Anexo 2

Determinações Finais em Investigações de Subsídios contra a China

DOC 1

Revisão de Final de Período Extrudados (Austrália)

Australian Government
Department of Industry and Science

Anti-Dumping Commission

CUSTOMS ACT 1901 - PART XVB

ANTI-DUMPING COMMISISON REPORT NO. 287

INQUIRY INTO THE CONTINUATION OF ANTI-DUMPING MEASURES

CERTAIN ALUMINIUM EXTRUSIONS EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA

28 September 2015

PUBLIC RECORD

CONTENTS

ABBREVIATIONS

ABF	Australian Border Force
the Act	*Customs Act 1901*
AUD	Australian dollars
Capral	Capral Limited
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CNY	Chinese Yuan Renminbi
CTMS	Cost to make and sell
Dumping Duty Act	*Customs Tariff (Anti-Dumping) Act 1975*
FOB	Free on board
GOC	Government of China
the goods	the goods the subject of the application (also referred to as the goods under consideration)
Guang Ya	Guang Ya Aluminium Industries Co., Ltd.
Inquiry no. 241	Anti-circumvention Inquiry No. 241
Inquiry period	1 April 2014 to 31 March 2015
Jinxiecheng	Guangdong Jinxiecheng Al. Manufacturing Co., Ltd.
Kam Kiu	Tai Shan City Kam Kiu Aluminium Extrusion Co., Ltd.
LME	London Metal Exchange
NIP	Non-injurious price
PanAsia	PanAsia Aluminium (China) Co., Ltd.
the Parliamentary Secretary	the Parliamentary Secretary to the Minister for Industry, Innovation and Science
REP	Final Report
Review no. 248	Review of Anti-Dumping Measures No. 248
SCM Agreement	*Agreement on Subsidies and Countervailing Measures*
SEF	Statement of Essential Facts
SHFE	Shanghai Futures Exchange
USD	United States dollars
USP	Unsuppressed selling price

1 SUMMARY AND RECOMMENDATIONS

1.1 Introduction

This continuation inquiry (the inquiry) is in response to an application by Capral Limited (Capral) seeking the continuation of anti-dumping measures applying to certain aluminium extrusions (aluminium extrusions) exported to Australia from the People's Republic of China (China).

This report sets out the Commissioner of the Anti-Dumping Commission's (the Commissioner) recommendations to the Parliamentary Secretary to the Minister for Industry, Innovation and Science (the Parliamentary Secretary) in relation to this inquiry.[1]

1.2 Applicable legislation

Division 6A of Part XVB of the *Customs Act 1901* (the Act)[2] requires the Commissioner to publish a notice informing persons of the impending expiry of anti-dumping measures and provide an opportunity, before those measures expire, to apply for a continuation of the measures.

Division 6A of Part XVB of the Act:

- sets out the consequences if no application is made;
- outlines the procedures to be followed by the Commissioner in dealing with an application and preparing a report for the Parliamentary Secretary; and
- empowers the Parliamentary Secretary, after consideration of that report, either to decide that the measures will expire or to take steps to ensure the continuation of the measures.

Pursuant to subsection 269ZHF(2), the Commissioner must not recommend that the Parliamentary Secretary take steps to secure the continuation of the anti-dumping measures unless he is satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the anti-dumping measures are intended to prevent.

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[1] The Minister for Industry, Innovation and Science has delegated responsibility for anti-dumping matters to the Parliamentary Secretary to the Minister for Industry, Innovation and Science.

[2] A reference to a division, section, subsection, paragraph or subparagraph in this report is a reference to a provision of the *Customs Act 1901*, unless otherwise specified.

1.3 Findings and conclusions

Based on all relevant and available information, the Commissioner is satisfied that:

- aluminium extrusions have been exported to Australia from China between 1 April 2014 to 31 March 2015 (the inquiry period) at dumped and subsidised prices; and

- the expiration of anti-dumping measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and subsidisation and the material injury that the anti-dumping measures are intended to prevent.

The Commissioner has also found that subsections 8(5BAAA) and 10(3DA) of the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act) apply. As such, it is no longer mandatory for the Parliamentary Secretary to have regard to the lesser duty rule for the purposes of continuing the anti-dumping measures.[3]

1.4 Recommendations

The Commissioner recommends that the Parliamentary Secretary secure the continuation of anti-dumping measures applying to aluminium extrusions exported to Australia from China from the expiry date of 28 October 2015.

The Commissioner recommends that, in continuing the anti-dumping measures, the variable factors[4] of export price, normal value and amount of countervailable subsidy received remain unaltered. This will mean that the interim dumping duty and interim countervailing duty rates determined by Review of Anti-Dumping Measures No. 248 (review no. 248)[5] remain in place.

The Commissioner further recommends that the full dumping and subsidy margins determined in review no. 248 be applied to any interim dumping duty and interim countervailing duty taken in relation to aluminium extrusions exported to Australia from China. The Commissioner notes that the Assistant Minster is not obliged to, but still may, consider applying a lesser amount of duty in accordance with the lesser duty rule.

If the Parliamentary Secretary exercises her discretion not to have regard to the lesser duty rule, the non-injurious price will have no future application.

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[3] Subsections 8(5BA) and 10(3D) of the Dumping Duty Act require the Parliamentary Secretary, in determining the interim dumping and countervailing duty payable, to have regard to the 'lesser duty rule' which requires consideration of the desirability of fixing a lesser amount of duty that does not exceed the non-injurious price. There are some exceptions to this requirement.

[4] Subsection 269T(4D).

[5] The final report for review no. 248 was submitted to the Parliamentary Secretary on 13 July 2015, and notice of the Parliamentary Secretary's decision was published in *The Australian* newspaper and the *Commonwealth of Australia Gazette* on 19 August 2015.

2 BACKGROUND

2.1 Continuation inquiry process

Dumping duty notices and countervailing duty notices (that have not been earlier revoked) expire five years after the date on which they were published, unless the Parliamentary Secretary decides to continue them.[6]

Not later than nine months before particular anti-dumping measures expire, the Commissioner must publish a notice informing persons that anti-dumping measures are due to expire on a specified day and invite certain interested parties to apply, within 60 days, for continuation of the anti-dumping measures.[7] If no application for continuation is received by the Anti-Dumping Commission (the Commission) within the period allowed, the anti-dumping measures expire on the specified expiry day.[8]

If an application for continuation of anti-dumping measures is received, and not rejected, the Commissioner has up to 155 days (or such longer period as the Parliamentary Secretary allows) to inquire and report to the Parliamentary Secretary on whether continuation of the anti-dumping measures is justified. Within 110 days of the initiation notice, or such longer period as the Parliamentary Secretary allows, the Commissioner must place on the public record a statement of essential facts (SEF) on which he proposes to base his recommendation to the Parliamentary Secretary.[9]

Before recommending the continuation of the anti-dumping measures, the Commissioner must be satisfied that the expiration of the anti-dumping measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the anti-dumping measures were intended to prevent.[10]

Where the Parliamentary Secretary decides to secure the continuation of anti-dumping measures, the dumping duty notice and countervailing duty notice continue in force for five years after the specified expiry date unless the notices are revoked before the end of that period.[11]

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6 Subsection 269TM(1).

7 Subsection 269ZHB(1)(a).

8 Subsection 269ZHB(3).

9 Subsection 269ZHE(1).

10 Subsection 269ZHF(2).

11 Subsection 269ZHG(5)(a).

In making recommendations in the report to the Parliamentary Secretary, the Commissioner must have regard to:[12]

- the application for continuation of the anti-dumping measures;
- any submission relating generally to the continuation of the anti-dumping measures to which the Commissioner has had regard for the purpose of formulating the SEF;
- the SEF; and
- any submission made in response to the SEF that is received by the Commissioner within 20 days of the SEF being placed on the public record.

The Commissioner may also have regard to any other matter that he considers to be relevant to the inquiry.[13]

Following the Parliamentary Secretary's decision, a notice will be published advising interested parties of the decision.[14]

2.2 History of anti-dumping measures

A history of the anti-dumping measures applying to aluminium extrusions exported to Australia from China is summarised below.

24 June 2009	The then Australian Customs and Border Protection Service initiated an investigation into the alleged dumping and subsidisation of aluminium extrusions exported to Australia from China following an application by Capral.
28 October 2009	The then Attorney-General published a dumping duty notice and a countervailing duty notice applying to aluminium extrusions exported from China - *Trade Remedies Branch Report No. 148* refers.
27 August 2011	The then Attorney-General published new notices as a result of a reinvestigation of certain findings made in *Trade Remedies Branch Report No. 148* following a review by the former Trade Measures Review Officer. *International Trade Remedies Report No. 175* refers.
21 November 2012	Publication of the outcome of a review of the anti-dumping measures as they apply to Wuxi Xisha Photoelectric Aluminium Products Co., Ltd. *International Trade Remedies Report No. 186* refers.

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12 Subsection 269ZHF(3)(a).

13 Subsection 269ZHF(3)(b).

14 Subsection 269ZHG(1).

	Anti-dumping measures applicable to Wuxi Xisha Photoelectric Aluminium Products Co., Ltd. were altered as if different variable factors applied.
4 September 2013	The Federal Court ruled that dumping duty and countervailing duty notices cannot impose different variable factors for each finish of aluminium extrusion.[15]
8 May 2014	Publication of the outcome of a review of anti-dumping measures as they apply to Alnan Aluminium Co., Ltd. Anti- dumping measures applicable to Alnan Aluminium Co., Ltd remained unaltered. *Final Report No. 229* refers.
19 February 2015	Publication of the outcome of an anti-circumvention inquiry into the avoidance of the intended effect of duty concerning certain aluminium extrusions exported to Australia by PanAsia Aluminium (China) Co., Ltd. (PanAsia). *Final Report No. 241* refers.
19 August 2015	The Parliamentary Secretary published a notice declaring the outcome of review no. 248. Anti-dumping measures applying to exports of certain aluminium extrusions from China were altered as if different variable factors had been ascertained. A correction to this notice was published on 10 September 2015 with respect to six entities incorrectly identified as residual exporters.

2.3 Notification and participation in the inquiry

Anti-dumping measures applying to aluminium extrusions exported to Australia from China are due to expire on 28 October 2015.

On 27 January 2015, the Commission published a notice in *The Australian* newspaper inviting certain interested parties to apply for the continuation of the anti-dumping measures in relation to aluminium extrusions exported to Australia from China.

On 27 March 2015, Capral, a manufacturer of aluminium extrusions in Australia, lodged an application for the continuation of the anti-dumping measures.

Following consideration of the application, the inquiry was initiated and public notification of initiation of the inquiry was made in *The Australian* newspaper on 24 April 2015. Anti-Dumping Notice No. 2015/48 provides further details of the initiation and is available at www.adcommission.gov.au.

The Commission requested sales and cost to make and sell (CTMS) data from Capral and other Australian industry manufacturers covering the period 1 July 2008 to the end of March 2015.

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[15] *PanAsia Aluminium (China) Limited v Attorney-General of the Commonwealth* [2013] FCA 870.

Given that a verification visit to Capral (the largest Australian industry manufacturer) was conducted in August 2014 for the purpose of review no. 248, the Commission did not conduct further Australian industry visits as part of the inquiry. The Commission has cross checked data provided by Capral in this inquiry with verified data in review no. 248 and is satisfied of its accuracy, relevance and completeness. Similarly, verification visits to importers and exporters were not conducted as part of this inquiry.

Having conducted review no. 248, the Commission considers it is in possession of sufficient verified data to base many of the findings for this inquiry. To supplement the verified data from review no. 248, on 19 June 2015, a file note and exporter questionnaire was placed on the public record inviting exporters to provide updated information relating to the inquiry period (1 April 2014 to 31 March 2015).[16] Three exporter questionnaires were received and considered as part of this inquiry.

2.4 Statement of Essential Facts (SEF)

On 12 August 2015, the Commissioner placed on the public record a statement of the facts (SEF 287) on which the Commissioner proposed to base his recommendation to the Parliamentary Secretary concerning the continuation of the anti-dumping measures.

Interested parties were invited to make submissions to the Commissioner in response to the SEF by 1 September 2015 (20 days after the SEF was placed on the public record).

2.5 Submissions in response to the SEF

The Commissioner received the following submissions in response to SEF 287.

Interested party	Date received	Public record item no.
Capral Limited	2 September 2015	12
Guangdong Jinxiecheng Al. Manufacturing Co., Ltd.	2 September 2015	13

Table 1: Submissions received in response to the SEF

Non-confidential versions of the above submissions are available on the public record.

The Commissioner has had regard to these submissions in deciding on the recommendations to be made to the Parliamentary Secretary in this report.

[16] The Commission did not conduct a separate sampling exercise under section 269TACAA of the Act as part of the inquiry. The file note also indicated that the Commission will, in assessing whether dumping and countervailable subsidies have continued, have regard to the outcomes of review no. 248.

3 THE GOODS AND LIKE GOODS

3.1 Findings

The Australian industry produces aluminium extrusions that have characteristics closely resembling aluminium extrusions produced in China and exported to Australia. Therefore, aluminium extrusions manufactured by the Australian industry are like goods as defined in subsection 269T(1) of the Act.

3.2 The goods

The goods the subject of the current anti-dumping measures (the goods) are:

> *Aluminium extrusions produced via an extrusion process, of alloys having metallic elements falling within the alloy designations published by The Aluminium Association commencing with 1, 2, 3, 5, 6 or 7 (or proprietary or other certifying body equivalents), with the finish being as extruded (mill), mechanical, anodized or painted or otherwise coated, whether or not worked, having a wall thickness or diameter greater than 0.5 mm, with a maximum weight per metre of 27 kilograms and a profile or cross-section which fits within a circle having a diameter of 421 mm.*

The goods include aluminium extrusion products that have been further processed or fabricated to a limited extent, after aluminium has been extruded through a die. Aluminium extrusion products that have been painted, anodised, or otherwise coated, or worked (e.g. precision cut, machined, punched or drilled) fall within the scope of the goods.

The goods do not extend to intermediate or finished products that are processed or fabricated to such an extent that they no longer possess the nature and physical characteristics of an aluminium extrusion, but have become a different product.

Consistent with investigation no. 148 (the original investigation), the inquiry has also relied upon the information shown in Table 2 in its assessment of the goods under consideration and like goods.

< GUC >				< Non GUC >		
1	2	3	4	5	6	7
Aluminium extrusions	Aluminium extrusions with minor working	Aluminium extrusions that are parts intended for use in intermediate or finished products	Aluminium extrusions that are themselves finished products	Unassembled products containing aluminium extrusions, e.g. 'kits' that at time of import comprise all necessary parts to assemble finished goods	Intermediate or partly assembled products containing aluminium extrusions	Fully assembled finished products containing aluminium extrusions
< **Examples** >						
Mill finish, painted, powder coated, anodised, or otherwise coated aluminium extrusions	Precision cut, machined, punched or drilled aluminium extrusions	Aluminium extrusions designed for use in a door or window	Carpet liner, fence posts, heat sinks	Shower frame kits, window kits, unassembled unitised curtain walls	Unglazed window or door frames	Windows, doors

Table 2: Goods under consideration and like goods

3.3 Tariff classification

The goods subject to the anti-dumping measures may be classified to the following subheadings in Schedule 3 of the *Customs Tariff Act 1995*:

7604.10.00/06	non alloyed aluminium bars, rods and profiles
7604.21.00/07	aluminium alloy hollow angles and other shapes
7604.21.00/08	aluminium alloy hollow profiles
7604.29.00/09	aluminium alloy non hollow angles and other shapes
7604.29.00/10	aluminium alloy non hollow profiles
7608.10.00/09	non alloyed aluminium tubes and pipes
7608.20.00/10	aluminium alloy tubes and pipes
7610.10.00/12	doors, windows and their frames and thresholds for doors
7610.90.00/13	Other

Table 3: Aluminium extrusions tariff classifications

The goods exported to Australia from China are subject to a 5 per cent rate of customs duty.

3.4 Like goods

In the original investigation (no. 148) and subsequent reviews in respect of aluminium extrusions (as detailed in section 2.2 of this report), the Commission (or the then Australian Customs and Border Protection Service[17]) found there to be an Australian industry producing like goods.

As part of this continuation inquiry, Capral stated that it continues to manufacture like goods to the goods under consideration. The Commissioner remains satisfied that there is an Australian industry producing like goods.

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17 As of 1 July 2015, the former Australian Customs and Border Protection Service is now known as the Australian Border Force - refer https://www.border.gov.au/.

4 THE AUSTRALIAN INDUSTRY

4.1 Findings

The Commission is satisfied that there are like goods wholly manufactured in Australia and that there is an Australian industry consisting of nine aluminium extrusion manufacturers.

4.2 Australian industry

In its application, Capral indicated that the Australian industry comprises of itself and the following eight manufacturers:

- Aluminium Profiles Australia Pty. Ltd.;
- G. James Extrusion Co., Pty. Ltd.;
- Almax Aluminium Pty. Ltd.;
- Independent Extrusions Pty. Ltd.;
- Extrusions Australia Pty. Ltd.;
- Olympic Aluminium Co., Pty. Ltd.;
- Aluminium Shapemakers Pty. Ltd.; and
- Ullrich Aluminium Pty. Ltd.

The Commission has made inquiries and remains satisfied that the Australian industry consists of the entities listed above.

The Commission sent an information request to each of the Australian industry manufacturers and received responses from Capral, Extrusions Australia Pty. Ltd., Independent Extrusions Pty. Ltd. and Aluminium Shapemakers Pty. Ltd.[18]

4.3 Production of aluminium extrusions in Australia

Subsection 269T(2) specifies that, for goods to be regarded as being produced in Australia, they must be wholly or partly manufactured in Australia. Subsection 269T(3) specifies that in order for the goods to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia.

Based on the information obtained from Capral during the Australian industry verification visit for review no. 248, the Commission is satisfied that like goods are wholly manufactured in Australia.

[18] The Commission notes that Independent Extrusions Pty. Ltd., Extrusions Australia Pty. Ltd. and Aluminium Shapemakers Pty. Ltd. collectively account for a minor proportion of the Australian market.

5 AUSTRALIAN MARKET

5.1 Finding

The Commission estimates the market for aluminium extrusions was approximately 165,000 tonnes in the inquiry period. The size of the Australian market has increased slightly since the original investigation.

5.2 Market structure and factors influencing market performance

As part of review no. 248, Capral advised that the market structure in Australia, with respect to aluminium extrusions, has not changed significantly since the original investigation. Capral considers the main market segments are:

- residential - including products such as windows and doors, security, internal fit out of showers and robes, external fit out, and fencing;
- commercial - including commercial window and doors, internal and external fit out, and curtain walls; and
- industrial - including automotive, truck and trailer, rail, electrical, signage, marine, portable buildings and large industrial infrastructure.

Capral also advised that the key drivers of market demand are:

- housing construction and commercial building activity;
- general industrial activity;
- major infrastructure projects; and
- the level of finished product substitution (for local manufacture).

5.3 Market size

The Australian market for aluminium extrusions is supplied by Australian manufacturers and imported goods predominately from China.

The Commission estimated the size of the Australian market using data submitted by the Australian industry and import data obtained from the Australian Border Force (ABF) import database.

The Commission filtered the data to identify the goods declared under the relevant tariff subheadings in the ABF import database. The Commission is satisfied that this data is reliable for estimating the size of the Australian market for aluminium extrusions.

The Commission estimates that the size of the Australian market in the inquiry period was 165,000 tonnes, which is slightly higher than the original investigation period.[19]

The Commission estimates that Capral currently accounts for almost half of domestically manufactured aluminium extrusions, and almost a third of the overall Australian market (including imports).

Subsequent to lodging its application, Capral provided its estimates of the Australian market for aluminium extrusions. In providing its estimates, Capral relied on its own sales volumes, import data, and its knowledge of local competitors (including press capacity, published financial accounts and market feedback). The Commission compared Capral's estimates to other information available to it and considers Capral's estimates are suitable for examining the trends in market share from 2009 to 2014.

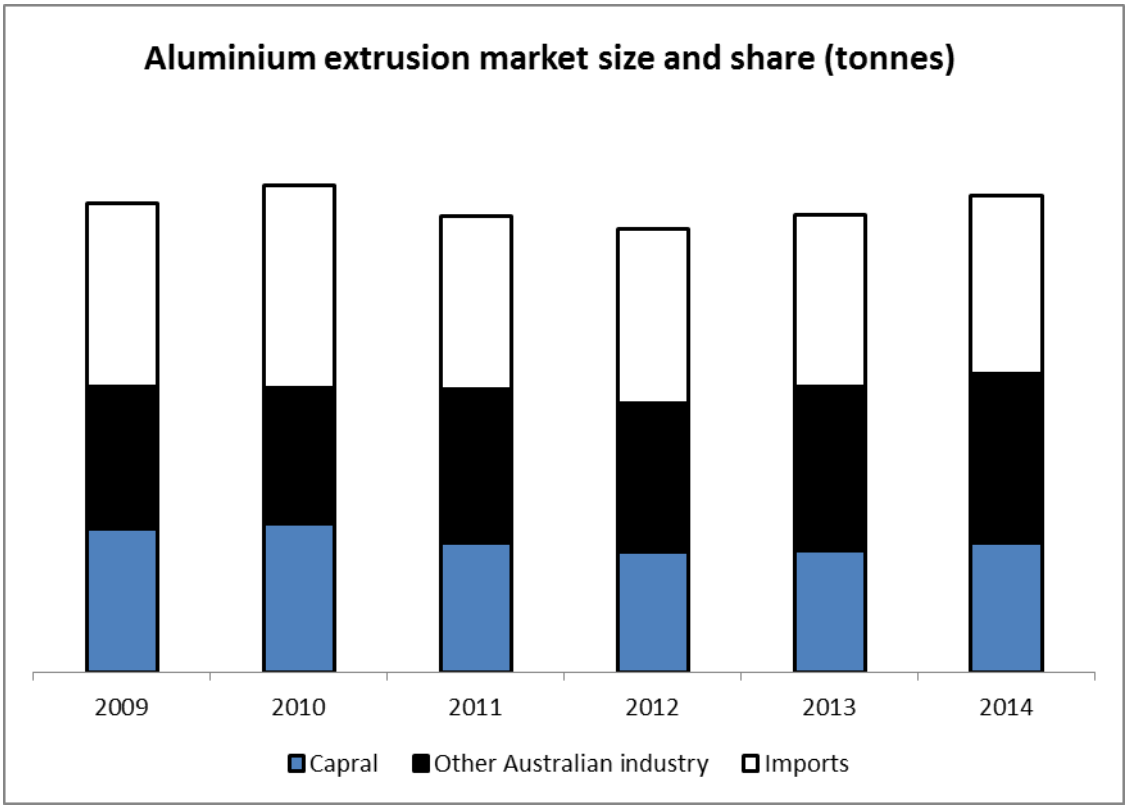

Figure 1: Capral's estimation of Australian market for aluminium extrusions

Figure 1 shows that Capral's market share has decreased slightly in 2014 from the levels achieved in 2009. For the same period, the market share of other Australian industry manufacturers has increased, whereas the market share held by imports has decreased slightly.

[19] The Commission notes that in the final report for investigation no. 148, the estimated size of the Australian market was stated as approximately 195,000 tonnes. However, as part of the inquiry, the Commission has applied additional filtering criteria, which indicates that import volumes, in particular from Japan, were overstated in the final report for investigation no. 148.

5.4 Import volume

Figure 2 below shows that import volume of aluminium extrusions from China was at its highest levels in 2008 (which partly covers the original investigation period). Chinese import volumes dipped in the first half of 2009 (also in the original investigation period). Chinese import volumes overall decreased in the period June 2009 to June 2011 and have since remained relatively constant to June 2014. Imports from China have increased over the inquiry period.

Figure 2 clearly shows that Chinese imports have remained the largest source of imports and accordingly the total import volumes follow a similar trend to the Chinese import volumes. The Commission has found that import volumes from China have ranged between 60 to 80 per cent of the total imports of aluminium extrusions since the original investigation period.

The Commission has found that there was a moderate increase in imports from other countries not subject to anti-dumping measures, including Malaysia, the Republic of Indonesia, the Kingdom of Thailand and the Socialist Republic of Vietnam. Based on the ABF import database, for the 2014 calendar year, imports from those four countries accounted for approximately 29 per cent of total imports.

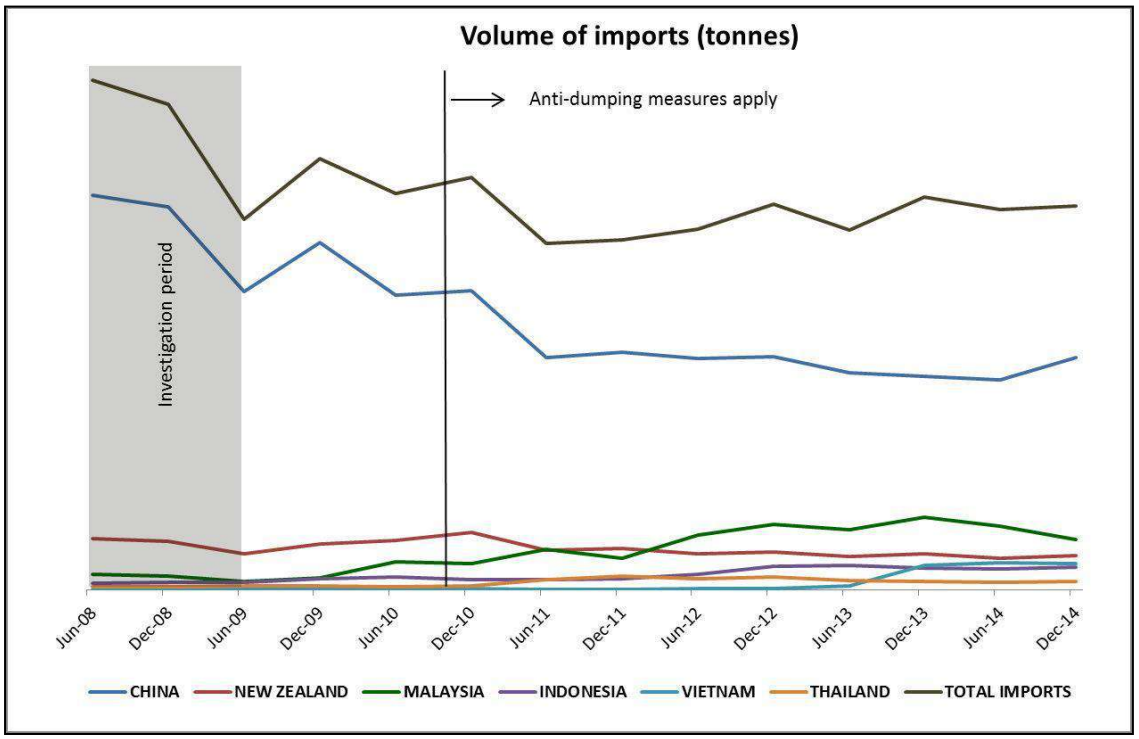

Figure 2: Imports of aluminium extrusions

6 ECONOMIC CONDITION OF THE AUSTRALIANINDUSTRY

6.1 Findings

Based on available evidence, the Commission considers that the economic performance of the Australian industry deteriorated from 2010 to 2013. Despite a minor improvement in economic performance in 2014, the Commission considers that the Australian industry is susceptible to material injury caused by dumping and subsidisation.

6.2 Approach to injury analysis

The Commission has analysed Australian industry data dating back to 2009. In doing so, it is noted that not all Australian industry manufacturers provided data for the period from 2009 to 2014 (inclusive).

As noted in section 5.3 of this report, Capral is the major producer of aluminium extrusions in Australia. For the purposes of this inquiry, the Commission considers that Capral is an appropriate representation of the Australian industry. The Commission has used Capral's data to assess the economic performance of the Australian industry. This approach is consistent with the original investigation.

The following analysis examines trends in respect of sales of local production and imports where noted, on a calendar year basis from 2009 to 2014 (inclusive).

6.3 Volume effects

6.3.1 Sales volume

Trends in Capral's sales volume are illustrated in Figure 3.

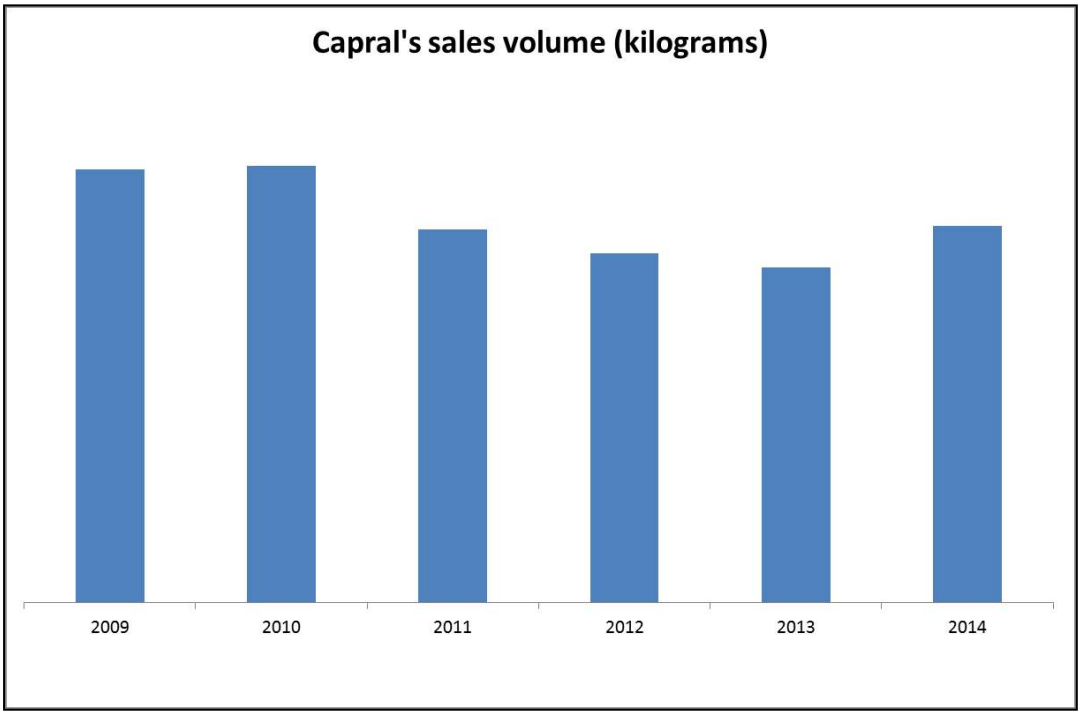

Figure 3: Capral's sales volume (kilograms) - 2009 to 2014

Figure 3 shows that Capral's sales volumes have increased in 2014 from levels achieved in 2013; however, the levels achieved in 2014 are approximately 13 per cent lower than when anti-dumping measures were imposed in 2010.

The Commission does not consider this conclusive evidence of volume injury. As outlined in section 5.3 of this report, the Commission found that the Australian industry (including manufacturers other than Capral) has collectively increased its market share relative to imports in the inquiry period. As indicated in Figure 1, data available to the Commission suggests that the Australian industry as a whole has increased its sales volumes in the inquiry period relative to the original investigation period.

6.4 Price effects

6.4.1 Price suppression and depression

Price depression occurs when a company, for some reason, lowers its prices. Price suppression occurs when price increases, which otherwise would have occurred, have been prevented. An indicator of price suppression may be the margin between revenues and costs.

Figure 4 shows Capral's weighted average unit selling prices and weighted average unit CTMS of aluminium extrusions for the period 2009 to 2014.

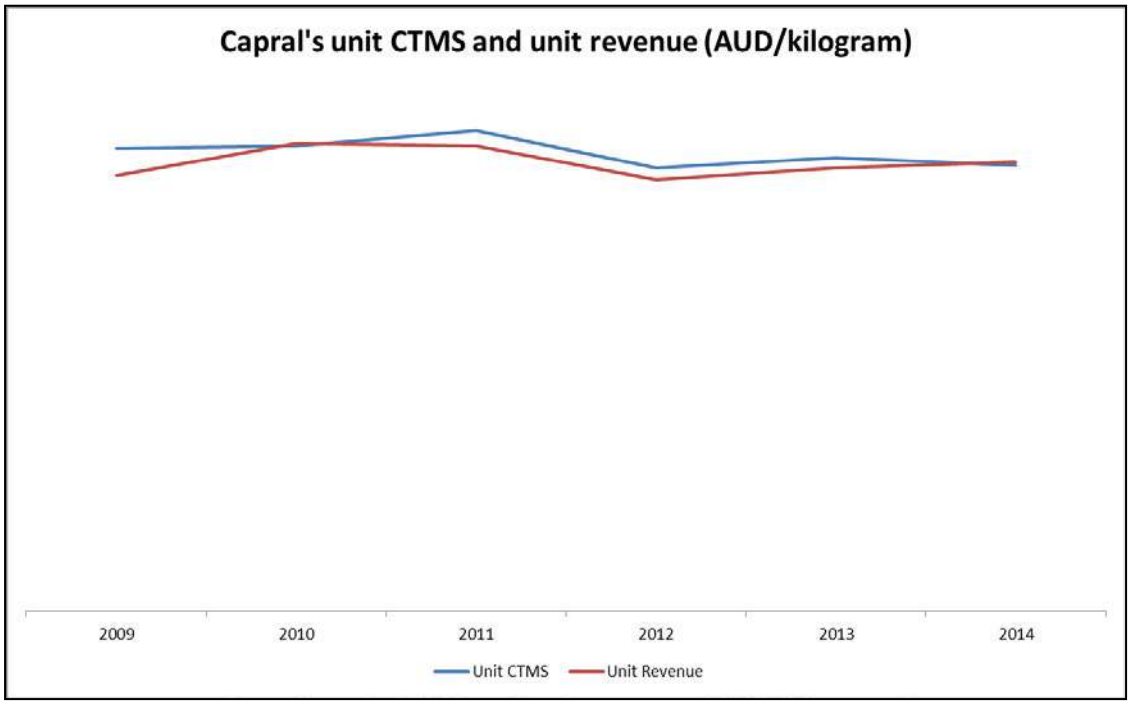

Figure 4: Capral's weighted average unit CTMS and weighted average selling prices 2009 - 2014

Figure 4 indicates that in 2009, Capral's unit CTMS exceeded its unit revenue. In 2010, when anti-dumping measures were first imposed, Capral's unit revenue increased relative to its unit CTMS and during this period unit revenue surpassed unit CTMS. However, between 2010 and 2012, Capral's unit revenue has declined.

From 2011 to 2013, Capral's unit CTMS once more exceeded unit revenue. It was not until 2014 that Capral's unit revenue again exceeded its unit CTMS. Despite recent improvement, the Commission considers that the Australian industry has remained susceptible to injury in the form of price depression and price suppression.

6.5 Profit and profitability

Trends in Capral's profits and profitability for the period 2009 to 2014 are illustrated in Figure 5.

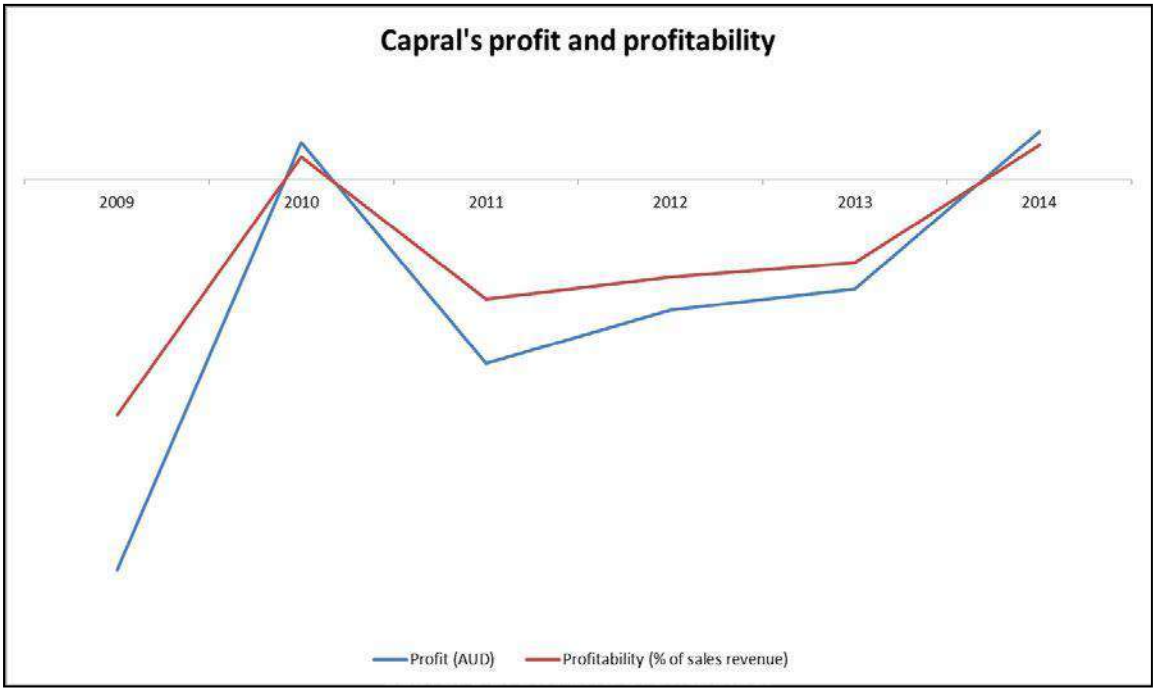

Figure 5: Capral's profit and profitability 2009 - 2014

Figure 5 shows that Capral's profit and profitability was lowest in 2009. In 2010, when anti-dumping measures were imposed, profit and profitability substantially improved.

Profit and profitability, however, decreased significantly in 2011, remaining negative in 2012 and 2013 before returning to 2010 levels in 2014. Despite recent improvement, profit and profitability are yet to exceed levels obtained in 2010 when anti-dumping measures were imposed.

The Commission is satisfied that Capral has experienced ongoing pressure in terms of profit and profitability.

6.6 The Commission's assessment

The Commission considers that the Australian industry has continued to experience pressure in terms of price depression, price suppression, profit and profitability.

The sales volumes, profit and profitability of the Australian industry have improved recently; however, this improvement is considered to be marginal and has yet to be sustained. As a result, based on evidence currently available, the Commission considers that the Australian industry is susceptible to material injury caused by dumping and subsidisation.

The Commission's assessment of the economic performance of the Australian industry is at **Confidential Appendix 1**.

7 WILL DUMPING, SUBSIDISATION AND MATERIAL INJURY CONTINUE TO RECUR?

7.1 Findings

Based on the evidence currently available, the Commissioner is satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and subsidisation and the material injury that the anti-dumping measures are intended to prevent.

7.2 Introduction

In accordance with subsection 269ZHF(2) of the Act, the Commissioner must not recommend that the Parliamentary Secretary take steps to secure the continuation of anti-dumping measures unless the Commissioner is satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, dumping or subsidisation and the material injury that the anti-dumping measures are intended to prevent.

7.3 Will dumping continue or recur?

7.3.1 Australian industry's claims

In its application, Capral submitted that:

- following the imposition of a dumping duty notice in October 2010, exports of aluminium extrusions to Australia from China have continued in significant volumes;
- PanAsia, the main Chinese exporter of aluminium extrusions, has maintained its market share and recorded revenue growth in recent times. In addition, duties of 10.1 per cent originally imposed on PanAsia were increased to 57.6 per cent as a result of Anti-circumvention Inquiry No. 241 (inquiry no. 241);
- in its view, dumping margins for other exporters are currently under review for review no. 248 and will be revised; and
- the Australian Dollar (AUD) has depreciated by around 15 per cent following the end of the review period for review no. 248 (31 March 2015). Capral considers that the declining AUD is likely to have impacted dumping margins in the most recent 12 month period and that this increases the likelihood of dumping in the future.

7.3.2 The Commission's assessment – dumping

Import volumes

The Commission has found in Chapter 5 of this report that exports of aluminium extrusions to Australia from China have continued in significant volumes. Whilst there has been some decline in the volume and market share of imports from China, as noted in Section 5.4 of this report, imports from China have remained between 60 to 80 per cent of total imports since the original investigation period. The continuing volume of imports from China indicates that Chinese exporters have maintained distribution channels into the Australian market since anti-dumping measures were imposed in October 2010. This trend in import volumes suggests that imports are likely to continue in significant volumes in the immediate future.

Anti-circumvention Inquiry no. 241

The key outcome of inquiry no. 241 was that exports from PanAsia were being sold by Australian importers at a price which was not commensurate with the total amount of duty payable.

As part of inquiry no. 241, the Minister for Industry and Science (as the decision maker at the time) declared that, for the purposes of the Act and the Dumping Duty Act, a different variable factor (a new ascertained export price) be applied to PanAsia in relation to the dumping duty notice and countervailing duty notice published under subsection 269TG(2) and subsection 269TJ(2) of the Act.

The declaration to alter the original notices resulted in the dumping margin on exports from PanAsia increasing from 10.1 per cent to 57.6 per cent.

This finding supports Capral's claims that during the relevant period for inquiry no. 241, the goods subject to dumping and countervailing duty were being sold at a loss, which allowed importers to circumvent the measures and undercut the Australian industry's selling prices. The Commission is of the view that if the measures were to expire, there would be an increased risk that price undercutting from importers would cause material injury to the Australian industry.

Review no. 248

As a result of review no. 248, the Parliamentary Secretary declared that the dumping duty notice and the countervailing duty notice are to be taken to have effect from 19 August 2015 as if different variable factors had been fixed in respect of the exporters identified in the table below.

The following weighted average dumping margins were calculated for the various exporters.

Exporter	Dumping margin
Tai Shan City Kam Kiu Aluminium Co., Ltd.	2.0%
PanAsia Aluminium (China) Co., Ltd.	21.9%
Guang Ya Aluminium Industries Co., Ltd.	-0.7%
Residual exporters	14.5%
Uncooperative and all other exporters	37.9%

Table 4: Dumping margins published in REP 248

The findings from review no. 248 support Capral's claims that dumping has continued to occur since the imposition of anti-dumping measures in October 2010.

The Commission notes that PanAsia's dumping margin of 21.9 per cent is substantially higher than the other selected cooperating exporters and residual exporters from review no. 248. Verified data from the original investigation, review no. 248 and data from the ABF import database, confirm Capral's claims that PanAsia is the single largest exporter from China by volume and value. Taking into consideration the size of PanAsia's dumping margin, in the absence of anti-dumping measures, there would be significant scope for importers of PanAsia's goods to injure the Australian industry by undercutting its selling prices.

Continuation inquiry

Three exporters completed an exporter questionnaire for the inquiry.

- PanAsia (and related trading company OPAL (Macao Commercial Offshore) Ltd.);
- Guang Ya Aluminium Industries Co., Ltd. (Guang Ya); and
- Guangdong Jinxiecheng Al. Manufacturing Co., Ltd. (Jinxiecheng).

In order to establish whether dumping has continued to occur in the inquiry period of 1 April 2014 to 31 March 2015, the Commission took the following approaches.

1. For exporters who submitted an exporter questionnaire response as part of the inquiry, the Commission used data contained in the exporter questionnaire responses.

   The Commission constructed the normal values under subsection 269TAC(2)(c) of the Act[20] in a manner consistent with that used in review no. 248. The Commission replaced the costs of primary aluminium with a reasonably competitive market cost. Specifically, the Commission replaced each exporter's primary aluminium costs with contemporaneous London Metal Exchange (LME) cash prices plus other reasonable costs and charges. Where applicable, the Commission made adjustments to normal values to ensure comparability with the export price.

2. For Tai Shan City Kam Kiu Aluminium Extrusion Co., Ltd. (Kam Kiu), the Commission relied on all relevant information, specifically on declared FOB values from the ABF import database to establish its export price.[21] The Commission benchmarked the declared FOB values for the inquiry period with the declared FOB values in the review period for review no. 248 and also verified data from the review and is satisfied with its accuracy. In relation to normal value, the Commission relied on cost data previously verified for Kam Kiu as part of review no. 248 and updated the aluminium component of the costs data to reflect contemporaneous LME cash prices plus other reasonable costs and charges. The Commission applied the same adjustments to Kam Kiu's normal values as determined for review no. 248.

3. The Commission established the export price for all other exporters having regard to all relevant information. Namely, the Commission used the weighted average declared FOB values of Chinese exporters from the ABF import database. The Commission also relied on best available information to calculate the normal value for all other exporters. Specifically, the Commission used the highest quarterly normal value of the three exporters who submitted an exporter questionnaire as part of the inquiry.

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[20] As part of review no. 248, the Commission found that the Government of China influenced the Chinese primary aluminium market. This influence is likely to have materially distorted competitive market conditions and both directly affected the price of the primary input used in the manufacture of aluminium extrusions, as well as likely affected supply within that industry. The Commission is satisfied that based on the distortion in the upstream raw material market having a flow-on effect, there was a 'market situation' in the market for aluminium extrusions during the review period such that sales in that market are not suitable for use to determine normal value under subsection 269TAC(1) of the Act. As a result, the Commission constructed normal values under paragraph 269TAC(2)(c) of the Act. The Commission's inquiries suggest that there would be no change to the market situation in the time since review no. 248; therefore, this continuation inquiry has not revisited this finding.

[21] The Commission filtered the ABF import database and isolated imports of aluminium extrusions made during the inquiry period and calculated quarterly weighted average export prices at FOB terms.

Dumping margins

The Commission has calculated dumping margins by comparing the weighted average of export prices over the inquiry period with the weighted average of corresponding normal values over the inquiry period.

For exporters who submitted an exporter questionnaire as part of the inquiry, dumping margins ranged from -2.0 to 13.9 per cent. Kam Kiu's dumping margin was within this range.[22] These dumping margins were found to be relatively consistent with review no. 248.

For all other exporters, the Commission calculated a dumping margin of 11.2 per cent. Dumping margin assessments are at **Confidential Appendix 2.**

Decline in the AUD

Figure 6 below shows the value of the AUD compared to the Chinese Yuan Renminbi (CNY) from June 2008 to June 2015.

Figure 6 supports Capral's claims that the AUD has declined in comparison to the CNY since January 2013. However, it also provides limited support of Capral's claims that the decline in the AUD has impacted on the export price when converted to CNY.

Figure 6 also shows that the declared FOB values extracted from the ABF import database, when converted from AUD to CNY, also correlate loosely to the spot price of primary aluminium as quoted in United States dollars (USD) on the LME. It is reasonable to expect that the normal value would have followed a similar trend.[23] The Commission also notes that a significant proportion of importations of aluminium extrusions are invoiced in other currencies, therefore, the Commission does not consider that the decline in the AUD influenced dumping margins in this instance.

[22] Guangdong Zhongya is currently exempt from dumping duties.

[23] Particularly given that primary aluminium is the major raw material input and that normal values for aluminium extrusions were constructed for review no. 248 under paragraph 269TAC(2)(c) of the Act.

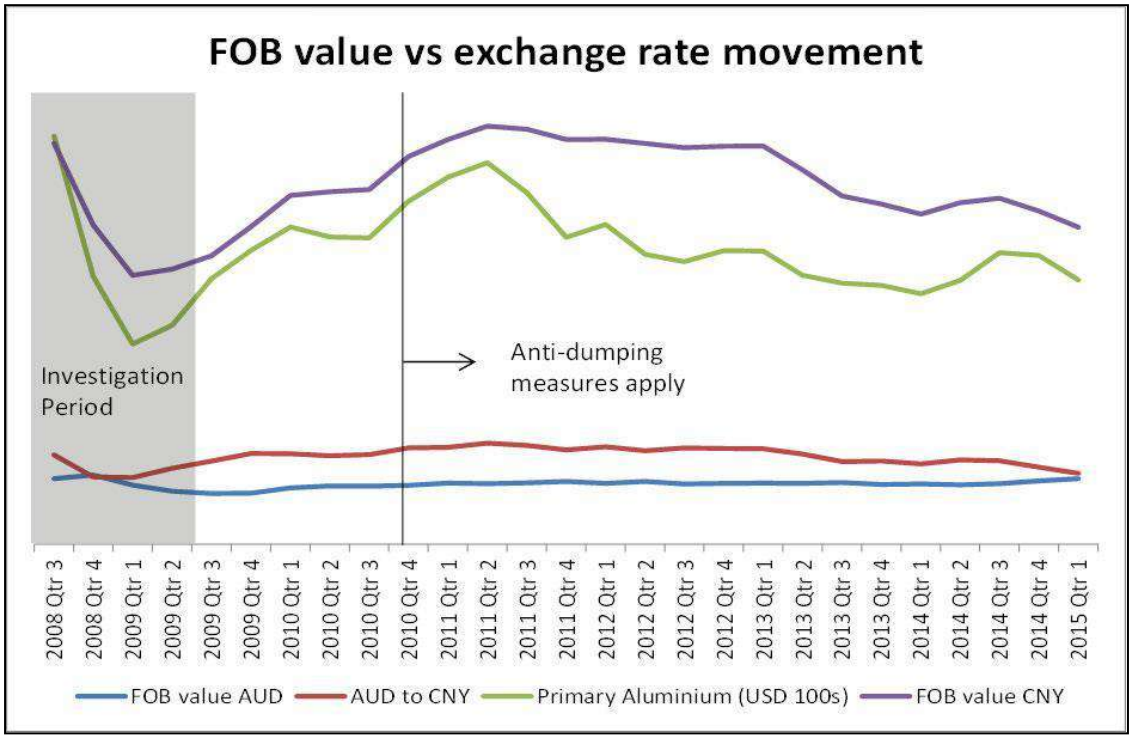

Figure 6: AUD to CNY comparison

Conclusion - dumping

The Commission has found that:

- imports have continued from China at substantial levels;
- the outcomes of inquiry no. 241 found that the anti-dumping measures had been circumvented;
- the outcomes of review no. 248 found that dumping has continued since the original dumping duty notice was published; and
- there was dumping in the continuation inquiry period.

The Commissioner is satisfied that expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, dumping that the anti-dumping measures are intended to prevent.[24]

[24] Whilst the Commission has calculated dumping margins for the purposes of the inquiry, as outlined in Chapters 8 and 9, it does not recommend altering the variable factors to reflect these dumping margins.

7.4 Will subsidisation continue to recur?

7.4.1 Australian industry's claims

As part of its application, Capral submitted that:

- the countervailing duty notice for the original investigation was published in October 2010 and covered 19 subsidy programs. The majority of the subsidy programs covered by the original investigation have been found to exist in subsequent investigations; and
- exporters have recently declared receipts of benefits under additional subsidy programs investigated in review no. 248.

In Capral's view, this is a clear indication that subsidisation is continuing and will continue should the countervailing duty notice be allowed to expire.

7.4.2 The Commission's assessment – subsidies

Review no. 248

In review no. 248, the Commission found that the programs outlined at **Attachment 2** were countervailable in respect of aluminium extrusions exported to Australia from China.

The following subsidy margins were calculated as part of review no. 248:

Exporter	Subsidy margin
Tai Shan City Kam Kiu Aluminium Extrusion Co., Ltd.	1.8%
Guangdong Zhongya Aluminium Co., Ltd.	0.6%
PanAsia Aluminium (China) Co., Ltd.	5.4%
Guang Ya Aluminium Industries Co., Ltd.	4.5%
Residual Exporters	8.1%
Uncooperative and all other exporters	20.2%

Table 5: Subsidy margins published in REP 248

Continuation inquiry

For the three exporters who submitted an exporter questionnaire response, the Commission relied on information provided in the exporter questionnaire response to establish whether the exporters continued to receive subsidies from the programs listed at **Attachment 2**.

Subsidies were found to have been received from programs 5, 7, 15 and 26. Subsidy margins for the three exporters ranged from 8.8 per cent to 15.5 per cent during the inquiry period. Subsidy margin assessments are at **Confidential Appendix 3.**

The Commission also looked at data submitted by the selected cooperating exporters as part of review no. 248. Of the existing programs found to be countervailable in review no. 248, no new information has been presented to indicate that any of those programs will cease in the near future.[25]

Conclusion - subsidies

Based on the available evidence, the Commissioner is satisfied that expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, subsidisation that the anti-dumping measures are intended to prevent.

7.4.3 Capral's submission regarding Program 45

Following publication of SEF 287, Capral submitted that the Commission should determine that Program 45 (provision of land use rights for less than adequate remuneration) is countervailable.

Capral cited the dumping and countervailing investigation by the United States of America into aluminium extrusions form China to support its view that the Commission should also countervail the provision of land use rights at less than adequate remuneration.

Capral also submitted information relating to PanAsia and attempted to calculate an amount of benefit that PanAsia allegedly received from Program 45.

7.4.4 The Commission's assessment

As discussed in REP 248, the data provided by the exporters for the purposes of review no. 248 revealed that there had not been any land use rights granted to aluminium extrusion manufacturers during the period of review. Therefore, the Commission concluded that it was not in possession of sufficient information to satisfy itself that the program should be countervailable in relation to aluminium extrusions.

The Commission notes Capral's attempt to calculate an amount of benefit that PanAsia allegedly received under Program 45.

Given that review no. 248 covered all exporters, including PanAsia, the Commission considers that, in this instance, it is appropriate to rely on verified data and information provided by the exporters in determining whether any land use rights were granted to the relevant exporters. As a result, for the purposes of this inquiry, the Commission remains satisfied that Program 45 should not be countervailable in relation to aluminium extrusions.

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[25] The Commission sent a letter to the Government of China advising it of the inquiry, offering the opportunity to discuss any aspect of the inquiry and inviting it to complete a questionnaire. To date, the Commission has not received a response from the Government of China.

7.5 Will material injury continue to recur?

7.5.1 Australian industry's claims

As part of its application, Capral submitted that:

- material injury from dumped and subsidised Chinese imports commenced as early as 1998 and was found to have occurred during the original investigation period of July 2008 to June 2009. Provisional measures were imposed on Chinese imports in November 2009, followed by the imposition of measures in October 2010;
- the Australian industry has not recovered as would be expected following the imposition of measures. Capral highlights that its sales volume has continued to decline since measures were imposed;
- China continues to be the main source of imports into Australia; and
- circumvention of duties enabled importers to continue to undercut the Australian industry's prices, causing ongoing injury to the industry.

7.5.2 The Commission's assessment - material injury

Injury assessment

The Commission examined the economic performance of the Australian industry in Chapter 6 of this report and is satisfied that the Australian industry is susceptible to material injury caused by dumping and subsidisation. Based on the evidence before it, the Commission considers that it would be unlikely that injury from other factors, if any, would detract from the Commissioner's view that dumping and subsidisation has materially injured the Australian industry's economic performance.

As noted in Section 7.3.2 of this report, the Commission established that imports of Chinese aluminium extrusions have continued in substantial volumes. Data from exporter questionnaires for review no. 248 and this inquiry indicate that Chinese aluminium extrusion manufacturers have excess capacity, with production utilisation ranging from 58 to 83 per cent. Data from the exporter questionnaires also demonstrates that many Chinese aluminium extrusion producers have a strong export focus.

The Commission is also of the view that the conditions of competition between imported products and between imported and domestically produced aluminium extrusions are similar. The Commission has established that importers and the Australian industry are both selling goods into the same markets and to the same customers, and that domestically produced aluminium extrusions can be substituted with imported goods. The Commission also considers that domestic and imported goods are alike, have similar specifications, and have similar end-uses. The above finding has been verified during previous importer, exporter and Australian industry visits.

For the above reasons, the Commission considers that import volumes are likely to continue and in the absence of anti-dumping measures would likely increase and continue to cause material injury.

Market for primary aluminium in China

In review no. 248, the Commission established that the Government of China (GOC) substantially influenced the aluminium extrusion market in China due to the distorted price of primary aluminium, a primary input used in the manufacture of aluminium extrusions.[26] This influence is likely to have materially distorted competitive market conditions and both directly affected the price of the primary input used in the manufacture of aluminium extrusions, as well as likely affecting supply within that industry.

According to the *Resources and Energy Quarterly (June 2015)*,[27] published by the Office of the Chief Economist,[28] the Chinese aluminium industry has grown significantly in recent years, with its production growth exceeding world growth. China is now responsible for 49 per cent of world aluminium production.[29] The Office of the Chief Economist has also established that within China's domestic aluminium market, supply has been rapidly increasing and demand has been growing at a slower rate. With higher international prices on the LME, China has increased its exports of aluminium in 2014 and has moved from being a net importer of aluminium to a net exporter. This is expected to continue with Chinese aluminium production forecast to continue increasing on the back of new smelters, capacity upgrades and efficiencies achieved by smelters that opened in 2014 reaching full production.

On this basis, it is reasonable to conclude that Chinese aluminium extrusion manufacturers will continue, because of GOC influence, to have the capacity and a competitive advantage over Australian manufacturers, such that the domestic sales prices of aluminium products, including aluminium extrusions, are unsuitable for determining normal value. In the absence of anti-dumping measures, exports of aluminium extrusions to Australia are likely to continue to injure the Australian industry.

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[26] REP 248 – Non-Confidential Appendix 1 – Market situation assessment.

[27] Available at http://www.industry.gov.au/Office-of-the-Chief-economist/Publications/Documents/req/REQ-June15.pdf.

[28] The Office of the Chief Economist is a research unit within the Department of Industry and Science, providing objective, robust and high quality economic analysis to inform policy development across resources and energy, industry and innovation, skills and evaluation.

[29] World Bureau of Metal Statistics, *World Metal Statistics* May 2015, Volume 68 Number 4, Table 7.

A report[30] by IBIS*World*[31], dated October 2014, provides further support that import volumes and injury from imports are likely to continue for the aluminium rolling, drawing and extruding industry (of which aluminium extrusions represented approximately 28 per cent). In particular, IBIS*World* predicts:

> *"Over the next five years, the Aluminium Rolling, Drawing, Extruding industry's prospects are not expected to improve significantly. Excess supply, weak demand and ongoing structural changes within Australia's manufacturing base mean that industry players will face deep-seated challenges. With domestic demand expected to remain subdued at best, the international market will increase in significance as players increasingly derive their earnings offshore. In 2019-20, about 85.0% of the industry's revenue base will originate from international markets. At the same time, additional cuts to the local industry's manufacturing base will mean that imports will satisfy an even higher proportion of domestic demand.*
>
> *Echoing trends throughout the general aluminium supply chain, the industry is expected to contract further. Revenue is forecast to decline by an annualised 2.2% over the next five years, to just $867.0 million in 2019-20. This includes an expected fall of 1.0% in 2015-16.*
>
> *In view of this weak performance, industry enterprise and establishment numbers will decline. Establishment numbers are expected to fall by 2.8% annualised as the industry seeks to cut excess capacity. The exit of players as struggling participants are forced to leave the industry will contribute to further cuts to the industry's base. This will result in a fall in employment to an expected 1,510 people in 2019-20."*

Anti-circumvention Inquiry no. 241

The Commission determined that, for the relevant period of inquiry, certain goods subject to dumping duty and countervailing duty were being sold by Australian importers at a loss.

For inquiry no. 241, Capral provided the Commission with evidence of the circumvention goods undercutting the Australian industry's selling prices. Therefore, the Commission is satisfied that the expiry of anti-dumping measures would lead to a recurrence of price undercutting, further injuring the Australian industry. This undercutting would likely lead to further pressure on Australian industry's prices resulting in price depression and suppression. The resulting price effects would flow through to a deterioration of the Australian industry's profit performance.

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[30] Industry Report C2142 Aluminium Rolling, Drawing, Extruding in Australia, October 2014.

[31] IBIS*World* is an independent research agency - www.ibisworld.com.au.

Comparison of the non-injurious price to export prices

Consistent with review no. 248, the Commission calculated a non-injurious price (NIP) by establishing an unsuppressed selling price (USP) using Capral's CTMS data and profit from the inquiry period. The Commission deducted from the USP amounts for importer selling, general and administrative expenses, profit and relevant post-exportation expenses verified as part of review no. 248.

The Commission compared the NIP with weighted average export prices of aluminium extrusions exported from China to Australia during the inquiry period. The NIP was higher than the weighted average export prices of aluminium extrusions exported from China during the investigation period.

This analysis supports the conclusion that dumped aluminium extrusions exported to Australia from China caused material injury to the Australian industry.

In the absence of measures, it is reasonable to expect that the exportation of aluminium extrusions from China is likely to be dumped and potentially undercut the Australian industry's selling prices. This undercutting would likely lead to further pressure on Australian industry's prices resulting in price depression and suppression. The resulting price effects would flow through to a deterioration of the Australian industry's profit performance. The NIP calculations are at **Confidential Appendix 4**.

Conclusion – material injury

The Commission is satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of the material injury that the anti-dumping measures are intended to prevent.

7.6 The Commission's assessment

The Commission has found:

- review no. 248 and the Commission's assessment of dumping (section 7.3 of this report refers) in the inquiry period indicate that dumping has continued to occur since the imposition of the dumping duty notice in October 2010;
- inquiry no. 241 found that certain importers of aluminium extrusions from China have circumvented the intended effect of anti-dumping measures, allowing importers of Chinese aluminium extrusions to undercut the Australian industry's selling prices;
- there is limited evidence to support claims that changes in the AUD may impact on the level of dumping margins in the future;
- of the selected exporters from review no. 248, PanAsia, the largest exporter of aluminium extrusions from China, was found to have the highest dumping margin, which is substantial at 21.9 per cent;
- that there is strong price competition between imported goods and domestically produced like goods;

- the GOC substantially influences the primary aluminium and aluminium extrusion market in China and this influence is likely to have materially distorted competitive market conditions in the aluminium extrusions market. In the absence of anti-dumping measures, it is likely that Chinese aluminium extrusion exporters would capitalise on cheaper aluminium inputs and further target export markets such as Australia;

- subsidisation is likely to continue to occur, given that existing programs found to be countervailable in review no. 248 are likely to continue in the near future;

- the Australian industry is susceptible to material injury particularly in terms of price and profitability as a result of dumping and subsidisation;

- since the imposition of anti-dumping measures, the size of the market has increased slightly and imports of Chinese aluminium extrusions have continued in substantial volumes (currently accounting for approximately 60 per cent of the market). It is reasonable to assume that in the absence of anti-dumping measures, dumped imports of Chinese aluminium extrusions are likely to increase in volume to levels achieved prior to the original investigation;

- exporter questionnaire data shows that many Chinese aluminium extrusions manufacturers have excess capacity and have a strong export focus;

- the calculated NIP is higher than weighted average export prices; and

- the economic outlook for the Australian industry is that it is likely to experience further pressures from imports in the short term; therefore, continued dumping and subsidisation may cause further material injury to the Australian industry as price competition from dumped and subsidised imports from China is likely to have a continuing adverse impact on the Australian industry.

Based on the above factors, the Commissioner is satisfied that the expiration of the anti-dumping measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping, subsidisation and material injury that the anti-dumping measures are intended to prevent.

8 VARIABLE FACTORS

8.1 Findings

Based on the analysis of the Commission, the Commissioner recommends that the Parliamentary Secretary, in deciding whether to continue the anti-dumping measures, leave the variable factors of export price, normal value and subsidies unaltered.

However, the Commissioner is satisfied that subsections 8(5BAAA) and 10(3DA) of the Dumping Duty Act apply (refer section 8.3.1. of this report). Therefore, the Parliamentary Secretary is no longer required to have regard to the desirability of fixing a lesser rate of duty under subsections 8(5BA) and 10(3D) of the Dumping Duty Act. If the Parliamentary Secretary chooses not to apply the lesser duty rule, the NIP will no longer be operable.

8.2 Export price, normal value and subsidies

As discussed in section 7.3.2 of this report, the Commission has calculated dumping and countervailing margins for the three exporters that had submitted responses to the exporter questionnaire. Further, the Commission calculated dumping and countervailing margins for Kam Kiu and for all other exporters.

However, given that review no. 248 applied to all exporters and altered variable factors in relation to export price, normal value and subsidies, the Commission considers, in this instance, it is preferable to rely on verified data from review no. 248 in continuing the measures. The Commission estimates that the variable factors calculated during review no. 248 do not appear to have changed so substantially as to warrant the fixing of different variable factors.

As a result, the inquiry has not established new variable factors for export price, normal value and subsidies and will rely on the findings from review no. 248, in relation to export price, normal value and subsidies in continuing the anti-dumping measures.

8.2.1 Jinxiecheng's submission

Following publication of SEF 287, Jinxiecheng requested that the Commissioner recommend to the Parliamentary Secretary that the dumping duty notice and the countervailing duty notice have effect in relation to Jinxiecheng as if different variable factors had been ascertained.

In particular, Jinxiecheng argues that it has submitted responses to the exporter questionnaire for review no. 248 and for the purposes of this inquiry, and therefore, the Commission should determine separate variable factors (including separate dumping and countervailing margins) for Jinxiecheng.

8.2.2 The Commission's assessment

As discussed in section 8.2 of this report, the Commission considers that it is reasonable to rely on verified data and information from review no. 248 in continuing the measures. Therefore, the Commissioner does not propose different variable factors in relation to Jinxiecheng.

The Commission notes that in certain circumstances, importers are able to recover any dumping and countervailing duty paid through the duty assessment process. This process would allow Jinxiecheng's individual variable factors to be considered.

8.3 Non-injurious price

8.3.1 Relevant legislation

Duties[32] may be applied where the Parliamentary Secretary is satisfied that dumped or subsidised exports of the goods to Australia have caused or threatened to cause material injury to the Australian industry producing like goods.

Under subsections 269TACA(a) and (c) of the Act, the NIP of the goods exported to Australia is the minimum price necessary to prevent the injury, or a recurrence of the injury, to the Australian industry by dumped or subsidised goods.

Where the Parliamentary Secretary is required to determine both interim dumping duty and interim countervailing duty, subsection 8(5BA) of the Dumping Duty Act applies. Subsection 8(5BA) requires the Parliamentary Secretary, in determining the interim dumping duty payable, to have regard to the 'lesser duty rule' which requires consideration of the desirability of fixing a lesser amount of duty that does not exceed the NIP. That is, a duty that is less than the full amount of the dumping margin but is sufficient to prevent material injury to Australian industry.

Similarly, in relation to the determination of interim countervailing duty, subsection 10(3D) of the Dumping Duty Act is applicable and requires the Parliamentary Secretary to have regard to the lesser duty rule in relation to interim countervailing duty.

However, in January 2014, legislative provisions commenced that prescribe certain circumstances, where if they exist, the Parliamentary Secretary is not required to have mandatory regard to the desirability of fixing a lesser amount of duty. These include:[33]

- there is a situation in the market that makes domestic selling prices unsuitable for the purpose of determining normal value under subsection 269TAC(1);
- there is an Australian industry in respect of like goods consisting of at least two small to medium sized enterprises (as defined in the Act); and

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[32] In the form of a dumping duty notice under subsection 269TG(1) or (2) of the Act and a countervailing duty notice under subsection 269TJ(1) or (2) of the Act.

[33] Subsection 8(5BAAA) of the Dumping Duty Act in relation to the calculation of dumping duty and subsection 10(3DA) of the Dumping Duty Act in relation to the calculation of countervailing duty.

- the country in relation to which the subsidy has been provided, has not complied with Article 25 of the *Agreement on Subsidies and Countervailing Measures* (SCM Agreement) for the compliance period.

These changes apply to dumping duty and countervailing duty notices that were published before 1 January 2014, but are continued on or after this date.[34]

8.3.2 The Commission's assessment

For the inquiry (and relying on review no. 248 findings), the Commission has found that two of the prescribed circumstances mentioned above exist. That is:

- there is a situation in the market that makes domestic selling prices for Chinese aluminium extrusions unsuitable for the purpose of determining normal value under subsection 269TAC(1); and

- China, the country in relation to which the subsidy has been provided, has not complied with Article 25 of the *Agreement on Subsidies and Countervailing Measures* (SCM Agreement) for the compliance period.

Article 25 of the SCM Agreement requires that WTO members are to notify the WTO of any specific subsidies (as defined in Articles 1 and 2) that are granted or maintained within their territories.

The Annual Report of the Committee on Subsidies and Countervailing Measures (the Committee) includes, in separate annexures to the Report, the status of notifications by Members for relevant reporting periods on a biennial basis (reflecting the above decision of the Committee that new and full notifications should be submitted every two years). These reports are the primary source of information for the Commission in making determinations regarding compliance with the subsidy notifications.

The Committee's report dated 3 November 2014 indicates that China has not submitted new and full subsidy notifications since 2011.

Given these circumstances, the Commissioner notes that the Parliamentary Secretary is not required to have regard to the desirability of fixing a lesser amount of duty due to the operation of paragraphs 8(5BAAA)(a) and (c) and paragraphs 10(3DA)(a) and (c) of the Dumping Duty Act. However, this does not prevent the Parliamentary Secretary from considering and applying the lesser duty rule, if considered appropriate.

The Commissioner is recommending that the full dumping and subsidy margins be applied to any interim dumping duty and interim countervailing duty taken in relation to aluminium extrusions exported to Australia from China. The Commissioner notes that, notwithstanding his recommendation, the Parliamentary Secretary is not obliged to, but still may, consider applying a lesser amount of duty.

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[34] Specifically, the legislative changes apply in circumstances where the Parliamentary Secretary publishes a notice under subsection 269ZHG(1) of the Act to continue the measures concerned.

9 RECOMMENDATIONS

The Commissioner recommends that the Parliamentary Secretary take steps to secure the continuation of the anti-dumping measures relating to certain aluminium extrusions exported to Australia from China from the expiry date of 28 October 2015.

The Commissioner recommends that, in continuing the anti-dumping measures, the variable factors of export price, normal value and amount of countervailable subsidy received remain unaltered. This will mean that the interim dumping duty and interim countervailing duty rates determined by review no. 248 remain in place.

The Commissioner further recommends that the full dumping and subsidy margins determined in review no. 248 be applied to any interim dumping duty and interim countervailing duty taken in relation to aluminium extrusions exported to Australia from China. The Commissioner notes that the Parliamentary Secretary is not obliged to, but still may, consider applying a lesser amount of duty in accordance with the lesser duty rule.

If the Parliamentary Secretary exercises her discretion not to have regard to the lesser duty rule, the NIP will have no future application.

If the Parliamentary Secretary accepts these recommendations, to give effect to the decision, the Parliamentary Secretary must declare, by signing the notice under subsection 269ZHG(1)(b) of the Act (**Attachment 1**), that she has decided to secure the continuation of the anti-dumping measures.

10 APPENDICES ANDATTACHMENTS

Attachment 1	Public notice under subsection 269ZHG(1)(b)
Attachment 2	Countervailable programs from review no. 248
Confidential Appendix 1	Economic performance of the Australian industry
Confidential Appendix 2	Dumping margin calculations
Confidential Appendix 3	Subsidy margin calculations
Confidential Appendix 4	USP and NIP calculations

ATTACHMENT 2 – SUBSIDY PROGRAMS FROM REVIEW NO. 248

Program number	Program name	Program type	Countervailable in relation to the goods (Yes/No)
1	Preferential tax policies for FIEs in the coastal economic open areas and economic and technological development zones	Tax	No
2	One-time Awards to Enterprises Whose Products Qualify for 'Well-Known Trademarks of China' and 'Famous Brands of China'	Grant	Yes
3	Provincial Scientific Development Plan Fund	Grant	Yes
4	Export Brand Development Fund	Grant	Yes
5	Matching Funds for International Market Development for SMEs	Grant	Yes
6	Superstar Enterprise Grant	Grant	Yes
7	Research & Development (R&D) Assistance Grant	Grant	Yes
8	Patent Award of Guangdong Province	Grant	Yes
9	Training Program for Rural Surplus Labour Force Transfer Employment	Grant	Yes
10	Preferential Tax Policies for FIEs – Reduced Tax Rate for Productive FIE's scheduled to operate for a period of not less than 10 years	Tax	No
15	Aluminium provided at less than adequate remuneration	LTAR	Yes
16	Preferential tax policies for FIEs established in Special Economic Zones (excluding Shanghai Pudong area)	Tax	No
17	Preferential tax policies for FIEs established in Pudong area of Shanghai	Tax	No
18	Preferential tax policies in the Western Regions	Tax	Yes
21	Tariff and VAT Exemptions on Imported Materials and Equipment	Tax	Yes
26	Innovative Experimental Enterprise Grant	Grant	Yes
29	Special Support Fund for Non-State-Owned Enterprises	Grant	Yes
32#	Venture Investment Fund of Hi-Tech Industry	Grant	Yes
35#	Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment	Grant	Yes
44#	Preferential lending programs – loans from Chinese policy banks and state owned commercial banks	Loans	No
45#	Provision of land use rights for less than adequate remuneration	LTAR	No
46#	Provision of electricity for less than adequate remuneration	LTAR	No
47#	Preferential tax policies for high and new technology enterprises	Tax	Yes
48#	Provincial Government of Guangdong tax offset for R&D	Tax	Yes

Program number	Program name	Program type	Countervailable in relation to the goods (Yes/No)
49#	Exemption from city construction tax and education tax for FIEs	Tax	No
50#	Refund of land-use tax for firms located in the Zhaoqing New and High Tech Industrial Development Zone (ZHTDZ)	Tax	No
51#	Fund for SME bank-enterprise cooperation projects	Grant	No
52#	Special fund for science and technology in Guangdong	Grant	No
53#	Provincial fund for fiscal and technological innovation	Grant	No
54#	Provincial loan discount special fund for SMEs	Grant	No
55#	Export rebate for mechanic, electronic, high tech products	Grant	No
56#	PGOG special fund for energy saving technology reform	Grant	Yes
57#	PGOG science and technology bureau project fund	Grant	No
58#	Development assistance grants from the ZHTDZ	Grant	Yes
59#	Provision of water for less than adequate remuneration	LTAR	No
60#	Provision of natural gas for less than adequate remuneration	LTAR	No
61#	Provision of heavy oil for less than adequate remuneration	LTAR	No
62#	Currency undervaluation	Other	No

- Denotes programs not previously countervailed in relation to aluminium extrusions.

DOC 2

Determinação Final Investigação Original Extrudados (Canadá)

Canada Border Services Agency | Agence des services frontaliers du Canada

OTTAWA, March 3, 2009

4214-22 AD/1379
4218-26 CV/124

STATEMENT OF REASONS

Concerning the making of final determinations with respect to the dumping and subsidizing of

CERTAIN ALUMINUM EXTRUSIONS ORIGINATING IN OR EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA

DECISION

On February 16, 2009, pursuant to paragraph 41(1)*(a)* of the *Special Import Measures Act,* the President of the Canada Border Services Agency made final determinations of dumping and subsidizing respecting aluminum extrusions produced via an extrusion process, of alloys having metallic elements falling within the alloy designations published by *The Aluminum Association* commencing with 1, 2, 3, 5, 6 or 7 (or proprietary or other certifying body equivalents), with the finish being as extruded (mill), mechanical, anodized or painted or otherwise coated, whether or not worked, having a wall thickness greater than 0.5 mm, with a maximum weight per meter of 22 kilograms and a profile or cross-section which fits within a circle having a diameter of 254 mm, originating in or exported from the People's Republic of China.

Cet *Énoncé des motifs* est également disponible en français. Veuillez vous reporter à la section "Renseignements".
This *Statement of Reasons* is also available in French. Please refer to the "Information" section.

Canada

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SUMMARY OF EVENTS

[1] On July 4, 2008, the Canada Border Services Agency (CBSA) received a complaint from Almag Aluminum Inc. of Brampton, Ontario, Apel Extrusions Limited of Calgary, Alberta, Can Art Aluminum Extrusion Inc. of Brampton, Ontario, Metra Aluminum Inc. of Laval, Quebec, Signature Aluminum Canada Inc. (formerly Bon L Canada Inc.) of Richmond Hill, Ontario, Spectra Aluminum Products Ltd. of Bradford, Ontario and Spectra Anodizing Inc. of Woodbridge, Ontario (Complainants) alleging that imports of certain aluminum extrusions originating in or exported from the People's Republic of China (China) are being dumped and subsidized and causing injury to the Canadian industry.

[2] On July 18, 2008, pursuant to subsection 32(1) of the *Special Import Measures Act* (SIMA), the CBSA informed the Complainants that the complaint was properly documented. The CBSA also notified the government of China (GOC) that a properly documented complaint had been received and provided the GOC with the non-confidential version of the subsidy complaint.

[3] The Complainants provided evidence to support the allegations that aluminum extrusions from China have been dumped and subsidized. The evidence also discloses a reasonable indication that the dumping and subsidizing has caused injury or is threatening to cause injury to the Canadian industry producing these goods.

[4] On August 13, 2008, the CBSA received written preliminary comments from the GOC concerning the evidence presented in the non-confidential version of the subsidy complaint and comments concerning the CBSA's practices in previous subsidy investigations involving China. The GOC claimed that the complaint lacks sufficient evidence to initiate a subsidy investigation on aluminum extrusions. The GOC also claimed that the complaint fails to provide supporting evidence to show that subsidies applied to the aluminum extrusions sector in China. The CBSA considered the representations made by the GOC in its analysis of whether there was sufficient evidence of subsidizing to warrant an investigation.

[5] On August 14, 2008 consultations were held with the GOC pursuant to Article 13.1 of the Agreement on Subsidies and Countervailing Measures. During these consultations, the GOC made representations with respect to its views on the evidence presented in the non-confidential version of the subsidy complaint.

[6] On August 18, 2008, pursuant to subsection 31(1) of SIMA, the President of the CBSA (President) initiated investigations respecting the dumping and subsidizing of certain aluminum extrusions from China. On the basis of the available information, the CBSA concluded that there was sufficient evidence to initiate a section 20 inquiry concurrently with the dumping and subsidy investigations to examine the degree of GOC involvement in the aluminum extrusions sector and the related impact on pricing.

[7] Upon receiving notice of the initiation of the investigations, the Canadian International Trade Tribunal (Tribunal) started a preliminary injury inquiry into whether the evidence discloses a reasonable indication that the alleged dumping and subsidizing of certain aluminum extrusions from China have caused injury or retardation or are threatening to cause injury to the

Canadian industry producing the goods. On October 17, 2008, the Tribunal determined that there is evidence that discloses a reasonable indication that the dumping and subsidizing of certain aluminum extrusions have caused injury.

[8] On November 17, 2008, as a result of the CBSA's preliminary investigations and pursuant to subsection 38(1) of SIMA, the President made preliminary determinations of dumping and subsidizing with respect to certain aluminum extrusions originating in or exported from China.

[9] The CBSA continued its investigations and, on the basis of the results, the President is satisfied that certain aluminum extrusions originating in or exported from China have been dumped and subsidized and that the margins of dumping and the amounts of subsidy are not insignificant. Consequently, on February 16, 2009, the President made final determinations of dumping and subsidizing pursuant to paragraph 41(1)*(a)* of SIMA.

[10] The Tribunal's inquiry into the question of injury to the Canadian industry is continuing. Provisional duties will continue to be imposed on the subject goods until the Tribunal renders its decision. The Tribunal will issue its finding by March 17, 2009.

PERIOD OF INVESTIGATION

[11] The period of investigation, with respect to dumping (Dumping POI), covered all subject goods released into Canada from July 1, 2007 to June 30, 2008.

[12] The period of investigation, with respect to subsidizing (Subsidy POI), covered all subject goods released into Canada from January 1, 2007 to June 30, 2008.

INTERESTED PARTIES

Complainants

[13] The Complainants are major producers of aluminum extrusions in Canada, accounting for a major proportion of the domestic industry for like goods.

The name and address of the Complainants are:

Almag Aluminum Inc.
22 Finley Road
Brampton, ON
L6T 1A9

Apel Extrusions Limited
7929-30 Street S.E.
Calgary, AB
T4C 1H7

Can Art Aluminum Extrusion Inc.
85 Parkshore Drive
Brampton, ON
L6T 5M1

Metra Aluminum Inc.
2000 Fortin Boulevard
Laval, QC
H7S 1P3

Signature Aluminum Canada Inc.
500 Edward Avenue
Richmond Hill, ON
L4C 4Y9

Spectra Aluminum Products Ltd.
95 Reagens Industrial Parkway
Bradford, ON
L3Z 2A4

Spectra Anodizing Inc.
201 Hanlan Rd
Woodbridge, ON
L4L 3R7

[14] Three other producers of the like goods, Extrudex Aluminum, Daymond Aluminum and Kaiser Aluminum Canada Ltd. provided letters supporting the complaint.

Exporters

[15] At the initiation of the investigations, the CBSA had identified 261 potential exporters of subject goods from customs import documentation and from the complaint.

[16] The CBSA sent a Dumping Request for Information (RFI) and Subsidy RFI to each of the identified potential exporters of the goods.

[17] As part of the CBSA's section 20 inquiry, the CBSA also sent section 20 RFIs to each of the identified potential exporters and producers of the goods located in China.

[18] While many of the export sales from China appear to involve international vendors and trading companies, in most instances the goods are shipped directly to Canada from China and the Chinese manufacturer is considered to be the exporter of the goods. However, some goods originating from China may be shipped to an intermediary country, such as the United States of America (USA) and subsequently exported to Canada. In these situations, the exporter of the goods is generally located in the intermediary country.

[19] Complete and timely responses to the CBSA's dumping RFI were received from seven exporters, including six exporters located in China as well as one exporter located in the USA which is exporting goods originating from China to Canada. The six exporters located in China also provided complete and timely responses to the section 20 inquiry RFI and the subsidy RFI.

[20] After the dumping and subsidy preliminary determinations on November 17, 2008, the CBSA conducted on-site verifications at the end of November and early December 2008 with these six exporters, as follows:

- Kam Kiu Aluminum Extrusion Co., Ltd.
- Press Metal International Ltd. (China)
- Panasia Aluminum (China) Limited
- Pingguo Asia Aluminum Co., Ltd.
- Guangdong Weiye Aluminum Factory Co Ltd.
- Guangdong Jianmei Aluminum Profile Factory Co., Ltd.

[21] During the course of the on-site verification with one of the Chinese exporters, Pingguo Asia Aluminum Co., Ltd. (Pingguo), there were issues with respect to the accuracy and reliability of their information. As a result, this exporter was considered non-cooperative for purposes of the final determinations.

[22] Another Chinese exporter, Press Metal International Ltd. (China) (PMI), cooperated in the dumping verification but failed to provide requested information and documentation relating to the subsidy verification. For purposes of the subsidy final determination, this exporter was considered non-cooperative.

[23] The other four Chinese exporters fully cooperated during the on-site dumping and subsidy verifications.

[24] In addition, during the course of the investigation, desk audits were performed by the CBSA on a number of exporter RFI submissions, including late exporter submissions received after the deadline date. Three Chinese exporters provided complete dumping and subsidy RFI responses and fully cooperated during these desk audits for purposes of the final determinations. A desk audit was also performed by the CBSA on one exporter located in the USA, which was exporting goods originating from China to Canada through two subsidiaries. This exporter also provided complete dumping RFI responses and fully cooperated for purposes of the investigation. These additional cooperating exporters are:

- China Square Industrial Limited (China)
- Guangya Group - Foshan Guangcheng Aluminum Co. Ltd. (China)
- Guangya Group - Guang Ya Aluminum Industries Co. Ltd. (China)
- Hunter Douglas Designer Shades (USA)
- Hunter Douglas Window Fashions (USA)

[25] Several other exporters and trading companies provided incomplete responses to the CBSA's dumping, subsidy, or section 20 RFIs, and their information will not be taken into consideration for purposes of the investigations.

Importers

[26] At the initiation of the investigations, the CBSA identified 535 potential importers of subject goods based on a review of customs import documentation and information provided in the complaint.

[27] The CBSA sent an RFI to all potential importers of the goods. Responses to the CBSA's importer RFI were received from 43 importers.

[28] There may be instances where the importer in Canada for SIMA purposes may be a different party than the importer of record. For certain transactions involving non-resident importers, the CBSA examined available information concerning the importations for purposes of identifying the importer in Canada.

Government of China

[29] For the purposes of these investigations "Government of China" refers to all levels of government, i.e. federal, central, provincial/state, regional, municipal, city, township, village, local, legislative, administrative or judicial, singular, collective, elected or appointed. It also includes any person, agency, enterprise, or institution acting for, on behalf of, or under the authority of any law passed by, the government of that country or that provincial, state or municipal or other local or regional government.

[30] At the initiation of the investigations, the CBSA sent a subsidy and a section 20 RFI to the GOC. While the GOC provided a substantially complete response to the section 20 RFI, the GOC's subsidy response was found to be incomplete and was not used for the preliminary determination.

[31] During the final stage of the investigation, after being advised by the CBSA that its original subsidy RFI response was incomplete, the GOC provided additional subsidy information. However, this additional information was filed very late in the investigation, which left the CBSA insufficient time to analyze and verify the information before the legislated final determination date. The GOC was advised that the information was not submitted in a timely fashion and that its subsidy information would not be used for purposes of the investigation. Additional details on this matter are provided subsequently in this report under "Subsidy Investigation".

Surrogate Countries

[32] As part of the CBSA's section 20 inquiry, an RFI was also sent to producers in India, Malaysia, Mexico and Chinese Taipei, which are not subject to the present dumping investigation. No responses to these RFIs were received.

PRODUCT DEFINITION

[33] For the purpose of these investigations, the subject goods are defined as:

> "Aluminum extrusions produced via an extrusion process, of alloys having metallic elements falling within the alloy designations published by *The Aluminum Association* commencing with 1, 2, 3, 5, 6 or 7 (or proprietary or other certifying body equivalents), with the finish being as extruded (mill), mechanical, anodized or painted or otherwise coated, whether or not worked, having a wall thickness greater than 0.5 mm, with a maximum weight per meter of 22 kilograms and a profile or cross-section which fits within a circle having a diameter of 254 mm, originating in or exported from the People's Republic of China."

Additional Product Information[1]

[34] Extrusion is the process of shaping heated material by forcing it through a shaped opening in a die with the material emerging as an elongated piece with the same profile as the die cavity. For greater clarity, the subject goods do not include goods made by the process of impact extrusion or cold extrusion. Impact (or cold) extrusion is commonly used to make collapsible tubes such as toothpaste tubes or cans usually using soft materials such as aluminum, lead and tin. Usually a small shot of solid material is placed in the die and is impacted by a ram, which causes cold flow in the material. Impact (or cold) extrusion is not performed by the same machinery or using the same inputs as the extrusion operations of the Complainants.

[35] Alloys are metals composed of more than one metallic element. Alloys used in aluminum extrusions contain small amounts (usually less than five percent) of elements such as copper, manganese, silicon, magnesium, or zinc which enable characteristics such as corrosion resistance, increased strength or improved formability to be imparted to the major metallic element, aluminum. Aluminum alloys are produced to specifications in "International Alloy Designations and Chemical Composition Limits for Wrought Aluminum and Wrought Aluminum Alloys" published by *The Aluminum Association*. These specifications have equivalent designations issued by other certifying bodies such as the International Standards Organization (ISO).

[36] All aluminum extrusions are produced as either hollow or solid profiles. Hollow profile extrusions generally cost more to produce and obtain higher prices than solid profile extrusions. Extrusions are often produced in standard shapes such as bars, rods, pipes and tubes, angles, channels and tees but they are also produced in customized shapes.

[37] In addition to 'as extruded' or mill finish, extrusions can be finished mechanically by polishing, buffing or tumbling. Extrusions can have anodized finishes applied by means of an electro-chemical process that forms a durable, porous oxide film on the surface of the aluminum. Also, they can be finished with liquid or powder paint coatings utilizing an electrostatic application process.

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[1] This section is based on the complaint. CBSA Dumping Exhibit# 2, non-confidential version of the complaint, pages 6-8.

[38] The ability to produce the full range of profiles is determined by the extrusion and ancillary equipment. The Complainants cannot produce extrusions having a wall thickness less than 0.5 mm or a weight greater than 22 kg per meter or a cross-section larger than would be enclosed within a 254 mm diameter circle.

[39] Working or fabricating extrusions includes any operation performed other than mechanical, anodized, painted or other finishing, prior to utilization of the extrusion in a finished product. These can include precision cutting, machining, punching and drilling.

[40] Aluminum extrusions are widely used in many end-use applications that span numerous market sectors. The main end-use sectors for aluminum extrusions are building and construction, transportation, and engineered products. Uses for aluminum extrusions in the building and construction industry cover a wide range of products, including windows, doors, railings, bridges, light poles, high-rise curtainwalls, framing members, and other various structures. Uses for aluminum extrusions in the transportation industry include parts for automobiles, buses, trucks, trailers, rail cars, mass transit vehicles, recreational vehicles, aircraft, and aerospace. Aluminum extrusions are also used in many consumer and commercial products, including, air conditioners, appliances, furniture, lighting, sports equipment, electrical power units, heat sinks, machinery and equipment, food displays, refrigeration, medical equipment, and laboratory equipment.[2]

Production Process[3]

[41] While details may vary from producer to producer, the process by which extrusions are produced is essentially the same for all.

[42] The intended use of the product in which the aluminum extrusion will be applied determines the specifications for the extrusion. Machinability, finish and environment of use will determine the alloy to be extruded. The function of the profile will determine its design and that of the die that shapes it.

[43] The extrusion process begins with an aluminum billet. The billet must be softened by heat prior to extrusion. The heated billet is placed into the extrusion press, a powerful hydraulic device wherein a ram pushes a dummy block that forces the softened metal through a precision opening known as a die, to produce the desired shape. This simplified description of the process is known as direct extrusion, which is the most common method in use today. Indirect extrusion is a similar process. In the direct extrusion process, the die is stationary and the ram forces the alloy through the opening in the die. In the indirect process, the die is contained within the hollow ram, which moves into the stationary billet from one end, forcing the metal to flow into the ram, acquiring the shape of the die as it does so.

[44] The aluminum billet may be a solid or hollow form, commonly cylindrical, and is the length charged into the extrusion press container. It is usually a cast product but may be a

[2] Aluminum Extruders Council (www.aec.org).

[3] This section is based on the complaint. CBSA Dumping Exhibit# 2, non-confidential version of the complaint, pages 9-11.

wrought product or powder compact. Often it is cut from a longer length of alloyed aluminum known as a log.

[45] The billet and extrusion tools are preheated (softened) in a heating furnace. The melting point of aluminum varies with the purity of the metal but is approximately 1,220° Fahrenheit (660° Centigrade). Extrusion operations typically take place with billet heated to temperatures in excess of 700° F (375° C), and depending upon the alloy being extruded, as high as 930° F (500° C).

[46] The actual extrusion process begins when the ram starts applying pressure to the billet within the container. Various hydraulic press designs are capable of exerting anywhere from 100 tons to 15,000 tons of pressure. This pressure capacity of a press determines how large an extrusion it can produce. The extrusion size is measured by its largest cross-sectional dimension, sometimes referred to as its fit within a circumscribing circle diameter.

[47] As pressure is first applied, the billet is crushed against the die, becoming shorter and wider until its expansion is restricted by full contact with the container walls. Then, as the pressure increases, the soft (but still solid) metal has no place else to go and begins to squeeze through the shaped orifice of the die to emerge on the other side as a fully formed extrusion or profile.

[48] About 10 percent of the billet, including its outer skin, is left behind in the container. The completed extrusion is cut off at the die and the remainder of the metal is removed to be recycled. After it leaves the die, the still-hot extrusion may be quenched, mechanically treated and aged.

Classification of Imports

[49] The aluminum extrusions subject to this complaint are normally imported into Canada under the following 34 Harmonized System (HS) classification numbers:

7604.10.11.10	7604.10.20.29	7604.29.12.29
7604.10.11.90	7604.10.20.30	7604.29.20.11
7604.10.12.11	7604.21.00.10	7604.29.20.19
7604.10.12.19	7604.21.00.20	7604.29.20.21
7604.10.12.21	7604.29.11.10	7604.29.20.29
7604.10.12.22	7604.29.11.90	7604.29.20.30
7604.10.12.23	7604.29.12.11	7608.10.00.10
7604.10.12.24	7604.29.12.19	7608.10.00.90
7604.10.12.29	7604.29.12.21	7608.20.00.10
7604.10.20.11	7604.29.12.22	7608.20.00.90
7604.10.20.19	7604.29.12.23	
7604.10.20.21	7604.29.12.24	

[50] This listing of HS codes is for convenience of reference only. Refer to the product definition for authoritative details regarding the subject goods.

CANADIAN INDUSTRY

[51] The Canadian industry for aluminum extrusions is comprised of the following companies:

Almag Aluminum Inc. of Brampton, Ontario,
Apel Extrusions Limited of Calgary, Alberta,
Can Art Aluminum Extrusion Inc. of Brampton, Ontario,
Daymond Aluminum of Chatham, Ontario,
Extrudex Aluminum of Woodbridge, Ontario,
Indalex Aluminum Solutions Group of Mississauga, Ontario,
Kaiser Aluminum Canada Ltd. of London, Ontario,
Kawneer Company Canada Ltd. of Scarborough, Ontario,
Kromet International Inc. of Cambridge, Ontario,
Metra Aluminum Inc. of Laval, Quebec,
Signature Aluminum Canada Inc. (formerly Bon L Canada Inc.) of Richmond Hill, Ontario,
Spectra Aluminum Products Ltd. of Bradford, Ontario,
Spectra Anodizing Inc. of Woodbridge, Ontario.

IMPORTS INTO CANADA

[52] During the final phase of the investigations, the CBSA refined the estimated volume of imports based on information from its internal Customs Commercial Systems, Customs import entry documentation and other information received from exporters, importers and other parties.

[53] The following table presents the CBSA's estimates of imports of certain aluminum extrusions for purposes of the final determinations:

Imports of Certain Aluminum Extrusions (July 1, 2007 - June 30, 2008)

Imports into Canada	**% of Total Imports**
China	43%
U.S.A.	49%
All Other Countries	8%
Total Imports	**100%**

INVESTIGATION PROCESS

[54] Regarding the dumping investigation, information was requested from known and possible exporters, vendors and importers, concerning shipments of certain aluminum extrusions released into Canada during the Dumping POI of July 1, 2007 to June 30, 2008. Information related to potential actionable subsidies was requested from known and possible exporters and the GOC concerning financial contributions made to producers or exporters of aluminum extrusions of Chinese origin released into Canada during the Subsidy POI of January 1, 2007 to June 30, 2008.

[55] In addition, known and possible exporters and producers of the goods along with the GOC were requested to respond to the section 20 RFI for the purposes of the section 20 inquiry. Aside from the aforementioned exporters which provided complete information and fully cooperated for purposes of the final determinations, several exporters and trading companies provided incomplete or deficient RFI replies. Information from these companies has not been taken into consideration for purposes of the final determinations.

[56] The GOC provided a substantially complete response to the section 20 RFI by the extended due date. As explained previously, after being advised by the CBSA that its original subsidy response was incomplete and would not be used for purposes of the preliminary determination, the GOC provided additional supplementary subsidy information. However, this additional information was filed very late in the investigation, which left the CBSA insufficient time to analyze and verify the information before the legislated final determination date.

[57] The GOC was advised that the information was not submitted in a timely fashion and that its subsidy information would not be used for purposes of the investigation. Notwithstanding that the GOC's subsidy information was not used, the CBSA has established individual amounts of subsidy for the cooperative Chinese exporters under a ministerial specification.

[58] In summary, 56 potential subsidy programs were investigated and the CBSA determined that 15 of the potential subsidy programs were conferring benefits to the seven cooperative Chinese exporters during the Subsidy POI.

[59] As part of the final stage of the investigations, case briefs and reply submissions were provided by the legal representatives of the GOC, the Complainants, three Chinese exporters and one U.S. exporter of Chinese origin goods.

DUMPING INVESTIGATION

Section 20 Inquiry

[60] Section 20 of SIMA may be applied to determine the normal value of goods in a dumping investigation where certain conditions prevail in the domestic market of the exporting country. In the case of a prescribed country under paragraph 20(1)*(a)* of SIMA[4], it is applied where, in the opinion of the President, domestic prices are substantially determined by the government of that country and there is sufficient reason to believe that they are not substantially the same as they would be if they were determined in a competitive market. Where section 20 is applicable, the normal value of goods is not determined based on domestic prices or costs in that country.

[61] For purposes of a dumping investigation, the CBSA proceeds on the presumption that section 20 of SIMA is not applicable to the sector under investigation unless there is evidence to suggest otherwise. The President may form an opinion where there is sufficient information that the conditions set forth in paragraph 20(1)*(a)* of SIMA exist in the sector under investigation.

[4] China is a prescribed country under Special Import Measures Regulation Section 17.1.

[62] The mere existence of substantial domestic price determination by the government would be insufficient to apply section 20 of SIMA. The CBSA is also required to examine the price effect resulting from substantial government determination of domestic prices and whether there is sufficient information on the record for the President to have a reason to believe that the resulting domestic prices are not substantially the same as they would be in a competitive market.

[63] The Complainants requested that section 20 be applied in the determination of normal values due to the alleged existence of the conditions set forth in paragraph 20(1)*(a)* of SIMA. The Complainants provided information to support these allegations concerning the aluminum extrusions sector in China.

[64] At the initiation of the investigation, the CBSA had sufficient evidence, supplied by the Complainants, and from its own research, to support the initiation of a section 20 inquiry. The information indicated that the prices of aluminum extrusions in China have been substantially determined, indirectly, by various GOC industrial policies regarding the aluminum and aluminum extrusions industries and by export restrictions and tax changes for aluminum and aluminum extrusions.

[65] Accordingly, the CBSA, at the initiation of the dumping investigation, sent section 20 RFIs to 160 known exporters of aluminum extrusions in China, as well as to the GOC requesting detailed information related to the aluminum extrusions sector. In response to the section 20 inquiry and the relevant questionnaires, the CBSA received substantially complete and verifiable responses from eight Chinese exporters and from the GOC.

[66] The eight cooperative exporters represent approximately 41% of the total exports to Canada of subject goods, by volume during the Dumping POI. These companies represent a far smaller proportion of the Chinese domestic aluminum extrusions industry, which the GOC has indicated is comprised of over 460 producers.[5] A section 20 inquiry assesses the domestic industry sector as a whole. As such, the review of the aluminum extrusions sector is not limited to an examination of the information provided by the cooperative exporters.

[67] In addition, the CBSA has obtained information from other sources such as previous CBSA reports, market intelligence reports, public industry reports, newspaper and internet articles as well as other government documents.

[68] For purposes of the preliminary determination, the President considered the cumulative effect that the GOC's measures have exerted on the aluminum extrusions sector in China. The information indicated that the wide range and material nature of the GOC measures have resulted in significant influences on the aluminum industry, including the aluminum extrusions sector, through means other than competitive market forces.

[69] Accordingly, the President formed the opinion that domestic prices in the aluminum extrusions sector in China are substantially determined by the GOC and there is sufficient reason

[5] CBSA Dumping Exhibit# 266. GOC Response to the Government's Request for Information (section 20).

to believe that the domestic prices are not substantially the same as they would be in a competitive market.

[70] The CBSA continued with the section 20 inquiry during the final stage of the investigation.

[71] Taking together all the information obtained during the course of the section 20 inquiry, the President has affirmed the opinion made at the preliminary determination that domestic prices in the aluminum extrusions sector in China are substantially determined by the GOC and there is sufficient reason to believe that the domestic prices are not substantially the same as they would be in a competitive market.

[72] **Appendix 3** provides a summary of the findings considered by the President in affirming this section 20 opinion.

Normal Value

[73] Normal values are generally based on the domestic selling prices of the goods in the country of export, or on the full cost of the goods including administrative, selling and all other costs plus a reasonable amount for profit.

[74] For purposes of the final determination, the CBSA has concluded that normal values could not be determined on the basis of domestic selling prices in China or on the full cost of goods plus profit, as the CBSA has affirmed the opinion made at the preliminary determination that the conditions of section 20 exist in the aluminum extrusions sector in China.

[75] Where section 20 conditions exist, the CBSA will establish whether normal values can be determined using the selling price, or the total cost and profit, of like goods sold by producers in a surrogate country designated by the President pursuant to paragraph 20(1)*(c)* of SIMA. However, no surrogate country producers provided the information necessary to determine normal values in accordance with this provision.

[76] Alternatively, normal values may be determined on a deductive basis starting with an examination of the prices of imported goods sold in Canada, from a surrogate country designated by the President, pursuant to paragraph 20(1)*(d)* of SIMA. However, sufficient information was not submitted by importers in response to the importer RFI to allow for the application of paragraph 20(1)*(d)*.

[77] Accordingly, the CBSA has used an alternate method to determine normal values for cooperative exporters for purposes of the final determination, pursuant to a ministerial specification under subsection 29(1) of SIMA.

[78] In the complaint, the Complainants submitted that India is an appropriate surrogate country to be used for the calculation of normal values, since it is a major producer of aluminum extrusions and has comparable wage rates. Additionally, the cost of the aluminum raw material input to extruders in India should reflect international, market economy prices.

[79] The CBSA finds that the Complainants' selection of India for purposes of establishing costs for use in determining normal values is reasonable since both India and China are developing countries and the President has designated India as the surrogate country for China previously.

[80] As the cost of aluminum accounts for such a significant portion of the costs of producing aluminum extrusions, the CBSA's starting point for determining normal values is based on the monthly average settlement price of aluminum as reported on the London Metal Exchange (LME). The LME is the largest futures and contract market for various metals including aluminum and is a global reference pricing source for purchases and sales of such goods.

[81] Amounts have been added to the LME prices for the cost to convert the aluminum into a finished aluminum extrusion product, using information provided by the Complainants, adjusted to reflect costs in India as a surrogate. Separate conversion costs have been established to account for cost differences relating to product that is "mill finished" and product that undergoes additional finishing, such as anodizing or painting. An amount for administrative, selling and all other costs has also been added using information provided by the Complainants, again adjusted to reflect costs in India.

[82] Lastly, an amount for profit has been added to these costs based on the profit earned by the Complainants on domestic and export sales of the like goods for the 2007 calendar year in order to determine normal values for the cooperative exporters.

Export Price

[83] The export price of goods sold to importers in Canada is generally calculated pursuant to section 24 of SIMA based on the lesser of the adjusted exporter's sale price for the goods or the adjusted importer's purchase price. These prices are adjusted where necessary by deducting the costs, charges, expenses, duties and taxes resulting from the exportation of the goods as provided for in subparagraphs 24*(a)*(i) to 24*(a)*(iii) of SIMA.

[84] In the case of sales to related importers in Canada, the CBSA performs a reliability test of the export price under section 24 of SIMA. If the export price under section 24 of SIMA is found not to be reliable, then section 25 of SIMA would be used to determine export prices.

[85] For purposes of the final determination, export prices for the cooperative exporters were determined using reported export pricing data provided by the exporters and importers of the goods. For non-cooperative exporters, the export price was determined based on the import pricing data available from customs' information. .

Export sales to Canada involving third parties (i.e. intermediaries) which are related to the exporter

[86] For goods shipped directly to Canada from China, the exporter for SIMA purposes is usually the Chinese producer of the goods (i.e. it is usually the producer which knowingly releases the goods for direct shipment to Canada). However, there are situations where the Chinese producer has a related trading company/sales office (i.e., an intermediary) located

elsewhere in China or in other jurisdictions which is involved in the export sale of goods to Canada. While the goods are shipped directly to Canada from the producer's facilities, frequently, there is an internal sale/transfer price between the Chinese producer and the related intermediary.

[87] Under section 24 of SIMA, export price is generally based on the lesser of the exporter's selling price and the importer's purchase price. For certain cooperating exporters, the sale/transfer price between the producer and the related intermediary was used for purposes of estimating export price at the time of the preliminary determination.

[88] This issue was reconsidered as part of the final stage of the investigation. This included an examination of the relationship between the producer and related intermediary and the manner in which the sales to Canada were made during the POI. The investigation revealed that the producer and intermediary are part of the same corporate group and meet the definition of "associated persons" in SIMA. It was found that the intermediary and producer did not deal with each other at arm's length, and in fact were operating as a single business entity on sales of subject goods to Canada during the POI. That is, the related intermediary was acting to facilitate the producer's sale of goods to the Canadian market and was not acting in its own commercial interest or assuming the commercial risk associated with such sales.

[89] Therefore, for purposes of the final determination, where the cooperating Chinese producers were selling to Canada through a related intermediary and the above-noted conditions were met, the sale/transfer price between the producer and related intermediary was not taken into consideration. Rather, the selling price from the related intermediary to the importer in Canada was used as the exporter's selling price under section 24 of SIMA.

Results of Dumping Investigation

[90] The CBSA determined margins of dumping for each of the cooperative exporters by comparing normal values with the export prices. When the export price is less than the normal value, the difference is the margin of dumping.

[91] For the exporters that did not respond to the RFI, or provided an incomplete or deficient submission, the normal values were determined under a ministerial specification pursuant to section 29 of SIMA based on the export price as determined under section 24, 25 or 29 of SIMA, plus an amount equal to 101% of that export price, which represents the highest margin of dumping found for a cooperative exporter during the investigation, excluding anomalies.

[92] The determination of the volume of dumped goods was calculated by taking into consideration each exporter's net aggregate dumping results. Where a given exporter has been determined to be dumping on an overall or net basis, the total quantity of exports attributable to that exporter (i.e. 100%) is considered dumped. Similarly, where a given exporter's net aggregate dumping results are zero, then the total quantity of exports deemed to be dumped by that exporter is zero.

[93] In calculating the weighted average margin of dumping, the overall margins of dumping found in respect of each exporter were weighted according to each exporter's volume of certain aluminum extrusions exported to Canada during the Dumping POI.

[94] Based on the preceding, 99.8% of the subject aluminum extrusions from China were dumped by a weighted average margin of dumping of 72.6%, as a percentage of export price.

[95] Under Article 15 of the World Trade Organization (WTO) *Anti-dumping Agreement*, developed countries are to give regard to the special situation of developing country members when considering the application of anti-dumping measures under the Agreement. Possible constructive remedies provided for under the Agreement are to be explored before applying anti-dumping duty where they would affect the essential interests of developing country members. As China is listed on the Development Assistance Committee (DAC) *List of Official Development Assistance* (ODA) *Aid Recipients*[6] maintained by the Organization for Economic Co-operation and Development (OECD), the President recognizes China as a developing country for purposes of actions taken pursuant to SIMA.

[96] Accordingly, the obligation under Article 15 of the WTO Anti-dumping Agreement was met by providing the opportunity for exporters to submit price undertakings. In this particular investigation, the CBSA did not receive any proposals for undertakings from any of the identified exporters.

Dumping Results by Exporter

[97] Specific margin of dumping details relating to each of the exporters that cooperated in the CBSA's dumping investigation are as follows:

Taishan City Kam Kiu Aluminum Extrusion Co., Ltd. (China)

[98] Taishan City Kam Kiu Aluminum Extrusion Co., Ltd. (Kam Kiu) is a 100% foreign owned, limited liability company incorporated in Hong Kong. Kam Kiu uses primary aluminum to cast its own billets and the special tooled precision dies are made by Kam Kiu to produce aluminum extrusions according to customer requirements. The CBSA conducted on-site verification of Kam Kiu's RFI responses from December 4 to December 12, 2008.

[99] Exports to Canada are sold via Kam Kiu's related trader and are shipped from China to customers in Canada. For the final determination, export prices were determined pursuant to section 24 of SIMA, on the basis of the exporter's selling price from Kam Kiu's related trader, adjusted to take into account all costs, charges and expenses incurred in preparing the goods for shipment to Canada and resulting from the exportation and shipment of the goods.

[6] OECD, Development Assistance Committee List of Aid Recipients – As at 1 January 2006, online: http://www.oecd.org/dataoecd/23/34/37954893.pdf

Margin of Dumping

[100] The total normal value was compared with the total export price for all subject aluminum extrusions imported into Canada during the Dumping POI. It was found that the goods exported by Kam Kiu were dumped by a weighted average margin of dumping of 27.8%, expressed as a percentage of export price.

Press Metal International Ltd. (China)

[101] Press Metal International Ltd. (PMI) is a 100% foreign owned company with the parent company located in Malaysia. PMI is an aluminum extruder and has a related raw material supplier of aluminum ingots. The CBSA conducted on-site verification of PMI's RFI responses, from November 24 to November 28, 2008, and its related raw material supplier's responses from December 8 to December 9, 2008.

[102] Exports to Canada are sold and shipped directly to several unrelated importers in Canada. For the final determination, export prices were determined pursuant to section 24 of SIMA, based on the exporter's selling price, adjusted to take into account all costs, charges and expenses incurred in preparing the goods for shipment to Canada and resulting from the exportation and shipment of the goods.

Margin of Dumping

[103] The total normal value was compared with the total export price for all subject aluminum extrusions imported into Canada during the Dumping POI. It was found that the goods exported by PMI were dumped by a weighted average margin of dumping of 35.2%, expressed as a percentage of export price.

PanAsia Aluminum (China) Limited

[104] PanAsia Aluminum (China) Limited (PanAsia) is a Foreign-Invested Enterprise (FIE) and manufacturer of the subject goods exported to Canada. It produces aluminum extrusions for the domestic and various export markets at its production facility located in Zengcheng City in the Chinese province of Guangdong. The CBSA conducted on-site verification of PanAsia's RFI responses from November 24 to November 28, 2008.

[105] Exports to Canada are sold through an affiliated trading company located in Macau and are shipped directly from China to related subsidiaries and unrelated companies in Canada.

[106] In the case of sales to related importers in Canada, the CBSA performs a reliability test of the export price under section 24 of SIMA. If the export price under section 24 of SIMA is found not to be reliable, then section 25 of SIMA would be used to determine export prices. The results of the reliability test for sales made by PanAsia's affiliated trading company to a related subsidiary in Canada revealed that the section 24 export prices to this related subsidiary were unreliable for SIMA purposes. As a result, for all sales to this related subsidiary, the export prices were determined in accordance with section 25 of SIMA, based on the importer's resale

prices in Canada less all costs incurred in importing and selling the goods, and an amount for profit based on the profit earned by vendors of like goods in Canada.

[107] Export prices for all other sales to Canada were determined pursuant to section 24 of SIMA, on the basis of the exporter's selling price from PanAsia's affiliated trading company, adjusted to take into account all costs, charges and expenses incurred in preparing the goods for shipment to Canada and resulting from the exportation and shipment of the goods.

Margin of dumping

[108] The total normal value was compared with the total export price for all subject aluminum extrusions imported into Canada during the Dumping POI. It was found that the goods exported by PanAsia were dumped by a weighted average margin of dumping of 31.4%, expressed as a percentage of export price.

Guangdong Weiye Aluminum Factory Co., Ltd. (China)

[109] Guangdong Weiye Aluminum Factory Co., Ltd. (Weiye) is a privately owned company and is a manufacturer of aluminum extrusions and stainless steel products. Weiye develops and manufactures a wide range of aluminum extrusions for various industries (such as construction, electronic, IT, sporting goods). The company purchases 100% of its raw materials from several domestic suppliers. The CBSA conducted on-site verification of Weiye's RFI responses from December 1 to December 5, 2008.

[110] Exports to Canada are sold and shipped directly to multiple unrelated companies in Canada. For the final determination, export prices were determined pursuant to section 24 of SIMA, based on the exporter's selling price, adjusted to take into account all costs, charges and expenses incurred in preparing the goods for shipment to Canada and resulting from the exportation and shipment of the goods.

Margin of dumping

[111] The total normal value was compared with the total export price for all subject aluminum extrusions imported into Canada during the Dumping POI. It was found that the goods exported by Weiye were dumped by a weighted average margin of dumping of 42.4%, expressed as a percentage of export price.

Guangdong Jianmei Aluminum Profile Factory Co., Ltd. (China)

[112] Guangdong Jianmei Aluminum Profile Factory Co., Ltd. (Jianmei) is a privately-owned limited liability company. Jianmei has two production plants that produce different types of aluminum profiles, including thermal break series, curtain wall series, doors and windows series and other profiles. Jianmei purchases aluminum ingots and melts them into aluminum billets. The CBSA conducted on-site verification of Jianmei's RFI responses from December 1 to December 5, 2008.

[113] Exports to Canada are sold by JMA (Hong Kong) Company Limited (JMA(HK)), an associated trading company, and are shipped directly from China to multiple unrelated companies in Canada. For the final determination, export prices were determined pursuant to section 24 of SIMA, based on the exporter's selling price from Jianmei's associated trading company, JMA (HK), adjusted to take into account all costs, charges and expenses incurred in preparing the goods for shipment to Canada and resulting from the exportation and shipment of the goods.

Margin of dumping

[114] The total normal value was compared with the total export price for all subject aluminum extrusions imported into Canada during the Dumping POI. It was found that the goods exported by Jianmei were dumped by a weighted average margin of dumping of 28.5%, expressed as a percentage of export price.

China Square Industrial Limited (China)

[115] China Square Industrial Limited (China Square) is a limited liability company, and includes a Hong Kong based parent company responsible for export sales, and production facilities in China (Zhaoqing). The company produces a range of aluminum extrusion products.

[116] Exports to Canada of subject goods are shipped directly from China to two unrelated companies in Canada. For the final determination, export prices were determined pursuant to section 24 of SIMA, based on the exporter's selling price, adjusted to take into account all costs, charges and expenses incurred in preparing the goods for shipment to Canada and resulting from the exportation and shipment of the goods.

Margin of dumping

[117] The total normal value was compared with the total export price for all subject aluminum extrusions imported into Canada during the Dumping POI. The subject goods exported by China Square were dumped by a weighted average margin of dumping of 1.7%, expressed as a percentage of export price.

Guangya Group (China)

[118] The CBSA received dumping and subsidy RFI responses from the Guangya Group, which is comprised of Guangya Aluminum Industries Co., Ltd. (Guangya), Foshan Guangcheng Aluminum Co., Ltd. (Guangcheng), Guangya Aluminum Industries (Hong Kong) Ltd. (Guangya HK) and Guangcheng Aluminum Industries (U.S.A.) Inc. (Guangcheng US). The Group produces and sells a wide range of aluminum products for architecture and industrial markets in China as well as for export.

[119] During the POI, exports to Canada were produced and shipped from China by Guangya and Guangcheng, and sold through one of the four Guangya Group companies (i.e. Guangya, Guangcheng, Guangya HK, or Guangcheng US) to multiple unrelated companies in Canada.

[120] As such, for the final determination, export prices were determined pursuant to section 24 of SIMA, based on the exporter's selling price, adjusted to take into account all costs, charges and expenses incurred in preparing the goods for shipment to Canada and resulting from the exportation and shipment of the goods.

Margin of Dumping

[121] The total normal value was compared with the total export price for all subject aluminum extrusions imported into Canada during the dumping POI, separately for Guangcheng and Guangya. The results reveal that the subject goods exported to Canada by Guangcheng were dumped by a weighted average margin of dumping of 33.8%, expressed as a percentage of export price. The subject goods exported to Canada by Guangya were dumped by a weighted average margin of dumping of 40.4%, expressed as a percentage of export price.

Hunter Douglas (United States)

[122] The Hunter Douglas group of companies is privately owned, and part of a wider corporate group, Hunter Douglas NV, located in the Netherlands.

[123] The Hunter Douglas group includes three USA subsidiaries, two of which are distributors and exporters of Chinese origin aluminum extrusions to Canada - Hunter Douglas Window Fashions (HDWF) and Hunter Douglas Designer Shades (HDDS).

[124] Hunter Douglas Window Coverings Inc (HDWC), the third party in this Hunter Douglas group, sources subject goods from Chinese manufacturers and paints them. Both HDWF and HDDS then purchase the painted subject goods from HDWC and sell them to USA and Canadian fabricators. The fabricators then use the subject goods in the manufacture of window shades and treatments based on the specifications of their dealer customers.

[125] Both HDDS and HDWF make export sales directly from the USA to two related Canadian importers.

[126] In the case of sales to related importers in Canada, the CBSA performs a reliability test of the export price under section 24 of SIMA. If the export price under section 24 of SIMA is found not to be reliable, then section 25 of SIMA would be used to determine export prices. The results of the reliability test for such sales made by HDDS and HDWF indicate that the section 24 export price was reliable.

[127] Accordingly, for the final determination, export prices were determined pursuant to section 24 of SIMA, based on the exporter's selling price, adjusted to take into account all costs, charges and expenses incurred in preparing the goods for shipment to Canada and resulting from the exportation and shipment of the goods.

Margin of dumping

[128] The total normal value was compared with the total export price for all subject aluminum extrusions imported into Canada during the Dumping POI. The subject goods exported by

HDDS were found not to be dumped. The subject goods exported by HDWF were dumped by a weighted average margin of dumping of 2.9%, expressed as a percentage of export price.

Non-Cooperative Exporters - Margin of Dumping

[129] For non-cooperative exporters, import pricing information available from the CBSA's internal Customs Commercial Systems was used for purposes of determining export price. The normal value was determined under a ministerial specification pursuant to section 29 of SIMA, based on the export price as determined under section 24, 25 or 29 of SIMA, plus an amount equal to 101% of that export price, which represents the highest margin of dumping found for a cooperative exporter during the investigation, excluding anomalies.

SUMMARY OF RESULTS – DUMPING

Period of Investigation – July 1, 2007 to June 30, 2008

Country	Dumped Goods as Percentage of Country Imports	Weighted Average Margin of Dumping	Country Imports as Percentage of Total Imports	Dumped Goods as Percentage of Total Imports
China	99.8%	72.6%	43%	43%

REPRESENTATIONS CONCERNING THE DUMPING INVESTIGATION

[130] Listed below are details of representations made to the CBSA with respect to the dumping investigation, including case arguments and reply submissions, from exporters, importers, the GOC and the Complainants. Following the representations on each issue is a response explaining the position of the CBSA. Since there were a number of common positions from multiple parties, the CBSA may make specific reference to only one or two parties when documenting the issue raised.

1. Grounds for Initiation and Burden of Proof

[131] The GOC submitted that the complaint fell short of establishing a "reasonable indication" of sufficient evidence of dumping or any causal link to any injury as required under Article 5.2 of the WTO *Anti-Dumping Agreement*.[7]

[132] Furthermore, the GOC submitted that the relevant provisions of SIMA must be construed strictly and that their application should be limited to the terms of the applicable provisions.[8] As such, the GOC argued that the CBSA must interpret and apply the provisions in section 20 of SIMA in a strict manner, as this section provides an exceptional method for determining normal values.[9]

[7] Exhibit 565 (NC) – GOC Case Arguments (Dumping and Subsidy), paragraph 169, page 40.
[8] Exhibit 565 (NC) – GOC Case Arguments (Dumping and Subsidy), paragraph 47, page 7.
[9] Exhibit 565 (NC) – GOC Case Arguments (Dumping and Subsidy), paragraph 47, page 9.

[133] Chinese exporter PanAsia claimed that the CBSA's interpretation of section 20 was inconsistent with SIMA.

[134] Another Chinese exporter, Kam Kiu, also submitted that the use of section 20 or invocation of Article 15 of China's WTO Accession Protocol does not eliminate the need for a fair comparison, and the CBSA has failed to properly interpret and apply Article 15.[10] The company stated that since section 20 is an exception to the general rules, the burden of proof for invoking the exception is on those parties requesting that section 20 be applied and that the evidence provided in the complaint was not sufficient to meet this burden of proof.[11]

[135] Chinese exporter Pingguo submitted that under section 20, the CBSA is required to adhere to a two-fold test: first, that domestic prices are substantially determined by the government of that country and second, that there is sufficient reason to believe that domestic prices are not substantially the same as they would be if they were determined in a competitive market.[12]

[136] Furthermore, Pingguo stated that at the preliminary determination, the CBSA conclusions referred to indirect price effects by GOC industrial policies and export restrictions, whereas Pingguo proposed that more substantive analysis is necessary.

[137] The GOC submitted that in order to demonstrate that domestic prices are substantially determined by the GOC, the evidence on the record must establish that the GOC has actively taken steps to determine prices. Consequently, the CBSA's list of indirect factors that are considered as methods a government may determine prices, cannot justify a section 20 finding. The GOC asserted that while certain measures may influence or affect prices, this is not sufficient to meet the "determine" threshold of section 20 of SIMA.[13]

[138] Kam Kiu added that the CBSA cannot properly determine that SIMA section 20 conditions exist on the basis of indirect factors and general government policies.[14]

[139] The GOC argued that the ordinary meaning of the words "substantially" and "determine" provide that the CBSA must establish that the GOC "determines or decides to a large extent or to a large degree" the domestic prices of aluminum extrusions in China to meet this threshold under section 20.[15]

[140] The GOC also submitted that, in assessing whether or not the domestic prices are not substantially the same as they would be if they were determined in a competitive market, that the CBSA must assess all of the factors that determine prices and "net out" other causal factors that may be driving prices. The GOC submitted that the CBSA did not conduct such an analysis at

[10] Exhibit 567 (NC) – Kam Kiu Case arguments, paragraph 8, page 3.
[11] Exhibit 567 (NC) – Kam Kiu Case arguments – paragraph 35, page 10.
[12] Exhibit 572 (NC) – Pingguo Case arguments – paragraphs 11 to 22.
[13] Exhibit 565 (NC) – GOC Case Arguments (Dumping and Subsidy) – paragraph 60, page 11.
[14] Exhibit 566- Kam Kiu Case arguments – paragraph 81.
[15] Exhibit 565 (NC) – GOC Case Arguments (Dumping and Subsidy) – paragraph 54, page 10.

the preliminary determination and simply noted that prices in China appeared lower than prevailing world prices.[16]

[141] The GOC further argued that the CBSA is bound by the fundamental principles of interpretation applicable to taxation laws in Canada to the effect that "any reasonable uncertainty or factual ambiguity resulting from a lack of explicitness in the statute should be resolved in favour of the taxpayer". The GOC submitted that in the event that there is any ambiguity in section 20 of SIMA, that the interpretation that favours the GOC and the exporters should be adopted.[17]

[142] The Complainants contended that section 20 of SIMA is applicable on the facts of the present investigation, indicating that the GOC policies exert sufficient influence on the aluminum extrusion industry, in China, so as to substantially determine prices of like goods and prices are not the same as they would be in a competitive market.[18] The Complainants contended that:

- The GOC manipulates aluminum billet cost, the largest material cost in the production of like goods, by providing access to low cost billets;
- The GOC manipulates domestic prices by changing export taxes and rebates; and
- The GOC controls production inputs and finished like goods through its laws, guidelines and through the influence of industry groups controlled by the GOC.[19]

[143] Furthermore, the Complainants responded to the issue of the various interpretations of section 20 of SIMA and cited illustrations of why the Chinese aluminum extrusion industry is not a competitive market.[20]

[144] In response to definitions proposed by the GOC for section 20 terms such as "substantially" and "determines", the Complainants contended that the GOC's own definition of these words, "support the interpretation of section 20 which contemplates that indirect government actions can substantially determine (non-market) pricing."[21]

[145] Regarding the GOC's suggestion that the CBSA's interpretation of SIMA relies on presumptions that "favour the taxpayer", the Complainants argued that such interpretations are based on a false premise and that SIMA's purpose is to protect the domestic industry.[22] The Complainants asserted that SIMA is "economic legislation" aimed to protect Canadian industry and is thus, not a taxation statute.

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[16] Exhibit 565 (NC) – GOC Case Arguments (Dumping and Subsidy) – paragraph 64, page 12.
[17] Exhibit 565 (NC) - GOC Case Arguments (Dumping and Subsidy), paragraph 39, page 7.
[18] Exhibit 564 (NC) – Complainants Case Arguments, paragraphs 2-3, page 1.
[19] Exhibit 564 (NC) – Complainants Case Arguments, paragraph 3, page 1.
[20] Exhibit 579 (NC) – Complainants Reply Submissions (Dumping and Subsidy), paragraph 3, page 1.
[21] Exhibit 579 (NC) – Complainants Reply Submissions (Dumping and Subsidy, Paragraph 5, page 1.
[22] Exhibit 579 (NC) – Complainants Reply Submissions (Dumping and Subsidy), Paragraph 4, page 1.

CBSA Response

[146] Absent sufficient information to the contrary, the CBSA proceeds in an anti-dumping investigation on the presumption that section 20 of SIMA does not apply to the sector under investigation. This approach follows the CBSA's section 20 policy.

[147] The information before the CBSA at the initiation of the investigation included information contained in the complaint from Canadian industry as well as information obtained through the CBSA's own research. The CBSA's analysis of this evidence and justification for initiating a section 20 inquiry is contained in the Complaint Analysis, which was placed on the CBSA's listing of exhibits for this investigation.[23]

[148] At the time of initiation, all known exporters, producers and the GOC were informed of the section 20 inquiry, requested to respond to a Request for Information and invited to provide any relevant information, evidence and arguments.

[149] Once a section 20 inquiry is undertaken, the President may, having regard to the information obtained from the complainant, the government of the country of export, producers, exporters or any other sources of relevant information, form an opinion on the basis of fact and positive evidence that the conditions described under section 20 exist in the sector under investigation.

[150] Regarding the sufficiency of information in the complaint to meet the threshold to initiate a section 20 inquiry, the CBSA notes that its policy with respect to the application of section 20 requires complainants to provide sufficient evidence that the conditions of section 20 exist in the relevant industry sector if they wish to base their price and cost estimates on third country information. In their complaint, the Complainants provided evidence that the section 20 conditions were met. The Complainants further provided normal values estimated on surrogate country costs and estimated costs in China.

[151] In short, the arguments regarding the alleged insufficiency of evidence to initiate a section 20 inquiry do not specifically address or refute any of the CBSA evidence or analysis contained in its Complaint Analysis.

[152] As in previous section 20 inquiries, the CBSA references a list of direct and indirect factors that governments may use to substantially determine prices. The CBSA's use of indirect factors is well established and the CBSA is of the opinion that such factors can result in a government's substantial determination of prices. The CBSA considered the cumulative effect that the GOC's regulatory, tax and other measures have exerted on the Chinese aluminum extrusions sector.

[153] The information on the record discloses both the scope and nature of the GOC measures in the aluminum extrusion sector and the related impact of these measures on pricing. The CBSA is satisfied that the evidence on the administrative record for this investigation is reliable and credible. The evidence is sufficient for the President to form the opinion that the GOC is

[23] Exhibit 42 (PRO) – CBSA Complaint Analysis, August 13, 2008.

substantially determining domestic prices of aluminum extrusions in China and that there is sufficient reason to believe that these prices are not the same as they would be if they were determined in a competitive market.

2. Prices for Aluminum Extrusions

[154] The GOC submitted that the CBSA failed to accord proper weight to the "ferociously competitive and fragmented nature of the Chinese aluminum extrusions industry and instead misdirected its analysis mainly to the state of the upstream aluminum industry in general." The GOC submitted that the primary focus of the section 20 inquiry must be specific to the aluminum extrusions industry, not generalized to the raw material production industry.[24]

[155] PanAsia also submitted that the CBSA should restrict its sector review to the manufacture, production and sale of "like products." PanAsia further contended that the process used to determine whether Chinese industry sectors are non-market violates the procedure for determining market economy status agreed upon among WTO members in China's WTO Accession Protocol.[25] PanAsia claimed that by relying on this flawed application, the Government of Canada is acting in violation of its WTO obligation.[26]

[156] The GOC submitted that the CBSA failed to conduct a "pass-through" analysis in assessing whether or not the alleged price effects on aluminum have indeed passed-through to any downstream users of the raw materials.

[157] The GOC argued that the same fundamental principles for determining whether or not an upstream subsidy is passed-through must be applied. In this regard, the GOC noted that the CBSA has failed to conduct any analysis to show that any benefit from any program in China relating to aluminum has contributed to or benefited producers of aluminum extrusions or had a material impact on aluminum prices paid by aluminum extrusions producers.[27]

[158] The GOC further stated that the CBSA completely failed to note that approximately half of the aluminum consumed by the aluminum extrusions sector is imported and not produced in China and that imports of aluminum into China rose during the POI, which would not be possible if market prices were artificially suppressed by government interference.[28]

CBSA Response

[159] Given that the cost of raw aluminum constitutes a high percentage of the cost of aluminum extrusions, the CBSA's section 20 analysis appropriately considered the impact of the GOC's involvement in the upstream industry. The evidence on the record and the CBSA's analysis demonstrates that GOC actions led to the price of aluminum in China being substantially lower than the prices found in the rest of the world during the POI, for what is essentially a commodity product. In both the preliminary and final determinations, the CBSA has

[24] Exhibit 565 (NC) - GOC Case Arguments (Dumping and Subsidy), paragraphs 79 - 80, pages 15 - 16.
[25] Exhibit 569 (NC) – Pan Asia Case Arguments, paragraph 25, page 8.
[26] Exhibit 569 (NC) – PanAsia Case Arguments, paragraph 25, page 8.
[27] Exhibit 565 (NC) - GOC Case Arguments (Dumping and Subsidy), paragraph 92, page 19.
[28] Exhibit 565 (NC) - GOC Case Arguments (Dumping and Subsidy), paragraph 136D, page 31.

demonstrated that the prices paid by cooperative exporters for aluminum (i.e. downstream users) are consistent with this conclusion.

[160] Regarding the GOC's assertion that "half of the aluminum consumed by the aluminum extrusions sector is imported and not produced in China," the CBSA notes that amongst the eight cooperative Chinese exporters, only one exporter imported marginal amounts of aluminum during the entire dumping POI; the rest relied entirely upon domestically produced aluminum. The CBSA further notes that the GOC's support for their assertion refers to the fact that aluminum producers in China import half of their alumina requirements, not that aluminum extruders import half of their aluminum.

[161] However, evidence on the record regarding alumina in China indicates that imports of alumina have been decreasing and amounted to approximately 20% of Chinese consumption in 2007.[29] The CBSA did not analyze the impact GOC measures would have on the price of alumina in China since alumina is not a direct raw material for aluminum extrusions and, to the extent that the price of alumina is affected by GOC policies, this effect would be reflected in the price of aluminum in China which was already included in the analysis.

[162] Furthermore, the CBSA does not disagree with the GOC's statement that extensive import penetration and rising import penetration for aluminum would not be possible in the POI if the Chinese market prices were artificially suppressed by government influence. Indeed, the evidence on the record demonstrates that imports of aluminum shrank over 60% from 2006 to 2007, and further demonstrates that imports of aluminum comprised less than 1% of China's domestic consumption of primary aluminum in 2007.[30] These facts demonstrate that aluminum import penetration was not possible, and was even significantly eroding during the POI, given the artificially suppressed government price of aluminum in China. These facts also support the analysis that the low price of aluminum in China has "passed through" to aluminum extruders in that virtually no imported aluminum was available in China during the POI.

[163] The CBSA's policy regarding the application of section 20 provides that the President may, having regards to the evidence on the record, form an opinion that the conditions described under section 20 exist in the sector under investigation and reflects Canada's implementation of its rights and obligations under the WTO.

3. Assessment of GOC Policies

[164] The GOC submitted that the CBSA has misconstrued the nature of the GOC "policies" it has examined, and reiterated its position that the *Industrial Development Policy for the Aluminum Industry* and the *Special development Plan for Aluminum Industry Development* have not been formally promulgated by the State Council and are not in effect.

[165] The GOC further argued that, even if these policies had been formally adopted, they are at most "aspirational expressions of the GOC's hopes for an industry".[31] The GOC further

[29] Exhibit 475 (NC) - GOC Response to Supplemental Section 20 RFI #2, page 347.
[30] Exhibit 475 (NC) - GOC Response to Supplemental Section 20 RFI #2, page 351.
[31] Exhibit 565 (NC) - GOC Case Arguments (Dumping and Subsidy), paragraph 98, page 20.

argued that the CBSA failed to properly consider the stated objective and intent of these industrial policies, in that they are directed towards concerns such as the environmental impact of inefficient aluminum smelters in China.

[166] In response to the GOC, the Complainants contended that China remains a country where the central government is an authority whose mere "aspirations" have more effect than actively enforced laws in other countries.

[167] The GOC also contested the CBSA's listed restrictions, minimum standards and thresholds for the aluminum industry, which the CBSA noted as being derived from GOC laws and policies. The GOC argued that these standards are not legally mandated and enforceable, and further noted that they all relate to the aluminum smelting industry and that the CBSA has not shown any causal link to any measurable price effects in the aluminum extrusions industry.

[168] The GOC further argued that policies that restrict investment and new production capacities should serve to limit supply and have a price increasing effect, if any. The GOC also noted that their industrial policies are "market neutral" (i.e. they will not have any impact on market prices)[32] and that they had "allowed increases in costs in the aluminum industry. The intended effect was to slow down overproduction". They further noted that these measures would result in higher costs of production, which would counterbalance the effect of restricting exports.[33]

CBSA Response

[169] In making its preliminary determination, the CBSA presented the facts surrounding its request for the *Industrial Development Policy for the Aluminum Industry* and the *Special Development Plan for Aluminum Industry Development.* The CBSA also presented the GOC's explanations for refusing to provide these two documents. At that time, the CBSA explained that it believed the documents existed and further explained why the documents were requested. The CBSA did not attempt to speculate as to the contents of these two documents that were never provided, nor did the CBSA ever infer that such documents resulted in enforceable measures.[34]

[170] For the purposes of the preliminary determination, the CBSA did rely upon numerous GOC circulars, regulations and other measures, provided by the GOC in its section 20 RFI responses, that demonstrate the restrictions, minimum standards and thresholds for the aluminum and aluminum extrusions industries. However, those items did not include the *Industrial Development Policy for the Aluminum Industry* and the *Special Development Plan for Aluminum Industry Development.*[35]

[171] Regarding the GOC's statement that its industrial policies are "at most aspirational expressions of the GOC's hopes for an industry", the CBSA notes that many of the GOC

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[32] Exhibit 332 (NC) - GOC Response to Supplemental Section 20 RFI #1, page 4.
[33] Exhibit 475 (NC) - GOC Response to Supplemental Section 20 RFI #2, page 3.
[34] Exhibit 444 (PRO) - Memorandum to file: Section 20 Inquiry of the aluminum extrusions sector in China - Preliminary Determination.
[35] Exhibit 444 (PRO) - Memorandum to file: Section 20 Inquiry of the aluminum extrusions sector in China - Preliminary Determination.

documents obtained by the CBSA contain very strict wording, including harsh penalties for companies that fail to conform to the written objectives.

[172] For example, in the *Emergent Circular on Curbing Rebound Investment in the Aluminum Industry*, which respects aluminum enterprises that have been using "backward production technology" or are considered "illegal" production facilities according to the industry policy and related regulations, it states rather directly that the government will get the companies "out of the market through stopping supplying power and water."[36] The CBSA is of the opinion that this type of language clearly establishes that the GOC's industrial policies and regulations are much more than aspirational expressions of hope for an industry.

[173] Regarding the market neutrality of GOC industrial policies, the GOC themselves noted that: "macro-economic adjustment policies have also had some influence on the general level of prices".[37] As previously noted, they further stated that they have "allowed" cost increases within the industry and, without providing any analysis, stated that these cost increases would fully offset the effect of export restrictions. The GOC, in their own statements and arguments, are therefore acknowledging the effects that their industrial policies and export restrictions can have on determining prices.

[174] The CBSA has considered the cumulative effect that the GOC's measures have exerted on the aluminum extrusions sector in China as part of its "Summary of Findings - Section 20" analysis in **Appendix 3** to this Statement of Reasons.

4. Prices of Aluminum in China and on the London Metal Exchange (LME)

[175] The GOC noted that in its preliminary section 20 determination, the CBSA has assumed a 75% aluminum raw material cost on the overall cost of producing aluminum extrusions. The GOC contended this is a "significant overstatement" of the actual proportion, which the GOC understands is closer to 67%. The GOC noted that certain responding producers will be making detailed arguments in this regard and that the CBSA must fully consider this evidence and related arguments in making its final determination.[38]

[176] The GOC submitted that the CBSA's section 20 determination based on the factual assumption that prevailing aluminum prices in China are consistently lower than LME prices is wrong and not supported by the evidence on the record. The GOC states that a comparison between the historical data for the monthly prices of aluminum on the Shanghai Nonferrous Metals Market and the LME during 2007 and the first half of 2008 shows that there is an insignificant price divergence of 3.67% on average. The same comparison with historical spot price information from the Ling Tong Metal (LTM) shows an average price divergence of 2.6%. The GOC argued that these figures demonstrate that the spot prices for aluminum in the Chinese markets closely follow LME and world prices.[39]

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[36] Exhibit 266 (NC) - GOC Response to the Government's RFI (Section 20), page 836.
[37] Exhibit 475 (NC) - GOC Response to Supplemental Section 20 RFI #2, page 6.
[38] Exhibit 565(NC) - GOC Case Arguments (Dumping and Subsidy), paragraph 135, page 30.
[39] Exhibit 565(NC) - GOC Case Arguments (Dumping and Subsidy), paragraphs 129 – 134, pages 28 - 29.

[177] The GOC argued that, in comparing the LME and Shanghai Futures Exchange (SHFE) prices of aluminum, the CBSA only took into account the alleged price differences without considering the similarities in fluctuations, the influence of the LME over the SHFE, and the difference in the size of both markets. These factors should have been examined and considered before concluding that there is a substantial price difference between aluminum in the "world market" and the SHFE.[40]

[178] Pingguo stated that it does not purchase aluminum ingots but molten aluminum, and that the SHFE price for aluminum is sometimes higher than the LME. Pingguo further added that it quotes the LTM price, which is a regional metal market exchange and is generally higher than the Shanghai Futures Exchange price.[41]

[179] Pingguo contended that China's pricing in the aluminum sector is a function of supply and demand forces and China's aluminum ingot market prices were actually higher than the LME for half of the POI. Pingguo also submitted that global competition necessarily entails there be variations from one market to the other.

[180] The GOC further submitted that the CBSA failed to consider any local premiums for delivery, or the effects of long term supply contracts for aluminum extrusion producers, both of which the CBSA has information on the record to consider.[42]

[181] The GOC argued that even if prices in China were materially lower, that the CBSA cannot simply assume that it is a result of government intervention. The GOC noted that the CBSA must take into consideration all relevant factors that may drive prices in the Chinese market, but the preliminary determination does not disclose "even a perfunctory attempt at such rigour."[43]

[182] In its reply submissions, PanAsia stated that there is absolutely no evidence of GOC involvement in any raw material pricing in the aluminum sector. Furthermore, PanAsia, like many other Chinese extruders, does not buy billets but ingots, which it melts into billets. PanAsia also submitted that the CBSA should acknowledge the difference in the methods of production to establish a fair comparison.

[183] With respect to the Complainants' arguments that there is manipulation of prices through taxation policies, Pingguo submitted that this was no different than from taxation policies in Canada.[44] Pingguo submitted that the reasoning in support of the President opinion established at the preliminary determination is weak.

[184] As for difference betweens prices on the LME, the SHFE and the LTM, the Complainants reiterated that the central fact is that the GOC substantially determined pricing of aluminum extrusions in the POI. To this end, the largest part of the reference price (the SHFE price of the ingot), is not the same as in a competitive market (i.e. the LME).

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[40] Exhibit 565(NC) - GOC Case Arguments (Dumping and Subsidy), paragraph 136C, page 31.
[41] Exhibit 578 (NC) – Pingguo Reply Submissions, paragraphs 6 - 8, page 2.
[42] Exhibit 565(NC) - GOC Case Arguments (Dumping and Subsidy), paragraphs 132 - 133, page 29.
[43] Exhibit 565(NC) - GOC Case Arguments (Dumping and Subsidy), paragraph 134, page 29.
[44] Exhibit 578 (NC) – Pingguo Reply Submissions – paragraphs 3 - 15, pages 1 - 4.

[185] The Complainants alleged that purchasing on the exchange where materials are artificially cheaper, due to the GOC's residency constraints on the SHFE, which is enjoyed exclusively by Chinese producers, allows them to sell goods at below fair market prices. The Complainants indicated that this very fact proves that the SHFE prices are artificially and substantially determined by the GOC and are not the same as in a competitive market.[45]

CBSA Response

[186] In response to the GOC's representation, the CBSA did not assume a 75% raw material cost of aluminum in making its preliminary determination. As stated in the preliminary determination Statement of Reasons, this number is based on the CBSA's review of the cooperative exporters' cost of production information for the dumping POI provided in their responses to the dumping RFI. The CBSA adjusted this analysis for the final determination to reflect cost revisions submitted during the investigation. The CBSA notes that no exporter provided representations stating that the CBSA's figure used at the preliminary determination was incorrect.

[187] The CBSA further notes the GOC assertion that the CBSA overstated the cost of aluminum by 8% (75% of cost versus 67% of cost). The GOC characterized this 8% difference as a "significant overstatement". In this regard, the CBSA would note that the President's opinion that section 20 conditions exist in the Chinese aluminum extrusions sector is based on evidence that clearly shows that the domestic prices of aluminum extrusions in China were lower than in other competitive markets by 16% to 28% during the dumping POI.

[188] The GOC argued that the prices for aluminum on various market exchanges in China closely tracked the LME (world price). However, the Chinese aluminum prices in these Chinese market exchanges are reported inclusive of the 17% Chinese VAT, whereas the LME prices do not include VAT. The GOC did not remove the 17% Chinese VAT included in the Chinese aluminum prices in its comparative analysis. The CBSA's comparison removed this Chinese tax to bring the quoted Chinese aluminum prices to an appropriate comparative basis with the LME quoted prices. With this adjustment, it became clear that the Chinese quoted prices were lower that the LME quoted prices.

[189] The CBSA believes its analysis of LME aluminum prices and prices in China, as evidenced through the SHFE, appropriately considers differences between the two markets. Given the alleged similarities in fluctuations, the CBSA finds the divergence of SHFE prices from LME prices in response to GOC tax changes to be compelling evidence of the GOC's determination of prices through tax changes.

[190] In regards to making proper price comparisons, it should be noted that companies purchasing aluminum from aluminum producers quoting LME prices would also pay local premiums on their purchases. This is evidenced by information contained in both the complaint and in information from a Chinese extruder with a supply agreement for importations of aluminum from an international supplier.

[45] Exhibit 579 (NC) - Complainants Reply Submissions, paragraph 13, page 6.

[191] The CBSA's analysis of the prevailing price of aluminum in China for the preliminary and final determinations demonstrates that the comparably low price of aluminum in China results from GOC actions. Again, the GOC has not indicated what evidence on the record disputes this analysis.

[192] The CBSA is satisfied that, based on the information collected during the course of the investigation including that obtained and verified during the final stage of the dumping investigation, the GOC is exerting significant influence on the aluminum extrusion sector and related pricing practices, resulting in substantially different domestic prices than would otherwise exist were it a competitive market.

[193] Regarding arguments concerning the interpretation of the section 20 provisions of SIMA and the evidentiary threshold, the CBSA believes that there is evidence on the record that is reliable and credible, has been properly interpreted, and is sufficient to form an opinion that section 20 conditions apply in the aluminum extrusion sector in China. The information on the record discloses both the scope and nature of the GOC measures in the aluminum extrusion sector and the related impact of these measures on pricing. See **Appendix 3** "Summary of Findings - Section 20" for details and analysis.

[194] The CBSA maintains that the information on the record supports the position that the GOC has exerted significant influence on the Chinese aluminum extrusions sector.

5. Normal Value and Surrogate Methodology

[195] PanAsia and Kam Kiu submitted that the CBSA had not been transparent in its analysis and conclusions regarding the application of section 20(1)*(c)* and 20(1)*(d)* of SIMA. PanAsia further contended that the CBSA incorrectly chose not to use its privileges of extending the preliminary phase of the investigation by an additional 45 days.

[196] PanAsia claimed that CBSA investigations continue to rely on methodologies that do not result in surrogate values and are thus not in good faith in adhering to the international agreements. Kam Kiu and Pingguo offered similar comments on this issue.

[197] Kam Kiu also indicated that the surrogate methodology employed by the CBSA at the preliminary determination was unfair and inaccurate. Kam Kiu alleged that the CBSA did not have a sound basis for ignoring the alternative methodology in 20(1)*(d)*.

[198] Pingguo referred to the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 – Annex II,* where a hierarchy of information to be used in the course of an anti-dumping investigation is listed. Pingguo referenced that the preferred information is that which is actually provided by the producers and exporters of the subject goods, along with that of the government in the country of examination.

[199] Pingguo argued that such submitted information cannot be rejected or disregarded without a thorough explanation by the investigating authority before information from a secondary source is used. Pingguo argued that the information from a secondary source could

only be used in circumstances where the interested party has failed to cooperate.[46] Pingguo also submitted that the CBSA failed to make adjustments to ensure a fair comparison between export price and normal value.[47]

[200] PanAsia further contended that section 20 refers to prices and costs in countries other than Canada. The company asserted that there is no reference in section 20 to using Canadian costs even if adjusted per the suggestion of the Complainants.

[201] PanAsia submitted that a determination of normal values under Section 29 of SIMA, which is based on the facts available, would allow the CBSA to use Chinese processing costs and General, Selling and Administrative (GSA) expenses.

[202] PanAsia and Kam Kiu also submitted that the use of the section 20 methodology does not preclude the use of each cooperative exporter's own processing costs and GSA expenses in calculating normal values. Kam Kiu submitted that the CBSA rejected this data in favour of an alternative methodology, based on the self-serving and unverified filings of petitioners, which by its nature, is arbitrary and by definition punitive.[48]

[203] With respect to the section 20 normal values, Kam Kiu submitted that their normal values are far closer to and in fact above Canadian prices and have no relationship to prices in India, the purported surrogate information base. Kam Kiu alleged that the CBSA did not reveal its precise methodology with respect to normal value calculations in any reliable way.[49]

[204] Pingguo further submitted that the cost of production portion of the normal value must be reduced for further finished aluminum extrusions. Pingguo submitted that it purchases molten aluminum not aluminum ingots and deductions to the normal value are necessary to account for these differences.[50]

[205] Pingguo also claimed that the CBSA established normal values based on only the alloy and surface finish of the aluminum extrusions and as a result, ignored the fact that there are standard shapes of aluminum extrusions and also very complex aluminum extrusions. Pingguo argued that this flaw has led to a significant overstatement of the normal values calculated by the CBSA and high margins of dumping.

[206] The GOC further concluded that the CBSA must assign an "all others" rate to all other exporters based on the weighted average margin of dumping found for the responding exporters.[51]

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[46] Exhibit 572 (NC) – Pingguo Case arguments, paragraph 29, page 10.
[47] Exhibit 572 (NC) – Pingguo Case arguments, paragraph 37, page 12.
[48] Exhibit 567 (NC) – Kam Kiu Case arguments by Kam Kiu, paragraph 179, page 49.
[49] Exhibit 567 (NC) – Kam Kiu Case Arguments, paragraph 45, page 13.
[50] Exhibit 572 (NC) - Pingguo Case Arguments, paragraph 39, page 13.
[51] Exhibit 565 (NC) - GOC Case Arguments (Dumping and Subsidy), paragraph 239, page 59.

CBSA Response

[207] The CBSA requested, but did not receive sufficient information to estimate or determine normal values pursuant to paragraphs 20(1)*(c)* and 20(1)*(d)* of SIMA. All of the information provided to the CBSA was placed on the administrative record and the public listing of exhibits. This information was accessible to all interested parties who have disclosure privileges at any time during the proceedings. The Statement of Reasons issued at the preliminary determination explained that sufficient information had not been received to apply paragraph 20(1)*(c)*, and explained how normal values were estimated for purposes of the preliminary determination. This Statement of Reasons explains that sufficient information was not received to apply either paragraph 20(1)*(c)* or paragraph 20(1)*(d)*, and explains how normal values were determined for purposes of the final determination. It is evident from the information on the record that the CBSA did not have available sufficient pricing, costing or import data relating to a surrogate country to possibly apply the said provisions of section 20. In the absence of surrogate country information, normal values were determined on the basis of the best information available.

[208] The CBSA has fully met its investigative obligations under section 20 by contacting producers in various surrogate countries and also in requesting information from known importers on their purchases of like goods from countries other than China.

[209] PanAsia contended that the CBSA incorrectly chose not to extend the preliminary phase of the investigation by up to 45 days. The CBSA notes that subsection 39(1) of SIMA permits the President to extend the preliminary investigation under certain circumstances which make it unusually difficult for the decision to be made within the prescribed timeframes. In this investigation and in accordance with the provisions in SIMA, the President was not of the opinion that an extension was warranted.

[210] The President has rendered the opinion that domestic prices in the aluminum extrusion sector are substantially determined by the GOC and that there is sufficient reason to believe that Chinese domestic prices of aluminum extrusions are not substantially the same as they would be in a competitive market. This opinion precludes the CBSA from using sales and associated costing data from the respective cooperating exporters.

[211] For the purposes of the final determination, in the absence of surrogate country information, normal values were determined under a ministerial specification under section 29 of SIMA, based on the best information available to the CBSA, to approximate surrogate normal values. Given this determination, the arguments submitted, which do not favour this approach, fail to provide an acceptable alternative to establish normal values.

[212] In respect of considerations for 'standard' versus 'custom' shapes, while the CBSA did not establish separate normal values for these two groups, the CBSA did provide information to the Tribunal relating to the margins of dumping for the cooperative exporters for standard shapes and custom shapes as per the definitions provided by the Tribunal on December 18, 2008.

[213] Lastly, the CBSA notes that the GOC did not provide any arguments regarding why the CBSA should use a weighted average margin of dumping for the "all others" rate. The CBSA's treatment of non-cooperative exporters in this dumping investigation is consistent with its past

practices in this regard. The GOC has not explained why the CBSA should deviate from this established practice.

6. Import Duties, VAT Rebates and Export Taxes

[214] The GOC submitted that there is no evidence to support the CBSA's assertion that the domestic prices of aluminum extrusions in China are substantially determined by the manipulation of VAT rebates. The GOC argued that the CBSA's reasoning in arriving at these conclusions is "riddled with unsubstantiated assumptions," and that the CBSA has failed to demonstrate that movements in domestic prices were not caused by other normal market factors.[52]

[215] The GOC also asserted that a section 20 determination must be premised on active price determination by a government, and that it is not sufficient to rely upon the fact that a government may have implemented general measures that have some permanent or temporary price suppressive or increasing effect.

[216] The GOC argued that the CBSA has confused the two distinct concepts of "influence" and "determine", and that the simple "effects" of government regulations aimed at environmental or other legitimate areas of government regulation cannot be interpreted to meet the high thresholds required by the wording of section 20 of SIMA ("substantially" and "determine"). They concluded that the CBSA has erred in equating influence or effect with price determination, contrary to the letter and spirit of section 20 of SIMA.[53]

[217] The GOC further submitted that if the CBSA insists on assessing such indirect factors that it must consider the net effect of all such measures, not just those the CBSA assumes may have driven prices down in China. The GOC noted that the preliminary determination disclosed no such analysis.[54]

CBSA Response

[218] The CBSA analyzed information on the record concerning export volumes of goods affected by the removal of VAT rebates and export taxes. This evidence demonstrates that, immediately following the GOC's tax changes to restrict exports, export volumes of the affected goods plunged dramatically.

[219] The CBSA's analysis at the preliminary determination also demonstrated that the reduction of VAT rebates and imposition of export taxes on aluminum coincided with a significant divergence in SHFE and LME prices. The CBSA is satisfied that this presents reasonable evidence that the reduction of VAT rebates and imposition of export taxes resulted in a reduction in export volumes and corresponding reduction in domestic prices as domestic supply increased.

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[52] Exhibit 565 (NC) - GOC Case Arguments (Dumping and Subsidy), paragraph 114, pages 24 and 25.
[53] Exhibit 565 (NC) - GOC Case Arguments (Dumping and Subsidy), paragraph 123, page 27.
[54] Exhibit 565 (NC) - GOC Case Arguments (Dumping and Subsidy), paragraph 126, page 28.

[220] The CBSA notes that the GOC has failed to identify information on the record that would provide an alternative explanation as to how the prices of aluminum, a world wide traded commodity product, could be significantly lower in China than the rest of the world. Instead, the GOC supplied other spot price information and conducted its own comparison to show that prevailing prices of aluminum in China are only about 3% below prices on the LME. However, the GOC's analysis did not remove the 17% VAT that is included in the reported spot price data. To make the data comparable to LME quoted prices, the 17% Chinese VAT should be removed.

7. Onsite Verification Meetings

[221] Pingguo submitted that variations do occur between the exporter's official invoices and the commercial invoices issued to customers. Pingguo submitted that while invoices are generally identical in terms of amount and value, certain variations could arise.[55] Pingguo submitted that variations do not diminish the reliability and accuracy of the information provided to the CBSA in respect of export sales to Canada for the purposes of cooperating in this investigation.[56]

CBSA Response

[222] Issues with respect to the reliability and accuracy of information submitted to the CBSA by Pingguo arose in the course of the verification. For example, Pingguo stated that it was not in a position to reconcile its domestic sales database provided to the CBSA with its financial information.[57]

[223] The reconciliation of domestic and export sales to an enterprise's financial data is a key component of the CBSA's verification and is material to the CBSA's decision whether or not normal values and export prices can be established based on the exporter's information.

[224] As indicated on the CBSA's administrative record, including the assembled verification exhibits,[58] there were several attempts by Pingguo to provide revised export sales to Canada.

[225] On December 2, 2008, during the company's last attempt to reconcile the data and provide explanations, Pingguo terminated the verification with the CBSA.

[226] On December 24, 2008, Pingguo provided additional information concerning the relevant regulatory provisions under Chinese law concerning export invoices, tax rebate exemptions and enterprise accounting.[59]

[227] However, while Pingguo provided the legislation to the CBSA, it did not make further submissions or provide complete details of its own information concerning these variances, and all other variances, along with the necessary explanations and supporting documentation. As a

[55] Exhibit 572 (NC) – Pingguo Case Arguments, paragraph 51, page 18.
[56] Exhibit 572 (NC) – Pingguo Case Arguments, paragraph 53, page 18.
[57] Exhibit 498 (NC) – Pingguo Verification Exhibit 32, "Representations from PAA Regarding Domestic Sales".
[58] Exhibit 498 (NC) – Pingguo Verification Exhibit 32, "Representations from PAA Regarding Domestic Sales".
[59] Exhibit 510 (NC) – Supplemental Information from Pingguo, December 24, 2008.

result, Pingguo's information was deemed to be deficient and could not be used for the purposes of the final determinations.

8. Measures by Investigating Authorities of a Country Other Than Canada

[228] In its representations, Jianmei stated that in South Africa's 2007 anti-dumping investigation on aluminum bars, rods and profiles originating in or exported from China, Jianmei participated and was assessed a dumping rate of zero at the final determination.[60]

CBSA Response

[229] The CBSA's dumping investigation on certain aluminum extrusions is independent of the investigation initiated by South Africa. The determination in that investigation is not relevant to this process.

9. Other Factors

[230] The GOC submitted that the CBSA failed to take into account or to give appropriate weight to other important factors that confirm that the aluminum extrusions industry in China is highly competitive and market driven.

[231] The GOC noted that the CBSA merely mentioned the low market concentration of the aluminum extrusions industry in China (460 above-scale producers), but did not provide reasons why it did not consider this any further in its analysis. The GOC further noted that the CBSA mentions the low levels of state-ownership amongst aluminum extrusions producers in China but ignored this evidence in its analysis.[61]

[232] Pingguo submitted that there is a basic flaw in the product definition in that the CBSA's subject goods definition describes a process and not a product.[62]

[233] Pingguo also submitted that the multiple exchange rate calculations from US currency to the Chinese Renminbi to Canadian currency in the calculation of export prices has erroneously decreased the export price resulting in an inflated margin of dumping.[63]

[234] PanAsia and Kam Kiu submitted that, as has been accepted in previous CBSA investigations, the proper point in the transaction chain to determine export prices pursuant to section 24 of SIMA is the sales between the company's trading arm and the customers in Canada. PanAsia and Kam Kiu objected to a determination based on the transfer price between the manufacturer in China and trader located in another country (i.e. Macau, Hong Kong).

[235] The Complainants also replied to issues raised in regards to the differences between the LME versus SHFE and LTM prices, the pass-through analysis, the nature of the GOC policies

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[60] Exhibit 188 (NC) – Response to RFI by Jianmei, question A12, page 7.
[61] Exhibit 565 (NC) - GOC Case Arguments (Dumping and Subsidy), paragraph 136A, page 30.
[62] Exhibit 572 (NC) – Case arguments from Pingguo, paragraphs 4 – 10, pages 1 - 3.
[63] Exhibit 572 (NC) – Case arguments by Pingguo – paragraph 42, page 14.

and guidelines as well as on state-owned aluminum companies.[64] The Complainants concluded that the evidence supported the appropriateness of a section 20 determination.

CBSA Response

[236] The CBSA notes that the information concerning the Chinese aluminum extrusions industry make-up, in terms of low market concentration and low state-ownership, was included, analysed and given appropriate weight in its analysis for both the preliminary and final determinations.

[237] Pingguo's allegation that the CBSA's product definition is flawed on the basis that it defines a process and not a product is unfounded. The CBSA's product definition clearly defines the parameters of the goods under investigation. Any description of the extrusion process that coincides with or follows that definition, as with other product information, is meant to help clarify the nature of the product, so as to best ensure that all interested parties are well informed as to the parameters of the investigation.

[238] With respect to the exchange rates, the nature of export trade is that there are sales made in different currencies. The exchange rates applied by the CBSA were the daily exchange rates as posted by the Bank at Canada on the date of sale of the goods as per subsection 44(1) of the *Special Import Measures Regulations*.

[239] The CBSA recognizes that PanAsia China and PanAsia Macau, although they are set up as two distinct companies, are owned by the same conglomerate and operate as one business entity for the purposes of exporting the subject aluminum extrusions to Canada. As a result, the CBSA recognized the transaction price between PanAsia Macau and the customers in Canada in establishing export prices under section 24 of SIMA for purposes of the final determinations.

SUBSIDY INVESTIGATION

[240] In accordance with SIMA, a subsidy exists if there is a financial contribution by a government of a country other than Canada that confers a benefit on persons engaged in the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export or import of goods. A subsidy also exists in respect of any form of income or price support within the meaning of Article XVI of the General Agreement on Tariffs and Trade, 1994, being part of Annex 1A to the WTO Agreement, that confers a benefit.

[241] Pursuant to subsection 2(1.6) of SIMA, there is a financial contribution by a government of a country other than Canada where:

(a) practices of the government involve the direct transfer of funds or liabilities or the contingent transfer of funds or liabilities;
(b) amounts that would otherwise be owing and due to the government are exempted or deducted or amounts that are owing and due to the government are forgiven or not collected;

[64] Exhibit 579 (NC) - Reply Submissions (Dumping and Subsidy) from Complainants, paragraphs 8-21, pages 4 – 8.

(c) the government provides goods or services, other than general governmental infrastructure, or purchases goods; or
(d) the government permits or directs a non-governmental body to do anything referred to in any of paragraphs (a) to (c) where the right or obligation to do the thing is normally vested in the government and the manner in which the non-governmental body does the thing does not differ in a meaningful way from the manner in which the government would do it.

[242] Where subsidies exist, they may be subject to countervailing measures if they are specific in nature. A subsidy is considered to be specific when it is limited, in law, to a particular enterprise within the jurisdiction of the authority that is granting the subsidy; or is a prohibited subsidy. An "enterprise" is defined under SIMA as also including a group of enterprises, an industry and a group of industries. A "prohibited subsidy" includes a subsidy which is contingent, in whole or in part, on export performance or a subsidy or portion of a subsidy that is contingent, in whole or in part, on the use of goods that are produced or that originate in the country of export.

[243] Notwithstanding that a subsidy is not specific in law, a subsidy may also be considered specific having regard as to whether:

(a) there is exclusive use of the subsidy by a limited number of enterprises;
(b) there is predominant use of the subsidy by a particular enterprise;
(c) disproportionately large amounts of the subsidy are granted to a limited number of enterprises; and
(d) the manner in which discretion is exercised by the granting authority indicates that the subsidy is not generally available.

[244] For purposes of a subsidy investigation, the CBSA refers to a subsidy that has been found to be specific as an "actionable subsidy," meaning that it is subject to countervailing measures if the persons engaged in the production, manufacture, growth, processing, purchase, distribution, transportation, export or import of goods under investigation have benefited from the subsidy.

Investigation process

[245] Prior to the initiation of the investigation, the Complainants submitted documents alleging that the producers and exporters of aluminum extrusions in China benefited from actionable subsidies provided by the GOC.

[246] Financial contributions provided by state-owned enterprises operating under the direct or indirect control or influence of the GOC may also be considered to be provided by the GOC for purposes of this investigation.

[247] At initiation, the CBSA identified 54 potential subsidy programs in the following eight categories:

1. Special Economic Zones (SEZ) and other Designated Areas Incentives;
2. Grants;

3. Equity Infusions/Debt-to-Equity Swaps;
4. Preferential Loans;
5. Preferential Income Tax Programs;
6. Relief from Duties and Taxes on Materials and Machinery;
7. Reduction in Land Use Fees; and
8. Purchase of Goods/Services from State-owned Enterprises.

[248] Details regarding these potential subsidies were provided in the *Statement of Reasons* issued for the initiation of this investigation. This document is available through the CBSA website at the following address:
http://www.cbsa-asfc.gc.ca/sima-lmsi/i-e/ad1379/ad1379-i08-de-eng.pdf .

[249] In conducting its investigation, the CBSA sent subsidy RFIs to identified potential exporters located in China and to the GOC. Under SIMA, the amount of subsidy is based on the benefits conferred by all levels of a foreign government, to any party engaged in the production, manufacture, growth, processing, purchase, distribution, transportation sale, export or import of the goods. Similarly, the determination of the amount of subsidy normally requires complete information from both the exporters of the subject goods and the government of the country of export. Although some of the exporters involved in this investigation provided the subsidy information that was requested from them, the GOC did not.

[250] Specifically, four of the six Chinese exporters that were verified on-site fully cooperated with the CBSA during the subsidy verifications. In addition, three other Chinese exporters, which submitted late subsidy responses, were verified by desk audit during the final stage of the investigation and their subsidy information is also considered complete for purposes of the final determination.

[251] Regarding the GOC, its original subsidy information was determined to be incomplete. The GOC was contacted prior to the preliminary determination and advised that its subsidy submission had been reviewed, was found to be incomplete and would not be used for purposes of the subsidy investigation. At the same time, the GOC was informed that if it subsequently submitted a complete response to the RFI, the CBSA would endeavour to use this information for the investigation provided that it was provided in sufficient time for the CBSA to analyze and verify before the closing of the record on December 31, 2008.

[252] On November 28, 2008, the GOC provided additional information relating to its subsidy submission. On December 31, 2008, after careful consideration of many factors, the CBSA notified the GOC that their information was not submitted within a reasonable amount of time, and consequently would not be used by the CBSA for purposes of the investigation.

[253] The following considerations, amongst others, were salient in considering whether the supplemental information from the GOC was submitted within a reasonable period of time:

- the CBSA made efforts to ensure that the GOC received the RFI as soon as possible, by providing an electronic copy of the RFI to the Embassy of the People's Republic of China in Canada on the day that the investigation was initiated, August 18, 2008;

- the fact that a one week extension had already been provided to the GOC for purposes of providing a response to the RFI, extending the original deadline of September 24, 2008, to October 1, 2008;
- the length of time by which the GOC missed the original deadline date for providing its subsidy RFI response. The supplemental information was filed on November 28, 2008, a full eight weeks past the October 1 deadline;
- there was insufficient time for the CBSA to verify the large quantity and complex nature of information submitted, given that the additional subsidy information was filed so late in the investigation;
- the late subsidy filing precluded the CBSA from planning and scheduling an on-site verification with the GOC, particularly considering that on-site verifications were already scheduled and underway with Chinese exporters at the time the supplemental information was submitted to the CBSA;
- the CBSA is bound by tight legislative and administrative timeframes to conduct its investigations, and to reach the final determination; and
- that using the information would likely compromise the orderly conduct of the investigation and prejudice the interests of other parties to the investigation.

In addition, the CBSA's review of the supplemental information submitted by the GOC still revealed deficiencies in the subsidy response.

[254] As a result, the information submitted by the GOC in response to the subsidy RFI was not used for purposes of the final determination. Notwithstanding that the GOC's subsidy information was not used, the CBSA, in recognition of the amount of cooperation and the volume of information that has been provided by the cooperative exporters, has determined individual amounts of subsidy under ministerial specification for the seven cooperative Chinese exporters.

Results of the Subsidy Investigation

[255] For the purposes of the final determination, the CBSA determined specific amounts of subsidy for each of the seven cooperative exporters on the basis of the program(s) that the exporter had utilized during the Subsidy POI.

[256] In summary, 56 potential subsidy programs were investigated and 15 of the potential subsidy programs were determined to have conferred benefits to the cooperative exporters. The information received from the cooperative exporters indicates that they received benefits under one or more of the following programs:

- Preferential Tax Policies for Enterprises with Foreign Investment Established in the Coastal Economic Open Areas and in Economic and Technological Development Zones
- Research & Development (R&D) Assistance Grant
- Superstar Enterprise Grant
- Matching Funds for International Market Development for SMEs
- One-time Awards to Enterprises Whose Products Qualify for "Well-Known Trademarks of China" or "Famous Brands of China"

- Export Brand Development Fund
- Preferential Tax Policies for Foreign Invested Enterprises – Reduced Tax Rate for Productive FIEs Scheduled to Operate for a Period not less than 10 Years
- Preferential Tax Policies for Foreign-Invested Export Enterprises
- Local Income Tax Exemption and/or Reduction
- Exemption of Tariff and Import VAT for Imported Technologies and Equipment
- Patent Award of Guangdong Province[65]
- Training Program for Rural Surplus Labor Force Transfer Employment[66]
- Reduction in Land Use Fees
- Provincial Scientific Development Plan Fund
- Primary aluminum Provided by Government at Less than Fair Market Value

[257] A summary of the findings for the named subsidy programs can be found in **Appendix 2.**

[258] For purposes of the final determination, the amounts of subsidy for the seven cooperative Chinese exporters range from 2.59 Renminbi per kilogram to 3.88 Renminbi per kilogram, or from 8% to 16% expressed as a percentage of export price. The resultant amounts of subsidy for each of the cooperative exporters are provided in **Appendix 1**.

[259] For the non-cooperative exporters, the amount of subsidy has been determined under a ministerial specification, pursuant to subsection 30.4(2) of SIMA, based on:

1) the highest amount of subsidy (Renminbi per kilogram) found for each of the 15 subsidy programs for the seven cooperative exporters located in China; plus
2) the simple average of these highest amounts in 1) applied to each of the remaining 41 potentially actionable subsidy programs for which information is not available or has not been provided at the final determination.

[260] As a result, the total amount of subsidy for the non-cooperative exporters is 15.84 Renminbi per kilogram, or 60% as a percentage of export price.

[65] This program was not identified at initiation but was found to have been used following the analysis of the cooperative exporter responses to the Subsidy RFI.

[66] This program was not identified at initiation but was found to have been used following the analysis of the cooperative exporter responses to the Subsidy RFI.

SUMMARY OF RESULTS – SUBSIDY

Period of Investigation - January 1, 2007 to June 30, 2008

Country	Subsidized Goods as Percentage of Country Imports	Weighted Average Amount of Subsidy*	Country Imports as Percentage of Total Imports	Subsidized Goods as Percentage of Total Imports
China	100%	47%	43%	43%

*As percentage of the export price

[261] The final results indicate that 100% of the subject goods imported into Canada during the Subsidy POI were subsidized. The overall weighted average amount of subsidy is equal to 47% of the export price.

[262] In making a final determination of subsidizing under subsection 41(1) of SIMA, the President must be satisfied that the subject goods have been subsidized and that the amount of subsidy on the goods of a country is not insignificant. According to subsection 2(1) of SIMA, an amount of subsidy that is less than 1% of the export price of the goods is considered insignificant.

[263] However, section 41.2 of SIMA directs the President to take into account the provisions of Article 27 of the WTO *Agreement on Subsidies and Countervailing Measures* (*ASCM)* when conducting subsidy investigations. These provisions stipulate that any investigation involving a developing country must be terminated as soon as the President determines that the total amount of subsidy for a developing country does not exceed 2% of the export price of the goods.

[264] The CBSA normally makes reference to the DAC List of Official Development Assistance Aid Recipients, maintained by the Organization for Economic Co-operation and Development, to determine eligibility for the differential amounts for developing countries in subsidy investigations. As China is a developing country according to this list, the 2% threshold for insignificance would apply. As the table above illustrates, the amount of subsidy found during this investigation is not insignificant.

[265] For purposes of the preliminary determination of subsidizing, the President has responsibility for determining whether the actual or potential volume of subsidized goods is negligible. After a preliminary determination of subsidizing, the Tribunal assumes this responsibility. In accordance with subsection 42(4.1) of SIMA, the Tribunal is required to terminate its inquiry in respect of any goods if the Tribunal determines that the volume of subsidized goods from a country is negligible.

REPRESENTATIONS CONCERNING THE SUBSIDY INVESTIGATION

[266] Listed below are details of representations made to the CBSA with respect to the subsidy investigation, including case arguments and reply submissions, from exporters, the GOC and the

Complainants. Following the representations on each issue is a response explaining the position of the CBSA.

1. Grounds for Initiation

[267] The GOC argued that the CBSA did not have sufficient grounds to initiate the subsidy investigation.[67] They contended that the Complainants and the CBSA have failed to provide *prima facie* evidence that any of the exporters benefited from the majority of the alleged programs identified.

[268] The GOC asserted that the Complainants failed to provide a reasonable indication of subsidization as is required by section 31 of SIMA and that the CBSA failed to provide the basis for its decision to initiate in relation to materials submitted by the Complainants.

[269] The GOC also argued that the initiation of the investigation was inconsistent with respect to Articles 11.2 and 11.3 of the ASCM and submitted that there was not sufficient evidence with respect to:

- The existence or nature of the subsidies contained within the complaint;
- Proof that these alleged subsidies applied to the industry sector concerned; or
- That the alleged subsidies were used by the aluminum extruders in China relevant to this investigation.

CBSA Response

[270] At the time of the initiation of the subsidy investigation, based on the information provided in the complaint, other available information, and the CBSA's internal data on imports, there was evidence that aluminum extrusions originating in or exported from China had been subsidized, and a reasonable indication that such subsidizing had caused or was threatening to cause injury to the Complainants.

[271] The Statement of Reasons issued at the initiation of this investigation publicly outlined the reasons for initiating the investigation and the evidence considered in making that determination. This document can be accessed at:
http://www.cbsa-asfc.gc.ca/sima-lmsi/i-e/ad1379/ad1379-i08-de-eng.html

2. Level of Cooperation by the GOC and Use of the Facts Available

[272] In their case arguments, the Complainants asserted that the GOC had not fully cooperated in the subsidy investigation. They contended that since the GOC had chosen to answer with specific information relating to only 12 exporters, that such a selective response cannot reflect any amounts of subsidy benefiting exporters not selected by the GOC. They stated that the GOC has been non-cooperative and has "designed, intentionally, a response based on information regarding certain selected exporters."[68]

[67] Exhibit S478 - Case Arguments (Dumping and Subsidy) - Government of China, pages 39-45.
[68] Exhibit S492 – Reply Submissions (Dumping and Subsidy) – Canadian Complainants, paragraph 23.

[273] Furthermore, the Complainants stated that this type of non-cooperation, if not properly addressed by the CBSA, could easily be used to manipulate results. Accordingly, they argued that amounts of subsidy from selected exporters should not subsequently be applied to calculate countervailing duties for non-cooperative or new exporters.[69]

[274] The Complainants also submitted that, it is unreasonable to assume that subsidies given to non-cooperative exporters are reflected in any cooperative exporter's RFI response. The Complainants submitted that the non-cooperative exporters should accordingly be assessed the highest possible amount of subsidy. Consequently, the Complainants contended that the CBSA should exercise its discretion in its approach to assessing duties to protect the Complainants from imports of the subsidized goods.[70]

[275] Lastly, the Complainants stated that CBSA policies should not contemplate or encourage partial cooperation by foreign governments in a subsidy investigation. They further asserted that the GOC has not cooperated with the subsidy investigation and provided an incomplete response even in respect of the selected exporters, which includes the cooperative exporters. Accordingly, the Complainants argued that all exporters of the subject goods from China should be deemed non-cooperative and have countervailing duty rates determined for them under a ministerial specification.[71]

[276] The GOC argued that their ability to provide a complete response to the RFI was significantly hampered because the CBSA did not provide the GOC with requested particulars.[72]

[277] Specifically, the GOC alleged that the CBSA did not provide clarification and information to allow the GOC to confirm the existence of programs and identify the level of government involved, nor did the CBSA supply a detailed list of deficiencies found in their original RFI response.

[278] Furthermore, the GOC argued that the CBSA should not use the "facts available" clause under Article 12.7 of the ASCM in its treatment of the GOC.[73] The GOC argued that this Article only applies where a country "refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation." The GOC asserted that its participation in the subsidy investigation does not meet this standard.

[279] In response to the Complainants' arguments, Kam Kiu submitted that WTO rules and procedural fairness require that actual verifiable information is to be preferred to information from unreliable sources.[74]

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[69] Exhibit s477 – Case Arguments (Subsidy) – Canadian Complainants, paragraphs, 2-3 and 15.
[70] Exhibit s477 – Case Arguments (Subsidy) – Canadian Complainants, paragraphs 7-8.
[71] Exhibit s477 – Case Arguments (Subsidy) – Canadian Complainants, paragraphs 10-11, 13.
[72] Exhibit S478 - Case Arguments (Dumping and Subsidy) - Government of China, pages 56-58.
[73] Exhibit S478 - Case Arguments (Dumping and Subsidy) - Government of China, pages 37-38.
[74] Exhibit 580 – Reply arguments by Kam Kiu, paragraph 45.

CBSA Response

[280] The GOC failed to provide a complete and timely response to the CBSA's subsidy RFI and as a result, the CBSA was unable to use their information for the purposes of the investigation. The information requested by the CBSA, which the GOC failed to provide, would have enabled the CBSA to conduct a proper analysis for each of the alleged programs and determine amounts of subsidy in the manner prescribed by SIMA.

[281] Therefore, in accordance with SIMA subsection 30.4(2), where, in the opinion of the President, sufficient information was not provided or was otherwise not available to enable the determination of the amount of subsidy in the prescribed manner, the amount of subsidy was determined under a ministerial specification.[75]

[282] Notwithstanding the incomplete GOC response, the CBSA is satisfied that the information on the CBSA's subsidy administrative record, where provided in a timely fashion by the cooperative exporters from China, is complete and verified. Therefore, for the final determination, the CBSA determined amounts of subsidy for these cooperative exporters, under a ministerial specification pursuant to subsection 30.4(2) of SIMA, using information provided by those respective parties.

[283] In respect of the concerns raised by the GOC regarding the quality of the CBSA's notification of deficiencies, the CBSA did notify the GOC, in a letter dated October 15, 2008, that their original response to the subsidy RFI was not sufficiently complete to be used for the investigation. In that letter, the CBSA explained the most significant aspects of the submission that were found to be deficient, including the following:

- The GOC limited its response to account for only 12 "responding companies" it identified instead of taking into account all 160 of the exporters identified by the CBSA.
- In many instances, the GOC did not answer the question posed by the CBSA and simply stated that none of the "responding companies" received benefits under the identified programs.
- In cases where "responding companies" received benefits under a program, the GOC failed to answer all of the CBSA's questions, failed to provide the amount of benefits given to the "responding companies", did not provide information concerning the number of industries and enterprises that received, applied for, or were denied benefits.
- The GOC failed to provide copies of 33 government documents specifically requested for various reasons, most notably, because the GOC believed the majority of the documents were irrelevant to "responding companies" and the GOC simply refused to submit them.
- The GOC failed to provide all of the provincial five-year plans, limiting their response to provinces where "responding exporters" were located.
- The GOC failed to provide the China Non-Ferrous Metals Yearbook and other statistical publications requested.

[75] Though technically all exporters had their amounts of subsidy calculated under a ministerial specification pursuant to subsection 30.4(2), exporters that were deemed 'cooperative' were treated differently than non-cooperative exporters under the methodology of the ministerial specification.

- The GOC provided only partial information on 1 of 27 newly identified grant programs and claimed to have no knowledge of the remaining 26 programs.

[284] In addition to identifying the major areas of deficiency through this correspondence, the CBSA attempted to assist the GOC in its response concerning the grant programs by indicating that the reference material used by the CBSA to identify these programs could be found on the CBSA's Exhibit Listing for this investigation as Exhibits S38, S43, and S48.

[285] In a further effort to assist the GOC, the CBSA also noted through this correspondence that some of the cooperative exporters indicated they had received benefits under some of the newly identified grant programs for which the GOC stated they had no knowledge.

[286] As with the reference material, the submissions received from cooperative exporters were also placed on the CBSA's administrative record and were available to the GOC and their counsel.

3. Rejection of Other GOC Filings

[287] The GOC further argued that the CBSA should consider information the GOC submitted on November 28, 2008, for purposes of the investigation.[76] The GOC indicated that the reasons provided by the CBSA for not accepting the information have no merit and that the WTO Appellate body has shown that a submission cannot simply be rejected for being untimely.

[288] The GOC alleged that the CBSA failed to provide a detailed list of deficiencies relating to their original October 1, 2008 submission and that the CBSA did not provide a deadline to submit additional information.

[289] The GOC asserted that this information was submitted within a reasonable amount of time before the closing of the record date of December 31, 2008, and that the CBSA would have been able to verify the information.

[290] The GOC also argued that the CBSA is not limited to considering only verified information, that the administrative deadlines are artificial and could have been changed, and that the CBSA could have extended the date for the preliminary determination.

CBSA Response

[291] As previously stated, the CBSA's letter dated October 15, 2008, notified the GOC that their original response to the subsidy RFI was not sufficiently complete to be used in this investigation. In that letter, the CBSA also indicated that if the GOC were to submit a complete response to the RFI, that the CBSA would endeavour to use such information for the purposes of the investigation, provided the information was submitted in sufficient time for the CBSA to analyze and verify it before the closing of the record on December 31, 2008.

[76] Exhibit S478 - Case Arguments (Dumping and Subsidy) - Government of China, pages 51-56.

[292] In a letter dated October 30, 2008, the GOC indicated that additional information in respect of the subsidy investigation would be submitted shortly. On the same date, the CBSA acknowledged this letter with its own correspondence and reminded the GOC that any such information submitted would be used if it were provided in sufficient time for the CBSA to analyze and verify it before the closing of the record.

[293] On November 28, 2008, the GOC submitted additional information to the CBSA in respect of the subsidy investigation, in excess of 1,100 pages.

[294] On December 29, 2008, counsel for the GOC requested confirmation that the information submitted would be considered to be a complete response from the GOC and would be used as part of the subsidy investigation final determination.

[295] On December 31, 2008, the CBSA responded in a letter to the GOC indicating that the information would not be used, as it was not submitted within a reasonable period of time.[77] In considering whether the additional information was submitted within a reasonable period of time, the CBSA considered a number of factors including:

- the CBSA made efforts to ensure that the GOC received the RFI as soon as possible, by providing an electronic copy of the RFI to the Embassy of the People's Republic of China in Canada on the day that the investigation was initiated, August 18, 2008;
- the fact that a one week extension had already been provided to the GOC for purposes of providing a response to the RFI, extending the original deadline of September 24, 2008, to October 1, 2008;
- the length of time by which the GOC missed the original deadline date for providing its subsidy RFI response. The supplemental information was filed on November 28, 2008, a full eight weeks past the October 1 deadline;
- there was insufficient time for the CBSA to verify the large quantity and complex nature of information submitted, given that the additional subsidy information was filed so late in the investigation;
- the late subsidy filing precluded the CBSA from planning and scheduling an on-site verification with the GOC, particularly considering that on-site verifications were already scheduled and underway with Chinese exporters at the time the supplemental information was submitted to the CBSA;
- the CBSA is bound by tight legislative and administrative timeframes to conduct its investigations, and to reach the final determination; and
- that using the information would likely compromise the orderly conduct of the investigation and prejudice the interests of other parties to the investigation.

[77] Exhibit S463 (NC).

[296] While the information submitted by the GOC on November 28, 2008 was not submitted within sufficient time for the CBSA to analyze and verify, the CBSA did conduct a review of the submission for general content and completeness. As a result of that review, it was noted that significant aspects of the submission were still deficient. In brief, some of the deficiencies included:

- The GOC's response remained limited to the 12 "responding companies" that they had previously identified, ignoring the CBSA's request for the GOC to consider all 160 exporters identified by the CBSA;
- Where the GOC acknowledged that exporters may have received benefits under a particular program, the GOC does not name that company, referring to them only as "responding companies";
- Similarly, in cases where "responding companies" received benefits under a program, the GOC failed to answer all of the CBSA's questions, failed to provide the amount of benefits given to the "responding companies", and did not provide information concerning the number of industries and companies that received, applied for, or were denied benefits;
- The GOC failed to provide information for a number of programs, noting the information with respect to the programs are unclear, broad, and difficult to identify, while noting in the same response that "responding companies" have advised them that they have not benefited from the programs;
- For programs administered in many different provinces, the GOC limited the information submitted to the provinces and areas where the GOC's list of "responding companies" are located;
- A complete and accurate list of SOE Primary Aluminum producers, though previously requested, was still not provided;
- The more than 30 government documents requested by the CBSA in the RFI, which the GOC refused to provide, were still absent from the submission; and
- The requested statistical publications and industry association yearbooks were omitted.

[297] This list above is not an exhaustive list of the deficiencies or a complete analysis of the submission, which was not undertaken for reasons noted earlier. However, it demonstrates that the information submitted by the GOC on November 28, 2008, was still incomplete and would have required additional information and clarification on numerous issues prior to any formal verification and consideration of the information for purposes of the final phase of the investigation.

[298] This also further substantiates the fact that the submission was not submitted within a reasonable period of time given the amount of time that would have been required by the CBSA to properly address these issues.

4. Extension of RFI Filing Deadline for GOC

[299] The GOC claimed that the refusal to grant a reasonable extension to their deadline for filing the subsidy RFI response breached the GOC's procedural rights in this investigation.[78]

[78] Exhibit S478 - Case Arguments (Dumping and Subsidy) - Government of China, pages 48-51.

The GOC argued that this refusal by the CBSA is inconsistent with ASCM Articles 11.11 and 12.1.1, as the CBSA failed to give due consideration to the request given the special circumstances.

[300] The GOC referenced previous investigations where the CBSA gave extensions and submitted that their two-week extension request should have been granted considering the complexity of the case. The GOC argued that had their extension request been granted, the initial response to the subsidy RFI may have contained additional information which may have allowed its response to be deemed substantially complete.

CBSA Response

[301] In terms of consistency with Article 12.1.1 of the ASCM, the CBSA also addressed this issue in a letter addressed to the GOC on September 23, 2008. The CBSA noted that, while Article 12.1.1 states that authorities should consider and grant extensions where practicable, Article 12.12 qualifies this directive in stating that other provisions of Article 12 are not intended to prevent the investigating authorities from proceeding expeditiously with their investigations.

[302] As a result of the due consideration given to Article 12 of the ASCM, the CBSA granted a one-week extension to the GOC instead of the two-week extension requested. This decision was meant to represent a balance between the rights of the GOC to defend their interests with the CBSA's own right to proceed expeditiously with this investigation.

[303] It should also be noted that in addition to granting a one-week extension to the GOC, the CBSA made efforts to ensure the GOC received the RFI as soon as possible by providing an electronic copy of the RFI to the Embassy of the People's Republic of China in Canada on the day that the investigation was initiated (August 18, 2008). The result of the extension and provision of the RFI on the day of the initiation, in effect, afforded the GOC 44 days to respond to the RFI on the deadline of October 1, 2008.

5. Developing Country Status

[304] In a position paper submitted to the CBSA, the GOC argued that Canada and other WTO members must take into consideration China's developing country status and the importance of permitting developing country Members to use special measures in order to promote their trade and development.[79]

[305] The GOC asserted that Canada's international obligations mandate that developed Members refrain from introducing or increasing trade barriers against products of particular export interest to developing countries, particularly primary products in raw or processed form.[80]

[306] The GOC submitted that the significant demand for aluminum extrusions from North America demonstrates that this product is of particular interest to developing countries and thus falls squarely within this provision.

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[79] Exhibit S476 - Government of China consultations (Talking Points) with CBSA, pages 13-14.
[80] Article XXXVI: 4 of the GATT 1947 and 1994.

CBSA Response

[307] The CBSA is aware of China's developing country status and takes this, and Canada's WTO obligations, into consideration when conducting a subsidy investigation.

[308] In making a final determination under section 41.2 of SIMA, the President must take into account the provisions of paragraphs 10 and 11 of Article 27 of the ASCM. These provisions set higher negligibility and insignificance thresholds for amounts of subsidy determined in respect of developing countries, and have accordingly been addressed in the current investigation.

[309] In this subsidy investigation, the overall level of subsidies found on the subject goods exceeded 2 per cent of its value calculated on a per unit basis and the volume of subsidized imports represented more than 4 per cent of the total imports of subject goods imported into Canada during the period of investigation.[81] As noted previously, it is recognized that in accordance with subsection 42(4.1) of SIMA, the Tribunal now has the responsibility for determining if the actual or potential volume of subsidized goods is negligible.

6. Scope of the Investigation

[310] The GOC submitted that the CBSA unilaterally expanded the scope of the subsidy investigation far beyond the scope of the complaint by including programs identified through CBSA research.[82] The GOC alleged that the CBSA's research does not identify the factual and legal basis for these programs and does not provide a basis for considering them actionable.

[311] The GOC further argued that Article 11 of the ASCM sets out a process based on the sufficiency of information within the complaint filed by the domestic industry and that Article 13 of the ASCM reinforces this obligation by providing the ability for WTO Members, whose products are under investigation, to formally consult with the investigating authority.

[312] The GOC argued that the CBSA must adopt the process set out in Article 11 of the ASCM. Furthermore, the GOC alleged that even if the CBSA were to have "self initiated" the subsidy investigation, as per the stipulation in paragraph 6 of Article 11 of the ASCM, that the CBSA did not satisfy the conditions of that provision to permissibly do so.

[313] The GOC also asserted that the CBSA failed to consult the GOC regarding programs not specifically identified in the complaint during pre-initiation consultations. In this regard, the GOC contended that the CBSA denied the GOC its right under Article 13 of the ASCM to pre-initiation consultation with respect to targeted programs.

CBSA Response

[314] Upon receiving a formal complaint, the CBSA conducts its own research concerning alleged subsidy programs in order to analyze and validate the information submitted by the

[81] ASCM Article 27, paragraphs 10(a) and (b) respectively.
[82] Exhibit S478 - Case Arguments (Dumping and Subsidy) - Government of China, pages 33, 40, 42-43.

Complainants in order to determine whether there is enough evidence to proceed with the initiation of an investigation.

[315] In some instances, during the course of this research, the CBSA may identify new programs that were not included in the complaint. While the Complainants are required to provide evidence that is reasonably available to them, this does not preclude the CBSA from including additional evidence found through its own research for purposes of the investigation. Any evidence found to support the identification of newly identified programs is placed on the CBSA's administrative record, which is also listed publicly as a 'Listing of Exhibits' on the CBSA's website. This supporting evidence was made available to interested parties upon request during the course of the investigation.

[316] In conducting a subsidy investigation, the scope of the CBSA's investigation includes all potential programs that the CBSA has identified at initiation or identifies during the course of the investigation, including programs identified in the complaint, in previous subsidy investigations, in information submitted by governments or exporters, and those found as a result of CBSA research.

[317] In addition, RFIs issued by the CBSA to the GOC included a section which directed the GOC to identify if any of the items listed as potential subsidy programs, which were not specifically identified by the CBSA at initiation, may have provided benefits to exporters in the industry under investigation. By including these potential programs the CBSA identifies through its own research, the CBSA aimed to assist the GOC in identifying such previously unidentified programs.

[318] It should be noted that, based on information submitted by cooperative exporters in this investigation, a number of new programs identified through CBSA research were found to have benefited those exporters. These programs had not been previously identified by either cooperative exporters or the GOC in previous subsidy investigations involving China.

7. Analysis of Actionable and Specific Nature of Subsidies

[319] The GOC argued that the CBSA analysis respecting the actionable and specific nature of subsidies was deficient.[83] In making this argument, the GOC provided a list of programs, which they stated had been repealed and could thus not have possibly been received by any of the exporters being investigated.

[320] The GOC also listed a number of programs they identified as being non-existent, as they could not locate relevant documents to support their existence. Consequently, the GOC claimed there was no legal or factual basis for which the CBSA is investigating those programs.

[321] The GOC characterized the CBSA as being unfair and abusive for requiring them to respond to questions on these programs, noting that the CBSA failed to provide particulars that might have assisted them in locating information on such programs.

[83] Exhibit S478 - Case Arguments (Dumping and Subsidy) - Government of China, pages 39-45.

[322] In addition to the programs the GOC listed as being repealed or non-existent, the GOC listed two programs for which they argued the CBSA must have confused with programs previously investigated, as the CBSA failed to include the province's name in the title of the program. The GOC noted that while they could not obtain details on these programs, they were able to confirm that none of the cooperative exporters received benefits under the programs. As such, the GOC argued that there is no basis for the CBSA to assume non-responding exporters received benefits under these programs.

[323] For the remaining programs not included in the list referenced above, the GOC asserted that their responses to the initial RFI combined with their November 28, 2008 submission are adequate. The GOC contended that this information must be considered by the CBSA as it provides clear and compelling confirmation that these remaining programs are not specific and thus not actionable under SIMA.

[324] In addition, Pingguo, a Chinese exporter in this investigation, submitted that the CBSA has countervailed programs that are generally accessible and do not meet the specificity threshold. Pingguo argued that as part of the preliminary determination, the CBSA made no specificity finding and that none of the factors statutorily identified in Section 2 of SIMA were examined.[84] Pingguo submitted that the absence of rigor in the examination and application of countervailing measures is prejudicial to trade and export companies in China.

[325] Pingguo also submitted that the subsidy calculated for Pingguo was 0.92%, which was a *de minimis* amount, and that the CBSA's methodology for calculating the amount of the subsidy for non-cooperative exporters was unreasonable and unfairly countervailed presumptive non-existent subsidies.[85]

CBSA Response

[326] As previously stated, the CBSA did not receive a complete and timely response to the subsidy RFI from the GOC. The reasons for not using the GOC subsidy response are addressed in the responses to other arguments made by the GOC and will not be further addressed in this response.

[327] Regarding the argument that the CBSA's analysis of the subsidy programs identified in this subsidy investigation was deficient, the CBSA notes that the GOC failed to provide the requested and necessary information required by the CBSA. This required information would have enabled the CBSA to conduct a proper *de jure* and *de facto* specificity analysis for each of the programs identified, which in turn would have enabled the CBSA to properly determine whether these programs were in fact specific and constituted actionable subsidies.

[328] In the absence of this information, the CBSA was unable to conduct an appropriate and meaningful analysis of the subsidy programs identified based solely on its own research, the information submitted by the Complainants, and the information submitted by exporters. In

[84] Exhibit S485 – Case Arguments (Dumping and Subsidy) - Pingguo Asia Aluminum Co., Ltd., paragraph 63.
[85] Exhibit S485 – Case Arguments (Dumping and Subsidy) - Pingguo Asia Aluminum Co., Ltd., paragraphs 58 to 60.

many cases, only the GOC is in a position to provide the legal and government policy documents requested, as well as application and usage statistics for each of the programs. Without this information, the CBSA cannot undertake a thorough analysis of the programs to determine whether they are specific and actionable.

[329] As a result of the absence of this information at the preliminary determination, the CBSA, in the Statement of Reasons, was only able to provide a description of the programs that the cooperative exporters in China are known to have used.

[330] For the purposes of the final determination, the CBSA determined amounts of subsidy for both cooperative and non-cooperative exporters using a methodology under a ministerial specification. The determination of the amount of subsidy was made in accordance with SIMA subsection 30.4(2), where, in the opinion of the President, sufficient information has not been provided or is otherwise not available to enable the determination of the amount of subsidy in the prescribed manner, the amount of subsidy shall be determined in such manner as the Minister specifies.

[331] In respect of the argument that the CBSA has countervailed programs that are generally accessible and do not meet the specificity threshold, the CBSA notes that in the absence of a complete response from the GOC, the CBSA was unable to conduct specificity analyses, and instead determined amounts of subsidy for the cooperative exporters under ministerial specification on the basis of the information provided by those exporters.

8. Subsidy Calculations without use of Sampling

[332] The GOC submitted that it is inappropriate for the CBSA to calculate amounts of subsidy without sampling exporters.[86] The GOC argued that requiring 261 exporters to respond to RFIs is unreasonable, is a departure from the CBSA's normal approach, and does not follow the CBSA's own Statement of Administrative Practices. In choosing not to sample for this investigation, the GOC accused the CBSA of setting up the investigation process to ensure the imposition of punitive (i.e. non-cooperative) subsidy rates on the majority of exporters.

[333] The GOC argued that a weighted-average subsidy rate based on the amounts of subsidy found for the responding exporters should be used to assess non-respondents for the CBSA's final determination.

CBSA Response

[334] The CBSA is legislatively required to calculate amounts of subsidy for all exporters identified in a subsidy investigation. SIMA does not contain provisions for amounts of subsidy based on sampling. It should be noted that sampling in an investigation is only provided for in SIMA for purposes of determining a margin of dumping as prescribed by section 30.3. In addition, there are no provisions for sampling in a subsidy investigation contained in the ASCM.

[86] Exhibit S478 - Case Arguments (Dumping and Subsidy) - Government of China, pages 58-60.

[335] It should also be noted that the CBSA has never used sampling in any of its previous subsidy investigations involving China. In previous cases involving China where both subsidy and dumping investigations were conducted and the CBSA sampled for the dumping investigation,[87] the CBSA did not sample for purposes of the subsidy investigation.

[336] In those cases, a dumping margin was calculated for cooperative exporters and non-cooperative exporters while an average dumping margin was calculated for non-sampled exporters. However, for the subsidy investigations involving those products, amounts of subsidy were calculated for only two categories - cooperative and non-cooperative exporters - as the CBSA does not use sampling in subsidy investigations.

[337] As such, the CBSA followed its own administrative practices and acted in accordance with the provisions of SIMA in conducting its subsidy investigation.

Upstream Subsidy Concerning Press Metal International Ltd. (PMI)

[338] Subsequent to the onsite verification with the company, PMI made two separate representations on December 15 and 31, 2008 respectively.[88] The company argued that PMI should not be treated as a non-cooperative exporter as a result of the verification conducted at Hubei Press Metal Huasheng Aluminum-Electric Co. Ltd. (PMH), an associated aluminum raw material supplier of PMI.

[339] In their representations, PMI argued that the documentation requested by the CBSA regarding the acquisition of state-owned assets by PMI's Malaysian parent company is outside the scope of the subsidy investigation and that such documentation was not listed in the verification outline provided to PMH.

[340] In addition, PMI argued that the requested documentation was in the possession of its parent company and it thus could not provide the documents without permission of the parent company. PMI further contended that the parent company was not obligated to participate in this investigation according to the original and supplemental subsidy RFIs.

CBSA Response

[341] Pursuant to subsection 2(1) of SIMA, "subsidized goods" refers to goods in which "a subsidy has been or will be paid, granted, authorized or otherwise provided, directly or indirectly, by the government of a country other than Canada". The CBSA considers that an indirect subsidy includes an "upstream subsidy".

[342] In other words, a producer of the goods under investigation can receive a subsidy through the acquisition of goods and services where the producer or supplier of those goods and services has received a subsidy.[89]

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[87] For example: *Certain Copper Pipe Fittings* and *Carbon Steel and Stainless Steel Fasteners.*
[88] CBSA Subsidy Exhibits S474 and S449.
[89] The subsidy is thus 'passed through' to the producer of the goods under investigation.

[343] In determining whether an upstream subsidy has been passed-through to the producer of the goods under investigation, the CBSA considers whether the upstream recipient and the downstream purchaser are associated persons as defined in SIMA. If so, the amount of the subsidy that is deemed to have been received by the downstream purchaser is the total amount of the subsidy that is attributable to the upstream product.

[344] In this case, PMI, PMH and the parent company are associated persons pursuant to subsection 2(2) of SIMA. During the subsidy POI, PMI purchased significant amounts of aluminum raw material from its associated supplier, PMH. As a result, any subsidy received by PMH (i.e. upstream subsidy) during the subsidy POI should be included in the total amount of the subsidy determined for PMI.

[345] In its responses to the subsidy RFIs, PMI failed to provide a full disclosure of the history of PMH. During the verification at PMH, CBSA officers were informed that prior to its establishment as 'PMH', the company was a state-owned enterprise (SOE) and that PMI's parent company purchased most of the state-owned assets of the operation in 2006.

[346] The requested documentation was necessary for the CBSA to determine whether any subsidy had been received by PMH under one of the subsidy programs identified in the subsidy RFI, (i.e. *Purchases of Goods and Services from State-Owned Enterprises*). The CBSA did not receive any of the requested documentation from PMI by the closing of the record date. As a result, the CBSA considered PMI to be non-cooperative in the subsidy investigation.

10. Concurrent use of Countervailing Remedy with Section 20 Conditions

[347] Pingguo submitted that in the absence of a competitive market economy, which forms the basis of a CBSA section 20 determination, it is impossible to measure specificity and the "financial contribution" made by a government to a recipient, which is required in order to countervail a subsidy.[90]

CBSA Response

[348] The CBSA maintains that it has adhered to the provisions of both SIMA and the relevant international rules governing anti-dumping and countervailing investigations.

[349] Neither the WTO *Anti-Dumping Agreement*, the *ASCM,* nor SIMA preclude the imposition of countervailing duties in respect of goods that are also subject to anti-dumping duties, where normal values have been determined pursuant to a surrogate country methodology (i.e. section 20 determination).

[350] More specifically, SIMA does not restrict or limit the applicability of the subsidizing provisions set forth in the Act when, in the opinion of the President, section 20 conditions exist in the industry sector under investigation, which requires that normal values be determined in a manner other than those set forth in sections 15 or 19 of SIMA.

[90] Exhibit 572 – Case arguments by Pingguo, paragraphs 56 & 57.

[351] With respect to concurrent dumping and subsidy investigations, section 10 of SIMA does direct that anti-dumping duties levied, collected and paid in respect of goods will only reflect the margin of dumping that is not, in the opinion of the President, attributable to the export subsidy.[91]

[352] Accordingly, the CBSA will, where necessary, offset the amount of anti-dumping duty levied or collected on goods imported into Canada by an amount that is attributable to an export subsidy.

[353] In short, the CBSA treats dumping and subsidy investigations as separate processes. In so doing, the CBSA is in no way prohibited in law or in practise, from conducting concurrent dumping and subsidy investigations where the conditions of section 20 are found to exist in the industry sector under investigation. In effect, neither investigation impedes nor restricts the process of the other and thus, it is well within the scope of the CBSA to conduct both concurrently.

11. Aluminum pricing on all Chinese exchanges reflect the forces of supply and demand

[354] Chinese exporter Kam Kiu submitted that the CBSA should not determine that differences in Chinese and LME prices constitute a subsidy.

CBSA Response

[355] The CBSA has not determined that primary aluminum purchased in China at prices different than LME solely constitute a subsidy on that basis.

[356] However, in cases where the CBSA found that goods were provided by the government through State-Owned Enterprises (SOEs) at prices below fair market value, the difference between the purchase price and the fair market value of the goods was determined to be a financial contribution that benefitted an exporter. Purchases of primary aluminum from private enterprises and, where applicable, manufacturers that are in fact not SOEs would not constitute a subsidy regardless of the price at which the transactions took place.

[357] Regarding the determination and method of calculation of subsidy amounts in respect of the subsidy program Primary Aluminum Provided By Government at Less Than Fair Market Value, the details are addressed in **Appendix 2** as Program 15.

DECISIONS

[358] The CBSA is satisfied that certain aluminum extrusions originating in or exported from the People's Republic of China, have been dumped and that the margins of dumping are not insignificant. Consequently, on February 16, 2009, the CBSA made a final determination of dumping pursuant to paragraph 41(1)*(a)* of SIMA.

[91] This is consistent with Article VI, paragraph 5 of the General Agreement on Tariffs and Trade 1994. Note that an error in the original wording of this footnote was corrected on April 15, 2009.

[359] Similarly, the CBSA is satisfied that certain aluminum extrusions originating in or exported from China have been subsidized and that the amounts of subsidy are not insignificant. As a result, the CBSA also made a final determination of subsidizing pursuant to paragraph 41(1)*(a)* of SIMA on this same date.

[360] **Appendix 1** contains a summary of the margins of dumping and amounts of subsidy relating to the final determinations.

FUTURE ACTION

[361] The provisional period began on November 17, 2008, and will end on the date the Tribunal issues its finding. The Tribunal is expected to issue its decision by March 17, 2009. Subject goods imported during the provisional period will continue to be assessed provisional duties as determined at the time of the preliminary determinations. For further details on the application of provisional duties, refer to the Statement of Reasons issued for the preliminary determinations, which is available on the CBSA web site at: http://www.cbsa-asfc.gc.ca/sima-lmsi/menu-eng.html

[362] If the Tribunal finds that the dumped and subsidized goods have not caused injury and do not threaten to cause injury, all proceedings relating to these investigations will be terminated. In this situation, all provisional duties paid or security posted by importers will be returned.

[363] If the Tribunal finds that the dumped and subsidized goods have caused injury, the anti-dumping and/or countervailing duties payable on subject goods released from customs during the provisional period will be finalized pursuant to section 55 of SIMA. Imports released from customs after the date of the Tribunal's finding will be subject to anti-dumping duty equal to the margin of dumping and countervailing duty equal to the amount of subsidy.

[364] The importer in Canada shall pay all applicable duties. If the importers of such goods do not indicate the required SIMA code or do not correctly describe the goods in the customs documents, an administrative monetary penalty could be imposed. The provisions of the Customs Act apply with respect to the payment, collection or refund of any duty collected under SIMA. As a result, failure to pay duty within the prescribed time will result in the application of interest.

[365] Normal values and amounts of subsidy have been provided to the cooperating exporters for future shipments to Canada in the event of an injury finding by the Tribunal. These normal values and amounts of subsidy will come into effect the day after the date of the injury finding, if there is one.

[366] Exporters that were non-cooperative in the dumping investigation will have normal values established by advancing the export price by 101% based on a ministerial specification pursuant to section 29 of SIMA. Anti-dumping duty will apply based on the amount by which the normal value exceeds the export price of the subject goods. Similarly, exporters that were non-cooperative in the subsidy investigation will be subject to a countervailing duty amount of 15.84 Renminbi per kilogram, based on a ministerial specification pursuant to subsection 30.4(2) of SIMA.

RETROACTIVE DUTY ON MASSIVE IMPORTATIONS

[367] Under certain circumstances, anti-dumping and countervailing duty can be imposed retroactively on subject goods imported into Canada. When the Tribunal conducts its inquiry on material injury to the Canadian industry, it may consider if dumped and/or subsidized goods that were imported close to or after the initiation of the investigation constitute massive importations over a relatively short period of time and have caused injury to the Canadian industry. Should the Tribunal issue a finding that there were recent massive importations of dumped and/or subsidized goods that caused injury, imports of subject goods released by the CBSA in the 90 days preceding the day of the preliminary determination could be subject to anti-dumping and/or countervailing duty.

[368] However, in respect of importations of subsidized goods that have caused injury, this provision is only applicable where the President has determined that the whole or any part of the subsidy on the goods is a prohibited subsidy. In such a case, the amount of countervailing duty applied on a retroactive basis will equal the amount of subsidy on the goods that is a prohibited subsidy.

PUBLICATION

[369] A notice of these final determinations of dumping and subsidizing will be published in the Canada Gazette pursuant to paragraph 41(3)*(a)* of SIMA.

INFORMATION

[370] This *Statement of Reasons* has been provided to persons directly interested in these proceedings. It is also posted on the CBSA's website at the address below. For further information, please contact the officers identified as follows:

Mail	SIMA Registry and Disclosure Unit Anti-dumping and Countervailing Program Trade Programs Directorate Canada Border Services Agency 100 Metcalfe Street, 11th Floor Ottawa, Ontario K1A 0L8 CANADA	
Telephone	Rob Wright Matt Lerette	(613) 954-1643 (613) 954-7398
Fax	(613) 948-4844	
Email	SIMARegistry@cbsa-asfc.gc.ca	
Website	http://www.cbsa-asfc.gc.ca/sima-lmsi/	

M.R. Jordan
Director General
Trade Programs Directorate

Attachments

APPENDIX 1 – SUMMARY OF MARGINS OF DUMPING AND AMOUNTS OF SUBSIDY

Exporter(Country)	Margin of Dumping*	Amount of Subsidy (Renminbi per kilogram)
Kam Kiu Aluminium Extrusion Co., Ltd. (China)	27.8%	3.88
Press Metal International Ltd. (China)	35.2%	15.84
Panasia Aluminium (China) Limited (China)	31.4%	3.51
Guangdong Weiye Aluminium Factory Co., Ltd., (China)	42.4%	3.65
Guangdong Jianmei Aluminum Profile Factory Co., Ltd. (China)	28.5%	2.59
China Square Industrial Limited (China)	1.7%	2.82
Foshan Guangcheng Aluminum Co., Ltd., (China)	33.8%	2.95
Guang Ya Aluminum Industries Co., Ltd., (China)	40.4%	3.07
Hunter Douglas Designer Shades (USA)	0.0%	N/A**
Hunter Douglas Window Fashions (USA)	2.9%	N/A**
All other exporters	101.0%	15.84

* As percentage of the export price.

**No amount of subsidy was found for this U.S. exporter. However, countervailing duties are applicable to this exporter, based on the amount of subsidy found for the Chinese supplier of the goods that the U.S. exporter sold to Canada.

APPENDIX 2 - SUMMARY OF FINDINGS FOR NAMED SUBSIDY PROGRAMS

As addressed earlier, the original information submitted by the GOC was reviewed by the CBSA, was considered to be incomplete, and was not used for the purposes of the preliminary determination. The additional information submitted by the GOC was not received within a reasonable period of time to allow the CBSA to analyze and verify the information prior to the closing of the record. As a result, none of the information submitted by the GOC was used for the purposes of the final determination. Sufficient information was not provided to the CBSA to enable a proper analysis of the programs or to demonstrate whether or not programs used by the cooperative exporters were specific and would therefore constitute actionable subsidies. The absence of such information would normally prevent the CBSA from determining amounts of subsidy for the cooperative exporters and would result in the CBSA resorting to the use of facts available. However, in recognition of the amount of cooperation and the volume of information that has been provided by the cooperative exporters, the CBSA has determined an amount of subsidy for each cooperative exporter under ministerial specification pursuant to subsection 30.4(2) of SIMA. The ministerial specification provides the authority to determine amounts of subsidy for the cooperative exporters based on the available information, absent the information needed from the GOC.

This appendix consists of descriptions of the 15 subsidy programs used by cooperative exporters in the current investigation, followed by a listing of the other subsidy programs investigated by the CBSA that were not found to have been used by cooperative exporters.

SUBSIDY PROGRAMS USED BY COOPERATIVE EXPORTERS

Without a complete response to the subsidy RFI from the GOC, the CBSA has used the best information available to describe the subsidy programs used by the cooperative exporters in the current investigation. This includes using information obtained from CBSA research on potential subsidy programs in China, information provided by the cooperative exporters and descriptions of programs that the CBSA has previously publicly published in recent Statements of Reasons relating to subsidy investigations involving China.

Program 1: Preferential Tax Policies for Enterprises with Foreign Investment Established in the Coastal Economic Open Areas and in the Economic and Technological Development Zones

General Information:

This program was established in the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprise*, which was promulgated on April 9, 1991, and came into effect on July 1, 1991. This program was established in order to encourage foreign investment in Economic and Technical Development Zones (ETDZs) in open coastal cities and encourage some districts to take the lead in development. The granting authority responsible for this program is the State Administration of Taxation and the program is administered by local tax authorities.

Under this program, Foreign Invested Enterprises (FIEs) of a productive nature established in coastal economic open zones or in the old urban districts of cities where the SEZs or the ETDZs are located shall pay income tax at a reduced rate of 24%.

Calculation of Amount of Subsidy:

The CBSA has determined that three of the cooperative exporters have received benefits under this program during the Subsidy POI. The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the tax benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

As the CBSA has no information regarding benefits received under this program by the non-cooperative exporters, the CBSA is unable to calculate specific amounts of subsidy for those exporters. As a result, for the non-cooperative exporters, the CBSA has determined an amount of subsidy under ministerial specification as explained earlier under the Results of the Subsidy Investigation section.

Program 2: Research & Development (R&D) Assistance Grant

General Information:

This program appears to be established by governments at the local level and was established to encourage and support enterprises to develop new technologies and products, to promote energy savings, to enhance product quality, to improve export structure, and to cultivate and develop high-tech industry and new pillar industry. The granting authority responsible for the program for this investigation is the government of Jiangmen City, in accordance with the *Administrative Measures of Science & Technology Three Kinds of Funds of Jiangmen* City.[92]

Calculation of Amount of Subsidy:

The CBSA has determined that one of the cooperative exporters has received benefits under this program during the Subsidy POI. The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the grant was attributable.

As the CBSA has no information regarding benefits received under this program by the non-cooperative exporters, the CBSA is unable to calculate specific amounts of subsidy for those exporters. As a result, for the non-cooperative exporters, the CBSA has determined an amount of subsidy under ministerial specification as explained earlier under the Results of the Subsidy Investigation section.

[92] CBSA Subsidy Exhibit# 206, Non-confidential Response to the Exporter's Subsidy RFI for Taishan City Kam Kui Aluminium Extrusions Co., Ltd., page 25.

Program 3: Superstar Enterprise Grant

General Information:

Under this program, enterprises located in certain cities and selected as "Superstar Enterprises" may receive grants from the local government. In order to qualify for a "Superstar Enterprise", total annual sales of the superstar enterprise have to reach a threshold. The granting authority responsible for this program appears to be the local municipal government.

Calculation of Amount of Subsidy:

The CBSA has determined that one of the cooperative exporters has received benefits under this program during the Subsidy POI. The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the grant was attributable.

As the CBSA has no information regarding benefits received under this program by the non-cooperative exporters, the CBSA is unable to calculate specific amounts of subsidy for those exporters. As a result, for the non-cooperative exporters, the CBSA has determined an amount of subsidy under ministerial specification as explained earlier under the Results of the Subsidy Investigation section.

Program 4: Matching Funds for International Market Development for SMEs

General Information:

This program appears to be established by governments at the local level. According to a document obtained through CBSA research, entitled *Investing in China: Incentives Offered by Local Governments*[93], the municipality of Zhengzhou will provide one-to-one matching funds for the international market development funds of small and medium-sized export enterprises that are supervised at the provincial level.

This program does not appear to be limited to the municipality of Zhengzhou as, in the current investigation, a cooperative exporter located in a different municipality received funding under this program.

Calculation of Amount of Subsidy:

The CBSA has determined that one of the cooperative exporters has received benefits under this program during the Subsidy POI. The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

As the CBSA has no information regarding benefits received under this program by the non-cooperative exporters, the CBSA is unable to calculate specific amounts of subsidy for those

[93] Exhibit S43: Tab 4 - Information on Zhengzhou, *Investing in China: Incentives Offered By Local Governments.*

exporters. As a result, for the non-cooperative exporters, the CBSA has determined an amount of subsidy under ministerial specification as explained earlier under the Results of the Subsidy Investigation section.

Program 5: One-time Awards to Enterprises Whose Products Qualify for "Well-Known Trademarks of China" or "Famous Brands of China"

General Information:

This program appears to be established by the State level government and administered by both the provincial and local authorities. According to a document obtained through CBSA research, entitled *Notions Concerning Accelerating The Growth of the Non-State-Owend Economy*[94], published by the Yunnan provincial government, the provincial government shall grant a one-time award to NSOEs whose products are qualified as "Well-known Trademarks of China" or "Famous Brands of China", or are listed among the most famous export commodities identified by the state trading authority. In addition, should an enterprise qualify as a well-known trademark or famous brand of the province, one-time awards will be granted by local authorities.

This program does not appear to be limited to the province of Yunnan as, in the current investigation, one of the cooperative exporters located in a different province received awards under this program.

Calculation of Amount of Subsidy:

The CBSA has determined that one of the cooperative exporters has received benefits under this program during the Subsidy POI. The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the grant was attributable.

As the CBSA has no information regarding benefits received under this program by the non-cooperative exporters, the CBSA is unable to calculate specific amounts of subsidy for those exporters. As a result, for the non-cooperative exporters, the CBSA has determined an amount of subsidy under ministerial specification as explained earlier under the Results of the Subsidy Investigation section.

Program 6: Export Brand Development Fund

General Information:

This program appears to be established by the State government and administered by the provincial authorities. According to a document obtained through CBSA research, entitled

[94] Exhibit S43: Tab 5 - Information on Yunnan, *Notions Concerning Accelerating The Growth of the Non-State-Owend Economy,* Yunnan Province, Article 6 paragraph 19.

Notice on Issuing the Directive on Supporting the Development of Name Brands for Export [95], within its Foreign Trade Development fund, the state shall arrange a special item under the heading "export brand development fund" to support enterprises in building up their independent brands and nurture and develop name brand exports.

Calculation of Amount of Subsidy:

The CBSA has determined that one of the cooperative exporters has received benefits under this program during the Subsidy POI. The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

As the CBSA has no information regarding benefits received under this program by the non-cooperative exporters, the CBSA is unable to calculate specific amounts of subsidy for those exporters. As a result, for the non-cooperative exporters, the CBSA has determined an amount of subsidy under ministerial specification as explained earlier under the Results of the Subsidy Investigation section.

Program 7: Preferential Tax Policies for Foreign Invested Enterprises - Reduced Tax Rate for Productive FIEs Scheduled to Operate for a Period not less than 10 Years

General Information:

This program was established in the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprise*, which was promulgated on April 9, 1991, and came into effect on July 1, 1991. This program was established in order to encourage foreign investment. The granting authority responsible for this program is the State Administration of Taxation and the program is administered by local tax authorities.

Under this program, from the year an FIE begins to make a profit, they may apply for and receive an exemption from income tax in the first and second years and a 50% reduction in the third, fourth, and fifth years of profitable operation. Should an FIE cease operation following a period of less than 10 years, that enterprise will be responsible for repaying the amount of tax that has been reduced or exempted under this program.

If the FIE business license prescribes a scope that encompasses both business of a "productive" nature and of a "non-productive" nature, the FIE may only apply for and receive benefits under this program in the years where the income from productive business exceeds 50% of its total income. Should the scope of the FIE not include business of a "productive" nature in the scope prescribed by its business license, it may not receive benefits under this program under any circumstance, regardless if it has productive business income that exceeds 50% of total income.

[95] Exhibit S48: Tab 6 - Information on Brand Names in China, *Notice on Issuing the Directive on Supporting the Development of Name Brands for Export,* Section III.

Calculation of Amount of Subsidy:

The CBSA has determined that one of the cooperative exporters has received benefits under this program during the Subsidy POI. The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the tax benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

As the CBSA has no information regarding benefits received under this program by the non-cooperative exporters, the CBSA is unable to calculate specific amounts of subsidy for those exporters. As a result, for the non-cooperative exporters, the CBSA has determined an amount of subsidy under ministerial specification as explained earlier under the Results of the Subsidy Investigation section.

Program 8: Preferential Tax Policies for Foreign Invested Export Enterprises

General Information:

This program was established in the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprise*, which was promulgated on April 9, 1991, and came into effect on July 1, 1991. This program was established to expand foreign economic cooperation. The granting authority responsible for this program is the State Administration of Taxation and the program is administered by local tax authorities.

Under this program, export oriented enterprises invested in and operated by foreign businesses may pay a reduced income tax rate of 15% if their annual output value of all export products amounts to 70% or more of the output value of the products of the enterprise for that year. Export oriented enterprises in the SEZs and ETDZs and other such enterprises subject to enterprise income tax at the tax rate of 15% that qualify under the abovementioned conditions, shall pay enterprise income tax at the tax rate of 10%.

Calculation of Amount of Subsidy:

The CBSA has determined that one of the cooperative exporters has received benefits under this program during the Subsidy POI. The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the tax benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

As the CBSA has no information regarding benefits received under this program by the non-cooperative exporters, the CBSA is unable to calculate specific amounts of subsidy for those exporters. As a result, for the non-cooperative exporters, the CBSA has determined an amount of subsidy under ministerial specification as explained earlier under the Results of the Subsidy Investigation section.

Program 9: Local Income Tax Exemption and/or Reduction

General Information:

This program was established in the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*, which was promulgated on April 9, 1991, and came into force on July 1, 1991. This program was established to provide preferential tax treatment to FIEs to accelerate the development of local economies. The granting authority responsible for this program is the State Administration of Taxation and the program is administered by local tax authorities.

Under this program, any FIE that operates in an industry or undertakes a project encouraged by the State may receive an exemption or reduction in local income taxes.

Calculation of Amount of Subsidy:

The CBSA has determined that one of the cooperative exporters has received benefits under this program during the Subsidy POI. The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the tax benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

As the CBSA has no information regarding benefits received under this program by the non-cooperative exporters, the CBSA is unable to calculate specific amounts of subsidy for those exporters. As a result, for the non-cooperative exporters, the CBSA has determined an amount of subsidy under ministerial specification as explained earlier under the Results of the Subsidy Investigation section.

Program 10: Exemption of Tariff and Import VAT for Imported Technologies and Equipment

General Information:

The exemptions of tariffs and import linked VAT is provided for and administered in accordance with the *Circular of the State Council Concerning the Adjustment in the Taxation Policy of Import Equipment*, which was established on December 29, 1997, and came into effect on January 1, 1998. This program was established to further expand foreign capital utilization, attract technologies and equipment from abroad, promote structural adjustments in industry and technological advancement and to maintain the sustained, rapid and healthy development of the national economy.

The granting authorities responsible for this program are the Ministry of Finance and the General Administration of Customs and the program is administered by local provincial and municipal customs branches.

Under this program, enterprises meeting the eligibility criteria set forth below may apply for exemption from tariffs and VAT on imported equipment and its related technologies,

components and parts. The enterprise must receive approval of its application from the appropriate authority, and subsequently that approval documentation is submitted to the local customs officials who verify that the documents presented are adequate and that the imported items are not listed in the catalogues of commodities that are not eligible for tax exemptions.

Calculation of Amount of Subsidy:

The CBSA has determined that two of the cooperative exporters have received benefits under this program during the Subsidy POI. The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

As the CBSA has no information regarding benefits received under this program by the non-cooperative exporters, the CBSA is unable to calculate specific amounts of subsidy for those exporters. As a result, for the non-cooperative exporters, the CBSA has determined an amount of subsidy under ministerial specification as explained earlier under the Results of the Subsidy Investigation section.

Program 11: Patent Award of Guangdong Province

General Information:

This program appears to be administered by municipal authorities. According to information submitted by one of the cooperative exporters[96], the program is provided for in the *Administrative Measures of Patent Award of Guangdong Province* and is administered by the Intellectual Property Office of Guangdong Province and the Bureau of Personnel of Guangdong Province. The program was established to support improvement in technology innovation and to promote intellectual property. The grant is provided in the form of a one-time award or bonus and the enterprise is also issued a certificate.

Calculation of Amount of Subsidy:

The CBSA has determined that one of the cooperative exporters has received benefits under this program during the Subsidy POI. The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the grant was attributable.

As the CBSA has no information regarding benefits received under this program by the non-cooperative exporters, the CBSA is unable to calculate specific amounts of subsidy for those exporters. As a result, for the non-cooperative exporters, the CBSA has determined an amount of subsidy under ministerial specification as explained earlier under the Results of the Subsidy Investigation section.

[96] Exhibit S206 - Response to the Exporter's Request for Information (Subsidy) - TaiShan City Kam Kiu Aluminium Extrusion Co., Ltd. (Non-Confidential).

Program 12: Training Program for Rural Surplus Labor Force Transfer Employment

General Information:

This program appears to be administered by municipal authorities. According to information submitted by one of the cooperative exporters[97], the program is provided for in the *Implemental Scheme of Training Program for Rural Surplus Labor Force Transfer Employment of Taishan City from the year of 2005 to 2009* and is administered by the Labour and Social Security Bureau of Taishan City. Enterprises meeting the qualification are entitled to receive funds from the local government for providing training to the rural surplus labor force which is aimed at supporting agriculture and villagers.

Calculation of Amount of Subsidy:

The CBSA has determined that one of the cooperative exporters has received benefits under this program during the Subsidy POI. The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the grant was attributable.

As the CBSA has no information regarding benefits received under this program by the non-cooperative exporters, the CBSA is unable to calculate specific amounts of subsidy for those exporters. As a result, for the non-cooperative exporters, the CBSA has determined an amount of subsidy under ministerial specification as explained earlier under the Results of the Subsidy Investigation section.

Program 13: Reduction in Land Use Fees

General Information:

This program is administered in accordance with the *Circular on Further Encouraging Foreign Investment Opinions of the Ministry of Foreign Trade and Economic Cooperation and Other Ministries Transmitted by the General Office of the State Council*, which was established on August 20, 1999. This program was established to attract foreign investors by providing a land use fee exemption to those enterprises with foreign investment that have acquired their lands from the GOC and have paid the transferring fee. The granting authority responsible for this program is the Administrative Office of the State Council.

At present, every Chinese enterprise is required to pay a land transfer fee when land use rights are acquired through the bidding system. Effective January 1, 2007, all FIEs were required to pay land use tax which is administrated by the State Administration of Taxation and local tax authorities.

[97] Exhibit S206 - Response to the Exporter's Request for Information (Subsidy) - TaiShan City Kam Kiu Aluminium Extrusion Co., Ltd. (Non-Confidential).

Calculation of Amount of Subsidy:

The CBSA has determined that one of the cooperative exporters has received benefits under this program during the Subsidy POI. The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

As the CBSA has no information regarding benefits received under this program by the non-cooperative exporters, the CBSA is unable to calculate specific amounts of subsidy for those exporters. As a result, for the non-cooperative exporters, the CBSA has determined an amount of subsidy under ministerial specification as explained earlier under the Results of the Subsidy Investigation section.

Program 14: Provincial Scientific Development Plan Fund

This program appears to be established and administered by the Provincial level governments. According to a document obtained through CBSA research, entitled *Notions Concerning Accelerating The Growth of the Non-State-Owend Economy*[98], published by the Yunnan provincial government. According to this document, projects launched by NSOEs, which boast intellectual properties and good marketing prospects, can be included in the projects that enjoy the support of the province's special funding such as the Provincial Scientific Development Plan Fund.

This program does not appear to be limited to the province of Yunnan as, in the current investigation, a cooperative exporter located in a different province received awards under this program.

Calculation of Amount of Subsidy:

The CBSA has determined that one of the cooperative exporters has received benefits under this program during the Subsidy POI. The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

As the CBSA has no information regarding benefits received under this program by the non-cooperative exporters, the CBSA is unable to calculate specific amounts of subsidy for those exporters. As a result, for the non-cooperative exporters, the CBSA has determined an amount of subsidy under ministerial specification as explained earlier under the Results of the Subsidy Investigation section.

[98] Exhibit S43: Tab 5 - Information on Yunnan, *Notions Concerning Accelerating The Growth of the Non-State-Owend Economy,* Yunnan Province, Article 6 paragraph 18.

Program 15: Primary Aluminum Provided By Government at Less Than Fair Market Value

General Information:

At the preliminary determination, the CBSA stated that information was still being reviewed to determine whether aluminum extrusion producers had purchased goods or services from state-owned enterprises (SOEs), including major manufacturing inputs, at prices below fair market value. Pursuant to this review, the CBSA examined the information provided by the cooperative exporters in respect of primary aluminum purchases during the Subsidy POI.

The information submitted by the cooperative exporters provided a detailed breakdown of primary aluminum purchases, such as billets and ingots. The information also included the names and addresses of suppliers and the raw material manufacturers as well as the ownership structure of these parties, when known. The cooperative exporters indicated that primary aluminum was purchased from SOEs, private trading companies, and other manufacturers during the Subsidy POI. The primary aluminum purchased by aluminum extrusion producers from private trading companies is provided to the private trading companies by producers that have been identified as SOEs or Non-SOEs by the cooperative exporters, where known. However, only one of the cooperative exporters was able to reliably and accurately identify purchases in which the supplier, trading company and/or manufacturer, was not an SOE. These purchases were imported by the cooperating exporter and were priced according to a pricing agreement that was in effect during the entire Subsidy POI.

Calculation of Amount of Subsidy:

In many instances, the CBSA was unable to identify whether primary aluminum was being provided indirectly by SOEs through private trading companies. For a large number of such purchases, exporters were unable to identify the manufacturer of the primary aluminum. Also, in many cases where they did identify the manufacturer, they could not indicate whether the manufacturer was in fact an SOE and, in some cases, the exporter identified known SOE suppliers and manufacturers as being Non-SOEs.

As a complete submission was not received from the GOC, which was to include a complete a list of all primary aluminum manufacturers for which the GOC retains partial or complete ownership, the CBSA was unable to verify the SOE/Non-SOE designations made by exporters for accuracy. As a result, where the CBSA found that an exporter identified one or more known SOE suppliers as being Non-SOEs, the designations were determined to be unreliable and all purchases designated as Non-SOE were treated as SOE purchases.

In cases where the exporter was unable to designate a supplier (either trader or manufacturer) as being either an SOE or Non-SOE, or where they could not identify the name of a manufacturer for purchases made from a trading company, such purchases were also treated as SOE purchases.

Where a subsidy relates to the provision of goods by government, the CBSA determines whether there is a difference between the fair market value of the goods in the territory of the government

providing the subsidy, and the price at which the goods were provided by that government. For the purposes of determining a fair market value benchmark for primary aluminum in China, the CBSA considered using the Shanghai Metals Market (SMM) or the Shanghai Futures Exchange (SHFE) pricing. A summary of this analysis follows.

Based on research conducted by the CBSA in combination with information provided by exporters during the course of the investigation, the CBSA was able to identify more than 30 state-owned primary aluminum producers and trading companies. However, without a complete subsidy submission from the GOC, it is unclear whether these companies would form the majority of primary aluminum sold by SOEs. Further, without information from the GOC, the CBSA was unable to accurately determine the production and sales figures for the SOEs which it identified.

While the CBSA cannot accurately determine what percentage of primary aluminum is in fact produced and sold by all SOEs in China, the CBSA did obtain the 2007 Annual Report[99] for Aluminum Corporation of China Limited (Chalco) that was filed with the United States Securities and Exchange Commission. The report states that Chalco's largest shareholder and parent company is the Aluminum Corporation of China (Chinalco), a state-owned company. In addition, the CBSA noted that Chalco is also listed as one of the 150 "Central SOEs" on the State-owned Assets Supervision and Administration Commission of the State Council (SASAC) website[100].

According to Chalco's annual report[101], it produced 2.8 million metric tonnes of primary aluminum in 2007, accounting for approximately 22% of China's total primary aluminum production for 2007. This percentage appears to be correct as the International Aluminum Institute[102] reported that 12.6 million metric tonnes of primary aluminum was produced in China in 2007. It should be noted that the total production figure reported by Chalco does not include an amount of production for Baotou Aluminum, an SOE acquired by Chalco at the end of 2007, which has annual capacity of 307,000 metric tonnes[103]. Based on this information pertaining to only one SOE, at a minimum, SOEs account for almost a quarter of the total production of primary aluminum in China.

In addition to a significant amount of SOE produced primary aluminum being sold in the Chinese domestic metal markets, the analysis conducted as part of the Section 20 inquiry also noted that a number of GOC export and VAT tax policies as well as trade restrictive industrial policies may also have a material impact on the prevailing price of primary aluminum in China.

Based on the above, the domestic selling prices of primary aluminum on the SHFE or SMM markets in China are not appropriate for purposes of determining the fair market value of primary aluminum for comparing to the prices paid by exporters on purchases of primary aluminum from SOEs.

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[99] Exhibit s402 NC - SEC Form 20-F – Aluminum Corporation of China Limited (December 31, 2007).
[100] SASAC Website: http://www.sasac.gov.cn/n2963340/n2963393/2965120.html.
[101] Exhibit s402 NC - SEC Form 20-F – Aluminum Corporation of China Limited (December 31, 2007).
[102] Exhibit s407 NC – International Aluminum Institute Statistics for China's Primary Aluminum Production.
[103] Exhibit s402 NC - SEC Form 20-F – Aluminum Corporation of China Limited (December 31, 2007).

To establish the fair market value of primary aluminum in China, the CBSA reviewed the information available. As noted above, the CBSA found that one cooperative exporter had imported primary aluminum from a supplier located outside of China during the Subsidy POI and that the exporter also had a contract in place through the POI establishing the price for such purchases.

The CBSA is unable to use the actual pricing of those specific transactions that took place between the cooperative exporter and its Non-SOE supplier as disclosing the confidential information may be harmful to that entity as the premium portion of the price is negotiated by the exporter. Therefore, in order to determine a fair market value price to compare with all cooperative exporters' purchases of primary aluminum from SOEs, the CBSA based the fair market value price on the non-confidential terms found in the pricing agreement. The pricing agreement between the cooperative exporter and the Non-SOE supplier was based on the monthly average LME price plus a negotiated premium. In order to protect the confidentiality of the negotiated portion of the contract, the CBSA used the official LME monthly average cash settlement price for primary aluminum (US$/Tonne) for purposes of establishing the fair market value of primary aluminum in China. As non-confidential information relating to premiums paid on primary aluminum imported into China is not available, a premium amount will not be included in establishing the fair market value.

As a result, the CBSA has determined that all seven of the cooperative exporters have received benefits under this program during the Subsidy POI. The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

As the CBSA has no information regarding benefits received under this program by the non-cooperative exporters, the CBSA is unable to calculate specific amounts of subsidy for those exporters. As a result, for the non-cooperative exporters, the CBSA has determined an amount of subsidy under ministerial specification as explained earlier under the Results of the Subsidy Investigation section.

SUBSIDY PROGRAMS NOT USED BY COOPERATIVE EXPORTERS

The following programs were included in the current investigation. Questions concerning these programs were included in the RFIs sent to the GOC and to all known exporters of subject goods in China. None of the cooperative exporters reported using these programs during the subsidy POI. Without complete responses to the Subsidy RFI from the GOC and all known exporters, the CBSA does not have detailed descriptions of these programs; nor does it have sufficient information to determine that any of these programs do not constitute actionable subsidy programs. In other words, the CBSA does not have sufficient information to determine that any of these programs should be removed from the investigation for the purposes of the final determination.

Special Economic Zone (SEZ) Incentives and Other Designated Areas

Program 16. Preferential tax policies for enterprises with foreign investment established in special economic zones (excluding Shanghai Pudong area).
Program 17. Preferential tax policies for enterprises with foreign investment established in Pudong area of Shanghai.
Program 18. Preferential tax policies in the Western Regions.
Program 19. Local Income Tax Exemption and/or Reduction for SEZs and Designated Areas.
Program 20. Exemption/reduction of special land tax and land use fee.
Program 21. Tariff and Value-added Tax (VAT) exemptions on imported materials and equipments.
Program 22. Income Tax Refund where Profits Re-Invested.
Program 23. Preferential costs of services or goods provided by government bodies or state-owned enterprises.
Program 24. Corporate Income Tax Exemption and/or Reduction in SEZs and other Designated Areas.

Grants

Program 25. The State Key Technology Renovation Projects.
Program 26. Reimbursement of Antidumping and/or Countervailing Legal Expenses by the Local Governments.
Program 27. Grant for Key Enterprises in Equipment Manufacturing Industry.
Program 28. Export Assistance Grant.
Program 29. Innovative Experimental Enterprise Grant.
Program 30. Inward Remittance of Export Earnings.
Program 31. Interest Subsidies for Loans Secured by Tax Refund Accounts.
Program 32. Special Support Fund for Non-State-Owned Enterprises (NSOEs).
Program 33. State Fund for R&D Technology Projects.
Program 34. Innovation Fund for Medium and Small Business.
Program 35. Technical Renovation Loan Interest Discount Fund.
Program 36. Special Project Support Fund.
Program 37. Special Funds for Foreign Economic and Technical Cooperation.
Program 38. Special Fund for Brand Development.
Program 39. Key Export Enterprise Assistance Fund.
Program 40. Support Fund for Key Commercial and Industrial Enterprises.
Program 41. Venture Investment Fund of Hi-Tech Industry.
Program 42. National Innovation Fund for Technology Based Firms.
Program 43. Guangdong – Hong Kong Technology Cooperation Funding Scheme.
Program 44. Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment.
Program 45. State Fund with Interest Discount.

Equity Infusions/Debt-to-Equity Swaps

Program 46. Debt-to Equity Swaps.

Preferential Loans

Program 47. Loans and Interest Subsidies provided under the Northeast Revitalization Program.
Program 48. Loan Guarantee Fund for Small and Medium Enterprises.
Program 49. Interest-Free Loans to High and New Technology Projects.

Preferential Income Tax Programs

Program 50. Preferential tax policies for enterprises with foreign investment which are technology-intensive and knowledge-intensive.
Program 51. Preferential tax policies for the research and development of foreign-invested enterprises.
Program 52. Preferential tax policies for foreign invested enterprises and foreign enterprises which have establishments or place in China and are engaged in production or business operations purchasing domestically produced equipment.
Program 53. Preferential tax policies for domestic enterprises purchasing domestically produced equipment for technology upgrading purpose.
Program 54. Income Tax Refund for Re-investment of FIE Profits by Foreign Investors.
Program 55. VAT and Income Tax Exemption/Reduction for Enterprises adopting Debt-to-Equity Swaps.

Relief from Duties and Taxes on Materials and Machinery

Program 56. Relief from Duties and Taxes on Imported Materials and Other Manufacturing Inputs.

APPENDIX 3 – SUMMARY OF FINDINGS – SECTION 20

INTRODUCTION

Section 20 is a provision under the *Special Import Measures Act* (SIMA) that may be applied to determine the normal value of goods in an anti-dumping investigation where certain "non-competitive" conditions prevail in the domestic market of the exporting country. In the case of a prescribed country under paragraph 20(1)*(a)* of SIMA, it is applied where, in the opinion of the President, the government of that country substantially determines domestic prices and there is sufficient reason to believe that the domestic prices are not substantially the same as they would be in a competitive market.

EVIDENCE OF SECTION 20 CONDITIONS

The following are guidelines that the CBSA considers when examining factors that suggest domestic prices may be substantially determined by the government of an exporting country under investigation.

These are factors which would suggest that the government directly determines pricing:

- the government or a government body sets minimum and/or maximum (floor or ceiling) price levels in respect of certain goods which permits prices to be established no lower or no higher than the minimum or maximum price levels;
- the government or a government body sets absolute pricing levels for certain goods;
- the government or a government body sets recommended or guidance pricing at which it is expected that sellers will adhere to within a certain range above and/or below that value;
- there are government or regulatory bodies which are responsible for establishing the price levels and for regulating and enforcing these price levels; and
- there are government-owned or controlled enterprises that set the price of their goods in consultation with the government or as a result of government-mandated pricing policies and, because of their market share or dominance, become price-leaders in the domestic market.

Governments can also indirectly determine domestic prices through a variety of mechanisms that can involve the supply or price of the inputs (goods and services) used in the production of the subject goods or by influencing the supply of the subject goods in order to affect their price. For example:

- governments can control import and export levels through licensing, quotas, duties or taxes to maintain domestic prices at a certain level;
- governments can subsidize producers by providing direct financial subsidies or low-priced inputs in order to maintain the selling price of the product at a certain level;
- governments can purchase goods in sufficient quantities to raise the domestic price of the goods or they can sell stockpiled goods to put downward pressure on prices;
- through taxation or other policies, governments can regulate the level of profits that a company can earn which will affect selling prices; and

- the government can regulate or control production levels or the number of producers or sellers permitted in the market in order to affect domestic prices.

BACKGROUND

Recent China Section 20 Inquiries

Since June 2005, the CBSA has conducted two investigations and three normal value re-investigations involving section 20 inquiries on steel products from China. The investigations covered carbon or alloy steel oil and gas well casing (oil country tubular goods or OCTG) products and carbon steel welded pipe, while the three re-investigations involved hot-rolled steel sheet and hot-rolled steel plate products. In all instances, information available to the CBSA indicated that there was reason to believe that section 20 conditions exist in the steel sector in China. Accordingly, the President was of the opinion that the conditions of section 20 were present in the Chinese domestic steel industry.

This investigation is Canada's first dumping and subsidy investigation involving an aluminum product from China. Accordingly, while there are some similar characteristics shared between the Chinese steel and aluminum industries, a separate, detailed analysis of the aluminum extrusions sector must be conducted to determine if the conditions of section 20 exist.

Investigation Process

At the initiation of the investigation, the CBSA had sufficient evidence, supplied by the Complainants, and from its own research, to support the initiation of a section 20 inquiry. The information indicated that the prices of aluminum extrusions in China have been substantially determined, indirectly, by various GOC industrial policies regarding the aluminum industry and by export restrictions and tax changes for aluminum and aluminum extrusions.

Accordingly, the CBSA, at the initiation of the dumping investigation, sent section 20 Requests For Information (RFIs) to all 160 known exporters of aluminum extrusions in China, as well as to the GOC requesting detailed information related to the aluminum extrusions sector. In response to the section 20 inquiry and the relevant RFIs, the CBSA received substantially complete and verifiable responses that are usable for the section 20 inquiry from eight Chinese exporters and from the GOC.

In addition, the CBSA has obtained information from secondary sources such as previous CBSA reports, market intelligence reports, public industry reports, newspaper and internet articles as well as other government documents.

The eight cooperative exporters represent approximately 41% of the total exports to Canada of subject goods, by volume during the Dumping Period of Investigation (Dumping POI). These companies represent a far smaller proportion of the Chinese domestic aluminum extrusions industry, which the GOC has indicated is comprised of over 460 producers.[104] A section 20

[104] CBSA Dumping Exhibit #266. GOC Response to Section 20 RFI, page 24.

inquiry assesses the domestic industry sector as a whole. As such, the review of the aluminum extrusions sector is not limited to an examination of the information provided by the cooperative exporters.

For the purposes of the preliminary determination, the President formed the opinion that domestic prices in the aluminum extrusions sector in China were substantially determined by the GOC and there were sufficient reasons to believe that the domestic prices were not substantially the same as they would be if they were determined in a competitive market. In arriving at this opinion, the President considered the cumulative effect that the GOC's measures exerted on the Chinese aluminum extrusions sector in China. The information indicated that the wide range of GOC influence and measures have a material impact nature on the aluminum and aluminum extrusions industries through means other than market forces.

CBSA ANALYSIS FOR FINAL DETERMINATION

China As An Economy In Transition

The GOC started to move from a "planned economy" to "socialist market economy" in the early 1990's. China's current economic structure reflects the legacy of central planning and the elements of a modern and increasingly market based competitive system.[105]

There are differences between a socialist market economy and a market economy. The main difference rests with the government involvement in various industrial sectors deemed to be important to the Government. For example, the GOC has identified two industry groups where the GOC must maintain a degree of control. The two groups are "strategic industries"[106] and "fundamental and pillar industries", with the non-ferrous metals industry listed as a pillar industry. [107] As reported in the United States International Trade Commission (USITC) Report of December 2007, the State-owned Assets Supervision and Administration Commission (SASAC) noted that for "strategic industries" the government must maintain absolute control, which is a minimum of 50% government equity stake in every company in the industry group. For "fundamental and pillar industries" the government should maintain relatively strong control over the principal companies, which is a minimum of 50% government equity in the principal enterprises in the industry group.[108] It appears that the GOC considers the non-ferrous metals industry, including the aluminum industry, to be a "fundamental and pillar industry".

An annual report (Form 20-F) filed with the United States Securities and Exchange Commission (SEC) by the Aluminum Corporation of China Limited (Chalco) provides some insight into the oversight role of the GOC in the economy and aluminum industry in general. Chalco is a subsidiary of the Aluminum Corporation of China Limited (Chinalco), which is listed as one of

[105] CBSA Dumping Exhibit #364. China: Description of Selected Government Practices and Policies Affecting the Decision-Making in the Economy, USITC December 2007 [page xiv].

[106] *Ibid*, page 18. Strategic industries include armaments, power generation and distribution, petroleum and petrochemicals, telecommunication, coal, civil aviation and shipping.

[107] *Ibid*, page 18. Pillar industries include machinery and equipment, automobiles, information technology, construction, iron and steel, nonferrous metals, chemicals, mining resources exploration, and science and technology.

[108] *Ibid*, pages 18 and 27.

the state-owned enterprises directly under the SASAC.[109] In their Form 20-F filing, they stated the following regarding the status of the economy in China and their own risks related to conducting business in China:

> *A significant portion of our business, assets and operations are located in China. The economy of China differs from the economies of most developed countries in many respects. The economy of China has been transitioning from a planned economy to a market-oriented economy. Although in recent years the PRC government has implemented measures emphasizing the utilization of market forces for economic reform, the reduction of state ownership of productive assets and the establishment of sound corporate governance in business enterprises, a substantial portion of productive assets in China are still owned by the PRC government. In addition, the PRC government continues to play a significant role in regulating industry by imposing industrial policies. It also exercises significant control over China's economic growth through the allocation of resources, controlling payment of foreign currency-denominated obligations, setting monetary policy and providing preferential treatment to particular industries or companies. Some of these measures benefit the overall economy of China, but may have a materially adverse impact on us.*[110]

China's National Five-Year Plans

Five-Year Plans for National Economic and Social Development (Five-Year Plans) are established by the GOC and arrange national key construction projects, manage the distribution of productive asset and economic development, map the direction of future regional development and establish social and economic targets. The first Five Year Plan was issued in 1953 and since that time, the GOC has issued Five-Year Plans on a consistent basis.

China's current plan is known as "Guidelines of the Eleventh Five-Year Plan for National Economic and Social Development 2006-2010" (Eleventh Five-Year Plan)[111] and was compiled according to the suggestions of the Central Committee of the Communist Party of China.

The Eleventh Five-Year Plan specifically sets out a framework for adjusting raw material industrial structure and distribution in Chapter 13, section 1 entitled "Optimize the Development of Metallurgical Industry", which notes that the GOC intends to:

> *Control the total quantity of electrolytic*[112] *aluminium, moderately develop alumina, encourage the development of deep aluminium processing and new type alloy material and enhance the comprehensive utilization level of aluminium industrial resources.*[113]

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[109] CBSA Dumping Exhibit #372. SASAC website, "Name List of Central SOEs", available at: http://www.sasac.gov.cn/n2963340/n2971121/n4956567/4956583.html.

[110] CBSA Dumping Exhibit #60. Aluminum Corporation of China Limited. *Annual Report of a Foreign Private Issuer: Form 20-F, for the fiscal year ended December 31, 2007.* United States Securities and Exchange Commission, commission file number: 001-15264, page 38. ["Chalco SEC filing 2007"].

[111] CBSA Dumping Exhibit #266. GOC Response to Section 20 RFI, page 971.

[112] The term electrolytic refers to the electrolysis process used to produce aluminum. Electrolytic aluminum is synonymous with the term primary aluminum.

[113] *Ibid*, page 986.

The inclusion of a specific reference to the aluminum industry in a broad national-level planning document signifies the importance of the aluminum industry to the Chinese economy and highlights the extent of GOC attention the industry receives. Despite being a general planning document, that the GOC notes is a non-binding blueprint for economic and social development[114], there is very clear and specific wording that the GOC will "control the total quantity of electrolytic aluminum". It is also worth noting that the design and production of aluminum extrusions would fall under the realm of the "development of deep aluminum processing and new type alloy material" that the GOC is broadly noting should be encouraged during the 11th five-year planning period.

Flowing from the Eleventh Five-Year Plan, the provinces/municipalities develop their own specific Five-Year plans which reflect the GOC's objectives, as detailed below.

China's Provincial Five-Year Plans

Similar to the central Government's Eleventh Five-Year Plan explained above, Chinese provinces/municipalities have their own corresponding five-year development plans. The Provincial Five-Year Plans reflect the Central Government's overall objectives and incorporate the specific National objectives for that province.

The CBSA requested that the GOC provide fully translated copies of the Provincial 10th and 11th Five-year Plans for all of the provinces and cities in which the known exporters were located. The GOC initially only provided provincial five-years plans for the two provinces where they believed all of the responding exporters were located. In the GOC's supplemental section 20 response they provided partial translations of the provincial plans for an additional five provinces in China. The GOC noted in their supplemental RFI response that these seven provinces contained aluminum extruders that account for over 80% of the production volume for aluminum extrusions in China in 2007.[115]

Some of the provincial plans reference aluminum only in a general way. For instance, the provincial five-year plans for Guangdong province only mentions that the province will "restrict the exported products which take lots of resources with high energy consumption and pollution"[116], which would presumably include exports of aluminum. Shandong province also only has general comments about the aluminum industry, including "take joint management of aluminum industry with power supply industry, accelerate the development of electrolytic aluminum, form the aluminum industrial system integrated with aluminum plate, strip, foil and shaped aluminum".[117] The five-year plans themselves contain no additional details on how the provinces plan on implementing these initiatives. However, with respect to Shandong province the CBSA has requested and received a copy of *Shandong Government Opinion on Speeding-up Adjustment in Structure of Aluminum Industry in the Area of Shandong*, which does contain additional details regarding their intentions towards the aluminum industry in their province. Details on the contents of this plan can be found in **Appendix 4**.

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[114] CBSA Dumping Exhibit #332. GOC Response to Supplemental Section 20 RFI #1, pages 2 and 3.
[115] CBSA Dumping Exhibit #332. GOC Response to Supplemental Section 20 RFI #1, page 6.
[116] CBSA Dumping Exhibit #266. GOC Response to Section 20 RFI, page 1166.
[117] CBSA Dumping Exhibit #332. GOC Response to Supplemental Section 20 RFI #1, page 130.

Other provinces' five-year plans contained much clearer plans for the aluminum industry. For instance, Henan province had the following in their 11th five-year plan:

> *To further strengthen aluminum centralized non-ferrous industry. To rationally allocate bauxite resources and to develop alumina intensively*[118]*. To build 3 alumina bases in Zhengahou, Jiaozuo and Yuxi. To promote the reorganization of electrolytic aluminum enterprises and to increase the concentration of electrolytic aluminum industry. To vigorously develop the deep processing of aluminum, with an emphasis on high-precision foil strip, die castings and industrial profiles, decorative building material in order to guide gathering of aluminum processing enterprises in aluminum industrial park.*[119]

Like the national five-year plans, the provincial-level plans' inclusion of specific references to the aluminum industry, plans for the aluminum industry, and even specific company names, signifies the importance of the aluminum industry and its major companies to these provincial economies and highlights the extent of GOC attention the industry receives overall.

Industry Structure and State-Owned Enterprise Involvement

Aluminum is the primary raw material input for aluminum extrusions and comprises a large percentage of the cost of aluminum extrusions. A review of the information submitted by the cooperating exporters shows that aluminum constitutes an average of approximately 81% of total cost of the aluminum extrusions they produce.[120] Given the importance of aluminum as a raw material input and cost component for aluminum extrusions, it is important to examine the GOC's involvement and influence over the Chinese aluminum industry, and any corresponding impact that would have an affect on the price of aluminum extrusions in China.

China is, by far, the world's largest producer of aluminum. In 2007, China produced 12.6 million metric tonnes (mt) of primary aluminum.[121] This accounted for over one third of the world's 37.4 million mt of primary aluminum production in 2007.[122] To provide for the production of aluminum, China produced 19.5 million mt of alumina in 2007.[123] As it takes approximately 2 mt of alumina to produce 1 mt of aluminum, China is, and will remain, a large importer of alumina.

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[118] Aluminum originates as an oxide called alumina. Deposits of bauxite ore are mined and refined into alumina one of the feedstocks for aluminum metal. Then alumina and electricity are combined in a cell with molten electrolyte called cryolite. Direct-current electricity is passed from a consumable carbon anode into the cryolite, splitting the aluminum oxide into molten aluminum metal and carbon-dioxide. (The Aluminum Association, www.aluminum.org).

[119] *Ibid,* page 371.

[120] CBSA Dumping Exhibit #586. CBSA Final Determination Section 20 Report.

[121] CBSA Dumping Exhibit #372. International Aluminium Institute, Alternative Source Statistical Report "China's Primary Aluminium Production", April 21, 2008. Online at: http://stats.worl-aluminum.org.iai/stats_new/formServer.asp?form=11.

[122] CBSA Dumping Exhibit #372. International Aluminium Institute, Alternative Source Statistical Report "Consolidated IAI Primary Aluminium Production", April 21, 2008. Online at: http://stats.worl-aluminum.org.iai/stats_new/formServer.asp?form=16.

[123] CBSA Dumping Exhibit #372. International Aluminium Institute, Alternative Source Statistical Report "China's Alumina Production", February 20, 2008. Online at: http://stats.worl-aluminum.org.iai/stats_new/formServer.asp?form=13.

Chinalco and it various subsidiaries, including Chalco, dominate the Chinese aluminum sector. Chinalco is listed as one of the state-owned enterprises directly under SASAC. Chinalco produced 10 million mt of alumina in 2007, or 46% of Chinese alumina production (down from 73% in 2006).[124] Aluminum production information for Chinalco for 2007 is not available, but their subsidiary Chalco produced 2.8 million mt of aluminum, accounting for 22% of Chinese production in 2007.[125] Chalco is the major, but not the only, aluminum producing subsidiary of Chinalco. Chalco is a publicly traded company, of which Chinalco currently owns 40% of the outstanding shares.

Apart from a small amount of export sales, Chalco sells all of their aluminum production domestically in China. There are approximately 100 aluminum smelting companies operating in China, which, like Chalco, sell substantially all of their products in China. In 2007, only 14 aluminum-smelting companies had production capacities in excess of 300,000 mt, with the rest having relatively smaller capacities.[126]

China's Aluminum Extrusion Production

While the Chinese primary aluminum industry is dominated by state-owned enterprises (SOE), particularly by Chinalco, the same situation is not prevalent in the aluminum extrusions sector. The downstream producers of aluminum extrusion products appear to have little direct state ownership and the industry is very fragmented. The GOC's RFI response indicated there are 460 aluminum extruders in China that each produce and sell at least 5 million RMB annually. Of these 460 companies, the GOC indicated that only 12 are wholly or partially state-owned. In their supplemental section 20 RFI response, the GOC provided the production volume of aluminum extrusions for these 12 companies. Only one of the 12 companies is a large producer of aluminum extrusions, producing over 75,000 mt in 2007. Canada customs information shows that these 12 companies accounted for only 3.4% of the imports of aluminum extrusions from China during the POI.

Government Industrial Policies

Like steel, aluminum has been identified by the GOC as an industry with "production capacity redundancy" that requires GOC mandated structural adjustment. The government industrial policies include several broader documents that discuss policies and approaches to multiple industries (such as steel, cement, non-ferrous metals, etc.). The GOC's industrial policies also include several documents that are specifically authored regarding the aluminum industry, including the mining of bauxite, production of alumina, production of primary aluminum, and the further processing of aluminum (including aluminum extrusions).

In past section 20 inquiries regarding steel products, the CBSA analyzed the GOC's *China Iron and Steel Industry Development Policy* as the main authoritative document outlining the GOC's

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[124] CBSA Dumping Exhibit #372. Xinhua. "China's Top Alumina Maker Reports 24% Rise In 2007 Revenue", January 14, 2008. Online at: http://english/mofcom.gov.cn.

[125] CBSA Dumping Exhibit #363. Aluminum Corporation of China, "Announcement of 2007 Annual Results", March 17, 2008.

[126] Chalco SEC filing 2007, *supra* note 7, page 38.

policies and plans that are specific to the steel industry. The CBSA, through its own research, is aware of three documents that were authored around the same time as the *China Iron and Steel Industry Development Policy* that may contain similar GOC policies and plans related to the aluminum industry. These documents are *The Industrial Development Policy for the Aluminum Industry* (Industrial Development Policy), *The Special Development Plan for the Aluminum Industry Development* (Special Development Plan), *and China's Aluminum Industry Layout and Restructuring Proposal* (Layout and Restructuring Proposal).

The CBSA requested all three of these documents in the section 20 RFI to the GOC. In response, the GOC noted that the Industrial Development Policy and the Special Development Plan had been "formulated in 2005" but that they had not "come into effect" and had not "been circulated to the local governments for implementation". However, the GOC provided a document authored in 2006 entitled *Guidelines for Accelerating the Restructuring of the Aluminum Industry* which contained the following measure:

> *(1) strengthen the direction to the industrial policy and industrial layout and plan*
>
> "It is important to complement the *Industrial Development Policy of Aluminum Industry* approved by the State Council, to stipulate the detailed measures for the implementation, and to accelerate the structural adjustment of the industry. According to the *Special Development Plan for the Aluminum Industry Development*, the aluminum industry will be designed well and developed orderly". [127]

Additionally, in another document provided by the GOC entitled *Emergent Circular on Curbing Rebound Investment in the Aluminum Industry*, promulgated in April 2007, the Industrial Development Policy is again referenced:

> "The local governments should implement the *Decision of Publishing and Implementing the 'Interim Measures of Accelerating Adjustment of Industrial Structure' by the State Council*, the *Development Policy of Aluminum Industry*, and the *Notice Concerning Guiding Opinion of Accelerating Adjustment of Aluminum Industrial* Structure to advance the process of adjustment of industrial structure."[128]

In both of the above referenced quotes, the Industrial Development Policy is referenced by its official title in italics (or in brackets in the manner of noting official documents in the original Chinese version), in the same manner as the title of other documents the GOC provided as officially approved documents. Additionally, the first quote above specifically notes that the Industrial Development Policy is "approved by State Council" and the second quote instructs the local governments to implement the noted policies.

In its second supplemental RFI response the GOC also provided the CBSA with articles published in the *China Non-ferrous Metals Monthly*. This publication is under the administration

[127] CBSA Dumping Exhibit #266. GOC Response to the Government's RFI (Section 20), page 495.
[128] *Ibid*, page 834.

and management of China Minmetals Corporation, an SOE under SASAC control.[129] In an article entitled *"The Major Events of China's Aluminum Industry in 2005"*, this state-owned publication noted the following:

> *In October 2005, the Project on the aluminium Industry Development and the Policies on the Aluminium Industry Development were passed at a conference held by the State Council. This project and the policies presented the principles for China's aluminium industry development in the future including total output control, improved industry structure and rational distribution, lower energy cost, etc.*[130]

Regarding the Layout and Restructuring Proposal, the GOC noted that this document was merely a proposal drafted by the Industry Department of the NDRC in 2005 and listed on its website. They further noted that it had not been submitted to State Council for examination and approval, and it had never come into effect.[131] The CBSA does not have any information indicating that this proposal has been adopted, however, the "proposal" was still publicly listed on the NDRC's website three years later.[132] This Layout and Restructuring Proposal also made reference to the other two industrial policies:

> *In order to optimize the layout of the structure of China's aluminum industry, the state has drawn up a special aluminum industry development planning and industrial development policies, to be made public after the approval of the State Council. In order to further strengthen the aluminum industry to adjust industrial layout and structure of the guide. All localities should strictly enforce the aluminum industry development policy, approved the project strictly to prevent redundant construction.*[133]

In a supplemental section 20 RFI, the CBSA reiterated its request to the GOC to provide the Industrial Development Policy, the Special Development Plan and the Layout and Restructuring Proposal. In their response the GOC noted that for these documents "the required legislative procedure has never been completed and, therefore, they are not in force".[134] The GOC also provided a statement by the NDRC noting that the policies were not in force. The GOC, therefore, again refused to provide the documents to the CBSA. The CBSA requested these documents again in its second supplemental section 20 RFI, and also requested the minutes of the State Council Executive meeting where the policies were discussed. The CBSA requested the meeting minutes to ascertain what direction the State Council had given in either approving the policies or limiting the policies to draft status. The GOC again refused to provide documents, noting that they "are not in force and are internal documents. The GOC did not provide these policies since its disclosure would mislead the domestic and/or international community."[135] The GOC also noted that "any discussions on these policy documents within the

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[129] CBSA Dumping Exhibit #372. SASAC website, "Name List of Central SOEs", available at: http://www.sasac.gov.cn/n2963340/n2971121/n4956567/4956583.html.
[130] CBSA Dumping Exhibit #475. GOC Response to Supplemental Section 20 RFI #2, page 222.
[131] *Ibid*, page 30.
[132] CBSA Dumping Exhibit #375.
[133] *Ibid.*
[134] CBSA Dumping Exhibit #332. GOC Response to Supplemental Section 20 RFI #1, page 4.
[135] CBSA Dumping Exhibit #475, GOC Response to Supplemental Section 20 RFI #2, page 1.

State Council are also privileged"[136] and therefore refused to provide the State Council Executive meeting minutes.

The GOC has requested that the CBSA give due consideration to its statement that the documents are not in effect and are non-legal drafts only. In its case briefs the GOC argued that the CBSA has placed an undue emphasis on these draft policies. Given the GOC refusal to provide these documents, the CBSA is wholly unaware of the contents of these policies, and therefore, cannot place an undue emphasis on their importance. The analysis of the GOC's industrial policies contained in the rest of this report analyzes the impact of GOC policies and regulations that have been provided by the GOC in its responses as being in force.

However, the CBSA notes the GOC's unwillingness to provide these policies and their failure to provide the minutes of the State Council Executive meeting that would have showed the context in which these policies were discussed and the direction the State Council provided regarding their implementation (or lack thereof). Even if the documents are "internal" as the GOC asserts, the fact that they are subsequently referenced in other official GOC policy documents at least demonstrates that these policies direct or guide, internally within the GOC, government officials in their overall policies objectives and treatment of the aluminum and aluminum processing industries. The CBSA therefore maintains that the documents are highly relevant to this investigation and takes note of the GOC's refusal to provide the documents after repeated requests. A report by the People's Daily on the policies' planned "launch" noted that they would "curb China's aluminum exports and call on domestic producers to mainly target the home market"[137] As discussed later in this report, the GOC has adopted measures that are in line with the apparent contents of these unofficial plans.

GOC Industrial Policies Summary

The GOC did provide numerous documents that cover their general industrial policies and investment guidance, as well as several documents more specific to the production of alumina, aluminum and aluminum products. The CBSA has extensive information on the record regarding numerous GOC industrial polices in general and polices that are specific to the aluminum industry. This information demonstrates a substantial amount of GOC involvement directed specifically towards the aluminum industry in China. **Appendix 4** details, in chronological order, the information that has been obtained regarding various GOC laws, circulars and policy measures affecting the Chinese aluminum and aluminum extrusions industry from 2002 until present.

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[136] *Ibid,* page 8.

[137] CBSA Dumping Exhibit #372. People's Daily Online --- http://english.people.com.cn. *China to Reveal Aluminium Reforms*, September 22, 2005.

To summarize, the GOC has laws and policies relating to the aluminum industry that dictate:

- the type of aluminum smelting processing technology that is permitted and bans on certain types of technology used in aluminum production; restricting foreign investment in the primary aluminum industry;
- minimum annual production capacity for new primary aluminum producers;
- minimum capital investment requirements for new aluminum projects;
- minimum efficiency standards for new and existing aluminum projects (in terms of electricity and coal usage per MT produced); and
- minimum amounts of raw materials the alumina or aluminum producer is required to have access to in order to be granted project approval.

Furthermore, the GOC has laws and policies relating specifically to the aluminum extrusions sector that dictate:

- minimum annual production capacity for new aluminum fabricators (including a minimum 50,000 MT capacity for new aluminum extruders); and
- minimum efficiency standards for new and existing aluminum extrusion facilities (in terms of electricity usage and raw material consumption per output).

The policies show that over time the GOC's restrictions in the aluminum industry in China have progressed further downstream. Earlier policies sought to restrict additional aluminum production, but encouraged the further processing of aluminum products, including aluminum extrusions. However, the most recent GOC policies now also place restrictions directed towards aluminum processors, including aluminum extrusions producers.

Another important aspect is that the earliest policies sought to restrict or outright ban inefficient technology for producing aluminum, but in the years following these restrictions aluminum smelting capacity actually increased substantially.[138] Analysis on the record from Metal Bulletin Research attributes much of the growth in China's aluminum capacity to the GOC's industrial policies. The report notes the following with respect to the elimination of older smelting technology:

> *The government repeatedly stated its intention to close all inefficient and polluting smelting capacity. Around 1.4m tpy of Chinese smelting capacity was based on* Söderberg[139] *pot technology during 2001/2002. The authorities announced in early 2003 a plan to phase out all this capacity during 2003, although it took until early 2005 for the vast majority of this capacity to be closed. Many smelters decided the best approach to*

[138] CBSA Dumping Exhibit #552, Information submitted by - Taishan City Kam Kiu Aluminium Co., Ltd. and Kam Kiu Aluminium Products Sdn. Bhd., page 43. Metal Bulletin Research, *An Analysis of the Global Market for Extruded Aluminium*, February 2006.

[139] There are two main types of aluminium smelting technology - Söderberg (or self-baked) and Pre-baked. The principal difference between the two is the type of anode used. Söderberg technology uses a continuous anode which is delivered to the cell (pot) in the form of a paste, and which bakes in the cell itself. Pre-bake technology uses multiple anodes in each cell, which are pre-baked in a separate facility and attached to rods that suspend the anodes in the cell. The Pre-baked technology is newer, and is much more efficient in terms of energy use. Over 80% of the world's aluminum smelters employ the Pre-baked technology.

dealing with the threat of closure was to firstly expand capacity by building prebake potlines and then subsequently close old Söderberg *technology. However, in many cases, the capacity of the newly installed potlines far exceeded the scale of the* Söderberg *pots and hence resulted in increased capacity.*[140]

In response to the GOC's move to ban a form of production technology, Chinese aluminum producers eventually complied but, overall, they first increased their production capacity with GOC approved technology. This response, combined with increasing domestic consumption, and preferential government treatment in the form of low electricity tariff rates and government grants for expansion, led to a surge in aluminum production in China.[141] As is reflected in the specific policies summarized in **Appendix 4**, the GOC's policy emphasis during the subsequent years (2003 and 2004) focussed on closing Söderberg technology to reduce capacity. While Chinese smelters still found this production method to be profitable they resisted attempts to be closed down.[142] As a result, Chinese aluminum production capacity continued to increase, partly fuelled by the GOC's mandate to shift into modern manufacturing methods. Having their attempts at restraining aluminum production capacity by closing Söderberg method production prove ineffective, or less effective than desired, the GOC was forced to pursue other measures, such as tax regime changes, to restrain production (see the import and export restrictions section of this report).

It should be noted that none of the GOC policies or regulations obtained by the CBSA in this investigation demonstrate any degree of direct price setting within the aluminum or aluminum extrusions industries. However, these policies and regulations do demonstrate the degree of control the GOC has over the industry in general. Overall, the extent of GOC oversight and control within the industry via their various policies and regulations is quite significant. The GOC's involvement is extensive enough to significantly affect companies within the industry. As Chalco notes in their 2007 SEC filing:

The central and local PRC governments continue to exercise a substantial degree of control and influence over the aluminum industry in China and shape the structure and characteristics of the industry by means of policies in respect of major project approvals, preferential treatments such as tax incentives and safety, environmental and quality control. If the PRC government changes its current policies or the interpretation of those policies that are currently beneficial to us, we may face pressure on profit margins and significant constraints on our ability to expand our business operations or to maximize our profitability.[143] *(emphasis added)*

Clearly, in Chalco's opinion, the GOC's extent of regulatory control is substantial and could significantly constrain their profitability and business operations. This wording, by a state-owned company, clearly reflects the strength and impact of GOC industrial policies and

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[140] CBSA Dumping Exhibit #552, Information submitted by - Taishan City Kam Kiu Aluminium Co., Ltd. and Kam Kiu Aluminium Products Sdn. Bhd., page 43. Metal Bulletin Research, *An Analysis of the Global Market for Extruded Aluminium*, February 2006.

[141] CBSA Dumping Exhibit #372. Robin Bhar, Base Metals Analyst at Standard Bank London ltd. *Commodities Now :* "Aluminum – The China Syndrome", June 2003.

[142] *Ibid.*

[143] Chalco SEC filing 2007, *supra* note 7, page 13.

defies the GOC's assertions that they are "aspirational expressions of the GOC's hopes for an industry".[144]

GOC Preferential Treatment and Subsidies

At the same time they were banning older technology, the GOC was providing preferential treatment to large aluminum smelters. In their 2005 SEC filing Chalco provided an explanation of their competition in the domestic market and the preferential treatment they were receiving from the GOC:

> *It is the PRC government's industrial policy to consolidate the Chinese primary aluminum industry into one consisting of larger, less polluting and more efficient producers. Accordingly, the larger smelters are being granted favorable treatment, including priority in the allocation of raw materials and electricity supplies and prices. These preferential treatments, especially discounts in electricity prices, represent stronger competitive advantage large domestic smelters have over small domestic smelters. In addition, since January 1, 2005, the PRC government prohibits domestic aluminum smelters whose annual production capacity lower than 100,000 tonnes from directly importing alumina to China. We are among a few companies in the PRC that are currently qualified to directly import alumina for our primary aluminum production. As imported alumina will usually be cost effective, we believe our competitiveness is enhanced as a result. ...*
>
> *PRC governmental policies directed at fostering the growth of larger domestic smelters are likely to be retained after China enters the WTO, such as tax benefits, preferential electricity tariffs, and subsidies for research and development.*[145]

Further, in 2005 Chalco noted that their domestic competition mostly came from sizable smelters and that there were only nine smelters with annual production capacity in excess of 200,000 mt. By their 2007 SEC filing, Chalco noted that there were fourteen Chinese smelters with annual capacity of at least 300,000 mt. Chalco notes that "Effective September 1, 1999, the former State Economic and Trade Commission, has prohibited construction of any new smelter with less than 100,000 tonnes in annual primary aluminum production capacity". Therefore, while the GOC was moving to ban older production technology they were providing strong incentives and encouragement to larger smelters to expand, and they were setting a minimum annual capacity, forcing such encouraged expansions to be large ones. As a result, Chinese aluminum smelting output increased from 5.5 million mt in 2003 to 7.8 million mt in 2005.[146] China also became a net exporter of aluminum in 2005.[147]

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[144] CBSA Dumping Exhibit #565. GOC case arguments, page 20.

[145] CBSA Dumping Exhibit #60. Aluminum Corporation of China Limited. *Annual Report of a Foreign Private Issuer: Form 20-F, for the fiscal year ended December 31, 2005.* United States Securities and Exchange Commission, commission file number: 001-15264, pages 29 and 30. ["Chalco SEC filing 2005"].

[146] CBSA Dumping Exhibit #372. International Aluminium Institute, Alternative Source Statistical Report "China's Alumina Production", February 20, 2008.
Online at: http://stats.worl-aluminum.org.iai/stats_new/formServer.asp?form=13.

[147] CBSA Dumping Exhibit #475, GOC Response to Supplemental Section 20 RFI #2, page 249.

Perhaps the most significant aspect of the GOC's preferential treatment of aluminum smelters is the preferential electricity rates charged to Chinese aluminum producers. The smelting of aluminum employs an electrolytic reduction process that requires a large and continuous supply of electricity. Electricity comprises a significant percentage of the cost of production for aluminum. For Chalco, the cost of electricity represents 30% of their cost of production for aluminum.[148] The GOC has had a policy of providing preferential electricity rates to large producers of aluminum. Reports indicate that the preferential power tariffs were in excess of RMB 0.10/kwh, and that the elimination of the preferential power rates is to be phased in by RMB 0.05/kwh annual increments.[149] In 2006, Chalco reported that their average cost of electricity was RMB 0.348 per kwh.[150] Therefore, the average preferential electricity concession of RMB 0.02 to greater than RMB 0.10 per kwh could represent substantial savings on the cost of electricity. However, in their 2007 annual SEC filing, Chalco notes that their preferential electricity rates were cancelled at the end of 2007 pursuant to a GOC circular ending the preferential electricity rates program.[151]

In their RFI response, the GOC provided the notice implementing the cancellation of preferential electricity rates. This notice provides for a phased in approach whereby a benefit of 5 cents per kwh was to be eliminated by December 2007; a benefit of between 5 and 10 cents would be reduced by 5 cents in December 2007 with the remainder eliminated in July 2008; and where the benefit was more than 10 cents, for 5 cents to be eliminated in December 2007, 5 cents eliminated in July 2008, and the remainder eliminated in January 2009.[152] The GOC was therefore still providing preferential electricity rates for the production of aluminum during the POI and, prior to the POI, was in some cases providing preferential electricity rates in excess of 10 cents per kwh.

Regarding preferential treatment for aluminum extruders themselves, it should be noted that the CBSA is also conducting a countervailing investigation with respect to benefits provided by the GOC to aluminum extruders in China. The final results of that investigation will show an amount of subsidy for each of the cooperative exporters that were investigated. The amount of benefits received ranges between 8% and 16% of the export prices of aluminum extrusions sold to Canada.

As noted by the World Bank in their *China Quarterly Update – February 2008*, provided by the GOC in the second supplemental RFI response:

> *Fiscal measures such as direct subsidies and taxes can sometimes substitute for administrative measures and have a different economic impact. Overall, they tend to keep incentives closer to being market determined and thus to be less distortive. A producer subsidy increases the incentive to supply and leaves demand market*

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[148] *Ibid* page 28.

[149] CBSA Dumping Exhibit #62. China Strategies LLC, "China Renewable Energy and Sustainable Development Report", January 2008: Volume 1, page 8.

[150] CBSA Dumping Exhibit #60. Aluminum Corporation of China Limited. *Annual Report of a Foreign Private Issuer: Form 20-F, for the fiscal year ended December 31, 2006*. United States Securities and Exchange Commission, commission file number: 001-15264, page 30. ["Chalco SEC filing 2006"].

[151] Chalco SEC filing 2007, *supra* note 7, page 11.

[152] CBSA Dumping Exhibit #266, GOC Response to the Section 20 RFI, page 817.

determined. We would normally expect a producer subsidy to result in a (somewhat) lower market price, and higher supply and demand.[153]

Therefore, the GOC's preferential treatment and subsidies available to aluminum and aluminum extrusions producers in China would have served to artificially increase the supply of the products in China. As previously noted, Chinese aluminum smelting production was 5.5 million mt in 2003. China's aluminum capacity rapidly expanded during the next few years and production reached 12.6 million mt in 2007.[154] Similarly, China's aluminum extrusion output rose from 2.62 million mt in 2003 to 5.5 million mt in 2007.[155]

Import and Export Restrictions

An important tool the GOC uses in implementing their industrial policy objectives is their tax regime regarding import tariffs, value-added tax rebate rates and export taxes. In general terms, China's value-added tax (VAT) system is similar to a consumption tax, with the ultimate burden borne by the consumer. A manufacturer in China pays 17% VAT on its purchases of raw materials, processes the goods, and then sells the end-products, collecting 17% VAT in the process. The manufacturer then remits the difference between the VAT collected and the VAT paid on the purchases of the raw materials. In this manner, a manufacturer does not incur any VAT related costs on his production materials. However, VAT on export sales is treated differently.

With exports, the exporter still pays the same 17% VAT on their purchases of raw materials, however, when they export the goods, they only receive a VAT tax refund (tax refund) of a fixed percentage, which is established by the GOC. In addition, the tax refund cannot exceed the VAT paid on raw materials. Consequently, the tax refund on exports would offset the VAT paid on the raw materials.

[153] CBSA Dumping Exhibit #475, GOC Response to Section 20 Supplemental RFI #2, page 420.
[154] CBSA Dumping Exhibit #372. International Aluminium Institute, Alternative Source Statistical Report "China's Alumina Production", February 20, 2008.
Online at: http://stats.worl-aluminum.org.iai/stats_new/formServer.asp?form=13.
[155] CBSA Dumping Exhibit #475, GOC Response to Section 20 Supplemental RFI #2, page 354.

Over the previous three years, the GOC has made substantial changes to the import tariffs, VAT rebates for exports, and export duties on aluminum raw materials, aluminum, and finished aluminum products. These changes are summarized in the table below.[156]

January 2004	Lowered VAT rebate on aluminum from 15% to 8%
January 2005	Fully removed VAT rebate and imposed a 5% export tax on aluminum
September 2006	Lowered VAT rebates on various aluminum products from 13% to 5-11% (11% for aluminum extrusions, except aluminum pipe and tube which remains at 13%)
November 2006	Increased the export tax on aluminum to 15%
July 2007	Fully removed VAT rebates on alloy and non-alloy aluminum bar, wire and profiles
August 2007	– Removed 5% import tariff on aluminum – Imposed a 15% export tax on non-alloy aluminum rod and bar
January 2008	– Removed 3% import tariff on alumina – Imposed 15% export tax on alloy aluminum rod, bar and some solid aluminum profiles

When considering the above VAT rebate changes, it is also very important to note the GOC's treatment of export sales for which the VAT rebate has been fully removed. When VAT rebates are fully removed the GOC deems an export sale to be a domestic sale for VAT purposes.[157] What this means is that the exporter's FOB Port selling price is effectively treated by Chinese authorities as being a VAT-inclusive price, and the exporter is assessed a VAT liability equal to 14.53% (1-(1/1.17)). Therefore, when the VAT rebates on aluminum extrusions were reduced to zero, aluminum extrusion exporters went from a position of receiving an 11% refund on their FOB selling price to their FOB selling price being deemed VAT inclusive and effectively being reduced by 14.53%. This change in tax treatment is quite significant.

Another important aspect affecting imports and exports is the restrictions placed on processing trade. Processing (or tolling) trade involves importing goods duty and VAT free provided the finished good is then exported. In October 2004, the GOC banned processing trade for alumina (importing alumina VAT and duty free if aluminum is exported) for all but the largest smelters

[156] CBSA Dumping Exhibit #266. GOC Response to Section 20 RFI, pages 47, 48, and 577.
CBSA Dumping Exhibit #332. GOC Response to Supplemental Section 20 RFI #1, page 8.
CBSA Dumping Exhibit #332. pages 7 and 8.
WTO, Trade Policy Review Body. "Trade Policy Review, Report by the Secretariat, China", WT/TPR/S/199, April 16, 2008, page 75.
CBSA Dumping Exhibit #372. Interfax-China. "New Aluminium Product Export Tax Policy to Hasten Industry Reform", June 25, 2006. Online at: http://www.chinamining.org/Policies/2007-06-25/1182738229d5773.html.
CBSA Dumping Exhibit #372. Chinamining.org. "China Adjusts Tariff on Aluminum Products to Cut Energy Consumption, Pollution", July 20, 2007. Online at: http://www.chinamining.org/Policies/2007-07-20/1184893800d6266.html.
CBSA Dumping Exhibit #372. Interfax-China. "China to Cancel Aluminium Import Tax, Impose Export Tax", July 19, 2007. Online at: http://resourceinvestor.com/pebble.asp?relid=34031&t=60
CBSA Dumping Exhibit #372. Resource Investor, Ida Chen. "China to Remove Import Tax on Alumina and refined Copper", December 26, 2007. Online at: http://www.resourceinvestor.com/pebble.asp?relid=39029&t=60.

[157] CBSA Dumping Exhibit #475, GOC Response to Section 20 Supplemental RFI #2, pages 8, 9 and 20.

that were in conformity with their industrial policies. The GOC fully banned processing trade for alumina in August 2005.[158]

The removal of VAT rebates, export taxes and restrictions on processing trade, were enacted in accordance with an official GOC plan directed at reducing exports of certain products. In July 2005, the GOC issued a circular explaining the need for export controls of certain products and its plan to control export levels within certain products. The stated government goal for these measures was to curb the export of energy-intensive, highly polluting and resource-wasting products, encourage energy conservation and raw material imports.[159] The specific products that were identified in the plan are steel billets and ingots, electrolytic aluminum, and other non-ferrous metals. Recent reports also suggest that the government is not satisfied with the results of the export taxes and may increase the export taxes on aluminum to divert more primary aluminum output towards domestic demand.[160]

An effect of these tax changes is that it increases the cost of exports and reduces their profitability, which in turn reduces the volume of material that is exported and leaves additional capacity to serve the domestic market. While the GOC has stated that many of these policies are intended to address environmental and resource efficiency issues, these measures are dramatically changing the demand and supply balance in the domestic market and materially affecting the domestic prices of aluminum and aluminum extrusion products. As noted by China Non-ferrous Metals Industry Association in the China non-ferrous Metals Yearbook, "The adjustment for provisional export tax rate will increase the cost of enterprises which may affect the export of enterprises. The intent of the structural adjustment [to VAT rebates] is obvious. This is for the purpose of guiding resources and energy enterprises to domestic markets and optimizing exported products structure when carrying out macro control"[161].

The GOC provided information regarding the export volume of the aluminum and aluminum extrusions products that are affected by these tax changes. This information is summarized in the following chart, which shows the quarterly export volume of primary aluminum affected by VAT rebate removal and export taxes, and aluminum extrusions covered by the VAT rebate removal.[162] The chart shows the information, as provided by the GOC, only for the Chinese commodity tax codes that were affected by the tax changes.

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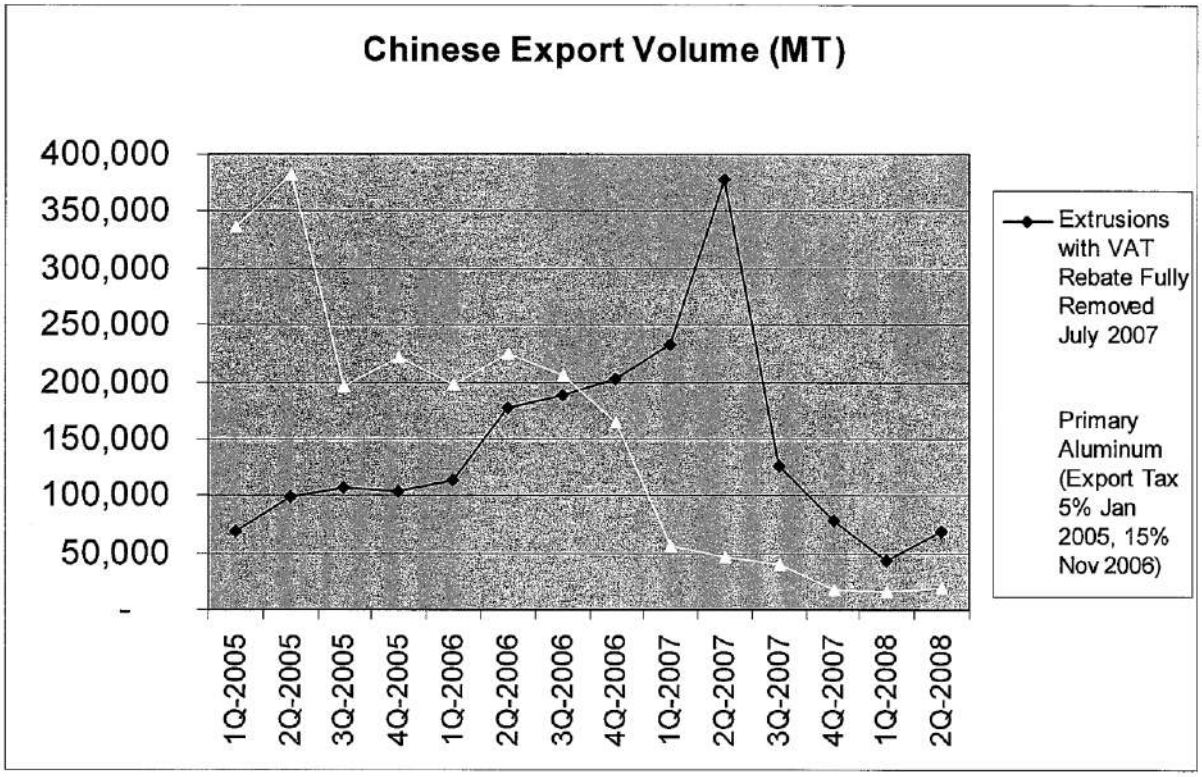
[158] CBSA Dumping Exhibit #552, Information submitted by - Taishan City Kam Kiu Aluminium Co., Ltd. and Kam Kiu Aluminium Products Sdn. Bhd., page 43. Metal Bulletin Research, *An Analysis of the Global Market for Extruded Aluminium*, February 2006, page 46.

[159] CBSA Dumping Exhibit #266. GOC Response to Section 20 RFI, page 865.

[160] CBSA Dumping Exhibit #372. China Aluminum Network. "China May Raise Primary Aluminum Export Tax to Secure Domestic Supplies", May 30, 2008. Online at: http://www.alu.com.cn/enNews/NewsInfo_1580.html.

[161] CBSA Dumping Exhibit #488. Addendum to the GOC Response to Supplemental Section 20 RFI #2, page 27.

[162] CBSA Dumping Exhibit #475. GOC Response to Supplemental Section 20 RFI #2, pages 368-374. CBSA Dumping Exhibit #586. CBSA Final Determination Section 20 Report.



Regarding aluminum exports, this chart shows the significant impact that the VAT rebate cancellation, export taxes and banning of processing trade had on Chinese exports. The volume of exports of aluminum decreased significantly during 2005, as the cancellation of VAT rebates, imposition of a 5% export tax and banning of processing trade of alumina took effect. Chinese export volume remained steady for several quarters until the GOC raised the export tax to 15% in November 2006, again causing a significant decrease in export volume, from 200,000 mt per quarter to 50,000 mt or less per quarter.

Regarding exports of aluminum extrusions, the above chart shows the significant growth in export volume during 2006 and the first half of 2007. Export volumes peaked at a high of 372,000 mt in the second quarter of 2007, and then plunged to 43,000 mt by the first quarter of 2008, which precisely coincides with the cancellation of VAT rebates and imposition of export taxes on some extrusions. Again, the effect of the GOC's tax changes is clear and results in a significant reduction in export volumes for the affected products.

The information available to the CBSA shows a strong level of GOC involvement in the aluminum industry through import tariffs, VAT rebate levels and export taxes. The use of such measures by the GOC is shown to severely restrict the export volume of the affected products. Arguments submitted by the GOC noted that there was no information on the record that demonstrates that reduced export volumes resulted in increased domestic supply (versus a reduction in production) or resulted in suppressed domestic prices. The next two sections of this report deal with the impact on domestic supply and prices that GOC policies have had on aluminum and aluminum extrusions.

Impact of GOC Policies on Domestic Chinese Supply and Price of Aluminum

In its first supplemental request to the GOC, the CBSA requested domestic sales volume and value statistics for aluminum and aluminum extrusions. The GOC noted that "neither the GOC nor the CNMIA maintain statistical data on domestic sales".[163] The CBSA therefore relied upon other information on the record to demonstrate the increasing volume of domestic supply.

The following information summarizes the domestic market situation of Chinese aluminum in 2006 and 2007:[164]

Units in Tons	2006	2007
Production	9,350,000	12,256,000
Imports	289,855	111,363
Exports	838,286	160,793
Net Exports	548,431	49,430
Stock Change in SHFE	-34,983	69,716

The above information demonstrates that domestic production increased in 2007 over 2006. At the same time, export volumes were significantly lower (as previously noted). Also, import volumes were significantly reduced, lowering 61% between 2006 and 2007. The stock change in the SHFE also increased significantly, by over 100,000 mt. While Chinese consumption also grew during this period, it is clear that export volumes were diverted to the domestic market in China, causing increased availability of product, as evidenced through increasing SHFE stocks, and reduced import penetration due to domestic oversupply.

Regarding the first imposition of the 5% export tax on primary aluminum in January 2005, Chalco noted in their 2005 annual SEC filing that:

> *The abolishment of export tax refund and the imposition of export tax affected the allocation of domestic and export sales by aluminum producers in China and resulted in an increase in domestic sales. The increase in domestic sales further intensified the competition in domestic primary aluminum market, where we conduct most of our primary aluminum business. Intensified domestic competition could have a material adverse effect on the price and margins of our products and market share.*[165]

One indicator of the domestic price of aluminum in China is the price of aluminum futures traded on the Shanghai Futures Exchange (SHFE). Trading on the SHFE is only open to corporations organized and registered in China.[166] In addition, companies that wish to trade in overseas futures markets have to be approved by the China Securities Regulatory Commission. Only

[163] CBSA Dumping Exhibit #332. GOC Response to Supplemental Section 20 RFI #1, page 14.
[164] CBSA Dumping Exhibit #475. GOC Response to Supplemental Section 20 RFI #2, pages 351 and 352.
[165] Chalco SEC filing 2007, *supra* note 41, page 5.
[166] CBSA Dumping Exhibit #266. GOC Response to Section 20 RFI, page 1994.

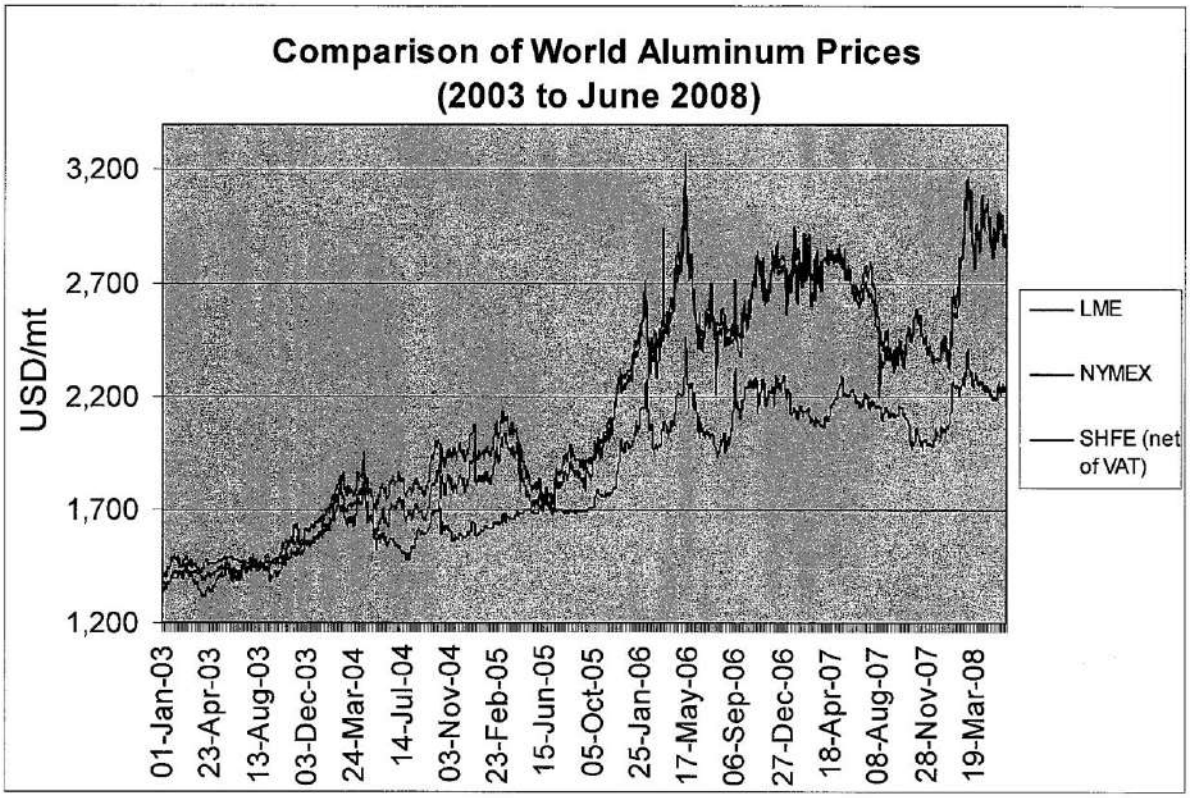
31 Chinese companies in any industry in the entire country are currently allowed to conduct overseas futures transactions.[167]

It is important to note that SHFE prices are quoted Chinese VAT inclusive.[168] As previously explained, Chinese aluminum extruders would be eligible to be reimbursed for the amount of VAT they pay on raw materials. The quoted SHFE prices are therefore 17% higher than the effective cost that SHFE aluminum would represent to Chinese aluminum extruders.

Market Spot Prices	2003	2004	2005	2006	2007	1H 2008
SHFE spot price RMB/mt[169],[170]	14,595	16,242	16,744	19,000	19,580	
SHFE spot price converted to US$/mt[171]	$ 1,763	$ 1,962	$ 2,046	$ 2,388	$ 2,583	$ 2,677
SHFE spot price US$/mt (net of VAT)	$ 1,464	$ 1,629	$ 1,698	$ 1,982	$ 2,144	$ 2,222
LME spot price US$/mt[172],[173]	$ 1,437	$ 1,722	$ 1,901	$ 2,568	$ 2,661	$ 2,868

As can be seen from this comparison of London Metal Exchange (LME) and SHFE aluminum contract pricing, the price of aluminum in China is not always reflective of the international price. Prices of aluminum on the SHFE (excluding VAT) were reflective of international prices until 2004. Since then, prices on SHFE have not moved in sync with LME prices, and have often been substantially lower. This divergence of prices is also evident in the chart below.[174] In addition to showing both the LME and SHFE (net of VAT) prices for aluminum, the chart includes aluminum prices as traded on the New York Mercantile Exchange (NYMEX). While there may be some temporary differences, the LME and NYMEX prices for aluminum closely track each other, or are exactly equivalent, for the entire period from 2003 to June 2008. This reflects the commodity nature of aluminum and establishes that there is a world price for this commodity product.

[167] WTO, Trade Policy Review Body. "Trade Policy Review, Report by the Secretariat, China", WT/TPR/S/199, April 16, 2008, page 160.
[168] CBSA Dumping Exhibit #266. GOC Response to Section 20 RFI, page 2007.
[169] CBSA Dumping Exhibit #363. Aluminium Holdings Limited. *Global Offering on Hong Kong Exchange,* March 17, 2008, page 67. Note their source for the information is *The 2006 Yearbook of Non-ferrous Metals Industry of China of CNIA.*
[170] Chalco SEC filing 2007, *supra* note 7, page 51.
[171] Converted at the average yearly exchange rate.
[172] CBSA Dumping Exhibit #1. Aluminum Extrusions Complaint. Confidential attachment 6, page 149.
[173] Chalco SEC filing 2007, *supra* note 7, page 51.
[174] Source information for the chart is CBSA Dumping Exhibit #365, aluminum prices on different commodity exchanges.



Again, it is evident that the SHFE price of aluminum traded at the world price of aluminum in 2003, but began to diverge from the world price in 2004, coinciding with the timing of the GOC first adjusting the VAT rebates available for primary aluminum. This divergence in pricing continued to increase during 2005 and 2006, which coincides with the timing of the GOC's full removal of VAT rebates (January 2005) and imposition of export taxes (5% in January 2005, and 15% in November 2006) on primary aluminum and primary aluminum products. As the WTO Trade Policy Review Body notes:

> *Removal of the VAT rebate together with the imposition of the export tax tends to reduce exports of primary aluminum and thus increase its domestic supply. As a result, the domestic price of primary aluminum tends to be lower than would otherwise be the case.*[175]

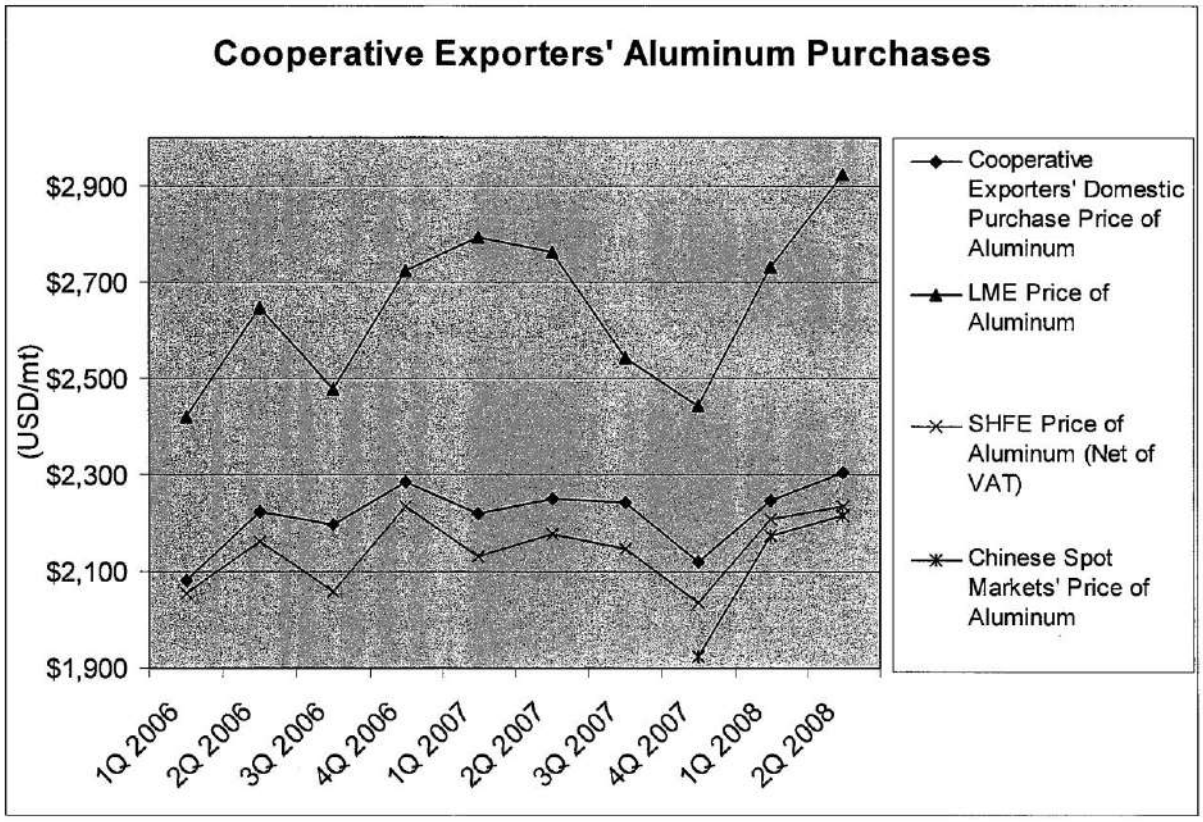
There is also information on the record that shows that SHFE prices generally reflect the prices of aluminum bought and sold in China (between two parties and not through the commodities exchange). In their 2007 SEC filing, Chalco notes "Like most primary aluminum producers in China, we price our primary aluminum products by reference to the Shanghai Futures Exchange spot prices".[176] Chalco further notes the average SHFE 3-month contract price during 2007 was

[175] WTO, Trade Policy Review Body. "Trade Policy Review, Report by the Secretariat, China", WT/TPR/S/199, April 16, 2008, page 75.

[176] CBSA Dumping Exhibit #60. Aluminum Corporation of China Limited. *Annual Report of a Foreign Private Issuer: Form 20-F, for the fiscal year ended December 31, 2006.* United States Securities and Exchange Commission, commission file number: 001-15264, page 51. ["Chalco SEC filing 2006"].

RMB19,580 per mt (or RMB16,251 excluding VAT) and that their own average selling price during 2007 was at a comparable level of RMB16,914 per tonne (excluding VAT).[177]

Additionally, the CBSA has information on the record regarding the actual purchases of aluminum by the cooperating exporters and information provided by the GOC for two spot markets in China. The following chart shows that the cooperating exporters' actual transaction prices of domestically sourced aluminum in China were at prices marginally higher than aluminum traded on the SHFE, but still substantially below the world price established on the LME.[178]



When the cooperative Chinese aluminum extruders imported aluminum, they did so at a price that was generally comparable to the LME.[179] The cooperative exporters' aluminum purchase data also confirms that the low level of aluminum import penetration in the Chinese market applies to aluminum extruders' purchases. In 2006, the cooperative extruders sourced 22% of their purchased aluminum from imports. In 2007 the cooperative extruders sourced only 3% of their aluminum from imports, and there were virtually no imports of aluminum by the cooperative extruders during the Dumping POI.[180]

[177] Chalco SEC filing 2007, *supra* note 7, pages 52 and 53.
[178] CBSA Dumping Exhibit #586. CBSA Final Determination Section 20 Report.
[179] CBSA Dumping Exhibit #586. CBSA Final Determination Section 20 Report.
[180] CBSA Dumping Exhibit #586. CBSA Final Determination Section 20 Report.

The chart also demonstrates that different spot markets in China also sell at or below the SHFE futures price of aluminum. The GOC provided average spot price information for two spot markets in China, one in Guangdong and one for the Yangtze River area.[181] The CBSA averaged these two spot markets prices together and removed VAT included in the price[182] for comparing to LME prices.

The cost of aluminum, as a raw material input, is the largest cost component of producing aluminum extrusions. A review of the cooperative exporters' cost of production information for the period of investigation reveals that, on average, the raw material cost of aluminum constitutes over 81% of their total cost of production for aluminum extrusions.[183] (Note: Many Chinese extruders purchase aluminum ingots, which they then melt, add alloying elements, and cast their own billets. Billets are the aluminum input placed in extrusion presses. This differs from the Canadian industry where producers purchase billets directly, at a premium over the price of aluminum ingots). Given this high cost proportion, the availability of low priced aluminum in China would clearly impact the domestic prices of aluminum extrusions in China.

The above information demonstrates that the GOC's trade restrictions and preferential policies have had a material impact on the prevailing price of aluminum in China. The GOC has been substantially affecting the Chinese aluminum extrusions industry through its above-noted policies and SOE involvement in the primary aluminum industry.

Impact of GOC Policies on Domestic Chinese Supply and Price of Aluminum Extrusions

As previously noted, the GOC explained that they do not collect or maintain information regarding domestic sales. The information on the record concerning Chinese domestic sales of aluminum extrusions is from the domestic sales of the cooperative exporters and from the China Minmetals' *China Nonferrous Metals Monthly*. This limited information does show an increasing amount of aluminum extrusions production serving the domestic market.

As previously noted, overall Chinese output for aluminum extrusions was reported to have increased from 2.6 million mt in 2003 to 5.5 million mt in 2007, an increase of 112% in four years.[184] At the same time, apparent Chinese consumption grew from 2.5 million mt to 4.6 million mt, an increase of 84%. As a result, China's export volume of aluminum extrusions increased over the same period, from only 169 thousand mt in 2003 to nearly 1 million mt in 2007.[185] However, in mid-2007 the GOC moved to restrict exports of some aluminum extrusions through their VAT rebate removals and export taxes on aluminum bar and rod. The impact of these tax changes on the export volume of extrusions has already been discussed and, given that exports still represented approximately 18% of the sales of Chinese production in 2007, the GOC's restrictions on exporting this volume of production would force an oversupply situation in the domestic market for aluminum extrusions.

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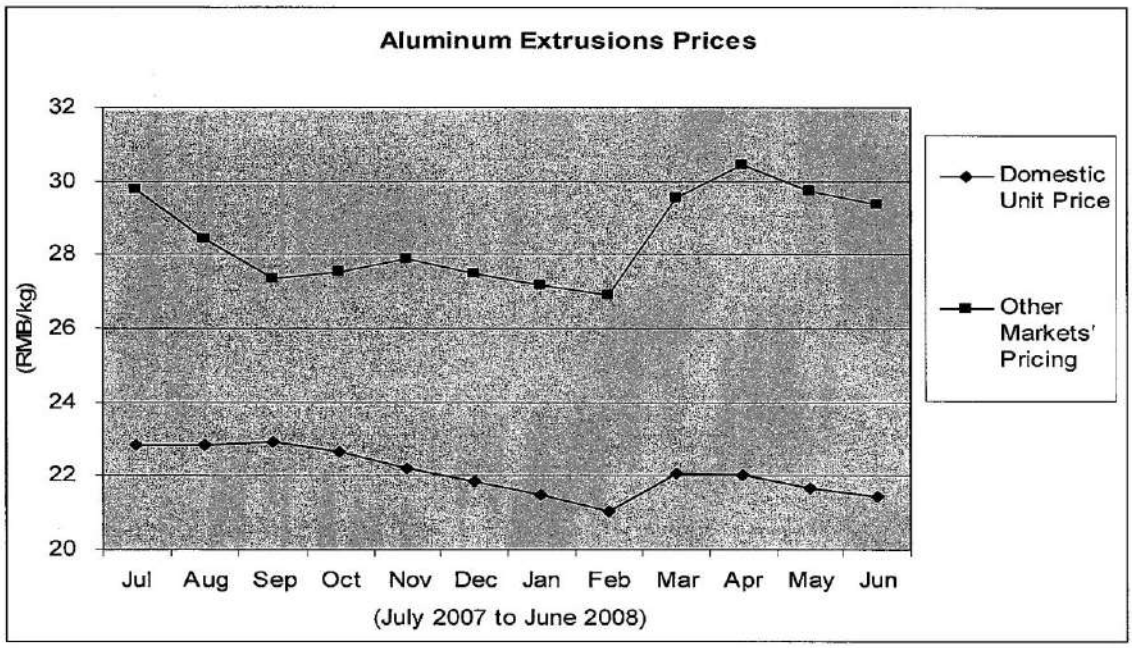
[181] CBSA Dumping Exhibit #332. GOC Response to Supplemental Section 20 RFI #1, pages 987 to 1002.
[182] CBSA Dumping Exhibit #475. GOC Response to Supplemental Section 20 RFI #2, page 11.
[183] CBSA Dumping Exhibit #586. CBSA Final Determination Section 20 Report.
[184] CBSA Dumping Exhibit #475. GOC Response to Supplemental Section 20 RFI #2, page 354.
[185] *Ibid.*

Amongst the cooperative exporters, the first half 2008 domestic sales of aluminum extrusions were nearly double the amount during 2006 (approximately 160,000 mt annualized in the 1st half of 2008 versus 89,000 mt in 2006).[186] During the same years, the cooperative exporters reported export sales of aluminum extrusions increased from 100,000 mt in 2006 to 121,000 mt in the 1st half of 2008 (annualized), an increase of 21%.[187] This information demonstrates the increasing amount of aluminum extrusions that were being sold in the domestic market as the GOC moved to restrict export sales on some aluminum extrusions.

The CBSA's understanding of pricing practices in the aluminum extrusions industry is that extrusions are priced by producers based on the current price of aluminum plus a conversion factor. The Chinese aluminum extrusions industry follows this pricing practice. Many of the cooperating exporters explained that they base their domestic prices on the SHFE or published local spot market rate, plus their own conversion factor.[188] Therefore, the below world market price of aluminum available to aluminum extruders in China must impact their domestic selling prices for aluminum extrusions, which can be shown to be lower than other markets in the world.

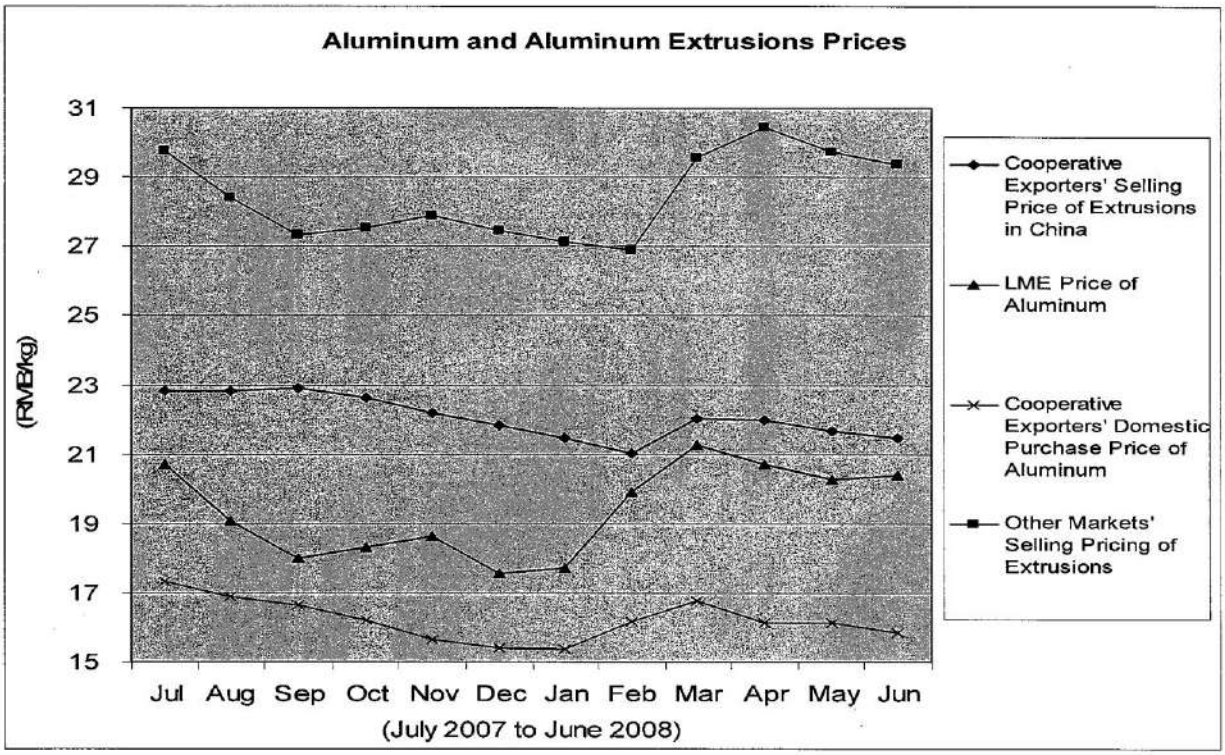
The CBSA has information that substantiates this difference based on aluminum extrusions pricing information in some European and North American markets from a Metal Bulletin Research publication for aluminum extrusions. This pricing information shows that prices for aluminum extrusion in other countries are higher than the average domestic prices of aluminum extrusions sold in China by the cooperative exporters during the POI.[189]



[186] CBSA Dumping Exhibit #586. CBSA Final Determination Section 20 Report.
[187] *Ibid.*
[188] CBSA Dumping Exhibit #188, page 24. CBSA Dumping Exhibit #209, page 17. CBSA Dumping Exhibit #220, page 21. CBSA Dumping Exhibit #236, page 24.
[189] CBSA Dumping Exhibit #586. CBSA Final Determination Section 20 Report.

The chart above clearly demonstrates that the prices of aluminum extrusions in China are substantially lower than in other markets in the world. During the dumping POI, prices in China ranged from 16 to 28% lower than the published prices shown in the Metal Bulletin Research (MBR) publication. It is also worth noting that while the prices in the MBR publication are for more developed markets, they are "regional prices for standard extruded shapes", which should represent a very conservative comparison to the full product mix, including some higher value-added products, that the cooperative exporters sold in the domestic market during the dumping POI.

The above selling price comparison chart becomes even more insightful when LME price of aluminum and the cooperative exporters' actual purchase prices of aluminum are added to the chart.[190]



From the chart above, it is apparent that there is a strong correlation between the underlying cost of aluminum and the fluctuation in aluminum extrusions prices. The MBR published prices respond to fluctuations in the world price of aluminum (as represented by the LME), whereas the cooperative exporters' domestic selling prices show less volatility and appear strongly correlated to their own actual purchase prices of aluminum domestically.

It is also very revealing to compare the cooperative exporters' domestic selling prices with the LME price of aluminum in the chart above. In early 2008, the world price of aluminum was almost equivalent to the cooperative exporters' domestic selling prices for aluminum extrusions

[190] CBSA Dumping Exhibit #586. CBSA Final Determination Section 20 Report.

in China. Clearly, if the cooperative exporters had purchased aluminum at the world price during this period, their domestic selling prices would have had to be significantly higher to even recover their costs of production.

SUMMARY

Based on the evidence on the record, it is clear that the GOC exerts a substantial degree of influence over the aluminum industry in China through its industrial policy measures. As noted under the government policy section, newer GOC aluminum industry documents also include policy measures specifically applicable to the aluminum extrusion industry. These policies impose minimum capacity size for new facilities, and minimum energy and production efficiency levels. The GOC has also been shown to provide preferential treatment and subsidies to aluminum producers and to aluminum extruders in China which would increase the ability of Chinese producers to supply the products to the Chinese market. The GOC also has measures in place that restrict the exports of aluminum and aluminum extrusions, also affecting the supply situation in the domestic market.

While the GOC does not directly set or control the prices of aluminum extrusions in China, the information currently available to the CBSA indicates that prices of aluminum extrusions in China are being substantially determined by GOC industrial policies and export restrictions. The cost of aluminum in China appears to be well below the world price of aluminum during the dumping POI. Since aluminum comprises a large percentage of the cost of aluminum extrusions and directly impacts the price of aluminum extrusions due to the 'aluminum cost plus' selling practises of the industry, the low cost of aluminum in China clearly impacts the prices of aluminum extrusions in China.

The CBSA has assessed the cumulative effect that the GOC industrial policy measures; regulations controlling technology and production levels; GOC preferential treatment and subsidies; and the control of import and export levels through tax changes have had on both aluminum and aluminum extrusions. The CBSA is satisfied that there is sufficient evidence on the record demonstrating that the domestic prices of aluminum extrusions in China are being substantially determined by the GOC and that there is sufficient reason to believe that these prices are substantially different than if they were determined in a competitive market.

Based on the preceding considerations, the President of the CBSA has formed the opinion, for purposes of the final determination, that Section 20 conditions exist in the aluminum extrusions sector in China.

APPENDIX 4 – GOC POLICIES AFFECTING THE CHINESE ALUMINUM AND ALUMINUM EXTRUSIONS INDUSTRIES

The following represents a chronological listing, from 2002 to present, of excerpts from the various policies that are relevant to the GOC's involvement in the aluminum and aluminum extrusions industries.

2002

In 2002, the State Economic and Trade Commission published the *Guidance of Recent Development in the Industrial* Sector. This notice was formed to carry-out the framework established in the Outline of the Tenth Five-year Plan for National Economic and Social Development" and aimed to "strengthen the macro-control, guide the direction of the investments with the fixed assets in the whole country, optimize the allocation of resources, reduce the repeated construction, and promote the healthy and stable development in all industries".[191] Regarding the aluminum industry, this document noted:

> *We should accelerate the pre-baked transformation of aluminum electrolysis, and must combine newly built and transformed pre-baked aluminum cells with the elimination of Söderberg electrolytic cells, and try to eliminate Söderberg aluminum cells in 2003. We should accelerate the construction of high-level hot tandem rolled aluminum plates and belts production lines, develop high-precision aluminum plates and belts, electronic aluminum foils, large industrial section bars and other varieties. We should stop the repeated construction of electrolytic aluminum, and any newly built electrolytic aluminum project must be strictly subject to the approval formalities in accordance with the relevant provisions.*[192] [emphasis added]

2003

In late 2003, the State Council published a document entitled *Several Opinions on Curbing Illegal Construction and Irrational Investment in the Electrolytic Aluminum Industry*. This document begins by noting that:

> *Electrolytic aluminum industry is an important industry producing basic raw materials and also an industry with high requirements for input, high energy and resource consumption, which may significantly affect the environment. In recent years, pushed by demand growth of domestic market, stipulated by price collapse of alumina and price rise of electrolytic aluminum in international market, driven by economic interest, some areas and enterprises illegally construct and irrational invest in electrolytic aluminum projects without following stipulated procedures.*
>
> ...
>
> *we should readjust the aluminum industrial development structure and industrial policy according to the need for a new approach to industrialization in order to make the development of aluminum industry and area distribution clear, to make the industrial access system strictly, to guide the orderly development of industry.*

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[191] CBSA Dumping Exhibit #266. GOC Response to Section 20 RFI, page 737.
[192] *Ibid*, page 752.

...

Electrolytic aluminum and alumina projects which do not conform to industrial policy and development plan shall not be approved by government department.[193]

It is interesting to note that, in the first paragraph of the above caption, the GOC acknowledges that the aluminum industry has been growing in response to demand growth and price factors in the industry, particularly in response to a high international price for aluminum. While this growth is in response to the industry's own economic interests, the GOC decided it was "irrational" investment because it did not conform to their industrial policy and development plans for the aluminum industry as stipulated by the GOC.

Also during 2003, the GOC issued the *Catalogue of Encouraged Hi-tech Products for Foreign Investment (2003).*[194] This catalogue established products that governments at various levels were to "actively conduct work in encouraging foreign investment and create favourable conditions for the quickening development of high-tech industry". This catalogue listed the following items of relevance under the section for new materials:[195]

1. *Large-scale aluminum alloy bar section of special type*
2. *Precise die forging of aluminum alloy*
3. *High-intensity aluminum alloy material*
4. *Pre-stretching thick plate of aluminum alloy and enveloped plate of aluminum alloy*
5. *PS aluminum alloy plate*
6. *Aluminum plate for beverage can*
7. *Compound aluminum foil for radiator*

This demonstrates that while the GOC was working to restrict investment in the production of primary aluminum, they were encouraging investment in products that further processed aluminum, including in aluminum extrusions.

2004

During 2004, investment in the aluminum industry continued to be heavily restricted. In a circular from the State Council on *Liquidating Fixed Asset Investment Projects*, the GOC noted that "a new project of steel, electrolytic aluminum and cement shall in principle not be launched in this year".[196]

In the same year, the GOC issued the *Notice Regarding the Further Enhancement of the Environmental Regulation of the Electrolytic Aluminum Industry.*[197] This notice called for the strengthening of the supervision and regulation on aluminum producers by the departments of environmental protection at various levels of government. The document focussed on

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[193] CBSA Dumping Exhibit #266. GOC Response to Section 20 RFI, page 576-577.

[194] CBSA Dumping Exhibit #372. Document of the Ministry of Science and Technology and the Ministry of Commerce. "Catalogue of Encouraged Hi-tech Products for Foreign Investment (2003)", Guo Ke Fa Ji Zi [2003] No. 179, June 2, 2003. Online at: http://www.fdi.org.cn/pub/FDI_EN/Laws/InvestmentDirection/IndustrialGuidance/t20060620_51273.jsp.

[195] *Ibid.*

[196] Dumping Exhibit #266. GOC Response to Section 20 RFI, page 567.

[197] *Ibid,* page 585.

implementing the desired move away from Söderberg cell aluminum production technology to the pre-baked cell method.

Another GOC circular in 2004 increased the capital requirements for new aluminum projects. A circular from the State Council *On Adjusting the Proportions of Registered Capital in Fixed asset Investment Projects of Some Industries*, ordered that "the proportion of registered capital of projects of cement, electrolytic aluminum and real estate development… shall be raised from 20% or more to 35% or more".[198]

2005

In 2005, the State Council promulgated the *Interim Provisions on Promoting Industrial Structure Adjustment*. The provisions were formulated for "the purpose of ensuring the all-round implementation of the scientific view of development, strengthening and improving the macro-control policy, guiding social investments, and promoting industrial structure optimization and upgrading".[199]

The Interim Provisions noted above, led to the issuance of the *Guiding Catalogue for Industry Restructuring*, which was issued by the NDRC on December 2, 2005.[200] The decision of the State Council notes:

> *The "Catalogue for the Guidance of Industrial Structure Adjustment" is the important basis for guiding investment directions, and for the governments to administer investment projects, to formulate and enforce policies on public finance, taxation, credit, land, import and export, etc.* [201]

The Catalogue is divided into three groups;

I. Catalogue of Encouraged Investment Industries,
II. Catalogue of Restricted Investment Industries, and
III. Catalogue of Eliminated Investment Industries

The following lists are the references under each above noted catalogue that may be applicable to aluminum or aluminum fabrication products of note:

Guiding Catalogue for Industrial Restructuring (2005)[202]

Encouraged:

- Construction of medium-sized copper, aluminum, lead, zinc and nickel mines
- Production of high-performance, high-precision rigid alloy, deep processing products and ceramic materials
- Manufacturing of the high-performance metal materials used for rail traffic

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[198] CBSA Dumping Exhibit #266. GOC Response to Section 20 RFI, page734.
[199] *Ibid*, page 525.
[200] *Ibid*, page 531.
[201] *Ibid.*
[202] CBSA Dumping Exhibit #266. GOC Response to Section 20 RFI. National Development and Reform Commission. "Directory Catalogue on Readjustment of Industrial Structure (Version 2005)", NDRC decree No. 40, December 2, 2005.

- Manufacturing of light autos and environmentally-friendly new materials
- Development and manufacturing of new-type of materials for aviation and aerospace
- Manufacturing of high-performance external encircling structural materials and parts for residence

Restricted:

- Electrolytic aluminum projects (except self-baked cell production capacity replacement and environmental protection reconstruction project)
- Secondary aluminum reverberatory furnace project of below 4 tons
- Reverberatory furnace project directly burning coals in renewable non-ferrous metal production
- Wet method fluoride salt in the production of aluminum
- Project of independent carbonaceous materials used in the production of aluminum of below 100,000 tons/year

Eliminated:

- Aluminum self-baking electrobath
- Recycled aluminum alloy and recycled lead melting technology with crucible furnace (2005)

This catalogue contains the government regulations that are used to "guide" investment into or out of a number of targeted industries and activities in accordance with the GOC's industrial policies. Such guidance includes, for example, instructions to financial institutions not to provide credit for investment in certain sectors, as well as to the authorities in charge of approving such investments to no longer accept proposals for such investment. Other measures that can be taken include land and tax policies, pricing policies (regarding electricity specifically) as well as trade restrictions.

This catalogue again demonstrates that while the GOC was working to restrict investment in the production of primary aluminum, they were encouraging investment in products that further processed aluminum, including in product areas that would use aluminum extrusions. The extent of the restriction on investment in primary aluminum was confirmed in a recent report, which quoted an official from the State Administration for Industry and Commerce (SAFIC) that "No foreign investment projects in the steel, cement or electrolysed aluminum sectors have been approved since 2005".[203]

The CBSA has several reports on the impact of the measures taken from 2003 to 2005, indicating that during these years 28 aluminum smelters that used the Soderberg method were closed (with a total capacity 300,000 mt), and a total of 43 smelters were closed by the end of 2005. "These smelters were forced to close because of a shortage of alumina or electricity, or both".[204] Under GOC trade policy at the time, only Chalco, China Minmetals Nonferrous Metals Co (Minmetals) and several large smelters were allowed to import alumina directly. The government of the PRC prohibited domestic aluminum smelters with annual production capacity lower than 100,000 mt

[203] CBSA Dumping Exhibit #372. China Daily. "Foreign Investment Hits $2.11 trn in 30 Years", March 13, 2008, Online at: http://english.mofcom.gov.cn/aarticle/counselorsreport/europereport/200803/20080305427267.html.

[204] CBSA Dumping Exhibit #61. Pui-Kwan Tse. "*U.S. Geological Survey Minerals Yearbook – 2004, The Mineral Industry of China*", page 8.3.

from directly importing alumina into China.[205] The remaining Chinese smelters had to purchase alumina from Chalco or Minmetals. "Owing to environmental concerns, Chalco and Minmetals preferred to supply alumina to larger and pre-baked smelters".[206] Other reports further indicated that smelters suspended construction or expansion plans to a significant degree.

In September 2005, the *China Daily* reported that the National Development and Reform Commission (NDRC) was releasing a national policy to reorganize the aluminum sector. The policy would encourage domestic aluminum producers to form bigger groups through mergers and acquisitions. The policy further required capital investment in all new aluminum projects to account for at least 35% of the total investment. The policy would curb aluminum exports and call on aluminum producers to focus on the domestic market. The report noted that in September 2005, the GOC had already banned tolling and processing trade of alumina. The restrictions on exports (processing trade ban and export taxes) came as most (65%) of the aluminum producers in China made losses on the year due to high prices of alumina and electricity. Forty small aluminum plants had already shut down on the year due to heavy losses.[207] As previously noted, the GOC has denied that the *Industrial Development Policy for the Aluminum Industry* and the *Special Development Plan for the Aluminum Industry* are in force, and have therefore not provided the CBSA with copies of these documents.

2006

In March 2006, the GOC issued a circular entitled *Accelerating the Structure Adjustment of the Industries with Production Capacity Redundancy.* This circular covered the general approach and macro-economic control measures the GOC would take to curb further investment in the iron and steel, electrolytic aluminum, calcium carbide, ferroalloy, coke and automobile industries. The macro-economic measures that were noted as being useful to curb investment in these industries was for the GOC to strictly control access to land, financing, environmental protection approval and construction permits. The GOC would encourage mergers and acquisitions within these industries and eliminate inferior producers through bankruptcy. This circular also noted:

> *We should, based on the market orientation, utilize the restrictions on the market and resources to intensify the reversed transmission of the pressure for easing monetary condition so as to promote the gross balance and structural optimism. We should adjust and rationalize the prices of resource products so as to better exert the function of the price leverage in adjustment and thus to promote enterprises' independent innovation and structural adjustment.*[208]
>
> ...
>
> *We should intensify the guidance for industrial policies, support credit policies, adjustment by the policies for finance and taxes so as to promote industrial restructuring. We should evaluate and strictly implement the relevant standards for market access regarding environmental protection, security, techniques, land and investment. We*

[205] Chalco SEC filing 2005, *supra* note 41, page 38.
[206] Chalco SEC filing 2005, *supra* note 41, page 32.
[207] CBAS Dumping Exhibit #372. China Daily, "China to Reveal Aluminium Reforms", September 22, 2005. Online at: http://english.peopledaily.com.cn/200509/22/print20050922_210123.html.
[208] CBSA Dumping Exhibit #266. GOC Response to Section 20 RFI, page 550.

should improve and strictly implement the relevant laws and regulations and regulate the acts of both enterprises and the government.[209]

...

As to the relevant development planning of as well as industrial policies for such industries as iron & steel, electrolytic aluminum and automobiles, we should intensify the implementation of these policies.[210]

Of particular note is that in the first paragraph referenced above, the GOC appears to be specifically noting that they intend to actively have an effect on the pricing of resource products such that it will achieve their structural adjustment objectives.

In order to achieve the objectives for industrial restructuring in the aluminum industry, in 2006 the GOC also published the *Guidelines for Accelerating the Restructuring of the Aluminum Industry* (the Guidelines). This document first noted the importance of the aluminum industry as a "fundamental raw material for the development of the national economy", and then defined the aluminum industry in China as "comprised of three sectors, alumina, electrolytic aluminum and aluminum processing".[211]

The Guidelines also notes the accomplishments that have been met in restricting the aluminum industry since 2003, as follows:

Pursuant to the requirements of the state macro-control, the electrolytic aluminum sector has made a significant achievement by carrying out a file Guo Ban Fa [2003] NO. 103 enacted by the executive office of the State Council. 23 illegal electrolytic aluminum projects have been terminated, which involve investments valuing 1,730 million RMB. The total production capacity terminated or postponed projects will be 2,470,000 tons... Some electrolytic aluminum enterprises, which adopt backward techniques or which production cost is high, have been terminated. The terminated production capacity would be approximately 1,200,000 tons.[212]

The 2003 document referenced in the above quotation is *Several Opinions On Curbing Illegal Construction and Irrational Investment in the Electrolytic Aluminum Industry*, which was previously discussed in this report. This quotation demonstrates that the GOC's industrial policies are being followed and implemented, and are having a measurable impact on the aluminum industry in China.

The Guidelines next note the problems that have yet to be resolved within the Chinese aluminum industry. These problems include:[213]

- A deficient level of government management and supervision over bauxite mining in China;
- The number of planned alumina projects that have not met all of their legal approvals or confirmed their required level of bauxite resources;

[209] *Ibid.*
[210] *Ibid*, page 553.
[211] *Ibid*, page 489.
[212] *Ibid*, page 491.
[213] *Ibid*, pages 491-493.

- Additional aluminum projects under construction despite industry capacity utilization at approximately 75%;
- Aluminum smelting capacity in excess of alumina supply in the domestic market, resulting in high cost of alumina and a high production cost for aluminum. The export volume of aluminum is too high; and
- Industrial concentration in aluminum processing is too low. Equipment, technology and techniques have fallen behind, and the variety of high-value added products is insufficient

The Guidelines then note the guiding principles and main objectives of the document as follows:

> *The guiding principles are comprised of focusing on transference of the growth pattern of aluminum industry, centering the structural adjustment, optimizing the industrial structure, innovating production technology and techniques, designing and planning in scientific way, considering situation as a whole as undertaking adjustment, reducing the production consumption , and protecting the environment. These principles should be exercised as a guide for macro-control.*
>
> ...
>
> *It is necessary to keep the balance of electrolytic aluminum between supply and demand. It is important to support the good enterprises and eliminate the inferior through the market, and to encourage the good enterprises to increase their production up to 75% out of entire production for the whole industry.*[214]

The Guidelines then note and describe eight specific policy measures to accelerate structural adjustment within the aluminum industry. Each of these eight measures are described in detail in the document. The eight policy measures are:[215]

1. *Strengthen the direction to the industrial policy and industrial layout and plan*
2. *Enhance the concentration of the industry, and encourage to comprehensively use and save resources*
3. *Strengthen the coordination between credit policy and industrial policy, build upon exit mechanism under the legal system*
4. *Strengthen environmental law enforcement, and eliminate backward production capacity*
5. *Rectify the bauxite exploitation order, and exploit the domestic resources reasonably*
6. *Encourage to exploit overseas resources, and widen the channels of using overseas alumina resources*
7. *Strictly control the export of electrolytic aluminum, improve the mechanisms of power price formation and power supply*
8. *Develop the aluminum smelting orderly, and develop highly-added value aluminum process products*

[214] *Ibid*, pages 493-494.
[215] *Ibid*, pages 495-500.

2007

In 2007, the GOC updated its catalogue guiding the direction of foreign investment in China. The *Catalogue for the Guidance of Foreign Investment Industries (amended in 2007)*, contains the following updated provisions applicable to the aluminum and aluminum extrusions industries.[216]

Encouraged:

- Production of high tech non-ferrous metallurgical materials:... special kind of large aluminum alloy materials, aluminum alloy precise model forge product...
- Production of lightened car, automobile and environment protecting new materials (bodywork aluminum board, aluminum magnesium alloy materials, automobile aluminum alloy frame and so on)
- Design, manufacturing and maintaining of metal product moulds (such as extrusion moulds of pipe, stick and shape of copper, aluminum, titanium, and zirconium)

Restricted:

- Non-ferrous metal refining of electrolytic aluminum, copper, lead, zinc and other non-ferrous metal

In early 2007, as electricity shortages eased and aluminum prices rose, investment in China in the aluminum smelting sector surged 124% in January and February compared with the previous year. In April 2007, the NDRC issued a circular entitled: *Emergent Circular on Curbing Rebound Investment in the Aluminum Industry*. This circular noted the importance of GOC control over the aluminum industry and called on local governments to maintain their efforts at restraining the aluminum industry:

> *At present the adjustment of the industry structure is at the key stage of the adjustment reform. The government should deepen and strengthen the macro-control and adjustment on the industrial structure, avoid unhealthy growth of blindly investment and exploitation capacity. All governmental departments at various levels must carry-out strictly the measures for the macro-control and adjustment of industry structure on a long view of scientific development.*[217]

The circular called on GOC officials at all levels to:

1. *regulate investing activities according to the industrial policy and the administrative measure on investment projects;*
2. *strengthen the coordination between industry policy and policy of land utilization, policy of the environmental protection, and financing policy, and reinforce the market monitoring;*
3. *accelerate abolishing the backward production techniques and producing device, and preventing backward production projects from reappearing;*
4. *strengthen environmental protection and avoid environmental pollution;*
5. *regulate the system of exploitation and smelting of ore resource;*
6. *strengthen the monitoring and examination of safe production;*

[216] CBSA Dumping Exhibit #444, page 31.
[217] CBSA Dumping Exhibit #266. GOC Response to Section 20 RFI, page 834.

7. *facilitate energy saving and consumption reduction, and accelerate the adjustment of industry structure;* and
8. *check up on current projects and future projects.*[218]

The circular further noted that the GOC would prevent self-baked cell facilities from resuming production. Companies attempting to operate such facilities would have their power and water supply forcefully disconnected.

On October 29, 2007, the NDRC promulgated the *Requirements of Entry Into the Aluminum Industry* (the Requirements), placing further restrictions on the aluminum industry in China and introducing new requirements for minimum capacity, location and energy consumption. These requirements are to be used by all GOC departments when conducting reviews for approving investment proposals within the industry in terms of verifying adequate investment, land supply, business registrations, environmental impact assessments, safety permits and credit financings.[219] This notice contained the following specific provisions:[220]

- New alumina projects using domestically produced bauxite must have an initial annual capacity in excess of 800,000 tons.
- Alumina projects that rely on imported bauxite must possess a minimum of 5-years worth of bauxite supply through a joint venture company, and this must be able to meet 60% of the bauxite required to meet production needs. These projects must be capable of producing 600,000 tons of alumina per annum.
- Any new electrolytic aluminum project must be approved by NDRC and that only environmental renovation projects, or projects replacing outdated production techniques, will be approved in accordance with the GOC's plan for the industry.
- New bauxite mining projects must have a minimum capacity output of 300,000 tons per annum, and a lifespan of at least 15 years.
- Proposed secondary aluminum projects require a minimum annual capacity of 50,000 tons, while existing projects must exceed 20,000 tons or face decommissioning. Approval of reconstruction or expansion projects must exceed 30,000 tons per annum.
- Aluminum processing projects must have a minimum annual capacity of 100,000 tons per annum (processing is defined as covering plate, strip, foil, **and extrusions**). Further, a single-product project must have a capacity of 50,000 tons for plate and strip, 30,000 tons for foil, and **50,000 tons for extrusions.** [emphasis added]
- A minimum of 35% of the total investment in all mining, smelting and recycling projects must be made in cash.
- New Bayer-method alumina projects must limit energy consumption to less than 500 kgs of coal per tonne of alumina produced, all other alumina projects must consume no more than 800 kgs coal/ tonne of alumina.
- New or upgraded electrolytic aluminum projects are restricted to a maximum of 14,300 kilowatt hours for every tonne of aluminum produced.

[218] *Ibid*, pages 834-838.
[219] *Ibid*, page 73.
[220] *Ibid*, pages 74-81.

Regarding the minimum annual capacity requirements for new extrusions facilities of 50,000 mt per year, it is important to put the magnitude this capacity requirement into perspective by considering that the estimated size of the Canadian market for aluminum extrusions was 200,000 mt in 2007.

The Requirements further note very specific energy consumption and raw material utilization amounts for bauxite mining, alumina production, aluminum production and aluminum processing. These provisions apply to both new and existing facilities. The following is a summary of the type of detail the Requirements contain with respect to aluminum processing projects:

> Comprehensive energy consumption for new aluminum processing projects should be lower than 350 kg of coal/ton; comprehensive electrical consumption should be lower than 1150 kwh/ton of aluminum products produced. Existing facilities must adhere to energy consumption limits of 410 kg of coal/ton and comprehensive electrical consumption lower than 1250 kwh/ton of aluminum products produced. New facilities' consumption of metal must be lower than 1025kg/ton of aluminum products produced, **including lower than 1015 kg/MT for aluminum extrusions**; overall rate of finished products must be higher than 75% for new facilities and 72% for existing facilities; metal consumption for existing facilities must be lower than 1035 kg/ton of aluminum product produced, **including 1020 kg/ton for aluminum extrusions production.**[221] [emphasis added]

[221] CBSA Dumping Exhibit #62. China Strategies LLC, "China Renewable Energy and Sustainable Development Report", January 2008: Volume 1, page 11.

DOC 3

1ª Revisão de Final de Período Extrudados (Canadá)

4214-22 (AD)
4218-26 (CV)

OTTAWA, October 18, 2013

STATEMENT OF REASONS

Concerning a determination under paragraph 76.03(7)(*a*) of the *Special Import Measures Act* regarding

CERTAIN ALUMINUM EXTRUSIONS ORIGINATING IN OR EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA

DECISION

On October 3, 2013, pursuant to paragraph 76.03(7)(*a*) of the *Special Import Measures Act*, the President of the Canada Border Services Agency determined that the expiry of the finding made by the Canadian International Trade Tribunal on March 17, 2009, in Inquiry No. NQ-2008-003, and as revised on February 20, 2011, in Inquiry No. NQ-2008-003R, concerning the dumping and subsidizing of certain aluminum extrusions originating in or exported from the People's Republic of China was likely to result in the continuation or resumption of dumping and subsidizing of these goods into Canada.

Cet *Énoncé des motifs* est également disponible en français.
This *Statement of Reasons* is also available in French.

Canada

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SUMMARY

[1] On June 5, 2013, the Canadian International Trade Tribunal (Tribunal), pursuant to subsection 76.03(3) of the *Special Import Measures Act (SIMA)*, initiated an expiry review of its findings made on March 17, 2009, in Inquiry No. NQ-2008-003, and as amended on February 10, 2011, in Inquiry No. NQ-2008-003R, concerning the dumping and subsidizing of certain aluminum extrusions originating in or exported from the People's Republic of China (China).

[2] As a result of the Tribunal's notice, on June 6, 2013, the Canada Border Services Agency (CBSA) commenced an investigation to determine whether the expiry of the findings is likely to result in the continuation or resumption of dumping and/or subsidizing of the goods from China.

[3] Almag Aluminum Inc. (Almag), Apel Extrusions Limited (Apel), Apex Aluminum Extrusions (Apex), Can Art Aluminum Extrusion Inc. (Can Art), Dajcor Aluminum (Dajcor), Extrudex Aluminum (Extrudex), Extrudex Aluminium Quebec S.E.C. (Extrudex Quebec), Metra Aluminum Inc. (Metra), Sapa Canada, Inc. (Sapa), and Spectra Aluminum Products Ltd./Spectra Anodizing Inc. (Spectra) provided responses to the producers Expiry Review Questionnaire (ERQ).

[4] Almag, Apel, Apex, Can Art, Dajcor, Extrudex, Extrudex Quebec, Metra, Sapa and Spectra are collectively referred to in this report as 'the Canadian producers. The Canadian producers also submitted a single consolidated case brief.[1] The Canadian producers did not provide a reply submission.

[5] The Canadian producers provided information in support of their position that continued or resumed dumping and subsidizing of certain aluminum extrusions from China is likely if the Tribunal's findings are rescinded.

[6] The CBSA received responses to the ERQ from nine importers. No importers provided case briefs or reply submissions. No importers expressed an opinion regarding whether continued or resumed dumping and subsidizing of certain aluminum extrusions from China is likely.

[7] The CBSA received one exporter response to the ERQ. This exporter manufactured and sold subject goods to importers in Canada throughout the Period of Review (POR) from January 1, 2010 to March 31, 2013. The exporter did not provide a case brief or reply submission. The exporter did not express an opinion regarding the likelihood of continued or resumed dumping and subsidizing of certain aluminum extrusions from China.

[1] Exhibits 94 (NC) – Case Brief Canadian producers.

[8] The CBSA did not receive a response to the ERQ from the Government of China (GOC) nor did the GOC provide a case brief or reply submission.

[9] Analysis of information on the record indicates that exporters in China: have a sustained interest in the Canadian market as evidenced by the volume of subject goods exported to Canada during the POR; have excess production capacity for aluminum in China; have high volumes of stockpiles of aluminum in China; have planned increases in production capacity for aluminum extrusions; continue to benefit from the presence of conditions of section 20 of SIMA; are faced with market prices of aluminum in China trending downward with respect to the world prices, allowing extruders to obtain raw metal at a lower cost; are subject to other current (both preliminary and final) anti-dumping measures concerning identical products in other jurisdictions; and are faced with the presence of exporters from the "Present Low Price Sources" in the Canadian market exporting like goods at very competitive prices.

[10] Analysis of information on the record also indicates that exporters in China: have a continued availability of subsidy programs for aluminum extrusions exporters in China; have continued to export subsidized goods to Canada during the POR; benefit from the GOC's continued provision of subsidies to manufacturers within the aluminum sector; and are faced with the countervailing measures against Chinese aluminum extrusions and downstream products in both Canada and other countries.

[11] For the foregoing reasons, the President, having considered the relevant information on the record, determined on October 3, 2013, under paragraph 76.03(7)(*a*) of SIMA that the expiry of the findings by the Tribunal in respect of certain aluminum extrusions originating in or exported from China is likely to result in:

i. the continuation or resumption of dumping of the goods into Canada; and
ii. the continuation or resumption of subsidizing of the goods exported to Canada.

BACKGROUND

[12] On August 18, 2008, pursuant to subsection 31(1) of SIMA, the President initiated investigations respecting the dumping and subsidizing of certain aluminum extrusions from China following a properly documented complaint received from Almag Aluminum Inc., Apel Extrusions Limited, Can Art Aluminum Extrusion Inc., METRA Aluminium Inc., Signature Aluminum Canada Inc., Spectra Aluminum Products Ltd. and Spectra Anodizing Inc. As part of the dumping investigation, the CBSA initiated a section 20 inquiry to examine the degree of GOC involvement in the aluminum extrusions sector and the related impact on pricing.

[13] On February 16, 2009, the President made final determinations of dumping and subsidizing in accordance with paragraph 41(1)*(a)* of SIMA in respect of certain aluminum extrusions originating in or exported from China.

[14] On March 17, 2009, the Tribunal found that the dumping and subsidizing of the goods originating in or exported from China had caused injury to the Canadian domestic industry for aluminum extrusions.[2]

[15] On February 10, 2011, the Tribunal determined that MAAX Bath Inc. was entitled to the product exclusions that it had requested, at the time of the original inquiry, for certain aluminum extrusions used in the assembly of shower enclosures.

[16] On September 19, 2011, the CBSA initiated a re-investigation of certain aluminum extrusions to update the normal values, export prices, and amounts of subsidy. The CBSA received cooperation from four exporters, and issued them company specific normal values and amounts of subsidy at the conclusion of the re-investigation on February 20, 2012. The GOC did not cooperate during the re-investigation.

[17] On April 30, 2013, pursuant to subsection 76.03(2) of SIMA, the Tribunal issued a notice concerning the upcoming expiry of its findings.[3] The findings were scheduled to expire on March 16, 2014. Based on the available information and the information submitted by the interested parties, the Tribunal was of the opinion that an expiry review of the findings was warranted.

PRODUCT DESCRIPTION

Definition

[18] The goods subject to the findings under review are defined as:

> "Aluminum extrusions produced via an extrusion process of alloys having metallic elements falling within the alloy designations published by The Aluminum Association commencing with 1, 2, 3, 5, 6 or 7 (or proprietary or other certifying body equivalents), with the finish being as extruded (mill), mechanical, anodized or painted or otherwise coated, whether or not worked, having a wall thickness greater than 0.5 mm, with a maximum weight per metre of 22 kg and a profile or cross-section which fits within a circle having a diameter of 254 mm, originating in or exported from the People's Republic of China."

[2] Exhibit 8 (NC) – Statement of Reasons – Aluminum Extrusions, Inquiry No. NQ-2008-003.
[3] Exhibit 1 (NC) – CITT Notice of Expiry LE-2013-001.

[19] The following goods were excluded from the Tribunal's findings of March 17, 2009, and therefore, are not subject goods:

- aluminum extrusions produced from either a 6063 or a 6005 alloy type with a T6 temper designation, in various lengths, with a powder coat finish on both the interior and the exterior surfaces of the extrusion, which finish is certified to meet the American Architectural Manufacturers Association AAMA 2603 standard, "Voluntary Specification, Performance Requirements and Test Procedures for Pigmented Organic Coatings on Aluminum Extrusions and Panels", for use in exterior railing systems;

- aluminum extrusions produced from a 6063 alloy type with a T5 temper designation, having a length of 3.66 m, with a powder coat finish, which finish is certified to meet the American Architectural Manufacturers Association AAMA 2603 standard, "Voluntary Specification, Performance Requirements and Test Procedures for Pigmented Organic Coatings on Aluminum Extrusions and Panels", for use as head rails and bottom rails in fabric window shades and blinds where the fabric has a cross-sectional honeycomb or "cellular" construction.;

- aluminum extrusions produced from a 6063 alloy type with a T5 temper designation and forming part of the Vario System™ 20, 30, 40, 45 and 60 series line of profiles, or equivalent, having a length of either 4.5 or 5.8 m and a straightness tolerance of +/- .5 mm or less per 6.0 m of length, for use in those parts of mechanical systems and automated machinery, such as gantry systems and conveyors, where precise linear movement is required;

- aluminum extrusions produced from either a 6063 or a 6463 alloy type, having a length of 3 m, with a hand-applied gold and silver leaf finish, for use as picture frame mouldings;

- aluminum extrusions produced from a 6063 alloy type with either a T5 or a T6 temper designation, having a length of between 20 and 33 ft. (between 6.10 and 10.06 m), with a powder coat finish, which finish is certified to meet the American Architectural Manufacturers Association AAMA 2603 standard "Voluntary Specification, Performance Requirements and Test Procedures for Pigmented Organic Coatings on Aluminum Extrusions and Panels", for use in window frames;

- heat sinks imported under tariff item No. 8473.30.90 and weighing 700 g or less; and

- aluminum extrusions produced by China Square Industrial Ltd. from either a 6063 or a 6463 alloy type with a T5 temper designation, with a profile or cross-section which fits within a circle having a diameter of 100 mm, for use by MAAX Bath Inc. in the assembly of its shower enclosures, specifically identified in the table found at www.citt-tcce.gc.ca/dumping/expiries/notices/lein01_e.asp.

Classes of Goods

[20] In its findings, the Tribunal had separated the subject goods into two classes of goods: standard-shaped and custom-shaped aluminum extrusions. In this *Statement of Reasons*, the term "aluminum extrusions" refers to both classes of goods as a whole.

[21] The information provided in the ERQ responses did not differentiate between the two classes of goods. In addition, the information gathered by the CBSA in its research did not reveal any differentiation within the industry regarding the two classes of goods, with news articles and analyses consistently referring to aluminum extrusions as a whole.

[22] Therefore the analysis respecting the likelihood of continued or resumed dumping and subsidizing applies to both classes of goods as defined by the Tribunal.

Production Process

[23] While details may vary from producer to producer, the process by which extrusions are produced is essentially the same for all.

[24] The intended use of the product in which the aluminum extrusion will be applied determines the specifications for the extrusion. Machinability, finish and environment of use will determine the alloy to be extruded. The function of the profile will determine its design and that of the die that shapes it.

[25] The extrusion process begins with an aluminum billet. The billet must be softened by heat prior to extrusion. The heated billet is placed into the extrusion press, a powerful hydraulic device wherein a ram pushes a dummy block that forces the softened metal through a precision opening known as a die, to produce the desired shape. This simplified description of the process is known as direct extrusion, which is the most common method in use today. Indirect extrusion is a similar process. In the direct extrusion process, the die is stationary and the ram forces the alloy through the opening in the die. In the indirect process, the die is contained within the hollow ram, which moves into the stationary billet from one end, forcing the metal to flow into the ram, acquiring the shape of the die as it does so.

[26] The aluminum billet may be a solid or hollow form, commonly cylindrical, and is the length charged into the extrusion press container. It is usually a cast product but may be a wrought product or powder compact. Often it is cut from a longer length of alloyed aluminum known as a log.

[27] The billet and extrusion tools are preheated (softened) in a heating furnace. The melting point of aluminum varies with the purity of the metal but is approximately 1,220° Fahrenheit (660° Centigrade). Extrusion operations typically take place with billet heated to temperatures in excess of 700° F (375° C), and depending upon the alloy being extruded, as high as 930° F (500°C).

[28] The actual extrusion process begins when the ram starts applying pressure to the billet within the container. Various hydraulic press designs are capable of exerting anywhere from 100 tons to 15,000 tons of pressure. This pressure capacity of a press determines how large an extrusion it can produce. The extrusion size is measured by its largest cross-sectional dimension, sometimes referred to as its fit within a circumscribing circle diameter.

[29] As pressure is first applied, the billet is crushed against the die, becoming shorter and wider until its expansion is restricted by full contact with the container walls. Then, as the pressure increases, the soft (but still solid) metal has no place else to go and begins to squeeze through the shaped orifice of the die to emerge on the other side as a fully formed extrusion or profile.

[30] About 10 percent of the billet, including its outer skin, is left behind in the container. The completed extrusion is cut off at the die and the remainder of the metal is removed to be recycled. After it leaves the die, the still-hot extrusion may be quenched, mechanically treated and aged.

CLASSIFICATION OF IMPORTS

[31] Imports into Canada of the subject goods described above are normally, but not exclusively, classified under the following Harmonized System classification numbers:

As of October 1, 2012:		
7604.10.00.10	7604.29.00.29	7610.90.10.00
7604.10.00.20	7604.29.00.30	7610.90.90.10
7604.10.00.30	7608.10.00.10	7610.90.90.20
7604.21.00.10	7608.10.00.90	7610.90.90.30
7604.21.00.90	7608.20.00.00	7610.90.90.90
7604.29.00.11	7610.10.00.10	
7604.29.00.19	7610.10.00.20	
7604.29.00.21	7610.10.00.30	
January 1, 2012 to September 30, 2012:		
7604.10.00.10	7604.29.00.29	7610.90.10.10
7604.10.00.20	7604.29.00.30	7610.90.10.20
7604.10.00.30	7608.10.00.10	7610.90.10.30
7604.21.00.10	7608.10.00.90	7610.90.10.90
7604.21.00.90	7608.20.00.00	7610.90.90.10
7604.29.00.11	7610.10.00.10	7610.90.90.20
7604.29.00.19	7610.10.00.20	7610.90.90.30
7604.29.00.21	7610.10.00.30	7610.90.90.90

Prior to January 1, 2012		
7604.10.11.10	7604.21.00.10	7604.29.20.29
7604.10.11.90	7604.21.00.20	7604.29.20.30
7604.10.12.11	7604.29.11.10	7608.10.00.10
7604.10.12.19	7604.29.11.90	7608.10.00.90
7604.10.12.21	7604.29.12.11	7608.20.00.10
7604.10.12.22	7604.29.12.19	7608.20.00.90
7604.10.12.23	7604.29.12.21	7610.10.00.10
7604.10.12.24	7604.29.12.22	7610.10.00.20
7604.10.12.29	7604.29.12.23	7610.10.00.30
7604.10.20.11	7604.29.12.24	7610.90.00.10
7604.10.20.19	7604.29.12.29	7610.90.00.20
7604.10.20.21	7604.29.20.11	7610.90.00.30
7604.10.20.29	7604.29.20.19	7610.90.00.40
7604.10.20.30	7604.29.20.21	7610.90.00.90

PERIOD OF REVIEW

[32] The period of review (POR) for the CBSA's expiry review investigation is from January 1, 2010 to March 31, 2013.

CANADIAN INDUSTRY

[33] The Canadian Industry is comprised of the following:

- Almag Aluminum Inc.;
- APEL Extrusion Limited;
- Apex Aluminum Extrusions Ltd.;
- Can Art Aluminum Extrusion Inc.;
- Dajcor Aluminum Limited;
- Extrudex Aluminum;
- Extrudex Aluminium Quebec S.E.C.;
- METRA Aluminium Inc.;
- Sapa Canada Inc.; and
- Spectra Aluminum Products Ltd./Spectra Anodizing Inc.

Almag Aluminum Inc.

[34] Almag was founded in 1953 as Almag Aluminum & Magnesium Ltd., manufacturing ornamental door grilles in Etobicoke, Ontario. In 1959, an extrusion press was purchased and the company began producing aluminum extrusions. In 1993, the son of the company's founder purchased the assets of Almag Aluminum Ltd. and continued operating the business as Almag Aluminum Inc. In 2005, the ownership was re-structured such that Almag Aluminum Inc. is now owned by Jedmar Holdings Ltd., a holding company controlled by the founder's son, who remains President of Almag.

[35] Almag now operates one extrusion and fabrication facility in Brampton, Ontario and through an associated company, Almag Aluminum Corp., a warehouse and fabrication facility in Alabama, United States.

[36] Almag has, for approximately ten years, imported aluminum extrusions from the United States. These have been products requested by Almag's customers that, due to their large size and/or the specific alloy, Almag was unable to produce.

[37] Almag has not imported any aluminum extrusions from China since the imposition of duties in 2009.

APEL Extrusion Limited

[38] APEL began operations with a 4-inch extrusion press in Winnipeg, Manitoba in 1972. The company was established as a joint venture with Alcan Aluminum Ltd. (Alcan) to manufacture and market aluminum extrusions in the prairie provinces and act as Alcan's sales agent for larger extrusions.

[39] A second extrusion operation was opened in Calgary, Alberta to service the growing Western Canadian market. Upgrades to the 6-inch press in Calgary and the installation of a new paint line allowed for the consolidation of operations into the Calgary facility, resulting in the closure of the Winnipeg operation in 1990.

[40] Alcan largely exited its extrusion business in North America in the late 1970's, selling its interest in APEL to the current private ownership group. Continuous upgrades to its equipment, expansion of its premises and the installation of a new 7-inch press in 2001 has allowed APEL to grow its operations and become a supplier of preference in western Canada.

[41] APEL purchased the assets of Postle Aluminum US North West (Postle) in 2010, when Postle closed its Oregon operations. APEL acquired a 3-year-old press and a manufacturing facility in Springfield, Oregon. With this addition, APEL began to market its extrusions and expand its business throughout the North American West Coast.

Apex Aluminum Extrusions Ltd.

[42] Apex was incorporated in January of 2010 for the sole purpose of producing and selling aluminum extrusions. Apex started production of mill finish extrusions in February of 2011. Apex produces aluminum extrusions at their only facility in Langley, British Columbia.

Can Art Aluminum Extrusion Inc.

[43] Can Art was incorporated April 28, 1989. Can Art initially operated one press line at a location in Mississauga, Ontario before relocating to Brampton, Ontario in 1996 to a larger facility where a second press line was added. In 2001, a new facility in Lakeshore, Ontario was established housing two new press lines. In 2008, the Lakeshore plant was expanded and a third press line added. In 2012 a new anodizing facility was completed in Mississauga, Ontario. All five press lines can produce the full range of aluminum extrusions. All three plants are part of a single corporate entity.

Dajcor Aluminum Limited

[44] Dajcor was established in May 2010 after purchasing the assets of Daymond Aluminum Limited, which was under bankruptcy proceedings. The company has one 7-inch press and one 5-inch press, and a 190,000 square foot facility in Chatham, Ontario with extrusion, fabrication, buffing and anodizing facilities.

[45] The first aluminum extrusions were produced by Dajcor on June 1, 2010. Since that time, Dajcor has become a leading Canadian supplier of extruded, fabricated/machined and anodized aluminum components and assemblies to various markets: automotive, renewable energy, medical equipment, transportation, building trades, military, recreation, and consumer-product industries. Dajcor has full in-house fabrication capabilities, avoiding costly delays and additional handling costs required by subcontracted fabrication services.

Extrudex Aluminum

[46] Extrudex is a privately owned company and was incorporated in 1981. Extrusions were first produced by the company in 1982. On December 21, 1988 Extrudex Aluminum became a limited partnership. Extrudex has its head office and main plant with five extrusion presses in Woodbridge, Ontario. Extrudex expanded in 1994 with a separately incorporated plant in Quebec that has two extrusion presses and a paint line.

[47] In 1999 Extrudex built a plant in Ohio, United States. This plant has three extrusion presses. All three plants supply aluminum extrusions to manufacture products for various markets. The largest markets supplied include building and construction, distribution, transportation, electrical and consumer durables.

Extrudex Aluminium Quebec S.E.C.

[48] Extrudex Quebec, a separately-incorporated subsidiary of Extrudex, is a producer of aluminum extrusions located in St-Nicolas, Quebec. The company was established in 1994. Its building was expanded in 2004 and two new press lines were added in 2004 and in 2005. The plant has one vertical paint line and two press lines, with a 7-inch press and an 8-inch press, respectively.

METRA Aluminium Inc.

[49] METRA is a privately owned company located in Laval, Quebec. The company was incorporated on July 22, 1994 and started its operation in August 1994 following the acquisition of the current plant from Alcan, which originally started production of aluminium extrusions at this location in 1965.

[50] METRA imports a very small amount of aluminum extrusions from METRA S.p.A. in Italy when it cannot meet customers' requirements from its plant in Laval, if the price is acceptable to the customer.

[51] METRA has two presses at its Laval location, one 7-inch press and one 8-inch press. This location also has a vertical liquid paint line.

Sapa Canada Inc.

[52] Sapa was incorporated on July 7, 2009 and holds all Canadian assets that it acquired from Indalex Limited, a Canadian producer at the time of the original investigations, and from certain of its affiliates. Based in Mississauga, Ontario, it produces aluminum extrusions with a broad range of finish and fabrication options to meet the needs of its customers.

Spectra Aluminum Products Ltd./Spectra Anodizing Inc.

[53] Spectra Aluminum Products Ltd. ("SAP"), Spectra Anodizing Inc. ("SAL") and HiTech Anodizing Inc. ("HIT") are the three private, family-owned and -operated corporate entities making up Spectra.

[54] SAP began its extrusion operations in February 1997 and is located in Bradford, Ontario. It operates two presses: a 7-inch press and an 8-inch press. It has an electrostatic paint line and fabrication capabilities including precision cutting, punching, notching, drilling and bending. SAL was established in May 1978 in Woodbridge, Ontario and operates Spectra's aluminum extrusion anodizing and dyeing facilities. HIT was acquired in May 2011 to provide additional aluminum extrusion anodizing capability and is located in Brampton, Ontario.

CANADIAN MARKET

[55] The imports of aluminum extrusions over the POR are indicated in **Table 1** (volume) and **Table 2** (value). Information pertaining to Canadian sales of aluminum extrusions was designated as confidential in nature by the Canadian Producers, and is therefore not being reported in the following tables:

Imports of Aluminum Extrusions
(kilograms)[4]

Table 1:

Source	2010	2011	2012	2013 (January 1 to March 31)
China	14,566,786	13,268,252	12,094,246	4,534,529
All Other Countries	87,422,869	98,058,080	109,778,090	26,904,875
Total Imports	101,989,655	111,326,332	121,872,336	31,439,404

* Importers' reporting of volume for Canadian customs purposes included some reports in kilograms and other in units. Therefore, due to the enforcement volume data also being a mix of kilograms and units, the CBSA was unable to accurately establish the total volume of the Canadian market for aluminum extrusions.

Imports of Aluminum Extrusions
(Value in CAN$)[5]

Table 2:

Source	2010	2011	2012	2013 (January 1 to March 31)
China	84,165,178	75,373,776	81,626,069	31,117,541
All Other Countries	470,166,900	539,751,127	575,152,724	140,110,822
Total Imports	554,332,078	615,124,903	656,778,793	171,228,363

[4] Exhibit 89 (NC) – Final Import Statistics and Enforcement Data.
[5] Ibid.

Canadian Industry

[56] Between 2010 and 2012, the domestic producers' share of the aluminum extrusions market, in terms of value, was relatively flat, between 2010 and 2012, with a further slight decline in the first quarter of 2013. Although the data regarding sales volume is not necessarily reliable, as discussed above, it further corroborates this trend, with the Canadian industry's share of the Canadian market declining from 2010 to 2012 and then dropping further in the first quarter of 2013.

Imports

[57] The percentage of imports from China compared to all other imports, in terms of value, decreased from 2010 to 2012, and then increased in the first quarter of 2013. A similar trend is seen when imports from China are compared to the total Canadian market, whereby their total Canadian market share dropped from 2010 to 2012, and then increased again in the first quarter of 2013. The statistics regarding volume, although less than reliable, further support this trend, with volumes from China decreasing in both absolute and in relative terms from 2010 to 2012 before increasing in the first quarter of 2013.

ENFORCEMENT

[58] In the enforcement of the Tribunal's findings in respect of aluminum extrusions from China during the POR, the amount of anti-dumping and countervailing duty collected on subject imports was over CAN$41.8 million[6]

SIMA Duties Collected on Aluminum Extrusions
(Value in CAN$)

Table 3:

Country	2010	2011	2012	2013 (Q1)
China	28,303,293	9,515,223	3,362,971	670,358

[59] It should be noted that at the time that the record closed and the import statistics were finalized the CBSA was still finalizing its review of importations of aluminum extrusions during 2012 and had not yet begun its review of importations during 2013. The relatively low amount of SIMA duties collected during these two periods may be more reflective of a low level of self-assessment of duty by importers rather than a lack of dumped and subsidized imports. Further, the large number of appeals to the Tribunal during the POR regarding subjectivity of goods impacted the timeliness of enforcement as decisions taken by the Tribunal impacted enforcement activities. Regardless, few conclusions can be drawn from the decline in SIMA duties collected in 2012 and in the first quarter of 2013.

[6] Ibid.

PARTIES TO THE PROCEEDINGS

[60] On June 5, 2013, the Tribunal's notice of the expiry review and ERQs were sent to the known Canadian producers, exporters, importers, the GOC and other interested parties.

[61] The ERQ requested information relevant to the consideration of the expiry review factors by the President, as listed in subsection 37.2(1) of the *Special Import Measures Regulations* (SIMR). Any persons or governments having an interest in this investigation were also invited to provide a submission regarding the likelihood of continued or resumed dumping and/or subsidizing of these goods, should the findings be rescinded.

[62] Ten Canadian producers, Almag, Apel, Apex, Can Art, Dajcor, Extrudex, Extrudex Quebec, Metra, Sapa and Spectra provided ERQ responses, in addition to a collective case brief (but no reply submission), emphasizing that the dumping and subsidization is likely to continue or resume should the Tribunal's findings be rescinded.

[63] Nine importers, Bath Fitter/Grate Ideas; Haynes, Jones & Cadbury Corporation; Heliene Inc.; Imperial Manufacturing Group; MAAX Bath Inc.; Russel Metals Inc.; Samuel, Son & Co., Limited; Sinobec Trading Inc./Sinometal Resources Inc.; and 0944460 BC Ltd. provided ERQ responses. Collectively, these importers accounted for 23.8% of all imports of subject aluminum extrusions into Canada during the POR.[7]

[64] No importers expressed an opinion regarding whether continued or resumed dumping and subsidizing of certain aluminum extrusions from China is likely if the Tribunal's findings are rescinded. No importers provided case briefs or reply submissions.

[65] Only one exporter, PanAsia Aluminium (China) Limited ("PanAsia") submitted a response, which also included information from its affiliate, Opal (Macao Commercial Offshore) Limited. PanAsia indicated it had manufactured and exported subject goods to Canada during the POR. It was also one of four exporters that cooperated in the CBSA's 2011 re-investigation, and obtained company-specific normal values and a specific amount of subsidy.

[66] PanAsia did not express an opinion regarding whether continued or resumed dumping and subsidizing of certain aluminum extrusions from China is likely if the Tribunal's findings are rescinded. PanAsia did not provide a case brief or a reply submission.

[67] The GOC did not respond to the ERQ, nor did it provide a case brief or a reply submission.

[7] Exhibits 19 (PRO), 21 (PRO), 22 (PRO), 23 (PRO), 24 (PRO), 46 (PRO), 49 (NC), 50 (PRO) – ERQ Responses from Importers, Exhibit 89 (NC) – Final Import Statistics and Enforcement Data.

INFORMATION CONSIDERED BY THE PRESIDENT

Administrative Record

[68] The information considered by the President for purposes of this expiry review investigation is contained in the administrative record. The administrative record includes the information on the CBSA's Exhibit Listing, which is comprised of the Tribunal's administrative record at initiation of the expiry review, CBSA exhibits and information submitted by interested persons, including information which parties feel is relevant to the decision as to whether dumping and/or subsidizing is likely to continue or resume if the findings are rescinded. This information may consist of expert analyst reports, excerpts from trade magazines and newspapers, orders and findings issued by authorities of Canada or of a country other than Canada, documents from international trade organizations such as the World Trade Organization and responses to the ERQs submitted by Canadian producers, importers and exporters.

[69] For purposes of an expiry review investigation, the CBSA sets a date after which no new information submitted by interested parties will be placed on the administrative record or considered as part of the CBSA's investigation. This is referred to as the "closing of the record date." For this investigation, the closing of the record date was July 25, 2013. This deadline allows participants time to prepare their case briefs and reply submissions based on the information that is on the administrative record.

Procedural Issues

[70] The President will normally not consider any new information submitted by participants subsequent to the closing of the record date. However, in certain exceptional circumstances, it may be necessary to permit new information to be submitted. The President will consider the following factors in deciding whether to accept new information submitted after the closing of the record date:

(a) the availability of the information prior to the closing of the record date;
(b) the emergence of new or unforeseen issues;
(c) the relevance and materiality of the information;
(d) the opportunity for other participants to respond to the new information; and
(e) whether the new information can reasonably be taken into consideration by the President in making the determination.

[71] Participants wishing to file new information after the closing of the record date, either separately or in case briefs or reply submissions, must identify this information so that the President can decide whether it will be included in the record for purposes of the determination.

[72] With respect to this expiry review investigation, there were no new documents submitted by the participants after the July 25, 2013 closing of the record date.

[73] There were no procedural issues.

POSITION OF THE PARTIES - DUMPING

Parties Contending that Continued or Resumed Dumping is Likely

Canadian Producers

[74] The Canadian producers made representations through their ERQ responses as well as in their collective case brief in support of their position that the continuation or resumption of dumping from China is likely should the findings be rescinded. Accordingly, the Canadian producers contend that the measures should remain in place.

[75] The Canadian producers focussed largely on the present, planned and added capacity for aluminum extrusions in China and the inability of the Chinese domestic market to absorb current and increasing production levels, necessitating exports to available markets. The Canadian producers believe that these factors, and others described below, together will inevitably lead to dumping when left unrestrained by regulatory measures such as those found in SIMA.

Position of the Canadian producers regarding China

[76] The Canadian producers collectively identified certain conditions related largely to the Chinese production of and capacity for aluminum extrusions in arguing that the absence of the Tribunal's findings will lead to continued and/or resumed dumping of aluminum extrusions from China. The main factors identified by the Canadian producers can be summarized as follows:

- the evidence of dumping during the POR;
- the continued and expected presence of Chinese exporters in the Canadian market;
- the downward pressure on prices stemming from what are described by the Canadian producers as the "Present Low Price Sources" (specifically India, Indonesia, the Republic of Korea, Malaysia, Thailand, and Vietnam), with whom the Chinese exporters would have to compete for Canadian orders;
- the commodity nature of the subject goods, making goods price sensitive where importers are quick to switch sources;
- the injury already sustained by the Canadian producers, as well as the loss of sales the Chinese exporters have experienced in the Canadian market due to the "Present Low Price Sources", and the potential for increased pricing pressure if the findings were allowed to expire;
- the current Chinese economy and the market for aluminum extrusions;
- excess capacity for aluminum extrusions production in China is large and projected to grow;
- the insufficient demand in China to absorb Chinese aluminum extrusion production, prompting export dependence;

- the anti-dumping measures against aluminum extrusions products from China in both Canada and in other jurisdictions, demonstrating the propensity to dump these goods; and
- the diversion effect that anti-dumping measures on aluminum extrusions in Australia and the United States has had and would have, if the findings in Canada were rescinded.

[77] With reference to the CBSA record, the Canadian producers noted that SIMA duty had been collected during the POR which indicates that there has been dumping of subject goods while the findings have been in effect.[8]

[78] The Canadian producers also noted the continued presence and interest in the Canadian marketplace of Chinese exporters of aluminum extrusions. Pointing to their market intelligence and CBSA statistics, they demonstrated that, despite the imposition of anti-dumping and countervailing duties in 2009, Chinese exporters have still maintained a significant portion of the Canadian market, although the percentage market share has dropped significantly. [9]

[79] They further argue that the drop in market share of Chinese exporters, and that the Tribunal's dismissal and denial of several appeals and interim reviews, indicates the Chinese exporters inability to compete in the Canadian market at un-dumped prices.[10]

[80] The Canadian producers also pointed to the significant increase in volume of aluminum extrusions being imported into Canada from the "Present Low Price Sources". The prices at which the "Present Low Price Sources" sell to the Canadian market are considerably below Chinese origin goods.

[81] The Canadian producers state that "Since it is commonly accepted in the industry that lower price offerings on even small quantities of extrusions will affect market pricing, downward price pressures will result from the significant differentials in pricing with domestic industry pricing."[11] This is due to the commodity nature of the subject goods, making them very price sensitive, since goods produced in any country are interchangeable. Hence, if the findings were rescinded, Chinese exporters would have to compete with the "Present Low Price Sources", which would cause them to resume dumping into Canada. This would "exacerbate the injury already suffered by the Domestic Extruders from competition with the "Present Low Price Sources"".[12]

[82] Further to this point, the Canadian producers argue that these "Present Low Price Sources" have already caused them injury, in the form of lost sales or discounted sales due to the extremely low prices they are forced to compete with. They provided many examples of clients who have openly admitted to the fact that the significantly lower prices have caused them to source aluminum extrusions from some of the "Present Low Price Sources" rather than purchasing them from the Canadian producers.

[8] Exhibit 94 (NC) – Case Brief Canadian producers, paragraphs 55-59.
[9] Ibid. paragraphs 60-65.
[10] Ibid. paragraphs 66-67.
[11] Ibid. paragraph 75.
[12] Ibid. paragraph 78.

[83] The Canadian producers' perception of the current state of the Canadian market for aluminum extrusions is the same as it was at the beginning of the POR in 2010. The prices have remained flat, and conversion costs have not changed over the last four years.

[84] Their perception of the Chinese market is that their economy is cooling more rapidly than expected, as evidenced in an article in *Bloomberg Businessweek* titled "China's Slowing Economy: What you need to know".[13] The article points to China's actual GDP growth of 7.7% in the first quarter of 2013 being lower than the 8% originally predicted, and lower than the growth of 7.8% for all of 2012, which was itself China's lowest annual growth rate in 13 years.[14]

[85] The Canadian producers are concerned about China's excess capacity, capacity expansion, and oversupply of aluminum extrusions and how it will affect exports to Canada, should the findings be rescinded, especially since the United States also has anti-dumping measures in place against aluminum extrusions from China. Evidence on the record points to Chinese extruders adding capacity, despite the competition they face in the domestic market in China.[15]

[86] The Canadian producers provided information concerning the excess capacity, in some cases exceeding 40% overcapacity, which the Chinese extruders are currently experiencing.[16] They fear that China could potentially tap into that excess capacity just to produce aluminum extrusions for export markets. Based on the information in one publication concerning the 50 largest extruders in China[17], the top six extruders alone have excess capacity large enough to service the entire Canadian market.

[87] The Canadian producers also noted the presence of the anti-dumping and countervailing measures against similar goods in other jurisdictions. The United States found that aluminum extrusions from China were being sold at dumped prices as well as being subsidized, and that these have caused injury to the domestic producers. "Significant volumes of extrusions from China in both Tribunal classes of goods not able to be sold there without anti-dumping and anti-subsidy scrutiny (…) as a result of the U.S. findings will, in the Domestic Extruders' view, be diverted into the adjacent market in Canada if the Findings at issue are rescinded or permitted to expire while the U.S. findings remain in place."[18]

[88] The Canadian producers also noted that anti-dumping and countervailing measures were imposed by Australia shortly after Canada, and others, like Brazil and Colombia, are contemplating trade remedy measures against Chinese aluminum extrusions.[19] One of the supporting documents presented by the Canadian producers indicates that Colombia initiated an anti-dumping investigation earlier this year against Chinese and Venezuelan aluminum extrusions.[20]

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[13] Exhibit 15 (NC) – CITT Administrative Record, attachment 4.
[14] Exhibit 94 (NC) – Case Brief Canadian producers, paragraph 105.
[15] Exhibit 91 (PRO) - Information and documents aiding to the expiry review, pages 20-21. Exhibit 94 (NC) – Case Brief Canadian producers, paragraphs 107-111.
[16] Ibid. paragraph 111.
[17] Ibid. paragraph 112.
[18] Ibid. paragraph 116.
[19] Ibid. paragraphs 118-119.
[20] Exhibit 92 (NC) – Information and documents aiding to the expiry review, page 7.

[89] The Canadian producers pointed out the fact that only one Chinese exporter and nine importers of aluminum extrusions submitted a response to the ERQ, and that there is clearly not sufficient evidence on the record to support that dumping is not likely to resume.[21] They submit that based on the evidence on the record, there is a likelihood of continued or resumed dumping if the findings are rescinded.

Parties contending that continued or resumed dumping is unlikely

[90] No case briefs or reply submissions were submitted contending that the dumping of aluminum extrusions is not likely to continue or resume if the findings are rescinded.

CONSIDERATION AND ANALYSIS - DUMPING

[91] In making a determination under paragraph 76.03(7)(*a*) of SIMA whether the expiry of the findings is likely to result in the continuation or resumption of dumping of the goods, the President may consider factors identified in subsection 37.2(1) of the SIMR, as well as any other factors relevant in the circumstances

[92] Before presenting a China-specific analysis concerning the likelihood of continued or resumed dumping in the absence of the Tribunal's findings, there are certain issues that must be noted relating to the global aluminum extrusion industry, which are as follows:

Capital-intensive nature of aluminum extrusion production

[93] A characteristic of aluminum extrusions is the capital-intensive nature of their production. As such, aluminum extruders have high fixed costs and in order to recover fixed expenses, they will aim to maintain high capacity utilization rates. When the demand in the home market is insufficient to absorb production, the producers will look to export markets to help maintain these capacity utilization rates.

[94] This characteristic is particularly important when there are conditions of overcapacity, as a producer may find it more feasible to sell excess production in foreign markets at depressed prices rather than reduce production, as long as the producer's variable costs are covered.

Aluminum market developments and trends

[95] Since the recent economic downturn beginning in 2008, the aluminum market has decreased significantly, and is best described as currently being in a recovery. Despite governments offering much needed economic stimulus to increase the number of project starts, the price of aluminum has crept downward, and it is becoming increasingly difficult to accurately predict the future demand for the metal. As the world economic recovery ensues, so will the demand for aluminum products.

[21] Exhibit 94 (NC) – Case Brief Canadian producers, paragraphs 122-125.

[96] Further, aluminum is becoming a more increasingly desired metal for many uses, particularly in transportation. With its characteristics of being light weight combined with its durability and ability to weather the elements, it has been replacing many of the former steel parts in automobiles and other multi-passenger transport vehicles.[22]

[97] Another fairly recent development for uses of aluminum extrusions in particular are photovoltaic modules (otherwise known as solar panels). As the technology evolves, and governments push for the development and use of renewable energy, so does the demand for these modules increase. A natural reason for using extruded aluminum in the construction of the module frames is its light weight and durability.[23]

[98] As the demand for aluminum increases in coming years, prices should, in theory, increase over time. However, expanding global capacity and excess supply are of major concern, especially as current demand is still weak and recovering[24].

LIKELIHOOD OF CONTINUED OR RESUMED DUMPING

China

[99] Guided by the factors in the aforementioned subsection 37.2(1) of the SIMR and having considered the information on the administrative record, the ensuing list represents a summary of the CBSA's analysis conducted in this expiry review investigation with respect to dumping:

- the sustained interest in the Canadian market by Chinese exporters as evidenced by the volume of exports to Canada and the anti-dumping duties collected throughout the POR;
- the excess production capacity for aluminum in China;
- the volume of stockpiles of aluminum in China;
- the planned increase in production capacity for aluminum extrusions;
- the continued presence of conditions of section 20 of SIMA;
- the market prices of aluminum in China trending downward with respect to the world prices, allowing extruders to obtain the raw metal at a lower cost;
- the current anti-dumping measures concerning Chinese aluminum extrusions in Canada and in other jurisdictions and the likely diversion effect the anti-dumping measures in other countries would have if the Tribunal's findings were rescinded; and
- the downward pressure on prices likely to stem from "Present Low Price Sources" with whom the Chinese exporters would have to compete if the findings were rescinded.

[22] Exhibit 75 (NC) – Article of interest "China Zhongwang Net Profit Surges by 108.4% to RMB 1.39 Billion in first Three Quarters of 2012", page2.
[23] Ibid. Metal Bulletin – January 28, 2013, "Mixed Fortunes", page 29.
[24] Exhibit 53 (PRO) - Metal Bulletin Research - Aluminium Weekly Market Tracker, February 25, 2013, page 9.

[100] PanAsia, the only exporter to provide a response to the ERQ, also cooperated in the original investigation and obtained company-specific normal values and an amount for subsidy, and was one of four exporters to cooperate during the re-investigation and obtained updated normal values and an amount for subsidy. PanAsia made no comments concerning the current or future anticipated states of the aluminum extrusions markets, nor did it file a case brief or reply submission. Further, no importer expressed an opinion regarding whether continued or resumed dumping and subsidizing of certain aluminum extrusions from China is likely if the Tribunal's findings are rescinded, and no case briefs or reply submissions were received from any of the importers that imported subject goods during the POR. The GOC did not provide a response to the ERQ, nor did the GOC provide a case brief or reply submission.

[101] Due to the limited participation from Chinese producers, importers of subject goods and the lack of participation by the GOC, the CBSA relied on other information on the record in assessing the likelihood of continued or resumed dumping should the Tribunal findings be rescinded.

[102] Information on the record indicates that Chinese extruders still have a sustained interest in the Canadian market. This is evident by the relatively stable volume of importations of aluminum extrusions throughout the POR, as demonstrated in **Table 1** and **Table 2** above, as well as the total anti-dumping and countervailing duties that were collected during the POR, which can be seen in **Table 3** above.

[103] Concerning the future of the excess capacity of aluminum in China, information on the record from a trade publication noted: "Elimination of outdated primary aluminium capacity will be a priority in 2013. Last week, the Ministry of Industry and Information Technology (MIIT) of China published an 'Overview for Chinese Non-ferrous Industry in 2012 and outlook for 2013'. In the report, MIIT emphasized that the overcapacity in the domestic aluminium industry is a key issue the government will work on in 2013. According to the MIIT, the Chinese government will try to alleviate the excess capacity in the Chinese aluminium market by either increasing the entry requirements for the primary aluminium industry or accelerating the pace of the closure of outdated capacity."[25]

[104] However, the same trade publication also noted that "Looking into 2013, we expect further curtailments of outdated aluminium capacity in China although the new lower-cost smelters coming on stream in western regions of China will more than offset a loss of capacity from closures of aged plants." [26]

[105] Further to the excess capacity of aluminum in China, there is also evidence on the record of stockpiles of aluminum that have been increasing in China due to low domestic demand caused by the slower than anticipated economic recovery, the slower than anticipated global economic recovery, the anti-dumping duties imposed by various export market countries, low aluminum prices, as well as rising operating (energy) costs.[27]

[25] Exhibit 53 (PRO) - Metal Bulletin Research, Aluminium Weekly Market Tracker, February 18, 2013, page 9.
[26] Exhibit 52 (PRO) - Metal Bulletin Research, Aluminium Weekly Market Tracker, January 7, 2013, page 9.
[27] Ibid.

[106] Information on the record suggests that Chinese aluminum producers are holding extremely high levels of inventory. According to one publication, the excess supply of aluminum in China was estimated to be 1.119 million metric tons in February 2013, up from 750,000 metric tons a year earlier, and expected to climb to 1.39 million tons in 2013.[28]

[107] The excess capacity and the large volumes of stockpiled aluminum impacts the price of aluminum to extruders, as evidenced by the price of aluminum in China versus the global market, as discussed further in this section. Greater capacity and volumes of stockpiles of aluminum puts downward pressure on the cost to extruders, as well the price at which the extruders sell their goods.

[108] Information on the record also points to the increasing capacity of aluminum extruders in China.[29] Another trade publication supplied by the Canadian producers noted that capacity utilization rates for the top 50 Chinese extrusion plants range from 53% to 96%.[30] From this publication[31], it can be seen that the current excess capacity from only the top six Chinese extruders alone could service the entire Canadian market.

[109] These planned expansions will apply additional pressure to export aluminum extrusions as the evidence on the record does not suggest that the Chinese domestic market for aluminum extrusions is projected to undergo any significant growth in the near future.

[110] Information on the record does point to two downstream products, requiring the use of aluminum extrusions, likely to grow in the near future. They are the automotive and the photovoltaic modules (solar panel) products. These two markets are expected to grow in the near future due to the global automotive sector recovering since the global economic downturn and the growing use of aluminum parts in auto-making to replace heavier steel parts, as well as the push by many countries to promote the use of alternative energy. Although these two markets may absorb some of the oversupply of aluminum in China, these products are mostly for export, not for domestic Chinese use.[32]

[111] With regards to the substitutability of imported versus domestically produced goods, generally speaking, aluminum extrusions produced either by a Canadian manufacturer or by foreign manufacturers are physically interchangeable. While proprietary differences may exist with respect to various forms and finishes, a wide range of aluminum extrusions compete with one another regardless of where they are produced, and thus distributor and end-user supply sources are largely substitutable. Consequently, as expressed by the Tribunal in its Findings and Reasons, aluminum extrusions are extremely price-sensitive and the lowest price may be the determining factor amongst prospective suppliers.[33]

[28] Exhibit 64 (NC) – Article of Interest, www.bloomberg.com, February 21, 2013, "China Aluminum Holdings Seen at Record, Boosting World Glut", page 2.
[29] Exhibit 91 (PRO) - Information and documents aiding to the expiry review, pages 20-21.
[30] Exhibit 91 (PRO) - Information and documents aiding to the expiry review, pages 17-18.
[31] Exhibit 91 (PRO) – Information and documents aiding to the expiry review, Attachment 2, pages 17-18.
[32] Exhibit 75 (NC) – Article of interest "China Zhongwang Net Profit Surges by 108.4% to RMB 1.39 Billion in first Three Quarters of 2012", page2., and Metal Bulletin – January 28, 2013, "Mixed Fortunes", page 29.
[33] Exhibit 8 (NC) – CITT Findings and Reasons, paragraph 155.

[112] Under SIMA, China is a 'prescribed'[34] country and normal values may be determined under section 20 of SIMA, in situations where in the opinion of the President, domestic prices are substantially determined by the government of that country and there is sufficient reason to believe that they are not substantially the same as they would be if they were determined in a competitive market.

[113] In addition to the original investigation on aluminum extrusions, in 2011 the CBSA conducted a re-investigation, which included a section 20 inquiry, to update normal values, export prices and amounts of subsidy respecting aluminum extrusions from China.

[114] In the aluminum extrusions re-investigation, the President maintained the opinion under section 20 of the SIMA that domestic prices in the aluminum extrusions sector are substantially determined by the GOC and that there is sufficient reason to believe that they are not substantially the same as they would be if they were determined in a competitive market. [35]

[115] One of the main factors in the President's decision was the market price of aluminum in China versus the world market price. The world aluminum prices are for the most part based on the London Metals Exchange (LME) spot prices. In China, however, the Shanghai Futures Exchange (SHFE) is the source of setting market prices. During the re-investigation, the CBSA found a large discrepancy in aluminum prices between the LME and the SHFE, whereby the SHFE prices were found to be significantly lower, with strong indication of the GOC's involvement in setting such low prices. [36]

[116] Evidence on the record indicates that the prices of aluminum on the LME are currently on an upward trend, and the prices of aluminum on the SHFE are on a downward trend, allowing Chinese manufacturers of aluminum and aluminum products, including aluminum extrusions, to take advantage of artificially low prices, and allowing these manufacturers to export their products to other countries, including Canada, at lower prices than would otherwise be the case.[37]

[117] This evidence is also echoed by Metal Bulletin Report (MBR) in their March 4, 2013 weekly update, as follows:

> "Exports of aluminium products in January [2013] rose by 15.5% year-on-year to 230,000 tonnes. The main reason for the rise is that extruders in China have a cost advantage from lower Chinese metal prices. With record-high stocks of metal and spot prices that are currently at a two-and-a-half year low, China's exports of aluminium products are expected to continue rising during the first half of this year."[38]

[34] Subsection 17.1(1) of SIMR: For the purposes of subsection 20(1) of the Act, the customs territory of the People's Republic of China is a prescribed country.
[35] Exhibit 3 (NC) – Notice of Conclusion of Re-investigation - Certain Aluminum Extrusions – 2012.
[36] Exhibit 82 (PRO) – Exhibit 291 from 2011 Certain Aluminum Extrusions Re-investigation - Section 20 Report, pages 16-17
[37] Exhibit 77 (NC) - LME vs. SHFE for the POR.
[38] Exhibit 54 (PRO) - Metal Bulletin Research, Aluminium Weekly Market Tracker, March 4, 2013, page 22.

[118] During the aluminum extrusions re-investigation which was concluded on February 20, 2012, only four exporters provided sufficient information and obtained exporter-specific normal values and amounts for subsidy. The GOC did not submit any of the requested information during the re-investigation. Effective the date of conclusion, the normal values for all other exporters have been determined in accordance with a ministerial specification under SIMA based on the export price of the goods advanced by 101%.[39] Prior to the conclusion of the re-investigation, ten Chinese exporters had normal values, export prices and amounts for subsidy determined that were effective from March 17, 2009 (the date of the Tribunal's findings) to February 19, 2012.[40]

[119] As noted, during the original aluminum extrusions investigation and subsequent re-investigation the President formed the opinion under section 20 that the domestic prices of aluminum extrusions from China are substantially determined by the GOC and that there is sufficient reason to believe that they are not substantially the same as they would be if they were determined in a competitive market.

[120] Given the continued availability of low-cost input material to Chinese aluminum extruders, it is likely that exporters would continue or resume dumping aluminum extrusions into Canada should the findings be rescinded.

[121] The information on the record documents several anti-dumping measures in other jurisdictions against Chinese-origin aluminum extrusions. These anti-dumping measures were documented as follows:

Country Imposing Action	Description of Goods	Year of Action
Australia[41]	Aluminum Extrusions	2010
United States[42]	Aluminum Extrusions	2011
Colombia[43]	Aluminum Extrusions*	2013

*This case has not been concluded and the investigation is still in progress.

[122] These measures indicate that Chinese producers of aluminum extrusions have a propensity to dump these products into the world market.

[39] Exhibit 3 (NC) – Notice of Conclusion of Re-investigation - Certain Aluminum Extrusions - 2012.
[40] Exhibit 2 (NC) – Final Determination- Statement of Reasons - Certain Aluminum Extrusions, Appendix 1.
[41] Exhibit 94 (NC) – Case Brief Canadian producers, paragraph 118.
[42] Exhibit 15 (NC) – CITT Administrative Record, attachment 4, page 1.
[43] Exhibit 92 (NC) – information aiding in the expiry review, page 8.

[123] Given the relatively slow growth in the Chinese market for aluminum extrusions and the amount of available supply which was previously absorbed by these countries, there is a likelihood that Chinese exporters would look to Canada as an outlet for exported aluminum extrusions, should the findings currently in place be rescinded. [44]

[124] The "Present Low Price Sources" identified by the Canadian producers have also been increasing market share in Canada, by competing at lower price levels. Evidence on the record corroborates the Canadian producers' assertions, at least in part, that these countries are increasing their exports to Canada and are selling at comparatively low prices.[45] Meanwhile, Chinese exporters have lost a significant share of their Canadian market share since the findings in 2009, yet still retain a large share of the Canadian imports market for aluminum extrusions.

[125] Given the market share of aluminum extrusions in Canada that the "Present Low Price Sources" have gained, the significant market share still held by imports from China, and the oversupply and excess capacity of aluminum extrusions in China, there is a strong likelihood that Chinese exporters will attempt to regain their prior market share by competing at dumped prices if the current findings in place were rescinded.

President's Determination – Dumping

[126] Based on information on the record in respect of: the sustained interest in the Canadian market as evidenced by the volume of subject goods exported to Canada during the POR; the excess production capacity for aluminum in China; the volume of stockpiles of aluminum in China; the planned increase in production capacity for aluminum extrusions; the continued presence of conditions of section 20 of SIMA; the market prices of aluminum in China trending downward with respect to the world prices, allowing extruders to obtain raw metal at a lower cost; the current anti-dumping measures concerning Chinese aluminum extrusions in other jurisdictions and the likely diversion effect these measures would have if the findings were rescinded; and the presence of exporters from the "Present Low Price Sources" in the Canadian market exporting like goods at very competitive prices; the President determined that the expiry of the findings is likely to result in the continuation or resumption of dumping into Canada of certain aluminum extrusions originating in or exported from China.

[44] Exhibit 61 (NC) – Article of Interest, www.economictimes.indiatimes.com, May 20, 2013, "Aluminum prices may decline further on glut in market, China inflation", page 2.

[45] Exhibit 89 (NC) – Final Import Statistics and Enforcement Data – Imports from both the Republic of Korea and from Malaysia have increased every year (and at prices per-unit that appear to be lower than those of Chinese-origin goods).

POSITION OF THE PARTIES - SUBSIDIZING

Parties Contending that Continued or Resumed Subsidizing is Likely

Canadian Producers

[127] The Canadian producers made limited representations specifically concerning subsidizing in China.

[128] The main factor identified by the Canadian producers can be summarized as follows:

- There are countervailing measures currently in place in Canada and in other jurisdictions concerning Chinese aluminum extrusions.

[129] The Canadian producers noted that aluminum extruders in China have been found to be exporting subsidized aluminum extrusions to the United States and Australia.[46] At the same time, exporters of aluminum extrusions in China have continued to export subsidized aluminum extrusions to Canada throughout the POR.

Parties contending that continued or resumed subsidizing is unlikely

[130] No case briefs or reply submissions were submitted contending that the subsidizing of aluminum extrusions is not likely to continue or resume if the findings are rescinded. No submissions were received from the GOC. No party expressed an opinion regarding the likelihood of continued or resumed subsidizing of certain aluminum extrusions from China.

CONSIDERATION AND ANALYSIS - SUBSIDIZING

[131] In making a determination under paragraph 76.03(7)(a) of SIMA whether the expiry of the findings in respect of goods from China is likely to result in the continuation or resumption of subsidizing of these goods, the President may consider factors identified in subsection 37.2(1) of the SIMR, as well as any other factors relevant in the circumstances.

[46] Exhibit 94 (NC) – Case Brief Canadian producers, paragraphs 115-119.

LIKELIHOOD OF CONTINUED OR RESUMED SUBSIDIZING

China

[132] Guided by the factors in the aforementioned subsection 37.2(1) of the SIMR and having considered the information on the administrative record, the ensuing list represents a summary of the CBSA's analysis conducted in this expiry review investigation with respect to subsidizing:

- continued availability of subsidy programs for exporters of aluminum extrusions in China;
- the fact that subsidized goods were imported during the POR;
- the GOC's continued provision of subsidies to manufacturers within the aluminum sector; and
- the countervailing measures against Chinese exporters of aluminum extrusions in other jurisdictions and on-going investigations into downstream products in Canada and the European Union.

[133] As noted, only one Chinese exporter of aluminum extrusions, PanAsia, provided a response to the ERQ, but did not file a case brief or reply submission. Further, no case briefs or reply submissions were received from any of the importers that imported subject goods during the POR. The GOC did not provide a response to the ERQ, nor did the GOC provide a case brief or reply submission.

[134] In light of the limited participation from Chinese producers, importers of subject goods and the lack of participation by the GOC, the CBSA relied on other information on the record in assessing the likelihood of continued or resumed subsidization should the Tribunal findings be rescinded.

[135] During the original subsidy investigation in 2008, 56 potential subsidy programs were investigated and 15 of these subsidy programs were determined by the President to have conferred benefits to the cooperative exporters.[47] PanAsia cooperated in the original investigation, and it was determined that it had benefited from an amount of subsidy of 3.51 Renminbi per kilogram.

[47] Exhibit S2 (NC) - Final Determination - Statement of Reasons – Certain Aluminum Extrusions, paragraph 256.

[136] A list of the programs that were used by cooperative exporters at the time of the final determination is as follows:

- *Preferential Tax Policies for Enterprises with Foreign Investment Established in the Coastal Economic Open Areas and in Economic and Technological Development Zones*
- *Research & Development (R&D) Assistance Grant*
- *Superstar Enterprise Grant*
- *Matching Funds for International Market Development for SMEs*
- *One-time Awards to Enterprises Whose Products Qualify for "Well-Known Trademarks of China" or "Famous Brands of China"*
- *Export Brand Development Fund*
- *Preferential Tax Policies for Foreign Invested Enterprises - Reduced Tax Rate for Productive FIEs Scheduled to Operate for a Period not less than 10 Years*
- *Preferential Tax Policies for Foreign-Invested Export Enterprises*
- *Local Income Tax Exemption and/or Reduction*
- *Exemption of Tariff and Import VAT for Imported Technologies and Equipment*
- *Patent Award of Guangdong Province*
- *Training Program for Rural Surplus Labor Force Transfer Employment*
- *Reduction in Land Use Fees*
- *Provincial Scientific Development Plan Fund*
- *Primary aluminum Provided by Government at Less than Fair Market Value*

[137] It was found that 100% of the goods exported from China were subsidized. The weighted average amount of subsidy, expressed as a percentage of the export price, was equal to 47%. The amounts of subsidy found for cooperative exporters ranged from 2.59 to 3.88 Renminbi per kilogram. The amount of subsidy for all other exporters was determined to be equal to 15.84 Renminbi per kilogram, as determined according to a Ministerial specification pursuant to subsection 30.4(2) of SIMA.[48]

[138] Detailed descriptions of the programs and explanations as to why they were regarded as countervailable subsidies are contained in the CBSA's *Statement of Reasons* issued at the final determination.[49]

[139] During the original investigation, the GOC did not provide information on subsidy programs that were not used by cooperative exporters. Consequently, although the programs were investigated, the CBSA had limited details to report on those programs at the final determination.

[140] On September 19, 2011, the CBSA initiated a re-investigation to update amounts of subsidy established at the final determination for aluminum extrusions.

[48] Ibid, Appendix 1.
[49] Ibid, Appendix 2.

[141] The Request for Information (RFI) sent to exporters at that time included programs identified at the original aluminum extrusions investigation, as well as those identified from any other investigation or new source that suggested the program may be applicable to the aluminum extrusions sector.

[142] On February 20, 2012, the CBSA concluded the re-investigation to update the amounts of subsidy calculated at the aforementioned final determination for the original subsidy investigation on aluminum extrusions.

[143] Only four Chinese exporters participated fully in the 2011 subsidy re-investigation, including PanAsia. The GOC did not participate in the subsidy re-investigation. Consequently, the CBSA has limited information concerning the details of the subsidy programs that were regarded as countervailable.

[144] Company-specific amounts for subsidy were calculated for each of the cooperating exporters. The amount of subsidy for all other exporters was equal to 15.84 Renminbi per kilogram, as determined according to Ministerial specification pursuant to subsection 30.4(2) of SIMA.[50]

[145] Detailed descriptions of the programs and explanations as to why they were regarded as countervailable subsidies are contained in the CBSA's *Letters to Exporters* issued at the conclusion of the re-investigation.[51]

[146] The results of the conclusion of the 2011 subsidy re-investigation represent the best information available, which is that subsidy programs continue to be available to aluminum extrusions exporters in China.

[147] As noted earlier, the GOC did not provide a response to the ERQ for this expiry review investigation. As a result, the CBSA relied on the information on the record, including publicly available data. The most current subsidy information available is from the subsidy re-investigation concluded February 20, 2012.

[50] Exhibit S3 – Notice of Conclusion – Certain Aluminum Extrusions Re-investigation.
[51] Exhibits S83 (PRO), S84 (PRO), S85 (PRO), S86 (PRO), S87 (PRO), – Notice of Conclusions and Exporter Ruling Letters.

[148] At the initiation of the re-investigation, the CBSA identified 41 potential subsidy programs. During the Period of Investigation (POI) for the 2011 re-investigation (January 1, 2010 to June 30, 2012), the cooperative exporters benefitted from one of these potential subsidy programs and from six additional programs that had not been identified at the initiation. The following is a list of these subsidy programs:

- *Input Materials Provided by Government at Less than Fair Market Value*
- *Exemption of cities maintenance and constriction tax and extra charges for education*
- *Income Tax reduction 2010*
- *Xinzhuang Financial Bureau - 2009 funds to support an open economy*
- *Xinzhuang Financial Bureau – Economic Development Award*
- *Xinzhuang Financial Bureau – Export Business Incentives*
- *IP Rebate*

[149] Chinese producers have continued to export aluminum extrusions to the Canadian market while the findings were in place as evidenced in **Table 1**.

[150] Since the conclusion of the original 2008 investigation, subject goods have continued to be assessed countervailing duty, as evidenced in **Table 3.**

[151] As noted in the analysis of likelihood of the continued or resumed dumping, information on the record indicates that there are many aluminum extrusion manufacturers in China and that their excess capacities for production of aluminum extrusions exceed the Canadian market many times over.[52]

[152] There is information on the record that indicates that Chinese aluminum extrusions exporters continue to rely heavily on export markets[53], and with other countries also imposing countervailing duties, the Chinese manufacturers of aluminum extrusions would most likely export goods to Canada at subsidized prices should the findings be rescinded.

[52] Exhibit S90 (PRO) - Information and documents aiding to the expiry review, pages 17-18.
[53] Exhibit S15 (NC) – CITT Administrative Record, attachment 4.

[153] There are also other countervailing measures against Chinese aluminum extrusions and downstream aluminum products from Australia, the European Union and the United States. With respect to the downstream products, at least in regards to the ongoing investigation concerning unitized wall modules, the allegations being investigated include, among others, that subsidies provided to producers of aluminum extrusions have been "passed-through" to the exporters of unitized wall modules. These countervailing measures were documented as follows:

Country Imposing Action	Description of Goods	Year of Action
Australia[54]	Aluminum Extrusions	2010
United States[55]	Aluminum Extrusions	2011
European Union[56]	Photovoltaic Modules (Solar Panels)*	2012
Canada[57]	Unitized Wall Modules*	2013

*These cases have not been concluded and the investigations are still in progress.

[154] The existence of these other countervailing measures is a further indication that the GOC continues to provide subsidies to its domestic producers and likely will continue to do so in the future.

President's Determination – Subsidizing

[155] Based on the information on the record in respect of: the continued availability of subsidy programs for aluminum extrusions exporters in China; the continued exports to Canada during the POR of subsidized goods; the GOC's continued provision of subsidies to manufacturers within the aluminum sector; and the countervailing measures against Chinese aluminum extrusions and downstream products in both Canada and other countries, the President determined that the expiry of the findings is likely to result in the continuation or resumption of subsidizing of certain aluminum extrusions originating in or exported from China.

[54] Exhibit 94 (NC) – Case Brief Canadian producers, paragraph 118.
[55] Exhibit S15 (NC) – CITT Administrative Record, attachment 4.
[56] www.ec.europa.eu/trade
[57] www.cbsa-asfc.gc.ca/sima-lmsi/menu-eng.html

CONCLUSION

[156] For the purposes of making determinations in this expiry review investigation, the CBSA conducted its analysis within the scope of the factors contained in subsection 37.2(1) of the SIMR. Based on the foregoing consideration of pertinent factors and analysis of the information on the record, the President determined that the expiry of the findings made on March 17, 2009, in Inquiry No. NQ 2008 003, and as amended on February 10, 2011, in Inquiry No. NQ-2008-003R, concerning certain aluminum extrusions originating in or exported from China is likely to result in the continuation or resumption of dumping and subsidizing of these goods into Canada.

FUTURE ACTION

[157] On June 5, 2013, the Tribunal commenced its inquiry to determine whether the expiry of its findings concerning the dumping and subsidizing of certain aluminum extrusions from China is likely to result in injury or retardation to the Canadian industry. The Tribunal has announced that it will issue its decision by March 17, 2014.

[158] If the Tribunal determines that the expiry of the findings with respect to the goods from China is likely to result in injury or retardation, the findings will be continued in respect of those goods, with or without amendment. If this is the case, the CBSA will continue to levy anti-dumping and countervailing duties on dumped and subsidized importations of certain aluminum extrusions originating in or exported from China.

[159] If the Tribunal determines that the expiry of the findings with respect to the goods from China is unlikely to result in injury or retardation, the findings in respect of those goods will be rescinded. Anti-dumping and countervailing duties would no longer be levied on importations of certain aluminum extrusions beginning on the date the findings are rescinded.

INFORMATION

[160] For further information, please contact the officer listed below:

Mail: SIMA Registry and Disclosure Unit
Anti-dumping and Countervailing Directorate
Canada Border Services Agency
100 Metcalfe Street, 11th Floor
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K1A 0L8

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Website: www.cbsa-asfc.gc.ca/sima-lmsi/menu-eng.html

Caterina Ardito-Toffolo
Acting Director General
Anti-dumping and Countervailing Directorate

DOC 4

2ª Revisão de Final de Período Extrudados (Canadá)

AE 2019 ER

OTTAWA, August 16, 2019

STATEMENT OF REASONS

Concerning an expiry review determination under paragraph 76.03(7)(a) of the *Special Import Measures Act* regarding

THE DUMPING AND SUBSIDIZING OF CERTAIN ALUMINUM EXTRUSIONS FROM CHINA

DECISION

On August 2, 2019, pursuant to paragraph 76.03(7)(a) of the *Special Import Measures Act*, the Canada Border Services Agency determined that the expiry of the Canadian International Trade Tribunal's order made on March 17, 2014, in Inquiry No. RR-2013-003:

i. is likely to result in the continuation or resumption of dumping of certain aluminum extrusions originating in or exported from China; and

ii. is likely to result in the continuation or resumption of subsidizing of certain aluminum extrusions originating in or exported from China.

Cet *Énoncé des motifs* est également disponible en français.
This *Statement of Reasons* is also available in French.

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EXECUTIVE SUMMARY

[1] On March 8, 2019, the Canadian International Trade Tribunal (CITT), pursuant to subsection 76.03(3) of the *Special Import Measures Act* (SIMA), initiated an expiry review of its order made on March 17, 2014, in Expiry Review No. RR-2013-003, concerning the dumping and subsidizing of certain aluminum extrusions originating in or exported from the People's Republic of China (China).

[2] As a result of the CITT's notice of expiry review, on March 11, 2019, the Canada Border Services Agency (CBSA) initiated an expiry review investigation to determine, pursuant to paragraph 76.03(7)(a) of SIMA, whether the expiry of the order is likely to result in the continuation or resumption of dumping and/or subsidizing of the subject goods.

[3] The CBSA received 10 responses to its Canadian Producer Expiry Review Questionnaire (ERQ): from Almag Aluminum Inc. (Almag)[1], APEL Extrusions Limited (APEL)[2], Apex Aluminum Extrusions Ltd. (Apex)[3], Can Art Aluminum Extrusion Limited Partnership (L.P.) (Can Art)[4], Dajcor Aluminum Limited (Dajcor)[5], Extrudex Aluminum Corp.(Extrudex)[6], Extrudex Aluminum (Quebec) Inc. (Extrudex Quebec)[7], Hydro Extrusion Canada, Inc. (Hydro)[8], Metra Aluminum Inc. (Metra)[9], Spectra Aluminum Products Ltd./Spectra Anodizing Inc. (Spectra)[10]. These companies collectively are referred to as "the Canadian producers" in this report. The submissions made by the Canadian producers included information supporting their position that continued or resumed dumping and subsidizing of certain aluminum extrusions from China is likely if the CITT's order is rescinded.

[4] The CBSA received four responses to the Importer ERQ: from HFI Pyrotechnics Inc.[11], Studica Limited[12], TORYLS Inc.[13], and TSDC Canada Inc.[14] The importers did not express an opinion as to the likelihood of continued or resumed dumping and subsidizing of certain aluminum extrusions from China is likely if the CITT's order is rescinded.

[5] The CBSA did not receive any response to the Exporter ERQ nor did it receive a response to the Foreign Government ERQ from the Government of China (GOC).

[1] Exhibit 23 (PRO) & 24 (NC) – ERQ Response of Almag Aluminium Inc.
[2] Exhibit 42 (PRO) & 43 (NC) – ERQ Response of APEL Extrusion Limited.
[3] Exhibit 28 (PRO) & 29 (NC) – ERQ Response of Apex Aluminum Extrusions.
[4] Exhibit 30 (PRO) & 31 (NC) – ERQ Response of Can Art Aluminum Extrusion Inc.
[5] Exhibit 32 (PRO) & 33 (NC) – ERQ Response of Dajcor Aluminum Limited.
[6] Exhibit 34 (PRO) & 35 (NC) – ERQ Response of Extrudex Aluminum Corp.
[7] Exhibit 36 (PRO) & 37 (NC) – ERQ Response of Extrudex Aluminum (Quebec) Inc.
[8] Exhibit 38 (PRO) & 39 (NC) – ERQ Response of Hydro Extrusions Canada Inc.
[9] Exhibit 40 (PRO) & 41 (NC) – ERQ Response of METRA Aluminum Inc.
[10] Exhibit 26 (PRO) & 27 (NC) – ERQ Response of Spectra Aluminum Products Ltd./Spectra Anodizing Inc.
[11] Exhibit 44 (PRO) & 45 (NC) – ERQ Response of HFI Pyrotechnics Inc.
[12] Exhibit 20 (NC) – ERQ Response of Studica Limited.
[13] Exhibit 21 (PRO) & 22 (NC) – ERQ Response of TORYLS Inc.
[14] Exhibit 25 (NC) – ERQ Response of TSDC Canada Inc.

[6] In addition to responding to the ERQ, the Canadian producers submitted supplementary information[15] prior to the closing of the record. The CBSA also received a joint case brief[16] on behalf of the Canadian producers. The case brief submitted by the Canadian producers included arguments supporting their position that continued or resumed dumping and subsidizing of certain aluminum extrusions from China is likely if the CITT's order is rescinded.

[7] Analysis of information on the administrative record in respect of the GOC's involvement in and influence on the aluminum industry – Section 20 conditions; the primary aluminum capacity and production levels in China; the conditions in the aluminum extrusion industry in China; the export orientation of Chinese aluminum extrusion producers; the trade measures in other jurisdictions; the evidence of circumvention of trade remedy measures/ transhipment; the continued presence of Chinese aluminum products in Canada; along with the competitive conditions in the Canadian aluminum extrusions market, indicates a likelihood of continued or resumed dumping into Canada of certain aluminum extrusions originating in or exported from China should the CITT's order be rescinded.

[8] In addition, analysis of information on the administrative record in respect of the continued subsidizing of the primary aluminum industry in China, the continued subsidizing of aluminum extrusion producers in China and the countervailing measures in Canada and in other jurisdictions, indicates a likelihood of continued or resumed subsidizing of certain aluminum extrusions originating in or exported from China should the CITT's order be rescinded.

[9] For the foregoing reasons, the CBSA, having considered the information on the record, made a determination on August 2, 2019, pursuant to paragraph 76.03(7)(a) of SIMA that:

- the expiry of the order in respect of certain aluminum extrusions originating in or exported from China is likely to result in the continuation or resumption of dumping of the goods exported to Canada; and

- the expiry of the order in respect of certain aluminum extrusions originating in or exported from China is likely to result in the continuation or resumption of subsidizing of the goods exported to Canada.

BACKGROUND

[10] On August 18, 2008, pursuant to subsection 31(1) of SIMA, the CBSA initiated investigations respecting the dumping and subsidizing of aluminum extrusions from China following a properly documented complaint received from Almag Aluminum Inc., Apel Extrusions Limited, Can Art Aluminum, METRA Aluminium Inc., Signature Aluminum Canada Inc., Spectra Aluminum Products Ltd. and Spectra Anodizing Inc.

[15] Exhibit 46 (PRO) & 47 (NC) – Close of record documents from the Canadian Producers.
[16] Exhibit 49 (PRO) & 50 (NC) – Case Briefs Filed on Behalf of the Canadian Producers.

[11] On February 16, 2009, the CBSA made final determinations[17] of dumping and subsidizing in accordance with subsection 41(1) of SIMA in respect of aluminum extrusions originating in or exported from China.

[12] On March 17, 2009, the CITT found that the dumping and subsidizing of the goods originating in or exported from China had caused injury to the Canadian domestic industry for aluminum extrusions pursuant to subsection 43(1) of SIMA[18].

[13] On February 10, 2011, the Tribunal determined[19] that MAAX Bath Inc. was entitled to the product exclusions that it had requested, at the time of the original inquiry, for certain aluminum extrusions used in the assembly of shower enclosures.

[14] On September 19, 2011, the CBSA initiated a re-investigation of certain aluminum extrusions to update the normal values and amounts of subsidy. The CBSA received cooperation from four exporters, and issued them company-specific normal values and amounts of subsidy at the conclusion of the re-investigation on February 20, 2012.[20] The GOC did not cooperate during the re-investigation.

[15] On June 5, 2013, the CITT, pursuant to subsection 76.03(3) of SIMA, initiated an expiry review of its findings made on March 17, 2009, in Inquiry No. NQ-2008-003, and as amended on February 10, 2011, in Inquiry No. NQ-2008-003R, concerning the dumping and subsidizing of certain aluminum extrusions originating in or exported from China. As a result of the Tribunal's Notice of Expiry Review, on June 6, 2013, the CBSA commenced an investigation to determine whether the expiry of the findings is likely to result in the continuation or resumption of dumping and/or subsidizing of the goods from China.

[16] On October 3, 2013, pursuant to paragraph 76.03(7)(a) of SIMA, the CBSA determined that the expiry of the finding was likely to result in the continuation or resumption of dumping and subsidizing of these goods into Canada.[21]

[17] On March 17, 2014, in Expiry Review No. RR-2013-003, the CITT continued its findings without amendment made on March 17, 2009, in Inquiry No. NQ-2008-003, as amended by its determination made on February 10, 2011, in Inquiry No. NQ-2008-003R, concerning the dumping and subsidizing of certain aluminum extrusions originating in or exported from China.[22]

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[17] Canada Border Services Agency – *Statement of Reasons* – Certain Aluminum Extrusions - Final Determination; March 3, 2009.

[18] Canadian International Trade Tribunal; *Finding and Reasons*, Aluminum Extrusions; Inquiry No. NQ-2008-003, April 1, 2009.

[19] Canadian International Trade Tribunal; *Finding and Reasons*, Aluminum Extrusions; Inquiry No. NQ-2008-003R, February 10, 2011.

[20] Canada Border Services Agency, *Notice of Conclusion of Re-Investigation* – Certain Aluminum Extrusions from China ; February 20, 2012.

[21] Canada Border Services Agency – *Statement of Reasons*; Aluminum Extrusions; Expiry Review No. RR-2013-003; October 18, 2013.

[22] Canadian International Trade Tribunal; *Finding and Reasons*, Aluminum Extrusions; Inquiry No. NQ-2013-003; March 28, 2014.

[18] On January 17, 2019, pursuant to subsection 76.03(2) of SIMA, the CITT issued a notice[23] concerning the expiry of its order, which was scheduled to occur on March 16, 2019. Based on the information filed during the expiry process, the CITT decided that a review of the order was warranted. On March 8, 2019, the CITT initiated an expiry review of its order pursuant to subsection 76.03(3) of SIMA.[24]

[19] On March 11, 2019, the CBSA commenced an expiry review investigation to determine whether the expiry of the order is likely to result in continued or resumed dumping and/or subsidizing of the goods from China.

PRODUCT DEFINITION

[20] The goods subject to this expiry review investigation are defined as:

> "Aluminum extrusions produced via an extrusion process of alloys having metallic elements falling within the alloy designations published by The Aluminum Association commencing with 1, 2, 3, 5, 6 or 7 (or proprietary or other certifying body equivalents), with the finish being as extruded (mill), mechanical, anodized or painted or otherwise coated, whether or not worked, having a wall thickness greater than 0.5 mm, with a maximum weight per metre of 22 kg and a profile or cross-section which fits within a circle having a diameter of 254 mm, originating in or exported from the People's Republic of China."

[23] Canadian International Trade Tribunal; Notice of Expiry of Order; Aluminum Extrusions; Expiry No. LE-2018-008; January 17, 2019.

[24] Canadian International Trade Tribunal, Notice of Expiry Review; Aluminum Extrusions, Expiry No. RR-2018-008; March 8, 2019.

Products excluded from the Tribunal's Order

- aluminum extrusions produced from either a 6063 or a 6005 alloy type with a T6 temper designation, in various lengths, with a powder coat finish on both the interior and the exterior surfaces of the extrusion, which finish is certified to meet the American Architectural Manufacturers Association AAMA 2603 standard, "Voluntary Specification, Performance Requirements and Test Procedures for Pigmented Organic Coatings on Aluminum Extrusions and Panels", for use in exterior railing systems;
- aluminum extrusions produced from a 6063 alloy type with a T5 temper designation, having a length of 3.66 m, with a powder coat finish, which finish is certified to meet the American Architectural Manufacturers Association AAMA 2603 standard, "Voluntary Specification, Performance Requirements and Test Procedures for Pigmented Organic Coatings on Aluminum Extrusions and Panels", for use as head rails and bottom rails in fabric window shades and blinds where the fabric has a cross-sectional honeycomb or "cellular" construction;
- aluminum extrusions produced from a 6063 alloy type with a T5 temper designation and forming part of the Vario System™ 20, 30, 40, 45 and 60 series line of profiles, or equivalent, having a length of either 4.5 or 5.8 m and a straightness tolerance of +/-1.5 mm or less per 6.0 m of length, for use in those parts of mechanical systems and automated machinery, such as gantry systems and conveyors, where precise linear movement is required;
- aluminum extrusions produced from either a 6063 or a 6463 alloy type, having a length of 3 m, with a hand-applied gold and silver leaf finish, for use as picture frame mouldings;
- aluminum extrusions produced from a 6063 alloy type with either a T5 or a T6 temper designation, having a length of between 20 and 33 ft. (between 6.10 and 10.06 m), with a powder coat finish, which finish is certified to meet the American Architectural Manufacturers Association AAMA 2603 standard ("Voluntary Specification, Performance Requirements and Test Procedures for Pigmented Organic Coatings on Aluminum Extrusions and Panels"), for use in window frames;
- heat sinks imported under tariff item No. 8473.30.90 and weighing 700 g or less; and
- aluminum extrusions produced by China Square Industrial Ltd. from either a 6063 or a 6463 alloy type with a T5 temper designation, with a profile or cross-section which fits within a circle having a diameter of 100 mm, for use by MAAX Bath Inc. in the assembly of its shower enclosures, specifically identified in the Appendix of the Determination and reasons issued by the Canadian International Trade Tribunal on February 10, 2011, in Inquiry No. NQ-2008-003R. The list of these excluded products can be found in the Appendix at the following link: http://www.citt.gc.ca/en/dumping/inquirie/findings/archive_nq2i003r_e#P166_42819

Additional Product Information[25]

[21] Extrusion is the process of shaping heated material by forcing it through a shaped opening in a die with the material emerging as an elongated piece with the same profile as the die cavity. For greater clarity, the subject goods do not include goods made by the process of impact extrusion or cold extrusion. Impact (or cold) extrusion is commonly used to make collapsible tubes such as toothpaste tubes or cans usually using soft materials such as aluminum, lead and tin. Usually a small shot of solid material is placed in the die and is impacted by a ram, which causes cold flow in the material. Impact (or cold) extrusion is not performed by the same machinery or using the same inputs as the extrusion operations of the complainants.

[22] Alloys are metals composed of more than one metallic element. Alloys used in aluminum extrusions contain small amounts (usually less than five percent) of elements such as copper, manganese, silicon, magnesium, or zinc which enable characteristics such as corrosion resistance, increased strength or improved formability to be imparted to the major metallic element, aluminum. Aluminum alloys are produced to specifications in "International Alloy Designations and Chemical Composition Limits for Wrought Aluminum and Wrought Aluminum Alloys" published by The Aluminum Association. These specifications have equivalent designations issued by other certifying bodies such as the International Standards Organization (ISO).

[23] All aluminum extrusions are produced as either hollow or solid profiles. Hollow profile extrusions generally cost more to produce and obtain higher prices than solid profile extrusions. Extrusions are often produced in standard shapes such as bars, rods, pipes and tubes, angles, channels and tees but they are also produced in customized shapes.

[24] In addition to "as extruded" or mill finish, extrusions can be finished mechanically by polishing, buffing or tumbling. Extrusions can have anodized finishes applied by means of an electro-chemical process that forms a durable, porous oxide film on the surface of the aluminum. Also, they can be finished with liquid or powder paint coatings utilizing an electrostatic application process.

[25] The ability to produce the full range of profiles is determined by the extrusion and ancillary equipment. The complainants cannot produce extrusions having a wall thickness less than 0.5 mm or a weight greater than 22 kilogram (kg) per metre or a cross-section larger than would be enclosed within a 254 mm diameter circle.

[26] Working or fabricating extrusions includes any operation performed other than mechanical, anodized, painted or other finishing, prior to utilization of the extrusion in a finished product. These can include precision cutting, machining, punching and drilling.

[25] Canada Border Services Agency – *Statement of Reasons* – Certain Aluminum Extrusions - Final Determination; March 3, 2009; paras. 34-40.

[27] Aluminum extrusions are widely used in many end-use applications that span numerous market sectors. The main end-use sectors for aluminum extrusions are building and construction, transportation, and engineered products. Uses for aluminum extrusions in the building and construction industry cover a wide range of products, including windows, doors, railings, bridges, light poles, high-rise curtainwalls, framing members, and other various structures. Uses for aluminum extrusions in the transportation industry include parts for automobiles, buses, trucks, trailers, rail cars, mass transit vehicles, recreational vehicles, aircraft, and aerospace. Aluminum extrusions are also used in many consumer and commercial products, including, air conditioners, appliances, furniture, lighting, sports equipment, electrical power units, heat sinks, machinery and equipment, food displays, refrigeration, medical equipment, and laboratory equipment.

CLASSES OF GOODS

[28] In its findings, the Tribunal had separated the subject goods into two classes of goods: standard-shaped and custom-shaped aluminum extrusions. In this *Statement of Reasons*, the term "aluminum extrusions" refers to both classes of goods as a whole.

[29] The information provided in the ERQ responses did not differentiate between the two classes of goods. In addition, the information gathered by the CBSA in its statistical and other research did not reveal any differentiation within the industry regarding the two classes of goods, with news articles and analyses consistently referring to aluminum extrusions as a whole.

[30] Therefore, unless stated otherwise, the analysis respecting the likelihood of continued or resumed dumping and subsidizing applies to both classes of goods as defined by the Tribunal.

CLASSIFICATION OF IMPORTS

[31] The subject goods are usually classified under the following tariff classification numbers:

7604.10.00.30	7604.29.00.19	7608.10.00.90	7610.90.10.00
7604.10.00.40	7604.29.00.21	7608.20.00.00	7610.90.90.10
7604.21.00.10	7604.29.00.29	7610.10.00.10	7610.90.90.20
7604.21.00.90	7604.29.00.30	7610.10.00.20	7610.90.90.30
7604.29.00.11	7608.10.00.10	7610.10.00.30	7610.90.90.90

[32] This listing of tariff classification numbers is for convenience of reference only. The tariff classification number provided may include goods that are not subject goods and subject goods may be imported into Canada under tariff classification numbers other than those provided.

PERIOD OF REVIEW

[33] The period of review (POR) for the CBSA's expiry review investigation is from January 1, 2016 to December 31, 2018.

CANADIAN INDUSTRY

[34] Submissions to the Expiry Review Questionnaire (ERQ) for the aluminum extrusions expiry review investigation were received from 10 domestic producers, which represent the majority of the Canadian industry. These producers estimated their combine production at approximately 70-85% of the total Canadian production of like goods.[26] Other known producers are Signature Aluminum Canada Inc. (Signature); Kawneer Company Canada Ltd. (Kawneer); Kaiser Aluminum Corporations (Kaiser), Kromet International Inc. (Kromet) and PexalTecalum Canada (Pexal).[27]

Almag Aluminum Inc.

[35] Almag was founded in 1953 as Almag Aluminum & Magnesium Ltd., manufacturing ornamental doors in Etobicoke, Ontario. In 1959, an extrusion press was purchased and the company began producing aluminum extrusions. In 1993, the son of the founder purchased the assets of Almag Aluminum Ltd and continued operating the business as Almag Aluminum Inc. In 2005 the ownership was re-structured such that Almag Aluminum Inc. is now owned by Jedmar Holdings ltd., a Holding Company controlled by the Founder's son, who is the CEO of Almag. Almag now operates one extrusion and fabrication facility in Brampton, Ontario and through an associated company Almag Aluminum Corp., a warehouse and fabrication facility in Alabama. Almag remains a family-owned business: operated and controlled by the son of the founder.[28]

APEL Extrusion Limited

[36] APEL began operations with a 4-inch extrusion press in Winnipeg, Manitoba in 1972. The company was established as a joint venture with Alcan Aluminum Ltd. (Alcan) to manufacture and market aluminum extrusions in the prairie provinces and acts as Alcan's sales agent for larger extrusions.

[37] A second extrusion operation was opened in Calgary, Alberta to service the growing Western Canadian market. Upgrades to the 6-inch press in Calgary and the installation of a new paint line allowed for the consolidation of operations into the Calgary facility, resulting in the closure of the Winnipeg operation in 1990.

[38] Alcan largely exited its extrusion business in North America in the late 1970's, selling its interest in APEL to the current private ownership group. Continuous upgrades to its equipment, expansion of its premises and the installation of a new 7-inch press in 2001 has allowed APEL to grow its operations and become a supplier of preference in western Canada.

[26] Exhibit 50 (NC) – Case Brief of Canadian Producers; para. 23.
[27] *Ibid.*; para. 24.
[28] Exhibit 24 (NC) – ERQ Response of Almag Aluminium Inc., Q. 9.

[39] Further equipment enhancements and a major upgrade to its horizontal paint line in 2005 allowed APEL to further improve its capabilities and meet the American Architectural Manufacturers Association (AAMA) paint standard (AAMA2603, 2604, 2605), which facilitated growth for the years to come. A new modern anodizing line and waste water handling system was installed in 2008 to replace the existing, outdated, 20-year-old equipment.

[40] APEL purchased the assets of Postle Aluminum – Oregon in 2010. APEL acquired a 3-year-old UBE press and a leased manufacturing facility in Springfield, Oregon. With this addition, APEL began to market its extrusions and expand its business dealings through the US West Coast. Upgrades to its paint line in Calgary, Canada allowed APEL to begin Powder Coating operations later that same year. Continuing to upgrade its capabilities in 2011, APEL replaced its 40-year-old 6-inch press in Calgary with modern UBE press, complete with Granco Clark ancillaries.

[41] In 2014 APEL purchased a 135,000 square foot building in Coburg Oregon and moved its 7 inch press from Springfield Oregon (leased facility) to Coburg Oregon. In the same year APEL installed a new 9-inch Press in the Coburg Oregon Facility. In 2018 APEL expanded the Coburg Oregon facility by 65,000 square feet and added a new 7-inch press to its current fleet of presses (now five).[29]

Apex Aluminum Extrusions Ltd.

[42] Apex was founded in 2009. Production began in 2011 and Apex Aluminum was soon delivering product throughout Western Canada. The company produces custom shapes, Standard Tube, Structural Channels, Architectural Angles, Bar and Pipe up to 10 inch by 2 inch in size.[30]

Can Art Aluminum Extrusion Inc.

[43] Can Art (formerly Daymond Aluminum) was incorporated April 28, 1989. Can Art initially operated one press line at a location in Mississauga, Ontario before relocating to Brampton, Ontario, in 1996 to a larger facility where a second press line was added. In 2001, a new facility in Lakeshore was established housing two new press lines. In 2008, the Lakeshore plant was expanded and a third press line added. In 2012 an anodizing facility was completed in Mississauga, Ontario In 2018, the Brampton facility was expanded and a third press line added. All six press lines can produce the full range of aluminum extrusions subject to this enquiry. The operations at all three plants are now under the ownership of Can Art Aluminum Extrusion L.P. and are part of one corporate entity.[31]

[29] Exhibit 43 (NC) – ERQ Response of APEL Extrusion Limited, Q. 9.
[30] Exhibit 29 (NC) – ERQ Response of Apex Aluminum Extrusions, Q. 9.
[31] Exhibit 31 (NC) – ERQ Response of Can Art Aluminum Extrusion Inc.; Q. 9.

Dajcor Aluminum Limited

[44] Dajcor was incorporated under the laws of Ontario in April 2010. It began production on June 1, 2010 at its Chatham Ontario facility. The company produces aluminum extrusions, performs fabrication, including CNC machining, cutting, notching, mitring, deburring, bending, brushing and polishing. The company also does anodizing all under one roof at its 200,000 sq. ft. facility. The company is locally owned.[32]

Extrudex Aluminum Corp.

[45] Extrudex Aluminum was founded in 1980 with a determination to manufacture quality aluminum extrusions and provide superior service.

[46] The Company has expanded several times since its inception. In 1984, Extrudex Aluminum moved from its original facility to a larger building; in 1994, a manufacturing operation was purchased in Quebec; in 1998, a new site was constructed in Ohio; and in the year 2000, a new head office and plant was built in Woodbridge, Ontario.

[47] The Extrudex Aluminum group covers over 500,000 sq.ft. with an annual output capacity in excess of 80,000 metric tonnes. The company's extrusion presses range in container size from 7 inch through 13 inch.

[48] A wide variety of surface finishes and colours are available. From basic mill finish (as extruded) to clear and coloured anodizing as well as a wide variety of paint colours in both wet and powder. [33]

Extrudex Aluminium (Quebec) Inc.

[49] Extrudex Quebec, a separately-incorporated subsidiary of Extrudex, is a producer of aluminum extrusions located in St-Nicolas, Quebec. The company was established in 1994.[34]

Hydro Extrusions Canada, Inc..

[50] The Hydro Canada operations (originally owned by Indalex) were founded in the early 1960s in Canada as the core business for the North American downstream metals and building products subsidiary of RTC Corp., the world's largest mining and metal company at that time, according to the company. At its peak in the 1990s and early 2000s, four locations existed across Canada, making Indalex the market leader in custom and standard extrusions. In 2009, Sapa Group acquired certain assets of Indalex, in the United States and Canada as part of a bankruptcy sale. Locations in Calgary, Alberta, and Port Coquitlam, British Columbia, were subsequently closed. In 2013, Norsk Hydro and Orkla (Sapa's parent company) entered into a global joint venture, combining both aluminum extrusion businesses. In 2017, Norsk Hydro became a 100% owner of the joint venture. [35]

[32] Exhibit 33 (NC) – ERQ Response of Dajcor Aluminum Limited; Q. 9.
[33] As per Extrudex's corporate website accessed in July 2019: http://www.extrudex.com.
[34] *Ibid.*
[35] Exhibit 39 (NC) – ERQ Response of Hydro Extrusions Canada Inc.; Q. 9.

METRA Aluminium Inc.

[51] METRA is a privately-owned company located in Laval, Québec. The company started its operations in 1994 following the acquisition of the current plant and equipment from Alcan. METRA has two extrusion presses producing custom shapes and one liquid paint line. METRA is a subsidiary of METRA Holding, of Italy.[36]

Spectra Aluminum Products Ltd./Spectra Anodizing Inc.

[52] Spectra is a privately-owned company incorporated in June 1978 that provides aluminum extrusion, fabrication, polishing and other value-added services in Canada to customers in Canada, the United States and Europe. [37]

Other Known Producers:

Kaiser Aluminum Corporation

[53] Kaiser, a United States based producer, has a production facility in London, Ontario. The Canadian producers believes that the production from this company is primarily for the United States market, although this may have changed due to the trade measures imposed by the United States.[38]

Kawneer Company Canada Ltd.

[54] Kawneer is a part of Arconic's Building and Construction Systems business and is a leading supplier of architectural systems and products.[39] The company's North American headquarters are located in Norcross, Georgia, United States. Kawneer has an aluminum extrusions production facility in Lethbridge, Alberta.

Kromet International Inc.

[55] Kromet has a manufacturing facility located in Cambridge, Ontario. The company manufactures finished metal components and assemblies for the appliance, furniture, automotive, urban transit and LED lighting marketplaces.[40] Kromet also manufactures aluminum extrusions in its Chinese production facility.

[36] Exhibit 41 (NC) – ERQ Response of METRA Aluminum Inc.; Q. 8 & 9.
[37] Exhibit 27 (NC) – ERQ Response of Spectra Aluminum Products Ltd./Spectra Anodizing Inc.; Q. 9.
[38] Exhibit 50 (NC) – Case Arguments of Canadian Producers; para. 26.
[39] As per Kawneer's corporate website: https://www.kawneer.com/kawneer/en/info_page/kawneer_overview.asp, as accessed in June 2019.
[40] As per Kromet's corporate website: http://www.kromet.com/, as accessed in June 2019.

Signature Aluminum Canada Inc.

[56] Signature is a producer of aluminum extrusions located in Pickering, Ontario. According to the Canadian producers, Signature Aluminum Canada is owned by Global Aluminum (USA), who is, in turn, a subsidiary of China Zhongwang, the largest producer of aluminum extrusion in China.[41]

Pexal Tecalum Canada

[57] Pexal, located in Alma, Quebec, is a Canadian enterprise stemming out of an international partnership with Tecalum, an entreprise located in Spain. Tecalum has been manufacturing aluminum extrusions for more than 40 years.[42]

[41] Exhibit 50 (NC) – Case Arguments of Canadian Producers; para. 25.
[42] As per Pexal's corporate website: http://www.pexaltecalum.ca/en/entreprise/pexal_tecalum_canada, as accessed in June 2019.

CANADIAN MARKET

[58] The apparent Canadian market for aluminum extrusions over the POR is indicated in **Table 1** and **Table 2** below. Table 1 reports the sales volume of the apparent Canadian market, while Table 2 reports the corresponding sales value in Canadian Dollars (CAD).

Table 1: **Apparent Canadian Market**
Aluminum Extrusions(kilograms)[43]

Source	2016	2017	2018
Canadian Producers' Domestic Sales*	**175,976,366**	**176,934,303**	**188,489,577**
China	5,818,312	2,077,878	1,577,560
All Other Countries	101,104,412	109,157,214	120,519,575
Total Imports	**106,922,724**	**111,235,092**	**122,097,135**
Total Market Volume (kg)**	**282,899,090**	**288,169,395**	**310,586,712**

Table 2: **Apparent Canadian Market**
Aluminum Extrusions (Value in CAD)[44]

Source	2016	2017	2018
Canadian Producers' Domestic Sales*	**872,347,358**	**962,274,008**	**1,116,279,908**
China	26,290,483	10,389,320	7,771,250
All Other Countries	609,415,110	669,861,037	769,788,792
Total Imports	**635,705,593**	**680,250,357**	**777,560,042**
Total Market Value in CAN$	**1,508,052,951**	**1,642,254,365**	**1,893,839,950**

* The Canadian producers' estimate of the 10 respondents' share of total Canadian production of like goods stand at between 70-85%.[45] The CBSA selected the mid-point (i.e. 77.5%) as its estimate of their share of Canadian production. Pursuant to this assumption, the CBSA determined the Canadian sales volume and value on the basis of the data provided by the 10 Canadian respondents, multiplied by 1/0.775 (i.e. 129%) in order to include sales volume and value of other producers in the apparent Canadian market data.

** FIRM's reporting of volume for Canadian customs purposes included some reports in kilograms and other in units. Therefore, despite the CBSA's attempts to convert data into a consistent unit of measure, there are limits to the CBSA's ability to accurately establish the total volume of the Canadian market for aluminum extrusions.

[43] Exhibits 23 (PRO), 26 (PRO), 28 (PRO), 30 (PRO), 32 (PRO), 34 (PRO), 36 (PRO), 38 (PRO), 40 (PRO), 42 (PRO), – ERQ responses from Canadian Producers and appendices, Exhibit 048 (NC) – Final Import Statistics and Enforcement Data.
[44] *Ibid.*
[45] Exhibit 50 (NC) – Case Arguments of Canadian Producers; para. 23.

[59] Based on the apparent Canadian market figures in Table 1 and 2 above, the total Canadian market increased by 26% between 2016 and 2018 in terms of value, and by 10% in terms of volume.[46] The increase mostly occurred in 2018, with an increase of 15% in terms of value and 8% in terms of volume, when compared to 2017. The tables above also suggest that the average unit price of aluminum extrusions in the Canadian market also increased significantly over the POR, with an increase of over 14% in the value per kg for the total market, when comparing 2018 data with 2016.

[60] Consistent with the increase in the total market, the Canadian producers' domestic sales from domestic production increased by 28% between 2016 and 2018 in terms of value, and by 7% in terms of volume. The increase was most pronounced in 2018. The Canadian producers also enjoyed a large increase in their average domestic selling price, with an increase of 20% between 2016 and 2018. Throughout the POR, however, the domestic producers lost some share of the market, based on volume. While the domestic producers' share of the total market was 62.2% in 2016, it was 61.4% in 2017 and 60.7% in 2018.

[61] Total imports also followed a similar pattern during the POR, with an increase of over 22% between 2016 and 2018 in terms of value, and by 14% in terms of volume. Total imports captured an additional 1.5% of market share during this period. Subject imports, on the other hand, dropped by over 70% in terms of value and almost 73% in terms of volume. As such, the increase in imports was evidently from other countries. While the total imports' share of the market increased from 37.8% to 39.3% during the POR, China's share dropped from 2% to 0.5% of the Canadian market in terms of volume. This indicates that imports from countries other than China captured an additional 3% of the total market during the POR, at the expense of both China and the Canadian industry.

[62] Since the finding was made by the CITT, subject imports dropped by over 95% in terms of volume, from 33,500,000 kg in 2007[47] to just over 1,500,000 kg in 2018. This is despite an increase of 52% in the size of the apparent market between 2007 and 2018[48].

Imports - China

[63] As mentioned above, the volume of subject imports dropped by over 95% between 2007 (i.e. prior to the finding) and 2018. Subject imports also dropped significantly during the POR, with a reduction of 70% between 2016 and 2018. In terms of market share, subject imports represented 16.4% of the Canadian market in 2007, prior to the finding.[49] The Chinese extruders' market share was reduced to 2.1% of the market in 2016 and further reduced to 0.5% of the market in 2018.

[46] As mentioned in the note under table 1, it is reminded that the total market data with respect to volume is somewhat skewed by inconsistent reporting of units in FIRM with respect to imports.
[47] Canadian International Trade Tribunal; Finding and Reasons, Aluminum Extrusions; Inquiry No. NQ-2008-003, April 1, 2009; paras. 164 and 263.
[48] *Ibid.*; paras. 191 and 284.
[49] *Ibid.*; paras. 161, 164 and 263.

ENFORCEMENT DATA

[64] As shown in **Table 3** below, the total amount of anti-dumping and countervailing duties collected on imports of subject goods from China during the POR was just over $11.4 million, consisting of $6.3 million in anti-dumping duty and $5.1 million in countervailing duty. As a percentage of the total value for duty, the anti-dumping and countervailing duties assessed during the POR were equal to 14.2% and 11.5%, respectively.

Table 3:

Enforcement Data – Imports of Subject Goods from China
Quantity, and Anti-dumping and Countervailing Duties Collected during the POR[50]
(Volume in kg and Values in CAD)*

	2015	2016	2017
Quantity	5,818,312	2,077,878	1,577,250
Value	26,290,483	10,389,320	7,771,250
Anti-dumping Duty	2,258,387	3,193,791	872,907
Countervailing Duty	2,638,983	1,800,487	662,004
Total Duties	**4,897,370**	**4,994,278**	**1,534,911**

Imports – Other Countries

[65] Imports from other countries increased faster than the market increase during the POR. In this regard, imports from countries other than China increased by 19.2% between 2016 and 2018 in terms of volume (vs 9.8% for the total market), and by 26.3% in terms of value (vs 25.6% for the total market).

[66] Several producers flagged, in their ERQ responses, an increase in low-priced imports from other Asian non-subject countries such as Malaysia, South Korea, Indonesia, Thailand and Vietnam, which are allegedly resulting in a downward pressure on prices[51]. Some producers raised concerns with the possibility that some of these imports may be the result of transhipment or circumvention, and also the result of displacement of Chinese production to other countries.[52]

[50] Exhibit 048 (NC) – Finalized Import Statistics and Market Table (CBSA).
[51] ERQ responses to question 25 from Apex, APEL and Spectra; see also Exhibit 50 (NC) – Case Arguments of Canadian Producers; paras. 142-143.
[52] ERQ responses to question 25-31 from APEL, Can Art, and Spectra.

Market Projections

Demand:

[67] Generally speaking, most Canadian producers are expecting relatively stable/flat demand in the foreseeable future, with growth to be in line with GDP growth.[53] Some see volatility due to the current trade environment, particularly with respect to tariffs.[54]

[68] While aluminum extrusions are used in such segments as construction, general industries and automotive, stronger growth is expected in the automotive segment.[55] Due to environmental regulations aiming at lowering the weight of vehicles in order to lower emissions, the use of aluminum extrusions in vehicle manufacturing is expected to increase significantly.

Supply:

[69] On the supply side, the CBSA expects increased competition in the foreseeable future. As mentioned above, several producers flagged, in their ERQ responses, an increase in low-priced imports from Asian countries, other than China, which are allegedly resulting in a downward pressure on prices.

[70] Further, on the basis of the CBSA's compilation of the producers' data, the domestic industry has been expanding during the POR. Overall domestic capacity increased by 10.5% between 2016 and 2018, with most of the increase occurring between 2017 and 2018. The CBSA notes, however, that the increase in capacity has not resulted in an increase in available capacity during the POR, as production increased at a slightly higher rate of 11.6%.

[71] Overall, all things being equal (i.e. including the CITT's order on aluminum extrusions remaining in place), the CBSA expects the market balance to remain relatively stable in the foreseeable future.

PARTIES TO THE PROCEEDINGS

[72] On March 11, 2019, a notice concerning the CBSA's initiation of the expiry review investigation was sent to Canadian producers and potential importers and exporters of aluminum extrusions, as well as to the GOC. All of these parties were also sent an ERQ.

[73] The ERQs requested information relevant to the CBSA's consideration of the expiry review factors, as listed in subsection 37.2(1) of the *Special Import Measures Regulations* (SIMR).

[53] Canadian producers' responses to questions 24-29 of ERQ.
[54] Canadian producers' responses to question 26 of ERQ.
[55] ERQ responses from Almag, APEL, Can Art, Dajcor.

[74] Ten Canadian producers: Almag, APEL, Apex, Can Art, Dajcor, Extrudex, Extrudex Quebec, Hydro, Metra, and Spectra, participated in the expiry review investigation and provided ERQ responses. Additional documents were also filed on behalf of the Canadian producers prior to the closing of the record. Four importers; HFI Pyrotechnics Inc., Studica Limited, TORYLS Inc., and TSDC Canada Inc. also participated in the expiry review investigation and provided an ERQ response.

[75] A case brief was received from counsel on behalf of the Canadian producers. No Reply submissions were filed.

[76] No exporter provided a response to the ERQ or otherwise participated in the expiry review. The GOC did not provide a response to the CBSA's ERQ nor did it submit a case brief or reply submission.

INFORMATION CONSIDERED BY THE CBSA

Administrative Record

[77] The information considered by the CBSA for purposes of this expiry review investigation is contained in the administrative record. The administrative record includes the information on the CBSA's exhibit listing, which is comprised of the CITT's administrative record relating to the initiation of the expiry review, the CBSA's exhibits and information submitted by interested parties, including information which the interested parties feel is relevant to the decision as to whether dumping and subsidizing are likely to continue or resume absent the CITT finding. This information may consist of expert analysts' reports, excerpts from trade magazines and newspapers, orders and findings issued by authorities of Canada or of a country other than Canada, documents from international trade organizations such as the World Trade Organization (WTO) and responses to the ERQs submitted by Canadian producers, exporters, and importers.

[78] For purposes of an expiry review investigation, the CBSA sets a date after which no new information submitted by interested parties will be placed on the administrative record or considered as part of the CBSA's investigation. This is referred to as the "closing of the record date" and is set to allow participants time to prepare their case briefs and reply submissions based on the information that is on the administrative record as of the closing of the record date. For this expiry review investigation, the administrative record closed on May 1, 2019.

Procedural Issues

[79] As mentioned above, normally, the CBSA does not consider any new information submitted by participants subsequent to the closing of the record date (i.e., May 1, 2019). However, in certain exceptional circumstances, it may be necessary to permit new information to be submitted. The CBSA considers the following factors in deciding whether to accept new information submitted after the closing of the record date:

(a) the availability of the information prior to the closing of the record date;

(b) the emergence of new or unforeseen issues;

(c) the relevance and materiality of the information;

(d) the opportunity for other participants to respond to the new information; and

(e) whether the new information can reasonably be taken into consideration by the CBSA in making the determination.

[80] Participants wishing to file new information after the closing of the record date, either separately or in case arguments or reply submissions, must identify this information so that the CBSA can decide whether it will be included in the record for purposes of the determination.

[81] New information was submitted on behalf of the Canadian producers on May 21, 2019, three weeks past the closing of the record date, requesting that the CBSA accept this information for filing and inclusion to the record for this proceeding. The Canadian producers contended that this information was not available before the closing of the record. It consisted of the United States Department of Commerce's Preliminary Determination Decision Memorandum published on May 17, 2019, which indicated that aluminum extrusions originating in China were circumventing the aluminum extrusions finding in the United States by transhipping through Vietnam. This information was meant to support allegations made in the producers' responses to the RFI and case brief.

[82] In this case, while the CBSA acknowledges that the information regarding the preliminary outcome of the United States Department of Commerce's investigation on this matter was only published after the closing of the record, in considering the materiality of the information and the inability of other participants to respond to the new information, the CBSA declined to add this information to the record, and did not consider the information for the purposes of this expiry review.

POSITION OF THE PARTIES – DUMPING

Parties Contending that Continued or Resumed Dumping is Likely

[83] The participating Canadian producers made representations in their ERQ responses and in their case brief supporting their position that dumping of certain aluminum extrusions from China is likely to continue or resume should the CITT's order expire. Therefore, they argued that the anti-dumping measures should remain in place.

[84] The main arguments made by the Canadian producers can be summarized as follows:

- Primary Aluminum Production Levels and Overcapacity in China
- Vast Production Capacity for Aluminum Extrusions in China
- Deceasing Demand for Aluminum Extrusions and Other Aluminum Products
- Reduced Growth Rate and Slowdown in Downstream Industries
- Export Orientation of Chinese Aluminum Extrusion Producers
- Lower Pricing due to Non-Market Conditions
- Trade Remedy Measures in Other Jurisdictions
- Circumvention of Trade Remedy Measures / Transhipment
- Continued Presence in Canada, Low-Priced Import Competition and Expected Pricing of Subject Goods

Primary Aluminum Production Levels and Overcapacity in China

[85] The Canadian producers alleged that the global aluminum overcapacity has been driven mainly by Chinese producers, who have invested heavily since the year 2000 to increase primary aluminum smelting capacity. The Canadian producers provided evidence that Chinese producers almost tripled their aluminum production since the finding was made by the CITT, to account for about 57% of global output in 2018.[56] For example, according to the producers, Chalco, a Chinese State-Owned Enterprise (SOE), increased its capacity by 16% in 2018 alone, to become the second largest aluminum producers in the world.[57]

[86] The Canadian producers also provided evidence that Chinese aluminum producers were still expanding their production capacity as well as their output, all while North American producers were decreasing theirs.[58] The producers alleged that evidence on the record also suggested that the Chinese aluminum producers were projected to further expand their capacity and their production between 2018 and 2021.[59]

[56] Exhibit 50 (NC) – Case Arguments of Canadian Producers; paras. 59-60.
[57] *Ibid.*; para. 65.
[58] *Ibid.*; paras. 63-72.
[59] *Ibid.*., paras. 60-63.

[87] The Canadian producers argued that this planned expansion was "…heavily supported by the Government of China with the involvement of state-owned enterprises, investments in the form of low-interest loans, preferential access to inputs and other mechanisms."[60] The producers cited a number of reports and analysis on this matter, including a report published in early 2019 by the Organization for Economic Co-operation and Development (OECD) regarding the measurement of distortions in international markets in the aluminum value chain.[61]

[88] The Canadian producers claimed that the expansion of Chinese aluminum production capacity led to a significant and growing overcapacity in China, a reduction in capacity utilization rates for smelters and increasing aluminum inventories.[62]

[89] The Canadian producers contended that the global aluminum overcapacity has a direct impact on the propensity of Chinese extruders to dump aluminum extrusions.[63]

Vast Production Capacity for Aluminum Extrusions in China

[90] The Canadian producers argued that the overcapacity in primary aluminum production has spilled over into downstream aluminum products, including aluminum extrusions.[64]

[91] The Canadian producers described a Chinese aluminum extrusion industry that is highly fragmented, with as many as 850 producers according to some reports.[65] The Canadian producers alleged that information on the record indicate that these producers have significant excess capacity to produce aluminum extrusions in China, along with low production utilization rate.[66] They also claimed that the record demonstrates that production and excess capacity are still increasing, and that aluminum extrusions exports from China are also on the rise.[67] The producers alleged that the available data suggest that Chinese excess capacity is equal to a significant proportion of the total world demand, excluding China, and that its excess production is several times the total apparent Canadian market.[68]

[92] The Canadian producers contended that this situation will only be exacerbated by slowing demand growth in China.[69]

Deceasing Demand for Aluminum Extrusions and Other Aluminum Products

[93] The Canadian producers argued that China continues to expand capacity at a time when demand is declining.[70]

[60] *Ibid.*, para. 68.
[61] *Ibid.*
[62] *Ibid.*, para. 69-74.
[63] *Ibid.*, para. 58.
[64] *Ibid.*, para. 75.
[65] *Ibid.*, paras. 76, 83.
[66] *Ibid.*, para. 75-81.
[67] *Ibid.*, para. 75-83.
[68] *Ibid.*, para. 80-81.
[69] *Ibid.*, 79, 81.
[70] *Ibid.*, para. 87 and 89.

[94] The Canadian producers contended that China's compounded annual growth rate for aluminum extrusions demand is forecasted to sharply decline from 2018 and 2028, compared to the previous ten-year period.[71] The producers also suggested that the projected trend is very similar for manufactured aluminum products in general, and also similar to the projected slowdown in industries that consume such aluminum products.[72]

Reduced Growth Rate and Slowdown in Downstream Industries

[95] The Canadian producers contended that the data regarding decreasing demand in China for aluminum extrusions and other semi-fabricated aluminum products was consistent with recent report from China regarding its slowing economy.[73]

[96] The producers argued that there were signs of weakness in industries such as automotive and construction in China, which are linked to weakening demand for primary aluminum and aluminum extrusions.[74]

[97] As part of its support for its allegations, the Canadian producers quoted the 2018 Annual Report of PanAsialum Holdings Company Limited, a major Chinese aluminum extrusions producer, which stated that it was having difficulty expanding into different domestic market segments on the basis that "the persisting unfavorable macro factors, including the volatility in each of the market the Group operates and uncertainty over the economic condition in China, has dampened the consumer sentiment and reduced the demand of the Group's products."[75] The industry also provided economic projection data from the IMF World Economic Outlook, as well as publically available media publications.[76]

[98] The Canadian producers argued that it was reasonable to infer that a slowdown in manufacturing and construction would also translate into decreased demand in China for aluminum extrusions, as forecasted by several analysts.[77]

Export Orientation of Chinese Aluminum Extrusion Producers

[99] The Canadian producers alleged that there were several reports and articles on the record regarding China's increasing reliance on export markets for its aluminum products.[78]

[71] *Ibid.* para. 88.
[72] *Ibid.*, 86-89.
[73] *Ibid.*; para. 90.
[74] *Ibid.*, paras. 96-101.
[75] *Ibid.*, para. 100.
[76] *Ibid.*, paras, 90-98.
[77] *Ibid.*, para 101.
[78] *Ibid.*, para. 107.

[100] The producers argued that the GOC implemented measures to discourage exports of primary aluminum and their input, with the aim of promoting exports of higher added-value aluminum products, including aluminum extrusions.[79] In particular, they referred to the GOC's VAT policy, which provides VAT rebates to downstream aluminum products, but not on primary aluminum and aluminum scrap. The Canadian producers contended that such policy has the effect of depressing the prices of primary aluminum in the Chinese domestic market, providing a significant price advantage to Chinese producers of processed aluminum products. They claimed that such policies have been confirmed by the European Commission in several investigations into aluminum products from China, as well as be other investigating authorities.[80]

[101] The Canadian producers claimed that because of such policies, and in the context of excess production capacities for both aluminum and aluminum extrusions, Chinese aluminum extrusion producers have remained export-oriented and have become even more so in recent years in order to absorb their excess capacity in light of declining domestic demand.[81]

Lower Pricing due to Non-Market Conditions

[102] The Canadian producers noted that in its final determination, the CBSA was of the opinion that domestic prices in the aluminum extrusion sector in China are substantially determined by the GOC and that there is sufficient reason to believe that prices are not substantially the same as they would be in a competitive market. They further alleged that as confirmed by American and Australian authorities, and as set out in GOC policies, the GOC continues to be involved in the aluminum industry such that prices are not substantially the same as they would be in a competitive market.[82]

[103] The Canadian producers referred to studies comparing the spread adjusted between aluminum prices in China and international prices and with respect to the reported prices paid by aluminum extrusion producers. They alleged that Chinese aluminum extrusion producers continue to benefit from the cheap input prices which are the result of the distortions caused by the GOC's policies.[83]

[104] The producers alleged that evidence on the record links the pricing difference between domestic and international aluminum prices with a steep pick up in Chinese exports of semi-manufactured aluminum products such as the subject goods.[84] They also claimed that export data shows that the apparent average Chinese export price of aluminum extrusions is lower than the average price from other countries. The producers claimed that their price advantage is as much as 15% over the other exporting countries.[85]

[79] *Ibid.*, paras. 102-106.
[80] *Ibid.*, para. 104.
[81] *Ibid.*, paras. 106-108.
[82] *Ibid.*, paras. 109-111.
[83] *Ibid.*, paras. 112-115.
[84] *Ibid.*, para. 115.
[85] *Ibid.*, para.117.

Trade Remedy Measures in Other Jurisdictions

[105] The Canadian producers noted that there were anti-dumping and countervailing measures with respect to aluminum extrusions from China in Australia and in the United States, which have both been renewed, as well as anti-dumping measures on several aluminum products from China, in several jurisdictions.[86] They also noted that in addition to the already existing measures on aluminum extrusions, the Americans have also recently imposed a tariff of 10% on all imports of aluminum products, including those from China.[87] The Canadian producers alleged that these barriers to importation of aluminum extrusions from China increase the potential for diversion of subject goods to Canada.[88]

Circumvention of Trade Remedy Measures / Transhipment

[106] The Canadian producers alleged that producers of subject goods from China have been accused of, and in some instance, found to be, engaging in circumvention and transhipment of aluminum extrusions.[89] In particular, they referred to instances where American and Australian authorities found that Chinese producers were circumventing the aluminum extrusion measures.

[107] The Canadian producers claimed that these reports and findings are indications that producers of subject goods are facing worsening conditions in China and are looking to export their excess production by whatever means available.[90]

Continued Presence in Canada, Low-Priced Import Competition and Expected Pricing of Subject Goods

[108] The Canadian producers contended that Chinese aluminum extruders continue to have a strong presence in the Canadian market, when considering both subject goods and non-subject aluminum extrusions. They claimed that the Chinese producers' imports have been in the range of 10% of all imports and have maintained a 5% market share of the Canadian market.[91] The producers also indicated that the data on the record also confirmed a continued presence of subject goods.[92]

[109] The Canadian producers argued, however, that subject goods are losing market share to other low-priced Asian sources, such as Malaysia, Thailand and Vietnam. They argued that to regain market share, the subject goods will have to compete with these low-priced offshore sources.[93]

[86] *Ibid.*, paras. 119-123, 130.
[87] *Ibid.*, para. 124.
[88] *Ibid.*, para. 126.
[89] *Ibid.*, paras.131-135.
[90] *Ibid.*; para.136.
[91] *Ibid.*, paras. 137-139.
[92] *Ibid.*, para 140.
[93] *Ibid.*, paras 142-143.

[110] The Canadian producers contended that the price of aluminum is a major component of the price at which domestic producers sell their goods. They reiterated that the price of aluminum in China is deeply affected by the various government policies and other influence, as well as by the effect of excessive production and capacity. On that basis, the producers are expecting that the subject goods will be priced at levels that reflect such non-market price considerations and will undercut those offered by the domestic producers. [94]

Parties Contending that Continued or Resumed Dumping is Unlikely

[111] None of the parties contended that continued or resumed dumping of subject goods from China is unlikely if the order is rescinded.

CONSIDERATION AND ANALYSIS – DUMPING

[112] In making a determination under paragraph 76.03(7)(a) of SIMA whether the expiry of the order is likely to result in the continuation or resumption of dumping of the goods, the CBSA may consider factors identified in subsection 37.2(1) of the SIMR, as well as any other factors relevant in the circumstances.

[113] Guided by the aforementioned factors and having considered the information on the administrative record, the following list represents a summary of the CBSA's analysis conducted in this expiry review investigation with respect to dumping:

- GOC's Involvement in and Influence on the Aluminum Industry – Section 20 Conditions
- Primary Aluminum Capacity and Production Levels in China
- Conditions in the Aluminum Extrusion Industry in China
- Export Orientation of Chinese Aluminum Extrusion Producers
- Trade Remedy Measures in Other Jurisdictions
- Evidence of Circumvention of Trade Remedy Measures / Transhipment
- Continued Presence of Chinese Aluminum Products in Canada
- Competitive Conditions in the Canadian Aluminum Extrusion Market

[114] As previously mentioned, the CBSA received ERQ responses from 10 Canadian producers and from four importers. In addition to responding to the ERQ, the Canadian producers submitted supplementary information prior to the closing of the record as well as a joint case brief. The CBSA relied on the information submitted by these parties, as well as the other information on the administrative record for purposes of this expiry review investigation.

[94] *Ibid.* para. 144.

GOC's Involvement in and Influence on the Aluminum Industry – Section 20 Conditions

[115] Section 20 of SIMA may be applied to determine the normal value of goods where certain conditions prevail in the domestic market of the exporting country. In the case of a prescribed country, under paragraph 20(1)(a) of SIMA, it is applied where, in the opinion of the CBSA, domestic prices are substantially determined by the government of that country and there is sufficient reason to believe that they are not substantially the same as they would be if they were determined in a competitive market. Where section 20 is applicable, the normal value of goods is not determined based on domestic prices or costs in that country.

[116] For the purposes of the final determination[95], and again further to the subsequent re-investigation[96], the CBSA was of the opinion that domestic prices in the aluminum extrusions sector in China are substantially determined by the GOC and there is sufficient reason to believe that the domestic prices are not substantially the same as they would be in a competitive market.

[117] When section 20 conditions are found to exist, the CBSA normally determines normal values using the selling price, or the total cost and profit, of like goods sold by producers in a surrogate country designated by the CBSA pursuant to paragraph 20(1)(c) of SIMA. Alternately, normal values may be determined under paragraph 20(1)(d) of SIMA, on a deductive basis starting with an examination of the prices of imported goods sold in Canada, from a surrogate country designated by the CBSA. During the investigation, none of the producers from any of the surrogate countries provided information. Furthermore, suitable information on imported goods sold in Canada from a surrogate country was not provided in the importers' responses to the questionnaires. Therefore, sufficient information was not available to the CBSA in order to determine normal values using either of these two methods.

[118] As a result, throughout the enforcement period, the normal values for the exporters that provided a complete and reliable response to the questionnaires have been determined using an alternate methodology under a Ministerial Specification, pursuant to section 29 of SIMA.[97] The methodology set out in the Ministerial Specification is a surrogate constructed cost methodology based on the monthly average settlement price of primary aluminum as reported on the London Metal Exchange (LME) for the month preceding the date of sale to Canada, plus the cost to convert the aluminum into a finished aluminum extrusion product, plus an amount for administrative, selling and all other costs, plus an amount for profit. These conversion costs and profit amounts were determined based on public information from extruders in India. The normal values determined under the Ministerial Specification also have separate conversion costs to account for cost differences relating to products that are "mill finished" and products that undergo additional finishing, such as anodizing or painting.

[95] Canada Border Services Agency, *Statement of Reasons* Concerning the Final Determination with Respect to the Dumping and Subsidizing of Certain Aluminum Extrusions Originating in or Exported from China; March 3, 2009.

[96] Canada Border Services Agency, Notice of Conclusion of Re-Investigation – Certain Aluminum Extrusions from China ; February 20, 2012.

[97] Exhibit 17 (PRO) – Supplementary CBSA Exhibits; Ministerial Specification.

[119] The administrative record contains evidence that the domestic prices in the aluminum extrusions sector in China are still substantially determined by the GOC and there is sufficient reason to believe that the domestic prices are not substantially the same as they would be in a competitive market. The government influence resulting in lower cost and prices is a relevant factor in the assessment of the likelihood of continued or resumed dumping by the Chinese aluminum extruders. As set out below, the GOC's policies are believed to result in artificially lowering the costs and prices of aluminum extrusions in China, increasing their output, and promoting an export orientation within Chinese extruders. As mentioned, the normal values for subject goods are currently not based on Chinese domestic prices of like goods or on their costs of production. Considering the evidence that the conditions of section 20 of SIMA are still applicable to the aluminum extrusions sector in China, the normal values for subject goods for the foreseeable future are still likely to be based on prices or costs in a surrogate country. As such, the normal values should reflect costs and prices in a market where competitive conditions exist. The Chinese extruders are believed to be more likely to be competing on the basis of their artificially lower cost and price structures (their cost advantage), while their export prices need to meet a level that is not based on these non-competitive conditions, in order to be selling at a fair non-dumped value.

[120] The principal manner by which the GOC appear to be influencing the price of aluminum extrusions relates to government policies affecting the primary aluminum industry. Primary aluminum is said to account for about 75-86% of the total cost of production for semis[98], which, as stated by the OECD, "makes competitiveness in the semis segment largely dependent on the cost of procuring raw aluminum."[99] As noted in a research paper on market distortions in the Chinese non-ferrous metals industry, "While the markets for finished goods and services have been widely liberalized and scarcity-based pricing – not government policy – is guiding the allocation of available resources, the markets for production factors remain subject to substantial state intervention."[100] As detailed below, in the case of the primary aluminum industry, such government interventions include taxation and tariff policies, the subsidizing of inputs and other types of government subsidies, development plans and policy documents, and the GOC's stockpiling policy.

[98] Semis refer to semi-fabricated aluminum products, such as aluminum extrusions.
[99] Exhibit 19 (NC) – OECD – Measuring Distortion in International Markets; The Aluminum Value Chain; January 8, 2019; p. 15.
[100] Exhibit 18 (NC) – Final Report – Analysis of Market Distortions in the Chinese Non-Ferrous Metals Industry, THINK!DESK China Research Consulting, April 24, 2017, p. 40.

[121] Among the GOC policies affecting the primary aluminum industries as well as the downstream industries are taxation and tariff policies. In this regard, China employs a regime of export taxes, in combination to an incomplete VAT rebate policy[101] for exporters as a mean of discouraging exports of primary aluminum while encouraging exports of semi-fabricated aluminum products such as aluminum extrusions. Specifically, China combines a 15% export tax with zero VAT rebates, which together result in a de facto export tax on primary aluminum exceeding 30%, according to the OECD.[102] Such trade policies discourages exports of primary aluminum, and provides an incentive for smelters to sell their production to domestic semis producers, who benefit from a larger supply at lower prices for their principal input. The policy also encourages exports of downstream products, such as the subject goods, given that exporters of semis are eligible for the VAT refund. As discussed in the section below, China is by far the largest producer of primary aluminum accounting for almost 60% of global production.[103] Considering that it is also known to have significant excess capacity, the impact of its trade policy is visible when considering that the country accounts for only about 2% of global exports of primary aluminum.[104] Again, this results in artificially increasing the supply of primary aluminum in the domestic market and in artificially lowering the costs for downstream producers.

[101] Chinese exporters may be eligible for VAT rebates that range from zero to a full refund of the typical 17% VAT rate, depending on the product they export. For primary aluminum, no refund is provided while a VAT refund is provided on export of aluminum extrusions.

[102] Exhibit 19 (NC) – OECD – Measuring Distortion in International Markets; The Aluminum Value Chain; January 8, 2019; p. 66.

[103] Exhibit 16 (NC) – Australian Anti-Dumping Commission; Statement of Essential Fact No. 482, Review of Anti-Dumping Measures Applying to Aluminum Extrusions, February 2019, p.73; Exhibit 19 (NC) – OECD – Measuring Distortion in International Markets; The Aluminum Value Chain; January 8, 2019; p. 39.

[104] Exhibit 19 (NC) – OECD – Measuring Distortion in International Markets; The Aluminum Value Chain; January 8, 2019; p. 66.

[122] Another manner by which the GOC influences the primary aluminum industry pricing is by providing significant energy subsidies to smelters. The administrative record contains numerous reports of energy subsidies provided to Chinese smelters. For example, significant amounts of electricity subsidies to smelters were reported by the Australian Anti-Dumping Commission[105], the European Commission[106], the OECD[107], a report submitted to the U.S. – China Economic and Security Review by Capital Trade Incorporated[108], and others[109]. Considering that electricity account for about 40% of the cost of smelting, energy subsidies take on a particular importance on the aluminum value chain. [110] Chinese smelters also benefit from the purchase of coal at below-market prices, either directly through government ownership of most coal producers, or indirectly through the provision of finance by policy banks or through regulations.[111]

[105] Exhibit 16 (NC) – Australian Anti-Dumping Commission; Statement of Essential Fact No. 482, Review of Anti-Dumping Measures Applying to Aluminum Extrusions, February 2019, pp. 81-82.; and Exhibit 16 (NC) – Analysis of Steel and Aluminum Markets; Report to the Commissioner of the Anti-Dumping Commission, August 2016., p. 55.

[106] Exhibit 15 (NC) – The European Commission's Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the Purposes of Trade Defence Investigations, 19 Dec. 2017, pp. 390-394.

[107] Exhibit 19 (NC) – OECD – Measuring Distortion in International Markets; The Aluminum Value Chain; January 8, 2019; pp. 17, 31, 82, 86-89, 91.

[108] Exhibit 15 (NC) – An Assessment of China's Subsidies to Strategic and Heavyweight Industries Submitted to the U.S.-China Economic and Security Review Commission By Capital Trade Incorporated, pp. 82-85, 101.

[109] Exhibit 18 (NC) – Final Report – Analysis of Market Distortions in the Chinese Non-Ferrous Metals Industry, THINK!DESK China Research Consulting, April 24, 2017, pp. 78-79, 110-115.

[110] Exhibit 19 (NC) – OECD – Measuring Distortion in International Markets; The Aluminum Value Chain; January 8, 2019; p. 86. The same ratio was also reported by Australian authorities in: Exhibit 16 (NC) – Australian Anti-Dumping Commission; Statement of Essential Fact No. 482, Review of Anti-Dumping Measures Applying to Aluminum Extrusions, February 2019, p. 81.

[111] Exhibit 19 (NC) – OECD – Measuring Distortion in International Markets; The Aluminum Value Chain; January 8, 2019; p. 87.

[123] In addition to energy subsidies, evidence on the record suggests that the GOC is also providing significant subsidies in other forms to smelters, as well as to downstream producers, including aluminum extrusion producers. Such subsidies include financial subsidies (e.g. loans at preferential rates, loan guarantees), tax subsidies and grants. For example, in an analysis, the OECD estimated that substantial amount of benefits were provided through the financial system to such enterprises as China Hongqiao Group, the world's largest aluminum producer, the Aluminum Corporation of China Limited (Chalco), the world's second largest Aluminum producer, the State Power Investment Corporation (SPIC), an aluminum smelter and also one of the major electricity generation company in China, Qinghai Provincial Investment Group Ltd (QPIG), another Chinese smelter, and several others. The OECD estimated that these four companies received as much as USD 4.480 billion, USD 8.302 billion, USD 33.791 billion and USD 2.149 billion, respectively, in financial subsidies provided through the financial system over a five year period.[112] [113] Similarly, the OECD estimated that China Zongwang Holdings Limited (China Zongwang), China's largest producer of aluminum extrusions, received USD 2.554 billion in financial subsidies provided through the financial system between 2013 and 2017.[114] By offering loan interest subsidies, loan guarantees and other means of reducing capital costs, government organisations seek to direct investment into key projects and industries.[115]

[124] The OECD report, along with other reports, also provides evidence of tax concessions, such as lower tax rates under China's Western Development Strategy.[116] Such tax concessions are specifically reported to have provided significant benefits to major smelters like Chalco, who has two subsidiaries in Western China.[117] It is also reported that China Zongwang is subject to preferential tax rates in light of its "High and New Technology Enterprise" status from the Liaoning Province.[118] Further, as discussed in the subsidy section of this report, the record also contains evidence of numerous government grants programs benefiting aluminum extrusion producers.

[112] *Ibid*.; p. 118.
[113] The period is either 2013-17 or 2012-16, depending on the company.
[114] Exhibit 19 (NC) – OECD – Measuring Distortion in International Markets; The Aluminum Value Chain; January 8, 2019; p. 118.
[115] Exhibit 18 (NC) – Final Report – Analysis of Market Distortions in the Chinese Non-Ferrous Metals Industry, THINK!DESK China Research Consulting, April 24, 2017, p. 42.
[116] Exhibit 19 (NC) – OECD – Measuring Distortion in International Markets; The Aluminum Value Chain; January 8, 2019; p. 18; Exhibit 15 (NC) – An Assessment of China's Subsidies to Strategic and Heavyweight Industries Submitted to the U.S.-China Economic and Security Review Commission By Capital Trade Incorporated, p. 82.
[117] Exhibit 15 (NC) – An Assessment of China's Subsidies to Strategic and Heavyweight Industries Submitted to the U.S.-China Economic and Security Review Commission By Capital Trade Incorporated, p. 82.
[118] Exhibit 19 (NC) – OECD – Measuring Distortion in International Markets; The Aluminum Value Chain; January 8, 2019; p. 18.

[125] Overall, according to the OECD study, the total average annual amount of government subsidy to China Hongqiao Group, Chalco, SPIC and QPIG was approximately USD 1.6 billion, USD 1.8 billion, USD 7.1 billion and USD 464 million, annually during the 5-year measurement period.[119] Meanwhile, China Zongwang benefited from about USD 586 million in annual subsidies. A THINK!DESK study noted that not only are subsidies mostly provided to SOEs, a large share of the subsidies is provided contingent on compliance with GOC directives.[120] This is therefore indicative that the SOEs may be considered as public bodies, and, considering the lower aluminum prices in China than on the international market[121], may be indicative that there is a benefit being passed on to users of these inputs, such as aluminum extrusion producers.

[126] The GOC also influences the primary aluminum industry through a number of development plans and policy documents, including the Non-ferrous Metals Industry Development Plan (2016-2020) and the Made in China 2025 initiative. Regarding the Non-ferrous Metals Industry Development Plan (2016-2020), it is written that "As supporting measures, the Plan calls for coordinating fiscal, taxation, financial, and trade policies with industrial policy, promoting bank-enterprise cooperation, increasing financing support to backbone enterprises and major international cooperation projects, adequately utilizing existing government funds, encouraging local governments and social funds to increase input, implementing preferential tax policies for mines, M&A, and restructurings, and establishing insurance compensation systems for new material development."[122] The Made in China 2025 initiative is another type of development plan providing guidance and support and targeting the role of technology for economic development. One research group wrote that "The roadmap instructs government departments on all levels to deploy the resources at their disposal to support the development in priority areas. Importantly, the roadmap also guides financial institutions and other supporting service sectors to focus support on corporate activities in the priority areas."[123] They also noted that "The cultivation of a group of national champion enterprises also raises concerns regarding the competitive fairness and market conformity of such an effort."[124] According to the OECD, the Made in China 2025 Plan lists ten priority industries, of which several rely on aluminium semis as inputs, and which are to be encouraged by means of dedicated funding and state direction.[125] The OECD also noted that the "*Announcement on Implementing the Made in China 2025 Strategy in Binzhou City*, published in September 2017, further encourages the gradual expansion of local aluminium firms into aluminium deep processing (semis) and finished products."[126]

[119] *Ibid*.; p. 118.
[120] Exhibit 18 (NC) – Final Report – Analysis of Market Distortions in the Chinese Non-Ferrous Metals Industry, THINK!DESK China Research Consulting, April 24, 2017, p. 61.
[121] Exhibit 16 (NC) – Australian Anti-Dumping Commission; Statement of Essential Fact No. 482, Review of Anti-Dumping Measures Applying to Aluminum Extrusions, February 2019; p. 95.
[122] Exhibit 18 (NC) – Doc.101.pdf - King & Spalding LLP; China Issues 13th Five Year Plan for the Non-ferrous Metals Industry, Lingna Yan, October 25, 2016; p. 31.
[123] Exhibit 18 (NC) – Final Report – Analysis of Market Distortions in the Chinese Non-Ferrous Metals Industry, THINK!DESK China Research Consulting, April 24, 2017, p. 33.
[124] *Ibid*. p. 32.
[125] Exhibit 19 (NC) – OECD – Measuring Distortion in International Markets; The Aluminum Value Chain; January 8, 2019; p. 47 - These include in particular: 'new energy' and energy-saving vehicles; aviation and aerospace; advanced rail-transportation equipment; and electrical equipment.
[126] Exhibit 19 (NC) – OECD – Measuring Distortion in International Markets; The Aluminum Value Chain; January 8, 2019; p. 85.

[127] Further, the notice of the State Council on "Further Strengthening the Elimination of Backward Production Capabilities and Guidelines" include mechanisms to address non-compliance such as i) revoking of pollutant discharge permit; ii) restrictions on financial institutions providing new credit support; iii) restrictions on examination and approval of new investment projects; iv) restrictions on approval of new land for use by the enterprise, and v) restrictions on issuing of new, and cancelling of existing, production licence.[127] Australian authorities noted that "The Guidelines state that enterprises that do not conform to the industrial policy shall not be provided financial support by financial departments."[128] They also noted that the the central role of the National Development and Reform Commission (NDRC) in both the development of directives and the provision of project approvals was also relevant to the question of government influence in the aluminum sector.

[128] The extent of the productive capacity accounted for by Chinese SOEs in the primary aluminum industry is also an indication of the GOC's direct involvement in the industry. According to information on the record, SOEs account for more than 50% of the total primary aluminum output in China.[129] There is also evidence that the extent of government ownership may be growing not only via capacity addition, but also via debt-equity swaps, whereby an SOE acting on behalf of the government converts the debt of highly leveraged firms into shares, thus increasing the government ownership in the economy,[130] and not entirely based on market principle.[131]

[127] Exhibit 16 (NC) – Australian Anti-Dumping Commission; Statement of Essential Fact No. 482, Review of Anti-Dumping Measures Applying to Aluminum Extrusions, February 2019, pp. 78-79.
[128] *Ibid*. p. 79.
[129] Exhibit 15 (NC) – The European Commission's Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the Purposes of Trade Defence Investigations, 19 Dec. 2017, p. 388.
[130] Exhibit 19 (NC) – OECD – Measuring Distortion in International Markets; The Aluminum Value Chain; January 8, 2019; p. 92.
[131] Exhibit 18 (NC) – Final Report – Analysis of Market Distortions in the Chinese Non-Ferrous Metals Industry, THINK!DESK China Research Consulting, April 24, 2017, p. 47.

[129] The extent of government ownership in the aluminum industry can have a distorting effect on the industry. In fact, SOEs are said to be the greatest recipients and providers of government support, especially in the area of financing and in the provision of inputs at less than adequate remunerations.[132] Further, evidence on the record suggest that the GOC maintains a "…porous and fluid relationship […] with companies, including through the appointment of key personnel and the day-to-day operations of firms."[133] For example, the OECD noted that SPIC mentioned in its 2016 prospectus that "the Group's Chairman and President is appointed by the State Council, Directors are accredited by SASAC, the Chairman of Board of Supervision is appointed by the State Council directly and the Vice President is appointed by SASAC."[134] Similarly, an investigation by THINK!DESK into the individual background of members of the board of directors and supervisory councils of 65 major enterprises in the non-ferrous market revealed that a large majority of them are closely tied to the GOC.[135] The EU also noted that "[in] 2017, a Chinese state-owned aluminium producer, China Aluminum International Engineering Corporation Limited (Chalieco), amended its Articles of Association giving more prominence to the role of party cells within the company […]. It included a whole chapter on the Party Committee, and Article 113 thereof states: *'In deciding major corporate issues, the Board shall consult the Party Committee of the Company in advance.'*"[136] As noted by Australian authorities, the SOEs are more likely to be responsive to the directives of the broader GOC.[137] They also identified several GOC document and guidelines which emphasizes the importance and role of the SOEs in the aluminum industries, such as with respect to the elimination of backward capacity, the control of production levels, the encouragement of mergers, restructuring and relocation, etc.[138]

[132] Exhibit 19 (NC) – OECD – Measuring Distortion in International Markets; The Aluminum Value Chain; January 8, 2019; p. 89-93; also Exhibit 16 (NC) – Australian Anti-Dumping Commission; Statement of Essential Fact No. 482, Review of Anti-Dumping Measures Applying to Aluminum Extrusions, February 2019, p. 77.
[133] Exhibit 19 (NC) – OECD – Measuring Distortion in International Markets; The Aluminum Value Chain; January 8, 2019; p. 91.
[134] *Ibid*.
[135] Exhibit 18 (NC) – Final Report – Analysis of Market Distortions in the Chinese Non-Ferrous Metals Industry, THINK!DESK China Research Consulting, April 24, 2017, p. 22-28.
[136] Exhibit 15 (NC) – The European Commission's Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the Purposes of Trade Defence Investigations, 19 Dec. 2017, p. 388.
[137] Exhibit 16 (NC) – Australian Anti-Dumping Commission; Statement of Essential Fact No. 482, Review of Anti-Dumping Measures Applying to Aluminum Extrusions, February 2019, p. 78.
[138] *Ibid*.

[130] Furthermore, there is evidence of stockpiling of aluminum by the GOC, which also has distorting effect on the industry. For example, stockpiling is said to have allowed production to be maintained during the global financial crisis and avoided the potential closure of some aluminium manufacturers.[139] The Australian Anti-Dumping Commission has seen reports that continuing stockpiling of aluminium, financed by interest payments from the Strategic Reserves Bureau, occurred in 2016, with as much as one million tonnes of aluminium being purchased at prices above market price. As per Australian authorities, "The likely effect of this market intervention is to ease the pressure on the Chinese aluminium industry to reduce excess capacity and to avoid rationalising the higher-cost manufacturing facilities."[140] The EU also noted instances where the government purchased aluminum at above market price with the purpose of stabilizing the price of aluminum and mitigating excess capacity.[141] The EU also noted that provisions for the continuation of the stockpiling policy are included in the 13th Five Year Plan for Non-Ferrous Metals.[142]

[131] Finally, Australian authorities recently issued a report[143] regarding the Chinese aluminum extrusion market in which it concluded that Chinese domestic prices of aluminum extrusions are substantially determined by the government of that country and there is sufficient reason to believe that they are not substantially the same as they would be if they were determined in a competitive market.

[132] For the reasons discussed above, the CBSA has reason to believe that the GOC is involved in and has influence on the aluminum industry (such that section 20 conditions would apply). Considering that the cost of primary aluminum accounts for 75-86% of the total cost of production for semis, the strong government influences which are artificially depressing the domestic price of aluminum, are having a strong impact on the pricing of the aluminum extrusions, providing an artificial cost advantage to the extruders. Considering the likelihood of the exporters to compete on the export market on the basis of their lower cost structure, in the opinion of the CBSA, they are likely to be exporting at prices that are lower than the prices in a surrogate country where competitive conditions exist, and thus, more likely to be selling at dumped prices, especially in an overcapacity situation.

[139] Exhibit 16 (NC) – Steel.Aluminium.Report.31.August.2016.pdf; Analysis of Steel and Aluminum Markets Report to the Commissioner of the Anti-Dumping Commission;, August 2016, p.56.
[140] *Ibid*.
[141] Exhibit 15 (NC) – The European Commission's Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the Purposes of Trade Defence Investigations, 19 Dec. 2017, p. 392.
[142] *Ibid*.
[143] Exhibit 16 (NC) – Australian Anti-Dumping Commission; Statement of Essential Fact No. 482, Review of Anti-Dumping Measures Applying to Aluminum Extrusions, February 2019.

Primary Aluminum Capacity and Production Level in China

[133] China is the largest global producer of primary aluminum, by far. Data on the record shows that China possesses almost 60% of the world's aluminum production capacity and is responsible for close to 57% of global production. These figures also suggest that China has a total excess capacity equal to 25% of its total capacity.[144]

[134] The Chinese aluminum industry has been growing in size at a rapid pace since the early 2000's, at which time China accounted for about 10% of global capacity, and especially in recent years.[145] This rapid growth in China's capacity and production is partly explained by the rapid growth of its economy and the expansion of its manufacturing base, requiring large quantities of aluminum. In fact, China's massive production is almost entirely consumed domestically.[146] However, studies also suggest that non-market forces, especially with respect to government support, are explaining some of the rapid capacity increase. For example, the OECD has suggested that "Non market forces encompasses a wide variety of government interventions that might help explain the persistence of excess capacity in the aluminum industry. […] Subsidies and subsidized bank loans in particular, have been shown, for example, to prevent the exit of less productive firms hit by unfavorable shocks, turning them into "zombies" that distort competition throughout the rest of the economy."[147] The EU has also noted the role of the GOC's subsidizing of energy cost as a contributor of the increase in production capacity.[148]

[135] It seems that while the growth in the Chinese economy and the related growth in the consumption of aluminum has slowed significantly, the expansion of aluminum capacity is continuing at a higher rate. Thus, overcapacity is expanding and is forecasted to continue to expand.

[136] Between 2008 (at the time of the CITT's finding) and 2015, Chinese capacity is said to have doubled.[149] Between 2015 and the end of 2018, capacity grew by another 26%.[150] Indications are that capacity is still growing. Reported projects under construction plus those that are expected would increase capacity by another 20% (although this does not consider any capacity that may be shut down).[151]

[144] Exhibit 16 (NC) – Misc2.pdf, International Aluminum Institute; Primary Aluminum Production; p.3 and Exhibit 46 (PRO) – 35_CONF Aluminum Market Report- December 2018.pdf; CRU Aluminium Long Market Outlook, December 2018; Table II and Table 3.2.

[145] Exhibit 18 (NC) – Final Report – Analysis of Market Distortions in the Chinese Non-Ferrous Metals Industry, THINK!DESK China Research Consulting, April 24, 2017, p. 106.

[146] Exhibit 46 (PRO) – 35_CONF Aluminum Market Report- December 2018.pdf; CRU Aluminium Long Market Outlook, December 2018; Table II and Table 3.2.

[147] Exhibit 19 (NC) – OECD – Measuring Distortion in International Markets; The Aluminum Value Chain; January 8, 2019; p. 12.

[148] Exhibit 15 (NC) – The European Commission's Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the Purposes of Trade Defence Investigations, 19 Dec. 2017, p. 396.

[149] *Ibid*.

[150] Exhibit 46 (PRO) – 35_CONF Aluminum Market Report- December 2018.pdf; CRU Aluminium Long Market Outlook, December 2018; Table II and Table 3.2.

[151] *Ibid*.; Table 3.3.

[137] Production is also increasing. For instance, Chalco, the world's second largest aluminum producer, an SOE, is said to have boosted its production by 16% in 2018 alone.[152] Production is projected to continue to increase between 2018 and 2020.[153] Further, production in December 2018 was reported to be up by 11.3% from the same period a year earlier, due to new smelters and a higher utilization rate due to a plunge in the cost of raw material alumina.[154] The same report refers to an expected increase in output in 2019.

[138] Meanwhile, growth in demand for aluminum is slowing. Internationally, demand is reported to be at its weakest in three years, with contraction in Chinese manufacturing over four months in the end of 2018 and early 2019, as well as contraction in Europe, Japan, South Korea, Taiwan and Turkey.[155] Although China's economy is still expected to grow at a rate of 6.3% in 2019 and 6.1% in 2020[156], the concern is that growth in capacity may outpace growth in demand, resulting in increasing the already staggering excess capacity.

[139] The excess capacity of primary aluminum in the Chinese domestic market has a direct implication for aluminum extrusion producers, who benefit from a higher supply of an artificially low-priced major production input. As mentioned earlier, since the cost of primary aluminum accounts for 75-86% of the total cost of production for semis, extruders will continue to benefit from an artificial cost advantage. Considering their own domestic conditions, which are discussed in the section below, Chinese aluminum extruders are more likely to increasingly rely on the export market to sell their goods, and are likely to be competing on the basis of their cost advantage. Given that their own domestic prices or own costs of production are not appropriate benchmarks to determine the normal values of the goods in light of the existence of non-market conditions, competing on the Canadian market on the basis of their artificially lower cost structure, rather than on the basis of prices and costs where competitive conditions exists, increases the likelihood that the goods will be dumped. In fact, the OECD did confirm that "Lower production costs for semis have in turn translated into lower export prices that have made China more competitive in most segments of the semis market."[157]

[152] Exhibit 47 (NC) – Attachment 28; Reuters, China's Chalco Leapfrogs Rusal as second-biggest listed aluminum producer, March 29, 2019.
[153] Exhibit 46 (PRO) – 35_CONF Aluminum Market Report- December 2018.pdf; CRU Aluminium Long Market Outlook, December 2018; Table II and Table 3.2.
[154] Exhibit 16 (NC) – misc1.pdf; Reuters, China December aluminum production surges to record monthly high; January 20, 2019.
[155] Exhibit 16 (NC) – misc1.pdf; Harbor Aluminum, World end-user aluminum demand at its weakest in three years, not yet bullish for LME prices; April 1, 2019.
[156] Exhibit 47 (NC), Attachment 47; IMF World Economic Outlook, April 2019, p. 9.
[157] Exhibit 19 (NC) – OECD – Measuring Distortion in International Markets; The Aluminum Value Chain; January 8, 2019; p. 27.

Conditions of the Aluminum Extrusions Industry in China

[140] The evidence on the record suggests that the Chinese aluminum extrusion industry has also increased its production dramatically in the past 15 years, fuelled by the country's infrastructure and housing boom.[158] It was said that by 2015, China accounted for 64% of the total global production of aluminum extrusions.[159] Information on the record suggests an overcapacity in 2018 that is equivalent to about 68% of global demand, excluding China, and 26% of the total global demand.[160]

[141] Based on the data on the record for 2018, China's overproduction level was almost four times the total Canadian demand and over 10% of the global demand excluding China.[161]

[142] As per information on the record, the growth in domestic demand for extrusions in China is expected to significantly slow in the next 10 years. [162]

[143] Considering the expected slowdown in Chinese demand growth, the existing substantial Chinese overcapacity and excess production may worsen if Chinese capacity growth continues at current rates despite market signals. If Chinese aluminum extrusion producers continue to increase their capacity and production levels at a pace that ignores the shift in growth speed, a distortion between demand and supply will be created in the market, and China will have to heavily rely on export markets to sell their excess production.

Export Orientation of Chinese Aluminum Extrusion Producers

[144] The non-market conditions described above with respect to the Chinese aluminum industry, namely, the policies and vast financial support of the primary aluminum industry, and the trade policies encouraging the exports of downstream aluminum products, have resulted in overcapacity and in a highly export oriented aluminum extrusions market.

[145] In this regard, the OECD has, in a study, linked the government policies to China's excess supply of primary aluminum benefitting Chinese producers of semis (such as aluminum extrusion producers) through lower input cost and to lower export prices that have made China more competitive on the global market. The OECD also noted that for processed articles of aluminum, "lower unit values on exports have made China the largest net exporter by a wide margin, with rapid growth leading to the country now holding around 20% of the global market share."[163]

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[158] *Ibid*.; p. 44.
[159] *Ibid*.
[160] Exhibit 46 (PRO) – 35_CONF Aluminum Market Report- December 2018.pdf; CRU Aluminium Long Market Outlook, December 2018; Table 1.4.
[161] *Ibid*.; see also Table 1 of this report for the Canadian figures.
[162] Exhibit 46 (PRO) – 35_CONF Aluminum Market Report- December 2018.pdf; CRU Aluminium Long Market Outlook, December 2018; Table 1.4.
[163] Exhibit 19 (NC) – OECD – Measuring Distortion in International Markets; The Aluminum Value Chain; January 8, 2019; p. 27.

[146] Another study has identified a number of subsidies available and used by producers of aluminum products, that are contingent on export, as a means by which the GOC selectively encourages the exportation of such goods.[164] For example, the study has found that some municipalities will match export revenues with subsidies. Other subsidies will offset domestic transportation cost for export shipments, in order to lower their cost of doing business and increase export trade. The provision of export credit insurance was another form of export subsidy listed by this study.

[147] The record contains evidence that the export orientation of producers of aluminum products has accelerated in recent years. For example, it was reported that from January to November 2018, Chinese global exports were up over 20% from a year earlier, while November exports were up over 41%.[165] The same report also mentioned that the GOC decided to adjust its tax policy to facilitate even more exports of aluminum semis, further raising the VAT rebate on these goods. China's exports and installed capacity were also forecasted to keep rising in 2019. CRU was also forecasting an increase in export, partly due to the increase in the tax rebate.[166]

Trade Remedy Measures in Canada and Other Jurisdictions

[148] In addition to the Canadian measures, several jurisdictions have imposed anti-dumping and other trade measures with respect to aluminum extrusions from China, as well as other aluminum products from China. [167]

[149] In addition to anti-dumping and countervailing measures in place with respect to aluminum extrusions from China, Australia also has anti-dumping measures on Chinese aluminum road wheels and aluminum zinc coated steel. Similarly, in addition to anti-dumping and countervailing measures in place with respect to aluminum extrusions from China, the United States also has anti-dumping measures on Chinese aluminum foil, aluminum sheet and aluminum oxide. The United States also imposes an additional 10% duties on aluminum products, including aluminum extrusions, pursuant to *Section 232 of the Trade Expansion Act of 1962.*[168] Colombia has anti-dumping on Chinese extruded aluminum profiles. The European Union maintains anti-dumping measures on Chinese Aluminum foil, aluminum radiators and aluminum road wheels. India has anti-dumping duties on Chinese presensitized positive offset aluminum plates, cast aluminum alloy wheels, aluminum foil and aluminum radiators. Mexico has anti-dumping duties on Chinese aluminum cookware.

[164] Exhibit 18 (NC) – Final Report – Analysis of Market Distortions in the Chinese Non-Ferrous Metals Industry, THINK!DESK China Research Consulting, April 24, 2017, pp.103-104.
[165] Exhibit 18 (NC); doc101.pdf; Aluminum: Year in Review and What to Expect in 2019 – Aluminum Insider; p. 4.
[166] Exhibit 47 (NC); 50_LMEWEEK-China aluminium exports to surge on trade war - CRU - Reuters.pdf.
[167] Exhibit 15 (NC) –AE CBSA Exhibits iii – Measures in Force AD; Semi-Annual Reports Under Article 16.4 of the Agreement, WTO.
[168] Exhibit 15 (NC) – Presidential Proclamation on Adjusting Imports of Aluminum into the United States; March 8, 2018.

[150] The anti-dumping measures in place on numerous aluminum products, in numerous jurisdictions, are indicative of a propensity of Chinese exporters to dump aluminum products. The anti-dumping measures and the other trade measures that are specific to aluminum extrusions increase the likelihood of dumped subject goods being exported to Canada in light of the trade barriers that exist in these jurisdictions, including such a large and geographically close market as the United States. While the anti-dumping and countervailing measures currently in place in Canada with respect to the subject goods have prevented a diversion of Chinese aluminum extrusions to Canada, the removal of these measures is likely to result in an increase of shipments to Canada at dumped prices.

Evidence of Circumvention of Trade Remedy Measures / Transhipment

[151] Canadian producers raised concerns with the possibility of transshipments and mislabeling of subject goods to circumvent the CITT's order, and provided evidence that authorities in Australia and the United States have investigated and ruled that some parties were engaging in circumvention of their respective aluminum extrusion measures.[169] Similarly, with respect to China, THINK!DESK reported that "[the] trans-shipment of goods through third countries is used to disguise their origin to the customs authorities in target markets that impose anti-dumping and/or countervailing duties."[170]

[152] The fact that some Chinese aluminum extrusion exporters need to circumvent anti-dumping findings could be an indication that they are unable to export subject goods at non-dumped prices in order to gain market share.

Continued Presence of Chinese Aluminum Products in Canada

[153] As mentioned earlier in this report, the volume of subject imports dropped by over 95% between 2007 (i.e. prior to the finding) and 2018. Subject imports also dropped significantly during the POR, with a reduction of 70% between 2016 and 2018. In terms of market share, subject imports represented 16.4% of the Canadian market in 2007, prior to the finding.[171] The Chinese extruders' market share was reduced to 2.1% of the market in 2016 and further reduced to 0.5% of the market in 2018. This significant reduction is indicative of the effect of the measures, and the inability for most exporters to maintain sales at normal values.

[169] Exhibit 50 (NC); Case Arguments of Canadian Producers; paras. 131-136.
[170] Exhibit 18 (NC) – Final Report – Analysis of Market Distortions in the Chinese Non-Ferrous Metals Industry, THINK!DESK China Research Consulting, April 24, 2017, p. 105.
[171] Canadian International Trade Tribunal; Finding and Reasons, Aluminum Extrusions; Inquiry No. NQ-2008-003, April 1, 2009; paras. 161, 164 and 263.

[154] Despite the significant drop in importation since the finding was put in place, subject goods continue to have a presence in the Canadian market. During the POR, subject goods totaled almost 9.5 million kg, accounting for about 1.1% of the total market volume. In 2018, these goods were imported at a weighted average price per kg that was about 20% lower than the weighted average for the market. Approximately $6.3 million in anti-dumping duty was assessed on subject goods, which suggest that these goods were dumped by a weighted average margin of approximately 14%. Although a difference in product mix can explain part of the lower pricing of Chinese exports, it does appear that the remaining Chinese exporters in the Canadian market are still competing on the basis of their artificial cost advantage in order to maintain a presence in Canada, despite the measures in place. The total amount of dumping duty assessed on those goods suggest that many of the exporters that maintained a presence in Canada while the finding is in place are unable to do so at non-dumped prices.

[155] More so, Statistics Canada data suggests that Chinese exporters of aluminum products which fall under the same HS classification numbers as the subject goods, which may include extrusions that do not meet the product definition, or further processed aluminum products, for example, maintained a weighted average share of import of over 11% during the POR.[172] These exporters, which may include producers of goods that meet the product definition, are maintaining a presence in the Canadian marketplace, and may have the contacts and infrastructure in place to export more subject goods should the measures expire. Considering the discussion above, the pricing for such additional supply of subject goods is likely to be at dumped prices.

Competitive Conditions in the Canadian Aluminum Extrusions Market

[156] Generally speaking, most Canadian producers are expecting relatively stable/flat demand in the foreseeable future, with growth to be in line with GDP growth.[173] Some see volatility due to the current trade environment, particularly with respect to tariff.

[157] On the supply side, the producers expect increased competitive pressure in the foreseeable future[174]. Domestically, it was noted that there was ample capacity available and that the new capacity introduced during the past few years is now fully engaged.[175] Based on the data available, the increase in domestic capacity was in line with the growth in market demand. Competition may also continue to increase due to the effect of the section 232 trade measures in the United States, which may lead to the diversion of aluminum goods into Canada, (the imposition of a 10% surtax on aluminum products) and the general uncertainty caused by the current trade environment.

[172] Exhibit 46 (PRO); close of Record Documents by Producers - Attachment 77: Market Table – Aluminum Extrusions 2015 top Q3 2018.
[173] Canadian producers' responses to questions 24-29 of ERQ.
[174] Based on their responses to questions 26-29 of the Producer ERQ.
[175] As per the combined responses of Canadian producers to Appendix 5 of the Producer ERQ, domestic capacity increased by 10.5% during the POR.

[158] Several producers noted an increase in low price imports from certain Asian countries, other than China. This trend is confirmed by the CBSA's statistical data on volume, which shows an increase of 19.2% in imports from countries other than China between 2016 and 2018, twice the pace of the apparent market growth.[176] At the same time, the average value of imports from countries other than China grew at a significantly lower pace than the average value of aluminum extrusion from other sources, which support the reports of increasing price pressure. For instance, while the average unit value of aluminum extrusions sold domestically by the Canadian producers increased by 19.5% between 2016 and 2018, it increased by only 6% for the other countries (excluding China).[177] The CBSA notes that the unit price for imports from countries other than China were the highest in the market during the POR. However, the differential is rapidly decreasing, possibly the result of increased competition from a number of sources.

[159] It was already noted that the Chinese aluminum extrusion producers are increasingly export focused, with ample capacity available and an artificially low cost advantage. As such, if the CITT's order was no longer in place, it is likely that the Chinese exporters would be competing with the reported new low priced sources of imports on the basis of their cost advantage. It was also established that to the extent that the conditions of section 20 of SIMA continue to apply to the Chinese aluminum extrusions sector in China, the normal values for Chinese extruders are not based on the domestic prices or costing data, but rather on the pricing and costing structure in a surrogate country, where competitive conditions exists. As discussed above, the normal values under section 20 are likely to be higher, and hence, the subject goods are more likely to be dumped.

Determination Regarding Likelihood of Continued or Resumed Dumping

[160] Based on the information on the administrative record in respect of; the GOC's involvement in and influence on the aluminum industry – Section 20 conditions; the primary aluminum capacity and production levels in China; the conditions of the aluminum extrusions industry in China; the export orientation of Chinese aluminum extrusion producers; the trade measures in Canada and in other jurisdictions; the evidence of circumvention / transhipment; the continued presence of Chinese aluminum products in Canada; and the competitive conditions in the Canadian aluminum extrusion market, the CBSA determined that the expiry of the finding is likely to result in the continuation or resumption of dumping into Canada of certain aluminum extrusions originating in or exported from China.

POSITION OF THE PARTIES – SUBSIDIZING

Parties Contending that Continued or Resumed Subsidizing is Likely

Canadian Producers

[161] The participating Canadian producers contend that the subsidizing of certain aluminum extrusions from China is likely to continue or resume should the CITT's order expire. Therefore, they argued that the countervailing measures should remain in place.

[176] See Table 1 and 2 of thisreport.
[177] See Table 1 and 2 of thisreport.

[162] The main arguments made by the Canadian producers can be summarized as follows:

- China continues to subsidize its primary aluminum industry;
- China continues to subsidize aluminum extruders; and
- Countervailing measures in other jurisdictions

China Continues to Subsidize its Primary Aluminum Industry

[163] The Canadian producers referenced several studies which found that the GOC has heavily subsidized its primary aluminum industry for many years, at the national and sub-national levels.[178] The producers noted that in the context of aluminum extrusions, primary aluminum accounts for 75-86% of the total cost of production, making competitiveness in the semis (i.e. semi-finished products) market largely dependent on the cost of primary aluminum.[179]

[164] One such studies, they claim, is the recently published OECD study titled "*Measuring Distortions in International Markets: the Aluminum Value Chain*". The Canadian producers noted that the OECD government financial support in the aluminum industry was very much concentrated in China, where it found significant subsidies in the form of energy subsidies (it was noted that electricity account for about 40% of the cost of smelting), tax incentives and concessions, and grants.[180]

China Continues to Subsidize Aluminum Extruders

[165] The Canadian producers noted that the OECD study determined that the effect of China's subsidy programs can be found at all levels of the aluminum value chain.[181]

[166] They referred to recently completed reviews in Australia and the U.S, in which both authorities found that China's aluminum extruders benefited from subsidy programs, including the provision of aluminum at less than adequate remuneration, preferential tax policies, tariff and VAT programs, various loan programs, as well as grants, as indications that China continues to subsidized aluminum extruders.[182]

[167] The producers also referred to other publically available information to confirm that aluminum extrusions producers received subsidies, such as the annual report of Pan Asialum Holdings Company Limited.[183]

[178] Exhibit 50 (NC) – Case Arguments of Canadian Producers, para. 146.
[179] *Ibid*., para. 149.
[180] *Ibid*., paras. 147-148.
[181] *Ibid*., para. 149.
[182] *Ibid*., paras. 151-154.
[183] *Ibid*., para. 156.

Countervailing Measures in Other Jurisdictions

[168] As discussed above, the Canadian producers argued American and Australian authorities also have countervailing measures in place with respect to aluminum extrusions specifically, while several jurisdictions have countervailing measures in place with respect to other aluminum products from China.[184]

Parties Contending that Continued or Resumed Subsidizing is Unlikely

[169] None of the parties contended that continued or resumed subsidizing of subject goods from China is unlikely should the CITT's order expire.

CONSIDERATION AND ANALYSIS – SUBSIDIZING

[170] In making a determination under paragraph 76.03(7)(a) of SIMA as to whether the expiry of the order in respect of goods from China is likely to result in the continuation or resumption of subsidizing of these goods, the CBSA may consider factors identified in subsection 37.2(1) of the SIMR, as well as any other factors relevant in the circumstances.

[171] Guided by the aforementioned factors and having considered the information on the administrative record, the following list represents a summary of the CBSA's analysis conducted in this expiry review investigation with respect to subsidizing:

- the subsidizing of the primary aluminum industry in China;
- the continued subsidizing of aluminum extrusion producers; and
- the countervailing measures in Canada and in other jurisdictions.

The Subsidizing of the Primary Aluminum Producers in China

[172] Evidence on the record suggests that the primary aluminum industry in China benefits from substantial amount of government subsidies and that such subsidies are being passed through to aluminum extrusions producers. The bulk of the subsidies to smelters are believed to consist of energy subsidy, financial subsidy (i.e. through the banking system) and tax subsidies.

[184] *Ibid*., paras. 151-157.

[173] As mentioned earlier in this report, electricity accounts for about 40% of the cost of smelting. As such, the provision of electricity, or coal for captive electricity production, on preferential terms can translate into significant benefit for smelters. Significant amounts of electricity subsidies to smelters were reported by the Australian Anti-Dumping Commission[185], the European Commission[186], the OECD[187], a report submitted to the U.S. – China Economic and Security Review by Capital Trade Incorporated[188], and others[189]. Chinese smelters also benefit from the purchase of coal at below-market prices, either directly through government ownership of most coal producers, or indirectly through the provision of finance by policy banks or through regulations.[190] In an analysis, the OECD estimated the amount of government support for energy and other intermediate to such enterprises as China Hongqiao Group, the world's largest aluminum producer, Chalco, the world's second largest Aluminum producer, SPIC, an aluminum smelter and also one of the major electricity generation company in China, QPIG, another Chinese smelter, and several others. The OECD estimated that these four companies received energy benefits valued at as much as USD 3.552 billion, USD 262 million billion, USD 395 million and USD 583 million respectively, over a five year period.[191] [192] According to the OECD, the GOC may subsidizes energy for smelters in one or several of the following manner: i) direct budgetary transfer (for example, the government may reimburse part of a smelter's energy cost), ii) tax revenue foregone (taxes normally levied on energy use are reduced or eliminated for specific users), iii) other government revenue foregone (for example, a SOE provides electricity to smelters at below-costs), or induced transfer (e.g. government regulations mandate that energy prices be kept below-market for certain users like aluminum smelters).[193]

[185] Exhibit 16 (NC) – Australian Anti-Dumping Commission; Statement of Essential Fact No. 482, Review of Anti-Dumping Measures Applying to Aluminum Extrusions, February 2019, pp. 81-82.; and Exhibit 16 (NC) – Analysis of Steel and Aluminum Markets; Report to the Commissioner of the Anti-Dumping Commission, August 2016., p. 55.

[186] Exhibit 15 (NC) – The European Commission's Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the Purposes of Trade Defence Investigations, 19 Dec. 2017, p. 390-394.

[187] Exhibit 19 (NC) – OECD – Measuring Distortion in International Markets; The Aluminum Value Chain; January 8, 2019; pp. 17, 31, 82, 86-89, 9.1

[188] Exhibit 15 (NC) – An Assessment of China's Subsidies to Strategic and Heavyweight Industries Submitted to the U.S.-China Economic and Security Review Commission By Capital Trade Incorporated, pp. 82-85, 101

[189] Exhibit 18 (NC) – Final Report – Analysis of Market Distortions in the Chinese Non-Ferrous Metals Industry, THINK!DESK China Research Consulting, April 24, 2017, pp. 78-79, 110-115.

[190] Exhibit 19 (NC) – OECD – Measuring Distortion in International Markets; The Aluminum Value Chain; January 8, 2019; p. 87.

[191] *Ibid*.; p. 118.

[192] The period is either 2013-17 or 2012-16, depending on the company.

[193] Exhibit 19 (NC) – OECD – Measuring Distortion in International Markets; The Aluminum Value Chain; January 8, 2019; p. 86.

[174] The OECD also estimated that substantial amount of benefits were provided to smelters through the financial system. In its report, it indicated that smelters such as China Hongqiao Group, Chalco, SPIC and QPIG resorted to debt as their main source of financing and were very highly leveraged[194]. Being highly leveraged, the ability to obtain financing on concessional terms can translate into significant benefits. In total, the OECD estimated that these four companies received as much as USD 4.480 billion, USD 8.302 billion, USD 33.791 billion and USD 2.149 billion, respectively, in financial subsidies provided through the financial system over a five year period.[195] [196] These companies were identified as benefiting from contractual terms that were better than those being available in private markets, such as preferential rates and longer repayment terms, or by better terms and conditions of private loans through explicit or implicit government guarantees.[197] It was also mentioned that firms such as SPEC and QPIG specifically indicated in bond prospectuses that they benefited from preferential loans from policy banks (which are, by their nature, more likely to be considered as public bodies), among other state-owned banks.

[175] Finally, the OECD report, along with other reports, also provides evidence of tax concessions, such as lower tax rates under China's Western Development Strategy.[198] Such tax concessions are specifically reported to have provided significant benefits to major smelters like Chalco, who has two subsidiaries in Western China.[199]

[176] The evidence on the record suggests that at least some of the substantial benefits received by aluminum smelters are being passed on to aluminum extrusions producers. Considering that the cost of primary aluminum accounts for 75-86% of the total cost of production for semis, the total benefit passed through to aluminum extrusion producers can be significant. On one hand, each of the four smelters listed above, which include the two largest aluminum producers in China, are believed to be state-owned. Evidence on the record also suggest that these SOEs are considered public bodies. As such, it can be implied that the benefit provided by the GOC to the state-owned smelters are being passed-through to the aluminum extruders. Further, evidence on the record suggest that state-owned aluminum producers are supplying aluminum to aluminum extrusion producers at less than adequate remuneration, which is further indication of the benefit that is being passed-through from the smelter to the downstream producer. In this regards, at the time of the original investigation, the CBSA determined that SOEs were providing primary aluminum at less than fair market value.[200] More recently, Australian authorities have also determined that aluminum extruders were still benefiting from the provision of aluminum by the GOC at less than adequate remuneration.[201]

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[194] *Ibid*.; p. 93.
[195] *Ibid*.; p. 118.
[196] The period is either 2013-17 or 2012-16, depending on the company.
[197] Exhibit 19 (NC) – OECD – Measuring Distortion in International Markets; The Aluminum Value Chain; January 8, 2019; p. 96.
[198] *Ibid*.; p. 18; Exhibit 15 (NC) – An Assessment of China's Subsidies to Strategic and Heavyweight Industries Submitted to the U.S.-China Economic and Security Review Commission By Capital Trade Incorporated, p. 82.
[199] Exhibit 15 (NC) – An Assessment of China's Subsidies to Strategic and Heavyweight Industries Submitted to the U.S.-China Economic and Security Review Commission By Capital Trade Incorporated, p. 82.
[200] CBSA, *Statement of Reasons* – Certain Aluminum Extrusions Originating in or Exported from the People's Republic of China, March 3, 2009; Appendix 2.
[201] Exhibit 16 (NC) – Australian Anti-Dumping Commission; Statement of Essential Fact No. 482, Review of Anti-Dumping Measures Applying to Aluminum Extrusions, February 2019, p. 94.

[177] A SOE may be considered to constitute "government" for the purposes of subsection 2(1.6) of SIMA if it possesses, exercises, or is vested with governmental authority. Without limiting the generality of the foregoing, the CBSA may consider the following factors as indicative of whether the SOE meets this standard: 1) the SOE is granted or vested with authority by statute; 2) the SOE is performing a government function; 3) the SOE is meaningfully controlled by the government; or some combination thereof.

[178] As discussed previously regarding the evidence of the aluminum sector in China not operating under competitive conditions, the record contains evidence that the state-owned smelters are meaningfully controlled by the government and that they performed a government function. As example of government exerting control, the OECD noted that SPIC mentioned in its 2016 prospectus that "the Group's Chairman and President is appointed by the State Council, Directors are accredited by SASAC, the Chairman of Board of Supervision is appointed by the State Council directly and the Vice President is appointed by SASAC."[202] Similarly, an investigation by THINK!DESK into the individual background of members of the board of directors and supervisory councils of 65 major enterprises in the non-ferrous market revealed that a large majority of them are closely tied to the GOC.[203] The EU also noted that "In 2017, a Chinese state-owned aluminium producer, China Aluminum International Engineering Corporation Limited (Chalieco), amended its Articles of Association giving more prominence to the role of Party cells within the company[…]. It included a whole chapter on the Party Committee, and Article 113 thereof states: *'In deciding major corporate issues, the Board shall consult the Party Committee of the Company in advance.'*"[204] As noted by Australian authorities, the SOEs are more likely to be responsive to the directives of the broader GOC.[205] They also identified several GOC documents and guidelines which emphasize the importance and role of the SOEs in aluminum industries, such as with respect to the elimination of backward capacity, the control of production levels, the encouragement of mergers, restructuring and relocation, etc.[206] Australian authorities recently made the same conclusion that the state-owned smelters are meaningfully controlled by the government and that they performed a government function.[207] Further, another study noted that not only are subsidies mostly provided to SOEs, a large share of the subsidies is provided contingent on compliance with GOC directives.[208] This is therefore indicative that the SOEs may be considered as public bodies, and, considering the lower aluminum prices in China than on the international market[209], may be indicative that there is a benefit being passed on to users of these inputs, such as aluminum extrusion producers.

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[202] Exhibit 19 (NC) – OECD – Measuring Distortion in International Markets; The Aluminum Value Chain; January 8, 2019; p. 91.

[203] Exhibit 18 (NC) – Final Report – Analysis of Market Distortions in the Chinese Non-Ferrous Metals Industry, THINK!DESK China Research Consulting, April 24, 2017, pp. 22-28.

[204] Exhibit 15 (NC) – The European Commission's Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the Purposes of Trade Defence Investigations, 19 Dec. 2017, p. 388.

[205] Exhibit 16 (NC) – Australian Anti-Dumping Commission; Statement of Essential Fact No. 482, Review of Anti-Dumping Measures Applying to Aluminum Extrusions, February 2019, p. 78.

[206] *Ibid*.

[207] Exhibit 16 (NC) – Australian Anti-Dumping Commission; Statement of Essential Fact No. 482, Review of Anti-Dumping Measures Applying to Aluminum Extrusions, February 2019, p. 126.

[208] Exhibit 18 (NC) – Final Report – Analysis of Market Distortions in the Chinese Non-Ferrous Metals Industry, THINK!DESK China Research Consulting, April 24, 2017, p. 61.

[209] Exhibit 16 (NC) – Australian Anti-Dumping Commission; Statement of Essential Fact No. 482, Review of Anti-Dumping Measures Applying to Aluminum Extrusions, February 2019; p. 95.

The Continued Subsidizing of Aluminum Extrusion Producers

[179] At the time of the original subsidy investigation, 56 potential subsidy programs were investigated and 15 of the potential subsidy programs were determined to have conferred benefits to the cooperative exporters. The programs included grants, preferential tax programs, reduction in land use fees and the provision of aluminum at less than fair market value. [210] For purposes of the final determination, the amounts of subsidy for the seven cooperative Chinese exporters ranged from 2.59 Renminbi (RMB) per kg to 3.88 RMB per kg, or from 8% to 16% expressed as a percentage of export price. For the non-cooperative exporters, the amount of subsidy has been determined under a ministerial specification, pursuant to subsection 30.4(2) of SIMA. The total amount of subsidy for the non-cooperative was 15.84 RMB per kg, or 60% as a percentage of export price. The final results indicated that 100% of the subject goods imported into Canada were subsidized. The overall weighted average amount of subsidy was equal to 47% of the export price. [211] On February 20, 2012, the CBSA concluded a dumping and subsidy re-investigation. Four exporters were issued specific amounts of subsidy on the basis of the re-investigation, which ranged from 0.75 to 1.84 RMB/kg.

[180] Despite the limited information with respect to current subsidy programs specifically applicable to aluminum extrusion producers and exporters, especially due to the non-participation by the GOC in this expiry review investigation, information on the record provides evidence of the continued availability of subsidy programs for aluminum extruders in China. For instance, the OECD estimated that China Zongwang, China's largest producer of aluminum extrusions, received USD 2.554 billion in financial subsidies provided through the financial system between 2013 and 2017.[212] It was also reported that China Zongwang is subject to preferential tax rates in light of its "High and New Technology Enterprise" status from the Liaoning Province.[213] According to a recently published *Statement of Essential Facts* with respect to a review of its anti-dumping and countervailing on aluminum extrusions from China, Australian authorities determined that the cooperating Chinese exporters received benefits during the period of review under 40 programs[214], and that another 25 programs were considered countervailable even though benefits were not conferred to the cooperating exporters during the period reviewed.[215] The majority of the programs consisted of grants (60 of the 65 available countervailable programs), with the others consisting of preferential tax programs, a tariff and VAT exemption program, in addition to the provision of primary aluminum at less than adequate remuneration. The 2017 annual report of aluminum extruder PanAsialum Holdings Company Limited also reports government grants from the GOC. For instance, the producer reported the receipt of subsidies from the Economic and Information Commission of Guangdong Province and the Industry and Information Technology Commission of Guangzhou Municipality, in addition to subsidies from the Wolong District Government.[216]

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[210] CBSA's Statement of Reason – Certain Aluminum Extrusions from China - Final Determination, March 3, 2009; para. 256.
[211] Ibid.; para. 258-261.
[212] Exhibit 19 (NC) – OECD – Measuring Distortion in International Markets; The Aluminum Value Chain; January 8, 2019; p. 118.
[213] *Ibid*.; p. 18.
[214] It is noted that one of these 40 programs, which has not been applicable since April 2009, no longer provide benefits as of April 30, 2019.
[215] Exhibit 16 (NC) – Australian Anti-Dumping Commission; Statement of Essential Fact No. 482, Review of Anti-Dumping Measures Applying to Aluminum Extrusions, February 2019, Attachment B.
[216] Exhibit 19 (NC), PanAsialum Holdings Company Limited 2017 Annual Report, p. 86.

[181] Finally, the record also contains evidence of export subsidies provided to aluminum extrusions producers. For example, a THINK!DESK China Research Consulting study has found that some municipalities will match export revenues with subsidies, while other subsidies will offset domestic transportation cost for export shipments, in order to lower their cost of doing business and increase export trade. The provision of export credit insurance was another form of export subsidy listed by this study. [217]

Countervailing Measures in Other Jurisdictions

[182] The existence of countervailing measures in place in Canada, Australia, the EU and in the US concerning aluminum products from China reinforces the argument that Chinese exporters/producers of aluminum extrusions receive countervailable benefits from the GOC and the GOC has placed a great deal of importance on its aluminum industry and subsidized it accordingly.

[183] Canada currently has countervailing measures in place against Chinese aluminum extrusions and photovoltaic modules and laminates (a product that includes aluminum extrusions as input for the frame).[218] Information on the administrative record indicates that Australia, the EU and the US also have countervailing measures against aluminum products from China. The products that are subject to the Australian countervailing measures include: Aluminum Extrusions, Aluminum road wheels and Aluminum Zinc Coated Steel.[219] The European Union also has countervailing measures against crystalline silicone photovoltaic modules and key components.[220] The products that are subject to the U.S. countervailing measures include: Aluminum Extrusions, certain aluminum foil, crystalline silicone photovoltaic cells, and certain crystalline silicone photovoltaic products.[221]

[184] On the basis of the above, there are strong indications that the GOC will likely continue to subsidize its domestic aluminum extrusion producers in the future, both directly and indirectly by subsidizing primary aluminum producers.

Determination Regarding Likelihood of Continued or Resumed Subsidizing

[185] Based on the information on the administrative record in respect of the continued availability of subsidy programs for primary aluminum producers in China which are benefiting aluminum extrusion producers, the continued availability of subsidy programs for aluminum extruders, and the countervailing measures in other jurisdictions, the CBSA determined that the expiry of the order is likely to result in the continuation or resumption of subsidizing of certain aluminum extrusions originating in or exported from China.

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[217] Exhibit 18 (NC) – Final Report – Analysis of Market Distortions in the Chinese Non-Ferrous Metals Industry, THINK!DESK China Research Consulting, April 24, 2017, p.103-104.

[218] Exhibit 015 (NC) – WTO Semi-annual report under article 25.11 of the Agreement – Canada, G/SCM/N/328/CAN.

[219] Exhibit 015 (NC) – WTO Semi-annual report under article 25.11 of the Agreement – Australia, G/SCM/N/328/AUS.

[220] Exhibit 015 (NC) – WTO Semi-annual report under article 25.11 of the Agreement – European Union, G/SCM/N/328/UEU.

[221] Exhibit 015 (NC) – WTO Semi-annual report under article 25.11 of the Agreement – United States of America, G/SCM/N/328/USA.

CONCLUSION

[186] For the purpose of making a determination in this expiry review investigation, the CBSA conducted its analysis within the scope of the factors found under subsection 37.2(1) of the SIMR. Based on the foregoing consideration of pertinent factors and an analysis of the information on the record, on August 2, 2019, the CBSA made a determination pursuant to paragraph 76.03(7)(a) of SIMA that the expiry of the CITT's order made on March 17, 2014, in Expiry Review No. RR-2013-003, continuing, without amendment, its findings made on March 17, 2009, in Inquiry No. NQ-2008-003, as amended by its determination made on February 10, 2011, in Inquiry No. NQ-2008-003R, in respect of certain aluminum extrusions originating in or exported from China is:

- likely to result in the continuation or resumption of dumping of the goods; and
- likely to result in the continuation or resumption of subsidizing of the goods.

FUTURE ACTION

[187] On August 6, 2019, the CITT commenced its inquiry to determine whether the expiry of the order with respect to the dumping and subsidizing of certain aluminum extrusions from China is likely to result in injury. The CITT's Expiry Review schedule indicates that it will make its decision by January 13, 2020.

[188] If the CITT determines that the expiry of the order with respect to the goods is likely to result in injury, the CITT will make an order continuing the order in respect of those goods, with or without amendment. If this is the case, the CBSA will continue to levy anti-dumping and/or countervailing duties on dumped and/or subsidized importations of the subject goods.

[189] If the CITT determines that the expiry of the order with respect to the goods is not likely to result in injury, the CITT will make an order rescinding the order in respect of those goods. Anti-dumping and/or countervailing duties would then no longer be levied on importations of the subject goods, and any anti-dumping and/or countervailing duties paid in respect of goods that were released after the date that the order was scheduled to expire will be returned to the importer.

INFORMATION

[190] For further information, please contact the officer listed below:

Mail: SIMA Registry and Disclosure Unit
Trade and Anti-dumping Programs Directorate
Canada Border Services Agency
100 Metcalfe Street, 11th floor
Ottawa, Ontario K1A 0L8
Canada

Telephone: Denis Chénier 613-954-0032

E-mail: simaregistry@cbsa-asfc.gc.ca

Web site: www.cbsa-asfc.gc.ca/sima-lmsi

Doug Band
Director General
Trade and Anti-dumping Programs Directorate

DOC 5

Determinação Final Investigação Original
Módulos Parede (Canadá)

4214-38
AD/1399
4218-36
CVD/135

OTTAWA, October 25, 2013

STATEMENT OF REASONS

Concerning the making of final determinations with respect to the dumping and subsidizing of

CERTAIN UNITIZED WALL MODULES ORIGINATING IN OR EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA

DECISION

Pursuant to subsection 41(1)(*a*) of the *Special Import Measures Act*, on October 10, 2013, the President of the Canada Border Services Agency made final determinations respecting: the dumping and subsidizing of unitized wall modules, with or without infill, including fully assembled frames, with or without fasteners, trims, cover caps, window operators, gaskets, load transfer bars, sunshades and anchor assemblies; excluding non-unitized building envelope systems such as stick systems and point-fixing systems originating in or exported from the People's Republic of China.

Cet *Énoncé des motifs* est également disponible en français.
This *Statement of Reasons* is also available in French.

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SUMMARY OF EVENTS

[1] On January 14, 2013, Allan Window Technologies, Ferguson Neudorf Glass Inc., Flynn Canada Ltd., Inland Glass & Aluminum Ltd./Aluminum Curtainwall Systems Inc., Oldcastle Building Envelope, Sota Glazing Inc., Starline Architectural Windows Ltd., State Windows Corporation, Toro Aluminum/Toro Glasswall Inc. and Windsor Glass Company (1992) Ltd. operating as Contract Glaziers, (hereafter 'the Complainants') filed a complaint with the Canada Border Services Agency (CBSA).

[2] Investigations respecting certain unitized wall modules from the People's Republic of China (China) were previously initiated on July 16, 2012. On September 14, 2012, the Canadian International Trade Tribunal (Tribunal) terminated the preliminary injury inquiry after finding that the evidence did not disclose a reasonable indication that the dumping and subsidizing of the subject goods had caused injury or retardation or was threatening to cause injury. As a result, on September 17, 2012 the CBSA terminated the investigations of dumping and subsidizing in respect of these goods. The complaint received on January 14, 2013 concerned the same goods that were subject to these investigations.

[3] In the new complaint filed on January 14, 2013, the Complainants provided evidence to support the allegations that certain unitized wall modules from China have been dumped and subsidized. The evidence also addressed the injury concerns outlined in the Tribunal's preliminary injury inquiry *Determination and Reasons* issued on October 1, 2012. The evidence disclosed a reasonable indication that the dumping and subsidizing has caused injury and is threatening to cause injury to the Canadian industry producing these goods.

[4] On February 1, 2013, pursuant to paragraph 32(1)(*a)* of the *Special Import Measures Act* (SIMA), the CBSA informed the Complainants that the complaint was properly documented. The CBSA also notified the Government of China (GOC) that a properly documented complaint had been received and provided the GOC with the non-confidential version of the subsidy portion of the complaint.

[5] Although the GOC was invited for consultations prior to the initiation of the investigations, pursuant to Article 13.1 of the *Agreement on Subsidies and Countervailing Measures,* no such consultations took place. However, on March 4, 2013, the GOC provided representations opposing the initiation of dumping and subsidizing investigations on certain unitized wall modules originating in or exported from China.

[6] On March 4, 2013, pursuant to subsection 31(1) of SIMA, the President of the CBSA (President) initiated investigations respecting the dumping and subsidizing of certain unitized wall modules from China.

[7] Upon receiving notice of the initiation of the investigations, the Tribunal commenced a preliminary injury inquiry, pursuant to subsection 34(2) of SIMA, into whether the evidence discloses a reasonable indication that the dumping and subsidizing of certain unitized wall modules has caused injury or is threatening to cause injury to the Canadian industry producing the goods.

[8] On May 3, 2013, pursuant to subsection 37.1(1) of SIMA, the Tribunal made a preliminary determination that there is evidence that discloses a reasonable indication that the dumping and subsidizing of certain unitized wall modules from China has caused injury or is threatening to cause injury.

[9] On May 17, 2013, pursuant to paragraph 39(1)(a) of SIMA, the President extended the time period for making preliminary decisions with respect to the investigations into the dumping and subsidizing of certain unitized wall modules from 90 days to 132 days due to the complexity and novelty of the issues presented by the investigations.

[10] On July 15, 2013, as a result of the CBSA's preliminary investigation and pursuant to subsection 38(1) of SIMA, the President made preliminary determinations of dumping and subsidizing with respect to certain unitized wall modules originating in or exported from China, and began imposing provisional duties on imports of the subject goods pursuant to subsection 8(1) of SIMA.

[11] On July 16, 2013, the Tribunal initiated a full inquiry pursuant to section 42 of SIMA to determine whether the dumping and subsidizing of the above-mentioned goods had caused injury or were threatening to cause injury to the Canadian industry.

[12] The CBSA continued its investigation and, on the basis of the results, the President was satisfied that certain unitized wall modules originating in or exported from China had been dumped and subsidized and that the margin of dumping and amount of subsidy were not insignificant. Consequently, on October 10, 2013, the President made final determinations of dumping and subsidizing pursuant to paragraph 41(1)(*a*) of SIMA.

[13] The Tribunal's inquiry into the question of injury to the Canadian industry is continuing. Provisional duties will continue to be imposed on the subject goods from China until the Tribunal renders its decision. The Tribunal has announced that it will issue its finding by November 12, 2013.

PERIOD OF INVESTIGATION

[14] The period of investigation (POI) with respect to dumping and subsidizing covered all subject goods released into Canada from January 1, 2011 to December 31, 2012.

INTERESTED PARTIES

Complainants

[15] The Complainants account for a major proportion of the production of like goods in Canada. The Complainants' goods are produced at manufacturing facilities at various locations in Canada.

[16] The names and addresses of the Complainants are:

Allan Window Technologies
131 Caldari Rd., Unit #1
Concord, ON L4K 3Z9

Ferguson Neudorf Glass Inc.
4275 North Service Road
Beamsville, ON L0R 1B1

Flynn Canada Ltd.
6435 Northwest Drive
Mississauga, ON L4V 1K2

Inland Glass & Aluminum Ltd./Aluminum Curtainwall Systems Inc.
1820 Kryczka Place
Kamloops, B.C. V1S 1S4

Oldcastle Building Envelope
210 Great Gulf Drive
Concord, ON L4K 5W1

Sota Glazing Inc.
443 Railside Drive
Brampton, ON L7A 1E1

Starline Architectural Windows Ltd.
9380 198th Street
Langley, B.C. V1M 3C8

State Window Corporation
20 Corrine Court
Concord, ON L4K 5A4

Toro Aluminum/Toro Glasswall Inc.
330 Applewood Crescent
Concord, ON L4K 4V2

Windsor Glass Company (1992) Ltd.
Operating as Contract Glaziers
620 Sprucewood, PO Box 7177
Windsor, ON N9C 3Z1

[17] Other producers of like goods in Canada include: Aluminum Window Design Ltd., Applewood Glass & Mirror Inc., Basic Industries, Epsylon Concept Inc., Ferguson Glass Corporation, Gamma Windows and Walls International Inc., Lessard Group Inc., Merit Glass Ltd., Noram Enterprises Inc., OVG Inc., Phoenix Glass Inc., Primeline Window and Doors Inc., Quest Window Systems Inc., Transit Glass Inc., Verval Ltd. and Zimmcor. All of these domestic producers supported the complaint with the exception of Aluminum Window Design Ltd., Basic Industries, Ferguson Glass Corporation, Gamma Windows and Walls International Inc., Merit Glass Ltd. and Zimmcor[1]. These six producers were contacted by the CBSA regarding support of the complaint but no responses were received.

Importers

[18] At the initiation of the investigations, the CBSA identified 11 potential importers of the subject goods from information provided by the Complainants and CBSA import entry documentation over the period of January 1, 2011 to December 31, 2012.

[19] The CBSA sent an importer Request for Information (RFI) to all potential importers of the goods. The CBSA received two responses to the importer RFI.

Exporters

[20] At the initiation of the investigations, the CBSA identified 64 potential exporters and producers of certain unitized wall modules from China over the period of January 1, 2011 to December 31, 2012 from information provided by the Complainants and CBSA import documentation. Each of these potential exporters were sent an exporter dumping RFI and an exporter subsidy RFI.

[21] The CBSA received three responses to the exporter dumping RFI and the exporter subsidy RFI. Of these, only two responses to the exporter dumping RFI and the exporter subsidy RFI were considered complete and timely.

[1] Dumping/Subsidy Exhibits 3 (NC), 4 (NC), 5 (NC), 6 (NC), 7 (NC), 8 (NC), 9 (NC), 10 (NC), 11 (NC), 12 (NC), 28 (PRO), 29 (PRO), 30 (PRO)

Government of China

[22] For the purpose of these investigations, "Government of China" refers to all levels of government, i.e. federal, central, provincial/state, regional, municipal, city, township, village, local, legislative, administrative or judicial, singular, collective, elected or appointed. It also includes any person, agency, enterprise, or institution acting for, on behalf of, or under the authority of, or under the authority of any law passed by, the government of that country or that provincial, state or municipal or other local or regional government.

[23] The CBSA sent a government subsidy RFI to the GOC at the initiation of the subsidy investigation. The GOC did not provide a response to the subsidy RFI.

PRODUCT INFORMATION

Definition

[24] For the purpose of these investigations, subject goods are defined as:

> Unitized wall modules, with or without infill, including fully assembled frames, with or without fasteners, trims, cover caps, window operators, gaskets, load transfer bars, sunshades and anchor assemblies; excluding non-unitized building envelope systems such as stick systems and point-fixing systems originating in or exported from the People's Republic of China.

Additional Product Information

[25] Subject and like unitized wall modules are an aluminum-framed engineered fenestration product which forms the building envelope or facade for multi-story buildings. The two main styles of unitized wall modules building envelope systems are referred to as "curtain wall" and "window wall".

[26] Unitized wall modules are prefabricated segments of the building envelope that interlock with each other when installed. They are manufactured and shipped to customers' building sites where they are installed by the customer or building contractor.

[27] Installed unitized wall modules separate the outdoors from a building's indoor environment. The unitized wall modules are designed to resist extreme wind pressures, limit air infiltration and exfiltration, prevent water infiltration and meet heat loss and energy usage criteria.

[28] The unitized wall modules are generally designed to meet any of the following or equivalent specifications:

- air infiltration/exfiltration to a minimum 0.10 L/s/m^2 (litres/second/square meter) when tested in accordance with American Society of Testing and Materials ("ASTM") Standard E283 at 0.3kPa (kilopascals) negative and positive pressure differential or equivalent proprietary or other internationally accepted standard;
- no water infiltration when tested under static wind load in accordance with ASTM Standard E331 using 205 liters of water per square meter for 15 minutes at a minimum 0.3kPa negative pressure differential or equivalent proprietary or other internationally accepted standard;no water infiltration when tested under dynamic wind load in accordance to American Architectural Manufacturers Association ("AAMA") Standard 501.1 using 205 liters of water per square meter for 15 minutes at a minimum O.3kPa negative pressure differential or equivalent proprietary or other internationally accepted standard;
- structural performance when tested to ASTM Standard E330 by uniform static air pressure at a minimum 0.5kPa for 60 seconds without permanent deformation or equivalent proprietary or other internationally accepted standard; or
- thermal performance calculated in accordance with Canadian Standards Association ("CSA") Standard A440.2 to deliver a maximum of 3.0 W/m^2C (watt/square meter/Celsius) for vision glass areas and 1.5 W/m^2C for opaque areas (including framing) or equivalent proprietary or other internationally accepted standard.

[29] Unitized wall modules usually consist of three principal components: extruded pre-finished (mill, alodine, painted or anodized) aluminum frame, hardware and infill materials.

[30] The frame is the structural component that provides support for the infill materials. Hardware consists of fasteners, gaskets and sealants used to attach or sit between the frame and the infill materials. Infill materials include, but are not limited to, insulated glass units, monolithic glass, panels of various materials such as stone, granite or limestone, aluminum or galvanized steel back pans, insulation, terracotta tiles, ceramic tiles, thin veneer unitized bricks, louvers, grilles and photovoltaic panels. Patio or terrace doors and operable windows also are used as infill materials.

[31] The subject goods do not include non-unitized systems such as “stick systems” or “point-fixing systems”. Stick system building envelopes or facades are not subject goods as they are not unitized. Unlike unitized wall modules, stick systems are not interlocking and require installation of individual framing components on-site to form the supporting grid for those systems. Stick systems are shipped to the project site as vertical and horizontal member components which are then installed and connected piece by piece to form the structural grid for a stick system envelope or facade for buildings. Once the grid of support members is secured to the building structure, infill materials are installed from the exterior and/or interior side of the building.

[32] Once a stick system building envelope or facade is completed, the appearance of the building exterior will be similar to a "unitized wall module" building envelope or facade. However, a stick system envelope or facade is differentiated from a "unitized wall module" building envelope or facade when viewed from the building interior, where the vertical frame members in the stick envelope or facade will be one-piece, while in the "unitized wall module" envelope or facade the vertical frame members will be two interlocked pieces.

[33] Products referred to as "point-fixing glass wall/curtain wall" and "full-glass glass wall/curtain wall" use glass fins, patch fittings, cable supports and other means for structural support and do not rely on the extruded aluminum members used in the subject goods covered by this complaint. These products cannot be "unitized" and are not subject goods.

Production Process

[34] The process begins with the fabrication of individual module components. Aluminum extrusions in the required sizes, shapes and finishes are purchased as required for each project. They are verified for colour and surface quality meeting the applicable standards and to ensure they meet the specifications of the individual project for which they are destined.

[35] Thermal breaks made from non-metal materials such as polyvinyl chloride or polyamide extrusions are sized and inserted into the aluminum extrusions to separate interior from exposed exterior sections of the frame. These composite frame sections are cut to length, shaped and machined to the final size of the unitized wall modules.

[36] The frame sections are then assembled. Typically the vertical mullions and horizontal frame sections are assembled using screws to connect the vertical to the horizontal frame sections. At this point the frames are fully assembled. Frames are typically rectangular in shape, but may also be manufactured to different shapes by using various angles and curves.

[37] The frames are prepared for the installation of infill materials. Frame connections are sealed using various sealant such as silicone, butyl, acrylic and elastomeric sealants. Frame sections are prepared by installing various types of air seal and glazing gaskets and/or glazing tapes to achieve air and water tight seals between the frame and infill materials.

[38] Once the frames have been prepared the infill materials are added. This can be done in a stationary manner on a fixed assembly table or on a conveyor assembly line. The process of installation into the assembled frames varies depending on the type of infill and complexity of the final unitized wall modules.

[39] For a typical unitized wall module the following assembly/infill procedures apply:

- install aluminum or galvanized steel back pans at spandrel conditions / opaque areas;
- seal back pans at the perimeter to the horizontal and vertical frame sections;
- install insulation boards of various thickness and materials into the backpan area. The insulation boards typically used are mineral board and fiberglass board;
- install glass panels of various thickness and assemblies into the vision and spandrel areas;
- glass panels or other infill materials are secured to frame sections mechanically using extruded glass stops, pressure plates and caps, or are glued using structural silicone or special structural adhesive tapes;
- infill materials can vary in type, thickness, and colour. Materials include, but are not limited to, insulated glass units, monolithic glass, aluminum or galvanized steel back pans, insulation, panels of metal, granite, limestone, photovoltaic, fibre reinforced or thin precast concrete, terra cotta and ceramic tiles, thin veneer unitized bricks, louvers, grilles and fixed or operable sun shading devices. Patio or terrace doors and operable windows are also used as infill materials; and
- once the frame assembly and installation of infill materials is completed, the assembled unitized wall modules is protected for shipment using cardboard, wood crating or steel racks. The product is then ready for shipment to the customer.

Classification of Imports

[40] Under the 2011 Customs Tariff, the goods subject to the product definition were normally imported into Canada under the following Harmonized System (HS) classification numbers:

7610.10.00.20
7610.90.00.90

[41] Under the 2012 Customs Tariff, the subject goods are normally imported into Canada under the following HS classification numbers:

7610.10.00.20
7610.90.10.90
7610.90.90.90

[42] The subject goods may also be imported under the following HS classification numbers:

Prior to January 1, 2012	As of January 1, 2012
7008.00.00.00	7008.00.00.00
7308.30.00.21	7308.30.00.21
7604.29.20.30	7610.10.00.10
7610.10.00.10	7610.90.90.30

[43] The HS classification numbers identified are for convenience of reference only. The HS classification numbers may include non-subject goods. Also, subject goods may fall under HS classification numbers that are not listed. Refer to the product definition for authoritative details regarding the subject goods.

CLASS OF GOODS

[44] The dumping and subsidy investigations were initiated on a single class of goods. However, as a result of the Tribunal's preliminary injury inquiry[2], the Tribunal was of the opinion that the question of whether there are multiple classes of goods merited further consideration. As such, the Tribunal requested the CBSA to collect, in addition to the single class of subject goods as defined at initiation, separate information on the dumping and subsidizing of (1) unitized curtain wall modules (2) unitized window wall modules. The CBSA sought further details from the Tribunal regarding how these two potential classes should be defined and the Tribunal provided further clarification in a letter received on June 6, 2013.

[45] The CBSA requested information on the two potential classes of goods from the exporters who have provided information to the CBSA. The requested information was received from these exporters. However, on August 14, 2013, the Tribunal determined that unitized curtain wall modules and unitized window wall modules constitute a single class of goods. The Tribunal informed the CBSA that as a result of this determination, the CBSA would no longer be required to collect information on the dumping and subsidizing of unitized curtain wall modules and unitized window wall modules separately.

LIKE GOODS

[46] Subsection 2(1) of SIMA defines "like goods", in relation to any other goods, as goods that are identical in all respects to the other goods, or in the absence of identical goods, goods the uses and other characteristics of which closely resemble those of the other goods.

[47] Unitized wall modules produced by the domestic industry in Canada compete directly for the same building contracts as the unitized wall modules imported from China. The goods produced in Canada are substitutable with unitized wall modules imported from China. Therefore, the CBSA has concluded that unitized wall modules produced by the Canadian industry constitute like goods to the unitized wall modules imported from China.

[48] However, unitized wall modules are custom designed for specific building projects, and can only be used for the projects for which they are designed. Therefore, for the purpose of determining normal values, the CBSA concluded that the unitized wall modules sold in China are not identical to and do not closely resemble the subject goods sold to the importer in Canada. As such, there are no domestic sales of like goods by Chinese producers.

[2] Preliminary Injury Inquiry No. PI-2012-006 Unitized Wall Modules, issued on May 3, 2013. Reasons available online at http://www.citt.gc.ca/dumping/preinq/determin/pi2m006_e.asp

THE CANADIAN INDUSTRY

[49] As previously stated, the Complainants account for a major proportion of known domestic production of like goods.

IMPORTS INTO CANADA

[50] During the investigations, the CBSA refined the value of imports based on information received from exporters and importers.

[51] The additional information indicated that certain unitized wall modules were only imported from China and the Republic of Korea during the POI.

[52] The following table presents the CBSA's analysis of imports of certain unitized wall modules for the final determinations.

Imports of Certain Unitized Wall Modules
(January 1, 2011 – December 31, 2012)
As a percentage of total import volume in Canadian Dollars ($)[3]

Imports into Canada	% of Total Import Volume
China	96%
Republic of Korea	4%
Total	**100%**

INVESTIGATION PROCESS

[53] Regarding the dumping investigation, information was requested from known and potential exporters, producers, vendors and importers, concerning shipments of certain unitized wall modules released into Canada during the POI of January 1, 2011 to December 31, 2012.

[54] Regarding the subsidy investigation, information related to potential actionable subsidies was requested from known and potential exporters and the GOC concerning financial contributions made to exporters or producers of certain unitized wall modules released into Canada during the POI of January 1, 2011 to December 31, 2012. Exporters and producers were also requested to forward a subsidy RFI to their suppliers of aluminum extrusions, in the context of the investigation of upstream subsidies from the suppliers of these raw materials since aluminum extrusions were found to be subsidized in a prior investigation.[4]

[3] The CBSA's import documentation was used to determine the imports of certain unitized wall modules during the POI. Since import volume information on the customs documentation was reported in various units of measure (i.e. m^2, number of modules, kg, etc.), it was not feasible to determine the imports of certain unitized wall modules by volume. As a result, import value was used as the unit of measure for determining imports of certain unitized wall modules.

[4] Certain Aluminum Extrusions originating in or exported from the People's Republic of China, *Certain Aluminum Extrusions – Final Determination.* This document is available at: http://www.cbsa-asfc.gc.ca/sima-lmsi/i-e/ad1379/ad1379-i08-fd-eng.html

[55] After reviewing the responses to the RFIs, supplemental RFIs were sent to each of the responding parties to clarify information provided in the submissions. In addition, on-site verifications were conducted at the premises of both responding exporters and their related importers during the course of the investigations.

[56] Details pertaining to the information submitted by the exporters in response to the exporter dumping RFI as well as the results of the CBSA's dumping investigation can be found in the "Dumping Investigation" section below. Details pertaining to the information submitted by the exporters in response to the subsidy RFI as well as the results of the CBSA's subsidy investigation can be found in the "Subsidy Investigation" section below.

[57] As part of the final stage of the investigations, case briefs and reply submissions were provided by counsel representing the Complainants and exporters. Details of all representations can be found in **Appendix 3** of this document.

[58] Under Article 15 of the World Trade Organization (WTO) *Anti-dumping Agreement*, developed countries are to give regard to the special situation of developing country members when considering the application of anti-dumping measures under the Agreement. Possible constructive remedies provided for under the Agreement are to be explored before applying anti-dumping duty where they would affect the essential interests of developing country members. As China is listed on the *Development Assistance Committee* (DAC) *List of Official Development Assistance (*ODA*) Recipients* maintained by the *Organization for Economic Co-operation and Development* (OECD)[5], the President recognizes China as a developing country for purposes of actions taken pursuant to SIMA.

[59] Accordingly, the obligation under Article 15 of the WTO *Anti-dumping Agreement* was met by providing the opportunity for exporters to submit price undertakings. In these investigations, the CBSA did not receive any proposals for undertakings from any of the exporters in China.

[5] The Organization for Economic Co-operation and Development, DAC List of ODA Recipients as at January 1, 2012, the document is available at: www.oecd.org/dac/stats/49483614.pdf

DUMPING INVESTIGATION

Importer Responses

[60] The CBSA received two responses to the importer RFI. Both submissions are substantially complete.

Jangho Curtain Wall Canada Co., Ltd.[6]

[61] Jangho Curtain Wall Canada Co., Ltd. (Jangho Canada) is an importer and seller of unitized wall modules. During the POI, Jangho Canada imported unitized wall modules from a related exporter, Guangzhou Jangho Curtain Wall System Engineering Co., Ltd. (Guangzhou Jangho). The submission provided by Jangho Canada is substantially complete and was verified on-site prior to the preliminary determination.

Yuanda Canada Enterprises Ltd.[7]

[62] Yuanda Canada Enterprises Ltd. (Yuanda Canada) is an importer and seller of unitized wall modules. During the POI, Yuanda Canada imported unitized wall modules from a related exporter, Shenyang Yuanda Aluminum Industry Engineering Co., Ltd. (Shenyang Yuanda). The submission provided by Yuanda Canada is substantially complete and was verified on-site after the preliminary determination.

Exporter Responses

[63] The CBSA received responses to the exporter dumping RFI from the following companies:

- Guangzhou Jangho and associated companies[8]
- Shenyang Yuanda and associated companies[9]
- Shanghai Henry Yijian Curtain Wall Manufacturing Co., Ltd. and an associated company[10]

Normal Values

[64] The normal value of goods sold to importers in Canada is generally based on the domestic selling prices of like goods in the country of export pursuant to section 15 of SIMA, or on the aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and all other costs, and a reasonable amount for profits, pursuant to paragraph 19(*b*) of SIMA.

[6] Dumping exhibit 68(NC)
[7] Dumping exhibit 66(NC)
[8] Dumping exhibit 71(NC)
[9] Dumping exhibit 77(NC)
[10] Dumping exhibit 80 (NC) and Dumping exhibit 83 (NC)

[65] Where, in the opinion of the President, sufficient information has not been furnished or is not available, normal values are determined pursuant to a ministerial specification in accordance with subsection 29(1) of SIMA.

Export Prices

[66] The export price of goods sold to importers in Canada is generally based on the lesser of the adjusted exporter's sale price for the goods or the adjusted importer's purchase price, pursuant to section 24 of SIMA. These prices are adjusted, where necessary, by deducting the costs, charges, expenses, duties and taxes resulting from the exportation of the goods as provided for in subparagraphs 24(a)(i) to 24(a)(iii) of SIMA.

[67] Where there are sales between associated persons or a compensatory arrangement exists, the export price may be determined based on the importer's resale price of the imported goods in Canada to non-associated purchasers, less deductions for all costs incurred in preparing, shipping and exporting the goods to Canada that are additional to those incurred on the sales of like goods for use in the country of export, all costs that are incurred in reselling the goods (including duties and taxes) or associated with the assembly of the goods in Canada and an amount representative of the industry profit in Canada, pursuant to paragraphs 25(1)(c) and 25(1)(d) of SIMA. Where, in any cases not provided for under paragraphs 25(1)(c) and 25(1)(d) of SIMA, the export price is determined in such manner as the Minister specifies, pursuant to paragraph (25)(1)(e) of SIMA.

[68] Where, in the opinion of the President, sufficient information has not been furnished or is not available, export prices are determined pursuant to a ministerial specification in accordance with subsection 29(1) of SIMA.

Amount for Profit for Purposes of Section 25 of SIMA

[69] An amount for profit was determined pursuant to paragraph 22(*b*) of the *Special Import Measures Regulations* (SIMR) by calculating the weighted-average of the profit margins of each complainant, other producer and importer for which financial information was provided, and that reported a profit during the POI. For the purposes of determining this amount for profit, all other known producers were contacted by the CBSA and were requested to provide financial information.

[70] The amount for profit determined was 10.53%.

Results of the Dumping Investigation

[71] With respect to the exporters that provided complete responses to the RFI, the CBSA determined a margin of dumping by comparing the total normal value with the total export price of the goods. When the total export price is less than the total normal value, the difference is the margin of dumping for that specific exporter.

[72] The determination of the volume of dumped goods was calculated by taking into consideration each exporter's net aggregate dumping results. Where a given exporter has been determined to be dumping on an overall or net basis, the total quantity of exports attributable to that exporter (i.e., 100%) is considered dumped. Similarly, where a given exporter's net aggregate dumping results are zero, then the total quantity of exports considered to be dumped by that exporter is zero.

[73] For those exporters that did not submit a response to the RFI, or that submitted an incomplete response, the normal value of the goods was determined by advancing the export price by the highest amount by which the total normal value of the goods exceeded the total export price relating to an individual project for an exporter that provided a substantially complete response to the RFI, excluding anomalies.

[74] In determining a margin of dumping for China, the margins of dumping found in respect of each exporter were weighted according to each exporter's value of certain unitized wall modules released into Canada during the POI.

Dumping Results by Exporter

[75] The margins of dumping were determined on the basis of the information provided by the exporters.

[76] Margin of dumping details relating to the exporters that provided a complete response to the RFI are presented in a margin of dumping summary table at the end of this section as well as in **Appendix 1**.

Guangzhou Jangho Curtain Wall System Engineering Co., Ltd.

[77] Guangzhou Jangho was established in June 2007 by its parent company Beijing Jangho Curtain Wall Co., Ltd. (Beijing Jangho). Guangzhou Jangho is wholly owned by Beijing Jangho. The parent company is publicly traded on the Shanghai Stock Exchange. Beijing Jangho has a complex corporate structure with many subsidiaries in China and internationally, including a related importer in Canada, Jangho Canada (see above). Guangzhou Jangho is a manufacturer of certain unitized wall modules which are sold domestically and to export markets including Canada.

[78] Guangzhou Jangho had domestic sales of certain unitized wall modules during the POI. However, due to the uniqueness of the unitized wall modules for each individual building project, the CBSA is of the opinion that these domestic sales are not like goods in relation to the subject goods exported to Canada. Therefore, normal values could not be determined using section 15 of SIMA.

[79] Normal values for Guangzhou Jangho have been determined pursuant to paragraph 19(b) of SIMA. A reasonable amount for administrative, selling and all other costs was determined pursuant to subparagraph 11(1)(*c*)(ii) of SIMR based on the costs that are reasonably attributable to the subject goods. An amount of profits, which was determined in accordance with subparagraph 11(1)(*b*)(ii) of SIMR, was based on the profits earned on sales of goods of the same general category by the exporter in the country of export, which met the conditions described in paragraph 13(*a*) of SIMR.

[80] Guangzhou Jangho exported subject goods during the POI to its related importer, Jangho Canada. A related vendor, Jangho Curtain Wall (Hong Kong) Co., Ltd., was used to facilitate the export sales to Canada. As the exporter and importer were related a reliability test was performed to determine whether the section 24 export prices were reliable as envisaged by SIMA. This test was conducted by comparing the section 24 export prices with the section 25 "deductive" export prices based on the importer's resale prices of the imported goods in Canada to non-associated purchasers, less deductions for all additional costs incurred in preparing, shipping and exporting the goods to Canada, all costs included in the resale prices that were incurred in reselling the goods in Canada (including duties and taxes) and an amount representative of the industry profit in Canada. The test revealed that the export prices determined in accordance with section 24 of SIMA were unreliable and therefore, export prices were determined pursuant to paragraph 25(1)(*c*) of SIMA. The amount for profit was determined pursuant to paragraph 22(*b*) of SIMR, based on sales of goods of the same general category by vendors in Canada who are at the same or substantially the same trade level as Jangho Canada.

[81] On-site verifications were held at Guangzhou Jangho, Jangho Hong Kong and Beijing Jangho from July 22, 2013 to August 8, 2013.

[82] The total normal value was compared with the total export price for all subject goods released into Canada during the POI from Guangzhou Jangho. The margin of dumping for Guangzhou Jangho is 15.7%, expressed as a percentage of the export price.

Shenyang Yuanda Aluminum Industry Engineering Co., Ltd.

[83] Shenyang Yuanda was established in 1993 and is a producer and exporter of unitized wall module products and other building facade products. Shenyang Yuanda is wholly-owned by Yuanda (Hong Kong) Holdings Ltd., who is in turn a wholly-owned subsidiary of Yuanda China Holdings Ltd. (Yuanda China). Yuanda China is a publically traded company on the Hong Kong Stock Exchange and was first listed in 2011. Yuanda China has many subsidiaries in China and internationally, including a related importer in Canada, Yuanda Canada.

[84] Shenyang Yuanda had domestic sales of certain unitized modules during the POI. However, due to the uniqueness of the unitized wall modules for each individual building project, the CBSA is of the opinion that these domestic sales are not like goods, in relation to the subject goods exported to Canada. Therefore, for the purposes of the final determination, normal values could not be determined using section 15 of SIMA.

[85] For the purposes of the final determination, normal values for Shenyang Yuanda have been determined pursuant to paragraph 19(*b*) of SIMA. A reasonable amount for administrative, selling and all other costs was determined pursuant to subparagraph 11(1)(*c*)(ii) of SIMR based on the costs that are reasonably attributable to the subject goods. An amount of profits, which was determined in accordance with subparagraph 11(1)(*b*)(ii) of SIMR, was based on the profits earned on sales of goods of the same general category by the exporter in the country of export, which met the conditions described in paragraph 13(*a*) of SIMR.

[86] Shenyang Yuanda exported subject goods during the POI to its related importer, Yuanda Canada. As the exporter and importer were related a reliability test was performed to determine whether the section 24 export prices were reliable as envisaged by SIMA. Thistest was conducted by comparing the section 24 export prices with the section 25 "deductive" export prices based on the importer's resale prices of the imported goods in Canada to non-associated purchasers, less deductions for all additional costs incurred in preparing, shipping and exporting the goods to Canada, all costs included in the resale prices that were incurred in reselling the goods in Canada (including duties and taxes) or associated with the assembly of the goods in Canada and an amount representative of the industry profit in Canada. The test revealed that the export prices determined in accordance with section 24 of SIMA were unreliable and therefore, export prices were determined pursuant to paragraph 25(1)(*d*) of SIMA. The amount for profit was determined in accordance with paragraph 22(*b*) of SIMR, based on sales of goods of the same general category by vendors in Canada who are at substantially the same trade level as Yuanda Canada.

[87] On-site verifications were held at Shenyang Yuanda and its related suppliers from June 17, 2013 to June 25, 2013.

[88] The total normal value was compared with the total export price for all subject goods released into Canada during the POI from Shenyang Yuanda. The margin of dumping for Shenyang Yuanda is 49.3%, expressed as a percentage of the export price.

Shanghai Henry Yijian Curtain Wall Manufacturing Co., Ltd.

[89] Shanghai Henry Yijian Curtain Wall Manufacturing Co., Ltd. (Henry Yijian) provided a response to the exporter dumping RFI. However, the response is incomplete.

[90] Henry Yijian was requested to provide the missing information and no response was received.

[91] Sufficient information was not provided to the CBSA in order to determine margins of dumping for Henry Yijian using Henry Yijian's own information. Therefore, Henry Yijian's normal values and export prices were determined based on a ministerial specification pursuant to subsection 29(1) of SIMA using the same methodology as all other exporters who did not provide a response to the CBSA.

All Other Exporters - Margin of Dumping

[92] For all other exporters, the normal values of the goods were determined pursuant to subsection 29(1) of SIMA by advancing the export price by 120%. The advance is based on the highest amount by which the total normal value of the goods exceeded the total export price of the goods for an individual project for an exporter that provided a substantially complete response to the RFI, excluding anomalies.

[93] Export prices for these other exporters were determined pursuant to subsection 29(1) of SIMA based on CBSA import documentation for the subject goods released into Canada during the POI.

[94] The total normal value was compared with the total export price of all subject goods released into Canada during the POI from all other exporters. The margin of dumping for all other exporters is 120%, expressed as a percentage of the export price.

Summary of Results - Dumping

[95] The following table summarizes the results of the dumping investigation respecting all subject goods released into Canada during the dumping POI.

Margin of Dumping and Volume of Dumped Goods
January 1, 2011 to December 31, 2012[11]

Country	Volume of Dumped Goods as Percentage of Country Imports	Margin of Dumping*	Volume of Country Imports as Percentage of Total Imports	Volume of Dumped Goods as Percentage of Total Imports
China	100%	83%	96%	96%

*expressed as a percentage of the export price

[96] Under paragraph 41(1)(*a*) of SIMA, the President shall make a final determination of dumping when he is satisfied that the goods have been dumped and that the margin of dumping of the goods of a country is not insignificant. Pursuant to subsection 2(1) of SIMA, a margin of dumping of less than 2% of the export price of the goods is defined as insignificant. As the preceding table illustrates, the margin of dumping found during this investigation is not insignificant.

[11] The CBSA's import documentation was used to determine the imports of certain unitized wall modules during the POI. Since import volume information on the customs documentation was reported in various units of measure (i.e. m^2, number of modules, kg, etc.), it was not feasible to determine the imports of certain unitized wall modules by volume. As a result, import value was used as the unit of measure for determining imports of certain unitized wall modules.

[97] For purposes of a preliminary determination of dumping, the President is responsible for determining whether the actual and potential volume of dumped goods is negligible. After a preliminary determination of dumping, the Tribunal assumes this responsibility. In accordance with subsection 42(4.1) of SIMA, if the Tribunal determines the volume of dumped goods from a country is negligible, the Tribunal is required to terminate its injury inquiry in respect of those goods.

Representations Concerning the Dumping Investigation

[98] Following the August 30, 2013 close of the record, three case briefs and three reply submissions were received from counsel representing the Complainants, Guangzhou Jangho and Shenyang Yuanda.

[99] Issues raised by participants through case briefs and reply submissions pertaining to the dumping investigation and the CBSA's response to these issues are provided in **Appendix 3**.

SUBSIDY INVESTIGATION

[100] In accordance with section 2 of SIMA, a subsidy exists if there is a financial contribution by a government of a country other than Canada that confers a benefit on persons engaged in the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export or import of goods. A subsidy also exists in respect of any form of income or price support within the meaning of Article XVI of the General Agreement on Tariffs and Trade, 1994, being part of Annex 1A to the WTO Agreement that confers a benefit.

[101] Pursuant to subsection 2(1.6) of SIMA, there is a financial contribution by a government of a country other than Canada where:

(a) practices of the government involve the direct transfer of funds or liabilities or the contingent transfer of funds or liabilities;
(b) amounts that would otherwise be owing and due to the government are exempted or deducted or amounts that are owing and due to the government are forgiven or not collected;
(c) the government provides goods or services, other than general governmental infrastructure, or purchases goods; or
(d) the government permits or directs a non-governmental body to do anything referred to in any of paragraphs (a) to (c) where the right or obligation to do the thing is normally vested in the government and the manner in which the non-governmental body does the thing does not differ in a meaningful way from the manner in which the government would do it.

[102] Where subsidies exist they may be subject to countervailing measures if they are specific in nature. According to subsection 2(7.2) of SIMA, a subsidy is considered to be specific when it is limited, in a legislative, regulatory or administrative instrument, or other public document, to a particular enterprise within the jurisdiction of the authority that is granting the subsidy; or is a prohibited subsidy.

[103] The following terms are defined in section 2 of SIMA. A "prohibited subsidy" is either an export subsidy or a subsidy or portion of subsidy that is contingent, in whole or in part, on the use of goods that are produced or that originate in the country of export. An "export subsidy" is a subsidy or portion of a subsidy contingent, in whole or in part, on export performance. An "enterprise" is defined as including a group of enterprises, an industry and a group of industries.

[104] Notwithstanding that a subsidy is not specific in law, under subsection 2(7.3) of SIMA a subsidy may also be considered specific having regard as to whether:

(a) there is exclusive use of the subsidy by a limited number of enterprises;
(b) there is predominant use of the subsidy by a particular enterprise;
(c) disproportionately large amounts of the subsidy are granted to a limited number of enterprises; and/or
(d) the manner in which discretion is exercised by the granting authority indicates that the subsidy is not generally available.

[105] For purposes of a subsidy investigation, the CBSA refers to a subsidy that has been found to be specific as an "actionable subsidy", meaning that it is subject to countervailing measures if the persons engaged in the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export or import of goods under investigation have benefited from the subsidy.

[106] Financial contributions provided by state-owned enterprises (SOEs) may also be considered to be provided by the GOC for purposes of this investigation. An SOE may be considered to constitute "government" for the purposes of subsection 2(1.6) of SIMA if it possesses, exercises, or is vested with, governmental authority. Without limiting the generality of the foregoing, the CBSA may consider the following factors as indicative of whether the SOE meets this standard: 1) the SOE is granted or vested with authority by statute; 2) the SOE is performing a government function; 3) the SOE is meaningfully controlled by the government; or some combination thereof.

[107] At the time of initiation of the investigation, the CBSA had identified 180 subsidy programs to be investigated. These programs can be classified under one of the following nine categories:

1. Special Economic Zone (SEZ) and Other Designated Areas Incentives;
2. Preferential Loans and Loan Guarantees;
3. Grants and Grant Equivalents;
4. Preferential Tax Programs;
5. Relief from Duties and Taxes on Inputs, Materials and Machinery;
6. Reduction in Land Use Fees;
7. Goods/Services Provided by the Government at Less than Fair Market Value;
8. Equity Programs; and
9. Subsidy Pass-through (i.e. upstream subsidies).

[108] Details regarding these potential subsidies were provided in the *Statement of Reasons* issued for the initiation of this investigation. This document is available through the CBSA Web site at the following address: www.cbsa-asfc.gc.ca/sima-lmsi.

Results of the Subsidy Investigation

[109] In conducting its investigation, the CBSA sent a subsidy RFI to the GOC, as well as to the potential exporters and producers located in China that had been identified in the complaint and through internal CBSA documentation. Information was requested in order to establish whether there had been financial contributions made by any level of government, including SOEs possessing, exercising or vested with government authority, and, if so, to establish if a benefit has been conferred on persons engaged in the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export or import of certain unitized wall modules; and whether any resulting subsidy was specific in nature. The exporters were requested to forward a portion of the RFI to their input suppliers of aluminum extrusions, glass products and steel products, who were asked to respond to questions pertaining to their legal characterization as SOEs. The exporters were also requested to forward a subsidy RFI to their aluminum extrusion suppliers, in the context of the investigation of upstream subsidies from the suppliers of these raw materials since aluminum extrusions were found to be subsidized in prior investigations. On May 22, 2013, the CBSA also sent RFIs to sixteen producers of aluminum extrusions in four countries, namely, Chinese Taipei, Malaysia, Mexico and India. These RFIs were seeking domestic pricing and costing information for the purposes of finding a non-subsidized benchmark price for aluminum extrusions in the context of the analysis of possible upstream subsidies from aluminum extrusion suppliers.

[110] The CBSA received responses to the exporter subsidy RFI from the following companies:

- Guangzhou Jangho and Associated Companies[12]
- Shenyang Yuanda and Associated Companies[13]
- Henry Yijian[14]

[111] The GOC did not provide a response to the subsidy RFI. Due to the lack of response from the GOC, subsidy amounts for all exporters have been determined under a ministerial specification pursuant to subsection 30.4(2) of SIMA. However, in consideration of the level of cooperation received from the exporters who provided complete responses to the subsidy RFI, individual amounts of subsidy have been determined for those exporters where sufficient information had been furnished to enable the necessary calculations.

[112] For the final determination, the CBSA determined an amount of subsidy for each of the two exporters in China who provided complete responses to the subsidy RFI, Guangzhou Jangho and Shenyang Yuanda, based on the information provided in their responses to the subsidy RFI. The CBSA was unable to determine a company-specific amount of subsidy for the remaining exporters as there was insufficient information on the record to do so.

[113] A summary of the findings for the named subsidy programs can be found in **Appendix 2**.

Guangzhou Jangho Curtain Wall System Engineering Co., Ltd.

[114] A substantially complete response to the Subsidy RFI was received from the exporter Guangzhou Jangho and from its parent company Beijing Jangho. Both Guangzhou Jangho and Beijing Jangho also responded to two supplemental RFIs. An on-site verification of both companies was conducted during the months of July and August 2013.

[115] For the purposes of the preliminary determination, the CBSA estimated, for Guangzhou Jangho, an amount of subsidy equal to 3.1% of the export price on the basis of the financial benefits received under the following 19 programs:

- Program 38: Technical Renovation Loan Interest Discount Fund;
- Program 42: Innovative Small and Medium-Sized Enterprise Grants;
- Program 54: Grant - Special Supporting Fund for Commercialization of Technological Innovation and Research Findings;
- Program 58: International market fund for small and medium sized export companies;
- Program 68: Awards for the Contributions to Local Economy and Industry Development;
- Program 82: Award for Excellent Enterprise;
- Program 91: Medium Size and Small Size Enterprises Development Special Fund;
- Program 96: Special Development Fund for Beijing Cultural Innovation Industry;

[12] Subsidy exhibit 81(NC)
[13] Subsidy exhibit 79(NC)
[14] Subsidy exhibit 88(NC)

- Program 97: Supporting Fund for Becoming Publicly Listed Company;
- Program 102: Brand Development Fund by Shunyi District Local Governments;
- Program 113: Supporting Fund for Science and Technology Expenses by Zengcheng Local Governments;
- Program 114: Supporting Fund for the Development from Guangzhou Local Governments;
- Program 121: Export Assistance Grant;
- Program 122: Research & Development (R&D) Assistance Grant;
- Program 136: Supporting fund provided to Service Outsourcing Enterprises for the Establishment of their Brands and the Acquisition of their International Qualification Accreditations;
- Program 142: Supporting Fund and Interest Assistance provided by Zengcheng Municipal Government to the Research and Development Projects accredited at Guangzhou Municipal Level, Guangdong Provincial Level and National level;
- Program 166: Corporate Income Tax Reduction for New High-Technology Enterprises;
- Program 170: Tax Offset for R&D Expenses in Guangdong Province; and
- Program 180: Subsidy Pass-Through from the Purchase of Aluminum Extrusions.

[116] During the final phase of the investigation the CBSA found that Beijing Jangho had also received benefits under the following six subsidy programs during the POI:

- Program 39: National Innovation Fund for Technology Based Firms;
- Program 48: Grant - Patent Application Assistance;
- Program 61: Grant - Special Fund for Fostering Stable Growth of Foreign Trade;
- Program 65: Special Fund for the Key Projects in the Cultural Innovation Industry by Shunyi District Local Government;
- Program 67: Subsidy for the Technology Development; and
- Program 107: Loan Subsidy for the Curtain Wall Technology Renovation Projects by Beijing Governments.

[117] During the final phase of the investigation the CBSA was provided with the income tax legislation and regulations in reference to the tax offset for research and development expenses which, supported by the CBSA's own research, indicated that the program was generally available to all companies throughout China. This resulted in the removal of the following program from the investigation:

- Program 170: Tax Offset for R&D Expenses in the Guangdong Province.

[118] For the purposes of the final determination, the CBSA determined that Guangzhou Jangho had received benefits from the following 10 programs during the POI:

- Program 38: Technical Renovation Loan Interest Discount Fund;
- Program 42: Innovative Small and Medium-Sized Enterprise Grants;
- Program 82: Award for Excellent Enterprise;
- Program 91: Medium Size and Small Size Enterprises Development Special Fund;
- Program 113: Supporting Fund for Science and Technology Expenses by Zengcheng Local Governments;
- Program 114: Supporting Fund for the Development from Guangzhou Local Governments;
- Program 136: Supporting fund provided to Service Outsourcing Enterprises for the Establishment of their Brands and the Acquisition of their International Qualification Accreditations;
- Program 142: Supporting Fund and Interest Assistance provided by Zengcheng Municipal Government to the Research and Development Projects accredited at Guangzhou Municipal Level, Guangdong Provincial Level and National level;
- Program 166: Corporate Income Tax Reduction for New High-Technology Enterprises; and
- Program 180: Subsidy Pass-Through from the Purchase of Aluminum Extrusions.

[119] For the purposes of the final determination, the CBSA determined that Beijing Jangho had received benefits from the following 16 programs during the POI:

- Program 39: National Innovation Fund for Technology Based Firms;
- Program 48: Grant - Patent Application Assistance;
- Program 54: Grant - Special Supporting Fund for Commercialization of Technological Innovation and Research Findings;
- Program 58: International market fund for small and medium sized export companies;
- Program 61: Grant - Special Fund for Fostering Stable Growth of Foreign Trade;
- Program 65: Special Fund for the Key Projects in the Cultural Innovation Industry by Shunyi District Local Government;
- Program 67: Subsidy for the Technology Development;
- Program 68: Awards for the Contributions to Local Economy and Industry Development;
- Program 82: Award for Excellent Enterprise;
- Program 96: Special Development Fund for Beijing Cultural Innovation Industry;
- Program 97: Supporting Fund for Becoming Publicly Listed Company;
- Program 102: Brand Development Fund by Shunyi District Local Governments;
- Program 107: Loan Subsidy for the Curtain Wall Technology Renovation Projects by Beijing Governments;

- Program 121: Export Assistance Grant;
- Program 122: Research & Development (R&D) Assistance Grant; and
- Program 166: Corporate Income Tax Reduction for New High-Technology Enterprises.

[120] For the purposes of the final determination, the CBSA attributed, based on consolidated sales, the subsidies received by Beijing Jangho to Guangzhou Jangho since Guangzhou Jangho, despite its status as a distinct legal entity, operates as a de-facto division of Beijing Jangho within the overall corporate structure.

[121] Accordingly, for the purposes of the final determination, the CBSA determined an amount of subsidy on the basis of the financial benefits received under the following 24 programs:

- Program 38: Technical Renovation Loan Interest Discount Fund;
- Program 39: National Innovation Fund for Technology Based Firms;
- Program 42: Innovative Small and Medium-Sized Enterprise Grants;
- Program 48: Grant - Patent Application Assistance;
- Program 54: Grant - Special Supporting Fund for Commercialization of Technological Innovation and Research Findings;
- Program 58: International market fund for small and medium sized export companies;
- Program 61: Grant - Special Fund for Fostering Stable Growth of Foreign Trade;
- Program 65: Special Fund for the Key Projects in the Cultural Innovation Industry by Shunyi District Local Government;
- Program 67: Subsidy for the Technology Development;
- Program 68: Awards for the Contributions to Local Economy and Industry Development;
- Program 82: Award for Excellent Enterprise;
- Program 91: Medium Size and Small Size Enterprises Development Special Fund;
- Program 96: Special Development Fund for Beijing Cultural Innovation Industry;
- Program 97: Supporting Fund for Becoming Publicly Listed Company;
- Program 102: Brand Development Fund by Shunyi District Local Governments;
- Program 107: Loan Subsidy for the Curtain Wall Technology Renovation Projects by Beijing Governments;
- Program 113: Supporting Fund for Science and Technology Expenses by Zengcheng Local Governments;
- Program 114: Supporting Fund for the Development from Guangzhou Local Governments;
- Program 121: Export Assistance Grant;
- Program 122: Research & Development (R&D) Assistance Grant;
- Program 136: Supporting fund provided to Service Outsourcing Enterprises for the Establishment of their Brands and the Acquisition of their International Qualification Accreditations;

- Program 142: Supporting Fund and Interest Assistance provided by Zengcheng Municipal Government to the Research and Development Projects accredited at Guangzhou Municipal Level, Guangdong Provincial Level and National level;
- Program 166: Corporate Income Tax Reduction for New High-Technology Enterprises; and
- Program 180: Subsidy Pass-Through from the Purchase of Aluminum Extrusions.

[122] On the basis of the information provided by Guangzhou Jangho and Beijing Jangho, the CBSA determined an amount of subsidy for Guangzhou Jangho equal to 3.8% of the export price or 32.01 Renminbi (RMB) per square meter. All subject goods exported by Guangzhou Jangho were found to be subsidized.

Shenyang Yuanda Aluminum Industry Engineering Co., Ltd.

[123] A substantially complete response to the Subsidy RFI was received from Shenyang Yuanda. Shenyang Yuanda also responded to three Supplementary RFI's sent by the CBSA, in addition to a few additional requests for clarification. An on-site verification was conducted in June 2013.

[124] For the purposes of the preliminary determination, the CBSA estimated an amount of subsidy equal to 4.6% of the export price on the basis of the financial benefits received under the following 14 programs:

- Program 19: VAT Refunds or Exemptions for the domestically purchased machinery, equipment and construction materials used for the production of exported goods and the construction of production facilities in the Export Processing Zone;
- Program 24: Supporting Fund Provided by Shenyang Economic & Technological Development Area Administration to the Enterprises to Encourage the Acquisition of Foreign Science & Technology Type Enterprises and the Employment of Foreign Science & Technology Development Experts;
- Program 28: Export Seller's Credit for High –and New Technology Products by China EXIM Bank ;
- Program 35: Awards to Enterprises whose Products Qualify for "Well-Known; Trademarks of China" or "Famous Brands of China";
- Program 48: Grant – Patent Application Assistance;
- Program 53: Grant – Provincial Foreign Economy and Trade Development Special Fund;
- Program 82: Award for Excellent Enterprise;
- Program 97: Supporting Fund for Becoming Publicly Listed Company;
- Program 141: Supporting Fund Provided by Shenyang Municipal Government to Enterprises to Maintain the Employment Level;
- Program 156: Liaoning High-tech Products & Equipment Export Interest Assistance;
- Program 164: Income Tax Refund for Re-Investment of FIE Profits by Foreign Investors;

- Program 174: Exemption of Tariff and Import VAT for the Imported Technologies and Equipment;
- Program 176: Reduction, Exemption or Refund of Land Use Fees, Land Rental Rates and Land Purchase/Transfer Prices; and
- Program 180: Subsidy Pass-Through from the Purchase of Aluminum Extrusions.

[125] During the final phase of the investigation, the CBSA continued to analyse and verify Shenyang Yuanda's response. For the purposes of the final determination, the amount of subsidy that was thought to have been provided under Program 24 at the preliminary determination was found to have been provided under Program 122: Research & Development (R&D) Assistance Grant. Further, the CBSA determined that the amount of benefits previously estimated under Program 82 was not allocable to the subject goods. Accordingly, Programs 24 and 82 were removed from the list of programs used by Shenyang Yuanda, while Program 122 was added to the list of programs.

[126] During the final phase of the investigation, the CBSA also found that Shenyang Yuanda received financial benefits under Program 166: Corporate Income Tax Reduction for New High-Technology Enterprises. Accordingly, this program was added to the list of programs used by Shenyang Yuanda.

[127] Accordingly, for the purposes of the final determination, the CBSA determined an amount of subsidy on the basis of the financial benefits received under the following 14 programs:

- Program 19: VAT Refunds or Exemptions for the domestically purchased machinery, equipment and construction materials used for the production of exported goods and the construction of production facilities in the Export Processing Zone;
- Program 28: Export Seller's Credit for High –and New Technology Products by China EXIM Bank (this basically consists of preferential loans from the EXIM Bank) ;
- Program 35: Awards to Enterprises whose Products Qualify for "Well-Known; Trademarks of China" or "Famous Brands of China";
- Program 48: Grant – Patent Application Assistance;
- Program 53: Grant – Provincial Foreign Economy and Trade Development Special Fund;
- Program 97: Supporting Fund for Becoming Publicly Listed Company;
- Program 122: Research & Development (R&D) Assistance Grant
- Program 141: Supporting Fund Provided by Shenyang Municipal Government to Enterprises to Maintain the Employment Level;
- Program 156: Liaoning High-tech Products & Equipment Export Interest Assistance;
- Program 164: Income Tax Refund for Re-Investment of FIE Profits by Foreign Investors;
- Program 166: Corporate Income Tax Reduction for New High-Technology Enterprises;

- Program 174: Exemption of Tariff and Import VAT for the Imported Technologies and Equipment;
- Program 176: Reduction, exemption or refund of Land Use Fees, Land Rental Rates and Land Purchase/Transfer Prices;
- Program 180: Subsidy Pass-Through from the Purchase of Aluminum Extrusions.

[128] On the basis of the information provided by Shenyang Yuanda, the CBSA determined an amount of subsidy of 5.3% of the export price or 64.83 RMB per square metre. All subject goods exported by Shenyang Yuanda were found to be subsidized.

Shanghai Henry Yijian Curtain Wall Manufacturing Co., Ltd.

[129] Henry Yijian provided a response to the exporter subsidy RFI. However, the response is incomplete.

[130] Henry Yijian was requested to provide the missing information and no response was received.

[131] Sufficient information has not been provided to the CBSA in order to determine an amount of subsidy for Henry Yijian using Henry Yijian's own information. Therefore, Henry Yijian's amount of subsidy was determined based on a ministerial specification pursuant to subsection 30.4(2) of SIMA using the same methodology as all other exporters who did not provide a response to the CBSA.

All other Exporters - Amount of Subsidy

[132] For all other exporters, the amount of subsidy has been determined under a ministerial specification, pursuant to subsection 30.4(2) of SIMA, based on:

1) the highest amount of subsidy for each of the 33 programs, as found at the final determination, for the cooperative exporters located in China, plus;
2) the average of the highest amounts of subsidy for the 33 programs in (1), applied to each of the remaining 146 potentially actionable subsidy programs for which information is not available or has not been provided at the final determination.

[133] Using the above methodology for all other exporters, the result is an amount of subsidy of 41.6%, expressed as a percentage of the export price, or 458.31 RMB per square metre.

[134] In summary, 100% of the subject goods from China are subsidized and the amount of subsidy is 25.8%, expressed as a percentage of the export price.

Summary of Results – Subsidy

Amount of Subsidy and Volume of Subsidized Goods
Period of Investigation - January 1, 2011 to December 31, 2012[15]

Country	Volume of Subsidized Goods as Percentage of Country Imports	Amount of Subsidy*	Volume of Country Imports as Percentage of Total Imports	Volume of Subsidized Goods as Percentage of Total Imports
China	100%	25.8%	96%	96%

* as a percentage of export price

[135] A summary regarding the amounts of subsidy for this investigation is provided in **Appendix 1.**

[136] In making a final determination of subsidizing under paragraph 41(1)(*a*) of SIMA, the President must be satisfied that the subject goods have been subsidized and that the amount of subsidy on the goods of a country is not insignificant. According to subsection 2(1) of SIMA, an amount of subsidy that is less than 1% of the export price of the goods is considered insignificant.

[137] However, according to section 41.2 of SIMA, the President is required to take into account Article 27.10 of the WTO *Agreement on Subsidies and Countervailing Measures* when conducting a subsidy investigation. This provision stipulates that a countervailing duty investigation involving a product from a developing country should be terminated as soon as the authorities determine that the overall level of subsidies granted upon the product in question does not exceed 2% of its value calculated on a per unit basis.

[138] SIMA does not define or provide any guidance regarding the determination of a "developing country" for purposes of Article 27.10 of the WTO *Agreement on Subsidies and Countervailing Measures*. As an administrative alternative, the CBSA refers to the *Development Assistance Committee List of Official Development Assistance Recipients* (DAC List of ODA Recipients) for guidance.[16] As China is included in the listing, the CBSA will extend developing country status to China for purposes of this investigation. As the preceding table illustrates, the amount of subsidy found during this investigation is not insignificant.

[15] The CBSA's import documentation was used to determine the imports of certain unitized wall modules during the POI. Since import volume information on the customs documentation was reported in various units of measure (i.e. m^2, number of modules, kg, etc.), it was not feasible to determine the imports of certain unitized wall modules by volume. As a result, import value was used as the unit of measure for determining imports of certain unitized wall modules.

[16] The Organization for Economic Co-operation and Development, DAC List of ODA Recipients from 2011 to 2013, the document is available at: www.oecd.org/dac/stats/DAC%20List%20used%20for%202012%20and%202013%20flows.pdf

[139] For purposes of the preliminary determination of subsidizing, the President has responsibility for determining whether the actual or potential volume of subsidized goods is negligible. After a preliminary determination of subsidizing, the Tribunal assumes this responsibility. In accordance with subsection 42(4.1) of SIMA, the Tribunal is required to terminate its inquiry in respect of any goods if the Tribunal determines that the volume of subsidized goods from a country is negligible.

Representations Concerning the Subsidy Investigation

[140] Following the August 30, 2013 close of the record, three case briefs and three reply submissions were received from counsel representing the Complainants, Guangzhou Jangho and Shenyang Yuanda.

[141] Issues raised by participants through case briefs and reply submissions pertaining to the subsidy investigation and the CBSA's response to these issues are provided in **Appendix 3**.

DECISIONS

[142] On the basis of the results of the dumping investigation, the President is satisfied that certain unitized wall modules originating in or exported from China, have been dumped and that the margin of dumping is not insignificant. Consequently, on October 10, 2013, the President made a final determination of dumping pursuant to paragraph 41(l)(*a*) of SIMA.

[143] On the basis of the results of the subsidy investigation, the President is satisfied that certain unitized wall modules originating in or exported from China have been subsidized and that the amount of subsidy is not insignificant. Consequently, on October 10, 2013, the President made a final determination of subsidizing pursuant to paragraph 41(l)(*a*) of SIMA.

[144] **Appendix 1** contains a summary of the margins of dumping and amounts of subsidy relating to the final determinations.

FUTURE ACTION

[145] The provisional period began on July 15, 2013, and will end on the date the Tribunal issues its finding. The Tribunal is expected to issue its decision by November 12, 2013. Subject goods imported during the provisional period will continue to be assessed provisional duties as determined at the time of the preliminary determinations. For further details on the application of provisional duties, refer to the *Statement of Reasons* issued for the preliminary determinations, which is available on the CBSA's Web site at www.cbsa-asfc.gc.ca/sima-lmsi.

[146] If the Tribunal finds that the dumped and subsidized goods have not caused injury and do not threaten to cause injury, all proceedings relating to these investigations will be terminated. In this situation, all provisional duties paid or security posted by importers will be returned.

[147] If the Tribunal finds that the dumped and subsidized goods have caused injury, the anti-dumping and/or countervailing duties payable on subject goods released by the CBSA during the provisional period will be finalized pursuant to section 55 of SIMA. Imports released by the CBSA after the date of the Tribunal's finding will be subject to anti-dumping duty equal to the margin of dumping and countervailing duty equal to the amount of subsidy.

[148] The importer in Canada shall pay all applicable duties. If the importers of such goods do not indicate the required SIMA code or do not correctly describe the goods in the customs documents, an administrative monetary penalty could be imposed. The provisions of the *Customs Act*[17] apply with respect to the payment, collection or refund of any duty collected under SIMA. As a result, failure to pay duty within the prescribed time will result in the application of interest.

[149] In the event of an injury finding by the Tribunal, normal values and amounts of subsidy have been provided to the co-operating exporters for future shipments to Canada and these normal values and amounts of subsidy would come into effect the day after an injury finding. Information regarding normal values of the subject goods should be obtained from the exporter.

[150] Exporters of subject goods who did not provide sufficient information in the dumping investigation will have normal values established by advancing the export price by 120% based on a ministerial specification pursuant to section 29 of SIMA. Anti-dumping duty will apply based on the amount by which the normal value exceeds the export price of the subject goods. Similarly, exporters of subject goods who did not provide sufficient information in the subsidy investigation will be subject to a countervailing duty amount of 458.31 RMB per square metre, based on a ministerial specification pursuant to subsection 30.4(2) of SIMA.

RETROACTIVE DUTY ON MASSIVE IMPORTATIONS

[151] Under certain circumstances, anti-dumping and/or countervailing duty can be imposed retroactively on subject goods imported into Canada. When the Tribunal conducts its inquiry on material injury to the Canadian industry, it may consider if dumped and/or subsidized goods that were imported close to or after the initiation of the investigation constitute massive importations over a relatively short period of time and have caused injury to the Canadian industry. Should the Tribunal issue a finding that there were recent massive importations of dumped and/or subsidized goods that caused injury, imports of subject goods released by the CBSA in the 90 days preceding the day of the preliminary determination could be subject to anti-dumping and/or countervailing duty.

[152] In respect of importations of subsidized goods that have caused injury, this provision is only applicable where the CBSA has determined that the whole or any part of the subsidy on the goods is a prohibited subsidy. In such a case, the amount of countervailing duty applied on a retroactive basis will equal the amount of subsidy on the goods that is a prohibited subsidy. An export subsidy is a prohibited subsidy according to subsection 2(1) of SIMA.

[17] *Customs Act* R.S.C. 1985

PUBLICATION

[153] A notice of these final determinations of dumping and subsidizing will be published in the *Canada Gazette* pursuant to paragraph 41(3)(*a*) of SIMA.

INFORMATION

[154] This *Statement of Reasons* has been provided to persons directly interested in these proceedings. It is also posted on the CBSA's Web site at the address below. For further information, please contact the officers identified as follows:

Mail: SIMA Registry and Disclosure Unit
Anti-dumping and Countervailing Directorate
Canada Border Services Agency
100 Metcalfe Street, 11th floor
Ottawa, Ontario K1A 0L8
Canada

Telephone: Dean Pollard 613-954-7410
Robert Wright 613-954-1643

Fax: 613-948-4844

E-mail: simaregistry@cbsa-asfc.gc.ca

Web site: www.cbsa-asfc.gc.ca/sima-lmsi

Caterina Ardito-Toffolo
Acting Director General
Anti-dumping and Countervailing Directorate

Attachments

APPENDIX 1 – SUMMARY OF MARGINS OF DUMPING AND AMOUNTS OF SUBSIDY

Exporters	Margin of Dumping*	Amount of Subsidy (RMB per m^2)	Amount of Subsidy*
Guangzhou Jangho Curtain Wall System Engineering Co., Ltd.	15.7%	32.01	3.8%
Shenyang Yuanda Aluminum Industry Engineering Co., Ltd.	49.3%	64.83	5.3%
All Other Exporters	120%	458.31	41.6%

* as a percentage of export price

APPENDIX 2 – SUMMARY OF FINDINGS FOR NAMED SUBSIDY PROGRAMS

As noted in the body of this document, the Government of China (GOC) did not submit a response to the subsidy RFI, and therefore did not provide the required information relating to financial contribution, benefit and specificity. This significantly impeded the CBSA's investigation as all information has not been furnished to enable the determination of the amount of subsidy in the prescribed manner. Due to this lack of information, subsidy amounts for all exporters have been determined under a ministerial specification pursuant to subsection 30.4(2) of SIMA based on the best information available to the CBSA. In consideration of the level of cooperation received from Guangzhou Jangho and Shenyang Yuanda, individual amounts of subsidy have been determined for those exporters where sufficient information had been furnished to enable the necessary calculations.

At the time of initiation, the CBSA identified 180 programs for review. The CBSA removed *Program 170: Tax Offset for R&D Expenses in Guangdong Province* from the investigation as it was determined that the program was not specific.

This appendix contains descriptions of the 33 subsidy programs used by the cooperative exporters, followed by a listing of the 146 potentially actionable subsidy programs identified by the CBSA.

SUBSIDY PROGRAMS USED BY COOPERATIVE EXPORTERS

The CBSA has used the best information available to describe the subsidy programs used by the cooperative exporters in the investigation. This includes using information obtained from CBSA research on potential subsidy programs in China, information provided by the responding exporters and descriptions of programs that the CBSA has previously publicly published in recent *Statements of Reasons* relating to subsidy investigations involving China. Since the GOC did not submit a response to the Subsidy RFI, the information available to identify the legal instruments pertaining to the programs is limited and such references may be inaccurate or incomplete.

Program 19: VAT Refunds or Exemptions for the Domestically Purchased Machinery, Equipment and Construction Materials Used for the Production of Exported Goods and the Construction of Production Facilities in the Export Processing Zone

During the POI, one of the exporters received benefits under this program, or a similar program refunding VAT for domestically purchased machinery. The exporter provided very limited information with respect to the program and the GOC provided no information.

The granting authority responsible for this program is the State Administration of Taxation and the program is administered by local tax authorities. The program is contingent on using domestically made machinery used for certain encouraged projects (as per a published list of encouraged projects) by foreign-invested enterprises (FIE).

The program may no longer be effective as of January 1, 2009, as per the *Notification from Ministry of Finance and State Administration of Taxation on Certain Issues of National Implementation of VAT Reform*; *Ref [2008}170.* Nevertheless, since such benefits are allocated over the useful life of the machinery (i.e. usually over a 10-year lifespan), benefits under this program are still applicable to the POI.

On the basis of the limited available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA; i.e. a practice of government that involves a direct transfer of funds. This grant confers a direct benefit to the recipient in the form of a grant, and the benefit is equal to the amount of the grant provided.

Due to the lack of a response by the GOC, and the lack of details provided by the exporter, there is not sufficient information on the record to determine whether the grant is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information, this program does not appear to be generally available to all enterprises in China and thus appears to be specific. In fact, the benefit appears to be limited to investment in machinery used in projects that belong to encouraged programs by FIEs.

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

Program 28: **Export Seller's Credit for High- and New-Technology Products by China EXIM Bank**

During the POI, one of the exporters benefited from preferential loans from the Export-Import Bank of China (EXIM) Bank.

Financial institutions may be considered to constitute "government" if they possess, exercise or are vested with government authority, which may be indicated by the following factors:

- where a statute or other legal instrument expressly vests government authority in the entity concerned;
- evidence that an entity is, in fact, exercising governmental functions; or
- evidence that a government exercises meaningful control over an entity.

For the purposes of the investigation, the CBSA is considering the EXIM Bank of China, a Policy Bank, as government. Export Seller's Credit refers to loans provided to an exporter to finance its export of manufactured or purchased mechanical and electronic products, complete sets of equipment, and high-tech and new-tech products as well as the provision of labour service. The EXIM Bank of China website specifically refers to "Chinese government concessional loan and preferential export buyer's credit" [18]. It also states that the capital of the Bank comes from fiscal allocation of the Chinese government. It further states that "the credit is provided for the purpose of lending strong government support in line with relevant national industrial, foreign trade, financial and fiscal policies". It thus appears that the China EXIM Bank, is "government" for the purposes of SIMA. In order to assess whether or not there was a financial contribution, the CBSA established a benchmark to which it could compare the loan interest rates submitted by the exporter. For the purposes of the investigation, the CBSA used the People's Bank of China (PBC) benchmark rates that were in effect when the loans were provided, which was available on the record[19].

The CBSA considered the difference between the exporters' loan interest rates that are below the PBC rates to constitute a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA; i.e., amounts that would otherwise be owing and due to the government are exempted or deducted or amounts that are owing and due to the government are forgiven or not collected. The above confers a benefit to the exporter by way of reducing its financial costs upon obtaining loans from a financial institution, and the benefit is equal to the amount of the exemption/deduction.

Due to the lack of a response by the GOC, and the lack of details provided by the exporter, there is not sufficient information on the record to determine whether the grant is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information, this program does not appear to be generally available to all enterprises in China as it seems to target high-tech and new-tech producers and thus appears to be specific.

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

Program 35: Awards to Enterprises whose Products Qualify for "Well-Known Trademarks of China" or "Famous Brands of China"

During the POI, one of the exporters received benefits under this program. The exporter provided very limited information with respect to this program and the GOC provided no information.

The program appears to be contingent on receiving the "Well-Known Trademarks of China" or "Famous Brands of China" status. It appears to be jointly administered at both the local government level in Shenyang and at the provincial level in the Liaoning province.

[18] CBSA Exhibits S154 (NC).; http://english.eximbank.gov.cn/businessarticle/activities/export/200905/9395_1.html
[19] CBSA Exhibits S153 (NC).

On the basis of the limited available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA; i.e., a practice of government that involves a direct transfer of funds. This grant confers a direct benefit to the recipient in the form of a grant, and the benefit is equal to the amount of the grant provided.

Due to the lack of a response by the GOC and the lack of details provided by the exporter, there is not sufficient information on the record to determine whether the grant is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information, this program does not appear to be generally available to all enterprises in China as it seems to target enterprises whose products qualify for "well-known trademarks of China" of "famous brands of China" and thus appears to be specific.

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

Program 38: Technical Renovation Loan Interest Discount Fund

During the POI, one of the exporters received benefits under this program. The exporter provided very limited information with respect to this program and the GOC provided no information.

Based on information provided by the exporter, the granting authority responsible for this program is the Guangdong Department of Finance and the program is administered by the Guangdong Economic and Information Commission. This program was established to support technology improvement and innovation projects and industrial transformation and upgrading projects.

On the basis of the limited available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA; i.e., a practice of government that involves a direct transfer of funds. This grant confers a direct benefit to the recipient in the form of a grant, and the benefit is equal to the amount of the grant provided.

Due to the lack of a response by the GOC and the lack of details provided by the exporter, there is not sufficient information on the record to determine whether the grant is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information this program does not appear to be generally available to all enterprises in China.

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

Program 39: National Innovation Fund for Technology Based Firms

During the POI, one of the exporters received benefits under this program. The exporter provided very limited information with respect to this program and the GOC provided no information.

Based on information provided by the exporter this program was administered by the Beijing Municipal Commission of Development and Reform. This program was established to support innovations in the Beijing manufacturing industry. The grant was received during the fiscal year 2007 and is amortized based on the useful life of the assets.

On the basis of the limited available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA; i.e., a practice of government that involves a direct transfer of funds. This grant confers a direct benefit to the recipient in the form of a grant, and the benefit is equal to the amount of the grant provided.

Due to the lack of a response by the GOC and the lack of details provided by the exporter, there is not sufficient information on the record to determine whether the grant is specific pursuant to sub-section 2(7.2) or subsection 2(7.3) of SIMA. On the basis of the available information this program does not appear to be generally available to all enterprises in China.

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

Program 42: Innovative Small and Medium-Sized Enterprise Grants

During the POI, one of the exporters received benefits under this program. The exporter provided very limited information with respect to this program and the GOC provided no information.

Based on information provided by the exporter the granting authority responsible for this program is the Guangdong Department of Finance and the program is administered by the Guangdong Small and Medium-sized Enterprise Bureau. This program was established to encourage small and medium-sized enterprises to perform technical innovations and product innovations and to increase employment.

On the basis of the limited available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA; i.e., a practice of government that involves a direct transfer of funds. This grant confers a direct benefit to the recipient in the form of a grant, and the benefit is equal to the amount of the grant provided.

Due to the lack of a response by the GOC and the lack of details provided by the exporter, there is not sufficient information on the record to determine whether the grant is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information this program does not appear to be generally available to all enterprises in China.

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

Program 48: Grant - Patent Application Assistance

During the POI, two of the exporters received benefits under this program. The exporters provided very limited information with respect to this program and the GOC provided no information.

Based on information provided by one of the exporters this program was administered by the Shenyang Science and Technology Bureau. Similarly, such a program was also found to be administered by the Beijing Intellectual Property Bureau.

On the basis of the limited available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA; i.e., a practice of government that involves a direct transfer of funds. This grant confers a direct benefit to the recipient in the form of a grant, and the benefit is equal to the amount of the grant provided.

Due to the lack of a response by the GOC and the lack of details provided by the exporters, there is not sufficient information on the record to determine whether the grant is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information this program does not appear to be generally available to all enterprises in China.

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

Program 53: Grant - Provincial Foreign Economy and Trade Development Special Fund

During the POI, one of the exporters received benefits under this program. The exporter provided very limited information with respect to this program and the GOC provided no information.

On the basis of the information provided by the exporter, the program appears to be administered by the Shenyang Finance Bureau. The grants appear to be provided as Development Funds for International Service Outsourcing Industry or as Funds for Foreign Trade.

On the basis of the limited available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA; i.e., a practice of government that involves a direct transfer of funds. This grant confers a direct benefit to the recipient in the form of a grant, and the benefit is equal to the amount of the grant provided.

Due to the lack of a response by the GOC and the lack of details provided by the exporter, there is not sufficient information on the record to determine whether the grant is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information this program does not appear to be generally available to all enterprises in China.

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

Program 54: Grant - Special Supporting Fund for Commercialization of Technological Innovation and Research Findings

During the POI, one of the exporters received benefits under this program. The exporter provided very limited information with respect to this program and the GOC provided no information.

Based on information provided by the exporter, this program was administered by the Science and Technology Commission of Shunyi District. This program was established to encourage technological innovations and to promote scientific and technological results.

On the basis of the limited available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA; i.e., a practice of government that involves a direct transfer of funds. This grant confers a direct benefit to the recipient in the form of a grant, and the benefit is equal to the amount of the grant provided.

Due to the lack of a response by the GOC and the lack of details provided by the exporter, there is not sufficient information on the record to determine whether the grant is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information this program does not appear to be generally available to all enterprises in China.

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

Program 58: International Market Fund for Small and Medium Sized Export Companies

During the POI, one of the exporters received benefits under this program. The exporter provided very limited information with respect to this program and the GOC provided no information.

As per information available to the CBSA, this program was established in a document titled 'Measure CaiQi [2010] No. 87' in order to provide support for export companies identified as small and medium-sized enterprises. The funds are provided for developing international markets including overseas exhibitions, certification of enterprise management systems, various product certifications, foreign patent applications, promotional activities in international markets, electronic business, foreign advertisement and trademark registration, international investigation, bids (negotiations) abroad, enterprise training, foreign technology and brand acquisition, etc. Benefits granted to an enterprise under this program shall not exceed 50% of the total expenditure paid by the enterprise. This program is administered jointly by the Ministry of Finance and the Ministry of Commerce.

On the basis of the limited available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA; i.e., a practice of government that involves a direct transfer of funds. This grant confers a direct benefit to the recipient in the form of a grant, and the benefit is equal to the amount of the grant provided.

Due to the lack of a response by the GOC and the lack of details provided by the exporter, there is not sufficient information on the record to determine whether the grant is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information this program does not appear to be generally available to all enterprises in China.

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

Program 61: Grant - Special Fund for Fostering Stable Growth of Foreign Trade

During the POI, one of the exporters received benefits under this program. The exporter provided very limited information with respect to this program, while the GOC provided none. Based on information provided by the exporter this program was administered by the Beijing Commerce Commission. This program was established to support export sales.

On the basis of the limited available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA; i.e., a practice of government that involves a direct transfer of funds. This grant confers a direct benefit to the recipient in the form of a grant, and the benefit is equal to the amount of the grant provided.

Due to the lack of a response by the GOC and the lack of details provided by the exporter, there is not sufficient information on the record to determine whether the grant is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information this program does not appear to be generally available to all enterprises in China.

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

Program 65: Special Fund for the Key Projects in the Cultural Innovation Industry by Shunyi District Local Government

During the POI, one of the exporters received benefits under this program. The exporter provided very limited information with respect to this program and the GOC provided no information.

Based on information provided by the exporter this program is administered by the Niulanshan Town People's Government, Shunyi District. This program was established to provide financial assistance to Beijing enterprises during the financial crisis. The grant was received during the fiscal year 2009 and is amortized based on the useful life of the assets.

On the basis of the limited available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA; i.e., a practice of government that involves a direct transfer of funds. This grant confers a direct benefit to the recipient in the form of a grant, and the benefit is equal to the amount of the grant provided.

Due to the lack of a response by the GOC and the lack of details provided by the exporter, there is not sufficient information on the record to determine whether the grant is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information this program does not appear to be generally available to all enterprises in China.

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

Program 67: Subsidy for the Technology Development

During the POI, one of the exporters received benefits under this program. The exporter provided very limited information with respect to this program and the GOC provided no information.

Based on information provided by the exporter this program is administered by the Beijing Municipal Science and Technology Commission. The grant was received during the fiscal year 2012 and is amortized based on the useful life of the assets.

On the basis of the limited available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA; i.e., a practice of government that involves a direct transfer of funds. This grant confers a direct benefit to the recipient in the form of a grant, and the benefit is equal to the amount of the grant provided.

Due to the lack of a response by the GOC and the lack of details provided by the exporter, there is not sufficient information on the record to determine whether the grant is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information this program does not appear to be generally available to all enterprises in China.

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

Program 68: Awards for the Contributions to Local Economy and Industry Development

During the POI, one of the exporters received benefits under this program. The exporter provided very limited information with respect to this program and the GOC provided no information.

Based on information provided by the exporter this program was administered by the Beijing Economic and Information Commission, the Beijing Finance Bureau and the Beijing Statistic Bureau. This program was established to support enterprises which support the local economy and the industry development.

On the basis of the limited available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA; i.e., a practice of government that involves a direct transfer of funds. This grant confers a direct benefit to the recipient in the form of a grant, and the benefit is equal to the amount of the grant provided.

Due to the lack of a response by the GOC and the lack of details provided by the exporter, there is not sufficient information on the record to determine whether the grant is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information this program does not appear to be generally available to all enterprises in China.

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

Program 82: Award for Excellent Enterprise

During the POI, one of the exporters received benefits under this program. The exporter provided very limited information with respect to this program and the GOC provided no information.

Based on information provided by the exporter this program was administered at the municipal level. This program appears to have been established to improve labor relations.

On the basis of the limited available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA; i.e., a practice of government that involves a direct transfer of funds. This grant confers a direct benefit to the recipient in the form of a grant, and the benefit is equal to the amount of the grant provided.

Due to the lack of a response by the GOC and the lack of details provided by the exporter, there is not sufficient information on the record to determine whether the grant is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information this program does not appear to be generally available to all enterprises in China.

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

Program 91: Medium Size and Small Size Enterprises Development Special Fund

During the POI, one of the exporters received benefits under this program. The exporter provided very limited information with respect to this program and the GOC provided no information.

Based on information provided by the exporter this program was administered by the Guangzhou Economic and Trade Commission and the Guangzhou Finance Bureau. This program was established to support small and medium-sized enterprises to perform technology reforms and innovations.

On the basis of the limited available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA; i.e., a practice of government that involves a direct transfer of funds. This grant confers a direct benefit to the recipient in the form of a grant, and the benefit is equal to the amount of the grant provided.

Due to the lack of a response by the GOC and the lack of details provided by the exporter, there is not sufficient information on the record to determine whether the grant is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information this program does not appear to be generally available to all enterprises in China.

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

Program 96: Special Development Fund for Beijing Cultural Innovation Industry

During the POI, one of the exporters received benefits under this program. The exporter provided very limited information with respect to this program and the GOC provided no information.

Based on information provided by the exporter this program was administered by the Beijing Shunyi District Culture Creative Industry Improvement Office. This program was established to support the cultural creative industry projects.

On the basis of the limited available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA; i.e., a practice of government that involves a direct transfer of funds. This grant confers a direct benefit to the recipient in the form of a grant, and the benefit is equal to the amount of the grant provided.

Due to the lack of a response by the GOC and the lack of details provided by the exporter, there is not sufficient information on the record to determine whether the grant is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information this program does not appear to be generally available to all enterprises in China.

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

Program 97: Supporting Fund for Becoming Publicly Listed Company

During the POI, the two cooperative exporters received benefits under this program. The exporters provided very limited information with respect to this program and the GOC provided no information.

Based on information provided by one of the exporters this program was administered by the Beijing Shunyi District Financial Service Office. This program was established to support companies located in the Shunyi district that intend to become publicly listed companies. Similarly, such a program was also found to be administered by the Shenyang Economic & Technological Development District Finance Bureau and the Shenyang Finance Bureau.

On the basis of the limited available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA; i.e., a practice of government that involves a direct transfer of funds. This grant confers a direct benefit to the recipient in the form of a grant, and the benefit is equal to the amount of the grant provided.

Due to the lack of a response by the GOC and the lack of details provided by the exporters, there is not sufficient information on the record to determine whether the grant is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information, this program does not appear to be generally available to all enterprises in China and thus appears to be specific. This program appears to be contingent on the recipient being a publicly listed company.

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

Program 102: Brand Development Fund by Shunyi District Local Governments

During the POI, one of the exporters received benefits under this program. The exporter provided very limited information with respect to this program and the GOC provided no information.

Based on information provided by the exporter this program was administered by the Beijing Industry and Commerce Administrative Bureau. This program was established to support enterprises that own a famous brand.

On the basis of the limited available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA; i.e., a practice of government that involves a direct transfer of funds. This grant confers a direct benefit to the recipient in the form of a grant, and the benefit is equal to the amount of the grant provided.

Due to the lack of a response by the GOC and the lack of details provided by the exporter, there is not sufficient information on the record to determine whether the grant is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information this program does not appear to be generally available to all enterprises in China.

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

Program 107: Loan Subsidy for the Curtain Wall Technology Renovation Projects by Beijing Governments

During the POI, one of the exporters received benefits under this program. The exporter provided very limited information with respect to this program and the GOC provided no information.

Based on information provided by the exporter this program was administered by the Beijing Municipal Commission of Development and Reform. This program was established to support technological transformation projects. The grant was received during the fiscal year 2010 and is amortized based on the useful life of the assets.

On the basis of the limited available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA; i.e., a practice of government that involves a direct transfer of funds. This grant confers a direct benefit to the recipient in the form of a grant, and the benefit is equal to the amount of the grant provided.

Due to the lack of a response by the GOC and the lack of details provided by the exporter, there is not sufficient information on the record to determine whether the grant is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information this program does not appear to be generally available to all enterprises in China.

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

Program 113: Supporting Fund for Science and Technology Expenses by Zengcheng Local Governments

During the POI, one of the exporters received benefits under this program. The exporter provided very limited information with respect to this program and the GOC provided no information.

Based on information provided by the exporter this program was administered by the Zengcheng Science and Technology Economic Trade and Information Bureau and the Guangzhou Science and Technology and Information Bureau. This program was established to support innovative companies.

On the basis of the limited available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA; i.e., a practice of government that involves a direct transfer of funds. This grant confers a direct benefit to the recipient in the form of a grant, and the benefit is equal to the amount of the grant provided.

Due to the lack of a response by the GOC and the lack of details provided by the exporter, there is not sufficient information on the record to determine whether the grant is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information this program does not appear to be generally available to all enterprises in China.

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

Program 114: Supporting Fund for the Development from Guangzhou Local Governments

During the POI, one of the exporters received benefits under this program. The exporter provided very limited information with respect to this program and the GOC provided no information.

Based on information provided by the exporter this program was administered by the Guangdong Department of Finance and the Guangzhou Finance Bureau. This program was established to encourage and support enterprises to establish proprietary brands and to own intellectual property.

On the basis of the limited available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA; i.e., a practice of government that involves a direct transfer of funds. This grant confers a direct benefit to the recipient in the form of a grant, and the benefit is equal to the amount of the grant provided.

Due to the lack of a response by the GOC and the lack of details provided by the exporter, there is not sufficient information on the record to determine whether the grant is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information this program does not appear to be generally available to all enterprises in China.

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

Program 121: Export Assistance Grant

During the POI, one of the exporters received benefits under this program. The exporter provided very limited information with respect to this program and the GOC provided no information.

As per information available to the CBSA, this program was established in the *Circular of the Trial Measures of the Administration of International Market Development Funds for Small and Medium-sized Enterprises Cai Qi No. 467, 2000*, which was promulgated and came into force on October 24, 2000. This program was established to support the development of Small and Medium-sized Enterprises (SMEs), to encourage SMEs to join in the competition of international markets, to reduce the business risks of the enterprises, and to promote the development of the national economy. The granting authority responsible for this program is the Foreign Trade and Economic Department and the program is administered at local levels.

On the basis of the limited available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA; i.e., a practice of government that involves a direct transfer of funds. This grant confers a direct benefit to the recipient in the form of a grant, and the benefit is equal to the amount of the grant provided.

Due to the lack of a response by the GOC and the lack of details provided by the exporter, there is not sufficient information on the record to determine whether the grant is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information this program does not appear to be generally available to all enterprises in China.

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

Program 122: Research & Development (R&D) Assistance Grant

During the POI, two exporters received benefits under this program. The exporters provided very limited information with respect to this program and the GOC provided no information.

Based on information provided by one of the exporters, this program was administered by the Beijing Municipal Science and Technology Commission. This program appears to have been established to encourage and support enterprises to develop new products and to strengthen support to innovative products with intellectual property rights and high technology content. Based on information provided by a second exporter, the GOC document related to this program may be the "*Implementation Measure to Support the Acquisition of Foreign Science & Technology Type Enterprises and the Employment of Foreign Science & Technology Development Team*", issued by the Shenyang Economic & Technological Development Area administration. As per the exporter, the grant was provided as Funds for Introduction of Foreign Experts.

On the basis of the limited available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA; i.e., a practice of government that involves a direct transfer of funds. This grant confers a direct benefit to the recipient in the form of a grant, and the benefit is equal to the amount of the grant provided.

Due to the lack of a response by the GOC and the lack of details provided by the exporter, there is not sufficient information on the record to determine whether the grant is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information this program does not appear to be generally available to all enterprises in China.

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

Program 136: Supporting fund provided to Service Outsourcing Enterprises for the Establishment of their Brands and the Acquisition of their International Qualification Accreditations

During the POI, one of the exporters received benefits under this program. The exporter provided very limited information with respect to this program and the GOC provided no information.

Based on information provided by the exporter this program was administered by the Guangzhou Foreign Trade and Economic Cooperation Bureau and the Guangzhou Finance Bureau. This program was established to support service outsourcing enterprises.

On the basis of the limited available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA; i.e., a practice of government that involves a direct transfer of funds. This grant confers a direct benefit to the recipient in the form of a grant, and the benefit is equal to the amount of the grant provided.

Due to the lack of a response by the GOC and the lack of details provided by the exporter, there is not sufficient information on the record to determine whether the grant is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information this program does not appear to be generally available to all enterprises in China.

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

Program 141: **Supporting Fund provided by Shenyang Municipal Government to the Enterprises to Maintain the Employment Level**

During the POI, one of the exporters received benefits under this program. The exporter provided very limited information with respect to this program and the GOC provided no information.

Based on information provided by the exporter this program was administered by Shenyang Human Resources and Social Security Bureau. Similar programs were also found to be administered in other local jurisdictions by the Shanghai City Jiading District Huating Town Finance Affair Center as well as the Foshan City Shancheng District Social Insurance Fund Management Bureau. Grants were provided to maintain the employment level, train new employees or hire new graduates.

On the basis of the limited available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA; i.e., a practice of government that involves a direct transfer of funds. This grant confers a direct benefit to the recipient in the form of a grant, and the benefit is equal to the amount of the grant provided.

Due to the lack of a response by the GOC and the lack of details provided by the exporter, there is not sufficient information on the record to determine whether the grant is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information this program does not appear to be generally available to all enterprises in China.

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

Program 142: **Supporting Fund and Interest Assistance provided by Zengcheng Municipal Government to the Research and Development Projects accredited at Guangzhou Municipal Level, Guangdong Provincial Level and National level**

During the POI, one of the exporters received benefits under this program. The exporter provided very limited information with respect to this program and the GOC provided no information.

Based on information provided by the exporter this program was administered by the Guangzhou Intellectual Property Bureau and the Zengcheng Intellectual Property Bureau. This program was established to support research and development projects.

On the basis of the limited available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA; i.e., a practice of government that involves a direct transfer of funds. This grant confers a direct benefit to the recipient in the form of a grant, and the benefit is equal to the amount of the grant provided.

Due to the lack of a response by the GOC and the lack of details provided by the exporter, there is not sufficient information on the record to determine whether the grant is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information this program does not appear to be generally available to all enterprises in China.

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

Program 156: **Liaoning High-Tech Products & Equipment Exports Interest Assistance**

During the POI, one of the exporters received benefits under this program. The exporter provided very limited information with respect to this program and the GOC provided no information.

Based on information provided by the exporter this program was administered by the Shenyang Finance Bureau. The program provides "Interest Subsidy Fund for Technology Exports".

On the basis of the limited available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA; i.e., a practice of government that involves a direct transfer of funds. This grant confers a direct benefit to the recipient in the form of a grant, and the benefit is equal to the amount of the grant provided.

Due to the lack of a response by the GOC and the lack of details provided by the exporter, there is not sufficient information on the record to determine whether the grant is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information this program does not appear to be generally available to all enterprises in China.

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

Program 164: **Income Tax Refund for Re-investment of FIE Profits by Foreign Investors**

During the POI, one of the exporters received benefits under this program. The exporter provided very limited information with respect to this program and the GOC provided no information.

As per information available to the CBSA, this program was established under a previous version of the *Income Tax Law of the People*'s *Republic of China for Enterprises With Foreign Investment and Foreign Enterprises, subject to the Notice of Ministry of Finance and the State Administration of Taxation on Enterprise Income Tax Preferential Policy for Foreign Investment Enterprise's(FIE) Additional Investment(2002).* The benefit under this program was available for five years, until fiscal year 2011, inclusively. The tax benefit seems to be contingent on an increase in the company's capital account in a specific year.

On the basis of the limited available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA; i.e., a practice of government that involves a direct transfer of funds. This grant confers a direct benefit to the recipient in the form of a grant, and the benefit is equal to the amount of the grant provided.

Due to the lack of a response by the GOC and the lack of details provided by the exporter, there is not sufficient information on the record to determine whether the grant is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information, this program does not appear to be generally available to all enterprises in China and thus appears to be specific. In fact, the program seems to be limited to certain FIEs.

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

Program 166: Corporate Income Tax Reduction for New High-Technology Enterprises

During the POI, the two cooperative exporters received benefits under this program. The exporters provided limited information with respect to this program and the GOC provided no information.

As per information available to the CBSA, this program, which came into effect as of January 1, 2008, was established under the *Income Tax Law of the People*'s *Republic of China for Enterprises*. This program was established to provide income tax reduction for new high-technology enterprises and to promote enterprise technology upgrades. The granting authority responsible for this program is the State Administration of Taxation and the program is administered by local tax authorities. Under this program, new high-technology enterprises may apply for and receive an income tax reduction at a reduced rate of 15% for three years.

On the basis of available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(*b*) of SIMA (i.e., amounts that would otherwise be owing and due to the government are exempted or deducted) and confers a benefit to the recipient equal to the amount of the exemption/deduction.

Due to the lack of a response by the GOC and the lack of details provided by the exporter, there is not sufficient information on the record to determine whether the grant is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information, this program does not appear to be generally available to all enterprises in China and thus appears to be specific. In fact, it appears to be limited to new high-technology enterprises.

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

Program 174: **Exemption of Tariff and Import VAT for the Imported Technologies and Equipment**

During the POI, one of the exporters received benefits under this program. The exporter provided limited information with respect to the program and the GOC provided no information.

The granting authority responsible for this program is the State Administration of Taxation and the program is administered by local tax authorities.

The legal basis for the exemption seems to be the *Notice for Adjustment of Import Equipment Tax Policy* issued by the State Council, dated December 29, 1997. The benefit appears to be limited to foreign investment projects which meets the "Encouraged" category in the "Foreign Investment Industry Guidance Catalogue". Further, it appears that pursuant to the subsequent "*Announcement by General Administration of Customs [2008] No. 103"*, dated December 31, 2008, as of January 1, 2009, VAT is now levied on imports, but the imports continue to be exempted from duties.

On the basis of available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(*b*) of SIMA (i.e., amounts that would otherwise be owing and due to the government are exempted or deducted) and confers a benefit to the recipient equal to the amount of the exemption/deduction.

Due to the lack of a response by the GOC and the lack of details provided by the exporter, there is not sufficient information on the record to determine whether the grant is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information, this program does not appear to be generally available to all enterprises in China and thus appears to be specific. In particular, the benefit appears to be limited to investment in machinery used in projects that belong to encouraged programs.

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

Program 176: Reduction, Exemption or Refund of Land Use Fees, Land Rental Rates and Land Purchase/Transfer Prices

During the POI, one of the exporters received benefits under this program. The exporter provided limited information with respect to the program and the GOC provided no information.

The granting authority responsible for this program is the Shenyang Economic and Technological Development District Group.

On the basis of the limited available information, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA; i.e., a practice of government that involves a direct transfer of funds. This grant confers a direct benefit to the recipient in the form of a grant, and the benefit is equal to the amount of the grant provided.

Due to the lack of a response by the GOC and the lack of details provided by the exporter, there is not sufficient information on the record to determine whether the grant is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information this program does not appear to be generally available to all enterprises in China.

The amount of subsidy was calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

Program 180: Subsidy Pass-Through from the Purchase of Aluminum Extrusions

Aluminum extrusions are the principal input material in unitized wall modules. On the basis of the CBSA's analysis, the two cooperative exporters received benefits in the form of upstream subsidies from aluminum extrusion suppliers.

An "upstream subsidy" is a subsidy that is initially conferred directly by the government on a recipient who is not the exporter of the goods under investigation and the subsidy is passed-through in some manner to the exporter of the goods under investigation. Since the exporter of the goods under investigation did not directly receive the subsidy from the government, the CBSA regards an "upstream subsidy" as an indirect subsidy.

Subsidies to the Aluminum Extrusion Suppliers

The CBSA investigated subsidies to aluminum extruders in the subsidy investigation with respect to certain aluminum extrusions from the People's Republic of China, concluded in February 2009 and the subsequent re-investigation concluded in February 2012 and found that aluminum extrusions were being subsidized by the GOC. During the 2009 aluminum extrusions investigation the CBSA found the following programs constituted a financial contribution to the aluminum extrusion sector for cooperative exporters, pursuant to one or more of the paragraphs under subsection 2(1.6) of SIMA:

- Preferential Tax Policies for Enterprises with Foreign Investment Established in the Coastal Economic Open Areas and in the Economic and Technological Development Zones
- Research & Development (R&D) Assistance Grant
- Superstar Enterprise Grant
- Matching Funds for International Market Development for SMEs
- One-time Awards to Enterprises Whose Products Qualify for "Well-Known Trademarks of China" or "Famous Brands of China"
- Export Brand Development Fund
- Preferential Tax Policies for Foreign Invested Enterprises - Reduced Tax Rate for Productive FIEs Scheduled to Operate for a Period not less than 10 Years
- Preferential Tax Policies for Foreign Invested Export Enterprises
- Local Income Tax Exemption and/or Reduction
- Exemption of Tariff and Import VAT for Imported Technologies and Equipment
- Patent Award of Guangdong Province
- Training Program for Rural Surplus Labor Force Transfer Employment
- Reduction in Land Use Fees
- Provincial Scientific Development Plan Fund
- Primary Aluminum Provided By Government at Less Than Fair Market Value

These subsidy programs were determined to have conferred benefits to the cooperative exporters of aluminum extrusions[20]. Subsidy programs were still found to benefit exporters of aluminum extrusions during the re-investigation of aluminum extrusions concluded in February 2012[21].

In light of the information on the record that aluminum extrusions in China are subsidized by the GOC, and given that they are the principal material incorporated into the unitized wall modules, the CBSA sent a Subsidy RFI to the unitized wall modules exporters at the time of initiation, and requested the exporters to forward the questionnaire to their aluminum extrusion suppliers. This RFI was a full Subsidy RFI and was necessary to gather information on the suppliers and the subsidies received from the GOC.

[20] For the subsidy analysis, refer to the section "Subsidy Programs used by Cooperative Exporters" of the *Statement of Reasons* issued at the final determination of the dumping and subsidy investigations concerning Certain Aluminum Extrusions from the People's Republic of China, March 3, 2009. The *Statement of Reasons* is available online at http://www.cbsa-asfc.gc.ca/sima-lmsi/i-e/ad1379/ad1379-i08-fd-eng.html

[21] *Notice of Conclusion of Re-investigation of Aluminum Extrusions from the People's Republic of China, February 20, 2012*. Available online at http://www.cbsa-asfc.gc.ca/sima-lmsi/ri-re/ad1379/ad1379-ri11-nc eng.html

While the exporters provided evidence that they had requested their suppliers to answer the questionnaires, none of the aluminum extrusion suppliers provided a complete response to the RFI. Accordingly, for the purposes of the investigation, the CBSA is using alternative information to determine the amount of subsidy received by the aluminum extruders.

For the purpose of the investigation, given that the information required to determine an amount of subsidy to the aluminum extruders was not provided and is not otherwise available, it was determined that all aluminum extruders were subsidized by an amount equal to 3.88 RMB per kilogram (kg), representing the highest total amount of subsidy found for a cooperating exporter in the investigation or re-investigation with respect to aluminum extrusions from China[22].

Pass-through Test

Having determined that the aluminum extrusion suppliers received an amount of subsidy, the CBSA then performed a "pass-through" test to determine whether the subsidies were passed-through to the unitized wall modules.

A "pass-through" analysis will normally require that the selling price of the upstream product or service be compared to a representative, commercial benchmark of an identical or similar unsubsidized product or service that has been sold in an arm's length transaction and under similar circumstances (e.g. trade level, date of sale, quantity and volume). The commercial benchmark will often be based on actual or offered selling prices in the country of export of the input product that has been produced in the country of export by other suppliers or that has been imported into the country of export.

The nature of the pass-through test in any given investigation will depend very much on the facts of that investigation and the nature of the product or service that may be conveying an upstream subsidy. It may not be possible to use a domestic benchmark price test in all situations. In some countries, it may be very difficult, if not impossible, to identify or locate an appropriate benchmark price since the amount and nature of the upstream subsidization may have severely distorted the market for the subject product or service. As a result, there may be no commercial benchmark in the domestic market and imports of such products or services may be restricted due to their inability to compete against the domestically subsidized products or services.

Further, if this information has been requested by the CBSA and it has not been provided or is otherwise not available, then the "fall-back" methodology is to compare the selling price of the input product to an appropriate commercial unsubsidized benchmark.

[22] This amount was found in the course of the original investigation in Certain Aluminum Extrusions from the People's Republic of China. For more details, the *Statement of Reasons* issued at the conclusion of the investigations concerning Certain Aluminum Extrusions from the People's Republic of China, on March 3, 2009, may be consulted.

Benchmark

In this case, it was not possible to use a domestic benchmark price due to the amount and nature of the upstream subsidization, particularly the provision of primary aluminum by government which dominates the primary aluminum industry. In addition, the conditions of section 20 of SIMA in the aluminum extrusions sector[23] have severely distorted the market for the aluminum extrusions[24]. Further, there was no information available on importations of aluminum extrusions in China. Accordingly, the CBSA looked for a commercial unsubsidized benchmark from a surrogate country.

For this purpose, on May 22, 2013, the CBSA sent RFIs to 16 producers of aluminum extrusions in four countries, namely, Chinese Taipei, Malaysia, Mexico and India[25]. These RFIs sought domestic pricing and costing information for the purposes of finding a non-subsidized benchmark price for aluminum extrusions. The deadline for a response was July 2, 2013. The CBSA did not receive any responses. The CBSA also did not find published benchmark prices for aluminum extrusions.

Accordingly, for purposes of the investigation, the CBSA used the best information available to determine an unsubsidized benchmark price in a third country.

Despite the lack of pricing data, it is possible to use publically available information to construct a price for aluminum extrusions in a surrogate country. The CBSA's understanding of pricing practices in the aluminum extrusions industry is that extrusions are priced by producers based on the current price of aluminum plus a conversion factor (i.e. all additional costs of production and sale, such as labour, overhead, general, selling and administration expenses, etc.).

For the current price of aluminum, the monthly average settlement price of aluminum is available on an ongoing basis from the London Metal Exchange's (LME) website[26]. To estimate the conversion cost, the CBSA used publically available information from an aluminum extruder in India, given the availability of the information and the fact that India is at a comparable level of development to China.

[23] *Notice of Conclusion of Re-investigation with Respect to Aluminum Extrusions from the People's Republic of China, February 20, 2012*. Available online at http://www.cbsa-asfc.gc.ca/sima-lmsi/ri-re/ad1379/ad1379-ri11nc-eng.html

[24] *Statement of Reasons* issued at the final determination of Aluminum Extrusions from the People's Republic of China, March 3, 2009. The *Statement of Reasons* is available online at http://www.cbsa-asfc.gc.ca/sima-lmsi/ie/menu-eng.html.

[25] CBSA Exhibit S143 (N.C.)

[26] http://www.lme.com/en-gb/pricing-and-data/historical-data/

The CBSA has financial information on the record from three companies in India that sell aluminum extrusions primarily in their domestic market; Bhoruka Aluminium Limited (Bhoruka), Century Extrusions Limited (CEL) and Sudal Industries Limited (Sudal). For Bhoruka, the CBSA obtained the company's annual report for the 2010-2011 fiscal-year[27] and an annual report for an 18-month period ending September 30, 2012.[28] For CEL and Sudal, the CBSA obtained the companies' 2011-2012 annual reports.[29] CEL and Sudal's annual reports make references to subsidies[30]. The benchmark to be used for the pass-through test must be an unsubsidized benchmark. For these reasons, the CBSA used only data from Bhoruka.

As mentioned, the information on the record includes Bhoruka's annual report for the 2010-2011 fiscal-year and an annual report for an 18-month period ending September 30, 2012. Despite the fact that the information is less up-to-date, the CBSA used information from the 2010-2011 annual report. In this regard, the other annual report, for the18-month period ending September 30, 2012, lacks information on aluminum usage. In addition, some notes in the report suggest that the company is in financial distress while much lower production volumes during the period may result in abnormally high unit cost of production.

Using Bhoruka's 2010-2011 financial data, the CBSA determined a conversion cost of 59.67 rupees per kg, and an amount for profit of 1.0%. It is noted that the conversion cost is an average conversion cost for all types of aluminum extrusions produced by the company.

Using the Bank of Canada average monthly currency conversion rate, the CBSA then converted, for each month of the POI, the monthly LME average settlement prices from USD to RMB and the conversion cost of 59.67 rupees to RMB. The final benchmark price for the aluminum extrusions consisted of adding the LME price in RMB per kg for a given month and the conversion cost in RMB per kg for that month, and adding a 1.0% profit.

The next step was to compare the purchase prices of aluminum extrusions, as reported by the exporters, to the appropriate monthly benchmark price. A purchase price lower than the benchmark price would be an indication that the subsidy is being passed-through from the aluminum extrusion suppliers to the unitized wall modules exporters. It is noted, however, that after applying the "pass-through" test, the amount of subsidy cannot exceed the amount of subsidy that was determined to be received by the upstream producer (i.e. 3.88 RMB per kg).

In *Certain Aluminum Extrusions*, the GOC did not provide the required information relating to specificity. This significantly impeded the CBSA's investigation as there was not sufficient information on the record to determine whether these programs were specific to the aluminum extrusions exporters, pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA.

[27] CBSA Exhibit S156 (N.C.)
[28] Ibid
[29] Ibid.
[30] See pages 28, 37 and 44 of CEL's 2011- 2012 Annual Report and page 34 of Sudal's 2011-2012 Annual Report (CBSA exhibit S156 (NC)).

The GOC did not submit a response to the Subsidy RFI in this investigation, and therefore did not provide the required information relating to specificity. This significantly impeded the CBSA's investigation as there was not sufficient information on the record to determine whether this program was specific, pursuant to subsection 2(7.2). On the basis of available information, it was found that such subsidy was only available to users of aluminum extrusions, which the CBSA considers to be a limited number of enterprises. Therefore, this program did not appear to be generally available to all enterprises in China and, using facts available, was determined to be specific.

The amount of subsidy was thus calculated under ministerial specification pursuant to subsection 30.4(2) of SIMA, by distributing the benefit amount received by the exporter over the total quantity of goods to which the benefit was attributable.

SUBSIDY PROGRAMS NOT USED BY COOPERATIVE EXPORTERS

The following 146 programs were also included in the current investigation. Questions concerning these programs were included in the RFI sent to the GOC and to all known exporters of the goods in China. None of the cooperative exporters reported using these programs during the subsidy POI. Without a complete response to the subsidy RFI from the GOC and all known exporters, the CBSA does not have sufficient information to determine that any of these programs do not constitute actionable subsidies. In other words, the CBSA does not have sufficient information to determine that any of the following programs should be removed from the investigation for purposes of the final determination.

I. Special Economic Zone (SEZ) and Other Designated Areas Incentives

Program 1: Preferential Tax Policies for Enterprises with Foreign Investment (FIEs) Established in Special Economic Zones (SEZs) (excluding Shanghai Pudong Area)

Program 2: Preferential Tax Policies for FIEs Established in the Coastal Economic Open Areas and in the Economic and Technological Development Zones

Program 3: Preferential Tax Policies for FIEs Established in the Pudong Area of Shanghai

Program 4: Preferential Tax Policies in the Western Regions

Program 5: Corporate Income Tax Exemption and/or Reduction in SEZs and other Designated Areas

Program 6: Local Income Tax Exemption and/or Reduction in SEZs and other Designated Areas

Program 7: Exemption/Reduction of Special Land Tax and Land Use Fees in SEZs and Other Designated Areas

Program 8: Tariff and Value-added Tax (VAT) Exemptions on Imported Materials and Equipment in SEZs and other Designated Areas in Guangdong

Program 9: Income Tax Refunds where Profits are Re-invested in SEZs and other Designated Areas

Program 10: Preferential Tax Program for FIEs Recognized as HNTEs (High and New Technology Enterprises)

Program 11: Preferential Tax Policies for FIEs which are Technology Intensive and Knowledge Intensive

Program 12: Services or Goods provided by Government or public bodies at the preferential prices to enterprises located in SEZs and other designated areas

Program 13: VAT Exemptions for the Central Region

Program 14: Tax over-refunds or over-exemptions for the water, electricity and gas consumed in the Export Processing Zone

Program 15: Custom Duty Exemption and VAT Exemption for machinery, equipment, construction materials imported into the Export Processing Zone for the construction of production facilities (such as factory and warehouse) in the Zone

Program 16: Custom Duty Exemption and VAT Exemption for machinery, equipment, moulds/dies and the corresponding repairing parts imported into the Export Processing Zone and used for the production by Enterprises in the Zone

Program 17: Custom Duty over-refund or over-exemption and VAT over-refund or over-exemption for raw materials, parts, packaging materials and consumable materials imported into the Export Processing Zone and used for the production of exported goods in the Zone

Program 18: Export Duty Refund or Exemption for the exported goods produced in the Export Processing Zone and exported from the Zone

Program 20: Interest Assistance provided by Shenyang Economic & Technological Development Area administration through the Enterprise Development Fund

Program 21: Freight Assistance provided by Shenyang Economic & Technological Development Area administration for the exported products

Program 22: Financial assistance provided by Shenyang Economic & Technological Development Area administration for the construction or the rental of manufacturing premises

Program 23: Special Industry Supporting Fund provided by Shenyang Tiexi District Government to the High Technology Enterprises located in Shenyang Tiexi modern Construction industry Area

Program 24: Supporting Fund provided by Shenyang Economic & Technological Development Area administration to the enterprises to encourage the acquisition of foreign Science & Technology type enterprises and the employment of foreign Science & Technology development experts

Program 25: Exemptions of administration fees by Zengcheng Municipal Government for Private (Min Ying) Enterprises located in the industrial parks approved by municipal level Governments or above

Program 26: Exemption of service fees and administrative fees by Shenyang Economic & Technological Development Area administration

II. Preferential Loans and Loan Guarantees

Program 27: Loans and Interest Subsidies Provided Under the Northeast Revitalization Program

Program 29: Preferential Loan for the National/Provincial key Science & Technology Industrialization Projects, High Technology Industrialization Projects, Science & Technology Achievements Commercialization Projects, Modern Equipment Manufacturing Industry and key Information Technology Industrialization Projects by Liaoning Governments

III. Grants and Grant Equivalents

Program 30: Innovation Fund for Medium and Small Business

Program 31: Special fund for developing trade through science and technology of Guangdong Province

Program 32: Special Funds for Foreign Economic and Technical Cooperation

Program 33: Innovative Experimental Enterprise Grant

Program 34: Superstar Enterprise Grant

Program 36: Export Brand Development Fund

Program 37: Provincial Scientific Development Plan Fund

Program 40: Guangdong - Hong Kong Technology Cooperation Funding Scheme

Program 41: Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment

Program 43: Product Quality Grant

Program 44: 2009 Energy-Saving Fund

Program 45: Grants for Export Activities

Program 46: Grants for International Certification

Program 47: Emission Reduction and Energy-Saving Award

Program 49: Grant - State Service Industry Development Fund

Program 50: Grant - Provisional Industry Promotion Special Fund

Program 51: Grant - Jiangsu Province Finance Supporting Fund

Program 52: Grant - Water Pollution Control Special Fund for Taihu Lake

Program 55: Grant - Resources Conservation and Environment Protection Grant

Program 56: Environment Protection Award (Jiangsu)

Program 57: Enterprise Technology Centers

Program 59: Business Development Overseas Support Fund

Program 60: Refund from Government for Participating in Trade Fair

Program 62: Reimbursement of Anti-dumping and/or Countervailing Legal Expenses by the Local Governments

Program 63: Financial Special Fund for Supporting High and New Technology Industry Development Project

Program 64: Subsidy for Promoting Energy-Saving Buildings

Program 66: Special Fund for the Technology Innovation by Niu Lan Shan Township Local Government

Program 69: Beijing Industrial Development Fund

Program 70: Grants, Loans, and Other Incentives for Development of Famous Brands, China Top World Brands or other well-known Brands
Program 71: Shunde Famous Brands
Program 72: Guangdong Supporting Fund
Program 73: "Five Points, One Line" Program of Liaoning Province
Program 74: State Special Fund for Promoting Key Industries and Innovation Technologies
Program 75: Fund for SME (small and medium size enterprises) Bank-Enterprise Cooperation Projects by Guangdong Governments
Program 76: Special Fund for Significant Science and Technology by Guangdong Governments
Program 77: Fund for Economic, Scientific and Technology Development by the Government of Foshan City
Program 78: Provincial Fund for Fiscal and Technological Innovation by Guangdong Governments
Program 79: Provincial Loan Discount Special Fund for SMEs by Guangdong Governments
Program 80: "Large and Excellent" Enterprises Grant
Program 81: Advanced Science/Technology Enterprise Grant
Program 83: Foshan City Government Technology Renovation and Technology Innovation Special Fund Grants
Program 84: Nanhai District Grants to State and Provincial Enterprise Technology Centers and Engineering Technology R&D Centers
Program 85: Supporting Fund for the Projects Used to Resolve the Important Technological Issues for Enterprises' Production and R&D by Liaoning Governments
Program 86: Technology Innovation Fund for Science & Technology Type SMEs by Liaoning Governments
Program 87: Supporting Fund for the Application Technology Research in the Overseas R&D Institution/Branch by Liaoning Governments
Program 88: Special Supporting Fund and Special Loan Assistance by Chinese Ministry of Science & Technology for revitalizing the Northeast old industrial base
Program 89: Special Supporting Fund for Key Projects of "500 Strong Enterprises in Contemporary Industries" by Guangdong Governments
Program 90: Fund for Supporting Strategic Emerging Industries by Guangdong Governments
Program 92: Medium Size and Small Size Trading Enterprises Development Special Fund
Program 93: Special Fund for Export Credit Insurance by Guangdong Governments
Program 94: Industrial Development Supporting Fund to Key Projects by Shunyi District Local Governments
Program 95: Supporting Fund for Converting the Industry Technology Achievements/Findings by Beijing Governments
Program 98: Supporting Fund for Constructing Energy-Saving Projects by Niu Lan Shan Township Local Governments
Program 99: Supporting Fund for the "Working Capital" Loan Interest
Program 100: Supporting Fund for "Information-Technology Application" Demonstration Enterprises by Niu Lan Shan Township Local Governments
Program 101: Supporting Fund for the Lab by Niu Lan Shan Township Local Governments
Program 103: Supporting Fund to Encourage Outwards Development by Niu Lan Shan Township Local Governments

Program 104: Supporting Fund for the Investments on Key Projects by Niu Lan Shan Township Local Governments
Program 105: Award by Niu Lan Shan Township Local Governments
Program 106: Supporting Fund for the Research of the Key Fire-proofing and Sound-proofing Technology for Curtain Wall by Beijing Governments
Program 108: Award for Maintaining the Growth by Beijing Governments
Program 109: Award by Beijing Technology Trading Encouraging Centre
Program 110: Award by Shunyi District Science and Technology Committee
Program 111: Supporting Fund for the New Energy-Saving Curtain Wall Technology Renovation Project by Shanghai Songjiang Economic Committee
Program 112: Award by Shanghai Songjiang Economic Committee
Program 115: Interest Assistance for Technology Renovation Projects by Liaoning Governments
Program 116: Interest Assistance for the Application of Information Technology by Liaoning Governments
Program 117: Loan Guarantee Fund for Science & Technology Enterprises by Liaoning Governments
Program 118: Fund for Optimizing Import and Export Structure of Mechanical Electronics and High and New Technology Products
Program 119: Special Fund for Pollution Control of Three Rivers, Three Lakes, and the Songhua River
Program 120: Government Export Subsidy and Product Innovation Subsidy in Shandong province
Program 123: Industrial Development Special Fund provided by Shenyang Municipal Government
Program 124: Technological Innovation Special Fund provided by Shenyang Municipal Government
Program 125: City Construction Special Fund provided by Shenyang Municipal Government
Program 126: Foreign Economic and Trading Special Fund provided by Shenyang Municipal Government
Program 127: Service Industry Guiding Fund provided by Shenyang Municipal Government
Program 128: Emerging Industry Special Fund provided by Shenyang Municipal Government
Program 129: Grants provided by Shenyang Municipal Government to National Key Projects, National Key Labs and National Research & Development Centers
Program 130: Supporting Fund provided by Shenyang Municipal Government for the acquisitions of the Foreign/Overseas Technology-Type Enterprises
Program 131: Grants by Shenyang Municipal Government to Municipal-level High and New Technology Enterprises for Promoting the Advancement of Technology
Program 132: Grants by Shenyang Municipal Government to New Accredited National-level Engineering Research Centers, Engineering Labs, Key Labs, Engineering Technology Centers and Enterprise Technology Centers
Program 133: Grants/Awards by Shenyang Municipal Government for Promoting the Technology Reformation
Program 134: Grants by Shenyang Municipal Government for Encouraging the Manufacturing and the Usage/Application of Domestically Produced First of its Kind Set of Equipment.

Program 135: Subsidy provided by Shenyang Municipal Government to Service Outsourcing Enterprises with Advanced Technology
Program 137: Supporting funds provided by Shenyang Municipal Government to stimulate the Export Growth
Program 138: Subsidy Fund provided by Shenyang Municipal Government to Offset the Export Credit Insurance Fees
Program 139: Subsidy Fund provided by Shenyang Municipal Government to Offset the Registration Fees and Accreditation Fees for International or Overseas Trade Marks
Program 140: Grants provided to the Enterprises for their Interim/Procedural Progress toward becoming Publicly Listed Companies by Shenyang Municipal Government
Program 143: Supporting Funds provided by Zengcheng Municipal Government to the Research and Development Institutions Accredited as "National Engineering Research and Development Center", "National Enterprise Technology Center", "National Key Lab" or "Provincial Research and Development Institution"
Program 144: Grants and Assistance provided by Zengcheng Municipal Government to Enterprises whose Products are Accredited as "Provincial Famous Trademark", "Guangzhou Famous Trademark" or who are accredited as "Zengcheng Regional Brand"
Program 145: Grants provided by Zengcheng Municipal Government to Enterprises to Encourage their Business Cooperation/Coordination
Program 146: Grants provided to Enterprises to encourage their Technology Renovations by Zengcheng Municipal Government
Program 147: "Going Out" Supporting Funds provided by Zengcheng Municipal Government
Program 148: Awards provided by Zengcheng Municipal Government to Publicly Listed enterprises that successfully Refinance through Capital Markets and Invest some or all of those Funds to the Projects located in Zengcheng City
Program 149: Supporting Funds provided by Zengcheng Municipal Government to Private (Min Ying) Industrial Enterprises who have the annual sales revenue more than 500M Chinese Yuan and the annual payable/paid tax amount more than 10M Chinese Yuan and follow the directions of industry structure adjustments prescribed by National, Provincial and Municipal Governments
Program 150: Awards provided by Zengcheng Municipal Government to Private (Min Ying) High & New Technology Enterprises who are accredited by Guangzhou Municipal Governments and have the large scale of investments, have the advanced and competitive Science & Technology products and have the significant amounts of profits and paid/payable taxes
Program 151: Awards provided by Zengcheng Municipal Government to Private (Min Ying) Enterprises for their new researched and developed products that are accredited at the national level or provincial level
Program 152: Grant provided by Zengcheng Municipal Government to Private (Min Ying) Enterprises for their patents that are accredited as "National Patent Gold Award" or "National Superior/Excellent Patent Award"
Program 153: Grant provided by Zengcheng Municipal Government to Private (Min Ying) Enterprises for their successful acquisition of national certifications

Program 154: Award provided by Zengcheng Municipal Government to Private (Min Ying) Enterprises who are accredited as "Demonstration Enterprises for Clean Production" by the Governments at Guangzhou municipal level or above
Program 155: Supporting Funds provided by Zengcheng Municipal Government to Private (Min Ying) Enterprises to encourage them to develop the domestic market and the international market

IV. Preferential Tax Programs

Program 157: Preferential tax policies for advanced technology enterprises with foreign investment
Program 158: Reduced Tax Rate for Productive FIEs Scheduled to Operate for a Period Not Less Than 10 Years
Program 159: Tax Preference Available to Companies that Operate at a Small Profit
Program 160: Preferential Tax Policies for Foreign Invested Export Enterprises
Program 161: Preferential Tax Policies for the Research and Development of FIEs
Program 162: Preferential Tax Policies for FIEs and Foreign Enterprises Which Have Establishments or Places in China and are Engaged in Production or Business Operations Purchasing Domestically Produced Equipment
Program 163: Preferential Tax Policies for Domestic Enterprises Purchasing Domestically Produced Equipment for Technology Upgrading Purpose
Program 165: VAT and Income Tax Exemption/Reduction for Enterprises Adopting Debt-to-Equity Swaps
Program 167: Income Tax Credits on Purchases of Domestically Produced Equipment
Program 168: Preferential Tax Programs for Encouraged Industries or Projects
Program 169: Exemption from City Maintenance and Construction Taxes and Education Fee Surcharges for FIEs
Program 171: Accelerated Depreciation on Fixed Assets
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Program 173: Accelerated Depreciation on Intangible Assets for Industrial Enterprises in Northeast Region

V. Relief from Duties and Taxes on Inputs, Materials and Machinery

Program 175: Relief from Duties and Taxes on Imported Material and Other Manufacturing Inputs

VI. Goods/Services provided by the Government at Less Than Fair Market Value

Program 177: Raw Materials Provided by the Government at Less than Fair Market Value
Program 178: Utilities Provided by the Government at Less than Fair Market Value

VII. Equity Programs

Program 179: Debt to Equity Swaps

APPENDIX 3 – DUMPING AND SUBSIDY REPRESENTATIONS

The CBSA received three case briefs by the deadline of September 6, 2013. These case briefs were from counsel for the Complainants, from Guangzhou Jangho and associated companies (Jangho), and from Shenyang Yuanda and associated companies (Yuanda).

Reply briefs were also received from all three parties by the deadline of September 13, 2013.

These submissions and the CBSA's responses are discussed below.

Arguments Pertaining to the Dumping Investigation

Amount for Profit for Purposes of Section 25 of SIMA

The Complainants argued that the amount for profit should be based on 2010 information, since the domestic industry was materially injured during the POI. This information was submitted as "supplementary documents"[31]. They argue that this claim is supported by the fact that the Tribunal found, during the preliminary injury inquiry, that there is evidence that discloses a reasonable indication that the domestic industry has been injured or that there was threat of injury.

Jangho responded that using 2010 information is not appropriate since 2010 is outside the POI and the profitability analysis period (PAP), and rejecting the 2011 and 2012 information would be assuming a final determination of injury, which is the jurisdiction of the Tribunal. Jangho also argues that the 2012 information is the most appropriate benchmark as this represents the most recent year under investigation.

Yuanda responded that the CBSA should reject the Complainants' proposal to use the 2010 information. Yuanda states that there has been no determination of material injury to the domestic industry as the preliminary injury inquiry only determines whether or not there is a reasonable indication of injury or threat of injury. Yuanda argues that there is no basis in *SIMA* to suggest that the information during the POI may be ignored.

Jangho argued that the "supplementary documents"[32] submitted by the Complainants should be used to determine importer amount for profit since these documents present updated income statements filed to the Tribunal.

The Complainants responded that they agree with Jangho's position that the updated information should be used to determine an amount for profit. However, they argue that the CBSA can use the 2010 information since section 22 of SIMR grants the CBSA discretion by qualifying the expression "profit" by including only such profit "made in the ordinary course of trade" and which "generally results" from the sale of the goods.

[31] Exhibit 213(pro)
[32] Exhibit 213(pro)

Yuanda also expressed concerns over how the amount for profit was determined and which companies were included in determining the amount for profit. Yuanda argues that using the domestic producers' financial information to determine an importer amount for profit is not a fair comparison, since Yuanda Canada is at a different trade level than producers of the goods.

The Complainants responded that section 22 of SIMR grants the CBSA discretion in determining an amount for profit due to the "in the ordinary course of trade" and "generally results" qualifications mentioned above.

CBSA's Response

In calculating the amount for profit under section 22 of SIMR, it is the CBSA's policy that a representative profit is best obtained from as broad a data base in Canada as possible. The vendors to be considered will include, where possible, Canadian producers, the importer, other importers and other vendors sourcing goods in Canada. However, only vendors having net overall profits are to be included.

In determining whether these vendors are at the same or substantially the same trade level as the importer, as required in section 22 of SIMR, the CBSA examines the functions performed in the particular industry related to sales and distribution. Companies in Canada are generally considered to be at "substantially the same trade level" when they sell to the same customers and compete directly in the marketplace for the same customers.

Finally, it is the CBSA's policy that the most recent data available should be utilized. This data should cover a reasonable and meaningful period of time to avoid anomalies and to ensure the result is representative.

In accordance with the CBSA's policy, the amount for profit was determined using the 2011 and 2012 financial information from each complainant, producer, and importer that provided sufficient financial information and reported a profit during the POI. This included the updated financial information submitted by the Complainants that related only to goods that met the product definition. It is the CBSA's opinion that this information is the most appropriate as it covers the entire POI and represents the best information available.

With regard to Yuanda's position that the domestic industry is at a different trade level than Yuanda Canada, the CBSA determined that the importers sell to the same customers and compete directly in the marketplace for the same customers as the domestic producers. Therefore, the domestic producers are considered to be at substantially the same trade level as the importer.

Amount for Profit for Purposes of Paragraph 19(b) of SIMA

Jangho has expressed concern on how the section 19 of *SIMA* amount for profit at PD was calculated. It argue that consideration must be given to section 11 of SIMR and the *Anti-Dumping Agreement* of the WTO which provides three profitability tests ("extended period of time", "substantial quantities", "recovery of all costs above weighted-average per unit costs"). The Complainants responded that since there are no comparable sales of like goods in the domestic market, there can be no data to perform the additional profit testing.

CBSA's Response

The CBSA agrees that section 11 of SIMR and the *Anti-Dumping Agreement* of the WTO must be taken into account to determine the amount for profit. As such, the CBSA has conducted the three profitability tests mentioned above to determine the amount of profit.

Representations Regarding the Calculation of the Export Price for One Project

Shenyang Yuanda argued that certain costs for one project should not be deducted to determine the export price.

The Complainants argued that these items should be deducted to determine the export price.

CBSA's Response

The CBSA maintains these items should be deducted to determine the export price pursuant to subparagraph 25(1)(d)(iii) of SIMA.

2010 General Selling and Administrative Expenses

Yuanda argued that the 2010 GS&A expenses incurred before the POI are irrelevant to the proper administration of SIMA, and should not be considered by the CBSA.

The Complainants responded that the 2010 GS&A expenses should be included since Yuanda states that they keep project-specific costing.

CBSA's Response

The CBSA has removed these expenses as they were incurred prior to the POI.

Adjustments to Total Manufacturing Cost

Yuanda argued that certain adjustments, based on GAAP and normal accounting practices, should be made to the total manufacturing cost for the POI.

CBSA's Response

The CBSA has taken this representation into account in determining the total manufacturing costs during the POI.

Arguments Pertaining to the Subsidy Investigation

Subsidy Pass-Through from the Purchase of Aluminum Extrusions

Yuanda argued that the subsidies to aluminum extruders were the result of benefits made available to producers of primary aluminum and not directly to extruders. Yuanda argued that in the Aluminum Extrusions investigation, the subsidies to aluminum extrusions were upstream subsidies from the primary aluminum industry that the CBSA deemed were passed through to extruders supplying its extrusions. Yuanda suggested that the upstream subsidy estimated by the CBSA at the preliminary determination consists of a double pass-through. Quoting the Appellate Body in Softwood Lumber IV, Yuanda argued that it is not sufficient for the CBSA to establish a financial contribution only for the input product, but that it must establish that the benefit resulting from the subsidy has passed-through from the input downstream, so as to benefit indirectly the processed product.

Yuanda further argued that the CBSA's practice is to flow through upstream subsidies only when the upstream and downstream firms are related. Quoting the CBSA in the *Statement of Reasons* for the Aluminum Extrusions final determination, Yuanda argued that in such cases (i.e. where the upstream and downstream firms are related), "…the amount of subsidy that is deemed to have received by the downstream purchaser is the total amount of subsidy that is attributable to the upstream product". Yuanda argued that the company is not related to any of its suppliers of aluminum extrusions. Accordingly, Yuanda claimed that the CBSA ignored its own practice. In its reply submission, the Canadian producers disagreed with this argument, pointing out that the CBSA's passage was case specific, relating to instance where the full amount of subsidy is deemed to be passed-though when the upstream recipient and the downstream purchaser are related, where a pass-through analysis is not required or performed.

Yuanda also argued that, as the CBSA pointed out in the Aluminum Extrusions investigation, the Chinese aluminum extrusion industry is virtually entirely privately owned with no evidence of government controls. The Canadian producers, in their reply submission, argued that the ownership of the aluminum extrusion industry is irrelevant.

Yuanda seemed to argue that the CBSA's methodology, which uses the facts available, is based on an assumption that Yuanda is related to its aluminum extrusions suppliers and that such assumption is based on the lack of cooperation by its suppliers or by the GOC. Yuanda also argued that the use of a ministerial specification is designed to be punitive, and that its use denies to Yuanda natural justice and procedural fairness. Yuanda alleged that the CBSA has used, in other investigations, standardized automatic criteria to establish "facts available" margins of dumping and subsidy. Yuanda suggests that the CBSA should not punish Yuanda for the lack of cooperation by extruders and the GOC. The Canadian producers argued that the arguments presented by Yuanda regarding this matter were incomprehensibly vague and irrelevant.

Jangho was critical of the CBSA for excluding unsubsidized transactions from its calculations of the amount of benefit, claiming that this results in distorting the amount of subsidy. Jangho also argued that the CBSA did not properly indicate the allocation basis at the time of the preliminary determination. Jangho argued that in order to avoid overestimating the subsidy, the benefit should not be allocated over the weight of the delivered extrusions, but should rather be allocated on the basis of the weight of the finished goods, because of the processing by Guangzhou, such as milling, cutting and punching the aluminum into shapes. The Canadian producers argued that there is no question of zeroing, as these are not calculations of the amount of anti-dumping duty payable. The Canadian producers argued that a benefit arising from a subsidy must be countervailed.

Both Jangho and Yuanda argued that the CBSA erred in discretionarily attributing specificity to this program as a result of the subsidy "being available to users of aluminum extrusions." Jangho argued that the "users of aluminum extrusions" are not an industry or group of enterprise as described under the SIMA or the *Agreement on Subsidies and Countervailing Measures* (ASCM). The Canadian producers disagreed with this argument in a reply brief, arguing that the subsidy is not generally available. Yuanda seemed to allege that the CBSA is assuming that extruders selectively and arbitrarily choose to pass on these benefits only to unitized wall module manufacturers or that the CBSA's methodology is based on whether Chinese extruders sell to all customers on the same basis. The Canadian producers replied that such an argument is irrelevant.

CBSA's Response

As the CBSA explained in the *Statement of Reasons* for the preliminary determination, the CBSA investigated subsidies to aluminum extruders in the subsidy investigation with respect to certain aluminum extrusions from the People's Republic of China, concluded in February 2009 and the subsequent re-investigation concluded in February 2012 and found that aluminum extrusions were being subsidized by the GOC. In fact, the CBSA determined that aluminum extruders received subsidies on the basis of 15 subsidy programs. These programs were determined to have conferred benefits to the cooperative exporters in the aluminum extrusion sector[33]. Subsidy programs were still found to exist in the aluminum extrusions sector during the re-investigation of aluminum extrusions concluded in February 2012 [34].

[33] For the subsidy analysis, refer to the section "Subsidy Programs used by Cooperative Exporters" of the *Statement of Reasons* issued at the conclusion of the dumping and subsidy investigations concerning Certain Aluminum Extrusions from the People's Republic of China, March 3, 2009. The *Statement of Reasons* is available online at http://www.cbsa-asfc.gc.ca/sima-lmsi/i-e/ad1379/ad1379-i08-fd-eng.html

[34] *Notice of Conclusion of Re-investigation of Aluminum Extrusions from the People's Republic of China, February 20, 2012*. Available online at http://www.cbsa-asfc.gc.ca/sima-lmsi/ri-re/ad1379/ad1379-ri11-nc-eng.html

The CBSA agrees that the investigative authority must determine that there was a financial contribution and a benefit to the unitized wall modules producers. Contrary to Yuanda's allegations, the CBSA did not simply deem the subsidy to have passed-through. Nor did the CBSA claim or assume that Yuanda is related to any of its suppliers. As Yuanda mentioned, if Yuanda was in fact related to its aluminum extrusions suppliers, or if the suppliers were considered government, the CBSA's policy would be to determine that the full subsidy passed-though. However, since there was no indication of a relationship, and since the CBSA did not find that the extruders were government, the CBSA performed a pass-through test which was explained in detail in the *Statement of Reasons* at the time of the preliminary determination.

Contrary to Yuanda's claim, the CBSA did not determine an amount of subsidy for this program on the basis of a ministerial specification that was designed to be punitive, and its use of information available is not based on an assumption that Yuanda is related to its aluminum extrusion suppliers. The CBSA used the information provided by Yuanda and filled any information gap with the best information available.

When analysing Program 180: *Subsidy Pass-Through from the Purchase of Aluminum Extrusions*, the CBSA performed a "pass-through" test to determine whether the subsidies granted to the aluminum extrusions sector were being passed-through to the unitized wall modules exporters. A "pass-through" analysis requires that the selling price of the upstream product or service be compared to a representative, commercial benchmark of an identical or similar unsubsidized product or service that has been sold in an arm's length transaction and under similar circumstances (e.g. trade level, date of sale, quantity and volume). For this program, the CBSA constructed a benchmark price for aluminum extrusions by adding London Metal Exchange's prices and a monthly conversion cost based on publicly available information from an Indian aluminum extruder, given that India was at a comparable level of development to China.

The next step was to compare the purchase prices of aluminum extrusions, as reported by the unitized wall modules exporters, to the appropriate monthly benchmark price. A purchase price lower than the benchmark price was an indication that the subsidy was being passed-through from the aluminum extrusion suppliers to the unitized wall modules producers. While conducting this comparison, the CBSA identified subsidies at the individual transaction level in the prevailing market conditions and did not determine the amount of subsidy on an aggregate basis where "positive" and "negative" benefits would be offset over the period of investigation. This methodology is supported by *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China* (DS379), which stipulates :

> […] Article 14(d) of the SCM Agreement contains no reference to any notion of offsetting, or "negative benefits" or of averaging across the period of investigation, for a particular good. Indeed, in our view, the language of the provision – especially the statement that "the provision of goods or services or purchase of goods by a government *shall not be considered as conferring a benefit unless* the provision is made for *less* than adequate remuneration" – if anything suggests both a disaggregated analysis and a focus on instances where benefits are found to exist. We note in particular the negative terms in which this sentence is drafted – a benefit "shall not" be conferred "unless" – which could be restated as there being *no* benefit, i.e., a benefit of *zero*, where the remuneration is at least "adequate".
>
> […] [R]ather than viewing the period of investigation monolithically, an investigating authority should be seeking to match the transactions under examination to contemporaneous benchmarks, and that the existence or absence of a benefit in respect of one transaction or group of transactions is independent of the existence or absence of a benefit in other transactions.
>
> **WTO, Report of the Panel, *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/R, 22 October 2010, para. 11.47-11.48.**

The CBSA also fully disclosed to the exporters its calculations and methodologies, including the allocation basis used to apply its subsidies. In the case of the subsidized aluminum extrusions, the CBSA determined an amount of subsidy per kilogram based on the aluminum extrusions purchased and allocated this amount over the weight of the aluminum included in the subject goods.

With respect to the arguments regarding specificity, in *Certain Aluminum Extrusions*, the GOC did not provide the required information relating to specificity, which significantly impeded the CBSA's investigation. At the time, in the absence of a complete response from the GOC, the CBSA was unable to conduct specificity analyses, and instead determined amounts of subsidy for the cooperative exporters under ministerial specification on the basis of the information provided by those exporters. It is those subsidies that are determined to have passed-through to the unitized wall unit producers, on the basis of the methodology detailed in this *Statement of Reasons*.

The GOC did not submit a response to the Subsidy RFI, and therefore did not provide the required information relating to specificity. This significantly impeded the CBSA's investigation as there was not sufficient information on the record to determine whether this program was specific to the unitized wall modules sector, pursuant to subsection 2(7.2) of SIMA. On the basis of available information, it was found that such subsidy was only available to users of aluminum extrusions, which the CBSA considers to be a limited number of enterprises. Therefore, this program did not appear to be generally available to all enterprises in China and, using facts available, was determined to be specific.

Subsidies Received by Beijing Jangho Attributed to Guangzhou Jangho

Jangho argued that the subsidies received by Beijing Jangho should not have been attributed, based on consolidated sales, to Guangzhou Jangho as Guangzhou Jangho conducts business on its own behalf. Jangho further argued that this approach conflicts with section 2 of SIMA as none of the subsidies were received by the producer or exporter of the subject goods. Counsel for the Complainants submitted that it was within the expertise and discretion of the CBSA to acknowledge that the Jangho companies operate as one entity and that Jangho has not provided any evidence to the contrary.

CBSA's Response

The attribution and apportionment of a subsidy in respect of a corporate organization will depend on the functions of the corporate entity that is the recipient of the subsidy. Evidence gathered during the on-site verifications confirmed that Guangzhou Jangho, despite its status as a distinct legal entity, operate as a de-facto division of Beijing Jangho within the overall corporate structure. As such, the CBSA attributed, based on consolidated sales, the subsidies received by Beijing Jangho to Guangzhou Jangho.

Raw Materials Provided by the Government at Less than Fair Market Value

Jangho argued that if the CBSA were to consider, in a final determination, to seek countervailing duties on upstream subsidies resulting from the purchase of steel materials they were not given all the facts and the opportunity to comment. Similarly, Yuanda argued that the CBSA placed information on the record slightly prior to the close of the record about a possible methodology to determine a benefit on steel products and that as per Article *12.8 of the WTO ASCM* theCBSA should, in sufficient time, notify all interested parties of the essential facts to permit a proper defence.

Jangho further argued that steel products purchased by Guangzhou Jangho were in a finished form and that a benchmark based on commodity prices would be distortive.

Jangho also argued that the allocation and specificity objections raised in regard to Program 180 (Subsidy Pass-Through from the Purchase of Aluminum Extrusions) would also apply to any alleged subsidies on steel products. Similarly, Yuanda also argued that their concerns regarding Program 180 were also applicable to the alleged subsidies on steel products.

Jangho argued that for the above reasons, the CBSA must set aside the attempt to countervail alleged upstream subsidies on steel products.

CBSA's Response

The CBSA examined and analyzed the information on steel products it received in RFI responses and conducted research to establish relevant benchmark prices for these products. Further to its analysis, the CBSA concluded that there was insufficient information on the record to determine whether there was a financial contribution that conferred a benefit to the producers/exporters of the subject goods. As a result, no amount of subsidy was determined under this program. Consequently, the CBSA will not address the arguments of Jangho and Yuanda.

Tax Offset for Research and Development Expenses

Jangho argued that the tax offset for research and development expenses is generally available to all companies throughout China which incur research and development expenses. Jangho further argued that it provided the CBSA, during the verification, with the income tax legislation and regulations pertaining to the tax offset for the research and development expenses which confirmed that the program is not specific and that, therefore, it should not be countervailed.

Counsel for the Complainants submitted that there is no evidence, given the limited details provided and the lack of response of the Government of China, that this program is not specific.

CBSA's Response

The CBSA examined the legislation and regulations provided and agree that the tax offset for research and development expenses is not specific. The program was removed from the investigation.

DOC 6

Revisão de Final de Período Módulos Parede (Canadá)

Canada Border Services Agency | Agence des services frontaliers du Canada

UWM 2018 ER

OTTAWA, February 8, 2019

STATEMENT OF REASONS

Concerning an expiry review determination under paragraph 76.03(7)(a) of the *Special Import Measures Act* regarding

THE DUMPING AND SUBSIDIZING OF CERTAIN UNITIZED WALL MODULES FROM CHINA

DECISION

On January 24, 2019, pursuant to paragraph 76.03(7)(a) of the *Special Import Measures Act*, the Canada Border Services Agency determined that the expiry of the Canadian International Trade Tribunal's finding made on November 12, 2013, in Inquiry No. NQ-2013-002:

i. is likely to result in the continuation or resumption of dumping of certain unitized wall modules originating in or exported from China; and

ii. is likely to result in the continuation or resumption of subsidizing of certain unitized wall modules originating in or exported from China.

Cet *Énoncé des motifs* est également disponible en français.
This *Statement of Reasons* is also available in French.

Canada

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EXECUTIVE SUMMARY

[1] On August 27, 2018, the Canadian International Trade Tribunal (CITT), pursuant to subsection 76.03(3) of the *Special Import Measures Act* (SIMA), initiated an expiry review of its finding made on November 12, 2013, in Inquiry No. NQ-2013-002, concerning the dumping and subsidizing of certain unitized wall modules (UWM) originating in or exported from the People's Republic of China (China).

[2] As a result of the CITT's notice of expiry review, the Canada Border Services Agency (CBSA), on August 28, 2018, initiated an investigation to determine, pursuant to paragraph 76.03(7)(a) of SIMA, whether the expiry of the finding is likely to result in the continuation or resumption of dumping and/or subsidizing of the goods.

[3] The CBSA received 12 responses to its Canadian Producer Expiry Review Questionnaire (ERQ), from BVGlazing Systems Ltd., Ferguson Neudorf Glass Inc., Flynn Group of Companies (Flynn Canada Ltd. And Northern Facades Ltd.), Contract Glaziers Corp., Inland Glass & Aluminum Ltd. / Aluminum Curtainwall Systems Inc., Integro Building Systems, Oldcastle Building Envelope Canada Inc. (as of December 31, 2018, the company's name changed to Antamex Industries ULC), Quest Window Systems Inc., Sotawall Limited, Starline Windows Ltd., State Window Corporation and Toro Aluminum/ Toro Glasswall Inc. These companies may also collectively be referred to as "the Canadian producers" in this *Statement of Reasons*. The submissions made by the Canadian producers included information supporting their position that continued or resumed dumping and subsidizing of certain UWM from China is likely if the CITT's finding is rescinded.

[4] The CBSA received a response to the Exporter ERQ from Shenyang Yuanda Aluminium Industry Engineering Co. Ltd. (Shenyang Yuanda). The submission made by Shenyang Yuanda did not explicitly express an opinion with respect to the likelihood of continued or resumed dumping and/or subsidizing of certain UWM from China if the CITT's finding is rescinded.

[5] In addition to responding to the ERQ, the Canadian producers submitted supplementary information prior to the closing of the record. The CBSA also received a joint case brief on behalf of the Canadian producers. The case brief submitted by the Canadian producers included arguments supporting their position that continued or resumed dumping and subsidizing of certain UWM from China is likely if the CITT's finding is rescinded. Shenyang Yuanda submitted a reply submission to the case brief of the Canadian producers, where it contested some of the allegations made by the Canadian producers.

[6] No importers in Canada responded to the ERQ nor did they provide a case brief or reply submission.

[7] The CBSA did not receive a response to the ERQ from the Government of China (GOC) nor did the GOC provide a case brief or reply submission.

[8] Analysis of information on the administrative record in respect of the weakening UWM market conditions and the excess production capacity in China; the increasing export orientation of Chinese producers, the attractiveness of the Canadian market and its increased competition from domestic and foreign sources, along with the propensity of Chinese exporters to undercut Canadian prices, indicates a likelihood of continued or resumed dumping into Canada of certain UWM originating in or exported from China should the CITT's finding be rescinded.

[9] In addition, analysis of information on the administrative record in respect of the continued availability of subsidy programs for UWM exporters in China, the subsidizing of primary aluminum in China and other government intervention in the primary aluminum industry and the countervailing measures against Chinese aluminum products in Canada and in other jurisdictions, indicates a likelihood of continued or resumed subsidizing of certain UWM from China should the CITT's finding be rescinded.

[10] For the foregoing reasons, the CBSA, having considered the information on the record, made a determination under paragraph 76.03(7)(a) of SIMA that:

i. the expiry of the finding in respect of the dumping of certain UWM originating in or exported from China is likely to result in the continuation or resumption of dumping of the goods into Canada; and

ii. the expiry of the finding in respect of the subsidizing of certain UWM originating in or exported from China is likely to result in the continuation or resumption of subsidizing of the goods exported to Canada.

BACKGROUND

[11] On March 4, 2013, following a complaint filed by Allan Window Technologies (now BVGlazing Systems), Ferguson Neudorf Glass Inc., Flynn Canada Ltd., Inland Glass & Aluminum Ltd./Aluminum Curtainwall Systems Inc., Oldcastle Building Envelope (now Antamex Industries ULC), Sota Glazing Inc., Starline Architectural Windows Ltd., State Windows Corporation, Toro Aluminum/Toro Glasswall Inc. and Windsor Glass Company (1992) Ltd. (now Contract Glaziers Inc.), (hereafter 'the Complainants'), the CBSA initiated investigations pursuant to subsection 31(1) of SIMA, respecting the dumping and subsidizing of certain UWM originating in or exported from China.

[12] On October 10, 2013, pursuant to subsection 41(1) of SIMA, the CBSA made final determinations respecting the dumping and subsidizing of UWM originating in or exported from China.

[13] On November 12, 2013, pursuant to subsection 43(1) of SIMA, the CITT found that the dumping and subsidizing of UWM originating in or exported from China threatened to cause injury to the domestic industry in Canada.

[14] On May 26, 2014, the CBSA concluded a re-investigation to update the normal values and export prices of certain UWM from China.

[15] On May 8, 2018, pursuant to subsection 76.03(3) of SIMA, the CITT issued a notice concerning the expiry of its finding, which was scheduled to occur on November 11, 2018. Based on the information filed during the expiry process, the CITT decided that a review of the finding was warranted.

[16] On August 27, 2018, the CITT initiated an expiry review of its finding pursuant to subsection 76.03(3) of SIMA.

[17] On August 28, 2018, the CBSA commenced an expiry review investigation to determine whether the expiry of the finding is likely to result in continued or resumed dumping and/or subsidizing of the subject goods.

PRODUCT DEFINITION

[18] The goods subject to the finding under review are defined as:

> "Unitized wall modules, with or without infill, including fully assembled frames, with or without fasteners, trims, cover caps, window operators, gaskets, load transfer bars, sunshades and anchor assemblies; excluding non-unitized building envelope systems such as stick systems and point-fixing systems, originating in or exported from the People's Republic of China."

Additional Product Information[1]

[19] Unitized wall modules (i.e. the subject goods and the like goods produced by the Canadian industry), are an aluminum-framed engineered fenestration product which forms the building envelope or facade for multi-story buildings. The two main styles of unitized wall modules building envelope systems are referred to as "curtain wall" and "window wall".

[20] Unitized wall modules are prefabricated segments of the building envelope that interlock with each other when installed. They are manufactured and shipped to customers' building sites where they are installed by the customer or building contractor.

[21] Installed unitized wall modules separate the outdoors from a building's indoor environment. The unitized wall modules are designed to resist extreme wind pressures, limit air infiltration and exfiltration, prevent water infiltration and meet heat loss and energy usage criteria.

[1] Exhibit 007 (NC) – CBSA – *Statement of Reasons* – Final Determination; para. 25-33

[22] The unitized wall modules are generally designed to meet any of the following or equivalent specifications:

- air infiltration/exfiltration to a minimum 0.10 $L/s/m^2$ (litres/second/square metre) when tested in accordance with American Society of Testing and Materials ("ASTM") Standard E283 at 0.3kPa (kilopascals) negative and positive pressure differential or equivalent proprietary or other internationally accepted standard;
- no water infiltration when tested under static wind load in accordance with ASTM Standard E331 using 205 litres of water per square metre for 15 minutes at a minimum 0.3kPa negative pressure differential or equivalent proprietary or other internationally accepted standard; no water infiltration when tested under dynamic wind load in accordance to American Architectural Manufacturers Association ("AAMA") Standard 501.1 using 205 litres of water per square metre for 15 minutes at a minimum O.3kPa negative pressure differential or equivalent proprietary or other internationally accepted standard;
- structural performance when tested to ASTM Standard E330 by uniform static air pressure at a minimum 0.5kPa for 60 seconds without permanent deformation or equivalent proprietary or other internationally accepted standard; or
- thermal performance calculated in accordance with Canadian Standards Association ("CSA") Standard A440.2 to deliver a maximum of 3.0 W/m^2C (watt/square metre/Celsius) for vision glass areas and 1.5 W/m^2C for opaque areas (including framing) or equivalent proprietary or other internationally accepted standard.

[23] Unitized wall modules usually consist of three principal components: extruded pre-finished (mill, alodine, painted or anodized) aluminum frame, hardware and infill materials.

[24] The frame is the structural component that provides support for the infill materials. Hardware consists of fasteners, gaskets and sealants used to attach or sit between the frame and the infill materials. Infill materials include, but are not limited to, insulated glass units, monolithic glass, panels of various materials such as stone, granite or limestone, aluminum or galvanized steel back pans, insulation, terracotta tiles, ceramic tiles, thin veneer unitized bricks, louvers, grilles and photovoltaic panels. Patio or terrace doors and operable windows also are used as infill materials.

[25] The subject goods do not include non-unitized systems such as "stick systems" or "point-fixing systems". Stick system building envelopes or facades are not subject goods as they are not unitized. Unlike unitized wall modules, stick systems are not interlocking and require installation of individual framing components on-site to form the supporting grid for those systems. Stick systems are shipped to the project site as vertical and horizontal member components which are then installed and connected piece by piece to form the structural grid for a stick system envelope or facade for buildings. Once the grid of support members is secured to the building structure, infill materials are installed from the exterior and/or interior side of the building.

[26] Once a stick system building envelope or facade is completed, the appearance of the building exterior will be similar to a "unitized wall module" building envelope or facade. However, a stick system envelope or facade is differentiated from a "unitized wall module" building envelope or facade when viewed from the building interior, where the vertical frame members in the stick envelope or facade will be one-piece, while in the "unitized wall module" envelope or facade the vertical frame members will be two interlocked pieces.

[27] Products referred to as "point-fixing glass wall/curtain wall" and "full-glass glass wall/curtain wall" use glass fins, patch fittings, cable supports and other means for structural support and do not rely on the extruded aluminum members used in the subject goods covered by this finding. These products cannot be "unitized" and are not subject goods.

Production Process[2]

[28] The process begins with the fabrication of individual module components. Aluminum extrusions in the required sizes, shapes and finishes are purchased as required for each project. They are verified for colour and surface quality meeting the applicable standards and to ensure they meet the specifications of the individual project for which they are destined.

[29] Thermal breaks made from non-metal materials such as polyvinyl chloride or polyamide extrusions are sized and inserted into the aluminum extrusions to separate interior from exposed exterior sections of the frame. These composite frame sections are cut to length, shaped and machined to the final size of the unitized wall modules.

[30] The frame sections are then assembled. Typically the vertical mullions and horizontal frame sections are assembled using screws to connect the vertical to the horizontal frame sections. At this point the frames are fully assembled. Frames are typically rectangular in shape, but may also be manufactured to different shapes by using various angles and curves.

[31] The frames are prepared for the installation of infill materials. Frame connections are sealed using various sealant such as silicone, butyl, acrylic and elastomeric sealants. Frame sections are prepared by installing various types of air seal and glazing gaskets and/or glazing tapes to achieve air and water tight seals between the frame and infill materials.

[32] Once the frames have been prepared the infill materials are added. This can be done in a stationary manner on a fixed assembly table or on a conveyor assembly line. The process of installation into the assembled frames varies depending on the type of infill and complexity of the final unitized wall modules.

[2] Exhibit 007 (NC) – CBSA – *Statement of Reasons* – Final Determination; para. 34-39

[33] For a typical unitized wall module, the following assembly/infill procedures apply:

- install aluminum or galvanized steel back pans at spandrel conditions / opaque areas;
- seal back pans at the perimeter to the horizontal and vertical frame sections;
- install insulation boards of various thickness and materials into the backpan area. The insulation boards typically used are mineral board and fiberglass board;
- install glass panels of various thickness and assemblies into the vision and spandrel areas;
- glass panels or other infill materials are secured to frame sections mechanically using extruded glass stops, pressure plates and caps, or are glued using structural silicone or special structural adhesive tapes;
- infill materials can vary in type, thickness, and colour. Materials include, but are not limited to, insulated glass units, monolithic glass, aluminum or galvanized steel back pans, insulation, panels of metal, granite, limestone, photovoltaic, fibre reinforced or thin precast concrete, terra cotta and ceramic tiles, thin veneer unitized bricks, louvers, grilles and fixed or operable sun shading devices. Patio or terrace doors and operable windows are also used as infill materials; and
- once the frame assembly and installation of infill materials is completed, the assembled unitized wall modules is protected for shipment using cardboard, wood crating or steel racks. The product is then ready for shipment to the customer.

CLASSIFICATION OF IMPORTS

[34] The subject goods are usually classified under the following tariff classification numbers:

7610.10.00.20
7610.90.90.90

[35] The subject goods may also be imported under the following tariff classification numbers:

7008.00.00.00
7308.30.00.21
7610.10.00.10
7610.90.90.30

[36] This listing of tariff classification numbers is for convenience of reference only. The tariff classification numbers provided may include goods that are not subject goods and subject goods may be imported into Canada under tariff classification numbers other than those provided. Refer to the product definition for authoritative details regarding the subject goods.

PERIOD OF REVIEW

[37] The period of review (POR) for the CBSA's expiry review investigation is January 1, 2015, to June 30, 2018.

CANADIAN INDUSTRY

[38] The Canadian industry for UWM is comprised of 26 known companies, as listed below. Of these companies, 10 were complainants (one of the "other producers" is now related to a complainant) and another 9[3] supported the complaint.

Antamex Industries ULC (formerly Oldcastle Building Envelope Canada Inc.)	Concord	ON	Complainant
BVGlazing Systems Ltd.	Concord	ON	Complainant
Contract Glaziers Corp.	Windsor	ON	Complainant
Ferguson Neudorf Glass Inc.	Beamsville	ON	Complainant
Flynn Group of Companies (Flynn Canada Ltd. and Northern Facades Ltd.)	Mississauga	ON	Complainant
Inland Glass & Aluminum Ltd. / Aluminum Curtainwall Systems Inc.	Kamloops	B.C.	Complainant
Sotawall Limited	Brampton	ON	Complainant
Starline Windows Ltd.	Surrey	B.C.	Complainant
State Window Corporation	Vaughan	ON	Complainant
Toro Aluminum / Toro Glasswall Inc.	Concord	ON	Complainant
Applewood Glass & Mirror Inc.	Mississauga	ON	Supporting Producer
Epsylon Concept Inc.	Québec	QC	Supporting Producer
Groupe Lessard Inc.	Dorval	QC	Supporting Producer
Noram Enterprises Inc.	Mississauga	ON	Supporting Producer
Phoenix Glass Inc.	Delta	B.C.	Supporting Producer
Primeline Window and Doors Inc.	Toronto	ON	Supporting Producer
Quest Window Systems Inc.	Mississauga	ON	Supporting Producer
Transit Glass and Aluminum Ltd.	Kanata	ON	Supporting Producer
Verval Ltd.	Gatineau	QC	Supporting Producer
Aluminum Window Design Ltd.	Woodbridge	ON	Other Producer
Basic Industries Glazing	St. Catharines	ON	Other Producer
Columbia Glazing Systems Inc.	Burnaby	BC	Other Producer
Erie Architectural Products Inc.	Lakeshore	ON	Other Producer
Gamma Windows and Walls International Inc.,	Concord	ON	Other Producer
Integro Building Systems	Maple	ON	[Other producer related to a complainant (State Window Corporation) since 2015]
Sky Window Technologies Inc.	Toronto	ON	Other Producer

[3] It is the CBSA's understanding that of the 10 producers that supported the UWM complaint, one company, OVG Inc., ceased operations, and therefore was not included on the list of producers.

[39] At the time of the original investigations, the CBSA and the CITT were satisfied that the complainants accounted for a major proportion of known domestic production of like goods and that the complainants and the supporting producers collectively represented a large majority of the total domestic production of like goods. [4]

[40] As mentioned, responses to the Canadian Producers ERQ were received from the following 12 producers:

Antamex Industries ULC (formerly Oldcastle Building Envelope Canada Inc.)

[41] Antamex Industries ULC (Antamex), formerly Oldcastle Building Envelope Canada Inc., of Concord, Ontario, is a custom high-performance unitized façade solutions provider for high-end, complex building applications. Antamex offers highly engineered and customized products for its customer base located in markets across the United States (U.S.) and Canada.

BVGlazing Systems Ltd.

[42] BVGlazing Systems Ltd. (BVG) is the amalgamation of The Allen Windows Group of Companies, Global Architectural Metals and LSC Railings. Window wall and curtain wall production facilities are located in Concord, Ontario and Niagara Falls, Ontario, with regional offices in British Columbia and Cornwall, New York. The company has been producing UWM since 1980 and sells to customers across Canada and in select markets in the United States.[5]

Contract Glaziers Corp.

[43] Established in 1971, Contract Glaziers Corp. (CGC), of Windsor, Ontario, designs and manufactures high performance commercial glass products for institutional and commercial customers in North America. CGC specializes in the development, design, engineering and installation of high performance unitized curtain wall. UWM are also produced by its subsidiary Ennova Facades Inc., in Windsor, Ontario.[6]

Ferguson Neudorf Glass Inc.

[44] Ferguson Neudorf Glass Inc. (Ferguson) is a self-performing contract glazing company, incorporated in 1986. Ferguson designs, engineers, manufactures and installs curtain wall modules throughout North America. Ferguson produces UWM in Beamsville, Ontario and in Stevensville, Ontario.[7]

[4] Exhibit 027 (NC) - CBSA – *Statement of Reasons* – Certain Wall Modules Originating in or Exported from China - Initiation; para. 6, 7, 35, 36; Exhibit 008 (NC) – CITT, Finding and Reasons – Inquiry No. NQ-2013-002 - Unitized Wall Modules. Para. 53

[5] Exhibit 035 (NC) - Response to producer ERQ from BVGlazing Systems Ltd, Q9

[6] Exhibit 037 (NC) - Response to producer ERQ from Contract Glazing Corp., Q7, 9

[7] Exhibit 033 (NC) - Response to producer ERQ from Ferguson Neudorf Glass Inc., Q5, 9

Flynn Group of Companies (Flynn Canada Ltd and Northern Facades Ltd.)

[45] Flynn Canada Ltd. (Flynn), of Mississauga, Ontario, is a privately-owned company that originated as a Winnipeg based roofing company, incorporated in 1978. Growth and expansion through various acquisitions has led the company to become a total building envelope contractor. UWM production, marketing and installation was added to the company's offerings in 2006. Flynn produces UWM at its production facilities in Mississauga and in Surrey, BC. Production by Flynn includes production of its subsidiary Northern Facades Ltd.[8]

Inland Glass & Aluminum Ltd. / Aluminum Curtainwall Systems Inc.

[46] Inland Glass & Aluminum Ltd. (IGA), of Kamloops, BC, produces custom architectural aluminum unitized curtain wall products since its incorporation on January 21, 1974. The firm operates within both Canada and the United States. IGA's products generally comprise of custom unitized curtain wall modules but the company offers a larger range of other products, including: aluminum stick system (site glazed), skylights, sunshades, storefronts/entrances and windows.[9]

Integro Building Systems

[47] Integro Building Systems (IBS) was incorporated in Ontario on February 17, 2015. UWM are designed and fabricated in house for supply and (at times) installation on commercial, institutional and mixed use towers throughout North America. The company opened its first manufacturing facility in Boynton Beach, Florida in March 2015. This was a turn-key facility needed to meet delivery schedules for the first major project located in San Francisco, California. A Canadian facility was next set up in Langley, BC to serve as an assembly and glazing plant to this and other projects on the West Coast. A Canadian manufacturing facility was opened in late 2016 in Maple, Ontario. The Maple facility more than doubled the company's manufacturing capacity.[10]

Quest Window Systems Inc.

[48] Quest Window Systems Inc. (Quest), a producer based in Mississauga, Ontario, has manufactured window wall since 2000. The company was founded as a window and glass products manufacturer catering to multi-residential high-rise condominium developers and constructors in Canada and the U.S.. In 2017, Quest was purchased by Exchange Income Corporation, of Winnipeg, Manitoba.[11]

[8] Exhibit 039 (NC) - Response to producer ERQ from Flynn Canada Inc., Q1, 3, 5, 9
[9] Exhibit 041 (NC) - Response to producer ERQ from Inland Glass & Aluminum Ltd., Q9
[10] Exhibit 043 (NC) - Response to producer ERQ from Integro Building Systems., Q5, 9
[11] Exhibit 047 (NC) - Response to producer ERQ from Quest Window Systems Inc., Q8, 9

Sotawall Limited

[49] Sotawall Limited (Sotawall), of Brampton, Ontario, was incorporated as Sota Glazing Inc. in 1991 from a corporate buyout. Sotawall has two UWM production facilities in Brampton, Ontario and a third in Mississauga, Ontario. The company also has drafting/engineering and sales offices in Winnipeg, Manitoba; Edmonton, Alberta; and St. Catharines, Ontario. Sotawall is a subsidiary of Apogee Enterprises of Minneapolis, MN, U.S.[12]

Starline Windows Ltd.

[50] Starline Windows Ltd. (Starline) (formerly Starline Architectural Windows Ltd.), of Surrey, BC, was incorporated in 2001 in British Columbia. From its inception, Starline has manufactured UWM's for the high-rise market in Western Canada and the Western United States. Its facility includes approximately 46,500 square metres of production area with automated inventory, painting, rolling, cutting and machining.[13]

State Window Corporation

[51] State Window Corporation (State Window), of Vaughan, Ontario, was incorporated on July 15, 2002. It is 100% Canadian and is privately held. The company began producing unitized window wall in 2006. One of the company's affiliated entities also provides installation of unitized curtain wall systems. The company mainly supplies to and installs for domestic clients, but has also supplied U.S. based clients in the past. The company does not import its UWM. The company also shares facilities with a related entity from which it receives custom fabrication services in relation to the manufacturing of its window wall modules as well as another related entity that manufactures aluminum railings.[14]

Toro Aluminum / Toro Glasswall Inc.

[52] Toro Aluminum / Toro Glasswall Inc. (Toro) is a UWM producer located in Concord, Ontario. Established in 1979, Toro Aluminum has become the window wall and door supplier for high-rise condominiums, office buildings and hotels across Canada, the United States and Mexico. Established in 2008, Toro Glasswall has become the curtain wall supplier for high-rise condominiums, office buildings and hotels across Canada and the United States.[15]

[12] Exhibit 048 (PRO) & 049 (NC) - Response to producer ERQ from Sotawall Limited, Q5, 8, 9
[13] Exhibit 051 (NC) - Response to producer ERQ from Starline Windows Ltd, Q. 9
[14] Exhibit 053 (NC) - Response to producer ERQ from State Window Corporation, Q. 9
[15] Exhibit 055 (NC) - Response to producer ERQ from Toro Aluminum / Toro Glasswall Inc., Q. 9

CANADIAN MARKET

[53] The apparent Canadian market for UWM over the POR, which includes Canadian production, is indicated in **Table 1** and **Table 2** below. In light of the limited number of parties involved, the CBSA cannot release specific quantitative data respecting imports of subject goods in 2015 and 2016 as it would lead to the disclosure of confidential information. As a result, the CBSA is also unable to disclose specific data for the total apparent market for those years.

Table 1
Apparent Canadian Market for the Period of Review*
(Value in CAN$)

Source	2015	2016	2017	2017 Jan. – June	2018 Jan. – June
From Canadian Production**	638,723,476	689,827,632	695,627,032	327,369,795	398,369,437
China[16]	xxxx	xxxx	0	0	0
All Other Countries[17]	9,164,634	14,679,482	23,183,815	13,175,766	9,353,232
Total Imports	xxxx	xxxx	23,183,815	13,175,766	9,353,232
Total Market	xxxx	xxxx	**718,810,847**	**340,545,561**	**407,722,669**

*The CBSA is unable to provide the total apparent Canadian market figures in terms volume because some of the information is not available in a consistent unit of measurement (i.e. Customs data mixes area vs weight vs number of units, etc.).

** The consensus among the responding Canadian producers is that the "Coalition of Canadian UWM producers" (i.e. Antamex, BVG, CGC, Ferguson, Flynn, IGA, IBS, Quest, Sotawall, Starline, State Window, and Toro) collectively held the vast majority (the average estimate being 76 %) of the total Canadian production of UWM for the Canadian market between January 1, 2015 and June 30, 2018. The CBSA therefore determined Canadian producers' sales data on the basis of the data provided by these respondents, plus 31.6% (i.e. 1/76%) of that amount as an estimate of the other producers' sales volume.

Table 2
Canadian Producers' Production of UWM
(Quantity in square metres)

	2015	2016	2017	H1 2017	H1 2018
Production for Domestic Sales*	1,159,204	1,156,123	1,134,718	551,117	671,378

* The consensus among the responding Canadian producers is that the "Coalition of Canadian UWM producers" (i.e. Antamex, BVG, CGC, Ferguson, Flynn, IGA, IBS, Quest, Sotawall, Starline, State Window, and Toro) collectively held the vast majority (the average estimate being 76 %) of the total Canadian production of UWM for the Canadian market between January 1, 2015 and June 30, 2018. The CBSA therefore determined Canadian producers' sales data on the basis of the data provided by these respondents, plus 31.6% (i.e. 1/76%) of that amount as an estimate of the other producers' production volume.

[16] Exhibit 057 (NC) - Finalized Import Stats and Market Table (CBSA)
[17] Exhibit 057 (NC) - Finalized Import Stats and Market Table (CBSA)

[54] In terms of trend, the total market increased steadily throughout the POR, including an additional increase of 19.7% in the first half of 2018, compared to the same period in the previous year.

[55] While the CBSA is unable to provide the total apparent Canadian market figures in terms of volume because some of the information is not available in a consistent unit of measurement (i.e. Customs data mixes area, weight, number of units, etc.), if it is assumed that the same market shares applies to the volumes as to the values, it can be estimated that the total Canadian market was approximately 1,175,000 square metres (m^2) in 2017.

Canadian Sales from Canadian Production

[56] Based on the apparent Canadian market figures in Table 1 above, the domestic sales value of UWM produced in Canada increased by 8.9% between 2015 and 2017, with most of the increase occurring in 2016. The increase in sales value accelerated in 2018, with sales during the first half of 2018 being 21.7% higher than during the same period in 2017.

[57] Despite the increase in value between 2015 and 2017, the actual volume decreased by 2.1% during that time. In 2018, however, the volume increased proportionally to the increase in value, with an increase of 21.8% during the first half of 2018 compared to the same period in 2017.

[58] The increase in value despite a decrease in the volume between 2015 and 2017 could be attributable to a number of factors. On the one hand, this may reflect a higher profit margin by Canadian producers. Based on the available financial reports of a sample of nine Canadian producers,[18] the weighted average profit margin increased slightly between 2015 and 2017. On this matter, one producer did report "...slight increase in system pricing for modules over the past three to four years in opportunities – over and above standard inflation."[19] On the other hand, the increase in sales value despite a decrease in the sales volume may also be partially explained by the reported building code changes and consumer preferences that have demanded improved performance, resulting in an increase in cost and value.[20] In other words, the quality of the goods have improved in the past few years, likely resulting in a higher value per square metre.

[59] During the POR, the Canadian producers held on to the vast majority of the Canadian market.

[18] Based on the financial statements of BVG, Contract, Ferguson, Aluminum Curtainwall Systems Inc. (in Inland's response), Inland, Starline, State, Toro Aluminum and Toro Glasswall.
[19] Exhibit 045 (NC) - Response to producer ERQ from Oldcastle Building Envelope Canada Inc., Q. 25
[20] As reported by several Canadian producers in response to question 25 of the ERQ and also by Chinese exporter Shenyang Yuanda in response to question 52 of its ERQ.

Imports - China

[60] As a result of the limited number of parties involved in the exportation/importation of the subject goods, the CBSA cannot release specific quantitative data respecting imports of subject goods as it would lead to the disclosure of confidential information. As can be seen in Table 1 above, during the POR, subject goods were only present in the Canadian market in 2015 and 2016.

Imports – Other Countries

[61] As shown in Table 1 above, while Chinese imports disappeared from the Canadian market after 2016, importers of UWM found new sources of imports. As such, imports from countries other than China increased from about $9 million in 2015 to just over $23 million in 2017, an increase of 153% over these years. During that time, their share of the total market increased. Imports seem to be lower in 2018, with a decrease of 29% during the first half of 2018 compared to the same period in 2017. Overall, total imports increased between 2015 and 2017.

Market Projections

Demand:

[62] As a general consensus, Canadian producers foresee healthy market demand in Canada in the foreseeable future. Most producers expect steady growth in market demand while others expect the market to remain stable in the foreseeable future.[21]

Supply:

[63] On the supply side, the CBSA expects increased competition in the Canadian market in the foreseeable future. There were several reports in Canadian producers' ERQ responses of new foreign entrants in the Canadian or North American market, from Asia (other than China) and also from Europe. Further, on the basis of the CBSA's compilation of the producers' data,[22] the domestic industry has been on an expansion during the POR. Overall domestic production capacity increased by 26% between 2015 and 2017, along with an additional increase of 16% in the first half of 2018. Production also increased, although at a slightly lower pace of 20% between 2015 and 2017, and an additional 16% in the first half of 2018. The capacity utilization rate has been decreasing during that time, from 59% in 2015 to 56% in 2017 to 50% in the first half of 2018.

[64] Overall, the expected demand growth and the increased competition may keep the demand and supply balance stable for the foreseeable future.

[21] Canadian producers' responses to questions 24-29 of ERQ.
[22] Based on the data provided in Appendix 5 of the Producers' responses to the ERQ.

ENFORCEMENT DATA

[65] As a result of the limited number of parties involved in the exportation/importation of subject goods during the POR, the CBSA cannot release the specific amounts of anti-dumping duty and countervailing duty assessed in 2015 and 2016 as this would lead to the disclosure of confidential information. The majority of the duties assessed in 2015 and 2016 consisted of countervailing duty. The total amount of anti-dumping duty assessed during 2015 and 2016 is considered to be minimal. There were no imports of subject goods during the remainder of the POR.

PARTIES TO THE PROCEEDINGS

[66] On August 28, 2018, the CBSA sent a notice concerning the initiation of the expiry review investigation and ERQs to known Canadian producers, importers and exporters. The GOC was also sent an ERQ relating to subsidy.

[67] The ERQs requested information needed to consider the expiry review factors, as found in subsection 37.2(1) of the *Special Import Measures Regulations* (SIMR), relevant to this expiry review investigation.

[68] Twelve Canadian producers: Antamex, BVG, CGC, Ferguson, Flynn, IGA, IBS, Quest, Sotawall, Starline, State Window, and Toro, participated in the expiry review investigation and provided ERQ responses. Additional documents were also filed on behalf of these Canadian producers prior to the closing of the record.

[69] One exporter, Shenyang Yuanda also participated in the expiry review investigation and provided an ERQ response.

[70] A case brief was received from counsel on behalf of the Canadian producers. A reply submission was filed on behalf of Shenyang Yuanda.

[71] No importers in Canada responded to the ERQ nor did they provide a case brief or reply submission.

[72] The CBSA did not receive a response to the ERQ from the GOC nor did the GOC provide a case brief or reply submission.

INFORMATION CONSIDERED BY THE CBSA

Administrative Record

[73] The information considered by the CBSA for purposes of this expiry review investigation is contained on the administrative record. The administrative record includes the exhibits listed on the CBSA's Exhibit Listing, which is comprised of the CITT's administrative record relating to the initiation of the expiry review, CBSA exhibits and information submitted by interested persons, including information which they feel is relevant to the decision as to whether dumping and/or subsidizing is likely to continue or resume, if the finding is rescinded. This information may consist of expert analyst reports, excerpts from trade magazines and newspapers, orders and findings issued by authorities of Canada or of a country other than Canada, documents from international trade organizations such as the World Trade Organization and responses to the ERQs submitted by domestic producers, importers, exporters and foreign governments.

[74] For purposes of an expiry review investigation, the CBSA sets a date after which no new information submitted by interested parties may be placed on the administrative record or considered as part of the CBSA's investigation. This is referred to as the closing of the record date. This allows participants time to prepare their case briefs and reply submissions based on the information that is on the record as of the date the record closed. For this expiry review investigation, the record closed on October 22, 2018.

[75] In terms of procedural issues, the CBSA notes that at paragraphs 4 and 5 of Shenyang Yuanda's reply submission, references were made to statistical data from the National Bureau of Statistics of China. As this data is new information that did not form part of administrative record for this expiry review investigation, the CBSA did not consider this information in its analysis.[23]

POSITION OF THE PARTIES – DUMPING

Parties Contending that Continued or Resumed Dumping is Likely

[76] The participating Canadian producers made representations in their ERQ responses and in their case brief supporting their position that dumping of certain UWM from China is likely to continue or resume should the CITT's finding expire. Therefore, they argued that the anti-dumping measures should remain in place.

[23] In any event, the actual statistical data was not provided by Shenyang Yuanda. Its reply submission only referred to their existence and requested the CBSA to find them at a provided internet link.

[77] The main arguments made by the Canadian producers can be summarized in the following categories:

- Weakening Market Conditions in China
- Excess Production Capacity / Oversupply in China
- Chinese Producers are Increasingly Export-focused
- Attractiveness of the Canadian and North American Markets
- Propensity to Dump
- Measures in Other Jurisdictions and Other Factors Likely to Lead to Diversion
- Positive Effect of Finding

Weakening Market Conditions in China

[78] The Canadian producers alleged that there were indications that the Chinese UWM market was losing its momentum and that demand for UWM will continue to stagnate over the foreseeable future.[24] The Canadian producers pointed to the weakening of the Chinese construction market due to developments in the Chinese economy, including concerns about debt levels and a real estate bubble.[25] The Canadian producers also referred to policies implemented by the GOC in response to these issues, such as policies to dampen demand, especially in the residential market.[26] The producers also provided evidence of a slow-down in the construction of office buildings in China.[27]

[79] The Canadian producers provided information indicating that Chinese developers were highly leveraged and facing heightened liquidity risks.[28] The producers provided evidence of concerns with respect to the risk of bankruptcies among developers in China. For example, they cited the chairman of a major property development holding company, who predicted that 20 to 30 percent of real estate firms would go bankrupt annually in the coming years.[29] The producers argued that weakening investment growth and declining construction starts are indicative of a slowdown in the UWM market.[30]

[80] The Canadian producers argued that since production of UWM often follows as much as 24 months after construction begins, the current state of the construction industry in China will impact UWM production and delivery over the foreseeable future.[31]

[24] Exhibit 34 (PRO) & Exhibit 35 (NC) Response to producer ERQ from BVG (as well as in all other producers' ERQ responses); Response to Producer Questionnaire Q30, p 3
[25] Exhibit 34 (PRO) & Exhibit 35 (NC) Response to producer ERQ from BVGlazing Systems Ltd; Response to Producer Questionnaire Q30, p.3; and Exhibit 61 (PRO) & 62 (NC) – Case Briefs of Canadian Producers, para. 40
[26] Exhibit 62 (NC) – Case Briefs of Canadian Producers, para. 41
[27] Exhibit 62 (NC) – Case Briefs of Canadian Producers, para. 46
[28] Exhibit 62 (NC) – Case Briefs of Canadian Producers, para. 40
[29] Exhibit 62 (NC) – Case Briefs of Canadian Producers, para. 41
[30] Exhibit 62 (NC) – Case Briefs of Canadian Producers, para. 45
[31] Exhibit 62 (NC) – Case Briefs of Canadian Producers, para. 48

[81] The producers referred to the annual reports of a number of Chinese UWM producers which discuss the challenging environment in the domestic market, an unbalanced supply and demand and declining sales.[32] The Canadian producers pointed to the financial data of one major Chinese producer, Yuanda China Holdings Limited (CNYD), which showed strong decline in awarded domestic projects and backlogs[33], as further evidence of the state of the Chinese market.[34]

[82] The producers argued that such developments in the Chinese economy, and policies implemented by the GOC, will lead to the export of dumped subject goods.[35]

Excess Production Capacity / Oversupply in China

[83] The Canadian producers argued that China has tremendous production capacity that has grown exponentially in recent years at a rate far greater than necessary to fulfil its domestic UWM product needs.[36] The Canadian producers point out that in one of the major UWM Chinese producers' recent annual reports, a description of the key risks and uncertainties flags the excess supply of curtain wall products on the mainland, which has sparked fierce competition.[37]

[84] The Canadian producers argued that the evidence suggests that one Chinese producer, CNYD, has a production capacity of 12 million m^2, as compared to the total annual Canadian consumption of just over 1 million m^2.[38] The Canadian producers indicate that CNYD could supply the entire Canadian market with just 9% of its capacity.[39] They alleged that this Chinese producer has announced plans to further increase capacity. Further, the Canadian producers allege that evidence suggests that there are at least 260 other UWM producers in China.[40]

[85] The Canadian producers pointed to a report suggesting that the total production of curtain wall in China has risen from 16 million m^2 in 2001 to just over 80 million m^2 in 2010 and to approximately 154.6 million m^2 in 2016.[41] The Canadian producers suggest that since there is evidence indicating that there was excess capacity in 2016, the actual total production capacity in China must be well over 200 million m^2. Assuming a 70% capacity utilization rate in 2016, the Canadian producers estimated that the total production capacity in 2016 may have been 223.4 million m^2.[42]

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[32] Exhibit 35 (NC) Response to producer ERQ from BVGlazing Systems Ltd; Response to Producer Questionnaire Q30, p. 2-4

[33] Backlogs are orders that a producer has received but has not yet produced and delivered.

[34] Exhibit 35 (NC) Response to producer ERQ from BVGlazing Systems Ltd; Response to Producer Questionnaire Q30., p. 3-8; Exhibit 61 (PRO) & 62 (NC) – Case Briefs of Canadian Producers, para. 51-63

[35] Exhibit 62 (NC) – Case Briefs of Canadian Producers, para. 43-44

[36] Exhibit 35 (NC) Response to producer ERQ from BVGlazing Systems Ltd; Response to Producer Questionnaire Q30, p. 2

[37] Exhibit 35 (NC) Response to producer ERQ from BVGlazing Systems Ltd; Response to Producer Questionnaire Q30., p. 2; Exhibit 61 (PRO) & 62 (NC) – Case Briefs of Canadian Producers, para. 27

[38] Exhibit 35 (NC) Response to producer ERQ from BVGlazing Systems Ltd; Response to Producer Questionnaire Q30. p. 3; Exhibit 61 (PRO) & 62 (NC) – Case Briefs of Canadian Producers, para. 30

[39] Exhibit 62 (NC) – Case Briefs of Canadian Producers, para. 30, 33

[40] Exhibit 62 (NC) – Case Briefs of Canadian Producers, para. 31-32

[41] Exhibit 35 (NC) Response to producer ERQ from BVGlazing Systems Ltd; Response to Producer Questionnaire Q30, p. 2; Exhibit 61 (PRO) & 62 (NC) – Case Briefs of Canadian Producers, para. 29

[42] Exhibit 62 (NC) – Case Briefs of Canadian Producers, para. 29

[86] The Canadian producers maintained that the existing excess production capacity in the Chinese market, combined with weakening market conditions, will push Chinese producers to increase sales to their export markets, including to Canada, in order to maintain production and service their debt.[43]

Chinese Producers are Increasingly Export-Focused

[87] The Canadian producers argued that the Chinese producers are export oriented and that current market conditions are further influencing producers to continue to expand globally.[44]

[88] The producers referred to the recent public annual reports of specific major Chinese producers and other public information, which indicate that these companies are strategically strengthening the expansion of their export markets. Such companies include CNYD, Far East Global, Jangho Curtain Wall Co., Ltd, and Meite.[45]

[89] The Canadian producers maintained that while CNYD's export markets accounted for 39% of its newly awarded projects in 2015, it represented 62% of new projects in 2017.[46] They maintained that the Chinese producer's backlog follows the same pattern. Backlogs are orders that a producer has received but has not yet produced and delivered. They maintain that this increasing focus on export markets is likely shared by other producers.[47]

Attractiveness of the Canadian and North American Markets to Chinese Producers

[90] The Canadian producers contend that considering the state of the Chinese UWM market, the Canadian market is a very attractive one to Chinese producers.[48] The Canadian producers argued that the Canadian market is stable and healthy, and attracts higher prices than the Chinese market. The producers believe that the Canadian market will remain strong over the next two years. According to the Canadian producers, the Chinese UWM producers will be attracted by a stable market with financially secure developers.[49]

[43] Exhibit 62 (NC) – Case Briefs of Canadian Producers, para. 43-44
[44] Exhibit 62 (NC) – Case Briefs of Canadian Producers, para. 64
[45] Exhibit 35 (NC) Response to producer ERQ from BVGlazing Systems Ltd; Response to Producer Questionnaire Q30, pp. 10-12 ; Exhibit 62 (NC) – Case Briefs of Canadian Producers, para. 65-68
[46] Exhibit 35 (NC) Response to producer ERQ from BVGlazing Systems Ltd; Response to Producer Questionnaire Q30. p. 11
[47] Exhibit 62 (NC) – Case Briefs of Canadian Producers, para. 57
[48] Exhibit 62 (NC) – Case Briefs of Canadian Producers, para. 88-96
[49] Exhibit 62 (NC) – Case Briefs of Canadian Producers, para. 90

[91] The Canadian producers stated that Chinese producers already have relationships and legal entities in Canada. Further, they argued that while Chinese producers are already present and interested in the American UWM market, the trade frictions between China and the U.S. and the existing aluminum extrusion finding in the U.S., whose scope includes the aluminum extrusions that form part of UWM, could result in diversions to Canada if the finding was rescinded.[50] The producers argue that six years of litigation by Beijing Jangho Curtainwall Company Ltd. and CNYD in the U.S. Aluminum Extrusions case demonstrates their interest in remaining in the North American market.[51] The producers noted that these companies are the same two companies that were involved in the original UWM investigation in Canada.

[92] The Canadian producers also argued that the attractiveness of the Canadian market is evidenced by exporters in new countries seeking to enter the Canadian market. Some Canadian producers noted an increase in competition from new players in the North American market.[52]

[93] The producers claim that if the finding is rescinded, Chinese producers would likely try to undercut these new foreign entrants and thus sell at dumped prices.[53]

Propensity to Dump

[94] The Canadian producers alleged that when the risk of purchasing UWM from a production facility that is a great distance away is taken into consideration, the Chinese producers can only compete in the Canadian market by undercutting domestic prices. This was also the case during the period prior to the CITT finding.[54] The Canadian producers claimed that in the original inquiry, the CITT recognized that Canadian customers would only consider offshore UWM if they were priced lower than those produced in Canada as a result of the risk associated with having production far away.[55] They also pointed to the CITT's Finding and Reasons which discussed the extent of the price undercutting and to the CBSA's *Statement of Reasons*, which indicated the extent of the dumping for the cooperating exporters, as evidence that Chinese producers are unable to export to Canada at non-dumped prices.[56] The Canadian producers argue that this situation remains applicable today.[57]

[50] Exhibit 35 (NC) - Response to producer ERQ from BVGlazing Systems Ltd; Response to Producer Questionnaire Q30, pp. 12-13
[51] Exhibit 62 (NC) – Case Briefs of Canadian Producers, para. 92-93
[52] Exhibit 62 (NC) – Case Briefs of Canadian Producers, para. 94-95
[53] Exhibit 045 (NC) - Response to producer ERQ from Oldcastle Building Envelope Canada Inc., Q.30
[54] Exhibit 35 (NC) Response to producer ERQ from BVGlazing Systems Ltd; Response to Producer Questionnaire Q30, p. 13; Exhibit 61 (PRO) & 62 (NC) – Case Briefs of Canadian Producers, para. 97-102
[55] Exhibit 62 (NC) – Case Briefs of Canadian Producers, para. 97
[56] Exhibit 62 (NC) – Case Briefs of Canadian Producers, para. 98, 100
[57] Exhibit 62 (NC) – Case Briefs of Canadian Producers, para. 99

Measures in Other Jurisdictions and Other Factors Likely to Lead to Diversion

[95] The Canadian producers maintained that the U.S. dumping and subsidy findings against aluminum extrusions from China apply to aluminum extrusions within UWM, and that this finding was continued following a sunset review in 2017.[58] The producers also note that the U.S. tariff on aluminum under Section 232 of the *Trade Expansion Act of 1962* applies to aluminum extrusions but not to finished goods made from aluminum extrusions. The Canadian producers argue that this will push Chinese producers to export finished goods, such as UWM, rather than the extrusions themselves, affecting subject goods prices to Canada.[59]

[96] The Canadian producers also argued that other markets for Chinese UWM may be slowing, particularly the construction industry in the Middle East region, which will force Chinese producers to seek to diversify their export markets.[60] The Canadian producers also argued that geopolitical tensions, emerging trade protectionism and global financial austerity, still persist and have a direct impact on Chinese producers.[61]

Positive Effect of Finding

[97] The Canadian producers argue that the decrease in the volume of subject goods imported since the finding was put in place demonstrates the effect of the finding.[62] The producers alleged that the lower volume, along with the assessment of SIMA duties support the conclusion that the Chinese producers cannot compete in the Canadian market without dumping subject goods.[63]

[58] Exhibit 62 (NC) – Case Briefs of Canadian Producers, para. 103-105
[59] Exhibit 62 (NC) – Case Briefs of Canadian Producers, para. 106
[60] Exhibit 62 (NC) – Case Briefs of Canadian Producers, para. 107-108
[61] Exhibit 62 (NC) – Case Briefs of Canadian Producers, para. 24
[62] Exhibit 62 (NC) – Case Briefs of Canadian Producers, para. 86-87
[63] Exhibit 62 (NC) – Case Briefs of Canadian Producers, para. 86-87

Parties Contending that Continued or Resumed Dumping is Unlikely

[98] None of the parties contended that continued or resumed dumping of subject goods from China is unlikely if the finding is rescinded.

[99] However, Shenyang Yuanda did provide a response to the ERQ and also provided a reply submission in which it argued that the evidence on the record does not support an affirmative determination of propensity to dump. Shenyang Yuanda also contested some of the arguments made by the Canadian producers in their case brief.

[100] Shenyang Yuanda argued that the Canadian producers erroneously refer to a reduction of the growth rate in China as contraction.[64] Shenyang Yuanda believes that despite a real estate slowdown in China, demand for UWM will remain stable.[65] Shenyang Yuanda also argued that the arguments made by the Canadian producers based on data suggesting a decrease in the Chinese domestic project prices and an increase in export project prices does not support that there is a threat of dumping should the finding be rescinded.[66]

CONSIDERATION AND ANALYSIS – DUMPING

[101] In making a determination under paragraph 76.03(7)(a) of SIMA whether the expiry of the finding is likely to result in the continuation or resumption of dumping of the goods, the CBSA may consider the factors identified in subsection 37.2(1) of the SIMR, as well as any other factors relevant under the circumstances.

[102] Guided by the aforementioned factors and having considered the information on the administrative record, the following list represents a summary of the CBSA's analysis conducted in this expiry review investigation with respect to dumping:

- Weakening Market Conditions in China
- Excess Production Capacity / Oversupply in China
- Chinese Producers are Increasingly Export-focused
- Attractiveness of the Canadian Market to Chinese Producers
- Increased Competition in the Canadian Market from Domestic and New Foreign Sources
- Propensity of Chinese Exporters to Undercut Canadian Prices

[103] As previously mentioned, the CBSA received ERQ responses from 12 Canadian producers and from one exporter. In addition to responding to the ERQ, the Canadian producers submitted supplementary information prior to the closing of the record as well as a case brief, and Shenyang Yuanda, an exporter, provided a reply submission.

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[58] Exhibit 62 (NC) – Case Briefs of Canadian Producers, para. 103-105
[59] Exhibit 62 (NC) – Case Briefs of Canadian Producers, para. 106
[60] Exhibit 62 (NC) – Case Briefs of Canadian Producers, para. 107-108
[61] Exhibit 62 (NC) – Case Briefs of Canadian Producers, para. 24
[62] Exhibit 62 (NC) – Case Briefs of Canadian Producers, para. 86-87
[63] Exhibit 62 (NC) – Case Briefs of Canadian Producers, para. 86-87

[104] The CBSA relied on the information submitted by these parties, as well as other information on the administrative record for purposes of this expiry review investigation.

[105] Specific supply and demand data for the Chinese UWM market is limited. Nevertheless, evidence on the record suggests that demand in the Chinese curtain wall market expanded significantly in the recent past, resulting in an increase in production by the Chinese industry. However, the Chinese curtain wall industry is currently operating in a weakening construction market with evidence of an oversupply condition.

[106] China's rapid economic growth and the fast pace of urbanization has spurred strong growth in fixed assets and construction investments. This in turn has led to rapid growth in the Chinese curtain wall industry, particularly for UWM. Similarly, limited land-use rights in China pushed developers to build taller buildings, which increased demand for UWM.[67]

[107] Evidence on the record suggests a total output of approximately 267 billion RMB for curtain wall production at the time of the finding, in 2013.[68] The total output increased to 320 billion RMB in 2014, 340 billion RMB in 2015, and 370 billion RMB in 2016.[69] This represents an increase of 38.6% between 2013 and 2016. In terms of volume, domestic production output was approximately 156.4 million m^2 in 2016,[70] up from approximately 115 million m^2 in 2013.[71] This represents a 36 % increase between 2013 and 2016.

[108] The Chinese curtain wall industry is known to be very fragmented and highly competitive. According to the CITT, at the time of the finding, there were allegedly as many as 200 producers of UWM in China.[72] One Chinese producer, referring to statistics from the China Building Decorating Association, noted that in 2016, there was a total of 260 companies with Class A Curtain Wall Designing Qualification, 210 companies which possess Level I Curtain Wall Contracting Qualification, and 947 companies holding Level I Building Decoration Contracting Qualifications.[73]

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[67] Exhibit 30 (PRO) & Exhibit 31 (NC) – Response to Exporter ERQ – Shenyang Yuanda Aluminum Industry Engineering Co., Ltd., Q34

[68] Exhibit 029 (NC); CBSA Research regarding Expiry Review; China Construction Curtain Wall Industry Report, 2013-2016

[69] Exhibit 35 (NC) Response to producer ERQ from BVGlazing Systems Ltd; Response to Producer Questionnaire Q30; public attachment 3; Golden Metropolis International Limited, Amendment No1 to Form F-1, US Securities and Exchange Commission; p. 56.

[70] Exhibit 35 (NC) Response to producer ERQ from BVGlazing Systems Ltd; Response to Producer Questionnaire Q30; public attachment 3; Golden Metropolis International Limited, Amendment No1 to Form F-1, US Securities and Exchange Commission; p. 57.

[71] Exhibit 29 (NC); CBSA Research regarding Expiry Review; China Construction Curtain Wall Industry Report, 2013-2016

[72] Exhibit 028 (NC) CITT, *Unitized Wall Modules* – NQ-2013-002, para. 145.

[73] Exhibit 35 (NC) Response to producer ERQ from BVGlazing Systems Ltd; Response to Producer Questionnaire Q30; public attachment 3; Golden Metropolis International Limited, Amendment No1 to Form F-1, US Securities and Exchange Commission; p. 9

[109] Sales of UWM depend heavily on the performance of the construction and real estate industries. During the POR, China experienced a slowdown of its real estate investments. This slowdown appears to be in part the result of specific policies of the GOC aimed at deflating the housing bubble and tightening its credit policies. The GOC's measures were seemingly successful at curbing demand for real estate, reducing buyers' leverage and weakening the willingness of developers to further invest in 2018.[74]

[110] The slowdown in the real estate market and its negative impact on the Chinese UWM market was flagged by Yuanda China Holdings Limited (CNYD) in its 2015, 2016 and 2017 Annual Reports.[75] CNYD, one of the major UWM producers in China and a major global player, is the parent company of Shenyang Yuanda, who participated in this expiry review investigation and exported subject goods to Canada at the time of the original investigation. CNYD's revenue from its domestic market decreased by 22.9% in 2015, by 25.2% in 2016 and again by 28.3% in 2017.[76] The company attributed the drop in its domestic market sales to the slowdown in the real estate market and the effects of government measures. Domestic sales in the foreseeable future are not expected to recover, as suggested by a 32.1% drop in newly-awarded domestic projects in 2017.[77] Projects awarded in any given year are what generate workload and revenue for the subsequent one to two years. In their 2017 Annual Reports, both CNYD[78] and Far East Global,[79] another major Chinese producer and global player, mentioned the need to be selective in choosing curtain wall projects in China and focus on major projects owned by customers with good reputations. Such a statement suggests great concern with respect to the sustainability of ongoing real estate investments in the current environment if it relates to concerns that ongoing projects may not proceed or be completed. This is also consistent with the information provided by the Canadian producers which indicated that Chinese developers were highly leveraged and faced heightened liquidity risks.

[111] In each of its 2015, 2016 and 2017 Annual Reports, CNYD indicated that the Chinese market was characterized by excess supply of curtain wall products on the mainland, the fragmentation of the industry and the presence of fierce competition.[80] Far East Global also described the domestic market as fragmented, disordered and oversupplied.[81]

[112] CNYD has an annual production capacity for curtain wall of as much as 10 million[82] to 12 million[83] m^2. This is 10 to 12 times the size of the entire estimated Canadian market. Although a portion of that capacity is used for the production of non-subject goods, such as stick systems, the capacity to produce UWM remains substantial.

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[74] Exhibit 25 (NC) – CNYD 2016 Annual Report, p. 13-15, 30
[75] Exhibit 25 (NC) – CNYD 2015 Annual Report, pp. 19, 27; CNYD 2016 Annual Report, pp. 13-14, 30; CNYD 2017 Annual Report, pp. 9, 12, 15, 24, 30
[76] Exhibit 25 (NC) – CNYD 2015 Annual Report, p.19; CNYD 2016 Annual Report, p. 19.; CNYD 2017 Annual Report, p. 15
[77] Exhibit 25 (NC) – CNYD 2017 Annual Report, p. 30
[78] Exhibit 25 (NC) – CNYD 2017 Annual Report, p. 30
[79] Exhibit 35 (NC) Response to producer ERQ from BVGlazing Systems Ltd; Response to Producer Questionnaire Q30; public attachment 7; Far East Global, Annual Report 2017, p. 19
[80] Exhibit 25 (NC) – CNYD 2015 Annual Report, p.27; CNYD 2016 Annual Report, pp. 30; CNYD 2017 Annual Report, p. 24
[81] Exhibit 35 (NC) Response to producer ERQ from BVGlazing Systems Ltd; Response to Producer Questionnaire Q30; public attachment 7; Far East Global, Annual Report 2017, pp. 19, 22
[82] Exhibit 58 (NC) – CBSA exhibit; CNYD Company Profile from its Corporate Website; p. 2
[83] Exhibit 60 (NC) – Close of Record documents from Canadian Producers; Attachment 18

[113] As suggested by the Canadian producers, if Chinese producers were operating at 70% of their capacity in 2016, the total Chinese production of 156.4 million m² in 2016[84] would suggest a total capacity of over 223.4 million m², or about 67 million m² in overcapacity. If Chinese producers were operating at 50% capacity utilization, the excess capacity increases to 156.4 million m², based on 2016 data. If total capacity actually increased since 2016, a likely scenario, the excess capacity may be even greater. This excess capacity is quite substantial compared to the Canadian market, estimated at just over 1.1 million m² in 2017.

[114] Evidence suggests that Chinese UWM producers are increasingly turning to export markets to make up for their decreases in domestic sales, put their excess production capacity to use and seek some stability.

[115] For example, CNYD's export sales as a percentage of total sales increased from 21.2% in 2014, prior to the POR, to 29% in 2015, 37.7% in 2016, and 42.5% in 2017.[85] The trend is believed to be continuing in 2018. In fact, the export markets represented over 62% of new projects total value in 2017, which is indicative of its workload in 2018 and parts of 2019.[86]

[116] Shenyang Yuanda claims that re-entering the Canadian market would be difficult even without SIMA duties in place.[87] The confidential evidence on the record, however, does not suggest that the company would have a difficult time re-entering the market if the finding was no longer in place.

[117] Other Chinese UWM producers are also increasingly export focused. The Canadian producers compiled information on 20 Chinese producers that export UWM products, and hold substantial production capacity.[88] One such company, Beijing Jangho Curtainwall Company Ltd., which previously exported to Canada and was a cooperating party in the original investigation, is currently advertising its presence in the international market, with over 20 branches. While all of its manufacturing is done in China, the company still has a Canadian subsidiary, Jangho Curtain Wall Canada Co., Ltd, who filed a submission with the CITT in their proceedings.[89] Similarly, in its 2017 Annual Report, Far East Global discussed the expansion of its production and manufacturing base in Mainland China in order to fulfil growing demand for projects in their export markets.[90] The company, which, according to the Canadian producers, has a production capacity of about 850,000 m², specifically notes its past successes in the Canadian market on the "About Us" section of its corporate website.

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[84] Exhibit 35 (NC) Response to producer ERQ from BVGlazing Systems Ltd; Response to Producer Questionnaire Q30; public attachment 3; Golden Metropolis International Limited, Amendment No1 to Form F-1, US Securities and Exchange Commission; p. 3; Exhibit 61 (PRO) & 62 (NC) – Case Briefs of Canadian Producers, para. 29
[85] Exhibit 25 (NC) – CNYD 2015 Annual Report, p.134; CNYD 2016 Annual Report, p. 171.; CNYD 2017 Annual Report, p. 158
[86] Exhibit 25 (NC) –CNYD 2017 Annual Report, p. 12
[87] Exhibit 31 (NC) – Response to Exporter ERQ – Shenyang Yuanda Aluminum Industry Engineering Co., Ltd., Q52
[88] Exhibit 60 (NC) – Close of Record documents from Canadian Producers; Attachment 18
[89] Exhibit 22 (PRO) & Exhibit 23 (NC) – CITT's Administrative Record; LE-2018-002-05.02
[90] Exhibit 35 (NC) Response to producer ERQ from BVGlazing Systems Ltd; Response to Producer Questionnaire Q30; public attachment 7; Far East Global, Annual Report 2017, p. 19

[118] Meanwhile, the Canadian market is expected to remain stable and healthy, and attract higher prices than the Chinese market. As mentioned in the Canadian Market section above, Canadian producers foresee healthy market demand in Canada in the foreseeable future, with most producers expecting steady growth in market demand while others expect the market to remain stable.[91] Shenyang Yuanda alleged that the price per square metre in the Canadian market more than doubled over the last five years, and that the range of prices for curtain walls is substantially higher than it was five years ago.[92] Shenyang Yuanda expects strong demand for residential condominium and for commercial buildings.

[119] As noted earlier, on the supply side, the CBSA expects increased competition in the Canadian market in the foreseeable future. There were several reports in Canadian producers' ERQ responses of new foreign entrants in the Canadian or North American market, from Asia (other than China) and also from Europe. Further, on the basis of the CBSA's compilation of the producers' data,[93] the domestic industry has been on an expansion during the POR. Overall, the expected demand growth and the increased competition may keep the demand and supply balance stable for the foreseeable future.

[120] In the original UWM inquiry, the CITT acknowledged that while UWM are not commodities, price is nonetheless of considerable importance. As stated by the CITT, "[l]ate delivery poses a significant risk to general contractors as purchasers of UWMs, having regards to the financial penalties that they may incur, should the project fall behind schedule, and the potential damage to the general contractor's reputation."[94] Nevertheless, although the domestic industry has a significant advantage in delivery time,[95] many purchasers seemed willing to assume this risk (i.e. of importing from abroad) if a price quotation is low enough.[96] On this matter, the Canadian producers argued that developers would only consider offshore UWM if they are priced lower than those produced in Canada as a result of the risk associated with having production far away.[97] The CITT estimated that the lower risk associated with sourcing domestically allowed like goods to command a risk mitigation premium over the price of the subject goods.[98] The CITT also noted the significance of the price undercutting of subject goods, which ranged, at the time, between 38% and 49% for unitized curtain wall modules and between 16% and 28% for unitized window wall modules.[99]

[91] Canadian producers' responses to questions 24-29 of ERQ.
[92] Exhibit 30 (PRO) & Exhibit 31 (NC) – Response to Exporter ERQ – Shenyang Yuanda Aluminum Industry Engineering Co., Ltd., Q.52
[93] Based on the data provided in Appendix 5 of the Producers' responses to the ERQ.
[94] Exhibit 028 (NC); CITT Finding and Reasons – UWM; November 27, 2013 – CITT; para. 74
[95] Exhibit 028 (NC); CITT Finding and Reasons – UWM; November 27, 2013 – CITT; para. 73
[96] Exhibit 028 (NC); CITT Finding and Reasons – UWM; November 27, 2013 – CITT; para. 75
[97] Exhibit 62 (NC) – Case Briefs of Canadian Producers, para. 97
[98] Exhibit 028 (NC); CITT Finding and Reasons – UWM; November 27, 2013 – CITT; para. 76
[99] Exhibit 028 (NC); CITT Finding and Reasons – UWM; November 27, 2013 – CITT; para. 79

[121] The CBSA acknowledges that in light of the higher prices in the Canadian market, the Chinese producers can undercut Canadian suppliers without necessarily dumping, provided that the price is sufficiently high to cover the cost of production of the goods, the administrative, selling and all other costs, and a reasonable amount for profit. Some projects were in fact sold at un-dumped prices at the beginning of the POR[100] or prior to that period.[101]

[122] Nevertheless, the CBSA believes that the risk involved with supplying UWM from China remains the same as it was at the time of the original investigation, and that for this reason, a Chinese supplier is likely to be selected to supply UWM only if the price is sufficiently low to justify the added risk. Information on the record suggests that Chinese exporters would not only have to undercut Canadian producers but possibly also new foreign entrants in the Canadian market. During the period of investigation for the original dumping investigation, a time when market conditions in China for UWM were much stronger than they are today, the CBSA determined margins of dumping of 15.7% and 49.3% for the two cooperating exporters. Considering the weakening market conditions in China and the increasing oversupply in that market, the CBSA expects that Chinese producers are likely to undercut the prices of Canadian producers and other bidders in the Canadian market by significant margins in order to re-enter the market, re-gain market share, and fill some of their excess capacity. The CBSA believes that Chinese UWM producers are likely to export UWM to Canada at prices that are insufficient to recover their full cost plus a reasonable amount for profit, and hence at a dumped price. Evidence on the record also suggests that the extent of the excess capacity in China is such that a significant volume of dumped UWM could be expected to be exported to Canada if the finding is rescinded.

Determination Regarding Likelihood of Continued or Resumed Dumping

[123] Based on the information on the administrative record demonstrating; the weakening UWM market conditions and the excess production capacity in China; the increasing export orientation of Chinese producers, the attractiveness of the Canadian market and increased competition from domestic and foreign sources, along with the propensity of Chinese exporters to undercut Canadian prices, the CBSA determined that the expiry of the finding is likely to result in the continuation or resumption of dumping into Canada of certain UWM originating in or exported from China.

POSITION OF THE PARTIES - SUBSIDIZING

Parties Contending that Continued or Resumed Subsidizing is Likely

Canadian Producers

[124] The participating Canadian producers contend that the subsidizing of certain UWM from China is likely to continue or resume should the CITT's finding be rescinded.

[100] Exhibit 026 (PRO) – CBSA Ruling Letters;
[101] Exhibit 026 (PRO) – CBSA Ruling Letters

[125] The Canadian producers alleged that Chinese producers remain heavily subsidized. The Canadian producers argued that there is no indication that the programs identified by the CBSA in 2013 have ceased, and believe that Chinese producers are likely receiving even greater subsidies, maintaining that subsidies to their main industries are a key tenet of Chinese economic policy.[102]

[126] The Canadian producers referred to the GOC's "Made in China 2025" programs as one example of wide-scale government subsidization of important industries. The Canadian producers indicated that estimates put subsidies under this program in the hundreds of millions of dollars.[103] The Canadian producers also alleged that the GOC's 13th 5-year plan for Economic and Social Development, which was issued after the 2013 finding, contains three core objectives that are likely to benefit Chinese UWM producers: i) promotion of green manufacturing, which, they claim, likely means additional grants and programs to improve production methods; ii) construction of green buildings, where Chinese UWM producers may receive government support in the development of its products to achieve the desired design, performance, and technology aims of this program; and iii) GOC playing a main role in providing basic housing, which, it is argued, is likely to result in subsidies to industries that supply materials for new housing, including Chinese UWM producers.[104]

[127] The Canadian producers also argued that CNYD reported receiving grants of several millions of dollars during the POR, according to the company's annual report[105]. The producers noted that Shenyang Yuanda, CNYD's subsidiary that produces and exports UWM, was determined by the CBSA to have benefited from 14 countervailable programs during the original investigation.[106] The Canadian producers contended that evidence on the record demonstrates that Shenyang Yuanda received subsidies during the POR.[107]

[128] The Canadian producers also contend that both Australia and the U.S. reviewed their countervailing duties in 2017 and 2018 against aluminum extrusions from China, and identified a significant number of applicable subsidy programs. They argue that the subsidy programs are highly relevant to UWM producers, and the pricing of subject goods, as extrusions are a significant input of UWM.[108]

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[102] Exhibit 35 (NC) Response to producer ERQ from BVGlazing Systems Ltd; Response to Producer Questionnaire Q30, pp. 8-10

[103] Exhibit 35 (NC) Response to producer ERQ from BVGlazing Systems Ltd; Response to Producer Questionnaire Q30. p. 9. The CBSA notes that while the Producers' narrative states that the estimates put subsidies under this program in the hundreds of millions of dollars, the supporting document (Council on Foreign Relations, Is 'Made in China 2025' a Threat to Global Trade? (August 2, 2018) actually states that the estimates put subsidies under this program in the hundreds of billions of dollars.

[104] Exhibit 35 (NC) Response to producer ERQ from BVGlazing Systems Ltd; Response to Producer Questionnaire Q30; pp. 9-10; Exhibit 61 (PRO) & 62 (NC) – Case Briefs of Canadian Producers, para. 77-81

[105] Exhibit 35 (NC) Response to producer ERQ from BVGlazing Systems Ltd; Response to Producer Questionnaire Q30., p. 8

[106] Exhibit 062 (NC) – Case Briefs of Canadian Producers, para. 74

[107] Exhibit 062 (NC) – Case Briefs of Canadian Producers, para. 76 and 123

[108] Exhibit 062 (NC) – Case Briefs of Canadian Producers, para. 84

[129] As detailed in the dumping section above, the Canadian producers argued that the already existing excess production capacity in the Chinese market, combined with weakening market conditions in their market will push Chinese producers to seek to increase sales to their export markets, including to Canada, given the attractiveness of the Canadian market. The Canadian producers maintain that these sales will not only be dumped, but they will be subsidized by an even greater amount than what was determined in the original investigation.

Parties Contending that Continued or Resumed Subsidizing is Unlikely

[130] None of the parties contended that continued or resumed subsidizing of subject goods from China is unlikely should the CITT's finding be rescinded.

[131] However, in its reply submission, Shenyang Yuanda did contest some of the allegations made by the Canadian producers in their case brief. Shenyang Yuanda argued that the Canadian producers misrepresented the subsidies it received resulting in an exaggeration of the amount of subsidies, which should typically be presented as a percentage of production or sales.[109] Shenyang Yuanda argued that on this basis, its financial statement shows subsidies equal to only 0.51% in 2016 and 0.14% in 2017, expressed as a percentage of sales. Shenyang Yuanda contends that this demonstrates that it received a de minimis amount of subsidy during the POR.

CONSIDERATION AND ANALYSIS – SUBSIDIZING

[132] In making a determination under paragraph 76.03(7)(a) of SIMA as to whether the expiry of the finding in respect of goods from China is likely to result in the continuation or resumption of subsidizing of these goods, the CBSA may consider factors identified in subsection 37.2(1) of the SIMR, as well as any other factors relevant in the circumstances.

[133] Guided by the aforementioned factors and having considered the information on the administrative record, the following list represents a summary of the CBSA's analysis conducted in this expiry review investigation with respect to subsidizing:

- the continued availability of subsidy programs for UWM exporters in China;
- the subsidizing of primary aluminum in China and other government intervention; and
- the countervailing measures against Chinese aluminum products in Canada and in other jurisdictions.

The continued availability of subsidy programs for UWM exporters in China

[134] At the time of the initiation of the original subsidy investigation in 2013, the CBSA had identified 180 subsidy programs to be investigated. Further to that investigation, the CBSA found that 33 of the identified programs had conferred benefits to at least one of the two cooperative exporters; Guangzhou Jangho Curtain Wall System Engineering Co. Ltd. (Guangzhou Jangho) and associated companies, and Shenyang Yuanda.[110]

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[109] Exhibit 063 (PRO) & 064 (NC) - Reply Submissions filed on behalf of Shenyang Yuanda Aluminium Engineering Co., Ltd; par. 13

[110] Exhibit 007 (NC) – CBSA – Statement of Reasons – Certain Wall Modules Originating in or Exported from China - Final Determination; para. 119, 121 and 127 and Appendix 2.

[135] At that time, the CBSA found that 100% of the goods exported from China were subsidized. The weighted average amount of subsidy, expressed as a percentage of the export price, was equal to 25.8%. The amounts of subsidy found for the cooperative exporters were equal to 3.8% and 5.3% of the export price, or 32.01 to 64.83 Renminbi (RMB) per m^2. For all other exporters, the amount of subsidy was determined under Ministerial Specification pursuant to subsection 30.4(2) of SIMA. The amount of subsidy found for non-cooperative exporters was equal to 41.6%, expressed as a percentage of the export price, or 458.31 RMB per m^2.[111]

[136] The 33 programs which were found by the CBSA to be conferring benefits to the cooperating exporters included several direct subsidy programs, such as grants, preferential loans, and preferential tax programs and also a subsidy passed-through from the purchase of aluminum extrusion.

[137] Despite the limited information with respect to current subsidy programs specifically applicable to UWM producers and exporters, in part due to the non-participation by the GOC in this expiry review investigation, information on the record provides evidence of the continued availability of subsidy programs for UWM exporters in China.

[138] There is evidence on the record that *Program 166: Corporate Income Tax Reduction for New High-Technology Enterprises*, a subsidy program that was found to benefit both cooperating exporters at the time of the investigation[112] is still benefiting UWM producers. Under this program, some companies enjoy a preferential corporate tax rate of 15% relating to a preferential policy for high-tech enterprise. Considering the corporate tax rate of 25% in China, this represent a reduction of 40% of the company's income tax.

[111] Exhibit 007 (NC) – CBSA – Statement of Reasons – Certain Wall Modules Originating in or Exported from China - Final Determination, paras. 122, 128, 133 and 134.
[112] Exhibit 007 (NC) – CBSA – Statement of Reasons – Certain Wall Modules Originating in or Exported from China - Final Determination, Appendix 2.

[139] In addition, information on the record confirms that Shenyang Yuanda has been receiving government subsidies during the POR.[113] The subsidies reported were as high as 0.5% of total revenue in 2016. While Shenyang Yuanda argued, in its reply submissions, that this amount is de minimis, the CBSA stresses that this amount is believed to represent only grants. Given that there were also other types of subsidy programs that were applicable to Shenyang Yuanda at the time of the original investigation, the total amount reported in Shenyang Yuanda's financial statements may represent only a portion of the total amount of subsidy received during the POR. For instance, exporters may have received benefits from the preferential tax subsidies discussed above, other types of tax benefits such as certain tariff and VAT refunds or exemptions (e.g. Program 19, Program 174, Program 176, which were found to have benefitted the cooperating exporters in the investigation), and preferential loans (e.g. Program 28 respecting preferential loans from the EXIM Bank). Additionally, it does not include the value of any subsidy passed-through from the purchase of aluminum extrusions, as further discussed below. The financial statements also do not provide information as to the nature of the grants, including whether they consist of export subsidies, in which case they would be allocated over export revenues only. In addition, the amount of grants indicated in the financial statements does not include any subsidies received by other entities within Shenyang Yuanda's corporate structure, which could be allocable to UWM.

[140] Among the subsidy programs found by the CBSA to have conferred benefits to UWM exporters in the original investigation were upstream subsidies received by aluminum extruders and passed-through to exporters of UWM through the purchase of aluminum extrusions. Aluminum extrusions are one of the principle inputs of UWM and one of its principle cost components.

[113] Exhibit 064 (NC) - Reply Submissions filed on behalf of Shenyang Yuanda Aluminium Engineering Co., Ltd; par. 13

[141] There is currently a finding in place with respect to the subsidizing of aluminum extrusions from China. In that case, 56 potential subsidy programs were investigated and 15 of those programs were determined to have conferred benefits to the cooperative exporters.[114] The information received from the cooperative exporters in that case indicates that they received benefits under one or more of the following programs:

- Preferential Tax Policies for Enterprises with Foreign Investment Established in the Coastal Economic Open Areas and in Economic and Technological Development Zones
- Research & Development (R&D) Assistance Grant
- Superstar Enterprise Grant
- Matching Funds for International Market Development for SMEs
- One-time Awards to Enterprises Whose Products Qualify for "Well-Known Trademarks of China" or "Famous Brands of China"
- Export Brand Development Fund
- Preferential Tax Policies for Foreign Invested Enterprises – Reduced Tax Rate for Productive FIEs Scheduled to Operate for a Period not less than 10 Years
- Preferential Tax Policies for Foreign-Invested Export Enterprises
- Local Income Tax Exemption and/or Reduction
- Exemption of Tariff and Import VAT for Imported Technologies and Equipment
- Patent Award of Guangdong Province
- Training Program for Rural Surplus Labor Force Transfer Employment
- Reduction in Land Use Fees
- Provincial Scientific Development Plan Fund
- Primary Aluminum Provided by Government at Less than Fair Market Value

[142] Countervailing measures with respect to Aluminum Extrusions are also applicable in Australia and in the United States.

[114] Exhibit 025 (NC) – CBSA – Statement of Reasons – Certain Aluminum Extrusions Originating in or Exported from the People's Republic of China - Final Determination, para. 256.

[143] In August 2016, in a sunset review of its countervailing finding on Aluminum Extrusions from China originally made on April 4, 2011, the United States Department of Commerce (US DOC) found that the revocation of its countervailing duty finding on aluminum extrusions would likely lead to a continuation or recurrence of a countervailable subsidy at substantial rates.[115] It is noted that aluminum extrusions that form part of UWM are included within the scope of the American measures on Aluminum Extrusions. In 2017, the U.S. International Trade Commission continued the countervailing findings on those goods.[116] In December 2017, the US DOC, further to an administrative review of the order, determined that the mandatory respondents received countervailable subsidies during the period of review.[117]

[144] In a review of its measures applying to Aluminum Extrusions concluded in October 2017, the Australian authorities found that cooperating exporters benefited from subsidies that had been granted under a total of 32 programs.[118] The subsidy margins varied between 0% and 4.5% of the export price for cooperating exporters.[119]

[145] Further, the Canadian, Australian and American authorities have all determined that the subsidies to the aluminum extrusion producers/exporters included benefits from the provision of primary aluminum at less than adequate remuneration, as discussed below.

Subsidizing of Primary Aluminum in China and Other Government Intervention

[146] The record contains evidence that the Chinese government continues to provide financial benefits to primary aluminum producers. For example, a report submitted to the U.S.-China Economic and Security Review Commission estimated benefits of US$444 million to Aluminum Corporation of China Limited (Chalco), a Chinese SOE and China's largest primary aluminum producer, in the form of grants, preferential tax rates, preferential loans and preferential electricity prices by the government.[120] This amount was equivalent to a subsidy rate of 4.7% of revenues according to the report.[121] As was the case at the time of the UWM investigation, subsidies may be passed through to aluminum extrusion producers and ultimately, in full or in part, to UWM producers.

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[115] U.S. Department of Commerce, Aluminum Extrusions from the People's Republic of China: Final Results of Expedited First Sunset Review of the Countervailing Duty Order, August 5, 2016; https://www.federalregister.gov/documents/2016/08/05/2016-18656/aluminum-extrusions-from-the-peoples-republic-of-china-final-results-of-expedited-first-sunset.

[116] US ITC; Aluminum Extrusions From the People's Republic of China: Continuation of Antidumping and Countervailing Duty Orders; April 25, 2017; https://www.federalregister.gov/documents/2017/04/25/2017-08352/aluminum-extrusions-from-the-peoples-republic-of-china-continuation-of-antidumping-and

[117] U.S. Department of Commerce, Aluminum Extrusions From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2015; December 8, 2017, https://www.federalregister.gov/documents/2017/12/08/2017-26488/aluminum-extrusions-from-the-peoples-republic-of-china-final-results-of-countervailing-duty

[118] Exhibit 014 (NC) – Australia Anti-Dumping Commission Report No. 392; Review of Anti-Dumping Measures Applying to Aluminum Extrusions Exported to Australia from the P.R. of China; pp. 41-42

[119] *Ibid.*, p. 45

[120] Exhibit 014 (NC) – An Assessment of China's Subsidies to Strategic and Heavyweight Industries, Submitted to the U.S.-China Economic and Security Review Commission by Capital Trade Incorporated; p. 82

[121] *Ibid.*, p 85

[147] In addition to directly subsidizing its aluminum industry, a report by the European Commission (EC) listed a number of instruments used by the GOC to control and influence its domestic aluminum industry.[122] Although the EC report does not conclude whether such measures consist of subsidies, such as income or price support, the report does provide insight as to the GOC's intervention in the market by applying a number of different instruments. Such instruments include restrictive export-related measures on bauxite, a key input in aluminum production, with the effect of increasing domestic supply and lowering its cost. The GOC also implemented VAT policies that discourage the export of primary aluminum and its inputs, with the aim of encouraging exports of higher added value aluminum products, including aluminum extrusions and UWM. The result, as per the report, is a "depression of prices of primary aluminum in the Chinese domestic market, and thereby providing a significant cost advantage for Chinese producers of processed aluminum products".[123] Similarly, the GOC also implemented an export tax of 15% on unwrought aluminum and aluminum scrap, again shifting exports towards high added value products.[124]

[148] The EC report also identified specific subsidies, in particular, the subsidizing of electricity, as yet another measure taken by the GOC to support its aluminum producers.[125] Such measures are significant considering that electricity accounts for as much as a third of primary aluminum production costs.[126]

[149] These measures demonstrate the importance that the GOC has placed on its aluminum industry and in particular, the higher value-added downstream products, including aluminum extrusions and UWM. As demonstrated, the GOC is supporting these industries and providing the producers of aluminum products an advantage in the export markets. Several of these measures consist of countervailable subsidies. Such advantage extends to producers of UWM and are likely to continue to exist in the foreseeable future.

The countervailing Measures Against Chinese Aluminum Products in Canada and in Other Jurisdictions

[150] The existence of countervailing measures in place in Canada, Australia, the European Union (EU) and in the US concerning aluminum products from China reinforces the argument that Chinese exporters/producers of UWM products receive countervailable benefits from the GOC and the GOC has placed a great deal of importance on its aluminum industry and subsidized it accordingly.

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[122] Exhibit 14 (NC) – European Commission; Commission Staff Working Document on Significant Distortion in the Economy of the P.R. of China for the Purposes of Trade Defence Investigation, December 19, 2017, pp. 388

[123] Exhibit 14 (NC) – European Commission; Commission Staff Working Document on Significant Distortion in the Economy of the P.R. of China for the Purposes of Trade Defence Investigation, December 19, 2017, p. 389

[124] Exhibit 14 (NC) – European Commission; Commission Staff Working Document on Significant Distortion in the Economy of the P.R. of China for the Purposes of Trade Defence Investigation, December 19, 2017, p. 390

[125] Exhibit 14 (NC) – European Commission; Commission Staff Working Document on Significant Distortion in the Economy of the P.R. of China for the Purposes of Trade Defence Investigation, December 19, 2017, p. 390

[126] Exhibit 014 (NC) – An Assessment of China's Subsidies to Strategic and Heavyweight Industries, Submitted to the U.S.-China Economic and Security Review Commission by Capital Trade Incorporated; p. 83

[151] The CBSA currently has a countervailing measure in place against aluminum extrusions and photovoltaic modules and laminates from China.[127] Information on the administrative record indicates that Australia, the EU and the US also have countervailing measures against aluminum products from China. The products that are subject to the Australian countervailing measures include: Aluminum Extrusions, Aluminum road wheels, and Aluminum Zinc Coated Steel.[128] The European Union also has countervailing measures against crystalline silicon photovoltaic modules and key components.[129] The products that are subject to the US countervailing measures include: Aluminum Extrusions (including the aluminum extrusions that form part of UWM), certain aluminum foil, crystalline silicon photovoltaic cells, and certain crystalline silicone photovoltaic products.[130]

[152] On the basis of the above, there are strong indications that the GOC will likely continue to subsidize its domestic UWM producers in the future, both directly and indirectly by subsidizing aluminum extrusion producers and/or the primary aluminum producers.

Determination Regarding Likelihood of Continued or Resumed Subsidizing

[153] Based on information on the record in respect of the continued availability of subsidy programs for UWM exporters in China, the subsidizing of primary aluminum in China and other government intervention, and the countervailing measures against Chinese aluminum products in Canada and in other jurisdictions, the CBSA determined that the expiry of the finding is likely to result in the continuation or resumption of subsidizing of certain UWM originating in or exported from China.

CONCLUSION

[154] For the purpose of making a determination in this expiry review investigation, the CBSA conducted its analysis within the scope of the factors found under subsection 37.2(1) of the SIMR. Based on the foregoing consideration of pertinent factors and an analysis of the information on the record, on January 24, 2019, the CBSA made a determination pursuant to paragraph 76.03(7)(a) of SIMA that the expiry of the CITT's finding made on November 12, 2013, in Inquiry No. NQ-2013-002:

i. in respect of certain unitized wall modules originating in or exported from China is likely to result in the continuation or resumption of dumping of the goods; and

ii. in respect of certain unitized wall modules originating in or exported from China is likely to result in the continuation or resumption of subsidizing of the goods.

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[127] Exhibit 011 (NC) - WTO Semi-annual report under article 25.11 of the Agreement – Canada, G/SCM/N/328/CAN

[128] Exhibit 011 (NC) - WTO Semi-annual report under article 25.11 of the Agreement – United States of America, G/SCM/N/328/AUS

[129] Exhibit 011 (NC) - WTO Semi-annual report under article 25.11 of the Agreement – United States of America, G/SCM/N/328/UEU

[130] Exhibit 011 (NC) - WTO Semi-annual report under article 25.11 of the Agreement – United States of America, G/SCM/N/328/USA

FUTURE ACTION

[155] On January 25, 2019, the CITT commenced its inquiry to determine whether the expiry of the finding with respect to the dumping and subsidizing of certain UWM from China is likely to result in injury. The CITT's Expiry Review schedule indicates that it will make its decision by July 3, 2019.

[156] If the CITT determines that the expiry of the finding with respect to the goods is likely to result in injury, the CITT will make an order continuing the finding in respect of those goods, with or without amendment. If this is the case, the CBSA will continue to levy anti-dumping and/or countervailing duties on dumped and/or subsidized importations of the subject goods.

[157] If the CITT determines that the expiry of the finding with respect to the goods is not likely to result in injury, the CITT will make an order rescinding the finding in respect of those goods. Anti-dumping and/or countervailing duties would then no longer be levied on importations of the subject goods, and any anti-dumping and/or countervailing duties paid in respect of goods that were released after the date that the finding was scheduled to expire will be returned to the importer.

INFORMATION

[158] For further information, please contact the officers listed below:

Mail: SIMA Registry and Disclosure Unit
Trade and Anti-dumping Programs Directorate
Canada Border Services Agency
100 Metcalfe Street, 11th floor
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E-mail: simaregistry@cbsa-asfc.gc.ca

Web site: www.cbsa-asfc.gc.ca/sima-lmsi

Doug Band
Director General
Trade and Anti-dumping Programs Directorate

DOC 7

Determinação Final Investigação Original
Extrudados (Estados Unidos)

C-570-968
Investigation
POI: 1/1/09 – 12/31/09
Public Document
Office 3: RC, JC, EBG

March 28, 2011

MEMORANDUM TO: Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Aluminum Extrusions from the People's Republic of China (PRC)

I. Summary

On August 30, 2010, the Department of Commerce (the Department) issued the Preliminary Determination in the above-mentioned countervailing duty (CVD) investigation. See Aluminum Extrusions From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, 75 FR 54302 (September 7, 2010) (Preliminary Determination). On October 29, 2010, the Department issued a post-preliminary determination decision memorandum concerning new subsidy allegations alleged by Petitioners on July 13 and July 28, 2010.[1] See Memorandum to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, "Post-Preliminary Determination Decision Memorandum," (October 2, 2010) (Post-Prelim Memorandum).[2]

We conducted verification of the questionnaire responses submitted by Zhaoqing New Zhongya Aluminum Co., Ltd. (New Zhongya), Zhongya Shaped Aluminum HK Holding Ltd. (Zhongya HK), and Karlton Aluminum Company Ltd. (Karlton) (collectively the Zhongya Companies) from December 3 through December 7, 2010. See Memorandum to Eric B. Greynolds, Program Manager, Office 3, Operations, "Verification of the Questionnaire Responses Submitted by the Zhaoqing New Zhongya Aluminum Co., Ltd. (New Zhongya) and its Hong Kong affiliate Zhongya Shaped Aluminum (HK) Holding, Ltd. (Zhongya HK) (collectively the Zhongya Companies)" (January 28, 2011) (Zhongya Companies Verification Report). We conducted verification of the questionnaire responses submitted by the Government

[1] Petitioners are Aluminum Extrusion Fair Trade Committee: Aerolite Extrusion Company; Alexandria Extrusions Company; Beneda Aluminum of Florida, Inc.; William L. Bonnell Company, Inc.; Frontier Aluminum Corporation; Futura Industries Corporation; Hydro Aluminum North American Inc.; Kaiser Aluminum Corporation; Profile Extrusion Company; Sapa Extrusions, Inc.; Western Extrusions Corporation; and the United Steel, Paper, and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union.

[2] Public and public versions of proprietary Departmental memoranda referenced in this document are on file in the Central Records Unit (CRU), Room 7046 in the main building of the Commerce Department.

of the PRC (GOC) from December 9 through December 10, 2010. See Memorandum to Eric B. Greynolds, Program Manager, Office 3, Operations, "Verification of Information Submitted by the Government of the People's Republic of China" (January 20, 2011) (GOC Verification Report). We conducted verification of the questionnaire responses submitted by Guang Ya Aluminum Industries Co., Ltd. (Guang Ya), Foshan Guangcheng Aluminum Co., Ltd. (Guangcheng), Guang Ya Aluminum Industries Hong Kong (Guang Ya HK), Kong Ah International Company Limited (Kong Ah), and Yongji Guanghai Aluminum Industry Co., Ltd. (Guanghai) (collectively the Guang Ya Companies) from December 14 through December 17, 2010. See Memorandum to Eric B. Greynolds, Program Manager, Office 3, Operations, "Verification of Guang Ya Aluminum Industries Co., Ltd., Foshan Guangcheng Aluminum Co., Ltd., Guang Ya Aluminum Industries Hong Kong, Kong Ah International Company Limited, and Yongji Guanghai Aluminum Industry Co., Ltd. (collectively the Guang Ya Companies)" (January 25, 2011) (Guang Ya Companies Verification Report).

The "Analysis of Programs" and "Subsidies Valuation Information" sections below describe the subsidy programs and the methodologies used to calculate benefits for the programs under examination. Additionally, we have analyzed the comments submitted by the interested parties in their case and rebuttal briefs in the "Analysis of Comments" section below, which contains the Department's response to the issues raised in the briefs. Based on the comments received and our verification findings, we have made certain modifications to the Preliminary Determination. We recommend that you approve the positions described in this memorandum.

Below is a complete list of the issues in this investigation for which we received case briefs and rebuttal comments from interested parties:

Comment 1: Application of CVD Law to the PRC
Comment 2: Whether Application of the CVD Law to Imports from the PRC Violates the Administrative Procedure Act (APA)
Comment 3: Double Counting
Comment 4: Cutoff Date for Identifying Subsidies
Comment 5: Whether the Guang Ya Companies Inaccurately Reported Their Affiliates Thereby Warranting the Application of Adverse Facts Available (AFA)
Comment 6: Whether the Zhongya Companies Failed to Report Their Affiliates Thereby Warranting the Application of AFA
Comment 7: Whether the AFA Calculation is Accurate and Reasonable
Comment 8: Whether to Include Newly Alleged and Self-Reported Programs in the AFA Calculation
Comment 9: Whether the All Others Rate Should Equal the Total AFA Rate
Comment 10: Whether the Department Should Have Collected Information from Firms Subject to the All Others Rate
Comment 11: Whether the Department Should Have Selected Additional Mandatory Respondents
Comment 12: Whether the Department Should Retroactively Revise the All Others Rate from the Preliminary Determination
Comment 13: Whether the Sales of Aluminum Extrusions for More Than Adequate Remuneration (MTAR) Program Was Used by the Voluntary Respondents
Comment 14: Whether the Sales of Aluminum Extrusions for MTAR Program Is Specific

Comment 15: Whether the Sales of Aluminum Extrusions for MTAR Program Confers a Benefit
Comment 16: Whether the Department Improperly Rejected Data From The Zhongya Companies Pertaining to the Sale of Aluminum Extrusions For MTAR Program
Comment 17: Whether the Ownership Information of Respondents' Customers Was Complete and Fully Verified
Comment 18: Whether a Financial Contribution Exists Under the Provision of Primary Aluminum for Less Than Adequate Remuneration (LTAR) Program
Comment 19: Whether the Provision of Primary Aluminum for LTAR Program is Specific
Comment 20: Whether the Benchmark Used for the Provision of Primary Aluminum for LTAR Program Should Include Import Duties
Comment 21: Whether the Department Should Use In-Country Benchmarks Under the Provision of Primary Aluminum for LTAR Program
Comment 22: Whether the Guang Ya Companies Properly Reported Their Purchases of Primary Aluminum and Whether the Application of AFA is Warranted
Comment 23: Whether the Land for LTAR Program Constitutes a Financial Contribution, Provides a Benefit, and is Specific
Comment 24: Whether the Department Should Revise the Benchmark Used Under the Land for LTAR Program
Comment 25: Whether the Department Erred in Rejecting Factual Information Concerning the Benchmark Used Under the Land for LTAR Program
Comment 26: Whether the Guang Ya Companies Received an Additional Subsidy in Connection With the GOC's Purchase of Land-Use Rights and Buildings
Comment 27: Whether PRC Commercial Banks Are GOC Authorities That Provide a Financial Contribution
Comment 28: Whether there is a Link Between the Alleged Policy Lending Program and Actual Loans Received by Respondents
Comment 29: Whether the Derivation of the Short-Term Benchmark Interest Rate is Arbitrary
Comment 30: Whether the Derivation of the Long-Term Benchmark Interest Rate is Arbitrary
Comment 31: Whether the Department Committed Ministerial Errors Concerning the Famous Brands Program
Comment 32: Whether the Department Should Provide an Entered Value Adjustment to the Zhongya Companies to Account for Price Mark-Ups Made by Their Hong-Kong Affiliate
Comment 33: Whether the Department Improperly Declined to Initiate an Investigation of the GOC's Alleged Currency Undervaluation

II. Period of Investigation

The period of investigation (POI) for which we are measuring subsidies is January 1, 2009, through December 31, 2009, which corresponds to the PRC's and the respondents' most recently completed fiscal year at the time we initiated this investigation. See 19 CFR 351.204(b)(2).

III. Attribution of Subsidies

The Department's regulations at 19 CFR 351.525(b)(6)(i) state that the Department will normally attribute a subsidy to the products produced by the corporation that received the subsidy. However, 19 CFR 351.525(b)(6)(ii) - (v) provides that the Department will attribute subsidies received by certain other companies to the combined sales of those companies when: (1) two or more corporations with cross-ownership produce the subject merchandise; (2) a firm that received a subsidy is a holding or parent company of the subject company; (3) a firm that produces an input that is primarily dedicated to the production of the downstream product; or (4) a corporation producing non-subject merchandise received a subsidy and transferred the subsidy to a corporation with cross-ownership with the subject company.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This regulation states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations. The Court of International Trade (CIT) has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits. See Fabrique de Fer de Charleroi, SA v. United States, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

The Guang Ya Companies

As discussed above, the Guang Ya Companies are Guang Ya, Guangcheng, Guanghai, Guang Ya HK, and Kong Ah. Guang Ya and Guangcheng are the producers of subject merchandise. Guanghai produces aluminum billet that it supplies to Guangcheng. Guang Ya HK and Kong Ah are Hong Kong-based trading companies that export merchandise produced by Guang Ya and Guangcheng. According to the Guang Ya Companies, only Guang Ya HK exported subject merchandise to the United States that was produced by the Guang Ya Companies. We find that the Guang Ya Companies are cross-owned with each other via common ownership within the meaning of 19 CFR 351.525(b)(6)(vi). See the Guang Ya Companies July 8, 2010, questionnaire response at Exhibit 1.

Guang Ya and Guangcheng are the members of the Guang Ya Companies that produce subject merchandise. Therefore, in accordance with 19 CFR 351.525(b)(6)(ii), we have attributed subsidies received by Guang Ya and Guangcheng to the products produced by the two firms. Guanghai is an input supplier to Guangcheng. Therefore, in accordance with 19 CFR 351.525(b)(6)(iv), we would attribute subsidies received by Guanghai to the combined sales of the input made by Guanghai and downstream products produced by Guang Ya and Guangcheng, excluding the sales between corporations.

During the POI, Guang Ya HK exported to the United States aluminum extrusions produced by Guang Ya and Guangcheng. As explained in the Preliminary Determination, the Guang Ya Companies submitted sales information to the Department in order to demonstrate that an Entered Value (EV) adjustment is warranted to ensure that the calculation of the subsidy rate would be reflective of the EV of the subject merchandise. The Department has developed six criteria it uses to determine whether an EV adjustment is warranted. See, e.g., Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Final Affirmative

Countervailing Duty Determination, 74 FR 4936 (January 28, 2009) (CWASPP from the PRC), and accompanying Issues and Decision Memorandum (CWASPP from the PRC Decision Memorandum) at "Adjustment to Net Subsidy Rate Calculation," in which the Department describes the six criteria utilized by the Department, and Certain Coated Paper Suitable for High-Quality Print Graphic Using Sheet-Fed Presses From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 75 FR 59212 (September 27, 2010) (Coated Paper from the PRC Final), and accompanying Issues and Decision Memorandum (Coated Paper from the PRC Decision Memorandum) at "Entered Value ('EV') Adjustment" and Comment 32, which was published after the Preliminary Determination, and provided elaboration on the Department's policy with respect to the EV adjustment.

We analyzed the sales information supplied by the Guang Ya Companies. Based on our review, we preliminarily determined that the Guang Ya Companies failed to meet all the criteria to warrant an EV adjustment. See Preliminary Determination, 75 FR at 54308. We continue to find that an EV adjustment to the net subsidy rate, as described in CWASPP from the PRC, is not warranted for the same reasons as discussed in the Preliminary Determination. Id.

The Zhongya Companies

As discussed above, the Zhongya Companies are New Zhongya, Zhongya HK, and Karlton. New Zhongya is the producer of subject merchandise. Zhongya HK and Karlton are Hong Kong based firms that are cross-owned with New Zhongya, within the meaning of 19 CFR 351.525(b)(6)(vi). During the POI, Zhongya HK exported products, including subject merchandise, produced by New Zhongya. During the POI, New Zhongya did not export aluminum extrusions to the United States through Karlton. In the Preliminary Determination, in accordance with 19 CFR 351.525(b)(6)(ii), we attributed subsidies received by New Zhongya to products produced by New Zhongya. We have continued this approach in the final determination.

As explained in the Preliminary Determination, the Zhongya Companies also submitted sales information to the Department in order to demonstrate than an EV adjustment is warranted. Based upon our analysis of the information submitted, we preliminarily determined the Zhongya Companies failed to meet all the criteria to warrant an EV adjustment. We continue to find that an EV adjustment to the net subsidy rate, as described in CWASPP from the PRC, is not warranted. See Comment 32, below.

Mutual Affiliation and Cross-Ownership Between Guang Ya Companies, Zhongya Companies, and Other Aluminum Extrusions Producers

In comments filed with the Department prior to the Preliminary Determination, Petitioners contend that the Guang Ya Companies and the Zhongya Companies are affiliated and cross-owned with one another by virtue of familial relations that exist between the firms. They further contend that the Guang Ya Companies and the Zhongya Companies are affiliated and cross-owned with Asia Aluminum Ltd. (Asia Aluminum), another aluminum extrusion producer as a result of familial relations. See, e.g., Petitioners' August 18, 2010, submission at 2.

Petitioners are correct in noting that familial relations exist between the Guang Ya Companies, the Zhongya Companies, and Asia Aluminum. For this reason, we find that under section 771(33)(A) of the Tariff Act of 1930, as amended (the Act), affiliation exists between

these three firms. However, as indicated by the CVD regulations, mere affiliation is not a sufficient basis to find that firms are cross-owned. The Preamble states that affiliation "clearly differs" from the cross-ownership standard. See Countervailing Duty Regulations, 63 FR 65347, 65401 (November 25, 1998) (Preamble). The Preamble further states that:

> . . . we simply do not find the affiliation standard to be a helpful basis for attributing subsidies. Nowhere in the Statement of Administrative Action (SAA) is there any indication that the affiliated party definition was intended to be used for subsidy attribution purposes. Rather, it identifies the broadest category of relationships which might be relevant to either an antidumping or a countervailing duty analysis . . . we do not intend to investigate subsidies to affiliated parties unless cross-ownership exists or other information, such as a transfer of subsidies, indicates that such subsidies may in fact benefit the subject merchandise produced by the corporation under investigation.

Id. Rather, to determine whether firms are cross-owned, we turn to the definition of cross-ownership as provided under 19 CFR 19 CFR 351.525(b)(6)(vi). The regulation states that cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This regulation states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations. Based on the information on the record of the investigation, we determine that there is no evidence indicating that the three firms, the Guang Ya Companies, the Zhongya Companies, and Asia Aluminum, have the ability to direct the individual assets of one another as if they were their own. Therefore, we determine that the threshold for finding cross-ownership among these firms, as described under 19 CFR 351. 525(b)(6)(vi), does not does not exist.

Further, for the reasons discussed below in Comments 5 and 6, we determine that the two firms have fully cooperated with regard to the Department's questions concerning affiliation and cross-ownership and, therefore, the application of total AFA, as argued by Petitioners, is not warranted.

IV. Allocation Period

Under 19 CFR 351.524(b), non-recurring subsidies are allocated over a period corresponding to the average useful life (AUL) of the renewable physical assets used to produce the subject merchandise. Pursuant to 19 CFR 351.524(d)(2), there is a rebuttable presumption that the AUL will be taken from the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (IRS Tables), as updated by the U.S. Department of the Treasury. For the subject merchandise, the IRS Tables prescribe an AUL of 12 years. No interested party has claimed that the AUL of 12 years is unreasonable.

Further, for non-recurring subsidies, we have applied the "0.5 percent expense test" described in 19 CFR 351.524(b)(2). Under this test, we compare the amount of subsidies approved under a given program in a particular year to sales (total sales or total export sales, as appropriate) for the same year. If the amount of subsidies is less than 0.5 percent of the relevant sales, then the benefits are allocated to the year of receipt rather than allocated over the AUL period.

V. Subsidies Valuation Information

Benchmarks and Discount Rates

The Department is investigating loans received by the Guang Ya Companies from Chinese policy banks and state-owned commercial banks (SOCBs), which were granted on a preferential, non-commercial basis.[3] Therefore, the derivation of the Department's benchmark and discount rates for use in computing benefits provided under countervailable programs is discussed below.

Benchmark for Short-Term Renminbi (RMB) Denominated Loans: Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the "difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market." Normally, the Department uses comparable commercial loans reported by the company for benchmarking purposes. See 19 CFR 351.505(a)(3)(i). If the firm did not have any comparable commercial loans during the period, the Department's regulations provide that we "may use a national interest rate for comparable commercial loans." See 19 CFR 351.505(a)(3)(ii).

As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate. However, for the reasons explained in CFS from the PRC, loans provided by Chinese banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market. See Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 72 FR 60645 (October 25, 2007) (CFS from the PRC), and accompanying Issues and Decision Memorandum (CFS from the PRC Decision Memorandum) at Comment 10. Because of this, any loans received by the respondents from private Chinese or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). Similarly, because Chinese banks reflect significant government intervention in the banking sector, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, the Department is selecting an external market-based benchmark interest rate. The use of an external benchmark is consistent with the Department's practice. For example, in Softwood Lumber from Canada, the Department used U.S. timber prices to measure the benefit for government-provided timber in Canada. See Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada, 67 FR 15545 (April 2, 2002) (Softwood Lumber from Canada), and accompanying Issues and Decision Memorandum (Softwood Lumber from Canada Decision Memorandum) at "Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit."

We are calculating the external benchmark using the regression-based methodology first developed in CFS from the PRC and more recently updated in LWTP from the PRC. See CFS from the PRC Decision Memorandum at Comment 10; see also Lightweight Thermal Paper From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 73 FR 57323 (October 2, 2008) (LWTP from the PRC), and accompanying Issues and Decision Memorandum (LWTP from the PRC Decision Memorandum) at "Benchmarks and Discount Rates." This benchmark interest rate is based on the inflation-adjusted interest rates of countries with per capita gross national incomes (GNIs) similar to the PRC. The benchmark interest rate

[3] The Zhongya Companies had no loans outstanding during the POI.

takes into account a key factor involved in interest rate formation (i.e., the quality of a country's institutions), which is not directly tied to the state-imposed distortions in the banking sector discussed above.

This methodology relies on data published by the World Bank and the International Monetary Fund (IMF). At the time of the Preliminary Determination, the World Bank had not yet published all the necessary data relied on by the Department to compute a 2009 short-term benchmark interest rate for the PRC. Specifically, the following data were not available: World Governance Indicators and World Bank classifications of lower-middle income countries based on GNI per capita in U.S. dollars. Therefore, for the Preliminary Determination, where the use of a 2009 short-term benchmark rate was required, we applied the 2008 short-term benchmark rate for the PRC, as calculated by the Department. See 75 FR at 54309. We further noted in the Preliminary Determination that the current 2008 loan benchmark may be updated, by the final determination, pending the release of all the necessary 2009 data. Id.

Since the Preliminary Determination, the World Bank has published the World Governance Indicators and World Bank classifications of lower-middle income countries based on GNI per capita in U.S. dollars. We, therefore, have placed these data on the record of the instant investigation and used these data to compute a 2009 short-term benchmark interest rate for the PRC for use in this final determination, where the application of a 2009 short-term benchmark rate is required. See Memorandum to the File from Eric B. Greynolds, Program Manager, Office 3, Operations, "Placement of Data Used to Derive 2009 Short-Term Benchmark Interest Rate on Record of Investigation," (January 11, 2011) (2009 Benchmark Interest Rate Memorandum).

The 2009 short-term interest rate benchmark, like the 2008 benchmark rate, was computed following the methodology developed in CFS from the PRC. Specifically, we first determined which countries are similar to the PRC in terms of GNI, based on the World Bank's classification of countries as low income, lower-middle income, upper-middle income, and high income. The PRC falls in the lower-middle income category, a group that includes 55 countries.[4] As explained in CFS from the PRC, this pool of countries captures the broad inverse relationship between income and interest rates.

Many of these countries reported lending and inflation rates to the International Monetary Fund and are included in that agency's international financial statistics (IFS). With the exceptions noted below, we have used the interest and inflation rates reported in the IFS for the countries identified as "low middle income" by the World Bank. First, we did not include those economies that the Department considers to be non-market economies (NMEs) for antidumping (AD) purposes for any part of the years in question, for example: Armenia, Georgia, Moldova, and Turkmenistan. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS for those years. Third, we removed any country that reported a rate that was not a lending rate or that based its lending rate on foreign-currency denominated instruments. For example, Jordan reported a deposit rate, not a lending rate, and the rates reported by Ecuador and Timor L'Este are dollar-denominated rates; therefore, the rates for these three countries were excluded. Finally, for the calculation of the inflation-adjusted short-term benchmark rate, we also excluded any countries with aberrational or negative real interest rates for the year in question. Because these are inflation-adjusted benchmarks, it is necessary to adjust the respondents' interest payments for inflation. This was done using the PRC inflation rate as reported in the IFS.

[4] See World Bank Country Classification at http://econ.worldbank.org/.

Benchmark for Long-Term RMB Denominated Loans: The lending rates reported in the IFS represent short- and medium-term lending, and there are no sufficient publicly available long-term interest rate data upon which to base a robust long-term benchmark. To address this problem, the Department has developed an adjustment to the short- and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates. See Light-Walled Rectangular Pipe and Tube From the People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination, 73 FR 35642 (June 24, 2008), and accompanying Issues and Decision Memorandum (LWRP from the PRC Decision Memorandum) at "Discount Rates." In Citric Acid from the PRC, this methodology was revised by switching from a long-term mark-up based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where n equals or approximates the number of years of the term of the loan in question. See Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 16836 (April 13, 2009) (Citric Acid from the PRC), and accompanying Issues and Decision Memorandum (Citric Acid from the PRC Decision Memorandum) at Comment 14.

Discount Rates: Consistent with 19 CFR 351.524(d)(3)(i)(A), we have used, as our discount rate, the long-term interest rate calculated according to the methodology described above for the year in which the government provided the subsidy.

VI. Use of Facts Otherwise Available and Adverse Inferences

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

Section 776(b) of the Act further provides that the Department 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.

Application of Adverse Inferences: Non-Cooperative Companies

The Department initially selected Dragonluxe Limited (Dragonluxe), Miland Luck Limited (Miland), and Co. Ltd./Liaoning Zhongwang Group (collectively the Zhongwang Group) as mandatory respondents. See Memorandum to John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Respondent Selection," (May 18, 2010) (Respondent Selection Memorandum). Accordingly, the Department sent the initial questionnaire to the three companies on May 18, 2010. The Department confirmed that the three firms received copies of the initial questionnaire. See Memorandum to the File from Eric B. Greynolds, Program Manager, Operations, Office 3, "Confirmation of Delivery of Initial Questionnaire to Firms Selected As Mandatory Respondents," (June 4, 2010). Dragonluxe, Miland, and the Zhongwang Group failed to respond the Department's initial questionnaire. As a result of the failure of Dragonluxe, Miland, and the Zhongwang Group to

submit responses to the Department's initial questionnaire, we found the firms to be non-cooperative, mandatory respondents. See Memorandum to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, "Acceptance of Requests for Treatment As Voluntary Respondents" (July 21, 2010) (Voluntary Respondent Selection Memorandum).

We find that, by not responding to the Department's initial questionnaire, Dragonluxe, Miland, and the Zhongwang Group withheld requested information and significantly impeded this proceeding. Thus, pursuant to sections 776(a)(2)(A) and (C) of the Act, we have based the CVD rate for Dragonluxe, Miland, and the Zhongwang Group on facts otherwise available.

We further determine that an adverse inference is warranted, pursuant to section 776(b) of the Act. By failing to submit responses to the Department's initial questionnaire, Dragonluxe, Miland, and the Zhongwang Group failed to cooperate by not acting to the best of their ability in this investigation. Accordingly, we find that an adverse inference is warranted to ensure that the three respondents will not obtain a more favorable result than had they fully complied with our request for information. Our decision to use an adverse inference in applying the facts otherwise available is unchanged from the Preliminary Determination. See 75 FR at 54304.

In deciding which facts to use as adverse facts available (AFA), section 776(b) of the Act and 19 CFR 351.308(c)(1) and (2) authorize the Department to rely on information derived from: (1) the petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any other information placed on the record. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner." See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan, 63 FR 8909, 8932 (February 23, 1998). The Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103-316, Vol. I, at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199.

It is the Department's practice in CVD proceedings to select, as AFA, the highest calculated rate in any segment of the proceeding. See, e.g., Laminated Woven Sacks From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances, 73 FR 35639 (June 24, 2008) (LWS from the PRC), and accompanying Issues and Decision Memorandum (LWS from the PRC Decision Memorandum) at "Selection of the Adverse Facts Available." In previous CVD investigations of products from the PRC, we adapted the practice to use the highest rate calculated for the same or similar program in another PRC CVD proceeding. Id.; see also Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination, 73 FR 70971, 70975 (November 24, 2008) (unchanged in the Certain Tow-Behind Lawn Groomers and Certain Parts Thereof From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 29180 (June 19, 2009), and accompanying Issues and Decision Memorandum at "Application of Facts Available, Including the Application of Adverse Inferences").

Thus, under this practice, for investigations involving the PRC, the Department computes the total AFA rate for non-cooperating companies generally using program-specific rates

calculated for the cooperating respondents in the instant investigation or calculated in prior PRC CVD cases. Specifically, for programs other than those involving income tax exemptions and reductions, the Department applies the highest calculated rate for the identical program in the investigation if a responding company used the identical program, and the rate is not zero. If there is no identical program within the investigation, the Department uses the highest non-de minimis rate calculated for the same or similar program (based on treatment of the benefit) in another PRC CVD proceeding. Absent an above-de minimis subsidy rate calculated for the same or similar program, the Department applies the highest calculated subsidy rate for any program otherwise listed that could conceivably be used by the non-cooperating companies. See, e.g., LWTP from the PRC Decision Memorandum at "Selection of the Adverse Facts Available Rate."

However, in the instant investigation the cooperating firms, the Guang Ya Companies and the Zhongya Companies, are voluntary respondents. Under 19 CFR 351.204(d)(3), in calculating an all-others rate under section 705(c)(5) of the Act, the Department will exclude net subsidy rates calculated for voluntary respondents. Thus, as discussed in further detail below in Comment 9, in accordance with section 705(c)(5)(A)(ii) of the Act and 19 CFR 351.204(d)(3), we have equated the all-others rate with the AFA rates calculated for the non-cooperative companies. We have adopted this approach because the inclusion of self-selected respondents in the derivation of the all-others rate could result in the distortion or manipulation of the all-others rate. See Antidumping Duties; Countervailing Duties, 62 FR 27296, 27310 (May 19, 1997) (Preamble to Procedural Regulations). Furthermore, in light of this concern, we determine that it is not appropriate to compute total AFA rates for non-cooperative companies using company-specific rates calculated for participating respondents, because to do so would require the use of program rates calculated for voluntary respondents. In addition, our reasoning not to base the AFA rate on program rates calculated for voluntary respondents extends to our use of program rates from other CVD proceedings involving the PRC. Thus, in deriving the AFA rate for the three non-cooperating mandatory respondents in the instant investigation, we have not utilized company-specific program rates that were calculated for voluntary respondents. Our approach in this regard is unchanged from the Preliminary Determination. See 75 FR at 54305.

Therefore, for purposes of deriving the AFA rate for the three non-cooperating mandatory respondents, we are using the highest non-de minimis rate calculated for the same or similar program (based on treatment of the benefit) in another PRC CVD investigation. Absent an above-de minimis subsidy rate calculated for the same or similar program, we are applying the highest calculated subsidy rate for any program otherwise listed that could conceivably be used by the non-cooperating companies. See, e.g., LWTP from the PRC Decision Memorandum at "Selection of the Adverse Facts Available Rate."

Further, where the GOC can demonstrate through complete, verifiable, positive evidence that Dragonluxe, Miland, and the Zhongwang Group (including all their facilities and cross-owned affiliates) are not located in particular provinces whose subsidies are being investigated, the Department will not include those provincial programs in determining the countervailable subsidy rate for those companies. See, e.g., Certain Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 37012 (July 27, 2009) (Racks from the PRC), and accompanying Issues and Decision Memorandum (Racks Decision from the PRC Decision Memorandum) at "Use of Facts Otherwise Available and Adverse Facts Available." In this investigation, the GOC has not provided any such information. Therefore, we are making the adverse inference that the three

non-cooperative companies, Dragonluxe, Miland, and the Zhongwang Group, had facilities and/or cross-owned affiliates that received subsidies under all of the sub-national programs on which the Department initiated.

For the seven income tax rate reduction or exemption programs at issue in the instant investigation, we are applying an adverse inference that Dragonluxe, Miland, and the Zhongwang Group paid no income taxes during the POI. The seven programs are: (1) Tax Reductions for High or New Technology Enterprises (HNTEs) Involved in Designated Projects; (2) Two Free, Three Half Tax Exemptions for Productive Foreign Invested Enterprises (FIEs); (3) Local Income Tax Exemption and Reduction Programs for "Productive" FIEs; (4) Income Tax Benefits for FIEs in Designated Geographic Location; (5) Income Tax Benefits for Technology- or Knowledge-Intensive FIEs; (6) Income Tax Benefits for FIES That Are Also HNTEs; and (7) Income Tax Reductions For Export-Oriented FIEs.

The standard income tax rate for corporations in the PRC filing income tax returns during the POI was 25 percent. See, e.g., "Notification of the State Council on Carrying out the Transition Preferential Policies Concerning Enterprise Income Tax," Guo Fa 2007, No. 39 as included in the March 31, 2010, petition at Exhibit III-65. Further, the three percent provincial income tax was no longer in effect during the POI. See the GOC's August 4, 2010, supplemental questionnaire response at 4. Therefore, the highest possible benefit for all income tax reduction or exemption programs combined is 25 percent. Therefore, we are applying a CVD rate of 25 percent on an overall basis for these seven income tax programs (i.e., these seven income tax programs combined provide a countervailable benefit of 25 percent). This 25 percent AFA rate does not apply to tax credit or tax refund programs. This approach is consistent with the Department's past practice. See, e.g., Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances, 73 FR 31966 (June 5, 2008) (CWP from the PRC), and accompanying Issues and Decision Memorandum (CWP from the PRC Decision Memorandum) at 2, and LWTP from the PRC Decision Memorandum at "Selection of the Adverse Facts Available Rate."

The 25 percent AFA rate does not apply to the following income tax credit and rebate or accelerated depreciation programs found countervailable because such programs may not affect the tax rate and, hence, the subsidy conferred, in the current year: (1) Value Added Tax (VAT) and Tariff Exemptions on Imported Equipment to FIEs and Certain Domestic Enterprises; (2) VAT Rebates on FIEs Purchases of Chinese-Made Equipment; (3) City Tax and Surcharge Exemptions for FIEs; (4) Tax Offsets for Research and Development (R&D); (5) Income Tax Credits for Domestically-Owned Companies Purchasing Chinese-Made Equipment; (6) Tax Reductions for FIEs Purchasing Chinese-Made Equipment; (7) Tax Refunds for Reinvesting of FIE Profits in Export-Oriented Enterprises; (8) Accelerated Depreciation for Enterprises Located in Northeast Region; and (9) Forgiveness of Tax Arrears for Enterprises in the "Old Industrial Bases" of Northeast China. Based on the methodology discussed above, we determine to use the highest non-de minimis rate for any non-income exemption/reduction tax program from a PRC CVD investigation. That rate is 1.51 percent, calculated for the "Value-Added Tax and Tariff Exemptions on Imported Equipment" program in CFS from the PRC. See CFS from the PRC Decision Memorandum at "VAT and Tariff Exemptions on Imported Equipment".

Regarding the Preferential Loans as Part of the Northeast Revitalization Program and the Policy Loans for Aluminum Extrusion Producers program, we determine to apply the highest non-de minimis subsidy rate for any loan program in a prior PRC CVD investigation. The

highest non-de minimis subsidy rate is 10.54 percent calculated for the "Preferential Lending for the Coated Paper Industry," from the Coated Graphic Paper from the PRC Order. See Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order, 75 FR 70201, 70202 (November 17, 2010) (Coated Graphic Paper from the PRC Order).

We are investigating a number of grant programs including: (1) State Key Technology Renovation Fund; (2) GOC and Sub-Central Government Grants, Loans, and Other Incentives for Development of Famous Brands and China World Top Brands; (3) Grants to Cover Legal Fees in Trade Remedy Cases in Shenzhen; (4) Special Fund for Energy Saving Technology Reform: Guangdong Province; (5) The Clean Production Technology Fund; (6) Grants for Listing Shares: Liaoyang City (Guangdong Province), Wenzhou Municipality (Zhejiang Province), and Quanzhou Municipality (Fujian Province); (7) Northeast Region Foreign Trade Development Fund; and (8) Northeast Region Technology Reform Fund. The Department has not calculated above de minimis rate for any of these programs in prior investigations, and, moreover, all previously calculated rates for grant programs from prior PRC CVD investigations have been de minimis. Therefore, for each of these grant programs we determine to use the highest calculated subsidy rate for any program otherwise listed, which could have been used by the non-cooperative companies. We determine that this rate is 10.54 percent from the "Preferential Lending for the Coated Paper Industry" program from the Coated Graphic Paper from the PRC Order.

The Department is also investigating several provision of a good or service for LTAR programs: (1) Provision of Land-Use Rights for LTAR in Liaoyang High-Tech Industry Development Zone; (2) Provision of Land-Use Rights for LTAR to State-Owned Enterprises (SOEs); and (3) Provision of Primary Aluminum for LTAR. For two of these LTAR programs, we are applying the highest non-de minimis subsidy rate for any provision of land-use rights for LTAR program in a prior PRC CVD investigation. The highest non-de minimis subsidy rate is 2.55 percent calculated for the "Subsidies Provided in the TBNA and the Tianjin Economic and Technological Development Area" from OCTG from the PRC. See Certain Oil Country Tubular Goods From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination, 74 FR 64045 (December 7, 2009) (OCTG from the PRC), and accompanying Issues and Decision Memorandum (OCTG from the PRC Decision Memorandum) at "Subsidies Provided in the TBNA and the Tianjin Economic and Technological Development Area." Concerning the provision of Primary Aluminum for LTAR, the Department has not previously investigated allegations concerning this input product. Therefore, for this program, we are applying the highest calculated subsidy rate for any program otherwise listed that could conceivably be used by the non-cooperating companies. We determine that this similar program rate is the above 2.55 percent rate from OCTG from the PRC. Id.

In addition, the Department is investigating government purchases of aluminum extrusions for MTAR. The Department has not previously investigated allegations concerning this program. Therefore, for this program, we are applying the highest calculated subsidy rate for any program otherwise listed that could conceivably be used by the non-cooperating companies. We determine that this rate is 10.54 percent for the "Preferential Lending for the Coated Paper Industry" program from the Coated Graphic Paper from the PRC Order.

On July 8 and July 28, 2010, Petitioners submitted new subsidy allegations. On August 11, 2010, the Department initiated investigations of all the allegations included in Petitioners' July 8 and July 28, 2010, submissions. See Memorandum to Melissa G. Skinner, Director, "New Subsidy Allegations for the Guang Ya and Zhongya Companies," (August 11, 2010). On August 11, 2010, the Department also sent a new subsidy questionnaire to the GOC as well as to the Zhongya Companies and the Guang Ya Companies regarding these new subsidy allegations. The due date of the questionnaires fell after the due date of the Preliminary Determination. Therefore, we did not address the new subsidy programs in the Preliminary Determination and did not include these additional subsidy programs under investigation in this proceeding in the total AFA rates calculated for Dragonluxe, Miland, and the Zhongwang Group. See 75 FR at 54306 – 54307. However, in the Preliminary Determination, we invited interested parties to comment on whether the Department should include the additional alleged programs and the various programs self-reported by the Guang Ya Companies and the Zhongya Companies into the AFA rate calculated for the non-cooperating, mandatory respondents. Id. Upon examination of the comments received we have determined to add the newly alleged and self-reported subsidy programs to the AFA rate established for the non-mandatory respondents. See Comment 8, below.

Therefore, we have included the new subsidy allegations in the total AFA rate. In accordance with the reasons described above, we have assigned the following rates to these programs. For the following LTAR programs, we used the rate of 2.55 percent from OCTG from the PRC: (1) Provision of Land-Use Rights and Fee Exemptions To Enterprises Located in the Zhaoqing High-Tech Industry Development Zone (ZHITDZ) for LTAR; (2) Provision of Land-Use Rights to Enterprises Located in the South Sanshui Science & Technology Industrial Park for LTAR; (3) Provision of Electricity for LTAR to FIEs Located in the Nanhai District of Foshan City; and (4) Government Provision of Land-Use Rights for LTAR for Enterprises Located in the Yongji Circular Economic Park. For the Tax Refunds for Enterprises Located in the ZHITDZ program, we used the rate of 1.51 percent from CFS from the PRC. For the following grant programs, we used the rate of 10.54 percent from the Coated Graphic Paper from the PRC Order: (1) Provincial Government of Guangdong (PGOG) and Foshan City Government Patent and Honor Award Grants; (2) Foshan City Government Technology Renovation & Technology Innovation Special Fund Grants; (3) Nanhai District Grants to State and Provincial Enterprise Technology Centers and Engineering Technology Research and Development Centers; and (4) Nanhai District Grants to High and New Technology Enterprises.

We have also included the following grant programs self-reported by the voluntary respondents in the total AFA rate: (1) Special Fund for Significant Science and Technology in Guangdong Province; (2) Fund for Economic, Scientific, and Technology Development; (3) Provincial Fund for Fiscal and Technological Innovation; (4) Provincial Loan Discount Special Fund for Small and Medium Sized Enterprises (SMEs); (5) Export Rebate for Mechanic, Electronic and High-Tech Products; (6) PGOG Special Fund for Energy Saving Technology Reform; (7) PGOG Science and Technology Bureau Project Fund (Also Referred to as Guangdong Industry, Research, University Cooperating Fund); (8) "Large and Excellent" Enterprises Grant; (9) Advanced Science/Technology Enterprise Grant; (10) Award for Self-Innovation Brand/Grant for Self-Innovation Brand and Enterprise Listing; (11) Tiaofeng Electric Power Subscription Subsidy Funds; (12) Award for Excellent Enterprise; (13) Grant for Labor and Social Security in Sanshui District; (14) Development Assistance Grants from the ZHITDZ

Local Authority; and (15) International Market Exploration Fund for SMEs. For these grant programs we used the rate of 10.54 percent from the Coated Graphic Paper from the PRC Order.

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." See also SAA at 870, 1994 U.S.C.C.A.N. at 4199. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes that the Department need not prove that the information selected as facts available are the best alternative information. SAA at 869.

Regarding the reliability of corroboration of the rates selected, we note that the rates selected were calculated in recent final CVD determinations, as outlined above. Further, the calculated rates were based upon verified information about the same or similar programs. No information has been presented that calls into question the reliability of these calculated rates that we are applying as AFA. See Comment 7, below, for additional explanation regarding rates for certain programs. Finally, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there are typically no independent sources for data on company-specific programs resulting from countervailable subsidy programs.

Regarding the relevance of the corroboration of the rates selected, the Department considers information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Where circumstances indicate that information is not appropriate for use as AFA, the Department will not use it. See, e.g., Wire Decking from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 75 FR 32902 (June 10, 2010) (Wire Decking from the PRC), and accompanying Issues and Decision Memorandum (Wire Decking from the PRC Decision Memorandum) at "Application of Adverse Inferences: Non-Cooperative Companies."

As discussed above, we do not have any evidence concerning these programs due to the decision of the mandatory respondents not to participate in the investigation. Therefore, we have reviewed the information concerning the PRC subsidy programs in other cases. Where we have a program-type match, we find that, because these are the same or similar programs, they are relevant to the programs of this case. For the programs for which there is no program-type match, we have selected the highest calculated subsidy rate for any PRC program from which the non-cooperative mandatory respondents could receive a benefit, to use as AFA. The relevance of these rates is that it is an actual calculated CVD rate for a PRC program from which the non-cooperative mandatory respondents could actually receive a benefit. Further, these rates were calculated for periods close to the POI in this case. In addition, the failure of the mandatory respondents to respond to the Department's requests for information has "resulted in an egregious lack of evidence on the record to suggest an alternative rate." Shanghai Taoen Int'l Trading Co., Ltd. v. United States, 360 F. Supp. 2d 1339, 1348 (CIT 2005) (Shanghai Taoen). Due to the lack of participation by the mandatory respondents and the resulting lack of record information concerning their use of the programs under investigation, the Department has corroborated the rates it selected to use as AFA to the extent practicable.

On this basis, we determine the AFA countervailable subsidy rate for the non-cooperative respondents (Dragonluxe, Miland, and the Zhongwang Group) to be 374.15 percent ad valorem. See the memorandum to the file titled "Derivation of Adverse Facts Available (AFA) Net Subsidy Rate Applied in Final Determination" (March 28, 2011).

Various Grant Programs Self-Reported by the Guang Ya Companies

The Guang Ya Companies self-reported receiving various lump sum cash grants from the GOC. As a result, the Department sent questionnaires to the GOC regarding these programs. See the July 21, 2010, first supplemental questionnaire sent to the GOC. In its supplemental questionnaire responses, the GOC provided information concerning the nature of the programs and indicated that the programs were not contingent upon exports, and thus are not specific under section 771(5A)(B) of the Act. However, the GOC failed to respond to the Department's questions concerning the distribution of benefits, which is information that the Department uses to determine whether alleged subsidy programs are de facto specific under section 771(5A)(D)(iii) of the Act. See the GOC's August 9, 2010, supplemental questionnaire response. Further, the GOC failed to supply the requested benefit distribution data in its second supplemental questionnaire response, despite the Department's request that it do so. See the GOC's August 19, 2010, second supplemental questionnaire response.

Because the GOC failed to provide the requested benefit distribution data, we find, pursuant to section 776(a) of the Act, that the necessary information is not on the record. We further find that the GOC failed to cooperate by not acting to the best of its ability. Therefore, for those programs for which we lack the necessary information and for which the GOC failed to cooperate, in accordance with section 776(b) of the Act, we are assuming as an adverse inference that the programs are de facto specific as domestic subsidies within the meaning of section 771(5A)(D)(iii) of the Act. Our approach in this regard is unchanged from the Preliminary Determination. See 75 FR at 54307.

The Guang Ya Companies' Failure to Report in a Timely Manner All of its Purchases of Primary Aluminum Under the Provision of Primary Aluminum for LTAR Program

In response to the Department's initial questionnaire, the Guang Ya Companies provided its purchases of primary aluminum during the POI. See the Guang Ya Companies' July 8, 2010, questionnaire response at Exhibit 20, in which they indicated that Guang Ya made all of the purchases of the Guang Ya Companies during the POI. The Department used the data in Exhibit 20 to perform the subsidy calculations for the Preliminary Determination. On December 6, 2010, three days after commencement of verification, the Guang Ya Companies submitted data regarding previously unreported purchases of primary aluminum made by Guangcheng during the POI. See the Guang Ya Companies' December 6, 2010, submission at Exhibit 103. The Guang Ya Companies claimed that the data in Exhibit 103 constituted a "slight" revision of the data originally submitted in Exhibit 20. Id. In response, the Department explained that the data in Exhibit 103 did not constitute a minor correction, as referenced in the Department's November 24, 2010, verification outline issued to the Guang Ya Companies. See the Department's December 15, 2010, letter to the Guang Ya Companies, "Rejection of the December 6, 2010, Submission by the Guang Ya Companies." In the letter, the Department further explained that the Guang Ya Companies' December 6, 2010, submission was untimely

under 19 CFR 351.302(d)(1)(i). As a result, the Department returned the submission to the Guang Ya Companies. At verification, the Department confirmed, in the aggregate, the magnitude of the previously unreported volume of primary aluminum purchased by Guangcheng. See Guang Ya Companies Verification Report, Exhibit 14 at 16 – 17.

Because the Guang Ya Companies failed to provide all of its purchases of primary aluminum in a timely manner, we find, pursuant to section 776(a) of the Act, that the necessary information is not on the record. We further find that the Guang Ya Companies have failed to cooperate by not acting to the best of their ability. Therefore, in accordance with section 776(b) of the Act, we are applying partial AFA with regard to the primary aluminum purchased domestically by Guangcheng. Specifically, as partial AFA, we have multiplied the single highest unit benefit calculated on Guang Ya's purchases of primary aluminum under this program by the total volume of primary aluminum purchased by the Guang Ya Companies. See "Provision of Primary Aluminum for LTAR" section below.

ANALYSIS OF PROGRAMS

VII. Programs Determined To Be Countervailable

A. Exemption from City Construction Tax and Education Tax for FIEs

Pursuant to the Circular Concerning Temporary Exemption from Urban Maintenance and Construction Tax and Additional Education Fees for Foreign-Funded and Foreign Enterprises (GUOSHUIFA {1994} No. 38), the local tax authorities exempt all FIEs and foreign enterprises from the city maintenance and construction tax and education fee surcharge. The construction tax is based on the amount of product tax, VAT, and/or business tax actually paid by the taxpayer. For taxpayers located in urban areas, the rate is seven percent; for taxpayers located in counties or townships, the rate is five percent; and for taxpayers located in areas other than urban areas, counties, and townships, the rate is one percent. Regarding the education fee surcharge, FIEs pay only one percent of the actual amount of the product tax, VAT, and business tax paid, whereas other entities pay four percent of that amount. Guangcheng and New Zhongya are FIEs and, therefore, received exemptions under this program.

Consistent with our finding in Racks from the PRC, we determine that the exemptions from the city construction tax and education surcharge under this program confer a countervailable subsidy. See Racks from the PRC Decision Memorandum at "Exemption from City Construction Tax and Education Tax for FIEs in Guangdong Province." The exemptions are financial contributions in the form of revenue forgone by the government and provide a benefit to the recipient in the amount of the savings. See section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also determine that the exemptions afforded by this program are limited as a matter of law to certain enterprises, i.e., FIEs, and, hence, specific under section 771(5A)(D)(i) of the Act. Our findings in this regard are unchanged from the Preliminary Determination. See 75 FR at 54310.

To calculate the benefit, we treated the tax savings and exemptions received by Guangcheng and New Zhongya as recurring benefits, consistent with 19 CFR 351.524(c)(1). Guangcheng and New Zhongya both reported that they are exempted from the city construction tax and education fee surcharge. To compute the amount of city construction tax savings, we first determined the rate the companies would have paid in the absence of the program. Both

Guangcheng and New Zhongya reported that a seven percent construction tax would have been applied to them absent the program. They further reported that they paid a one percent education tax instead of a four percent education tax that would have been applicable absent the program. Thus, we compared the rates the companies would have paid during the POI in the absence of the program (seven percent for the construction tax and four percent on the education tax) with the rate the companies paid (zero percent construction tax and one percent education tax), because they are FIEs. To calculate the total benefit under the program, we summed the savings from the construction tax exemption and education fee exemption.

To calculate the program rate, we divided the companies' tax savings received during the POI by their total consolidated sales, net of intra-company sales. Specifically, for New Zhongya, we divided the benefit by its total sales for the POI. For Guangcheng, we divided the benefit by the combined total sales of Guangcheng and Guang Ya.

On this basis, we determine the countervailable subsidy to be 0.01 percent ad valorem for the Guang Ya Companies and 0.07 percent ad valorem for the Zhongya Companies.

B. GOC and Sub-Central Government Grants, Loans, and Other Incentives for Development of Famous Brands and China World Top Brands

The Famous Brand program is administered at the central, provincial, and municipal government level. During the POI, New Zhongya and Guang Ya reported receiving grants under the Famous Brand program from their respective local governments.

Though operated at the local level, the GOC issued "Measures for the Administration of Chinese Top-Brand Products," which state that the requirements for application require that firms provide information concerning their export ratio as well as the extent to which their product quality meets international standards. See the Guang Ya Companies July 8, 2010, questionnaire response at Exhibit 24 (Chapter 3 of the "Measures for the Administration of Chinese Top-Brand Products").

We determine that the grants that the Zhongya Companies and the Guang Ya Companies received under the famous brand program constitute a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Regarding specificity, section 771(5A)(B) of the Act states that an export subsidy is a subsidy that is, in law or in fact, contingent upon export performance, alone or as one of two or more conditions. We determine that grants provided to the Zhongya Companies and the Guang Ya Companies under the famous brands program are contingent on export activity. Therefore, we find that the program is specific under section 771(5A)(A) and (B) of the Act. Our approach in this regard is unchanged from the Preliminary Determination and consistent with the Department's findings in prior CVD proceedings involving the PRC. See 75 FR at 54310; see also Pre–Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 75 FR 28557 (May 21, 2010), and accompanying Issues and Decision Memorandum (PC Strand from the PRC Decision Memorandum) at "Subsidies for Development of Famous Export Brands and China World Top Brands at Central and Sub-Central Level."

The grants that New Zhongya and Guang Ya received during the POI were less than 0.5 percent of their respective total export sales denominators in the year of approval/receipt. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the year of receipt. Guang Ya also received a grant prior to the POI that was greater than 0.5 percent of its total export sales denominator in the year of approval/receipt. Therefore, we allocated the

benefit over time using the methodology provided under 19 CFR 351.524(d)(2).

On this basis, we calculated a total net subsidy rate of 0.36 percent ad valorem for the Guang Ya Companies and a total net subsidy rate of 0.09 percent ad valorem for the Zhongya Companies.

C. Two Free, Three Half Income Tax Exemptions for FIEs

The Foreign Invested Enterprise and Foreign Enterprise Income Tax Law (FIE Tax Law), enacted in 1991, established the tax guidelines and regulations for FIEs in the PRC. The intent of this law is to attract foreign businesses to the PRC. According to Article 8 of the FIE Tax Law, FIEs that are "productive" and scheduled to operate not less than 10 years are exempt from income tax in their first two profitable years and pay half of their applicable tax rate for the following three years. FIEs are deemed "productive" if they qualify under Article 72 of the Detailed Implementation Rules of the Income Tax Law of the People's Republic of China of Foreign Investment Enterprises and Foreign Enterprises. New Zhongya reported receiving benefits under this program that are attributable to the POI.

We determine that the exemption or reduction in the income tax paid by "productive" FIEs under this program confers a countervailable subsidy. The exemption/reduction is a financial contribution in the form of revenue forgone by the GOC and it provides a benefit to the recipients in the amount of the tax savings. See sections 771(5)(D)(ii) and 771(5)(E) of the Act and 19 CFR 351.509(a)(1). We further determine that the exemption/reduction afforded by this program is limited as a matter of law to certain enterprises, "productive" FIEs, and, hence, is specific under section 771(5A)(D)(i) of the Act. Our approach in this regard is unchanged from the Preliminary Determination and consistent with the Department's practice. See 75 FR at 54310, see also CFS from the PRC Decision Memorandum at "Two Free/Three Half Program."

To calculate the benefit from this program, we treated the income tax exemption claimed as a recurring benefit, consistent with 19 CFR 351.524(c)(1). We then compared the tax rate paid to the rate that otherwise would have been paid by New Zhongya and multiplied the difference by the company's taxable income. We divided the benefit by the total sales of New Zhongya during the POI.

On this basis, we determine a countervailable subsidy of 0.53 percent ad valorem for the Zhongya Companies.

D. Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries

Enacted in 1997, the Circular of the State Council on Adjusting Tax Policies on Imported Equipment (Guofa No. 37) (Circular 37) exempts both FIEs and certain domestic enterprises from the VAT and tariffs on imported equipment used in their production so long as the equipment does not fall into prescribed lists of non-eligible items. The National Development and Reform Commission (NDRC) and the General Administration of Customs are the government agencies responsible for administering this program. Qualified enterprises receive a certificate either from the NDRC or one of its provincial branches. To receive the exemptions, a qualified enterprise only has to present the certificate to the customs officials upon importation of the equipment. The objective of the program is to encourage foreign investment and to introduce foreign advanced technology equipment and industry technology upgrades. The

Department has previously found this program to be countervailable. See, e.g., Citric Acid from the PRC Decision Memorandum at "VAT Rebate on Purchases by FIEs of Domestically Produced Equipment."

New Zhongya, an FIE, reported receiving VAT and tariff exemptions under this program for imported equipment prior to and during the POI. Guangcheng, also an FIE, reported receiving VAT and tariff exemptions under this program for imported equipment prior to the POI.

We determine that the VAT and tariff exemptions on imported equipment confer a countervailable subsidy. The exemptions are a financial contribution in the form of revenue forgone by the GOC and the exemptions provide a benefit to the recipients in the amount of the VAT and tariff savings. See section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). As described above, only FIEs and certain domestic enterprises are eligible to receive VAT and tariff exemptions under this program; therefore, we further determine that the VAT and tariff exemptions under this program are specific under section 771(5A)(D)(iii)(I) of the Act because the program is limited to certain enterprises. See, e.g., CFS from the PRC Decision Memorandum at Comment 16, and Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances, 73 FR 40480 (July 15, 2008) (Tires from the PRC), and accompanying Issues and Decision Memorandum (Tires from the PRC Decision Memorandum) at "VAT and Tariff Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment on Encouraged Industries." Our findings are unchanged from the Preliminary Determination. See 75 FR at 54311.

Normally, we treat exemptions from indirect taxes and import charges, such as the VAT and tariff exemptions, as recurring benefits, consistent with 19 CFR 351.524(c)(1) and allocate these benefits only in the year that they were received. However, when an indirect tax or import charge exemption is provided for, or tied to, the capital structure or capital assets of a firm, the Department may treat it as a non-recurring benefit and allocate the benefit to the firm over the AUL. See 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(1). Therefore, because these exemptions are for capital equipment, we have examined the VAT and tariff exemptions that New Zhongya and Guangcheng received under the program during the POI and prior years.

To calculate the amount of import duties exempted under the program, we multiplied the value of the imported equipment by the import duty rate that would have been levied absent the program. To calculate the amount of VAT exempted under the program, we multiplied the value of the imported equipment (inclusive of import duties) by the VAT rate that would have been levied absent the program. Our derivation of VAT in this calculation is consistent with the Department's approach in prior cases. See, e.g., Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 73 FR 70961 (November 24, 2008), and accompanying Issues and Decision Memorandum (Line Pipe from the PRC Decision Memorandum) at Comment 8 (". . . we agree with Petitioners that VAT is levied on the value of the product inclusive of delivery charges and import duties"). Next, we summed the amount of duty and VAT exemptions received in each year. For each company, we divided the total amount of annual VAT and tariff exemptions by the corresponding total sales for year in which the exemptions were received. Those exemptions that were less than 0.5 percent of total sales were expensed to the year of receipt. Those exemptions that were greater than 0.5 percent of total sales were allocated over the AUL using the methodology described under 19 CFR 351.524(d)(2).

On this basis, we determine the countervailable subsidy to be 0.53 percent ad valorem for the Zhongya Companies and less than 0.005 percent ad valorem for the Guang Ya Companies.[5]

E. International Market Exploration Fund (SME Fund)

The SME Fund, established under CQ (2000) No. 467, encourages the development of SMEs by reducing the risk of operation for these enterprises in the international market. To qualify for the program, a company needs to satisfy the criteria in CQ (2000), which provides that the SME should have export and import rights, exports of less than $15,000,000, an accounting system, personnel with foreign trade skills, and a plan for exploring the international market. Guang Ya reported receiving funds under this program in 2008 and 2009 from the Shishan Town Economic Development Office.

We determine that the grants provided under the SME Fund constitute a financial contribution and benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. We also determine that this program is an export subsidy and thus, specific, under section 771(5A)(A) and (B) of the Act, because the program supports the international market activities of SMEs and is contingent upon export performance. Our findings in this regard are unchanged from the Preliminary Determination and consistent with the Department's practice. See 75 FR at 54311 - 12, see also Wire Decking from the PRC Decision Memorandum at "International Market Exploration Fund (SME Fund)." Information on the record indicates that the SME Fund provides one-time assistance. Therefore, consistent with 19 CFR 351.524(c)(1), we are treating the grants received under this program as "non-recurring." To measure the benefits of each grant that are allocable to the POI, we first conducted the "0.5 percent test" for the grant. See 19 CFR 351.524(b)(2). We divided the total amount approved in 2008 and 2009 by the total export sales of Guang Ya and Guangcheng in 2008 and 2009. As a result, we found that the grants received by Guang Ya are less than 0.5 percent and fully expensed to the year of receipt.

Therefore, for the POI, we calculated a total net subsidy rate of 0.01 percent ad valorem for the Guang Ya Companies.

F. Preferential Tax Program for FIEs Recognized as HNTEs

According to the "Circular of the State Council Concerning the Approval of the National Development Zones for New and High Technology Industries and the Relevant Policies and Provisions" at Article 2 and 4 of Appendix III, "Regulations on the Tax Policy for the National New and High Technology Industries Parks", FIEs designated as HNTEs in high and new technology parks pay a reduced income tax rate of 15 percent.

We determine that the reduction in the income tax paid by FIEs designated as HNTEs under this program confers a countervailable subsidy. The reduction is a financial contribution in the form of revenue forgone by the government and it provides a benefit to the recipient in the amount of the tax savings. See sections 771(5)(D)(ii) and 771(5)(E) of the Act, respectively, and 19 CFR 351.509(a)(1). We also determine that the reduction afforded by this program is limited as a matter of law to certain enterprises, i.e., FIEs designated as HNTEs, and, hence, is specific

[5] Consistent with our past practice, we did not include this program in the Guang Ya Companies' total net subsidy rate because it is numerically insignificant. See, e.g., CFS from the PRC Decision Memorandum at "Analysis of Programs, Programs Determined Not To Have Been Used or Not To Have Provided Benefits During the POI for GE."

under section 771(5A)(D)(i) of the Act. The program is also specific pursuant to section 771(5A)(D)(iv) of the Act, as only ratified new and high technology enterprises located in new and high technology parks approved by the State Council are eligible for the reduced tax rate. Our findings are unchanged from the Preliminary Determination. See 75 FR at 54312. Guang Ya and Guangcheng reported receiving tax benefits attributable to the POI under this program.

We treated the income tax savings enjoyed by the companies as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To compute the amount of the tax savings, we compared the rate Guang Ya and Guangcheng would have paid in the absence of the program (25 percent) with the rate the company paid (15 percent), and divided the tax savings received during the POI by the combined total sales of Guang Ya and Guangcheng.

On this basis, we determine the countervailable subsidy attributable to the Guang Ya Companies to be 0.15 percent ad valorem under this program.

G. Policy Loans to Chinese Aluminum Extrusion Producers

The Department examined whether aluminum extrusion producers receive preferential lending through SOCBs or policy banks. According to the allegation, preferential lending to the aluminum extrusion industry is supported by the GOC through the issuance of national and provincial five-year plans, industrial plans for the aluminum and nonferrous metal sector, catalogues of encouraged industries, and other government laws and regulations. Based on our review of the responses and documents provided by the GOC, we determine that loans received by the aluminum extrusion industry from SOCBs and policy banks were made pursuant to government directives.

Record evidence demonstrates that the GOC, through its directives, has highlighted and advocated the development of the aluminum extrusion industry. At the national level, the GOC has placed an emphasis on the development of high-end, value-added aluminum products through foreign investment as well as through technological research, development, and innovation. In laying out this strategy, the GOC has identified specific products selected for development. For example, the "Catalogue of Major Industries, Products, and Technologies Encouraged for Development in China" (Encouraged Industries Catalogue), issued by the GOC in 2000, identifies 526 products, technologies, and infrastructure facilities for business promotion. See the GOC's August 4, 2010, questionnaire response at Exhibit 3. The Encouraged Industries Catalogue specifically mentions aluminum extrusion products under the non-ferrous metals heading. Id.

Similarly, there is the Decision of the State Council on Promulgating the "Interim Provisions on Promoting Industrial Structure Adjustment" for Implementation (No. 40 (2005)) (Decision 40). The GOC implemented Decision 40 in order to achieve the objectives of the Eleventh Five-Year Plan. See the GOC's August 4, 2010, questionnaire response at Exhibit 6. Decision 40 references the Directory Catalogue on Readjustment of Industrial Structure (Industrial Catalogue), which outlines the projects which the GOC deems "encouraged," "restricted," and "eliminated," and describes how these projects will be considered under government policies. Id. Aluminum is mentioned as an industry in the Industrial Catalogue as an "encouraged project." Id. For the "encouraged" projects, Decision 40 outlines several support options available from the government, including financing. Id.

In addition, the "Guidelines on Acceleration of the Adjustment of the Aluminum Industry Structure" (Aluminum Industry Guidelines), issued by the GOC in 2006, discusses support that

is to be provided to producers of aluminum extrusions. See the GOC's August 4, 2010, questionnaire response at Exhibit 9. For instance, under the heading "Increase Industry Concentration, Encourage Comprehensive Usage and Conservation of Resources," the Aluminum Industry Guidelines state:

> Create favorable conditions for enterprises M&A and restructuring, and accelerate enterprises' merger and restructuring via economic means. Support aluminum, electrolytic aluminum, and aluminum processing enterprises to undertake merger and restructuring, establish internationally competitive enterprise group, realize advantage complementation, and increase industry concentration. Encourage private capital and foreign capital to participate in the reform, restructuring and transformation of state-owned enterprises. Encourage backbone enterprises to keep raising technology and management levels, accelerate medium and small-sized aluminum processing enterprises' technology transformation, and improve resource utilization.

Id. The Aluminum Industry Guidelines also make reference to lending activities. Under the heading, "Strengthen the Coordination and Cooperation of Credit Policy and Industrial Policy and Establish Withdrawal Mechanism Under the Policies," the Aluminum Industry Guidelines state:

> It is required to strictly abide by the rule that the minimum self-owned capital requirement for electrolytic aluminum projects shall be no less than 35 percent of the total investment. Financial institutions shall rationally allocate the lending credits taking into account the national macroeconomic adjustments, industrial policies, and ordinary lending principles. Financial institutions may continue to provide credits to oxide aluminum or electrolytic aluminum enterprises that are in compliance with national industrial policies and the market entrance threshold, provided such lending is in accordance with the ordinary lending principles. No credit shall be provided to those enterprises that do not conform to national industrial policies, do not satisfy the market entrance threshold, have obsolete manufacturing processes, have been classified as prohibited, or have been ordered to cease operation. In the event that credits are mistakenly provided to such enterprises, the financial institutions shall take appropriate measures to reclaim the credits and avoid financial risk.

Id. (emphasis added). Additionally, under the heading "Enhance the Implementation of Environmental Protection Regulations, Eliminate Capacities," the Aluminum Industry Guidelines state that different "financing means" shall be used "to support enterprises' environmental protection and energy savings." Id.

Support, in the form of financing, is also discussed in the "Nonferrous Metal Industry Adjustment and Revitalization Plan" (Nonferrous Metal Plan) that was issued by the GOC in 2009. See the GOC's August 4, 2010, questionnaire response at Exhibit 10. Under the heading "Increase Dedication to Technology Improvement and Technology Reform," the Nonferrous Metal Plan states:

> Set aside some funds from new central investment. Use loan interest subsidies to support R&D and technology reform in the nonferrous metals industry. Increase the level of financial support directed toward reform of energy conservation technologies.

The Nonferrous Metal Plan further references financing to the aluminum extrusions industry under the heading, "Continue to Implement the Financing Policy of 'Encouragement and Discouragement'":

> Increase financing support to backbone enterprises in the nonferrous metals industry. Provide support to certain enterprises in issuing stock, enterprise bonds, and corporate bonds. Enterprises eligible to receive such support are those which are engaged in projects which, in addition to adhering to investment management prescriptions, are in compliance with industry policy as well as relevant environmental and land regulations; and implement acquisitions, restructuring, "Going Abroad" and technological reformation.

Id. (emphasis added).

As noted in Citric Acid from the PRC, in general, the Department looks to whether government plans or other policy directives lay out objectives or goals for developing the industry and call for lending to support those objectives or goals. See Citric Acid from the PRC Decision Memorandum at Comment 5. Where such plans or policy directives exist, then it is the Department's practice to determine that a policy lending program exists that is specific to the named industry (or producers that fall under that industry). See CFS from the PRC Decision Memorandum at Comment 8, and LWTP from the PRC Decision Memorandum at "Government Policy Lending Program." Once that finding is made, the Department relies upon the analysis undertaken in CFS from the PRC to further conclude that national and local government control over the SOCBs result in the loans being a financial contribution by the GOC. See CFS from the PRC Decision Memorandum at Comment 8.[6] Therefore, on the basis of the record information described above, we determine that the GOC has a policy in place to encourage the development of the production of aluminum extrusions through policy lending.

The GOC and the Guang Ya Companies provided source documents concerning the largest loans the Guang Ya Companies had outstanding during the POI.[7] Information in these business proprietary documents further supports our determination that the GOC has a policy in place to encourage the development of the production of aluminum extrusions through policy lending. See Memorandum to the File from Eric B. Greynolds, Program Manager, Office 3, Operations, "Excerpts of Internal Loan Documents of the Guang Ya Companies," (August 30, 2010) (Internal Loan Document Memorandum).

The GOC has argued in its August 4, 2010, questionnaire response that the People's Bank of China revoked the PRC's policy lending programs in 1999 pursuant to the "Circular on Improving Administration of Special Loans" (YINFA (1999) No. 228 (Special Loans Circular). See the GOC's August 4, 2010, questionnaire response at Exhibit 18. We preliminarily determined that there is no basis to conclude that the GOC's policy lending activities ceased with

[6] For the Department's analysis concerning how loans by SOCBs constitute a financial contribution by GOC authorities, see Preliminary Determination, 75 FR at 54313, further discussion below, and Comment 27 below.
[7] The Zhongya Companies did not have any loans outstanding during the POI.

the issuance of the Special Loans Circular. See Preliminary Determination, 75 FR at 54313. We have reached the same conclusion in the final determination. The Special Loans Circular states that, while banks shall make lending decisions on their own, "authorities" may continue to "give advice on the choice of project." Further, the Special Loans Circular states that firms may continue to receive formerly designated "special loans":

> For those (former special) loans which do not meet the commercial lending conditions, if the authorities can provide loan interest grant or other subsidies so that the commercial lending conditions are fulfilled, the banks may continue to provide the loans.

Id. The Special Loans Circular goes on to state that:

> Wholly State-owned banks shall make efforts to implement the requirements above, and shall actively communicate with the authorities in charge of relevant industries, with a view to gaining their understanding and support.

Id. Thus, despite the GOC's claims, the Special Loans Circular provides a means by which what it refers to as "special loans" may continue to be provided to firms in the PRC. In addition, the Special Loans Circular states government authorities will continue to "advise" and monitor the actions of the PRC state-owned lending institutions. Furthermore, the Aluminum Industries Guidelines and the Nonferrous Metal Plan, both of which mention directing credit to members of the aluminum extrusions industry, as well as the loans discussed in the Internal Loan Document Memorandum, were issued after the GOC released the Special Loans Circular.

The Guang Ya Companies reported that they had outstanding loans from PRC-based banks during the POI. Consistent with our determinations in prior proceedings, we find these PRC-based banks to be SOCBs. See, e.g., OCTG from the PRC Decision Memorandum at Comment 20.

We determine that the loans to aluminum extrusion producers from SOCBs in the PRC constitute a direct financial contribution from the government, pursuant to section 771(5)(D)(i) of the Act, and they provide a benefit equal to the difference between what the recipients paid on their loans and the amount they would have paid on comparable commercial loans (see section 771(5)(E)(ii) of the Act). We further preliminarily determine that the loans are de jure specific within the meaning of section 771(5A)(D)(i) of the Act because of the GOC's policy, as illustrated in the government plans and directives, to encourage and support the growth and development of the aluminum extrusions industry. Our findings are unchanged from the Preliminary Determination. See 75 FR at 54313 – 54314.

To determine whether a benefit is conferred under section 771(5)(E)(ii) of the Act, we compared the amount of interest the Guang Ya Companies paid on their outstanding loans to the amount they would have paid on comparable commercial loans. See 19 CFR 351.505(a). In conducting this comparison, we used the interest rates described in the "Benchmarks and Discount Rates" section above. We have attributed benefits under this program to the combined total sales of Guang Ya and Guangcheng.

On this basis, we determine a countervailable subsidy of 1.14 percent ad valorem for the Guang Ya Companies.

H. Fund for SME Bank-Enterprise Cooperation Projects

According to the GOC, 1000 eligible SMEs along with several financial institutions were selected to participate in this program. Under the program, financial institutions in the PRC decide whether to extend credit to certain eligible SMEs. If they decide to do so, the PGOG provides loan interest assistance to the SME that received the financing from the financial institution. The program is administered by the PGOG's Department of Finance and the Bureau of SMEs pursuant to the Circular on Printing and Distributing of the Measures on Implementing the 2009 Government-Bank-Enterprise Cooperation Special Fund Program (YUECAI GONG (2009) No. 54) (Bank Enterprise Cooperation Measures). See the GOC's August 9, 2010, supplemental questionnaire response at Supp-1. The Guang Ya Companies reported that Guang Ya received a grant under this program during the POI.

We determine that the grants issued by the GOC under this program constitute a financial contribution under section 771(5)(D)(i) of the Act, in the form of a direct transfer of funds, and a benefit under section 771(5)(E) of the Act.

According to the Bank Enterprise Cooperation Measures, the 500 SMEs deemed as having the "greatest potential" as well as enterprises that manufacture key equipment, or pursue creative technologies, or engage in advanced manufacturing activities backed by both the PGOG and the corresponding city will receive preferential treatment under the program. In light of the selection process described in the Bank Enterprise Cooperation Measures, we determine that this program is de jure specific under section 771(5A)(D)(i) of the Act because the measures expressly limit access to certain enterprises. Our findings are unchanged from the Preliminary Determination. See 75 FR at 54314.

To calculate the benefit, we divided the amount of the grant by the total sales of Guang Ya and Guangcheng. The grant was less than 0.5 percent of the export sales of Guang Ya and Guangcheng in the year of approval/receipt. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POI (year of receipt).

On this basis, we calculated a total net subsidy rate of 0.05 percent ad valorem for the Guang Ya Companies.

I. Special Fund for Significant Science and Technology in Guangdong Province

Under this program, the PGOG seeks to support major, generic, and key technology R&D of Guangdong industries and promote technology achievements and diffusion of technological knowledge. The program is administered by the Guangdong Science and Technology Department pursuant to the Provisional Measures on Administration of Guangdong Important Science-Technology Project Special Fund (YEUCAIGONG (2009) No. 166). The Guang Ya Companies reported that Guang Ya received a grant under this program during the POI.

We determine that the grants issued by the GOC under this program constitute a financial contribution under section 771(5)(D)(i) of the Act, in the form of a direct transfer of funds, and a benefit under section 771(5)(E) of the Act. As explained in the "Various Grant Programs Self-Reported by the Guang Ya Companies" section, the GOC failed to provide benefit distribution data for this program. As a result, the Department is applying AFA and assuming that the program is specific under section 771(5A)(D) of the Act. Our findings are unchanged from the Preliminary Determination. See 75 FR at 54314.

To calculate the benefit, we divided the amount of the grant by the total sales of Guang Ya and Guangcheng in the year of approval/receipt. The grant was less than 0.5 percent of the total sales of Guang Ya and Guangcheng. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POI (year of receipt).

On this basis, we calculated a total net subsidy rate of 0.12 percent ad valorem for the Guang Ya Companies.

J. Fund for Economic, Scientific, and Technology Development

Under this program, the Government of Foshan City distributes grants to firms with the aim of fostering technological and economic development. The program is administered by the Science and Technology Bureau of Foshan Municipality and the Finance Bureau of Foshan Municipality pursuant to the Circular on Printing and Distributing of the Measures on Administration of Foshan Sci-Tech Development Special Fund (FOFUBAN (2008) No. 402). See the GOC's August 9, 2010, supplemental questionnaire response at Supp-4. The Guang Ya Companies, which are located in Foshan City, reported that Guang Ya received a grant under this program during the POI.

We determine that the grants issued by the GOC under this program constitute a financial contribution under section 771(5)(D)(i) of the Act and a benefit under section 771(5)(E) of the Act. As explained in the "Various Grant Programs Self-Reported by the Guang Ya Companies" section, the GOC failed to provide benefit distribution data for this program. As a result, the Department is applying AFA and assuming that the program is specific under section 771(5A)(D) of the Act. Our findings are unchanged from the Preliminary Determination. See 75 FR at 54314.

To calculate the benefit, we divided the amount of the grant by the total sales of Guang Ya and Guangcheng in the year of approval/receipt. The grant was less than 0.5 percent of the total sales of Guang Ya and Guangcheng. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POI (year of receipt).

On this basis, we calculated a total net subsidy rate of 0.01 percent ad valorem for the Guang Ya Companies.

K. Provincial Fund for Fiscal and Technological Innovation

Under this program, the PGOG provides grants to firms for the purpose of promoting technological and fiscal innovation. The program is administered by the Provincial Department of Finance and Economic and Trade Commission of Guangdong Province pursuant to the Provisional Measures on Administration of Exploration and Renovation Provincial Level Fund (YUECAIQI (2003) No. 140). See the GOC's August 9, 2010, supplemental questionnaire response at Supp-1. The Guang Ya Companies reported that Guangcheng received a grant under this program during the POI.

We determine that the grants issued by the GOC under this program constitute a financial contribution under section 771(5)(D)(i) of the Act and a benefit under section 771(5)(E) of the Act. As explained in the "Various Grant Programs Self-Reported by the Guang Ya Companies" section, the GOC failed to provide benefit distribution data for this program. As a result, the Department is applying AFA and assuming that the program is specific under section

771(5A)(D) of the Act. Our findings are unchanged from the Preliminary Determination. See 75 FR at 54315.

To calculate the benefit, we divided the amount of the grant by the total sales of Guang Ya and Guangcheng in the year of approval/receipt. The grant was less than 0.5 percent of the total sales of Guang Ya and Guangcheng. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POI (year of receipt).

On this basis, we calculated a total net subsidy rate of 0.04 percent ad valorem for the Guang Ya Companies.

L. Provincial Loan Discount Special Fund for SMEs

Under this program, the PGOG provides interest subsidy grants in order to promote and support SMEs. The program is administered by the Provincial Department of Finance and the Guangdong Provincial SME Bureau pursuant to the Measures on Administration of SME Loan Interest Assistance Special Fund (YUECAIGONG (2009) No. 124). See the GOC's August 9, 2010, supplemental questionnaire at Supp-9. The Guang Ya Companies reported that Guangcheng received a grant under this program during the POI.

We determine that the grants issued by the GOC under this program constitute a financial contribution under section 771(5)(D)(i) of the Act and a benefit under section 771(5)(E) of the Act. As explained in the "Various Grant Programs Self-Reported by the Guang Ya Companies" section, the GOC failed to provide benefit distribution data for this program. As a result, the Department is applying AFA and assuming that the program is specific under section 771(5A)(D) of the Act. Our findings are unchanged from the Preliminary Determination. See 75 FR at 54315.

To calculate the benefit, we divided the amount of the grant by the total sales of Guang Ya and Guangcheng. The grant was less than 0.5 percent of the total sales of Guang Ya and Guangcheng in the year of approval/receipt. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POI (year of receipt).

On this basis, we calculated a total net subsidy rate of 0.04 percent ad valorem for the Guang Ya Companies.

M. Export Rebate for Mechanic, Electronic, and High-Tech Products

The Guang Ya Companies reported that Guangcheng received a grant under this program during the POI. See the Guang Ya Companies' July 8, 2010, initial questionnaire response at 60. The Department sent two questionnaires to the GOC concerning this program. In its responses, the GOC indicated that it could not find any "meaningful information" concerning the program. See, e.g., the GOC's August 18, 2010, second supplemental questionnaire response at 1.

We determine that the grants issued by the GOC under this program constitute a financial contribution under section 771(5)(D)(i) of the Act and a benefit under section 771(5)(E) of the Act. Concerning specificity, we are resorting to the use of facts available (FA) within the meaning of section 776(a)(1) of the Act because the necessary information concerning the manner in which this program is administered is not on the record. Based on the information contained in the July 8, 2010, questionnaire response of the Guang Ya Companies indicating that they received the grant in the form of an "export rebate," we are relying upon FA and determine that the program is contingent upon exports and therefore specific under section 771(5A)(A) and

(B) of the Act. Our findings remain unchanged from the Preliminary Determination. See 75 FR at 54315.

To calculate the benefit, we divided the amount of the grant by the total export sales of Guang Ya and Guangcheng in the year of approval/receipt. The grant was less than 0.5 percent of the total export sales of Guang Ya and Guangcheng. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POI (year of receipt).

On this basis, we calculated a total net subsidy rate of 0.02 percent ad valorem for the Guang Ya Companies.

N. PGOG Special Fund for Energy Saving Technology Reform

Under this program, the PGOG provides grants in the amount of RMB 200 for every one metric ton (MT) of standard coal saved through increased energy efficiency during a given year. Firms must demonstrate annual energy savings equivalent to 2,000 MT of standard coal in order to be eligible to apply for grants under the program. The program is administered by the PGOG's Department of Finance and the Economic Trade Commission of Guangdong pursuant to the "Provisional Measures on Administration of Guangdong Energy-Saving Special Fund (YUECAIGONG) (2008) No. 126). See the GOC's August 4, 2010, initial questionnaire response at Exhibit 46. The Guang Ya Companies reported that Guangcheng received a grant under this program during the POI.

We determine that the grant issued by the GOC under this program constitutes a financial contribution under section 771(5)(D)(i) of the Act and a benefit under section 771(5)(E) of the Act. As explained in the "Various Grant Programs Self-Reported by the Guang Ya Companies" section, the GOC failed to provide adequate benefit distribution data for this program. In its initial questionnaire, the GOC provided the amount of grants received by all firms (including Guangcheng) during the POI. It also provided for the POI the amount of grants received by aluminum extrusions producers as well as the total amount of grants issued under the program. However, the GOC did not provide, as requested by the Department, the amounts disbursed to other industries during the POI. In addition, the GOC did not provide, as requested by the Department, information concerning the distribution of benefits provided to firms and industry groups in the three years preceding the POI. See the GOC's August 4, 2010, initial questionnaire response at 104 – 111 and Exhibit 46. Further, the GOC did not provide the requested information concerning the distribution of benefits in its second supplemental questionnaire response. See the GOC's August 19, 2010, second supplemental questionnaire response at 1. As a result, the Department is applying AFA and assuming that the program is specific under section 771(5A)(D) of the Act. Our findings remain unchanged from the Preliminary Determination. See 75 FR at 54315.

To calculate the benefit, we divided the amount of the grant by the total sales of Guang Ya and Guangcheng in the year of approval/receipt. The grant was less than 0.5 percent of the total sales of Guang Ya and Guangcheng. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POI (year of receipt).

On this basis, we calculated a total net subsidy rate of 0.06 percent ad valorem for the Guang Ya Companies.

O. PGOG Science and Technology Bureau Project Fund (Also Referred to as Guangdong Industry, Research, University Cooperating Fund)

Under this program, the PGOG distributes grants to universities and firms to support, among other things, industrial development and innovation in the province. The program is administered by the PGOG's Department of Finance and Department of Science and Technology. See the GOC's August 9, 2010, first supplemental questionnaire response at 41 – 50 and Exhibit Supp-5. The Guang Ya Companies reported that Guang Ya received a grant under this program during the POI.

We determine that the grant issued by the GOC under this program constitutes a financial contribution under section 771(5)(D)(i) of the Act and a benefit under section 771(5)(E) of the Act. As explained in the "Various Grant Programs Self-Reported by the Guang Ya Companies" section, the GOC failed to provide benefit distribution data for this program. As a result, the Department is applying AFA and assuming that the program is specific under section 771(5A)(D) of the Act. Our findings remain unchanged from the Preliminary Determination. See 75 FR at 54316.

To calculate the benefit, we divided the amount of the grant by the total sales of Guang Ya and Guangcheng in the year of approval/receipt. The grant was less than 0.5 percent of the total sales of Guang Ya and Guangcheng. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POI (year of receipt).

On this basis, we calculated a total net subsidy rate of 0.03 percent ad valorem for the Guang Ya Companies.

P. PGOG Tax Offset for R&D

Under this program, for R&D expenses incurred for developing new products and technologies that cannot be treated as intangible assets, 50 percent of the R&D expense shall be deducted as a tax offset. For R&D expenses considered intangible assets, the tax offset shall be amortized based on 150 percent of the R&D expenses. The program is administered by the PGOG's Science and Technology Department and the Economic Trade Commission pursuant to the "Trial Administrative Measures for the Pre-Tax Deduction of Enterprises R&D Expenses" (R&D Measures). See the Guang Ya Companies' July 8, 2010, questionnaire response at Exhibit 23. Article 5 of the R&D Measures states that eligible R&D projects:

> . . . shall be in line with national and Guangdong provincial technological policies and industrial policies. Any projects belonging to producer projects, technological projects, or process projects eliminated or restricted by the central or Guangdong provincial government shall not enjoy the policy of additional calculation of R&D expenses.

Id. The Guang Ya Companies reported that Guangcheng received a tax offset under this program during the POI.

We determine that the offset issued by the GOC under this program constitutes a financial contribution under section 771(5)(D)(i) of the Act and a benefit under section 771(5)(E) of the Act. Concerning specificity, as noted above in the "Policy Loans to Chinese Aluminum Extrusion Producers" section, we have determined that the GOC and the PGOG have targeted the aluminum extrusions industry for development and assistance in a manner that is specific

under section 771(5A)(D)(i) of the Act, as illustrated in the government plans and directives, to encourage and support the growth and development of the aluminum extrusions industry. Given this finding and in light of the language in Article 5 of the R&D Measures, we determine that the tax offsets provided under this program are de jure specific within the meaning of section 771(5A)(D)(i) of the Act. Our findings remain unchanged from the Preliminary Determination. See 75 FR at 54316.

To calculate the benefit, we divided the amount of the tax offset by the total sales of Guang Ya and Guangcheng in the year of approval/receipt. The grant was less than 0.5 percent of the total sales of Guang Ya and Guangcheng. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POI (year of receipt).

On this basis, we calculated a total net subsidy rate of 0.04 percent ad valorem for the Guang Ya Companies.

Q. Refund of Land-Use Tax for Firms Located in the Zhaoqing New and High-Tech Industrial Development Zone (ZHTDZ)

The Zhongya Companies reported that New Zhongya received a one-time refund during the POI of land-use taxes paid to the ZHTDZ local authority in 2007. According to the Zhongya Companies, the ZHTDZ local authority reduced its land-use tax rate from five RMB per square meter to two RMB per square meter. The Zhongya Companies state that receipt of the land-use tax refund was contingent upon New Zhongya's location in the ZHTDZ. See the Zhongya Companies August 6, 2010, supplemental questionnaire response at 27. The Zhongya Companies reported that New Zhongya recorded the tax refund in its "subsidy income" ledger. Id.

We determine that the land-use tax refund received by the Zhongya Companies constitutes a financial contribution, in the form of revenue foregone, and a benefit, equal to the amount of the refund, as described under sections 771(5)(D)(ii) and 771(5)(E) of the Act. Because the tax refund is limited to firms located in the ZHTDZ, we determine that the program is regionally-specific under section 771(5A)(D)(iv) of the Act. Our findings remain unchanged from the Preliminary Determination. See 75 FR at 54316.

To calculate the benefit, we divided the amount of the land-use tax received during the POI by the Zhongya Companies' total sales. On this basis, we calculated a total net subsidy rate of 0.13 percent ad valorem for the Zhongya Companies.

R. Development Assistance Grants from the ZHTDZ Local Authority

The Zhongya Companies reported that New Zhongya received a one-time development assistance grant from the ZHTDZ local authority during the POI. According to the Zhongya Companies, in determining eligibility, the ZHTDZ local authority examines firms' output, tax payments, the level of foreign investment, and whether the firms have received famous brand designation. See the Zhongya Companies' August 6, 2010, supplemental questionnaire response at 17.

We determine that the grant issued by the GOC under this program constitutes a financial contribution under section 771(5)(D)(i) of the Act and a benefit under section 771(5)(E) of the Act. Concerning specificity, as explained above in the "GOC and Sub-Central Government Grants, Loans, and Other Incentives for Development of Famous Brands and China World Top

Brands" section, we have determined that the Famous Brand program is contingent upon export activity and, thus, is specific under section 771(5A)(A) and (B) of the Act. The Zhongya Companies indicate that famous brand designation is among the factors considered when determining eligibility under this program. Section 771(5A)(B) of the Act states that a program shall be deemed an export subsidy if receipt of the subsidy is contingent upon export performance, alone or as one of two or more conditions. Accordingly, because famous brand designation is among the factors the ZHTDZ local authority considers when determining eligibility and because the famous brand designation is contingent upon export activity, we determine that the program is specific under section 771(5A)(A) and (B) of the Act. Our interpretation of section 771(5A)(A) and (B) of the Act in this regard is consistent with the Department's practice. See, e.g., PC Strand from the PRC Decision Memorandum at "Subsidies for Development of Famous Export Brands and China World Top Brands at Central and Sub-Central Level." Our findings remain unchanged from the Preliminary Determination. See 75 FR at 54316.

To calculate the benefit, we divided the amount of the grant by the total export sales of the Zhongya Companies in the year of approval/receipt. The grant was less than 0.5 percent of the export sales of the Zhongya Companies. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POI (year of receipt).

On this basis, we calculated a total net subsidy rate of 0.08 percent ad valorem for the Zhongya Companies.

S. Provision of Primary Aluminum for LTAR

In the Preliminary Determination the Department found that producers and suppliers, acting as Chinese government authorities, sold primary aluminum to the Guang Ya Companies and the Zhongya Companies for LTAR. The Guang Ya Companies and the Zhongya Companies reported obtaining primary aluminum during the POI from trading companies as well as directly from primary aluminum producers. In the case of the Zhongya Companies, they were able to identify all of the firms that produced the primary aluminum, even the aluminum purchased from trading companies and the Zhongya Companies identified all of these producers as state-owned. Concerning the Guang Ya Companies, in some instances they were not able to identify the producers of some primary aluminum purchased from trading companies. However, all the producers that the Guang Ya Companies could identify were classified as state-owned by the respondent.

In Tires from the PRC, the Department determined that majority government ownership of an input producer is sufficient to qualify it as an "authority." See Tires from the PRC Decision Memorandum at "Government Provision of Rubber for Less than Adequate Remuneration." Because all of the producers identified by the Guang Ya Companies and the Zhongya Companies were state-owned, we determine that these primary aluminum producers are majority-owned and are "authorities" under section 771(5) of the Act. As a result, we determine that primary aluminum supplied by companies deemed to be government authorities constitute a financial contribution in the form of a governmental provision of a good and that the respondents received a benefit to the extent that the price they paid for primary aluminum produced by these suppliers was for LTAR. See sections 771(5)(D)(iv) and 771(5)(E)(iv) of the Act.

In prior CVD proceedings involving the PRC, the Department has determined that when a respondent purchases an input from a trading company or non-producing supplier, a subsidy is

conferred if the producer of the input is an "authority" within the meaning of section 771(5)(B) of the Act and that the price paid by the respondent for the input was sold for LTAR. See, e.g., CWP from the PRC Decision Memorandum at "Hot-Rolled Steel for Less Than Adequate Remuneration;" Racks from the PRC Decision Memorandum at "Provision of Wire Rod for Less than Adequate Remuneration;" and CWASPP from the PRC Decision Memorandum at Comment 5.

As noted above, the Zhongya Companies were able to identify all of the entities that produced the primary aluminum that they acquired through trading companies during the POI. However, for the Guang Ya Companies, their accounting and purchase records and invoices did not allow them to identify all the producers that supplied the trading companies during the POI. See, e.g., Guang Ya Companies Verification Report at 6 – 8.

Because the Guang Ya Companies have not been able to supply the requested information, we find that the necessary information is not on the record and, as a result, we are resorting to the use of FA pursuant to section 776(a)(1) of the Act. In its response, the GOC provided information on the amount of primary aluminum produced by SOEs and private producers in the PRC. Using these data, we derived the ratio of primary aluminum produced by SOEs during the POI. Thus, pursuant to section 776(a)(1) of the Act, we have resorted to the use of FA with regard to the primary aluminum sold to the Guang Ya Companies by certain domestic trading companies. Specifically, we assumed that the percentage of primary aluminum supplied by these domestic trading companies that is produced by government authorities is equal to the ratio of primary aluminum produced by SOEs during the POI.[8] Regarding this ratio, we note that the GOC classified the CHALCO Aluminum Corporation of China (CHALCO) as a privately- owned primary aluminum producer. However, based on publicly available information, we are treating CHALCO as a GOC authority. See Memorandum to the File, "Factual Information Placed On Record Regarding the Ownership of a Primary Aluminum Producer," (August 16, 2010) (CHALCO Memorandum). Our use of FA in this regard is consistent with the Department's practice. See, e.g., CWP from the PRC Decision Memorandum at "Hot-Rolled
Steel for Less Than Adequate Remuneration;" see also LWRP from the PRC Decision Memorandum at "Hot-Rolled Steel for Less Than Adequate Remuneration."

Having addressed the issue of financial contribution, we must next analyze whether the sale of primary aluminum to the mandatory respondents by suppliers designated as government authorities conferred a benefit within the meaning of section 771(5)(E)(iv) of the Act. The Department's regulations at 19 CFR 351.511(a)(2) set forth the basis for identifying appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (e.g., actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As we explained in Softwood Lumber from Canada, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation because such prices generally would be expected to reflect most closely the

[8] In other words, in instances where we are applying FA, we are assuming that the percentage of primary aluminum purchased by domestic trading companies during the POI was equal to the ratio of primary aluminum produced by SOEs during the POI, as indicated by the aggregate data supplied in the questionnaire responses of the GOC.

prevailing market conditions of the purchaser under investigation. See Softwood Lumber from Canada Decision Memorandum at "Market-Based Benchmark" section.

Beginning with tier-one, we must determine whether the prices from actual sales transactions involving Chinese buyers and sellers are significantly distorted. As explained in the Preamble:

> Where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative {tier two} in the hierarchy.

See 63 FR at 65377. The Preamble further recognizes that distortion can occur when the government provider constitutes a majority or, in certain circumstances, a substantial portion of the market. Id.

In the instant investigation, the GOC reported the total primary aluminum production by SOEs during the POI. The share of production number of these SOEs, after adjustment by the Department, accounted for more than 50 percent of the PRC's production. See Memorandum to the File from Eric B. Greynolds, Program Manager, "Share of Primary Aluminum Production During Period of Investigation," (August 30, 2010). We find this majority share by SOEs makes it reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market. See Preamble, 63 FR at 65377. Our finding in this regard is in accord with the Department's practice. See, e.g., Wire Decking from the PRC Decision Memorandum at "Provision of HRS for LTAR." In addition, as further evidence of the government's predominant role in the market, we note that the GOC has imposed export tariffs on two of the three harmonized tariff schedule (HTS) categories that cover primary aluminum. Such export restraints can discourage exports and increase the supply of primary aluminum in the domestic market, with the result that domestic prices are lower than they would be otherwise. See, e.g., Racks from the PRC Decision Memorandum at "Provision of Wire Rod for Less Than Adequate Remuneration." For these reasons, we determine that domestic prices charged by privately-owned primary aluminum producers based in the PRC may not serve as viable, tier-one benchmark prices. For more discussion of this issue, see Comment 21, below.

The Department has on the record primary aluminum prices, as published by the London Metals Exchange (LME). We find that these prices may serve as a tier-two benchmark, as described under 19 CFR 351.511(a)(2)(ii), when determining whether the Guang Ya Companies and the Zhongya Companies received a benefit on their purchases of primary aluminum from government authorities. Concerning the LME prices, we note that the Department has relied on pricing data from industry publications in prior CVD proceedings involving the PRC. See, e.g., CWP from the PRC Decision Memorandum at "Hot-Rolled Steel for Less Than Adequate Remuneration" section; see also LWRP from the PRC Decision Memorandum at "Hot-Rolled Steel for Less Than Adequate Remuneration" section. As in the Preliminary Determination, we continue to find prices from the LME to be sufficiently reliable and representative for use in the benchmark calculation.

The Zhongya Companies and the Guang Ya Companies reported that they imported primary aluminum. In past cases, the Department has incorporated prices on company-specific imports into the LTAR benchmark, provided that the Department's analysis indicates that the company-specific import prices are not distorted by the dominance of government production in

the PRC. See, e.g., CWASPP from the PRC Decision Memorandum at "Provision of SSC for LTAR;" see also CWP from the PRC Decision Memorandum at Comment 7.

However, upon further examination, we determine that when the Department has determined that it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, it is not appropriate to utilize company-specific prices as a tier-one benchmark. See Preamble, 63 FR at 65377. We determine that it is reasonable to conclude that the prices of goods that are imported into the domestic market are also significantly distorted as a result of the government's involvement in the market. Our conclusion in this regard is unchanged from the Preliminary Determination. See 75 FR at 54318.

To determine whether primary aluminum suppliers, acting as government authorities, sold primary aluminum to respondents for LTAR, we compared the prices the respondents paid to the suppliers to our primary aluminum benchmark price. We conducted our comparison on a monthly basis. When conducting the price comparison, we converted the benchmark to the same currency and unit of measure as reported by the voluntary respondents for their purchases of primary aluminum.

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one or tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Accordingly, in deriving the benchmark prices, we ensured that ocean freight and inland freight were included. Specifically, we included ocean freight pricing data from the Maersk shipping company pertaining to shipments of aluminum, articles of aluminum, and metal products from the port of Busan, South Korea, to Hong Kong. See Petitioners' August 20, 2010, submission at Exhibit 4. We used this information because it was the only information on the record for ocean freight. Concerning inland freight, we calculated company-specific inland freight rates using cost data supplied by the Guang Ya Companies and the Zhongya Companies. Further, we added to the benchmark the appropriate import duties and the VAT applicable to imports of primary aluminum into the PRC as reported by the GOC. In deriving the benchmark we did not include marine insurance. In prior CVD investigations involving the PRC, the Department has found that while the PRC customs authorities impute an insurance cost on certain imports for purposes of levying duties and compiling statistical data, there is no evidence to suggest that PRC customs authorities require importers to pay insurance charges. See, e.g., PC Strand from the PRC Decision Memorandum at Comment 13. Further, we have not added separate brokerage, handling, and documentation fees to the benchmark because we find that such costs are already reflected in the ocean freight cost from Maersk that is being used in this determination. See Petitioners' August 20, 2010, submission at Exhibit 4.

Regarding the primary aluminum prices that the respondents paid to government authorities, both the Zhongya Companies and the Guang Ya Companies reported their prices to the Department inclusive of inland freight and indicated the domestic VAT applied to their purchases. Accordingly, when performing our comparison, we included the domestic VAT paid on purchases from government authorities. In this manner, we find the Department has conducted the comparison on an apples-to-apples basis.

Comparing the benchmark unit prices to the unit prices paid by the respondents for primary aluminum, we determine that primary aluminum was provided for LTAR and that a benefit exists in the amount of the difference between the benchmark and what the respondent paid. See section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a).

As noted above in the "Use of Facts Otherwise Available and Adverse Inferences" section, the Guang Ya Companies failed to report in a timely manner a certain volume of primary aluminum that Guangcheng purchased during the POI. As a result of this failure to report the requested information in a timely manner, the Department has determined to apply partial AFA with regard to the primary aluminum purchased by Guangcheng. Specifically, as partial AFA, we have multiplied the single highest unit benefit calculated on Guang Ya's purchases of primary aluminum under this program by the total volume of primary aluminum purchased by Guangcheng. We then added the benefit on Guangcheng's purchases to the benefit calculated on the purchases made by Guang Ya. In this manner, we calculated the total benefit for the Guang Ya Companies under this program.

Finally, with respect to specificity, the GOC has provided information on end uses for primary aluminum. The GOC stated that the end uses of primary aluminum relate to the type of industry involved as a direct purchaser of the input. The GOC further stated that the consumption of primary aluminum occurs across a broad range of industries. While numerous companies may comprise the listed industries, section 771(5A)(D)(iii)(I) of the Act clearly directs the Department to conduct its analysis on an industry or enterprise basis. Based on our review of the data and consistent with our past practice, we determine that the industries named by the GOC are limited in number and, hence, the subsidy is specific. See section 771(5A)(D)(iii)(I) of the Act. See LWRP from the PRC Decision Memorandum at Comment 7; see also Racks from the PRC Decision Memorandum at "Provision of Wire Rod for Less Than Adequate Remuneration."

Our decision to find this program countervailable is unchanged from the Preliminary Determination. See 75 FR at 54317 – 54319.

We find that the GOC's provision of primary aluminum for LTAR to be a domestic subsidy as described under 19 CFR 351.525(b)(3). Therefore, to calculate the net subsidy rate, we divided the benefit by a denominator comprised of total sales. Regarding the Zhongya Companies, we divided the benefit by the companies' total sales during the POI. Regarding the Guang Ya Companies, we divided the benefit by combined total sales of Guang Ya and Guangcheng.

On this basis, we calculated a total net subsidy rate of 1.62 percent ad valorem for the Zhongya Companies and 6.06 percent ad valorem for the Guang Ya Companies.

T. Provision of Land-Use Rights and Fee Exemptions To Enterprises Located in the ZHITDZ for LTAR

Petitioners alleged that the PGOG established the ZHITDZ to attract industries encouraged by the GOC, including aluminum extrusion producers. Petitioners allege the PGOG offers to qualifying firms such incentives as reduced requisition compensation costs (i.e., reduced payments to local residents/business displaced by the ZHITDZ's development), the provision of land for LTAR (in which land-use rights are provided on a sliding scale depending on the size of the development, the firm's technological development, and the firm's domestic/international prominence), and discounts on construction application fees, exemptions from administrative fees, and reductions in operational charges.

We initiated an investigation of this program with regard to the Zhongya Companies. In questionnaire responses, the Zhongya Companies reported that New Zhongya signed Land Supply Agreements with the Dawang Sub-Bureau of the Zhaoqing Municipal Bureau of Land

and Resources in 2006. The Zhongya Companies also reported that New Zhongya did not receive any discounts on construction application fees, exemptions from administrative fees, and/or reductions in operational charges during 2009, which is the POI.

In the Post-Prelim Memorandum, we determined that the provision of land-use rights constituted financial contributions in the form of a provision of a good within the meaning of section 771(5)(D)(iii) of the Act.[9] See Post-Prelim Memorandum at 3. We further found that the provision of land-use rights constitutes a benefit within the meaning of section 771(5)(E)(iv) of the Act to the extent the PGOG provides them for LTAR. Id. Regarding specificity, in the Post-Prelim Memorandum we noted that the PGOG brochure describing the ZHITDZ states that there are preferential policies for land use within the industrial zone. First, the land within the ZHITDZ is state-owned so there is no requisition compensation costs included. Furthermore, we noted that land prices can be lowered according to such factors as industry type, investment volume, and output volume. Id.; see also Petitioners' June 13, 2010, submission at Exhibit 1. In addition, we noted that the PGOG brochure further states that, with regard to land prices, "world top 500 enterprises, internationally or domestically renowned enterprises, high-tech projects as well as other influential projects can be treated individually" and that "land prices can be further lowered upon negotiations between the investor and the management committee." See Post-Prelim Memorandum at 3.

In the Post-Prelim Memorandum, we further explained that New Zhongya received a one-time development assistance grant from the ZHITDZ local authority during the POI and that information from the Zhongya Companies indicates that, in determining New Zhongya's eligibility for the grant, the ZHTDZ local authority examined the firm's output, tax payments, the level of foreign investment, and whether the firms have received famous brand designation. Id.; see also the Zhongya Companies' August 6, 2010, supplemental questionnaire response at 17. Therefore, in the Post-Prelim Memorandum, we concluded that the Land Supply Agreements contract New Zhongya signed with the Dawang Sub-Bureau of the Zhaoquing Municipal Bureau of Land and Resources in 2006 for land located in the ZHITDZ constitute negotiations between New Zhongya and the government authorities managing the ZHITDZ, as described in the PGOG brochure. See Post-Prelim Memorandum at 3. We further concluded that information in the Land Use Contracts confirms a negotiated price different from the published price for land use rights. Therefore, in the Post-Prelim Memorandum, we determined that, the fact that the ZHITDZ local authority provided grants to New Zhongya based on such factors as output and its famous brand designation, New Zhongya also would have met the criteria for receiving preferential land prices as described in the PGOG brochure. Id. On this basis, we determined that the benefits provided under this program are limited to eligible firms located in the ZHITDZ and, thus, are specific under section 771(5A)(D)(iv) of the Act. Id. We have reached the same conclusions in the final determination.

Regarding the various reductions/exemptions of fees allegedly provided under the program, we verified that that New Zhongya did not use these aspects of the program.

To determine whether New Zhongya received a benefit, we have analyzed potential benchmarks in accordance with 19 CFR 351.511(a). First, we look to whether there are market-determined prices (referred to as tier-one prices in the LTAR regulation) within the country. See 19 CFR 351.511(a)(2)(i). In LWS from the PRC, the Department determined that "Chinese land

[9] The Department determined in LWS from the PRC that the provision of land-use rights constitutes the provision of a good within the meaning of section 771(5)(D)(iii) of the Act. See LWS from the PRC Decision Memorandum at Comment 8.

prices are distorted by the significant government role in the market" and, hence, that tier-one benchmarks do not exist. See, e.g., LWS from the PRC Decision Memorandum at Comment 10. The Department also found that tier-two benchmarks, world market land prices that would be available to purchasers in the PRC, are not appropriate because "they cannot be simultaneously 'available to an in-country purchaser' while located and sold out-of-country on the world market." Id. at "Analysis of Programs – Government Provision of Land for Less Than Adequate Remuneration"; see also 19 CFR 351.511(a)(2)(ii). Because benchmarks were unavailable under the first and second tiers, in LWS from the PRC the Department determined the adequacy of remuneration by reference to tier-three. Id. In LWS from the PRC the Department found, however, that the sale of land-use rights in the PRC was not consistent with market principles because of the overwhelming presence of the government in the land-use rights market and the widespread and documented deviation from the authorized methods of pricing and allocating land. See LWS from the PRC Decision Memorandum at Comment 10; see also 19 CFR 351.511(a)(2)(iii). We determine that, in this investigation, the GOC has submitted no information that questions this analysis.

For these reasons, we are not able to use Chinese or world market prices as a benchmark. Therefore, we are comparing the price that New Zhongya paid for its land-use rights with comparable market-based prices for land purchases in a country at a comparable level of economic development that is reasonably proximate to, but outside of, the PRC. Specifically, we are comparing the price New Zhongya paid in 2006 to the price of certain industrial land in industrial estates, parks, and zones in Thailand in 2006. See LWS from the PRC Decision Memorandum at "Analysis of Programs – Government Provision of Land for Less Than Adequate Remuneration." In deriving the benchmark, we used, where appropriate updated Thai land price data supplied by the Zhongya Companies. See Comment 24, below.

To calculate the benefit, we computed the amount that New Zhongya would have paid for its land-use rights and subtracted the amount it actually paid for its 2006 purchases under the land-use rights contract. Our comparison indicates that the price New Zhongya paid to the government authority in 2006 was less than our land benchmark price and, thus, that New Zhongya received a benefit under section 771(5)(E)(iv) of the Act. Next, in accordance with 19 CFR 351.524(b)(2), we examined whether the subsidy amount exceeded 0.5 percent of the Zhongya Companies' total consolidated sales in the year of purchase. Our analysis indicates that the subsidy amount exceeded the 0.5 percent threshold. Therefore, we used the discount rate described under the "Benchmarks and Discount Rates" section to allocate the benefit over the life of the land-use rights contract, which is 50 years.

To calculate the net subsidy rate, we divided the benefit by the Zhongya Companies' total consolidated sales for the POI, as discussed in the "Attribution of Subsidies" section. On this basis, we calculated a net subsidy rate of 4.97 percent ad valorem for the Zhongya Companies.

U. Provision of Land-Use Rights To Enterprises Located in the South Sanshui Science and Technology Industrial Park for LTAR

Petitioners alleged that the Sanshui District Government (located in Foshan City) provides land to enterprises located in the South Sanshui Science and Technology Industrial Park with preferential prices for land-use rights. The Guang Ya Companies reported that Guangcheng purchased land-use rights in the South Sanshui Science and Technology Industrial Park in 2007.

In the Post-Prelim Memorandum, we determined that the provision of land-use rights for

LTAR under this program constitutes a financial contribution within the meaning of section 771(5)(D)(iii) of the Act and that the provision of land-use rights constitutes a benefit under section 771(5)(E)(iv) of the Act to the extent Foshan City provides them for LTAR. See Post-Prelim Memorandum at 5. Regarding specificity, we noted that documents from the Sanshui District Government (located in Foshan City) indicate that industrial land within the South Sanshui Science and Technology Industrial Park will be offered at preferential prices. See Post-Prelim Memorandum at 5; see also Petitioners' July 28, 2010, submission at Exhibits 6 and 7. Thus, we determined that the benefits provided under this program are limited to firms located in the South Sanshui Science and Technology Industrial Park and, thus, are specific under section 771(5A)(D)(iv) of the Act. See Post-Prelim Memorandum at 5. We have reached the same conclusions in the final determination.

As explained above, we are not able to use Chinese or world market prices as a benchmark. Therefore, we are comparing the price that the Guancheng paid for its land-use rights with comparable market-based prices for land purchases in a country at a comparable level of economic development that is reasonably proximate to, but outside of, the PRC. Specifically, we are comparing the price Guangcheng paid in 2007 to the price of certain industrial land in industrial estates, parks, and zones in Thailand in 2007. See LWS from the PRC Decision Memorandum at "Analysis of Programs – Government Provision of Land for Less Than Adequate Remuneration." In deriving the benchmark, we used, where appropriate updated Thai land price data supplied by the Zhongya Companies. See Comment 24, below.

To calculate the benefit, we computed the amount that Guancheng would have paid for its land-use rights and subtracted the amount it actually paid for its 2007 purchases under the program. Our comparison indicates that the price Guancheng paid to the government authority in 2007 was less than our land benchmark price and, thus, that the Guang Ya Companies received a benefit under section 771(5)(E)(iv) of the Act. Next, in accordance with 19 CFR 351.524(b)(2), we examined whether the subsidy amount exceeded 0.5 percent of the Guang Ya companies' total consolidated sales in the year of purchase. Our analysis indicates that the subsidy amount exceeded the 0.5 percent threshold. Therefore, we used the discount rate described under the "Benchmarks and Discount Rates" section to allocate the benefit over the life of the land-use rights contract, which is 50 years.

To calculate the net subsidy rate, we divided the benefit by the Guang Ya Companies' consolidated sales for the POI. On this basis, we calculated a net subsidy rate of 1.80 percent ad valorem for the Guang Ya Companies.

VIII. Program Determined Not to Exist

A. Provision of Electricity for LTAR to Firms Located in the ZHITDZ

Petitioners alleged that the PGOG provides electricity to firms located in the ZHITDZ for LTAR. We initiated an investigation of this program with regard to the Zhongya Companies only. The Zhongya Companies reported that only New Zhongya is located in ZHITDZ and that New Zhongya purchased electricity during the POI. The Guang Ya Companies are not located in the ZHITDZ.

In the Post-Prelim Memorandum, we determined that the program, as alleged, does not exist. See Post-Prelim Memorandum at 6. The allegation in this case is that the PGOG provides electricity at reduced rates inside the zone. However, we verified that firms located in the

ZHITDZ are subject to rates applicable to the East/West Wing Regions of the Guangdong Province, which include the municipalities of Shantaou, Chaozhou, Jieyang, Shanwei, Yangjiang, Zhanjiang, Maoming, Zhaoqing (which includes the ZHITDZ), Yunfu, and Enping of the Jiangmen Municipality. Id. Therefore, we determine that companies in the zone pay the same rate as other companies in the East/West Wing Regions of Guangdong Province. Id. As a result, in the Post-Prelim Memorandum, we determined that there is no program under which electricity is provided for LTAR within the zone. Id. Our finding in this regard remains unchanged from the Post-Prelim Memorandum.

IX. Programs Determined Not to Confer a Benefit During the POI

Regarding programs listed below, benefits from these programs result in net subsidy rates that are less than 0.005 percent ad valorem or constitute benefits that were fully expensed prior to the POI. Consistent with our past practice, we therefore have not included these programs in our net CVD rate calculations. See, e.g., CFS from the PRC Decision Memorandum at "Analysis of Programs, Programs Determined Not To Have Been Used or Not To Have Provided Benefits During the POI for GE."

A. Labor and Social Security Allowance Grants in Sanshui District of Guangdong Province
B. "Large and Excellent" Enterprises Grant
C. Advanced Science/Technology Enterprise Grant
D. Advanced Science/Technology Enterprise Grant
E. Award for Self-Innovation Brand/Grant for Self-Innovation Brand and Enterprise Listing
F. Tiaofeng Electric Power Subscription Subsidy Funds
G. Award for Excellent Enterprise
H. Export Incentive Payments Characterized as VAT Rebates
I. PGOG and Foshan City Government Patent and Honor Award Grants
J. Foshan City Government Technology Renovation and Technology Innovation Special Fund Grants
K. Nanhai District Grants to State and Provincial Enterprise Technology Centers and Engineering Technology R&D Centers

X. Programs Determined Not to be Used[10]

A. Loans and Interest Subsidies Provided Pursuant to the Northeast Revitalization Program
B. Provincial Tax Exemptions and Reductions for "Productive" FIEs
C. Tax Reductions for FIEs Purchasing Chinese-Made Equipment
D. Tax Reductions for FIEs in Designated Geographic Locations
E. Tax Reductions for Technology- or Knowledge-Intensive FIEs
F. Tax Credits for Domestically-Owned Companies Purchasing Chinese-Made Equipment
G. Tax Reductions for Export-Oriented FIEs
H. Tax Refunds for Reinvesting of FIE Profits in Export-Oriented Enterprises
I. Accelerated Depreciation for Enterprises Located in the Northeast Region
J. Forgiveness of Tax Arrears for Enterprises in the Old Industrial Bases of Northeast China
K. VAT Rebates on FIE Purchases of Chinese-Made Equipment

[10] In this section we refer to programs determined to be not used by the two voluntary respondent companies.

L. Exemptions from Administrative Charges for Companies in the ZHTIDZ
M. The State Key Technology Renovation Project Fund
N. Grants to Cover Legal Fees in Trade Remedy Cases in Zhenzhen
O. The Clean Production Technology Fund
P. Grants for Listing Shares: Liaoyang City (Guangzhou Province), Wenzhou Municipality (Zhejiang Province), and Quanzhou Municipality (Fujian Province)
Q. The Northeast Region Foreign Trade Development Fund
R. The Northeast Region Technology Reform Fund
S. Land Use Rights in the Liaoyang High-Tech Industry Development Zone
T. Allocated Land Use Rights for SOEs
U. Tax Refunds for Enterprises Located in the ZHITDZ
V. Provision of Electricity for LTAR to FIEs Located in the Nanhai District of Foshan City
W. Nanhai District Grants to High and New Technology Enterprises
X. Government Provision of Land-Use Rights to Enterprises Located in the Yongji Circular Economic Park for LTAR

Y. Purchase of Aluminum Extrusions for MTAR

We initiated on a program that alleged that the GOC, by means of the Government Procurement Law and the Indigenous Innovation program, purchases aluminum extrusions for MTAR. In the Preliminary Determination, the GOC, the Guang Ya Companies, and the Zhongya Companies stated that neither the two companies nor their products are listed in government indigenous innovation catalogues. Therefore, we preliminarily determined that the companies did not use the Indigenous Innovation program. See 75 FR at 54319. Based on verified information we continue to find that the Guang Ya Companies and the Zhongya Companies did not use the Indigenous Innovation program. See GOC Verification Report at 12.

In the Preliminary Determination, the Department found that information provided in the questionnaire responses of the Guang Ya Companies and the Zhongya Companies indicated that they may have benefited from the government's purchase of aluminum extrusions under the Procurement Law. See 75 FR at 54319. Thus, in the Preliminary Determination, the Department countervailed the companies' sales of aluminum extrusions that the Department determined were to GOC authorities. Id. Since the Preliminary Determination, the Department has collected additional information from the GOC and the respondent firms regarding the extent to which they sold aluminum extrusions under the Procurement Law during the POI. In light of this additional information, we have revised our findings from the Preliminary Determination.

We verified that the Guang Ya and Zhongya Companies did not sell aluminum extrusions under the Procurement Law during the POI. Therefore, we find this program not used by the Guang Ya and Zhongya Companies. For additional information, see Comment 13, below.

XI. Analysis of Comments

Comment 1: Application of CVD Law to the PRC

Certain importers[11] argue that by initiating both an AD and CVD investigation on imports

[11] In addition to the GOC, the Guang Ya Companies, and the Zhongya Companies, several additional interested parties submitted case and rebuttal briefs. These parties are: Evergreen Solar, Inc. (Evergreen), the Shower Door,

of aluminum extrusions from the PRC, while continuing to treat the PRC as an NME for purposes of the AD law, the Department disregarded the Court of Appeals for the Federal Circuit's decision in Georgetown Steel and the GPX decisions by the CAFC and CIT, respectively. See Georgetown Steel Corp. v. United States, 801 F.2d 1308 (Fed. Cir. 1986) (Georgetown Steel); see also GPX International Tire Corp. v. United States, 645 F. Supp. 2d 1231 (CIT 2009) (GPX II), and GPX International Tire Corp. v. United States, 715 F. Supp. 2d 1337 (2010) (GPX III) (collectively, GPX decisions).

Certain importers add that in GPX II, the CIT found that, while the Department may have the authority to apply CVD law to products from NME countries, the Department cannot concurrently apply the AD NME methodology. As such, absent new legislation, the importers argue that the Department may not initiate this or any other CVD investigation against the PRC. Therefore, the Department must terminate this CVD investigation or calculate the AD duties according to market economy methodologies. Certain importers further argue that applying the CVD law to the PRC violates the statutory intent of the Act and the CAFC's decision in Georgetown Steel and the CIT's decision in GPX II. See Georgetown Steel, 801 F.2d at 1308.

Certain importers assert that the Act precludes the Department from concurrently applying the CVD law and AD NME methodology. Specifically, they claim that the exclusion of the term "non-market economy" from sections 701 and 771(5) and (5A) of the Act, combined with the use of that term in other sections, demonstrates that Congress intended to preclude the Department from applying the CVD law concurrently with the AD NME methodology. See Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 843 (1984) (Chevron), and Bell Atlantic Telephone Companies v. FCC, 131 F.3d 1044, 1047 (D.C. Cir. 1997). They state that the absence of the NME term in section 701 of the Act is insufficient to endow the Department with discretion and, because section 771 of the Act sets forth rules and definitions that are applicable to the conduct of both CVD and AD proceedings, it too must be considered.

Certain importers argue that the most significant CVD-specific subsections, 771(5) and (5A) of the Act, contain no reference to NMEs. They state that NMEs are referenced in section 773 of the Act, where there is instruction on the calculation of normal value for AD investigations; however, NMEs are not referenced anywhere in the instructions on the calculation of subsidies for CVD investigations.

They further argue that prior to the shift in practice to applying the CVD law and AD NME methodology concurrently, for two decades following Georgetown Steel, the Department dismissed CVD petitions involving NMEs based on the Federal Circuit's statutory analysis. They cite to the Rescission of Initiation of Countervailing Duty Investigation and Dismissal of Petition: Chrome-Plated Lug Nuts and Wheel Locks From the People's Republic of China, 57 FR 10459 (March 26, 1992); Final Negative Countervailing Duty Determinations: Oscillating and Ceiling Fans From the People's Republic of China, 57 FR 24018 (June 5, 1992); Final Affirmative Countervailing Duty Determination: Certain Steel Products From Austria, 58 FR 37217(July 9, 1993) and the General Issues Appendix attached thereto; and Countervailing Duty,

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Tub, and Enclosure Manufacturers Alliance, Eagle Metals Distributors, Inc. (Eagle Metals), Ningbo Yile Import & Export Co., Ltd., Asia Aluminum, MacLean-Fogg Company, Fiskars Brands, Inc., Construction Specialists, North China Aluminum Co., Ltd., RC Respondents (Jiangyin Trust International Inc., COSCO (J.M.) Aluminum Developments Co., Ltd., USA Worldwide Door Components (Pinghu) Co., Ltd., Zhejiang Yongkang Listar Aluminum Industry Co., Ltd., and Floturn Inc. The additional interested parties that submitted case and rebuttal briefs are collectively referred to as the importers.

63 FR at 65377. During this period, they state the Department reasoned that Congress could not have intended for it to apply the CVD law to NMEs. They claim that the Department's express declaration that it was unable to apply the CVD law to NMEs should have evoked some contrary response from Congress if Congress had intended the CVD law to be applicable concurrently with the AD NME methodology. However, they state that Congress adopted the Department's long-standing interpretation of Congressional intent. They note that when Congress enacted the Omnibus Trade and Competitiveness Act of 1988, it was Congress' first opportunity to alter the finding in Georgetown Steel, but that Congress rejected a specific amendment to the law that would have done so. See section 157 of H.R. 3; and H.R. Rep. No. 100-40, pt. 1 at 138 (1987). They add that Congress also chose not to change the law in 1994, when it enacted the URAA. Certain importers assert that by rejecting a change in law, Congress clarified its intent that the Department does not have discretion to apply the CVD law and AD NME methodology concurrently. The Guang Ya Companies assert that this express rejection of an attempt to amend the CVD law does not represent mere Congressional inaction as the Department has previously claimed. See CFS from the PRC Decision Memorandum at Comment 1.

Further, certain importers claim that the Department's previous interpretation of the current CVD law in Sulfanilic Acid from Hungary confirms this interpretation, because the determination was issued after enactment of the new CVD law. See Final Affirmative Countervailing Duty Determination: Sulfanilic Acid from Hungary, 67 FR 60223 (September 25, 2002) (Sulfanilic Acid from Hungary), and accompanying Issues and Decision Memorandum (Sulfanilic Acid Decision Memorandum). In that investigation, the Department stated that it could not apply CVD law to an NME country. See Sulfanilic Acid Decision Memorandum at Comment 1. Additionally, the importers assert that the Department's current application of the CVD law to the PRC is also contradicted by the Department's continued failure to accord a PRC industry involved in an AD investigation market-oriented industry status, or to accord a PRC respondent market economy status.

The Guang Ya Companies state court decisions do not support the Department's application of the CVD law to the PRC. The Guang Ya Companies argue that the CIT in GPX II and GPX III squarely ruled against the Department. They add that in GOC v. United States, the CIT did not affirm the Department's proposed application of the CVD law to NME countries nor did it agree with the Department's reasoning in CFS from the PRC, where the Department determined that the Act provides discretion to apply the CVD law when also applying the NME AD methodology in the same country. See Government of the People's Republic of China v. United States, 483 F. Supp. 2d 1274, 1275 (CIT 2007) (GOC v. United States). In that case, the Guang Ya Companies argue the CIT ruled solely that it did not have the jurisdiction to decide the merits of the case. As such, the Guang Ya Companies argue that GOC v. United States is persuasive authority only as it relates to the jurisdictional questions.

The Guang Ya Companies further argue that the CAFC's statutory interpretation in Georgetown Steel confirms that the CVD law cannot be applied concurrently with the AD NME methodology. In Georgetown Steel, they assert the CAFC concluded that under the statutory scheme Congress intended that the AD NME methodology would remedy all unfair trade (CVD and AD) from NME countries, where the court stated:

> Congress, however, has decided that the proper method for protecting the American market against selling by nonmarket economies at unreasonably low prices is through the antidumping law. Congress intended that any selling by nonmarket economies at

> unreasonably low prices should be dealt with under the antidumping law. There is no indication in any of those statutes, or their legislative history, that Congress intended or understood that the countervailing duty law also would apply.

Id. at 1316 - 1318.

The Guang Ya Companies additionally argue that, contrary to the Department's claim of discretion under Georgetown Steel, the only discretion the CAFC acknowledged was the "broad discretion to determine the existence of a 'bounty' or 'grant' under the {CVD} law." Id. at 1318. According to the Guang Ya Companies, contrary to the Department's rationale, the discretion to determine the existence of a subsidy is merely discretion exercised in the calculation of subsidies; it is not the discretion to determine whether the CVD law can be applied concurrently with the AD NME methodology.

The GOC argues that in this investigation the Department preliminarily found that there is no way to measure the alleged subsidies to the Chinese aluminum extrusions industry with reference to a market benchmark reflecting actual supply and demand conditions within the PRC and, thus, there is no way of measuring the deviation or misallocation caused by the alleged government intervention. The GOC adds that this contradiction, inherent in the Department's simultaneous conclusion in the AD context that the PRC remains an NME, is why the Federal Circuit held that the AD remedy is the proper method for remedying unfair pricing on goods originating in NMEs.

Petitioners state that the Department acted lawfully in applying the CVD law to the PRC while also applying the AD NME methodology. They argue that the Act requires that the CVD law be applied to all countries, and does not limit application to non-NME countries. Petitioners cite Ad Hoc. Comm. Of AZ-NM-TX-FL Producers of Gray Portland Cement v. United States, 13 F.3d. 398 (Fed. Cir. 1994) in support of the proposition that, because the AD and CVD law are unambiguous, the Department must give them full effect.

Petitioners argue that, even if the CVD law were ambiguous, Georgetown Steel does not prohibit the application of the CVD law to the PRC. Petitioners claim that the GOC, the Guang Ya Companies, and certain importers misread the meaning of Georgetown Steel, which merely affirmed the Department's decision not to apply the CVD law to certain Soviet-era economies, and did not prohibit the Department from applying the CVD law to all NMEs. They add that Georgetown Steel also interpreted a statute that has since been repealed (i.e., section 303 of the Act, which referenced bounties or grants). They state that the replacement of the term "bounty or grant" with a specific, three-part definition (i.e., financial contribution, benefit, and specificity) provides the Department with new criteria to assess government actions in an NME. Petitioners further argue that the Georgetown Steel Memorandum chronicles the changes in the PRC in the last 20 years that distinguish the PRC from the Soviet-era economies at issue in Georgetown Steel and that Congressional action, which has occurred since Georgetown Steel, highlights Congressional intent to apply the CVD law to the PRC.[12] Specifically, Petitioners argue that the 1994 Uruguay Round Agreements Act (URAA) made clear that the CVD law

[12] See Memorandum from Shana Lee-Alaia and Lawrence Norton to David M. Spooner, Assistant Secretary of Commerce, regarding "Countervailing Duty Investigation of Coated Free Sheet Paper from the People's Republic of China, "Whether the Analytical Elements of the Georgetown Steel Opinion are Applicable to China's Present-Day Economy," (March 29, 2007) (Georgetown Steel Memorandum), a public document available at http://ia.ita.doc.gov/download/nme-sep-rates/prc-cfsp/china-cfs-georgetown-applicability.pdf and the Department's Central Records Unit at room 7046 of the main Commerce building.

should apply to the PRC; the 2000 Permanent Normal Trade Relations (PNTR) legislation demonstrates Congressional intent to apply the CVD law to the PRC; and the 1988 Trade Act did not indicate Congressional intent to forbid the application of the CVD law to the PRC.

Petitioners argue that the CIT's decisions in GPX II and GPX III were wrongly decided, and that these decisions do not prohibit the simultaneous application of the CVD law to the PRC. Petitioners also note that these decisions are not final.

Department's Position: We disagree with arguments raised by certain importers, the GOC, and the Guang Ya Companies regarding the Department's lack of authority to apply the CVD law to the PRC. The Department's positions on the issues raised are fully explained in multiple cases. See, most recently, Drill Pipe From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination, 76 FR 1971 (January 11, 2011), and accompanying Issues and Decision Memorandum (Drill Pipe from the PRC Decision Memorandum) at Comment 1; see also Coated Paper from the PRC Decision Memorandum at Comment 1; Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination, 75 FR 57444 (September 21, 2010) (Seamless Pipe from the PRC), and accompanying Issues and Decision Memorandum (Seamless Pipe from the PRC Decision Memorandum) at Comment 1; OCTG from the PRC Decision Memorandum at Comment 1; CFS from the PRC Decision Memorandum at Comment 1; CWP from the PRC Decision Memorandum at Comment 1; LWRP from the PRC Decision Memorandum at Comment 1; OTR from the PRC Decision Memorandum at Comment A.1; LWTP from the PRC Decision Memorandum at Comment 1; and Line Pipe from the PRC Decision Memorandum at Comment 16.

Congress granted the Department the general authority to conduct CVD investigations. See, e.g., sections 701, 771(5), and 771(5A) of the Act. In none of these provisions is the granting of this authority limited only to market economies. For example, the Department is given the authority to determine whether a "government of a country or any public entity within the territory of a country is providing . . . a countervailable subsidy..... " See section 701(a) of the Act. Similarly, the term "country," defined in section 771(3) of the Act, is not limited only to market economies, but is defined broadly to apply to a foreign country, among other entities. See section 701(b) of the Act (providing the definition of "Subsidies Agreement country").

In 1984, the Department first addressed the issue of the application of the CVD law to NMEs. In the absence of any statutory command to the contrary, the Department exercised its "broad discretion" to conclude that "a 'bounty or grant,' within the meaning of the CVD law, cannot be found in an NME." See Carbon Steel Wire Rod from Poland; Final Negative Countervailing Duty Determination, 49 FR 19374 (May 7, 1984) (Wire Rod from Poland) and Carbon Steel Wire Rod from Czechoslovakia: Final Negative Countervailing Duty Determination, 49 FR 19370 (May 7, 1984) (Wire Rod from Czechoslovakia). The Department reached this conclusion, in large part, because both output and input prices were centrally administered, thereby effectively administering profits as well. The Department explained that "{t}his is the background that does not allow us to identify specific NME government actions as bounties or grants." See, e.g., Wire Rod from Czechoslovakia, 49 FR at 19373. Thus, the Department based its decision upon the economic realities of Soviet-bloc economies. In contrast, the Department has previously explained that, "although price controls and guidance remain on certain 'essential' goods and services in the PRC, the PRC Government has eliminated

price controls on most products....." See Georgetown Steel Memorandum. Therefore, the primary concern about the application of the CVD law to NMEs originally articulated in the Wire Rod from Poland and Wire Rod from Czechoslovakia cases is not a significant factor with respect to the PRC's present-day economy. Thus, the Department has concluded that it is able to determine whether subsidies benefit imports from the PRC.

The Georgetown Steel Memorandum details the Department's reasons for applying the CVD law to the PRC and the legal authority to do so. As explained in the Georgetown Steel Memorandum, Georgetown Steel does not rest on the absence of market-determined prices, and the decision to apply the CVD law to the PRC does not rest on a finding of market-determined prices in the PRC. Id. at 4-5. In the case of the PRC's economy today, as the Georgetown Steel Memorandum makes clear, the PRC no longer has a centrally-planned economy and, as a result, the PRC no longer administratively sets most prices. Id. at 5. As the Georgetown Steel Memorandum also makes clear, it is the absence of central planning, not market-determined prices, that makes subsidies identifiable and the CVD law applicable to the PRC. Id.

As the Department further explains in the Georgetown Steel Memorandum, extensive PRC government controls and interventions in the economy, particularly with respect to the allocation of land, labor, and capital, undermine and distort the price formation process in the PRC and, therefore, make the measurement of subsidy benefits potentially problematic. Id. The problem is such that there is no basis for either outright rejection or acceptance of all the PRC's prices or costs as CVD benchmarks because the nature, scope, and extent of government controls and interventions in relevant markets can vary tremendously from market-to-market. Some of the PRC prices or costs will be useful for benchmarking purposes, i.e., are market-determined, and some will not, and the Department will make that determination on a case-by-case basis, based on the facts and evidence on the record. Thus, because of the mixed, transitional nature of the PRC's economy today, there is no longer any basis to conclude, from the existence of some "non-market-determined prices," that the CVD law cannot be applied to the PRC.

The CAFC recognized the Department's broad discretion in determining whether it can apply the CVD law to imports from an NME in Georgetown Steel. See Georgetown Steel, 801 F.2d at 1318. The issue in Georgetown Steel was whether the Department could apply CVD laws (irrespective of whether any AD duties were also imposed) to potash from the USSR and the German Democratic Republic and carbon steel wire rod from Czechoslovakia and Poland. The Department determined that those economies, which operated under the same, highly rigid Soviet system, were so monolithic as to render nonsensical the very concept of a government transferring a benefit to an independent producer or exporter. The Department therefore concluded that it could not apply the U.S. CVD law to those exports, because it could not determine whether that government had bestowed a subsidy (then called a "bounty or grant") upon them. See, e.g., Wire Rod from Czechoslovakia, 49 FR at 19373. While the Department did not explicitly limit its decision to the specific facts of the Soviet Bloc in the mid-1980s, its conclusion was based on those facts. The CAFC accepted the Department's logic, agreeing that, "Even if one were to label these incentives as a 'subsidy,' in the loosest sense of the term, the governments of those nonmarket economies would in effect be subsidizing themselves." See Georgetown Steel, 801 F.2d at 1316. Noting the "broad discretion" due the Department in determining what constituted a subsidy, the Court then deferred to the Department's judgment on the question. Id. at 1318. Thus, Georgetown Steel did not hold that the Department could choose not to apply the CVD law to exports from NME countries, where it was possible to do so. Instead, the CAFC simply deferred to the Department's determination that it was unable to apply

the CVD law to exports from Soviet Bloc countries in the mid-1980s.

The Georgetown Steel Court did not find that the CVD law prohibited the application of the CVD law to all NMEs for all time, but only that the Department's decision not to apply the law was reasonable based upon the language of the statute and the facts of the case. Specifically, the CAFC recognized that:

> {T}he agency administering the countervailing duty law has broad discretion in determining the existence of a "bounty" or "grant" under that law. We cannot say that the Administration's conclusion that the benefits the Soviet Union and the German Democratic Republic provided for the export of potash to the United States were not bounties or grants under section 303 was unreasonable, not in accordance with law or an abuse of discretion. Chevron at 842-845.

Georgetown Steel, 801 F.2d at 1318 (emphasis added).

The Georgetown Steel Court did not hold that the statute prohibited application of the CVD law to NMEs, nor did it hold that Congress spoke to the precise question at issue. Instead, as explained above, the Court held that the question was within the discretion of the Department.

The CIT concurred, explaining that "the Georgetown Steel court only affirmed {the Department's decision not to apply countervailing duty law to the NMEs in question in that particular case and recognized the continuing 'broad discretion' of the agency to determine whether to apply countervailing duty law to NMEs." See GOC v. U.S., 483 F. Supp. 2d at 1282 (citing Georgetown Steel, 801 F.2d at 1318). Therefore, contrary to the Guang Ya Companies' argument, the Court declined to find that the Department's investigation of subsidies in the PRC was ultra vires.[13]

The parties' arguments that the intent of Congress is that the CVD law does not apply to NMEs is also flawed. Since the holding in Georgetown Steel, Congress has expressed its understanding that the Department already possesses the legal authority to apply the CVD law to NMEs on several occasions. For example, on October 10, 2000, Congress passed the PNTR Legislation. In section 413 of that law, which is now codified in 22 U.S.C. § 6943(a)(1), Congress authorized funding for the Department to monitor "compliance by the People's Republic of China with its commitments under the World Trade Organization (WTO), assisting United States negotiators with the ongoing negotiations in the WTO, and defending United States antidumping and countervailing duty measures with respect to products of the People's Republic of China."[14] The PRC was designated as an NME at the time this bill was passed, as it is today. Thus, Congress not only contemplated that the Department possesses the authority to apply the CVD law to the PRC, but authorized funds to defend any CVD measures the Department might apply.

This statutory provision is not the only instance where Congress has expressed its understanding that the CVD law may be applied to NMEs in general and the PRC in particular. In that same trade law, Congress explained that "{o}n November 15, 1999, the United States and the People's Republic of China concluded a bilateral agreement concerning the terms of the People's Republic of China's eventual accession to the World Trade Organization."[15] Congress then expressed its intent that the "United States Government must effectively monitor and

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[13] Id.

[14] See 22 U.S.C. § 6943(a)(1) (emphasis added).

[15] See 22 U.S.C. § 6901(8).

enforce its rights under the Agreements on the accession of the People's Republic of China to the WTO."[16] In these statutory provisions, Congress is referring, in part, to the PRC's commitment to be bound by the Agreement on Subsidies and Countervailing Measures (SCM Agreement) as well as the specific concessions the PRC agreed to in its Accession Protocol.

The Accession Protocol allows for the application of the CVD law to the PRC, even while the PRC remains classified as an NME by the Department.[17] In fact, in addition to agreeing to the terms of the SCM Agreement, specific provisions were included in the Accession Protocol that involve the application of the CVD law to the PRC. For example, Article 15(b) of the Accession Protocol provides for special rules in determining benchmarks that are used to measure whether the subsidy bestowed a benefit on the company. Paragraph (d) of that same Article provides for the continuing treatment of the PRC as an NME. There is no limitation on the application of Article 15(b) with respect to Article 15(d), thus indicating it became applicable at the time the Accession Protocol entered into effect. Although WTO agreements such as the Accession Protocol do not grant direct rights under U.S. law, the Accession Protocol contemplates the application of CVD measures to the PRC as one of the possible existing trade remedies available under U.S. law. Therefore, Congress' directive that the "United States Government must effectively monitor and enforce its rights under the agreements on the accession of the People's Republic of China to the WTO," contemplates the application of the CVD law to the PRC.[18] Neither the SCM Agreement nor the PRC's Accession Protocol is part of U.S. domestic law. However, the Accession Protocol, to which the PRC agreed, is relevant to the PRC's and our international rights and obligations. Further, Congress thought the provisions of the Accession Protocol important enough to direct that they be monitored and enforced, a direction codified in U.S. law.

In sum, the Department has authority to apply the CVD law to NMEs under U.S. law. Further, the Department's decision to apply the CVD law to the PRC, as explained in the Georgetown Steel Memorandum, is within the Department's discretion and in accordance with law. Accordingly, the Department's application of the CVD law in this proceeding is appropriate.

Comment 2: Whether Application of the CVD Law to Imports from the PRC Violates the APA

The Guang Ya Companies and Evergreen argue that the Department's imposition of CVDs on Chinese imports violates the requirements of the APA, which sets procedures that must be followed when agencies formulate, amend, or repeal a rule.[19] They assert that the Department's change of methodology to apply the CVD law to the PRC falls within the rule-making rubric. Specifically, they state that the Department's previously long-held position that the CVD law does not apply to NMEs meets the APA's definition of a rule as "the whole or part of an agency statement of general or particular applicability and future effects designed to implement, interpret, or prescribe law or policy."[20] In support of their argument that the Department's practice rose to the level of "rule," they discuss the Department's statements of

[16] See 22 U.S.C. § 6841(5).
[17] See CFS from the PRC Decision Memorandum at Comment 1.
[18] See 22 U.S.C. § 6941(5).
[19] Parties cite to 5 U.S.C. § 553(c) (opportunity to participate in the process) and 5 U.S.C. § 551(5) (providing that rulemaking includes information, amendment, or repeal of a rule).
[20] See 5 U.S.C. § 551(4).

legal interpretation regarding the application of CVD law concurrent with the application of the AD NME methodology. They state that on three past occasions the Department issued statements on the imposition of CVD duties against imports from NMEs, following a notice and comment period, and each time found that CVDs could not be imposed against NMEs. Those occasions were: (1) in 1984, the Department adopted its position not to apply the CVD law to NMEs; (2) in the 1993 General Issues Appendix, the Department affirmed its 1984 decision not to apply the CVD law to NMEs; and (3) in 1998, the Department promulgated its CVD regulations confirming that it did not intend to impose CVD duties against NMEs. The Guang Ya Companies note that in the final CVD regulations, the Department decided to codify a final rule on the concept of benefit and, in its definitive interpretation of that term, the Department explained that:

> it is important to note here our practice of not applying the CVD law to non-market economies. The CAFC upheld this practice in Georgetown Steel Corp. v. United States, 801 F.2d 1308 (CAFC 1986). We intend to continue to follow this practice.[21]

These parties assert that the Department's treatment of NMEs in the CVD context was a definitive interpretation. As such, they argue that it is not permissible for the Department to apply the CVD law to Chinese imports prior to the final amendment of the applicable rules promulgated through established rulemaking procedures. The Guang Ya Companies and Evergreen add that, although the Department issued a notice to the public on December 15, 2006, regarding the application of the CVD law to imports from the PRC, it never addressed the comments made by the parties as required by the APA.[22] Therefore, they assert, because the Department failed to follow the required procedures, the initiation of this investigation was unlawful and should be rescinded.

Petitioners state that importers have failed to establish that the APA applies to CVD proceedings, which are largely investigatory and quasi-adjudicatory in nature. Petitioners discuss that the respondents' arguments are premised on the erroneous conclusion that the Department's prior position regarding the applicability of the CVD law to the PRC constituted a rule that required use of the APA's notice-and-comment procedures. However, as the Department stated in CFS from the PRC, Petitioners note that "the Department's previous policy of non-application of the CVD law to NMEs is not a rule under the APA, but a practice."[23] Petitioners assert that the Department's position was confirmed by the CIT, when it stated:

> While Commerce acknowledges that it has a policy or practice of not applying {CVD} law to NMEs … Commerce has not promulgated a regulation confirming that it will not apply {CVD} law to NMEs. In the absence of a rule, Commerce need not follow the notice-and-comment obligations found in the APA, 5 U.S.C. § 553, and instead may change its policy by "ad hoc litigation."[24]

Petitioners argue that the Department is entitled to change its practice provided that it

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[21] See Preamble, 63 FR at 65360.

[22] See Application of the Countervailing Duty Law to Imports From the People's Republic of China: Request for Comment, 71 FR 75507 (December 15, 2006).

[23] See CFS from the PRC Decision Memorandum at Comment 2.

[24] See GOC v. United States, 483 F. Supp. 2d at 1282 (internal citation omitted).

explains the basis for its change, citing Nat'l Cable & Telecommunications Ass'n v. Brand X, 545 U.S. 967, 981 (2005). Petitioners argue that the Department explained its basis for the change in CFS from the PRC and in the Georgetown Steel Memorandum.

Department's Position: We disagree with arguments that the Department failed to follow the APA procedures. The Department's decision to apply the CVD law to NMEs is not subject to the APA's notice-and-rulemaking procedures because those procedures do not apply to "interpretative rules, general statements of policy or procedure, or practice."[25] The Department's position on this issue was fully explained in CFS from the PRC and the respondents have raised no new arguments here. Therefore, we are adopting our analysis in CFS from the PRC for this proceeding, incorporated herein by reference.[26]

Comment 3: Double Counting

The GOC, the Guang Ya Companies, and certain importers argue that the Department cannot apply the CVD law and the AD NME methodology concurrently because such action results in the unlawful imposition of double remedies on Chinese imports. They argue that the CIT held in GPX II that the Department's current interpretation of the NME AD statute in relation to the CVD statute is unreasonable and the Department must not impose the CVD law on imports from an NME country because its methodologies can result in the imposition of a double remedy. Specifically, the CIT stated:

> the Department has a choice. The unfair trade statutes … give the Department the discretion not to impose CVDs as long as it is using the NME AD methodology. Thus, the Department reasonably can do all of its remedying through the NME AD statute, as it likely accounts for any competitive advantages the exporter received that are measurable. If the Department now seeks to impose CVD remedies on the products of NME countries as well, the Department must apply methodologies that make such parallel remedies reasonable, including methodologies that will make it unlikely that double counting will occur.[27]

They state that, on remand in that case, the Department attempted to impose CVD remedies and to offset those CVDs against the respondents' calculated AD cash deposit rate.[28] The court, however, held that this approach was unreasonable and noted that with this offset, the combination of the CVD margin and NME AD cash deposit rate will always equal the unaltered NME AD margin and that this renders concurrent CVD and AD investigations unnecessary. The court also held that such an offset does not comply with the statute (section 772 of the Act), which list the specific offsets to export price and constructed export price that are permissible. They note that the Court held that the Department:

> must forego the imposition of the countervailing duty law on the nonmarket economy products before the court because its actions on remand clearly demonstrate its inability,

[25] See CFS from the PRC Decision Memorandum at Comment 2 (citing 5 U.S.C. § 553(b)(3)(A)).
[26] Id.
[27] See GPX II, 645 F. Supp. 2d at 1243.
[28] See GPX III, 715 F. Supp. 2d at 1343.

> at this time, to use improved methodologies to determine whether and to what degree double counting occurs when NME antidumping remedies are imposed on the same good, or to otherwise comply with the unfair trade statutes in this regard.[29]

Agreeing with the court, the GOC, the Guang Ya Companies, and certain importers assert that the current AD/CVD methodologies as applied to Chinese imports of aluminum extrusions are unfair and effectively punish Chinese companies twice for the same act. They assert that this unfairness comes when the Department offsets an alleged subsidy first by imposing a CVD and then measures dumping by constructing normal value for comparison to U.S. prices by using surrogate values and not actual foreign-market prices. They state that AD NME methodology uses surrogate values to establish a subsidy-free, surrogate normal value and compares this to a subsidized U.S. price. They insist that Department's use of third-country, unsubsidized market surrogate values to measure the respondents' normal value in the parallel AD investigation in this proceeding results in a remedy that fully captures and accounts for any additional domestic subsidy margin found for the respondents in the CVD investigation.

They add that double counting is acute in the aluminum extrusions investigation because the Department is investigating the provision of inputs for LTAR. They discuss that the Department preliminarily calculated CVD margins of 2.36 percent for the Zhongya Companies and 3.07 percent for the Guang Ya Companies for the provision of primary aluminum at LTAR. In the AD investigation, the Department uses a surrogate value for primary aluminum that, by definition, does not include the 2.36 percent or 3.07 percent subsidies. They state that under the Department's current practice, however, the effect of the 2.36 percent or 3.07 percent subsidies is included in the U.S. sales used to calculate the dumping margin. Thus, in the calculation of the AD margin using the NME methodology, the Department captures the effect of the lower price due to subsidized primary aluminum purchases and provides an AD duty to remedy the effect. The result, they assert, is a double remedy for a single, alleged trade-distorting act.

These parties further argue that, as the CIT held in GPX II, due to the potential double counting and the inability of the Department to determine whether and to what degree this double counting is occurring, the Department should not apply the CVD law while also applying an AD NME methodology in the parallel AD case.[30] They also argue that the Department, and not the respondents, bears the burden of demonstrating that no double remedy arises through simultaneous application of the CVD law and the AD NME methodology. The GOC and the Guang Ya Companies note that the CIT in GPX II asserted that the Department cannot avoid the double counting issue by placing the burden on the respondents, because there is no way for any respondent to accurately prove what may be occurring.[31] The GOC adds that the Department's position that there is a burden on the respondents to demonstrate the existence of double counting creates an evidentiary presumption that lacks a lawful or factual basis. The GOC argues that not only has the Department failed to provide the parties in this investigation the required notice of such a presumption and an opportunity to present rebuttal evidence, the presumption itself lacks an economic or legal foundation. The GOC adds that economic principles as well as the Act demonstrate that the application of the Department's NME third-country surrogate value methodology to determine the AD normal value benchmark will always result in a dumping margin calculation that provides a full remedy for any domestic subsidies

[29] Id. at 1341 - 1342.
[30] See GPX II, 645 F. Supp. 2d at 1243.
[31] Id.

provided in the exporting country. Therefore, until the Department develops methodologies to address this problem and can demonstrate that no double remedy exists, these parties argue that the Department must terminate this CVD investigation.

Petitioners rebut by stating that the AD and CVD laws address different unfair trade practices and, therefore, their simultaneous application does not result in any double remedy for the same practice. Petitioners argue that AD duties, including those calculated using the NME methodology, are not intended to address subsidies. The purpose of the CVD law is to offset any unfair advantage that foreign governments confer on their producers or exporters. Petitioners contend that Congress did not intend CVDs to reflect the price effects of subsidies on subject merchandise. They state that this fact is evident from the manner in which CVDs are calculated in terms of benefit to the recipient and the Act's instruction that the effects of subsidies are irrelevant to the Department's analysis.[32] Petitioners explain that export subsidies constitute the only recognized instance in which one unfair trade process can lead to the imposition of both AD and CVDs. They add, however, that Congress provided Section 772(c)(1)(C) of the Act to address this situation by requiring an upward adjustment to export price or constructed export price in the amount of the export subsidies received. Petitioners contend that in all other instances the company or government practices underlying AD and CVDs are distinct, as are the remedies.

Petitioners also discuss that as a precondition to joining the WTO, the PRC agreed to be subject to both AD and CVDs. Specifically, they note that the PRC agreed, in the Accession Protocol, to be subject to (1) AD methodologies not based on a strict comparison with domestic prices or costs in the PRC, and (2) CVD methodologies with the possibility that prevailing terms and conditions in the PRC may not always be available as appropriate benchmarks.

Petitioners argue that the parties are mistaken when they argue that double remedy must be presumed and that the parties have failed to make any such showing in this investigation. Petitioners state that the parties' arguments are predicated on two assumptions: (1) the PRC domestic subsidies always result in lower export prices and (2) Chinese domestic subsidies never lower normal value. Petitioners respond that the record lacks any evidentiary support for either assumption, and neither is supported by economic theory. Petitioners state that domestic subsidies can be used for any number of purposes and thus do not necessarily have any impact on pricing. Petitioners also state that certain types of subsidies would lower dumping margins for companies located in an NME country, such as a subsidy used to improve production processes that would reduce a company's consumption factors of production per unit of production output. Petitioners explain that a subsidy used for such a purpose would reduce labor hours, electricity usage, and raw material usage. Further, Petitioners state that, to the extent that domestic subsidies do lower export prices, they do so for all markets, not just the United States. Therefore, a reduction in the world price for aluminum extrusions would lower profit ratios for surrogate producers in India. Petitioners add that lower prices in India would depress prices paid for inputs which would, in turn, lower surrogate values for inputs.

Department's Position: We disagree with the GOC, the Guang Ya Companies, and certain importers that the Department cannot apply the CVD law and the AD NME methodology concurrently because such action might result in the unlawful imposition of double remedies. First, the parties' reliance on the GPX decisions is misplaced because those decisions are not

[32] See Section 771(5)(C) and (E) of the Act; and Kiswok Industries Pvt. Ltd. v. United States, 28 CIT 774, 783 (2004) (holding that the secondary tax consequences of a subsidy are irrelevant).

final and conclusive as a final order has not been issued and all appellate rights have not been exhausted. Second, the parties have not cited to any statutory authority for not imposing CVDs so as to avoid the alleged double remedies or for making an adjustment to the CVD calculations to prevent an incidence of alleged double remedies. If any adjustment to avoid a double remedy is possible, it would only be in the context of the AD investigation. We note that this position is consistent with the Department's decisions in recent PRC CVD cases.[33]

Comment 4: Cutoff Date for Identifying Subsidies

The GOC and the Guang Ya Companies argue that the Department's use of December 11, 2001, as the cutoff date for measuring countervailable subsidies is incorrect. They assert that the cutoff date should be January 1, 2005, the beginning of the POI in CFS from the PRC. They state that the preliminary determination in CFS from the PRC was the first occasion on which the Department claimed that the CVD law was applicable to the PRC. Therefore, they argue that any date prior to January 1, 2005 would subject Chinese exports to the CVD law before the PRC had a reasonable expectation that the CVD law applied.

They further state that the Department's use of December 11, 2001, conflicts with its past practice of applying the CVD law only after finding that a country is no longer an NME. They note that when Sulfanilic Acid from Hungary was published, the Department's determination that Hungary was no longer an NME coincided with the determination that Hungary was subject to the CVD law, thereby setting a clear cutoff date for the application of the CVD law. See Sulfanilic Acid Decision Memorandum at Comment 1. The GOC adds that in the Preamble to the final CVD regulations, the Department states that where the Department "determines that a change in status from non-market to market is warranted, subsidies bestowed by that country after the change in status would become subject to the CVD law." See Preamble, 63 FR at 65360.

The GOC further states that the CIT has found that the Department's adoption of a December 11, 2001, cutoff date was arbitrary and unsupported by substantial evidence.[34] In GPX II, the GOC notes that the CIT suggested that no uniform cutoff date is appropriate in PRC CVD cases.[35] Therefore, the GOC argues that the cutoff date must be consistent with the Department's practice and policy of not countervailing subsidies until the country has graduated to market economy status. The GOC asserts that that Department graduated the PRC to market economy status when it made its decision to apply the CVD law to the PRC in CFS from the PRC, which had a POI beginning January 1, 2005.

Petitioners argue that the Department should apply its standard allocation methodology and identify and measure all subsidies bestowed on subject merchandise using the 12-year AUL. Petitioners assert that this approach is consistent with the CIT's decision in GPX II, where the court stated:

> Commerce's use of a cut-off date was unsupported by substantial evidence, and the court remands to Commerce to determine the existence of countervailable subsidies based on

[33] See, e.g., Drill Pipe from the PRC Decision Memorandum at Comment 4; Coated Graphic Paper from the PRC Decision Memorandum at Comment 3; Seamless Pipe from the PRC Decision Memorandum at Comment 3; and OCTG from the PRC Decision Memorandum at Comment 2.

[34] See GPX II, 645 F. Supp. 2d at 1246.

[35] Id.

> the specific facts for each subsidy, rather than by examining those subsidies found after an arbitrary cut-off date.[36]

In rebuttal, Evergreen argues that both the Department's cutoff date of December 11, 2001, and Petitioners' proposed cutoff date of 12 years prior to the investigation are unlawful. Evergreen states that using the December 11, 2001 cutoff dates ignores the fundamental requirement of due process and fairness. Evergreen asserts that the Department acknowledged those requirements in Sulfanilic Acid from Hungary, where the Department stated:

> In Georgetown Steel, the CAFC held that the CVD provisions of the Act do not apply to subsidies granted by NME countries. Such dramatic changes in well-settled expectations should apply only prospectively, and should not go back in time.[37]

Evergreen also states that the Georgetown Steel Memorandum, issued in connection with the preliminary determination in CFS from the PRC, is limited to analysis of economic and market conditions in "present-day" PRC, or, at most, for the POI in that case, which began on January 1, 2005. Evergreen contends that the memorandum contains no analysis of the PRC's market economy conditions for any prior period, nor is there any record evidence that supports the Department's determination to use a cutoff date of December 11, 2001. Evergreen further argues that a cutoff date prior to 2005 is incompatible with the Department's assessment that the PRC was far from completing its transition to market economy by 2005, as demonstrated in the Lined Paper NME Memorandum,[38] issued in Certain Lined Paper Products from the PRC.[39] As such, Evergreen asserts that, based on the analysis in the Lined Paper NME Memorandum, the Department should use a cutoff date no earlier than January 1, 2005.

Department's Position: Consistent with recent PRC CVD determinations,[40] we continue to find that it is appropriate and desirable to identify a uniform date from which the Department will identify and measure subsidies in the PRC for purposes of the CVD law, and have adopted December 11, 2001, the date on which the PRC became a member of the WTO, as that date.

We have selected December 11, 2001, because of the reforms in the PRC's economy in the years leading up to that country's WTO accession and the linkage between those reforms and the PRC's WTO membership.[41] The changes in the PRC's economy that were brought about by those reforms permit the Department to determine whether countervailable subsidies were being bestowed on Chinese producers. For example, the GOC eliminated price controls on most products; since the 1990s, the GOC has allowed the development of a private industrial sector; and in 1997, the GOC abolished the mandatory credit plan. Additionally, the PRC's Accession

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[36] See GPX II, 645 F. Supp. 2d at 1250.
[37] See Sulfanilic Acid from Hungary Decision Memorandum at 8, 14.
[38] See Memorandum from Shana Lee-Alaia, Lawrence Norton, and Anthony Hill to David M. Spooner, Assistant Secretary, Antidumping Duty Investigation of Certain Lined Paper Products from the People's Republic of China – China's Status as a Non-Market Economy, August 30, 2006 (Lined Paper from the PRC NME Memorandum).
[39] See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079 (September 8, 2006).
[40] See, e.g., Drill Pipe from the PRC Decision Memorandum at Comment 4; Coated Paper from the PRC Decision Memorandum at Comment 4; Seamless Pipe from the PRC Decision Memorandum at Comment 4; and OCTG from the PRC Decision Memorandum at Comment 3.
[41] See Report of the Working Party on the Accession of China, WT/ACC/CHN/49 (October 1, 2001).

Protocol contemplates application of the CVD law. While the Accession Protocol, in itself, would not preclude application of the CVD law prior to the date of accession, the Protocol's language in Article 15(b) regarding benchmarks for measuring subsidies and the PRC's assumption of obligations with respect to subsidies provide support for the notion that the PRC economy had reached the stage where subsidies and disciplines on subsidies (e.g., CVDs) were meaningful.

We disagree that adoption of the December 11, 2001, date is unfair because parties did not have adequate notice that the CVD law would be applied to the PRC prior to January 1, 2005 (the start of the POI in the investigation of CFS from the PRC). Initiation of CVD investigations against imports from the PRC and possible imposition of duties was not a settled matter even before the December 11, 2001, date. For example, in 1992, the Department initiated a CVD investigation on lug nuts from the PRC. See Initiation of Countervailing Duty Investigation: Chrome-Plated Lug Nuts and Wheel Locks From the People's Republic of China, 57 FR 877 (January 9, 1992). In 2000, Congress passed PNTR Legislation (as discussed in Comment 1) which authorized funding for the Department to monitor "compliance by the People's Republic of China with its commitments under the WTO, assisting United States negotiators with the ongoing negotiations in the WTO, and defending United States antidumping and countervailing duty measures with respect to products of the People's Republic of China."[42] Thus, the GOC and importers, such as Evergreen, were on notice that CVDs were possible well before January 1, 2005.

We further disagree that Sulfanilic Acid from Hungary is controlling in this case. The Department has revisited its original decision not to apply the CVD law to NMEs and has determined that it will reexamine the economic and reform situation of the NME on a case-by-case basis to determine whether the Department can identify subsidies in that country.

Additionally, with regard to Petitioners' argument that subsidies granted prior to the cut-off date should be included in this investigation, we first do not find Petitioners' reliance on GPX II to be persuasive because the decision is not final and conclusive. We also reiterate that economic changes that occurred leading up to and at the time of WTO accession allow us to identify or measure countervailable subsidies bestowed upon Chinese producers. In this regard, the Department is not providing the PRC with preferential treatment. The Department is simply acknowledging its ability to identify and measure subsidies as of December 11, 2001, based on economic conditions in the PRC. Therefore, the Department is fully within its authority in not applying the CVD law to the PRC prior to December 11, 2001.[43]

As such, for the above reasons and consistent with CWP from the PRC, as well as other recent PRC CVD cases, the Department finds that it can determine whether the GOC has bestowed countervailable subsidies on Chinese producers from the date of the PRC's WTO accession.[44]

Comment 5: Whether the Guang Ya Companies Inaccurately Reported Their Affiliates Thereby Warranting the Application of AFA

Petitioners contend that the Guang Ya Companies failed to provide necessary information in their initial questionnaire response concerning their affiliated producers and exporters of

[42] See 22 U.S.C. § 6943(a)(1) (emphasis added).
[43] See Georgetown Steel, 801 F.2d at 1318.
[44] See, e.g., CWP from the PRC Decision Memorandum at Comment 2.

subject merchandise. Petitioners assert that the Guang Ya Companies' failure to report affiliated entities is problematic, particularly because they refused to provide a questionnaire response from a certain affiliated company that, according to Petitioners, specialized in the fabrication of aluminum parts.[45] See Guang Ya Companies Verification Report at 4. Petitioners argue that the record contains evidence including a publicly available internet profile that confirms their assertions. See Petitioners' August 18, 2010, submission at Exhibit 4.

Petitioners argue that this entity should have provided the Department with a full questionnaire response, allowing the possibility for follow-up questions through supplemental questionnaires. Petitioners conclude that given these facts, the Department should reject the incomplete voluntary questionnaire response of the Guang Ya Companies and apply total AFA. Petitioners cite to other determinations in which the Department applied AFA where respondent companies provided incomplete information about affiliates, such as Coated Paper from the PRC Decision Memorandum at Comment 31 and Seamless Pipe from the PRC Decision Memorandum at Comment 22.

The Guang Ya Companies argue that the Department should not collapse the Guang Ya Companies with various other companies due to the fact that their shareholders have family members that hold shares in other aluminum extrusion producers. The Guang Ya Companies claim that the record of this case demonstrates that there is no common ownership among any of the sibling-related companies. Neither the majority shareholder of the Guang Ya Companies, nor his/her spouse or child has any ownership interest in any of the other companies in which his siblings are alleged to have an interest, nor do the siblings have any ownership interest in any of the Guang Ya Companies. See the Guang Ya Companies' August 9, 2010, First Supplemental questionnaire response at 1-6; see also Guang Ya Companies Verification Report at 4-5.

Second, according to the Guang Ya Companies, the record demonstrates that there are no managerial employees or board members of any of the sibling-related companies working as managers or sitting on the board of directors of another of the sibling-related companies. Furthermore, the Guang Ya Companies assert that there were no intertwined operations among the sibling-related companies, no sharing of sales information, no involvement in production and pricing decisions, and no sharing of facilities or employees among the sibling-related companies. The Guang Ya Companies argue that there is no record of any significant transactions among the sibling-related companies. See Guang Ya Companies Verification Report at 4-5.

The Guang Ya Companies argue that the record and the Department's verification findings demonstrate that the companies are operated completely independently and that the Department should continue to find that the sibling-related firms should not be collapsed into a single entity for purposes of the Department's analysis. Accordingly, the Guang Ya Companies argue that the existence of the sibling relationships among the shareholders of other aluminum extrusion producers or exporters should not impinge on the Guang Ya Companies' participation in the Department's investigation or its analysis of the exporters in the Guang Ya Companies.

The Guang Ya Companies disagree with Petitioners' assertion that the Department should use "total AFA" because of Guang Ya's previous relationship with a smaller former affiliate. The Guang Ya Companies state that, in 2008, the Guang Ya Companies formed a company to perform downstream value-added processing using Guang Ya's products. The business did not go well because the new company could not provide the needed quality at an acceptable price. See The Guang Ya Companies October 28, 2010, Fifth Supplemental Response at 3. Late in 2008, after just a few months, the Guang Ya Companies ceased doing

[45] The name of the affiliated company is proprietary.

business with it and decided to sell. In November 2009, they sold to two individuals who are unrelated to any Guang Ya Companies group owner or manager. See the Guang Ya Companies' October 15, 2010, questionnaire response at 6-7 and Exhibit. 96. Thus, according to the Guang Ya Companies, this company has not had any active role in the Guang Ya Companies' business since 2008, and was completely removed from the Guang Ya Companies by November 2009. See the Guang Ya Companies' October 28, 2010 Supplemental questionnaire response at 3-4.

The Guang Ya Companies dispute Petitioners' assertion that they "refused to provide a questionnaire response" from the company in question. The Guang Ya Companies state that at the time of the filing of the petition, and at all times since, the Guang Ya Companies have had no relationship with the company: no common ownership, no operations or commercial transactions, and no familial ties.

Additionally, the Guang Ya Companies argue that they have formally requested the company to respond to the Department's CVD questionnaire, and provided a translated copy of the questionnaire. They offered to send their own lawyers to assist it in responding, at the Guang Ya Companies' expense. The company refused to provide any cooperation. See the Guang Ya Companies' October 28, 2010 Supplemental questionnaire response at Exhibit 101. Therefore the Guang Ya Companies believe that Petitioners' claim that the Guang Ya Companies refused to cooperate or otherwise impeded the investigation by refusing to provide a questionnaire response is false.

The Guang Ya Companies also dispute Petitioners' reliance on a website that, according to the Guang Ya Companies, has long been out of date and is no longer being updated. Furthermore, the Guang Ya Companies have requested that the company no longer represent itself publicly as affiliated with the Guang Ya Companies. See the Guang Ya Companies' October 15, 2010, questionnaire response at 7 and Exhibit 100.

Thus, the Guang Ya Companies contend the refusal of its former affiliate to cooperate was entirely outside their control. Since the Guang Ya Companies and the company in question are no longer affiliated, and have not been affiliated at any time since before the filing of the petition, the Guang Ya Companies argue that the Department could not possibly apply any adverse inferences, much less total AFA, because of the former affiliate's non-participation. The Guang Ya Companies assert that this is true even if it is recognized as an interested party to the investigation who had an independent obligation to cooperation. The Guang Ya Companies cite to the CIT's decision in SKF USA Inc. v. United States, 675 F. Supp. 2d 1264, 1276 (CIT 2009) (SKF), in which the CIT held that:

> Allowing an interested party's failure to cooperate to affect adversely the dumping margin of another interested party who is a party to the proceeding, about whom Commerce did not make a finding of non-cooperation, violates the Department's obligation to treat fairly every participant in an administrative proceeding. As is any government agency, Commerce is under a duty to accord fairness to the parties that appear before it. Although 19 U.S.C. § 1677e(b) does not expressly state that Commerce may not adversely affect a party to a proceeding based upon another interested party's failure to cooperate, a construction permitting such an absurd result makes a mockery of any notion of fairness.

Thus the Guang Ya Companies argue there is no justification for Petitioners' suggestion that the absence of a former affiliated company from this investigation requires that the Department

should "reject" the Guang Ya Companies' entire response, and "apply total AFA."

Department's Position: As explained above in the "Mutual Affiliation and Cross-Ownership Between Guang Ya Companies, Zhongya Companies, and Other Aluminum Extrusions Producers" section, we determine that cross-ownership, as defined under 19 CFR 351.525(b)(6)(vi), does not exist amongst the Guang Ya Companies, the Zhongya Companies, or Asia Aluminum.

We also disagree with Petitioners' argument that the Department should apply AFA to the Guang Ya Companies due to their failure to provide a questionnaire response from a certain affiliate that specialized in the fabrication of aluminum parts. As indicated in the initial questionnaire, the Department requires respondents to provide complete questionnaire responses for affiliates where cross-ownership exists and:

1. the affiliate produces the subject merchandise; or

2. the affiliate is a holding company or a parent company (with its own operations) of your company; or

3. the affiliate supplies an input product to you that is primarily dedicated to the production of the subject merchandise.

See the Department's May 18, 2010, Initial Questionnaire at III-1 and III-2. While there was ownership of the affiliate during the POI, the Department confirmed at verification that the affiliate in question did not meet any of the additional three criteria specified above that would have required the affiliate to submit a response to the initial questionnaire. See Guang Ya Companies Verification Report at 4. In particular, the Department confirmed that the affiliate in question did not produce subject merchandise or supply an input to the Guang Ya Companies that was dedicated to the production of subject merchandise during the POI. Id. at 4. Furthermore, we find that the Guang Ya Companies provided complete information regarding cross-ownership and corporate structure of the Guang Ya Companies and the affiliated company, and therefore cooperated fully in this regard. Therefore, we find that the application of AFA to the Guang Ya Companies is not warranted. Further, we find that this case is distinguishable from those cited by Petitioners. For instance, in Seamless Pipe from the PRC the respondent did not provide information concerning the cross-owned holding companies, failed to provide necessary information concerning the relationship between the respondents and holding companies by the applicable deadline, and the Department was unable to verify this information. See Seamless Pipe from the PRC Decision Memorandum at Comment 22.

Comment 6: Whether the Zhongya Companies Failed to Report Their Affiliates Thereby Warranting the Application of AFA

Petitioners argue that, despite the Department's standard instructions in the original questionnaire to disclose all affiliated companies, the Zhongya Companies have failed to provide complete information about affiliated companies, both manufacturers of aluminum extrusion and cross-owned input suppliers. They offer as an example the absence of a questionnaire response from Foshan Nanhai Dali Zhongya Aluminum Co., Ltd. (Foshan Nanhai), although the Zhongya Companies eventually identified this company as the owner's, Mr. Kwong, previous factory.

They argue that Foshan Nanhai produced subject merchandise during the allocation period and should be considered cross-owned with the Zhongya Companies. They also argue that Foshan Nanhai produced all of the subject merchandise that the Zhongya Companies exported in 2007 and that assets moved between the two companies. They argue that the Zhongya Companies' website even refers to its previous factory. Petitioners further argue that the owners do not treat the firms as separate entities, noting that a GOC official attested at verification that New Zhongya moved its productive assets from its former location in the Nanhai District of Foshan.

Petitioners contend that, in the absence of complete information from this entity, the Department cannot calculate an accurate subsidy rate for the Zhongya Companies. Petitioners argue that, in other determinations, the Department has applied AFA when a respondent has not provided information on affiliates, including affiliates that hold ownership in the respondent companies, since December 2001. See, e.g., Seamless Pipe from the PRC Decision Memorandum at Comment 22. Petitioners argue that the Department is confronted with a similar set of facts here and should apply AFA.

The Zhongya Companies argue that Petitioners fail to demonstrate that Foshan Nanhai should have provided a response to the Department's questionnaire per the standard for cross-owned companies. With regard to the statement made by a government official at the verification of the GOC's responses that "New Zhongya moved its productive assets from its former location in the Nanhai District of Foshan," they argue that New Zhongya purchased water supply systems and air conditioners from Foshan Nanhai, but did not purchase production equipment. See GOC Verification Report at 15. They contend that the verification report does not indicate any follow-up with regard to the government official's statement, nor was there a reason for follow-up, because this statement does not indicate that production equipment was purchased from Foshan Nanhai.

Department's Position: We disagree with Petitioners that the Department should apply facts available and adverse inferences with regard to the Zhongya Companies due to a failure to provide questionnaires responses from affiliated companies. We determine that there is no evidence on the record of this investigation that warrants a determination that any of the Zhongya Companies are cross-owned with certain other companies or with Foshan Nanhai specifically. We therefore determine the Zhongya Companies did not neglect to provide required questionnaire responses for any other companies and that the use of facts available or adverse inferences with regard to Petitioners' argument to the contrary is not warranted. As indicated above, the initial questionnaire instructs respondents to provide complete questionnaire responses for affiliates only where cross-ownership exists and where one of three certain conditions apply. See the Department's May 18, 2010, Initial Questionnaire at III-1 and III-2.

The Zhongya Companies reported that New Zhongya has three cross-owned companies, Zhongya HK, Karlton, and Alumizonia Inc., but did not provide any additional responses to our May 18, 2010, Initial Questionnaire regarding these firms. See the Zhongya Companies July 9, 2010, initial questionnaire response at III-1 through III-2 and Exhibit 1. They reported that each is incorporated and registered outside of the PRC and therefore, is not eligible for any subsidies from the PRC. Id. We accept this explanation, because, consistent with practice, the Department will not attribute subsidies to a company that is incorporated and registered outside the PRC, and so could not receive subsidies from the PRC. See, e.g., CWASPP from the PRC Decision Memorandum at "Cross-Ownership and Subsidy Attribution" section.

At verification, we reviewed the relationships between the Zhongya Companies and other companies. See Zhongya Companies Verification Report at 2 and 3. As explained above in the "Mutual Affiliation and Cross-Ownership Between Guang Ya Companies, Zhongya Companies, and Other Aluminum Extrusions Producers" section, we determine that cross-ownership, as defined under 19 CFR 351.525(b)(6)(vi), does not exist amongst the Guang Ya Companies, Zhongya Companies, or Asia Aluminum.

We also determine that the Zhongya Companies are not cross-owned with other companies. First, the Zhongya Companies did not identify Da Yang Aluminum Co. Ltd. and Xinyu Aluminum & Stainless Steel Product Co., Ltd. as cross-owned companies and did not provide questionnaire responses for these two companies. However, in response to the Department's request, the Zhongya Companies reported the names of owners of these two companies, identifying them as brothers and sisters of a shareholder of Zhongya HK. See the Zhongya Companies' July 9, 2010, initial questionnaire response at III-1 and the Zhongya Companies' August 6, 2010, supplemental questionnaire response at 3-5. At verification, we reviewed the relationships between the owners and directors the Zhongya Companies and several other companies, including these two companies. See Zhongya Companies Verification Report at 3. As discussed above, while these companies are affiliated under Section 771(33) of the Act, we do not find that the standard for cross-ownership exists under 19 CFR 351.525(b)(6)(vi). Based upon the results of verification and the information on the record, we determine that there nothing on the record to warrant a determination of cross-ownership between either of these two companies and any of the Zhongya Companies.

In addition, the Zhongya Companies did not identify Foshan Nanhai as a cross-owned company. In response to a request by the Department, the Zhongya Companies provided ownership information for this company. This information indicates that the company is not owned by any of the owners of the Zhongya Companies. See the Zhongya Companies' August 6, 2010, supplemental questionnaire response at 8. In addition, in response to questions by the Department, the Zhongya Companies described the business dealings between the Zhongya Companies and Foshan Nanhai. Id. 6, 8 – 9; see also the Zhongya Companies' October 13, 2010, supplemental questionnaire response at 6 – 7. Upon review of this information (which is business proprietary), we did not find any evidence that a transfer of subsidies occurred between the companies or any evidence that the Zhongya Companies had the ability to direct the assets of Foshan Nanhai or vice versa. Id.; see also Zhongya Companies Verification Report at 3 in which no reference is made to Foshan Nanhai. Based on the information reported by the Zhongya Companies, we determine that there is no information on the record to warrant a determination of "cross-ownership" between Foshan Nanhai and any of the Zhongya Companies.

We disagree that Seamless Pipe from the PRC provides a relevant precedent for applying AFA to the Zhongya Companies. In Seamless Pipe from the PRC, the Department applied AFA to a respondent because it refused to provide a questionnaire response for a cross-owned company that was also its parent company. Seamless Pipe from the PRC Decision Memorandum at Comment 22. Thus, in Seamless Pipe from the PRC, the Department was dealing with a scenario in which the respondent and its parent company met the conditions requiring the submission of a response to the initial questionnaire. As stated above, we find that the facts concerning the Zhongya Companies and Foshan Nanhai did not meet such conditions.

Comment 7: Whether the AFA Calculation is Accurate and Reasonable

Certain importers argue that the AFA rate calculation from the Preliminary Determination was improperly calculated. They argue that the Department did not follow its practice of selecting, as AFA, the highest calculated rate in any segment of the proceeding because there are subsidy rates attributed to the AFA rate for programs that neither of the voluntary respondents used. They also argue that the rate selected as AFA is much higher than the rate established for either of the two voluntary respondents. Certain importers further argue that the Department has improperly found a benefit for programs which could not co-exist for the same producer or exporter. As an example, they point to the VAT Rebates on FIEs' Purchases of Chinese-Made Equipment and Income Tax Credits for Domestically-Owned Companies Purchasing Chinese-Made Equipment programs. The importers argue the inclusion of both of these programs in the AFA/all others rate constitutes a ministerial error because the two programs could never coexist at the same time for the same entity. They contend an entity is either a domestically-owned entity or an FIE, not both. In addition, the importers argue that the Department erred in the Preliminary Determination when it countervailed multiple grant programs in multiple geographic locations, notwithstanding the fact that there is no evidence of any kind that the non-cooperative respondents that are located in the regions in which the grants are disbursed.

Lastly, certain importers argue that the AFA rate from the Preliminary Determination is unreasonably distortive, detached from commercial reality, and cannot be corroborated. Certain importers contend that, if the Department uses the mandatory respondents' AFA rate in the calculation of the all others rate, it must calculate a reasonably accurate AFA rate. The importers argue that in Gallant Ocean the CAFC determined that an AFA rate must be a "reasonable estimate of respondent's actual rate, albeit with some built-in increase intended as a deterrent to non-compliance" and that the Department "may not select unreasonably high rates having no relationship to the respondent's actual dumping margin." See Gallant Ocean (Thailand) Co., Ltd. v. United States, 602 F.3d 1319, 1321 (CAFC 2010) (Gallant Ocean). Certain importers argue that, in that case, the CAFC found that a rate which was over five times the highest rate was excessive, and that the AFA rate/all others rate in this case is 13 times that of the highest calculated rate.

Petitioners contest the importers' claims that the Department erred in the Preliminary Determination when it included both the VAT Rebates on FIEs' Purchases of Chinese-Made Equipment and Income Tax Credits for Domestically-Owned Companies Purchasing Chinese-Made Equipment programs in the AFA/all others rate calculation. Petitioners note that FIEs need only 25 percent foreign ownership and, thus, a wholly-owned PRC-based company can own a controlling share of an FIE subsidiary and still be eligible for programs targeting both PRC-based companies and FIEs. Petitioners also challenge the importers' claim that the Department improperly assumed that firms in the PRC could have operations in multiple jurisdictions and, therefore, benefit from subsidy programs available in more than one location. They argue that, absent verified information that a company was not eligible for a program the Department should continue to include all of the subsidy programs alleged in the petition in its AFA/all other rate calculation.

Petitioners argue that the Department must update the AFA rate with regard to the Policy Loans for Aluminum Extrusion Producers program. They explain that in the Preliminary Determination, the Department assigned as AFA a net subsidy rate of 8.31 percent ad valorem

for the policy lending program (calculated in LWTP from the PRC) which the Department stated was the highest non-de minimis subsidy rate calculated for any loan program in a prior CVD proceeding involving the PRC. See Preliminary Determination, 75 FR at 54306. However, Petitioners note that the Department has since calculated a net subsidy rate for policy lending that exceeds the 8.31 percent ad valorem AFA rate assigned in the Preliminary Determination. See Coated Graphic Paper from the PRC Order, in which the Department calculated a net subsidy rate of 10.54 percent ad valorem for a policy lending program.

Petitioners further argue that the Department used the 8.31 percent ad valorem subsidy rate for policy loans from LWTP from the PRC as a plug for certain grant programs for which it lacked a calculated rate from a matching grant program. They argue that for such grant programs, the Department should instead use the 10.54 percent ad valorem net subsidy rate calculated for policy loans in Coated Graphic Paper from the PRC Order.

Petitioners also take issue with the AFA rate assigned to the provision of primary aluminum for LTAR program. In the Preliminary Determination, the Department assigned an AFA rate of 2.55 percent ad valorem. See 75 FR at 54306, referencing OCTG from the PRC Decision Memorandum at "Subsidies Provided in the TBNA and Tianjin Economic and Technical Development Area." Petitioners argue that for the provision of primary aluminum for LTAR program, the Department should have instead assigned as AFA a net subsidy rate of 44.91 percent ad valorem calculated for the provision of Hot-Rolled Steel for LTAR program in Amended CWP from the PRC. See Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order, 73 FR 42545, 42546 (July 22, 2008) (CWP from the PRC Order). Petitioners note that the Department applied the 44.91 percent ad valorem rate from CWP from the PRC Order when assigning an AFA rate for the provision of zinc for LTAR program in Wire Decking from the PRC. See Wire Decking from the PRC Decision Memorandum at "Use of Facts Otherwise Available and Adverse Inferences." Petitioners add that the 44.91 percent ad valorem rate is appropriate for use as an AFA plug for the provision of primary aluminum for LTAR program because it represents the highest calculated subsidy rate for any program otherwise listed, which could have been used by the non-cooperative companies. See Preliminary Determination, 75 FR at 53406.

Regarding the purchase of aluminum extrusions for MTAR program, Petitioners argue that the Department erred when it assigned to the program an AFA rate of 8.31 percent ad valorem from LWTP from the PRC. They argue the Department should have instead assigned an AFA rate of 44.91 percent ad valorem from CWP from the PRC Order because it represents the highest calculated subsidy rate for any program otherwise listed, which could have been used by the non-cooperative companies. See Preliminary Determination, 75 FR at 53406. In the event the Department forgoes the use of the 44.91 percent rate, Petitioners argue the Department should assign as AFA an ad valorem rate of 10.54 percent from Coated Graphic Paper from the PRC Order for the program.

Certain importers rebut Petitioners' proposed revisions concerning the AFA rates established for the provision of primary aluminum for LTAR and sale of aluminum extrusions for MTAR programs. Certain importers argue that the 44.91 percent rate from CWP from the PRC Order stems from a provision of hot-rolled steel for LTAR program. Certain importers argue that, in the Preliminary Determination, for programs for which there was no matching program the Department sought "the highest calculated subsidy rate for any program otherwise listed that could conceivably be used by the non-cooperating respondents." See 75 FR at 54305.

Certain importers argue that the Department correctly refrained from using the 44.91 percent rate from CWP from the PRC Order because a provision of hot-rolled steel for LTAR program is not a program that aluminum extrusion producers could conceivably use. They further argue that the 44.91 percent rate, calculated in a hot-rolled steel for LTAR program, is not appropriate for as an AFA rate for the MTAR program because it is not a similar program and that producers of aluminum extrusions do not produce hot-rolled steel.

Department's Position: We disagree with the importers that the Department incorrectly calculated the AFA rate by using the highest calculated rate from other PRC investigations which the voluntary respondents did not use. As discussed in the "Application of Adverse Inferences: Non-Cooperative Companies" section above, it is the Department's practice to select, as AFA, the highest calculated rate for the same or similar program in other CVD proceedings. See LWS from the PRC Decision Memorandum at "Selection of the Adverse Facts Available." Moreover, the Department's regulations provide that the Department "will exclude weighted-average dumping margins or countervailable subsidy rates calculated for voluntary respondents." See 19 CFR 351.204(d)(3). Therefore, we disagree with the arguments of certain importers that it was improper to include in the calculation of the AFA/all others rate rates for programs which were not used by the voluntary respondents. In addition, we disagree with the argument that the Department erred when it included both the VAT Rebates on FIEs' Purchases of Chinese-Made Equipment and Income Tax Credits for Domestically-Owned Companies Purchasing Chinese-Made Equipment programs in the AFA rate. Petitioners are correct in noting that FIEs need only 25 percent foreign ownership and, thus, a wholly-owned PRC-based company can own a controlling share of an FIE subsidiary and still be eligible for programs targeting both PRC-based companies and FIEs.

We further disagree with the arguments of certain importers that the Department erred when it included multiple grant programs administered in several geographic locations in the AFA established for the non-cooperative mandatory respondents. As explained in the "Application of Adverse Inferences: Non-Cooperative Companies" section, where the GOC can demonstrate through complete, verifiable, positive evidence that mandatory respondents (including all their facilities and cross-owned affiliates) are not located in particular provinces whose subsidies are being investigated, the Department will not include those provincial programs in determining the countervailable subsidy rate for those companies. See, e.g., Racks from the PRC Decision Memorandum at "Use of Facts Otherwise Available and Adverse Facts Available." We reiterate that in this investigation, the GOC has not provided any such information. Therefore, we are making the adverse inference that the three non-cooperative companies had facilities and/or cross-owned affiliates that received subsidies under all of the sub-national programs on which the Department initiated.

We also disagree that the AFA rate applied in the Preliminary Determination is unreasonably distortive, punitive, detached from commercial reality, and cannot be corroborated. None of the mandatory respondents cooperated and acted to the best of their ability in the instant investigation and, thus, the Department was precluded from obtaining the necessary information to determine those respondents' actual net subsidy rates for the POI. When faced with a situation requiring total AFA, the Department determines the net subsidy rate on a program-by-program basis and then calculates the total net subsidy rate by summing each of the program rates. See, e.g., Wire Decking from the PRC Decision Memorandum at "Application of Adverse Inferences Non-Cooperative Companies." The Department determined the net subsidy rate for

each program using the AFA methodology described above. See "Application of Adverse Inferences: Non-Cooperative Companies" section.

The Department based its AFA methodology in the instant investigation on net subsidy rates for identical or similar programs that it calculated in CVD proceedings involving the PRC and these rates have been corroborated. The rates are found to be reliable because they are based upon verified information for the same or similar programs. The rates are relevant because the Department must consider information reasonably at its disposal; because the mandatory respondents chose not to participate, the Department reviewed information concerning PRC subsidy programs in other cases to find actual calculated CVD rates for a PRC program which the mandatory respondents could have actually used. Further, as indicated above, the Department has limited its selection of AFA rates to those programs that could conceivably be used by the non-cooperating companies subject to this investigation. See "Application of Adverse Inferences: Non-Cooperative Companies" section above; see also LWTP from the PRC Decision Memorandum at "Selection of the Adverse Facts Available Rate." These calculated rates reflect the actual subsidy practices of the PRC's central, provincial, and municipal governments. Moreover, the Federal Circuit has found that in cases where the respondents have failed to cooperate to the best of their ability. . . "Commerce need not select as the AFA rate, a rate that represents the typical dumping margin for the industry in question." KYD, Inc. v. United States, 607 F.3d 760 (CAFC 2010) (KYD). Furthermore, in KYD, the Federal Circuit upheld the Department's practice of assigning uncooperative respondents the highest rate previously calculated by the Department. See KYD, 607 F.3d at 766, citing to F.lli De Cecco Di Filippo Fara S. Martino S.p.A. v. United States, 216 F.3d 1027, 1029, 1033-34 (CAFC 2000) (De Cecco) (an uncooperative party may be assigned the "highest verified margin" of the cooperating companies, even though it was "highly likely that the real dumping margin for (that company) would be well under" the AFA rate). Therefore, we find that the AFA methodology applied has been corroborated.

We disagree that the Department exceeded its discretionary limits and applied a total net subsidy rate to non-cooperative mandatory respondents that was unreasonable and unrelated to commercial reality. The mandatory respondents refused to fully participate in the review. For this reason, we lack information concerning the extent to which those respondents used the alleged subsidy programs. Further, the GOC did not provide any information that could definitively prove the non-use of the alleged subsidy programs by the mandatory respondents. Thus, it is due to the respondents' refusal to fully cooperate in the review that the Department has had to resort to the use of AFA. The Department is in the position of having to determine subsidy rates for numerous subsidy programs based on a substantial lack of record evidence, which is the direct result of the decision of the mandatory respondents not to cooperate to the best of their ability. The application of AFA could have been avoided if the mandatory respondents had chosen to fully cooperate in the investigation.

Despite missing evidence, the Department finds that it was able to calculate a total net subsidy rate which does have a relationship to the GOC's industrial policies vis-à-vis the metals industry and thus reflects commercial reality. As explained in the Preliminary Determination, when assigning a net subsidy to each of the programs at issue, we followed the Department's approach in recent CVD investigations. See 75 FR at 54305; see also LWS from the PRC Decision Memorandum at "Selection of Adverse Facts Available" and "Application of Adverse Inferences: Non-Cooperative Companies" sections. Under this approach, the Department computes the total AFA rate for non-cooperating companies generally using program-specific

rates calculated for the cooperating respondents in the instant investigation or calculated in prior PRC CVD cases. Specifically, for programs other than those involving income tax exemptions and reductions, the Department applies the highest calculated rate for the identical program in the investigation if a responding company used the identical program, and the rate is not zero. If there is no identical program match within the investigation, the Department uses the highest non-de minimis rate calculated for the same or similar program (based on treatment of the benefit) in another PRC CVD proceeding. Absent an above-de minimis subsidy rate calculated for the same or similar program, the Department applies the highest calculated subsidy rate for any program otherwise listed that could conceivably be used by the non-cooperating companies. See Preliminary Determination, 75 FR at 54305. Thus, the Department utilized calculated rates for the same or similar programs from prior CVD proceedings involving the PRC as the basis for its AFA calculation and thereby derived AFA rates that have a direct relationship to the GOC's subsidy practices and the experience of steel and metals industry in the PRC.

We further disagree with the claim that the AFA rate applied in the Preliminary Determination is unreasonable because it did not reflect the mandatory respondents' actual subsidy rate. On this point, we reiterate that the decision of the mandatory respondents not to fully cooperate to the best of their ability in the investigation precluded the Department from obtaining the necessary information that would have permitted the Department to calculate a net subsidy rate based on reported data supplied by the mandatory respondents. The CIT has upheld AFA margins in AD proceedings even though only a very small percentage of the respondent's total sales were above the selected rate. See KYD, 607 F.3d at 766, citing Shanghai Taoen, 360 F. Supp. 2d at 1345-48 (upholding a 223.01 percent AFA dumping margin, the "highest rate determined in the current or any previous segment of the proceeding," because "the rate reflects recent commercial activity" by a different exporter of the same goods from the same country, and because there was no prior dumping margin for that company on which Commerce could rely).

In keeping with the Department's underlying determinations in KYD, De Cecco, and Shanghai Taoen, in this case the Department assigned an AFA rate to an uncooperative respondent that consisted of the highest net subsidy rates the Department had previously calculated for each of the subsidy programs at issue.[46] In instances in which the Department had not previously calculated a net subsidy rate for the identical program at issue, the Department used the highest net subsidy rate calculated for a similar program type. Thus, the Department's AFA hierarchy is in accordance with the principal discussed by the Federal Circuit in KYD, namely that of basing the AFA rate on the highest net subsidy rates previously calculated by the Department.

In addition, we disagree with the notion that total AFA rate assigned in the Preliminary Determination is punitive. In KYD the Federal Circuit held that the Department is ". . . permitted to use a 'common sense inference that the highest prior margin is the most probative evidence of current margins . . ." See KYD, 607 F.3d at767, citing to Rhone Poulenc, Inc. v. United States, 899 F.2d 1185, 1190 (Fed. Cir. 1990). In addition, in KYD the Federal Circuit further upheld the Department's practice of presuming that ". . . the highest prior margin reflects the current margins . . ." in cases in which the respondent fails to cooperate to the best of its ability. See KYD, 607 F.3d at 767, quoting Ta Chen Stainless Steel Pipe, Inc. v. United States, 298 F.3d 1330, 1339 (Fed. Cir. 2002). In the instant investigation, the Department followed the

[46] We use the term "calculated" in this context to mean CVD rates derived from information supplied by fully cooperating respondents.

practice upheld by the Court in KYD, in that the Department derived AFA rates for subsidy programs using the highest previously calculated net subsidy rate for the identical or similar program. Thus, we find that the resulting total net subsidy rate is not punitive.

We agree with Petitioners that the AFA rate with regard to the loan programs (i.e., "Policy Loans for Aluminum Extrusion Producers" and "Preferential Loans as Part of the Northeast Revitalization Program") for this final determination should be the net subsidy rate of 10.54 percent, which is the highest non-de minimis subsidy rate calculated for a loan program (i.e., "Preferential Lending to the Coated Paper Industry") in a CVD proceeding involving the PRC. See Coated Graphic Paper from the PRC Order, 75 FR at 70202. Also, because the net subsidy rate of 10.54 percent is the highest calculated subsidy rate for any program otherwise listed, which could have been used by the non-cooperative companies, we have applied the 10.54 percent as the AFA rate for the grant programs and "Government Purchase of Aluminum Extrusions for MTAR" program, in this final determination.

We disagree with Petitioners that the Department should use the net subsidy rate of 44.91 percent, which was calculated for the provision of hot-rolled steel for LTAR in CWP from the PRC Order, for the provision of primary aluminum for LTAR program. We determine that the 44.91 percent rate is not an appropriate AFA plug for any program being examined in this investigation, because the non-cooperating respondents cannot conceivably use hot-rolled steel in their production of subject merchandise. Therefore, for the provision of primary aluminum for LTAR program, we continue to apply the AFA rate of 2.55 percent, which was calculated for a provision of a good for LTAR program under "Subsidies Provided in the TBNA and the Tianjin Economic and Technological Development Area" in OCTG from the PRC. See OCTG from the PRC Decision Memorandum at "Subsidies Provided in the TBNA and the Tianjin Economic and Technological Development Area."

Comment 8: Whether to Include Newly Alleged and Self-Reported Programs in the AFA Calculation

Petitioners argue that the Department should include newly alleged subsidy programs and programs self-reported by the voluntary respondents in the total AFA rate assigned to the non-cooperative mandatory respondents.[47] Petitioners argue that section 775(1) of the Act instructs the Department to "include the . . . subsidy program" in the proceeding if the Department finds the program to be countervailable. They add that this is also reflected in the Department's regulations. See 19 CFR 351.311(b). Petitioners argue that there have been no time constraints in the instant investigation that would prevent the Department from modifying the AFA rate pursuant to their proposal.

Petitioners argue that including the additional programs in the AFA rate for the final determination conforms with the Department's precedent. Petitioners cite to Retail Bags from Vietnam in which Petitioners claim that the Department included subsidy programs discovered during the course of the investigation in the total AFA rate calculated for a non-cooperative mandatory respondent, save those programs that were found to terminated or not applicable to producers of subject merchandise. See, e.g., Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination, 75 FR 16428 (April 1, 2010) (Retail Bags from Vietnam), and accompanying Issues and Decision

[47] Petitioners further argue that in the final determination the all others rate should also reflect the inclusion of the newly alleged and self-reported subsidy programs.

Memorandum (Retail Bags from Vietnam Decision Memorandum) at "Application of Facts Otherwise Available and AFA for API and Fotai."

Petitioners acknowledge that, as it relates to provincial or local programs alleged after respondent selection, the Department has previously only assigned adverse rates to those mandatory respondents that Petitioners alleged were located in the respective province or locality. See Racks from the PRC Decision Memorandum at "Use of Facts Otherwise Available and Adverse Facts Available." Petitioners argue that the standard set forth in Racks from the PRC places an unfair burden on the petitioners to make a city-by-city allegation for multiple programs. They argue that the Department should instead acknowledge fact that subsidy programs in the PRC are manifestations of the central government that are merely implemented at the provincial and municipal level. They argue that the Department should therefore be able to assume that the same types of subsidy programs exist across most provinces and municipalities. Therefore, in terms of AFA, they argue the burden should be on the GOC or other interested parties to demonstrate that a particular entity is not in a particular jurisdiction. On this basis, Petitioners argue that the Department should depart from the approach adopted in Racks from the PRC.

No other party commented on this issue.

Department's Position: We have applied the following standard as it applies to the subsidy programs at issue that were not included in the investigation at the time of the initiation of the investigation. Specifically, we have included newly initiated and self-reported programs in the AFA rate calculations for the non-cooperative mandatory respondents, except for those programs that would not have been available to the non-cooperative respondents or those programs found not to exist. This is consistent with our determination in Retail Bags from Vietnam, where we included in the total AFA rate for a non-cooperating mandatory respondent a program that was discovered during verification, after the respondent had stopped cooperating. See Retail Bags from Vietnam Decision Memorandum at "Application of Facts Otherwise Available and AFA for API and Fotai." Further, for all of the self-reported and newly initiated programs, there was nothing on the record to support a conclusion that these subsidy programs were not available to the non-cooperative respondents. Therefore, all of these programs were included in the AFA calculation. We find this approach prevents non-cooperative respondents that no longer participate from successfully avoiding being associated with newly alleged subsidy programs and subsidies discovered during the course of the investigation. Therefore, as discussed above in the "Application of Adverse Inferences: Non-Cooperative Companies," section, we have modified the total AFA calculations to reflect this standard.

We find that our approach in the instant investigation to include the newly alleged programs and self-reported programs, as opposed to the approach from Racks from the PRC, most closely adheres to the Department's existing AFA methodology, namely that the Department will include regional subsidy programs in the AFA rate in the absence of evidence from the GOC that mandatory respondents' facilities and cross-owned affiliates are not located in particular provinces whose subsidies are being investigated.

Comment 9: Whether the All Others Rate Should Equal the Total AFA Rate

The GOC and numerous importers object to the Department's decision in the Preliminary Determination to set the all others rate equal to the AFA rate assigned to the three non-cooperative mandatory respondents. They argue that the Department's approach contradicts its

practice, violates its statutory and regulatory obligations, and is not supported by record evidence.

The GOC argues there is no basis to conclude that the circumstances surrounding the selection of the initial mandatory respondents and subsequent voluntary respondents somehow created a situation in which "the potential for voluntary respondents' net subsidy rates to distort or manipulate the all others rate is too great." See Preliminary Determination, 75 FR at 54321. The GOC points out that two of the mandatory respondents, Dragonluxe and Miland, are non-PRC mainland trading companies, and argues that little is known of their operations. The GOC argues it was for this reason that Petitioners urged the Department to avoid selecting Dragonluxe and Miland. See Respondent Selection Memorandum at 4, discussing Petitioners' arguments that selecting the two companies "would be unlikely to yield any useful information about the degree of government subsidization in the PRC." Thus, the GOC argues it should be of no surprise that the two companies chose not to respond to the questionnaire. The GOC further argues that it is likely that the two firms do not exist and are not involved in trading aluminum extrusions. In light of this information, the GOC argues that the Department had no basis to preliminarily determine that the use of the voluntary respondents' net subsidy rates to derive the all others rate could lead to distortive or manipulated results.

The GOC further argues that the Department is statutorily obligated to determine the individual weighted average rate for each known exporter and producer of the merchandise. See section 751(a)(2) of the Act. The GOC argues that the Department has often determined not to review all of the individual producers and exporters when doing so would not be practicable, pursuant to section 777(c)(2) of the Act. But, the GOC argues that the Congressional intent behind this exception is that it be read narrowly in order to preserve the notion that the Department should base rates on each party's individual circumstance. See Carpenter Technology Corp. v. United States, 662 F. Supp. 2d 1337 (CIT 2009) (Carpenter Technology). The GOC argues that as of result of Carpenter Technology, the courts have directed the Department to individually investigate a greater number of respondents in a given segment of a proceeding.

The GOC further argues that section 705(c)(5)(A)(i) of the Act requires that the Department calculate weighted average countervailable subsidy rates for exporters and producers individually investigated, excluding any zero and de minimis rates as well as any margins determined entirely under AFA. The GOC contends that the Department individually investigated a total of five firms in the instant investigation: the three non-cooperative mandatory respondents and the two voluntary respondents. The GOC argues that pursuant to section 705(c)(5)(A)(i) of the Act, the all others rate cannot include the AFA rates of the three non-cooperative mandatory respondents but rather should include the rates of the two voluntary respondents who were individually investigated.

The GOC argues that section 705(c)(5)(A)(ii) of the Act allows the Department to utilize a "reasonable method" (a.k.a. an exception provision) to establish the all others rate if the subsidy rates established for all exporters and producers are zero, de minimis, or determined entirely under AFA. However, argues the GOC, this exception does not apply in this case, because two of the individually investigated respondents received rates which were above de minimis and not based entirely on AFA. In the alternative, the GOC argues that even if the Department concludes that this exception applies, the Department's method of basing the all others rate entirely on a total AFA rate is not a "reasonable method" as described under section 705(c)(5)(A)(ii) of the Act. The GOC asserts that the CIT recently held that it is unreasonable to

calculate an all others rate based entirely on AFA:

> Commerce explained that it determined both that the China-wide entity's rate was not reasonably reflective of Jiuli's dumping rates and that it was inappropriate to assign a cooperative respondent . . . an antidumping margin based entirely on adverse facts available due to another respondent's failure to cooperate . . . These are reasonable conclusions.

See Bristol Metals L.P. v. United States, 703 F. Supp. 2d 1370, 1378 (CIT 2010) (Bristol Metals).

The GOC argues that in LWS from the PRC, the Department found that issues relating to the calculation of the all others rate are the same in both the AD and CVD context. See LWS from the PRC Decision Memorandum at Comment 21. Therefore, the GOC argues that statutory requirement to avoid basing the all others rate on AFA applies with equal force in CVD investigations and, thus, the Department should revise its approach from the Preliminary Determination.

In order to correct the allegedly unreasonable and unsupported approach from the Preliminary Determination, the GOC argues the Department should calculate the all others rate based on the final net subsidy rates calculated for the two voluntary respondents. At a minimum, adds the GOC, any "reasonable method" for calculating the all others rate must include the net subsidy rates of the voluntary respondents in a simple average.

Evergreen argues that section 705(c)(5)(A)(i) of the Act provides that the all others rate must be an amount equal to the rates established for exporters and producers individually examined, unless these rates are zero, de minimis, or based entirely on AFA. Evergreen argues that the Department individually investigated two respondents, and calculated a rate for the respondents which was above de minimis and not based entirely on AFA. Evergreen concludes that the Department is required to calculate the all others rate using a weighted average of the mandatory respondents' rates.

Evergreen argues that the "reasonable method" exception discussed in section 705(c)(5)(A)(ii) of the Act may be employed when the net subsidy rates for all individually investigated exporters and producers are zero, de minimis, or determined entirely under AFA. In the Preliminary Determination, the Department stated that, "because it lacks subsidy rates for exporters and producers individually investigated, it must resort to 'any reasonable method' to derive the all others rate." However, Evergreen notes that the Department in fact selected two firms, the Guang Ya Companies and the Zhongya Companies, for individual investigation. The preliminary rates for the Guang Ya Companies and the Zhongya Companies were not zero, de minimis, or based entirely on AFA. Yet, the Department incorrectly excluded the companies' rates from the all others rate.

Evergreen argues that the Act is unambiguous, and thus Chevron does not allow the Department to fill gaps in the statute where there is no ambiguity, or take authority upon itself where no such authority has been explicitly or implicitly granted. See Marine Harvest (Chile) S.A. v. United States, 244 F. Supp. 2d 1364, 1374 (CIT 2002) quoting Chevron, 467 U.S. at 842-43; see also United States v. Menasche, 348 U.S. 528, 528-539 (1955), and Siderca, S.A.I.C. v. United States, 350 F. Supp. 2d 1223, 1227 (CIT 2004). Nowhere in section 705(c)(5)(A)(ii) of the Act does it imply that voluntary rates may be excluded from the all others rate calculation.

Evergreen points out that the Department acknowledged that the "principal of excluding

voluntary rates from the all others rate is not directly addressed in the statute. See Preliminary Determination, 75 FR at 54321. Evergreen asserts that, pursuant to Chevron, such an observation by the Department should serve as the end of the inquiry, not the beginning. Evergreen further notes that in FAG Italia the court found it "well established that the absence of a statutory prohibition cannot be the source of agency authority." See FAG Italia S.p.A. v. United States, 291 F.3d 806, 816 (Federal Circuit 2002) (FAG Italia). Thus, the Department cannot attempt to stretch the fact that Congress did not explicitly preclude the exclusion of voluntary rates into an ambiguity that permits the Department's approach in the Preliminary Determination concerning the derivation of the all others rate.

Evergreen contends that the statute makes clear that, for purposes of calculating the all others rate, there are only two groups of exporters and producers: those that are individually investigated and receive company-specific rates and those that are not individually investigated and receive the all others rate. Evergreen asserts that in the Preliminary Determination, the Department created a distinction not found in the statute between mandatory respondents and voluntary respondents, when the Department stated that "the companies under individual investigation that participated in the investigation are voluntary respondents." See 75 FR at 54321. Then, despite the fact that the Department individually investigated the voluntary respondents and assigned them company-specific rates, the Department nonetheless preliminarily determined not to treat the voluntary respondents as "individually investigated" firms when calculating the all others rate, based not on the Act, but on the Preamble to Procedural Regulations, which states that the term "investigated" is not defined by statute and does not address the question of how voluntary respondents should be treated. Evergreen asserts that the plain language of statute regards the voluntary respondents as "individually investigated exporters and producers" and, as such, their net subsidy rates must be used as the basis for deriving the all others rate.

Evergreen takes issue with the Department's claim that Article 9.4 of the Antidumping Agreement implies that the all others rate cannot be a function of subsidy rates calculated for voluntary respondents. See Preliminary Determination, 75 FR at 54321, citing Preamble to Procedural Regulations, 62 FR at 27310. On the contrary, Evergreen claims that Article 6.10.2 of the Antidumping Agreement clearly implies that voluntary respondents are in fact "selected" for examination: "In cases where the authorities have limited their examination . . . they shall nevertheless determine an individual margin of dumping for any exporter or producer not initially selected who submits the necessary information . . ." Evergreen argues that the phrase "initially selected" implies that voluntary respondents are entities that are subsequently "selected." Evergreen contends that, when read in tandem with Article 6.10.2 of the Antidumping Agreement, Article 9.4 actually supports the notion of including voluntary respondents rates in the all others rate calculation. Evergreen further notes that the Department stated that it "selected" the Guang Ya Companies and the Zhongya Companies during its respondent selection process. See Post-Prelim Memorandum at 1.

Evergreen further argues that even if it were possible to exclude the rates of voluntary respondents from the all others rate calculation, the Department may not set the all others rate equal to a total AFA rate. Evergreen argues that AFA rates may only be assigned to non-cooperative respondents. Evergreen notes that in SKF the Court held that the Department "violates" its obligation to fairness when it allows "an interested party's failure to cooperate to affect adversely the dumping margin of another interested party who is a party to the proceeding about whom the Department did not make a finding of non-cooperation." See SKF, 675 F. Supp.

2d at 1264, 1276; see also De Cecco, 216 F.3d at 1030. Evergreen adds that in SKF, the court further stated that while section 776(b) of the Act does not expressly prohibit the Department from applying AFA to a party based upon another party's failure to cooperate, "a construction permitting such an absurd result makes a mockery of any notion of fairness." Id. Evergreen notes that in the Preliminary Determination the Department did not, and could not, find that companies subject to the all others rate were non-cooperative under section 776(b) of the Act. Thus, the Department's preliminary decision to equate the all others rate with the AFA rate violates the clear mandate of section 776(b) of the Act.

Evergreen further argues that the Department's approach in the Preliminary Determination cannot be considered "reasonable" as described under section 705(c)(5)(A)(ii) of the Act. Evergreen argues that the Department acknowledged this fact in LWS from the PRC in which the Department did not to equate the all others rate with the AFA rate and instead incorporated the rates of the voluntary respondents into the all others rate calculation. The Department determined that Petitioners' argument that the all others rate should be based on the mandatory respondents' rates, where the mandatory respondents received AFA, was not a "more reasonable approach" than weight averaging the mandatory respondents and voluntary respondents' rates to calculate the all others rate. See LWS from the PRC Decision Memorandum at Comment 21.

Evergreen adds that there is no evidentiary support for the Department's concern that the use of voluntary respondent rates to derive the all others rate will result in "manipulation." It further argues that, in terms of the all others rate calculation, the Department cites no distinguishing characteristic of the instant investigation that would warrant even harsher treatment than it imposed in LWS from the PRC. Evergreen asserts that the Department has failed to explain why voluntary rates calculated from record evidence are distortive, but a total AFA rate comprised from myriad unrelated investigations is not. Evergreen argues that if the Department refuses to calculate the all others rate based solely on the voluntary rates, then it should at least resort to a simple average calculation consisting of the voluntary respondent rates and a reasonable AFA rate.

Several importers of aluminum extrusions submitted case briefs that echo the arguments of the GOC and Evergreen. Additionally, they argue that in Amanda, the CIT found that there is no basis in the statute for penalizing cooperative, uninvestigated respondents due solely to the presence of non-cooperating uninvestigated respondents who received a margin based on AFA. See Amanda Foods (Vietnam) Ltd. v. United States, 647 F. Supp. 2d 1368 (Amanda); see also Bristol Metals. Eagle Metals argues that the Department's determination to base the all others rate on the AFA rate is an ultra vires act, because the Department is acting without express or implied statutory authority, citing Pac Fung Feather Co., Ltd. v United States, 911 F. Supp. 529, 534 (CIT 1995).

Concerning the exception provision under section 705(c)(5)(A)(ii) of the Act, these importers argue that the provision applies to firms not "individually investigated." If voluntary respondents are not "individually investigated," then section 705(c)(5)(A)(ii) of the Act would preclude them from receiving a rate based on their own data, which would render the voluntary respondent provision under section 782(a) of the Act a nullity. The fact that the Department's approach in the Preliminary Determination leads to such an illogical outcome demonstrates that its interpretation of section 705(c)(5)(A)(ii) of the Act was in error. They further argue that the SAA indicates that the Department "shall endeavor to investigate all firms that voluntarily provide timely responses . . ." See SAA at 942. Thus, the Department cannot credibly claim that

the statute does not define the term "investigate" and does not directly address whether voluntary respondents are considered part of the investigation. The importers further note that the Department stated in a prior CVD proceeding involving the PRC that the all others rate may not include rates based solely on AFA rates. See Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order, 75 FR 38977 (July 7, 2010).

The importers argue that if the Department nonetheless decides to base the all others rate, in whole or in part, on AFA, then the program rates that comprise the AFA and all others rate calculations should be capped based on the highest calculated program rate determined for either of the two voluntary respondents. According to the importers, this approach reflects the Department's standard AFA methodology for CVD proceedings. According to the importers, utilizing this approach in the Preliminary Determination would have resulted in an AFA rate of 31.01 percent ad valorem. They add that simple averaging the AFA rate with the individual rates calculated for the voluntary respondents would have resulted in a preliminary all others rate of 21.92 percent ad valorem.

Petitioners state that none of the mandatory respondents chose to participate in the investigation. Petitioners argue that this decision followed comments by the Zhongwang Group in the press that it was "closely cooperating" with agencies of the GOC to defend its interest. See Petitioners' June 24, 2010, submission to the Department. Petitioners further note that, at the same time that the Department learned of the firms' decision not to participate, the GOC informed the Department that the GOC would participate if and when the Department selected voluntary respondents to replace the mandatory respondents. Petitioners claim that the mandatory respondents' unified decision not to participate coupled with the dictates of the GOC "set a troubling tone from the outset of the investigation." See Petitioners' case brief at 21.

Petitioners argue that 19 CFR 351.204(d)(3) expressly states that the Department will exclude weighted-average rates of voluntary respondents from the all others rate calculation. They state that in the instant investigation the Department opted to exclude the rates of voluntary respondents from the all others rate calculation in full consideration of record evidence and the behavior of Chinese respondents. They add that the Department's approach was consistent with its recent practice. See Certain Potassium Phosphate Salts From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Termination of Critical Circumstances Inquiry, 75 FR 30375, 30376 (June 1, 2010) (Phosphate Salts from the PRC), where the all others rate was equal to the AFA rate assigned to all mandatory respondents. Petitioners contend that this determination is consistent to the Preamble to Procedural Regulations, where the Department stated that it would exclude voluntary respondents from the all others rate to "prevent{} distortion or outright manipulation of the all-others rate." Preamble to Procedural Regulations, 62 FR at 27310.

The GOC disputes the relevance of Phosphate Salts from the PRC. It notes that in Phosphate Salts from the PRC there were no individually investigated respondents, whether mandatory or voluntary, and, thus, no individually calculated net subsidy rate on which to base an all others rate calculation. The GOC also argues that the plain language of the statute provides an exception to the normal calculation of the all others rate only when the net subsidy rates calculated for all exporters and producers individually investigated are zero, de minimis, or based entirely on AFA, conditions that do not apply to the facts of the instant investigation. See section 705(c)(5)(A)(ii) of the Act.

The GOC further contends that the SAA supports this plain reading of the statute.

According to the GOC, the SAA specifically provides that the new law overruled the Department's prior practice by removing the Department's authority to include AFA rates in the all others rate. See SAA at 873. Echoing comments made by the importers, the GOC adds that the SAA highlights the statute's new treatment of voluntary respondents and the calculation of rates for such respondents. The GOC argues that Petitioners' interpretation of the exception provision under section 705(c)(5)(A)(ii) of the Act renders the entire new section 782(a) of the Act, concerning voluntary respondents, a nullity. Under such an interpretation, the Guang Ya Companies and the Zhongya Companies would not be considered "individually investigated" and, thus, the Department would be directed to assign those firms the all others rate rather than the calculated rates derived from their respective, actual circumstances. The GOC contends, that on the contrary, section 704(c)(1)(B)(i)(I) of the Act contemplates only two categories of respondents for which the Department will determine a subsidy rate, those individually investigated and those that are assigned the all others rate. According to the GOC, those that the Department individually investigates receive rates based on their individual circumstances, while the remaining firms receive the all others rate as described under section 705(c)(5)(A)(i) of the Act. The GOC asserts that the Department clearly investigated the Guang Ya Companies and the Zhongya Companies on an individual basis.

Evergreen reiterates that in SKF the Court prohibited the Department from applying AFA to one group of respondents for the unrelated misdeeds of another. See SKF, 675 F. Supp. 2d at 1276. They further argue that this aspect of SKF was recently upheld in Tianjin, where the Court rejected the Department's application of AFA to a respondent based entirely on an unaffiliated suppliers' failure to cooperate. See Tianjin Magnesium International Co., Ltd. v. United States, Ct. No. 09-00535, Slip Op. 11-17 at 6 (CIT February 11, 2011) (Tianjin). The importers also restate their position that section 705(c)(5)(A)(i) of the Act does not exclude voluntary rates from the all others rate calculation, but rather only excludes zero/de minimis rates and rates based entirely on AFA. They contend that the exception provision, as described under section 705(c)(5)(A)(ii) of the Act, applies only in such narrow categories.

Certain importers further contend that Petitioners' reliance upon 19 CFR 351.204(d)(3) is misplaced. They argue that it is well-established that a regulation is unlawful to the extent that it is inconsistent on its face. See Chevron, 467 U.S. at 842 – 843; see also Allied Pacific Food (Dalian) Co. Ltd. v. United States, 587 F. Supp. 2d 1330, 1352 (CIT 2008), in which the court found that the Department's regulation dealing with the calculation of surrogate values contrary to the statute and, therefore, "invalid."

Certain importers take issue with Petitioners' claim that the use of the voluntary respondents' subsidy rates to calculate the all others rate poses a risk of manipulation or distortion. They contend that Petitioners' single citation to a newspaper article does not support the notion that the Chinese producers and exporters of subject merchandise were colluding to achieve a particular result. They argue that the "cooperation" mentioned in the article between one of the mandatory respondents and the GOC is to be expected in a CVD investigation where the Department requires the GOC to work closely with the selected respondents. Certain importers contend that the record does not support Petitioners' allegation of manipulation.

Petitioners argue that it is not appropriate to use the voluntary respondents' rates as the basis for the all others rate. They note that the voluntary respondents initially were not selected as mandatory respondents because of the relative size of their sales volumes and, thus, their situations are not necessarily reflective of the degree of subsidization in the industry as a whole. Petitioners add that, contrary to the respondents' claims, the possibility of manipulating the all

others rate is a real concern and that this concern warrants excluding rates of voluntary respondents from the all others rate calculation.

If, however, the Department departs from its approach in the Preliminary Determination, Petitioners urge the Department to utilize the approach from LWS from the PRC, in which the Department calculated the all others rate based on the average rates for both the non-cooperative mandatory respondents and voluntary respondents.

Department's Position: We disagree with the arguments of the GOC and the importers and have continued to calculate the all others rate as in the Preliminary Determination. In reaching its decision on this issue in the Preliminary Determination, the Department relied upon language in 19 CFR 351.204(d)(3) and the Preamble to Procedural Regulations. The Department's regulations at 19 CFR 351.204(d)(3) state that in calculating an all others rate under section 705(c)(5) or 735(c)(5) of the Act:

> . . . the Secretary will exclude weighted-average dumping margins or countervailable subsidy rates calculated for voluntary respondents.

Thus, with reference to the Act, the regulation clearly states that the subsidy rates of voluntary respondents shall not be included in the all others rate calculation. Further, with regard to this regulation as well as others, the Department makes clear at the outset that it finds them to be in "conformity" with the Act and an "elaboration through regulation" of statements in the SAA. See Preamble to Procedural Regulations, 62 FR at 27296. Furthermore, in the Preamble to Procedural Regulations the Department directly addresses the claim that 19 CFR 351.204(d)(3) is inconsistent with the statute:

> One commenter argued that this provision is inconsistent with the statute and should be deleted. We do not agree with this comment. . . The statute does not define the term "investigated" and does not directly address the question of whether voluntary respondents should be considered to be part of the investigation. Because the statute does not resolve the issue we look to the AD Agreement for guidance as to the best interpretation of the Act, in keeping with the requirement that, to the extent possible, a statute be interpreted in a manner consistent with the international obligations of the United States.
>
> Article 9.4 of the AD Agreement provides that the duties applied to "exporters or producers not included in the examination" (i.e., "all others") may not exceed the weighted-average margin for the "selected exporters or producers." This implies that those exporters or producers not "selected" are not considered to be included in the "examination." Therefore, the better interpretation of section 705(c)(5) or 735(c)(5) of the Act is that producers who are not "selected" by the Department (i.e., voluntary respondents) are not considered to have been "examined" (i.e., investigated), so that their margins should not contribute to the "all others" rate. In effect the Department conducts parallel proceedings for voluntary respondents.

See 62 FR at 27310. Thus, the parties' claims that the decision in the Preliminary Determination to exclude the subsidy rates of the voluntary respondents from the all others rate calculation

violated the statute are not new and, as indicated above, have already been addressed and rejected by the Department. Moreover, as stated in the Preamble to Procedural Regulations, we find that the Act does not directly address the treatment of voluntary respondents regarding the all others rate, and thus the Department has the discretion to determine how to calculate the all others rate with respect to voluntary respondents. As the Department's regulations make clear, the Department has determined not to include the rates of the voluntary respondents in the calculation of the all others rate. We further disagree with the parties' argument that the Department's regulation is inconsistent with the Act because the Act did not address the inclusion of the voluntary respondents' rates in the calculation of the all others rate.

Concerning the issue of whether the subsidy rates of voluntary respondents should have been included in the all others rate calculation, we acknowledge that the Preliminary Determination utilized an approach that differed from the method employed LWS from the PRC. See LWS from the PRC Decision Memorandum at Comment 21, in which the Department calculated the all others rate by simple-averaging the AFA rates of the non-cooperating mandatory respondents with the rate calculated for a voluntary respondent. For the reasons explained in the Preliminary Determination, the Department has re-evaluated its approach from LWS from the PRC and determined that it is not appropriate to include the rates of voluntary respondents in the all others rate:

> However, upon further examination, we now determine that the potential for voluntary respondents' net subsidy rates to distort or manipulate the all-others rate is too great and, thus, we find that reliance on the approach from LWS from the PRC is no longer appropriate.

See 75 FR at 54321. Given that we determine that the rates for voluntary respondents should not be utilized in establishing the all others rate, we have not implemented the importers' proposal of simple averaging the AFA with the individual rates calculated for the voluntary respondents.

We disagree with the notion that the Department must somehow first affirmatively prove that the voluntary respondents or the foreign government are attempting to distort the all others rate before the subsidy rates of the voluntary respondents may be excluded from the all others rate calculation under 19 CFR 351.204(d)(3). Again, the Preamble to Procedural Regulations addresses this very point:

> . . . the purpose of this provision was to prevent manipulation and to maintain the integrity of the all others rate. . . exclusion of the voluntary respondents from the determination of the all others rate serves the obvious purpose of preventing distortion or outright manipulation of the all others rate. The producers or exporters most likely to submit voluntary responses are those with reason to believe that they will obtain a lower margin by volunteering than they would obtain by being subject to the all others rate. Inclusion of rates determined for voluntary respondents thus would be expected to distort the weighted-average for the respondents selected by the Department on a neutral basis.

See 62 FR 27310. As the Preamble to Procedural Regulations makes clear, the Department requires no affirmative finding in order to exclude voluntary respondents from the all others rate. Rather, the Department has reasonably concluded that voluntary respondents are "expected" to be those firms with the lowest levels of subsidization and, thus, their inclusion will lead to the distortion of the all others rate calculation.

We further disagree with the argument that the Department's method for deriving the all others rate in the Preliminary Determination was improper because it constitutes the unfair application of AFA to "cooperative" parties (i.e., parties subject to the all others rate for which the Department made no finding of non-cooperation under section 776 of the Act). As explained above, the Department does not consider voluntary respondents to be part of the investigation but rather treats them as participants in a parallel proceeding. See Preamble to Procedural Regulations, 62 FR at 27310. As a result, the three firms initially selected as mandatory respondents are the only firms the Department considers as being "individually investigated" respondents in the investigation. We find that the GOC's and importers' argument that the Department admitted that it was "investigating" or "selecting" the voluntary respondents is irrelevant, because the term "individually investigated" as it is used in 9.4 of the AD Agreement and the Preamble to Procedural Regulations does not consider voluntary respondents to be individually investigated. We disagree with Evergreen's assertion that Article 6.10.2 of the Antidumping Agreement demonstrates that voluntary respondents are "selected" and thus should be considered "individually investigated" because, as stated above, the Department considers voluntary respondents to be part of a parallel investigation and not "selected" as part of the investigation that will be used for purposes of the all others rate calculation.

As explained above, the three mandatory respondents chose not to participate and, thus, the Department designated them as non-cooperative respondents. Given that the Department does not consider voluntary respondents to be part of the investigation and given the fact that the mandatory respondents chose not to cooperate, the facts of the instant investigation resemble those of prior investigations in which the Department lacked participation from respondents that were considered part of the investigation. Thus, we find that, contrary to the arguments of certain importers, the facts of the instant investigation do, in fact, resemble those of Phosphate Salts from the PRC. See 75 FR at 30376; see also Raw Flexible Magnets from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 73 FR 39667, 39668 (July 10, 2008) (Flexible Magnets from the PRC). In these investigations, the Department, in accordance with its practice, set the all others rate equal to the AFA rate assigned to the non-cooperative mandatory respondents:

> In accordance with section 705(c)(1)(B)(i)(I) of the Act, we have assigned a subsidy rate to each of the three producers/exporters of the subject merchandise that were selected as mandatory company respondents in this CVD investigation. With respect to the all-others rate, section 705(c)(5)(A)(ii) of the Act provides that if the countervailable subsidy rates established for all exporters and producers individually investigated are determined entirely in accordance with section 776 of the Act, the Department may use any reasonable method to establish an all-others rate for exporters and producers not individually investigated. In this case, the rate calculated for the three investigated companies is based entirely on facts available under section 776 of the Act. There is no other information on the record upon which to determine an all-others rate. As a result, we have used the AFA rate assigned to the three mandatory respondents as the all-others rate.

See Phosphate Salts from the PRC, 75 FR at 30376. As indicated above, in Phosphate Salts from the PRC and Flexible Magnets from the PRC, the Department invoked the exception provision under section 705(c)(5)(A)(ii) of the Act and set the all others rate equal to the AFA rate.

We also disagree that the various court cases cited by the GOC and certain importers hold that the Department erred when it set the all others rate equal the AFA rate. Regarding Bristol Metals and Amanda, the issue in both cases revolved around the rate assigned to firms that applied for treatment as separate rate entities under the Department's AD NME methodology, thereby making those the facts of those cases distinct from those of the instant investigation. Though not as fully examined as a selected respondent, separate rate entities in AD NME proceedings are considered part of the proceeding, they participate in the proceeding, and may receive a rate that differs from the all others rate. In contrast, in CVD proceedings, the Department does not examine additional respondents in the form of separate rate entities. Rather, in CVD proceedings, the respondents are limited to the foreign government, the mandatory respondents, and voluntary respondents, as applicable. Thus, in the instant investigation, the pool of cooperative and uncooperative parties was limited to these five entities. Therefore, we find it is incorrect to characterize interested parties subject to the all others rate as "cooperating" parties when the parties submitted no factual information on the record of the investigation, Department sent no questionnaires to such parties, and the Department's CVD methodology has no equivalent allowance for separate rate entities as it does under its AD NME methodology.

For similar reasons, we find that parties' citation to SKF and Tianjin are distinct from the facts of the instant investigation. These cases involved instances in which the Department applied AFA to mandatory respondents because unaffiliated parties failed to provide information that mandatory respondents needed in order to respond to the Department's questionnaires. In the instant investigation, parties cite to SKF and Tianjin in reference to parties subject to the all others rate and not with regard to selected respondents. As such, we find the facts of SKF and Tianjin are distinct from the instant investigation.

Because there were no calculated rates for individually investigated mandatory respondents on this record, it was reasonable for the Department to resort to section 705(c)(5)(A)(ii) of the Act and use "any reasonable method" to determine the all others rate. We have continued to set the all others rate equal to the rate assigned to the non-cooperative mandatory respondents.

Comment 10: Whether the Department Should Have Collected Information from Firms Subject to the All Others Rate

Certain importers argue that the Department improperly failed to request further information from non-selected, active participants in the investigation. Certain importers note that on September 20, 2010, certain interested parties filed a procedural comment requesting that the Department seek limited additional information from all cooperative interested parties with respect to key facts, such as the nature of the ownership of each cooperative firm, the geographic location of the firm's factory and office, as well as other basic information that could have easily been collected by the Department.

The importers argue that the Department failed to respond to their September 20, 2010, request and failed to collect any information from any cooperative interested party that was not selected for individual examination. They further argue that the Department improperly applied a punitive net subsidy rate to such cooperative firms based on a purported lack of information available to the Department regarding whether such firms had any possibility of benefitting from the alleged subsidy programs. The importers assert that the Department cannot, due to lack of

information, impose AFA on such cooperative firms when the Department knows that it may need such information, but nevertheless refuses to solicit the necessary facts from the cooperative firms. The importers add that the court has found that the Department "must insure that any methodology it employs . . . is based on the best information available." See Yantai Oriental Juice Co., et al. v. United States, Slip Op 03-150 at 2 (CIT 2003). On this basis, the importers argue that the all others assigned to such cooperative firms was punitive and improper.

Petitioners argue that the parties in question are not "cooperative" because they have not filed any information about any of the subsidy programs at issue. Rather, argue Petitioners, the parties in question have done nothing more than suggest that the Department create a new separate rates practice in the context of CVD proceedings, where entities not selected for mandatory investigation are able to make claims concerning the subsidies they have received. Petitioners claim that such an approach is not only unprecedented in the CVD context but also untenable due to the GOC's failure to properly respond to the Department's questions and because the PRC's subsidy programs often go by different names and operate slightly differently depending on the location of the administering authority that operates the program. Petitioners argue that, should the Department accept certain importers' suggestion, the Department should allow Petitioners to submit subsidy allegations for each entity.

Department's Position: We disagree with the importers' claims that the Department improperly failed to solicit information from non-selected firms that would have enabled the Department to determine whether those firms received subsidies from the GOC. We agree with Petitioners that these importers are requesting that the Department establish a separate rates practice in CVD proceedings. In AD proceedings involving NME countries, the Department holds a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assessed a single AD duty rate. It is the Department's policy to assign all exporters of subject merchandise in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. See, e.g., Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Final Results of the First Antidumping Duty Administrative Review, 76 FR 9753, 9754 (February 22, 2011); see also Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China, 56 FR 20588 (May 6, 1991), as further developed in Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China, 59 FR 22585 (May 2, 1994). In conducting its separate rates analysis for AD proceedings involving NME countries, the Department's analysis is limited to the issue of government control. Moreover, the analysis does not address the actions of the firms requesting separate rates treatment (i.e., the Department does not examine the extent to which such firms engaged in dumping).

In contrast, in the instant investigation, the importers appear to demand that the Department not only create a separate rates practice for CVD proceedings, but that the Department take the significant, extra step of evaluating the extent to which the GOC subsidized each firm requesting separate rate treatment so that each firm may receive a company-specific rate that differs from the all others rate. The practice urged by the importers arguably would exceed the level of inquiry utilized for separate rate requests in AD proceedings, because rather than parties submitting information concerning government control only, the Department would be required to conduct individual examinations of numerous firms in the PRC. Adopting such an approach would not only be unprecedented in the context of CVD proceedings, it would, for

purposes of the instant investigation, also be untenable in light of the Department's available resources and the regulatory and statutory deadlines in CVD investigations. For further discussion of the Department's decision not to select additional mandatory respondents, see Comment 11 below.

In addition, in this case, the Department limited its examination to three companies, determining that it was not practicable to examine the 114 individual exporters and/or producers of which Petitioners requested an investigation. See Respondent Selection Memorandum at 4. This determination was pursuant to the Department's discretion as set forth in section 777A(e)(2) of the Act, which allows the Department to limit is examination to a reasonable number of companies where it determines that it is not practicable to examine all companies. The importers' argument amounts to a request that we conduct an examination of all companies, even though these companies did not request examination, and despite the fact that the Department reasonably limited its examination to a reasonable number of companies.

Comment 11: Whether the Department Should Have Selected Additional Mandatory Respondents

Certain importers argue that, when it became apparent the mandatory respondents would not participate in the investigation, the Department could have selected additional firms as mandatory respondents. Certain importers argue that the Department had ample time to make such a selection, as evidenced by the fact that the Department accepted questionnaire responses from the voluntary respondents on July 8, 2010, and formally accepted them as voluntary respondents on July 21, 2010. Certain importers further note that the Department postponed the due date of the GOC's initial questionnaire response until August 9, 2010. Thus, argue certain importers, the Department accepted initial responses more than 45 days after the date on which it became aware that the mandatory respondents would not participate.

Certain importers further argue that the Department had adequate resources to review one or more additional mandatory respondents. They argue that the Department initially selected three mandatory respondents for review, only to ultimately investigate two voluntary respondents. Thus, the Department should have had the resources available to select additional mandatory respondents.

The importers assert that the Department's failure to select additional mandatory respondents or convert one or more of the voluntary respondent into mandatory respondents constitutes an abuse of its discretion. They argue that to remedy its oversight, the Department should retroactively designate one or both of the voluntary respondents as mandatory respondents and use their data as the basis of the all others rate.

Department's Position: We disagree with the importers. The Department received two requests from firms for voluntary treatment: a May 6, 2010, request from the Zhongya Companies and a May 26, 2010, request from the Guang Ya Companies. We disagree that the Department improperly failed to select an additional mandatory respondent. In CVD investigations, the Department faces tight statutory deadlines. See, e.g., section 703(b)(1) of the Act, providing that the Department shall make a preliminary determination within 65 days after the date on which the Department initiates an investigation, and section 703(c)(1)(A) of the Act, providing that the Department may postpone the preliminary determination not later than the 130th day after the date of initiation, if the petitioners request an extension. The three mandatory

respondents initially selected for investigation did not directly inform the Department of their intention not to participate in the proceeding. Rather, they simply failed to respond to the Department's initial questionnaire, and so, the Department was not able to formally designate the three firms as non-cooperative until after the expiration of the June 24, 2010, due date of the initial questionnaire, which was 65 days after the initiation of the investigation and only 67 days prior to the fully extended due date of the Preliminary Determination. For the Department to have selected additional mandatory respondent(s) after June 24, 2010, would not have been tenable given the Department's statutory and regulatory deadlines.

In fact, it was the Department's concern about its statutory deadlines that lead it to require that the two firms requesting voluntary treatment submit their initial questionnaire responses to the Department by July 8, 2010, the date that the initially selected mandatory respondents would have submitted their initial questionnaire responses had the Department granted a two-week extension to the initial questionnaire. See Voluntary Respondent Selection Memorandum at 2; see also, e.g., the Department's June 21, 2010, letter to the Zhongya Companies in which it extended the companies' deadline for responding to the initial questionnaire until July 8, 2010.

We acknowledge that the Department extended the due date of the GOC's response to the initial questionnaire until August 9, 2010. However, the Department explained that its decision to do so was partly based on the fact that the voluntary respondents were not formally selected until July 21, 2010, and that portions of the GOC's response would require specific information for particularly identified companies. See the Department's July 21, 2010, letter to the GOC. Furthermore, for the reasons explained above, we disagree that the decision to extend the deadline for the submission of the GOC's questionnaire response is somehow indicative of the Department's ability to accept additional mandatory respondents. It would not have been tenable for the Department to simultaneously receive and review initial questionnaire responses from the GOC and respondent firms so close to the fully extended due date of the Preliminary Determination.

Lastly, we disagree with importers' argument that the Department should have converted the voluntary respondents to mandatory respondents. As explained above in Comment 9, we find that it is not appropriate to treat voluntary respondents as mandatory respondents.

Comment 12: Whether the Department Should Retroactively Revise the All Others Rate from the Preliminary Determination

Certain importers argue that, as the method the Department used to establish the all others rate from the Preliminary Determination does not accord with the statute, the Department must correct and lower the all others rate. In doing so, argue the importers, the Department should apply the revised all others rate retroactively to entries that were made on or after September 7, 2010, the effective date of the Preliminary Determination. Certain importers argue that the Department has the authority to apply such retroactive revisions to preliminary decisions. See, e.g., Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 33977 (June 16, 2008) (Nails from the PRC), and accompanying Issues and Decision Memorandum (Nails from the PRC Decision Memorandum) at Comment 22; see also Steel Wire Garment Hangers from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 47587 (August 14, 2008) (Hangers from the PRC), and accompanying

Issues and Decision Memorandum (Hangers from the PRC Decision Memorandum) at Comment 8.H. Certain importers contend that, in Hangers from the PRC, the Department, over the objections of the petitioners, applied the results of an amended preliminary determination retroactively to the start of the suspension of liquidation period, which was the effective date of the initial preliminary decision). See Hangers from the PRC Decision Memorandum at Comment 7.H.

The importers argue that the need to apply a retroactive correction to the all others rate is not hypothetical. They explain that they have had to pay the improper and punitive duties since the September 7, 2010, publication of the Preliminary Determination and to allow the rate to stand uncorrected would impose excessive financial burdens on innocent importers. They add that it would also be unjust to require importers to participate in a first administrative review for the sole purpose of recouping deposits paid pursuant to an unlawful Preliminary Determination.

Department's Position: As explained above in Comment 9, the Department disagrees with the notion that its method for establishing the all others rate in the Preliminary Determination was in violation of the statute or otherwise in error. Because we are not amending our decision on this matter, this issue is moot.

Furthermore, we also disagree that the Department's decision to retroactively amend the cash deposit rates in Nails from the PRC and Hangers from the PRC should lead the Department to take the same approach in the instant investigation. In both cases, the Department states revised the dumping margins retroactively for entries that were made on or after the effective date of the investigations' preliminary determinations because the preliminary margins contained significant ministerial errors that required the issuance of amended determinations:

> Furthermore, because these errors pertain to the identification of the proper separate rates recipients for this investigation, the Department is making these corrections effective as of January 23, 2008, the date of the Preliminary Determination.

See Nails from the PRC Decision Memorandum at Comment 22. Similarly, in Hangers from the PRC, the Department stated that, because the preliminary determination was amended to correct ministerial errors for a certain respondent, it agreed with the respondent that it "should retroactively change the effective date of the amendment to the date of publication of the Preliminary Determination." See Hangers from the PRC Decision Memorandum at Comment 8.H. In this case, the Department did not issue an amended preliminary determination to correct ministerial errors, and so Evergreen's reliance on Nails from the PRC and Hangers from the PRC is misplaced. Therefore, we find no basis to retroactively amend the cash deposit rates as requested by the respondents.

Comment 13: Whether the Sales of Aluminum Extrusions for MTAR Program Was Used by the Voluntary Respondents

The GOC contends that the record of the investigation demonstrates that the Guang Ya Companies and the Zhongya Companies did not make any sales under the alleged MTAR program during the POI. The GOC explains that the alleged program operates under the

Procurement Law and that the law applies to purchases involving government funds at the municipal, provincial, and central government level. See GOC Verification Report at 6. The GOC asserts that the Procurement Law does not apply to any corporate entities, whether they are SOEs or privately owned. The GOC argues that verified information proves that the Procurement Law applies to only three types of entities: 1) state departments (or government agencies); 2) government-sponsored institutions; and 3) social organizations. See GOC Verification Report at 5 – 6. The GOC adds the Department further verified that the Procurement Law does not apply to profit-making entities and that different regulations apply to the registration of profit-making entities. Id. at 6 – 7. Further, the GOC states that GOC officials explicitly confirmed to the Department that SOEs are not eligible to purchase items under the Procurement Law. Id. at 6. On this basis, the GOC argues that the record clearly demonstrates that the Procurement Law does not apply to SOEs. Accordingly, there is no basis for the Department to conclude in the final determination that the Guang Ya Companies and the Zhongya Companies "have benefitted from the government's purchases of aluminum extrusions under the Government Procurement Law" as the Department found in the Preliminary Determination. See 75 FR at 54319.

The GOC further argues that records examined at verification confirm that the Guang Ya Companies and the Zhongya Companies did not supply any goods that were covered under the Procurement Law during the POI. The GOC notes that the Department examined database queries that government officials conducted of all procurement announcements by city and provincial governments during the POI and that no reference to the Guang Ya Companies and the Zhongya Companies was found. See GOC Verification Report at 3 and Exhibit 7 at 90 – 95. The GOC argues that the negative results of the database queries are consistent with the fact that all of the two firms' customers during the POI consisted of profit-making enterprises that are not subject to the Procurement Law. See, e.g., Zhongya Companies Verification Report at 12, in which the Department did not find any indication that the firm's ten customers were government-owned or that the firm's purchase orders indicated participation in a bidding process or procurement order under the Procurement Law.

The GOC further asserts that after an exhaustive review at verification of the government procurement process, the relevant regulations, and procurement catalogues, the Department confirmed that aluminum extrusions are not included in any of the municipal, provincial, or central government catalogues. See GOC Verification Report at 9.

The GOC also argues that none of products of the Guang Ya Companies and the Zhongya Companies fall under the Indigenous Innovation Policy. The GOC states that at verification the Department reviewed the circulars containing products lists that are issued under the Indigenous Innovation Law and confirmed that the lists contained no reference to aluminum extrusions, the Guang Ya Companies, or the Zhongya Companies.

The GOC also contends that the Department confirmed as unfounded Petitioners' claims that the Guang Ya Companies and the Zhongya Companies used the MTAR program. The GOC cites to Petitioners' August 19, 2010, submission at Exhibits 7, 8, and 9, which purportedly indicates that the respondents used the program during the POI. The GOC asserts that evidence examined at verification clearly demonstrates that Petitioners' information relates to projects involving sales transactions that occurred in 2010, which is after the POI. See GOC Verification Report at 11 – 12. Further, concerning the alleged transactions referenced in Petitioners' August 19, 2010, submission the GOC argues that the Department confirmed that either the respondents did not actually participate in the project or that the information merely referenced the

solicitation of installation services, not the direct supply of aluminum extrusion materials. Thus, argues the GOC, the information submitted by Petitioners cannot serve as a basis for finding that the two respondents used this program.

Concerning the Guang Ya Companies, the GOC notes that they made sales to certain schools located in Fuqing City in Fujian Province. See GOC Verification Report at 9. However, the GOC asserts that the Department cannot find that the Guang Ya Companies made the sales to these schools under the Procurement Law because, as demonstrated at verification, aluminum extrusions are not listed in the procurement catalogues and the values of the sales in question were too small to be covered by the law. See GOC Verification Report at 8 – 10.

Regarding the Zhongya Companies, the GOC asserts that in the Preliminary Determination the Department relied solely on language from the implementing measures of the Procurement Law as the basis for assuming, as AFA, that the companies' unreported domestic sales were made to GOC authorities at a 20 percent price premium. See Preliminary Determination, 75 FR at 54307. The GOC argues that undisputed record evidence demonstrates that the implementing regulations were, and still are, in draft form and were not in effect during the POI, thus there is no basis for the Department to use references to a purported 20 percent price premium in the implementing measures as AFA. See the March 31, 2010, Petition at Exhibit III-155.

The Zhongya Companies also argue that record evidence and the Department's verification findings demonstrate that the Zhongya Companies did not use the MTAR program. The Zhongya Companies explain that at verification the Department found no evidence indicating that the firm participated in bidding projects under the program during the POI. See Zhongya Companies Verification Report at 14. The Zhongya Companies further note that the verification report states that during the POI items in New Zhongya's accounts receivable were limited to private, profit making entities and contained no references to "government ministries," "agencies," "hospitals," or "utilities." Id. The Zhongya Companies add that the Department's review of the firm's customer lists indicated that New Zhongya's sales were limited to private companies and did not involve SOEs or government agencies. Id.

Petitioners argue that the Department properly countervailed the Guang Ya Companies sales of aluminum extrusions to state-owned firms by comparing the prices the Guang Ya Companies charged to state-owned firms, to the prices the Guang Ya Companies charged to privately-owned firms. They also contend that the Department properly assumed, as AFA, that all of the customers comprising the Zhongya Companies' missing domestic sales data were government authorities, the purchases of which were covered by the Procurement Law.

Petitioners add that public information in the Petition indicates that one of the mandatory respondents, the Zhongwang Group, has nearly exclusive procurement arrangements with government-owned companies in the transportation and construction sector that are covered by the Procurement Law. Petitioners argue that the fact that the Zhongwang Group, one of the PRC's largest aluminum extrusions producers, appears to have benefited greatly as a result of the Procurement Law, reinforces the notion that the MTAR program provides significant benefits to members of the PRC's aluminum extrusions industry.

Department's Position: We determine that the two voluntary respondents, the Guang Ya Companies and the Zhongya Companies, did not make any sales of aluminum extrusions under the Procurement Law during the POI; therefore, we find this program not used. During the GOC verification we reviewed various product catalogues at the municipal, provincial, and central

government level that are issued as part of the Procurement Law to determine whether aluminum extrusions are covered under the Procurement Law. Furthermore, we also reviewed the value threshold for procurement of items not listed in the government procurement catalogues. Under the Procurement Law, procurement of items not listed in the government procurement catalogues will fall under the Procurement Law if the purchase is above the value threshold set by the government. See GOC Verification Report at 7 - 9. None of the procurement catalogues reviewed at verification listed aluminum extrusions. Id. In addition, during the GOC verification, we queried databases that track procurement announcements in the city of Guangzhou and the Province of Guangdong (the locations where the two respondent firms are located) and found that the Guang Ya Companies and the Zhongya Companies were not listed. See GOC Verification Report at 3. Therefore, we were able to confirm during the GOC verification that the Guang Ya Companies and the Zhongya Companies did not use this program.[48] At verification, we also confirmed the types of information and documentation that firms must supply to the GOC for sales of products covered by the Procurement Law. See GOC Verification Report at 3 - 5. We found no such documentation concerning sales of aluminum extrusions by the Guang Ya Companies or the Zhongya Companies during the company verifications. See Guang Ya Companies Verification Report at 12 – 13; see also Zhongya Companies Verification Report at 12 -14.

We disagree with Petitioners' comment that we should apply AFA in this final determination with respect to the Zhongya Companies. While the Zhongya Companies did not provide a complete listing of all of their customers, we were able to verify that the company did not make sales under the Procurement Law through an examination of GOC records. However, because we have found this program not used rather than not countervailable, we have included this program in the AFA calculation for the non-cooperative companies which includes the Zhongwang Group.

Regarding Petitioners' argument that one of the non-cooperating mandatory respondents benefited from the program, and therefore provides evidence that members of the aluminum extrusion industry benefit from the program, we find that the evidence on the record indicates that the voluntary respondents did not use the program, and so the potential use of the program by the mandatory respondents or other members of the industry is irrelevant.

Comment 14: Whether the Sales of Aluminum Extrusions for MTAR Program Is Specific

The GOC argues that there was no basis for the Department to preliminarily conclude that the sales of aluminum extrusions for MTAR program is ". . . specific under section 771(5A)(C) of the Act because the government procurement program is contingent upon the use of domestic goods over imported goods, as evidenced by the price premium set forth in the Implementing Measures of the Procurement Law." See Preliminary Determination, 75 FR at 54320. The GOC argues that the Implementing Measures referenced by the Department were not in effect and existed only in draft form during the POI. See the March 31, 2010, Petition at Exhibit III-155. The GOC argues that Petitioners have not cited to any evidence indicating that the draft measures have been adopted, and indeed, reiterates the GOC, the measures have not

[48] Information submitted by the Guang Ya Companies indicates that they made sales of aluminum extrusions to two schools during the POI. Assuming arguendo that these sales were covered by the Procurement Law, they would not give rise to a numerically significant net subsidy rate (e.g., a net subsidy rate that exceeds 0.005 percent ad valorem), even if the entire purchase values were treated as the benefit.

been adopted. Therefore, argues the GOC, the Department has no basis to conclude that the MTAR program is specific under section 771(5A)(C) of the Act.

Petitioners argue that the Department properly determined that MTAR program is specific under section 771(5A)(C) of the Act because the Procurement Law requires the use of domestic goods or services unless they cannot be obtained under reasonable commercial conditions. Petitioners contest the GOC's claims that the Implementing Measures of the Procurement Law were not in effect during the POI. In support of their contention, Petitioners note that the GOC has similarly claimed that a 1999 proclamation from the GOC ended all policy lending in the PRC. Petitioners argue that record evidence clearly demonstrates that SOCBs have not heeded the GOC's proclamation. As a result, the Department should view skeptically the GOC's claims concerning the date on which the Implementing Measures were enacted. Moreover, Petitioners argue that the Implementing Measures simply serve as clarification of requirements under the Procurement Law, which has been in place since 2002.

Department's Position: As noted above, we find that this program was not used by the Guang Ya Companies and the Zhongya Companies. Therefore, there is no need to address the issue of specificity, as it pertains to these two firms. However, because we have found this program not used we have, consistent with Department practice, included it in the AFA calculation for the non-cooperative respondents.

Comment 15: Whether the Sales of Aluminum Extrusions for MTAR Program Confers a Benefit

The GOC argues there is no basis to conclude that a benefit was provided to suppliers of aluminum extrusions under the provisions of the Procurement Law. The GOC argues that the Procurement Law provides explicit provisions for price competition that result in market-driven prices which are competitive and consistent with market principles. The GOC explains that during the verification of the GOC the Department examined in detail the documents related to three examples of procurement by public bidding and confirmed the various steps of the process. See GOC Verification Report at 3-5. The GOC contends that nothing in these documents suggests that suppliers or products procured under the Procurement Law benefit from any price minimums or that there are preferences for domestic products over imported products. In addition, the GOC contends that the bidding process provided explicitly for price competition and that these documents confirm that the Procurement Law applies mechanisms to obtain the most competitive market price available. The GOC argues that this process is consistent with market principles.

The GOC further argues that even if the respondents had provided supplies of aluminum extrusions to domestic customers under the provision of the Procurement Law, there would be no basis to conclude that a benefit was provided. The GOC maintains that, as the Procurement Law embraces mechanisms that obtain competitive market prices, there is no basis to resort to an out-of-country benchmark with regard to such purchases. The GOC argues that, at a minimum, the prices subject to the Procurement Law procedures are consistent with market principles within the meaning of 19 CFR 351.511(a)(2)(iii)(tier three) and that the prices obtained through competitive bidding are explicitly the result of competitively-run government auctions within the meaning of 19 CFR 351.511(a)(2)(i)(tier one).

Department's Position: As noted above, we find that this program was not used by the Guang Ya Companies and the Zhongya Companies. Therefore, the issue of benefit is moot. However, because we have found this program not used we have, consistent with Department practice, included it in the AFA calculation for the non-cooperative respondents.

Comment 16: Whether the Department Improperly Rejected Data From The Zhongya Companies Pertaining to the Sale of Aluminum Extrusions For MTAR Program

The Zhongya Companies argue that Department's use of adverse inferences with regard to this program is unwarranted. They contend that they did as the Department instructed, arguing that the Department's original questionnaire said not to answer program-specific questions for a program that the respondent did not apply for, use, or benefit from. They argue that New Zhongya did not apply for, use, or benefit from the MTAR government purchase program during the POI and that they stated this in their response to the Department's original questionnaire. The Zhongya Companies contend that they did not answer the program-specific questions for this program, including the one which requested that the Zhongya Companies provide home market sales/customer data, because they were following the Department's explicit instructions. Thus, they argue that there was no deficiency in their original questionnaire response.

The Zhongya Companies provide a detailed account of the chain of events, in support of their contention that AFA is unwarranted. They explain that, in their response to the Department's May 18, 2010, initial questionnaire, they answered the Department's questions, stating (a) New Zhongya did not apply for, use, or benefit from the program, and (b) New Zhongya had not operated under any government procurement contract, nor sold aluminum extrusions to SOEs in the transportation and construction sectors during the POI. The Zhongya Companies state that they responded to the program-specific questions for each program that they did not use in the same manner and that the Department did not object to their responses to the other non-used programs, even though the questionnaire format is the same for all programs.

The Zhongya Companies state that, in the Department's July 21, 2010, first supplemental questionnaire, the Department requested that they report home market sales/customers data for the one year POI. On July 28, 2010, the Zhongya Companies requested a one-week extension of the deadline for providing its response to this supplemental questionnaire, explaining that their offices were closed due to a typhoon. They explain that they were granted a partial extension until August 6, 2010, and argue that Department's practice is to grant a one-week extension for extensive questionnaires. They then explain that their response to this supplemental questionnaire was 322 pages, with 29 exhibits and that they only had time to provide the domestic sales/customer data for the Zhongya Companies' top ten customers. They explain that the sales of these ten customers accounted for 70 percent of the Zhongya Companies' home market sales during the POI and that providing data for all 146 customers would have taken a huge amount of time that was not granted by the Department.

The Zhongya Companies explain that, given the Department's preliminary decision to use AFA with regard this program, they included a complete set of the Zhongya Companies' domestic sales/customer data in their October 12, 2010, questionnaire response. On October 26, 2010, the Department rejected this domestic sales/customer data.

The Zhongya Companies take issue with the Department's rationale for rejecting the data

pertaining to their other customers. They argue that the original May 18, 2010, questionnaire instructed the respondent not to answer the program-specific questions as to a particular program if the respondent did not apply for, use or benefit from the program. They explain that, if the Department's use of the term "again" in its October 26, 2010, letter means that New Zhongya should have followed the original May 18, 2010, questionnaire instructions when answering the July 21, 2010, supplemental questionnaire regarding MTAR, then the Zhongya Companies should have just said in answer to the July 21, 2010, supplemental questionnaire that the Zhongya Companies had already fully answered the original May 18, 2010, questionnaire. However, the Zhongya Companies claim they did more than requested in response to the July 21, 2010, supplemental questionnaire by providing program-specific information, i.e., a complete set of domestic sales/customer data. They then point out that the Department's October 26, 2010, letter stated that New Zhongya should have requested an extension to answer the July 21, 2010, supplemental questionnaire, but the Zhongya Companies did request an extension which the Department only partially granted.

The Zhongya Companies then explain that, on November 2, 2010,the Department issued another supplemental questionnaire regarding this program and that, on the November 9,2010, due date, they again answered that New Zhongya did not use the program and provided the missing sales/customer data. They argued that this was responsive to the Department's explicit request in this particular supplemental questionnaire that the Zhongya Companies discuss and describe any documentation that it reviewed or consulted when providing the response. The Zhongya Companies then explain that, on November 15, 2010, the Department again rejected the missing domestic sales/customer data, stating that this information was requested in the Department's initial May 18, 2010, original questionnaire. They again contend that the Department wrongly ignored its own instructions in the May 18, 2010, questionnaire which indicated that the respondent should answer the program-specific questions (such as providing the domestic sales data) if the particular program was used. They argue that the Department is effectively arguing that a respondent must answer the program specific questions even if the respondent does not use the program. They maintain that this would be contrary to the wording of the May 18, 2010, questionnaire and to Department practice.

They further explain that the Department's November 15, 2010, letter states that its July 21, 2010, supplemental questionnaire just "reiterates" the Department's original May 18, 2010, questionnaire. They argue that is too is wrong and lament that, in reply to the Department's July 21, 2010, supplemental questionnaire, they could have answered that, as they indicated in its original questionnaire response, the Zhongya Companies did not use the program and do not need to answer the program-specific questions. In addition, they disagree that Department gave the Zhongya Companies 78 days to provide the home market sales/customer data because this erroneously assumes that the May 18, 2010, questionnaire asked for this program-specific information even though New Zhongya did not use the program.

The Zhongya Companies also argue that the sales data they submitted on November 9, 2010, was directly responsive to the questions in the Department's November 2, 2010, supplemental questionnaire, contending that those new supplemental questions explicitly requested this information. They further argue that before the start of the verification, they filed an objection to the Department's action, noting all the above and asking to speak with senior Department officials. They disagree with Department's December 8, 2010, letter, arguing that it lacks explanation and repudiates the Department's prior statements, also without explanation.

The Zhongya Companies conclude that, yet again at verification, they offered their full

books and records, including full sales listing to demonstrate that it did not benefit from this program. They maintain that these data, again, were wrongly rejected.

The Zhongya Companies take further issue with the Department application of AFA for this program, arguing that, as a matter of law, adverse inferences are only permissible if there has been a failure to answer a question. They maintain that there was no such failure. In addition, they argue that there was no corroboration of the adverse facts that were used by the Department. They state that section 776(c) of the Act requires the Department to corroborate information from independent sources has not been met and that the Department provided no support for the 20 percent preferential price the Department used for its adverse inference.

Petitioners rebut that the Zhongya Companies had 79 days to provide the Department with the MTAR data that the Department requested in its initial and first supplemental questionnaires. They contend that the Zhongya Companies waited until October 12, 2010, to submit complete data. Noting that this is 147 days after the Department's initial questionnaire, they contend that the Zhongya Companies simply did not take the time to assemble the data. Petitioners argue that it was well within the Department's authority to require the Zhongya Companies to provide data responsive to the Department's clearly-articulated request within the allotted 79 days. Petitioners further argue that allowing the Zhongya Companies to submit the data at such a late date would be an invitation to respondents in future investigations to treat the Department's deadlines as mere suggestions rather than meaningful dates intended to allow the Department to complete investigations in a timely and thorough manner.

Petitioners also rebut the Zhongya Companies' claim that there is "no support" for the AFA rate the Department selected. They argue that the assumptions that New Zhongya's other customers were government authorities, and that the application of a 20 percent sales price premium, were necessary in light of the nature of the allegations and failure to provide the information. They state that, because the GOC's Implementing Regulations require purchase of domestic goods unless they are more than 20 percent more expensive than foreign good, applying this 20 percent rate as AFA was the only way the Department could fulfill its mandate to ensure that the party does not obtain a favorable result by failing to cooperate that if it had cooperated fully. They further argue that the Implementing Regulations are simply clarifications of requirements under the Government Procurement Law of the People's Republic of China and that it has been in place since 2002. Petitioners contend the Federal Circuit has stated that the Department must balance the statutory objectives of finding an accurate dumping margin and inducing compliance when selecting an AFA rate and that this 20 percent rates is the rate that record evidence indicates is the maximum possible amount of benefit from this program.

Department's Position: As explained above, we determine that this program was not used by the Zhongya Companies. Therefore, this issue is moot.

Comment 17: Whether the Ownership Information of Respondents' Customers Was Complete and Fully Verified

The GOC argues that the ownership information it submitted regarding the voluntary respondents' domestic customers was complete, accurate, and fully verified by the Department. It argues that the Department confirmed the accuracy of the ownership information submitted by

the GOC, the Guang Ya Companies, and the Zhongya Companies with reference to the customers' capital verification reports, articles of association, shareholder resolutions, and share transfer agreements. See GOC Verification Report at 10 – 11. Accordingly, argues the GOC, there is no basis for the Department to reject any of the ownership information pertaining to the respondents' domestic customers.

Petitioners did not comment on this issue.

Department's Position: As stated above, we determine that the sale of aluminum extrusions for MTAR program was not used by the Guang Ya Companies and the Zhongya Companies. Therefore, this issue is moot.

Comment 18: Whether a Financial Contribution Exists Under the Provision of Primary Aluminum for LTAR Program

The GOC contends that the record demonstrates that it did not provide the aluminum extrusions industry with financial contributions during the POI in connection with the alleged provision of primary aluminum for LTAR program. The GOC asserts that the Preliminary Determination failed to address how government-owned primary aluminum producers in the PRC constitute authorities within the meaning of section 771(5)(B) of the Act, or whether the government entrusted or directed the producers to provide a financial contribution to the aluminum extrusions industry under section 771(5)(B)(iii) of the Act. The GOC argues that consistent with its decisions in previous CVD investigations, for the final determination the Department must consider the following five factors to determine whether an entity is an authority: 1) government ownership; 2) the government's presence on the entity's board of directors; 3) the government's control over the entity's activities; 4) the entity's pursuit of governmental policies or interests; and 5) whether the entity is created by statute. See, e.g., Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea, 68 FR 37122 (June 23, 2003) (DRAMS from Korea), and accompanying Issues and Decision Memorandum (DRAMS from Korea Decision Memorandum) at "The GOK's Involvement in the ROK Lending Sector from 1999 through June 30, 2002;" Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium From Canada, 57 FR 30946, 30954 (July 13, 1992); Final Affirmative Countervailing Duty Determination: Certain Fresh Cut Flowers From the Netherlands, 52 FR 3301, 3310 (February 3, 1987); and Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils From the Republic of Korea, 64 FR 30636, 30642-43 (June 8, 1999). The GOC argues that proper application of these factors in this case shows that the primary aluminum producers whom the Department preliminarily considered "authorities" based essentially only on the existence of government ownership do not satisfy the applicable standards.

The GOC argues that primary aluminum producers who are government-owned should not per se be considered "authorities" within the meaning of section 771(5)(B) of the Act. The GOC argues that Government ownership/control does not by itself establish the existence of a government "authority" for purposes of the statute. The GOC argues that in the past, the Department has concluded that entities with even 100 percent majority government ownership should not be considered government authorities. See DRAMS from Korea Decision Memorandum at "The GOK's Involvement in the ROK Lending Sector from 1999 through June

30, 2002."

Furthermore, the GOC argues, government ownership of enterprises in the PRC is separate and independent of traditional government functions. The GOC argues that previous reforms have established that SOEs do not exercise elements of governmental authority and, therefore, SOEs do not confer financial contributions within the meaning of the statute. SOEs have separate legal status from that of the government and management of the enterprises' operations has been given to the enterprises' managers. The GOC points to the 1993 Company Law and the State-Owned Assets Supervision and Administration Commission (SASAC) in support of its argument that SOEs act separately from the state. The GOC also argues that the record establishes that primary aluminum pricing is not regulated or set by the state, but is subject to market forces under the 1998 Price Law. The GOC argues that the government sets prices only for vital or rare commodities, natural monopolies and essential non-profit services set forth in government pricing catalogs, but not for aluminum.

Petitioners argue that the Department appropriately determined that companies that provided aluminum extrusions to the respondents in this investigation which were owned and controlled by the GOC are "government authorities" consistent with section 771(5)(B) of the Act. Petitioners argue that in this investigation, as in other PRC cases, the Department established that companies that are over 50 percent owned by the GOC are authorities for purposes of determining whether there is a financial contribution. See Preliminary Determination, 75 FR at 54317. Petitioners note that the GOC does not take issue with the fact that the entities are majority government-owned but argues that state-ownership is not sufficient to establish government authority.

Petitioners disagree with the GOC argument that the government ownership of enterprises in the PRC is separate and independent from government functions and that that the management of the state-owned enterprises is left to the management of the companies. Petitioners contend that the GOC cites to no authority or precedent to support their contention that government reforms have established that SOEs do not exercise elements of government authority nor does the GOC provide specific information about how its reforms have created greater autonomy among state-owned aluminum companies.

Petitioners cite Coated Paper from the PRC in support because in that case the Department disagreed with the GOC that government ownership is "separate and independent of traditional government functions." Moreover, Petitioners argue, in that case the Department did not find that the GOC provided evidence that the GOC does not control majority owned companies. See Coated Paper from the PRC Decision Memorandum at Comment 16.

Petitioners argue that the notion that the price for primary aluminum is not regulated or set by the GOC, and prices are subject to "market forces" pursuant to the 1998 Price Law is inaccurate and that evidence on the record indicates that the GOC is heavily involved in manipulating the market for primary aluminum in the PRC.

Petitioners conclude that the GOC's involvement in the market for primary aluminum through majority ownership of over half the primary aluminum suppliers in the PRC, and through the effect of export restraints which allows the government to affect pricing for primary aluminum in the PRC demonstrates that majority government-owned primary aluminum companies are government authorities in accordance with section 771(5)(B) of the Act.

Department's Position: In Racks from the PRC, the Department stated its policy with respect to application of the five factors test. See Racks from the PRC Decision Memorandum at

Comment 4; see also OCTG from the PRC Decision Memorandum at Comment 9. In Racks from the PRC, the Department stated that it does not analyze each of the five factors for every firm in every case, and, "in most instances, majority government ownership alone indicates that a firm is an authority." See Racks from the PRC Decision Memorandum at Comment 4; see also Coated Paper from the PRC Decision Memorandum at Comment 16, stating that there is a rebuttable presumption that majority owned government entities are authorities within section 771(5)(B) of the Act.

In this case, we have analyzed whether the evidence on the record indicates that enterprises which are majority-owned by the government as "authorities" within the meaning of section 771(5)(B) of the Act. The GOC argues that the prices of primary aluminum inputs are not regulated by the state, as evidenced by the 1998 Price Law and, thus, the Department erred in its preliminary finding that majority state-owned firms are GOC authorities capable of providing a financial contribution. The evidence submitted by the GOC to support its claim that the primary aluminum suppliers are not exercising elements of government authority attempts to show that these suppliers act as commercial entities. However, the Department addressed and rejected this same argument in Racks from the PRC:

> It has been argued that government-owned firms may act in a commercial manner. We do not dispute this. Indeed, the Department's own regulations recognize this in the case of government-owned banks by stating that loans from government-owned banks may serve as benchmarks in determining whether loans given under government programs confer a benefit. However, this line of argument conflates the issues of the "financial contribution" being provided by an authority and "benefit." If firms with majority government ownership provide loans or goods or services at commercial prices, i.e., act in a commercial manner, then the borrower or purchaser of the good or service receives no benefit. Nonetheless, the loan or good or service is still being provided by an authority and, thus, constitutes a financial contribution within the meaning of the Act.

See Racks from the PRC Decision Memorandum at Comment 4. The Department rejected similar claims in Coated Paper from the PRC. See Coated Paper from the PRC Decision Memorandum at Comment 16.

We also disagree that the 1998 Law and the SASAC demonstrate that government ownership is separate and independent of traditional government functions. We note that no pricing information or ownership information was submitted on the record that would support these claims. The laws cited by the GOC suggest that SOEs should be provided some level of autonomy, but we do not find that this is sufficient to demonstrate that the GOC does not control majority owned companies, because, with majority ownership, the government could control the majority of board seats and thus have the power to appoint senior managers.

Thus, following the reasons set forth in Racks from the PRC, we have continued to treat majority state-owned input producers as GOC authorities capable of providing primary aluminum for LTAR.

The GOC cites to DRAMs from Korea to support its statement that the Department considers 100 percent government-owned entities not to be "authorities" under the CVD law. The Department has no policy that would find a wholly-owned company not an 'authority." The cite to DRAMS from Korea is misplaced because, in CORE from Korea, the Department decided to modify our treatment of commercial banks with government ownership with respect to the

finding of a financial contribution under section 771(5)(B)(i) of the Act. As we noted in CORE from Korea:

> In both the DRAMs Investigation and the CFS from the PRC Investigation, we accorded different treatment under this section of the Act to government-owned banks that were commercial banks and those government-owned banks that acted as policy or specialized banks. Upon further review, we have determined that, with respect to determining whether a government-owned bank is a public entity or authority under the CVD law, it is more appropriate to focus solely on the issue of government ownership and control. This treatment of government-owned commercial banks is consistent with our treatment of all other government-owned entities, such as government-owned manufacturers, utility companies, and service providers. Furthermore, this treatment of government-owned commercial banks is also more consistent with 19 CFR 351.505(a)(2)(ii) and 351.505(a)(6)(ii). Thus, a government-owned or controlled bank, be it a commercial bank or a policy bank, is considered a public entity or authority under the Act.

See Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 74 FR 2512 (January 15, 2009) (CORE from Korea), and accompanying Issues and Decision Memorandum at "GOK's Direction of Credit." Therefore, the Department considers companies (and banks) that are owned or controlled by the government to be public authorities under the CVD law.

Comment 19: Whether the Provision of Primary Aluminum for LTAR Program is Specific

The GOC notes that in the Preliminary Determination, the Department found the "program" to be specific because "the industries named by the GOC are limited in number." See 75 FR at 54319. The GOC submits that the record evidence of the range of industries utilizing primary aluminum does not meet the statutory requirement of "specificity" under CVD law. The GOC states that record evidence for the end uses of primary aluminum relate to the type of industry involved as a direct purchaser of the input, and the GOC documented that the consumption of primary aluminum occurs across a broad range of industries. The GOC argues that this record evidence demonstrates that primary aluminum sales are not directed to a specific group of industries or enterprises, but that sales are made to a broad variety of industries. Moreover, the GOC argues that the record evidence shows that the GOC does not restrict the prices charged to consumers in the PRC. See the GOC's August 9, 2010, questionnaire response at 6-10. Thus, in the final determination the GOC argues that the Department must reverse its finding that the provision of primary aluminum is specific to aluminum extrusions producers during the POI.

Petitioners dispute the GOC's contention that the record demonstrates that primary aluminum sales were not directed to a specific industry or group of industries. Petitioners argue that the GOC did not answer any of the Department's questions on this issue during the investigation, and only stated that the GOC confirms that primary aluminum could be used in an unlimited number of industries.

Petitioners argue that in the Preliminary Determination, the Department appropriately determined that the number of industries that use primary aluminum is limited. Petitioners argue that primary aluminum is purchased and used by companies that produce downstream aluminum

products. Thus, the benefit from the provision of primary aluminum is limited to the industry producing finished aluminum products. Petitioners contend that this situation does not vary significantly from the provision of standing timber for LTAR in Coated Paper from Indonesia. See Certain Coated Paper Suitable for High-Quality Print Graphics using Sheet-Fed Presses from Indonesia: Final Affirmative Countervailing Duty Determination, 75 FR 59209 (September 27, 2010) (Coated Paper from Indonesia), and accompanying Issues and Decision Memorandum at "Provision of Standing Timber for Less Than Adequate Remuneration." Petitioners argue that in that investigation, the Government of Indonesia provided standing timber to five industries including the paper industry. Therefore, the Department found that the number of industries that benefit from the provision of standing timber was limited to a group of industries and was therefore specific.

Department's Position: The Department has addressed the GOC's arguments in this regard in prior CVD investigations involving the PRC. For example, in Racks from the PRC, the Department explained that it examined information supplied by the GOC regarding the end uses for wire rod. The Department concluded that while numerous companies may comprise the listed industries, section 771(5A)(D)(iii)(I) of the Act clearly directs the Department to conduct its analysis on an industry or enterprise basis. See Racks from the PRC Decision Memorandum at "Provision of Wire Rod for LTAR." In Racks from the PRC, the Department concluded that the industries named by the GOC were limited in number and, hence, the subsidy was specific. Id. We have conducted the same analysis in the instant review based on information supplied by the GOC, and have determined that the industries named by the GOC are limited in number. Therefore, as in Racks from the PRC, we have determined that the provision of primary aluminum for LTAR program is specific under section 771(5A)(D)(iii)(I) of the Act.

Comment 20: Whether the Benchmark Used for the Provision of Primary Aluminum for LTAR Program Should Include Import Duties

The Zhongya Companies argue that the benchmark used to measure the benefit on purchases of primary aluminum should be corrected to eliminate the erroneous inclusion of an import duty. They explain that New Zhongya pays no import duty for its aluminum feedstock because it imports from Hong Kong and that no import duties apply to imports from Hong Kong. They argue that, once the import duty is removed from the benchmark, it is clear that the Zhongya Companies paid more for primary aluminum from the PRC than the benchmark price and therefore there is no benefit.

Petitioners rebut the Zhongya Companies' position, arguing that, under 19 CFR 351.511(a)(2)(ii) and practice, the Department relies on a benchmark that would apply to all purchasers nationwide in the country under investigation, and is not restricted to the particular circumstances of one respondent. Petitioners argue that the regulations require the inclusion of import duties in the benchmark. 19 CFR 351.511(a)(2)(iv).

Petitioners then argue that the Zhongya Companies' claim that no import duties apply to their purchases of imported aluminum is too categorical and thus inaccurate, arguing that, during verification, a company official explained that if New Zhongya uses imported aluminum in goods it sells domestically, it must pay the import duties on aluminum ingots supplied by Karlton. They contend that New Zhongya is only exempt from the import duty when it is operating under an inward processing model. They take issue with the reliability of the

information provided by the Zhongya Companies in support of their claim, arguing that all of the primary aluminum that New Zhongya reported as imports from Hong Kong actually originated in another country. They then argue that, given that this third country is not a WTO member and that there is no evidence that value is added to the imported primary aluminum prior to entering the PRC the Department should continue to add duties to the benchmark. Petitioners further argue that the suppliers for most of the import transactions were related companies that should not be included in the establishment of the benchmark. Petitioners conclude that the inclusion of a five percent import duty is well-supported by the record of this investigation. In the alternative, they propose that the Department average the three potentially applicable tariff rates of zero, five, and fourteen percent to get an import duty rate of 6.3 percent and include this in the benchmark.

Department's Position: The Zhongya Companies are essentially arguing that the Department should construct a company-specific, tier-one benchmark to measure the benefit from this program. Because the Department is not constructing a tier-one benchmark, the import duties applicable to the Zhongya Companies' imports from Hong Kong are not relevant to the calculation of a benchmark for this program. As explained above in the "Provision of Primary Aluminum for LTAR" section and in Comment 21, we have determined that, due to distortion in the PRC market, we are unable to use tier-one prices as benchmark prices. Therefore, the actual import prices reported by the Zhongya Companies are not useable as benchmark prices in our examination of whether domestic purchases of primary aluminum from government-owned or controlled producers are made at LTAR. Consequently, we are conducting our analysis by using a tier-two world market price benchmark, pursuant to 19 CFR 351.511(a)(2)(ii). The tier-two benchmark prices are monthly LME prices. Furthermore, as mandated by 19 CFR 351.511(a)(iv), we have adjusted these price to include delivery charges and import duties. We note that the LME prices do not include prices from Hong Kong.

For this final determination, we have adjusted each monthly LME benchmark price to include an average import duty rate of 2.5 percent. To derive this average import duty rate, we first identified the two Chinese tariff numbers under which unwrought non-alloy primary aluminum are categorized, tariff numbers 7601.1010 and 7601.1090. See excerpt from the Chinese tariff schedule titled "Customs Import and Tariff of the People's Republic of China," provided in Petitioners' August 20, 2010, submission at Exhibit 5.[49] We selected these two categories because, as with our LME benchmark prices, they pertain to non-alloy aluminum. Of the rates listed for these two categories, we used the rates list under the Most Favored Nation (MFN) heading, five percent for tariff number 7601.1010 and zero percent for tariff number 7601.1090, because the MFN rate reflects the general tariff rate applicable to world trade.

Comment 21: Whether the Department Should Use In-Country Benchmarks Under the Provision of Primary Aluminum for LTAR Program

The Zhongya Companies argue that the Department should use their import prices as the benchmark, arguing that their import prices are LME prices plus a premium. They contend that the Department states in the Preliminary Determination that the LME prices are acceptable as a benchmark. They further contend that the Department's preliminary decision that import prices are distorted by the PRC state-owned primary aluminum import supply in the PRC is not

[49] See also the GOC's August 9, 2010, supplemental questionnaire response at 8 and Zhongya Companies Verification Report at 10 and Exhibit 8, at 24 – 30.

supported because the Zhongya Companies' questionnaire response shows that the import prices are below domestic prices.

The Zhongya Companies further assert that because foreign primary aluminum suppliers to the Zhongya Companies sell on the international market, they are not going to sell to the Zhongya Companies if they can get a better price elsewhere in the world. They maintain that the prices of their foreign suppliers therefore constitute world prices and thus are adequate for use in the benchmark.

Finally, the Zhongya Companies assert that the Department provides no evidence for its finding that the prices in the PRC are distorted. They argue that the Department provides no evidence that the state-owned suppliers are operating on terms inconsistent with commercial considerations.

The GOC asserts that the Department's rejection of a tier-one benchmark (market prices from actual transactions within the PRC) for valuing the adequacy of remuneration is contrary to law, citing the section 771(5)(E)(iv) of the Act, 19 CFR 351.511(a)(2)(i), and the Preamble. The GOC argues that a NAFTA panel the Department's preference for tier-one benchmarks. See In the matter of Certain Softwood Lumber Products from Canada, NAFTA USA-CDA-2002-1904-03 (June 7, 2004). The GOC submits that it is not reasonable to conclude that the prices in the primary aluminum market in the PRC are significantly distorted as a result of the government's involvement in the market and that the record in this investigation does not provide for such a finding.

The GOC asserts that the government does not constitute a substantial part of the primary aluminum market in the PRC. The GOC argues that the Department found that 50 percent of the PRC's primary aluminum production stemmed from state entities based on an unlawfully broad definition of "authorities" and that, if a lawful approach to defining government "authorities" were used, it would be clear that the vast majority of Chinese primary aluminum was manufactured by non-government authorities.

The GOC argues that the Department should consider the actual nature and structure of the market to determine whether the GOC's involvement distorts prices. The GOC contends that the record contains no evidence that the private suppliers' prices are distorted by alleged GOC control of the SOE firms or that any government impact results in a downward distortion of private firm prices. The GOC argues that, to the contrary, the fact that there are numerous private aluminum producers within the PRC supports a conclusion that primary aluminum pricing decisions within the PRC are driven by competitive market principles. The GOC contends that the Department has failed to demonstrate significant distortion and, therefore, is required by law and regulation to rely on in-country prices as the benchmark for determining whether the respondents purchase primary aluminum for LTAR. The GOC argues that the Department must treat the respondents' import prices as a viable tier-one benchmark price because the record demonstrates that the respondents import a significant amount of primary aluminum. See Preliminary Determination, 75 FR at 54318.

Petitioners argue that the Department correctly rejected actual transaction prices from non-SOE suppliers and import prices and used an external benchmark. They contend that the record demonstrates that the GOC is heavily involved in the market for primary aluminum. First, Petitioners argue that the Department calculated that 60 percent of the primary aluminum production in the PRC is accounted for by SOEs and collectively-owned companies and that this is a strong indication that the primary aluminum prices in the PRC are distorted and an additional percentage may also be government-owned. See CHALCO Memorandum. Second, Petitioners

argue that the existence of export tariffs on two of three of the HTS categories that cover primary aluminum is further evidence of the GOC's predominant role in the market for primary aluminum. They contend that these export taxes distort the pricing structure by making the primary aluminum supply in the PRC more abundant that it otherwise would be relative to demand, resulting in a decrease in the prevailing prices. Third, Petitioners argue that import prices cannot be used as the benchmarks. They argue that, given that imports of primary aluminum account for only 11.81 percent of total supply, imports cannot have a meaningful effect on market prices in the PRC and would likely be affected by the preponderance of SOE supply and the export restraints.

Finally, Petitioners argue that the record demonstrates the GOC's heavy involvement in aluminum market, citing the GOC's 11th Five-Year Plan. See Petition at Exhibit III-17. In addition, they maintain that the GOC has called for the development of several large secondary aluminum enterprises and that a plentiful and inexpensive supply of primary aluminum would be critical to the enhancement of the downstream aluminum industry. Petitioners also argue that other planning documents highlight a pervasive policy by the GOC to manage, develop, and enhance the primary aluminum industry. These include the 10th Five-Year Development Guidelines for the Aluminum Industry and the Nonferrous Metal Industry Adjustment and Revitalization Plan. Petitioners conclude that, for these reasons, the Department should continue to use prices published by the LME for benchmark purposes.

Department's Position: As explained above in the "Provision of Primary Aluminum for LTAR" section and Comment 18, we have determined that state-owned domestic producers of aluminum in the PRC are GOC authorities. We also determined that primary aluminum supplied by companies determined to be government authorities constitutes a financial contribution in the form of a governmental provision of a good and that the respondents received a benefit to the extent that the price they paid for primary aluminum produced by these suppliers was for LTAR. See sections 771(5)(D)(iv) and 771(5)(E)(iv) of the Act.

The basis for identifying appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services is set forth under 19 CFR 351.511(a)(2). These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (e.g., actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). While we agree with the GOC that the Act directs the Department to determine the adequacy of remuneration in relation to the prevailing market conditions in the country where the good is being provided, in this case we have determined that the market for primary aluminum is significantly distorted by the presence of companies determined to be government authorities and that, therefore, the use of a tier-one benchmark prices, which includes actual imports, is not suitable for our analysis. See "Provision of Primary Aluminum for LTAR" section for further discussion. We agree with Petitioners that the fact that SOEs account for more than 50 percent of the PRC's production of primary aluminum demonstrates that actual transaction prices are significantly distorted. We disagree with the GOC that the fact that there are some private aluminum producers in the PRC demonstrates that the market is not distorted; the majority of primary aluminum producers are SOEs, and so a finding of significant distortion is reasonable. We disagree with the GOC that this decision is inconsistent with the Preamble, because the

Preamble expressly states that, "where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative…" See 63 FR at 65377.

We determine that the London Metal exchange prices for primary aluminum on the record are suitable for use as a tier-two benchmark, pursuant to 19 CFR 351.511(a)(2)(ii). In the Preliminary Determination, we used the LME prices for primary aluminum that were placed on the record by Petitioners. We also collected LME price data for a single month at our verification meeting with the Zhongya Companies. See Zhongya Companies Verification Report, Exhibit 8 at 75. The monthly average price reviewed during the Zhongya Companies verification is the same as the monthly average price provided by Petitioners. Similarly, the Guang Ya Companies provided six months of LME price data. Again, the monthly average prices for these data are the same as that submitted by Petitioners. Therefore, we are continuing to use the monthly average LME price data provided by Petitioners.

Comment 22: Whether the Guang Ya Companies Properly Reported Their Purchases of Primary Aluminum and Whether the Application of AFA is Warranted

Petitioners assert that the Department should apply AFA in light of the Guang Ya Companies' failure to provide reliable information relating to purchases of primary aluminum for LTAR. Petitioners argue that the Department was not able to verify the Guang Ya Companies' largest purchase of aluminum during the POI. Petitioners argue that the Department discovered that "the largest purchase that Guang Ya made during the POI was unknown," and that "the company was not able to identify the supplier in both its 2009 books and in its current accounting system from 2010." See Guang Ya Companies Verification Report at 7. The Department noted in its verification report that the Guang Ya Companies' attempt to explain that their employees "may not be aware of who the supplier(s)" are, and that they simply pay suppliers whatever amounts are requested "without corroborating documentation." Id. at 7-8.

Petitioners argue that that the Guang Ya Companies' failure to keep verifiable records undermines the reliability of all data that they submitted in relation to their purchases of aluminum. Petitioners further argue that it is not clear how the Guang Ya Companies could have prepared the data submitted to the Department if they do not record the supplier of each shipment of and simply pay anyone who puts forward a claim to have supplied aluminum. In these circumstances Petitioners argue that the Department must apply FA because it was "unable to verify submitted information." See 19 CFR 351.308(a). Petitioners further argue that the Department should also apply an adverse inference as to this information, because the Guang Ya Companies were not acting to the best of their ability when they submitted information that cannot be corroborated. See 19 CFR 351.308(a).

The Guang Ya Companies reject claims by Petitioners that the Department was not able to verify their largest purchase of aluminum during the POI and that there is no basis for resorting to AFA when calculating the Guang Ya Companies' rate.

The Guang Ya Companies argue that, as reported in the Department's verification report, Department officials selected the purchase identified by the Guang Ya Companies as the largest reported purchase of primary aluminum and the verifiers were able to trace the purchase through to payment. See Guang Ya Companies Verification Report at 7. The Guang Ya Companies further argue that the verification report makes clear that in reviewing the chart of primary aluminum purchases, the Department found that cumulatively the largest purchase was classified

under the generic category of "supplier." The Guang Ya Companies argue that this largest recorded purchase was not in fact a single purchase sourced from a single supplier, but rather comprised of several small shipments from multiple suppliers during the course of the POI. The Guang Ya Companies argue that they explained to Department officials at verification, in the normal course of business the company books some purchases under the generic term "supplier," when at the time of delivery, the warehouse employees inputting the material into inventory do not know the identity of the supplier. As a result, although this may seem to be the largest purchase in Guang Ya's books and records, it is actually a series of small shipments under the generic entry of supplier. See Guang Ya Companies Verification Report at 7.

Furthermore, according to the Guang Ya Companies, not only was the Department able to verify that the Guang Ya Companies received this merchandise from multiple suppliers but also verified that it was paid in small batches to the several suppliers. See Guang Ya Companies Verification Report at 7. The Guang Ya Companies conclude that because the Department was able to verify their record keeping as to their purchases of primary aluminum, Petitioners' argument should be rejected and AFA should not be applied.

Department's Position: We disagree with Petitioners that we should apply AFA to the Guang Ya Companies' purchases of primary aluminum. Under 19 CFR 351.511(b), the Department will normally consider a benefit as having been received as of the date on which the firm pays or, in the absence of payment, was due to pay for the government provided good or service. Thus, at verification, the Department confirmed the total quantities of primary aluminum purchased by both Guang Ya and Guangcheng during the POI. See Guang Ya Companies Verification Report at 6-8 and Exhibits 9 and 14. Specifically, we reviewed the internal quantity and value ledgers for both imported and domestically sourced primary aluminum for both companies and reconciled the total payments during the POI to their respective financial statements. Id. We also reviewed a variety of pre-selected purchases and did an on-site inspection of the warehouse where the primary aluminum was delivered. See Guang Ya Companies Verification Report at 6-8 and Exhibit 7. Additionally, the Guang Ya Companies were able to trace the purchases reported in their questionnaire responses to the corresponding invoices, including the single largest purchase of aluminum that it made during the POI. See Guang Ya Companies Verification Report at 7 and Exhibit 8 which describe the verification of the Guang Ya Companies' purchase of primary aluminum during the POI including their largest purchase, which was comprised of several smaller purchases.

At verification, we were unable to match all of the deliveries the Guang Ya Companies received in their warehouse to the corresponding accounting records. See Guang Ya Companies Verification Report at 7. However, as noted above, we were able to identify the date on which all of the purchases were made during the POI, which 19 CFR 351.511(b) states is the information the Department requires in order to quantify the benefit. Moreover, we find there is no evidence on the record indicating that payments for deliveries of primary aluminum made to the Guang Ya Companies were not eventually made. Because we were able to determine the date of the purchases during the POI, we do not find that there is information missing from the record, or that the Guang Ya Companies failed to cooperate by not acting to the best of their ability in this regard. Therefore, we have determined that AFA is not warranted. See Sections 776(a) and (b) of the Act.

Comment 23: Whether the Land for LTAR Program Constitutes a Financial Contribution, Provides a Benefit, and is Specific

The GOC disagrees with the Department's Preliminary Determination that the GOC's provision of land-use rights to the Guang Ya Companies and the Zhongya Companies constitutes the provision of a good within the meaning of section 771(5)(D)(iii) of the Act, is specific within the meaning of section 771(5A) of the Act, and confers a countervailable benefit within the meaning of section 771(5)(E) of the Act. See Post-Preliminary Memorandum at 2 – 6.

The GOC argues that in the Post-Preliminary Memorandum the Department concluded that the negotiated price for land use rights by New Zhongya Companies in the ZHITDZ was preferential, preliminarily finding that the government provided incentives such as reduced requisition compensation costs and the provision of land-use rights on a sliding scale depending on the size of the development, the firm's technological development, and the firm's domestic/international prominence. See Post-Preliminary Memorandum at 2-3.

The GOC argues that at verification it demonstrated that the criteria for negotiating prices for land parcels within the ZHITDZ were no different from the general area of Zhaoqing outside the zone:

> The official provided screen shots from a website containing the guidelines for applying for land-use rights that were in effect in 2006. See VE 4 at pages 48-50 . . . . The official explained that these guidelines were applicable to parcels located throughout Zhaoqing and that there were not any separate guidelines for land located in the ZHITDZ.

See GOC Verification Report at 15. The GOC further argues that at verification the GOC explained that corporate status of the applicant is not a factor in the approval process, with the exception of farms. The GOC Verification Report states that, "any type of company can apply for land-use rights in the ZHITDZ. The official also stated that whether or not an applicant is an exporter is not a consideration." See GOC Verification Report at 15.

The GOC contends that at verification the Department further confirmed that the ZHITDZ is not limited to high technology companies and the Department verified that the Zhongya Companies did not receive any refund or exemption on the construction fees levied for the ZHITDZ. Additionally the GOC argues that the Department confirmed that there is no construction fee imposed for construction on parcels outside the ZHITDZ. See GOC Verification Report at 15.

For New Zhongya, the GOC argues that the land in question was farmland/"greenfield" without any supporting infrastructure, and so the company was required, at its own costs, to build whatever was required. See Zhongya Companies Verification Report at 18. The GOC argues that it is clear that the Zhongya Companies negotiated and paid for the land-use rights on an arm's length basis and did not benefit from any government program. Thus the Department should conclude that the provision of such land-use rights was not countervailable or provided at LTAR.

The GOC argues similarly with regard to the Guang Ya Companies and their acquisition of land-use rights in the South Sanshui Science and Technology Industrial Park. The GOC notes that the Department verified that all parcels within the entire Sanshui district are classified

according to grade:

> The official then explained that sales of land-use rights for parcels located both inside the industrial park and outside the park are negotiated. The official explained that the Sanshui District Land and Resources Bureau begins the negotiation with an interested party based on the average prices of the parcels with the same grade located throughout the Sanshui District. Then, from that starting point, the price is negotiated based on the characteristics of the parcel itself, such as location, the level of infrastructure on the parcel, and nearness to roads and sewage systems.

See GOC Verification Report at 17-18.

According to the GOC, the Department reviewed detailed lists of all the parcels sold in the Sanshui District in 2006, both within the industrial park and outside the industrial park and confirmed the accuracy of the lists provided by reference to the original source documents. See GOC Verification Report at 18 and Exhibit 5 at pages 66-78. The GOC claims that these verified documents established that the weighted-average price of the parcels sold within the industrial park was greater than the weighted-average price of all parcels sold in the Sanshui District in 2006. See GOC Verification Report at 18. The GOC concludes that there is no evidence that the purchase of land-use rights by Guangcheng in the South Sanshui Science and Technology Industrial Park occurred at preferential prices or in any way conveyed a benefit to Guangcheng or the Guang Ya Companies and, therefore, the Department has no basis to conclude that the provision of such land-use rights was countervailable or provided at LTAR.

The GOC further argues that the Department made an incorrect finding that the government sale of the rights to use land is a provision of a "good" within the meaning of the statute. The GOC states that the sale of land use rights does not fit within any of the definitions of "financial contribution" and thus cannot be held as countervailable under the statute.

The Zhongya Companies argue that in the Post-Preliminary Memorandum the Department failed to demonstrate that their acquisition of land-use rights was specific under section 771(5A) of the Act. The Zhongya Companies assert that the evidence on the record and the Department's own findings in previous cases demonstrate that the Department cannot satisfy the relevant legal standard in this case and therefore cannot find this program to be countervailable in its final determination.

The Zhongya Companies argue that the Department previously determined:

> . . . that, due to the overwhelming presence of government involvement in the land-use rights market, as well as the widespread and documented deviation from the authorized methods of pricing and allocating land, the sale of land-use rights in China is not conducted in accordance with market principles.

See LWS from the PRC Decision Memorandum at "Government Provision of Land for Less Than Adequate Remuneration" (emphasis added). In finding that any land subsidy is "widespread" and generally available in the PRC, the Department effectively has found the subsidy therefore is not "specific" and not a countervailable subsidy. They further argue that, in stating that the subsidy must be measured based on out-of-the PRC benchmarks, the Department further confirms its view that all PRC land prices are subsidized such that the subsidy is generally available (i.e., not "specific"), and the Department has failed to establish otherwise in

this case or elsewhere. In the absence of a reasonable demonstration that it is specific, the Zhongya Companies argue the Department should find the program not countervailable in the final determination.

Petitioners contend the Zhongya Companies' arguments deny the nature of land in the PRC and the industrial zones at issue. Petitioners argue that the GOC owns all of the land in the PRC and certain GOC agencies responsible for distributing land use rights have established special geographical areas within which they provide land use rights under conditions that differ from those elsewhere in the same jurisdictions. Petitioners argue that there would be no point in the GOC setting up such special zones if they served the same purpose elsewhere. Petitioners argue that, although the respondents imply that the land use rights in the zones at issue are provided on essentially the same terms as those outside of the zones the evidence on the record makes it clear that this is not the case.

Petitioners cite a document that they submitted on the record where the Zhaoqing Government touts the "Eight Advantages" of locating in the ZHITDZ, which include "preferential policies for land use." Specifically Petitioners note one of the selling points the Zhaoqing Government advertises is that it gives certain companies a better deal for land-use rights than others:

> World top 500 enterprises internationally or domestically renowned enterprises, High-Tech projects at the state level, high taxation project or other influential projects can be treated individual and land prices can be further lowered upon negotiations between the investor and management committee.

See Petitioners' July 13, 2010, First New Subsidy Allegation at Exhibit 1. Petitioners further note that the Zhaoqing Government has specified that the preferred investment for the zone relate to only a handful of projects specifically including enterprises engaged in the processing of aluminum. Id.

Petitioners contest the GOC's claim that even though the local government advertises ZHITDZ to potential investors, the "guidelines" for price negotiations are the same for all firms inside and outside the zone and therefore price negotiations cannot be specific. Petitioners note that section 771(5A)(D)(iv) of the Act states that in the case where a good is sold for LTAR it is specific if the subsidy is limited to an enterprise or industry located within a designated geographical region. Petitioners assert that the information posted by the GOC on the Internet makes clear that it does not negotiate on neutral criteria.

With regard to the land use rights in the South Sanshui Science and Technology Industrial Park, Petitioners argue that the GOC makes a similar claim that land-use rights prices are the same inside and outside of the zone. Petitioners contest as unsubstantiated the GOC's assertion that it uses the same grading system for land in and outside the zone or that this renders the provision of these land use rights not specific because negotiations all begin at the same price. Additionally, Petitioners argue that the GOC's contention that it charged more for land inside the zone did not withstand verification. See GOC Verification Report at 18.

Petitioners disagree with the Zhongya Companies' argument that the Department "has not explained its analysis for finding the alleged program to be specific." Petitioners assert that in the Post-Preliminary Memorandum the Department specifies that land use rights are regionally specific under section 771(5A)(D)(iv) of the Act. See Post-Preliminary Memorandum at 5. Petitioners argue that the evidence on the record indicates that the GOC created the zone and

offers land use rights in this designated geographic area at preferential prices. See Petitioners' July 28, 2010, Second New Subsidy Allegation at Exhibit 6 and 7. In conclusion, Petitioners support the analysis in the Post-Preliminary Memorandum concerning the GOC's provision of land use rights. Petitioners assert that the Department correctly found that these land use rights provided by the GOC are regionally specific.

Department's Position: We disagree with the notion that the GOC's provision of land-use rights does not constitute a financial contribution, confer a benefit, or is not specific. The Department has addressed this argument in past CVD proceedings involving the PRC. As explained in LWTP from the PRC, the Department's practice of treating land as a good or service is fully consistent with the Act. In that investigation, the Department explained that it has consistently taken the position that the provision of land is the provision of a good or service and, consequently, a financial contribution under section 771(5)(D)(iii) of the Act. See LWTP from the PRC Decision Memorandum at Comment 12. The Department further explained in LWTP from the PRC that the statutory definition of a financial contribution is written broadly in recognition that governments have a variety of mechanisms at their disposal to confer a financial advantage on specific domestic enterprises or industries. Id. The SAA confirms that the sweep of the statute is intended to be broad to ensure that such mechanisms are subject to the CVD law:

> Section 771(5)(D) of the Act lists the four broad generic categories of government practice that constitute a "financial contribution." The examples of particular types of practices falling under each category are not intended to be exhaustive. The Administration believes that these generic categories are sufficiently broad so as to encompass the types of subsidy programs generally countervailed by Commerce in the past, although determinations with respect to particular programs will have to be made on a case-by-case basis.

See SAA at 927. We agree with the reasoning set forth in LWTP from the PRC, and adopt that reasoning in response to the arguments raised here.

We further disagree with the arguments of the GOC and the respondents concerning whether the land for LTAR programs are regionally specific under section 771(5A)(iv) of the Act. The GOC and the respondent have presented no evidence that overcomes or disproves the factual information from regional and municipal governments in the PRC that the Department used as its basis for finding regional specificity within the two zones. Regarding the ZHITDZ, a brochure issued by the PGOG states that there are preferential policies for land use within the zone, namely that land prices can be lowered according to such factors as industry type, investment volume, and output volume. See Petitioners' June 13, 2010, submission at Exhibit 1. The PGOG brochure further states that with regard to land prices "world top 500 enterprises, internationally or domestically renowned enterprises, high-tech projects" ". . . and other influential projects can be treated individually" and that "land prices can be further lowered upon negotiations between the investor and the management committee." Id. Similarly, regarding the South Sanshui Science and Technology Industrial Park, documents from the Sanshui District Government (located in Foshan City) indicate that industrial land within the South Sanshui Science and Technology Industrial Park will be offered at preferential prices. See Petitioners' July 28, 2010, submission at Exhibits 6 and 7. When asked at verification to discuss the information from the municipal government touting preferential prices for firms that located

within the South Sanshui Science and Technology Industrial Park, the GOC stated that it was unable to comment on this. See GOC Verification Report at 18.

We further disagree with the Zhongya Companies' argument that, by previously finding that deviations from the authorized methods of pricing and allocating land are "widespread" and generally available in the PRC, the Department effectively has found the provision of land-use rights to be not specific. See LWS from the PRC Decision Memorandum at "Government Provision of Land for Less Than Adequate Remuneration." The excerpt from LWS from the PRC to which the Zhongya Companies cite was made in reference to the benchmark that the Department must utilize when determining whether land was sold in the PRC for LTAR. Specifically, the passage in question states that the overwhelming presence of GOC involvement in the land-use rights market makes the use of a tier three benchmark under 19 CFR 351.511(a)(2)(iii) (i.e., whether the GOC's pricing of land-use rights is consistent with market principles) not viable. As such, the Department's statement in LWS from the PRC cannot be interpreted as a finding on by the Department that the GOC's provision of land-use rights cannot be specific under section 771(5A) of the Act.

Comment 24: Whether the Department Should Revise the Benchmark Used Under the Land for LTAR Program

The Zhongya Companies argue that the Thai land benchmarks used by the Department in its post-preliminary determination calculations are inappropriate. They argue that the Department must use alternative land benchmarks placed in the record by New Zhongya that meet the legal requirements relating to comparability and non-subsidization, or it must make adjustments to the Thai land benchmarks.

The Zhongya Companies argue that, while the first quarter 2008 Thai land values used as a benchmark in the post-preliminary calculations also have been used as the land benchmark in previous CVD investigations, the Department has not provided any evidence that the values represent an accurate and legally acceptable benchmark based on the particular circumstances of the Zhongya Companies' land acquisition. They argue that the Department has simply and impermissibly relied on the same land values as those used in LWS from the PRC without any supporting evidence showing how these property values accurately reflect the market value of the specific land acquired by the Zhongya Companies. They argue that this is contrary to the Department's own approach in LWS from the PRC, in which the Department focused on the specific land-use rights at issue in that investigation.

The Zhongya Companies argue that the Department has made no demonstration in this case that the province in which the Zhongya Companies are located is similarly "on par with Thailand," and there is no evidence in the record indicating that it is. The Zhongya Companies maintain that the record of each review/investigation is independent and the decision should be case specific.

The Zhongya Companies argue that the record in this investigation shows the Thai land benchmarks used in the Post-Preliminary Memorandum fail to meet the comparability requirements of section 771(5) of the Act and 19 CFR 351.511(a) because of fundamental differences between the proposed benchmark and New Zhongya's acquisition. First they argue that the Thai benchmarks pertain to properties in developed industrial parks with significant amenities, while the land acquired by the Zhongya Companies was undeveloped. They explain that the Thailand benchmarks used in the Post-Preliminary Memorandum were based on land

values for properties in several Thai industrial parks or estates, as reported in a CBRE Asian Industrial Market Flash for first quarter 2008. The Zhongya Companies add that both the first quarter 2008 and first quarter 2007 versions of the CBRE report show that the Thailand industrial estates and parks for which indicative land values are provided include infrastructure and other amenities unlike the greenfield land acquired by the Zhongya Companies. They further argue that the CBRE "Industrial Property Guide" included as Exhibit B of the November 26, 2010, submission explains that the Thai Industrial Estates and Industrial Parks/Zones are more expensive than greenfield sites, which require additional costs for land preparation, connection to utilities, and other infrastructure and amenities.

The Zhongya Companies argue that at verification they provided 128 photographs showing the development of their factory site from 2005 to March 2010. The Zhongya Companies then argue that the benchmark prices based on the land values for the Thailand properties vastly overstate the value of the New Zhongya properties. As evidence, they refer to page 12 of the CBRE Industrial MarketView report for the Philippines in second quarter 2007 (Exhibit D to the November 26, 2010 submission), which lists average lease rates and capital values at selected industrial parks in the Philippines at the end of second quarter 2007. They state that one property in Subic Bay Technopark listed as having "infrastructure in place" has an indicated land price of US$4.64 per square foot for a 50-year leasehold. They state that a second property, located in the same region in Subic Bay Industrial Park, is not indicated as having "infrastructure in place" and has an indicated land price of only US$2.80 per square foot, also for a 50-year leasehold. They argue that these prices indicate that the value of land without infrastructure is worth only approximately 60 percent of the value of similar land available with infrastructure in place.

Second, the Zhongya Companies argue that the Thai benchmarks used are for sales involving permanent transfers of property rights, while the land they acquired was only a 50-year lease for limited land-use rights. They contend that the Thai land values used in the benchmark represent significantly more valuable permanent land transfers as compared with the limited 50-year leases of land-use rights.

Third, they argue that the benchmarks used by the Department are from a time more than two years after New Zhongya's acquisition and the Department's adjustments for inflation are insufficient to account for changes in property values during the intervening period. They argue that the Thailand land values used in the Department's benchmark are taken from a CBRE report on industrial land values in Thailand for the first-quarter of 2008, which is well over a year after the 2006 land acquisitions by the Zhongya Companies to which they are compared. They further argue that the CBRE report from which the land benchmark prices were sourced reflects the volatility of industrial land prices in Thailand, in particular, the impact of the booming automotive sector and related Eco-Car initiative that spurred investment in Thailand's economic sector in first-quarter 2008. They argue that, as a result of this volatility, prices from first-quarter 2008 do not accurately reflect market prices from mid-2006, even when adjusted for inflation.

Fourth, they argue that the Thai benchmarks used are from a major metropolitan city (Bangkok), while the property acquired by the Zhongya Companies is in a much less developed area. They then explain that the Zhongya Companies' acquisition was of land that is not near a city of the size and state of development of Bangkok.

Fifth, they argue the CBRE report from which the Department obtained the Thai land values indicates that industrial land values in Thailand that the Department used as the benchmark were artificially inflated by Thai government subsidies to the automotive industry.

They argue that such subsidies led to an automotive industry boom that spurred investment and drove up industrial land values in the particular locale that the Department used for the benchmark land prices. They conclude that the courts routinely have recognized that benchmarks distorted by government intervention cannot be used as benchmarks in CVD proceedings, citing, e.g., Royal Thai Government v. United States, 441 F. Supp. 2d 1350, 1365 (CIT 2006).

The Zhongya Companies argue that a land value for industrial property in the Philippines that they placed on the record satisfies the relevant legal requirements relating to comparability and non-subsidization. Specifically, they contend that the CBRE Industrial MarketView report provided as Exhibit D to their November 26, 2010, submission lists a land price for a 50-year leasehold in the Subic Bay Industrial Park of US$2.80 per square foot. They argue that, similar to the term of New Zhongya's land acquisition, this land value is for the acquisition of a 50-year lease of an industrial property. They also argue that because the Subic Technopark property listed immediately below it in the CBRE report is indicated as having "infrastructure in place," the lack of such a description for the Subic Bay Industrial Park property indicates that it does not have infrastructure in place and therefore is a greenfield tract comparable to the land acquired by the Zhongya Companies. Third, they argue that the indicative land price reported is for a period (second quarter 2007) relatively close in time to the Zhongya Companies' acquisitions (June and October 2006) and there is no evidence that land prices in the Philippines experienced unusual volatility during the intervening months. Fourth, they argue there is no evidence that land prices in Subic Bay Industrial Park are distorted by subsidies or other government intervention. Fifth, they contend that the Philippines is economically similar to the PRC, as evidenced both by the economic data in the Department's memorandum of January 11, 2011, and by the fact that the Department found the Philippines to be economically comparable to the PRC in the companion AD investigation.

The GOC also argues that, in measuring the benefit, the Department incorrectly uses the price of outright land sales of industrial land in Bangkok, Thailand, as benchmarks for land leases in Zhaoqing and Foshan, the PRC, without any adjustments to account for obvious differences. The GOC argues that the statute requires the Department to seek domestic benchmarks, and that external land price benchmarks are not permissible under the statute because the value of land in another country can be determined only on the basis of the derived demand in that other county, which is necessarily based on the land's productive use in that country. The GOC concludes that, in this investigation, the Department has failed to use Chinese land benchmarks and made no adjustments the many differences in market conditions affecting land values between the urban metropolis of Bangkok, Thailand, and the areas of Zhaoqing and Foshan.

Petitioners rebut by arguing that the GOC created the South Sanshui Science and Technology Industrial Park and offers land-use rights in this designated geographic area at preferential rates, citing to screen shots of government websites. They agree with the approach from the Preliminary Determination, contending that the Thai land prices are appropriate and contemporaneous benchmarks from an authoritative, public source and that appropriate adjustments for inflation were made. They take issue with the Zhongya Companies' assertion that the land-use rights the Zhongya Companies acquired are in a much less developed area than the Thai industrial zones forming the basis of the benchmark prices used by the Department, which wrongly implies that the Thai industrial land is in downtown Bangkok, which Petitioners assert is not the case. They argue that the Department should reject the proposal of using

alternative land prices from the Philippines. They also point out that the proposed benchmark zone in the Philippines is adjacent to a highly developed metropolitan area. They also rebut the Zhongya Companies' position that subsidies in Thailand to the auto industry distorted land values by arguing that the alternative Philippines data reference incentives and tax amnesties for companies located in the economic zones. See Petitioners' February 15, 2011, Rebuttal Brief at 58 – 60.

Petitioners further argue that the Zhongya Companies do not provide adequate support for their assertion that infrastructure should represent more than half of the cost of land use rights. They contend that the comparison of two disparate pieces of land contained in the Philippines land data are neither scientific nor authoritative and thus cannot be accepted as a general rule for the final determination. In conclusion, Petitioners argue that the land values for industrial estates outside Bangkok are appropriate and that the Department adjustments are sufficient to ensure an appropriate comparison under the Act. Id. at 60 – 61.

Department's Position: We disagree with the GOC and the Zhongya Companies that the Department should use as external land benchmarks the prices for land in the Philippines placed on the record by the Zhongya Companies. See the Zhongya Companies November 26, 2010, submission at Exhibit D. Consistent with LWS from the PRC and Citric Acid from the PRC, we continue to determine that that the "indicative land values" for land in Thai industrial estates, parks, and zones, which are published in the "Asian Industrial Property Market Flash" by CBRE, are suitable for comparison with the prices for land-use rights acquired by New Zhongya and the Guang Ya Companies. The 2007 prices for land in Thailand that were provided by Zhongya Companies are from the same source (CBRE), and pertain to the same industrial lands in Thailand, as the 2008 prices that we used in our preliminary calculations. See the Zhongya Companies' November 24, 2010, submission at Exhibit A, page 3.

With regard to the Zhongya Companies' argument that New Zhongya's land in the ZHITDZ is not comparable with the Thai industrial lands referred to in the CBRE report, we do not agree. Information on the record indicates that the levels of infrastructure and the amenities in the ZHTIDZ and the Thai industrial parks referenced, as the CBRE report, are comparable. A website provided by Petitioners that was published in 2004 and entitled "An Introduction to Zhaoqing" contains a detailed description of the ZHTIDZ. Under the heading, "Preferential Policies for Land Use," the website states that the "Zhaoqing High-Tech Zone offers the industrial estate which has been well-equipped with electricity, water, cable, road…," indicating a significant level of infrastructure. See Petitioners July 13, 2010, New Subsidy Allegations at Exhibit 1, page 8.

The website also touts several "advantages" of the industrial park regarding the park's infrastructure, location, and amenities. For example, "Advantage Four: Convenient Multidimensional Transportation Network" is a detailed description of the park's proximity to large cities (i.e., Guangzhou, Hong Kong, Macao), roadways, railways, ports, and the airport. "Advantage Five: High Starting-point Planning, High Standard Construction" states, "the infrastructure facilities are growing better and better" and lists as supporting service facilities a customs house, commodity inspection, a bank, a school, and a hospital. It also states that a golf holiday village, five-star hotel, large shopping mall, and high class business center will be forthcoming. See Petitioners July 13, 2010, New Subsidy Allegations at Exhibit 1, pages 5-8. With regard to the slideshow presentation at verification, we collected pictures of the construction of New Zhongya showing power lines and a canal on or near the site, and do not

agree with the Zhongya Companies that these pictures prove that the land is not comparable to Thai industrial lands. See Zhongya Companies Verification Report at Exhibits 24-26.

The CRBE report lists prices for Thai land in industrial estates, industrial parks and an industrial zone under the heading "Industrial Parks." The report describes industrial estates in Thailand as having similar levels of infrastructure and amenities as what was advertised for the ZHTIDZ (see above). According to the CBRE report, in Thailand,

> an industrial estate resembles an industrial town or industrial city, providing the complete infrastructure necessary for industrial operation, including electricity, water, flood protection, waste water treatment, solid waste disposal, etc. They are accessible to seaports, airports, and other transportation centres.

See the Zhongya Companies' November 26, 2010, submission at Exhibit A, page 11.

Another CBRE report, titled "Industrial Property Guide," contains a description of Industrial parks/Zones," and it states that, "[p]hysically, industrial parks/zones are quite similar to the industrial estates…" See the Zhongya Companies' November 26, 2010 submission, at Exhibit B (page 5 of the guide). In addition, at our verification meetings with the GOC, an official explained that the ZHITDZ was attractive to because of its location and because it has better infrastructure that other parts of Zhaoqing (i.e., specifically more advanced roads, water and sewer systems, and residential infrastructure). See GOC Verification Report at 16. For these reasons, we do not find the arguments for not using the land prices for industrial land in Thailand or for making an infrastructure comparability adjustment to these Thai industrial land prices to be persuasive. We also disagree with the Zhongya Companies' assertion that the Department did not make a case-specific finding regarding the comparability of the Thai industrial land to land in the ZHITDZ.

We agree with the Zhongya Companies that we should use the 2007 land prices, as opposed to the 2008 land prices we used in our preliminary calculations. New Zhongya acquired its land-rights in 2006, and the Guang Ya Companies acquired their land-use rights in 2007. As 2007 is more contemporaneous with the times of these purchases, we have used the 2007 prices for Thai industrial land for benchmark purposes. See the Zhongya Companies November 26, 2010, submission at Exhibit A, page 3. These are the same benchmark prices that were used in the LWS from the PRC and Citric Acid from the PRC. In addition, with regard to the Zhongya Companies' argument that the 2008 Thai land prices are distorted by subsidies that increased the land values in 2008, we do not need to address this point, as we determine to use the 2007 land prices provided by the Zhongya Companies instead of the 2008 prices.

We also disagree with the argument that land price data from the Philippines are best suited for use as a benchmark. As stated above, we find that the land-use rights acquired by the Zhongya Companies and the land that comprises the Thai land benchmark are located in areas with infrastructure development. In contrast, according to the Zhongya Companies, the proposed land prices from the Philippines are not located in an area with infrastructure development. Further, we disagree with the Zhongya Companies' argument that the Philippines land price data are a better benchmark because, unlike the Thai land price data, they are not distorted by government subsidization. As Petitioners point out, the alternative Philippines data reference incentives and tax amnesties for companies located in the economic zones. See the Zhongya Companies' November 26, 2010, submission at Exhibit A, page 7. Therefore, we continue to use the land price data from Thailand as the basis for the benchmark under the land for LTAR

programs at issue in this investigation.

Comment 25: Whether the Department Erred in Rejecting Factual Information Concerning the Benchmark Used Under the Land for LTAR Program

The Zhongya Companies argue that the Department improperly rejected the Zhongya Companies' December 22, 2010, submission providing needed information to accurately calculate the true subsidy rate, despite the fact that the Department introduced very little evidence on the record regarding the Thai land benchmark, and despite the Department's statutory obligation to accurately measure the amount of the subsidy. They argue that the Department's initial letter rejecting the Zhongya Companies' requested extension with regard to aluminum benchmark information failed to address the pending request relating to the land benchmark. They explain that, in a letter dated November 24, 2010, they requested an extension until December 22, 2010, to provide further information as to benchmark land values, on the basis that this date was consistent with the deadline for providing final surrogate value information in the companion AD case and would not be information subject to verification during the upcoming verification. They contend that, if the Department had time to consider benchmark information for the companion AD investigation, it would equally have such time in the CVD case. They further explain that the Department issued its October 29, 2010, Post-Preliminary Memorandum well after the deadline for its August 29, 2010, Preliminary Determination, thereby warranting additional time for consideration of appropriate benchmarks. They explain that they followed this request with a separate letter on November 26, 2010, requesting extension of the deadline to submit information relevant to benchmark aluminum input values. They argue that on December 8, 2010, the Department responded by rejecting only the Zhongya Companies' request with regard to the benchmark aluminum input values.

The Zhongya Companies argue that the reasons cited in the Department's letter rejecting an extension for aluminum benchmark information weigh in favor of granting the requested extension with regard to land benchmark information. They argue that the Department's letter notes that the aluminum benchmark was determined in the Preliminary Determination, published on September 7, 2010, and two subsequent invitations were issued to relevant parties to comment further on the benchmark used in the MTAR program. They argue that the land benchmark, however, was not determined at that time and no such explicit invitations to comment were issued by the Department.

They argue that the Department's letter of January 5, 2011, rejecting the December 22, 2010, submission of land benchmark information did so simply by a brief reference to the previously established deadline and without addressing any of the reasons Zhongya Companies provided for needing an extension or otherwise explaining why "good cause" did not exist to grant the extension, as the Department is authorized to do under 19 CFR 351.302(b). They complain that the Department has routinely extended the deadline for submission of new facts in other cases, and contend that its unexplained failure to follow such practice in this case is not in accordance with law.

The Zhongya Companies then argue that the Department itself then added new benchmark data to the record on January 11, 2011 -- nearly three weeks after rejecting New Zhongya's submitted benchmark data as untimely. They contend that Department thereby demonstrated that still had ample time under the statutory deadlines to consider further relevant information in order to determine accurate benchmarks meeting the relevant statutory and

regulatory requirements. They argue that Department's failure to explain why its information was timely and relevant but the Zhongya Companies' information should be rejected out of hand furthermore is not in accordance with law.

The Zhongya Companies conclude that the Department has been inconsistent, and has failed to explain its acceptance/inclusion of certain information versus rejection of other information on the record.

Department's Position: We disagree with the Zhongya Companies. The Department clearly indicated to interested parties that, in accordance with 19 CFR 351.301(b)(1), the deadline for factual information would be due no later than the close of business on November 26, 2010, which corresponded to seven days prior to the start of verification. See Memorandum to the File from Eric B. Greynolds, Program Manager, Office 3, Operations (Factual Deadline Memorandum). The Zhongya Companies filed the factual submission in question on December 22, 2010, 12 days after the completion of the GOC verification, 15 days after the completion of the Zhongya Companies' verification, and 26 days after the new factual information deadline. Thus, the Department properly rejected the Zhongya Companies' December 22, 2010, submission as untimely under 19 CFR 351.302(d)(1)(i).

The Zhongya Companies' claims concerning its November 24, 2010, request for an extension to the factual deadline and the Department's purported silence concerning its request to submit additional information concerning the land for LTAR benchmarks constitute nothing more than an attempt to create ambiguity where none exists. Again, the Factual Deadline Memorandum made it abundantly clear that November 26, 2010, was the deadline for additional factual information. The Department's December 8, 2010, letter to the Zhongya Companies rejecting their request for additional time to file factual information only served to reiterate the finality of the November 26, 2010, deadline. See the Department's December 8, 2010, letter, "Response to Request for Extension of Time to File Factual Information Pertaining to the More Than Adequate Remuneration (MTAR) Program," (More importantly, the requested extension date is past the regulatory deadline for the submission of factual information. See 19 CFR 351.301(b)(1)). We also disagree that, because the Department has accepted information filed after the deadline in other cases, it was required to accept the Zhongya Companies' untimely filed data. The Department is not required to extend its deadlines. As the CIT has held, the Department has "broad authority to set, and extend, its deadlines." See SKF, 675 F. Supp. 2d at 1274.

We further disagree with the Zhongya Companies' argument that the Department should have accepted the information contained in their December 22, 2010, submission because it was not information subject to the upcoming verification. It is the role of the Department, and not that of the respondent or petitioning parties, to determine whether information is subject to verification. In fact, as the Preamble to Procedural Regulations points out, the reason why 19 CFR 351.301(b)(1) sets the factual information deadline seven days prior to verification is that, ". . . a single deadline ensures that Department analysts have time to review submitted information before they depart for verification."

Lastly, we disagree with the Zhongya Companies' argument that the Department's placement of 2009 Benchmark Interest Rate Memorandum on the record after completion of verification undermines its decision to reject the Zhongya Companies' December 22, 2010, submission. In the Preliminary Determination, the Department stated its intention to place updated benchmark data on the record as soon as it became available: "The Department notes

that the current 2008 loan benchmark may be updated, by the final determination, pending the release of all the necessary 2009 data." See 75 FR at 54309.

Comment 26: Whether the Guang Ya Companies Received an Additional Subsidy in Connection With the GOC's Purchase of Land-Use Rights and Buildings

Petitioners argue that at verification the Guang Ya Companies and its affiliate Guangcheng revealed that they had received payment from the local government in connection with the acquisition of land and buildings. See Guang Ya Companies Verification Report at 20. Although the Department obtained a copy of a sales agreement between Guangcheng and the Foshan City Nanhai District Sushan Township Guanyao Office, Petitioners argue more information is required for the Department to determine whether this financial payment constitutes a countervailable subsidy. See Guang Ya Companies Verification Report at Exhibit 25.

Petitioners argue that the Department is required to determine whether a benefit was provided by the government to Guangcheng in the form of excessive compensation and more detailed information is also needed relating to the land and buildings that Guangcheng sold in order to assess the appropriate level of compensation. See Guang Ya Companies Verification Report at 20. Petitioners argue that the Department should obtain further information in order to investigate this financial contribution and potential subsidy. If the Department determines that insufficient time remains to investigate this possible subsidy before the final determination, Petitioners argue that it should defer consideration of this newly discovered potential subsidy to the first administrative review pursuant to 19 CFR 351.311(c)(2).

According to the GOC, the Guang Ya Companies had no obligation to report on this transaction in their questionnaire response and should not be penalized for that fact that this transaction was discussed for the first time at verification. The GOC argues that Petitioners have provided no evidence that the circumstances surrounding this transaction justify the initiation of an investigation because of the lack of a financial contribution, benefit or specificity.

The Guang Ya Companies argue that Petitioners are factually incorrect regarding the circumstances in which Guangcheng received compensation for the land and buildings, and that the issue was discussed in full at verification. Guangcheng was required by the local government in Foshan City, Nanhai District, to sell to the local government certain land and buildings owned by Guangcheng, through the government's right of eminent domain. The property was needed in order to build a high speed rail line that crossed a portion of Guangcheng's premises. See Guang Ya Companies Verification Report at 20. According to the Guang Ya Companies, the transaction is essentially a sale of land use rights, and the compensation was the value of the property taken and does not constitute a "benefit" as Petitioners argue.

The Guang Ya Companies contend that the Act and regulations define "benefit" as instances where goods or services are provided at LTAR. See Section 771(5)(E)(iv) of the Act; see also 19 CFR 351.511(a). The Guang Ya Companies argue that the government's exercise of its right of eminent domain cannot be regarded as a "benefit" to the company. According to the Guang Ya Companies, the Department verified that Guangcheng received "compensation" in the form of monies from the local government for its land and buildings, and that it booked this receipt of income as it does with other payments under the "special payables account." See Guang Ya Companies Verification Report at 20. However, the Guang Ya Companies argue that this compensation does not amount to an award or a benefit, and Petitioners' argument that the

Department attempt to investigate this alleged subsidy should be rejected.

Department's Position: The Department's regulations provide that, if the Department discovers a practice "that appears to provide a countervailable subsidy with respect to the subject merchandise and the practice was not alleged or examined in the proceeding," the Department will examine the practice if it concludes that "sufficient time remains before the scheduled date for the final determination." See 19 CFR 351.311(b). In their case brief, Petitioners allege that information concerning compensation from the GOC for certain land and buildings which was discovered at verification may constitute a subsidy, and that the Department should obtain additional information about it. However, we find that there is insufficient time to examine the allegations contained in Petitioners' case brief. Therefore, should the instant investigation result in the imposition of an order, the Department will examine the circumstances surrounding the acquisition of the land and buildings at issue in a subsequent administrative review involving the Guang Ya Companies, pursuant to 19 CFR 351.311(c)(2) (providing that the Department may defer consideration of the newly discovered practice, subsidy, or subsidy program until a subsequent administrative review, if any).

Comment 27: Whether PRC Commercial Banks Are GOC Authorities That Provide a Financial Contribution

The GOC argues that the Department has previously determined that state ownership alone is not sufficient to establish that PRC commercial banks are authorities for purposes of the CVD law and has found that entities with majority government ownership not to be government authorities for purposes of the CVD law. See CFS from the PRC Decision Memorandum at Comment 8; see also DRAMS from Korea Decision Memorandum. The GOC asserts that the Department must have affirmative evidence that PRC commercial banks are GOC authorities. It further argues that, rather than ownership, the issue should center on whether commercial banks are acting on a commercial basis or fulfilling government policies. In this regard, asserts the GOC, the record evidence demonstrates that the PRC commercial banks involved in this proceeding acted on a commercial basis and that there is no evidence that the GOC directed said banks to provide a financial contribution.

Petitioners argue that the Department has previously found that the GOC maintains majority ownership in nearly all of the country's banks and guides their operations through various means. See CFS from the PRC. They further argue that the record contains ample evidence of affirmative control on the part of the GOC. Thus, Petitioners argue that the Department should continue to find that PRC commercial banks are GOC authorities which are able to provide a financial contribution under the CVD law.

Department's Position: The Department has previously determined that government-owned banks are a public entity or authority under the CVD law. See, e.g., OCTG from the PRC Decision Memorandum at Comment 20. This treatment of government-owned commercial banks as authorities is consistent with our treatment of all other government-owned entities, such as government-owned manufacturers, utility companies, and service providers. In CORE from Korea, the Department decided to modify our treatment of commercial banks with government ownership with respect to the finding of a financial contribution under section 771(5)(B)(i) of the Act. See CORE from Korea Decision Memorandum at "Programs Determined to Confer

Subsidies." As we found in CORE from Korea, we continue to find that the treatment of government-owned commercial banks as authorities is also consistent with 19 CFR 351.505(a)(2)(ii) and 351.505(a)(6)(ii). Thus, a government owned or controlled bank, be it a commercial bank or a policy bank, is considered a public entity or authority under the Act. Therefore, the Department considers banks that are owned or controlled by the government to be public authorities under the CVD law.

In light of the Department's findings in CORE from Korea, we do not find the GOC's arguments concerning CFS from the PRC (e.g., that the Department purportedly found that state ownership alone is not sufficient to establish that PRC commercial banks are authorities and even found entities with majority government ownership not to be government authorities) to be persuasive. Further, as noted above, in OCTG from the PRC, an investigation issued after CFS from the PRC, the Department explicitly rejected the notion that state ownership alone is not sufficient to establish that Chinese commercial banks act as GOC authorities. See OCTG from the PRC Decision Memorandum at Comment 20.

Comment 28: Whether There Is a Link Between the Alleged Policy Lending Program and Actual Loans Received by Respondents

The GOC argues that the record fails to establish any link between an alleged government policy to encourage a specific industry and the bank loans received by the Guang Ya Companies. According to the GOC, in the Preliminary Determination the Department unlawfully concluded that loans received by the Guang Ya Companies from SOCBs and policy banks were made pursuant to government directives. See 75 FR at 54313. According to the GOC, the Department's standard as applied in this investigation, reaches beyond the lawful limits. U.S. law provides that a subsidy is specific as a matter of law when "the authority providing the subsidy, or the legislation pursuant to which the authority operates, expressly limit access to the subsidy to an enterprise or industry." See section 771(5A)(D)(i) of the Act. The GOC submits that the Department may not lawfully rely on isolated references to the "non-ferrous metals industry" and general statements of broad economic goals such as "creating favorable conditions for enterprises' mergers and acquisitions (M&A) and restructuring, and accelerating enterprises' merger and restructuring," citing to certain planning documents, to make this determination. The isolated references to "government support" or "creating favorable conditions" from various plans cited by the Department, that have to be "taken together," fall short of requiring preferential lending to the aluminum extrusions industry. The Department must examine the broad scope and context of these documents in its final determination. The GOC argues that the documents relied upon by the Department to make its determination do not direct "policy lending" to aluminum extrusions industry. The GOC contends that these documents neither provide nor expressly limit a subsidy to the aluminum extrusions industry.

The GOC argues that Decision 40 does not support the Department's conclusion that the GOC directs lending to aluminum extrusions producers at preferential rates. See Preliminary Determination, 75 FR at 54312. First, contends the GOC, Decision 40 applies to hundreds of projects and is not limited to a single enterprise or industry as required section 771(5A)(D)(i) of the Act. In addition, Article 17 of Decision 40 specifically provides that "{a}ll financial institutions shall provide credit in accordance with lending principles." See Decision 40 at 10. Thus, there is no directive in Decision 40 for preferential lending specifically to the aluminum extrusions industry.

Furthermore, the GOC argues, the Department dismisses the GOC's confirmation that the Special Loans Circular revoked the PRC's policy lending programs in 1999. See the GOC's August 4, 2010, questionnaire response at Exhibit 18. The GOC contends that the Department failed to provide substantive references to justify its preliminary decision particularly because the Preliminary Determination acknowledges that the 1999 Circular specifically provides that "banks shall make lending decisions on their own." See 75 FR at 54313.

Petitioners disagree with the GOC's contention that the Department made an error in its decision to countervail policy lending. According to Petitioners, Chinese law requires that the country's banks, state and commercial, lend according to industrial policies. See Petition at Exhibit III-44 at Article 34. Petitioners note that the Department cited to language of many of the relevant policies in the Preliminary Determination. See 75 FR at 54312 - 54313. Petitioners point to the Aluminum Industry Guidelines which call for the development of high value-added processed aluminum products, and further provide that financial institutions shall rationally allocate the lending credits taking into account the national macroeconomic adjustments, industrial policies and ordinary lending principles. See Petition at Exhibit III-21. Petitioners further highlight the Nonferrous Metal Plan which provides that the GOC should:

> Increase the support to backbone nonferrous enterprises in financing, and provide support in issuance of stocks, enterprise bonds and corporate bonds, and in bank loans, for project that are in conformity with the industrial policy, environmental protection and land laws and regulations, and investment regulations, and for enterprises that undertake M&A restructuring, 'going abroad,' and technology reform.

See Petition at Exhibit III-25. Petitioners note that, in referencing the Nonferrous Metal Plan in the Preliminary Determination, the Department failed to utilize the translation noted above that contains the term "bank loans." See 75 FR at 54313. Petitioners conclude that the record of this investigation demonstrates that the GOC's pronouncements in various laws and industrial policies indicate that there is a link between policy lending programs and actual loans received by the respondents.

Department's Position: We continue to find that loans received by the aluminum extrusions industry from SOCBs were made pursuant to government directives. We disagree with the GOC's contention that the Department erred in countervailing policy lending in the Preliminary Determination. In general, the Department looks to whether government plans or other policy directives lay out objectives or goals for developing the industry and call for lending to support objectives or goals. See, e.g., Drill Pipe from the PRC Decision Memorandum at Comment 8**.** We find this standard has been met in the instant investigation.

We disagree with the GOC's claim that the Special Loans Circular effectively revoked the GOC's extension of policy loans to favored industries. As stated above in the "Policy Loans to Chinese Aluminum Producers" section, the Special Loan Circular states that "authorities" (i.e., GOC authorities) may continue to give "advice on the choice of the project." See the GOC's August 4, 2010, questionnaire response at Exhibit 18. The Special Loan Circular further states that firms may continue to receive financing formerly designated as "special loans" provided that the government sufficiently subsidizes the firms such that they will be able to meet "commercial lending conditions." Id. In addition, the Special Loan Circular states that wholly stated owned banks shall "actively communicate with authorities" and "gain their understanding and support."

Id. Thus, we do not find the GOC's comments concerning the Special Loans Circular to be persuasive.

We also disagree with the GOC's claim that the Department's preliminary decision is flawed because it is based on isolated references and general statements of broad economic goals. The Department has previously determined that Article 34 of Law of the People's Republic of China on Commercial Banks (Banking Law) states that banks should carry out their loan business "under the guidance of the state industrial policies." See OCTG Decision Memorandum at Comment 21. The Department therefore found that the Banking Law, in some measure, stipulates that lending procedures be based on the guidance of government industrial policy. Id.

We also disagree with the GOC's claim that Decision 40 fails to support the Department's preliminary decision. In Decision 40, Article 3 states:

> Adhering to combining market regulation with government guidance, we shall give full play to the fundamental role of the market in allocating resources, strengthen the reasonable guidance of state industrial policies, and realize optimal resource allocation.

See the GOC's August 4, 2010, questionnaire response, Exhibit 6 at 2. Thus, Decision 40 indicates the GOC's intent to continue to "guide" the market. Id.

Further, in addition to the GOC documents cited above, the Department referenced several other documents in the Preliminary Determination concerning policy lending to the aluminum extrusions industry. For example, the Encouraged Industries Catalogue specifically designates aluminum extrusion products for business promotion and the Industrial Catalogue identifies the aluminum industry as an encourage industry. See the GOC's August 4, 2010, questionnaire response at Exhibit 9. Moreover, as Petitioners note, the Aluminum Industry Guidelines state that financial institutions shall allocate "lending credits taking into account . . . industrial policies," deny credit to enterprises that do not conform to national industrial policies, and use "financing means" to support the aluminum industry environmental protection and energy saving efforts. Id. The Nonferrous Metal Plan makes similar references to financial support. See the GOC's August 4, 2010, questionnaire response at Exhibit 10. Therefore, we disagree with the GOC that these policies are not specific to the aluminum extrusions industry. Furthermore, business proprietary source documents concerning the largest loans the Guang Ya Companies had outstanding during the POI further supports our determination that the GOC has a policy in place to encourage policy lending to the aluminum extrusions industry. See Memorandum to the File, from Eric B. Greynolds, Program Manager, Office 3, Operations, "Excerpts from Internal Loan Documents of the Guang Ya Companies."

Thus, taking into account all of the evidence, we determine that the GOC's industrial plans clearly indicate state support and, specifically, credit or financing support for the producers of aluminum extrusions.

We also disagree with the GOC's argument that SOCBs lend to aluminum extrusion producers according to market principals and, therefore, the Department has no basis to find such loans are specific under section 771(5A) of the Act. As indicated above, the Department has cited numerous GOC documents that instruct SOCBs to take industrial policies into account

when issuing credit to certain industries, including the aluminum extrusions industry. Therefore, we find unpersuasive the GOC's claim that SOCBs adhere to market principals without regard to the GOC's industrial policy.

Comment 29: Whether the Derivation of the Short-Term Benchmark Interest Rate is Arbitrary

The GOC argues that the Department's regression-based methodology to determine the short-term benchmark interest rate that relies on IMF and World Bank data is fundamentally flawed, because the Department relies on a collection of IMF published rates which the GOC contends are not actually short-term rates, and may not reflect business loans. The GOC further argues that the Department arbitrarily excluded negative inflation-adjusted rates from its benchmark calculation. The GOC argues that the Department should use the actual interest rates on comparable bank loans in the PRC, as required by the regulations.

Petitioners disagree with the GOC's assertion that the Department's short-term benchmark interest rate is flawed. They assert that the Department correctly found that lending rates in the PRC are distorted because of the GOC's lending policies and are inappropriate for use as a "market" benchmark. See Preliminary Determination, 75 FR at 54309. Additionally, Petitioners cite the GOC's ownership of most of the banks in the county and its control over interest rates thought its manipulation of benchmark deposit and lending rates. See Petition at 14-18 and Exhibits III-34 through III-44. Petitioners conclude that the Department should continue to compare interest rates from state-owned banks to a market benchmark from outside of the PRC finding that banks owned and controlled by the GOC are government authorities capable of providing a financial contribution within the meaning of the CVD law.

Department's Position: With respect to the suitability of using a regression-based methodology that relies on World Bank governance indicators and lending rates to calculate a short-term benchmark interest rate, we disagree that the Department's methodology was arbitrary. We disagree with the GOC's argument that the assumptions underlying the benchmark calculation are flawed. The benchmark interest rate is based on several variables, the inflation-adjusted interest rates of countries with per capita gross national incomes similar to that of the PRC as well as variables that take into account the quality of a country's institutions (as reflected by World Bank governance indicators). We note that the World Bank governance indicators are factors that are not directly tied to state-imposed distortions in the banking sector. Thus, we have continued to rely on the calculated regression-based benchmark first developed in CFS from the PRC and used in recent CVD investigations involving the PRC, such as OCTG from the PRC. Regarding the GOC's objection to the Department excluding inflation adjusted, negative interest rates from the short-term benchmark, as previously explained, the Department finds that negative-adjusted rates are not common, tend to be anomalous, and, moreover, are not sustainable commercially. See, e.g., OCTG from the PRC Decision Memorandum at Comment 25. Therefore, we have continued to exclude negative real interest rates in calculating our regression-based benchmark rates.

The GOC contends that although the Department has characterized the loans from the IFS as short-term, many of the reported lending rates are not short-term rates. The GOC has raised this point in past cases. See Line Pipe from the PRC Decision Memorandum at Comment 12. We agree that certain of the interest rates used in our regression analysis may reflect

maturities of longer than one-year. Indeed, the notes to the IFS state that these rates apply to loans that meet short- and medium-term financing needs. Therefore, we find that these rates should not be treated as exclusively short-term in nature. See 19 CFR 351.102, where a short-term loan is defined as having repayment terms of one-year or less. To address this concern, we will continue to use the same interest rate data from the IMF and regression-based benchmark rate methodology, but will apply it to loans with terms of two years or less. This approach is consistent with the Department's approach in prior investigations. See LWTP from the PRC Decision Memorandum at "Benchmark and Discount Rates" section; see also Line Pipe from the PRC Decision Memorandum at Comment 12.

We disagree with the GOC's argument that the Department should have used interest rates from PRC-based lending institutions as the basis for the short-term benchmark. In the Preliminary Determination, the Department made the finding that the "GOC's predominant role in the banking sector results in significant distortions that render the lending rates in the PRC unsuitable as market benchmarks." See Preliminary Determination, 75 FR at 54309; see also CFS from the PRC Decision Memorandum at Comment 10, and LWTP from the PRC Decision Memorandum at Comment 20. As a result, the Department preliminarily determined that interest rates in the domestic Chinese banking sector do not provide a suitable basis for benchmarking the loans provided to the respondents in this investigation and, thus, determined to use an external benchmark to measure the benefit of countervailable loans. See Preliminary Determination, 75 FR at 54309. The Department finds that no new information has been submitted on the administrative record of this proceeding to give it reason to revisit its preliminary finding regarding the use of an external benchmark to measure the benefit of loans found to be countervailable. In CWP from the PRC, the Department indicated that for loan purposes, benchmarks must be a comparable commercial loan, i.e., they must be from a commercial lending institution, and they must be similar in structure to government loans with respect to whether they are fixed or variable, the date of maturity, and the currency in which they are granted. See CWP from the PRC Decision Memorandum at Comment 14. However, where we have determined that interest rates in the country are distorted, such interest rates are unusable to measure the benefit from government loans. Id. Furthermore, in CFS from the PRC, the Department noted that it is not possible to adjust for these market distortions, stating that any such endeavor would be a "highly complex, speculative, and impracticable exercise," and that for these reasons, it is appropriate to resort to an external benchmark with regard to GOC policy lending programs. See CFS from the PRC Decision Memorandum at Comment 10.

Normally, the Department uses comparable commercial loans reported for benchmarking purposes. See 19 CFR 351.505(a)(2)(i) and (ii). However, because we find that the GOC's intervention has created distortions in the PRC's banking sector, we find that there are no actual commercial loans and that there are no national interest rates that would make a suitable benchmark. See 19 CFR 351.505(a)(3). Therefore, the Department finds that it is appropriate to use an external benchmark to calculate the benefits provided under this program. Further, the use of external benchmarks is consistent with the Department's practice in such situations where government intervention into a sector prevents us from applying an internal benchmark. See, e.g., Softwood Lumber from Canada Decision Memorandum at "Provincial Stumpage Programs Determined to Confer Subsidies;" see also CFS from the PRC Decision Memorandum at Comment 10; see also CWP from the PRC Decision Memorandum at "Benchmarks for Short-Term RMB Denominated Loans."

For all these reasons, we determine that is appropriate to use the external benchmark methodology as used in the Preliminary Determination. Since the publication of the Preliminary Determination, the Department has made minor revisions to the external benchmark used to calculate the benefit conferred to recipients of policy loans through this program. See the above section regarding Loan Benchmarks and Discount Rate.

Comment 30: Whether the Derivation of the Long-Term Benchmark Interest Rate is Arbitrary

The GOC argues that in deriving the long-term benchmark interest rate, the Department arbitrarily calculated an adjustment spread, or factor, between short-term and long-term rates using United States dollar "BB" bond rates. It contends this approach is illogical. The GOC notes that the Department uses its improperly derived short-term benchmark as the starting point for its long-term benchmark and then adds a "bump-up" to arrive at the long-term benchmark. The GOC contends that the Department erroneously adds the "bump-up" not only to the short-term interest rate but also to the PRC's inflation rate. The GOC argues that the Department should use actual interest rates on comparable bank loans in the PRC.

As described above in Comment 29, Petitioners rebut the GOC argument the Department should use actual interest rates of bank loans in the PRC for loan benchmark purposes. However, Petitioners did not provide rebuttal comments to the GOC's specific arguments regarding the ways in which Department's calculation of the long-term benchmark interest rate is flawed.

Department's Position: We disagree with the GOC's objection to the Department's derivation of the long-term benchmark, which consists of the short-term benchmark plus a spread that is a function of U.S. dollar "BB" bond rates. The Department has fully addressed the arguments raised by the GOC regarding the use of the U.S. corporate BB bond rate to derive a long-term external benchmark in prior cases. See, e.g., OCTG from the PRC Decision Memorandum at Comment 27. The Department explained that 19 CFR 351.505(a)(3)(iii) requires the Department to use ratings of AAA to BAA and CAA to C- in deriving a probability of default in the stated formula. However, there is no statutory or regulatory language requiring that these rates apply to the calculation of long-term rates under 19 CFR 351.505(a)(3)(i) or (ii). Moreover, the transitional nature of PRC financial accounting standards and practices, as well as the PRC's underdeveloped credit rating capacity, suggests that a company-specific mark-up (to account for investment risk) should not be the general rule. The Department determined that a uniform rate would be appropriate, which would reflect average investment risk in the PRC associated with companies not found uncreditworthy by the Department. As we have received no other objective basis upon which to determine this average investment risk or a basis to presume it is only for companies with an investment grade rating, we are choosing the highest non-investment rate. See OCTG from the PRC Decision Memorandum at Comment 27.

When the Department began to apply this mark-up using the BB corporate bond rate, we solicited comments from parties and none were filed. See Citric Acid from the PRC Decision Memorandum at Comment 13. In this instant case, we have also not received any suggested alternatives. As no new arguments have been presented, we will continue to use the BB corporate bond rate for the final determination in any long-term loan calculations or discount rate calculations.

Regarding the "bump-up" the Department applied to the long-term benchmark, we find that because the Department has already adopted an additive long-term adjustment, the GOC's argument regarding applying a "bump-up" to the inflation rate is moot. See Citric Acid from the PRC Decision Memorandum at Comment 15.

Lastly, for the reasons discussed in Comment 29, we find that the use of PRC-based long-term benchmarks is not appropriate.

Comment 31: Whether the Department Committed Ministerial Errors Concerning the Famous Brands Program

Petitioners contend that there was a clerical error in the preliminary calculations concerning benefits that the Zhongya Companies obtained from the Famous Brands program. The Department stated in the Preliminary Determination that the benefit Zhongya received from this program was expensed prior to the POI. See 75 FR at 54310. However, the Zhongya Companies reported that they received "rewards" under this program twice during the POI, once on May 21, 2009 and once on October 28, 2009. Petitioners argue that the Department should incorporate these subsidies into its final calculations and treat these grants as export subsidies.

Petitioners note that during verification the DOC discovered that the Guang Ya Companies received a grant under the Famous Brands program in 2004 that it did not report. See Guang Ya Companies Verification Report at 16. Petitioners argue that the Department must revise its calculations of the benefits the Guang Ya Companies received to reflect this additional benefit.

Department's Position: We agree with Petitioners and have revised our calculations from the Preliminary Determination with respect to the Zhongya Companies and the Guang Ya Companies to reflect receipt of benefits under the Famous Brands program for both companies during the POI. See "GOC and Sub-Central Government Grants, Loans, and Other Incentives for Development of Famous Brands and China World Top Brands" for additional explanation regarding the Famous Brand program. Regarding the Guang Ya Companies, we agree with Petitioners that benefits received under the Famous Brand program which were discovered during verification should be included for the final determination. See Section 775 of the Act.

Regarding the Zhongya Companies, in the Preliminary Determination, we agree with Petitioners that we inadvertently included one of the Famous Brand grants received by the Zhongya Companies in our preliminary calculations for the Development Assistance Grants from the ZHTDZ Local Authority program, thereby double-counting the value of the grant. We have removed the value of this grant from the calculations for the Development Assistance Grants from the ZHTDZ Local Authority program, because it is included in the calculations for the Famous Brands program. As a result, we determine that the Zhongya Companies received numerically significant benefits during the POI under both of these programs.

Comment 32: Whether the Department Should Provide an Entered Value Adjustment to the Zhongya Companies to Account for Price Mark-Ups Made by Their Hong-Kong Affiliate

The Zhongya Companies explain that Zhongya HK, their Hong-Kong based affiliate, makes the final export sale to foreign customers (including U.S. customers) and that the prices

ultimately charged to foreign customers differ from the prices charged by New Zhongya (located in the PRC mainland) to Zhongya HK. They argue that the Department, as it has done in past CVD proceedings under such circumstances, should calculate the sales denominator over which subsidies are allocated based on Zhongya HK's sales value to foreign customers. They contend Department should not allocate the subsidies only to the sales of New Zhongya (which reflect the prices it charged to Zhongya HK), as was done in the Preliminary Determination.

The Zhongya Companies argue that they have met the Department's six criteria for granting an entered value (EV) adjustment and that these criteria were reviewed at verification. Specifically, the Zhongya Companies list the criteria as follows: 1) the price on which the alleged subsidy is based differs from the U.S. invoiced price; 2) the exporter and the party that invoices the customer are affiliated; 3) the U.S. invoice establishes the customs value to which CVD duties are applied; 4) there is a one-to-one correlation between the invoice that reflects the price on which subsidies are received and the invoice with the mark-up that accompanies the shipment; 5) the merchandise is shipped directly to the United States; and 6) the invoices can be tracked as back-to-back invoices that are identical except for price. See, e.g., CWASPP from the PRC Decision Memorandum at "Adjustment to Net Subsidy Rate Calculation."

The Zhongya Companies argue their sales process fulfills the above because each New Zhongya invoice to Zhongya HK can be matched to a Zhongya HK invoice to the unaffiliated foreign customer. They contend that the Department should adjust its net subsidy rate calculations to account for the fact that the "export values" recorded in the books of New Zhongya do not reflect the actual U.S. prices because there is a mark-up on those sales made by Zhongya HK. They argue that, to calculate the adjusted net subsidy rate, the Department should multiply each program rate by a ratio equal to the value of sales to the United States made by New Zhongya to Zhongya HK divided by the value of Zhongya HK's sales to the United States, inclusive of Zhongya HK's mark-up. They conclude that, in this manner, a net subsidy rate is calculated that conforms to Department practice.

Petitioners argue that the Department should continue to deny the Zhongya Companies' claim for an EV adjustment. They argue that the Department's practice is clear – the burden of establishing entitlement for such an adjustment falls squarely on the respondent and when a respondent does not adequately meet its burden, the Department denies the adjustment and attributes the subsidy to the products produced by the corporation that received the subsidy, consistent with 19 CFR 351 351.525(b)(6)(i). They argue that the information provided by the company after the Preliminary Determination is inadequate to establish an EV adjustment and that the attempts at verification to supplement its submission were both untimely and insufficient.

Petitioners argue that, as described in the verification report, the Zhongya Companies export subject merchandise pursuant to several different arrangements and substantially different relationships between the amounts of revenue that New Zhongya books and the ultimate price of the same merchandise when sold to the final customer. They argue that, for example, under the "inward processing with supplied materials" sales model, the offshore trading company retains title to the input and therefore New Zhongya's revenue represents only the value it adds transforming these inputs and profits. Petitioners compare this model with the "inward processing with imported material" model in which aluminum inputs are purchased by New Zhongya and thus, New Zhongya's sales revenue is included in both the value added to transform the inputs (and its profit) and the value of the inputs. They cite the Coated Graphic Paper from the PRC Prelim, arguing that the Department rejected an analogous claim for an EV

adjustment because the respondent failed to provide adequate support documentation for each of the producer/trading company combinations and were not able to disaggregate their sales. See Certain Coated Paper Suitable For High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination, 75 FR 10774 (March 9, 2010) (Coated Graphic Paper from the PRC Prelim). They argue that, as in that case, the Department does not appear to have the required information to ascertain which sales of subject merchandise were made under which type of processing agreement, and to calculate the separate EV adjustments that would pertain to each type of sale.

They further argue that, even if the Department were to reverse its preliminary finding, the Department must revise the manner in which it applied the EV Adjustment in CWASPP from the PRC, CFS from the PRC, and Ball Bearings and Parts Thereof From Thailand; Final Results of Countervailing Duty Administrative Review, 57 FR 26646, 26447 (June 15, 1992) (Bearings from Thailand) to prevent the under-collection of CVDs, as addressed in detail by the Department in the Coated Graphic Paper from the PRC Prelim. They explain that in the Coated Graphic Paper from the PRC Prelim, the Department adjusted the sales denominator by removing the toll processing fees from the reported sale and replaced this value with the off-shore trading company's sales value for the same products.

Petitioners provide four theoretical examples for calculating the final subsidy rate to demonstrate the effect of the off-shore toll processing arrangements on the CVD rate calculations. First, they provide an example of a volume-based methodology. Second, they provide what they claim is an example of the Department's standard value based methodology. Third, they outline how an EV adjustment would be applied for a Chinese manufacturer that produces merchandise through a "toll processing agreement" with an offshore, affiliated (or cross-owned) trading company. Fourth, they explain how the EV Adjustment was applied in CWASPP from the PRC, CFS from the PRC, and Bearings from Thailand. They argue that applying the EV adjustment using the same methodology of the aforementioned cases leads to an under collection of CVD duties.

Finally, Petitioners argue that, if the Department determines that it is appropriate to apply an EV Adjustment in this case, it should either apply the methodology from the Coated Graphic Paper from the PRC Prelim or revise its adjustment formula to eliminate the type of over-collection that exists in under the third scenario and the under collection that exist under the fourth scenario.

Department's Position: In order to qualify for the EV adjustment, a respondent must claim, and demonstrate through documentary evidence, that it qualifies for the EV adjustment. The evidence on the record does not lead us to a conclusion that the adjustment requested by the Zhongya Companies is warranted. In prior proceedings, the Department has used six criteria to determine whether a company merits an EV adjustment and has granted an adjustment if the company met these criteria. See, e.g., CWASPP from the PRC Decision Memorandum at "Adjustment to Net Subsidy Rate Calculation." The Zhongya Companies have not sufficiently demonstrated through their submissions and verification that they have met these criteria. Additionally, the Zhongya Companies sell their products through unrelated domestic trading companies, which then sell the merchandise to trading companies in Hong Kong that are related to New Zhongya, before the merchandise is "marked up" for sale by the Hong Kong trading company to customers in the United States. We find this aspect of the Zhongya Companies'

sales chain does not adhere to the second and sixth criteria of the Department's EV adjustment methodology. See, e.g., CWASPP from the PRC Decision Memorandum at "Adjustment to Net Subsidy Rate Calculation," which states that in order for the Department to make the EV adjustment, the exporter and the party that invoices the customer must be affiliated (the second criteria) and the Department must be able to track the invoices as back-to-back invoices that are identical except for price (the sixth criteria).

In supplemental questionnaire responses, the Zhongya Companies explained that New Zhongya produces aluminum extrusions and that extrusions that are exported to the United States during the POI are sold to Zhongya HK. The Zhongya Companies provided some evidence that Zhongya HK charged higher "marked-up" prices for exports of products made by New Zhongya. In their August 6, 2010, supplemental questionnaire response, they provided a copies of a New Zhongya factory invoice and the invoice Zhongya HK issued to a U.S. customer, indicating a higher price charged by Zhongya HK than New Zhongya's factory invoice price. See the Zhongya Companies' August 6, 2010, supplemental questionnaire response at 12 and Exhibit 9. However, the information submitted by the Zhongya Companies in response to the Department's questionnaires and the information we reviewed at New Zhongya during verification indicates that New Zhongya sells the large majority of its merchandise first through unaffiliated domestic trading companies that, in turn, invoice Zhongya HK. We reviewed an example of a sale New Zhongya made through this "general sales" process. It indicates two markups, one for the sale to the domestic trading company and one by the domestic trading company to New Zhongya.

However, we find that the Zhongya Companies did not provide information regarding the domestic trading companies' markup to Zhongya HK. Further, we lack information concerning which of Zhongya HK's sales are attributable to production by New Zhongya through the general sales model, and how much was made through the inward processing trade model. Also, while they provided a few limited examples, the Zhongya Companies did not provide data for all of sales exported through the Hong Kong trading companies.

On this basis, we continue to refrain from making the EV adjustment as requested by the Zhongya Companies.

Comment 33: Whether the Department Improperly Declined to Initiate an Investigation of the GOC's Alleged Currency Undervaluation

Petitioners urge the Department to reconsider its decision not to initiate on their allegation that the GOC has a program to undervalue its Chinese currency and ask that the Department apply its initiation standards and initiate an investigation of currency undervaluation. Petitioners also argue that the Department calculate a net subsidy rate for the program using facts available. Petitioners argue that Congress intended the threshold for initiation to be low, and that Petitioners met the threshold requirement under section 702(b)(1) of the Act. See United States v. Roses Inc., 706 F.2d 1563, 1572 – 1573 (CAFC 1983) (Roses). They argue that Roses held that the threshold for initiation should be "roughly analogous to the rigor of the requirements necessary to make out a cause of action for purposes of civil litigation." Petitioners add that the Supreme Court found that a civil litigation complaint may proceed even if "it strikes a savvy judge that actual proof the facts is improbable" and "recovery . . . unlikely." See Bell Atl. Corp. v. Twombly, 550 U.S. 544, 556 (2007) (Bell) (internal quotations omitted). Petitioners contend the Department should apply the initiation threshold standard established in Bell to the currency undervaluation allegation. Petitioners argue that the amount of time the Department took to

consider the allegation is inconsistent with its practice, citing, e.g., Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination, 74 FR 45811 (September 4, 2009). Petitioners argue that the Department did not provide Petitioners with an opportunity to comment.

Petitioners take issue with the Department's decisions that the currency undervaluation allegation insufficiently supports the claim of a de facto export subsidy because assistance to an industry is not indicative of a subsidy contingent upon exportation or anticipated exportation. See Memorandum to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, ''Subsidy Allegation—Currency,'' (August 30, 2010) (Currency Memorandum) at 4. Petitioners argue that the law does not require evidence of assistance to an industry for a subsidy to be considered a de facto export subsidy. Rather, Petitioners argue the regulations state an export subsidy exists if the eligibility, approval, or amount of a subsidy is contingent upon export performance. See 19 CFR 351.514. Petitioners argue that 70 percent of the PRC's foreign currency earnings are earned by exporters, exporters (not all enterprises and individuals, as the Department inferred) are the recipients of excess RMB resulting from the GOC's policy of undervaluing its currency. Citing Can-Am Corp. v. United States, 664 F. Supp. 1444, 1450 (CIT 1987) (Can-Am), Petitioners argue that this provides evidence that the GOC anticipates that currency undervaluation will lead to exportation. They further argue that currency undervaluation stimulates export sales over domestic sales, thereby providing another basis for a de facto export subsidy. Additionally, Petitioners argue that the fact that exporters earn the vast majority of the PRC's foreign currency earnings demonstrates that the GOC's undervaluation program is tied to ". . . actual or anticipated export earnings . . . as one of two or more conditions." See 19 CFR 351.514.

Alternatively, Petitioners contend that they adequately alleged that the GOC's currency undervaluation is de facto specific to FIEs under sections 771(5A)(D)(iii)(II) and (III) of the Act. Petitioners cite to evidence they claim demonstrates that 20 percent of the foreign currency receipts earned by FIEs are converted into RMBs. See Petition at Exhibit III-183 (Undervaluation Report). Petitioners argue that a finding of specificity must be determined on a case-by-case basis, and requires gathering of data during the investigation, citing Preamble, 63 FR at 65358. Petitioners argue that the Department should initiate an investigation of this allegation to obtain more information and revise its analysis.

Petitioners note that in the Currency Memorandum, the Department cited to the Wire Rod from Poland Prelim to support its decision not to initiate an investigation of the allegation. See Currency Memorandum at 5, citing Carbon Steel Wire Rod From Poland; Preliminary Negative Countervailing Duty Determination, 49 FR 6768 (February 23, 1984) (Wire Rod from Poland Prelim). Petitioners argue that in the Wire Rod from Poland Prelim, the Department at least made its finding not to apply the CVD law to the PRC after investing alleged subsidies. They argue the Department should, at the very least, do the same in the instant investigation.

Petitioners contend that the Department's decision in the Wire Rod from Poland Prelim hinged on the fact that Poland was a command-style, non-market economy and that prices were set in that economy without any regard to economic value and, thus, there was no reason to believe that the exchange rate had any effect on the decision to export. See Wire Rod from Poland Prelim, 49 FR at 6768. The Department ultimately determined that the CVD law did not apply to such Soviet-style, non-market economies. See Wire Rod from Poland, 49 FR at 19374. However, Petitioners point out that, in applying the CVD law to the PRC, the Department has

repeatedly distinguished the economy of the PRC from such Soviet-style economies and, thus, the Department's assumptions from Wire Rod from Poland concerning exchange rates case do not carry over to CVD proceedings in the PRC.

Petitioners also object to the Department's assertion that currency subsidies only exist in multiple exchange rate systems. See Currency Memorandum at 5. They argue there is no basis to limit the countervailability of a currency practice to a single kind of government exchange regime. Petitioners also argue that the Department failed to address how the GOC's alleged currency undervaluation program provides a benefit and financial contribution. They argue that declining to initiate solely by reference to specificity is unlawful and unfair. Lastly, Petitioners argue that the Department must provide interested parties an opportunity to comment on the PRC's currency practices. They argue there is still time to allow such a comment period prior due date of the final determination.

The GOC argues that an allegation of currency manipulation is not within the jurisdiction of the Department or the WTO SCM Agreement. However, to the extent that the Department considered Petitioners' allegation, the GOC supports the Department's conclusion not to initiate on this allegation. The GOC argues that Petitioners had ample opportunity to submit their allegation and, in fact, provided the Department with substantial documentation. Therefore, the Department had more than an adequate record on which to evaluate Petitioners' currency allegation. The GOC adds that the Department correctly concluded that the allegation lacked "the elements necessary for the imposition of the duty imposed by section 701(a)" of the Act and was not supported by information reasonably available to Petitioners. See Currency Memorandum at 3 – 6. The GOC further notes that all prior findings related to currency regimes dealt with multiple, not unified, exchange rate regimes and that the Department has properly rejected allegations involving unified regimes because they do not single out any specific user. Id. at 5. Thus, argues the GOC, in the instant investigation the Department reached the correct conclusion that the PRC's exchange rate system was "broadly available across the Chinese economy to all firms that exchange foreign currency and thus does not single out any enterprise, industry, or group thereof." Id. at 6.

Department's Position: We disagree with Petitioners' claims regarding our decision not to investigate their currency subsidy allegations. Petitioners are incorrect that the Department failed to apply the correct initiation standard. In addressing both the initial currency allegation filed with the Petition and the revised currency allegation, the Department identified the correct statutory standard cited by Petitioners. See section 702(b)(1) of the Act. Consistent with that standard, the Department determined that Petitioners' allegation failed to provide the elements necessary for the imposition of CVD duties and was not supported by information reasonably available to Petitioners. See Currency Memorandum at 4. For example, Petitioners' allegation relied on their claim that FIEs are required to surrender the foreign exchange they earn and accept RMB in return, but the Department pointed out that, "Petitioners own information indicates that the surrender requirement was terminated in 2007." Id. In addition, Petitioners overlooked information in the documentation that they provided which indicated that FIEs use the vast majority of their foreign exchange earnings to purchase imported inputs and, thus, do not convert those foreign currency earnings at the allegedly undervalued exchange rate. Id. at 4 – 5. Notwithstanding Petitioners' claims to the contrary, the Department was not required to initiate an investigation of a currency allegation that was not reasonably supported by the facts alleged by Petitioners. Petitioners' allegation was not only unsupported but directly contradicted by the

facts on the record.

We disagree with Petitioners' argument that they were not provided a sufficient comment period. The Currency Memorandum explained in detail why the Department determined that Petitioners' allegation did not meet the standard for initiation. The Department issued the Currency Memorandum concurrently with the Preliminary Determination. Thus, Petitioners could have supplemented their currency allegation with additional information and argument after the issuance Preliminary Determination. However, Petitioners did not do so.

While we did not specifically address in the Currency Memorandum Petitioners' information that exporters account for 70 percent of foreign exchange earned, Petitioners' allegation in this regard does not differ in substance from their original currency allegation, which the Department determined was inadequate. In particular, Petitioners alleged that there is a direct and positive correlation between the export activity/export earnings and the amount of the subsidy received, while the Department found no export contingency because receipt of the excess RMB is independent of the type of transaction or commercial activity for which the dollars are converted or of the particular company or individuals converting the dollars.

We disagree with Petitioners' characterization of the Department's statements regarding unified and multiple exchange rate regimes. In the Currency Memorandum, the Department did not state that the CVD law only applied to countries with multiple exchange rate regimes. The Department merely noted that the select set of cases cited by Petitioners in support of their allegation addressed only multiple exchange rate regimes. See Currency Memorandum at 5 – 6. Any views or findings the Department may have articulated in these decisions – some of which are several decades old – is informative on the exchange-rate-as-a-subsidy issue, but is no longer necessarily dispositive. However, the Department did point out distinguishing factors between Petitioners' allegation regarding the currency practices of the PRC and previous case determinations. First, in previous CVD cases, a government selected certain industries and enterprises, or groups thereof, as the subject of preferential currency exchange rates. This preferential rate was separate and distinct from the exchange rate used by the broader economy. Id. Second, the Department observed that, unlike previous cases, the available evidence indicates that the unified exchange rate of the PRC applies to all enterprises and individuals in the economy. Id. Therefore, the Department concluded that the case precedent cited by Petitioners, as well as all previous determinations regarding exchange rate programs, did not support Petitioners' allegation that the PRC's unified exchange rate regime provides a countervailable subsidy. Id. We also disagree with Petitioners' reading of the Can-Am decision. In our view, that case, which pre-dates the current statutory provisions defining subsidies, merely reinforces that the alleged subsidy must be tied to the exportation of goods.

The Department does not agree with Petitioners' arguments regarding the Wire Rod from Poland Prelim. It is true that in the Wire Rod from Poland Prelim the Department considered the petitioner's exchange rate claim at the same time it also considered whether to apply the CVD law to Poland. But the application question was separate and distinct from the Department's finding on the exchange rate. Moreover, as explained above, the Department's assessment that no subsidy existed in the context of a unified rate is only informative, not dispositive, in the present case.

XII. Recommendation

We recommend that you accept the positions described above.

_____ _____
Agree Disagree

_____
Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

_____
Date

DOC 8

Revisão de Final de Período Extrudados (Estados Unidos)

81 FR 48741, July 26, 2016

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-033]

Large Residential Washers 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

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that large residential washers (LRWs) from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is April 1, 2015, through September 30, 2015. The estimated margins of sales at LTFV are shown in the ``Preliminary Determination'' section of this notice. Interested parties are invited to comment on this preliminary determination.

DATES: Effective July 26, 2016.

FOR FURTHER INFORMATION CONTACT: Brian Smith or David Goldberger, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202)482-1766 or (202) 482-4136, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the notice of initiation of this investigation on January 12, 2016.\1\ For a complete description of the events that followed the initiation of this investigation, see the Preliminary Decision Memorandum that is dated concurrently with and hereby adopted by this notice.\2\ The Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at http://access.trade.gov, and is available to all parties in the Department's Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at http://enforcement.trade.gov/frn/. The signed and the electronic versions of the Preliminary Decision Memorandum are identical.

\1\ See Large Residential Washers From the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation, 81 FR 1398 (January 12, 2016) (Initiation Notice).

\2\ See Memorandum entitled ``Decision Memorandum for the Preliminary Determination of the Less-Than-Fair-Value Investigation of Large Residential Washers from the People's Republic of China'' (Preliminary Decision Memorandum).

As explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll all administrative deadlines due to the closure of the Federal Government. All deadlines in this segment of the proceeding

have been extended by four business days. The revised deadline for the preliminary determination is July 19, 2016.\3\

\3\ See Memorandum to the Record from Ron Lorentzen, Acting A/S for Enforcement & Compliance, ``Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas'' (January 27, 2016).

Scope of the Investigation

The products covered by this investigation are LRWs. For a full description of the scope of this investigation, see the ``Scope of the Investigation,'' in Appendix I of this notice.

Scope Comments

In accordance with the Preamble to the Department's regulations,\4\ the Initiation Notice set aside a period of time for parties to raise issues regarding product coverage (i.e., scope).\5\ Certain interested parties commented on the scope of the investigation, as it appeared in the Initiation Notice. After consideration of these comments, we preliminarily determined not to amend the scope as published in the Initiation Notice. For a summary of the product coverage comments and rebuttal responses submitted to the record, and an accompanying discussion and analysis of all comments timely received, see the Department's Scope Memorandum issued concurrently with this notice.\6\

\4\ See Antidumping Duties; Countervailing Duties, 62 FR 27296, 27323 (May 19, 1997) (Preamble).

\5\ See Initiation Notice, 80 FR at 73716.

\6\ See Memorandum entitled ``Scope Issues for the Preliminary Determination of the Less-Than-Fair-Value (LTFV) Investigation of Large Residential Washers (LRWs) from the People's Republic of China,'' dated concurrently with this notice (Scope Memorandum).

[[Page 48742]]

Methodology

The Department is conducting this investigation in accordance with section 731 of the Act. We calculated constructed export prices in accordance with section 772 of the Act. Because the PRC is a non-market economy, within the meaning of section 771(18) of the Act, we calculated normal value (NV) in accordance with section 773(c) of the Act. For a full discussion of the Department's methodology, see the Preliminary Decision Memorandum.

Preliminary Affirmative Negative Determination of Critical Circumstances, in Part

On May 6, 2016, Whirlpool Corporation (the petitioner) timely filed an allegation of critical circumstances, pursuant to section 733(e)(1) of the Act and 19 CFR 351.206(1), alleging that critical circumstances exist with respect to imports of the merchandise under consideration. We preliminarily determine that critical circumstances do not exist for Nanjing LG-Panda Appliances Co., Ltd., but do exist with respect to Suzhou Samsung Electronics Co., Ltd./Suzhou Samsung Electronics Co. Ltd--Export (collectively, Samsung) and the PRC-wide entity. For a full description of the methodology and results of our analysis, see the Preliminary Decision Memorandum.

Preliminary Determination

The Department preliminarily determines that the following

weighted-average dumping margins exist during the period April 1, 2015, through September 30, 2015:

Exporter	Producer	Weighted-average margin (%)
Nanjing LG-Panda Appliances Co., Ltd./LG Electronics, Inc.	Nanjing LG-Panda Appliances Co., Ltd.	49.88
Suzhou Samsung Electronics Co., Ltd./Suzhou Samsung Electronics Co. Ltd--Export/ Samsung Electronics Co., Ltd.	Suzhou Samsung Electronics Co., Ltd./ Suzhou Samsung Electronics Co. Ltd--Export.	111.09
PRC-Wide Entity.....	.....	80.49

PRC-Wide Rate

In calculating rates for non-individually investigated respondents in the context of non-market economy cases, the Department looks to section 735(c)(5)(A)-(B) of the Act, which provides instructions for calculating the all-others rate in an investigation.\7\ Section 735(c)(5)(A) of the Act provides that the estimated all-others rate shall be equivalent to the weighted average of the estimated weighted-average dumping margins calculated for exporters and producers individually investigated, excluding any margins that are zero, de minimis, or based entirely on facts available. Section 735(c)(5)(B) of the Act provides that where all individually investigated exporters or producers receive rates that are zero, de minimis, or based entirely on facts available, then the Department may use ``any reasonable method'' to establish the all-others rate for those companies not individually investigated.

\7\ See Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 33351 (June 4, 2013), and accompanying Issues and Decision Memorandum at page 4-5.

Apart from the mandatory respondents in this investigation, no other PRC exporters of the subject merchandise during the POI established entitlement to a separate rate.\8\ Thus, no non-individually examined separate rates are being assigned in this segment. Moreover, the PRC-wide entity is not being individually examined in this investigation. Furthermore, there currently exist no respondents that have failed to cooperate in this investigation, and there are no zero or de minimis margins. Therefore, we are preliminarily determining the PRC-wide rate based on a simple average of the calculated rates determined for the mandatory respondents,\9\ in accordance with section 735(c)(5)(A) of the Act.\10\

\8\ See Preliminary Decision Memorandum.

\9\ With two respondents, we would normally calculate (A) a weighted-average of the dumping margins calculated for the mandatory respondents; (B) a simple average of the dumping margins calculated for the mandatory respondents; and (C) a weighted-average of the dumping margins calculated for the mandatory respondents using each company's publicly-ranged values for the merchandise under consideration. We would compare (B) and (C) to (A) and select the rate closest to (A) as the most appropriate rate for all other companies. See Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part, 75 FR 53661, 53663 (September 1, 2010). In this case, however, we do not have complete publicly-ranged quantities from either respondent on the record to

properly conduct this comparison. Therefore, we are using a simple average of the dumping margins calculated for the mandatory respondents as the PRC-wide rate for this preliminary determination, and we intend to ask the respondents to provide a complete, publicly-ranged summary of their U.S. sales quantities for consideration in the final determination.

\10\ See Welded Stainless Pressure Pipe From the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value, 79 FR 31092-93 (May 30, 2014); and Notice of Final Determination of Sales at Less Than Fair Value: Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Romania, 65 FR 39125, 39127 (June 23, 2000).

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Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, the Department will instruct U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of LRWs from the PRC, as described in the ``Scope of the Investigation'' section, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register.

Section 733(e)(2) of the Act provides that, given an affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the later of (a) the date which is 90 days before the date on which the suspension of liquidation was first ordered, or (b) the date on which notice of initiation of the investigation was published. We preliminarily find that critical circumstances exist for imports of LRWs from the PRC produced and/or exported by Samsung and the PRC-wide entity. Accordingly, for Samsung and the PRC-wide entity, in accordance with section 733(e)(2)(A) of the Act, the suspension of liquidation shall apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the publication of this notice.

Pursuant to 19 CFR 351.205(d), the Department will instruct CBP to require a cash deposit \11\ equal to the weighted-average amount by which NV exceeds U.S. price as follows: (1) The cash deposit rate for the exporter/producer combinations listed in the table above will be the rate identified in the table; (2) for all combinations of PRC

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exporters/producers of merchandise under consideration that have not received their own separate rate above, the cash-deposit rate will be the cash deposit rate established for the PRC-wide entity; and (3) for all non-PRC exporters of merchandise under consideration which have not received their own separate rate above, the cash-deposit rate will be the cash deposit rate applicable to the PRC exporter/producer combination that supplied that non-PRC exporter. These suspension of liquidation instructions will remain in effect until further notice.

\11\ See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations, 76 FR 61042 (October 3, 2011).

Disclosure and Public Comment

We intend to disclose the calculations performed to parties in this proceeding within five days after public announcement of the preliminary determination in accordance with 19 CFR 351.224(b). Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the final verification report is issued in this

proceeding and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.\12\ Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

\12\ See 19 CFR 351.309; see also 19 CFR 351.303 (for general filing requirements).

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, ACCESS, by 5:00 p.m. Eastern Time, within 30 days after the date of publication of this notice.\13\ Hearing requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues parties intend to present at the hearing. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

\13\ See 19 CFR 351.310(c).

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination by the Department, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination by the Department, a request for such postponement is made by the petitioner. 19 CFR 351.210(e)(2) requires that requests by respondents for postponement of a final antidumping determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On June 27 and 29, 2016, pursuant to 19 CFR 351.210(b)(2)(ii), LG and Samsung, respectively, requested that the Department postpone its final determination, and extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2), from a four-month period to a period not to exceed six months.

In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and (e)(2), because (1) our preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, we are postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, we will make our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.\14\

\14\ See 19 CFR 351.210(e).

International Trade Commission (ITC) Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our affirmative preliminary determination of sales at LTFV. Because the preliminary determination in this investigation is affirmative, section 735(b)(2) of the Act requires that the ITC make its final determination whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of LRWs from the PRC before the later of 120 days after the date of this preliminary determination or 45 days after our final determination. Because we are postponing the deadline for our final determination to 135 days from the date of publication of this preliminary determination, as discussed above, the ITC will make its final determination no later than 45 days after our final determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: July 19, 2016.
Paul Piquado,
Assistant Secretary for Enforcement and Compliance.

List of Topics Discussed in the Preliminary Decision Memorandum

Appendix I: Scope of the Investigation

The products covered by this investigation are all large residential washers and certain parts thereof from the People's Republic of China.

For purposes of this investigation, the term ``large residential washers'' denotes all automatic clothes washing machines, regardless of the orientation of the rotational axis, with a cabinet width (measured from its widest point) of at least 24.5 inches (62.23 cm) and no more than 32.0 inches (81.28 cm), except as noted below.

Also covered are certain parts used in large residential washers, namely: (1) All cabinets, or portions thereof, designed for use in large residential washers; (2) all assembled tubs \15\ designed for use in large residential washers which incorporate, at a minimum: (a) A tub;

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and (b) a seal; (3) all assembled baskets \16\ designed for use in

large residential washers which incorporate, at a minimum: (a) A side wrapper; \17\ (b) a base; and (c) a drive hub; \18\ and (4) any combination of the foregoing parts or subassemblies.

\15\ A ``tub'' is the part of the washer designed to hold water.

\16\ A ``basket'' (sometimes referred to as a ``drum'') is the part of the washer designed to hold clothing or other fabrics.

\17\ A ``side wrapper'' is the cylindrical part of the basket that actually holds the clothing or other fabrics.

\18\ A ``drive hub'' is the hub at the center of the base that bears the load from the motor.

Excluded from the scope are stacked washer-dryers and commercial washers. The term ``stacked washer-dryers'' denotes distinct washing and drying machines that are built on a unitary frame and share a common console that controls both the washer and the dryer. The term ``commercial washer'' denotes an automatic clothes washing machine designed for the ``pay per use'' segment meeting either of the following two definitions:

(1) (a) It contains payment system electronics; \19\ (b) it is configured with an externally mounted steel frame at least six inches high that is designed to house a coin/token operated payment system (whether or not the actual coin/token operated payment system is installed at the time of importation); (c) it contains a push button user interface with a maximum of six manually selectable wash cycle settings, with no ability of the end user to otherwise modify water temperature, water level, or spin speed for a selected wash cycle setting; and (d) the console containing the user interface is made of steel and is assembled with security fasteners; \20\ or

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\19\ ``Payment system electronics'' denotes a circuit board designed to receive signals from a payment acceptance device and to display payment amount, selected settings, and cycle status. Such electronics also capture cycles and payment history and provide for transmission to a reader.

\20\ A ``security fastener'' is a screw with a non-standard head that requires a non-standard driver. Examples include those with a pin in the center of the head as a ``center pin reject'' feature to prevent standard Allen wrenches or Torx drivers from working.

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(2) (a) it contains payment system electronics; (b) the payment system electronics are enabled (whether or not the payment acceptance device has been installed at the time of importation) such that, in normal operation,\21\ the unit cannot begin a wash cycle without first receiving a signal from a bona fide payment acceptance device such as an electronic credit card reader; (c) it contains a push button user interface with a maximum of six manually selectable wash cycle settings, with no ability of the end user to otherwise modify water temperature, water level, or spin speed for a selected wash cycle setting; and (d) the console containing the user interface is made of steel and is assembled with security fasteners.

\21\ ``Normal operation'' refers to the operating mode(s) available to end users (i.e., not a mode designed for testing or repair by a technician).

Also excluded from the scope are automatic clothes washing machines that meet all of the following conditions: (1) Have a vertical rotational axis; (2) are top loading; \22\ (3) have a drive train consisting, inter alia, of (a) a permanent split capacitor (PSC) motor,\23\ (b) a belt drive,\24\ and (c) a flat wrap spring clutch.\25\

\22\ ``Top loading'' means that access to the basket is from the top of the washer.

\23\ A ``PSC motor'' is an asynchronous, alternating current (AC), single phase induction motor that employs split phase capacitor technology.

\24\ A ``belt drive'' refers to a drive system that includes a belt and pulleys.

\25\ A ``flat wrap spring clutch'' is a flat metal spring that, when engaged, links abutted cylindrical pieces on the input shaft with the end of the concentric output shaft that connects to the drive hub.

Also excluded from the scope are automatic clothes washing machines that meet all of the following conditions: (1) Have a horizontal rotational axis; (2) are front loading; \26\ and (3) have a drive train consisting, inter alia, of (a) a controlled induction motor (CIM),\27\ and (b) a belt drive.

\26\ ``Front loading'' means that access to the basket is from the front of the washer.

\27\ A ``controlled induction motor'' is an asynchronous, alternating current (AC), polyphase induction motor.

Also excluded from the scope are automatic clothes washing machines that meet all of the following conditions: (1) Have a horizontal rotational axis; (2) are front loading; and (3) have cabinet width (measured from its widest point) of more than 28.5 inches (72.39 cm).

The products subject to this investigation are currently classifiable under subheadings 8450.20.0040 and 8450.20.0080 of the Harmonized Tariff Schedule of the United States (HTSUS). Products subject to this investigation may also enter under HTSUS subheadings 8450.11.0040, 8450.11.0080, 8450.90.2000, and 8450.90.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this investigation is dispositive.

[FR Doc. 2016-17680 Filed 7-25-16; 8:45 am]
BILLING CODE 3510-DS-P

DOC 9

Determinação Final Investigação Original Fios (Estados Unidos)

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

C-570-096
Investigation
Public Document
E&C/OVII: CM/ND

October 18, 2019

MEMORANDUM TO: Carole Showers
Executive Director, Office of Policy
Policy & Negotiations
Enforcement and Compliance

FROM: Scot T. Fullerton
Director, Office VI
Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Aluminum Wire and Cable from the People's Republic of China

I. SUMMARY

The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers of aluminum wire and cable (AWC) from the People's Republic of China (China), as provided in section 705 of the Tariff Act of 1930, as amended (the Act). The petitioners are Encore Wire Corporation (Encore) and Southwire Company, LLC (Southwire) (collectively, the petitioners). The mandatory respondents subject to this investigation are the Government of China (GOC), Changfeng Wire & Cable Co. Ltd. (Changfeng), Shanghai Silin Special Equipment Co., Ltd. (Silin),[1] and Shanghai Yang Pu Qu Gong (Qu Gong). As a result of our analysis, we made changes to the subsidy rate calculations. Below is the complete list of issues in this investigation for which we received comments from interested parties:

General Issues
Comment 1: Export Buyer's Credits
Comment 2: Other Subsidies
Comment 3: Benchmark for Aluminum Rod
Comment 4: Double Remedies for Aluminum Rod
Comment 5: Loan Calculations

[1] Silin is a trading companythatexported subject merchandise produced byseven manufacturersduringthe period of investigation (POI). We also required questionnaire responses fromfour of Silin's: Mingda Wire and Cable Group Co., Ltd. (Mingda Cable); QingdaoCable Co.,Ltd.(Qingdao Cable); ShandongZhongzhouCable Co.,Ltd.; and Shanghai Xinqi Cable Technology Co., Ltd. (Xinqi Cable).

Issues Related to Silin and its Suppliers/Producers
Comment 6: Whether to Apply Adverse Facts Available (AFA) to Silin
Comment 7: Whether to Apply Partial AFA to Qingdao Cable
Comment 8: Xinqi Cable's Electricity Benefit Calculation

Issues Related to Changfeng
Comment 9: Whether to Apply AFA to Changfeng
Comment 10: Whether to Apply Partial AFA to Changfeng's Policy Loans

II. BACKGROUND

A. Case History

On April 8, 2019, Commerce published the *Preliminary Determination* in this proceeding.[2] From April 5 through May 2, 2019, Silin, Changfeng, and the GOC submitted timely responses to Commerce's new subsidy allegation (NSA) questionnaires and NSA supplemental questionnaires.[3] Between May 18 and June 13, 2019, we conducted verifications of the questionnaire responses submitted by Changfeng, the GOC, Mingda Cable, Qingdao Cable, and Silin. On September 11, 2019, we released a Post-Preliminary Analysis on the new subsidy allegations.[4] Interested parties submitted case briefs[5] and rebuttal briefs[6] on September 18 and September 23, 2019, respectively.

[2] *See Aluminum Wire and Cable from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination*, 84 FR 13886 (April 8, 2019) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).
[3] *See* Changfeng's April 5, 2019 NSA Questionnaire Response (Changfeng NSAQR); Silin's April 5, 2019, NSA Questionnaire Response (Silin NSAQR); the GOC's April 5, 2019 NSA Questionnaire Response regarding Aluminum Rod (GOC NSAQR Part B); the GOC's April 10, 2019 NSA Questionnaire Response regarding ocean freight (GOC NSAQR Part A); Changfeng's April 30, 2019 NSA Supplemental Questionnaire Response; Silin's May 2, 2019 NSA Supplemental Questionnaire Response; and the GOC's May 2, 2019 NSA Supplemental Questionnaire Response (GOC SNSAQR).
[4] *See* Memorandum to the File, "Verification of the Questionnaire Responses of the Government of the People's Republic of China," dated June 19, 2019; Memorandum to the File, "Verification of the Questionnaire Responses of Mingda Wire and Cable Group Co., Ltd.," dated July 17, 2019; Memorandum to the File, "Verification of the Questionnaire Responses of Changfeng Wire & Cable Co., Ltd.," dated July 29, 2019 (Changfeng Verification Report); Memorandum to the File, "Verification of the Countervailing Duty Questionnaire Responses Submitted by Qingdao Cable Co., Ltd.," dated September 9, 2019; and Memorandum to the File "Verification of the Countervailing Duty Questionnaire Responses Submitted by Shanghai Silin Special Equipment Co., Ltd.," dated September 10, 2019 (Silin Verification Report).
[5] *See* Memorandum, "Post-Preliminary Analysis of Countervailing Duty Investigation: Aluminum Wire and Cable from the People's Republic of China," dated September 18, 2019 (Post-Preliminary Analysis).
[6] *See* Encore's Letter, "Aluminum Wire and Cable from China: Case Brief on Behalf of Encore Wire Corporation," dated September 18, 2019 (Encore Case Brief); Southwire's Letter, "Aluminum Wire and Cable from the People's Republic of China: Case Brief - Southwire Company, LLC- Changfeng Wire and Cable Co. Ltd.," dated September 18, 2019 (Southwire Case Brief); Silin's Letter, "Aluminum Wire and Cable from the People's Republic of China – Case Brief," dated September 18, 2019 (Silin Case Brief); GOC's Letter, "Government of China's Affirmative Case Brief; Aluminum Wire and Cable from the People's Republic of China," dated September 18, 2019 (GOC Case Brief); Changfeng's Letter, "Aluminum Wire and Cable from the People's Republic of China - Rebuttal Brief," dated September 23, 2019 (Changfeng Rebuttal Brief); Silin's Letter, "Aluminum Wire and Cable from the People's Republic of China - Rebuttal Brief," dated September 23, 2019 (Silin Rebuttal Brief); Southwire's Letter,

B. Period of Investigation

The period of investigation (POI) is January 1, 2017 through December 31, 2017.

III. SCOPE COMMENTS

During the course of this investigation and the concurrent antidumping duty investigation of AWC from China, Commerce received scope comments from interested parties. Commerce addressed these comments in the *Preliminary Determination*. We received no additional scope comments in case and rebuttal briefs. Therefore, for this final determination, we have made no changes to the scope of this investigation, as published in the *Preliminary Determination*.

IV. SCOPE OF THE INVESTIGATION

The products covered by this investigation are aluminum wire and cable. For a complete description of the scope of this investigation, *see* this memorandum's accompanying *Federal Register* notice at Appendix I.

V. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

In the *Preliminary Determination*, we applied total adverse facts available (AFA) to calculate a subsidy rate for Qu Gong because it failed to respond to our initial questionnaire.[7] Additionally, we applied partial AFA with respect to the GOC to find specificity, benefit, and/or financial contribution for several programs.[8] In the Post-Preliminary Analysis, we preliminarily used facts available (FA) and AFA with respect to certain aspects of specificity, benefit, and/or financial contribution for "Provision of Aluminum Rod for LTAR." We have made no changes to these underlying decisions to apply AFA for this Final Determination. However, we are making modifications to the total AFA calculation, as discussed below. Further, based on the findings at verification, we are applying total AFA to calculate Silin's subsidy rate in this Final Determination.

A. Legal Standard

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

"AluminumWire and Cable from the People's Republic of China: Rebuttal Brief- Southwire Company, LLC - Changfeng Wire and Cable Co. Ltd.," dated September 23, 2019 (Southwire Rebuttal Brief); Encore's Letter, "AluminumWire and Cable from China: Case Brief on Behalf of Encore Wire Corporation," dated September 23, 2019 (Encore Rebuttal Brief); and GOC's Letter, "Government of China's Rebuttal Brief - AluminumWire and Cable from the People's Republic of China," dated September 23, 2019 (GOC Rebuttal Brief).

[7] *See Preliminary Determination* PDM at 18-23.

[8] *Id.* at 23-33.

significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Further, section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. When selecting an adverse facts available (AFA) rate from among the possible sources of information, Commerce's practice is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide {Commerce} with complete and accurate information in a timely manner."[9] Commerce's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[10]

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."[11] It is Commerce's practice to consider information to be corroborated if it has probative value.[12] In analyzing whether information has probative value, it is Commerce's practice to examine the reliability and relevance of the information to be used.[13] However, the Statement of Administrative Action emphasizes that Commerce need not prove that the selected facts available are the best alternative information.[14]

Finally, under section 776(d) of the Act, Commerce may use any countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a CVD rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates. Additionally, when selecting an AFA rate, Commerce is not required for purposes of 776(c), or any other purpose, to estimate what the countervailable subsidy rate would have beenif the interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.[15]

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[9] *See, e.g., Drill Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76FR 1971 (January 11, 2011) (*Drill Pipe from China Final*); *see also Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998).
[10] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R.Doc. 103-316, Vol. I (1994) (SAA) at 870.
[11] *See, e.g.*, SAA at 870.
[12] *See* SAA at 870.
[13] *See, e.g.*, SAA at 869.
[14] *See* SAA at 869-870.
[15] *See* section 776(d)(3) of the Act.

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

B. Application of AFA – Unreported Financing / Policy Loans

As discussed further in Comment 10 below, Changfeng did not report all of its financing that was outstanding during the POI. At verification, we discovered that Changfeng did not report bank acceptance notes,[16] and thus, necessary information is missing from the record because we cannot accurately calculate benefit conferred under the Policy Loans program without this information. We additionally find that Changfeng withheld this information and failed to provide it by the deadline for the submission of such information. We therefore must rely on "facts otherwise available" in issuing our final determination, pursuant to sections 776(a)(1), (a)(2)(A), and (a)(2)(B) of the Act. Moreover, by failing to provide information that it was otherwise able to provide, we find that Changfeng did not act to the best of its ability to comply with our request for information. Consequently, we find that an adverse inference is warranted in the application of facts available pursuant to section 776(b) of the Act.

Consistent with section 776(d) of the Act, because there are no above-zero calculated rates for Policy Loans to the Aluminum Wire and Cable Industry from this proceeding, we sought the highest non-*de minimis* rate calculated for a comparable or similar program (based on the treatment of the benefit) in another China proceeding. The highest calculated rate for a similar program in another China proceeding for these programs is 10.54 percent.[17]

Consistent with the *Preliminary Determination*, we find that Policy Loans to the Aluminum Wire and Cable Industry provide a financial contribution within the meaning of sections 771(5)(B)(i) and 771(5)(D)(i) of the Act, and are specific within the meaning of section 771(5A)(D)(i) of the Act.[18]

C. Application of Total AFA: Silin

As discussed further in Comment 6, we discovered numerous discrepancies at verification that contradicted significant portions of Silin's reported information. The totality of the circumstances lead us to conclude that Silin's reported information is unreliable. Due to Silin's failure to provide accurate and complete questionnaire responses, critical information required for our subsidy analysis is missing from the record. On this basis, and for the reasons explained in detail below, we find that the application of AFA with respect to Silin is appropriate pursuant to sections 776(a) and 776(b) of the Act.

The verification findings establish that Silin could and should have reported the requested information. Further, these findings suggest an attempt to mislead Commerce regarding the true

[16] *See* Changfeng Verification Report at 2-3.
[17] *See Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet Fed Presses from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 75 FR 70201, 70202 (November 17, 2010) (*Coated Paper from China*)(revised rate for "Preferential Lending to the Coated Paper Industry" program).
[18] *See Preliminary Determination* PDM at 33-36.

nature of its and its affiliates' operations. Silin's failure to provide complete and accurate information throughout this investigation significantly impeded the proceeding because it deprived Commerce and interested parties from analyzing the full facts of the case. Moreover, in addition to the foregoing, because Silin had an ample opportunity to provide accurate information and request clarification, yet failed to do so, we find that Silin did not act to the best of its ability.

As explained by the Court of Appeals for the Federal Circuit (CAFC) in *Nippon Steel*, the ordinary meaning of "best of its ability" means "one's maximum effort," and that the statutory mandate that a respondent act to the "best of its ability" requires the respondent to do the maximum it is able to do. As evidenced by Silin's misleading statements, concealment of key facts, repeated contradictions, and inadequate recordkeeping, we find that Silin did not put forth its maximum effort. Accordingly, we determine that an adverse inference is warranted in the application of facts available pursuant to section 776(b) of the Act. Because the contradictions and discrepancies are pervasive throughout Silin's responses, and because significant portions of Silin's reported information remains unclear or unverified, we are unable to apply AFA on a program-specific basis. Rather, the totality of the contradictions necessitates the application of total AFA, as we are unable to rely on the majority of Silin's reported information.

D. Application of AFA – Total AFA Rate Calculation for Qu Gong and Silin

It is Commerce's practice in CVD proceedings to compute an AFA rate for non-cooperating companies using the highest calculated program-specific rates determined for a cooperating respondent in the same investigation, or, if not available, rates calculated in prior CVD cases involving the same country.[19] Specifically, Commerce applies the highest calculated rate for the identical subsidy program in the investigation if a responding company used the identical program, and the rate is not zero. If there is no identical program match within the investigation, or if the rate is zero, Commerce uses the highest non-*de minimis* rate calculated for the identical program in a CVD proceeding involving the same country. If no such rate is available, Commerce will use the highest non-*de minimis* rate for a similar program (based on treatment of the benefit) in another CVD proceeding involving the same country. Absent an above-*de minimis* subsidy rate calculated for a similar program, Commerce applies the highest calculated subsidy rate for any program otherwise identified in a CVD case involving the same country that could conceivably be used by the non-cooperating companies.[20] Commerce used this methodology in the *Preliminary Determination*, to calculate the AFA rate for Qu Gong. We

[19] *See, e.g., Certain Tow-Behind LawnGroomersand Certain Parts Thereoffromthe People's Republicof China: Preliminary Affirmative Countervailing Duty Determinationand Alignment of Final CountervailingDuty Determinationwith Final Antidumping Duty Determination*, 73FR 70971, 70975 (November 24, 2008) (unchanged in *Certain Tow-BehindLawn Groomersand Certain Parts Thereoffromthe People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 29180 (June 19, 2009) (*Tow-Behind Groomers from China Final*) and accompanying Issues and Decision Memorandum (IDM) at "Application of Facts Available, Including the Application of Adverse Inferences"); *seealso Aluminum Extrusionsfromthe People's RepublicofChina: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) (*Aluminum Extrusions from China Final*), and accompanying IDM at "Applicationof AdverseInferences: Non-Cooperative Companies."

[20] *Id.*; *seealso LightweightThermal Paperfromthe People's Republic ofChina: Final AffirmativeCountervailing Duty Determination*, 73FR 57323 (October 2, 2008) (*Thermal Paper fromthe PRC*), and accompanying IDM at "Selection of the Adverse Facts Available Rate."

continue to use same general methodology in this final determination to calculate the rates for Qu Gong and Silin. However, as described below, because we are now applying AFA to Silin and not considering subsidies received by its unaffiliated suppliers, some the subsidy rates we used in *Preliminary Determination* as the AFA rate for certain programs have now changed. In applying AFA, we also excluded any program determined not to be specific.

Under Commerce's practice, we begin by selecting, as AFA, the highest calculated program-specific above-zero rates determined for Changfeng in the instant investigation. Accordingly, we are applying the highest applicable subsidy rate calculated for Changfeng for the following programs:

- Government Provision of Electricity for LTAR[21]
- Government Provision of Land Use-Rights for LTAR to Aluminum Wire and Cable Producers
- Government Provision of Aluminum Rod for LTAR[22]
- Certain Other Subsidies[23]

In applying an AFA rate for the following income tax reduction programs on which Commerce initiated an investigation, we are drawing an adverse inference that Qu Gong and Silin paid no Chinese income tax during the POI:

- Income Tax Reductions for High or New Technology Enterprises
- Income Tax Deductions for Research and Development Expenses Under the Enterprise Income Tax Law
- Income Tax Concessions for Enterprises Engaged in Comprehensive Resource Utilization
- Tax Incentives for Businesses in China (Shanghai) Pilot Free Trade Zone

The standard income tax rate for corporations in China in effect during the POI was 25 percent.[24] Thus, the highest possible benefit for these income tax programs is 25 percent. Accordingly, we are applying the 25 percent AFA rate on a combined basis (*i.e.*, the four programs, combined, provide a 25 percent benefit). Consistent with past practice, application of this AFA rate for preferential income tax programs does not apply to tax credit, tax rebate, or import tariff and VAT exemption programs, because such programs may provide a benefit in addition to a preferential tax rate.[25]

[21] In a change from the *Preliminary Determination*, we are now using Changfeng's calculated rate for this program. In the *Preliminary Determination*, we used the rate calculated for another company.
[22] In a change from the *Preliminary Determination*, we are now including this program in the AFA rate. We first found it countervailable in the Post-Preliminary Analysis.
[23] Changfeng reported several other subsidies. For subsidies for which we calculated a rate for Changfeng, we are using the rate calculated in the AFA rate calculation.
[24] *See* GOC's March 5, 2019 Questionnaire Response (GOC QR) at 35.
[25] *See, e.g., Aluminum Extrusions from China Final* IDM at "Application of Adverse Inferences: Non-Cooperative Companies."

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

- Government Provision of Primary Aluminum for LTAR[26]
- Policy Loans to Aluminum Wire and Cable Industry[27]
- Deed Tax Exemption for State-Owned Enterprises (SOEs) Undergoing Mergers or Restructuring[28]
- Exemptions for SOEs from Distributing Dividends[29]
- Export Loans from Chinese State-Owned Banks (SOCBs)[30]
- Export Buyer's Credits[31]
- Export Seller's Credits[32]
- Foreign Trade Development Fund Grants[33]
- GOC and Sub-Central Government Subsidies for Development of Famous Brands and China World Top Brands[34]
- Grants for Energy Conservation and Emission Reduction[35]
- Grants for the Retirement of Capacity[36]
- Import Tariff and VAT Exemptions on Imported Equipment for Encouraged Industries[37]

[26] In the *Preliminary Determination*, we used calculated subsidy rates for Silin or its suppliers to value this program. However, we are now using the highest above-*de minimis* subsidy rate calculated for the same or comparable programs in a CVD investigation or administrative review involving China for this program. *See Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 75 FR 70201 (November 17, 2010) (*Coated Paper from China Investigation Amended Final*), and accompanying Ministerial Error Memorandum (MEM) at "Revised Net Subsidy Rate for the Gold Companies" (regarding "Preferential Lending to the Coated Paper Industry").

[27] In the *Preliminary Determination*, we used calculated subsidy rates for Silin or its suppliers to value this program. However, we are now using the highest above-*de minimis* subsidy rate calculated for the same or comparable programs in a CVD investigation or administrative review involving China for this program.

[28] *See New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review*, 75 FR 64268, 64275 (October 19, 2010), unchanged in the final (*see New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*, 76 FR 23286 (April 26, 2011) (*OTR Tires from China*)).

[29] *See Chlorinated Isocyanurates from the People's Republic of China: Final Affirmative Countervailing Duty Determination; 2012*, 79 FR 56560 (September 22, 2014) (*Chlorinated Isos from China*), and accompanying IDM at 13-14 ("Special Fund for Energy Saving Technology").

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

[31] *Id.*

[32] *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*, 76 FR 77206 (December 12, 2011), and accompanying IDM at 12.

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

[34] *Id.*

[35] *Id.*

[36] *Id.*

[37] *See OTR Tires from China.*

- Income Tax Deductions/Credit for Purchase of Special Equipment[38]
- Preferential Loans to SOEs [39]
- Provision of Land and Land-Use Rights for LTAR to SOEs[40]
- Provision of Land-Use Rights for LTAR in Nanching Economic Development Zone[41]
- Provision of Steam Coal for LTAR[42]
- Tax Grants, Rebates, and Credits in Yixing Economic Development Zone[43]
- The State Key Technology Project Fund[44]
- VAT Rebates on Domestically-Produced Equipment[45]
- Certain Other Subsidies[46]

Based on the methodology described above, we determine the AFA countervailable subsidy rate for Qu Gong and Silin to be to be 165.63 percent *advalorem*.[47]

VI. SUBSIDIES VALUATION

A. Allocation Period

We made no changes to, and interested parties raised no issues in their case briefs regarding, the allocation methodology used in the *Preliminary Determination*. For a description of the allocation period and the methodology used for this final determination, *see* the *Preliminary Determination*.[48]

B. Attribution of Subsidies

[38] *Id.*
[39] *See Coated Paper from China Investigation Amended Final.*
[40] *See Countervailing Duty Investigationof Certain Hardwood Plywood Productsfromthe People's Republic of China: FinalAffirmative Determination,and Final Affirmative CriticalCircumstances Determination, in Part*, 82 FR 53473 (November 16, 2017) (*Hardwood Plywood*).
[41] *Id.*
[42] *See Countervailing Duty Investigationof Common Alloy Aluminum Sheet fromthe People's Republic of China: Final Affirmative Determination*, 83FR 57427 (November 15, 2018) (*Alloy Sheet from China*), and accompanying IDM at 17.
[43] *See OTR Tires from China.*
[44] *See Chlorinated Isos from China* IDM at 13 – 14 ("Special Fund for Energy Saving Technology").
[45] *See Certain Magnesia Carbon Bricksfromthe People's Republicof China: FinalDeterminationofSalesat Less Than Fair Valueand Critical Circumstances*, 75FR 45472 (August 2, 2010), and accompanying IDM at 10.
[46] These include other subsidies reported by Changfeng, for which we did not calculate a rate, as well as other subsidies reported by Silin or Jiangxi Silin, or discovered at theirverification. In a changefromthe *Preliminary Determination*, we are not including othersubsidiesreportedby Silin's suppliers, but we are including Jiangxi Silin's other subsidies.
[47] *See* Memorandum,"AFACalculation Memorandumforthe FinalDetermination in the Investigationof Aluminum Wire and Cable from China," dated concurrently with this memorandum.
[48] *See Preliminary Determination* PDM at 7.

We made no changes to the methodology underlying our attribution of subsidies in the *Preliminary Determination* with respect to Changfeng. For a description of the methodology used for this final determination for Changfeng, *see* the *Preliminary Determination.*[49]

C. Denominators

We made no changes to, and interested parties raised no issues in their case briefs regarding, Changfeng's denominator used in the *Preliminary Determination.*[50]

D. Benchmarks and Interest Rates

Interested parties provided comments regarding the benchmark used for aluminum rod, which are addressed in Comment 3 below. We made no changes to any benchmarks for the final determination, and interested parties raised no other issues in their case briefs regarding benchmarks and the denominators used in the Post-Preliminary Analysis and *Preliminary Determination.*[51]

VII. ANALYSIS OF PROGRAMS

A. Programs Determined to Be Countervailable

1. Policy Loans to the Aluminum Wire and Cable Industry

Interested parties provided comments regarding this program, which are addressed in Comments 5 and 10 below. We are now applying AFA to Changfeng with respect to this program. *See* Comment 10 below, as well as the "Use of Facts Otherwise Available and Adverse Inferences" section above. Because we are no longer calculating rates for this program, the calculation issues in Comment 5 are now moot.

- 10.54 percent *ad valorem* for Changfeng

2. Export Buyer's Credit

Interested parties provided comments regarding this program, which are addressed in Comment 1. We have not changed our methodology for calculating subsidy rates for the respondents under this program.

- 10.54 percent *ad valorem* for Changfeng

3. Provision of Aluminum Rod for LTAR

[49] *Id.* at 7-12.
[50] *See Preliminary Determination* PDM at 12.
[51] *Id.* at 12-17.

Interested parties provided comments regarding the benchmark for this program, which are addressed in Comment 3. We have not changed our methodology for calculating subsidy rates for Changfeng under this program since the Post-Preliminary Analysis.

- 11.67 percent *ad valorem* for Changfeng

4. Provision of Land-Use Rights for LTAR to Aluminum Wire and Cable Producers

We have not changed our general methodology for calculating subsidy rates for Changfeng under this program.

- 0.11 percent *ad valorem* for Changfeng

5. Provision of Electricity for LTAR

Silin provided comments regarding this program, which are addressed in Comment 8. We have not changed our general methodology for calculating subsidy rates for Changfeng under this program.

- 0.43 percent *ad valorem* for Changfeng

6. Subsidy Fund for Foreign Trade Development

The GOC provided comments regarding this program, which are addressed in Comment 2. We have not changed our methodology for calculating subsidy rates for the respondent under this program.

- 0.02 percent *ad valorem* for Changfeng

7. Special Fund for Foreign Trade Development

The GOC provided comments regarding this program, which are addressed in Comment 2. We have not changed our methodology for calculating subsidy rates for the respondent under this program.

- 0.05 percent *ad valorem* for Changfeng

8. Funds for Foreign Trade Transformation and Upgrading Development in 2016

The GOC provided comments regarding this program, which are addressed in Comment 2. We have not changed our methodology for calculating subsidy rates for the respondent under this program.

- 0.07 percent *ad valorem* for Changfeng

9. Development Fund for Special Industry

The GOC provided comments regarding this program, which are addressed in Comment 2. We have not changed our methodology for calculating subsidy rates for the respondent under this program.

- 0.01 percent *ad valorem* for Changfeng

B. Program Determined to Be Not Specific

1. Provision of International Ocean Shipping Services for LTAR

C. Programs Determined Not to Be Used by Changfeng

1. Provision of Primary Aluminum for LTAR
2. Income Tax Reductions for High or New Technology Enterprises
3. Income Tax Deductions for Research and Development Expenses Under the Enterprise Income Tax Law
4. Export Loans from Chinese State-Owned Banks
5. Preferential Loans for State-Owned Enterprises
6. Export Sellers Credits from Export Import Banks of China (China ExIm)
7. Provision of Steam Coal for LTAR
8. Provision of Land and Land Use Rights for LTAR to SOEs
9. Provision of Land Use Rights for LTAR in Nanching Economic Development Zone
10. Income Tax Concessions for Enterprises Engaged in Comprehensive Resource Utilization
11. Income Tax Deductions/Credits for Purchase of Special Equipment
12. Import Tariff and VAT Exemptions on Imported Equipment for Encouraged Industries
13. VAT Rebates on Domestically-Produced Equipment
14. Deed Tax Exemption for SOEs Undergoing Mergers or Restructuring
15. Tax Grants, Rebates, and Credits in the Yixing Economic Development Zone
16. Tax Incentives for Businesses in China (Shanghai) Pilot Free Trade Zone
17. Exemptions for SOEs from Distributing Dividends
18. The State Key Technology Project Fund
19. Foreign Trade Development Fund Grants
20. Grants for Energy Conservation and Emission Reduction
21. Grants for Retirement of Capacity
22. GOC and Sub-Central Government Subsidies for the Development of Famous Brands and China World Top Brands

VIII. ANALYSIS OF COMMENTS

General Issues

Comme nt 1: Export Buye r's Cre dit

Changfeng's Case Brief,[52] *Silin's Case Brief,*[53] *and GOC Case Brief*[54]

- Commerce should conclude that the export buyer's credit was not used by the respondents in this proceeding. By applying AFA subsidy rates to the respondents, Commerce ignored substantial evidence of non-use. The respondents reported that none of the U.S. customers of the company respondents used this program during the POI. Silin further explained it had only one foreign customer and the customer confirmed in an email that it was aware that it never applied for or received any kind of credit from China ExIm. In addition, Silin's affiliates did not export, so none of them could have used the program.
- AFA cannot be applied unless information is missing from the record. The application of adverse inferences cannot be applied unless it is appropriate to use facts otherwise available (*i.e.*, it is only appropriate to fill gaps in the record necessary for Commerce to complete its calculation).
- In the CVD context, gaps might occur with respect to financial contribution, specificity or benefit. Each of these three elements must be satisfied independent of each other. Thus, as AFA, Commerce cannot discard all evidence on the record related to the existence (or lack thereof) of the three elements of a subsidy merely because of a respondents' failure to cooperate in relation to some but not all of those elements.
- Therefore, the GOC's alleged failure to provide certain information on this program does not render its responses to other aspects of the program unusable or unimportant. Specifically, the GOC states unequivocally that the respondents' customers did not use the program. The only information conceivably absent from the record in the GOC responses is information regarding the operation of the program, but non-use information was not discredited in anyway.
- Even assuming the GOC's responses on program non-use fall short, Commerce is still required to review the totality of the evidence, including that which detracts from its determination.[55] Commerce is required to review information provided by the respondent to determine whether sufficient information exists with regard to use, before it can apply AFA.[56]
- Moreover, the CIT held that where relevant information exists elsewhere on the record, Commerce should seek to avoid adversely impacting a cooperatingparty.[57]
- The GOC provided information which would have enabled Commerce to verify the program. As can be seen under the implementing rules for this program, the exporter is required to obtain export credit insurance, and the buyer is required to open a bank

[52] *See* Changfeng Case Brief at 5-6.
[53] *See* Silin Case Brief at 14-15.
[54] *See* GOC Case Brief at 2-12.
[55] *See CS Wind Vietnam Co. v. United States*, 832 F. 3d 1367, 1373 (Fed. Cir. 2016).
[56] *See Certain In-Shell Pistachios (C-507-501) and Certain Roasted In-Shell Pistachios (C-507-601) from the Islamic Republicof Iran: Final Resultsof New Shipper Countervailing Duty Reviews* 73FR 9993 (Feb. 25, 2008) (*Pistachios*), and accompanying IDM at Comment 2; *see also Certain Hot-Rolled Carbon SteelFlat Products from India: Final Results of Countervailing Duty Administrative Review*, 73 FR 40295 (July 14, 2008) (*Indian Flat Products*), and accompanying IDM at Comment 6.
[57] *See Archer Daniels Midland Co. v. United States*, 917 F. 2d 1331, 1342 (CIT 2013).

account with the Ex-Im Bank. Commerce could have verified whether the exports of subject merchandise obtained credit insurance, and it could have enquired whether the borrowers opened bank accounts with Ex-Im Bank. Commerce did neither.

- There is no uncertainty regarding the statements of non-use of the program by Silin and Changfeng. Silin's only foreign customer expressly confirmed that it never applied for or received any kind of credit from China ExIm. Silin's affiliates reported they did not export their products and could therefore not apply for, use, or benefit from this program. Changfeng provided confirmation from one of its customers that the customer had not used the program, and it provided the names of its other customers. Commerce failed to explain why this unequivocal evidence of non-use was insufficient.
- Commerce's sole justification of its AFA decision was that it was unable to verify in a meaningful manner the little information on the record indicating non-usage. This rationale is without merit and contrary to past practice. How a program operates, and whether it is used are two distinct issues. Regardless of whether Commerce or the U.S. customer have knowledge of exactly how the program operates, the U.S. customers undeniably have knowledge of their own usage of the program.
- Commerce could have inquired further with the customers to the same end. Verifying customers would have hardly been a novel approach, as Commerce has verified this program with U.S. customers in the past. Despite the lack of Commerce's complete understanding, it had a clear path to find non-use by accepting the statement and declaration submitted by the company respondents and verifying customer to the extent necessary.[58] Failing to rely on this evidence when it had done so in the past is contrary to law and must be reversed in any final results.
- The CIT recently expressly found in the exact same factual circumstances as the one present in this proceeding that Commerce cannot apply AFA to usage with regard to the Export Buyer's Credit Program. In that case, the GOC similarly did not provide the document required by the Commerce, the 2013 revised guidelines and did not provide information regarding partner banks. As in this case, Commerce determined AFA was appropriate regarding use of the program because the missing information prohibited it from understanding the operation of the program and how it could be used. The CIT rejected this position.[59] The CIT concluded that Commerce's decision to apply AFA was unreasonable because material information was not missing from the record.
- If Commerce continues to find that respondents benefited from this program, Commerce should affirmatively find that the program is export contingent and therefore must be offset from the antidumping margin.[60] It is Commerce's longstanding practice to treat this program as a prohibited export subsidy.[61]

[58] *See Chlorinated Isos from China* IDM.

[59] *See Guizhou Tyre Co., Ltd. v. United States* Ct. No. 17-00101, Slip Op. 18-140 (October 17, 2018) (*Guizhou Tyre*).

[60] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016-2017*, 84 FR 36886 (July 30, 2019), and accompanying IDM at Comment 2.

[61] *See Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Amended Final Affirmative Antidumping Duty Determination and Antidumping Duty Order; and Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 80 FR 47902 (August 10, 2015); *see also Jinko Solar Co. v. United States*, 229 F. Supp. 3d 1333, 1359 (CIT 2017).

Encore Rebuttal Brief [62] *and Southwire Rebuttal Brief* [63]

- Commerce properly relied on AFA in quantifying the benefit associated with the Export Buyer's credit program. Commerce correctly concluded that the GOC failed to cooperate to the best of its ability in providing information regarding the administration of this program. Due to the GOC's fundamental failures, Commerce correctly found that it could not even conduct verification of this program.
- The GOC acknowledges information is missing from the record. It repeatedly failed to provide full and complete responses to Commerce's requests regarding this program, most notably by not providing certain ExIm Bank documents and a list of all partner/correspondent banks. The GOC even refused provide a sample redacted application for funds under this program.
- The GOC does not dispute that it withheld information, but instead it tries to diminish the importance of Commerce's requests for information, stating that Commerce should just rely on the response that the respondents' customers did not use the program.
- The facts specific to this investigation establish why Commerce must understand how the Export Buyer's Credits program operates in order to verify non-use.
- In this investigation, verification revealed that Silin and Qingdao Cable withheld information of specific subsidies that Commerce's verification team discovered precisely because it understood how the particular programs under investigation were expected to operate.
- Commerce previously explained that it doubts customer-generated certifications of non-use because without a complete understanding of the program (only achieved through a complete response from the GOC), those certifications cannot be verified against how the program operates.
- Commerce lacks an understanding of this program to be able to fully examine non-use without the potential for the respondent parties to fail to disclose use of the program. Commerce just reiterated this position in *Ceramic Tile from China*.[64]
- Here, the GOC failed to provide a list of all partner/correspondent banks involved in this program. Assuming Commerce conducted verification of the respondents' customers, what banks would Commerce search for in its completeness test?
- The GOC's citations to *Pistachios* and *Indian Flat Products* are inapposite here. In *Pistachios* and *Indian Flat Products*, Commerce did not examine a respondent, like in this case, that attempted to misleads Commerce regarding the true nature of its subsidization. Likewise, *Guizhou Tyre* did not consider the import of discovered programs at verification and how those facts establish a reasoned basis to deny reliance upon certification of non-use.
- Record evidence does not demonstrate that the Export Buyer's Credit was not used because there is insufficient information regarding the program's operation. Commerce's incomplete understanding of the program, based on GOC's decision not to provide

[62] *See* Encore Rebuttal Brief at 8-14.
[63] *See* Southwire Rebuttal Brief at 8-10.
[64] *See Ceramic Tile from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination, and Alignment of Final Determination With Final Antidumping Duty Determination*, 84 FR 48125 (September 12, 2019) (*Ceramic Tile from China*), and accompanying PDM at 28-30.

requested information, has a direct impact on Commerce's ability to analyze the program's countervailability and determine how benefits should be calculated.

Comme rce's Position: As an initial matter, as described above and below in Comment 6, we find the totality of the circumstances lead us to conclude that Silin's reported information on this record unreliable. Due to Silin's repeated failure to provide accurate and complete questionnaire responses, critical information required for our subsidy analysis is missing from the record.

As stated in the *Preliminary Determination*, we requested a list of all partner/correspondent banks involved in the disbursement of funds under the Export Buyer's Credit Program.[65] Instead of providing the requested information, the GOC stated that our question is not applicable.[66] We also asked the GOC to submit the Administrative Measures that were revised in 2013, but the GOC refused.[67] Though the GOC provided some information, it was unresponsive to the request, preventing Commerce from analyzing the function of the program, as discussed below.

In our initial questionnaire and supplemental questionnaire to the GOC, we requested that the GOC answer all the questions in the Standard Questions Appendix and other specific questions relating to the China Ex-Im Bank's Export Buyer's Credit Program, which are necessary for Commerce to analyze how the program is administered and how it functions.[68] In response, the GOC stated that "{n}one of the respondents applied for, used, or benefited from, this alleged program during the POI. Therefore, this question is not applicable, and as a consequence, the corresponding appendix is not applicable."[69] The GOC did provide the Administrative Measures of Export Buyer's Credit of EIBC (implemented in 2000) (Administrative Measures).[70] The GOC also stated that the exporter itself is the entity that actually receives the money from the China Ex-Im Bank, and that the Chinese exporter can verify usage.[71] However, information on the record indicates that the GOC revised the Administrative Measures regarding this program in 2013. This information provides that the China Ex-Im Bank may disburse export buyer's credits directly or through third-party partner and/or correspondent banks.[72] As noted above, we asked the GOC to submit the Administrative Measures that were revised in 2013, however, the GOC responded that it was unable to provide this document.[73] Additiona lly, the respondents each reported non-use for themselves and for their U.S. customers, and they each provided correspondence from at least some of their U.S. customers indicating that these customers did not obtain financing through the program.[74]

[65] *See Preliminary Determination* PDM at 24.
[66] *Id*.
[67] *Id*. at 23-24
[68] *See* GOC QR; and GOC's March 6, 2019 Supplemental Questionnaire Response (GOC SQR).
[69] *See* GOC QR at 17.
[70] *Id*. at Exhibit II.B.10.
[71] *Id*. at 20-22
[72] *See* Encore's Letter,"AluminumWire and Cable fromChina: Encore's Submission to Rebut, Clarify, or Correct the GOC's Questionnaire Response," dated February 19, 2019, at Attachment 1 (Citric Acid Verification Report) at 2.
[73] *See* GOC SQR at 3.
[74] *See, e.g.*, Changfeng's February 5, 2019 Questionnaire Response at 12-13 and Exhibit 13; and Changfeng's March 5, 2019 Questionnaire Response at 9-10.

We continue to find that the GOC's responses with respect to the Export Buyer's Credit Program are deficient in two key respects.

First, as we found in the *Silica Fabric Investigation* that was conducted in 2016-2017, where we asked the GOC about the amendments to the Export Buyer's Credit Program,[75] we continue to find that the GOC has refused to provide the requested information concerning the 2013 program revisions, which is necessary for Commerce to analyze how the program functions. We requested information regarding the 2013 revisions to the Administrative Measures, and information on the partner/correspondent banks that are involved in the disbursement of funds under this program, because our prior knowledge of this program demonstrates that the 2013 revisions effected important program changes.[76] Specifically, the 2013 revisions (which the GOC refers to as "internal guidelines") appear to be significant and have impacted a major condition in the provision of loans under the program, *i.e.*, by eliminating the USD 2 million minimum business contract requirement.[77]

This information is necessary and critical to our understanding of the program and for any determination of whether the "manufacture, production, or export" of the respondents' merchandise has been subsidized. For instance, if the program continues to be limited to USD 2 million contracts between a mandatory respondent and its customer, this is an important limitation to the universe of potential loans under the program and can assist us in targeting our verification of non-use. However, if the program is no longer limited to USD 2 million contracts, this increases the difficulty of verifying loans without any such parameters, as discussed further below.[78] Therefore, by refusing to provide the requested information, and instead providing unverifiable assurances that other rules regarding the program remained in effect, the GOC impeded Commerce's ability to understand how this program operates and how it can be verified. Further, regarding the GOC's concerns regarding the non-public nature of the 2013 revisions, Commerce has well-established rules governing the handling of business proprietary information in its proceedings.

Second, Commerce's understanding of the Export Buyer's Credit Program changed after Commerce began questioning the GOC's earlier indication that loans provided pursuant to the Export Buyer's Credit Program were between the GOC and the borrower *only*, essentially a *direct* deposit from the China Ex-Im Bank to the foreign buyer. In particular, in the silica fabric investigation, Commerce identified that the rules implementing the Export Buyer's Credit Program appeared to indicate that the China Ex-Im Bank's payment was instead disbursed to U.S. customers via an intermediary Chinese bank, thereby contradicting the GOC's response otherwise.[79] Thus, Commerce asked the GOC to provide the same information it provided in the

[75] *See* GOC QR at Exhibit II.B.11 (containingthe GOC's September 6, 2016, Silica Fabric QR at 4-5).
[76] *See* GOC SQR at 3-4.
[77] *See Countervailing Duty Investigationof Certain Amorphous Silica Fabric fromthe People's Republicof China: Final Affirmative Determination*, 82FR 8405 (January 25,2017) (*Silica Fabric Inv*), and accompanying IDM at 12 and 61.
[78] The GOC is the only partywhich could provide theidentities of the correspondentbanks thatthe China Ex-Im Bank utilizes to disbursefunds underthe Export Buyer's Credit Program. There is no indicationon therecordthat other parties hadaccess to the correspondent banks utilized by the China Ex-Im Bank.
[79] *See Silica Fabric Inv* IDM at 12.

silica fabric investigation regarding the rules implementing the Export Buyer's Credit Program, as well as any other governing documents (discussed above). Commerce also asked a series of questions regarding the method of transferring funds from the China Ex-Im Bank to Chinese exporters on behalf of U.S. customers via the credits at issue:

- Please provide the 2013 amendment and guidelines to the *Administrative Measures of Export Buyers' Credit of the Export-Import Bank of China* (Exhibit II.B.10) and the *Implementing Rules for the Export Buyers' Creditof the Export-Import Bank of China* (Exhibit II.B.12).[80]
- Provide a sample application for each type of financing provided under the Buyer Credit Facility, the application's approval, and the agreement between the respondent's customer and the China ExIm that establish the terms of the assistance provided under the facility.[81]
- Provide a list of all partner/correspondent banks involved in disbursement of funds under the Export Buyer's Credit Program.[82]

Although the GOC provided certain documents,[83] the GOC provided non-responsive answers to Commerce's specific questions, stating in response to our request for the 2013 revised Administrative Measures: "The Export-Import Bank of China (the "Ex-Im Bank") has confirmed to the GOC that its 2013 guidelines are internal to the bank, non-public, and not available for release. Although the GOC has used its best efforts in attempting to obtain a copy of the document requested by the Department, the GOC has no authority or right to force the Ex-Im Bank to provide a copy of the 2013 guidelines, and therefore is unable to provide a copy to the Department."[84] With regard to our request for a list of partner/correspondent banks that are involved in the disbursement of funds through the program, the GOC similarly stated: "the GOC would like to reiterate that, although it has used its best efforts in attempting to obtain this information, the GOC is unable to compel the Ex-Im Bank to disclose, or provide the GOC with, a list of all partner or correspondent banks which may have been involved in disbursement of funds under the Export Buyer's Credit Program—more so because neither of the mandatory respondents, their cross-owned affiliates or their U.S. customers used this program.[85]

We note that in the instant investigation, the GOC has provided requested information for other programs even though it considered this information to be not applicable to the issue under examination. For example, regarding the Provision of Electricity for LTAR Program, we requested that the GOC provide information from the GOC's 2009 questionnaire response in the CVD investigation of kitchen appliance shelving and racks from China:

[80] *See* GOC SQR at 3.
[81] *See* GOC QR at 18; *see also* GOC SQR at 2-3.
[82] *See* GOC QR at 19; *see also* GOC SQR at 4.
[83] *See* GOC QR at 19; *id.* at Exhibit II.B.10, "The Administrative Measures of Export Buyer's Credit of EIBC," dated November 20, 2000; *id.* at Exhibit II B.12, "The implementing Rules for the Export Buyer's Credit of the Export-Import Bank of China," dated September 11, 1995.
[84] *See* GOC SQR at 2.
[85] *Id.* at 3.

> Provide the Public Version of the March 11, 2009, Response of the Government of China To The U.S. Department of Commerce's Supplemental Questionnaire on Electricity filed in Certain Kitchen Appliance Shelving and Racks from the People's Republic of China including Exhibit S2-1, Exhibit S2-2 and Exhibit S2-6. Furthermore, include an English translation of Exhibit S2-1.[86]

The GOC stated that the requested information was "no longer applicable," but still provided the information:

> The GOC provides the requested document at Exhibit II.E.c.2. However, we note that due to the changes that occurred in the electricity regime in China since that date, the information contained in this old GOC response is no longer applicable.[87]

The GOC also provided requested information in another instance, even though it concluded this information was not applicable to our investigation:

> Provide the Public Version of the March 11, 2009, submission of the Government of China titled *Paper on China's Electricity System: Certain Kitchen Appliance Shelving and Racks from the People's Republic of China – CVD Investigations* including Exhibits 1-15.[88]

Thus, the GOC provided requested information that it concluded was not applicable to our examination of the Provision of Electricity for LTAR Program, but did not act in the same way regarding our request for the 2013 revised Administrative Measures for the Export Buyer's Credit Program, thus demonstrating that the GOC is capable of providing information for certain programs even if it deems such information "not applicable" to Commerce's examination.

Accordingly, we continue to find the GOC's responses deficient and unresponsive to our request for necessary information with respect to the operation of the Export Buyer's Credit Program. This information is necessary and critical to our understanding of the program and for any determination of whether the "manufacture, production, or export" of the company respondents' merchandise has been subsidized. As noted above, information on the record of this segment of the proceeding altered Commerce's understanding of how the Export Buyer's Credit Program operated (*i.e.*, how funds were disbursed under the program) from Commerce's understanding of this same program in the chlorinated isos investigation. Specifically, the record indicates that the loans associated with this program are not limited to direct disbursements through the China Ex-Im Bank.[89]

For instance, it appears that: (1) customers can open loan accounts for disbursements through this program with other banks; (2) the funds are first sent from the China Ex-Im Bank to the

[86] *See* GOC QR at 95.
[87] *Id*.
[88] *Id.*
[89] *See* GOC QR at Exhibit II.B.11 (containingthe GOC's September 6, 2016, Silica Fabric QR at 4-5).

importer's account, which could be at the China Ex-Im Bank or other banks; and (3) that these funds are then sent to the exporter's bank account.[90] Given the complicated structure of loan disbursements which can involve various banks for this program, Commerce's complete understanding of how this program is administrated is necessary to verify claims of non-use.[91] Thus, the GOC's refusal to provide the 2013 revisions, which provide internal guidelines for how this program is administrated by the China Ex-Im Bank, as well as other requested information, such as key information and documentation pertaining to the application and approval process, and partner/correspondent banks, impeded Commerce's ability to conduct its investigation of this program and to verify the claims of non-use by the company respondents' customers.

This missing information was especially significant because the available record evidence indicates that under the Export Buyer's Credit Program, credits are not direct transactions from the China Ex-Im Bank to U.S. customers of the respondent exporters, but rather, that there can be intermediary banks involved,[92] the identities of which the GOC has refused to provide to Commerce. In the chlorinated isos investigation, based on our understanding of the program at that time, verification of non-usage appeared to be possible through examining the financial statements and books and records of U.S. customers for evidence of loans *provided directly from the China Ex-Im Bank to the U.S. customer*, pursuant to verification steps similar to the ones described above.[93] However, based on our more recent understanding of the program in this investigation discussed above, performing the verification steps to make a determination of whether the "manufacture, production, or export" of the company respondents' merchandise has been subsidized would therefore require knowing the names of the intermediary banks; it would be their names, not the name "China Ex-Im Bank," that would appear in the subledgers of the U.S. customers if they received the credits. As explained recently in the investigation of aluminum sheet:

> Record evidence indicates that the loans associated with this program are not limited to direct disbursements through the China Ex-Im Bank. Specifically, the record information indicates that customers can open loan accounts for disbursements through this program with other banks, whereby the funds are first sent to . . . the importer's account, which could be at the China Ex-Im Bank or other banks, and that these funds are then sent to the exporter's bank account.[94]

In other words, there will not necessarily be an account in the name "China Ex-Im Bank" in the books and records (*e.g.*, subledger, tax return, bank statements) of the U.S. customer. Thus, if we cannot verify claims of non-use at the GOC,[95] having a list of the correspondent banks is critical for us to perform verification at the U.S. customers.

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[90] *Id.*
[91] *Id.*
[92] *Id.*
[93] *See Chloro Isos from China* IDM at 15.
[94] *See Alloy Sheet from China* IDM at 30.
[95] Commerce no longer attempts to verify usage with the GOC given the inadequate information provided in its questionnaire responses, in particular, the GOC's refusal to provide the 2013 revisions to the administrative rules. *Id.* at Comment 2.

Without such information, it would be unreasonably onerous for Commerce to comb through the business activities of the company respondents' customers without any guidance as to how to simplify the process or any guidance as to which loans or banks to subject to scrutiny as part of a verification for each company. A careful verification of the company respondents' customers' non-use of this program without understanding the identity of these correspondent banks would be extremely difficult, if not impossible. Because Commerce does not know the identities of these banks, Commerce's second step of its typical non-use verification procedures (*i.e.*, examining the company's subledgers for references to the party making the financial contribution) could not by itself demonstrate that the U.S. customers did not use the program (*i.e.*, by examining whether there were any correspondent banks in the subledger). Nor could the second step be used to narrow down the company's lending to a sub-set of loans likely to be the export buyer's credits (*i.e.*, loans from the correspondent banks). Thus, verifying non-use of the program without knowledge of the correspondent banks would require Commerce to view the underlying documentation for *all* entries from the subledger *to attempt* to confirm the origin of each loan—*i.e.*, whether the loan was provided from the China Ex-Im Bank via an intermediary bank. This would be an extremely onerous undertaking for any company that received more than a small number of loans.

Furthermore, Commerce's typical non-use verification procedures (*i.e.*, selecting *specific* entries from the subledger and requesting to see underlying documentation, such as applications and loan agreements) would be of no value. This step might serve merely to confirm whether banks were correctly identified in the subledger—not necessarily whether those banks were correspondent banks participating in the Export Buyer's Credit Program. This is especially true given the GOC's failure to provide other requested information, such as the 2013 revisions, a sample application, and other documents making up the "paper trail" of a direct or indirect export credit from the China Ex-Im Bank, discussed above. Commerce would simply not know what to look for behind each loan in attempting to identify a loan provided by the China Ex-Im Bank via a correspondent bank.

This same sample "paper trail" would be necessary even if the GOC provided the list of correspondent banks. For instance, assuming that one of the correspondent banks is HSBC, Commerce would need to know how to differentiate ordinary HSBC loans from loans originating from, facilitated by, or guaranteed by the China Ex-Im Bank. In order to do this, Commerce would need to know what underlying documentation to look for in order to determine whether particular subledger entries for HSBC might actually be Ex-Im Bank financing: specific applications, correspondence, abbreviations, account numbers, or other indicia of Ex-Im Bank involvement. As explained above, the GOC failed to provide Commerce with any of this information. Thus, even were Commerce to attempt to verify respondents' non-use of the Export Buyer's Credit Program, notwithstanding its lack of knowledge of which banks are intermediary/corresponde nt banks, by examining *each* loan received by *each* of the respondents' U.S. customers, Commerce still would not be able to verify which loans were normal loans versus Export Buyer's Credit Program loans due to its lack of understanding of what underlying documentation to expect to review, and whether/how that documentation would indicate China Ex-Im Bank involvement. In effect, companies could provide Commerce with incomplete loan documentation without Commerce understanding that the loan documentation was incomplete.

Even if it were complete and identified China Ex-Im Bank involvement, without a thorough understanding of the program, Commerce might not recognize indicia of such involvement.

That is why Commerce requires disclosure of the 2013 Administrative Measures, as well as other information concerning the operation of the Export Buyer's Credit Program, in order to verify usage. Understanding the operation of the program is not, therefore, solely a matter determining whether there is a financial contribution or whether a subsidy is specific. A complete understanding of the program provides a "roadmap" for the verifiers by which they can conduct an effective verification of usage. By analogy, consider attempting to verify whether a company has received a tax break without having an adequate understanding of how the underlying tax returns should be completed or where use of the tax break might be recorded.

Thus, Commerce finds it could not *accurately and effectively* verify usage at the company respondents' customers, even were it to attempt the unreasonably onerous examination of each of the customers' loans. To conduct verification of the customers without the information requested from the GOC would amount to looking for a needle in a haystack with the added uncertainty that Commerce might not even be able to identify the needle when it was found. Based on the GOC's responses, Commerce understood that under this program loans were provided either directly from the China Ex-Im Bank to the borrowers (*i.e.*, a respondent's customers), or through an intermediary third-party bank, and that a respondent might have knowledge of loans provided to its customers through its involvement in the application process. Commerce gave the GOC an opportunity to provide the 2013 revisions regarding the Administrative Measures, which the GOC refused to provide.[96] The GOC also refused to provide a requested sample application, instead claiming that "none of the respondents applied for, used, or benefited from, this alleged program during the POI. Therefore, no agreements between the respondents and the China Ex-Im Bank or between the U.S. customers and the China Ex-Im Bank exist. A sample credit application is not available because no fixed format for such document exists, which are prepared by the borrowers autonomously."[97]

According to the GOC, none of the respondent companies' U.S. customers used the Export Buyer's Credits from the China Export-Import Bank during the POI.[98] The GOC explained that to make this determination, GOC has obtained the list of U.S. customers from the respondents; the GOC also enquired with the Ex-Im Bank; and the GOC understands that Ex-Im Bank queried its internal system which manages the Export Buyer's Credits and confirmed that none of the respondents used the Export Buyer's Credits during the POI.[99] The GOC's response indicated that exporters would know whether there was an interaction between the China Ex-Im Bank and the borrowers (*i.e.*, the respondents' U.S. customers, who are not participating in this proceeding), but neither the GOC, nor the respondent companies, provided enough information for Commerce to understand this interaction or how this information would be reflected in the respondent companies' or their U.S. customers' books and records. As a result, the GOC failed to respond to Commerce's request, and instead claimed that neither of the company respondents' U.S. customers used this program based on selectively provided, incomplete information. As

[96] *See* GOC SQR at 3.
[97] *See* GOC QR at 18.
[98] *See* GOC SQR at 3.
[99] *Id.*

determined in the *Preliminary Determination*, we continue to find that Commerce could not verify non-use of export buyer's credits by the customers of the company respondents. Furthermore, the lack of information concerning the operation of the Export Buyer's Credit Program prevents an accurate assessment of usage at verification:

> In prior proceedings in which we have examined this program, before the 2013 amendments, we have found that the China Ex-Im, as the lender, is the primary entity that possesses the supporting information and documentation that are necessary for Commerce to fully understand the operation of the program which is prerequisite to Commerce's ability to verify the accuracy of the program. Because the program changed in 2013 and the GOC has not provided details about these changes, Commerce has outstanding questions about how this program currently functions, *e.g.*, whether the EX-IM Bank limits the provision of Export Buyer's Credits to business contracts exceeding USD 2 million, and whether it uses third-party banks to disburse/settle Export Buyer's Credits. Such information is critical to understanding how Export Buyer's Credits flow to and from foreign buyers and the EX-IM Bank and forms the basis of determining countervailability. Absent the requested information, the GOC's claims that the respondent companies did not use this program are not verifiable. Moreover, without a full understanding of the involvement of third-party banks, the respondent companies' (and their customers') claims are also not verifiable.[100]

We continue to find that usage of the Export Buyer's Credit Program could not be verified at the company respondents in a manner consistent with Commerce's verification methods because Commerce could not confirm usage or claimed non-use by examining books and records which can be reconciled to audited financial statements[101] or other documents, such as taxreturns. Without the GOC providing bank disbursement information, Commerce could not tie any loan amounts to banks participating in this program in the company respondents' U.S. customers' books and records, and therefore could not verify the claims of non-use. A review of ancillary documents, such as applications, correspondence, emails, *etc.*, is insufficient for Commerce to verify any bank disbursement or loan amount pertaining to the company respondents, their customers, and/or the GOC's participation in the program.[102] Commerce needed to have a better understanding of the program before it could verify it because it did not know what documents to request to review at verification or what information in the books and records to tie to the company respondents' reported information from their questionnaire responses. Therefore, we found it necessary to have had this information prior to verification in order to ensure the information we would have received was complete and accurate to fully analyze and calculate the benefits the company respondents received under this program during the course ofthe POI.

In short, because the GOC failed to provide Commerce with information necessary to identify a paper trail of a direct or indirect export credit from the China Ex-Im Bank, we would not know

[100] *See Chlorinated Isocyanurates from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2015*, 82FR 57209 (December 4, 2017), and accompanying PDM at 16-17.

[101] *Id*.

[102] *Id*.

what to look for behind each loan in attempting to identify which loan was provided by the China Ex-Im Bank via a correspondent bank under the Export Buyer's Credit Program. This necessary information is missing from the record because such disbursement information is only known by the originating bank, the China Ex-Im Bank, which is a government-controlle d bank.[103] Without cooperation from the China Ex-Im Bank and/or the GOC, we cannot know the banks that could have disbursed export buyer's credits to the company respondents' customers. Therefore, there are gaps in the record because the GOC refused to provide the requisite disbursement information.

Additionally, Commerce finds that it is not possible to determine whether export buyer's credits were received with respect to the export of aluminum wire and cable because the potential recipients of export buyer's credit are not limited to the customers of the company respondents as they be may be received by other third-party banks and institutions. Again, Commerce would not know what indicia to look for in searching for usage or even what records, databases, or supporting documentation we would need to examine to conduct the verifications (*i.e.*, without a complete set of laws, regulations, application and approval documents, and administrative measures, Commerce would not even know what books and records the China Ex-Im Bank maintains in the ordinary course of its operations). Essentially, Commerce is unable to verify in a meaningful manner what little information there is on the record indicating non-usage (*e.g.*, the claims of the GOC and certifications from U.S. customers), pursuant to section 776(a)(2)(D) of the Act, with the exporters, U.S. customers, or at the China Ex-Im Bank itself given the refusal of the GOC to provide the 2013 Revision and a complete list of correspondent/partner/intermediate banks.

Commerce finds that required missing information concerning the operation and administration of the Export Buyer's Credit Program is necessary, as it demonstrates why usage information provided by the GOC and the respondents cannot be verified and why there is therefore a gap in the record concerning usage. Commerce has explained how the gap in the record (*i.e.*, missing information concerning the operation of the Export Buyer's Credit Program) prevents complete and effective verification of the customer's certifications of non-use. A very similar rationale has been accepted by the Court in a review of Solar Cells from China. Specifically, in *Changzhou I*,[104] given similar facts, the Court found Commerce reasonably concluded it could not verify usage of the Export Buyer's Credit Program at the exporter's facilities absent an adequate explanation from the GOC of the program's operation; *i.e.*, "absent a well-documented understanding of how an exporter would be involved in the application of its customer for an export buyer credit and what records the exporter might retain, we would have no way of knowing whether the records we review at a company verification necessarily include any applications or compliance records that an exporter might have…."[105]

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[103] *See Countervailing Duty Investigation of 1,1,1,2 Tetraflouroethane from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79FR 62594 (October 24, 2014), and accompanying IDM at 31 (confirming that the GOC solely owns the China Ex-Im Bank).

[104] *See Changzhou I*, 195 F. Supp. 3d at 1355 (citing *Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79FR 76962 (December 23, 2014), and accompanying IDM at 91-94).

[105] *Id*. at 1355.

Moreover, Commerce disagrees with the respondents that Commerce does not need the information requested from the GOC to determine non-use. As an initial matter, we cannot simply rely on the GOC's assurances that it has checked its records. We have no way of verifying such statements without the GOC providing us with the requested documents which would allow us to then properly examine its claims of non-use. Further, given the constraints on Commerce resulting from the GOC's failure to provide all of the necessary information to fully understand the program's operation, Commerce reasonably determined that it would be unable to examine each and every loan obligation of each of the company respondents' customers and that, even if such an undertaking were possible, it would be meaningless, as Commerce would have no idea as to what documents it should look for or what other indicia there might be within a company's loan documentation regarding the involvement of the China Ex-Im Bank.

At the very least, even when Commerce has no means of limiting the universe of transactions before it begins verification, Commerce knows what it is looking for when it begins selecting documents or transactions for review. When, because of the GOC's failure to provide complete information, there are no such parameters, or there is no guidance as to what indicia Commerce should look for, it is unreasonable to expect Commerce to hunt for a needle in a haystack – a very large haystack in some instances. As an illustrative example, regarding the VAT and import duty exemptions, Commerce has met with the GOC to discuss how that program works, and in such instances the GOC has been fully cooperative.[106] Therefore, Commerce knows what documents it should see when VAT and import duties are paid and when they are exempted. It knows, in other words, when it has a complete document trace. The GOC, in fact, provides sample documents to help Commerce understand the paper flow under the program. Commerce can also simply ask to see a VAT invoice or a payment to the Chinese customs service to verify whether VAT and duties were charged and paid.

By contrast, we simply do not know what to look for when we look at a loan to determine whether the China Ex-Im Bank was involved or whether a given loan was provided under the Export Buyer's Credit Program, for the reasons explained. Another example is when Commerce is verifying non-use of an income tax rebate or exemption, it relies on information gathered from the GOC during meetings with the relevant tax authorities at the national and local levels. Commerce would expect the GOC officials to provide blank tax forms indicating where the rebate would be recorded, including the specific line item on the form. Commerce would then know precisely which documentation to ask for when verifying the company respondent and would also know with certainty whether the company should have this document. For the reasons explained above, such documentation is insufficient without being able to tie it to the company's books and records.

The respondents argue that Commerce could have had a clear path to find non-use by either accepting the company respondents' customers' declarations or by verifying the declarations. Commerce, however, has already explained in past proceedings why it cannot verify non-usage at the exporters given similar deficiencies with the GOC's explanation of the operation of the

[106] *See, e.g., Tow-Behind Groomers from China Final* IDM at 10 ("At the verification of Princeway's questionnaire responses . . . the GOC presented corrections regarding the reported exempted import duties for imported equipment . . . .").

program.[107] Commerce specifically explained how verification methods require examining books and records that can be tied to audited financial statements, tax returns, *etc*. to ensure a complete picture of the company's activities rather than searching through filing cabinets, binders, *etc*. looking for what may or may not be a complete set of application documents.[108] Moreover, the idea of searching through the company respondents' cash accounts in an effort to find evidence that certain funds may have been deposited pursuant to the Export Buyer's Credit Program is similarly onerous as searching through the details of the customer's borrowings to find such evidence.

With respect to arguments that AFA should not be applied to this program, we continue to find that the GOC withheld necessary information that was requested of it and significantly impeded the proceeding. Accordingly, Commerce must rely on facts otherwise available in issuing this final determination, pursuant to sections 776(a)(1), (2)(A) and (C) of the Act. Specifically, necessary information was not on the record because the GOC withheld information that we requested that was reasonably available to it which significantly impeded the proceeding. In addition, we find that an adverse inference is warranted in the application of facts available, pursuant to section 776(b) of the Act because the GOC did not act to the best of its ability in providing the necessary to Commerce. As AFA, we determine that this program provides a financial contribution, and provides a benefit to the company respondents within the meaning of sections 771(5)(D), and 771(5)(E), respectively, of the Act.

Commerce has considered all information on the record of this proceeding, including the statements of non-use provided by the respondent companies (*i.e.*, declarations of non-use from respondents' customers); however, as explained above, we are unable to rely on information provided by respondent companies due to Commerce's lack of a complete and reliable understanding of the program, which is a prerequisite to our reliance on information provided by the respondent companies regarding non-use. Thus, without the GOC's necessary information, the information provided by the respondent companies is incomplete for reaching a determination of non-use.

For all the reasons explained above, we continue to find that necessary information is missing from the record, the GOC withheld information that was requested, and significantly impeded the proceeding, pursuant to sections 776(a)(1), (2) of the Act, and that the GOC has failed to cooperate to the best of its ability, pursuant to section 776(b) of the Act. Commerce's resort to the use of an adverse inference when selecting from among the facts otherwise available is reasonable and supported by substantial evidence on the record.

With respect to the selection of the AFA rate to apply to this program, we have reviewed comments from interested parties and we are continuing to apply our CVD AFA hierarchy to assign a rate of 10.54 percent *ad valorem* to this program, consistent with the *Preliminary*

[107] *See, e.g., Chloro Isos from China* IDM at 15 ("While the Department was unable to conduct a complete verification of non-use of this programat China ExIm, both Jihengand Kangtai in their questionnaire responses provided statementsfromeach of their U.S. customers in which eachcustomercertified that theydid not receive any financing fromChina ExIm.").

[108] "The Departmentcannot typically lookat the contents of a filing cabinet or binder and determine whether it includes everythingthat it's supposed to include." *See Changzhou I*, 195 F. Supp. 3d at 1355.

Determination.[109] We conclude that the Export Buyer's Credit Program provides loan support through export buyer's credits.[110] Based on the description of the Export Buyer's Credit Program, we find that the Preferential Policy Lending program and the Export Buyer's Credit Program are similar/comparable programs as both programs provide access to loans.

Finally, with regard to the respondents' argument that Commerce should find that this program is an export subsidy, we agree. Although the record regarding this program suffers from significant deficiencies, we note that the GOC's description of the program and supporting materials (albeit found to be deficient) demonstrates that through this program, state-owned banks, such as the EX-IM Bank, provide loans at preferential rates for the purchase of exported goods from China.[111] In addition, the program was alleged by the petitioners as a possible export subsidy.[112] Finally, Commerce has found this program to be an export subsidy in the past.[113] Thus, taking all such information into consideration indicates the provision of export buyer's credits is contingent on exports within the meaning of section 771(5A)(B) of the Act.

Comme nt 2: Othe r Subsidie s

GOC Case Brief [114]

- Commerce's investigation and subsidy finding must focus on properly alleged subsidies for which there is formal initiation of an investigation.
- For more than a decade, Commerce has employed a practice in CVD investigations of requesting respondents to disclose all other subsidies. Such "other" subsidies are not subject of any allegation raised by the petitioner, any formal initiation of an investigation, nor are they defined in any way by Commerce.
- This "other" subsidy request has been used by Commerce as the basis to apply AFA. The practice thus prejudices responding parties by placing undue burdens upon them and distracting from the proper focus of the proceeding.
- In the instant proceeding, Commerce asked about other subsidies in the absence of evidence or other formalities required by law. In the preliminary determination, Commerce assigned margins to the company respondents using utilization information provided by those companies for these reported other subsidies. This is contrary to law and no margin should be assigned.
- Under section 702 of the Act, investigations may only commence after sufficient evidence of financial contribution, specificity, and benefit is found or present. This true for self-initiated investigation or investigations commenced with petitions. Commerce engages in an allegation-by-allegation review to establish whether each allegation is

[109] *See Preliminary Determination* PDM at 25.
[110] *See* GOC QR at 17-22.
[111] *See* GOC QR at Exhibits II.B.10 and II.B.12.
[112] *See Aluminum Wire and Cable from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 83 FR 52805 (October 18, 2018) (*Initiation Notice*), and accompanying CVD Initiation Checklist at 13.
[113] *See, e.g., Countervailing Duty Order on Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2016*, 84 FR 17382 (April 25, 2019), and accompanying IDM at Comment 16.
[114] *See* GOC Case Brief at 12-16.

properly framed and supported by sufficient evidence. Initiation in response to an allegation is not a doorway to open-ended inquiries.

- These provisions and practices do not preclude Commerce from engaging in additional investigation during the course of a proceeding and incorporating additional subsidy findings in the final determination. Commerce's regulations contemplate this, allowing for new subsidy allegation with 40 days of the scheduled preliminary determination. Commerce's practice is to examine the allegation and determine whether the allegation is supported and warrants initiation consistent with section 702 of the Act.
- Commerce's regulations also set forth the scenarios when Commerce will examine apparent subsidy practices discovered during the course of an investigation. In accordance with 19 CFR 351.301(c)(2)(iv)(A), Commerce will include an investigation of a discovered practice that appears to provide a countervailable subsidy if it concludes that sufficient time remains before the final determination. If Commerce concludes there is insufficient time, it will allow the petitioner to withdraw the petition and resubmit it with regard to the newly discovered program, or it will defer consideration of the newly program to an administrative review.[115] The regulations also specify that Commerce will further notify the parties to proceeding of any practice it discovers and whether or not it will be included in the ongoing proceeding.
- Commerce's regulations reinforce the idea that discovery of an apparent practice is not the means to an end, but there still need to be evidence to give rise to the appearance of a subsidy. Moreover, "discovery" is not a substitute for investigation. Rather discovery must be followed by notice to the parties of Commerce's intent to include the discovered practice in the ongoing proceeding and then proceed to examination and consideration.
- Commerce's formal initiation of the provision of international shipping and aluminum rod for LTAR, lends support to the GOC proposition. In deciding to initiate the NSA investigation, Commerce made an express determination allegedly grounded in fact and law, and then formally initiated an investigation. On the other hand, Commerce's practice of asking the open-ended question into other subsidies results in what is, effectively, an investigation into practices which have neither been alleged as subsidies, nor subject to a formal initiation by Commerce, even when there is no basis to do so.
- No legal basis exists for investigating or countervailing "other" subsidies in this proceeding. Commerce was immediately in error when it made its "other" subsidy request in the initial questionnaire. Such a request represents an investigation in the absence of a properly framed inquiry or other evidence, contrary to the U.S. statute, Commerce's regulations, and its practice.
- It stands to reason that an impermissible investigation into unspecified "other" subsidies, where the term subsidy itself is a term of art and inherently suspect, and therefore cannot be the basis for FA or AFA. It cannot be said that the details of "other subsidies," whatever that may mean, constitutes necessary information within the scope of the Commerce's investigation or the meaning of the facts available statute.
- At most, the statute and Commerce's regulations provides Commerce the authority, upon proper notice to the parties, to investigate such practices upon discovery, or defer consideration to a review, but nothing more. In this proceeding, Commerce made no such discovery, provided no advance notice of the intent to include the discovered

[115] *See* 19 CFR 351.311(c).

practice in the ongoing proceedings, and engaged in no investigation once notice was given.
- Commerce should assign no subsidy margin to "other subsidies" reported by company respondents.

Encore Rebuttal Brief[116]
- Commerce acted lawfully by countervailing a subsidy program it discovered during the course of the proceeding.
- In the initial questionnaire responses, Silin and Changfeng self-reported receiving other subsidies from the GOC or its subdivisions. The GOC, however, failed to provide any requested information in its original or supplemental responses. In fact, the GOC refused to answer the question stating that "the practices and policies employed by the Department eliciting the reported information are contrary to U.S. law and disciplines under the WTO SCM Agreement."[117] This question is required by the CVD statute [118] and has been found lawful by the CIT in *Trina Solar*.[119]
- It is China that violates the WTO's Agreement on Subsidies and Countervailing Measures (WTO SCM), annually, when it fails to provide notification of any subsidy programs in a manner that is "sufficiently specific to enable other programs."[120]
- Commerce lawfully applied AFA and found that the other assistance reported by Silin and Changfeng constitute a financial contribution and specific in accordance with the Act.
- The GOC is mistaken that the Act provides limited authority to investigation whether subsidies have been conferred. Section 775 of Act contains no limiting language as to how Commerce is to discover a practice which appears to be a countervailable subsidy but was not included in the matters alleged in the petition.
- The GOC alleges that the investigation must be supported by an allegation and evidence. The CIT rejected this narrow view of the statute in *Trina Solar* when it held that: "nowhere does the statute contemplate that the Petitioner's failure to include all known potential subsidies in its petition thereby waivers Commerce's own, independent authority to investigation such programs."[121] The GOC cannot point to any statutory provision that establishes otherwise. Likewise, the statute and Commerce's regulations provide wide latitude for Commerce to determine whether to take discovered subsidies into account during the investigation or defer them for consideration in a review.
- While the GOC contends that Commerce failed to make threshold determinations, comparing Commerce's finding to the initiation of NSAs, Commerce reasonably exercised its own investigative authority, which does not require any formal initiation upon discovery of subsidies.[122]
- Because Commerce reasonably exercised its authority under section 775 of the Act and 19 CFR 351.311 to consider Silin's and Changfeng's self-disclosed "other subsidies,"

[116] *See* Encore Rebuttal Brief at 14-17.
[117] *See* GOC's March 6, 2019, supplemental questionnaire response at 30.
[118] *See* section 775 of the Act.
[119] *See Changzhou Trina Solar Energy Co. v. United States*, 195 F. Supp. 3d 1334, 1346 (CIT 2016) (*Trina Solar*).
[120] *See* WTOSCM at Art. 8.2.
[121] *See Trina Solar*, 195 F. Supp. 3d at 1341-2.
[122] *See Allegheny Ludlum Corp. v. United States*, 25 CIT 816 (July 18, 2001).

and the GOC failed to respond to any questions related to this other assistance, Commerce lawfully applied AFA in the *Preliminary Determination*.

Comme rce's Position: We disagree that Commerce's request that respondent interested parties report "other assistance" received by the respondents from governments is inconsistent with domestic law or the United States' international obligations. Investigations into potentially countervailable subsidies to a class or kind of merchandise are initiated in one of two ways. First, an investigation can be self-initiated by Commerce.[123] Second, a domestic interested party may file a petition for the imposition of countervailing duties on behalf of an industry.[124] Under the second mechanism, those parties are obligated to support their subsidy allegations with information reasonably available to them, and those allegations must identify the elements of a countervailable subsidy (*i.e.*, specificity, benefit, and financialcontribution).[125]

However, once an investigation has been initiated through one of the above mechanisms, then, under section 775 of the Act, Commerce may also investigate potential subsidies it discovers in the course of the proceeding. Specifically, in the course of an investigation, Commerce may "discover{} a practice which appears to be a countervailable subsidy, but was not included in the matters alleged in the countervailing duty petition."[126] In such a case, Commerce "*shall* include the practice, subsidy, or subsidy program in the proceeding."[127] Thus, section 775 of the Act imposes an affirmative obligation on Commerce to "consolidate in one investigation … all subsidies known by petitioning parties to the investigation or by the {Commerce} relating to {subject} merchandise" to ensure "proper aggregation of subsidization practices."[128] Commerce's regulations carve out a limited exception to its obligation to investigate what "appear{}" to be countervailable subsidies: when Commerce discovers a potential subsidy too late in a proceeding, it may defer its analysis of the program until a subsequent review, if any.[129] Moreover, Commerce has broad discretion to determine which information it deems relevant to its determination, and to request that information.[130]

Thus, consistent with the CIT's holding in *Trina Solar*,[131] we find that Commerce's "other assistance" question enables Commerce to effectuate its obligation to investigate subsidies that it

[123] *See* section 702(a) of the Act.
[124] *See* section 702(b) of the Act.
[125] *See* section 702(b)(1) of the Act.
[126] *See* section 775of the Act.
[127] *Id.* (emphasis added).
[128] *See* S. Rep. No. 96-249, at 98 (1979); *see also AlleghenyLudlum Corp. v. United States*, 112F. Supp. 2d at 1141, 1150 n.12 (CIT 2000) (*Allegheny I*)("Congress…clearly intended that allpotentially countervailable programsbe investigated and catalogued, regardless ofwhen evidence on these programs became reasonablyavailable.").
[129] *See* 19 CFR 351.311(b).
[130] *See Trina Solar*, 195 F. Supp. 3d at 1341 (holding that Commerce has "independent authority, pursuant to {section 775of the Act}, to examineadditionalsubsidization in the production of subject merchandise," andthis "broad investigative discretion" permits Commerce to require respondents to report additional forms of governmentalassistance); *see also, e.g., Ansaldo Componeti, S.p.A.*, 628F. Supp. at 205; *Essar Steel Ltd.*, 721F. Supp. 2d at 1298-1299, revoked in part on othergrounds;*Acciai Speciali Terni S.p.A.*, 26CIT at 167; and *PAM, S.p.A.*, 495 F. Supp. 2d at 1369.
[131] *See Trina Solar*, 195 F. Supp. 3d at 1346 ("Commerce's inquiry concerningthe full scope of governmental assistance provided bythe {Government of China} and receivedby the Respondents in the productionof subject

discovers that appear to be countervailable in the course of a proceeding and is consistent with its broad discretion to seek information it deems relevant to its determination.

The GOC contends that Commerce is expected to apply the same threshold standards that apply where a subsidy is alleged by a petitioner under section 702 of the Act whenever Commerce itself "discovers" a potential subsidy under section 775 of the Act. However, such an interpretation is not supported by the statute. We are not precluded from investigating programs or subsidies that appear to be countervailable with respect to subject merchandise and we are not precluded from asking questions that enable us to effectuate thisobligation.[132]

Commerce stated in the *Preamble* that its regulations "adequately describe the requirements for the initiation and conduct of a *countervailing duty* investigation," and thus there was no further need to describe "how the Department would investigate a subsidy practice discovered *during an antidumping investigation*."[133] Here, Commerce has followed the requirements for the initiation and conduct of a countervailing duty investigation, and that the "other assistance" question is not precluded by those requirements.

Commerce is not precluded from inquiring about other assistance in order to determine whether a program or subsidy is countervailable and attributable to the subject merchandise.[134]

Neither does the "other assistance" question unlawfully shift the burden of production from the petitioners to the respondents. As explained above, the result is consistent with section 775 of the Act and 19 CFR 351.311(b), which require that Commerce investigate potentially countervailable subsidies when sufficient time remains in the proceeding to do so.[135] Here, at the outset of the investigation, sufficient time remained in the investigation for Commerce to inquire about other forms of assistance received by the respondents during the POI, and so Commerce requested that the respondents report such information for Commerce to examine.

Comme nt 3: Be nchmark for Aluminum Rod

Changfeng's Case Brief [136]*and Silin's Case Brief* [137]

- In its Post-Preliminary Analysis, Commerce used four HTS numbers for benchmark: HTS 7604.10 and 7605.11 for aluminum alloy rod and HTS 7604.29 and 7605.21 for aluminum rod.

merchandisewas within theagency's independent investigative authoritypursuant to{sections 702}(a) and {775 of the Act}, this inquiry was not contrary to law.").

[132] *See* S. Rep. No. 96-249, at 98 (1979); *see also Allegheny I*, 112 F. Supp. 2d at 1150 n.12.

[133] *See Countervailing Duties*, 53FR 52306, 52344 (December 17, 1988) (*1988 CVDPreamble*)(emphasisadded).

[134] *See Ansaldo Componeti S.p.A.*, 628 F. Supp. at 205; *see also Essar Steel Ltd.*, 721 F. Supp. 2d at 1298-1299; *Acciai Speciali Terni S.p.A.*, 26CIT at 167; and *PAM, S.p.A.*, 495 F. Supp. 2d at 1369.

[135] *See Trina Solar*, 195F. Supp. 3d at 1345 ("{T}he petitioner's burden is irrelevantwhen Commerce chooses to exercise its independentinvestigativeauthorityunder{section 775of the Act}…{and thus} Commercedid not unlawfully shift any burden fromthe petitioner" through its requestthat respondentsreport anyother forms of governmentalassistance).

[136] *See* Changfeng Case Brief at 1-2.

[137] *See* Silin Case Brief at 1-2.

- Commerce should only use 7605.11 and 7605.21, respectively, because only these two HTS numbers are specific to the input and, therefore, the most specific benchmark.
- When Commerce uses tier two benchmarks, it considers whether it is getting a world benchmark that would be most comparable to what purchaser in China would obtain.[138] Therefore, Commerce should only rely on a benchmark that is most specific to the aluminum rod that the respondent obtained.
- HTS 7604 includes aluminum bars, rod, and profiles, which includes dissimilar products profiles and barks. In contrast, the HTS 7605 numbers cover aluminum wire with a cross-sectional dimension exceeding 7mm. The aluminum rod consumed by respondents falls into this latter category. The terms "rod" and "wire" are not a determinative difference in products, but, rather, diameter is the key description factor. Larger diameter products are commonly called rods and small diameter products are more commonly called wires.
- In this case, respondents used 9.5mm diameter aluminum rods. Commerce did not request information on the diameters of the rod, but the respondents specifically submitted the two HTS 7605 numbers because they fit the diameter of their inputs.
- At verification of Mingda, Commerce collected documentation on Mingda's cables which shows it purchased 9.5mm diameter aluminum rods.[139] The other producers consumed the same range of diameter aluminum rods, which is a normal diameter for these products. Thus, the HTS 7605 numbers most closely match the purchased aluminum rod inputs, while the HTS 7604 numbers include dissimilar products, bars and profiles, and rods that presumably are larger in diameter than that used by the respondents.
- Thus, in the final determination, Commerce should solely rely on the HTS 7605 numbers that the respondents submitted.

Southwire's Rebuttal Brief[140] *and Encore Rebuttal Brief*[141]

- Commerce correctly included HTS 7604 data in the benchmark calculation for aluminum rod.
- It is notable that the GOC disagrees with the respondents concerning the correct tariff classification of aluminum rod sold to producers of aluminum wire and cable. Specifically, the GOC reported the production volume of aluminum rod, as well as the VAT and import tariff rates, using HTS codes 7604.10 and 7604.29.10, and no number under HTS subheading 7605. The GOC is the authority providing the goods at issues, so the GOC is well-aware of the HTS subheading governing aluminum rod.
- The contention that HTS 7605.11 and 7605.21 provide the most specific benchmark data relies solely on the assertion, without any record support, that respondent use 9.5 mm diameter rods and the 7605 numbers most closely match the purchased aluminum rod inputs because HTS 7604 include dissimilar products which presumably are larger in diameter than that used by the respondents.

[138] *See* section 771(5)(E) of the Act.
[139] *See* Mingda Verification Exhibit 12 at 13 and 61.
[140] *See* Southwire Rebuttal Brief at 2-3.
[141] *See* Encore Rebuttal Brief at 3-7.

- The respondents' claims about rods versus wires is also without record evidence. The HTS subheadings are not specific to diameter of the aluminum rod but instead specific to whether the aluminum rod is in coils (HTS 7605) or straight lengths (HTS 7604). Indeed note 1 to Chapter 76 states this difference.[142] The section and chapter notes are not optional interpretive rules but are statutory law codified at 19 USC 1202. In addition, while the respondents focus on denominator which sets forth not distinction in the HTS subheadings.
- The respondents do not claim, and the record does not support, that the aluminum rod they acquire is only acquired in coil form. Therefore, HTS 7604 should be used alongside HTS 7605 as the benchmark.

Comme rce's Position: We agree with the petitioners, and we are continuing to use the same benchmarks as we did in the Post-Preliminary Analysis. Silin and Changfeng sourced their aluminum rod benchmark data, the HTS 7605 numbers, from UN Comtrade World Export Data. The HTS 7605 description from that source does indeed indicate that it is for dimensions exceeding 7mm. However, no information on the record demonstrates that the HTS 7604 numbers are limited to only certain sizes. Indeed, other information shows that, as the petitioners note, HTS 7605 is for aluminum rod in coils, while HTS 7604 is for aluminum rod in straight lengths. The petitioners gave us data for HTS 7604 and HTS 7605 numbers. Moreover, when asked to provide information on aluminum rod for LTAR, the GOC provided only the HTS 7604 numbers. There is insufficient evidence on the record to demonstrate that the respondents' rod purchases only fall under the HTS 7605 numbers. Given that the respondents have given us different information (the authority, the GOC, relied on the HTS 7604 numbers in reporting wire rod information, while the company respondents suggest the HTS 7605 numbers), it is reasonable for us to use both sets of numbers. Thus, for this final determination, we have continued to calculate two benchmarks: one for aluminum rod (non-alloyed) using HTS 7604.10 and 7605.11; and one for alloyed aluminum rod using HTS 7604.29 and 7605.21.

Comme nt 4: Double Remedies for Aluminum Rod

Changfeng's Case Brief[143] and Silin's Case Brief[144]

- The new subsidy allegation on aluminum rod for LTAR affect the concurrent antidumping margins calculated for respondents. Commerce issued a double remedy questionnaire in the antidumping investigation prior to Commerce's issuance of the new subsidy allegation questionnaire in this countervailing investigation. Likewise, briefing completed in the antidumping investigation prior to the release of the Post-Preliminary Analysis including subsidies relevant to the new subsidy allegations. Therefore, Commerce must consider that there is overlap in remedies and adjust accordingly. Generally, this adjustment occurs in the antidumping investigation. Respondents will request the opportunity to address this in the antidumping investigation. However, it is inappropriate and unlawful to apply a double remedy for this program. Therefore, the countervailing or antidumping team must adjust accordingly.

[142] *See Harmonized Tariff Schedule of the United States*, Rev. 12, USITC Pub. 4949 at 76-1 (September 2019) (defines bars and rods as not in coils and defines wire as in coils).
[143] *See* Changfeng Case Brief at 2-3.
[144] *See* Silin Case Brief at 2-3.

The petitioners did not comment on this issue.

Comme rce's Position: Double remedy concerns are properly addressed in the context of the parallel antidumping duty case, not in the CVD investigation. Accordingly, we will address this issue in the concurrent antidumping duty investigation final IDM.

Comme nt 5: Loan Calculations

Changfeng's Case Brief[145] *and Silin's Case Brief*[146]

- Commerce used the incorrect principal balance in the loan benefit calculation for Changfeng, Mingda, Mingda Affiliate I, Mingda Affiliate IV, and Qingdao Cable. Commerce used the column "Initial Loan Amount (Principal in RMB" when it should have used the column "Principal Balance to Which Each Interest Payment Applies." The loan principal may be paid in part at any time before maturity. Thus, the initial loan amount is not always the principal balance applicable to each single interest payment. In such cases, the interest payment was actually based on the remaining principal rather than the initial principal. Commerce should correct this error for the final.

Encore Rebuttal Brief[147]

- Commerce should not alter how it calculates benefits received under GOC policy loans. Policy loans were provided with a favorable interest rate based upon the principal of the loan at the date of approval. The respondents failed to establish that the interest rate changes based on a reduction in principal and thus, Commerce properly calculated the benefit accrued to the respondents from the GOC's policy loans.

Comme rce's Position: As described below, we are applying total AFA to Silin, and we are applying partial AFA to Changfeng's policy loans. Thus, we are no longer calculating a benefit for this program. Thus, this issue is moot.

Issues Related to Silin and its Suppliers/Producers

Comme nt 6: Whe the r to Apply AFA to Silin

Encore Case Brief[148]

Jiangxi Silin Deficiencies

1) Affiliates/Operations

- Commerce's verification report is replete with Silin's failure to provide complete and accurate information in response to Commerce's requests.
- Silin misled Commerce by requesting relief from providing a questionnaire response on behalf of its cross-owned affiliate, Jiangxi Silin, and claiming that Jiangxi Silin had

[145] *See* Changfeng Case Brief at 3-4.
[146] *See* Silin Case Brief at 12-13.
[147] *See* Encore Rebuttal Brief at 27.
[148] *See* Encore Case Brief at 5-15.

purportedly ceased production in 2016 and that no employees existed to answer Commerce's questionnaire. Silin further intended to obfuscate the issue by repeatedly changing its story regarding Jiangxi Silin's number of employees, operational status and land agreement with the GOC; however, this narrative unraveled at verification.

- Silin failed to provide factual information in the form and manner requested by Commerce and tried to conceal facts by failing to translate Jiangxi Silin's financial statements as requested; however, once Commerce's translator reviewed them, it was evident that Jiangxi Silin recorded various expenses that indicated continued activity and employees well beyond the period it purportedly ceased operations.
- Commerce verifiers discovered that Jiangxi Silin maintained production equipment and a warehouse on its land and had not vacated its land in 2016, as previously stated.
- Commerce discovered that Jiangxi Silin failed to disclose its Chinese State-Owned Enterprise (SOE) parent company, Nanchang Holdings, and two other affiliates.

2) Sales

- Jiangxi Silin's sales data was materially incomplete as it failed to report sales to Nanchang Cable and an unreported affiliate during and after the POI (*i.e.*, beyond the period it purportedly ceased operations).

3) Grants

- Silin failed to report a large grant Jiangxi Silin received from the GOC to relocate from its existing operations, even though it claims it ultimately did not relocate.
- Jiangxi Silin reported receiving one grant in one installment but presented documents at verification indicating that it was received in two installments and was unable to provide bank slips for this grant.

4) Land

- Commerce was unable to verify Jiangxi Silin's land because land-related documents presented at verification differed from the land-related documents on the record.

Silin Deficiencies

1) Affiliates/Operations

- Silin mislead Commerce about the nature of its operations by stating that it did not import or purchase equipment because neither it, nor its affiliates, are producers, but reported "production" in its list of activities to the GOC, and its chart of accounts listed accounts for equipment, including imported equipment.
- In its grant application sent to the GOC, Silin stated included "production" in its list of business activities; however, it previously stated to Commerce that it, nor its affiliates, are producers. Upon questioning, Silin stated that it reported this to the GOC for "propaganda" purposes, which demonstrates that Silin will tell any government anything it needs to in order to advance its interests.
- By its own admission, Silin failed to provide Commerce with complete and accurate information for its eight affiliates because it sourced some information from websites which it acknowledged could be outdated.

2) Sales

- Silin admitted to Commerce at verification that its sales revenue figures are not actual sales revenues amounts, but merely estimated revenues. The Chinese CPA at verification confirmed that "Chinese GAAP does not allow a CPA to audit estimated or proforma

revenue." Because Silin's total domestic and export sales are estimates and do not comply with Chinese GAAP, they cannot be relied upon.

- Silin failed to report several million RMB in sales from one unaffiliated producer in 2011-2012, and several million RMB in sales from Jiangxi Silin in 2012, until verification. Silin had previously reported no sales from these producers for those years.

3) Grants

- Silin did not have *any* grant application documents prepared and could not provide *any* information regarding certain grants; and therefore, failed to provide Commerce with factual information in the form and manner requested by Commerce.
- Silin failed to accurately report its receipt of grants by reporting certain grants under "other subsidies" despite being the same programs Commerce initiated on.
- Silin failed to report its designation as an "export famous brand." In response to this discovery at verification, Silin officials claimed that they reported this designation to the GOC for "propaganda" purposes to receive the grant.

4) Land

- Silin failed to report its ownership of certain land parcels discovered at verification because they allegedly do not use the land to produce subject merchandise.

5) Electricity

- Silin reported incorrect figures for its electricity usage for a pre-selected month examined at verification. The sloppiness evident from this spot check bespeaks inattentiveness and carelessness by Silin with respect to all of its reported information.

Application of AFA is Warranted

- Silin's behavior combined "deliberate concealment or inaccurate reporting" with respect to Jiangxi Silin's operations and SOE ownership as well as "inattentiveness and carelessness" with respect to all of its information reported to Commerce, evidenced by its failure to report land transactions, grants, sales, and discrepancies during spot checks.
- Due to Silin's uncooperative behavior, Commerce was unable to verify substantial portions of its questionnaire responses.
- Silin admits that it decided not to provide a full and complete response; however, "it is Commerce, not the respondent, that determines what information is to be provided."
- Silin's numerous inaccurate, misleading, incomplete and unverifiable responses warrants the application of AFA to all programs from which Silin and Jiangxi Silin could have benefited.
- Consistent with its established practice, Commerce should apply AFA to all of the programs under investigation and discovered for Silin, Jiangxi Silin, and Jiangxi Silin's two unreported affiliates. Further, because Commerce discovered at verification that Silin does not record its sales figures in accordance with Chinese GAAP, it should determine that all non-recurring subsidy benefits received during the AUL pass the 0.5 percent test and are allocable to the POI.

Silin's Case Brief[149]

Jiangxi Silin Deficiencies

[149] *See* Silin Case Brief at 3-11.

1) Affiliates/Operations

- Commerce did not collapse or attribute subsidies from Jiangxi Silin to Silin in the *Preliminary Determination*, thus issues related to Jiangxi Silin have no bearing on Silin's benefit calculation.
- Commerce found no information at verification to undermine Silin's reporting or contradict the fact that Jiangxi Silin did not sell or export to or through Silin during the POI. As such, Commerce should continue to not attribute any benefits received by Jiangxi Silin to Silin.
- Jiangxi Silin ceased production and dismissed its staff in October 2016. Although there is no document demonstrating a deviation from the agreements with the GOC to re-establish Jiangxi Silin's operations elsewhere, the company's 2017 financial statement demonstrates a lack of necessary costs forproduction.
- Because Jiangxi Silin is a registered company, it must maintain at least a legal representative and accountant. Nanchang Cable pays for Jiangxi Silin's employee housing costs and Jiangxi Silin reimburses Nanchang Cable for these costs.
- Jiangxi Silin's POI revenue was from sales of products produced by Nanchang Cable.
- Jiangxi Silin's 2017 audited financial statement indicating that Nanchang Cable's ownership in Jiangxi Silin is significantly larger than previously reported "cannot conceivably be correct."
- Jiangxi Silin's articles of association, business license and tax return submitted in questionnaire responses corroborate Nanchang Cable's reported ownership in Jiangxi Silin and Jiangxi Silin's registered capital.
- Jiangxi Silin's 2017 financial statement indicates that Nanchang Industrial Holding, a wholly-SOE, is Nanchang Cable's parent company, *not* Jiangxi Silin's parent company.
- Even assuming Nanchang Cable holds a larger ownership stake in Jiangxi Silin than previously reported, that fact does not provide Nanchang Industrial Holding with a controlling share in Nanchang Cable or Jiangxi Silin because it only directly holds a ten percent share in Nanchang Cable. Therefore, Nanchang Industrial Holding cannot control Jiangxi Silin, nor can Jiangxi Silin be considered a SOE. Thus, any connection between Nanchang Industrial Holding and Jiangxi Silin has no bearing on Commerce's subsidy calculation.
- Regarding the affiliated companies discovered at verification, the affiliation exists between Jiangxi Silin and Nanchang Cable, and these companies are not affiliated with Silin. Accordingly, Silin did not report the companies in its affiliation response, nor did it purchase anything from these companies, thus, the companies have no relevance to Silin's subsidy calculation.

2) Land

- While there is still production equipment, inventory, and a warehouse on Jiangxi Silin's land, the company has legally divested the land to the GOC for an agreed-upon value.

3) Grants

- Jiangxi Silin does not consider the money it received from the GOC for its land as a grant, but rather compensation for the Jiangxi Silin's land and displacement.

Silin Deficiencies

- Silin did not maintain copies of application documents for its grants, as is normal practice in China.

- Regardless of the name Silin reported the grants under, Commerce has the full information to analyze any benefit from its grants.

Encore Rebuttal Brief [150]

Jiangxi Silin

1) Affiliates/Operations

- Silin's narrative regarding Jiangxi Silin unraveled at verification. Although Silin attempted to prevent Commerce from reviewing Jiangxi Silin's financial statements, once they were translated by Commerce's interpreter, they indicated continued activity well beyond the period Jiangxi Silin purportedly ceased operations and dismissed its employees.
- At verification, Silin purposefully confused the number of employees employed by Jiangxi Silin during the POI to further obfuscate the issue of Jiangxi Silin's activity.
- Contrary to Silin's representations that Jiangxi Silin ceased production in 2016, Commerce verifiers discovered that Jiangxi Silin did not actually vacate its land in 2016 and maintained production equipment and a warehouse on the land.
- Silin failed to disclose affiliates, including Jiangxi Silin's SOE parent company, and attempted to cover it up by failing to translate Jiangxi Silin's requested financial statements.
- Commerce's verification conclusions establish that Silin significantly impeded the investigation and withheld essential information by failing to disclose Jiangxi Silin's affiliates.
- Silin's argument that none of the inputs produced by Jiangxi Silin's undisclosed affiliates were primarily dedicated to the production or sale of subject merchandise is incorrect because the courts have upheld that Commerce alone determines what information is necessary, not respondents.
- Silin's case brief further demonstrates the unreliability of its questionnaire responses because it admits that Jiangxi Silin's SOE ownership in its audited financial notes "cannot conceivably be correct."
- Silin argues that Commerce should ignore the reference to Nanchang Cable's ownership share of Jiangxi Silin indicated in Jiangxi Silin's financial statements. However, Silin contradicts this argument by stating that Nanchang Cable wanted to include Jiangxi Silin's financial performance in its own financial statements and in doing so caused Jiangxi Silin to designate Nanchang Cable as its parent company, evidencing Nanchang Cable's ability to control Jiangxi Silin, and by extension the SOE.
- The fact that the record remains unclear, at this late stage of the proceeding, regarding Jiangxi Silin's ownership demonstrates that Jiangxi Silin did not cooperate to the best of its ability to provide information to Commerce regarding its ownership structure.

2) Grants

- Silin could and should have reported the large grant Jiangxi Silin received for its land relocation.

[150] *See* Encore Rebuttal Brief at 18-25.

- Silin cannot excuse its failure to report the grant by claiming that the funding was not reportable assistance because Commerce's questionnaire requested that Silin report all funding provided by the GOC.
- Silin's failure to disclose the grant prevented Commerce from making a substantive decision concerning the grant, and it is for Commerce to decide what is and is not a subsidy.

Silin

1) Grants

- Silin failed to maintain adequate records, failed to make reasonable inquiries prior to responding, and did not review all of its records, and failed to report grant programs that appeared to be identical to programs under investigation; thus, AFA is necessary.

Silin's Rebuttal Brief[151]

Jiangxi Silin

1) Affiliates/Operations

- Nothing at verification merits alteration of Commerce's preliminary determination that Jiangxi Silin did not sell merchandise to or through Silin during the POI; therefore, Commerce should not collapse Jiangxi Silin with Silin, nor should it attribute the benefits from any subsidies received by Jiangxi Silin to Silin.
- Silin did not understand that it needed to translate Jiangxi Silin's financial notes.
- Silin's statements regarding its employees were not contradictions, rather clarifications from Jiangxi Silin itself and about the term "employee." Jiangxi Silin acknowledged that it had approximately ten employees in 2017 that were involved in overseeing its production facilities during demolishment.
- The petitioner insinuates that Jiangxi Silin may have not ceased production in 2016 merely because Jiangxi Silin did not vacate its land and maintained production equipment; however, the record demonstrates that Jiangxi Silin has ceased production, has no production staff, and its land belongs to the GOC.
- Although Commerce noted unreported sales from Jiangxi Silin to Nanchang Cable and an unreported affiliate in 2017, these sales were carried over from the previous yearand have no bearing on Silin's benefit calculation. Further, Commerce verified that Jiangxi Silin made no sales to Silin in2017.
- Nanchang Holdings, the SOE, is not the parent company of Jiangxi Silin; Nanchang Cable is the minority owner of Jiangxi Silin and Silin is the majority shareholder. Nanchang Holdings cannot control Nanchang Cable nor JiangxiSilin.
- Jiangxi Silin's unreported affiliates are not affiliates of Silin; therefore, they have no relevance to Commerce's subsidy calculation for Silin.

2) Grants

- Regarding Jiangxi Silin's grants that was reported as a lump sum, this is a minor issue and the total figure is correct. Further, Silin could not immediately provide the bank slips for the grant because Jiangxi Silin is located at a different location not accessible by Silin.

[151] *See* Silin Rebuttal Brief at 1-12.

Silin

1) Affiliates/Operations

- Silin provided information regarding its eight affiliated companies including copies of the business licenses for three of its four affiliates which did not have their business licenses revoked. Even if there is a remote possibility that the shareholder information for one of Silin's affiliates is not up to date, it has no relevance on Silin's subsidy rate calculation because this company is not involved in the sale of subject merchandise and did not make sales to Silin.
- Although Silin included "production" in its listed business activities in a 2017 grant application, Silin's business license only permits Silin to be involved in the import and export business.
- At verification, Silin explained that it has accounts for the purchase and import of equipment because sometimes imports and purchases equipment on behalf of its producers and affiliates. Commerce verified Silin's financial statements and accounts that confirm it has no production facilities or staff.

2) Sales

- Silin brought in the CPA because it reasonably believed that the issues in the concurrent antidumping duty investigation could come up in the countervailing duty verification.
- The CPA stated that Silin's accounting is fully in compliance with Chinese GAAP.
- Silin's reported sales revenue is not an estimate, rather based on the VAT invoice value, which is equal to the US dollar value on the Proforma Invoice multiplied by the exchange rate, and thus, represents a realized value.
- Regarding the unreported sales to Jiangxi Silin and another producer in 2011-2012, Silin reported these as minor corrections, which Commerce accepted.
- Commerce verified Silin's sales and noted no discrepancies.

3) Grants

- Silin understood certain grants to be separate programs from those of which Commerce initiated on, however, Silin still reported the information under "other subsidies."
- Silin could not provide certain approval or application documents for grants because it does not keep those documents in the normal course of business.

4) Land

- Regarding the unreported land, Silin did not report the land because it was not relevant to any production.

5) Electricity

- Silin's electricity usage subtotal was incorrect due to a formula mistake, not misreported.

6) AFA Request

- Silin cooperated to the best of its ability in this investigation, as evidenced by its eighteen questionnaire responses and three verifications.
- Silin did not withhold any information, no material information is missing from the record, and Commerce has no basis to apply AFA.
- Silin's questionnaire responses were verified and any issues were minor inconsistencies.
- Silin understood that it did not have to prepare answers for detailed questions about Jiangxi Silin because only certain items in the verification agenda were related to Jiangxi Silin. As a result, normal misunderstandings occurred.

GOC Rebuttal Brief [152]

- Any decision to apply subsidy rates calculated based on AFA to the company respondents is limited by law and should be consistent with Commerce practice.
- Adverse inferences can only be applied if it is first appropriate to use facts otherwise available and that fact otherwise available could only be relied on by Commerce if there is a gap that needs to be filled regarding any of the three elements necessary for the existence of a subsidy.
- While Encore requested Commerce to select information that is sufficiently adverse as to induce respondent to provide Commerce with complete and accurate information in a timely manner, the CAFC has held that Congress intended the adverse facts available rate to be a reasonably accurate estimate of the respondent's actual rate, albeit with some built-in increase intended as a deterrent to non-complia nce.[153] Commerce must reject Encore's reading of the statute, and if Commerce decides to rely on AFA rates in calculating a rate for any program in this proceeding, Commerce should continue to recognize that any such AFA rate in the final results must reflect and accurate estimate based on the record.
- While the statute permits Commerce to rely on secondary information when making an adverse inference, it also contains an express requirement that Commerce shall to the extent practicable, "corroborate that information from independent sources."[154] While the statute does not provide a definition of "secondary information," the SAA notes that secondary information is information derived from the petition that gave rise to the investigation or review, the final determination concerning subject merchandise, or any previous review under section 751 concerning the subject merchandise.[155] A similar definition is also contained in the regulations at 19 CFR 351.308(c)(1).
- The regulations and the SAA define corroboration as an examination of whether the secondary information has probative value. The corroboration requirement is necessary because secondary information may not be entirely reliable if it is based on unverified allegations or concerns a different time frame than the one issued.
- The CIT noted that in order to comply with the statute and the SAA, corroborated information is probative information, Commerce must assure itself that the margin it applies is relevant, not outdated, or lacking rational relationship to the respondent.[156] Commerce must to the extent practicable demonstrate the rate isreliable and relevant to the particular respondent in light of the whole record before it.[157] The CAFC further explained that Commerce must select a rate using reliable fact with some grounding in commercial reality.[158]

Comme rce's Position: As noted above in "Use of Facts Otherwise Available and Adverse Inferences," we determine that Silin failed to cooperate to the best of its ability in this

[152] *See* GOC Rebuttal Brief at 1-4.
[153] *See F.lli De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F. 3d 1027, 1032 (Fed. Cir. 2000).
[154] *See* section 776 of the Act.
[155] *See* SAA at 870.
[156] *See Ferro Union Inc. v. United States*, 44 F. Supp. 2d 1310, 1333 (CIT 1999).
[157] *See Yantai Xinke SteelStructure Co. v. United States*, 2012W.L. 2930182, CIT Slip Op. 12-95 at 27 (July 18, 2012).
[158] *See Gallant Ocean (Thail.) Co. v. United States*, 602 F.3d 1319, 1323-1324 (Fed. Cir. 2010).

investigation. We find that necessary information is missing from the record and that Silin withheld information from Commerce, failed to timely provide certain information, significantly impeded this proceeding, and provided information that could not be verified. Silin's contradictions and discrepancies are so pervasive that they are significant in the totality of the circumstances and render Silin's responses unreliable. As a result, crucial deficiencies exist in Silin's reported information sufficient to warrant the application of total facts available, with an adverse inference (AFA), pursuant to sections 776(a) and (b) of the Act. Accordingly, for the reasons enumerated below, we agree with the petitioner that the application of total AFA is warranted and necessary for this final determination.

Jiangxi Silin

As an initial matter, we disagree with Silin that the numerous, widespread issues related to Jiangxi Silin are irrelevant. In the *Preliminary Determination*, we found Jiangxi Silin, a producer of subject merchandise, cross-owned with Silin due to Silin's majority-ownership of Jiangxi Silin and significant managerial overlap.[159] Accordingly, because Jiangxi Silin is a cross-owned producer of subject merchandise with significant transactions with Silin across the AUL, under 19 CFR 351.525(b), we faced the possibility of having to attribute subsidies received by the cross-owned subject merchandise producer, Jiangxi Silin, to Silin. Further, because Silin is a trading company, under 19 CFR 351.525(c), we were also required to cumulate subsidies received by suppliers of subject merchandise with subsidies received by that trading company. Under both regulations, a full and accurate questionnaire response from Jiangxi Silin was necessary. Thus, we rejected Silin's request for an exemption from providing a questionnaire response on behalf of Jiangxi Silin.[160] The purpose of obtaining a full questionnaire response from Jiangxi Silin was to analyze the full facts of the case and examine the benefits of any subsidies received by Jiangxi Silin that may have been transferred, directly or indirectly, to Silin. As a mandatory respondent in this case, Silin was responsible for providing a complete and accurate response on Jiangxi Silin's behalf.

The burden of building the record rests on the party in possession of necessary information.[161] As such, Jiangxi Silin's extensive discrepancies and deficiencies in its reported information, which Silin gathered, certified as accurate, and transmitted to Commerce, are a direct reflection of Silin's failure to cooperate to the best of its ability. The purpose of verification was to test the accuracy of Silin's reported information to verify that it was reliable; however, the verification findings detailed in the verification report[162] and highlighted below demonstrate the extent of the contradictions in Silin's reporting, which render its reported information unreliable and warrant the application of AFA.

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[159] *See Preliminary Determination* PDM at 9; *see also* Memorandum, "Preliminary Determination Calculations for Silin," dated April 1, 2019.

[160] *See* Silin's Letter, "Aluminum Wire and Cable from the People's Republic of China – Silin Request for Partial Relief from CVD Questionnaires for Suppliers," dated November 30, 2018 (Silin's Request for Relief) at 5; *see also* Commerce's Letter, "Request for Partial Relief from Questionnaires, Extension of Time, and Request for Clarification in the Countervailing Duty Investigation of Aluminum Wire and Cable from the People's Republic of China," dated December 14, 2018 (Partial Relief Letter).

[161] *See Ta Chen Stainless Steel Pipe, Inc. v. United States*, 298 F. 3d 1330, 1336 (Fed. Cir. 2002) (quoting *Zenith Elecs. Corp. v. United States*, 988 F. 2d 1573, 1583 (Fed. Cir. 1993).

[162] *See* Silin Verification Report.

As noted above, section 776(a) of the Act provides that when necessary information is not on the record, or an interested party: (A) withholds information, (B) fails to provide information in a timely manner, (C) significantly impedes a proceeding, or (D) provides unverifiable information, Commerce is directed to use facts otherwise available. For the reasons described in detail below, we find that Silin withheld information, failed to provide requested information, significantly impeded this proceeding, and provided unverifiable information. As a result, we cannot rely on Silin's reported information, and must resort to facts available pursuant to 776(a)(2)(A),(B),(C), and (D).

At the onset of this investigation, Silin requested an exemption from providing a full questionnaire on behalf of Jiangxi Silin, because Jiangxi Silin "has ceased production since the second half of 2016. Thus, there are no employees at Jiangxi Silin to answer any questionnaires."[163] In its initial questionnaire response, Silin reiterated that Jiangxi Silin's "staff was dismissed in October 2016," and stated that Jiangxi Silin "did not produce or sell any product during the POI."[164] These statements led us to believe that Jiangxi Silin was no longer in operation, which is a core reason as to why we decided not to attribute any subsidies received by Jiangxi Silin to Silin in the *Preliminary Determination*.

Further, as a result, in the verification outline issued 25 days in advance of verification, we only requested limited documentation from Jiangxi Silin to verify that Silin's statements regarding Jiangxi Silin's activity were accurate. Had we known prior to verification that Jiangxi Silin maintained employees, land, production equipment, and was continuing to make sales in the POI, including to a company that made sales of subject merchandise to Silin during the POI, we would have had the opportunity to ask follow-up questions and, possibly, attribute subsidies received by Jiangxi Silin to Silin in the *Preliminary Determination*.[165] Moreover, at Silin's verification, had we known from the beginning that information we would have closely examined its transactions with this company to verify that Silin did not purchase or sell merchandise produced by Jiangxi Silin during the POI, as it claimed.

Accordingly, Silin's misleading statements concerning Jiangxi Silin's operations and its failure to report Jiangxi Silin's sales to its cross-owned company during the POI significantly impeded the proceeding because they prevented Commerce from fully understanding the situation, asking additional questions at the appropriate time concerning the merchandise sold by Jiangxi Silin and its cross-owned company, and from adequately preparing for verification.

As noted above, because Silin's statements led us to believe that Jiangxi Silin was no longer operational, we only intended to verify the claim that Jiangxi Silin "did not produce or sell any product during the POI,"[166] and thus instructed Silin to "have the original financial statements and *accompanying notes, as well as translations* available for Silin and Jiangxi Silin" at

[163] *See* Silin's Request for Relief at 5.
[164] *See* Jiangxi Silin's February 5, 2019 Initial Questionnaire Response (JiangxiSilin February 5, 2019 IQR) at 3.
[165] The name of the company is Business Proprietary Information. For a full discussion of the issue, *see* Silin Final Analysis Memorandum.
[166] *See* Jiangxi Silin February 5, 2019 IQR at 3.

verification.[167] Despite these explicit directions, Silin failed to provide the requested information in the form and manner requested by Commerce. Specifically, Silin did not provide Jiangxi Silin's requested translated financial notes at any point during this investigation. Accurate and full financial records are crucial to our subsidy analysis and serve as the basis of verification, as demonstrated by the fact that the majority of the contradictions found at verification stemmed from these notes. By not complying with Commerce's request for information, Silin impeded this investigation because the interpreter retained by Commerce spent considerable time translating *over 80 pages* of Jiangxi Silin's financial statements and notes on Silin's behalf, which severely delayed verification.[168] Such noncompliance warrants the application of facts available pursuant to section 776(a)(2)(A),(B), and (C), as well as an adverse inference, pursuant to section 776(b), because Silin could and should have complied with Commerce's request to properly prepare for verification.

In its briefs, Silin attempts to minimize its deliberate noncompliance by arguing that it "did not understand that it needed to translate more than what was already translated and placed on the record."[169] However, our instructions were explicit in noting that we intended to examine Silin and Jiangxi Silin's translated financial notes at verification and left no room for misinterpretation.[170] It is far more likely that Silin simply elected not to comply with our instructions. Further, in another attempt to mischaracterize its noncompliance with Commerce's request for Jiangxi Silin's translated financial statements and notes, Silin points to a self-curated sample of financial documents (*i.e.*, Jiangxi Silin's financial statements without the translated financial notes) submitted to the record in its questionnaire responses. In the identified CVD questionnaire, we directed Silin to:

> "Provide {Jiangxi Silin's} complete audited financial statements for the last three fiscal years… If they are not available in English, provide translations of the income statement, the balance sheet, the cash flow statement, the statement of change in equity, *all notes thereto*, and the auditor's opinion.)…The financial statements should include the complete set of statements, *e.g.*, income statement, balance sheet, cash flow statement, statement of change in equity, *all notes thereto*, and the auditor's opinion."[171]

However, Silin's questionnaire response referenced in its briefs did not include any of Jiangxi Silin's requested financial notes for any year; thus, the record reflects that Silin did not comply with Commerce's requests for Jiangxi Silin's translated financial notes in the CVD questionnaire, in the verification outline, or during verification.[172] Silin's decision to withhold Jiangxi Silin's requested and complete translated financial statements, inclusive of the notes, and

[167] *See* Commerce's Letter, "Verification Agenda for Shanghai Silin Special Equipment Co., Ltd. in the Countervailing Duty Investigation of Aluminum Wire and Cable from China," dated May 15, 2019 (Silin Verification Agenda) at 6 (Emphasis Added).
[168] *See* Silin Verification Report at 2.
[169] *See* Silin Rebuttal Brief at 3.
[170] *See* Silin Verification Agenda at 1-4 and 6.
[171] *See* Commerce's Letter, "Countervailing Duty Investigation on Aluminum Wire and Cable from the People's Republic of China: Countervailing Duty Questionnaire," dated November 9, 2018 (Initial CVD Questionnaire) at 5 (Emphasis Added).
[172] *See* Silin IQR at 4.

its repeated failure to comply with Commerce's clear instructions before and during verification exemplifies its disregard for Commerce's requests and procedures, and demonstrates its failure to comply to the best of its ability with Commerce's requests for information.

Despite the challenges presented by Silin's noncompliance, in reviewing Jiangxi Silin's financial notes translated by Commerce, we found myriad discrepancies that contradicted Jiangxi Silin's reported information, which Silin had previously certified as accurate and complete.[173] The most significant of these findings, as provided below, demonstrate that Silin's reported information regarding Jiangxi Silin was at best misleading and at worse categorically false.

As noted above, Silin stated in its responses that Jiangxi Silin's purported cessation of operations is supported by its dismissal of its employees in 2016.[174] However, Jiangxi Silin's financial notes (*i.e.*, the notes Commerce translated at verification) indicated substantial employee and management expenses in 2017 (*i.e.*, the POI), well after Jiangxi Silin allegedly ceased operations and terminated its employees.[175] Upon further *initial* questioning at verification, Silin stated that Jiangxi Silin had one employee in 2017.[176] However, *later* at verification, additional questioning revealed that Jiangxi Silin maintained approximately ten employees in 2017, and currently employs at least two.[177] This finding undermines Silin's claim Jiangxi Silin's had ceased operations in 2016 and, in any event, demonstrates that Silin's prior representations regarding Jiangxi Silin's employee count were false.

Further, by withholding this information and repeatedly indicating that Jiangxi Silin had no employees after 2016, Commerce was misled into believing that Jiangxi Silin was no longer operational during the POI. As a result, Silin significantly impeded this investigation because it prevented Commerce from timely understanding the full extent of Jiangxi Silin's POI operations, which in turn prevented Commerce from asking additional questions concerning Jiangxi Silin's activity, and from analyzing the full facts of this investigation. Had we known that Jiangxi Silin still maintained several employees, we would have inquired further into its operational status and POI activities. Moreover, had we known that Jiangxi Silin was still buying and selling materials and subject merchandise during the POI, we would have inquired further to determine whether attribution of Jiangxi Silin's subsidies to Silin was appropriate. Again, Silin's behavior warrants the application of an adverse inference because it could have accurately reported this information, but instead provided inaccurate information. Further, but for Commerce's efforts at verification to uncover this information, this information would have remained unknown.

In briefs, Silin attempts to dismiss the issue by noting that Jiangxi Silin spent less on employee expenses in 2017 than in 2016.[178] As an initial matter, while Jiangxi Silin's financial notes do indeed demonstrate a decrease in employee expenses from the previous year,[179] that does not excuse Silin's failure to timely report this information to Commerce, nor does it substantiate

[173] *See, e.g.*, Jiangxi Silin IQR at 4-5.
[174] *See* Silin's Request for Relief at 5.
[175] *See* Silin Verification Report.
[176] *See* Silin Verification Report at 10.
[177] *Id.*
[178] *See* Silin Case Brief at 5.
[179] *See* Silin Verification Report and Attachment III at 59.

Silin's claim that Jiangxi Silin "did not produce or sell any product" in 2017.[180] Further though, the financial notes also reveal additional previously undisclosed information that could explain why these expenses decreased. Specifically, while reviewing an account containing previously unreported transactions between Jiangxi Silin and Nanchang Cable, one of Jiangxi Silin's parent companies which also produced and sold subject merchandise, we found that Nanchang Cable paid for certain expenses incurred by Jiangxi Silin during the POI, such as employee housing and employee social security expenses.[181] We also learned that Jiangxi Silin made sales from Nanchang Cable's office and that Jiangxi Silin's records and employees are currently located in Nanchang Cable's office building.[182] These findings suggest that Nanchang Cable mayhave been conducting operations on Jiangxi Silin's behalf during the POI. In briefs, Silin makes the unsubstantiated claim that Jiangxi Silin reimburses Nanchang Cable for these expenses.[183] Whatever the case may be, because Silin failed to report these additional transactions beyond the sale of goods between Jiangxi Silin and Nanchang Cable, among other things, to Commerce at the appropriate time, we were unable to, for example, substantiate this claim, and the proceeding was thereby impeded. Further, because Jiangxi Silin did not report any transactions with a company which sold subject merchandise to Silin during the POI, we were unable to collect additional information regarding the merchandise Jiangxi Silin sold to this company or the merchandise which was sold by this company to Silin.

At verification, we also learned that Jiangxi Silin's previous statements that it "did not produce or sell any product during the POI"[184] were false.[185] Jiangxi Silin's financial notes, an invoice from Jiangxi Silin provided at verification, and Silin's own admission at verification demonstrated that Jiangxi Silin bought and sold goods, including subject merchandise, during the POI.[186] Not only did Jiangxi Silin make sales during the POI, but we also discovered previously unreported sales of materials and subject merchandise *to* Jiangxi Silin's cross-ownedparent company, Nanchang Cable, as well as to unreported affiliates.[187] These findings were made after noting that Jiangxi Silin's translated financial notes indicated that Jiangxi Silin maintained considerable inventory in 2017 as well as an increase from its beginning and ending balance in its accounts receivables and "other payables" accounts with Nanchang Cable and with its unreported affiliate, and were corroborated by Silin's own admission upon further questioning. At verification, Silin attempted to minimize the severity of the issue by first arguing that it did not report any sales to Nanchang Cable in the POI because they were "mostly carried over from the previous year." [188] This argument, reiterated in its briefs,[189] implies that that the failure to report these sales is inconsequential because they do not represent a significant volume of transactions. While the changes reflected in the beginning and ending balances of Jiangxi Silin's POI affiliated transactions do not indicate large increases, the beginning and ending balances

[180] *See* Jiangxi Silin February 5, 2019 IQR at 3.
[181] *Id.* at 10.
[182] *Id.* at 3.
[183] *See* Silin Case Brief at 5-6.
[184] *See* Jiangxi Silin IQR at 3.
[185] *See* Silin Verification Report at 3.
[186] *Id.*
[187] *Id.*
[188] *Id.* at 11.
[189] *See* Silin Rebuttal Brief at 10.

represent only two snapshots of Jiangxi Silin's POI activity. Thus, there is no way of gleaning the full extent of Jiangxi Silin's transactions with Nanchang Cable, nor its unreported affiliate throughout the POI, from this information. The significance of this discovery is that it is yet another indication that Jiangxi Silin's activities continued throughout the POI as well as another example of Silin's failure to cooperate to the best of its ability by withholding this necessary information and misleading Commerce regarding Jiangxi Silin.[190]

In its briefs, Silin then attempts to re-write the verification report by stating that Jiangxi Silin's unreported transactions with Nanchang Cable were "from sales of products produced by Nanchang Cable,"[191] presumably in an attempt to discount the contradictions found at verification that demonstrate Silin's previous claims that Jiangxi Silin "did not produce or sell any product during the POI" were false.[192] However, as noted in the verification report,

> "Concerning Jiangxi Silin's production activities, Silin began by stating that Jiangxi Silin did not produce or sell any merchandise during the POI because it vacated its land in 2016. However, after further questioning regarding the equipment and raw material expenses listed in its 2017 financial notes, as well as cash inflows from operating activities, and {large inventory} at the end of 2017, company officials stated that Jiangxi Silin did not actually vacate the land in 2016 because it still maintained some production equipment and a warehouse that had yet to be demolished. Company representatives stated that Jiangxi Silin purchased materials, including subject merchandise, from Nanchang Cable in 2017, and also continued selling to Nanchang Cable as well as older customers in 2017, and exclusively to Nanchang Cable in 2018."[193]

Therefore, Silin's argument in its briefs represents another contradiction with what it reported in its questionnaire responses and at verification because the record reflects that Jiangxi Silin continued to sell raw materials and subject merchandise it produced and kept in inventory during the POI, including sales of merchandise *to* Nanchang Cable.

Furthermore, Silin's argument ignores the core of the problem: that it withheld information by failing to report Jiangxi Silin's transactions with Nanchang Cable during the POI and mislead Commerce by repeatedly indicating that Jiangxi Silin was non-operational during the POI.[194] Thus, Silin's claim in its briefs is unverified due to its uncooperative behavior evidenced by its failure to provide Jiangxi Silin's translated financial notes in a timely matter, as well as its decision to withhold Jiangxi Silin's POI transactions with Nanchang Cable and its unreported affiliate.

Silin then argues that "{e}ven if Jiangxi Silin had sales to Nanchang Cable in 2017, Nanchang Cable is not affiliated with Silin. The sales between Jiangxi Silin and Nanchang Cable have no bearing on a benefit calculated for Silin."[195] Silin employs the same reasoning in its attempt to

[190] *See* ~~Silin Verification Report at~~ 10 and Attachment III at 64.
[191] *See* Silin Case Brief at 6.
[192] *See* Silin Verification Report at 3; *see also* Jiangxi Silin February 5, 2019 IQR at 3.
[193] *See* Silin Verification Report at 10.
[194] *See* Jiangxi Silin's IQR at 3, *see also* Silin's November 30, 2018 Affiliation Response(Silin AFFQR) at 4.
[195] *See* Silin Rebuttal Brief at 5.

justify its failure to report Jiangxi Silin's POI transactions with its unreported affiliates that are subsidiaries of Nanchang Cable, adding that Silin did not purchase any subject merchandise from Jiangxi Silin's unreported affiliates during the POI.[196] As an initial matter, we disagree that this information has no bearing on a subsidy analysis for Silin. While Silin claims that it did not purchase anything from Jiangxi Silin's unreported affiliates, we are unable to verify this statement due to Silin's uncooperative behavior. Had Silin provided Commerce with Jiangxi Silin's accurate and complete sales information, including its translated financial notes, as requested, we would have had the opportunity to examine the relevant accounts at verification to ensure that Silin did not purchase materials from Jiangxi Silin's unreported affiliates, as it claims, and to inquire into the matter further with company officials. Once more, this is why, in part, compliance with Commerce's instructions in its questionnaires, verification outlines, and other materials is critical, and why the statute provides for the use of FA and AFA as a remedial mechanism in the administration of Commerce's proceedings.

In its briefs, Silin argues that Jiangxi Silin's failures to accurately report its information are irrelevant because Commerce did not attribute Jiangxi Silin's subsidies to Silin in the *Preliminary Determination*.[197] However, this preliminary decision was predicated on Silin's statements that Jiangxi Silin did not make any POI sales to or through Silin, which were subject to verification.[198] In light of the aforementioned evidence that severely undermines the accuracy of Silin's reporting with respect to Jiangxi Silin's POI sales activity, Silin's argument hinges on the single fact that we did not directly observe POI sales from Jiangxi Silin to Silin at verification.[199] However, the discovery of Jiangxi Silin's previously unreported sales is pivotal in this proceeding because we now know that Jiangxi Silin made POI sales of materials and subject merchandise to a company that accounted for a portion of the subject merchandise exported by Silin during the POI.[200] Thus, by withholding Jiangxi Silin's transactions with this company during the POI, Silin significantly impeded this investigation. Had we known that Jiangxi Silin was still selling subject merchandise and materials during the POI to a company which then made POI sales of subject merchandise to Silin, we would have requested additional information and closely examined Silin's transactions with this company at verification to determine whether attribution was warranted. Further, we likely would have attributed Jiangxi Silin's subsidies to Silin under 19 CFR 351.525(b)(6)(iv) because Jiangxi Silin provided inputs and subject merchandise to a cross-owned company which then sold subject merchandise to Silin, which Silin then exported during the POI. However, due to Silin's noncooperation, whether or not Jiangxi Silin made sales of subsidized subject merchandise to Silin through another company during the POI is not known or verified. Accordingly, because verification revealed that our preliminary decision was based on a false, or at the very least unverified, premise, we must resort to facts available.

In this regard, it is also important to understand that 19 CFR 351.525(b) ("Attribution of Subsidies") does not constitute an exclusive list of situations under which Commerce may

[196] *See* Silin Case Brief at 9-10.
[197] *See* Silin Rebuttal Brief at 5.
[198] *See Preliminary Determination* PDM at 8-10; *see also* Initial CVD Questionnaire at 4, 9, and 35.
[199] *See, e.g.*, Silin Case Brief at 7; *see also* Silin Rebuttal Brief at 2.
[200] *See* Silin AFFQR at Exhibit 1.

attribute subsidies received by one company to its cross-owned affiliate. "The underlying rational for attributing subsidies between two separate corporations is that the interest of those two corporations have merged to such a degree that one corporation can use or direct the individua l assets (or subsidy benefits) of the other corporation in essentially the same ways it can use its own assets (or subsidy benefits)."[201] The record as described under this comment makes it evident that there was such a confluence of interests between Silin and Jiangxi Silin such that Commerce may well have attributed subsidies received by Jiangxi Silin to Silin if it had had a complete and accurate response regarding Jiangxi Silin's activities and subsidies, even if Jiangxi Silin had not sold subject merchandise to Silin during the POI. For example, the *Preamble* notes that a subsidy provided to a non-producing subsidiary might be attributable to the parent in circumstances where there are no conditions imposed by the foreign government on the use of the money.[202] As discussed below, Commerce discovered at verification unreported subsidies provided to Jiangxi Silin, such as a grant that may or may not be tied to land dislocation. Such a free grant of money could easily be attributed to Silin, especially given that Jiangxi Silin is supposedly in a wind-down phase and would no longer have need for the funds itself. Section 19 CFR 351.525(b)(v) also provides for the possibility of a subsidy being attributable to a cross-owned affiliate even outside of the specific attribution provisions of 19 CFR 351.525(b)(i)-(iv), and even when the recipient of the subsidy is not a producer. Given the pervasive deficiencies in the information Silin provided regarding Jiangxi Silin, including information regarding its activities and the full extent of its subsidization, Commerce was denied the opportunity to consider the fuller attribution picture.

The verification findings demonstrate that Silin significantly impeded this proceeding by repeatedly providing contradictory, unsubstantiated and false statements, withholding information, refusing to comply with Commerce's requests for information, and providing unverifiable information; thus, the mere fact that Commerce did not observe POI sales directly from Jiangxi Silin to Silin at verification does not detract from the overwhelming evidence that the extent of Silin's discrepancies renders the entirety of its questionnaire responses unreliable.

Moreover, as stated in the *Preliminary Determination*, "because Jiangxi Silin did not sell or export any subject merchandise to or through Silin during the POI, we are not attributing the benefit of any subsidies received by Jiangxi Silin to Silin."[203] However, the discovery of sales from Jiangxi Silin to a company with POI sales to Silin undermines Silin's argument that Jiangxi Silin did not make any sales to or through Silin during the POI. It is completely plausible that at least a portion of the subject merchandise Jiangxi Silin sold to this company during the POI was then resold to Silin and potentially exported. However, because Silin deliberately withheld crucial information related to Jiangxi Silin's operations, subsidies, and sales, necessary information for our subsidy and attribution analyses is missing from the record. As such, we must resort to facts available pursuant to 776(a)(2)(A)(B)(C) and (D) of the Act. Further, these issues are significant not only because they epitomize uncooperative behavior that impeded this investigation, but also because they severely undermine the reliability of Silin's reporting.

[201] *See Countervailing Duties*, 63 FR 65401 (November 25, 1998) (*CVDPreamble*).
[202] *Id.* at 65402.
[203] *See Preliminary Determination* PDM at 8-10.

Adding to the confusion concerning Jiangxi Silin's relationship with Nanchang Cable, Jiangxi Silin's 2017 financial notes translated at verification indicated that Jiangxi Silin's parent company is Nanchang Industrial Holding Co., Ltd. (Nanchang Holding),[204] which we later learned is a Chinese wholly-state owned enterprise (SOE).[205] We also noted at verification that, in 2016, Jiangxi Silin changed its accounting policy to match that of Nanchang Industrial Holding Group.[206] In briefs, Silin again contradicts its statements made at verification and record evidence[207] by stating that Nanchang Holdings is not Jiangxi Silin's parent company, rather Nanchang Cable's parent company.[208] Silin states that, "Nanchang Cable decided it wanted to include Jiangxi Silin in its consolidated statement. To allow this, Jiangxi Silin then had to indicate Nanchang Cable was its parent company in its own financial statement."[209] This admission is particularly concerning for two reasons. First, because it represents Silin's acknowledgement that it provided knowingly false information in this investigation, again, when it stated in questionnaire responses that Jiangxi Silin's "sales are not consolidated with those of other companies in the financial report of a parent, holding company, or group of companies."[210] Second, this admission evidences Nanchang Cable's control over Jiangxi Silin by its ability to induce Jiangxi Silin to consolidate its financial information with Nanchang Cable and designate Nanchang Cable or Nanchang Holding (the wholly-owned SOE) as its parent company. Silin then argues that neither Nanchang Cable nor Nanchang Holding are able to control Jiangxi Silin due to Nanchang Cable's minority ownership in Jiangxi Silin, and Nanchang Holding's ten percent direct ownership in Nanchang Cable.[211] As an initial matter, Jiangxi Silin provided information indicating that it is cross-owned with Nanchang Cable.[212] Further, while ownership stake is a factor in determining control, it is not the only consideration, and the evidence discovered at verification concerning Jiangxi Silin's relationship with Nanchang Cable are clear indications of Nanchang Cable's ability to exercise control over Jiangxi Silin. Namely, the fact that Jiangxi Silin moved its operations to Nanchang Cable's office in 2017, and that Nanchang Cable pays for certain employee expenses incurred by Jiangxi Silin, along with the unreported transactions between the two companies, as well as Silin's admission at verification that Jiangxi Silin sold "exclusively to Nanchang Cable in 2018."[213] However, because Silin withheld information from Commerce by not reporting the extent of Jiangxi Silin's relationship with Nanchang Holding, we are unable to make a substantive determination on whether or not control exists. Moreover, while Nanchang Holding may directly hold a ten percent ownership in Nanchang Cable, the record shows that Nanchang Cable is an investment company which is also

[204] *See* Silin Verification Report at 9.

[205] *Id.*

[206] *Id. at* 10. We note that in its briefs, Silin contends thatthe verification report incorrectly equates Nanchang Cable and NanchangHoldings; however, Silin fails to acknowledgethatanyconfusion regarding thecompaniesis entirely due to its own noncooperation. Had Silin provided JiangxiSilin's translatednotes as originally requested, Commerce could have inquired about Nanchang Holdings and Silin could have clarified anyissues prior to verification. Silin cannotblame Commerce for any alleged misunderstandingswhen it had ample opportunityto provide andclarify the requested information priorto andduringverification, yetrefusedto do so.

[207] *See* Silin Verification Report at 2 and 9.

[208] *See* Silin Case Brief at 9.

[209] *Id.*

[210] *See* Jiangxi Silin February 5, 2019 IQR at 8; *see also* Silin Verification Report at 9-10.

[211] *See* Silin Rebuttal Brief at 5.

[212] *See* Jiangxi Silin February 5, 2019 IQR at Exhibit 6.

[213] *See* Silin Verification Report at 10.

owned by an apparently state-affiliated labor committee (Nanchang Cable Labor Union Committee).[214] Additionally, as noted in the verification report, another discrepancy found in Jiangxi Silin's translated financial notes is that Nanchang Cable's ownership interest in Jiangxi Silin and Jiangxi Silin's total equity are both significantly higher than previously reported.[215] In response to these glaring discrepancies, Silin argues that this information, from its own audited financial reports, "cannot conceivably be correct."[216] Silin attempts to substantiate this statement by citing to unverified record information, including Jiangxi Silin's business license, which listed a different tax number and legal representative than in its land documents examined at verification.[217] Jiangxi Silin's accurate and complete ownership is pertinent to this investigation because it allows us to analyze and determine any state cross-ownership, which is of particular importance in CVD proceedings as they require additional inquiries when state-control exists. Due to Silin's withholding of information and failure to comply with Commerce's requests for information, necessary information remains unverified.

Further, Silin's own admission that Jiangxi Silin's audited financial statements, which were also signed by Jiangxi Silin's board of directors that includes overlap with Silin's executives, are incorrect, is precisely why the application of AFA is necessary. Accurate financial records are crucial to our subsidy analysis and serve as the basis of verification. Silin cannot contend that its financial statements are reliable, while also stating that they are incorrect. Again, due to Silin's withholding of information by not previously disclosing Nanchang Holding's ownership in Jiangxi Silin through Nanchang Cable and its failure to provide verifiable and requested information, Commerce was denied the opportunity of examining the full facts of the case and asking additional questions.

Yet another issue discovered through the examination of Jiangxi Silin's translated financial notes at verification was a previously unreported large grant from the GOC.[218] We also noted that the grant amount matched the figure listed as "other cash received related to investing activities" in Jiangxi Silin's financial statement.[219] Silin stated that it did not report Jiangxi Silin's receipt of this grant because it did not consider it a grant, but rather "money from the government" for Jiangxi Silin's land, which it allegedly vacated in 2016.[220] This statement is another acknowledgement of Silin's decision to withhold information and blatantly ignore Commerce's request for information because in the initial questionnaire response, we asked the following question:

> Did the GOC (or entities owned directly, in whole or in part, by the GOC or any provincial or local government) provide, directly or indirectly, any other forms of assistance to your company between January 1, 2006, and the end of the POI? If so,

[214] *Id.* at 9 and accompanying Verification Exhibit 3 at 10-11.
[215] *See* Silin Verification Report at 10.
[216] *See* Silin Case Brief at 8.
[217] *See* Silin Verification Report at19.
[218] *See* Silin Verification Report at 3.
[219] *Id.*
[220] *Id.*

> please describe the assistance in detail, including the amounts, date of receipt, purpose and terms, and answer all questions in the appropriate appendices.[221]

Despite these clear instructions to report "any other forms of assistance," Silin did not report millions of RMB in financial assistance Jiangxi Silin received from the GOC to relocate its operations.[222] At verification and in briefs, Silin attempted to excuse its noncompliance with Commerce's request for information by claiming that it was merely compensation for Jiangxi Silin's losses due to its land demolishment and displacement.[223] However, the grant documents observed at verification indicated various incentives to induce Jiangxi Silin to relocate.[224] Silin's argument is again predicated on its claim that Jiangxi Silin ceased operations and vacated its land in 2016, a fact that is unsubstantiated and outright contradicted by the verification findings. Specifically, as noted in the verification report,

> Silin began by stating that Jiangxi Silin did not produce or sell any merchandise during the POI because it vacated its land in 2016. However, after further questioning regarding the equipment and raw material expenses listed in its 2017 financial notes, as well as cash inflows from operating activities, and {large inventory} at the end of 2017, company officials stated that Jiangxi Silin did not actually vacate the land in 2016 because it still maintained some production equipment and a warehouse that had yet to be demolished.[225]

Further, the footnote under the large unreported grant in Jiangxi Silin's financial notes states that Jiangxi Silin reached an agreement with the provincial government authority to relocate in 2015. The 2015 agreement between Jiangxi Silin and the provincial authority indicates that Jiangxi Silin received compensation for lost production, temporary relocation, renovations, operations and relocation rewards.[226] However, as noted in the verification report,

> Upon further inquiry, company officials stated that although they signed the demolition and relocation agreement in 2015, and accepted the payment from the government in 2016, Jiangxi Silin's board of directors ultimately decided in 2018 not to relocate and to cease operations entirely. We requested any and all documentation that would substantiate this claim, specifically relating to the board decision and correspondence/negotiation concerning the decision. Company officials were only able to provide a second "Building on State-Owned Land Demolition Agreement," signed on July 7, 2018. The second agreement lists an additional {large} compensation amount, which Jiangxi Silin received in September 2018. The compensation amount is based on the third-party evaluation report for 2017 and a {larger} land area {than the one listed in the 2015 agreement} which {matches} the only land area Jiangxi Silin reported in its questionnaire response, {although the reported price was higher}. Commerce officials asked if the agreements were related to two separate land parcels, and company officials

[221] *See* Initial CVD Questionnaire at 17.
[222] *See* Silin Verification Report at 3 and 18.
[223] *See* Silin Case Brief at 6-7.
[224] *See* Silin Verification Report at 18.
[225] *Id.* at10.
[226] *Id.* at18.

> stated that they were not. Although both agreements list Jiangxi Silin as the recipient of the demolition grants, we noted that the business license numbers, legal representatives and land size on the agreements differed.[227]

Accordingly, the record reflects that Jiangxi Silin did not vacate its land in 2016 as previously reported because it did not sign an agreement to relinquish its reported land area to the provincial authority until after the POI. Thus, Silin's argument that Jiangxi Silin's lack of production is corroborated by its relinquishment of its land in 2016 is unsupported by record evidence. Further, Silin's argument ignores the core of the issue: that Silin possessed the information related to Jiangxi Silin's financial assistance from the GOC, did not report it, did not ask any clarification questions and attempted to prevent Commerce and interested parties from discovering this information by failing to translate Jiangxi Silin's financial notes. Silin's decision to deprive Commerce and interested parties the opportunity to adequately analyze the grant significantly impedes the investigative process because it prevents Commerce from determining its countervailability. As the courts have upheld, it is not for respondents to decide what information to report nor what constitutes a subsidy in this proceeding, because that authority rests solely with the United States Department of Commerce.[228]

Silin

Verifying the completeness and accuracy of a respondent's reported sales information is a crucial component of verification because it serves as the foundation of Commerce's subsidy analysis, *i.e.*, sales denominators for calculation of CVD rate for subsidies programs under investigation. Prior to verification, Silin revised its reported quantity and value.[229] Upon the start of verification, Silin again provided another revision to its quantity and value in its list of minor corrections.[230] Despite the notable revisions, including over 100 million RMB in unreported transactions, we accepted Silin's revised quantity and value for the third time.[231] After several calculations, we were able to confirm that Silin's reported sales information matched the sales figure in its financial statement. However, as noted in the verification report, Silin stated that it "records its sales revenue based on the estimated value of its sales listed on the proforma invoice,"[232] thus, Silin failed to report its actual sales value despite multiple opportunities to do so. Upon additional questioning at verification, we learned the following information:

> "Company representatives stated that Silin records revenue based on the estimated amounts because payment could take up to one year. Silin officials also stated that the

[227] *Id.* at 18-19.
[228] *See, e.g., Ansaldo Componenti, S.p.A. v. United States*, 628 F. Supp. 198, 205 (CIT 1986); *Essar Steel Ltd. v. United States*, 721 F. Supp. 2d 1285, 1298-99 (CIT 2010); *see also Certain Oil Country Tubular Goods from the People's RepublicofChina: Preliminary ResultsofCountervailing Duty Administrative Review; 2011*, 78FR 9368 (February 8, 2013), and accompanying IDM at Comment 5, unchanged in *Certain Oil Country Tubular Goodsfrom the People's Republicof China: Final Resultsof Countervailing Duty Administrative Review; 2011*, 78FR 49475 (August 14, 2013).
[229] *See* Silin's March 5, 2019, Supplemental Questionnaire Response (Silin SQR) at Exhibit 2S-II-1.4.
[230] *See* Silin Verification Report at 5.
[231] *Id.*
[232] *See* Silin Verification Report at 12.

> company does not track the differences between the estimated proforma values, and the actual payment received because it is small over the long-term. Silin reported that it could not substantiate the differences between the estimated and actual values recorded in their accounting system for the POI because its accounts receivable could include other revenue and the only way to compare the values is to review each invoice individually. In the middle of reconciling the remaining sales data, Silin's counsel introduced a CPA from out of town and insisted on having the CPA discuss Chinese accounting practices… We asked the CPA only one question: whether Chinese GAAP allows a CPA to audit estimated or proforma revenue. The CPA stated that Chinese GAAP does not allow a CPA to audit estimated or proforma revenue."[233]

In briefs, Silin again attempts to re-write the verification report by stating that its accounting practices are "fully in compliance with Chinese GAAP" and that its sales revenue and accounting "are not estimates, but are based on the VAT invoice value, which is equal to the US dollar value on the Proforma Invoice multiplie d by the exchange rate converting US dollars to Renminbi."[234] Not only are these claims diametrically opposed to the statements made by both Silin and the CPA at verification and recorded in the verification report, but they are also completely unsubstantiated. While Silin's reported sales figures matched its financial statements, Silin's acknowledgement that it could not reconcile its actual and estimated POI revenue in its accounting system, along with the CPA's statement that auditing estimated sales revenue is not in compliance with Chinese GAAP, renders Silin's sales unverifiable. Because an accurate sales denominator is core to the subsidy analysis, and because we are prohibited from relying on unverified information, we must resort to facts available pursuant to 776(a)(2)(A)(B)(C) and (D) of the Act.

In its briefs, the petitioner raises other discrepancies discovered at verification relating to Silin which add to the contradictions. Namely, the fact that Silin reported on its grant application to the GOC that it was involved in "production," as well as previously undisclosed land parcels. In response, Silin argues that "the inclusion of production in its business activities on one grant application cannot be used to establish that Silin is a producer."[235] Regarding the unreported land, Silin argues that it did not report the land because it "was not relevant to any production." While these facts alone do not firmly establish Silin's involvement in production, these findings in conjunction with Silin's unreported purchases of production equipment on its unreported land add to the uncertainty regarding Silin and its affiliates' actual activity, and the accuracy of its reported information. These discrepancies also serve as additional examples of information that Silin withheld, that could have informed Commerce's analysis and preliminary determination. Had Silin reported its land parcels as requested, Commerce and interested parties would have been able to review the land contracts and ask additional questions to ascertain whether the land was being used for production. Further, we directed Silin to report all of its land parcels, thus, regardless of whether Silin believed this land was relevant for production of subject merchandise, it could and should have reported the information. Accordingly, because Silin did not comply with Commerce's request for information, an adverse inference is warranted.

[233] *Id.*
[234] *See* Silin Rebuttal Brief at 9.
[235] *See* Silin Rebuttal Brief at 7.

For the aforementioned reasons, we must resort to facts available. In selecting from among the facts otherwise available, our regulations permit the use of an adverse inference, in instances where we find a party "has failed to cooperate by not acting to the best of its ability with a request for information." In *Nippon Steel*, the CAFC noted that while the statute does not provide an express definition of the "failure to act to the best of its ability" standard, the ordinary meaning of "best" is "one's maximum effort." Thus, compliance with the "best of its ability" standard requires the respondent to do the maximum that it is able to do. As the CAFC explained in *Nippon Steel*, although the statutory standard for cooperation "does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping."

Despite Silin's attempts in its briefs to mischaracterize or dismiss the significant issues highlighted above and detailed in the verification report, Silin's repeated refusals to comply with Commerce's clear instructions, consistent contradictions with information it previously reported as accurate and complete, and concealment of key facts in this proceeding are well-documented. While some issues during verification were a result of Silin's inadequate recordkeeping, such as its inability to provide any grant documents or substantiate the differences between its estimated and actual revenue, the majority of the issues resulted from contradictions with Silin's previously reported information stemming from the discovery of requested information that Silin previously withheld. Because Silin's behavior at verification exemplifies its noncompliance, the application of an adverse inference is warranted.

In its rebuttal brief, the GOC states that the AFA rate should be a reasonably accurate estimate of the respondent's actual rate, with some additional increase to deter noncompliance.[236] The GOC also argues that the CAFC has held that an AFA rate should reflect the "commercial reality" of the respondent.[237] The GOC, however, appears unaware that in 2015 Congress overturned that CAFC-created standard through an amendment to the statute. Under current law, Section 776(d)(3) of the Act clearly states that Commerce's selection of facts available need not be restricted as reflecting alleged commercial reality.[238] Further, as explained above, because the issues with Silin's reporting are pervasive throughout its response, the totality of the contradictions, lead us to conclude that Silin's reported information as a whole is unreliable. Thus, due to Silin's failure to cooperate to the best of its ability, we are unable to reasonably estimate the full extent of Silin's subsidization. As such, the application of total AFA is necessary.

[236] *See* GOC Rebuttal Brief at 2-3.
[237] *Id*. at 4.
[238] On June 29, 2015, the President of the United States signedinto lawthe Trade Preferences Extension Act of 2015, which made numerous amendmentsto the AD and CVDlaw, including amendmentsto sections 776(b)and 776(c) of the Act and theaddition ofsection 776(d)ofthe Act. *See Trade Preferences Extension Act of 2015*, Pub. L. No. 1 14-27, 129 Stat. 362 (June 29, 2015) ("TPEA"). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretativerule, in which it announcedthe applicability datesforeach amendment tothe Act, except foramendmentsto section 771(7) of the Act, which relate to determinations of materialinjury by the ITC. *See Datesof Applicationof Amendmentsto the Antidumpingand Countervailing DutyLaws Madeby the Trade Preferences Extension Act of 2015*, 80FR 46793 (August 6, 2015). The amendmentsto section 776of the Act are applicable to alldeterminations made on orafter August 6, 2015. Therefore, the amendmentsapply to this investigation.

The GOC also argues that Commerce should corroborate, to the extent possible, any adverse inference based on secondary information, while ensuring that the adverse inference is both reliable and relevant to the respondent's use of the programs under investigation.[239] With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. With respect to the relevance aspect of corroboration, Commerce will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. As indicated in the *Initiation Notice* and accompanying CVD Initiation Checklist, Commerce determined that each of the programs subject to verification were relevant to the sale and production of subject merchandise.[240] Further, the other subsidies which were either disclosed by Silin or discovered at verification, demonstrate that they are likewise relevant to the aluminum wire and cable industry.

In determining the AFA rates applicable to Silin, we are guided by Commerce's methodology detailed above. We begin by selecting, as AFA, the highest calculated program-specific above-zero rates determined for the cooperating respondent in the instant investigation. For all other programs not used by the cooperating respondent, we are applying, where available, the highest above-*de minimis* subsidy rate calculated for the same or comparable programs in a CVD investigation or administrative review involving China.

Comme nt 7: Whe the r to Apply Partial AFA to Qingdao Cable

Encore Case Brief [241]

1) Qingdao Cable Affiliate II

- At verification, Commerce found that Qingdao Cable's affiliate mainly supplies the company with cables and reels, a fact that was previously undisclosed in questionnaire responses. Further, Qingdao Affiliate II manufactures its reels in accordance with Qingdao Cable's wire and cable specifications.
- Because Qingdao Affiliate II produced and sold reels, which are required for its cable sales and certainly primarily dedicated to the production and sale of subject merchandise, Commerce should attribute the any subsidies received by Qingdao Affiliate II to Qingdao Cable.

2) Grants

- Commerce could not verify half of the grants reported by Qingdao Cable because the company failed to provide *any* documentation for these grants.
- Qingdao Cable stated in questionnaire responses and at verification that certain grants were not related to sales of wire and cable or exports; however, documents examined at verification revealed that some grants were, and some grants were the same as those the company reported not using. Thus, Qingdao Cable attempted to mislead Commerce

[239] *See* GOC Rebuttal Brief at 4.
[240] *See Initiation Notice* and accompanying CVD Initiation Checklist; *see also* 776(d) of the Act.
[241] *See* Encore Case Brief at 16-24.

regarding the true purpose of its grants and failed to report grants subject to this investigation.

- Qingdao Cable prevented Commerce from accessing information in its "Subsidy Income" account because when Commerce attempted to open the account at verification, it was in edit or write mode by another user.
- Commerce should apply AFA to all grants because Qingdao Cable failed to provide information, misled Commerce, and Commerce was temporarily unable to access the subsidy income account. On the basis of AFA, Commerce should presume that all grants received during the AUL were received during the POI.

3) Land

- Commerce discovered at verification that Qingdao Cable received additional undisclosed benefits related to its land parcels.
- Commerce's practice as it relates to programs discovered at verification is to calculate a subsidy based on available information and should do so for the benefits related to Qingdao Cable's land relocation. Commerce should also apply AFA to the following programs that were associated with Qingdao Cable's land relocation:
    - Income tax deductions/credits for special equipment,
    - VAT rebates on domestically-produced equipment,
    - Grants for energy conservation and emission reduction,
    - Grants for retirement of capacity, and
    - On a separate land parcel, the provincial government's waiver of all taxes.

Silin's Case Brief [242]

1) Qingdao Affiliate II

- In its request for exemption, Qingdao Affiliate II reported selling packing materials to Qingdao Cable. Commerce did not inquire as to the nature of the packing materials sold, thus Qingdao Affiliate II did not report them.
- At verification, Commerce "discovered" that Qingdao Affiliate II sold copper cables and reels to Qingdao Cable. Copper cables are not subject merchandise and reels are packing materials, which Commerce does not consider as an input into subject merchandise. Accordingly, Commerce should continue to not attribute any subsidies from Qingdao Affiliate II to Qingdao Cable.

Encore's Rebuttal Brief [243]

1) Qingdao Affiliate II

- Qingdao Cable mislead Commerce regarding Qingdao Affiliate II so that its subsidies would not be attributed to Qingdao Cable. This is demonstrated by Qingdao Affiliate II's statement that it produced and sold products that did not include wire and cable, when at verification Commerce found that the company actually mainly produces and sells reels and cables to Qingdao Cable.
- Qingdao Cable specifically omitted reels when it reported producing and selling the other packing materials, which no reasonable respondent under the *Nippon Steel* standard would not reference even if it considered the reels as packing materials.

[242] *See* Silin Case Brief at 11-13.

[243] *See* Encore Rebuttal Brief at 25-27.

- Commerce's verification found that the reels are provided with all cables, which makes them primarily dedicated to the production and sale of the subject merchandise.

Silin's Rebuttal Brief[244]

1) Qingdao Affiliate II

- Qingdao Cable reported that Qingdao Affiliate II provided packing materials to Qingdao Cable, and Commerce never inquired about the exact packing materials.
- Commerce preliminarily did not include Qingdao Affiliate II's benefits in its subsidy calculation because it correctly determined that packing materials are not material inputs.
- Commerce's discovery that Qingdao Affiliate II sold copper cables and reels corroborates what Silin and Qingdao Cable reported: That this affiliate did not produce or sell any inputs to Qingdao Cable.
- Reels are understood to be a packing material in the industry. The only purpose of reels s to wrap the cables and the cost is built into the price of the cable.

2) Grants

- Qingdao Cable reported all of its grants; however, it could not provide certain approval or application documents for every grant because it does not keep those documents in the normal course of business.
- Qingdao Cable understood certain grants to be separate programs from those of which Commerce initiated on, however, the company still reported the information under "other subsidies."
- The fact that another employee was using the "Subsidy Income" account, temporarily preventing the verifiers from accessing the account, is not outside the realm of normal operations, and does not mean that the account was being changed. Commerce examined all entries in this account and noted no discrepancies.

Comme rce's Position: Because we are applying total AFA to Silin for this final determination, including for programs that are specific to producers, it is no longer necessary to calculate additional subsidy rates for Silin's unaffiliated producer-suppliers, such as Qingdao Cable. Silin's unaffiliated suppliers were only examined in this investigation to ensure that the full extent of subsidizations conferred upon Silin's export of subject merchandise was captured. As described above, we are applying AFA to Silin for all programs in this investigation, excluding programs determined to be not specific. For each of the programs, we would assign a single AFA program rate. In other words, the final CVD rate imposed on export of subject merchandise by Silin would reflect the applied total AFA rate, due to Silin's failure to cooperate.

Further, because the AFA rate determined by our AFA hierarchy is higher than the total calculated rate for Silin, using the calculated rates for its unaffiliated suppliers from the *Preliminary Determination*, this ensures that Silin does not benefit from its non-cooperation.

Accordingly, it is no longer necessary to calculate additional subsidy rates for Silin's unaffiliated producer-suppliers. Consequently, for each program to which we are applying AFA, we would only apply a single AFA program rate and would not add to the AFA program rate additional calculated subsidy rate for Silin's unaffiliated producer-suppliers. This way, we strike a balance

[244] *See* Silin Rebuttal Brief at 12-15.

between inducing cooperation and ensuring our AFA rates are not punitive. Arguments concerning Silin's unaffiliated suppliers are moot.

Issue 8: Whether Commerce Should Revise its Calculation of Xinqi Cable's Benefit from the Electricity for LTAR Program

Silin's Case Brief [245]

- Xinqi Cable only used a percentage of the electricity that its affiliate purchased from the state grid. Accordingly, Commerce should multiply the calculated benefit under the program by Xinqi Cable's usage and use the adjusted benefit as thenumerator.

Comme rce's Position: As indicated above, we are relying on total AFA in determining Silin's total subsidy rate, and we are not calculating individua l subsidy rates for Silin's unaffiliated suppliers. Therefore, issues concerning the calculation of subsidy rates for programs used by Silin and its producer-suppliers are moot.

Issues Related to Changfeng

Comme nt 9: Whe the r to Apply AFA to Changfe ng

Southwire Case Brief [246]

- The record makes clear that Changfeng failed to report all of its affiliates in a timely manner. In its initial affiliation response, Changfeng failed to identify at least five affiliates, including one referred to herein as Company A, forcing Commerce to issues to supplemental affiliation questionnaires. Moreover, Changfeng refused to report the full extent of its affiliation with Company A, despite being given multiple attempts to do so.
- Early in the investigation, the petitioners provided publicly available information indicating Company A's affiliation.[247] Nonetheless, Changfeng submitted a letter refuting this affiliation.[248] Commerce gave Changfeng another opportunity to correct the record, but Changfeng maintained that Company A was not an affiliate for purposes of this investigation.[249]
- As the result of another supplemental questionnaire, Changfeng revealed for the first time that Company A was in fact a cross-owned affiliate during the average useful life period.[250] It also revealed for the first time in this response, received just six days before the Preliminary Determination, that Company A was a subject merchandise producer.[251]

[245] *See* Silin Case Brief at 13-14.
[246] *See* Southwire Case Brief at 1-8.
[247] *See* Petitioners' Letter,"Petitioners' Response to Changfeng's Response IdentifyingAffiliates in Section IIIof the CVD Questionnaire," dated December 14, 2018 (Petitioners' December 14, 2018, Letter).
[248] *See* Changfeng's Letter, "Rebuttal to Petitioners' Comments on Changfeng Affiliation Response," dated December 18, 2018 (Changfeng's December 18, 2018, Response).
[249] *See* Changfeng's Supplemental Section II Questionnaire Response, dated February 22, 2019, at 6-7.
[250] *See* Changfeng's Second Supplemental Affiliation Response, dated March 25, 2019, at 3.
[251] *Id.* at 4-5.

The response contradicted its earlier claims that Company A only sold a small quantity of inputs and non-subject merchandise to Changfeng prior to its deregistration.

- Due to Changfeng's repeated failure to accurately report its affiliation with Company A, information on that affiliate's subsidy program usage is missing from the record, which is required to calculate an accurate subsidy margin for Changfeng under Commerce's attribution rule.
- Commerce has regularly applied AFA in cases where a respondent failed to reveal or fully report an affiliate until late in an investigation.[252] Commerce has made clear that respondents cannot unilaterally withhold information from Commerce that may require further analysis.[253] Commerce has applied AFA in cases where respondents argued that affiliates did not satisfy reporting criteria or were immaterial because of their size.[254]
- In *Plywood from China*, Commerce found that AFA was warranted when a respondent did not disclose the full extent of its affiliations as required by the initial CVD questionnaire, regardless of attempts later in the case to provide required information.[255] Commerce found that the lateness of the respondent's decision to reveal affiliation significantly impeded Commerce's ability to complete the investigation and, thus, rendered the company wholly uncooperative.[256]
- Changfeng's conduct in this investigation mirrors that of the respondent in *Plywood from China*. In that case, Commerce found that complete accurate affiliation information is critical to the examination of subsidy programs, as well as to the attribution of benefits among cross-owned companies, and it concluded that a failure to provide such information seriously impedes the investigation.[257]
- Changfeng hid the cross-ownership with Company A for more than three months, and only admitted the affiliation after multiple questionnaires and after the factual record closed. It twice disputed the affiliation by focusing on non-dispositive or irrelevant facts.
- Commerce should find, like it did in *Plywood from China*, that Changfeng failed the "maximum efforts test" by hiding a critical fact until late in the proceeding, despite having been given multiple opportunities to correct the record.
- Changfeng suggests that its reporting failure is of no significance because its cross-ownership was limited to the short period starting when Company A was established in 2008. However, Changfeng did not provide sufficient documentation to support its claim. Moreover, Changfeng cited no authority to support that the alleged facts exempt Changfeng from its obligation to submit a full CVD questionnaire for Company A. In addition, Changfeng cannot be allowed to hide affiliation information from Commerce for a prolonged period and then claim any omission is harmless based on facts Commerce has not investigated.

[252] *See, e.g., Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 49943 (July 29, 2016) (*Cold-Rolled Korea*), and accompanying IDM at 64-66; and *Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 53439 (August 12, 2016) (*Hot-Rolled Korea*), and accompanying IDM at 60-66.
[253] *See Cold-Rolled Korea* IDM at 64.
[254] *Id.*; *see also Hot-Rolled Korea* IDM at 56-57.
[255] *See Hardwood Plywood* IDM at 24-26.
[256] *Id.*
[257] *Id.* at 25.

- Commerce has previously explained that it does not take issue with the timeliness of a cross-owned affiliate's questionnaire response, but rather with a respondent's decision to deprive Commerce of the ability to fully investigate the issues of affiliation and cross- ownership.[258]

Changfeng Rebuttal Brief[259]

- Changfeng properly reported its affiliates and timely responded to Commerce's affiliation questionnaires. Commerce regularly issues supplemental questionnaires on affiliation in investigations given the short time frame and Commerce's broad definition of affiliation.
- While Southwire claims initially that Changfeng failed to identify at least five affiliates, Southwire later claims that only one company (Company A) was affiliated. However, Changfeng never changed its position that the affiliates listed in the initial affiliation response are the only companies that meet Commerce's definition of affiliation.
- The petitioners submitted unsubstantiated information that Changfeng had other affiliates. Changfeng filed timely rebuttal comments to the petitioners' comments, and in supplemental questionnaires documented that these other companies are not affiliates. Based on these responses, Commerce never asked Changfeng to provide a full questionnaire response from any of its affiliates or perceived affiliates. In the *Preliminary Determination*, Commerce found Changfeng responded on behalf of itself with no affiliates involved or engaged in the sale, purchase, marketing, and production of subject merchandise.
- Changfeng does not agree that Company A is an affiliate. Changfeng provided information throughout the proceeding concerning Company A, establishing that this company does not meet the definition of a company that would be required to provide a full questionnaire response. Thus, Changfeng never withheld information or impeded the investigation.
- In any case, the window of potential affiliation between Changfeng and Company A is very small (starting in 2009), and the purported affiliation ended when certain ownership interest was transferred in 2010. In addition, Company A was deregistered in 2011.
- Southwire attempts to cast doubt on the share transfer claiming Company A's amended Articles of Association are inadequate documentation. However, Southwire provides no reasonable argument why an official legally binding document filed with the GOC is inadequate to document a share transfer. Moreover, the shares were transferred in January 2010, and Changfeng did not begin operations until July 2010.

Comme rce's Position: We disagree with Southwire, and we are not applying AFA to Changfeng. While Changfeng was not immediately forthcoming with information about Company A, it fully responded to our subsequent requests and provided necessary information.

Changfeng did not initially report Company A as an affiliate.[260] In response to public information placed on the record by the petitioners,[261] Changfeng explained that Company A was

[258] *Id.* at 26.
[259] *See* Southwire Case Brief at 1-8.
[260] *See* Changfeng's November 30, 2018, Affiliation Questionnaire Response.
[261] *See* Petitioners' December 14, 2018, Letter.

deregistered in 2011.[262] Changfeng noted that prior to deregistration, Company A sold a small quantity of inputs and non-subject merchandise to Changfeng.[263] It noted that no subsidy benefits were transferred to Changfeng in the POI.[264] We then asked Changfeng to provide a full CVD questionnaire or explain why Company A was not cross-owned with Changfeng.[265] Changfeng responded and explained that cross-ownership exists between two company where one company holds, directly or indirectly, a majority interest in the other, and based on this definition, Company A was not cross-owned with Changfeng inthe AUL.[266] The company noted that the sole shareholder of Company A became a minority shareholder of Changfeng after the POI.[267] To verify Changfeng's claim, we asked Changfeng to provide a detailed history of Company A and to provide information on Company A's location, facilities, *etc.* [268] It was at this time that Changfeng clarified there was a short period of affiliation (from 2009 to 2010).[269]

As an initial matter, we acknowledge that Changfeng should have accurately explained that there was a short period of affiliation between Company A and Changfeng in its initial questionnaire. The information was necessary because even though Company A and Changfeng were not cross-owned during the POI, we still need to examine whether Company A and Changfeng were cross-owned during the AUL so that we can determine whether any subsidies received by Company A could be transferred to Changfeng. However, based on our questioning, Changfeng was alerted to the need for a more accurate explanation and worked with reasonable care to correct the information previously provided, which ultimately gave us the information we needed to conduct our analysis.

Thus, we disagree with Southwire that the application of AFA is warranted. Changfeng explained that it did not have any operating activities or transactions with other companies during the period of affiliation, and thus, subsidies could not have been transferred from the Company A to Changfeng.[270] We were able to verify this latter claim (*i.e.*, that no subsidies could have been transferred from Company A to Changfeng) at verification through a review of accounting documentation. *See* full discussion of this documentation in the Changfeng Final Calculation Memorandum.[271] Thus, we find we have the necessary information, and we are not applying AFA to Changfeng for this final determination.

Issue 10: Whe ther to Apply Partial AFA to Changfe ng's Policy Loans

Southwire's Case Brief [272] *and Rebuttal Brief* [273]

[262] *See* Changfeng's December 18, 2018, Response.
[263] *Id.*
[264] *Id.*
[265] *See* Commerce's February 1, 2019, Supplemental Affiliation Questionnaire to Changfeng.
[266] *See* Changfeng's Supplemental Section II Questionnaire Response, dated February 22, 2019, at 6-7.
[267] *Id.*
[268] *See* Commerce's March 15, 2019, Second Supplemental Affiliation Questionnaire to Changfeng.
[269] *See* Changfeng's Second Supplemental Affiliation Response, dated March 25, 2019, at 3.
[270] *Id.* at 3-4.
[271] *See* Memorandum,"FinalDeterminationAnalysisforChangfengWire& Cable Co.,Ltd.," dated concurrently with this memorandum(Changfeng FinalCalculation Memorandum).
[272] *See* Southwire Case Brief at 8-11.
[273] *See* Southwire Rebuttal Brief at 5-8.

- Changfeng failed to include certain bank acceptance bills that it redeemed before maturity and hence paid interest to Chinese banks.[274] In a supplemental questionnaire, Commerce asked Changfeng to report "any and all forms of outstanding during the POI, including any invoice and bill discounting, regardless of whether it was from a bank." Changfeng maintained that it had reported all forms of financing.[275]
- At verification, however, Changfeng presented as minor corrections, omitted bank acceptance notes financed by Chinese banks, alleging that the notes were issued by commercial entities, which is why it neglected the fact they were later financed by Chinese banks to which interest was paid.[276] Commerce appropriately rejected these so-called minor corrections as untimely new factual information.[277]
- Commerce has previously applied AFA when a respondent fails to disclose policy loans that were discovered at verification or reported after the deadline required by Commerce.[278] In particular, Commerce has rejected "missing loans" presented as minor corrections at verification as untimely new factual information.[279] In addition, the CIT has affirmed Commerce's broad discretion in rejection new factual informationtendered as such a late time.[280]
- Thus, applying AFA to Changfeng's policy loans is consistent with Commerce precedent. Changfeng's conduct in this investigation is analogous to the respondents in *Resin from China* and *Flanges from India*. In *Resin from China*, the respondent attempted to present missing loans as minor corrections, Commerce rejected the corrections as minor, and finding the error committed by respondent to be methodologica l in nature.[281] Commerce eventually applied AFA to the respondent's loan programs, finding the respondent withheld requested information.[282] Commerce likewise applied AFA in *Flanges from India* in similar circumstances.[283]
- Commerce should follow its precedent and find Changfeng has withheld information and, as such, necessary information on the policy loan program is missing from the record. Moreover, because Changfeng withheld necessary information despite multiple requests, it has failed to cooperate to the best of its ability. This warrants the application of AFA to Changfeng's policy loans. As AFA, Commerce should apply the highest above *de minimis* subsidy rate determined for a lending program in the final determination of this proceeding if such rate is sufficiently adverse to induce further cooperation.

[274] *See* Changfeng Verification Report at 2-3.
[275] *See* Changfeng's March 5, 2019, Supplemental Questionnaire Response at 9.
[276] *See* Changfeng Verification Report at 2-3.
[277] *Id*.
[278] *See, e.g., Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017) (*Flanges from India*), and accompanying IDM at Comment 4; *Countervailing Duty Investigation of Certain Polyethylene Terephthalate Resin from the People's Republic of China: Final Affirmative Determination*, 81 FR 13337 (March 14, 2016) (*Resin from China*), and accompanying IDM at Comment 5; and *Certain Oil Country Tubular Goods from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 52301 (September 3, 2014) (*OCTG from China*), and accompanying IDM at Comment 14.
[279] *See, e.g., Resin from China* IDM at 57-58.
[280] *See, e.g., Reiner Brach GmbH & Co., KG v. United States*, 206 F. Supp. 2d 1323, 1334 (CIT 2002).
[281] *See Resin from China* IDM at 57.
[282] *Id.*
[283] *See Flanges from India* IDM at 27-30.

- Changfeng does not cite any legal authority for its argument that Commerce should apply facts available without adverse inference. Changfeng's argument against AFA is unavailing because it is inconsistent with the AFA statute, as well as judicial and Commerce precedent.
- Changfeng's argument, that the unreported bank financing should have been accepted as minor corrections because Changfeng properly reported hundreds of loan payments and the correction was minor in relation to the universe of its reported loans, has no merit. Changfeng acknowledges that its mistake affects an entire type of financing (bank acceptance notes redeemed before maturity. Thus, Changfeng's error was methodological in nature and was properly rejected as new information.
- Changfeng tries to assert its own judgement concerning the nature of its error over the broad discretion afforded to Commerce to make that determination itself.
- Changfeng claims the amount of interest actually paid on unreported financing represents a small percentage of POI net sales revenue and argues that this would have a small impact on the margin. The alleged impact of Changfeng's error has no relevance to the AFA determination, and even if it did, Changfeng has no evidence to quantify the impact. The relevant figure here is the difference between what Changfeng actually paid and what is should have paid without the preferential government policy.
- Because of missing information, it is impossible for Commerce to know the true margin impact of Changfeng's unreported POI loan benefits.

Changfeng's Case Brief [284] *and Rebuttal Brief* [285]

- Changfeng submitted a minor correction that it had inadvertently failed to report interest paid on bank acceptance notes redeemed with banks before maturity. Commerce refused to accept this information, but it should have accepted it.
- Changfeng properly reported hundreds of loan payments. Changfeng inadvertently failed to report interest paid on one particular type of finance, bank acceptance notes redeemed before maturity. The correction was minor in relation to the universe of reportedloans.
- Even though it refused the bank acceptance not information, Commerce can nonetheless use fact available to determine the universe of underreported loan interest expenses. Commerce reconciled Changfeng's loans. To reconcile the loan interest to the income statement, the total bill acceptance discount interest was listed at page 47 of Verification Exhibit 9. The interest expense represents only a small portion of POI net sales revenue and demonstrates the small impact of this interest on the margin. Commerce could include the average or highest calculated benefit from a loan and add that benefit as an inference to account for the bill acceptance discount interest. Otherwise, Commerce could use the interest figure and make an inference that the interest applies to the average or largest loan figure on record with a period of 365 days and calculate abenefit.
- Changfeng's minor error did not impede Commerce's ability to analyze and verify its loans, as petitioners assert, and AFA is not warranted under the circumstances.
- Changfeng discovered the error preparing for verification and attempted to submit it as a minor correction. The error was minor in relation to the universe of reported loans.

[284] *See* Changfeng Case Brief at 4-5.
[285] *See* Changfeng Rebuttal Brief at 4-5.

Comme rce's Position: We agree with Southwire, and we are applying partial AFA to Changfeng's policy loans in this final determination because at verification we discovered that Changfeng did not timely report interest paid on bank acceptance notes redeemed with Chinese banks before maturity.

The CVD Questionnaire clearly instructs respondents to report all financing outstanding at any point during the POI, including, but not limited to, interest expenses on bank promissory notes, invoice discounting, and factoring of accounts receivable.[286] We reiterated this request in the first section III supplemental questionnaire, asking Changfeng to "{a}dditiona lly, please report any and all forms of financing outstanding during the POI, including any invoice and bills discounting, regardless of whether it is from a bank."[287] Changfeng stated that it "has reported all forms of financing except the money borrowed from individua ls in the loans chart. Changfeng understands that the financing from individuals has nothing to do with the GOC."[288]

At verification, we discovered that Changfeng did not report interest paid on bank acceptance notes redeemed with Chinese banks before maturity. Changfeng officials explained that customers paid Changfeng with bank acceptance bills, and Changfeng cashed in these bills with Chinese bank before maturity. The unreported bills consisted of interest paid by Changfeng to a Chinese bank. We informed the company that we could not accept information related to these bills as this was new information.[289]

Sections 776(a)(1) and (2) of the Act provide that Commerce shall, subject to section 782(d) of the Act, apply "facts otherwise available" if necessary information is not on the record of if an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Here, Changfeng did not timely report all of its financing that was outstanding during the POI (regardless of whether it was from a bank) in spite of being provided two opportunities to do so.[290] While Changfeng tried to present the missing financing as a minor correction at verification, Commerce properly rejected this information.[291] The statute does not require Commerce to provide a respondent with limitless opportunities to correct the record, especially in the context of verification.[292] The purpose of verification is to ascertain the accuracy and completeness of information *previously* submitted, not to collect new factual information for which no adequate time remains for analysis or comment.[293]

[286] *See* Initial CVD Questionnaire at section III, page 8.
[287] *See* Commerce's February 19, 2019, Section III Supplemental Questionnaire at 6.
[288] *See* Changfeng's March 5, 2019, Supplemental Questionnaire Response at 9.
[289] *See* Changfeng Verification Report at 2-3.
[290] *See* Changfeng's February 5, 2019, Questionnaire Response at 9; and Changfeng's March 5, 2019, Supplemental Questionnaire Responseat 8-9.
[291] *See* Changfeng Verification Report at 2-3("We informed the company thatwe could notacceptinformation related to these bills as this was new information.").
[292] *See Nippon Steel* at 53(citing *Gerber Food(Yunnan) Co. v. United States*, 491F. Supp. 2d 1326, 1336 (CIT 2007)).
[293] *See, e.g., Final Determination of Sales at Less Than Fair Value: Silica Bricks and Shapes from the People's Republic of China*, 78 FR 70918 (November 27, 2013), and accompanying IDM at Comment 7; *see also Marsan*

The deadlines for providing factual information, as delineated in 19 CFR 351.301, are in place well in advance of verification and thereby serve to provide Commerce sufficient time to review and analyze information provided by interested parties. Therefore, it is critical to Commerce's efficient administration of these proceedings that parties provide the necessary information by the established deadlines or timely request an extension of such deadlines. The CAFC has upheld Commerce's discretion to reject or refuse to consider information that is submitted late in the proceeding.[294] Commerce's enforcement of the AFA provision of the statute under these circumstances is necessary to ensure that "the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[295]

Changfeng did not act to the best of its abilities to comply with Commerce's request for information about its financing. The CAFC in *Nippon Steel* provided an explanation of the "failure to act to the best of its ability," stating that the ordinary meaning of "best" means "one's maximum effort," and that the statutory mandate that a respondent act to the "best of its ability" requires the respondent to do the maximum it is able to do.[296] The CAFC acknowledged, however, that while there is no willfulness requirement, "deliberate concealment or inaccurate reporting" would certainly be sufficient to find that a respondent did not act to the best of its ability, although it indicated that inadequate inquiries to respond to agency questions may suffice as well.[297] Compliance with the "best of its ability" standard is determined by assessing whether a respondent has put forth its maximum effort to provide Commerce with full and complete answers to all inquiries in an investigation.[298] The CAFC further noted that, while the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping.[299] Commerce's enforcement of the AFA provision of the statute under these circumstances is necessary to ensure that "the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[300]

Changfeng asserts we could use facts available to determine the universe of underreported loan interest expenses. In addition, Changfeng asserts that the interest expense represents only a small portion of POI net sales revenue and demonstrates the small impact of this interest on the margin. We disagree. What is important here is the total loan amount, not the amount of interest paid, because the amount of interest paid has no relation to the amount of financing outstanding. For instance, if a company had $100 million in financing and it paid no interest or interest at a very low rate (well below the benchmark interest rate), then its interest expense would be very small even if its loan amount is large. Without the total loan amount, we are unable to calculate a benchmark interest amount, and we are missing the total loan amount because Changfeng withheld this information prior to verification.

Gida Sanayi Ve Ticaret A.S. v. Unites States, 931 F. Supp. 2d 1258, 1280 (CIT 2013) (agreeing that "{t}he purpose of verification is not to collect new information").

[294] *See Dongtai Peak Honey Industry Co., Ltd. v. United States of America*, 777 F. 3d 1343 (Fed. Cir. 2015).

[295] *See* SAA at 870.

[296] *See Nippon Steel* at 1373, 1380-1382.

[297] *Id.*

[298] *Id.*

[299] *Id.*

[300] *See* SAA at 870.

As discussed in further detail, in the section "Use of Facts Otherwise Available and Adverse Inferences," we find that Changfeng failed to provide necessary information regarding its use of Policy Loans to the Aluminum Wire and Cable and that as a result, necessary information with respect to the policy loans is missing. Further, we find that Changfeng withheld this information, failed to provide this information by the deadline for its submission, and significantly impeded the proceeding with respect to this issue. Thus, in accordance with sections 776(a)(1) and 776(a)(2)(A)-(C) of the Act, we determine that the use of FA is warranted in determining the countervailability of Policy Loans received by Changfeng. Moreover, in light of the foregoing, we find that Changfeng failed to act to the best of its abilities in providing requested information that was in its possession, and that the application of AFA is warranted, pursuant to 776(b) of the Act, in determining benefit.

IX. RECOMMENDATION

We recommend approving all of the above positions and adjusting all related countervailable subsidy rates accordingly. If these positions are accepted, we will publish the final determination in the *Federal Register* and will notify the ITC of our determination.

☒	☐
Agree	Disagree

10/18/2019

X 

Signed by: Carole Showers

Carole Showers
Executive Director, Office of Policy
Policy & Negotiations
Enforcement and Compliance

DOC 10

Determinação Final Investigação Original Folhas (Estados Unidos)

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

C-570-054
Investigation
Public Document
E&C/Office IV: YB

DATE: February 26, 2018

MEMORANDUM TO: P. Lee Smith
Deputy Assistant Secretary
for Policy and Negotiations

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

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

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I. SUMMARY

The Department of Commerce (Commerce) determines that countervailable subsidies are being provided above the *de minimis* level to producers and exporters of certain aluminum foil (aluminum foil) from the People's Republic of China (China), as provided for in section 705 of the Tariff Act of 1930, as amended (the Act).[1] Below is the complete list of issues in this investigation for which we received comments from interested parties.

Issues:

Comment 1: Whether Commerce Erred in its Treatment of Manakin
Comment 2: Whether the Record Supports a Finding of Policy Lending
Comment 3: Whether Chinese Commercial Banks are Government Authorities
Comment 4: Whether Commerce's Policy Lending Benchmark Interest Rate Computations are Supported by the Record and Lawful
Comment 5: Whether Commerce's Investigation of Uninitiated Programs is Lawful
Comment 6: Whether Commerce Should Change its Export Buyer's Credit Determination
Comment 7: Whether Commerce Should Use the USD Interest Rate Benchmark for Hong Kong Loans

[1] *See also* section 701(f) of the Act.

Comment 8: Whether Loans Issued in Hong Kong to Hong Kong Companies Are Countervailable
Comment 9: Whether Commerce Should Revise Dingsheng's Sales Denominator
Comment 10: Whether Commerce Should Correct Calculation Errors forDingsheng's Loans
Comment 11: Whether Commerce Should Correct Calculation Errors for Dingsheng's Aluminum and Coal Purchases
Comment 12: Whether Commerce Should Place Interest Rate Benchmarks on the Record That Are Contemporaneous to the POI
Comment 13: Whether Commerce Should Rely on AFA For Subsidies Discovered at Zhongji's verification
Comment 14: Whether Commerce Should Grant Zhongji an Export Value Adjustment
Comment 15: Whether Commerce Improperly Rejected Dingsheng's Benchmark Data
Comment 16: Whether Commerce Should Revise the Benchmarks for Primary Aluminum
Comment 17: Whether the Government of China Provided Sufficient Evidence to Find That Input Suppliers Were Not Government Authorities
Comment 18: Whether CCP Affiliations or Activities by Company Officials Make a Company a Government Authority
Comment 19: Whether the Primary Aluminum and Steam Coal for LTAR Programs are Specific
Comment 20: Whether Commerce Must Use a Tier-One Benchmark for the Primary Aluminum and Steam Coal for LTAR Programs
Comment 21: Whether Dingsheng's Income Tax Deductions for R&D Expenses are Understated
Comment 22: Whether Commerce Selected the Highest Electricity Rate Benchmarks
Comment 23: Whether Commerce Should Apply AFA for Electricity
Comment 24: Whether Commerce Should Adjust the Electricity Benchmark for VAT
Comment 25: Whether Electricity Constitutes General Infrastructure and Provides a Financial Contribution
Comment 26: Whether Commerce Should Rely on Xeneta Data for Freight Benchmark
Comment 27: Whether Commerce Should Find Non-Use of Steam Coal

II. BACKGROUND

A. Case History

On August 14, 2017, we published the *Preliminary Determination* for this investigation.[2] In the *Preliminary Determination*, we calculated above *de minimis* rates for Dingsheng Aluminum Industries (Hong Kong) Trading Co., Ltd. (Dingsheng HK)[3] and Jiangsu Zhongji Lamination

[2] *See Certain Aluminum Foil from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 82 FR 37844 (August 14, 2017) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

[3] Commerce has found the following companies to be cross-owned with Dingsheng HK: Jiangsu Dingsheng New Materials Joint-Stock Co. (Jiangsu Dingsheng), Ltd.; Hangzhou Teemful Aluminum Co., Ltd.(Teemful); Hangzhou Five Star Aluminum Co., Ltd. (Five Star); Hangzhou DingCheng Aluminum Co., Ltd.; Luoyang Longding

Materials Co., Ltd. (Zhongji). The subsidy rates for Loften Aluminum (Hong Kong) Limited (Loften HK) and Manakin Industries, LLC (Manakin Industries),[4] were based entirely on adverse facts available.[5] We conducted verifications of the questionnaire responses submitted by Dingsheng HK and Zhongji between October 9, 2017, and October 23, 2017.[6]

We received case briefs regarding the *Preliminary Determination* from the petitioners,[7] Dingsheng HK, Manakin, Zhongji, and the Government of China on December 14, 2017, and rebuttal briefs from the petitioners, Dingsheng HK, Mahle, Zhongji, and the Government of China on December 19, 2017.[8]

The "Analysis of Programs" and "Subsidies Valuation" sections below describe the subsidy programs and the methodologies used to calculate the subsidy rates for our final determination. Based on our verification findings, we made certain modifications to the *Preliminary Determination*, which are discussed under each program, below. For details of the resulting revisions to Commerce's rate calculations resulting from those modifications, *see* the final calculation memoranda.[9] We recommend that you approve the positions we describe in this memorandum.

Aluminum Co., Ltd.; Hangzhou Dingsheng Industrial Group Co., Ltd.; Hangzhou Dingsheng Import & Export Co., Ltd.; and Walson (HK) Trading Co., Limited. These companies are collectively referred to as Dingsheng.

[4] As discussed in the PDM, Commerce found that Manakin Industries and Suzhou Manakin Aluminum Processing Technology Co., Ltd., effectively function by joint operation as a trading company, and therefore, the rate for Manakin Industries was applicable to Suzhou Manakin Aluminum Processing Technology Co., Ltd.

[5] *See* PDM at 20-26.

[6] *See* Commerce Memoranda, "Verification of the Questionnaire Responses of Dingsheng Aluminum Industries (Hong Kong) Trading Co., Ltd.: Countervailing Duty Investigation of Certain Aluminum Foil from the People's Republic of China," (Dingsheng Verification Report) and "Verification of the Questionnaire Responses of Jiangsu Zhongji Lamination Materials Co., Ltd.: Countervailing Duty Investigation of Certain Aluminum Foil from the People's Republic of China," (Zhongji Verification Report), both dated November 25, 2017.

[7] The petitioner to this investigation is the Aluminum Association Trade Enforcement Working Group (the petitioners).

[8] *See* Petitioners' Case Brief, "Certain Aluminum Foil from the People's Republic of China: Petitioners' Case Brief," dated December 14, 2017 (Petitioners' Case Brief); Dingsheng's Case Brief, "Dingsheng Administrative Case Brief: Countervailing Duty Investigation on Aluminum Foil from the People's Republic of China (C-570-054)," dated December 14, 2017 (Dingsheng's Case Brief); Manakin's Case Brief, "Certain Aluminum Foil from the People's Republic of China: Case Brief of Manakin Industries," dated December 14, 2017 (Manakin's Case Brief); Zhongji's Case Brief, "Certain Aluminum Foil from the People's Republic of China: Case Brief," dated December 14, 2017 (Zhongji's Case Brief); the Government of China's Case Brief, "Certain Aluminum Foil from China; CVD Investigation; GOC Case Brief," dated December 14, 2017 (Government of China's Case Brief); Petitioners' Rebuttal Brief, "Certain Aluminum Foil from the People's Republic of China: Petitioners' Rebuttal Brief," dated December 14, 2017 (Petitioners' Rebuttal Brief); Dingsheng's Rebuttal Brief, "Dingsheng Rebuttal Brief: Countervailing Duty Investigation on Aluminum Foil from the People's Republic of China (C-570-054)," dated December 19, 2017 (Dingsheng's Rebuttal Brief); Mahle's Rebuttal Brief, "Certain Aluminum Foil from the People's Republic of China: Rebuttal Case Brief of Mahle Industries, Incorporated, Mahle Behr Charleston, Inc., and Mahle Behr Dayton, LLC" dated December 19, 2017 (Mahle's Rebuttal Brief); Zhongji's Rebuttal Brief, "Certain Aluminum Foil from the People's Republic of China: Rebuttal Brief," dated December 19, 2017 (Zhongji's Rebuttal Brief); the Government of China's Rebuttal Brief, "Certain Aluminum Foil from China; CVD Investigation; GOC Rebuttal Brief," dated December 19, 2017 (Government of China's Rebuttal Brief).

[9] *See* Commerce Memoranda, "Countervailing Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Final Determination Calculation Memorandum for Dingsheng Aluminum (Hong Kong) Trading Co., Ltd.," dated February 26, 2018 (Dingsheng Final Calculation Memorandum) and "Countervailing Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Final Determination Calculation

B. Period of Investigation

The POI for which we are measuring subsidies is January 1, 2016, through December 31, 2016.

III. SCOPE OF THE INVESTIGATION

The product covered by this investigation is certain aluminum foil from China. For a full description of the scope of this investigation, see in the accompanying *Federal Register* notice at Appendix II.

IV. SCOPE COMMENTS

We invited parties to comment on Commerce's Preliminary Scope Memorandum.[10] Commerce has reviewed the briefs submitted by interested parties, considered the arguments therein, and has made changes to the scope of the investigation. For further discussion, *see* Commerce's Final Scope Decision Memorandum.[11]

V. SUBSIDIES VALUATION INFORMATION

A. Allocation Period

Commerce has made no changes to the allocation period and the allocation methodology used in the *Preliminary Determination* and no issues were raised by interested parties in case briefs regarding the allocation period or the allocation methodology. For a description of the allocation period and the methodology used for this final determination, *see* the *Preliminary Determination*.[12]

B. Attribution of Subsidies

Commerce has made no changes to the methodologies used in the *Preliminary Determination* for attributing subsidies. For a description of the methodology used for this final determination, *see* the *Preliminary Determination* and accompanying PDM and the final analysis memoranda.[13]

Memorandum for Zhongji Lamination Materials Co., Ltd," dated February 26, 2018 (Zhongji Final Calculation Memorandum).

[10] *See* Memorandum, "Certain Aluminum Foil from the People's Republic of China: Scope Comments Decision Memorandum for the Preliminary Determinations," dated October 26, 2017, and filed to ACCESS on October 30, 2017.

[11] *See* Memorandum, "Certain Aluminum Foil from the People's Republic of China: Final Scope Decision Memorandum," dated concurrently with this memorandum.

[12] *See* PDM at 7.

[13] *Id.*; *see also* Dingsheng Final Calculation Memorandum and Zhongji Final Calculation Memorandum.

C. Denominators

In accordance with 19 CFR 351.525(b), Commerce considers the basis for the respondent's receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondent's export or total sales, or portions thereof. The denominators we used to calculate the countervailable subsidy rates for the various subsidy programs described below are explained in the calculation memorandum prepared for this final determination.[14]

VI. BENCHMARKS AND DISCOUNT RATES

Interested parties submitted a number of comments regarding the benchmarks used in the *Preliminary Determination* in their case and rebuttal briefs.[15] Commerce has considered these comments and has made certain changes to the benchmarks used previously. Specifically, we have made adjustments to the primary aluminum and electricity benchmarks; no other changes were made to any of the benchmarks. For a more in-depth discussion of the comments and Commerce's analysis, as well as the changes made to the benchmarks, *see* Comments 16 and 22. For a description of all other unchanged benchmarks and discount rates used for these final results, *see* the *Preliminary Determination* and the accompanying PDM.[16]

VII. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

A. Legal Standard

Sections 776(a)(1) and (2) of the Act provide that Commerce shall, subject to section 782(d) of the Act, apply "facts otherwise available" if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.[17]

Where Commerce determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that Commerce will so inform the party submitting the response and will, to the extent practicable, provide that party with an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, Commerce may disregard all or part of the original and subsequent responses, as appropriate.

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[14] *Id.*

[15] *See* the Government of China's Case Brief, Dingsheng's Case Brief, Zhongji's Case Brief, the Government of China's Rebuttal Brief, Mahle's Rebuttal Brief, and Petitioners' Rebuttal Brief.

[16] *See* PDM at 12-18.

[17] Under the Trade Preferences Extension Act of 2015, numerous amendments to the AD and CVD law were made, including amendments to sections 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act, as summarized below. *See Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362, dated June 29, 2015. *See also Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015). The amendments are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.

Section 776(b) of the Act provides that Commerce may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In so doing, and under the TPEA, Commerce is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information. Furthermore, 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 countervailing duty investigation, a previous administrative review, or other information placed on the record.

Finally, under section 776(d)(1)(A) of the Act, when applying an adverse inference, Commerce may use any countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, Commerce may use a CVD rate for a subsidy program from a proceeding that the administering authority considers reasonable to use. The TPEA also makes clear that, when selecting facts available with an adverse inference, Commerce is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.[18]

Moreover, under our CVD AFA methodology, we strive to assign AFA rates that are the same in terms of the type of benefit, (*e.g.*, grant to grant, loan to loan, indirect tax to indirect tax) because these rates are relevant to the respondent. Additionally, by selecting the highest rate calculated for a cooperative respondent we arrive at a reasonably accurate estimate of the respondent's actual rate, and a rate that also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[19] Finally, Commerce will not use information where circumstances indicate that the information is not appropriate as AFA.

B. Application of Facts Otherwise Available and Adverse Facts Available

Commerce relied on "facts otherwise available," including adverse facts available (AFA), for several findings in the *Preliminary Determination.*[20] For a description of these decisions, *see* the *Preliminary Determination*. Commerce has not made any changes to its decisions in the *Preliminary Determination* to use facts otherwise available and AFA. We also address AFA in Comment 1 below.

VIII. ANALYSIS OF PROGRAMS

A. Programs Determined to Be Countervailable

[18] *See* section 776(d)(1) of the Act; *see also* section 502(3) of the TPEA.
[19] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. I, at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199 (SAA).
[20] *See* PDM at 18-42.

1. Policy Loans to the Aluminum Foil Industry

The petitioners, the Government of China, Dingsheng, Zhongji and Mahle submitted comments in either their case or rebuttal briefs regarding this program and the calculation methodology. These are addressed in Comments 2, 3, 4, 7, 8, 10, and 12. As discussed in Comment 10, Commerce has made certain changes to the methodology used to calculate Dingsheng's subsidies under this program since the *Preliminary Determination*.

Dingsheng: 3.62 percent *ad valorem*
Zhongji: 3.17 percent *ad valorem*

2. Export Seller's Credit

No parties commented on this program. Commerce has made no changes to the methodology used to calculate or attribute subsidies under this program since the *Preliminary Determination*.

Dingsheng: 0.82 percent *ad valorem*

3. Export Buyer's Credit

The petitioners, the Government of China, Dingsheng, Zhongji and Mahle submitted comments in either their case or rebuttal briefs regarding this program. As explained below in Comment 6, Commerce has made no changes to the methodology used to calculate or attribute subsidies under this program since the *Preliminary Determination*.

Dingsheng: 10.54 percent *ad valorem*
Zhongji: 10.54 percent *ad valorem*

4. Income Tax Reduction for HNTEs

No parties commented on this program. Commerce has made no changes to the methodology used to calculate or attribute subsidies under this program since the *Preliminary Determination*.

Dingsheng: 0.25 percent *ad valorem*
Zhongji: 0.32 percent *ad valorem*

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

The petitioners submitted comments in their case brief regarding our calculation methodology for this program. No other parties commented on this issue. As explained below in Comment 21, Commerce has changed the methodology used to calculate or attribute subsidies under this program.

Dingsheng: 0.04 percent *ad valorem*
Zhongji: 0.16 percent *ad valorem*

6. Import Tariff and VAT Exemptions on Imported Equipment for Encouraged Industries

No parties commented on this program. Commerce has made no changes to the methodology used to calculate or attribute subsidies under this program since the *Preliminary Determination*.

Dingsheng: 0.01 percent *ad valorem*
Zhongji: 0.75 percent *ad valorem*

7. VAT Rebates on Domestically-Produced Equipment

No parties commented on this program. Commerce has made no changes to the methodology used to calculate or attribute subsidies under this program since the *Preliminary Determination*.

Zhongji: 0.06 percent *ad valorem*

8. Government Provision of Land for LTAR

The petitioners and Zhongji commented on this program in their case or rebuttal briefs. As explained below in Comment 13, Commerce has made no changes to the methodology used to calculate or attribute subsidies under this program since the *Preliminary Determination*.

Dingsheng: 0.84 percent *ad valorem*
Zhongji: 1.12 percent *ad valorem*

9. Government Provision of Inputs for LTAR
   a. Primary Aluminum for LTAR
   b. Steam Coal for LTAR
   c. Electricity for LTAR

The petitioners, the Government of China, Dingsheng, Zhongji, and Mahle submitted comments in their case or rebuttal briefs regarding this program. As explained below in Comment 22, Commerce has modified its methodology for calculating a subsidy rate for this program from the *Preliminary Determination*.[21]

a. Primary Aluminum for LTAR

Dingsheng: 2.62 percent *ad valorem*

b. Steam Coal for LTAR

Dingsheng: 0.12 percent *ad valorem*

[21] *See* PDM at 34-35.

Zhongji: less than 0.005 percent *ad valorem*[22]

c. Electricity for LTAR

Dingsheng: 0.52 percent *ad valorem*
Zhongji: 0.73 percent *ad valorem*

10. "Other Subsidies"

The Government of China commented on this program in its case brief. As explained below in Comment 5, Commerce has made no changes to the methodology used to calculate or attribute subsidies under this program since the *Preliminary Determination*.

Dingsheng: 0.60 percent *ad valorem*
Zhongji: 0.29 percent *ad valorem*

B. Programs Determined to Be Not Used by, or Not to Confer a Measurable Benefit to, Dingsheng and/or Zhongji

1. Preferential Loans for SOEs
2. Export Loans from Chinese State-Owned Banks
3. Equity Infusions into Nanshan Aluminum
4. Dividends for SOEs from Distributing Dividends
5. Income Tax Concessions for Enterprises Engaged in Comprehensive Resource Utilization
6. Income Tax Deductions/Credits for Purchase of Special Equipment
7. Stamp Tax Exemption on Share Transfers Under Non-Tradeable Share Reform
8. Deed Tax Exemption for SOEs Undergoing Mergers or Restructuring
9. Government of China and Sub-Central Government Subsidies for the Development of Famous Brands and China World Top Brands
10. The State Key Technology Renovation Project Fund
11. Foreign Trade Development Fund Grants
12. Grants for Energy Conservation and Emission Reduction
13. Grants for the Retirement of Capacity
14. Grants for the Relocation of Productive Facilities
15. Grants for Nanshan Aluminum

IX. ANALYSIS OF COMMENTS

[22] Consistent with past practice, we did not include this program in our net subsidy rate calculations for Zhongji because the benefit resulted in a rate that is less than 0.005 percent *ad valorem. See e.g., Countervailing Duty Investigation of Fine Denier Polyester Staple Fiber from the People's Republic of China: Final Affirmative Determination*, 83 FR 3120 (Dep't of Commerce January 23, 2018) (Fine Denier PSF from China), and accompanying Issues and Decision Memorandum at 8.

Comment 1: Whether Commerce Erred in its Treatment of Manakin

Manakin's Case Brief:

- Manakin was improperly selected as a mandatory respondent throughout this proceeding. Manakin is a Virginia company, not a Chinese exporter.[23]
- Commerce's reviews of the very same CBP data in its first respondent selection and its second respondent selection were inconsistent. Without any explanation, the differing approach is arbitrary and unlawful.[24]
- Suzhou Manakin was not selected as a mandatory respondent and it is not cross-owned with Manakin. Therefore, Commerce erred in requiring a questionnaire response from Suzhou Manakin and any margin that may apply to Suzhou Manakin cannot be applied to Manakin.[25]
- Neither Manakin nor Suzhou Manakin satisfy the statutory requirement that mandatory respondents are "representative of exporters and producers accounting for the largest volume of the subject merchandise from the exporting country. . ."[26]
- The additional U.S. Customs and Border Protection (CBP) document placed on the record by Commerce confirmed Manakin's channels of distribution, none of which made Manakin a proper respondent to this proceeding. Further, the CBP data do not indicate any role of Suzhou Manakin in the sales identified by Commerce as justifying its selection of Manakin.[27]
- The petitioners have not provided any argument or factual information rebutting the information placed on the record by Manakin explaining why Manakin was selected in error.[28]
- Suzhou Manakin's exports were not among those triggering the mistaken designation of Manakin Industries as an exporter.
- Manakin has cooperated fully contrary to the conclusion that it withheld information by not providing a response to the questionnaire for three unaffiliated Chinese producers. Nowhere in the questionnaire does it require Manakin to gather information from unrelated producers.[29]
- The record does not justify applying AFA to Manakin based on Suzhou Manakin's inability to get responsive information from unrelated Chinese mills.[30]
- Assuming *arguendo*, that Manakin and Suzhou Manakin do operate as a "joint trading company," though this type of entity does not appear in the statute or Commerce's regulations, this import channel does not support the selection of Manakin as a mandatory respondent.[31]

[23] *See* Manakin's Case Brief at 2-5.
[24] *Id.*
[25] *Id.*
[26] Section 777A(e)(2)(A)(ii) of the Act. *See* Mankin's Case Brief at 4.
[27] *See* Manakin's Case Brief at 2-5.
[28] *Id.*
[29] *Id.* at 8.
[30] *Id.* at 9-10.
[31] *Id.* at 11.

- Because it is not an exporter from China, and was not the importer in the case of the sales forming the basis of Commerce's erroneous selection of Manakin as a mandatory respondent, Manakin Industries can never ask for an administrative review to alter this outcome in the future.[32]

Petitioners' Rebuttal Brief:

- Given the information on the record, which is business proprietary in nature, Manakin's incomplete statements concerning the involvement of Suzhou Manakin in supporting Manakin's sales activities, and both entities' refusal to provide questionnaire responses from the three unaffiliated Chinese producers, Commerce reasonably relied on AFA in assigning a subsidy margin to both entities in the *Preliminary Determination*.[33]

Commerce's Position: Consistent with the *Preliminary Determination*, we continue to rely on AFA in determining a subsidy rate for Suzhou Manakin and Manakin Industries.[34] We find that the record, including the additional CBP documents pertaining to Manakin's entries,[35] does not support Manakin Industries' contention that it operates strictly as a U.S. importer. Documentation and descriptions of these sales processes demonstrate that Manakin Industries purchases the subject merchandise from entities in China and resells it prior to importation into the United States.[36] This is consistent with other indications in the record pointing to Manakin Industries operating in China through either actual staff or agents acting on its behalf.[37] While Manakin Industries claims that some of this information is not what it appears to be, we continue to find these claims unpersuasive.

When Commerce initially requested that Manakin Industries clarify the relationship between Manakin Industries and Suzhou Manakin and provide supporting documentation, Manakin Industries claimed that Suzhou Manakin was not involved in the shipments that Commerce is attributing as Manakin Industries' exports.[38] Instead, Manakin Industries stated that Manakin Industries arranges purchases of subject merchandise from unaffiliated mills and exporters, which is then exported to the United States.[39] We requested clarification, a second time, of the precise role that Suzhou Manakin maintains in Manakin Industries' supply chain. In the Manakin Industries July 17, 2017 SQR, Manakin Industries explained that Suzhou Manakin acts as a liaison between Manakin Industries and the unrelated mills, and Suzhou Manakin provides

[32] *Id.* at 13.
[33] *See* Petitioners' Rebuttal Brief at 63-65. *See also* PDM at 21-22.
[34] *See* PDM at 20-26.
[35] *See* Memorandum, "Re: Countervailing Duty Investigation of Certain Aluminum Foil from the People's Republic of China: U.S. Customs and Border Protection Documentation," dated September 14, 2017.
[36] *See* Manakin Industries' June 2, 2017 Supplemental Affiliation Response (Manakin Industries June 2, 2017 SAFFR) at SQ-1.
[37] Certain record information indicative of this situation is business proprietary in nature and, thus, cannot be publicly identified here.
[38] *See* Manakin Industries SAFFR at SQ-1; *see also* Manakin Industries May 26, 2017 Affiliation Response (Manakin Industries AFFR) at 5.
[39] *Id.*

"sourcing and logistics support" to Manakin Industries' sales activity.[40] With respect to Suzhou Manakin's operations, Suzhou Manakin stated that all of its exports were made to Manakin Industries and that it purchased subject merchandise from three unaffiliated Chinese producers during the POI.[41]

Based on Commerce's assessment of the record information as indicating that Manakin Industries and Suzhou Manakin undertake joint operations to purchase and export subject merchandise, *i.e.*, they jointly function as trading companies, we sought information from both companies pursuant to the requirements under 19 CFR 351.525(c).[42] As Suzhou Manakin reported exporting subject merchandise produced by Chinese companies, Manakin Industries and Suzhou Manakin, as joint trading companies, were required to respond on behalf of these three unaffiliated Chinese producers.[43] Instead of providing the requested responses, they refused to provide the three requested responses from the unaffiliated Chinese producers, stating that they lack "the budget that would be required to answer the questionnaire for the three unrelated companies."[44] Commerce requires responses from producers of the subject merchandise from which trading companies sourced, in order to cumulate the benefits provided to the producers with the benefits (if any) provided to the trading companies, pursuant to 19 CFR 351.525(c). Regardless of whether a particular company is selected as a mandatory respondent, Commerce must conduct the same level of analysis of each producer's subsidization as it would for a mandatory respondent.[45] Thus, without a full response from their producers, we are unable to calculate a subsidy rate for Manakin Industries and Suzhou Manakin as trading companies. In sum, Commerce's ability to determine the amount of subsidization of subject merchandise exported by Manakin Industries and its joint trading company Suzhou Manakin was stymied by the incomplete and evasive responses from the companies.

Accordingly, we determine that Manakin Industries and Suzhou Manakin withheld necessary information that was requested of them and significantly impeded this proceeding. Therefore, Commerce continues to rely on facts otherwise available in making our final determination with respect to Suzhou Manakin and Manakin Industries, pursuant to sections 776(a)(2)(A)-(C) of the Act. Moreover, we determine that an adverse inference is warranted, pursuant to section 776(b) of the Act, because, by refusing to provide responses to Commerce's Initial CVD Questionnaire for the three unaffiliated Chinese producers, we find that Manakin Industries and Suzhou Manakin did not cooperate to the best of their abilities to comply with the request for information in this investigation. Accordingly, we find that use of AFA is warranted to ensure that Manakin

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[40] *See* Manakin Industries' July 24, 2017 Supplemental Questionnaire Response (Manakin Industries July 24, 2017 SQR) at SQ-3.
[41] *See* Manakin Industries' June 30, 2017 Initial Questionnaire Response (Manakin Industries June 30, 2017 IQR) at 4, Section II.
[42] *See* Commerce Letter re: Countervailing Duty Questionnaire, dated April 28, 2017 (Initial CVD Questionnaire) at Section III, "Affiliated Companies" section.
[43] In our Initial CVD Questionnaire, we instructed Manakin Industries to provide a complete response to the questionnaire. In its May 26, 2017 response, Manakin Industries reported that it had a close supplier relationship with Suzhou Manakin. In a questionnaire to Manakin Industries dated June 9, 2017, we instructed Manakin Industries to provide a complete questionnaire response for Suzhou Manakin.
[44] *See* Manakin Industries June 30, 2017 IQR at 4, Section II.
[45] *See* 19 CFR 351.525(b)(6)(i)-(vi), 351.525(b)(7), and 351.525(c).

Industries and Suzhou Manakin do not obtain a more favorable result by failing to cooperate than if they had fully complied with our request for information. In applying AFA, we attributed one AFA rate to the combined Manakin Industries/Suzhou Manakin entity.

Comment 2: Whether the Record Supports a Finding of Policy Lending

Government of China's Case Brief:

- Commerce cited in its *Preliminary Determination* that almost all of the national and provincial five-year plans placed emphasis on non-ferrous metals industries for development. However, the industrial policies on which Commerce relied are overly broad and are not specifically pertinent to the aluminum foil industry.[46]
- Commerce quoted out of context the provisions provided under *Guidelines.* It is undisputable that the *Guidelines* were promulgated to curb the blind expansion of the primary aluminum sector in China.[47] Further, the provision cited by Commerce is only pertinent to alumina and primary aluminum sectors, not the aluminum foil industry.
- Commerce failed to establish a link between the alleged government policy to "encourage" the aluminum foil industry and the bank loans received by the respondents.
- Its *Preliminary Determination* also ignores record information concerning regulatory initiatives and reforms that contradicts Commerce's policy lending finding.[48] Further, record information shows that the structure of the banking sector in China is now diversified and competitive.[49]
- State-owned commercial banks (SOCBs) only amount to a very small portion of the banking sector in China when compared to the large number of privately-owned banks, foreign-invested banks and joint-ownership commercial banks. The record evidence indicates that significant loans received by the mandatory respondents were from publicly-listed commercial banks.[50]

Petitioners' Rebuttal Brief:

- Record evidence clearly indicates the Government of China's support for the aluminum foil industry, as well as for the broader alumina and primary aluminum sectors.[51] The Government of China's promotion of the aluminum foil industry is apparent in plans directed at the aluminum industry overall.[52]

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[46] *See* Government of China's Case Brief at 50 (citing PDM at 43).
[47] *Id.* at 50 (citing *Notice of Guidelines on Accelerating the Adjustment of Aluminum Industry Structure (2006)* (*Guidelines*) at Government of China June 12, 2017 IQR – Zhongji at Exhibit A-21).
[48] *Id.* at 51-52 (citing Government of China's June 12, 2017 Initial Questionnaire Response (Government of China June 12, 2017 IQR – Zhongji) at 3 - 7, and Exhibits A1-1, A1-2, A1-3, A1-6, A1-7, and A1-8).
[49] *Id.* at 53 (citing Government of China June 12, 2017 IQR – Zhongji at 8, and Exhibit A1-9 and A1-10).
[50] *Id.*
[51] *See* Petitioners' Rebuttal Brief at 50 (citing "Petition for the Imposition of Countervailing Duties on Imports of Certain Aluminum Foil from the People's Republic of China," dated March 9, 2017 (Petition) at Volume III at CVD Exhibit-26 (at VIII.7) "Catalogue for the Guidance of Industrial Structure Adjustment" (2005); PDM at 44 "Nonferrous Metal Development Plan 2016-2020").
[52] *Id.* (citing Government of China June 12, 2017 IQR – Zhongji at A1-19, at *Guidelines*).

- The Government of China's use of SOCBs to encourage the development of the Chinese aluminum industry has been established by Commerce in prior CVD investigations involving aluminum extrusions.[53]
- There is substantial record evidence to support Commerce's finding that China's financial system does not operate under market principles.[54]

Mahle's Rebuttal Brief:

- Interested Party Mahle restates and affirms its support for the Government of China's arguments.[55]

Commerce's Position: Consistent with the *Preliminary Determination,* we continue to find that the loans received by aluminum foil producers from SOCBs were made pursuant to government directives. We disagree with the Government of China's contention that Commerce erred in countervailing policy lending in the *Preliminary Determination*. In general, Commerce looks to whether government plans or other policy directives lay out objectives or goals for developing the industry and call for lending to support objectives or goals.[56] We find this standard has been met in the instant investigation.

Commerce has found, in this and in prior proceedings, that the Government of China, through SOCBs, encourages the development of the aluminum industry.[57] The record of this proceeding continues to support this finding. Within the "*National 12th Five-Year Plans of Economic and Social Development Plan* (2011-2015)" is the "*Aluminum Industry Development Plan*."[58] The objective of the plan is, "for speeding up the transformation of aluminum industry development and guiding the healthy and sustainable development of aluminum industry."[59] This plan aims to "increase technological innovative ability" in the aluminum industry sector by taking "efforts to break through the constraints of aluminum industry, the core technology and common basic technology to improve the core competitiveness of the industry."[60] The plan explicitly links the Government of China's aluminum industry development policy with its finance and banking policies, as it states that "{t}he connection of aluminum industry policy and finance and taxation, banking, trade, land, environmental production, safe production, electricity, and other policies should be strengthened."[61] It further states that "{f}iscal and taxation policy support should be given in the high-tech industry, energy saving emission reduction, red mud and other was

[53] *Id.* (citing *Aluminum Extrusions from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 76 FR 18521 (April 4, 2011) (Aluminum Extrusions from China Investigation)*, and accompanying Issues and Decision Memorandum (IDM) at Comment 28).
[54] *Id.* at 53 (citing Commerce Memorandum, Review of China's Financial System Memorandum, dated July 21, 2017) (Financial System Memo).
[55] *See* Mahle's Rebuttal Brief at 16-17.
[56] *See, e.g., Aluminum Extrusions from China Investigation*, and accompanying IDM at Comment 28.
[57] *Id.*
[58] *See* Government of China's June 12, 2017 IQR – Zhongji at 9 and Exhibit A1-17.
[59] *Id.*
[60] *Id.*
[61] *Id.*

comprehensive utilization of new technologies, new product development, and so on."[62] The Government of China makes clear that industrial authorities "at all levels shall strengthen the implementation of the aluminum industry policy, planning and standards, and solve any significant problems occurring in the development of the industry in a timely manner."[63] Thus, this plan, which is specific to the development of the aluminum industry, makes clear the Government of China's policy to encourage the industry's development *via* finance policy and banks, and it directs authorities "at all levels" to strength the implementation of its aluminum industry policy.

In its brief, the Government of China asserts that Commerce has quoted the provisions of the *"Notice of Guidelines on Accelerating the Adjustment of Aluminum Industry Structure (2006)"* out of context, as these were promulgated to curb the blind expansion of the industry. However, these guidelines also state that, "In accordance with the Catalogue for Guiding the Adjustment of Industry Restructuring (Version 2015), high and precious aluminum plates, strips, foils, and high-speed ribbons and large-scale aluminum alloy sections used for rail transit and other production technologies and equipment of high value-added products shall be developed as the key point; the new technologies and techniques of high efficiency, low cost and energy consumption, short process and environmental aluminum fabrication shall be promoted."[64] While there may be language in this plan to "curb blind expansion," this plan specifically identifies aluminum foil for development and growth.

The Government of China further argues that the non-ferrous metal development plans are not specific to aluminum foil. However, the 2009-2011 "*Restructuring and revitalization plan of non-ferrous metal industry*" plan discusses improving the innovation ability, high-end product development, production and application technology to promote industrial technological progress and improve product quality of products including the "deep processing products of aluminum."[65] The *"Nonferrous Metal Development Plan (2016-2020)"* identifies aluminum as included in the plan, and names as a problem the inadequate technological innovation capability of specific products, including aluminum panels with foil.[66] The plan also identifies "high strength and high ductility aluminum foil" for priority development.[67] Also included in the plan is a strengthening of financial support, as it states: "The convergence of financial and tax, finance, trade and other policies and industrial policy shall be strengthened to promote bank-enterprise docking and financial cooperation. For those backbone enterprises who meet the industry standard conditions, environmental protection and safety production standards with market prospects and operating efficiency, financing support shall be increased under the premise that the risks are controllable and businesses are sustainable."[68]

As discussed in the *Preliminary Determination*, additional record evidence indicates financial support is directed specifically toward certain encouraged industries, including the aluminum

[62] *Id.*
[63] *Id.*
[64] *Id.* at Exhibit A1-19.
[65] *Id.* at Exhibit A1-20.
[66] *Id.* at Exhibit A1-21.
[67] *Id.*
[68] *Id.*

industry.[69] The *Preliminary Determination* also established a link between the alleged government policy to encourage the aluminum foil industry and the bank loans received by the respondents. The "*Decision of the State Council on Promulgating the Interim Provisions Promoting Industrial Structure Adjustment for Implementation* (Guo Fa {2005} No. 40)" (Decision 40) indicates that the "Catalogue for the Guidance of Industrial Structure Adjustment" is an important basis for investment guidance and government administration of policies such as public finance, taxation, and credit."[70] Decision 40 further indicates that projects in "encouraged" industries shall be provided credit support in compliance with credit principles."[71] The "*Catalogue for the Guidance of Industrial Structure Adjustment*" (2005) specifically includes aluminum, and the development of production technology within it, as encouraged.[72] Thus, taking into account all of the evidence, we determine that the Government of China's industrial plans clearly indicate state support and, specifically, credit or financing support for the producers of aluminum foil.

We also find that loans from SOCBs under this program constitute financial contributions, pursuant to sections 771(5)(B)(i) and 771(5)(D)(i) of the Act, because SOCBs are "authorities." We disagree with the Government of China that Commerce ignored information concerning regulatory reforms that contradict our policy lending finding. The significance of the referenced "*Capital Rules*" and "*Guidelines on Internal Control of Commercial Banks*" is unclear given the high and increasing level of debt relative to GDP, indicating that credit is being put to increasingly unproductive use; the rising number of troubled and non-performing loans; and large-scale systemic credit misallocation, including overallocation of credit to SOEs and an increasing share of loans going to firms with low debt-service capacity. These factual findings are detailed in the Financial System Memo, as is the fundamentally unchanged institutional relationship between the government (Party-state) and the financial sector (including SOCBs and trust companies) that underlies these chronic and systemic debt and NPL problems that China struggles to resolve today.

Reforms are intended only to improve the performance and efficiency of the existing system, not to fundamentally change it or the state's role. When the Government of China's objective of improving the performance and efficiency of the financial system conflicts with the Government of China's industrial policy and macro-stabilization objectives and use of SOCBs and trust companies as government policy instruments, which they often do, the latter objectives take precedence and the former a back seat. This is why there is space only for incremental reform that preserves the current institutional order (*e.g.*, tightening capital requirements) but not for reforms that would systemically undermine it (*e.g.*, full operational independence for SOCBs). This is a clear policy choice made by the government (Party-state), not a legacy problem or an economic development hurdle that China is having difficulty overcoming. Because there has been no fundamental change in the state's pervasive role in the financial system and the institutional relationships that bind the government and the principal actors in that system, Commerce's properly determined, as detailed in the Financial System Memo, that the Chinese financial system is distorted.

[69] *See* PDM at 42-44.
[70] *See* Government of China June 12, 2017 IQR Exhibit A1-23 at Chapter III Article 12.
[71] *Id.*, at Chapter III Articles 13, 14, and 17.
[72] *See* Government of China July 5, 2017 SQR Exhibit S-7 at Section I.VII.7.

Comment 3: Whether Chinese Commercial Banks are Government Authorities

Government of China's Case Brief:

- Chinese commercial banks are not "government authorities." Commerce's *Preliminary Determination* fails to satisfy U.S. obligations under the World Trade Organization (WTO) Subsidies and Countervailing Measures (SCM) Agreement.[73] There is an eleven-year gap between the POI in *CFS Paper from China* and the POI of the instant proceeding. The mere fact that a government is the majority shareholder of an entity does not demonstrate that the government exercises meaningful control over the product of that entity, much less that the government has bestowed it with government authority."[74]
- Commerce's unfounded presumption that ownership alone indicates that the entity is a government entity plainly fails to company with U.S. WTO obligations.[75]

Petitioners' Rebuttal Brief:

- As a threshold matter, WTO Appellate Body rulings are not binding on Commerce. Under relevant U.S. law, section 771(5)(B) of the Act defines "authority" to mean "a government of a country or any public entity within the territory of the country." Accordingly, Commerce has developed a "longstanding practice of treating most government-owned corporations as the government itself." In this investigation, the Government of China has not presented any factual information that the SOCBs that provided loans to the subject producers are not controlled by the government. [76]
- Commerce has a longstanding practice of treating most government-owned corporations as the government itself.[77]
- The Government of China has not presented any factual information that the SOCBs that provided loans to the subject producers are not controlled by the Government of China.[78]

Commerce's Position: We find that the Government of China had a policy in place to encourage the development of the production of aluminum foil through policy lending, and further, that Chinese SOCBs are authorities under the countervailing duty law. When examining a policy lending program, Commerce looks to whether government plans or other policy directives lay out objectives or goals for developing the industry and call for lending to support

[73] *See* Government of China's Case Brief at 55 (citing United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China, WT/DS379/AB/R (March 11, 2011) (Appellate Body Report – Certain Products from China at para. 354).
[74] *Id.* at 55. *See also Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 72 FR 60645 (October 25, 2007) (*CFS Paper from China*).
[75] *Id.* at 55 (citing Appellate Body Report – Certain Products from China at para. 319; United States – Countervailing Duty Measures on Certain Products from China, WT/DS437/R (July 14, 2014) (Panel Report - Certain Products from China) at para 7.75; United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India, WT/DS436/17 (December 8, 2014) at para. 4.10).
[76] *See* Petitioners' Rebuttal Brief at 54 (citing *Countervailing Duties; Final Rule*, 63 FR 65348, 65402 (November 25, 1998) (*Preamble).*
[77] *Id.*
[78] *Id.* (citing Zhongji's June 12, 2017 Initial Questionnaire Response (Zhongji June 12, 2017 IQR) at 4-9).

such objectives or goals. Where such plans or policy directives exist, then it is our practice to find that a policy lending program exists that is *de jure* specific to the targeted industry (or producers that fall under that industry) within the meaning of section 771(5A)(D)(i) of the Act. Once that finding is made, we rely upon the analysis undertaken in *CFS Paper from China* to further conclude that national and local government control over the SOCBs render the loans a government financial contribution.[79] In *CFS from China*, Commerce explained why SOCBs are "authorities" within the meaning of section 771(5)(B) of the Act. Contrary to the Government of China's arguments made there, which are reiterated here, our findings were not, and are not, based upon government ownership alone. For example, we stated:

> ... information on the record indicates that the {Chinese} banking system remains under State control and continues to suffer from the legacies associated with the longstanding pursuit of government policy objectives. These factors undermine the SOCBs ability to act on a commercial basis and allow for continued government control resulting in the allocation of credit in accordance with government policies. Therefore, treatment of SOCBs in China as commercial banks is not warranted in this case.

In *Drill Pipe from China* and *Oil Country Tubular Goods from China*, Commerce established a link between the Government of China policy of "promoting" a specific industry and policy loans to that sector from SOCBs.[80] As discussed above, at Comment 2, record evidence indicates that financial support directed specifically toward certain encouraged industries, including the aluminum foil industry, does in fact exist. Further, the SOCBs act in accordance with these government policies and effectuate government interests in providing the lending, and therefore they are "authorities" within the meaning of section 771(5)(B) of the Act.[81]

Regarding the Government of China's statements concerning *US-CVD I*, we note that the Appellate Body in that dispute affirmed Commerce's finding that SOCBs are "public bodies" or "authorities" because they pursue and effectuate government policies. Commerce's determination in this investigation that the Chinese banks at issue are "authorities" within the meaning of section 771(5)(B) of the Act is in accordance with U.S. law, which is consistent with our WTO obligations.

The Government of China argues that Commerce is relying on outdated findings to support its decision that SOCBs are "authorities," but Commerce updated its analysis of the Chinese banking sector in 2017, and we continue to conclude that the Government of China uses SOCBs

[79] *See CFS Paper from China*, and accompanying IDM at Comment 8.
[80] *See Drill Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011) (*Drill Pipe from China)*, and accompanying IDM at 15-17; *Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 75 FR 57444 (September 21, 2010), and accompanying IDM at 15-16; and *Certain Oil Country Tubular Goods from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination*, 74 FR 64045 (December 7, 2009) (*Oil Country Tubular Goods from China*), and accompanying IDM at 12.
[81] *See, e.g., Coated Paper from China,* and accompanying IDM at Comment 1.

to fulfill government functions.[82] Therefore, we continue to find that loans from SOCBs under this program constitute financial contributions, pursuant to sections 771(5)(B)(i) and 771(5)(D)(i) of the Act, because SOCBs are "authorities"; thus, we have made no changes to our calculations for policy loans for the final determination.

Comment 4: Whether Commerce's Policy Lending Benchmark Interest Rate Computations are Supported by the Record and Lawful

Government of China's Case Brief:

- Given the substantial changes regarding bank loan management stipulated under the *Capital Rules for Commercial Banks (provisional)*, combined with the deregulation of floor interest rates in China's banking sector, the application of external interest rates as benchmarks is unsupported on the record of this case.[83]
- Commerce's Financial System Memo is riddled with inaccuracies, outdated information and unlawful assumptions regarding the nature of China's financial system.[84] The Financial System Memo ignores facts and important studies that undermine its analysis, and, as a result, Commerce's conclusions are unlawfully biased and unsupportable.[85]
- The multi-country short-term interest rate benchmark computations in the *Preliminary Determination*, which rely on a regression analysis based on World Bank governance indicators and lending rates as published by the International Monetary Fund for dozens of upper and lower middle-income countries, are fundamentally flawed. Commerce has relied upon an arbitrary collection of International Monetary Fund (IMF) published rates that are in many cases not actually short-term rates, but Commerce has made no adjustment to correct for this. In some cases, the rates do not even reflect business loans. Commerce has arbitrarily excluded negative inflation- adjusted rates from its calculations, and it has used an invalid regression analysis to determine a short-term interest rate for China based on a composite governance indicator factor. Also, Commerce has arbitrarily calculated an adjustment spread or factor between short-and long- term rates using United States dollar "BB" bond rates, an illogical approach with no rational explanation.[86]
- China's financial system is market oriented and should serve as a basis for in-country tier one benchmarks for interest rates in this investigation.[87]

Petitioners' Rebuttal Brief:

[82] *See* Financial System Memo at 7, which expressly states, among other things, that the government uses "the banking sector as a key policy instrument to allocate capital to priority industries."
[83] *See* Government of China's Case Brief at 56-57 (citing PDM at 12).
[84] *Id.* at 57 (citing Government of China Letter, "Response to the Department's Financial System Memo," dated August 8, 2017 (Response to Financial System Memo) at 2).
[85] *Id.* at 57 (citing Response to Financial System Memo at 2-3).
[86] *Id*. at 58.
[87] *Id*. at 59.

- Commerce's Financial System Memo concludes that there appears to be little practical effect of the Government of China's change to "reference rates."[88]
- The Government of China's challenges to the regression analysis used to determine the external benchmark interest rate contains no concrete evidence of error.
- Commerce rejected these same arguments in *Aluminum Extrusions from China; 2014*.[89]

Commerce's Position: Commerce has fully addressed the arguments raised by the government of China regarding Commerce's rationale for relying on an external benchmark and its authority to do so in prior cases and the *Preliminary Determination*.[90] The Government of China has not presented sufficient information to warrant reconsideration of Commerce's prior findings, including on the issue of whether certain regulatory initiatives have had an impact on the Commerce's prior findings.

Additionally, Commerce has previously fully addressed the arguments raised by the Government of China regarding the calculation of Commerce's benchmark interest rate, including the use of certain rates published by the IMF,[91] Commerce's practice with respect to certain negative inflation-adjusted rates,[92] its regression analysis based on a composite governance factor,[93] and adjustment of rates based on the spread between U.S. short and long-term "BB" bond rates.[94] Because the Government of China offers no more here than bare restatements of these previously rejected arguments, we find the Government of China has not presented new arguments or information sufficient to warrant reconsideration of Commerce's prior findings.

The Government of China asserts that Commerce's Financial System Memo is inaccurate, and contains outdated information and unlawful assumptions regarding the nature of China's financial system. Regarding the Government of China's claim that we have relied on outdated

[88] *See* Petitioners' Rebuttal Brief at 57.
[89] *Id.* at 58 (citing *Aluminum Extrusions from the People's Republic of China: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2014*, 81 FR 92778, December 20, 2016 (*Aluminum Extrusions from China; 2014)*, and accompanying IDM at Comment 10).
[90] *See, e.g.*, PDM at 15; *see also CFS Paper from China,* and accompanying IDM at Comment 10, and *Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008), and accompanying IDM at 8-10. We are, therefore, incorporating our response to the Government of China's comments in these other decisions by reference herein. This issue, in general terms, has also been raised in numerous China CVD proceedings.
[91] *See* PDM at 12-15. *See also Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 16836 (April 13, 2009) *(Citric Acid from China),* and accompanying IDM at Comment 10, *Oil Country Tubular Goods from China*, and accompanying IDM at Comments 24, 26.
[92] *See* PDM at 12-15. *See also, e.g., Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (October 17, 2010), and accompanying IDM at Comment 16.
[93] *See, e.g.*, *Citric Acid from China*, and accompanying IDM at Comment 12, *Aluminum Extrusions from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010 and 2011*, 79 FR 106 (January 2, 2014), and accompanying IDM at Comment 8, *Oil Country Tubular Goods from China*, and accompanying IDM at Comment 23.
[94] *See, e.g.*, *Citric Acid from China*, and accompanying IDM at Comment 13, *Oil Country Tubular Goods from China*, and accompanying IDM at Comment 27.

information, we note that the 2011 "Catalogue for Guiding Industrial Restructuring" is derived from the "mother" State Council policy document (No. 40). This document was released with the first version of the catalogue in 2005 and remains in effect today. With regard to the Government of China's assertion that we relied on an inaccurate translation of Article 34 of the *Law on Commercial Banks*, we stand by the pkulaw translation and the quoted text. We see no other translation on the administrative record that indicates the pkulaw translation is inaccurate or in error. Although the Government of China has asserted that the *Law on Commercial Banks* does not oblige banks to pursue industrial policies in their lending operations and that the Chinese version does not contain the equivalent of "shall," translations from expert, third-party sources indicate otherwise.

We have addressed the Government of China's arguments concerning alleged reforms at Comment 2, above.

Comment 5: Whether Commerce's Investigation of Uninitiated Programs is Lawful

Government of China's Case Brief:

- Articles 11.1 and 11.2 of the WTO SCM Agreement provide that an investigation of any alleged subsidy may be initiated only upon written application that must include sufficient evidence of a subsidy, injury, and a causal link between the subsidy and alleged injury.[95]
- The right to self-initiate can only be exercised on the basis of sufficient evidence of the existence of a subsidy, consistent with Article 11.6 of the WTO SCM Agreement, and after an opportunity for consultation has been properly offered to the government of the exporting country under investigation, consistent with Articles 13.1 and 13.2 of the WTO SCM Agreement.[96]
- Commerce should withdraw its preliminary findings related to "other subsidies," and remove from the record all the information obtained through improper questionnaire requests. None of these grant programs were alleged by the petitioners or duly initiated by Commerce.[97]

Petitioners' Rebuttal Brief:

- Commerce's decision to countervail other subsidies falls squarely within the guidelines established under section 775 of the Act and 19 CFR 351.31l(b).[98]
- Commerce notified parties of Commerce's consideration of the respondents' reported subsidies in its initial and supplemental questionnaires to the Government of China.[99]

Mahle's Rebuttal Brief:

[95] *See* Government of China's Case Brief at 59.
[96] *Id.* at 59-60.
[97] *Id.*
[98] *See* Petitioners' Rebuttal Brief at 60.
[99] *Id.*

- Interested Party Mahle restates and affirms its support for the Government of China's arguments.[100]

Commerce's Position: We disagree with the Government of China and Mahle that Commerce unlawfully investigated "other subsidies." Investigations into potentially countervailable subsidies are initiated in one of two ways. First, an investigation can be self-initiated by Commerce. Second, when a domestic interested party files a petition for the imposition of countervailing duties on behalf of an industry, and the petition: (1) alleges the elements necessary for the imposition of a countervailing duty pursuant to section 701(a) of the Act; and (2) "is accompanied by information reasonably available to the petitioner supporting those allegations {,}" Commerce will initiate an investigation into whether countervailing duties should be imposed.[101] Pursuant to section 775 of the Act, Commerce has an "affirmative obligation" to "consolidate in one investigation...all subsidies known by petitioning parties to the investigation or by the administering authority relating to that merchandise" to ensure "proper aggregation of subsidization practices."[102]

Pursuant to section 702 of the Act, "{a} countervailing duty investigation shall be initiated whenever the administering authority determines, from information available to it, that a formal investigation is warranted into the question of whether the elements necessary for the imposition of duty under section 701 of the Act exits." This statutory provision does not preclude Commerce from investigating a program or subsidy "which appears to be a countervailable subsidy... with respect to the merchandise which is the subject of the proceeding." Indeed, section 775 of the Act requires further analysis by Commerce of practices that appear to be countervailable subsidies that were not originally alleged. Further, Commerce is not "legally precluded from asking questions that enable it to effectuate this obligation, the goal of which is to consolidate all relevant subsidies into a single investigation."[103]

We disagree with the suggestion by the Government of China that the consultations provision of section 702(b)(4)(A)(ii) of the Act applies to subsidies discovered during an investigation. That provision only applies when a petition is filed by a domestic interested party. Section 775 of the Act contains no requirement that the responding government be invited to consultations.

Although the Government of China asserts that "Other Subsidies" were not included in Commerce's "initial or any new subsidy questionnaires in the proceeding,"[104] the record contradicts this claim. In its initial questionnaire to the Government of China, Commerce asked the Government of China: (1) if it provided any other forms of assistance to subject producers; and (2) to coordinate with the Respondents on any additional subsidies reported by the companies in order to provide detailed information.[105] In response, the Government of China

[100] *See* Mahle's Rebuttal Brief at 17.
[101] *See* section 702(b) of the Act.
[102] *See Allegheny Ludlum Corp. v. Unites States*, 112 F. Supp. 2d 1141, 1150 n 12 (CIT 2000) (*Allegheny I); see* section 775 of the Act.
[103] *See Allegheny I*, 112 F. Supp. 2d at 1150 n 12 ("Congress...clearly intended that all potentially countervailable programs be investigated and catalogue{.}").
[104] *See* Government of China's Case Brief at 59.
[105] *See* Initial CVD Questionnaire.

refused to provide the requested information, replying "that an answer to this question is premature absent a more direct inquiry supported by credible evidence and the initiation of a discrete investigation by the Commerce."[106] Additionally, in response to supplemental questions by Commerce as to the particular forms of other assistance reported by the respondents, the Government of China confirmed the reported years of receipt and amounts as reported by the companies, but withheld all additional information required by Commerce to determine the countervailability of the reported grants.[107] The Government of China's conduct, therefore, warrants the application of AFA, as Commerce appropriately determined in its *Preliminary Determination*.[108]

Moreover, the Government of China's claim that the Commerce was required to initiate investigations into the other reported subsidies has been rejected repeatedly by Commerce in prior investigations. As previously stated by Commerce, the decision to countervail "Other Subsidies" reported by the respondents "fell squarely within the guidelines established under section 775 of the Act and 19 CFR 351.31 l(b)."[109]

In accordance with its regulations, Commerce will notify the parties of a subsidy discovered in the course of the proceeding. Here, as in prior proceedings, Commerce's initial and supplemental questionnaires to the Government of China regarding the "Other Subsidies," reported by the respondents, served as notification to the Government of China, and to the respondents, of Commerce's consideration of the reported subsidies.[110] Commerce's *Preliminary Determination* regarding "Other Subsidies" was consistent with the agency's regulations and prior practice and, thus, should be affirmed in the final determination.[111]

Comment 6: Whether Commerce Should Change its Export Buyer's Credit Determination

Government of China's Case Brief:

- The Government of China confirmed non-use for the mandatory respondents.[112]

[106] *See* Petitioners' Rebuttal Brief at 59. *See also* Government of China June 12, 2017 IQR - Zhongji at 91. *See also* Government of China's July 20, 2017 Initial Questionnaire Response (Government of China July 20, 2017 IQR – Dingsheng) at 126.
[107] *Id*. *See also* Government of China's July 5, 2017 Supplemental Questionnaire Response (Government of China July 5, 2017 SQR) at 14, Exhibit S-11.
[108] *See* PDM at 41-42.
[109] *See* Petitioners' Rebuttal Brief at 60. *See also, e.g., Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People's Republic of China: Final Affirmative* Determination, 82 FR 8405 (January 25, 2017) (*Silica Fabric from China*), and accompanying IDM at Comment 22.
[110] *Id*.
[111] *See* Petitioners' Rebuttal Brief at 60.
[112] *See* Government of China's Case Brief at 5-6. *See also* Government of China June 12, 2017 IQR – Zhongji at 10; Government of China July 5, 2017 SQR at 8; Government of China July 20, 2017 IQR - Dingsheng HK at 19.

- The mandatory respondents submitted sworn certifications on program non-use from their U.S. customers.[113] Commerce relied on such certifications to determine non-use in prior proceedings.[114]
- Commerce did not verify the respondents' non-use claims. Having forgone verification, Commerce must assume that every factual statement submitted by the Government of China is accurate.[115]
- Commerce's instructions are clear that the Government of China is not required to submit a full program response if the respondents' claim non-use of the program.[116]
- Contrary to Commerce's assertions, the Government of China did not fail to provideany of the requested information.[117] If the Government of China's response was deficient, Commerce had a legal obligation to notify the Government of China of the deficiency and provide an opportunity to remedy the deficiency.[118]
- The Government of China confirmed that the 2013 Administrative Measures (2013 Revisions) to the Export Buyer's Credit program do not formally repeal or replace the provisions of the regulations for the program that are on the record.[119] The Government of China explained that loan disbursements under this program, the Export-Import Bank of China (China Ex-Im Bank), disburses credits directly to the exporters based on the executed lending contracts. Third-party banks are not actively involved in disbursing credits for this program. [120]
- China Ex-Im Bank has confirmed that the 2013 Revisions are internal to the bank, non-public, and not available for release.[121] Commerce cannot penalize a party for not being able to submit information that is clearly impossible to obtain.[122]

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[113] *See* Government of China's Case Brief at 6-7. *See* Zhongji June 12, 2017 IQR at 13 and Exhibit 11; Dingsheng's July 20, 2017 Initial Questionnaire Response (Dingsheng July 20, 2017 IQR) at 24 and Exhibit P.A.4.

[114] *See* Government of China's Case Brief at 7-8 (*citing Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2013*, 81 FR 46904 (July 19, 2016) (*Solar Cells from China 2013)*, and accompanying IDM at 11*; Chlorinated Isocyanurates from the People's Republic of China: Final Affirmative Countervailing Duty Determination; 2012*, 79 FR 56560 (September 22, 2014) (*Chlorinated Isocyanurates from China)*, and accompanying IDM at 15; *Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 80 FR 51775 (August 26, 2015) (*Boltless Shelving from China*), and accompanying IDM at Comment X.)

[115] *See* Government of China's Case Brief at 8 (citing *Boltless Shelving from China*, and accompanying IDM at 45, China Kingdom, 507 F. Supp. 2d at 1341.

[116] *See* Government of China's Case Brief at 10-11 (citing at Government of China June 12, 2017 IQR – Zhongji at 3).

[117] *See* Government of China's Case Brief at 11-15 (citing Government of China June 12, 2017 IQR – Zhongji at 18-21 and Exhibits A3-2, A3-3, and A3-4.

[118] *See* Government of China's Case Brief at 11-12 (citing section 776(a)(2)(d) and 782(d) of the Act.)

[119] *See* Government of China's Case Brief at 12-13 (citing Government of China June 12, 2017 IQR – Zhongji at Exhibit A3-3.

[120] *See* Government of China's Case Brief at 12-15 (citing Government of China June 12, 2017 IQR – Zhongji at 20 and exhibit A3-2.

[121] *See* Government of China's Case Brief at 17-18 (citing Government of China June 12, 2017 IQR – Zhongji at 20 and exhibit A3-2.

[122] *Id*. (citing *Shantou Red Garden Foodstuff Co. v. United States*, 815 F. Supp. 2d 1311, 1316, 1325 (CIT Trade 2012), 815 F. Supp. 2d at 1325; *Olympic Adhesives, Inc. v. United States*, 899 F.2d 1565, 1572 (Fed. Cir. 1990) (*Olympic Adhesives*)*; AK Steel Corp. v. United States*, 21 CIT 1204 (1997) *(AK Steel)*, 21 CIT at 1223; *NSK Ltd. v. United States*, 416 F. Supp. 2d 1334, 1341 (CIT 2006) (*NSK)*.

- The statue only allows Commerce to use factual information otherwise available in reaching the applicable determination. Moreover, Commerce can only apply adverse inferences to information missing from the record.[123] Further, a finding of adverse facts available is not lawful when there is sufficient information on the record to reach a conclusion on the matter in question.[124]
- In its *Preliminary Determination*, Commerce did not explain the relevance of the 2013 Revisions or the USD 2 million threshold to the usage determination of this program. The respondents were not eligible for the Export Buyer's Credit program, and there is sufficient evidence of non-use of this program on the record. Any application of AFA, simply because the China Ex-Im Bank did not provide the 2013 Revisions, would be counter to the well-established tenet that the antidumping and countervailing duty laws are remedial and not punitive.[125]
- Commerce is obliged to avoid the adverse impact of the application of AFA on a cooperating respondent if relevant information exists elsewhere on the record.[126]
- The 10.54 percent AFA rate is punitive, no longer reliable, and superseded by more recent and probative factual evidence on which Commerce should base an AFA determination.[127] This rate is a policy lending rate that is not based on a "same or similar" program and is neither "reliable" nor "relevant" to this investigation, nor does it take into account the "situation that resulted in an adverse inference" in this case.
- Section 776(d) allows Commerce discretion to apply the highest subsidy rate based on evaluation by the administering authority of the situation that resulted in having to use an adverse inference. Contrary to *Trina Solar,* Commerce applied AFA to the detriment of the cooperating mandatory respondents when there was information elsewhere on the record that would allow it to make a non-use determination. Commerce should in the final determination select the final calculated subsidy rate for Export Seller's Credit program as a reliable, relevant, and reasonable facts available rate for the Export Buyer's Credit program.[128]
- If it does not rely on the Export Seller's Credit program rate as AFA, Commerce should resort to the most recently verified information from the record of this investigation, which are the subsidy rates for preferential lending in the aluminum foil industry. This is consistent with Commerce's approach in other recent cases.[129] It is reasonable to assume

[123] *Id.* at 18-19 (citing section 776(a)(2)(A) of the Act; *Zhejiang DunAn Hetian Metal Co. v. United States*, 652 F.3d 1333, 13448 (Fed. Cir. 2011) (*Hetian Metal*); *Shandong Huarong Mach. Co. v. United States*, 435 F. Supp. 2d 1261, 1289 (CIT 2006).
[124] *Id.* at 19-20 (citing *Gerber Food (Yunnan) Co., Ltd. v. U.S.*, 387 F. Supp. 2d 1270, 1284 (CIT 2005).
[125] *Id.* at 20-21 (citing *National Knitwear & Sportswear Ass'n v. United States*, 15 CIT 548, 558 (1991); *Chaparral Steel Co. v. United States*, 901 F.2d 1097, 1103-1104 (Fed. Cir. 1990).
[126] *Id.* at 21 (citing *Archer Daniels Midland Co. v. United States*, 917 F. Supp. 2d 1331, 1342 (CIT 2013) (*Archer Daniels Midland)*; *Changzhou Trina Solar Energy Co., Ltd. v. United States*, 255 F. Supp. 3d 1312, 1318 (CIT 2017) (*Trina Solar).*
[127] *Id.* at 22-27 (citing PDM at 18; *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order, 75 FR 70201* (November 17, 2010) (*Coated Paper from China Amended Final*)).
[128] *Id.* at 27.
[129] *Id.* at 27-29 (citing *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 41003 (July

that programs that are similar because they confer similar benefits are likely to be used similarly in the same industry.[130]

Dingsheng's Case Brief:

- Commerce has not used the USD 2 million threshold as the basis for finding non-use in the past and has never looked at this threshold in the countless on-site verifications at the China Ex-Im Bank as a means to determined non-use. This criterion is thus irrelevant.[131]
- The 2013 Revisions are also irrelevant as to whether Commerce could have conducted usage verification at China Ex-Im Bank. Commerce failed to investigate whether the absence of this information had any real impact on the usage determination and whether it in fact created a gap in the record that required the application of AFA.[132]
- The Government of China explained very clearly in its questionnaire responses how EX-IM Bank determined usage in this case.[133]
- Commerce failed to articulate a rational connection between the list of third party banks that it requested from the Government of China and its conclusion that it could not verify use without this information.[134]
- The Government of China's failure to provide certain information in this case is no different from the information it did not provide concerning certain grant programs. Usage could still be determined by the questionnaire responses, China Ex-Im Bank's computer systems, and declarations of non-use from the respondent's customers.[135]
- Dingsheng placed sufficient information on the record to demonstrate non-use of this program.[136]
- Commerce's review and consideration of the respondent's non-use information is consistent with its practice and the court's view of the law.[137]
- Commerce must follow its past precedent based on the record information and find this program not used.[138] In *Solar Cells from China; 2013*, Commerce declined to punish the cooperative respondent in accordance with agency practice, where the respondent

14, 2015), and accompanying IDM at 18 and 44; *SolarWorld Americas, Inc., v. United States*, Consol. Court No. 15-00232 (CIT 2017) at 6).

[130] *See* Government of China's Case Brief at 28-29.

[131] *See* Dingsheng's Case Brief at 24-25.

[132] *Id*. at 25-26 (citing *Hetian Metal*, 652 F.3d at 1348).

[133] *Id*. at 26.

[134] *Id*. at 26 (citing *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962).

[135] *Id*. at 27.

[136] *Id*. at 27-28 (citing *Countervailing Duty New Shipper Review: Certain In-shell Roasted Pistachios from the Islamic Republic of Iran*, 73 Fed. Reg. 9993 (Feb. 25, 2008) (*Pistachios from Iran)*, and accompanying IDM at Comment 2; *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Countervailing Duty Administrative Review*, 73 Fed. Reg. 40,295 (July 14, 2008), and accompanying IDM at Comment 6; Dingsheng July 20, 2017 IQR at Exhibit P.A.5; Dingsheng's July 21, 2017 Benchmark Submission (Dingsheng Benchmark Submission) at Exhibit 3).

[137] *Id*. at 27 (citing *Pistachios from Iran*; *Archer Daniels Midland*, 917 F. Supp. 2d 1342; *Fine Furniture (Shanghai) Ltd. v. United States*, 865 F. Supp. 2d 1254 (CIT 2012) (*Fine Furniture)*, 865 F. Supp. 2d 1254; *Trina Solar*, 255 F. Supp. 3d 1318).

[138] *Id*. at 29-31 (citing *Solar Cells from China; 2013*, and accompanying IDM at Comment 1; *Sunpower Corp. v. United States*, 179 F. Supp. 3d 1286, 1295 (June 8, 2016)).

provided declarations for all of its U.S. customers during the review period stating that they did not obtain credit under or otherwise participate in the Export Buyer's Credit program.[139]

- In this case, Dingsheng placed evidence on the record demonstrating that its customers did not use this program. This information consisted of declarations from all of the respondents' U.S. customers certifying to the fact that they received no funding from the EX-IM Bank directly or indirectly through any third-party bank.
- Consistent with *Boltless Shelving from China*, Commerce's decision to not verify the program does not prevent a finding of non-use.[140]
- The rate selected cannot be corroborated and is otherwise unreasonable. It is mathematically impossible for U.S. companies receiving U.S. dollar loans under this program to receive an *ad valorem* rate that is higher than the U.S. dollar benchmark interest rate in this case.[141]
- The AFA rate is unreasonable and cannot be corroborated under the statute. Therefore, if Commerce's AFA finding stands, the AFA rate applied in the Final Determination must be less than 0.56 percent.[142]

Zhongji's Case Brief:

- The record contains an abundance of evidence that the Government of China has fully cooperated during the proceeding.[143] The Government of China clarified that the 2013 Revision and the USD 2 million loan threshold are irrelevant to Commerce's understanding and verification of this program.[144]
- Commerce did not verify the respondents' non-use claims. Having forgone verification, Commerce must assume that every factual statement submitted by the Government of China is accurate.[145]
- Zhongji fully cooperated and Commerce improperly allowed collateral impact of its AFA decision on Zhongji.[146]
- Commerce's application of AFA is an impermissible departure to apply a zero percent CVD margin based on non-use declarations from U.S. customers.[147]
- Failure to consider the record evidence violates Commerce's statutory obligation not to decline to consider information that is submitted by an interested party and is necessary

[139] *Id*.
[140] *Id*. at 31 (citing *Boltless Shelving from China*, and accompanying IDM at Comment X).
[141] *Id*. at 32-34 (citing *Aluminum Extrusions from China Investigation*).
[142] *Id*.
[143] *See* Zhongji's Case Brief at 3.
[144] *Id*. at 4.
[145] *Id*. at 5 (citing *China Kingdom Imp. & Exp. Co. v. United States*, 507 F. Supp. 2d 1337, 1341, n. 13 (CIT 2007) (*China Kingdom).*
[146] *Id*. at 5.
[147] *Id*. at 6-7 (citing *Solar Cells from China; 2013*, and accompanying IDM at Comment1, *Trina Solar*, 255 F. Supp. 3d 1318).

to the determination provided that the information meets the quality requirements under the statute.[148]

- To the extent there is any deficiency in Jiangsu Zhongji's responses to questions about the program, Commerce has deprived the company of an opportunity to remedy and has preemptively applied the most severe adverse inference.[149]
- Case law limits the application of adverse inferences to fill gaps in the record.[150] There is no gap on the record regarding the existence of the benefit to Zhongji under the program.[151]
- Commerce is prohibited from applying AFA against a cooperating party because of another party's non-cooperation.[152]
- The AFA rate, which was established in the *Coated Paper from China Amended Final*, targeted a different industry during a different time period. If Commerce continues to calculate an AFA rate for the Export Buyer's Credit program in the final determination, Commerce must use the highest calculated CVD rate for the policy loans to the aluminum foil industry in the current investigation: 5.65 percent assigned to mandatory respondent Dingsheng.[153]

Petitioners' Rebuttal Brief:

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- Commerce's preliminary application of AFA to the Export Buyer's Credit program is warranted due to the Government of China's refusal to provide information specifically requested by Commerce.[154]
- The Government of China attempts to gloss over the information that was specifically requested by Commerce and that was omitted from the Government of China's initial questionnaire response.[155]
- Commerce's subsequent request for this document, therefore, was the agency's second notification to the Government of China that this document was necessary for the agency's analysis.[156]
- Commerce requested the 2013 Revisions because information on the record of this proceeding indicated that the 2013 Revisions affected important program changes. The Government of China's failure to place a copy of the 2013 Revisions on the record of this

[148] *Id*. at 7-8 (citing section 782(e) of the Act; 19 CFR 351.308(e); Zhongji June 12, 2017 IQR at Vol. 1, 13, Exhibit 12; Zhongji's July 14, 2017 Supplemental Questionnaire Response (Zhongji July 14, 2017 SQR).
[149] *Id*. at 8.
[150] *Id*. at 9 (citing *Hetian Metal*, 652 F.3d at 1348; *Essar Steel Ltd. v. United States*, 721 F. Supp. 2d 1285, 1297 (CIT 2010) (*Essar Steel*)).
[151] *Id*.
[152] *Id*. at 10 (citing *SKF USA Inc. v. United States*, 675 F. Supp. 2d 1264, 1276 (CIT 2009); *Fine Furniture*, 865 F. Supp. 2d 1372).
[153] *Id*. at 12 (citing PDM at 44; *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review: 2014*, 82 Fed. Reg. 32678 (July 17, 2017) (*Solar Cells frm China; 2014)*, and accompanying IDM at Comment 2).
[154] *See* Petitioners' Rebuttal Brief at 4-5.
[155] *Id*. at 6.
[156] *Id*.

investigation has impeded Commerce's ability to determine whether the USD 2 million requirement applies - information that is "critical to understanding how the Export Buyer's Credit program operates and is critical to Commerce's program use determination."[157]

- The Government of China's questionnaire response raised significant questions with Commerce officials regarding how loans associated with the Export Buyer's Credit program are disbursed. The Government of China's questionnaire response explains that the China Ex-Im Bank may deposit funds in the importer's account at a third-party bank, but does not explain how that third-party bank then transfers those funds to the Chinese exporter.[158]
- In light of the Government of China's failure to comply to the best of its ability, mere assurances of non-use by the Government of China and through non-comprehensive customer declarations cannot appropriately be considered verifiable evidence by Commerce, in accordance with the law and recent case precedent.

Mahle's Rebuttal Brief:

- Interested Party Mahle restates and affirms its support for the Government of China's and Zhongji's arguments.[159]

Commerce's Position: Consistent with the *Preliminary Determination*, and Commerce's past practice, we continue to find that the record of the instant investigation does not support a finding of non-use regarding the Export Buyer's Credit program.[160] In prior examinations of this program, we found that the China Ex-Im, as a lender, is the primary entity that possesses the supporting information and documentation that are necessary for Commerce to fully understand the operation of this program, which is a prerequisite to Commerce's ability to verify the accuracy of the respondents' claimed non-use of the program.[161] As we discussed in the *Preliminary Determination*, and in the "Use of Facts Otherwise Available and Adverse Inferences," section above, the Government of China did not provide the requested information or documentation necessary for Commerce to develop a complete understanding of this program (*i.e.,* information regarding whether China Ex-Im uses third-party banks to disburse/settle export buyer's credits, and information on the size of the business contracts for which export buyer's credits are applicable).[162] Furthermore, this information is critical for Commerce to understand how export buyer's credits flow to and from foreign buyers and China Ex-Im. Absent the requested information, the Government of China's claims that the respondent companies did not

[157] *Id.* at 7.
[158] *Id.* at 9.
[159] *See* Mahle's Rebuttal Brief at 2-10.
[160] *See* PDM at 26-29. *See also Solar Cells from China; 2014*, and accompanying IDM at Comment 1.
[161] *See, e.g., Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the People's Republic of China: Final Affirmative Determination and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35308 (June 2, 2016) (*CORE from China)*, and accompanying IDM at Comment 6; *see also Chlorinated Isocyanurates from China,* and accompanying IDM at Comment 2 (concluding that "without the Government of China's necessary information, the information provided by the respondent companies is incomplete for reaching a determination of non-use").
[162] *See* PDM at 26-29.

use the program are not reliable. Moreover, without a full and complete understanding of the involvement of third-party banks, the respondent companies (and their customers) claims are also not reliable because Commerce cannot be confident in its ability to verify those claims.

We disagree with the Government of China's argument that Commerce did not need to review the 2013 Measures or consider the $2 million contract minimum to determine non-use of the program. As we explained in the *Preliminary Determination*, we requested the 2013 Measures because information on the record of this proceeding indicated that the 2013 Measures implemented important program changes. For example, the 2013 Measures may have eliminated the $2 million contract minimum associated with this lending program.[163] By refusing to provide the requested information, and instead asking Commerce to rely upon unverifiable assurances that the 2000 Rules Governing Export Buyer's Credit remained in effect, the Government of China impeded Commerce's understanding of how this program operates and how to verify it, with both the Government of China and the respondent companies. In addition, record evidence indicates that the loans associated with this program are not limited to direct disbursements through China Ex-Im.[164] Specifically, the record information indicates that customers can open loan accounts for disbursements through this program with other banks, whereby the funds are first sent to the China Ex-Im to the importer's account, which could be at the China Ex-Im or other banks, and that these funds are then sent to the exporter's bank account.[165] Given the complicated structure of loan disbursements for this program, Commerce's complete understanding of how this program is administered is necessary.[166] Thus, the Government of China's refusal to provide the most current 2013 Administrative Measures, which provide internal guidelines for how this program is administered by the China Ex-Im, significantly impeded Commerce's ability to conduct its investigation of this program.

In this investigation, we have information on the record indicating that there were revisions to the 2013 Measures program and the involvement of third-party banks, which were not present on the record *of Solar Cells from China; 2013, Chlorinated Isocyanurates from China*, and *Boltless Steel Shelving Units from China*, which have been cited by the Government of China and the respondent companies to support their arguments.[167] In addition, we find that, with respect to *Chlorinated Isocyanurates from China*, *Boltless Steel Shelving Units from China*, and *Solar Cells from China; 2013*, Commerce has since modified its position with respect to the Export Buyer's Credit program in *Chlorinated Isocyanurates from China; 2014*,[168] where it determined that AFA was warranted because the Government of China did not cooperate to the best of its ability

[163] *See* Memorandum, "Placing Information on the Record," dated July 27, 2017, at Document 1 (Citric Acid Verification Report) at 2.
[164] *See* Government of China June 12, 2017 IQR - Zhongji at Exhibit A3-3.
[165] *Id*.
[166] *See* PDM at 28.
[167] *See Solar Cells from China; 2013*, and accompanying IDM at Comment 1. *See also* Citric Acid verification report; *Boltless Steel Shelving Units from China*, and accompanying IDM at Comment X.
[168] *See Chlorinated Isocyanurates from the People's Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review; 2014*, 82 FR 27466 (June 15, 2017) (*Chlorinated Isocyanurates from China; 2014*), and accompanying IDM at Comment 2 (concluding that "without the Government of China's necessary information, the information provided by respondent companies is incomplete for reaching a determination of non-use").

in responding to Commerce's request for additional information regarding the operations of the Export Buyer's Credit program.[169] As such, we find the Government of China's and the respondent companies' reliance on *Chlorinated Isocyanurates from China* and *Boltless Steel Shelving Units from China* is unpersuasive.

Moreover, in *Solar Cells from China; 2013*, we specifically stated that, even though we found the record in those cases supported a conclusion of non-use, we intended to continue requesting the Government of China's cooperation regarding this program in future proceedings, and we would base subsequent evaluations of this program on the record for each respective proceeding.[170] Thus, by not responding to our requests for additional information regarding the operation of this program, the Government of China was uncooperative in the instant proceeding.

In response to Dingsheng and Zhongji's claims that they provided declarations from customers claiming non-use of the program, similar to documents provided in *Chlorinated Isocyanurates from China* and *Solar Cells from China; 2013*, we find that the facts of this case are different. In the immediate investigation, we are unable to verify the accuracy of these documents as the primary entity that possesses such supporting records in the China Ex- Im Bank. Further, we now have information on the record that demonstrates the Government of China updated certain measures of the program, but the Government of China refused to provide the updated measures. Because the Government of China withheld critical information regarding this program, we are unable to determine how the program now operates, and, thus, we cannot verify Dingsheng and Zhongji's declarations as submitted.[171]

In addition, without the additional information requested of the Government of China, Commerce determines that the information provided by the Government of China and our understanding of this program is incomplete and unreliable. As such, we recognize that we cannot rely on information about this program provided by parties, other than the Government of China (i.e., the respondent company's customers' certifications of non-use).[172] Therefore, while we did consider the customer certifications provided by the respondents, without a complete and reliable understanding of the program's operation, especially with regard to the involvement of third-party banks, the information provided by the respondents is also unreliable.

With respect to the arguments that AFA should not be applied for this program, we continue to find that the Government of China withheld necessary information that was requested and significantly impeded the proceeding and, thus, that Commerce must rely on facts otherwise available in issuing the final determination, pursuant to sections 776(a)(2)(A) and 776(a)(2)(C) of the Act. Moreover, we determine that the Government of China failed to cooperate by not acting to the best of its ability to comply with our request for information. Specifically, the Government of China withheld information that we requested that was reasonably available to it.

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[169] *See Chlorinated Isocyanurates from China; 2014* and accompanying IDM at Comment 2.
[170] *See Solar Cells from China;* 2013, and accompanying IDM at Comment 2.
[171] *See Silica Fabric from China*, and accompanying IDM at Comment 17.
[172] *See Certain Crystalline Silicon Photovoltaic Product from the People's Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review; 2014-2015*, 82 FR 42792 (September 12, 2017), and accompanying IDM at Comment 11.

Consequently, we find that an adverse inference is warranted in the application of facts available, pursuant to section 776(b) of the Act. As AFA, we determine that this program provides a financial contribution, is specific, and provides a benefit to the respondent companies within the meaning of sections 771(5)(D), 771(5A), and 771(5)(E), respectively, of the Act. This finding is identical to the application of AFA in prior proceedings. Specifically, we find that the circumstances in this case are like those in *Chlorinated Isocyanurates from China; 2014* and *Truck and Bus Tires from China*,[173] where Commerce requested operational program information from the Government of China on this program, pointing out that there were substantial changes to the 2013 Measures, which the Government of China declined to provide. As we explained in the Preliminary Determination, this information is necessary to the analysis of this program.[174]

Furthermore, we disagree with arguments that non-use of the program is verifiable and cannot be found otherwise because Commerce decided not to verify the customers' certifications of non-use. Commerce is not finding the mandatory respondents' customers' certifications of non-use to be unreliable because it declined to verify them. Rather, Commerce finds the mandatory respondents' customers' certifications of non-use to be unreliable because, without a complete understanding of the operation of the program, which could only be achieved through a complete response by the Government of China to Commerce's questionnaires, verification of the respondents' customers' certifications of non-use are meaningless.

Commerce considered all the information on the record of this proceeding, including the statements of non-use provided by the mandatory respondents. As explained above and in the *Preliminary Determination*, we are unable to rely on the information provided by the respondents because Commerce lacks a complete and reliable understanding of the program.[175]

With respect to the Government of China's and the respondents' claim that the 10.54 percent AFA is punitive, we reviewed the comments from interested parties, and made no change to the AFA rate selected in the *Preliminary Determination* for this program. As we explained in the *Preliminary Determination*, it is Commerce's practice in CVD proceedings to compute a total AFA rate for non-cooperating companies using the highest calculated program-specific rates determined for the cooperating respondents in the instant investigation, or, if not available, rates calculated in prior CVD cases involving the same country.[176] When selecting AFA rates, section 776(d) of the Act provides that Commerce may use a countervailable subsidy rate applied for the

[173] *See Truck and Bus Tires from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination, in Part*, 82 FR 8606 (January 27, 2017), and accompanying IDM at Comment 5.
[174] *See* PDM at 26-29.
[175] *Id.* at 26-29.
[176] *Id.* at 18-19, under "Use of Facts Otherwise Available and Adverse Inferences" section*; see also, e.g.*, *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 73 FR 70971, 70975 (November 24, 2008), and accompanying PDM (unchanged in *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 29180 (June 19, 2009), and accompanying IDM at "Application of Facts Available, Including the Application of Adverse Inferences"); *see also Aluminum Extrusions from China Investigation,* and accompanying IDM at "Application of Adverse Inferences: Non-Cooperative Companies."

same or similar program in a countervailable duty proceeding involving the same country, or, if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates.[177] Accordingly, when selecting AFA rates, if we have cooperating respondents, as we do in this investigation, we first determine if there is an identical program in the investigation and use the highest calculated rate for the identical program. If there is no identical program that resulted in a subsidy rate above-zero for a cooperating respondent in the investigation, we then determine if an identical program was used in another CVD proceeding involving the same country, and apply the highest calculated rate for the identical program (excluding *de minimis* rates).[178] If no such rate exists, we then determine if there is a similar/comparable program (based on the treatment of the benefit) in another CVD proceeding involving the same country and apply the highest calculated above-*de minimis* rate for the similar/comparable program. Finally, where no such rate is available, we apply the highest calculated above-*de minimis* rate from any non-company specific program in a CVD case involving the same country that the company's industry could conceivably use.[179]

Further, in applying AFA to each of the non-responsive companies, we are guided by Commerce's methodology detailed above. We begin by selecting, as AFA, the highest calculated program-specific above-zero rates determined for the cooperating respondents in the instant investigation. In relying on AFA for the selection of a subsidy rate, we point out that there is no identical program in this investigation for which we have calculated a rate; neither has Commerce calculated a rate for this program in any other CVD proceeding involving China. On this basis, we find that using an AFA rate of 10.54 percent ad valorem, the highest rate determined for a similar program in *Coated Paper from China*,[180] as the rate for this program, is appropriate. The 10.54 percent *ad valorem* rate calculated in *Coated Paper from China* for "Government Policy Lending," a program that that provides assistance in the form of preferential interest rates on various types of loans sourced from Chinese-owned financial institutions. We find that this methodology is consistent with Commerce's practice in the selecting an appropriate AFA rate.

With regard to the Government of China's and the respondents' argument that the AFA rate is uncorroborated, we disagree. As we explained in the *Preliminary Determination*, section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on

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[177] *See, e.g., Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) (*Shrimp from China*) and accompanying IDM at 13; *see also Essar Steel*, 753 F.3d 1368, 1373-1374 (upholding "hierarchical methodology for selecting an AFA rate").

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

[179] *See Shrimp from China* IDM at 13-14.

[180] *See Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet Fed Presses from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 75 FR 70201, 70202 (November 17, 2010) (*Coated Paper from China*) (revised rate for "Preferential Lending to the Coated Paper Industry" program).

information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.[181] Secondary information is defined as "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."[182] The SAA provides that to "corroborate" secondary information, Commerce will satisfy itself that the secondary information to be used has probative value.[183]

Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that Commerce need not prove that the selected facts available are the best alternative information.[184] Furthermore, Commerce is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.[185]

Because the rate constitutes secondary information, we have, according to section 776(c)(1) of the Act, corroborated the rates to the extent practicable. With regard to the reliability aspect of corroboration, we note that the rates on which we are relying are subsidy rates calculated in this and in another CVD proceeding concerning merchandise from China. Further, the calculated rate was based on information for a similar program, the "Government Policy Lending" program, and, thus, reflects the actual behavior of the Government of China with respect to a similar subsidy program. Finally, unlike other types of information, such as publicly available data on a country's national inflation rate or national average interested rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. With respect to the relevance aspect of corroborating the rates selected, Commerce will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. There is no information on the record of this investigation to indicate that the information is not appropriate as AFA for Commerce to use. Thus, we have corroborated the selected rate to the extent possible and find that the rate is reliable and relevant for use as an AFA rate for the program listed above.[186]

Due to the failures of the Government of China to cooperate to the best of its ability, Commerce, as explained above, relied on a subsidy rate from another CVD proceeding involving China. Commerce corroborated this rate to the extent practicable for this final determination. Because this rate reflects the actual behavior of the Government of China with respect to similar subsidy programs, and lacking adequate information demonstrating otherwise, Commerce corroborated the rate that it selected to the extent practicable.

[181] *See* PDM at 24.
[182] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol. 1 (1994) (SAA).
[183] *Id.*
[184] *Id.* at 869-870.
[185] *See* section 776(d)(3) of the Act.
[186] *See* PDM at 24.

With regard to the Government of China's contention that Commerce should use the export seller's credit rate calculated in this investigation, or the rate calculated for preferential lending in this investigation, we disagree. As noted above, it is Commerce's practice to rely on, as an AFA rate, the highest above-zero rate calculated for the identical program in the investigation, and if there is no such rate, Commerce will use the highest above *de minimis* rate from the same program in another countervailing duty proceeding involving the same country.[187] If there is no such rate for the same program from another countervailing duty proceeding involving the same country, Commerce will use the highest non-*de minimis* rate for a similar program from a proceeding involving the same country. The export seller's credit program is not identical to the export buyer's credit program. Therefore, we must move beyond the first and second steps in the hierarchy. Further, the rate calculated here for the export seller's credit program is not the highest non-*de minimis* rate for a similar program (based on the treatment of benefit) in any China countervailing duty proceeding. Likewise, the rate calculated here for preferential lending is not the highest non-*de minimis* rate for a similar program in any China countervailing duty proceeding. As such, we find the Government of China's argument in this regard is unpersuasive. Therefore, as indicated above, we find that the 10.54 percent rate is sufficiently corroborated. Accordingly, we continue to rely on this rate as AFA for the export buyer's credits program benefit.

Comment 7: Whether Commerce Should Use the USD Interest Rate Benchmark for Hong Kong Loans

Dingsheng's Case Brief:

- Following the *Preliminary Determination*, Dingsheng reported the loans received, if any, by Dingsheng HK and Walson.[188] Thus, it has remedied the circumstances that predicated the use of facts available in the *Preliminary Determination*.
- Dingsheng HK's loans were all issued in USD at interest rates above the 0.56 percent USD interest rate. These loans should not be countervailed in the final determination, as no benefit exists.

No other comments were received on this issue.

Commerce's Position: We agree with Dingsheng, and we have revised the loan interest rates to reflect a USD lending rate.

Comment 8: Whether Loans Issued in Hong Kong to Hong Kong Companies Are Countervailable

Dingsheng's Case Brief:

[187] *Id.* at 23-24.
[188] *See* Dingsheng's Case Brief at 19 (citing Dingsheng's September 12, 2017 Supplemental Questionnaire Response (Dingsheng September 12, 2017 SQR) at Exhibit P-1).

- Commerce should not have required Dingsheng HK and Walson to report loans received by banks located in Hong Kong as these loans are not subject to the allegation made in this case for policy lending by Chinese state-owned banks to aluminum foil producers located in China.[189]
- The *Preamble* and 19 CFR 351.525 establish a presumption that governments normally subsidize domestic production only.[190]
- Commerce has a consistent practice of not requiring questionnaire responses from companies located outside the legal jurisdiction of the country under investigation.[191]
- Dingsheng HK is not a "trading company" that is required to report subsidies pursuant to 19 CFR 351.525(c), as it cannot have any benefits that could be cumulated with the benefits of producers located in China.[192] Commerce has explained that 19 CFR 351.525(c) does not apply to companies located in Hong Kong or other third-country.[193]
- 19 CFR 351.525(b)(7) applies only where a company has "production facilities in two or more countries." Dingsheng HK is not a producer, nor does it have a production affiliate in Hong Kong. 19 CFR 351.527 states that 'transnational subsidies' are not countervailable. There have not been any allegations regarding subsidies provided to international consortia pursuant to section 701(d) of the Act or of upstream subsidies pursuant to section 771A of the Act.[194]
- The policy loan program initiated on in this case was with regard to preferential loans provided in the Chinese market. Policy loans are only countervailable to the extent that they are provided at preferential rates compared to what the benchmark interest rate should be in China. Commerce has not analyzed or concluded that Hong Kong's financial sector is distorted, preventing loans provided in Hong Kong from being countervailed.[195]

Mahle's Rebuttal Brief:

[189] *See* Dingsheng's Case Brief at 16-19.
[190] *Id*. (citing *Preamble*).
[191] *Id*. (citing *Aluminum Extrusions from China Investigation*, and accompanying IDM at 6; *Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 4936 (January 28, 2009) (not requiring third-country affiliates to report subsidies because "each is incorporated and registered outside of the PRC and therefore, is not eligible for any subsidies from the PRC" and "because, consistent with practice, the Department will not attribute subsidies to a company that is incorporated and registered outside the PRC, and so could not receive subsidies from the PRC.").
[192] *Id*. (citing *Aluminum Extrusions from the People's Republic of China: Preliminary Results of the Countervailing Duty Administrative Review and Preliminary Intent To Rescind, in Part; 2014*, 81 Fed. Reg. 38,137 (June 13, 2016), (*Aluminum Extrusions from China Preliminary Determination; 2014)*, unchanged in final ("We are not making a cross-ownership determination or attributing any subsidies to Jangho Hong Kong, a Hong Kong entity, consistent with 19 CFR 351.525(b)(6) and (7)").
[193] *Id*. at 17-18 (*citing Application of U.S. Antidumping and Countervailing Duty Laws to Hong Kong*, 62 FR 42965 (August 11, 1997); *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 (April16, 2004); *Citric Acid and Certain Citrate Salts from Thailand: Preliminary Negative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination and Alignment of Final Determination With Final Antidumping Duty Determination,* 82 FR 51216 (November 3, 2017), and accompanying PDM).
[194] *Id*. at 18-19 (citing *Preamble*, 63 FR at 65403).
[195] *Id*.

- Interested Party Mahle restates and affirms its support for Dingsheng's arguments.[196]

Commerce's Position: Consequent to the interest rate revisions described at the comment above, no benefit exists for Dingsheng HK's loans. Accordingly, this issue is moot.

Comment 9: Whether Commerce Should Revise Dingsheng's Sales Denominator

Dingsheng's Case Brief:

- Commerce's *Preliminary Determination* correctly intended to use Jiangsu Dingsheng's consolidated sales value for the *ad valorem* subsidy calculation of benefits received by Jiangsu Dingsheng. However, the actual calculation used the company's unconsolidated sales value.[197]
- Commerce should use the consolidated sales figure, as correct in Dingsheng's minor corrections at verification.[198]
- Commerce should include "other revenue" figures in all of the cross-owned companies' sales denominators. Commerce only removes sales from the denominator if those sales consist of service income or royalty income. [199]
- At the *Preliminary Determination*, Commerce calculated the benefit Dingsheng IE received using its own sales only. Commerce subsequently confirmed that all of Dingsheng IE's exports were produced by its cross-owned affiliates, Jiangsu Dingsheng or Five Star. Thus, in accordance with 19 CFR 351.525(c), Dingsheng IE's subsidies should be cumulated over the sales of Dingsheng IE, Jiangsu Dingsheng and Five Star.[200]
- Dingsheng reported that Dingsheng IE was wholly owned by Jiangsu Dingsheng and that Dingsheng IE exported subject merchandise produced by both Jiangsu Dingsheng and Five Star during the POI.[201]
- Commerce should use the verified sales figures to exclude intercompany sales, consistent with past practice.[202]

Petitioners' Rebuttal Brief:

[196] *See* Mahle's Rebuttal Brief at 13-14.
[197] *See* Dingsheng's Case Brief at 4-5.
[198] *Id*. at 5 (citing Dingsheng September 12, 2017 SQR at Exhibit S-1; Dingsheng Verification Report at Minor Corrections, Attachment 2).
[199] *Id*. (citing Dingsheng Verification Report at VE-4-23, -22 (Five Star), VE-4-45 (Teemful); *Residential Washers from Korea*, and accompanying IDM at Comment 13).
[200] *Id*. at 6-7 (citing PDM at 20; Dingsheng September 12, 2017 SQR at 4; *Certain Frozen Warmwater Shrimp from India: Final Affirmative Countervailing Duty Determination*, 78 FR 50385 (August 19, 2013), and accompanying IDM at 9; *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Preliminary Results of Countervailing Duty Administrative Review; Calendar Year 2015*, 82 FR 16994 (April 7, 2017).
[201] *Id*. at 7 (citing Dingsheng's July 5, 2017 Supplemental Affiliation Response (Dingsheng July 5, 2017 SAFFR) at Exhibit A.1).
[202] *Id*. at 21-24 (citing *PC Strand from China*; Dingsheng Verification Report at VE-4-14 (Five Star), VE-4-42 (Teemful), and VE-13-18 (Jiangsu Dingsheng); *Certain Polyethylene Terephthalate Resin from the People's Republic of China*, 81 Fed. Reg. 13337 (March 14, 2016) (*PET Resin from China)*, and accompanying IDM at Comment 12).

- Commerce verified that Dinghseng's "other revenues" is derived from activities other than products manufactured by the company.[203] Accordingly, these revenues should be excluded from the sales denominator.
- To support its position, Dingsheng misrepresents Commerce's actual finding in *Residential Washers from Korea*. As clearly stated by Commerce in that investigation, "we find it is appropriate to exclude Samsung's income from non-production related activities" such as royalties, sales of services, commissions, *etc*." Commerce, therefore, did not indicate that only service income and royalties should be excluded, but rather all non-production related income.[204]
- 19 CFR 351.525(c) states that countervailable benefits received by "a trading company which exports subject merchandise shall be cumulated with benefits from subsidies provided to the firm which is producing subject merchandise." Critically, cumulation is not the same as attribution, and denotes that the respective countervailable benefits should be aggregated. In other words, 19 CFR 351.525(c) does not declare that the subsidies provided to the trading company are attributable to the total sales of both the trading company and the firm producing the subject merchandise.[205]
- In *Cold-Drawn Mechanical Tubing from China,* Commerce recently affirmed its attribution of all benefits received by a trading company to the sales of the trading company alone, in accordance with 19 CFR 351.525(c).[206]
- The nature of the subsidy provided is relevant to Commerce's analysis and the appropriate attribution of the benefit. The countervailable subsidies provided to Dingsheng IE only benefited Dingsheng IEs operations. Accordingly, Commerce should affirm its preliminary benefit calculations for countervailable subsidies provided to Dingsheng IE.

Commerce's Position: We agree with the respondent that, for subsidies received by Jiangsu Dingsheng, we should use the 2016 verified, consolidated sales value. We have adjusted Jiangsu Dingsheng's final calculations, accordingly.[207]

With regard to "other revenue," we find it appropriate to include Dingsheng's income associated with non-operational and service-related (hereinafter referred to as "non-operational") activity in the total sales denominator for the final determination, consistent with our past practice. Commerce examines whether the value of such non-operational income should be included in

[203] *See* Petitioners' Rebuttal Brief at 61 (citing Dingsheng Verification Report at Exhibit VE4-22, VE4-45).

[204] *Id*.

[205] *Id*. at 62.

[206] *Id*. at 62-63 (citing *Countervailing Duty Investigation of Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Determination of Critical Circumstances*, in Part, 82 FR 58175, (December 11, 2017) (*Cold-Drawn Mechanical Tubing from China),* and accompanying IDM at 11.

[207] *See* Dingsheng Final Calculation Memorandum.

the denominator on a case-by-case basis.[208] Commerce stated in *Steel Products from Austria GIA*:

> We determine that the value of services sold should be included in a company's total sales when the subsidy for which we are measuring the benefit is not tied to the production of merchandise. This determination derives from the reasonable presumption that, to the extent a government provides a subsidy which is not tied to a company's productive activities, a recipient company can be presumed to use that subsidy to benefit its entire operations, including its services functions.[209]

Furthermore, we note that in those instances where the subsidy is not tied *per se* to merchandise production, such a subsidy benefits a company's entire operation, which would include its service activities.[210]

In this instance, we reviewed Dingsheng's activities associated with the non-operational income during verification. Specifically, we examined documentation of selected companies and found that the non-operational income was related to production activities of the merchandise under investigation.[211] Thus, we find that record evidence demonstrates that the non-operational income at issue was related to the production of merchandise under investigation. Conversely, in *Washers from Korea*, the income at issue related only to non-production related activities.[212] Accordingly, consistent with our past practice,[213] we included Dingsheng's income from non-operational activities in the total sales denominator for this final determination.

We revised certain sales figures to exclude intercompany sales, consistent with past practice.[214] Specifically, we only excluded sales attributable to producers of the subject merchandise from the sales denominator pertaining to producers of the subject merchandise.

Finally, consistent with past proceedings,[215] pursuant to 19 CFR 351.525(c), for subsidies provided to a trading company that exports subject merchandise, the benefits are cumulated with benefits from subsidies provided to the firm that is producing subject merchandise that is sold through the trading company, regardless of whether the trading company and the producing firm

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[208] *See Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 81 FR 47349 (July 21, 2016) (*Rectangular Pipes and Tubes from Turkey*), and accompanying IDM at Comment 4.

[209] *See Rectangular Pipes and Tubes from Turkey*, at Comment 4; *see also, Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria*, 58 FR 37217, 37238 (July 9, 1993), General Issues Appendix at "C. Services" (*Steel Products from Austria GIA*).

[210] *Id.*

[211] *See, e.g.*, Dingsheng Verification Report at Exhibit VE4-22, VE4-45.

[212] *See Large Residential Washers from the Republic of Korea: Final Affirmative Countervailing Duty Determination, 77 FR 75975 (December 26, 2012) (Washers from Korea)*, and accompanying IDM at 52.

[213] *See, e.g., Rectangular Pipes and Tubes from Turkey*, and accompanying IDM at Comment 4 and *Steel Products from Austria GIA.*

[214] *See PC Strand from China*; Dingsheng Verification Report at VE-4-14 (Five Star), VE-4-42 (Teemful), and VE-13-18 (Jiangsu Dingsheng).

[215] *See, e.g., Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Preliminary Negative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 81 FR 63168 (September 14, 2016), and accompanying PDM at 13, unchanged in final.

are affiliated. Thus, consistent with the *Preliminary Determination*, we are cumulating the benefits from subsidies received by Dingsheng IE with the benefits from subsidies received by Jiangsu Dingsheng and Five Star based on the relative share, by value, of Dingsheng IE's exports to the United States of subject merchandise that was produced by Jiangsu Dingsheng and Five Star during the POI.

Comment 10: Whether Commerce Should Correct Calculation Errors for Dingsheng's Loans

Dingsheng's Case Brief:

- Commerce should follow its practice and take into account principal payments in calculating benchmark interest payments for Jiangsu Dingsheng and Five Star.[216]
- Commerce should correct Jiangsu Dingsheng's loan calculations to apply an interest rate benchmark that corresponds to the currency denomination of the loan.[217]
- The financing loan from Mercedes Benz should not be countervailed, as Mercedes Benz is not a Chinese government authority and the loan was provided for a vehicle purchase.[218]

No other comments were received on this issue.

Commerce's Position: We agree with Dingsheng's characterization of these errors. We have corrected these errors for the final determination.[219]

Comment 11: Whether Commerce Should Correct Calculation Errors for Dingsheng's Aluminum and Coal Purchases

Petitioners' Case Brief:

- Commerce's preliminary calculations failed to apply the appropriate benchmark price for select input purchases due to formula errors. These errors should be corrected for the final determination.[220]

No other comments were received on this issue.

Commerce's Position: We agree with the petitioners' characterization of these errors. We have corrected these errors for the final determination.[221]

[216] *See* Dingsheng's Case Brief at 8-9 (citing *Shrimp from China*, and accompanying IDM at 13).
[217] *Id*. at 9 (citing 19 CFR 351.505(a)(2); *Preamble*, 63 FR at 65363).
[218] *Id*.
[219] *See* Dingsheng Final Calculation Memorandum.
[220] *See* Petitioners' Case Brief at 16 (citing PDM at 50-52).
[221] *See* Dingsheng Final Calculation Memorandum.

Comment 12: Whether Commerce Should Place Interest Rate Benchmarks on the Record That Are Contemporaneous to the POI

Dingsheng's Case Brief:

- Commerce used interest rate benchmarks from 2014 to calculate the benefit for Dingsheng's 2016 loans. Using a two-year old interest rate to calculate the benefit for policy lending violates the statutory requirement of using a commercially comparable loan to calculate the benefit.[222] Commerce should place 2015 and 2016 interest rate benchmarks on the record and use them for the final determination.

Mahle's Rebuttal Brief:

- Interested Party Mahle restates and affirms its support for Dinghseng's arguments.[223]

Commerce's Position: As explained in the *Preliminary Determination* calculation memoranda, the interest rate benchmarks for 2016 are not available.[224] Moreover, parties did not submit data that are consistent with Commerce's interest rate calculation methodology that we could have used to calculate an updated interest rate benchmark. Thus, consistent with the *Preliminary Determination*, we have relied on the 2014 interest lending rates, adjusted for inflation, as the benchmark for the Policy Lending program. Section 771(5)(E) of the Act instructs Commerce that a benefit for a loan is the "difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market." This is consistent with Commerce's practice.[225]

Comment 13: Whether Commerce Should Rely on AFA For Subsidies Discovered at Zhongji's verification

Petitioners' Case Brief:

- Commerce discovered that Zhongji is located in the Jiangyin Lingang Economic Development zone at verification.[226] Zhongji's failure to disclose its location in a special economic zone (SEZ) prior to verification necessitates a facts available analysis for the final determination. Further, as Zhongji failed to cooperate to the best of its ability, the statute authorizes Commerce to use an adverse inference.[227]
- Commerce should use the subsidy rate calculated for Dingsheng for the Provision of Land for LTAR program, 1.16 percent *ad valorem.* The overall program benefit should

[222] *See* Dingsheng's Case Brief at 20-21 (citing section 771(5)(E) of the Act; 19 CFR 351.505; *Preamble*, 63 FR at 65364).
[223] *See* Mahle's Rebuttal Brief at 16.
[224] *See* Dingsheng Preliminary Calculation Memorandum at 3 and Zhongji Preliminary Calculation Memorandum at 3.
[225] *See, e.g., Silica Fabric from China; Truck and Bus Tires from China; Fine Denier PSF from China.*
[226] *See* Petitioners' Case Brief at 6 (citing Zhongji Verification Report at 2, 25).
[227] *Id*. (citing section 776(a)(2) and (b) of the Act).

reflect land-use rights extended to both Zhongji and Huafeng Aluminum, totaling 1.83 percent *ad valorem*.[228]

- Information collected at verification contradicts Zhongji's non-use of primary aluminum claims.[229] Zhongji's failure to disclose its primary aluminum purchases prior to verification necessitates a facts available analysis for the final determination. Further, as Zhongji failed to cooperate to the best of its ability, the statute authorizes Commerce to use an adverse inference.
- Commerce should use the subsidy rate calculated for Dingsheng for the Provision of Primary Aluminum for LTAR program, 6.79 percent *ad valorem.*[230]

Zhongji's Rebuttal Brief:

- Just because an area is designated as an economic development zone does not mean it has the legal status of a "special economic zone." Jiangsu Zhongji has provided unrebutted evidence that the company obtained its land-use rights through public auctions or arms-length transactions. The zone to which the verification report refers confers no tax, legal or other countervailable benefit to Jiangsu Zhongji.[231]
- Commerce verified that Huafeng Aluminum did not have the capacity to consume primary aluminum until after the POI.[232] Huafeng Aluminum explained that its production started with aluminum plate during the POI. This is corroborated by verification of its raw materials account and sub-accounts. The petitioners have mistaken aluminum foil stock for primary aluminum in Huafeng Aluminum's accounts.

Commerce's Position: We disagree with the petitioners that we should rely on AFA to measure the benefit for certain of Zhongji's land parcels. Zhongji's initial questionnaire response included information pertaining to Jiangsu Zhongji's location in an SEZ.[233] Accordingly, for this final determination, we are relying on this information to calculate a benefit for Jiangsu Zhongji's land that is located in an SEZ.

We disagree with the petitioners that the verification report suggests Zhongji failed to disclose primary aluminum purchases. The verification report clearly states that we examined Zhongji's accounts and found no indication of any primary aluminum purchases during the POI.[234] Accordingly, we continue to find that the Primary Aluminum for LTAR program was not used by Zhongji.

Comment 14: Whether Commerce Should Grant Zhongji an Export Value Adjustment

Petitioners' Case Brief:

[228] *Id*. at 7.
[229] *Id*. at 7-11 (citing Zhongji Verification Report at 7-9; VE-12; VE-12-9; VE 15-31).
[230] *Id*.
[231] *See* Zhongji's Rebuttal Brief at 7-8.
[232] *Id.* at 4 (citing Zhongji Verification Report at 7).
[233] *See* Zhongji June 12, 2017 IQR at Vol.1 – Exhibit 3; Exhibit 6; Exhibit 18; and Exhibit 22.
[234] *See* Zhongji Verification Report at 25-26.

- At verification, Zhongji was unable to confirm that all Zhongji HK's reported shipments of subject merchandise actually were provided directly to U.S. customers.[235]
- In light of these circumstances, Zhongji fails to meet the criteria necessary to qualify for an export value adjustment under Commerce's standard practice.[236] Commerce should revise the sales denominators preliminarily used to calculate countervailable benefits received by Jiangsu Zhongji and Shantou Wanshun to exclude the mark-up for Zhongji HK's sales.[237]
- In *Aluminum Extrusions*, Commerce found the adjustment requested by the respondent was not warranted due to insufficient evidence from the producer, stating that "the Zhongya Companies' sales chain does not adhere to the second and sixth criteria of {Commerce's} EV adjustment methodology."[238]

Zhongji's Rebuttal Brief:

- The information that Commerce relied upon for its export value adjustment is not impacted by Commerce's verification finding. Plain language of the regulation at 19 CFR 351.525(a) does not limit the denominator to U.S. sales. The petitioners cannot insert the word "U.S." before "sales value" by imagination. Doing so would also be inconsistent with the method used by Commerce to calculate the subsidy rate.[239]
- The relevant question is not whether all sales through Zhongji HK were provided to ultimate customers in the United States, but whether all sales though Zhongji HK were exports and can be properly adjusted as "export value." This question has been answered in Jiangsu Zhongji's initial questionnaire response. Commerce did not find any inconsistency regarding this issue during verification.[240]
- As a matter of law, sales made through Zhongji HK are bound to be export sales because Hong Kong is a separate jurisdiction from China. Thus, the products are already exported out of China when Zhongji HK takes title, as reflected in purchase orders and invoices between Jiangsu Zhongji and Zhongji HK.[241]

Commerce's Position: At the *Preliminary Determination*, we granted Zhongji an export value adjustment.[242] We stated that Zhongji met the requisite six criteria for an export value adjustment: 1) U.S. invoices via Zhongji HK include a mark-up from the invoice issued from Zhongji to Zhongji HK; 2) Zhongji and Zhongji HK are affiliated; 3) the U.S. invoice issued by Zhongji HK establishes the customs value to which CVD duties would be applied; 4) there is a one-to-one correlation between the Zhongji HK and Zhongji invoices, *e.g.* between sales reference numbers and quantities; 5) Zhongji HK ships the subject merchandise directly to the

[235] *See* Petitioners' Case Brief at 12.
[236] *Id*. (citing *Aluminum Extrusions from China Investigation*, and accompanying IDM at Comment 32).
[237] *Id*.
[238] *Id*. at 13.
[239] *See* Zhongji's Rebuttal Brief at 3.
[240] *Id*. (citing Zhongji June 12, 2017 IQR at Vol. IV, Ex. 5).
[241] *Id*. at 4 (citing Zhongji June 12, 2017 IQR at Vol. IV, Ex. 6).
[242] *See* PDM at 10-11.

United States; and 6) the invoices can be tracked as back-to-back invoices that are identical, with the exception of price.[243]

As noted above, one of the six criteria enumerated in the *Preliminary Determination* was Zhongji HK's shipment of subject merchandise directly to the United States. In order for Zhongji to qualify for an adjustment to its sales denominator, it must be able to demonstrate the higher Customs value for all of its U.S. sales. As noted in Zhongji's verification report, Zhongji's export sales ledger contained all exports, and was not sub-divided by country or region.[244] Thus, Zhongji relied on its U.S. customer codes to identify which of its sales entered the United States.[245] However, during the course of the verification, it became apparent that sales identified by Zhongji as U.S. sales did not enter the United States.[246] Thus, the methodology that Zhongji used to identify its U.S. sales was faulty. Because Zhongji was unable to identify its U.S. sales with certainty, it can no longer claim that all of its sales of subject merchandise to the U.S. meet the six criteria.

Additionally, at verification, Commerce discovered that certain characteristics of Zhongji's trading practices call into question whether Zhongji is able to meet the requisite six criteria for an export value adjustment For example, Zhongji stated that its affiliated trading company Zhongji HK made sales to the United States *via* trading companies.[247] Zhongji also stated that the identity of final customers of these unaffiliated trading companies is withheld from Zhongji.[248] One of the six criteria speak to the necessity of the sale being shipped directly from the respondent's affiliated trading company to the United States. Commerce is unable to ascertain whether sales that are being made by the affiliated trading company, Zhongji HK, through another unaffiliated trading company to the final U.S. customer, meet this criterion.

Moreover, as further discovered at verification, Zhongji sent the commercial invoice for a sale to a U.S. trading company, and the U.S. trading company changed the commercial invoice before sending it to the final customer. One of the six criteria mandates a one-to-one correlation between the invoice that reflects the price on which subsidies are received and the invoice with the mark-up that accompanies the shipment. Similarly, if an unaffiliated U.S. trading company is able to change the commercial invoice prior to the final sale, Commerce is unable to ascertain whether there is a one-to-one correlation between the invoice that reflects the price on which subsidies are received (*i.e.*, the invoice from Zhongji) and the invoice that accompanies the shipment.

Commerce's practice of granting a sales adjustment for marked-up invoices is limited to instances where a respondent can demonstrate that all of its sales to the United States met the six criteria enumerated, above. This is to satisfy to Commerce that the sales value adjustment properly reflects an upward adjustment to the sales value of all merchandise that entered the

[243] *Id.*
[244] *See* Zhongji Verification Report at 10-11.
[245] *Id.*
[246] *Id.*
[247] *Id.* at 12.
[248] *Id.*

United States, and on which CBP assessed dutiable value. In *Coated Paper from China*, Commerce acknowledged that it expects that the criteria for such an adjustment will rarely be met.[249] Here, in light of the verification findings, Commerce concludes that Zhongji has failed to demonstrate that its sales meet the requisite criteria, and, as such, we are not making an adjustment to its sales value for sales through Zhongji HK for this final determination.

Comment 15: Whether Commerce Improperly Rejected Dingsheng's Benchmark Data

Dingsheng's Case Brief:

- Commerce rejected Dingsheng's aluminum ingot benchmark data on the basis of it being summary data.[250] Commerce recently accepted such data in the *Tool Chests from China* proceeding.[251] Commerce has used London Metal Exchange (LME) prices in past proceedings for tier 2 benchmarks.[252] As such, there is no reasonable basis to reject these prices in the instant proceeding.[253]
- 19 CFR 351.511(a)(2)(ii) states that world prices will be averaged for benchmarks. The LME data, which reflects average prices, is perfectly viable for use as benchmark.[254]

Petitioners' Rebuttal Brief:

- Commerce did not consider LME as a data source in the *Tool Chests from China* proceeding.[255] Commerce specifically rejected LME pricing information for primary aluminum as an appropriate benchmark in prior proceedings on aluminum extrusions.[256]

Mahle's Rebuttal Brief:

- Interested Party Mahle restates and affirms its support for Dinghseng's arguments.[257]

Commerce's Position: Consistent with the *Preliminary Determination*, we continue to rely solely on GTIS's Global Trade Atlas (GTA) data as benchmark for primary aluminum. As noted by the petitioners, Commerce did not consider LME as a data source in the *Tool Chests from China* proceeding.[258] Commerce specifically rejected LME pricing information for primary

[249] *See Coated Paper from China*, and accompanying IDM at Comment 21.
[250] *See* Dingsheng's Case Brief at 10-12 (citing PDM at 17).
[251] *Id*. (citing *Tool Chests and Cabinets from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 82 FR 56582 (November 29, 2017) (*Tool Chests from China)*, and accompanying IDM at Comment 5).
[252] *Id*. (citing *Oil Country Tubular Goods from China*, and accompanying IDM at Comment 13; *Drill Pipe from China Investigation*, and accompanying IDM at 32).
[253] *Id*. at 12 (citing *Dongbu Steel Co., Ltd. v. United States*, 635 F.3d 1363, 1371 (Fed. Cir. 2011).
[254] *Id*.
[255] *See* Petitioners' Rebuttal Brief at 36 (citing *Tool Chests from China*, and accompanying IDM at Comment 5).
[256] *Id*. (citing *Aluminum Extrusions from China; 2012*, and accompanying IDM at Comment 9).
[257] *See* Mahle's Rebuttal Brief at 14-15.
[258] *See* Petitioners' Rebuttal Brief at 36 (citing *Tool Chests from China*, and accompanying IDM at Comment 5).

aluminum as an appropriate benchmark in prior proceedings on aluminum extrusions.[259] As explained in *Aluminum Extrusions from China; 2012,* the LME contains only a cash price for primary aluminum (unalloyed ingots) with a minimum aluminum content of 99.7 percent.[260]

Commerce has previously determined that the GTA unalloyed aluminum category data reflects ingots that have a minimum aluminum content of 99 percent.[261] Thus, the GTA data reflect a larger universe of ingots than the LME, which only captures a subset of ingots (*i.e.*, those with 99.7 percent minimum aluminum content). Consistent with *Aluminum Extrusions from China; 2012*, we find that the GTA data better captures the entire range of ingots that could be purchased by the respondents. Thus, for this final determination, we continue to rely solely upon the GTA data for the benchmark.

Comment 16: Whether Commerce Should Revise the Benchmarks for Primary Aluminum

Dingsheng's Case Brief:

- If Commerce continues to use GTA data for the tier 2 benchmark for aluminum ingot in its Final Determination, it should only use the HTS provision covering unalloyed aluminum ingot, 7601.10, and not HTS 7601.20 covering alloyed ingot, since Dingsheng only reported usage of unalloyed ingot.[262]
- Section 771(5)(E)(iv) directs Commerce to measure the adequacy of remuneration in relation to the prevailing market conditions for the good, which includes price, quality, availability, marketability, transportation, and other conditions of purchase or sale. 19 CFR 351.511(a)(2)(ii) incorporates these statutory criteria in the provision by requiring that the tier 2 price selected be "a world market price where it is reasonable to conclude that such price would be available to purchaser in the country in question."[263]
- In practice, Commerce generally selects the most product specific benchmarks possible for its LTAR calculation.[264]

[259] *Id*. (citing *Aluminum Extrusions from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 78788 (December 31, 2014) (*Aluminum Extrusions from China; 2012)*, and accompanying IDM at Comment 9).
[260] *Id. See also* Dingsheng July 21, 2017 Benchmark Submission at Exhibit 1.
[261] *See Aluminum Extrusions from China; 2012;* and accompanying IDM at Comment 9.
[262] *See* Dingsheng's Case Brief at 12-14.
[263] *Id*.
[264] *Id*. (citing *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia: Final Affirmative Countervailing Duty Determination*, 75 FR 59209 (September 27, 2010) (*Coated Paper from Indonesia)*, and accompanying IDM at Comment 11; *Final Results of Countervailing Duty New Shipper Review: Certain Softwood Lumber Products from Canada*, 70 FR 56640 (September 28, 2005), and accompanying IDM at Comment 1; *Magnesia Carbon Bricks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 45472 (August 2, 2010), and accompanying IDM at Comment 7; *Laminated Woven Sacks from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008), and accompanying IDM at Comment 15).

- The *Preliminary Determination* stated that the aluminum benchmark reflects aluminum input purchased by Jiangsu Dingsheng.[265] However, this benchmark covers both unalloyed and alloyed ingot. Jiangsu Dingsheng stated multiple times in its response that it purchased on unalloyed ingot, and this information was verified.[266]
- On average, the price for alloyed aluminum ingot is $208.90 higher than the price for unalloyed aluminum ingot. Thus, the inclusion of the alloyed aluminum ingot distorts the benchmark price of this input.[267]

Petitioners' Rebuttal Brief:

- Dingsheng failed to produce the mill certificates that Commerce requested at verification. Instead, Commerce reviewed purchase contracts, but it was unable to verify Dinsheng's payments of the specific provided contracts. In light of these facts, Commerce should not accept Dingsheng's assertion that all purchases of aluminum were unalloyed.[268]

Mahle's Rebuttal Brief:

- Interested Party Mahle restates and affirms its support for Dinghseng's arguments.[269]

Commerce's Position: We agree with Dingsheng. In its initial questionnaire response, Dingsheng reported that it purchased unalloyed aluminum ingot.[270] At verification, Dingsheng explained that it was unable to obtain mill certificates from its trading company suppliers.[271] Thus, in order to verify Dingsheng's reported purchases of unalloyed aluminum ingots, we reviewed the purchase contracts.[272] According to these purchase contracts, Dingsheng purchased unalloyed aluminum ingots.[273] Review of these contracts satisfied Commerce verifiers that Dingsheng's purchases were limited to unalloyed aluminum ingots. s

The benchmark for primary aluminum currently includes unalloyed aluminum ingot, HTS 7601.10, and alloyed ingot, HTS 7601.20. Because the respondent purchased unalloyed aluminum ingots, consistent with our practice, we have revised the benchmark to include only unalloyed aluminum ingot, HTS 7601.10, for this final determination.[274]

[265] *Id*. at 14 (citing PDM at 16-17).
[266] *Id*. (citing Dingsheng July 20, 2017 IQR at 47, Exhibit P.E.2.1; Dingsheng Verification Report at VE-17-38; Dingsheng Verification Report at 17-78).
[267] *Id*. at 15 (citing Commerce Preliminary Calculation File at Tab "AL.Benchmark").
[268] *See* Petitioners' Rebuttal Brief at 37-38 (citing Dingsheng Verification Report at 25).
[269] *See* Mahle's Rebuttal Brief at 14-15.
[270] *See* Dingsheng July 20, 2017 IQR at 46-47.
[271] *See* Dingsheng Verification Report at 25.
[272] *Id*.
[273] *Id*. at 25 and VE-17.
[274] *See Coated Paper from Indonesia*, and accompanying IDM at Comment 11.

Comment 17: Whether the Government of China Provided Sufficient Evidence to Find That Input Suppliers Were Not Government Authorities

Government of China's Case Brief:

- The information on the record shows that all input producers are bound by the *Company Law of China* and conduct their business activities autonomously.[275] Commerce's conclusion that all non-government owned producers are government authorities is unsupported by the record of this investigation.
- The Government of China submitted authoritative ownership information and business registrations for all primary aluminum and steam coal producers available through the Enterprise Credit Information Publicity System (ECIPS).[276] This is sufficient to demonstrate the current ownership status and history of changes of all aluminum and steam coal producers reported by Dinghseng HK.[277]

Petitioners' Rebuttal Brief:

- The respondents did not provide complete information concerning their input purchases. As such, the information requested by Commerce from the Government of China in the Input Producer Appendix is incomplete.
- The Government of China's claim that ownership information alone should be sufficient to find certain input producers to not be government authorities glosses over the fact that Commerce requested additional corporate information, and the Government of China failed to provide it.

Mahle's Rebuttal Brief:

- Interested Party Mahle restates and affirms its support for the Government of China's arguments.[278]

Commerce's Position: As explained in the *Preliminary Determination*,[279] we asked that the Government of China provide information regarding the specific companies that produced primary aluminum and steam coal that Dingsheng and Zhongji purchased during the POI. Specifically, we sought information from the Government of China which would allow us to analyze whether the producers are "authorities" within the meaning of section 771(5)(B) of the Act. In our initial and supplemental questionnaire to the Government of China, Commerce requested certain information be provided with respect to both the majority government-owned and non-majority government-owned enterprises.[280]

[275] *See* Government of China's Case Brief at 30 (citing Government of China July 20, 2017 IQR - Dingsheng HK at 67-68, 90 and Exhibit D-7.
[276] *Id*. at 31-32 (citing Government of China July 20, 2017 IQR - Dingsheng HK at 60, 87-88, Exhibits D-2, D-3, D-4, D-18 and D-19).
[277] *Id.* at 31 (citing Government of China July 20, 2017 IQR – Dingsheng HK at 60 and 88).
[278] *See* Mahle's Rebuttal Brief at 15-16.
[279] *See* PDM at 30-33.
[280] *See* Initial CVD Questionnaire, at Section II, "Input Producer Appendix;" *see also* Government of China July 5, 2017 SQR at 1.

With respect to the steam coal producers within China, the Government of China provided no information on government ownership. The Government of China did not provide any information on its involvement in the industry, nor on its ownership interest within individual steam coal producers. Instead of providing the requested information, the Government of China stated that "the data is not available."[281]

With respect to those primary aluminum producing enterprises that the Government of China identified as majority government-owned, we explained that Commerce made multiple requests for the Government of China to provide the articles of incorporation and capital verification reports of all majority government-owned enterprises.[282] The Government of China provided partial information (*i.e.*, the corporate profile, shareholder structure, and articles of association) with respect to only one of the majority government-owned enterprises.[283] Despite Commerce's requests, the Government of China did not provide the articles of incorporation and capital verification reports for any of the majority government-owned enterprises. As explained in the Public Bodies Memorandum, record evidence demonstrates that producers in China that are majority-owned by the government possess, exercise, or are vested with, governmental authority.[284] Record evidence demonstrates that the Government of China exercises meaningful control over these entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector.[285] Therefore, in light of our prior findings and the Government of China's failure to provide rebuttal information to the contrary, we determine that these enterprises are "authorities" within the meaning of section 771(5)(B) of the Act.

With respect to those primary aluminum producing entities that were reported as being non-majority government-owned enterprises that produce primary aluminum purchased by Jiangsu Dingsheng and Zhongji during the POI, while the Government of China provided website screenshots of certain business registrations for some of the input producers of Jiangsu Dingsheng, the Government of China did not provide other relevant documentation requested by the Commerce, including company by-laws, annual reports, and tax registration documents, and articles of association.[286]

Additionally, while the Commerce made attempts to obtain ownership and management information for the respondents' primary aluminum and steam coal producers, the Government of China did not provide the requested information. For instance, in the Government of China July 20, 2017 IQR, the Government of China stated in response to the Commerce's request for CCP information of the primary aluminum producers, that it is "beyond the capacity of the Government of China to access information requested by the Commerce in this regard," and refused to provide the requested information.[287] In response to the Commerce's supplemental

[281] *See* Government of China July 20, 2017 IQR – Dingsheng HK at 104.
[282] *See* Initial CVD Questionnaire, at Section II, "Input Producer Appendix;" *see also* Government of China July 5, 2017 SQR at 1.
[283] *See* Government of China July 20, 2017 IQR – Dingsheng HK at 104.
[284] *See* Public Bodies Memorandum at 35-36, and sources cited therein.
[285] *Id*.
[286] *See* Government of China July 20, 2017 IQR - Dingsheng HK at Exhibit D-1 and D-2.
[287] *Id.* at 73 and Government of China June 12, 2017 IQR - Zhongji, at 68-70.

questionnaire, in which the Commerce reiterated the same requests for information, the Government of China again refused to provide a complete response with regard to all requested documentation of producers of primary aluminum in the China.[288]

As discussed above, the Government of China did not provide complete responses to our numerous requests for information with respect to primary aluminum and steam coal producers that the Government of China claimed to be non-majority government-owned enterprises, including requests for information pertaining to ownership or management by CCP officials. Such information is necessary to our determination of whether the input producers are authorities within the meaning of section 771(5)(B) of the Act. Therefore, we determine that necessary information is not available on the record, and that the Government of China withheld information that was requested of it with regard to the input purchases by Jiangsu Dingsheng and Zhongji.[289] Accordingly, the Commerce must rely on "facts otherwise available" in reaching a determination in this respect. Further, we find that the Government of China failed to cooperate by not acting to the best of its ability to comply with requests for information regarding the producers of the primary aluminum and steam coal from which Jiangsu Dingsheng and Zhongji purchased during the POI because the Government of China did not provide the requested information.[290] Consequently, we find that an adverse inference is warranted in the application of facts available.[291]

At Comment 18, below, we further address the Government of China's argument concerning the *Company Law of China*, and explain why it does not provide a basis to determine that the respondent's input suppliers are not government authorities.

In sum, as AFA, we determine that all of the domestic Chinese producers that produced the steam coal purchased by Dingsheng and Zhongji during the POI are "authorities" within the meaning of section 771(5)(B) of the Act.[292] Relying on AFA, we also determine that the non-government owned domestic producers of the primary aluminum purchased by Dingsheng are "authorities" within the meaning of section 771(5)(B) of the Act.

Comment 18: Whether Chinese Communist Party (CCP) Affiliations or Activities by Company Officials Make a Company a Government Authority

Government of China's Case Brief:

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[288] *Id*. at Government of China July 5, 2017 SQR, at 1-4.
[289] *See* sections 776(a)(1) and (a)(2)(A) of the Act.
[290] *See* sections 776(a) and (b) of the Act.
[291] *See* section 776(b) of the Act.
[292] *See Aluminum Extrusions from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 75 FR 54302 (September 7, 2010) (*Aluminum Extrusions from China Investigation Preliminary Determination*) at 54306 (unchanged in final); *Aluminum Extrusions from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2010 and 2011*, 78 FR 34649 (June 10, 2013), and accompanying PDM at "Provision of Primary Aluminum for Less Than Adequate Remuneration (LTAR)" (unchanged in final); and *Aluminum Extrusions from China: Preliminary Results of Countervailing Duty Administrative Review; 2012*, 79 FR 36009 (June 25, 2014), and accompanying PDM at "Provision of Primary Aluminum for LTAR." (unchanged in final).

- The record establishes that the CCP is not a government authority.[293] The *Company Law of China* and the *Civil Servant Law* clearly stipulate the company shall operate independently without being subject to any governmental intervention.[294]
- Commerce's finding in *PC Strand from China* is an insufficient basis for the finding in this proceeding because *PC Strand from China* did not address the issue whether Chinese law permits owners, members of the board of directors, and managers of companies to be CCP officials. Instead, *PC Strand from China* concerned general membership in the CCP and the National Party Conference. This is a distinction explicitly made by Commerce in its questionnaires to the commerce, in that Commerce sought information about CCP officials and CCP committees but not information about general membership in the CCP or participation in the National Party Conference.[295] In *PC Strand from China*, Commerce concluded that member in the CCP or National Party Conference was insufficient to conclude government control.[296]
- Provisions of the *Company Law of China* demonstrate that the shareholders, directors and managers of a company are solely responsible for the company's internal operations and that it is unlawful for CPP organizations to interfere.[297] Commerce previously found that the *Company Law of China* demonstrates the absence of legal state control over privately-owned Chinese companies.[298]
- The Government of China provided detailed efforts it undertook to try to obtain the requested information, and reasons to explain why "it is beyond the capacity of the GOC to access the information."[299] To have fully responded to Commerce's questionnaires, the Government of China would have been required to provide information as to the CCP involvement in the management and operations of producers of primary aluminum and steam coal of hundreds, perhaps thousands, of natural persons serving as owners, members of the board of directors and managers of suppliers. Further, the line of inquiry is deeply intrusive, demanding information at the individual level as to a person's political activities.[300]
- Commerce cannot penalize a party for not being able to provide information that it does not have.[301]
- The Government of China has provided documents, including business registration documents and shareholding registrations of the input producers demonstrate the ownership status and changes, if any, of the input producers reported by the respondent

[293] *Id*. at 32 (citing Government of China July 20, 2017 IQR - Dingsheng HK at 92-93).
[294] *Id*. at 33 (citing Government of China July 20, 2017 IQR - Dingsheng HK at 97, 98; and Exhibits D-7 and D-8).
[295] *Id.* at 34 (citing *PC Strand from China*, and accompanying IDM at Comment 8; Government of China July 20, 2017 IQR - Dingsheng HK at 101, Input Producer Appendix, D.2).
[296] *Id.* at 34-35 (citing *PC Strand from China*, and accompanying IDM at 72).
[297] *Id.* at 34-35 (citing Government of China July 20, 2017 IQR - Dingsheng HK at 67-68 and Exhibit D-7).
[298] *Id*. at 35 (citing *Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China: Final Results of the 2007-2008 Administrative Review of the Antidumping Duty Order*, 75 FR 8301 (February 24, 2010) (*Steel Plate from China*), and accompanying IDM at Comment 2 ("we have analyzed the Company Law and have found it to establish sufficiently an absence of *de jure* control over privately-owned companies in the PRC")).
[299] *Id*. at 36 (citing Government of China July 20, 2017 IQR - Dingsheng HK at 73).
[300] *Id*. at 36 (citing, *e.g.*, Government of China July 20, 2017 IQR - Dingsheng HK at D-1 and D-17).
[301] *Id*. at 37 (citing *Olympic Adhesives*, 899 F.2d 1572; *AK Steel*, 21 CIT 1223; *NSK*, 416 F. Supp. 2d 1341).

companies during the POI. Commerce has consistently said such documents can demonstrate the absence of state control of an entity.[302]

- Commerce has failed to establish the relevance of CCP affiliations or activities of these input producers, and the evidence on the record in this investigation affirmatively demonstrates that CCP affiliations or activities are in fact not relevant to the statutory analysis of "government authorities."[303]
- There is no information missing from the record and no gap in the record exists.[304] To the extent that a gap exists, an adverse inference is unwarranted because the Government of China responded to the best of its ability concerning the input suppliers.[305]

Petitioners' Rebuttal Brief:

- The Government of China's position that the CCP is not a government authority has been rejected repeatedly by Commerce and is undermined by record evidence.[306]
- Commerce has previously rejected the argument that the Government of China makes concerning the distinction in *PC Strand from China*.[307] Commerce should follow its practice and disregard the Government of China's assertion that CCP officials and committees have no decision-making authority.[308]
- Commerce's policy and practice with respect to government authorities or public bodies in China is well-settled. The role and functions of CCP officials within Chinese enterprises is relevant to Commerce's analysis.[309]

Commerce's Position: Commerce continues to find, based on AFA, that non-government owned domestic producers of steam coal and primary aluminum for which the Government of China failed to provide information about CCP membership are "authorities," and that the goods provided by them are financial contributions within the meaning of section 771(5)(D)(iii) of the Act.

Commerce sought information from the Government of China that would allow us to analyze whether the producers are "authorities" within the meaning of section 771(5)(B) of the Act.[310] As explained in the *Preliminary Determination*,[311] while Commerce made attempts to obtain ownership and management information for all of the respondents' primary aluminum and steam coal producers, the Government of China did not provide the requested information. For instance, in the Government of the China July 20, 2017 IQR, the Government of China stated in response to the

[302] *Id*. at 37-38 (citing Government of China July 20, 2017 IQR - Dingsheng HK at 68, Exhibits D-2, D-7, D-8, and D-18; *Steel Plate from China*, and accompanying IDM at 11.
[303] *Id*. at 37-38.
[304] *Id.* at 40 (citing 776(a)(1); *Hetian Metal*, 652 F.3d at 1348).
[305] *Id*. at 40.
[306] *See* Petitioners' Rebuttal Brief at 27-28.
[307] *Id*. at 28-29.
[308] *Id*., citing *CORE from China,* and accompanying IDM at Comment 1.
[309] *Id*.
[310] *See* Memorandum to the File, "Public Bodies Memorandum," dated July 27, 2017 (Public Bodies Memorandum). *See also* Initial CVD Questionnaire, at Section II, "Input Producer Appendix;" *see also* Government of China July 5, 2017 SQR at 1.
[311] *See* PDM at 32 – 33.

request for CCP information of the primary aluminum producers, that it is "beyond the capacity of the Government of{China} to access information requested by {Commerce} in this regard," and refused to provide the requested information. In response to Commerce's supplemental questionnaire, in which Commerce reiterated the same requests for information, the Government of China again refused to provide a complete response with regard to all requested documentation of producers of primary aluminum in China.

The Government of China did not provide information that we rely on to determine the level of government ownership and involvement in primary aluminum producers. It also did not identify the individual owners, members of the board of directors or senior managers of the producers who were CCP officials during the POI for any producer. The information we requested regarding the role of CCP officials in the management and operations of these producers is necessary to our determination of whether these producers are "authorities" within the meaning of section 771(5)(B) of the Act. Commerce considers information regarding the CCP's involvement in China's economic and political structure to be relevant because public information suggests that the CCP exerts significant control over activities in China and is part of the governing structure in China.[312]

The Government of China asserts three arguments regarding the CCP in its case brief and throughout this proceeding. First, the Government of China argues that CCP officials are prohibited from serving as owners, members of the board of directors, and managers of companies. Second, the Government of China argues that it would be "unreasonably burdensome" to supply Commerce with information regarding "CCP involvement in the management and operations of producers of primary aluminum and steam coal of hundreds, perhaps thousands, of natural persons serving as owners, members of the board of directors and managers of suppliers."[313] Third, it argues that "CCP affiliations or activities of producers of primary aluminum and steam coal is not relevant" to the statutory analysis of government 'authorities.'"[314]

Regarding the first argument, the Government of China argues in its case brief that CCP officials are prohibited from being owners, members of the board of directors, and managers of companies, as specified in the *Company Law of China* and the *Civil Servant Law*.[315] However, the Government of China acknowledges that Commerce has dismissed this argument in the past. Specifically, we have previously found that CCP officials "can, in fact, serve as owners, members of the board of directors, or senior managers of companies."[316] In a prior proceeding, Commerce found that the Government of China's basis for this assertion rests on the *Executive Opinion of the Central Organization Department of Central Committee of CPC on Modeling and Trial Implementation of the Provisional Regulations of State Civil Servants in CCP Organs* (ZHONG FA (1993) No. 8), which reflects the CCP's intent to model its personnel management

[312] *See* Public Bodies Memorandum.
[313] *See* Government of China's Case Brief at 36.
[314] *Id*. at 38 (citing Section 771(5)(B) of the Act).
[315] *Id*. at 33-34 (citing Government of China July 20, 2017 IQR - Dingsheng HK at 97-98 and Exhibits D-7 and D-8).
[316] *Id*. at 34 (citing *PC Strand from China*, and accompanying IDM at Comment 8). *See also* Petitioners' Rebuttal Brief at 28-29.

system after the *Civil Servant Law*, including restrictions on enterprise employment.[317] However, it has been explained that this rule only applies to "staff of the administrative organs of the CCP and specified officials."[318] Thus, the rule only applies to a subset of party and government officials. The Government of China has not defined the "specified officials" it applies to, nor the officials to which it does not apply.[319]

This finding illustrates that CCP officials are able to serve as owners, members of the board of directors, or managers of input producers. With respect to this finding, we also note that the Government of China has acknowledged, on the record of this proceeding, that the Public Bodies Memorandum plainly states that the CCP "may exert varying degrees of control {in private companies} in different circumstances.[320] Additionally, in *PC Strand from China*, Commerce determined that, "{i}n the instant investigation, the information on the record indicates that certain company officials are members of the Communist Party and National Party Conference as well as members of certain town, municipal, and provincial level legislative bodies."[321] We understand "National Party Conference" to be a reference to the "National Party Congress," which is described in the Public Bodies Memorandum as "the highest leading body of the Party."[322] Commerce considers representatives of the National Party Congress to be relevant government officials for purposes of the CVD law and an "authorities" analysis. Thus, the Government of China is incorrect that Commerce's finding in *PC Strand from China* was limited to a finding of membership in the CCP.[323]

The Government of China argues that Commerce has previously found that the *Company Law of China* demonstrates the absence of legal state control over privately owned Chinese companies. However, this argument, as presented in the Government of China's case brief, relies exclusively on one example involving Commerce's findings with respect to separate rate applications in an AD proceeding,[324] which involves a different test, standard and focus with regard to "control." In the context of a separate rate analysis, Commerce's sole focus is on the government's control over export activities. For example, Commerce has repeatedly noted that a state-owned enterprise may receive a separate rate given that the focus of the separate rates test is limited to control over export activities and not other aspects of the enterprise's operations.[325] By contrast, Commerce is concerned here with whether the key positions within a company are filled by

[317] *See Certain Oil Country Tubular Goods from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 52301 (dated September 3, 2014), and accompanying IDM at Comment 7 (*Oil Country Tubular Goods from China; 2012*).

[318] *Id.*

[319] *Id.*

[320] *See* Government of China July 20, 2017 IQR - Dingsheng HK at 64-65.

[321] *See PC Strand from China*, and accompanying IDM at Comment 8.

[322] *See Oil Country Tubular Goods from China; 2012* at Comment 7.

[323] *See* Government of China's Case Brief at 34. *See also* Petitioners' Rebuttal Brief at 28-29 (citing *CORE from China*, and accompanying IDM at Comment 1 (May 24, 2016).

[324] *Id. See also* Government of China's Case Brief at 35, 38.

[325] *See, e.g.*, *Oil Country Tubular Goods from China; 2012*, and accompanying IDM at Comment 7; *Utility Scale Wind Towers from the People's Republic of China: Final Affirmative Countervailing Duty Determination Wind Towers from China (Wind Towers from China)*, and accompanying IDM at Comment 6; *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils from the People's Republic of China,* 59 FR 55625, 55627-29.

personnel who are also CCP or Government of China officials, and may exert control over the company's activities more broadly.

The Government of China also argues that it would be "unreasonably burdensome" to supply Commerce with information regarding "CCP involvement in the management and operations of producers of primary aluminum and steam coal of hundreds, perhaps thousands, of natural persons serving as owners, members of the board of directors and managers of suppliers."[326] However, Commerce has not requested information regarding all possible CCP affiliations, but rather only whether owners, members of the board of directors and managers are also CCP or government officials. The Government of China has been able to provide this information in prior CVD investigations.[327]

If the Government of China was not able to submit the required information in the requested form and manner, it should have promptly notified Commerce, in accordance with section 782(c) of the Act. It did not do so, nor did it suggest any alternative forms for submitting this information. Further, the Government of China did not indicate that it had attempted to contact the CCP.[328] Instead, the Government of China chose not to respond to our questions regarding CCP officials for any input producer. Specifically, the Government of China argued that "the nine entities {(*i.e.,* GOC or CCP entities)} questions are irrelevant to this investigation as well as to the issue of whether the suppliers in this investigation are 'public bodies' for the purposes of the Department's LTAR analysis."[329] Therefore, we do not consider the Government of China to have cooperated to the best of its ability. Additionally, we note that Commerce has the discretion to determine information needed to conduct its investigation.[330]

Commerce's policy and practice with respect to "government authorities," or "public bodies," in China is well-established, as indicated above. In prior proceedings, Commerce has addressed this same argument in great detail, and clearly stated that understanding the role and functions of CCP officials within Chinese enterprises is relevant to Commerce's analysis.[331] Thus, Commerce's request for such information from the Government of China was based on Commerce's established policy and practice.

In sum, the Government of China did not provide the information we requested regarding CCP officials' involvement in the operations of the input producers. The Government of China also

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[326] *See* Government of China's Case Brief at 36.

[327] *See* Petitioners' Rebuttal Brief at 30. *See also High Pressure Steel Cylinders from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 26738 (May 7, 2012), and accompanying IDM at 13.

[328] *See* Section 782(c)(1) of the Act states that "{i}f an interested party, promptly after receiving a request from the administering authority or the Commission for information, notifies the administering authority or the Commission (as the case may be) that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the administering authority or the Commission (as the case may be) shall consider the ability of the interested party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party."

[329] *See* Government of China July 20, 2017 IQR - Dingsheng HK at 91.

[330] *See* Petitioners' Rebuttal Brief at 30. *See also* Government of China's Case Brief at 38-39.

[331] *Id.* at 31 citing *CORE from China,* and accompanying IDM at Comment 1. *See also Oil Country Tubular Goods from China; 2012* at Comment 7.

did not provide the requested details on the producers' operations (*e.g.*, company by-laws, articles of incorporation, licenses, *etc*.). For these reasons, we have no basis to revise the preliminary AFA finding that the producers are "authorities" within the meaning of section 771(5)(B) of the Act. Due to the Government of China's noncooperation, we infer that CCP officials were present as owners, managers and directors in the relevant companies, and that control by the CCP is control by the government for purposes of the CVD law. Consequently, we continue to find that all producers of steam coal and primary aluminum for which the Government of China failed to provide information about CCP membership are "authorities" within the meaning of section 771(5)(B) of the Act. We also determine that the non-government owned domestic producers of primary aluminum for which the Government of China failed to provide information about CCP membership are "authorities" within the meaning of section 771(5)(B) of the Act.

Comment 19: Whether the Primary Aluminum and Steam Coal for LTAR Programs are Specific

Government of China's Case Brief:

- The record evidence establishes that primary aluminum is used in a wide variety of industries that involve a diverse array of products and consumers.[332]
- Steam coal is widely used across virtually sectors of industry in China, and its use cannot be considered specific to one industry or a particular group of industries.[333]
- Commerce found in *Chlorinated Isocyanurates from China* that even where the agricultural sector was the predominant user, accounting for over 70 percent of urea consumption in China, this did not render urea specific because it was consumed by at least 9 different industries in China.[334]

Petitioners' Rebuttal Brief:

- Commerce considered the Government of China's reported information concerning industry sectors and determined it was incomplete.[335]
- The Government of China's reliance on *Chlorinated Isocyanurates from China* is misplaced as the facts are not analogous to this investigation, as the Government of China failed to provide verifiable consumption data by industry.[336]

Commerce's Position: As explained in the *Preliminary Determination*, Commerce asked the Government of China to provide information about the industries that purchase primary aluminum and steam coal. Specifically, the Government of China was instructed to:

> Provide a list of industries in the PRC that purchase primary aluminum and steam coal directly, using a consistent level of industrial classification. Provide the amounts

[332] *Id*. at 41 (citing Government of China July 20, 2017 IQR - Dingsheng HK at 79 and Exhibit D-11).
[333] *Id*. (citing Government of China July 20, 2017 IQR - Dingsheng HK at 107 and Exhibit D-21).
[334] *Id*. (citing *Chlorinated Isocyanurates from China*, and accompanying IDM at 39-40).
[335] *See* Petitioners' Rebuttal Brief at 32-33 (citing PDM at 23).
[336] *Id*. (citing *Chlorinated Isocyanurates from China*, and accompanying IDM at 23).

(volume and value) purchased by the industry in which the mandatory respondent companies operate, as well as the totals purchased by every other industry. In identifying the industries, please use whatever resource or classification scheme the Government normally relies upon to define industries and to classify companies within an industry. Please provide the relevant classification guidelines, and please ensure the list provided reflects consistent levels of industrial classification. Please clearly identify the industry in which the companies under investigation are classified.[337]

Commerce requests such information for purposes of its *de facto* specificity analysis. The Government of China submitted an incomplete list of data requested for the primary aluminum and steam coal industries. In response to Commerce's request for such documentation relating to the primary aluminum and steam coal industries, the Government of China submitted lists of industrial categories without further description, discussion of the methodology used to collect such data, and the source of all data collected.[338]

Therefore, consistent with past proceedings,[339] we determine that necessary information is not available on the record, and that the Government of China has withheld information that was requested of it. Thus, Commerce must rely on "facts available" in making our final determination, in accordance with sections 776(a)(1) and 776(a)(2)(A) of the Act. Moreover, we determine that the Government of China failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available pursuant to section 776(b) of the Act. In drawing an adverse inference, we find that the Government of China's provision of primary aluminum and steam coal is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act. Further, we took account of the diversification of economic activities in China and the length of time during which this subsidy program has been in operation.

Comment 20: Whether Commerce Must Use a Tier-One Benchmark for the Primary Aluminum and Steam Coal for LTAR Programs

Government of China's Case Brief:

- In its *Preliminary Determination*, Commerce did not find the primary aluminum market distorted based on AFA. Instead, it concluded that the market was distorted due to the substantial government share in the market, coupled with the restrictions on exports in the form of export taxes.[340] This finding is contradicted by verified record evidence, including total number of producers, value and volume of domestic consumption, value and volume of imports, VAT, import tariff, and export tariff of primary aluminum.[341]

[337] *See* Initial CVD Questionnaire at Section II.
[338] *See* Government of China July 20, 2017 IQR – Dingsheng HK at Exhibits D-11 and D-21.
[339] *See Wind Towers from China*, and accompanying IDM at Comment 13.
[340] *Id.* at 42 (citing PDM at 51).
[341] *Id*. at 43 (citing Government of China July 20, 2017 IQR - Dingsheng HK at 75-79; Government of China Verification Report at 4 and 5).

- The Government of China provided all the requested information except the information that is pertinent to steam coal producers in which it maintains an ownership or management interest.[342]
- The WTO Appellate body has found that evidence relating to government ownership of state-owned entities and their respective market shares does not, in and of itself, provide a sufficient basis for concluding that in-country prices are distorted. The Panel further found that the distortion of in-country prices must be established on the basis of the particular facts underlying each countervailing duty investigation and that an investigating authority cannot refuse to consider evidence relating to factors other than government market share.[343]
- The Government of China has provided evidence showing that the prices in China for primary aluminum and steam coal reflect market forces.[344]

Petitioners' Rebuttal Brief:

- Commerce's preliminary determination regarding steam coal was hindered by the Government of China's failure to provide most of the information requested by the agency on the Chinese steam coal market, resulting in Commerce's reliance on AFA.[345]
- In addition to government ownership, Commerce determined that the Government of China controlled and distorted domestic markets for primary aluminum and steam coal by restricting exports.[346]
- Commerce's finding is consistent with prior proceedings.[347]

Commerce's Position: As explained in the *Preliminary Determination*, we determined on the basis of AFA that the Government of China's involvement in the steam coal market in China results in significant distortion of the prices of steam coal such that they cannot be used as a tier one benchmark and, hence, the use of an external benchmark, as described under 19 CFR 351.511(a)(2)(ii), is warranted to calculate the benefit for the Provision of Steam Coal for LTAR.[348] This determination stemmed from the Government of China's refusal to provide requested information regarding the steam coal industry in China.[349] For this final determination, we continue to find an adverse inference is warranted in the application of facts available.

[342] *Id*. (citing Government of China July 20, 2017 IQR - Dingsheng HK at 104-107).
[343] *Id*. (citing Panel Report - Certain Products from China, para. 4.51, 4.62, and 4.95).
[344] *Id*. (citing Government of China July 20, 2017 IQR - Dingsheng HK at 78, 106, and Exhibit D-9).
[345] *See* Petitioners' Rebuttal Brief at 34 (citing PDM at 34-37).
[346] *Id*.
[347] *Id*. (citing *Aluminum Extrusions from the People's Republic of China: Final Results, and Partial Rescission of Countervailing Duty Administrative Review; 2013*, 80 FR 77325 (December 14, 2015), and accompanying IDM at Comment 13; *Countervailing Duty Investigation of Stainless Steel Sheet and Strip from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 82 FR 9714 (February 8, 2017)).
[348] *See* PDM at 36-37.
[349] *Id*.

With respect to primary aluminum, we verified the information that we relied on in the *Preliminary Determination* to determine that the domestic market was distorted through the intervention of the Government of China.[350] The Government of China reported that China produces over 99 percent of the primary aluminum it consumes, and about 37 percent of domestic consumption is from companies the Government of China identifies as SOEs.[351] Further, the Government of China reported that a 30 percent export tariff was imposed on primary aluminum during the POI and the two years immediately prior, discouraging primary aluminum exports from China.[352] Thus, given the substantial government share in the market, coupled with the restriction on exports in the form of the export taxes, we continue to determine that the domestic market for primary aluminum was distorted through the intervention of the Government of China during the POI and the two years immediately prior.

Comment 21: Whether Dingsheng's Income Tax Deductions for R&D Expenses are Understated

Petitioners' Case Brief:

- Although Commerce stated its intention to calculate the benefit using the standard corporate income tax rate of 25 percent, it instead based Dingsheng's benefit on the preferential corporate income tax rate of 15 percent.[353]
- Under 19 CFR 351.509(a)(l), Commerce will calculate the benefit based on the difference between the amount the company paid and the amount the company would have paid in the absence of the program. Commerce typically does not consider a company's receipt of other tax incentives when determining the benefit from a separate, countervailable tax program.[354]
- Commerce should revise its preliminary calculations and use the 25 percent tax rate to calculate the countervailable benefit from Dingsheng's Income Tax Deductions for R&D Expenses.[355]

No other comments were received on this issue.

Commerce's Position: We agree with the petitioners. For this final determination, we have revised the preliminary calculations and used the 25 percent tax rate to calculate the benefit for Dingsheng's Income Tax Deductions for R&D Expenses.

Comment 22: Whether Commerce Selected the Highest Electricity Rate Benchmarks

Petitioners' Case Brief:

[350] *See* Government of China Verification Report at 3-5.
[351] *See* Government of China July 20, 2017 IQR – Dingsheng HK at 76.
[352] *Id*. at 79.
[353] *See* Petitioners' Case Brief at 14-15 (citing PDM at 47).
[354] *Id*. at 15 (citing *PET Resin from China*, and accompanying IDM at 40-41, 43-44).
[355] *Id*.

- In the *Preliminary Determination*, Commerce stated its intention to use "the highest electricity rates on the record for the applicable rate and user categories" for the benchmark electricity rates. However, it failed to select the highest electricity rates on the record in this investigation.[356] Commerce should remedy its error for the final determination.

Dingsheng's Rebuttal Brief:

- Commerce rejected this same argument in the recent *Tool Chests from China*[357] proceeding. The petitioners' arguments are without merit and should be rejected.

Government of China's Rebuttal Brief:

- Contrary to the petitioners' claim, Zhejiang Province does not have a price category described as the "Normal" range. The petitioners deliberately garble the definitions of high, peak, and normal. Further, the petitioners' misinterpretations flatly contradict Commerce's own correct interpretations of the schedule's pricing in the preliminary determination.[358] The Zhejiang Province electricity schedules submitted by the Government of China clearly support the correct interpretation applied by the Commerce in the preliminary determination as to "peak" and "normal" electricity rates applied as AFA.

Zhongji's Rebuttal Brief:

- Commerce should select a benchmark that reflects Jiangsu Zhongji's actual location.[359]

Commerce's Position: During the course of this proceeding, the petitioners did challenge the translation of the electricity schedule provided by the Government of China. Thus, we rely upon the translations in this schedule to inform our selection of benchmark.

This schedule lists four prices: "Electricity Degree Price," "Peak Price," "High Price," and "Low Price." We agree with the petitioners that we did not use the price labeled "Peak Price" as the peak price for our preliminary calculations. For this final determination, we are using the price reported as "Peak Price" for the peak electricity benchmark. The schedule does not identify a price labeled as "normal." In its absence, we continue to rely on the price labeled "Electricity Degree Price" for this final determination.

With regard to Zhongji's argument, as explained in the Comment below, Commerce continues to apply AFA in selecting the benchmark for determining the existence and amount of the benefit. Thus, we have selected the highest electricity rates on the record for the applicable rate and user categories.

[356] *See* Petitioners' Case Brief at 17-19.
[357] *See Tool Chests from China*, and accompanying IDM at Comment 10.
[358] *See* Government of China's Rebuttal Brief at 4.
[359] *See* Zhongji's Rebuttal Brief at 6-7.

Comment 23: Whether Commerce Should Apply AFA for Electricity

Government of China's Case Brief:

- Commerce's preliminary conclusions flatly contradict the record evidence.[360] The Government of China has acted to the best of its ability with respect to providing information on the roles of National Development Reform Commission (NDRC) in the electricity price setting in China and provinces in deriving electricity price adjustments. The Government of China consistently stressed in its responses in this investigation that electricity prices are determined by the provincial governments within their jurisdictions and that the NDRC only requires the established electricity schedules be placed on the record of the NDRC.[361] The Government of China also submitted evidence to confirm that the NDRC has delegated authority to the provincial agencies to prepare, establish and publish the price adjustment schedules of the electricity sales prices within the respective provincial jurisdiction.[362]
- Commerce has not demonstrated that Notice 748 and Notice 3150 explicitly mandate specific electricity tariffs for the provinces or alters the Provincial Price Proposals.[363]
- The Government of China has demonstrated that since 2015 the Government of China has proactively promoted electricity market reform. Chinese electricity prices are based on market principles, and the Government of China has made its best efforts to further explain its answers and provide additional factual information as necessary.[364]
- In stark contrast to Commerce's assertion, the Government of China has provided the necessary information as requested by the Department regarding the roles and natureof cooperation between the NDRC and the provinces in deriving electricity price adjustments.[365]
- Commerce should determine the adequacy of remuneration by examining whether the respondents received a preferential rate compared to those entities receiving a rate by the standard pricing mechanism. No record evidence indicates that the producers of aluminum foil received a preferential rate when compared to other entities. The record evidence indicates that in all the provinces in which the mandatory respondents and their reported cross-owned affiliates are located, including Jiangsu, Zhejiang, and Guangdong, all large scale industrial enterprise users enjoy the same electricity tariff rates.[366]

[360] *See* Government of China's Case Brief at 46-47 (citing PDM at 40-41).
[361] *Id*. at 47 (citing Government of China June 12, 2017 IQR – Zhongji at 79,82; Government of China July 5, 2017 SQR at 12).
[362] *Id*. (citing Government of China June 12, 2017 IQR – Zhongji at 79,82; Government of China July 5, 2017 SQR at 12; Government of China's July 21, 2017 Supplemental Questionnaire Response (Government of China's July 21, 2017 SQR) at Exhibits S2-1 and S2-2).
[363] *Id*. (citing PDM at 39).
[364] *Id*. (citing Government of China June 12, 2017 IQR – Zhongji at 80, 81-88; Government of China July 5, 2017 SQR at 12-14 and Exhibit S-10; and Government of China July 21, 2017 SQR at 4-11 and Exhibits S2-1 and S2-2).
[365] *Id*. at 48.
[366] *Id*. at 49 (citing *Maverick Tube Corporation v. United States*, Slip Op. 17-146 (CIT 2017) at 20; Government of China June 12, 2017 IQR – Zhongji at Exhibits E4-5 and E4-6; Government of China July 20, 2017 IQR - Dingsheng HK at at Exhibit 22).

Zhongji's Case Brief:

- The proceeding record shows that the provincial governments determine electricity prices within their jurisdictions in keeping with the market conditions.[367]
- Commerce's application of AFA is unlawfully punitive as it is based on the Government of China's inability to provide information that does not exist.[368]

Petitioners' Rebuttal Brief:

- The Government of China responded to a question regarding documentation showing the NDRC 'ratified" Jiangsu Province's electricity price adjustment, by asserting that the term 'ratified' that was referenced in the Jiangsu Province Notice, means 'confirmed' or 'procedurally sanctioned' in the context." Thus, record information submitted by the Government of China directly contradicts its assertions of provincial independence in establishing electricity prices.[369]
- As a threshold matter, the Government of China's contradictory and unreliable questionnaire responses alone are more than sufficient to support the Department's reliance on AFA.[370]
- None of the government notices submitted by the Government of China explicitly eliminated Provincial Pricing Proposals, nor fully defined the NDRC's and the provinces' roles in setting electricity prices.[371] The Government of China failed to provide information regarding price differences between the provinces, how the provinces derive electricity price adjustments, and how they cooperate with the NDRC.[372]
- The Government of China's contradictory and unreliable questionnaire responses alone are more than sufficient to support Commerce's reliance on AFA.[373]

Mahle's Rebuttal Brief:

- Mahle restates and affirms its support for Zhongji's arguments.[374]

Commerce's Position: As discussed above, consistent with our practice and in accordance with the law, Commerce is applying AFA to the Government of China with respect to the provision of electricity. Contrary to the Government of China's argument, Commerce is not required to demonstrate that Notices 748 and 3150 mandate specific electricity tariffs. As noted by the petitioners, none of the government notices submitted by the Government of China explicitly eliminated Provincial Pricing Proposals, nor fully defined the NDRC's and the provinces' roles

[367] *See* Zhongji's Case Brief at 14.
[368] *Id.* (citing *AK Steel*, 21 CIT 1223).
[369] *See* Petitioners' Rebuttal Brief at 45.
[370] *Id.* (citing *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003) (holding that a party's compliance with the "best of its ability" standard includes providing accurate responses to Commerce's request for information)).
[371] *Id.*
[372] *Id.*
[373] *Id.*
[374] *See* Mahle's Rebuttal Brief at 12-13.

in setting electricity prices.[375] Further, in the *Preliminary Determination*, we determined that the Government of China withheld information that was requested of it for our analysis of financial contribution and specificity and, thus, we relied on "facts available."[376] As detailed in the *Preliminary Determination*, the Government of China did not provide the following: Provincial Price Proposals; the specific derivation of increases in cost elements and the methodology used to calculated cost element increases; legislation that may have eliminated the Price Proposals; explanation, with supporting documents, how pricing values in the Appendix to Notice 748 were derived; information concerning the coincidence of provincial price changes with Notices 748 and 3105; and explanation of the factors and information that Jiangsu and Guangdong Province relied upon to generate their submitted price adjustments and tariffs.[377] Moreover, we determined that the Government of China failed to cooperate by not acting to the best of its ability to comply with our request for information. We also noted that the Government of China did not ask for additional time to gather and provide such information. Consequently, we drew an adverse inference in the application of facts available.[378]

In drawing an adverse inference, we found that the Government of China's provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act. The Government of China failed to provide certain requested information regarding the relationship (if any) between provincial tariff schedules and cost, as well as requested information regarding cooperation (if any) in price setting practices between the NDRC and provincial governments. Therefore, we also drew an adverse inference in selecting the benchmark for determining the existence and amount of the benefit.[379] For this final determination, we continue to find that the Government of China withheld information that was requested of it. Therefore, we continue to apply facts available, with an adverse inference, for this program.

Comment 24: Whether Commerce Should Adjust the Electricity Benchmark for VAT

Zhongji's Case Brief:

- If Commerce continues to calculate an AFA benchmark for electricity, it must ensure that the benchmark is exclusive of value-added tax to be consistent with past practice.[380]

Petitioners' Rebuttal Brief:

- Record evidence confirms that all provincial electricity rates in China include VAT.[381] Commerce verified that Jiangsu Zhongji and Huafeng Aluminum paid the tariff rates established in the Jiangsu Province electricity rate schedule. Thus, no adjustment to the calculation is required.[382]

[375] *See* Petitioners' Rebuttal Brief at 45
[376] *See* PDM at 37-41. *See also* section 776(a)(2)(A) of the Act.
[377] *See* PDM at 37-41.
[378] *See* section 776(b) of the Act.
[379] *See* section 776(b)(4) of the Act.
[380] *See* Zhongji's Case Brief at 15.
[381] *See* Petitioners' Rebuttal Brief at 48 (citing Government of China July 5, 2017 SQR at 13-14).
[382] *Id. (citing* Zhongji Verification Report at 21-22).

Commerce's Position: We have reviewed the record information and the verification reports, and agree with the petitioners that all provincial electricity rates in China include VAT. We also verified that the respondents paid the tariff rates established in the Jiangsu Province electricity schedule. Thus, we agree with the petitioners that no adjustment to the calculation to account for VAT is required.

Comment 25: Whether Electricity Constitutes General Infrastructure and Provides a Financial Contribution

Government of China's Case Brief:

- Commerce may not lawfully countervail the provision of electricity in this case because this alleged program constitutes general infrastructure and therefore is not a financial contribution under U.S. CVD law or the WTO SCM Agreement. Further, there is no evidence in the record that the provision of electricity by the Government of China in this case is "specific" to the aluminum foil industry.[383]
- Commerce should follow its precedent and reject the petitioners' attempt to claim "infrastructure subsidies."[384]
- Record evidence fails to demonstrate that the Government of China has given aluminum foil producers preferential rates or greater access to the power grids.[385]

Petitioners' Rebuttal Brief:

- In *Hot-Rolled Carbon Steel Flat Products from Thailand*, Commerce unequivocally determined that the provision of electricity does not constitute general infrastructure and it does constitute a financial contribution by the government.[386] The Court affirmed Commerce's determination.[387]

Mahle's Rebuttal Brief:

- Interested Party Mahle restates and affirms its support for the Government of China arguments.[388]

[383] *See* Government of China's Case Brief at 44-45 (citing 771(5)(D)(iii) of the Act and WTO SCM Agreement, Art. 1.1(a)(1)(iii)).
[384] *Id*. at 45 (citing *Bethlehem Steel Corporation v. United States*, 223 F. Supp. 2d 1372 (CIT 2002); *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Carbon Steel Wire Rod from Saudi Arabia*, 51 FR 4206 (February 3, 1986); and *Final Affirmative Countervailing Duty Determination: Industrial Phosphoric Acid from Israel*, 52 FR 25447 (July 7, 1987).
[385] *Id*. at 46.
[386] *See* Petitioners' Rebuttal Brief at 31 (citing *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand*, 66 FR 50410 (October 3, 2001) (*Hot-Rolled Carbon Steel Flat Products from Thailand)*, and accompanying IDM at Comment 10).
[387] *Id*. (citing *Royal Thai Gov't v. United States*, 441 F. Supp. 2d 1350, 1356 (CIT 2006).
[388] *See* Mahle's Rebuttal Brief at 11-12.

Commerce's Position: We agree with the petitioners. This issue was unequivocally addressed in *Hot-Rolled Carbon Steel Flat Products from Thailand*, and the court affirmed Commerce's determination in *Royal Thai*. Commerce has consistently found the provision of electricity to be the provision of a good, and not to be general infrastructure.[389] Also, Commerce's regulations explicitly categorize electricity within the provision of countervailable goods and services.[390] As detailed at Comment 24, above, in this proceeding we determined that the provision of electricity by the Government of China is specific and provides a financial contribution on the basis of AFA.

Comment 26: Whether Commerce Should Rely on Xeneta Data for Freight Benchmark

Zhongji's Case Brief:

- Commerce rejected the Xeneta freight rates with no explanation in the *Preliminary Determination*. For the final determination, Commerce should disregard the Maersk rates because the Xeneta rates represent the best available information to value ocean freight.[391]
- If Commerce continues to rely on Maersk, it should at least include Xeneta rates to calculate an average price for the global benchmark.[392]

Petitioners' Rebuttal Brief:

- Zhongji submitted rates reported by Xeneta, which it identified as "a freight rate market intelligence firm," and requested business proprietary treatment for these data. Pursuant to 19 CFR 351.102(b)(21)(iii), factual information used by Commerce to assess the adequacy of remuneration must be publicly available information. Zhongji's Xeneta rates fail to meet this requirement and, thus, should not be relied on by Commerce either individually, or collectively with Maersk rates, in the final determination.[393]

Commerce's Position: Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier two, Commerce will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. The Xeneta data submitted by Zhongji either includes or excludes terminal handling charges, according to Xeneta's data methodology.[394] Additional information in Zhongji's benchmark submission clarifies that terminal handling charges are not always included in freight

[389] *See, e.g., Certain Steel Wheels from the People's Republic from China: Final Affirmative Countervailing Duty Determination, Final Critical Circumstances Determination*, 77 FR 17017 (March 23, 2012), and accompanying IDM at 64 at Comment 20 ("The Department has consistently found the provision of electricity to be the provision of a good, and not to be general infrastructure.").
[390] *See Preamble*, 63 FR at 65348.
[391] *Id*. at 15 (citing PDM at 16-17).
[392] *Id*. (citing *Solar Cells from China; 2014*, at Comment 7 (applying an average of the Maersk and Xeneta ocean freight charges)).
[393] *See* Petitioners' Rebuttal Brief at 39.
[394] *See* Zhongji Benchmark Submission, Re: Certain Aluminum Foil from the People's Republic of China: Benchmark submission, dated July 21, 207, at Exhibit 2.

rates to Asia.[395] In accordance with Commerce's regulation, it is Commerce's practice to include handling charges in the freight benchmark. Because the Xeneta data inconsistently include handling charges, we are not using it to value freight for this final determination. Accordingly, the argument raised in the petitioners' rebuttal brief is moot.

Comment 27: Whether Commerce Should Find Non-Use of Steam Coal

Zhongji's Case Brief:

- In the *Preliminary Determination*, Commerce treated anthracitic coal purchased by Jiangsu Huafeng as steam coal.[396]
- The record establishes that anthracite coal is distinct from steam coal.[397] Therefore, this program should be found not used for the final determination.

Petitioners' Rebuttal Brief:

- Steam coal is not a specific tariff classification for coal, but is defined based on its end use. The Chinse tariff schedule does not contain a specific designation for steam coal.[398]
- Record evidence confirms that Zhongji's purchases of anthracite coal should be considered steam coal and are pertinent to Commerce's investigation. Accordingly, Commerce should ignore Zhongji's proposed exclusion in the final determination.[399]

Mahle's Rebuttal Brief:

- Mahle restates and affirms its support for Zhongji's arguments.[400]

Commerce's Position: The record establishes that the respondent's Zhongji's coal purchases do not result in a measurable benefit.[401] Thus, this issue is moot.

[395] *Id*.
[396] *See* Zhongji Case Brief at 16 (citing PDM at 50, 52).
[397] *Id*. (citing Government of China Letter, "RE: GOC Submission of Rebuttal Factual Information," dated July 17, 2017 at 5, Exhibit 3; Zhongji June 12, 2017 IQR at Vol. III, 17-18).
[398] *See* Petitioners' Rebuttal Brief at 49 (citing Government of China July 20, 2017 SQR – Dingsheng HK at Exhibit D-20).
[399] *Id*. (citing Zhongji June 12, 2017 IQR at 17-18).
[400] *See* Mahle's Rebuttal Brief at 15.
[401] *See* PDM at 52.

X. RECOMMENDATION

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

☒ ☐

Agree Disagree

2/26/2018

X

Signed by: PRENTISS SMITH
P. Lee Smith
Deputy Assistant Secretary
for Policy and Negotiations

DOC 11

Determinação Final Investigação Original Chapas de Alumínio (Estados Unidos)

C-570-074
Investigation
Public Document
E&C/Office IV: YB/LN/JA

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 Determination in the Countervailing Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China

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I. SUMMARY

The Department of Commerce (Commerce) determines that countervailable subsidies are being provided above the *de minimis* level to producers and exporters of common alloy aluminum sheet (common alloy sheet) from the People's Republic of China (China), as provided for in section 705 of the Tariff Act of 1930, as amended (the Act).[1] Below is the complete list of issues in this investigation for which we received comments from interested parties.

Comment 1: Whether Commerce's Self-Initiation of This Investigation Was Lawful
Comment 2: Whether Commerce's Investigation of Critical Circumstances Was Lawful
Comment 3: Whether to Make a Separate Critical Circumstances Determination for TCI
Comment 4: Whether Commerce Should Continue to Apply AFA to the Export Buyer's Credit Program
Comment 5: Whether Commerce's Finding that the Aluminum and Steal Coal Markets are Distorted is Supported by Substantial Evidence
Comment 6: Whether Commerce Should Apply AFA to Yong Jie New Material's Financing
Comment 7: Whether Commerce Should Adjust Its Benefit Calculation for the Provision of Land for Less Than Adequate Remuneration
Comment 8: Whether Commerce Should Apply AFA to Mingtai's Financing

[1] *See also* section 701(f) of the Act.

Comment 9: Whether Commerce Should Amend Its Preliminary Calculation for Subsidies Received by Mingtai

II. BACKGROUND

A. Case History

On April 23, 2018, we published the *Preliminary Determination* for this investigation,[2] in which we aligned the final countervailing duty (CVD) determination with the final antidumping duty determination, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4). Inthe *Preliminary Determination*, we calculated above *de minimis* rates for Henan Mingtai Industrial Co., Ltd. and Zhengzhou Mingtai (collectively, Mingtai); and Yong Jie New Material Co., Ltd. (Yong Jie New Material). The subsidy rates for Chalco Ruimin Co., Ltd. (Chalco Ruimin) and Chalco-SWA Cold Rolling Co., Ltd. (Chalco-SWA) were based entirely on adverse facts available.[3] We conducted verifications of the questionnaire responses submitted by Mingtai and Yong Jie New Material between June 5, 2018, and June 14, 2018.[4] Subsequent to the *Preliminary Determination*, we received timely filed requests for a hearing from Mingtai and Yong Jie New Material.[5] On October 11, 2018, we held a hearing.[6]

We received case briefs regarding the *Preliminary Determination* from the domestic industry,[7] AA Metals,[8] Mingtai, Yong Jie New Material, TCI,[9] and the Government of China on July 27, 2018, and rebuttal briefs from the domestic industry, Mingtai, Yong Jie New Material, and the Government of China on August 1, 2018.[10]

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[2] *See Common Alloy Aluminum Sheet from the People's Republic of China: Preliminary Affirmative Countervailing Duty (CVD) Determination, Alignment of Final CVD Determination With Final Antidumping Duty Determination, and Preliminary CVD Determination of Critical Circumstances*, 83 FR 17651 (April 23, 2018) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

[3] *See* PDM at 18-24.

[4] *See* Memoranda, "Verification of the Questionnaire Responses of Henan Mingtai Al Industrial Co., ltd. and Zhengzhou Mingtai Industry Co., Ltd.: Countervailing Duty Investigation of Common Alloy Sheet from the People's Republic of China," (Mingtai Verification Report) and "Verification of the Questionnaire Responses of Yong Jie New Material: Countervailing Duty Investigation of Common Alloy Sheet from the People's Republic of China," (Yong Jie New Material Verification Report), both dated July 3, 2018.

[5] *See* Mingtai Letter, "Common Alloy Aluminum Sheet from the People's Republic of China-Request for Hearing," dated May 23, 2018; Yong Jie New Material Letter, "Common Alloy Aluminum Sheet from the People's Republic of China: Yong Jie New Material Request for Public Hearing," dated April 29, 2018.

[6] *See* Letter to All Interested Parties, dated October 1, 2018.

[7] The domestic industry to this investigation is the Aluminum Association Common Alloy Aluminum Sheet Trade Enforcement Working Group and its individual members (collectively, the domestic industry).

[8] AA Metals, Inc. (AA Metals) is an U.S. importer of subject common alloy aluminum sheet from China.

[9] Ta Chen International Inc. and affiliates Empire Resources Inc. and Galex Inc. (collectively, TCI) are U.S. importers of subject common alloy aluminum sheet from China.

[10] *See* Domestic Industry Case Brief, "Common Alloy Aluminum Sheet from the People's Republic of China: Domestic Industry's Case Brief," dated July 27, 2018 (Domestic Industry's Case Brief); AA Metals' Case Brief, "Countervailing Duty Investigation on Common Alloy Aluminum Sheet from the People's Republic of China: Case Brief," dated July 27, 2018 (AA Metals' Case Brief); Mingtai's Case Brief, "Common Alloy Aluminum Sheet from the People's Republic of China: Case Brief," dated July 27, 2018 (Mingtai's Case Brief); Yong Jie New Material's Case Brief, "Common Alloy Aluminum Sheet from the People's Republic of China: Case Brief," dated July 27, 2018 (Yong Jie New Material's Case Brief); TCI's Case Brief, "Common Alloy Aluminum Sheet from the People's

The "Analysis of Programs" and "Subsidies Valuation" sections below describe the subsidy programs and the methodologies used to calculate the subsidy rates for our final determination. Based on our verification findings, we made certain modifications to the *Preliminary Determination*, which are discussed under each program, below. For details of the resulting revisions to Commerce's rate calculations resulting from those modifications, *see* the final calculation memoranda.[11] We recommend that you approve the positions we describe in this memorandum.

B. Period of Investigation

The period of investigation (POI) for which we are measuring subsidies is January 1, 2016, through December 31, 2016.

III. FINAL DETERMINATION OF CRITICAL CIRCUMSTANCES, IN PART

Commerce preliminarily found that critical circumstances existed for Chalco Ruimin, Chalco-SWA, and all other producers or exporters, but not for Yong Jie New Material or Mingtai.[12] For Chalco Ruimin and Chalco-SWA, we continue to find that critical circumstances exist on the basis of AFA.[13] In accordance with section 776(a) and (b) of the Act, and 19 CFR 351.308(c) we find that imports of subject merchandise from Chalco Ruimin and Chalco-SWA were massive over a relatively short period of time and that Chalco Ruimin and Chalco-SWA received subsidies that are inconsistent with the World Trade Organization (WTO) Agreement on Subsidies and Countervailing Measures (SCM Agreement).

For Yong Jie New Material and Mingtai, based on the examination of the shipping data placed on the record by the mandatory respondents after the preliminary determination, as requested by Commerce, we are modifying our critical circumstances analysis to expand the "base" and "comparison periods" by a month. Accordingly, we examined shipment data placed on the

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Republic of China," dated July 27, 2018 (TCI's Case Brief); the Government of China's Case Brief, "GOC Administrative Case Brief in the Countervailing Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China," dated July 27, 2018 (Government of China's Case Brief); Domestic Industry's Rebuttal Brief, "Common Alloy Aluminum Sheet from the People's Republic of China: Domestic Industry's Rebuttal Brief," August 1, 2018 (Domestic Industry's Rebuttal Brief); Mingtai's Rebuttal Brief, "Common Alloy Aluminum Sheet from the People's Republic of China-Rebuttal Brief," dated August 1, 2018 (Mingtai's Rebuttal Brief); Yong Jie New Material's Rebuttal Brief, "Common Alloy Aluminum Sheet from the People's Republic of China: Rebuttal Brief," August 1, 2018 (Yong Jie New Material's Rebuttal Brief); Government of China's Rebuttal Brief, "GOC Rebuttal Brief in the Countervailing Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China," August 1, 2018 (Government of China's Rebuttal Brief).

[11] *See* Memoranda, "Countervailing Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China: Final Determination Calculation Memorandum for Henan Mingtai Industrial Co., Ltd. and Zhengzhou Mingtai," dated November 5, 2018 (Mingtai Final Calculation Memorandum) and "Countervailing Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China: Final Determination Calculation Memorandum for Yong Jie New Material Co., Ltd.," dated November 5, 2018 (Yong Jie New Material Final Calculation Memorandum).

[12] *See* PDM at 6-8.

[13] *See* "Use of Facts Otherwise Available and Adverse Inferences" section below; *see also* PDM at 6-7.

record for the period August 2017, through March 2018. Because the shipment data are business proprietary, our analysis can be found in a separate memorandum issued concurrently with this final determination.[14]

For this final determination, we continue to find that the increase in imports was greater than 15 percent and was therefore "massive" for the all other producers or exporters, but not for Yong Jie New Material and Mingtai.[15] Because we continue to find evidence of the existence of countervailable subsidies that are inconsistent with the SCM Agreement (*e.g.*, Value-Added Tax Rebates on Domestically-Produced Equipment), and because we continue to determine that the increase in imports was greater than 15 percent and was therefore "massive" for all other producers or exporters, we find that critical circumstances continue to exist for all other producers or exporters. Comments regarding critical circumstances for all other producers or exporters are addressed at Comment 3.

IV. SCOPE OF THE INVESTIGATION

The product covered by this investigation is common alloy sheet from China. For a full description of the scope of this investigation, see the accompanying *Federal Register* notice at Appendix II.

V. SCOPE COMMENTS

We invited parties to comment on Commerce's Preliminary Scope Memorandum.[16] Commerce has reviewed the briefs submitted by interested parties, considered the arguments therein, and has made changes to the scope of the investigation. For further discussion, *see* Commerce's Final Scope Decision Memorandum.[17]

VI. SUBSIDIES VALUATION INFORMATION

A. Allocation Period

Commerce has made no changes to the allocation period and the allocation methodology used in the *Preliminary Determination* and no issues were raised by interested parties in case briefs regarding the allocation period or the allocation methodology. For a description of the allocation

[14] *See* Memorandum, "Calculations for Final Determination of Critical Circumstances in the Countervailing Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China," dated concurrently with this final determination.
[15] *Id. See also* Memorandum, "Calculations for Preliminary Determination of Critical Circumstances in the Countervailing Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China," dated April 16, 2018.
[16] *See* Memorandum, "Common Alloy Aluminum Sheet from the People's Republic of China: Scope Comments Preliminary Decision Memorandum," dated June 15, 2018.
[17] *See* Memorandum, "Common Alloy Aluminum Sheet from the People's Republic of China: Final Scope Decision Memorandum," dated concurrently with this memorandum.

period and the methodology used for this final determination, *see* the *Preliminary Determination*.[18]

B. Attribution of Subsidies

Commerce has made no changes to the methodologies used in the *Preliminary Determination* for attributing subsidies. For a description of the methodology used for this final determination, *see* the *Preliminary Determination* and accompanying PDM and the final analysis memoranda.[19]

C. Denominators

In accordance with 19 CFR 351.525(b), Commerce considers the basis for the respondent's receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondent's export or total sales, or portions thereof. The denominators we used to calculate the countervailable subsidy rates for the various subsidy programs described below are explained in the calculation memorandum prepared for this final determination.[20]

VII. BENCHMARKS AND DISCOUNT RATES

The Government of China and the domestic interested party submitted comments regarding the benchmarks used in the *Preliminary Determination*. These comments are addressed below, at Comment 5. The benchmarks and discount rates that we used for these final results are unchanged from the *Preliminary Determination.* For a description of the benchmarks and discount rates used for these final results, *see* the *Preliminary Determination* and the accompanying PDM.[21]

VIII. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

A. Legal Standard

Sections 776(a)(1) and (2) of the Act provide that Commerce shall, subject to section 782(d) of the Act, apply "facts otherwise available" (FA) if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.[22]

[18] *See* PDM at 9-10.
[19] *Id.*; *see also* Mingtai Final Calculation Memorandum and Yong Jie New Material Final Calculation Memorandum.
[20] *Id.*
[21] *See* PDM at 13-18.
[22] On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the AD and CVD law, including amendments to sections 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act, as summarized below. *See Trade Preferences Extension Act of 2015,* Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015). The 2015 law does not specify dates of

Section 776(b) of the Act further provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Further, section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. When selecting an adverse facts available (AFA) rate from among the possible sources of information, Commerce's practice is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide {Commerce} with complete and accurate information in a timely manner."[23] Commerce's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[24]

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."[25] It is Commerce's practice to consider information to be corroborated if it has probative value.[26] In analyzing whether information has probative value, it is Commerce's practice to examine the reliability and relevance of the information to be used.[27] However, the SAA emphasizes that Commerce need not prove that the selected facts available are the best alternative information.[28]

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

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application for those amendments. On August 6, 2015, Commerce published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the United States International Trade Commission. *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015). Therefore, the amendments apply to this investigation.

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

[24] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. I at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199 (SAA) at 870.

[25] *See, e.g.*, SAA at 870.

[26] *See* SAA at 870.

[27] *See, e.g.*, SAA at 869.

[28] *See* SAA at 869-870.

if the interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.[29]

B. Application of Facts Otherwise Available and Adverse Facts Available and Selection of the AFA Rate

Commerce relied on "facts otherwise available," including adverse facts available (AFA), for several findings in the *Preliminary Determination*.[30] For a description of these decisions, *see* the *Preliminary Determination*. Commerce continues to use facts otherwise available and AFA for these final results. Also, as described below, Commerce is using facts otherwise available and AFA for several additional findings. We further address our AFA decisions in Comments 4, 6, and 8, below.

It is Commerce's practice in CVD proceedings to compute a total AFA rate for non-cooperating companies using the highest calculated program-specific rates determined for the cooperating respondents in the instant investigation, or, if not available, rates calculated in prior CVD cases involving the same country.[31] When selecting AFA rates, section 776(d) of the Act provides that Commerce may use any countervailable subsidy rate applied for the same or similar program in a countervailing duty proceeding involving the same country, or, if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates.[32] Accordingly, when selecting AFA rates, if we have cooperating respondents, as we do in this investigation, we first determine if there is an identical program in the investigation and use the highest calculated rate for the identical program. If there is no identical program that resulted in a subsidy rate above zero for a cooperating respondent in the investigation, we then determine if an identical program was used in another CVD proceeding involving the same country, and apply the highest calculated rate for the identical program (excluding *de minimis* rates).[33] If no such rate exists, we then determine if there is a similar/comparable program (based on the

[29] *See* section 776(d)(3) of the Act.

[30] *See* PDM at 18-39.

[31] *See, e.g., Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 73 FR 70971, 70975 (November 24, 2008) (unchanged in *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 29180 (June 19, 2009), and accompanying IDM at "Application of Facts Available, Including the Application of Adverse Inferences;" *see also Aluminum Extrusions from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) (*Aluminum Extrusions from China*), and accompanying IDM at "Application of Adverse Inferences: Non-Cooperative Companies.

[32] *See, e.g., Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) (*Shrimp from China*), and accompanying IDM at 13; *see also Essar Steel Ltd. v. United States*, 753 F.3d 1368, 1373-1374 (Fed. Cir. 2014) (*Essar Steel*) (upholding "hierarchical methodology for selecting an AFA rate").

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

treatment of the benefit) in another CVD proceeding involving the same country and apply the highest calculated above-*de minimis* rate for the similar/comparable program. Finally, where no such rate is available, we apply the highest calculated above-*de minimis* rate from any non-company specific program in a CVD case involving the same country that the company's industry could conceivably use.[34]

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

Section 776(d)(2) of the Act authorizes Commerce to rely on the highest prior rate under certain circumstances. In deriving an adverse facts available rate under section 776(d)(1)(A) of the Act described above, the provision states that Commerce "may apply any of the countervailable subsidy rates or dumping margins specified under that paragraph, including the highest such rate or margin, based on the evaluation by the administering authority of the situation that resulted in the administering authority using an adverse inference in selecting among the facts otherwise available."[35] No legislative history accompanied this provision of the TPEA. Accordingly, Commerce is left to interpret this "evaluation by the administering authority of the situation" language in light of existing agency practice, and the structure and provisions of section 776(d) of the Act itself.

We find that the Act anticipates a two-step process for determining an appropriate adverse facts available rate in CVD cases: 1) Commerce may apply its hierarchy methodology; and 2) Commerce may apply the highest rate derived from this hierarchy to a respondent, should it choose to apply that hierarchy in the first place, unless, after an evaluation of the situation that resulted in the use of adverse facts available, Commerce determines that the situation warrants a rate different than the rate derived from the hierarchy be applied.[36]

In applying the adverse facts available rate provision, it is well established that when selecting the rate from among possible sources, Commerce seeks to use a rate that is sufficiently adverse to effectuate the statutory purpose of section 776(b) of the Act to induce respondents to provide Commerce with complete and accurate information in a timely manner. This ensures "that the

[34] *See Shrimp from China* IDM at 13-14.
[35] *See* Section 776(d)(2) of the Act.
[36] This differs from antidumping proceedings, for which no hierarchy applies, under section 776(d)(1)(B). Under that provision, "any dumping margin from any segment of the proceeding under the applicable antidumping order" may be applied, which suggests an adverse rate could be derived from different available margins, given the facts on the record.

party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[37] Further, "in the case of an uncooperative respondent, Commerce is in the best position, based on its expert knowledge of the market and the individual respondent, to select adverse facts that will create the proper deterrent to non-cooperation with its investigations and assure a reasonable margin."[38] It is pursuant to this knowledge and experience that Commerce has implemented its adverse facts available hierarchy in CVD cases to select an appropriate adverse facts available rate.[39]

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

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

Under the first step of Commerce's investigation hierarchy, Commerce applies the highest non-zero rate calculated for a cooperating company for the identical program in the investigation.

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[37] *See* SAA at 4040, 4090; *see also Essar Steel*, 678 at 1276 (citing *F. Lii De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027, 1032 (Fed. Cir. 2000) (finding that "{t}he purpose of the adverse facts statute is 'to provide respondents with an incentive to cooperate" with Commerce's investigation, not to impose punitive damages.'") (*De Cecco*).

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

[39] Commerce has adopted a practice of applying its hierarchy in CVD cases. *See, e.g.*, *Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017), and accompanying IDM, Cmt. 4 at 28-31 (applying the adverse facts available hierarchical methodology within the context of CVD investigation); *see also Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 41003 (July 14, 2015), and accompanying IDM at 11-15 (applying the adverse facts available hierarchical methodology within the context of CVD administrative review). However, depending on the type of program, Commerce may not always apply its AFA hierarchy. *See, e.g.*, *Certain Uncoated Paper from Indonesia: Final Affirmative Countervailing Duty Determination*, 81 FR 3104 (January 20, 2016), and accompanying IDM at 7-8 (applying, outside of the adverse facts available hierarchical context, the highest combined standard income tax rate for corporations in Indonesia).

Under this step, we will even use a *de minimis* rate as adverse facts available if that is the highest rate calculated for another cooperating respondent in the same industry for the same program.

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

Finally, if no such rate exists, under the third step of Commerce's investigation hierarchy, Commerce applies the highest rate calculated for a cooperating company from any non-company-specific program that the industry subject to the investigation could have used for the production or exportation of subject merchandise.[40]

In all three steps of Commerce's adverse facts available investigation hierarchy, if Commerce were to choose low adverse facts available rates consistently, the result could be a negative determination with no order (or a company-specific exclusion from an order) and a lost opportunity to correct future subsidized behavior. In other words, the "reward" for a lack of cooperation would be no order discipline in the future for all or some producers and exporters. Thus, in selecting the highest rate available in each step of Commerce's investigation adverse facts available hierarchy (which is different from selecting the highest possible rate in the "pool" of all available rates), Commerce strikes a balance between the three necessary variables: inducement, industry relevancy, and program relevancy.[41]

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

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

[41] It is significant that all interested parties, since at least 2007, that choose not to provide requested information have been put on notice that Commerce, in the application of facts available with an adverse inference, may applyits hierarchy methodology and select the highest rate in accordance with that hierarchy. *See, e.g.*, *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007), and accompanying IDM at 2, dated October 17, 2007 ("As AFA in the instant case, the Department is relying on the highest calculated final subsidy rates for income taxes, VAT and Policy lending programs of the other producer/producer in this investigation, Gold East Paper (Jiangsu) Co., Ltd. (GE). GE did receive any countervailable grants, so for all grant programs, we are applying the highest subsidy rate for any program otherwise listed…"). Therefore, when an interested party is making a decision as to whether or not to cooperate and respond to a request for information by Commerce, it does not make this decision in a vacuum; instead, the interested party makes this decision in an environment in which Commerce may apply the highest rate as adverse facts available under its hierarchy.

There are no facts on this record that suggest that a rate other than the highest rate envisioned under the appropriate step of the hierarchy applied in accordance with section 776(d)(1) of the Act should be applied as adverse facts available. As explained below, Commerce is applying adverse facts available because the Government of China, Chalco Ruimin, Chalco-SWA, Mingtai, and Yong Jie New Material chose not to cooperate by not providing the information Commerce requested. Therefore, we find that the record does not support the application of an alternative rate, pursuant to section 776(d)(2) of the Act.

In determining the program-specific AFA rates we will apply to Chalco Ruimin, Chalco-SWA, Mingtai, and Yong Jie New Material, we are guided by Commerce's methodology detailed above. We begin by selecting, as AFA, the highest calculated program-specific above-zero rates determined for a cooperating respondent in the instant investigation, as applicable to each company. Accordingly, we are applying the highest applicable subsidy rates for Chalco Ruimin, Chalco-SWA, Mingtai, and Yong Jie New Material for the following programs:[42]

1. Government of China – Financial Contribution and Specificity for Certain Alleged Subsidy Programs

Commerce's initial questionnaire instructed the Government of China to respond on behalf of all mandatory respondent companies, including Chalco Ruimin and Chalco-SWA.[43] In its response, the Government of China stated that it was responding to the questionnaire with respect to the alleged programs used by the mandatory respondents Mingtai and Yong Jie New Material Co.[44] In a supplemental questionnaire, Commerce instructed the Government of China that it should, "provide complete questionnaire responses for all programs under investigation and for all mandatory respondents to this investigation."[45] In its response to this supplemental questionnaire, the Government of China stated that it would not provide information for any companies other than Mingtai and Yong Jie New Material.[46]

[42] In the *Preliminary Determination*, we inadvertently selected rates that were inconsistent with our AFA hierarchy methodolgy. For this final determination, in accordance with the AFA hierarchy, we corrected the Export Sellers Credit program AFA rate to reflect the highest rate for an identical program. For the seven programs that we are treating as grants, we have corrected the rates to reflect the highest rate for a similar program based on benefit or type. *See* Appendix to this memorandum.

[43] *See* Letter, "Countervailing Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China: Countervailing Duty Questionnaire," dated December 20, 2017 (December 20, 2017 (CVD Questionnaire), at 18.

[44] *See* Government of China Letter, "GOC Initial CVD Questionnaire Response: Countervailing Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China (C-570-074{)}," dated February 6, 2018, at 7.

[45] *See* Letter, "Countervailing Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China: Request for Additional Information Regarding the Government of the People's Republic of China's Response to the December 20, 2017 initial questionnaire," dated March 5, 2018.

[46] *See* Government of China Letter, "GOC First Supplemental Questionnaire Response: Countervailing Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China (C-570-074{)}," dated March 20, 2018.

Because of the Government of China's refusal to provide the requested information, the record is incomplete with regard to program information about alleged subsidies that could have been used by Chalco Ruimin and Chalco-SWA.[47] Specifically, the Government of China only provided information pertaining to the financial contribution and specificity of subsidy programs that were reported as "used" by Mingtai and Yong Jie New Material. For the remaining alleged subsidy programs, there is no record information from the Government of China as to whether the alleged subsidies provided a financial contribution or whether the alleged programs are specific. By not responding to the initial questionnaire with regard to alleged subsidies that could have been used by Chalco Ruimin and Chalco-SWA, the Government of China withheld information that had been requested and failed to provide information with the deadlines established. Therefore, in reaching a final determination, pursuant to sections 776(a)(2)(A), (B), and (C) of the Act, we base our findings regarding the specificity and financial contribution by the Government of China for these alleged subsidies on facts otherwise available.

Moreover, we determine that an adverse inference is warranted, pursuant to section 776(b) of the Act, because the Government of China did not cooperate to the best of its ability to comply with the requests for information in this investigation. Commerce is, therefore, finding all programs in this proceeding for which the Government of China did not provide information pertaining to financial contribution or specificity to be countervailable – that is, these programs provide a financial contribution within the meaning of sections 771(5)(B)(i) and (D) of the Act and are specific within the meaning of section 771(5A) of the Act. We are including those programs upon which Commerce initiated in this investigation in determining the AFA rate for Chalco Ruimin and Chalco-SWA.[48]

2. Yong Jie New Material - Unreported Financing

As discussed further in Comment 6 below, Commerce was unable to verify certain financing information that was submitted by Yong Jie New Material. Specifically, Commerce was unable to reconcile Yong Jie New Material's reported loans to its financial statements due to the discovery at verification of additional, unreported loans (*i.e.*, alleged letters of credit) and other forfaiting interest.[49] Commerce also discovered that Yong Jie New Material's reported interest paid did not match the loan interest report in the reconciliation worksheet, which was based on its accounting system.[50] Further, Commerce found additional reporting discrepancies pertaining to the interest rate and days covered by the interest payments for the two pre-selected loans that Commerce reviewed at verification.[51]

Accordingly, given the information reported in its questionnaire responses, and the conflicting information discovered at verification, we determine that Yong Jie New Material withheld requested necessary information during the course of the investigation, impeded the proceeding, and, through its actions, prevented Commerce from being able to verify that information.

[47] *Id.*
[48] *See* Appendix for the AFA rates for Chalco Ruimin and Chalco-SWA.
[49] *See* Yong Jie New Material Verification Report at 10-11.
[50] *Id.* at 11.
[51] *Id.* at 11-12.

Therefore, Commerce determines that the use of facts available pursuant to sections 776(a)(1) and 776 (a)(2)(A), (C), & (D) of the Act is warranted in determining whether Yong Jie New Material held countervailable financing during the POI.

We further find that an adverse inference is warranted, pursuant to section 776(b) of the Act. Despite repeated requests,[52] Yong Jie New Material failed to accurately report its outstanding loans. As a result, we find that Yong Jie New Material did not act to the best of its ability in this investigation. In drawing an adverse inference, we find that Yong Jie New Material benefitted from the alleged financing subsidy programs. These alleged financing programs include Policy Loans, Export Seller's Credit, Export Buyer's Credit,[53] and Export Loans from Chinese State-Owned Banks programs.[54] For further discussion, *see* Comment 6 below.

Consistent with section 776(d) of the Act and our established practice, we used the highest non-*de minimis* rate calculated for an identical program in another China proceeding for Export Seller's Credit program, which is 4.25 percent.[55] For the Policy Lending to the Aluminum Sheet Industry, Export Buyer's Credit, and the Export Loans from Chinese State-Owned Banks, because there are no calculated rates for these programs from another proceeding, we sought the highest non-*de minimis* rate calculated for a comparable or similar program (based on the treatment of the benefit) in another China proceeding. The highest calculated rate for a similar program in another China proceeding for these programs is 10.54 percent.[56]

Consistent with the *Preliminary Determination*, we find that Policy Loans to the Common Alloy Sheet Industry provide a financial contribution within the meaning of sections 771(5)(B)(i) and 771(5)(D)(i) of the Act, and are specific within the meaning of section 771(5A)(D)(i) of the Act.[57] For Export Loans from Chinese State-Owned Banks, Export Buyer's Credits, and Export Seller's Credits, as explained, *supra*,[58] we determine that these programs provided a financial contribution within the meaning of sections 771(5)(B)(i) and (D) of the Act and are specific within the meaning of section 771(5A) of the Act.

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[52] *See* CVD Questionnaire at 66-67; Letter, "Countervailing Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China: Request for Additional Information Regarding February 6, 2018 Questionnaire Responses," dated March 1, 2018 at 6-7; and Letter, "Countervailing Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China: Request for Additional Information Regarding March 16, 2018," dated March 28, 2018.

[53] As explained in the *Preliminary Determination*, we have applied AFA due to the Government of China's failure to provide information that was requested by Commerce about this program.

[54] Because Yong Jie New Material is not a state-owned enterprise, we find that it could not have benefitted from the Loans to State-Owned Enterprises program.

[55] *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*, 76 FR 77206 (December 12, 2011) (*Citric Acid from China*), and accompanying IDM at "Export Seller's Credit for High-and New-Technology Products."

[56] *See Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet Fed Presses from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 75 FR 70201, 70202 *(November 17, 2010) (Coated Paper from China) (revised rate for "Preferential Lending to the Coated Paper Industry" program).*

[57] *See* PDM at 40-42.

[58] *See* above at "1. Government of China – Financial Contribution and Specificity for Certain Alleged Subsidy Programs." *See also* PDM at 24-26.

3. Mingtai – Unreported Financing

As explained in the *Preliminary Determination*, Mingtai did not report all of its financing that was outstanding during the POI.[59] The record is thus incomplete with regard to Mingtai's outstanding loans, and we therefore must rely on "facts otherwise available" in issuing our final determination, pursuant to section 776(a)(2)(A) of the Act. Moreover, by failing to provide information that it was otherwise able to provide, we find that Mingtai did not act to the best of its ability to comply with our request for information. Consequently, we find that an adverse inference is warranted in the application of facts available pursuant to section 776(b) of the Act. In drawing an adverse inference, we find that Mingtai benefitted from the alleged financing subsidy programs. These alleged financing programs include Policy Loans, Export Seller's Credit, Export Buyer's Credit,[60] and Export Loans from Chinese State-Owned Banks programs.[61]

Consistent with section 776(d) of the Act and our established practice, we used the highest non-d*e minimis* rate calculated for an identical program in another China proceeding for Export Seller's Credit program, which is 4.25 percent.[62] For the Policy Lending to the Aluminum Sheet Industry, the Export Loans from Chinese State-Owned Banks, and the Export Buyer's Credit programs, because there are no calculated rates for these programs from another proceeding, we sought the highest non-*de minimis* rate calculated for a comparable or similar program (based on the treatment of the benefit) in another China proceeding. The highest calculated rate for a similar program in another China proceeding for these programs is 10.54 percent.[63]

Consistent with the *Preliminary Determination*, we find that Policy Loans to the Common Alloy Sheet Industry provide a financial contribution within the meaning of sections 771(5)(B)(i) and 771(5)(D)(i) of the Act, and are specific within the meaning of section 771(5A)(D)(i) of the Act.[64] For Export Loans from Chinese State-Owned Banks, Export Buyer's Credits, and Export Sellers Credits, as explained, *supra*,[65] we determine that these programs provided a financial contribution within the meaning of sections 771(5)(B)(i) and (D) of the Act and are specific within the meaning of section 771(5A) of the Act.

[59] *See* PDM at 38-39.
[60] As explained in the *Preliminary Determination*, we have applied AFA due to the Government of China's failure to provide information that was requested by Commerce about this program.
[61] Because Mingtai is not a state-owned enterprise, we find that it could not have benefitted from the Loans to State-Owned Enterprises program.
[62] *See Citric Acid from China* IDM at "Export Seller's Credit for High-and New-Technology Products."
[63] *See Coated Paper from China (revised rate for "Preferential Lending to the Coated Paper Industry" program).*
[64] *See* PDM at 40-42.
[65] *See* above at "1. Government of China – Financial Contribution and Specificity for Certain Alleged Subsidy Programs." *See also* PDM at 24-26.

IX. ANALYSIS OF PROGRAMS

A. Programs Determined to Be Countervailable

1. Policy Loans to the Common Alloy Sheet Industry

The domestic industry, the Government of China, Mingtai, and Yong Jie New Material submitted comments in either their case or rebuttal briefs regarding this program and the calculation methodology. These are addressed in Comments 6 and 8. As discussed in Comment 6, Commerce has made certain changes to the methodology used to calculate Yong Jie New Material's subsidies under this program since the *Preliminary Determination*.

Mingtai: 10.54 percent *ad valorem*
Yong Jie New Material: 10.54 percent *ad valorem*

2. Export Loans from Chinese State-Owned Banks

No parties commented on this program. However, as discussed in the Use of Facts Otherwise Available and Adverse Inferences section above, Commerce has made changes to the methodology used to calculate or attribute subsidies under this program since the *Preliminary Determination* subsequent to its application of AFA to Mingtai's and Yong Jie's lending programs.

Mingtai: 10.54 percent *ad valorem*
Yong Jie New Material: 10.54 percent *ad valorem*

3. Export Seller's Credit

No parties commented on this program. However, as discussed in the Use of Facts Otherwise Available and Adverse Inferences section above, Commerce has made changes to the methodology used to calculate or attribute subsidies under this program since the *Preliminary Determination* subsequent to its application of AFA to Mingtai's and Yong Jie's lending programs.

Mingtai: 4.25 percent *ad valorem*
Yong Jie New Material: 4.25 percent *ad valorem*

4. Export Buyer's Credit

The domestic industry, the Government of China, Mingtai, and Yong Jie submitted comments in either their case or rebuttal briefs regarding this program. As explained below in Comment 4, Commerce has made no changes to the methodology used to calculate or attribute subsidies under this program since the *Preliminary Determination*.

Mingtai: 10.54 percent *ad valorem*
Yong Jie New Material: 10.54 percent *ad valorem*

5. Income Tax Reduction for Research and Development Expenses Under the Enterprise Income Tax Law

No parties commented on this program. However, as discussed in Comment 9, Commerce made corrections to Mingtai's total sales denominator, which was used to calculate the benefit Mingtai experienced from this program.

Mingtai: 0.06 percent *ad valorem*

6. Income Tax Credits for Purchase of Special Equipment

No parties commented on this program. However, as discussed in Comment 9, Commerce made corrections to Mingtai's total sales denominator, which was used to calculate the benefit Mingtai experienced from this program.

Mingtai: 0.02 percent *ad valorem*

7. VAT Rebates on Domestically-Produced Equipment

No parties commented on this program. Commerce has made no changes to the methodology used to calculate or attribute subsidies under this program since the *Preliminary Determination*.

Yong Jie New Material: 0.05 percent *ad valorem*

8. Government Provision of Land for Less Than Adequate Remuneration

The domestic industry and Mingtai commented on this program in their case or rebuttal briefs. As explained below in Comment 7, Commerce has made changes to the methodology used to calculate or attribute subsidies under this program since the *Preliminary Determination*. Further, as discussed in Comment 9, Commerce made corrections to Mingtai's total sales denominator, which was used to calculate the benefit Mingtai experienced from this program.

Mingtai: 0.37 percent *ad valorem*
Yong Jie New Material: 0.24 percent *ad valorem*

9. Government Provision of Primary Aluminum for Less Than Adequate Remuneration

The domestic industry and the Government of China submitted comments in their case or rebuttal briefs regarding this program. As explained below in Comment 5, Commerce has made no changes to the methodology used to calculate or attribute subsidies under this program since the *Preliminary Determination*. However, as discussed in Comment 9, Commerce made corrections to Mingtai's total sales denominator, which was used to calculate the benefit Mingtai experienced from this program.

Mingtai: 4.09 percent *ad valorem*
Yong Jie New Material: 15.67 percent *ad valorem*

10. Government Provision of Steam Coal for Less Than Adequate Remuneration

The domestic industry and the Government of China submitted comments in their case or rebuttal briefs regarding this program. As explained below in Comment 7, Commerce has made no changes to the methodology used to calculate or attribute subsidies under this program since the *Preliminary Determination*. However, as discussed in Comment 9, Commerce made corrections to Mingtai's total sales denominator, which was used to calculate the benefit Mingtai experienced from this program.

Mingtai: 5.20 percent *ad valorem*

11. Government Provision of Electricity for Less Than Adequate Remuneration

The domestic industry and Mingtai submitted comments in their case or rebuttal briefs regarding this program. As explained below in Comment 9, Commerce has made changes to the methodology used to calculate or attribute subsidies under this program since the *Preliminary Determination*.

Mingtai: 0.86 percent *ad valorem*
Yong Jie New Material: 0.86 percent *ad valorem*

12. "Other Subsidies"

No parties commented on these programs. Commerce has made no changes to the methodology used to calculate or attribute subsidies under these programs since the *Preliminary Determination*.

Mingtai: 0.01 percent *ad valorem*
Yong Jie New Material: 2.33 percent *ad valorem*

B. Programs Determined Not Used by, or Not to Confer a Measurable Benefit to, Mingtai and Yong Jie

1. Preferential Loans for State-Owned Enterprises (SOEs)
2. Equity Infusions into Nanshan Aluminum
3. Dividends for SOEs from Distributing Dividends
4. Income Tax Concessions for Enterprises Engaged in Comprehensive Resource Utilization
5. Income Tax Deductions/Credits for Purchase of Special Equipment
6. Stamp Tax Exemption on Share Transfers Under Non-Tradeable Share Reform
7. Deed Tax Exemption for SOEs Undergoing Mergers or Restructuring
8. Government of China and Sub-Central Government Subsidies for the Development of Famous Brands and China World Top Brands

9. The State Key Technology Renovation Project Fund
10. Foreign Trade Development Fund Grants
11. Grants for Energy Conservation and Emission Reduction
12. Grants for the Retirement of Capacity
13. Grants for the Relocation of Productive Facilities
14. Grants for Nanshan Aluminum

X. ANALYSIS OF COMMENTS

Comment 1: Whether Commerce's Self-Initiation of this Investigation Was Lawful

Government of China's Comments:

- Commerce's self-initiation of this investigation was in violation of its obligations under the WTO, and not in accordance with law or with Commerce's past practice.[66]
- Commerce has self-initiated only twice before – in cases involving semi-conductors from Japan, where the investigation was later suspended, and softwood lumber from Canada. Both of those cases, as opposed to this investigation, represented extraordinarily rare exceptions to the petition-based initiation.[67]
- Commerce's authority to self-initiate derives from the Trade Agreement of 1979 implementing the General Agreement on Tariffs and Trade (GATT). GATT stipulated that investigations may only be self-initiated under "special circumstances."[68] After the establishment of the WTO, similar provisions were included in the SCM Agreement. However, neither of the agreements defined what "special circumstances" meant.[69]
- In 1998, when Venezuela asked the United States to clarify under what circumstances a self-initiated investigation could be carried out consistent with 19 CFR 351.201, the United States answered that it would do so "only in situations involving special circumstances."[70]
- The only self-initiated CVD investigation was of *Softwood Lumber from Canada*. In the initiation notice of that case, Commerce stated that Canada's withdrawal from the 1986 Memorandum of Understanding (MOU) were the special circumstances prompting the investigation.[71] Commerce also self-initiated that investigation after consultations with Canada.
- Canada appealed to a GATT panel claiming, among other things, that there were no "special circumstances."

[66] *See* Government of China's Case Brief at 3.
[67] *Id.* at 6-12 (citing Report of the Panel, *Japan – Trade in Semi-Conductors*, L/6309 (May 4, 1988) GATT BISD (35th Supp.) at 116 (1989) and Report of the Panel, *United States – Measures Affecting Imports of Softwood Lumber from Canada*, SCM/162 (October 27, 1993) GATT BISD (40th Supp.) at 358 (1993) (*Softwood Lumber from Canada GATT Report*).
[68] *Id.* at 4 (citing Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade, art. 2, WTO Doc. LT/TR/A/3 (April 12, 1979).
[69] *Id.* at 4-6.
[70] *Id.* at 5-6 (citing *Notification of Laws and Regulations Under Articles 18.5 and 42.6 of the Agreements, Replies of the United States to Questions Posed by Japan and Venezuela*, G/ADP/Q1/USA/8, G/SCM/Q1/USA/8 (July 6, 1998) at "Replies to Questions Posted by Venezuela, Q.1.").
[71] *Id.* at 8 (citing *Certain Softwood Lumber Products from Canada: Self-Initiation of Countervailing Duty Investigation*, 56 FR 56055 (October 31, 1991) (*Softwood Lumber from Canada*).

- The GATT panel found that Canada's termination of the MOU constituted a "special circumstance." Although the GATT panel stated that "special circumstances" were not defined in the Trade Agreement of 1979, the panel stated that "special circumstances" would have to be "sufficiently exceptional" to not undermine the main purpose of the initiation provision which was to ensure petition-based initiations. Also, the GATT panel stated that the requirement for "special circumstances" is in addition to the "sufficiency of evidence."
- Commerce failed to identify or articulate any basis for the "special circumstances" in this investigation.
- Although Commerce referred to potentially unique considerations concerning "systematic and significant over-capacity in the Chinese aluminum industry," Commerce provided no indication that it considers this a "special circumstance."
- Commerce also failed to indicate how this investigation involved sufficiently exceptional circumstances to ensure that investigations were normally initiated through a petition procedure.
- This investigation could and should have been initiated through the normal petition procedure because (1) the initiation memoranda relied heavily on information provided by counsel (Kelley Drye) for the domestic aluminum sheet industry, (2) Kelley Drye is one of the most prolific petitioning law firms, (3) Kelley Drye represented petitioners in the Aluminum Foil from China AD/CVD investigations, and (4) Commerce already self-initiated a Section 232 investigation concerning aluminum imports and the President exercised his authority to impose a 10 percent tariff on aluminum imports.

Domestic Industry Rebuttal Comments:

- Indication of "special circumstances" is not a threshold requirement for self-initiations, and Commerce's decision to self-initiate was consistent with law and past practice.[72]
- The statue mandates that Commerce self-initiate if an examination of the elements under section 701(a) of the Act is warranted and the Government of China has identified no legal authority to show how Commerce did not comport with U.S. law by self-initiating this investigation.[73]
- Commerce has long recognized that U.S. law is fully compliant with United States' WTO obligations.[74]
- Commerce satisfied the requirements for self-initiating this investigation by identifying the factual information and explaining how that information provides sufficient basis for further examination of the elements under section 701(a) of the Act.
- The Government of China has identified no legal authority to show how Commerce did not comport with U.S. law by self-initiating this investigation.
- Additionally, "special circumstances" is not defined in the GATT or the SCM Agreement.
- In response to Venezuela's question regarding self-initiations in 1998, the United States did not offer a definition of "special circumstances."

[72] *See* Domestic Industry Case Brief at 6.
[73] *Id.* 6-7.
[74] *Id.* at 10 (citing *Countervailing Duty Investigation of Fine Denier Polyester Staple Fiber from India: Final Affirmative Determination*, 83 FR 3122 (January 23, 2018) (*Fine Denier PSF from India*), and accompanying IDM at Comment 1.

- Commerce's investigation was warranted because of the rapid increase in imports of subject merchandise and "systemic and significant over-capacity in the Chinese aluminum industry."
- This self-initiation is consistent with both the United States' response to the question posed by Venezuela and the GATT panel report regarding softwood lumber from Canada, because in its initiation notice Commerce stated it rarely invoked this statutory authority and expects future investigations to normally proceed based on petitions
- Finally, Commerce's purported failure to identify "special circumstances" in the initiation notice was not inconsistent with its past practice, because in one of the only two prior self-initiations which involved semiconductors from Japan, Commerce did not refer to any special circumstances. Therefore, the Government of China cannot claim the existence of any past practice regarding this issue.

Commerce's Position: Consistent with U.S. law, Commerce initiated this case based on record evidence of potential countervailable subsidization of the Chinese common alloy aluminum sheet industry. The United States law is consistent with our WTO obligations. The fact that U.S. law does not contain the words "special circumstances," and that Commerce did not use those words in its determination does not mean that U. S. law and the determination to self-initiate are inconsistent with the WTO obligations. AD and CVD investigations are normally initiated through a petition procedure. This case represents an exception rather than the norm because of the unusual facts involving a rapid increase in import volumes over the last three years and a "systemic and significant over-capacity in the Chinese aluminum industry," as stated in the initiation notice.[75] Commerce stated in the initiation notice that it expects most of the subsequent investigations to normally proceed based on petitions filed by or on behalf the industry.

Comment 2: Whether Commerce's Investigation of Critical Circumstances Was Lawful

AA Metals Comments:

- Commerce lacked legal authority to consider the issue of critical circumstances in this self-initiated investigation.[76]
- Pursuant to 19 CFR 351.206(b), Commerce may consider the issue of critical circumstances only when it receives a written allegation of critical circumstances from a petitioner; or on its own initiative, examines whether critical circumstances exist.[77]
- Commerce cannot make a determination without meeting the procedural predicates.[78]
- In self-initiated investigations, Commerce may consider the issue of critical circumstances only on its own initiative because there is no petitioner.

[75] *See Common Alloy Aluminum Sheet from the People's Republic of China: Initiation of Less-Than-Fair-Value and Countervailing Duty Investigations,*82 FR 57214 (December 4, 2017).
[76] *See* AA Metals, Inc.'s Case Brief, "Countervailing Duty Investigation on Common Alloy Aluminum Sheet from the People's Republic of China: Case Brief," dated July 27, 2018 (AA Metals Case Brief).
[77] *Id.* at 1 and 3 (citing *e.g. Jennings v. Rodriguez*, 138 S. Ct. 830,844 (2018) ("Negative-Implication Canon: Expression of one thing implies the exclusion of others (expression *unius est exclusion alterius*)" (internal citations omitted)).
[78] *Id.* at 2 (citing *Carton-Closing Staples from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 13236 (March 28, 2018), and accompanying IDM at Comment 4).

- Commerce did not allege the presence of critical circumstances on its own initiative and did so only after the issue was raised by the domestic industry.
- Commerce did not articulate why it initiated the inquiry into critical circumstances other than reliance on the domestic industry's allegations.
- Therefore, Commerce's preliminary critical circumstances determination is unlawful, and Commerce should reverse that determination in the final determination.

Domestic Industry Rebuttal Comments:

- Commerce's preliminary critical circumstances determination is lawful.[79]
- AA Metals does not challenge the substantive basis for Commerce's inquiry into critical circumstances.
- Commerce had the necessary information on the record to support a critical circumstances investigation, albeit placed on the record by the domestic industry.
- The statue is silent as to whether a domestic interested party may allege critical circumstances in a self-initiated investigation; therefore, Commerce is entitled to a *Chevron* deference for construction of the statute that a domestic interested party may do so.[80]
- Commerce's decision to rely on information submitted by the domestic industry for considering the issue of critical circumstance is permissible because the domestic industry has acted in a manner similar to that of a petitioner.

Commerce's Position: Generally, Commerce will make a finding of whether critical circumstances exist if a petitioner submits a written allegation. [81] In self-initiated investigations, Commerce will examine whether critical circumstances exist on its own initiative.[82] Neither the statue 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.

[79] *See* Domestic Industry Rebuttal Brief at 64.
[80] *Id.* at 65 (citing "19 U.S.C. §1677b(e)(1) {sic} and *Chevron USA Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 (1984) (*Chevron*).
[81] *See* 19 CFR 351.206(b).
[82] *Id.*

Comment 3: Whether to Make a Separate Critical Circumstances Determination for TCI

TCI Comments:

- TCI refiles its April 26, 2018, submission as its case brief on the preliminary determination.[83]
- TCI provides rebuttal information to the GTA data placed on the record by Commerce within the standard ten-day rule period given for rebuttal facts from the date Commerce introduced new facts into the record on April 18, 2018.[84]
- In its preliminary critical circumstances determination, Commerce stated that it analyzed "all-other" exporters' export volumes based on Global Trade Atlas (GTA) data.
- In so doing, Commerce made two factual assumptions: (1) the GTA Harmonized Tariff Schedule (HTS) numbers accurately represented the merchandise under consideration,[85] and (2) "all-other" exporters increased their exports in the same amount.
- Based on the data submitted for TCI's two China exporters, Commerce should not find critical circumstances in its final determination.
- Additionally, Commerce should (1) consider the shipment data for the entire period between initiation and the preliminary determination – not just the first three months after the initiation of the investigation,[86] and (2) exclude certain shipments by TCI's China exporter from its "massive imports" analysis because those shipments were not motivated by foreign exporters seeking to avoid AD/CVD duties.

Domestic Industry Rebuttal Comments:

- TCI's April 26, 2018, submission of new factual information was not timely because TCI's letter intended to rebut the GTA import data for "all-other" exporters which was *first* placed on the record by the Domestic Industry on March 23, 2018, and again on April 11, 2018.[87]
- TCI did not identify any authority or practice for issuing a separate critical circumstances determination for a non-mandatory respondent. Moreover, doing so would be unduly burdensome for Commerce and U.S. Customs and Border Protection (CBP) because CBP

[83] *See* Ta Chen International Inc.'s, Empire Resources Inc.'s, and Galex Inc.'s Case Brief, "Common Alloy Aluminum Sheet from People's Republic of China," dated July 27, 2018 (TCI Case Brief).
[84] *Id.* at 2 (citing 19 CFR 351.102(b)(21)(v) and 19 CFR 351.301).
[85] *Id.* at 1 (citing *Preliminary Determination* ("Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these investigations is dispositive.") and *Common Alloy Aluminum Sheet from China: Investigation Nos. 701-TA-591 and 731-TA-1399 (Preliminary)*, Publication 4757, January 2018 ("The National Marine Manufacturers Association, Recreational Vehicle Manufacturers Association and S F Smith Co. state that tariff categories, which are the same as used by Commerce as to the above GTA data, include non-subject product and do not include aluminum can stock and so cannot insure integrity as to what mean {sic}, so should use questionnaire data.")).
[86] *Id.* at 2 (citing *Bottom Mount Combination Refrigerator-Freezers from Korea*, 77 FR 17413, 17416 (March 26, 2012).
[87] *See* Domestic Industry Case Brief at 66-67.

entry data used for respondent selection indicated 681 potential producers or exporters of merchandise under consideration.[88]

Commerce's Position: We continue to find that critical circumstances exist for all-other companies. Consistent with our practice, we have not determined critical circumstances using individual shipment data, except for cooperative companies that were selected as mandatory respondents.[89]

The critical circumstances provisions are focused on determining whether a surge of sales to the United States occurred in response to the filing of an AD/CVD petition. Analyzing producer data evidences whether that producer increased its sales following the filing of a petition. An importer-specific analysis would allow a producer to mask such a surge by selling to multiple exporters or importers. Finally, Commerce agrees that the importer-specific methodology proposed by TCI would be unduly burdensome for Commerce to administer. As the domestic industry has argued, as a matter of equity, Commerce cannot make importer-specific critical circumstances determinations based on data from TCI's two China exporters without doing the same for all-other importers. Much of the specific shipment data used in such an analysis would be difficult, if not impossible, to verify, particularly if shipments originate with producers who have declined to cooperated.

TCI also claims that the GTA data under the HTS numbers used by Commerce for making its critical circumstances determination for the "all-other" companies included non-subject merchandise. However, consistent with our practice, we collect data based on the non-basket HTS category numbers listed in the scope.[90] TCI did not suggest how we could adjust the data reported under the HTS numbers used by Commerce to remove shipments of non-subject merchandise. Thus, we continue to use data from the non-basket category HTS numbers listed in the scope.

[88] *Id.* at 67 (citing Memorandum, "Countervailing Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China: Respondent Selection," dated December 20, 2017 at 2).
[89] *See, e.g., Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 80 FR 34888 (June 18, 2015), and accompanying IDM at Comment 24; *see also, e.g., Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008), and accompanying IDM at Comment 10.
[90] *See, e.g., Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (October 17, 2012), and accompanying IDM at 10.

Comment 4: Whether Commerce Should Continue to Apply AFA to the Export Buyer's Credit Program

G overnment of China's Comments:[91]

- Any failure of the Government of China to provide information goes to the issue of countervailability, not use. Thus, there was no ambiguity with regard to the fact that the Export Buyer's Credit program was not used by the respondents' customers.
- Commerce stated that due to the Government of China's failure to provide the 2013 Administrative Measures (2013 Measures) revisions, regarding the two-million-dollar threshold, it lacked information critical to understanding how the program operates and to make a determination.
- Commerce has never used this as the threshold for finding non-use even when this program was previously verified. At past verifications Commerce has looked to review the China Export-Importer Bank (China Ex-Im Bank) database, the two-million-dollar threshold is irrelevant, and Commerce could have conducted a similar verification.
- Commerce failed to determine whether the absence of this information on the record had any real impact, and whether it created a gap in the record that required the use of AFA.[92]
- Even with the Government of China's failure to provide certain information Commerce still could have determined usage by the Government of China's questionnaire responses, verification, or declarations of non-use by the respondent's customers. Commerce's refusal was unreasonable and unsupported by substantial evidence.
- There is evidence on the record from both the Government of China and respondents that this program was not used. In *Roasted Pistachios from Iran*, Commerce stated, "if information on the record indicates that the respondent did not use the program, the Department will find the program was not used, regardless of whether the foreign government participated to the best of its ability."[93]
- In *Hot-Rolled Steel from India* Commerce stated, "…the Department relies on information provided by respondent firms to determine the extent to which the firms benefited from the alleged subsidy program."[94]
- Mingtai placed declarations on the record from all of their U.S. customers certifying to the fact that they received no funding from the China Ex-Im Bank either directly or indirectly. Commerce should follow the precedent established in *Solar Cells from China; 2013*[95] and find the declarations sufficient to establish non-use of the Export Buyer's Credit Program.

[91] *See* Government of China's Case Brief at 26-37.
[92] *See Zhejiang Dunan Hetian Metal Co., Ltd. v. United States*, 652 F. 3d 1333, 1348 (Fed. Cir. 2011) (noting, "Commerce can only use facts otherwise available to fill a gap in the record.")
[93] *See Countervailing Duty New Shipper Review: Certain In-Shell Roasted Pistachios from the Islamic Republic of Iran*, 73 FR 9993 (February 25, 2008) (*Roasted Pistachios from Iran*), and accompanying IDM at comment 2.
[94] *See Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Countervailing Duty Administrative Review*, 73 FR 40295 (July 14, 2008) (*Hot Rolled Steel from India*), and accompanying IDM at Comment 6.
[95] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2013*, 81 FR 46904 (July 19, 2016) (*Solar Cells from China*; 2013).

- In *Boltless Steel Shelving Units from China*, Commerce did not verify the China Ex-Im Bank and still found that the program was not used during the POI based on the Government of China's responses and verification of non-use at both respondents.[96]
- The applied AFA rate of 10.54 percent is unreasonable. The highest rate a company could receive for this program should be 0.56 percent *ad valorem*. Similar to how Commerce has recognized a limitation on Chinese tax programs where it capped the AFA CVD rate for income tax programs at 25 percent, the Department should do the same here.
- Commerce should expressly recognize that the Export Buyer's Credit program is an export subsidy program as it noted in its initiation checklist when stating, "export buyer's credits are specific because they are contingent on export performance under section 771(5A)(A) and (B) of the Act."[97]

Mingtai Comments:[98]

- Commerce's finding that respondents benefitted from the export buyer's credit program was not supported by substantial evidence. Further, Mingtai acted to the best of its ability.
- The Government of China confirmed that none of the respondents' identified U.S. customers used the program during the POI. Mingtai confirmed that none of its customers received any kind of buyer's credits under the program. Mingtai also provided declarations from its customers certifying it did not apply for or receive buyer's credits.
- In line with both *Boltless Steel Shelving Units from China* and *Chlorinated Isocyanurates from China; 2012*, Commerce could and should have verified non-use at respondents' headquarters.[99]
- The program requires that the exporter, Mingtai, buy export credit insurance as a prerequisite to apply for the buyer's credit. Because Mingtai did not buy any insurance for exports its customers could not have applied for an export buyer's credit.
- Where the Government of China fails to respond to Commerce's questionnaire, Commerce's normal practice is to apply adverse facts available to the benchmark information requested from the Government of China but use the respondents' own data to measure the benefit received. Therefore, Commerce should use Mingtai's data, reported non-use, which is verifiable. It is unreasonable to assume that Mingtai's customers are wholly incapable of identifying the sources and reasons for their loan receipt, Commerce may not speculate that they did receive loans when they reported that they did not.
- Furthermore, Commerce's selection of the 10.54 percent rate from *Coated Paper from China*[100] was unreasonable. It is not the appropriate facts available rate because the program "Preferential Lending to the Coated Paper Industry" is not the same or similar to any export lending or financing program that Mingtai may have used.

[96] *See Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 80 FR 51775 (August 26, 2015) (*Boltless Steel Shelving Units from China*), and accompanying IDM at Comment X.
[97] *See* Memorandum, "Initiation of the Countervailing Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China," dated November 28, 2017.
[98] *See* Mingtai's Case Brief at 17-31.
[99] *See Boltless Steel Shelving Units from China*, and accompanying IDM at Comment X; *see also Chlorinated Isocyanurates from the People's Republic of China: Final Affirmative Countervailing Duty Determination; 2012*, 79 FR 56560 (September 22, 2014) (*Chlorinated Isocyanurates from China; 2012*), and accompanying IDM at 15.
[100] *See Coated Paper from China*, 75 FR 70201, 70202.

- The Department should use the "policy lending" rate from the investigation of *Aluminum Foil from China*.[101] In that investigation the Department determined a 3.62 percent subsidy rate for policy loans to the aluminum foil industry. Alternatively, the Department can choose to use the 0.82 percent subsidy rate calculated for the "export seller's credit" program also from the *Aluminum Foil from China* investigation. Mingtai produces and sells aluminum foil and, thus, is in the same industry and getting the same loans as those in the aluminum foil industry.[102]
- The name of the program, as well as the fact that there is a separate domestic lending program, indicate that the Export Buyer's Credit program is in fact export dependent. The Department's initiation memorandum also indicated that this program was export specific. The Department should find this program specific according to section 771(5A)(B) of the Act and a corresponding adjustment should be made to the antidumping cash deposit rate.[103]

Yong Jie New Material's Comments:[104]

- Both Yong Jie New Material and the Government of China answered all of Commerce's questions regarding the Export Buyer's Credit program. Both parties reported that no U.S. customers obtained any benefit under this program.
- Citing the initial questionnaire to the Government of China, Yong Jie New Material argued that if the program was not used, the Government of China did not have to fully answer the questionnaire.[105] The additional questions in the Standards Questions Appendix were irrelevant.
- The response that no U.S. customers received any export buyer credits is substantial evidence on the record. Therefore, Commerce's decision to use AFA because it thought information was missing was not based on substantial evidence.[106]
- Commerce may not treat failure to cooperate the same as failure to provide requested information.[107] Commerce may not use AFA against a government when there is no evidence it maintained the data it refused to give Commerce.[108]
- Citing *Chevron*, Yong Jie New Material argues that if the statute has spoken to an issue, then it is settled; however if the statute is unclear Commerce may make a decision that is both reasonable and based on substantial evidence.[109] Here, with both the Government of China and Yong Jie New Material answering "no," the matter is settled because the statute is clear that Commerce cannot use either facts otherwise available or adverse facts available unless

[101] *See Countervailing Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Final Affirmative Determination*, 83 FR 9274 (March 5, 2018) (*Aluminum Foil from China*).
[102] Mingtai also puts forth the same arguments as regards the "Export Loans from Chinese State-Owned Banks" program, for which it also received a 10.54 percent AFA rate. *See* Mingtai's Case Brief at 29.
[103] Similarly, Mingtai argues that the Export Loans from Chinese State-Owned Banks program is an export subsidy. *See* Mingtai's Case Brief at 29-31.
[104] *See* Yong Jie New Material's Case Brief at 9-19.
[105] *See* Letter, "Countervailing Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China: Countervailing Duty Questionnaire," dated December 20, 2017, at 18.
[106] *See Chevron*, 837.
[107] *See Nippon Steel Corp. v. United States*, 337 F.3d 1373 (Fed. Cir. 2003) (*Nippon Steel*).
[108] *See Maverick Tube Corp. v. United States*, 857 F.3d 1353, (Fed. Cir. 2017) (*Maverick Tube*).
[109] *See Chevron*.

the required information is missing from the record. There is no information missing from the record in this instance.

- Commerce also stated that the program could disburse funds through banks other than the China Ex-Im Bank, and therefore, "a complete understanding of how this program is administered is necessary."[110] But if no one received a benefit, only limited information is necessary.
- Commerce's determination was arbitrary especially in light of the fact that both Yong Jie New Material, and Mingtai, reported on more than 100 other subsidies that were obtained from the Government of China. Commerce asked no further questions on these programs. The same can be said for other initiated programs that Yong Jie New Material reported it did not use. Therefore, it was arbitrary and capricious for Commerce to require such details on the non-used export buyer's credits program.
- Citing *Mueller*, Commerce cannot use AFA against Yong Jie New Material because Yong Jie New Material has no control over the Government of China and its alleged failure to participate.[111]
- Commerce's refusal to verify this program is contrary to law.[112]
- Commerce should have verified whether the export buyer's credits were requested and received by Yong Jie New Material's U.S. buyers.[113]

Domestic Industry's Rebuttal Comments:[114]

- The Government of China failed to cooperate to the best of its ability. It refused to provide the 2013 Measures and the list of partner banks authorized to distribute program funds. As a result, the Government of China hindered Commerce's investigation and its ability to verify the purported non-use. It is for Commerce, not the Government of China, to determine what information is relevant and needed.
- In the *Aluminum Foil from China* investigation, Commerce stated, "…without a full and complete understanding of the involvement of third-party banks, the respondent companies (and their customers) claims are also not reliable because Commerce cannot be confident in its ability to verify those claims."[115]
- Yong Jie New Material claims the *Preliminary Determination* is due no deference under *Chevron*; however, *Chevron* is an appellate standard. Furthermore, Yong Jie New Material ignores gaps in the record. Section 776 of the Act provides that if information is missing from the record due to a respondent's failure to act to the best of its ability, Commerce may apply an adverse inference.
- Respondents also rely on outdated Commerce precedent, citing to the 2013 administrative review of *Solar Cells from China; 2013* where Commerce relied on declarations of non-use.

[110] *See* PDM at 25.
[111] *See Mueller Comercial de Mex., S. de R.L. de C.V. v. United States*, 753 F.3d 1227, 1235 (Fed. Cir. 2014) (*Mueller*).
[112] *See Shandong Dongfang Bayley Wood Co. Ltd. v. United States*, 236 F. Supp. 3d 1346 (CIT 2017).
[113] *See e.g., Boltless Steel Shelving Units from China* IDM at Comment X.
[114] *See* Domestic Industry's Rebuttal Case Brief at 12-28.
[115] *See Aluminum Foil from China* IDM at Comment 6.

However, in the 2014 administrative review of the same order Commerce revised its position.[116]

- Commerce has also previously addressed arguments against its current practice and refuted reliance on *Chlorinated Isocyanurates from China* and *Boltless Steel Shelving Units from China*.[117]
- Mingtai's and Yong Jie New Material's reliance on the U.S. Court of International Trade decisions in *SKF USA Inc.*[118] and *Mueller* is also misguided. In those cases, there were unaffiliated suppliers which had failed to supply certain information to the Department. Here, it is the failure of a foreign government, the Government of China, an interested party, that failed to respond.
- Additionally, the respondent's reliance on *Fine Furniture* is also incorrect. In that case, the Federal Circuit found that in the context of a countervailing duty proceeding, a government's failure to cooperate is a legitimate basis to apply an adverse inference that affects a cooperating respondent that has benefited from subsidies from that government.[119]
- Commerce should continue to apply the 10.54 percent rate for the Export Buyer's Credit program because despite the Government of China's argument that this is an "export loan program" the precise treatment of benefits under this program is unknown as a result of the Government of China's noncooperation.
- The Government of China argues that the highest conceivable rate under this program would be 0.56 percent – assuming that loans received under this program would be in US dollars and that any benefit would be calculated based on the interest rate of the loan. However, none of this information is on the record because the Government of China refused to provide it. Commerce rejected this rate and logic in *Fine Denier PSF from China*.[120]
- Arguments asserting that Commerce should use the rates calculated for the "policy loans" or "export seller's credit" programs calculated in the *Aluminum Foil from China* investigation should also be rejected. Commerce would have to assume that the benefit from the Export Buyer's Credit program is treated similarly to either of these programs; however, there is no record evidence to support this.
- Mingtai asserts that either of these rates should be used because they were for programs for the aluminum foil industry and respondents here produce aluminum foil as well – but this ignores Commerce's AFA hierarchy which states that when an agency has not previously countervailed a certain subsidy program, Commerce will use the highest calculated rate "from any non-company specific program in a CVD case involving the same country that the company's industry could conceivably use."
- According to section 776 of the Act Commerce is not required to make any adjustments or assumptions based on any information the interested party would have provided if it had

[116] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review; 2014*, 82 FR 32678 (July 17, 2017) (*Solar Cells from China; 2014*), and accompanying IDM at Comment 1.
[117] *See Aluminum Foil from China* IDM at Comment 6.
[118] *See SKF USA Inc. v. United States*, 675 F. Supp. 2d 1264 (CIT 2009) (*SKF USA*).
[119] *See Fine Furniture (Shanghai) Ltd. v. United States*, 748 F.3d 1365, 1372 (Fed. Cir. 2014) (*Fine Furniture*).
[120] *See Countervailing Duty Investigation of Fine Denier Polyester Staple Fiber from the People's Republic of China: Final Affirmative Determination*, 83 FR 3120 (January 23, 2018) (*Fine Denier PSF from China*), and accompanying IDM at Comment 2.

complied with the request for information. Commerce also does not need to demonstrate that the rate reflects a commercial reality of the interested party.[121]

- Furthermore, the Department should not adjust margins in the parallel antidumping duty investigation for export subsidy rates based on AFA. In applying AFA, the respondent must not receive a lower rate than if it cooperated fully. An offset would decrease the respondent's margin in an antidumping investigation by more than it would have if the respondent had cooperated.
- Additionally, because the 10.54 percent rate was determined on the basis of adverse facts available, the Department has not made an affirmative determination regarding whether such subsidies are in fact export subsidies.[122] The Department's practice has been not to make any offsets where there is no finding of whether the subsidy is an export subsidy.[123]

Commerce's Position: Consistent with the *Preliminary Determination*, and Commerce's past practice, we continue to find that the record of the instant investigation does not support a finding of non-use regarding the Export Buyer's Credit program.[124] In prior examinations of this program, we found that the authority administering this lending program, China Ex-Im Bank, is the primary entity that possesses the supporting information and documentation that are necessary for Commerce to fully understand the operation of this program, which is a prerequisite to Commerce's ability to verify the accuracy of the respondents' claimed non-use of the program.[125] As discussed in the *Preliminary Determination*, the Government of China did not provide the requested information or documentation necessary for Commerce to develop a complete understanding of this program (*i.e.*, information regarding whether China Ex-Im Bank uses third-party banks to disburse/settle export buyer's credits, and information on the size of the business contracts for which export buyer's credits are applicable).[126] Furthermore, this information is critical for Commerce to understand how export buyer's credits flow to and from foreign buyers and China Ex-Im Bank.[127] Absent the requested information, the Government of China's claims that the respondent companies did not use the program are not reliable. Moreover, without a full and complete understanding of the involvement of third-party banks, the respondent companies' (and their customers') claims are also not reliable because Commerce cannot be confident in its ability to verify those claims.

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[121] *See* section 776 of the Act.

[122] For these reasons, the Domestic Industry contends that Commerce's selection of the AFA rate for the "Export Loans from Chinese State-Owned Commercial Banks" program is also appropriate.

[123] *See Fine Denier Polyester Staple Fiber from the People's Republic of China: Final Affirmative Determination of Sales at the Less-Than-Fair-Value*, 83 FR 24740, (May 23, 2018) (*Fine Denier PSF from China AD*), and accompanying IDM at 6.

[124] *See* PDM at 24-26. *See also Solar Cells from China; 2014*, and accompanying IDM at Comment 1.

[125] *See, e.g., Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the People's Republic of China: Final Affirmative Determination and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35308 (June 2, 2016) (*CORE from China*), and accompanying IDM at Comment 6; *see also Chlorinated Isocyanurates from the People's Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review; 2014, 82 FR 27466 (June 15, 2017) (Chlorinated Isocyanurates from China; 2014)*, and accompanying IDM at Comment 2 (concluding that "without the Government of China's necessary information, the information provided by the respondent companies is incomplete for reaching a determination of non-use").

[126] *See* PDM at 24-26.

[127] *Id.* at 25.

We disagree with the Government of China's argument that Commerce did not need to review the 2013 Measures or consider the $2 million contract minimum to determine non-use of the program. As we explained in the *Preliminary Determination*, we requested the 2013 Measures because information on the record of this proceeding indicated that the 2013 Measures affected important program changes. For example, the 2013 Measures may have eliminated the $2 million contract minimum associated with this lending program.[128] By refusing to provide the requested information, and instead asking Commerce to rely upon unverifiable assurances that the 2000 Rules Governing Export Buyer's Credit remained in effect, the Government of China impeded Commerce's understanding of how this program operates and how to verify it with both the Government of China and the respondent companies. In addition, record evidence indicates that the loans associated with this program are not limited to direct disbursements through the China Ex-Im Bank.[129] Specifically, the record information indicates that customers can open loan accounts for disbursements through this program with other banks, whereby the funds are first sent to the China Ex-Im Bank to the importer's account, which could be at the China Ex-Im Bank or other banks, and that these funds are then sent to the exporter's bank account.[130] Given the complicated structure of loan disbursements for this program, Commerce's complete understanding of how this program is administered is necessary.[131] Thus, the Government of China's refusal to provide the most current 2013 Administrative Measures, which provide internal guidelines for how this program is administered by the China Ex-Im Bank, impeded Commerce's ability to conduct its investigation of this program.

In this investigation, information on the record indicates that there were revisions to the 2013 Measures program and the involvement of third-party banks, which were not present on the record *of Solar Cells from China; 2013, Chlorinated Isocyanurates from China; 2012*, and *Boltless Steel Shelving Units from China*, which have been cited by the Government of China and the respondent companies to support their arguments.[132] In addition, we find that, with respect to *Chlorinated Isocyanurates from China; 2012*, *Boltless Steel Shelving Units from China*, and *Solar Cells from China; 2013*, Commerce has since modified its position with respect to the Export Buyer's Credit program as explained in *Chlorinated Isocyanurates from China; 2014*,[133] where it determined that AFA was warranted because the Government of China did not cooperate to the best of its ability in responding to Commerce's request for additional information regarding the operations of the Export Buyer's Credit program.[134] As such, we find the Government of China's and the respondent companies' reliance on *Chlorinated Isocyanurates from China* and *Boltless Steel Shelving Units from China* is misplaced and unpersuasive.

[128] *See* Memorandum to the File, "Placing Information on the Record," dated January 16, 2018, at Attachment 1 (Citric Acid Verification Report) at 2.
[129] *See* Government of China's February 6, 2018 Questionnaire Response at Exhibit A4-2.
[130] *Id*.
[131] *See* PDM at 24-26.
[132] *See Solar Cells from China; 2013* IDM at Comment 1. *See also* Citric Acid verification report; *Boltless Steel Shelving Units from China* IDM at Comment X.
[133] *See Chlorinated Isocyanurates from China; 2014* IDM at Comment 2 (concluding that "without the Government of China's necessary information, the information provided by respondent companies is incomplete for reaching a determination of non-use").
[134] *See Chlorinated Isocyanurates from China; 2014* IDM at Comment 2.

Moreover, in *Solar Cells from China; 2013*, we specifically stated that, even though we found the record in those cases supported a conclusion of non-use, we intended to continue requesting the Government of China's full cooperation regarding this program in future proceedings, and we would base subsequent evaluations of this program on the record for each respective proceeding.[135] Thus, by not responding to our requests for additional information regarding the operation of this program, the Government of China was uncooperative in the instantproceeding. Furthermore, in *Solar Cells from China; 2014*, Commerce revised its position, stating that "…the Department finds the mandatory respondent's customers' certifications of non-use to be unreliable because without a complete understanding of the operation of the program which could only be achieved through a complete response by the GOC to the Department's questionnaires, the Department could not verify the respondent's customer's certifications of non-use."[136] Accordingly, Commerce can no longer rely on declarations of non-use.
In response to Mingtai's claims that it provided declarations from customers claiming non-use of the program, similar to documents provided in *Chlorinated Isocyanurates from China* and *Solar Cells from China; 2013*, we find that the facts of this case are different. In the instant investigation, we are unable to verify the accuracy of these documents because the primary entity that possesses such supporting records is the China Ex-Im Bank. We find Mingtai's customers' certifications of non-use to be unverifiable because, without a complete understanding of the operation of the program, which could only be achieved through a complete response by the Government of China to our questions on this program, verification of the respondents' customer's certifications of non-use would be meaningless.

With respect to the arguments that AFA should not be applied for this program, we continue to find that the Government of China withheld necessary information that was requested and significantly impeded the proceeding. Thus, we must rely on facts otherwise available in issuing the final determination, pursuant to sections 776(a)(2)(A) and 776(a)(2)(C) of the Act. Moreover, we determine that the Government of China failed to cooperate by not acting to the best of its ability to comply with our request for information. Specifically, the Government of China withheld information that we requested that was reasonably available to it. As such, we find that an adverse inference is warranted in the application of facts available, pursuant to section 776(b) of the Act. As AFA, we determine that this program provides a financial contribution, is specific, and provides a benefit to the respondent companies within the meaning of sections 771(5)(D), 771(5A), and 771(5)(E) of the Act, respectively. This finding is identical to the application of AFA in prior proceedings. Specifically, we find the circumstances in this case to be similar to those in *Chlorinated Isocyanurates from China; 2014* and *Truck and Bus Tires from China*,[137] where Commerce requested operational program information from the Government of China on this program, pointing out that there were substantial changes to the 2013 Measures, which the Government of China declined to provide. As we explained in the *Preliminary Determination*, this information is necessary to the analysis of this program.[138]

[135] *See Solar Cells from China; 2013* IDM at Comment 2.
[136] *See Solar Cells from China*; *2014* IDM at Comment 1.
[137] *See Truck and Bus Tires from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination, in Part*, 82 FR 8606 (January 27, 2017 (*Truck and Bus Tires from China*), and accompanying IDM at Comment 5.
[138] *See* PDM at 24-26.

The Government of China argues that, while it may not have provided specific information regarding the mechanics of the Export Buyer's Credit program, information that it did not provide only goes to the countervailability of this program and not to usage. As stated above and in our *Preliminary Determination*, we disagree. Our complete understanding of the operation of this program is a prerequisite to our reliance on the information provided by the company respondents regarding non-use. Therefore, without the necessary information that we requested from the Government of China, the information provided by the company respondents is incomplete for reaching a determination of non-use.[139] Accordingly, information regarding the operation of this program and the respondents' usage would come from the Government of China.

Commerce considered all the information on the record of this proceeding, including the statements of non-use provided by the mandatory respondents. As explained above and in the *Preliminary Determination*, we are unable to rely on the information provided by the respondents because Commerce lacks a complete and reliable understanding of the program.[140]

The U.S. Court of Appeals for the Federal Circuit (CAFC) has affirmed that certain information comes from the government and that Commerce can take an action that adversely affects a respondent if the government fails to provide requested information:

> Fine Furniture is a company within the Country of China, benefitting directly from subsidies the {GOC} may be providing, even if not intending to use such subsidy for anticompetitive purposes. Therefore, a remedy that collaterally reaches Fine Furniture has the potential to encourage the {GOC} to cooperate so as not to hurt its overall industry. Unlike *SKF*, Commerce in this case did not choose the adverse rate to punish the cooperating plaintiff, but rather to provide a remedy for the {GOC's} failure to cooperate.[141]

With respect to the Government of China's and the respondents' claim that the 10.54 percent AFA is punitive, we reviewed the comments from interested parties, and made no change to the AFA rate selected in the *Preliminary Determination* for this program. As we explained in the *Preliminary Determination*, it is Commerce's practice in CVD proceedings to compute a total AFA rate for non-cooperating companies by selecting rates pursuant to a well-established hierarchical methodology in accordance with section 776(d) of the Act and consistent with *Section 502 of the Trade Preferences Extension Act of 2015*, as described in detail above under "VIII. Use of Facts Otherwise Available and Adverse Inferences."

As explained in that section, in applying the methodology, Commerce takes into account 1) the need to induce cooperation, 2) the relevance of a rate to the industry in the country under investigation (*i.e.*, can the industry use the program from which the rate is derived), and 3) the relevance of a rate to a particular program, though not necessarily in that order of importance. Thus, in selecting a rate, Commerce takes due consideration of factors that determine the applicability of the rate while satisfying the statutory mandate for inducing cooperation. Hence,

[139] *See, e.g., Chlorinated Isocyanurates from China; 2014* IDM at Comment 2.
[140] *See* PDM at 24-26.
[141] *See Fine Furniture,* 1365, 1373.

Commerce follows a reasonably calibrated approach in applying AFA, the intent of which is not punitive as such.

With regard to the Government of China's contention that the preferential government lending program is not similar to the Export Buyer's Credit program, we find that because the Government of China did not provide the necessary information requested with respect to the 2013 Administrative measures, there is no evidence on the record from the Government of China that indicates that the Government Policy Lending program from *Coated Paper from China* is dissimilar to the Export Buyer's Credit program. We are similarly unpersuaded that the highest CVD rate a company could receive under this program is 0.56 percent. The Government of China's argument concerning the calculation methodology is misplaced, in light of the fact that we lack a full understanding of the program due to its own failure to provide the very information we requested as essential to such an understanding. As such, the record does not contain information to support the Government of China's suggested calculation methodology. Additionally, respondents' arguments that Commerce should select a rate from the *Aluminum Foil from China*[142] investigation, specifically the rate calculated for either the Policy Loans to the Aluminum Foil Industry program or the Export Seller's Credit program, are unavailing. When no identical program with an above *de minimis* rate exists, Commerce looks for a similar or comparable program from the same country (based on the treatment of the benefit) and takes the highest calculated rate for a similar or comparable program from any proceeding, pursuant to the methodology described in detail earlier. Accordingly, we continue to rely on the 10.54 percent rate as AFA for the Export Buyer's Credit program benefit.

Additionally, we disagree with the Government of China and respondents that Commerce should find this program specific under section 771 (5A)(B) of the Act in order to allow for a proper corresponding offset to the AD margin. Again, due to the Government of China's lack of participation and refusal to answer all questions for this program, we do not have all the necessary facts to make such a call.[143] Furthermore, providing an offset for an AFA rate would defeat the statutory intent not to provide respondents with a more favorable result than if they were to fully cooperate, assuming that the calculated rate would have been lower than the AFA rate.[144]

Comment 5: Whether Commerce's Finding that the Primary Aluminum and Steal Coal Markets are Distorted is Supported by Substantial Evidence

Government of China's Comments

- The *CVD Preamble* indicates a strong preference for the use of Tier 1 benchmarks in conducting the less than adequate remuneration (LTAR) benefit analysis.[145] The focus

[142] *See Aluminum Foil from China.*
[143] *See Fine Denier PSF from China AD.*
[144] Likewise, we will not be changing or offsetting the AFA rate applied to the "Export Loans from Chinese State-Owned Banks" program.
[145] *See* Government of China's Case Brief at 17 (citing *Countervailing Duties; Final Rule*, 63 FR 65348, 65377 (November 25, 1998) (*CVD Preamble*)).

on whether actual transactions prices are significantly distorted is consistent with the WTO Dispute Settlement Body (DSB) and Appellate Body (AB) jurisprudence.[146]

- The record demonstrates that the Chinese government's presence in the primary aluminum and coal industries is less than a majority.[147]
- Commerce is required to demonstrate with record evidence that actual transaction prices are significantly distorted by government intervention in the economy. Commerce did not do so.[148]

Domestic Industry's Rebuttal Comments

- Commerce recently rejected identical arguments by the Government of China in *Iron Pipe Fittings from China*.[149] Commerce concluded that the Government of China misinterpreted the *CVD Preamble* and WTO determinations to claim Commerce's findings of distortion are unlawful.[150]
- The record demonstrates that the Chinese primary aluminum and steam coal markets are distorted. The preliminary determinations regarding these markets were based on negligible consumption of imported products, the Government of China's significant ownership of the producers, the existence of export controls that were in effect during the POI.[151]

Commerce's Position: Commerce's long-standing practice is to utilize a benchmark outside of the country of provision when record evidence indicates that the high level of the government's share of the market of the good in question, along with other factors, results in a distortion of that market.[152] Such a finding is consistent with the *CVD Preamble*, which states that government involvement in a market may, in certain circumstances, have a distortive effect on the price of a good even when the government provider accounts for less than a majority of the market.[153] The Government of China's arguments regarding this matter have been previously addressed and rejected by Commerce.[154] Out-of-country benchmarks are required in such instances because the

[146] *Id.* at 18 (citing *United States-Countervailing Duty Measures on Certain Products from China*, WT/DS437/RW (March 21, 2018) at para. 7.205-6, finding that an investigating authority must explain how government intervention in the market results in in-country prices for the inputs at issue deviating from a market-determined price; citing also *United-States-Countervailing Measures on Certain Products from China*, WT/DS437/AB/R (December 18, 2014) at para. 4.62 (collectively, WTO/DS437); *United States-Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India*, WT/DS436/AB/R (December 8, 2014) at para. 4.157, and note 754).

[147] *Id.* at 20 (citing Government of China April 16, 2018 Questionnaire Response at 74 and 92).

[148] *Id.* at 21.

[149] *See* Domestic Industry Rebuttal Comments at 29, citing *Cast Iron Soil Pipe Fittings from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 83 FR 32075 (July 11, 2018) (*Iron Pipe Fittings from China*), and accompanying IDM at Comment 1.

[150] *Id.*

[151] *Id.* at 30 (citing PDM at 49-52, 40-41).

[152] *See Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 70961 (November 24, 2008) (*Line Pipe from China*), and accompanying IDM at Comment 5.

[153] *See CVD Preamble*, 63 FR 65348, 65377.

[154] *See, e.g., Certain Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 37012 (July 27, 2009) (*Racks from China*), and accompanying IDM at Comment 8; *Line Pipe from China* IDM at Comment 5; and *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative*

use of in-country private producer prices would be akin to comparing the benchmark to itself (*i.e.*, such a benchmark would reflect the distortions of the government presence).[155] Additionally, the Government of China's reliance on WTO/DS437 to argue for in-country benchmarks is misplaced. The CAFC has held that WTO reports are without effect under U.S. law "unless and until such ruling has been adopted pursuant to the specified statutory scheme" established in the Uruguay Round Agreements Act (URAA).[156] Congress adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports.[157] As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically trump the exercise of Commerce's discretion in applying the statute.[158] Concerning primary aluminum, the Government of China has reported that SOEs accounted fora substantial share of primary aluminum production in China (*i.e.*, 37 percent) during the POI.[159] This percentage is similar to that observed in *Cylinders from China* in which Commerce declined to use in-country seamless tube steel benchmarks due to the distortive effect caused by the market share held by state-owned seamless tube steel producers, in light of the added fact that imports of seamless tube steel as a share of domestic consumption were insignificant.[160] Moreover, the record in this investigation includes other indicators of distortive government involvement in the primary aluminum market. In particular, the record information shows that the Government of China imposed an export tariff on primary aluminum.[161] Such export restraints discourage exportation of the good, thus, artificially increasing the supply of primary aluminum in the domestic market and lowering domestic prices. Moreover, similar to *Cylinders from China*, the share of imports in the domestic market of the good in question, at less than one percent, is insignificant, further indicating that the government plays a predominant role through its involvement in the market.[162]

Concerning steam coal, the Government of China has reported that government-owned or controlled enterprises accounted for a substantial share of primary aluminum production in China (*i.e.*, 25 percent) during the POI, and an overwhelming percentage of total production of steam coal was produced by enterprises in which the Government maintains an ownership or management interest (*i.e.*, 68 percent).[163] Further, the Government of China reported that an export quota on coal was in place during the POI, limiting coal exports from China.[164] Moreover, similar to *Cylinders from China*, the share of imports in the domestic market of the good in question, at less than two percent, is insignificant, further indicating that the government plays a predominant role through its involvement in the market.[165]

Determination of Critical Circumstances, 73 FR 31966 (June 5, 2008) (*CWP from China*), and accompanying IDM at Comment 7.

[155] *See CWP from China* IDM at Comment 7.

[156] *See Corus* 1343, 1347-49.

[157] *See, e.g.*, 19 U.S.C. §3533, 3538.

[158] *See, e.g.*, 19 U.S.C. §3538 (implementation of WTO reports is discretionary).

[159] *See* Government of China February 6, 2018 Questionnaire Response at 74-75.

[160] *See High Pressure Steel Cylinders from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 26738 (May 7, 2012) (*Cylinders from China*), and accompanying IDM at 19.

[161] *See* Government of China February 6, 2018 Questionnaire Response at 77.

[162] *Id.* at 74-75.

[163] *See* Government of China February 6, 2018 Questionnaire Response at 92.

[164] *Id*. at 93.

[165] *Id.*

Regarding the Government of China's contention that a large number of private primary aluminum and steam coal producers ensures that the domestic market for primary aluminum and steam coal is not distorted by the involvement of state-owned firms, we find the argument unpersuasive, in light of the government's significant market share and, as noted above, the additional indicators of distortive government involvement in the market. On this basis, we continue to find that it is appropriate to use Tier 2 benchmarks, as described under 19 CFR 351.511(a)(2)(ii), when determining whether benefits were conferred under the provision of primary aluminum and steam coal for LTAR programs.

Comment 6: Whether Commerce Should Apply AFA to Yong Jie New Material's Financing

Yong Jie New Material's Comments:[166]

- Commerce's decision to countervail loans and other instruments under the preferential loan program was not supported by substantial evidence.
- Commerce erred when it decided to countervail letters of credit. Letters of credit are not loans.
- There is no evidence on the record that the banks from whom Yong Jie New Material obtained loans were either majority owned or controlled by any government entity.

Domestic Industry's Comments:[167]

- Commerce should apply adverse facts available to Yong Jie New Material for the policy lending program.
- As evident in the *Preliminary Determination*, where its reporting was riddled with inaccuracies, Yong Jie New Material has consistently failed to report its lending completely and accurately. The Department issued three separate questionnaires providing Yong Jie New Material an opportunity to report fully and accurately its loan reporting.
- In Yong Jie New Material's preliminary determination calculation memorandum Commerce needed to make numerous adjustments as a result of Yong Jie New Material's deficiencies in reporting, these included: reporting interest payments based on 360 days rather than 365 days; incorrect reporting of the total number of days covered by each interest payment for certain loans; failure to provide the total number of days covered by each interest payment for certain loans; failure to report the principal balance for certain loans; incorrect currency reporting for certain loans; failure to report the number of years for each long-term loan; and other discrepancies.
- Commerce also issued a post-preliminary supplemental questionnaire with additional loan questions, providing Yong Jie New Material with another opportunity to accurately report its lending.
- At verification, Commerce was unable to reconcile Yong Jie New Material's reported loans to its accounting system and discovered unreported loans. This was due to the discovery of additional unreported loans and other forfaiting interest. Beginning and ending loan balances did not reconcile, and reported interest paid did not reconcile with the company's year-end

[166] *See* Yong Jie New Material's Case Brief at 19-21.
[167] *See* Domestic Industry's Case Brief at 2-14.

cash statement. Yong Jie New Material, in response, as an explanation, stated that the discrepancies were attributable to "forfaiting expenses and to interest paid on additional letters of credit that they had not included in their loan template."[168]

- There were also similar inconsistencies and an ultimate inability to reconcile the loans reported by Yongjie Aluminum and Nanjie Industry.
- There were additional reconciliation discrepancies found regarding Commerce's pre-selected loans at verification.
- If Commerce determines "that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information," Commerce "may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available."[169] In *Nippon Steel*, the U.S. Court of Appeals for the Federal Circuit defined the "best of its ability" standard by assessing whether the party has put forth its maximum effort to provide "full and complete" answers to all inquiries.[170]
- It appears that Yong Jie New Material was aware of its deficient reporting. As a minor correction, Yong Jie New Material attempted to remove 18 loans from its reporting, defining them as letters of credit, which according to them are not loans and are not countervailable. Commerce rightfully rejected this correction. Nevertheless, Yong Jie New Material should have reported all letters of credit to Commerce prior to verification.
- Yong Jie New Material referred to what letters of credit they did report throughout verification interchangeably as loans incurring interest payments. Additionally, when reviewing one of the pre-selected loans that Yong Jie New Material categorized at verification as a letter of credit, it was evident that the amount paid to the bank on the due date was more than the initial amount received – this difference was consistently referred to by company officials as "interest," and according to the verification report, the letters of credit were nearly always referred to as loans.
- Furthermore, Commerce has found letters of credit to be countervailable in past cases. In *Fine Denier PSF from China*, Commerce rejected arguments that letters of credit and other traditional forms of financing are not countervailable.[171]
- Commerce has an established practice of applying AFA when it is unable to fully verify a respondent's information. For example, in *Truck and Bus Tires from China*, a respondent attempted to submit as a minor correction additional unreported financing.[172] Commerce rightfully rejected this as a minor correction and ultimately determined that AFA was warranted and applied a rate of 10.54 percent. Similarly, AFA is warranted here because Yong Jie New Material failed to completely and accurately report all loans and interest payments prior to verification.
- According to Commerce's AFA hierarchy, it should apply a 10.54 percent *ad valorem* rate to Yong Jie New Material for this program, as this is the highest rate calculated for the same program in another countervailing duty proceeding involving China. This rate would also then be applied to Mingtai, according to the AFA hierarchy.

[168] *See* Yong Jie New Material's Verification Report at 10.
[169] *See* Section 776 of the Act.
[170] *See Nippon Steel*, 1373, 1382.
[171] *See Fine Denier PSF from China* IDM at 39-40.
[172] *See Truck and Bus Tires from China*.

Y ong Jie New Material's Rebuttal Comments:[173]

- All actual loans were reported by Yong Jie New Material. Discounts on letters of credit are not loans and loan interest was not paid by the Yongjie companies.
- The original questionnaire asked to "report all financing to your company that was outstanding at any point during the POI, regardless of whether you consider the financing to have been provided under this program."[174] Letters of credit are not loans and there is no evidence on the record that any loans were taken out for these letters of credit, nor is there any evidence that any of the Yongjie companies made any principal or interest payments on the borrowed principal.
- Contrary to a loan, the discount price received by the Yongjie companies for its letters of credit have no association with either, borrowing money, period of time for repayment of the principal, or payment by Yongjie to the bank of any interest calculated on the length of the loan.
- The Domestic Industry has overstated the reconciliation issue. Every item reported to Commerce that Commerce attempted to verify was traced to the financial statement. The problem was how does one trace a loan or letter of credit to the appropriate sub-account and then to the financial statement.
- Initially, Yong Jie New Material reported its loans and letters of credit in its "short-term" loan account. However, its auditor believed that letters of credit are better classified in a different account, *i.e.*, "financing expenses." The auditor instructed Yong Jie New Material to create this new account. Certain letters of credit erroneously remained in the "short-term" account. The accountants did not realize that there were two accounts for letters of credit. It reported the "short-term" account and only discovered the second account when preparing for verification.
- The reason the beginning and year end balances in the accounting system did not reconcile to what was in Yong Jie New Material's audited balance sheet was due to the fact that some loans were booked the previous year.
- With the addition of the minor correction that was not accepted, the previously reported loans reconciled to the financial statement. Only unreported letters of credit and some forfaiting expenses had been excluded – Commerce did not give Yong Jie New Material an opportunity to show how the previously reported data and the new data reconciled to the financial statement.
- Commerce refused to allow Yong Jie New Material a chance to include the newly-reported letters of credit as a minor correction. This was an abuse of discretion.
- Only actual loans need to be reported. If all letters of credit, both what Yong Jie New Material reported, and those it did not, are excluded, then all loans reconciled to the financial statement.
- Yongjie Aluminum also had a "financing expenses" account, that if considered by Commerce, its information would have reconciled as well.

[173] *See* Yong Jie New Material's Rebuttal Brief at 2-9.
[174] *See* CVD Questionnaire.

D omestic Industry Rebuttal Comments:[175]

- Yong Jie New Material argues that Commerce erroneously countervailed its letters of credit, yet Commerce has consistently treated letters of credit as countervailable loans.[176]
- Commerce was right to reject Yong Jie New Material's minor correction, which attemptedto delete numerous letters of credit from its reporting, because as Commerce stated, this issue should have been raised much earlier.
- However, even if Commerce were to have accepted Yong Jie New Material's minor correction, the record still would lack sufficient verified evidence to calculate a benefit for this program.
- Yong Jie New Material does not make any detailed argument regarding countervailability other than to say that letters of credit, on their face, are not countervailable. This is incorrect.
- Despite Yong Jie New Material's arguments that the Government of China did not have control of any of the commercial banks providing lending, the record demonstrates that Yong Jie New Material received certain loans from China state-owned commercial banks (SOCBs) that were outstanding during the POI. Neither Yong Jie New Material nor the Government of China submitted any evidence supporting such a claim. Yong Jie New Material also never identifies which banks it specifically claims are not SOCBs.
- As Commerce has stated in the *Preliminary Determination*, and further detailed in its *Public Bodies Memorandum*, "the national and local government control over the SOCBs render the loans a government financial contribution."[177]
- Yong Jie New Material's attempt to compare the Government of China's control of banks with the antidumping standard for affiliation is immaterial. The Department has determined that the Government of China exercises control over entities through ownership, policy directives, and integration of state actors in the industrial sector.[178]
- Whether letters of credit are countervailable or not, and whether the banks from which Yong Jie New Material obtained loans are controlled by the Government of China, Yong Jie New Material, still failed to report its lending completely and accurately, and Commerce should find that AFA is warranted in determining the magnitude of the benefit associated with all of Yong Jie New Material's policy lending.

Commerce's Position: During verification of this program for Yong Jie New Material, Commerce officials encountered numerous inconsistencies with what the respondent reported. One of the largest discrepancies, as laid out with detail in Yong Jie New Material's verification report,[179] was the reported amount of interest paid during the POI by Yong Jie New Material, which was significantly less than its cash flow statement indicated. Company officials stated that the difference was attributable to forfaiting expenses and to interest paid on additional "letters of credit" that they had *not* included in their loan template. We faced similar issues with Yong Jie New Material's cross-owned affiliates where we were unable to reconcile what was reported.[180]

[175] *See* Domestic Industry's Rebuttal Brief at 56-59.
[176] *See, e.g., Fine Denier PSF from China* IDM at Comment 8.
[177] *See* PDM at 40; *see also* Public Bodies Memorandum, placed on record January 16, 2018.
[178] *See* Public Bodies Memorandum at 3.
[179] *See* Yong Jie New Material's Verification Report at section V.B.
[180] *Id.*

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

Yong Jie New Material's arguments rely on their assertation that the alleged "letters of credit" are not countervailable, and thus any non-reporting is immaterial. Specifically, Yong Jie New Material claims that there were no issues at verification because to the extent information did not reconcile, this involved information that did not need to be reported (*i.e.*, the unreported "letters of credit"), which Commerce should ignore, because everything else did reconcile. However, this claim is disingenuous; it is not for the respondent to determine what is or is not reportable or not countervailable. Indeed, Commerce has previously found letters of credit to be countervailable financing in the past.[181] Commerce was very clear in its request in the initial questionnaire in asking respondents to "[r]eport all financing to your company that was outstanding at any point during the POI, regardless of whether you consider the financing to have been provided under this program."

In the first place, Yong Jie New Material sought, as a "minor correction" at the outset of verification, to delete what it claimed were non-countervailable "letters of credit" among its previously reported financing, which Commerce rightly rejected as not a minor correction. Regarding additional claimed "letters of credit" discovered at verification, Yong Jie New Material argues that Commerce should have somehow provided it with an opportunity to submit this new information on the record, which Commerce also rightly rejected. The purpose of verification is to ascertain the accuracy and completeness of information previously submitted, not to collect new factual information for which no adequate time remains for analysis or comment.[182] Thus, the deadlines for providing factual information, as delineated in 19 CFR 351.301, are in place well in advance of verification to provide Commerce sufficient time to review and analyze information provided by interested parties. Therefore, it is critical to Commerce's efficient administration of these proceedings that parties provide the necessary information by the established deadlines or timely request an extension of such deadlines. The Federal Circuit has upheld Commerce's discretion to reject or refuse to consider information that is submitted late in the proceeding.[183]

Thus, when it becomes apparent that respondents have not cooperated to the best of their ability to timely and fully respond to our requests for information, and that this lack of cooperation has impeded our investigation, section 776 of the Act provides that Commerce may rely on the facts available and to draw adverse inferences from those facts, as appropriate.

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[181] *See Fine Denier PSF from China* IDM at Comment 8.

[182] *See, e.g., Final Determination of Sales at Less Than Fair Value: Silica Bricks and Shapes from the People's Republic of China*, 78 FR 70918 (November 27, 2013), and accompanying IDM at Comment 7; *see also Marsan Gida Sanayi Ve Ticaret A.S. v. Unites States*, 931 F. Supp. 2d 1258, 1280 (CIT 2013) (agreeing that "[t]he purpose of verification is not to collect new information").

[183] *See Dongtai Peak Honey Industry Co., Ltd. v. United States of America*, 777 F.3d 1343 (Fed. Cir. 2015).

With regard to Yong Jie New Material's argument that the record does not show that it received loans from Chinese government banks, we disagree. The loan information submitted by Yong Jie New Material in its questionnaire responses demonstrates that it received certain loans from Chinese SOCBs and that these were outstanding during the POI. As Commerce stated in the *Preliminary Determination*, and further detailed in its Public Bodies Memorandum, "the national and local government control over the SOCBs render the loans a government financial contribution."[184] Commerce has previously determined that the Government of China exercises control over entities through ownership, policy directives, and integration of state actors in the industrial sector.

As discussed in further detail, in the section "Use of Facts Otherwise Available and Adverse Inferences," we find that Yong Jie New Material failed to provide information regarding its use of Policy Loans to the Aluminum Sheet Industry that was requested of it by the deadlines we established, and thus, section 776(a)(2)(B) of the Act applies. Further, Yong Jie New Material significantly impeded the proceeding, within the meaning of section 776(a)(2)(C) of the Act. We further find that by not timely reporting this assistance, Yong Jie New Material failed to cooperate by not acting to the best of its ability and precluded the Commerce from investigating and verifying this financing. Thus, pursuant to section 776(b) of the Act, we are determining that the application of AFA to Policy Loans to the Aluminum Sheet Industry is warranted.

Comment 7: Whether Commerce Should Adjust Its Benefit Calculation for the Provision of Land for LTAR

Domestic Industry Comments

- Given the preliminary finding the provision of land for LTAR is *de jure* specific to promote the aluminum industry, Commerce should include the land purchases that Mingtai reported following the Preliminary Determination.[185]
- Commerce should only use land prices, exclusive of fees to calculate the benefit.[186]
- At verification, it was found that Mingtai's classification of certain items as payments for land use fees and others as administrative fees is arbitrary, and, thus, not tied to theactual purchase price for the underlying right.[187]
- Administrative fees are not included in the "tier three" benchmarks that Commerce uses to measure the adequacy of remuneration.[188]

[184] *See also* Memorandum Placing "Review of China's Financial System Memorandum" on the record, dated January 16, 2018.
[185] *See* Domestic Industry's Case Brief at 15.
[186] *Id.* at 16.
[187] *Id.* at 17.
[188] *Id.* at 18.

Mingtai Rebuttal Comments

- The land for LTAR allegation was initiated on the basis of benefits provided to SOEs and producers in high-technology special economic zones (SEZs).[189] Mingtai is not an SOE, and its additional land purchases were not made in SEZs.[190]
- Commerce's preliminary analysis of this program is clear, and the discussion is limited to SEZs. This is consistent with other investigation wherein Commerce has found land for LTAR only in SEZ locations.[191]
- If Commerce includes land purchases reported by Mingtai after the *Preliminary Determination*, only the land use certification fee and the land deed tax should be excluded from the acquisition cost.[192]
- The pure transfer charge only accounts for the land sale portion that is directly earned by the Government of China. The price required to be paid to the collective landowners, the villagers, is not included in this charge. If these payments are left out of the calculation then the full, accurate acquisition cost of the land will not be accounted for. [193]
- Commerce used an industrial land value in Thailand as a benchmark. As in any normal economy, the supplier of land must have acquired the land from individual land owners to form an industrial park. Thus, the Thai benchmark prices must also have entailed the original compensation from the individual owners. Excluding the Government of China purchase of land from the villager, through compensation paid by companies like Mingtai, would not result in an apple-to-apple comparison.[194]

Commerce's Position: As described in the *Preliminary Determination*,[195] we find that national and provincial level development plans, including the "Catalogue for the Guidance of Industrial Structure Adjustment" (Guidance Catalogue, provide for priority land supply and financing arrangements for priority development projects. These plans also consistently identify the deep processing aluminum industry and high-technology industries as targets for economic development. The "Decision of the State Council on Promulgating the Interim Provisions Promoting Industrial Structure Adjustment for Implementation (Guo Fa {2005} No. 40)" (Decision 40) identifies the Guidance Catalogue as "the important basis for guiding investment directions, and for governments to administer investment projects, to formulate and enforce policies on public finance, taxation, credit, land, import and export, etc."[196] Decision 40 provides for encouragement policies, including land, for the industries in the encouraged industry category.[197]

Given the evidence demonstrating the Government of China's use of preferential pricing policies to develop the aluminum sector, together with evidence of similar policies in the provinces where respondents are located, we determine that the Government of China, in conjunction with certain provincial authorities, pursues a program to provide land for LTAR to producers of

[189] *See* Mingtai Rebuttal Brief at 1.
[190] *Id.* at 3.
[191] *Id.* at 2. *See also, e.g., Fine Denier PSF from China* IDM at 9.
[192] *Id.* at 3.
[193] *Id.* at 4.
[194] *Id.*
[195] *See* PDM at 45-48.
[196] *Id.*
[197] *Id.*

common alloy sheet within the meaning of section 771(5A)(D)(i) of the Act. Because the Chinese government owns all land in China, we determine that the entities that provided the land to the respondents are "authorities" within the meaning of section 771(5)(B) of the Act, and that such authorities conferred a financial contribution to the respondents in the form of a provision of a good, pursuant to section 771(5)(D)(iii) of the Act. Accordingly, we have calculated a benefit for all of the land parcels that were acquired by the respondents during the average-useful-life period, which includes the land parcels that were reported by Mingtai as located outside of the SEZ.

With regard to the taxes and administrative fees that were paid by Mingtai in connection with its land purchases, we find that the record supports including these taxes and fees in Mingtai's total land purchase price.[198] According to the land-use rights contracts, the total amount that Mingtai paid for its land is also the value of the land purchase.[199] When comparing the price of a good received for LTAR to a benchmark price, Commerce seeks to ensure the comparison is made on a like-for-like basis. There is no information on our record to support a finding that our tier 3 land benchmark does not include taxes and fees. Thus, there is no basis, in this proceeding, to adjust Mingtai's reported land purchase price by excluding the fees and taxes it paid as part of its contracted price for land.

Comment 8: Whether Commerce Should Countervail Mingtai's Financing

Mingtai Comments

- Commerce has previously considered time drafts to be non-countervailable.[200] Mingtai does not defer the payment with a time draft. Mingtai's bank makes payment either when the time draft matures six months later or immediately, in which case Mingtai's supplier pays interest for the case. Mingtai does not owe any interest on payments that are not due.[201]
- Commerce has failed to explain its changed interpretation of the time drafts as a countervailable subsidy. The Courts require a reasonable explanation for the change.[202]
- Mingtai attempted to put information on the record of this investigation concerning the time drafts, which Commerce rejected. Mingtai asked Commerce to accept the information in accordance with Commerce's explanation in its *Final Rule* on factual information concerning information to supplement a deficient record.[203]

[198] *See* Mingtai April 30, 2018 Supplemental Questionnaire Response at Exhibit SQ4-4.

[199] *Id.*

[200] *See* Mingtai Case Brief at 4 (citing *Countervailing Duty Investigation of Certain Hardwood Plywood Products from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part,* 82 FR 53473 (November 16, 2017) (*Hardwood Plywood from China*), and accompanying IDM at Comment 5).

[201] *Id.* at 5.

[202] *Id.* at 6 (citing *Motor Vehicle Mfrs Assoc. v. State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 42-43, 77 L. Ed. 2d 443, 103 S. Ct. 2856 (1983). "A change is arbitrary if the factual findings underlying the reason for change are not supported by substantial evidence." *Asociacion Colombiana de Exportadores de Flores v. United States*, 6 F. Supp. 2d 865, 880 n.20 (CIT 1998)).

[203] *Id*. at 7-8 (citing *Final Rule*, 78 FR 21246, 21249 (April 10, 2014) (*Final Rule*).

- Commerce failed to ask Mingtai expressly for specific data on the time drafts outstanding during the POI.[204] Mingtai's misunderstanding of Commerce's questions concerning these time drafts is the type of situation discussed in the *Final Rule* on factual information.[205]
- Mingtai relied on Commerce's decision in *Hardwood Plywood from China* and sincerely believed that it had answered Commerce's completely and satisfactorily.[206] Mingtai has cooperated in every respect to Commerce's requests for information, and the application of AFA is unwarranted.[207] Commerce is required by law to issue a supplemental questionnaire requesting that the respondent correct all deficiencies."[208]
- The Courts have concluded that Commerce's practice of not accepting new information at verification could not trump the letter of the law that requires respondents be given opportunity to remedy or explain the deficiency.[209] Moreover, Commerce clearly had time following the *Preliminary Determination* to issue a supplemental questionnaire.[210]
- In examining whether Commerce has improperly rejected untimely filings, the CIT has noted that it will "review on a case-by-case basis whether the interests of accuracy and fairness outweigh the burden placed on the Department and the interest in finality."[211]
- Mingtai has tried to correct and supplement the record of this case in response to Commerce's preliminary determination, and application of adverse facts available rather than a supplemental questionnaire from the Department does not relieve Commerce of applying section 782(d) of the Act, if necessary.[212]

Domestic Industry Rebuttal Comments

- The record does not establish that these are time drafts as claimed by Mingtai.[213]
- Mingtai was clearly instructed in the initial questionnaire to report all forms of financing during the POI, noting that this encompasses more than traditional loans, such as bank promissory notes, invoice discounting, and factoring of accounts receivable.[214] Mingtai failed twice to properly report its policy lending.[215] Mingtai replied that it had reported all of its financing.[216] Commerce subsequently issued another supplemental questionnaire

[204] *Id.* at 8-9.
[205] *Id.* at 9 (citing *Final Rule* at 21246, 21248-21249).
[206] *Id.* at 9-10.
[207] *Id.* at 10.
[208] *Id.* at 10 (citing sections 776(a) and 782(d) of the Act and *China Kingdom Imp. & Exp. Co. v. United States*, 507 F. Supp. 2d 1337, 1353-1354 (CIT 2007) (*China Kingdom*).
[209] *Id.* at 11-12.
[210] *Id.* at 12-13.
[211] *Id.* at 12-13 (citing *Grobest & I-Mei Industrial (Vietnam) Co., Ltd. v. United States,* 815 F. Supp.2d 1342, 1365 (CIT 2012) (*Grobest*); *Fine Furniture (Shanghai) Ltd. v. United States*, 865 F. Supp. 2d 1254, 1267 (CIT 2012); *Timken US. Corp. v. United States,* 4343 F.3d 1345, 1351-52 (Fed. Cir. 2006) (holding that *NTN Bearing* was not limited to submission of clerical errors)).
[212] *Id.* at 13-14 (citing *Agro Dutch Indus. v. United States*, 31 CIT 2047, 2055-2056 (CIT 2007) (*Agro Dutch*).
[213] *See* Domestic Industry's Rebuttal Brief at 37.
[214] *Id.* (citing Commerce December 20, 2017 Countervailing Duty Questionnaire (December 20, 2017 Questionnaire) at Section III, Program-Specific Questions at Question A.1.a.).
[215] *Id.* at 39 (citing Henan Mingtai IQR at 12, Exhibit 7; Zhengzhou Mingtai IQR at 10, Exhibit 6; Letter, "Request for Additional Information Regarding January 29, 2018 Questionnaire Responses, Supplemental Questionnaire," dated February 5, 2018 (Commerce February 5, 2018 Supplemental Questionnaire), at 2).
[216] *Id.*, (citing Henan Mingtai February 15, 2018 Supplemental Questionnaire Response at 5).

regarding Mingtai's financing, at which point Mingtai clarified that it did not report "a kind of letter of guarantee/time draft from the bank."[217]

- In its supplemental questionnaire response, Mingtai did not put forth any substantive legal argument regarding countervailability, let alone cite *Hardwood Plywood from China*.[218] Thus, there was no information that would allow Commerce or other interested parties to discern the basis for Mingtai's alleged legal position.[219]
- Mingtai's reliance on its belief in the non-countervailability of the financial instruments at issue is misplaced. Commerce has held, and the courts have affirmed, that it is not within a respondent's discretion to determine which subsidies should be reported to Commerce. To the contrary, Mingtai's unilateral decision to withhold information warrants the application of AFA because it prevented Commerce from conducting a full investigation in order to determine the countervailability of the particular instruments in question.[220]
- The time drafts, as described by Mingtai, are a countervailable form of financing.[221] There is no basis to claim that Commerce has arbitrarily changed its decision regarding the countervailability of time drafts. Rather, Commerce properly applied a countervailable subsidy rate as an adverse inference as a result of Mingtai's failure to report the time drafts.
- Commerce properly rejected Mingtai's attempts to place new information on the record relating to these time drafts. Mingtai's argument that the allowances in the *Final Rule* are applicable because "there was a misunderstanding" as to how to respond to Commerce's questions is unpersuasive. If Mingtai needed clarification about these questions, it should have contacted Commerce, as instructed in the countervailing duty questionnaire.[222]
- As the party in control of the information, it was Mingtai's responsibility to present information requested by Commerce and to prepare a complete and accurate record for Commerce's decision.[223]
- Mingtai's focus on the provision in the *Final Rule* allowing Commerce to accept untimely information ignores the stated policy rational behind Commerce's factual information time limits.[224] Commerce's regulations strongly favor the submission of factual information during the time allotted to ensure both fairness and efficiency in the proceeding.[225]
- Commerce should reject Mingtai's arguments that section 782(d) of the Act and appellate court precedent required Commerce to accept Mingtai's unsolicited submission. Its reliance on section 782(d) of the Act is misplaced because Mingtai had three opportunities to report

[217] *Id.* (citing Henan Mingtai March 15, 2018 Supplemental Questionnaire Response (Henan Mingtai March 15, 2018 SQR), at 2).
[218] *Id.* at 40 (citing Henan Mingtai March 15, 2018 SQR at 2-3).
[219] *Id*. at 41.
[220] *Id*. at 42 (citing *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Final Affirmative Countervailing Duty Determination*, 82 FR 58172 (December 11, 2017) (*Mechanical Tubing from India*), and accompanying IDM at 41; *Maverick Tube*, 857 F.3d 1353, 1360-61; *Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017), and accompanying IDM at 54.
[221] *Id*. at 43-44, citing *Fine Denier PSF from China* IDM at Comment 8).
[222] *Id.* (citing December 20, 2017 Questionnaire at Section I, General Instructions, at 1).
[223] *Id.* at 48 (citing *Ta Chen Stainless Steel Pipe, Inc. v. United States*, 298 F.3d 1130, 1336 (Fed. Cir. 2002) (*Ta Chen*).
[224] *Id*. at 49 (citing *Final Rule*, 78 FR 21247-21248).
[225] *Id.*

the missing information. [226] The statute does not require Commerce to provide a respondent with endless opportunities to correct the record.[227]

- *China Kingdom* held that Commerce erred by not giving the respondent an opportunity to remedy or explain a deficiency that the respondent identified at verification.[228] Mingtai has had multiple opportunities to report information that Commerce identified as deficient.[229]
- In *Agro Dutch*, the Court found that Commerce erred in disregarding the information provided by the respondent in response to that supplemental questionnaire, instead using the response to "defeat {the respondent's} earlier responses.[230] In contrast, Mingtai provided no earlier responses, substituting its own judgment regarding countervailability for that of Commerce.
- If every respondent were allowed to supplement the record to "correct" adverse preliminary determinations, the application of adverse inferences would lose all deterrent effect.[231]
- Mingtai's argument that Commerce should have verified the missing information is inappropriate and inconsistent with Commerce's policy and practice.[232]

Government of China's Rebuttal Comments:

- Mingtai's responses were reasonable and based on its belief that these time drafts were not countervailable.[233]
- Commerce's questions were unclear, as the second supplemental questionnaire requested that Mingtai identify the items in its account. Commerce did not request that Mingtai identify and submit the items in the form of a loan worksheet.[234]
- If Commerce disagreed with Mingtai's response to this issue, it should have requested that Mingtai submit a revised loan worksheet with these items. Commerce had time to request this information before the *Preliminary Determination*, and, if it did not have time, it could have deferred a decision until a post-preliminary decision.[235]
- Commerce issued three supplemental questionnaires to these respondents after the *Preliminary Determination.* It's refusal to ask additional questions about these time drafts is arbitrary and capricious.[236] The Government of China has become increasingly concerned that this procedural gamesmanship rather than the pursuit of truth and the calculation of accurate duties has become Commerce's primary objective.[237]

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[226] *Id.* at 50.
[227] *Id.* at 53 (citing *Gerber Food (Yunnan) Co. v. United States*, 491 F. Supp. 2d 1326, 1336 (CIT 2007).
[228] *Id.* at 51, citing *China Kingdom*, 1337, 1343-44).
[229] *Id.* at 51-52.
[230] *Id.* at 52 (citing *Agro Dutch*, 2047, 2054 (2007).
[231] *Id.* at 54-55 (citing SAA at 870).
[232] *Id.* at 56 (citing Commerce's May 29, 2018 Verification Agenda at 2; *Mechanical Tubing from India* IDM at 40).
[233] *See* Government of China's Rebuttal Brief at 1 (citing *Hardwood Plywood from China* IDM at Comment 5).
[234] *Id.* at 2.
[235] *Id.* at 3 (citing, *e.g.*, *Ripe Olives from Spain: Final Affirmative Countervailing Duty Determination*, 83 FR 28186 (June 18, 2018) (issuing a post-preliminary determination regarding certain types of loans); *Drawn Stainless Steel Sinks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 13017 (February 26, 2013) (issuing a post-preliminary determination regarding export financing but finding policy lending countervailable in the preliminary determination)).
[236] *Id.* at 4 (citing *Ta Chen Stainless Pipe*, at n.16).
[237] *Id.* (citing *CP Kelco US, Inc. v. United States*, 2018 CIT Lexis 39 (2018)).

- Under 19 USC 1677m(d), Commerce was legally required to permit Mingtai an opportunity to remedy or explain the deficiency.

Commerce Position: Consistent with the *Preliminary Determination*, we find that Mingtai failed to provide information that was requested of it. Mingtai did not report all of its financing that was outstanding during the POI,[238] despite being given three opportunities to do so. The CVD Questionnaire clearly instructs respondents to report all financing, including, but not limited to, interest expenses on bank promissory notes, invoice discounting, and factoring of accounts receivable.[239] Commerce's first supplemental questionnaire re-iterated this request, and it also instructed Mingtai to submit a revised Excel loan table, if needed.[240] In its response, Mingtai stated that it had reported all financing it had outstanding during the POI.[241] In Commerce's final attempt to gather the requested information, we instructed Mingtai to identify certain items on its financial statements that appeared to contradict Mingtai's assertion that it had completely reported all financing. At this point, Mingtai clarified that it had not reported certain notes that are a "letter of guarantee/time draft."[242] Mingtai did not submit any source documentation to support its narrative claim.

Mingtai contends that it was not required to report these letters of guarantee/time drafts. Commerce disagrees. As upheld in *Ansaldo Componenti* and discussed in *Cold-Rolled Steel Flat Products from Korea*, it is Commerce, and not interested parties, who determines whether a response is required.[243] As such, the respondents cannot unilaterally decide to withhold information that may require further analysis by Commerce. Commerce is unable to conduct an accurate and complete investigation if interested parties decide on their own to provide, or not provide, information based on their own judgments of what is necessary, without an opportunity for Commerce or other parties to examine the information. Indeed, the facts available provisions of Section 776(a) of the Act specifically contemplate the application of facts available when an interested party withholds requested information and allows Commerce to take necessary action in response.

We disagree with Mingtai that it acted to the best of its abilities to comply with Commerce's request for information about its financing. The Federal Circuit in *Nippon Steel* provided an explanation of the "failure to act to the best of its ability," stating that the ordinary meaning of "best" means "one's maximum effort," and that the statutory mandate that a respondent act to the

[238] *See* PDM at 38-39.
[239] *See* CVD Questionnaire at 66-67.
[240] *See* Letter, "Countervailing Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China: Request for Additional Information Regarding January 29, 2018 Questionnaire Responses," dated February 5, 2018 at 2.
[241] *See* Mingtai Letter, "Common Alloy Aluminum Sheet from the People's Republic of China-Section III 2nd Supplemental Questionnaire Response," dated February 15, 2018.
[242] *See* Mingtai Letter, "Common Alloy Aluminum Sheet from the People's Republic of China-Section III 3rd Supplemental Questionnaire Response," dated March 15, 2018 (Mingtai March 15, 2018 SQR) at 2-3.
[243] *See Ansaldo Componenti, S.p.A. v. United States*, 628 F. Supp. 198, 205 (CIT 1986) (*Ansaldo Componenti*); *see also Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 49946 (July 29, 2016) (*Cold-Rolled Steel Flat Products from Korea*), and accompanying IDM at Comment 5.

"best of its ability" requires the respondent to do the maximum it is able to do.[244] The Federal Circuit acknowledged, however, that while there is no willfulness requirement, "deliberate concealment or inaccurate reporting" would certainly be sufficient to find that a respondent did not act to the best of its ability, although it indicated that inadequate inquiries to respond to agency questions may suffice as well.[245] Compliance with the "best of its ability" standard is determined by assessing whether a respondent has put forth its maximum effort to provide Commerce with full and complete answers to all inquiries in an investigation.[246] The Federal Circuit further noted that, while the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping.[247]

Mingtai argues that these same financial instruments were found to be not countervailable in the *Hardwood Plywood from China* proceeding. However, its reliance on this proceeding as a basis to not comply with the CVD Questionnaire instructions is misplaced. There is no record information about these financial instruments as they were used by Mingtai. Specifically, it is impossible to determine whether these are "time drafts" as claimed that operate in the same manner as those in the *Hardwood Plywood from China* proceeding. Further, there is no way to establish that all of Mingtai's unreported financing were in connection with time drafts.

Mingtai and the Government of China assert that Mingtai should have been allowed to submit the missing information subsequent to our *Preliminary Determination*. We disagree. The statute does not require Commerce to provide a respondent with limitless opportunities to correct the record.[248] Further, Mingtai's reliance on *Grobest* is misguided. Unlike the plaintiff in *Grobest*, Mingtai did not promptly try to correct its failure "upon discovering its error."[249] Instead of providing the detailed transaction information about these instruments, as requested by Commerce, it made an unsupported argument that the financing it chose not to report is not countervailable.[250] Commerce's enforcement of the AFA provision of the statue under these circumstances is necessary to ensure that "the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[251]

Finally, regarding Mingtai's and the Government of China's assertions that Commerce's request for information was unclear, we disagree. The CVD Questionnaire and supplemental questionnaire instructed Mingtai to "report all financing."[252] If Mingtai was unclear about this instruction, it should have followed the guideline given in the CVD Questionnaire to consult with the officials in charge in the event of any questions.[253] Moreover, Mingtai and the

[244] *See Nippon Steel* at 1373, 1380-1382.
[245] *Id.*
[246] *Id.*
[247] *Id.*
[248] *Id.* at 53 (citing *Gerber Food (Yunnan) Co. v. United States*, 491 F. Supp. 2d 1326, 1336 (CIT 2007).
[249] *Id.* at 53-54, citing *Grobest*, 1342,1367).
[250] *See* Mingtai March 15, 2018 SQR at 2-3.
[251] *See SAA* at 870.
[252] *See* CVD Questionnaire at 66-67; Letter, "Countervailing Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China: Request for Additional Information Regarding January 29, 2018 Questionnaire Responses," dated February 5, 2018 at 2.
[253] *See* CVD Questionnaire at Section I, General Instructions, at 1.

Government of China cannot have it both ways, simultaneously asserting that Mingtai's decision to not report these instruments based on its understanding of prior proceedings was reasonable, while also asserting that Mingtai was unclear as to whether it must report this financing. Accordingly, we find that Mingtai did not act to the best of its abilities in responding to Commerce's CVD Questionnaire about its outstanding financing.

Comment 9: Whether Commerce Should Amend Its Preliminary Calculation for Subsidies Received by Mingtai

Domestic Industry Comments

- Commerce should use corrected sales information that was submitted by Mingtai. Specifically, it should exclude service income that was previously mistakenly classified by Mingtai as product sales income.[254]
- Commerce should also adjust Mingtai's sales income to exclude two service fees that were found at verification to have been included in "other operation income" for products.[255]
- Mingtai reported negative electricity adjustment fees. These should have been added, and not subtracted, to the total electricity benefit. Similar adjustments were made in other proceedings, such as *Chlorinated Isocyanurates from China*, for purposes of calculating electricity for LTAR benefit.[256]

Mingtai Rebuttal Comments

- Commerce does not have a benchmark to compare this electricity expense adjustment, and, thus, could not find any adjustment was less than adequate remuneration. Accordingly, there should not be a benefit calculated for this item. It should continue to be treated neutrally, as Commerce did in the *Preliminary Determination*. This is consistent with Commerce's approach in other investigations.[257]

Commerce Position: We agree that the record establishes that Mingtai's reported service income should be excluded from its product sales income. We also agree that we should exclude two service fees that were found at verification. Finally, we agree that the electricity adjustments, which decrease the amounts Mingtai paid for its electricity, should be subtracted from the total electricity benefit. These adjustments are simple reductions in the total price that Mingtai paid for its electricity, and do not need to be separately measured against a different benchmark.

[254] *See* Domestic Industry's Case Brief at 19.
[255] *Id.* at 20.
[256] *Id.* at 21-24.
[257] *See* Mingtai's Rebuttal Brief at 5 (citing *Hardwood Plywood Products from China*, and accompanying Sanfortune Final Calculation).

XI. RECOMMENDATION

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

☒	☐
Agree	Disagree

11/5/2018

X 

Signed by: GARY TAVERMAN

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

APPENDIX

AFA Rate Calculation

	Program Name	AFA Rate	Source	Citation
1.	Deed Tax Exemption for SOEs Undergoing Mergers or Restructures	9.71%	Highest Rate for Similar Program Based on Benefit Type: VAT and Import Duty Exemptions on Imported Materials	*New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review* , 75 FR 64268, 64275 (October 19, 2010), unchanged in the final (*see New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review* , 76 FR 23286 (April 26, 2011) (*OTR Tires from China).*
2.	Equity Infusions into Nanshan Aluminum	N/A	N/A	
3.	Exemptions for SOEs from Distributing Dividends	0.62%	Highest Rate for Similar Program Based on Benefit Type: Special Fund for Energy Saving Technology	*Chlorinated Isocyanurates from the People's Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review; 2014, 82 FR 27466 (June 15, 2017) (Chlorinated Isocyanurates from China; 2014)*
4.	Export Buyer's Credits	10.54%	Highest Rate for Similar Program Based on Benefit Type: Preferential Lending to the Coated Paper Industry	*Certain Coated Paper Suitable for High-Quality Print Graphics Using SheetFed Presses from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* , 75 FR 70201, 70202 (November 17, 2010) (C*oated Paper from China*)
5.	Export Loans from Chinese SOCBs	10.54%	Highest Rate for Similar Program Based on Benefit Type: Preferential Lending to the Coated Paper Industry	*Coated Paper from China*
6.	Export Seller's Credits	4.25%	Highest Rate for Identical Program	*Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review* , 76 FR 77206 (December 12, 2011).
7.	Foreign Trade Development Fund Grants	0.62%	Highest Rate for Similar Program Based on Benefit Type: Special Fund for Energy Saving Technology	*Chlorinated Isocyanurates from China; 2014*
8.	Government of China and Sub-Central Government Subsidies for the Development of Famous Brands and China World Top Brands	0.62%	Highest Rate for Similar Program Based on Benefit Type	*Chlorinated Isocyanurates from China; 2014*
9.	Government Provision of Electricity for LTAR	0.86%	Calculated – Mingtai	
10.	Government Provision of Land for LTAR	0.37%	Calculated – Mingtai	
11.	Government Provision of Primary Aluminum for LTAR	15.67%	Calculated – Yong Jie New Material	
12.	Government Provision of Steam Coal for LTAR	5.20%	Calculated – Mingtai	
13.	Grants for Energy Conservation and Emission Reduction	0.62%	Highest Rate for Similar Program Based on Benefit Type: Special Fund for Energy Saving Technology	*Chlorinated Isocyanurates from China; 2014*

14.	Grants for the Relocation of Productive Facilities	0.62%	Highest Rate for Similar Program Based on Benefit Type: Special Fund for Energy Saving Technology	*Chlorinated Isocyanurates from China; 2014*
15.	Grants for the Retirement of Capacity	0.62%	Highest Rate for Similar Program Based on Benefit Type: Special Fund for Energy Saving Technology	*Chlorinated Isocyanurates from China; 2014*
16.	Grants to Nanshan Aluminum	N/A	N/A	
17.	Import Tariff and VAT exemptions on Imported Equipment in Encouraged Industries	9.71%	Highest Rate for Similar Program Based on Benefit Type: VAT and Import Duty Exemptions on Imported Materials	*OTR Tires from China*
18.	Income Tax Concessions for Enterprises Engaged in Comprehensive Resource Utilization	25.00%	Corporate Income Tax Rate	Government of China February 6, 2018 Questionnaire Response at 21
19.	Income Tax Deductions/Credits for Purchase of Special Equipment			
20.	Income Tax Reduction for HNTEs			
21.	Income Tax Reduction for R&D under the EITL			
22.	Policy Loans to Common Alloy Sheet Industry	10.54%	Highest Rate for Similar Program Based on Benefit Type: Preferential Lending to the Coated Paper Industry	*Coated Paper from China*
23.	Preferential Loans for SOEs			
24.	Stamp Tax Exemption on Share Transfers Under Non-Tradeable Share Reform	9.71%	Highest Rate for Similar Program Based on Benefit Type: VAT and Import Duty Exemptions on Imported Materials	*OTR Tires from China*
25.	The State Key Technology Fund Project	0.62%	Highest Rate for Similar Program Based on Benefit Type: Special Fund for Energy Saving Technology	*Chlorinated Isocyanurates from China; 2014*
26.	VAT Rebates on Domestically-Produced Equipment	0.05%	Calculated – Yong Jie New Material	