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

C-570-083
Investigation
Public Document
E&C/VII: CY/ML

March 21, 2019

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: Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Certain Steel Wheels from the People's Republic of China

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I. SUMMARY

The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of certain steel wheels (steel wheels) from the People's Republic of China (China), as provided in section 703 of the Tariff Act of 1930, as amended (Act). The mandatory respondents subject to this investigation are Xiamen Sunrise Wheel Group Co., Ltd. (Xiamen Sunrise)[1] and Zhejiang Jingu Company Limited (Zhejiang Jingu).[2] The period of investigation (POI) is January 1, 2017, through December 31, 2017.

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[1] As discussed below, Commerce has assigned Xiamen Sunrise Wheel Group Co., Ltd.'s rate to each of the entities named as cross-owned in its affiliation questionnaire response: Xiamen Sunrise Wheel Co., Ltd., Xiamen Sunrise Metal Co., Ltd., Xiamen Topu Import & Export Co., Ltd. and Sichuan Sunrise Metal Industry Co., Ltd. *See also Certain Steel Wheels from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 83 FR 44573 (August 31, 2018) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum (PDM) at 7-8.

[2] As discussed below, Commerce has assigned Zhejiang Jingu Company Limited's rate to each of the entities named as cross-owned in its affiliation questionnaire response: Shanghai Yata Industry Company Limited; Shangdong Jingu Auto Parts Co., Ltd.; Chengdu Jingu Wheel Co., Ltd.; and An'Gang Jingu (Hangzhou) Metal Materials Co., Ltd. *See also* PDM at 8.

We analyzed the comments of the interested parties. As a result of this analysis, we have made changes to the *Preliminary Determination*.[3] We recommend that you approve the positions described in the "Discussion of Comments" section of this memorandum.

Below is a complete list of the issues in this investigation on which we received comments:

Comment 1: Whether to Clarify the Scope to Include Steel Wheels Processed in a Third Country Using Rims and Discs from China.
Comment 2: Whether to Revise the Total AFA Rate Applied to Xiamen Sunrise and Zhejiang Jingu
Comment 3: Calculation of the "All-Others" Rate
Comment 4: Whether Critical Circumstances Exist

II. BACKGROUND

On August 31, 2018, Commerce published its *Preliminary Determination* in the countervailing duty (CVD) investigation of certain steel wheels from China.[4] In the *Preliminary Determination*, we aligned the final CVD determination with the final determination in the companion antidumping duty (AD) investigation, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4). On September 5, 2018, Xiamen Sunrise filed a ministerial error allegation.[5] We found the alleged error to be methodological and made no changes to the *Preliminary Determination*.[6] On October 4, 2018, Xiamen Sunrise withdrew its participation from this investigation and requested its business proprietary information (BPI) to be removed from the record.[7]

On October 19, 2018, the petitioners[8] submitted a critical circumstances allegation with respect to imports of subject merchandise, pursuant to section 703(e)(1) of the Act and 19 CFR 351.206(c)(1).[9] On October 24, 2018, Government of China (GOC) submitted its response to the critical circumstances allegation.[10] We have addressed the critical circumstances allegation in this final determination in the "AFFIRMATIVE DETERMINATION OF CRITICAL CIRCUMSTANCES, IN PART" section and Comment 4, below.

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[3] *See Preliminary Determination*, 83 FR 44573.
[4] *Id.*
[5] *See* Letter from Xiamen Sunrise, "Certain Steel Wheels from the People's Republic of China: Ministerial Error Comments," dated September 4, 2018.
[6] *See* Memorandum, "Allegation of Ministerial Error in the Preliminary Determination with Regard to Xiamen Sunrise Wheel Group Co., Ltd," dated December 3, 2018.
[7] *See* Letter from Xiamen Sunrise, "Certain Steel Wheels from the People's Republic of China: Withdrawal from Participation," dated October 4, 2018 (Xiamen Sunrise Withdrawal Letter).
[8] The petitioners in this investigation are Accuride Corporation and Maxion Wheels Akron LLC (collectively, the petitioners).
[9] *See* Letter from the petitioners, "Certain Steel Wheels from China - Petitioners' Critical Circumstances Allegation," dated October 19, 2018.
[10] *See* Letter from GOC, "Certain Steel Wheels from the People's Republic of China. Case No. C-570-083: Response to Critical Circumstances Allegation," dated October 24, 2018.

We received timely case and rebuttal briefs from the petitioners and the GOC.[11] On December 11, 2018, the petitioners requested permission to submit additional factual information for the final scope determination to ensure any orders resulting from this investigation and the concurrent AD investigation would effectively provide protection from unfairly-traded imports.[12] Commerce allowed the petitioners to submit the requested information on December 14, 2018 and gave interested parties an opportunity to comment.[13] Accordingly, on December 19, 2018, the petitioners submitted a request for clarification of the scope of the investigation.[14] On February 4, 2019, Xiamen Sunrise and Zhejiang Jingu each submitted rebuttal comments concerning the Petitioners' Scope Comments.[15]

No public hearing was held for this investigation because the hearing request was withdrawn.[16]

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.[17] If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. Accordingly, the revised deadline for the final determination is now March 21, 2019.

III. PERIOD OF INVESTIGATION

The POI is January 1, 2017, through December 31, 2017.

IV. SCOPE OF THE INVESTIGATION

As discussed in Comment 1 below, we have clarified the scope of this investigation to include the following provision:

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[11] *See* Letter from the petitioners, "Case Brief," dated on December 4, 2018 (Petitioners Case Brief); Letter from GOC, "Certain Steel Wheels from the People's Republic of China, Case No. C-570-083: Rebuttal Brief," dated December 10, 2018 (GOC Rebuttal Brief).

[12] *See* Letter from the petitioners, "Certain Steel Wheels from China (C-570-083) – Petitioners' Request to Submit Additional Factual Information Relevant to Scope," dated December 11, 2018.

[13] *See* Memorandum, "Certain Steel Wheels from the People's Republic of China: Opportunity to Submit Factual Information and Comments Pertaining to the Scope of Investigation," dated December 14, 2018.

[14] *See* Letter from the petitioners, "Certain Steel Wheels from the People's Republic of China (A-570-082, C-570-083) – Petitioners' Request for Clarification of the Scope of the Investigations and Submission of Additional Factual Information Relevant to Scope," dated December 19, 2018 (Petitioners' Scope Comments).

[15] *See* Letter from Xiamen Sunrise, "Certain Steel Wheels from the People's Republic of China: Response to Petitioners' Request for Clarification of the Scope of the Investigations and Submission of Additional Factual Information Relevant to Scope," dated February 4, 2019 (Xiamen Sunrise's Scope Comments); Letter from Zhejiang Jingu, "Antidumping and Countervailing Duty Investigation of Certain Steel Wheels from the People's Republic of China: Response to Petitioners' Request for Clarification of Scope of Investigation," dated February 4, 2019 (Zhejiang Jingu's Scope Comments).

[16] *See* Letter from the petitioners, "Certain Steel Wheels from China (C-570-083) - Petitioners' Withdrawal of Request for Hearing," dated December 13, 2018.

[17] *See* Memorandum, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019 (Tolling Memorandum). All deadlines in this segment of the proceeding have been extended by 40 days.

The scope includes rims and discs that have been further processed in a third country, including, but not limited to, the welding and painting of rims and discs from China to form a steel wheel, or any other processing that would not otherwise remove the merchandise from the scope of the proceeding if performed in China.

For a full description of the scope of this investigation, *see* this memorandum's accompanying *Federal Register* notice at Appendix I.

V. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

a. Legal Standard

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

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 manner."[18] 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."[19]

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."[20] It is Commerce's

[18] *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*); *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).
[19] *See* Statement of Administrative Action (SAA) 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 at 870.
[20] *See, e.g.*, SAA at 870.

practice to consider information to be corroborated if it has probative value.[21] In analyzing whether information has probative value, it is Commerce's practice to examine the reliability and relevance of the information to be used.[22] However, the SAA emphasizes that Commerce need not prove that the selected facts available are the best alternative information.[23]

In a CVD investigation, Commerce requires information from both the foreign producers and exporters of the merchandise under investigation and the government of the country where those producers and exporters are located. When the government fails to provide requested and necessary information concerning alleged subsidy programs, Commerce, applying AFA, may find that a financial contribution exists under the alleged program and that the program is specific.[24] However, where possible, Commerce will rely on the responsive producer's or exporter's records to determine the existence and amount of the benefit conferred, to the extent that those records are useable and verifiable.[25]

Otherwise, under 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 non-cooperating interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.[26]

b. Application of Total AFA to Xiamen Sunrise and Zhejiang Jingu

As we determined in the *Preliminary Determination*, because the mandatory respondent Zhejiang Jingu did not respond to our requests for information and withdrew its participation, we have relied on facts available with an adverse inferences in selecting from among the facts otherwise available, pursuant to sections 776(a)(2)(A), (B), and (C) and (b) of the Act, as discussed further below. Furthermore, as an extension of our application of AFA, we have assigned Zhejiang Jingu's rate to all of the entities named in its affiliation questionnaire response.[27]

In the *Preliminary Determination*, we determined that countervailable subsidies were being provided to mandatory respondent Xiamen Sunrise for certain programs under investigation, and that Xiamen Sunrise either did not use or did not receive a measurable benefit for the remaining programs under investigation.[28] Since the *Preliminary Determination*, Xiamen Sunrise withdrew

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[21] *See* SAA at 870.
[22] *See, e.g.*, SAA at 869.
[23] *See* SAA at 869-70.
[24] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2015*, 83 FR 34828 (July 23, 2018) and accompanying Issues and Decision Memorandum at 6-7.
[25] *Id.*
[26] *See* section 776(d)(3) of the Act.
[27] *See* PDM at 16-17.
[28] *Id.* at 34-44

its participation in this investigation and requested the return of its business proprietary information (BPI) submitted on the record of this investigation. For purposes of this final determination, we find that Xiamen Sunrise has significantly impeded this proceeding and provided information which could not be verified, in accordance with section 776(a)(2)(C) and (D) of the Act. In addition, we find that an adverse inference is warranted, pursuant to section 776(b) of the Act, because by withdrawing from participation, Xiamen Sunrise has failed to cooperate to the best of its ability. Accordingly, we have relied on facts available with an adverse inference in selecting among the facts otherwise available, as discussed further below. Additionally, as an extension of our application of AFA, we have assigned Xiamen Sunrise's rate to all of the entities named in its affiliation questionnaire response.[29]

In light of the above, as AFA, we find that countervailable subsidies are being provided to Zhejiang Jingu and Xiamen Sunrise for all programs identified in the Initiation Checklist and *Preliminary Determination*, as appropriate.[30] Accordingly, as AFA, Commerce is finding the programs identified in Appendix I to be countervailable – that is, they provide a financial contribution within the meaning of sections 771(5)(B)(i) and (D) of the Act, confer a benefit within the meaning of sections 771(5)(B) and (E) of the Act, and are specific within the meaning of section 771(5A) of the Act.[31, 32]

c. Selection of Total AFA Rate

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.[33] When selecting AFA rates, section 776(d) of the Act provides that Commerce may use a countervailable subsidy rate applied for the same or a similar program in a

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[29] *See* Letter from Xiamen Sunrise, "Certain Steel Wheels from the People's Republic of China: Response to the Department's Affiliation Questions," dated June 8, 2018.

[30] *See* Countervailing Duty Investigation Initiation Checklist: Certain Steel Wheels from the People's Republic of China, dated April 16, 2018 (Initiation Checklist). The Initiation Checklist identified certain company-specific alleged subsidy programs that would only be investigated to the extent that they appear in the financial statements of the named company if it was chosen as a respondent. *See* Initiation Checklist at 50-54. Thus, we have not included these company-specific alleged subsidy programs, if any, that are not related to either Zhejiang Jingu or Xiamen Sunrise in their respective AFA rates.

[31] *See* Initiation Checklist; *see also* PDM at 34-43.

[32] With respect to "Foreign Trade Development Fund Program Grants," as AFA, we continue to find this program to be specific because it is contingent upon export in accordance with section 771(5A)(B) of the Act. *See* Preliminary *Determination* and PDM at 32-33.

[33] *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 Issues and Decision 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 Issues and Decision Memorandum at "VI. Use of Facts Otherwise Available and Adverse Inferences: Application of Adverse Inferences: Non-Cooperative Companies."

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.[34] Accordingly, when selecting AFA rates, if we have cooperating respondents (which we do not in this investigation), we first determine if there is an identical program in the investigation and use the highest calculated rate for the identical program. If there is no identical program that resulted in a subsidy rate above zero for a cooperating respondent in the investigation, we then determine if an identical program was used in another CVD proceeding involving the same country, and apply the highest calculated rate for the identical program (excluding *de minimis* rates).[35] If no such rate exists, we then determine if there is a similar/comparable program (based on the treatment of the benefit) in any 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.[36]

Additionally, the standard income tax rate for corporations in China in effect during the POI was 25 percent.[37] Thus, the highest possible benefit for income tax programs which we have included in our AFA rate for both Zhejiang Jingu and Xiamen Sunrise is 25 percent. Accordingly, we are applying the 25 percent AFA rate on a combined basis (*i.e.*, the nine 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.[38]

Commerce's methodology is consistent with Section 502 of the Trade Preferences Extension Act of 2015 (TPEA), which the President of the United States signed into law on June 29, 2015. Section 502 of the TPEA added new subsection (d) to section 776 of the Act. Section 776(d)(1)(A) of the Act states that when applying an adverse inference in selecting from the facts otherwise available, Commerce may (i) use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or (ii) if there is no same or similar program, use a countervailable subsidy for a subsidy rate from a proceeding that Commerce considers reasonable to use. Thus, section 776(d)(1)(A) of the Act expressly allows

[34] *See, e.g., Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 78 FR 50391 (August 19, 2013) (*Shrimp from China),* and accompanying Issues and Decision Memorandum (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").
[35] 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 Issues and Decision Memorandum at "1. Grant Under the Tertiary Technological Renovation Grants for Discounts Program" and "2. Grant Under the Elimination of Backward Production Capacity Award Fund."
[36] *See Shrimp from China* IDM at 13-14.
[37] *See* Initiation Checklist at 8.
[38] *See, e.g., Aluminum Extrusions from China Final* IDM at "Application of Adverse Inferences: Non-Cooperative Companies."

for Commerce's existing practice of using an AFA hierarchy in selecting a rate "among the facts otherwise available" in CVD cases, should the facts warrant such a selection.

Section 776(d)(2) of the Act authorizes Commerce to rely on the highest prior rate under certain circumstances. In deriving an AFA rate under section 776(d)(1)(A) of the Act described above, the provision states that Commerce "may apply any of the countervailable subsidy rates or dumping margins specified under that paragraph, including the highest such rate or margin, based on the evaluation by the administering authority of the situation that resulted in the administering authority using an adverse inference in selecting among the facts otherwise available."[39] No legislative history accompanied this provision of the TPEA. Accordingly, Commerce is left to interpret this "evaluation by the administering authority of the situation" language in light of existing agency practice, and the structure and provisions of section 776(d) of the Act itself.

We find that the Act anticipates a two-step process for determining an appropriate AFA rate in CVD cases: 1) Commerce may apply its hierarchy methodology, and 2) Commerce may apply the highest rate derived from this hierarchy to a respondent, should it choose to apply that hierarchy in the first place, unless, after an evaluation of the situation that resulted in the use of AFA, Commerce determines that the situation warrants a rate different than the rate derived from the hierarchy be applied.[40]

In applying the AFA rate provision, it is well established that when selecting the rate from among possible sources, Commerce seeks to use a rate that is sufficiently adverse to effectuate the statutory purpose of section 776(b) of the Act to induce respondents to provide Commerce with complete and accurate information in a timely manner. This ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[41] Further, "in the case of an uncooperative respondent, Commerce is in the best position, based on its expert knowledge of the market and the individual respondent, to select adverse facts that will create the proper deterrent to non-cooperation with its investigations and assure a reasonable margin."[42] It is pursuant to this knowledge and experience that Commerce has implemented its AFA hierarchy in CVD cases to select an appropriate AFA rate.[43]

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[39] *See* section 776(d)(2) of the Act.

[40] This differs from AD proceedings, for which no hierarchy applies, under section 776(d)(1)(B) of the Act. Under that provision, "any dumping margin from any segment of the proceeding under the applicable antidumping order" may be applied, which suggests an adverse rate could be derived from different available margins, given the facts on the record.

[41] *See* SAA at 870; *see also Essar Steel*, 678 at 1276 (citing *F. Lii De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027, 1032 (Fed. Cir. 2000) (finding that "{t}he purpose of the adverse facts statute is 'to provide respondents with an incentive to cooperate" with Commerce's investigation, not to impose punitive damages.'") (*De Cecco*).

[42] *See De Cecco*, 216 F.3d at 1032.

[43] Commerce has adopted a practice of applying its hierarchy in CVD cases. *See e.g., Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017) and accompanying Issues and Decision Memorandum at Comment 4 at 28-31 (applying the AFA hierarchical methodology within the context of a CVD investigation); *see also Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 41003 (July 14, 2015) and accompanying Issues and Decision Memorandum at

In applying its AFA hierarchy in CVD investigations, Commerce's goal is as follows: in the absence of necessary information from cooperative respondents, Commerce is seeking to find a rate that is a relevant indicator of how much the government of the country under investigation is likely to subsidize the industry at issue, through the program at issue, while inducing cooperation. Accordingly, in sum, the three factors that Commerce takes into account in selecting a rate are: 1) the need to induce cooperation, 2) the relevance of a rate to the industry in the country under investigation (*i.e.*, can the industry use the program from which the rate is derived), and 3) the relevance of a rate to a particular program, though not necessarily in that order of importance.

Furthermore, the hierarchy (as well as section 776(d)(1) of the Act) recognizes that there may be a "pool" of available rates that Commerce can rely upon for purposes of identifying an AFA rate for a particular program. In investigations for example, this "pool" of rates could include the rates for the same or similar programs used in either that same investigation, or prior CVD proceedings for that same country. Of those rates, the hierarchy provides a general order of preference to achieve the goal identified above. The hierarchy therefore does not focus on identifying the highest possible rate that could be applied from among that "pool" of rates; rather, it adopts the factors identified above of inducement, relevancy to the industry and to the particular program.

Under the first step of Commerce's investigation hierarchy, Commerce applies the highest non-zero rate calculated for a cooperating company for the identical program in the investigation. Under this step, we will even use a *de minimis* rate as AFA if that is the highest rate calculated for another cooperating respondent in the same industry for the same program.

However, if there is no identical program match within the investigation, or if the rate is zero, then Commerce will shift to the second step of its investigation hierarchy, and either apply the highest non-*de minimis* rate calculated for a cooperating company in any CVD proceeding involving the same country for the identical program, or if the identical program is not available, for a similar program. This step focuses on the amount of subsidies that the government has provided in the past under the investigated program. The assumption under this step is that the non-cooperating respondent under investigation uses the identical program at the highest above *de minimis* rate of any other company using the identical program.

Finally, if no such rate exists, under the third step of Commerce's investigation hierarchy, Commerce applies the highest rate calculated for a cooperating company from any non-company-specific program that the industry subject to the investigation could have used for the production or exportation of subject merchandise.[44]

11-15 (applying the AFA hierarchical methodology within the context of a CVD administrative review). However, depending on the type of program, Commerce may not always apply its AFA hierarchy. *See e.g.*, *Certain Uncoated Paper from Indonesia: Final Affirmative Countervailing Duty Determination*, 81 FR 3104 (January 20, 2016), and accompanying IDM at 7-8 (applying, outside of the AFA hierarchical context, the highest combined standard income tax rate for corporations in Indonesia).

[44] In an investigation, unlike an administrative review, Commerce is just beginning to achieve an understanding of how the industry under investigation uses subsidies. Commerce may have no prior understanding of the industry and no final calculated and verified rates for the industry.

In all three steps of Commerce's AFA investigation hierarchy, if Commerce were to choose low AFA rates consistently, the result could be a negative determination with no order (or a company-specific exclusion from an order) and a lost opportunity to correct future subsidized behavior. In other words, the "reward" for a lack of cooperation would be no order discipline in the future for all or some producers and exporters. Thus, in selecting the highest rate available in each step of Commerce's investigation AFA hierarchy (which is different from selecting the highest possible rate in the "pool" of all available rates), Commerce strikes a balance between the three necessary variables: inducement, industry relevancy, and program relevancy.[45]

Furthermore, we find that section 776(d)(2) of the Act applies as an exception to the selection of an AFA rate under section 776(d)(1) of the Act; that is, after "an evaluation of the situation that resulted in the application of an adverse inference," Commerce may decide that given the unique and unusual facts on the record, the use of the highest rate within that step is not appropriate.

Here, there are no facts on this record that suggest that a rate other than the highest rate envisioned under the appropriate step of the hierarchy applied in accordance with section 776(d)(1) of the Act should be applied as AFA for all programs included in the AFA rate for Zhejiang Jingu, and for all programs included in the AFA rate for Xiamen Sunrise with the exception of three programs discussed below. As explained above, Commerce is applying AFA because Zhejiang Jingu and Xiamen Sunrise withdrew from participation and otherwise failed to cooperate to the best of their ability. Therefore, with the exception of the three programs for Xiamen Sunrise discussed below, we preliminarily find that the record does not support the application of an alternative rate, pursuant to section 776(d)(2) of the Act.

As discussed above, Xiamen Sunrise withdrew its participation from this investigation after the *Preliminary Determination* in which we calculated margins for Xiamen Sunrise for certain programs based on its reporting.[46] For all but three of the programs included in Xiamen Sunrise's AFA rate in this final determination, we find that following the appropriate step of the hierarchy discussed above results in a rate higher than the rate Xiamen Sunrise would have received, had we continued to rely on its reported data, as calculated in the *Preliminary Determination*. However, Commerce may depart from the above CVD AFA hierarchy to prevent a party from obtaining "a more favorable result by failing to cooperate than if had cooperated fully."[47] We further find this is fully consistent with our discussion of section

[45] It is significant that all interested parties, since at least 2007, that choose not to provide requested information have been put on notice that Commerce, in the application of facts available with an adverse inference, may apply its hierarchy methodology and select the highest rate in accordance with that hierarchy. *See, e.g.*, *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) and accompanying IDM at 2 ("As AFA in the instant case, the Department is relying on the highest calculated final subsidy rates for income taxes, VAT and Policy lending programs of the other producer/producer in this investigation, Gold East Paper (Jiangsu) Co., Ltd. (GE). GE did receive any countervailable grants, so for all grant programs, we are applying the highest subsidy rate for any program otherwise listed…"). Therefore, when an interested party is making a decision as to whether or not to cooperate and respond to a request for information by Commerce, it does not make this decision in a vacuum; instead, the interested party makes this decision in an environment in which Commerce may apply the highest rate as AFA under its hierarchy.
[46] *See* Xiamen Sunrise Withdrawal Letter; *see also* PDM at 34-44.
[47] *See* SAA at 870.

776(d)(2) of the Act discussed above.

In *OCTG from China 2012*, Commerce determined that rote application of the hierarchy would result in a rate for a program lower than the rate calculated for a company in the *Preliminary Determination*, a company who had subsequently withdrawn from participation after the *Preliminary Determination*. Therefore, in that case, we progressed down the hierarchy until we identified a rate in a later step of the hierarchy which was higher than the preliminary rate.[48]

Here, we had no cooperating respondents in this investigation, so the first step in the hierarchy is not at issue for any program (*i.e.*, the highest calculated above de minimis rate for an identical or similar program in this investigation). Therefore, we examined the AFA rates potentially assigned to three programs[49] under our standard CVD hierarchy, beginning with the second step of the hierarchy, to determine whether such rates were less than the rates calculated for Xiamen Sunrise in the *Preliminary Determination*. We compared the company's calculated CVD rates for these three programs in the *Preliminary Determination* to the rates under the next steps of our standard CVD hierarchy, until the rate resulting from the application of our standard CVD hierarchy was greater than the rate calculated for each of the three programs in the *Preliminary Determination*.[50] Following this methodology, *i.e.*, progressing through the hierarchy, ensures that Xiamen Sunrise does not receive "a more favorable result by failing to cooperate than if had cooperated fully." This is demonstrated in the following chart:

[48] *See Certain Oil Country Tubular Goods from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 52301 (September 3, 2014) (*OCTG from China 2012*) and accompanying Issues and Decision Memorandum (IDM) at Comment 15.
[49] These programs are Export Seller's Credit, Grants for Export Credit Insurance, and Direct Government Grants to Xiamen Sunrise.
[50] *See Preliminary Determination* and Memorandum, "Preliminary Determination Analysis for Xiamen Sunrise Wheel Group Co., Ltd.," dated August 24, 2018 at Attachment I.

Program	Xiamen Sunrise's Calculated Rate from the *Preliminary Determination*	Step 1: The highest calculated above *de minimis* rate for an identical or similar program in this investigation	Step 2: The highest calculated above *de minimis* rate for an identical program in any proceeding in the same country	Step 3: The highest calculated above *de minimis* rate for a similar program in any proceeding in the same country	Step 4: The highest calculated rate from any non-company specific program from any proceeding in the same country, so long as the industry at issue could have used the program
Export Seller's Credit	12.95%	n/a	4.25%[51]	10.54%[52]	44.91%[53]
Grants for Export Credit Insurance	0.74%	n/a	n/a	0.62%[54]	44.91%[55]
Direct Government Grants to Xiamen Sunrise	0.67%	n/a	n/a	0.62%[56]	44.91%[57]

Thus, following our approach in *OCTG from China 2012*, and consistent with section 776(d)(2) of the Act, we progressed through the AFA hierarchy until we reached rates greater than Xiamen Sunrise's calculated preliminary rates for each of the three programs. We therefore arrived at the final tier (*i.e.*, the highest calculated rate from any non-company specific program from any proceeding in the same country, so long as the industry at issue could have used the program),

[51] *See Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 80 FR 34888 (June 18, 2015), and accompanying Issues and Decision Memorandum (calculating a rate of 4.25 percent for the program "Export Seller's Credits from the Export Import Bank of China").

[52] *See Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* 75 FR 70201, 70202 (November 7, 2010) (*Coated Paper from China*) (revised rate for "Preferential Lending to the Coated Paper Industry" program).

[53] *See Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order*, 73 FR 31966 (June 5, 2008) (*Circular Welded Carbon Quality Steel Pipe from China*) and accompanying Memorandum, "Countervailing Duty Investigation: Circular Welded Carbon-Quality Steel Pipe from the People's Republic of China: Ministerial Error Allegations," (July 2, 2008) (Ministerial Error Memorandum) at 8 (calculating a rate of 44.91 percent for the program "Hot-Rolled Steel for LTAR").

[54] *See Chlorinated Isocyanurates from the People's Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review; 2014,* 82 FR 27466 (June 15, 2017) (*Chlorinated Isos 2014*) and accompanying IDM at 6-7 (calculating a rate of 0.62 percent for the program "Special Fund for Energy Saving Technology").

[55] *See Circular Welded Carbon Quality Steel Pipe from China* accompanying Ministerial Error Memorandum at 8.

[56] *See Chlorinated Isos 2014* and accompanying IDM at 6-7 (calculating a rate of 0.62 percent for the program "Special Fund for Energy Saving Technology").

[57] *See Circular Welded Carbon Quality Steel Pipe from China* accompanying Ministerial Error Memorandum at 8.

which is the 44.91 percent rate calculated for the Hot-Rolled Steel for LTAR program in *Circular Welded Carbon Quality Steel Pipe from China*.[58] Thus, based on AFA, we applied a program rate of 44.91 percent for each of the three programs to avoid Xiamen Sunrise's gaining "a more favorable result by failing to cooperate than if it had cooperated fully."[59]

Finally, on a related matter, as discussed above, Xiamen Sunrise withdrew its participation from this investigation and requested that its BPI be removed from the record after the *Preliminary Determination* which relied on such information.[60] Depending on the circumstances of a given case, Commerce may return BPI at the request of withdrawing parties.[61] However, Commerce has declined to do so where it is necessary to preserve the fundamental integrity of the process and the remedial purpose of the law (*i.e.*, if the party requesting the return of its BPI or another party would inappropriately benefit from the removal of the BPI via rate manipulation).[62] Here, we have determined that retaining Xiamen Sunrise's BPI on the record is necessary for the limited purpose of performing our analysis which demonstrates that Xiamen Sunrise will not benefit from its non-cooperation in the manner described above. Therefore, because we find it is necessary to preserve the fundamental integrity of the process and the remedial purpose of the law to retain Xiamen Sunrise's BPI, we have declined Xiamen Sunrise's request.

d. Application of AFA to Find "Massive" Shipments

As noted above, Xiamen Sunrise and Zhejiang Jingu each withdrew its participation in this investigation. With respect to whether there have been massive imports, necessary information is missing from the record, and the respondents have not cooperated to the best of their ability. Accordingly, pursuant to section 776(a)-(b) of the Act, we are determining that there was a massive increase in the volume of imports of the subject merchandise from Xiamen Sunrise and Zhejiang Jingu during the critical circumstances period.

VI. AFFIRMATIVE DETERMINATION OF CRITICAL CIRCUMSTANCES, IN PART

In their allegation, the petitioners argued that critical circumstances exist with respect to imports of certain steel wheels from China because the GOC provided countervailable subsidies to steel wheel producers inconsistent with the Subsidies Agreement, and the existence of "massive" imports of subject merchandise over a relatively short period of time.[63]

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[58] *See Circular Welded Carbon Quality Steel Pipe from China* accompanying Ministerial Error Memorandum at 8.
[59] *See* SAA at 870.
[60] *See* Xiamen Sunrise Withdrawal Letter.
[61] *See Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination*, 75 FR 16428 (April 1, 2010) and accompanying Issues and Decision Memorandum at 4.
[62] *See Certain Steel Nails From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015–2016,* 83 FR 11683 (March 16, 2018) and accompanying Issues and Decision Memorandum at 25; *see also Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 74 FR 29167 (June 19, 2009) and accompanying Issues and Decision Memorandum at Comment 1.
[63] *See* Letter from the petitioners, "Certain Steel Wheels from China – Petitioners' Critical Circumstances Allegation," dated October 19, 2018.

Section 705(a)(2) of the Act provides that Commerce will determine that critical circumstances exist in a CVD investigation if there is a reasonable basis to believe or suspect: (A) the respondents have received a countervailable subsidy that is inconsistent with the Subsidies Agreement;[64] and (B) there have been massive imports of the subject merchandise over a relatively short period. Further, 19 CFR 351.206 provides that imports must increase by a least 15 percent during the "relatively short period" to be considered "massive" and defines a "relatively short period" as normally being the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later.[65] The regulation also provides, however, that, if the Commerce finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, Commerce may consider a period of not less than three months from that earlier time.[66]

In accordance with the *Preliminary Determination*, we continue to determine, as AFA, that the following subsidy program is contintent upon export, and, therefore, is inconsistent with the Subsidies Agreement pursuant to section 705(a)(2)(A) of the Act: the "Foreign Trade Development Fund Program Grants" program.[67] Additionally, as discussed above, as AFA we find that there was a massive increase in the volume of imports of the subject merchandise from Xiamen Sunrise and Zhejiang Jingu during the critical circumstances period pursuant to section 705(a)(2)(B) of the Act.

Therefore, we determine that critical circumstances exist for Xiamen Sunrise's and Zhejiang Jingu's imports of steel wheels from China. In addition, we determine that critical circumstances do not exist with respect to the imports of subject merchandise from all other companies based on the available record evidence. These findings are discussed in greater detail in Comment 4 below.

VII. DISCUSSION OF THE ISSUES

Comment 1: Whether to Clarify the Scope to Include Steel Wheels Processed in a Third Country Using Rims and Discs from China.

Petitioners' Scope Comments

- The new factual information submitted in the petitioners' December 19, 2018, comments – the market research report regarding Chinese-owned facilities in Thailand and Vietnam

[64] Commerce limits its critical circumstances findings to those subsidies contingent upon export performance or use of domestic over imported goods (*i.e.*, those prohibited under Article 3 of the SCM Agreement). *See e.g.*, *Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Carbon and Certain Alloy Steel Wire from Germany*, 67 FR 55808, 55809-10 (August 30, 2002) (*Steel Wire from Germany*).
[65] *See* 19 CFR 351.206(i).
[66] *Id*.
[67] *See* PDM at 32-33..

and the International Trade Commission's import statistics for October 2018 – was not available until early December 2018.[68]

- Commerce should clarify the scope to include steel wheels processed in a third country using rims and discs from China, as follows:

> The scope includes rims and discs that have been further processed in a third country, including, but not limited to, the welding and painting of rims and discs to form a steel wheel, or any other processing that would not otherwise remove the merchandise from the scope of the investigations if performed in the People's Republic of China.[69]

- Similar to *Solar Products from Taiwan*, Commerce should rely on a substantial transformation analysis to determine the country of origin for steel wheels assembled and painted in a third country from rims and discs manufactured in China.[70]
- In order to determine whether substantial transformation has occurred in the third country, Commerce analyzes (1) whether the processed downstream products falls into a different class or kind of product when compared to the upstream product; (2) whether the essential component of the merchandise is substantially transformed in the country of exportation; and (3) the extent of processing."[71]
- As in *Solar Products from Taiwan*, the upstream and processed downstream products are both within the scope and should be considered within the same "class or kind."[72]
- As in *Solar Products from Taiwan*, the upstream and processed downstream products have the same physical characteristics, chemical properties, and use before and after the assembly, as made clear in the Petitions.[73] Accordingly, the essential component of the merchandise is not substantially transformed during the assembly and painting of the steel wheels.

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[68] *See* Petitioners' Scope Comments at Exhibits 2-3.
[69] *Id* at 5-6 (citing, *e.g.*, *Certain Cold-Rolled Steel Flat Products from Brazil: Determination of Sales at Less Than Fair Value*, 81 FR 44946, 44948 (July 29, 2016) (*Cold-Rolled Steel from Brazil*); *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Final Affirmative Critical Circumstances Determination, In Part*, 81 FR 35316 (June 2, 2016) (*CORE from China*)).
[70] *Id*. (citing *Certain Crystalline Silicon Photovoltaic Products from Taiwan: Notice of Amended Preliminary Determination of Sales at Less Than Fair Value*, 79 FR 49754 (August 22, 2014); *Certain Crystalline Silicon Photovoltaic Products from Taiwan: Final Determination of Sales at Less Than Fair Value*, 79 FR 76966 (December 23, 2014), and accompanying Issues and Decision Memorandum (IDM) (*Solar Products from Taiwan*); and *Notice of Final Determination of Sales at Less Than Fair Value: Glycine from India*, 73 FR 16640 (March 28, 2008)).
[71] *Id*. at 6 (citing *Solar Products from Taiwan*, IDM at 19).
[72] *Id*. at 7 (citing *Solar Products from Taiwan*, IDM at 19).
[73] *Id*. at 8 (citing the Petition Volume II at II-11; *Erasable Programmable Read Only Memories (EPROMs) from Japan; Final Determination of Sales at Less Than Fair Value*, 51 FR 39680 (October 30, 1986) (*EPROMs from Japan*) and *Solar Products from Taiwan*, IDM at 19).

- Assembling the rim and disc and painting the steel wheels is not substantial or sophisticated processing,[74] but rather, account for only a minor portion of the costs of manufacturing a steel wheel.[75]

Xiamen Sunrise's Scope Comments

- It is the petitioners' obligation to consider the scope at the beginning of the case to ensure any relief granted will be effective.[76]
- The petitioners' suggested scope clarification seeks to include imports of non-subject merchandise from other countries under the scope of these investigations. If Commerce accepts the petitioners' scope clarification, it should permit an importer to certify that wheels entering the United States are not subject to the scope of these orders. This would facilitate imports of non-subject merchandise.[77]

Zhejiang Jingu's Scope Comments

- In the court-affirmed precedent from *Diamond Sawblades from China*, Commerce determined that "the controlling factor in a substantial transformation determination is not whether there is a change in class or kind of merchandise{,}" but "where the essential quality of the imported product was imparted, as well as the extent of manufacturing and processing in the exporting country and in the third country.[78]
- Similar to *Diamond Sawblades from China*, the rim and disc alone lack the functionality of a finished steel wheel, thus, the "essential quality" is not imparted until the rim and disc are joined through welding to create a finished steel wheel.[79]
- The processing at issue includes capital-intensive and highly technical welding and a sophisticated coating and painting process: more extensive than that for which Commerce found a substantial transformation in *Diamond Sawblades from China*.[80]
- The proposed scope language is overly broad and vague, potentially expanding the scope to include other merchandise that also originates in third countries (*e.g.*, the language does not explicitly require that both the rim and disc be produced in China for China to be considered the country of origin).[81]
- If only the rim or disc were produced in China, substantial transformation, namely a majority (7 of 12) of the steps to produce a finished steel wheel, would occur in a third country.[82]

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[74] *Id*. (citing, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Wax and Wax/Resin Thermal Transfer Ribbons from France*, 69 FR 10674 (March 8, 2004)).
[75] *Id*. at 9, Exhibit 5 (citing *Solar Products from Taiwan*).
[76] *See* Xiamen Sunrise's Scope Comments.
[77] *Id*. at 2-3.
[78] *See* Zhejiang Jingu's Scope Comments (citing *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Part Thereof from the People's Republic of China*, 71 FR 29303 (May 22, 2006) and accompanying Issues and Decision Memorandum (IDM) at 18).
[79] *See* Zhejiang Jingu's Scope Comments at 4.
[80] *Id.* at 4 and Exhibit 1 (citing *ITC Preliminary Determination* at I-13).
[81] *Id*. at 6.
[82] *Id*. at 6-7 at Exhibit 1.

- If Commerce were to improperly expand the scope of these investigations to include third-country merchandise based on circumvention concerns, this would deny exporters and importers the procedural protection afforded by 19 CFR 351.225(l).
- The petitioners' scope request must nevertheless be rejected because the lateness of the filing deprives Commerce of the ability to develop an adequate record and denies interested parties their right of due process.[83]

Commerce's Position:

Following Commerce precedent, we will show "ample deference to the petitioner with respect to the definition of the product of the product(s) for which it seeks relief during the investigation phase of an AD or CVD proceeding"[84] and clarify the scope of this investigation as follows:

The scope includes rims and discs that have been further processed in a third country, including, but not limited to, the welding and painting of rims and discs from China to form a steel wheel, or any other processing that would not otherwise remove the merchandise from the scope of the proceeding if performed in China.

Contrary to Xiamen Sunrise's claim that the petitioner has the obligation of considering the scope at the beginning of an investigation, both the Court of International Trade (CIT) and the Court of Appeals for the Federal Circuit (CAFC) have stated that Commerce has the discretion to clarify the scope, even in a way that "expand{s} the language of a petition," in the course of an AD/CVD investigation.[85] In *Mitsubishi I*, the CIT stated that Commerce "has a certain amount of discretion to expand the language of a petition…with the purpose in mind of preventing the intentional evasion or circumvention of the antidumping duty law."[86] Notably, "the purpose of the petition is to propose an investigation," and the "purpose of the investigation is to determine what merchandise should be included in the final order."[87] Commerce has "inherent power to establish the parameters of the investigation, so that it {is} not…tied to an initial scope definition that…may not make sense in light of the information available to Commerce or subsequently obtained in the investigation."[88]

Furthermore, the CIT has held that "{t}here is no clear point during the course of an {LTFV} investigation at which {Commerce} loses the ability to adjust the scope."[89] In *Kyocera*, the CIT

[83] *Id*. at 2, 11.
[84] *See, e.g., Cold-Rolled Steel from Brazil*, 81 FR at 44948; *see* also *CORE from China*; *see also Antidumping Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, In Part*, 80 FR 34893 (June 18, 2015) and accompanying Issues and Decision Memorandum at comment 1.
[85] *See Mitsubishi Elec. Corp. v. United States*, 700 F. Supp. 538 at 555 (CIT 1988) (*Mitsubishi I*); *see also Mitsubishi Elec. Corp. v. United States*, 898 F.2d 1577 (CAFC 1990) (affirming the CIT's ruling).
[86] *See Mitsubishi I*, 700 F. Supp at 555.
[87] *See Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 79 FR 76970 (December 23, 2014), and accompanying Issues and Decision Memorandum (*Solar Products from China*) at 12 (citing *Duferco Steel, Inc. v. United States*, 296 F.3d 1087, 1096-97 (CAFC 2002) (*Duferco*)).
[88] *See Duferco*, 296 F.3d at 1089 (citing *CMTS from Japan*, 50 FR at 45449).
[89] *See Allegheny Bradford Corp. v. United States*, 342 F. Supp. 2d. 1172 at 1187 (CIT 2004) (*Allegheny Bradford*).

considered Commerce's decision to add language to the scope of the investigation of solar cells from Taiwan.[90] Commerce had included additional language in that scope after the preliminary determination and before the final determination, which covered "modules, laminates, and panels produced in a third-country from cells produced in Taiwan."[91] The CIT sustained Commerce's decision, explaining that "Commerce has the authority to initially determine the scope of the investigation, as well as the authority to modify the scope language until the final order is issued, based on the agency's findings during the course of the investigation."[92]

In this investigation, the petitioners have provided information that indicates that the scope, as proposed in the Petition, may not provide effective relief to the domestic steel wheels industry. Specifically, the petitioners have shown that two major Chinese producers of steel wheels have facilities in Thailand and Vietnam, thus showing that the Chinese producers have some manufacturing capabilities in Thailand and Vietnam.[93] The petitioners have also shown that imports of steel wheels from Thailand and Vietnam have increased in recent months.[94] This information was not available to the petitioners until December 2018.[95] As we have a long-standing practice of taking potential circumvention concerns into consideration when defining the scope of an investigation, we find that it is appropriate to do so here.[96] Furthermore, because we find that the scope language is administrable should this investigation go to order, we find it unnecessary to further consider interested parties' arguments regarding whether it is appropriate to include language on substantial transformation within the scope.

Both petitioners and Zhejiang Jingu make arguments with respect to the substantial transformation test, which we have frequently used to determine the country of origin of particular merchandise. We understand the petitioners to be arguing that "the assembly and painting of steel wheels does not result in a substantial transformation of the rims and discs such that performance of these steps in a third country would not change the country of origin of the rims and discs," and they refer to information from the Petition to argue that "the two steps of assembly and painting account for only about ten percent of the costs of manufacturing a steel wheel."[97] In contrast, Zhejiang Jingu suggests that "Chinese rims and discs that are welded and painted in a third country are 'substantially transformed' in that third country, such that the third country is the country of origin for AD and CVD purposes."[98] As discussed above, Commerce and has the authority to set the scope of the investigation to describe with adequate clarity the subject merchandise that the petitioners are seeking to address. While in some instances

[90] *See Kyocera Solar, Inc. v. United States*, 253 F. Supp. 3d 1294 (CIT 2017).
[91] *Id.* at 1303.
[92] *Id.* at 1315.
[93] *See* Petitioners' Scope Comments at 3 and Exhibit 2.
[94] *Id*. at 3-4 and Exhibit 3.
[95] *Id*. at 4.
[96] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany*, 61 FR 38166, 38169 (January 23, 1996) ("it was {Commerce's} intent to use the language at issue to avoid creating loopholes for circumvention"); *Cellular Mobile Telephones and Subassemblies from Japan; Final Determination of Sales at Less Than Fair Value*, 50 FR 45447, 45448 (October 31, 1985) (*CMTS from Japan*) ("The determination {to expand the scope} was based on the need to prevent circumvention of any antidumping order on {the product}…").
[97] *See* Petitioners' Scope Comments at 9.
[98] *See* Zhejiang Jingu's Scope Comments at 2-3.

Commerce has relied on a substantial transformation analysis to address country-of-origin issues, the decision to conduct such an analysis is contingent upon the facts and circumstances of a particular case.[99] However, here, we find that we can properly frame the scope of the investigation and properly address issues concerning circumvention by incorporating the petitioners' proposed clarification of the scope, subject to the minor change discussed further below. In addition, Commerce has incorporated such third country processing language in other recent investigation scopes without conducting a substantial transformation analysis.[100]

We need not disregard the petitioners' requested scope clarification because of its "lateness," as claimed by Zhejiang Jingu.[101] As explained above, the information relied upon by the petitioners was not available until early December 2018.[102] Moreover, contrary to Zhejiang Jingu's claim, all parties to this investigation were allowed the opportunity to comment on the information submitted by the petitioners, as well as to provide their own factual information to rebut, clarify, or correct the petitioners' submitted factual information pursuant to 19 CFR 351.301(c)(5)(ii).[103] In addition, Zhejiang Jingu claims that we gave interested parties "only one week" to comment on the petitioners' request with "a deadline falling on December 26, 2018."[104] However, we determine that one week is an adequate amount of time to respond to the petitioners' request and, in any event, we note that the December 26, 2018, deadline cited by Zhejiang Jingu was ultimately tolled 40 days to February 4, 2019, to account for the partial shutdown of the federal government.[105]

Likewise, Zhejiang Jingu argues that the inclusion of this language in the scope would deny importers and exporters the "procedural protection afforded by 19 CFR 351.225(l)."[106] Zhejiang Jingu argues that if Commerce were to conduct an anti-circumvention determination after the issuance of this order, that determination would only apply to import entries prospectively from the date of initiation of the circumvention inquiry. Zhejiang Jingu cites to *Bell Supply*,[107] in which the CAFC found that "if Commerce applies the substantial transformation test and concludes that the imported article has a country of origin different from the country identified in an AD or CVD order, then Commerce can include such merchandise within the scope of an AD or CVD order only if it finds circumvention" under the anti-circumvention provision of the statute.[108] According to Zhejiang Jingu, if Commerce finds that rims and discs are substantially transformed in a third country then, pursuant to *Bell Supply*, Commerce can only include such merchandise within the scope by conducting an anti-circumvention determination, and that such a determination could only apply prospectively from the date of initiation.

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[99] *See Canadian Solar, Inc. v. United States*, 2019 U.S. App. LEXIS 7181 at *20 (CAFC 2019).
[100] *See, e.g., Certain Cold-Rolled Steel Flat Products from Brazil, India, the Republic of Korea, and the United Kingdom: Amended Final Affirmative Antidumping Determinations for Brazil and the United Kingdom and Antidumping Duty Orders*, 81 FR 64432 (September 20, 2016).
[101] *See* Zhejiang Jingu's Scope Comments at 10.
[102] *See* Petitioners' Scope Comments.
[103] *See* Scope Clarification Comment Memo.
[104] *See* Zhejiang Jingu's Scope Comments at 11.
[105] *See* Tolling Memorandum. All deadlines in this segment of the proceeding have been extended by 40 days.
[106] *See* Zhejiang Jingu's Scope Comments at 9.
[107] *See Bell Supply Co., LLC v. United States*, 888 F.3d 1222 (CAFC 2018) (*Bell Supply*).
[108] *Id.*

Zhejiang Jingu's arguments are misplaced. As explained above, the substantial transformation test does not govern our authority to modify a scope prior to the issuance of an order. Furthermore, in *Bell Supply*, the CAFC considered a scope ruling made by Commerce *after* the issuance of an order.[109] The CAFC's findings were therefore limited to situations where Commerce employs the substantial transformation test to determine whether a product is included in the scope of an order that has already been issued. *Bell Supply* did not address Commerce's authority to modify a scope prior to the issuance of an order.

Zhejiang Jingu's argument is additionally contradicted by the CAFC's decision in *Canadian Solar*. In that case, the CAFC considered whether Commerce could depart from the substantial transformation test when determining the country of origin in an investigation to address evasion concerns. The appellants argued in part that Commerce was bound to apply the substantial transformation test when determining country of origin, and that the petitioners should have addressed evasion concerns through other means, such as filing new petitions to cover the merchandise at issue. With respect to this argument, the CAFC found that "it is unnecessary for Commerce to engage in a game of whack-a-mole when it may reasonably define the class or kind of merchandise in a single set of orders, and within the context of a single set of investigations, to include all imports causing injury."[110] We find that the logic of the CAFC with respect to this issue is instructive here. Although this issue does not involve the application of the substantial transformation test, the petitioners have placed information on the record such that they have identified an evident concern that the scope may not provide relief from injurious dumped goods, and we find that we may reasonably clarify the scope accordingly. Contrary to Zhejiang Jingu's claim, we need not wait for a problem to arise after the issuance of an order to address the petitioners' concerns.

However, we agree with Zhejiang Jingu that the proposed scope amendment should include further clarifying language. The scope of this investigation makes clear that steel wheels, discs, and rims from China are covered by the scope.[111] However, we understand the petitioners' statements in their scope comments filed in December 2018 to be requesting that rims and discs from China that have been further processed in a third country into finished steel wheels be included within scope.[112] We have, therefore, clarified the petitioners' proposed scope language to reflect the petitioners' intention.

Finally, we disagree with Xiamen Sunrise's claim that Commerce should permit importers to certify that wheels entering the United States are not subject to the scope. We find that the scope language, as clarified, does not seek to include non-subject imports because not all steel wheels exported from a third country are covered by the scope of this investigation. Therefore, it is unclear how having importers certify that imported wheels are not subject to the investigation

[109] *Bell Supply* at 1230 (noting that the Court was considering whether Commerce is allowed to use the substantial transformation test to "determine whether an imported article is covered by AD or CVD orders in the first instance.").
[110] *Canadian Solar, Inc. v. United States*, 2019 U.S. App. LEXIS 7181 at *25-*26 (CAFC 2019).
[111] *See Preliminary Determination*.
[112] *See* Petitioners' Scope Comments at 4 ("In-Scope *Rims and Discs from China* That Are Assembled into Steel Wheels in a Third Country Should Be Included in the Scope in Any Orders so that They Will Be More Effective") (emphasis added).

would facilitate entries of non-subject merchandise from a third country. As such, we find a certification process for this investigation is unnecessary.

Comment 2: Whether to Revise the Total AFA Rate Applied to Xiamen Sunrise and Zhejiang Jingu

Petitioners' Brief:[113]

- Commerce should apply total AFA to both Xiamen Sunrise and Zhejiang Jingu, as these two mandatory respondents have withdrawn from participation in this investigation.
- The total AFA rate of 172.51 percent computed in the *Preliminary Determination* is not "sufficiently adverse" to ensure the mandatory respondents do not obtain more favorable results by failing to cooperate with Commerce's investigation. Commerce should apply a new total AFA rate of 380.82 percent to both Xiamen Sunrise and Zhejiang Jingju.
- Commerce should modify individual AFA rates for certain programs[114] that were incorrectly combined into the income tax reduction programs, as the 25 percent AFA rate for preferential income tax programs does not apply to tax credit, tax rebate, or import tariff and VAT exemption programs.

GOC's Rebuttal:[115]

- The preliminary total AFA rate of 172.51 percent is already more than sufficient to ensure the mandatory respondents do not obtain favorable results, given Xiamen Sunrise's calculated rate was 58.75 percent in the *Preliminary Determination*.
- The rate of 380.82 percent, suggested by the petitioners, would be a "punitive" and "aberrational" rate.
- Commerce should reject the additional 83.26 percent rates that petitioners suggested applying for certain tax programs,[116] as no rationale and explanation are provided.

Commerce's Position: As discussed above, Xiamen Sunrise withdrew participation in this investigation after the *Preliminary Determination*. We have, therefore, not relied on the preliminary rates calculated for Xiamen Sunrise to compute the total AFA rates for this final determination.

We have applied the rates calculated for subsidy programs in other cases in a manner consistent with the CVD rate selection hierarchy explained in above section "Selection of Total AFA Rate," with the noted exception for three programs for Xiamen Sunrise. As discussed above, we have applied these AFA rates so long as the producer of the subject merchandise or the industry to which it belongs could have used the program for which the rates were calculated.

[113] *See* Petitioners' Case Brief at 2-7.
[114] These programs include the following: Enterprise Income Tax Law, Research and Development (R&D) Program, Income Tax Credits Purchases of Domestically-Produced Equipment by FIEs, Income Tax Credits for Domestically-Owned Companies Purchasing Domestically-Produced Equipment, Reduction in or Exemption from Fixed Assets Investment Orientation Regulatory Tax, Preferential Income Tax Policy for Enterprises in the Northeast Region, and Forgiveness of Tax Arrears for Enterprises Located in the Old Industrial Bases of Northeast China.
[115] *See* GOC Rebuttal Brief at 2-5.
[116] *Id*.

For the income tax programs, as discussed above, the standard income tax rate for corporations in China in effect during the POI was 25 percent.[117] Commerce's practice is to apply a CVD rate of 25 percent, as AFA, on an overall basis for all income tax reduction or exemption programs.[118] Consistent with this practice, as AFA, we have therefore applied the 25 percent rate on a combined basis to five income tax related programs.[119] 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.[120] Therefore, we have applied individual independent AFA rates of 9.71 percent for each of the following non-income tax programs: "Income Tax Credits for Domestically-Owned Companies Purchasing Domestically-Produced Equipment," "Income Tax Credits Purchases of Domestically-Produced Equipment by FIE," "Reduction in or Exemption from Fixed Assets Investment Orientation Regulatory Tax," and "Forgiveness of Tax Arrears for Enterprises Located in the Old Industrial Bases of Northern China." We agree with petitioners that this list should incorporate programs that were incorrectly treated as income tax programs at the *Preliminary Determination*. *See* Appendix.

Comment 3: Calculation of the "All-Others" Rate

Petitioners' Brief:[121]

- Commerce should apply the total AFA rate as the "all-others" rate, because all mandatory respondents have withdrawn their participation.

GOC's Rebuttal:[122]

- Commerce should exclude rates based entirely on AFA when calculating the all-others rate, as it is not reasonable to companies that were not given an opportunity to participate and receive their own rates because of Commerce's resource constraints.
- As Commerce cannot establish that a respondent failed to cooperate to the best of its ability by not providing the requested information, there is no logical connection between the AFA rate and its application to the all-others rate companies.
- In order to reach a reasonable and non-total AFA rate for the all-others rate companies, Commerce should reopen the record to collect the necessary information to calculate the all-others rate.

Commerce's Position: In accordance with section 705(c)(5)(A) of the Act, Commerce shall

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[117] *See* Initiation Checklist at 8.
[118] *See, e.g., Aluminum Extrusions from China Final IDM* at "Application of Adverse Inferences: Non-Cooperative Companies."
[119] These five programs are: Income Tax Reduction for High- and New-Technology Enterprises, Income Tax Reduction for Advanced-Technology FIEs, Preferential Tax Policies for the Development of Western Regions of China, Enterprise Income Tax Law, Research and Development (R&D) Program, and Preferential Income Tax Policy for Enterprises in the Northern Region.
[120] *See, e.g., Aluminum Extrusions from China Final IDM* at "Application of Adverse Inferences: Non-Cooperative Companies."
[121] *See* Petitioners Case Brief at 8.
[122] *See* GOC Rebuttal Brief at 5-7.

determine an estimated all-others rate for companies not individually examined. Generally, under section 705(c)(5)(A)(i) of the Act 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 on AFA under section 776 of the Act. However, section 705(c)(5)(A)(ii) of the Act provides that, where all countervailable subsidy rates established for the mandatory respondents are zero, *de minimis*, or based entirely on facts available, Commerce may use "any reasonable method" for assigning an all-others rate, including "averaging the estimated weighted-average countervailably subsidy rates determined for the exporters and producers individually investigated." The SAA states that the "expected method" under "any reasonable method" is that Commerce will weight-average the rates that are zero, *de minimis*, and based entirely on facts available.[123] In this investigation, all rates for the individually-investigated respondents are based entirely on facts available, pursuant to section 776 of the Act. Accordingly, we are using "any reasonable method" to establish the all-others rate. We find that it is reasonable to rely on a simple average of the total AFA rates computed for Xiamen Sunrise and Zhejiang Jingu as the "all-others" rate in this final determination, particularly as there is no other information on the record that can be used to determine the all-others rate. Commerce has taken this approach to calculating the all-others rate in other CVD investigations.[124]

Comment 4: Whether Critical Circumstances Exist

Petitioners' Brief:[125]

- Commerce should find, based on AFA, that critical circumstances exist for Xiamen Sunrise and Zhejiang Jingu because each company received countervailable subsidies inconsistent with the Subsidies Agreement, and the existence of "massive" imports of subject merchandise over a relatively short period of time.
- In this investigation, subject merchandise falls primarily under two main Harmonized Tariff System (HTS) subheadings 8708.70.4053 (wheels for heavy trucks) and 8716.90.5045 (wheels for trailers). According to the import statistics, the quantities (in pieces under HTS subheading 8716.90.5045 show a 18.68% increase, while the quantities (in kgs) under HTS subheading 8708.70.4053 show a decrease of 13.35%.

GOC's Rebuttal:[126]

- Record evidence, based on the USITC Dataweb, shows that over-all imports decreased by 2.68 percent during the five-month period of time comparison (November 2017 to March

[123] *See* SAA at 873.
[124] *See, e.g., Countervailing Duty investigation of Stainless Steel Flanges from the People's Republic of China: Preliminary Affirmative Determination*, 83 FR 3124 (January 23, 2018), and accompanying PDM at "Calculating of the All-Others Rate," unchanged in *Countervailing Duty Investigation of Stainless Steel Flanges from the People's Republic of China: Final Affirmative Determination*, 83 FR 15790 (April 12, 2018); *Countervailing Duty Investigation of Ammonium Sulfate from the People's Republic of China: Preliminary Affirmative Determination,* 81 FR 76332 (November 2, 2016), and accompanying PDM at "Calculation of the All-Other Rates," unchanged in *Ammonium Sulfate from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 82 FR 4850 (January 17, 2017).
[125] *See* Petitioners' Case Brief at 8-14.
[126] *See* GOC Rebuttal Brief at 8-12.

2018 versus April 2018 to August 2018), relying on an estimate of 39 kgs per wheel to aggregate imports under two HTS subheadings, HTSUS 8708.70.4053 and HTSUS 8716.90.5045, in question.

- Even in an AFA situation, Commerce cannot simply rely on a respondent's lack of cooperation to make a critical circumstances finding when the data on the record show otherwise. Commerce should make a negative critical circumstances determination in this investigation.

Commerce's Position: In accordance with section 705(a)(2) of the Act, Commerce will determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A) the alleged countervailable subsidy is inconsistent with the SCM Agreement;[127] and (B) 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 705(a)(2) of the Act and 19 CFR 351.206(h) and (i), Commerce normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, the base period) to a comparable period of at least three months following the filing of the petition (*i.e.*, the comparison period). However, the regulations also provide that if Commerce finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, Commerce may consider a period of not less than three months from the earlier time.[128] Further, imports must increase by at least 15 percent during the comparison period to be considered massive.[129]

Xiamen Sunrise and Zhejiang Jingu

As discussed above, in accordance with the *Preliminary Determination*, we continue to determine, as AFA, that the following subsidy program is contintent upon export, and, therefore, is inconsistent with the Subsidies Agreement pursuant to section 705(a)(2)(A) of the Act: the "Foreign Trade Development Fund Program Grants" program.[130] We reach this finding with regard to this program, which had the lowest rate in the *Preliminary Determination* among the programs alleged to be inconsistent with the SCM Agreement. In so doing, we intend to limit the corresponding offset to the dumping margin (if one is found) in the companion antidumping duty investigation, which best fulfills our statutory mandate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully,"[131] and induce future cooperation by companies in investigations where the petitioners allege the existence of programs potentially inconsistent with the SCM Agreement.

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[127] Commerce limits its critical circumstances findings to those subsidies contingent upon export performance or use of domestic over imported goods (*i.e.*, those prohibited under Article 3 of the SCM Agreement). *See e.g.*, *Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Carbon and Certain Alloy Steel Wire from Germany*, 67 FR 55808, 55809-10 (August 30, 2002) (*Steel Wire from Germany*).
[128] *See* 19 CFR 351.206(i).
[129] *See* 19 CFR 351.206(h)(2).
[130] *See* PDM at 32-33.
[131] SAA at 870.

Additionally, as discussed above, as AFA we find that there was a massive increase in the volume of imports of the subject merchandise from Xiamen Sunrise and Zhejiang Jingu during the critical circumstances period pursuant to section 705(a)(2)(B) of the Act. For the purposes of the "massive imports" analysis, Commerce's long-standing practice is to rely on respondent-specific shipment data to determine whether imports were massive in the context of critical circumstances determinations.[132] Where such verified information does not exist because of a respondent's failure to cooperate to the best of its ability in the course of the investigation, Commerce normally makes an adverse inference that imports were massive during the relevant time period.[133] Here, Xiamen Sunrise and Zhejiang Jingu each withdrew its participation in this investigation.[134] Therefore, we are unable to rely on their shipment data. Thus, in accordance with section 776(a)-(b) of the Act, we will use an adverse inference in applying facts available, and determine that there were massive imports from Xiamen Sunrise and Zhejiang Jingu over a relatively short period.

As a result, we determine, based on AFA, the existence of critical circumstances for Xiamen Sunrise and Zhejiang Jingu in this investigation.

All-Others Companies

Consistent with prior determinations,[135] Commerce has not imputed the adverse inferences of massive imports that we applied to the mandatory respondents to the non-individually examined companies receiving the all-others rate. Rather, Commerce examined all available data for total imports of the subject merchandise during the comparison period relative to a base period to determine whether or not imports were massive with respect to these companies. Here, we relied on import data from USITC Dataweb and compared the base period of November 2017 through March 2018 to the comparison period of April 2018 through August 2018.[136] Consistent with the methodology we used when selecting mandatory respondents in this investigation, we

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[132] *See, e.g., Certain Carbon and Alloy Cut-to-Length Plate from Italy: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 82 FR 16345 (April 4, 2017) (*CTL Plate from Italy*) and accompanying IDM at 7-8; *and Steel Concrete Reinforcing Bar from Mexico: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, and Postponement of Final Determination*, 79 FR 22802 (April 24, 2014), unchanged in *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014)(*Rebar from Mexico*), and accompanying IDM at 6.
[133] *Id.*
[134] *See* Xiamen Sunrise Withdrawal Letter; Letter from Zhejiang Jingu, "Countervailing Duty Investigation of Certain Steel Wheels from the People's Republic of China: Notice of Decision to Not Participate in the Investigation," dated June 22, 2018.
[135] *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 PDM at 10-11 (noting that, where mandatory respondents receive AFA, we do 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).
[136] *See* Petitioners' Case Brief at 8-14.

converted each wheel/piece to 39 kgs where USITC data was not reported in kilograms.[137] On this basis, we find that the overall imports decreased by 2.68 percent during the five-month period of time comparison.[138] As a result, we determine that the critical circumstances do not exist with respect to the companies covered by the all-others rate because the record does not support a finding of massive imports during the period at issue.

VIII. RECOMMENDATION

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

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Agree Disagree

3/21/2019

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

[137] We determined that the typical steel wheel weighs 39 kilograms. *See* Memorandum, "Respondent Selection for the Countervailing Duty Investigation of Steel Wheels (Steel Wheels) from the People's Republic of China," dated May 24, 2018.
[138] *See* Memorandum, "Critical Circumstances Analysis" dated concurrently with this memorandum.

Appendix I

Steel Wheels Total AFA Rates for Final Determination

Program Name	Rate
Direct Tax Exemptions and Reductions	
Income Tax Reduction for High- and New- Technology Enterprises	25.00%
Income Tax Reduction for Advanced-Technology FIEs	
Preferential Tax Policies for the Development of Western Regions of China	
Enterprise Income Tax Law, Research and Development (R&D) Program	
Preferential Income Tax Policy for Enterprises in the Northern Region	
Income Tax Credits for Domestically-Owned Companies Purchasing Domestically-Produced Equipment	9.71%
Income Tax Credits Purchases of Domestically-Produced Equipment by FIEs	9.71%
Reduction in or Exemption from Fixed Assets Investment Orientation Regulatory Tax	9.71%
Forgiveness of Tax Arrears for Enterprises Located in the Old Industrial Bases of Northern China	9.71%
Indirect Tax Programs	
Import Duty Exemptions for Imported Equipment	9.71%
VAT Exemptions for Imported Equipment	9.71%
VAT Refunds for FIEs on Purchases of Chinese-Made Equipment	9.71%
VAT Exemptions and Reductions for Central Regions	0.31%
VAT Exemptions and Reductions for Northern Regions	0.31%
Import Duty Exemptions for Equipment Under the Preferential Tax Policy of Development of Western Regions of China	0.31%
Deed Tax Exemption for SOEs Undergoing Mergers or Restructuring	9.71%
Loan Programs	
Government Policy Lending Program	10.54%
Preferential Loans to State-Owned Enterprises (SOEs)	10.54%
Discounted Loans for Export-Oriented Enterprises	10.54%
Preferential Loans for Key Projects and Technologies	10.54%
Treasury Bond Loans	10.54%
Loans & Interest Subsidies Provided Pursuant to the Northeast Revitalization Program	10.54%
Export Buyer's Credits	10.54%
Export Seller’s Credit	44.91%
Export Credit Insurance Subsidies	4.25%
Export Credit Guarantees	10.54%
LTAR Programs	
Provision of HRS Inputs for LTAR	44.91%
Provision of Land-Use Rights to Steel Wheels Producers	13.36%
Government Provision of Land to State-Owned Enterprises (SOEs)	13.36%
Provision of Land LTAR to FIEs	13.36%
Provision of Land-Use Rights in Industrial and Other Special Economic Zones	13.36%

Provision of Electricity for LTAR	20.06%
Grant Programs	
Famous Brands Program	0.62%
Direct Government Grants to Xiamen Sunrise	44.91%
SME International Market Exploration Fund	0.62%
Export Assistance Grants	0.62%
Grants for Export Credit Insurance	44.91%
Foreign Trade Development Fund Program Grants	0.62%
Special Fund for Energy-Saving Technology Reform	0.62%
The Clean Production Technology Fund	0.62%
Emission Reduction Award	0.62%
State Special Fund for Promoting Key Industries and Innovation Technologies	0.62%
State Key Technology Renovation Project Fund Program	0.62%
Initial Public Offering (IPO) Grant from the City of Fuyang	0.62%
Fuyang City Government Grant for Enterprises Paying Over RMB 10 Million in Taxes	0.62%
Fuyang and Hangzhou City Government Grants for Enterprises Operating Technology and Research and Development Centers	0.62%
Fuyang City Government Grants under the Export of Subcontract Services Program	0.62%
Export Contingent Grants Provided by the Fuyang City Government	0.62%
Investment Grants from Fuyang City Government for Key Industries	0.62%
Export Interest Subsidies for Enterprises Located in Zhejiang Province	0.62%
Initial Public Offering (IPO) Grants from the Hangzhou Prefecture	0.62%
Hangzhou City Government Grants under the Hangzhou Excellent new Products/Technology Award	0.62%
Direct Government Grants to Zhejiang Jingu Company Ltd.	0.62%
Total AFA Rate:	457.10%