s tier-three regression-based benchmark is appropriate.

Comment 15: Whether Commerce’s Investigation of Uninitiated Programs is Lawful

GOC’s Case Brief:

- Commerce may only investigate subsidy programs after sufficient evidence of financial contribution, specificity, and benefit is found or presented.²⁷⁹
- The petitioners did not argue or provide evidence of the existence of any subsidy program in this review, other than the one program listed in petitioners’ new subsidy allegation. Further, the petitioners did not request that Commerce initiate an investigation of any of the “self-reported” programs.²⁸⁰

²⁷⁴ See Petitioners’ Rebuttal Brief at 48-49 (citing Aluminum Foil from China INV IDM at Comment 4; see also, e.g., Yarn from China IDM at Comment 7; and Aluminum Extrusions from the People’s Republic of China: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2014, 81 FR 92778 (December 20, 2016), and accompanying IDM at Comment 9).

²⁷⁵ *Id.* at 49-50 (citing Aluminum Foil from China INV IDM at Comment 4; and *Zhongji* at 1345).

²⁷⁶ See, e.g., Aluminum Foil from China INV IDM at Comment 4; see also *CFS Paper from China* IDM at Comment 10, and *Lightweight Thermal Paper from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008), and accompanying IDM at 8-10.

²⁷⁷ See GOC IQR at 2.

²⁷⁸ *Id.*

²⁷⁹ See GOC Case Brief at 29 (citing sections 702(a) and (b) of the Act).

²⁸⁰ *Id.* at 29-30.

- Articles 11.1 and 11.2 of the WTO SCM Agreement provide that an investigation of any alleged subsidy may be initiated only upon written application that must include sufficient evidence of a subsidy, injury, and a causal link between the subsidy and alleged injury.²⁸¹
- The right to self-initiate can only be exercised on the basis of sufficient evidence of the existence of a subsidy, consistent with Article 11.6 of the WTO SCM Agreement, and after an opportunity for consultation has been properly offered to the government of the exporting country under investigation, consistent with Articles 13.1 and 13.2 of the WTO SCM Agreement.²⁸²
- As a result, there is no legal basis for Commerce to examine these “other subsidies,” because they were never initiated or alleged, nor do they meet any of the aforementioned articles of the WTO SCM Agreement.²⁸³ As such, Commerce may not apply AFA to any of these programs.²⁸⁴

Petitioners’ Rebuttal Brief:

- The GOC’s claim that Commerce unlawfully countervailed “other subsidies” in the preliminary results is false.²⁸⁵
- Commerce and the CIT have rejected the position that formal initiation is required prior to the investigation to examine “other subsidies.”²⁸⁶
- The CIT has also affirmed Commerce’s authority to request additional information concerning “other subsidies.”²⁸⁷

Commerce’s Position: We agree with the petitioners. Commerce has repeatedly found that it is appropriate to investigate self-reported programs including in the investigation of *Aluminum Foil from China INV*.²⁸⁸ In the *Aluminum Foil from China INV*, the GOC provided similar arguments, as it provided here, against Commerce’s decision to investigate self-reported programs. As discussed in the *Aluminum Foil from China INV*:²⁸⁹

Investigations into potentially countervailable subsidies are initiated in one of two ways. First, an investigation can be self-initiated by Commerce. Second, when a domestic interested party files a petition for the imposition of countervailing duties on behalf of an industry, and the petition: (1) alleges the elements necessary for the imposition of a CVD pursuant to section 701(a) of the Act; and (2) “is accompanied by information reasonably available to the petitioner supporting those allegations {, }” Commerce will initiate an

²⁸¹ *Id.* at 30.

²⁸² *Id.* at 30-31.

²⁸³ *Id.* at 30-31.

²⁸⁴ *Id.* at 31 (citing *Preliminary Results PDM* at 44-45).

²⁸⁵ See *Petitioners’ Rebuttal Brief* at 50.

²⁸⁶ *Id.* at 50-51 (citing section 775 of the Act; 19 CFR 351.311(b); *Aluminum Foil from China INV* IDM at Comment 5; *Certain Collated Steel Staples from the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 85 FR 33626 (June 2, 2020) (*Staples from China*), and accompanying IDM at Comment 2; and *Zhongji* at 1342-1343).

²⁸⁷ *Id.* at 51-52 (citing *Zhongji* at 1343; and *Preliminary Results PDM* at 32-33).

²⁸⁸ See, e.g., *Aluminum Foil from China INV* IDM at Comment 5; *Staples from China* and accompanying IDM at Comment 2; and *Zhongji* at 1342-1343.

²⁸⁹ See *Aluminum Foil from China INV* IDM at Comment 5.

investigation into whether countervailing duties should be imposed.²⁹⁰ Pursuant to section 775 of the Act, Commerce has an “affirmative obligation” to “consolidate in one investigation ... all subsidies known by petitioning parties to the investigation or by the administering authority relating to that merchandise” to ensure “proper aggregation of subsidization practices.”²⁹¹

Pursuant to section 702 of the Act, “{a} countervailing duty investigation shall be initiated whenever the administering authority determines, from information available to it, that a formal investigation is warranted into the question of whether the elements necessary for the imposition of duty under section 701 of the Act exists.” This statutory provision does not preclude Commerce from investigating a program or subsidy “which appears to be a countervailable subsidy ... with respect to the merchandise which is the subject of the proceeding.” Indeed, section 775 of the Act requires further analysis by Commerce of practices that appear to be countervailable subsidies that were not originally alleged. Further, Commerce is not “legally precluded from asking questions that enable it to effectuate this obligation, the goal of which is to consolidate all relevant subsidies into a single investigation.”²⁹²

We disagree with the suggestion by the GOC that the consultations provision of section 702(b)(4)(A)(ii) of the Act applies to subsidies discovered during an investigation. That provision only applies when a petition is filed by a domestic interested party. Section 775 of the Act contains no requirement that the responding government be invited to consultations.

Further, Commerce’s practice to investigate self-reported programs was affirmed by the CIT.²⁹³ Thus, we find the GOC’s arguments unavailing. Accordingly, we continue to include self-reported “other programs” in these final results.

²⁹⁰ See section 702(b) of the Act.

²⁹¹ See *Allegheny Ludlum Corp. v. United States*, 112 F. Supp. 2d 1141, 1150 n 12 (CIT 2000) (*Allegheny I*); see section 775 of the Act.

²⁹² See *Allegheny I*, 112 F. Supp. 2d at 1150 n 12 (“Congress... clearly intended that all potentially countervailable programs be investigated and catalogue{.}”).

²⁹³ See *Zhongji* at 1343.

XIII. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting all related countervailable subsidy rates accordingly. If these positions are accepted, we will publish the final results in the *Federal Register*.

Agree

Disagree

2/24/2021

X



Signed by: CHRISTIAN MARSH
Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

Appendix

Non-Selected Companies Under Review

1. Dingsheng Aluminum Industries (Hong Kong) Trading Co. Ltd.²⁹⁴
2. Hunan Suntown Marketing Limited
3. Inner Mongolia Liansheng New Energy Material Joint-Stock Co., Ltd.
4. Shanghai Shenyang Packaging Materials Co., Ltd.
5. SNTO International Trade Limited
6. Suzhou Manakin Aluminum Processing Technology Co., Ltd.²⁹⁵

²⁹⁴ In the investigation, Commerce found the following companies to be cross-owned with Dingsheng Aluminum Industries (Hong Kong) Trading Co., Ltd.: Jiangsu Dingsheng New Materials Joint-Stock Co., Ltd.; Hangzhou Teemful Aluminum Co., Ltd.; Hangzhou Five Star Aluminum Co., Ltd.; Hangzhou DingCheng Aluminum Co., Ltd.; Luoyang Longding Aluminum Co., Ltd.; Hangzhou Dingsheng Industrial Group Co., Ltd.; Hangzhou Dingsheng Import & Export Co., Ltd.; and Walson (HK) Trading Co., Limited. The subsidy rates apply to all cross-owned companies.

²⁹⁵ In the investigation, Commerce found the following company to be cross-owned with Suzhou Manakin Aluminum Processing Technology Co., Ltd.: Manakin Industries, LLC. The subsidy rates apply to the cross-owned company.