



C-570-968
Administrative Review
POR: 01/01/2013 – 12/31/2013
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Office VI: DF, TRW

DATE: December 7, 2015

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh *(CM)*
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

RE: Decision Memorandum for the Final Results of Countervailing
Duty Administrative Review: Aluminum Extrusions from the
People's Republic of China, 2013 (Third Review)

Summary

On May 26, 2011, the Department of Commerce (the Department) published a countervailing duty (CVD) order on aluminum extrusions from the People's Republic of China (PRC).¹ The Department published the *Preliminary Results* of this administrative review on June 9, 2015.² The respondents are: Guang Ya Aluminium Industries Co., Ltd. (Guang Ya), Foshan Guangcheng Aluminium Co., Ltd. (Guangcheng), Guang Ya Aluminium Industries (HK) Ltd. (Guang Ya HK), and Yongji Guanghai Aluminium Industry Co., Ltd. (Guanghai) (collectively, the Guang Ya Group, or GYG); and Guangzhou Jangho Curtain Wall System Engineering Co., Ltd., (Guangzhou Jangho), Jangho Group Co., Ltd. (Jangho Group Co.), Beijing Jiangheyuan Holding Co., Ltd (Beijing Jiangheyuan), Beijing Jangho Curtain Wall System Engineering Co., Ltd. (Beijing Jangho), and Shanghai Jangho Curtain Wall System Engineering Co., Ltd., (Shanghai Jangho) (collectively, the Jangho Companies), the two mandatory respondents, as well as the 37 companies not selected for individual examination and the six companies which did not cooperate in the review. Petitioner is the Aluminum Extrusions Fair Trade Committee ("Petitioner"). The period for which we are measuring subsidies, *i.e.*, the period of review (POR), is January 1, 2013, through December 31, 2013.

¹ See *Aluminum Extrusions from the People's Republic of China: Countervailing Duty Order*, 76 FR 30653 (May 26, 2011) (the *Order*) and *Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order*, 76 FR 30650 (May 26, 2011) (the *AD Order*), (collectively, the *Orders*).

² See *Aluminum Extrusions from the People's Republic of China: Preliminary Results, Preliminary Intent to Rescind, in Part, and Partial Rescission of Countervailing Duty Administrative Review: 2013*, 80 FR 32528 (June 9, 2015) (*Preliminary Results*).



In the *Preliminary Results*, we stated that we required additional information and/or additional time to evaluate the information received with respect to the following programs, and that we intended to include such programs in a post-preliminary analysis memorandum: 1) Award for Self-Innovation Brand/Grant for Self-Innovation Brand and Enterprise Listing (aka, Income Tax Reward for Listed Enterprises); 2) Export Insurance Fund; 3) Provision of Primary Aluminum for Less than Adequate Remuneration (LTAR); 4) Provision of Aluminum Extrusions Inputs for LTAR; and 5) Provision of Glass for LTAR.³ As explained in the *Preliminary Results*, additional information was required for certain of the programs identified above (namely, Provision of Primary Aluminum for LTAR, Export Insurance Fund, and Income Tax Reward for Listed Enterprises). Further, as the Government of China's (GOC's) responses with respect to the Provision of Aluminum Extrusions for LTAR and the Provision of Glass for LTAR programs were received very close to the deadline for the preliminary results of review, we were not able to fully analyze that information. We issued a supplemental questionnaire to the GOC on June 8, 2015, and received the GOC's response on June 15, 2015.⁴ We issued a supplemental questionnaire to the Guang Ya Group on June 8, 2015, and received the Guang Ya Group's response on June 17, 2015.⁵ On October 7, 2015, we extended the final results of this administrative review until December 7, 2015.⁶ On October 27, 2015, we issued a Post-Preliminary Analysis.⁷ We are conducting this administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act).

List of Comments

We analyzed the comments submitted by the interested parties in their case and rebuttal briefs in the "Analysis of Comments" section below, which also contains the Department's responses to the issues raised in the briefs. Below is a complete list of the issues raised in this administrative review for which we received comments and rebuttal comments from interested parties.

Comment 1: Whether the Jangho Companies' Products are Subject to the Scope of the *Order*

Comment 2: Whether the Department Should Instruct CBP to Lift Suspension and Not Assess Duties Prior to the Date of Initiation of the Relevant Scope Ruling on Curtain Wall Units

Comment 3: Whether the GOC Provided Policy Loans to the Jangho Companies and GYG

³ See Preliminary Decision Memorandum at 28 to 29.

⁴ See Letter from the GOC to the Department, dated June 11, 2015 ("the GOC's Fourth Supplemental Questionnaire Response").

⁵ See Letter from the Guang Ya Group to the Department, dated June 11, 2015 ("the Guang Ya Group's Fourth Supplemental Questionnaire Response").

⁶ See Memorandum from Davina Friedmann, Analyst, Office VI, through Scot Fullerton, Director Office VI, to Christian Marsh Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, regarding: "Aluminum Extrusions from the People's Republic of China: Extension of Deadline for Final Results of Countervailing Duty Administrative Review," (October 7, 2015).

⁷ See Memorandum from Scot Fullerton, Office Director Office VI, through Christian Marsh Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado Assistant Secretary for Enforcement and Compliance, regarding: "Post-Preliminary Analysis Memorandum in the 2013 Countervailing Duty Administrative Review; Aluminum Extrusions from the People's Republic of China," October 27, 2015 ("Post Preliminary Analysis").

- Comment 4: Whether the Department’s Benchmark Interest Rates are Arbitrary, Unsupported by Record Evidence, or Unlawful
- Comment 5: Whether the Preferential Tax Policies for High or New Technology Enterprises (HTNEs) Program is Specific
- Comment 6: Whether the Tax Offsets for Research and Development (R&D) Program is Specific
- Comment 7: Alleged Ministerial Error in the Jangho Companies’ Overall and Additional Subsidy Margin Calculations
- Comment 8: Whether The Department May Countervail Provision of Glass for LTAR; Whether Glass is, Properly, an Input of the Subject Merchandise
- Comment 9: Whether The Department May Countervail Provision of Aluminum Extrusions for LTAR; Whether Aluminum Extrusions are, Properly, Inputs of the Subject Merchandise
- Comment 10: Whether the Department Should Include the Subsidy Rates for Glass and Aluminum Extrusions for LTAR Programs in the Rates for Non-Selected Companies
- Comment 11: Whether The Jangho Companies’ Glass and Aluminum Extrusions Producers and Suppliers and GYG’s Primary Aluminum Producers and Suppliers are “Authorities”
- Comment 12: Whether Specificity Exists for Primary Aluminum for LTAR, Glass for LTAR and Aluminum Extrusions for LTAR
- Comment 13: Whether the Department may use a “tier two” Benchmark for Primary Aluminum for LTAR, Aluminum Extrusions for LTAR, and Glass for LTAR
- Comment 14: Whether the Department Made a Ministerial Error in the Calculation of Benefits for the Aluminum Extrusions for LTAR and Glass for LTAR Programs.
- Comment 15: Whether the Department Should Calculate Subsidies on Two Programs for Which It Sought Additional Information After Issuance of the *Preliminary Results*
- Comment 16: Whether the Department Made a Ministerial Error in the Policy Lending Calculation for GYG
- Comment 17: Whether the Department Should Allocate Benefits from GYG’s Famous Brands Program over 2013 Sales

Comment 18: Whether the Department Should Countervail Non-Recurring Subsidies Received Prior to January 1, 2005

Comment 19: Whether TenKSolar Shanghai Should Receive the Cooperative Rate for Non-Selected Respondents

Comment 20: Whether the Department Should Use Aluminum Billet Purchases by Guang Ya in the Benchmark Calculation of Primary Aluminum for LTAR

Comment 21: Whether the Department Erred in Calculating the Benchmark for Primary Aluminum

Scope of the Order

The merchandise covered by the *Order* is aluminum extrusions which are shapes and forms, produced by an extrusion process, made from aluminum alloys having metallic elements corresponding to the alloy series designations published by The Aluminum Association commencing with the numbers 1, 3, and 6 (or proprietary equivalents or other certifying body equivalents). Specifically, the subject merchandise made from aluminum alloy with an Aluminum Association series designation commencing with the number 1 contains not less than 99 percent aluminum by weight. The subject merchandise made from aluminum alloy with an Aluminum Association series designation commencing with the number 3 contains manganese as the major alloying element, with manganese accounting for not more than 3.0 percent of total materials by weight. The subject merchandise is made from an aluminum alloy with an Aluminum Association series designation commencing with the number 6 contains magnesium and silicon as the major alloying elements, with magnesium accounting for at least 0.1 percent but not more than 2.0 percent of total materials by weight, and silicon accounting for at least 0.1 percent but not more than 3.0 percent of total materials by weight. The subject aluminum extrusions are properly identified by a four-digit alloy series without either a decimal point or leading letter. Illustrative examples from among the approximately 160 registered alloys that may characterize the subject merchandise are as follows: 1350, 3003, and 6060.

Aluminum extrusions are produced and imported in a wide variety of shapes and forms, including, but not limited to, hollow profiles, other solid profiles, pipes, tubes, bars, and rods. Aluminum extrusions that are drawn subsequent to extrusion (drawn aluminum) are also included in the scope.

Aluminum extrusions are produced and imported with a variety of finishes (both coatings and surface treatments), and types of fabrication. The types of coatings and treatments applied to subject aluminum extrusions include, but are not limited to, extrusions that are mill finished (*i.e.*, without any coating or further finishing), brushed, buffed, polished, anodized (including bright-dip anodized), liquid painted, or powder coated. Aluminum extrusions may also be fabricated, *i.e.*, prepared for assembly. Such operations would include, but are not limited to, extrusions that are cut-to-length, machined, drilled, punched, notched, bent, stretched, knurled, swaged, mitered, chamfered, threaded, and spun. The subject merchandise includes aluminum extrusions that are finished (coated, painted, *etc.*), fabricated, or any combination thereof.

Subject aluminum extrusions may be described at the time of importation as parts for final finished products that are assembled after importation, including, but not limited to, window frames, door frames, solar panels, curtain walls, or furniture. Such parts that otherwise meet the definition of aluminum extrusions are included in the scope. The scope includes the aluminum extrusion components that are attached (*e.g.*, by welding or fasteners) to form subassemblies, *i.e.*, partially assembled merchandise unless imported as part of the finished goods ‘kit’ defined further below. The scope does not include the non-aluminum extrusion components of subassemblies or subject kits.

Subject extrusions may be identified with reference to their end use, such as fence posts, electrical conduits, door thresholds, carpet trim, or heat sinks (that do not meet the finished heat sink exclusionary language below). Such goods are subject merchandise if they otherwise meet the scope definition, regardless of whether they are ready for use at the time of importation.

The following aluminum extrusion products are excluded: aluminum extrusions made from aluminum alloy with an Aluminum Association series designations commencing with the number 2 and containing in excess of 1.5 percent copper by weight; aluminum extrusions made from aluminum alloy with an Aluminum Association series designation commencing with the number 5 and containing in excess of 1.0 percent magnesium by weight; and aluminum extrusions made from aluminum alloy with an Aluminum Association series designation commencing with the number 7 and containing in excess of 2.0 percent zinc by weight.

The scope also excludes finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry, such as finished windows with glass, doors with glass or vinyl, picture frames with glass pane and backing material, and solar panels. The scope also excludes finished goods containing aluminum extrusions that are entered unassembled in a “finished goods kit.” A finished goods kit is understood to mean a packaged combination of parts that contains, at the time of importation, all of the necessary parts to fully assemble a final finished good and requires no further finishing or fabrication, such as cutting or punching, and is assembled ‘as is’ into a finished product. An imported product will not be considered a ‘finished goods kit’ and therefore excluded from the scope merely by including fasteners such as screws, bolts, *etc.* in the packaging with an aluminum extrusion product.

The scope also excludes aluminum alloy sheet or plates produced by other than the extrusion process, such as aluminum products produced by a method of casting. Cast aluminum products are properly identified by four digits with a decimal point between the third and fourth digit. A letter may also precede the four digits. The following Aluminum Association designations are representative of aluminum alloys for casting: 208.0, 295.0, 308.0, 355.0, C355.0, 356.0, A356.0, A357.0, 360.0, 366.0, 380.0, A380.0, 413.0, 443.0, 514.0, 518.1, and 712.0. The scope also excludes pure, unwrought aluminum in any form.

The scope also excludes collapsible tubular containers composed of metallic elements corresponding to alloy code 1080A as designated by the Aluminum Association where the tubular container (excluding the nozzle) meets each of the following dimensional characteristics:

(1) length of 37 millimeters (mm) or 62 mm, (2) outer diameter of 11.0 mm or 12.7 mm, and (3) wall thickness not exceeding 0.13 mm.

Also excluded from the scope of the order are finished heat sinks. Finished heat sinks are fabricated heat sinks made from aluminum extrusions the design and production of which are organized around meeting certain specified thermal performance requirements and which have been fully, albeit not necessarily individually, tested to comply with such requirements.

Also excluded from the scope of the order is certain rectangular wire produced from continuously cast rolled aluminum wire rod, which is subsequently extruded to dimension to form rectangular wire. The product is made from aluminum alloy grade 1070 or 1370, with no recycled metal content allowed. The dimensions of the wire are 5 mm (+/- 0.05 mm) in width and 1.0 mm (+/- 0.02 mm) in thickness. Imports of rectangular wire are provided for under Harmonized Tariff Schedule of the United States (HTSUS) category 7605.19.000.

Imports of the subject merchandise are provided for under the following categories of the HTSUS: 7610.10.00, 7610.90.00, 7615.10.30, 7615.10.71, 7615.10.91, 7615.19.10, 7615.19.30, 7615.19.50, 7615.19.70, 7615.19.90, 7615.20.00, 7616.99.10, 7616.99.50, 8479.89.98, 8479.90.94, 8513.90.20, 9403.10.00, 9403.20.00, 7604.21.00.00, 7604.29.10.00, 7604.29.30.10, 7604.29.30.50, 7604.29.50.30, 7604.29.50.60, 7608.20.00.30, 7608.20.00.90, 8302.10.30.00, 8302.10.60.30, 8302.10.60.60, 8302.10.60.90, 8302.20.00.00, 8302.30.30.10, 8302.30.30.60, 8302.41.30.00, 8302.41.60.15, 8302.41.60.45, 8302.41.60.50, 8302.41.60.80, 8302.42.30.10, 8302.42.30.15, 8302.42.30.65, 8302.49.60.35, 8302.49.60.45, 8302.49.60.55, 8302.49.60.85, 8302.50.00.00, 8302.60.90.00, 8305.10.00.50, 8306.30.00.00, 8414.59.60.90, 8415.90.80.45, 8418.99.80.05, 8418.99.80.50, 8418.99.80.60, 8419.90.10.00, 8422.90.06.40, 8473.30.20.00, 8473.30.51.00, 8479.90.85.00, 8486.90.00.00, 8487.90.00.80, 8503.00.95.20, 8508.70.00.00, 8516.90.50.00, 8516.90.80.50, 8517.70.00.00, 8529.90.73.00, 8529.90.97.60, 8538.10.00.00, 8543.90.88.80, 8708.29.50.60, 8708.80.65.90, 8803.30.00.60, 9013.90.50.00, 9013.90.90.00, 9401.90.50.81, 9403.90.10.40, 9403.90.10.50, 9403.90.10.85, 9403.90.25.40, 9403.90.25.80, 9403.90.40.05, 9403.90.40.10, 9403.90.40.60, 9403.90.50.05, 9403.90.50.10, 9403.90.50.80, 9403.90.60.05, 9403.90.60.10, 9403.90.60.80, 9403.90.70.05, 9403.90.70.10, 9403.90.70.80, 9403.90.80.10, 9403.90.80.15, 9403.90.80.20, 9403.90.80.41, 9403.90.80.51, 9403.90.80.61, 9506.11.40.80, 9506.51.40.00, 9506.51.60.00, 9506.59.40.40, 9506.70.20.90, 9506.91.00.10, 9506.91.00.20, 9506.91.00.30, 9506.99.05.10, 9506.99.05.20, 9506.99.05.30, 9506.99.15.00, 9506.99.20.00, 9506.99.25.80, 9506.99.28.00, 9506.99.55.00, 9506.99.60.80, 9507.30.20.00, 9507.30.40.00, 9507.30.60.00, 9507.90.60.00, and 9603.90.80.50.

The subject merchandise entered as parts of other aluminum products may be classifiable under the following additional Chapter 76 subheadings: 7610.10, 7610.90, 7615.19, 7615.20, and 7616.99 as well as under other HTSUS chapters. In addition, fin evaporator coils may be classifiable under HTSUS numbers: 8418.99.80.50 and 8418.99.80.60. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.⁸

⁸ See Order.

There have been numerous scope rulings with regard to this *Order*. For further information, see a listing of these at the webpage titled *Final Scope Rulings of Enforcement and Compliance* website at <http://enforcement.trade.gov/download/prc-ae/scope/prc-ae-scope-index.html>.

Partial Rescission of Review

The Department is rescinding the instant administrative review for certain companies,⁹ pursuant to 19 CFR 351.213(d)(1), for which it received timely requests for withdrawal of this administrative review, and for which no other party requested an administrative review of such companies.¹⁰ Those companies are listed in the *Federal Register* notice issued concurrently with this decision memorandum. Also included in this list of companies are those companies for which the Department received a no-shipment response, and for which the Department confirmed with CBP as having no shipments during the current review period. The no-shipment companies were also included in Petitioner's timely withdrawal request, and because no party other than Petitioner requested a review of the no-shipment companies, the Department is also rescinding the administrative review of these companies pursuant to 19 CFR 351.213(d)(1).

Subsidies Valuation Information

Allocation Period

The average useful life (AUL) period in this proceeding, as described in 19 CFR 351.524(d)(2), is 12 years according to the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System, as revised. No party in this proceeding disputed this allocation period.

For non-recurring subsidies, we 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 expensed to the year of receipt rather than allocated over the AUL period.

Consistent with other PRC CVD proceedings,¹¹ we continue to find that it is appropriate and administratively 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 adopted December 11, 2001, the date on which the PRC became a member of the World Trade Organization (WTO), as that date. For further discussion of this issue, see Comment 18.

⁹ See *Aluminum Extrusions from the People's Republic of China: Final Results, and Partial Rescission of Countervailing Duty Administrative Review; 2013*, dated concurrently with this memorandum, at Appendix II.

¹⁰ See Letter from Petitioner regarding, "Aluminum Extrusions from the People's Republic of China: Withdrawal of Request for Administrative Review," dated September 25, 2014.

¹¹ 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 (IDM). See also *Aluminum Extrusions from the PRC Second Review* and the accompanying Issues and Decision Memorandum at 6.

Attribution of Subsidies

In accordance with 19 CFR 351.525(a), we calculated *ad valorem* subsidy rates by dividing the amount of the benefit allocated to the POR by the appropriate sales value during the same period. We have determined sales values on a free-on-board (FOB) basis. In accordance with 19 CFR 351.525(b)(2), we attributed export subsidies only to products exported by a firm. In accordance with 19 CFR 351.525(b)(3), we have attributed domestic subsidies to all products sold by the firm, including products that were exported.

Additionally, 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)-(iv) directs the Department to attribute subsidies received by certain other companies to the combined sales of the recipient and other companies if: (1) cross-ownership exists between the companies, and (2) the cross-owned companies produce the subject merchandise, are a holding or parent company of the subject company, produce an input that is primarily dedicated to the production of the downstream product, or transfer a subsidy to a cross-owned 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 section of the Department's regulations states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations. The *Preamble* to the Department's regulations further clarifies the Department's cross-ownership standard. According to the *Preamble*, relationships captured by the cross-ownership definition include those where

the interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits). . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.¹²

Thus, the Department's regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists. The U.S. Court of International Trade (CIT) upheld 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.¹³

¹² See *Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998) (*Preamble*).

¹³ See *Fabrique de Fer de Charleroi v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

The Guang Ya Group

GYG reported that Guang Ya is a domestically-owned Chinese company that both produced and exported subject merchandise domestically and to foreign markets, including to the United States. GYG reported that Guang Ya is privately owned by certain individuals. GYG also reported that, during the POR, Kong Ah, an affiliated company of Guang Ya located in Hong Kong, only collected payment on behalf of Guang Ya for the export sales of Guang Ya, and was not an exporter to the United States during the POR. According to GYG, Guangcheng, an affiliate of Guang Ya, also produces subject merchandise, which it primarily sells in the domestic Chinese market. GYG reported that Guangcheng did not sell subject merchandise to the United States during the POR. GYG did, however, report that during the POR, Guangcheng provided toll-processing services to Guang Ya, and *vice versa*, related to the production of subject merchandise. Also, GYG reported that during the POR, Guanghai, another affiliate of Guang Ya, supplied aluminum billets to only Guang Ya. GYG also reported that its affiliate, Guang Ya HK, is a trading company that was not involved in the sale of subject merchandise during the instant POR.¹⁴

We examined the ownership interests between Guang Ya and its reported affiliates. Based on our review of information on the record of this review, we determined that Guang Ya, Guangcheng, and Guanghai are cross-owned with each other via common ownership within the meaning of 19 CFR 351.525(b)(6)(vi).¹⁵

Because Guang Ya and Guangcheng are the members of the Guang Ya Companies that produce subject merchandise, we have attributed subsidies received by Guang Ya and Guangcheng to the products produced by the two firms in accordance with 19 CFR 351.525(b)(6)(ii). Since Guanghai served as an input supplier to Guang Ya during the POR, we attributed subsidies received by Guanghai to the combined sales of Guanghai and Guang Ya and Guangcheng, excluding the sales between corporations in accordance with 19 CFR 351.525(b)(6)(iv), where appropriate.

The Guang Ya Group also reported that Guang Ya wholly owns or otherwise maintains significant ownership in various other entities. However, according to the Guang Ya Group, during the POR, those entities were not involved with the sale or production of subject merchandise.¹⁶ Nonetheless, we requested questionnaire responses from Guangya Al-Mg Alloy

¹⁴ See Letter from GYG to the Department, regarding “Aluminum Extrusions from the PRC: CVD Questionnaire Response of the Guang Ya Group,” December 3, 2014 (“GYG’s Initial Questionnaire Response”), at 4 through 8 and Exhibit 1.

¹⁵ For the proprietary details of this discussion, see Memorandum from Davina Friedmann to Robert James, regarding “Aluminum Extrusions from the PRC – Third CVD Administrative Review; Preliminary Results Calculation Memorandum for the Guang Ya Group,” (June 1, 2015). We are not making a cross-ownership determination or attributing any subsidies to Kong Ah or Guang Ya HK, Hong Kong entities, consistent with 19 CFR 351.525(b)(6) and (7).

¹⁶ See GYG’s Initial Questionnaire Response at 6 and Exhibit 1, Letter from GYG to the Department, regarding: “Aluminum Extrusions from the PRC: First Supplemental CVD Questionnaire Response of the Guang Ya Group,” February 19, 2015 (“GYG’s First Supplemental Questionnaire Response”), at 7; and letter from GYG to the Department, regarding: “Aluminum Extrusions from the PRC: First Supplemental CVD Questionnaire Response of the Guang Ya Group,” dated April 22, 2015 (“GYG’s Second Supplemental Questionnaire Response”), at 4 (wherein GYG confirmed that Guangxi Guangyin Aluminum Industrial Co., Ltd did not make any sales of

Engineering Technology (Guangya Al-Mg Engineering), a research company, and Guangxi Guangyin Commerce Co. (Guangyin Commerce), a trading company that buys and sells aluminum ingot, billet and other similar products.¹⁷ GYG confirmed that Guangya Al-Mg Engineering remained an inactive company through the end of this POR.¹⁸ GYG also confirmed that Guangxi Commerce did not sell primary inputs to Guang Ya or to any other company within GYG during the POR.¹⁹ Therefore, having examined record information regarding relationships between GYG companies, as well as any production and sales activities that may have occurred between these companies during the POR, as mentioned above, we limited attributed subsidies received to only Guang Ya, Guangcheng, and Guanghai, where appropriate.

The Jangho Companies

The Jangho Companies include several entities involved in the production, sale, and export of subject merchandise. Guangzhou Jangho was reported as a producer of subject merchandise that was sold to the United States during the POR through its affiliate Jangho HK, a Hong Kong reseller/trading company. The Jangho Companies reported that two affiliates of Guangzhou Jangho, Beijing Jangho and Shanghai Jangho, produced subject merchandise which was not exported to the United States. The Jangho Companies also reported that Guangzhou Jangho, Beijing Jangho, and Shanghai Jangho were each wholly owned by Jangho Group Co., a producer of subject merchandise which was not exported to the United States. Further, the Jangho Companies reported Beijing Jiangheyuan and Xinjiang Jianghe Huizhong Equity Investment Co., Ltd. (Jianghe Huizhong) are the parent companies of Jangho Group Co., who were holding or investment companies and not producers of subject merchandise.²⁰

Because Guangzhou Jangho, Shanghai Jangho, and Beijing Jangho are wholly-owned by Jangho Group Co., we find that these companies are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi). Record evidence further demonstrates that Beijing Jiangheyuan and Jangho Group Co. are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi).²¹ Consequently, we find Beijing Jiangheyuan, Jangho Group, Co., Guangzhou Jangho, Shanghai Jangho, and Beijing Jangho to all be cross-owned with each other, in accordance with 19 CFR

aluminum billet to Guang Ya, nor did it sell this input to any other company within GYG during the POR).

¹⁷ See Department Letter to GYG regarding “Administrative Review of the Countervailing Duty Order on Aluminum Extrusions from the People’s Republic of China: First Supplemental Questionnaire to the Gaung Ya Group,” dated January 22, 2015.

¹⁸ See Guangya Al-MG Engineering’s Initial Questionnaire Response, dated February 19, 2015, at 7-9, and GYG’s Second Supplemental Questionnaire Response, at 5.

¹⁹ See Guangxi Commerce’s Initial Questionnaire Response, dated March 5, 2015, at 13, and GYG’s Second Supplemental Questionnaire Response, at 4.

²⁰ See, e.g., the Jangho Companies’ Affiliations Response at 2, 4, and 5, Exhibit 1, and Exhibit 2; the Jangho Companies’ Initial Questionnaire Response at 5 to 8, and Exhibit GZ-5, at Jangho Group Co.’s Questionnaire Response at 6, at JHG Exhibit 5, and at Beijing Jiangheyuan Questionnaire Response at 4; and Letter from Jangho to the Department, Regarding “First Supplemental Questionnaire Response: Jangho Group,” dated February 27, 2015 (The Jangho Companies’ First Supplemental Questionnaire Response) at 2, at Beijing Jangho’s Questionnaire Response at 4, and 5, and at Shanghai Jangho’s Questionnaire Response at 3 to 5.

²¹ For further details, which are proprietary, see Memorandum from Robert James to Abdelali Elouaradia, regarding “Affiliations and Cross Ownership within the Jangho Group,” dated June 1, 2015 (Jangho Cross Ownership Memorandum).

351.525(b)(6)(vi).²² Record evidence demonstrates that Jangho Group Co. is a producer of subject merchandise, as are its affiliates Guangzhou Jangho, Shanghai Jangho, and Beijing Jangho.²³ Because Guangzhou Jangho, Shanghai Jangho, and Beijing Jangho, are cross-owned members of the Jangho Group that produce subject merchandise, we have attributed subsidies received by Guangzhou Jangho, Shanghai Jangho, and Beijing Jangho, to the products produced by the three firms, in accordance with 19 CFR 351.525(b)(6)(ii).²⁴ Because Beijing Jiangheyuan and Jangho Group Co., are cross-owned parent holding companies, we have attributed subsidies received by Beijing Jiangheyuan and Jangho Group Co. to the products produced by Beijing Jiangheyuan and Jangho Group Co. and all of Beijing Jiangheyuan's and Jangho Group Co.'s PRC subsidiaries, in accordance with 19 CFR 351.525(b)(6)(iii).²⁵

Loan Benchmark Rates

The Department is examining loans received by the respondents from Chinese policy banks and state-owned commerce banks (SOCBs), as well as non-recurring, allocable subsidies.²⁶ The derivation of the benchmark and discount rates used to value these subsidies are discussed below.

Short-Term RMB Denominated Loans

Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the “difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market.” Normally, the Department uses comparable commercial loans reported by the company as a benchmark.²⁷ If the firm did not have any comparable commercial loans during the period, the Department's regulations provide that we “may use a national average interest rate for comparable commercial loans.”²⁸ As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate.

For the reasons first explained in *CFS from the PRC*,²⁹ 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.³⁰ Because of this, any loans received by respondents from private

²² Record evidence indicates that Jianghe Huizhong is not cross-owned under 19 CFR 351.525(b)(6)(vi). See Jangho Cross Ownership Memorandum.

²³ See, e.g., The Jangho Companies' November 4, 2015, Affiliation Response at Exhibits 1 and 2; The Jangho Companies' Initial Questionnaire Response at and The Jangho Companies' First Supplemental Questionnaire Response at 2 to 5, Beijing Jangho's Questionnaire Response, at Shanghai Jangho's Questionnaire Response, and at 2 to 5.

²⁴ We have excluded intercompany sales and service sales from all such calculations.

²⁵ 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). See Jangho Cross Ownership Memorandum.

²⁶ See 19 CFR 351.524(b)(1).

²⁷ See 19 CFR 351.505(a)(3)(i).

²⁸ See 19 CFR 351.505(a)(3)(ii).

²⁹ 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 IDM at Comment 10.

³⁰ See Memorandum from Tyler Weinholt to the File, regarding “Countervailing Duty Investigation of Aluminum Extrusions from the People's Republic of China: Banking Memoranda,” (June 1, 2015).

Chinese or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2). Similarly, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). There is no new information on the record of this review that would lead us to deviate from our prior determinations regarding government intervention in the PRC's banking sector. 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.³¹

We first developed in *CFS from the PRC*,³² and more recently updated in *Thermal Paper from the PRC*,³³ the methodology used to calculate the external benchmark. Under that methodology, we first determine which countries are similar to the PRC in terms of gross national income, based on the World Bank's classification of countries as: low income; lower-middle income; upper-middle income; and high income. For 2001 through 2009, the PRC fell in the lower-middle income category.³⁴ Beginning with 2010, however, the PRC is in the upper-middle income category and remained there for 2011 to 2013.³⁵ Accordingly, as explained below, we are using the interest rates of lower-middle income countries to construct the benchmark and discount rates for 2001 – 2009, and the interest rates of upper-middle income countries to construct the benchmark and discount rates for 2010 – 2013. As explained in *CFS from the PRC*, by pooling countries in this manner, we capture the broad inverse relationship between income and interest rates.

After identifying the appropriate interest rates, the next step in constructing the benchmark is to incorporate an important factor in the interest rate formation – the strength of governance as reflected in the quality of the countries' institutions. The strength of governance has been built into the analysis by using a regression analysis that relates the interest rates to governance indicators.

In each year from 2001 – 2009, and 2011 – 2013, the results of the regression-based analysis reflected the intended, common sense result: stronger institutions meant relatively lower real interest rates, while weaker institutions meant relatively higher real interest rates. For 2010, however, the regression does not yield that outcome for the PRC's income group. This contrary result for a single year does not lead the Department to reject the strength of governance as a determinant of interest rates. Therefore, we continue to rely on the regression-based analysis used since *CFS from the PRC* to compute the benchmark for the years from 2001 – 2009, and

³¹ 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), and accompanying IDM at "Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit."

³² See *CFS from the PRC*, and accompanying IDM at Comment 10.

³³ See *Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) (*Thermal Paper from the PRC*), and accompanying IDM at 8-10.

³⁴ See World Bank Country Classification, <http://econ.worldbank.org/>; see also Memorandum from Tyler Weinholt to the file, regarding "Administrative Review of Countervailing Duty Order on Aluminum Extrusions from the People's Republic of China: Interest Rate Benchmark Memorandum," dated concurrently with, and adopted by, the Preliminary Decision Memorandum (Interest Rate Benchmark Memorandum).

³⁵ See World Bank Country Classification.

2011 – 2013. For the 2010 benchmark, we are using an average of the interest rates of the upper-middle income countries.

Many of the countries in the World Bank’s upper-middle and lower-middle income categories reported lending and inflation rates to the International Monetary Fund, and they are included in that agency’s international financial statistics (IFS). With the exceptions noted below, we used the interest and inflation rates reported in the IFS for the countries identified as “upper-middle income” by the World Bank for 2010 – 2013, and “lower-middle income” for 2001 –2009.³⁶ First, we did not include those economies that the Department considers to be non-market economies for antidumping purposes for any part of the years in question, for example: Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS for those years. Third, we removed any country that reported a rate that was not a lending rate or that based its lending rate on foreign-currency denominated instruments.³⁷ Finally, for each year the Department calculated an inflation-adjusted short-term benchmark rate and excluded any countries with aberrational or negative real interest rates for the year in question.³⁸ Because the resulting rates are net of inflation, we adjusted the benchmark rates to include an inflation component before comparing them to the interest rates on loans issued to the respondents by SOCBs.³⁹

Long-Term RMB-Denominated Loans

The lending rates reported in the IFS represent short- and medium-term lending, and there are not sufficient publicly available long-term interest rate data upon which to base a robust benchmark for long-term loans. 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.⁴⁰

In *Citric Acid from the PRC*, this methodology was revised by switching from a long-term markup based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where ‘n’ equals or approximates the number of years of the term of the loan in question.⁴¹ Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.⁴²

³⁶ See Interest Rate Benchmark Memorandum.

³⁷ For example, in certain years Jordan reported a deposit rate, not a lending rate, and Ecuador and Timor L’Este reported dollar-denominated rates; therefore, such rates have been excluded.

³⁸ For example, we excluded Brazil from the 2010 and 2011 benchmarks because the country’s real interest rate was 34.95 percent and 37.25 percent, respectively. See Interest Rate Benchmark Memorandum.

³⁹ See Interest Rate Benchmark Memorandum for the adjusted benchmark rates including an inflation component.

⁴⁰ 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) (*Light-Walled Pipe from the PRC*), and accompanying IDM at 8.

⁴¹ 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 IDM at Comment 14.

⁴² See Interest Rate Benchmark Memorandum for the resulting inflation adjusted benchmark lending rates.

Foreign Currency-Denominated Loans

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

For any long-term foreign currency-denominated loans, the Department added the applicable short-term LIBOR rate to a spread which is calculated as the difference between the one-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.⁴³

Discount Rates

Consistent with 19 CFR 351.524(d)(3)(i)(A), we are using as the discount rate the long-term interest rate calculated according to the methodology described above for the year in which the government provided non-recurring subsidies.⁴⁴

Use of Facts Otherwise Available and Adverse Inferences

Section 776(a) of the Act provides that, subject to section 782(d) of the Act, the Department shall apply “facts otherwise available” if: (1) necessary information is not on the record; or (2) 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.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.

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 antidumping (AD) and CVD law, including amendments to section 776(b) and 776(c) of the Act and the addition of

⁴³ *Id.*, for the LIBOR rates.

⁴⁴ *Id.*, for the discount rates.

section 776(d) of the Act.⁴⁵ The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this review.⁴⁶

Section 776(b) of the Act provides that the Department 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 doing so, and under the TPEA, the Department 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.⁴⁷ Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or other information placed on the record.⁴⁸

Section 776(c) of the Act provides that, in general, when the Department relies on secondary information rather than on information obtained in the course of a review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.⁴⁹ Secondary information is defined to include information derived from the petition that gave rise to the investigation, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.⁵⁰ Further, and under the TPEA, the Department is not required to corroborate any countervailing duty applied in a separate segment of the same proceeding.⁵¹

Finally, under the new section 776(d) of the Act, when applying an adverse inference, the Department may use a 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 countervailable subsidy rate for a subsidy program from a proceeding that the Department considers reasonable to use.⁵² The TPEA also makes clear that when selecting facts available with an adverse inference, the Department 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.⁵³

⁴⁵ See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015) (TPEA). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced 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 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) (*Applicability Notice*). The text of the TPEA may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>.

⁴⁶ See *Applicability Notice*, 80 FR at 46794-95.

⁴⁷ See section 776(b)(1)(B) of the Act; TPEA, section 502(1)(B).

⁴⁸ See also 19 CFR 351.308(c).

⁴⁹ See also 19 CFR 351.308(d).

⁵⁰ See Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol. 1 at 870 (1994).

⁵¹ See section 776(c)(2) of the Act; TPEA, section 502(2).

⁵² See section 776(d)(1) of the Act; TPEA, section 502(3).

⁵³ See section 776(d)(3) of the Act; TPEA, section 502(3).

When the government fails to provide requested information concerning alleged subsidy programs, the Department, as AFA, typically finds that a financial contribution exists under the alleged program and that the program is specific.⁵⁴ However, where possible, the Department will normally rely on the foreign producer's or exporter's records to determine the existence and amount of the benefit to the extent that such information is useable and verifiable. Consistent with its past practice, as described below, because the GOC failed to provide information concerning certain alleged subsidies identified below, the Department, as AFA, has determined that those programs confer a financial contribution and are specific pursuant to sections 771(5)(D) and 771(5A) of the Act, respectively. The analysis of the extent of the benefit, if any, is discussed under the sections below entitled "Analysis of Programs."

1. Application of Total AFA to Non-Cooperative Companies

As explained in our memorandum on the record regarding issuance of the quantity and value (Q&V) questionnaire, we issued Q&V questionnaires to potential respondents in this review due to inconsistencies with U.S. Customs and Border Protection entry data.⁵⁵ These Q&V questionnaires were sent either electronically via ACCESS or by mail via FedEx.⁵⁶ The following companies failed to respond to the Department's Q&V questionnaire: Dynamic Technologies China Ltd., Foreign Trade Co. of Suzhou New & High-Tech Industrial Development Zone, Foshan Shunde Aoneng Electrical Appliances Co., Ltd., Golden Dragon Precise Copper Tube Group, WTI Building Products, Ltd. and Zhaoqing Asia Aluminum Factory Company Ltd. The Q&V questionnaires were issued to these companies on August 14, 2014; none submitted a response by the deadline of September 4, 2014, or a request for an extension of time to respond to the Q&V questionnaire.

As a result of these companies' failure to submit a response to the questionnaire, we find them to be non-cooperative. By not responding to the request for information regarding the Q&V of their sales, the companies withheld information that was requested by the Department. Thus, we are basing the CVD rate for these non-cooperative companies on the facts otherwise available, pursuant to section 776(a)(2)(A) of the Act. We further find that an adverse inference is warranted, pursuant to section 776(b) of the Act. By failing to submit a response to the Department's questionnaire, the companies did not act to the best of their ability in this review. Accordingly, we continue to find that AFA is warranted.

In deciding which facts to use as 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. Section 776(d) of the Act provides that the Department may use any countervailable subsidy rate applied for the same or similar program in a countervailable duty proceeding involving the same country, or, if there is no same or similar program, use a

⁵⁴ See, e.g., *Hardwood and Decorative Plywood from the People's Republic of China: Final Affirmative Countervailing Duty Determination*; 2011, 78 FR 58283 (September 23, 2013), and accompanying IDM at Comment 3, "Provision of Electricity."

⁵⁵ See Memorandum to the File regarding "Respondent Selection for the Third Administrative Review of the Countervailing Duty Order on Aluminum Extrusions from the People's Republic of China," dated October 9, 2014.

⁵⁶ See Memorandum to The File regarding "Issuance of Quantity and Value Questionnaires," dated August 18, 2014.

countervailable subsidy rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates. 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 AFA rule to induce respondents to provide the Department with complete and accurate information in a timely manner."⁵⁷

Accordingly, pursuant to section 776(d) of the Act and our established practice,⁵⁸ the Department computes the total AFA rate for non-cooperative companies generally using program-specific rates calculated for the cooperating respondents in the instant review or in prior segments of the instant proceeding, or calculated in prior CVD cases involving the country under review (in this case, the PRC), unless it is clear that the industry in which the respondents operate cannot use the program for which the rates were calculated.

In these final results, for the income tax rate reduction or exemption programs, we are applying an adverse inference that the non-cooperative companies paid no income taxes during the POR. The standard income tax rate for PRC corporations filing income tax returns during the POR was 25 percent.⁵⁹ We, therefore, find that the highest possible benefit for all income tax reduction or exemption programs combined is 25 percent (*i.e.*, the income tax programs combined provide a countervailable benefit of 25 percent). This approach is consistent with the Department's past practice.⁶⁰

The 25 percent AFA rate does not apply to income tax credit and rebate, accelerated depreciation, or import tariff and value added tax exemption programs because such programs may not affect the tax rate. Therefore, for all programs other than those involving income tax rate reduction or exemption programs, we first sought to apply, where available, the highest above *de minimis* subsidy rate calculated for an identical program from any segment of this proceeding. Absent such a rate, we applied, where available, the highest above *de minimis* subsidy rate calculated for a similar program from any segment of this proceeding.

In the absence of an above *de minimis* subsidy rate calculated for the same or similar program in any segment of this proceeding, we applied 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 in any PRC CVD proceeding, we applied the highest calculated subsidy rate for any program otherwise listed from any prior PRC CVD case, so long as the non-cooperating companies conceivably could have used the program for which the rate was calculated. On that basis, we determine that the AFA rate for the non-cooperative companies is 282.82 percent *ad valorem*.⁶¹

⁵⁷ See SAA at 870.

⁵⁸ See *Aluminum Extrusions From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010 and 2011*, 79 FR 106 (June 10, 2013) (*Aluminum Extrusions from the PRC First Review*) and *Aluminum Extrusions from the PRC Second Review* and accompanying Issues and Decision Memorandum under the section entitled, "Use of Facts Available and Adverse Inferences."

⁵⁹ See the GOC's Initial Questionnaire Response at Exhibit 13.

⁶⁰ See, e.g., *Aluminum Extrusions from the PRC Second Review*, and accompanying IDM at "Application of Total Adverse Facts Available to Non-Cooperative Companies."

⁶¹ See Department Memorandum regarding "AFA Calculation Memorandum for the Preliminary Results" (June 1,

Corroboration of Secondary Information Used to Derive AFA Rates

Section 776(c) of the Act provides that, in general, 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 determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”⁶² The Department considers information to be corroborated if it has probative value.⁶³ 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, however, that the Department need not prove that the selected facts available are the best alternative information.⁶⁴

With regard to the reliability aspect of corroboration, we note that the rates on which we are relying are subsidy rates calculated in this review or other PRC CVD final determinations. Further, the calculated rates were based on information about the same or similar programs. Moreover, no information has been presented that calls into question the reliability of these calculated rates that we are applying as AFA. 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 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, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Where circumstances indicate that the information is not appropriate as AFA, the Department will not use it.⁶⁵

In the absence of record evidence concerning the programs under review resulting from the non-cooperative companies’ decision not to participate in the review, we reviewed the information concerning PRC subsidy programs in this and other cases. For those programs for which the Department found a program-type match, we find that, because these are the same or similar programs, they are relevant to the programs under review in this case. For the programs for which there is no program-type match, we selected the highest calculated subsidy rate for any PRC program from which the non-cooperative companies could receive a benefit to use as AFA. The relevance of these rates is that they are actual calculated CVD rates for a PRC program from which the non-cooperative companies could actually receive a benefit. Further, these rates were calculated for periods close to the POR. Moreover, the failure of these companies to respond to the Department’s request for information “resulted in an egregious lack of evidence on the record to suggest an alternative rate.”⁶⁶ Due to the lack of participation by the non-cooperative

2015) (AFA Calculation Memorandum), for a table detailing the derivation of the AFA rate applied.

⁶² See SAA at 870.

⁶³ *Id.*

⁶⁴ *Id.*, at 869-870.

⁶⁵ See, e.g., *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

⁶⁶ See *Shanghai Taoen Int’l Trading Co., Ltd. v. United States*, 360 F. Supp. 2d 1339, 1348 (CIT 2005).

companies and the resulting lack of record information concerning their use of programs under review, the Department corroborated the rates it selected to the extent practicable.

2. Application of AFA for Certain Grants Received by The Jangho Companies

In its initial questionnaire response submitted in this review, with regard to each of the programs listed below under “Grant Programs for Which the GOC Did Not Provide the Requested Laws, Regulations, and Specificity Information,” the GOC did not provide the requested program information.⁶⁷ In its responses to the Department’s supplemental questionnaires, which contain additional requests for information about each of these programs, the GOC again did not provide the requested information regarding the specificity of each of these programs and whether assistance under each of these programs constitutes a financial contribution. In the GOC Initial Questionnaire Response, the GOC did not coordinate with the Jangho Companies, and did not provide any information with regard to these programs. In the GOC’s Second Supplemental Questionnaire Response, in response to the Department’s request for complete responses to our standard and usage appendices, the GOC provided responses to the usage appendices for two programs, 2012 Industrial Development Fund and 2013 Working Capital Loans Discount. The GOC did not respond to any of the questions in the standard appendix for these programs. For two other programs, 2013 Export Increase Fund and 2013 Guangzhou Innovation Enterprise Fund from Guangzhou, the GOC did not respond to any of the questions contained in the standard and usage appendices, but merely confirmed the Jangho Companies’ receipt of benefits under these programs. Finally, in the GOC’s Third Supplemental Questionnaire Response, the GOC gave no response to our requests for further information as regards Industrial Development Fund and 2013 Working Capital Loans Discount, and indicated that could not provide further information about these programs.⁶⁸ In addition, the GOC did not provide copies of the laws and regulations pertaining to any of these programs.⁶⁹

Because the GOC twice refused to provide requested information with regard to each of these programs and did not provide any reasons to explain why it was unable to provide the requested information, we find that the GOC withheld the requested program information and failed to cooperate by not acting to the best of its ability to comply with the Department’s requests for information.⁷⁰ Therefore, as AFA, we find that each of the programs constitutes a financial contribution in the form of a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act and is specific within the meaning of section 771(5A) of the Act. Furthermore, as AFA, we determine that the grant(s) received by the Jangho Companies under the 2013 Export Increase Fund program was specific pursuant to section 771(5A) and (B) of the Act because it is

⁶⁷ See GOC Initial Questionnaire Response at 58 to 59.

⁶⁸ See letter from the GOC to the Department, “Aluminum Extrusions from China; 3rd CVD Administrative Review GOC Second Supplemental Questionnaire Response,” dated April 28, 2015 (GOC’s Second Supplemental Questionnaire Response), at 6, 13 and 15; GOC’s Second Supplemental Questionnaire Response, at 2 and 13 to 16; and Letter from the GOC to the Department, “Aluminum Extrusions from China; 3rd CVD Administrative Review GOC 3rd Supplemental Questionnaire Response,” dated April 28, 2015 (GOC’s Third Supplemental Questionnaire Response), at 2.

⁶⁹ See GOC Initial Questionnaire Response at 58 to 59; GOC’s Second Supplemental Questionnaire Response at 6 and 13 to 16; and GOC’s Second Supplemental Questionnaire Response at 2.

⁷⁰ See Sections 776(a) and (b) of the Act.

contingent on export activity. Accordingly, we calculated the rate for this program using export sales as the denominator.

For further information with respect to the calculation of the benefit for each of these programs, see “Grant Programs for which the GOC Did Not Provide the Requested Laws, Regulations, and Specificity Information,” below.

3. Application of Adverse Facts Available for Primary Aluminum for LTAR

GOC – Whether Certain Primary Aluminum Producers Are “Authorities”

In the *Aluminum Extrusions from the PRC Investigation*, *Aluminum Extrusions from the PRC First Review*, and *Aluminum Extrusions from the PRC Second Review*, we determined that this program is a countervailable domestic subsidy program as described under sections 771(5)(A) and (5A)(D) of the Act.⁷¹ As discussed below under “Programs Found To Be Countervailable,” the Department examined whether the GOC provided primary aluminum for LTAR to the Guang Ya Group. We asked the GOC to provide information regarding the specific companies that produced primary aluminum which the Guang Ya Group purchased during the POR. Specifically, we sought information from the GOC which would allow us to analyze whether the producers are “authorities” within the meaning of section 771(5)(B) of the Act.⁷² In prior CVD

⁷¹ See *Aluminum Extrusions From the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 75 FR 54302 (September 7, 2010) (*Aluminum Extrusions Investigation Preliminary Determination*) at 54306 (unchanged in *Aluminum Extrusions From the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) (*Aluminum Extrusions from the PRC Investigation*)); *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) (*Aluminum Extrusions First Review Preliminary Results*) and the accompanying PDM at “Provision of Primary Aluminum for Less Than Adequate Remuneration (LTAR)” (unchanged in *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) (*Aluminum Extrusions from the PRC First Review*)); and *Aluminum Extrusions From the People’s Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2012*, 79 FR 36009 (June 25, 2014) (*Aluminum Extrusions Second Review Preliminary Results*) and the accompanying PDM at “Provision of Primary Aluminum for LTAR.” (unchanged in *Aluminum Extrusions from the PRC Second Review*).

⁷² For entities in the PRC, the Department previously described an analytical framework for addressing the question of whether such entities are “authorities” within the meaning of the Act. See Department Memorandum regarding “Additional Documents for Preliminary Decision” (June 18, 2014), which contains the Memorandum for Paul Piquado, Assistant Secretary for Import Administration, through Lynn Fischer Fox, Deputy Assistant Secretary for AD/CVD Policy and Negotiation, Christian Marsh, Deputy Assistant Secretary for AD/CVD Operations, and John D. McInerney, Chief Counsel for Import Administration, from Shauna Biby, Christopher Cassel, Timothy Hruby, Office of Policy, Import Administration, “Section 129 Determination of the Countervailing Duty Investigation of Circular Welded Carbon Quality Steel Pipe; Light-Walled Rectangular Pipe and Tube; Laminated Woven Sacks; and Off-the-Road Tires from the People’s Republic of China: An Analysis of Public Bodies in the People’s Republic of China in Accordance with the WTO Appellate Body’s Findings in WTO DS379,” dated May 18, 2012 (Public Bodies Memorandum); and its attachment, Memorandum for Paul Piquado, Assistant Secretary for Import Administration, through Lynn Fischer Fox, Deputy Assistant Secretary for AD/CVD Policy and Negotiation, Christian Marsh, Deputy Assistant Secretary for AD/CVD Operations, and John D. McInerney, Chief Counsel for Import Administration, from Shauna Biby, Christopher Cassel, Timothy Hruby, Office of Policy, Import Administration, “The relevance of the Chinese Communist Party for the limited purpose of determining whether particular enterprises should be considered to be ‘public bodies’ within the context of a countervailing duty investigation,” dated May 18, 2012 (CCP Memorandum). These documents were placed on the record at the time of *Preliminary Results*.

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 for less than adequate remuneration (LTAR).⁷³

In addition to the initial questionnaire, the Department issued supplemental questionnaires to the GOC and the Guang Ya Group regarding the Guang Ya Group’s purchases of primary aluminum for LTAR.⁷⁴ In the Department’s initial questionnaire, we asked the GOC to respond to the specific questions regarding the producers of primary aluminum and to respond to the *Input Producer Appendix* for each producer which produced the primary aluminum purchased by the Guang Ya Group.⁷⁵ We instructed the GOC to coordinate with the Guang Ya Group to obtain a complete list of the primary aluminum producers, including the producers of inputs purchased through a supplier.⁷⁶ In response to our supplemental questionnaires, GYG companies (*i.e.*, Guang Ya, Guangcheng, and Guanghai) identified the companies that produced and supplied the primary aluminum purchases during the POR,⁷⁷ which the GOC confirmed in its questionnaire responses.⁷⁸ While the GOC ultimately provided the identities of the producers of primary aluminum inputs, the GOC did not provide all of the information requested in the Department’s Initial Questionnaire to the GOC, as discussed below.

In our initial and supplemental questionnaires to the GOC,⁷⁹ the Department requested certain information be provided with respect to both the majority government-owned and non-majority government-owned enterprises. We address each group, in turn.

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

⁷⁴ See Letter from Erin Bengal to the GOC regarding: “2013 Administrative Review of the Countervailing Duty Order on Aluminum Extrusions from the People’s Republic of China: Countervailing Duty Questionnaire,” October 14, 2014 (“Initial Questionnaire to the GOC”), at Section II, “Input Producer Appendix”; see also Letter to the GOC regarding the “First Supplemental Questionnaire to the Government of China” (January 26, 2015) (“GOC First Supplemental Questionnaire”), and Letter to the GOC regarding the “Fourth Supplemental Questionnaire to the Government of the People’s Republic of China” (June 8, 2015) (“GOC Fourth Supplemental Questionnaire”). See also Letter to GYG regarding the “First Supplemental Questionnaire to the Guang Ya Group,” dated January 22, 2015, at 9 (First GYG Supplemental Questionnaire); and Letter to GYG regarding the “Second Supplemental Questionnaire to the Guang Ya Group,” dated April 8, 2015, at 8 (“Second GYG Supplemental Questionnaire”).

⁷⁵ See Initial Questionnaire, at Section II, “Provision of Primary Aluminum for LTAR.”

⁷⁶ *Id.*, at Section II, “Provision of Goods or Services for LTAR.”

⁷⁷ See Letter from GYG regarding, “Aluminum Extrusions from the PRC: First Supplemental CVD Questionnaire Response of the Guang Ya Group, dated February 19, 2015 (“First GYG Supplemental Questionnaire Response”), at Exhibits 37b, and 40; see also Letter from GYG regarding, “Aluminum Extrusions from the PRC: Second Supplemental CVD Questionnaire Response of the Guang Ya Group,” dated April 22, 2015 (“Second GYG Supplemental Questionnaire Response”), at Exhibit 79.

⁷⁸ See GOC First Supplemental Questionnaire Response, at S-6, GOC Second Supplemental Questionnaire Response, at S2-1, and GOC Fourth Supplemental Questionnaire Response, at S4-7.

⁷⁹ See Initial Questionnaire, at Section II, “Input Producer Appendix;” see also GOC First Supplemental Questionnaire, and GOC Fourth Supplemental Questionnaire, at S4-7.

With respect to those enterprises that the GOC identified as majority government-owned,⁸⁰ we note that the Department made multiple requests for the GOC to provide the articles of incorporation and capital verification reports of all majority government-owned enterprises.⁸¹ The GOC 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. Despite the Department's requests, the GOC did not provide the articles of incorporation and capital verification reports for any of the majority government-owned enterprises.⁸² Consequently, due to the GOC's failure to provide the requested information, the record is incomplete as to the full extent that the GOC may exercise meaningful control over these entities and use them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector.

As explained in the Public Bodies Memorandum,⁸³ evidence demonstrates that producers in the PRC that are majority-owned by the government possess, exercise, or are vested with governmental authority.⁸⁴ Evidence demonstrates that the GOC exercises meaningful control over these entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector.⁸⁵ Therefore, in light of our prior findings and the GOC's failure to provide requested information, that might rebut record 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 entities that were reported as being non-majority government-owned enterprises that produce primary aluminum inputs purchased by the Guang Ya Group during the POR, the GOC stated in its Third Supplemental Questionnaire Response that it "has not been provided any information regarding the legal status of the producers that are relevant to the POR"⁸⁶ Despite the fact that for these enterprises the GOC provided business certificates, along with aspects of articles of association and capital verification reports that identify shareholders and senior management, the GOC did not provide other relevant documentation requested by the Department, including company by-laws, annual reports, and tax registration documents.⁸⁷

Additionally, while the Department made several attempts in the Initial, First and Second Supplemental Questionnaires issued to the GOC to obtain ownership and management information of the non-majority government-owned entities, the GOC did not provide the requested information. For instance, in the GOC's Initial Questionnaire Response, the GOC stated that it is ". . . unable to provide the information requested in the Input Producer Appendix, especially those relating to CCP {Chinese Communist Party} official status of the shareholders, managers and/or members of the boards of directors."⁸⁸ In response to the Department's First

⁸⁰ *Id.*

⁸¹ See Initial Questionnaire, at Section II, "Input Producer Appendix;" *see also* GOC First Supplemental Questionnaire, at 3, GOC Second Supplemental Questionnaire, GOC Fourth Supplemental Questionnaire, at 4.

⁸² See GOC Fourth Supplemental Questionnaire Response, at 13.

⁸³ See Public Bodies Memorandum.

⁸⁴ *Id.*, at 35-36 and sources cited therein.

⁸⁵ *Id.*

⁸⁶ *Id.*, at 13.

⁸⁷ *Id.*, at Exhibits S4-8 through S4-11.

⁸⁸ See GOC's Initial Response, at 36.

Supplemental Questionnaire in which the Department reiterated the same requests for information from the GOC regarding ownership information requested in the *Input Producer Appendix*, the GOC stated that it “. . . reiterates what it has explained in its response to the request on page 36 of the initial questionnaire to this review.”⁸⁹ Further, the GOC stated that it “. . . also encourages the Department to reconsider its approach to define questions and making ‘determinations’ regarding the producers of primary aluminum in China based on what has been provided in its response to the initial questionnaire in this matter.”⁹⁰ We note that even if the GOC did not have the information when it received the Department’s request, the GOC’s responses in prior proceedings demonstrate that it is, in fact, able to obtain the information related to whether certain individuals are CCP officials.⁹¹

In response to the Department’s Second Supplemental Questionnaire, the GOC stated that, despite its own attempts to obtain the requested information, “. . . the GOC is unable to provide the information in response to question A.2 of the Input Producer Appendix of the Department’s initial questionnaire for each primary aluminum producer that is not a ‘majority Government-owned enterprise’ within the given time frame of this questionnaire. The GOC will provide the required information to DOC when they are available.”⁹² Despite this Supplemental Questionnaire Response, we note that the GOC did not submit an extension request to provide this information at a later time. As stated in the initial questionnaire, the Department does not allow statements within a questionnaire response “regarding a respondent’s ongoing efforts to collect part of the requested information and promises to supply such missing information when available in the future,” to substitute for a written extension.⁹³

Notwithstanding this fact, the Department again requested this same information in a Fourth Supplemental Questionnaire to the GOC.⁹⁴ In its supplemental questionnaire response, the GOC stated that it “. . . has not been provided any information regarding the legal status of the producers that are relevant to the POR so far and for this 4th supplemental questionnaire response. For purposes of cooperation, the GOC provides the business information sheets for each of the producers that are not a ‘majority Government-owned enterprise.’”⁹⁵ These “business information sheets” however, contained only limited information regarding the identification of senior management, shareholders and amount of shares held by the shareholders. Thus, despite these multiple attempts to solicit the requisite input-producer information, the GOC did not provide key information (*e.g.*, articles of grouping, complete capital verification reports, company by-laws, annual reports, tax registration documents) for the Department to perform an analysis to trace ownership of the enterprises in question back to the

⁸⁹ See GOC Fourth Supplemental Questionnaire Response, at 13.

⁹⁰ *Id.*, at 8.

⁹¹ See, *e.g.*, *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 “Use of Facts Available and Adverse Inferences” (*PRC Steel Cylinders IDM*) (“{T}he GOC informed us that none of this producer’s owners, members of the board of directors or managers are government or CCP officials or representatives. Although incomplete, its response for this other producer evinces that the GOC is able to access and review the information requested by the Department, even though the GOC has repeatedly argued that it is impossible for it to do so.”).

⁹² See GOC Second Supplemental Questionnaire Response, at 34.

⁹³ See Letter accompanying the GOC Initial Questionnaire, at 3; *see also* 19 CFR 351.302(c).

⁹⁴ See GOC Fourth Supplemental Questionnaire, at 4.

⁹⁵ *Id.*, at 13.

ultimate individual owners. The information we requested regarding the ultimate owners of the producers of primary aluminum and the role of government/CCP officials and CCP committees in the management and operation of the input producers which sold inputs to the respondents is necessary to our determination of whether the producers are “authorities” within the meaning of section 771(5)(B) of the Act. Consequently, requested information is not on the record of this segment of the proceeding for the Department’s analysis of whether the producers of primary aluminum purchased by the Guang Ya Group claimed to be non-majority Government-owned enterprises are or are not “authorities” within the meaning of section 771(5)(B) of the Act.

As discussed above, the GOC did not provide complete responses to our numerous requests for information with respect to primary aluminum producers which the GOC claimed to be majority government-owned enterprises. Nor did the GOC provide complete responses to our numerous requests for information with respect to primary aluminum producers which the GOC 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 GOC withheld information that was requested of it with regard to purchases by GYG companies.⁹⁶ Accordingly, the Department must rely on “facts otherwise available” in reaching a determination in this respect. Further, we find that the GOC 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 from which GYG companies purchased during the POR because the GOC did not provide the requested information.⁹⁷ Consequently, we find that an adverse inference is warranted in the application of facts available.⁹⁸ As AFA, we determine that all of the producers that produced the primary aluminum purchased by GYG companies during the POR are “authorities” within the meaning of section 771(5)(B) of the Act.

GOC – Whether The Primary Aluminum Market Is Distorted

In the Department’s initial questionnaire, we asked the GOC to respond to specific questions regarding the PRC primary aluminum industry and market for the POR.⁹⁹ Specifically, we asked the GOC to:

- Provide the following information concerning the primary aluminum industry in the PRC for the POR, including an explanation of the sources used to compile the information:
 - a. The total number of producers.
 - b. The total volume and value of Chinese domestic consumption of primary aluminum and the total volume and value of Chinese domestic production of primary aluminum.
 - c. The percentage of domestic consumption accounted for by domestic production.

⁹⁶ See sections 776(a)(1) and (a)(2)(A) of the Act.

⁹⁷ See sections 776(a) and (b) of the Act.

⁹⁸ See section 776(b) of the Act.

⁹⁹ See Initial Questionnaire, Section II, “Provision of Primary Aluminum for LTAR – Questions Regarding the Primary Aluminum Industry” (Industry and Market Questions).

- d. The total volume and value of imports of primary aluminum.
 - e. The total volume and value of domestic production that is accounted for by companies in which the government maintains an ownership or management interest either directly or through other government entities.
 - f. A discussion of what laws, plans or policies address the pricing of primary aluminum, the levels of production of primary aluminum, the importation or exportation of primary aluminum, or the development of primary aluminum capacity. Please state which, if any, central and sub-central level industrial policies pertain to the primary aluminum.
- If there is a primary aluminum industry or aluminum industry association in the PRC, please provide the rules or guidelines under which it operates and a list of its members.
 - Are there any or have there been in the POR any export or price controls on primary aluminum or any price floors or ceilings established?
 - Please state the value added tax (VAT) and import tariff rates in effect for primary aluminum in 2012.
 - Was there an export tariff or quota on primary aluminum during the POR? If so, please report the tariff rate or quota amount in effect and provide a translated copy of the regulation/law in which the export tariff rate or quota is reported.
 - Indicate whether export licensing requirements were in place during the POR with regard to primary aluminum. If so, please provide a translated copy of the regulation/law in which the export licensing requirements are explained.
 - Are there trade publications that specify the prices of the good/service within your country and on the world market? Provide a list of these publications, along with sample pages from these publications listing the prices of the good/service within your country and in world markets during the POR.

The Department requests such information to inform its analysis of the degree of the GOC's presence in the market and whether such presence results in the distortion of prices. In its initial response, while the GOC provided the total volume of Chinese domestic production and imports of primary aluminum,¹⁰⁰ it did not provide data on the total volume and value of domestic consumption. Specifically, the GOC stated that it "does not have data regarding the percentage of domestic consumption accounted for by domestic production."¹⁰¹ The GOC also stated that it does not have data regarding the total volume and value of domestic production that is accounted for by companies in which the government maintains an ownership or management interest either directly or through other government entities.¹⁰²

¹⁰⁰ See GOC Initial Questionnaire Response, at Exhibits 15 and 16.

¹⁰¹ *Id.*, at 37.

¹⁰² *Id.*, at 36.

Additionally, regarding a discussion of what laws, plans or policies address the pricing of primary aluminum, the levels of production of primary aluminum, the importation or exportation of primary aluminum, and the development of primary aluminum capacity, the GOC stated that “{t}here is no government ‘program’ of Provision of Primary Aluminum for LTAR in China. As to goods/services markets, including the market of primary aluminum, the purpose of GOC’s policy is always to create and maintain an open, competitive, level playing field for all enterprises, domestic or foreign, SOE or non-SOE.”¹⁰³ Further, the GOC maintains that “{a}ll the transactions were made at market prices that were competitive and closely linked to the international price.”¹⁰⁴ The GOC claims that neither export performance or export potential of a company, nor the industry or sector in which the company operates, is taken into consideration for eligibility for assistance under what the GOC refers to as an “alleged program” related to the primary aluminum industry. The GOC also provided documentation in its questionnaire response which it claims demonstrated that there are no limits, economic or legal in nature, placed on the various industries in the PRC that may purchase primary aluminum.¹⁰⁵ Despite the information the GOC placed on the record in relation to economic and business activities in China, as well as certain laws in its Initial Questionnaire Response to which it claims the input suppliers are subject, the GOC did not respond to other requests for information, as noted above.

In the First GOC Supplemental Questionnaire, we again instructed the GOC to respond to the Questions Regarding the Primary Aluminum Industry including those to which the GOC has not already provided a response.¹⁰⁶ In its First GOC Supplemental Questionnaire Response, the GOC again did not submit a response to certain questions and instead stated that it “reiterates what it has explained in its response to the request on page 48 of the initial questionnaire to this review.”¹⁰⁷ The GOC states further that it “...encourages the Department to reconsider its approach to define questions and making ‘determinations’ regarding the producers of primary aluminum in China based on what have been provided in its response to the initial questionnaire in this matter.”¹⁰⁸

Because the GOC did not provide requested information regarding the primary aluminum industry in the PRC, *i.e.*, information regarding the total value and volume of domestic consumption of primary aluminum, and information regarding the total volume and value of domestic production that is accounted for by companies in which the government maintains an ownership or management interest either directly or through other government entities, we determine that the GOC withheld necessary information with regard to the PRC primary aluminum industry and market for the POR that was requested of it on more than two occasions¹⁰⁹ and, thus, the Department must rely on facts available with respect to this issue.¹¹⁰ We note that in *Certain Crystalline Silicon Photovoltaic Products*, the GOC was able to provide

¹⁰³ *Id.*, at 37.

¹⁰⁴ *Id.*, at 36.

¹⁰⁵ *Id.*, at 37 and Exhibits 32-33 and 18-31.

¹⁰⁶ See GOC First Supplemental Questionnaire Response.

¹⁰⁷ *Id.*, at 9.

¹⁰⁸ *Id.*

¹⁰⁹ See Initial Questionnaire, at Section II, “Input Producer Appendix;” see also GOC First Supplemental Questionnaire, at 4, GOC Second Supplemental Questionnaire, at 5, and GOC Fourth Supplemental Questionnaire, at 4.

¹¹⁰ See sections 776(a)(1) and (a)(2)(A) of the Act.

information regarding the total value and volume of domestic consumption of “aluminum sections.”¹¹¹ Additionally, with respect to the GOC’s claim that it “does not have data regarding the total volume and value of domestic production that is accounted for by companies in which the Government maintains an ownership or management interest either directly or through other Government entities {,}”¹¹² we note that with respect to aluminum extrusions discussed below, the GOC was in fact able to provide such information.¹¹³ Further, because the GOC did not respond to the Department’s multiple requests by the Department to provide certain information regarding primary aluminum consumption data, as well as information on laws, plans, policies specific to pricing, production, cross-border trades and development capacity of primary aluminum, we find that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information necessary for our analysis of the primary aluminum, despite the fact that it did provide similar information in another proceeding, we find that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information necessary for our analysis of the primary aluminum industry and market during the POR. Consequently, we find that an adverse inference is warranted in the application of facts available.¹¹⁴

Accordingly, as adverse facts available, we have determined that the GOC’s involvement in the market in the PRC for this input results in significant distortion of the prices such that they cannot be used as a tier one benchmark and, hence, the use of an external benchmark, as described under 19 CFR 351.511(a)(2)(ii), is warranted to calculate the benefit for the Provision of Primary Aluminum for LTAR.

For further information on this program, see “Programs Found To Be Countervailable” below.

¹¹¹ See *Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 79 FR 33174 (June 10, 2014), and accompanying DM, at “Input Benchmarks,” pages 14-15 (*Certain Crystalline Silicon Photovoltaic Products Investigation*).

¹¹² See GOC Initial Questionnaire Response at 37.

¹¹³ See, e.g., GOC NSA Response at 2 (“The GOC provides the total number of producers of the aluminum extrusion industry as well as the total number of producers categorized by government ownership at Exhibit NSR-2.”).

¹¹⁴ See section 776(b) of the Act.

4. Application of Adverse Facts Available for Aluminum Extrusions for LTAR

GOC – Whether Aluminum Extrusions Producers Are “Authorities”

As discussed below under “Programs Found To Be Countervailable,” the Department examined whether the GOC provided aluminum extrusions for LTAR to the Jangho Companies. We asked the GOC to provide information regarding the specific companies that produced aluminum extrusions which the Jangho Companies purchased during the POR.¹¹⁵ Specifically, we sought information from the GOC which would allow us to analyze whether the producers are “authorities” within the meaning of section 771(5)(B) of the Act. As noted above, in prior PRC CVD proceedings, the Department 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 for LTAR.¹¹⁶

In addition to the NSA questionnaire,¹¹⁷ the Department issued supplemental questionnaires to the GOC and the Jangho Companies regarding purchases of aluminum extrusions for LTAR.¹¹⁸ In the Department’s NSA questionnaire, we asked the GOC to respond to the specific questions regarding the producers of aluminum extrusions and to respond to the Input Producer Appendix for each producer which produced the aluminum extrusions purchased by the Jangho Companies.¹¹⁹ We instructed the GOC to coordinate with the respondents to obtain a complete list of the aluminum extrusions producers, including the producers of inputs purchased through a supplier.¹²⁰ We notified the GOC that it is “the GOC’s responsibility to ensure that the respondent companies provide the identities of their producers in sufficient time to enable the GOC to include the information requested in this questionnaire in the initial response.”¹²¹ In response to our supplemental questionnaires, the Jangho Companies (*i.e.*, Guangzhou Jangho, Jangho HK, Jangho Group Company, Beijing Jangho, and Shanghai Jangho) partially identified the companies that produced and supplied the aluminum extrusions purchased by the Jangho Companies during the POR,¹²² which the GOC confirmed in its questionnaire responses.¹²³

¹¹⁵ See Letter from the Department to the GOC Regarding: “Administrative Review of the Countervailing Duty Order on Aluminum Extrusions from the People’s Republic of China: NSA questionnaire for the GOC,” April 3, 2015 (GOC NSA Questionnaire). See also GOC Initial Questionnaire, at Section II, “Input Producer Appendix.”

¹¹⁶ See, e.g., *Kitchen Shelving and Racks from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 37012 (July 27, 2009), and accompanying IDM at “Provision of Wire Rod for Less than Adequate Remuneration.”

¹¹⁷ See Letter from the Department to the Regarding: “Administrative Review of the Countervailing Duty Order on Aluminum Extrusions from the People’s Republic of China: NSA Questionnaire for the Jangho Group,” April 3, 2015 (GOC NSA Questionnaire).

¹¹⁸ See Letter to the GOC regarding “Administrative Review of the Countervailing Duty (CVD) Order on Aluminum Extrusions from the People’s Republic of China: Third Supplemental Questionnaire to the Government of the People’s Republic of China,” April 28, 2015 (GOC Third Supplemental Questionnaire).

¹¹⁹ See GOC NSA Questionnaire. See also GOC Initial Questionnaire, at Section II, “Input Producer Appendix.”

¹²⁰ *Id.*

¹²¹ See GOC Initial Questionnaire at II-6.

¹²² See Letter from the Jangho Companies to the Department Regarding: “NSA Supplemental Questionnaire Response: Jangho Group,” April 22, 2015 (the Jangho Companies’ NSA Response). See also the section below entitled “One Purchase of Aluminum Extrusions.”

¹²³ See Letter to the Department from the GOC to the Department Regarding: “Aluminum Extrusions from China; 3rd CVD Administrative Review GOC New Subsidy Allegation Response,” April 22, 2015 (GOC NSA Response)

While the GOC provided the identities of the producers of aluminum extrusions inputs which were also identified by the Jangho Companies, the GOC did not provide all of the information requested in the Department's GOC NSA Questionnaire, as discussed below.

The GOC initially explained that it could not provide responses to the Input Producer Appendix with respect to any of the companies that produced and supplied the aluminum extrusions purchased by the Jangho Companies: "The GOC is unable to provide any of the information in response to the Input Producer Appendix for any aluminum extrusion producers within the given timeframe of this questionnaire although it issued a request for information to local bureaus of the locations where one or more of these producers are registered as soon as it obtained the names and addresses of these producers and kept contacting those bureaus to the best of its capacity during the past week."¹²⁴ The GOC did, however, provide certain other information, which was also reported in the Jangho Companies' NSA responses, such as a list of the names of the producers.¹²⁵

In a supplemental questionnaire, we gave the GOC a second opportunity to provide these producer appendices, and to answer certain other outstanding questions.¹²⁶ The GOC provided partial responses with regard to two aluminum extrusions producers reported by the Jangho Companies, as discussed in further detail below.¹²⁷ However, the GOC did not provide responses to the Input Producer Appendix with regard to a large number of the Jangho Companies' other producers and/or suppliers of aluminum extrusions. The GOC explained:

The GOC has sent out a request for the information to local bureau/s of the location/s where one or more of these producers are registered as soon as it obtained the names and addresses of these producers, even renewed the name list in the request for information, where appropriate, when the respondent made revision or update to its reported producer list in some occasions, and kept contacting with those bureaus to the best of its capacity thereafter to alert urgency when needed. However, the information collection processes are normally time-consuming for establishing authenticity and verifiability, especially where the producer/s is registered at an administration of industry and commerce in charge of business registration at lower level government, which is the case for some of the producers.¹²⁸

Thus, with respect to the vast majority of the Jangho Companies' producers and suppliers, the GOC did not provide a response to the appropriate appendices, thereby failing to provide requested information for the Department to determine the individual owners of the producers

at 1 and Letter to the Department from the GOC regarding: "Aluminum Extrusions from China; 3rd CVD Administrative Review GOC 3rd Supplemental Questionnaire Response," May 11, 2015 (GOC Third Supplemental Questionnaire Response).

¹²⁴ See GOC NSA Response at 1.

¹²⁵ *Id.*, at 1 and Exhibit NSR-1.

¹²⁶ See GOC Third Supplemental Questionnaire Response.

¹²⁷ *Id.*, at 34 to 44 and 45 to 55.

¹²⁸ *Id.*, at 34.

and to determine the extent of GOC control, if any, over the producers. Although the GOC indicated that it was awaiting further information, we note that the GOC did not submit an extension request to provide this information at a later time. As stated in the initial questionnaire, the Department does not allow statements within a questionnaire response “regarding a respondent’s ongoing efforts to collect part of the requested information and promises to supply such missing information when available in the future,” to substitute for a written request for an extension.¹²⁹

Further, although we twice asked the GOC for responses to the producer appendix for all of the Jangho Companies’ producers of aluminum extrusions, as explained above, the GOC only provided responses for two producers.¹³⁰ The GOC provided no information at all regarding the identification of owners, directors, or senior managers who were also GOC or CCP officials for the vast majority of the Jangho Companies’ producers and suppliers. Consequently, requested information is not on the record of this segment of the proceeding for the Department’s analysis of whether the vast majority of producers of aluminum extrusions purchased by the Jangho Companies are or are not “authorities” within the meaning of section 771(5)(B) of the Act.

Regarding the two producers for which the GOC did provide a response to the Input Producer Appendix, whose names are proprietary, the GOC reported that they were both non-majority government-owned enterprises. However, the GOC’s responses were in several ways incomplete and insufficient, for the reasons explained below.

For both of the producer-suppliers mentioned, the GOC provided articles of association (which include articles of incorporation, articles of grouping, and company by-laws), business registration documents of the immediate shareholders, capital verifications reports, and business registration documents.¹³¹ However, the GOC did not provide other relevant documentation requested by the Department, including business license(s), business group registration, tax registration certificate, and annual reports, which were necessary to identify the ultimate owners of these companies.¹³² With regard to business license(s), business group registration, and tax registration certificate for each company, the GOC stated that certain information contained in these documents is also covered by the business registration documents, which it has provided.¹³³ With regard to the annual reports, the GOC stated that annual reports were not required by the *Company Law*.¹³⁴ However, despite the GOC’s explanations, we asked for the missing documents, not other documents which the GOC maintains contain the same of similar information. It is the prerogative of the Department, not the GOC, to determine what information is needed for our proceeding.¹³⁵ Thus, the fact that partial information is contained in the business registration documents and that the *Company Law* does not require annual reports does not address our request for the missing documentation for these two companies.

¹²⁹ See Letter accompanying the GOC Initial Questionnaire, at 3; see also 19 CFR 351.302(c).

¹³⁰ See GOC NSA Response at 7 to 13 and GOC Third Supplemental Questionnaire Response at 33 to 56 and 64 to 67.

¹³¹ See GOC Third Supplemental Questionnaire Response at 35, 46 and Exhibits S3-9 to S3-13.

¹³² *Id.*, at 35-36, 45 to 46 and Exhibits S3-9 to S3-11 and Exhibits S3-15 to S3-18.

¹³³ *Id.*, at 35 to 36 and 45 to 46.

¹³⁴ *Id.*, at 36 and 46.

¹³⁵ See, e.g., *Essar Steel Ltd. v. United States*, 721 F. Supp. 2d 1285, 1298-99 (CIT 2010); *NSK Ltd. v. United States*, 919 F. Supp. 442, 447 (CIT 1996); *Ansaldo Componenti, S.p.A. v. United States*, 628 F. Supp. 198, 205 (CIT 1986).

Additionally, while the Department made multiple attempts in the NSA Questionnaire issued to the GOC and in the Third GOC Supplemental Questionnaire to obtain ownership and management information for these identified non-majority government-owned entities, the GOC did not provide the requested information. For instance, in the GOC's Initial Questionnaire Response, the GOC provided the business registration documents, which identifies the board of directors, and a chart detailing the name and respective ownership level (in percent) of each owner.¹³⁶ However, the GOC only identified the immediate corporate owners of the producer-suppliers, and did not identify the ultimate owners. Furthermore, with respect to the second of the two producer-suppliers mentioned, there are internal inconsistencies in the GOC's responses with regard to the names of the immediate owners.¹³⁷

Moreover, with respect to the first of the two producer-suppliers mentioned, in response to questions about key decision-makers, senior management and directors holding official positions in the CCP, the GOC explained that the questions are "not applicable {} since all its owners and members of the Board of Directors come from outside the customs territory of the People's Republic of China."¹³⁸ The GOC provided a similar response with respect to the second of the two producer-suppliers: "{The producer-supplier} is a Mainland-Hongkong, Macao and Taiwan joint venture enterprise with no government entity shareholder of any kind. Therefore, this question is not applicable."¹³⁹ However, these are not adequate responses to our questions. The GOC has failed to identify the ultimate owners (or intermediate owners, if any) at issue as requested; thus its claim that such owners are outside of the customs territory of the PRC does not address the question at issue.

The GOC further explains with respect to the first of the two producer-suppliers: "{f} or purpose of cooperation, the GOC clarifies that there is no record on the business registration that shows that there is any CCP committee, branch, or 'primary organization' as has been formed within the enterprise, and that there are no decisions taken by the entity that are subject to review or approval by the Government or the nine entities listed above as regulator during the entire POR, and as stated above, the GOC has no ownership in {the producer-supplier}."¹⁴⁰ The GOC made a similar statement with respect to the second of the two producer-suppliers.¹⁴¹ Again, this is not an adequate response to our question. The GOC was required to provide information about whether such CCP committee, branch, or "primary organization," exists, not merely to explain whether any such entities are identified on the business registration documents.¹⁴²

In short, despite multiple attempts to solicit the requisite input-producer information for these two identified producer-suppliers, the GOC did not provide key information (*e.g.*, business

¹³⁶ See GOC Third Supplemental Questionnaire Response at 36-37, 46-47 and Exhibits S3-12 and S3-13 and Exhibits S3-17 and S3-18.

¹³⁷ *Id.*, at 46 to 47 and exhibit S3-18. See also the Jangho Companies' NSA Response at S2-2 and GOC NSA Response at NSR-1.

¹³⁸ See GOC Third Supplemental Questionnaire Response at 40.

¹³⁹ *Id.*, at 46 to 47 and exhibit S3-18. See also the Jangho Companies' NSA Response at S2-2 and GOC NSA Response at NSR-1.

¹⁴⁰ See GOC Third Supplemental Questionnaire Response at 40.

¹⁴¹ *Id.*, at 50-51.

¹⁴² See GOC Initial Questionnaire, at Section II, "Input Producer Appendix."

license(s), business group registration, tax registration certificate, and annual reports) for the Department to perform an analysis to trace ownership of the enterprises in question back to the ultimate individual owners. The information we requested regarding the ultimate owners of the producers of aluminum extrusions and the role of government/CCP officials and CCP committees in the management and operation of the input producers, which sold inputs to the respondents, is necessary to our determination of whether the producers are “authorities” within the meaning of section 771(5)(B) of the Act. Consequently, requested information is not on the record of this segment of the proceeding for the Department’s analysis of whether the producers of aluminum extrusions purchased by the Jangho Companies claimed to be non-majority Government-owned enterprises are or are not “authorities” within the meaning of section 771(5)(B) of the Act.

As discussed above, with respect to the majority of the producers-suppliers identified by the Jangho Companies, the GOC failed to provide the relevant Input Producer Appendix, and further failed to request an extension for additional time to respond. With respect to the two producers-suppliers which the GOC identified as non-majority government-owned, the GOC did not provide complete responses to our numerous requests for information, including requests for information pertaining to ownership or control 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 GOC withheld information that was requested of it with regard to purchases by the Jangho Companies.¹⁴³ Accordingly, the Department must rely on “facts otherwise available” in reaching a determination in this respect. Further, we find that the GOC failed to cooperate by not acting to the best of its ability to comply with requests for information regarding the producers of aluminum extrusions from which the Jangho Companies purchased during the POR because the GOC did not provide the requested information.¹⁴⁴ Consequently, we find that an adverse inference is warranted in the application of facts available.¹⁴⁵ As AFA, we determine that all of the producers that produced the aluminum extrusions purchased by the Jangho Companies during the POR are “authorities” within the meaning of section 771(5)(B) of the Act.

GOC – Whether the Provision of Aluminum Extrusions is Specific

The GOC did not provide complete responses to questions regarding whether the provision of aluminum extrusions for LTAR was specific with the meaning of section 771(5A) of the Act. The Department asked the GOC to provide a list of industries in the PRC that purchased aluminum extrusions directly and to provide the amounts (volume and value) purchased by each of the industries. The Department requests such information for purposes of its *de facto* specificity analysis. In addressing specificity in its NSA Response, the GOC stated that “{t}here are a vast number of uses for aluminum extrusions. The types of consumers that may purchase aluminum extrusions is highly varied within the economy.”¹⁴⁶ The GOC further stated that “{a}s the Department is aware, aluminum extrusions are used in a variety of downstream sectors, as

¹⁴³ See sections 776(a)(1) and (a)(2)(A) of the Act.

¹⁴⁴ See sections 776(a) and (b) of the Act.

¹⁴⁵ See section 776(b) of the Act.

¹⁴⁶ See GOC NSA Response at 4.

evidenced by the comprehensive coverage and large number of HS codes and the wide variety of scope rulings with respect to the subject merchandise of this proceeding.”¹⁴⁷ In its Third Supplemental Questionnaire, the Department sought this information again, noting that the GOC claimed in the two Solar proceedings that there were six industries that consumed aluminum extrusions in 2012: construction industry, transportation industry, mechanical and electrical equipment industry, consumer durable goods industry, electricity, and other industries.¹⁴⁸ The Department requested that the GOC provide an updated version of that information.¹⁴⁹ While the GOC endorsed that information, it claimed it was unable to provide updated information for the POR “in this timeframe of this NSA investigation,” without explaining why it was not able to do so in the allotted timeframe or what efforts it made to collect the information.¹⁵⁰ Ultimately, the GOC provided none of the information requested concerning amounts of aluminum extrusions purchased by individual industries.

We determine that necessary information is not available on the record and that the GOC has withheld information that was requested of it, and, thus, that the Department must rely on “facts available” in making our determination in accordance with sections 776(a)(1) and 776(a)(2)(A) of the Act. Moreover, we determine that by failing to provide the requested information and not explaining why it was unable to provide the information or what efforts it made to collect the information, the GOC 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 GOC’s provision of aluminum extrusions is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act. We note that Petitioner’s NSA provided information demonstrating the company Petitioner alleges to be the largest aluminum extrusions producer in Asia, Zhongwang Holdings Ltd, has three categories of customers: transportation, machinery and equipment, and electric power engineering industries.¹⁵¹ We also note that that the Department has previously found the provision of aluminum extrusions in the PRC to be specific because the users of aluminum extrusions as an input are limited in number to certain industries.¹⁵²

¹⁴⁷ *Id.*, at 4.

¹⁴⁸ See *Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China: Final Affirmative Countervailing Duty Determination; 2012*, 79 FR 76962, and the accompanying Decision Memorandum (Solar I) at Comment 6; see also, *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People’s Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2012*; and *Partial Rescission of Countervailing Duty Administrative Review*, 80 FR 1019 (January 8, 2015) (*Crystalline Silicon Photovoltaic Cells Prelim*), and the accompanying Decision Memorandum and accompanying Issues and Decision Memorandum (Solar II) under section entitled, “Provision of Aluminum Extrusions for LTAR,” (unchanged in *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) (*Crystalline Silicon Photovoltaic Cells Final*) (collectively, *Crystalline Silicon Photovoltaic Cells*).

¹⁴⁹ See Letter to the GOC regarding, “Administrative Review of the Countervailing Duty (CVD) Order on Aluminum Extrusions from the People’s Republic of China: Third Supplemental Questionnaire to the Government of the People’s Republic of China, dated April 28, 2015, at 5.

¹⁵⁰ See GOC Third Supplemental Questionnaire Response at 66 and 67.

¹⁵¹ See NSA at 18 and Exhibit 51.

¹⁵² See *Crystalline Silicon Photovoltaic Cells Prelim*, and the accompanying Decision Memorandum at 28-29 (unchanged in *Crystalline Silicon Photovoltaic Cells Final* and accompanying Issues and Decision Memorandum at 22-23 and Comment 3).

One Purchase of Aluminum Extrusions

As discussed in further detail in the proprietary Jangho Companies Post-Preliminary Analysis Memorandum, the Jangho Companies did not provide complete information with respect to one of its purchases of aluminum extrusions, including the quantity of the purchase and the identity of the producer at issue, although the corresponding supplier was identified.¹⁵³ Because the Jangho Companies did not provide the requested information, necessary information relating to the quantity of the purchase and whether the producer at issue constitutes an authority for purposes of section 771(5)(B) of the Act is not on the record. Therefore, pursuant to section 776(a)(1) of the Act, as facts available, we have calculated subsidy benefits for this purchase based on the weighted-average of the *ad valorem* subsidy rates (benefit as a percentage of total purchase value) found in Guangzhou Jangho's purchase data.

Additionally, in its response, the GOC provided information on the amount of aluminum extrusions produced by SOEs and private producers in the PRC.¹⁵⁴ Using these data, we derived the ratio of aluminum extrusions produced by SOEs during the POR (SOE ratio). Specifically, as facts available, we determined that the percentage of aluminum extrusions produced by this unidentified producer that is produced by government authorities is equal to the ratio of aluminum extrusions produced by SOEs during the POR. We then reduced the *ad valorem* subsidy rate by this derived SOE ratio. Our use of facts available in this regard is consistent with the Department's practice.^{155,156}

5. Application of Adverse Facts Available for Glass for LTAR

GOC – Whether Glass Producers Are “Authorities”

As discussed below under “Programs Found To Be Countervailable,” the Department is examining whether the GOC provided glass for LTAR to the Jangho Companies. We asked the GOC to provide information regarding the specific companies that produced glass which the Jangho Companies purchased during the POR.¹⁵⁷ Specifically, we sought information from the GOC which would allow us to analyze whether the producers are “authorities” within the meaning of section 771(5)(B) of the Act.¹⁵⁸ As noted above, in prior PRC CVD proceedings, the Department 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 for LTAR.

¹⁵³ See The Jangho Companies' NSA Response at Exhibit S2-2.

¹⁵⁴ See GOC NSA at 2-4 and Exhibit NSA-3.

¹⁵⁵ See *Aluminum Extrusions Investigation* IDM at 33.

¹⁵⁶ See Jangho Companies' Post-Preliminary Analysis Memorandum for further discussion.

¹⁵⁷ See GOC NSA Questionnaire. See also GOC Initial Questionnaire, at Section II, “Input Producer Appendix.”

¹⁵⁸ For entities in the PRC, the Department previously described an analytical framework for addressing the question of whether such entities are “authorities” within the meaning of the Act. See Public Bodies Memorandum and CCP Memorandum.

In addition to the NSA questionnaire, the Department issued supplemental questionnaires to the GOC and the Jangho Companies regarding purchases of glass for LTAR.¹⁵⁹ In the Department's NSA questionnaire, we asked the GOC to respond to the specific questions regarding the producers of glass and to respond to the Input Producer Appendix for each producer which produced the glass purchased by the respondent companies.¹⁶⁰ We instructed the GOC to coordinate with the respondents to obtain a complete list of the glass producers, including the producers of inputs purchased through a supplier.¹⁶¹ We notified the GOC that it is "the GOC's responsibility to ensure that the respondent companies provide the identities of their producers in sufficient time to enable the GOC to include the information requested in this questionnaire in the initial response."¹⁶² In response to our supplemental questionnaires, the Jangho Companies (*i.e.*, Guangzhou Jangho, Jangho HK, Jangho Group Company, Beijing Jangho, and Shanghai Jangho) identified the companies that produced and supplied the glass purchases during the POR,¹⁶³ which the GOC confirmed in its questionnaire responses.¹⁶⁴ While the GOC provided the identities of the producers of glass inputs, the GOC did not provide all of the information requested in the Department's GOC NSA Questionnaire, as discussed below.

The GOC initially explained that it could not provide responses to the Input Producer Appendix with respect to any of the companies that produced and supplied the glass purchased by the Jangho Companies: "The GOC is unable to provide any of the information in response to the Input Producer Appendix either for tempered plate glass and for laminated glass producers within the given timeframe of this questionnaire although it issued a request for information to local bureaus of the locations where one or more of these producers are registered as soon as it obtained the names and addresses of these producers and kept contacting those bureaus to the best of its capacity during the past week."¹⁶⁵ The GOC did, however, provide certain other information, which was also reported in the Jangho Companies' NSA responses, such as a list of the names of the producers.¹⁶⁶

In a supplemental questionnaire, we gave the GOC a second opportunity to provide these producer appendices, and to answer certain other outstanding questions.¹⁶⁷ The GOC provided incomplete responses with regard to two glass producers reported by the Jangho Companies, as discussed in further detail below.¹⁶⁸ However, the GOC did not provide responses to the Input Producer Appendix with regard to a large number of the Jangho Companies' other producers and/or suppliers of glass. The GOC explained:

The GOC has sent out a request for the information to local bureau/s of the location/s where one or more of these producers are

¹⁵⁹ See GOC Third Supplemental Questionnaire.

¹⁶⁰ See GOC Initial Questionnaire, at Section II, "Input Producer Appendix."

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ See The Jangho Companies' NSA Response.

¹⁶⁴ See GOC NSA Response at Exhibit NSR-1 and GOC Third Supplemental Questionnaire Response. See also the section below entitled "Certain Purchases of Glass."

¹⁶⁵ See GOC NSA Response at 7.

¹⁶⁶ *Id.*, at Exhibit NSR-1.

¹⁶⁷ See GOC Third Supplemental Questionnaire.

¹⁶⁸ *Id.*, at 25 to 34 and 56 to 64.

registered as soon as it obtained the names and addresses of these producers, even renewed the name list in the request for information, where appropriate, when the respondent made revision or update to its reported producer list in some occasions, and kept contacting with those bureaus to the best of its capacity thereafter to alert urgency when needed. However, the information collection processes are normally time-consuming for establishing authenticity and verifiability in due courses via provincial, municipal and county level authorities (and normally there are more than one stops in ordering information in each of all the relevant agencies), especially where the producer/s is registered at an administration of industry and commerce in charge of business registration at lower level government, which is the case for some of the producers.¹⁶⁹

Thus, with respect to the vast majority of the Jangho Companies' producers and suppliers, the GOC did not provide a response to the appropriate appendices, thereby failing to provide requested information for the Department to determine the individual owners of the producers and to determine the extent of GOC control, if any, over the producers. Although the GOC indicated that it was awaiting further information, we note that the GOC did not submit an extension request to provide this information at a later time. As stated in the initial questionnaire, the Department does not allow statements within a questionnaire response "regarding a respondent's ongoing efforts to collect part of the requested information and promises to supply such missing information when available in the future," to substitute for a written request for an extension.¹⁷⁰

Further, although we twice asked the GOC for responses to the producer appendix for all of the Jangho Companies' producers of glass, as explained above, the GOC only provided responses for two producers (which we address below).¹⁷¹ The GOC provided no information at all regarding the identification of owners, directors, or senior managers who were also GOC or CCP officials for the vast majority of the Jangho Companies' producers and suppliers. Consequently, requested information is not on the record of this segment of the proceeding for the Department's analysis of whether the vast majority of producers of glass purchased by the Jangho Companies are or are not "authorities" within the meaning of section 771(5)(B) of the Act.

For both of the producers for which the GOC did provide a response to the Input Producer Appendix, one of whose name is proprietary, the GOC reported that they were both non-majority GOC-owned enterprises. The Jangho Companies did publicly identify one of the producers, Shenzhen Shenbo Special Glass Co., Ltd. (Shenzhen Shenbo) and the affiliated supplier, Hong Kong Shenbo Co., Ltd., a Hong Kong Company, but did not publicly reveal any other information with respect to these companies.¹⁷² Additionally, with regard to Supplier/Producer

¹⁶⁹ *Id.*, at 55 to 56.

¹⁷⁰ *See* Letter accompanying the GOC Initial Questionnaire, at 3; *see also* 19 CFR 351.302(c).

¹⁷¹ *See* GOC NSA Response at 7 to 13 and GOC Third Supplemental Questionnaire Response at 23 to 33 56 to 64 and 67 to 68.

¹⁷² *See, e.g.*, Letter from the Jangho Companies to the Department of Commerce, regarding "First Supplemental

Hong Kong Shenbo Co., Ltd., the GOC explained: “The GOC is not in a position to provide a response to the input producer appendix with regard to Hong Kong Shenbo Co. Ltd. which is a Special Administrative Region of China and outside the customary territory of PRC.”¹⁷³ However, the GOC confirmed that the reported producer and affiliate of Hong Kong Shenbo Co. Ltd. in PRC, is based and registered in Shenzhen City as a limited liability company under the Company Law of China, and did provide an incomplete Input Producer appendix for Hong Kong Shenbo’s affiliated PRC producer, as discussed in further detail below.¹⁷⁴

The GOC’s responses with respect to both producers were in several ways incomplete and insufficient, for the reasons explained below.

For both producers, the GOC provided articles of association (which include articles of incorporation, articles of groupings, and company by-laws), business registration documents of the immediate shareholders, capital verification reports, and business registration documents.¹⁷⁵

For both producers, the GOC did not provide other relevant documentation requested by the Department, including business license(s), business group registration, tax registration certificate, and annual reports.¹⁷⁶ With regard to business license(s), business group registration, tax registration certificate, the GOC stated that certain information contained in these documents is also covered by the business registration documents, which it has provided.¹⁷⁷ With regard to the annual reports, the GOC stated that annual reports were not required by the *Company Law*.¹⁷⁸ However, despite the GOC’s explanations, we asked for the missing documents, not other documents which the GOC maintains contain the same or similar information. It is the prerogative of the Department, not the GOC, to determine what information is needed for our proceeding.¹⁷⁹ Thus, the fact that partial information is contained in the business registration documents and that the *Company Law* does not require annual reports does not address our request for the missing documentation for these two companies.

Additionally, while the Department made multiple attempts in the NSA Questionnaire issued to the GOC and in the Third GOC Supplemental Questionnaire, to obtain information regarding ownership and management, the GOC did not provide the requested information.¹⁸⁰ For instance, in response to questions about key decision-makers, senior management and directors holding official positions in the CCP, the GOC explained that “{t}here is no record on the business registration that shows that there is any CCP committee, branch, or ‘primary organization’ as has been formed within the enterprise. Also to the best of GOC’s knowledge,

Questionnaire Response: Jangho Group,” dated February 27, 2015 (The Jangho Companies’ First Supplemental Questionnaire Response) at 5 to 8 and S - Exhibit – 1, and Letter from the Jangho Companies to the Department of Commerce, regarding “Second Supplemental Questionnaire Response: Jangho Group,” dated May 6, 2015 (The Jangho Companies’ Second Supplemental Questionnaire Response) at 5.

¹⁷³ *Id.*, at 24.

¹⁷⁴ *Id.*

¹⁷⁵ See GOC Third Supplemental Questionnaire Response at 25, 57 and Exhibits S3-19 to S3-24.

¹⁷⁶ *Id.*, at 25 to 26, 55 to 56, and Exhibits S3-9 to S3-11 and S3-19 to S3-24.

¹⁷⁷ *Id.*, at 25 to 26 and 55 to 56.

¹⁷⁸ *Id.*, at 26 and 57.

¹⁷⁹ See, e.g., *Essar Steel Ltd. v. United States*, 721 F. Supp. 2d 1285, 1298-99 (CIT 2010); *NSK Ltd. v. United States*, 919 F. Supp. 442, 447 (CIT 1996); *Ansaldo Componenti, S.p.A. v. United States*, 628 F. Supp. 198, 205 (CIT 1986).

¹⁸⁰ See GOC Third Supplemental Questionnaire Response at 25 to 26, 55 to 56.

there are no decisions taken by the entity that are subject to review or approval by the Government or the 9 entities listed above as regulator during the entire POR, and as stated above, the GOC has no ownership in {the producer-supplier}.”¹⁸¹ However, the GOC was required to provide information about whether such CCP committee, branch, or “primary organization,” exists, not merely to explain whether any such entities are identified on the business registration documents.¹⁸²

In short, despite multiple attempts to solicit the requisite input-producer information for these two identified producer-suppliers, the GOC did not provide key information (*e.g.*, business license(s), business group registration, tax registration certificate, and annual reports) for the Department to perform an analysis to trace ownership of the enterprises in question back to the ultimate individual owners. The information we requested regarding the ultimate owners of the producers of the primary input(s) and the role of government/CCP officials and CCP committees in the management and operations of the input producers, which sold inputs to the respondents, is necessary to our determination of whether the producers are “authorities” within the meaning of section 771(5)(B) of the Act. Consequently, requested information is not on the record of this segment of the proceeding for the Department’s analysis of whether the producers of glass purchased by the Jangho Companies claimed to be non-majority Government-owned enterprises are or are not “authorities” within the meaning of section 771(5)(B) of the Act.

As discussed above, with respect to the majority of the producers-suppliers identified by the Jangho Companies, the GOC failed to provide the relevant Input Producer Appendix, and further failed to request an extension for additional time to respond. With respect to the two producers-suppliers which the GOC identified as non-majority government-owned, the GOC did not provide complete responses to our numerous requests for information, including requests for information pertaining to ownership or control 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 GOC withheld information that was requested of it with regard to purchases by the Jangho Companies.¹⁸³ Accordingly, the Department must rely on “facts otherwise available” in reaching a determination in this respect. Further, we find that the GOC failed to cooperate by not acting to the best of its ability to comply with requests for information regarding the producers of glass from which the Jangho Companies purchased during the POR because the GOC did not provide the requested information.¹⁸⁴ Consequently, we find that an adverse inference is warranted in the application of facts available.¹⁸⁵ As AFA, we determine that all of the producers that produced the glass purchased by the Jangho Companies during the POR are “authorities” within the meaning of section 771(5)(B) of the Act.

Certain Purchases of Glass

¹⁸¹ *Id.*, at 29 and 60.

¹⁸² See GOC Initial Questionnaire, at Section II, “Input Producer Appendix.”

¹⁸³ See sections 776(a)(1) and (a)(2)(A) of the Act.

¹⁸⁴ See sections 776(a) and (b) of the Act.

¹⁸⁵ See section 776(b) of the Act.

As discussed in further detail in the proprietary Jangho Companies Post-Preliminary Analysis Memorandum, the Jangho Companies failed to adequately or consistently identify the source and distribution processes with respect to certain of its purchases of glass.¹⁸⁶ Thus, the Jangho Companies failed to provide an accurate account of its producers and suppliers.

The Jangho Companies' failure to provide this information in an adequate and consistent manner prevented the Department from obtaining complete information with respect to these purchases of glass which was necessary for the Department's analysis of whether these glass purchases were sourced from producers which were "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 Jangho Companies withheld information that was requested with regard to these purchases by the Jangho Companies.¹⁸⁷ Accordingly, the Department must rely on "facts otherwise available" in reaching a determination in this respect. Further, we find that the Jangho Companies failed to cooperate by not acting to the best of their ability to comply with these requests for information.¹⁸⁸ Consequently, we find that an adverse inference is warranted in the application of facts available.¹⁸⁹ As AFA, we determine that the producers that produced these purchases of glass are "authorities" within the meaning of section 771(5)(B) of the Act.

6. Application of Facts Available for GYG Inland Freight Expenses

Pursuant to 19 CFR 351.511(a)(2)(iv), the Department adjusts the benchmark price to include delivery charges and import duties, as appropriate. Regarding delivery charges, we requested that the respondent companies report their per-metric ton inland freight expenses for transporting the primary input from the nearest seaport to the firm's complex for each month of the POR. Should the respondents not incur such freight expenses, we requested they report this expense associated with shipping the most closely-related input or finished product to or from the nearest seaport.¹⁹⁰

In its Initial Questionnaire Response, GYG reported the freight expenses for Guang Ya associated with only two months of the POR.¹⁹¹ In GYG's second supplemental questionnaire response GYG stated that it reported freight expenses for only those months in which such expenses related to imports of aluminum ingot were incurred.¹⁹² Despite reminding GYG in a supplemental questionnaire issued in April, 2015,¹⁹³ of the requirement to report freight expenses for a closely-related input product or a finished product to or from the nearest seaport, GYG did not report any additional expenses for Guang Ya. Further, regarding Guangcheng's freight

¹⁸⁶ See, e.g., The Jangho Companies' Affiliations Response at 4, The Jangho Companies' Questionnaire Response at 5, The Jangho Companies' First Supplemental Questionnaire Response at 5 to 8 and S - Exhibit - 1, The Jangho Companies' Second Supplemental Questionnaire Response at 5 to 8, The Jangho Companies' NSA Response at Exhibit S2-2, Exhibit S2-3, Exhibit S2-4, and Exhibit S2-5, and The Jangho Companies' Third Supplemental Questionnaire Response at 5 and Exhibit S3-8.

¹⁸⁷ See sections 776(a)(1) and (a)(2)(A) of the Act.

¹⁸⁸ See sections 776(a) and (b) of the Act.

¹⁸⁹ See section 776(b) of the Act.

¹⁹⁰ See the Department's Initial Questionnaire, at III-12, Section III.E.1.d.

¹⁹¹ See Guang Ya's Initial Questionnaire Response, at 37.

¹⁹² See Second GYG Supplemental Questionnaire Response, at 25.

¹⁹³ *Id.*, 9.

expenses, GYG stated only that “Guangcheng did not import or export any goods from or to other countries...so Guang Ya’s freight expense applies to Guangcheng.”¹⁹⁴ Sales data submitted on the record of this POR however, indicates that both Guang Ya and Guangcheng had export sales and therefore, could have reported freight expenses associated with those sales of a finished product, at the very least. In the case of Guanghai, GYG reported that “Guanghai did not import or export any goods from or to other countries...so Guanghai is not able to submit such information...”¹⁹⁵ Sales data related to Guanghai on the record of this review is consistent with Guanghai’s claims of no imports or exports during the instant POR.

Because GYG failed to provide information requested by the Department to determine freight expenses for primary inputs for purposes of the benchmark calculation, we determined that, in accordance with section 776(a) of the Act, necessary information for all three companies is not available on the record for this calculation. Since we requested such information from the respondent companies, but find that, with respect to Guang Ya and Guangcheng, inconsistent information on the record demonstrates that they could have submitted this information in response to our repeated requests for such information, we determine that, in accordance with 776(b) of the Act, Guang Ya and Guangcheng failed to act to the best of their ability by withholding requested information. Accordingly, with respect to the calculation of inland freight expenses for both Guang Ya and Guangcheng, we have resorted to the application of adverse facts available for those months for which an inland freight expense was not reported. Therefore, for the calculation of benchmark prices for Guang Ya and Guangcheng, we used the highest inland freight expense reported by Guang Ya as a proxy for inland freight expenses for each month of the POR for both Guang Ya and Guangcheng for which such expenses were not reported. With respect to the inland freight expenses that were reported by Guang Ya, we refer the “Benefit” discussion below under section VI, Analysis of Programs for these final results.¹⁹⁶

However, with respect to Guanghai, we find that record information supports Guanghai’s inability to provide the requested freight expenses. Therefore, as facts available pursuant to section 776(a) of the Act, we determine it is appropriate to utilize information on the record to derive the requisite freight expenses for each month of the POR that would otherwise be incurred to deliver the primary input to respondent’s production facilities.¹⁹⁷ For this purpose, we used the two months of freight expenses reported by Guang Ya to calculate a monthly weighted-average freight expense¹⁹⁸ as a proxy for Guanghai’s monthly inland freight expense for the benchmark price calculation.

7. Application of Facts Available for GYG Billet and Ingot Purchases

In accordance with 19 CFR 351.511(a)(2)(ii), with respect to tier-two benchmarks, the Department should make due allowance for factors affecting price comparability. In *Aluminum Extrusions from the PRC Second Review*, we determined that because primary aluminum ingots

¹⁹⁴ *Id.*, at 17.

¹⁹⁵ *Id.*

¹⁹⁶ See also Memorandum from Davina Friedmann, International Trade Compliance Analyst, Office VI, to Robert James, Program Manager, Office VI, Regarding: “Post-Preliminary Results Calculation Memorandum for the Guang Ya Group” (GYG’s Post-Preliminary Analysis Memorandum) (October 27, 2015).

¹⁹⁷ See 776(a) of the Act.

¹⁹⁸ See also GYG’s Post-Preliminary Analysis Memorandum.

and billets are two distinct types of inputs, they would have different pricing structures with markets commanding higher prices for billets than for ingots.¹⁹⁹ As such, in that review, we determined it was more appropriate to match an ingot benchmark to ingot purchases and billet benchmarks to billet purchases.²⁰⁰

In the instant review, GYG reported in its narrative responses that Guang Ya purchased aluminum ingots from all companies, with the exception of Guanghai, from which GYG claims Guang Ya purchased only aluminum billets.²⁰¹ Despite GYG's claims of the types of purchases made by Guang Ya in its initial and supplemental questionnaires, in a subsequent submission on behalf of Guangxi Guangyin Commerce Co., Ltd., GYG indicated that Guang Ya purchases both billet and ingot, but did not clarify from which company it made such purchases.²⁰² Also, of the purchase data submitted by GYG companies used in the benchmark calculations, only Guang Ya identified its purchases, which it claimed were of ingots only, contrary to Guang Ya's narrative responses. Because we do not have the necessary information to discern whether GYG's input purchases were of ingot or billet inputs, we cannot match ingot and billet benchmarks to ingot and billet purchases, respectively. Therefore, for these final results, as facts otherwise available pursuant to section 776(a)(1) of the Act, we utilized GTIS world market prices that Petitioner submitted on the record of this review for both ingots and billets.²⁰³ For each month of the POR, we calculated a single weighted-average price using the data submitted under both HTS 7601.10 and 7601.20 by dividing the total value by the total quantity for each country for the benchmark calculation, which is further discussed under the section entitled, "Provision of Primary Aluminum for LTAR."

8. Application of Facts Available for the Jangho Companies' Ocean Freight Expense

As discussed above, pursuant to 19 CFR 351.511(a)(2)(iv), the Department adjusts the benchmark price to include delivery charges and import duties, as appropriate. Regarding delivery charges, we require information regarding ocean freight expenses. Specifically, in calculating a benchmark for the Jangho Companies' purchases of aluminum extrusions and glass, the Department requires ocean freight pricing data to correspond to the closest ports to the Jangho Companies' production facilities, which are located in Guangzhou, Shanghai, Beijing, Wuhan, and Chongqing.²⁰⁴ While Petitioner submitted ocean freight pricing data for the Port of Shanghai and the Port of Yantian, Petitioner did not specify which data the Department should

¹⁹⁹ See *Aluminum Extrusions from the PRC Second Review* and the accompanying Issues and Decision Memorandum at 28.

²⁰⁰ See *Aluminum Extrusions from the PRC Second Review*, at Comment 9.

²⁰¹ See GYG's Initial Questionnaire Response, at 3, 20, and 36 (Guanghai's section of GYG's Initial Questionnaire Response); GYG's First Supplemental Questionnaire Response, at 25 and 27; and GYG's Second Supplemental Questionnaire Response, at 16.

²⁰² See letter from Guangxi Guangyin Commerce Co., Ltd. regarding, "Aluminum Extrusions from the PRC: CVD Questionnaire Response of Guangxi Guangyin Commerce Co., Ltd.," dated March 5, 2015, at Exhibit 64.

²⁰³ See Letter from Petitioner regarding "Submission of Factual Information – Benchmark Data," dated May 4, 2015 (Petitioner Benchmark Submission).

²⁰⁴ See, e.g., Letter from the Jangho Companies to the Department, regarding: "Aluminum Extrusions From China: Jangho Curtain Wall System Engineering Co., Ltd. and Jangho Curtain Wall Hong Kong Ltd.: Cross Ownership/Affiliations Response," (November 4, 2014), (The Jangho Companies' Affiliations QR) at Exhibit 1.

utilize for each of the Jangho Companies' production facilities.²⁰⁵ No other party placed ocean freight pricing data on the record.

As discussed in further detail below, we have relied on Petitioner's ocean freight pricing data for the Port of Shanghai in calculating a benchmark for the Jangho Companies' purchases of aluminum extrusions and glass with respect to the production facility in Shanghai. With respect to the Jangho Companies' production facility in Guangzhou, the Jangho Companies identified the Port of Shenzhen as the nearest port to its production facility in Guangzhou, however, ocean freight pricing data for the Port of Shenzhen is not on the record.²⁰⁶ Accordingly, as facts available, in accordance with section 776(a)(1) of the Act, we have used Petitioner's ocean freight price quotations related to the Port of Yantian in place of ocean freight to the Port of Shenzhen, as we find that the Port of Yantian is the closest port for which we have information to the Jangho Companies' production facility in Guangzhou (and the Port of Shenzhen), as no party submitted alternative ocean freight for Shenzhen or any port closer to Shenzhen or Guangzhou.

With respect to the Jangho Companies' production facilities in Beijing, Wuhang, and Chongqing, no party submitted ocean freight data related to a port in close proximity to these locations. Therefore, as facts available, pursuant to section 776(a)(1) of the Act, we are using a simple average of the per-container ocean freight data submitted by Petitioner for the Port of Shanghai and the Port of Yantian to calculate per-container and per-unit ocean freight rates to the Jangho Companies' production facilities in Beijing, Wuhang, and Chongqing, because this is the only information we have on the record with respect to ocean freight data for the Jangho Companies' production facilities.²⁰⁷

9. Application of Facts Available for the Jangho Companies' Inland Freight Expenses

As discussed above, pursuant to 19 CFR 351.511(a)(2)(iv), the Department adjusts the benchmark price to include delivery charges and import duties, as appropriate. Regarding delivery charges, in calculating a benchmark for the Jangho Companies' purchases of aluminum extrusions and glass, the Department sought inland freight expenses for each of the Jangho Companies' production facilities, which are located in Guangzhou, Shanghai, Beijing, Wuhan, and Chongqing.²⁰⁸ Specifically, we requested that the Jangho Companies report their per-metric ton inland freight expenses for transporting aluminum extrusions and glass from the nearest seaport to each production facility (or "complex") for each month of the POR. Should the respondents not incur such freight expenses, we requested they report this expense associated with shipping the most closely-related input or finished product to or from the nearest seaport.²⁰⁹ Additionally, we instructed the Jangho Companies to report all input purchases.²¹⁰

²⁰⁵ See Petitioner Benchmark Submission at 5 and Exhibit 11.

²⁰⁶ *Id.*

²⁰⁷ For further details, see sections Provision of Aluminum Extrusions for LTAR and "Provision of Glass for LTAR," below.

²⁰⁸ See NSA Questionnaire to the Jangho Companies at Attachment I, pages 1 to 2.

²⁰⁹ *Id.*

²¹⁰ *Id.*

Pursuant to this request, the Jangho Companies reported glass purchases on a company-specific basis. However, the Jangho Companies did not specify which glass purchases corresponded to which production complex.²¹¹ With respect to aluminum extrusions purchases, the Jangho Companies identified which purchases corresponded to which production complex.²¹² The Jangho Companies also provided monthly per-container freight quotations for shipment to each production complex, except for the Jangho Group Co.'s complexes in Wuhan and Chongqing.²¹³ No other party placed alternative inland freight data on the record.

As discussed in further detail below, we are relying on the Jangho Companies' reported monthly per-container freight quotations for shipments of aluminum extrusions and glass to each production complex, except for the Jangho Group Co.'s complexes in Wuhan and Chongqing. As facts available, in accordance with section 776(a)(1) of the Act, we have used the inland freight rate reported for Jangho Group Co.'s production facilities in Beijing for all of Jangho Group Co.'s branches (Beijing, Wuhan, and Chongqing).

Analysis of Programs

Based on our analysis and the responses to our questionnaires, and in light of comments received, we find the following:

I. Programs Determined To Be Countervailable

A. Policy Loans to Chinese Aluminum Extrusion Producers

In the *Aluminum Extrusions from the PRC Investigation*, *Aluminum Extrusions from the PRC First Review*, and *Aluminum Extrusions from the PRC Second Review*, we determined that the GOC had a policy in place to encourage the development of the production of aluminum extrusions through policy lending.²¹⁴ In the instant administrative review, the GOC's discussions of the lending practices of financial institutions echoed the discussion in previous administrative reviews.²¹⁵ In the first administrative review, the GOC reported that in February 2010, the China Banking Regulatory Commission (CBRC) promulgated the *Interim Measures for the Administration of Working Capital Loans (Interim Measures)*, which, according to the GOC, state that "banking financial institutions established in China upon the CBRC's approval, including those at issue in this review, all make their decisions on issuance of working capital loans on a pure commercial basis."²¹⁶ In this review, interested parties put information about the *Law of the People's Republic of China on Commercial Banks (Banking Law)*, *Interim Measures*,

²¹¹ See The Jangho Companies' NSA Response at 1 to 3.

²¹² *Id.*, at 1 to 2.

²¹³ *Id.*, at 2 to 3 and Exhibit S2-6, Exhibit S2-7, and Exhibit S2-8.

²¹⁴ See *Aluminum Extrusions Final Determination*, *Aluminum Extrusions from the PRC First Review*, and *Aluminum Extrusions from the PRC Second Review* and accompanying IDMs at the sections entitled, "Policy Loans to Chinese Aluminum Extrusion Producers."

²¹⁵ See the GOC's Initial Questionnaire Response, at 5. A copy of the *Interim Measures* was provided in the GOC's Initial Questionnaire Response at Exhibit 1.

²¹⁶ See *Aluminum Extrusions from the PRC Second Review* IDM at "Policy Loans to Chinese Aluminum Extrusion Producers."

and *Capital Rules for Commercial Banks* (provisional) (Capital Rules) on the record.²¹⁷ The GOC points out that in addition, the *Interim Measures*, Article 34 of the *Law of the People's Republic of China on Commercial Banks (Banking Law)*, which, according to the GOC, does not specify any specific obligation imposed by the government on commercial banks, remained in effect during the current POR.²¹⁸

We considered the *Banking Law* and *Interim Measures* in the *Aluminum Extrusions from the PRC First Review* and determined that there is no basis to conclude that the GOC's policy lending activities ceased with the issuance of the *Interim Measures*.²¹⁹ As we explained in the *Aluminum Extrusions from the PRC Investigation* and *Aluminum Extrusions from the PRC First Review*, we determined that Article 34 of the *Banking Law* states that banks should carry out their loan business "under the guidance of the state industrial policies."²²⁰ We reached these same findings in the *Aluminum Extrusions from PRC Second Review*. In the instant review, because the *Interim Measures* are "fully consistent" with the *Banking Law*, we determine, consistent with prior determinations, that they do not constitute evidence that the GOC ceased policy lending to the aluminum extrusions industry, despite any changes to lending practices asserted by the GOC.²²¹

In the current administrative review, the GOC indicated that on January 1, 2013, the Capital Rules, as enacted by the China Banking Regulatory Commission, went into effect. According to the GOC, these Capital Rules establish tight disciplines on loan management. These changes, combined with deregulation of floor interest rates by commercial banks, demonstrate substantial changes in China's commercial banking sector, as advanced by the GOC.²²² For the reasons explained in Comment 3, the Department finds that these changes do not call into question the Department's prior findings regarding the Chinese banking sector.

For these final results, as discussed in more detail in Comment 3, we find that the GOC's policy lending program to Chinese aluminum extrusions producers continued during the POR. As such, we find that the loans to aluminum extrusion producers from SOCBs and policy banks in the PRC were made pursuant to government directives and, thus, constitute a direct financial contribution from "authorities," pursuant to section 771(5)(D)(i) of the Act. The policy lending provides 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). Further, the loans are *de jure* specific under 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.²²³ Additionally, because

²¹⁷ See the GOC's Initial Questionnaire Response, at Exhibit 1 and Exhibit 9.

²¹⁸ *Id.*, at 6.

²¹⁹ See *Aluminum Extrusions from the PRC First Review*, and accompanying IDM at "Policy Loans to Chinese Aluminum Extrusion Producers" and Comment 6.

²²⁰ *Id.*, and *Aluminum Extrusions from the PRC Investigation*, and accompanying IDM at Comment 28.

²²¹ For the Department's analysis of this information on the record, *see infra* Comment 3.

²²² See GOC's initial questionnaire response, at 4.

²²³ See *Aluminum Extrusions from the Investigation*, and accompanying IDM at "Policy Loans to Chinese Aluminum Extrusion Producers."

GYG reported trade financing,²²⁴ we find that such loans are additionally specific under section 771(5A)(B) of the Act because receipt of the financing is export contingent.

GYG and the Jangho Companies both reported receiving loans from SOCBs that were outstanding during the POR.²²⁵ To calculate the benefit under this program, pursuant to section 771(5)(E)(ii) of the Act, for each respondent, we compared the amount of interest paid on each outstanding loan to the amount that would have been paid on a comparable commercial loan during the POR.²²⁶ In conducting this comparison, we used the interest rates described in the “Loan Benchmark Rates” section above. To calculate the subsidy rate for each respondent, we divided the benefit by the total sales or total export sales, as appropriate, for the POR, attributing benefits under this program according to the methodology described in the “Subsidies Valuation Information” section.²²⁷ On this basis, we calculated a countervailable subsidy of 3.29 percent *ad valorem* for GYG and 0.66 percent *ad valorem* for the Jangho Companies.

B. Preferential Tax Policies for High or New Technology Enterprises

In *Aluminum Extrusions from the PRC First Review*, the GOC reported that this program was established on January 1, 2008. Pursuant to Article 28.2 of the *Enterprise Income Tax Law* (EITL) of the PRC, the government provides for the reduction of the corporate income tax rate from 25 percent to 15 percent for enterprises that are recognized as a High or New Technology Enterprise (HNTEs).²²⁸ The conditions to be met by an enterprise to be recognized as an HNTE set are forth in Article 93 of the *Regulation on the Implementation of the Enterprise Income Tax Law*.²²⁹

In the *Citric Acid from the PRC First Review*, *Citric Acid from the PRC Second Review*, and *Citric Acid from the PRC Third Review*, the Department found this program to be countervailable.²³⁰ Article 28.2 of the EITL authorizes a reduced income tax rate of 15 percent

²²⁴ See GYG’s Initial Questionnaire Response, at Exhibits 9, and 26. See also, Letter from GYG companies regarding, “Aluminum Extrusions from the PRC: CVD Questionnaire Response of Foshan Guangcheng Aluminum Co., Ltd.,” dated February 19, 2015, at Exhibit 47.

²²⁵ See GYG’s Initial Questionnaire Response, at Exhibits 9, and 26, Letter from GYG companies regarding, “Aluminum Extrusions from the PRC: CVD Questionnaire Response of Foshan Guangcheng Aluminum Co., Ltd.,” dated February 19, 2015, at Exhibit 47; and The Jangho Companies’ Initial Questionnaire Response at Guangzhou Jangho Response at 11 to 12 and Exhibits GZ-6; Jangho Group, Co., Ltd. Response at 12-13 and Exhibit JHG-6; and Response at 10 and Exhibit JY-5, and The Jangho Companies’ First Supplemental Questionnaire Response at Shanghai Jangho Response at 9-10 and Exhibit SH-6.

²²⁶ See GYG’s Initial Questionnaire Response, at Exhibits 9, and 26. See also, Letter from GYG companies regarding, “Aluminum Extrusions from the PRC: CVD Questionnaire Response of Foshan Guangcheng Aluminum Co., Ltd.,” dated February 19, 2015, at Exhibit 47.

²²⁷ See 19 CFR 351.525(b)(2), 19 CFR 351.525(b)(3), and 19 CFR 351.525(b)(6).

²²⁸ See *Aluminum Extrusions from the PRC First Review*, and accompanying IDM, at “Preferential Tax Program for High or New Technology Enterprises.”

²²⁹ See *Aluminum Extrusions from the PRC First Review*, and accompanying IDM, at “Preferential Tax Program for High or New Technology Enterprises.”

²³⁰ 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 the PRC First Review*), and accompanying IDM at “Reduced Income Tax Rate for High or New Technology Enterprises;” *Citric Acid and Certain Citrate Salts from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2010*, 77 FR 72323 (December 5, 2012) (*Citric Acid from the PRC Second Review*), and accompanying

for HNTes. The criteria and procedures for identifying eligible HTNEs are provided in the *Measures on Recognition of High and New Technology Enterprises* (GUOKEFAHUO (2008) No. 172) (*Measures on Recognition of HNTes*) and the *Guidance on Administration of Recognizing High and New Technology Enterprises* (GUOKEFA HUO (2008) No.362). Article 8 of the *Measures on Recognition of HNTes* provides that the science and technology administrative departments of each province, autonomous region, and municipality directly under the central government or cities under separate state planning shall collaborate with the finance and taxation departments at the same level to recognize HTNEs in their respective jurisdictions.²³¹ The GOC reported that the program is administered by the State Administration of Taxation (SAT) and is implemented by the SAT branches at the local level within their respective jurisdictions and that exemption is claimed on line 28 of the Statement of Tax Preferences Table, which is an appendix to the corporate tax return.²³² The annex of the *Measures on Recognition of HNTes* lists eight high- and new-technology areas selected for the State's "primary support:" 1) Electronics and Information Technology; 2) Biology and New Medicine Technology; 3) Aerospace Industry; 4) New Materials Technology; 5) High-tech Service Industry; 6) New Energy and Energy-Saving Technology; 7) Resources and Environmental Technology; and 8) High-tech Transformation of Traditional Industries.²³³

GYG reported that Guang Ya received tax savings under this program in the amount indicated on income tax returns filed during the POR.²³⁴ The Jangho Companies reported that Guangzhou Jangho, Jangho Group Co., and Shanghai Jangho received tax savings under this program in the amount indicated on income tax returns filed during the POR.²³⁵ In its questionnaire response, the GOC stated that there were no changes under this program during the POR.²³⁶ Consistent with the *Citric Acid from the PRC First Review*, *Citric Acid from the PRC Second Review*, and *Citric Acid from the PRC Third Review*, we find that the reduced income tax rate paid by Guang Ya, Guangzhou Jangho, Jangho Group Co., and Shanghai Jangho represent financial contributions under section 771(5)(D)(ii) of the Act in the form of revenue foregone by the GOC, and provides a benefit to the recipient in the amount of the tax savings.²³⁷ We also determine, consistent with the *Citric Acid from the PRC First Review*, *Citric Acid from the PRC Second Review*, and *Citric Acid from the PRC Third Review*, that the reduction afforded by this program is limited as a matter of law to certain new and high technology companies selected by the government pursuant to legal guidelines specified in *Measures on Recognition of HNTes* and,

IDM at "Reduced Income Tax Rate for High or New Technology Enterprises;" and *Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2011*, 79 FR 108 (January 2, 2014) (*Citric Acid from the PRC Third Review*), and accompanying IDM at "Reduced Income Tax Rate for High or New Technology Enterprises."

²³¹ See *Citric Acid from the PRC First Review*, *Citric Acid from the PRC Second Review*, *Citric Acid from the PRC Third Review* and accompanying IDMs at "Reduced Income Tax Rate for High or New Technology Enterprises."

²³² See *Citric Acid from the PRC First Review*, *Citric Acid from the PRC Second Review*, *Citric Acid from the PRC Third Review* and accompanying IDMs at "Reduced Income Tax Rate for High or New Technology Enterprises."

²³³ See *Citric Acid from the PRC First Review*, *Citric Acid from the PRC Second Review*, *Citric Acid from the PRC Third Review* and accompanying IDMs at "Reduced Income Tax Rate for High or New Technology Enterprises."

²³⁴ See GYG's First Supplemental Questionnaire Response at 14.

²³⁵ See the Jangho Companies' Initial Questionnaire Response at Guangzhou Jangho Response at 13, Exhibit GZ-3, Exhibit GZ-8, and Exhibit GZ-9; and Jangho Group Co.'s Response at 13 to 14, Exhibit JHG-3, Exhibit JHG-8, and Exhibit JHG-9.

²³⁶ See GOC's Initial Questionnaire Response, at 18.

²³⁷ See section 771(5)(D)(ii) of the Act, section 771(5)(E) of the Act, and 19 CFR 351.509(a)(1).

hence, is specific under section 771(5A)(D)(i) of the Act. Both the number of targeted industries (eight) and the narrowness of the identified project areas under those industries support a finding that the legislation expressly limits access to the program to a specific group of enterprises or industries.

To calculate the benefit, we compared the income tax rate that Guang Ya, Guangzhou Jangho, Jangho Group Co., and Shanghai Jangho would have paid in the absence of the program (25 percent) to the income tax rate that the companies actually paid (15 percent). We treated the income tax savings as a recurring benefit, consistent with section 771(5)(E) of the Act and 19 CFR 351.524(c)(1). To calculate the countervailable subsidy rate, we divided the benefit by a denominator comprised of the combined sales of the relevant GYG or Jangho Group companies (net of inter-company sales), in accordance with 19 CFR 351.525(b)(3) and (6), according to the methodology described above in the “Attribution” section.

On this basis, we calculated a countervailable subsidy of 0.21 percent *ad valorem* for GYG, and 0.76 percent, *ad valorem* for the Jangho Companies.

C. Provision of Land-Use Rights Located in the South Sanshui Science and Technology Industrial Park for LTAR

In the *Aluminum Extrusions CVD Investigation*, GYG reported that Guangcheng purchased land-use rights in the South Sanshui Science and Technology Industrial Park in 2007. Based on the information on the record of the underlying investigation, we determined that the provision of land-use rights for LTAR constituted a financial contribution within the meaning of section 771(5)(D)(iii) of the Act and that the provision of land-use rights confers a benefit under section 771(5)(E)(iv) of the Act to the extent Foshan City provides them for LTAR. The benefit under this program was allocated over the life of the land-use rights contract covering a period of 50 years.²³⁸ Additionally, documents on the record of the investigation indicated that industrial land within the South Sanshui Science and Technology Industrial Park is offered at preferential prices. We therefore 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.²³⁹

In the current POR, the GOC confirmed that GYG did not acquire any additional land-use rights in the South Sanshui Science and Technology Industrial Park during the AUL period.²⁴⁰ In its supplemental questionnaire response, GYG reconfirmed Guangcheng’s purchase of land in the South Sanshui Science and Technology Industrial Park in 2007.²⁴¹ Because no changes to this

²³⁸ See *Aluminum Extrusions Final Determination*, at section VII.U., “Analysis of Programs.”

²³⁹ *Id.*

²⁴⁰ See GOC’s Initial Questionnaire Response, at 50; see also Letter from the GOC regarding, “Aluminum Extrusions from China; 3rd CVD Administrative Review GOC Second Supplemental Questionnaire Response,” dated April 28, 2015 (GOC Second Supplemental Questionnaire Response), at 36. See also, Letter from GYG companies regarding, “Aluminum Extrusions from the PRC: CVD Questionnaire Response of the Guang Ya Group, dated December 3, 2014, at 40, and Part II (Guanghai’s Questionnaire Response) at 25. See also, Letter from Guangcheng regarding, “Aluminum Extrusions from the PRC: CVD Questionnaire Response of Foshan Guangcheng Aluminium Co., Ltd., dated February 19, 2015, at 33.

²⁴¹ See GYG’s Second Supplemental Questionnaire Response, at 12.

program were reported during this POR, consistent with the finding during the underlying investigation, we continue to find that this program meets the elements of financial contribution, benefit, and specificity, as described above. Accordingly, using information from the investigation placed on the record of this review in relation to this program of land-use rights for LTAR,²⁴² we divided the benefit calculated during the underlying investigation for 2013 by the total sales of Guang Ya and Guangcheng, net intercompany sales and services, to derive the subsidy rate of 1.17 percent *ad valorem* for GYG.

D. GOC and Sub-Central Government Grants, Loans, and Other Incentives for Development of Famous Brands and China World Top Brands (Famous Brands program)

In the *Aluminum Extrusions CVD Investigation*, we found that the Famous Brands program is administered at the central, provincial, and municipal government level. In that investigation, the relevant GYG companies reported receiving grants under the Famous Brands program.²⁴³ Based on information from the underlying investigation, which was also placed on the record of this review,²⁴⁴ we determined that the grant(s) received by the Guang Ya Companies under the Famous Brands program constituted a financial contribution and conferred a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. We also determined that the grant(s) provided to the Guang Ya Companies were specific in accordance with 771(5A)(B) of the Act, because the Famous Brands program was contingent on export activity. We also found that Guang Ya received a grant prior to the POI that was greater than 0.5 percent of its total export sales in the year of approval/receipt. Therefore, the Department allocated the benefit over time in accordance with the methodology provided under 19 CFR 351.524(d)(2). The allocated benefit covered a period that includes the current segment of this proceeding.²⁴⁵

In the current review, no new information was placed on the record to warrant a change in our finding. Further, the GOC stated that there were no changes to this program during the POR.²⁴⁶ Therefore, we continue to find that the program provides countervailable subsidies within the meaning of 771(5) of the Act as described above. Accordingly, we divided the amount of the benefit calculated under this program for 2013 by the total 2013 value of export sales of Guang Ya and Guangcheng in accordance with 19 CFR 351.525(b)(2), according to the methodology described above in the “Attribution” section. On this basis, we calculated a net subsidy of 0.10 percent *ad valorem* for the Guang Ya Group.

²⁴² See GYG’s Initial Questionnaire Response, at Exhibit 3.

²⁴³ See *Aluminum Extrusions from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 75 FR 54302, 54310 (September 7, 2010) (*Aluminum Extrusions Preliminary Determination*); see also, *Aluminum Extrusions from the People’s Republic of China: Final Affirmative Countervailing Duty Determination (Aluminum Extrusions Final Determination)*, 76 FR 18521, (April 4, 2011) and accompanying IDM, at comment 31.

²⁴⁴ See *Aluminum Extrusions from the PRC Investigation* and accompanying IDM, at Analysis of Programs VII.B., and comment 31; see also GYG’s Initial Questionnaire Response, at Exhibit 3.

²⁴⁵ See *Aluminum Extrusions from the PRC Investigation* and accompanying IDM, at Analysis of Programs VII.B., and comment 31.

²⁴⁶ See GOC’s Initial Questionnaire Response, at 22.

E. International Market Exploration (SME) Fund

In the underlying CVD investigation,²⁴⁷ we determined that the SME Fund provides countervailable subsidies that are contingent upon export activity because, to qualify for the program, a small and medium-sized enterprise (SME) must have export and import rights, exports of less than \$15,000,000 in the previous year, an accounting system, personnel with foreign trade skills, and an international marketing plan. As explained in the *Aluminum Extrusions from the PRC Second Review*, in the first administrative review, the GOC reiterated that this program was established in 2000, pursuant to the *Circular of the Ministry of Finance, the Ministry of Foreign Trade and Economic Cooperation Concerning Printing and Distributing the Measures for the Administration of International Market Developing Funds of Small- and Medium-Sized Enterprises (for Trial Implementation)*, and *Detailed Rules for the Implementation of the Measures for the Administration of International Market Developing Funds of Small- and Medium-Sized Enterprise (for Provisional Implementation)* to support the development of small and medium-sized enterprises.²⁴⁸ The GOC added that in May 2010, this program was renewed and the above-listed legislation was replaced by the *Measures for Administration of International Market Developing Funds of Small- and Medium-Sized Enterprises (Market Developing Funds Measure)*.²⁴⁹ The GOC explained that after the promulgation of the *Market Developing Funds Measure*, the export value eligibility criterion was modified to state that an applicant enterprise must have had an export value in the previous year of less than \$45,000,000.²⁵⁰

Neither GYG nor the GOC provided any information to warrant a reconsideration of the Department's determination that this program is a countervailable export subsidy. Moreover, the GOC stated in its questionnaire response that there were no changes made to this program during the instant administrative review.²⁵¹ Therefore, consistent with the *Investigation*, we find that the grants received under this program constitute a financial contribution and confer a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively, and are 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.

Guang Ya and Guangcheng reported receipt of grants under this program in 2013.²⁵² The Department treats grants under this program as non-recurring subsidies under 19 CFR

²⁴⁷ See *Aluminum Extrusions from the PRC Investigation*, and accompanying IDM at "International Market Exploration Fund (SME Fund)."

²⁴⁸ See *Aluminum Extrusions from the PRC First Review*, and accompanying IDM at "International Market Exploration Fund (SME Fund)." See also, *Aluminum Extrusions from the PRC Second Review*, and accompanying IDM at "International Market Exploration Fund (SME Fund)."

²⁴⁹ See *Aluminum Extrusions from the PRC First Review*, and accompanying IDM at "International Market Exploration Fund (SME Fund)." See also, *Aluminum Extrusions from the PRC Second Review*, and accompanying IDM at "International Market Exploration Fund (SME Fund)."

²⁵⁰ See *Aluminum Extrusions from the PRC First Review*, and accompanying IDM at "International Market Exploration Fund (SME Fund)." See also, *Aluminum Extrusions from the PRC Second Review*, and accompanying IDM at "International Market Exploration Fund (SME Fund)."

²⁵¹ See GOC Initial Questionnaire Response, at 22.

²⁵² See GYG's Initial Questionnaire Response, at Exhibits 10 and 11. See also Guangcheng's Initial Questionnaire Response regarding, "Aluminum Extrusions from the PRC: CVD Questionnaire Response of Foshan Guangcheng Aluminum Co., Ltd., dated February 19, 2015 (Guangcheng's Initial Questionnaire Response), at Exhibits 48 and 49.

351.524(c).²⁵³ Thus, we conducted the “0.5 percent test” of 19 CFR 351.524(b)(2), by dividing the total amount of the grants received by Guang Ya and Guangcheng over their total export sales for the year the grants were approved/received.²⁵⁴ We find that the grants received in 2013 were less than 0.5 percent of the total export sales denominator for the year of approval/receipt. Therefore, we expensed the grant amounts to the year of receipt. To calculate the subsidy rate, we divided the full amount of the grant by the total export sales of Guang Ya and Guangcheng for 2013, in accordance with 19 CFR 351.525(b)(2) and (6), according to the methodology described above in the “Attribution” section.

On this basis, we calculated a countervailable subsidy of 0.06 percent *ad valorem* for the Guang Ya Group.

F. Tax Offset for Research and Development (R&D)

The Jangho Companies reported that both Jangho Group Co. and Guangzhou Jangho received tax savings under this program during the POR. The Department has previously found benefits received under this program to be a countervailable subsidy.²⁵⁵ There is no new information on the record for us to reconsider our determination. Therefore, we continue to find that this program provides a countervailable subsidy. The GOC reported that 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 incurred for developing new products and technologies that can be treated as intangible assets, the tax offset shall be amortized based on 150 percent of the R&D expenses.²⁵⁶ For Guangzhou Jangho, the program is administered by the State Taxation Bureau of Zengcheng City, Guangdong. For Jangho Group Co., the program is administered by the Second Taxation Office of Local Taxation Bureau of Shunyi District, Beijing.²⁵⁷ The Program is administered pursuant to the “Trial Administrative Measures for the Pre-Tax Deduction of Enterprises R&D Expenses” (R&D Measures). 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.²⁵⁸

The Department has determined that the income tax reduction under this program constitutes a financial contribution in the form of revenue forgone by the government under section

²⁵³ See *Aluminum Extrusions from the PRC Investigation*, and accompanying IDM at “International Market Exploration Fund (SME Fund).”

²⁵⁴ Where the company was unable to report the date/year of approval of the grant, we used the date/year of receipt of the grant for the yearly sales denominator used in the 0.5 percent test.

²⁵⁵ See *Aluminum Extrusions From the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 75 FR 54302 (September 10, 2007), unchanged in *Aluminum Extrusions From the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011).

²⁵⁶ See the GOC’s Initial Questionnaire Response at 18.

²⁵⁷ *Id.* at 17.

²⁵⁸ See *Aluminum Extrusions From the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 75 FR 54302 (September 10, 2007), unchanged in *Aluminum Extrusions From the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011).

771(5)(D)(ii) of the Act and a benefit in the amount of the tax savings pursuant to 19 CFR 351.509(a). Concerning specificity, as noted above in the “Policy Loans to Chinese Aluminum Extrusion Producers” section, we determined that the GOC has 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, the Department determined that tax reduction under this program are *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act.²⁵⁹

To calculate the benefit, we multiplied the reduction in taxable income attributed to Guangzhou Jangho and Jangho Group Co. under the program by the tax rate, 15 percent.²⁶⁰ We treated the income tax savings as a recurring benefit, consistent with section 771(5)(E) of the Act and 19 CFR 351.524(c)(1). To calculate the countervailable subsidy rate, we divided the benefit by a denominator comprised of the consolidated sales of the relevant Jangho Group companies (net of inter-company sales), in accordance with 19 CFR 351.525(b)(3) and (6), according to the methodology described above in the “Attribution” section. On this basis, we calculated a countervailable subsidy of 0.19 percent, *ad valorem* for the Jangho Companies.

G. Grant Programs for Which the GOC Did Not Provide the Requested Laws, Regulations, and Specificity Information

The Jangho Companies reported receiving grants from the GOC under the following programs: 2013 Export Increase Fund, 2012 Guangzhou Innovation Enterprise from Guangzhou, 2012 Industrial Development Fund, and 2013 Working Capital Loans Discount. As explained above in section entitled, *Application of AFA for Certain Grants Received by The Jangho Companies*, as AFA we determined that each of the following programs are specific within the meaning of section 771(5A) of the Act, and constitute a financial contribution in the form of a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act. Based on information provided by the GOC and the Jangho Companies, we also determine that each program conferred a benefit under section 771(5)(E) of the Act and 19 CFR 351.504(a) during the POR. Therefore, we determine that each of these programs provides countervailable subsidies within the meaning of section 771(5) of the Act.

Consistent with 19 CFR 351.524(c)(1), we are treating grants received under these programs a “non-recurring.” We performed the “0.5 percent test” of 19 CFR 351.524(b)(2) with regard to each grant program. For those grants that passed the “0.5 percent test,” we allocated the benefit received by the Jangho Companies over the AUL in this proceeding, 12 years. For those grants, that did not pass the “0.5 percent test,” we expensed the grant amounts in the years they were received.

To calculate the countervailable subsidy rate for each year, we divided the benefit by a denominator comprised of the sales of the Jangho Companies (which is net of inter-company

²⁵⁹ *Id.*

²⁶⁰ As noted above as HTNE-status companies, Guangzhou Jangho and Jangho Group Co. incur a 15 percent income tax rate.

sales), according to the methodology described above in the “Subsidies Valuation Information” section. As explained above in “Use of Facts Otherwise Available and Adverse Inferences: *Application of AFA for Certain Grants Received by The Jangho Companies*,” for the program entitled “2013 Export Increase Fund”, as AFA, we found the program to be export specific. Accordingly, we calculated the program rate using export sales as the denominator.

On this basis, we find that the following grant programs are countervailable and have calculated the following *ad valorem* countervailable subsidy rates for the Jangho Companies.

Name of Program	2012 <i>Ad Valorem</i> Rate (percent)
2013 Export Increase Fund	0.01 ²⁶¹
2012 Guangzhou Innovation Enterprise Fund from Guangzhou	0.01
2012 Industrial Development Fund	0.01
2013 Working Capital Loans Discount	0.02

H. Provision of Primary Aluminum for LTAR

Financial Contribution and Specificity

In the *Aluminum Extrusions from the PRC Investigation*, *Aluminum Extrusions from the PRC First Review*, and *Aluminum Extrusions from the PRC Second Review*, we determined that this program is a countervailable domestic subsidy as described under sections 771(5)(A) and (5A)(D) of the Act.²⁶² GYG reported purchasing primary aluminum during the POR.

In the *Aluminum Extrusions from the PRC Investigation*, *Aluminum Extrusions from the PRC First Review*, and *Aluminum Extrusions from the PRC Second Review*, the Department determined that this subsidy is specific under section 771(5A)(D)(iii)(I) of the Act.²⁶³ No new information has been submitted in this review to warrant a reconsideration of the Department’s

²⁶¹ We divided the amount of the benefit calculated under this program for 2013 by the total 2013 value of export sales of Jangho in accordance with 19 CFR 351.525(b)(2) and (6), according to the methodology described above in the “Attribution” section.

²⁶² See *Aluminum Extrusions From the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 75 FR 54302 (September 7, 2010) (*Aluminum Extrusions Investigation Preliminary Determination*) at 54306 (unchanged in *Aluminum Extrusions From the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) (*Aluminum Extrusions from the PRC Investigation*)); *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) (*Aluminum Extrusions First Review Preliminary Results*) and the accompanying PDM at “Provision of Primary Aluminum for Less Than Adequate Remuneration (LTAR)” (unchanged in *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) (*Aluminum Extrusions from the PRC First Review*)); and *Aluminum Extrusions From the People’s Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2012*, 79 FR 36009 (June 25, 2014) (*Aluminum Extrusions Second Review Preliminary Results*) and the accompanying PDM at “Provision of Primary Aluminum for LTAR.” (unchanged in *Aluminum Extrusions from the PRC Second Review*).

²⁶³ *Id.*

specificity finding. For the same reasons discussed in the *Aluminum Extrusions from the PRC First Review*, and *Aluminum Extrusions from the PRC Second Review*, we continue to find that the China Input-Output Table of 2007 does not provide the type of information which the Department requires to determine if the provision of primary aluminum is specific to aluminum extrusion producers, such as the number of enterprises or industries that purchase primary aluminum.²⁶⁴ In the underlying investigation, Petitioner provided evidence in the petition that primary aluminum is used in the production of the seven main aluminum fabricated products (including casts, planks, screens, extrusions, forges, powder and die casting) and based on this information, the Department concluded in the *Aluminum Extrusions from the PRC Investigation* that the record supported a determination that the users of primary aluminum are limited, and therefore, the provision of primary aluminum for LTAR was *de facto* specific.²⁶⁵ As such, consistent with the *Aluminum Extrusions from the PRC Investigation*, *Aluminum Extrusions from the PRC First Review*, and *Aluminum Extrusions from the PRC Second Review*, we find that the industries that purchase primary aluminum are limited in number and, hence, the subsidy is specific under section 771(5A)(D)(iii)(I) of the Act.²⁶⁶

For the reasons discussed above under “Use of Facts Otherwise Available and Adverse Inferences: GOC – Whether Certain Primary Aluminum Producers Are ‘Authorities,’” we are relying on AFA to find that the companies which produced the primary aluminum purchased by GYG are “authorities” within the meaning of section 771(5)(B) of the Act. Further, we determine that a financial contribution in the form of the provision of a good was provided to GYG within the meaning of section 771(5)(D)(iii) of the Act.

Benefit

In order to determine the existence and amount of any benefit conferred by the producers to the respondent companies pursuant to section 771(5)(E)(iv) of the Act, we followed the methodology described in 19 CFR 351.511(a)(2) to identify a suitable benchmark for primary aluminum. 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. The potential benchmarks listed in the regulation, in order of preference, are: (1) market prices from actual transactions within the country under investigation for the government-provided good (*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) prices consistent with market principles based on an assessment by the Department of the government-set price (tier three).²⁶⁷

Based on the discussion above in the “Application of Adverse Facts Available for Primary Aluminum for LTAR” section, we determine that domestic prices in the PRC cannot serve as

²⁶⁴ See *Aluminum Extrusions First Review Preliminary Results* and the accompanying PDM at “Provision of Primary Aluminum for Less Than Adequate Remuneration (LTAR)” (unchanged in *Aluminum Extrusions from the PRC First Review*).

²⁶⁵ *Id.*

²⁶⁶ *Id.*

²⁶⁷ See 19 CFR 351.511(a)(2).

viable, “tier one” benchmark prices. Instead, we are relying on “tier two” prices, *i.e.*, world market prices.

As in prior reviews, the GOC, on the instant record, has submitted that the prices for primary aluminum on the Shanghai Futures Exchange parallel, or are higher than, prices on the London Metal Exchange (LME), suggesting the use of a tier-one benchmark.²⁶⁸ The GOC asserts that the convergence of prices indicates that there can be no benefit arising from price differentials between the aluminum markets in China and those in foreign countries.²⁶⁹ However, we find that no evidence has been submitted in this review that would cause us to revisit our prior determinations that domestic prices in the PRC cannot be used as benchmarks due to the government’s extensive involvement in the PRC primary aluminum market.²⁷⁰ As discussed above under “Use of Facts Otherwise Available and Adverse Inferences: GOC – Whether Certain Primary Aluminum Market Is Distorted,” the GOC did not provide certain information in response to the Department’s questions regarding the primary aluminum industry during the POR, including the total PRC domestic consumption of primary aluminum and the volume/value of domestic consumption accounted for by domestic production.²⁷¹

Because the GOC failed to provide the requested information, as explained above, we find, as AFA, that the GOC’s involvement in the market in the PRC for this input results in significant distortion of the prices such that they cannot be used as a tier one benchmark pursuant to 19 CFR 351.511(a)(2)(i) and, hence, the use of an external benchmark, *i.e.*, world market prices, is warranted to calculate the benefit for the provision of primary aluminum.

While neither respondent submitted benchmark pricing data on the record of this review, Petitioner submitted benchmark pricing data²⁷² on the record of this POR specific to several tariff numbers. Specifically, Petitioner submitted (1) Global Trade Information Services, Inc. (GTIS) pricing data for harmonized tariff schedule subheadings 7601.10 (aluminum not alloyed), 7601.20 (aluminum alloys), 7604.21, 7604.29, 7610.10 (aluminum profiles and extruded aluminum), all of which excludes pricing for products exported from and imported into the PRC, and (2) LME price information,²⁷³ as potential benchmarks for primary aluminum inputs.

With respect to the primary aluminum input for GYG, we are relying upon GTIS data related to the 7601.10 and 7601.20 pricing data that Petitioner submitted because those data represent the primary aluminum input purchased by Guang Ya, Guangcheng and Guanghai, used in the production of subject merchandise. The GTIS data are exclusive of prices for products exported from and imported into the PRC for this POR. We did not use the GTIS data Petitioner submitted concerning the other aluminum-related tariff numbers (*i.e.*, 7604.21, 7604.29, 7610.10), because those data reflect end products, not inputs, produced by Guang Ya or Guangcheng.

²⁶⁸ See GOC Initial Questionnaire Response at 46 and Exhibit 40.

²⁶⁹ *Id.*

²⁷⁰ See *Aluminum Extrusions from the PRC First Review*, and accompanying IDM at Comment 13; *Aluminum Extrusions from the PRC Second Review*, Comment 12.

²⁷¹ See Initial Questionnaire, at Section II, “Provision of Primary Aluminum for LTAR – Questions Regarding the Primary Aluminum Industry.”

²⁷² See Petitioner Benchmark Submission.

²⁷³ *Id.*, at p. 2 and Exhibits 1 – 3 and 7.

Pursuant to 19 CFR 351.511(a)(2)(ii), with respect to tier-two benchmarks, the Department should make due allowance for factors affecting price comparability. As discussed above under “Use of Facts Otherwise Available and Adverse Inferences: Application of Facts Available for GYG Billet and Ingot Purchases,” consistent with *Aluminum Extrusions from the PRC Second Review*,²⁷⁴ the Department sought to account for differences between GYG’s aluminum ingot and billet purchases. However, necessary information distinguishing between GYG’s ingot and billet input purchases is not on the record. Thus, we cannot match ingot and billet benchmarks to GYG’s ingot and billet purchases. Because we are unable to match a specific benchmark for GYG’s purchases of ingot and billets, as facts otherwise available, for each month of the POR, we calculated a single weighted-average price using the data submitted under both HTS 7601.10 and 7601.20 by dividing the total value by the total quantity for each country for the benchmark calculation.

In its benchmark submission, Petitioner provided both GTIS and LME pricing data, although it states that, consistent with *Aluminum Extrusions from the PRC Second Review*, the Department should not rely on the LME pricing data.²⁷⁵ No other party submitted arguments supporting the use of LME data. However, while the GOC submitted Shanghai Futures Exchange data reflective of only the primary aluminum market, arguing that such data is essentially equal to or higher than benchmark data in foreign markets, including LME data,²⁷⁶ we did not rely upon the Shanghai Futures Exchange data because we determined that the primary aluminum market is distorted, as discussed further below. *See* Comment 13. Also, no other party submitted arguments supporting the use of LME pricing data in this administrative review. Thus, consistent with *Aluminum Extrusions from the PRC Second Review*, we are relying only on GTIS data for these final results to derive benchmark prices, as discussed above.

For GYG, using the GTIS pricing data, we first calculated monthly weighted-average prices using the quantity exported by each country. Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under “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, to derive the benchmark prices we included ocean freight and inland freight.

With respect to ocean freight expenses, Petitioner’s submission of these expenses were sourced from the Maersk Shipping Line, representing the shipment of cargo (*e.g.*, aluminum and glass) from various points around the world to Shanghai, China and Yantian, China.²⁷⁷ While Petitioner submitted benchmark pricing data for Shanghai, China and Yantian, China, Petitioner’s Benchmark Submission was silent on which benchmark data the Department should utilize for GYG, *i.e.*, that associated with Shanghai and/or Yantian. Therefore, because the facilities of the producing firms (*i.e.*, Guang Ya and Guangcheng) are located near the Sanshan

²⁷⁴ *See Aluminum Extrusions from the PRC Second Review* Decision Memorandum, at Comment 9.

²⁷⁵ *See* Petitioner Benchmark Submission at p. 2, and Exhibits 1 and 7.

²⁷⁶ *See* GOC Initial Questionnaire Response at 26.

²⁷⁷ *Id.*, at Exhibit 11.

Port, a port that is closer in proximity to Shanghai than to Yantian, we utilized the data submitted in relation to only Shanghai, China.²⁷⁸

Regarding inland freight, GYG indicated that only Guang Ya imported primary inputs during two months of the instant review period. For those two months, we used the respective per-unit inland freight expense in the benchmark calculation. We determined a different methodology was appropriate for all other months during the POR for which no inland freight expense was reported, which is discussed above under the AFA section. We added the calculated monthly inland freight expense to ocean freight expenses. Further, we added to the benchmark prices the appropriate import duties applicable to imports of primary aluminum into the PRC, as provided by Petitioner. Because the benchmark includes prices for aluminum not alloyed and aluminum alloys, which have different import duties (five percent and seven percent, respectively, for Guang Ya), we averaged the import duty rates and applied the result to the construction of the benchmark prices. Additionally, we added the appropriate VAT of 17 percent to the benchmark prices.²⁷⁹

In deriving the benchmark prices, we did not include marine insurance. In prior CVD investigations involving the PRC, the Department determined 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.²⁸⁰ 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 review.

To determine whether the government authorities sold primary aluminum for LTAR, we compared the adjusted benchmark prices to the respondents' actual purchase prices of primary inputs from PRC firms, inclusive of taxes and delivery charges. We conducted the comparison on a monthly basis and using the same currency and unit of measure in which each respondent purchased its primary aluminum during the POR.

Comparing the benchmark unit prices to the unit prices paid by the respondents, we find that primary aluminum was provided for LTAR and that a benefit exists in the amount of the difference between the benchmark price and the price that the respondent paid. To calculate the subsidy rate for each respondent, we divided the benefit by the total sales for the POR, attributing benefits under this program according to the methodology described in the "Subsidies Valuation Information" section of these Final Results.

²⁷⁸ See Guang Ya Questionnaire Response, dated February 19, 2015, at 24 and 25. See also, Guangcheng Questionnaire Response, dated April 22, 2015, at 17.

²⁷⁹ See Petitioner Benchmark Submission, at Exhibit 9.

²⁸⁰ 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 Comment 13.

For the reason discussed above, we have calculated a subsidy of 0.27 percent *ad valorem* for GYG.²⁸¹ For more information, *see* GYG’s Final Calculation Memorandum.²⁸²

I. Provision of Aluminum Extrusions for LTAR

The Jangho Companies are producers and exporters of curtain wall products, including curtain wall units, a downstream product which is a part of a curtain wall or curtain wall system and subject to the *Orders*.²⁸³ As a downstream subject aluminum extrusions product, the Jangho Companies’ products include certain other types of aluminum extrusions as inputs.²⁸⁴

Financial Contribution and Specificity

Petitioner alleged that the respondents received countervailable subsidies in the form of the provision of aluminum extrusions for LTAR.²⁸⁵ In *Crystalline Silicon Photovoltaic Cells from China*, we determined that this program is a countervailable domestic subsidy as described under sections 771(5)(A) and (5A)(D) of the Act.²⁸⁶ The Jangho Companies reported purchasing aluminum extrusions during the POR.²⁸⁷

For the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we are basing our determination regarding the government’s provision of aluminum extrusions, in part, on AFA. Specifically, in accordance with sections 776(a) and (b) of the Act, we determine as AFA that the producers of the aluminum extrusions purchased by the Jangho Companies are “authorities” within the meaning of section 771(5)(B) of the Act and, as such, that the provision of aluminum extrusions constitutes a financial contribution under section 771(5)(D)(iii) of the Act.

Additionally, for the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we are basing our determination that the provisions of aluminum extrusions for LTAR is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act on AFA. We note that Petitioner’s NSA provided information demonstrating the alleged largest aluminum extrusions producer in Asia, Zhongwang Holdings Ltd, has three categories of customers: transportation, machinery and equipment, and electric power engineering

²⁸¹ *See* Attachment 2 for the underlying calculation.

²⁸² *See* Memorandum From Davina Friedmann, Analyst, Office VI, to Robert James, Program Manager, Office VI, regarding: “Final Results Calculation Memorandum for the Guang Ya Group,” dated concurrently with this memorandum (GYG Final Calculation Memorandum”) (December 7, 2015).

²⁸³ *See, e.g.*, Letter from the Jangho Companies to the Department, regarding: “Countervailing Duty Questionnaire Response Administrative Review—Jangho,” (December 8, 2014), (The Jangho Companies’ QR) at 5.

²⁸⁴ *See, e.g.*, The Jangho Companies’ QR at 22 and Exhibit GZ-11; The Jangho Companies’ First Supplemental Questionnaire Response at Exhibit BH-6 and Exhibit SH-1; and The Jangho Companies’ NSA Response at Exhibit S2-3, Exhibit S2-4, and Exhibit S2-5.

²⁸⁵ *See* Letter from Petitioner to the Department, regarding: “Aluminum Extrusions from the People’s Republic of China: New Subsidies Allegation,” dated January 9, 2015 (NSA).

²⁸⁶ *See* *Crystalline Silicon Photovoltaic Cells Final* and accompanying Issues and Decision Memorandum at “VII. Analysis of Programs: A. Programs Determined to Be Countervailable: 2. Provision of Aluminum Extrusions for LTAR.”

²⁸⁷ *See* The Jangho Companies’ NSA Response at 1 to 2 and Exhibit S2-2, Exhibit S2-3, Exhibit S2-4, and Exhibit S2-5.

industries.²⁸⁸ We also note that the Department has previously found the provision of aluminum extrusions in the PRC to be specific because the users of aluminum extrusions as an input are limited in number to certain industries.²⁸⁹

Benefit

In order to determine the existence and amount of any benefit conferred pursuant to section 771(5)(E)(iv) of the Act, we followed the methodology described in 19 CFR 351.511(a)(2) to identify a suitable benchmark for aluminum extrusions. 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. The potential benchmarks listed in the regulation, in order of preference, are: (1) market prices from actual transactions within the country under investigation for the government-provided good (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) prices consistent with market principles based on an assessment by the Department of the government-set price (tier three).²⁹⁰

Initially, we note that no interested party provided an internal "tier one" benchmark for valuing aluminum extrusions and we have no benchmark prices from actual transactions in the Chinese market for these inputs. Accordingly, the Department will proceed to use a "tier two" benchmark of world market prices, pursuant to 19 CFR 351.511(a)(2)(ii), as discussed in further detail below.

We also note that in the event the Department considers a "tier one" benchmark, the Department requests certain information to inform its analysis of the degree of the GOC's presence in the market and whether such presence results in the distortion of prices. Here, the GOC failed to provide the necessary information requested to determine whether the domestic market for aluminum extrusions in the PRC is distorted. In the GOC NSA Questionnaire, we asked the GOC to respond to specific questions regarding the PRC aluminum extrusions industry and market for the POR.²⁹¹ The GOC provided the total number of producers, total volume and value of imports of aluminum extrusions, the total volume of Chinese domestic production of the aluminum extrusions that is accounted for by companies in which the GOC maintains controlling ownership or management interest, and the VAT and import and export tariff rates for aluminum extrusions. The GOC explained that to the best of its knowledge, there is no independent association that solely specializes in the industry of aluminum extrusions and there are no government or trade publications specifying prices of aluminum extrusions in China. The GOC explained that there were no export or price controls or price floors or ceilings on aluminum

²⁸⁸ See NSA at 18 and Exhibit 51.

²⁸⁹ See *Crystalline Silicon Photovoltaic Cells Prelim*, and the accompanying Decision Memorandum at 28-29 (unchanged in *Crystalline Silicon Photovoltaic Cells Final* and accompanying Issues and Decision Memorandum at 22-23 and Comment 3).

²⁹⁰ See 19 CFR 351.511(a)(2).

²⁹¹ See GOC NSA Questionnaire at 1 to 2. These questions mimic the Industry and Market Questions listed above under the section entitled, "GOC – Whether Primary Aluminum Market Is Distorted," with the exception that they are directed toward the aluminum extrusions industry and market, rather than the primary aluminum industry and market.

extrusions or export licensing requirements during the POR or during the previous two years. The GOC explained that there are no laws, plans or policies in China that specifically and/or explicitly address the pricing of aluminum extrusions, the levels of production of aluminum extrusions, the importation or exportation of aluminum extrusions, or the development of aluminum extrusions capacity. The GOC explained that there are no central and sub-central level industrial policies as described by the question that pertain to aluminum extrusions.²⁹²

Despite the above information, in the GOC NSA Response, the GOC did not provide data on the total volume and value of domestic consumption, the percentage of consumption accounted for by domestic production, or the industries that purchase aluminum extrusions.²⁹³ Specifically, the GOC stated: “The GOC does not collect and maintain data regarding the total volume and value of Chinese domestic consumption of aluminum extrusions. For purposes of cooperation, the GOC provides the total production of aluminum extrusions as well as a breakdown by each category of enterprise by ownership.”²⁹⁴ The GOC also stated that it did not have data regarding the percentage of domestic consumption accounted for by domestic production, nor the industries that purchase aluminum extrusions.²⁹⁵

In the Third Supplemental Questionnaire to the GOC²⁹⁶ we gave the GOC another opportunity to provide the missing information regarding consumption of aluminum extrusions and the industries that purchase aluminum extrusions. We asked the GOC to explain what steps it took to gather the missing information, and to explain further why it could not provide the missing information. Specifically, we directed the GOC to its responses in the *Certain Crystalline Silicon Photovoltaic Products Investigation*, where it was able to provide information regarding domestic consumption of aluminum extrusions for 2012.²⁹⁷ In the GOC Third SQR, the GOC explained that it was unable to provide such detailed information given the timeframe of this review, and that it did not maintain the necessary information.²⁹⁸ However, the GOC encouraged the Department to use the information it had provided in *Crystalline Silicon Photovoltaic Products Investigation*.

Consequently, due to the GOC’s failure to provide requested information, the record is incomplete on the question of whether the PRC market for aluminum extrusions is distorted. However, as noted above, no interested party provided an internal “tier one” benchmark for valuing aluminum extrusions and we have no benchmark prices from actual transactions in the Chinese market for these inputs. Accordingly, the Department will proceed to use a “tier two” benchmark of world market prices, pursuant to 19 CFR 351.511(a)(2)(ii).

²⁹² See GOC NSA Response at 2 to 4.

²⁹³ *Id.*, at 2.

²⁹⁴ *Id.*, at 2 and Exhibit NSR-3.

²⁹⁵ *Id.*, at 2 to 4.

²⁹⁶ See Third Supplemental Questionnaire to the GOC.

²⁹⁷ See Letter from the GOC to the Department Regarding: “Response of the Government of the People's Republic of China to the Department’s Supplemental Questionnaire: *Certain Crystalline Silicon Photovoltaic Products from the People’s Republic Of China*” at pages 8 to 11 (public version contained in GOC Third Supplemental Questionnaire at Attachment 1). See also *Crystalline Silicon Photovoltaic Cells Prelim*, and the accompanying Decision Memorandum at 27-28 (unchanged in *Crystalline Silicon Photovoltaic Cells Final*).

²⁹⁸ See GOC Third Supplemental Questionnaire Response at 64 to 67.

In accordance with 19 CFR 351.301(c)(3)(ii), Petitioner submitted factual information on the record of this review to measure the adequacy of remuneration.²⁹⁹ This information reflected “tier two” price data. Since we do not have “tier one” price data on this administrative record, and no other party submitted benchmark information for purposes of calculating benchmark prices, we are relying on the information submitted by Petitioner to construct “tier two” prices, *i.e.*, world market prices. Petitioner’s benchmark pricing data³⁰⁰ included GTIS pricing data for harmonized tariff schedule subheadings 7604.21 (*i.e.*, aluminum alloy hollow profiles), 7604.29 (*i.e.*, aluminum alloy profiles other than hollow profiles), 7610.10 (*i.e.*, aluminum doors, windows and their frames and thresholds for doors), all of which exclude pricing for products exported from and imported into the PRC.³⁰¹ No party submitted alternative “tier two” benchmark data for aluminum extrusions.

With respect to the aluminum extrusions input for the Jangho Companies, we are relying upon GTIS data related to the 7604.21, 7604.29, and 7610.10 pricing data that Petitioner submitted because those data represent the aluminum extrusions inputs purchased by Jangho Group Co., Guangzhou Jangho, Shanghai Jangho and Beijing Jangho, and used in the production of subject merchandise. We did not use the data Petitioner submitted concerning the other aluminum-related tariff numbers (*i.e.*, 7601.10 (aluminum not alloyed), and 7601.20 (aluminum alloys)), because those data reflect primary aluminum, not aluminum extrusions. The GTIS pricing data provided by Petitioner are exclusive of prices for products exported from and imported into the PRC for this POR.

For the Jangho Companies, using the GTIS pricing data, we first calculated monthly weight-averaged prices using the quantity exported by each country. Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under “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, to derive the benchmark prices we included ocean freight and inland freight.

With respect to ocean freight expenses, Petitioner submitted expenses from the Maersk Shipping Line, representing the shipment of cargo (*e.g.*, aluminum and glass) from various points around the world to the Port of Shanghai, China and the Port of Yantian, China.³⁰² However, Petitioner did not specify which data the Department should utilize for each of the Jangho Companies’ production facilities, which are located in Guangzhou, Shanghai, Beijing, Wuhan, and Chongqing.³⁰³ No other party placed ocean freight pricing data on the record.

We have relied on Petitioner’s ocean freight pricing data for the Port of Shanghai in calculating a benchmark for the Jangho Companies’ purchases of aluminum extrusions with respect to the production facility in Shanghai. As discussed above under “Use of Facts Otherwise Available and Adverse Inferences: Application of Facts Available for the Jangho Companies’ Ocean Freight Expenses,” as facts available we have used Petitioner’s ocean freight price quotations

²⁹⁹ See Petitioner Benchmark Submission.

³⁰⁰ *Id.*, at p. 2.

³⁰¹ *Id.*, at p. 2 and Exhibits 1 – 3 and 7.

³⁰² See Petitioner Benchmark Submission, at Exhibit 11.

³⁰³ See, *e.g.*, The Jangho Companies’ Affiliations QR at Exhibit 1.

related to the Port of Yantian for the Jangho Companies' purchases with respect to the production facility in Guangzhou. Also as facts available, we are using a simple average of the per-container ocean freight data submitted by Petitioner for the Port of Shanghai and the Port of Yantian to calculate per-container and per-unit ocean freight rates to the Jangho Companies' production facilities in Beijing, Wuhan, and Chongqing.

Regarding inland freight, the Department sought inland freight expenses for each of the Jangho Companies' production facilities, which are located in Guangzhou, Shanghai, Beijing, Wuhan, and Chongqing.³⁰⁴ Specifically, we requested that the Jangho Companies report their per-metric ton inland freight expenses for transporting aluminum extrusions from the nearest seaport to each production facility (or "complex") for each month of the POR.³⁰⁵ Additionally, we instructed the Jangho Companies' to report all input purchases.³⁰⁶

The Jangho Companies indicated that none of the cross-owned producers imported aluminum extrusions during the instant review period. The Jangho Companies identified which aluminum extrusions purchases corresponded to which production complex.³⁰⁷ The Jangho Companies also provided monthly per-container freight quotations for shipment to each production complex, except for the Jangho Group Co.'s complexes in Wuhan and Chongqing.³⁰⁸ No other party placed alternative inland freight data on the record.

We are relying on the Jangho Companies' reported monthly per-container freight quotations for shipments of aluminum extrusions to each production complex, except for the Jangho Group Co.'s complexes in Wuhan and Chongqing. As discussed above under "Use of Facts Otherwise Available and Adverse Inferences: Application of Facts Available for the Jangho Companies' Inland Freight Expenses," as facts available we have used the inland freight rate reported for Jangho Group Co.'s production facilities in Beijing for all of Jangho Group Co.'s branches (Beijing, Wuhan, and Chongqing).

We added the calculated monthly inland freight expense and ocean freight expenses to the benchmark prices. Further, we added to the benchmark prices the appropriate import duties applicable to imports of aluminum extrusions into the PRC, as provided by Petitioner. Additionally, we added the appropriate VAT of 17 percent to the benchmark prices.³⁰⁹

In deriving the benchmark prices, we did not include marine insurance. In prior CVD investigations involving the PRC, the Department determined 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.³¹⁰ Further, we have not added separate brokerage, handling

³⁰⁴ See The Jangho Companies' NSA Response at 5 and Exhibit S2-9, Exhibit S2-10, and Exhibit S2-11, and Exhibit S2-12.

³⁰⁵ See NSA Questionnaire to the Jangho Companies at Attachment I, pages 1 to 2.

³⁰⁶ *Id.*

³⁰⁷ See The Jangho Companies' NSA Response at 4 and Exhibit S2-9, Exhibit S2-10, and Exhibit S2-11, and Exhibit S2-12.

³⁰⁸ *Id.* at 2-3 and Exhibit S2-6, Exhibit S2-7, and Exhibit S2-8.

³⁰⁹ See Petitioner Benchmark Submission, at Exhibit 9.

³¹⁰ See, e.g., *Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative*

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 review.

To determine whether the government authorities sold aluminum extrusions inputs for LTAR, we compared the adjusted benchmark prices to the respondents' actual purchase prices of aluminum extrusions inputs from PRC firms, inclusive of taxes and delivery charges. We conducted the comparison on a monthly basis and using the same currency and unit of measure in which each respondent purchased its aluminum extrusions inputs during the POR.

Comparing the benchmark unit prices to the unit prices paid by the respondents, we find that aluminum extrusions inputs were provided for LTAR and that a benefit exists in the amount of the difference between the benchmark price and the price that the respondent paid. To calculate the subsidy rate for each respondent, we divided the benefit by the total sales for the POR, attributing benefits under this program according to the methodology described in the "Subsidies Valuation Information" section.

For the reasons discussed above, we calculated a final subsidy rate for this program of 11.67 percent *ad valorem*, for the Jangho Companies. For more information, *see* the Jangho Companies' Final Calculation Memorandum.³¹¹

J. Provision of Glass for LTAR

The Jangho Companies are producers and exporters of curtain wall products, including curtain wall units, a downstream product containing glass, which is a part of a curtain wall or curtain wall system and subject to the *Orders*.³¹² As a downstream subject aluminum extrusions product, the Jangho Companies' products also include glass components as inputs.³¹³

Financial Contribution and Specificity

Petitioner alleged that the respondents received countervailable subsidies in the form of the provision of glass for LTAR.³¹⁴ Specifically, Petitioner alleged that the GOC's provision of laminate and tempered glass by SOEs constitutes a countervailable subsidy. The Jangho Companies reported purchases of glass during the POR.³¹⁵

For the reasons explained in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we are basing our determination regarding the government's provision of glass, in

Countervailing Duty Determination, 75 FR 28557 (May 21, 2010), and accompanying IDM, at Comment 13.

³¹¹ See Memorandum From Tyler Weinhold, Analyst, Office VI, to Robert James, Program Manager, Office VI, regarding: "Final Results Calculation Memorandum for the Jangho Companies," dated concurrently with this memorandum (The Jangho Companies' Final Calculation Memorandum).

³¹² See, e.g., Letter from the Jangho Companies to the Department, regarding: "Countervailing Duty Questionnaire Response Administrative Review—Jangho," (December 8, 2014), (The Jangho Companies' QR) at 5.

³¹³ See The Jangho Companies' NSA Response at 4 and Exhibit S2-9, Exhibit S2-10, and Exhibit S2-11, and Exhibit S2-12.

³¹⁴ See NSA.

³¹⁵ See The Jangho Companies' NSA Response at 4 and Exhibit S2-9, Exhibit S2-10, and Exhibit S2-11, and Exhibit S2-12.

part, on AFA. Specifically, we determine as AFA that the producers of the glass purchased by the Jangho Companies are “authorities” within the meaning of section 771(5)(B) of the Act and, as such, that the provision of glass constitutes a financial contribution under section 771(5)(D)(iii) of the Act.

In addressing specificity, the GOC stated “{t}here are a vast number of uses for either tempered plate glass or laminated glass {,} {and} {t}he types of consumers that may purchase either tempered plate glass or laminated glass are highly varied within the economy....”³¹⁶ In response to our questions concerning specificity, the GOC stated that “it is commonly known that tempered glass, and to some extent also laminated glass, are used in a variety of downstream sectors, including but not limited to doors and windows building, construction model forging, curtain wall, internal decoration, furniture and ancillaries, television, air-conditioning, refrigerator, toaster, oven, electronics, watch, mobile phone, musical players, cars and land-transportation vehicles, home instrument, among others.”³¹⁷ However, the GOC provided none of the information requested concerning amounts purchased by individual industries, stating that “to the best of the GOC’s knowledge, neither tempered plate glass nor laminated glass producers compile their sales volume and value by the industry in which the mandatory respondent companies operate, as well as the totals purchased by every other industry.”³¹⁸

Petitioner’s NSA provided information demonstrating that users of tempered and laminate glass are limited to a number of enterprises and industries (*e.g.*, construction and automobile).³¹⁹ The GOC has identified several “uses” but has not classified these “uses” into industries or otherwise identified the industries which cover these various uses. The GOC merely claimed, without providing specific evidence, that there are vast “uses” of glass, and claimed that it is common knowledge that glass is “used in a variety of downstream sectors, including but not limited to doors and windows building, construction model forging, curtain wall, internal decoration, furniture and ancillaries, television, air-conditioning, refrigerator, toaster, oven, electronics, watch, mobile phone, musical players, cars and land-transportation vehicles, home instrument, among others.” An analysis of these types of end uses would imply the existence of at least four industries. However, the GOC’s claims lack evidentiary value, as they are based on the GOC’s opinions or on what the GOC claims is common knowledge, and not on any express or specific evidence. Furthermore, because such assertions are not based on evidence, they are not verifiable. Finally, the GOC does not attempt address the issue of whether the construction industry is a predominant or disproportionate user of glass. Therefore, the GOC has provided no verifiable evidence, and indeed no evidence, that the industries consuming glass are more than the two identified by Petitioner. Therefore, taking into consideration the information provided by Petitioner and the GOC, we find that the recipients of glass are limited in number to at least two and possibly four industries, and that the provision of glass is therefore *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.

³¹⁶ See GOC NSA Response at 8.

³¹⁷ *Id.*, at 10 to 11.

³¹⁸ *Id.*

³¹⁹ See NSA at Exhibit 1, page 12.

Benefit

In order to determine the existence and amount of any benefit conferred by the producers to the respondent companies pursuant to section 771(5)(E)(iv) of the Act, we followed the methodology described in 19 CFR 351.511(a)(2) to identify a suitable benchmark for glass. 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. The potential benchmarks listed in the regulation, in order of preference, are: (1) market prices from actual transactions within the country under investigation for the government-provided good (*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) prices consistent with market principles based on an assessment by the Department of the government-set price (tier three).³²⁰

Initially, we note that no interested party provided an internal "tier one" benchmark for valuing glass and we have no benchmark prices from actual transactions in the Chinese market for these inputs. Accordingly, the Department will proceed to use a "tier two" benchmark of world market prices, pursuant to 19 CFR 351.511(a)(2)(ii), as discussed in further detail below.

We also note that in the event the Department considers a "tier one" benchmark, the Department requests certain information to inform its analysis of the degree of the GOC's presence in the market and whether such presence results in the distortion of prices. Here, the GOC failed to provide the necessary information requested to determine whether the domestic market for glass in the PRC is distorted. In the GOC NSA Questionnaire, we asked the GOC to respond to specific questions regarding the PRC glass industry and market for the POR.³²¹ The GOC provided the total number of producers, total volume and value of imports of glass, the total volume of Chinese domestic production of the glass that is accounted for by companies in which the GOC maintains controlling ownership or management interest, the VAT and import and export tariff rates for glass. The GOC explained that to the best of its knowledge, there is no independent association that solely specializes in the industry of tempered plate or laminated glass, and there are no government or trade publications specifying prices of glass in China. The GOC explained that there was no export or price controls or price floors or ceilings on glass or export licensing requirements during the POR or during the previous two years. The GOC explained that there are no laws, plans or policies in China that specifically and/or explicitly address the pricing, the levels of production, the importation or exportation, or the development either of tempered plate glass or laminated glass capacity. The GOC explained that there are no central and sub-central level industrial policies as described by the question that pertain to either tempered plate or laminated glass.³²²

³²⁰ See 19 CFR 351.511(a)(2).

³²¹ See GOC NSA Questionnaire at 6. These questions mimic the Industry and Market Questions listed above under the section entitled, "GOC-Whether Primary Aluminum Market Is Distorted," with the exception that they are directed toward the glass industry and market, rather than the primary aluminum industry and market.

³²² See GOC NSA Response at 9 to 11.

Despite the above information, in the GOC NSA Response, the GOC did not provide data on the total volume and value of domestic consumption.³²³ Specifically, the GOC stated: “The GOC does not collect official data regarding the industries in China that purchase either tempered plate glass or laminated glass.”³²⁴ The GOC also claims that it does not have data regarding the percentage of domestic consumption accounted for by domestic production nor the industries that purchase glass.³²⁵

In the Third Supplemental Questionnaire to the GOC we gave the GOC another opportunity to provide the missing information regarding consumption of glass and the industries that purchase glass, and we asked the GOC to explain what steps it took to gather the missing information, and to explain further why it could not provide the missing information. In the GOC Third SQR, the GOC further explained that it did not maintain the necessary information.³²⁶

Consequently, due to the GOC’s failure to provide requested information, the record is incomplete on the question of whether the PRC market for glass is distorted. However, as noted above, no interested party provided an internal “tier one” benchmark for valuing glass and we have no benchmark prices from actual transactions in the Chinese market for this input. Accordingly, the Department will proceed to use a “tier two” benchmark of world market prices, pursuant to 19 CFR 351.511(a)(2)(ii).

In accordance with 19 CFR 351.301(c)(3)(ii), Petitioner submitted factual information on the record of this review to measure the adequacy of remuneration.³²⁷ This information reflected “tier two” price data. We do not have “tier one” price data on this administrative record, and no other party submitted benchmark information for purposes of calculating benchmark prices. Therefore, we are relying on the information submitted by Petitioner to construct “tier two” prices, *i.e.*, world market prices. Specifically, Petitioner³²⁸ submitted (1) GTIS pricing data for harmonized tariff schedule subheadings 7007.19 (*e.g.*, tempered safety glass, other than of a size and shape suitable for incorporation in vehicles, aircraft, spacecraft or vessels), 7007.29 (*e.g.*, laminated safety glass, other than of a size and shape suitable for incorporation in vehicles, aircraft, spacecraft or vessels), and 7008.00 (*e.g.*, multiple-walled insulating units of glass), all of which excludes pricing for products exported from and imported into the PRC.³²⁹

With respect to the glass input for the Jangho Companies, we are relying upon GTIS data related to the 7007.19 and 7007.29 pricing data that Petitioner submitted because those data represent the glass inputs purchased by Jangho Group Co., Guangzhou Jangho, Shanghai Jangho and Beijing Jangho, and used in the production of subject merchandise. The Jangho Companies reported input purchases in a manner which allows us to identify the type of glass (*i.e.*, tempered glass or laminated safety glass). Accordingly, rather than averaging the AUVs of disparate products to arrive at a single “glass” benchmark, we have calculated separate benchmarks for the

³²³ *Id.*, at 8.

³²⁴ *Id.*, at 8 and Exhibit NSR-10 and NSR-11.

³²⁵ *Id.*, at 8.

³²⁶ See GOC Third Supplemental Questionnaire Response at 67 to 68.

³²⁷ See Petitioner Benchmark Submission.

³²⁸ *Id.*, at p. 2.

³²⁹ *Id.*, at p. 2 and Exhibits 1 – 3 and 7.

Jangho Companies' laminate glass and tempered safety glass input purchases.³³⁰ The GTIS pricing data provided by Petitioner are exclusive of prices for products exported from and imported into the PRC for this POR.

Using the GTIS pricing data, we first calculated monthly weight-averaged prices using the quantity exported by each country. Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under "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, to derive the benchmark prices we included ocean freight and inland freight.

With respect to ocean freight expenses, Petitioner submitted expenses from the Maersk Shipping Line, representing the shipment of cargo (*e.g.*, aluminum and glass) from various points around the world to the Port of Shanghai, China and the Port of Yantian, China.³³¹ However, Petitioner did not specify which data the Department should utilize for each of the Jangho Companies' production facilities, which are located in Guangzhou, Shanghai, Beijing, Wuhan, and Chongqing.³³² No other party placed ocean freight pricing data on the record.

We have relied on Petitioner's ocean freight pricing data for the Port of Shanghai in calculating a benchmark for the Jangho Companies' purchases of glass with respect to the production facility in Shanghai. As discussed above under "Use of Facts Otherwise Available and Adverse Inferences: Application of Facts Available for the Jangho Companies' Ocean Freight Expenses," as facts available we have used Petitioner's ocean freight price quotations related to the Port of Yantian for the Jangho Companies' purchases with respect to the production facility in Guangzhou. Also as facts available, we are using a simple average of the per-container ocean freight data submitted by Petitioner for the Port of Shanghai and the Port of Yantian to calculate per-container and per-unit ocean freight rates to the Jangho Companies' production facilities in Beijing, Wuhang, and Chongqing.

Regarding inland freight, the Jangho Companies indicated that none of the cross-owned producers imported glass inputs during the instant review period. Therefore, the Jangho Companies provided monthly per-container freight quotations for shipment to each affiliated producer's facilities except for Jangho Group Co.'s facilities ("branches") in Wuhan, and Chongqing. The Jangho Companies did not report input purchases for Jangho Group Co.'s branches in Wuhan, Beijing, and Chongqing separately, did not identify which purchases were associated with which branch, and did not report separate inland freight rates. As discussed above under "Use of Facts Otherwise Available and Adverse Inferences: Application of Facts Available for the Jangho Companies' Inland Freight Expenses," as facts available we used the inland freight rate reported for Jangho Group Co.'s Beijing production facilities for all of Jangho Group Co.'s purchases of glass. For the remaining affiliated producers, we are relying on the Jangho Companies' reported monthly per-container freight quotations for shipments of glass.

³³⁰ See The Jangho Group Companies' Post-Preliminary Analysis Memorandum.

³³¹ See Petitioner Benchmark Submission, at Exhibit 11.

³³² See The Jangho Companies' Affiliations QR at Exhibit 1.

We added the calculated monthly inland freight expense to ocean freight expenses. Further, we added to the benchmark prices the appropriate import duties applicable to imports of glass into the PRC, as provided by Petitioner. Additionally, we added the appropriate VAT of 17 percent to the benchmark prices.³³³ In deriving the benchmark prices, we did not include marine insurance. In prior CVD investigations involving the PRC, the Department determined 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.³³⁴ 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 review.

Comparing the benchmark unit to the unit prices paid by the respondents, we find that glass was provided for LTAR and that a benefit exists in the amount of the difference between the benchmark price and the price that the respondent paid. To calculate the subsidy rate for each respondent, we divided the benefit by the total sales for the POR, attributing benefits under this program according to the methodology described in the “Subsidies Valuation Information” section.

We calculated a final subsidy rate for this program of 50.81 percent *ad valorem*, for the Jangho Companies.³³⁵

For more information, *see* the Jangho Companies’ Final Calculation Memorandum.

Programs Determined Not to Confer Measurable Benefit or Not Used

We find that the following programs did not confer a measurable benefit to the respondent companies during the POR:

- Economic, Scientific Technology Development Fund (Guang Ya and Guangcheng)
- Science and Technology Bureau Project Fund (Guang Ya and Guangcheng)
- Industrial Economy Transformation and Upgrading (Guang Ya)
- Special Fund for Energy Saving Technology Reform (Guang Ya and Guangcheng)
- Technical Standards Award (Guang Ya)
- Labour and Social Security Allowance (Guangcheng)
- Intellectual Property Rewards (Guang Ya and Guangcheng)
- Safe Production Without Injury in Working (Guangcheng)
- Award for Remarkable Taxpayer (Guangcheng)
- Intellectual Property Award (Jangho Group Co. and Guangzhou Jangho)
- 2013 Import Increase Fund (Guangzhou Jangho)
- 2013 Guangzhou Innovation Enterprise Fund from Zengcheng (Guangzhou Jangho)
- 2012 First Export Increase Discount (Guangzhou Jangho)
- 2012 Second Export Increase Discount (Guangzhou Jangho)

³³³ See Petitioner Benchmark Submission, at Exhibit 9.

³³⁴ 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 Comment 13.

³³⁵ See Attachment 3 for the calculation of this subsidy rate.

2012 Private Enterprise Award (Guangzhou Jangho)
 2012 Fund for Processing Trade Transition (Guangzhou Jangho)
 2012 Fund for Processing Trade Transition (Guangzhou Jangho)
 2013 Guangzhou Service Contracting Program (Guangzhou Jangho)
 2011-2012 Second Class Science and Technology Award (Jangho Group Co.)
 Post Doctor Allowances (Jangho Group Co.)
 Post Doctor Center Research Fund (Jangho Group Co.)
 Technology Center Assistance (Jangho Group Co.)
 2008 Cultural and Creative Industry Assistance (Jangho Group Co.)
 2009 Cultural and Creative Industry Assistance (Jangho Group Co.)
 Financial Crisis Assistance (Jangho Group Co.)
 Industry Structure Reforming Fund (Jangho Group Co.)
 Solar Panel Construction Assistance (Jangho Group Co.)
 2012 “Double 10” Plan (Jangho Group Co.)
 Headquarters Building and Solar Panel Assistance (Jangho Group Co.)
 2012 Creative Industry Development Fund -2012 (Jangho Group Co.)
 2012 Creative Industry Development fund -2013 (Jangho Group Co.)
 Cultural Creative Development Fund (Jangho Group Co.)
 2013 Beijing High and New Technology Products Fund (Jangho Group Co.)
 2012 Songjiang Product Quality Award (Shanghai Jangho)
 Shanghai Patent Assistance (Shanghai Jangho)
 Industrialization and Informationization Assistance (Shanghai Jangho)
 Science Little Giants Award (Shanghai Jangho)
 2012 Employee Training Fund (Shanghai Jangho)
 Technology Renovation Fund (Shanghai Jangho)
 Award for Self-Innovation Brand/Grant for Self-Innovation Brand and Enterprise Listing –
 Nanhai District (aka, Income Tax Reward for Listed Enterprises) (Guang Ya and
 Guangcheng)³³⁶
 Export Insurance Rebate Program (Guang Ya)³³⁷

We find that the respondent companies did not use the following programs:

“Large and Excellent” Enterprises Grant
 2009 Special Fund
 Accelerated Depreciation for Enterprises Located in the Northeast Region
 Advanced Science/Technology Enterprise Grant
 Allocated Land Use Rights for State-Owned Enterprises
 Assistance for Science Research and Technology Development Planning Projects of Nanning
 Municipality
 Assistancess for Research & Development (“R&D”) projects under Funds of Nanning
 Municipality for Foreign Trade Development
 Award for Excellent Enterprise
 Award of Nanning Municipality for Industrial Enterprises Completing Energy Saving Tasks

³³⁶ See Post Preliminary Analysis at 42.

³³⁷ *Id.* at 42 to 43.

Awarding Funds of Guangxi Autonomous Region for Renovation of Energy-Saving Technologies
Awards of Guangxi Autonomous Region for Advancement of Science and Technology
Awards of Guangxi Autonomous Region for Emission Reduction of Main Pollutants
Awards of Guangxi Autonomous Region for New Products
Awards of Nanning High-tech Zone for Annual top Tax Payers of Industrial Enterprises
Awards of Nanning Municipality for Advancement of Science and Technology
Awards of Nanning Municipality for Excellent Foreign Trade Enterprises
Awards of Nanning Municipality for New Products
Awards to Key Enterprises for Large Consumption of Electricity
Bonus for 2009 Excellent Sewage Treatment Management Companies
Clean Production Technology Fund
Development Assistance Grants from the Zhaoqing New and High-Tech Industrial Development Zone (“ZHTDZ”) Local Authority
Exemption from City Construction Tax and Education Tax for Foreign-Invested Enterprises (“FIEs”)
Exemptions from Administrative Charges for Companies in the ZHTDZ
Expanding Production and Stabilizing Jobs Fund of Jiangsu Province
Export Credit Subsidy Program: Export Buyer’s Credits
Export Credit Subsidy Program: Export Seller’s Credits
Export Incentive Payments Characterized as Value Added Tax (“VAT”) Rebates
Export Rebate for Mechanic, Electronic, and High-Tech Products
Financial Assistance (interest subsidy) of Nanning Municipality for Key Technology Renovation
Financial Supporting Funds of Nanning Municipality for Technology Renovation for Production Safety
Forgiveness of Tax Arrears for Enterprises in the Old Industrial Bases of Northeast China
Foshan City Government Technology Renovation and Technology Innovation Special Fund Grants
Fund for Economic, Scientific, and Technology Development
Fund for SME Bank-Enterprise Cooperation Projects
Funds for Demonstration Bases of Introducing Foreign Intellectual Property
Funds for Projects of Science and Technology Professionals serving the Enterprises
Funds of Guangxi Autonomous Region for Energy Saving and Emission Reduction
Funds of Guangxi Autonomous Region for Enterprises’ Technology Renovation
Funds of Guangxi Autonomous Region for Promotion of Foreign Trade Development of the West Region
Funds of Nanning Municipality for Project Preliminary Works
Funds of Nanning Municipality for Sustainable Development of Foreign Trade
Funds of Nanning Municipality for Technology Innovation
Government Provision of Land-Use Rights to Enterprises Located in the Yongji Circular Economic Park for Less Than Adequate Remuneration (“LTAR”)
Government Purchase of Aluminum Extrusions for More Than Adequate Remuneration

Grants for Listing Shares: Liaoyang City (Guangzhou Province), Wenzhou Municipality (Zhejiang Province), and Quanzhou Municipality (Fujian Province)
 Grants to Cover Legal Fees in Trade Remedy Cases in Zhenzhen
 Guangxi Awards for Private Enterprises Designated as Pilot Innovation-Oriented Enterprises
 Guangxi Technology R&D Funds
 Import and Export Credit Insurance Supporting Development Fund for Changzhou
 Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries*
 Income Tax Rewards for Key Enterprises
 Labor and Social Security Allowance Grants in Sanshui District of Guangdong Province
 Land Use Rights in the Liaoyang High-Tech Industry Development Zone
 Loans and Interest Subsidies Provided Pursuant to the Northeast Revitalization Program
 Membership Fee Refunds for Members of Rescue Sub-team of Guangxi Emergency and Rescue Association for Production Safety
 Migrant Workers Training Subsidy
 Nanhai District Grants to High or New Technology Enterprises (“HNTEs”)
 Nanhai District Grants to State and Provincial Enterprise Technology Centers and Engineering Technology R&D Centers
 National Funds for Construction of Ten “Key Energy Saving Projects,” “Key Demonstration Bases for Recycling Economy and Resource Saving,” and “Key Industrial Pollution Control Projects”
 National Funds for the Industry Revitalization and Technology Renovation of the Key Fields
 National Special Funds for Emission of Main Pollutants (Assistance for Construction of Automatic Surveillance of Key Pollutant Sources)
 Northeast Region Foreign Trade Development Fund
 PGOG and Foshan City Government Patent and Honor Award Grants
 PGOG Science and Technology Bureau Project Fund (*aka*, Guangdong Industry, Research, University Cooperating Fund)
 PGOG Special Fund for Energy Saving Technology Reform
 Preferential Tax Policies for the Development of Western Regions of China
 Preferential Tax Policies for the Opening and Development of Beibu Gulf Economic Zone of Guangxi Zhuang Autonomous Region (Local Income Tax Exemption)
 Preferential Tax Program for FIEs Recognized as HNTEs
 Provincial Fund for Fiscal and Technological Innovation
 Provincial Loan Discount Special Fund for SMEs
 Provincial Tax Exemptions and Reductions for “Productive” FIEs
 Provision of Electricity for LTAR to FIEs Located in the Nanhai District of Foshan City
 Provision of Land-Use Rights and Fee Exemptions to Enterprises Located in the LHTDZ for LTAR
 Provision of Steam Coal for LTAR
 Refund of Land-Use Tax for Firms Located in the ZHTDZ
 Refund of VAT on Products Made Through Comprehensive Utilization of Resources
 Returns for Land-Transferring Fee
 Social Insurance Subsidy

Special Fund for 2010 Provincial-Level Foreign Economy and Foreign Trade Development
Special Fund for Environment Protection
Special Fund for External Economy
Special Fund for Foreign Trade
Special Fund for Industrial Development
Special Fund for Significant Science and Technology in Guangdong Province
Special Fund Subsidy for Export-Oriented Economy
Special Fund Subsidy for Industrial Development
Special Funds for Projects of National Science and Technology Supporting Plan
Special Funds for the Development of Five Industries
Special Funds of Guangxi Autonomous Region for Production Safety (Supporting Fund for Eliminating Potential and Seriously Dangerous Projects)
Special Funds of Guangxi Autonomous Region for Small Highland of Talents
Special Funds of Guangxi Beibu Gulf Economic Zone for the Development of Key Industries
Special Funds of Nanning Municipality for Academic and Technical Leaders of the New Century
Special Funds of Nanning Municipality for Key Planning Project of Professionals Cultivation
Special Funds of Nanning Municipality for Small Highland of Talents
Special Guiding Fund
Special Guiding Fund for Key Industries
Special Reward Fund for Industrial Economy Transformation and Upgrading of the Whole District
State Key Technology Renovation Project Fund
Support for Disabled Persons
Support for the Tax Refund Difference Program
Supporting Funds for Trade with the Minority Nationalities and Production of Goods Specially Needs by Minority Nationalities
Supporting Funds of Nanning Municipality for “Informatization-industrialization Integration” and Development of Information Industry
Tax Credits for Domestically-Owned Companies Purchasing Chinese-Made Equipment
Tax Reductions for Export-Oriented FIEs
Tax Reductions for FIEs in Designated Geographic Locations
Tax Reductions for FIEs Purchasing Chinese-Made Equipment
Tax Reductions for Technology- or Knowledge-Intensive FIEs
Tax Refunds for Enterprises Located in the ZHTDZ
Tax Refunds for Reinvesting of FIE Profits in Export-Oriented Enterprises
Technical Reform Subsidy for Changzhou City
Technical Standards Awards
Tiaofeng Electric Power Subscription Subsidy Funds
Two Free, Three Half Income Tax Exemptions for FIEs
VAT Rebates on FIE Purchases of Chinese-Made Equipment

Ad Valorem Rate for Non-Selected Companies Under Review

The statute and the Department's regulations do not directly address the establishment of rates to be applied to companies not selected for individual examination where the Department limited its examination in an administrative review pursuant to section 777A(e)(2) of the Act. However, the Department normally determines the rates for non-selected companies in reviews in a manner that is consistent with section 705(c)(5) of the Act, which provides instructions for calculating the all others rate in an investigation. We also note that section 777A(e)(2) of the Act provides that "the individual countervailable subsidy rates determined under subparagraph (A) shall be used to determine the all others rate under section {705(c)(5) of the Act}." Section 705(c)(5)(A) of the Act instructs the Department to calculate an all others rate using the weighted average of the subsidy rates established for the producers/exporters individually examined, excluding any zero, *de minimis*, or facts available rates. In this review, the final subsidy rates calculated for the two mandatory respondents are above *de minimis* and neither was determined entirely under facts available.

Calculating the non-selected rate by weight averaging the rates of the respondents, using respondents' proprietary sales, however, risks disclosure of this proprietary information. Therefore, for these final results, we calculated the rate for the non-selected companies by weight averaging the rates of GYG and the Jangho Companies using publicly-ranged sales data.³³⁸ As such, for each of the 38 companies for which a review was requested and not rescinded, but were not selected as mandatory respondents, and that did not fail to cooperate, we derived a final subsidy rate of 61.35 percent *ad valorem*.³³⁹

Ad Valorem Rate for Non-Cooperative Companies under Review

In this administrative review, we must also assign a rate to the four companies which failed to respond to the Department's Q&V questionnaire. As discussed above in the "*Use of Facts Otherwise Available and Adverse Inferences – Application of Total AFA to Non-Cooperative Companies*" section we find that it is appropriate to assign to these companies the total AFA rate of 158.96 percent *ad valorem*.³⁴⁰

³³⁸ See Memorandum to The File entitled, "Administrative Review of Countervailing Duty Order on Aluminum Extrusions from the People's Republic of China: Non-Selected Rate Calculation for the Preliminary Results of Review," dated June 1, 2014.

³³⁹ For a list of the non-selected companies, see *Aluminum Extrusions from the People's Republic of China: Final Results, and Partial Rescission of Countervailing Duty Administrative Review; 2013*, signed concurrently with this decision memorandum.

³⁴⁰ See AFA Calculations Memorandum.

Analysis of Comments

Comment 1: Whether the Jangho Companies' Products are Subject to the Scope of the Order

The Jangho Companies' Case Brief:

- The Department has previously issued scope rulings finding curtain wall units to be subject to *the Orders*.³⁴¹ However the Jangho Companies note that in the Preliminary Results, we stated that we would determine “countervailing duties on all appropriate entries covered by this review.”³⁴²
- The Jangho Companies’ finished curtain wall units are not “appropriate for assessment.”³⁴³
- The Jangho Companies’ finished curtain wall units were not covered by the original investigation.³⁴⁴
- Despite the fact that the Department has issued scope rulings finding curtain wall units subject to *the Orders*, the Department “must address the scope of the Jangho Companies’ imported product as part of this current review process.”³⁴⁵
- The Jangho Companies cites the *Fan Blades Assemblies Scope Ruling*, where the Department found certain products containing aluminum extrusions and other parts to be excluded as sub-assembly finished goods.³⁴⁶

Petitioner's Rebuttal Brief:

- The Department has previously ruled the Jangho Companies’ curtain wall units and components are subject merchandise.³⁴⁷
- The Department’s scope ruling found that only completely finished curtain wall and kits thereof were excluded from the orders.³⁴⁸
- Jangho Companies’ reliance on the fan blade assemblies is misplaced, because the Jangho Companies’ products have themselves been specifically ruled to be subject.³⁴⁹

³⁴¹ See *Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order*, 76 FR 30650 (May 26, 2011) (*Antidumping Duty Order*); *Aluminum Extrusions from the People's Republic of China Countervailing Duty Order*, 76 FR 30653 (May 26, 2011) (*Countervailing Duty Order*) (collectively, *the Orders*).

³⁴² See *Aluminum Extrusions from the People's Republic of China: Preliminary Results, Preliminary Intent to rescind, in Part, and Partial Rescission of countervailing Duty administrative Review: 2013*, June 9, 2015 (*Preliminary Results*) at 32532. See also, Letter from the Jangho Companies to the Department regarding: “Aluminum Extrusions from the People’s Republic of China: Case Brief,” October 24, 2015 (“the Jangho Companies’ Case Brief”) at 3.

³⁴³ See the Jangho Companies’ Case Brief at 3.

³⁴⁴ *Id.*, at 2-7 and Attachment 1.

³⁴⁵ *Id.*, at 7.

³⁴⁶ *Id.*, at 4 to 5. See also scope ruling memorandum regarding: “Antidumping (AD) and Countervailing Duty (CVD) Orders: Aluminum Extrusions From the People’s Republic of China (PRC): Final Scope Ruling on Fan Blade Assemblies,” November 30, 2012 at 16, available at <http://enforcement.trade.gov/download/prc-ae/scope/prc-ae-scope-index.html>.

³⁴⁷ *Id.*

³⁴⁸ *Id.*

³⁴⁹ *Id.*, at 20.

Department's Position:

We disagree with the Jangho Companies that its imports of merchandise are excluded from the *Orders*. As the Jangho Companies acknowledge, the Department has previously found that curtain wall units³⁵⁰ are subject to the *Orders*.

In *Curtain Wall 2012*, the Department explained that, parts of curtain walls are explicitly included in the scope of the preliminary and final determinations of the original investigation, which specifically states, “subject aluminum extrusions may be described at the time of importation as parts for final finished products that are assembled after importation, including, but not limited to, window frames, door frames, solar panels, curtain walls, or furniture.”³⁵¹ In addition, during the underlying investigation, the Department determined that a “final finished good” under the scope is a completed curtain wall, and “components” of a curtain wall, including another company’s “unitized curtain wall product” exported by that company, was subject to the *Orders*.³⁵² Moreover, the CIT affirmed this understanding of the investigation and curtain wall units in *Shenyang Yuanda*, holding that “liquidation of parts for curtain walls has been suspended since publication of the preliminary determinations for the countervailing duty order on September 7, 2010 and November 12, 2010 for the antidumping duty order.”³⁵³

The Jangho Companies’ argument that language in Exhibit I-5 to the Petition reflects that curtain wall units are outside the scope of the *Orders* is incorrect. Exhibit I-5 is a chart which indicates that “unassembled unitized curtain walls” are an example of an “unassembled” product “containing aluminum extrusions, e.g., “kits” that at the time of importation comprise all necessary parts to assemble finished goods.”³⁵⁴ Curtain wall units, as described by the Jangho Companies, are not curtain walls, but only stand-alone parts of a curtain wall. Accordingly, Exhibit I-5 to the Petition does not address curtain wall units.

Since the investigation, the Department has conducted several scope inquiries with regard to curtain wall and related products. For example, as the Jangho Companies indicate, in *Curtain*

³⁵⁰ Throughout this proceeding the Jangho Companies have referred to its product interchangeably as “curtain walls” and “curtain wall units”. Additionally, in their case brief, the Jangho Companies refer to its product as “curtain wall and window wall imports,” “curtain wall units that are produced and imported pursuant to a contract to supply a curtain wall, which contain, in part, aluminum extrusions,” and “finished curtain wall units.” Jangho Case Brief at 2-7. Aside from a brief reference to “window wall imports” in its case brief, the Jangho Companies have provided no evidence that its imports are “window walls.”

³⁵¹ See *Aluminum Extrusions From the People’s Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, and Preliminary Determination of Targeted Dumping*, 75 FR 69403 (November 12, 2010) at 69404; and *Aluminum Extrusions From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 18524 (April 4, 2011) at 18525-18526.

³⁵² See *Aluminum Extrusions From the People’s Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, and Preliminary Determination of Targeted Dumping*, 75 FR 69403 (November 12, 2010), which references the Department’s memorandum entitled “Aluminum Extrusions from the People’s Republic of China, Preliminary Determinations: Comments on the Scope of the Investigations,” dated October 27, 2010, at Comment 6.

³⁵³ See *Shenyang Yuanda Aluminum Industry Engineering Co., Ltd. v. United States*, 961 F. Supp. 2d 1291, 1304-05 (CIT 2014) (*Shenyang Yuanda*), *aff’d* by *Shenyang Yuanda Aluminum Indus. Eng’g Co. v. United States*, 776 F.3d 1351 (Fed. Cir. 2015).

³⁵⁴ See Jangho Companies’ Case Brief at Attachment 1.

Wall 2012, the Department found that curtain wall units, curtain wall systems, and parts thereof, other than those which “fall short of the final finished curtain wall that envelopes an entire building structure” are within the scope of the *Orders*.³⁵⁵ Further, the CIT and the Court of Appeals for the Federal Circuit (CAFC) have both affirmed the Department’s ruling.³⁵⁶

In *Curtain Wall 2014*, the Department ruled that curtain wall units produced and imported pursuant to a contract to supply a complete curtain wall system are within the scope of the *Orders*.³⁵⁷ Although this scope ruling is under appeal, the Jangho Companies have provided no argument why that scope ruling should not be followed in the instant review.

In sum, the Jangho Companies have presented no evidence or convincing argument why the Department should not continue to treat curtain wall units as subject to the *Orders*. For instance, in the Jangho Companies’ questionnaire responses, it repeatedly asserted: “Guangzhou Jangho produces curtain walls, not aluminum extrusions. It is Jangho’s belief that its curtain wall units fall outside the scope of the aluminum extrusions orders. However, in light of the Department’s findings in Final Scope Ruling on Curtain Wall Units that are Produced and Imported Pursuant to a Contract to Supply a Curtain Wall dated March 27, 2014, Jangho intends to file questionnaire responses in this proceeding and to fully cooperate with the Department.”³⁵⁸ The Jangho Companies also stated that “Jangho realizes that pursuant to the Final Scope Ruling on Curtain Wall Units that are Produced and Imported Pursuant to a Contract to Supply a Curtain Wall dated March 27, 2014, curtain wall is currently covered by the scope of this case, although that ruling is subject to ongoing litigation.”³⁵⁹

Aside from these mere assertions, the Jangho Companies provide no argument or evidence throughout its questionnaire responses that its merchandise was outside the scope of the *Orders*. In its case brief, the Jangho Companies continue to assert that its merchandise is not subject merchandise, relying not on any evidence in this proceeding, but rather, on prior scope rulings – which are not on point.

For instance, the Department’s analysis in the *Fan Blade Assemblies Scope Ruling* does not apply to parts of curtain walls, including individual curtain wall units, because parts of curtain walls are explicitly included in the scope of the *Orders*. This is different from the facts that were before the Department in the *Fan Blade Assemblies Scope Ruling* in which the merchandise at issue was not explicitly included in the scope of the *Orders*. Further, we disagree with the Jangho Companies that curtain wall units and the window wall kits at issue in *NR Window Scope Ruling* are alike. As discussed above, the Department has consistently found that curtain wall

³⁵⁵ See scope ruling memorandum regarding: “Antidumping Duty (AD) and Countervailing (CVD) Orders: Curtain Wall Units and Other Parts of a Curtain Wall System from the People’s Republic of China (PRC): Final Scope Ruling on Curtain Wall Units and Other Parts of Curtain Wall Systems” (November 30, 2012)). See also CBP message number 3003305 (January 3, 2013), available at <http://enforcement.trade.gov/download/prc-ae/scope/prc-ae-scope-index.html>.

³⁵⁶ See *Shenyang Yuanda*, 961 F. Supp. 2d at 1304-05, *aff’d*, 776 F.3d 1351.

³⁵⁷ See scope ruling memorandum regarding: “Curtain Wall Units that are Produced and Imported Pursuant to Contract to Supply a Curtain Wall,” March 27, 2014 (*Curtain Wall 2014*), available at <http://enforcement.trade.gov/download/prc-ae/scope/prc-ae-scope-index.html>.

³⁵⁸ See The Jangho Companies’ Nov. 4, 2014 QR.

³⁵⁹ See The Jangho Companies’ QR at 8-9.

units are part of the scope of the *Orders*. Moreover, in *NR Window Scope Ruling*, the Department determined that window walls were different in several respects from curtain wall products which had been previously examined. In particular, unlike curtain walls, window walls do not envelop or enclose the entire façade of the building, and instead leave significant areas of the building façade uncovered. In this sense, the Department determined that the window walls are akin to the window frames with glass that are expressly excluded from the scope. Further, based on evidence on the record of that scope ruling—which is not on the record of this review, or challenged by the Jangho Companies here—in the *NR Window Scope Ruling*, the Department explained that the American Architectural Manufacturers Association distinguishes between window walls and curtain walls by describing curtain walls as “exterior cladding” while defining window walls as “fenestration systems.”³⁶⁰ Aside from an unsupported assertion that curtain wall units can also be described as “fenestration systems,” the Jangho Companies address none of these points.

Thus, the Jangho Companies have not provided evidence or clearly articulated the rationale under which it alleges its products are outside the scope of the *Orders*.

Further, because the Jangho Companies have not requested a scope ruling nor provided the requisite evidence concerning its products, the Department has no basis to determine that its merchandise is excluded from the scope of the *Orders*. Accordingly, if the Jangho Companies believe that its merchandise is not covered by the scope of the *Order*, there is a mechanism available pursuant to 19 CFR 351.225 for the Jangho Companies to request the Department to issue a scope ruling. For purposes of this administrative review, however, no evidence on the record supports the Jangho Companies’ argument that its merchandise is outside the scope of the order on aluminum extrusions from the PRC.

Comment 2: Whether the Department Should Instruct CBP to Lift Suspension and Not Assess Duties Prior to the Date of Initiation of the Relevant Scope Ruling on Curtain Wall Units

The Jangho Companies’ Case Brief:

- The Jangho Companies note that, in the instruction issued to CBP at the completion of the relevant scope inquiry pertaining to the Jangho Companies’ curtain wall and window wall products, the Department instructed CBP to suspend liquidation of entries effective the date of initiation of the scope inquiry, May 10, 2013.³⁶¹
- The Department may not instruct CBP to suspend liquidation and assess duties on the Jangho Companies’ entries prior to May 10, 2013, because to do so would contradict the instructions issued in the prior scope ruling.

³⁶⁰ See scope ruling memorandum regarding: “Antidumping and Countervailing Duty Orders on Aluminum Extrusions from the People’s Republic of China; Final Scope Ruling on Finished Window Kits,” June 19, 2014 (*NR Windows Scope Ruling*) at 9 to 10, available at <http://enforcement.trade.gov/download/prc-ae/scope/prc-ae-scope-index.html>.

³⁶¹ See the Jangho Companies’ Case Brief at 8.

- Section 351.225(1)(3) of the Department’s regulations also direct the Department to suspend liquidation and assess duties on entries “on or after the date of initiation of the scope inquiry.”³⁶²
- In the first administrative review of the instant proceeding, the Department concluded, citing section 351.225(1)(3), of the regulations, that duties could only be assessed on respondent IDEX’s imports which occurred after the date of the initiation of the relevant scope inquiry on IDEX’s products.³⁶³
- In *AMS Assocs., Inc. v. United States*,³⁶⁴ the CIT (affirmed by the Federal Circuit) ruled that the Department is bound in administrative reviews by regulations regarding suspension of liquidation in scope proceedings: “{e}ven if Commerce decided not to initiate a formal scope proceeding, it was bound by the substantive regulations regarding suspension of liquidation during scope determinations.”³⁶⁵
- Citing *AMS Associates*, the Jangho Companies argue that “the Department cannot ignore its own scope proceeding and include a product newly determined to be within scope (*i.e.*, effective 5/10/2013) retroactively under the AE Orders.”³⁶⁶
- In *Dongbu Steel v. United States*, the Federal Circuit ruled that “an agency action is arbitrary when the agency offers insufficient reasons for treating similar situations differently.”³⁶⁷
- Citing *Fort Stewart Schools v. Federal Labor Relations Authority* and *Torrington Co. v. United States*, the Jangho Companies argue that “{i}t is a familiar rule of administrative law that an agency must abide by its own regulations.”³⁶⁸
- The initiation of a formal scope inquiry under section 351.225(b) of the Department’s regulations³⁶⁹ provides interested parties with a “procedural safeguard intended to assure fairness,” so that parties “have an opportunity to cease practices subject to the scope

³⁶² Section 351.225(1)(3) of the Department’s regulations provides: “If the Secretary issues a final scope ruling, under either paragraph (d) or (f)(4) of this section, to the effect that the product in question is included within the scope of the order, any suspension of liquidation under paragraph (1)(1) or (1)(2) of this section will continue. Where there has been no suspension of liquidation, the Secretary will instruct the Customs Service to suspend liquidation and to require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the product entered, or withdrawn from warehouse, for consumption on or after the date of initiation of the scope inquiry. If the Secretary’s final scope ruling is to the effect that the product in question is not included within the scope of the order, the Secretary will order any suspension of liquidation on the subject product ended and will instruct the Customs Service to refund any cash deposits or release any bonds relating to this product.”

³⁶³ See the Jangho Companies’ Case Brief at 9 to 10. See also *Aluminum Extrusions from the PRC First Review* and the accompanying Issues and Decision Memorandum (*Aluminum Extrusions 2010-2012 AD Final Results*) at Comment 14.

³⁶⁴ See *AMS Assocs. v. United States*, 881 F. Supp. 2d 1374 (CIT 2012); affirmed by *AMS V. United States*, 737 F.3d 1338 (Federal Circuit 2013) (*AMS Assocs. v. United States*).

³⁶⁵ *Id.*, at 1381.

³⁶⁶ See the Jangho Companies’ Case Brief at 11.

³⁶⁷ *Id.*, at 10. See also *Dongbu Steel Company v. United States*, 635 F.3d 1363, 1371 (Federal Circuit 2011) (*Dongbu Steel Company v. United States*).

³⁶⁸ See *Fort Stewart Schools v. Federal Labor Relations Authority*, 495 U.S. 535, 547, 79 S.Ct. 968, 3Led.2d 1012 (1959); *Service v. Dulles*, 354 U.S. 363, 388, 77 S.Ct. 1152, 1 L.Ed.2d 1403 (*Fort Stewart Schools v. Federal Labor Relations Authority*). See also *Torrington Co. v. United States*, 83 F.3d 1039, 1049 (Federal Circuit 1996).

³⁶⁹ Section 351.225(b) of the Department’s regulations provides: “If the Secretary determines from available information that an inquiry is warranted to determine whether a product is included within the scope of an antidumping or countervailing duty order or a suspended investigation, the Secretary will initiate an inquiry, and will notify all parties on the Department’s scope service list of its initiation of a scope inquiry.”

inquiry,” and “protect importers that have every legal right to rely on the Department’s public instructions to CBP specifying the date when their exposure to potential CVD duties may begin.”³⁷⁰

Petitioner’s Rebuttal Brief:

- The Department should collect duties on the Jangho Companies’ curtain wall units entered prior to the date of initiation of the scope inquiry covering the products. Petitioner further argues that the Jangho Companies are attempting to be excused from duties on merchandise that has always been subject and is now confirmed as subject.³⁷¹
- Section 351.225(1)(3) of the Department’s regulations, does not prevent the Department from collecting duties on entries of subject merchandise prior to the initiation of a scope inquiry. Rather, Petitioner argues that in *Shenyang Yuanda v. United States*, the CIT rejected the Jangho Companies’ argument, finding the Department’s suspension of liquidation of such entries lawful, since the merchandise has always been subject to the orders.³⁷²
- The Department addressed this question in the last administrative review, where the Jangho Companies and Permasteelisa argued that the Department could not assess duties on curtain wall units entered during the period of review because the Department had initiated the scope review of those products after the POR. The Department found that the regulations do not prohibit CBP from suspending liquidation or prohibit the Department from assessing duties on entries which occurred prior to a scope inquiry.³⁷³
- In *Shenyang Yuanda v. United States*, the CIT explained why the ruling in *AMS Associates v. United States* is inapplicable. In *AMS Associates v. United States*, the Department had issued instructions, pursuant to the preliminary results of an administrative review, interpreting the scope of an existing order “to cover new products.” In *Shenyang Yuanda v. United States*, in which the “retroactive” suspension of entries of the Jangho Companies’ curtain wall units was at issue, the Department’s instructions did not attempt to add new products to the scope. The CIT found such entries to have always been subject to the Order, and, therefore, to have been suspended since the *Preliminary Determination*.³⁷⁴

Department’s Position:

We disagree with the Jangho Companies that the Department has no authority to assess duties on imports prior to the initiation of a scope inquiry. Further, we disagree with the Jangho Companies that section 351.225(1)(3) of the Department’s regulations prohibit the Department, as a result of this administrative review, from assessing duties on their entries prior to the date of initiation of the scope inquiry. The Jangho Companies mischaracterize 19 CFR 351.225(1)(3), which states that “the Secretary will instruct the Customs Service to suspend liquidation and to

³⁷⁰ See the Jangho Companies’ Case Brief at 14.

³⁷¹ See Petitioner’s Rebuttal Brief at 20-21.

³⁷² See Petitioner’s Rebuttal Brief at 20-21. See also, *Shenyang Yuanda v. United States*, 1302-04.

³⁷³ See Petitioner’s Rebuttal Brief at 20-21.

³⁷⁴ See *Aluminum Extrusions From the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 75 FR 54302, (September 7, 2010) (*Aluminum Extrusions Investigation Preliminary Determination*).

require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the product entered, or withdrawn from warehouse, for consumption *on or after the date of initiation of the scope inquiry*,” by failing to include the words, “*{w}here there has been no suspension of liquidation*” (emphasis added). The Jangho Companies’ relevant entries were suspended prior to the date of initiation of the curtain wall units scope ruling.³⁷⁵ Nothing in 19 CFR 351.225(l)(3) prohibits CBP from suspending liquidation of these entries prior to the initiation of a scope inquiry. Likewise, nothing in this provision prohibits the Department from instructing CBP to assess duties on these entries, which are properly subject to this review. As evidenced by 19 CFR 351.225(l)(1)-(3), the Department may initiate a formal scope inquiry even where products have already been suspended prior to the date of initiation. If the Department reaches an affirmative determination that the products are within the scope of the orders, 19 CFR 351.225(l)(3) permits the Department to continue its suspension of the products. As noted above, the Jangho Companies’ products at issue were already suspended prior to the date of initiation of the scope inquiry, and thus, the Department may properly assess duties on these entries. However, as stated above, nothing in 19 CFR 351.225(l)(3) prohibits CBP from suspending liquidation of these entries prior to the initiation of a scope inquiry.

We also disagree with the Jangho Companies’ contention that the Department’s treatment of IDEX in the final results of the *Aluminum Extrusions 2010-2012 AD Final Results* is applicable to the parties in this review.³⁷⁶ In that review, the Department stated: “Consistent with 19 CFR 351.225(l)(3), the Department will instruct CBP to suspend liquidation and to require a cash deposit of estimated AD duties, at the applicable rate, for each unliquidated entry, if any, of IDEX’s subject merchandise entered, or withdrawn from warehouse, for consumption on or after December 1, 2011, the date of initiation of IDEX’s scope inquiry for precision-machined parts.”³⁷⁷

Contrary to the Jangho Companies’ contention, the *Aluminum Extrusions 2010-2012 AD Final Results* did not say that the Department would not assess duties on IDEX’s entries of subject merchandise prior to the initiation of its scope inquiry, but rather that the Department would instruct CBP to “suspend liquidation and require a cash deposit” on or after the date of the initiation of IDEX’s scope inquiry. Thus, we do not find that the *Aluminum Extrusions 2010-2012 AD Final Results* is applicable to the parties in this review.

Moreover, the Jangho Companies’ reliance on *AMS Associates* is misplaced. As an initial matter, the Department does not add new products to or remove products from the scope of an

³⁷⁵ See scope ruling memorandum regarding: “Antidumping Duty (AD) and Countervailing Duty (CVD) Orders: Curtain Wall Units and Other Parts of a Curtain Wall Systems from the People’s Republic of China (PRC),” March 27, 2014 (*Curtain Wall 2012*), available at <http://enforcement.trade.gov/download/prc-ae/scope/prc-ae-scope-index.html>.

³⁷⁶ See the Jangho Companies’ Case Brief at 9 to 10. See also *Aluminum Extrusions 2010-2012 AD Final Results* and the accompanying Issues and Decision Memorandum at Comment 14.

³⁷⁷ See *Aluminum Extrusions from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission*, in Part, 2010/12, 79 FR 96 (January 2, 2014) (*Aluminum Extrusions 2010-2012 AD Final Results*), and accompanying IDM at Comment 14.

existing order, either in scope rulings or in administrative reviews.³⁷⁸ In *AMS Associates*, the Federal Circuit held that the Department (1) erred in failing to conduct a formal scope inquiry because the scope of the order was unclear, and (2) exceeded its authority under 19 CFR 351.225(l)(2) by ordering the suspension of liquidation retroactive to the beginning of the period of review when the order did not clearly cover the product at issue.³⁷⁹ In contrast, in the scope ruling at issue, at the request of Yuanda USA Corporation, an importer, and Shenyang Yuanda Aluminum Industry Engineering Co., Ltd., a foreign producer/exporter of certain curtain wall units, (together, “Yuanda”), the Department initiated a formal scope inquiry on certain curtain wall units to determine whether the products were subject to the order. The Department found the products were within the scope of the order pursuant to the scope language that explicitly covers parts for curtain walls,³⁸⁰ and ordered CBP to “suspend liquidation of entries of curtain wall units that are produced and imported pursuant to a contract to supply a curtain wall effective 05/10/2013, which is the date of initiation of the scope inquiry.”³⁸¹ Importantly, nothing in these instructions prohibited the continued suspension of liquidation for products that were already suspended prior to the date of initiation of the formal scope inquiry.

Importantly, in *Shenyang Yuanda*, the CIT expressly addressed and rejected the argument presented here by the Jangho Companies that the Department cannot “retroactively” collect duties on curtain wall units. The CIT confirmed that “{w}here, as here, a scope ruling confirms that a product is, and has been, the subject of an order, the Department has not acted beyond its authority by continuing the suspension of liquidation of the product.”³⁸² The CIT in *Shenyang Yuanda* further dismissed the argument that the Jangho Companies rely on here with respect to *AMS Associates*. As the CIT explained, “{i}n *AMS*, Commerce issued clarification instructions that interpreted the scope of an existing antidumping duty order to cover new products and then retroactively suspended liquidation of these products.”³⁸³ The CIT went on to find *AMS Associates* “inapplicable to this case because, here, the instructions added no new products to the scope, and because liquidation of plaintiffs’ curtain wall units has been suspended since publication of the preliminary determinations {,} . . . {thus,} merely confirm {ing} what had previously been the case.”³⁸⁴

Here, the Department has not retroactively ordered the suspension of liquidation of any entries of the Jangho Companies’ merchandise, although such merchandise may already have been properly suspended by CBP. Thus, we disagree with the Jangho Companies that *AMS Associates* stands for the proposition that the Department cannot liquidate a party’s suspended entries of subject merchandise prior to the initiation of a scope inquiry.

Finally, the in-scope status of the Jangho Companies’ curtain wall units and other curtain wall components and products subject to this review has been confirmed by the Department’s scope

³⁷⁸ We might remove a product from the scope pursuant to a changed-circumstances review in accordance with 19 CFR 351.216 of the Department’s regulations and Section 751(b) of the Act, or add a product in the context of an anti-circumvention inquiry in accordance with 19 CFR 351.225(g)-(j) and Section 781(a)-(d) of the Act.

³⁷⁹ See *AMS Associates*, 737 F. 3d at 1343-44.

³⁸⁰ See *Curtain Wall 2012* at 20-27.

³⁸¹ See CBP Message No. 4101301 (April 11, 2014).

³⁸² See *Shenyang Yuanda*, 961 F. Supp. 2d at 1302-03.

³⁸³ *Id.*, at 1303 (citing *AMS Associates CIT*, 881 F. Supp. 2d at 1377).

³⁸⁴ *Id.*

ruling, by the CIT, and by the Federal Circuit in *Shenyang Yuanda v. United States*. Accordingly, the Jangho Companies' reference to *Dongbu Steel v. United States* and *Fort Stewart Schools v. Federal Labor Relations Authority* and *Torrington Co. v. United States* are also misplaced, because of the clear differences explained above, and because the Department has complied fully with its own regulations in this regard.

Comment 3: Whether the GOC Provided Policy Loans to the Jangho Companies and GYG

The Jangho Companies' Case Brief:

- The Jangho Companies received no preferential (policy) loans during the POR. The Department's finding of a GOC policy to subsidize the Aluminum Extrusions industry through policy lending contradicts the record of this proceeding.³⁸⁵
- Banks in the PRC made lending decisions based on sound commercial considerations, not GOC policy.³⁸⁶
- The *Interim Measures for the Administration of Working Capital Loans* provide that all loans are made on a pure commercial basis, and the Department acknowledged this fact.³⁸⁷
- The *Capital Rules for Commercial Banks*, enacted by the China Regulatory commission, were in effect during the POR. These rules created strict fiscal controls on lending.³⁸⁸
- The Department's finding that the Article 34 of the *Banking Law* requires banks to make decisions based on policy goals is incorrect; rather, the Banking law merely provides that banks operate "with the spirit of state industrial policies."³⁸⁹
- With respect to the effect of *Capital Rules for Commercial Banks*, in effect during the POR, the Department's is incorrect in its conclusion that because changes in bank loan policy are new, the Department cannot determine the impact of such policies on lending. The Jangho Companies contend, instead, that there is no evidence that banks act inconsistently with such these rules.³⁹⁰
- There is no evidence on the record that loans were granted to the Jangho Companies pursuant to a GOC directive to support the aluminum extrusions industry.³⁹¹
- The Department's finding that loans from state-owned commercial banks (SOCBs) constitute a direct financial contribution is incorrect. Chinese commercial banks are not "authorities" under CVD law. SOCBs are not controlled by the GOC in a way that their conduct is controlled, or in such a way that they could be considered "authorities" under CVD law.³⁹²

³⁸⁵ See Jangho Case Brief at 14 to 15.

³⁸⁶ *Id.*, at 14 to 15.

³⁸⁷ *Id.*, at 15. See also *Preliminary Results* and the accompanying Decision Memorandum at 19.

³⁸⁸ See The Jangho Companies' Case Brief at 15. See also *Preliminary Results* and the accompanying Preliminary Decision Memorandum at 20.

³⁸⁹ See The Jangho Companies' Case Brief at 16. See also *Preliminary Results* and the accompanying Preliminary Decision Memorandum at 19.

³⁹⁰ See The Jangho Companies' Case Brief at 17. See also *Preliminary Results* and the accompanying Preliminary Decision Memorandum at 20.

³⁹¹ See The Jangho Companies' Case Brief at 17.

³⁹² *Id.* See also *Preliminary Results* and the accompanying Preliminary Decision Memorandum at 20.

The GOC's Case Brief:

- The GOC did not provide preferential lending to respondents during the POR.³⁹³
- The *Capital Rules for Commercial Banks* have resulted in substantial changes in Chinese commercial banking and that *Capital Rules for Commercial Banks* and *Interim Measures for the Administration of Working Capital Loans* rule out industrial policy as a consideration, stipulate due diligence on the part of banks, and provide that loans be made on the basis of factors such as specified use, continuing operations, credit, scale, business characteristics, working capital, cash flow, capital turnover.³⁹⁴ Article 34 of the *Banking Law* merely provides that banks operate “with the spirit of the state industrial policies {,}”³⁹⁵ and that this provision has not been incorporated into any other applicable law or regulations and thus has no enforceable regulatory function.
- The *Capital Rules for Commercial Banks*, in effect during the POR, demonstrate that commercial loans to businesses in China are regulated under applicable Chinese law and result in substantial changes in China’s commercial banking sector. Contrary to the *Preliminary Determination*, there is no evidence that banks act inconsistently with such these rules.³⁹⁶
- China’s commercial banks are not “authorities.”³⁹⁷ Ownership alone does not indicate that the entity is an “authority”³⁹⁸ The Department failed to provide a separate analysis, instead relying on *CFS Paper*.³⁹⁹ Citing *Appellate Body Report*,⁴⁰⁰ the GOC argues that the Department failed to comply with the United States’ WTO obligations to provide “reasoned and adequate explanation.”⁴⁰¹
- Commercial banks in China operate on commercial principles, even where there is some state ownership.

Petitioner's Rebuttal Brief:

- The policy loans program is countervailable.⁴⁰²
- The policy loans program still exists.⁴⁰³
- The changes claimed by the GOC are largely symbolic, are being phased in over several years, and still permit certain banks to ignore the *Interim Measures for the Administration*

³⁹³ See Letter from the GOC to the Department regarding: “Aluminum Extrusions from the People’s Republic of China; 3rd Administrative Review GOC Case Brief,” October 23, 2015 (“GOC Case Brief”) at 1 and 3 to 6.

³⁹⁴ *Id.*, at 1, 3 to 6, and 8.

³⁹⁵ *Id.*, at 4.

³⁹⁶ *Id.*, at 5-6..

³⁹⁷ *Id.*, at 6 to 9.

³⁹⁸ *Id.*, at 7 to 8.

³⁹⁹ See *Coated Free Sheet Paper from China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (*CFS Paper*).

⁴⁰⁰ See United States - Definitive Anti-Dumping and Countervailing Duties on Certain Products from China, WT/DS379/AB/R (March 11, 2011) (*Appellate Body Report*).

⁴⁰¹ See GOC Case Brief at 7. See also, United States - Definitive Anti-Dumping and Countervailing Duties on Certain Products from China, WT/DS379/AB/R (March 11, 2011).

⁴⁰² See Petitioner’s Rebuttal Brief at 2-7.

⁴⁰³ *Id.*

of *Working Capital Loans* and the *Banking Law*, and modify the previous requirement that banks “consider industrial policy,” such that banks must instead act “within the spirit of the state industrial policies” and the “needs of the national economy and the social development.”⁴⁰⁴

- These changes merely indicate that the GOC is strongly urging its banks to issue loans to bolster the economy pursuant to industrial policy.⁴⁰⁵
- Petitioner, noting increases in bad debts in China in 2014, argues that liberalization of bank capital requirements have merely allowed banks to absorb more bad debt.⁴⁰⁶
- Petitioner argues that *Capital Rules for Commercial Banks* have no potency and may be ignored by certain banks.⁴⁰⁷
- SOCBs are still authorities.⁴⁰⁸
- While the WTO ruled in *Appellate Body Report* that state ownership may not constitute authority status, as the Department noted in the *Preliminary Results*, in *OCTG from China*,⁴⁰⁹ and in *Solar I*,⁴¹⁰ state ownership is just one consideration in its authorities analysis.⁴¹¹
- Many banks *are* owned by the state, advancing policy goals through lending as arms of the GOC.⁴¹²

Department’s Position:

The Department finds, as it has in prior segments of this proceeding,⁴¹³ that the GOC had a policy in place to encourage the development of the production of aluminum extrusions through policy lending, and that Chinese SOCBs are authorities under the countervailing duty law. We disagree with the arguments made by the GOC and the Jangho Companies in this regard.

The Department has repeatedly affirmed its finding in *CFS from the PRC* that the PRC’s banking sector does not operate on a commercial basis and is subject to significant distortions, primarily arising out of the continued dominant role of the government in the financial system and the

⁴⁰⁴ *Id.* at 4. See also *Interim Measures for the Administration of Working Capital Loans*.

⁴⁰⁵ *Id.*

⁴⁰⁶ See Petitioner’s Rebuttal Brief at 4. See also, Letter from Petitioner to the Department regarding: “Aluminum Extrusions from the People’s Republic of China: Comments on Questionnaire Responses of the Government of the People’s Republic of China,” Dec 17, 2014, at Exhibit 1.

⁴⁰⁷ See Petitioner’s Rebuttal Brief at 4 to 5. See also, Letter from Petitioner to the Department regarding: “Aluminum Extrusions from the People’s Republic of China: Comments on Questionnaire Responses of the Government of the People’s Republic of China,” Dec 17, 2014, at Exhibit 3.

⁴⁰⁸ *Id.*, at 6-7.

⁴⁰⁹ See *Certain Oil Country Tubular Goods From the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 52301 (August 25, 2014) (*OCTG From China*), and the accompanying Issues and Decision Memorandum at Comment 12.

⁴¹⁰ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People’s Republic of China*, 77 FR 63788 (October 17, 2012) (*Solar I*) and the accompanying Issues and Decision Memorandum at Comment 13.

⁴¹¹ See Petitioner’s Rebuttal Brief at 6.

⁴¹² *Id.* See also GOC Case Brief at 8.

⁴¹³ See *Aluminum Extrusions Final Determination, Aluminum Extrusions from the PRC First Review, and Aluminum Extrusions from the PRC Second Review* and accompanying IDMs at the sections entitled, “Policy Loans to Chinese Aluminum Extrusion Producers.”

government's use of banks to effectuate policy objectives.⁴¹⁴ As such, loans provided by PRC banks reflect significant government intervention and are considered SOCBs.⁴¹⁵

Further, in *CFS from the PRC*, the Department explained why SOCBs are "authorities" within the meaning of section 771(5)(B) of the Act. Contrary to the GOC's arguments, our findings were not, and are not, based upon government ownership alone. For example, we stated:

. . . information on the record indicates that the PRC's 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.⁴¹⁶

In order to revisit the determination in *CFS from the PRC*, there must be evidence warranting reconsideration. However, there is no such evidence on the record of this administrative review. While the GOC has made similar claims in other recent PRC CVD proceedings,⁴¹⁷ it has never provided sufficient evidence suggesting that even the most basic facts of the *CFS from the PRC* analysis have changed. For example, in *OCTG from the PRC*, we noted:

{T}he GOC has failed to provide evidence that the government has divested itself of ownership in Chinese banks. The GOC has failed to address the issue of real risk assessment within the Chinese banking sector. The GOC has failed to address interest rate and deposit rate ceilings and floors set by the government. The GOC has failed to address both *de jure* and *de facto* reforms within the Chinese banking sector. The GOC has failed to address the elimination of policy-based lending within the Chinese banking sector. Therefore, the GOC has failed to provide the information that would warrant a reconsideration of the Department's determination in {the *CFS from the PRC* investigation}.⁴¹⁸

Similarly, the GOC did not provide a sufficient factual basis for reconsidering the *CFS from the PRC* decision in this instant review. The GOC's arguments⁴¹⁹ about the lending practices of financial institutions echo arguments that have been rejected in previous administrative reviews. In the first administrative review, the GOC reported that in February 2010, the China Banking Regulatory Commission (CBRC) promulgated the *Interim Measures for the Administration of Working Capital Loans (Interim Measures)*, which, according to the GOC, state that "banking

⁴¹⁴ *Id.*, citing *CFS from the PRC*, and accompanying IDM at Comment 10; *see also* China-NME Status Memoranda (discussing the status of the Chinese commercial banking sector).

⁴¹⁵ *Id.*

⁴¹⁶ *See CFS from the PRC*, and accompanying IDM at Comment 10.

⁴¹⁷ *See, e.g., Aluminum Extrusions from the PRC First Review*, and accompanying IDM at Comment 7; *Aluminum Extrusions from the PRC 2012 Review*, and accompanying IDM at Comment 5; *Wind Towers from the PRC*, and accompanying IDM at Comment 4; *OCTG from the PRC*, and accompanying IDM at Comment 20; *Solar Cells from the PRC*, and accompanying IDM at Comment 15.

⁴¹⁸ *See OCTG from the PRC*, and accompanying IDM at Comment 20.

⁴¹⁹ *See* the GOC's Initial Questionnaire Response, at 5. Also, a copy of the *Interim Measures* was provided in the GOC's Initial Questionnaire Response at Exhibit 1.

financial institutions established in China upon the CBRC's approval, including those at issue in this review, all make their decisions on issuance of working capital loans on a pure commercial basis."⁴²⁰ The GOC points out that in addition to the *Interim Measures*, Article 34 of the *Law of the People's Republic of China on Commercial Banks (Banking Law)*, which does not specify any specific obligation imposed by the government on commercial banks, remained in effect during the current POR.⁴²¹

We considered this information in the *Aluminum Extrusions from the PRC First Review* and determined that there is no basis to conclude that the GOC's policy lending activities ceased with the issuance of the *Interim Measures*.⁴²² As we explained in the *Aluminum Extrusions from the PRC Investigation* and *Aluminum Extrusions from the PRC First Review*, we determined that Article 34 of the *Banking Law* states that banks should carry out their loan business "under the guidance of the state industrial policies."⁴²³ Thus, because the *Interim Measures* are "fully consistent" with the *Banking Law*, we determine, consistent with prior determinations, that they do not constitute evidence that the GOC ceased policy lending to the aluminum extrusions industry, despite any changes to lending practices asserted by the GOC.

In the current administrative review, the GOC indicated that the *Capital Rules for Commercial Banks* (provisional) (Capital Rules), as enacted by the China Banking Regulatory Commission, went into effect on January 1, 2013. According to the GOC, these Capital Rules establish tight disciplines on loan management. According to the GOC, these changes, combined with deregulation of floor interest rates by commercial banks, demonstrate substantial changes in China's commercial banking sector.⁴²⁴

We find that these changes do not call into question the Department's prior findings regarding the Chinese banking sector. The GOC has cited certain specific regulatory initiatives concerning bank loan management and lending rate floors that the GOC has recently undertaken. However, insufficient time has elapsed to see clearly the definitive, *de facto* results of these incremental reforms and regulatory initiatives, nor does the record contain any such evidence. More importantly, even under the assumption that sufficient time might have elapsed, the GOC has offered no demonstration or evidence of how these incremental reforms and regulatory initiatives have fundamentally changed, or relate to fundamental changes in, (i) core features of the state-commercial bank relationship and (ii) the economic and institutional roles of banks and the banking sector in China. (The Department noted these features and roles in its analysis in *CFS from the PRC*⁴²⁵.) In the absence of any argument or evidence of such change, the Department sees no basis at this time to depart from its analysis of China's banking sector.

Regarding the GOC's statements concerning the *US-CVD I WTO AB Decision*, we note that the

⁴²⁰ See *Aluminum Extrusions from the PRC Second Review* IDM at "Policy Loans to Chinese Aluminum Extrusion Producers."

⁴²¹ See the GOC's Initial Questionnaire Response, at 6. A copy of the *Banking Law* was provided in the GOC's Initial Questionnaire Response at Exhibit 9.

⁴²² See *Aluminum Extrusions from the PRC First Review*, and accompanying IDM at "Policy Loans to Chinese Aluminum Extrusion Producers" and Comment 6.

⁴²³ *Id.*, and *Aluminum Extrusions from the PRC Investigation*, and accompanying IDM at Comment 28.

⁴²⁴ See GOC's Initial Questionnaire Response, at 4.

⁴²⁵ See *CFS from the PRC*, and accompanying IDM at Comment 10.

Appellate Body in that dispute affirmed the Department’s finding based on a previous proceeding that SOCBs are “public bodies” or “authorities,” as both determinations concerned the nature of SOCBs in China.⁴²⁶ The Department’s determination in this review that the PRC 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. For these reasons, we continue to find that SOCBs are “authorities” capable of providing financial contributions to the respondents.

Comment 4: Whether the Department’s Benchmark Interest Rates are Arbitrary, Unsupported by Record Evidence, or Unlawful

The GOC’s Case Brief:

- The Department’s benchmark interest rates are arbitrary.⁴²⁷
- The Department’s failure to apply a Chinese interest rate benchmark is contrary to the Department’s regulations and past precedents.⁴²⁸ Given the changes in the Chinese banking sector and deregulation of floor interest rates, the use of external benchmarks is unsupported by record evidence.⁴²⁹
- The calculation of short-term interest rate benchmarks is based on an arbitrary collection of IMF-published rates, some of which are not short-term, some of which are not business loans. The Department arbitrarily excluded negative inflation-adjusted rates, arbitrarily used an invalid regression analysis based on a composite governance factor, and arbitrarily adjusted rates based on the spread between U.S. short and long-term “BB” bond rates.⁴³⁰

Petitioner’s Rebuttal Brief:

- The benchmark interest rates comport with the Department’s Practice, and that in this proceeding, there is no new information which would lead the Department to a contrary conclusion.⁴³¹
- With respect to the negative inflation-adjusted interest rates excluded from our benchmark analysis, the Department has noted previously that negative inflation-adjusted interest rates are anomalies.⁴³²
- With respect to the countries chosen, the terms of the loans used, the Department has noted previously that it has addressed these arguments in previous cases and in prior segments of the instant proceeding, and found the approach to consistent with the

⁴²⁶ See *US-CVD I WTO AB Decision* at para. 34.

⁴²⁷ See GOC Case Brief at 9.

⁴²⁸ *Id.*

⁴²⁹ *Id.*

⁴³⁰ *Id.*, at 9 to 10.

⁴³¹ See Petitioner’s Rebuttal Brief at 7-9.

⁴³² *Id.*, at 8. See also *Citric Acid and Certain Citrate Salts From the People’s Republic of China*, 74 FR 16836 (April 13, 2009) (*Citric Acid*), and the accompanying Issues and Decision Memorandum at Comment 16.

- Department's regulations.⁴³³
- With respect to the use of the spread between U.S. long-term and short-term BB loans in adjusting long-term interest rates for use as benchmarks, Petitioner notes that the Department has addressed this issue in the instant proceeding, and in other proceedings, including OCTG From China⁴³⁴

Department's Position:

The Department has fully addressed the arguments raised by the GOC regarding the Department's rationale for relying on an external benchmark and its authority to do so in prior cases and the *Preliminary Determination*.⁴³⁵ As discussed above in comment 3, the GOC has not presented sufficient information to warrant reconsideration of the Department's prior findings, including on the issue of whether certain regulatory initiatives have had an impact on the Department's prior findings.

Additionally, the Department has previously fully addressed the arguments raised by the GOC regarding the calculation of the Department's benchmark interest rate, including the use of certain rates published by the IMF,⁴³⁶ the Department's practice with respect to certain negative inflation-adjusted rates,⁴³⁷ its regression analysis based on a composite governance factor,⁴³⁸ and adjustment of rates based on the spread between U.S. short and long-term "BB" bond rates.⁴³⁹ Because the GOC offers no more here than bare restatements of these previously rejected arguments, we find the GOC has not presented new arguments or information sufficient to warrant reconsideration of the Department's prior findings.

⁴³³ See Petitioner's Rebuttal Brief at 9. See also *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) (First Administrative Review Final Results) and the accompanying Issues and Decision Memorandum at Comment 8.

⁴³⁴ See Petitioner's Rebuttal Brief at 9. See also, *OCTG From China*, and the accompanying Issues and Decision Memorandum at Comment 13.

⁴³⁵ See, e.g., *Preliminary Determination* IDM at 12; see also, e.g., *CFS from the PRC*, 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) (*Thermal Paper from the PRC*), and accompanying IDM at 8-10. We are, therefore, incorporating our response to the GOC's comments in these other decisions by reference herein. This issue, in general terms, has also been raised in numerous PRC CVD proceedings.

⁴³⁶ See *Preliminary Determination*. See also, e.g., Citric Acid comment 10, OCTG comments 24, 26.

⁴³⁷ See *Preliminary Determination*. See also, e.g., *Solar Cells* and the accompanying Issues and Decision Memorandum at Comment 16.

⁴³⁸ See, e.g., Citric Acid comment 12, Extrusions First Administrative Review Final Results comment 8, OCTG comment 23.

⁴³⁹ See, e.g., Citric Acid comment 13, OCTG comment 27.

Comment 5: Whether Preferential Tax Policies for High or New Technology Enterprises (HTNEs) is Specific

The Jangho Companies' Case Brief:

- The Department incorrectly concluded that the program is limited to an enterprise or industry, pursuant to section 771(5A)(D)(i) of the Act.⁴⁴⁰
- This program is available to eight industries: electronics and information, technology, biology and new medicine technology, aerospace industry, new materials technology, high-tech service industry, new energy and energy-saving technology, resources and environmental technology, and high-tech transformation of traditional industries, and various sub-areas and several specific areas. This demonstrates that the program is not limited to an enterprise or industry.⁴⁴¹ Further, the areas are further broken into 39 sub-areas and more than 200 specific areas.

The GOC's Case Brief:

- This program is available to eight broad and diverse industries, and thus is not limited to an enterprise or industry.⁴⁴²
- The Department's assertion that the program is limited to enterprises and industries meeting certain eligibility requirements does not indicate that the program is limited to a specific enterprise or industry.⁴⁴³
- The Department found the program to be specific because it is limited to certain industries and is limited by objective criteria,⁴⁴⁴ but the GOC argues that section 771(5A)(D)(ii) of the Act indicates that objective criteria indicate that a subsidy is not specific.⁴⁴⁵ The GOC points to the "detailed application process" which respondents "strictly follow," and argues that the record indicates that the subsidy is automatic, and, therefore, not specific.⁴⁴⁶

Petitioner's Rebuttal Brief:

- By identifying the classes of industries that the program is available to, by definition the program is not available to other industries. Therefore, the program is *de jure* specific, because it is limited by law to a group of industries.⁴⁴⁷

⁴⁴⁰ Section 771(5A)(D)(i) of the Act provides: "Where the authority providing the subsidy, or the legislation pursuant to which the authority operates, expressly limits access to the subsidy to an enterprise or industry, the subsidy is specific as a matter of law."

⁴⁴¹ See the Jangho Companies' Case Brief at 18. See also *Preliminary Results* and the accompanying Decision Memorandum at 22.

⁴⁴² See GOC Case Brief at 14.

⁴⁴³ *Id.*

⁴⁴⁴ See GOC Case Brief at 14.

⁴⁴⁵ *Id.* See also, *Preliminary Results* and the accompanying Decision Memorandum at 21.

⁴⁴⁶ See GOC Case Brief at 15 and Letter from the GOC to the department regarding: "Aluminum Extrusions from China; 3rd CVD Administrative Review GOC Second Supplemental Questionnaire Response," April 28, 2014, at 3 to 4 (GOC April 28, 2014, Supplemental Questionnaire Response).

⁴⁴⁷ See GOC Case Brief at 10.

Department's Position:

As explained in the *Preliminary Results*, the Department has previously found, in prior proceedings and in a prior segment of the instant proceeding, including *Aluminum Extrusions from the PRC First Review*, *Aluminum Extrusions from the PRC Second Review*, *Citric Acid from the PRC First Review*, that this program is *de jure* specific in accordance with section 771(5A)(D)(i) of the Act because, as a matter of law, the qualifying industries are limited.⁴⁴⁸ For example, in *Citric Acid from the PRC First Review*, the Department found:

We also determine that the reduction afforded by this program is limited as a matter of law to certain new and high technology companies selected by the government pursuant to legal guidelines specified in *Measures on Recognition of HNTEs*, and, hence, is specific under section 771(5A)(D)(i) of the Act. Both the number of targeted industries (eight) and the narrowness of the identified project areas under those industries support a finding that the legislation expressly limits access to the program to a specific group of enterprises or industries.⁴⁴⁹

Citing these prior determinations, in the *Preliminary Results*, we likewise determined that the program is available to the eight identified industries, and that access to the program is limited to certain industries, and therefore, the program is specific in accordance with section 771(5A)(D)(i) of the Act.⁴⁵⁰ There is no new information on the record to counter these findings. In our initial questionnaire to the GOC, with regard to the program, we stated:

The Department found the following listed program(s) to be countervailable in a prior segment of this proceeding. We do not intend to reevaluate the countervailability of the program(s). However, if there were changes to any of the program(s) affecting the respondents' income tax returns filed during the POR, or if the government replaced a program with a successor program, then please answer all questions in the *Standard Questions Appendix*. If there were

⁴⁴⁸ See *Aluminum Extrusions From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010 and 2011*, 79 FR 106 (June 10, 2013) (*Aluminum Extrusions from the PRC First Review*) and the accompanying Issues and Decision Memorandum at "Preferential Tax Program for High And New Technology Enterprises." See also *Aluminum Extrusions from the PRC Second Review* at "I. Preferential Tax Program for High or New Technology Enterprises," *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 the PRC First Review*), and accompanying IDM at "Reduced Income Tax Rate for High or New Technology Enterprises;" *Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010*, 77 FR 72323 (December 5, 2012) (*Citric Acid from the PRC Second Review*), and accompanying IDM at "Reduced Income Tax Rate for High or New Technology Enterprises;" and *Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2011*, 79 FR 108 (January 2, 2014) (*Citric Acid from the PRC Third Review*), and accompanying IDM at "Reduced Income Tax Rate for High or New Technology Enterprises."

⁴⁴⁹ See *Citric Acid from the PRC First Review* and the accompanying Issues and Decision Memorandum at 14.

⁴⁵⁰ See *Preliminary Results* and the accompanying Preliminary Decision Memorandum at 21 to 23.

no changes to a program affecting income tax returns filed during the POR, please so state for each program; you do not need to provide a response to the *Standard Questions Appendix* if there were no changes to a program.⁴⁵¹

The GOC responded: “{t}here were no changes during the POR to this program, and none of the companies under review applied for, received, or accrued assistance under the program during the POR.”⁴⁵² Moreover, the GOC did not provide a complete standard appendix response with regard to this program, for the Department to consider in the context of this review. Therefore, we continue to find that the program is *de jure* specific under section 771(5A)(D)(i) of the Act. Nevertheless, we have addressed the arguments of the Jangho Companies and the GOC.

Record evidence shows that this program is limited to eight industries: 1) Electronics and Information Technology; 2) Biology and New Medicine Technology; 3) Aerospace Industry; 4) New Materials Technology; 5) High-tech Service Industry; 6) New Energy and Energy-Saving Technology; 7) Resources and Environmental Technology; and 8) High-tech Transformation of Traditional Industries.⁴⁵³ In prior proceedings and in prior segments of this proceeding we found, based on record evidence, that the program is limited to these eight industries and that the program is therefore specific.⁴⁵⁴ The Jangho Companies’ argument that these eight industries do not represent a limited number of industries under section 771(5A)(D)(i) of the Act is contrary to our confirmed practice.⁴⁵⁵

Regarding the GOC’s claims that the Department found the program to be specific, in part, because it is limited by objective criteria or eligibility requirements, and provided by an automatic process, we made no such claims. Rather, we pointed to the industries specifically listed in the annex of the Measures on Recognition of HTNEs. The record does not identify such “objective criteria or conditions” or otherwise reflect that eligibility is governed by any “objective criteria.”⁴⁵⁶

Further, whether the application process is detailed, the process strictly followed, or the subsidy is automatic, these facts do not mandate a finding of non-specificity under the Act. We find that neither the avenue by which benefits are provided under this program, nor other record evidence,

⁴⁵¹ See Initial Questionnaire to the GOC at II-3.

⁴⁵² See *GOC Initial Questionnaire Response* at 19.

⁴⁵³ See *Citric Acid from the PRC First Review*, *Citric Acid from the PRC Second Review*, *Citric Acid from the PRC Third Review* and accompanying IDMs at “Reduced Income Tax Rate for High or New Technology Enterprises.”

⁴⁵⁴ See *Citric Acid from the PRC First Review*, *Citric Acid from the PRC Second Review*, *Citric Acid from the PRC Third Review* and accompanying IDMs at “Reduced Income Tax Rate for High or New Technology Enterprises”; *Aluminum Extrusions from the Investigation*, and accompanying IDM at “Policy Loans to Chinese Aluminum Extrusion Producers.”

⁴⁵⁵ See, e.g., *Circular Welded Carbon Steel Pipes and Tubes From Turkey: Final Results of Countervailing Duty Administrative Review; Calendar Year 2013 and Rescission of Countervailing Duty Administrative Review, in Part*, 80 FR 61361 (October 13, 2015) (*Circular Welded Pipes From Turkey*), and the accompanying Issues and decision Memorandum at Comment 8 (finding that eight industries (*i.e.*, “Construction, Automotive, Machinery Industry, Domestic Appliances, Agricultural, Shipbuilding, Steel Pipe and Profile, and Re-rolling Producers”) were limited in number).

⁴⁵⁶ See *Preliminary Results* and the accompanying Decision Memorandum at 21 to 22. See also Section 771(5A)(D)(i) of the Act.

indicate that eligibility is determined solely based on “objective criteria or conditions.”⁴⁵⁷ Rather, the annex of the *Measures on Recognition of HTNEs* clearly identifies those eight industries which are eligible.⁴⁵⁸ The additional requirements that “eligibility is automatic,” that “the criteria or conditions for eligibility are strictly followed,” and that “the criteria or conditions are clearly set forth...” presuppose that access to the subsidy is not expressly limited to an enterprise or industry, and, failing this, that eligibility for the subsidy is solely governed by “objective criteria or conditions.”⁴⁵⁹ These conditions are absent here.

Further, section 771(5A)(D)(ii) of the Act specifically defines “objective criteria or conditions” as “criteria or conditions that are neutral and that do not favor one enterprise or industry over another.”⁴⁶⁰ By specifically identifying eight particular industries for subsidization, the criteria or conditions are not neutral and favor these eight industries.

Comment 6: Whether the Tax Offsets for Research and Development (R&D) Program is Specific

The Jangho Companies’ Case Brief:

- The Department incorrectly concluded that the program is limited to an enterprise or industry, pursuant to section 771(5A)(D)(i) of the Act.⁴⁶¹
- According to the Jangho Companies and as the Department’s initial questionnaire notes, the *Trial Administrative Measures for the Pre-Tax Deduction of Enterprises R&D Expenses* provides that “eligible R&D projects shall be in line with national and Guangdong provincial technological and industrial policies.”⁴⁶²

The GOC’s Case Brief:

- Any project in line with national and Guangdong provincial technological and industrial policies would be eligible for the program, thus the eligible industries are broad and diverse.⁴⁶³
- The Department’s assertion that the program is limited to enterprises and industries meeting certain eligibility requirements does not indicate that the program is limited to a specific enterprise or industry.⁴⁶⁴
- The Department found the program to be specific because it is limited to certain industries and is limited by objective criteria.⁴⁶⁵ However, section 771(5A)(D)(ii) of the Act indicates that objective criteria indicate that a subsidy is not specific.⁴⁶⁶

⁴⁵⁷ See section 771(5A)(D)(ii) of the Act.

⁴⁵⁸ See section 771(5A)(D) of the Act.

⁴⁵⁹ *Id.*

⁴⁶⁰ See section 771(5A)(D)(ii) of the Act.

⁴⁶¹ See the Jangho Companies’ Case Brief at 19.

⁴⁶² *Id.* See also, Letter from the GOC to the department regarding: “Aluminum Extrusions from the People’s Republic of China (“PRC”), December 3, 2014 (“GOC Initial Questionnaire Response”).

⁴⁶³ See GOC Case Brief at 14.

⁴⁶⁴ *Id.*

⁴⁶⁵ *Id.*

⁴⁶⁶ *Id.*, at 14 to 15. See also, *Preliminary Results* and the accompanying Decision Memorandum at 21.

Petitioner's Rebuttal Brief:

- This has previously been found to be countervailable, and in the instant segment of this proceeding the GOC confirmed that there were no changes to the program. Therefore, as there is no new information on the record, we should continue to find that the program confers a benefit provided by an authority, and is targeted and, therefore, specific.⁴⁶⁷

Department's Position:

As explained in the *Preliminary Results*, the Department has previously found in a prior segment of the instant proceeding that this program is *de jure* specific in accordance with section 771(5A)(D)(i) of the Act.⁴⁶⁸ In *Aluminum Extrusions Investigation Final*, the Department found:

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.⁴⁶⁹

Citing this prior determination, in the *Preliminary Results*, we likewise determined that the program is expressly limited to an industry or enterprise, and accordingly, that the program, is therefore specific in accordance with section 771(5A)(D)(i) of the Act.⁴⁷⁰ There is no information on the record to counter these findings. In our initial questionnaire to the GOC, with regard to the program, we stated:

The Department found the following listed program(s) to be countervailable in a prior segment of this proceeding. We do not intend to reevaluate the countervailability of the program(s). However, if there were changes to any of the program(s) affecting the respondents' income tax returns filed during the POR, or if the government replaced a program with a successor program, then please answer all questions in the *Standard Questions Appendix*. If there were

⁴⁶⁷ See GOC Case Brief at 10 to 11.

⁴⁶⁸ See *Aluminum Extrusions From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 75 FR 54302 (September 10, 2007), unchanged in *Aluminum Extrusions From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) (*Aluminum Extrusions Investigation Final*) and the accompanying Issues and Decision Memorandum.

⁴⁶⁹ See *Aluminum Extrusions Investigation Final* and the accompanying Issues and Decision Memorandum at 30 to 31.

⁴⁷⁰ See *Preliminary Results* and the accompanying Preliminary Decision Memorandum at 26-27.

no changes to a program affecting income tax returns filed during the POR, please so state for each program; you do not need to provide a response to the *Standard Questions Appendix* if there were no changes to a program.⁴⁷¹

The GOC responded: “There were no changes during the POR to this program.”⁴⁷² Moreover, the GOC did not provide a complete standard appendix response with regard to this program, for the Department to consider in the context of this review. We have made findings in a prior segment of this proceeding which are not contested by record evidence. Therefore, we continue to find that the program is *de jure* specific under section 771(5A)(D)(i) of the Act.⁴⁷³

Regarding the GOC’s claims that the Department found the program to be specific, in part, because it is limited by objective criteria or eligibility requirements, and provided by an automatic process, we made no such claims.⁴⁷⁴ Rather, based on our findings in *Aluminum Extrusions Investigation Final*, we found the subsidy to be specific under section 771(5A)(D)(i) of the Act.⁴⁷⁵ Moreover, the record does not identify any such “objective criteria or conditions” or otherwise reflect that eligibility is governed by any “objective criteria or conditions.”⁴⁷⁶ There is nothing on the record to contradict our findings of specificity in *Aluminum Extrusions Investigation Final*.

Further, regarding the GOC’s argument that the program is not specific because, *i.e.*, “the authority providing the subsidy, or the legislation pursuant to which the authority operates, establishes objective criteria or conditions governing the eligibility for, and the amount of, a subsidy,” section 771(5A)(D)(ii) of the Act defines “objective criteria or conditions” as “criteria or conditions that are neutral and that do not favor one enterprise or industry over another.”⁴⁷⁷ We have previously determined, in *Aluminum Extrusions Investigation Final*, that the GOC and the Provincial Government of Guangdong 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.⁴⁷⁸ That finding, combined with Article 5 of the R&D Measures supported the Department’s analysis that this program is *de jure* specific. We find no new record evidence to contradict this finding.

⁴⁷¹ See Initial Questionnaire to the GOC at II-3.

⁴⁷² *Id.*, at 16.

⁴⁷³ See *Aluminum Extrusions from the Investigation*, and accompanying IDM at “Policy Loans to Chinese Aluminum Extrusion Producers.”

⁴⁷⁴ See Section 771(5A)(D)(ii) of the Act.

⁴⁷⁵ See *Preliminary Results* and the accompanying Decision Memorandum at 26 to 27.

⁴⁷⁶ *Id.*, at 21 to 22. See also Section 771(5A)(D)(i) of the Act.

⁴⁷⁷ See Section 771(5A)(D)(i) of the Act.

⁴⁷⁸ See *Preliminary Results* and the accompanying *See also Aluminum Extrusions Investigation Preliminary Determination*, at 54316 (unchanged in *Aluminum Extrusions Investigation Final*).

Comment 7: Alleged Ministerial Error in the Jangho Companies' Overall and Additional Subsidy Margin Calculations

Petitioner's Case Brief:

- The Department made an error in its subsidy rate calculation for the Jangho Companies related to the adding of individual program-specific subsidy rates.⁴⁷⁹ Petitioner suggests that this alleged error is caused by the presence, in the Jangho Companies' subsidy margin calculation workbook released with the *Preliminary Results*, of characters in two cells (*i.e.*, the words "POST PRELIM") among the range of cells which we added to calculate the Companies' overall subsidy rate.⁴⁸⁰
- The Department should revise the non-selected respondent (non-mandatory) rate to account for the effect of this alleged error.⁴⁸¹

Department's Position:

We have reviewed our calculations and Petitioner's description of the problem. We find that Petitioner's description of the problem is erroneous. The calculation is unaffected by the presence of characters in the range of cells which we added in the "summary of program benefits" worksheet.⁴⁸² That being said, we find that we did make two ministerial errors on the calculation in our overall subsidy rate calculation for the Jangho Companies. First, we added a truncated range of cells which did not include the individual program-specific subsidy rates for all of the programs found in the "summary of program benefits" worksheet. We included the Preferential Tax Rate for HNTes, Tax Offset for R&D, and Preferential Lending programs, but did not include 2013 Export Increase Fund, 2013 Guangzhou Innovation Enterprise Fund from Guangzhou, 2012 Industrial Development Fund, and the 2013 Working Capital Loans Discount. Second, we did not round the individual program-specific subsidy rates before adding them.⁴⁸³ We have corrected these errors in our calculations for these final results by modifying the formula which we used to add the individual program-specific subsidy rates and rounding the individual program-specific subsidy rates before adding them.⁴⁸⁴ We have also revised the non-selected respondent (non-mandatory) rate to account for these errors.

⁴⁷⁹ See letter from Petitioner to the Department regarding: "Aluminum Extrusions from the People's Republic of China: Brief of the Aluminum Extrusions Fair Trade Committee," October 23, 2015 (Petitioner's Case Brief) at 2 to 3.

⁴⁸⁰ *Id.*, at 2. See also, Memorandum from Tyler Weinhold, Analyst to Robert James, Program Manager, Office VII regarding: "Preliminary Determination Calculation Memorandum for and {sic.} Guangzhou Jangho Curtain Wall System Engineering Co., Ltd., (Guangzhou Jangho); . . ." (June 1, 2015) (The Jangho Companies' Preliminary Results Calculation Memorandum).

⁴⁸¹ *Id.*, at 3.

⁴⁸² See the Jangho Companies' Preliminary Results Calculation Memorandum at Attachment 1 and the accompanying Excel workbook at worksheet "Summary of Program Benefits."

⁴⁸³ It is the Department's common practice to calculate discrete program-specific subsidy rates at the one hundredth of a percent level of significance, and to calculate overall subsidy rates by adding these rounded figures.

⁴⁸⁴ See the Jangho Companies' Final Analysis Memo, at 2 to 3.

**Comment 8: Whether The Department May Countervail Provision of Glass for LTAR;
Whether Glass is, Properly, Treated as an Input of the Subject Merchandise**

The Jangho Companies' Case Brief:

- The Department may not countervail glass because glass does not relate to, and is not an input for the subject merchandise, aluminum extrusions.⁴⁸⁵
- The scope language states: the scope does not include the non-aluminum extrusion components of subassemblies and kits.”⁴⁸⁶
- In *PET Film from India*, *Washers from Korea*, *Drill Pipe from the PRC*, and *Steel Wheels from the PRC*, the Department did not countervail benefits specifically tied to non-subject merchandise.⁴⁸⁷
- The Department’s practice of not countervailing subsidies related to non-subject merchandise is consistent with section 771 of the Act, which allows countervailing duties to be assessed only after an injury determination has been made, and with *WTO Agreement on Subsidies and Countervailing Measures*.⁴⁸⁸
- The Jangho Companies note that the Department cited *Solar II*, but argues that in *Solar II*, glass was an input to the subject solar panels, while subject aluminum extrusions are manufactured from certain aluminum alloys.⁴⁸⁹

The GOC's Case Brief:

- Glass is not an input used in the manufacture of aluminum extrusions.⁴⁹⁰
- Glass is not a material element of aluminum extrusions, but, rather, is incorporated into certain downstream products which also incorporate aluminum extrusions (e.g., curtain wall).⁴⁹¹
- The GOC notes the scope language states: “the scope does not include the non-aluminum extrusion components of subassemblies and kits.”⁴⁹²

⁴⁸⁵ See letter from the Jangho Companies to the Department, regarding: “Aluminum Extrusions from the People’s Republic of China: Case Brief,” November 5, 2015 (the Jangho Companies’ Post-Preliminary Case Brief) at 1 and 2 to 5.

⁴⁸⁶ *Id.*

⁴⁸⁷ See *Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 69 FR 51063, August 17, 2004 (*PET Film from India*) and the accompanying Issues and Decision Memorandum at Comment 8, *Large Residential Washers from Korea*, 77 FR 75975 (December 26, 2012) (*Washers from Korea*), and the accompanying Issues and Decision Memorandum at Comment 7, *Drill Pipe from the People’s Republic of China*, 76 FR 1971 (January 11, 2012) (*Drill Pipe from the PRC*), and the accompanying Issues and Decision Memorandum at Comment 6, and *Certain Steel Wheels from the People’s Republic of China*, 77 FR 17017 (March 23, 2013) (*Steel Wheels from the PRC*), and the accompanying Issues and Decision Memorandum at 36.

⁴⁸⁸ See the Jangho Companies’ Post-Preliminary Case Brief at 4 to 5.

⁴⁸⁹ See *Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China*, 79 FR 76962 (December 23, 2014) (*Solar II*).

⁴⁹⁰ See Letter from the GOC to the Department, regarding: “Aluminum Extrusions from China; 3rd CVD Administrative Review GOC Case Brief Regarding Post-Preliminary Results,” November 5, 2015 (“the GOC’s Post-Preliminary Case Brief”), at 2 and 5 to 6.

⁴⁹¹ *Id.*

⁴⁹² *Id.*

- The GOC also notes that neither the Department, nor the ITC, determined that glass imports were being subsidized, sold for less than fair value, or caused material injury to the U.S. glass industry.

The Jangho Companies' Rebuttal Brief:

- The Jangho Companies concur with the GOC's arguments and argue that the *Order* specifically excludes non-aluminum components from the scope of the order, and argue that glass is not an input to aluminum extrusions, nor is it manufactured from aluminum extrusions.⁴⁹³
- Citing several cases where the Department allegedly declined to countervail programs which did not relate to subject merchandise (*i.e.*, *CORE from Korea*, *OCTG from India*, *Carbon Steel Plate from China*, *Korean Welded Line Pipe*, *Carbon Steel Wire Rod from Canada*, and *DRAMS from Korea*), the Jangho Companies argue that alleged provision of glass for LTAR does not relate to the subject merchandise and may not be countervailed.⁴⁹⁴

Petitioner's Rebuttal Brief:

- The scope of the *Orders* and *Curtain Wall 2012* both clearly indicate that a curtain wall unit is subject merchandise, inclusive of aluminum extrusions, glass, and all other components.⁴⁹⁵
- The Department has already explicitly found that a curtain wall unit *is* subject merchandise and that the components contained within that curtain wall are all covered by the countervailing duty order.⁴⁹⁶
- The original countervailing duty order explicitly references curtain walls in their entirety as being an example of a good that is a subject good.⁴⁹⁷

⁴⁹³ See Letter from the Jangho Companies regarding: "Aluminum Extrusions from the People's Republic of China: Rebuttal Brief," November 10, 2015 (the Jangho Companies' Post-Preliminary Rebuttal Brief) at 2 and 4 to 6. See also, the *Order*.

⁴⁹⁴ See the Jangho Companies' Post-Preliminary Rebuttal Brief at 5 to 6. See also, *Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2010*, 78 FR 19210 (March 29, 2013) (*CORE from Korea*) and the accompanying Issues and Decisions Memorandum at footnote 66; *Certain Oil Country Tubular Goods From India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances*, 79 FR 41967 July 18, 2014) (*OCTG from India*) at 17; *Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review; 2012*, 79 FR 16283 (March 25, 2014) and the accompanying Issues and Decision Memorandum at 7; *Welded Line Pipe From the Republic of Korea: Preliminary Negative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 80 FR 14907 (March 20, 2015) and the accompanying Issues and Decision Memorandum at 8 and 19 to 20; *Final Affirmative Countervailing Duty Determination: Carbon and Certain Alloy Steel Wire Rod from Canada*, 67 FR 55813 (August 30, 2002) and the accompanying Issues and Decision Memorandum at 16 to 17; and *Dynamic Random Access Memory Semiconductors from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 71 FR 14174 (March 21, 2006) and the accompanying Issues and Decision Memorandum at 15.

⁴⁹⁵ See Letter from Petitioner to the Department regarding: "Aluminum Extrusions from the People's Republic of China: Rebuttal Brief of the Aluminum Extrusions Fair Trade Committee," November 10, 2015 (Petitioner's Post-Preliminary Rebuttal Brief) at 1 to 2.

⁴⁹⁶ See Petitioner's Post-Preliminary Rebuttal Brief at 4 to 5.

- Petitioner notes that in *Curtain Wall 2012*, the Department found: “the scope of the Orders specifically includes curtain walls and window frames, but specifically excludes windows with glass. The scope does not specifically exclude curtain walls with glass.”⁴⁹⁸
- Because the Department has already found that curtain walls are subject merchandise, there is no need to address the scope language’s limitation on non-aluminum components that are subassemblies or subject kit.⁴⁹⁹
- Jangho’s references to past determinations concerning inputs for non-subject merchandise or the conferring of a benefit to a non-subject revenue stream are irrelevant because curtain walls and parts thereof were specifically identified in the scope of the *Order* and were found within the scope in previous scope proceedings (e.g., *Curtain Wall 2012*).⁵⁰⁰
- Petitioner also references *Solar I*. Petitioner argues that despite that fact that the goods subject to the order in *Solar I* are crystalline silicon photovoltaic cells (whether or not assembled into modules) the Department found that producers of photovoltaic cells had benefitted from the glass or LTAR and aluminum extrusions for LTAR programs, which are inputs of the modules, not the photovoltaic cells themselves.⁵⁰¹
- By providing these inputs for less than adequate remuneration, the GOC provides countervailable benefits to the entire subject curtain wall unit and distorts the pricing against which U.S. extruders must compete.⁵⁰²

Department’s Position:

For the reasons discussed below, we disagree with the Jangho Companies and the GOC that the Department may not countervail benefits arising from the provision of glass for LTAR. As an initial matter, as discussed in further detail in Comment 1 above, the Department has repeatedly determined that parts of curtain walls, including curtain wall units such as those produced by the Jangho Companies, are covered by the scope of the *Order*. Moreover, the CIT and CAFC have both affirmed that curtain wall units, which are made up of aluminum extrusions and other components, are subject to the scope of the *Order*.⁵⁰³

As explained in *PET Film from India*, the Department does not normally countervail benefits found to be tied to non-subject merchandise.⁵⁰⁴ Here, as discussed above, curtain wall units such as those produced by the Jangho Companies are considered subject merchandise. In other words, subject curtain wall units containing glass is a single commercial product. Glass is therefore an input used in the manufacture of subject merchandise, *i.e.*, curtain wall units. Thus, benefits

⁴⁹⁷ *Id.*, at 4.

⁴⁹⁸ *Id.*, at 5. See also *Curtain Wall 2012* at 9.

⁴⁹⁹ *Id.*, at 6.

⁵⁰⁰ *Id.*, at 6 to 8.

⁵⁰¹ *Id.* See also *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People’s Republic of China*, 77 FR 63791 (Oct. 17, 2012) (*Solar I*) and the accompanying Issues and Decision Memorandum at Comment 1.

⁵⁰² See Petitioner’s Post-Preliminary Rebuttal Brief at 4 to 5.

⁵⁰³ *Shenyang Yuanda*, 961 F. Supp. 2d at 1298, *aff’d*, 776 F.3d at 1358.

⁵⁰⁴ See, e.g., *PET Film From the India*, and the accompanying Issues and decision Memorandum at Comment 8, where the Department did not countervail the benefits from a subsidy program where they were tied to non-subject merchandise.

arising from the provision of glass for LTAR are not tied to non-subject merchandise. The Jangho Companies' comparisons to *PET Film from India*, *Large Residential Washers from Korea*, *Drill Pipe from the PRC*, and *Steel Wheels from the PRC* are therefore not on point because in those cases the subsidy programs in question were found to be tied to the production of wholly separate non-subject merchandise.⁵⁰⁵

We also disagree with the Jangho Companies and the GOC that the scope language at issue – “the scope does not include the non-aluminum extrusion components of subassemblies or subject kits provides” – indicates that benefits from the provision of glass cannot be countervailed. Regardless of the Jangho Companies' and the GOC's arguments with respect to that language of the scope, this does not affect our ability to countervail glass for LTAR. As discussed, curtain wall units are subject merchandise and the inputs at issue are used in the production of subject merchandise. Thus, there is no basis to make a finding that the subsidy benefits for glass are tied to non-subject merchandise. In light of the foregoing, we find it is thus appropriate for the Department to continue to countervail the glass for LTAR program.

Comment 9: Whether The Department May Countervail Provision of Aluminum Extrusions for LTAR; Whether Aluminum Extrusions are, Properly, Inputs of the Subject Merchandise

The GOC's Case Brief:

- Aluminum extrusions are not an input used in the manufacture of the Jangho Companies' subject merchandise, because aluminum extrusions *are* the subject merchandise and, therefore, may not be countervailed.⁵⁰⁶
- It is circular and unlawful for the Department to consider the subject merchandise as an input into the subject merchandise, because countervailing duties are permissible only where a subsidy is provided with respect to the manufacture, production, or export, of subject merchandise.⁵⁰⁷
- There can be only one producer of the subject merchandise. However, by treating aluminum extrusions as an input, the Department has countervailed subject merchandise produced by non-selected respondents, assessing duties on two producers for the same merchandise.⁵⁰⁸

The Jangho Companies' Rebuttal Brief:

- The Jangho Companies concur with the GOC's arguments that aluminum extrusions are not an input used in the manufacture subject merchandise, aluminum extrusions, because aluminum extrusions *are* the subject merchandise and, therefore, may not be countervailed.⁵⁰⁹

⁵⁰⁵ *Id.*

⁵⁰⁶ See the GOC's Post-Preliminary Case Brief at 1 and 3 to 5.

⁵⁰⁷ *Id.*, at 1 and 3.

⁵⁰⁸ *Id.*, at 4.

⁵⁰⁹ See the Jangho Companies' Post-Preliminary Rebuttal Brief at 2 and 3.

- Neither the statute nor the regulations recognize the subject merchandise as a “good” provided for LTAR.⁵¹⁰
- Were the Department to first countervail subsidies received by respondent and then unlawfully countervail subsidies for a non-reviewed producer, Commerce would improperly assess duties on two producers for the same merchandise.⁵¹¹
- The Jangho Companies agree with the GOC that there “can only be one producer of the subject merchandise.”⁵¹²
- Citing *Shikoku Chemicals Corporation* and *Wuhan Bee Healthy Co., Ltd. v. United States*, the Jangho Companies argue that the Department’s methodology in the Post Preliminary Analysis unlawfully inflates the CVD margin and is inconsistent with the Department’s mandate to fairly and accurately administer the CVD laws and regulations.⁵¹³

Petitioner’s Rebuttal Brief:

- The scope of the *Orders* and *Curtain Wall 2012* both clearly indicate that a curtain wall unit is subject merchandise, inclusive of aluminum extrusions, glass, and all other components.⁵¹⁴
- There is no prohibition in the Act or the Department’s regulations against finding that a countervailable benefit exists if a good that is subject to a CVD order happens to be produced from inputs that are also subject to the same CVD order.⁵¹⁵ Petitioner notes that the Act and the Department’s regulation speak to goods and services, irrespective of whether a good is subject to the same CVD order.⁵¹⁶ To adopt the GOC’s position on the matter would strip the ability of domestic industries to seek relief for classes of merchandise that are broad in nature or that include both a good and that good’s downstream products.
- Using the example of lobsters and lobster tails, Petitioner argues the GOC’s interpretation of the Act and the Department’s regulations would prevent the Department from finding that a countervailable subsidy exists in proceedings where the scope covers both upstream and downstream products, making producers immune from being assessed countervailing duties on the primary input that is used to produce their merchandise.⁵¹⁷

Department’s Position:

⁵¹⁰ *Id.*, at 3.

⁵¹¹ *Id.*

⁵¹² *Id.* See also the GOC’s Post-Preliminary Case Brief at 4.

⁵¹³ See the Jangho Companies’ Post-Preliminary Rebuttal Brief at 3. See also *Shikoku Chemicals Corp. v. United States*, 16 CIT 382, 388, 795 F. Supp. 417, 422 (May 18, 1992) (*Shikoku Chemicals Corp. v. United States*), and *Wuhan Bee Healthy Co., Ltd. v. United States*, 31 CIT 11821207 Slip. Op. 07-113 (July 20, 2007) (*Wuhan Bee Healthy Co., Ltd. v. United States*).

⁵¹⁴ See Petitioner’s Post-Preliminary Rebuttal Brief at 1 to 2.

⁵¹⁵ *Id.*, at 8.

⁵¹⁶ *Id.*, at 10.

⁵¹⁷ *Id.*, at 10.

As explained in Comment 8, the Department has found in *Curtain Wall 2012* that a curtain wall unit is subject merchandise, inclusive of aluminum extrusions, glass, and all other components. As explained above in Comment 8, the scope language states:

Subject aluminum extrusions may be described at the time of importation as parts for final finished products that are assembled after importation, including, but not limited to, window frames, door frames, solar panels, curtain walls, or furniture. Such parts that otherwise meet the definition of aluminum extrusions are included in the scope. The scope includes the aluminum extrusion components that are attached (*e.g.*, by welding or fasteners) to form subassemblies, *i.e.*, partially assembled merchandise unless imported as part of the finished goods ‘kit’ defined further below.⁵¹⁸

The information on the record reflects that aluminum extrusions are an input into the Jangho Companies’ production.⁵¹⁹ Thus, to the extent an authority provides such inputs used in its production, a benefit is conferred, and the Department finds the provision to be specific within the meaning of section 771(5A) of the Act, it is consistent with U.S. law to find such provision to constitute a countervailable subsidy.

As indicated by Petitioner, the scope of the order covers not only up-stream aluminum extrusion components, but also certain downstream aluminum extrusion products which incorporate those components. The Jangho Companies’ curtain wall units themselves are subject merchandise, *i.e.*, a downstream aluminum extrusion product that incorporates aluminum extrusions. As Petitioner suggests, there is nothing in the Act or in the Department’s regulations that prohibits the Department from countervailing a good provided for LTAR when both the downstream product produced from that good and the good itself both could constitute subject merchandise. Also, as Petitioner points out, the Act and the Department’s regulation speak to goods and services, irrespective of whether a good is subject to the same CVD order. Given that the scope broadly covers the up-stream components and downstream products, we find that it is appropriate for the Department to countervail the aluminum extrusions for LTAR program.

We disagree with the GOC’s argument that the Department is assessing duties twice and/or on two producers for the same merchandise. Here, the Jangho Companies used subject merchandise in the production of subject curtain wall products that were subsequently exported to the United States. Contrary to the GOC’s understanding, duties are assessed on entries of the Jangho Companies’ subject merchandise. The assessment rate for the Jangho Companies is based on the subsidies provided to the Jangho Companies, which include the provision of an input (in this case, aluminum extrusions) for less-than-adequate-remuneration. Thus, the CVDs calculated for the Jangho Companies are applied to the Jangho Companies’ exports of subject merchandise and duties are not being assessed on two producers.

⁵¹⁸ See the Order.

⁵¹⁹ See, *e.g.*, the Jangho Companies’ Initial Questionnaire Response at 8.

Comment 10: Whether the Department Should Include the Subsidy Rates for Glass and Aluminum Extrusions for LTAR Programs in the Rates for Non-Selected Companies

The GOC's Case Brief:

- The Department may not include subsidy rates for glass for LTAR and aluminum extrusions for LTAR programs in its calculation of the subsidy rate for the non-selected companies.⁵²⁰
- There is no evidence that non-selected companies produced curtain walls and purchased aluminum extrusions or glass, or used aluminum extrusions or glass as inputs.⁵²¹
- The Department initiated new subsidy investigations on glass and aluminum extrusions for LTAR with respect to one product, curtain wall units, and only with respect to the Jangho Companies, and not GYG or the other 38 non-selected respondents.⁵²²
- Glass serves as an input only for curtain wall units.⁵²³

Petitioner's Rebuttal Brief:

- The Department should include benefits from the aluminum extrusions and glass for LTAR programs when calculating the non-selected respondent subsidy rate because benefits from these programs are available to producers of a wide range of aluminum extrusion products.⁵²⁴
- The GOC's arguments ignore and mischaracterize the nature of Petitioner's NSA. Petitioner argues that its NSA was not limited to one company. Rather, Petitioner argues that in its NSA, it alleged that producers of aluminum extrusions products were benefitting from the provision of glass and aluminum extrusions for LTAR.⁵²⁵
- Petitioner asserts that its NSA included several references to producers and groups besides the Jangho Companies which may further process aluminum extrusions and glass into subject downstream products.⁵²⁶
- The Act required the Department to calculate a weighted-average subsidy rate for all non-mandatory respondents based upon "the weighted-average subsidy rate established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates determined entirely under section 776 {of the Act}."⁵²⁷
- There is no requirement to adjust the net countervailable subsidy rate based on a belief that certain other non-investigated non-mandatory respondents may nor may not use a given countervailable subsidy program.⁵²⁸

⁵²⁰ See the GOC's Post-Preliminary Case Brief at 2.

⁵²¹ *Id.*, at 6.

⁵²² *Id.*, at 7.

⁵²³ *Id.*

⁵²⁴ See Petitioner's Post-Preliminary Rebuttal Brief) at 2 and 29 to 31.

⁵²⁵ *Id.*, at 30.

⁵²⁶ *Id.*, at 30 to 31.

⁵²⁷ *Id.*, at 31. See also Section 705(c)(5)(A)(i) of the Act.

⁵²⁸ See Petitioner's Post-Preliminary Rebuttal Brief) at 31.

- The Department should not assume that no other Chinese producers benefited from the programs.⁵²⁹
- To accept the GOC’s argument would be contrary to the statutory requirement to calculate the non-mandatory subsidy rate based on a weighted-average of the subsidy rates established for exporters and producers individually investigated.⁵³⁰

Department’s Position:

We agree with Petitioner. Where it was not practicable to examine all known producers or exporters, the Department limited its individual examination of companies to the two mandatory respondents, consistent with section 777A(e)(2) of the Act. No party challenges the Department’s determination in this respect and no party sought to be a voluntary respondent.

As stated above in the “Ad Valorem Rate for Non-Selected Companies Under Review” section, although the statute does not directly instruct the Department how to determine a rate in administrative reviews for companies not selected for individual examination, we look to section 705(c)(5) of the Act—which relates to determining the all-others rate in investigations, for guidance. Sections 703(d) and 705(c)(5)(A) of the Act state that, for companies not investigated, the Department will determine an all-others rate by weight-averaging the individual countervailable subsidy rate of each of the companies investigated, excluding zero and *de minimis* rates or any rates based solely on the facts available.⁵³¹ However, the statute does not provide for the exclusion of subsidies benefits accruing from programs when it is not clear whether certain non-selected respondents benefit from such programs. Therefore, for the final results, and consistent with the Department’s practice, we have calculated the all-others rate based on the weighted average of the mandatory respondents’ calculated subsidy rates. As stated above, we were unable to individually examine additional respondents in this review. The Department cannot conclude without additional investigation that the non-selected companies, or any of their cross-owned companies, do not benefit from certain subsidies programs. Accordingly, we are not in a position to speculate as to whether non-selected companies use or do not use various programs. Furthermore it is not apparent that the Glass for LTAR and Aluminum extrusions for LTAR programs are limited only to Jangho.

We did not limit our initiation of investigations of these programs to Jangho, but to situations akin to Jangho’s, specifically, situations in which aluminum extrusions and glass are inputs into downstream subject merchandise. The Department initiated the new subsidies investigations of glass for LTAR and aluminum extrusions for LTAR, finding that sufficient grounds for initiation existed based on evidence of the situation of the Jangho Companies:

... our initiation of the allegation is limited to the situation of the mandatory respondent, Jangho. That is, our initiation of this program rests solely upon 1) the nature of the scope of the order, which expressly covers aluminum extrusions and certain products into which aluminum extrusions are incorporated and 2) evidence

⁵²⁹ *Id.*

⁵³⁰ *Id.*

⁵³¹ *See* Section 705(c)(5)(A)(i) of the Act.

that one of the mandatory respondents uses aluminum extrusions as a basic input into its product which, in this case, is curtain wall.⁵³²

However, that does not mean that our investigation of these programs was limited to the Jangho companies. The Jangho Companies were simply the only one of our two selected respondents using the programs. The Department frequently encounters situations where some producers of subject merchandise or some mandatory respondents use a subsidy program, but other producers or respondents do not. In this very proceeding, we have found that only GYG used some programs, and that only the Jangho Companies used others. The Department does not remove such programs when calculating a rate for non-selected respondents or “all others.” Rather, in the context of investigations, section 705(c)(5)(A)(i) of the Act, which the Department looks to for guidance in determining a rate for non-selected companies, explicitly requires the Department to base the subsidy rate for all-others upon “the weighted-average subsidy rate established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates determined entirely {on the basis of the facts available}.”⁵³³ Therefore, we calculated a weighted-average margin for non-mandatory respondents based on the company-specific margins for GYG and the Jangho Companies, inclusive of the countervailable subsidies pertaining to glass and aluminum extrusions of the latter. Such guidance provides no basis for making the requested adjustments to the rate determined for non-individually examined respondents.

Comment 11: Whether The Jangho Companies’ Glass and Aluminum Extrusions Producers and Suppliers and GYG’s Primary Aluminum Producers and Suppliers are “Authorities”

The Jangho Companies’ Case Brief:

- The Jangho Companies note that the Department preliminarily applied adverse facts available (AFA) and found the Jangho Companies’ glass and aluminum extrusions suppliers to be “authorities” in accordance with section 771(5)(B) of the *Act*.⁵³⁴
- Citing *Countervailing Duties: Final Rule*⁵³⁵ and *PPG Industries Inc. v. United States*,⁵³⁶ the Jangho Companies argue that the record shows that both the Jangho Companies and the GOC cooperated to the best of their ability; thus, AFA is not warranted.⁵³⁷

⁵³² See Memorandum from Tyler Weinhold and Davina Friedmann, through Robert James, to Abdelali Elouaradia, Acting Director, Office VI. “Countervailing Duty Administrative Review of Aluminum Extrusions from the People’s Republic of China: Decision Memorandum on New Subsidy Allegations NSA,” April 1, 2015 (“NSA Decision Memorandum”) at 6.

⁵³³ *Id.*, at 31. See also Section 705(c)(5)(A)(i) of the Act.

⁵³⁴ See the Jangho Companies’ Post-Preliminary Case Brief at 2 to 3 and 8 to 22.

⁵³⁵ See *Countervailing Duties: Final Rule*, 63 FR 65348 (November 25, 2008) at 65357.

⁵³⁶ See *PPG Industries v. United States*, 978 F. 2d 1232, 1241 (Federal Circuit 1992).

⁵³⁷ *Id.*, at 6.

The GOC's Case Brief:

- The GOC contends that it is unlawful for the Department to find that Chinese producers of primary aluminum, aluminum extrusions and glass (inputs) are “authorities,” as there is no program within China to provide these inputs to the aluminum extrusions industry in China, and the record of the instant review does not support such a finding.⁵³⁸
- The GOC disagrees with the Department’s determination that Chinese state-owned enterprises (SOEs) are government authorities under section 1677(5)(B) of the *Act*.⁵³⁹
- Citing *Countervailing Duties on Products from China (2011)* and *Countervailing Measures on Products from China (2014)*, *Countervailing Measures on Steel Flat Products from India (2014)*,⁵⁴⁰ the GOC states that relying upon only one criterion - ownership, *i.e.*, majority shareholding in an entity, does not demonstrate meaningful control over an entity, nor does it establish an entity as a public body, and thus, it is inconsistent with WTO obligations.⁵⁴¹
- The GOC points out that it provided substantial evidence in its questionnaire response supporting the fact that it does not play a role in any ordinary business operations, as the fundamental laws of China does not distinguish between SOEs and other enterprises.⁵⁴²

The CCP and Village Committees Are Not Government ‘Authorities’

- The Communist Party of China (CCP), and village committees are not “authorities.”⁵⁴³
- The record evidence contradicts the Department’s finding that the GOC withheld necessary information to conclude it appropriate to find that non-state-owned input producers are “authorities” within the meaning of 19 U.S.C. 1677(5)(B) of the *Act*.⁵⁴⁴
- The CCP is merely a political party in China, distinct from government institutions, and has no legal or factual authority to direct operations of private entities.⁵⁴⁵
- There is no government at the village level and, therefore, village committees cannot be government authorities.⁵⁴⁶

⁵³⁸ See GOC’s Post-Preliminary Case Brief, at 8 to 22.

⁵³⁹ *Id.*, at 9 to 11.

⁵⁴⁰ See Appellate Body Report, *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/AB/R (March 11, 2011), Panel Report, *United States - Countervailing Duty Measures on Certain Products from China*, WT/DS437/R (July 14, 2014), Appellate Body Report, *United States - Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India*, WT/DS436/AB/R (December 8, 2014).

⁵⁴¹ See GOC’s Post-Preliminary Case Brief, at 9, wherein the GOC cites to the Appellate Body Report: *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/AB/R, paragraph 318 (March 11, 2011); the GOC also cites to Article 1.1(a)(1) of the SCM Agreement.

⁵⁴² See GOC’s Post-Preliminary Case Brief, at 10.

⁵⁴³ *Id.*, at 11 to 12.

⁵⁴⁴ *Id.*

⁵⁴⁵ *Id.*

⁵⁴⁶ *Id.*

CCP Officials Are Not Eligible to be Owners, Members of the Board of Directors or Managers

- Despite the Department’s conclusion to the contrary, Chinese law, particularly the Chinese Civil Servant Law, prohibits owners, members of the board of directors and managers of input producers from being GOC or CCP officials.⁵⁴⁷
- *PC Strand* does not support the notion that CCP officials are permitted to serve as owners, members of the board of directors, or senior managers of companies.⁵⁴⁸ The finding in *PC Strand* was concerned with membership in the CCP and National Party Conference; it did not address the issue of whether Chinese law permits owners, boards of directors and managers to be CCP officials.⁵⁴⁹
- The Department made this distinction in its questionnaires to the GOC during the instant review in which the Department sought information about CCP officials and committees, rather than about general membership in the CCP or participation in the National Party Conference.⁵⁵⁰

The Company Law Vests Authority in Private Companies with Shareholders, Not the CCP

- The *Chinese Company Law* establishes the fact that private Chinese companies are responsible to their shareholders, and points to certain Articles, such as Article 37, which requires shareholders to exercise power of over the company.⁵⁵¹
- In *Plate from the PRC*,⁵⁵² the Department found that the Chinese Company Law demonstrates the absence of legal state control over privately-owned Chinese companies.⁵⁵³

The GOC Responded to the Best of its Ability Concerning Ownership Information and CCP Affiliations or Activities

- The Department has established the very challenging and onerous requirement of providing a plethora of information on CCP affiliations and activities, including political, of hundreds of natural persons serving as owners or in management positions, in addition to CCP affiliations.⁵⁵⁴
- The GOC, noting that the Department’s requests for information on input producers and suppliers represented “intrusive,” “demanding” and “tremendously burdensome” tasks

⁵⁴⁷ *Id.*, at 12.

⁵⁴⁸ See “Countervailing Duty Investigation of Certain Seamless Carbon and Alloy Steel Standard, Lie, and Pressure Pipe from the People’s Republic of China: Post-Preliminary Analysis and Calculation Memorandum,” (August 13, 2010) (*PC Strand*), at 72.

⁵⁴⁹ *GOC’s Post-Preliminary Case Brief*, at 12.

⁵⁵⁰ *Id.*, at 13.

⁵⁵¹ *Id.*

⁵⁵² See *Certain Cut-to-Length Carbon Steel 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) and accompanying decision memorandum, at comment 2 (Plate from China).

⁵⁵³ *Id.*, at 14.

⁵⁵⁴ *Id.*, at 15.

covering “numerous” producers and suppliers, argues that it responded to the best of its ability to the Department’s requests for information.⁵⁵⁵

- The GOC claims however, that it has responded to the Department’s request to the best of its ability, noting that it has submitted numerous documents on the current record, including business registration documents and capital verification reports, to substantiate its cooperation.⁵⁵⁶ It provided some information including PRC laws and documents for some producers and suppliers which indicate lack of state control.⁵⁵⁷ In particular, the GOC has reported that the owners, members of the board of directors and managers of suppliers were not eligible to be GOC or CCP officials, based on the Civil Servant Law.
- The GOC avers that, despite having acted to the best of its ability by submitting various documents in response to the Department’s questionnaires that could be used as a basis to determine whether non-state-owned companies are government “authorities,” the Department seemingly ignored this information, and clearly dismissed the GOC’s own confirmation negating any such government control.⁵⁵⁸ At the same time, the Department has consistently found such documents can demonstrate state control of an entity, citing CCTL from China AD Review.

Evidence on the Record in this Review Establishes that the CCP Affiliations or Activities of Suppliers are Not Relevant

- The Department has yet to establish the relevance of CCP affiliation or activities to the statutory analysis behind the government authorities’ determination.⁵⁵⁹
- The GOC cites to the Public Bodies Memorandum that contains a discussion of the structure of the CCP and its influence on the GOC; however, the GOC maintains that this memorandum provides little support for the Department’s conclusion that CCP officials or committees influence non-state-owned entities.⁵⁶⁰
- In the Public Bodies Memorandum, the Department misstates Chinese law, by stating that *all* enterprises are required to set up CCP committees.⁵⁶¹
- The GOC points out that in the Public Bodies Memorandum the Department stated that “{t}he role of this party presence is unclear: it may exert varying degrees of control in different circumstances,” demonstrating the Department did not know the role of CCP committees in regards to the activities of non-state-owned enterprises.⁵⁶²
- The GOC also cites to an aspect of the Public Bodies Memorandum wherein it indicates that entrepreneurs join the CCP to advance their own careers, *e.g.*, for “political insurance,” further demonstrating that the analysis discussed in that memorandum has little bearing on whether private companies are government “authorities” under CVD law.⁵⁶³

⁵⁵⁵ *Id.*, at 14 to 16.

⁵⁵⁶ *Id.*

⁵⁵⁷ *Id.*, at 15 and 19 to 22.

⁵⁵⁸ *Id.*

⁵⁵⁹ *Id.*, at 16.

⁵⁶⁰ *Id.*

⁵⁶¹ *Id.*, at 17.

⁵⁶² *Id.*

⁵⁶³ *Id.*

- The record evidence in this review contradicts the Department’s findings as to whether CCP affiliations and activities are relevant.⁵⁶⁴
- CCP officials are not eligible to be owners, board members, or managers of primary aluminum suppliers.⁵⁶⁵
- Because Chinese law vests authority into non-SOEs with shareholders, CCP committees do not have decision-making authority in private enterprises.⁵⁶⁶
- Citing several laws and regulations of the PRC, the GOC argues that it does not interfere with the ordinary business operations of state-owned enterprises (SOEs) or non-SOEs and that SOEs are subject to the same fundamental laws as non-SOEs.⁵⁶⁷
- Because the *Chinese Company Law* and regulations do not distinguish between SOEs and other enterprises, allowing them to operate in a similar capacity, the CCP affiliations and activities are irrelevant to the daily operations of all enterprises governed by those laws and regulations.⁵⁶⁸

The Department Should Find that Primary Aluminum, Aluminum Extrusions and Glass Suppliers Are Not Government Authorities and Should Revise the Respondents’ CVD Margins

- The Department’s requests for information to determine whether producers of subject merchandise were “authorities” were “deeply intrusive,” “demanding,” and “tremendously burdensome.”⁵⁶⁹
- AFA was not warranted because the information the Department requested was not “necessary” within the meaning of 1677e(a)(1) of the Act and, to the extent that it was necessary, the Department already had enough information on the record to ascertain whether the suppliers in question are government authorities.⁵⁷⁰
- Regarding the issue of whether a gap in the record exists, the GOC cites to *Zhejiang v. United States* and to 19 U.S.C. 1677e(a)(1), and maintains that not only did it not withhold information, nor impede the proceeding under 19 U.S.C. 1677e(a)(2)(A) and (B), it provided adequate responses concerning CCP affiliations and activities such that no gaps or missing information exist to warrant an AFA determination.⁵⁷¹
- The GOC notes the fact that it did provide certain information and documents for some producers, including ownership information, articles of association, business registrations, capital verification reports, and other documents for some producers of primary aluminum, aluminum extrusions, and glass.⁵⁷²
- Additionally, the GOC contends that, even if it is determined that a gap in the record does exist, because the GOC responded to the best of its ability with respect to primary

⁵⁶⁴ *Id.*, at 18.

⁵⁶⁵ *Id.*

⁵⁶⁶ *Id.*

⁵⁶⁷ See the GOC’s Post-Preliminary Case Brief at 10 to 11.

⁵⁶⁸ *Id.*, at 14 to 15.

⁵⁶⁹ *Id.*, at 19.

⁵⁷⁰ *Id.*

⁵⁷¹ *Id.*, at 19; see also *Zhejiang Dunan Hetian Metal Co. v. United States*, 652 F.3d 1333, 1348 (Fed. Cir. 2011) (*Zhejiang v. United States*).

⁵⁷² See the GOC’s Post-Preliminary Case Brief at 19 to 22.

aluminum suppliers, an adverse inference is unwarranted under 19 U.S.C. 1677e(b) of the Act.⁵⁷³

The Jangho Companies' Rebuttal Brief:

- The Jangho Companies concur with the GOC's arguments that the Jangho Companies did not purchase aluminum extrusions or glass from government authorities at LTAR.⁵⁷⁴
- The Department's conclusion that producers and suppliers were government entities is inconsistent with Chinese law, and that neither CCP nor village committees are "authorities."⁵⁷⁵
- Chinese laws provide that companies are obligated to act in the interests of their shareholders, that companies are not controlled by the GOC, and preclude CCP officials from participating in profit-making activities or holding posts in profit making organizations.⁵⁷⁶
- The record shows that the Jangho Companies' aluminum extrusions producers and suppliers are not "authorities."⁵⁷⁷
- The Department's preliminary decision to rely on AFA is not supported by record evidence.⁵⁷⁸
- The GOC provided a considerable part of the documents and other information requested, and that the GOC and the Jangho Companies cooperated to the best of their ability.⁵⁷⁹
- Where the GOC was unable to provide other documents and information, the GOC informed Commerce that it did not have the information or was not able to obtain it.⁵⁸⁰
- The Department should revise the final results to reflect record evidence that The Jangho Companies' producers and suppliers are not "authorities."⁵⁸¹
- In the alternative that should the Department find that facts available are warranted, the Department should not apply an adverse inference.⁵⁸²

Petitioner's Rebuttal Brief:

- The Department appropriately determined that AFA was warranted with respect to whether input producers constitute government "authorities" within the meaning of 1677(5)(B) of the Act, and this determination should be upheld for the final results of review.⁵⁸³
- Concerning the GOC's argument regarding *Countervailing Duties on Products from China (2011)* and *Countervailing Measures on Products from China (2014)*,

⁵⁷³ *Id.*, at 19.

⁵⁷⁴ *See* the Jangho Companies' Post-Preliminary Rebuttal Brief at 2 and 8 to 11.

⁵⁷⁵ *Id.*, at 8.

⁵⁷⁶ *Id.*, at 8 to 9.

⁵⁷⁷ *Id.*, at 9.

⁵⁷⁸ *Id.*, at 9 to 10.

⁵⁷⁹ *Id.*, at 10.

⁵⁸⁰ *Id.*

⁵⁸¹ *Id.*

⁵⁸² *Id.*

⁵⁸³ *See* Petitioner's Rebuttal Brief, at 12.

Countervailing Measures on Steel Flat Products from India (2014),⁵⁸⁴ that relying upon ownership does not demonstrate meaningful control, public body status, and is inconsistent with WTO obligations,⁵⁸⁵ Petitioner avers that the GOC misinterprets its own understanding of this law. In particular, Petitioner points out that while the GOC argues that WTO case law supports the requirement that all relevant characteristics be fully evaluated, as opposed to reliance upon a single characteristic, the GOC's failure to submit all requested information impedes the ability to weigh all such characteristics.⁵⁸⁶

- Petitioner argues further that the Department has previously determined that the findings in US-CVD I⁵⁸⁷ and US-CVD II⁵⁸⁸ are not applicable, as they are limited to only those specific CVD proceedings, and that regardless, the WTO Panel and Appellate Body Reports have yet to be adopted by U.S. law and thus, have no bearing on this case.⁵⁸⁹
- The GOC's arguments regarding the role of the CCP within China and its status as an "authority" are not new and that such issues have already been considered and rejected by the Department, citing to previous segments in the current proceeding and in other CVD from the PRC proceedings.⁵⁹⁰
- As examples, Petitioner points to *Aluminum Extrusions from the PRC First Review* and *Aluminum Extrusions from the Second Review* in which the Department considered the significance of the role of the CCP in its analysis of input producers and the extent to which CCP officials exert control over private companies and in the activities of China.⁵⁹¹
- There is little question as to whether the GOC provided all of the requested information pertaining to the "authorities" analysis.⁵⁹²
- While in numerous questionnaires the Department sought ownership and other related information necessary to the "authorities" analysis, the GOC provided responses that were only partial and incomplete with respect to SOE and non-SOE input producers.⁵⁹³
- Petitioner points out that the GOC did not provide the appropriate input producer appendices for a large number of glass producers and suppliers identified by the Jangho Companies.⁵⁹⁴

⁵⁸⁴ See Appellate Body Report, *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/AB/R (March 11, 2011), Panel Report, *United States - Countervailing Duty Measures on Certain Products from China*, WT/DS437/R (July 14, 2014), Appellate Body Report, *United States - Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India*, WT/DS436/AB/R (December 8, 2014).

⁵⁸⁵ See GOC's Post-Preliminary Case Brief, at 9, wherein the GOC cites to the Appellate Body Report: *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/AB/R, paragraph 318 (March 11, 2011); the GOC also cites to Article 1.1(a)(1) of the SCM Agreement.

⁵⁸⁶ *Id.*, at 16.

⁵⁸⁷ See Panel Report, *United States – Countervailing Duty Measures on Certain Products from China*, WT/DS437/R (July 14, 2014) (US-CVD I), para. 7.75.

⁵⁸⁸ See Appellate Body Report, *United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India*, WT/DS436/AB/R (December 8, 2014) (US-CVD II) at para 4.10.

⁵⁸⁹ *Id.*, at 16-17.

⁵⁹⁰ *Id.*, at 18-19.

⁵⁹¹ *Id.*, at 19.

⁵⁹² *Id.*, at 13.

⁵⁹³ *Id.*

⁵⁹⁴ *Id.*

- Citing to cases such as, *Tow-Behind Lawn Groomers*, Petitioner asserts that where necessary facts are not provided on the record to conduct an appropriate analysis of government control, the Department must rely on AFA, as to do otherwise allows the GOC to manipulate the record by submitting only selective information to the Department to fashion a desired outcome.⁵⁹⁵
- The GOC’s claim that SOEs’ purpose is to maximize returns for their owners does not demonstrate independent operations from the Government, nor that an SOE is precluded from acting as a government authority.⁵⁹⁶
- Because the GOC has not submitted any new information on the record that would alter the Department’s previous findings on whether SOEs constitute government authorities, and because the GOC’s failed to adequately respond to the Department’s numerous requests for information necessary for the analysis of whether the inputs at issue were provided to respondents at LTAR, the Department should adopt its preliminary finding in the final results of review and find that the GOC provided inputs for LTAR for this POR.⁵⁹⁷

Department’s Position:

The Department concluded in the Post-Preliminary Analysis that the GOC failed to cooperate by not acting to the best of its ability, and had withheld certain information with regard to all producers of primary aluminum, aluminum extrusions, and glass, and applied AFA, finding all producers to be “authorities” within the meaning of section 771(5)(B) of the Act. As discussed above in the sections entitled “Use of Facts Otherwise Available and Adverse Inferences” and “Programs Determined to Be Countervailable”, we have made no changes to our Post-Preliminary Analysis in these final results.

Since issuance of the initial questionnaire⁵⁹⁸ in this review, the GOC was on notice of the information sought by the Department with respect to input producers. In that questionnaire, the Department laid out each of the items it deems necessary to trace all ownership back to the ultimate individual or state owners. We reiterated these facts in the GOC NSA Questionnaire.⁵⁹⁹

With regard to primary aluminum, as discussed above in the “Use of Facts Otherwise Available and Adverse Inferences” section, despite multiple requests by the Department, the GOC failed to provide requested information concerning enterprises that the GOC identified as majority government-owned. Accordingly, the record was incomplete as to the full extent to which the GOC may exercise meaningful control over these entities and use them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector. Therefore, in light of our prior findings and the GOC’s failure to provide requested information, that might rebut record information to the contrary, we determine that these enterprises are “authorities” within the meaning of section 771(5)(B) of the Act. Additionally, with respect to those enterprises that the GOC identified as non-majority

⁵⁹⁵ *Id.*, at 14.

⁵⁹⁶ *Id.*, at 17.

⁵⁹⁷ *Id.*

⁵⁹⁸ See GOC Initial Questionnaire, at Section II, “Input Producer Appendix.”

⁵⁹⁹ See GOC NSA Questionnaire, at Attachment 1, at 1.

government-owned, the GOC provided incomplete responses to our numerous requests for information, including requests for information pertaining to ownership or management by CCP officials. Thus, as AFA, we determine that, as AFA, these producers that produced the primary aluminum purchased by the GYG companies during the POR are “authorities” within the meaning of section 771(5)(B) of the Act.

With respect to aluminum extrusions and glass, as discussed above in the “Use of Facts Otherwise Available and Adverse Inferences” section, the GOC likewise did not provide requested information, despite multiple requests, that would enable the Department to conduct an analysis as to whether the producers that produced the aluminum extrusions and glass purchased by the Jangho Companies during the POR are authorities within the meaning of section 771(5)(B) of the Act. Therefore, our findings in this regard are based on AFA.

Despite the GOC’s arguments, we continue to find that the aforementioned producers are “authorities” within the meaning of section 771(5)(B). However, contrary to the GOC’s assertions, our findings are not based solely on a finding of state ownership. Rather, as explained in the “Use of Facts Otherwise Available and Adverse Inferences” section, in the Public Bodies Memorandum the Department has previously concluded that producers in the PRC that are majority-owned by the government possess, exercise, or are vested with governmental authority. Our finding in this regard is based on the fact that record evidence indicates that the GOC exercises meaningful control over these entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector. Moreover, the GOC contends that it does not play a role in any ordinary business operations, including those in which the state holds an ownership interest. However, as discussed above, the Department provided the GOC an opportunity to provide requested information to enable the Department’s “authorities” analysis under section 771(5)(B), which the GOC refused to do.

Despite the GOC’s claims that the GOC holds little influence on the business operations of privately-held Chinese companies, the Department seeks certain information to inform its own analysis of the extent of government involvement in those entities serving as input producers. When the Department receives only a portion of the requested information, or none at all, for instance, and documentation it does receive does not enable the Department to perform a complete “authorities” analysis, for example, to establish that intermediate or ultimate owners are not government authorities, then the Department cannot discern whether GOC or CCP officials exert control over the producers.

The GOC next raises several arguments with respect to the Department’s questions pertaining to CCP affiliations or activities: 1) that CCP and village committees are not government “authorities”, 2) that CCP officials are not eligible to be owners, members of the board of directors or managers, of primary aluminum, aluminum extrusions, and glass producers, 3) that the Company Law vests authority in private companies with shareholders, not the CCP, 4) that the GOC responded to the best of its ability concerning ownership information and CCP affiliations or activities, and 5) that record evidence establishes that CCP affiliations or activities of suppliers are not relevant.

We disagree with the GOC. In *Aluminum Extrusions from the PRC First Review*, *Aluminum Extrusions from the PRC Second Review*, and *Solar Cells from the PRC*,⁶⁰⁰ we informed the GOC of the information required regarding the CCP's involvement in the PRC's economic and political structure that is considered essential to our "authorities" analysis. As the Department has previously concluded in the Public Bodies Memorandum and CCP Memorandum, the Department considers information regarding the CCP's involvement in the PRC's economic and political structure to be relevant and essential to our "authorities" analysis, because information on the record suggests that the CCP exerts significant control over activities in the PRC. Notably, the GOC simply failed to respond to the Department's questions in this regard. Moreover, the GOC failed to address the substantive concerns raised by third-party experts cited in the Public Bodies Memorandum and the CCP Memorandum with anything other than unsupported assertions. We have also addressed these issues in detail in Comment 7 of the Aluminum Extrusions PRC Second Review IDM, which we incorporate here by reference, and which have not been rebutted by the GOC.

For these reasons, the GOC's reliance on *Countervailing Duties on Products from China (2011)* and *Countervailing Measures on Products from China (2014)*, *Countervailing Measures on Steel Flat Products from India (2014)*,⁶⁰¹ is misplaced, as those decisions do not apply to this proceeding. The GOC's reliance on *Plate from the PRC*⁶⁰² is misplaced as well.

We also disagree with the GOC that it has cooperated to the best of its ability. The Department provided the GOC multiple opportunities to provide the requested information, which, as discussed above, was relevant and necessary to the Department's "authorities" analysis under section 771(5)(B) of the Act. The limited information that was provided by the GOC was not sufficient, in light of the remaining missing information. Additionally, by stating that the information is not relevant, the GOC has placed itself in the position of the Department: however, it is the prerogative of the Department, not the GOC to determine what information is relevant to our proceedings. Therefore, with respect to the "authorities" analysis, the Department appropriately determined that the request for such information was necessary and warranted, and the GOC's failure to provide such information rendered the application of AFA appropriate. Further, the GOC's attempted justification for failing to provide all of the requested information on the basis that its own local offices failed to respond simply demonstrates an unwillingness to provide information in this review. Finally, claims about the number of producers and suppliers and the burden of responding fully with regard to all producers is an insufficient explanation, given that the GOC failed to provide any producer appendices responses on its first opportunity,

⁶⁰⁰ See Public Bodies Memorandum and its attachment the CCP Memorandum. See also *Aluminum Extrusions from the PRC First Review*, and accompanying IDM at Comment 10; *Aluminum Extrusions from the PRC Second Review* and accompanying IDM at Comment 7; and *Solar Cells from the PRC*, and accompanying IDM at Comment 6.

⁶⁰⁰ See Public Bodies Memorandum at 35-36, and sources cited therein.

⁶⁰¹ See Appellate Body Report, *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/AB/R (March 11, 2011), Panel Report, *United States – Countervailing Duty Measures on Certain Products from China*, WT/DS437/R (July 14, 2014), Appellate Body Report, *United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India*, WT/DS436/AB/R (December 8, 2014).

⁶⁰² See *Certain Cut-to-Length Carbon Steel 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) and accompanying decision memorandum, at comment 2 (Plate from China).

and failed to provide a single complete producer appendix response, and provided only five incomplete producer appendix responses.

Jangho's reliance on *Countervailing Duties: Final Rule*⁶⁰³ and *PPG Industries Inc. v. United States*,⁶⁰⁴ and the GOC's reliance on *Zhejiang v. United States*⁶⁰⁵ are misplaced. The GOC had been granted considerable extensions of time to respond to both the Department's GOC NSA Questionnaire and the GOC Third Supplemental questionnaire, which included questions regarding producers of Aluminum Extrusions and Glass. The GOC ultimately provided both of its responses without any further requests for additional time, yet the GOC explicitly stated that it did not have sufficient time to provide producer appendix responses. Ultimately, the GOC provided incomplete and inadequate responses for two glass producers, and two aluminum extrusions producers only. This response was completely inadequate, given the "numerous"⁶⁰⁶ producers for which we required responses. The GOC similarly, provided inadequate responses for all producers of primary aluminum. Further the GOC gave no producer appendix responses and a similar excuse in response to our earlier GOC NSA Questionnaire, substantially impeding the progress of our investigation.⁶⁰⁷ The responses, that were provided, as explained above, lacked some of the most important pieces of information necessary for the Department to conduct an authorities analysis, including information needed to determine the extent of the CCP's involvement in and potential control over input producers, and the information needed to determine the ultimate owners of the input producers, and the GOC's possible ownership and control of the producers or the producers' parents or other affiliates.

As explained in the CCP Memo, the Department has determined that "the CCP may, for the limited purposes of applying the U.S. CVD law to China, properly be considered to be the 'government.'"⁶⁰⁸ Therefore, the statement that certain company officials were members and not officials of the CCP and NPC in *PC Strand from the PRC* is irrelevant to the Department's position that complete information related to whether any senior company officials were government or CCP officials and to the role of any CCP committee within the companies is essential to determine whether primary aluminum producers are "authorities" within the meaning of section 771(5)(B) of the Act.

Given that the GOC did not provide the information requested regarding this issue, we are not reevaluating the Department's prior factual findings on the role of the CCP. We continue to find that the CCP, like the formal state apparatus, constitutes part of the "government" in the PRC for the limited purposes of applying the CVD law to the PRC.

⁶⁰³ See *Countervailing Duties: Final Rule*, 63 FR 65348 (November 25, 2008) at 65357.

⁶⁰⁴ See *PPG Industries v. United States*, 978 F. 2d 1232, 1241 (Federal Circuit 1992).

⁶⁰⁵ *Id.*, at 19; see also *Zhejiang Dunan Hetian Metal Co. v. United States*, 652 F.3d 1333, 1348 (Fed. Cir. 2011) (*Zhejiang v. United States*).

⁶⁰⁶ See the GOC's Post-Preliminary Case Brief at 14 to 15.

⁶⁰⁷ See GOC NSA Response at 1.

⁶⁰⁸ See CCP Memorandum at 33.

Comment 12: Whether Specificity Exists for Primary Aluminum for LTAR, Glass for LTAR, and Aluminum Extrusions for LTAR

The Jangho Companies' Case Brief:

- The record does not support a finding of specificity under 771(5A)(D)(iii)(I) of the Act because glass and aluminum extrusions are both widely consumed in China and because the Department provided no rationale for finding specificity or applying AFA for glass for LTAR.⁶⁰⁹
- The aluminum extrusions-consuming industries identified by the Department are demonstrably flawed because the industry in which curtain walls are used, (*i.e.*, construction) is not represented, and nor are the industries represented by the several products identified in the Department's scope rulings.⁶¹⁰
- The curtain wall industry is demonstrably not a predominant user of aluminum extrusions.⁶¹¹

The GOC's Case Brief:

- The primary aluminum for LTAR, aluminum extrusions for LTAR and glass for LTAR programs are not specific.⁶¹²
- The record reflects the fact that the consumers of primary aluminum, aluminum extrusions, and glass are not limited, but rather diverse.⁶¹³
- With regard to primary aluminum, the GOC points to the input-output table it submitted on the record, showing uses of non-ferrous metal smelting products.⁶¹⁴
- With regard to aluminum extrusions, the GOC points to the broad coverage of the scope and the large numbers of HTS numbers covered by the scope of the *Orders*, and to the variety of scope rulings issued in the course of these *Orders*.⁶¹⁵
- With regard to glass, the GOC argues that the uses of tempered and laminated glass are “vast” and “varied.”⁶¹⁶
- The GOC notes that in *Chlorinated Isocyanurates from the PRC*,⁶¹⁷ the Department concluded that the alleged urea LTAR program was not specific because of the presence of nine separate industries which consumed urea.⁶¹⁸

⁶⁰⁹ See the Jangho Companies' Post-Preliminary Case Brief at 9 to 13.

⁶¹⁰ *Id.*, at 9 to 12.

⁶¹¹ *Id.*, at 13.

⁶¹² See the GOC's Post-Preliminary Case Brief at 22 to 24.

⁶¹³ *Id.*

⁶¹⁴ *Id.*, at 22 to 23.

⁶¹⁵ *Id.*, at 23.

⁶¹⁶ *Id.*

⁶¹⁷ See *Chlorinated Isocyanurates from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 2012, 79 FR 56560 (September 22, 2014) (*Chlorinated Isocyanurates from the PRC*) and the accompanying Issues and Decisions Memorandum at “1. Urea for LTAR” and Comment 4; and *Chlorinated Isocyanurates from the People's Republic of China*, 79 FR 67424 (November 13, 2014).

⁶¹⁸ See the GOC's Post-Preliminary Case Brief at 24.

The Jangho Companies' Rebuttal Brief:

- The Jangho Companies concur with the GOC's argument that primary aluminum for LTAR, aluminum extrusions for LTAR and glass for LTAR programs are not specific under the Act.⁶¹⁹
- The record demonstrates that a broad array of industries use aluminum extrusions and glass.⁶²⁰
- The *Orders* themselves and the numerous scope rulings in the aluminum extrusions proceedings demonstrate the use of aluminum extrusions as inputs across a broad array of HTS numbers and industries.⁶²¹
- The record reflects that glass is used in industries including doors and windows, construction model forging, curtain walls, internal decoration, furniture and ancillaries, television, air-conditioning, refrigerator, toaster, oven, electronics, watch, mobile phone, music players, cars and land-transportation vehicles, home instruments and others.⁶²²
- Citing section 771(5A)(D)(iii)(I) of the Act, the Jangho Companies argue that the Department cannot ignore the non-specific uses of glass and aluminum extrusions or the Department's own scope rulings. Jangho insists that section 771(5A)(D)(iii)(I) of the Act indicates that an LTAR program is specific where "actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number {;}" "where users represented {are} numerous and diverse industries" the alleged subsidy is not specific.⁶²³
- The Department must consider both the number and the actual make-up of eligible firms, which for glass and aluminum extrusions reflect a broad and diverse variety of industries.⁶²⁴

Petitioner's Rebuttal Brief:

- The provision of primary aluminum, aluminum extrusions, and glass was specific.⁶²⁵
- Noting the GOC's references to its input-output table, and the Department's findings in *ARI Final Results*, Petitioner argues that the Department has already concluded that this table does not support the GOC's contention that primary aluminum for LTAR is consumed by a limited number of industries.⁶²⁶
- The GOC ignored the Department's repeated requests to identify and provide quantity and value information for the industries or enterprises which purchase aluminum extrusions.⁶²⁷
- Petitioner, noting the GOC's identification of a number of industries which are consumers of glass and Petitioner's own identification of three industries, and precedent

⁶¹⁹ See the Jangho Companies' Post-Preliminary Rebuttal Brief at 2 and 6 to 8.

⁶²⁰ *Id.*, at 6 to 7.

⁶²¹ *Id.*, at 7.

⁶²² *Id.*

⁶²³ *Id.* See also section 771(5A)(D)(iii)(I) of the Department's regulations.

⁶²⁴ See the Jangho Companies' Post-Preliminary Rebuttal Brief at 8.

⁶²⁵ See Petitioner's Post-Preliminary Rebuttal Brief at 2 and 21 to 24.

⁶²⁶ *Id.*, at 21. See also Aluminum Extrusions 2010-2012 AD Final Results, 79 FR 106 (January 2, 2014) (*ARI Final Results*) and the accompanying Issues and Decision Memorandum at 29.

⁶²⁷ *Id.*, at 23.

provided by *OCTG from the PRC*, argues that the Department has previously found the provision of a benefit to an even larger number of industries to be “limited” for purposes of specificity.⁶²⁸

Department’s Position:

As explained in the relevant sections above, we continue to find each of the LTAR programs to be specific.

With respect to primary aluminum for LTAR, in the *Aluminum Extrusions from the PRC Investigation*, *Aluminum Extrusions from the PRC First Review*, and *Aluminum Extrusions from the PRC Second Review*, the Department determined that this subsidy is specific under section 771(5A)(D)(iii)(I) of the Act.⁶²⁹ We find nothing on the record to contradict these findings.

With respect to aluminum extrusions for LTAR, as discussed above, we relied on AFA to find the program to specific under section 771(5A)(D)(iii)(I) of the Act because the GOC did not provide a list of industries which purchase these inputs or provide the quantity and value purchased by each industry, withheld the information, and failed to explain why it had withheld the information.

With respect to glass for LTAR, we relied on the information available to find the program specific under section 771(5A)(D)(iii)(I) of the Act because the GOC did not provide a list of industries which purchase these inputs or provide the quantity and value purchased by each industry. Therefore, we based our analysis on the industries identified by the GOC and Petitioner, finding that the industries identified were limited and the glass for LTAR program specific.

Nevertheless, we have addressed the interested parties’ arguments in turn.

Regarding the primary aluminum for LTAR program, as explained in the Post Preliminary Analysis, the GOC has provided no new information in this review to contradict evidence presented in segments of this proceeding. We continue to find for the same reasons discussed in the *Aluminum Extrusions from the PRC First Review*, and *Aluminum Extrusions from the PRC Second Review*, that the China Input-Output Table of 2007 provided in this and previous segments of the proceeding does not provide the type of information which the Department requires to determine if the provision of primary aluminum is specific to aluminum extrusion producers, such as the number of enterprises or industries that purchase primary aluminum.⁶³⁰

⁶²⁸ *Id.* See also *Certain Oil Country Tubular Goods from the People's Republic of China*, 74 FR 64045 (December 7, 2009) (*OCTG from the PRC*).

⁶²⁹ See *Aluminum Extrusions Investigation Preliminary Determination* at 54306 (unchanged in *Aluminum Extrusions from the PRC Investigation*); *Aluminum Extrusions First Review Preliminary Results* and the accompanying PDM at “Provision of Primary Aluminum for Less Than Adequate Remuneration (LTAR)” (unchanged in *Aluminum Extrusions from the PRC First Review*); and *Aluminum Extrusions Second Review Preliminary Results* and the accompanying PDM at “Provision of Primary Aluminum for LTAR.” (unchanged in *Aluminum Extrusions from the PRC Second Review*).

⁶³⁰ See *Aluminum Extrusions First Review Preliminary Results* and the accompanying PDM at “Provision of Primary Aluminum for Less Than Adequate Remuneration (LTAR)” (unchanged in *Aluminum Extrusions from the PRC First Review*).

Further, in the underlying investigation, Petitioner provided evidence in the petition that primary aluminum is used in the production of the seven main aluminum fabricated products (including casts, planks, screens, extrusions, forges, powder and die casting) and based on this information, the Department concluded in the *Aluminum Extrusions from the PRC Investigation* that the record supported a determination that the users of primary aluminum are limited, and therefore, the provision of primary aluminum for LTAR was *de facto* specific.⁶³¹ Therefore, consistent with the *Aluminum Extrusions from the PRC Investigation*, *Aluminum Extrusions from the PRC First Review*, and *Aluminum Extrusions from the PRC Second Review*, we continue to find that the industries that purchase primary aluminum are limited in number and, hence, the subsidy is specific under section 771(5A)(D)(iii)(I) of the Act.⁶³²

Regarding the Jangho Companies' argument with respect to aluminum extrusions, that the industries identified by the Department are flawed because they fail to include the construction industry in which Jangho operates, other industries represented in the scope of the *Orders*, and various scope rulings, we noted in the Post-Preliminary Analysis that Petitioner's information, taken from Zhongwang Holdings Ltd.'s financial statements, identified three consuming industries, transportation, machinery, and equipment, and we *also* noted that in *Crystalline Silicon Photovoltaic Cells*, the GOC had identified and endorsed a list of six industries, construction industry, transportation industry, mechanical and electrical equipment industry, consumer durable goods industry, electricity, and other industries. Thus we did not conclude that the program was specific based on three consuming industries. Rather we found the program to be specific based on AFA because the GOC declined to provide a list of industries on the record of this review, despite evidence that they had done so in the past. Further the GOC's contention that it lacked sufficient time to do so, within the deadline of our supplemental questionnaire, is insufficient. Our AFA determination merely noted that evidence available on the record indicates no more than the existence of three industries according to Petitioner and the GOC's endorsement of six U.S. industries, including the construction industry, that supported the determination in *Crystalline Silicon Photovoltaic Cells*.

Further, the various scope rulings or the scope of the *Orders* do not indicate a precise number or list of consuming industries different from the sets of three or six indicated on the record. We note that, while the GOC pointed to the large number of products which are within the scope of the order, the GOC has not suggested these products fall under additional industries not considered. On the contrary, in *Crystalline Silicon Photovoltaic Cells*, the GOC endorsed (with respect to a prior period) the six industries identified in the ITC's report in the aluminum extrusions investigation. The number and identity of other industries not identified on the record or in prior proceedings is not available. The Department cannot base its analysis on information which the GOC failed to place on the record. Further the GOC has not provided the quantity and value of aluminum extrusions consumed by the three to six industries identified on the record, or any other industries.

Regarding the glass for LTAR program, after failing to respond to our questions with verifiable information (as discussed above) the GOC asserted "it is commonly known that tempered glass, and to some extent also laminated glass, are used in a variety of downstream sectors, including

⁶³¹ *Id.*

⁶³² *Id.*

but not limited to doors and windows building, construction model forging, curtain wall, internal decoration, furniture and ancillaries, television, air-conditioning, refrigerator, toaster, oven, electronics, watch, mobile phone, musical players, cars and land-transportation vehicles, home instrument, among others.”⁶³³ Petitioner provided information demonstrating that users of tempered and laminate glass include the construction and automobile industries.⁶³⁴ Therefore, we find the industries identified on the record to be limited, and the glass for LTAR program to be specific.

Regarding the GOC’s claim that in *Chlorinated Isocyanurates from the PRC*,⁶³⁵ the Department concluded that the alleged urea LTAR program was not specific because of the presence of nine separate industries which consumed urea, we note that circumstances in *Chlorinated Isocyanurates from the PRC* are not found here. Specifically, based on record evidence, urea was found to be consumed by nine broad industries, (1) agriculture (both as fertilizer and feed additives), (2) chemicals, (3) wood products, (4) textiles, (5) paper, (6) automotive, (7) industrial pollution control, (8) medicine, and (9) cosmetics. Further, we found that producers of the subject merchandise were not a predominant or disproportionately large user of urea.⁶³⁶ The GOC has provided no verifiable, evidence, and indeed no evidence, of any industries consuming glass. Even if we had verifiable information on the record indicating that the GOC’s list of purported users of glass was accurate, that list would not reflect the diversity of users which were found to consume urea in *Chlorinated Isocyanurates from the PRC*. Nor does the GOC’s assertion and argument attempt address the issue of whether the construction industry is a predominant or disproportionate user of glass.

For these reasons, we continue to find that the industries consuming primary aluminum are limited and that the primary aluminum for LTAR program is specific. We also continue to find, as AFA, that the industries consuming aluminum extrusions are limited and that the aluminum extrusions for LTAR program is specific. Finally, we continue to find that the available record evidence indicates that the industries consuming glass are limited in number and that the glass for LTAR program is specific.

Comment 13: Whether the Department May Use a “Tier Two” Benchmark for Primary Aluminum for LTAR, Aluminum Extrusions for LTAR, and Glass for LTAR

The GOC’s Case Brief:

- The Department inappropriately resorted to the use of non-Chinese benchmarks.⁶³⁷
- The Department should use “in-China” (*i.e.*, tier one) benchmarks to value inputs.⁶³⁸
- The Department erroneously found that the record is incomplete with regard to whether the PRC markets for inputs are distorted.⁶³⁹

⁶³³ *Id.*, at 10 to 11.

⁶³⁴ See NSA at Exhibit 1, page 12 to 18.

⁶³⁵ See *Chlorinated Isocyanurates from the PRC* and the accompanying Issues and Decisions Memorandum at Comment 4.

⁶³⁶ See the GOC’s Post-Preliminary Case Brief at 24.

⁶³⁷ See GOC Post-Preliminary Brief, at 24 to 25

⁶³⁸ *Id.*, at 24 to 26.

⁶³⁹ *Id.*, at 24 to 25.

- Citing *Countervailing Measures on Steel Flat Products from India (2014)*, the GOC argues that the Department finding was contrary to the United States' WTO obligations because the Department failed to consider factors other than the extent of SOE participation in the Chinese primary aluminum, aluminum extrusions, and glass markets, and the finding from a previous investigation (*i.e.*, *Solar II*).⁶⁴⁰
- The GOC argues that it provided spot prices for primary aluminum from the Shanghai Futures Exchange, provided evidence on the record that primary aluminum prices in China were often higher than the London Metal exchange (LME) prices, and provided evidence that primary aluminum, aluminum extrusions, and glass reflect market forces, and are not subject to price controls.⁶⁴¹
- Therefore, that record evidence contradicts the Department's conclusion that the Chinese primary aluminum, aluminum extrusions, and glass markets are significantly distorted.⁶⁴²

The Jangho Companies' Rebuttal Brief:

- The Jangho Companies concur with the GOC's argument that the Department should use in-China benchmarks for glass and aluminum.⁶⁴³
- The administrative record demonstrates that the markets for glass and aluminum extrusions are not distorted, and that prices therein are based on market forces.⁶⁴⁴

Petitioner's Rebuttal Brief:

- The Department should continue to use a tier-two benchmark for primary aluminum, aluminum extrusions, and glass.⁶⁴⁵
- the GOC's refusal to cooperate and provide information necessary to the Department in assessing the extent to which the government maintains management or ownership interests, prevented the Department from being able to assess the extent of the GOC's role in the primary aluminum, aluminum extrusions, and glass markets.⁶⁴⁶
- the GOC's withholding of such information was particularly egregious, given its ability to provide such information with regard to "aluminum sections" in *Solar II*.⁶⁴⁷
- With regard to primary aluminum, the GOC has not provided any new evidence to undermine the Department's prior findings that a tier two benchmark is appropriate.⁶⁴⁸
- The CCP is an authority and permeates society and maintains committees within various entities.⁶⁴⁹
- The GOC has historically directly influenced pricing for aluminum within China.⁶⁵⁰

⁶⁴⁰ *Id.*, at 25.

⁶⁴¹ *Id.*, at 26. *See also* GOC Initial Questionnaire Response at 46 and Exhibit 40.

⁶⁴² *Id.*

⁶⁴³ *See* the Jangho Companies' Post-Preliminary Rebuttal Brief at 2 and 6 to 8.

⁶⁴⁴ *Id.*, at 21 to 22.

⁶⁴⁵ *See* Petitioner's Post-Preliminary Rebuttal Brief at 24 to 28.

⁶⁴⁶ *Id.* at 25.

⁶⁴⁷ *Id.* *See also* *Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China*, 79 FR 33174 (June 10, 2014) (*Solar II*).

⁶⁴⁸ *See* Petitioner's Post-Preliminary Rebuttal Brief at 26.

⁶⁴⁹ *Id.*

⁶⁵⁰ *Id.*, at 26 to 27.

- Petitioner argues that no interested party provided a tier one benchmark for valuing either aluminum extrusions or glass, and the Department had no benchmark prices from actual transactions in the Chinese market for either input.⁶⁵¹
- Petitioner further avers that the GOC did not provide certain information critical to the Department's assessment of the GOC's presence in the glass and aluminum extrusions markets and whether that presence resulted in the distortion of prices.⁶⁵²

Department's Position:

As an initial matter, it is important to reiterate that regarding the aluminum extrusions for LTAR and glass for LTAR programs, no party has provided tier-one benchmark prices for aluminum extrusions or glass on the record of this review. Regarding primary aluminum, the GOC provided certain information on the Shanghai Futures Exchange, including a table of monthly open, high, low, and close settlement prices for primary aluminum. For the reasons discussed above, we continue to find that there is no evidence on the record to cause us to revisit our prior determinations that such prices cannot be used as benchmarks due to the GOC's extensive involvement in the PRC primary aluminum market.

Moreover, for primary aluminum for LTAR, aluminum extrusions for LTAR, and glass for LTAR, the GOC failed to answer certain important questions or provide all of the information required to perform a distortion analysis. For example, as explained in the *Post-Preliminary Analysis*, the GOC failed to provide the total volume and value of domestic consumption or the percentage of domestic consumption accounted for by domestic production, information which is critically necessary for our analysis. Our distortion analysis requires that we analyze several factors, including the percentage of production accounted for by companies in which the GOC maintains controlling ownership or management interest, in light of the volume and value of total domestic consumption and the percentage of domestic consumption accounted for by domestic production. Without information on domestic consumption and the percentage of domestic consumption accounted for by domestic production, other information provided, including information on domestic production in total and production by companies in which the GOC maintains controlling ownership or management interest does not form a sufficient basis for a distortion analysis. Therefore, as discussed above, we continue to find as AFA, that the market for primary aluminum is distorted. We also find that there is no record information of tier-one benchmark prices for aluminum extrusions or glass, and that, in any event, the GOC did not respond to our requests for information to determine whether the aluminum extrusions and glass markets are distorted. For these reasons, we have used tier-two benchmark prices for these final results for primary aluminum, aluminum extrusions, and glass.

Comment 14: Whether the Department Made a Ministerial Error in the Calculation of Benefits for the Aluminum Extrusions for LTAR and Glass for LTAR Programs.

- The Department made a ministerial error in the calculation of benefits for the aluminum extrusions for LTAR and glass for LTAR programs.⁶⁵³

⁶⁵¹ *Id.*, at 27.

⁶⁵² *Id.*

- The Department’s calculations treated purchases at prices above the benchmark price as positive subsidies.⁶⁵⁴

Petitioner’s Rebuttal Brief:

- Providing several examples, Petitioner argues that a review of the actual calculations and output for each program for each of the Jangho Companies entities does not reveal that any error exists.⁶⁵⁵

Department’s Positon:

We agree with the Jangho Companies, in part. There was an error in the formulas used to calculate benchmarks for Guangzhou Jangho’s individual purchases of glass. First, the formula incorrectly referenced the wrong cells, a column containing values, rather than the cells used to identify the type of glass (*i.e.*, tempered or laminated), erroneously setting the benchmark price to zero. We have corrected this error by referencing the correct column in the formula used to calculate unit benchmarks. Second, we did not calculate benefits for certain of the Jangho Companies’ purchases. We have corrected this error as well. Third, for certain purchases reported with negative quantities, the resulting benefit calculation erroneously resulted in a positive benefit. In these cases, the unit values were greater than the associated unit benchmark value. Therefore, the calculation correctly yielded a positive unit benefit, but the multiplication of the subsequent negative unit benefits by negative quantities resulted in positive transaction-specific benefits. Negative transaction-specific benefits were automatically set to zero, but this check didn’t capture the erroneous positive transaction-specific values.⁶⁵⁶ For these reasons, there were some benefits calculated for certain sales with negative unit benefits as Jangho argues, because some of these sales also had negative quantities. We have corrected this error by setting total benefits of sales with negative quantities to zero.⁶⁵⁷

Comment 15: Whether the Department Should Calculate Subsidies on Two Programs for Which It Sought Additional Information After Issuance of the *Preliminary Results*

Petitioner’s Comments:

- The Department should find that, with respect to the Self-Innovation Brand/Grant for Self-Innovation and Enterprise Listing (aka, Income Tax Reward for Listed Enterprises) and the Export Insurance Program, programs on which the Department sought additional information after issuance of the preliminary results of review, a benefit was conferred to GYG for both programs.

⁶⁵³ See the Jangho Companies’ Post-Preliminary Case Brief at 9 to 13.

⁶⁵⁴ *Id.*

⁶⁵⁵ See Petitioner’s Post-Preliminary Rebuttal Brief at 28.

⁶⁵⁶ It is unclear from the Jangho Companies’ responses what is indicated by the presence of negative quantities in the data.

⁶⁵⁷ See The Jangho Companies’ Final Analysis Memo at 3.

- Petitioner argues that similar to *Low Enriched Uranium*,⁶⁵⁸ the Department should find that a grant was bestowed on the date on which the funds were awarded, as it is related to the date on which the company received the grant.

Department’s Position

We disagree with Petitioner. The Department included both programs, *i.e.*, the Self-Innovation Brand/Grant for Self-Innovation and Enterprise Listing (aka, Income Tax Reward for Listed Enterprises) and the Export Insurance Program, in its post-preliminary results of review based on information received in response to supplemental questionnaires issued after the preliminary results of review. Having reviewed that information, the Department determined that no measurable benefit existed under those programs in this POR.⁶⁵⁹

The Department’s practice is for respondent to identify when a grant was received. This is based on how the information is maintained by the company and the GOC to enable such reporting to the Department. In this aluminum extrusions CVD proceeding, the Department has permitted respondents to report grants using the receipt date of the grant where the company was not able to provide the approval date.⁶⁶⁰ While in the *Low Enriched Uranium* case the Department permitted grants to be reported based on when they were disbursed, that case does not necessarily reflect the same facts as the respondent’s experience in this administrative review. In this review, GYG specified that the booking date not only reflects the receipt of benefit,⁶⁶¹ but it is also consistent with records maintained by Guang Ya.⁶⁶² Therefore, for the aforementioned reasons, we continue to use the “booking date” as the date of receipt of payment in our grant calculations for the final results of review.

Comment 16: Whether the Department Made a Ministerial Error in the Policy Lending Calculation for GYG

GYG’s Comments:

- GYG contends the Department erred in the methodology used to calculate the policy lending subsidy for GYG, thus inflating the Group’s overall subsidy rate.⁶⁶³

⁶⁵⁸ See *Notice of Final Affirmative Countervailing Duty Determinations: Low Enriched Uranium from Germany, the Netherlands, and the United Kingdom – Calendar Year 1999*, 66 FR 65903 (December 13, 2001) (*Low Enriched Uranium*), at Comment 10.

⁶⁵⁹ See the Post-Preliminary Analysis at p. 42-43.

⁶⁶⁰ See, e.g., *Aluminum Extrusions From the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2010 and 2011*, and accompanying decision memorandum, at 31 (January 2, 2014); see also, *Aluminum Extrusions From the People’s Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2012*, and accompanying decision memorandum, at 36 (June 25, 2014).

⁶⁶¹ See Letter from GYG to the Department regarding, “Aluminum Extrusions from the PRC: Second Supplemental CVD Questionnaire Response of the Guang Ya Group,” (April 22, 2015) at page 9.

⁶⁶² See Letter from GYG to the Department regarding, “Aluminum Extrusions from the PRC: First Supplemental CVD Questionnaire Response of the Guang Ya Group,” (February 19, 2015) at page 22.

⁶⁶³ See Letter from GYG to the Department re: “Aluminum Extrusions from the PRC: Case Brief of the Guang Ya Group,” (October 23, 2015) (GYG’s Case Brief) at 2.

- GYG Department should have calculated a sum of the weight-averaged benefit in the policy loan calculation based on the total sales of GYG, rather than using the sum of the benefit based on the individual sales of each company.⁶⁶⁴
- GYG illustrates the differences between the calculation methodology employed by the Department in the preliminary results and the calculation methodology the Department should have used. GYG's analysis takes into account the relative size of each company in relation to the experience of the entire group. GYG divides the sum of the benefit for each company by the sum of the sales value, exclusive of services and intercompany sales.⁶⁶⁵

Petitioner's Rebuttal Brief:

- Should the Department agree that it incorrectly calculated the subsidy benefit attributable to GYG, the Department should ensure that the sales denominator does not (a) double count values, or (b) include figures that may be excluded in the calculation of other programs.⁶⁶⁶

Department's Position:

The Department agrees with GYG that it erred in the calculation of policy lending, but does not agree with GYG's calculation methodology, which would improperly dilute the policy lending subsidy. The calculation methodology submitted by GYG does not properly attribute subsidies in accordance with the Department's regulations under 19 CFR 351.525. This regulation contemplates differences in attribution between producers and input suppliers. Specifically, with respect to cross-owned producers, 19 CFR 351.525(b)(6)(ii) states:

...the Secretary will attribute the subsidies received by either or both corporations to the products produced by both corporations.

Whereas 19 CFR 351.525(b)(6)(iv) provides for the following regarding input suppliers:

If there is cross-ownership between an input supplier and a downstream producer, and production of the input product is primarily dedicated to production of the downstream product, the Secretary will attribute subsidies received by the input producer to the combined sales of the input and downstream products produced by both corporations (excluding the sales between the two corporations).

Accordingly, for these final results, we attributed the policy lending benefit for Guang Ya and Guangcheng over the combined sales of Guang Ya and Guangcheng in accordance with 19 CFR 351.525(b)(6)(ii). Regarding the benefit calculated for Guanghai, we attributed the benefit to the combined sales of Guang Ya, Guangcheng, and Guanghai, in accordance with 19 CFR 351.525(b)(6)(iv). Having employed this methodology, we summed the resulting figures to yield the overall policy lending subsidy.

⁶⁶⁴ See GYG's Case Brief, at 3.

⁶⁶⁵ *Id.*, at 4-5.

⁶⁶⁶ See Petitioner's Rebuttal Brief, at p. 17.

Comment 17: Whether the Department Should Allocate Benefits from GYG’s Famous Brands Program over 2013 Sales

GOC’s Comments:

- In calculating a benefit for GYG’s Famous Brands Program, the Department erroneously used the 2009 benefit, rather than the 2013 benefit, which should be corrected for the final results of review.⁶⁶⁷

Department’s Position:

The Department agrees that it erred with using the 2009 figure in the calculation for the Famous Brands Program. For the final results of review, we corrected this calculation by using the 2013 benefit amount and divided this figure by the total combined export value for Guang Ya and Guangcheng.

Comment 18: Whether the Department Should Countervail Non-Recurring Subsidies Received Prior to January 1, 2005.

GOC’s Comments

- The Department should not countervail non-recurring subsidies received prior to January 1, 2005, despite the long-standing practice to examine countervailing subsidies back to December 11, 2002, as was done in the preliminary results of this review.⁶⁶⁸
- Citing to *Sulfanilic Acid*⁶⁶⁹ and *Georgetown Steel*,⁶⁷⁰ the GOC contends that the Department’s application of subsidies prior to January 1, 2005, conflicts with the Department’s own determination that it cannot apply CVD law to an NME country, and unfairly subjects China to CVD law absent a reasonable expectation of when that law actually applied.⁶⁷¹
- In addition to *Sulfanilic Acid* and *GPX*, the GOC points to the Department’s *Final Rule*⁶⁷² wherein the Department states that subsidies would apply prospectively upon a determination of a country’s change in status from NME to ME; and that this “graduation” to ME status would serve as the “official cut-off date” for identifying and measuring such subsidies.⁶⁷³
- The GOC also references the *CFS Paper*⁶⁷⁴ investigation in which the Department said it was not able to determine whether the GOC bestowed a benefit upon a Chinese company and whether such a benefit was specific prior to January 1, 2005.⁶⁷⁵

⁶⁶⁷ See GOC’s Rebuttal Brief, at 10.

⁶⁶⁸ *Id.*, at 11.

⁶⁶⁹ See *Final Affirmative Countervailing Duty Determination: Sulfanilic Acid from Hungary*, 67 FR 60223, dated September 25, 2002, and accompanying decision memorandum (*Sulfanilic Acid*).

⁶⁷⁰ See *Georgetown Steel Corp. v. United States*, 801 F.2d 1308 (CAFC 1986) (*Georgetown Steel*).

⁶⁷¹ See GOC’s Case Brief, at 11-12.

⁶⁷² See *Countervailing Duties: Final Rule*, 63 FR 65347 (November 25, 1998).

⁶⁷³ See GOC’s Case Brief, at 11-12.

⁶⁷⁴ See Memorandum from Shauna Lee-Alaia and Lawrence Norton, Office of Policy, Import Administration, to

- The GOC cites to Public Law 112-99⁶⁷⁶ which states that subsidies cannot be applied to NME countries where it is unable to identify and measure such subsidies; to do so would prove contrary to the Department's practice and policy of applying countervailing duties to a country that has yet to graduate from NME status. Moreover, it would be contrary to law.⁶⁷⁷

Petitioner's Comments:

- The date on which the Department identifies and measures non-recurring subsidies, *i.e.*, December 11, 2001, is consistent with past practice it is in accordance with the law.⁶⁷⁸
- The Department changed its practice of not applying CVD law to NMEs after determining distinctions between China's current economy and Soviet-style economies at issue in the *Georgetown Steel*.⁶⁷⁹
- Petitioner also indicates that in addition to the Department's own practice in *CFS Paper*, the Supreme Court also recognized the Department's own authority to modify its practice supported by reasoned analysis.⁶⁸⁰
- Ample evidence supports the fact that the GOC has well aware of the potential subsidy obligations under CVD law prior to 2005.⁶⁸¹
- The Department may determine imposition of a subsidy where such a subsidies exist, regardless of political or economic status.⁶⁸²
- Documents surrounding the GOC's accession to the WTO put the GOC on notice that it could be held accountable for prior subsidies, pointing to, for instance, Article 10.1 of its Protocol of Accession, including the WTO's own requirement that China notify member countries of past subsidies thus signaling the potential imposition of countervailing duties on Chinese exports.⁶⁸³
- Petitioner rebuts that the GOC's assertion that the Department's practice of applying CVD law to China is inapposite to the Department's determination in *Sulfanilic Acid*. According to Petitioner, however, the Department changed its practice, and that the Department has since clarified China's economy as one that includes market mechanisms that enable the Department to identify and measure subsidies.⁶⁸⁴
- Further, Petitioner explains that the *Georgetown Steel Memo*⁶⁸⁵ makes clear changes in China's economy in the 1990s, long before January 1, 2005, allowing for potential application of subsidies since that period in time.⁶⁸⁶

David M. Spooner, Assistant Secretary for Import Administration, re: *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*, dated March 29, 2007 (*Georgetown Steel Memo*), at 10.

⁶⁷⁵ See GOC's Case Brief, at 12.

⁶⁷⁶ Public Law No. 112-99, 126 Stat. 265-266 (2012) (codified at 19 U.S.C. § 1671(f)(2)).

⁶⁷⁷ See GOC's Case Brief, at 12.

⁶⁷⁸ See Petitioner's Rebuttal Brief, at 11.

⁶⁷⁹ *Id.*, at 12.

⁶⁸⁰ *Id.*, at 12.

⁶⁸¹ *Id.*, at 12.

⁶⁸² See 19 U.S.C. § 1671(a).

⁶⁸³ See Petitioner's Rebuttal Brief, at 13.

⁶⁸⁴ *Id.*, at 14-15.

⁶⁸⁵ See generally, *Georgetown Steel Memo*.

Department's Position:

Since *CFS from the PRC*,⁶⁸⁷ the Department has consistently applied December 11, 2001, the date of the PRC's WTO accession, as the cut-off date for measuring subsidies in the PRC. The Department addressed the GOC's arguments raised in this review several times in the past,⁶⁸⁸ including in prior segments of this proceeding.⁶⁸⁹ For example, in *Steel Wheels from the PRC*, we responded to these same arguments as follows:

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. {*See Report of the Working Party on the Accession of China*, WT/ACC/CHN/49 (October 1, 2001).} 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 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 with the notion 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 {period of investigation} 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

⁶⁸⁶ See Petitioner's Rebuttal Brief, at 15-16.

⁶⁸⁷ 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 IDM at Comment 10. 38 See Department Memorandum regarding "Placement of China-NME Status Memoranda on the Record" (June 18, 2014) (China-NME Status Memoranda) (discussing the status of the Chinese commercial banking sector).

⁶⁸⁸ See, *e.g.*, *Solar Cells from the PRC*, and accompanying IDM at Comment 1; and *Certain Steel Wheels from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 77 FR 17017 (March 23, 2012) (*Steel Wheels from the PRC*), and accompanying IDM at Comment 4.

⁶⁸⁹ See, *e.g.*, *Aluminum Extrusions from the PRC Investigation* IDM, at Comment 4, *Aluminum Extrusions from the PRC First Review* IDM, at Comment 1, and *Aluminum Extrusions from the PRC Second Review* and the accompanying Issues and Decision Memorandum at Comment 2.

“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.” {See 22 U.S.C. § 6943(a)(1).} Thus, the GOC and PRC importers 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.⁶⁹⁰

Having raised these issues in the past with regard to the cut-off date selected by the Department, the GOC has yet to offer new information, or any convincing argument that would influence a change in our long-held position for measuring subsidies in the PRC. Accordingly, for the foregoing reasons, and consistent with our past determinations on this matter, we continue to find that December 11, 2001, not January 1, 2005, serves as the appropriate cut-off date for measuring subsidies in the PRC.

Comment 19: Whether TenKSolar Shanghai Should Receive the Cooperative Rate for Non-Selected Respondents

TenKSolar’s Comments:

- According to TenKSolar (Shanghai) Co. Ltd. (TenKSolar), the Department erred in the preliminary results of review by including TenKSolar among those companies on which it intends to rescind the administrative review.⁶⁹¹
- TenKSolar argues that it timely submitted a response to the Department’s Quantity and Value questionnaire, which demonstrates TenKSolar’s status as subject to this review, and its cooperation as a non-selected respondent.⁶⁹²

Department’s Position:

The Department agrees that tenKSolar should receive the cooperative rate for non-selected respondents. TenKSolar was among those companies to which the Department issued a Q&V questionnaire. Subsequently, tenKSolar submitted a Q&V response to that questionnaire, identifying the quantity and value of shipments imported into the United States during the instant POR. Therefore, for these final results, we included tenKSolar among the group of companies to which the Department has assigned a non-selected *ad valorem* subsidy rate for this POR.

⁶⁹⁰ See *Steel Wheels from the PRC*, and accompanying IDM at Comment 4 (original citations included).

⁶⁹¹ See Letter from tenKSolar to the Department re: “Aluminum Extrusions from the People’s Republic of China – Case Brief,” (October 23, 2015) (tenKSolar’s Case Brief) at 1.

⁶⁹² *Id.*, at 1-2.

Comment 20: Whether the Department Should Use Aluminum Billet Purchases by Guang Ya in the Benchmark Calculation of Primary Aluminum for LTAR

Petitioner's Comments

- The Department incorrectly estimated Guang Ya's benefit under the primary aluminum for LTAR program by not including aluminum billet in the benchmark calculation thus, undervaluing the overall benefit of this program.⁶⁹³
- Despite contradictory information submitted in Guang Ya's questionnaire responses, Guang Ya provided on the record of this review its aluminum billet purchases and therefore, the Department should calculate a benefit for those billet purchases.⁶⁹⁴
- Petitioner further questions the accuracy of the data placed on the record by Guanghai and Guangcheng given inconsistent information submitted to the Department Guang Ya on its purchases of primary inputs.⁶⁹⁵

Department's Position

We disagree with Petitioner's contention that the Department incorrectly estimated the primary aluminum input benefit for Guang Ya. Upon evaluation of all submissions by GYG, there is little question that inconsistent and contradictory information exists on the record of this review as to whether Guang Ya's input purchases were of aluminum ingot, aluminum billet, or both. Petitioner points to GYG's submission of March 5, 2015, on behalf of Guanxi Guangyin Commerce Co., Ltd. (Guangyin Commerce) as testament of ingot and billet purchases made by Guang Ya during the POR.⁶⁹⁶ While that submission included a data file listing Guang Ya's purchases of both ingots and billets, notably, in multiple submissions by GYG on behalf of Guang Ya, including the submission on behalf of Guangyin Commerce, GYG has attested to mistakes in how it labeled various documents and data files for the purpose of identifying whether Guang Ya's purchases were of ingots only.⁶⁹⁷

Furthermore, in its case brief, Petitioner indicates that it conducted its own analysis of Guang Ya's purchase price data, and explains that in doing so, it compared prices to Guangcheng's purchase data, to ascertain which of Guang Ya's purchases were of ingot and billet.⁶⁹⁸ First, we note that in its case brief, Petitioner itself refers incorrectly to the type of input purchases made by Guangcheng. Second, Petitioner did not place its analysis of Guang Ya's purchase data on the record of this review. Third, as Petitioner points out, the Department cannot assume Guang Ya's input purchases were necessarily of only aluminum ingots. Consequently, for the post-preliminary results of review, the Department used a "blended" benchmark price reflecting both aluminum ingot and billet prices. Because of the inconsistencies reflected in GYG's submissions on the record of this review, and the inability to discern whether GYG's input purchases were for

⁶⁹³ See Petitioner's Post-Preliminary Case Brief, at 2.

⁶⁹⁴ *Id.*, at 3-4.

⁶⁹⁵ *Id.*, at 4-5.

⁶⁹⁶ See, e.g., Guangxi Commerce's Response, at 19, Exhibit 64, GYG's First Supplemental Questionnaire Response, at 7 and 24, and Petitioner's Post-Preliminary Case Brief, at 2.

⁶⁹⁷ See, e.g., GYG's First Supplemental Questionnaire Response, at 25, and GYG's Second Supplemental Questionnaire Response, at 13-16.

⁶⁹⁸ See Petitioner's Post-Preliminary Case Brief, at 4-5.

ingots or billets, we cannot match ingot benchmarks to ingot prices, nor can we match billet benchmarks to billet prices. Accordingly, for the final results of review, as facts available, we continued to use a “blended” price for calculating the benchmark for primary aluminum purchases by Guang Ya, Guangcheng and Guanghai for the final results of review.

Comment 21: Whether the Department Erred in Calculating the Benchmark for Primary Aluminum

Petitioner’s Comments

- The Department erred in calculating the average world market price as part of GYG’s overall benchmark calculation for the primary aluminum input.⁶⁹⁹
- Specifically, Petitioner points out that despite the Department’s computational intention to add together the monthly average world market price and monthly average ocean freight expense, as indicated in the side note of its calculation worksheet, the Department instead added an incorrect figure to the monthly average ocean freight expense resulting in a deflated overall subsidy for GYG.⁷⁰⁰

Department’s Position:

We agree with Petitioner and have corrected the computation of the average world market price for GYG companies in the overall benchmark calculation for the final results of review.

Conclusion

Based on our analysis of the comments received, we recommend adopting all of the above positions. If accepted, we will publish the final results of review in the *Federal Register*.


Agree

Disagree


Paul Piquado
Assistant Secretary
for Enforcement and Compliance

7 DECEMBER 2015
(Date)

⁶⁹⁹ *Id.*, at 5-6.

⁷⁰⁰ *Id.*, at 6.