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Admin. Rev.  
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May 31, 2017

**MEMORANDUM TO:** Ronald K. Lorentzen  
Acting Assistant Secretary  
for Enforcement and Compliance

**FROM:** Gary Taverman  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Decision Memorandum for Preliminary Results of Antidumping  
Duty Administrative Review: Aluminum Extrusions from the  
People's Republic of China; 2015-2016

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## SUMMARY

In response to requests from interested parties, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty (AD) order on aluminum extrusions from the People's Republic of China (PRC) in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (the Act). The period of review (POR) is May 1, 2015, through April 30, 2016. The Department selected the following companies as mandatory respondents: Kam Kiu Aluminium Products Sdn. Bhd. (Kam Kiu) and tenKsolar (Shanghai) Co., Ltd. (tenKsolar).<sup>1</sup>

We preliminarily determine that we lack sufficient record information to allow the Department to calculate a margin for tenKsolar's reported sales of subject merchandise into the United States during the POR. Additionally, we preliminarily determine that Kam Kiu and eight other companies did not demonstrate their eligibility for a separate rate and are, therefore, part of the PRC-wide entity. Further, we preliminarily determine that the PRC-wide entity failed to cooperate by not acting to the best of its ability to fully comply with the Department's requests for information, warranting the application of facts otherwise available with adverse inferences, pursuant to sections 776(a) and 776(b) of the Act.

If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these

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<sup>1</sup> See Memorandum, "Selection of Respondents for the 2015-2016 Administrative Review of the Antidumping Duty Order on Aluminum Extrusions from the People's Republic of China," dated January 23, 2017 (Respondent Selection Memorandum).

preliminary results. Unless otherwise extended, we intend to issue the final results of this administrative review no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

## Background

On May 2, 2016, the Department published a notice of opportunity to request an administrative review of the AD order on aluminum extrusions from the PRC<sup>2</sup> for the period May 1, 2015, through April 30, 2016.<sup>3</sup> On May 31, 2016, the petitioner<sup>4</sup> requested an administrative review of 191 companies and the PRC-wide entity.<sup>5</sup> Also on May 31, 2016, Kam Kiu<sup>6</sup> and tenKsolar<sup>7</sup> each requested an administrative review of itself. On July 7, 2016, the Department initiated a review of 191 companies and the PRC-wide entity.<sup>8</sup> On August 1, 2016, the petitioner requested that the Government of China (GOC) be added to the Department's service list, and submitted proof of service on the GOC.<sup>9</sup> During July and August 2016, the Department received no-shipment letters from: China Square Industrial Ltd;<sup>10</sup> Danfoss Micro Channel Heat Exchangers (Jia Xing) Co., Ltd.;<sup>11</sup> Xin Wei Aluminum Company Limited, Guangdong Xin Wei Aluminum Co., Ltd., and Xin Wei Aluminum Co.;<sup>12</sup> Traffic Brick Network LLC;<sup>13</sup> Jiangmen Jianghai District Foreign Economic Enterprise Corporation Limited;<sup>14</sup> Tai-Ao Aluminium (TaiShan) Co., Ltd.;<sup>15</sup> Fuzhou

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<sup>2</sup> See *Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order*, 76 FR 30650 (May 26, 2011) (the *Order*).

<sup>3</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 81 FR 26206 (May 2, 2016).

<sup>4</sup> The petitioner is the Aluminum Extrusions Fair Trade Committee, composed of the following members: Aerolite Extrusion Company; Alexandria Extrusion Company; William L. Bonnell Company, Inc.; Frontier Aluminum Corporation; Futura Industries Corporation; Hydro Aluminum North America, Inc.; Kaiser Aluminum Corporation; Profile Extrusion Company; Sapa Extrusions, Inc.; and Western Extrusions Corporation.

<sup>5</sup> See Petitioner Letter re: Aluminum Extrusions from the People's Republic of China: Request for Administrative Review, dated May 31, 2016.

<sup>6</sup> See Kam Kiu Letter re: Aluminum Extrusions from the People's Republic of China: Request for Administrative Review, dated May 31, 2016.

<sup>7</sup> See tenKsolar Letter re: Aluminum Extrusions from China -- Request for Administrative Review, dated May 31, 2016.

<sup>8</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 81 FR 44260 (July 7, 2016) (*Initiation Notice*).

<sup>9</sup> See Petitioner Letter re: Aluminum Extrusions from the People's Republic of China: Request that the GOC Be Included on the Department's Service List, dated August 1, 2016.

<sup>10</sup> See China Square Industrial Ltd Letter re: Aluminium Extrusions from the People's Republic of China: No Shipment Certification, dated July 7, 2016.

<sup>11</sup> See Danfoss Micro Channel Heat Exchangers (Jia Xing) Co., Ltd. Letter re: "No Shipments" Letter for Aluminum Extrusions from the People's Republic of China (5/1/2015 - 4/30/2016), dated July 20, 2016.

<sup>12</sup> See Xin Wei Aluminum Company Limited, Guangdong Xin Wei Aluminum Co., Ltd., and Xin Wei Aluminum Co. Letter re: Aluminum Extrusions from the People's Republic of China: Certification of No Sales, Shipments, or Entries, dated July 25, 2016.

<sup>13</sup> See Traffic Brick Network LLC Letter re: Traffic Brick Notice of No Sales -- Antidumping Administrative Review of Aluminum Extrusions from the People's Republic of China, dated July 29, 2016.

<sup>14</sup> See Jiangmen Jianghai District Foreign Economic Enterprise Corporation Limited Letter re: Aluminium Extrusions from the People's Republic of China: No Shipment Certification, dated August 1, 2016.

<sup>15</sup> See Tai-Ao Aluminium (TaiShan) Co., Ltd., Letter re: Aluminium Extrusions from the People's Republic of China: No Shipment Certification, dated August 2, 2016.

Sunmodo New Energy Equipment Co., Ltd.;<sup>16</sup> Justhere Company Limited;<sup>17</sup> Ningbo Yili Import & Export, Co., Ltd.;<sup>18</sup> and Permasteelisa Hong Kong Limited and Permasteelisa South China Factory.<sup>19</sup> During the month of August 2016, the Department received Q&V questionnaire responses from: Guangzhou Jangho Curtain Wall System Engineering Co., Ltd. and Jangho Curtain Wall Hong Kong Ltd. (Jangho);<sup>20</sup> Allied Maker Limited;<sup>21</sup> Changzhou Changzheng Evaporator Co., Ltd. (Changzhou Changzheng);<sup>22</sup> Kam Kiu;<sup>23</sup> Metaltek Group Company Limited;<sup>24</sup> tenKsolar;<sup>25</sup> Union Industry (Asia) Co., Limited (Union);<sup>26</sup> and Sincere Profit Limited.<sup>27</sup> Also during the month of August 2016, the Department received separate rate applications (SRAs) from Jangho<sup>28</sup> and Union,<sup>29</sup> and separate rate certifications (SRCs) from: Kam Kiu;<sup>30</sup> tenKsolar;<sup>31</sup> Allied Maker Limited;<sup>32</sup> and Changzhou Changzheng.<sup>33</sup>

On October 5, 2016, the petitioner withdrew its request for review of 181 companies.<sup>34</sup> On December 2, 2016, the Department issued a quantity and value (Q&V) questionnaire to the PRC-

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<sup>16</sup> See Fuzhou Sunmodo New Energy Equipment Co., Ltd., Letter re: Aluminum Extrusions from the People's Republic of China: Notice of No Sales, dated August 3, 2016.

<sup>17</sup> See Justhere Company Limited Letter re: Aluminium Extrusions from the People's Republic of China: No Shipment Certification, dated August 3, 2016.

<sup>18</sup> See Ningbo Yili Import & Export, Co., Ltd., Letter re: Aluminum Extrusions from the People's Republic of China: No Shipments Letter, dated August 8, 2016.

<sup>19</sup> See Permasteelisa Hong Kong Limited and Permasteelisa South China Factory Letter re: Aluminum Extrusions From the People's Republic of China: Notice of No Sales, dated August 8, 2016.

<sup>20</sup> See Jangho Letter re: Aluminum Extrusions from the People's Republic of China; A-570-967; Quantity and Value Response, dated August 3, 2016.

<sup>21</sup> See Allied Maker Limited Letter re: Aluminum Extrusions from the People's Republic of China: Response to Quantity and Value Questionnaire, dated August 3, 2016.

<sup>22</sup> See Changzhou Changzheng Letter re: Aluminum Extrusions from the People's Republic of China: Response to Quantity and Value Questionnaire, dated August 3, 2016.

<sup>23</sup> See Kam Kiu Letter re: Aluminum Extrusions from the People's Republic of China: Quantity and Value Questionnaire Response, dated August 3, 2016.

<sup>24</sup> See Metaltek Group Company Limited Letter re: Aluminum Extrusions from the People's Republic of China: Response to Quantity and Value Questionnaire, dated August 3, 2016.

<sup>25</sup> See tenKsolar Letter re: Aluminum Extrusions from the People's Republic of China: Quantity and Value Questionnaire Response, dated August 3, 2016.

<sup>26</sup> See Union, Letter re: Aluminum Extrusions from the People's Republic of China: Response to Quantity and Value Questionnaire, dated August 3, 2016.

<sup>27</sup> See Sincere Profit Limited Letter re: Sincere Profit Limited (the 'Company') – Response to Quantity & Value Questionnaire, dated August 26, 2016.

<sup>28</sup> See Jangho Letter re: Aluminum Extrusions from the People's Republic of China; A-570-967; Separate Rate Application, dated August 8, 2016.

<sup>29</sup> See Union Letter re: Aluminum Extrusions from the People's Republic of China: Separate Rate Application, dated August 11, 2016.

<sup>30</sup> See Kam Kiu Letter re: Aluminum Extrusions from the People's Republic of China: Separate Rate Certification, dated August 3, 2016.

<sup>31</sup> See tenKsolar Letter re: Aluminum Extrusions from the People's Republic of China: Separate Rate Certification, dated August 4, 2016.

<sup>32</sup> See Allied Maker Limited Letter re: Aluminum Extrusions from the People's Republic of China: Separate Rate Certification, dated August 8, 2016.

<sup>33</sup> See Changzhou Changzheng Letter re: Aluminum Extrusions from the People's Republic of China: Separate Rate Certification, dated August 8, 2016.

<sup>34</sup> See Petitioner Letter re: Aluminum Extrusions from the People's Republic of China: Withdrawal of Request for Administrative Review, dated October 5, 2016 (Petitioner's Withdrawal Letter); *see also* Petitioner Letter re:

wide entity, to which the PRC-wide entity did not respond.<sup>35</sup> On January 23, 2017, the Department selected Kam Kiu and tenKsolar as mandatory respondents.<sup>36</sup> On February 14, 2017, Kam Kiu submitted a letter stating that it was withdrawing from active participation as a mandatory respondent in this administrative review and would not provide responses to the Department's AD questionnaire.<sup>37</sup> Between February 23, 2017, and March 9, 2017, tenKsolar responded to the Department's AD questionnaire.<sup>38</sup>

On January 3, 2017, the Department extended the time limit for the preliminary results of review, pursuant to section 751(a)(3)(A) of the Act, by 100 days, which resulted in a deadline of May 11, 2017.<sup>39</sup> On May 5, 2017, the Department extended the time limit for the preliminary results of review by an additional 20 days, until May 31, 2017.<sup>40</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 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

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Aluminum Extrusions from the People's Republic of China: Clarification of Withdrawal of Request for Administrative Review, dated December 6, 2016 (Petitioner's Clarification of Withdrawal Letter).

<sup>35</sup> See Department Letter to Liu Fang, First Secretary, Embassy of the People's Republic of China, dated December 2, 2016 (PRC-wide Entity Q&V Questionnaire). See also Memorandum to the File, "Antidumping Duty Order on Aluminum Extrusions from the People's Republic of China: Issuance of Quantity and Value Questionnaire to the PRC-wide Entity," dated December 8, 2016 (containing Federal Express shipment and delivery confirmation) (Shipment and Delivery Confirmation Memorandum).

<sup>36</sup> See Respondent Selection Memorandum.

<sup>37</sup> See Kam Kiu Letter re: Aluminum Extrusions from the People's Republic of China: Withdrawal as a Mandatory Respondent, dated February 14, 2017 (Kam Kiu Withdrawal Letter).

<sup>38</sup> See tenKsolar Letter re: Aluminum Extrusions from the People's Republic of China: Section A Questionnaire Response, dated February 23, 2017 (tenKsolar February 23, 2017 AQR); see also tenKsolar Letter re: Aluminum Extrusions from the People's Republic of China: Section C and D Questionnaire Response, dated March 9, 2017 (tenKsolar March 9, 2017 CDQR).

<sup>39</sup> See Memorandum, "Aluminum Extrusions from the People's Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated January 3, 2017.

<sup>40</sup> See Memorandum, "Aluminum Extrusions from the People's Republic of China: Additional Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated May 5, 2017.

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 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.

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States (HTSUS): 6603.90.8100, 7616.99.51, 8479.89.94, 8481.90.9060, 8481.90.9085, 9031.90.9195, 8424.90.9080, 9405.99.4020, 9031.90.90.95, 7616.10.90.90, 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 the *Order* is dispositive.<sup>41</sup>

### Respondent Selection

Section 777A(c)(1) of the Act directs the Department to calculate an individual weighted-average dumping margin for each known exporter and producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion to limit its examination to a reasonable number of exporters or producers if it is not practicable to determine an individual weighted average dumping margins for each known exporter and producer because of the large number of companies involved in the review.

In the *Initiation Notice*, the Department stated that if it limited the number of respondents for individual examination in this administrative review, it intended to select respondents based on volume data reported in Q&V questionnaire responses.<sup>42</sup> The Department further stated that it intended to limit the number of Q&V questionnaires issued in the review based on import values in the CBP data for aluminum extrusions from the PRC.<sup>43</sup> Specifically, the Department explained that the wide variety of products covered by the scope of the *Order* would preclude meaningful results in attempting to ascertain the largest PRC exporters of subject merchandise using import volumes in the CBP data.<sup>44</sup>

On July 20, 2016, the Department issued a memorandum notifying interested parties that the Q&V questionnaire was available on the Department's website as of that date, and that responses to the Q&V questionnaire must be received within 14 days, *i.e.*, by August 3, 2016.<sup>45</sup> On July 28, 2016, the Department issued a second memorandum clarifying its instructions regarding the Q&V questionnaire.<sup>46</sup> Specifically, the Department clarified that it would issue Q&V questionnaires to certain selected firms, and that companies intending to submit a voluntary response to the Department's Q&V questionnaire must do so by the August 3, 2016, deadline.

The Department queried CBP's Automated Commercial System for all entries of subject merchandise suspended pursuant to the *Order*, for the period May 1, 2015, through April 30, 2016, by the companies on which we initiated a review. On August 1, 2016, the Department

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<sup>41</sup> See the *Order*.

<sup>42</sup> See *Initiation Notice*, 81 FR at 44261.

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

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

<sup>45</sup> See Memorandum, "Aluminum Extrusions from the People's Republic of China: Extension of Time Limit for Response to Quantity and Value (Q&V) Questionnaire," dated July 20, 2016.

<sup>46</sup> See Memorandum, "Antidumping Duty Order on Aluminum Extrusions from the People's Republic of China: Clarification of Quantity and Value Questionnaire Cover Letter Placed on the Record," dated July 28, 2016.

placed the proprietary results of its data query on the record of this administrative review, and stated that it intended to issue Q&V questionnaires to the 10 companies with the largest import values as shown in the CBP data.<sup>47</sup> The Department received no comments from interested parties on the CBP data.

On August 12 and August 17, 2016, the Department issued Q&V questionnaires to the companies with the largest import values, as reflected in the CBP data, that did not submit a voluntary Q&V response by the August 3, 2016, deadline.<sup>48</sup>

On October 5, 2016, the petitioner withdrew its request for administrative review for all but eight companies and the PRC-wide entity.<sup>49</sup> The Department subsequently issued a Q&V questionnaire to the PRC-wide entity on December 2, 2016.<sup>50</sup> The PRC-wide entity did not submit a response to the Department's Q&V questionnaire. On December 6, 2016, the Department informed the petitioner of discrepancies in its withdrawal request.<sup>51</sup> The petitioner submitted a letter later that day, clarifying that ten companies (rather than eight) and the PRC-wide entity remain under review.<sup>52</sup> The entities for which requests for administrative review remain in place are the following (listed in alphabetical order):

1. Atlas Integrated Manufacturing Ltd.
2. Classic & Contemporary Inc.
3. Dongguan Golden Tiger Hardware Industrial Co., Ltd.
4. Jiaying Jackson Travel Products Co., Ltd.
5. Kam Kiu
6. Shenyang Yuanda Aluminium Industry Engineering Co. Ltd.
7. Sincere Profit Limited
8. Suzhou New Hongji Precision Part Co.
9. Taishan City Kam Kiu Aluminium Extrusion Co., Ltd.
10. tenKsolar
11. The PRC-wide entity

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<sup>47</sup> See Memorandum, "Placing U.S. Customs and Border Protection Data on the Record for the Purpose of Identifying Companies to Receive a Quantity and Value Questionnaire," dated August 1, 2016 (CBP Data Memorandum). The results of the Department's data query are contained in Attachment 1 of that memorandum.

<sup>48</sup> See Respondent Selection Memorandum, at 3 and Attachment 1.

<sup>49</sup> See Petitioner's Withdrawal Letter. Kam Kiu and tenKsolar had each requested a review of themselves as well; see Kam Kiu Letter re: Aluminum Extrusions from the People's Republic of China: Request for Administrative Review, dated May 31, 2016; see also tenKsolar SRC.

<sup>50</sup> See PRC-wide Entity Q&V Questionnaire; see also Shipment and Delivery Confirmation Memorandum.

<sup>51</sup> See Memorandum, "Antidumping Duty Order on Aluminum Extrusions from the People's Republic of China: *Ex Parte* Conversation Concerning Clarification of Withdrawal of Requests for Review," dated December 6, 2016. The discrepancies were related to certain of the companies that remain under review, and were unrelated to the request for review of the PRC-wide entity.

<sup>52</sup> See Petitioner's Clarification of Withdrawal Letter; see also Attachment 1 to the Respondent Selection Memorandum. Although Classic & Contemporary Inc. and Dongguan Golden Tiger Hardware Industrial Co., Ltd., were not listed among the "companies for which review requests were not withdrawn," neither were they listed by the petitioner as among the "companies for which review requests were withdrawn." See Petitioner's Clarification of Withdrawal Letter. Therefore, we consider Classic & Contemporary Inc. and Dongguan Golden Tiger Hardware Industrial Co., Ltd., to continue to be under review. Hence, the number of entities under review is 11 (*i.e.*, 10 companies and the PRC-wide entity).

On January 23, 2017, the Department issued its Respondent Selection Memorandum.<sup>53</sup> The Department explained that it would only select entities which responded to the Department’s Q&V questionnaire.<sup>54</sup> The Department determined that Kam Kiu and tenKsolar were the only two entities which had submitted complete Q&V questionnaire responses and remained available for individual examination in this administrative review. Accordingly, we selected Kam Kiu and tenKsolar as mandatory respondents.<sup>55</sup>

On January 23, 2017, the Department issued its standard non-market economy (NME) AD questionnaire to Kam Kiu and tenKsolar.<sup>56</sup> On February 14, 2017, Kam Kiu submitted a letter to the Department stating that it was withdrawing from participation in this review.<sup>57</sup>

### Rescission of Administrative Review in Part

On October 5, 2016, the petitioner timely withdrew its request for administrative review with respect to 181 companies.<sup>58</sup> Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the party that requested the review withdraws its request within 90 days of the date of publication of the notice of initiation of the requested review. Accordingly, the Department is rescinding this review, in part, with respect to these 181 entities, in accordance with 19 CFR 351.213(d)(1).<sup>59</sup>

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<sup>53</sup> See Respondent Selection Memorandum at 7.

<sup>54</sup> *Id.*, at 5.

<sup>55</sup> *Id.*, at 7. Kam Kiu and tenKsolar had also each timely submitted a SRC. See Kam Kiu SRC; see also tenKsolar SRC.

<sup>56</sup> See Department Letter to Kam Kiu, dated January 23, 2017, and Department Letter to tenKsolar, dated January 23, 2017, respectively.

<sup>57</sup> See Kam Kiu Withdrawal Letter.

<sup>58</sup> See Petitioner’s Withdrawal Letter, and Petitioner’s Clarification of Withdrawal Letter; see also *Initiation Notice*, and Respondent Selection Memorandum at Attachment 1. The following explains how we derived the numbers we use above: (A) Petitioner’s Withdrawal Letter indicated withdrawal of requests for review of 180 companies, but Petitioner’s Clarification of Withdrawal Letter states that 5 companies were on *both* the “companies for which review requests were not withdrawn” list *and* the “companies for which review requests were withdrawn” list; consequently, only 175 were properly listed as rescinded on that list. Further, 6 of the companies for which the petitioner requested a review were listed in the request for review as joined with slashes; these were each listed separately in the *Initiation Notice* (e.g., “China Square / China Square Industrial Co.” became “China Square” and “China Industrial Square Co.”), resulting in a total of 181 individually named companies; (B) Additionally, as mentioned above, two companies (Classic & Contemporary Inc. and Dongguan Golden Tiger Hardware Industrial Co., Ltd.) were included in *neither* petitioner’s list of companies for which review remains in place *nor* its list of companies for which request for review was withdrawn in Petitioner’s Withdrawal Letter; they therefore remain as companies for which a request for review remains in place. Petitioner’s Withdrawal Letter properly lists 8 companies for which a request for review remains in place; consequently, there remain 10 companies (plus the PRC-wide entity); and (C) Hence, the number of companies for which review was requested was 191 (plus the PRC-wide entity); the number of companies for which requests for review were withdrawn is 181; and the number of companies for which a request for review remains in place is 10 (plus the PRC-wide entity). Based on the withdrawal of review requests, we are rescinding this administrative review with respect to 181 companies.

<sup>59</sup> See Appendix II of the *Federal Register* notice for a full list of these 181 companies.

## Preliminary Determination Regarding tenKsolar's Reported Sales

tenKsolar states that all of the subject merchandise it sold to the United States was sold to its affiliated U.S. parent company in Minnesota.<sup>60</sup> It also states that the value added to the imported aluminum extrusions in the United States is over 90 percent of the value of the product sold to the first unaffiliated U.S. customer.<sup>61</sup> Citing section 772(e) of the Act and the Statement of Administrative Action,<sup>62</sup> tenKsolar maintains that it need not respond to section E of the AD questionnaire because, where the value added to the subject merchandise by an affiliated party is 65 percent or more, then the Department ought not base the U.S. price on the sale of the further-manufactured good to the first unaffiliated party.<sup>63</sup> Additionally, tenKsolar argues that the Department must calculate a margin based upon the price from the respondent to its affiliated U.S. parent, which owns 100 percent of respondent.<sup>64</sup> There is no contention on the record by any party that such sales are at arm's length.

The petitioner argues to the contrary, stating:

Petitioner is not aware of any case where the Department has used an internal transfer price to calculate a dumping margin. Indeed, this methodology would allow respondents to set their U.S. price to eliminate their dumping margin, while at the same time allowing them to ultimately sell the subject merchandise at dumped prices with impunity. This is contrary to the statute and the Department's established practice.<sup>65</sup>

The petitioner contends that tenKsolar must be compelled to respond to section E of the Department's AD questionnaire, regardless of the amount of value added by further manufacturing.<sup>66</sup>

The U.S. database submitted by tenKsolar also reflects constructed export price (CEP) sales,<sup>67</sup> but record evidence does not establish that they are of subject merchandise.<sup>68</sup> We, therefore, preliminarily determine that there are no CEP sales.

Section 772(e) of the Act states:

(e) Special Rule for Merchandise With Value Added After Importation. Where the subject merchandise is imported by a person affiliated with the exporter or producer, and the value added in the United States by the affiliated person is

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<sup>60</sup> See tenKsolar Letter re: Aluminum Extrusions from the People's Republic of China - Further Manufacturing Notification, dated February 6, 2017, at 2.

<sup>61</sup> *Id.*, at 3.

<sup>62</sup> See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994) (SAA).

<sup>63</sup> *Id.*, at 2.

<sup>64</sup> See tenKsolar SRC.

<sup>65</sup> See Petitioner Letter re: Aluminum Extrusions from the People's Republic of China: Deficiency Comments to TenKsolar's Sections C-D Questionnaire, dated March 23, 2017 (Petitioner's Section C-D Comments), at 5.

<sup>66</sup> *Id.*

<sup>67</sup> See tenKsolar Letter re: Aluminum Extrusions from the People's Republic of China: Section C and D Questionnaire Response, dated March 9, 2017 (tenKsolar Section C Response), at Exhibit C-1.

<sup>68</sup> *Id.*, at C-2; see also Petitioner's Section C-D Comments, at 2-4.

likely to exceed substantially the value of the subject merchandise, the administering authority shall determine the constructed export price for such merchandise by using one of the following prices if there is a sufficient quantity of sales to provide a reasonable basis for comparison and the administering authority determines that the use of such sales is appropriate:

(1) The price of identical subject merchandise sold by the exporter or producer **to an unaffiliated person**.

(2) The price of other subject merchandise sold by the exporter or producer **to an unaffiliated person**.

If there is not a sufficient quantity of sales to provide a reasonable basis for comparison under paragraph (1) or (2), or the administering authority determines that neither of the prices described in such paragraphs is appropriate, then the constructed export price may be determined on any other reasonable basis. *{Emphasis added.}*

We have accepted tenKsolar's representations on the record regarding the value added to its subject merchandise after importation and preliminarily find that over 90 percent of the value of the merchandise sold to unaffiliated customers being added in the United States meets the definition of "exceed{s} substantially the value of the subject merchandise." Additionally, the further-manufactured product is a photovoltaic solar array priced in terms of kilowatts or megawatts, for which there is no method of conversion or correlation to a price expressed in kilograms for the portion of those arrays which constitute subject merchandise.<sup>69</sup> Therefore, consistent with our practice, we further preliminarily determine that the Department should employ the special rule in section 772(e) of the Act and decline to require a response to section E of the Department's AD questionnaire because the Department could not accurately calculate a margin based upon it.

Furthermore, sections 772(a) and (b) of the Act state the following:

(a) Export Price. The term "export price" means the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States **to an unaffiliated purchaser** in the United States or **to an unaffiliated purchaser** for exportation to the United States, as adjusted under subsection (c). *{Emphasis added.}*

There are no CEP sales, and no EP sales to unaffiliated purchasers in the database. Therefore, the plain language of these two sections of the Act prevents us from calculating a margin based upon the price from the wholly-owned respondent to its affiliated U.S. parent.

Accordingly, there are no sales on which the Department can calculate a dumping margin. We, therefore, preliminarily find that there exists no "other reasonable basis" on which to base a

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<sup>69</sup> See tenKsolar February 23, 2017 AQR at 21.

constructed export price. Consequently, we preliminarily determine that we lack sufficient record information to allow the Department to calculate a margin for tenKsolar's reported sales of subject merchandise for this POR. However, consistent with our practice in NME cases, the Department is not rescinding this review with respect to tenKsolar, but intends to complete the review of tenKsolar and issue appropriate instructions to CBP based on the final results of this review.<sup>70</sup> For these preliminary results, we have made no change to the weighted-average dumping margin with which tenKsolar entered this review (*i.e.*, 86.01 percent), except to adjust that rate for countervailable subsidies (*see* the section entitled, "Adjustments for Countervailable Subsidies," below).

### NME Country

The Department considers the PRC to be an NME country.<sup>71</sup> In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority.<sup>72</sup> None of the parties to this proceeding contested such treatment. Therefore, we continue to treat the PRC as an NME country for purposes of these preliminary results.

### Separate Rates

Pursuant to section 771(18)(C)(i) of the Act, a designation of a country as an NME remains in effect until it is revoked by the Department. Accordingly, there is a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single AD duty rate.<sup>73</sup>

In the *Initiation Notice*, the Department notified parties of the application process by which exporters may obtain separate-rate status in an NME proceeding.<sup>74</sup> It is the Department's policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department

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<sup>70</sup> See *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694, 65695 (October 24, 2011).

<sup>71</sup> See, e.g., *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Preliminary Results of the First Administrative Review, Preliminary Rescission, in Part, and Extension of Time Limits for the Final Results*, 76 FR 62765, 62767-68 (October 11, 2011), unchanged in *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Results and Partial Rescission of First Antidumping Duty Administrative Review*, 77 FR 21734 (April 11, 2012).

<sup>72</sup> See, e.g., *Brake Rotors from the People's Republic of China: Preliminary Results and Partial Rescission of the 2004/2005 Administrative Review and Preliminary Notice of Intent To Rescind the 2004/2005 New Shipper Review*, 71 FR 26736 (May 8, 2006), unchanged in *Brake Rotors from the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review*, 71 FR 66304 (November 14, 2006).

<sup>73</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China*, 71 FR 53079, 53082 (September 8, 2006).

<sup>74</sup> See *Initiation Notice*, 81 FR at 44261-2.

analyzes each exporting entity in an NME country under the test established in *Sparklers*,<sup>75</sup> as further developed by *Silicon Carbide*.<sup>76</sup> However, if the Department determines that a company is wholly foreign-owned, then an analysis of the *de jure* and *de facto* criteria is not necessary to determine whether it is independent from government control.<sup>77</sup>

In order to demonstrate eligibility for separate-rate status, the Department requires entities for which a review was requested, and which were assigned a separate rate in the most recent segment of this proceeding in which they participated, to submit an SRC stating that they continue to meet the criteria for obtaining a separate rate.<sup>78</sup> For entities which currently do not have a separate rate from a completed segment of the proceeding, to demonstrate eligibility for a separate rate, the Department requires a SRA.<sup>79</sup> Companies that submit an SRA or SRC which are subsequently selected as mandatory respondents must respond to all parts of the Department's questionnaire in order to be eligible for separate rate status.<sup>80</sup>

Mandatory respondent Kam Kiu submitted a SRC,<sup>81</sup> but then informed the Department that it was withdrawing as a mandatory participant and subsequently did not respond to any section of the Department's AD questionnaire.<sup>82</sup> Absent the additional information required in the Department's questionnaires, the select data in Kam Kiu's SRC are insufficient to calculate a margin, and we cannot analyze fully or verify Kam Kiu's claim for a separate rate. As a result, we preliminarily find that Kam Kiu did not demonstrate its eligibility for a separate rate in this review. Consequently, we preliminarily find that Kam Kiu is part of the PRC-wide entity.

Mandatory respondent tenKsolar submitted a SRC<sup>83</sup> and also submitted responses to each section of the Department's AD questionnaire to which it was required to submit a response.<sup>84</sup> Based on information on the record, we preliminarily determine that tenKsolar remains eligible for a separate rate in this review. Because we did not calculate an individual dumping margin for any respondent for the preliminary results of this review, we have preliminarily assigned to tenKsolar, as a separate rate, the separate rate dumping margin of 86.01 percent (which will be adjusted for countervailable subsidies, *see* the section entitled, "Adjustments for Countervailable Subsidies," below) previously assigned to tenKsolar in a prior segment of this proceeding.<sup>85</sup>

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<sup>75</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>76</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*).

<sup>77</sup> See, e.g., *Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China*, 72 FR 52355, 52356 (September 13, 2007).

<sup>78</sup> See *Initiation Notice*, 81 FR at 44261-2.

<sup>79</sup> *Id.*, 81 FR at 44262.

<sup>80</sup> *Id.*

<sup>81</sup> See Kam Kiu SRC.

<sup>82</sup> See Kam Kiu Withdrawal Letter.

<sup>83</sup> See tenKsolar SRC.

<sup>84</sup> See tenKsolar February 23, 2017 AQR; *see also* tenKsolar March 9, 2017 CDQR.

<sup>85</sup> See *Aluminum Extrusions from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013–2014*, 80 FR 75060, 75603 (December 1, 2015) (*2013-2014 Final Results*). Note that this margin is adjusted, *see* the section entitled "Adjustments for Countervailable Subsidies" section, below.

Of the other companies remaining under review for these preliminary results, the Department did not receive a SRA or SRC from any of them. We, therefore, preliminarily determine that the following companies are not eligible for a separate rate in this administrative review: (1) Atlas Integrated Manufacturing Ltd.; (2) Classic & Contemporary Inc.; (3) Dongguan Golden Tiger Hardware Industrial Co., Ltd.; (4) Jiaxing Jackson Travel Products Co., Ltd.; (5) Taishan City Kam Kiu Aluminium Extrusion Co., Ltd.; (6) Shenyang Yuanda Aluminium Industry Engineering Co. Ltd.; (7) Sincere Profit Limited; and (8) Suzhou New Hongji Precision Part Co.

### PRC-Wide Entity

We preliminarily find that mandatory respondent Kam Kiu is part of the PRC-wide entity because it did not demonstrate its eligibility for a separate rate in this administrative review by not responding to the Department's AD questionnaire. In addition, we preliminarily find that eight other non-individually examined companies are not eligible for a separate rate because they did not submit SRAs or SRCs.<sup>86</sup> As a result, the Department preliminarily finds these eight companies are also part of the PRC-wide entity.

The Department's change in policy regarding conditional review of the PRC-wide entity applies to this administrative review.<sup>87</sup> 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. The petitioner requested a review of the PRC-wide entity in the instant review. Pursuant to our change in policy regarding conditional review of the PRC-wide entity, the entity, which includes Kam Kiu and the eight companies referenced above, is currently under review. The PRC-wide entity previously received a margin of 33.28 percent, but as explained below, that rate is changing as a result of this administrative review.<sup>88</sup>

### Application of Facts Available and Use of Adverse Inference

Sections 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that, if necessary information is not available on the record, or if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the AD statute; or (D) provides such information but the information cannot be verified as provided for in section 782(i) of the Act, the Department shall, subject to subsection 782(d) of the Act, use the facts otherwise available in reaching the applicable determination.

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<sup>86</sup> These eight companies are: (1) Atlas Integrated Manufacturing Ltd.; (2) Classic & Contemporary Inc.; (3) Dongguan Golden Tiger Hardware Industrial Co., Ltd.; (4) Jiaxing Jackson Travel Products Co., Ltd.; (5) Taishan City Kam Kiu Aluminium Extrusion Co., Ltd.; (6) Shenyang Yuanda Aluminium Industry Engineering Co. Ltd.; (7) Sincere Profit Limited; and (8) Suzhou New Hongji Precision Part Co.

<sup>87</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 (November 4, 2013) (*Conditional Review of NME Entity*).

<sup>88</sup> See *Aluminum Extrusions from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014–2015*, 81 FR 85516 (November 28, 2016).

Section 782(c)(1) of the Act provides that if an interested party “promptly after receiving a request from {the Department} for information, notifies {the Department} that such party is unable to submit the information requested in the requested form and manner,” the Department shall consider the ability of the interested party and may modify the requirements to avoid imposing an unreasonable burden on that party.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person an opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states that the Department shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Under the Trade Preferences Extension Act of 2015 (TPEA), numerous amendments to the AD and countervailing duty (CVD) laws were made.<sup>89</sup> The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this administrative review.<sup>90</sup>

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 weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.<sup>91</sup> Further, section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the less-than-fair-value investigation, a previous administrative review, or other information placed on the record.<sup>92</sup>

Under section 776(d) of the Act, the Department may use any dumping margin from any segment of the proceeding when applying an adverse inference, including the highest of such margins. The TPEA also makes clear that when selecting an AFA margin, the Department is not

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<sup>89</sup> See TPEA, Pub. L. No. 114-27, 129 Stat. 362 (2015), and *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*).

<sup>90</sup> See *Applicability Notice*, 80 FR at 46794-46795.

<sup>91</sup> See section 776(b)(1)(B) of the Act; see also section 502(1)(B) of the TPEA.

<sup>92</sup> See section 776(b)(2) of the Act; see also 19 CFR 351.308(c).

required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party. Further, under the TPEA, the Department is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.<sup>93</sup>

Below, we discuss the application of facts available and the use of adverse inferences with respect to the PRC-wide entity in these preliminary results.

### The PRC-Wide Entity

The Department issued a Q&V questionnaire to the PRC-wide entity, care of the PRC’s Embassy in the United States, on December 2, 2016.<sup>94</sup> The PRC-wide entity, however, did not submit a response to the Department’s Q&V questionnaire. The Department, therefore, preliminarily finds the use of facts otherwise available is warranted with respect to the PRC-wide entity, in accordance with sections 776(a)(1) and (2)(A) & (C) of the Act, because the PRC-wide entity withheld necessary information that was requested by the Department and, by not providing requested information, significantly impeded the proceeding.

Pursuant to section 776(b) of the Act, the Department preliminarily finds that, because the PRC-wide entity failed to cooperate by not acting to the best of its ability to comply with the Department’s requests for information, and an adverse inference is warranted.<sup>95</sup> Therefore, we are applying total AFA to the PRC-wide entity for these preliminary results.

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) provide that the Department may rely on information derived from: (1) the petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any information placed on the record. The Department’s practice is to select an AFA rate that is sufficiently adverse “as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner” and that ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”<sup>96</sup> Specifically, the Department’s practice in reviews, in selecting a rate as total AFA, is to use the highest rate on the record of the proceeding which, to the extent practicable, can be corroborated (assuming the rate is based on secondary information).<sup>97</sup>

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<sup>93</sup> See section 776(c)(2) of the Act; see also section 502(2) of the TPEA.

<sup>94</sup> See PRC-wide Entity Q&V Questionnaire. See also Shipment and Delivery Confirmation Memorandum.

<sup>95</sup> See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1383 (Fed. Cir. 2003) (noting that the Department need not show intentional conduct existed on the part of the respondent, but merely that a “failure to cooperate to the best of a respondent’s ability” existed (*i.e.*, information was not provided “under circumstances in which it is reasonable to conclude that less than full cooperation has been shown.”)).

<sup>96</sup> See *Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8911 (February 23, 1998); see also *Brake Rotors from the People’s Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review*, 70 FR 69937, 69939 (November 18, 2005), and the SAA.

<sup>97</sup> See *Glycine from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 15930, 15934 (April 8, 2009), unchanged in *Glycine from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 41121 (August 14, 2009); see also *Fujian Lianfu Forestry Co., Ltd. v. United States*, 638 F. Supp. 2d 1325, 1336 (CIT 2009) (“Commerce may, of course, begin its

The Court of International Trade and the Court of Appeals for the Federal Circuit have affirmed decisions to select the highest margin from any prior segment of the proceeding as the AFA rate on numerous occasions.<sup>98</sup> In choosing the appropriate balance between providing a respondent with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's prior commercial activity, selecting the highest prior margin reflects "a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less."<sup>99</sup> Therefore, as AFA, the Department has assigned the PRC-wide entity a weighted-average dumping margin of 86.01 percent (which will be adjusted for countervailable subsidies, *see* the section entitled, "Adjustments for Countervailable Subsidies," below), the highest calculated rate on the record of any segment of this proceeding.<sup>100</sup>

### Adjustments for Countervailable Subsidies

To determine whether to grant a domestic pass-through adjustment for the separate-rate recipients, the Department relies on the experience of the mandatory respondents examined in this review, subject to section 777A(f)(2) of the Act. None of the entities remaining under review submitted any record evidence to establish eligibility for this adjustment. Therefore, for these preliminary results, the Department did not make an adjustment pursuant to section 777A(f) of the Act for countervailable domestic subsidies for the separate-rate recipients.

Pursuant to section 772(c)(1)(C) of the Act, the Department made an adjustment for countervailable export subsidies for the sole separate-rate recipient, tenKsolar.<sup>101</sup> We calculated this adjustment as the simple average of the countervailable export subsidies determined for the mandatory respondents in the 2014 (*i.e.*, most recently completed) CVD administrative review<sup>102</sup> and deducted this amount from the rate assigned to tenKsolar.

For the PRC-wide entity, since the entity is currently under review, its rate is subject to change. As the PRC-wide entity is subject to AFA, we calculated this adjustment by using the lowest countervailable export subsidy determined for the mandatory respondents in the 2014 (*i.e.*, most

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total AFA selection process by defaulting to the highest rate in any segment of the proceeding, but that selection must then be corroborated, to the extent practicable.").

<sup>98</sup> *See, e.g., KYD, Inc. v United States*, 607 F.3d 760, 766-767 (Fed. Cir. 2010) (*KYD*); *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1335 (CIT 2004) (affirming a 73.55 percent total AFA rate, the highest available dumping margin calculated for a different respondent in the investigation); *Kompass Food Trading Int'l v. United States*, 24 CIT 678, 683-84 (CIT 2000) (affirming a 51.16 percent total AFA rate, the highest available dumping margin for a different, fully cooperative respondent); and *Shanghai Taoen Int'l Trading Co. v. United States*, 360 F. Supp. 2d 1339, 1348 (CIT 2005) (affirming a 223.01 percent total AFA rate, the highest available dumping margin for a different respondent in a previous administrative review).

<sup>99</sup> *See KYD*, 607 F.3d at 766 (citing *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990)).

<sup>100</sup> *See 2013-2014 Final Results*, 80 FR at 75060.

<sup>101</sup> *See* Memorandum, "Antidumping Duty Order on Aluminum Extrusions from the People's Republic of China: Adjustment for Countervailable Subsidies," dated January 23, 2017 (Countervailable Subsidies Calculation Memorandum), at Attachment 1.

<sup>102</sup> *See Aluminum Extrusions from the People's Republic of China: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2014*, 81 FR 92778 (December 20, 2016).

recently completed) CVD administrative review and deducted this amount from the rate assigned to the PRC-wide entity.<sup>103</sup>

Conclusion

We recommend applying the above methodology for these preliminary results.

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

5/31/2017

X *Ronald K. Lorentzen*

Signed by: RONALD LORENTZEN

\_\_\_\_\_  
Ronald K. Lorentzen  
Acting Assistant Secretary  
for Enforcement and Compliance

<sup>103</sup> *Id.*; see also Countervailable Subsidies Calculation Memorandum), at Attachment 1.