



C-570-968
Administrative Review
POR: 01/01/18 – 12/31/2018
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July 20, 2020

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Results of the 2018
Countervailing Duty Administrative Review and Intent to Rescind,
in Part: Aluminum Extrusions from the People's Republic of
China

I. Summary

The Department of Commerce (Commerce) is conducting an administrative review of the countervailing duty (CVD) order on aluminum extrusions from the People's Republic of China (China). The period of review (POR) is January 1, 2018 through December 31, 2018. This administrative review was requested by the Aluminum Extrusions Fair Trade Committee (the petitioner) and Endura Products, Inc. (Endura).¹

Commerce initiated this administrative review with respect to 257 companies² based on the review request by the petitioner and Endura;³ subsequently, the petitioner and Endura withdrew their review requests for 248 companies.⁴ Thus, nine companies remain under review: (1) Activa International Inc. (Activa); (2) Changzhou Tenglong Auto Parts Co. Ltd. (Changzhou Tenglong); (3) CRRC Changzhou Auto Parts Co. Ltd. (CRRC); (4) Dongguan Aoda Aluminum Co. Ltd. (Dongguan Aoda); (5) Guangdong Xingfa Aluminum Co., Ltd. (Guangdong Xingfa); (6) Precision Metal Works Limited (Precision Metal); (7) Shangyang Yuanda Aluminum

¹ See Petitioner and Endura's Letter, "Aluminum Extrusions from the People's Republic of China: Request for Administrative Review," dated May 31, 2019 (Petitioner and Endura Review Request).

² See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 33739 (July 15, 2019); and *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 47242 (September 9, 2019) (together, *Initiation Notice*), which includes corrections to company names included in the *Initiation Notice*.

³ See Petitioner and Endura Review Request.

⁴ See Petitioner and Endura's Letter, "Aluminum Extrusions from the People's Republic of China: Partial Withdrawal of Request for Administrative Review," dated October 15, 2019.

Industry Engineering Co. Ltd. (Shangyang Yuanda); (8) Summit Heat Sinks Metal Co, Ltd. (Summit); and (9) Wenzhou Yongtai Electric Co. Ltd. (Wenzhou Yongtai).⁵

If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties on all appropriate entries of subject merchandise covered by this review. For the 248 companies for which this review is rescinded, we will instruct CBP to assess countervailing duties on all appropriate entries at a rate equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period January 1, 2018, through December 31, 2018, in accordance with 19 CFR 351.212(c)(1)(i).

Interested parties are invited to comment on these preliminary results. Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), we intend to issue the final results no later than 120 days after publication of these preliminary results.

II. Background

On May 26, 2011, we published the *Order* on aluminum extrusions from China.⁶ On May 1, 2019, we published a notice of opportunity to request an administrative review of the *Order* for the 2018 POR.⁷ Based on timely requests for review of 257 companies,⁸ and in accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation for this administrative review on July 15, 2019.⁹ We published corrections to company names in the notice of initiation for this administrative review on September 9, 2019.¹⁰

In the *Initiation Notice*, we stated our intent to select respondents based on CBP data for U.S. imports during the POR.¹¹ As explained in that notice,¹² because of data inconsistencies stemming from the wide variety of individual aluminum extrusion products included in the scope of the *Order*, we were precluded from relying on volume data in determining the largest Chinese exporters of subject merchandise. Instead, we issued quantity and value (Q&V) questionnaires to the following companies, which accounted for the largest import values, as reflected in the CBP data:¹³ (1) Activa; (2) Changzhou Tenglong; (3) CRRC; (4) Dongguan Aoda; (5) Guangdong Xingfa; (6) Precision Metal; (7) Shenyang Yuanda; (8) Sincere Profit Limited (Sincere Profit); (9) Summit; and (10) Wenzhou Yongtai. We also posted the Q&V questionnaire to Commerce's website, inviting parties not included in the Q&V Issuance

⁵ *Id.*

⁶ See *Aluminum Extrusions from the People's Republic of China: Countervailing Duty Order*, 76 FR 30653 (May 26, 2011) (*Order*).

⁷ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 84 FR 18479 (May 1, 2019).

⁸ See Petitioner and Endura Review Request.

⁹ See *Initiation Notice*.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ See Memorandum, "2018 Administrative Review of the Countervailing Duty Order on Aluminum Extrusions from the People's Republic of China: Issuance of Quantity and Value Questionnaire," dated September 26, 2019 (Q&V Issuance Memorandum).

Memorandum to file a Q&V response. On October 10, 2019, we received a Q&V questionnaire response from Sincere Profit. We did not receive Q&V questionnaire responses from Activa, Changzhou Tenglong, CRRC, Dongguan Aoda, Guangdong Xingfa, Precision Metal, Shenyang Yuanda, Summit, or Wenzhou Yongtai.

Between August 13, 2019 and October 11, 2019, Commerce received no-shipment certification letters from the following companies (collectively, no-shipment companies): (1) Xin Wei Aluminum Company Limited, Guangdong Xin Wei Aluminum Products Co., Ltd., and Xin Wei Aluminum Co.; (2) Changshu Changsheng Aluminum Products Co., Ltd., (3) Permasteelisa Hong Kong Limited and Permasteelisa South China Factory; and (4) Tai-Ao Aluminium (Taishan) Co., Ltd.

On October 15, 2019, the petitioner and Endura withdrew their requests for review for 248 companies, including Sincere Profit and the no-shipment companies.¹⁴ Because none of the companies remaining under review responded to our request for Q&V data, we did not have sufficient information on the administrative record to select any respondents for individual examination, and thus we have no mandatory respondents as such, in this administrative review. On March 12, 2020, we issued the standard CVD questionnaire to the Government of China (GOC);¹⁵ however, the GOC did not respond to our request for information.

Between January 27, 2020 and February 6, 2020, Commerce extended the deadline for the preliminary results.¹⁶ On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days, thereby extending the deadline for these results until July 20, 2020.¹⁷

III. 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

¹⁴ See Petitioner and Endura's Letter, "Aluminum Extrusions from the People's Republic of China: Partial Withdrawal of Request for Administrative Review," dated October 15, 2019; the Petitioner and Endura Withdrawal Request. This request included one of the Q&V companies, Sincere Profit Limited.

¹⁵ See Commerce's Letter, "2018 Administrative Review of the Countervailing Duty Order on Aluminum Extrusions from the People's Republic of China: Countervailing Duty Questionnaire," dated March 12, 2020.

¹⁶ See Memoranda, "Aluminum Extrusions from the People's Republic of China: Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review," dated January 27, 2020; and "Aluminum Extrusions from the People's Republic of China: Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review; 2018," dated February 6, 2020.

¹⁷ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19," dated April 24, 2020. Commerce's practice dictates that where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day. See *Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005). Because the 50-day extension would result in the signature date being on a weekend, the deadline moves to the next business day, Monday, July 20, 2020.

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, swaged, mitered, chamfered, threaded, and spun. The subject merchandise includes aluminum extrusions that are finished (coated, painted, *etc.*), fabricated, or any combination thereof.

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

Subject extrusions may be identified with reference to their end use, such as fence posts, electrical conduits, door thresholds, carpet trim, or heat sinks (that do not meet the finished heat sink exclusionary language below). Such goods are subject merchandise if they otherwise meet the scope definition, regardless of whether they are ready for use at the time of importation. The following aluminum extrusion products are excluded: aluminum extrusions made from aluminum alloy with an Aluminum Association series designations commencing with the number 2 and containing in excess of 1.5 percent copper by weight; aluminum extrusions made from aluminum alloy with an Aluminum Association series designation commencing with the number 5 and containing in excess of 1.0 percent magnesium by weight; and aluminum extrusions made from aluminum alloy with an Aluminum Association series designation commencing with the number 7 and containing in excess of 2.0 percent zinc by weight.

The scope also excludes finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry, such as finished windows with glass, doors with glass or vinyl, picture frames with glass pane and backing material, and solar panels. The scope also excludes finished goods containing aluminum extrusions that are entered unassembled in a “finished goods kit.” A finished goods kit is understood to mean a packaged combination of parts that contains, at the time of importation, all of the necessary parts to fully assemble a final finished good and requires no further finishing or fabrication, such as cutting or punching, and is assembled “as is” into a finished product. An imported product will not be considered a “finished goods kit” and therefore excluded from the scope of the *Order* 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): 7604.29.3060; 7604.29.3090; 7604.29.5050; 7604.29.5090; 8541.90.00.00, 8708.10.30.50, 8708.99.68.90, 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 this *Order* is dispositive.

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

IV. Intent to Rescind the Review, In Part

For the 248 companies for which all review requests were timely withdrawn,¹⁸ we intend to rescind the administrative review, pursuant to 19 CFR 351.213(d)(1). These companies are listed in Attachment II of the *Federal Register* notice issued concurrently with this decision memorandum.

V. Non-Selected Company Rates

We preliminarily find that two companies selected to receive Commerce's Q&V questionnaire, (*i.e.*, Dongguan Aoda and Changzhou Tenglong), did not receive the questionnaire because the addresses on the record of this review were not valid. On September 23, 2019, the petitioner and Endura submitted company addresses onto the record of this administrative review for each of the Q&V companies.¹⁹ We issued Q&V questionnaires to 10 companies, including Dongguan Aoda and Changzhou Tenglong, using those addresses. As indicated in the Q&V Delivery Status Memorandum,²⁰ we mailed Q&V questionnaires to Dongguan Aoda and Changzhou

¹⁸ This includes all companies that filed certifications of no shipments: (1) Xin Wei Companies; (2) Changshu Changsheng Aluminium Products Co., Ltd.; (3) Permasteelisa South China; (4) Tai-Ao Aluminium (Taishan) Co., Ltd.; and (5) Sincere Profit Limited.

¹⁹ See Petitioner and Endura's Letter, "Aluminum Extrusions from the People's Republic of China: Placing Company Addresses on the Record," dated September 23, 2019 (Petitioner's Company Addresses Letter).

²⁰ See Memorandum, "Aluminum Extrusions from the People's Republic of China: Quantity and Value Questionnaire Delivery Status," dated January 16, 2020 (Q&V Delivery Status Memorandum).

Tenglong; however, according to the courier, the delivery addresses for both companies were invalid.

The statute and Commerce's regulations do not directly address the establishment of rates to be applied to companies not selected for individual examination where Commerce limits its examination in an administrative review pursuant to section 777A(e)(2) of the Act. However, Commerce normally determines the rates for cooperative non-selected companies in reviews in a manner that is consistent with sections 703(d) and 705(c)(5)(A) of the Act, which provide that Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely on facts available under section 776 of the Act. However, if the countervailable subsidy rates established for all exporters and producers individually investigated are zero or *de minimis*, or are determined entirely based on facts available under section 776 of the Act, Commerce may use any reasonable method to establish the all-others rate, including averaging the weighted average countervailable subsidy rates determined for the exporters and producers individually investigated.

In this review, all companies subject to the review failed to cooperate with Commerce's request for Q&V information, except Dongguan Aoda and Changzhou Tenglong, to whom we were unable to deliver the Q&V questionnaire. Given these circumstances, we find it appropriate to determine a net subsidy rate for Dongguan Aoda and Changzhou Tenglong. To determine the rate for companies under review but not selected for individual examination, Commerce's practice is to weight average the net subsidy rates of the selected mandatory companies, excluding rates that are zero, *de minimis*, or based entirely on facts available.²¹ Section 705(c)(5)(A)(ii) of the Act also provides that, where all rates are zero, *de minimis*, or based entirely on facts available, we may use "any reasonable method" for assigning the all-others rate. However, as explained earlier, we have no mandatory respondents as such in this review, and other rates being applied are based entirely on facts available. Accordingly, to determine the "non-selected rate" for Dongguan Aoda and Changzhou Tenglong, we are drawing on the rate of 16.08 percent established for the non-selected companies in *Aluminum Extrusions 2014 Review*,²² which was the sole calculated rate for a mandatory respondent in that review, and the most recently determined rate for an individually examined respondent in this proceeding that is not zero, *de minimis*, or based entirely on facts available.²³ Accordingly, we are preliminarily assigning to Dongguan Aoda and Changzhou Tenglong, respectively, the non-selected rate of

²¹ See, e.g., *Certain Pasta from Italy: Final Results of the 13th (2008) Countervailing Duty Administrative Review*, 75 FR 37386, 37387 (June 29, 2010).

²² 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) (*Aluminum Extrusions 2014 Review*).

²³ Commerce has used a similar method in past reviews, when all the rates of the mandatory respondents were zero, *de minimis*, or determined entirely on facts available, and we found that it was appropriate to apply another reasonable method to determine the rate for those companies that were not selected for individual examination. See, e.g., *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review; Calendar Year 2012 and Rescission of Countervailing Duty Administrative Review, in Part*, 79 FR 51140, 51141 (August 27, 2014); and *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 47191, 47194-95 (September 15, 2009).

16.08 percent *ad valorem*.²⁴ This approach is also consistent with the non-selected rate determination in *Aluminum Extrusions 2015 Review*.²⁵

VI. Use of Adverse Facts Available (AFA)

A. Legal Standard

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

Section 776(b) of the Act provides that Commerce may use an adverse inference in selecting from 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, Commerce is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.²⁶ Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the countervailing duty investigation, a previous administrative review, or other information placed on the record.²⁷

Finally, under section 776(d) of the Act, when using an adverse inference when selecting from the facts otherwise available, Commerce may use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that Commerce considers reasonable to use.²⁸ When selecting from the facts otherwise available with an adverse inference, Commerce is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.²⁹

When selecting an adverse facts available (AFA) rate from among the possible sources of information, Commerce’s practice is to ensure that the rate is sufficiently adverse “as to effectuate the statutory purposes of the AFA rule to induce respondents to provide Commerce

²⁴ 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, 2020).

²⁵ See *Aluminum Extrusions from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2015*, 82 FR 57951 (December 8, 2017), and accompanying Issues and Decision Memorandum (IDM) at 4-5.

²⁶ See section 776(b)(1)(B) of the Act.

²⁷ See also 19 CFR 351.308(c).

²⁸ See section 776(d)(1) of the Act.

²⁹ See section 776(d)(3) of the Act.

with complete and accurate information in a timely manner.”³⁰ Commerce’s practice also ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”³¹ At the same time, section 776(b)(1)(B) of the Act states that Commerce is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information the interested party would have provided if the interested party had complied with the request for information.

In a CVD review, Commerce requires information from both the foreign producers and exporters of the merchandise under review and from the government of the country where those producers and exporters are located. When the government fails to provide the requested and necessary information concerning alleged subsidy programs, in applying AFA, Commerce may find that a financial contribution exists under the alleged programs and that such programs are specific.³² However, where possible, Commerce will rely on the responsive producer’s or exporter’s records to determine the existence conferred, to the extent that those records are useable and verifiable.

B. Application of AFA

As discussed in the “Background” section above, we issued Q&V questionnaires to 10 companies using the addresses submitted by the petitioner and Endura.³³ Seven of those companies (*i.e.*, (1) Activa, (2) CRRC, (3) Guangdong Xingfa, (4) Precision Metal, (5) Shenyang Yuanda, (6) Summit, and (7) Wenzhou Yongtai) received Commerce’s Q&V questionnaire, but did not submit a response.³⁴ We also issued an initial CVD questionnaire to the GOC, but the GOC did not respond to our request for information. Therefore, we preliminarily determine that necessary information is not on the record within the meaning of section 776(a)(1) because (1) these seven companies did not provide Q&V information necessary for purposes of respondent selection, and (2) the GOC did not provide the information requested.

Moreover, we preliminarily determine that the GOC, Activa, CRRC, Guangdong Xingfa, Precision Metal, Shenyang Yuanda, Summit, and Wenzhou Yongtai withheld information that was requested of them within the meaning of section 776(a)(2)(A) of the Act and failed to provide information within the deadlines established and failed to provide information in the form and manner requested by Commerce within the meaning of section 776(a)(2)(B) of the Act. We also preliminarily determine that, by not responding to our questions, the GOC, Activa, CRRC, Guangdong Xingfa, Precision Metal, Shenyang Yuanda, Summit, and Wenzhou Yongtai significantly impeded this review within the meaning of section 776(a)(2)(C) of the Act.

³⁰ See, e.g., *Drill Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011) (*Drill Pipe from the PRC*); and *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

³¹ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), H.R. Doc. 103-316, Vol. I at 870 (1994), reprinted at 1994 U.S.C.A.N. 4040, 4199.

³² See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review, 2015*, 83 FR 34828 (July 23, 2018), and accompanying IDM at 6-7.

³³ See Petitioner’s Company Addresses Letter.

³⁴ See Q&V Delivery Status Memorandum.

Accordingly, given their failure to respond to Commerce's requests for information, Commerce must rely on "facts available" in making its preliminary determination with respect to all countervailable subsidy programs that these unresponsive companies could have used, in accordance with sections 776(a)(1) and 776(a)(2)(A)-(C) of the Act.

Furthermore, we preliminarily determine that AFA is warranted, pursuant to section 776(b) of the Act, because, by not responding to Commerce's questionnaires, the GOC, Activa, CRRC, Guangdong Xingfa, Precision Metal, Shenyang Yuanda, Summit, and Wenzhou Yongtai failed to cooperate to the best of their ability to comply with Commerce's requests for information in this administrative review.

C. Selection of AFA Rate

For the programs that Commerce has previously found to be countervailable, in part because these programs constituted a financial contribution by an authority and were specific,³⁵ we are continuing to find these programs to constitute a financial contribution by an authority and to be specific. It is Commerce's practice not to revisit financial contribution and specificity determinations made in a prior segment of the same proceeding, absent the presentation of new facts or evidence.³⁶ The United States Court of Appeals for the Federal Circuit (CAFC) has affirmed this practice, under section 751(a)(1)(A) of the Act.³⁷ In this administrative review, the GOC withheld information requested of it, including new information regarding the financial contribution and specificity of these programs. In light of the lack of new information on the record, and consistent with our practice and *Magnola*, we are continuing to find these programs to be countervailable.

For these preliminary results of review, we find, based on AFA, that Activa, CRRC, Guangdong Xingfa, Precision Metal, Shenyang Yuanda, Summit, and Wenzhou Yongtai used and benefited from each of the programs that were previously found to be countervailable in prior segments of this proceeding, unless we have subsequently found the program not to be countervailable.³⁸ We are, therefore, including these programs among those we look to in determining the AFA rate.³⁹ Further, we selected an AFA rate for each such program consistent with our CVD AFA hierarchy

³⁵ See *Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 76962 (December 23, 2014), and accompanying IDM at sections VIII.A and B.1.a; and *Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review, 2014-2015*, 82 FR 42792 (September 12, 2017), and accompanying IDM at section X.A.

³⁶ See *Certain Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, Products from the People's Republic of China: Final Results of Countervailing Duty Administrative Review, 2012*, 80 FR 41003 (July 14, 2015) (*Solar Cells from China 2012*), and accompanying IDM at 27 n.130 ("In a CVD administrative review, we do not revisit past determinations of countervailability made in the proceeding, absent new information.").

³⁷ See *Magnola Metallurgy, Inc. v United States*, 508 F. 3d 1349, 1353-56 (CAFC 2007) (*Magnola*).

³⁸ See, e.g., *Aluminum Extrusions 2017 Final Results; Aluminum Extrusions 2016 Final Results; Certain Cold-Rolled Carbon Steel Flat Products from Korea; Final Affirmative CVD Determination*, 67 FR 62102 (October 3, 2002), and accompanying IDM at "Methodology and Background Information;" and *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2017), at 60646-47.

³⁹ See Appendix I.

in determining the AFA subsidy rate that we applied to Aactiva, CRRC, Guangdong Xingfa, Precision Metal, Shenyang Yuanda, Summit, and Wenzhou Yongtai.

Consistent with section 776(d) of the Act and our established practice, we selected rates using our CVD AFA hierarchy. In an administrative review, our CVD AFA hierarchy provides that we first determine if there is an identical program from any segment of the proceeding and use the highest calculated rate for any respondent for the program (excluding *de minimis* rates).⁴⁰ If no such identical program exists, we then determine if there is a similar or comparable program (based on the treatment of the benefit) within the same proceeding and apply the highest calculated rate for the similar program, excluding *de minimis* rates. Where there is no similar or comparable program in the proceeding at issue, we look outside the proceeding (but within the same country) for the highest non-*de minimis* calculated rate for the identical program. If there is no identical program in any other CVD proceeding involving the same country, we look for the highest non-*de minimis* rate for a similar/comparable program from another proceeding. If that option is not available, we apply the highest calculated rate from any non-company specific program, but we do not use a rate from a program if the industry in the proceeding cannot use that program.⁴¹

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”⁴² The SAA provides that to “corroborate” secondary information, Commerce will satisfy itself that the secondary information to be used has probative value.⁴³ However, Commerce is not required to corroborate any CVD rate applied in a separate segment of the same proceeding.⁴⁴

Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes that Commerce need not prove that the selected facts available are the best alternative information.⁴⁵ Furthermore, Commerce is not required to estimate what the countervailing subsidy rate would have been if the interested party failing to

⁴⁰ For purposes of selecting AFA program rates, we normally treat rates less than 0.5% to be *de minimis*. See, e.g., *Pre-Stressed Concrete Steel Wire Strand from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 28557 (May 21, 2010), and accompanying IDM at “Grant Under the Tertiary Technological Renovation Grants for Discounts Program” and “Grant Under the Elimination of Backward Production Capacity Award Fund.”

⁴¹ See, e.g., *Aluminum Extrusions from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 78788 (December 31, 2014), and accompanying IDM at 15-16; and *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 41003 (July 14, 2015), and accompanying IDM at 14.

⁴² See SAA, at 870.

⁴³ *Id.*

⁴⁴ See section 776(c)(2) of the Act.

⁴⁵ See SAA, at 869-870.

cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.⁴⁶

Because we have found it appropriate to apply AFA in determining the net subsidy rates for Aactiva, CRRC, Guangdong Xingfa, Precision Metal, Shenyang Yuanda, Summit, and Wenzhou Yongtai due to their failure to cooperate in providing information in this proceeding, we have selected AFA rates for all subsidy programs listed below according to Commerce’s CVD AFA hierarchy.⁴⁷ For a number of programs,⁴⁸ because we are selecting CVD rates that were applied in a separate segment of the same proceeding, pursuant to section 776(c)(2) of the Act, we are not required to corroborate those rates in this review.⁴⁹ For other programs, we have updated the rates selected in this review as AFA rates, using the same or similar programs from a different proceeding.⁵⁰ Because these rates constitute secondary information, and have not been applied in a separate segment of this proceeding, the Act requires that we corroborate them to the extent practicable.

With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. With respect to the relevance aspect of corroboration, Commerce will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Commerce will not use information where circumstances indicate that the information is not appropriate as AFA.⁵¹

In the absence of responses from Aactiva, CRRC, Guangdong Xingfa, Precision Metal, Shenyang Yuanda, Summit, and Wenzhou Yongtai concerning the alleged programs due to their lack of participation in this review, Commerce reviewed the information concerning China subsidy programs in this and other cases. Where we have a program-type match, we find that, because these are the same or similar programs, they are relevant to the programs in this case. Additionally, the relevance of the rates applied above is that they are actual calculated CVD rates for Chinese programs, from which the aforementioned entities could actually receive a benefit. Due to the lack of participation by the aforementioned entities and their failure to provide a response concerning each of these programs, Commerce has corroborated the rates it selected to use as AFA to the extent practicable for these preliminary results.

VII. Subsidy Programs Subject to Countervailing Duties

⁴⁶ See section 776(d) of the Act.

⁴⁷ See Memorandum, “Administrative Review of Countervailing Duty Order on Aluminum Extrusions from the People’s Republic of China: AFA Calculation Memorandum for the Preliminary Results of Review; 2018” dated concurrently with this memorandum (AFA Rate Calculation Memorandum).

⁴⁸ See AFA Rate Calculation Memorandum at Attachment I for identification of the sources used in a prior segment that have been previously corroborated.

⁴⁹ See *Aluminum Extrusions 2017 Preliminary Results*; *Aluminum Extrusions 2017 Final Results*; section 776(c)(2) of the Act; and section 502(2) of the TPEA.

⁵⁰ See AFA Rate Calculation Memorandum at Attachment II for identification of programs for which we are using updated subsidy program rates.

⁵¹ See, e.g., *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

Loan Programs

1. Export Buyer's Credit
2. Export Seller's Credit
3. Loans and Interest Subsidies Provided Pursuant to the Northeast Revitalization Program
4. Policy Loans to Chinese Aluminum Extrusions Producers

Provision of Goods and Services for Less than Adequate Remuneration (LTAR)

1. Allocated Land-Use Rights for State-Owned Enterprises (SOEs)
2. Provision of Aluminum Extrusions for LTAR
3. Provision of Electricity for LTAR to FIEs Located in the Nanhai District of Foshan City
4. Provision of Glass for LTAR
5. Provision of Land-Use Rights and Fee Exemptions to Enterprises Located in the Zhaoqing New and High-Tech Industrial Development Zone (ZHTDZ) for LTAR
6. Provision of Land-Use Rights for LTAR for Enterprises Located in the Yongji Circular Economic Park
7. Provision of Land-Use Rights in the Liaoyang High-Tech Industry Development Zone
8. Provision of Land-Use Rights to Enterprises Located in the South Sanshui Science & Technology Industrial Park for LTAR
9. Provision of Primary Aluminum for LTAR
10. Provision of Steam Coal for LTAR

Purchase of Goods and Services for More than Adequate Remuneration (MTAR)

1. Purchases of Aluminum Extrusions for MTAR

Income Tax Programs

1. Preferential Tax Policies for the Development of Western Regions of China (aka, Go West Campaign)
2. Preferential Tax Policies for the Opening and Development of Beibu Gulf Economic Zone of Guangxi Zhuang Autonomous Region (Local Income Tax Exemption)
3. Preferential Tax Program for Foreign Invested Enterprises (FIEs) Recognized as HNTes
4. Preferential Tax Program for High or New Technology Enterprises
5. Provincial Tax Exemptions and Reductions for "Productive" FIEs
6. Tax Reduction for Export-Oriented FIEs
7. Tax Reductions for FIEs in Designated Geographic Locations
8. Tax Reductions for FIEs Purchasing Chinese-Made Equipment
9. Tax Reductions for Technology- or Knowledge-Intensive FIEs

Tax Credit and Tax Rebate Programs

1. Accelerated Depreciation for Enterprises Located in the Northeast Region
2. Forgiveness of Tax Arrears for Enterprises in the Old Industrial Bases of Northeast China
3. Tax Offset for Research & Development
4. Tax Refunds for Enterprises Located in the ZHTDZ
5. Tax Refunds for Tax Refunds for Reinvesting of FIE Profits in Export-Oriented Enterprises

Other Tax Programs

1. Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises using Imported Equipment in Encouraged Industries
2. Refund of Value Added Tax on Products Made through Comprehensive Utilization of Resources
3. VAT Rebates on FIE Purchases of Chinese-Made Equipment

Grant Programs

1. Advantaged Traditional Manufacturing Industry Transformation and Upgrading Model Enterprise Award (Industry Upgrading Model Award)
2. Assistance for Science Research and Technology Development Planning Projects of Nanning Municipality
3. Assistance for R&D projects under Funds of Nanning Municipality for Foreign Trade Development
4. Assurances for R&D projects under Funds of Nanning Municipality for Foreign Trade Development
5. Awards of Guangxi Autonomous Region for Advancement of Science and Technology
6. Awards of Guangxi Autonomous Region for Emission Reduction of Main Pollutants
7. Awards of Guangxi Autonomous Region for New Products
8. Awards of Nanning Municipality for New Products
9. Awards to Key Enterprises for Large Consumption of Electricity
10. Beijing Industry Development Fund
11. Clean Production Technology Fund
12. Development Assistance Grants from the ZHTDZ Local Authority
13. Enterprise Technology Center Fund
14. Exemptions from Administrative Charges for Companies in the ZHTDZ
15. Expanding Production and Stabilizing Jobs Fund of Jiangsu Province
16. Export Increase Fund
17. Export Rebate for Mechanic, Electronic, and High-Tech Products
18. Financial Supporting Funds of Nanning Municipality for Technology Renovation for Production Safety
19. Financial Assistance (interest subsidy) of Nanning Municipality for Key Technology Renovation
20. Fund for Economic, Scientific, and Technology Development
21. Fund for SME Bank-Enterprise Cooperation Projects
22. Funds for Projects of Science and Technology Professionals serving the Enterprises
23. Funds of Guangxi Autonomous Region for Enterprises' Technology Renovation
24. Funds of Nanning Municipality for Technology Innovation
25. GOC and Sub-Central Government Grants, Loans, and Other Incentives for Development of Famous Brands and China World Top Brands
26. Grants for Listing Shares: Liaoyang City (Guangdong Province), Wenzhou Municipality (Zhejiang Province), and Quanzhou Municipality (Fujian Province)
27. Grants to Cover Legal Fees in Trade Remedy Cases in Zhenzhen
28. Guangxi Awards for Private Enterprises designated as Pilot Innovation-oriented Enterprises
29. Guangxi Technology R&D Funds

30. Guangzhou Engineering Technology R&D Center Fund
31. Guangzhou Innovation Enterprise Fund from Guangzhou
32. Import and Export Credit Insurance Supporting Development Fund for Changzhou
33. Industrial Development Fund
34. Intellectual Property Reward
35. International Market Exploration Fund (Small- and Medium-Sized Enterprises or SME Fund)
36. Nanhai District Grants to High and New Technology Enterprises
37. National Funds for Construction of Ten “Key Energy Saving Projects”, “Key Demonstration Bases for Recycling Economy and Resource Saving” and “Key Industrial Pollution Control Projects”
38. National Funds for the Industry Revitalization and Technology Renovation of the Key Fields
39. Northeast Region Foreign Trade Development Fund
40. PGOG Science and Technology Bureau Project Fund (aka, Guangdong Industry, Research, University Cooperating Fund)
41. PGOG Special Fund for Energy Saving Technology Reform
42. Private Enterprise Award
43. Provincial Fund for Fiscal and Technological Innovation
44. Provincial Loan Discount Special Fund for SMEs
45. Refund of Land-Use Tax for Firms Located in the ZHTDZ
46. Special Fund for External Economy
47. Special Fund for Significant Science and Technology in Guangdong Province
48. Special Funds for the Development of Five Industries
49. Special Funds of Guangxi Autonomous Region for Production Safety (Supporting Fund for Eliminating Potential and Seriously Dangerous Projects)
50. Special Funds of Guangxi Autonomous Region for Small Highland of Talents
51. Special Funds of Guangxi Beibu Gulf Economic Zone for the Development of Key Industries
52. Special Funds of Nanning Municipality for Academic and Technical Leaders of the New Century
53. Special Funds of Nanning Municipality for Small Highland of Talents
54. Special Reward Fund for Industrial Economy Transformation and Upgrading of the Whole District
55. State Key Technology Renovation Project Fund
56. Supporting Funds for Trade with the Minority Nationalities and Production of Goods Specially Needs by Minority Nationalities
57. Supporting Funds of Nanning Municipality for “Informatization-industrialization Integration” and Development of Information Industry
58. Technical Standards Awards
59. Technology Innovation Assistance Fund (Niulanshan Industrial Development Center - Technology Products Fund)
60. Trade Promotion and Brand Building Fund
61. Working Capital Loans Discount

VIII. *Ad Valorem* Rate for Non-Cooperative Companies Under Review

Based on the methodology described above, we preliminarily determine the AFA countervailable subsidy rate for Aactiva, CRRC, Guangdong Xingfa, Precision Metal, Shenyang Yuanda, Summit, and Wenzhou Yongtai to be 242.15 percent *ad valorem*.⁵²

IX. Recommendation

We recommend applying the above methodology for these preliminary results.

Agree

Disagree

7/20/2020

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

⁵² See AFA Rate Calculation Memorandum for a table detailing the derivation of the AFA rate applied.