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February 26, 2018

MEMORANDUM TO: P. Lee Smith
Deputy Assistant Secretary
for Policy and Negotiations

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

SUBJECT: Issues and Decision Memorandum for the Final Determination in the Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China

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I. SUMMARY

The Department of Commerce (Commerce) has analyzed the comments submitted by the interested parties in the antidumping duty investigation of certain aluminum foil from the People's Republic of China (China) covering the period of investigation (POI) July 1, 2016 to December 31, 2016.

The mandatory respondents are (1) Hangzhou Dingsheng Import & Export Co. Ltd. (Dingsheng IE), Jiangsu Dingsheng New Materials Joint-Stock Co., Ltd. (Jiangsu Dingsheng), Dingsheng Aluminum Industries (Hong Kong) Trading Co. Ltd. (Dingsheng HK), Inner Mongolia Liansheng New Energy Material Joint-Stock Co., Ltd. (Liansheng), Hangzhou Teemful Aluminium Co., Ltd. (Teemful), Hangzhou Five Star Aluminium Co., Ltd. (Five Star), and Walson (HK) Trading Co., Limited (Walson) (collectively, Dingsheng); and (2) Jiangsu Zhongji Lamination Materials Co., (HK) Ltd., Jiangsu Zhongji Lamination Materials Stock Co., Ltd., and Jiangsu Huafeng Aluminium Industry Co., Ltd. (collectively, Zhongji).[1] Based upon

[1] Zhongji has indicated that, and information on the record supports, that subsequent to the period of investigation (POI), the name of the producer of subject merchandise was changed from "Jiangsu Zhongji Lamination Materials Stock Co., Ltd." to "Jiangsu Zhongji Lamination Materials Co., Ltd." *See* Zhongji's November 8, 2017 Ministerial Error Comments, at 4, citing Zhongji's May 3, 2017 Separate Rate Application. Commerce has previously recognized name changes in the course of an investigation when such changes are supported by record evidence and confirmed at verification. *See Truck and Bus Tires from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination, in Part*, 82 FR 8606

our analysis of the comments received, we made changes from the *Preliminary Determination*[2] with respect to Dingsheng, Zhongji, the companies eligible for a separate rate, and the rate assigned to the China-wide entity. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

II. LIST OF ISSUES

A. General Issues

Comment 1: Surrogate Country and Surrogate Values
Comment 2: International Freight
Comment 3: Marine Insurance
Comment 4: Value Added Tax Calculation
Comment 5: Deferral of Preliminary Determination and Deadline for Final Determination
Comment 6: Ministerial Errors

B. Dingsheng-Specific Issues

Comment 7: Affiliation and Collapsing Status of Liansheng and an Upstream Producer
Comment 8: Application of Partial Adverse Facts Available (AFA)
Comment 9: Double Remedy Adjustment

C. Zhongji-Specific Issues

Comment 10: Surrogate Value Adjustment for Steam
Comment 11: Surrogate Value for Aluminum Scrap

III. BACKGROUND

On November 2, 2017, Commerce released its preliminary calculation materials to interested parties. On November 8, 2017, Zhongji submitted a request that Commerce correct certain alleged ministerial errors in its *Preliminary Determination*.[3] On February 1, 2018, Commerce issued its response to Zhongji's ministerial error allegation, resulting in no change to the *Preliminary Determination*.[4]

(January 27, 2018) (*Truck and Bus Tires from China*), and accompanying Issues and Decision Memorandum, at Comment 17. As in *Truck and Bus Tires from China*, we find in this instance that it is appropriate to recognize both names for the purposes of this final determination and related cash deposit instructions.

[2] *See Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination*, 82 FR 50858 (November 2, 2017) (*Preliminary Determination*), and accompanying Memorandum, "Decision Memorandum for Preliminary Determination in the Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China," dated October 26, 2017 (Preliminary Decision Memorandum).

[3] *See* Letter, "Certain Aluminum Foil from the People's Republic of China: Ministerial Error Comments," dated November 8, 2017 (Zhongji Ministerial Error Allegations).

[4] *See* Memorandum, "Certain Aluminum Foil from the People's Republic of China: Ministerial Error Memorandum," dated February 1, 2018.

On November 2, 2017, Commerce published the *Preliminary Determination* of this investigation.[5] In accordance with 19 CFR 351.309(c), we invited interested parties to comment on the *Preliminary Determination*.[6] In December 2017, we conducted verification of the sales and factors of production information submitted by Dingsheng and Zhongji. We issued verification reports on January 24, 2018.[7] We used standard verification procedures, including an examination of relevant accounting and production records, and original source documents provided by Dingsheng and Zhongji.

On January 31, 2018, we timely received case briefs from The Aluminum Association Trade Enforcement Working Group and its individual members[8] (the petitioners), Dingsheng, and Zhongji.[9] On February 5, 2018, we timely received rebuttal briefs from the petitioners, Dingsheng, and Zhongji.[10] Based on the requests of Dingsheng and Zhongji,[11] Commerce held a public hearing on February 9, 2018.

In the *Preliminary Determination*, Commerce announced that it would be extending the deadline for the final determination of this investigation, until February 22, 2018.[12] Commerce has exercised its discretion to toll deadlines affected by the closure of the Federal Government from January 20 through 22, 2018.[13] If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day.[14] The revised deadline for the final determination of this investigation is now February 26, 2018.

Commerce conducted this investigation in accordance with section 735 of the Tariff Act of 1930, as amended (the Act).

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[5] *See Preliminary Determination*, 82 FR 50858.
[6] *Id.*
[7] *See* Memorandum, "Verification of the Questionnaire Responses of Hangzhou Dingsheng Import & Export Co., Ltd., Jiangsu Dingsheng New Materials Joint Stock Co., Ltd, Dingsheng Aluminum Industries (Hong Kong) Trading Co., Limited, Walson (HK) Trading Co., Ltd, Hangzhou Teemful Aluminum Co., Ltd., Hangzhou Five Star Aluminum Co., Ltd and Inner Mongolia Liansheng New Energy Material Joint Stock Co., Ltd. in the Antidumping Investigation of Certain Aluminum Foil from China," dated January 24, 2018 (Dingsheng Verification Report); *see also* Verification of the Questionnaire Responses of Zhongji in the Antidumping Investigation of Aluminum Foil from the People's Republic of China," dated January 24, 2018.
[8] The individual members of The Aluminum Association Trade Enforcement Working-Group are JW Aluminum Company, Novelis Corporation, and Reynolds Consumer Products LLC.
[9] *See* Petitioners' January 31, 2018 Case Brief (Petitioners Case Brief); Dingsheng's January 31, 2018 Case Brief (Dingsheng Case Brief); Zhongji's January 31, 2018 Case Brief (Zhongji Case Brief).
[10] *See* Petitioners' February 5, 2018 Rebuttal Brief (Petitioners Rebuttal Brief); *see* Dingsheng's February 5, 2018 Rebuttal Brief (Dingsheng Rebuttal Brief); and *see* Zhongji's January 31, 2018 Rebuttal Brief (Zhongji Rebuttal Brief).
[11] *See* Dingsheng and Zhongji's December 4, 2017 Hearing Requests.
[12] *See Preliminary Determination*, 82 FR at 50860.
[13] *See* Memorandum, "Deadlines Affected by the Shutdown of the Federal Government" (Tolling Memorandum), dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by 3 days.
[14] The revised deadline for the final determination of this investigation would be Sunday, February 25, 2018. Accordingly, the deadline is the next business day, Monday, February 26, 2018.

IV. PERIOD OF INVESTIGATION

The POI is July 1, 2016, through December 31, 2016. This period corresponds to the two most recently completed fiscal quarters prior to the month of the filing of the Petition, which was March 2017.[15]

V. SCOPE OF THE INVESTIGATION

The merchandise covered by this investigation 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, including aluminum foil to which lubricant has been applied to one or both sides of the foil.

Excluded from the scope of this investigation is aluminum foil that is backed with paper, paperboard, plastics, or similar backing materials on one side or both sides 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 under investigation are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7607.11.3000, 7607.11.6000, 7607.11.9030, 7607.11.9060, 7607.11.9090, and 7607.19.6000. Further, merchandise that falls within the scope of this proceeding may also be entered into the United States under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3045, 7606.12.3055, 7606.12.3090, 7606.12.6000, 7606.91.3090, 7606.91.6080, 7606.92.3090, and 7606.92.6080.

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

VI. SCOPE COMMENTS

We invited parties to comment on Commerce's Preliminary Scope Memorandum.[16] Commerce has reviewed the briefs submitted by interested parties, considered the arguments therein, and has made changes to the scope of the investigation. For further discussion, *see* Commerce's Final Scope Decision Memorandum.[17]

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[15] *See* 19 CFR 351.204(b)(1).
[16] *See* Memorandum, "Certain Aluminum Foil from the People's Republic of China: Scope Comments Decision Memorandum for the Preliminary Determinations," dated October 26, 2017, and submitted to ACCESS on October 30, 2017.
[17] *See* Memorandum, "Certain Aluminum Foil from the People's Republic of China: Final Scope Decision Memorandum," dated concurrently with this memorandum.

VII. DISCUSSION OF THE ISSUES

A. General Issues

Comment 1: Surrogate Country and Surrogate Values

Zhongji Comments[18]

- Commerce should select Bulgaria, rather than South Africa, as the surrogate country for the final determination.
- Commerce appears to have based its preliminary surrogate country selection on the fact that the record does not contain contemporaneous Bulgarian surrogate values (SVs) for nitrogen and argon gas. However, nitrogen and argon gas are minor inputs which have little to no impact on the respondents' margin calculations, and the lack of contemporaneous SVs for these inputs is an insufficient reason to reject Bulgaria as the surrogate country.
- South African SV data are less preferable than Bulgarian SV data for the following reasons:
  - The notes to South African company Hulamin's financial statements establish that it received subsidies for electricity and aluminum raw materials, which both distort the financial ratios and meet Commerce's criteria for treatment as countervailable subsidies. Bulgarian company Alcomet AD's financial statements reflect no countervailable subsidies during the POI.
  - The labor costs reflected in South African company Hulamin's financial statements are overly broad and reflect overly aggregated labor costs. The petitioners' suggested adjustment for Hulamin's labor costs is a speculative estimate. The Bulgarian financial statement for Alcomet AD separately reports a detailed breakdown of personnel expenses.
  - South African labor data are from 2012 and requires potentially distortive inflating, whereas Bulgarian labor data are contemporaneous to the POI.
  - South African GTA data are reported on an FOB basis, and are, therefore, more susceptible to distortions than Bulgarian GTA data, which are reported on a CIF basis. Use of South African GTA data requires Commerce to add ocean freight and marine insurance, whereas no such additions are required for Bulgarian data. South African GTA data are reported at the six-digit level, which is less specific than Bulgarian GTA data, which is reported at the eight-digit level. The imprecise nature of South African data relating to aluminum inputs distorts the margin calculation.
  - The South African SVs for rolling oil, rolling oil additives, aluminum scrap, and certain packing materials are less specific than are the Bulgarian SVs for these inputs. The South African data used to value Zhongji's packing materials come from overly broad basket categories which are not specific to Zhongji's production process.
  - South African GTA import volumes for aluminum production inputs are smaller than Bulgarian GTA import volumes for those inputs.

Dingsheng Comments[19]

- Commerce should use Bulgarian SVs instead of South African SVs for the final determination. Commerce has an established practice of selecting the country which has SVs

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[18] *See* Zhongji Case Brief at 1-37, 42-51.
[19] *See* Dingsheng Case Brief at 34-63.

that are most specific to the product in question. Commerce's long-standing practice is to change its selected surrogate country when record evidence establishes that an alternative surrogate country offers superior data.

  - Bulgarian SVs for valuing aluminum ingot (Dingsheng's most important production input) are more specific to Dingsheng's production process than are South African SVs.
  - The South African HTS category under which aluminum ingot is classified includes a much smaller import quantity than the Bulgarian HTS category for valuing this production input. As such, the Bulgarian SV more accurately reflects Dingsheng's production experience since Dingsheng utilizes large amounts of aluminum ingot in its production process.
  - South African GTA values for valuing alloy strip are less specific to the input than are Bulgarian GTA values.
  - South African company Hulamin's financial statements are insufficiently disaggregated and preclude Commerce from calculating accurate South African financial ratios. Hulamin's financial statements yield potentially distorted selling, general and administrative (SG&A) expenses because the financial statements do not disclose what expenses are included within Hulamin's "other expenses." Because of the aggregated nature of Hulamin's financial statements, Commerce arbitrarily allocated line items in Hulamin's financial statements to labor and SG&A expenses. Additionally, various line items (*i.e.*, "other gains and losses") in Hulamin's financial statements distort the calculated profit ratios.
  - The Bulgarian financial statements of Alcomet AD permit an accurate and more specific calculation of labor costs and other financial ratios. There are no distortions in calculating Alcomet AD's profit ratio.
  - The South African SVs for nitrogen and argon are less specific than the Bulgarian SVs for these inputs. Nitrogen and argon are minor inputs when compared to major inputs such as aluminum foil, aluminum ingot, or foil stock. Non-contemporaneity alone does not justify excluding the 1996 Bulgarian data for valuing nitrogen and argon gases.
  - CIF-based, Bulgarian GTA data are available at the eight-digit level, which is more specific to Dingsheng's production process than is the six-digit, FOB-based South African GTA data.

The Petitioners' Rebuttal Comments[20]

- Commerce should reject the arguments of Dingsheng and Zhongji, and continue relying on South Africa as the surrogate country for the final determination.
- Commerce should continue calculating financial ratios using the South African Hulamin financial statements.
  - Although Zhongji claims that Hulamin's financial statements show evidence of subsidies, Commerce has made no specific countervailability finding with respect to South African subsidies concerning the aluminum industry or electricity. Also, Commerce has made no finding that any South African subsidies are actionable under United States countervailing duty law. Absent such a finding, there is no basis to reject Hulamin's financial statements.

[20] *See* Petitioners Rebuttal Brief at 1-42.

- In past cases, Commerce has reallocated financial expenses consistent with the methodology utilized in the *Preliminary Determination*.[21] Additionally, the calculation of SG&A expenses from the Hulamin financial statement data are consistent with past Commerce practice.
- Inclusion of "other materials" and "other direct costs" in the Materials and Labor Expense (MLE) denominator, as well as the SG&A calculation utilized by Commerce, represent conservative allocation methodologies, as they potentially lower the overhead and SG&A percentage ratios. Further, the petitioners identified problems with Alcomet AD's Bulgarian financial statements in their July 31, 2017 rebuttal SV comments.

- Commerce routinely relies on non-contemporaneous labor data. The fact that South African labor data are not contemporaneous to the POI does not preclude its use.
- Three countries determined to be economically comparable to China utilize CIF import statistics: South Africa, Mexico, and Brazil. The CIF-basis of South Africa's GTA data should not be a reason to reject the data.
- The volume of South African imports in the GTA data for primary aluminum inputs is not aberrational. South African GTA values for aluminum represent purchases at world prices for aluminum inputs in commercial quantities.
- The 1996 data for nitrogen and argon gases submitted by respondents is two decades removed from the instant POI and is reflective of an Indian value, not a Bulgarian value.
- Because Dingsheng never provided a breakout of its foil stock input by gauge, Dingsheng's calculation of a foil stock SV based on an average of eight-digit Bulgarian HTS classifications is no more specific than is the six-digit South African HTS classification used to value foil stock in the *Preliminary Determination*.
- Zhongji utilizes a conversion factor from the London Metal Exchange to derive its suggested foil stock SV. Such a methodology is inconsistent with Commerce's practice of using data from a market economy country that is at the same level of economic development as the NME country. There is no record evidence suggesting that South African SV data for aluminum foil is aberrational. South African SV data for aluminum inputs is comparable to that of Mexico, Brazil, Thailand, Romania, and Bulgaria. Moreover, the fact that six-digit data can be tested for aberrational features underscores the advantage of using six-digit HTS data instead of eight-digit data.
- With regard to rolling oil and rolling oil additives, Zhongji submitted a combination of proprietary and public factors. Commerce's practice is to base SVs on publicly available information.
- For most of the packing materials in question, Zhongji has failed to establish that the suggested Bulgarian SV is more specific to the input than is the South African SV.

Commerce Position: We continue to find, after consideration of the comments received, that South Africa best satisfies Commerce's criteria for selection of a surrogate country in this investigation.

[21] *Id.* at 5-6, *citing Vitric Acid and Certain Salts from the People's Republic of China Final Results of Antidumping Duty Administrative Review 2013-2014*, 80 FR 77323 (December 14, 2015), and accompanying Issues and Decision Memorandum at 39-40 and *Large Power Transformers from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 77 FR 40857 (July 11, 2012), and accompanying Issues and Decision Memorandum, at 62-63.

When Commerce is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base normal value (NV), in most circumstances, on the NME producer's factors of production (FOPs), valued in a surrogate market economy (ME) country or countries considered to be appropriate by Commerce. Specifically, in accordance with section 773(c)(4) of the Act, in valuing the FOPs, Commerce shall utilize, "to the extent possible, the prices or costs of {FOPs} in one or more ME countries that are (A) at a level of economic development comparable to that of the {NME} country; and (B) significant producers of comparable merchandise." As a general rule, Commerce selects a surrogate country that is at the same level of economic development of the NME unless it is determined that none of the countries are viable options because they (a) are not significant producers of comparable merchandise, (b) do not provide sufficient reliable sources of publicly available surrogate value (SV) data, or (c) are not suitable for use based on other reasons. Surrogate countries that are not at the level of economic development of the NME country, but still at a level of economic development comparable to the NME country, are selected only to the extent that data considerations outweigh the difference in levels of economic development. To determine which countries are at the same level of economic development of the NME country, Commerce generally relies on per capita gross national income (GNI) data from the World Bank's World Development Report. Further, Commerce normally values all FOPs in a single surrogate country.[22]

No interested party in this investigation has submitted arguments challenging whether Bulgaria or South Africa is economically comparable to China or a significant producer of comparable merchandise. Accordingly, for the reasons discussed in the *Preliminary Determination*, we continue to find that both Bulgaria and South Africa are at the same level of economic development as China and are significant producers of comparable merchandise.[23]

In considering whether Bulgaria or South Africa provide the best available information for SVs, pursuant to Section 773(c)(1) of the Act, we considered whether the potential SV data on the record from each country were: publicly available, product-specific, representative of broad market average prices, contemporaneous with the POI, and free of taxes and import duties.[24] For the reasons discussed below, we continue to find that the South African SV data on the record represents the best available information for valuing FOPs for this final determination. Accordingly, we continue to use South Africa as the surrogate country in this investigation.

We continue to find that the record of this investigation contains information to value all factors of production with South African data, but that the record does not contain usable Bulgarian SV data to value all inputs. We find that the record contains complete South African GTA SVs for all material inputs, including nitrogen and argon gases, whereas no Bulgarian GTA SVs for nitrogen and argon inputs are available on the record. Contrary to Zhongji's argument that nitrogen and argon inputs are insignificant in the margin calculation, these inputs constitute a significant component of the normal value calculation for one mandatory respondent and

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[22] *See* 19 CFR 351.408(c)(2).
[23] *See* Preliminary Decision Memorandum at 8.
[24] *See, e.g.*, *Drill Pipe from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, and Postponement of Final Determination*, 75 FR 51004 (August 18, 2010), unchanged in *Drill Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Critical Circumstances*, 76 FR 196 (January 11, 2011).

therefore the availability of useable nitrogen and argon gas surrogate values in the South African data is a key distinction between the South African and Bulgarian datasets. Additionally, we find that the record contains publicly available South African data for valuing ocean freight, whereas the record contains Bulgarian data for ocean freight that are based upon a combination of publicly available and proprietary information. Furthermore, as discussed in more detail below, we find unpersuasive the arguments raised by Dingsheng and Zhongji that Bulgarian SVs are more specific or reflective of respondents' individual production experience than are South African SVs.

With respect to the arguments that the South African financial statements of Hulamin are unusable because they contain evidence of subsidies, Commerce's practice is not to rely on financial statements where there is evidence that the company received countervailable subsidies, and there are other more reliable and representative data on the record for purposes of calculating the surrogate financial ratios.[25] Further, as noted in *Seamless Carbon and Alloy Steel PRC Final*, in determining whether a company has received subsidies, our practice is to look to whether specific countervailable subsidies have been determined by Commerce in a prior countervailing duty proceeding.[26] Commerce has made no specific finding with respect to subsidies concerning either the aluminum industry or electricity in South Africa. Zhongji has relied on references in Hulamin's financial statement to an Organization for Economic Co-Operation and Development (OECD) report,[27] and to a "preferential" electricity rate.[28] However, these references do not show that Hulamin benefitted from countervailable subsidies, nor do they suggest that Commerce has found countervailable subsidies exist in South Africa with respect to either the aluminum industry or to electricity.

We find that the OECD report and the "preferential" electricity rate cited by Zhongji do not provide a reason to believe or suspect that Hulamin benefitted from countervailable subsidies. First, we note that there is no information on the record to tie potential benefits from the OECD program to Hulamin's specific sale or production of aluminum. Secondly, while Zhongji has attempted to equate a "preferential" electricity rate with a countervailable subsidy, there is again nothing on the record of this review to demonstrate that the "preferential" was not widely available to other industrial users of electricity in South Africa. As the record reflects no specific countervailable subsidies have been found by Commerce with respect to either the South African aluminum industry or to the electricity rate charged to Hulamin, we find no support for Zhongji's

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[25] *See*, *e.g.*, *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part*, 77 FR 63791 (October 17, 2012), and accompanying Issues and Decision Memorandum, at Comment 2 (*Crystalline Silicon Photovoltaic Cells*).

[26] *See*, *e.g.*, *Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Critical Circumstances, in Part*, 75 FR 57449 (September 21, 2010) (*Seamless Carbon and Alloy Steel PRC Final*) and accompanying Issues and Decision Memorandum at Comment 6 ("Because this is not a specific countervailable subsidy program determined by the Department to confer countervailable benefits, the Department determines that there is no evidence that Jindal Steel received countervailable subsidies, based on its 2008-09 financial statements."); *Clearon Corp. v. United States*, 800 F. Supp. 2d 1355, 1359 (CIT 2011) (citing IDM for the Final Results of the 3rd New Shipper Reviews: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam at 4-5 (June 15, 2009)).

[27] See Zhongji's Case Brief, at 9.

[28] *Id.*

argument that we should reject Hulamin's financial statements based on Hulamin having allegedly received alleged countervailable subsidies. Although Zhongji concedes that Hulamin's financial statement would not be "automatically excluded," (consistent with Commerce's practice), Zhongji argues that Commerce will not use a financial statement with evidence of subsidies not found to be countervailable if other financial statements on the record are superior. However, we disagree that the Alcomet AD financial statement is superior.

Regarding the financial ratios calculated from Hulamin's financial statements, we have modified our final analysis consistent with the methodology employed in the *Aluminum Sheet Initiation*,[29] and our analysis of the arguments raised by Dingsheng, Zhongji, and the petitioners. We first note that we find unpersuasive Dingsheng's and Zhongji's assertion that Hulamin's financial data are inappropriately aggregated relative to that of Alcomet AD. As the petitioners have noted, the "headcount" methodology employed by Hulamin in the instant case is consistent with the allocation methodology employed by Commerce in past cases.[30] Moreover, in as much as such a methodology may assign more employees for tasks such as janitorial staff, grounds keeping, and repair, we find such a headcount allocation conservative in application in that it reassigns expenses which might otherwise be pulled into the materials, labor and energy (MLE) portion of the financial ratio calculation.[31]

We also find unpersuasive Dingsheng's additional challenges to line items in Hulamin's financial statements relating to "other materials" and "other direct costs" in the MLE denominator. We also agree with the petitioners that inclusion of these costs within MLE would serve only to remove costs that would otherwise be included in overhead.[32] Moreover, as in the preliminary determination, we again find that there is no evidence that inclusion of these expenses is distortive, since assigning such expenses to MLE removes expenses that would otherwise be assigned to overhead. We also note that in instances where certain expenses are excluded or written off, Commerce's practice is to include these expenses within SG&A.[33]

Further, while Dingsheng has challenged the allocation of R 365,000,000 as a freight item to materials, commissions, and SG&A expenses as distortive, we again find the allocation to be conservative in that it allocates to MLE expenses that would otherwise be included within SG&A. We find these expenses would reasonably be assigned to SG&A, rather than elsewhere, because they relate more to the broader operations of the company than to specific production activities. The freight item expense in question is a balance sheet item rather than a line item

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[29] *See* Memorandum, "Initiation of the Antidumping Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China," at Appendix VIII and Appendix X dated November 28, 2017 (*Aluminum Sheet Initiation*).

[30] *See* Petitioners Rebuttal Brief, at 4-5 citing *Citric Acid and Certain Salts from the People's Republic of China: Final Results of Antidumping Duty Administrative Review 2013-2014,* 80 77323 (December 14-2015) and accompanying Issues and Decision Memorandum at 39-40; and *Large Power Transformers from the Republic of Korea: Final Determination of Sales at Less Than Fair Value,* 77 FR 40857 (July 11, 2012) and accompanying Issues and Decision Memorandum at 62-63.

[31] *Id.* at 6.

[32] *Id*.

[33] *See, e.g.*, *Steel Wire Garment Hangers from the People's Republic of China: Final Results and Final Partial Rescission of Second Antidumping Duty Administrative Review*, 77 FR 12553 (March 1, 2012) and accompanying Issues and Decision Memorandum at 7-14.

from the balance sheet, and was, thus, properly excluded from the profit expense ratio calculation.[34] Finally, we agree with petitioners that use of Alcomet AD's Bulgarian financial statements would also raise questions concerning Alcomet AD's treatment of various inventory expenses and other elements of SG&A.[35] As the petitioners have noted, Alcomet's financial statements *inter alia,* contain notes with regards to the cost of materials, inventory accounts, administrative and commission components of SG&A which could result in significant reallocation of the financial ratios derived from the Alcomet financial statements.[36]

However, consistent with the analysis employed in the *Aluminum Sheet Initiation*, we have recalculated the Hulamin overhead, SG&A ratios and profit calculations on the record consistent with the methodology employed therein.[37] Based on the analysis employed in the *Aluminum Sheet Initiation*, we have removed certain non-itemized expenses in the calculation of cost of goods sold from MLE, since it is unclear that this element reflects Hulamin's direct production costs.[38] We have also removed a line item for valuation of derivative items relating to foreign exchange contracts and hedging from Hulamin's SG&A, since it is unclear that these expenses relate to Hulamin's period selling expenses.[39] Finally, with regard to certain reductions for retirement benefits, we have added this element back to Hulamin's profit since this item does not relate to Hulamin's current profit.[40] Based on this analysis, and consistent with the ratio analysis employed in the *Aluminum Sheet Initiation*, we have calculated revised ratios for overhead, SG&A, profit in this investigation.[41]

Regarding the use of South African GTA data versus Bulgarian GTA data, we continue to find that the record does not contain Bulgarian GTA data with which to value nitrogen and argon gases, and that the SVs suggested by Dingsheng for nitrogen and argon are based on third-country Indian data from the 1996 financial statements of Bhouruka Gases.[42] As a general rule, Commerce selects a surrogate country that is at the same level of economic development as that of the NME in question unless Commerce determines that none of the available countries are viable options because they either (a) are not significant producers of comparable merchandise, (b) do not provide sufficient reliable sources of publicly available surrogate value (SV) data, or (c) are not suitable for use based on other reasons.[43] Surrogate countries that are not at the level of economic development of the NME country, but still at a level of economic development comparable to the NME country, are selected only to the extent that data considerations

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[34] *See* Petitioners July 17, 2017 SV Letter at Exhibit ZA-7.
[35] *See* Petitioners July 31, 2017 SV letter at 22-23. The expenses in question concern treatment of a note to Alcomet AD' s valuation of inventories, subcomponents that comprise Alcomet AD's "other income", and three exclusions of line items involving SG&A.
[36] See Petitioner's July 31, 2017 Rebuttal Surrogate Value Submission at 22-23.
[37] See Aluminum Sheet Initiation at Appendix VIII and X.
[38] *See* Final Surrogate Value Memorandum.
[39] *Id*.
[40] *Id*.
[41] *Id.*
[42] *See* Zhongji's Case Brief, at 23, citing *Certain Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Critical Circumstances* in Part 75 FR 57449 (September 21, 2010).
[43] *See* Commerce Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (Policy Bulletin 04.1) available on Commerce's website at http://enforcement.trade.gov/policy/bull04-1.html.

outweigh the difference in levels of economic development.[44] India was not determined by Commerce in this investigation to be economically comparable to China, and no parties submitted information related to India regarding the selection of an appropriate surrogate country.[45] In addition, Commerce seeks to value all factors of production in a single surrogate country, pursuant to 19 CFR 351.408(c)(2).

Furthermore, Commerce considers contemporaneity as one of several factors in selecting SVs. Here, we note that the Indian SVs from the Bhouruka Gases financial statement suggested by Dingsheng are from 1996, which is more than 20 years prior to the POI. While Commerce may inflate certain data to be contemporaneous with the POI, we find that inflating SV data from such a long period before the POI (*i.e.*, more than 20 years) may be less reliable than more contemporaneous data. Because South African SVs are specific to the production input, and are more contemporaneous to the POI than are SVs derived from the Bhouruka Gases financial statements, we have continued to use South African SVs to value nitrogen and argon gases.

Zhongji argues that the Bulgarian labor data on the record are preferable to the South African labor data because the Bulgarian data are contemporaneous with the POI, while the South African data are from 2012. Although Commerce always attempts to value each FOP with contemporaneous SVs, in some prior cases Commerce has selected a labor value from the selected surrogate country regardless of there being other values on the record that may have been more contemporaneous to the POI or POR.[46] The South African labor data on this record reflect wages from the South African manufacturing sector which we continue to find an appropriate metric for valuing labor inputs in the aluminum industry.[47] Furthermore, we note that the non-contemporaneous labor data in this case are from four years prior to the POI. Thus, unlike the proposed 20-plus-year-old Indian surrogate data for nitrogen and argon, we find it reasonable to inflate these data given their relative contemporaneity to the POI. Based upon the foregoing, and consistent with the position we took in *Passenger Tires* and *Transfer Presses*, where Commerce used non-contemporaneous SV data to value labor, we continue to find South African data are an appropriate basis to value labor.

Dingsheng and Zhongji also argue that Bulgaria is a superior surrogate country as compared to South Africa because the eight-digit Bulgarian HTS data are inherently more specific to the respondents' manufacturing situation than are the six-digit South African data. First, we note that, unlike the situation presented in *Crystalline Silicon Photovoltaic Cells,* we disagree with the

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[44] *See* Letter to All Interested Parties, "Investigation of Certain Aluminum Foil from the People's Republic of China: Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information," dated May 24, 2017 (Surrogate Country Letter); *see also* Memoranda regarding surrogate country selection submitted by Zhongji, Dingsheng, and the petitioners on June 23, 2017.

[45] *See* Letter to All Interested Parties, "Investigation of Certain Aluminum Foil from the People's Republic of China: Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information," dated May 24, 2017 (Surrogate Country Letter).

[46] *See, e.g.*, *Antidumping Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Sales at Less Than Fair Value*, 81 FR 75032 (*Passenger Tires*); *see also Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 81 FR 75032 (October 28, 2016) (*Transfer Presses*).

[47] *See* Preliminary SV Memorandum at Attachment 7.

argument that in this case the underlying GTA values are overly broad or unrepresentative of the respondents' actual production experiences.[48] In *Crystalline Silicon Photovoltaic Cells,* Commerce noted, *inter alia*, a 40,000 percent difference between the AUVs of imports within a country, 10,000 percent differences for import AUVs between countries, and yearly AUV fluctuations of 4,000 percent.[49] In contrast to the situation presented in *Crystalline Silicon Photovoltaic Cells* and as discussed in further detail below, we find that South African GTA values do not vary to the degree noted in *Crystalline Silicon Photovoltaic Cells*, and reasonably reflect the value of aluminum production inputs in the instant investigation. Additionally, we note that Dingsheng's suggested Bulgarian SV for valuing aluminum sheet results in an averaging of three separate eight-digit size and gauge categories. Because this Bulgarian SV averages data from three different HTS categories representing various thicknesses of aluminum sheet, we find that the resulting SV, while presented as based on a more accurate 8-digit category, is no more specific than the Bulgarian 6-digit HTS category data.[50]

Moreover, we disagree with Dingsheng that the GTA data for foil stock is unrepresentative because it is based on only 165 metric tons of imports during the six-month POI. There is nothing that indicates the value of the South African GTA value for foil stock renders that value as unrepresentative of a world, market price for the production input.

With regard to the aluminum inputs of both Zhongji and Dingsheng, we find that record evidence fails to demonstrate that South African GTA values for foil stock and aluminum alloy sheet are aberrational when compared to Bulgarian GTA values for the comparable HTS subcategory or to the SVs of the all six countries that are listed on the Surrogate County List.[51] The South African CIF price for imports of aluminum alloy strip under HTS subheading 7606.12 is $2.86 per kilogram, which after adjustments to the South African HTS value for marine insurance and ocean freight is only 12.7 percent less than the average CIF price of $3.36 for all countries on the Surrogate Country List.[52]

Additionally, we disagree with the respondents' assertions that the fact that Bulgarian GTA data are reported on a CIF basis, whereas South African GTA data are reported on an FOB basis, renders Bulgarian data superior to South African data. Three countries on the Surrogate Country Check List maintain GTA data on a CIF basis.[53] Attempting to limit Commerce's selection of SV source countries to countries that report HTS data on a CIF basis could have the effect of unreasonably limiting the potential pool of SV source countries. Here, and as further explained

[48] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part*, 77 FR 63791 (October 17, 2012) and accompanying Issues and Decision Memorandum at 43 (*Crystalline Silicon Photovoltaic Cells*).
[49] *See* Petitioners Rebuttal Brief at 24, citing *Crystalline Silicon Photovoltaic Cells.*
[50] *See* Dingsheng's SV Submission, at 2 and Exhibit 1.
[51] The six countries listed on the Surrogate Country List are Mexico, South Africa, Brazil, Thailand, Romania and Specifically, Bulgaria. *See* SV Country List. At a six-digit level, inputs of sheet and strip of aluminum alloys are classified under South African HTS subcategory 7606.12 and within the Bulgarian subcategory 7606.12.92 (which includes the Bulgarian six -digit subcategory 7606.12). *See* Petitioners' July 17, 2017 SV Letter, at 2 and Exhibit ZA-1.
[52] *See* Petitioners' Rebuttal Brief, at 29.
[53] South Africa, Mexico, and Brazil maintain GTA data on a CIF basis.

in our response to Comment 2 and Comment 3**,** we have applied ocean freight and marine insurance values, which reasonably reflect the derivation of FOP values from South African CIF values. Moreover, we find unpersuasive Zhongji's argument that the Bulgarian SVs that Zhongji submitted are more specific to its production situation than are South African SVs. First, we note that Zhongji's preferred methodology results in an average of three Bulgarian HTS SVs, to which Zhongji then subsequently applied a conversion value from the London Metal Exchange.[54] Second, as previously indicated, comparison of the commensurate six-digit values for the six countries on the surrogate value country list does not indicate significantly different HTS values for the Bulgarian input than for the South African input.

Similarly, with regard to packing inputs, we continue to find that the South African data are reasonably specific to both respondents' packing inputs. Zhongji has asserted that Bulgarian SVs are more specific to the labels, wrap film, straps, iron sleeves, galvanized pipe, drying agents, steel pipes, two layer paperboard, wooden boxes, kraft paper, kraft paper tape, three layer paperboard, plastic sleeves, corrugated paper, five layer paperboard, pearl wool, and paper tubes based upon the eight digit HTS classification of Bulgarian data relative to the six digit classification of South African HTS data.[55] However, as the petitioners have noted, the packing materials maintained at the six digit level are universal under the six digit level and, therefore, "highly determinative for comparable products in comparable classification systems, whether in South Africa or the EU."[56] We therefore agree with petitioners that comparisons of the South African six digit HTS values to the Bulgarian eight digit HTS values fails to render the Bulgarian values more "specific" to respondent's production input or render the South African values "less specific," given the description and the nature of the packing inputs maintained within the South African and Bulgarian HTS data. We continue to find that the six digit South African values used in the *Preliminary Determination* reasonably reflect the value of the packing input based upon the description of the label, wrap film, strap, iron sleeve, galvanized pipe, drying agent, steel pipes, two layer paperboard, wooden boxes, kraft paper, kraft paper tape, three layer paperboard, plastic sleeve, corrugated paper, five layer paperboard, pearl wool, or paper tube HTS description maintained in the South African HTS data.[57] We also find that the although Zhongji asserts that the eight digit HTS categories are more specific, that is not conclusively established based on the record evidence, given the similarity of the descriptions of South African and Bulgarian GTA data for packing inputs.[58] This is in contrast to the fact, as noted above, that the South African GTA SVs include values for nitrogen and argon gases, two material inputs, which are not contained in the Bulgaraian GTA SVs.

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[54] See Zhongji July 17, 2017 SV submission at 2-4.
[55] *See* Zhongji's Case Brief, at 45-48.
[56] *See* Petitioners' Rebuttal Brief, at 32.
[57] *See* Preliminary SV Memorandum, at Attachment 2.
[58] *See* Petitioners' and Zhongji's SV Submissions. As an example of the minimal differentiation in specificity, welded pipe is described as "pipes, tubes and hollow profiles, welded, of circular cross section of iron or nonalloy," and "other tubes, pipes and hollow profiles… of iron or steel: other, welded, of circular cross-section, of iron or non-alloy steel of an external diameter not exceeding 168.3 millimeters," in the South African and Bulgarian data, respectively.

<u>Comment 2: International Freight</u>

Zhongji Comments[59]

- Data provided by Zhongji from Xeneta represents a more reliable source of ocean freight and marine insurance SV data than does information provided by the petitioners. The international freight data relied upon by Commerce in the *Preliminary Results* is not appropriate because it reflects shipments from UAE and Qatar to South Africa.
- The Xeneta data are superior because it reflects a statistical sample of actual freight charges and is supported by record evidence, whereas the SV proposed by the petitioners represent freight quotes and is not supported by information on the record.

Dingsheng Comments[60]

- Commerce provided no source data supporting the ocean freight data used in its *Preliminary Determination*.
- Commerce should use Descartes data to value ocean freight, which Dingsheng provided in its first SV submission.

The Petitioners' Rebuttal Comments[61]

- Commerce can corroborate the Maersk data used to calculate ocean freight by accessing the Maersk web site.
- As an alternative to Maersk data, the best available source for valuing ocean freight is the data provided in the petition.
- Descartes data are not contemporaneous with the POI.
- Xeneta data are not publicly available. Commerce's practice is, where possible, to base SVs on publicly available data.

Commerce's Position: We agree with Dingsheng and, in part, with Zhongji, and we have relied on information on the record from Descartes to value ocean freight for the final determination. Upon further review of the record, we agree that the SV for ocean freight utilized in the *Preliminary Determination* was not fully supported by information on the record. Specifically, although the petitioners' submission contained a suggested SV, it did not contain any supporting documentation for that value. Therefore, we have revisited our selection of an ocean freight SV, based on the information available on the record, which includes SV data from Descartes and Xeneta.

We find that the Xeneta ocean freight data are proprietary in nature.[62] As noted above, when comparing SVs, it is Commerce's preference to utilize product-specific, contemporaneous, publicly available SV information that is free of taxes and import duties and represents broad market averages for each of the production inputs utilized. Therefore, because the Xeneta data are not publicly available, we have not relied on these data for the final determination.

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[59] *See* Zhongji Case Brief at 37-41, 49-51.
[60] *See* Dingsheng Case Brief at 64-66.
[61] *See* Petitioners Rebuttal Brief at 56-59, 66.
[62] *See* Zhongji's SV Submission, at Exhibit SV-8.

We find that the Descartes ocean freight quotes represent the best information available on the record with which to value ocean freight. These data are publicly available information and represent ocean freight costs between various locations in China and the west coast of the United States. Moreover, the information from Descartes is free of taxes and import duties and is the best available information on the record with regard to product specificity, while also being nearly contemporaneous with the POI.[63] For the final results, we have, therefore, relied on information from Descartes to value ocean freight, inflated to reflect POI values.[64]

Comment 3: Marine Insurance

Zhongji Comments[65]

- Commerce relied on unsupported data in the *Preliminary Determination* to value marine insurance. In so doing, it selected an insurance rate for "steel sheets, coils, and bars," and applied this value to all inputs, including packing materials.
- For the final determination, Commerce should rely on the marine insurance SV provided by Zhongji. If Commerce continues to rely on the same source of data used in the *Preliminary Determination*, it should use the rate applicable to the "general merchandise" category, or an average of the available data, rather than the rate for "steel sheets, coils, and bars."

Dingsheng Comments[66]

- The marine insurance data relied upon in the *Preliminary Determination* is unsupported by record evidence. Commerce did not include any source documentation or calculation to support the marine insurance value; instead, it simply used the data proposed by the petitioners.
- Because the record contains no source data pertaining to the marine insurance value used in the *Preliminary Determination*, Commerce should reject these data in the final determination, and instead use the marine insurance value proposed by Dingsheng.

Petitioners Rebuttal Comments[67]

- The source data for the marine insurance value used in the *Preliminary Determination* is on the record in the petitioners' July 17, 2017 SV comments.
- The marine insurance data provided by the petitioners is for "steel sheets, coils, and bars," which is the most specific category available. Neither respondent has pointed to any record evidence to undermine the specificity of the data with respect to aluminum foil, which is a metal product that can be easily damaged in transit.
- Commerce should continue valuing marine insurance for the final determination using the P.A.F. Insurance rate for "steel sheets, coils, and bars."

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[63] Information from Descartes is from 2014-2015 and represents the commodity categories "Valves and Valve Parts, Brass, Iron, & Copper, N.O.S.," and "Brassware and Copperware, N.O.S." *See* Dingsheng's SV Submission, at Exhibit 7.
[64] *See* Final Surrogate Value Memorandum.
[65] *See* Zhongji Case Brief at 41-42.
[66] *See* Dingsheng Case Brief at 64-66.
[67] *See* Petitioners Rebuttal Brief at 59, 66.

Commerce's Position: For the final determination, we have continued to value marine insurance using data from P.A.F. Insurance. Although the respondents have argued that the marine insurance SV used in the *Preliminary Determination* is not on the record of this proceeding, we note that the data are on the record in Exhibit ZA-1 of the petitioners' July 17, 2017 SV submission.[68] We find that we erroneously attributed this data to Maersk in the *Preliminary Determination*, but now acknowledge that the data in question is from P.A.F. Insurance. However, we agree with Zhongji's contention that Commerce should not apply the insurance rate quote for "steel sheets, coils, and bars" to all inputs. For the final determination, we have applied the rate for "general merchandise" from the P.A.F. Insurance document to value inputs.

Comment 4: Value Added Tax Calculation

Zhongji Comments[69]

- Commerce incorrectly removed the irrecoverable value added tax (VAT) from U.S. price, when this adjustment should instead be applied to the sale between Jiangsu Zhongji and Zhongji HK.

Dingsheng Comments[70]

- Commerce's reduction of U.S. price by the amount of irrecoverable VAT is contrary to the statute and unsupported by record evidence.
- Based on the language of the statute, the tax, duty, or charge must be imposed on the exportation of the subject merchandise. The record shows that there is no VAT imposed on the subject merchandise upon export from China. The only VAT Dingsheng pays with respect to export sales is the VAT paid for domestic purchases of inputs used to produce aluminum foil.
- Pursuant to the statute, Commerce is authorized to make a deduction to U.S. price for the <u>amount</u> of any export tax, duty, or other charge imposed by the exporting country on the exportation of subject merchandise to the United States. Commerce's preliminary computation of the adjustment was based on the difference between the VAT <u>rates</u> paid and refunded, which is different than the amount paid.
- If Commerce continues to make a VAT adjustment, it should calculate the adjustment as a percentage of the FOB price (sales field VATBASUSDU), rather than gross unit price.

The Petitioners' Rebuttal Comments:[71]

- With respect to Dingsheng and Zhongji's arguments that Commerce's preliminary VAT adjustment methodology was incorrect or unreasonable, Commerce followed its well-established practice for adjusting respondents' U.S. price for irrecoverable VAT, and should continue to do so in the final determination.

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[68] *See* Petitioners' SV Submission, at Exhibit ZA-1. As noted by the petitioners, the chart which outlines the rates is located on page 66 of the document; *see also* Petitioners' Rebuttal Brief, at 59.
[69] *See* Zhongji Case Brief at 51-52.
[70] *See* Dingsheng Case Brief at 23-34.
[71] *See* Petitioners Rebuttal Brief at 43-47.

- The CIT has repeatedly rejected Dingsheng's argument that VAT is not imposed on the exportation of subject merchandise. Accordingly, Commerce's interpretation of the statute is permissible.

Commerce Position: For the reasons explained below, we have continued to make an irrecoverable VAT adjustment for the difference between the standard VAT levy of 17 percent, and the rebate rate for merchandise under consideration of 15 percent, for Dingsheng and Zhongji.

Pursuant to section 772(c)(1)(B) of the Act, the price used to establish export price (EP) and constructed export price (CEP) shall be reduced by "the amount, if included in such price, of any export tax, duty, or other charge imposed by the exporting country on the exportation of the subject merchandise to the United States, other than an export tax, duty, or other charge described in section 771(6)(C)." Pursuant to 19 CFR 351.401(c), such price adjustment must be "reasonably attributable to the subject merchandise."

As explained in the Preliminary Decision Memorandum, Commerce announced a change in methodology in 2012 with respect to the calculation of EP and CEP to include an adjustment for irrecoverable VAT in accordance with section 772(c)(2)(B) of the Act.[72] When an NME government imposes an export tax, duty, or other charge on subject merchandise, or on inputs used to produce subject merchandise, from which the respondent was not exempted, Commerce will reduce the respondent's EP and CEP accordingly, by the amount of the tax, duty or charge paid, but not rebated.[73]

In a typical VAT system, companies do not incur any VAT expense for exports. Rather, upon export, they receive a full rebate of the VAT paid on inputs used in the production of exports ("input VAT"), and, in the case of domestic sales, the company can credit the VAT they paid on input purchases for those sales against the VAT they collect from customers.[74] That stands in contrast to China's VAT regime, where some portion of the input VAT that a company pays on inputs used in the production of exports is not refunded.[75] This unrefunded amount differs from the amount refunded on domestic sales and, thus, amounts to a tax, duty, or other charge imposed on exports that is not imposed on domestic sales. Where the irrecoverable VAT is a fixed percentage of U.S. price, Commerce explained in the *Methodological Change* that the final step in arriving at a tax-neutral dumping comparison is to reduce the U.S. price downward by this same percentage.[76]

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[72] *See Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings*, 77 FR 36481 (June 19, 2012) (*Methodological Change*).
[73] *Id.*; *see also Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 4875 (January 30, 2014), and accompanying Issues and Decision Memorandum at Comment 5.A.
[74] *See*, *e.g.*, *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 18733 (April 21, 2017) (*OTR Tires Final 2014-15*) and accompanying Issues and Decision Memorandum at Comment 8; *see also Methodological Change*, 77 FR at 36483.
[75] *Id.*
[76] *See Methodological Change*, 77 FR at 36483.

Irrecoverable VAT, as defined in Chinese law, is a net VAT burden that arises solely from, and is specific to, exports.[77] It is VAT paid on inputs and raw materials used in the production of exports that is non-refundable and, therefore, a cost.[78] Irrecoverable VAT is, therefore, an "export tax, duty, or other charge imposed" on exports of the subject merchandise to the United States. The statute does not define the terms "export tax, duty, or other charge imposed" on the exportation of subject merchandise. We find it reasonable to interpret these terms as encompassing irrecoverable VAT because the irrecoverable VAT is a cost that arises as the result of export sales.[79] It is set forth in Chinese law and, therefore, can be considered to be "imposed" by the exporting country on the exportation of subject merchandise. Furthermore, an adjustment for irrecoverable VAT achieves what is called for under section 772(c)(2)(B) of the Act, as it reduces the gross U.S. price charged to the customer to a net price received. This deduction is consistent with our longstanding policy, which is consistent with the intent of the statute, *i.e.*, that dumping margin calculations be tax neutral.[80]

Commerce's methodology, as applied in this investigation, consists of two basic steps: (1) determining the irrecoverable VAT on subject merchandise, and (2) reducing U.S. price by the amount determined in step one.[81] As explained in the Preliminary Decision Memorandum, information placed on the record of this investigation by Dingsheng and Zhongji indicates that the standard VAT levy is 17 percent and the rebate rate for merchandise under consideration is 15 percent.[82] Accordingly, in the *Preliminary Determination*, we removed from U.S. price the amount calculated based on the difference between those rates (*i.e.*, 2 percent) applied to the export sales value.[83]

We disagree with Dingsheng's claim that we do not have the statutory authority to adjust for irrecoverable VAT, and that our methodology unlawfully interprets section 772(c)(2)(B) of the Act. As stated above, section 772(c)(2)(B) of the Act authorizes Commerce to deduct from EP or CEP the amount, if included in the price, of any "export tax, duty, or other charge imposed by the exporting country on the exportation" of the subject merchandise. Moreover, in *Fushun Jinly*,[84] the Court disagreed that the primary purpose of the Act's NME methodology provisions is necessarily to disregard prices and costs incurred in the production and sale of the subject merchandise that were incurred in the NME country.[85] In addition, the Court observed that, although NMEs are specifically addressed in the Act's normal value provisions,[86] NMEs are not

[77] *See Small Diameter Graphite Electrodes from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 57508 (September 25, 2014) and accompanying Issues and Decision Memorandum at Comment 7.
[78] *Id.*
[79] *See*, *e.g.*, *OTR Tires Final 2014-15* and accompanying Issues and Decision Memorandum at Comment 8.
[80] *See Methodological Change*, 77 FR at 36483; *see also Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27369 (May 19, 1997).
[81] *See* Preliminary Decision Memorandum at 22-23.
[82] *Id.*
[83] *Id.*
[84] *See Fushun Jinly Petrochemical Carbon Co., Ltd. v. United States*, Slip Op. 16-25, Ct. No. 14-00287 (CIT 2016) (*Fushun Jinly*).
[85] *Id.* at 24.
[86] *Id.* at 25 (citing section 773(c)(1)(B) of the Act).

named in the Act's U.S. price provisions.[87] Furthermore, "with regard to U.S. price, neither the governing statute nor its legislative history defines 'export tax, duty or other charge imposed' for the purpose of adjusting U.S. price."[88] The Court continued:

> Commerce reconsidered its interpretation and concluded that "export tax, duty or other charge imposed" includes VAT that is not fully refunded upon exportation...Such a methodological update, achieved through notice and comment, compels Chevron deference. On this issue, the plaintiffs do not persuade that deduction of the portion of {China's} VAT that was unrefunded or irrecoverable upon export of their subject merchandise to the United States was contrary to law and not supported by substantial evidence.[89]

Therefore, as explained above, to the extent that the amount of VAT paid on inputs used to produce aluminum foil is not refunded upon exportation of the finished product, section 772(c)(2)(B) supports our adjustment for irrecoverable VAT. Additionally, the term "imposed," as used in the Act, does not require a positive action, nor does China's status as an NME preclude Commerce from making irrecoverable VAT adjustments.

We also disagree with Zhongji's argument that we should apply the adjustment for irrecoverable VAT to the sale between Jiangsu Zhongji and Zhongji HK. As explained above, where the irrecoverable VAT is a fixed percentage of U.S. price, in order to arrive at a tax-neutral dumping comparison, Commerce reduces the U.S. price downward by this same percentage.[90] In the *Preliminary Determination*, we reduced Zhongji's U.S. price by the amount of the VAT adjustment, consistent with our practice. Therefore, we made no change to this calculation for the final determination.

However, with respect to Dingsheng's argument that Commerce should use Dingsheng's reported transaction-specific FOB price for each sale in its U.S. sales database (*i.e.*, field VATBASUSDU) for purposes of calculating the VAT adjustment, we agree. Commerce has previously stated that irrecoverable VAT is defined as (1) the free-on-board (FOB) value of the exported good, applied to the difference between (2) the standard VAT levy rate and (3) the VAT rebate applicable to the exported goods.[91] Because Dingsheng reported transaction-specific FOB values for its sales, we have revised its VAT adjustment so that the amount of the deduction from U.S. price is based on the FOB value of the sale.[92]

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[87] *Id.*
[88] *Id.*
[89] *Id.*
[90] *See Methodological Change*, 77 FR at 36483.
[91] *See*, *e.g.*, *Final Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Rail Tie Wire from the People's Republic of China*, 79 FR 25572 (May 5, 2014) and accompanying Issues and Decision Memorandum at Comment 1.
[92] *See* Dingsheng Final Analysis Memorandum.

Comment 5: Deferral of Preliminary Determination and Deadline for Final Determination

Zhongji Comments[93]

- AD and CVD proceedings are governed by mandatory statutory timetables, which state that the preliminary determination must be made within 140 days of the date of initiation of the investigation, which may be extended until no later than 190 days after the date of initiation.
- The preliminary determination in this case was due October 4, 2017, and was not issued until after that date.
- All continued proceedings in this case after the statutory deadline for the preliminary determination are null and void, and application or collection of duties pursuant to that determination are *ultra vires*.
- Commerce stated that no compelling reasons exist for the denial of parties' requests to fully postpone the final determination, but yet declined to do so, in violation of statutory language. Therefore, Commerce should fully postpone the final determination until March 17, 2018, which is 135 days from the publication of the *Preliminary Determination*.

The Petitioners' Rebuttal Comments[94]

- Commerce should reject Zhongji's assertion that Commerce lost its authority to impose antidumping duties as a result of its decision to defer the *Preliminary Determination*.
- Zhongji has identified no legal basis in support of its argument that Commerce's proceedings in this investigation are null and void after October 4, 2017. The CIT has previously rejected similar arguments in *Valeo North America*.[95]
- Zhongji has not identified any manner in which it was prejudiced by Commerce's deferral of its *Preliminary Determination.*
- The statutory language authorizes Commerce to extend the deadline for issuing a final determination "until not later than the 135th day" after the publication of the *Preliminary Determination*, but does not obligate Commerce to extend the deadline to the entire 135 days.

Commerce's Position: Commerce initiated the less-than-fair-value investigation of aluminum foil from China on March 30, 2017.[96] The *Initiation Notice* stated that Commerce, in accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), would issue its preliminary determination no later than 140 days after the date of initiation, unless postponed.[97] On August 1, 2017, Commerce postponed the deadline for the preliminary determination by 50 days, until

[93] *See* Zhongji's Case Brief at 52-55.
[94] *See* Petitioners' Rebuttal Brief at 60-63.
[95] *Id.* at 60-61, citing *Valeo North America, Inc., et al. v. United States*, Court No. 17-00264, Slip Op. 17-155 (CIT November 20, 2017) (*Valeo North America*), at 2.
[96] *See Certain Aluminum Foil from the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation*, 82 FR 15691 (March 30, 2017) (*Initiation Notice*).
[97] *See Initiation Notice*, 82 FR at 15695.

October 4, 2017, in accordance with section 733(c)(1)(A) of the Act and 19 CFR 205(b)(2).[98] On October 4, 2017, Commerce issued a notice deferring the preliminary determination, and stating that it expected to issue the determination by November 30, 2017.[99] Commerce made its affirmative preliminary determination on October 26, 2017, which published in the *Federal Register* on November 2, 2017.[100]

We disagree with Zhongji's arguments with respect to Commerce's deferral of the *Preliminary Determination* in this investigation. As noted by the petitioners, the CIT addressed similar arguments in *Valeo North America*. In that case, the plaintiffs alleged that Commerce exceeded its statutory authority and acted contrary to law by publishing the preliminary determination more than 190 days after the initiation of the investigation.[101] The plaintiffs asked that the Court invalidate the preliminary determination, such that the preliminary determination is deemed negative.[102] The Court in that case stated that "{a}lthough Plaintiffs may state that the procedural defect on which they rely here renders the proceeding itself *ultra vires*, they are not claiming, nor could they claim, that the proceeding should terminate as a result of the alleged defect."[103] With respect to the argument in that case that a preliminary determination should automatically be negative because it was issued outside of the statutorily prescribed time frame, the Court noted that "even if Plaintiffs were correct, a negative preliminary determination by Commerce does not stop the proceedings."[104]

We find that Commerce's deferral of the *Preliminary Determination* in the instant case does not invalidate the determination, nor does it require that Commerce's *Preliminary Determination* be deemed negative. Zhongji cited no cases in which Commerce's authority to issue its determination was invalidated as a result of deferring a deadline. While the instant case is an investigation, rather than an administrative review, we note that the CIT held, prior to the Uruguay Round Agreements Act (URAA), that the statutory deadlines are directory and not mandatory "because Congress did not provide for a prohibition or adverse consequence to be imposed for failing to meet the statutory deadline."[105] Although the subsequent amendments to section 751 of the Act provide additional detail regarding the timeline for completion of administrative reviews, these amendments did not include any prohibition or adverse consequence to be imposed for failing to meet statutory deadlines for preliminary results.[106]

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[98] *See Certain Aluminum Foil from the People's Republic of China: Postponement of Preliminary Determination of the Less-Than-Fair-Value Investigation*, 82 FR 35753 (August 1, 2017).
[99] *See Certain Aluminum Foil from the People's Republic of China: Deferral of Preliminary Determination of the Less-Than-Fair-Value Investigation*, 82 FR 47481 (October 12, 2018).
[100] *See Preliminary Determination.*
[101] *See Valeo North America*, at 7.
[102] *Id.*
[103] *Id.* at 10-11.
[104] *Id.*
[105] *See Koyo Seiko Co. v United States*, 796 F. Supp. 517 (CIT 1992), *reh. den.* 806 F. Supp. 1008 (CIT 1992), *appeal after remand, dism'd on other grounds*, 819 F. Supp. 1093 (CIT 1993) (noting that "[t]he Court is 'loathe to affirm a determination that might be based on a questionable record'"), *aff'd in part and rev'd in part on other grounds, remanded*, 20 F.3d 1160 (Fed. Cir. 1994).
[106] *See* URAA, Statement of Administrative Action, H.R. 5110 (H.R. Doc. No. 103-316), reprinted in 1994 U.S.C.C.A.N 4040 ("SAA") at 875 ("The Administration is aware of prior complaints regarding delays in the completion of administrative reviews and the liquidation of entries, and intends to do its utmost to ensure that

The issue before Commerce is whether Zhongji had sufficient notice of Commerce's *Preliminary Determination* and opportunity to comment fully on that *Preliminary Determination*. The record reflects that it did have that notice and did have that opportunity. It filed a case brief and fully provided its legal and factual arguments. Accordingly, we do not find that Zhongji was unfairly prejudiced by Commerce's issuance of the *Preliminary Determination* on October 26, 2017, and its determination to issue its final determination within the statutory deadlines.

We also disagree with Zhongji with respect to Commerce's deadline for issuing the final determination in this investigation. Section 735(a)(1) of the Act states that Commerce will make a final determination in an antidumping duty investigation "within 75 days after the date of its preliminary determination. Section 735(a)(2) of the Act states that Commerce "may postpone making the final determination under paragraph (1) until not later than the 135th day after the date on which it published notice of its preliminary determination…". Section 351.210(b)(2) of Commerce's regulations states that "{t}he deadline for a final determination under section 705(a)(1) or section 735(a)(1) of the Act will be… In an antidumping investigation, not later than 135 days after the date of publication of the preliminary determination if the Secretary postpones the final determination."[107] The February 22, 2018,[108] deadline set by Commerce for issuing a final determination in this investigation falls within the 135-day period stipulated in Section 735(a) of the Act and 19 CFR 351.210(b)(2). Because both the Act and Commerce's regulations state that the deadline must be "not later than" the 135th day after publication of the preliminary determination, we find that a shorter time period is permitted by the statute. Therefore, we find that Commerce has not denied any party's request for postponement of the final determination but, rather, has determined to postpone the final determination for a period less than the full amount of time allowable under Section 735(a) of the Act and 19 CFR 351.210(b)(2).

Comment 6: Ministerial Errors

Dingsheng Comments:[109]

- Commerce erred in its SAS programming language by including argon in the calculation twice.
- The construction of the SV for welded pipe incorrectly omits truck freight.

No other party commented on this issue.

Commerce and Customs are able to comply with the deadlines established by the bill. At the same time, however, it is not the Administration's intent to sacrifice accuracy of results and fairness to the parties involved for the sake of speed."); *see also* H. Rep. No. 103-826 at 54-55 (explaining that deadlines may be extended as specified in the amended statute); *accord* S. Rep. No. 103-412 at 42-43*; Husqvarna Construction Products North America v. United States*, Court No. 12-00205, Slip Op. 12-150 (CIT December 6, 2012) (citing *Hitachi Home Electronics, Inc. v. United States*, 661 F.3d 1343, 1347 (Fed. Cir. 2011) for the concept that the statutory deadlines may be deferred under certain circumstances).

[107] *See* 19 CFR 351.210(b)(2).

[108] This deadline was extended to February 26, 2018 as a result of the tolling of deadlines for the January 20-22 closure of the Federal Government.

[109] *See* Dingsheng's Case Brief, at 9-10.

Commerce Position: We agree with Dingsheng that, in the buildup for the direct material inputs used in the SAS language for the *Preliminary Determination*, the SV for argon was inadvertently included twice. Additionally, we also agree that the SV for welded pipe in the *Preliminary Determination* omitted the truck freight component. We have revised the programming to correct these errors for the final determination.[110]

B. Dingsheng-Specific Issues

Comment 7: Affiliation and Collapsing Status of Liansheng and an Upstream Producer

Dingsheng Comments[111]

- Record evidence does not support treating Liansheng and Dingsheng as a single entity because Liansheng cannot and does not produce subject merchandise. Furthermore, Dingsheng's purchases of aluminum alloy strip from Liansheng are not significant enough to justify including a value for Liansheng's FOPs in the final determination.
- Commerce did not find any upstream suppliers affiliated with Dingsheng. As such, Commerce should adhere to its practice of valuing only FOPs of affiliated input suppliers which are collapsed as a single entity with the producer of subject merchandise.

The Petitioners' Rebuttal Comments[112]

- The statute permits Commerce to identify the FOPs that are utilized in production of the subject merchandise and does not limit these factors only to downstream producers.
- Liansheng and Dingsheng are affiliated and have production facilities for similar or identical merchandise; therefore, Commerce's preliminary decision to collapse Liansheng with Dingsheng was correct. Dingsheng's argument concerning the quantity of aluminum alloy strip purchased from Liansheng is incorrect.
- Liansheng and its upstream producer, Company A,[113] are affiliated. Because Commerce was precluded from verifying information related to the collapsing criteria, Commerce should draw adverse inferences with respect to the remaining criteria for collapsing and find Company A to be a member of the Dingsheng entity.

Commerce Position: In the *Preliminary Determination*, we determined that Liansheng and Dingsheng should be treated as a single entity because Liansheng has production facilities for similar or identical products, and a significant potential for manipulation of price or production exists, based on common ownership, shared managers and/or board members, and intertwined operations.[114] For the reasons explained below, we continue to find Liansheng to be a member of the Dingsheng entity. In addition, we have revised our preliminary affiliation determination to include Company A as an affiliate of Dingsheng, and have continued to use FOP information from Liansheng and Company A in the margin calculation for Dingsheng.[115]

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[110] *See* Dingsheng Final Analysis Memorandum.
[111] *See* Dingsheng's Case Brief, at 11-21.
[112] *See* Petitioners' Rebuttal Brief, at 48-55.
[113] Because the name of this company is business proprietary, we refer to this company as "Company A" for purposes of this memorandum.
[114] *See* Preliminary Decision Memorandum, at 17-18.
[115] *See* Dingsheng Final Affiliation and Collapsing Memorandum, dated concurrently with this memorandum.

Section 771(33) of the Act provides that the following persons shall be considered to be "affiliated" or "affiliated persons":

> (A) Members of a family, including brothers and sisters (whether by the whole or halfblood), spouse, ancestors, and lineal descendants;
> (B) Any officer or director of an organization and such organization;
> (C) Partners;
> (D) Employer and employee;
> (E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization;
> (F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; or,
> (G) Any person who controls any other person and such other person.

The Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreement Act states the following:

> The traditional focus on control through stock ownership fails to address adequately modern business arrangements, which often find one firm 'operationally in a position to exercise restraint or direction' over another in the absence of an equity relationship. A company may be in a position to exercise restraint or direction, for example, through corporate or family groupings, franchise or joint venture agreements, debt financing, or close supplier relationships in which the supplier or buyer becomes reliant upon the other.[116]

Section 351.102(b)(3) of Commerce's regulations defines affiliated persons and affiliated parties as having the same meaning as in section 771(33) of the Act. In determining whether control over another person exists, within the meaning of section 771(33) of the Act, Commerce considers the following factors, among others: corporate or family groupings; franchise or joint venture agreements; debt financing; and close supplier relationships. The regulation directs Commerce not to find that control exists on the basis of these factors unless the relationship has "the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product." The regulation also directs Commerce to consider the temporal aspect of a relationship in determining whether control exists; normally, temporary circumstances will not suffice as evidence of control.

19 CFR 351.401(f), which outlines the criteria for treating affiliated producers as a single entity for purposes of AD proceedings, states the following:

> (1) In general. In an antidumping proceeding under this part, the Secretary will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that

[116] *See* SAA, H.R. Doc. No. 316, Vol. 1, 103d Cong., 2d Sess. (1994) at 838.

> would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production.
> (2) Significant potential for manipulation, in identifying a significant potential for the manipulation of price or production, the factors the Secretary may consider include:
> (i) The level of common ownership;
> (ii) The extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and
> (iii) Whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.[117]

We disagree with Dingsheng's argument that Dingsheng and Liansheng should not be treated as a single entity. While it acknowledges that Liansheng and Dingsheng are affiliated,[118] Dingsheng argues that the record does not support treating Liansheng and Dingsheng as a single entity because Liansheng is not a producer of subject merchandise. However, 19 CFR 351.401(f) states that, among other criteria, two or more affiliated producers will be treated as a single entity if they have "production facilities for similar or identical products." Accordingly, this collapsing criterion is not limited only to producers of subject merchandise. Commerce found in the *Preliminary Determination* that "Jiangsu Dingsheng, Teemful, Five Star, and Liansheng have production facilities for similar or identical products that would not require substantial retooling of their facilities in order to restructure manufacturing priorities."[119] Specifically, with respect to Liansheng, the record shows that Liansheng produces aluminum alloy strip, which is a rolled product of the same chemical composition, but slightly thicker than the final product, and which is the direct material input in the production of subject merchandise.[120] Because of the similarities in chemical composition and production methods of aluminum alloy strip and aluminum foil, as well as the criteria outlined in the preliminary affiliation and collapsing memorandum, we continue to find aluminum alloy strip and aluminum foil to be similar products, such that Liansheng's production facility would not require substantial retooling in order to restructure manufacturing priorities. Commerce is not limited in its collapsing determination to companies which produce only identical merchandise, and because Commerce found Liansheng to be a part of the Dingsheng entity partially on the basis of Liansheng's production of similar merchandise, we continue to find Liansheng to be a part of the Dingsheng entity.

We find similarly unavailing Dingsheng's argument that the quantity of aluminum alloy strip purchased by Dingsheng from Liansheng is insignificant, rendering it unnecessary to value the

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[117] *See* 19 CFR 351.401(f).
[118] *See* Dingsheng's Section A Response, at 1.
[119] *See* Memorandum, "Dingsheng Affiliation and Collapsing Status," dated October 26, 2017.
[120] *See* Dingsheng's Section A Response, at A-21. HTS numbers identified in SV submissions of both Dingsheng and the petitioners identify aluminum alloy strip gauge ranges beginning at 2 millimeters, or just outside the endpoint for the scope of this investigation. *See* Dingsheng's Surrogate Value Comments, at Exhibit 1; *see also* Petitioners' Surrogate Value Comments, at the Surrogate Value Summary section.

FOPs of Liansheng. Because Liansheng acted as both a producer and toller of aluminum alloy strip, absent inclusion of Liansheng's FOPs, Dingsheng's calculation would understate the quantity of aluminum alloy strip purchased from Liansheng.[121] Moreover, Commerce does not utilize the quantity of inputs provided by an affiliate as a criterion for determining whether to utilize FOP information from an upstream supplier.[122]

With regard to the petitioners' argument that Commerce should find the upstream producer, Company A, to be affiliated with Dingsheng, we agree. Under Section 771(33)(F) of the Act, Commerce considers "{t}wo or more persons directly or indirectly controlling, controlled by, or under common control with, any person" to be affiliated. Evidence on the record shows that Company A exhibits common control of an affiliate within the Dingsheng entity, including common ownership of the entity as well as overlap of members of the board of directors of these companies.[123] In light of this record evidence, we have determined that it is appropriate to revise our decision from the *Preliminary Determination* regarding entities affiliated with Dingsheng to include this upstream supplier, Company A.[124]

Finally, we agree with the petitioners' argument that Commerce is not limited to utilizing FOPs from collapsed entities. 19 CFR 351.408 makes no mention of utilizing only FOPs from collapsed entities when calculating normal value in nonmarket economy countries. Thus, we agree with the petitioners that the plain language of the statute permits Commerce to identify the FOPs utilized in producing the final product, and does not limit those factors to downstream producers. Furthermore, we disagree with Dingsheng's argument that it has not been Commerce's practice to value the FOPs of an affiliate input supplier unless that affiliate is collapsed with the producer of subject merchandise. In *Small Diameter Graphite Electrodes*, Commerce utilized the FOP data from both affiliated and unaffiliated upstream suppliers in calculating normal value.[125] Consistent with Commerce's position in *Small Diameter Graphite Electrodes*, we have utilized the FOP information from Company A, an affiliated upstream supplier, in this case. Therefore, for the final determination, we have continued to utilize the FOP information provided for both Liansheng and the upstream producer, Company A, in calculating normal value for Dingsheng.

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[121] *See* Dingsheng's Case Brief, at 20; *see also* Dingsheng's Section A Response, at A-21.
[122] *See* l9 CFR 351.401(f)(2).
[123] *See* Letter, "Dingsheng's Supplemental Response," dated August 28, 2017, at 3; *see also* Dingsheng's Supplemental Section A Response, dated July 17, 2017, at 1.
[124] *See* Dingsheng Final Affiliation and Collapsing Memorandum.
[125] *See Small Diameter Graphite Electrodes from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013,* 79 FR 57508 (September 25, 2014), and accompanying Issues and Decision Memorandum, at Comment 6.

Comment 8: Application of Partial Adverse Facts Available (AFA) for Dingsheng

The Petitioners' Argument[126]

- Because Commerce officials were prevented from verifying information provided by Company A[127] which was used in the calculation of Dingsheng's antidumping margin, Commerce should rely on partial AFA to value the FOPs which could not be verified.
- Commerce should apply the single highest reported factor-specific consumption rate to all factors that were provided, in whole or in part, by Company A.
- Alternatively, if Commerce chooses to apply an adverse inference only to inputs fully supplied by Company A, Commerce should also apply AFA proportionally to shared FOPs obtained from Liansheng using materials supplied by Company A.

Dingsheng's Rebuttal[128]

- Commerce must reject the petitioners' assertion that partial application of AFA is appropriate.
- In its verification agenda, Commerce did not request to verify the FOPs of Company A. Commerce also was not prevented from verifying Company A's FOPs, but rather Dingsheng was unable to arrange a tour of Company A's facilities on short notice.
- Valuation of Company A's FOPs should be deemed irrelevant as Commerce should not be utilizing the FOPs of non-collapsed entities in the final determination.

Commerce Position: We agree with the petitioners that partial AFA should be applied to Dingsheng. Such an application of AFA is warranted because Company A was located adjacent to Liansheng, Liansheng purchased inputs and energy from Company A, Liansheng and this company have shared members of their individual Boards of Directors, and yet, when Commerce requested an opportunity to visit and verify information from Company A, the agency's request was not granted. Accordingly, we find that Dingsheng failed to provide the necessary information upon request, and did not act to the best of its ability in providing access to verify Company A's information.

Section 776(a)(1) and (2) of the Act provides that, subject to section 782(d) of the Act, Commerce shall apply "facts otherwise available" if (1) necessary information is not on the record or (2) 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)(l) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Section 776(b) of the Act further provides that Commerce may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

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[126] *See* Petitioners' Case Brief, at 2-9.

[127] Because the identity of Dingsheng's upstream supplier was designated as business proprietary information by Dingsheng, we refer to this company as "Company A" for purposes of this memorandum. *See* Dingsheng Final Analysis Memorandum for additional detail.

[128] *See* Dingsheng's Rebuttal Brief, at 1-8.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the antidumping and countervailing duty law, including amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.[129] The amendments to section 776 the Act are applicable to all determinations made on or after August 6, 2015 and, therefore, apply to this administrative review.[130]

Section 776(b) of the Act provides that Commerce may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the AD investigation, a previous administrative review under section 751 of the Act or a determination under section 753 of the Act, or other information placed on the record.[131] The SAA explains that Commerce may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[132] Further, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.[133]

Section 776(c) of the Act provides that, in general, when Commerce relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.[134] Secondary information is defined as information derived from the petition that gave rise to the investigation, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.[135]

In the *Preliminary Determination*, we preliminarily found the following companies to be affiliated and collapsed as a single entity with Dingsheng: Jiangsu Dingsheng, Dingsheng IE, Dingsheng HK, Liansheng, Teemful, Five Star, and Walson. We did not include Company A in the preliminary affiliation or collapsing determination because Dingsheng alleged in its submissions that it had no control over Company A; however, we did preliminarily use FOPs

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[129] *See* TPEA, Pub. L. No. 114-27, 129 Stat. 362 (2015). On August 6, 2015, Commerce published an interpretative rule, in which it announced applicability dates for each amendment to the Act, except for amendments contained to section 771 (7) of the Act, which relate to determinations of material injury by the International Trade Commission. *See 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) (*Applicability Notice*). The text of the TPEA may be found at https://www.congress.gov/bi1l/114thcongress/house-bill/1295/text/pl.
[130] *See Applicability Notice*, 80 FR at 46794-95.
[131] *See also* 19 CFR 351.308(c).
[132] *See* SAA at 870.
[133] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan,* 65 FR 42985 (July 12, 2000); *Antidumping Duties, Countervailing Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997); and *Nippon Steel Corp. v. United States,* 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) (*Nippon Steel*).
[134] *See also* 19 CFR 351.308(d).
[135] *See* SAA, H.R. Doc. No. 103-31 6, 103d Cong., 2d Session, Vol. 1 (1994) at 870.

reported by Dingsheng for inputs consumed by upstream producer Company A.[136] Furthermore, as explained in Comment 7, we have revised our preliminary affiliation determination with respect to Company A for this final determination, and have continued to use Company A's FOPs in calculating Dingsheng's dumping margin. We conducted verification of the Dingsheng entity in December 2017, during which time Commerce officials visited the facilities of Dingsheng IE, Dingsheng HK, Liansheng, Teemful, and Five Star. Because Dingsheng gave no indication of the proximity of Company A to the facilities of Liansheng, which are located adjacent to each other, Commerce did not include verification at the facilities of Company A in its agenda issued to Dingsheng prior to verification.

While we agree with Dingsheng that no written request was made prior to the verification of Liansheng regarding verification of Company A's production facilities or inputs supplied by Company A, Commerce stated in its verification agenda that "{t}he enclosed agenda is not necessarily all inclusive and we reserve the right to request any additional information or materials necessary for a complete verification."[137] Moreover, we disagree with Dingsheng's contention that it would be "absurd" for Dingsheng to have anticipated verification at Company A.[138] Dingsheng submitted FOP information in this investigation, some of which it obtained from Company A. Based on Dingsheng's relationship with Liansheng and Company A, Liansheng's relationship with Company A, and Dingsheng's communication with both companies for purposes of responding to Commerce's questionnaires, we find that Dingsheng should have been aware that Company A's production facilities were directly adjacent to those of Liansheng. Furthermore, based on the companies' adjacent physical proximity to one another, shared Board members, and their close relationship with respect to the production of subject merchandise and inputs to subject merchandise,[139] we find that Commerce's request during Liansheng's verification to verify select, limited, information on the record at an adjacent facility was not only reasonable, but one that could be anticipated by Dinghsheng. Furthermore, it is a fact that Commerce officials were told at the time of their request that they would not be permitted to tour the facilities of Company A. Dingsheng makes a claim, with no supporting evidence, that it "undertook its best efforts" to arrange a tour of Company A, but in response to Commerce's verification report, it provided no further clarification as to those alleged efforts, and in its case briefs provided no explanation outside of its mere allegation to that effect.[140] In fact, there is nothing on the record which either supports such a claim or indicates the extent of Dingsheng's alleged efforts to secure such a tour.

Dingsheng had reported that Company A did not "share{} production facilities, sales facilities, or employees … with any Dingsheng company."[141] However, while verifying information on the record at the facilities of Liansheng, Commerce officials noted that the production facilities for Company A were immediately adjacent to those of Liansheng. As noted in the Dingsheng

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[136] *See* Dingsheng Preliminary Analysis Memorandum.
[137] *See* Dingsheng Verification Agenda, dated November 24, 2017, at 1.
[138] *See* Dingsheng Verification Report, at 2.
[139] *Id.*, at 18; *see also* Dingsheng's September 5, 2017 Supplemental Questionnaire Response, at 1-5, in which Dingsheng states that "{t}he main inputs at this stage are aluminum ingot and liquid aluminum. Both of these inputs are purchased from" Company A.
[140] *See* Dingsheng's Rebuttal Brief, at 3.
[141] *See* Dingsheng's August 28, 2017 Supplemental Questionnaire Response, at 5.

Verification Report, during the verification of Liansheng, Commerce officials repeatedly requested to view the production facilities of Company A, so as to verify certain information placed on the record by Dingsheng and pertaining to FOPs reported for Company A.[142] However, company officials and counsel indicated that Commerce officials would not be permitted to visit Company A's facilities. Consequently, we were not permitted to verify certain information on the record pertaining to costs and factor usage rates provided by Dingsheng and Company A.

Sections 776(a)(1) and (2)(A) & (D) of the Act provide that Commerce shall apply "facts otherwise available" if necessary information is not on the record, if a party to the proceeding "withholds information" requested by Commerce, or "provides information that cannot be verified as provided by section 782(i) of the Act." Because certain necessary information was withheld by Dingsheng, and Dingsheng's FOPs and information regarding the production capabilities of Company A were unable to be verified by Commerce as provided by Section 782(i) of the Act, we have determined that the application of partial facts available is warranted to certain information provided by Company A for the final determination.

Additionally, in accordance with section 776(b) of the Act, we find that because Commerce was not permitted to verify the requested information and that Dingsheng did not account for its alleged efforts to secure such a verification, Dingsheng did not act to the best of its ability with respect to this issue.[143] Thus, Commerce has concluded that the application of partial AFA is warranted in this case.

The petitioners proposed several methodologies for the application of partial AFA to Dingsheng: 1) application of the single highest reported factor-specific consumption rate to all factors provided, in whole or in part, by Company A, or 2) apply AFA only to the inputs fully supplied by Company A, but also including a proportion of the shared FOPs obtained from Liansheng using materials supplied by Company A.[144] We find that the application of AFA only to the inputs fully supplied by Company A, to include a proportion of the shared FOPs obtained from Liansheng using materials supplied by Company A, is the most appropriate in this case. This methodology applies AFA only to the inputs supplied by Company A which we were unable to verify and conservatively applies the adverse rate found for these inputs to the inputs utilized by Dingsheng and supplied by Liansheng. Accordingly, we have revised Dingsheng's margin calculation for the final determination using partial AFA in the calculations in this manner.

Comment 9: Dingsheng Double Remedy Adjustment

Dingsheng Comments[145]

- Commerce should offset Dingsheng's dumping margin by its CVD rate for purchases of primary aluminum and steam coal for less than adequate remuneration (LTAR).

[142] *See* Dingsheng Verification Report, at 2.
[143] *Id.* at 2 and 15.
[144] *See* Petitioners' Case Brief, at 4-9.
[145] *See* Dingsheng Case Brief at 67-71.

- Dingsheng met all of the criteria for the offset to be applied, including substantiating the subsidies-to-cost link and the cost-to-price link.

The Petitioners' Rebuttal Comments[146]

- Commerce correctly found in the *Preliminary Determination* that Dingsheng did not qualify for an offset for purchases of primary aluminum and steam coal for LTAR.
- The documentation submitted by Dingsheng in its double remedies questionnaire response does not support an adjustment, as Dingsheng failed to demonstrate a subsidies-to-cost link and a cost-to-price link.

Commerce Position: We disagree with Dingsheng, and continue to find that Dingsheng failed to substantiate a subsidies-to-cost link and a cost-to-price link with respect to its purchases of primary aluminum and steam coal for LTAR.

In applying section 777A(f) of the Act, Commerce examines (1) whether a countervailable subsidy (other than an export subsidy) has been provided with respect to a class or kind of merchandise, (2) whether such countervailable subsidy has been demonstrated to have reduced the average price of imports of the class or kind of merchandise during the relevant period, and (3) whether Commerce can reasonably estimate the extent to which that countervailable subsidy, in combination with the use of normal value determined pursuant to section 773(c) of the Act, has increased the weighted-average dumping margin for the class or kind of merchandise.[147] For a subsidy meeting these criteria, the statute requires Commerce to reduce the AD cash deposit rate by the estimated amount of the increase in the weighted-average dumping margin subject to a specified cap.[148]

In conducting this analysis, Commerce has not concluded that concurrent application of NME ADs and CVDs necessarily and automatically results in overlapping remedies. Rather, a finding that there is an overlap in remedies, and any resulting adjustment, is based on a case-by-case analysis of the totality of facts on the administrative record for that segment of the proceeding as required by the statute.

In order to examine the effects of concurrent countervailable subsidies in calculating antidumping margins for respondents in this investigation, Commerce requested that Dingsheng and Zhongji submit information with respect to subsidies relevant to their eligibility for an adjustment to the calculated weighted-average dumping margin. Commerce issued its double remedy questionnaire to Dingsheng and Zhongji on July 25, 2017, which instructed the respondents to "provide full documentary support" for each response.[149] Dingsheng and Zhongji each submitted responses to Commerce's double remedy questionnaire on August 8, 2017.[150] In

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[146] *See* Petitioners Rebuttal Brief at 63-66.
[147] *See* section 777A(f)(1)(A)-(C) of the Act.
[148] *See* section 777A(f)(1)-(2) of the Act.
[149] *See* Letters to Dingsheng and Zhongji, "Certain Aluminum Foil from the People's Republic of China: Double Remedy Questionnaire," dated July 25, 2017.
[150] *See* Dingsheng Letter, "Dingsheng's Double Remedy Response in the Antidumping Duty Investigation of Aluminum Foil from the People's Republic of China, A-570-053," dated August 8, 2017 (Dingsheng DR Response);

the *Preliminary Determination*, Commerce examined whether Dingsheng and Zhongji demonstrated: (1) a subsidies-to-cost link, *e.g.*, the subsidy's impact on cost of manufacture (COM); and (2) a cost-to-price link, *e.g.*, the respondent's prices changed as a result of changes in the COM. Commerce preliminarily determined that, based upon the information submitted to Commerce, Dingsheng and Zhongji failed to substantiate a subsidies-to-cost link and a cost-to-price link.[151]

Dingsheng identified two programs that potentially impact COM: Provision of Primary Aluminum for less than adequate remuneration (LTAR) and Provision of Steam Coal for LTAR.[152] However, Dingsheng did not answer certain questions in Commerce's double remedy questionnaire and did not provide sufficient documentary support for its answers. For example, Commerce's double remedy questionnaire requested: "For each subsidy program under investigation in the concurrent CVD proceeding…please respond to the information requests in the table below, in accordance with your actual accounting practices, as reflected in your books and records, during the relevant time period." However, for the Provision of Steam Coal for LTAR program, Dingsheng only provided supporting documentation in the form of an accounting voucher from outside the POI.[153] In response to the question asking Dingsheng to report "how many cost change(s) for this {cost} item resulted in price changes during the relevant time period," Dingsheng referred generally to its process for determining price changes, but did not identify how many changes to costs resulted in price changes during the POI.[154] Another question in Commerce's double remedy questionnaire requested that Dingsheng "provide minutes of meetings, or any other relevant internal communications between relevant business units in your firm, during the relevant time period where management considered, or adopted, changes to budgeted prices in response to changes in this cost item." In response, Dingsheng provided an Excel spreadsheet containing various market prices for aluminum ingot, but provided no communications relating to managerial considerations of price changes in response to cost items.[155] Moreover, Dingsheng did not provide a response to this question with respect to steam coal.[156] Finally, Commerce's double remedy questionnaire asked Dingsheng to "describe your company's policy or practice with regard to price reductions, and provide the most recent example during the relevant period when you lowered the price of subject merchandise in response to a decrease in an input cost or the cost of manufacturing." Dingsheng provided an example of an email chain with a customer; however, we find that the email chain between Dingsheng and its customer fails to demonstrate that Dingsheng lowered the price of subject merchandise in response to a decrease in input costs or COM.[157]

Based on the above, we continue to find that Dingsheng failed to substantiate a subsidies-to-cost link and a cost-to-price link with respect to its purchases of primary aluminum and steam coal for

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see also Zhongji Letter, "Certain Aluminum Foil from the People's Republic of China: Double Remedies Questionnaire Response," dated August 8, 2017.
[151] *See Preliminary Determination* and accompanying Preliminary Decision Memorandum at 29.
[152] *See* Dingsheng DR Response at 4.
[153] *Id.* at 4 and Exhibit DR-2.
[154] *Id.* at 4.
[155] *Id.*
[156] *Id.*
[157] *Id.* at 5 and Exhibit DR-5.

LTAR. Accordingly, we have made no adjustment under section 777A(f) of the Act for purposes of this final determination.

C. Zhongji-Specific Issues

Comment 10: Surrogate Value Adjustment for Steam

Zhongji Comments[158]

- In its valuation of steam using data for natural gas, Commerce's practice is to adjust the SV with a conversion factor of 14.52 percent.

No other parties commented on this issue.

Commerce Position: We agree with Zhongji that Commerce's normal practice is to include a conversion factor when steam is valued with a natural gas SV.[159] We have made this change with respect to Zhongji's steam SV for the final determination.[160]

Comment 11: Surrogate Value for Aluminum Scrap

Zhongji's Comments[161]

- In the *Preliminary Determination*, Commerce valued Zhongji's aluminum scrap with South African GTA data for HTS 7602.00, covering "aluminum waste and scrap." This value understates the value of scrap that Zhongji recovers during its production process.
- The aluminum scrap Zhongji generates in the aluminum foil production process is of the same metallurgical quality as the aluminum input that Zhongji utilizes in the production process, and can be directly reintroduced without degradation. Therefore, Commerce should value Zhongji's aluminum scrap with data from HTS 7601.20, covering "unwrought aluminium: aluminium alloys."
- Commerce's practice is to cap the value of by-products at the value of the underlying input, which implies that a by-product can have a value up to the same value as the primary input.

The Petitioners' Rebuttal Comments:[162]

- Metallurgical content does not govern the value of scrap, but instead, only serves to put a cap on the maximum value to which a value of scrap may be assigned.
- Various processing costs associated with reintroducing scrap into the melting process supports assigning a lower value to the aluminum scrap than to the primary production product itself.

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[158] *See* Zhongji's Case Brief, at 48.

[159] *See Certain Steel Wheels from the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Preliminary Determination of Critical Circumstances, and Postponement of Final Determination*, 76 FR 67703 (November 2, 2011); *see also Certain Hardwood Plywood Products from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, in Part*, 82 FR 28629 (June 23, 2017).

[160] *See* Zhongji Final Analysis Memorandum.

[161] *See* Zhongji's Case Brief, at 42-44.

[162] *See* Petitioners' Rebuttal Brief, at 30-31.

- In *CORE from China*,[163] Commerce valued brass, steel, and aluminum scrap, but did not seek to apply the same value to the scrap as to the inputs. Zhongji did not identify any commercial source of information to show that any specific grades of aluminum scrap are sold at the same value as primary inputs such as billets, slabs, and ingots.
- For the final determination, Commerce should continue to rely on South African import data for merchandise under HTS 7602.00 to value aluminum scrap.

Commerce Position: We disagree with Zhongji's argument that Commerce should value aluminum scrap generated in the production of subject merchandise using the HTS sub-heading for unwrought aluminum.

Zhongji has argued that Commerce's practice is to cap the value of the byproduct at the value of the underlying input.[164] However, as the petitioners have noted, in *CORE from China*, Commerce valued brass, steel, and aluminum scrap, but did not assign the same value to scrap as it assigned to the production inputs.[165] We find that a similar situation exists in the instant case. As the petitioners have noted, Zhongji has cited to no commercial source which establishes that its scrap has the same commercial value as the aluminum foil input.[166]

Similarly, we find no support for Zhongji's argument that metallurgical content alone determines the value of the byproduct in question. Regardless of the level of purity of the aluminum scrap, Zhongji accounted for and sold this material as scrap.[167] For the reasons outlined above, we disagree with Zhongji's argument that, because Commerce's practice is to cap the value of a by-product at the value of the upstream product, Commerce should utilize the HTS sub-heading for the upstream product in valuing by-product.[168] We, therefore, agree with the petitioners that the similarity in chemical content between aluminum alloy scrap and aluminum ingot does not render the values for these products equivalent. Based upon the foregoing, in these final results we have continued to value scrap in the same manner that we utilized in the *Preliminary Determination*.

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[163] *Id.* at 30, citing *Final Determination in the Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Products from the People's Republic of China*, 81 FR 35316 (June 2, 2016) (*CORE from China*), and accompanying Issues and Decision Memorandum at Comment 2.

[164] *See* Zhongji case brief at 43, citing Final Results of Remand Redetermination pursuant to *Albemarle Corp v. United States*, Ct No 11-0451, Slip Op. 13-106 (Jan. 9, 2014), at 8-9 (*Albermarle* Remand). In this regard, Zhongji also cites to *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results and Partial Rescission of the Seventh Antidumping Duty Administrative Review*, 77 FR 15039 (March 14, 2012), and accompanying Issues and Decision Memorandum at Comment II.B.3.

[165] *See CORE from China*, at Comment 2.

[166] *See* Petitioners' Rebuttal Brief at 31,

[167] *See* Zhongji Verification Report, at 21 and Exhibit VE-12.

[168] *See* Zhongji's Case Brief, at 44, citing *Albemarle* Remand.

VIII. RECOMMENDATION

We recommend following the above methodology for this final determination.

☒ ☐

Agree Disagree

2/26/2018

X

Signed by: PRENTISS SMITH

P. Lee Smith
Deputy Assistant Secretary
for Policy and Negotiations