UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

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Investigation
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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 Countervailing Duty Investigation of Certain Aluminum Foil from the People's Republic of China

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I. SUMMARY

The Department of Commerce (Commerce) determines that countervailable subsidies are being provided above the *de minimis* level to producers and exporters of certain aluminum foil (aluminum foil) from the People's Republic of China (China), as provided for in section 705 of the Tariff Act of 1930, as amended (the Act).[1] Below is the complete list of issues in this investigation for which we received comments from interested parties.

Issues:

Comment 1: Whether Commerce Erred in its Treatment of Manakin
Comment 2: Whether the Record Supports a Finding of Policy Lending
Comment 3: Whether Chinese Commercial Banks are Government Authorities
Comment 4: Whether Commerce's Policy Lending Benchmark Interest Rate Computations are Supported by the Record and Lawful
Comment 5: Whether Commerce's Investigation of Uninitiated Programs is Lawful
Comment 6: Whether Commerce Should Change its Export Buyer's Credit Determination
Comment 7: Whether Commerce Should Use the USD Interest Rate Benchmark for Hong Kong Loans

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[1] *See also* section 701(f) of the Act.

INTERNATIONAL TRADE ADMINISTRATION

Comment 8: Whether Loans Issued in Hong Kong to Hong Kong Companies Are Countervailable
Comment 9: Whether Commerce Should Revise Dingsheng's Sales Denominator
Comment 10: Whether Commerce Should Correct Calculation Errors for Dingsheng's Loans
Comment 11: Whether Commerce Should Correct Calculation Errors for Dingsheng's Aluminum and Coal Purchases
Comment 12: Whether Commerce Should Place Interest Rate Benchmarks on the Record That Are Contemporaneous to the POI
Comment 13: Whether Commerce Should Rely on AFA For Subsidies Discovered at Zhongji's verification
Comment 14: Whether Commerce Should Grant Zhongji an Export Value Adjustment
Comment 15: Whether Commerce Improperly Rejected Dingsheng's Benchmark Data
Comment 16: Whether Commerce Should Revise the Benchmarks for Primary Aluminum
Comment 17: Whether the Government of China Provided Sufficient Evidence to Find That Input Suppliers Were Not Government Authorities
Comment 18: Whether CCP Affiliations or Activities by Company Officials Make a Company a Government Authority
Comment 19: Whether the Primary Aluminum and Steam Coal for LTAR Programs are Specific
Comment 20: Whether Commerce Must Use a Tier-One Benchmark for the Primary Aluminum and Steam Coal for LTAR Programs
Comment 21: Whether Dingsheng's Income Tax Deductions for R&D Expenses are Understated
Comment 22: Whether Commerce Selected the Highest Electricity Rate Benchmarks
Comment 23: Whether Commerce Should Apply AFA for Electricity
Comment 24: Whether Commerce Should Adjust the Electricity Benchmark for VAT
Comment 25: Whether Electricity Constitutes General Infrastructure and Provides a Financial Contribution
Comment 26: Whether Commerce Should Rely on Xeneta Data for Freight Benchmark
Comment 27: Whether Commerce Should Find Non-Use of Steam Coal

II. BACKGROUND

A. Case History

On August 14, 2017, we published the *Preliminary Determination* for this investigation.[2] In the *Preliminary Determination*, we calculated above *de minimis* rates for Dingsheng Aluminum Industries (Hong Kong) Trading Co., Ltd. (Dingsheng HK)[3] and Jiangsu Zhongji Lamination

[2] *See Certain Aluminum Foil from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 82 FR 37844 (August 14, 2017) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).
[3] Commerce has found the following companies to be cross-owned with Dingsheng HK: Jiangsu Dingsheng New Materials Joint-Stock Co. (Jiangsu Dingsheng), Ltd.; Hangzhou Teemful Aluminum Co., Ltd.(Teemful); Hangzhou Five Star Aluminum Co., Ltd. (Five Star); Hangzhou DingCheng Aluminum Co., Ltd.; Luoyang Longding

Materials Co., Ltd. (Zhongji). The subsidy rates for Loften Aluminum (Hong Kong) Limited (Loften HK) and Manakin Industries, LLC (Manakin Industries),[4] were based entirely on adverse facts available.[5] We conducted verifications of the questionnaire responses submitted by Dingsheng HK and Zhongji between October 9, 2017, and October 23, 2017.[6]

We received case briefs regarding the *Preliminary Determination* from the petitioners,[7] Dingsheng HK, Manakin, Zhongji, and the Government of China on December 14, 2017, and rebuttal briefs from the petitioners, Dingsheng HK, Mahle, Zhongji, and the Government of China on December 19, 2017.[8]

The "Analysis of Programs" and "Subsidies Valuation" sections below describe the subsidy programs and the methodologies used to calculate the subsidy rates for our final determination. Based on our verification findings, we made certain modifications to the *Preliminary Determination*, which are discussed under each program, below. For details of the resulting revisions to Commerce's rate calculations resulting from those modifications, *see* the final calculation memoranda.[9] We recommend that you approve the positions we describe in this memorandum.

Aluminum Co., Ltd.; Hangzhou Dingsheng Industrial Group Co., Ltd.; Hangzhou Dingsheng Import & Export Co., Ltd.; and Walson (HK) Trading Co., Limited. These companies are collectively referred to as Dingsheng.

[4] As discussed in the PDM, Commerce found that Manakin Industries and Suzhou Manakin Aluminum Processing Technology Co., Ltd., effectively function by joint operation as a trading company, and therefore, the rate for Manakin Industries was applicable to Suzhou Manakin Aluminum Processing Technology Co., Ltd.

[5] *See* PDM at 20-26.

[6] *See* Commerce Memoranda, "Verification of the Questionnaire Responses of Dingsheng Aluminum Industries (Hong Kong) Trading Co., Ltd.: Countervailing Duty Investigation of Certain Aluminum Foil from the People's Republic of China," (Dingsheng Verification Report) and "Verification of the Questionnaire Responses of Jiangsu Zhongji Lamination Materials Co., Ltd.: Countervailing Duty Investigation of Certain Aluminum Foil from the People's Republic of China," (Zhongji Verification Report), both dated November 25, 2017.

[7] The petitioner to this investigation is the Aluminum Association Trade Enforcement Working Group (the petitioners).

[8] *See* Petitioners' Case Brief, "Certain Aluminum Foil from the People's Republic of China: Petitioners' Case Brief," dated December 14, 2017 (Petitioners' Case Brief); Dingsheng's Case Brief, "Dingsheng Administrative Case Brief: Countervailing Duty Investigation on Aluminum Foil from the People's Republic of China (C-570-054)," dated December 14, 2017 (Dingsheng's Case Brief); Manakin's Case Brief, "Certain Aluminum Foil from the People's Republic of China: Case Brief of Manakin Industries," dated December 14, 2017 (Manakin's Case Brief); Zhongji's Case Brief, "Certain Aluminum Foil from the People's Republic of China: Case Brief," dated December 14, 2017 (Zhongji's Case Brief); the Government of China's Case Brief, "Certain Aluminum Foil from China; CVD Investigation; GOC Case Brief," dated December 14, 2017 (Government of China's Case Brief); Petitioners' Rebuttal Brief, "Certain Aluminum Foil from the People's Republic of China: Petitioners' Rebuttal Brief," dated December 14, 2017 (Petitioners' Rebuttal Brief); Dingsheng's Rebuttal Brief, "Dingsheng Rebuttal Brief: Countervailing Duty Investigation on Aluminum Foil from the People's Republic of China (C-570-054)," dated December 19, 2017 (Dingsheng's Rebuttal Brief); Mahle's Rebuttal Brief, "Certain Aluminum Foil from the People's Republic of China: Rebuttal Case Brief of Mahle Industries, Incorporated, Mahle Behr Charleston, Inc., and Mahle Behr Dayton, LLC" dated December 19, 2017 (Mahle's Rebuttal Brief); Zhongji's Rebuttal Brief, "Certain Aluminum Foil from the People's Republic of China: Rebuttal Brief," dated December 19, 2017 (Zhongji's Rebuttal Brief); the Government of China's Rebuttal Brief, "Certain Aluminum Foil from China; CVD Investigation; GOC Rebuttal Brief," dated December 19, 2017 (Government of China's Rebuttal Brief).

[9] *See* Commerce Memoranda, "Countervailing Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Final Determination Calculation Memorandum for Dingsheng Aluminum (Hong Kong) Trading Co., Ltd.," dated February 26, 2018 (Dingsheng Final Calculation Memorandum) and "Countervailing Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Final Determination Calculation

B. Period of Investigation

The POI for which we are measuring subsidies is January 1, 2016, through December 31, 2016.

III. SCOPE OF THE INVESTIGATION

The product covered by this investigation is certain aluminum foil from China. For a full description of the scope of this investigation, see in the accompanying *Federal Register* notice at Appendix II.

IV. SCOPE COMMENTS

We invited parties to comment on Commerce's Preliminary Scope Memorandum.[10] 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.[11]

V. SUBSIDIES VALUATION INFORMATION

A. Allocation Period

Commerce has made no changes to the allocation period and the allocation methodology used in the *Preliminary Determination* and no issues were raised by interested parties in case briefs regarding the allocation period or the allocation methodology. For a description of the allocation period and the methodology used for this final determination, *see* the *Preliminary Determination*.[12]

B. Attribution of Subsidies

Commerce has made no changes to the methodologies used in the *Preliminary Determination* for attributing subsidies. For a description of the methodology used for this final determination, *see* the *Preliminary Determination* and accompanying PDM and the final analysis memoranda.[13]

Memorandum for Zhongji Lamination Materials Co., Ltd," dated February 26, 2018 (Zhongji Final Calculation Memorandum).

[10] *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 filed to ACCESS on October 30, 2017.

[11] *See* Memorandum, "Certain Aluminum Foil from the People's Republic of China: Final Scope Decision Memorandum," dated concurrently with this memorandum.

[12] *See* PDM at 7.

[13] *Id.*; *see also* Dingsheng Final Calculation Memorandum and Zhongji Final Calculation Memorandum.

C. Denominators

In accordance with 19 CFR 351.525(b), Commerce considers the basis for the respondent's receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondent's export or total sales, or portions thereof. The denominators we used to calculate the countervailable subsidy rates for the various subsidy programs described below are explained in the calculation memorandum prepared for this final determination.[14]

VI. BENCHMARKS AND DISCOUNT RATES

Interested parties submitted a number of comments regarding the benchmarks used in the *Preliminary Determination* in their case and rebuttal briefs.[15] Commerce has considered these comments and has made certain changes to the benchmarks used previously. Specifically, we have made adjustments to the primary aluminum and electricity benchmarks; no other changes were made to any of the benchmarks. For a more in-depth discussion of the comments and Commerce's analysis, as well as the changes made to the benchmarks, *see* Comments 16 and 22. For a description of all other unchanged benchmarks and discount rates used for these final results, *see* the *Preliminary Determination* and the accompanying PDM.[16]

VII. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

A. Legal Standard

Sections 776(a)(1) and (2) of the Act provide that Commerce shall, subject to section 782(d) of the Act, apply "facts otherwise available" if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.[17]

Where Commerce determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that Commerce will so inform the party submitting the response and will, to the extent practicable, provide that party with an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, Commerce may disregard all or part of the original and subsequent responses, as appropriate.

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[14] *Id*.
[15] *See* the Government of China's Case Brief, Dingsheng's Case Brief, Zhongji's Case Brief, the Government of China's Rebuttal Brief, Mahle's Rebuttal Brief, and Petitioners' Rebuttal Brief.
[16] *See* PDM at 12-18.
[17] Under the Trade Preferences Extension Act of 2015, numerous amendments to the AD and CVD law were made, including amendments to sections 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act, as summarized below. *See Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362, dated June 29, 2015. *See also Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015). The amendments are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.

Section 776(b) of the Act provides that Commerce may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In so doing, and under the TPEA, Commerce is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information. Furthermore, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the countervailing duty investigation, a previous administrative review, or other information placed on the record.

Finally, under section 776(d)(1)(A) of the Act, when applying an adverse inference, Commerce may use any countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, Commerce may use a CVD rate for a subsidy program from a proceeding that the administering authority considers reasonable to use. The TPEA also makes clear that, when selecting facts available with an adverse inference, Commerce is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.[18]

Moreover, under our CVD AFA methodology, we strive to assign AFA rates that are the same in terms of the type of benefit, (*e.g.*, grant to grant, loan to loan, indirect tax to indirect tax) because these rates are relevant to the respondent. Additionally, by selecting the highest rate calculated for a cooperative respondent we arrive at a reasonably accurate estimate of the respondent's actual rate, and a rate that also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[19] Finally, Commerce will not use information where circumstances indicate that the information is not appropriate as AFA.

B. Application of Facts Otherwise Available and Adverse Facts Available

Commerce relied on "facts otherwise available," including adverse facts available (AFA), for several findings in the *Preliminary Determination.*[20] For a description of these decisions, *see* the *Preliminary Determination*. Commerce has not made any changes to its decisions in the *Preliminary Determination* to use facts otherwise available and AFA. We also address AFA in Comment 1 below.

VIII. ANALYSIS OF PROGRAMS

A. Programs Determined to Be Countervailable

[18] *See* section 776(d)(1) of the Act; *see also* section 502(3) of the TPEA.
[19] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. I, at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199 (SAA).
[20] *See* PDM at 18-42.

1. Policy Loans to the Aluminum Foil Industry

The petitioners, the Government of China, Dingsheng, Zhongji and Mahle submitted comments in either their case or rebuttal briefs regarding this program and the calculation methodology. These are addressed in Comments 2, 3, 4, 7, 8, 10, and 12. As discussed in Comment 10, Commerce has made certain changes to the methodology used to calculate Dingsheng's subsidies under this program since the *Preliminary Determination*.

Dingsheng: 3.62 percent *ad valorem*
Zhongji: 3.17 percent *ad valorem*

2. Export Seller's Credit

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

Dingsheng: 0.82 percent *ad valorem*

3. Export Buyer's Credit

The petitioners, the Government of China, Dingsheng, Zhongji and Mahle submitted comments in either their case or rebuttal briefs regarding this program. As explained below in Comment 6, Commerce has made no changes to the methodology used to calculate or attribute subsidies under this program since the *Preliminary Determination*.

Dingsheng: 10.54 percent *ad valorem*
Zhongji: 10.54 percent *ad valorem*

4. Income Tax Reduction for HNTEs

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

Dingsheng: 0.25 percent *ad valorem*
Zhongji: 0.32 percent *ad valorem*

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

The petitioners submitted comments in their case brief regarding our calculation methodology for this program. No other parties commented on this issue. As explained below in Comment 21, Commerce has changed the methodology used to calculate or attribute subsidies under this program.

Dingsheng: 0.04 percent *ad valorem*
Zhongji: 0.16 percent *ad valorem*

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

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

Dingsheng: 0.01 percent *ad valorem*
Zhongji: 0.75 percent *ad valorem*

7. VAT Rebates on Domestically-Produced Equipment

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

Zhongji: 0.06 percent *ad valorem*

8. Government Provision of Land for LTAR

The petitioners and Zhongji commented on this program in their case or rebuttal briefs. As explained below in Comment 13, Commerce has made no changes to the methodology used to calculate or attribute subsidies under this program since the *Preliminary Determination*.

Dingsheng: 0.84 percent *ad valorem*
Zhongji: 1.12 percent *ad valorem*

9. Government Provision of Inputs for LTAR
   a. *Primary Aluminum for LTAR*
   b. *Steam Coal for LTAR*
   c. *Electricity for LTAR*

The petitioners, the Government of China, Dingsheng, Zhongji, and Mahle submitted comments in their case or rebuttal briefs regarding this program. As explained below in Comment 22, Commerce has modified its methodology for calculating a subsidy rate for this program from the *Preliminary Determination*.[21]

a. *Primary Aluminum for LTAR*

Dingsheng: 2.62 percent *ad valorem*

b. *Steam Coal for LTAR*

Dingsheng: 0.12 percent *ad valorem*

[21] *See* PDM at 34-35.

Zhongji: less than 0.005 percent *ad valorem*[22]

c. *Electricity for LTAR*

Dingsheng: 0.52 percent *ad valorem*
Zhongji: 0.73 percent *ad valorem*

10. "Other Subsidies"

The Government of China commented on this program in its case brief. As explained below in Comment 5, Commerce has made no changes to the methodology used to calculate or attribute subsidies under this program since the *Preliminary Determination*.

Dingsheng: 0.60 percent *ad valorem*
Zhongji: 0.29 percent *ad valorem*

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

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

IX. ANALYSIS OF COMMENTS

[22] Consistent with past practice, we did not include this program in our net subsidy rate calculations for Zhongji because the benefit resulted in a rate that is less than 0.005 percent *ad valorem. See e.g., Countervailing Duty Investigation of Fine Denier Polyester Staple Fiber from the People's Republic of China: Final Affirmative Determination*, 83 FR 3120 (Dep't of Commerce January 23, 2018) (Fine Denier PSF from China), and accompanying Issues and Decision Memorandum at 8.

Comment 1: Whether Commerce Erred in its Treatment of Manakin

Manakin's Case Brief:

- Manakin was improperly selected as a mandatory respondent throughout this proceeding. Manakin is a Virginia company, not a Chinese exporter.[23]
- Commerce's reviews of the very same CBP data in its first respondent selection and its second respondent selection were inconsistent. Without any explanation, the differing approach is arbitrary and unlawful.[24]
- Suzhou Manakin was not selected as a mandatory respondent and it is not cross-owned with Manakin. Therefore, Commerce erred in requiring a questionnaire response from Suzhou Manakin and any margin that may apply to Suzhou Manakin cannot be applied to Manakin.[25]
- Neither Manakin nor Suzhou Manakin satisfy the statutory requirement that mandatory respondents are "representative of exporters and producers accounting for the largest volume of the subject merchandise from the exporting country. . ."[26]
- The additional U.S. Customs and Border Protection (CBP) document placed on the record by Commerce confirmed Manakin's channels of distribution, none of which made Manakin a proper respondent to this proceeding. Further, the CBP data do not indicate any role of Suzhou Manakin in the sales identified by Commerce as justifying its selection of Manakin.[27]
- The petitioners have not provided any argument or factual information rebutting the information placed on the record by Manakin explaining why Manakin was selected in error.[28]
- Suzhou Manakin's exports were not among those triggering the mistaken designation of Manakin Industries as an exporter.
- Manakin has cooperated fully contrary to the conclusion that it withheld information by not providing a response to the questionnaire for three unaffiliated Chinese producers. Nowhere in the questionnaire does it require Manakin to gather information from unrelated producers.[29]
- The record does not justify applying AFA to Manakin based on Suzhou Manakin's inability to get responsive information from unrelated Chinese mills.[30]
- Assuming *arguendo*, that Manakin and Suzhou Manakin do operate as a "joint trading company," though this type of entity does not appear in the statute or Commerce's regulations, this import channel does not support the selection of Manakin as a mandatory respondent.[31]

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[23] *See* Manakin's Case Brief at 2-5.
[24] *Id.*
[25] *Id.*
[26] Section 777A(e)(2)(A)(ii) of the Act. *See* Mankin's Case Brief at 4.
[27] *See* Manakin's Case Brief at 2-5.
[28] *Id.*
[29] *Id*. at 8.
[30] *Id*. at 9-10.
[31] *Id*. at 11.

- Because it is not an exporter from China, and was not the importer in the case of the sales forming the basis of Commerce's erroneous selection of Manakin as a mandatory respondent, Manakin Industries can never ask for an administrative review to alter this outcome in the future.[32]

Petitioners' Rebuttal Brief:

- Given the information on the record, which is business proprietary in nature, Manakin's incomplete statements concerning the involvement of Suzhou Manakin in supporting Manakin's sales activities, and both entities' refusal to provide questionnaire responses from the three unaffiliated Chinese producers, Commerce reasonably relied on AFA in assigning a subsidy margin to both entities in the *Preliminary Determination*.[33]

Commerce's Position: Consistent with the *Preliminary Determination*, we continue to rely on AFA in determining a subsidy rate for Suzhou Manakin and Manakin Industries.[34] We find that the record, including the additional CBP documents pertaining to Manakin's entries,[35] does not support Manakin Industries' contention that it operates strictly as a U.S. importer. Documentation and descriptions of these sales processes demonstrate that Manakin Industries purchases the subject merchandise from entities in China and resells it prior to importation into the United States.[36] This is consistent with other indications in the record pointing to Manakin Industries operating in China through either actual staff or agents acting on its behalf.[37] While Manakin Industries claims that some of this information is not what it appears to be, we continue to find these claims unpersuasive.

When Commerce initially requested that Manakin Industries clarify the relationship between Manakin Industries and Suzhou Manakin and provide supporting documentation, Manakin Industries claimed that Suzhou Manakin was not involved in the shipments that Commerce is attributing as Manakin Industries' exports.[38] Instead, Manakin Industries stated that Manakin Industries arranges purchases of subject merchandise from unaffiliated mills and exporters, which is then exported to the United States.[39] We requested clarification, a second time, of the precise role that Suzhou Manakin maintains in Manakin Industries' supply chain. In the Manakin Industries July 17, 2017 SQR, Manakin Industries explained that Suzhou Manakin acts as a liaison between Manakin Industries and the unrelated mills, and Suzhou Manakin provides

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[32] *Id*. at 13.
[33] *See* Petitioners' Rebuttal Brief at 63-65. *See also* PDM at 21-22.
[34] *See* PDM at 20-26.
[35] *See* Memorandum, "Re: Countervailing Duty Investigation of Certain Aluminum Foil from the People's Republic of China: U.S. Customs and Border Protection Documentation," dated September 14, 2017.
[36] *See* Manakin Industries' June 2, 2017 Supplemental Affiliation Response (Manakin Industries June 2, 2017 SAFFR) at SQ-1.
[37] Certain record information indicative of this situation is business proprietary in nature and, thus, cannot be publicly identified here.
[38] *See* Manakin Industries SAFFR at SQ-1; *see also* Manakin Industries May 26, 2017 Affiliation Response (Manakin Industries AFFR) at 5.
[39] *Id*.

"sourcing and logistics support" to Manakin Industries' sales activity.[40] With respect to Suzhou Manakin's operations, Suzhou Manakin stated that all of its exports were made to Manakin Industries and that it purchased subject merchandise from three unaffiliated Chinese producers during the POI.[41]

Based on Commerce's assessment of the record information as indicating that Manakin Industries and Suzhou Manakin undertake joint operations to purchase and export subject merchandise, *i.e.*, they jointly function as trading companies, we sought information from both companies pursuant to the requirements under 19 CFR 351.525(c).[42] As Suzhou Manakin reported exporting subject merchandise produced by Chinese companies, Manakin Industries and Suzhou Manakin, as joint trading companies, were required to respond on behalf of these three unaffiliated Chinese producers.[43] Instead of providing the requested responses, they refused to provide the three requested responses from the unaffiliated Chinese producers, stating that they lack "the budget that would be required to answer the questionnaire for the three unrelated companies."[44] Commerce requires responses from producers of the subject merchandise from which trading companies sourced, in order to cumulate the benefits provided to the producers with the benefits (if any) provided to the trading companies, pursuant to 19 CFR 351.525(c). Regardless of whether a particular company is selected as a mandatory respondent, Commerce must conduct the same level of analysis of each producer's subsidization as it would for a mandatory respondent.[45] Thus, without a full response from their producers, we are unable to calculate a subsidy rate for Manakin Industries and Suzhou Manakin as trading companies. In sum, Commerce's ability to determine the amount of subsidization of subject merchandise exported by Manakin Industries and its joint trading company Suzhou Manakin was stymied by the incomplete and evasive responses from the companies.

Accordingly, we determine that Manakin Industries and Suzhou Manakin withheld necessary information that was requested of them and significantly impeded this proceeding. Therefore, Commerce continues to rely on facts otherwise available in making our final determination with respect to Suzhou Manakin and Manakin Industries, pursuant to sections 776(a)(2)(A)-(C) of the Act. Moreover, we determine that an adverse inference is warranted, pursuant to section 776(b) of the Act, because, by refusing to provide responses to Commerce's Initial CVD Questionnaire for the three unaffiliated Chinese producers, we find that Manakin Industries and Suzhou Manakin did not cooperate to the best of their abilities to comply with the request for information in this investigation. Accordingly, we find that use of AFA is warranted to ensure that Manakin

[40] *See* Manakin Industries' July 24, 2017 Supplemental Questionnaire Response (Manakin Industries July 24, 2017 SQR) at SQ-3.
[41] *See* Manakin Industries' June 30, 2017 Initial Questionnaire Response (Manakin Industries June 30, 2017 IQR) at 4, Section II.
[42] *See* Commerce Letter re: Countervailing Duty Questionnaire, dated April 28, 2017 (Initial CVD Questionnaire) at Section III, "Affiliated Companies" section.
[43] In our Initial CVD Questionnaire, we instructed Manakin Industries to provide a complete response to the questionnaire. In its May 26, 2017 response, Manakin Industries reported that it had a close supplier relationship with Suzhou Manakin. In a questionnaire to Manakin Industries dated June 9, 2017, we instructed Manakin Industries to provide a complete questionnaire response for Suzhou Manakin.
[44] *See* Manakin Industries June 30, 2017 IQR at 4, Section II.
[45] *See* 19 CFR 351.525(b)(6)(i)-(vi), 351.525(b)(7), and 351.525(c).

Industries and Suzhou Manakin do not obtain a more favorable result by failing to cooperate than if they had fully complied with our request for information. In applying AFA, we attributed one AFA rate to the combined Manakin Industries/Suzhou Manakin entity.

Comment 2: Whether the Record Supports a Finding of Policy Lending

Government of China's Case Brief:

- Commerce cited in its *Preliminary Determination* that almost all of the national and provincial five-year plans placed emphasis on non-ferrous metals industries for development. However, the industrial policies on which Commerce relied are overly broad and are not specifically pertinent to the aluminum foil industry.[46]
- Commerce quoted out of context the provisions provided under *Guidelines.* It is undisputable that the *Guidelines* were promulgated to curb the blind expansion of the primary aluminum sector in China.[47] Further, the provision cited by Commerce is only pertinent to alumina and primary aluminum sectors, not the aluminum foil industry.
- Commerce failed to establish a link between the alleged government policy to "encourage" the aluminum foil industry and the bank loans received by the respondents.
- Its *Preliminary Determination* also ignores record information concerning regulatory initiatives and reforms that contradicts Commerce's policy lending finding.[48] Further, record information shows that the structure of the banking sector in China is now diversified and competitive.[49]
- State-owned commercial banks (SOCBs) only amount to a very small portion of the banking sector in China when compared to the large number of privately-owned banks, foreign-invested banks and joint-ownership commercial banks. The record evidence indicates that significant loans received by the mandatory respondents were from publicly-listed commercial banks.[50]

Petitioners' Rebuttal Brief:

- Record evidence clearly indicates the Government of China's support for the aluminum foil industry, as well as for the broader alumina and primary aluminum sectors.[51] The Government of China's promotion of the aluminum foil industry is apparent in plans directed at the aluminum industry overall.[52]

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[46] *See* Government of China's Case Brief at 50 (citing PDM at 43).
[47] *Id*. at 50 (citing *Notice of Guidelines on Accelerating the Adjustment of Aluminum Industry Structure (2006)* (*Guidelines*) at Government of China June 12, 2017 IQR – Zhongji at Exhibit A-21).
[48] *Id*. at 51-52 (citing Government of China's June 12, 2017 Initial Questionnaire Response (Government of China June 12, 2017 IQR – Zhongji) at 3 - 7, and Exhibits A1-1, A1-2, A1-3, A1-6, A1-7, and A1-8).
[49] *Id*. at 53 (citing Government of China June 12, 2017 IQR – Zhongji at 8, and Exhibit A1-9 and A1-10).
[50] *Id*.
[51] *See* Petitioners' Rebuttal Brief at 50 (citing "Petition for the Imposition of Countervailing Duties on Imports of Certain Aluminum Foil from the People's Republic of China," dated March 9, 2017 (Petition) at Volume III at CVD Exhibit-26 (at VIII.7) "Catalogue for the Guidance of Industrial Structure Adjustment" (2005); PDM at 44 "Nonferrous Metal Development Plan 2016-2020").
[52] *Id*. (citing Government of China June 12, 2017 IQR – Zhongji at A1-19, at *Guidelines*).

- The Government of China's use of SOCBs to encourage the development of the Chinese aluminum industry has been established by Commerce in prior CVD investigations involving aluminum extrusions.[53]
- There is substantial record evidence to support Commerce's finding that China's financial system does not operate under market principles.[54]

Mahle's Rebuttal Brief:

- Interested Party Mahle restates and affirms its support for the Government of China's arguments.[55]

Commerce's Position: Consistent with the *Preliminary Determination,* we continue to find that the loans received by aluminum foil producers from SOCBs were made pursuant to government directives. We disagree with the Government of China's contention that Commerce erred in countervailing policy lending in the *Preliminary Determination*. In general, Commerce looks to whether government plans or other policy directives lay out objectives or goals for developing the industry and call for lending to support objectives or goals.[56] We find this standard has been met in the instant investigation.

Commerce has found, in this and in prior proceedings, that the Government of China, through SOCBs, encourages the development of the aluminum industry.[57] The record of this proceeding continues to support this finding. Within the "*National 12th Five-Year Plans of Economic and Social Development Plan* (2011-2015)" is the "*Aluminum Industry Development Plan*."[58] The objective of the plan is, "for speeding up the transformation of aluminum industry development and guiding the healthy and sustainable development of aluminum industry."[59] This plan aims to "increase technological innovative ability" in the aluminum industry sector by taking "efforts to break through the constraints of aluminum industry, the core technology and common basic technology to improve the core competitiveness of the industry."[60] The plan explicitly links the Government of China's aluminum industry development policy with its finance and banking policies, as it states that "{t}he connection of aluminum industry policy and finance and taxation, banking, trade, land, environmental production, safe production, electricity, and other policies should be strengthened."[61] It further states that "{f}iscal and taxation policy support should be given in the high-tech industry, energy saving emission reduction, red mud and other was

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[53] *Id*. (citing *Aluminum Extrusions from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 76 FR 18521 (April 4, 2011) (Aluminum Extrusions from China Investigation)*, and accompanying Issues and Decision Memorandum (IDM) at Comment 28).
[54] *Id*. at 53 (citing Commerce Memorandum, Review of China's Financial System Memorandum, dated July 21, 2017) (Financial System Memo).
[55] *See* Mahle's Rebuttal Brief at 16-17.
[56] *See*, *e.g., Aluminum Extrusions from China Investigation*, and accompanying IDM at Comment 28.
[57] *Id.*
[58] *See* Government of China's June 12, 2017 IQR – Zhongji at 9 and Exhibit A1-17.
[59] *Id.*
[60] *Id.*
[61] *Id*.

comprehensive utilization of new technologies, new product development, and so on."[62] The Government of China makes clear that industrial authorities "at all levels shall strengthen the implementation of the aluminum industry policy, planning and standards, and solve any significant problems occurring in the development of the industry in a timely manner."[63] Thus, this plan, which is specific to the development of the aluminum industry, makes clear the Government of China's policy to encourage the industry's development *via* finance policy and banks, and it directs authorities "at all levels" to strength the implementation of its aluminum industry policy.

In its brief, the Government of China asserts that Commerce has quoted the provisions of the *"Notice of Guidelines on Accelerating the Adjustment of Aluminum Industry Structure (2006)"* out of context, as these were promulgated to curb the blind expansion of the industry. However, these guidelines also state that, "In accordance with the Catalogue for Guiding the Adjustment of Industry Restructuring (Version 2015), high and precious aluminum plates, strips, foils, and high-speed ribbons and large-scale aluminum alloy sections used for rail transit and other production technologies and equipment of high value-added products shall be developed as the key point; the new technologies and techniques of high efficiency, low cost and energy consumption, short process and environmental aluminum fabrication shall be promoted."[64] While there may be language in this plan to "curb blind expansion," this plan specifically identifies aluminum foil for development and growth.

The Government of China further argues that the non-ferrous metal development plans are not specific to aluminum foil. However, the 2009-2011 "*Restructuring and revitalization plan of non-ferrous metal industry*" plan discusses improving the innovation ability, high-end product development, production and application technology to promote industrial technological progress and improve product quality of products including the "deep processing products of aluminum."[65] The *"Nonferrous Metal Development Plan (2016-2020)"* identifies aluminum as included in the plan, and names as a problem the inadequate technological innovation capability of specific products, including aluminum panels with foil.[66] The plan also identifies "high strength and high ductility aluminum foil" for priority development.[67] Also included in the plan is a strengthening of financial support, as it states: "The convergence of financial and tax, finance, trade and other policies and industrial policy shall be strengthened to promote bank-enterprise docking and financial cooperation. For those backbone enterprises who meet the industry standard conditions, environmental protection and safety production standards with market prospects and operating efficiency, financing support shall be increased under the premise that the risks are controllable and businesses are sustainable."[68]

As discussed in the *Preliminary Determination*, additional record evidence indicates financial support is directed specifically toward certain encouraged industries, including the aluminum

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[62] *Id*.
[63] *Id*.
[64] *Id*. at Exhibit A1-19.
[65] *Id.* at Exhibit A1-20.
[66] *Id*. at Exhibit A1-21.
[67] *Id.*
[68] *Id*.

industry.[69] The *Preliminary Determination* also established a link between the alleged government policy to encourage the aluminum foil industry and the bank loans received by the respondents. The "*Decision of the State Council on Promulgating the Interim Provisions Promoting Industrial Structure Adjustment for Implementation* (Guo Fa {2005} No. 40)" (Decision 40) indicates that the "Catalogue for the Guidance of Industrial Structure Adjustment" is an important basis for investment guidance and government administration of policies such as public finance, taxation, and credit."[70] Decision 40 further indicates that projects in "encouraged" industries shall be provided credit support in compliance with credit principles."[71] The "*Catalogue for the Guidance of Industrial Structure Adjustment*" (2005) specifically includes aluminum, and the development of production technology within it, as encouraged.[72] Thus, taking into account all of the evidence, we determine that the Government of China's industrial plans clearly indicate state support and, specifically, credit or financing support for the producers of aluminum foil.

We also find that loans from SOCBs under this program constitute financial contributions, pursuant to sections 771(5)(B)(i) and 771(5)(D)(i) of the Act, because SOCBs are "authorities." We disagree with the Government of China that Commerce ignored information concerning regulatory reforms that contradict our policy lending finding. The significance of the referenced "*Capital Rules*" and "*Guidelines on Internal Control of Commercial Banks*" is unclear given the high and increasing level of debt relative to GDP, indicating that credit is being put to increasingly unproductive use; the rising number of troubled and non-performing loans; and large-scale systemic credit misallocation, including overallocation of credit to SOEs and an increasing share of loans going to firms with low debt-service capacity. These factual findings are detailed in the Financial System Memo, as is the fundamentally unchanged institutional relationship between the government (Party-state) and the financial sector (including SOCBs and trust companies) that underlies these chronic and systemic debt and NPL problems that China struggles to resolve today.

Reforms are intended only to improve the performance and efficiency of the existing system, not to fundamentally change it or the state's role. When the Government of China's objective of improving the performance and efficiency of the financial system conflicts with the Government of China's industrial policy and macro-stabilization objectives and use of SOCBs and trust companies as government policy instruments, which they often do, the latter objectives take precedence and the former a back seat. This is why there is space only for incremental reform that preserves the current institutional order (*e.g.*, tightening capital requirements) but not for reforms that would systemically undermine it (*e.g.*, full operational independence for SOCBs). This is a clear policy choice made by the government (Party-state), not a legacy problem or an economic development hurdle that China is having difficulty overcoming. Because there has been no fundamental change in the state's pervasive role in the financial system and the institutional relationships that bind the government and the principal actors in that system, Commerce's properly determined, as detailed in the Financial System Memo, that the Chinese financial system is distorted.

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[69] *See* PDM at 42-44.
[70] *See* Government of China June 12, 2017 IQR Exhibit A1-23 at Chapter III Article 12.
[71] *Id*., at Chapter III Articles 13, 14, and 17.
[72] *See* Government of China July 5, 2017 SQR Exhibit S-7 at Section I.VII.7.

Comment 3: Whether Chinese Commercial Banks are Government Authorities

Government of China's Case Brief:

- Chinese commercial banks are not "government authorities." Commerce's *Preliminary Determination* fails to satisfy U.S. obligations under the World Trade Organization (WTO) Subsidies and Countervailing Measures (SCM) Agreement.[73] There is an eleven-year gap between the POI in *CFS Paper from China* and the POI of the instant proceeding. The mere fact that a government is the majority shareholder of an entity does not demonstrate that the government exercises meaningful control over the product of that entity, much less that the government has bestowed it with government authority."[74]
- Commerce's unfounded presumption that ownership alone indicates that the entity is a government entity plainly fails to company with U.S. WTO obligations.[75]

Petitioners' Rebuttal Brief:

- As a threshold matter, WTO Appellate Body rulings are not binding on Commerce. Under relevant U.S. law, section 771(5)(B) of the Act defines "authority" to mean "a government of a country or any public entity within the territory of the country." Accordingly, Commerce has developed a "longstanding practice of treating most government-owned corporations as the government itself." In this investigation, the Government of China has not presented any factual information that the SOCBs that provided loans to the subject producers are not controlled by the government. [76]
- Commerce has a longstanding practice of treating most government-owned corporations as the government itself.[77]
- The Government of China has not presented any factual information that the SOCBs that provided loans to the subject producers are not controlled by the Government of China.[78]

Commerce's Position: We find that the Government of China had a policy in place to encourage the development of the production of aluminum foil through policy lending, and further, that Chinese SOCBs are authorities under the countervailing duty law. When examining a policy lending program, Commerce looks to whether government plans or other policy directives lay out objectives or goals for developing the industry and call for lending to support

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[73] *See* Government of China's Case Brief at 55 (citing United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China, WT/DS379/AB/R (March 11, 2011) (Appellate Body Report – Certain Products from China at para. 354).
[74] *Id*. at 55. *See also Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 72 FR 60645 (October 25, 2007) (*CFS Paper from China*).
[75] *Id*. at 55 (citing Appellate Body Report – Certain Products from China at para. 319; United States – Countervailing Duty Measures on Certain Products from China, WT/DS437/R (July 14, 2014) (Panel Report - Certain Products from China) at para 7.75; United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India, WT/DS436/17 (December 8, 2014) at para. 4.10).
[76] *See* Petitioners' Rebuttal Brief at 54 (citing *Countervailing Duties; Final Rule*, 63 FR 65348, 65402 (November 25, 1998) (*Preamble)*.
[77] *Id*.
[78] *Id*. (citing Zhongji's June 12, 2017 Initial Questionnaire Response (Zhongji June 12, 2017 IQR) at 4-9).

such objectives or goals. Where such plans or policy directives exist, then it is our practice to find that a policy lending program exists that is *de jure* specific to the targeted industry (or producers that fall under that industry) within the meaning of section 771(5A)(D)(i) of the Act. Once that finding is made, we rely upon the analysis undertaken in *CFS Paper from China* to further conclude that national and local government control over the SOCBs render the loans a government financial contribution.[79] In *CFS from China*, Commerce explained why SOCBs are "authorities" within the meaning of section 771(5)(B) of the Act. Contrary to the Government of China's arguments made there, which are reiterated here, our findings were not, and are not, based upon government ownership alone. For example, we stated:

> ... information on the record indicates that the {Chinese} banking system remains under State control and continues to suffer from the legacies associated with the longstanding pursuit of government policy objectives. These factors undermine the SOCBs ability to act on a commercial basis and allow for continued government control resulting in the allocation of credit in accordance with government policies. Therefore, treatment of SOCBs in China as commercial banks is not warranted in this case.

In *Drill Pipe from China* and *Oil Country Tubular Goods from China*, Commerce established a link between the Government of China policy of "promoting" a specific industry and policy loans to that sector from SOCBs.[80] As discussed above, at Comment 2, record evidence indicates that financial support directed specifically toward certain encouraged industries, including the aluminum foil industry, does in fact exist. Further, the SOCBs act in accordance with these government policies and effectuate government interests in providing the lending, and therefore they are "authorities" within the meaning of section 771(5)(B) of the Act.[81]

Regarding the Government of China's statements concerning *US-CVD I*, we note that the Appellate Body in that dispute affirmed Commerce's finding that SOCBs are "public bodies" or "authorities" because they pursue and effectuate government policies. Commerce's determination in this investigation that the Chinese banks at issue are "authorities" within the meaning of section 771(5)(B) of the Act is in accordance with U.S. law, which is consistent with our WTO obligations.

The Government of China argues that Commerce is relying on outdated findings to support its decision that SOCBs are "authorities," but Commerce updated its analysis of the Chinese banking sector in 2017, and we continue to conclude that the Government of China uses SOCBs

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[79] *See CFS Paper from China*, and accompanying IDM at Comment 8.

[80] *See Drill Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011) (*Drill Pipe from China)*, and accompanying IDM at 15-17; *Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 75 FR 57444 (September 21, 2010), and accompanying IDM at 15-16; and *Certain Oil Country Tubular Goods from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination*, 74 FR 64045 (December 7, 2009) (*Oil Country Tubular Goods from China*), and accompanying IDM at 12.

[81] *See, e.g., Coated Paper from China*, and accompanying IDM at Comment 1.

to fulfill government functions.[82] Therefore, we continue to find that loans from SOCBs under this program constitute financial contributions, pursuant to sections 771(5)(B)(i) and 771(5)(D)(i) of the Act, because SOCBs are "authorities"; thus, we have made no changes to our calculations for policy loans for the final determination.

Comment 4: Whether Commerce's Policy Lending Benchmark Interest Rate Computations are Supported by the Record and Lawful

Government of China's Case Brief:

- Given the substantial changes regarding bank loan management stipulated under the *Capital Rules for Commercial Banks (provisional)*, combined with the deregulation of floor interest rates in China's banking sector, the application of external interest rates as benchmarks is unsupported on the record of this case.[83]
- Commerce's Financial System Memo is riddled with inaccuracies, outdated information and unlawful assumptions regarding the nature of China's financial system.[84] The Financial System Memo ignores facts and important studies that undermine its analysis, and, as a result, Commerce's conclusions are unlawfully biased and unsupportable.[85]
- The multi-country short-term interest rate benchmark computations in the *Preliminary Determination*, which rely on a regression analysis based on World Bank governance indicators and lending rates as published by the International Monetary Fund for dozens of upper and lower middle-income countries, are fundamentally flawed. Commerce has relied upon an arbitrary collection of International Monetary Fund (IMF) published rates that are in many cases not actually short-term rates, but Commerce has made no adjustment to correct for this. In some cases, the rates do not even reflect business loans. Commerce has arbitrarily excluded negative inflation- adjusted rates from its calculations, and it has used an invalid regression analysis to determine a short-term interest rate for China based on a composite governance indicator factor. Also, Commerce has arbitrarily calculated an adjustment spread or factor between short-and long- term rates using United States dollar "BB" bond rates, an illogical approach with no rational explanation.[86]
- China's financial system is market oriented and should serve as a basis for in-country tier one benchmarks for interest rates in this investigation.[87]

Petitioners' Rebuttal Brief:

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[82] *See* Financial System Memo at 7, which expressly states, among other things, that the government uses "the banking sector as a key policy instrument to allocate capital to priority industries."
[83] *See* Government of China's Case Brief at 56-57 (citing PDM at 12).
[84] *Id*. at 57 (citing Government of China Letter, "Response to the Department's Financial System Memo," dated August 8, 2017 (Response to Financial System Memo) at 2).
[85] *Id*. at 57 (citing Response to Financial System Memo at 2-3).
[86] *Id*. at 58.
[87] *Id*. at 59.

- Commerce's Financial System Memo concludes that there appears to be little practical effect of the Government of China's change to "reference rates."[88]
- The Government of China's challenges to the regression analysis used to determine the external benchmark interest rate contains no concrete evidence of error.
- Commerce rejected these same arguments in *Aluminum Extrusions from China; 2014*.[89]

Commerce's Position: Commerce has fully addressed the arguments raised by the government of China regarding Commerce's rationale for relying on an external benchmark and its authority to do so in prior cases and the *Preliminary Determination*.[90] The Government of China has not presented sufficient information to warrant reconsideration of Commerce's prior findings, including on the issue of whether certain regulatory initiatives have had an impact on the Commerce's prior findings.

Additionally, Commerce has previously fully addressed the arguments raised by the Government of China regarding the calculation of Commerce's benchmark interest rate, including the use of certain rates published by the IMF,[91] Commerce's practice with respect to certain negative inflation-adjusted rates,[92] its regression analysis based on a composite governance factor,[93] and adjustment of rates based on the spread between U.S. short and long-term "BB" bond rates.[94] Because the Government of China offers no more here than bare restatements of these previously rejected arguments, we find the Government of China has not presented new arguments or information sufficient to warrant reconsideration of Commerce's prior findings.

The Government of China asserts that Commerce's Financial System Memo is inaccurate, and contains outdated information and unlawful assumptions regarding the nature of China's financial system. Regarding the Government of China's claim that we have relied on outdated

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[88] *See* Petitioners' Rebuttal Brief at 57.
[89] *Id*. at 58 (citing *Aluminum Extrusions from the People's Republic of China: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2014*, 81 FR 92778, December 20, 2016 (*Aluminum Extrusions from China; 2014)*, and accompanying IDM at Comment 10).
[90] *See*, *e.g.*, PDM at 15; *see also CFS Paper from China,* and accompanying IDM at Comment 10, and *Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008), and accompanying IDM at 8-10. We are, therefore, incorporating our response to the Government of China's comments in these other decisions by reference herein. This issue, in general terms, has also been raised in numerous China CVD proceedings.
[91] *See* PDM at 12-15. *See also Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 16836 (April 13, 2009) *(Citric Acid from China),* and accompanying IDM at Comment 10, *Oil Country Tubular Goods from China*, and accompanying IDM at Comments 24, 26.
[92] *See* PDM at 12-15. *See also*, *e.g.*, *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (October 17, 2010), and accompanying IDM at Comment 16.
[93] *See*, *e.g.*, *Citric Acid from China*, and accompanying IDM at Comment 12, *Aluminum Extrusions from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010 and 2011*, 79 FR 106 (January 2, 2014), and accompanying IDM at Comment 8, *Oil Country Tubular Goods from China*, and accompanying IDM at Comment 23.
[94] *See*, *e.g.*, *Citric Acid from China*, and accompanying IDM at Comment 13, *Oil Country Tubular Goods from China*, and accompanying IDM at Comment 27.

information, we note that the 2011 "Catalogue for Guiding Industrial Restructuring" is derived from the "mother" State Council policy document (No. 40). This document was released with the first version of the catalogue in 2005 and remains in effect today. With regard to the Government of China's assertion that we relied on an inaccurate translation of Article 34 of the *Law on Commercial Banks*, we stand by the pkulaw translation and the quoted text. We see no other translation on the administrative record that indicates the pkulaw translation is inaccurate or in error. Although the Government of China has asserted that the *Law on Commercial Banks* does not oblige banks to pursue industrial policies in their lending operations and that the Chinese version does not contain the equivalent of "shall," translations from expert, third-party sources indicate otherwise.

We have addressed the Government of China's arguments concerning alleged reforms at Comment 2, above.

Comment 5: Whether Commerce's Investigation of Uninitiated Programs is Lawful

Government of China's Case Brief:

- Articles 11.1 and 11.2 of the WTO SCM Agreement provide that an investigation of any alleged subsidy may be initiated only upon written application that must include sufficient evidence of a subsidy, injury, and a causal link between the subsidy and alleged injury.[95]
- The right to self-initiate can only be exercised on the basis of sufficient evidence of the existence of a subsidy, consistent with Article 11.6 of the WTO SCM Agreement, and after an opportunity for consultation has been properly offered to the government of the exporting country under investigation, consistent with Articles 13.1 and 13.2 of the WTO SCM Agreement.[96]
- Commerce should withdraw its preliminary findings related to "other subsidies," and remove from the record all the information obtained through improper questionnaire requests. None of these grant programs were alleged by the petitioners or duly initiated by Commerce.[97]

Petitioners' Rebuttal Brief:

- Commerce's decision to countervail other subsidies falls squarely within the guidelines established under section 775 of the Act and 19 CFR 351.311(b).[98]
- Commerce notified parties of Commerce's consideration of the respondents' reported subsidies in its initial and supplemental questionnaires to the Government of China.[99]

Mahle's Rebuttal Brief:

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[95] *See* Government of China's Case Brief at 59.
[96] *Id*. at 59-60.
[97] *Id*.
[98] *See* Petitioners' Rebuttal Brief at 60.
[99] *Id*.

- Interested Party Mahle restates and affirms its support for the Government of China's arguments.[100]

Commerce's Position: We disagree with the Government of China and Mahle that Commerce unlawfully investigated "other subsidies." Investigations into potentially countervailable subsidies are initiated in one of two ways. First, an investigation can be self-initiated by Commerce. Second, when a domestic interested party files a petition for the imposition of countervailing duties on behalf of an industry, and the petition: (1) alleges the elements necessary for the imposition of a countervailing duty pursuant to section 701(a) of the Act; and (2) "is accompanied by information reasonably available to the petitioner supporting those allegations {,}" Commerce will initiate an investigation into whether countervailing duties should be imposed.[101] Pursuant to section 775 of the Act, Commerce has an "affirmative obligation" to "consolidate in one investigation...all subsidies known by petitioning parties to the investigation or by the administering authority relating to that merchandise" to ensure "proper aggregation of subsidization practices."[102]

Pursuant to section 702 of the Act, "{a} countervailing duty investigation shall be initiated whenever the administering authority determines, from information available to it, that a formal investigation is warranted into the question of whether the elements necessary for the imposition of duty under section 701 of the Act exits." This statutory provision does not preclude Commerce from investigating a program or subsidy "which appears to be a countervailable subsidy... with respect to the merchandise which is the subject of the proceeding." Indeed, section 775 of the Act requires further analysis by Commerce of practices that appear to be countervailable subsidies that were not originally alleged. Further, Commerce is not "legally precluded from asking questions that enable it to effectuate this obligation, the goal of which is to consolidate all relevant subsidies into a single investigation."[103]

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

Although the Government of China asserts that "Other Subsidies" were not included in Commerce's "initial or any new subsidy questionnaires in the proceeding,"[104] the record contradicts this claim. In its initial questionnaire to the Government of China, Commerce asked the Government of China: (1) if it provided any other forms of assistance to subject producers; and (2) to coordinate with the Respondents on any additional subsidies reported by the companies in order to provide detailed information.[105] In response, the Government of China

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[100] *See* Mahle's Rebuttal Brief at 17.
[101] *See* section 702(b) of the Act.
[102] *See Allegheny Ludlum Corp. v. Unites States*, 112 F. Supp. 2d 1141, 1150 n 12 (CIT 2000) (*Allegheny I); see* section 775 of the Act.
[103] *See Allegheny I*, 112 F. Supp. 2d at 1150 n 12 ("Congress...clearly intended that all potentially countervailable programs be investigated and catalogue{.}").
[104] *See* Government of China's Case Brief at 59.
[105] *See* Initial CVD Questionnaire.

refused to provide the requested information, replying "that an answer to this question is premature absent a more direct inquiry supported by credible evidence and the initiation of a discrete investigation by the Commerce."[106] Additionally, in response to supplemental questions by Commerce as to the particular forms of other assistance reported by the respondents, the Government of China confirmed the reported years of receipt and amounts as reported by the companies, but withheld all additional information required by Commerce to determine the countervailability of the reported grants.[107] The Government of China's conduct, therefore, warrants the application of AFA, as Commerce appropriately determined in its *Preliminary Determination*.[108]

Moreover, the Government of China's claim that the Commerce was required to initiate investigations into the other reported subsidies has been rejected repeatedly by Commerce in prior investigations. As previously stated by Commerce, the decision to countervail "Other Subsidies" reported by the respondents "fell squarely within the guidelines established under section 775 of the Act and 19 CFR 351.31 l(b)."[109]

In accordance with its regulations, Commerce will notify the parties of a subsidy discovered in the course of the proceeding. Here, as in prior proceedings, Commerce's initial and supplemental questionnaires to the Government of China regarding the "Other Subsidies," reported by the respondents, served as notification to the Government of China, and to the respondents, of Commerce's consideration of the reported subsidies.[110] Commerce's *Preliminary Determination* regarding "Other Subsidies" was consistent with the agency's regulations and prior practice and, thus, should be affirmed in the final determination.[111]

Comment 6: Whether Commerce Should Change its Export Buyer's Credit Determination

Government of China's Case Brief:

- The Government of China confirmed non-use for the mandatory respondents.[112]

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[106] *See* Petitioners' Rebuttal Brief at 59. *See also* Government of China June 12, 2017 IQR - Zhongji at 91. *See also* Government of China's July 20, 2017 Initial Questionnaire Response (Government of China July 20, 2017 IQR – Dingsheng) at 126.
[107] *Id.* *See also* Government of China's July 5, 2017 Supplemental Questionnaire Response (Government of China July 5, 2017 SQR) at 14, Exhibit S-11.
[108] *See* PDM at 41-42.
[109] *See* Petitioners' Rebuttal Brief at 60. *See also, e.g., Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People's Republic of China: Final Affirmative* Determination, 82 FR 8405 (January 25, 2017) (*Silica Fabric from China*), and accompanying IDM at Comment 22.
[110] *Id.*
[111] *See* Petitioners' Rebuttal Brief at 60.
[112] *See* Government of China's Case Brief at 5-6. *See also* Government of China June 12, 2017 IQR – Zhongji at 10; Government of China July 5, 2017 SQR at 8; Government of China July 20, 2017 IQR - Dingsheng HK at 19.

- The mandatory respondents submitted sworn certifications on program non-use from their U.S. customers.[113] Commerce relied on such certifications to determine non-use in prior proceedings.[114]
- Commerce did not verify the respondents' non-use claims. Having forgone verification, Commerce must assume that every factual statement submitted by the Government of China is accurate.[115]
- Commerce's instructions are clear that the Government of China is not required to submit a full program response if the respondents' claim non-use of the program.[116]
- Contrary to Commerce's assertions, the Government of China did not fail to provide any of the requested information.[117] If the Government of China's response was deficient, Commerce had a legal obligation to notify the Government of China of the deficiency and provide an opportunity to remedy the deficiency.[118]
- The Government of China confirmed that the 2013 Administrative Measures (2013 Revisions) to the Export Buyer's Credit program do not formally repeal or replace the provisions of the regulations for the program that are on the record.[119] The Government of China explained that loan disbursements under this program, the Export-Import Bank of China (China Ex-Im Bank), disburses credits directly to the exporters based on the executed lending contracts. Third-party banks are not actively involved in disbursing credits for this program. [120]
- China Ex-Im Bank has confirmed that the 2013 Revisions are internal to the bank, non-public, and not available for release.[121] Commerce cannot penalize a party for not being able to submit information that is clearly impossible to obtain.[122]

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[113] *See* Government of China's Case Brief at 6-7. *See* Zhongji June 12, 2017 IQR at 13 and Exhibit 11; Dingsheng's July 20, 2017 Initial Questionnaire Response (Dingsheng July 20, 2017 IQR) at 24 and Exhibit P.A.4.

[114] *See* Government of China's Case Brief at 7-8 (*citing Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2013*, 81 FR 46904 (July 19, 2016) (*Solar Cells from China 2013)*, and accompanying IDM at 11*; Chlorinated Isocyanurates from the People's Republic of China: Final Affirmative Countervailing Duty Determination; 2012*, 79 FR 56560 (September 22, 2014) (*Chlorinated Isocyanurates from China)*, and accompanying IDM at 15; *Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 80 FR 51775 (August 26, 2015) (*Boltless Shelving from China*), and accompanying IDM at Comment X.)

[115] *See* Government of China's Case Brief at 8 (citing *Boltless Shelving from China*, and accompanying IDM at 45, China Kingdom, 507 F. Supp. 2d at 1341.

[116] *See* Government of China's Case Brief at 10-11 (citing at Government of China June 12, 2017 IQR – Zhongji at 3).

[117] *See* Government of China's Case Brief at 11-15 (citing Government of China June 12, 2017 IQR – Zhongji at 18-21 and Exhibits A3-2, A3-3, and A3-4.

[118] *See* Government of China's Case Brief at 11-12 (citing section 776(a)(2)(d) and 782(d) of the Act.)

[119] *See* Government of China's Case Brief at 12-13 (citing Government of China June 12, 2017 IQR – Zhongji at Exhibit A3-3.

[120] *See* Government of China's Case Brief at 12-15 (citing Government of China June 12, 2017 IQR – Zhongji at 20 and exhibit A3-2.

[121] *See* Government of China's Case Brief at 17-18 (citing Government of China June 12, 2017 IQR – Zhongji at 20 and exhibit A3-2.

[122] *Id*. (citing *Shantou Red Garden Foodstuff Co. v. United States*, 815 F. Supp. 2d 1311, 1316, 1325 (CIT Trade 2012), 815 F. Supp. 2d at 1325; *Olympic Adhesives, Inc. v. United States*, 899 F.2d 1565, 1572 (Fed. Cir. 1990) (*Olympic Adhesives*)*; AK Steel Corp. v. United States,* 21 CIT 1204 (1997) *(AK Steel)*, 21 CIT at 1223; *NSK Ltd. v. United States*, 416 F. Supp. 2d 1334, 1341 (CIT 2006) (*NSK).*

- The statue only allows Commerce to use factual information otherwise available in reaching the applicable determination. Moreover, Commerce can only apply adverse inferences to information missing from the record.[123] Further, a finding of adverse facts available is not lawful when there is sufficient information on the record to reach a conclusion on the matter in question.[124]
- In its *Preliminary Determination*, Commerce did not explain the relevance of the 2013 Revisions or the USD 2 million threshold to the usage determination of this program. The respondents were not eligible for the Export Buyer's Credit program, and there is sufficient evidence of non-use of this program on the record. Any application of AFA, simply because the China Ex-Im Bank did not provide the 2013 Revisions, would be counter to the well-established tenet that the antidumping and countervailing duty laws are remedial and not punitive.[125]
- Commerce is obliged to avoid the adverse impact of the application of AFA on a cooperating respondent if relevant information exists elsewhere on the record.[126]
- The 10.54 percent AFA rate is punitive, no longer reliable, and superseded by more recent and probative factual evidence on which Commerce should base an AFA determination.[127] This rate is a policy lending rate that is not based on a "same or similar" program and is neither "reliable" nor "relevant" to this investigation, nor does it take into account the "situation that resulted in an adverse inference" in this case.
- Section 776(d) allows Commerce discretion to apply the highest subsidy rate based on evaluation by the administering authority of the situation that resulted in having to use an adverse inference. Contrary to *Trina Solar*, Commerce applied AFA to the detriment of the cooperating mandatory respondents when there was information elsewhere on the record that would allow it to make a non-use determination. Commerce should in the final determination select the final calculated subsidy rate for Export Seller's Credit program as a reliable, relevant, and reasonable facts available rate for the Export Buyer's Credit program.[128]
- If it does not rely on the Export Seller's Credit program rate as AFA, Commerce should resort to the most recently verified information from the record of this investigation, which are the subsidy rates for preferential lending in the aluminum foil industry. This is consistent with Commerce's approach in other recent cases.[129] It is reasonable to assume

[123] *Id*. at 18-19 (citing section 776(a)(2)(A) of the Act; *Zhejiang DunAn Hetian Metal Co. v. United States*, 652 F.3d 1333, 13448 (Fed. Cir. 2011) (*Hetian Metal*); *Shandong Huarong Mach. Co. v. United States*, 435 F. Supp. 2d 1261, 1289 (CIT 2006).

[124] *Id*. at 19-20 (citing *Gerber Food (Yunnan) Co., Ltd. v. U.S.*, 387 F. Supp. 2d 1270, 1284 (CIT 2005).

[125] *Id*. at 20-21 (citing *National Knitwear & Sportswear Ass'n v. United States*, 15 CIT 548, 558 (1991); *Chaparral Steel Co. v. United States*, 901 F.2d 1097, 1103-1104 (Fed. Cir. 1990).

[126] *Id*. at 21 (citing *Archer Daniels Midland Co. v. United States*, 917 F. Supp. 2d 1331, 1342 (CIT 2013) (*Archer Daniels Midland)*; *Changzhou Trina Solar Energy Co., Ltd. v. United States*, 255 F. Supp. 3d 1312, 1318 (CIT 2017) (*Trina Solar).*

[127] *Id*. at 22-27 (citing PDM at 18; *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order, 75 FR 70201* (November 17, 2010) (*Coated Paper from China Amended Final*)).

[128] *Id*. at 27.

[129] *Id*. at 27-29 (citing *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 41003 (July

that programs that are similar because they confer similar benefits are likely to be used similarly in the same industry.[130]

Dingsheng's Case Brief:

- Commerce has not used the USD 2 million threshold as the basis for finding non-use in the past and has never looked at this threshold in the countless on-site verifications at the China Ex-Im Bank as a means to determined non-use. This criterion is thus irrelevant.[131]
- The 2013 Revisions are also irrelevant as to whether Commerce could have conducted usage verification at China Ex-Im Bank. Commerce failed to investigate whether the absence of this information had any real impact on the usage determination and whether it in fact created a gap in the record that required the application of AFA.[132]
- The Government of China explained very clearly in its questionnaire responses how EX-IM Bank determined usage in this case.[133]
- Commerce failed to articulate a rational connection between the list of third party banks that it requested from the Government of China and its conclusion that it could not verify use without this information.[134]
- The Government of China's failure to provide certain information in this case is no different from the information it did not provide concerning certain grant programs. Usage could still be determined by the questionnaire responses, China Ex-Im Bank's computer systems, and declarations of non-use from the respondent's customers.[135]
- Dingsheng placed sufficient information on the record to demonstrate non-use of this program.[136]
- Commerce's review and consideration of the respondent's non-use information is consistent with its practice and the court's view of the law.[137]
- Commerce must follow its past precedent based on the record information and find this program not used.[138] In *Solar Cells from China; 2013*, Commerce declined to punish the cooperative respondent in accordance with agency practice, where the respondent

14, 2015), and accompanying IDM at 18 and 44; *SolarWorld Americas, Inc., v. United States*, Consol. Court No. 15-00232 (CIT 2017) at 6).

[130] *See* Government of China's Case Brief at 28-29.

[131] *See* Dingsheng's Case Brief at 24-25.

[132] *Id*. at 25-26 (citing *Hetian Metal*, 652 F.3d at 1348).

[133] *Id*. at 26.

[134] *Id*. at 26 (citing *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962).

[135] *Id*. at 27.

[136] *Id*. at 27-28 (citing *Countervailing Duty New Shipper Review: Certain In-shell Roasted Pistachios from the Islamic Republic of Iran*, 73 Fed. Reg. 9993 (Feb. 25, 2008) (*Pistachios from Iran)*, and accompanying IDM at Comment 2; *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Countervailing Duty Administrative Review*, 73 Fed. Reg. 40,295 (July 14, 2008), and accompanying IDM at Comment 6; Dingsheng July 20, 2017 IQR at Exhibit P.A.5; Dingsheng's July 21, 2017 Benchmark Submission (Dingsheng Benchmark Submission) at Exhibit 3).

[137] *Id*. at 27 (citing *Pistachios from Iran*; *Archer Daniels Midland*, 917 F. Supp. 2d 1342; *Fine Furniture (Shanghai) Ltd. v. United States*, 865 F. Supp. 2d 1254 (CIT 2012) (*Fine Furniture)*, 865 F. Supp. 2d 1254; *Trina Solar*, 255 F. Supp. 3d 1318).

[138] *Id*. at 29-31 (citing *Solar Cells from China; 2013*, and accompanying IDM at Comment 1; *Sunpower Corp. v. United States*, 179 F. Supp. 3d 1286, 1295 (June 8, 2016)).

provided declarations for all of its U.S. customers during the review period stating that they did not obtain credit under or otherwise participate in the Export Buyer's Credit program.[139]

- In this case, Dingsheng placed evidence on the record demonstrating that its customers did not use this program. This information consisted of declarations from all of the respondents' U.S. customers certifying to the fact that they received no funding from the EX-IM Bank directly or indirectly through any third-party bank.
- Consistent with *Boltless Shelving from China*, Commerce's decision to not verify the program does not prevent a finding of non-use.[140]
- The rate selected cannot be corroborated and is otherwise unreasonable. It is mathematically impossible for U.S. companies receiving U.S. dollar loans under this program to receive an *ad valorem* rate that is higher than the U.S. dollar benchmark interest rate in this case.[141]
- The AFA rate is unreasonable and cannot be corroborated under the statute. Therefore, if Commerce's AFA finding stands, the AFA rate applied in the Final Determination must be less than 0.56 percent.[142]

Zhongji's Case Brief:

- The record contains an abundance of evidence that the Government of China has fully cooperated during the proceeding.[143] The Government of China clarified that the 2013 Revision and the USD 2 million loan threshold are irrelevant to Commerce's understanding and verification of this program.[144]
- Commerce did not verify the respondents' non-use claims. Having forgone verification, Commerce must assume that every factual statement submitted by the Government of China is accurate.[145]
- Zhongji fully cooperated and Commerce improperly allowed collateral impact of its AFA decision on Zhongji.[146]
- Commerce's application of AFA is an impermissible departure to apply a zero percent CVD margin based on non-use declarations from U.S. customers.[147]
- Failure to consider the record evidence violates Commerce's statutory obligation not to decline to consider information that is submitted by an interested party and is necessary

[139] *Id*.
[140] *Id*. at 31 (citing *Boltless Shelving from China*, and accompanying IDM at Comment X).
[141] *Id*. at 32-34 (citing *Aluminum Extrusions from China Investigation*).
[142] *Id*.
[143] *See* Zhongji's Case Brief at 3.
[144] *Id*. at 4.
[145] *Id*. at 5 (citing *China Kingdom Imp. & Exp. Co. v. United States*, 507 F. Supp. 2d 1337, 1341, n. 13 (CIT 2007) (*China Kingdom)*.
[146] *Id*. at 5.
[147] *Id*. at 6-7 (citing *Solar Cells from China; 2013*, and accompanying IDM at Comment1, *Trina Solar*, 255 F. Supp. 3d 1318).

to the determination provided that the information meets the quality requirements under the statute.[148]

- To the extent there is any deficiency in Jiangsu Zhongji's responses to questions about the program, Commerce has deprived the company of an opportunity to remedy and has preemptively applied the most severe adverse inference.[149]
- Case law limits the application of adverse inferences to fill gaps in the record.[150] There is no gap on the record regarding the existence of the benefit to Zhongji under the program.[151]
- Commerce is prohibited from applying AFA against a cooperating party because of another party's non-cooperation.[152]
- The AFA rate, which was established in the *Coated Paper from China Amended Final*, targeted a different industry during a different time period. If Commerce continues to calculate an AFA rate for the Export Buyer's Credit program in the final determination, Commerce must use the highest calculated CVD rate for the policy loans to the aluminum foil industry in the current investigation: 5.65 percent assigned to mandatory respondent Dingsheng.[153]

Petitioners' Rebuttal Brief:

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- Commerce's preliminary application of AFA to the Export Buyer's Credit program is warranted due to the Government of China's refusal to provide information specifically requested by Commerce.[154]
- The Government of China attempts to gloss over the information that was specifically requested by Commerce and that was omitted from the Government of China's initial questionnaire response.[155]
- Commerce's subsequent request for this document, therefore, was the agency's second notification to the Government of China that this document was necessary for the agency's analysis.[156]
- Commerce requested the 2013 Revisions because information on the record of this proceeding indicated that the 2013 Revisions affected important program changes. The Government of China's failure to place a copy of the 2013 Revisions on the record of this

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[148] *Id*. at 7-8 (citing section 782(e) of the Act; 19 CFR 351.308(e); Zhongji June 12, 2017 IQR at Vol. 1, 13, Exhibit 12; Zhongji's July 14, 2017 Supplemental Questionnaire Response (Zhongji July 14, 2017 SQR).
[149] *Id*. at 8.
[150] *Id*. at 9 (citing *Hetian Metal*, 652 F.3d at 1348; *Essar Steel Ltd. v. United States*, 721 F. Supp. 2d 1285, 1297 (CIT 2010) (*Essar Steel*)).
[151] *Id*.
[152] *Id*. at 10 (citing *SKF USA Inc. v. United States*, 675 F. Supp. 2d 1264, 1276 (CIT 2009); *Fine Furniture*, 865 F. Supp. 2d 1372).
[153] *Id*. at 12 (citing PDM at 44; *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review: 2014*, 82 Fed. Reg. 32678 (July 17, 2017) (*Solar Cells frm China; 2014)*, and accompanying IDM at Comment 2).
[154] *See* Petitioners' Rebuttal Brief at 4-5.
[155] *Id*. at 6.
[156] *Id*.

investigation has impeded Commerce's ability to determine whether the USD 2 million requirement applies - information that is "critical to understanding how the Export Buyer's Credit program operates and is critical to Commerce's program use determination."[157]

- The Government of China's questionnaire response raised significant questions with Commerce officials regarding how loans associated with the Export Buyer's Credit program are disbursed. The Government of China's questionnaire response explains that the China Ex-Im Bank may deposit funds in the importer's account at a third-party bank, but does not explain how that third-party bank then transfers those funds to the Chinese exporter.[158]
- In light of the Government of China's failure to comply to the best of its ability, mere assurances of non-use by the Government of China and through non-comprehensive customer declarations cannot appropriately be considered verifiable evidence by Commerce, in accordance with the law and recent case precedent.

Mahle's Rebuttal Brief:

- Interested Party Mahle restates and affirms its support for the Government of China's and Zhongji's arguments.[159]

Commerce's Position: Consistent with the *Preliminary Determination*, and Commerce's past practice, we continue to find that the record of the instant investigation does not support a finding of non-use regarding the Export Buyer's Credit program.[160] In prior examinations of this program, we found that the China Ex-Im, as a lender, is the primary entity that possesses the supporting information and documentation that are necessary for Commerce to fully understand the operation of this program, which is a prerequisite to Commerce's ability to verify the accuracy of the respondents' claimed non-use of the program.[161] As we discussed in the *Preliminary Determination*, and in the "Use of Facts Otherwise Available and Adverse Inferences," section above, the Government of China did not provide the requested information or documentation necessary for Commerce to develop a complete understanding of this program (*i.e.*, information regarding whether China Ex-Im uses third-party banks to disburse/settle export buyer's credits, and information on the size of the business contracts for which export buyer's credits are applicable).[162] Furthermore, this information is critical for Commerce to understand how export buyer's credits flow to and from foreign buyers and China Ex-Im. Absent the requested information, the Government of China's claims that the respondent companies did not

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[157] *Id*. at 7.
[158] *Id*. at 9.
[159] *See* Mahle's Rebuttal Brief at 2-10.
[160] *See* PDM at 26-29. *See also Solar Cells from China; 2014*, and accompanying IDM at Comment 1.
[161] *See*, *e.g*., *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the People's Republic of China: Final Affirmative Determination and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35308 (June 2, 2016) (*CORE from China)*, and accompanying IDM at Comment 6; *see also Chlorinated Isocyanurates from China,* and accompanying IDM at Comment 2 (concluding that "without the Government of China's necessary information, the information provided by the respondent companies is incomplete for reaching a determination of non-use").
[162] *See* PDM at 26-29.

use the program are not reliable. Moreover, without a full and complete understanding of the involvement of third-party banks, the respondent companies (and their customers) claims are also not reliable because Commerce cannot be confident in its ability to verify those claims.

We disagree with the Government of China's argument that Commerce did not need to review the 2013 Measures or consider the $2 million contract minimum to determine non-use of the program. As we explained in the *Preliminary Determination*, we requested the 2013 Measures because information on the record of this proceeding indicated that the 2013 Measures implemented important program changes. For example, the 2013 Measures may have eliminated the $2 million contract minimum associated with this lending program.[163] By refusing to provide the requested information, and instead asking Commerce to rely upon unverifiable assurances that the 2000 Rules Governing Export Buyer's Credit remained in effect, the Government of China impeded Commerce's understanding of how this program operates and how to verify it, with both the Government of China and the respondent companies. In addition, record evidence indicates that the loans associated with this program are not limited to direct disbursements through China Ex-Im.[164] Specifically, the record information indicates that customers can open loan accounts for disbursements through this program with other banks, whereby the funds are first sent to the China Ex-Im to the importer's account, which could be at the China Ex-Im or other banks, and that these funds are then sent to the exporter's bank account.[165] Given the complicated structure of loan disbursements for this program, Commerce's complete understanding of how this program is administered is necessary.[166] Thus, the Government of China's refusal to provide the most current 2013 Administrative Measures, which provide internal guidelines for how this program is administered by the China Ex-Im, significantly impeded Commerce's ability to conduct its investigation of this program.

In this investigation, we have information on the record indicating that there were revisions to the 2013 Measures program and the involvement of third-party banks, which were not present on the record *of Solar Cells from China; 2013, Chlorinated Isocyanurates from China*, and *Boltless Steel Shelving Units from China*, which have been cited by the Government of China and the respondent companies to support their arguments.[167] In addition, we find that, with respect to *Chlorinated Isocyanurates from China*, *Boltless Steel Shelving Units from China*, and *Solar Cells from China; 2013*, Commerce has since modified its position with respect to the Export Buyer's Credit program in *Chlorinated Isocyanurates from China; 2014*,[168] where it determined that AFA was warranted because the Government of China did not cooperate to the best of its ability

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[163] *See* Memorandum, "Placing Information on the Record," dated July 27, 2017, at Document 1 (Citric Acid Verification Report) at 2.
[164] *See* Government of China June 12, 2017 IQR - Zhongji at Exhibit A3-3.
[165] *Id*.
[166] *See* PDM at 28.
[167] *See Solar Cells from China; 2013,* and accompanying IDM at Comment 1. *See also* Citric Acid verification report; *Boltless Steel Shelving Units from China*, and accompanying IDM at Comment X.
[168] *See Chlorinated Isocyanurates from the People's Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review; 2014,* 82 FR 27466 (June 15, 2017) (*Chlorinated Isocyanurates from China; 2014*), and accompanying IDM at Comment 2 (concluding that "without the Government of China's necessary information, the information provided by respondent companies is incomplete for reaching a determination of non-use").

in responding to Commerce's request for additional information regarding the operations of the Export Buyer's Credit program.[169] As such, we find the Government of China's and the respondent companies' reliance on *Chlorinated Isocyanurates from China* and *Boltless Steel Shelving Units from China* is unpersuasive.

Moreover, in *Solar Cells from China; 2013*, we specifically stated that, even though we found the record in those cases supported a conclusion of non-use, we intended to continue requesting the Government of China's cooperation regarding this program in future proceedings, and we would base subsequent evaluations of this program on the record for each respective proceeding.[170] Thus, by not responding to our requests for additional information regarding the operation of this program, the Government of China was uncooperative in the instant proceeding.

In response to Dingsheng and Zhongji's claims that they provided declarations from customers claiming non-use of the program, similar to documents provided in *Chlorinated Isocyanurates from China* and *Solar Cells from China; 2013*, we find that the facts of this case are different. In the immediate investigation, we are unable to verify the accuracy of these documents as the primary entity that possesses such supporting records in the China Ex- Im Bank. Further, we now have information on the record that demonstrates the Government of China updated certain measures of the program, but the Government of China refused to provide the updated measures. Because the Government of China withheld critical information regarding this program, we are unable to determine how the program now operates, and, thus, we cannot verify Dingsheng and Zhongji's declarations as submitted.[171]

In addition, without the additional information requested of the Government of China, Commerce determines that the information provided by the Government of China and our understanding of this program is incomplete and unreliable. As such, we recognize that we cannot rely on information about this program provided by parties, other than the Government of China (i.e., the respondent company's customers' certifications of non-use).[172] Therefore, while we did consider the customer certifications provided by the respondents, without a complete and reliable understanding of the program's operation, especially with regard to the involvement of third-party banks, the information provided by the respondents is also unreliable.

With respect to the arguments that AFA should not be applied for this program, we continue to find that the Government of China withheld necessary information that was requested and significantly impeded the proceeding and, thus, that Commerce must rely on facts otherwise available in issuing the final determination, pursuant to sections 776(a)(2)(A) and 776(a)(2)(C) of the Act. Moreover, we determine that the Government of China failed to cooperate by not acting to the best of its ability to comply with our request for information. Specifically, the Government of China withheld information that we requested that was reasonably available to it.

[169] *See Chlorinated Isocyanurates from China; 2014* and accompanying IDM at Comment 2.
[170] *See Solar Cells from China;* 2013, and accompanying IDM at Comment 2.
[171] *See Silica Fabric from China*, and accompanying IDM at Comment 17.
[172] *See Certain Crystalline Silicon Photovoltaic Product from the People's Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review; 2014-2015,* 82 FR 42792 (September 12, 2017), and accompanying IDM at Comment 11.

Consequently, we find that an adverse inference is warranted in the application of facts available, pursuant to section 776(b) of the Act. As AFA, we determine that this program provides a financial contribution, is specific, and provides a benefit to the respondent companies within the meaning of sections 771(5)(D), 771(5A), and 771(5)(E), respectively, of the Act. This finding is identical to the application of AFA in prior proceedings. Specifically, we find that the circumstances in this case are like those in *Chlorinated Isocyanurates from China; 2014* and *Truck and Bus Tires from China*,[173] where Commerce requested operational program information from the Government of China on this program, pointing out that there were substantial changes to the 2013 Measures, which the Government of China declined to provide. As we explained in the Preliminary Determination, this information is necessary to the analysis of this program.[174]

Furthermore, we disagree with arguments that non-use of the program is verifiable and cannot be found otherwise because Commerce decided not to verify the customers' certifications of non-use. Commerce is not finding the mandatory respondents' customers' certifications of non-use to be unreliable because it declined to verify them. Rather, Commerce finds the mandatory respondents' customers' certifications of non-use to be unreliable because, without a complete understanding of the operation of the program, which could only be achieved through a complete response by the Government of China to Commerce's questionnaires, verification of the respondents' customers' certifications of non-use are meaningless.

Commerce considered all the information on the record of this proceeding, including the statements of non-use provided by the mandatory respondents. As explained above and in the *Preliminary Determination*, we are unable to rely on the information provided by the respondents because Commerce lacks a complete and reliable understanding of the program.[175]

With respect to the Government of China's and the respondents' claim that the 10.54 percent AFA is punitive, we reviewed the comments from interested parties, and made no change to the AFA rate selected in the *Preliminary Determination* for this program. As we explained in the *Preliminary Determination*, it is Commerce's practice in CVD proceedings to compute a total AFA rate for non-cooperating companies using the highest calculated program-specific rates determined for the cooperating respondents in the instant investigation, or, if not available, rates calculated in prior CVD cases involving the same country.[176] When selecting AFA rates, section 776(d) of the Act provides that Commerce may use a countervailable subsidy rate applied for the

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[173] *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 (January 27, 2017), and accompanying IDM at Comment 5.
[174] *See* PDM at 26-29.
[175] *Id.* at 26-29.
[176] *Id.* at 18-19, under "Use of Facts Otherwise Available and Adverse Inferences" section*; see also*, *e.g.*, *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 73 FR 70971, 70975 (November 24, 2008), and accompanying PDM (unchanged in *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 29180 (June 19, 2009), and accompanying IDM at "Application of Facts Available, Including the Application of Adverse Inferences"); *see also Aluminum Extrusions from China Investigation*, and accompanying IDM at "Application of Adverse Inferences: Non-Cooperative Companies."

same or similar program in a countervailable duty proceeding involving the same country, or, if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates.[177] Accordingly, when selecting AFA rates, if we have cooperating respondents, as we do in this investigation, we first determine if there is an identical program in the investigation and use the highest calculated rate for the identical program. If there is no identical program that resulted in a subsidy rate above-zero for a cooperating respondent in the investigation, we then determine if an identical program was used in another CVD proceeding involving the same country, and apply the highest calculated rate for the identical program (excluding *de minimis* rates).[178] If no such rate exists, we then determine if there is a similar/comparable program (based on the treatment of the benefit) in another CVD proceeding involving the same country and apply the highest calculated above-*de minimis* rate for the similar/comparable program. Finally, where no such rate is available, we apply the highest calculated above-*de minimis* rate from any non-company specific program in a CVD case involving the same country that the company's industry could conceivably use.[179]

Further, in applying AFA to each of the non-responsive companies, we are guided by Commerce's methodology detailed above. We begin by selecting, as AFA, the highest calculated program-specific above-zero rates determined for the cooperating respondents in the instant investigation. In relying on AFA for the selection of a subsidy rate, we point out that there is no identical program in this investigation for which we have calculated a rate; neither has Commerce calculated a rate for this program in any other CVD proceeding involving China. On this basis, we find that using an AFA rate of 10.54 percent ad valorem, the highest rate determined for a similar program in *Coated Paper from China*,[180] as the rate for this program, is appropriate. The 10.54 percent *ad valorem* rate calculated in *Coated Paper from China* for "Government Policy Lending," a program that that provides assistance in the form of preferential interest rates on various types of loans sourced from Chinese-owned financial institutions. We find that this methodology is consistent with Commerce's practice in the selecting an appropriate AFA rate.

With regard to the Government of China's and the respondents' argument that the AFA rate is uncorroborated, we disagree. As we explained in the *Preliminary Determination*, section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on

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[177] *See*, *e.g.*, *Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) (*Shrimp from China*) and accompanying IDM at 13; *see also Essar Steel*, 753 F.3d 1368, 1373-1374 (upholding "hierarchical methodology for selecting an AFA rate").

[178] For purposes of selecting AFA program rates, we normally treat rates less than 0.5 percent to be *de minimis*. *See*, *e.g.*, *Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 28557 (May 21, 2010) (*PC Strand from China*), and accompanying IDM at "1. Grant Under the Tertiary Technological Renovation Grants for Discounts Program," and "2. Grant Under the Elimination of Backward Production Capacity Award Fund."

[179] *See Shrimp from China* IDM at 13-14.

[180] *See Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet Fed Presses from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 75 FR 70201, 70202 (November 17, 2010) (*Coated Paper from China*) (revised rate for "Preferential Lending to the Coated Paper Industry" program).

information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.[181] Secondary information is defined as "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."[182] The SAA provides that to "corroborate" secondary information, Commerce will satisfy itself that the secondary information to be used has probative value.[183]

Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that Commerce need not prove that the selected facts available are the best alternative information.[184] Furthermore, Commerce is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.[185]

Because the rate constitutes secondary information, we have, according to section 776(c)(1) of the Act, corroborated the rates to the extent practicable. With regard to the reliability aspect of corroboration, we note that the rates on which we are relying are subsidy rates calculated in this and in another CVD proceeding concerning merchandise from China. Further, the calculated rate was based on information for a similar program, the "Government Policy Lending" program, and, thus, reflects the actual behavior of the Government of China with respect to a similar subsidy program. Finally, unlike other types of information, such as publicly available data on a country's national inflation rate or national average interested rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. With respect to the relevance aspect of corroborating the rates selected, Commerce will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. There is no information on the record of this investigation to indicate that the information is not appropriate as AFA for Commerce to use. Thus, we have corroborated the selected rate to the extent possible and find that the rate is reliable and relevant for use as an AFA rate for the program listed above.[186]

Due to the failures of the Government of China to cooperate to the best of its ability, Commerce, as explained above, relied on a subsidy rate from another CVD proceeding involving China. Commerce corroborated this rate to the extent practicable for this final determination. Because this rate reflects the actual behavior of the Government of China with respect to similar subsidy programs, and lacking adequate information demonstrating otherwise, Commerce corroborated the rate that it selected to the extent practicable.

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[181] *See* PDM at 24.
[182] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol. 1 (1994) (SAA).
[183] *Id.*
[184] *Id.* at 869-870.
[185] *See* section 776(d)(3) of the Act.
[186] *See* PDM at 24.

With regard to the Government of China's contention that Commerce should use the export seller's credit rate calculated in this investigation, or the rate calculated for preferential lending in this investigation, we disagree. As noted above, it is Commerce's practice to rely on, as an AFA rate, the highest above-zero rate calculated for the identical program in the investigation, and if there is no such rate, Commerce will use the highest above *de minimis* rate from the same program in another countervailing duty proceeding involving the same country.[187] If there is no such rate for the same program from another countervailing duty proceeding involving the same country, Commerce will use the highest non-*de minimis* rate for a similar program from a proceeding involving the same country. The export seller's credit program is not identical to the export buyer's credit program. Therefore, we must move beyond the first and second steps in the hierarchy. Further, the rate calculated here for the export seller's credit program is not the highest non-*de minimis* rate for a similar program (based on the treatment of benefit) in any China countervailing duty proceeding. Likewise, the rate calculated here for preferential lending is not the highest non-*de minimis* rate for a similar program in any China countervailing duty proceeding. As such, we find the Government of China's argument in this regard is unpersuasive. Therefore, as indicated above, we find that the 10.54 percent rate is sufficiently corroborated. Accordingly, we continue to rely on this rate as AFA for the export buyer's credits program benefit.

Comment 7: Whether Commerce Should Use the USD Interest Rate Benchmark for Hong Kong Loans

Dingsheng's Case Brief:

- Following the *Preliminary Determination*, Dingsheng reported the loans received, if any, by Dingsheng HK and Walson.[188] Thus, it has remedied the circumstances that predicated the use of facts available in the *Preliminary Determination*.
- Dingsheng HK's loans were all issued in USD at interest rates above the 0.56 percent USD interest rate. These loans should not be countervailed in the final determination, as no benefit exists.

No other comments were received on this issue.

Commerce's Position: We agree with Dingsheng, and we have revised the loan interest rates to reflect a USD lending rate.

Comment 8: Whether Loans Issued in Hong Kong to Hong Kong Companies Are Countervailable

Dingsheng's Case Brief:

[187] *Id.* at 23-24.
[188] *See* Dingsheng's Case Brief at 19 (citing Dingsheng's September 12, 2017 Supplemental Questionnaire Response (Dingsheng September 12, 2017 SQR) at Exhibit P-1).

- Commerce should not have required Dingsheng HK and Walson to report loans received by banks located in Hong Kong as these loans are not subject to the allegation made in this case for policy lending by Chinese state-owned banks to aluminum foil producers located in China.[189]
- The *Preamble* and 19 CFR 351.525 establish a presumption that governments normally subsidize domestic production only.[190]
- Commerce has a consistent practice of not requiring questionnaire responses from companies located outside the legal jurisdiction of the country under investigation.[191]
- Dingsheng HK is not a "trading company" that is required to report subsidies pursuant to 19 CFR 351.525(c), as it cannot have any benefits that could be cumulated with the benefits of producers located in China.[192] Commerce has explained that 19 CFR 351.525(c) does not apply to companies located in Hong Kong or other third-country.[193]
- 19 CFR 351.525(b)(7) applies only where a company has "production facilities in two or more countries." Dingsheng HK is not a producer, nor does it have a production affiliate in Hong Kong. 19 CFR 351.527 states that 'transnational subsidies' are not countervailable. There have not been any allegations regarding subsidies provided to international consortia pursuant to section 701(d) of the Act or of upstream subsidies pursuant to section 771A of the Act.[194]
- The policy loan program initiated on in this case was with regard to preferential loans provided in the Chinese market. Policy loans are only countervailable to the extent that they are provided at preferential rates compared to what the benchmark interest rate should be in China. Commerce has not analyzed or concluded that Hong Kong's financial sector is distorted, preventing loans provided in Hong Kong from being countervailed.[195]

Mahle's Rebuttal Brief:

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[189] *See* Dingsheng's Case Brief at 16-19.
[190] *Id*. (citing *Preamble*).
[191] *Id*. (citing *Aluminum Extrusions from China Investigation*, and accompanying IDM at 6; *Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 4936 (January 28, 2009) (not requiring third-country affiliates to report subsidies because "each is incorporated and registered outside of the PRC and therefore, is not eligible for any subsidies from the PRC" and "because, consistent with practice, the Department will not attribute subsidies to a company that is incorporated and registered outside the PRC, and so could not receive subsidies from the PRC.").
[192] *Id*. (citing *Aluminum Extrusions from the People's Republic of China: Preliminary Results of the Countervailing Duty Administrative Review and Preliminary Intent To Rescind, in Part; 2014*, 81 Fed. Reg. 38,137 (June 13, 2016), (*Aluminum Extrusions from China Preliminary Determination; 2014)*, unchanged in final ("We are not making a cross-ownership determination or attributing any subsidies to Jangho Hong Kong, a Hong Kong entity, consistent with 19 CFR 351.525(b)(6) and (7)").
[193] *Id*. at 17-18 (*citing Application of U.S. Antidumping and Countervailing Duty Laws to Hong Kong*, 62 FR 42965 (August 11, 1997); *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers from the People's Republic of China*, 69 FR 20594 (April16, 2004); *Citric Acid and Certain Citrate Salts from Thailand: Preliminary Negative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination and Alignment of Final Determination With Final Antidumping Duty Determination,* 82 FR 51216 (November 3, 2017), and accompanying PDM).
[194] *Id*. at 18-19 (citing *Preamble*, 63 FR at 65403).
[195] *Id*.

- Interested Party Mahle restates and affirms its support for Dingsheng's arguments.[196]

Commerce's Position: Consequent to the interest rate revisions described at the comment above, no benefit exists for Dingsheng HK's loans. Accordingly, this issue is moot.

Comment 9: Whether Commerce Should Revise Dingsheng's Sales Denominator

Dingsheng's Case Brief:

- Commerce's *Preliminary Determination* correctly intended to use Jiangsu Dingsheng's consolidated sales value for the *ad valorem* subsidy calculation of benefits received by Jiangsu Dingsheng. However, the actual calculation used the company's unconsolidated sales value.[197]
- Commerce should use the consolidated sales figure, as correct in Dingsheng's minor corrections at verification.[198]
- Commerce should include "other revenue" figures in all of the cross-owned companies' sales denominators. Commerce only removes sales from the denominator if those sales consist of service income or royalty income. [199]
- At the *Preliminary Determination*, Commerce calculated the benefit Dingsheng IE received using its own sales only. Commerce subsequently confirmed that all of Dingsheng IE's exports were produced by its cross-owned affiliates, Jiangsu Dingsheng or Five Star. Thus, in accordance with 19 CFR 351.525(c), Dingsheng IE's subsidies should be cumulated over the sales of Dingsheng IE, Jiangsu Dingsheng and Five Star.[200]
- Dingsheng reported that Dingsheng IE was wholly owned by Jiangsu Dingsheng and that Dingsheng IE exported subject merchandise produced by both Jiangsu Dingsheng and Five Star during the POI.[201]
- Commerce should use the verified sales figures to exclude intercompany sales, consistent with past practice.[202]

Petitioners' Rebuttal Brief:

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[196] *See* Mahle's Rebuttal Brief at 13-14.
[197] *See* Dingsheng's Case Brief at 4-5.
[198] *Id*. at 5 (citing Dingsheng September 12, 2017 SQR at Exhibit S-1; Dingsheng Verification Report at Minor Corrections, Attachment 2).
[199] *Id*. (citing Dingsheng Verification Report at VE-4-23, -22 (Five Star), VE-4-45 (Teemful); *Residential Washers from Korea*, and accompanying IDM at Comment 13).
[200] *Id*. at 6-7 (citing PDM at 20; Dingsheng September 12, 2017 SQR at 4; *Certain Frozen Warmwater Shrimp from India: Final Affirmative Countervailing Duty Determination*, 78 FR 50385 (August 19, 2013), and accompanying IDM at 9; *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Preliminary Results of Countervailing Duty Administrative Review; Calendar Year 2015*, 82 FR 16994 (April 7, 2017).
[201] *Id*. at 7 (citing Dingsheng's July 5, 2017 Supplemental Affiliation Response (Dingsheng July 5, 2017 SAFFR) at Exhibit A.1).
[202] *Id*. at 21-24 (citing *PC Strand from China*; Dingsheng Verification Report at VE-4-14 (Five Star), VE-4-42 (Teemful), and VE-13-18 (Jiangsu Dingsheng); *Certain Polyethylene Terephthalate Resin from the People's Republic of China*, 81 Fed. Reg. 13337 (March 14, 2016) (*PET Resin from China)*, and accompanying IDM at Comment 12).

- Commerce verified that Dinghseng's "other revenues" is derived from activities other than products manufactured by the company.[203] Accordingly, these revenues should be excluded from the sales denominator.
- To support its position, Dingsheng misrepresents Commerce's actual finding in *Residential Washers from Korea*. As clearly stated by Commerce in that investigation, "we find it is appropriate to exclude Samsung's income from non-production related activities" such as royalties, sales of services, commissions, *etc*." Commerce, therefore, did not indicate that only service income and royalties should be excluded, but rather all non-production related income.[204]
- 19 CFR 351.525(c) states that countervailable benefits received by "a trading company which exports subject merchandise shall be cumulated with benefits from subsidies provided to the firm which is producing subject merchandise." Critically, cumulation is not the same as attribution, and denotes that the respective countervailable benefits should be aggregated. In other words, 19 CFR 351.525(c) does not declare that the subsidies provided to the trading company are attributable to the total sales of both the trading company and the firm producing the subject merchandise.[205]
- In *Cold-Drawn Mechanical Tubing from China,* Commerce recently affirmed its attribution of all benefits received by a trading company to the sales of the trading company alone, in accordance with 19 CFR 351.525(c).[206]
- The nature of the subsidy provided is relevant to Commerce's analysis and the appropriate attribution of the benefit. The countervailable subsidies provided to Dingsheng IE only benefited Dingsheng IEs operations. Accordingly, Commerce should affirm its preliminary benefit calculations for countervailable subsidies provided to Dingsheng IE.

Commerce's Position: We agree with the respondent that, for subsidies received by Jiangsu Dingsheng, we should use the 2016 verified, consolidated sales value. We have adjusted Jiangsu Dingsheng's final calculations, accordingly.[207]

With regard to "other revenue," we find it appropriate to include Dingsheng's income associated with non-operational and service-related (hereinafter referred to as "non-operational") activity in the total sales denominator for the final determination, consistent with our past practice. Commerce examines whether the value of such non-operational income should be included in

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[203] *See* Petitioners' Rebuttal Brief at 61 (citing Dingsheng Verification Report at Exhibit VE4-22, VE4-45).
[204] *Id*.
[205] *Id*. at 62.
[206] *Id*. at 62-63 (citing *Countervailing Duty Investigation of Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Determination of Critical Circumstances*, in Part, 82 FR 58175, (December 11, 2017) (*Cold-Drawn Mechanical Tubing from China)*, and accompanying IDM at 11.
[207] *See* Dingsheng Final Calculation Memorandum.

the denominator on a case-by-case basis.[208] Commerce stated in *Steel Products from Austria GIA*:

> We determine that the value of services sold should be included in a company's total sales when the subsidy for which we are measuring the benefit is not tied to the production of merchandise. This determination derives from the reasonable presumption that, to the extent a government provides a subsidy which is not tied to a company's productive activities, a recipient company can be presumed to use that subsidy to benefit its entire operations, including its services functions.[209]

Furthermore, we note that in those instances where the subsidy is not tied *per se* to merchandise production, such a subsidy benefits a company's entire operation, which would include its service activities.[210]

In this instance, we reviewed Dingsheng's activities associated with the non-operational income during verification. Specifically, we examined documentation of selected companies and found that the non-operational income was related to production activities of the merchandise under investigation.[211] Thus, we find that record evidence demonstrates that the non-operational income at issue was related to the production of merchandise under investigation. Conversely, in *Washers from Korea*, the income at issue related only to non-production related activities.[212] Accordingly, consistent with our past practice,[213] we included Dingsheng's income from non-operational activities in the total sales denominator for this final determination.

We revised certain sales figures to exclude intercompany sales, consistent with past practice.[214] Specifically, we only excluded sales attributable to producers of the subject merchandise from the sales denominator pertaining to producers of the subject merchandise.

Finally, consistent with past proceedings,[215] pursuant to 19 CFR 351.525(c), for subsidies provided to a trading company that exports subject merchandise, the benefits are cumulated with benefits from subsidies provided to the firm that is producing subject merchandise that is sold through the trading company, regardless of whether the trading company and the producing firm

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[208] *See Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 81 FR 47349 (July 21, 2016) (*Rectangular Pipes and Tubes from Turkey*), and accompanying IDM at Comment 4.
[209] *See Rectangular Pipes and Tubes from Turkey*, at Comment 4; *see also*, *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria*, 58 FR 37217, 37238 (July 9, 1993), General Issues Appendix at "C. Services" (*Steel Products from Austria GIA*).
[210] *Id.*
[211] *See, e.g.*, Dingsheng Verification Report at Exhibit VE4-22, VE4-45.
[212] *See Large Residential Washers from the Republic of Korea: Final Affirmative Countervailing Duty Determination, 77 FR 75975 (December 26, 2012) (Washers from Korea)*, and accompanying IDM at 52.
[213] *See*, *e.g.*, *Rectangular Pipes and Tubes from Turkey,* and accompanying IDM at Comment 4 and *Steel Products from Austria GIA.*
[214] *See PC Strand from China*; Dingsheng Verification Report at VE-4-14 (Five Star), VE-4-42 (Teemful), and VE-13-18 (Jiangsu Dingsheng).
[215] *See*, *e.g., Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Preliminary Negative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 81 FR 63168 (September 14, 2016), and accompanying PDM at 13, unchanged in final.

are affiliated. Thus, consistent with the *Preliminary Determination*, we are cumulating the benefits from subsidies received by Dingsheng IE with the benefits from subsidies received by Jiangsu Dingsheng and Five Star based on the relative share, by value, of Dingsheng IE's exports to the United States of subject merchandise that was produced by Jiangsu Dingsheng and Five Star during the POI.

Comment 10: Whether Commerce Should Correct Calculation Errors for Dingsheng's Loans

Dingsheng's Case Brief:

- Commerce should follow its practice and take into account principal payments in calculating benchmark interest payments for Jiangsu Dingsheng and Five Star.[216]
- Commerce should correct Jiangsu Dingsheng's loan calculations to apply an interest rate benchmark that corresponds to the currency denomination of the loan.[217]
- The financing loan from Mercedes Benz should not be countervailed, as Mercedes Benz is not a Chinese government authority and the loan was provided for a vehicle purchase.[218]

No other comments were received on this issue.

Commerce's Position: We agree with Dingsheng's characterization of these errors. We have corrected these errors for the final determination.[219]

Comment 11: Whether Commerce Should Correct Calculation Errors for Dingsheng's Aluminum and Coal Purchases

Petitioners' Case Brief:

- Commerce's preliminary calculations failed to apply the appropriate benchmark price for select input purchases due to formula errors. These errors should be corrected for the final determination.[220]

No other comments were received on this issue.

Commerce's Position: We agree with the petitioners' characterization of these errors. We have corrected these errors for the final determination.[221]

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[216] *See* Dingsheng's Case Brief at 8-9 (citing *Shrimp from China*, and accompanying IDM at 13).
[217] *Id*. at 9 (citing 19 CFR 351.505(a)(2); *Preamble*, 63 FR at 65363).
[218] *Id*.
[219] *See* Dingsheng Final Calculation Memorandum.
[220] *See* Petitioners' Case Brief at 16 (citing PDM at 50-52).
[221] *See* Dingsheng Final Calculation Memorandum.

Comment 12: Whether Commerce Should Place Interest Rate Benchmarks on the Record That Are Contemporaneous to the POI

Dingsheng's Case Brief:

- Commerce used interest rate benchmarks from 2014 to calculate the benefit for Dingsheng's 2016 loans. Using a two-year old interest rate to calculate the benefit for policy lending violates the statutory requirement of using a commercially comparable loan to calculate the benefit.[222] Commerce should place 2015 and 2016 interest rate benchmarks on the record and use them for the final determination.

Mahle's Rebuttal Brief:

- Interested Party Mahle restates and affirms its support for Dinghseng's arguments.[223]

Commerce's Position: As explained in the *Preliminary Determination* calculation memoranda, the interest rate benchmarks for 2016 are not available.[224] Moreover, parties did not submit data that are consistent with Commerce's interest rate calculation methodology that we could have used to calculate an updated interest rate benchmark. Thus, consistent with the *Preliminary Determination*, we have relied on the 2014 interest lending rates, adjusted for inflation, as the benchmark for the Policy Lending program. Section 771(5)(E) of the Act instructs Commerce that a benefit for a loan is the "difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market." This is consistent with Commerce's practice.[225]

Comment 13: Whether Commerce Should Rely on AFA For Subsidies Discovered at Zhongji's verification

Petitioners' Case Brief:

- Commerce discovered that Zhongji is located in the Jiangyin Lingang Economic Development zone at verification.[226] Zhongji's failure to disclose its location in a special economic zone (SEZ) prior to verification necessitates a facts available analysis for the final determination. Further, as Zhongji failed to cooperate to the best of its ability, the statute authorizes Commerce to use an adverse inference.[227]
- Commerce should use the subsidy rate calculated for Dingsheng for the Provision of Land for LTAR program, 1.16 percent *ad valorem*. The overall program benefit should

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[222] *See* Dingsheng's Case Brief at 20-21 (citing section 771(5)(E) of the Act; 19 CFR 351.505; *Preamble*, 63 FR at 65364).
[223] *See* Mahle's Rebuttal Brief at 16.
[224] *See* Dingsheng Preliminary Calculation Memorandum at 3 and Zhongji Preliminary Calculation Memorandum at 3.
[225] *See, e.g.*, *Silica Fabric from China; Truck and Bus Tires from China; Fine Denier PSF from China.*
[226] *See* Petitioners' Case Brief at 6 (citing Zhongji Verification Report at 2, 25).
[227] *Id*. (citing section 776(a)(2) and (b) of the Act).

reflect land-use rights extended to both Zhongji and Huafeng Aluminum, totaling 1.83 percent *ad valorem*.[228]

- Information collected at verification contradicts Zhongji's non-use of primary aluminum claims.[229] Zhongji's failure to disclose its primary aluminum purchases prior to verification necessitates a facts available analysis for the final determination. Further, as Zhongji failed to cooperate to the best of its ability, the statute authorizes Commerce to use an adverse inference.
- Commerce should use the subsidy rate calculated for Dingsheng for the Provision of Primary Aluminum for LTAR program, 6.79 percent *ad valorem.*[230]

Zhongji's Rebuttal Brief:

- Just because an area is designated as an economic development zone does not mean it has the legal status of a "special economic zone." Jiangsu Zhongji has provided unrebutted evidence that the company obtained its land-use rights through public auctions or arms-length transactions. The zone to which the verification report refers confers no tax, legal or other countervailable benefit to Jiangsu Zhongji.[231]
- Commerce verified that Huafeng Aluminum did not have the capacity to consume primary aluminum until after the POI.[232] Huafeng Aluminum explained that its production started with aluminum plate during the POI. This is corroborated by verification of its raw materials account and sub-accounts. The petitioners have mistaken aluminum foil stock for primary aluminum in Huafeng Aluminum's accounts.

Commerce's Position: We disagree with the petitioners that we should rely on AFA to measure the benefit for certain of Zhongji's land parcels. Zhongji's initial questionnaire response included information pertaining to Jiangsu Zhongji's location in an SEZ.[233] Accordingly, for this final determination, we are relying on this information to calculate a benefit for Jiangsu Zhongji's land that is located in an SEZ.

We disagree with the petitioners that the verification report suggests Zhongji failed to disclose primary aluminum purchases. The verification report clearly states that we examined Zhongji's accounts and found no indication of any primary aluminum purchases during the POI.[234] Accordingly, we continue to find that the Primary Aluminum for LTAR program was not used by Zhongji.

Comment 14: Whether Commerce Should Grant Zhongji an Export Value Adjustment

Petitioners' Case Brief:

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[228] *Id*. at 7.
[229] *Id*. at 7-11 (citing Zhongji Verification Report at 7-9; VE-12; VE-12-9; VE 15-31).
[230] *Id*.
[231] *See* Zhongji's Rebuttal Brief at 7-8.
[232] *Id.* at 4 (citing Zhongji Verification Report at 7).
[233] *See* Zhongji June 12, 2017 IQR at Vol.1 – Exhibit 3; Exhibit 6; Exhibit 18; and Exhibit 22.
[234] *See* Zhongji Verification Report at 25-26.

- At verification, Zhongji was unable to confirm that all Zhongji HK's reported shipments of subject merchandise actually were provided directly to U.S. customers.[235]
- In light of these circumstances, Zhongji fails to meet the criteria necessary to qualify for an export value adjustment under Commerce's standard practice.[236] Commerce should revise the sales denominators preliminarily used to calculate countervailable benefits received by Jiangsu Zhongji and Shantou Wanshun to exclude the mark-up for Zhongji HK's sales.[237]
- In *Aluminum Extrusions*, Commerce found the adjustment requested by the respondent was not warranted due to insufficient evidence from the producer, stating that "the Zhongya Companies' sales chain does not adhere to the second and sixth criteria of {Commerce's} EV adjustment methodology."[238]

Zhongji's Rebuttal Brief:

- The information that Commerce relied upon for its export value adjustment is not impacted by Commerce's verification finding. Plain language of the regulation at 19 CFR 351.525(a) does not limit the denominator to U.S. sales. The petitioners cannot insert the word "U.S." before "sales value" by imagination. Doing so would also be inconsistent with the method used by Commerce to calculate the subsidy rate.[239]
- The relevant question is not whether all sales through Zhongji HK were provided to ultimate customers in the United States, but whether all sales though Zhongji HK were exports and can be properly adjusted as "export value." This question has been answered in Jiangsu Zhongji's initial questionnaire response. Commerce did not find any inconsistency regarding this issue during verification.[240]
- As a matter of law, sales made through Zhongji HK are bound to be export sales because Hong Kong is a separate jurisdiction from China. Thus, the products are already exported out of China when Zhongji HK takes title, as reflected in purchase orders and invoices between Jiangsu Zhongji and Zhongji HK.[241]

Commerce's Position: At the *Preliminary Determination*, we granted Zhongji an export value adjustment.[242] We stated that Zhongji met the requisite six criteria for an export value adjustment: 1) U.S. invoices via Zhongji HK include a mark-up from the invoice issued from Zhongji to Zhongji HK; 2) Zhongji and Zhongji HK are affiliated; 3) the U.S. invoice issued by Zhongji HK establishes the customs value to which CVD duties would be applied; 4) there is a one-to-one correlation between the Zhongji HK and Zhongji invoices, *e.g.* between sales reference numbers and quantities; 5) Zhongji HK ships the subject merchandise directly to the

[235] *See* Petitioners' Case Brief at 12.
[236] *Id*. (citing *Aluminum Extrusions from China Investigation*, and accompanying IDM at Comment 32).
[237] *Id*.
[238] *Id*. at 13.
[239] *See* Zhongji's Rebuttal Brief at 3.
[240] *Id*. (citing Zhongji June 12, 2017 IQR at Vol. IV, Ex. 5).
[241] *Id*. at 4 (citing Zhongji June 12, 2017 IQR at Vol. IV, Ex. 6).
[242] *See* PDM at 10-11.

United States; and 6) the invoices can be tracked as back-to-back invoices that are identical, with the exception of price.[243]

As noted above, one of the six criteria enumerated in the *Preliminary Determination* was Zhongji HK's shipment of subject merchandise directly to the United States. In order for Zhongji to qualify for an adjustment to its sales denominator, it must be able to demonstrate the higher Customs value for all of its U.S. sales. As noted in Zhongji's verification report, Zhongji's export sales ledger contained all exports, and was not sub-divided by country or region.[244] Thus, Zhongji relied on its U.S. customer codes to identify which of its sales entered the United States.[245] However, during the course of the verification, it became apparent that sales identified by Zhongji as U.S. sales did not enter the United States.[246] Thus, the methodology that Zhongji used to identify its U.S. sales was faulty. Because Zhongji was unable to identify its U.S. sales with certainty, it can no longer claim that all of its sales of subject merchandise to the U.S. meet the six criteria.

Additionally, at verification, Commerce discovered that certain characteristics of Zhongji's trading practices call into question whether Zhongji is able to meet the requisite six criteria for an export value adjustment For example, Zhongji stated that its affiliated trading company Zhongji HK made sales to the United States *via* trading companies.[247] Zhongji also stated that the identity of final customers of these unaffiliated trading companies is withheld from Zhongji.[248] One of the six criteria speak to the necessity of the sale being shipped directly from the respondent's affiliated trading company to the United States. Commerce is unable to ascertain whether sales that are being made by the affiliated trading company, Zhongji HK, through another unaffiliated trading company to the final U.S. customer, meet this criterion.

Moreover, as further discovered at verification, Zhongji sent the commercial invoice for a sale to a U.S. trading company, and the U.S. trading company changed the commercial invoice before sending it to the final customer. One of the six criteria mandates a one-to-one correlation between the invoice that reflects the price on which subsidies are received and the invoice with the mark-up that accompanies the shipment. Similarly, if an unaffiliated U.S. trading company is able to change the commercial invoice prior to the final sale, Commerce is unable to ascertain whether there is a one-to-one correlation between the invoice that reflects the price on which subsidies are received (*i.e.*, the invoice from Zhongji) and the invoice that accompanies the shipment.

Commerce's practice of granting a sales adjustment for marked-up invoices is limited to instances where a respondent can demonstrate that all of its sales to the United States met the six criteria enumerated, above. This is to satisfy to Commerce that the sales value adjustment properly reflects an upward adjustment to the sales value of all merchandise that entered the

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243 *Id*.
244 *See* Zhongji Verification Report at 10-11.
245 *Id*.
246 *Id*.
247 *Id*. at 12.
248 *Id*.

United States, and on which CBP assessed dutiable value. In *Coated Paper from China*, Commerce acknowledged that it expects that the criteria for such an adjustment will rarely be met.[249] Here, in light of the verification findings, Commerce concludes that Zhongji has failed to demonstrate that its sales meet the requisite criteria, and, as such, we are not making an adjustment to its sales value for sales through Zhongji HK for this final determination.

Comment 15: Whether Commerce Improperly Rejected Dingsheng's Benchmark Data

Dingsheng's Case Brief:

- Commerce rejected Dingsheng's aluminum ingot benchmark data on the basis of it being summary data.[250] Commerce recently accepted such data in the *Tool Chests from China* proceeding.[251] Commerce has used London Metal Exchange (LME) prices in past proceedings for tier 2 benchmarks.[252] As such, there is no reasonable basis to reject these prices in the instant proceeding.[253]
- 19 CFR 351.511(a)(2)(ii) states that world prices will be averaged for benchmarks. The LME data, which reflects average prices, is perfectly viable for use as benchmark.[254]

Petitioners' Rebuttal Brief:

- Commerce did not consider LME as a data source in the *Tool Chests from China* proceeding.[255] Commerce specifically rejected LME pricing information for primary aluminum as an appropriate benchmark in prior proceedings on aluminum extrusions.[256]

Mahle's Rebuttal Brief:

- Interested Party Mahle restates and affirms its support for Dinghseng's arguments.[257]

Commerce's Position: Consistent with the *Preliminary Determination*, we continue to rely solely on GTIS's Global Trade Atlas (GTA) data as benchmark for primary aluminum. As noted by the petitioners, Commerce did not consider LME as a data source in the *Tool Chests from China* proceeding.[258] Commerce specifically rejected LME pricing information for primary

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[249] *See Coated Paper from China*, and accompanying IDM at Comment 21.
[250] *See* Dingsheng's Case Brief at 10-12 (citing PDM at 17).
[251] *Id*. (citing *Tool Chests and Cabinets from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 82 FR 56582 (November 29, 2017) (*Tool Chests from China)*, and accompanying IDM at Comment 5).
[252] *Id*. (citing *Oil Country Tubular Goods from China*, and accompanying IDM at Comment 13; *Drill Pipe from China Investigation*, and accompanying IDM at 32).
[253] *Id*. at 12 (citing *Dongbu Steel Co., Ltd. v. United States*, 635 F.3d 1363, 1371 (Fed. Cir. 2011).
[254] *Id*.
[255] *See* Petitioners' Rebuttal Brief at 36 (citing *Tool Chests from China*, and accompanying IDM at Comment 5).
[256] *Id*. (citing *Aluminum Extrusions from China; 2012*, and accompanying IDM at Comment 9).
[257] *See* Mahle's Rebuttal Brief at 14-15.
[258] *See* Petitioners' Rebuttal Brief at 36 (citing *Tool Chests from China*, and accompanying IDM at Comment 5).

aluminum as an appropriate benchmark in prior proceedings on aluminum extrusions.[259] As explained in *Aluminum Extrusions from China; 2012,* the LME contains only a cash price for primary aluminum (unalloyed ingots) with a minimum aluminum content of 99.7 percent.[260]

Commerce has previously determined that the GTA unalloyed aluminum category data reflects ingots that have a minimum aluminum content of 99 percent.[261] Thus, the GTA data reflect a larger universe of ingots than the LME, which only captures a subset of ingots (*i.e.*, those with 99.7 percent minimum aluminum content). Consistent with *Aluminum Extrusions from China; 2012*, we find that the GTA data better captures the entire range of ingots that could be purchased by the respondents. Thus, for this final determination, we continue to rely solely upon the GTA data for the benchmark.

Comment 16: Whether Commerce Should Revise the Benchmarks for Primary Aluminum

Dingsheng's Case Brief:

- If Commerce continues to use GTA data for the tier 2 benchmark for aluminum ingot in its Final Determination, it should only use the HTS provision covering unalloyed aluminum ingot, 7601.10, and not HTS 7601.20 covering alloyed ingot, since Dingsheng only reported usage of unalloyed ingot.[262]
- Section 771(5)(E)(iv) directs Commerce to measure the adequacy of remuneration in relation to the prevailing market conditions for the good, which includes price, quality, availability, marketability, transportation, and other conditions of purchase or sale. 19 CFR 351.511(a)(2)(ii) incorporates these statutory criteria in the provision by requiring that the tier 2 price selected be "a world market price where it is reasonable to conclude that such price would be available to purchaser in the country in question."[263]
- In practice, Commerce generally selects the most product specific benchmarks possible for its LTAR calculation.[264]

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[259] *Id*. (citing *Aluminum Extrusions from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 78788 (December 31, 2014) (*Aluminum Extrusions from China; 2012)*, and accompanying IDM at Comment 9).
[260] *Id. See also* Dingsheng July 21, 2017 Benchmark Submission at Exhibit 1.
[261] *See Aluminum Extrusions from China; 2012;* and accompanying IDM at Comment 9.
[262] *See* Dingsheng's Case Brief at 12-14.
[263] *Id*.
[264] *Id*. (citing *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia: Final Affirmative Countervailing Duty Determination*, 75 FR 59209 (September 27, 2010) (*Coated Paper from Indonesia)*, and accompanying IDM at Comment 11; *Final Results of Countervailing Duty New Shipper Review: Certain Softwood Lumber Products from Canada*, 70 FR 56640 (September 28, 2005), and accompanying IDM at Comment 1; *Magnesia Carbon Bricks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 45472 (August 2, 2010), and accompanying IDM at Comment 7; *Laminated Woven Sacks from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008), and accompanying IDM at Comment 15).

- The *Preliminary Determination* stated that the aluminum benchmark reflects aluminum input purchased by Jiangsu Dingsheng.[265] However, this benchmark covers both unalloyed and alloyed ingot. Jiangsu Dingsheng stated multiple times in its response that it purchased on unalloyed ingot, and this information was verified.[266]
- On average, the price for alloyed aluminum ingot is $208.90 higher than the price for unalloyed aluminum ingot. Thus, the inclusion of the alloyed aluminum ingot distorts the benchmark price of this input.[267]

Petitioners' Rebuttal Brief:

- Dingsheng failed to produce the mill certificates that Commerce requested at verification. Instead, Commerce reviewed purchase contracts, but it was unable to verify Dinsheng's payments of the specific provided contracts. In light of these facts, Commerce should not accept Dingsheng's assertion that all purchases of aluminum were unalloyed.[268]

Mahle's Rebuttal Brief:

- Interested Party Mahle restates and affirms its support for Dinghseng's arguments.[269]

Commerce's Position: We agree with Dingsheng. In its initial questionnaire response, Dingsheng reported that it purchased unalloyed aluminum ingot.[270] At verification, Dingsheng explained that it was unable to obtain mill certificates from its trading company suppliers.[271] Thus, in order to verify Dingsheng's reported purchases of unalloyed aluminum ingots, we reviewed the purchase contracts.[272] According to these purchase contracts, Dingsheng purchased unalloyed aluminum ingots.[273] Review of these contracts satisfied Commerce verifiers that Dingsheng's purchases were limited to unalloyed aluminum ingots. s

The benchmark for primary aluminum currently includes unalloyed aluminum ingot, HTS 7601.10, and alloyed ingot, HTS 7601.20. Because the respondent purchased unalloyed aluminum ingots, consistent with our practice, we have revised the benchmark to include only unalloyed aluminum ingot, HTS 7601.10, for this final determination.[274]

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[265] *Id*. at 14 (citing PDM at 16-17).
[266] *Id*. (citing Dingsheng July 20, 2017 IQR at 47, Exhibit P.E.2.1; Dingsheng Verification Report at VE-17-38; Dingsheng Verification Report at 17-78).
[267] *Id*. at 15 (citing Commerce Preliminary Calculation File at Tab "AL.Benchmark").
[268] *See* Petitioners' Rebuttal Brief at 37-38 (citing Dingsheng Verification Report at 25).
[269] *See* Mahle's Rebuttal Brief at 14-15.
[270] *See* Dingsheng July 20, 2017 IQR at 46-47.
[271] *See* Dingsheng Verification Report at 25.
[272] *Id*.
[273] *Id*. at 25 and VE-17.
[274] *See Coated Paper from Indonesia*, and accompanying IDM at Comment 11.

Comment 17: Whether the Government of China Provided Sufficient Evidence to Find That Input Suppliers Were Not Government Authorities

Government of China's Case Brief:

- The information on the record shows that all input producers are bound by the *Company Law of China* and conduct their business activities autonomously.[275] Commerce's conclusion that all non-government owned producers are government authorities is unsupported by the record of this investigation.
- The Government of China submitted authoritative ownership information and business registrations for all primary aluminum and steam coal producers available through the Enterprise Credit Information Publicity System (ECIPS).[276] This is sufficient to demonstrate the current ownership status and history of changes of all aluminum and steam coal producers reported by Dinghseng HK.[277]

Petitioners' Rebuttal Brief:

- The respondents did not provide complete information concerning their input purchases. As such, the information requested by Commerce from the Government of China in the Input Producer Appendix is incomplete.
- The Government of China's claim that ownership information alone should be sufficient to find certain input producers to not be government authorities glosses over the fact that Commerce requested additional corporate information, and the Government of China failed to provide it.

Mahle's Rebuttal Brief:

- Interested Party Mahle restates and affirms its support for the Government of China's arguments.[278]

Commerce's Position: As explained in the *Preliminary Determination,*[279] we asked that the Government of China provide information regarding the specific companies that produced primary aluminum and steam coal that Dingsheng and Zhongji purchased during the POI. Specifically, we sought information from the Government of China which would allow us to analyze whether the producers are "authorities" within the meaning of section 771(5)(B) of the Act. In our initial and supplemental questionnaire to the Government of China, Commerce requested certain information be provided with respect to both the majority government-owned and non-majority government-owned enterprises.[280]

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[275] *See* Government of China's Case Brief at 30 (citing Government of China July 20, 2017 IQR - Dingsheng HK at 67-68, 90 and Exhibit D-7.

[276] *Id*. at 31-32 (citing Government of China July 20, 2017 IQR - Dingsheng HK at 60, 87-88, Exhibits D-2, D-3, D-4, D-18 and D-19).

[277] *Id.* at 31 (citing Government of China July 20, 2017 IQR – Dingsheng HK at 60 and 88).

[278] *See* Mahle's Rebuttal Brief at 15-16.

[279] *See* PDM at 30-33.

[280] *See* Initial CVD Questionnaire, at Section II, "Input Producer Appendix;" *see also* Government of China July 5, 2017 SQR at 1.

With respect to the steam coal producers within China, the Government of China provided no information on government ownership. The Government of China did not provide any information on its involvement in the industry, nor on its ownership interest within individual steam coal producers. Instead of providing the requested information, the Government of China stated that "the data is not available."[281]

With respect to those primary aluminum producing enterprises that the Government of China identified as majority government-owned, we explained that Commerce made multiple requests for the Government of China to provide the articles of incorporation and capital verification reports of all majority government-owned enterprises.[282] The Government of China provided partial information (*i.e.*, the corporate profile, shareholder structure, and articles of association) with respect to only one of the majority government-owned enterprises.[283] Despite Commerce's requests, the Government of China did not provide the articles of incorporation and capital verification reports for any of the majority government-owned enterprises. As explained in the Public Bodies Memorandum, record evidence demonstrates that producers in China that are majority-owned by the government possess, exercise, or are vested with, governmental authority.[284] Record evidence demonstrates that the Government of China exercises meaningful control over these entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector.[285] Therefore, in light of our prior findings and the Government of China's failure to provide rebuttal information to the contrary, we determine that these enterprises are "authorities" within the meaning of section 771(5)(B) of the Act.

With respect to those primary aluminum producing entities that were reported as being non-majority government-owned enterprises that produce primary aluminum purchased by Jiangsu Dingsheng and Zhongji during the POI, while the Government of China provided website screenshots of certain business registrations for some of the input producers of Jiangsu Dingsheng, the Government of China did not provide other relevant documentation requested by the Commerce, including company by-laws, annual reports, and tax registration documents, and articles of association.[286]

Additionally, while the Commerce made attempts to obtain ownership and management information for the respondents' primary aluminum and steam coal producers, the Government of China did not provide the requested information. For instance, in the Government of China July 20, 2017 IQR, the Government of China stated in response to the Commerce's request for CCP information of the primary aluminum producers, that it is "beyond the capacity of the Government of China to access information requested by the Commerce in this regard," and refused to provide the requested information.[287] In response to the Commerce's supplemental

[281] *See* Government of China July 20, 2017 IQR – Dingsheng HK at 104.
[282] *See* Initial CVD Questionnaire, at Section II, "Input Producer Appendix;" *see also* Government of China July 5, 2017 SQR at 1.
[283] *See* Government of China July 20, 2017 IQR – Dingsheng HK at 104.
[284] *See* Public Bodies Memorandum at 35-36, and sources cited therein.
[285] *Id.*
[286] *See* Government of China July 20, 2017 IQR - Dingsheng HK at Exhibit D-1 and D-2.
[287] *Id.* at 73 and Government of China June 12, 2017 IQR - Zhongji, at 68-70.

questionnaire, in which the Commerce reiterated the same requests for information, the Government of China again refused to provide a complete response with regard to all requested documentation of producers of primary aluminum in the China.[288]

As discussed above, the Government of China did not provide complete responses to our numerous requests for information with respect to primary aluminum and steam coal producers that the Government of China claimed to be non-majority government-owned enterprises, including requests for information pertaining to ownership or management by CCP officials. Such information is necessary to our determination of whether the input producers are authorities within the meaning of section 771(5)(B) of the Act. Therefore, we determine that necessary information is not available on the record, and that the Government of China withheld information that was requested of it with regard to the input purchases by Jiangsu Dingsheng and Zhongji.[289] Accordingly, the Commerce must rely on "facts otherwise available" in reaching a determination in this respect. Further, we find that the Government of China failed to cooperate by not acting to the best of its ability to comply with requests for information regarding the producers of the primary aluminum and steam coal from which Jiangsu Dingsheng and Zhongji purchased during the POI because the Government of China did not provide the requested information.[290] Consequently, we find that an adverse inference is warranted in the application of facts available.[291]

At Comment 18, below, we further address the Government of China's argument concerning the *Company Law of China,* and explain why it does not provide a basis to determine that the respondent's input suppliers are not government authorities.

In sum, as AFA, we determine that all of the domestic Chinese producers that produced the steam coal purchased by Dingsheng and Zhongji during the POI are "authorities" within the meaning of section 771(5)(B) of the Act.[292] Relying on AFA, we also determine that the non-government owned domestic producers of the primary aluminum purchased by Dingsheng are "authorities" within the meaning of section 771(5)(B) of the Act.

Comment 18: Whether Chinese Communist Party (CCP) Affiliations or Activities by Company Officials Make a Company a Government Authority

Government of China's Case Brief:

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[288] *Id*. at Government of China July 5, 2017 SQR, at 1-4.
[289] *See* sections 776(a)(1) and (a)(2)(A) of the Act.
[290] *See* sections 776(a) and (b) of the Act.
[291] *See* section 776(b) of the Act.
[292] *See Aluminum Extrusions from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 75 FR 54302 (September 7, 2010) (*Aluminum Extrusions from China Investigation Preliminary Determination*) at 54306 (unchanged in final); *Aluminum Extrusions from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2010 and 2011*, 78 FR 34649 (June 10, 2013), and accompanying PDM at "Provision of Primary Aluminum for Less Than Adequate Remuneration (LTAR)" (unchanged in final); and *Aluminum Extrusions from China: Preliminary Results of Countervailing Duty Administrative Review; 2012*, 79 FR 36009 (June 25, 2014), and accompanying PDM at "Provision of Primary Aluminum for LTAR." (unchanged in final).

- The record establishes that the CCP is not a government authority.[293] The *Company Law of China* and the *Civil Servant Law* clearly stipulate the company shall operate independently without being subject to any governmental intervention.[294]
- Commerce's finding in *PC Strand from China* is an insufficient basis for the finding in this proceeding because *PC Strand from China* did not address the issue whether Chinese law permits owners, members of the board of directors, and managers of companies to be CCP officials. Instead, *PC Strand from China* concerned general membership in the CCP and the National Party Conference. This is a distinction explicitly made by Commerce in its questionnaires to the commerce, in that Commerce sought information about CCP officials and CCP committees but not information about general membership in the CCP or participation in the National Party Conference.[295] In *PC Strand from China*, Commerce concluded that member in the CCP or National Party Conference was insufficient to conclude government control.[296]
- Provisions of the *Company Law of China* demonstrate that the shareholders, directors and managers of a company are solely responsible for the company's internal operations and that it is unlawful for CPP organizations to interfere.[297] Commerce previously found that the *Company Law of China* demonstrates the absence of legal state control over privately-owned Chinese companies.[298]
- The Government of China provided detailed efforts it undertook to try to obtain the requested information, and reasons to explain why "it is beyond the capacity of the GOC to access the information."[299] To have fully responded to Commerce's questionnaires, the Government of China would have been required to provide information as to the CCP involvement in the management and operations of producers of primary aluminum and steam coal of hundreds, perhaps thousands, of natural persons serving as owners, members of the board of directors and managers of suppliers. Further, the line of inquiry is deeply intrusive, demanding information at the individual level as to a person's political activities.[300]
- Commerce cannot penalize a party for not being able to provide information that it does not have.[301]
- The Government of China has provided documents, including business registration documents and shareholding registrations of the input producers demonstrate the ownership status and changes, if any, of the input producers reported by the respondent

[293] *Id*. at 32 (citing Government of China July 20, 2017 IQR - Dingsheng HK at 92-93).
[294] *Id*. at 33 (citing Government of China July 20, 2017 IQR - Dingsheng HK at 97, 98; and Exhibits D-7 and D-8).
[295] *Id*. at 34 (citing *PC Strand from China*, and accompanying IDM at Comment 8; Government of China July 20, 2017 IQR - Dingsheng HK at 101, Input Producer Appendix, D.2).
[296] *Id*. at 34-35 (citing *PC Strand from China*, and accompanying IDM at 72).
[297] *Id*. at 34-35 (citing Government of China July 20, 2017 IQR - Dingsheng HK at 67-68 and Exhibit D-7).
[298] *Id*. at 35 (citing *Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China: Final Results of the 2007-2008 Administrative Review of the Antidumping Duty Order*, 75 FR 8301 (February 24, 2010) (*Steel Plate from China*), and accompanying IDM at Comment 2 ("we have analyzed the Company Law and have found it to establish sufficiently an absence of *de jure* control over privately-owned companies in the PRC")).
[299] *Id*. at 36 (citing Government of China July 20, 2017 IQR - Dingsheng HK at 73).
[300] *Id*. at 36 (citing, *e.g.*, Government of China July 20, 2017 IQR - Dingsheng HK at D-1 and D-17).
[301] *Id*. at 37 (citing *Olympic Adhesives*, 899 F.2d 1572; *AK Steel*, 21 CIT 1223; *NSK*, 416 F. Supp. 2d 1341).

companies during the POI. Commerce has consistently said such documents can demonstrate the absence of state control of an entity.[302]

- Commerce has failed to establish the relevance of CCP affiliations or activities of these input producers, and the evidence on the record in this investigation affirmatively demonstrates that CCP affiliations or activities are in fact not relevant to the statutory analysis of "government authorities."[303]
- There is no information missing from the record and no gap in the record exists.[304] To the extent that a gap exists, an adverse inference is unwarranted because the Government of China responded to the best of its ability concerning the input suppliers.[305]

Petitioners' Rebuttal Brief:

- The Government of China's position that the CCP is not a government authority has been rejected repeatedly by Commerce and is undermined by record evidence.[306]
- Commerce has previously rejected the argument that the Government of China makes concerning the distinction in *PC Strand from China*.[307] Commerce should follow its practice and disregard the Government of China's assertion that CCP officials and committees have no decision-making authority.[308]
- Commerce's policy and practice with respect to government authorities or public bodies in China is well-settled. The role and functions of CCP officials within Chinese enterprises is relevant to Commerce's analysis.[309]

Commerce's Position: Commerce continues to find, based on AFA, that non-government owned domestic producers of steam coal and primary aluminum for which the Government of China failed to provide information about CCP membership are "authorities," and that the goods provided by them are financial contributions within the meaning of section 771(5)(D)(iii) of the Act.

Commerce sought information from the Government of China that would allow us to analyze whether the producers are "authorities" within the meaning of section 771(5)(B) of the Act.[310] As explained in the *Preliminary Determination*,[311] while Commerce made attempts to obtain ownership and management information for all of the respondents' primary aluminum and steam coal producers, the Government of China did not provide the requested information. For instance, in the Government of the China July 20, 2017 IQR, the Government of China stated in response to the

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[302] *Id*. at 37-38 (citing Government of China July 20, 2017 IQR - Dingsheng HK at 68, Exhibits D-2, D-7, D-8, and D-18; *Steel Plate from China*, and accompanying IDM at 11.
[303] *Id*. at 37-38.
[304] *Id.* at 40 (citing 776(a)(1); *Hetian Metal*, 652 F.3d at 1348).
[305] *Id*. at 40.
[306] *See* Petitioners' Rebuttal Brief at 27-28.
[307] *Id*. at 28-29.
[308] *Id*., citing *CORE from China,* and accompanying IDM at Comment 1.
[309] *Id*.
[310] *See* Memorandum to the File, "Public Bodies Memorandum," dated July 27, 2017 (Public Bodies Memorandum). *See also* Initial CVD Questionnaire, at Section II, "Input Producer Appendix;" *see also* Government of China July 5, 2017 SQR at 1.
[311] *See* PDM at 32 – 33.

request for CCP information of the primary aluminum producers, that it is "beyond the capacity of the Government of{China} to access information requested by {Commerce} in this regard," and refused to provide the requested information. In response to Commerce's supplemental questionnaire, in which Commerce reiterated the same requests for information, the Government of China again refused to provide a complete response with regard to all requested documentation of producers of primary aluminum in China.

The Government of China did not provide information that we rely on to determine the level of government ownership and involvement in primary aluminum producers. It also did not identify the individual owners, members of the board of directors or senior managers of the producers who were CCP officials during the POI for any producer. The information we requested regarding the role of CCP officials in the management and operations of these producers is necessary to our determination of whether these producers are "authorities" within the meaning of section 771(5)(B) of the Act. Commerce considers information regarding the CCP's involvement in China's economic and political structure to be relevant because public information suggests that the CCP exerts significant control over activities in China and is part of the governing structure in China.[312]

The Government of China asserts three arguments regarding the CCP in its case brief and throughout this proceeding. First, the Government of China argues that CCP officials are prohibited from serving as owners, members of the board of directors, and managers of companies. Second, the Government of China argues that it would be "unreasonably burdensome" to supply Commerce with information regarding "CCP involvement in the management and operations of producers of primary aluminum and steam coal of hundreds, perhaps thousands, of natural persons serving as owners, members of the board of directors and managers of suppliers."[313] Third, it argues that "CCP affiliations or activities of producers of primary aluminum and steam coal is not relevant" to the statutory analysis of government 'authorities.'"[314]

Regarding the first argument, the Government of China argues in its case brief that CCP officials are prohibited from being owners, members of the board of directors, and managers of companies, as specified in the *Company Law of China* and the *Civil Servant Law*.[315] However, the Government of China acknowledges that Commerce has dismissed this argument in the past. Specifically, we have previously found that CCP officials "can, in fact, serve as owners, members of the board of directors, or senior managers of companies."[316] In a prior proceeding, Commerce found that the Government of China's basis for this assertion rests on the *Executive Opinion of the Central Organization Department of Central Committee of CPC on Modeling and Trial Implementation of the Provisional Regulations of State Civil Servants in CCP Organs* (ZHONG FA (1993) No. 8), which reflects the CCP's intent to model its personnel management

[312] *See* Public Bodies Memorandum.
[313] *See* Government of China's Case Brief at 36.
[314] *Id*. at 38 (citing Section 771(5)(B) of the Act).
[315] *Id*. at 33-34 (citing Government of China July 20, 2017 IQR - Dingsheng HK at 97-98 and Exhibits D-7 and D-8).
[316] *Id*. at 34 (citing *PC Strand from China*, and accompanying IDM at Comment 8). *See also* Petitioners' Rebuttal Brief at 28-29.

system after the *Civil Servant Law*, including restrictions on enterprise employment.[317] However, it has been explained that this rule only applies to "staff of the administrative organs of the CCP and specified officials."[318] Thus, the rule only applies to a subset of party and government officials. The Government of China has not defined the "specified officials" it applies to, nor the officials to which it does not apply.[319]

This finding illustrates that CCP officials are able to serve as owners, members of the board of directors, or managers of input producers. With respect to this finding, we also note that the Government of China has acknowledged, on the record of this proceeding, that the Public Bodies Memorandum plainly states that the CCP "may exert varying degrees of control {in private companies} in different circumstances.[320] Additionally, in *PC Strand from China*, Commerce determined that, "{i}n the instant investigation, the information on the record indicates that certain company officials are members of the Communist Party and National Party Conference as well as members of certain town, municipal, and provincial level legislative bodies."[321] We understand "National Party Conference" to be a reference to the "National Party Congress," which is described in the Public Bodies Memorandum as "the highest leading body of the Party."[322] Commerce considers representatives of the National Party Congress to be relevant government officials for purposes of the CVD law and an "authorities" analysis. Thus, the Government of China is incorrect that Commerce's finding in *PC Strand from China* was limited to a finding of membership in the CCP.[323]

The Government of China argues that Commerce has previously found that the *Company Law of China* demonstrates the absence of legal state control over privately owned Chinese companies. However, this argument, as presented in the Government of China's case brief, relies exclusively on one example involving Commerce's findings with respect to separate rate applications in an AD proceeding,[324] which involves a different test, standard and focus with regard to "control." In the context of a separate rate analysis, Commerce's sole focus is on the government's control over export activities. For example, Commerce has repeatedly noted that a state-owned enterprise may receive a separate rate given that the focus of the separate rates test is limited to control over export activities and not other aspects of the enterprise's operations.[325] By contrast, Commerce is concerned here with whether the key positions within a company are filled by

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[317] *See Certain Oil Country Tubular Goods from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 52301 (dated September 3, 2014), and accompanying IDM at Comment 7 (*Oil Country Tubular Goods from China; 2012*).
[318] *Id*.
[319] *Id*.
[320] *See* Government of China July 20, 2017 IQR - Dingsheng HK at 64-65.
[321] *See PC Strand from China*, and accompanying IDM at Comment 8.
[322] *See Oil Country Tubular Goods from China; 2012* at Comment 7.
[323] *See* Government of China's Case Brief at 34. *See also* Petitioners' Rebuttal Brief at 28-29 (citing *CORE from China*, and accompanying IDM at Comment 1 (May 24, 2016).
[324] *Id. See also* Government of China's Case Brief at 35, 38.
[325] *See, e.g.*, *Oil Country Tubular Goods from China; 2012*, and accompanying IDM at Comment 7; *Utility Scale Wind Towers from the People's Republic of China: Final Affirmative Countervailing Duty Determination Wind Towers from China (Wind Towers from China)*, and accompanying IDM at Comment 6; *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils from the People's Republic of China,* 59 FR 55625, 55627-29.

personnel who are also CCP or Government of China officials, and may exert control over the company's activities more broadly.

The Government of China also argues that it would be "unreasonably burdensome" to supply Commerce with information regarding "CCP involvement in the management and operations of producers of primary aluminum and steam coal of hundreds, perhaps thousands, of natural persons serving as owners, members of the board of directors and managers of suppliers."[326] However, Commerce has not requested information regarding all possible CCP affiliations, but rather only whether owners, members of the board of directors and managers are also CCP or government officials. The Government of China has been able to provide this information in prior CVD investigations.[327]

If the Government of China was not able to submit the required information in the requested form and manner, it should have promptly notified Commerce, in accordance with section 782(c) of the Act. It did not do so, nor did it suggest any alternative forms for submitting this information. Further, the Government of China did not indicate that it had attempted to contact the CCP.[328] Instead, the Government of China chose not to respond to our questions regarding CCP officials for any input producer. Specifically, the Government of China argued that "the nine entities {(*i.e.,* GOC or CCP entities)} questions are irrelevant to this investigation as well as to the issue of whether the suppliers in this investigation are 'public bodies' for the purposes of the Department's LTAR analysis."[329] Therefore, we do not consider the Government of China to have cooperated to the best of its ability. Additionally, we note that Commerce has the discretion to determine information needed to conduct its investigation.[330]

Commerce's policy and practice with respect to "government authorities," or "public bodies," in China is well-established, as indicated above. In prior proceedings, Commerce has addressed this same argument in great detail, and clearly stated that understanding the role and functions of CCP officials within Chinese enterprises is relevant to Commerce's analysis.[331] Thus, Commerce's request for such information from the Government of China was based on Commerce's established policy and practice.

In sum, the Government of China did not provide the information we requested regarding CCP officials' involvement in the operations of the input producers. The Government of China also

[326] *See* Government of China's Case Brief at 36.
[327] *See* Petitioners' Rebuttal Brief at 30. *See also High Pressure Steel Cylinders from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 26738 (May 7, 2012), and accompanying IDM at 13.
[328] *See* Section 782(c)(1) of the Act states that "{i}f an interested party, promptly after receiving a request from the administering authority or the Commission for information, notifies the administering authority or the Commission (as the case may be) that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the administering authority or the Commission (as the case may be) shall consider the ability of the interested party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party."
[329] *See* Government of China July 20, 2017 IQR - Dingsheng HK at 91.
[330] *See* Petitioners' Rebuttal Brief at 30. *See also* Government of China's Case Brief at 38-39.
[331] *Id*. at 31 citing *CORE from China,* and accompanying IDM at Comment 1. *See also Oil Country Tubular Goods from China; 2012* at Comment 7.

did not provide the requested details on the producers' operations (*e.g*., company by-laws, articles of incorporation, licenses, *etc*.). For these reasons, we have no basis to revise the preliminary AFA finding that the producers are "authorities" within the meaning of section 771(5)(B) of the Act. Due to the Government of China's noncooperation, we infer that CCP officials were present as owners, managers and directors in the relevant companies, and that control by the CCP is control by the government for purposes of the CVD law. Consequently, we continue to find that all producers of steam coal and primary aluminum for which the Government of China failed to provide information about CCP membership are "authorities" within the meaning of section 771(5)(B) of the Act. We also determine that the non-government owned domestic producers of primary aluminum for which the Government of China failed to provide information about CCP membership are "authorities" within the meaning of section 771(5)(B) of the Act.

Comment 19: Whether the Primary Aluminum and Steam Coal for LTAR Programs are Specific

Government of China's Case Brief:

- The record evidence establishes that primary aluminum is used in a wide variety of industries that involve a diverse array of products and consumers.[332]
- Steam coal is widely used across virtually sectors of industry in China, and its use cannot be considered specific to one industry or a particular group of industries.[333]
- Commerce found in *Chlorinated Isocyanurates from China* that even where the agricultural sector was the predominant user, accounting for over 70 percent of urea consumption in China, this did not render urea specific because it was consumed by at least 9 different industries in China.[334]

Petitioners' Rebuttal Brief:

- Commerce considered the Government of China's reported information concerning industry sectors and determined it was incomplete.[335]
- The Government of China's reliance on *Chlorinated Isocyanurates from China* is misplaced as the facts are not analogous to this investigation, as the Government of China failed to provide verifiable consumption data by industry.[336]

Commerce's Position: As explained in the *Preliminary Determination*, Commerce asked the Government of China to provide information about the industries that purchase primary aluminum and steam coal. Specifically, the Government of China was instructed to:

> Provide a list of industries in the PRC that purchase primary aluminum and steam coal directly, using a consistent level of industrial classification. Provide the amounts

[332] *Id*. at 41 (citing Government of China July 20, 2017 IQR - Dingsheng HK at 79 and Exhibit D-11).
[333] *Id*. (citing Government of China July 20, 2017 IQR - Dingsheng HK at 107 and Exhibit D-21).
[334] *Id*. (citing *Chlorinated Isocyanurates from China*, and accompanying IDM at 39-40).
[335] *See* Petitioners' Rebuttal Brief at 32-33 (citing PDM at 23).
[336] *Id*. (citing *Chlorinated Isocyanurates from China*, and accompanying IDM at 23).

> (volume and value) purchased by the industry in which the mandatory respondent companies operate, as well as the totals purchased by every other industry. In identifying the industries, please use whatever resource or classification scheme the Government normally relies upon to define industries and to classify companies within an industry. Please provide the relevant classification guidelines, and please ensure the list provided reflects consistent levels of industrial classification. Please clearly identify the industry in which the companies under investigation are classified.[337]

Commerce requests such information for purposes of its *de facto* specificity analysis. The Government of China submitted an incomplete list of data requested for the primary aluminum and steam coal industries. In response to Commerce's request for such documentation relating to the primary aluminum and steam coal industries, the Government of China submitted lists of industrial categories without further description, discussion of the methodology used to collect such data, and the source of all data collected.[338]

Therefore, consistent with past proceedings,[339] we determine that necessary information is not available on the record, and that the Government of China has withheld information that was requested of it. Thus, Commerce must rely on "facts available" in making our final determination, in accordance with sections 776(a)(1) and 776(a)(2)(A) of the Act. Moreover, we determine that the Government of China failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available pursuant to section 776(b) of the Act. In drawing an adverse inference, we find that the Government of China's provision of primary aluminum and steam coal is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act. Further, we took account of the diversification of economic activities in China and the length of time during which this subsidy program has been in operation.

Comment 20: Whether Commerce Must Use a Tier-One Benchmark for the Primary Aluminum and Steam Coal for LTAR Programs

Government of China's Case Brief:

- In its *Preliminary Determination*, Commerce did not find the primary aluminum market distorted based on AFA. Instead, it concluded that the market was distorted due to the substantial government share in the market, coupled with the restrictions on exports in the form of export taxes.[340] This finding is contradicted by verified record evidence, including total number of producers, value and volume of domestic consumption, value and volume of imports, VAT, import tariff, and export tariff of primary aluminum.[341]

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[337] *See* Initial CVD Questionnaire at Section II.
[338] *See* Government of China July 20, 2017 IQR – Dingsheng HK at Exhibits D-11 and D-21.
[339] *See Wind Towers from China*, and accompanying IDM at Comment 13.
[340] *Id*. at 42 (citing PDM at 51).
[341] *Id*. at 43 (citing Government of China July 20, 2017 IQR - Dingsheng HK at 75-79; Government of China Verification Report at 4 and 5).

- The Government of China provided all the requested information except the information that is pertinent to steam coal producers in which it maintains an ownership or management interest.[342]
- The WTO Appellate body has found that evidence relating to government ownership of state-owned entities and their respective market shares does not, in and of itself, provide a sufficient basis for concluding that in-country prices are distorted. The Panel further found that the distortion of in-country prices must be established on the basis of the particular facts underlying each countervailing duty investigation and that an investigating authority cannot refuse to consider evidence relating to factors other than government market share.[343]
- The Government of China has provided evidence showing that the prices in China for primary aluminum and steam coal reflect market forces.[344]

Petitioners' Rebuttal Brief:

- Commerce's preliminary determination regarding steam coal was hindered by the Government of China's failure to provide most of the information requested by the agency on the Chinese steam coal market, resulting in Commerce's reliance on AFA.[345]
- In addition to government ownership, Commerce determined that the Government of China controlled and distorted domestic markets for primary aluminum and steam coal by restricting exports.[346]
- Commerce's finding is consistent with prior proceedings.[347]

Commerce's Position: As explained in the *Preliminary Determination*, we determined on the basis of AFA that the Government of China's involvement in the steam coal market in China results in significant distortion of the prices of steam coal such that they cannot be used as a tier one benchmark and, hence, the use of an external benchmark, as described under 19 CFR 351.511(a)(2)(ii), is warranted to calculate the benefit for the Provision of Steam Coal for LTAR.[348] This determination stemmed from the Government of China's refusal to provide requested information regarding the steam coal industry in China.[349] For this final determination, we continue to find an adverse inference is warranted in the application of facts available.

[342] *Id*. (citing Government of China July 20, 2017 IQR - Dingsheng HK at 104-107).
[343] *Id*. (citing Panel Report - Certain Products from China, para. 4.51, 4.62, and 4.95).
[344] *Id*. (citing Government of China July 20, 2017 IQR - Dingsheng HK at 78, 106, and Exhibit D-9).
[345] *See* Petitioners' Rebuttal Brief at 34 (citing PDM at 34-37).
[346] *Id*.
[347] *Id*. (citing *Aluminum Extrusions from the People's Republic of China: Final Results, and Partial Rescission of Countervailing Duty Administrative Review; 2013*, 80 FR 77325 (December 14, 2015), and accompanying IDM at Comment 13; *Countervailing Duty Investigation of Stainless Steel Sheet and Strip from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 82 FR 9714 (February 8, 2017)).
[348] *See* PDM at 36-37.
[349] *Id*.

With respect to primary aluminum, we verified the information that we relied on in the *Preliminary Determination* to determine that the domestic market was distorted through the intervention of the Government of China.[350] The Government of China reported that China produces over 99 percent of the primary aluminum it consumes, and about 37 percent of domestic consumption is from companies the Government of China identifies as SOEs.[351] Further, the Government of China reported that a 30 percent export tariff was imposed on primary aluminum during the POI and the two years immediately prior, discouraging primary aluminum exports from China.[352] Thus, given the substantial government share in the market, coupled with the restriction on exports in the form of the export taxes, we continue to determine that the domestic market for primary aluminum was distorted through the intervention of the Government of China during the POI and the two years immediately prior.

Comment 21: Whether Dingsheng's Income Tax Deductions for R&D Expenses are Understated

Petitioners' Case Brief:

- Although Commerce stated its intention to calculate the benefit using the standard corporate income tax rate of 25 percent, it instead based Dingsheng's benefit on the preferential corporate income tax rate of 15 percent.[353]
- Under 19 CFR 351.509(a)(l), Commerce will calculate the benefit based on the difference between the amount the company paid and the amount the company would have paid in the absence of the program. Commerce typically does not consider a company's receipt of other tax incentives when determining the benefit from a separate, countervailable tax program.[354]
- Commerce should revise its preliminary calculations and use the 25 percent tax rate to calculate the countervailable benefit from Dingsheng's Income Tax Deductions for R&D Expenses.[355]

No other comments were received on this issue.

Commerce's Position: We agree with the petitioners. For this final determination, we have revised the preliminary calculations and used the 25 percent tax rate to calculate the benefit for Dingsheng's Income Tax Deductions for R&D Expenses.

Comment 22: Whether Commerce Selected the Highest Electricity Rate Benchmarks

Petitioners' Case Brief:

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[350] *See* Government of China Verification Report at 3-5.
[351] *See* Government of China July 20, 2017 IQR – Dingsheng HK at 76.
[352] *Id*. at 79.
[353] *See* Petitioners' Case Brief at 14-15 (citing PDM at 47).
[354] *Id*. at 15 (citing *PET Resin from China*, and accompanying IDM at 40-41, 43-44).
[355] *Id*.

- In the *Preliminary Determination*, Commerce stated its intention to use "the highest electricity rates on the record for the applicable rate and user categories" for the benchmark electricity rates. However, it failed to select the highest electricity rates on the record in this investigation.[356] Commerce should remedy its error for the final determination.

Dingsheng's Rebuttal Brief:

- Commerce rejected this same argument in the recent *Tool Chests from China*[357] proceeding. The petitioners' arguments are without merit and should be rejected.

Government of China's Rebuttal Brief:

- Contrary to the petitioners' claim, Zhejiang Province does not have a price category described as the "Normal" range. The petitioners deliberately garble the definitions of high, peak, and normal. Further, the petitioners' misinterpretations flatly contradict Commerce's own correct interpretations of the schedule's pricing in the preliminary determination.[358] The Zhejiang Province electricity schedules submitted by the Government of China clearly support the correct interpretation applied by the Commerce in the preliminary determination as to "peak" and "normal" electricity rates applied as AFA.

Zhongji's Rebuttal Brief:

- Commerce should select a benchmark that reflects Jiangsu Zhongji's actual location.[359]

Commerce's Position: During the course of this proceeding, the petitioners did challenge the translation of the electricity schedule provided by the Government of China. Thus, we rely upon the translations in this schedule to inform our selection of benchmark.

This schedule lists four prices: "Electricity Degree Price," "Peak Price," "High Price," and "Low Price." We agree with the petitioners that we did not use the price labeled "Peak Price" as the peak price for our preliminary calculations. For this final determination, we are using the price reported as "Peak Price" for the peak electricity benchmark. The schedule does not identify a price labeled as "normal." In its absence, we continue to rely on the price labeled "Electricity Degree Price" for this final determination.

With regard to Zhongji's argument, as explained in the Comment below, Commerce continues to apply AFA in selecting the benchmark for determining the existence and amount of the benefit. Thus, we have selected the highest electricity rates on the record for the applicable rate and user categories.

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[356] *See* Petitioners' Case Brief at 17-19.
[357] *See Tool Chests from China*, and accompanying IDM at Comment 10.
[358] *See* Government of China's Rebuttal Brief at 4.
[359] *See* Zhongji's Rebuttal Brief at 6-7.

Comment 23: Whether Commerce Should Apply AFA for Electricity

Government of China's Case Brief:

- Commerce's preliminary conclusions flatly contradict the record evidence.[360] The Government of China has acted to the best of its ability with respect to providing information on the roles of National Development Reform Commission (NDRC) in the electricity price setting in China and provinces in deriving electricity price adjustments. The Government of China consistently stressed in its responses in this investigation that electricity prices are determined by the provincial governments within their jurisdictions and that the NDRC only requires the established electricity schedules be placed on the record of the NDRC.[361] The Government of China also submitted evidence to confirm that the NDRC has delegated authority to the provincial agencies to prepare, establish and publish the price adjustment schedules of the electricity sales prices within the respective provincial jurisdiction.[362]
- Commerce has not demonstrated that Notice 748 and Notice 3150 explicitly mandate specific electricity tariffs for the provinces or alters the Provincial Price Proposals.[363]
- The Government of China has demonstrated that since 2015 the Government of China has proactively promoted electricity market reform. Chinese electricity prices are based on market principles, and the Government of China has made its best efforts to further explain its answers and provide additional factual information as necessary.[364]
- In stark contrast to Commerce's assertion, the Government of China has provided the necessary information as requested by the Department regarding the roles and nature of cooperation between the NDRC and the provinces in deriving electricity price adjustments.[365]
- Commerce should determine the adequacy of remuneration by examining whether the respondents received a preferential rate compared to those entities receiving a rate by the standard pricing mechanism. No record evidence indicates that the producers of aluminum foil received a preferential rate when compared to other entities. The record evidence indicates that in all the provinces in which the mandatory respondents and their reported cross-owned affiliates are located, including Jiangsu, Zhejiang, and Guangdong, all large scale industrial enterprise users enjoy the same electricity tariff rates.[366]

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[360] *See* Government of China's Case Brief at 46-47 (citing PDM at 40-41).
[361] *Id*. at 47 (citing Government of China June 12, 2017 IQR – Zhongji at 79,82; Government of China July 5, 2017 SQR at 12).
[362] *Id*. (citing Government of China June 12, 2017 IQR – Zhongji at 79,82; Government of China July 5, 2017 SQR at 12; Government of China's July 21, 2017 Supplemental Questionnaire Response (Government of China's July 21, 2017 SQR) at Exhibits S2-1 and S2-2).
[363] *Id*. (citing PDM at 39).
[364] *Id*. (citing Government of China June 12, 2017 IQR – Zhongji at 80, 81-88; Government of China July 5, 2017 SQR at 12-14 and Exhibit S-10; and Government of China July 21, 2017 SQR at 4-11 and Exhibits S2-1 and S2-2).
[365] *Id*. at 48.
[366] *Id*. at 49 (citing *Maverick Tube Corporation v. United States*, Slip Op. 17-146 (CIT 2017) at 20; Government of China June 12, 2017 IQR – Zhongji at Exhibits E4-5 and E4-6; Government of China July 20, 2017 IQR - Dingsheng HK at at Exhibit 22).

Zhongji's Case Brief:

- The proceeding record shows that the provincial governments determine electricity prices within their jurisdictions in keeping with the market conditions.[367]
- Commerce's application of AFA is unlawfully punitive as it is based on the Government of China's inability to provide information that does not exist.[368]

Petitioners' Rebuttal Brief:

- The Government of China responded to a question regarding documentation showing the NDRC 'ratified" Jiangsu Province's electricity price adjustment, by asserting that the term 'ratified' that was referenced in the Jiangsu Province Notice, means 'confirmed' or 'procedurally sanctioned' in the context." Thus, record information submitted by the Government of China directly contradicts its assertions of provincial independence in establishing electricity prices.[369]
- As a threshold matter, the Government of China's contradictory and unreliable questionnaire responses alone are more than sufficient to support the Department's reliance on AFA.[370]
- None of the government notices submitted by the Government of China explicitly eliminated Provincial Pricing Proposals, nor fully defined the NDRC's and the provinces' roles in setting electricity prices.[371] The Government of China failed to provide information regarding price differences between the provinces, how the provinces derive electricity price adjustments, and how they cooperate with the NDRC.[372]
- The Government of China's contradictory and unreliable questionnaire responses alone are more than sufficient to support Commerce's reliance on AFA.[373]

Mahle's Rebuttal Brief:

- Mahle restates and affirms its support for Zhongji's arguments.[374]

Commerce's Position: As discussed above, consistent with our practice and in accordance with the law, Commerce is applying AFA to the Government of China with respect to the provision of electricity. Contrary to the Government of China's argument, Commerce is not required to demonstrate that Notices 748 and 3150 mandate specific electricity tariffs. As noted by the petitioners, none of the government notices submitted by the Government of China explicitly eliminated Provincial Pricing Proposals, nor fully defined the NDRC's and the provinces' roles

[367] *See* Zhongji's Case Brief at 14.
[368] *Id*. (citing *AK Steel*, 21 CIT 1223).
[369] *See* Petitioners' Rebuttal Brief at 45.
[370] *Id*. (citing *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003) (holding that a party's compliance with the "best of its ability" standard includes providing accurate responses to Commerce's request for information)).
[371] *Id*.
[372] *Id*.
[373] *Id*.
[374] *See* Mahle's Rebuttal Brief at 12-13.

in setting electricity prices.[375] Further, in the *Preliminary Determination,* we determined that the Government of China withheld information that was requested of it for our analysis of financial contribution and specificity and, thus, we relied on "facts available."[376] As detailed in the *Preliminary Determination*, the Government of China did not provide the following: Provincial Price Proposals; the specific derivation of increases in cost elements and the methodology used to calculated cost element increases; legislation that may have eliminated the Price Proposals; explanation, with supporting documents, how pricing values in the Appendix to Notice 748 were derived; information concerning the coincidence of provincial price changes with Notices 748 and 3105; and explanation of the factors and information that Jiangsu and Guangdong Province relied upon to generate their submitted price adjustments and tariffs.[377] Moreover, we determined that the Government of China failed to cooperate by not acting to the best of its ability to comply with our request for information. We also noted that the Government of China did not ask for additional time to gather and provide such information. Consequently, we drew an adverse inference in the application of facts available.[378]

In drawing an adverse inference, we found that the Government of China's provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act. The Government of China failed to provide certain requested information regarding the relationship (if any) between provincial tariff schedules and cost, as well as requested information regarding cooperation (if any) in price setting practices between the NDRC and provincial governments. Therefore, we also drew an adverse inference in selecting the benchmark for determining the existence and amount of the benefit.[379] For this final determination, we continue to find that the Government of China withheld information that was requested of it. Therefore, we continue to apply facts available, with an adverse inference, for this program.

Comment 24: Whether Commerce Should Adjust the Electricity Benchmark for VAT

Zhongji's Case Brief:

- If Commerce continues to calculate an AFA benchmark for electricity, it must ensure that the benchmark is exclusive of value-added tax to be consistent with past practice.[380]

Petitioners' Rebuttal Brief:

- Record evidence confirms that all provincial electricity rates in China include VAT.[381] Commerce verified that Jiangsu Zhongji and Huafeng Aluminum paid the tariff rates established in the Jiangsu Province electricity rate schedule. Thus, no adjustment to the calculation is required.[382]

[375] *See* Petitioners' Rebuttal Brief at 45
[376] *See* PDM at 37-41. *See also* section 776(a)(2)(A) of the Act.
[377] *See* PDM at 37-41.
[378] *See* section 776(b) of the Act.
[379] *See* section 776(b)(4) of the Act.
[380] *See* Zhongji's Case Brief at 15.
[381] *See* Petitioners' Rebuttal Brief at 48 (citing Government of China July 5, 2017 SQR at 13-14).
[382] *Id. (citing* Zhongji Verification Report at 21-22).

Commerce's Position: We have reviewed the record information and the verification reports, and agree with the petitioners that all provincial electricity rates in China include VAT. We also verified that the respondents paid the tariff rates established in the Jiangsu Province electricity schedule. Thus, we agree with the petitioners that no adjustment to the calculation to account for VAT is required.

Comment 25: Whether Electricity Constitutes General Infrastructure and Provides a Financial Contribution

Government of China's Case Brief:

- Commerce may not lawfully countervail the provision of electricity in this case because this alleged program constitutes general infrastructure and therefore is not a financial contribution under U.S. CVD law or the WTO SCM Agreement. Further, there is no evidence in the record that the provision of electricity by the Government of China in this case is "specific" to the aluminum foil industry.[383]
- Commerce should follow its precedent and reject the petitioners' attempt to claim "infrastructure subsidies."[384]
- Record evidence fails to demonstrate that the Government of China has given aluminum foil producers preferential rates or greater access to the power grids.[385]

Petitioners' Rebuttal Brief:

- In *Hot-Rolled Carbon Steel Flat Products from Thailand*, Commerce unequivocally determined that the provision of electricity does not constitute general infrastructure and it does constitute a financial contribution by the government.[386] The Court affirmed Commerce's determination.[387]

Mahle's Rebuttal Brief:

- Interested Party Mahle restates and affirms its support for the Government of China arguments.[388]

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383 *See* Government of China's Case Brief at 44-45 (citing 771(5)(D)(iii) of the Act and WTO SCM Agreement, Art. 1.1(a)(1)(iii)).
384 *Id*. at 45 (citing *Bethlehem Steel Corporation v. United States*, 223 F. Supp. 2d 1372 (CIT 2002); *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Carbon Steel Wire Rod from Saudi Arabia*, 51 FR 4206 (February 3, 1986); and *Final Affirmative Countervailing Duty Determination: Industrial Phosphoric Acid from Israel*, 52 FR 25447 (July 7, 1987).
385 *Id*. at 46.
386 *See* Petitioners' Rebuttal Brief at 31 (citing *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand*, 66 FR 50410 (October 3, 2001) (*Hot-Rolled Carbon Steel Flat Products from Thailand)*, and accompanying IDM at Comment 10).
387 *Id*. (citing *Royal Thai Gov't v. United States*, 441 F. Supp. 2d 1350, 1356 (CIT 2006).
388 *See* Mahle's Rebuttal Brief at 11-12.

Commerce's Position: We agree with the petitioners. This issue was unequivocally addressed in *Hot-Rolled Carbon Steel Flat Products from Thailand*, and the court affirmed Commerce's determination in *Royal Thai*. Commerce has consistently found the provision of electricity to be the provision of a good, and not to be general infrastructure.[389] Also, Commerce's regulations explicitly categorize electricity within the provision of countervailable goods and services.[390] As detailed at Comment 24, above, in this proceeding we determined that the provision of electricity by the Government of China is specific and provides a financial contribution on the basis of AFA.

Comment 26: Whether Commerce Should Rely on Xeneta Data for Freight Benchmark

Zhongji's Case Brief:

- Commerce rejected the Xeneta freight rates with no explanation in the *Preliminary Determination*. For the final determination, Commerce should disregard the Maersk rates because the Xeneta rates represent the best available information to value ocean freight.[391]
- If Commerce continues to rely on Maersk, it should at least include Xeneta rates to calculate an average price for the global benchmark.[392]

Petitioners' Rebuttal Brief:

- Zhongji submitted rates reported by Xeneta, which it identified as "a freight rate market intelligence firm," and requested business proprietary treatment for these data. Pursuant to 19 CFR 351.102(b)(21)(iii), factual information used by Commerce to assess the adequacy of remuneration must be publicly available information. Zhongji's Xeneta rates fail to meet this requirement and, thus, should not be relied on by Commerce either individually, or collectively with Maersk rates, in the final determination.[393]

Commerce's Position: Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier two, Commerce will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. The Xeneta data submitted by Zhongji either includes or excludes terminal handling charges, according to Xeneta's data methodology.[394] Additional information in Zhongji's benchmark submission clarifies that terminal handling charges are not always included in freight

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[389] *See*, *e.g.*, *Certain Steel Wheels from the People's Republic from China: Final Affirmative Countervailing Duty Determination, Final Critical Circumstances Determination*, 77 FR 17017 (March 23, 2012), and accompanying IDM at 64 at Comment 20 ("The Department has consistently found the provision of electricity to be the provision of a good, and not to be general infrastructure.").
[390] *See Preamble*, 63 FR at 65348.
[391] *Id*. at 15 (citing PDM at 16-17).
[392] *Id*. (citing *Solar Cells from China; 2014*, at Comment 7 (applying an average of the Maersk and Xeneta ocean freight charges)).
[393] *See* Petitioners' Rebuttal Brief at 39.
[394] *See* Zhongji Benchmark Submission, Re: Certain Aluminum Foil from the People's Republic of China: Benchmark submission, dated July 21, 207, at Exhibit 2.

rates to Asia.[395] In accordance with Commerce's regulation, it is Commerce's practice to include handling charges in the freight benchmark. Because the Xeneta data inconsistently include handling charges, we are not using it to value freight for this final determination. Accordingly, the argument raised in the petitioners' rebuttal brief is moot.

Comment 27: Whether Commerce Should Find Non-Use of Steam Coal

Zhongji's Case Brief:

- In the *Preliminary Determination*, Commerce treated anthracitic coal purchased by Jiangsu Huafeng as steam coal.[396]
- The record establishes that anthracite coal is distinct from steam coal.[397] Therefore, this program should be found not used for the final determination.

Petitioners' Rebuttal Brief:

- Steam coal is not a specific tariff classification for coal, but is defined based on its end use. The Chinse tariff schedule does not contain a specific designation for steam coal.[398]
- Record evidence confirms that Zhongji's purchases of anthracite coal should be considered steam coal and are pertinent to Commerce's investigation. Accordingly, Commerce should ignore Zhongji's proposed exclusion in the final determination.[399]

Mahle's Rebuttal Brief:

- Mahle restates and affirms its support for Zhongji's arguments.[400]

Commerce's Position: The record establishes that the respondent's Zhongji's coal purchases do not result in a measurable benefit.[401] Thus, this issue is moot.

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[395] *Id*.
[396] *See* Zhongji Case Brief at 16 (citing PDM at 50, 52).
[397] *Id*. (citing Government of China Letter, "RE: GOC Submission of Rebuttal Factual Information," dated July 17, 2017 at 5, Exhibit 3; Zhongji June 12, 2017 IQR at Vol. III, 17-18).
[398] *See* Petitioners' Rebuttal Brief at 49 (citing Government of China July 20, 2017 SQR – Dingsheng HK at Exhibit D-20).
[399] *Id*. (citing Zhongji June 12, 2017 IQR at 17-18).
[400] *See* Mahle's Rebuttal Brief at 15.
[401] *See* PDM at 52.

X. RECOMMENDATION

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

☒ ☐

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Agree Disagree

2/26/2018

X

Signed by: PRENTISS SMITH

P. Lee Smith
Deputy Assistant Secretary
for Policy and Negotiations