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June 17, 2020

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Results of the Antidumping Duty Administrative Review of Certain Aluminum Foil from the People's Republic of China; 2017-2019

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on certain aluminum foil (aluminum foil) from the People's Republic of China (China).[1] The review covers two mandatory respondents: (1) Jiangsu Zhongji Lamination Materials Co., (HK) Ltd.; Jiangsu Zhongji Lamination Materials Stock Co., Ltd.; Jiangsu Zhongji Lamination Materials Co., Ltd.; and Jiangsu Huafeng Aluminum Industry Co., Ltd (collectively, Zhongji),[2] and (2) Xiamen Xiashun Aluminum Foil Co., Ltd. (Xiamen Xiashun).[3] The review also covers 10 other companies that were not selected for individual examination. The period of review (POR) is November 2, 2017 through March 31, 2019. We preliminarily find that sales of the subject merchandise were made at prices below normal value

[1] *See Certain Aluminum Foil from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order:* 83 FR 17362 (April 19, 2018) (*Order*).
[2] Consistent with the methodology employed in the less-than-fair-value (LTFV) investigation, we have continued to collapse Jiangsu Zhongji Lamination Materials Co., (HK) Ltd.; Jiangsu Zhongji Lamination Materials Stock Co., Ltd.; Jiangsu Zhongji Lamination Materials Co., Ltd.; and Jiangsu Huafeng Aluminum Industry Co., Ltd and to treat these companies as a single entity. *See Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination and Accompanying Preliminary Decision Memorandum*, 82 FR 50858 (November 2, 2017) and accompanying Preliminary Decision Memorandum at 16-18, unchanged in *Certain Aluminum Foil From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 9282 (March 5, 2018). We find that record evidence supports treating each of these entities as a collapsed entity in this review. *See* Memorandum, "Zhongji Analysis for the Preliminary Results," dated concurrently with this memorandum. .
[3] We preliminarily find that Xiamen Xiashun is affiliated with Daching Enterprises Ltd. *See* Memorandum, "Xiamen Xiashun Preliminary Affiliation Memorandum," dated concurrently with this memorandum.

(NV). The estimated weighted-average dumping margins are shown in the "Preliminary Results of Review" section of the accompanying *Federal Register* notice.

II. BACKGROUND

On April 19, 2018, Commerce published in the *Federal Register* the AD order on aluminum foil from China.[4] On April 1, 2019, Commerce published in the *Federal Register* a notice of opportunity to request an administrative review of the AD order on aluminum foil from China for the period November 2, 2017 through March 31, 2019.[5] On June 13, 2019, Commerce published the initiation of the first administrative review of the *Order* with respect to 29 companies.[6]

In the *Initiation Notice*, Commerce notified parties of the application process by which firms may obtain separate rate status in non-market economy (NME) administrative reviews.[7] The process requires exporters to submit a separate-rate application (SRA) or separate rate certification (SRA), as appropriate, and to demonstrate an absence of both *de jure* and *de facto* government control over their export activities.

Between July 10 and 21, 2019, we timely received SRAs or SRCs from the following companies: (1) Dingsheng Aluminum Industries (Hong Kong) Trading Co. (Dingsheng Aluminum); (2) Granges Aluminum (Shanghai) Co., Ltd. (Granges Aluminum); (3) Hangzhou Dingsheng Import & Export Co., Ltd. (Hangzhou Dingsheng); (4) Hunan Suntown Marketing Limited; (Hunan Suntown); (5) Shanghai Shenyan Packaging Materials Co., Ltd. (Shanghai Shenyan); (6) SNTO International Trade Limited (SNTO); (7) Suzhou Manakin Aluminum Processing Technology Co., Ltd. (Suzhou Manakin); and (8) Yinbang Clad Materials Co., Ltd. (Yinbang Clad).[8] We also received certifications that the following companies had no shipments

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[4] *See Order*.
[5] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 84 FR 12707 (April 1, 2019).
[6] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 27587 (June 13, 2019) (*Initiation Notice*).
[7] *Id.*, 84 FR at 27588.
[8] *See* Dingsheng Aluminum's Letter, "HK Dingsheng Separate Rate Certification in the Administrative Review of the Antidumping Duty Order on Aluminum Foil from the People's Republic of China" dated July 12, 2019 (Dingsheng Aluminum SRC); Granges Aluminum's Letter, "Aluminum Foil from China Separate Rate Application," dated July 10, 2019 (Granges Aluminum SRA); Hangzhou Dingsheng's Letter, "Hangzhou Dingsheng Import Export Separate Rate Certification in the Administrative Review of the Antidumping Duty Order on Aluminum Foil from the People's Republic of China," dated July 12, 2019 (Hangzhou Dingsheng SRC); Hunan Suntown's Letter, "Suntown Marketing Separate Rate Certification in the Administrative Review of the Antidumping Duty Order on Aluminum Foil from the People's Republic of China," dated July 12, 2019 (Hunan Suntown SRC); Shanghai Shenyan's Letter, "Aluminum Foil from the People's Republic of China: Separate Rate Application," dated July 12, 2019 (Shanghai Shenyan SRA); SNTO's Letter, "SNTO International Separate Rate Certification in the Administrative Review of the Antidumping Duty Order on Aluminum Foil from the People's Republic of China," dated July 12, 2019 (SNTO SRC); Suzhou Manakin's Letter, "Suzhou Manakin Aluminum Processing Technology Co., Ltd. Separate Rate Certification in Antidumping Administrative Review of Aluminum Foil from the People's Republic of China," dated July 15, 2019 (Suzhou Manakin SRC); and Yinbang Clad's Letter, "Aluminum Foil from the People's Republic of China: Separate Rate Application for Yinbang Clad Materials Co., Ltd.," dated July 15, 2019 (Yinbang Clad SRA).

or sales of subject merchandise during the POR: (1) Jiangsu Dingsheng New Materials Joint-Stock Co., Ltd. (Jiangsu Dingsheng); (2) Hangzhou Teemful Aluminum Co., Ltd. (Hangzhou Teemful); (3) Hangzhou Five Star Aluminum Co., Ltd. (Hangzhou Five Star); (4) Walson (HK) Trading Co. (Walson HK); and (5) Baotou Alcha Aluminum Co., Ltd. (Baotou Alcha).[9]

On August 14, 2019, we selected Zhongji and Xiamen Xiashun as mandatory respondents in this administrative review.[10] On August 15, 2019, we issued the standard non-market economy (NME) questionnaire to Zhongji and Xiamen Xiashun, and between December 26, 2019 and March 6, 2020, we issued supplemental questionnaires to Zhongji and Xiamen Xiashun.[11] Between September 12, 2019 and March 19, 2020, Zhongji and Xiamen Xiashun submitted timely responses to Commerce's initial and supplemental questionnaires.[12] On February 4, 2020, we issued the Double Remedies Questionnaire to Zhongji and Xiamen Xiashun, and on February 18 and February 20, 2020, respectively, Zhongji and Xiamen Xiashun responded to the Double Remedies Questionnaire.[13]

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[9] *See* Jiangsu Dingsheng's Letter, "No Shipment Letter for Jiangsu Dingsheng in the Administrative Review of the Antidumping Duty Order on Aluminum Foil from the People's Republic of China," dated July 12, 2019 (Jiangsu Dingsheng No-Shipment Certification); Hangzhou Teemful's Letter, "No Shipment Letter for Hangzhou Teemful in the Administrative Review of the Antidumping Duty Order on Aluminum Foil from the People's Republic of China," dated July 12, 2019 (Hangzhou Teemful No-Shipment Certification); Hangzhou Five Star's Letter, "No Shipment Letter for Hangzhou Five Star in the Administrative Review of the Antidumping Duty Order on Aluminum Foil from the People's Republic of China," dated July 12, 2019 (Hangzhou Five Star No-Shipment Certification); Walson HK's Letter, "No Shipment Letter for Walson (HK) in the Administrative Review of the Antidumping Duty Order on Aluminum Foil from the People's Republic of China," dated July 12, 2019 (Walson HK No-Shipment Certification); and Baotou Alcha's Letter, "Aluminum Foil from the People's Republic of China: No Shipment Letter of Baotou Alcha Aluminum Co., Ltd " dated July 15, 2019 (Baotou Alcha No-Shipment Certification).

[10] *See* Respondent Selection Memorandum, "Antidumping Duty Administrative Review of Aluminum Foil from the People's Republic of China," dated August 14, 2019.

[11] *See* Commerce's Letter to Zhongji, dated August 15, 2019 (Zhongji NME Questionnaire); *see also* Commerce's Letter to Xiamen Xiashun Aluminum Foil Co., Ltd., dated August 15, 2019 (Xiamen Xiashun NME Questionnaire).

[12] *See* Zhongji September 12, 2019 Section A Questionnaire Response (Zhongji September 12, 2019 AQR); Zhongji September 30, 2019 CQR; Zhongji October 6, 2019 Section D Questionnaire Response (Zhongji October 6, 2019 DQR); Zhongji January 16, 2020 Supplemental Section A Questionnaire Response (Zhongji Supplemental A); Zhongji January 21, 2020 Supplemental Section C Questionnaire Response (Zhongji Supplemental C); Zhongji January 21, 2020 Supplemental Section D Questionnaire Response (Zhongji Supplemental D); Zhongji March 13, 2020 Second Supplemental Section D Questionnaire Response (Zhongji Second Supplemental D); *see also* Xiamen Xiashun September 12, 2019 Section A Questionnaire Response (Xiamen Xiashun September 12, 2019 AQR); Xiamen Xiashun September 30, 2019 Section C Questionnaire Response (Xiamen Xiashun September 30, 2019 CQR); Xiamen Xiashun October 6, 2019 Section D Questionnaire Response (Xiamen Xiashun October 6, 2019 DQR); Xiamen Xiashun January 21, 2020 Supplemental Section A Questionnaire Response (Xiamen Xiashun Supplemental A); Zhongji January 21, 2020 Supplemental Section C Questionnaire Response (Xiamen Xiashun Supplemental C); Xiamen Xiashun January 28, 2020 Supplemental Section D Questionnaire Response (Xiamen Xiashun Supplemental D); Xiamen Xiashun March 19, 2020 Second Supplemental Section D Questionnaire Response (Xiamen Xiashun Second Supplemental D).

[13] *See* Commerce's Letter to Zhongji, "Certain Aluminum Foil from the People's Republic of China—Double Remedies Questionnaire," dated February 4, 2020 (Zhongji Double Remedies Questionnaire); Commerce's Letter to Xiamen Xiashun, "Certain Aluminum Foil from the People's Republic of China—Double Remedies Questionnaire," dated February 4, 2020 (Xiamen Xiashun Double Remedies Questionnaire); Zhongji's Letter, "Administrative Review of the Antidumping Duty Order on Aluminum Foil from the People's Republic of China: Double Remedies Questionnaire Response," dated February 18, 2020 (Zhongji Double Remedies Response); and

On August 28, 2019, Commerce sent interested parties a letter inviting comments on the non-exhaustive list of countries Commerce determined are at the same level of economic development as China, surrogate country selection, and surrogate value (SV) data, and specified the deadlines for these respective submissions.[14] In November 2019 and March 2020, we received timely SV data and comments from the petitioner, Zhongji, and Xiamen Xiashun.[15]

On September 11, 2019, the Aluminum Association Trade Enforcement Group (the petitioner) withdrew its review request for 15 companies.[16]

On April 22, 2020, Commerce sent a no shipment inquiry to U.S. Customs and Border Protection (CBP) to determine whether Jiangsu Dingsheng, the only company with a no-shipment certification which remains under review, had entries of subject merchandise during the POR.[17] On May 15, 2020, CBP responded that it found no shipments from Jiangsu Dingsheng during the POR.[18]

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), Commerce determined that it was not practicable to complete the preliminary results of this review within

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Xiamen Xiashun's Letter, "Aluminum Foil from the People's Republic of China: Xiashun Double Remedies Questionnaire Response," dated February 24, 2020 (Xiamen Xiashun Double Remedies Response).

[14] *See* Commerce's Letter, "Aluminum Foil from China: 11/2/2017- 3/31/2019 Administrative Review: Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information," dated August 28, 2019 (Surrogate Country and Values Letter). The countries identified in the Attachment to the Surrogate Country and Values Letter are Brazil, Bulgaria, Malaysia, Mexico, Russia, and Turkey (Surrogate Country List).

[15] *See* Petitioner's Letter, "1st Administrative Review of the Antidumping Duty Order on Certain Aluminum Foil from the People's Republic of China—Petitioner's Preliminary Surrogate Value Comments," dated November 1, 2019 (Petitioner November 1, 2019 SV Comments); *see also* Petitioner's Letter, "1st Administrative Review of the Antidumping Duty Order on Certain Aluminum Foil from the People's Republic of China – Petitioner's Final Surrogate Value Comments," dated March 30, 2020 (Petitioner March 30, 2020 SV Comments); Zhongji's Letter, "Administrative Review of the Antidumping Duty Order on Aluminum Foil from the People's Republic of China: Surrogate Value Comments," dated November 1, 2019 (Zhongji November 1, 2019 SV Comments); Zhongji's Letter, "Administrative Review of the Antidumping Duty Order on Aluminum Foil from the People's Republic of China: Submission of Surrogate Value Spreadsheet" (Zhongji March 30, 2020 SV Comments); Xiashun Xiashun's Letter, "Aluminum Foil from the People's Republic of China: Surrogate Value Data Submission," dated November 1, 2019 (Xiamen Xiashun November 1, 2019 SV Comments); and Xiamen Xiashun Second Supplemental D at SSD-9.

[16] *See* Petitioner's Letter, "1st Administrative Review of the Antidumping Duty Order on Certain Aluminum Foil from the People's Republic of China—Petitioner Partial Withdrawal of Review Requests" dated September 11, 2019 (Petitioner's Withdrawal Letter). The 15 companies for which the petitioner withdrew its request for review are: (1) Alcha International Holdings Limited (Alcha International); (2) Baotou Alcha; (3) Guangxi Baise Xinghe Aluminum Industry Co., Ltd. (Guangxi Baise); (4) Hangzhou Five Star; (5) Hangzhou Teemful; (6) Huafon Nikkei Aluminum Corporation (Huafon Nikkei); (7) Jiangsu Alcha Aluminum Co., Ltd. (Jiangsu Alcha); (8) Jiangsu Dolphin Pack Co., Ltd., (Jiangsu Dolphin); (9) Luoyang Longding Aluminum Industries Co., Ltd. (Luoyang Longding); (10) Suntown Technology Group Limited (Suntown); (11) Walson HK; (12) Yuntai Donghai Aluminum Foil Co., Ltd. (Yuntai Donghai); (13) Yuntai Jintai International Trade Co., Ltd. (Yuntai Jintai); (14) Yinbang Clad Material Co., Ltd. (Yinbang Clad); and (15) Zhejiang Zhongjin Aluminum Industry Co., Ltd (Zhejiang Zhongjin).

[17] *See* Memorandum, "No Shipment Inquiry with Respect to the Companies Below During the Period 11/02/2017 through 03/31/2019," May 28, 2020 (CBP Response).

[18] *Id*.

the 245 days and postponed the preliminary results by 120 days.[19] On April 24, 2020, Commerce tolled the deadlines for issuing its preliminary results by an additional 50 days.[20] The revised deadline for the preliminary results in this review is June 18, 2020.

III. SCOPE OF THE *ORDER*

The merchandise covered by the *Order* is aluminum foil having a thickness of 0.2 mm or less, in reels exceeding 25 pounds, regardless of width. Aluminum foil is made from an aluminum alloy that contains more than 92 percent aluminum. Aluminum foil may be made to ASTM specification ASTM B479, but can also be made to other specifications. Regardless of specification, however, all aluminum foil meeting the scope description is included in the scope.

Excluded from the scope of the *Order* is aluminum foil that is backed with paper, paperboard, plastics, or similar backing materials on only one side of the aluminum foil, as well as etched capacitor foil and aluminum foil that is cut to shape.

Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above. The products covered by the *Order* are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7607.11.3000, 7607.11.6000, 7607.11.9030, 7607.11.9060, 7607.11.9090, and 7607.19.6000. Further, merchandise that falls within the scope of the *Order* may also be entered into the United States under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3045, 7606.12.3055, 7606.12.3090, 7606.12.6000, 7606.91.3090, 7606.91.6080, 7606.92.3090, and 7606.92.6080.

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

IV. PRELIMINARY DETERMINATION OF NO SHIPMENTS

As discussed above, Jiangsu Dingsheng, Hangzhou Teemful, Hangzhou Five Star, Walson HK, and Baotou reported no shipments of subject merchandise to the United States during the POR.[21] However, all review requests for four of these companies, (*i.e.*, Hangzhou Teemful, Hangzhou Five Star, Walson HK, and Baotou Alcha) have been withdrawn, so we have not made a determination on the no-shipment certifications of these four companies.

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[19] *See* Memorandum, "Aluminum Foil from the People's Republic of China: Extension of Time Limit Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated December 18, 2019; *see also* Memorandum, "Certain Aluminum Foil from the People's Republic of China: Extension of Time Limit Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated March 13, 2020.
[20] *See* Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19," dated April 24, 2020.
[21] *See* Jiangsu Dingsheng No-Shipment Certification, Hangzhou Teemful No-Shipment Certification, Hangzhou Five Star No-Shipment Certification, Walson HK No-Shipment Certification, and Baotou Alcha No-Shipment Certification.

With respect to Jiangsu Dingsheng, we confirmed the no-shipment claims by reviewing information obtained from a CBP data query[22] and by contacting CBP to request that it provide any information that contradicted the no-shipment claims of these companies. CBP responded with certain information that supported the no shipment claims of Jiangsu Dingsheng.[23]

Based on its no-shipment certification, our analysis of the results of the CBP data queries, and the fact that CBP identified no information that contradicted the no-shipment claim, we preliminarily determine that Jiangsu Dingsheng did not have any shipments of subject merchandise to the United States during the POR. Consistent with Commerce's practice in NME cases, we have not rescinded the review with respect to Jiangsu Dingsheng, but we will continue the review of this company and issue instructions to CBP based on the final results of the review.[24]

V. RESCISSION OF REVIEW, IN PART

Section 351.213(d)(1) of Commerce's regulations provides that Commerce will rescind an administrative review, in whole or in part, if the party that requested the review withdraws its request for review within 90 days of the date of publication of the notice of initiation of the requested review. Commerce initiated this administrative review on June 13, 2019.[25]

On September 11, 2019, the petitioner withdrew its request for review of the following companies: (1) Alcha International; (2) Baotou Alcha; (3) Guangxi Baise; (4) Hangzhou Five Star; (5) Hangzhou Teemful; (6) Huafon Nikkei; (7) Jiangsu Alcha; (8) Jiangsu Dolphin; (9) Luoyang Longding; (10) Suntown; (11) Walson HK; (12) Yuntai Donghai; (13) Yuntai Jintai; (14) Yinbang Clad; and (15) Zhejiang Zhongjin.[26]

Because the review requests for each of the 15 companies named above have been timely withdrawn, and because no other party has requested a review of these companies, we are rescinding this review with respect to these 15 companies.

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[22] *See* CBP Response.
[23] *Id*.
[24] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011).
[25] *See Initiation Notice*, 84 FR at 27587.
[26] *See* Petitioner's Withdrawal Letter.

VI. DISCUSSION OF THE METHODOLOGY

A. Non-Market Economy Country

Commerce considers China to be an NME country.[27] In accordance with section 771(18)(C)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by the administering authority. None of the parties to this proceeding have contested such treatment. Therefore, we continue to treat China as an NME country for purposes of these preliminary results.

B. Separate Rates

In proceedings involving NME countries, Commerce maintains a rebuttable presumption that all companies within the country are subject to government control and, therefore, should be assessed a single dumping margin.[28] In the *Initiation Notice*, Commerce notified parties of the application process by which exporters and producers may obtain separate-rate status in NME proceedings.[29] It is Commerce's policy to assign all exporters of the subject merchandise from an NME country a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports.[30] Commerce analyzes each entity's export independence under a test first articulated in *Sparklers* and as further developed in *Silicon Carbide*.[31]

In order to demonstrate separate-rate status eligibility, Commerce normally requires an entity, for which a review was requested, and which was assigned a separate rate in a previous segment, to submit a separate rate certification stating that it continues to meet the criteria for obtaining a separate rate.[32] For entities that were not assigned a separate rate in the previous segment, however, Commerce requires a separate rate application.[33]

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[27] *See, e.g., Certain Aluminum Foil from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 9282 (March 5, 2018), and accompanying IDM at Comment 1; and *Certain Steel Nails from the People's Republic of China; Final Results of Third Antidumping Duty Administrative Review*; 2010-2011, 78 FR 16651, 16652 (March 18, 2013), and accompanying IDM at Comment 1.
[28] *See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China*, 71 FR 53079, 53082 (September 8, 2006); *see also Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303, 29307 (May 22, 2006).
[29] *See Initiation Notice*, 84 FR at 27588.
[30] *See* Policy Bulletin 05.1, Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries, dated April 15, 2005, available at https://enforcement.trade.gov/policy/bull05-1.pdf.
[31] *See Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*); *see also Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*).
[32] *See Initiation Notice*, 84 FR at 27588.
[33] *Id.*

Between July 10, 2019 and July 21, 2019, the mandatory respondents and seven other companies applied for separate rate status.[34] Zhongji and Xiamen Xiashun submitted responses to section A of the NME AD questionnaire, in which each company submitted information pertaining to their eligibility for a separate rate.[35] The other seven companies submitted SRAs or SRCs, as appropriate.[36] As explained in detail below, Commerce preliminarily determines that the following companies are entitled to a separate rate: (1) Zhongji; (2) Xiamen Xiashun; (3) Dingsheng Aluminum, (4) Granges Aluminum, (5) Hangzhou Dingsheng; (6) Hunan Suntown; (7) Shanghai Shenyan, (8) SNTO, and (9) Suzhou Manakin.

Dingsheng Aluminum, Granges Aluminum, and SNTO provided evidence that they are wholly foreign-owned companies.[37] Because Dingsheng Aluminum, Granges Aluminum, and SNTO are wholly foreign-owned, and we have no evidence indicating that these companies are under the control of the Chinese government, an analysis of the *de jure* and *de facto* criteria is not necessary to determine whether they are independent from government control.[38] Accordingly, we preliminarily grant a separate rate to Dingsheng Aluminum, Granges Aluminum, and SNTO.

Zhongji, Xiamen Xiashun, Hangzhou Dingsheng, Hunan Suntown, Shanghai Shenyan, and Suzhou Manakin each reported that they are either wholly or partially owned by a domestic entity/entities located in China.[39] In accordance with our practice, we analyzed whether these companies demonstrated an absence of *de jure* and *de facto* governmental control over their export activities.

1. Absence of De Jure Control

Commerce considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.[40]

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[34] In addition to Zhongji and Xiamen Xiashun, Commerce timely received SRAs or SRCs from the following companies: (1) Dingsheng Aluminum; (2) Granges Aluminum; (3) Hangzhou Dingsheng; (4) Hunan Suntown; (5) Shanghai Shenyan; (6) SNTO; and (7) Suzhou Manakin. Two other companies, *i.e.*, Jiangsu Alcha Aluminum Co., Ltd (Jiangsu Alcha) and Yinbang Clad Materials Co., Ltd. (Yinbang Clad), submitted SRAs or SRCs; however, all review requests for these companies were timely withdrawn.

[35] *See* Zhongji September 12, 2019 AQR at A-2-A18; *see also* Xiamen Xiashun September 12, 2019 AQR at A-2-18.

[36] *See* Dingsheng Aluminum SRC; Granges Aluminum SRA; Hangzhou Dingsheng SRC; Hunan Suntown SRC; Shanghai Shenyan SRA; SNTO SRC; Suzhou Manakin SRC.

[37] *See* Dingsheng Aluminum SRC; Granges Aluminum SRA; SNTO SRC.

[38] *See Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination*, 82 FR 50858 (November 2, 2017) and the accompanying Preliminary Decision Memorandum at 13-14 (unchanged in *Order*); *see also Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China,* 72 FR 52355 (September 13, 2007) and Accompanying IDM at Comment 2.

[39] *See* Zhongji September 12, 2019 AQR at A-2-A18; Xiamen Xiashun September 12, 2019 AQR at 2-18; Hangzhou Dingsheng SRC at 5-7; Hunan Suntown SRC at 4-6; Shanghai Shenyan SRA at 9-22; Suzhou Manakin SRC at 8-11.

[40] *See Sparklers*, 56 FR at 20589.

The evidence provided by Zhongji, Xiamen Xiashun, Hangzhou Dingsheng, Hunan Suntown, Shanghai Shenyan, and Suzhou Manakin, supports a preliminary finding of the absence of *de jure* government control of export activities based on the following: (1) there is an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) there are formal measures by the government decentralizing control of the companies.[41]

2. Absence of De Facto Control

Typically, Commerce considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) whether the export prices (EPs) are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.[42] As stated in previous cases, there is evidence that certain enactments of the Chinese central government have not been implemented uniformly among different sectors and/or jurisdictions in China.[43] Therefore, Commerce has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude Commerce from assigning separate rates.[44]

The evidence provided by Zhongji, Xiamen Xiashun, Hangzhou Dingsheng, Hunan Suntown, Shanghai Shenyan, and Suzhou Manakin supports a preliminary finding of the absence of *de facto* government control based on the following: (1) the company set its own EPs independent of the government and without the approval of a government authority; (2) the company had authority to negotiate and sign contracts and other agreements; (3) the company had autonomy from the government in making decisions regarding the selection of management; and (4) there is no restriction on the company's use of export revenue.[45]

Therefore, we preliminarily find that the evidence placed on the record of this review demonstrates an absence of *de facto* government control with respect to exports of Zhongji, Xiamen Xiashun, Hangzhou Dingsheng, Hunan Suntown, Jiangsu Alcha, Shanghai Shenyan, Suzhou Manakin, and Yinbang Clad regarding the merchandise under review.

Based on the absence of both *de jure* and *de facto* government control with respect to the company's exports of the merchandise under review, we preliminarily find that Zhongji, Xiamen Xiashun, Hangzhou Dingsheng, Hunan Suntown, Shanghai Shenyan, and Suzhou Manakin have

[41] *Id*.
[42] *See Silicon Carbide*, 59 FR at 22586-87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544 (May 8, 1995).
[43] *See, e.g.*, *Silicon Carbide*, 59 FR at 22587.
[44] *Id*.
[45] *See* Zhongji September 12, 2019 AQR at A-2-A18; Xiamen Xiashun September 12, 2019 AQR at 2-18; Hangzhou Dingsheng SRC at 5-7; Hunan Suntown SRC at 4-6; Shanghai Shenyan SRA at 9-22; Suzhou Manakin SRC at 8-11.

established that each company qualifies for a separate rate under the criteria established by *Sparklers* and *Silicon Carbide*. For the respondents which are eligible for a separate rate, but not selected for individual examination in this administrative review, we have assigned a margin based on the weighted-average dumping margin calculated for Xiamen Xiashun, the only mandatory respondent with a margin that is not zero, *de minimis*, or based entirely on adverse facts available, consistent with section 735(c)(5)(A) of the Act.[46]

3. China-Wide Entity

Because no party requested a review of the China-wide entity and Commerce no longer considers the China-wide entity as an exporter conditionally subject to administrative reviews, Commerce is not conducting a review of the China-wide entity.[47] Thus, the rate for the China-wide entity (*i.e.*, 105.80 percent) is not subject to change under this review.[48]

C. Surrogate Country and Surrogate Values

When Commerce is investigating or reviewing imports from an NME country, section 773(c)(1) of the Act directs us to base NV, in most circumstances, on the NME producer's factors of production (FOPs), valued in a surrogate market economy (ME) country or countries considered to be appropriate by Commerce. Specifically, in accordance with section 773(c)(4) of the Act, in valuing the FOPs, Commerce shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (A) at a level of economic development comparable to that of the NME country; and (B) significant producers of comparable merchandise.[49]

As a general rule, Commerce selects a surrogate country that is at the same level of economic development as the NME unless we determine that none of the countries are viable options because: (a) they either are not significant producers of comparable merchandise; (b) do not provide sufficient reliable sources of publicly available SV data; or (c) are not suitable for use based on other reasons.[50] Surrogate countries that are not at the same level of economic development as the NME country, but still at a level of economic development comparable to the NME country, are selected only to the extent that data considerations outweigh the difference in levels of economic development. To determine which countries are at the same level of economic development, Commerce generally relies on *per capita* gross national income (GNI) data from the World Bank's World Development Report.[51] It is our practice to value inputs

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[46] We have used a simple average because publicly available data is not available for Xiamen Xiashun. *See* Memorandum "Aluminum Foil from the People's Republic of China: Calculation of the Margin for Respondents Not Selected for Individual Examination" dated concurrently with this notice; *see also* Preliminary Decision Memorandum.
[47] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963, 65969-70 (November 4, 2013).
[48] *See Order*, 83 FR at 17363.
[49] For a description of our practice, *see* Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (*Policy Bulletin 04.1*), available at https://enforcement.trade.gov/policy/bull04-1 html.
[50] *Id.*
[51] *Id.*

using data from the primary surrogate country, in accordance with 19 CFR 351.408(c)(2) and resort to data from a secondary surrogate country only if data from the primary surrogate country are unavailable or unreliable.[52] The sources of the SVs we used in this review are discussed under the "Normal Value" section below. The petitioner, Zhongji, and Xiamen Xiashun each submitted Bulgarian SV information for consideration.[53]

1. Economic Comparability

Commerce determined that Brazil, Bulgaria, Malaysia, Mexico, Russia, and Turkey are at the same level of economic development as China, based on *per capita* GNI .[54] Therefore, we consider all six countries as having met this criterion of surrogate country selection.

In the Surrogate Country and Values Letter, we requested comments on the list of potential surrogate countries as a starting point for surrogate country selection, pursuant to section 773(c)(4) of the Act, and requested that parties submit for consideration other countries that are at a level of economic development comparable to China.[55] No party submitted comments on the list of potential surrogate countries. Therefore, unless we find that all the countries determined to be equally economically comparable are not significant producers of comparable merchandise, do not provide a reliable source of publicly available surrogate data, or are unsuitable for use for other reasons, we will rely on data from one of the surrogate countries Commerce deemed to be economically comparable to China (*i.e.*, Brazil, Bulgaria, Malaysia, Mexico, Russia, and Turkey).

2. Significant Producer of Comparable Merchandise

Section 773(c)(4)(B) of the Act requires Commerce, to the extent possible, to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Although the legislative history states that "the term 'significant producer' includes any country that is a significant net exporter and, if appropriate, Commerce may use a significant, net exporting country in valuing factors,"[56] that does not preclude reliance on additional or alternative metrics. Moreover, neither the statute nor Commerce's regulations provide further guidance on what may be considered comparable merchandise. Given the absence of any definition in the statute or regulations, Commerce looks to other sources, such as the *Policy Bulletin 04.1* for guidance on defining comparable merchandise. The *Policy Bulletin 04.1* states that "the terms 'comparable level of economic development,' 'comparable merchandise,' and 'significant producer' are not defined in the statute."[57] The *Policy Bulletin 04.1* further states that "in all cases, if identical

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[52] *See, e.g.*, *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 61172 (October 9, 2015), and accompanying IDM at Comments 2 and 5.
[53] *See* Petitioner March 30, 2020 SV Comments; *see also* Zhongji March 30, 2020 SV Comments; Xiamen Xiashun Second Supplemental D at SSD-9.
[54] *See* Surrogate Country and Values Letter at Attachment (Surrogate Country List).
[55] *Id.*
[56] *See* Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Conf. Rep. No. 576,100 Cong, 2d Sess. (1988), reprinted in Cong. Rec. H2032 (Daily Ed. April 20, 1988).
[57] For a description of our practice *see Policy Bulletin 04.1*, at Background.

merchandise is produced, the country qualifies as a producer of comparable merchandise."[58] Conversely, if identical merchandise is not produced, then a country producing comparable merchandise is sufficient in selecting a surrogate country.[59] Further, when selecting a surrogate country, the statute requires Commerce to consider the comparability of the merchandise, not the comparability of the industry.[60]

Following our practice, Commerce analyzed exports of comparable merchandise, as defined by the HTS subheadings listed in the order, from the economically comparable countries during the POR as a proxy for production data.[61] We obtained export data using the Global Trade Atlas (GTA) values for HTS items 7607.11 (*Aluminum Foil, Not Over 0.2 Mm Thick, Not Backed, Rolled but not Further Worked*) and 7607.19 (*Aluminum Foil, Not Over 0.2 Mm Thick, Not Backed, Nesoi*).[62] Commerce found that, of the six countries provided in the Surrogate Country and Values Letter, all were exporters of comparable merchandise.[63] Therefore, because all six countries on the Surrogate Country List satisfy the "economic comparability" and "significant producer" criteria of the surrogate country analysis, Commerce also will consider data availability and reliability in selecting a surrogate country.[64]

3. *Data Availability*

If more than one potential surrogate country satisfies the statutory requirements for selection as a surrogate country, Commerce selects the primary surrogate country based on data availability and reliability.[65] When evaluating SV data, Commerce considers several factors including whether the SV data are publicly available, contemporaneous with the POR, representative of a broad market average, tax and duty-exclusive, and specific to the inputs being valued.[66] There is no hierarchy among these criteria; it is Commerce's practice to consider carefully the available evidence in light of the particular facts of each industry when undertaking its analysis.[67]

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[58] *Id.*
[59] In addition, the *Policy Bulletin 04.1* at note 6, states that "if considering a producer of identical merchandise leads to data difficulties, the operations team may consider countries that produce a broader category of reasonably comparable merchandise."
[60] *See Sebacic Acid from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 62 FR 65674, 65675-76 (December 15, 1997) ("{T}o impose a requirement that merchandise must be produced by the same process and share the same end uses to be considered comparable would be contrary to the intent of the statute.").
[61] *See Certain Uncoated Paper from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 81 FR 3112 (January 20, 2016), and accompanying IDM at Comment 1.
[62] *See* Memorandum, "Surrogate Values for the Preliminary Results," dated concurrently with this memorandum (Preliminary SV Memorandum).
[63] *Id*. at Attachment 2.
[64] *See Policy Bulletin 04.1* at Data Considerations.
[65] *Id.*
[66] *See Policy Bulletin 04.1*; *see also Electrolytic Manganese Dioxide from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 48195 (August 18, 2008), and accompanying IDM at Comment 2.
[67] *See Ad Hoc Shrimp Trade Action Comm. v. United States*, 618 F. 3d 1316, 1322 (Fed. Cir. 2010).

The petitioner, Zhongji, and Xiamen Xiashun each submitted Bulgarian SV information.[68] As stated above, all six countries in the Surrogate Country List satisfy both the "economic comparability" and "significant producer" criteria of the surrogate country analysis. Therefore, Commerce only considered the SV data availability from countries in the Surrogate Country List. However, no party placed SV data on the record from Brazil, Malaysia, Mexico, Russia, or Turkey. As a result, we have not considered these countries for surrogate country selection purposes, and only analyzed the SV data availability for Bulgaria. The petitioner, Zhongji, and Xiamen Xiashun submitted Bulgarian data to value all FOPs.[69]

As noted above, Commerce selects a surrogate country that is at the same level of economic development as the NME unless we determine that none of the countries are viable options because: (a) they either are not significant producers of comparable merchandise; (b) do not provide sufficient reliable sources of publicly available SV data; or (c) are not suitable for use based on other reasons.[70] In this case, the record contains data for all FOPs in Bulgaria, which is at the same level of comparability and is a significant producer of comparable merchandise, and, therefore, the appropriate surrogate country in this review. Absent any compelling arguments, there is no reason why we would select a surrogate country that is not on the Surrogate Country List, unless those countries are not suitable for use based on other reasons. Moreover, although we have a strong regulatory preference for valuing all FOPs in a single surrogate country,[71] the CIT has held that such a preference must still yield to reason and the sourcing of particular SVs from outside the primary surrogate country.[72]

For the reasons described above, we preliminarily determine that Bulgaria best satisfies Commerce's criteria for selection as the primary surrogate country in this review.

D. Application of Facts Available and Adverse Inferences

Sections 776(a)(1) and (2) of the Act provide that, if necessary information is missing from the record, or if an interested party: (A) withholds information that has been requested by Commerce, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the AD statute, or (D) provides such information but the information cannot be verified, Commerce shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Where Commerce determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that Commerce will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain

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[68] *See* Petitioner November 1, 2019 SV Comments; Petitioner March 30, 2020 SV Comments; Zhongji November 1, 2019 SV Comments; Zhongji March 30, 2020 SV Comments; Xiamen Xiashun November 1, 2019 SV Comments; Xiamen Xiashun Second Supplemental D at SSD-9.
[69] *Id.*
[70] *Id.*
[71] *See* 19 CFR 351.408(c)(2).
[72] *See, e.g.*, *Juancheng Kantai Chem. Co. v. United States*, 2015 Ct. Intl. Trade LEXIS 94, *65-66, 71 (August 21, 2015).

the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, Commerce may disregard all or part of the original and subsequent responses, as appropriate.

Section 776(b) of the Act provides that Commerce may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In so doing, and under the Trade Preferences Extension Act of 2015 (TPEA),[73] Commerce is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the 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 LTFV investigation, a previous administrative review, or other information placed on the record.[74]

When using facts otherwise available, section 776(c) of the Act provides that, where Commerce relies on secondary information (such as the petition) rather than information obtained in the course of an investigation or review, it must corroborate, to the extent practicable, 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 of the Act concerning the subject merchandise.[75] The Statement of Administrative Action clarifies that "corroborate" means that Commerce will satisfy itself that the secondary information to be used has probative value,[76] although, under the TPEA, Commerce is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.[77] To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used, although, under the TPEA, Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an "alleged commercial reality" of the interested party.[78]

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[73] On June 29, 2015, the TPEA 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. *See* TPEA, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015). The amendments to section 776 of the Act are applicable to all determinations made on or after August 6, 2015. *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). The text of the TPEA may be found at https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl.
[74] *See also* 19 CFR 351.308(c).
[75] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. I (1994) at 870.
[76] *Id.*; *see also* 19 CFR 351.308(d).
[77] *See* section 776(c)(2) of the Act; TPEA, section 502(2).
[78] *See*, *e.g.*, *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

Under section 776(d) of the Act, Commerce may use any dumping margin from any segment of a proceeding under an AD order when applying an adverse inference, including the highest of such margins. The TPEA also makes clear that when selecting an AFA margin, Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an "alleged commercial reality" of the interested party.[79]

1. Use of Facts Available

We find that necessary information is missing from the record as a result of Xiamen Xiashun's reporting of 14 non-metal inputs and scrap in its questionnaire responses. We also find that Xiamen Xiashun withheld information regarding certain inputs and scrap that had been requested by Commerce, and that its failure to properly report certain inputs and scrap significantly impeded this proceeding.

Xiamen Xiashun originally identified 14 non-metal FOPs as overhead,[80] which should have properly been reported as direct material inputs. After twice being instructed to properly report all direct material FOPs and to provide reconciliations, Xiashun reported the FOPs for eleven of these inputs, but failed to provide complete reconciliations for them.[81] Thus, for these 11 non-metal FOPs, we cannot rely on the reported consumption quantities reported by Xiamen Xiashun because they have not been reconciled to Xiamen Xiashun's financial statements. Accordingly, we find that the complete reconciliations constitute necessary information that is missing from the record, and that Xiamen Xiashun withheld this information and significantly impeded the proceeding.

Additionally, Xiamen Xiashun failed to provide any consumption data for the additional three non-metal inputs, (*i.e.*, lauric acid, lubricating oil, and mineral oil), despite the fact that we specifically instructed Xiamen Xiashun to report these as direct material inputs, rather than as overhead.[82] Accordingly, we find that the consumption data for these three FOPs constitutes necessary information that is missing from the record, and that Xiamen Xiashun withheld this information that had been requested, which significantly impeded the proceeding.

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[79] *See*, *e.g.*, *Cast Iron Soil Pipe Fittings From the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, in Part, Postponement of Final Determination and Extension of Provisional Measures*, 83 FR 7145 (February 20, 2018) (unchanged in *Cast Iron Soil Pipe Fittings From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances, in Part,* 83 FR 33205 (July 17, 2018)).
[80] *See* Xiamen Xiashun Supplemental D at 23-25.
[81] *Id.* at SSD-1 and 2; *see also* Aluminum Association Trade Enforcement Working Group's Letter, "1st Administrative Review of the Antidumping Duty Order on Certain Aluminum Foil from the People's Republic of China—Petitioners Comments Concerning Issues Pertaining to Xiashun dated April 10, 2020 (Petitioner Xiashun Pre-Preliminary Comments) dated April 10, 2020 (Petitioner Xiamen Xiashun Pre-Preliminary Comments at 8-12.
[82] *See* Petitioner Xiamen Xiashun Pre-Preliminary Comments at 12-14.

Finally, we find Xiamen Xiashun's reporting of scrap to be deficient such that necessary, reliable information is missing from the record of this review. Xiamen Xiashun reported scrap production which exceeds the amount of "run-around" scrap consumption in the production process[83] and provided insufficient explanation of its scrap production and consumption, despite Commerce's numerous attempts to solicit this information. Xiamen Xiashun also failed to report scrap on an alloy-specific basis, despite Commerce requesting multiple times that it do so.[84] Xiamen Xiashun's failure to explain how its generation of scrap output outpaced its consumption for certain CONNUMs during the POR, as well as its failure to report scrap on an alloy-specific basis, has resulted in necessary information that is not available on the record. As such, we find that Xiamen Xiashun withheld information that has been requested by Commerce. We also find that Xiamen Xiashun impeded this proceeding, since its production inputs and scrap generation are of significant importance to the accurate calculation of its dumping margin.

2. Adverse Inference in Applying Facts Available

We find that Xiamen Xiashun's reporting of 14 non-metal inputs and Xiamen Xiashun's reporting of scrap each represent a failure of Xiamen Xiashun to cooperate to the best of its ability pursuant to Section 776(b) of the Act.

As stated above, Xiamen Xiashun originally identified 14 non-metal FOPs as overhead,[85] which should have properly been reported as direct material inputs. After twice being instructed to properly report all direct material FOPs and to provide reconciliations, Xiashun reported the FOPs for eleven of these inputs, but failed to provide complete reconciliations.[86] Additionally, Xiamen Xiashun failed to provide any consumption data for the additional three non-metal inputs, (*i.e.*, lauric acid, lubricating oil, and mineral oil), despite the fact that we specifically instructed Xiamen Xiashun to report these as direct material inputs, rather than as overhead.[87] We find that Xiamen Xiashun's failure to tie consumption of eleven production inputs to its financial statements, as well as its failure to provide any consumption data for its lauric acid, lubricating oil, and mineral oil FOPs, despite multiple requests to do so, represents a failure by Xiamen Xiashun to cooperate to the best of its ability.

Additionally, we find Xiamen Xiashun's reporting of scrap to be deficient and to also represent a

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[83] The petitioners have provided evidence that run-around scrap, over time, should reach a near-equilibrium in the production process, meaning that the amount of scrap output is approximately equal to the amount of scrap reintroduced into the production process as an input. *See* Aluminum Association Trade Enforcement Working Group's Letter, "1st Administrative Review of the Antidumping Duty Order on Certain Aluminum Foil from the People's Republic of China—Petitioner's Submission of Rebuttal Factual Information Concerning Respondents Supplemental D Questionnaire Response dated February 7, 2020 at Exhibit 1-- affidavit from Murray G. Rudisell, Vice President of Strategic Initiatives with Reynolds Aluminum.
[84] *See* Xiamen Xiashun Second Supplemental D at SSD-3; *see also* Petitioner Xiamen Xiashun Pre-Preliminary Comments at 16-20.
[85] *See* Xiamen Xiashun Supplemental D at 23-25.
[86] *Id.* at SSD-1 and 2; *see also* Aluminum Association Trade Enforcement Working Group's Letter, "1st Administrative Review of the Antidumping Duty Order on Certain Aluminum Foil from the People's Republic of China—Petitioners Comments Concerning Issues Pertaining to Xiashun dated April 10, 2020 (Petitioner Xiashun Pre-Preliminary Comments) dated April 10, 2020 (Petitioner Xiamen Xiashun Pre-Preliminary Comments at 8-12.
[87] *See* Petitioner Xiamen Xiashun Pre-Preliminary Comments at 12-14.

failure of Xiamen Xiashun to cooperate to the best of its ability pursuant to Section 776(a)(1)(A) and (B) of the Act. As explained above, Xiamen Xiashun reported scrap production which exceeds the amount of "run-around" scrap consumption in the production process[88] and provided insufficient explanation of its scrap production and consumption, despite Commerce's numerous attempts to solicit this information. Xiamen Xiashun also failed to report scrap on an alloy specific basis, despite Commerce requesting multiple times that it do so.[89] Xiamen Xiashun's refusal to explain how its generation of scrap output outpaced its consumption for certain CONNUMs during the POR, as well as its refusal to report scrap on an alloy-specific basis consistent with Commerce's instructions, represents a failure of Xiamen Xiashun to cooperate to the best of its ability. Accordingly, we find that application of an adverse inference in applying facts available, under Section 776(b) of the Act, is warranted.

However, while we find that Xiamen Xiashun failed to cooperate to the best of its ability with respect to 14 direct material FOPs and scrap reporting, we preliminarily do not find that it was uncooperative in the rest of its responses to Commerce's requests for information. As such, we preliminarily find that application of partial AFA, rather than total AFA, is appropriate. As partial AFA for the eleven FOPs for which Xiamen Xiashun failed to provide a complete reconciliation, and for Xiamen Xiashun's unreported FOPs for lauric acid, lubricating oil, and mineral oil, we have used the highest FOP consumption value on the record for similar non-metal inputs.[90] Finally, as partial AFA with regard to scrap, we have capped, on a CONNUM-specific basis, the amount of Xiamen Xiashun's reported run-around scrap output by the amount of Xiamen Xiashun's reported run-around scrap input.[91]

E. Date of Sale

In identifying the date of sale of subject merchandise, in accordance with 19 CFR 351.401(i), Commerce will normally "use the date of invoice, as recorded in the exporter or producer's records kept in the normal course of business" unless a different date better reflects the date on which the material terms of sale (*e.g.*, price and quantity) are established.[92] Furthermore, we

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[88] The petitioners have provided evidence that run-around scrap, over time, should reach a near-equilibrium in the production process, meaning that the amount of scrap output is approximately equal to the amount of scrap reintroduced into the production process as an input. *See* Aluminum Association Trade Enforcement Working Group's Letter, "1st Administrative Review of the Antidumping Duty Order on Certain Aluminum Foil from the People's Republic of China—Petitioner's Submission of Rebuttal Factual Information Concerning Respondents Supplemental D Questionnaire Response dated February 7, 2020 at Exhibit 1-- affidavit from Murray G. Rudisell, Vice President of Strategic Initiatives with Reynolds Aluminum.
[89] *See* Xiamen Xiashun Second Supplemental D at SSD-3; *see also* Petitioner Xiamen Xiashun Pre-Preliminary Comments at 16-20.
[90] *See* Memorandum, "Xiamen Xiashun Analysis for the Preliminary Results," dated concurrently with this memorandum (Xiamen Xiashun Preliminary Analysis Memorandum).
[91] *Id*.
[92] *See, e.g., Notice of Final Determinations of Sales at Less Than Fair Value; Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from Turkey*, 65 FR 15123 (March 21, 2000), and accompanying IDM at Comment 1.

have a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.[93]

Zhongji and Xiamen Xiashun both reported the date of the invoice issued to its unaffiliated U.S. customer as the date of sale.[94] Commerce found no evidence contrary to Zhongji's and Xiamen Xiashun's claims that the invoice date reflected the date on which the material terms of sale were established. Additionally, Zhongji's and Xiamen Xiashun's invoice and shipment dates were the same. Thus, because record evidence does not demonstrate that the material terms of sale were established on another date, Commerce used the invoice date as the date of sale for these preliminarily results, in accordance with 19 CFR 351.401(i).[95]

F. Normal Comparisons

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether Zhongji's and Xiamen Xiashun's sales of subject merchandise from China to the United States were made at less than NV, Commerce compared the EP to the NV as described in the "Export Price" and "Normal Value" sections of this memorandum.

1. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs (or constructed export prices (CEPs)) (*i.e.*, the average-to-average method) unless Commerce determines that another method is appropriate in a particular situation. In LTFV investigations, Commerce examines whether to compare weighted-average NVs with the EPs (or CEPs) of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce's examination of this question in the context of administrative reviews, Commerce nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in LTFV investigations.[96]

In recent investigations, Commerce applied a "differential pricing" analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation

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[93] *See, e.g., Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 10670 (March 12, 2018), and accompanying Preliminary Decision Memorandum (PDM) at 6-7, unchanged in *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 32629 (July 13, 2018).
[94] *See* Zhongji September 30, 2019 CQR at C-10; *see also* Xiamen Xiashun September 30, 2019 CQR at C-9-C10.
[95] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (December 23, 2004), and accompanying IDM at Comment 10; *see also Allied Tube and Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090-92 (CIT 2001) (upholding Commerce's rebuttable presumption that invoice date is the appropriate date of sale).
[96] *See Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010-2011*, 77 FR 73415 (December 10, 2012), and accompanying IDM at Comment 1; *see also Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (CIT 2014).

pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.[97] Commerce finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce's additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in these preliminary results examines whether there exists a pattern of EPs (or CEPs) for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchaser, region, and time period to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported customer codes. Regions are defined using the reported destination code (*i.e.*, zip code) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POR based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region, and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region, and time period, that Commerce uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the "Cohen's *d* test" is applied. The Cohen's *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen's *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen's *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium, or large (0.2, 0.5, and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there

[97] *See, e.g.*, *Polyethylene Terephthalate Resin from Taiwan: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 83 FR 19696 (May 4, 2018), unchanged in *Polyethylene Terephthalate Resin from Taiwan: Final Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances, in Part*, 83 FR 48287 (September 24, 2018); *Large Diameter Welded Pipe from Canada: Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 83 FR 43649 (August 27, 2018), unchanged in *Large Diameter Welded Pipe from Canada: Final Affirmative Determination of Sales at Less Than Fair Value*, 84 FR 6378 (February 27, 2019); and *Cast Iron Soil Pipe from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 83 FR 44567 (August 31, 2018), unchanged in *Cast Iron Soil Pipe from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 84 FR 6767 (February 28, 2019).

is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the "ratio test" assesses the extent of the significant price differences for all sales as measured by the Cohen's *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen's *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage (*i.e.*, the Cohen's *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, Commerce examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, Commerce tests whether using an alternative comparison method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if (1) there is a 25 percent relative change in the weighted-average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold, or (2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.

2. Results of the Differential Pricing Analysis

For Zhongji, Commerce finds that the value of U.S. sales passing the differential pricing test is 64.9 percent of the value of total U.S. sales, thereby confirming the existence of a pattern of EPs for comparable merchandise that differ significantly among purchasers, regions, or time periods.[98] Further, the test results show that there is not a meaningful difference in the weighted-average dumping margins when calculated using the average-to-average method for all sales and the average-to-transaction method for all sales passing the Cohen's *d* test and the average-to-average method to those sales not passing the Cohen's *d* test (*i.e.*, the mixed method). Accordingly, Commerce used the average-to-average method in making comparisons of EP and normal value for Zhongji.[99]

For Xiamen Xiashun, Commerce finds that the value of U.S. sales passing the differential pricing test is 54.0 percent of the value of total U.S. sales, thereby confirming the existence of a pattern of EPs for comparable merchandise that differ significantly among purchasers, regions, or time periods.[100] Further, the test results show that there is not a meaningful difference in the weighted-average dumping margins when calculated using the average-to-average method for all sales and the average-to-transaction method for all sales passing the Cohen's *d* test and the average-to-average method to those sales not passing the Cohen's *d* test (*i.e.*, the mixed method). Accordingly, Commerce used the average-to-average method in making comparisons of EP and normal value for Xiamen Xiashun.

G. U.S. Price

Pursuant to section 772(a) of the Act, EP is "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States," as adjusted under section 772(c) of the Act.

Commerce considers the U.S. prices of all sales by Zhongji and Xiamen Xiashun to be EPs, in accordance with section 772(a) of the Act, because they were the prices at which the subject merchandise was first sold before the date of importation by the exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States and CEP methodology was not otherwise warranted based on the facts of this record. For this review, Zhongji and Xiamen Xiashun each reported EP for all their sales during the POR.[101]

1. Export Price

We based EP on packed prices to unaffiliated purchasers in the United States. In accordance with 19 CFR 351.401(c) we adjusted the starting price, where appropriate, in accordance with section 772(c)(2)(A) of the Act. We also deducted domestic and international movement expenses (*i.e.*, domestic and foreign inland freight, domestic and foreign brokerage and handling, marine insurance, and international freight and commissions) in accordance with section

[98] *See* Memorandum, "Zhongji Analysis for the Preliminary Results," dated concurrently with this memorandum (Zhongji Preliminary Analysis Memorandum) at Section IV.
[99] *Id*.
[100] *See* Xiamen Xiashun Preliminary Analysis Memorandum at Section IV.
[101] *See* Zhongji September 30, 2019 CQR at C-9; *see also* Xiamen Xiashun September 30, 2019 CQR at C-9.

772(c)(2)(A) of the Act.[102] Where movement expenses were provided by Chinese service providers or paid for in an NME currency, we valued these services using SVs.[103]

2. Value-Added Tax

Commerce's recent practice in NME cases is to adjust EP (or the CEP) for the amount of any unrefunded, (herein irrecoverable) value added taxes (VAT) in certain non-market economies in accordance with section 772(c)(2)(B) of the Act.[104] In changing this practice, Commerce explained that, when an NME government imposes an export tax, duty, or other charges on subject merchandise, or on inputs used to produce subject merchandise, from which the respondent was not exempted, Commerce will reduce the respondent's EP and CEP prices accordingly, by the amount of the tax, duty or charge paid, but not rebated.[105] Where the irrecoverable VAT is a fixed percentage of EP or CEP, Commerce explained that the final step in arriving at a tax neutral dumping comparison is to reduce the U.S. EP or CEP downward by this same percentage.[106]

VAT is an indirect, *ad valorem* consumption tax imposed on the purchase (sale) of goods. It is levied on the purchase (sale) price of the good, *i.e.*, it is paid by the buyer and collected by the seller. For example, if the purchase price is \$100 and the VAT rate is 15 percent, the buyer pays \$115 to the seller, \$100 for the good and \$15 in VAT. VAT is typically imposed at every stage of production. Thus, under a typical VAT system, firms: (1) pay VAT on their purchases of production inputs and raw materials ("input VAT") as well as (2) collect VAT on sales of their output ("output VAT").

Firms calculate input VAT and output VAT for tax purposes on a company-wide (not transaction-specific) basis, *i.e.*, in the case of input VAT, on the basis of *all input purchases* regardless of whether used in the production of goods for export or domestic consumption, and in the case of output VAT, on the basis of *all sales to all markets*, foreign and domestic. Thus, a firm might pay the equivalent of \$60 million in total input VAT across all input purchases and collect \$100 million in total output VAT across all sales. In this situation, however, the firm would remit to the government only \$40 million of the \$100 million in output VAT collected on its sales because of a \$60 million credit for input VAT paid that the firm can claim against output VAT.[107] As result, the firm bears no "VAT burden (cost)": the firm through the credit is refunded or recovers <u>all</u> of the \$60 million in input VAT it paid, and the \$40 million remittance to the government is simply a transfer to the government of VAT paid by (collected from) the buyer with the firm acting only as an intermediary. Thus, the cost of output VAT falls on the buyer or the good, not on the firm.

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[102] *See* Zhongji Preliminary Analysis Memorandum; *see also* Xiamen Xiashun Preliminary Analysis Memorandum.
[103] *See* Preliminary SV Memorandum.
[104] *See Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, in Certain Non-Market Economy Antidumping Proceedings*, 77 FR 36481 (June 19, 2012).
[105] *Id.*; *see also Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 4875 (January 30, 2014), and accompanying IDM at Comment 5.A.
[106] *Id.*
[107] The credit, if not exhausted in the current period, can be carried forward.

This would describe the situation under Chinese law except that producers in China, in most cases, do not recover (*i.e.*, are not refunded) the total input VAT they paid. Instead, Chinese tax law requires a *reduction in or offset to* the input VAT that can be credited against output VAT. This formula for this reduction/offset is provided in Article 5 of the 2012 Chinese government tax regulation, *Circular on Value-Added Tax and Consumption Tax Policies on Exported Goods and Services* (*2012 VAT Notice*):[108]

$$\textbf{Reduction/Offset} = \mathbf{(P - c)} \times \mathbf{(T_1 - T_2)},$$

where,
P = (VAT-free) FOB value of export sales;
c = value of bonded (duty- and VAT-free) imports of inputs used in the production of goods for export;
T_1 = VAT rate; and,
T_2 = refund rate specific to the export good.
Using the example above, if P = \$200 million, c = 0, T_1 = 17% and T_2 = 10%, then the reduction/offset = (\$200 million - \$0) x (17% - 10%) = \$200 million x 7% = \$14 million.

Chinese law then requires that the firm in this example calculate creditable input VAT by subtracting the \$14 million from total input VAT, as specified in Article 5.1(1) of the *2012 VAT Notice*:

Creditable input VAT = Total input VAT – Reduction/Offset

Using again the example above, the firm can credit only \$60 million – \$14 million = \$46 million of the \$60 million in input VAT against output VAT. Since the \$14 million is not creditable (legally recoverable), it is not refunded to the firm. Thus, the firm incurs a cost equal to \$14 million, which is calculated on the basis of FOB export value at the *ad valorem* rate of $T_1 - T_2$. This cost therefore functions as an "export tax, duty, or other charge" because the firm does not incur it *but for* exportation of the subject merchandise, and under Chinese law it must be recorded as a cost of exported goods.[109] It is for this "export tax, duty, or other charge" that Commerce makes a downward adjustment to U.S. price under section 772(c) of the Act.[110]

[108] We have placed the 2012 Chinese Circular Governing the VAT offset on the record of this proceeding. *See* Memorandum, "Certain Aluminum Foil from the People's Republic of China; 2018-2019-- Placing Document on the Record of this Redetermination," dated concurrently with this memorandum (2012 VAT Notice).
[109] Article 5(3) of the *2012 VAT Notice* states: "If the tax refund rate is lower than the applicable tax rate, the tax for the difference calculated accordingly shall be included in the cost of exported goods and labor services."
[110] Because the \$14 million is the amount of input VAT that is not refunded to the firm, it is sometimes referred to as "irrecoverable input VAT." However, that phrase is perhaps misleading because the \$14 million is not a fraction or percentage of the VAT the firm paid on purchases of inputs used in the production of exports. If that were the case, the value of production inputs, not FOB export value, would appear somewhere in the formula in Article 5 of the *2012 VAT Notice* as the tax basis for the calculation. The value of production inputs does not appear in the formula. Instead, as explained above, the \$14 million is simply a cost imposed on firms that is tied to export sales, as evidenced by the formula's reliance on the FOB export value as the tax basis for the calculation. The \$14 million is a reduction in or offset to what is essentially a tax credit, and it is calculated based on and is proportional to the value of a company's export sales. Thus, "irrecoverable input VAT" is in fact, despite its name, an export tax within the meaning of section 772(c) of the Act.

It is important to note that under Chinese law, the reduction/offset described above is defined in terms of, and applies to, total (company-wide) input VAT across purchases of all inputs, whether used in the production of goods for export or domestic consumption. The reduction/offset does not distinguish the VAT treatment of export sales from the VAT treatment of domestic sales from an input VAT recovery standpoint for the simple reason that such treatment under Chinese law applies to the company as a whole, not specific markets or sales. At the same time, however, the reduction/offset is calculated on the basis of the FOB value of exported goods, so it can be thought of as a tax on the company (*i.e.*, a reduction in the input VAT credit) that the company would not incur but for the export sales it makes, a tax fully allocable to export sales because the firm under Chinese law must book it as cost of exported goods.

The VAT treatment under Chinese law of exports of goods described above concerns only export sales that are *not* subject to output VAT, the situation where the firm collects no VAT from the buyer, which applies to most exports from China. However, the *2012 VAT Notice* provides for a limited exception in which export sales of certain goods are, under Chinese law, deemed domestic sales for tax purposes and are thus subject to output VAT at the full rate.[111] The formulas discussed above from Article 5 of the *2012 VAT Notice* do not apply to firms that export these goods, and there is therefore no reduction in or offset to their creditable input VAT. For these firms creditable input VAT = total input VAT, *i.e.*, these firms recover all their input VAT. At the same time, export sales of these firms are subject to an explicit output VAT at the full rate, T_1.[112] Commerce must therefore deduct this tax from U.S. price[113] under section 772(c) of the Act to ensure tax-neutral dumping margin calculations.[114]

In the initial questionnaires, Commerce instructed Zhongji and Xiamen Xiashun to report VAT on the subject merchandise sold to the United States during the POR and to identify which taxes are unrefunded upon export.[115] Information placed on the record of this review indicates that, according to China's VAT schedule, the standard VAT levied during the period January through April 2018 was 17 percent and the refund rate for the subject merchandise was 15 percent; that during the period May through October 2018, it was 16 percent and the refund rate was 15 percent; and that during the period November 2018 through January 2019, the VAT levy and refund rate were 16 percent.[116] Consistent with our standard methodology, for purposes of these preliminary results, we based the calculation of irrecoverable VAT on the difference between those standard rates, applied to a FOB price at the time of exportation.[117] Thus, because the VAT levy and VAT rebate rates on exports are different during certain periods of the POR, we adjusted both Zhongji's and Xiamen Xiashun's U.S. sales for irrecoverable VAT.

[111] *See 2012 VAT Notice*, Article 7. For these goods, the VAT refund rate on export is zero.
[112] *See 2012 VAT Notice*, Article 7.2(1).
[113] Commerce will divide the VAT-inclusive export price by (1 + T), where T is the applicable VAT rate.
[114] Pursuant to sections 772(c) and 773(c) of the Act, the calculation of NV based on FOPs in NME antidumping cases is calculated on a VAT-exclusive basis, so U.S. price must also be calculated on a VAT-exclusive basis to ensure tax neutrality.
[115] *See* Zhongji and Xiamen Xiashun NME Questionnaires.
[116] *See* Zhongji September 30, 2019 CQR at C-33.
[117] *See, e.g.*, *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2012-2013*, 80 FR 33241 (June 11, 2015), and accompanying IDM at Comment 5.

H. Normal Value

Section 773(c)(1) of the Act provides that Commerce shall determine the NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home market prices, third country prices, or constructed value under section 773(a) of the Act. Commerce bases NV in an NME context on FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under Commerce's normal methodologies. Commerce's questionnaire requires that a respondent provide information regarding the weighted–average FOPs across all of the company's plants and/or suppliers that produce the subject merchandise, not just the FOPs from a single plant or supplier.[118] This methodology ensures that Commerce's calculations are as accurate as possible.[119]

Therefore, we calculated NV based on FOPs reported by Zhongji and Xiamen Xiashun for the POR, in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c). Under section 773(c)(3) of the Act, FOPs include, but are not limited to: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs.[120] We used the FOPs reported by Zhongji and Xiamen Xiashun for materials, energy, labor, by-products, packing, and freight. In accordance with section 773(c) of the Act and 19 CFR 351.408(c)(1), we calculated the cost of FOPs by multiplying the reported per-unit FOP consumption rates by publicly available SVs.[121] We summed the FOP and freight costs to derive NV.

1. *Factor Valuations*

As noted above, when selecting from among the available information for valuing FOPs, Commerce's practice is to select, to the extent practicable, SVs which are publicly available, broad market averages, contemporaneous with the POR or closest in time to the POR, product-specific, and tax-exclusive.[122] As appropriate, we adjusted FOP costs by including freight costs to make them delivered values. Specifically, we added a surrogate freight cost, where appropriate, to surrogate input values using the shorter of the reported distance from the domestic supplier to the respondent's factory or the distance from the nearest seaport to the respondent's factory.[123] An overview of the SVs used to calculate weighted-average dumping margins for the mandatory respondent is described below. For a detailed description of all SVs used to calculate the weighted-average dumping margins, *see* the Preliminary SV Memorandum.

[118] *See* Initial Questionnaires at Section D.
[119] *See, e.g., Final Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Rail Tie Wire from the People's Republic of China*, 79 FR 25572 (May 5, 2014), and accompanying IDM at Comment 7
[120] *See* section 773(c)(3)(A)-(D) of the Act.
[121] *See* Preliminary SV Memorandum.
[122] *See, e.g.*, *Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004).
[123] *See Sigma Corp. v. United States*, 117 F. 3d 1401, 1407-08 (Fed. Cir. 1997) (*Sigma Corp.*).

a. Direct and Packing Materials

GTA import prices for the primary surrogate country, Bulgaria, are generally publicly available, representative of a broad market average, contemporaneous with the POR, product-specific, and tax-exclusive.[124] Thus, we based SVs for Zhongji and Xiamen Xiashun on Bulgarian import values.[125]

Pursuant to section 773(c)(5) of the Act and the legislative history of the Omnibus Trade and Competitiveness Act of 1988, Commerce continues to apply its long-standing practice of disregarding certain prices as SVs if it has reason to believe or suspect that those prices may have been dumped or subsidized.[126] In this regard, Commerce previously found that it is appropriate to disregard such prices from India, Indonesia, South Korea, and Thailand because we determined that these countries maintain broadly available, non-industry specific, export subsidies.[127] Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, Commerce finds that it is reasonable to infer that all exporters from India, Indonesia, South Korea, and Thailand may have benefitted from these subsidies. Therefore, Commerce has not used prices from these countries in calculating the Bulgarian import-based SVs. Commerce similarly disregarded prices from NME countries. Finally, imports that were labeled as originating from an "unspecified" country were excluded from the average value, since Commerce could not be certain that these imports were not from either an NME country or a country with generally available export subsidies.[128]

Commerce adjusted the SVs, as appropriate, for exchange rates and taxes. As appropriate, Commerce adjusted FOP costs by including freight costs to make them delivered values. Specifically, Commerce added a surrogate freight cost, where appropriate, to surrogate input values using the shorter of the reported distance from the domestic supplier to the respondent's factory or the distance from the nearest seaport to the respondent's factory.[129]

[124] *See* Preliminary SV Memorandum.
[125] *Id*.
[126] *See* Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988) at 590.
[127] *See, e.g.*, *Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order*, 75 FR 13257 (March 19, 2010), and accompanying IDM at 4-5; *see also Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review*, 70 FR 45692 (August 8, 2005), and accompanying IDM at 4; *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 74 FR 2512 (January 15, 2009), and accompanying IDM at 17, 19-20; and *Certain Frozen Warmwater Shrimp from Thailand: Final Negative Countervailing Duty Determination*, 78 FR 50379 (August 19, 2013), and accompanying IDM at IV.
[128] *See, e.g.*, *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 73 FR 24552, 24559 (May 5, 2008), unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 55039 (September 24, 2008); *see also* Preliminary SV Memorandum.
[129] *See Sigma Corp.*, 117 F. 3d at 1407-08.

b. Energy

Commerce valued coke gas, natural gas, and electricity using non-household prices provided by Eurostat that are contemporaneous with the POR.[130]

c. Labor

In *Labor Methodologies*,[131] Commerce determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Commerce does not, however, preclude other sources for valuing labor.[132] Rather, we continue to follow our practice of selecting the best available information. Here, we determined that the best data source from the primary surrogate country was the labor data from the Bulgarian National Institute of Statistics.[133]

d. Movement Services

We used various sources to value movement services. For inland freight and brokerage and handling (B&H), we valued these expenses using a price list for charges related to importing/exporting a standardized cargo of goods in and out of Bulgaria, as published in the World Bank's *Doing Business 2019: Bulgaria*.[134] We valued international freight using price rates from Descartes.com.[135] We did not inflate or deflate the rates because they were in effect during the POR.[136] Because the GTA import prices for Bulgaria were reported on a cost, insurance and freight basis, we did not adjust the GTA surrogate values by including international freight, marine insurance, and B&H.[137]

e. Financial Ratios

Pursuant to 19 CFR 351.408(c)(4), Commerce values selling, general and administrative (SG&A) expenses, factory overhead expenses, and profit using publicly available information gathered from producers of comparable merchandise in the surrogate country. To value factory overhead, SG&A expenses, and profit for these preliminary results, we relied on the 2018

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[130] See Zhongji November 1, 2019 SV Comments at SV-6 and SV-10; *see also* Preliminary SV Memorandum.
[131] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092-36094 (June 21, 2011) (*Labor Methodologies*).
[132] *See Steel Wire Garment Hangers from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012–2013*, 79 FR 65616 (November 5, 2014), and accompanying IDM at 11.
[133] *See* Petitioner November 1, 2019 SV Comments at SV-4.
[134] *Id.* at SV-6; *see also* Preliminary SV Memorandum.
[135] *See* Zhongji November 1, 2019 SV Comments at SV-7; *see also* Preliminary SV Memorandum.
[136] *Id.*
[137] *See* Policy Bulletin 10.2: Inclusion of International Freight Costs When Import Prices Constitute Normal Value (November 1, 2010) at 1-2; *see also, e.g.*, *Certain Quartz Surface Products from the People's Republic of China: Preliminary Determination of Sales at Less Than Sales Value and Postponement of Final Determination*, 83 FR 58540 (November 20, 2018), and accompanying PDM at 31, unchanged in *Certain Quartz Surface Products From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances*, 84 FR 23767 (May 23, 2019), and accompanying IDM at Comment 10.

financial statements from Alcomet AD, a Bulgarian producer of aluminum foil, which represents the best available information on the record.[138]

I. Currency Conversion

Where necessary, Commerce made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

VII. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

☒	☐
Agree	Disagree

6/17/2020

X

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

[138] *See* Preliminary SV Memorandum; *see also* Petitioner November 1, 2019 SV Comments at SV-7.