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November 20, 2015

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

FROM: Christian Marsh   
Deputy Assistant Secretary for Antidumping and  
Countervailing Duty Operations

SUBJECT: Aluminum Extrusions from the People's Republic of China:  
Issues and Decision Memorandum for the Final Results of  
Antidumping Duty Administrative Review; 2013-2014

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## SUMMARY

The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order<sup>1</sup> on aluminum extrusions from the People's Republic of China (PRC).<sup>2</sup> The period of review (POR) is May 1, 2013, through April 30, 2014. These final results cover 39 companies for which an administrative review was initiated and not rescinded.<sup>3</sup> The Department selected the following companies as mandatory respondents: Guangzhou Jangho Curtain Wall System Engineering Co., Ltd. and Jangho Curtain Wall Hong Kong Ltd. (collectively, Jangho), Union Industry (Asia) Co., Ltd. (Union), and Guang Ya Aluminium Industries Co., Ltd., Foshan Guangcheng Aluminium Co., Ltd., Kong Ah International Company Limited, and Guang Ya Aluminium Industries (Hong Kong) Ltd. (collectively, Guang Ya Group); Guangdong Zhongya Aluminium Company Limited, Zhongya Shaped Aluminium (HK) Holding Limited, and Karlton Aluminum Company Ltd. (collectively, Zhongya); and Xinya

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<sup>1</sup> See *Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order*, 76 FR 30650 (May 26, 2011) (*Order*).

<sup>2</sup> The Department initiated this review on June 27, 2014. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 79 FR 36462 (June 27, 2014) (*Initiation Notice*).

<sup>3</sup> This administrative review initially covered 155 companies. See *Initiation Notice*. However, on January 29, 2015, the Department rescinded this review with respect to 116 companies. See *Aluminum Extrusions From the People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review*, 80 FR 4868 (January 29, 2015).



Aluminum & Stainless Steel Product Co., Ltd. (Xinya) (collectively, Guang Ya Group/Zhongya/Xinya).<sup>4</sup>

We recommend making changes to the *Preliminary Results* for the final determination in accordance with the positions described in the “Discussion of the Issues” section of this memorandum.

## **BACKGROUND**

On April 2, 2015, we extended the period for commenting on the *Preliminary Results*.<sup>5</sup> On June 8, 2015, the Department published the *Preliminary Results* of this administrative review.<sup>6</sup> At that time, in accordance with 19 CFR 351.309(c)(1)(i), we invited interested parties to comment on the *Preliminary Results*. On June 10, 2015, we received comments from the Aluminum Extrusions Fair Trade Committee (Petitioner) on the calculation of the margin for Union.<sup>7</sup> On July 8, 2015, we received case briefs from Petitioner<sup>8</sup> and Zhongya.<sup>9</sup> On July 15, 2015, we received rebuttal briefs from Jangho<sup>10</sup> and Petitioner.<sup>11</sup> On September 25, 2015, the Department extended the deadline for the final results until November 5, 2015.<sup>12</sup>

## **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

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<sup>4</sup> In prior segments of this proceeding the Department found that the Guang Ya Group, Zhongya, and Xinya were affiliated with each other and should be treated as a single entity. See, e.g., *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) (*2010-2012 Final Results*) and *Aluminum Extrusions From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 78784 (December 31, 2014) (*2012-2013 Final Results*).

<sup>5</sup> See letter from Robert James to All Interested Parties entitled, “Antidumping Duty Order on Aluminum Extrusions from the People's Republic of China: Extension of Time to Submit Rebuttal Briefs,” dated April 2, 2015.

<sup>6</sup> See *Aluminum Extrusions From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 32347 (June 8, 2015) (*Preliminary Results*).

<sup>7</sup> See letter from Petitioner to the Secretary of Commerce entitled, “Aluminum Extrusions from the People's Republic of China: Comments on Union's Preliminary Margin Calculations,” dated June 10, 2015 (Petitioner's Calculation Comments).

<sup>8</sup> See letter from Petitioner to the Secretary of Commerce entitled, “Aluminum Extrusions from the People's Republic of China: Case Brief of the Aluminum Extrusions Fair Trade Committee,” dated July 8, 2015 (Petitioner's Case Brief).

<sup>9</sup> See letter from Zhongya to the Secretary of Commerce entitled, “Aluminum Extrusions from China: Zhongda {sic} Case Brief,” dated July 8, 2015 (Zhongya's Case Brief).

<sup>10</sup> See letter from Jangho to the Secretary of Commerce entitled, “Aluminum Extrusions from the People's Republic of China: Rebuttal Brief: Guangzhou Jangho Curtain Wall System Engineering Co., Ltd. and Jangho Curtain Wall Hong Kong Ltd.,” dated July 15, 2015 (Jangho's Rebuttal Brief).

<sup>11</sup> See letter from Petitioner to the Secretary of Commerce entitled, “Aluminum Extrusions from the People's Republic of China: Rebuttal Brief of the Aluminum Extrusions Fair Trade Committee,” dated July 15, 2015 (Petitioner's Rebuttal Brief).

<sup>12</sup> See memorandum from Mark Flessner to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, entitled, “Aluminum Extrusions from the People's Republic of China: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review,” dated September 25, 2015.

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 brightdip 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, swedged, 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 of the investigation 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 this 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.

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States (HTSUS): 7609.00.00, 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, 8515.90.20.00, 8516.90.50.00, 8516.90.80.50, 8517.70.00.00, 8529.90.73.00, 8529.90.97.60, 8536.90.80.85, 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 this *Order* is dispositive.

#### **APPLICATION OF FACTS AVAILABLE AND USE OF ADVERSE INFERENCE**

In the *Preliminary Results*, the Department found that the use of facts otherwise available is warranted with respect to Jangho and Guang Ya Group/Zhongya/Xinya pursuant to sections 776(a)(2)(A), (B), (C), and (D) of the Tariff Act of 1930, as amended (the Act).<sup>13</sup> In addition, the Department preliminarily determined that both Jangho and Guang Ya Group/Zhongya/Xinya failed to cooperate by not acting to the best of their abilities to comply with the Department's requests for information, thereby warranting an adverse inference pursuant to section 776(b) of the Act.<sup>14</sup>

Upon further consideration, the Department finds for these final results that the application of adverse facts available (AFA) is not necessary. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in a non-market economy (NME) country under the test established in *Sparklers*,<sup>15</sup> as further developed by *Silicon Carbide*.<sup>16</sup> Neither Jangho nor Guang Ya Group/Zhongya/Xinya provided the Department with factual information that affirmatively

<sup>13</sup> See *Preliminary Results*, 80 FR at 32349; see also the memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, entitled, "Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Aluminum Extrusions from the People's Republic of China; 2013-2014," dated June 1, 2015 (Preliminary Decision Memorandum), at 17-20.

<sup>14</sup> *Id.*

<sup>15</sup> See *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*).

<sup>16</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*).

demonstrates an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports.<sup>17</sup> The Department's change in policy regarding conditional review of the NME-wide entity applies to this administrative review.<sup>18</sup> As a result, those companies not establishing their eligibility for a separate rate in this review are to be considered part of the PRC-wide entity.<sup>19</sup> Under the Department's policy, the PRC-wide entity will not be under review unless a party specifically requests, or the Department self-initiates, a review of the entity.<sup>20</sup>

Because Jangho and Guang Ya Group/Zhongya/Xinya failed to demonstrate eligibility for a separate rate, they are properly considered to be part of the PRC-wide entity, which is not subject to this administrative review. For further discussion of the Department's application of its policy regarding conditional review of the PRC-wide entity, *see* Comments 4 and 5 below. As a result of this application of the Department's policy, the Department need not reach the issue of whether application of AFA is warranted with respect to Jangho and Guang Ya Group/Zhongya/Xinya. Therefore, we make no such determination for these final results.

## **DISCUSSION OF THE ISSUES**

### **Comment 1: Collapsing of Zhongya**

Zhongya submitted a case brief which appeared to object to the collapsing of Guangdong Zhongya Aluminium Company Limited, Zhongya Shaped Aluminium (HK) Holding Limited, and Karlton Aluminum Company Ltd. into a single entity, but urged no specific action by the Department.<sup>21</sup>

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<sup>17</sup> See Preliminary Decision Memorandum at 9-10.

<sup>18</sup> See *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963, 65970 (November 4, 2013) (*Conditional Review of NME Entity Notice*).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> See Zhongya's Case Brief at 1-2; the following is the entire text of the Zhongya case brief:

Dear Secretary:

Guangdong Zhongya Aluminium Company Limited, Zhongya Shaped Aluminium (HK) Holding Limited, and Karlton Aluminum Company Ltd. (collectively, Zhongya), previously known as Zhaoqing New Zhongya Aluminum Co., Ltd. ("New Zhongya"), hereby comment on the preliminary determination. Zhongya has in the past fully answered Commerce dumping margin questionnaires, twice, in the original investigation and a prior administrative review. Each time, Commerce rejected Zhongya's questionnaire responses, saying others as to whom Commerce says should be collapsed with Zhongya have not answered Commerce's questionnaires too.

We have made our arguments against such collapsing to Commerce. Commerce has also rejected them, every time (the original investigation and two reviews). The others whom Commerce says should be collapsed with Zhongya have declined to answer Commerce questionnaires. There is nothing more we (Zhongya) can do.

Answering Commerce questionnaires and objecting to collapsing has now multiple times been rejected by Commerce. It is a futile effort at this point.

-Very truly yours, {s} Peter Koenig, Counsel to Zhongya

Petitioner in its rebuttal brief<sup>22</sup> requested that the Department continue to collapse “the Zhongya Entity,” citing the reasons set forth in the Preliminary Decision Memorandum and a recent decision by the U.S. Court of International Trade which confirmed the Department’s decision to collapse these companies in an earlier segment of the proceeding.<sup>23</sup>

*Department’s Position:*

The reasons why the Department collapsed these companies are fully set forth in the Preliminary Decision Memorandum.<sup>24</sup> The case brief presents no evidence or reasoning as to how or why the Department erred in collapsing Zhongya’s constituent companies into a single entity in the *Preliminary Results*. Therefore, we are continuing to collapse Guangdong Zhongya Aluminium Company Limited, Zhongya Shaped Aluminium (HK) Holding Limited, and Karlton Aluminum Company Ltd. into a single entity for these final results.

**Comment 2: Improper Calculation of Union’s Dumping Margin**

Petitioner, in comments upon the calculation of Union’s margin (as reiterated in its case brief), maintained that the Department improperly calculated Union’s dumping margin for the *Preliminary Results* in three specific ways.<sup>25</sup> First, Petitioner asserts that the Department inadvertently made errors in unit conversions regarding Union’s U.S. sales price based on factors of production unit reporting errors by Union. Second, Petitioner contends that the Department failed to include marine insurance, warehousing, and early-payment discounts in the margin calculation. Third, Petitioner argues, the Department’s inadvertent errors in unit conversions regarding Union’s U.S. sales price caused an improper calculation of the countervailing duty (CVD) adjustment in the antidumping program.

No other party commented upon this issue or rebutted Petitioner’s comments.

*Department’s Position:*

We carefully reviewed Petitioner’s contentions and agree with all three. Consequently, we have recalculated Union’s antidumping margin. Specifics of the calculation changes can be found in the Final Union Analysis Memorandum.<sup>26</sup>

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<sup>22</sup> See Petitioner’s Rebuttal Brief at 1-3.

<sup>23</sup> See *Zhaoqing New Zhongya v. United States*, 887 F. Supp. 2d 1301, 1307 (Ct. Int’l Trade 2012).

<sup>24</sup> See Preliminary Decision Memorandum, at 8-9.

<sup>25</sup> See Petitioner’s Calculation Comments at 1-6; see also Petitioner’s case brief at 11-15.

<sup>26</sup> See Memorandum from Mark Flessner to the File entitled, “Analysis of Data Submitted by Union Industry (Asia) Co., Ltd. (Union), for the Final Results of the Antidumping Duty Administrative Review of Aluminum Extrusions from the People’s Republic of China; 2013-2014,” dated concurrently with this Issues and Decision Memorandum (Final Union Analysis Memorandum). See also the memorandum from Mark Flessner to The File entitled, “Aluminum Extrusions from the People’s Republic of China: Export Subsidy Adjustment Memorandum for the Final Results of Antidumping Duty Administrative Review; 2013-2014,” dated concurrently with this Issues and Decision Memorandum.

### **Comment 3: Assignment of Union's Revised Dumping Margin to the Separate Rate Respondents**

Petitioner in its case brief contends that the only dumping margin established for an individually-investigated producer or exporter in this review that is not zero, *de minimis*, or based entirely on facts available, is Union's recalculated margin.<sup>27</sup> Petitioner maintains that, because Union's recalculated dumping margin is based on its actual data and sales during the POR, Union's margin represents the only dumping margin established for a producer or exporter.<sup>28</sup> Furthermore, Petitioner states that Union's recalculated margin is the only calculated dumping margin established for an exporter or producer in the history of the *Order*.<sup>29</sup> Petitioner argues that the statute requires that the Department assign this margin to the separate rate respondents, as unlike in previous reviews where all rates were zero, *de minimis*, or based entirely on facts available, a rate has been calculated in this proceeding.<sup>30</sup> Petitioner concludes that the Act consequently requires the Department to assign Union's recalculated margin to the separate rate respondents.<sup>31</sup>

No other party commented on this issue.

#### *Department's Position:*

For the *Preliminary Results*, the Department assigned to non-examined, separate rate companies the weighted-average dumping margin assigned to non-examined, separate rate companies in the *Final Determination* and for the *2010-2012 Final Results*. Neither the Act nor the Department's regulations address the establishment of the rate applied to individual companies not selected for examination where the Department limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. The Department's practice in cases involving limited selection based on exporters accounting for the largest volumes of trade has been to look to section 735(c)(5) of the Act for guidance, which provides instructions for calculating the all-others rate in an investigation.<sup>32</sup> Section 735(c)(5)(A) of the Act instructs the Department to avoid calculating an all-others rate using any rates that are zero, *de minimis*, or based entirely on facts available in market-economy antidumping investigations. Section 735(c)(5)(B) of the Act provides that, where all rates are zero, *de minimis*, or based entirely on facts available, the Department may use "any reasonable method" for assigning an all-others rate.

In the *Preliminary Results*, we determined that the application of the investigation antidumping rate to the non-examined separate rate respondents was consistent with precedent and an appropriate method to determine the separate rate in the instant review. Pursuant to this method, we assigned the rate of 32.79 percent, the most recent rate (from the less than fair value

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<sup>27</sup> See Petitioner's Case Brief at 10.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* See also: *Aluminum Extrusions From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 18524 (*Final Determination*); the *Order*; *2010-2012 Final Results*, 79 FR at 96; and *Aluminum Extrusions From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 78784 (December 31, 2014) (*2012-2013 Final Results*).

<sup>30</sup> See Petitioner's Case Brief at 10.

<sup>31</sup> *Id.*

<sup>32</sup> See, e.g., *Longkou Haimeng Mach. Co. v. United States*, 581 F. Supp. 2d 1344, 1357-60 (Ct. Int'l Trade 2008).

investigation) calculated for the non-examined separate rate respondents, to the non-examined separate rate respondents in the instant review. However, as we have explained, we used that rate only because we erroneously calculated a zero margin for Union in the *Preliminary Results* (see Comment 2, above). As Union's rate at these Final Results is not zero, *de minimis*, or based entirely on facts available, we have determined that it is appropriate to apply Union's calculated rate to the non-examined, separate rate companies in accordance with Section 735(c)(5) of the Act.

#### **Comment 4: Use of Union's Recalculated Margin as the AFA Rate**

Citing certain cases, (a) *Pure Magnesium from the People's Republic of China*,<sup>33</sup> (b) *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China*,<sup>34</sup> and (c) *Certain Preserved Mushrooms From India*,<sup>35</sup> Petitioner urges the Department to follow past practice by selecting as the AFA rate, pursuant to section 776(a) and (b) of the Act, the higher of the petition rate or the highest calculated rate (provided it can be corroborated and is not unduly punitive), which would be Union's rate as recalculated for these final results.<sup>36</sup> Petitioner further maintains that, because the Zhongya Entity has not participated in the instant review and indicated that it will no longer participate in any future reviews, the PRC-wide rate is not sufficient to induce compliance.<sup>37</sup> Petitioner therefore urges the Department to use Union's rate as recalculated for these final results for the AFA rate for both Zhongya and Jangho.<sup>38</sup>

Jangho states that the PRC-wide rate, rather than the Union rate, must be applied to Jangho.<sup>39</sup> Jangho maintains that the Department found that Jangho did not demonstrate its eligibility for a separate rate in the *Preliminary Results*, and therefore included Jangho in the PRC-wide entity. Jangho argues:

Petitioner does not dispute the Department's decision not to grant Jangho a separate rate in this proceeding. Petitioner instead argues that the PRC-wide rate is not punitive enough. Yet, as the Department is aware, adverse facts available determinations are not intended to be punitive in nature.<sup>40</sup>

Jangho contends that the PRC-wide rate is not subject to review in this proceeding because no request for administrative review of the PRC-wide entity was submitted by any party. Jangho states the Department's policy as follows:

In administrative reviews of AD orders from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was

<sup>33</sup> See *Pure Magnesium from the People's Republic of China*, 74 FR 66089 (December 14, 2009).

<sup>34</sup> See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China*, 77 FR 31309 (May 25, 2012).

<sup>35</sup> See *Certain Preserved Mushrooms From India*, 78 FR 12034 (February 21, 2013).

<sup>36</sup> See Petitioner's Case Brief at 11-12.

<sup>37</sup> See Petitioner's Rebuttal Brief, at 3.

<sup>38</sup> See Petitioner's Case Brief at 11-12.

<sup>39</sup> See Jangho's Rebuttal Brief at 4-5.

<sup>40</sup> *Id.*, at 4.

initiated does not qualify for a separate rate, the Department will issue a final decision indicating that the company in question is part of the NME entity.<sup>41</sup>

Jangho claims that, even if the Department were to assign a rate other than the PRC-entity rate, assignment of Union's rate to Jangho would not be appropriate due the greatly-varying nature of the products sold by Jangho (*i.e.*, architectural facades) and Union (*i.e.*, trim kits and handles).<sup>42</sup>

*Department's Position:*

As discussed above in the "Application of Facts Available and Use of Adverse Inference" section, we no longer find the application of AFA to both Jangho and Zhongya necessary in light of the Department's current practice concerning the conditional review of the PRC-wide entity. In the *Preliminary Results*, we determined that neither Jangho nor Zhongya has established, for this review, its eligibility for a separate rate, which no party has challenged. In accordance with the *Conditional Review of NME Entity Notice*, both are therefore part of the PRC-wide entity. The cases cited by Petitioner all predate the *Conditional Review of NME Entity Notice* as a statement of the Department's policy. We find the words of the *Conditional Review of NME Entity Notice*, correctly quoted by Jangho, unambiguous:

In administrative reviews of AD orders from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, the Department will issue a final decision indicating that the company in question is part of the NME entity.

Therefore, in keeping with this policy, we are not applying Union's rate to either Jangho or Zhongya for reasons further explained in Comment 5, below. Instead, our final determination with respect to Jangho and Zhongya is limited to finding both companies to be part of the PRC-wide entity. Because no review request was made for the PRC-wide entity, the PRC-wide entity rate is not subject to this administrative review.<sup>43</sup>

**Comment 5: Revision of the PRC-Wide Rate to Reflect Union's Recalculated Dumping Margin**

Petitioner calls on the Department to revise the PRC-wide rate to reflect Union's dumping margin as recalculated for these final results.<sup>44</sup> Petitioner contends that the current PRC-wide rate is insufficient to induce compliance with the Department's proceedings as mandatory respondents repeatedly fail to participate, citing Zhongya and Jangho as examples of respondents being rewarded for noncooperation.<sup>45</sup> Citing sources such as *Timken*,<sup>46</sup> *iScholar*,<sup>47</sup> *de Cecco*,<sup>48</sup>

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<sup>41</sup> *Id.* See also *Conditional Review of NME Entity Notice*, 78 FR at 65970. Note that Jangho, in citing to this *Federal Register* notice, calls it a "Department Policy Memorandum." "NME" is an abbreviation for "nonmarket economy."

<sup>42</sup> *Id.*, at 5.

<sup>43</sup> See *Conditional Review of NME Entity Notice*, 78 FR at 65970.

<sup>44</sup> See Petitioner's Case Brief at 12-15.

<sup>45</sup> *Id.*, at 12-13.

<sup>46</sup> See *Timken Co. v. United States*, 354 F.3d 1334, 1345 (Fed. Cir. 2004) (*Timken*).

<sup>47</sup> See *iScholar, Inc. v. United States*, No. 10-00107, Slip Op. 11-4 (Ct. Int'l Trade. Jan. 13, 2011) (*iScholar*).

and the SAA, Petitioner maintains that the Department erred in not revising the PRC-wide rate in this administrative review despite the PRC-wide entity not being a respondent.<sup>49</sup>

Petitioner states, “Although the Department’s policy states there will be no conditional review of the PRC-wide entity, good cause exists to update the Department’s PRC-wide rate.”<sup>50</sup> As a note to this statement, Petitioner adds, “To the extent the Department does not update the PRC-wide rate, the Department should apply Union’s recalculated rate of 94 percent to all of the unliquidated entries subject to this review, which include the Zhongya Entity’s and Jangho’s entries, as well as the entries of all separate rate applicants.”<sup>51</sup> Petitioner puts forward three justifications.

First, Petitioner avers that respondents would benefit from lack of cooperation in this proceeding and that the conditional review policy would lead to absurd results (in that non-cooperative respondents would receive a dumping margin vastly lower than that calculated for the cooperative mandatory respondent);<sup>52</sup> Petitioner argues that a failure to revise the PRC-wide rate would encourage nonparticipation, rather than induce compliance.<sup>53</sup>

Second, Petitioner, citing the *Conditional Review of NME Entity Notice*, theorizes that the Department’s policy change did not contemplate situations where the PRC-wide entity’s rate would be increased as a result of the agency calculating a dumping margin for a mandatory respondent that is higher than the PRC-wide rate, since its purpose is stated as preventing liquidation delays “even though the NME entity rate is unlikely to change” and it commented that “the dumping margin of an individual exporter may change as a function of the finding that the exporter is part of the NME entity.”<sup>54</sup> Petitioner stresses that, because the statute requires the Department to assign Union’s dumping margin to the separate rate respondents, it would be fundamentally unfair to participating companies that they would receive a higher margin than would entities that failed to cooperate or are controlled by the Chinese government.<sup>55</sup>

Third, Petitioner contends that the PRC-wide rate is based on Indian surrogate values which are no longer valid because India has not for several years been considered to be at a comparable level of economic development to the PRC; Petitioner charges, “The respondents’ failure to participate and blatant gaming of the system is a direct result of the Department’s failure to update the PRC-wide rate to reflect a rate based on the current surrogate country – Thailand.”

Jangho urges the Department to reject Petitioner’s request to recalculate the PRC-wide rate to reflect Union’s calculated antidumping margin.<sup>56</sup> Jangho maintains that the Department considered this same issue in the two previous administrative reviews, each time rejecting

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<sup>48</sup> See *Filii de Cecco di Filippo Far aS. Martino Sp.A. v. United States*, 216 F.3d 1027 (Fed. Cir. 2000) (*de Cecco*).

<sup>49</sup> See Petitioner’s Case Brief at 13-14.

<sup>50</sup> *Id.*, at 14.

<sup>51</sup> *Id.*, at footnote 57.

<sup>52</sup> *Id.*, at 14.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*, at 14-15, citing to the *Conditional Review of NME Entity Notice*, 78 FR at 65970.

<sup>55</sup> *Id.*, at 15.

<sup>56</sup> See Jangho’s Rebuttal Brief at 2-4.

Petitioner's request.<sup>57</sup> Jangho contends that the Department was correct in the *Preliminary Results* when it relied upon the *Conditional Review of NME Entity Notice* as a statement of the Department's policy that there is no conditional review of the PRC-wide rate. Jangho quoted from *Conditional Review of NME Entity Notice* as follows:

The Department will no longer consider the NME entity as an exporter conditionally subject to administrative reviews. Accordingly, the NME entity will not be under review unless the Department specifically receives a request for, or self-initiates, a review of the NME entity. In administrative reviews of AD orders from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, the Department will issue a final decision indicating that the company in question is part of the NME entity. However, in that situation, because no review of the NME entity was conducted, the NME entity's entries were not subject to the review and the rate for the NME entity is not subject to change as a result of that review...<sup>58</sup>

Jangho reiterates that there was no request for review of the PRC-wide entity for this administrative review, that Petitioner could have requested review of the PRC-wide entity but chose not to do so, and that the Department did not initiate a review the PRC-wide entity.<sup>59</sup> Jangho further points out that Petitioner's argument concerning revision of the PRC-wide rate because India (as a surrogate country) is no longer considered economically comparable to the PRC was rejected by the Department in the previous administrative review.<sup>60</sup> Jangho contends that Petitioner's request to revise the PRC-wide rate has no merit.<sup>61</sup>

*Department's Position:*

Jangho is correct. The sources and cases cited by Petitioner all predate the *Conditional Review of NME Entity Notice* as a statement of the Department's policy. And, again, we find its wording unambiguous:

The Department will no longer consider the NME entity as an exporter conditionally subject to administrative reviews. Accordingly, the NME entity will not be under review unless the Department specifically receives a request for, or self-initiates, a review of the NME entity.<sup>62</sup>

The *Conditional Review of NME Entity Notice* goes on to clarify that, in a situation where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, "because no review of the NME entity

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<sup>57</sup> *Id.*; see also *2010-2012 Final Results* and accompanying Issues and Decision Memorandum at Comment 6; see also *2012-2013 Final Results* and accompanying Issues and Decision Memorandum at Comment 3.

<sup>58</sup> See Jangho's Rebuttal Brief at 3; see also *Conditional Review of NME Entity Notice*, 78 FR at 65970.

<sup>59</sup> See Jangho's Rebuttal Brief at 3-4.

<sup>60</sup> *Id.*, at 4.

<sup>61</sup> *Id.*

<sup>62</sup> See *Conditional Review of NME Entity Notice*, 78 FR at 65970.

was conducted, the NME entity's entries were not subject to the review and the rate for the NME entity is not subject to change as a result of that review...."<sup>63</sup>

The Department's change in policy regarding conditional review of the PRC-wide entity therefore applies to this administrative review and these final results. Under this policy, the PRC-wide entity will not be under review unless a party specifically requests, or the Department self-initiates, a review of the entity. It remains the fact that no party, including Petitioner, requested a review of the PRC-wide entity in the instant review despite the Department's publication of the *Conditional Review of NME Entity Notice* several months prior to the opportunity to request this administrative review. Jangho is correct in its statement that Petitioner could have requested a review of the PRC-wide entity and made a conscious and informed choice not to do so. Consequently, pursuant to our change in policy regarding conditional review of the PRC-wide entity, the PRC-wide entity (which includes: Jangho; Guang Ya Group/Zhongya/Xinya; Alumnicaste Fundicion de Mexico; China Zhongwang Holdings, Ltd.; Classic & Contemporary Inc.; Dongguan Golden Tiger; Dongguan Golden Tiger Hardware Industrial Co., Ltd.; Gold Mountain International Development, Ltd.; Golden Dragon Precise Copper Tube Group, Inc.; Metaltek Metal Industry Co., Ltd.; Nidec Sankyo Singapore Pte. Ltd.; Press Metal International Ltd.; Shenyang Yuanda Aluminium Industry Engineering Co., Ltd.; tenKsolar, Inc.; Tianjin Jinmao Import & Export Corp., Ltd.; WTI Building Products, Ltd.; and Zahoqing China Square Industry Limited/Zhaoqing China Square Industry Limited) is not currently under review. As such, the PRC-wide rate from the previous administrative review remains unchanged at 33.28 percent.<sup>64</sup>

We agree that it is unusual that companies that are part of the PRC-wide entity, including Jangho and the Guang Ya Group/Zhongya/Xinya, are receiving lesser antidumping duty rates as a result of this administrative review than the separate rate companies who cooperated in this administrative review. That is a function of the fact that no administrative review was requested of the PRC-wide entity. In future reviews, should a request to review the PRC-wide entity be made, the Department will consider the antidumping duty rate calculated for Union as a possible rate to apply as AFA to all reviewed parties, including the PRC-wide entity, that fail to cooperate by not acting to the best of their ability in providing requested information.

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<sup>63</sup> *Id.*

<sup>64</sup> See 2012-2013 *Final Results*, 79 FR at 78787.

**CONCLUSION**

We recommend following the above methodology for this final determination.

Agree ✓ Disagree \_\_\_\_\_

Paul Piquado  
Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

20 NOVEMBER 2015  
Date