



C-570-054  
Administrative Review  
POR: 1/1/2019 – 12/31/2019  
**Public Document**  
E&C/OVI: TRW

June 29, 2021

**MEMORANDUM TO:** Christian Marsh  
Acting 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  
Countervailing Duty Administrative Review of Certain Aluminum  
Foil from the People's Republic of China; 2019

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## I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the countervailing duty (CVD) order on certain aluminum foil (aluminum foil) from the People's Republic of China (China). The period of review (POR) is January 1, 2019, through December 31, 2019. We preliminarily find that the respondent, Xiamen Xiashun Aluminum Foil Co., Ltd. (Xiashun) received countervailable subsidies during the POR.

If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), we will issue the final results no later than 120 days after publication of these preliminary results.

## II. BACKGROUND

### A. Case History

On April 19, 2018, Commerce published in the *Federal Register* the CVD order on aluminum foil from China.<sup>1</sup> On April 30, 2020, we received timely review requests from the Aluminum Association Trade Enforcement Working Group (the petitioners) covering 33 companies, and we

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<sup>1</sup> See *Certain Aluminum Foil from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 83 FR 17360 (April 19, 2018) (*Order*).

received review requests from the following interested parties covering 16 of the companies requested for review by the petitioners: Xiashun; Valeo North America, Inc. (Valeo); Hangzhou Dingsheng Import & Export Co. Ltd., Jiangsu Dingsheng New Materials Joint-Stock Co., Ltd., Dingsheng Aluminum Industries (Hong Kong) Trading Co. Ltd., Hangzhou Five Star Aluminum Co., Ltd., SNTA International Trade Limited, Hunan Suntown Marketing Limited, and Suntown Technology Group Corporation Limited (Collectively the Dingsheng Companies); and Jiangsu Zhongji Lamination Materials Co., Ltd. (Zhongji), Shantou Wanshun Package Material Stock Co., Ltd., Jiangsu Huafeng Aluminum Industry Co., Ltd., Anhui Maximum Aluminium Industries Company Ltd., and Jiangsu Zhongji Lamination Materials Co., (HK) Ltd. (collectively the Zhongji Companies).<sup>2</sup> We initiated a review of 33 companies, in total. On June 8, 2020, Commerce published a notice of initiation of an administrative review of the *Order*, covering the requested companies.<sup>3</sup>

In the “Respondent Selection” section of the *Initiation Notice*, Commerce stated that, if necessary, it intended to select respondents based on CBP data for entries of aluminum foil from China made during the POR.<sup>4</sup> Accordingly, on July 1, 2020, Commerce released the CBP data to all interested parties under an administrative protective order, and requested comments regarding the data and respondent selection.<sup>5</sup> On September 8, 2020, the petitioners withdrew all of their review requests.<sup>6</sup> On September 17, 2020, we selected Jiangsu Alcha Aluminum Co., Ltd. (Alcha) and Xiashun as mandatory respondents in this review.<sup>7</sup>

On September 21, 2020, Commerce issued the Initial Questionnaire to the Government of China (GOC).<sup>8</sup> From October 13, 2020, to November 12, 2020, Commerce received timely responses to the Initial Questionnaire from the GOC, Xiashun, and Xiashun’s affiliate, Daching Enterprises

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<sup>2</sup> See Petitioners’ Letter, “Countervailing Duty Order on Certain Aluminum Foil from the People’s Republic of China – Petitioners’ Request for 2019/2020 Administrative Review,” dated April 30, 2020 (Petitioners’ Review Request); Valeo’s Letter, “Aluminum Foil from the People’s Republic of China: Request for Administrative Review,” dated April 30, 2020 (Valeo’s Review Request); Xiashun’s Letter, “Aluminum Foil from the People’s Republic of China: Request for Administrative Review,” dated April 30, 2020 (Xiashun’s Review Request); Dingsheng Companies’ Letter, “Request for Administrative Review of the Countervailing Duty Order on Aluminum Foil from the People’s Republic of China (C-570-054),” dated April 30, 2020 (Dingsheng Companies’ Review Request); and Zhongji Companies’ Letter “Certain Aluminum Foil from the People’s Republic of China: Request for Second Administrative Review,” (Zhongji Companies’ Review Request).

<sup>3</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 85 FR 35068 (June 8, 2020) (*Initiation Notice*).

<sup>4</sup> See *Initiation Notice*, 85 FR at 35068.

<sup>5</sup> See Memorandum, “Aluminum Foil from the People’s Republic of China: Release of U.S. Customs and Border Protection Import Data,” dated July 1, 2020.

<sup>6</sup> See Petitioners’ Letter, “2nd Administrative Review of the Countervailing Duty Order on Certain Aluminum Foil from the People’s Republic of China – Petitioners’ Withdrawal of Certain Requests for Administrative Reviews,” dated September 8, 2020 (Petitioner’s Withdrawal of Review Requests).

<sup>7</sup> See Memorandum, “2019 Administrative Review of the Countervailing Duty Order on Aluminum Foil from the People’s Republic of China: Respondent Selection,” dated September 17, 2020 (Respondent Selection Memorandum).

<sup>8</sup> See Commerce’s Letter, “Administrative Review of the Countervailing Duty Order on Certain Aluminum Foil from the People’s Republic of China: Initial Questionnaire,” dated September 21, 2020 (Initial Questionnaire).

Ltd.<sup>9</sup> Alcha did not provide a response to the affiliation questions portion of the Initial Questionnaire, which was due on October 5, 2020, and did not provide a response to the other parts of the Initial Questionnaire, which was due on October 28, 2020.<sup>10</sup> On February 26, 2021, Commerce fully extended the preliminary results deadline until June 29, 2021.<sup>11</sup> Between March 16 and 18, 2021, Commerce issued supplemental questionnaires to the GOC and Xiashun.<sup>12</sup> Commerce received timely responses to these questionnaires between April 1 and 5, 2021.<sup>13</sup>

## **B. Tolling and Extension of the Deadline for the Preliminary Results**

On July 21, 2020, Commerce tolled all deadlines in administrative reviews by 60 days, thereby extending the deadline for the preliminary results until March 1, 2021.<sup>14</sup> On February 26, 2021, Commerce fully extended the deadline for these preliminary results until June 29, 2021.<sup>15</sup>

## **III. RESCISSION OF ADMINISTRATIVE REVIEW, IN PART**

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation of the requested review.

On September 8, 2020, the petitioners withdrew their requests for review of certain companies.<sup>16</sup> In particular, the petitioners withdrew their requests for review of the 12 companies for which their request was the only request for review: (1) Baotou Alcha Aluminum Co., Ltd.; (2)

<sup>9</sup> See Xiashun's Letter, "Certain Aluminum Foil from The People's Republic of China –Xiashun Identifying Affiliates Questionnaire Response," dated October 13, 2020 (Xiashun's Affiliation Response); GOC's Letter, "Administrative Review of the Countervailing Duty Order on Certain Aluminum Foil from the People's Republic of China: Government of China's Response to Section II," dated November 12, 2020 (GOC's IQR); Xiashun's Letter, "Certain Aluminum Foil from The People's Republic of China–Xiashun's Section III Questionnaire Response," dated November 12, 2019 (Xiashun's IQR); and Daching Letter "Certain Aluminum Foil from The People's Republic of China – Daching's Section III Questionnaire Response," dated November 12, 2020 (Daching's IQR).

<sup>10</sup> See Initial Questionnaire at Cover Letter and Section III, Part I.

<sup>11</sup> See Memorandum, "Certain Aluminum Foil from the People's Republic of China: Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review; 2019," dated February 26, 2021.

<sup>12</sup> See Commerce's Letter, "Administrative Review of the Countervailing Duty Order on Aluminum Foil from the People's Republic of China, 2019: First Supplemental Questionnaire for Xiashun," dated March 16, 2021 (Xiashun Supplemental Questionnaire); and Commerce's Letter, "Countervailing Administrative Review of Aluminum Foil from the People's Republic of China, 2019: Supplemental Questionnaire" dated March 18, 2021 (GOC Supplemental Questionnaire).

<sup>13</sup> See Xiashun's Letter, "Certain Aluminum Foil from The People's Republic of China –Supplemental Section III Questionnaire Response," dated April 5, 2021 (Xiashun's SQR); and GOC's Letter, "Aluminum Foil from the People's Republic of China: Government of China's Response to Section II Supplemental Questionnaire," dated April 1, 2021 (GOC's SQR);

<sup>14</sup> See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews," dated July 21, 2020.

<sup>15</sup> See Memorandum, "Certain Aluminum Foil from the People's Republic of China: Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review; 2019," dated February 26, 2021.

<sup>16</sup> See Petitioners' letter, "2nd Administrative Review of the Countervailing Duty Order on Certain Aluminum Foil from the People's Republic of China – Petitioners' Withdrawal of Certain Requests for Administrative Reviews," September 8, 2020.

Granges Aluminum (Shanghai) Co., Ltd.; (3) Guangxi Baise Xinghe Aluminum Industry Co., Ltd.; (4) Huaфон Nikkei Aluminium Corporation; (5) Jiangsu Zhongji Lamination Materials Stock Co., Ltd.; (6) Jiangyin Dolphin Pack Ltd. Co.; (7) Shandong Yuanrui Metal Material Co., Ltd.; (8) Suntown Technology Group Limited; (9) Suzhou Manakin Aluminum Processing Technology Co., Ltd.; (10) Yantai Donghai Aluminum Foil Co., Ltd.; (11) Yantai Jintai International Trade Co., Ltd.; and (12) Zhejiang Zhongji Aluminum Industry Co., Ltd.<sup>17</sup>

Because the petitioners were the only parties who requested a review of these 12 companies, and because the petitioners timely withdrew their requests for a review for each of the 12 companies, we are rescinding the review with respect to these 12 companies, pursuant to 19 CFR 351.213(d)(1).

#### IV. NON-SELECTED COMPANIES UNDER REVIEW

The statute and Commerce's regulations do not directly address the establishment of rates to be applied to companies not selected for individual examination where Commerce limits its examination in an administrative review pursuant to section 777A(e)(2) of the Act. However, Commerce normally determines the rates for non-selected companies in reviews in a manner that is consistent with section 705(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation.

There are 14 companies for which a review was requested that were not selected for individual examination, for which we did not receive a timely withdrawal of the request for review, and which we are not finding to be cross-owned with the mandatory company respondents.<sup>18</sup> For these companies, we are basing the subsidy rate on the subsidy rate calculated for Xiashun, the only mandatory respondent for which the preliminary subsidy rate is not based entirely on AFA.<sup>19</sup>

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<sup>17</sup> Of the 33 companies for which we initiated a review in the *Initiation Notice*, 16 were subject to the review requests of other interested parties: (1) Alcha International Holdings Limited; (2) Anhui Maximum Aluminium Industries Company Ltd.; (3) Dingsheng Aluminum Industries (Hong Kong) Trading Co. Ltd.; (4) Hangzhou Dingsheng Import & Export Co. Ltd.; (5) Hangzhou Five Star Aluminum Co., Ltd.; (6) Hunan Suntown Marketing Limited; (7) Jiangsu Alcha Aluminum Co., Ltd.; (8) Jiangsu Dingsheng New Materials Joint-Stock Co., Ltd.; (9) Jiangsu Huafeng Aluminum Industry Co., Ltd.; (10) Jiangsu Zhongji Lamination Materials Co., Ltd.; (11) Jiangsu Zhongji Lamination Materials Co., (HK) Limited; (12) Shantou Wanshun Package Material Stock Co., Ltd.; (13) SNTD International Trade Limited; (14) Suntown Technology Group Corporation Limited; (15) Xiamen Xiashun Aluminum Foil Co., Ltd.; and (16) Yinbang Clad Material Co., Ltd. Among the 16 companies included in the petitioners' review request, for which no other interested party requested a review, and for which the petitioners have withdrawn their request, five were found to have been cross-owned in the *Final Determination* with companies subject to this review: (1) Hangzhou DingCheng Aluminum Co., Ltd.; (2) Hangzhou Dingsheng Industrial Group Co. Ltd.; (3) Hangzhou Teemful Aluminum Co., Ltd.; (4) Luoyang Longding Aluminium Industries Co., Ltd.; and (5) Walson (HK) Trading Co., Limited. Because these five companies were previously found to be cross-owned with a company which is subject to this review, we preliminarily intend not to rescind the review with respect to these five companies. See Petitioners' Review Request; Dingsheng Companies' Review Request; Valeo's Review Request; Xiashun's Review Request; Zhongji Companies' Review Request; Petitioner's Withdrawal of Review Requests; *Initiation Notice*; and *Order*.

<sup>18</sup> See accompanying *Federal Register* notice at section "Preliminary Results."

<sup>19</sup> See section "IX. Use of Facts Otherwise Available and Adverse Inferences," below.

## V. 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 subject to 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.

## VI. DIVERSIFICATION OF CHINA'S ECONOMY<sup>20</sup>

In evaluating the specificity factors for domestic subsidies, pursuant to section 771(5A)(D)(iii) of the Act, Commerce must take into account the extent of diversification of economic activities within the jurisdiction of the authority providing the subsidy. According to the Statement of Administrative Action,<sup>21</sup> the additional criteria of the extent of diversification of economic activities (and length of time during which the subsidy program in question has been in operation) serve to inform the application of, rather than supersede or substitute for, the enumerated specificity factors.

To determine the extent of diversification of economic activities within a given jurisdiction, Commerce will normally consider publicly available data and information from expert third party sources, including such information as provided by interested parties in a proceeding. Available and reliable information sources necessarily vary from case to case. For this proceeding, Commerce has relied on data found in the National Bureau of Statistics of China's *China Statistical Yearbook*. Accordingly, Commerce placed excerpts from the *China Statistical Yearbook* from the National Bureau of Statistics of China on the record of this review.<sup>22</sup> This information reflects a wide diversification of economic activities in China. The industrial sector

<sup>20</sup> In accordance with section 701(f) of the Act, Commerce continues to apply the CVD law to China.

<sup>21</sup> See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994) (SAA) at 911 and 931.

<sup>22</sup> See Memorandum, "2019 Administrative Review of the Countervailing Duty Order on Aluminum Foil from China; Economic Diversification Memo," dated August 13, 2020.

in China alone is comprised of 19 listed industries and economic activities, indicating the diversification of the economy.

## **VII. SUBSIDIES VALUATION**

### **A. Allocation Period**

Under 19 CFR 351.524(b), non-recurring subsidies are allocated over a period corresponding to the Average Useful Life (AUL) of the renewable physical assets used to produce the subject merchandise. Pursuant to 19 CFR 351.524(d)(2), there is a rebuttable presumption that the AUL will be taken from the IRS Tables, as updated by the U.S. Department of the Treasury. For the subject merchandise, the IRS Tables prescribe an AUL of 12 years. Commerce notified the respondents of the AUL in the initial questionnaire and requested data accordingly. No party in this proceeding disputed this allocation period.

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

### **B. Attribution of Subsidies**

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

{T}he interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits)... Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a “golden share” may also result in cross-ownership.<sup>23</sup>

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

<sup>23</sup> See *Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998) (*CVD Preamble*).

own subsidy benefits.<sup>24</sup> Based on information on the record, we preliminarily determine that cross-ownership exists, in accordance with 19 CFR 351.525(b)(6)(vi), among the companies identified by the respondent.

In accordance with 19 CFR 351.525(b)(6)(i), Commerce normally attributes a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provides additional rules for the attribution of subsidies received by respondents with cross-owned affiliates. Subsidies to the following types of cross-owned affiliates are covered in these additional attribution rules: (ii) producers of the subject merchandise; (iii) holding companies or parent companies; (iv) producers of an input that is primarily dedicated to the production of the downstream product; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to a respondent. Further, 19 CFR 351.525(c) provides that benefits from subsidies provided to a trading company which exports subject merchandise shall be cumulated with benefits provided to the firm producing the subject merchandise that is sold through the trading company, regardless of affiliation.

### *Xiashun*

Xiashun responded to Commerce's Initial Questionnaire and Xiashun Supplemental questionnaire on behalf of itself, a producer and exporter of the subject merchandise during the POR, and its cross-owned Hong Kong-based holding company, Daching.<sup>25</sup> Xiashun reported being affiliated with 27 companies in total.<sup>26</sup> In addition to being Xiashun's holding company, Daching is also a trading company that exported Xiashun's subject merchandise to the United States. However, based on record information, we preliminarily determine that Daching did not receive countervailable subsidies from China.<sup>27</sup> Regarding Xiashun's other affiliates, Xiashun reported that none of them received countervailable subsidies, none of them were involved in the production of the subject merchandise, none of them transferred subsidies to Xiashun, and none of them have provided inputs to Xiashun.<sup>28</sup> Therefore, based on this information, we are preliminarily attributing subsidies received by Xiashun to its own sales in accordance with 19 CFR 351.525(b)(6)(i) and we are making no other subsidy benefit attributions under 19 CFR 351.525(b)(6) or 351.525(c) with regard to Xiashun's affiliates.

## **C. Denominators**

In accordance with 19 CFR 351.525(b)(1)-(5), Commerce considers the basis for a respondent's receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondent's export or total sales. As discussed in further detail below in the "Programs Preliminarily Determined to be Countervailable" section, where the program has been found to be countervailable as a domestic subsidy, we used the recipient's total sales as the denominator. For any program found to be countervailable as an export subsidy, we used the recipient's total export sales as the denominator.

<sup>24</sup> See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

<sup>25</sup> See Xiashun's Affiliation Response at 2, Xiashun's IQR, and Daching's IQR.

<sup>26</sup> *Id.* at Attachment 2.

<sup>27</sup> See Daching's IQR.

<sup>28</sup> See Xiashun's Affiliation Response at 2, 4-5, and Exhibit 1; and Xiashun's SQR at 1-7.

## VIII. INTEREST RATES, DISCOUNT RATES, AND BENCHMARK PRICES

We are examining loans received by the respondents from Chinese policy banks and state-owned commercial banks (SOCBs), as well as non-recurring subsidies, and the provision of certain inputs for less than adequate remuneration (LTAR). The derivation of the loan interest rate benchmarks, the discount rates, and the benchmark prices used to measure the benefit from these subsidies is discussed below.

### A. Loan Benchmark and Discount Rates

#### 1. *Short-Term RMB-Denominated Loans*

Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the “difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market.” Normally, Commerce uses comparable commercial loans reported by the company as a benchmark.<sup>29</sup> If the firm did not have any comparable commercial loans during the period, Commerce’s regulations provide that we “may use a national average interest rate for comparable commercial loans.”<sup>30</sup>

As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate. For the reasons explained in *CFS from China*,<sup>31</sup> loans provided by Chinese banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market. On July 21, 2017, Commerce conducted a re-assessment of China’s financial system for CVD benchmarking purposes.<sup>32</sup> Pursuant to our re-assessment, we determined that there continues to be significant government intervention in the financial sector such that interest rates within China cannot be used for CVD loan rate benchmarking or discount rate purposes.<sup>33</sup> Consequently, we preliminarily find that any loans received by the recipients from private Chinese or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). For the same reasons, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, Commerce is selecting an external market-based benchmark interest rate. The use of an external benchmark under these circumstances is consistent with Commerce’s practice.<sup>34</sup>

<sup>29</sup> See 19 CFR 351.505(a)(3)(i).

<sup>30</sup> See 19 CFR 351.505(a)(3)(ii).

<sup>31</sup> See *Coated Free Sheet Paper from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (*CFS from China*), and accompanying Issues and Decision Memorandum (IDM) at Comment 10.

<sup>32</sup> See Memorandum, “Countervailing Duty Administrative Review of Aluminum Foil from the People’s Republic of China: Analysis of China’s Financial System Memorandum,” dated August 13, 2020.

<sup>33</sup> *Id.*

<sup>34</sup> See, e.g., *Certain New Pneumatic Off-The-Road Tires from the People’s Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2015*, 82 FR 46754 (October 6, 2017), and accompanying Preliminary Decision Memorandum (PDM) at 21, unchanged in *Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2015*, 83 FR 16055 (April 13, 2018).



In past proceedings involving imports from China, we calculated the external benchmark using the methodology first developed in *CFS from China*,<sup>35</sup> and later updated in *Thermal Paper from China*.<sup>36</sup> Under that methodology, we first determine which countries are similar to China in terms of gross national income, based on the World Bank's classification of countries as: low income; lower-middle income; upper-middle income; and high income. As explained in *CFS from China*,<sup>37</sup> this pool of countries captures the broad inverse relationship between income and interest rates. For 2003 through 2009, China fell in the lower-middle income category.<sup>38</sup> Beginning in 2010, however, China was classified in the upper-middle income category and remained there through 2011 to 2017.<sup>39</sup> Accordingly, as explained below, we are using the interest rates of lower-middle income countries to construct the benchmark and discount rates for the years 2003 through 2009, and the interest rates of upper-middle income countries to construct the benchmark and discount rates for the years 2010 through 2017. This is consistent with Commerce's calculation of interest rates for recent CVD proceedings involving Chinese merchandise.<sup>40</sup>

After Commerce identifies the appropriate interest rates, the next step in constructing the benchmark is to incorporate an important factor in the interest rate formation – the strength of governance as reflected in the quality of the countries' institutions. The strength of governance has been built into the analysis by using a regression analysis that relates the interest rates to governance indicators. In each year from 2003 through 2009, and 2011 through 2017, the results of the regression-based analysis reflected the intended, common sense result: stronger institutions meant relatively lower real interest rates, while weaker institutions meant relatively higher real interest rates.<sup>41</sup> For 2010, however, the regression does not yield that outcome for China's income group.<sup>42</sup> This contrary result for a single year does not lead us to reject the strength of governance as a determinant of interest rates. Therefore, we continue to rely on the regression-based analysis used since *CFS from China* to compute the benchmark for the years from 2003 through 2009, and 2011 through 2017. For the 2010 benchmark, we are using an average of the interest rates of the upper-middle income countries.

Many of the countries in the World Bank's upper-middle and lower-middle income categories reported lending and inflation rates to the International Monetary Fund, and they are included in that agency's International Financial Statistics (IFS). With the exceptions noted below, we used the interest and inflation rates reported in the IFS for the countries identified as "upper-middle income" by the World Bank for 2010 through 2017, and "lower-middle income" for 2001

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<sup>35</sup> See *CFS from China* IDM at Comment 10.

<sup>36</sup> See *Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) (*Thermal Paper from China*), and accompanying IDM at 8-10.

<sup>37</sup> See World Bank Country Classification, <http://data.worldbank.org/about/country-and-lending-groups> (World Bank Country Classification); see also Memorandum, "2019 Loan Interest Rate Benchmarks," dated concurrently with this memorandum (Interest Rate Benchmark Memorandum).

<sup>38</sup> See Interest Rate Benchmark Memorandum.

<sup>39</sup> See World Bank Country Classification.

<sup>40</sup> See, e.g., *Certain Frozen Warmwater Shrimp from the People's Republic of China: Preliminary Countervailing Duty Determination*, 78 FR 33346 (June 4, 2013), and accompanying PDM at the section "Benchmarks and Discount Rates," unchanged in *Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) (*Shrimp from China*).

<sup>41</sup> See Interest Rate Benchmark Memorandum.

<sup>42</sup> *Id.*

through 2009.<sup>43</sup> First, we did not include those economies that Commerce considers to be non-market economies for antidumping duty purposes for any part of the years in question, for example: Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS for those years. Third, we removed any country that reported a rate that was not a lending rate or that based its lending rate on foreign-currency denominated instruments. Finally, for each year Commerce calculated an inflation-adjusted short-term benchmark rate we excluded any countries with aberrational or negative real interest rates for the year in question.<sup>44</sup> Because the resulting rates are net of inflation, we adjusted the benchmark rates to include an inflation component.<sup>45</sup>

## 2. Long-Term RMB-Denominated Loans

The lending rates reported in the IFS represent short-and medium-term lending, and there is not sufficient publicly available long-term interest rate data upon which to base a robust benchmark for long-term loans. To address this problem, Commerce developed an adjustment to the short-and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates.<sup>46</sup>

In *Citric Acid from China*, this methodology was revised by switching from a long-term markup based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where ‘n’ equals or approximates the number of years of the term of the loan in question.<sup>47</sup> Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.<sup>48</sup>

## 3. Foreign Currency Denominated Loans

To calculate benchmark interest rates for foreign currency-denominated loans, Commerce is following the methodology developed over a number of successive proceedings regarding China.<sup>49</sup> For U.S. dollar short-term loans, Commerce used as a benchmark the one-year dollar London Interbank Offering Rate (LIBOR), plus the average spread between LIBOR and the one-year corporate bond rates for companies with a BB rating. Likewise, for any short-term loans denominated in other foreign currencies, we used as a benchmark the one-year LIBOR for the given currency plus the average spread between the LIBOR rate and the one-year corporate bond rate for companies with a BB rating.

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<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> See, e.g., *Thermal Paper from China* IDM at 10.

<sup>47</sup> See *Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 16836 (April 13, 2009) (*Citric Acid from China*), and accompanying IDM at Comment 14.

<sup>48</sup> See Interest Rate Benchmark Memorandum for the resulting inflation adjusted benchmark lending rates.

<sup>49</sup> See, e.g., *Aluminum Extrusions from the People's Republic of China: Final Results, and Partial Rescission of Countervailing Duty Administrative Review; 2013*, 80 FR 77325 (December 14, 2015), and accompanying IDM at 14.

## B. Benchmarks to Determine the Adequacy of Remuneration

The adequacy of remuneration for government-provided goods or services is determined pursuant to 19 CFR 351.511(a)(2). Under 19 CFR 351.511(a)(2), Commerce measures the remuneration received by a government for goods or services against comparable benchmark prices to determine whether the government provided goods or services for LTAR. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (*e.g.*, actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As provided in our regulations, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation (*i.e.*, tier one). This is because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation.

### 1. *Input Benchmarks*

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

We received data submissions from certain parties for Commerce to consider using as “tier two” benchmarks for primary aluminum. Xiashun submitted a summary table of primary aluminum prices from the London Metal Exchange (LME).<sup>50</sup> Xiashun also submitted United Nations International Trade Statistics Database (Comtrade) data specific to two tariff numbers for primary aluminum.<sup>51</sup> Specifically, Xiashun separately submitted Comtrade monthly pricing data for HTS subheadings 7601.10 (aluminum not alloyed) and 7601.20 (aluminum alloys) as potential benchmarks for primary aluminum. The petitioners submitted a single set of Comtrade data covering both HTS subheadings 7601.10 (aluminum not alloyed) and 7601.20 (aluminum alloys) as potential benchmarks for primary aluminum and calculated monthly average unit values based on these data.<sup>52</sup>

<sup>50</sup> See Xiashun’s Letter “Certain Aluminum Foil from The People’s Republic of China – Benchmark Information,” dated June 1, 2021 (Xiashun’s Benchmark Submission) at 2 and Exhibit 4.

<sup>51</sup> See Xiashun’s Benchmark Submission at Exhibit 2-3 and Exhibit 5.

<sup>52</sup> See Petitioner’s Letter, “2nd Administrative Review of the Countervailing Duty Order on Certain Aluminum Foil from the People’s Republic of China – Petitioners’ Submission of Factual Information to Measure Adequacy of Remuneration,” dated February 8, 2020 at 4-6 (Petitioner’s Benchmark Submission) at 3-5 and Attachment 1.

In prior cases, Commerce has declined to use LME prices as benchmarks for primary aluminum because the LME data “contains only a cash price for primary aluminum (*i.e.*, unalloyed ingots) with a minimum aluminum content of 99.7 percent.”<sup>53</sup> Instead, Commerce has found the GTA or Comtrade data better capture a range of products (both alloyed and non-alloyed, both of greater than 99.7 percent aluminum content and less than 99.7 percent aluminum content).<sup>54</sup> Therefore, for these preliminary results, we are not using the LME prices submitted by Xiashun; instead, we are relying on the Comtrade pricing data from the petitioner related to HTS subheadings 7601.10 and 7601.20 (alloyed and non-alloyed primary aluminum), which fully reflect the primary aluminum purchased by the Xiashun to use in the production of subject merchandise.<sup>55</sup> This approach is consistent with *Aluminum Foil 2017-2018 Final Results*,<sup>56</sup> *Aluminum Extrusions from China 2012 Final Results*, *Aluminum Extrusions from China 2013 Final Results*, and *Tool Chests from China*.<sup>57</sup> For further information, please see Xiashun’s Preliminary Calculation Memorandum.<sup>58</sup>

## 2. Ocean Freight

With respect to ocean freight expenses, we are relying on Drewry Maritime Research data submitted by the petitioners.<sup>59</sup> Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier two, Commerce will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. The Drewry Maritime Research data submitted by the petitioners represents ocean freight inclusive of origin and destination terminal handling charges.<sup>60</sup> For further information, please see Xiashun’s Preliminary Calculation Memorandum.<sup>61</sup>

## 3. Inland Freight Charges

Xiashun calculated freight costs for transporting primary aluminum by dividing the freight cost for delivering one standard shipping container loaded with finished goods to the nearest port by

<sup>53</sup> See *Aluminum Extrusions from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 78788 (*Aluminum Extrusions from China 2012 Final Results*), and accompanying IDM at 28; and *Certain Aluminum Foil from the People’s Republic of China: Final Results of the Countervailing Duty Administrative Review; 2017–2018*, 86 FR 12171 (March 2, 2021) (*Aluminum Foil from China 2017-2018 Final Results*), and accompanying IDM at Comment 6.

<sup>54</sup> *Id.*; see also *Tool Chests and Cabinets from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 82 FR 56582 (November 29, 2017) (*Tool Chests from China*), and accompanying IDM at Comment 5; and *Order* at 17360 and accompanying IDM at 45-46.

<sup>55</sup> See Petitioner’s Benchmark Submission at 3-5 and Attachment 1.

<sup>56</sup> See *Certain Aluminum Foil from the People’s Republic of China: Final Results of the Countervailing Duty Administrative Review; 2017–2018*, 86 FR 12171 (March 2, 2021) (*Aluminum Foil 2017-2018 Final Results*)

<sup>57</sup> See *Aluminum Extrusions from China 2012 Final Results* IDM at 28; see also *Aluminum Extrusions from the People’s Republic of China: Final Results, and Partial Rescission of Countervailing Duty Administrative Review; 2013*, 80 FR 77325 (December 14, 2015) (*Aluminum Extrusions from China 2013 Final Results*), and accompanying IDM at 55.

<sup>58</sup> See Memorandum “Administrative Review of the Countervailing Duty Order on Certain Aluminum Foil from the People’s Republic of China; Final Results Calculation Memorandum for Xiamen Xiashun Aluminum Foil Co., Ltd.,” dated concurrently with this memorandum (Xiashun’s Preliminary Calculation Memorandum) at 2-3.

<sup>59</sup> See Petitioner’s Benchmark Submission at 5-6 and Attachment 2.

<sup>60</sup> See *Id.* at Attachment 3 and Zhongji’s Rebuttal Benchmark Submission at 3 and Attachment 2.

<sup>61</sup> See Xiashun’s Preliminary Calculation Memorandum at 2-3.

the capacity of a standard shipping container, in metric tons, to derive the average unit inland freight to the nearest port.<sup>62</sup> We used this freight expense in the benchmark calculations for Xiashun's imports of primary aluminum. For further information, please *see* Xiashun's Preliminary Calculation Memorandum.<sup>63</sup>

### C. Provision of Electricity for LTAR

As discussed below in the section, "Use of Facts Otherwise Available and Adverse Inferences," we are relying on adverse facts available (AFA) to select the highest electricity rates that are on the record of this review as our benchmark for measuring the adequacy of remuneration. For further information, please *see* Xiashun's Preliminary Calculation Memorandum.<sup>64</sup>

## IX. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

In a CVD proceeding, Commerce requires information from both the government of the country whose merchandise is under investigation and the foreign producers and exporters. When the government fails to provide requested information concerning alleged subsidy programs, Commerce may rely on AFA to preliminarily find that a financial contribution exists under the alleged program or that the program is specific.<sup>65</sup> However, where possible, Commerce will rely on the responsive producer's or exporter's records to determine the existence and amount of the benefit, to the extent that those records are useable and verifiable.

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

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 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 further provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In so doing, Commerce is not

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<sup>62</sup> See Xiashun's SQR at 15; *see also* Xiashun's Preliminary Calculation Memorandum at 5.

<sup>63</sup> See Xiashun's Preliminary Calculation Memorandum at 2-3.

<sup>64</sup> See Xiashun's Preliminary Calculation Memorandum at 2-3.

<sup>65</sup> See, e.g., *Hardwood and Decorative Plywood from the People's Republic of China: Final Affirmative Countervailing Duty Determination; 2011*, 78 FR 58283 (September 23, 2013), and accompanying IDM at Comment 3.

required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.<sup>66</sup> Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the CVD investigation, a previous administrative review, or other information placed on the record.

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”<sup>67</sup> It is Commerce’s practice to consider information to be corroborated if it has probative value.<sup>68</sup> In analyzing whether information has probative value, it is Commerce’s practice to examine the reliability and relevance of the information to be used.<sup>69</sup> However, the SAA emphasizes that Commerce need not prove that the selected facts available are the best alternative information.<sup>70</sup> Moreover, under section 776(c)(2) of the Act, Commerce is not required to corroborate any CVD rate applied in a separate segment of the same proceeding.

Finally, under section 776(d) of the Act, Commerce may use any countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a CVD rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates. When selecting an AFA rate from among the possible sources of information, Commerce’s practice is to ensure that the rate is sufficiently adverse “as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide Commerce with complete and accurate information in a timely manner.”<sup>71</sup> Commerce’s practice also ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”<sup>72</sup>

For purposes of these preliminary results, we are applying AFA as outlined below:

#### **A. Application of AFA: Distortion in the Primary Aluminum Market**

In order to determine the appropriate benchmark methodology with which to measure the benefit from the provision of primary aluminum for LTAR in accordance with 19 CFR 351.511(a)(2), Commerce asked the GOC several questions concerning the structure of the primary aluminum

<sup>66</sup> See section 776(b)(1)(B) of the Act.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> See SAA at 869.

<sup>70</sup> See SAA at 869-870.

<sup>71</sup> See, e.g., *Drill Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011); see also *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

<sup>72</sup> See SAA at 870.

industry in China, as well as the government's role in this field.<sup>73</sup> The GOC repeatedly failed to answer any of our requests for information regarding the primary aluminum industry, specifically with regard to the following:

- a. The total number of producers.
- b. The total volume and value of Chinese domestic consumption of primary aluminum and the total volume and value of Chinese domestic production of primary aluminum.
- c. The percentage of domestic consumption accounted for by domestic production.
- d. The percentage of total volume and (separately) value of domestic production that is accounted for by companies in which the Government maintains a majority ownership or a controlling management interest (state-owned enterprises or SOEs), either directly or through other Government entities. Please also provide a list of the companies that meet these criteria.
- e. If the share of total volume and/or value of production that is accounted for by government entities or SOEs is less than 50 percent, please provide the following information:
  - i. The percentage of total volume and value of domestic production that is accounted for by companies in which the Government maintains some, but not a majority, ownership interest or some, but not a controlling, management interest, either directly or through other Government entities.
  - ii. A list of the companies that meet the criteria under sub-paragraph "i", above.
  - iii. A detailed explanation of how it was determined that the government has less than a majority ownership or less than a controlling interest in such companies, including identification of the information sources relied upon to make this assessment.

In its responses, the GOC instead stated that "{t}he GOC has cooperated to the best of its ability in responding to these questions. However, as explained in the IQR, the GOC does not maintain the requested information and thus is unable to provide this data to the Department."<sup>74</sup>

Commerce preliminarily determines that the GOC's failure to provide the information requested constitutes a lack of cooperation. The GOC has previously provided, and Commerce has verified, information from other government databases concerning the value and volume of production by enterprises producing input products.<sup>75</sup> Moreover, Commerce has previously verified the operation of the GOC's "Enterprise Credit Information Publicity System," which requires that the administrative authorities release detailed information of enterprises and other entities and is intended to bring clarity to companies registered in China.<sup>76</sup> Based on this

<sup>73</sup> See Initial Questionnaire at II-5, II-6.

<sup>74</sup> See GOC's SQR at 14.

<sup>75</sup> See, e.g., *Citric Acid and Certain Citrate Salts from China: Final Results of Countervailing Duty Administrative Review*; 2013, 80 FR 77318 (December 14, 2015).

<sup>76</sup> See *Countervailing Duty Investigation of Stainless Steel Sheet and Strip from the People's Republic of China: Preliminary Affirmative Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 81 FR 46643 (July 18, 2016), and accompanying PDM at 21-22, unchanged in *Countervailing Duty Investigation of Stainless Steel Sheet and Strip from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 82 FR 9714 (February 8, 2017).

experience, Commerce is aware that this system is a national-level internal portal that holds certain information regarding any Chinese-registered company. Among other information, each company must upload its annual report, make public whether it is still operating, and update any changes in ownership. The GOC has stated that all companies operating within China maintain a profile in the system, regardless of whether they are private or state-owned. Therefore, we preliminarily determine that the GOC withheld necessary information that was requested of it related to the operation and ownership of companies within the primary aluminum industry, and, thus, we must rely on facts available in these preliminary results.<sup>77</sup>

Additionally, regarding a discussion of what laws, plans, policies, catalogues, investment guides, or other planning or policy documents address the primary aluminum industry or producers of primary aluminum and whether producers of primary aluminum are subject to State-owned Assets Supervision and Administration Commission of the State Councils (SASACs) or other government approval for mergers, restructuring, or capacity increases, the GOC stated neither primary aluminum producers, nor the primary aluminum industry are specifically mentioned by any plan policy, catalogues, investment guides, or other planning or policy document.<sup>78</sup> In addition, the GOC Explained:

Since the corporatizing of the state-owned sector and the creation of the {SASACs}, the SASACs have approved numerous mergers, acquisitions, capacity expansions, and other investments in their capacities as a shareholder in state-owned enterprises. The SASACs, however, do not have any regulatory authority. That authority is exercised by government agencies performing government regulatory functions such as the competition authorities, the land-use authorities, the environmental authorities, the investment authorities, *etc.* These functions are distinct from the functions of SASAC which is limited to exercising the rights of the GOC as a shareholder in state-owned entities.

While the GOC claimed that the Aluminum Industry and its members were not subject to such planning and policy documents, and claimed that mergers, acquisitions, and capacity increases were not subject to government oversight or approval, the GOC failed to respond to other requests for information necessary to our analysis, as noted above.

Because the GOC refused to provide requested information regarding the primary aluminum industry in China, *e.g.*, information regarding the total volume and value of domestic production that is accounted for by companies in which the government maintains an ownership or management interest either directly or through other government entities, we determine that the GOC withheld necessary information, within the meaning of section 776(a)(2)(A) of the Act, with regard to the Chinese primary aluminum industry and markets for the POR.<sup>79</sup> Further, because the GOC refused to respond to Commerce's request for information regarding the information described above, we find that the GOC failed to cooperate by not acting to the best

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<sup>77</sup> See section 776(a)(2)(A) of the Act.

<sup>78</sup> See GOC's IQR at 36.

<sup>79</sup> See Initial Questionnaire at Section II, "Input Producer Appendix" (Input Producer Appendix).



of its ability to comply with our request for information necessary for our analysis of primary aluminum in China, despite the fact that it was able to provide similar information in another proceeding. Consequently, we find that an adverse inference is warranted in the application of facts available, pursuant to section 776(b) of the Act.<sup>80</sup>

Accordingly, as adverse facts available, we preliminarily determine that the GOC's involvement in the primary aluminum market in China results in significant distortion of the prices of primary aluminum such that they cannot be used as a tier one benchmark and, hence, the use of an external benchmark, as described under 19 CFR 351.511(a)(2)(ii), is warranted to calculate the benefit for the Provision of Primary Aluminum for LTAR. For further information on this program, *see* "Programs Preliminarily Found to Be Countervailable" below.

## **B. Application of AFA: Whether Xiashun's Primary Aluminum Producers/Suppliers Are "Authorities"**

As discussed below under "Programs Preliminarily Found to Be Countervailable," Commerce examined whether the GOC provided primary aluminum LTAR to Xiashun. We asked the GOC to provide information regarding the specific companies that produced the primary aluminum produced by Xiashun during the POR. Specifically, we sought information from the GOC that would allow us to analyze whether the producers are "authorities" within the meaning of section 771(5)(B) of the Act.<sup>81</sup> In prior CVD proceedings involving China, Commerce has determined that when a respondent purchases an input from a trading company or non-producing supplier, a subsidy is conferred if the producer of the input is an "authority" within the meaning of section 771(5)(B) of the Act and if the price paid by the respondent for the input was for LTAR.<sup>82</sup>

In addition to the Initial Questionnaire, Commerce issued a supplemental questionnaire to the GOC regarding its response to information requests about the subsidy programs under review. In Commerce's Initial Questionnaire, and GOC Supplemental Questionnaire, we asked the GOC to respond to the specific questions regarding the producers of primary aluminum and to respond to the Input Producer Appendix for each producer that produced the primary aluminum purchased by Xiashun.<sup>83</sup> We instructed the GOC to coordinate with Xiashun to obtain a complete list of such producers, including the producers of these inputs purchased through a non-producing supplier.<sup>84</sup> In response to the Initial Questionnaire, Xiashun identified the companies

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<sup>80</sup> *See* section 776(b) of the Act.

<sup>81</sup> *See* GOC Supplemental Questionnaire at 5-9.

<sup>82</sup> *See* Memorandum, "2019 Administrative Review of the Countervailing Duty Order on Aluminum Foil from China RE: Public Bodies Analysis Memo," dated August 13, 2020 (Public Body Memorandum).

<sup>83</sup> *See, e.g., Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008), and accompanying IDM at "Hot-Rolled Steel for Less Than Adequate Remuneration"; and *Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 37012 (July 27, 2009), and accompanying IDM at "Provision of Wire Rod for Less than Adequate Remuneration."

<sup>84</sup> *See* Initial Questionnaire at Section II, "Provision of Primary Aluminum for LTAR"; and GOC Supplemental Questionnaire at 5-9.

<sup>85</sup> *See* Initial Questionnaire at Section II, "Provision of Goods or Services for LTAR."

that produced and supplied Xiashun primary aluminum inputs during the POR,<sup>85</sup> which the GOC confirmed in its questionnaire responses.<sup>86</sup>

While the GOC ultimately provided the identities of certain of the producers that supplied these inputs to Xiashun, and basic registration information and ownership information for these producers, the GOC did not provide all of the information requested in the Initial Questionnaire, or GOC Supplemental Questionnaire. Commerce made multiple requests for the GOC to provide articles of incorporation, capital verification reports, articles of groupings, and company by-laws for all producers supplying primary aluminum to Xiashun and to provide annual reports, articles of association, business group registration, business licenses, and tax registration documents for all non-majority government-owned producers supplying Xiashun with primary aluminum.<sup>87</sup> In response, while the GOC provided partial information (*i.e.*, the basic registration information and shareholder structure), it failed to provide articles of incorporation, capital verification reports, articles of groupings, and company by-laws for all producers supplying Xiashun with primary aluminum and all non-majority government-owned producers supplying Xiashun with primary aluminum.<sup>88</sup>

With respect to the reportedly non-majority government-owned primary aluminum producers that supplied these inputs to Xiashun during the POR, while the GOC provided business registration documents and information regarding shareholder structure, the GOC failed to provide other relevant documentation specifically requested by Commerce as explained above.<sup>89</sup>

Moreover, the GOC also failed to provide other producer information specifically requested by Commerce. For instance, in the Initial Questionnaire and GOC Supplemental Questionnaire, Commerce requested certain information from the GOC regarding the scope and level of involvement of the various organs of the Chinese Communist Party (CCP) in the ownership, control and governance of the primary aluminum producers that supplied primary aluminum to the Xiashun. In its responses, the GOC claimed it was unable to require the CCP, the People's Congress, the CPPCC or the rest of the entities to provide the requested information.<sup>90</sup>

As discussed above, the GOC did not provide complete responses to our numerous requests for information with respect to reportedly non-majority government-owned primary aluminum producers that supplied these inputs to the respondents. Such information is necessary to our determination of whether the input producers are authorities within the meaning of section 771(5)(B) of the Act. Therefore, we determine that necessary information is not available on the record, and that the GOC withheld information that was requested of it with regard to such producers.<sup>91</sup> Accordingly, Commerce must rely on "facts otherwise available" in determining the status of these producers. Further, we find that by withholding the requested information, the GOC failed to cooperate by not acting to the best of its ability regarding these producers.<sup>92</sup>

<sup>85</sup> See Xiashun's IQR at 19 and Exhibit 11.

<sup>86</sup> See GOC's IQR at Exhibits II.E.A1.2 and II.E.A1.4, and II.E.A1.5.

<sup>87</sup> See the Initial Questionnaire at Producer Appendix; and GOC Supplemental Questionnaire at 6.

<sup>88</sup> *Id.*

<sup>89</sup> See Initial Questionnaire at Producer Appendix; and GOC Supplemental Questionnaire at 7-9.

<sup>90</sup> See GOC's IQR at 26-30; and GOC's SQR at 10-12.

<sup>91</sup> See sections 776(a)(1) and (a)(2)(A) of the Act.

<sup>92</sup> See sections 776(a) and (b) of the Act.

Consequently, we find that an adverse inference is warranted in the application of facts available.<sup>93</sup>

Accordingly, as AFA, we determine that the reportedly non-majority government-owned producers of the primary aluminum purchased by Xiashun during the POR are “authorities” within the meaning of section 771(5)(B) of the Act.

### **C. Application of AFA: Provision of Electricity for LTAR**

The GOC did not provide complete responses to Commerce’s questions regarding the provision of electricity for LTAR. These questions solicited information needed to determine whether the provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D) of the Act, whether such a provision provides a benefit within the meaning of section 771(5)(E) of the Act, and whether such a provision is specific within the meaning of section 771(5A) of the Act.

In order for Commerce to analyze the financial contribution and specificity of this program, we requested that the GOC provide information regarding the roles of provinces and the National Development and Reform Commission (NDRC), and cooperation between the provinces and the NDRC in electricity price adjustments. Specifically, Commerce requested that the GOC provide detailed explanations to questions including, but not limited to: (1) how increases in the cost elements in the price proposals led to retail price increases for electricity; (2) how increases in labor costs, capital expenses, and transmission and distribution costs are factored into the price proposals for increases in electricity rates; and (3) how the cost element increases in the price proposals and the final price increases were allocated across the province and across tariff end-user categories.<sup>94</sup> Commerce requested this information in order to determine the process by which electricity prices and price adjustments are derived, to identify the entities that manage and impact the price adjustment process, and to examine the cost elements included in the derivation of electricity prices in effect throughout China during the POR.

In its initial questionnaire response, the GOC did not adequately address these questions.<sup>95</sup> The GOC responded by stating that since 2015, a number of market reforms occurred in China’s electricity market and that the responsibility of setting electricity sale prices within each province has moved from the NDRC to the provincial governments.<sup>96</sup> According to the GOC, the “Notice of the NDRC on Completing Price Linkage Mechanism Between Coal and Electricity (NDRC 2015-3169)” went into effect on January 1, 2016, which, according to the GOC, added a market-oriented character of electricity pricing.<sup>97</sup>

The GOC reported that since January 1, 2016, all of the provincial governments have been given the authority to prepare and to publish electricity tariff rates in their own jurisdictions, and that notices regarding the adjustment of electricity sale prices issued by the NDRC since then have

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<sup>93</sup> See section 776(b) of the Act.

<sup>94</sup> See Initial Questionnaire at Electricity Appendix.

<sup>95</sup> See GOC’s IQR at 44-53.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.* at 47-48.

required provincial pricing departments to set specific electricity prices and to report the electricity tariff after adjustment to the NDRC for the record.<sup>98</sup> The GOC reported that the creation of this new structure eliminated the need for the provincial price proposals that had previously been used by the NDRC to set the prices for each province.<sup>99</sup> The GOC continued by stating that because the provinces now set their own prices, the provincial price proposals are no longer needed.<sup>100</sup> As such, the GOC argues, Commerce's question asking the GOC to provide provincial price proposals for each province in which a mandatory respondent (or cross-owned affiliate) was located during the POR is no longer applicable.<sup>101</sup>

Despite the GOC's claims that provincial authorities have more authority in setting their own electricity tariff rates, the NDRC's Notice (2015) No. 3105 (NDRC Notice 3105) provides general guidelines for changing electricity price, including calculation formulas and selling price adjustments.<sup>102</sup> Notice 3105 states that provincial price authorities "shall formulate and release specific regulation plan of on-grid price and sales price in the province (Region, Municipality) according to average regulation standard regulated in the appendix, and report to National Development and Reform Commission for filing."<sup>103</sup> Further, the NDRC's Notice (2015) No. 748 (NDRC Notice 748) is based upon consultations between the NDRC and the National Energy Administration, and states that provinces "develop and issue specific adjustment plan of electricity price and sales price in accordance with the average price adjustment standard of Annex 1, and reported to our Commission for the record."<sup>104</sup>

We find that the record evidence does not support the GOC's claims that the relevant provincial pricing authorities determine and issue electricity prices within their own jurisdictions. Rather, record information such as NDRC Notice 748 and NDRC Notice 3105 indicate that the NDRC continues to play a seminal role in setting and adjusting electricity prices. Specifically, the NDRC mandates an average price adjustment target for each province.<sup>105</sup> As a result of this mandate, each province is obligated to set electricity prices within the range mandated by the NDRC.<sup>106</sup>

And while the GOC claims that the Provincial Price Proposals have been eliminated due to the new structure that has been put into place since 2016, none of the documentation the GOC submitted to support its claim explicitly eliminates the provincial price proposals. Commerce additionally requested that the GOC explain, for each province in which a respondent or cross-owned company is located, how increases in labor costs, capital expenses, and transmission and distribution costs are factored in provincial price proposals, and how cost element increases, and final price increases were allocated across the province and across tariff end-user categories. The GOC failed to provide a complete response to this request. The GOC stated:

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<sup>98</sup> *Id.* at 48-49.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.* at 47.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.* at Exhibit II.E.Elec.2.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.* at Exhibit II.E.Elec.1.

<sup>105</sup> *See, e.g.*, Notice 748 at Article 10 and Notice 3105 at Articles II and X.

<sup>106</sup> *Id.*

In general, changes in such cost items as labor, capital, and electricity transmission and distribution are monitored by the price authorities via investigation and inspection of relevant company expenses. Price adjustments are determined based on the principles stipulated in the *Electric Power Law of China* (see Exhibit II.E.Elec.9) and the *Pricing Law of China*, such as ‘reasonable compensation of costs, reasonable determination of profits, legal incorporation of taxes, and fairly shared burdens.’ With regard to adjustments during the POR, no Price Proposals were involved. Therefore, the question relating to the proposal is not applicable.<sup>107</sup>

As discussed above, the GOC failed to fully explain the roles and nature of the cooperation between the NDRC and provincial authorities in deriving electricity prices adjustments. The information provided by the GOC indicates that despite its claims that the responsibility for setting prices within each province has moved from the NDRC to the provincial governments, the NDRC continues to play a major role in setting and adjusting prices. Further, the GOC failed to explain both the derivation of the price reductions directed to the provinces by the NDRC and the derivation of the prices by the provinces themselves. Consequently, we preliminarily find, in accordance with sections 776(a)(1), (2)(A), and (C) of the Act, that information necessary to our analysis of financial contribution and specificity is not available on the record because the GOC withheld information requested by us, thereby significantly impeding this proceeding. Thus, we must rely on “facts available” in making our determination for these preliminary results.<sup>108</sup>

Moreover, we preliminarily determine, in accordance with section 776(b) of the Act, that the GOC failed to cooperate to the best of its ability to comply with our request for necessary information. As a result, application of facts otherwise available with an adverse inference is warranted.<sup>109</sup> Based on AFA, we find that the GOC’s provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act. We are also relying on AFA in selecting the benchmark for determining the existence and amount of any benefit provided to the respondents.<sup>110</sup> The benchmark rates selected are derived from the record of this administrative review and are the highest electricity rates on the record for the applicable rate and user categories. For details regarding the remainder of our analysis, see the section “Provision of Electricity for LTAR,” below.

#### **D. Application of AFA: Export Buyer’s Credit Program**

As discussed under the section “Programs Preliminarily Determined to be Countervailable,” Commerce is investigating the Export Buyer’s Credit Program (EBCP).

In response to our questions regarding program use, Xiashun explained that it determined use/non-use by asking its U.S. customer and provided an e-mail from Xiashun’s U.S. customer. However, this email does not confirm non-use and falls short of the type of certifications or declarations provided by U.S. customers in other proceedings involving this program. Therefore,

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<sup>107</sup> See GOC’s IQR at 50.

<sup>108</sup> See section 776(a)(2)(A) of the Act.

<sup>109</sup> See section 776(b) of the Act.

<sup>110</sup> See section 776(b)(4) of the Act.

we find that the lack of necessary information required from the GOC, detailed below, coupled with the mere assertions from Xiashun that its customer did not use the program and the superficial email from its customer, are insufficient to demonstrate non-use of the program.<sup>111</sup> Therefore, consistent with previous proceedings in which Commerce has investigated the EBCP, we have preliminarily determined that the use of AFA is warranted in determining the use, financial contribution, benefit, and specificity of the EBCP because Xiashun's customer did not unequivocally confirm non-use and the GOC did not provide the requested information needed to allow Commerce to fully analyze this program or to investigate and verify non-use.<sup>112</sup>

In our Initial Questionnaire, we requested that the GOC "provide the information requested in the Standard Questions Appendix with regard to all types of financing provided by the Export-Import Bank of China (China Ex-Im Bank) under the Buyer Credit Facility."<sup>113</sup> The Standard Questions Appendix requested various information that Commerce requires in order to analyze the specificity and financial contribution of this program, including the following: the date the program was established, the name and address of government agencies and authorities administering the program, translated copies of the laws and regulations pertaining to the program, copies of the laws and regulations relating to the program, copies of reports pertaining to the program, identifying the types of records regarding the program which are maintained by the government, a description of the program and the program application process, program eligibility criteria, and program use data. The GOC refused to answer any of these questions, and instead provided a long explanation of why our authority to apply AFA with respect this program is not warranted or permitted where respondents or respondents' customers claim not to have benefited from the program.<sup>114</sup> The GOC further explained that "{b}ased on information available to the GOC at this stage, the GOC confirms that none of the U.S. customers of the mandatory respondent or its reported affiliate used Export Buyer's Credits during the POR."<sup>115</sup>

Furthermore, in its initial questionnaire response, the GOC provided the Administrative Measures of Export Buyers' Credit of the Export-Import Bank of China (*Administrative Measures*).<sup>116</sup> In the GOC's 7th Supplemental Response in *Silica Fabric*, the GOC confirmed that *Administrative Measures* included a two million U.S. dollar minimum business contract threshold.<sup>117</sup> At our request, the GOC provided a copy of its 7th Supplemental Response in *Silica Fabric*.<sup>118</sup> Information in that document indicates that the GOC revised this program in

<sup>111</sup> See Xiashun's IQR at 26 and Exhibit 17.

<sup>112</sup> See, e.g., *Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 86 FR 27379 (May 20, 2021), and accompanying IDM at Comment 6; *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (October 17, 2012), and accompanying IDM at Comment 18; *Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 78799 (December 31, 2014), and accompanying IDM at Comment 6; and *Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People's Republic of China: Final Affirmative Determination*, 82 FR 8405 (January 25, 2017) (*Silica Fabric*), and accompanying IDM at Comment 17.

<sup>113</sup> See Initial Questionnaire, Section II, Part A Question 4.a at 4-5.

<sup>114</sup> See GOC's IQR at 53-57.

<sup>115</sup> See GOC's IQR at 57.

<sup>116</sup> See GOC's IQR at 58 and Exhibit II.Buy.1.

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

2013 to eliminate this minimum requirement.<sup>119</sup> We also requested, in the Initial Questionnaire, that the GOC provide original and translated copies of any laws, regulations or other governing documents cited by the GOC in the 2016 Export Buyer's Credit Supplemental Questionnaire Response. This request included the "2013 *Administrative Measures* (2013 Revisions) to the Export Buyer's Credit Program" or "2013 Guidelines," (2013 Revisions), which the GOC discussed in Export Buyer's Credit Supplemental Questionnaire Response.<sup>120</sup> However, the GOC failed to provide the 2013 Revisions.<sup>121</sup> We, therefore, again requested that the GOC provide the 2013 Revisions.<sup>122</sup> In response, the GOC merely stated that "{a}s explained in the IQR, the information available to the GOC at this stage confirms that none of the U.S. customers of the mandatory respondent or its reported affiliate used Export Buyer's Credits during the POR. Therefore, this question is not applicable."<sup>123</sup> Through its response to Commerce's Initial Questionnaire and GOC Supplemental Questionnaire, the GOC has refused on two occasions to comply with specific requests to provide the 2013 Revisions.

We requested the 2013 Revisions because information on the record of this proceeding indicated that the 2013 Revisions affected important program changes. For example, the 2013 Revisions may have eliminated the USD 2 million contract minimum associated with this lending program.<sup>124</sup> By refusing to provide the requested information, the GOC impeded Commerce's understanding of how this program operates and how it can be properly verified.

Our previous investigations of this program indicate that the loans associated with this program are not limited to direct disbursements through the China Ex-Im Bank.<sup>125</sup> Specifically, this information indicates that customers can open loan accounts with other banks for disbursements through this program.<sup>126</sup> The funds are first sent from the China Ex-Im Bank to the importer's account, which could be at the China Ex-Im Bank or other banks, and these funds are then sent to the exporter's bank account.<sup>127</sup> Given the complicated structure of loan disbursements for this program, Commerce's complete understanding of how this program is administered is necessary. Thus, the GOC's refusal to provide the most current 2013 Revisions, which provide internal guidelines for how this program is administered by the China Ex-Im Bank, impeded Commerce's ability to conduct its investigation of this program.

In the Initial Questionnaire, we also asked the GOC to explain in detail the steps the government took to determine that no customer of the respondents used Export Buyer's Credits and to identify the documents, databases, accounts, *etc.*, that were examined to determine there was no

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<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *See, e.g.*, GOC's SQR at 4-5.

<sup>123</sup> *See* GOC's SQR at 4-5.

<sup>124</sup> *See* GOC's IQR at 58 and Exhibit II.Buy.1.

<sup>125</sup> *See, e.g.*, *Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 85 FR 68848 (October 30, 2020), and accompanying PDM at 26, unchanged in *Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 86 FR 27379 (May 20, 2021), and accompanying IDM)).

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

use.<sup>128</sup> The GOC explained merely that it had obtained the list of U.S. customers from the mandatory respondents and checked with China Ex-Im Bank to confirm that none of the U.S. customers of either respondent used Export Buyer's Credits during the POR. The GOC also asserted that

{W}hether a foreign buyer received a loan pursuant to the Export Buyer's Credits program can be confirmed by the Chinese exporter. Normally, if Export Buyer's Credits are provided by the China Ex-Im Bank, the Chinese exporter is aware of the buyer's receipt of the loans and is involved in the loan evaluation proceeding and, in particular, in the post-lending loan management conducted by the China Ex-Im Bank. Therefore, the Chinese exporter is in a position to verify and confirm the existence, if any, of sales contracts that were supported by Buyer's Export Credits of the China Ex-Im Bank.<sup>129</sup>

Notwithstanding the GOC's assertions, we require more detailed explanation of the steps taken by the GOC to determine that no customer of Xiashun used the program, both to confirm the GOC's assertions and to guide further questions and/or verification procedures. Therefore, in Commerce's GOC Supplemental Questionnaire, to attempt to collect more information, we asked the GOC to "{f}ully explain all steps taken to make this determination and provide copies with English translations of all documents used and screen shots of all accounts or databases referenced to make this determination, and all other documentation necessary to confirm non-use of this program" and "clearly show that Xiashun's customers did not use this program."<sup>130</sup> However, the GOC also failed to provide this information, stating instead merely that "{t}he GOC understands that the respondents are providing in their own questionnaire responses complete with affidavits from their U.S. customers to the effect that none of the customers obtained any Export Buyers Credits from the ExIm Bank."<sup>131</sup> However, we received no affidavit or certification of non-use from Xiashun's customer.

The GOC also failed to provide a sample buyer's credit application, the interest rate(s) established during the POR under the program, and a list of all partner/correspondent banks involved in the disbursement of funds under the program.<sup>132</sup> We again requested this information in Commerce's GOC Supplemental Questionnaire, but the GOC again failed to respond.<sup>133</sup> This information is necessary for us to investigate and verify non-use of the program. In particular, Commerce cannot verify claims of non-usage, whether originating with Xiashun or its U.S. customer, if it does not know the names of the intermediary banks that might appear in the books and records of the recipient of the credit (*i.e.*, loan) or the cash disbursement made pursuant to the credit. There will not necessarily be an

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<sup>128</sup> See GOC Supplemental Questionnaire at 5.

<sup>129</sup> See GOC's IQR at 58-59.

<sup>130</sup> See GOC Supplemental Questionnaire at 5.

<sup>131</sup> See the GOC's SQR at 5.

<sup>132</sup> See GOC's IQR at 57-58.

<sup>133</sup> See GOC's SQR art 4-5.



account in the name of the China Ex-Im Bank in the books and records (*e.g.*, subledger, tax return, bank statements) of either the exporter or the U.S. customer. In addition, a sample application and the interest rates prevailing under the program are important to our understanding of the functioning of the program, which is necessary to facilitate a preliminary finding and verification of non-use.

For the reasons stated above, pursuant to section 776(a)(1) of the Act, we find that necessary information is missing from the record for Commerce to have a clear understanding of how this program operates and to be able to verify the purported and unsubstantiated claims of non-use of this program. Furthermore, pursuant to sections 776(a)(2)(A) and (2)(C) of the Act, when an interested party withholds information requested by Commerce and significantly impedes a proceeding, Commerce uses facts otherwise available. We find that the use of facts otherwise available is appropriate in light of the GOC's refusal to provide the 2013 Revisions, interest rates, partner/correspondent banks, and to explain the steps it took to confirm non-use. This information is necessary information for Commerce to make a determination regarding this program.

Further, pursuant to section 776(b) of the Act, we find that the GOC, by virtue of its withholding of information and significantly impeding this proceeding, failed to cooperate by not acting to the best of its ability. Accordingly, the application of AFA is warranted. Specifically, the GOC has not provided complete information concerning the administration and operation of the program, including how loans are disbursed (*e.g.*, the 2013 Revisions), such as through intermediate or correspondent banks, the identities of which the GOC has withheld from Commerce, the interest rates under the program during the POI, or whether the China Ex-Im Bank employs threshold criteria, such as a minimum 2 million U.S. dollar contract value. This information is necessary to understand fully how the Export Buyer's Credits program operates, and is, therefore, critical to Commerce's ability to verify the program operation and the accuracy of the GOC's claims, including with respect to the respondent's claimed non-use of this program. By not providing us with this critical information, we find that the GOC failed "to do the maximum it is able to do."<sup>134</sup>

The GOC is the only party that can answer questions about the internal administration of this program, and, thus, its failure to provide the requested information further undermines Commerce's ability to verify the GOC's and the respondent company's claims of non-use of this program. Commerce cannot verify non-use at the China Ex-Im Bank without a complete set of administrative measures on the record that would provide guidance to Commerce in querying the records and electronic databases of the China Ex-Im Bank. Without understanding how this program operates, we cannot ascertain what a proper database search entails. For example, we do not know whether the searches should have been performed using the U.S. customer's names or on other entities (for example, the partner/correspondent banks that worked with the U.S. customer rather than the U.S. customers themselves). Nor do we know whether there are different electronic systems for different types of credits without a clear understanding of the computer systems used, including screen shots of the relevant account and databases.<sup>135</sup> As a result, we cannot ascertain that the screen shots or other documentation provided by the GOC at

<sup>134</sup> See *Nippon Steel Corp v. United States*, 337 F. 3d 1373, 1382 (Fed. Cir. 2003).

<sup>135</sup> See GOC Supplemental Questionnaire at 5 and GOC's SQR at 5.

verification are for searches of the proper system. Similar to the obstacles we would face in attempting to verify usage at the exporter or U.S. customer, Commerce would not know what indicia to look for in searching for usage or even what records or databases we need to examine in conducting the verification (*i.e.*, without a complete set of laws, regulations, administrative measures, Commerce would not even know what books and records the China Ex-Im Bank maintains in the ordinary course of its operations). Essentially, Commerce is unable to verify the little information on the record indicating non-usage (*e.g.*, the claims of the GOC and of Xiashun and the ambiguous email from the customer), with the exporters, U.S. customers or at the China Ex-Im Bank itself given the refusal of the GOC to provide the 2013 Revisions and a complete list of correspondent/partner/intermediate banks. Therefore, we determine that the GOC has not cooperated to the best of its ability and, as AFA, especially in light of the lack of a certification of non-use from Xiashun's customer, find that the respondents used and benefited from this program.

For these reasons, we preliminarily find, as AFA, that under this program, the GOC bestowed a financial contribution pursuant to section 771(5)(D) of the Act, provided a benefit pursuant to section 771(5)(E) of the Act, and the benefit is contingent on exports within the meaning of sections 771(5A)(A) and (B) of the Act. Regarding specificity, although the record regarding this program suffers from significant deficiencies, we note that the GOC's description of the program and supporting materials (albeit found to be deficient) demonstrates that through this program, state-owned banks, such as the China Ex-Im Bank, provide loans at preferential rates for the purchase of exported goods from China.<sup>136</sup> In addition, the program was alleged by the petitioners as a possible export subsidy.<sup>137</sup> Finally, Commerce has found this program to be an export subsidy in the past.<sup>138</sup> Thus, taking all such information into consideration indicates the provision of export buyer's credits is contingent on exports within the meaning of section 771(5A)(A) and (B) of the Act.

Based on the AFA rate selection hierarchy described below,<sup>139</sup> for this program we are using an AFA rate of 3.89 percent *ad valorem*, the highest rate determined for a similar program in this proceeding, as the rate for Xiashun under the EBCP.<sup>140</sup> Additionally, based on the methodology also described above for corroborating secondary information, we have corroborated the selected rate to the extent possible and find that the rate is reliable and relevant for use as an AFA rate for the EBCP.

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<sup>136</sup> See GOC's IQR at Exhibits II.F.Buy.1, II.F.Buy.2 and I.F.Buy.3.

<sup>137</sup> See Initial Questionnaire, Section II, Attachment C (CVD Initiation Checklist) at 24-25.

<sup>138</sup> See, *e.g.*, *Countervailing Duty Order on Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*; 2016, 84 FR 17382 (April 25, 2019), and accompanying IDM at Comment 16.

<sup>139</sup> See section "G. Selection of the AFA Rates for Xiashun Under the Export Buyer's Credit Program and for Jiangsu Alcha Aluminum Co., Ltd.," below; see also section "H. Corroboration of AFA Rates for Xiashun under the Export Buyer's Credit Program and for Jiangsu Alcha Aluminum Co., Ltd.," below.

<sup>140</sup> *Id.* See also Section "X.ANALYSIS OF PROGRAMS... A. Programs Preliminarily Found to be Countervailable ...1. Policy Loans to the Aluminum Foil Industry and Xiashun's Preliminary Calculation Memorandum at Attachment 1 and Attachment 2 at 3 and worksheet "Rate Summary."

## E. Application of AFA: Other Self-Reported Programs

As discussed in further detail in the “Programs Preliminarily Found to be Countervailable” section below, Xiashun reported receiving benefits under certain other grant programs.<sup>141</sup> Commerce requested information from the GOC regarding these grants in the initial questionnaire and again in the GOC Supplemental Questionnaire.<sup>142</sup> The GOC did not provide a complete response regarding any of these self-reported grant programs. Rather, the GOC stated that a response to Commerce’ initial and supplemental questions regarding these programs is not “required or warranted.”<sup>143</sup>

In order to conduct the analysis of whether a program is specific and constitutes a financial contribution under sections 771(5A) and 771(5)(D) of the Act, respectively, it is essential that the government provides a complete response to the questions that are contained in the Standard Questions Appendix to enable Commerce to conduct statutory analyses to determine if an alleged program is countervailable. To that end, government cooperation is essential because the government has sole access to the information required for a complete analysis of specificity and financial contribution with respect to government subsidy programs. By failing to provide complete responses to the Standard Questions Appendices as requested, Commerce finds that the record is missing necessary information because the GOC withheld necessary information and significantly impeded this administrative review within the meaning of section 776(a)(1) and (2)(A), (C) of the Act and also failed to cooperate by not acting to the best of its ability to comply with our requests within the meaning of section 776(b) of the Act. Based on application of AFA regarding these programs, we preliminarily determine that the self-reported grants listed in the “Self-Reported Grants Programs” section below constitute a financial contribution under section 771(5)(D)(i) of the Act. Moreover, applying AFA, we preliminarily determine that these programs are specific under section 771(5A)(A)-(B) or 771(5A)(D) of the Act. Specifically, as AFA, we preliminarily find that the following programs which were used by Xiashun during the POR provided financial contributions within the meaning of section 771(5)(D) of the Act and are specific within the meaning of section 771(5A) of the Act:

1. Commissions on the Commissioned Withholding and Collection of Taxes
2. Compensation for social insurance of Haicang household
3. Export credit insurance subsidies<sup>144</sup>
4. Haicang District R&D subsidy
5. Incentive funds to electricity consumption used in production increase
6. Incentive to Major Project Bidding
7. Labor Cooperation Rewards from Xiamen Haicang Employment Center Grant program
8. Municipal Enterprise Technology Center Award
9. National and industry standards formulation and revision outlay

<sup>141</sup> See Xiashun’s IQR at 28 and Exhibit 18.

<sup>142</sup> See Initial Questionnaire at II-8; *see also* GOC’s IQR at 63-64 and GOC’s SQR at 22-24.

<sup>143</sup> See GOC’s IQR at 63-64 and GOC’s SQR at 22-24.

<sup>144</sup> Based on record evidence provided by Xiashun, we have determined that the Export Credit Insurance Program is an export-contingent subsidy within the meaning of sections 771(5A)(A)-(B) of the Act and 19 CFR 351.525(b)(2). See Xiashun’s SQR at Exhibit SQ-10-2. We have therefore attributed benefits under this program to Xiashun’s POR export sales.

10. Provincial Special awards for industrial enterprises
11. Rewards for spanning development
12. Subsidy and rewards for standard formulation
13. Subsidy for stable employment
14. Xiamen industrial enterprises technical renovation project award
15. Xiamen New Material Product Bonus

#### **F. Application of AFA to Jiangsu Alcha Aluminum Co., Ltd.**

As discussed in the “Background” section above, Commerce selected Alcha as a mandatory respondent, but Alcha did not respond to our Initial Questionnaire.<sup>145</sup> The GOC also told Commerce that Alcha is not participating in this administrative review.<sup>146</sup> Accordingly, we preliminarily find that Alcha withheld information that had been requested, failed to provide information within the established deadlines, and thus significantly impeded this proceeding. Thus, Commerce is relying on facts available in making this preliminary finding with respect to Alcha, pursuant to sections 776(a)(1) and (a)(2)(A) through (C) of the Act.

Moreover, we preliminarily determine that AFA is warranted, pursuant to section 776(b)(1) of the Act, because by not responding to the Initial Questionnaire, Alcha did not cooperate to the best of its ability to comply with Commerce’s requests for information in this review. Accordingly, we preliminarily find that based on its failure to cooperate to the best of its ability, the application of AFA is warranted. As AFA, we preliminarily find that Alcha used and benefitted from all of the programs we found to be countervailable in a previous segment of this proceeding and all of the programs that Xiashun and its cross-owned affiliates reported using in this administrative review. Regarding benefit, we selected program-specific AFA rates pursuant to Commerce’s AFA hierarchy for administrative reviews, as discussed below.

#### **G. Selection of the AFA Rates for Xiashun Under the Export Buyer’s Credit Program and for Jiangsu Alcha Aluminum Co., Ltd.**

Consistent with section 776(d) of the Act, it is Commerce’s practice in CVD proceedings to apply an AFA rate for a non-cooperating company using the highest calculated program-specific rates determined for the identical or similar programs.<sup>147</sup> Specifically, under the first step of Commerce’s CVD AFA hierarchy for administrative reviews, Commerce applies the highest non-*de minimis* rate calculated for the identical program in any segment of the same proceeding.<sup>148</sup> If there is no identical program match within the same proceeding, or if the rate

<sup>145</sup> See Respondent Selection Memorandum.

<sup>146</sup> See GOC’s IQR at Section “I. PRODUCERS/EXPORTERS SUBJECT TO REVIEW.”

<sup>147</sup> See, e.g., *Chlorinated Isocyanurates from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review*; 2014, 82 FR 27466 (June 15, 2017) (*Chlorinated Isocyanurates from China*; 2014), and accompanying IDM at “Use of Facts Otherwise Available and Adverse Inferences”; see also *Shrimp from China* IDM at 13.

<sup>148</sup> For purposes of selecting AFA program rates, we normally consider rates less than 0.5 percent to be *de minimis*. See, e.g., *Pre-Stressed Concrete Steel Wire Strand from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 28557 (May 21, 2010), and accompanying IDM at “1. Grant Under the Tertiary Technological Renovation Grants for Discounts Program” and “2. Grant Under the Elimination of Backward Production Capacity Award Fund.”

*de minimis*, under step two of the hierarchy, Commerce applies the highest non-*de minimis* rate calculated for a similar program within any segment of the same proceeding. If there is no non-*de minimis* rate calculated for a similar program within the same proceeding, under step three of the hierarchy, Commerce applies the highest non-*de minimis* rate calculated for an identical or similar program in another CVD proceeding involving the same country. Finally, if there is no non-*de minimis* rate calculated for an identical or similar program in another CVD proceeding involving the same country, under step four, Commerce applies the highest calculated rate for any program from the same country that the industry subject to the review could have used.<sup>149</sup>

Furthermore, Commerce’s methodology is consistent with section 776 of the Act. Section 776(d)(1)(A) of the Act states that when applying an adverse inference in selecting from the facts otherwise available, Commerce may: (i) use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country; or (ii) if there is no same or similar program, use a countervailable subsidy for a subsidy rate from a proceeding that Commerce considers reasonable to use. Thus, section 776(d)(1)(A) of the Act expressly allows for Commerce’s existing practice of using an AFA hierarchy in selecting a rate “among the facts otherwise available” in CVD cases, should the facts warrant such a selection.

Section 776(d)(2) of the Act authorizes Commerce to rely on the highest prior rate under certain circumstances. In deriving an AFA rate under section 776(d)(1)(A) of the Act described above, section 776(d)(2) of the Act states that Commerce “may apply any of the countervailable subsidy rates or dumping margins specified under that paragraph, including the highest such rate or margin, based on the evaluation by the administering authority of the situation that resulted in the administering authority using an adverse inference in selecting among the facts otherwise available.” No legislative history accompanied this provision of the TPEA.<sup>150</sup> Accordingly, Commerce is left to interpret this “evaluation by the administering authority of the situation” language in light of existing agency practice, and the structure and provisions of section 776(d) of the Act itself.

In this review, the record does not suggest that we should apply a rate other than the highest rate envisioned under the appropriate step of the hierarchy, pursuant to section 776(d)(1) of the Act for all programs included in the AFA rate for the mandatory respondents. As explained above, Alcha did not participate in the administrative review, and, as such, it failed to cooperate to the best of its ability. Additionally, pursuant to section 776(d)(2) of the Act, we find that the record does not support the application of an alternative rate. As also explained above, we are relying on AFA with respect to benefit for Xiashun’s use of the EBCP.

Section 776(d)(1) of the Act anticipates a two-step process for determining an appropriate AFA rate in CVD cases: (1) Commerce may apply its hierarchical methodology; and (2) Commerce may apply the highest rate derived from this hierarchy to a respondent, should it choose to apply that hierarchy in the first place, unless, after an evaluation of the situation that resulted in the use

<sup>149</sup> See section 776(d) of the Act; see also *SolarWorld Americas, Inc. v. United States*, 229 F. Supp. 3d 1362 (CIT 2017) (sustaining Commerce’s CVD AFA hierarchy and selection of AFA rate for CVD reviews).

<sup>150</sup> See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015) (TPEA).

of AFA, Commerce determines that the situation warrants a rate different than the rate derived from the hierarchy be applied.<sup>151</sup>

In applying the AFA rate provision, it is well established that when selecting the rate from among possible sources, Commerce seeks to use a rate that is sufficiently adverse to effectuate the statutory purpose of section 776(b) of the Act to induce respondents to provide Commerce with complete and accurate information in a timely manner. This ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”<sup>152</sup> Further, “in the case of an uncooperative respondent, Commerce is in the best position, based on its expert knowledge of the market and the individual respondent, to select adverse facts that will create the proper deterrent to non-cooperation with its investigations and assure a reasonable margin.”<sup>153</sup> It is pursuant to this knowledge and experience that Commerce has implemented its AFA hierarchy in CVD cases to select an appropriate rate.<sup>154</sup>

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

Furthermore, the hierarchy (as well as section 776(d)(1) of the Act) recognizes that there may be a “pool” of available rates that Commerce can rely upon for purposes of identifying an AFA rate for a particular program. In reviews, for example, this “pool” of rates could include a non-*de minimis* rate calculated for the identical program in any segment of the proceeding, a non-*de minimis* rate calculated for a similar program in any segment of that proceeding, or prior CVD proceedings for that same country. Of those rates, the hierarchy provides a general order of

<sup>151</sup> This differs from antidumping proceedings, for which no hierarchy applies, under section 776(d)(1)(B). Under that provision, “any dumping margin from any segment of the proceeding under the applicable antidumping order” may be applied, which suggests an adverse rate could be derived from different available margins, given the facts on the record.

<sup>152</sup> See SAA at 870; see also *Essar Steel Ltd. v. United States*, 678 F. 3d 1268, 1276 (Fed. Cir. 2012) (citing *F. Lii De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F. 3d 1027, 1032 (Fed. Cir. 2000) (finding that “{t}he purpose of the adverse facts statute is ‘to provide respondents with an incentive to cooperate with Commerce’s investigation, not to impose punitive damages.’”) (*De Cecco*)).

<sup>153</sup> See *De Cecco*, 216 F. 3d at 1032.

<sup>154</sup> Commerce has adopted a practice of applying its hierarchy in CVD cases. See, e.g., *Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017), and accompanying IDM at 28-31 (applying the AFA hierarchical methodology within the context of a CVD investigation); and *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 41003 (July 14, 2015), and accompanying IDM at 11-15 (applying the AFA hierarchical methodology within the context of a CVD administrative review). However, depending on the type of program, Commerce may not always apply its AFA hierarchy. See, e.g., *Certain Uncoated Paper from Indonesia: Final Affirmative Countervailing Duty Determination*, 81 FR 3104 (January 20, 2016), and accompanying IDM at 7-8 (applying, outside of the AFA hierarchical context, the highest combined standard income tax rate for corporations in Indonesia).

preference to achieve the goal identified above. The hierarchy therefore does not focus on identifying the highest possible rate that could be applied from among the “pool” of rates; rather, it adopts the factors identified above of inducement, relevancy to the industry and to the particular program.

In selecting AFA rates for Alcha, and for Xiashun’s benefit under the ECBP, we are guided by Commerce’s methodology detailed above. We begin by selecting, as AFA, the highest calculated program-specific above-*de minimis* rates determined for the cooperating respondents in the instant administrative review. Accordingly, we are applying the highest applicable subsidy rate calculated for Xiashun in this review for the following program, which we found to be countervailable in a prior segment of this proceeding (*i.e.*, the final determination in the underlying investigation) for these preliminary results:

#### Policy Loans to the Aluminum Foil Industry

For the direct tax (income tax reduction) programs, we are applying an adverse inference that Alcha paid no income taxes during the POR. The standard income tax rate for corporations in China in effect during the POR was 25 percent.<sup>155</sup> Thus, the highest possible benefit for all income tax programs is 25 percent. Accordingly, we are applying the 25 percent AFA rate on a combined basis (*i.e.*, the four programs listed below as “Income Tax Programs,” combined, provide a 25 percent benefit). Consistent with past practice, application of this AFA rate for preferential income tax programs does not apply to tax credit, tax rebate, or import tariff and value-added tax (VAT) exemption programs, because such programs may provide a benefit in addition to a preferential tax rate.<sup>156</sup>

1. Income Tax Reductions for High or New Technology Enterprises (HNTEs)
2. Income Tax Reduction for R&D under the Enterprise Income Tax Law (EITL)
3. Income Tax Concession for Enterprises Engaged in Comprehensive Resource Utilization
4. Income Tax Deductions/Credits for Purchase of Special Equipment

For other programs listed below, we selected, as AFA, the highest calculated program-specific non-*de minimis* rates in a prior segment of this proceeding (*i.e.*, the final determination in the underlying investigation or the final results of the first administrative review).<sup>157</sup> For programs where there were no above *de minimis* subsidy rates calculated in the underlying investigation or

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<sup>155</sup> See *Vertical Metal File Cabinets from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 84 FR 37622 (August 1, 2019), and accompanying PDM at 20, unchanged in *Vertical Metal File Cabinets from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 84 FR 57394 (October 25, 2019).

<sup>156</sup> See, e.g., *Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 84 FR 5989 (February 25, 2019), and accompanying PDM at 28-29, unchanged in *Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, and Final Affirmative Determination of Critical Circumstances*, 84 FR 32723 (July 9, 2019).

<sup>157</sup> See *Countervailing Duty Investigation of Certain Aluminum Foil from the People’s Republic of China: Final Affirmative Determination*, 83 FR 9274 (March 5, 2018) (*Aluminum Foil Final Determination*), and accompanying IDM; Order; and *Aluminum Foil 2017-2018 Final Results* IDM.

prior review for the identical or similar programs, we applied the highest above *de minimis* subsidy rate calculated in another China proceeding for the identical program (where possible) or similar program.

#### Loans and Credits

1. Preferential Loans to SOEs
2. Export Loans from SOCBs
3. Export Seller's Credit
4. EBCP

#### Other Tax Programs

1. Import Tariff and VAT Exemptions on Imported Equipment in Encouraged Industries
2. VAT Rebates on Domestically Produced Equipment
3. Stamp Tax Exemption on Share Transfers Under Non-Tradeable Share Reform
4. Deed Exemption for SOEs Undergoing Mergers or Restructures

#### Provision of Goods or Services for LTAR

1. Provision of Electricity For LTAR
2. Provision of Land for LTAR
3. Provision of Aluminum Plate and/or Sheet and Strip for LTAR
4. Provision of Steam Coal for LTAR

#### Grant Programs<sup>158</sup>

1. Government of China and Sub-Central Government Subsidies for Development of Famous Brands and China World Top Brands
2. Exemptions for SOEs from Distributing Dividends
3. Grants for the Retirement of Capacity
4. Grants for the Relocation of Productive Facilities
5. Foreign Trade Development Fund
6. Grants for Energy Conservation and Emission Reduction
7. The State Key Technology Fund Project
8. Advanced unit reward for clean production audit in Xiamen
9. Advanced unit rewards
10. Award of Integrating informatization and industrialization
11. Balance compensation of social security of labor with Haicang census register
12. Balance compensation of social security of local rural labor

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<sup>158</sup> We note that Xiashun benefited from certain non-recurring self-reported programs in the first administrative review of the *Order*. However, the names and program-specific subsidy rates for these programs, were not identified publicly in the first administrative review. In the current review, Xiashun publicly reported the names of all such programs in its responses (*See, e.g.*, Xiashun's SQR at Exhibit SQ-10-2). Therefore, for the purposes of calculating the AFA rate for Alcha, we have included these previously un-named self-reported programs.



13. Bonus for Work Safety Standardization Level 3 of Haicang District Work Safety Supervision and Management
14. Brand production and development support funds of Municipal Economic and Trade Bureau
15. China Nonferrous Metals Techno-Economic Research Institute subsidy
16. City-level patent fund
17. Clean production audit fund subsidy
18. Clean production standard fund
19. Commissions on the Commissioned Withholding and Collection of Taxes
20. Compensation for social insurance of Haicang household
21. Compensation for social insurance of the city's rural labor recruited by employer
22. Electricity rewards distribution
23. Electricity rewards for increasing production and efficiency
24. Electricity rewards of Haicang District
25. Electricity rewards of Xiamen City
26. Electricity subsidy
27. Employment of graduates from higher education institutes
28. Energy audit grants
29. Energy Conservation Demonstration Project funds
30. Enterprise R&D subsidy
31. Export credit insurance subsidies
32. Finance Bureau export subsidy
33. Financial rewards of individual income tax for key development and local retention of professional and technical personnel in industries
34. Fixed investments subsidy for typhoon victims
35. Funding for solid powder high-grade packaging foil project
36. Funds for establishment of national standard
37. Funds for provincial-level innovative enterprise
38. Green finance support funds
39. Haicang District Economic and Trade Bureau Energy Saving and Emission Reduction Project Reward
40. Haicang District R&D subsidy
41. Incentive for Investment in Industrial Fixed Assets
42. Incentive funds to electricity consumption used in production increase
43. Incentive to Major Project Bidding
44. Increase in production and efficiency of manufacturing enterprises rewards
45. Individual tax incentives for Xiamen's key development industries, professional technologies and management talents
46. industrial enterprise electricity price subsidy
47. Industrial investment rewards
48. insurance premium and credit information fees support funds
49. Interest subsidy for industrial enterprises financing supported by Xiamen Municipal Finance Bureau
50. Key R&D and innovation project fund
51. Labor cooperation rewards from Labor and Employment Management Center of Xiamen City

52. Labor cooperation rewards from Xiamen Haicang Employment Center
53. Legal fees for Anti-dumping investigation
54. Migrant workers training subsidy
55. Municipal Enterprise Technology Center Award
56. Municipal high-tech enterprises recognition reward
57. National and industry standards formulation and revision outlay
58. Personal income tax reward for key industrial talents in Xiamen
59. Post-disaster reconstruction working capital loan with discounted interest and subsidy
60. Project grant
61. Property tax and urban land use tax rewards
62. Provincial Special awards for industrial enterprises
63. R&D and industrialization of aluminum foil technology for High-performance and high-anticorrosion aseptic package project fund
64. Receipt of discounted interest on imported equipment of key foreign-funded enterprises
65. Rewards for advanced industrial enterprise with increase assurance and stability promotion
66. Rewards for annual large taxpayer
67. Rewards for electricity consumption
68. Rewards for industrial production and sales increase
69. Rewards for large taxpayer in Haicang
70. Rewards for spanning development
71. Rewards for structural adjustment to enhance enterprise development
72. Science and Technology Bureau Reward (Standardized fund and rewards)
73. Science and Technology Bureau Reward (Standardized fund and rewards)
74. Social insurance compensation for fresh college graduates
75. Social insurance subsidy for fresh college graduates
76. Social insurance subsidy for graduates
77. Social insurance subsidy for graduates of vocational colleges and colleges and universities recruited from Labor and Employment Management Center of Xiamen City
78. Social insurance subsidy for graduates of vocational colleges and colleges and universities recruited from Xiamen Haicang Employment Center
79. Social insurance subsidy for graduates recruited
80. Social insurance subsidy for people experiencing employment difficulty
81. Social insurance subsidy for post stability
82. Special fund for brand development
83. Standard subsidy
84. Standards formulation and revision funds from Xiamen Haicang District Science and Technology and Information Technology Bureau
85. Standards formulation and revision funds from Xiamen Municipal Bureau of Quality and Technical Supervision
86. Standards formulation grants
87. Subsidies for social security for retired fishermen in Haicang District
88. Subsidy and rewards for standard formulation
89. Subsidy for early scrapping of vehicles

90. Subsidy for Haicang District fishermen losing land and fishery to tidal flats
91. Subsidy for one key university graduate recruited
92. Subsidy for post stability of unemployment insurance
93. Subsidy for scientific and technological insurance
94. Subsidy for stable employment
95. Subsidy for standard formulation
96. Subsidy for support of corporate development
97. Subsidy for supporting industrial enterprises to undertake orders and the above scale
98. Subsidy for three system certification
99. Subsidy of “Xiamen City-level High-tech Enterprises”
100. Subsidy to counsel fee for responding to antidumping and CVD cases
101. Support for land use tax
102. The first batch of enterprise R&D fund subsidy
103. Xiamen Municipal Excellent New Product Reward
104. Trademark brand rewards
105. Vocational training subsidy income
106. Winning project of large-scale project bidding rewards
107. Xiamen City energy audit fund subsidy
108. Xiamen Economic Development Bureau provincial industrial operation information work reward
109. Xiamen industrial enterprises technical renovation project award
110. Xiamen Municipal Finance Bureau Xiamen City Measurement Management System fund subsidy
111. Xiamen Municipal Finance Bureau support funds
112. Xiamen New Material Product Bonus
113. Xiashun casting No. 2 production line project financial subsidy in the city

Based on the methodology described above, we preliminarily determine the net AFA countervailable subsidy rate for Alcha to be 305.07 percent, *ad valorem*. Also based on the methodology described above, we determine that the rate applicable to the EBCP is 3.89 percent, the rate calculated for Xiashun under the Policy Loans to the Aluminum Foil Industry, the highest rate for a similar program under this proceeding.<sup>159</sup> The Appendix to this memorandum contains a chart summarizing the selection of the AFA rates.

#### **H. Corroboration of AFA Rates for Xiashun under the Export Buyer’s Credit Program and for Jiangsu Alcha Aluminum Co., Ltd.**

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

<sup>159</sup> See Section “X. ANALYSIS OF PROGRAMS... A. Programs Preliminarily Found to be Countervailable ...1. Policy Loans to the Aluminum Foil Industry,” and Xiashun’s Preliminary Calculation Memorandum at Attachment 1 and Attachment 2 at 3 and worksheet “Rate Summary.”

merchandise.”<sup>160</sup> The SAA provides that to “corroborate” secondary information, Commerce will satisfy itself that the secondary information to be used has probative value.<sup>161</sup>

Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that Commerce need not prove that the selected FA are the best alternative information.<sup>162</sup> Furthermore, Commerce is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.<sup>163</sup>

With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. With respect to the relevance aspect of corroboration, Commerce will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Commerce will not use information where circumstances indicate that the information is not appropriate as AFA.<sup>164</sup>

In the absence of record evidence concerning Alcha’s usage of the subsidy programs at issue, due to its decision not to participate in this review, we have reviewed the information concerning Chinese subsidy programs in past proceedings of this case, as well as other China CVD cases. For all programs where we selected the program-specific rates from the underlying investigation, Commerce is not required to corroborate the AFA rates for these programs because the selected program-specific rates are from a prior segment of this proceeding.<sup>165</sup> For other programs where we selected rates from other China CVD cases, we find that, because these are the same or similar programs, they are relevant to the programs in this review. The relevance of these rates is that they are actual calculated subsidy rates for Chinese programs, from which the non-responsive companies could actually receive a benefit. Due to the lack of participation by Alcha and the resulting lack of record information concerning these programs, we have corroborated the rates we selected to use as AFA to the extent practicable pursuant to section 776(c)(1) for these preliminary results.

## **I. Application of AFA to the GOC: Other Programs Previously Found to be Countervailable**

As noted above in the “Case History” section, the GOC did not submit requested information related to Alcha in response to the Initial Questionnaire. We repeatedly requested information from the GOC regarding the use of all programs by Alcha. In the Initial Questionnaire, we requested information regarding both Xiashun’s and Alcha’s use of programs, and for

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<sup>160</sup> See SAA at 870.

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

<sup>163</sup> See section 776(d)(3) of the Act.

<sup>164</sup> See, e.g., *Silica Fabric IDM* at 14 (citing *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996)).

<sup>165</sup> See section 776(c)(2) of the Act.

appropriate responses regarding such programs.<sup>166</sup> However, the GOC explained that “{t}he GOC’s initial response does not cover {Alcha} as Alcha is not responding to the initial questionnaire.”<sup>167</sup> In Commerce’s GOC Supplemental Questionnaire, we reiterated the need for the GOC to identify all programs used by the mandatory respondents. Specifically, we stated that “{f}or each subsidy program, you must state if a company or any of its ‘cross-owned’ companies subject to this review did or did not apply for, use, or benefit from that program during the POR.”<sup>168</sup> In response, the GOC claimed to have provided the required information in its initial questionnaire response. However, the GOC did not fully respond to our requests for such information with respect to the EBCP, Provision of Electricity for LTAR, Provision of Primary Aluminum for LTAR, and grant programs which were used by Xiashun. Further, the GOC did not provide any of the requested information related to the other previously countervailed programs under review which might have been used by Alcha. The information requested concerns the implementation and operation of each of the programs, which allows Commerce to determine whether an authority provided a financial contribution within the meaning of section 771(5)(D) of the Act, which conferred a benefit to respondent, and whether the subsidy is specific as defined under section 771(5A) of the Act. The information requested regarding the programs used by Alcha also pertains to whether Alcha used each of the programs. By failing to respond to the Initial Questionnaire, the GOC deprived the case record of information necessary to determine whether a financial contribution was provided and whether specificity existed.

Consequently, we must rely on “facts otherwise available” for the preliminary results, pursuant to sections 776(a)(2)(A) and (C) of the Act because the GOC has withheld necessary information that was requested of it, thereby significantly impeding this administrative review. Moreover, we preliminarily find that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information because it provided no response. Consequently, we find that the application of AFA is warranted pursuant to section 776(b) of the Act.

As AFA, we preliminarily find that the following programs that we found to be countervailable in the original investigation or the first review of the *Order* provided financial contributions within the meaning of section 771(5)(D) of the Act and are specific within the meaning of section 771(5A) of the Act:

1. Foreign Trade Development Fund Grants
2. Provision of Land for LTAR
3. Provision of Aluminum Plate and/or Sheet and Strip for LTAR
4. Provision of Steam Coal for LTAR

For details on the calculation of Alcha’s subsidy rates for these programs, *see* below at Appendix.

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<sup>166</sup> See GOC’s IQR at Section “I. PRODUCERS/EXPORTERS SUBJECT TO REVIEW.”

<sup>167</sup> *Id.*

<sup>168</sup> See GOC Supplemental Questionnaire at 1.

## **J. Application of AFA to the GOC: Specificity, and Financial Contribution for Programs Not Previously Used or Which Previously Provided No Measurable Benefits**

As explained above, the GOC repeatedly failed to respond to our questions regarding Alcha's use of all programs and information needed to evaluate the countervailability of all programs in terms of financial contribution, benefit and specificity.

With respect to the programs found not to have been used by, or to have provided measurable benefits to, respondents in the original investigation or the first review of the *Order*, the information requested in the Initial Questionnaire would be the only information available in this proceeding concerning the implementation and operation of each of the programs, which allows Commerce to determine whether and authority provided a financial contribution within the meaning of section 771(5)(D) of the Act, which conferred a benefit to respondent, and whether the subsidy was specific as defined under section 771(5A) of the Act. In order for Commerce to conduct a full analysis of whether a financial contribution is provided and whether it is specific under sections 771(5)(D) and 771(5A) of the Act, respectively, Commerce requires the government to provide a complete response to the questions that are contained in the Standard Questions Appendix. The government's cooperation is essential because the information required for a complete analysis of specificity and financial contribution with respect to government subsidy programs is ordinarily in the sole custody of the government. By failing to provide complete responses to the Standard Questions Appendices as requested, Commerce finds that the record is missing necessary information because the GOC withheld necessary information and significantly impeded this administrative review within the meaning of section 776(a)(1) and (2)(A), (C) of the Act and also failed to cooperate by not acting to the best of its ability to comply with our requests within the meaning of section 776(b) of the Act. Specifically, as AFA, we preliminarily find that the following programs provided financial contributions within the meaning of section 771(5)(D) of the Act and are specific within the meaning of section 771(5A) of the Act:

1. Preferential Loans to SOEs
2. Export Loans from SOCBs
3. Income Tax Concession for Enterprises Engaged in Comprehensive Resource Utilization
4. Income Tax Deductions/Credits for Purchase of Special Equipment
5. Stamp Tax Exemption on Share Transfers Under Non-Tradeable Share Reform
6. Deed Exemption for SOEs Undergoing Mergers or Restructures
7. Government of the China and Sub-Central Government Subsidies for Development of Famous Brands and China World Top Brands
8. Exemptions for SOEs from Distributing Dividends
9. Grants for Retirement of Capacity
10. Grants for the Relocation of Productive Facilities
11. Grants for Energy Conservation and Emission Reduction
12. The State Key Technology Fund Project
13. Advanced unit reward for clean production audit in Xiamen
14. Advanced unit rewards
15. Balance compensation of social security of labor with Haicang census register

16. Balance compensation of social security of local rural labor
17. Bonus for Work Safety Standardization Level 3 of Haicang District Work Safety Supervision and Management
18. Brand production and development support funds of Municipal Economic and Trade Bureau
19. China Nonferrous Metals Techno-Economic Research Institute Subsidy
20. City-level patent fund
21. Clean production audit fund subsidy
22. Clean production standard fund
23. Electricity rewards distribution
24. Electricity rewards for increasing production and efficiency
25. Electricity rewards of Haicang District
26. Electricity rewards of Xiamen City
27. Electricity subsidy
28. Employment of graduates from higher education institutes
29. Energy audit grants
30. Energy Conservation Demonstration Project funds
31. Finance Bureau export subsidy
32. Financial rewards of individual income tax for key development and local retention of professional and technical personnel in industries
33. Fixed investments subsidy for typhoon victims
34. Funding for solid powder high-grade packaging foil project
35. Funds for establishment of national standard
36. Funds for provincial-level innovative enterprise
37. Haicang District Economic and Trade Bureau Energy Saving and Emission Reduction Project Reward
38. Increase in production and efficiency of manufacturing enterprises rewards
39. Industrial enterprise electricity price subsidy
40. Industrial investment rewards
41. Insurance premium and credit information fees support funds
42. Interest subsidy for industrial enterprises financing supported by Xiamen Municipal Finance Bureau
43. Key R&D and innovation project fund
44. Labor cooperation rewards from Labor and Employment Management Center of Xiamen City
45. Legal fees for Anti-dumping investigation
46. Migrant workers training subsidy
47. Municipal high-tech enterprises recognition reward
48. Personal income tax reward for key industrial talents in Xiamen
49. Post-disaster reconstruction working capital loan with discounted interest and subsidy
50. Project grant
51. Property tax and urban land use tax rewards
52. R&D and industrialization of aluminum foil technology for High-performance and high-anticorrosion aseptic package project fund
53. Receipt of discounted interest on imported equipment of key foreign-funded enterprises

54. Rewards for advanced industrial enterprise with increase assurance and stability promotion
55. Rewards for annual large taxpayer
56. Rewards for electricity consumption
57. Rewards for industrial production and sales increase
58. Rewards for large taxpayer in Haicang
59. Rewards for structural adjustment to enhance enterprise development
60. Science and Technology Bureau Reward (Standardized fund and rewards)
61. Social insurance compensation for fresh college graduates
62. Social insurance subsidy for fresh college graduates
63. Social insurance subsidy for graduates
64. Social insurance subsidy for graduates of vocational colleges and colleges and universities recruited from Labor and Employment Management Center of Xiamen City
65. Social insurance subsidy for graduates recruited
66. Social insurance subsidy for post stability
67. Special fund for brand development
68. Standard subsidy
69. Standards formulation and revision funds from Xiamen Haicang District Science and Technology and Information Technology Bureau
70. Standards formulation and revision funds from Xiamen Municipal Bureau of Quality and Technical Supervision
71. Standards formulation grants
72. Subsidy for early scrapping of vehicles
73. Subsidy for Haicang District fishermen losing land and fishery to tidal flats
74. Subsidy for one key university graduate recruited
75. Subsidy for post stability of unemployment insurance
76. Subsidy for scientific and technological insurance
77. Subsidy for standard formulation
78. Subsidy for support of corporate development
79. Subsidy for supporting industrial enterprises to undertake orders and the above scale
80. Subsidy for three system certification
81. Subsidy of "Xiamen City-level High-tech Enterprises"
82. Subsidy to counsel fee for responding to antidumping and CVD cases
83. Support for land use tax
84. enterprise R&D fund subsidy
85. Xiamen Municipal Excellent New Product Reward
86. Trademark brand rewards
87. Vocational training subsidy income
88. Winning project of large-scale project bidding rewards
89. Xiamen City energy audit fund subsidy
90. Xiamen Economic Development Bureau provincial industrial operation information work reward
91. Xiamen Municipal Finance Bureau Xiamen City Measurement Management System fund subsidy
92. Xiamen Municipal Finance Bureau support funds



For details on the calculation of Alcha's subsidy rates for these programs, *see* below at Appendix.

## **X. ANALYSIS OF PROGRAMS**

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

### **A. Programs Preliminarily Found to be Countervailable**

#### **1. Policy Loans to the Aluminum Foil Industry**

Commerce determined in the investigation that this program was countervailable.<sup>169</sup> Specifically, we found a program of preferential policy lending specific to producers of aluminum foil within the meaning of section 771(5A)(D)(i) of the Act.<sup>170</sup> We also found that loans from SOCBs under this program constitute financial contributions, pursuant to sections 771(5)(B)(i) and 771(5)(D)(i) of the Act, because SOCBs are "authorities."<sup>171</sup> We also found that policy loans provide a benefit equal to the difference between what the recipients paid on their loans and the amount they would have paid on comparable commercial loans.<sup>172</sup> We confirmed our findings in the first administrative review of the *Order*.<sup>173</sup>

In this review, we preliminarily determine that the GOC submitted no new information or argument that warrants reconsideration of Commerce's prior determination in the investigation concerning the countervailability of the program.<sup>174</sup> Therefore, consistent with our practice not to revisit financial contribution and specificity determinations made in a prior segment of the proceeding, absent the presentation of new facts or evidence,<sup>175</sup> we preliminarily continue to find that this program provides a financial contribution, pursuant to sections 771(5)(B)(i) and 771(5)(D)(i) of the Act, which is specific within the meaning of section 771(5A)(D)(i) of the Act.

Xiashun reported benefiting from this program during the POR.<sup>176</sup> The loans provide a benefit equal to the difference between what Xiashun paid on their loans and the amount they would have paid on comparable commercial loans.<sup>177</sup> To calculate the benefit from this program, we

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<sup>169</sup> *See Certain Aluminum Foil from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 82 FR 37844 (August 14, 2017) (*Aluminum Foil Preliminary Determination*), and accompanying PDM at 42-44, unchanged in *Aluminum Foil Final Determination and Order*.

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> *See Aluminum Foil 2017-2018 Final Results* IDM at Comment 13.

<sup>174</sup> *See* GOC's IQR at 2.

<sup>175</sup> *See Magnola Metallurgy, Inc. v. United States*, 508 F.3d 1349, 1354-55 (Fed. Cir. 2007) (*Magnola*); *see also* *Solar Cells from China Investigation* IDM at 27 n.130; *see also* Initial Questionnaire at I-1 (stating "[a]bsent new information or evidence of changed circumstances, however, we do not intend to reexamine the countervailability of programs previously found to be countervailable, or not countervailable").

<sup>176</sup> *See* Xiashun's IQR at 7-8 and Exhibit 9.

<sup>177</sup> *See* 19 CFR 351.505(a).

used the benchmarks discussed above under the “Subsidy Valuation” section. To calculate the net countervailable subsidy rate under this program we divided the benefit by the appropriate sales denominator, as described in the “Subsidies Valuation” section above.

On this basis, we preliminarily determine an *ad valorem* net countervailable subsidy rates for Xiashun of 3.89 percent.

## 2. Income Tax Reduction for High or New Technology Enterprises (HNTEs)

Commerce determined in the investigation that this program was countervailable.<sup>178</sup> Specifically, we found that this tax incentive constitutes a financial contribution in the form of revenue forgone by the GOC and confers a benefit in the amount of tax savings, as provided under sections 771(5)(D)(ii) and 771(5)(E) of the Act.<sup>179</sup> We further determined that the income tax reduction afforded by this program is limited as a matter of law to certain enterprises whose products are designated as being in “high-tech fields with state support,” and, hence, is *de jure* specific, under section 771(5A)(D)(i) of the Act.<sup>180</sup> We confirmed our findings in the First Administrative Review of the *Order*.<sup>181</sup>

In this review, we preliminarily determine that the GOC did not submit any new information that warrants reconsideration of Commerce’s prior determination in the investigation concerning the countervailability of the program.<sup>182</sup> Therefore, consistent with our normal practice not to revisit financial contribution and specificity determinations made in a prior segment of the proceeding, absent the presentation of new facts or evidence,<sup>183</sup> we preliminarily continue to find that this tax incentive program confers a financial contribution as provided under sections 771(5)(D)(ii) and 771(5)(E) of the Act and is *de jure* specific, under section 771(5A)(D)(i) of the Act.

Xiashun reported benefiting from this program during the POR.<sup>184</sup> We calculated the benefit as the difference between taxes Xiashun would have paid under the standard 25 percent tax rate and the taxes that the companies actually paid under the preferential 15 percent tax rate.<sup>185</sup> We treated the tax savings, or the difference between the amount of taxes that would have been due under each tax rate, as a recurring benefit consistent with 19 CFR 351.524(c)(1). To calculate the net countervailable subsidy rate under this program we divided the benefit by the appropriate sales denominator, as described in the “Subsidies Valuation” section above.

<sup>178</sup> See *Aluminum Foil Preliminary Determination* PDM at 45-46, unchanged in the *Aluminum Foil Final Determination and Order*.

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> See *Certain Aluminum Foil from the People’s Republic of China: Preliminary Results of the Countervailing Duty Administrative Review and Rescission of Review, in Part; 2017-2018*, 85 FR 38861 (June 29, 2020) (*Aluminum Foil 2017-2018 Preliminary Results*), and accompanying PDM at 34-35, unchanged in *Aluminum Foil 2017-2018 Final Results* IDM.

<sup>182</sup> See GOC’s IQR at 4.

<sup>183</sup> See *Magnola*, 508 F. 3d at 1354-55; see also *Solar Cells from China Investigation* IDM at 27 n.130; see also Initial Questionnaire at I-1 (stating “[a]bsent new information or evidence of changed circumstances, however, we do not intend to reexamine the countervailability of programs previously found to be countervailable, or not countervailable”).

<sup>184</sup> See Xiashun’s IQR at 8-12 and Exhibit 10.

<sup>185</sup> *Id.*

On this basis, we preliminarily determine an *ad valorem* net countervailable subsidy rates for Xiashun of 0.78 percent.

### 3. Income Tax Deductions for Research and Development (R&D) Expenses under the Enterprise Income Law

Commerce determined this program to be countervailable in the original investigation.<sup>186</sup> Specifically, we determined that this income tax deduction provides a financial contribution in the form of revenue forgone by the government, and it provides a benefit to the recipients in the amount of the tax savings, pursuant to section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also found that the income tax deduction afforded by this program is limited as a matter of law to certain enterprises, *i.e.*, those with R&D in eligible high-technology sectors and, thus, is *de jure* specific under section 771(5A)(D)(i) of the Act. We confirmed our findings in the First Administrative Review of the *Order*.<sup>187</sup>

In this review, we preliminarily determine that the GOC did not submit any new information that warrants reconsideration of Commerce's prior determination in the investigation concerning the countervailability of the program.<sup>188</sup> Therefore, consistent with our normal practice not to revisit financial contribution and specificity determinations made in a prior segment of the proceeding, absent the presentation of new facts or evidence,<sup>189</sup> we preliminarily continue to find that this program confers a financial contribution pursuant to section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1) and is *de jure* specific under section 771(5A)(D)(i) of the Act.

Xiashun reported benefiting from this program during the POR.<sup>190</sup> To calculate the benefit for the two companies, we treated the tax deduction as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To determine the amount of the tax savings (*i.e.*, the benefit), we multiplied the amount of the tax deduction by the standard tax rate of 25 percent (*i.e.*, 25 percent of the tax deduction). This is equal to the difference between the amount of tax the company would have paid absent the tax deductions at the standard tax rate of 25 percent and the amount of taxes that would have been due after deducting the tax deduction from taxable income under the standard 25 percent tax rate. We then divided the tax savings by the appropriate total sales denominator for each company, respectively.

On this basis, we preliminarily determine an *ad valorem* net countervailable subsidy rates for Xiashun of 0.35 percent.

<sup>186</sup> See *Aluminum Foil Preliminary Determination* PDM 46-47, unchanged in *Aluminum Foil Final Determination*.

<sup>187</sup> See *Aluminum Foil 2017-2018 Preliminary Results* PDM at 35-36, unchanged in *Aluminum Foil 2017-2018 Final Results* IDM.

<sup>188</sup> See GOC's IQR at 7.

<sup>189</sup> See *Magnola*, 508 F.3d at 1354-55; see also *Solar Cells from China Investigation* IDM at 27 n.130; see also Initial Questionnaire at I-1 (stating “{a}bsent new information or evidence of changed circumstances, however, we do not intend to reexamine the countervailability of programs previously found to be countervailable, or not countervailable”).

<sup>190</sup> See Xiashun's IQR at 12-16 and Exhibit 10.

## 7. Provision of Electricity for LTAR

In the original investigation, Commerce determined this program to be countervailable based, in part, on the application of AFA.<sup>191</sup> We confirmed our findings in the First Administrative Review of the *Order*.<sup>192</sup> Likewise, for this review, as explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we are preliminarily basing our determination regarding the GOC’s provision of electricity, in part, on AFA. For these preliminary results, we determine that Xiashun received a countervailable subsidy from electricity provided for LTAR.

As discussed above, the GOC did not provide the information requested by Commerce regarding its provision of electricity to the company respondents and, as a result, we find, as AFA, that the GOC is providing a financial contribution that is specific within the meaning of sections 771(5)(D)(iii) and 771(5A)(D) of the Act, respectively. To determine the existence and amount of any benefit from this program, we relied on the respondents’ reported information on the amounts of electricity used, and the rates the respondents paid for that electricity, during the POR. We compared the rates paid by the respondents for their electricity to the highest rates that they could have paid in China during the POR.

To calculate the benchmark, we selected the highest rates in China for the type of user for the peak, normal, and valley ranges, as provided by the GOC.<sup>193</sup> The electricity rate benchmark chart is included in Xiashun’s Preliminary Calculation Memorandum.<sup>194</sup> This benchmark reflects an adverse inference, which we drew as a result of the GOC’s failure to act to the best of its ability in providing requested information about its provision of electricity in this review.

To measure whether the mandatory respondents received a benefit under this program, Commerce first calculated the electricity prices the respondents paid by multiplying the monthly kilowatt hours or kilovolt amperes consumed for each price category by the corresponding electricity rates charged for each price category. Next, we calculated the benchmark electricity cost by multiplying the monthly consumption reported by the respondents for each price category by the highest electricity rate charged for each price category, as reflected in the electricity rate benchmark chart. To calculate the benefit for each month, we subtracted the amount paid by the respondents for electricity during each month of the POR from the monthly benchmark electricity price. We then calculated the total benefit for each company during the POR by summing the monthly benefits for each company.<sup>195</sup>

To calculate the subsidy rate under the program, we divided the benefit amount calculated for Xiashun by the appropriate total sales denominator, as discussed in the “Subsidies Valuation”

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<sup>191</sup> See *Aluminum Foil Preliminary Determination* PDM at 52-53, unchanged in *Aluminum Foil Final Determination*.

<sup>192</sup> See *Aluminum Foil 2017-2018 Preliminary Results* PDM at 39-40, unchanged in *Aluminum Foil 2017-2018 Final Results* IDM.

<sup>193</sup> See GOC’s IQR at Exhibit II.D.25 and 26.

<sup>194</sup> See Xiashun Preliminary Calculation Memorandum, Attachment 2 at Worksheets “7A Electricity Benchmark” “7B Electricity for LTAR.”

<sup>195</sup> See Xiashun Preliminary Calculation Memorandum.

section above. On this basis, we preliminarily determine net *ad valorem* countervailable subsidy rates for Xiashun of 2.24 percent.<sup>196</sup>

## 9. Provision of Primary Aluminum for LTAR

Commerce determined this program to be countervailable in the investigation based on AFA.<sup>197</sup> We confirmed our findings in the First Administrative Review of the *Order*.<sup>198</sup> In its questionnaire response in this review, the GOC indicated that certain producers that provided primary aluminum to the respondents are majority-owned by the government.<sup>199</sup> As explained in the Public Body Memorandum, majority state-owned enterprises in China possess, exercise, or are vested with governmental authority.<sup>200</sup> The GOC exercises meaningful control over these entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector. Therefore, we preliminarily determine that these entities constitute “authorities” within the meaning of section 771(5)(B) of the Act and that they provided the respondents with a financial contribution in the form of a provision of a good, pursuant to section 771(5)(D)(iii) of the Act.<sup>201</sup>

As discussed above in section “Use of Facts Otherwise Available and Adverse Inferences,” we find that the GOC’s refusal to provide certain information regarding the remaining producers from whom respondents sourced their input purchases warrants the use of AFA. As AFA, we find that these remaining producers are “authorities” within the meaning of section 771(5)(B) of the Act and, thus, that these producers provided financial contributions to the respondents.

In the underlying investigation, we determined that this program is specific on the basis of AFA.<sup>202</sup> The GOC provided no new information concerning the specificity of this program. Therefore, we continue to find that the provision of primary aluminum for LTAR is specific.<sup>203</sup>

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<sup>196</sup> See Xiashun Preliminary Calculation Memorandum.

<sup>197</sup> See *Aluminum Foil Preliminary Determination* PDM at 30-37, unchanged in *Aluminum Foil Final Determination*.

<sup>198</sup> See *Aluminum Foil 2017-2018 Preliminary Results* PDM at 42-48, unchanged in *Aluminum Foil 2017-2018 Final Results* IDM.

<sup>199</sup> See GOC’s IQR at 22-23 and Exhibit II.E.A1.1.

<sup>200</sup> See Public Body Memorandum at Attachments “Section 129 Determination of the Countervailing Duty Investigation of Circular Welded Carbon Quality Steel Pipe; Light-Walled Rectangular Pipe and Tube; Laminated Woven Sacks; and Off-the-Road Tires from the People’s Republic of China: An Analysis of Public Bodies in the People’s Republic of China in Accordance with the WTO Appellate Body’s Findings in WTO DS379” and “The relevance of the Chinese Communist Party for the limited purpose of determining whether particular enterprises should be considered to be ‘public bodies’ within the context of a countervailing duty investigation.”

<sup>201</sup> See, e.g., *Certain Oil Country Tubular Goods from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 52301 (September 3, 2014) (*OCTG from China 2012 AR*), and accompanying IDM at 48-50.

<sup>202</sup> See *Aluminum Foil Preliminary Determination* PDM at 30-37, unchanged in *Aluminum Foil Final Determination*.

<sup>203</sup> See *Magnola*, 508 F.3d at 1354-55; see also *Solar Cells from China Investigation* IDM at 27 n.130; see also Initial Questionnaire at I-1 (stating “{a}bsent new information or evidence of changed circumstances, however, we do not intend to reexamine the countervailability of programs previously found to be countervailable, or not countervailable”).

A benefit is conferred to the extent that primary aluminum is being provided for LTAR. As discussed above under the “Subsidies Valuation Information” section, we are basing the benchmark on the Comtrade data for primary aluminum under HTS subheadings 7601.10 and 7601.20 submitted by the petitioner. We adjusted the benchmark price to include delivery charges, import duties, and VAT pursuant to 19 CFR 351.511(a)(2)(iv). We added import duties and VAT as reported by the GOC.<sup>204</sup> In calculating VAT, we applied the applicable VAT rate to the benchmark after first adding amounts for ocean freight and import duties. We then compared these monthly benchmark prices to the respondents’ reported purchase prices for individual transactions, including VAT and delivery charges.

Based on this comparison, we preliminarily determine that primary aluminum was provided to Xiashun for LTAR and that a benefit exists to the extent that the prices paid by Xiashun were lower than the benchmark prices.<sup>205</sup> We divided Xiashun’s total benefits by the appropriate total sales denominator, as discussed in the “Subsidies Valuation Information” section above, and in Xiashun’s preliminary calculation memorandum. On this basis, we preliminarily determine an *ad valorem* net countervailable subsidy rates for Xiashun of 11.33 percent.<sup>206</sup>

## 11. Other Subsidies

Xiashun reported receiving various other grants from the GOC during the AUL.<sup>207</sup> For the reasons explained in the “Application of AFA: Other Subsidies” section above, we are basing our preliminary determination regarding these grants on AFA, in part. Therefore, we determine that the following grants provide a financial contribution in the form of a direct transfer of funds under section 771(5)(D)(i) of the Act, and are specific either under sections 771(5A)(A)-(B) or 771(5A)(D) of the Act (as appropriate, depending on whether the respondent reported the grant as export-related or as a domestic subsidy).

With regard to benefit, we preliminarily find that these grants constitute non-recurring subsidies within the meaning of 19 CFR 351.524(b). To measure the benefit, we followed the methodology described in 19 CFR 351.524(b) and (d). In accordance with 19 CFR 351.524(b)(2), we determined whether to allocate the benefit over the AUL by dividing the approved grant amount by the company’s total sales in the year of approval. If the approved amount was less than 0.5 percent of the company’s total sales, we expensed the amounts received under the grants in the respective years received; otherwise, we allocated the benefit across the AUL in accordance with 19 CFR 351.524(d). For approved amounts received during the POR or amounts allocable to the POR from earlier years of the AUL that are less than 0.005 percent of the company’s total sales, we determined there is no measurable benefit. To calculate the POR *ad valorem* subsidy rates for these grants, Commerce divided the benefit allocable to the POR by Xiashun’s total POR sales, as applicable.

<sup>204</sup> See GOC’s IQR at 33 and Xiashun Benchmark Submission at Exhibit 1.

<sup>205</sup> See 19 CFR 351.511(a).

<sup>206</sup> See Xiashun Preliminary Calculation Memorandum.

<sup>207</sup> See Xiashun Initial Questionnaire Response at 28 and Exhibit 18; and Xiashun’s SQR at Exhibit SQ-10-1 and SQ 10-2.

Based on the methodology outlined above, we calculated the following (measurable) *ad valorem* net countervailable subsidy rates:<sup>208</sup>

<b>Program</b>	<b>Rate</b>
Grant – Labor Cooperation Rewards (from Xiamen Haicang Employment Center)	0.15%
Other Assistance – Grant – Compensation for social insurance of Haicang household	0.02%
Other Assistance – Grant – National and industry standards formulation and revision funds	0.02%
Other Assistance – Grant – Subsidy and rewards for standard formulation	0.02%
Other Assistance – Grant – Incentive funds to electricity consumption used in production increase	0.06%
Other Assistance – Grant – Incentive to Major Project Bidding	0.11%
Other Assistance – Grant – Subsidy for stable employment	0.01%
Other Assistance – Grant – Rewards for spanning development	0.17%
Other Assistance – Grant – Xiamen New Material Product Bonus	0.01%
Other Assistance – Grant – Municipal Enterprise Technology Center Award	0.03%
Other Assistance – Grant – Haicang District R&D subsidy	0.06%
Other Assistance – Grant – Provincial Special awards for industrial enterprises	0.02%
Other Assistance – Grant – Xiamen industrial enterprises technical renovation project award	0.10%
Other Assistance – Grant – Commissions on the Commissioned Withholding and Collection of Taxes	0.03%
Other Assistance – Grant – Export Credit Insurance Subsidy	0.05%

**B. *Programs Preliminarily Determined to be Not Used by Xiashun***

Commerce preliminarily determines that the following programs were not used by Xiashun during the POR:

1. Import Tariff and VAT Exemptions on Imported Equipment in Encouraged

<sup>208</sup> See Preliminary Calculation Memoranda.

- Industries
2. VAT Rebates on Domestically Produced Equipment
  3. Foreign Trade Development Fund Grants
  4. Grants to Jiangsu Zhongji Lamination Materials Co., Ltd.<sup>209</sup>
  5. Provision of Steam Coal for LTAR
  6. Government Provision of Aluminum Plate and/or Sheet and Strip for LTAR
  7. Government Provision of Land for LTAR
  8. Export Seller's Credit<sup>210</sup>
  9. Preferential Loans for SOEs
  10. Export Loans from Chinese State-Owned Banks
  11. Equity Infusions into Nanshan Aluminum<sup>211</sup>
  12. Exemptions for SOEs from Distributing Dividends
  13. Income Tax Concessions for Enterprises Engaged in Comprehensive Resource Utilization
  14. Income Tax Deductions/Credits for Purchase of Special Equipment
  15. Stamp Tax Exemption on Share Transfers Under Non-Tradeable Share Reform
  16. Deed Tax Exemption for SOEs Undergoing Mergers or Restructuring
  17. GOC and Sub-Central Government Subsidies for the Development of Famous Brands and China World Top Brands
  18. The State Key Technology Project Fund
  19. Grants for Energy Conservation and Emission Reduction
  20. Grants for the Retirement of Capacity
  21. Grants for the Relocation of Productive Facilities
  22. Grants to Nanshan Aluminum<sup>212</sup>

***C. Programs Preliminarily Determined to Provide No Measurable Benefits to Xiashun***

Commerce preliminarily determines that the following programs were used by Xiashun during the POR, but provided no measurable benefits:

1. Enterprise R&D Subsidy (from Xiamen Municipal Science and Technology Bureau)
2. Social insurance subsidy for graduates of vocational colleges and colleges and universities (from Xiamen Haicang Employment Center)
3. Social insurance subsidy for people experiencing employment difficulty
4. Subsidies for social security for retired fishermen in Haicang District
5. Compensation for social insurance of the city's rural labor recruited by employer

<sup>209</sup> We have preliminarily determined that neither Xiashun nor Alcha used this program because this program is specific to Jiangsu Zhongji Lamination Materials Co., Ltd.

<sup>210</sup> At page 8 of Xiashun's IQR, Xiashun reported "Please see Exhibit 9 for Xiashun's export seller's credits from the China Export- Import Bank." However, Xiashun reported no Export Sellers Credits in Exhibit 9 (Xiashun's loans template response exhibit).

<sup>211</sup> We have preliminarily determined that neither Xiashun nor Alcha used this program because this program is specific to Nanshan Aluminum.

<sup>212</sup> We have preliminarily determined that neither Xiashun nor Alcha used this program because this program is specific to Nanshan Aluminum.



6. Incentive for Investment in Industrial Fixed Assets
7. Green finance support funds
8. Award of Integrating informatization and industrialization
9. Individual tax incentives for Xiamen's key development industries, professional technologies and management talents
10. Subsidy to counsel fee for responding to antidumping and CVD cases<sup>213</sup>

## **XI. RECOMMENDATION**

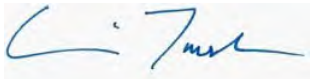
We recommend applying the above methodology for these preliminary results.

☒
☐

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

X



Signed by: CHRISTIAN MARSH

Christian Marsh  
Acting Assistant Secretary  
for Enforcement and Compliance

<sup>213</sup> Based on record evidence provided by Xiashun, we have determined that the Subsidy to counsel fee for responding to antidumping and CVD cases is an export-contingent subsidy within the meaning of 771(5A)(A)-(B) of the Act and 19 CFR 351.525(b)(2). See Xiashun's SQR at Exhibit SQ-10-2. We have therefore attributed benefits under this program to Xiashun's POR Export Sales.

## Appendix

### Alcha AFA Rate Calculation

	Program Name	Rate	Source
	<b>Loans</b>		
1	Policy Loans to the Aluminum Foil Industry	3.89% <sup>214</sup>	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent in this proceeding for the identical program
2	Preferential Loans to SOEs	3.89% <sup>215</sup>	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent in this proceeding for a similar program
3	Export Loans from Chinese Stated-Owned Commercial Banks (SOCBs)	3.89% <sup>216</sup>	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent in this proceeding for a similar program
4	Export Seller's Credit	2.04% <sup>217</sup>	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent in this proceeding for the identical program
5	Export Buyer's Credit	3.89% <sup>218</sup>	The highest calculated non — <i>de minimis</i> rate for any cooperative mandatory respondent in this proceeding for a similar program
	<b>Income Tax Programs</b>		
6	Income Tax Reductions for High or New Technology Enterprises (HNTEs)	25%	Chinese Corporate Income Tax Rate <sup>219</sup>
7	Income Tax Reduction for R&D under EITL		
8	Income Tax Concession for Enterprises Engaged in Comprehensive Resource Utilization		
9	Income Tax Deductions/Credits for Purchase of Special Equipment	2.40% <sup>220</sup>	The highest calculated non — <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country

<sup>214</sup> See the Rate Calculated for Xiashun for this program, in section “X. ANALYSIS OF PROGRAMS... A. Programs Preliminarily Found to be Countervailable ...1. Policy Loans to the Aluminum Foil Industry.”

<sup>215</sup> *Id.*

<sup>216</sup> *Id.*

<sup>217</sup> See *Aluminum Foil 2017-2018 Final Results* IDM at 7.

<sup>218</sup> See the Rate Calculated for Xiashun for this program, in section “X. ANALYSIS OF PROGRAMS... A. Programs Preliminarily Found to be Countervailable ...1. Policy Loans to the Aluminum Foil Industry.”

<sup>219</sup> Consistent with other proceedings, we have used the Chinese corporate income tax rate as the combined *ad valorem* subsidy rate for all Chinese income tax programs which provide either a reduction in the income tax rate or a reduction in taxable income, but where (in the case that the company has zero or negative taxable income) further benefits are not possible. This reflects the fact that under such programs, the complete elimination of all tax is the maximum benefit possible.

<sup>220</sup> See *1,1,1,2 Tetrafluoroethene from China* IDM at 30.

	<b>Other Tax Programs</b>		
10	Import Tariff and VAT Exemptions on Imported Equipment in Encouraged Industries	0.91% <sup>221</sup>	The highest calculated non — <i>de minimis</i> rate for any cooperative mandatory respondent in this proceeding for the identical program
11	VAT Rebates on Domestically Produced Equipment	9.71% <sup>222</sup>	The highest calculated non — <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for an identical program in the same country
12	Stamp Tax Exemption on Share Transfers Under Non-Tradeable Share Reform	9.71% <sup>223</sup>	The highest calculated non-de minimis rate for any cooperative mandatory respondent outside this proceeding for an identical program in the same country
13	Deed Exemption for SOEs Undergoing Mergers or Restructures	9.71% <sup>224</sup>	The highest calculated non-de minimis rate for any cooperative mandatory respondent outside this proceeding for an identical program in the same country
	<b>Provision of Goods and Services for Less Than Adequate Remuneration (LTAR)</b>		
14	Provision of Electricity For LTAR	1.94% <sup>225</sup>	The highest calculated non-de minimis rate for any cooperative mandatory respondent in this proceeding for the identical program
15	Provision of Land for LTAR	1.40% <sup>226</sup>	The highest calculated non — <i>de minimis</i> rate for any cooperative mandatory respondent in this proceeding for the identical program
16	Provision of Primary Aluminum For LTAR	16.46% <sup>227</sup>	The highest calculated non — <i>de minimis</i> rate for any cooperative mandatory respondent in this proceeding for the identical program
17	Provision of Aluminum Plate and/or Sheet and Strip for LTAR	33.36% <sup>228</sup>	The highest calculated non — <i>de minimis</i> rate for any cooperative mandatory respondent in this proceeding for the identical program
18	Provision of Steam Coal for LTAR	33.36% <sup>229</sup>	The highest calculated non — <i>de minimis</i> rate for any cooperative mandatory respondent in this proceeding for a similar program

<sup>221</sup> See *Aluminum Foil 2017-2018 Final Results* IDM at 8.

<sup>222</sup> See *New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review*, 75 FR 64268 (October 19, 2010), unchanged in *New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*, 76 FR 23286 (April 26, 2011).

<sup>223</sup> *Id.*

<sup>224</sup> *Id.*

<sup>225</sup> See the Rate Calculated for Xiashun for this program, in section “X. ANALYSIS OF PROGRAMS... A. Programs Preliminarily Found to be Countervailable ...1. Provision of Electricity for Less Than Adequate Remuneration.”

<sup>226</sup> See *Aluminum Foil 2017-2018 Final Results* IDM at 8.

<sup>227</sup> See the Rate Calculated for Xiashun for this program, in section “X. ANALYSIS OF PROGRAMS... A. Programs Preliminarily Found to be Countervailable ...1. Provision of Primary Aluminum for Less Than Adequate Remuneration.”

<sup>228</sup> See *Aluminum Foil 2017-2018 Final Results* IDM at 8.

<sup>229</sup> *Id.*

	<b>Grants</b> <sup>230</sup>		
19	Government of the China and Sub-Central Government Subsidies for Development of Famous Brands and China World Top Brands	1.27%	The highest calculated non — <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for an identical program in the same country
20	Exemptions for SOEs from Distributing Dividends	1.27%	The highest calculated non — <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
21	Grants for the Retirement of Capacity	1.27%	The highest calculated non — <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
22	Grants for the Relocation of Productive Facilities	1.27%	The highest calculated non — <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
23	Foreign Trade Development Fund	1.27%	The highest calculated non — <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
24	Grants for Energy Conservation and Emission Reduction	1.27%	The highest calculated non — <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for an identical program in the same country
25	The State Key Technology Fund Project	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
26	Advanced unit reward for clean production audit in Xiamen	1.27%	The highest calculated non — <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
27	Advanced unit rewards	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
28	Award of Integrating informatization and industrialization	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
29	Balance compensation of social security of labor with Haicang census register	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
30	Balance compensation of social security of local rural labor	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
31	Bonus for Work Safety Standardization Level 3 of Haicang District Work Safety Supervision and Management	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
32	Brand production and development support funds of Municipal Economic and Trade Bureau	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
33	China Nonferrous Metals Techno-Economic Research Institute subsidy	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country

<sup>230</sup> For all Grant programs we used the 1.27% rate for the “Production Base Construction for Gas Storage and Transportation Equipment” program from *High Pressure Steel Cylinders* (see *High Pressure Steel Cylinders from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review*; 2017, 84 FR 71373 (December 27, 2019), and accompanying IDM at Comment 6.

34	city-level patent fund	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
35	clean production audit fund subsidy	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
36	Clean production standard fund	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
37	Commissions on the Commissioned Withholding and Collection of Taxes	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
38	Compensation for social insurance of Haicang household	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
39	Compensation for social insurance of the city's rural labor recruited by employer	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
40	Electricity rewards distribution	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
41	Electricity rewards for increasing production and efficiency	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
42	Electricity rewards of Haicang District	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
43	Electricity rewards of Xiamen City	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
44	Electricity subsidy	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
45	Employment of graduates from higher education institutes	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
46	Energy audit grants	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
47	Energy Conservation Demonstration Project funds	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
48	enterprise R&D subsidy	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
49	Export credit insurance subsidies	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
50	Finance Bureau export subsidy	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country

51	Financial rewards of individual income tax for key development and local retention of professional and technical personnel in industries	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
52	Fixed investments subsidy for typhoon victims	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
53	Funding for solid powder high-grade packaging foil project	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
54	Funds for establishment of national standard	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
55	Funds for provincial-level innovative enterprise	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
56	Green finance support funds	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
57	Haicang District Economic and Trade Bureau Energy Saving and Emission Reduction Project Reward	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
58	Haicang District R&D subsidy	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
59	Incentive for Investment in Industrial Fixed Assets	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
60	Incentive funds to electricity consumption used in production increase	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
61	Incentive to Major Project Bidding	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
62	Increase in production and efficiency of manufacturing enterprises rewards	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
63	Individual tax incentives for Xiamen's key development industries, professional technologies and management talents	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
64	Industrial Enterprise Electricity Price Subsidy	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
65	Industrial investment rewards	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
66	Insurance Premium And Credit Information Fees Support Funds	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
67	Interest subsidy for industrial enterprises financing supported by Xiamen Municipal Finance Bureau	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country

68	Key R&D and innovation project fund	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
69	Labor cooperation rewards from Labor and Employment Management Center of Xiamen City	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
70	Labor cooperation rewards from Xiamen Haicang Employment Center	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
71	Legal fees for Anti-dumping investigation	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
72	Migrant workers training subsidy	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
73	Municipal Enterprise Technology Center Award	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
74	Municipal high-tech enterprises recognition reward	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
75	National and industry standards formulation and revision outlay	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
76	Personal income tax reward for key industrial talents in Xiamen	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
77	Post-disaster reconstruction working capital loan with discounted interest and subsidy	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
78	Project grant	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
79	Property tax and urban land use tax rewards	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
80	Provincial Special awards for industrial enterprises	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
81	R&D and industrialization of aluminum foil technology for High-performance and high-anticorrosion aseptic package project fund	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
82	Receipt of discounted interest on imported equipment of key foreign-funded enterprises	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
83	Rewards for advanced industrial enterprise with increase assurance and stability promotion	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
84	Rewards for annual large taxpayer	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country

85	Rewards for electricity consumption	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
86	Rewards for industrial production and sales increase	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
87	Rewards for large taxpayer in Haicang	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
88	Rewards for spanning development	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
89	Rewards for structural adjustment to enhance enterprise development	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
90	Science and Technology Bureau Reward (Standardized fund and rewards)	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
91	small invention and small creation support funds	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
92	Social insurance compensation for fresh college graduates	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
93	Social insurance subsidy for fresh college graduates	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
94	Social insurance subsidy for graduates	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
95	Social insurance subsidy for graduates of vocational colleges and colleges and universities recruited from Labor and Employment Management Center of Xiamen City	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
96	Social insurance subsidy for graduates of vocational colleges and colleges and universities recruited from Xiamen Haicang Employment Center	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
97	Social insurance subsidy for graduates recruited	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
98	Social insurance subsidy for people experiencing employment difficulty	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
99	Social insurance subsidy for post stability	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
100	Special fund for brand development	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
101	Standard subsidy	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country



102	Standards formulation and revision funds from Xiamen Haicang District Science and Technology and Information Technology Bureau	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
103	Standards formulation and revision funds from Xiamen Municipal Bureau of Quality and Technical Supervision	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
104	Standards formulation grants	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
105	Subsidies for social security for retired fishermen in Haicang District	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
106	Subsidy and rewards for standard formulation	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
107	Subsidy for early scrapping of vehicles	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
108	Subsidy for Haicang District fishermen losing land and fishery to tidal flats	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
109	Subsidy for one key university graduate recruited	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
110	Subsidy for post stability of unemployment insurance	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
111	Subsidy for scientific and technological insurance	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
112	Subsidy for stable employment	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
113	Subsidy for standard formulation	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
114	Subsidy for support of corporate development	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
115	Subsidy for supporting industrial enterprises to undertake orders and the above scale	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
116	Subsidy for three system certification	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
117	Subsidy of “Xiamen City-level High-tech Enterprises”	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
118	Subsidy to counsel fee for responding to antidumping and CVD cases	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country

119	Support for land use tax	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
120	The first batch of enterprise R&D fund subsidy in 2017	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
121	Xiamen Municipal Excellent New Product Reward	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
122	Trademark brand rewards	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
123	Vocational training subsidy income	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
124	Winning project of large-scale project bidding rewards	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
125	Xiamen City energy audit fund subsidy	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
126	Xiamen Economic Development Bureau provincial industrial operation information work reward	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
127	Xiamen industrial enterprises technical renovation project award	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
128	Xiamen Municipal Finance Bureau Xiamen City Measurement Management System fund subsidy	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
129	Xiamen Municipal Finance Bureau support funds	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
130	Xiamen New Material Product Bonus	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
131	Xiashun casting No. 2 production line project financial subsidy in the city	1.27%	The highest calculated non- <i>de minimis</i> rate for any cooperative mandatory respondent outside this proceeding for a similar program in the same country
	<b>Total Rate</b>	<b>305.07%</b>	