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Investigation
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April 16, 2018

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

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: Decision Memorandum for the Preliminary Affirmative Determination: Countervailing Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China

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I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of common alloy aluminum sheet (common alloy sheet) from the People's Republic of China (China), as provided in section 703(b)(1) of the Tariff Act of 1930, as amended (the Act).

II. BACKGROUND

A. Initiation and Case History

On December 4, 2017, Commerce self-initiated the countervailing duty (CVD) investigation of common alloy aluminum sheet from China, in accordance with section 702(a) of the Act.[1]

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[1] *See Common Alloy Aluminum Sheet from the People's Republic of China: Initiation of Less-Than-Fair-Value and Countervailing Duty Investigations*, 82 FR 57214 (December 4, 2017) (*Initiation Notice*). For the initial allegations based on information available to Commerce, *see* Memorandum, "Initiation of the Countervailing Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China," dated November 28, 2017 (Initiation Memorandum).

In the *Initiation Notice*, we stated that, following the standard practice in CVD investigations, we would, where appropriate, select respondents based on U.S. Customs and Border Protection (CBP) entry data for specified Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation during the period of investigation (POI).[2] Section 777A(e)(1) of the Act directs Commerce to calculate individual countervailable subsidy rates for each known producer/exporter of the subject merchandise. However, when faced with a large number of producers/exporters, and, if Commerce determines it is therefore not practicable to examine all companies, section 777A(e)(2)(A)(ii) of the Act and 19 CFR 351.204(c) give Commerce discretion to limit its examination to a reasonable number of the producers/exporters accounting for the largest volume of the subject merchandise that can reasonably be examined.

Commerce obtained data for entries made for U.S. imports under the HTSUS numbers 7606.11.3060, 7606.11.6000, 7606.12.3090, 7606.12.6000, 7606.91.3090, 7606.91.6080, 7606.92.3090, and 7606.92.6080 during the POI, and released the data to the interested parties for comment on November 30, 2017.[3] No interested party submitted comments on the CBP data.

On December 8, 2017, Yantai Jintai International Trade Co., Ltd. (Yantai Jintai) requested that Commerce investigate it as a voluntary respondent. On December 12, 2017, Yantai Jintai withdrew that request.[4] Based on our analysis of the CBP data, we determined that the CBP data are an appropriate basis on which to select respondents for individual examination in this investigation.[5] As outlined in Commerce's Respondent Selection Memorandum, based upon the CBP data, Commerce selected Chalco Ruimin Co., Ltd. (Chalco Ruimin); Chalco-SWA Cold Rolling Co., Ltd. (Chalco-Swa); Henan Mingtai Industrial Co., Ltd.; Yong Jie New Material Co., Ltd. (Yong Jie New Material); and Zhengzhou Mingtai Industry Co., Ltd. as mandatory respondents.[6] Consistent with section 777A(e)(2)(A)(ii) of the Act, these five companies accounted for the largest import volumes of the subject merchandise under consideration during the POI.

On December 20, 2017, Commerce issued a CVD questionnaire to the Government of China.[7] On December 26, 2017, Chalco Ruimin and Chalco-SWA requested an extension of time to

[2] *See Initiation Notice*, 82 FR at 57217.
[3] *See* Commerce Letter re: To All Interested Parties, dated November 30, 2017.
[4] *See* Yantai Jintai Letter re: Common Alloy Aluminum Sheet from the People's Republic of China: Request for Voluntary Respondent Treatment, dated December 8, 2017 and Yantai Jintai Letter re: Common Alloy Aluminum Sheet from the People's Republic of China: Withdrawal of Request for Voluntary Respondent Treatment, dated December 12, 2017.
[5] *See* Memorandum, "Countervailing Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China: Respondent Selection," dated December 20, 2017 (Respondent Selection Memorandum).
[6] *Id*. at 5-6.
[7] *See* Commerce Letter re: Countervailing Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China: Countervailing Duty Questionnaire, dated December 20, 2017 (Initial CVD Questionnaire). On December 29, 2017, Commerce issued an addendum to the CVD questionnaire to the Government of China, *see* Commerce Letter re: Countervailing Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China: Countervailing Duty Questionnaire Addendum, dated December 29, 2017.

respond to Section III, affiliation portion of Commerce's Initial CVD Questionnaire.[8] On December 27, 2017, Commerce partially extended the deadline until January 8, 2018.[9] However, on January 9, 2018, Chalco Ruimin and Cahlco-SWA notified Commerce that they did not intend to respond to Commerce's Initial CVD Questionnaire.[10]

On January 8, 2018, Henan Mingtai Industrial Co., Ltd. (Henan Mingtai) and Zhengzhou Mingtai Industry Co., Ltd. (Zhengzhou Mingtai) timely filed their responses to Section III, the affiliation portion of Commerce's Initial CVD Questionnaire. Henan Mingtai and Zhengzhou Mingtai (collectively, Mingtai) reported that they are affiliated companies.[11] Also on January 8, 2018, Yong Jie New Material timely filed its response to Section III, the affiliation portion of Commerce's Initial CVD Questionnaire.[12] On January 16, 2018, and January 18, 2018, Mingtai and Yong Jie New Material, respectively, timely filed their supplemental affiliation questionnaire responses.[13] On January 29, 2018, Yong Jie New Material timely filed its response to Commerce's second supplemental affiliation questionnaire.[14]

On January 29, 2018, Mingtai timely filed its full Section III responses to Commerce's Initial CVD Questionnaire on behalf of itself, Kunshan Mingtai Al Industry Co., Ltd. (Kunshan Mingtai); Henan T-Bond Trading Co., Ltd. (Henan T-Bond); and Henan Gongdian Thermal Co., Ltd. (Henan Gongdian).[15] On February 6, 2018, the Government of China and Yong Jie New Material timely filed their Section III responses to Commerce's Initial CVD Questionnaire.[16] Mingtai, Yong Jie New Material, and the Government of China filed responses to additional supplemental questionnaires between February 15, 2018, and April 5, 2018, as discussed below.[17]

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[8] *See* Chalco Ruimin and Chalco-SWA Letter re: Common Alloy Aluminum Sheet from the People's Republic of China: Request for an Extension to Complete "Section III Identifying Affiliated Companies" of Commerce's Countervailing Duty Questionnaire, dated December 26, 2017.

[9] *See* Commerce Letter re: Partial Ext for Q/R III, dated December 27, 2017.

[10] *See* Chalco Ruimin's and Chalco-SWA's January 9, 2018 Notice of Non-Participation as Mandatory Respondent.

[11] *See* Mingtai's January 8, 2018 Affiliation Questionnaire Response (Mingtai January 8, 2018 AFFR) at 3.

[12] *See* Yong Jie New Material's January 8, 2018 Affiliation Response (Yong Jie New Material Affiliation Response).

[13] *See* Mingtai's January 16, 2018 Supplemental Affiliation Response (Mingtai January 16, 2018 SAFFR) and Yong Jie New Material's January 18, 2018 Supplemental Affiliation Response.

[14] *See* Yong Jie New Material's January 29, 2018 Second Supplemental Affiliation Response.

[15] *See* Henan Mingtai's January 29, 2018 Initial Questionnaire Response (Henan Mingtai January 29, 2018 IQR); Zhengzhou Mingtai's January 29, 2018 Initial Questionnaire Response (Zhengzhou Mingtai January 29, 2018 IQR); Kunshan Mingtai's January 29, 2018 Initial Questionnaire Response (Kunshan Mingtai January 29, 2018 IQR); Henan T-Bond's January 29, 2018 Initial Questionnaire Response (Henan T-Bond January 29, 2018 IQR); Henan Gongdian's January 29, 2018 Initial Questionnaire Response (Henan Gongdian January 29, 2018 IQR).

[16] *See* Government of China's February 6, 2018 Initial Questionnaire Response (Government of China February 6, 2018 IQR) and Yong Jie New Material's February 6, 2018 Initial Questionnaire Response (Yong Jie New Material February 6, 2018 IQR).

[17] *See* Mingtai's February 15, 2018 Supplemental Questionnaire Response (Mingtai February 15, 2018 SQR); Mingtai's March 15, 2018 Supplemental Questionnaire Response (Mingtai March 15, 2018 SQR); Mingtai's April 3, 2018; Government of China's March 20, 2018 Supplemental Questionnaire Response (Government of China March 20, 2018 SQR); Government of China's April 4, 2018 Supplemental Questionnaire Response (Government of China April 4, 2018 SQR); Government of China's April 5, 2018 Supplemental Questionnaire Response (Government of China April 5 SQR); Yong Jie New Material's March 16, 2018 Supplemental Questionnaire Response (Yong Jie New Material March 16, 2018 SQR); Yong Jie New Material's March 23, 2018 Supplemental

B. Postponement of Preliminary Determination

On January 19, 2018, Commerce postponed the deadline for the preliminary determination to the full 130 days permitted under sections 703(c)(1)(B) and (c)(2) of the Act and 19 CFR 351.205(f)(1) because it determined that this investigation was extraordinarily complicated and required additional time to issue a preliminary determination.[18] On January 23, 2018, Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from January 20, 2018, through January 22, 2018.[19] Additionally, on April 9, 2018, Commerce issued a memorandum to the file correcting the deadline to issue its preliminary determination.[20] The corrected deadline is April 16, 2018.

C. Period of Investigation

The POI is January 1, 2016, through December 31, 2016.

III. SCOPE COMMENTS

In accordance with the preamble to Commerce's regulations,[21] we set aside a period of time in our *Initiation Notice* for parties to raise issues regarding product coverage, and we encouraged all parties to submit comments by December 18, 2017, and rebuttal comments by December 28, 2017.[22]

We received comments concerning the scope of the AD and CVD investigations of common alloy sheet from China. We are currently evaluating the scope comments filed by the interested parties. We intend to issue our preliminary decision regarding the scope of the AD and CVD investigations in the preliminary determination of the companion AD investigation, which is due no later than June 15, 2018.

IV. SCOPE OF THE INVESTIGATION

The merchandise covered by the investigation is aluminum common alloy sheet (common alloy sheet), which is a flat-rolled aluminum product having a thickness of 6.3 mm or less, but

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Questionnaire Response (Yong Jie New Material March 23, 2018 SQR); Yong Jie New Material's April 2, 2018 Supplemental Questionnaire Response (Yong Jie New Material April 2, 2018 SQR).

[18] *See Common Alloy Aluminum Sheet from the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 83 FR 2768 (January 19, 2018) (postponing the preliminary determination to 130 days after initiation).

[19] *See* Memorandum, "Deadlines Affected by the Shutdown of the Federal Government," dated January 23, 2018 (All deadlines in this segment of the proceeding have been extended by 3 days); *see also* Memorandum, "Countervailing Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China; Correction of the Preliminary Determination Deadline," dated April 9, 2018 (informing interested parties of Commerce's intention to make the preliminary determination no later than April 16, 2018 because, pursuant 19 CFR 351.102(40), a self-initiated proceeding officially begins on the date of "publication of a notice of initiation").

[20] *See* Memorandum, "Correction of the Preliminary Determination Deadline," dated April 9, 2018.

[21] *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[22] *See Initiation Notice*, 82 FR at 57215.

greater than 0.2 mm, in coils or cut-to-length, regardless of width. Common alloy sheet within the scope of the investigation includes both not clad aluminum sheet, as well as multi-alloy, clad aluminum sheet. With respect to not clad aluminum sheet, common alloy sheet is manufactured from a 1XXX-, 3XXX-, or 5XXX-series alloy as designated by the Aluminum Association. With respect to multi-alloy, clad aluminum sheet, common alloy sheet is produced from a 3XXX-series core, to which cladding layers are applied to either one or both sides of the core.

Common alloy sheet may be made to ASTM specification B209-14, but can also be made to other specifications. Regardless of specification, however, all common alloy sheet meeting the scope description is included in the scope. Subject merchandise includes common alloy sheet that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the common alloy sheet.

Excluded from the scope of the investigation is aluminum can stock, which is suitable for use in the manufacture of aluminum beverage cans, lids of such cans, or tabs used to open such cans. Aluminum can stock is produced to gauges that range from 0.200 mm to 0.292 mm, and has an H-19, H-41, H-48, or H-391 temper. In addition, aluminum can stock has a lubricant applied to the flat surfaces of the can stock to facilitate its movement through machines used in the manufacture of beverage cans. Aluminum can stock is properly classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7606.12.3045 and 7606.12.3055.

Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set for the above.

Common alloy sheet is currently classifiable under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3090, 7606.12.6000, 7606.91.3090, 7606.91.6080, 7606.92.3090, and 7606.92.6080. Further, merchandise that falls within the scope of the investigation may also be entered into the United States under HTSUS subheadings 7606.11.3030, 7606.12.3030, 7606.91.3060, 7606.91.6040, 7606.92.3060, 7606.92.6040, 7607.11.9090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

V. INJURY TEST

Because China is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from China materially injure, or threaten material injury to, a U.S. industry. On January 16, 2018, the ITC preliminarily determined that there was a reasonable indication that an industry in the United States is materially injured by reason of imports of common alloy sheet from China.[23]

VI. PRELIMINARY DETERMINATION OF CRITICAL CIRCUMSTANCES

The Aluminum Association Common Alloy Aluminum Sheet Trade Enforcement Working Group and its individual members (collectively, the domestic industry) submitted information alleging that, pursuant to section 703(e)(1) of the Act, and 19 CFR 351.206, critical circumstances exist with respect to imports of common alloy sheet from China.[24] Based on information provided by the domestic industry, data placed on the record of this investigation by the mandatory respondents, and data collected by Commerce from Global Trade Atlas (GTA), Commerce preliminary determines that, consistent with 19 CFR 351.206(c), there is a reasonable basis to believe or suspect that critical circumstances exist for imports of common alloy sheet from certain producers and exporters from China. In this self-initiated investigation and pursuant to 19 CFR 351.206(f), Commerce makes these preliminary findings on critical circumstances without regard to the time limits in 19 CFR 351.206(c).

Section 703(e)(1) of the Act provides that Commerce will determine that critical circumstances exist in CVD investigations if there is a reasonable basis to believe or suspect: (A) that "the alleged countervailable subsidy" is inconsistent with the Agreement on Subsidies and Countervailing Measures (SCM Agreement) of the World Trade Organization, and (B) that "there have been massive imports of the subject merchandise over a relatively short period."

In determining whether there are "massive imports" over a "relatively short period," pursuant to section 703(e)(1)(B) and 19 CFR 351.206(i), Commerce normally compares the import volumes of the subject merchandise for at least three months immediately before the date when the proceeding begins (*i.e.*, the date of publication of the notice of initiation)[25] (*i.e.*, the "base period") to a comparable period of at least three months following the same date (*i.e.*, the "comparison period"). Commerce's regulations provide that, generally, imports must increase by at least 15 percent during the "comparison period" to be considered "massive."[26]

Chalco Ruimin and Chalco-SWA

As discussed in further detail below in the "Use of Facts Otherwise Available and Adverse Inferences" section, Commerce is applying total adverse facts available (AFA) to Chalco Ruimin and Chalco-SWA. As part of the AFA determination described below, we are making adverse inferences that both Chalco Ruimin and Chalco-SWA benefitted from the alleged VAT Rebates on Domestically-Produced Equipment program for which we calculated a benefit for Yong Jie

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[23] *See Common Alloy Aluminum Sheet from China: Investigation Nos. 701-TA-591 and 731-TA-1399 (Preliminary)*, Publication 4757, January 2018; *see also Common Alloy Aluminum Sheet from China*, 83 FR 3024 (January 22, 2018).
[24] *See* Domestic Industry's March 23, 2018 Critical Circumstances Allegation.
[25] *See* 19 CFR 351.102(b)(40) (providing that a proceeding begins on the date of the publication of a notice of initiation in a self-initiated investigation).
[26] *See* 19 CFR 351.206(h)(2).

New Material[27] and had "massive imports" over a "relatively short period." These adverse inferences give Commerce reasonable bases to believe or suspect that Chalco Ruimin and Chalco-SWA benefitted from a countervailable subsidy which is inconsistent with the SCM Agreement and there have been "massive imports" over a "relatively short period." Thus, Commerce determines that critical circumstances exist regarding imports of merchandise under consideration shipped by Chalco Ruimin and Chalco-SWA, pursuant to sections 703(e) and 776(a) and (b) of the Act and 19 CFR 351.206.

Yong Jie New Material

In determining whether there were massive imports from Yong Jie New Material, we examined its reported shipment data for the period September 2017, through February 2018.[28] Because the shipment data are business proprietary, our analysis can be found in a separate memorandum issued concurrently with this final determination.[29] Our analysis of the shipment data submitted by Yong Jie New Material leads us to conclude that there was not a massive increase in shipments of subject merchandise to the United States by Yong Jie New Material. Therefore, we preliminarily determine that critical circumstances do not exist with respect to Yong Jie New Material.

Mingtai

In determining whether there were massive imports from Mingtai, we examined its reported shipment data for the period September 2017, through February 2018.[30] Because the shipment data are business proprietary, our analysis can be found in a separate memorandum issued concurrently with this final determination.[31] Our analysis of the shipment data submitted by Mingtai leads us to conclude that there was not a massive increase in shipments of subject merchandise to the United States by Mingtai. Therefore, we preliminarily determine that critical circumstances do not exist with respect to Mingtai.

All-Other Exporters or Producers

Consistent with prior determinations, we did not impute the adverse inference of massive imports that we applied to the mandatory respondents to the non-individually examined companies receiving the all-others rate.[32] Rather, Commerce examined data for total imports of the subject

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[27] Pursuant to the discussion below regarding this program, we are determining that this program is inconsistent with the SCM Agreement because it is an import substitution program.
[28] *See* Yong Jie New Material re: Common Alloy Aluminum Sheet from the People's Republic of China: Yong Jie New Material, Response to March 29th, 2018, Quantity and Value Shipment Questionnaire, dated April 3, 2018.
[29] *See* Memorandum, "Calculations for Preliminary Determination of Critical Circumstances in the Countervailing Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China," dated concurrently with this preliminary determination (Critical Circumstances Calculation Memorandum).
[30] *See* Mingtai Letter re: Common Alloy Aluminum Sheet from the People's Republic of China-Monthly Quantity & Value Data, dated April 3, 2018.
[31] *See* Critical Circumstances Calculation Memorandum.
[32] *See, e.g.*, *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670 (December 31, 2013), and accompanying Preliminary Decision Memorandum (noting that, where mandatory respondents receive AFA, we do

merchandise during the comparison period relative to a base period to determine whether or not imports were massive with respect to these companies. Commerce typically determines whether or not to include the month in which a party had reason to believe that a proceeding was likely in the base or comparison period based on whether the event that gave rise to the belief *(i.e*., filing of a petition) occurred in the first half of the month (included in the comparison period) or the second half of the month (included in the base period).[33] Moreover, it is Commerce's practice to base its critical circumstances analysis on all available data, using base and comparison periods of no less than three months.[34] Therefore, we chose to compare the base period of September 2017 through November 2017 to the comparison period of December 2017 through February 2018 to determine whether or not imports of subject merchandise were massive. These base and comparison periods satisfy the regulatory provisions that the comparison period be at least three months long and that the base period have a comparable duration. We relied on U.S. import statistics, as reported by the Global Trade Atlas, to determine whether or not there were massive imports of subject merchandise in the comparison period.[35] This comparison indicates that there was a 97.6 percent (*i.e.* more than 15 percent) increase in imports of subject merchandise during a "relatively short period of time," in accordance with 19 CFR 351.206(h) and (i). Therefore, we preliminary find there to be "massive imports" over a relatively short period" for all non-individually examined companies, pursuant to section 703(e)(1)(B) of the Act and 19 CFR 351.206(c)(2)(i).

Because Commerce has calculated a measurable benefit for Yong Jie New Material for a program that is inconsistent with the SCM Agreement, as discussed above, Commerce preliminary finds that there is reasonable basis to believe or suspect that the non-individually examined companies also benefitted from the same program. Finally, because Commerce has bases to reasonably believe or suspect that there were "massive imports" over a "relatively short period" and that the non-individually examined companies benefited from a program inconsistent with the SCM Agreement, we preliminarily determine that critical circumstances exist with respect to all other non-individually examined companies.

VII. APPLICATION OF THE CVD LAW TO IMPORTS FROM CHINA

On October 25, 2007, Commerce published its final determination in *CFS Paper from China*, where we found that:

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not impute "massive imports" to companies receiving the all-others rate), unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476 (March 14, 2014).

[33] *See, e.g.*, *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances*, 77 FR 31309, 31312 (May 25, 2012).

[34] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from India*, 69 FR 76916 (December 23, 2004).

[35] *See* Critical Circumstances Calculation Memorandum. Because we lack the necessary reliable shipment data from Chalco Ruimin and Chalco-SWA, Commerce adjusted the U.S. import statistics to exclude the data reflected shipments made only by Yong Jie New Material and Mingtai.

> {G}iven the substantial differences between the Soviet-style economies and China's economy in recent years, Commerce's previous decision not to apply the CVD law to these Soviet-style economies does not act as a bar to proceeding with a CVD investigation involving products from China.[36]

Commerce affirmed its decision to apply the CVD law to China in numerous subsequent determinations.[37] Furthermore, on March 13, 2012, Public Law 112-99 was enacted which makes clear that Commerce has the authority to apply the CVD law to countries designated as non-market economies (NMEs) under section 771(18) of the Act, such as China.[38] The effective date provision of the enacted legislation makes clear that this provision applies to this proceeding.[39]

VIII. SUBSIDIES VALUATION

A. Allocation Period

Commerce normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise.[40] Commerce finds the AUL in this proceeding to be 12 years, pursuant to 19 CFR 351.524(d)(1) and the U.S. Internal Revenue Service Publication 946 (2016), "Appendix B - Table of Class Lives and Recovery Periods" (IRS Pub. 946).[41] The 12-year period corresponds to IRS Pub. 946 asset class, under "34.0 Manufacture of Fabricated Metal Products." Commerce notified the respondents of the 12-year AUL in the Initial CVD Questionnaire and requested data accordingly. No party in this proceeding disputed this allocation period.

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

B. Attribution of Subsidies

In accordance with 19 CFR 351.525(b)(6)(i), Commerce normally attributes a subsidy to the products produced by the company that received the subsidy. However, 19 CFR

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[36] *See Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (*CFS Paper from China*), and accompanying Issues and Decision Memorandum (IDM) at Comment 6.
[37] *See*, *e.g.*, *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008) (*CWP from China Final*), and accompanying IDM at Comment 1.
[38] Section 1(a) is the relevant provision of Public Law 112-99 and is codified at section 701(f) of the Act.
[39] *See* Public Law 112-99, 126 Stat. 265 §1(b).
[40] *See* 19 CFR 351.524(b).
[41] *See* U.S. Internal Revenue Service Publication 946 (2016), "How to Depreciate Property" at Table B-2: Table of Class Lives and Recovery Periods.

351.525(b)(6)(ii)-(v) provide additional rules for the attribution of subsidies received by respondents with cross-owned affiliates. Subsidies to the following types of cross-owned affiliates are covered in these additional attribution rules: (ii) producers of the subject merchandise; (iii) holding companies or parent companies; (iv) producers of an input that is primarily dedicated to the production of the downstream product; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to a respondent.

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

> {T}he interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.[42]

Thus, Commerce's regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists. The U.S. Court of International Trade (CIT) upheld Commerce's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.[43]

<u>Mingtai</u>

As discussed above, we selected Henan Mingtai and Zhengzhou Mingtai as mandatory respondents. These companies responded to Commerce's questionnaires on behalf of themselves, Henan Gongdian, Henan T-Bond, and Kunshan Mingtai.[44]

Henan Mingtai and Zhengzhou Mingtai are Chinese producers of the subject merchandise located in Henan, China, that exported the subject merchandise to the United States during the POI.[45] Henan Mingtai was established in April 1997, and is a majority shareholder of Zhengzhou Mingtai.[46] We preliminarily find that Henan Mingtai is the parent company, due to

[42] *See CVD Preamble* at 65401.
[43] *See Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).
[44] *See* Mingtai January 8, 2018 AFFR at 5.
[45] *Id*. at 2. *See also* Henan Mingtai's January 29, 2018 IQR at 1.
[46] *See* Mingtai January 8, 2018 AFFR at 3, 6.

its owning 81 percent of Zhengzhou Mingtai. Accordingly, we preliminarily find that Zhengzhou Mingtai is cross-owned with Henan Mingtai, pursuant to 19 CFR 351.525(b)(6)(vi).

Pursuant to 19 CFR 351.525(b)(6)(ii), we attributed subsidies received by Zhengzhou Mingtai to the sales of Henan Mingtai and Zhengzhou Mingtai, net of intercompany sales. Because Henan Mingtai is a parent company, we attributed subsidies it received to its sales, consolidated with the sales of its subsidiaries, pursuant to 19 CFR 351.525(b)(6)(iii).

Henan Mingtai reported that Kunshan Mingtai, Henan T-Bond, and Henan Gongdian are direct subsidiary companies.[47] Accordingly, we find that these companies are cross-owned with Henan Mingtai, pursuant to 19 CFR 351.525(b)(6)(vi).

Henan Gongdian produced and sold an input during the POI to Henan Mingtai. Pursuant to 19 CFR 351.525(b)(6)(iv), for subsidies received by an input supplier whose production of inputs is primarily dedicated to the production of the downstream merchandise by a cross-owned producer, Commerce attributes the benefit to the combined sales of the input and downstream products produced by both corporations, excluding the sales between the two corporations. Accordingly, pursuant to 19 CFR 351.525(b)(6)(iv), we attributed subsidies received by Henan Gongdian to its total sales plus the sales of Mingtai, net of inter-company sales.

Kunan Mingtai and Henan T-Bond provided inputs to Henan Mingtai during the POI. Because Kunan Mingtai and Henan T-Bond were not the producers of the inputs, we attribute, pursuant to 19 CFR 351.525(b)(6)(v), only those subsidies that were transferred to Henan Mingtai by Kunan Mingtai and Henan T-Bond. We preliminarily find that Kunan Mingtai and Henan T-Bond did not transfer any subsidies to Henan Mingtai. Therefore, we are not including these companies in the calculation of the preliminary *ad valorem* rate for Mingtai.

Yong Jie New Material

Mandatory respondent Yong Jie New Material responded to Commerce's questionnaires on behalf of itself, Zhejiang Yongjie Aluminum Co., Ltd. (Yongjie Aluminum), Zhejiang Nanjie Industry Co., Ltd. (Nanjie Industry), Zhejiang Yongjie Holding Co., Ltd. (Yongjie Holding), and Nanjie Resources Co., Ltd. (HK Nanjie).[48] As discussed more fully in Yong Jie New Material's preliminary calculation memorandum, in addition to being a producer of subject merchandise, Yong Jie New Material is a parent company with direct ownership of Yongjie Aluminum, Nanjie Industry and HK Nanjie.[49] Accordingly, for subsidies received by Yong Jie New Material, we are attributing the benefit to its consolidated sales in accordance with 19 CFR 351.525(b)(6)(iii). Along with Yong Jie New Material, Yongjie Aluminum is a producer of the subject merchandise. Thus, pursuant to 19 CFR 351.525(b)(6)(ii), we are attributing subsides received by Yongjie Aluminum to the products produced by Yongjie Aluminum and Yong Jie New

[47] *See* Mingtai January 8, 2018 AFFR at 4.

[48] Although cross-owned, Yongjie Holding reported receiving no subsidies, therefore, for this preliminary determination, we did not determine how to attribute any subsidies reported by Yongjie Holding entities to Yong Jie New Material.

[49] *See* Memorandum, "Countervailing Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China: Preliminary Determination Calculations for Yong Jie New Material Co., Ltd.," dated concurrently with this preliminary determination (Yong Jie New Material Preliminary Calculation Memorandum).

Material, using as the appropriate sales denominator Yongjie Aluminum's sales plus Yong Jie New Material's unconsolidated sales, less intercompany sales.

Nanjie Industry provides inputs to both Yong Jie New Material and Yongjie Aluminum, and its production of the inputs (aluminum ingots) is primarily dedicated to the production of the two producers' downstream product, aluminum sheet. Therefore, consistent with 19 CFR 351.525(b)(6)(iv), we are attributing subsidies received by Nanjie Industry to the combined sales of Nanjie Industry, Yongjie Aluminum and the unconsolidated sales of Yong Jie New Material, less intercompany sales.

Yong Jie New Material reported that it made sales to HK Nanjie and that HK Nanjie was an exporter during the POI.[50] Further, HK Nanjie is a subsidiary of Yong Jie New Material.[51] We are therefore examining HK Nanjie together with Yong Jie New Material as a cross-owned, affiliated trading company. Pursuant to 19 CFR 351.525(c), benefits from subsidies provided to a trading company that exports subject merchandise shall be cumulated with benefits from subsidies provided to the firm that is producing subject merchandise that is sold through the trading company, regardless of whether the trading company and the producing firm are affiliated. Thus, we are cumulating the benefits from subsidies received by HK Nanjie with the benefits from subsidies received by Yong Jie New Material based on the ratio of HK Nanjie's exports to the United States of merchandise that was produced by Yong Jie New Material during the POI (based on value).[52]

C. Denominators

When selecting an appropriate denominator for use in calculating the *ad valorem* subsidy rate, Commerce considers the basis for the respondents' receipt of benefits under each program. As discussed in further detail below in the "Programs Preliminarily Determined to be Countervailable" section, where the program has been found to be countervailable as a domestic subsidy, we used the recipient's total sales as the denominator (or the total combined sales of the cross-owned affiliates, as described above). Where the program has been found to be contingent upon export activities, we used the recipient's total export sales as the denominator. All sales used in our net subsidy rate calculations are net of intra-company sales. For a further discussion of the denominators used, *see* the preliminary calculation memoranda.[53]

[50] *See* Yong Jie New Material March 23, 2018 SQR at Exhibit SS-1; *see also* Yong Jie New Material Affiliation Response at Exhibit 1.
[51] *See* Yong Jie New Material Affiliation Response at Exhibit 1.
[52] Although this ratio should be based on HK Nanjie's sales of subject merchandise produced by Yong Jie New Material. Yong Jie New Material did not provide this value. Rather, they provided the total value of intercompany sales between Yong Jie New Material and HK Nanjie. This is the value that we are using for this ratio. We intend to solicit additional information after the preliminary determination.
[53] *See* Yong Jie New Material Preliminary Calculation Memorandum and Mingtai Preliminary Calculation Memorandum.

IX. BENCHMARKS AND INTEREST RATES

Commerce is investigating loans received by Yong Jie New Material, Mingtai, and their cross-owned companies from Chinese policy banks and state-owned commercial banks (SOCBs), as well as non-recurring, allocable subsidies received by the mandatory respondents.[54] The derivation of the benchmark and discount rates used to value these subsidies is discussed below.

A. Short-Term and Long-Term Renminbi (RMB)-Denominated Loans

Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the "difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market." Normally, Commerce uses comparable commercial loans reported by the company as a benchmark.[55] If the firm did not have any comparable commercial loans during the period, Commerce's regulations provide that we "may use a national average interest rate for comparable commercial loans."[56]

As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate. For the reasons first explained in *CFS Paper from China*, loans provided by Chinese banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market.[57] In an analysis memorandum dated July 21, 2017, Commerce has conducted a re-assessment of the lending system in China.[58] Based on this re-assessment, Commerce has concluded that, despite reforms to date, the Government of the China's role in the system continues to fundamentally distort lending practices in China in terms of risk pricing and resource allocation, precluding the use of interest rates in China for CVD benchmarking or discount rate purposes. Consequently, we preliminarily find that any loans received by the respondents from private Chinese or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). For the same reasons, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, Commerce is selecting an external market-based benchmark interest rate. The use of an external benchmark is consistent with Commerce's practice. For example, in *Lumber from Canada,* Commerce used U.S. timber prices to measure the benefit for government-provided timber in Canada.[59]

In past proceedings involving imports from China, we calculated the external benchmark using the methodology first developed in *CFS Paper from China* and later updated in *Thermal Paper*

[54] *See* 19 CFR 351.524(b)(1).
[55] *See* 19 CFR 351.505(a)(3)(i).
[56] *See* 19 CFR 351.505(a)(3)(ii).
[57] *See CFS Paper from China* IDM at Comment 10.
[58] *See* Memorandum Placing "Review of China's Financial System Memorandum" on the record, dated January 16, 2018.
[59] *See Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products from Canada*, 67 FR 15545 (April 2, 2002) (*Lumber from Canada*), and accompanying IDM at "Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit."

from China.[60] Under that methodology, we first determine which countries are similar to China in terms of gross national income, based on the World Bank's classification of countries as: low income; lower-middle income; upper-middle income; and high income. As explained in *CFS Paper from China*, this pool of countries captures the broad inverse relationship between income and interest rates. For 2003 through 2009, China fell in the lower-middle income category.[61] Beginning in 2010, however, China was classified in the upper-middle income category and remained there from 2011 to 2016.[62] Accordingly, as explained below, we are using the interest rates of lower-middle income countries to construct the benchmark and discount rates for 2003-2009, and we used the interest rates of upper-middle income countries to construct the benchmark and discount rates for 2010-2016. This is consistent with Commerce's calculation of interest rates for recent CVD proceedings involving Chinese merchandise.[63]

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

In each of the years from 2003-2009, 2011-2016, the results of the regression analysis reflected the expected result: stronger institutions meant relatively lower real interest rates, while weaker institutions meant relatively higher real interest rates.[64] For 2010, however, the regression does not yield that outcome for China's income group.[65] This contrary result for a single year does not lead us to reject the strength of governance as a determinant of interest rates. Therefore, we continue to rely on the regression-based analysis used since *CFS Paper from China* to compute the benchmarks for the years from 2001-2009, 2011-2016. For the 2010 benchmark, we are using an average of the interest rates of the upper-middle income countries.

Many of the countries in the World Bank's upper-middle and lower-middle income categories reported lending and inflation rates to the International Monetary Fund (IMF), and they are included in that agency's International Financial Statistics (IFS). With the exceptions noted below, we used the interest and inflation rates reported in the IFS for the countries identified as "upper middle income" by the World Bank for 2010-2016 and "lower middle income" for 2001-

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

[61] *See* World Bank Country Classification, http://data.worldbank.org/about/country-and-lending-groups ("World Bank Country Classification"); *see also* "Memorandum Interest Rate Benchmark Memorandum," dated January 16, 2018 and Memorandum "Interest Rate Benchmark Memorandum for years 2015 and 2015," dated concurrently with this preliminary determination (collectively, Interest Rate Benchmark Memoranda)

[62] *See* World Bank Country Classification.

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

[64] *See* Interest Rate Benchmark Memoranda.

[65] *Id.*

2009.[66] First, we did not include those economies that Commerce considered to be NMEs for AD purposes for any part of the years in question, for example: Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS for those years. Third, we removed any country that reported a rate that was not a lending rate or that based its lending rate on foreign-currency denominated instruments. Finally, for each year Commerce calculated an inflation-adjusted short-term benchmark rate, we also excluded any countries with aberrational or negative real interest rates for the year in question.[67] Because the resulting rates are net of inflation, we adjusted the benchmark to include an inflation component.[68]

The lending rates reported in the IFS represent short- and medium-term lending, and there are not sufficient publicly available long-term interest rate data upon which to base a robust benchmark for long-term loans. To address this problem, Commerce developed an adjustment to the short- and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates.[69]

In *Citric Acid from China*, this methodology was revised by switching from a long-term mark-up based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where "n" equals or approximates the number of years of the term of the loan in question.[70] Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.[71]

The resulting inflation-adjusted benchmark lending rates are provided in the Yong Jie New Materials Preliminary Calculation Memorandum and the Mingtai Preliminary Calculation Memorandum.

B. Foreign-Currency-Denominated Loans

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

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[66] *Id*.
[67] *Id*.
[68] *Id*.
[69] *See*, *e.g.*, *Thermal Paper from China* IDM at 10.
[70] *See Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 16836 (April 13, 2009) (*Citric Acid from China*), and accompanying IDM at Comment 14.
[71] *See* Interest Rate Benchmark Memoranda.

C. Discount Rates

Consistent with 19 CFR 351.524(d)(3)(i)(A), we used, as our discount rate, the long-term interest rate calculated according to the methodology described above for the year in which the Government of the China provided non-recurring subsidies.[72] The interest rate benchmarks and discount rates used in our preliminary calculations are provided in the Yong Jie New Material Preliminary Calculation Memorandum and the Mingtai Preliminary Calculation Memorandum.

D. Government Provision of Land for Less Than Adequate Remuneration (LTAR) Benchmark

As explained in detail in previous investigations, Commerce cannot rely on the use of the so-called "tier one" and "tier two" benchmarks described above to assess the benefits from the provision of land for LTAR in China. Specifically, in *Sacks from China*, Commerce determined that "Chinese land prices are distorted by the significant government role in the market," and hence, no usable "tier one" benchmarks exist.[73] Furthermore, Commerce also found that "tier two" benchmarks (world market prices that would be available to purchasers in China) are not appropriate.[74] Accordingly, consistent with Commerce's past practice, we are relying on the use of so called "tier three" benchmarks for purposes of calculating a benefit for this program.

For this investigation, the domestic industry submitted industrial land prices from Thailand, adjusted for inflation.[75] We are also placing on the record benchmark information to value land from "Asian Marketview Reports" by CB Richard Ellis for Thailand for 2010.[76] Commerce used this benchmark in the CVD investigations of *Solar Cells from China* and *ITDCs from China*.[77] We initially selected this information in the *Sacks from China* investigation after considering a number of factors, including national income levels, population density, and producers' perceptions that Thailand is a reasonable alternative to China as a location for Asian

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[72] *See* Yong Jie New Material Preliminary Calculation Memorandum and Mingtai Preliminary Calculation Memorandum; *see also* Interest Rate Benchmark Memoranda.

[73] *See, e.g.*, *Laminated Woven Sacks from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination; Preliminary Affirmative Determination of Critical Circumstances, In Part; and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 72 FR 67893, 67906-08 (December 3, 2007) (unchanged in *Sacks from China*).

[74] *Id*.

[75] *See* Domestic Industry's Letter re: "Common Alloy Aluminum Sheet from the People's Republic of China – Domestic Industry's Submission of Factual Information to Measure the Adequacy of Remuneration," dated March 12, 2018 (Domestic Industry's Benchmark Submission).

[76] *See* Memorandum, "Countervailing Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China: Asian Marketview Report," dated concurrently with this preliminary determination.

[77] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (October 17, 2012) (*Solar Cells from China*), and accompanying IDM at 6 and Comment 11; *Countervailing Duty Investigation of Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Preliminary Affirmative Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 81 FR 21316 (April 11, 2016) (*ITDCs from China*), and accompanying IDM at 13.

production.[78] We find that these benchmarks are suitable for this preliminary determination, adjusted accordingly for inflation, to account for any countervailable land received by Mingtai and Yong Jie New Material during the AUL of this investigation.[79]

E. Input Benchmarks

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

We received data submissions from certain parties to consider using as "tier two" benchmarks for primary aluminum. Mingtai and Yong Jie submitted benchmarks for primary aluminum, steam coal, ocean freight, electricity from the recent *Aluminum Foil from China* investigation.[80] The domestic industry submitted data from GTA specific to several tariff numbers. Specifically, the domestic industry submitted pricing data for HTS subheadings 7601.10 (aluminum not alloyed) and 7601.20 (aluminum alloys) as potential benchmarks for primary aluminum inputs, pricing data for HTS subheadings 2701.11, 2701.12, and 2701.19 as potential benchmarks for steam coal, and monthly ocean freight rates from a variety of world ports to Shanghai between August 2016 and December 2016, as reported by Maersk Line.[81]

With respect to the primary aluminum input for Jiangsu Dingsheng, we are relying on the raw GTA pricing data from the domestic industry related to HTS subheadings 7601.10 and 7601.20, which reflect the primary aluminum input purchased by Mingtai and Yong Jie New Material to use in the production of subject merchandise. This approach is consistent with *Aluminum Foil from China*.[82]

Henan Mingtai reported purchases of steam coal during the POI. We are basing our benchmark regarding the provision of steam coal for LTAR on GTA data that is specific to bituminous coal, which was submitted by the domestic industry.

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[78] The complete history of our reliance on this benchmark is discussed in the above-referenced *Solar Cells from China* IDM. In that discussion, we reviewed our analysis from the *Sacks from China* investigation and concluded the CBRE data remained a valid land benchmark.
[79] *See* Mingtai Preliminary Calculation Memorandum and Yong Jie Preliminary Calculation Memorandum.
[80] *See* Mingtai and Yong Jie New Material Letter re: Common Alloy Aluminum Sheet from the People's Republic of China – Benchmark Information Submission, dated March 13, 2017 (Respondent's Benchmark Submission). *See also Countervailing Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Final Affirmative Determination*, 83 FR 9274 (March 5, 2017) (*Aluminum Foil from China*).
[81] *See* Domestic Industry's Benchmark Submission.
[82] *See Aluminum Foil from China*, 83 FR 9274, and accompanying IDM at 5.

With respect to ocean freight expenses, the domestic industry submitted ocean freight data sourced from Maersk Line for 2016. Yong Jie and Mingtai's ocean freight data was also sourced from Maersk Line, but this data is for 2015. For our preliminary calculations, we are relying on the ocean freight data submitted by the domestic industry because it is contemporaneous with our POI.

Regarding inland freight, Henan Mingtai and Zhengzhou Mingtai reported freight expenses by dividing the freight cost for delivering goods to the exportation port by the total quantity of exports to derive the average inland freight to the port.[83] We used an average of these freight expenses in the benchmark calculations for Mingtai. Similarly, Yong Jie New Material reported freight expenses for Yong Jie New Material and Yongjie Aluminum,[84] and we used an average of these freight expenses in the benchmark calculations for Yong Jie New Material.

X. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

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" (FA) 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 the Department, 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.[85]

Section 776(b) of the Act further provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Further, section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. When selecting an adverse facts available (AFA) rate from among the possible sources of information, Commerce's practice is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide {Commerce} with complete and accurate information in a timely

[83] *See* Henan Mingtai January 29, 2018 IQR at 21 and Exhibit 13, Zhengzhou Mingtai January 29, 2018 IQR at Exhibit 10.

[84] *See* Yong Jie New Material February 6, 2018 IQR at Exhibit 23.

[85] On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015, which made numerous amendments to the AD and CVD law, 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 (June 29, 2015). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, Commerce published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015). Therefore, the amendments apply to this investigation.

manner."[86] Commerce's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[87]

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."[88] It is Commerce's practice to consider information to be corroborated if it has probative value.[89] In analyzing whether information has probative value, it is Commerce's practice to examine the reliability and relevance of the information to be used.[90] However, the SAA emphasizes that Commerce need not prove that the selected facts available are the best alternative information.[91]

Finally, under the new section 776(d) of the Act, Commerce may use any countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a CVD rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates. Additionally, when selecting an AFA rate, Commerce is not required for purposes of 776(c), or any other purpose, to estimate what the countervailable subsidy rate would have been if the interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.[92]

For purposes of this preliminary determination, we are applying AFA in the circumstances outlined below.

A. Application of Total AFA: Chalco Ruimin and Chalco-SWA

Chalco Ruimin and Chalco-SWA

As noted in the "Initiation and Case History" section above, Commerce selected Chalco Ruimin and Chalco-SWA as mandatory respondents.[93] On January 9, 2018, Chalco Ruimin and Chalco-SWA notified Commerce that they would not respond to Commerce's Initial CVD Questionnaire.[94] Accordingly, we preliminary determine that Chalco Ruimin and Chalco-SWA withheld necessary information that was requested of it, failed to provide information within the

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[86] *See*, *e.g.*, *Drill Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011) (*Drill Pipe from China Final*); *see also Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998).
[87] *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) at 870.
[88] *See*, *e.g.*, SAA at 870.
[89] *See* SAA at 870.
[90] *See*, *e.g.*, SAA at 869.
[91] *See* SAA at 869-870.
[92] *See* section 776(d)(3) of the Act.
[93] *See* Respondent Selection Memorandum.
[94] *See* Chalco Ruimin's and Chalco-SWA's January 9, 2018 Notice of Non-Participation as Mandatory Respondent.

deadlines established, and significantly impeded this proceeding. Thus, Commerce is relying on facts otherwise available in making our preliminary determination with respect to Chalco Ruimin and Chalco-SWA, pursuant to sections 776(a)(2)(A)-(C) of the Act. Moreover, we preliminarily determine that an adverse inference is warranted, pursuant to section 776(b)(1) of the Act, because, by not responding to Commerce's Initial CVD Questionnaire, Chalco Ruimin and Chalco-SWA did not cooperate to the best of their ability to comply with the request for information in this investigation. Accordingly, we preliminarily find that use of AFA is warranted to ensure that Chalco Ruimin and Chalco-SWA do not obtain a more favorable result by failing to cooperate than if they had fully complied with our request for information. Therefore, we are adversely inferring from Chalco Ruimin's and Chalco-SWA's decision not to participate in this investigation that they used all the programs on which we initiated an investigation, and we are applying an AFA rate for each program.

Application of AFA

Based on the above discussion, we are adversely inferring from Chalco Ruimin's and Chalco-SWA's decision not to participate in this investigation that these companies used all the programs on which Commerce initiated an investigation, except for programs that are company-specific to the other respondents, *i.e.,* Grants to Nashan Aluminum and Henan Mingtai, and Equity Infusions into Nanshan Aluminum.

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.[95] When selecting AFA rates, section 776(d) of the Act provides that Commerce may use any countervailable subsidy rate applied for the 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.[96] 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 above zero 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

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[95] *See, 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) (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 Memorandum at "Application of Facts Available, Including the Application of Adverse Inferences"); *see also Aluminum Extrusions from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) (*Aluminum Extrusions from China Final*), and accompanying IDM at "Application of Adverse Inferences: Non-Cooperative Companies."

[96] *See, e.g.*, *Shrimp from China,* and accompanying IDM at 13; *see also Essar Steel Ltd. v. United States*, 753 F.3d 1368, 1373-1374 (Fed. Cir. 2014) (upholding "hierarchical methodology for selecting an AFA rate").

country, and apply the highest calculated rate above *de minimis* for the identical program.[97] 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.[98]

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is 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."[99] The SAA provides that to "corroborate" secondary information, Commerce will satisfy itself that the secondary information to be used has probative value.[100]

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.[101] 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.[102]

With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest 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 corroboration, Commerce will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Commerce will not use information where circumstances indicate that the information is not appropriate as AFA.[103]

In determining the AFA rates that we are preliminarily applying to Chalco Ruimin and Chalco-SWA, 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

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[97] 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), 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."
[98] *See Shrimp from China Final* IDM at 13-14.
[99] *See* SAA at 870.
[100] *Id*.
[101] *Id*. at 869-870.
[102] *See* section 776(d) of the Act.
[103] *See, e.g.*, *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

respondents in the instant investigation. Accordingly, we are applying the highest applicable subsidy rate calculated for Yong Jie New Material and Mingtai for the following programs:[104]

- Government Provision of Electricity for LTAR
- Government Provision of Land for LTAR
- Government Provision of Primary Aluminum for LTAR
- Government Provision of Steam Coal for LTAR
- Policy Loans to Common Alloy Sheet Industry
- VAT Rebates on Domestically-Produced Equipment

In applying an AFA rate for the following income tax reduction programs on which the Commerce initiated an investigation, we are drawing an adverse inference that each of the three companies paid no Chinese income tax during the POI:

- Income Tax Concessions for Enterprises Engaged in Comprehensive Resource Utilization
- Income Tax Deductions/Credits for Purchase of Special Equipment
- Income Tax Reduction for High and New Technology Enterprises (HNTEs)
- Income Tax Reduction for Research & Development (R&D) under the Enterprise Income Tax Law (EITL)

The standard income tax rate for corporations in China in effect during the POI was 25 percent.[105] Thus, the highest possible benefit for these income tax programs is 25 percent. Accordingly, we are applying the 25 percent AFA rate on a combined basis (*i.e.*, the four programs, combined, provide a 25 percent benefit). Consistent with past practice, application of this AFA rate for preferential income tax programs does not apply to tax credit, tax rebate, or import tariff and VAT exemption programs, because such programs may provide a benefit in addition to a preferential tax rate.[106]

For all other programs not identified above, we are applying, where available, the highest above-*de minimis* subsidy rate calculated for the same or comparable programs in a CVD investigation or administrative review involving China. For this preliminary determination, we are able to match, based on program names, descriptions, and benefit treatments, the following programs to the same or similar programs from other CVD proceedings involving China:

- Deed Tax Exemption for SOEs Undergoing Mergers or Restructures[107]
- Exemptions for SOEs from Distributing Dividends[108]

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[104] We note that respondents benefited from additional programs that were reported or discovered during the course of this proceeding. For the purposes of calculating the AFA rate, however, we are only referencing those programs for which we initiated this investigation.
[105] *See* Government of China February 6, 2018 IQR at 21.
[106] *See*, *e.g.*, *Aluminum Extrusions from China Final* IDM at "Application of Adverse Inferences: Non-Cooperative Companies."
[107] *Id*.
[108] *See Chlorinated Isocyanurates from the People's Republic of China: Final Affirmative Countervailing Duty*

- Export Loans from Chinese State-Owned Banks (SOCBs) [109]
- Export Buyer's Credits[110]
- Export Seller's Credits[111]
- Foreign Trade Development Fund Grants[112]
- Government of China and Sub-Central Government Subsidies for Development of Famous Brands and China World Top Brands[113]
- Grants for Energy Conservation and Emission Reduction[114]
- Grants for the Relocation of Productive Facilities[115]
- Grants for the Retirement of Capacity[116]
- Import Tariff and VAT exemptions on Imported Equipment in Encouraged Industries[117]
- Preferential Loans to State Owned Enterprises (SOEs) [118]
- Stamp Tax Exemption on Share Transfers Under Non-Tradeable Share Reform[119]
- The State Key Technology Fund Project[120]

Determination; 2012, 79 FR 56560 (September 22, 2014) (*Chlorinated Isos from China*) and accompanying IDM at 13-14 ("Special Fund for Energy Saving Technology").

[109] *See Coated Paper from China Investigation Amended Final* and accompanying Ministerial Error Memorandum (MEM) at "Revised Net Subsidy Rate for the Gold Companies" (regarding "Preferential Lending to the Coated Paper Industry").

[110] *Id.*

[111] *Id.*

[112] *See Chlorinated Isos from China* at 13 – 14 ("Special Fund for Energy Saving Technology").

[113] *Id.*

[114] *Id.*

[115] *Id.*

[116] *Id.*

[117] *See Countervailing Duty Investigation of Certain Polyethylene Terephthalate Resin from the People's Republic of China: Final Affirmative Determination*, 81 FR 13337 (March 14, 2016) ("DAC -Import Tariff and VAT Exemptions on Imported Equipment in Encouraged Industries").

[118] Consistent with recent investigations, we are using a single AFA rate for "Policy Loans to Common Alloy Sheet Industry" and "Preferential Loans to SOEs," and selecting the AFA rate calculated for Yong Jie New Material in this investigation, because an analysis of these two allegations in this investigation reveals that they would apply to the same loans provided by SOCBs. *See*, *e.g.*, *Grain-Oriented Electrical Steel from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 59221 (October 1, 2014) (*GOES from China*), and accompanying IDM at 7; *see also 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 Investigation Amended Final*), and accompanying MEM at "Revised Net Subsidy Rate for the Gold Companies" (discussing revised subsidy rate for "Preferential Lending to the Coated Paper Industry"). This document is proprietary in nature. However, the public version, which has been placed on the record of this investigation, identifies the revised subsidy rate on which we are relying.

[119] *See New Pneumatic Off-the-Road Tires From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review*, 75 FR 64268, 64275 (October 19, 2010) (*OTR Tires from China Preliminary AR*) ("C. VAT and Import Duty Exemptions on Imported Material"), unchanged in *New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*, 76 FR 23286 (April 26, 2011) (*OTR Tires from China Final AR*).

[120] *See Chlorinated Isos from China* at 13 – 14 ("Special Fund for Energy Saving Technology").

Based on the methodology described above, we preliminarily determine the AFA countervailable subsidy rate for each of the AFA Companies to be 113.30 percent *ad valorem*. The Appendix contains a chart summarizing our calculation of this rate.

B. Application of AFA: Export Buyer's Credit

Government of China

Commerce preliminarily determines that the use of AFA is warranted in determining the countervailability of the Export Buyer's Credit program because the Government of China did not provide the requested information needed to allow Commerce to fully analyze this program. In our Initial CVD Questionnaire, we requested that the Government of China provide the information requested in the Standard Questions Appendix "with regard to all types of financing provided by the China ExIm under the Buyer Credit Facility."[121] The Standard Questions Appendix requested various information that Commerce requires in order to analyze the specificity and financial contribution of this program, including the following: translated copies of the laws and regulations pertaining to the program, identification of the agencies and types of records maintained for administration of the program, a description of the program and the program application process, program eligibility criteria, and program use data. Rather than responding to the questions in the Appendix, the Government of China stated that it had confirmed "{n}one of the respondents' identified U.S. customers used the alleged program during the POI. Therefore, the relevant appendix is not applicable."[122]

In its initial questionnaire response, the Government of China stated that the EX-IM Bank confirmed that it strictly limits the provision of Export Buyer's Credits to business contracts exceeding USD 2 million.[123] In that same response, the Government of China provided a copy of its *7th Supplemental Response in the Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People's Republic of China*.[124] Information in that document indicates that the Government of China revised this program in 2013 to eliminate this minimum requirement.[125] Thus, we requested in our Initial CVD Questionnaire that the Government of China also provide original and translated copies of any laws, regulations or other governing documents cited by the Government of China in the Export Buyer's Credit Supplemental Questionnaire Response. This request included the 2013 *Administrative Measures* revisions (2013 Revisions) to the Export Buyer's Credit program. In its response, the Government of China failed to provide the 2013 Revisions.[126] We, therefore, again requested that the

[121] *See* Initial CVD Questionnaire at Section II, part II, at 4.
[122] *See* Government of the China February 6, 2018 IQR at 10.
[123] *Id.* at Exhibit A4-1.
[124] *Id.* at Exhibit A4-2(Export Buyer's Credit Supplemental Questionnaire Response). *See also Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People's Republic of China: Final Affirmative Determination*, 82 FR 8405 (January 25, 2017).
[125] *Id.*; *see also* Memorandum to the File, "Countervailing Duty Investigation of Common Allow Aluminum Sheet from the People's Republic of China: Placing Information on the Record," dated January 16, 2018, 2017, at Attachment 1 (Citric Acid Verification Report) at 2.
[126] *See* Government of China February 6, 2018 IQR at 12.

Government of China provide the 2013 Revisions.[127] Through its response to Commerce's initial and supplemental questionnaires, the Government of China has twice refused to provide the requested information or any information concerning the 2013 program revision, which is necessary for Commerce to analyze how the program functions.

We requested the 2013 Revisions because information on the record of this proceeding indicated that the 2013 Revisions affected important program changes. For example, the 2013 Revisions may have eliminated the USD 2 million contract minimum associated with this lending program.[128] By refusing to provide the requested information, and instead asking Commerce to rely upon unverifiable assurances that the 2000 Rules Governing Export Buyers' Credit remained in effect, the Government of China impeded Commerce's understanding of how this program operates and how it can be verified.

Additional information in the Government of the China's initial questionnaire response also indicated that the loans associated with this program are not limited to direct disbursements through the EX-IM Bank.[129] Specifically, this record information indicates that customers can open loan accounts for disbursements through this program with other banks.[130] The funds are first sent from the EX-IM Bank to the importer's account, which could be at the EX-IM Bank or other banks, and that these funds are then sent to the exporter's bank account.[131] Given the complicated structure of loan disbursements for this program, Commerce's complete understanding of how this program is administered is necessary. Thus, the Government of China's refusal to provide the most current 2013 Revisions, which provide internal guidelines for how this program is administrated by the EX-IM Bank, impeded Commerce's ability to conduct its investigation of this program.

Pursuant to sections 776(a)(2)(A) and (2)(C) of the Act, when an interested party withholds information requested by Commerce and significantly impedes a proceeding, Commerce uses facts otherwise available. We find that the use of facts otherwise available is appropriate in light of the Government of the China's refusal to provide the 2013 Revisions. Further, pursuant to section 776(b) of the Act, we find that the Government of China, by virtue of its withholding of information and significantly impeding this proceeding, failed to cooperate by not acting to the best of its ability. Accordingly, the application of AFA is warranted. The Government of China has not provided enough information to determine whether the EX-IM Bank limits the provision of Export Buyer's Credits to business contracts exceeding USD 2 million. Such information is critical to understanding how the Export Buyer's Credits program operates and is critical to Commerce's program use determination.

The Government of China March 20, 2018, SQR indicated the Government of China's refusal to provide information about the internal administration of the program.[132] The Government of China is the only party that can answer questions about the internal administration of this

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[127] *See* Government of China March 20, 2018 SQR at 2.
[128] *See* Citric Acid Verification Report.
[129] *See* Government of the China February 6, 2018 IQR at Exhibit A4-2.
[130] *Id*.
[131] *Id*.
[132] *See* Government of the China March 20, 2018 SQR at 2.

program, and, thus, absent the requested information, the Government of China's and respondent company's claims of non-use of this program are not verifiable. Therefore, we determine that the Government of China has not cooperated to the best of its ability and, as AFA, find that the respondents used and benefited from this program.

Based on the AFA rate selection hierarchy described above, for this program we are using an AFA rate of 10.54 percent *ad valorem*, the highest rate determined for a similar program in the *Coated Paper from China Investigation Amended Final* proceeding, as the rate for these companies.[133] Additionally, based on the methodology also described above for corroborating secondary information, 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 Export Buyer's Credits program.

C. Application of AFA for the Provision of Primary Aluminum and Steam Coal for LTAR

Government of China – Whether Certain Primary Aluminum and Steam Coal Producers Are "Authorities"

As discussed below under "Programs Found to Be Countervailable," Commerce examined whether the Government of China provided primary aluminum and steam coal for LTAR to the Mingtai and Yong Jie (collectively, the respondents). We asked the Government of China to provide information regarding the specific companies that produced primary aluminum and steam coal which the respondents 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.[134] In prior CVD proceedings involving China, Commerce has determined that when a respondent purchases an input from a trading company or non-producing supplier, a subsidy is conferred if the producer of the input is an "authority" within the meaning of section 771(5)(B) of the Act and that the price paid by the respondent for the input was for less than adequate remuneration LTAR.[135]

In addition to the Initial CVD Questionnaire, Commerce issued supplemental questionnaires to the Government of China regarding its response to the alleged subsidy programs.[136] In Commerce's Initial CVD Questionnaire, we asked the Government of China to respond to the specific questions regarding the producers of primary aluminum and steam coal and to respond to the *Input Producer Appendix* for each producer which produced the primary aluminum and

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[133] *See Coated Paper from China Investigation Amended Final* (revised rate for "Preferential Lending to the Coated Paper Industry" program).
[134] *See* Memorandum, "Public Bodies Memorandum," dated January 16, 2018 (Public Bodies Memorandum).
[135] *See, e.g., Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008), and accompanying IDM at "Hot-Rolled Steel for Less Than Adequate Remuneration"; *Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 37012 (July 27, 2009), and accompanying IDM at "Provision of Wire Rod for Less than Adequate Remuneration."
[136] *See* Initial CVD Questionnaire, at Section II, "Input Producer Appendix;" *see also* Government of China March 20, 2018 SQR at 6-11.

steam coal purchased by the respondents.[137] We instructed the Government of China to coordinate with the respondents to obtain a complete list of the primary aluminum and steam coal producers, including the producers of inputs purchased through a supplier.[138] In response to the Initial CVD Questionnaire, Mingtai identified certain of the companies that produced and supplied the primary aluminum purchases during the POI, which the Government of China confirmed in its questionnaire responses.[139]

With respect to Mingtai's purchases of primary aluminum, while the Government of China ultimately provided the identities of certain of the producers of primary aluminum inputs, it did not provide all of the information requested of it in the Initial CVD Questionnaire, as discussed below. Similarly, in regard to Mingtai's purchases of steam coal during the POI, while the Government of China provided the identities of producers of steam coal, it did not provide all of the information requested of it in the Initial CVD Questionnaire, as discussed below.[140]

In our initial and supplemental questionnaire to the Government of China,[141] Commerce requested certain information be provided with respect to both the majority government-owned and non-majority government-owned enterprises. We address each group below.

With respect to those steam coal-producing enterprises that the Government of China identified as majority government-owned,[142] we note 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.[143] The Government of China provided partial information (*i.e.*, basic registration and shareholder structure) with respect to the majority government-owned enterprises. 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.[144]

As explained in the Public Bodies Memorandum,[145] record evidence demonstrates that producers in China that are majority-owned by the government possess, exercise, or are vested with, governmental authority.[146] 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.[147] 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.

[137] *See* Initial CVD Questionnaire, at Section II, "Provision of Primary Aluminum for LTAR."
[138] *Id.* at Section II, "Provision of Goods or Services for LTAR."
[139] *See* Government of China February 6, 2018 IQR at 59.
[140] *Id.* at 83.
[141] *See* Initial CVD Questionnaire, at Section II, "Input Producer Appendix;" *see also* Government of China March 20, 2018 SQR at 9.
[142] *Id.*
[143] *Id.*
[144] *See* Government of China February 6, 2018 IQR at 83, and Government of China March 20, 2018 SQR at 9.
[145] *See* Public Bodies Memorandum.
[146] *Id.* at 35-36 and sources cited therein.
[147] *Id.*

With respect to those primary aluminum-producing enterprises that the Government of China identified as majority government-owned, we note 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.[148] The Government of China provided partial information (*i.e.*, basic registration and shareholder structure) with respect to the government-owned enterprises. 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.[149]

As explained in the Public Bodies Memorandum,[150] record evidence demonstrates that producers in China that are majority-owned by the government possess, exercise, or are vested with, governmental authority.[151] 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.[152] 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 Mingtai during the POI, while the Government of China provided ownership structure information, the Government of China did not provide other relevant documentation requested by the Department, including company by-laws, annual reports, and tax registration documents, and articles of association.[153]

Additionally, 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 China February 6, 2018 IQR, the Government of China responded to Commerce's request for CCP information of the primary aluminum and steam coal producers by referencing the registration information that it reported, and stated that it was could not obtain the requested information.[154] 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.[155]

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

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[148] *See* Government of China February 6, 2018 IQR at 59, 60, and Government of China March 20, 2018 SQR at 9.
[149] *Id.*
[150] *See* Public Bodies Memorandum.
[151] *Id.* at 35-36 and sources cited therein.
[152] *Id.*
[153] *See* Government of China February 6, 2018 IQR at Exhibit E2-2 and Exhibit E2-3.
[154] *Id.* at 70,71, and 89.
[155] *See* Government of China March 20, 2018 SQR at 6-11.

which 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 Mingtai and Yong Jie.[156] Accordingly, 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 Mingtai and Yong Jie purchased during the POI because the Government of China did not provide the requested information.[157] Consequently, we find that an adverse inference is warranted in the application of facts available.[158]

In sum, as AFA, we determine that all of the non-government-owned Chinese producers that produced the steam coal purchased by Mingtai and Yong Jie during the POI are "authorities" within the meaning of section 771(5)(B) of the Act.[159] Relying on AFA, we also determine that the non-government-owned domestic producers of the primary aluminum purchased by Mingtai are "authorities" within the meaning of section 771(5)(B) of the Act.

Yong Jie New Material – Whether All Primary Aluminum Producers Are "Authorities"

The Government of China did not provide any information regarding producers of primary aluminum for Yong Jie New Material, claiming that Yong Jie New Material did not report producer information to the Government of China.[160] Furthermore, Yong Jie New Material also did not report the identities of ultimate producers of primary aluminum that it purchased during the POI to Commerce. In its initial questionnaire response, Yong Jie New Material stated that the trading companies from which it purchased the primary aluminum would not identify the ultimate producers for competitive reasons.[161] In a supplemental questionnaire, we asked Yong Jie New Material for an explanation of how it is not able to identify the ultimate producers, especially with respect to certain sales; however, despite stating that it can sometimes find out

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[156] *See* sections 776(a)(1) and (a)(2)(A) of the Act.
[157] *See* sections 776(a) and (b) of the Act.
[158] *See* section 776(b) of the Act.
[159] *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 *Aluminum Extrusions from China 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) (*Aluminum Extrusions from China First Review Preliminary Results*) and the accompanying PDM at "Provision of Primary Aluminum for Less Than Adequate Remuneration (LTAR)" (unchanged in *Aluminum Extrusions from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010 and 2011*, 79 FR 106 (January 2, 2014) (*Aluminum Extrusions from China First Review*)); and *Aluminum Extrusions From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2012*, 79 FR 36009 (June 25, 2014) (*Aluminum Extrusions from China Second Review Preliminary Results*) and the accompanying PDM at "Provision of Primary Aluminum for LTAR." (unchanged in *Aluminum Extrusions from China Second Review*).
[160] *See* Government of China February 6, 2018 IQR at 59.
[161] *See* Yong Jie New Material February 6, 2018 IQR at 29.

the identity of the ultimate supplier, Yong Jie New Material continued to report the identities of the ultimate producers of primary aluminum as "unknown."[162] Hence, all producer identities of primary aluminum purchased by Yong Jie New Material during the POI are listed as "unknown."

Pursuant to sections 776(a)(2)(A) and (2)(C) of the Act, when an interested party withholds information requested by Commerce and significantly impedes a proceeding, Commerce uses facts otherwise available. We find that the use of facts otherwise available is appropriate in light of Yong Jie New Material's refusal to identify the ultimate producers of primary aluminum that it purchased during the POI. Further, pursuant to section 776(b) of the Act, we find that the Yong Jie New Material, by virtue of its withholding of information and significantly impeding this proceeding, failed to cooperate by not acting to the best of its ability. Accordingly, the application of AFA is warranted. Identities of those producers are critical for Commerce's ability to analyze whether the producers are "authorities" within the meaning of section 771(5)(B) of the Act. Therefore, Commerce is making an adverse inference that all primary aluminum purchased by Yong Jie New Material and its cross-owned responding companies is produced by "authorities" within the meaning of section 771(5)(B) of the Act and, consistent with prior CVD proceedings involving China, determines that a subsidy is conferred because the producer of the input is an "authority."[163]

Yong Jie New Material – Whether All Primary Aluminum Purchased by Yong Jie New Material Was Alloyed

Commerce asked Yong Jie New Material to clarify whether the aluminum ingots it purchased during the POI were unalloyed or unalloyed and to provide supporting documentation in the event that all of the purchases were for unalloyed products.[164] In response, Yong Jie New Material affirmed that the ingots each responding company purchased were unalloyed and provided one purchase contract for each responding company as supporting documentation.[165] However, two of the three provided contracts did not demonstrate that the purchased ingots were unalloyed.[166] In response to Commerce's follow-up supplemental questionnaire requesting supporting documentation to demonstrate that those purchases were for unalloyed ingots, Yong Jie New Material stated that the contracts specified quality and technical requirements of "according to national standard" and claimed that "national standard" referred to the national standard "GB/T 1196-2008" which is for unalloyed ingots.[167] However, those contracts neither demonstrated that the national standard was specific to "GB/T 1196-2008," or did Yong Jie New Material provide any other supporting documentation to show that all of its purchases of aluminum ingots during the POI were for unalloyed products.

Pursuant to sections 776(a)(2)(A) and (2)(C) of the Act, because Yong Jie New Material

[162] *See* Yong Jie New Material March 16, 2018 SQR at 32-33.
[163] *See* "*Government of China – Whether Certain Primary Aluminum and Steam Coal Producers Are 'Authorities'*" section above.
[164] *See* Commerce Letter re: Countervailing Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China: Request for Additional Information Regarding February 6, 2018 Questionnaire Responses, dated March 1, 2018 (Yong Jie New Material March 1, 2018 SQ).
[165] *See* Yong Jie New Material March 16, 2018 SQR at 31 at Exhibit 17.
[166] *Id.* at Exhibit 17.
[167] *See* Yong Jie New Material March 23, 2018 SQR at 3-4 and Exhibits SS-3 and SS-4.

withheld information requested by Commerce and significantly impeded this proceeding, Commerce uses facts otherwise available because it refused to provide supporting documentation, with the exception of one purchase contract, demonstrating that the aluminum ingots it purchased were unalloyed. By withholding information, Yong Jie New Material significantly impeded this proceeding because the type of aluminum ingots it purchased is critical for Commerce's ability to use an appropriate benchmark in order to calculate any benefit received. Further, pursuant to section 776(b) of the Act, we find that Yong Jie New Material, by its withholding of information and significantly impeding this proceeding, failed to cooperate by not acting to the best of its ability. Accordingly, the application of AFA is warranted. Therefore, Commerce is making an adverse inference that all primary aluminum purchased by Yong Jie New Material were for alloyed primary aluminum ingots, except for purchases from a certain supplier for which a purchase contract specified that aluminum ingots were to be unalloyed. Accordingly, Commerce calculated the benefit conferred to Yong Jie New Material by using the appropriate benchmarks.

Government of China – Whether the Provisions of Primary Aluminum and Steam Coal are Specific

Commerce asked the Government of China to provide a list of industries in China that purchase primary aluminum and steam coal:

> 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 (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.[168]

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.[169] In response to Commerce's request for such documentation relating to the primary aluminum and steam market 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.[170] We asked again for this information in supplemental questionnaires, and the Government of China again failed to provide the value of the inputs purchased by industry, the relevant classification guidelines, and the identity of the industry in which the companies under investigation are classified.[171]

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[168] *See* Initial CVD Questionnaire at Section II.
[169] *See* Government of China February 6, 2018 IQR at Exhibit E2-9 and Exhibit E3-4.
[170] *Id*. at 78 and 96.
[171] *See* March 20, 2018 SQR at 9; SQ-12; SQ2-7.

Therefore, consistent with past proceedings,[172] we preliminarily determine that necessary information is not available on the record and that the Government of China has withheld information that was requested of it, and, thus, that Commerce must rely on "facts available" in making our preliminary determination, in accordance with sections 776(a)(1) and 776(a)(2)(A) of the Act. Moreover, we preliminarily determine that the 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 provisions of primary aluminum and steam coal are specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.

E. Application of AFA: Provision of Electricity for LTAR

Government of China

The Government of China did not provide complete responses to Commerce's questions regarding the alleged provision of electricity for LTAR. These questions requested information needed to determine whether the provision of electricity constituted a financial contribution within the meaning of section 771(5)(D) of the Act, whether such a provision provided a benefit within the meaning of section 771(5)(E) of the Act, and whether such a provision was specific within the meaning of section 771(5A) of the Act.

In order for Commerce to analyze the financial contribution and specificity of this program, we requested that the Government of China provide information regarding the roles of provinces, the National Development and Reform Commission (NDRC), and cooperation between the provinces and the NDRC in electricity price adjustments. Specifically, Commerce requested, *inter alia*: Provincial Price Proposals for each province in which mandatory respondents or any company "cross-owned" with those respondents is located for applicable tariff schedules that were in effect during the POI; all original NDRC Electricity Price Adjustment Notice(s) that were in effect during the POI; the procedure for adjusting retail electricity tariffs and the role of the NDRC and the provincial governments in this process; the price adjustment conferences that took place between the NDRC and the provinces, grids and power companies with respect to the creation of all tariff schedules that were applicable to the POI; the cost elements and adjustments that were discussed between the provinces and the NDRC in the price adjustment conferences; and how the NDRC determines that the provincial level price bureaus have accurately reported all relevant cost elements in their price proposals with respect to generation, transmission and distribution. Commerce requested this information in order to determine the process by which electricity prices and price adjustments are derived, identify entities that manage and impact price adjustment processes, and examine cost elements included in the derivation of electricity prices in effect throughout China during the POI.

In its initial questionnaire response, the Government of China stated that, as of the issuance of

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

the "NDRC Notification on Lowering the On-Grid Price of Coal-Fired Electricity and Electricity for Industrial and Commercial-Use {2015 No. 748}",[173] the NDRC no longer reviews, *i.e.* approves, electricity pricing schedules submitted to it by the provinces.[174] Therefore, according to the Government of China, Provincial Price Proposals did not exist during the POI.[175] Further, the Government of China stated that, as a result of Notice 748, provincial price departments develop and establish grid and electricity sales prices.[176] Consequently, according to the Government of China, the NDRC no longer has any impact on prices, which are set autonomously at the provincial level. The Government of China added that interprovincial and interregional electricity price adjustments and prices are based upon market principles and negotiations between parties.[177] Finally, the Government of China states that the NDRC issued an updated price adjustment notice, Number 3015, on December 27, 2015.[178] The Government of China stated that Notices 748 and 3105 were the central government measures mandating delegation of what it claims to be electricity pricing authority to the provinces in effect during the POI.[179]

Notice 748 is based upon consultations between the NDRC and the National Energy Administration.[180] Article 1 contained therein stipulates a lowering of the on-grid sales price of coal-fired electricity by an average amount per kilowatt hour.[181] Annex 1 of Notice 748 indicates that this average price adjustment applies to all provinces and at varying amounts.[182] Article 2 indicates that the "price space" formed due to this price reduction "{s}hall be mainly used to lower the sales price of electricity for industrial and commercial use."[183] Articles 3 and 4 specifically direct the reduction of the sales price of industrial and commercial electricity.[184] Articles 6 and 7, respectively, indicate that provincial pricing authorities "{s}hall make and distribute the on-grid price of electricity and specific plans of the price adjustment in accordance with the average standard of price adjustment in Annex 1 and submit filings to the National Development and Reform Commission," and that the "{a}forementioned electricity price adjustment shall be enforced since April 20th, 2015."[185] Lastly, Article 10 directs that, "Administrative departments at all levels in charge of pricing shall guarantee the implementation of the price adjustment."[186]

NDRC Notice 3105, also based upon consultations between the NDRC and the National Energy Administration, directs additional price reductions, and stipulates at Articles II and X, that local price authorities shall implement in time the price reductions included in its Annex and report

[173] *See* Government of China's February 6, 2018 IQR at Exhibit E4-1 (Notice 748).
[174] *Id*. at 103
[175] *Id*. at
[176] *Id*. at 102
[177] *Id*. at100 and 105.
[178] *Id*. at Exhibit E4-2 (Notice 3105).
[179] *Id*. at 102.
[180] *See* Government of China February 6, 2018 IQR at Exhibit E4-1.
[181] *Id*.
[182] *Id*.
[183] *Id*.
[184] *Id*.
[185] *Id*.
[186] *Id*.

resulting prices to the NDRC.[187] Consequently, both Notice 748 and Notice 3105 explicitly direct provinces to reduce prices and to report the enactment of those changes to the NDRC. Neither Notice 748 nor Notice 3105 explicitly stipulates that relevant provincial pricing authorities determine and issue electricity prices within their own jurisdictions, as the Government of China states to be the case.[188] Rather, both notices indicate that the NDRC continues to play a seminal role in setting and adjusting electricity prices, by mandating average price adjustment targets with which the provinces are obligated to comply in setting their own specific prices.[189]

With respect to price derivation at the provincial level, Commerce requested specific information regarding how increases in cost elements led to retail price increases, the derivations of those cost increases, how cost increases were calculated, and how cost increases impacted final prices. The Government of China failed to provide complete responses to these requests. Specifically, it failed to provide the specific derivation of increases in cost elements and the methodology used to calculated cost element increases.[190] Lastly, the Government of China failed to explain how final price increases were allocated across the respondents' provinces and across tariff end-user categories.[191]

In a supplemental questionnaire, Commerce requested that the Government of China identify the legislation which may have eliminated the Provincial Price Proposals. The Government of China referred Commerce to Notice 748 and Notice 3105.[192] As discussed above, these two documents, issued by the NDRC, direct provinces to reduce prices by amounts specific to provinces. They neither explicitly eliminate Provincial Price Proposals nor define distinctions in price-setting roles between national and provincial pricing authorities. Additionally, we requested that the Government of China explain whether the province-specific price reductions indicated in Notice 748 were required to be adopted by all provinces. The Government of China responded that, "sales prices for each pricing category within each province are dictated by the provincial authorities and do not need to include the exact on-grid amount dictated by the NDRC notice.[193] This response does not accord with the directive language in Notice 748, as discussed above. Finally, we requested that the Government of China explain how the NDRC monitors compliance with the price changes directed in Notice 748 and what action the NDRC would take were any province not to comply with the directed price changes. The Government of China responded failed to explain what actions the NDRC would take in the event of non-compliance with directed price changes.[194]

Commerce additionally requested that the Government of China identify the sources of the pricing factors that the NDRC relied upon to generate pricing values, and provide translated copies of the relevant documentation. The Government of China failed to provide the requested

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[187] *Id*. at Exhibit E4-2.
[188] *Id*.
[189] *See, e.g.*, Notice 748 Article 10 and Notice 3105 Articles II and X.
[190] *Id*. at 103.
[191] *Id*.
[192] *See* Government of China March 20, 2018 SQR at 16.
[193] *Id*. at 17.
[194] *Id*.

documents.[195] In addition to our request for a detailed explanation of how the NDRC derived the price reduction amounts indicated in Notice 748 and Notice 3105, we requested that the Government of China explain, for each province in which a respondent or cross-owned company is located, how increases in labor costs, capital expenses, and transmission and distribution costs are factored into the Price Proposals, and, how cost element increases and final price increases were allocated across the province and across tariff end-user categories.[196] In its response, the Government of China repeated its claim that there were no provincial pricing proposals used for or relevant to the POI prices.[197]

As explained above, the Government of China failed on multiple occasions to explain the roles and nature of cooperation between the NDRC and provinces in deriving electricity price adjustments. Further, the Government of China failed to explain both the derivation of the price reductions directed to the provinces by the NDRC and the derivation of prices by provinces themselves. Consequently, we preliminarily determine that the Government of China withheld information that was requested of it for our analysis of financial contribution and specificity and, thus, Commerce must rely on "facts available" in making our preliminary determination.[198] Moreover, we preliminarily 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. We also note that the Government of China did not ask for additional time to gather and provide such information. Consequently, an adverse inference is warranted in the application of facts available.[199] In drawing an adverse inference, we find 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 are also drawing an adverse inference in selecting the benchmark for determining the existence and amount of the benefit.[200] The benchmark rates we selected are derived from the record of this investigation and are the highest electricity rates on the record for the applicable rate and user categories. For details regarding the remainder of our analysis, *see* the "Provision of Electricity for LTAR" section.

Yong Jie New Material

Yong Jie New Material provided inconsistent and incomplete responses regarding how certain categories of electricity rates it paid during the POI were determined. Its initial questionnaire response, the Government of China reported that none of the respondents directly negotiated prices with the power companies.[201] Yong Jie New Material also initially reported that the

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[195] *Id*. at 18.
[196] *See* Government of China February 6, 2018 SQR at 103-104.
[197] *Id*.
[198] *See* section 776(a)(2)(A) of the Act.
[199] *See* section 776(b) of the Act.
[200] *See* section 776(b)(4) of the Act.
[201] *See* Government of China February 6, 2018 IQR at 105.

electricity rates paid were established in rate schedules.[202] Moreover, in response to Commerce's request to explain how any rates not derived from the rate schedules were set, Yong Jie New Material stated that the question was not applicable.[203] In response to a supplemental questionnaire asking to explain and provide supporting documentation for each rate category, Yong Jie New Material provided no narrative explanation and referred to an exhibit containing electricity invoices showing the electricity rates;[204] however, it did not provide any explanation as to how each rate was established. In response to a second supplemental questionnaire regarding this issue, Yong Jie New Material explained that two rate categories applied to its responding companies: large-scale industry and large consumer direct.[205] Yong Jie New Material further explained that large consumer direct rates were "individually determined between the company and power station" and "cannot match the tariff schedule."[206] Yong Jie New Material provided no further explanation as to how the consumer direct rates were "determined." Yong Jie New Material also explained that to obtain large consumer direct rates, qualifying companies must submit an application to "the comprehensive management department," which will then be reviewed by a "relevant department" and "in accordance with national industry policy and environmental policy."[207]

Because Yong Jie New Material provided inconsistent responses between its initial questionnaire and follow-up supplemental questionnaire responses, it failed to cooperate by not acting to the best of its ability to comply with our requested 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 are applying an AFA rate for the provision of electricity for LTAR using Mingtai's calculated rate for the same program.

F. Application of AFA: Provision of "Other Subsidies" as Specific

Government of China

While both Mingtai and Yong Jie New Material self-reported receiving "Other Subsidies" in their questionnaire responses, the Government of China stated that:

> The Department has requested information on numerous programs in this investigation. Respondents and the GOC have cooperated to the best of their ability to provide the information requested. The GOC further notes that Article 11.2 of the W*TO Agreement on Subsidies and Countervailing Measures* dictates that investigations may not be initiated on the basis of 'simple assertion, unsubstantiated by relevant evidence.' Sufficient evidence with regard to the existence, amount, and nature of a subsidy must be presented for Commerce to initiate the investigation of another program, consistent with Article 11.2(iii). The GOC believes, therefore, that an answer

[202] *See* Yong Jie New Material February 6, 2018 IQR at 31.
[203] *Id.*
[204] *See* Yong Jie New Material March 16, 2018 SQR at 35 and Exhibit S-19.
[205] *See* Yong Jie New Material April 2, 2018 SQR at 1-2.
[206] *Id.* at 5.
[207] *Id.* at 2.

> to this question is premature absent a more direct inquiry supported by credible evidence and the initiation of a discrete investigation by the Department.[208]

We issued a supplemental questionnaire to the Government of China requesting full responses regarding the respondents' reported "Other Subsidies." The Government of China reiterated its aforementioned statement regarding the W*TO Agreement on Subsidies and Countervailing Measures.*[209]

Based upon the above, we preliminarily determine that necessary information to determine whether these reported "Other Subsidies" are specific is not available on the record and that the Government of the China has withheld information that was requested of it, and, thus, that Commerce must rely on "facts available" in making our preliminary determination in accordance with sections 776(a)(1) and 776(a)(2)(A) of the Act. Moreover, we preliminarily determine that the 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 these "Other Subsidies" reported by Yong Jie New Material and Mingtai constitute a financial contribution pursuant to section 771(5)(D) of the Act and are specific within the meaning of section 771(5A) of the Act.

G. Application Adverse Facts Available: Income Tax Credits for Purchase of Special Equipment

In response to Commerce's questionnaire, Mingtai reported receiving assistance under this program. In our questionnaire to the Government of China, we requested information necessary to our analysis of whether this program is *de facto* specific within the meaning of section 771(5A) of the Act. Specifically, we asked that the Government of China provide the total amount of assistance approved for all companies under the program; the total number of companies that were approved for assistance under this program; the total amount of assistance approved for the industry in which the mandatory respondent companies operate, as well as the totals for every other industry in which companies were approved for assistance under this program; and the total number of companies that applied for, but were denied, assistance under this program. The Government of China failed to provide the requested information, and instead asserted that the Government of China does not maintain such statistics.[210] However, the Government of China also stated that the State Administration of Taxation (SAT) and its local branches are responsible for the administration of this program.[211] Further, the Government of China stated that the local SAT branch keeps records related to this program, including corporate income tax returns of the enterprises.[212] Given that the Government of China admitted that local SAT branches administer and keep records of the program, we find the Government of China's claim that it cannot provide the requested information unpersuasive.

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[208] *See* Government of China February 6, 2018 IQR at 130.
[209] *See* Government of China March 20, 2018 SQR at 20.
[210] *See* February 6, 2018 IQR at 35-36.
[211] *Id*. at 30-31.
[212] *Id*. at 31.

Consequently, we preliminarily determine that necessary information to determine whether this program is specific is not available on the record. We further preliminarily determine that the Government of the China has withheld information that was requested of it, and, thus, that Commerce must rely on "facts available" in making our preliminary determination in accordance with sections 776(a)(1) and 776(a)(2)(A) of the Act. Moreover, we preliminarily determine that the 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 this program is specific within the meaning of section 771(5A) of the Act.

H. Application Adverse Facts Available: Policy Lending for Mingtai

In the initial CVD Questionnaire, we instructed Mingtai to report all financing that was outstanding during the POI, regardless of whether it considered the financing to have been provided under this program. We also stated that it should report all forms of financing outstanding during the POI, not only traditional loans: "This includes, but is not limited to, interest expenses on bank promissory notes, invoice discounting, and factoring of accounts receivable." In response, Mingtai stated that it had reported all financing outstanding during the POI.[213]

In a supplemental questionnaire, we asked that Mingtai confirm that it had reported all financing it had outstanding during the POI, including long-term loans and letters of credit. Mingtai confirmed that it had reported all financing outstanding during the POI, all of which were short-term loans.[214]

In a second supplemental questionnaire, we asked that Mingtai explain certain items in its financial statement that appeared relevant to Mingtai's outstanding financing. In response, Mingtai stated that these items were letters of guarantee/time drafts from the bank,[215] *i.e.*, discounted financial instruments. Specifically, Mingtai explained that these pertained to certain guarantee deposits that Henan Mingtai and Zhengzhou Mingtai were required to make with the bank, in consideration of which the bank in turn would issue a "full value time draft" guaranteeing payment of the full amount owed to suppliers.[216] Henan Mingtai and Zhengzhou Mingtai surrendered these "time drafts" to their suppliers, and in turn pay the bank the full value of the "time draft" within six months.[217] If the suppliers wanted payment earlier than the due date of the "time draft," then the suppliers would pay the interest for the early cash-out of the "time draft."[218]

Commerce considers discounted financial instruments, such as the letters of credit described

[213] *See* Mingtai January 29, 2018 IQR at 10 and Exhibit 7.
[214] *See* Mingtai February 15, 2018 SQR at 5.
[215] *See* Mingtai March 15, 2018 SQR at 2-3.
[216] *Id.*
[217] *Id.*
[218] *Id.*

above, as loans within the meaning of section 771(5)(D)(i) of the Act.[219] Commerce's subsidy analysis is not concerned with whether such financial instruments fit into a narrow definition of a conventional loan. Such nontraditional loans typically provide a discount to the company, whether on the face value of the debt instrument in question or in the form of a reduced interest rate, thereby conferring a benefit in the form of a reduction in payment by the company to the lending party.[220]

Because Mingtai did not report all of its financing that was outstanding during the POI, the record is incomplete with regard to Mingtai's outstanding loans, and we preliminarily determine that Commerce must rely on "facts otherwise available" in issuing its preliminary determination, pursuant to section 776(a)(2)(A) of the Act. Moreover, by failing to provide information that that it is otherwise able to provide, we preliminarily find that the Mingtai did not act to the best of its ability to comply with our request for information. Consequently, we find that an adverse inference is warranted in the application of facts available pursuant to section 776(b) of the Act. In drawing an adverse inference, we find that Mingtai benefitted from the Policy Loan and Export Loan programs.

In determining the AFA rate that we are preliminarily applying to Mingtai for these programs, we are guided by the Department's methodology as detailed earlier. Consistent with the methodology, where we have calculated rates for the same program for other respondents in the investigation, we select the highest such rates above zero. Accordingly, for Policy Lending, we are applying as the highest applicable subsidy rate the rate calculated for Yong Jie New Material. Because Yong Jie New Material did not use the Export Lending program, we are applying the highest above-*de minimis* subsidy rate calculated for the same or comparable program in another CVD investigation or administrative review involving imports from China.[221]

I. Application Facts Available: Consolidated Sales Values for Mingtai

In its questionnaire responses, Mingtai did not report consolidated sales values for the AUL. This amount is necessary to calculate Mingtai's benefit for subsidies received during the AUL. Therefore, pursuant to section 776(a)(1) of the Act, as facts available, we are relying on the total sales values of Henan Mingtai and Zhengzhou Mingtai, net of intercompany sales, to value the benefit for subsidies received by Henan Mingtai during the AUL period.[222]

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[219] *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 (January 23, 2018), and accompanying IDM at Comment 8; *Countervailing Duty Investigation of 1,1,1,2 Tetrafluoroethane from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 62594 (October 20, 2014) (*Tetrafluoroethane from China*); *Citric Acid and Certain Citrate Sales from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*; 2010, 77 FR 72323 (December 5, 2012) (*Citric Acid from China; 2010*), and accompanying IDM at 15.

[220] *See Tetrafluoroethane from China*, and accompanying IDM at Comment 11; *Citric Acid from China; 2010*, and accompanying IDM at 15.

[221] *See Coated Paper from China Investigation Amended Final*.

[222] *See* Mingtai Preliminary Calculation Memorandum.

XI. ANALYSIS OF PROGRAMS

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

A. Programs Preliminarily Determined to Be Countervailable

1. Policy Loans to the Common Alloy Sheet Industry

Commerce is examining whether the Government of the China has encouraged the development of the common alloy sheet industry through financial support from SOCBs and government policy banks, such as the China Development Bank. Commerce has countervailed policy lending programs in previous investigations.[223]

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 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 PRC*[224] to further conclude that national and local government control over the SOCBs render the loans a government financial contribution.

Yong Jie New Material and its cross-owned affiliates and Mingtai reported having loans from China SOCBs that were outstanding during the POI.[225] Commerce preliminarily finds that these loans provide countervailable subsidies under a policy lending program directed at the common alloy sheet industry. Record information indicates the Government of the China placed great emphasis on targeting the common alloy sheet industry for development throughout recent years. For example, the "*National 10th Five-Year Plans of Economic and Social Development of the 10th Five-Year Plan for National Economic and Social Development* (2001-2005)" indicates that accelerated industrial restructuring and reorganization would be undertaken to further the development of industrial products, including the raw materials industry, and more specifically, alumina.[226] The "*National 11th Five-Year Plans of Economic and Social Development* (2006-2010)" calls for the development of aluminum processing and enhancement of the "{c}omprehensive utilization level of aluminum industrial resources."[227] The "*National 12th Five-Year Plans of Economic and Social Development* (2011-2015)" indicates the restructuring of key industries should include new progress in R&D, integrated resources utilization, energy conservation, and emission reduction by the smelting and building material industries.[228] The

[223] *See, e.g., Drawn Stainless Steel Sinks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 13017 (February 26, 2013) (*Steel Sinks from China)*, and accompanying IDM at 24-25.
[224] *See CFS Paper from China Final* IDM at Comment 8.
[225] *See* Yong Jie New Material February 6, 2018 IQR at Exhibit 9 (P.A.1); Yong Jie New Material March 30, 2018 SQR at Exhibit SS-1; Mingtai January 29, 2018 IQR at 10.
[226] *See* Government of China February 6, 2018 IQR Exhibit A1-10 at page 11.
[227] *Id*. at Exhibit A1-11 at page 16.
[228] *Id*. at Exhibit A1-12 at page 10.

current "*National 13th Five-Year Plans of Economic and Social Development* (2016-2020)" continues these objectives, and identifies the nonferrous metals industry as a "key" industry for which the service supporting system, including finance, insurance, and investment platforms should be perfected.[229]

Additional record evidence indicates that financial support is directed specifically toward certain encouraged industries, including the aluminum industry. For example, 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" (Guidance Catalogue) is an important basis for investment guidance and government administration of policies such as public finance, taxation, and credit."[230] Decision 40 further indicates that projects in "encouraged" industries shall be provided credit support in compliance with credit principles."[231] The "*Catalogue for the Guidance of Industrial Structure Adjustment*" (2005) specifically includes aluminum, and the development of production technology within it, as encouraged.[232] The "*Nonferrous Metal Development Plan* (2016-2020)" describes the nonferrous metal industry as an important foundation of the manufacturing industry and support for the "{r}ealization of manufacturing power."[233] Further, priority is indicated for the development of common alloy sheet.[234] Lastly, "*Notice of Guidelines on Accelerating the Adjustment of Aluminum Industry Structure* (2006)" indicates that, "Aluminum is an important raw material for the development of the national economy."[235] This document indicates targeted financial support for the aluminum sector:

> According to the national macro-control, industrial policy and credit requirements, the financial institutions shall conduct reasonable allocation of credit funds. For alumina enterprises and electrolytic aluminum enterprises that meet the national industrial policies, market access conditions and credit principles, it is required to continue to give credit support; for enterprises of non-compliance with national industrial policy and market access conditions with backward technology and are listed in prohibited items or eliminated, shall not be provided with any form of credit support.[236]

Thus, given the evidence demonstrating the Government of China's objective of developing the nonferrous metal sector, and more specifically the aluminum industry, through preferential loans, we preliminarily determine there is a program of preferential policy lending specific to producers of common alloy sheet within the meaning of section 771(5A)(D)(i) of the Act. We also preliminarily 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."

[229] *See* Government of China March 20, 2018 SQR at Exhibit SQ-1 at Chapter11 Section 4.
[230] *See* Government of China February 6, 2018 IQR at Exhibit A1-22 at Chapter III Article 12.
[231] *Id*. at Chapter III Articles 13, 14, and 17.
[232] *See* Government of China March 20, 2018 SQR at Exhibit SQ-2 at Section I.VIII.7.
[233] *See* Government of China February 6, 2018 IQR at Exhibit A1-21page 1.
[234] *Id*. at 32.
[235] *Id*. Exhibit A1-19 at page 1.
[236] *Id*. at 4.

For Yong Jie New Material and its cross-owned affiliates, the loans provide a benefit equal to the difference between what the recipients paid on their loans and the amount they would have paid on comparable commercial loans.[237] To calculate the benefit from this program, we used the benchmarks discussed above under the "Subsidy Valuation" section.[238] To calculate the net countervailable subsidy rate under this program we divided the benefit by the appropriate sales denominator, as described in the "Subsidies Valuation" section above. On this basis, we preliminarily determine a subsidy rate of 3.62 percent *ad valorem* for Yong Jie New Material under this program. As explained above, we preliminarily determine on the basis of AFA that Mingtai also benefited from this program during the POI within the meaning of section 771(5)(E) of the Act, and preliminarily select the rate calculated for Yong Jie New Material as the AFA rate applicable to Mingtai, *i.e.*, 3.62 percent *ad valorem*.

2. Export Loans from Chinese State-Owned Banks

For the reasons explained in the "Use of Facts Otherwise Available and Adverse Inferences" section above, our preliminary determination regarding the Government of China's provision of Export Lending is based on AFA. Thus, we determine that the Government of China's provision of Export Buyer's Credit confers a financial contribution and is specific within the meaning of sections 771(5)(D) and 771(5A) of the Act, respectively. Further, we preliminarily determine on the basis of AFA that Mingtai benefited from this program during the POI within the meaning of section 771(5)(E) of the Act. Because we are not calculating a rate for Yong Jie New Material under this program, consistent with Commerce's AFA rate selection methodology, we are applying a subsidy rate of 10.54 percent *ad valorem* for Mingtai, which is a rate calculated for the same or similar program in another CVD proceeding involving imports from China.[239]

3. Export Buyer's Credit

For the reasons explained in the "Use of Facts Otherwise Available and Adverse Inferences" section above, our preliminary determination regarding the Government of China's provision of Export Buyer's Credit is based on AFA. Thus, we determine that the Government of China's provision of Export Buyer's Credit confers a financial contribution and is specific within the meaning of sections 771(5)(D) and 771(5A) of the Act, respectively. Further, we determine on the basis of AFA that Yong Jie New Material and Mingtai benefited from this program during the POI within the meaning of section 771(5)(E) of the Act. On this basis, consistent with Commerce's AFA rate selection methodology, we determine a countervailable subsidy rate of 10.54 percent *ad valorem* for Yong Jie New Material and Mingtai, a rate calculated for the same or similar program in another CVD proceeding involving imports from China.[240]

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[237] *See* section 771(5)(E)(ii) of the Act and 19 CFR 351.505(a).
[238] *See* 19 CFR 351.505(c).
[239] *See Coated Paper from China Investigation Amended Final*, and accompanying MEM at "Revised Net Subsidy Rate for the Gold Companies" (discussing revised subsidy rate for "Preferential Lending to the Coated Paper Industry"). This document is proprietary in nature. However, the public version, which has been placed on the record of this investigation, identifies the revised subsidy rate on which we are relying.
[240] *Id.*

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

Under Article 30.1 of the Enterprise Income Tax Law (EITL), which became effective January 1, 2008, companies may deduct R&D expenses incurred in the development of new technologies, products, or processes from their taxable income.[241] Article 95 of the Regulations on the Implementation of Enterprise Income Tax Law (Decree 512 of the State Council, 2007) provides that, if eligible research expenditures do not form part of the intangible assets value, an additional 50 percent deduction from taxable income may be taken on top of the actual accrual amount.[242] Where these expenditures form the value of certain intangible assets, the expenditures may be amortized based on 150 percent of the intangible assets' costs.[243]

Article 4 of the "Circular of the State Administration of Taxation on Printing and Issuing the Administrative Measures for the Pre-tax Deduction of Enterprises' Expenditures for Research and Development (for Trial Implementation)" (Circular 116) states that enterprises engaged in hi-tech R&D, including aluminum producers, may deduct certain expenditures, as listed in the "Hi-tech Sectors with Primary Support of the State Support and the Guideline of the Latest Key Priority Developmental Areas in the High Technology Industry (2007)."[244]

We preliminarily determine that this program provides a countervailable subsidy. This income tax deduction is a financial contribution in the form of revenue forgone by the government within the meaning of section 771(5)(D)(ii) of the Act, and it provides a benefit to the recipients in the amount of the tax savings within the meaning of 19 CFR 351.509(a)(1). We also find that the income tax deduction afforded by this program is limited as a matter of law to certain enterprises, *i.e.*, those with R&D in eligible high-technology sectors and, thus, is *de jure* specific under section 771(5A)(D)(i) of the Act. Commerce has previously found this program to be countervailable.[245]

To calculate the benefit from this program, we treated the tax deductions as recurring benefits, consistent with 19 CFR 351.524(c)(1). To compute the amount of the tax savings, we calculated the amount of tax Henan Mingtai would have paid absent the tax deductions at the standard tax rate of 25 percent (*i.e.*, 25 percent of the tax deduction).[246] We then divided the tax savings for Henan Mingtai during the POI by its consolidated POI sales. On this basis, we preliminarily determine a subsidy rate of 0.06 percent for Mingtai.

Record information indicates that Yong Jie New Material did not use this program during the POI.

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[241] *See* Government of China February 6, 2018 IQR at 22.
[242] *Id*. at Exhibit C1-2.
[243] *Id*.
[244] *See* Memorandum, "Placing Information on the Record," dated April 16, 2018, at Document 2, Exhibit S2-4 to S2-6.
[245] *See Solar Cells from China* IDM at 17.
[246] *See* Mingtai January 29, 2018 IQR at Exhibit 9.

5. Income Tax Credits for Purchase of Special Equipment

Under Article 34 of the EITL, enterprises are granted tax deductions for the purchase of "special equipment for protecting the environment, saving energy and water, work safety, etc."[247] Further, in accordance with Article 100 of the "Implementation Regulations of the Corporate Income Tax Law of the People's Republic of China," enterprises may deduct 10 percent of the investment in such equipment from income taxes payable in the current year and may carry forward any excess deduction for the next five years.[248]

We preliminarily determine that this program provides a countervailable subsidy. This income tax credit is a financial contribution in the form of revenue forgone by the government within the meaning of section 771(5)(D)(ii) of the Act, and it provides a benefit to the recipients in the amount of the tax savings pursuant to 19 CFR 351.509(a)(1). As discussed in the "Use of Facts Available and Adverse Inferences" section above, Commerce preliminarily determines that this tax credit is specific under section 771(5A) of the Act.

Henan Mingtai used this program during the POI. To calculate the benefit, we treated the tax credits as recurring benefits, consistent with 19 CFR 351.524(c)(1). To compute the amount of the tax credit, we calculated 10 percent of Mingtai's investment in special equipment.[249] We then divided the tax credit for Henan Mingtai during the POI by its consolidated POI sales. On this basis, we preliminarily determine a subsidy rate of 0.02 percent *ad valorem* for Mingtai.

Record information indicates that Yong Jie New Material did not use this program during the POI.

6. VAT Rebates on Domestically-Produced Equipment

Pursuant to the "Interim Measures for the Refund of the VAT in the Purchase of Domestic Manufactured Equipment by FIEs (GUOSHUIFA (1999) No. 171)," the Government of China refunds the VAT on purchases of domestically-produced equipment by foreign invested enterprises (FIEs) if the equipment does not fall into the non-duty exemptible catalog and if the value of the equipment does not exceed the total investment limit of an FIE.[250] Yong Jie New Material reported using this program, and according to the Government of China, was an FIE throughout the AUL period and POI.[251] Commerce has previously found VAT rebates under this program to confer countervailable subsidies.[252] Commerce preliminarily determines the rebates under this program are a financial contribution in the form of revenue forgone by the Government of China and they provide a benefit to the recipients in the amount of the tax

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[247] *See* Government of China February 6, 2018 IQR at 31 and Exhibit C1-1.
[248] *Id*. at Exhibit C1-2.
[249] *See* Mingtai January 29, 2018 IQR at Exhibit 10.
[250] *See* Government of China February 6, 2018 IQR at Exhibit D2-1.
[251] *See* Yong Jie New Material February 6, 2018 IQR at pages 22-25; *see also* Government of China February 6, 2018 IQR at 47.
[252] *See Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 76962 (December 23, 2014) (*Solar Products from China*) and accompanying IDM at 18-19.

savings.[253] Further, we preliminarily determine that the VAT rebates are contingent upon the use of domestic over imported equipment and, hence, specific under section 771(5A)(A) and (C) of the Act.

We are examining VAT rebates only to the extent they were provided prior to 2009. Effective 2009, China's VAT regime transformed from a "production-based" system into a "consumption-based" system, which is the world-norm for countries that have a VAT.[254] Under the production-based system, China did not allow VAT paid on purchases of capital goods and fixed assets to be credited when remitting VAT to the tax authorities.[255] Therefore, firms receiving rebates of VAT on capital goods before 2009 were relieved from a tax otherwise payable. However, Commerce has found that under a consumption-based VAT system, "the company merely conveys the VAT to the government, ultimately paying nothing because it is the final consumer who actually shoulders the tax burden."[256]

We have on the record information on Yong Jie New Material's VAT rebates on equipment and machinery prior to 2009. Since this indirect tax incentive is provided for, or tied to, the capital structure or capital assets of a firm, as reported by Yong Jie New Material, Commerce treated it as a non-recurring benefit and allocated the benefit to Yong Jie New Material over the AUL.[257] To calculate a benefit under this program, for those years in which the VAT rebates were greater than or equal to 0.5 percent of sales, we allocated the rebate amount over the AUL. We used the discount rates described above in the "Subsidies Valuation" section to calculate the amount of the benefit allocable to the POI.

On this basis, we determine a countervailable subsidy rate of 0.07 percent *ad valorem* for Yong Jie New Material. Record information indicates that Mingtai did not use this program during the POI.

7. Government Provision of Land for LTAR

Commerce is examining whether the Government of China has encouraged the development of the common alloy sheet industry through the provision of land at less than adequate remuneration. Both Mingtai and Yong Jie New Material reported purchasing land in high-technology special economic zones (SEZs) during the AUL period, and Yong Jie New Material was granted High and New Technology Enterprise (HNTE) designation.[258]

In examining this program, Commerce looks to whether government plans or other policy directives lay out objectives or goals for developing the industry and call for preferential land pricing to support such objectives or goals. The Government of China's national five-year plans

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[253] *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1).
[254] *See Shrimp from China* IDM at 31, footnote 104.
[255] *See Forged Steel Fittings from the People's Republic of China: Initiation of Countervailing Duty Investigation,* (October 25, 2017), and accompanying Initiation Checklist at 17, footnote 37.
[256] *See Large Residential Washers From the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 75975 (December 26, 2012) (*Residential Washers from Korea*).
[257] *See* 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2).
[258] *See* Yong Jie New Material February 6, 2018 IQR at 12.

identify the provision of land and land financing as policy tools to direct economic development for key objectives. For example, the national 13th FYP states that, "for major projects included in the plan, the procedures for examination and approval shall be simplified, and priority shall be given to the planning, site selection, land supply, and financing arrangements.[259] The 13th FYP identifies development goals for the region in which Mingtai is located as including, "Orderly undertake industrial transfer,…build a number of strategic emerging industries and high-tech industrial base, and cultivate a number of industrial clusters."[260]

The 12th FYP similarly identifies land management policies as development tools, referencing the importance of the Guidance Catalogue's encouraged industries alongside implementing differential land management policy: "Modify and perfect the current industrial guidance catalogue, clarify the encouraged, limited and prohibited industrial for different principle function areas. Implement the differential land management policy, scientifically set the different land using scale, and carry out strict land use control."[261]

The 11th FYP instructs strengthened support for industrial policy, especially for high tech industries, alongside strengthened cooperation of land policies: "Strengthen and improve industrial policy work, reinforce the unified planning for domestic industry development and for investment introduction, strengthen the cooperation of the policies in credit, land, environmental protection, safety and science and technology with the industrial policy and use economic means to promote the development of industries. Strengthen the support for the weak links of high tech industries and equipment manufacturing industry, mainly support research and development and foster core competitive power."[262] It further calls for giving development priority to the high technology industry and intensive processing by enhancing the efficiency of land resources and the functions of special economic zones.[263]

The provincial FYPs mirror the national FYPs identification of land supply and financing as policy tools for economic development of encouraged industries. For example, the 13th FYP of Henan Province states that, "For the major projects included in the plan, the examination and approval procedures will be simplified, and priority will be given to ensuring site selection, land supply and financing arrangements. Focusing on the key areas of economic and social development, research and formulation of supporting policies will provide strong support for the realization of various development goals."[264] The 13th FYP of Zhengjiang calls for establishing institutional mechanism leading to economic development by deepening, "…the reform of the system of paid use of land, fully implement flexible land leases for industrial land, and accelerate the formation of reasonable land price, income distribution and compensation mechanisms."[265] The 12th FYP of Henan Province states that high-tech industrial development zones will be used

[259] *See* Government of China March 20, 2018 SQR at Exhibit 2-a, Part XX Strengthen the plan implementation guarantee.
[260] *Id.* at Chapter 37, Section 3.
[261] *See* Government of China February 6, 2018 IQR at Exhibit A1-12, Chapter 19.
[262] *Id.* at Exhibit A1-11, at 47.
[263] *Id.* at Exhibit A1-11, at Chapter 19.
[264] *See* Government of China March 20, 2018 SQR at Exhibit SQ-1, at 13th FYP of Henan Province, Chapter 22.
[265] *Id.* at Exhibit SQ-1, at 13th FYP of Zhengjiang Province, Chapter 3.

to lead the development of strategic emerging industries.[266] The 11th FYP of Henan Province notes that the "state implements the strategy of promoting the rise of the central region in all aspects, lists our province as a key development area, and supports the development of agriculture, basic industries, and advantageous industries in terms of funds, policies, and major construction layouts."[267] The 11th and 10th FYPs of Henan Province identify high-tech industries,[268] deep processing of aluminum, and pillar industries for priority development.[269]

The Government of China has identified the common alloy sheet industry for priority development in the Guidance Catalogue, which includes aluminum, and the development of production technology within it, as encouraged.[270] Decision 40 identifies the Guidance Catalogue as "the important basis for guiding investment directions, and for governments to administer investment projects, to formulate and enforce policies on public finance, taxation, credit, land, import and export, etc."[271] Decision 40 also directs all local, provincial, and municipal governments under the Central Government's control to cooperate closely and intensify the effectiveness of implementing industrial policies, and instructs that the relevant provisions of the state will apply to other preferential policies on encouraged industry projects.

We asked the Government of China to elaborate on its intention, as expressed in Decision 40, to intensify the effectiveness of implementing industrial policies through its land resources. The Government of China explained that Decision 40 provides for encouragement policies for the industries in the encouraged industry category, and, unless an industry is in the encouraged category, land or other policies are not directed to support those industries.[272] The Government of China also submitted the "Notice of the Ministry of Land and Resources on Adjusting the Implementation Policy of the Minimum Price for Industrial Land Transfer" GuoTuZiFa No.56 (2009) (Minimum Price for Land Transfer Notice), which allows for reduced reserve prices of land sales for industrial priority projects.[273] The Minimum Price for Land Transfer Notice clarifies that priority development of industries refers to industries that have been prioritized for development in local industry plans formulated in accordance with the Guidance Catalogue.[274]

As detailed above, national and provincial level development plans provide for priority land supply and financing arrangements for priority development projects. These plans also consistently identify the deep processing aluminum industry and high-technology industries as targets for economic development. As noted previously, the mandatory respondents are located in high-technology SEZs and Yong Jie New Material was designated as an HNTE. Thus, given the evidence demonstrating the Government of China's use of preferential pricing policies to develop the aluminum sector, together with evidence of similar policies in the provinces where

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[266] *Id*. at Chapter 11.
[267] *Id*. at 11th FYP of Henan Province, Chapter 1.
[268] *Id*. at Section 3.
[269] *Id*. at Section 9 preferential industry. *See also* Government of China March 20, 2018 SQR at Exhibit SQ-1, at 10th FYP of Henan Province, Chapter 1.
[270] *See* Government of China March 20, 2018 SQR at Exhibit SQ-2, Section I.VII.7.
[271] *See* Government of China February 6, 2018 IQR at Exhibit A1-22, Chapter III.
[272] *See* Government of China March 20, 2018 SQR at 4-5.
[273] *See* Government of China April 4, 2018 SQR at SQ2-4.
[274] *Id*.

respondents are located, we preliminarily determine there is a program to provide land for LTAR to producers of common alloy sheet within the meaning of section 771(5A)(D)(i) of the Act. Because the Chinese government owns all land in China,[275] we preliminarily determine that the entities that provided the land to the respondents are "authorities" within the meaning of section 771(5)(B) of the Act, and that the respondents received a financial contribution from them in the form of a provision of a good, pursuant to section 771(5)(D)(iii) of the Act. Given the total government ownership of the land market, we preliminarily determine that the domestic market for land was distorted through the Government of China's ownership.

To determine the benefit pursuant to section 771(5)(E)(iv) of the Act, we first multiplied the Thailand industrial land benchmarks discussed above under the "Benchmarks and Discount Rates" section, by the total area of the aforementioned companies' land. We then subtracted the net price actually paid for the land to derive the total unallocated benefit. We next conducted the "0.5 percent test" of 19 CFR 351.524(b)(2) for the year(s) of the relevant land-rights agreement by dividing the total benefit for the respective year(s) by the relevant sales. For those benefits that pass the 0.5 percent test, we allocated the total benefit amounts across the terms of the land use agreement, using the standard allocation formula of 19 CFR 351.524(d), and determined the amount attributable to the POI. We then divided this amount by the appropriate total sales denominator, as discussed in the "Subsidies Valuation" section.

On this basis, we preliminarily determine subsidy rates of 0.07 percent *ad valorem* and 0.24 percent *ad valorem* for Mingtai and Yong Jie New Material, respectively.

8. <u>Government Provision of Primary Aluminum</u>

Commerce is examining whether the Government of China or other "authorities" within China provided Mingtai or Yong Jie New Material with primary aluminum for LTAR. Mingtai and Yong Jie New Material reported that they purchased primary aluminum during the POI.

Financial Contribution

The Government of China reported certain producers of primary aluminum to be majority-owned by the government. As explained in the Public Body Memorandum, majority state-owned enterprises in China possess, exercise, or are vested with governmental authority.[276] As such, we find 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. Therefore, we preliminarily determine that these entities constitute "authorities" within the meaning of section 771(5)(B) of the Act and that

[275] *See* Government of China February 6, 2018 IQR at 55.
[276] *See* Memorandum, "Placing Information on the Record," dated April 16, 2018.

the respondents received a financial contribution from them in the form of a provision of a good, pursuant to section 771(5)(D)(iii) of the Act.[277]

As discussed above in section "Use of Facts Otherwise Available and Adverse Inferences," we find that the Government of China's refusal to provide certain information regarding the remaining primary aluminum producers from whom respondents sourced their input purchases warrants the use of AFA.[278] As AFA, we find that these remaining producers are "authorities" within the meaning of section 771(5)(B)(i) of the Act and that the respondents received financial contributions from them.

As described above, in the "Use of Facts Otherwise Available and Adverse Inferences" section of this memorandum, for purchases of primary aluminum where Yong Jie New Material reported "unknown" for the producer information, we are determining that, as adverse facts available, the "unknown" producers are also "authorities." Because all of the known domestic producers are "authorities," we find that all of the unknown primary aluminum producers are also "authorities" within the meaning of section 771(5)(B) of the Act.

Specificity

Additionally, as explained in the "Use of Facts Otherwise Available and Adverse Inferences" section of this memorandum above, we preliminarily determine that the Government of China is providing primary aluminum to a limited number of industries and enterprises, and, hence, that the subsidies under this program is specific pursuant to section 771(5A)(D)(iii) of the Act.

Market Distortion

In its Government of China February 6, 2018 IQR, the Government of China indicates 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.[279] 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.[280] Thus, given the substantial government share in the market, coupled with the restriction on exports in the form of the export taxes, we preliminarily 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.

Benefit

In order to determine the existence and amount of any benefit conferred by the producers to the respondent companies pursuant to section 771(5)(E)(iv) of the Act, we followed the

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[277] *See 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), and accompanying IDM at 6.
[278] For the remaining input producers, we are applying this finding only with regard to domestic Chinese producers to the extent the record information allows.
[279] *See* Government of China February 6, 2018 IQR at 74-75.
[280] *Id*. at 77.

methodology described in 19 CFR 351.511(a)(2) to identify a suitable benchmark for primary aluminum. Commerce's regulations at 19 CFR 351.511(a)(2) set forth the basis for identifying appropriate market determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services. The potential benchmarks listed in the regulation, in order of preference, are: (1) market prices from actual transactions within the country under investigation for the government-provided good (*e.g.*, actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) prices consistent with market principles based on an assessment by Commerce of the government-set price (tier three).[281]

As discussed above, because Commerce is finding that Chinese markets for primary aluminum were distorted by government involvement, we are selecting external benchmark prices, *i.e.*, "tier two" world market prices, consistent with 19 CFR 351.511(a)(2)(ii) and the *CVD Preamble*. Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under "tier two," Commerce will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Accordingly, to derive the benchmark prices, we included ocean freight and inland freight that would be incurred to deliver inputs to the respondents' production facilities. We then added to the benchmark prices the appropriate import duties applicable to imports of primary aluminum into China, as provided by the Government of China.[282] Additionally, we added the appropriate VAT of 17 percent to the benchmark prices.

We compared these monthly benchmark prices to Mingtai's and Yong Jie New Material's reported purchase prices for individual domestic transactions, including VAT and delivery charges. Based on this comparison, we preliminarily determine that a benefit exists for Mingtai and Yong Jie New Material in the amount of the difference between the benchmark prices and the prices Mingtai and Yong Jie New Material paid, respectively. We divided the total benefits by the appropriate consolidated sales denominator, as discussed in the "Subsidies Valuation Information" section.

For the reasons discussed above, we have calculated a subsidy rate of 4.09 percent *ad valorem* for Mingtai for the provision of primary aluminum for LTAR.[283] For Yong Jie New Material, we have calculated a subsidy rate of 13.52 percent *ad valorem* for the provision of primary aluminum.[284]

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[281] *See* 19 CFR 351.511(a)(2).
[282] Consistent with *Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2011*, 79 FR 108 (January 2, 2014) (*Citric Acid from China; 2011 Review*), we have utilized the Most Favored Nation import duty rate because it reflects the general tariff rate applicable to world trade. *See Citric Acid from China; 2011 Review* IDM at 90.
[283] *See* Attachment 2 for the underlying calculation.
[284] *See* Yong Jie New Material Preliminary Calculation Memorandum.

9. **Government Provision of Steam Coal for LTAR**

Commerce is examining whether the Government of China or other "authorities" within China provided Mingtai or Yong Jie New Material with steam coal for LTAR. Mingtai reported that it purchased steam coal during the POI.

Financial Contribution

The Government of China reported certain producers of steam coal to be majority-owned by the government. As explained in the Public Body Memorandum, majority state-owned enterprises in China possess, exercise, or are vested with governmental authority.[285] As such, we find 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. Therefore, we preliminarily determine that these entities constitute "authorities" within the meaning of section 771(5)(B) of the Act and that Mingtai received a financial contribution from them in the form of a provision of a good, pursuant to section 771(5)(D)(iii) of the Act.[286]

As discussed above in section "Use of Facts Otherwise Available and Adverse Inferences," we find that the Government of China's refusal to provide certain information regarding the remaining steam coal producers from whom Mingtai sourced its purchases warrants the use of AFA.[287] As AFA, we find that these remaining producers are "authorities" within the meaning of section 771(5)(B)(i) of the Act and that Mingtai received financial contributions from them. Because all of the known domestic producers are "authorities," we find that all of the unknown steam coal producers are also "authorities" within the meaning of section 771(5)(B) of the Act.

Specificity

Additionally, as explained in the "Use of Facts Otherwise Available and Adverse Inferences" section of this memorandum above, we preliminarily determine that the Government of China is providing steam coal to a limited number of industries and enterprises, and, hence, that the subsidies under this programs is specific pursuant to section 771(5A)(D)(iii) of the Act.

Market Distortion

In its Government of China February 6, 2018 IQR, the Government of China indicates that China produces over 98 percent of the steam coal it consumes, and about 68 percent of domestic

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[285] *See* Memorandum, "Placing Information on the Record," dated April 16, 2018.
[286] *See 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), and accompanying IDM at 6.
[287] For the remaining input producers, we are applying this finding only with regard to domestic Chinese producers to the extent the record information allows.

consumption is from companies the Government of China identifies as SOEs.[288] Further, the Government of China reported that an export quota on coal was in place during the POI, limiting coal exports from China.[289] Thus, given the substantial government share in the market, coupled with the restriction on exports in the form of the export quota, we preliminarily determine that the domestic market for steam coal was distorted through the intervention of the Government of China during the POI.

Benefit

In order to determine the existence and amount of any benefit conferred by the producers to the respondent companies pursuant to section 771(5)(E)(iv) of the Act, we followed the methodology described in 19 CFR 351.511(a)(2) to identify a suitable benchmark for steam coal. Commerce's regulations at 19 CFR 351.511(a)(2) set forth the basis for identifying appropriate market determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services. The potential benchmarks listed in the regulation, in order of preference, are: (1) market prices from actual transactions within the country under investigation for the government-provided good (*e.g.*, actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) prices consistent with market principles based on an assessment by Commerce of the government-set price (tier three).[290]

As discussed above, because Commerce is finding that Chinese markets for steam coal were distorted by government involvement, we are selecting external benchmark prices, *i.e.*, "tier two" world market prices, consistent with 19 CFR 351.511(a)(2)(ii) and the *CVD Preamble*. Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under "tier two," Commerce will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Accordingly, to derive the benchmark prices we included ocean freight and inland freight that would be incurred to deliver inputs to the respondents' production facilities. We then added to the benchmark prices the appropriate import duties applicable to imports of steam coal into China, as provided by the Government of China.[291] Additionally, we added the appropriate VAT of 17 percent to the benchmark prices.

We compared these monthly benchmark prices to Mingtai's reported purchase prices for individual domestic transactions, including VAT and delivery charges. Based on this comparison, we preliminarily determine that a benefit exists for Mingtai in the amount of the difference between the benchmark prices and the prices Mingtai paid, respectively. We divided the total benefits by the appropriate consolidated sales denominator, as discussed in the "Subsidies Valuation Information" section.

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[288] *Id.* at 93.
[289] *Id.* at 98.
[290] *See* 19 CFR 351.511(a)(2).
[291] Consistent with *Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2011*, 79 FR 108 (January 2, 2014) (*Citric Acid from China; 2011 Review*), we have utilized the Most Favored Nation import duty rate because it reflects the general tariff rate applicable to world trade. *See Citric Acid from China; 2011 Review* IDM at 90.

For the reasons discussed above, we have calculated a subsidy rate of 5.20 percent *ad valorem* for Mingtai for the provision of steam coal for LTAR.[292] Record information indicates that Yong Jie New Material did not purchase steam coal during the POI, therefore, we are not calculating a benefit for this program for Yong Jie New Material.

10. Government Provision of Electricity for LTAR

For the reasons explained in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we are basing our preliminary determination regarding the Government of China's provision of electricity for LTAR on facts otherwise available. Therefore, we preliminarily determine that the Government of China's provision of electricity confers a financial contribution as a provision of a good under section 771(5)(D)(iii) of the Act and is specific under section 771(5A)(D) of the Act.

For determining the existence and amount of any benefit under this program, we selected the highest non-seasonal provincial rates in China for each electricity category (*e.g.*, "large industry," "general industry and commerce") and "base charge" (either maximum demand or transformer capacity) used by the respondent. Additionally, where applicable, we identified and applied the peak, normal, and valley rates within a category.

Consistent with our approach in *Wind Towers from China*, we first calculated the respondents' variable electricity costs by multiplying the monthly kilowatt hours (kWh) consumed at each price category (*e.g.*, peak, normal, and valley, where appropriate) by the corresponding electricity rates paid by the respondent during each month of the POI.[293] Next, we calculated the benchmark variable electricity costs by multiplying the monthly kWh consumed at each price category by the highest electricity rate charged at each price category. To calculate the benefit for each month, we subtracted the variable electricity costs paid by the respondent during the POI from the monthly benchmark variable electricity costs.

To measure whether Mingtai received a benefit with regard to its base rate (*i.e.*, either maximum demand or transformer capacity charge), we first multiplied the monthly base rate charged to Mingtai by the corresponding consumption quantity. Next, we calculated the benchmark base rate cost by multiplying Mingtai's consumption quantities by the highest maximum demand or transformer capacity rate. To calculate the benefit, we subtracted the maximum demand or transformer capacity costs paid by the companies during the POI from the benchmark base rate costs. We then calculated the total benefit received during the POI under this program by summing the benefits stemming from Mingtai's variable electricity payments and base rate payments.[294]

To calculate the net subsidy rates attributable to Mingtai, we divided the benefit by the appropriate sales denominators, as described in the "Subsidies Valuation" section above. On this

[292] *See* Attachment 2 for the underlying calculation.
[293] *See Wind Towers from China* IDM at 21-22.
[294] *See* Mingtai Preliminary Calculation Memorandum.

basis, we preliminarily determine that Mingtai a received countervailable subsidy rate of 0.84 percent *ad valorem*, respectively.

See discussion above regarding application of AFA for Yong Jie New Material's provision of electricity for LTAR subsidy rate.

11. <u>"Other Subsidies"</u>

Mingtai and Yong Jie New Material and its cross-owned affiliates reported receiving various non-recurring grants from the Government of China during the POI and throughout the AUL period. As discussed in the "Use of Facts Available and Adverse Inferences" section above, Commerce preliminarily determines that these grants constitute a financial contribution under section 771(5)(D)(i) of the Act, and that they are specific under section 771(5A) of the Act. Commerce further preliminarily determines that these grants each confer a benefit equal to the amount of the grant provided in accordance with 19 CFR 351.504(a). To calculate the benefit received under these programs, Commerce followed the methodology described in 19 CFR 351.524. Grants under the programs listed below were received by the mandatory respondents during the POI. To calculate the *ad valorem* subsidy rate for these grants, Commerce divided the benefit conferred under each of these programs by the appropriate POI sales denominator – total sales or total export sales – depending on the nature of the subsidy program.

Based on the methodology outlined above, Commerce preliminarily determines a cumulative *ad valorem* subsidy rate of 0.01 percent for Mingtai and 2.37 percent *ad valorem* for Yong Jie New Material.

B. Programs Preliminarily Determined Not to Confer a Measurable Benefit during the POI

The respondents reported receiving benefits under various programs, some of which Commerce initiated and others that were self-reported. Based on the record evidence, we preliminarily determine that the benefits from certain programs were fully expensed to years prior to the POI or are less than 0.005 percent *ad valorem* when attributed to the respondent's applicable sales as discussed above in the "Attribution of Subsidies" section above. Consistent with Commerce's practice,[295] we have not included those programs in our preliminary subsidy rate calculations for the respondents. We also determine that it is unnecessary for Commerce to make a preliminary determination as to the countervailability of those programs.

C. Programs Preliminarily Determined Not to Be Used during the POI

1. Deed Tax Exemption for SOEs Undergoing Mergers or Restructuring
2. Equity Infusions into Nanshan Aluminum
3. Exemptions for SOEs from Distributing Dividends
4. Export Credits from Export-Import Bank of China – Export Seller's Credits

[295] *See, e.g.*, *Large Residential Washers from the Republic of Korea: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Determination*, 77 FR 33181 (June 5, 2012) (*Large Residential Washers from Korea*), and accompanying IDM at 10, unchanged in final *Residential Washers from Korea.*

5. Grants for Energy Conservation and Emission Reduction
6. Grants to Nanshan Aluminum
7. Grants for the Relocation of Productive Facilities
8. Grants for Retirement of Capacity
9. Income Tax Concessions for Enterprises Engaged in Comprehensive Resource Utilization
10. Income Tax Reduction for High or New Technology Enterprises
11. Preferential Loans for State-Owned Enterprises (SOEs)
12. Stamp Tax Exemption on Share Transfers Under Non-Tradeable Share Reform
13. The State Key Technology Project Fund

XII. CALCULATION OF THE ALL-OTHERS RATE

Sections 703(d) and 705(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act. Notwithstanding the language of section 705(c)(5)(A)(i) of the Act, we have not calculated the "all-others" rate by weight-averaging the rates of the two individually investigated respondents, because doing so risks disclosure of proprietary information. Therefore, for the "all-others" rate, we calculated a simple average of the two responding companies' rates. In this investigation, the only rates that are not zero or *de minimis* or based entirely on the facts available are the rates calculated for Mingtai and Yong Jie New Material. Consequently, we are assigning the simple-average of the rates calculated for Mingtai and Yong Jie New Material (*i.e.* 34.99 and 31.20 percent, respectively) as the "all-others" rate (*i.e.* 33.10 percent *ad valorem*).

XIII. ITC NOTIFICATION

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an APO, without the written consent of the Assistant Secretary for Enforcement and Compliance.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after Commerce makes its final determination.

XIV. DISCLOSURE AND PUBLIC COMMENT

Commerce intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement.[296] Case briefs may be submitted to Enforcement and Compliance's Antidumping and Countervailing Duty

[296] *See* 19 CFR 351.224(b).

Centralized Electronic Service System (ACCESS) no later than seven days after the date on which the last verification report is issued in this proceeding and rebuttal briefs, limited to issues raised in the case briefs, may be submitted no later than five days after the deadline for case briefs.[297]

Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[298] This summary should be limited to five pages total, including footnotes.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5:00 p.m. Eastern Time, within 30 days after the date of publication of this notice.[299] Hearing requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues parties intend to present at the hearing. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and location to be determined. Prior to the date of the hearing, Commerce will contact all parties that submitted case or rebuttal briefs to determine if they wish to participate in the hearing. Commerce will then distribute a hearing schedule to the parties prior to the hearing and only those parties listed on the schedule may present issues raised in their briefs.

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using ACCESS.[300] Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time,[301] on the due dates established above.

XIII. VERIFICATION

As provided in section 782(i)(1) of the Act, we intend to verify the factual information submitted in response to Commerce's questionnaires.

[297] *See* 19 CFR 351.309(c)(1)(i) and (d)(1).
[298] *See* 19 CFR 351.309(c)(2) and (d)(2).
[299] *See* 19 CFR 351.310(c).
[300] *See* 19 CFR 351.303(b)(2)(i).
[301] *See* 19 CFR 351.303(b)(1).

XIV. CONCLUSION

We recommend that you approve the preliminary findings described above.

☒ ☐

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Agree Disagree

4/16/2018

X 

Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

APPENDIX

AFA Rate Calculation

	Program Name	AFA Rate	Source
1.	Deed Tax Exemption for SOEs Undergoing Mergers or Restructures	9.71%	Highest Rate for Similar Program Based on Benefit Type
2.	Equity Infusions into Nanshan Aluminum	N/A	N/A
3.	Exemptions for SOEs from Distributing Dividends	0.58%	Highest Rate for Similar Program Based on Benefit Type
4.	Export Buyer's Credits	10.54%	Highest Rate for Similar Program Based on Benefit Type
5.	Export Loans from Chinese SOCBs	10.54%	Highest Rate for Similar Program Based on Benefit Type
6.	Export Seller's Credits	10.54%	Highest Rate for Similar Program Based on Benefit Type
7.	Foreign Trade Development Fund Grants	0.58%	Highest Rate for Similar Program Based on Benefit Type
8.	Government of China and Sub-Central Government Subsidies for the Development of Famous Brands and China World Top Brands	0.58%	Highest Rate for Similar Program Based on Benefit Type
9.	Government Provision of Electricity for LTAR	0.84%	Calculated – Mingtai
10.	Government Provision of Land for LTAR	0.24%	Calculated – Yong Jie New Material
11.	Government Provision of Primary Aluminum for LTAR	13.52%	Calculated – Yong Jie New Material
12.	Government Provision of Steam Coal for LTAR	5.20%	Calculated – Mingtai
13.	Grants for Energy Conservation and Emission Reduction	0.58%	Highest Rate for Similar Program Based on Benefit Type
14.	Grants for the Relocation of Productive Facilities	0.58%	Highest Rate for Similar Program Based on Benefit Type
15.	Grants for the Retirement of Capacity	0.58%	Highest Rate for Similar Program Based on Benefit Type
16.	Grants to Nanshan Aluminum	N/A	N/A

17.	Import Tariff and VAT exemptions on Imported Equipment in Encouraged Industries	9.71%	Highest Rate for Similar Program Based on Benefit Type
18.	Income Tax Concessions for Enterprises Engaged in Comprehensive Resource Utilization	25.00%	Highest Rate for Similar Program Based on Benefit Type
19.	Income Tax Deductions/Credits for Purchase of Special Equipment		
20.	Income Tax Reduction for HNTEs		
21.	Income Tax Reduction for R&D under the EITL		
22.	Policy Loans to Common Alloy Sheet Industry	3.62%	Calculated – Yong Jie New Material
23.	Preferential Loans for SOEs		
24.	Stamp Tax Exemption on Share Transfers Under Non-Tradeable Share Reform	9.71%	Highest Rate for Similar Program Based on Benefit Type
25.	The State Key Technology Fund Project	0.58%	Highest Rate for Similar Program Based on Benefit Type
26.	VAT Rebates on Domestically-Produced Equipment	0.07%	Calculated – Yong Jie New Material

Total AFA Rate: **113.30%**