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**DATE:** November 5, 2018

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

**FROM:** James Maeder  
Associate Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations  
performing the duties of Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Issues and Decision Memorandum for the Final Results of the  
Antidumping Duty Investigation of Common Alloy Aluminum  
Sheet from the People's Republic of China

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## I. SUMMARY

The Department of Commerce (Commerce) has analyzed the comments submitted by the interested parties in the antidumping investigation of common alloy aluminum sheet (common alloy sheet) from the People's Republic of China (China) covering the period of investigation (POI) April 1, 2017 to September 30, 2017.

The mandatory respondents are: (1) Nanjie Resources Co., Limited (Nanjie), Yong Jie New Material Co., Ltd. (Yong Jie New Material) and Zhejiang Yongjie Aluminum Co., Ltd. (Yongjie Aluminum) (collectively, Yongjie Companies); (2) Henan Mingtai Al Industrial Co., Ltd. (Henan Mingtai) and Zhengzhou Mingtai Industry Co., Ltd. (Zhengzhou Mingtai) (collectively, Mingtai); and (3) Zhejiang GKO Aluminium Stock Co., Ltd. (GKO Aluminium). Based upon our analysis of the comments received, we made changes from the *Preliminary Determination*<sup>1</sup>

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<sup>1</sup> See *Antidumping Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value, Preliminary Affirmative Determination of Critical Circumstance, and Postponement of Final Determination*, 83 FR 29088 (June 22, 2018) (*Preliminary Determination*), and accompanying Memorandum, "Decision Memorandum for Preliminary Determination in the

and *Amended Preliminary Determination*<sup>2</sup> with respect Mingtai, the Yongjie Companies, GKO Aluminium, the companies eligible for a separate rate, and the China-wide entity. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum.

## II. LIST OF ISSUES

- Comment 1: Application of Adverse Facts Available (AFA)
- Comment 2: Critical Circumstances Determination
- Comment 3: Surrogate Country
- Comment 4: Surrogate Value for Aluminum Scrap
- Comment 5: Surrogate Value for Argon
- Comment 6: Mingtai’s Aluminum Scrap
- Comment 7: Separate Rate Status for Wanji Global and Luoyang Wanji
- Comment 8: Separate Rate Status for Tianjin Zhongwang

## III. BACKGROUND

On June 22, 2018, Commerce published in the *Federal Register* the *Preliminary Determination*, and completed disclosure of all calculation materials to interested parties. On June 26, 2018, Mingtai submitted a request that Commerce correct certain ministerial errors in its *Preliminary Determination*.<sup>3</sup> On August 8, 2018, Commerce published in the *Federal Register* the *Amended Preliminary Determination*.<sup>4</sup>

In accordance with 19 CFR 351.309(c), we invited interested parties to comment on the *Preliminary Determination* and *Amended Preliminary Determination*.<sup>5</sup> From July 2, 2018, through July 6, 2018, we conducted verification of the sales and factors of production information submitted by Mingtai. We issued verification reports on August 28, 2018.<sup>6</sup> We used standard verification procedures, including an examination of relevant accounting and production records, and original source documents provided by Mingtai.

On September 6, 2018, the following parties timely submitted case briefs: Mingtai; the Yongjie Companies; AA Metals, Inc. (AA Metals); Tianjin Zhongwang Aluminium Co., Ltd. (Tianjin Zhongwang); TCI Stainless & Aluminum (TCI Stainless); Ta Chen International Inc. and

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Antidumping Duty Investigation of Common Alloy Aluminum Sheet from the People’s Republic of China,” dated October 26, 2017 (PDM).

<sup>2</sup> *Common Alloy Aluminum Sheet from the People’s Republic of China: Amended Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 39056 (August 8, 2018) (*Amended Preliminary Determination*).

<sup>3</sup> See Mingtai’s June 26, 2018 Ministerial Error Allegation.

<sup>4</sup> See *Common Alloy Aluminum Sheet from the People’s Republic of China: Amended Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 39056 (August 8, 2018) (*Amended Preliminary Determination*).

<sup>5</sup> See *Preliminary Determination*, at 29090-29091.

<sup>6</sup> See Memorandum, “Verification of the Questionnaire Responses of Henan Mingtai Al Industrial Co., Ltd. and Zhengzhou Mingtai Industry Co., Ltd. in the Less-Than-Fair-Value Investigation of Common Alloy Aluminum Sheet from the People’s Republic of China,” dated August 28, 2018 (Mingtai Verification Report).

affiliates Empire Resources Inc. and Galex Inc. (collectively, TCI); Wanji Global (Singapore) Pte. Ltd. (Wanji Global); and Luoyang Wanji Aluminum Processing Co., Ltd. (Luoyang Wanji).<sup>7</sup> Also on September 6, 2018, the Aluminum Association Common Alloy Aluminum Sheet Trade Enforcement Working Group and its individual members (collectively, the Domestic Industry) timely filed comments in lieu of case brief.<sup>8</sup> On September 13, 2018, the Domestic Industry timely filed a rebuttal brief.<sup>9</sup> Based on the requests of Mingtai and the Yongjie Companies,<sup>10</sup> Commerce held a public hearing on October 19, 2018.<sup>11</sup>

In the *Preliminary Determination*, Commerce announced that it would be extending the deadline for the final determination of this investigation, until November 5, 2018.<sup>12</sup>

Commerce conducted this investigation in accordance with section 735 of the Tariff Act of 1930, as amended (the Act).

#### IV. PERIOD OF INVESTIGATION

The period of investigation (POI) is April 1, 2017, through September 30, 2017. This period corresponds to the two most recently completed fiscal quarters prior to the month of initiation of the investigation, which was December 2017.<sup>13</sup>

#### V. SCOPE OF THE INVESTIGATION

The merchandise covered by this investigation is aluminum common alloy sheet (common alloy sheet), which is a flat-rolled aluminum product having a thickness of 6.3 mm or less, but greater than 0.2 mm, in coils or cut-to-length, regardless of width. Common alloy sheet within the scope of this investigation includes both not clad aluminum sheet, as well as multi-alloy, clad aluminum sheet. With respect to not clad aluminum sheet, common alloy sheet is manufactured from a 1XXX-, 3XXX-, or 5XXX-series alloy as designated by the Aluminum Association. With respect to multi-alloy, clad aluminum sheet, common alloy sheet is produced from a 3XXX-series core, to which cladding layers are applied to either one or both sides of the core.

Common alloy sheet may be made to ASTM specification B209-14, but can also be made to other specifications. Regardless of specification, however, all common alloy sheet meeting the scope description is included in the scope. Subject merchandise includes common alloy sheet

<sup>7</sup> See Mingtai's September 6, 2018 Case Brief (Mingtai Case Brief), the Yongjie Companies' September 6, 2018 Case Brief (Yongjie Companies Case Brief), AA Metals' September 6, 2018 Case Brief (AA Metals Case Brief), Tianjin Zhongwang's September 6, 2018 Case Brief (Tianjin Zhongwang Case Brief), TCI Stainless' September 6, 2018 Case Brief (TCI Stainless Case Brief), TCI's September 6, 2018 Case Brief (TCI Case Brief), Wanji Global's September 6, 2018 Case Brief (Wanji Global Case Brief), Luoyang Wanji's September 6, 2018 Case Brief (Luoyang Wanji Case Brief).

<sup>8</sup> See Domestic Industry's September 6, 2018 Affirmative Comments (Domestic Industry Affirmative Comments)

<sup>9</sup> See Domestic Industry's February 5, 2018 Rebuttal Brief (Domestic Industry Rebuttal Brief).

<sup>10</sup> See Mingtai's and Yongjie Companies' July 23, 2018 Hearing Requests.

<sup>11</sup> See Public Hearing Transcript, Case No. A-570-073, dated October 19, 2018.

<sup>12</sup> See *Preliminary Determination*, 83 FR at 29091. This date reflects the next business day after the deadline of November 4, 2018. See *Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

<sup>13</sup> See 19 CFR 351.204(b)(1).

that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the common alloy sheet.

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

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

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

## VI. SCOPE COMMENTS

We invited parties to comment on Commerce's Preliminary Scope Memorandum.<sup>14</sup> On July 23, 2018, the China Building Materials Federation filed a scope case brief.<sup>15</sup> On July 30, 2018, the Domestic Industry filed scope rebuttal comments.<sup>16</sup> We have reviewed the scope case brief and rebuttal comments submitted by interested parties, considered the arguments therein, and have made no changes to the scope of the investigation. For further discussion, *see* Commerce's Final Scope Decision Memorandum.<sup>17</sup>

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<sup>14</sup> *See* Memorandum, "Common Alloy Aluminum Sheet from the People's Republic of China: Scope Comments Preliminary Decision Memorandum," dated June 15, 2018.

<sup>15</sup> *See* China Building Materials Federation Letter, "Common Alloy Aluminum Sheet from China; Antidumping and Countervailing Duty Investigations: Scope Case Brief," dated July 23, 2018 (China Materials Federation Scope Brief).

<sup>16</sup> *See* Domestic Industry Letter, "Common Alloy Aluminum Sheet from the People's Republic of China – Domestic Industry's Scope Rebuttal Comments," dated July 30, 2018 (Domestic Industry Rebuttal Scope Comments).

<sup>17</sup> *See* Memorandum, "Common Alloy Aluminum Sheet from the People's Republic of China: Scope Comments Final Decision Memorandum," dated concurrently with this memorandum.

## VII. CHANGES FROM THE PRELIMINARY DETERMINATION

We calculated U.S. price and normal value using the same methodology stated in the *Preliminary Determination* and *Amended Preliminary Determination*, except as follows:

- We revised the surrogate value for Mingtai’s argon factor of production using data from Bulgaria instead of South Africa.
- We revised the surrogate value for Mingtai’s prompt aluminum scrap factor of production.
- We treated Mingtai’s run-around aluminum scrap as a direct material input, rather than as a by-product.

## VIII. ADJUSTMENT UNDER SECTION 777A(F) OF THE ACT

In applying section 777A(f) of the Act, Commerce examines: (1) whether a countervailable subsidy (other than an export subsidy) has been provided with respect to a class or kind of merchandise, (2) whether such countervailable subsidy has been demonstrated to have reduced the average price of imports of the class or kind of merchandise during the relevant period, and (3) whether Commerce can reasonably estimate the extent to which that countervailable subsidy, in combination with the use of normal value determined pursuant to section 773(c) of the Act, has increased the weighted-average dumping margin for the class or kind of merchandise.<sup>18</sup> For a subsidy meeting these criteria, the statute requires Commerce to reduce the AD cash deposit rate by the estimated amount of the increase in the weighted-average dumping margin subject to a specified cap.<sup>19</sup>

Since Commerce has relatively recently started conducting an analysis under section 777A(f) of the Act, Commerce is continuing to refine its practice in applying this section of the law. We issued questionnaires concerning the adjustment under section 777A(f) of the Act to Mingtai.<sup>20</sup> Mingtai submitted its response on June 27, 2018.<sup>21</sup> Commerce examined whether Mingtai demonstrated: (1) a subsidies-to-cost link, *e.g.*, subsidy impact on cost of manufacture (COM); and (2) a cost-to-price link, *e.g.*, respondent’s prices changed as a result of changes in the COM.

Based upon information submitted to Commerce, we find that Mingtai failed to substantiate a subsidies-to-cost link and a cost-to-price link.<sup>22</sup> To determine whether to grant a domestic pass-through adjustment for non-selected separate rate respondents, Commerce relies on the experience of the mandatory respondents examined in this investigation.<sup>23</sup> For the final

<sup>18</sup> See section 777A(f)(1)(A)-(C) of the Act.

<sup>19</sup> See section 777A(f)(1)-(2) of the Act.

<sup>20</sup> See Commerce Letter re: Double Remedies Questionnaire, dated June 20, 2018.

<sup>21</sup> See Mingtai’s June 27, 2018 Double Remedies Questionnaire Response.

<sup>22</sup> See Memorandum “Common Alloy Aluminum Sheet from the People’s Republic of China - Analysis Memorandum for the Preliminary Determination for Henan Mingtai Al Industrial Co., Ltd. and Zhengzhou Mingtai Industry Co., Ltd.,” dated November 5, 2018 (Mingtai Analysis Memorandum).

<sup>23</sup> See *Certain Hardwood Plywood Products From the People’s Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, in Part*, 82 FR 28629 (June 23, 2017) and accompanying PDM, unchanged in *Certain Hardwood Plywood Products*

determination, because Mingtai failed to establish eligibility for this adjustment, Commerce did not make an adjustment pursuant to section 777A(f) of the Act for countervailable domestic subsidies for Mingtai or the non-selected separate rate respondents.<sup>24</sup>

## IX. SELECTION AND CORROBORATION OF THE ADVERSE FACTS AVAILABLE RATE

In the *Preliminary Determination*, we found that the Yongjie Companies failed to provide a reliable set of factors of production (FOP) inputs for purpose of section 773 of the Act and, thus, found that application of facts available was warranted.<sup>25</sup> Additionally, we found that GKO Aluminium and the China-wide entity failed to provide necessary information, withheld information requested by Commerce, and significantly impeded this proceeding by not submitting the requested information, and, thus, found that application of facts available was warranted.<sup>26</sup> Also, in the *Preliminary Determination*, we found that the Yongjie Companies, GKO Aluminium, and the China-wide entity failed to cooperate by not acting to the best of their ability to comply with requests for information and, thus, found that an adverse inference was warranted in selecting from the facts otherwise available.<sup>27</sup> For the final determination, we continue to find that use of facts available, with an adverse inference, is warranted in determining the rate for the Yongjie Companies,<sup>28</sup> GKO Aluminium, and the China-wide entity.

In an investigation, Commerce's practice with respect to the assignment of a rate based on AFA is to select the higher of: (1) the highest dumping margin alleged in the petition, or (2) the highest calculated dumping margin of any respondent in the investigation.<sup>29</sup> In the *Amended Preliminary Determination*, we used the margin calculated for Mingtai as the AFA rate for the Yongjie Companies, GKO Aluminium, and the China-wide entity because the highest margin in the initiation of this investigation (*i.e.*, 59.72 percent) was lower than the 91.47 percent margin calculated for Mingtai.<sup>30</sup>

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, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.<sup>31</sup> Secondary information is defined as information derived from the petition that gave rise to the investigation, the final determination concerning the subject merchandise, or any

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*from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances, in Part*, 82 FR 53460 (November 16, 2017).

<sup>24</sup> See Mingtai Analysis Memorandum.

<sup>25</sup> See *Preliminary Determination* and accompanying PDM, at 20-24.

<sup>26</sup> See *Preliminary Determination* and accompanying PDM, at 20-24.

<sup>27</sup> See *Preliminary Determination* and accompanying PDM, at 24-26.

<sup>28</sup> See Comment 1, below.

<sup>29</sup> See, *e.g.*, *Certain Uncoated Paper from Indonesia: Final Determination of Sales at Less Than Fair Value*, 81 FR 3101 (January 20, 2016).

<sup>30</sup> See *Amended Preliminary Determination*, 83 FR at 39056-39057.

<sup>31</sup> See also 19 CFR 351.308(d).

previous review under section 751 of the Act concerning the subject merchandise.<sup>32</sup> Further, and under the TPEA, Commerce is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.<sup>33</sup>

Finally, under the new section 776(d) of the Act, when applying an adverse inference, Commerce may use a dumping margin from any segment of the proceeding under the applicable antidumping order.<sup>34</sup> The TPEA also makes clear that, when selecting facts available with an adverse inference, Commerce is not required to estimate what the weighted-average dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the weighted-average dumping margin reflects an “alleged commercial reality” of the interested party.<sup>35</sup>

To determine the appropriate rate for the Yongjie Companies,<sup>36</sup> GKO Aluminium, and the China-wide entity based on adverse facts available, we first examined whether the highest margin from the initiation was less than or equal to the highest calculated margin for a mandatory respondent in this final determination, and we found that the initiation margin of 59.72 percent is higher than the final margin calculated for Mingtai. Next, in order to corroborate that the highest rate in the initiation (*i.e.*, 59.72 percent) as the AFA rate, we compared it to the highest transaction-specific margins calculated for Mingtai. We determined the initiation rate was below multiple transaction-specific margins calculated for Mingtai.<sup>37</sup> Thus, we were able to find that the highest rate in the initiation (*i.e.*, 59.72 percent) has probative value and were, therefore, able to corroborate this rate for use as the rate for the Yongjie Companies, GKO Aluminium, and the China-wide entity.

## X. DISCUSSION OF THE ISSUES

### Comment 1: Application of Adverse Facts Available (AFA)

Yongjie Companies<sup>38</sup>

- The Yongjie Companies fully complied with Section 776(a) and (b) of the Act, as they supplied accurate FOP data, did not withhold any information, provided such information by established deadlines, did not significantly impede the proceeding, and provided verifiable information.
- Commerce: (1) did not inform, much less “promptly inform” the Yongjie Companies of the nature of any deficiency, *i.e.*, did not ask any question twice; (2) did not provide the Yongjie Companies with an opportunity to remedy or explain any perceived deficiency; (3) failed to consider information that it determined did not meet its standards, but was (a) submitted by the deadline established for its submission, (b) could be verified, (c) was not so incomplete that it cannot serve as a reliable basis for reaching a decision, and (d)

<sup>32</sup> See SAA, H.R. Doc. No. 103-31 6, 103d Cong., 2d Session, Vol. 1 (1994) at 870.

<sup>33</sup> See section 776(c)(2) of the Act; TPEA, section 502(2).

<sup>34</sup> See section 776(d)(1) of the Act; TPEA, section 502(3).

<sup>35</sup> See section 776(d)(3) of the Act; TPEA, section 502(3).

<sup>36</sup> See Comment 1, below.

<sup>37</sup> See Mingtai Analysis Memorandum, at Attachment 1.

<sup>38</sup> See Yongjie Companies Case Brief, at 3-24.

Yongjie Companies demonstrated that they acted to the best of their ability in providing the information and meeting the requirements established by Commerce, and (e) the information could be used without undue difficulties.

- AFA was unwarranted since substantial evidence on the record does not support Commerce's conclusion that the Yongjie Companies failed to cooperate by not acting to the best of their ability to comply with a request for information; moreover, since Commerce's decision was not predicated on substantial information on the record, it was arbitrary and capricious.
- Due to the full and timely compliance by the Yongjie Companies with all requests for information, Commerce should conduct a verification of the Yongjie Companies' responses.
- Commerce's decision to not verify the Yongjie Companies was arbitrary and capricious and an abuse of discretion because it did not treat the Yongjie companies the same as other respondents in similar or even worse situations.<sup>39</sup>

Domestic Industry:<sup>40</sup>

- Commerce should continue to assign the Yongjie Companies an antidumping duty rate that is based on total AFA.
- Commerce issued three supplemental questionnaires, each of which addressed the significant deficiencies in the Yongjie Companies' response to Section D of Commerce's initial questionnaire.
- Commerce instructed the Yongjie Companies to submit a POI-contemporaneous financial statement, requested information regarding the reported FOPs, and attempted to determine the Yongjie Companies' consumption of their reported FOPs, in each supplemental questionnaire. As a result, Commerce satisfied the requirements of 19 U.S.C. 1677m(d).
- Necessary information in the form of a reliable FOP response for the Yongjie Companies is not on the record of this investigation.
- The Yongjie Companies withheld information and significantly impeded Commerce's investigation.
- The Yongjie Companies did not provide a POI-contemporaneous financial statement for Yong Jie New Material and Yongjie Aluminum until its final supplemental questionnaire response, which was submitted just two weeks before the deadline for Commerce to issue its preliminary determination. In the same response, the Yongjie Companies also provided a completely new FOP database.
- The record does not contain a reconciliation of the Yongjie Companies' FOP database.
- The Yongjie Companies reported impossible consumption of FOPs for the primary inputs, withheld information necessary to reconcile FOPs, and submitted a completely new FOP database only two weeks before the deadline for the preliminary determination.

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<sup>39</sup> See Yongjie Companies Case Brief at 23-24, citing *Certain Plastic Decorative Ribbons from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 83 FR 39058 (August 8, 2018) and accompanying Decision Memorandum (*Decorative Ribbon from China*).

<sup>40</sup> See Domestic Industry Rebuttal Brief, at 25-41.

- Commerce’s determination that the Yongjie Companies failed to cooperate to the best of their ability is reasonable and is not arbitrary and capricious.
- Commerce correctly declined to verify the Yongjie Companies. The circumstances of this investigation are completely different than those identified by the Yongjie Companies in their case brief.

### Commerce’s Position

Section 776(a) of the Act provides that Commerce, subject to section 782(d) of the Act, will apply “facts otherwise available” if necessary information is not available on the record or an interested party: (1) withholds information that has been requested by Commerce; (2) fails to provide such information within the deadlines established, or in the form or manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; (3) significantly impedes a proceeding; or (4) provides such information, but the information cannot be verified.

Section 776(b) of the Act provides that Commerce may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. 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 AD investigation, a previous administrative review under section 751 of the Act or a determination under section 753 of the Act, or other information placed on the record.<sup>41</sup> The SAA explains that Commerce may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”<sup>42</sup> Further, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.<sup>43</sup>

We disagree with the Yongjie Companies’ arguments that we failed to address the complete administrative record in the *Preliminary Determination* and did not provide the companies an opportunity to correct deficiencies in their questionnaire responses. On January 19, 2018, Commerce issued its antidumping (AD) NME questionnaires to Henan Mingtai, Nanjie, and GKO Aluminium.<sup>44</sup> In Section D of the initial questionnaire, we requested that each respondent provide detailed information regarding its production process, factors of production, material consumption quantities, material purchases, and costs, as well as reconcile this information back to its audited financial statements.<sup>45</sup> The Yongjie Companies submitted its initial section A response on February 12, 2018 and its initial section C and D response on March 28, 2018.<sup>46</sup> On

<sup>41</sup> See also 19 CFR 351.308(c).

<sup>42</sup> See SAA at 870.

<sup>43</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); *Antidumping Duties, Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997); and *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) (*Nippon Steel*).

<sup>44</sup> See Commerce Letter re: NME Antidumping Questionnaire, dated January 19, 2018 (NME Questionnaire).

<sup>45</sup> See NME Questionnaire at D-4.

<sup>46</sup> See Yongjie Companies’ February 12, 2018 Section A Questionnaire Response (Yongjie Companies’ February 12, 2018 AQR). See Yongjie Companies’ March 8, 2018 Section CD Questionnaire Response (Yongjie Companies’ March 8, 2018 CQR and Yongjie Companies’ March 8, 2018 DQR).

March 30, we issued supplemental questionnaires to the Yongjie Companies, which related primarily to their responses to sections A and C of the initial questionnaire, with one question relating to their responses to Section D. In this supplemental, we asked questions relating to various deficiencies in the initial questionnaire response, including the Yongjie Companies' failure to provide audited financial statements or full descriptions of their reported FOPs.<sup>47</sup> On April 20, 2018, we issued a supplemental questionnaire to the Yongjie Companies for Section D, which included questions addressing the Yongjie Companies' deficiencies in reconciling their FOPs to their audited financial statements, insufficient explanations of their FOP allocation methodology, reconciliations lacking supporting documentation, and failure to report FOPs on a product-specific basis.<sup>48</sup>

On May 17, 2018, we issued another supplemental questionnaire (*i.e.*, second supplemental questionnaire for section D). Because of the Yongjie Companies' deficiencies in the previous responses, in which their reported consumption of raw materials and reported production of finished merchandise still remained unclear, we continued to ask follow-up questions relating to their purchases, consumption, and production. For example, we requested that the Yongjie Companies report their correct amounts of purchased and consumed materials, which should have been reported in their initial questionnaire response, and to demonstrate that their consumption of raw materials and scrap were sufficient to produce the volumes of common alloy sheet and aluminum scrap that they reported.<sup>49</sup> Rather than being "new" questions that were asked for the first time in the May 17, 2018 supplemental, as alleged by the Yongjie Companies, these questions were part of a continuing line of initial and supplemental questioning that was necessary to fully understand the nature of the Yongjie Companies' reported production process and consumption of raw materials. However, even after these initial and supplemental questionnaires, the Yongjie Companies had not provided a clear and supported explanation of how their reported consumption of raw material inputs were sufficient to generate the volume of finished product that they reported.<sup>50</sup> As a result, the record still lacked accurate FOP data for the Yongjie Companies, as well as a reconciliation of the data to the Yongjie Companies' audited financial statements. Therefore, we disagree with the Yongjie Companies' argument that Commerce did not give the Yongjie Companies an adequate opportunity to explain deficiencies, and that AFA was, therefore, inappropriately applied.

Moreover, we disagree with the Yongjie Companies' argument that they fully complied with Section 776(a) of the Act. As explained in the *Preliminary Determination*,<sup>51</sup> the Yongjie Companies repeatedly reported that their total input of aluminum scrap was more than the total generated during the POI.<sup>52</sup> In its final supplemental questionnaire response, the Yongjie

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<sup>47</sup> See Commerce Letter, "Common Alloy Aluminum Sheet from the People's Republic of China: First Supplemental Questionnaire for Nanjie Resources Co., Limited," dated April 20, 2018 (Yongjie Companies 1SQ);

<sup>48</sup> See Commerce Letter, "Common Alloy Aluminum Sheet from the People's Republic of China: Second Supplemental Questionnaire for Nanjie Resources Co., Limited," dated April 20, 2018 (Yongjie Companies 2SQ).

<sup>49</sup> See Commerce Letter, "Common Alloy Aluminum Sheet from the People's Republic of China: Third Supplemental Questionnaire for Nanjie Resources Co., Limited," dated May 17, 2018 (Yongjie Companies 3SQ)

<sup>50</sup> *Id.*

<sup>51</sup> See *Preliminary Determination* and accompanying PDM, at 21-23.

<sup>52</sup> See Yongjie Companies' May 30, 2018 Supplemental Questionnaire Response (Yongjie Companies' May 30, 2018 SQR), at 14.

Companies introduced a wholly new, previously unreported FOP (*i.e.*, cast-rolled coils).<sup>53</sup> While Commerce does not necessarily expect perfection in respondents' reporting, the introduction of previously unidentified, significant FOPs is not an error akin to a minor oversight or computing error. Whereas the Yongjie Companies had originally reported large amounts of run-around scrap as a production input, the Yongjie Companies revised their responses to replace run-around scrap with a wholly new, previously unreported FOP (*i.e.*, cast-rolled coils) and other primary aluminum production inputs.<sup>54</sup> Additionally, the Yongjie Companies failed to reconcile the revised factors of production and consumption to the companies' books and records.<sup>55</sup> As a result of this conflicting information on the record pertaining to its FOPs being inaccurate, we found that the application of facts available was warranted pursuant to section 776(a)(1), (2)(A), and (C) of the Act.<sup>56</sup>

Based on the above, we continue to find that the Yongjie Companies' failure to reconcile its reported cost data results in necessary information, *i.e.*, accurate and reliable data, being missing from the record of this investigation, because it demonstrates that all of its submissions are incomplete and unreliable for purposes of this final determination.<sup>57</sup> Accurate cost and FOP data "is core to the antidumping analysis and leaves little room for the substitution of partial facts without undue difficulty" because it determines which surrogate values are most appropriate to use in the calculation of normal value under section 773 of the Act, pursuant to section 776(a)(1).<sup>58</sup>

Additionally, missing accurate FOP data constitutes information being withheld by the Yongjie Companies pursuant to section 776(a)(2)(A). Finally, we continue to find that the Yongjie Companies significantly impeded Commerce's ability to calculate an accurate dumping margin by not reporting its production process and cost information accurately and failing to reconcile its FOP data to its financial statements, pursuant to section 776(a)(2)(B). Therefore, taken together, we find that the Yongjie Companies did not comply with section 776(a) of the Act.

We also disagree with the Yongjie Companies' argument that they fully complied with section 776(b) of the Act. The Federal Circuit has explained that the "best of its ability" standard under section 776(b) "requires the respondent to do the maximum it is able to do" and "does not condone inattentiveness, carelessness, or inadequate record keeping."<sup>59</sup> The standard presumes that parties are familiar with the rules and regulations governing the sales of goods from other

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<sup>53</sup> Compare Yongjie Companies' March 8, 2018 DQR at Part B, Exhibit D-14 and Part A, Exhibit D-14 to Yongjie Companies' May 30, 2018 SQR at Appendices SD-3.1 through SD-10.2.

<sup>54</sup> *Id.* at 14-15.

<sup>55</sup> *Id.*

<sup>56</sup> See *Preliminary Determination* and accompanying PDM, at 23.

<sup>57</sup> See *Certain Biaxial Integral Geogrid Products from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 82 FR 3284 (January 11, 2017) and accompanying Issues and Decision Memorandum, at Comment 3C.

<sup>58</sup> See *Mukand Ltd. v. United States*, 767 F. 3d 1300, 1308 (Fed. Cir. 2014) (citing *Shanghai Taoen Int'l Co. v. United States*, 360 F. Supp. 2d 1339, 1348 n. 13 (Ct. Int'l Trade 2005)).

<sup>59</sup> See *Nippon Steel Corporation v. United States*, 337 F.3d 1373, 1383 (Fed. Cir. 2003) (*Nippon 2003*) (noting that Commerce need not show intentional conduct existed on the part of the respondent, but merely that a "failure to cooperate to the best of a respondent's ability" existed (*i.e.*, information was not provided "under circumstances in which it is reasonable to conclude that less than full cooperation has been shown."))

countries into the United States “and requires that {parties}, to avoid a risk of an adverse inference determination in responding to Commerce’s inquiries,... take reasonable steps to keep and maintain full and complete records documenting the information that a reasonable {party} should anticipate being called upon to produce.”<sup>60</sup> Commerce has previously found that failure to provide a reliable cost reconciliation warrants the application of total AFA.<sup>61</sup> Additionally, the Court has recognized that, because cost information is essential for multiple calculations, “cost information is a vital part of {Commerce’s} dumping analysis.”<sup>62</sup>

We provided the Yongjie Companies with multiple opportunities to remedy and explain the deficiencies in its reporting by issuing two supplemental questionnaires related to their FOPs.<sup>63</sup> The conflicting and incomplete information provided in the Yongjie Companies’ questionnaire responses has significantly impeded Commerce’s ability to determine the accuracy of the Yongjie Companies’ FOP data. As a result, we find that the Yongjie Companies: (1) failed to identify all factors of production used in their production process from the outset of this proceeding (*e.g.*, cast-rolled coils); (2) submitted a significantly revised section D response only two weeks before the date of the fully postponed preliminary determination and (3) failed to reconcile the revised factors of production and consumption to the companies’ books and records. Thus, we continue to find that each of these failures demonstrate “circumstances {under} which it is reasonable to conclude that less than full cooperation has been shown.”<sup>64</sup> Therefore, we continue to find that the Yongjie Companies did not fully comply with section 776(b) of the Act. Additionally, for the reasons set forth above, we disagree with the Yongjie Companies that the use of AFA was arbitrary and capricious.

With respect to the Yongjie Companies’ argument that we should rely on facts available (without an adverse inference), we find that the Yongjie Companies did not act to the best of their ability in accordance with section 776(b) of the Act, in that they failed to provide accurate information that was core to the agency’s antidumping analysis (*i.e.*, accurate FOP data), as explained above. For those reasons, we find that usage of facts available without an adverse inference inappropriate.

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<sup>60</sup> *Id.*, at 1382.

<sup>61</sup> See *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Prestressed Concrete Steel Wire Strand from Mexico*, 68 FR 68350 (December 8, 2003) and accompanying Issues and Decision Memorandum at Comment 6 (noting that “{Commerce}’s practice has been to reject a respondent’s submitted information in total when flawed and unreliable cost data renders any price-to-price comparison impossible”); see also *Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India*, 71 FR 45012 (August 8, 2006) (*Lined Paper from India*) and accompanying Issues and Decision Memorandum at Comment 14.

<sup>62</sup> See *Mukand, Ltd. v. United States*, Court No. 11-00401, Slip Op. 13-41 (CIT March 25, 2013), at 15, *aff’d*, *Mukand Ltd. v. United States*, 767 F.3d 1300 (Fed. Cir. 2014) (*Mukand*).

<sup>63</sup> See *Preliminary Determination* and accompanying PDM, at 24-25.

<sup>64</sup> See *Nippon 2003*, at 1383.

Regarding the *Shrimp from Brazil*,<sup>65</sup> *Honey from Argentina*,<sup>66</sup> and *Wheat from Canada*<sup>67</sup> cases cited by the Yongjie Companies in support of using facts available without an adverse inference, we agree with the Domestic Industry that they are inapposite.<sup>68</sup> We note that all three cases are market economy proceedings, which require the reporting of different information, that dealt with cost allocation for certain inputs.<sup>69</sup> Additionally, in all three cases, the respondent in each case did not maintain product-specific costs in its financial books and records and then made every attempt to comply with of Commerce's requests for cost allocations.<sup>70</sup> In this instance, this is a non-market economy proceeding, where the respondent (*i.e.*, the Yongjie Companies) failed to submit: (1) basic information on the FOP that they consume to produce subject merchandise; and (2) accurate information on the FOP consumption, both of which are critical to our normal value calculation. For those reasons, we find the *Shrimp from Brazil*, *Honey from Argentina*, *Wheat from Canada*, inapposite.

The Yongjie Companies further claim that we failed to consider information under Section 782(d) of the Act. Section 782(d) states:

If the administering authority or the Commission determines that a response to a request for information under this subtitle does not comply with the request, the administering authority or the Commission (as the case may be) shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of investigations or reviews under this subtitle.

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<sup>65</sup> See Yongjie Companies Case Brief at 21, citing *Certain Frozen Warmwater Shrimp from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative*, 72 FR 52061 (September 12, 2007) and accompanying Issues and Decisions Memorandum (*Shrimp from Brazil*) at Comment 8.

<sup>66</sup> See Yongjie Companies Case Brief, at 22, citing *Honey from Argentina: Final Results of Antidumping Duty Administrative Review*, 69 FR 30283 (May 27, 2004) and accompanying Issues and Decision Memorandum (*Honey from Argentina*), at Comment 1.

<sup>67</sup> See Yongjie Companies Case Brief, at 22, citing *Notice of Final Determinations of Sales at Less Than Fair Value: Certain Durum Wheat and Hard Red Winter Wheat from Canada*, 68 FR 52741 (September 5, 2003) and accompanying Issues and Decision Memorandum (*Wheat from Canada*), at Comment 20.

<sup>68</sup> See Domestic Industry Rebuttal Brief at 38-39.

<sup>69</sup> See *Shrimp from Brazil*, at Comment 8, *Honey from Argentina*, at Comment 1, and *Wheat from Canada*, at Comment 20.

<sup>70</sup> See *Shrimp from Brazil*, at Comment 8 (“Aquatic does not maintain product-specific costs in its normal books and record and adopted, for reporting purposes, a weight-based allocation methodology. However, we determined based on the record evidence that a weight-based allocation methodology is not appropriate. Although we have rejected its weight-based allocation methodology, Aquatica made every attempt to comply with all of {Commerce}'s requests to allocate costs on a reasonable basis.” See *Honey from Argentina*, at Comment 1 (“...the beekeepers had minimal to no supporting documentation and evidence related to reported bee feed consumption rates. Although the respondents claim the reported bee costs for its beekeepers were good faith estimates based on industry standards...the fact remains that these estimates cannot be tied to the records of the beekeeper or other verifiable sources”). See *Wheat from Canada*, at Comment 20 (“the farmers’ claims of the number of straw bales utilized in the offset calculation by each farmer were clearly estimates...were, reasonable, and yield reliable results, the fact remains they are estimates that cannot be tied to records of the farmer.”)

We disagree with the Yongjie Companies' claim. During this proceeding, we issued three supplemental questionnaires to the Yongjie Companies to address the discrepancies identified above.<sup>71</sup> With regard to FOPs, in the initial questionnaire we instructed parties to “{d}escribe each type of and grade of material used in the production process” and “{d}escribe each type of and grade of material, as appropriate used in the packing process.”<sup>72</sup> In the first supplemental questionnaire, we asked the Yongjie Companies to “{p}rovide a description of each material and packing input utilized in the production process.”<sup>73</sup> In its first supplemental questionnaire response, the Yongjie Companies provided a description for its originally reported FOPs, but it also identified new, previously unreported FOPs.<sup>74</sup> The Yongjie Companies had originally reported large amounts of run-around scrap as a production input, but in the third supplemental questionnaire response, the Yongjie Companies revised their responses to replace run-around scrap with a wholly new, previously unreported FOP (*i.e.*, cast-rolled coils) and other primary aluminum production inputs.<sup>75</sup> In issuing multiple supplemental questionnaires following the initial NME questionnaire, we find that we provided the Yongjie Companies with sufficient opportunity to correct deficiencies, in accordance with Section 782(d) of the Act. However, despite these opportunities to correct reporting deficiencies, due to the changing FOP information reported by the Yongjie Companies in their responses, the record remains unclear as to the specific type and quantities of the FOPs that were actually used by the Yongjie Companies in their production of the subject merchandise.

The Yongjie Companies further claim that we failed to consider information under Section 782(e). Section 782(e) states:

In reaching a determination under section 703, 705, 733, 735, 751, or 753 the administering authority and the Commission shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority or the Commission, if (1) the information is submitted by the deadline established for its submission, (2) the information can be verified, (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination, (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the administering authority or the Commission with respect to the information, and (5) the information can be used without undue difficulties.

We disagree with the Yongjie Companies' claim. We find that accurate information regarding FOP data was not submitted by the deadline pursuant to section 782(e)(1). As discussed below in further detail, we found that the FOP data could not be verified, because it did not reconcile to

<sup>71</sup> See Commerce Letter, “Common Alloy Aluminum Sheet from the People’s Republic of China: First Supplemental Questionnaire for Nanjie Resources Co., Limited,” dated March 30, 2018 (Yongjie Companies 1SQ); see Yongjie Companies 2SQ; see Yongjie Companies 3SQ.

<sup>72</sup> See Initial Questionnaire at D-8 and D-10.

<sup>73</sup> See Yongjie Companies 1SQ, at 16.

<sup>74</sup> See Yongjie Companies 1SQR, at Exhibit S-24.

<sup>75</sup> *Id.* at 14-15.

the financial statements and therefore failed to comply with 782(e)(2). As explained above, the missing accurate FOP data constitutes information which was withheld by the Yongjie Companies, which failed to comply with 782(e)(3). As described in detail above, we find that the Yongjie Companies did not act to the best of their ability in accordance with section 782(e)(4) of the Act. Additionally, accurate FOP information is missing from the record, which “is core to the antidumping analysis and leaves little room for the substitution of partial facts without undue difficulty,” which means the information fails to comply with 782(e)(5). Therefore, taken together, we find that the Yongjie Companies did not comply with section 782(e).

We disagree with the Yongjie Companies that we should have conducted a verification of the Yongjie Companies’ responses, and that our decision not to conduct verification was arbitrary and capricious. As an initial matter, as stated in the *Preliminary Determination*, the new FOP data reported in the Yongjie Companies’ third supplemental response were not reconciled to company’s financial statements.<sup>76</sup> This is particularly problematic, as Commerce considers the reconciliation process to be “one of the most important tasks performed” at verification:

It also serves another very important purpose in that it baselines accounting ledgers and worksheets that will be used to verify many other topics. Base lining documents means that verifiers have established the validity of these documents by tying them into the audited financial statements and that other verified topics can be tied into these documents without having to go back to the general ledger. Thus, each of the documents used to reconcile the total quantity and value of reported POI or POR sales back to the financial report can be considered a source document. The exercise requires that verifiers establish to their full satisfaction that the tie-in to the financial statement is complete and accurate. If not, where appropriate, verifiers should continue to reconcile verified topics back to the company’s general ledger.<sup>77</sup>

Since the Yongjie Companies’ FOP data is not reconciled to the companies’ financial statements, we find that any documents pertaining to FOPs will have no baseline or have established validity of the documents to the audited financial statements. Commerce has previously stated that “the purpose of verification is to verify the accuracy of information already on the record, not to continue the information-gathering stage of Commerce’s investigation.”<sup>78</sup> In light of both of those items, we continue to find that verification of the Yongjie Companies would be inappropriate.

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<sup>76</sup> See *Preliminary Determination* and accompanying PDM, at 21-23. Compare Yongjie Companies’ March 8, 2018 DQR at Part B, Exhibit D-14 and Part A, Exhibit D-14 to Yongjie Companies’ May 30, 2018 SQR at Appendices SD-3.1 through SD-10.2.

<sup>77</sup> See *Certain Corrosion-Resistant Steel Products from Italy: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 81 FR 35320 (June 2, 2016), and accompanying Issues and Decision Memorandum at Comment 1.

<sup>78</sup> See *Certain Oil Country Tubular Goods from the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 79 FR 41964 (July 18, 2014), and accompanying Issues and Decision Memorandum at Comment 9.

We further disagree with the Yongjie Companies' argument that it has been treated differently than companies in a similar situation, for which it cited Commerce's decision to conduct verification in *Decorative Ribbon from China*.<sup>79</sup> In *Decorative Ribbon from China*, Commerce preliminarily determined that necessary information was not on the record (*i.e.*, an explanation how the respondent consolidated its revised FOP information with that of an affiliate),<sup>80</sup> and noted that it intended to issue a supplemental questionnaire to the respondent after its preliminary determination to explain the most recent deficiencies and that Commerce had not concluded the information reported was not verifiable.<sup>81</sup> This is in contrast to the current proceeding, where here we determined that necessary information is not on the record, because the information that the Yongjie Companies submitted was unreliable and unverifiable, and we made no statement about issuing another supplemental questionnaire.<sup>82</sup> Therefore, we find that our different treatment of the Yongjie Companies compared to that of the respondent in *Decorative Ribbon from China* is warranted due to the different fact pattern of each proceeding.

For the reasons explained above, we continue to find that AFA is warranted for the Yongjie Companies, and as such, we continue to find that the Yongjie Companies are ineligible for a separate rate.

## **Comment 2: Critical Circumstances Determination**

AA Metals:<sup>83</sup>

- Commerce should reverse its critical circumstances determination because neither of the requirements under 19 CFR 351.206(b) have been satisfied.
- Commerce did not receive a written allegation of critical circumstance from a petitioner.
- Commerce did not on its own initiative allege the presence of critical circumstances. Instead, it explicitly considered the presence of critical circumstance after the issue was raised by the domestic industry.

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<sup>79</sup> See Yongjie Companies Case Brief at 23, citing *Certain Plastic Decorative Ribbon from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 83 FR 39058 (August 8, 2018) (*Decorative Ribbon from China*) and accompanying Preliminary Decision Memorandum at 22.

<sup>80</sup> See *Decorative Ribbon from China* and accompanying Preliminary Decision Memorandum at 22.

<sup>81</sup> *Id.* at 22-23, n.107.

<sup>82</sup> See *Preliminary Determination* and accompanying PDM, at 21-23.

<sup>83</sup> See AA Metals Case Brief, at 2-5.

TCI Stainless:<sup>84</sup>

- Commerce improperly applied AFA, contrary to statute and court decisions, for critical circumstances to GKO Aluminium and the China-wide entity, because Commerce never issued a critical circumstances questionnaire to these entities.
- Commerce treated GKO Aluminium differently from other respondents by not addressing GKO Aluminium's separate rate application (SRA) and quantity and value questionnaire responses (Q&V responses).
- GKO Aluminium never stated it would not be participating in the investigation. GKO Aluminium merely stated that it was "unable to respond to the demands of the antidumping duty questionnaire due that day."<sup>85</sup>
- TCI Stainless is an exporter, and Commerce did not issue it a critical circumstances questionnaire, which is prohibited by statute.
- Commerce should not find critical circumstances for GKO Aluminium or the China-wide entity for the final determination, or it should issue a critical circumstances questionnaire to these entities.

TCI:<sup>86</sup>

- A finding of critical circumstances is not warranted for GKO Aluminium, Qinghai Pingan Aluminium High Precision Machining Industrial Co., Ltd. (PingAn), or Henan Xintai Aluminum Industry Co., Ltd.(Xintai), based on rebuttal quantity & value data provided by TCI.

Yongjie Companies:<sup>87</sup>

- Commerce's decision to resort to AFA was baseless as the Yongjie Companies fully complied with all of Commerce's requests and provided substantial evidence for quantity and value data relating to critical circumstances.

Domestic Industry:<sup>88</sup>

- Commerce should continue to find that critical circumstances exist with respect to imports of common alloy sheet from GKO Aluminium, the Yongjie Companies, the companies determined to be eligible for a separate rate, and the China-wide entity.
- Based on the sufficiency of the information provided by the Domestic Industry, Commerce initiated its critical circumstances investigation by directing the participating mandatory respondents to submit monthly quantity and value data for shipments of subject merchandise.
- The issue raised by AA Metals is procedural in nature, as the statute's discussion of critical circumstances determinations in antidumping investigations notes only those

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<sup>84</sup> See TCI Stainless Case Brief, at 1-5.

<sup>85</sup> *Id.* at 2, citing GKO Aluminium's February 12, 2018 Letter of Non-Participation, at 1-2.

<sup>86</sup> See TCI Case Brief, at 1-4.

<sup>87</sup> See Yongjie Companies Case Brief, at 25.

<sup>88</sup> See Domestic Industry Rebuttal Brief, at 50-55.

allegations set forth by “a petitioner.” It is silent as to whether a domestic interested party may allege critical circumstances in a self-initiated investigation.

- Commerce’s initiation of a critical circumstances inquiry, utilizing information timely submitted by the Domestic Industry, was based on substantial record evidence and is consistent with the statute.
- Commerce should reject TCI’s submission of untimely filed new factual information relating to quantity and value data. However, regardless of whether Commerce rejects TCI’s information, the statute does not require the agency to conduct separate inquiries into every interested party, and certainly does not require Commerce to do so on a customer-specific basis.
- Commerce should continue to find that critical circumstances exist with respect to the Yongjie Companies and GKO Aluminium based on AFA, in accordance with Commerce’s practice, because the Yongjie Companies and GKO Aluminium failed to cooperate to the best of their ability.

### Commerce’s Position

We agree with the Domestic Industry, and we continue to find that critical circumstances exist with respect to imports of common alloy sheet from GKO Aluminium, the Yongjie Companies, the companies determined to be eligible for a separate rate, and the China-wide entity.

19 CFR 351.206(b) states:

If a petitioner submits to the Secretary a written allegation of critical circumstances, with reasonably available factual information supporting the allegation, 21 days or more before the scheduled date of the Secretary’s final determination, or on the Secretary’s own initiative in a self-initiated investigation, the Secretary will make a finding whether critical circumstances exist, as defined in section 705(a)(2) or section 735(a)(3) of the Act (whichever is applicable).

Section 735(a)(3) of the Act provides that Commerce will determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise; or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period. Section 351.206(h)(1) of Commerce’s regulations provides that, in determining whether imports of the subject merchandise have been “massive,” Commerce normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, 19 CFR 351.206(h)(2) provides that an increase in imports of 15 percent during the “relatively short period” of time may be considered “massive.” Section 351.206(i) of Commerce’s regulations defines “relatively short period” as normally being the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later. The regulations also provide, however, that if Commerce

finds that importers, exporters, or producers had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, Commerce may consider a period of not less than three months from that earlier time.

In our *Preliminary Determination*, we found that critical circumstances existed for GKO Aluminium, the Yongjie Companies, the companies determined to be eligible for a separate rate, and the China-wide entity.<sup>89</sup> We explained that Commerce normally considers margins of 25 percent or more for export price (EP) sales and 15 percent or more for constructed export price (CEP) sales sufficient to impute importer knowledge of sales at LTFV.<sup>90</sup> For these final results, we have revised Mingtai's margin calculation to 49.85 percent, and we continue to find that Mingtai had only EP sales to the United States during the POI.<sup>91</sup> The weighted-average dumping margin calculated for Mingtai and the separate rate respondents continues to exceed the threshold margin sufficient to impute knowledge of dumping (*i.e.*, 25 percent for EP sales) as does the AFA rate of 59.72 percent assigned to the China-wide entity.<sup>92</sup> We also found in the *Preliminary Determination*, based on AFA, that there was a history of dumping and material injury, and that the companies had massive imports over a relatively short time.<sup>93</sup>

We disagree with AA Metal's argument that we should reverse our critical circumstances determination because neither requirement under 19 CFR 351.206(b) has been satisfied. Generally, Commerce will make a finding of whether critical circumstances exist if a petitioner submits a written allegation.<sup>94</sup> In self-initiated investigations, Commerce will examine whether critical circumstances exist on its own initiative.<sup>95</sup> Neither the statute nor the regulations preclude Commerce from making a critical circumstances finding based on record evidence in the absence of a petitioner allegation. While the regulations provide detail on how a petitioner's request for critical circumstances must be treated, there is no prohibition on Commerce conducting a critical circumstances analysis on its own when it has evidence that critical circumstances exist. Such a reading of the statute and the regulations would undermine the effectiveness of any resulting investigation margins. Therefore, we find that Commerce, when faced with record evidence of critical circumstances, has the authority to make a finding of whether critical circumstances exist on its own initiative, using available information that was appropriately placed on the record.

We also disagree with the argument raised by TCI and TCI Stainless regarding our reliance on GTA data for the determination of critical circumstances for the separate rate entities. As noted in *Thermal Transfer Ribbons from Japan*,<sup>96</sup> Commerce does not conduct individual examination of non-examined companies (*i.e.*, separate rate applicants) in its critical circumstances analysis:

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<sup>89</sup> See *Preliminary Determination* and accompanying PDM, at 4-7.

<sup>90</sup> See *Preliminary Determination* and accompanying PDM, at 5.

<sup>91</sup> See Mingtai's Analysis Memorandum.

<sup>92</sup> The China-wide entity includes GKO Aluminium and the Yongjie Companies, as we determine them to be ineligible for a separate rate.

<sup>93</sup> See *Preliminary Determination* and accompanying PDM at 4-7.

<sup>94</sup> See 19 CFR 351.206(b).

<sup>95</sup> *Id.*

<sup>96</sup> See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances: Wax and Wax/Resin Thermal Transfer Ribbons from Japan*, 68 FR 71072, 71077 (December 22, 2003) (*Thermal Transfer Ribbons from Japan*), unchanged in *Notice of Final Determination*

It is {Commerce}'s normal practice to conduct its critical circumstances analysis of companies in the "all others" group based on the experience of the investigated companies... However, {Commerce} does not automatically extend an affirmative critical circumstances determination to companies covered by the "all others" rate... Instead, {Commerce} considers the traditional critical circumstances criteria with respect to the companies covered by the "all others" rate.

We followed this practice in the *Preliminary Determination*, explaining:<sup>97</sup>

To determine whether the non-selected separate rate respondents have massive imports, it is Commerce's practice to rely upon GTA import statistics specific to the merchandise covered by the scope of the investigation less the mandatory respondents' reported shipment data.<sup>98</sup> In so doing, in this case, we found that these imports were massive as well. From this data, it is clear that there was an increase in imports of more than 15 percent during a "relatively short period" of time, in accordance with 19 CFR 351.206(h) and (i). Therefore, we preliminarily find there to be massive imports for the companies eligible for a separate rate, pursuant to section 733(e)(1)(B) of the Act and 19 CFR 351.206(c)(2)(i).

Thus, we find that the methodology employed in our preliminary determination that critical circumstances exist with respect to the companies eligible for a separate rate was supported by record evidence and was consistent with our normal practice.<sup>99</sup> Furthermore, while we have not found the data submitted by TCI to have been untimely filed, we find the use of this individual data from a non-examined separate rate company to be inconsistent with our practice.<sup>100</sup> Therefore, for this final determination, we have continued to not rely on the reported shipment data submitted by individual separate rate companies, and we continue to find that critical circumstances exist for the companies eligible for a separate rate.

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*of Sales at Less Than Fair Value and affirmative Final Determination of Critical Circumstances: Wax and Wax/Resin Thermal Transfer Ribbons from Japan*, 69 FR 11834 (March 12, 2004); see also, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers from the People's Republic of China*, 69 FR 20594 (April 16, 2004), and accompanying Issues and Decision Memorandum at Comment 3.

<sup>97</sup> See *Preliminary Determination* and accompanying PDM, at 6.

<sup>98</sup> See, e.g., *Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances, in Part, and Postponement of Final Determination*, 81 FR 5098 (February 1, 2016) and accompanying Preliminary Decision Memorandum at "Critical Circumstances," unchanged in *Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 42314 (June 29, 2016).

<sup>99</sup> See *Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 42314 (June 29, 2016), and accompanying Issues and Decision Memorandum at Comment 7.

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

Regarding the arguments raised about the preliminary affirmative finding of critical circumstances for GKO Aluminium, the Yongjie Companies, and the China-wide entity, we continue to find, as we did in the *Preliminary Determination*, that critical circumstances exist based on AFA because of these parties' failure to cooperate to the best of their ability with Commerce's investigation.<sup>101</sup> It is Commerce's practice to rely on total AFA in determining whether there have been massive imports over relatively short period of time if a respondent party is uncooperative.<sup>102</sup> As we found in the *Preliminary Determination*, we continue to find that GKO Aluminium, the Yongjie Companies, and the China-wide entity were uncooperative with this investigation.<sup>103</sup>

Specifically, GKO Aluminium failed to respond to Commerce's standard questionnaire when it was chosen as a mandatory respondent. On January 19, 2018, we issued the standard NME questionnaire to GKO Aluminium, which states:<sup>104</sup>

If Commerce does not receive either the requested information or a written extension request before 5:00 pm ET on the established deadline, we may conclude that you have decided not to cooperate in this proceeding. Commerce will not accept any requested information submitted after the deadline. As required by section 351.302(d) of our regulations, we will reject such submissions as untimely. Therefore, failure to properly request extensions for all or part of a questionnaire response may result in the application of partial or total facts available, pursuant to section 776(a) of the Act, which may include adverse inferences, pursuant to section 776(b) of the Act.

On February 12, 2018, GKO Aluminium filed a letter stating that it was "unable to respond to demands of the Department's AD questionnaire due that day."<sup>105</sup> Because GKO Aluminium failed to respond to Commerce's NME Questionnaire, we continue to find that it did not cooperate to the best of its ability with this investigation. Furthermore, we disagree with TCI Stainless that GKO Aluminium was treated any differently than any other respondent with respect to its separate rate application. As we stated in the *Preliminary Determination*, because GKO Aluminium did not respond to the NME questionnaire after it was selected as a mandatory respondent, even though it did previously submit a separate rate application, we find that it is not eligible for a separate rate.

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<sup>101</sup> See *Preliminary Determination* and accompanying PDM at 4-8.

<sup>102</sup> See *Cast Iron Soil Pipe Fittings from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances, in Part*, 83 FR 33205 (July 17, 2018) and accompanying Issues and Decisions Memorandum, at 4. See also, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR at 42985, 42986 (July 12, 2000) (where Commerce applied total AFA when the respondent failed to respond to the antidumping questionnaire).

<sup>103</sup> See *Preliminary Determination* and accompanying PDM, at 19-27.

<sup>104</sup> See NME Questionnaire at G-9.

<sup>105</sup> See GKO Aluminum's February 12, 2018 Letter of Non-Participation.

In addition, the Yongjie Companies were uncooperative for the reasons detailed in Comment 1, above. Despite the Yongjie Companies argument that they fully complied with Commerce's requests for quantity and value information for the critical circumstances analysis, as described above, for purposes of this final determination we have determined that the Yongjie Companies are ineligible for separate rate status and thus, are treating the Yongjie Companies as part of the China-wide entity. As such, the Yongjie Companies are subject to our critical circumstances determination with respect to the China-wide entity, despite the quantity and value data it has placed on the record. This is consistent with Commerce's decisions in other proceedings, in which Commerce does not rely on data submitted by companies that are part of the China-wide entity.<sup>106</sup>

We also continue to find that the rest of the China-wide entity was uncooperative because it contains companies that failed to respond to the quantity and value questionnaire that Commerce issued to them.<sup>107</sup> Accordingly, we find that our determination to base the affirmative critical circumstances determination on AFA for GKO Aluminium, the Yongjie Companies, and the China-wide entity is supported by record evidence and is consistent Commerce's practice.<sup>108</sup>

### Comment 3: Surrogate Country

Mingtai:<sup>109</sup>

- Commerce should select Bulgaria as the primary surrogate country for the final determination.
- South Africa had the greatest discrepancy with China in terms of economic comparability. In fact, based upon contemporaneous 2017 gross national income (GNI), which became available in July, Commerce now excludes South Africa from the surrogate country list in non-market economy proceedings, deeming it not at the same level of economic comparability with China.
- Bulgaria is the closest to China in terms of per capita GNI.
- The English translation of the Bulgarian financial statement for Alcomet is the English translation provided by Alcomet for the official statement. Therefore, Commerce's issue on the lack of the original Bulgarian statement is moot since Commerce relies upon the English translations for examining the statement and calculating the ratios.
- GTA data from South Africa are less reliable than the Eurostat Bulgaria data, because GTA data are reported on an FOB basis while the Eurostat data are reported on a CIF basis. Use of the FOB-based GTA data requires Commerce to make adjustments that introduce inaccuracies, compared to the CIF-based Eurostat data.
- South African data has lower quality data for argon gas and the labor rate.

<sup>106</sup> See, e.g., *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Affirmative Final Determination of Sales at Less-Than-Fair Value and Final Determination of Critical Circumstances, in Part*, 83 FR 16322 (April 16, 2018) and accompanying Issues and Decisions Memorandum, at Comment 4.

<sup>107</sup> See *Preliminary Determination* and accompanying PDM at 24.

<sup>108</sup> See *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Affirmative Final Determination of Sales at Less-Than-Fair Value and Final Determination of Critical Circumstances, in Part*, 83 FR 16322 (April 16, 2018) and accompanying Issues and Decision Memorandum, at 4.

<sup>109</sup> See Mingtai Case Brief, at 1-9.

Domestic Industry:<sup>110</sup>

- Commerce’s preliminary selection of South Africa as the primary surrogate country for valuing respondents’ reported factors of production (FOPs) in this investigation is lawful, and Commerce should continue relying on South Africa as the primary surrogate country for the final determination.
- Commerce’s practice is to treat each country on the Office of Policy’s list of potential surrogate market economy countries (OP List) to be equivalent in terms of economic comparability. Moreover, to the extent Commerce evaluates the differences in per capita GNI of South Africa and Bulgaria, as compared to the quality of surrogate value information on the record from those countries, the quality of South African surrogate values far outweighs any accuracy gained by Bulgaria’s GNI being slightly closer to China’s GNI.
- The South African financial statement for Hulamin is contemporaneous with the POI and otherwise satisfies Commerce’s criteria for selection of surrogate financial statements.
- The Bulgarian financial statement on the record for Alcomet is not contemporaneous with the POI and, thus, is less representative of Chinese respondents’ financial ratios.
- Respondents failed to submit a copy of the foreign-language version of the Alcomet financial statement, contrary to Commerce’s regulations and stated practice.
- Commerce should also reject respondents’ claims that South African import statistics are inferior to Bulgarian import statistics because they are reported on a FOB basis, rather than a CIF basis. This argument is contrary to Commerce’s long-established practice, as well as its inclusion of three potential surrogate market economy countries on the OP List -(i.e., South Africa, Mexico, and Brazil) that report import values on an FOB basis.

**Commerce’s Position**

Section 773(c)(1) of the Act directs Commerce to base its normal value (NV) calculation, in most circumstances, on the NME producer’s factors of production (FOPs), valued in a surrogate market economy (ME) country or countries considered to be appropriate by Commerce. It is Commerce’s practice, to the extent practicable, to select surrogate values (SVs) which are product-specific, representative of a broad-market average, publicly available, contemporaneous with the POI, and tax and duty exclusive.<sup>111</sup>

Section 773(c)(4) of the Act instructs Commerce to utilize, “to the extent possible, the prices or costs of {FOPs} in one or more ME countries that are (A) at a level of economic development comparable to that of the {NME} country; and (B) significant producers of comparable merchandise.”<sup>112</sup> Thus, as a general rule, Commerce selects a surrogate country that is at the

<sup>110</sup> See Domestic Industry Rebuttal Brief, at 6-17.

<sup>111</sup> See, e.g., *First Administrative Review of Certain Polyester Staple Fiber from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 FR 1336 (January 11, 2010) and accompanying Issues and Decision Memorandum at Comment 1.

<sup>112</sup> See Commerce Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (Policy Bulletin 04.1) available on Commerce’s website at <http://enforcement.trade.gov/policy/bull04-1.html>.

same level of economic development of the NME country, unless it determines that none of the countries are viable options because they either: (a) are not significant producers of comparable merchandise, (b) do not provide sufficient reliable sources of publicly available surrogate value (SV) data, or (c) are not suitable for use based on other reasons.<sup>113</sup>

19 CFR 351.408(c)(2) instructs Commerce to value all FOPs in a single surrogate country unless data from the primary surrogate country are unavailable or unreliable. When surrogate countries are not at the level of economic development of the NME country, but still at a level of economic development comparable to the NME country, it is Commerce's practice to select only one country to ensure that data considerations outweigh the difference in levels of economic development.<sup>114</sup> To determine which countries are at the same level of economic development of the NME country, Commerce generally relies on per capita GNI data from the World Bank's World Development Report.<sup>115</sup>

When evaluating SV data, Commerce considers several factors, including whether the SVs are publicly available, contemporaneous with the POI, representative of a broad market average, tax and duty-exclusive, and specific to the inputs being valued. There is no hierarchy among these criteria.<sup>116</sup> It is Commerce's practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis.<sup>117</sup>

Prior to the *Preliminary Determination*, the Domestic Industry, Mingtai, and the Yongjie Companies placed SV data on the record from Bulgaria, Thailand, and South Africa.<sup>118</sup> No parties placed SV information on the record for the other countries identified on the OP List (*i.e.*, Brazil, Mexico, or Romania), or argued that these countries should be selected as the surrogate country. As a result, we did not consider Brazil, Mexico, or Romania for surrogate country selection purposes.

In the *Preliminary Determination*, we found that the South African data were the best available data for valuing the relevant FOPs because the record contains complete, publicly available, contemporaneous, and specific South African data which represent a broad market average, and which are tax and duty exclusive, for the vast majority of inputs used by the respondents to produce subject merchandise during the POI.<sup>119</sup> In addition, we found that the South African

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<sup>113</sup> *Id.*

<sup>114</sup> See 19 CFR 351.408(c)(2); *see also, e.g., Certain Aluminum Foil Final Determination of Sales at Less Than Fair Value*, 83 FR 9282 (March 5, 2018) and accompanying Issues and Decision Memorandum at 8.

<sup>115</sup> *Id.*

<sup>116</sup> See, *e.g., Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review*, 71 FR 40477 (July 17, 2006), and accompanying Issues and Decision Memorandum at Comment 1.

<sup>117</sup> See Policy Bulletin 04.1.

<sup>118</sup> See Mingtai's and Yongjie Companies' April 9, 2018 Surrogate Value Comments; *see also* the Domestic Industry's April 9, 2018 Surrogate Value Comments; *see also* Mingtai's and Yongjie Companies' May 16, 2018 Second Surrogate Value Comments; *see also* the Domestic Industry's May 16, 2018 Second Surrogate Value Comments.

<sup>119</sup> See Memorandum, "Common Alloy Aluminum Sheet from the People's Republic of China: Surrogate Values for the Preliminary Determination," dated June 15, 2018 (Preliminary SV Memorandum).

surrogate financial statements on the record are publicly available statements for a company which produces identical merchandise.<sup>120</sup>

The record also contains publicly available surrogate value data representing a broad market average, which are tax and duty exclusive, from Bulgaria and Thailand.<sup>121</sup> However, we found in the *Preliminary Determination* that the Bulgarian financial statements on the record are not contemporaneous with the POI and are not the original, official Bulgarian-language versions, but, rather, unofficial, English-language translations.<sup>122</sup> Additionally, we found that the Thai financial statements on the record show evidence of subsidies previously found by Commerce to be countervailable.<sup>123</sup> On the other hand, the record contains South African financial statements from a producer of comparable merchandise, which are complete, fully translated, and contemporaneous with the POI, and do not contain evidence of subsidies previously found to be countervailable.<sup>124</sup>

Mingtai argues that Commerce should use Bulgaria as the primary surrogate country for the final determination, instead of South Africa, because Bulgaria is more economically comparable to China than South Africa based on per capita GNI. Citing *Ad Hoc Shrimp I*, Mingtai states that Commerce is not obligated to select the most economically comparable surrogate country, but that it should take economic comparability into consideration.<sup>125</sup> We agree with Mingtai's assertion that we are not obligated to select the most economically comparable country but must take economic comparability into account, per our regulations and policy guidelines, which explicitly state that Commerce is not required to select a surrogate country "that is at a level of economic comparability *most* comparable to the NME country."<sup>126</sup> By using the OP list of economically comparable countries to select the surrogate country in this investigation, we have, in fact, taken economic comparability into account since the surrogate countries on the list are not ranked and should be considered equivalent in terms of economic comparability.<sup>127</sup>

Accordingly, we disagree with Mingtai's contention that we should find that Bulgaria is more economically comparable to China than is South Africa and, thus, that we should select Bulgaria

<sup>120</sup> *Id.*; see also the Domestic Industry's April 9, 2018 Surrogate Value Comments at Exhibit ZA-7.

<sup>121</sup> See Mingtai's and Yongjie Companies' April 9, 2018 Surrogate Value Comments; see also Mingtai's and Yongjie Companies' May 16, 2018 Second Surrogate Value Comments.

<sup>122</sup> See Preliminary SV Memorandum; see also Mingtai's and Yongjie Companies' April 9, 2018 Surrogate Value Comments at Exhibit SV-6.

<sup>123</sup> See Preliminary SV Memorandum; see also Mingtai's and Yongjie Companies' May 16, 2018 Second Surrogate Value Comments at Exhibit SV2-7; see also, e.g., *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part*, 77 FR 63791 (October 17, 2012), and accompanying Issues and Decision Memorandum, at Comment 2.

<sup>124</sup> See the Domestic Industry's April 9, 2018 Surrogate Value Comments at Exhibit ZA-7.

<sup>125</sup> See *Ad Hoc Shrimp Trade Action Committee v. United States*, 882 F. Supp. 2d 1366, 1374 (CIT 2012) (*Ad Hoc Shrimp I*).

<sup>126</sup> See Commerce Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (Policy Bulletin 04.1) available on Commerce's website at <http://enforcement.trade.gov/policy/bull04-1.html>.

<sup>127</sup> *Id.*; see also, e.g., *Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture from the People's Republic of China*, 69 FR 67313 (November 17, 2004) and accompanying Issues and Decisions Memorandum, at Comment 2.

as the primary surrogate country for this investigation. The surrogate countries on the OP list are not ranked and are all considered to be economically comparable to China. When there are several economically comparable countries to use as potential primary surrogate countries, it is Commerce's practice to select the one with the best data.<sup>128</sup> In this case, we find that data from South Africa represent the best information available on the record.

Mingtai also argues that the GTA data from South Africa are less reliable than the Eurostat data from Bulgaria, and that the South African data for other inputs are of lower quality than the Bulgarian data. Mingtai also argues that the South African data not being originally reported on a CIF basis makes the data less reliable. However, since the South African data are reported on a FOB basis and Commerce's practice is to use surrogate values on a CIF basis,<sup>129</sup> we added international freight and insurance costs to the South African FOB data to arrive at CIF values. Commerce stated in *Aluminum Foil China Final* that if we limited the surrogate country list to only those countries that report their data on a CIF basis, the list of potential surrogate countries would be severely and unreasonably limited.<sup>130</sup> Mingtai also disputes the freight value we added to the South African FOB data to convert it to a CIF basis, stating that the addition of the same freight value to every surrogate value sale hindered the reliability of the South African data. However, pursuant to Commerce's regulations and in accordance with Section 773(c)(1) of the Act, data that are used for surrogate value construction must be publicly available.<sup>131</sup> In order to convert the South African data from a FOB-basis to CIF, we must add freight costs that are publicly available. Other freight insurance rates on the record were not public, so we rejected them in favor of the public data that we ultimately used to convert the South African data to a CIF basis. Furthermore, we disagree that use of a single freight value necessarily renders the resulting surrogate value unreliable. Based on the above, we disagree that the reporting of South African data on a FOB basis renders the data less reliable than the Bulgarian data and continue to find South African data usable for valuing the FOPs in this investigation.

With respect to Mingtai's arguments concerning selection of the surrogate financial statements, pursuant to Section 773(c)(1) of the Act, it is our standard practice to select surrogate countries that have contemporaneous financial statements and to require that any translated documents on the record be accompanied by the original-language version.<sup>132</sup> As we explained in the *Preliminary Determination*, the Bulgarian Alcomet financial statements are not contemporaneous with the POI and were submitted only in an unofficial English language version that did not accompany the original Bulgarian version. Although Mingtai argues that the

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<sup>128</sup> See *Certain Steel Threaded Rod from the People's Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review; 2010-2011*, 77 FR 67332, 67333 (November 9, 2012); see also Policy Bulletin 04.1.

<sup>129</sup> See *Certain Aluminum Foil from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 9282 (March 5, 2018) (*Aluminum Foil China Final*) and accompanying Issues and Decision Memorandum at 13-14.

<sup>130</sup> *Id.*

<sup>131</sup> See 19 CFR 351.408(c)(1).

<sup>132</sup> See, e.g., *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Affirmative Final Determination of Sales at Less-Than-Fair Value and Final Determination of Critical Circumstances, in Part*, 83 FR 16322 (April 16, 2018) and accompanying Issues and Decision Memorandum, at Comment 6.

English translation is an official version obtained directly from Alcomet's English-language website, we note that the submitted version of the financial statements state that they are the "unofficial translation of the original in Bulgarian."<sup>133</sup> In comparison, we continue to find, as explained in the *Preliminary Determination*, that the South African Hulamin financial statements meet all of Commerce's criteria for selection as a surrogate financial statement. Accordingly, we continue to find that the South African Hulamin financial statements are the best source of surrogate financial data available on the record.

Regarding Mingtai's argument that the labor data from Bulgaria are preferable to the South African labor data, Mingtai stated that the Bulgarian labor rate, from 2016, is more contemporaneous than the South African labor rate, from 2013, and should, therefore, be used instead of the South African labor rate. Citing *Isocyamurates China Final*, Mingtai stated that Commerce has selected between surrogate countries based on a missing input or less contemporaneous labor rate in the past, when Commerce chose Mexico as the primary surrogate country instead of Romania because Romania had less contemporaneous values for electricity and water, while Mexico only had a less contemporaneous value for labor.<sup>134</sup> However in this case, because the POI covers a portion of the year 2017, we find that both the 2016 Bulgarian labor data and the 2013 South African labor data would need to be inflated to be contemporaneous with the POI. As such, and considering the fact that the only usable surrogate financial statements on the record are from South Africa, we disagree with Mingtai that moderately more contemporaneous labor data from Bulgaria outweighs the other data considerations as a whole, which lead us to continue to find that South Africa is the best choice for the primary surrogate country in this case.

Finally, Mingtai argued that the Bulgarian surrogate value for argon was preferable to the South African value. We agree. See Comment 5, below. However, notwithstanding our selection of a surrogate value for argon from a secondary surrogate country, we continue to find that for the remainder of the FOPs, South Africa represents the best source of surrogate value data on the record.

Based on the foregoing, we continue to find that South Africa best meets our criteria for the primary surrogate country, given the completeness and contemporaneity of the data, including the financial statements. Therefore, we continue to find, pursuant to section 773(c)(4) of the Act, that it is appropriate to use South Africa as the primary surrogate country because South Africa is: (1) at the same level of economic development as China; (2) a significant producer of merchandise comparable to the merchandise under consideration; and (3) the source of the best available data on the record for valuing FOPs, including the complete, fully translated financial statements of a producer of comparable merchandise that is also contemporaneous to the POI.

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<sup>133</sup> See Mingtai and Nanjie's April 9, 2018 Surrogate Value Submission (Respondents' SVS).

<sup>134</sup> See *Chlorinated Isocyanurates From the People's Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review; 2014*, 82 FR 27466 (June 15, 2017) and accompanying Issues and Decision Memorandum at 11-12 (*Isocyamurates China Final*).

For the reasons stated above, we continue to find that South African data is the best choice for primary surrogate country data.<sup>135</sup>

#### **Comment 4: Surrogate Value for Aluminum Scrap**

Mingtai:<sup>136</sup>

- Commerce should rely on imports under HTS 7602.00 (aluminum waste and scrap), instead of the average of HTS 7601.10 (unwrought aluminum not alloyed) and 7601.20 (unwrought aluminum alloyed) to value Mingtai's scrap inputs (recycled run-around scrap and purchased prompt scrap).
- The majority of the recycled run-around scrap generated by Zhengzhou Mingtai was from the master coils produced by Henan Mingtai, which used aluminum ingot, aluminum alloy, and prompt aluminum scrap to produce the master coils; therefore, the use of data from all three HTS categories would be more accurate than only relying upon HTS 7601.10, and 7601.20 to value recycled run-around scrap, should Commerce decide against Mingtai's primary recommendation to use HTS 7602.00 alone to value both purchased prompt scrap and recycled run-around scrap.

Domestic Industry:<sup>137</sup>

- Commerce should continue to value Mingtai's consumption of recycled run-around scrap using South African import statistics for HTS 7601.10 (unwrought aluminum not alloyed) and 7601.20 (unwrought aluminum alloyed).
- As Mingtai explained, the use of this recycled run-around scrap, which has already been cast to the exact chemistries of Mingtai's products, reduces the need for the company to purchase alloyed and unalloyed ingots. Thus, HTS commodity subheadings 7601.10 and 7601.20 are the most specific values on the record to value run-around scrap.
- Recycled run-around scrap is internally generated by Mingtai and is fundamentally different from prompt aluminum scrap.

#### **Commerce's Position**

Commerce's practice when selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, SVs which are product-specific, representative of a broad-market average, publicly available,

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<sup>135</sup> See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part* 77 FR 63791 (October 17, 2012) and accompanying Issues and Decision Memorandum at 43 (*Crystalline Silicon Photovoltaic Cells*); see also *Preliminary Determination* and accompanying Preliminary Decision Memorandum at 9-12.

<sup>136</sup> See Mingtai Case Brief, at 9-11.

<sup>137</sup> See Domestic Industry Rebuttal Brief, at 17-22.

contemporaneous with the POI, and tax and duty exclusive.<sup>138</sup> Commerce undertakes its analysis of valuing the FOPs on a case-by-case basis, carefully considering the available evidence in light of the particular facts of each industry.<sup>139</sup> While there is no hierarchy for applying the SV selection criteria, “{Commerce} must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the ‘best’ SV is for each input.”<sup>140</sup>

It is Commerce’s established practice to value inputs that are recycled by being reintroduced into the production process as substitutes of the original input with values based on the price of the original source input.<sup>141</sup> Following this practice, in our *Preliminary Determination* we used an average of South African import data under HTS 7601.10 (unwrought aluminum not alloyed) and 7601.20 (unwrought aluminum alloyed) to value prompt aluminum scrap (ALUMSCRAP) and run-around scrap (RASCRA).<sup>142</sup>

With respect to the prompt aluminum scrap (ALUMSCRAP) purchased by Mingtai, we agree with Mingtai and the Domestic Industry that ALUMSCRAP should be valued using import data under HTS 7602.00 because it is a more specific subheading pertaining to aluminum waste and scrap, of which purchased prompt scrap is. As Mingtai explained, valuing this purchased prompt scrap as aluminum ingot or alloy is not specific to the input purchased, making HTS 7602.00 a more specific subheading for valuing it.

However, with respect to run-around scrap (RASCRA), we disagree with Mingtai that RASCRA should also be valued using import data under HTS 7602.00 or an average of HTS 7601.10, 7601.20, and 7602.00. We agree with the Domestic Industry that RASCRA is internally generated by Mingtai and is fundamentally different from prompt aluminum scrap in that RASCRA has a known chemistry, is generated from purchased aluminum inputs such as alloyed and unalloyed aluminum ingots and billets, and is constantly cycling through the production process as an alternative to purchased aluminum inputs, whereas prompt scrap is purchased scrap which is collected from various sources, generated as the end result of various

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<sup>138</sup> See, e.g., *First Administrative Review of Certain Polyester Staple Fiber from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 FR 1336 (January 11, 2010) and accompanying Issues and Decision Memorandum at Comment 1.

<sup>139</sup> See *Glycine from the People’s Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 70 FR 47176 (August 12, 2005), and accompanying Issues and Decision Memorandum at Comment 1.

<sup>140</sup> See, e.g., *Polyethylene Terephthalate Film, Sheet, and Strip from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 55039 (September 24, 2008) (*PET Film 2008*), and accompanying Issues and Decision Memorandum at Comment 2; see also *Freshwater Crawfish Tail Meat from the People’s Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 19546, 19549 (April 22, 2002), and accompanying Issues and Decision Memorandum at Comment 2.

<sup>141</sup> See, e.g., *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part*, 77 FR 63791 (October 17, 2012), and accompanying Issues and Decision Memorandum, at Comment 9.

<sup>142</sup> See Preliminary SV Memorandum at Attachment 1 and Attachment 2a.

production processes, likely transformed and recycled multiple times, and of an alloy composition and purity much less controlled than that of internally-generated runaround scrap.<sup>143</sup> Based on the reasons provided above, we find that HTS 7602.00 is the best classification for valuing Mingtai's prompt aluminum scrap (ALUMSCRAP). In addition, we continue to find that the average of import data under HTS 7601.10 and 7601.20 is the best surrogate value for Mingtai's run-around aluminum scrap (RASCRAAP).

#### **Comment 5: Surrogate Value for Argon**

Mingtai:<sup>144</sup>

- The average unit value in the South African HTS category for argon (HTS 2804.21) is aberrantly high (259.62 USD/kg) and based upon a commercially insignificant quantity (*i.e.*, 8 kg). In comparison, the average unit values in the same Bulgarian and Thai HTS category are significantly lower (*i.e.*, 0.36 USD/kg and 0.49 USD/kg, respectively), and are based on much larger volumes (*i.e.*, 2,614,000 kg and 1,935,178 kg, respectively).
- It is Commerce's practice when it cannot rely upon import statistics into the primary surrogate country to rely upon the largest importer of the input in a secondary surrogate country, which, in this instance, is Bulgaria.<sup>145</sup> Thus, even if Commerce continues to rely on South Africa as the primary surrogate country, it should use data from Bulgaria to value the argon FOP.

Domestic Industry:<sup>146</sup>

- Commerce should continue to rely on the POI-specific South African import value under HTS subheading 2804.21 to value Mingtai's consumption of argon. This would be consistent with the agency's preference for valuing each FOP using information from the primary surrogate country.

#### **Commerce's Position**

Upon reconsideration of the surrogate value data on the record, we agree with Mingtai and find that the South African import quantity and value of argon represent an anomaly when compared with the Bulgarian and Thai import quantities and values for argon. For that reason, and following Commerce's practice of utilizing statistics from a secondary surrogate country when those of the primary surrogate country are unreliable for a certain input, we have used the Bulgarian SV for argon in lieu of either the South African or Thai import statistics for argon.

<sup>143</sup> See *Jinko Solar Co., Ltd. v. United States*, 279 F. Supp. 3d 1253, 1263-64 (Ct. Int'l Trade 2017) (remanding where Commerce's surrogate value determination "found that the scrap nature of the by-product more significant to selecting an appropriate surrogate value than the material components of the by-product").

<sup>144</sup> See Mingtai Case Brief, at 11-16.

<sup>145</sup> See Mingtai Case Brief at 11-16, citing *Chlorinated Isocyanurates Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 1167 (January 11, 2016) and accompanying Issues and Decision Memorandum at Comment 1.

<sup>146</sup> See Domestic Industry Case Brief, 22-25.

Although both Bulgarian and Thai data for argon satisfy our SV selection criteria in equal measure, we selected the Bulgarian argon SV Bulgaria is the larger importer of argon, and choosing data from the country with the larger volume of imports is consistent with Commerce's past practice where two potential surrogate values equivalently satisfy our SV selection criteria.<sup>147</sup>

### Comment 6: Mingtai's Aluminum Scrap

Domestic Industry.<sup>148</sup>

- Commerce's treatment of Mingtai's reported run-around scrap as a by-product is erroneous and resulted in an improper reduction of Mingtai's antidumping margin in the *Preliminary Determination*.
- Mingtai did not claim any by-product offset in the course of responding to Commerce's questionnaires.
- Zhengzhou Mingtai's run-around scrap (RASCRAAP) generated during the production process is a substitute for aluminum ingots, billets, and alloys and, therefore, should properly be treated as a direct raw material input instead of as a by-product.
- Mingtai described scrap aluminum as "a raw material used in the direct chilling or continuous casting process with a lower cost, reducing the consumption of aluminum ingot."
- Commerce should revise its normal value calculation by: (1) declining to grant Mingtai a by-product offset; and (2) treating RASCRAAP as a direct material input, not as a by-product.

No other parties commented on this issue.

### Commerce's Position

We agree with the Domestic Industry that our preliminary treatment of Mingtai's reported run-around scrap as a by-product was in error. After reviewing information on the record, we note that Mingtai stated that it was "not claiming a by-product off-set because any by-products are reintroduced into the production in the normal business of operation."<sup>149</sup> Additionally, Mingtai

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<sup>147</sup> See, e.g., *Chlorinated Isocyanurates Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 1167 (January 11, 2016) and accompanying Issues and Decision Memorandum at Comment 1 ("In selecting the surrogate value for chlorine, we relied on {GTA import} data to identify which of these four countries had the largest imports of chlorine during the POR, following the same methodology used in the prior review. This is consistent with our practice of ensuring that the surrogate value is not aberrational when we have to rely on a country other than our primary surrogate country as the source of the surrogate value."); see also *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review: 2014-2015*, 81 FR 62088 (September 8, 2016) and accompanying Issues and Decision Memorandum at Comment 3 (in which Commerce used data from Romania to value anthracite coal because, while other surrogate data selection criteria were equivalent, the Romanian imports of anthracite coal exceeded those of the other potential surrogate countries).

<sup>148</sup> See Domestic Industry Affirmative Comments, at 2-5.

<sup>149</sup> See Mingtai's Mar. 7, 2018 CDQR, at D-17.

did not report a by-product in the by-product section of any of its questionnaire responses. Therefore, we agree that Zhengzhou Mingtai's RASCRAAP generated during the production process is a substitute for aluminum ingots, billets, and alloys and, therefore, should properly be treated as a direct raw material input instead of as a by-product. As a result, we have revised Mingtai's normal value calculation by: (1) not including Mingtai's RASCRAAP as a by-product offset; and (2) including RASCRAAP as a direct material input.<sup>150</sup>

#### **Comment 7: Separate Rate Status for Wanji Global and Luoyang Wanji**

Wanji Global:<sup>151</sup>

- The record of this investigation indicates that Wanji Global qualifies for a separate rate because of a lack of both *de jure* and *de facto* government control.
- Commerce based its preliminary denial of a separate rate on the mere potential for government control through ownership, providing no basis for its reasoning, in contradiction of longstanding precedent.
- The lack of record evidence of *de jure* and *de facto* government control over Wanji Global indicates that it should receive separate rate status in accordance with agency practice.

Luoyang Wanji:<sup>152</sup>

- The record of this investigation indicates that Luoyang Wanji qualifies for a separate rate because of a lack of both *de jure* and *de facto* government control.
- Commerce based its preliminary denial of a separate rate denial on the mere potential for government control through ownership, providing no basis for its reasoning, and in contradiction of longstanding precedent.
- The lack of record evidence of *de jure* and *de facto* government control over Luoyang Wanji indicates that it should receive separate rate status in accordance with agency practice.

Domestic Industry:<sup>153</sup>

- Commerce should continue to deny a separate rate to Wanji Global and Luoyang Wanji for the final determination.
- Record evidence demonstrates that Wanji Global and Luoyang Wanji are each majority-owned by a Chinese government entity. Wanji Global and Luoyang Wanji do not contest Commerce's determination that they are majority-owned by a Chinese government entity.
- Wanji Global and Luoyang Wanji failed to demonstrate the absence of *de facto* government control over their operations since the Chinese government holds a majority ownership share in each entity which allows the Chinese government to exercise control

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<sup>150</sup> See Mingtai Analysis Memorandum, at 2-3.

<sup>151</sup> See Wanji Global Case Brief, at 2-18.

<sup>152</sup> See Luoyang Wanji Case Brief, at 1-19.

<sup>153</sup> See Domestic Industry Rebuttal Brief, at 42-50.

over each entity's operations generally - including with respect to each entity's export activities.

- A recent CIT ruling<sup>154</sup> supports a finding that Wanji Global and Luoyang Wanji are both ineligible for a separate rate.
- Commerce previously found that Luoyang Wanji was not eligible for a separate rate in its recent antidumping investigation on certain aluminum foil from China.<sup>155</sup>

## Commerce's Position

In evaluating whether to grant separate rate status to a company in an NME country, Commerce has a rebuttable presumption that the export activities of all firms operating within the country are subject to government control and influence.<sup>156</sup> It is Commerce's policy to assign all exporters in an NME country a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports.<sup>157</sup> To establish that a company is independent of government control and, therefore, entitled to a separate rate, Commerce analyzes each exporting entity in an NME country under the test established in *Sparklers*,<sup>158</sup> as further developed in *Silicon Carbide*.<sup>159</sup> Together, these tests require a respondent to demonstrate an absence of both *de jure* and *de facto* government control with respect to exports.<sup>160</sup> The consequences of failing to do so mean the exporter will be assigned the single rate given to the NME-wide entity.<sup>161</sup> In sum, Commerce determines whether an exporter has demonstrated an ability to control its own commercial decision-making concerning exportation of the subject merchandise, *i.e.*, whether decisions at the firm level are separate and apart from decisions made at the central government level with respect to exports.

<sup>154</sup> See Domestic Industry Rebuttal Brief at 42-50, citing *Shandong Rongxin Imp. And Exp. Co., Ltd. v. United States*, Court No. 15-00151, Slip Op. 18-107 (CIT August 29, 2018).

<sup>155</sup> See Domestic Industry Rebuttal Brief at 42-50, citing *Aluminum Foil China Final*.

<sup>156</sup> See *Preliminary Determination* and accompanying Preliminary Decision Memorandum at 12-17.

<sup>157</sup> See, e.g., *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part*, 77 FR 63791 at 63793 (October 17, 2012) and accompanying Issues and Decisions Memorandum.

<sup>158</sup> See *Sparklers from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 56 FR 20588 (May 6, 1991) and accompanying Issues and Decision Memorandum at Comment 1. (*Sparklers*) ("We have determined that exports in nonmarket economy countries are entitled to separate, company-specific margins when they can demonstrate an absence of central government control, both in law and in fact, with respect to export activities).

<sup>159</sup> See *Silicon Carbide from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 59 FR 22,585 (May 2, 1994) (*Silicon Carbide*) (Companies for which the record of this investigation demonstrates a *de jure* and *de facto* absence of government control over export activities are eligible for separate rates).

<sup>160</sup> See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, and Rescission of New Shipper Review*; 2014-2015, 82 FR 4844 (January 17, 2017) and accompanying Issues and Decision Memorandum at Comment 3.

<sup>161</sup> The Federal Circuit has upheld the application of the "NME presumption," in *Sigma Corp. v. United States*, 117 F.3d 1401, 1405-06 (CAFC 1997). In setting forth its NME policy, "Commerce made clear the consequences to an exporter of not rebutting the presumption of state control and establishing its independence: the exporter would be assigned the single rate given to the NME entity. Shortly thereafter, the Court of International Trade acknowledged and sustained Commerce's NME policy." *Transcom Inc. v. United States*, 294 F.3d 1371, 1381-82 (Fed. Cir. 2002) (citation omitted).

As we explained in the *Preliminary Determination*, Commerce continues to evaluate its practice with regard to the separate rates analysis in light of the diamond sawblades from China proceeding, and its determinations therein.<sup>162</sup> In recent proceedings, we have concluded that where a government entity holds a majority equity ownership, either directly or indirectly, in the respondent exporter, the majority ownership holding, in and of itself, means that the government exercises, or has the potential to exercise, control over the company's operations.<sup>163</sup> This may include control over, for example, the selection of board members and management, which are key factors in determining whether a company has sufficient independence in its export activities to merit a separate rate.<sup>164</sup> Consistent with our normal separate rate practice, any ability to

<sup>162</sup> See *Diamond Sawblades Redetermination in Advanced Tech I*, 885 F. Supp. 2d at 1343, sustained in *Advanced Tech II*, 938 F. Supp. 2d at 1342, aff'd *Advanced Tech III*; see also *Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011–2012*, 78 FR 77098 (December 20, 2013), and accompanying Preliminary Decision Memorandum at 7, unchanged in *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011–2012*, 79 FR 35723 (June 24, 2014), and accompanying Issues and Decision Memorandum at Comment 1.

<sup>163</sup> See *Multilayered Wood Flooring from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review, Preliminary Determination of No Shipments, and Rescission of Review, in Part; 2015–2016*, 83 FR 2137 (January 16, 2018), and the accompanying Decision Memorandum at 9, unchanged in *Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission; 2015-2016*, 83 FR 35461 (July 26, 2018) (*Wood Flooring*) and accompanying Issues and Decision Memorandum at Comment 2; see also *Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances, in Part, and Postponement of Final Determination*, 81 FR 5098 (February 1, 2016) and accompanying Preliminary Decision Memorandum at 23-24, unchanged in *Hydrofluorocarbon Blends and Components Thereof From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances* 81 FR 42314 (June 29, 2016) (*HFC Blends China Final*) and accompanying Issues and Decision Memorandum at Comment 8; *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 75 (January 4, 2016) and accompanying Preliminary Decision Memorandum at 15; unchanged in *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35316 (June 2, 2016); *1,1,1,2 Tetrafluoroethane (R-134a) from the People's Republic of China: Preliminary Determination of Sales at Less-Than-Fair Value and Affirmative Determination of Critical Circumstances, in Part, and Postponement of Final Determination*, 81 FR 69786 (October 7, 2016) (*Tetrafluoroethane Prelim*) and accompanying Preliminary Decision Memorandum at 17, unchanged in *Tetrafluoroethane Final* and accompanying Issues and Decision Memorandum at 12-16; *Truck and Bus Tires from the People's Republic of China: Preliminary Affirmative Determinations of Sales at Less Than Fair Value and Critical Circumstances, and Postponement of Final Determination*, 81 FR 61186 (September 6, 2016) (*Truck and Bus Tires Prelim*) and accompanying Decision Memorandum at 13, unchanged in *Truck and Bus Tires from the People's Republic of China: Final Affirmative Determinations of Sales at less Than Fair Value and Critical Circumstances*, 82 FR 8599 (January 27, 2017) (*Truck and Bus Tires Final*) and accompanying Issues and Decision Memorandum at Comment 2.

<sup>164</sup> See, e.g., *HFC Blends China Final*, and accompanying Issues and Decision Memorandum at Comment 8, (citing *Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances, in Part*, 79 FR 53169 (September 8, 2014), and accompanying Decision Memorandum at 5-9, unchanged in *Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 79 FR 68860 (November 19, 2014)); see also *Preliminary Determination* and accompanying Preliminary Decision Memorandum at 12-15 (discussing the

control, or possess an interest in controlling the operations of the company (including the selection of board members, management, and the profit distribution of the company) by a government entity is subject to Commerce's rebuttable presumption that all companies within the NME country are subject to government control.<sup>165</sup> As we did for the *Preliminary Determination*,<sup>166</sup> in assessing the degree of government control over Luoyang Wanji and Wanji Global, we analyzed the level of government ownership, by which we found a chain of majority ownership sufficient to determine that Luoyang Wanji and Wanji Global have not rebutted the presumption of government control.<sup>167</sup>

Luoyang Wanji and Wanji Global each argue that Commerce appears to have adopted a stricter analysis since the original implementation of the separate rate test established in *Sparklers* and *Silicon Carbide* by automatically presuming that majority government ownership results in *de facto* government control without the support of any additional record evidence. They argue that this is an unacceptable practice, and that we did not take into account any other factors outside of majority ownership in denying each company a separate rate.<sup>168</sup>

Both Luoyang Wanji and Wanji Global argue that Commerce's decision to deny each company a separate rate was not based on substantial evidence, and that the record evidence indicates that they should each have been granted a separate rate in this investigation. Luoyang Wanji states that the Chinese government lacks *de jure* control over the company based on its certification that there are no government laws or regulations which control its activities at the national or sub-national level. Luoyang Wanji also placed on the record provisions of Chinese company law which they claim demonstrate lack of legal rule over their company.<sup>169</sup> We disagree that this is substantial evidence which disproves that Luoyang Global is *de jure* autonomous of the Chinese government because Luoyang Wanji is still majority-owned by a Chinese government entity, thus meeting Commerce's established criteria for *de facto* government control.

Wanji Global also argues that it is *de jure* autonomous of the Chinese government because it is a Singaporean company and, thus, not subject to Chinese laws.<sup>170</sup> However, because record evidence shows that the company is majority-owned by a Chinese government entity,<sup>171</sup> we find that there is no basis to find that this claim substantiates necessary evidence of Chinese government independence.

Both Luoyang Wanji and Wanji Global assert that they meet the four criteria necessary to demonstrate a lack of *de facto* control by the Chinese government, that both companies: (1) set

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four factors Commerce uses to evaluate whether a respondent is subject to *de facto* government control over its export functions).

<sup>165</sup> See, e.g., *Tetrafluoroethane Prelim* and accompanying Decision Memorandum at 14, unchanged in *Tetrafluoroethane Final*.

<sup>166</sup> See *Preliminary Determination* and accompanying Preliminary Decision Memorandum at 16.

<sup>167</sup> The CAFC has held that Commerce has the authority to place the burden on the exporter to establish an absence of government control. See *Sigma*, 117 F.3d at 1405-06.

<sup>168</sup> See Luoyang Wanji Case Brief; see also Wanji Global Case Brief.

<sup>169</sup> See Luoyang Wanji's January 5, 2018 Separate Rate Application (Luoyang Wanji SRA), at Exhibit 12.

<sup>170</sup> Wanji Global Case Brief, at 11.

<sup>171</sup> See Wanji Global's January 5, 2018 Separate Rate Application (Wanji Global SRA), at 12-15.

their own export prices, (2) have the authority to negotiate and sign contracts, (3) have shown autonomy from the government in management selection, and (4) retain the proceeds of export sales.<sup>172</sup> However, in Section IV of their Separate Rate Applications, both Luoyang Wanji and Wanji Global state that they are each majority-owned by an entity which, in turn, is wholly-owned by a Chinese government entity.<sup>173</sup> Accordingly, because the record shows both companies to be majority-owned by a Chinese government entity, we find that they have failed to demonstrate that they are *de facto* autonomous from the Chinese government.

Based on the above, we disagree with Luoyang Wanji and Wanji Global that either is eligible for a separate rate. We continue to find that the record shows that Luoyang Wanji and Wanji Global are majority-owned by a Chinese government entity and, therefore, *de facto* controlled by that entity. Thus, based on established Commerce practice, we continue to find that neither company provided sufficient evidence to warrant granting either a separate rate, and we continue to deny a separate rate to both companies.

### **Comment 8: Separate Rate Status for Tianjin Zhongwang**

Tianjin Zhongwang:<sup>174</sup>

- Commerce should continue to assign a separate rate for Tianjin Zhongwang.

No other parties commented on this issue.

### **Commerce's Position**

We agree with Tianjin Zhongwang and continue to assign to it a separate rate.

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<sup>172</sup> See Luoyang Wanji Case Brief, at 13-20; *see also* Wanji Global Case Brief., at 12-19.

<sup>173</sup> See Wanji Global's January 5, 2018 Separate Rate Application (Wanji Global SRA).

<sup>174</sup> See Tianjin Zhongwang Case Brief, at 1-2.

## VII. RECOMMENDATION

We recommend following the above methodology for this final determination.

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

11/5/2018

X

*Gary Taverman*  
\_\_\_\_\_

Signed by: GARY TAVERMAN

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