UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

C-570-968
Administrative Review
POR: 9/07/2010 – 12/31/2011
Public Document
Operations III: KJ/RC

DATE: December 26, 2013

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

FROM: Melissa Skinner
Director, Office III
Antidumping and Countervailing Duty Operations

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

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Summary

On June 10, 2013, the Department of Commerce (the Department) published the *Preliminary Results* for this administrative review of the countervailing duty (CVD) order on aluminum extrusions from the People's Republic of China (PRC).[1] The period of review (POR) is September 7, 2010, through December 31, 2011.[2] The respondents are: Changzhou Changzheng Evaporator Co., Ltd. (Changzheng Evaporator) and Kromet International Inc. (Kromet) and the Alnan Companies.[3]

[1] *See Aluminum Extrusions from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2010 and 2011*, 78 FR 34649 (June 10, 2013) (*Preliminary Results*), and accompanying Issues and Decision Memorandum.

[2] For purposes of calculating countervailable benefits and net subsidy rates for the period September 7, 2010, through December 31, 2010, we have utilized information corresponding to calendar year 2010.

[3] The Alnan Companies are Alnan Aluminum Co., Ltd. (Alnan Aluminum or Alnan), Alnan Aluminum Foil Co., Ltd. (Alnan Foil), Alnan (Shanglin) Industry Co., Ltd. (Shanglin Industry), and Shanglin Alnan Aluminum Comprehensive Utilization Power Co. Ltd. (Shanglin Power).

Background

On July 26, 2013, interested parties submitted case briefs[4] and filed rebuttal briefs[5] on August 2, 2013. The Department did not hold a hearing as parties withdrew their requests for a hearing.[6] On August 23, 2013 and December 6, 2013, the Department instructed the Alnan Companies and Changzheng Evaporator to submit adequate public summaries of their sales data for 2010 and 2011.[7] On September 3 and 12, 2013, and December 9, 2013, the Alnan Companies and Changzheng Evaporator submitted their publicly-ranged sales data.[8]

On September 4, 2013, the Department extended the final results of this administrative review until December 9, 2013.[9] Subsequently, as explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1 through October 16, 2013.[10] Therefore, all deadlines in this segment of the proceeding have been extended by 16 days. As such the new deadline for the final results is December 25, 2013. However, because the new deadline falls on a non-business day, in accordance with the Department's practice, the deadline is the next business day. Therefore, the revised deadline for the final results of this review is December 26, 2013.

The "Subsidy Valuation Information" and "Analysis of Programs" sections below describe the subsidy programs and the methodologies used to calculate the subsidy rates for these final results. Additionally, we have analyzed the comments submitted by interested parties in their case briefs and rebuttal briefs in the "Analysis of Comments" section below, which contains the Department's responses to the issues raised in the briefs. Based on the comments received, we have made certain modifications to the *Preliminary Results* for this final, which are discussed below under each program.

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[4] The following parties submitted case briefs: Aluminum Extrusions Fair Trade Committee (Petitioner), the Government of the People's Republic of China (GOC), IDEX Health & Science LLC and BAND-IT-IDEX, Inc. (collectively, IDEX), Kromet, Newell Rubbermaid (Newell), Tai Shan City Kam Kiu Aluminium Extrusions Co. Ltd. (Taishan City Kam Kiu), and Zhaoqing Asia Aluminum Factory Company Limited (ZAA).

[5] The following parties submitted rebuttal briefs: Petitioner, Eagle Metal Distributors, Inc. (Eagle Metal), Newell, Peak Products USA Corporation and Wadeco Inc., d/b/a Wade Mfg. Co., a/k/a Wade Rain Inc (collectively, Peak Products), Whirlpool Corporation (Whirlpool), and ZAA.

[6] *See* Letter from Kromet regarding "Withdrawal of Hearing Request" (August 8, 2013), and Letter from Taishan City Kam Kiu regarding "Withdrawal of Request for Hearing" (August 13, 2013).

[7] *See* Department Memorandum regarding 'Request for Publicly Ranged Sales Data for 2010 and 2011 from the Alnan Companies and Changzheng Evaporator" (August 23, 2013) (Request for Publicly Ranged Sales Memorandum); and Letter from the Department to Kromet/Alnan Companies regarding "Request for Correction of Public Version of Sales Figures" (December 6, 2013).

[8] *See* Letters from Changzheng Evaporator regarding "Submission of Publicly Ranged Sales Data for 2010 and 2011" (September 3 and 12, 2013); and Letters from Kromet regarding "Resubmission of Public Version of Sales Data Exhibit" (September 3, 2013, and December 9, 2013).

[9] *See* Department Memorandum regarding "Aluminum Extrusions from the People's Republic of China: Extension of Deadline for Final Results of Countervailing Duty Administrative Review" (September 4, 2013).

[10] *See* Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, regarding "Deadlines Affected by the Shutdown of the Federal Government" (October 18, 2013).

Below is a complete list of the issues in this administrative review for which we received comments from the parties.

General Issues

Comment 1: Application of the CVD Law to the PRC
Comment 2: Simultaneous Application of CVD and Non-Market Economy (NME) Measures
Comment 3: Calculation of Non-Selected Rate
Comment 4: Calculation of the Adverse Facts Available (AFA) Rate
Comment 5: Assessment of Duties On or After Date of Formal Initiation of a Scope Ruling

Program-Specific Issues

Comment 6: Whether There Is a Link Between Policy Lending and Respondents' Bank Loans
Comment 7: Whether PRC Commercial Banks Are Government Authorities
Comment 8: Computation of Benchmark Loan Interest Rate
Comment 9 Whether State Ownership Makes an Entity a Government Authority
Comment 10: Whether Chinese Communist Party (CCP) Affiliations/Activities by Company Officials Makes an Entity a Government Authority and Whether Such Affiliations/Activities Are Relevant to the Department's Analysis
Comment 11: Whether the GOC Responded to the Best of Its Ability Concerning Ownership Information and CCP Affiliations/Activities
Comment 12: Whether the Provision of Primary Aluminum is Specific
Comment 13: Whether to Use an In-Country Benchmark to Determine Adequacy of Remuneration for Primary Aluminum
Comment 14: Whether the Department's Investigation of Uninitiated Programs is Unlawful
Comment 15: Whether the Reduced Tax Rate Provided under Article 28 of the Enterprise Income Tax Law for High or New Technology Enterprises is Countervailable

Company-Specific Issues

Comment 16: Attribution of Subsides Received by Alnan Foil
Comment 17: Attribution of Subsides Received by Alnan Aluminum
Comment 18: The Department's Use of Facts Available Regarding Suppliers of Aluminum
Comment 19: Whether Import Prices into the PRCShould Be Used as "Tier One" Benchmark Prices
Comment 20: Errors in the Conversions of the Benchmark Prices used in the Provision of Aluminum for LTAR Program Calculations
Comment 21: Errors in the Calculation of the Benefit to Alnan from the Provision of Aluminum for LTAR Program
Comment 22: Application of AFA to Foshan Yong Li Jian Alu. Ltd. (Foshan Yong)
Comment 23: Application of AFA to Taishan City Kam Kiu
Comment 24: Correct Spelling of ZAA

We are conducting this administrative review in accordance with section 751(a)(1)(A) of the Act.

Scope of the Order

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

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

Aluminum extrusions are produced and imported with a variety of finishes (both coatings and surface treatments), and types of fabrication. The types of coatings and treatments applied to subject aluminum extrusions include, but are not limited to, extrusions that are mill finished (*i.e.*, without any coating or further finishing), brushed, buffed, polished, anodized (including bright-dip anodized), liquid painted, or powder coated. Aluminum extrusions may also be fabricated, *i.e.*, prepared for assembly. Such operations would include, but are not limited to, extrusions that are cut-to-length, machined, drilled, punched, notched, bent, stretched, knurled, 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 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 (HTS): 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, 8418.99.80.05, 8418.99.80.50, 8418.99.80.60, 8419.90.10.00, 8422.90.06.40, 8479.90.85.00, 8486.90.00.00, 8487.90.00.80, 8503.00.95.20, 8516.90.50.00, 8516.90.80.50, 8708.29.50.60, 8708.80.65.90, 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, 9403.90.80.30, 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 HTS chapters. In addition, fin evaporator coils may be classifiable under HTS numbers: 8418.99.80.50 and 8418.99.80.60. While HTS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.[11]

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

Use of Facts Otherwise Available and Adverse Inferences

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

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

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

Application of Total AFA to Non-Cooperative Companies

Foshan Yong,[12] North China Aluminum Co., Ltd., and Taishan City Kam Kiu (collectively, the non-cooperative companies) failed to respond to the Department's October 1, 2012, Q&V questionnaire.[13] We sent a questionnaire via United Parcel Service (UPS) to the address provided for each company.[14] We also contacted by telephone the counsel that represented the importers of subject merchandise from the three producers to notify them that the Department's Quantity and Value (Q&V) questionnaire was issued.[15] None of the non-cooperative companies, however, submitted a response by the October 18, 2012, deadline, or requested an extension to respond to the questionnaire.

We received comments from interested parties on the application of AFA to the non-cooperative companies and the calculation of the AFA rate. After considering those comments, we have not made any changes to our finding with regard to the non-cooperative companies or any modifications to the methodology used to construct the AFA rate. *See* Comments 4, 22, and 23, below.

Because of the companies' failure to submit a response to the questionnaire, we continue to find them to be non-cooperative. By not responding to the request for information regarding the Q&V of their sales, the companies withheld information that has been requested by the Department and significantly impeded the Department's ability to conduct its review by denying the Department information to evaluate respondents' volumes of subject merchandise for respondent selection purposes. Thus, we are basing the CVD rate for these non-cooperative companies on the facts otherwise available, pursuant to sections 776(a)(2)(A) and (C) of the Act.

We further find that an adverse inference is warranted, pursuant to section 776(b) of the Act. By failing to submit a response to the Department's questionnaire, the companies did not cooperate by not acting to the best of their ability in this review. Accordingly, we find that AFA is warranted to ensure that the companies do not obtain a more favorable result than had they fully complied with the Department's request for information.

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) and (2) authorize the Department to rely on information derived from: (1) the petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any other information placed on the record. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents

[12] An importer submitted a letter to the Department claiming that Foshan Yong did not have any exports of subject merchandise to the United States during the POR. *See* Letter from Newell regarding "No Shipment Regarding Foshan Yong Li Jian Aluminum Ltd." (October 24, 2012). However, a no-shipment claim must be submitted and certified by the producer/exporter and so the Department cannot determine that Foshan Yong had no entries, exports or shipments during the POR. *See* Comment 22.
[13] *See* Department Letters regarding "Issuance of Quantity and Value Questionnaire" (October 1, 2012).
[14] *See* Department Memorandum regarding "Contacting Potential Respondents" (October 4, 2012).
[15] *Id*.

to provide the Department with complete and accurate information in a timely manner."[16] The Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[17]

In applying AFA to the non-cooperative companies, we are guided by the Department's approach in recent CVD investigations and reviews.[18] Under this practice, the Department computes the total AFA rate for non-cooperative companies generally using program-specific rates calculated for the cooperating respondents in the instant review or in prior segments of the instant proceeding, or calculated in prior CVD cases involving the country under review (in this case, the PRC), unless it is clear that the industry in which the respondents operate cannot use the program for which the rates were calculated.

In these final results, for the income tax rate reduction or exemption programs, we are applying an adverse inference that the non-cooperative companies paid no income taxes during the POR. The standard income tax rate for PRC corporations filing income tax returns during the POR was 25 percent.[19] We, therefore, find that the highest possible benefit for all income tax reduction or exemption programs combined is 25 percent (*i.e.*, the income tax programs combined provide a countervailable benefit of 25 percent). This approach is consistent with the Department's past practice.[20]

The 25 percent AFA rate does not apply to the income tax credit and rebate, accelerated depreciation, or import tariff and value add tax exemption programs because such programs may not affect the tax rate. Therefore, for all programs other than those involving income tax rate reduction or exemption programs, we have first sought to apply, where available, the highest above *de minimis* subsidy rate calculated for an identical program from any segment of this proceeding. Absent such a rate, we have applied, where available, the highest above *de minimis* subsidy rate calculated for a similar program from any segment of this proceeding. Because the rates calculated in the underlying investigation were calculated for voluntary respondents,[21] we are not using any of those rates as AFA rates in this administrative review.

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[16] *See e.g., Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

[17] *See* Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H. Doc. No. 316, 103d Cong. 2d Session, at 870.

[18] *See e.g., Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Results of the Countervailing Duty Administrative Review*, 77 FR 21744 (April 11, 2012) (*Kitchen Shelving from the PRC First Review*), and accompanying Issues and Decision Memorandum at "Use of Facts Otherwise Available and Adverse Inferences;" *see also Aluminum Extrusions from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) (*Aluminum Extrusions from the PRC Investigation* or *Investigation*), and accompanying Issues and Decision Memorandum at "Application of Adverse Inferences: Non-Cooperative Companies."

[19] *See* GOC's New Subsidy Allegation Questionnaire Response (NSA QR) (March 21, 2013) at 11.

[20] *See, e.g., Aluminum Extrusions from the PRC Investigation*, and accompanying Issues and Decision Memorandum at "Application of Adverse Inferences: Non-Cooperative Companies;" and *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008) (*CWP from the PRC*), and accompanying Issues and Decision Memorandum at 2.

[21] *See Aluminum Extrusions from the PRC Investigation*, and accompanying Issues and Decision Memorandum at "Application of Adverse Inferences: Non-Cooperative Companies."

In the absence of an above *de minimis* subsidy rate calculated for the same or similar program in any segment of this proceeding, we have applied the highest non-*de minimis* rate calculated for the same or similar program (based on treatment of the benefit) in another PRC CVD proceeding. Absent an above *de minimis* subsidy rate calculated for the same or similar program in any PRC CVD proceeding, we have applied the highest calculated subsidy rate for any program otherwise listed from any prior PRC CVD case, so long as the non-cooperating companies conceivably could have used the program for which the rate was calculated.[22] On that basis, we determine that the AFA rate for the non-cooperative companies is 121.22 percent *ad valorem*.[23]

Corroboration of Secondary Information Used to Derive AFA Rates

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."[24] The Department considers information to be corroborated if it has probative value.[25] To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information.[26]

With regard to the reliability aspect of corroboration, we note that the rates on which we are relying are subsidy rates calculated in this review or other PRC CVD final determinations. Further, the calculated rates were based on information about the same or similar programs. Moreover, no information has been presented that calls into question the reliability of these calculated rates that we are applying as AFA. Finally, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs.

With respect to the relevance aspect of corroborating the rates selected, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Where circumstances indicate that the information is not appropriate as AFA, the Department will not use it.[27]

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[22] *See Kitchen Shelving from the PRC First Review*, and accompanying Issues and Decision Memorandum at "Use of Facts Otherwise Available and Adverse Inferences."
[23] *See* Department Memorandum regarding "AFA Calculation Memorandum for the Final Results" (AFA Calculation Memorandum), dated concurrently with, and hereby adopted by, this memorandum, for a table detailing the derivation of the AFA rate applied.
[24] *See* SAA at 870.
[25] *Id*.
[26] *Id*., at 869-870.
[27] *See, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

In the absence of record evidence concerning the programs under review resulting from the non-cooperative companies' decision not to participate in the review, we have reviewed the information concerning PRC subsidy programs in this and other cases. For those programs for which the Department has found a program-type match, we find that, because these are the same or similar programs, they are relevant to the programs under review in this case. For the programs for which there is no program-type match, we have selected the highest calculated subsidy rate for any PRC program from which the non-cooperative companies could receive a benefit to use as AFA. The relevance of these rates is that they are actual calculated CVD rates for a PRC program from which the non-cooperative companies could actually receive a benefit. Further, these rates were calculated for periods close to the POR. Moreover, the failure of these companies to respond to the Department's request for information has "resulted in an egregious lack of evidence on the record to suggest an alternative rate."[28] Due to the lack of participation by the non-cooperative companies and the resulting lack of record information concerning their use of programs under review, the Department has corroborated the rates it selected to the extent practicable.

Application of AFA for Programs Discovered Through the Analysis of the Alnan Companies' Financial Statements

Pursuant to section 775 of the Act, the Department has the authority to examine subsidies discovered during the course of an administrative review.[29] By examining the Alnan Companies' financial statements, we discovered that the Alnan Companies received numerous grants or funding from provincial and local governments that were not part of any of the other programs included in this administrative review. Therefore, we issued supplemental questionnaires regarding these grants or other types funding to the GOC and to Kromet and the Alnan Companies.

In its responses to these supplemental questionnaires, the GOC only identified the names of the programs under which some of the grants and other amounts of funding were provided. In addition, the GOC reported that some of the amounts of funding received by the Alnan Companies were provided under a tax program, not a grant program.[30]

The GOC provided copies of the relevant legislation and regulations for some of these programs. However, the GOC did not provide the legislation and regulations for other programs. In addition, the GOC did not provide the requested *de facto* specificity information for any of these programs. Because the GOC did not provide information necessary to analyze whether the programs under which the benefits received by the Alnan Companies and reflected in their financial statements are specific, we find that the GOC has withheld information that was requested and has failed to cooperate by not acting to the best of its ability.[31] Because the GOC did not provide complete information required for our analysis of these programs, we again requested this information from the GOC in a supplemental questionnaire issued on April 23, 2013. On April 29, 2013, the GOC provided a response but failed to provide the requested

[28] *See Shanghai Taoen Int'l Trading Co., Ltd. v. United States*, 360 F. Supp. 2d 1339, 1348 (CIT 2005).
[29] For further discussion of this issue, *see* Comment 14.
[30] The name of this tax program is "Refund of Value Added Tax on Products Made through Comprehensive Utilization of Resources."
[31] *See* sections 776(a)(2)(A) and (b) of the Act.

information, stating that it is "unable to provide any additional laws or regulation at this time" and that it is unable to provide any additional information regarding these programs at this time."[32]

Therefore, for each program for which the GOC did not provide the relevant laws or regulations, we determine, as AFA, that the programs are *de jure* specific. For those programs for which the GOC provided the relevant legislation and for which the laws do not provide the basis for *de jure* specificity, we determine, as AFA, that the programs are *de facto* specific.[33] For any program for which the GOC did not provide the legislation and regulations but it is clear from name of the program that it is an export program, *e.g.*, "Funds of Nanning Municipality for Sustainable Development of Foreign Trade," we determine that, as AFA, the program rate will be calculated using export sales as the denominator.[34] For certain amounts listed in the financial statements, the GOC did not identify the programs under which they were provided. Therefore, as AFA, we used the descriptions in the companies' financial statements to assign them to the most similar grant programs.

Subsidies Valuation Information

Attribution of Subsidies

The Department's regulations at 19 CFR 351.525(b)(6)(i) state that the Department will normally attribute a subsidy to the products produced by the corporation that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) directs the Department to attribute subsidies received by certain other companies to the combined sales of the recipient and other companies if: (1) cross-ownership exists between the companies, and (2) the cross-owned companies produce the subject merchandise, are a holding or parent company of the subject company, produce an input that is primarily dedicated to the production of the downstream product, or transfer a subsidy to a cross-owned company.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This section of the Department's regulation states that this standard will normally be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. The *Preamble* to the Department's regulations further clarifies the

[32] *See* GOC's Supplemental QR (SQR) (regarding Kromet) (April 29, 2013) at pages 10-11.
[33] Our AFA finding that these programs are *de facto* specific is based on the fact that the GOC did not provide information concerning the distribution of benefits on an enterprise and industry-wide basis, as requested in the Standard Questions Appendix of the Initial Questionnaire.
[34] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (October 17, 2012) (*Solar Cells from the PRC*), and accompanying Issues and Decision Memorandum at Comment 23; and *Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*, 76 FR 77206 (December 12, 2011) (*Citric Acid from the PRC First Review*), and accompanying Issues and Decision Memorandum at "Use of Facts Otherwise Available and Adverse Inferences."

Department's cross-ownership standard. According to the *Preamble*, relationships captured by the cross-ownership definition include those where

> the interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits). … Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.[35]

Thus, the Department's regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists. The U.S. Court of International Trade (CIT) has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.[36]

Changzheng Evaporator

Changzheng Evaporator, established in December 1993, in Jiangsu Province, is a domestic enterprise owned by two Chinese citizens.[37] Changzheng Evaporator produces fin evaporators, which were exported to the United States during the POR.[38]

Changzheng Evaporator filed a response on behalf of itself and its wholly-owned affiliate Liaoning Changzheng Aluminum Company (Liaoning Changzheng).[39] Liaoning Changzheng, established in November 2010, is located in Liaoning Province where it produces aluminum tubes that are supplied to Changzheng Evaporator for the production of fin evaporators.[40]

We find that Changzheng Evaporator and Liaoning Changzheng are cross-owned affiliates within the meaning of 19 CFR 351.525(b)(6)(vi) by virtue of direct or common ownership. Because Liaoning Changzheng supplies inputs to Changzheng Evaporator that are primarily dedicated to the downstream product, pursuant to 19 CFR 351.525(b)(6)(iv), we are attributing subsidies received by Liaoning Changzheng to the combined sales of Changzheng Evaporator

[35] *See Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998) (*Preamble*).
[36] *See Fabrique de Fer de Charleroi v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).
[37] *See* Changzheng Evaporator's Initial Questionnaire Response (IQR) (January 8, 2013) at 6-7 and 9.
[38] *Id*., at 2.
[39] Changzheng Evaporator reported another wholly-owned subsidiary, Changzheng Refrigeration Technical Co., Ltd. (Changzheng Refrigeration), which was established in October 2011. Changzheng Evaporator, however, provided information to demonstrate that Changzheng Refrigeration was not required to provide questionnaire responses under the Department's attribution and cross-ownership regulations. *See* Changzheng Evaporator's IQR (January 8, 2013) at 4-5; and Changzheng Evaporator's SQR (March 6, 2013) at 2-3.
[40] *See* Changzheng Evaporator's IQR (January 8, 2013) at 4, 6.

and Liaoning Changzheng, net of inter-company sales. For Changzheng Evaporator, we are attributing subsidies received by the company to its own sales for the relevant years.[41]

Kromet and the Alnan Companies

Kromet is a Canadian company that exported to the United States during the POR subject aluminum extrusions that were produced and exported by Alnan Aluminum. Alnan Aluminum is a Chinese company located in Nanning City, Guangxi Province of the PRC. Based on the information on the record provided by Kromet and the Alnan Companies, we find that Alnan Aluminum, Alnan Foil, Shanglin Industry and Shanglin Power are cross-owned affiliates within the meaning of 19 CFR 351.525(b)(6)(vi) by virtue of direct or common ownership.[42]

Pursuant to 19 CFR 351.525(b)(6)(iii), because Alnan Aluminum is the parent company of the Alnan Companies, we are attributing subsidies received by Alnan Aluminum to the consolidated sales of the parent company and its subsidiaries, *i.e.*, the consolidated sales of the Alnan Companies, net of inter-company sales. For further discussion, *see* Comment 16: How to Attribute Subsidies Received by Alnan Foil and *see* Comment 17: Whether to Use Consolidated Sales as the Denominator for the Attribution of Subsides Received by Alnan Aluminum.

Because Shanglin Industry and Shanglin Power are input producers that supplied inputs to Alnan that are primarily dedicated to the production of the downstream product, aluminum extrusions, pursuant to 19 CFR 351.525(b)(6)(iv), we are attributing all subsidies received by these companies to the combined sales of the company and Alnan, net of inter-company sales.[43] Alnan Foil also supplied inputs to Alnan. Because Alnan Foil was not the producer of the inputs, we are attributing, pursuant to 19 CFR 351.525(b)(6)(v), only those subsidies that were transferred to Alnan Aluminum by Alnan Foil to sales of Alnan Aluminum. Because Alnan Aluminum is a parent company, pursuant to 19 CFR 351.525(b)(6)(iii), the denominator for attributing subsidies received by input producers Shanglin Industry and Shanglin Power and subsidies transferred from Alnan Foil is the value of the consolidated sales of the Alnan Companies (which is net of inter-company sales). For further discussion, *see* Comment 16: How to Attribute Subsidies Received by Alnan Foil

Grant and Tax Programs Discovered Through the Analysis of the Alnan Companies' Financial Statements

As discussed above in the "Adverse Facts Available" Section, we examined the Alnan Companies' financial statements and discovered that the Alnan Companies received grants and

[41] For the denominators used in the final calculations, *see* Department Memorandum regarding "Final Calculations for Changzheng Evaporator" (Final Calculations for Changzheng Evaporator), dated concurrently with, and hereby adopted by, this memorandum.
[42] *See* Kromet and the Alnan Companies IQR (January 9, 2013) at 4 and Exhibits 1-5 and Kromet and the Alnan Companies SQR (March 20, 2013) at 1-2. As the ownership information is business proprietary, for further explanation, *see* Department Memorandum regarding "Final Calculations for Kromet Inc. and the Alnan Companies" (Final Calculations for Kromet and the Alnan Companies), dated concurrently with, and hereby adopted by, this memorandum.
[43] For the denominators used in the final calculations, *see* Final Calculations for Kromet Inc. and the Alnan Companies.

other amounts of funding from provincial and local governments that were not part of any of the other programs included in this administrative review. In its responses to our supplemental questions, the GOC reported that the grants and other amounts of funding that we identified were provided under 32 grant programs and one tax program titled "Refund of Value Added Tax on Products Made through Comprehensive Utilization of Resources."

With regard to the 32 grant programs contained in the financial statement of Alnan Aluminum, consistent with 19 CFR 351.524(c)(1), we are treating grants received under these programs as "non-recurring." We performed the "0.5 percent test" of 19 CFR 351.524(b)(2) with regard to each grant program. For the 18 grant programs under which the Alnan Companies received benefits during the POR that exceeded 0.005 percent *ad valorem*, our final determinations with regard to their countervailability are included below in the "Programs Determined To Be Countervailable" section. For the 14 grant programs under which the benefits provided to the Alnan Companies during the POR were less than 0.005 percent *ad valorem*, it is unnecessary to make determinations with regard to their countervailability at this time. Therefore, we have listed such grant programs the "Programs Determined Not to Confer a Benefit" section.

Our analysis of the tax program, titled "Refund of Value Added Tax on Products Made through Comprehensive Utilization of Resources" is included in the "Programs Determined To Be Countervailable" section below.

Loan Benchmark Rates

The Department examined loans received by the respondents from state-owned commercial banks (SOCBs). We received comments from the GOC concerning the derivation of the short- and long-term benchmark rates. We considered the GOC's comments, but have made no modification to the methodology used to construction the benchmarks. *See* Comment 8, below. The derivation of the benchmark rates used to value these subsidies is discussed below.

Short-Term RMB Denominated Loans

Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the "difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market." Normally, the Department will rely on the actual experience of the firm in question in obtaining comparable commercial loans.[44] If the firm did not have any comparable commercial loans during the period, the Department's regulations provide that we "may use a national average interest rate for comparable commercial loans."[45] Section 771(5)(E)(ii) of the Act also indicates that the benchmark should be a market-based rate.

For the reasons explained in *CFS from the PRC*,[46] loans provided by Chinese banks reflect significant government intervention in the banking sector and do not reflect rates that would be

[44] *See* 19 CFR 351.505(a)(3)(i).
[45] *See* 19 CFR 351.505(a)(3)(ii).
[46] *See Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (*CFS from the PRC*), and accompanying Issues and Decisions

found in a functioning market. Because of this, any loans received by respondents from private Chinese or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(3)(i). Similarly, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, the Department is selecting an external, market-based benchmark interest rate. The use of an external benchmark is consistent with the Department's practice. For example, in *Softwood Lumber from Canada*, the Department used U.S. timber prices to measure the benefit for government-provided timber in Canada.[47] Further, there is no new information on the record of this review that would lead us to deviate from the Department's prior finding regarding government intervention in the PRC's banking sector.

We first developed in *CFS from the PRC*,[48] and more recently updated in *Thermal Paper from the PRC*,[49] the methodology used to calculate the external benchmark. Under that methodology, we first determine which countries are similar to the PRC in terms of gross national income, based on the World Bank's classification of countries as: low income; lower-middle income; upper-middle income; and high income. As explained in *CFS from the PRC*, using these different groupings of countries we are able to capture the broad inverse relationship between income and interest rates. For 2001 through 2009, the PRC fell in the lower-middle income category.[50] Beginning with 2010, however, the PRC is in the upper-middle income category.[51] Accordingly, as explained below, we are using the interest rates of lower-middle income countries to construct the benchmark rates for 2001 – 2009, and the interest rates of upper-middle income countries to construct the benchmark rates for 2010 and 2011.

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

In each year from 2001-2009, and 2011, the results of the regression-based analysis reflected the intended, common sense result: stronger institutions meant relatively lower real interest rates, while weaker institutions meant relatively higher real interest rates.[52] For 2010, however, the

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Memorandum at Comment 10; *see also* Department Memorandum regarding "Placement of Banking Memoranda on the Record" (June 3, 2013) (Banking Memoranda).

[47] *See Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products from Canada*, 67 FR 15545 (April 2, 2002) (*Softwood Lumber from Canada*), and accompanying Issues and Decision Memorandum at "Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit."

[48] *See CFS from the PRC*, and accompanying Issues and Decision Memorandum at Comment 10.

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

[50] *See* World Bank Country Classification, http://econ.worldbank.org/; *see also* Department Memorandum regarding "Interest Rate Benchmark Memorandum" (June 3, 2013) (Interest Rate Benchmark Memorandum) .

[51] *Id.*

[52] *Id.*, and Department Memorandum regarding "Additional Documents for Preliminary Decision" (June 3, 2013) at Attachment I (which contains Department Memorandum regarding "Consultations with Government Agencies" (October 17, 2007) from *CFS from the PRC*) (Additional Documents Memorandum).

regression does not yield that outcome for the PRC's income group. This contrary result for a single year does not lead the Department to reject the strength of governance as a determinant of interest rates. As confirmed by the Federal Reserve, "there is a significant negative correlation between institutional quality and the real interest rate, such that higher quality institutions are associated with lower real interest rates."[53] However, for 2010, incorporating the governance indicators in our analysis does not make for a better benchmark. Therefore, we have continued to rely on the regression-based analysis used since *CFS from the PRC* to compute the benchmarks for the years from 2001-2009, and 2011. For the 2010 benchmark, we are using an average of the interest rates of the upper-middle income countries. Based on our experience for the 2001-2009 period, in which the average interest rate of the lower-middle income group did not differ significantly from the benchmark rate resulting from the regression for that group, use of the average interest rate for 2010 does not introduce a distortion into our calculations.

Many of the countries in the World Bank's upper-middle and lower-middle income categories reported lending and inflation rates to the International Monetary Fund, and they are included in that agency's international financial statistics (IFS). With the exceptions noted below, we have used the interest and inflation rates reported in the IFS for the countries identified as "upper-middle income" by the World Bank for 2010 and 2011, and "lower-middle income" for 2001-2009. First, we did not include those economies that the Department considered to be nonmarket economies for antidumping purposes for any part of the years in question, for example: Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS for those years. Third, we removed any country that reported a rate that was not a lending rate or that based its lending rate on foreign-currency denominated instruments.[54] Finally, for each year the Department calculated an inflation-adjusted short-term benchmark rate, we have also excluded any countries with aberrational or negative real interest rates for the year in question.[55]

Because these rates are net of inflation, we adjusted the benchmark rates to include an inflation component before comparing them to the interest rates on loans issued to the respondents by SOCBs.[56]

Long-Term RMB-Denominated Loans

The lending rates reported in the IFS represent short- and medium-term lending, and there are not sufficient publicly available long-term interest rate data upon which to base a robust benchmark for long-term loans. To address this problem, the Department has developed an adjustment to the short- and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates.[57]

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[53] *Id.*

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

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

[56] *See* Interest Rate Benchmark Memorandum for the resulting inflation adjusted benchmark lending rates.

[57] *See e.g., Light-Walled Rectangular Pipe and Tube from the People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination*, 73 FR 35642 (June 24, 2008) (*Light-Walled Pipe from the PRC*), and accompanying Issues and Decision Memorandum at 8.

In *Citric Acid from the PRC*, this methodology was revised by switching from a long-term markup based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where 'n' equals or approximates the number of years of the term of the loan in question.[58] Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.[59]

Foreign Currency-Denominated Loans

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

For any long-term foreign currency-denominated loans, the Department added the applicable short-term LIBOR rate to a spread which is calculated as the difference between the one-year BB bond rate and the n-year BB bond rate, where "n" equals or approximates the number of years of the term of the loan in question.

Discount Rate Benchmarks

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

The resulting interest rate benchmarks that we used in the final calculations are provided in the respondents' final calculations memoranda.

[58] *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 16836 (April 13, 2009) (*Citric Acid from the PRC*), and accompanying Issues and Decision Memorandum at Comment 14.
[59] *See* Interest Rate Benchmark Memorandum for the resulting inflation adjusted benchmark lending rates.

Analysis of Programs

Based on our analysis and the responses to our questionnaires, we find the following:

I. Programs Determined To Be Countervailable

A. Policy Loans to Chinese Aluminum Extrusion Producers

As noted in *Citric Acid from the PRC*, in general, the Department looks to whether government plans or other policy directives lay out objectives or goals for developing the industry and call for lending to support those objectives or goals.[60] Where such plans or policy directives exist, then it is the Department's practice to determine that a policy lending program exists that is specific to the named industry (or producers that fall under that industry).[61] Once that finding is made, the Department relies upon the analysis undertaken in *CFS from the PRC* to further conclude that national and local government control over the SOCBs result in the loans being a financial contribution by the GOC.[62] We received and considered the GOC's comments on the existence of a policy lending program and whether PRC banks are government authorities. We however have made no changes with regard to the Department's findings. *See* Comments 6 and 7, below.

In the *Investigation*, we determined that, during the period of investigation (POI), the GOC, through its directives, had a policy in place to encourage the development of the production of aluminum extrusions through policy lending.[63] We determined that at the national level, the GOC has placed an emphasis on the development of high-end, value-added aluminum products through foreign investment as well as through technological research, development, and innovation. We also determined that, in laying out this strategy, the GOC identified specific products selected for development. For example, we determined that the *Catalogue of Major Industries, Products, and Technologies Encouraged for Development in China* (*Encouraged Industries Catalogue*), issued by the GOC in 2000, identifies 526 products, technologies, and infrastructure facilities for business promotion. We also found that the *Encouraged Industries Catalogue* specifically mentions aluminum extrusion products under the non-ferrous metals heading. Similarly, we concluded that the GOC implemented the *Decision of the State Council on Promulgating the "Interim Provisions on Promoting Industrial Structure Adjustment" for Implementation* (No. 40 (2005)) (*Decision 40*) in order to achieve the objectives of the Eleventh Five-Year Plan. In the *Investigation*, we noted that Decision 40 references the *Directory Catalogue on Readjustment of Industrial Structure* (*Industrial Catalogue*), which outlines the projects which the GOC deems "encouraged," "restricted," and "eliminated," and describes how these projects will be considered under government policies. We further noted that aluminum is mentioned as an industry in the Industrial Catalogue as an "encouraged project" and that for the

[60] *See Citric Acid from the PRC*, and accompanying Issues and Decision Memorandum at Comment 5.
[61] *See CFS from the PRC*, and accompanying Issues and Decision Memorandum at Comment 8, and *Thermal Paper from the PRC*, and accompanying Issues and Decision Memorandum at "Government Policy Lending Program."
[62] *See CFS from the PRC*, and accompanying Issues and Decision Memorandum at Comment 8.
[63] *See Aluminum Extrusions from the PRC Investigation*, and accompanying Issues and Decision Memorandum at "Policy Loans to Chinese Aluminum Extrusion Producers."

"encouraged" projects, *Decision 40* outlines several support options available from the government, including financing.

In the *Investigation,* we also found that the *Guidelines on Acceleration of the Adjustment of the Aluminum Industry Structure* (*Aluminum Industry Guidelines*), issued by the GOC in 2006, discusses support that is to be provided to producers of aluminum extrusions. For instance, we noted that under the heading "Increase Industry Concentration, Encourage Comprehensive Usage and Conservation of Resources," the *Aluminum Industry Guidelines* state:

> Create favorable conditions for enterprises M&A and restructuring, and accelerate enterprises' merger and restructuring via economic means. Support aluminum, electrolytic aluminum, and aluminum processing enterprises to undertake merger and restructuring, establish internationally competitive enterprise group, realize advantage complementation, and increase industry concentration. Encourage private capital and foreign capital to participate in the reform, restructuring and transformation of state-owned enterprises. Encourage backbone enterprises to keep raising technology and management levels, accelerate medium and small-sized aluminum processing enterprises' technology transformation, and improve resource utilization.

In the *Investigation*, we further explained that the *Aluminum Industry Guidelines* also make reference to lending activities. Under the heading, "Strengthen the Coordination and Cooperation of Credit Policy and Industrial Policy and Establish Withdrawal Mechanism Under the Policies," the *Aluminum Industry Guidelines* state:

> It is required to strictly abide by the rule that the minimum self-owned capital requirement for electrolytic aluminum projects shall be no less than 35 percent of the total investment. Financial institutions shall rationally allocate the lending credits taking into account the national macroeconomic adjustments, industrial policies, and ordinary lending principles. Financial institutions may continue to provide credits to oxide aluminum or electrolytic aluminum enterprises that are in compliance with national industrial policies and the market entrance threshold, provided such lending is in accordance with the ordinary lending principles. No credit shall be provided to those enterprises that do not conform to national industrial policies, do not satisfy the market entrance threshold, have obsolete manufacturing processes, have been classified as prohibited, or have been ordered to cease operation. In the event that credits are mistakenly provided to such enterprises, the financial institutions shall take appropriate measures to reclaim the credits and avoid financial risk.

We further noted in the *Investigation* that, under the heading "Enhance the Implementation of Environmental Protection Regulations, Eliminate Capacities," the *Aluminum Industry Guidelines* state that different "financing means" shall be used "to support enterprises' environmental protection and energy savings."

Additionally, in the *Investigation*, we found that support, in the form of financing, is also discussed in the *Nonferrous Metal Industry Adjustment and Revitalization Plan* (*Nonferrous Metal Plan*) that was issued by the GOC in 2009. We noted that under the heading "Increase

Dedication to Technology Improvement and Technology Reform," the Nonferrous Metal Plan states:

> Set aside some funds from new central investment. Use loan interest subsidies to support R&D and technology reform in the nonferrous metals industry. Increase the level of financial support directed toward reform of energy conservation technologies.

Further, we found that the *Nonferrous Metal Plan* further references financing to the aluminum extrusions industry under the heading, "Continue to Implement the Financing Policy of 'Encouragement and Discouragement:'"

> Increase financing support to backbone enterprises in the nonferrous metals industry. Provide support to certain enterprises in issuing stock, enterprise bonds, and corporate bonds. Enterprises eligible to receive such support are those which are engaged in projects which, in addition to adhering to investment management prescriptions, are in compliance with industry policy as well as relevant environmental and land regulations; and implement acquisitions, restructuring, "Going Abroad' and technological reformation.

We also determined in the *Investigation*, that consistent with our determinations in prior proceedings, the PRC-based banks which provided loans to the aluminum extrusions industry during the POI were SOCBs.[64]

Thus, in the *Investigation*, we determined that the loans to aluminum extrusion producers from SOCBs and policy banks in the PRC were made pursuant to government directives and, thus, constitute a direct financial contribution from the government, pursuant to section 771(5)(D)(i) of the Act, and they provide a benefit equal to the difference between what the recipients paid on their loans and the amount they would have paid on comparable commercial loans (*see* section 771(5)(E)(ii) of the Act). We further determined that the loans are *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act because of the GOC's policy, as illustrated in the government plans and directives, to encourage and support the growth and development of the aluminum extrusions industry. [65]

Changzheng Evaporator and the Alnan Companies reported that they had outstanding loans from PRC-based banks during the POR. Therefore, in this administrative review, we again reviewed the record evidence to ascertain whether loans received by aluminum extrusions producers constitute countervailable policy lending by SOCBs and/or policy banks.

The GOC reported that in February 2010 the China Banking Regulatory Commission (CBRC) promulgated the *Interim Measures for the Administration of Working Capital Loans* (*Interim Measures*). The GOC states that the *Interim Measures* require that "the banking financial

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[64] *See e.g., Certain Oil Country Tubular Goods from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination*, 74 FR 64045 (December 7, 2009) (*OCTG from the PRC*), and accompanying Issues and Decision Memorandum at Comment 20.
[65] *See Aluminum Extrusions from the PRC Investigation*, and accompanying Issues and Decision Memorandum at "Policy Loans to Chinese Aluminum Extrusion Producers."

institutions established in China upon the CBRC's approval, including those at issue in this review, all make their decisions on issuance of working capital loans on a pure commercial basis."[66] The GOC stated that "it is an explicit requirement of the *Interim Measures* that the issuance of working capital loans shall be prudentially decided by banks based on a reasonable estimation of the borrower's working capital demand and fair consideration of cash flow, liabilities, repayment ability, guarantee status and other factors of the borrower."[67] The GOC also reported that the *Interim Measures* are "fully consistent with Article 34 of the *Law of the People's Republic of China on Commercial Banks (Banking Law)*" and stated that Article 34 "does not specify any specific obligation imposed by the government on commercial banks."[68]

We determine that there is no basis to conclude that the GOC's policy lending activities ceased with the issuance of the *Interim Measures*. The GOC reported that the *Interim Measures* are fully consistent with Article 24 of the *Banking Law*. However, as explained in the *Investigation*, we have previously determined that Article 34 of the *Banking Law* states that banks should carry out their loan business "under the guidance of the state industrial policies."[69] Thus, because the *Interim Measures* are "fully consistent" with the *Banking Law*, we determine that they do not constitute evidence that the GOC has ceased policy lending to the aluminum extrusions industry.

To determine whether a benefit was conferred under section 771(5)(E)(ii) of the Act, we compared the amount of interest paid during the POR on outstanding loans to the amount that would have paid on comparable commercial loans.[70] In conducting this comparison, we used the interest rates described in the "Benchmarks and Discount Rates" section above. We have attributed benefits under this program according to the methodology described above in the "Subsidies Valuation Information" section.

On this basis, for the Alnan Companies, we calculated a countervailable subsidy of 1.54 percent *ad valorem* for 2010 and 2.05 percent *ad valorem* for 2011. For Changzheng Evaporator, we calculated a countervailable subsidy of 0.65 percent *ad valorem* for 2010 and 1.40 percent *ad valorem* for 2011.

B. Provision of Primary Aluminum for LTAR

In the *Investigation*, we found that producers and suppliers, found to be Chinese government authorities, sold primary aluminum to aluminum extrusions producers for LTAR.[71] Changzheng Evaporator and the Alnan Companies reported purchasing primary aluminum during the POR from trading companies as well as directly from primary aluminum producers. The Alnan Companies identified all of the firms that produced the primary aluminum that they purchased during the POR. Changzheng Evaporator was able to identify the input producers from which its affiliate Liaoning Changzheng directly purchased primary aluminum during the POR, with the

[66] *See* GOC's IQR (January 9, 2013) at -3.
[67] *Id*., at 4-5.
[68] *Id*., at 3.
[69] *See Aluminum Extrusions from the PRC Investigation*, and accompanying Issues and Decision Memorandum at Comment 28.
[70] *See* 19 CFR 351.505(a).
[71] *See Aluminum Extrusions from the PRC Investigation*, and accompanying Issues and Decision Memorandum at "Provision of Primary Aluminum for LTAR."

exception of the producer(s) whose product was sold through a trading company.[72] Changzheng Evaporator explained that it was not able to obtain the identity of the producer(s) of primary aluminum which Liaoning Changzheng purchased from a trading company, because the trading company "sources from many aluminum bar suppliers and cannot recognize the source of the aluminum bar when it sells the product to its customers."[73] Changzheng Evaporator added that the trading company explained that because "its customers usually do not require mill certificates for their purchases of aluminum bars, it does not segregate the aluminum bar by its source after it enters into its warehouse."[74]

The GOC submitted comments on the Department's "government authorities" analysis and requests for CCP-related information. We considered the GOC's arguments but have not made any changes to the Department's analysis and findings. *See* Comments 9, 10, and 11, below.

Whether Primary Aluminum Producers Are Authorities

The Department investigated whether the GOC provided primary aluminum for LTAR. We asked the GOC to provide information regarding the specific companies that produced primary aluminum that the mandatory respondents purchased during the POR. Specifically, we sought information from the GOC which would allow us to analyze whether the producers are "authorities" within the meaning of section 771(5)(B) of the Act.

In prior CVD proceedings involving the PRC, the Department has determined that when a respondent purchases an input from a trading company or non-producing supplier, a subsidy is conferred if the producer of the input is an "authority" within the meaning of section 771(5)(B) of the Act and that the price paid by the respondent for the input was sold for LTAR.[75]

Changzheng Evaporator reported the producer from which Liaoning Changzheng directly purchased primary aluminum during the POR. For this input producer, the GOC provided some ownership information, including capital verification reports and business registration forms, but did not trace ownership to the ultimate state or individual owners, stating that it was unable to trace the ownership in the time limit provided for the questionnaire response.[76] The GOC also did not answer the questions regarding the owners, members of the board of directors, or senior managers who are government or CCP officials or explain if the aluminum producer has a CCP committee.[77] Instead, the GOC argued that pursuant to Article 53 of the *Civil Servant Law*, government officials cannot serve as owners, members of the board of directors, or managers of

[72] *See* Changzheng Evaporator's SQR (March 6, 2013) at Exhibit 10, and Changzheng Evaporator's SQR (April 3, 2013) at 1-2.
[73] *See* Changzheng Evaporator's SQR (April 3, 2013) at 2.
[74] *Id*.
[75] *See e.g.*, *CWP from the PRC*, and accompanying Issues and Decision Memorandum at "Hot-Rolled Steel for Less Than Adequate Remuneration;" *Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 37012 (July 27, 2009) (*Kitchen Racks from the PRC*), and accompanying Issues and Decision Memorandum at "Provision of Wire Rod for Less than Adequate Remuneration;" and *Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 4936 (January 28, 2009) (*CWASPP from the PRC*), and accompanying Issues and Decision Memorandum at Comment 5.
[76] *See* GOC's SQR (February 8, 2013) at Exhibit ISA-3 (page 4).
[77] *Id*., at Exhibit ISA-3 (page 4-12).

the input producer without violating the law.[78] The GOC also asserted that CCP officials are restrained from serving as employees in enterprises, as per the *Executive Opinion of the Central Organization Department of Central Committee of CPC on Modeling and Trial Implementation of the Provisional Regulations of State Civil Servants in CCP Organs* (ZHONG FA (1993) No. 8) (*Trial Implementation of Civil Servants in CCP Organs)*, which reflects the CCP's intent to model its personnel management system after the *Civil Servant Law*, including restrictions on enterprise employment.[79] The GOC therefore concluded that none of the individual owners, members of the board of directors, or senior managers of the aluminum producer are eligible to also be government or CCP officials during the POR.[80]

Because the GOC did not provide complete information required for our analysis of the input producer which sold primary aluminum to Liaoning Changzheng, we again requested this information from the GOC in a supplemental questionnaire issued on February 22, 2013. In its response, the GOC reiterated, with no explanation, that it was unable to further trace ownership to the ultimate individuals or state owners for the aluminum producer.[81] Concerning the CCP questions, the GOC reiterated that civil servants and CCP officials cannot simultaneously be owners, members of the board of directors, or managers of the input producer.[82] The GOC added that even if an owner, member of the board of directors, or manager of the input producer was a CCP member or there was a CCP committee, it does not mean that the management and operation of the company is subject to any intervention of the government.[83] The GOC again failed to answer the questions asked and requested that further investigation in this regard be terminated.[84]

As noted above, the Alnan Companies were able to identify all of the entities that produced the primary aluminum that they acquired through trading companies during the POR. The GOC provided information regarding the corporate ownership and management of two of the suppliers from which the Alnan Companies purchased aluminum during the POR in order to demonstrate that they are not authorities.[85] For these input producers, the GOC provided some ownership information, including capital verification reports and business registration forms, but did not trace ownership to the ultimate individual or state owners and did not answer the questions regarding the owners, members of the board of directors, or senior managers who are government or CCP officials or explain if the aluminum producer has a CCP committee.[86] Instead, the GOC argued that pursuant to Article 53 of the *Civil Servant Law*, government officials cannot serve as owners, members of the board of directors, or managers of the input producer without violating the law.[87] The GOC also asserted that CCP officials are restrained from serving as employees in enterprises, as per the *Trial Implementation of Civil Servants in CCP Organs*, which reflects the CCP's intent to model its personnel management system after

[78] *Id*., at page 5.
[79] *Id*.
[80] *Id*.
[81] *See* GOC's SQR (March 8, 2013) at 16.
[82] *Id*., at 18.
[83] *Id*.
[84] *Id*.
[85] *See* GOC's SQR (February 8, 2013) at Exhibit ISA-1 and Exhibit ISA-2.
[86] *Id.*, at 2 and 5-11 of Exhibit ISA-1, and at 3 and 5-13 of Exhibit ISA-2.
[87] *Id*., at 2 of Exhibit ISA-1 and at 6 of Exhibit ISA-2.

the *Civil Servant Law*, including restrictions on enterprise employment.[88] The GOC therefore concluded that none of the individual owners, members of the board of directors, or senior managers of the aluminum producers are eligible to also be government or CCP officials during the POR.[89]

Although the GOC provided some of the information we requested, it did not provide complete answers to our questions. For some of the owners of the producers, the GOC did not trace ownership to the ultimate individual or state owners.[90] In addition, the GOC declined to provide the requested information regarding the role of CCP officials as owners, board members, or managers of the input producers and the existence and role of a CCP committee within the companies themselves.[91] Because the GOC did not provide complete information required for our analysis of the input producers which sold primary aluminum to the respondents, we again requested this information from the GOC in supplemental questionnaires issued on May 13, 2013. On May 23, 2013, the GOC provided its response but again failed to answer the questions asked and requested that further investigation in this regard be terminated. [92]

Regarding the GOC's objections to our questions about the role of CCP officials in the management and operations of the primary aluminum producers, we observe that it is the prerogative of the Department, not the GOC, to determine what information is relevant to our investigations and administrative reviews.[93] Specifically, the Department considers information regarding the CCP's involvement in the PRC's economic and political structure to be relevant because public information suggests that the CCP exerts significant control over activities in the PRC. [94] The Department has previously determined that "available information and record evidence indicates that the CCP meets the definition of the term 'government' for the limited

[88] *Id*.
[89] *Id*.
[90] *Id*., at 3 of Exhibit ISA-2.
[91] *Id.*, at 5-11 of Exhibit ISA-1 and at 5-13 of Exhibit ISA-2.
[92] *See* GOC's SQR (May 23, 2013) at 1-5.
[93] *See NSK, Ltd. v. United States*, 919 F. Supp. 442, 447 (CIT 1996) (*NSK*) ("NSK's assertion that the information it submitted to Commerce provided a sufficient representation of NSK's cost of manufacturing misses the point that 'it is Commerce, not the respondent, that determines what information is to be provided for an administrative review.'"); and *Ansaldo Componenti, S.p.A. v. United States*, 628 F. Supp. 198, 205 (CIT 1986) (*Ansaldo*) (stating that "{i}t is Commerce, not the respondent, that determines what information is to be provided").
[94] *See* Additional Documents Memorandum at Attachment II, which includes Memorandum for Paul Piquado, Assistant Secretary for Import Administration, through Lynn Fischer Fox, Deputy Assistant Secretary for AD/CVD Policy and Negotiation, Christian Marsh, Deputy Assistant Secretary for AD/CVD Operations, and John D McInerney, Chief Counsel for Import Administration, from Shauna Biby, Christopher Cassel, Timothy Hruby, Office of Policy, Import Administration, "Section 129 Determination of the Countervailing Duty Investigation of Circular Welded Carbon Quality Steel Pipe; Light-Walled Rectangular Pipe and Tube; Laminated Woven Sacks; and Off-the-Road Tires from the People's Republic of China: An Analysis of Public Bodies in the People's Republic of China in Accordance with the WTO Appellate Body's Findings in WTO DS379," dated May 18, 2012 (Public Body Memorandum); and its attachment, Memorandum for Paul Piquado, Assistant Secretary for Import Administration, through Lynn Fischer Fox, Deputy Assistant Secretary for AD/CVD Policy and Negotiation, Christian Marsh, Deputy Assistant Secretary for AD/CVD Operations, and John D McInerney, Chief Counsel for Import Administration, from Shauna Biby, Christopher Cassel, Timothy Hruby, Office of Policy, Import Administration, "The relevance of the Chinese Communist Party for the limited purpose of determining whether particular enterprises should be considered to be 'public bodies' within the context of a countervailing duty investigation," dated May 18, 2012 (CCP Memorandum).

purpose of applying the U.S. CVD law to China."[95] Additionally, publicly available information indicates that Chinese law requires the establishment of CCP organizations "in all companies, whether state, private, domestic, or foreign-invested" and that such organizations may wield a controlling influence in the company's affairs.[96] Because the GOC did not provide the information we requested regarding this issue, we have no further basis for reevaluating the Department's prior factual findings on the role of the CCP. With regard to the GOC's claim that Chinese law prohibits GOC officials from taking positions in private companies, we have previously found that this particular law does not pertain to CCP officials.[97]

The information we requested regarding the ultimate owners of the producers and the role of government/CCP officials and CCP committees in the management and operations of the aluminum producers, which sold inputs to the respondents, is necessary to our determination of whether the producers are "authorities" within the meaning of section 771(5)(B) of the Act. If the GOC was not able to submit the required information in the requested form and manner, it should have promptly notified the Department, in accordance with section 782(c) of the Act. It did not do so, nor did it suggest any alternative forms for submitting this information.[98] Further, the GOC did not indicate that it had attempted to contact the CCP, or that it consulted any other sources. The GOC's responses in prior proceedings demonstrate that it is, in fact, able to access the information we requested.[99]

We, thus, determine that the GOC has withheld necessary information that was requested of it and, thus, that the Department must rely on "facts otherwise available" in issuing our final results for these input producers. Moreover, we determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with our requests for information. Consequently, we find that an adverse inference is warranted in the application of facts available. As AFA, for those input producers for which the GOC failed to provide ownership information, failed to identify whether the members of the board of directors, owners or senior managers were government/CCP officials, or failed to report if the companies had CCP committees, we are finding them to be "authorities" within the meaning of section 771(5)(B) of the Act.

Additionally, as noted above, Changzheng Evaporator explained why it was not able to identify the producer(s) of aluminum bar which Liaoning Changzheng purchased from a trading company

[95] *Id.*, at CCP Memorandum at 33.
[96] *Id*., at Public Body Memorandum at 35-36, and sources cited therein.
[97] *See Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 75 FR 57444 (September 21, 2010) (*Seamless Pipe from the PRC*), and accompanying Issues and Decision Memorandum at 16.
[98] Section 782(c)(1) of the Act states that "{i}f an interested party, promptly after receiving a request from the administering authority or the Commission for information, notifies the administering authority or the Commission (as the case may be) that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the administering authority of the Commission (as the case may be) shall consider the ability of the interested party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party."
[99] *See e.g.*, *High Pressure Steel Cylinders from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 26738 (May 7, 2012) (*Cylinders from the PRC*), and accompanying Issues and Decision Memorandum at "Use of Facts Available and Adverse Inferences."

during the POR.[100] Because Changzheng Evaporator was unable to identify the producer(s) of the aluminum bar, the GOC was not able to provide a response to the "Information Regarding Input Producers in the PRC Appendix" for that company.[101] We find that the necessary information for this unidentified aluminum producer is not on the record. As a result, we are resorting to the use of facts available (FA) pursuant to section 776(a)(1) of the Act. In the underlying investigation, the GOC provided information on the amount of primary aluminum produced by state-owned enterprises (SOEs), collectives, and private producers in the PRC.[102] Using that data, we derived the ratio of primary aluminum produced by SOEs and collectives during the POI.[103] As FA in this review, we find that the percentage of primary aluminum supplied by Liaoning Changzheng's trading company which is produced by government authorities is equal to the ratio of primary aluminum produced by SOEs and collectives during the POI.[104] Our use of FA in this regard is consistent with the Department's practice.[105]

Benchmarks for Provision of Primary Aluminum

Having addressed the issue of financial contribution, we must next analyze whether the sale of primary aluminum to the mandatory respondents by suppliers designated as government authorities conferred a benefit within the meaning of section 771(5)(E)(iv) of the Act. We received comments from the GOC and Kromet arguing for the use of an in-country benchmark. *See* Comments 13 and 19, below. We considered the GOC's and Kromet's comments, but for the reasons explained below and at Comments 13 and 19, we continue to rely on a world market price to serve as the benchmark for primary aluminum.

The Department's regulations at 19 CFR 351.511(a)(2) set forth the basis for identifying appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (*e.g.*, actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As we explained in *Softwood Lumber from Canada*, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the

[100] *See* Changzheng Evaporator's SQR (April 3, 2013) at 1-2.
[101] *See* GOC's SQR (April 4, 2013) at 1.
[102] *See Aluminum Extrusions from the PRC Investigation*, and accompanying Issues and Decision Memorandum at "Provision of Primary Aluminum for LTAR."
[103] *Id*.
[104] In other words, as FA, we assume that the percentage of primary aluminum purchased by domestic trading companies during the POR was equal to the ratio of primary aluminum produced by SOEs and collectives during the POI, as indicated by the aggregate data supplied in the questionnaire responses of the GOC in the investigation. *See* Department Memorandum regarding "Share of Primary Aluminum Production During Period of Investigation" (June 3, 2013) (Share of Primary Aluminum Memorandum).
[105] *See e.g.*, *CWP from the PRC*, and accompanying Issues and Decision Memorandum at "Hot-Rolled Steel for Less Than Adequate Remuneration;" and *Light Walled Pipe from the PRC*, and accompanying Issues and Decision Memorandum at "Hot-Rolled Steel for Less Than Adequate Remuneration."

country under investigation because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation.[106]

Beginning with tier-one, we must determine whether the prices from actual sales transactions involving Chinese buyers and sellers are significantly distorted. As explained in the *Preamble*:

> Where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative {tier two} in the hierarchy.[107]

The *Preamble* further recognizes that distortion can occur when the government provider constitutes a majority or, in certain circumstances, a substantial portion of the market.[108]

In the *Investigation*, the GOC reported the total primary aluminum production by SOEs and collectives during the POI. The share of production number of these SOEs, after adjustment by the Department, accounted for more than 50 percent of the PRC's production.[109] We find this majority share by SOEs makes it reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market.[110] Our finding in this regard is in accord with the Department's practice.[111] In addition, as further evidence of the government's involvement in the market, we note that the GOC has imposed export tariffs on two of the three HTS categories that cover primary aluminum. Such export restraints can discourage exports and increase the supply of primary aluminum in the domestic market, with the result that domestic prices are lower than they would be otherwise.[112] For these reasons, we determine, as in the *Investigation*, that domestic prices charged by privately-owned primary aluminum producers based in the PRC may not serve as viable, tier-one benchmark prices.[113]

The Department has on the record of this review primary aluminum prices, as published by Global Trade Information Services, Inc. (GTIS). We find that these prices may serve as a tier-two benchmark, as described under 19 CFR 351.511(a)(2)(ii), when determining whether the Alnan Companies and Changzheng Evaporator received a benefit on their purchases of primary aluminum from government authorities. Concerning the GTIS prices, we note that the Department has relied on pricing data from industry publications in prior CVD proceedings

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[106] *See Softwood Lumber from Canada*, and accompanying Issues and Decision Memorandum at "Market-Based Benchmark."
[107] *See Preamble*, 63 FR at 65377.
[108] *Id*.
[109] *See* Share of Primary Aluminum Memorandum.
[110] *See Preamble*, 63 FR at 65377.
[111] *See e.g., Wire Decking from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 32902 (June 10, 2010) (*Wire Decking from the PRC*), and accompanying Issues and Decision Memorandum at "Provision of HRS for LTAR."
[112] *See e.g., Kitchen Racks from the PRC*, and accompanying Issues and Decision Memorandum at "Provision of Wire Rod for Less Than Adequate Remuneration."
[113] *See Aluminum Extrusions from the PRC Investigation*, and accompanying Issues and Decision Memorandum at Comment 21.

involving the PRC.[114] We continue to find prices from the GTIS prices on the record to be sufficiently reliable and representative for use in the benchmark calculation.

To determine whether primary aluminum suppliers, as government authorities, sold primary aluminum to respondents for LTAR, we compared the prices the respondents paid to the suppliers to our primary aluminum benchmark price. We conducted our comparison on a monthly basis. When conducting the price comparison, we converted the benchmark to the same currency and unit of measure as reported by the voluntary respondents for their purchases of primary aluminum.

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one or tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Accordingly, in deriving the benchmark prices, we ensured that ocean freight and inland freight were included. Specifically, we included ocean freight pricing data from the Maersk shipping company pertaining to shipments of aluminum, articles of aluminum, and metal products from the ports of Fancheng and Shanghai.[115] We used this information because it was the only information on the record for ocean freight. Concerning inland freight, we calculated company-specific inland freight rates using cost data supplied by the Alnan Companies and Changzheng Evaporator.[116] Further, we added to the benchmark the appropriate import duties and the value-added tax (VAT) applicable to imports of primary aluminum into the PRC as reported by the GOC.[117] In deriving the benchmark we did not include marine insurance. In prior CVD investigations involving the PRC, the Department has found that while the PRC customs authorities impute an insurance cost on certain imports for purposes of levying duties and compiling statistical data, there is no evidence to suggest that PRC customs authorities require importers to pay insurance charges.[118] Further, we have not added separate brokerage, handling, and documentation fees to the benchmark because we find that such costs are already reflected in the ocean freight cost from Maersk that is being used in this determination.[119]

Regarding the primary aluminum prices that the respondents paid to government authorities, both the Alnan Companies and the Changzheng Evaporator reported their prices to the Department inclusive of inland freight and indicated the domestic VAT applied to their purchases. Accordingly, when performing our comparison, we included the domestic VAT paid on purchases from government authorities.

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[114] *See e.g., CWP from the PRC,* and accompanying Issues and Decision Memorandum at "Hot-Rolled Steel for Less Than Adequate Remuneration;" *see also Light Walled Pipe from the PRC,* and accompanying Issues and Decision Memorandum at "Hot-Rolled Steel for Less Than Adequate Remuneration."

[115] *See* Letter from Petitioner regarding "Submission of Factual Information – Benchmark Data" (February 8, 2013) at Exhibits 2 and 3 (Petitioner's Benchmark Data Submission).

[116] *See* Kromet's and the Alnan Companies' IQR (January 9, 2013) at 26-27 and Changzheng Evaporator's IQR (January 8, 2013) at 24.

[117] *See* Petitioner's Benchmark Data Submission at Exhibit 8.

[118] *See e.g., Pre–Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 28557 (May 21, 2010) (*PC Strand from the PRC*), and accompanying Issues and Decision Memorandum at Comment 13.

[119] *See* Petitioner's Benchmark Data Submission at Exhibits 2 and 3.

Comparing the benchmark unit prices to the unit prices paid by the respondents for primary aluminum, we determine that primary aluminum was provided for LTAR and that a benefit exists in the amount of the difference between the benchmark and what the respondent paid. *See* section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a).

Provision of Primary Aluminum Is Specific to Aluminum Extrusion Producers

With respect to specificity, the GOC claims that there are a vast number of uses for primary aluminum and the type of industries/consumers that may purchase primary aluminum is varied within the economy.[120] To support its argument, the GOC provided a 2007 input-output table published by the State Statistics Bureau (SSB), which, the GOC explained, covers the 135 industries in the PRC and details the industries that consumed primary aluminum as reported in the "nonferrous metal smelting products and manufacture of alloy" category.[121] The GOC asserts that the input-output table indicates that that the provision of primary aluminum is not specific. The GOC raised these same arguments in its case brief. *See* Comment 12, below. We again considered the GOC's arguments; however for the reasons explained below and at Comment 12, we have not modified our specificity finding.

After examining the data provided in the SSB input-output table, we find that the table does not provide the type of information which the Department requires to determine if the provision of primary aluminum is specific to aluminum extrusion producers, such as the number of enterprises/industries that purchase primary aluminum. We identity the following deficiencies with regard to the table: (1) it does not delineate data specific to primary aluminum, which is contained within the large, comprehensive category of "nonferrous metal smelting products and manufacture of alloy;" and (2) it provides information on the end-users' level of consumption but does not report data on sales or purchases of primary aluminum across industrial sectors. In the *Investigation*, we determined, based on data provided by the GOC on the end uses for primary aluminum, that the industries named by the GOC are limited in number and, hence, the subsidy is specific under section 771(5A)(D)(iii)(I) of the Act.[122]

Because the input-output table provided in this review is too general, and does not detail the spectrum of industrial sectors that purchase primary aluminum, by value and/or volume, we determine that the input-output table does not undermine our finding that the provision of primary aluminum is specific to aluminum extrusion producers.

We, therefore, find that the GOC has not provided information to warrant a reconsideration of our determination from the *Investigation*, where the Department found that the provision of primary aluminum is specific under section 771(5A)(D)(iii)(I) of the Act.[123]

[120] *See* GOC's IQR (January 9, 2013) at 36.
[121] *Id*., and Exhibit E-15; *see also* GOC's SQR (February 8, 2013) at 1-2.
[122] *See Aluminum Extrusions from the PRC Investigation*, and accompanying Issues and Decision Memorandum at "Provision of Primary Aluminum for LTAR."
[123] *Id*.

Countervailability and Calculation of Program Rates

Our decision to find this program countervailable is unchanged from the *Investigation*. As such we continue to find that the GOC's provision of primary aluminum for LTAR to be a domestic subsidy as described under 19 CFR 351.525(b)(3). In the Preliminary Results, we countervailed all of the purchases of aluminum made by Alnan Foil during the POR. However, in these final results, we did not include in the benefit calculation all of Alnan Foil's purchases of aluminum. Rather, we included only the amount of aluminum transferred to from Alnan Foil to Alan Aluminum in the benefit calculation. For further discussion, *see* Comment 16: How to Attribute Subsidies Received by Alnan Foil. For each year, we then divided the benefit by a denominator comprised of the sales of the Alnan Companies (which is net of intercompany sales), attributing benefits under this program to according to the methodology described in the "Subsidies Valuation Information" section.

On this basis, for the Alnan Companies, we calculated a countervailable subsidy of 11.96 percent *ad valorem* for 2010 and 12.19 percent *ad valorem* for 2011. For Changzheng Evaporator, we calculated a countervailable subsidy of 0.08 percent *ad valorem* for 2011.

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

In the *Investigation*, we determined that the Famous Brands Program, which is administered at the central, provincial, and municipal government levels, provides countervailable subsidies that are contingent on export activity.[124] As discussed in the *Investigation*, although operated at the local level, the GOC issued *Measures for the Administration of Chinese Top-Brand Products* (*Top-Brand Measures*), which state that the requirements for application are that firms provide information concerning their export ratio and whether their product quality meets international standards.[125] Changzheng Evaporator reported that it received its famous brands designation in December 2010,[126] and subsequently received a grant under this program from the Changzhou Bureau of Finance and Xinbei District government in 2011.[127]

Changzheng Evaporator stated that it received the one-time grant because of its famous brands status and location in Changzhou City.[128] The GOC reported that the company received the grant under the *Enterprise Brand Building Awards of Changzhou Municipality* and *Famous*

[124] *See Aluminum Extrusions from the PRC Investigation*, and accompanying Issues and Decision Memorandum at "GOC and Sub-Central Government Grants, Loans, and Other Incentives for Development of Famous Brands and China World Top Brands;" *see also PC Strand from the PRC*, and accompanying Issues and Decision Memorandum at "Subsidies for Development of Famous Export Brands and China World Top Brands at Central and Sub-Central Level;" and *Solar Cells from the PRC*, and accompanying Issues and Decision Memorandum at Comment 22.
[125] A copy of the "Measures for the Administration of Chinese Top-Brand Products" was placed on the record of this administrative review. *See* the Department's Memorandum regarding "Measures for the Administration of Chinese Top-Brand Products" (June 3, 2013).
[126] *See* Changzheng Evaporator's SQR (April 17, 2013) at 1 and Exhibit 1.
[127] *See* Changzheng Evaporator's SQR (March 5, 2013) at 1-6.
[128] *Id.*, at 2-3, and 6.

Brand Awards of Xinbei District, Changzhou Municipality because of the famous brands designation.[129]

Neither Changzheng Evaporator nor the GOC provided any new information to warrant a reconsideration of the Department's determination in the *Investigation* that this program is a countervailable export subsidy.[130] The GOC did not submit any information that the *Top-Brand Measures*, which outline the requirements for application of famous brands designation, were not in effect when the company applied for famous brands status,[131] and Changzheng Evaporator was unable to provide a copy of its famous brands application.[132]

While Changzheng Evaporator's grant was provided by local governments, pursuant to their own measures, such local measures must conform with the central government measures, which call for the examination of an applicant's export performance. Therefore, consistent with the *Investigation*, we continue to find the provision of famous brands grants specific as an export subsidy. As such, we find that the grant, which Changzheng Evaporator received under this program, constitutes a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively, and is specific under section 771(5A)(A) and (B) of the Act.

Because Changzheng Evaporator cannot expect to receive ongoing assistance under this program,[133] we are treating the grants as a non-recurring subsidy under 19 CFR 351.524(c). We, thus, conducted the "0.5 percent test" of 19 CFR 351.524(b)(2), by dividing the grant amount by Changzheng Evaporator's total export sales for the year the grant was approved/received.[134] We find that the grant received was less than 0.5 percent of the total export sales denominator for the year of receipt. Therefore we have expensed the grant to the year of receipt (*i.e.*, 2011). To calculate the subsidy rate, we divided the full amount of the grant by Changzheng Evaporator's total export sales for 2011.

On this basis, we find that Changzheng Evaporator received a countervailable subsidy of 0.03 percent *ad valorem* for 2011.

D. International Market Exploration Fund (SME Fund)

In the *Investigation*, we determined that the SME Fund provides countervailable subsidies that are contingent on export activity because, to quality for the program, a small and medium-sized enterprise (SME) must have export and import rights, exports of less than $15,000,000 in the previous year, an accounting system, personnel with foreign trade skills, and an international

[129] *See* GOC's SQR (March 8, 2013) at 2 and 9.
[130] *See* Changzheng Evaporator's SQR (March 5, 2013) at 1-6, and GOC's SQR (March 8, 2013) at 1-16.
[131] *See* GOC's SQR (March 8, 2013) at 1-16.
[132] *See* Changzheng Evaporator's SQR (April 17, 2013) at 1.
[133] *See* Changzheng Evaporator's SQR (March 5, 2013) at 6.
[134] Where the company was unable to report the date/year of approval of the grant, we used the date/year of receipt of the grant for the yearly sales denominator used in the 0.5 percent test.

marketing plan.[135] Changzheng Evaporator reported that it received a non-recurring grant under this program in 2010.[136]

In its response, the GOC reiterated that this program was established in 2000, pursuant to the *Circular of the Ministry of Finance, the Ministry of Foreign Trade and Economic Cooperation Concerning Printing and Distributing the Measures for the Administration of International Market Developing Funds of Small- and Medium-Sized Enterprises (for Trial Implementation),* and *Detailed Rules for the Implementation of the Measures for the Administration of International Market Developing Funds of Small- and Medium-Sized Enterprise (for Provisional Implementation)* to support the development of small and medium-sized enterprise.[137] The GOC added that in May 2010, this program was renewed and the above listed legislation was replaced by the *Measures for Administration of International Market Developing Funds of Small- and Medium-Sized Enterprises (Market Developing Funds Measure).*[138] The GOC explained that after the promulgation of the *Market Developing Funds Measure,* the export value eligibility criterion was modified to state that an applicant enterprise must have had an export value in the previous year of less than $45,000,000.[139]

Neither Changzheng Evaporator nor the GOC provided any information to warrant a reconsideration of the Department's determination that this program is a countervailable export subsidy. Therefore, consistent with the *Investigation*, we find that the grant, which Changzheng Evaporator received under this program, constitutes a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively, and is specific under section 771(5A)(A) and (B) of the Act because the program supports the international market activities of SMEs and is contingent upon export performance.

The Department treats grants under this program as non-recurring subsidies under 19 CFR 351.524(c).[140] We, thus, conducted the "0.5 percent test" of 19 CFR 351.524(b)(2), by dividing the grant amount by Changzheng Evaporator's total export sales for the year the grant was approved/received.[141]

We find that the grant received in 2010 was less than 0.5 percent of the total export sales denominator for the year of approval/receipt. Therefore, we have expensed the grant amount to the year of receipt. To calculate the subsidy rate, we divided the full amount of the grant by Changzheng Evaporator's total export sales for 2010.

On this basis, we find that Changzheng Evaporator received a countervailable subsidy of 0.01 percent *ad valorem* in 2010.

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[135] *See Aluminum Extrusions from the PRC Investigation*, and accompanying Issues and Decision Memorandum at "International Market Exploration Fund (SME Fund)."
[136] *See* Changzheng Evaporator's IQR (January 8, 2013) at 18-21.
[137] *See* GOC's IQR (January 9, 2013) at 20, as well as Exhibits D-1-1 and D-1-2.
[138] *Id*., at 20 and Exhibit D-1-3.
[139] *Id*., at 22 and Exhibit D-1-3 (Article 6 of *Market Developing Funds Measure*).
[140] *See Aluminum Extrusions from the PRC Investigation*, and accompanying Issues and Decision Memorandum at "International Market Exploration Fund (SME Fund)."
[141] Where the company was unable to report the date/year of approval of the grant, we used the date/year of receipt of the grant for the yearly sales denominator used in the 0.5 percent test.

E. Expanding Production and Stabilizing Jobs Fund of Jiangsu Province

Changzheng Evaporator reported that it received assistance under this program in 2009 and 2010.[142] The GOC stated that the program was established by the government of Jiangsu Province during 2008 in response to the global economic crisis to assist enterprises restore their businesses.[143] The GOC explained that any enterprise in Jiangsu Province which had an increase in export volume in 2008, over 2007 export volume, was eligible for assistance under this program.[144] The GOC stated that after the funds were disbursed in 2010, the program was terminated, but did not provide any documentation to substantiate the termination.[145] The GOC added that there are no laws or regulations pertaining to this program.[146] Changzheng Evaporator reported that it neither submitted an application for the grants, nor received any written approval for the assistance received.[147]

We determine that grants received by Changzheng Evaporator under this program constitute a financial contribution and benefit under sections 771(5)(D)(i) because it is the direct transfer of funds and 771(5)(E) of the Act, respectively. Regarding specificity, section 771(5A)(B) of the Act states that an export subsidy is a subsidy that is, in law or in fact, contingent upon export performance, alone or as one of two or more conditions. We find that the grant under this program are contingent on export activity and, thus, specific under section 771(5A)(A) and (B) of the Act.

Because Changzheng Evaporator cannot expect to receive ongoing assistance under this program,[148] we are treating the grants as a non-recurring subsidy under 19 CFR 351.524(c). We, thus, conducted the "0.5 percent test" of 19 CFR 351.524(b)(2), by dividing the grant amount by Changzheng Evaporator's total export sales for the year the grant was approved/received.[149] We find that the grant which Changzheng Evaporator received in 2009 was less than 0.5 percent of the company's total export sales for the year of approval/receipt. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed this grant to the year of receipt, *i.e.*, 2009, which is prior to the POR.

Concerning the 2010 assistance, we find that this grant is less than 0.5 percent of the company's total export sales for the year of approval/receipt. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant to the year of receipt, *i.e.*, 2010, which is during the POR. To calculate the subsidy rate, we divided the full amount of the grant by Changzheng Evaporator's total export sales for 2010.

On this basis, we find that Changzheng Evaporator received a countervailable subsidy rate of 0.12 percent *ad valorem* for 2010.

[142] *See* Changzheng Evaporator's SQR (March 6, 2013) at 16-20, and 31-33.
[143] *See* GOC's SQR (March 27, 2013) at 1.
[144] *Id*., at 2.
[145] *Id.*, at 5.
[146] *See* GOC's SQR (April 25, 2013) at 1.
[147] *See* Changzheng Evaporator's SQR (March 6, 2013) at 16
[148] *Id*., at 19.
[149] Where the company was unable to report the date/year of approval of the grant, we used the date/year of receipt of the grant for the yearly sales denominator used in the 0.5 percent test.

F. Technical Standards Awards

Changzheng Evaporator reported that it received technology rewards in 2010 from the Xinbei District Government and Changzhou City Government based on a single application it filed in 2009.[150] In its response, the GOC provided information for "Technical Standards Awards of Changzhou Municipality" and "Technical Standards Awards of Xinbei District, Changzhou Municipality."[151]

The GOC stated that the governments of Changzhou Municipality and Xinbei District Changzhou Municipality established programs in 2006 and 2007, respectively, to promote technical standards.[152] The GOC explained that entities which participate in technical standards development projects may apply for awards under the programs.[153] The GOC added that the "main entities that are engaged in a qualified national technical standards development project and have independent intellectual property rights, upon application review and approval, can receive a one-time award."[154] The GOC further stated that to qualify for an award, the technical standards projects are to be in line with the orientation of the industry development of Changzhou Municipality and Xinbei District.[155]

We determine that the technical standards awards which Changzheng Evaporator received are countervailable subsidies. The grant is a financial contribution pursuant to section 771(5)(D)(i) of the Act and provides a benefit in the amount of the grant provided, pursuant to section 771(5)(E) of the Act and 19 CFR 351.504(a). We find that grants from this program are specific as a matter of law to certain enterprises, namely those involved in technical standards projects, which comply with the direction of industrial development in the Changzhou Municipality and Xinbei District, pursuant to section 771(5A)(D)(i) of the Act.

In accordance with 19 CFR 351.524(c), we are treating this one-time grant as a non-recurring subsidy, and performed the "0.5 percent test" of 19 CFR 351.524(b)(2). We divided the total amount of the grant by Changzheng Evaporator's total sales denominator for the year of approval/receipt.[156] Because the resulting percentage is less than 0.5 percent, we are expensing the full amount of the grant in 2010. To determine Changzheng Evaporator's subsidy rate from the grant, we divided the benefit expensed in 2010 by the company's total sales denominator for 2010. On this basis, we find that Changzheng Evaporator received a countervailable subsidy rate of 0.24 percent *ad valorem* for 2010.

[150] *See* Changzheng Evaporator's SQR (March 6, 2013) at 20-25.
[151] *See* GOC's SQR (March 27, 2013) at 8-22.
[152] *Id*., at 8 and 15; *see also* GOC's SQR (April 25, 2013) at Exhibit C-1 and Exhibit C-2, for the respective laws.
[153] *See* GOC's SQR (March 27, 2013) at 9 and 16.
[154] *Id*.
[155] *Id*., at 10 and 17.
[156] Where the company was unable to report the date/year of approval of the grant, we used the date/year of receipt of the grant for the yearly sales denominator used in the in the 0.5 percent test.

G. State Key Technology Renovation Project Fund

In *Tires from the PRC*, we determined that the State Key Technology Program provided countervailable subsidies within the meaning of section 771(5) of the Act.[157] We found that grants provided under this program were a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act, providing a benefit under section 771(5)(E) of the Act in the amount of the grant. We further determined that the grants provided under this program were limited as a matter of law to certain enterprises, *i.e.*, large-sized state-owned enterprises and large-sized state holding enterprises among the 512 key enterprises, 120 pilot enterprise groups and the leading enterprises in industries, and, hence, are specific under section 771(5A)(D)(i) of the Act.[158]

In this administrative review, we continue to find the State Key Technology Program to be countervailable. The information in this review is consistent with the information underlying our analysis in *Tires from the PRC*, and no new information has been placed on the record of this administrative review to warrant a change in our finding in *Tires from the PRC*.

The Alnan Companies reported that they received benefit under this program. Consistent with 19 CFR 351.524(c)(1), we are treating grants received under this program as "non-recurring." We performed the "0.5 percent test" of 19 CFR 351.524(b)(2). We divided the total value of the grant by the relevant sales value for the year in which the grant was approved. Because the resulting percentage is greater than 0.5 percent, we are allocating the grant over 12 years, which is the average useful life of assets for the industry.[159]

To calculate the countervailable subsidy rate, we divided the benefits attributable to the POR according to the methodology described above in the "Subsidies Valuation Information" section. On this basis, we determine that the Alnan Companies received a countervailable subsidy rate of 0.04 percent *ad valorem* for 2010 and 0.03 percent *ad valorem* for 2011.

H. Preferential Tax Policies for the Opening and Development of Beibu Gulf Economic Zone of Guangxi Zhuang Autonomous Region (Local Income Tax Exemption)

The GOC reported that this this program was established in 2008 in accordance with the regulation titled *Several Policies on the Opening and Development of Beibu Gulf Economic Zone of Guangxi (GUIZHENGFA {2008} No.61)* and that that purpose of the program is to promote development of the economic zone.[160]

Under this program, companies which qualify for the program under Article 9 of *GUIZHENGFA {2008} No. 61* are exempted from paying the local portion of their yearly corporate income

[157] *See Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances*, 73 FR 40480 (July 15, 2008) (*Tires from the PRC*), and accompanying Issues and Decision Memorandum at "State Key Technology Renovation Project Fund."
[158] *Id*.
[159] *See Aluminum Extrusions from the PRC Investigation*, and accompanying Issues and Decision Memorandum at "Allocation Period."
[160] *See* GOC's NSA QR (March 21, 2013) at pages 5-13.

taxes.[161] From January 1, 2008, to December 31, 2010, under Items 1, 2 and 3 of Article 9 of *GUIZHENGFA {2008} No. 61*, enterprises located within the economic zone, which qualify for the reduced corporate income tax rate of 15 percent under the Preferential Tax Policies for the Development of the Western Regions program (*see* below), also qualify for an additional exemption of the portion of the corporate income tax destined for the local government. From January 1, 2008, to December 31, 2012, enterprises located within the economic zone, which qualify for the reduced corporate income tax rate of 15 percent under the Preferential Tax Program for High and New Technology Enterprises program (*see* below), qualify for the same amount of additional exemption of corporate income taxes. Therefore, under this program, qualified enterprises receiving a reduced corporate income tax rate of 15 percent during these years were eligible to have their corporate income tax rate further reduced to 9 percent.

The GOC reported that the program is administered by the State Administration of Taxation (SAT) and is implemented by the SAT branches at the local level within their respective jurisdictions and that exemption is claimed on line 36 of the Statement of Tax Preferences Table, which is an appendix the corporate tax return.[162]

We determine that this program constitutes a financial contribution in the form of revenue forgone under section 771(5)(D)(ii) of the Act and a benefit under section 771(5)(E) of the Act. The GOC reported that only the enterprises located within Beibu Gulf Economic Zone of Guangxi Zhuang Autonomous Region may benefit from this tax exemption.[163] Therefore, we determine that the program is regionally-specific pursuant to section 771(5A)(D)(iv) of the Act.

The Alnan Companies reported that certain companies within the Alnan Companies corporate grouping received benefits under this program during 2010 and 2011 as indicated on their tax returns. To calculate the countervailable subsidy rate for each year, we divided the benefit by a denominator comprised of the sales of the Alnan Companies (which is net of intercompany sales), according to the methodology described above in the "Subsidies Valuation Information" section.

On this basis, we determine that the Alnan Companies received a countervailable subsidy rate of 0.32 percent *ad valorem* for 2010 and 0.29 percent *ad valorem* for 2011.

I. Preferential Tax Policies for the Development of Western Regions of China

The GOC reported that this program was established in 2001. The purpose of the program is to accelerate the development of China's Western Regions by promoting economic liberalization pursuant to *Circular of the Ministry of Finance, the State Administration of Taxation, the General Administration of Customs on Issues of Incentive Policies on Taxation for the Strategy of the Development in the Western Areas (CAISHUI {2001} No. 202) and Circular on Deepening the Implementation of Tax Policy concerning Development of Western Regions (CAISHUI {2011} No.58).*[164]

[161] *Id*., at 5-13 and Exhibit NSA-D-1.
[162] *Id*.
[163] *Id*.
[164] *See* GOC's NSA QR (March 21, 2013) at 21-28 and at Exhibit NSA-F-1and Exhibit NSA-F-2.

The GOC reported that, from 2001 to 2010, in accordance with Section Two of CAISHUI {2001} No. 202, the income tax on domestic and foreign-invested enterprises established in the Western regions, which are engaged in industries encouraged by the State, is levied at the reduced rate of 15 percent.[165] In accordance with CAISHUI {2011} No.58, from January 1, 2011 to December 31, 2020, the enterprise income tax on an enterprise engaged in an encouraged industry established in western China is levied at the reduced rate of 15 percent.[166]

We determine the program provides a financial contribution in the form of foregone tax revenue and provide a benefit to the recipients in the amount of the tax savings.[167] The GOC reported that, under the program, the term "enterprise in an encouraged industry" refers to an enterprise whose main business falls within the scope of industry projects set out in the *Catalogue of Encouraged Industries in Western China* and whose revenue from its main business accounts for 70 percent or more of its gross income.[168] Therefore, we determine that, because only enterprises located in the Western Regions are eligible for a reduced tax rate, this program is regionally-specific pursuant to section 771(5A)(D)(iv) of the Act.

To calculate the countervailable subsidy rate for each year, we divided the benefit by a denominator comprised of the sales of the Alnan Companies (which is net of intercompany sales), according to the methodology described above in the "Subsidies Valuation Information" section.

On this basis, we determined that the Alnan Companies received a countervailable subsidy rate of 0.52 percent *ad valorem* for 2010 and 0.47 percent *ad valorem* for 2011.

J. Guangxi Awards for Private Enterprises Designated as Pilot Innovation-Oriented Enterprises

The GOC reported that this program was established in October 2011 by the Finance Department and the Science and Technology Department of Guangxi Autonomous Region. The purpose of the program is to honor private enterprises designated as national pilot innovation-oriented enterprises or excellent Guangxi pilot innovation-oriented enterprises pursuant to the *Measures of Guangxi for Awards for Private Enterprises Designated as Pilot Innovation-Oriented Enterprises*. An award of 1,000,000 RMB may be granted to enterprises with the former designation, and enterprises with the latter may receive awards of 500,000 RMB.[169]

To qualify for an award under the program, an enterprise: 1) must have R&D expenditures of a certain level, 2) must have applied for a patent for an invention with in the past three years, 3) must have developed new products, techniques, or services, within the past three years, and 4) must have independent R&D branches.[170]

[165] *Id*., at Exhibit NSA-F-1.
[166] *Id.*, at Exhibit NSA-F-2.
[167] *See* section 771(5)(D)(ii) of the Act, section 771(5)(E) of the Act, and 19 CFR 351.509(a)(1).
[168] *Id*.
[169] *See* program "B" of GOC's SQR (regarding Kromet) (April 22, 2013) at 9-14 and Exhibit K-2.
[170] *Id*., at 10 and Exhibit K-2.

Based on our analysis of the laws and regulations provided by the GOC for this program, we find a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act and provide a benefit in the amount of the grant, pursuant to section 771(5)(E) of the Act and 19 CFR 351.504(a). We also determine that this program is *de jure* specific under section 771(5A)(D)(i) of the Act because the eligibility for benefits under the program is limited to a group of companies or industries, namely companies that meet the criteria to be designated as innovation-oriented enterprises.

Under 19 CFR 351.524(c)(1), we are treating grants received under this program as "non-recurring." We performed the "0.5 percent test" of 19 CFR 351.524(b)(2). Because the Alnan Companies did not receive any grants which passed the "0.5 percent test," we expensed each grant amount in the year of receipt. To calculate the countervailable subsidy rate for each year, we divided the benefit by a denominator comprised of the sales of the Alnan Companies (which is net of intercompany sales), according to the methodology described above in the "Subsidies Valuation Information" section.

On this basis, we determine that this program is countervailable and have calculated, for the Alnan Companies a countervailable subsidy program rate of 0.03 percent *ad valorem* for 2011.

K. Special Funds of Guangxi Autonomous Region for Small Highland of Talents

The GOC reported that this program was established in July 2004 by the Finance Department and the Department of Human Resources and Social Security of Guangxi Autonomous Region. The purpose of the program is to attract and cultivate high-level and innovative talents pursuant to *Measures for Administration of Special Funds of Guangxi Autonomous Region for Small Highland of Talents*.[171]

To qualify for an award under the program an enterprise must meet these requirements: (1) "have intensive human resources of high-level talents; (2) the specialization structure of its talents must be in line with the development orientations of important industries, important projects, important disciplinary fields and superior enterprises and government-sponsored institutions that have strong innovation capacity, (3) have a sound innovation environment and relatively strong economic capacity; (4) have a work plan for construction of the small highland of talents."[172]

Based on our analysis of the laws and regulations provided by the GOC for this program, we determine that grants provided under this program are financial contributions in the form of a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act and provide a benefit to the Alnan Companies in the amount of the grant, pursuant to section 771(5)(E) of the Act and 19 CFR 351.504(a). We also determine that this program is *de jure* specific under section 771(5A)(D)(i) of the Act due to provisions in the laws and/or regulations indicating that eligibility for benefits under the program is limited to a group of companies or industries, namely enterprises that are "approved and publically announced carrier entities" which must meet

[171] *See* program "C" of GOC's SQR (regarding Kromet) (April 22, 2013) at 15-22 and Exhibit K-3.
[172] *Id*., at 17 and Exhibit K-3.

innovation criteria and a criterion requiring involvement in important industries, projects, or fields.

Under 19 CFR 351.524(c)(1), we are treating grants received under these programs as "non-recurring." We performed the "0.5 percent test" of 19 CFR 351.524(b)(2). Because the Alnan Companies did not receive any grants which passed the "0.5 percent test," we have expensed each grant in the year of receipt. To calculate the countervailable subsidy rate for each year, we divided the benefit by a denominator comprised of the sales of the Alnan Companies (which is net of intercompany sales),according to the methodology described above in the "Subsidies Valuation Information" section.

On this basis, we determine that this program is countervailable and have calculated for the Alnan Companies a countervailable subsidy rate of 0.09 percent *ad valorem* for 2010 and 0.03 percent *ad valorem* for 2011.

L. Special Funds of Nanning Municipality for Small Highland of Talents

The GOC reported this program was established in 2005 by the Government of Nanning Municipality. The purpose of the program is to attract and cultivate high-level and innovative talents pursuant to *Measures for Building Nanning Small Highland of Talents*.[173]

To qualify for an award under the program, an enterprise must meet these requirements: "(1) have intensive human resources of high-level talents; (2) the specialization structure of its talents must be in line with the development orientations of important industries, important projects, important disciplinary fields and superior enterprises and government-sponsored institutions that have strong innovation capacity, (3) have sound innovation environment and relatively strong economic capacity; (4) have a work plan for construction of the small highland of talents."[174]

Based on our analysis of the laws and regulations provided by the GOC for this program, we determine that grants provided under this program are financial contributions in the form of a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act and provide a benefit to the Alnan Companies in the amount of the grant, pursuant to section 771(5)(E) of the Act and 19 CFR 351.504(a). We also determine that this program is *de jure* specific under section 771(5A)(D)(i) of the Act due to provisions in the laws and/or regulations indicating that eligibility for benefits under the program is limited to a group of companies or industries which must meet innovation criteria and a criterion requiring involvement in industries, project, or fields deemed "important" by the municipal government.

Under 19 CFR 351.524(c)(1), we are treating grants received under these programs as "non-recurring." We performed the "0.5 percent test" of 19 CFR 351.524(b)(2). Because the Alnan Companies did not receive any grants which passed the "0.5 percent test," we have expensed each grant in the year of receipt. To calculate the countervailable subsidy rate for each year, we divided the benefit by a denominator comprised of the sales of the Alnan Companies (which is

[173] *See* program "D" of GOC's SQR (regarding Kromet) (April 22, 2013) at 29-35 and Exhibit K-4.
[174] *Id.*, at 23 and Exhibit K-4.

net of intercompany sales), according to the methodology described above in the "Subsidies Valuation Information" section.

On this basis, we find that this program is countervailable and have calculated for the Alnan Companies a countervailable subsidy rate of 0.03 percent *ad valorem* for 2010 and 0.02 percent *ad valorem* for 2011.

M. Assistance for Science Research and Technology Development Planning Projects of Nanning Municipality

The GOC reported that this program was established in January 2005 by the Science and Technology Bureau of Nanning Municipality. The purpose of the program is to support science and technology research and development (R&D) pursuant to *Interim Measures for Administration of Nanning Science and Technology Planning Projects*.[175]

To qualify for an award under this program, an enterprise must meet these requirements: (1) be registered in Nanning Municipality, be an independent legal person, and be able to take legal liability independently; (2) be specialized in the areas it intends to engage in; (3) have the necessary professionals, technologies, equipment and funds to complete the project; (4) have the necessary organizing and coordinating capacities and effective management system to complete the project; (5) have a good reputation.[176]

Based on our analysis of the laws and regulations provided by the GOC for this program, we determine that grants provided under this program are financial contributions in the form of a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act and provide a benefit to the Alnan Companies in the amount of the grant, pursuant to section 771(5)(E) of the Act and 19 CFR 351.504(a). We also determine that this program does not contain provisions that indicate that the program is *de jure* specific under section 771(5A)(D)(i) of the Act. However, the GOC did not provide the requested *de facto* specificity information for this program. Thus, as explained above, as AFA, we determine that this program is *de facto* specific under section 771(5A)(D)(iii) of the Act.

Under 19 CFR 351.524(c)(1), we are treating grants received under these programs as "non-recurring." We performed the "0.5 percent test" of 19 CFR 351.524(b)(2). Because the Alnan Companies did not receive any grants which passed the "0.5 percent test," we have expensed each grant in the year of receipt. To calculate the countervailable subsidy rate for each year, we divided the benefit by a denominator comprised of the sales of the Alnan Companies (which is net of intercompany sales), attributable to the POR according to the methodology described above in the "Subsidies Valuation Information" section.

On this basis, we find that this program is countervailable and have calculated for the Alnan Companies a countervailable subsidy rate of 0.17 percent *ad valorem* for 2010.

[175] *See* program "E" of GOC's SQR (regarding Kromet) (April 22, 2013) at 29-34 and Exhibit K-5.
[176] *Id*., at 30 and Exhibit K-5.

N. Special Funds of Nanning Municipality for Academic and Technical Leaders of the New Century

The GOC reported that this program was established in 1999 by the Government of Nanning of Nanning Municipality. The purpose of the program is to encourage the development of science and technology professionals and cultivate a new generation of academic and technical leaders, pursuant to *Administrative Measures of Nanning Municipality for Cultivating and Selecting Academic and Technical Leaders of the New Century (Revised).*[177]

The GOC reported that candidates of the national project called "millions, ten millions of talents," candidates of the Guangxi project called "tens, hundreds, thousands of talents" and candidates a Nanning project called "academic and technical leaders of the new century" may apply for assistance under this program. The GOC also reported that funds under this program are generally used to support the scientific and technological activities of the candidates, including the R&D activities, domestic and overseas short-term training or research, purchase necessary facilities and equipment, improve the working conditions of the key experimental bases, domestic and overseas academic and technical exchange activities and publish academic works. The GOC further reported that the scientific and technical projects to be supported shall be projects for key industries, key programs, and key disciplinary fields of Nanning Municipality.[178]

Based on our analysis of the laws and regulations provided by the GOC for this program, we determine that grants provided under this program are financial contributions in the form of a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act and provide a benefit to the Alnan Companies in the amount of the grant, pursuant to section 771(5)(E) of the Act and 19 CFR 351.504(a). We also determine that this program is *de jure* specific under section 771(5A)(D)(i) of the Act due to provisions in the laws and/or regulations indicating that eligibility for benefits under the program is limited to a group of companies or industries, namely key industries, key program and key disciplinary fields within Nanning Municipality. Under 19 CFR 351.524(c)(1), we are treating grants received under these programs as "non-recurring." We performed the "0.5 percent test" of 19 CFR 351.524(b)(2). Because the Alnan Companies did not receive any grants which passed the "0.5 percent test," we have expensed each grant in the year of receipt. . To calculate the countervailable subsidy rate for each year, we divided the benefit by a denominator comprised of the sales of the Alnan Companies (which is net of intercompany sales), according to the methodology described above in the "Subsidies Valuation Information" section.

On this basis, we find that this program is countervailable and have calculated for the Alnan Companies a countervailable subsidy rate of 0.01 percent *ad valorem* for 2010.

[177] *See* program "H" of GOC's SQR (regarding Kromet) (April 22, 2013) at 48-54 and Exhibit K-6.
[178] *Id*., at 49 and Exhibit K-6.

O. Refund of Value Added Tax on Products Made Through Comprehensive Utilization of Resources

The GOC reported that this program was established on July 1, 2008, by the Ministry of Finance and the State Administration of Taxation. The purpose of the program is to promote comprehensive utilization of recycled resources, energy conservation and emission reductions pursuant to *Notice of the Ministry of Finance and State Administration of Taxation about Policies Regarding the Value Added Tax on Products Made through Comprehensive Utilization of Resources and Other Products*.[179]

The GOC reported that, as detailed in Article 4 of *Notice of the Ministry of Finance and the State Administration of Taxation about Policies Regarding the Value Added Tax on Products Made through Comprehensive Utilization of Resources and Other Products*, for the sale of the self-produced electric power and heat generated from coal slack, slime, stone-like coal and oil shale as fuel (of which coal slack, slime, stone-like coal and oil shale shall account for not less than 60 percent of the fuel for generating electric power), a refund of 50 percent is applied immediately after the payment of VAT.[180]

The GOC also reported that to qualify for these VAT refunds, a taxpayer must apply for and obtain a Certificate of Comprehensive Utilization of Resources. To obtain this certificate, an applicant must meet the following requirements: 1) its manufacturing techniques, technologies and products shall comply with the industrial policies and the relevant standards of the state; (2) the profit and loss of products of resources comprehensive utilization may be calculated separately; (3) the sources of its raw materials and fuels shall be stable and reliable, the quantity and quality shall meet the relevant requirements, the complementary conditions on water and electric power shall be put into effect; and (4) it shall satisfy the requirements of environmental protection and will not result in secondary pollution.[181]

Based on our analysis of the laws and regulations provided by the GOC for this program, we determine that tax refunds provided under the program are a financial contribution in the form of revenue foregone by the government and provide a benefit to the recipients in the amount of the tax savings.[182] We also determine that his program is *de jure* specific due to provisions in the laws and/or regulations indicating that eligibility for benefits under the program is limited to a group of companies or industries, namely producers of self-produced electric power and heat which use coal slack, slime, stone-like coal and oil shale accounting for not less than 60 percent of the fuel for generating electric power.

To calculate the countervailable subsidy rate for each year, we divided the benefit by a denominator comprised of the sales of the Alnan Companies (which is net of intercompany sales), according to the methodology described above in the "Subsidies Valuation Information" section.

[179] *See* program "S7" of GOC's SQR (regarding Kromet) (April 29, 2013) at 3-10 and Exhibit 2K-2.
[180] *Id*., at 4.
[181] *Id*., at 23 and Exhibit K-4.
[182] *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1).

On this basis, we determine that this program is countervailable and have calculated for the Alnan Companies a countervailable subsidy rate of 0.06 percent *ad valorem* for 2010, and 0.04 percent *ad valorem* for 2011.

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

In response to Department's supplemental questionnaires regarding grants and other funding received by Alnan Companies, the GOC provided information concerning 32 grant programs under which the Alnan Companies received, namely descriptions of the programs.[183] In addition, the GOC submitted comments that the Department's investigation of these programs is unlawful. As explained in Comment 14, the statute provides that the Department shall include programs discovered during the course of a proceeding in its review.[184] However, the GOC did not provide complete answers in response to our supplemental questionnaires with regard to many of these programs. Specifically, for a number of grant programs, the GOC did not provide the relevant requested laws and regulations and did not provide the requested *de facto* specificity information. As discussed above, we find that the GOC failed to provide necessary information pursuant to section 776(a) of the Act and failed to cooperate by not acting to the best of its ability to comply with the request for information, pursuant to section 776(b) of the Act. Therefore, for each program for which the GOC did not provide the relevant laws or regulations, we determine, as AFA, that the programs are *de jure* specific. For those programs for which the GOC provided the relevant legislation and for which the laws do not provide the basis for *de jure* specificity, we determine, as AFA, that the programs are *de facto* specific.[185] We determine, as AFA, that each of these programs constitute a financial contribution in the form of a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act and a benefit under section 771(5)(E) of the Act and 19 CFR 351.504(a).

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

To calculate the countervailable subsidy rate for each year, we divided the benefit by a denominator comprised of the sales of the Alnan Companies (which is net of intercompany sales), according to the methodology described above in the "Subsidies Valuation Information" section. As explained above in the AFA section, for those programs which GOC did not provide the legislation and regulations but for which the name of the program indicates that it is an export program, as AFA, we calculated the program rate using export sales as the denominator.

[183] *Id.*
[184] *See* section 775 of the Act.
[185] As noted above, our AFA finding that these programs are *de facto* specific is based on the fact that the GOC did not provide information concerning the distribution of benefits on an enterprise and industry-wide basis, as requested in the Standard Questions Appendix of the Initial Questionnaire.

On this basis, we find that the following 13 grant programs are countervailable and have calculated the following *ad valorem* countervailable subsidy program rates for the Alnan Companies for 2010 and 2011, respectively.[186]

	Name of Program	2010 Ad Valorem Rate	2011 Ad Valorem Rate
1.	Guangxi Technology R&D Funds (A.)	0.04%	0.02%
2.	Supporting Funds of Nanning Municipality for "Informatization-industrialization Integration" and Development of Information Industry (F.)		0.02%
3.	Funds for Projects of Science and Technology Professionals serving the Enterprises (G.)	0.04%	
4.	Funds of Nanning Municipality for Technology Innovation (I.)	0.05%	0.05%
5.	Funds of Guangxi Autonomous Region for Enterprises' Technology Renovation (J.)	0.36%	0.11%
6.	Financial Assistance (interest subsidy) of Nanning Municipality for Key Technology Renovation (K.)	0.32%	0.11%
7.	Financial Supporting Funds of Nanning Municipality for Technology Renovation for Production Safety (N.)	0.01%	0.01%
8.	Assistances for R&D projects under Funds of Nanning Municipality for Foreign Trade Development (P.)		0.05%
9.	Awards of Guangxi Autonomous Region for Emission Reduction of Main Pollutants (R.)	0.02%	
10.	National Funds for the Industry Revitalization and Technology Renovation of the Key Fields (S.)	0.25%	
11.	Special Funds of Guangxi Autonomous Region for Production Safety (Supporting Fund for Eliminating Potential and Seriously Dangerous Projects) (U.)	0.01%	
12.	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" (W.)	0.11%	0.08%
13.	Special Funds of Guangxi Beibu Gulf Economic Zone for the Development of Key Industries (S4.)	0.08%	0.06%

II. Programs Determined Not To Provide a Benefit During the POR

A. Programs Used By Changzheng Evaporator

Changzheng Evaporator reported that it received assistance under the following listed programs in 2010 and 2011. We find that the benefit from each program results in a subsidy rate that is

[186] *Id.* For ease of reference, we have provided the letters used by the GOC to identify the grant programs in its supplemental questionnaire responses.

less than 0.005 percent *ad valorem*, for both 2010 and 2011.[187] Consistent with the Department's practice,[188] we are not including program rates of less than 0.005 percent *ad valorem* in the final calculations of the total net subsidy rate for Changzheng Evaporator. We also determine that it is unnecessary for the Department to make a finding as to the countervailability of these programs in the final results of this administrative review.

1. Intellectual Property Reward[189]
2. Support for Disabled Persons[190]

B. Programs Used By the Alnan Companies

The Alnan Companies reported that they received benefits under the following programs during the POR. We find that the benefits received during the POR under each of these programs result in net subsidy rates for the program that are less than 0.005 percent *ad valorem* for both 2010 and 2011.[191] Consistent with the Department's practice,[192] we are not including a program rate of less than 0.005 percent *ad valorem* in the final calculations of the total net subsidy rate for the Alnan Companies.[193] We also determine that it is unnecessary for the Department to make a finding as to the countervailability of these programs in the final results of this administrative review.

1. Tax Reductions for FIEs Purchasing Chinese-Made Equipment

In *Citric Acid Investigation*, *Citric Acid First Review*, and *Citric Acid Second Review* the Department found that this program provided countervailable subsidies.[194] According to the *Provisional Measures on Enterprise Income Tax Credit for Investment in Domestically Produced Equipment for Technology Renovation {Projects}* (CAI SHU ZI {1999} No. 290), a domestically

[187] *See* Final Calculations for Changzheng Evaporator.
[188] *See e.g.*, *CFS from the PRC*, and accompanying Issues and Decision Memorandum at "Analysis of Programs, Programs Determined Not To Have Been Used or Not To Have Provided Benefits During the POI for GE;" *see also Certain Steel Wheels from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 77 FR 17017 (March 23, 2012) (*Steel Wheels from the PRC*), and accompanying Issues and Decision Memorandum at "Income Tax Reductions for Firms Located in the Shanghai Pudong New District."
[189] *See* Changzheng Evaporator's SQR (March 6, 2013) at 4-9.
[190] *Id*., at 9-13, and 25-28.
[191] *See* Final Calculations for Kromet and Alnan Companies.
[192] *See e.g.*, *CFS from the PRC*, and accompanying Issues and Decision Memorandum at "Analysis of Programs, Programs Determined Not To Have Been Used or Not To Have Provided Benefits During the POI for GE;" *see also Steel Wheels from the PRC*, and accompanying Issues and Decision Memorandum at "Income Tax Reductions for Firms Located in the Shanghai Pudong New District."
[193] For ease of reference, the letters used by the GOC to identify the grant programs in it supplemental questionnaires are provided. *See* GOC's SQR (regarding Kromet) (April 22, 2013) at 1-7, and GOC SQR (regarding Kromet) (April 29, 2013) at 1-11 and Exhibit 2K-1.
[194] *See Citric Acid from the PRC*, and accompanying Issues and Decision Memorandum at "Income Tax Credits on Purchases of Domestically Produced Equipment;" *see also Citric Acid from the PRC First Review*, and accompanying Issues and Decision Memorandum at "Income Tax Credits on Purchases of Domestically Produced Equipment;" and *Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010*, 77 FR 72323 (December 5, 2012) (*Citric Acid from the PRC Second Review*), and accompanying Issues and Decision Memorandum at "Income Tax Credits on Purchases of Domestically Produced Equipment."

invested company may claim tax credits on the purchase of domestic equipment if the project is compatible with the industrial policies of the GOC. Specifically, a tax credit of up to 40 percent of the purchase price of the domestic equipment may apply to the incremental increase in tax liability from the previous year.[195]

The Alnan Companies reported that they received tax savings under this program on their income tax returns filed during the POR. Consistent with the prior segments of prior CVD proceedings,[196] we find that income tax credits for the purchase of domestically produced equipment are countervailable subsidies. The tax credits are a financial contribution in the form of revenue foregone by the government and provide a benefit to the recipients in the amount of the tax savings.[197] We further find that these tax credits are contingent upon use of domestic over imported goods and, hence, are specific under section 771(5A)(C) of the Act.

We treated the income tax savings as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To calculate the countervailable subsidy rate for each year, we divided the benefit by a denominator comprised of the sales of the Alnan Companies (which is net of intercompany sales) according to the methodology described above in the "Subsidies Valuation Information" section.

No benefits were attributable to Alnan Aluminum, the parent company, during the POR.

2. Preferential Tax Program for High or New Technology Enterprises

The GOC reported that this program was established on January 1, 2008. Pursuant to Article 28.2 of the *Enterprise Income Tax Law* (EITL) of the PRC, the government provides for the reduction of the corporate income tax rate from 25 percent to 15 percent for enterprises that are recognized as a High or New Technology Enterprise (HNTEs).[198] The conditions to be met by an enterprise to be recognized as an HNTE set forth in Article 93 of the *Regulation on the Implementation of the Enterprise Income Tax Law*.[199]

In the *Citric Acid First Review* and *Citric Acid Second Review*, the Department found this program to be countervailable.[200] Article 28.2 of the EITL authorizes a reduced income tax rate of 15 percent for HNTEs. The criteria and procedures for identifying eligible HTNEs are provided in the *Measures on Recognition of High and New Technology Enterprises* (GUOKEFAHUO {2008} No. 172) (*Measures on Recognition of HNTEs*) and the *Guidance on Administration of Recognizing High and New Technology Enterprises* (GUOKEFA HUO {2008} No.362). Article 8 of the *Measures on Recognition of HNTEs* provides that the science and technology administrative departments of each province, autonomous region, and

[195] *Id*.
[196] *See e.g.*, *Citric Acid from the PRC*, and accompanying Issues and Decision Memorandum at "Income Tax Credits on Purchases of Domestically Produced Equipment."
[197] *See* section 771(5)(D)(ii) of the Act, section 771(5)(E) of the Act, and 19 CFR 351.509(a)(1).
[198] For the EITL, *see* GOC's IQR (January 9, 0130) at Exhibit B-2.
[199] *See* GOC's NSA QR (March 21, 2013) at Regulation on the Implementation of the EITL at Exhibit NSA-E-1.
[200] *See Citric Acid from the PRC First Review*, and accompanying Issues and Decision Memorandum at "Reduced Income Tax Rate for High or New Technology Enterprises;" and *Citric Acid from the PRC Second Review*, and accompanying Issues and Decision Memorandum at "Reduced Income Tax Rate for High or New Technology Enterprises."

municipality directly under the central government or cities under separate state planning shall collaborate with the finance and taxation departments at the same level to recognize HTNEs in their respective jurisdictions.[201]

The annex of the *Measures on Recognition of HNTEs* lists eight high- and new-technology areas selected for the State's "primary support:" 1) Electronics and Information Technology; 2) Biology and New Medicine Technology; 3) Aerospace Industry; 4) New Materials Technology; 5) High-tech Service Industry; 6) New Energy and Energy-Saving Technology; 7) Resources and Environmental Technology; and 8) High-tech Transformation of Traditional Industries.[202]

The GOC reported that the program is administered by the SAT and is implemented by the SAT branches at the local level within their respective jurisdictions and that exemption is claimed on line 28 of the Statement of Tax Preferences Table, which is an appendix the corporate tax return.[203]

The Alnan Companies reported that they received tax savings under this program in the amounts indicated on income tax returns filed during the POR. Consistent with the *Citric Acid First Review* and *Citric Acid Second Review*, we find that the reduced income tax rate paid by the Alnan Companies is a financial contribution in the form of revenue foregone by the GOC, and provides a benefit to the recipient in the amount of the tax savings.[204] We also determine, consistent with the *Citric Acid First Review* and *Citric Acid Second Review*, that the reduction afforded by this program is limited as a matter of law to certain new and high technology companies selected by the government pursuant to legal guidelines specified in *Measures on Recognition of HNTEs* and, hence, is specific under section 771(5A)(D)(i) of the Act. Both the number of targeted industries (eight) and the narrowness of the identified project areas under those industries support a finding that the legislation expressly limits access to the program to a specific group of enterprises or industries.

To calculate the benefit, we compared the income tax rate that Alnan Companies would have paid in the absence of the program (25 percent) to the income tax rate that the companies actually paid. We treated the income tax savings as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To calculate the countervailable subsidy rate for each year, we divided the benefit by a denominator comprised of the sales of the Alnan Companies (which is net of intercompany sales), according to the methodology described above in the "Subsidies Valuation Information" section. No benefits were attributable to Alnan Aluminum, the parent company, during the POR .

3. Awards of Nanning Municipality for Advancement of Science and Technology (L.)
4. Award of Nanning Municipality for Industrial Enterprises Completing Energy Saving Tasks (M.)

[201] *Id*.
[202] *Id*.
[203] *See* GOC's NSA QR (March 21, 2013) at 19.
[204] *See* section 771(5)(D)(ii) of the Act, section 771(5)(E) of the Act, and 19 CFR 351.509(a)(1).

5. Membership Fee Refunds for Members of Rescue Sub-team of Guangxi Emergency and Rescue Association for Production Safety (O.)
6. Funds of Nanning Municipality for Sustainable Development of Foreign Trade (Q.)
7. Funds for Demonstration Bases of Introducing Foreign Intellectual Property (T.)
8. Funds of Nanning Municipality for Project Preliminary Works (V.)
9. Funds of Guangxi Autonomous Region for Promotion of Foreign Trade Development of the West Region (X.)
10. Awards of Nanning Municipality for Excellent Foreign Trade Enterprises (Y.)
11. Special Funds of Nanning Municipality for key Planning Project of Professionals Cultivation (S1.)
12. Special Funds for Projects of National Science and Technology Supporting Plan (S2.)
13. Funds of Guangxi Autonomous Region for Energy Saving and Emission Reduction (S3.)
14. Awards of Nanning High-tech Zone for Annual top Tax Payers of Industrial Enterprises (S5.)
15. Awarding Funds of Guangxi Autonomous Region for Renovation of Energy-Saving Technologies (S6.)
16. National Special Funds for Emission of Main Pollutants (Assistance for Construction of Automatic Surveillance of Key Pollutant Sources) (S8.)

III. Programs Determined Not To Be Not Used During the POR

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

A. Exemption from City Construction Tax and Education Tax for Foreign-Invested Enterprises (FIEs)
B. Two Free, Three Half Income Tax Exemptions for FIEs
C. Preferential Tax Program for FIEs Recognized as High and New-Technology Enterprises (HNTEs)
D. Provincial Government of Guangdong (PGOG) Tax Offset for Research and Development (R&D)
E. Refund of Land-Use Tax for Firms Located in the Zhaoqing New and High-Tech Industrial Development Zone (ZHTDZ)
F. Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries
G. Fund for SME Bank-Enterprise Cooperation Projects
H. Special Fund for Significant Science and Technology in Guangdong Province
I. Fund for Economic, Scientific, and Technology Development
J. Provincial Fund for Fiscal and Technological Innovation
K. Provincial Loan Discount Special Fund for SMEs
L. Export Rebate for Mechanic, Electronic, and High-Tech Products
M. PGOG Special Fund for Energy Saving Technology Reform

N. PGOG Science and Technology Bureau Project Fund (aka, Guangdong Industry, Research, University Cooperating Fund)
O. Provision of Land-Use Rights and Fee Exemptions to Enterprises Located in the ZHTDZ for LTAR
P. Provision of Land-Use Rights to Enterprises Located in the South Sanshui Science and Technology Industrial Park for LTAR
Q. Labor and Social Security Allowance Grants in Sanshui District of Guangdong Province
R. "Large and Excellent" Enterprises Grant
S. Advanced Science/Technology Enterprise Grant
T. Award for Self-Innovation Brand/Grant for Self-Innovation Brand and Enterprise Listing
U. Tiaofeng Electric Power Subscription Subsidy Funds
V. Award for Excellent Enterprise
W. Export Incentive Payments Characterized as VAT Rebates
X. PGOG and Foshan City Government Patent and Honor Award Grants
Y. Foshan City Government Technology Renovation and Technology Innovation Special Fund Grants
Z. Nanhai District Grants to State and Provincial Enterprise Technology Centers and Engineering Technology R&D Centers
AA. Loans and Interest Subsidies Provided Pursuant to the Northeast Revitalization Program
BB. Provincial Tax Exemptions and Reductions for "Productive" FIEs
CC. Tax Reductions for FIEs in Designated Geographic Locations
DD. Tax Reductions for Technology- or Knowledge-Intensive FIEs
EE. Tax Credits for Domestically-Owned Companies Purchasing Chinese-Made Equipment
FF. Tax Reductions for Export-Oriented FIEs
GG. Tax Refunds for Reinvesting of FIE Profits in Export-Oriented Enterprises
HH. Accelerated Depreciation for Enterprises Located in the Northeast Region
II. Forgiveness of Tax Arrears for Enterprises in the Old Industrial Bases of Northeast China
JJ. VAT Rebates on FIE Purchases of Chinese-Made Equipment
KK. Exemptions from Administrative Charges for Companies in the ZHTDZ
LL. Grants to Cover Legal Fees in Trade Remedy Cases in Zhenzhen
MM. Clean Production Technology Fund
NN. Grants for Listing Shares: Liaoyang City (Guangzhou Province), Wenzhou Municipality (Zhejiang Province), and Quanzhou Municipality (Fujian Province)
OO. Northeast Region Foreign Trade Development Fund
PP. Land Use Rights in the Liaoyang High-Tech Industry Development Zone
QQ. Allocated Land Use Rights for State-Owned Enterprises
RR. Tax Refunds for Enterprises Located in the ZHTDZ
SS. Provision of Electricity for LTAR to FIEs Located in the Nanhai District of Foshan City
TT. Nanhai District Grants to High and New Technology Enterprises

UU. Government Provision of Land-Use Rights to Enterprises Located in the Yongji Circular Economic Park for LTAR
VV. Purchase of Aluminum Extrusions for More Than Adequate Remuneration
WW. Support for the Tax Refund Difference Program[205]
XX. Export Credit Subsidy Program: Export Seller's Credits
YY. Export Credit Subsidy Program: Export Buyer's Credits
ZZ. Development Assistance Grants from the ZHTDZ Local Authority

Ad Valorem Rate for Non-Selected Companies under Review

The statute and the Department's regulations do not directly address the establishment of rates to be applied to companies not selected for individual examination where the Department limited its examination in an administrative review pursuant to section 777A(e)(2) of the Act. However, the Department normally determines the rates for non-selected companies in reviews in a manner that is consistent with section 705(c)(5) of the Act, which provides instructions for calculating the all other rate in an investigation. We also note that section 777A(e)(2) of the Act provides that "the individual countervailable subsidy rates determined under subparagraph (A) (limiting respondents) shall be used to determine the all others rate under section {705(c)(5) of the Act}." Section 705(c)(5)(A) of the Act instructs the Department to calculate an all others rate using the weighted average of the subsidy rates established for the producers/exporters individually examined, excluding any zero, *de minimis*, or facts available rates. In this review, the final subsidy rates for 2010 and 2011 calculated for the two mandatory respondents are above *de minimis* and neither were determined entirely under facts available.

As explained in the *Preliminary Results*, because calculating the non-selected rate by weight averaging the rates of the respondents risked disclosure of proprietary information, we calculated the non-selected rate for 2010 and 2011, respectively, by taking a simple-average of the subsidy rates computed for Changzheng Evaporator and the Alnan Companies.[206]

We received comments from interested parties on the preliminary calculation of the non-selected rate. *See* Comment 3, below. After considering those comments, we have decided to modify the calculation of the non-selected rate. *Id*. For these final results, we have calculated the rate for the non-selected companies by weight-averaging the rates of Changzheng Evaporator and the Alnan Companies using publicly-ranged sales data. As such, to each of the 49 non-selected companies, for which a review was requested and not rescinded, but were not selected as mandatory respondents,[207] we are assigning a final subsidy rate of 10.23 percent *ad valorem* for 2010 and 9.67 percent *ad valorem* for 2011.[208]

[205] Changzheng Evaporator received assistance under this program, however the grant was expensed prior to the POR. *See* Final Calculations for Changzheng Evaporator.
[206] *See Preliminary Results*, and accompanying Issues and Decision Memorandum at "Preliminary Ad Valorem Rate for Non-Selected Companies under Review."
[207] For a list of the non-selected companies, *see Aluminum Extrusions from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010 and 2011*, signed concurrently with this final decision memorandum.
[208] *See* Department Memorandum regarding "Non-Selected Rate Calculation for the Final Results" (Non-Selection Rate Memorandum), dated concurrently with, and hereby adopted by, this memorandum.

Ad Valorem Rate for Non-Cooperative Companies under Review

In this administrative review, we must also assign a rate to the three companies that failed to respond to the Department's Q&V questionnaire. As discussed above in the "Use of Facts Otherwise Available and Adverse Inferences" section we find that it is appropriate to assign to these companies the total AFA rate of 121.22 percent *ad valorem.*[209]

Analysis of Comments

Comment 1: Application of the CVD Law to the PRC

Case Brief of the GOC:

- The World Trade Organization (WTO) Appellate Body and the Court of Appeals for the Federal Circuit have determined that the application of the CVD law to the PRC while simultaneously using the NME methodology to calculate AD duties on the same merchandise is inconsistent with WTO obligations and U.S. law, respectively.[210]
- The retroactive application of Public Law 112-99 (2012) raises constitutional issues.
- Public Law 112-99 violates the *ex post facto* clause of the Constitution, due process guaranteed by the Fifth Amendment, and equal protection of the laws also guaranteed by the Fifth Amendment.
- The application of the CVD law to the PRC, while at the same time considering the PRC to be an NME under the AD law, is harsh, oppressive, and arbitrary because the Department has acknowledged that it cannot identify or accurately measure subsidies in NME countries.[211]
- The Department made a public commitment to not apply the CVD laws to NME countries,[212] which it has breached by continuing to treat the PRC as an NME and by considering countervailing payments allegedly provided by the GOC dating back to 2001.
- The Department should remedy the unconstitutional application of the CVD law to the PRC by finding that it cannot identify and measure subsidies in the PRC under Public Law 112-99, that the PRC no longer warrants being treated as an NME under the AD statute, or that the aluminum extrusions industry is market oriented.

Rebuttal Brief of Petitioner:

- The GOC has made the same arguments in numerous cases and fora (including both the Department and the CIT), and both bodies have rejected the GOC's claims.

[209] *See* AFA Calculations Memorandum.
[210] *See Appellate Body Report, United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/AB/R (March 11, 2011) (*WTO AB Decision*), and *GPX Int'l Tire Corp. v. United States*, 666 F.3d 732 (Fed. Cir. 2011) (*GPX V*).
[211] *See GPX V*, 666 F.3d at 740.
[212] *See Preamble*, 63 FR at 65361.

- At the administrative level, the Department has repeatedly considered the GOC's claims and has repeatedly determined that the arguments advanced by the GOC are without merit.[213]

- The CIT has affirmed the viewpoints adopted by the Department and has found the identical arguments of the GOC to be equally without merit. Specifically, the CIT has completely rejected the objections raised by the GOC in two cases.[214]

Department's Position: Public Law 112-99 clarifies that the Department has the authority to apply the CVD law to imports from NME countries, such as the PRC. The GOC contends that the Department lacks such authority by relying on a court decision which never became final and was, in fact, superseded by a later decision.[215] The CIT has recently affirmed the constitutionality of Public Law 112-99, rejecting the same claims that the GOC has raised in this case.[216] We disagree that Public Law 112-99 violates equal protection of the law as guaranteed by the Fifth Amendment's due process clause. Section 1 of Public Law 112-99 imposes no new obligation on parties, but merely reaffirms the Department's authority to apply the CVD law to NME countries. Thus, section 1 does not single out one group of companies and deny them the "protections" of section 2. Rather, section 1 simply confirms that existing law, to which all companies already were subject, applies. Further, the distinction between section 1 and section 2 of the legislation serves a rational purpose. As evidenced by the legislative history, section 2 of Public Law 112-99 was adopted, in part, to bring the United States into compliance with its WTO obligations.[217] Given the statutory scheme for prospective implementation of adverse WTO decisions,[218] it was entirely reasonable for Congress to decline to upset the finality of already-completed administrative determinations or to impose new obligations in administrative proceedings already in progress by requiring the Department to make adjustments not necessary to bring the United States into compliance with its WTO obligations.

Further, we disagree that the legislation violates the Fifth Amendment's due process clause. Section 1 of Public Law 112-99 is not retroactive. Rather, it clarifies existing law by ensuring that the Department will continue to apply the CVD law to NME countries. Congress enacted the legislation to prevent the Court's holding in *GPX V* – a decision that would have changed existing law – from becoming final and taking effect.[219] In any event, even if section 1 of Public

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[213] *See e.g., Drawn Stainless Steel Sinks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 13017 (February 26, 2013) (*Steel Sinks from the PRC*), and accompanying Issues and Decision Memorandum at Comment 1; and *Solar Cells from the PRC*, and accompanying Issues and Decision Memorandum at Comment 1.

[214] *See GPX Int'l Tire Corp. v. United States*, 893 F. Supp. 2d 1296, 1334 (CIT 2013) (*GPX VII*), and *Guangdong Wireking Housewares and Hardware Co., Ltd. v. United States*, 900 F. Supp. 2d 1362, 1371 (CIT 2013) (*Guangdong Wireking*).

[215] *See GPX Int'l Tire Corp. v. United States*, 678 F.3d 1308 (Fed. Cir. 2012) (remanding to the CIT for a determination of the constitutionality of Public Law 112-99), and *GPX VII* (holding that Public Law 112-99 is constitutional).

[216] *See GPX VII*, 893 F. Supp. 2d at 1334, and *Guangdong Wireking*, 900 F. Supp. 2d at 1371.

[217] *See e.g.*, 158 Cong. Rec. at H1167–68, H1171 (daily ed. March 6, 2012) (statements of Representatives Camp, Brady, and Jackson Lee).

[218] *See* 19 U.S.C. § 3533, 3538.

[219] *See e.g.*, 158 Cong. Rec. at H1167–68 (daily ed. March 6, 2012) (statements of Representatives Camp, Levin, Rohrabacher, and Boustany).

Law 112-99 were considered retroactive, it does not violate the due process clause. This is because the legislation has a rational basis, which is to correct what was perceived by Congress to be an erroneous decision in *GPX* by confirming and clarifying the existing law.[220]

We also disagree that Public Law 112-99 is a prohibited *ex post facto* law. The *ex post facto* clause of the Constitution bars retroactive application of penal legislation, but, as just described, section 1 of Public Law 112-99 is not retroactive. Even if that section were considered retroactive, it is not penal, because it merely clarifies that the government can collect duties proportional to the harm caused by unfair foreign subsidization. In this regard, the CVD law is remedial in nature.

Lastly, contrary to the GOC's arguments concerning the Department's "commitment" to not applying the CVD law to NME countries, the Department has been applying the CVD law to NME countries since 2006, several years before the imposition of the AD and CVD orders on aluminum extrusions. Further, we continue to find that the use of a December 11, 2001, cut-off date for measuring subsidies in China is appropriate, for the reasons outlined in *Solar Cells from the PRC* and accompanying Issues and Decision Memorandum at Comment 1.

Comment 2: Simultaneous Application of CVD and NME Measures

Case Brief of the GOC:

- In the AD preliminary results, the Department adjusted the AD margin for only one respondent (*i.e.*, Kromet) and assigned to the separate rate respondents the rate calculated in the investigation;[221] that rate, however, included no adjustment to eliminate the effect of domestic subsidies because no such adjustment was required under the AD or CVD law at the time. The Department thus needs to revise its preliminary results.
- The WTO Appellate Body found that the Department is required to affirmatively determine whether double counting is occurring, where CVDs are imposed in addition to ADs using the NME methodology.[222]
- Both AD and CVD reviews of aluminum extrusions from China were initiated after February 25, 2012, *i.e.*, after the expiration of the reasonable period of time to comply with the *WTO AB Decision*.[223]
- Further, Public Law 112-99 calls for the Department to make adjustments to avoid including subsidies provided to PRC producers in both the AD and CVD rates.[224]
- To comply with the *WTO AB Decision*, and therefore U.S. law, the Department should adjust the CVD rates, terminate the CVD review, or find that China is not an NME under the AD statute.

[220] *See e.g.*, *Gen. Motors Corp. v. Romein*, 503 U.S. 181, 191 (1992) (upholding retroactive legislation that corrected unexpected results of judicial opinion).
[221] *See Aluminum Extrusion from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Rescission in Part, 2010/12*, 78 FR 34986 (June 11, 2013), and accompanying Issues and Decision Memorandum at 14 and 30-31.
[222] *See WTO AB Decision*, at para 599 and 605.
[223] *See* Agreement Under Article 21.3(b) of the DSU, U.S. – CVDs, WT/DS379/11 (July 8, 2011).
[224] *See* section 777A(f)(1) of the Act.

Rebuttal Brief of Petitioner:

- The GOC's "double remedy" arguments are incorrect. Moreover, even if there were any validity to the GOC's claims, any adjustment for an alleged "double remedy" would be made in the context of the AD proceeding and not in this CVD review.[225]

- The Act prohibits the Department from making an adjustment to the CVD rates for any respondent.[226]

Department's Position: We agree with Petitioner. When the Department makes both AD and CVD determinations with respect to a class or kind of merchandise from an NME, the law provides for any adjustments to be made to the AD margins calculated in the concurrent AD proceeding.[227] Accordingly, there is no basis for the Department to adjust the final calculated CVD rates in this review, and we have not done so.

Comment 3: Calculation of Non-Selected Rate

Case Brief of Petitioner:

- Petitioner disagrees with the Department's preliminarily decision to calculate the subsidy rate for the non-selected respondents using a simple average of the subsidy rates computed for the two mandatory respondents because weight-averaging would risk disclosure of proprietary information.

- Where proprietary data would be revealed, it is the Department's practice to calculate the rate for non-selected respondents based on weight-averaged, ranged public data, rather than on a simple average. Petitioner notes that the Department has previously found that a simple average does not always "yield the best proxy of the weighted-average margin relative to publicly available data."[228]

- In support of its argument, Petitioner cites to several AD cases in which the Department calculated the rate for non-selected responses using weight-averaged, ranged public

[225] *Id*.
[226] *Id*.
[227] *Id*.
[228] *See Light-Walled Rectangular Pipe and Tube from Mexico: Preliminary Results of Antidumping Duty Administrative Review*, 75 FR 55559, 55560-61 (September 13, 2010).

data,[229] asserting that there is no meaningful distinction with respect to the desirability of weight-averaging in determining non-selected respondents' AD margins and non-selected respondents' subsidy rates.

- The Act directs that the determination of non-selected respondents' rates in both AD and CVD investigations correspond to a weighted-average margin of the estimated AD margin or CVD subsidy rates established for exporters and producers individually investigated[230] and although the Act does not contain a similar provision for calculating the non-selected rate in reviews, the Department's practice has been to derive the rate for non-selected respondents in AD and CVD reviews based on guidance from the Act.

- For the final results, the Department should follow its practice and calculate the subsidy rate for the non-selected respondents on the basis of weight-averaged, ranged public data. In order to do that, the Department should either obtain ranged sales data from the mandatory respondents, or should range the respondents' sales data as facts available since the companies failed to provide such public data despite being required to do so under the regulations.[231]

Rebuttal Briefs of Interested Parties:[232]

- There is no basis for the Department to change the calculation methodology for the final results. Petitioner's brief refers only to AD cases where weighted-average rates were used and does not cite to any prior CVD cases where weight-averaging was done.

- The Department's simple average computation is consistent with existing CVD practice, where necessary ranged public information is not available and the Department risks

[229] *See Certain Activated Carbon from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012,* 78 FR 26748 (May 8, 2013), and accompanying Issues and Decision Memorandum at 10; *Certain Activated Carbon from the People's Republic of China; 2010-2011; Final Results of Antidumping Duty Administrative Review*, 77 FR 67337 (November 9, 2012), and accompanying Issues and Decision Memorandum at 29; *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Results of the 2009-2010 Antidumping Duty Administrative Review of the Antidumping Duty Order,* 77 FR 14493 (March 12, 2012), and accompanying Issues and Decision Memorandum at 22-23; and *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53662 (September 1, 2010) (*Ball Bearings from France*), and accompanying Issues and Decision Memorandum.

[230] *See* section 705(c)(5) of the Act (CVD); and section 735(c)(5) of the Act (AD).

[231] 19 CFR 351.304(c)(1).

[232] Rebuttal case brief arguments were submitted by the following interested parties: Peak Products, Newell, Eagle Metal, Whirlpool, and ZAA.

disclosure of proprietary information by weight-averaging,[233] which is the case in this review and, therefore, simple-averaging should continue to be used in the final results.

- The Act authorizes the Department to use "any reasonable method to establish the estimated all others rate for exporters and producers not individually investigated."[234] The Department has relied on that discretion when calculating a simple average rather than a weighted-average for the non-selected rate to avoid revealing proprietary data and running afoul of the Trade Secrets Act.[235]

- This review involves a variety of manufacturers and diverse range of products. Weight-averaging the subsidy rates to calculate a rate for the non-selected respondents suggests that the larger of the two mandatory respondents is somehow more representative of the respondents as a whole simply by virtue of its high volume. Petitioner however has not identified any record evidence to support that conclusion and, therefore, a simple average of the two subsidy rates is more analytically justifiable.

- The Act specifies that the all others rate is a weight average of "the rates that have been established" for the mandatory respondents; publicly ranged data do not represent the actual rates which have been established for the mandatory respondents.

- Contrary to Petitioner's argument that the only permissible public summary of data is ranged data, the regulations permit indexing as a legitimate method for public summarization of proprietary data.[236] However, Petitioner does not explain how the Department could calculate a weighted-average rate with indexed data.

- Publicly ranged data would have to be coordinated between the mandatory respondents for a weight-averaged calculation to be possible, but parties are not required to exchange proprietary data. If one mandatory respondent ranged its public data higher, and the other ranged its data lower by an equal percentage, the resulting margin would not equal the weighted-average of the margins for the producers or exporters individually investigated.

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[233] *See e.g., Utility Scale Wind Towers from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 75978 (December 26, 2012) (*Wind Towers from the PRC)*; *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Countervailing Duty Determination*, 78 FR 33342 (June 4, 2013); *Certain Frozen Warmwater Shrimp from India: Preliminary Countervailing Duty Determination*, 78 FR 33344 (June 4, 2013), and accompanying Issues and Decision Memorandum at 25; *Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 28557, 28558-59 (May 21, 2010); and *Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Final Affirmative Countervailing Duty Determination*, 77 FR 64465 (October 22, 2012).

[234] *See* section 705(c)(5)(B) of the Act; *see also Amanda Foods (Vietnam) v. United States*, 837 F. Supp. 2d 1338, 1345 (CIT 2012) (mandatory respondents' rates presumed to be relevant to determine the separate rate for respondents).

[235] *See Certain Frozen Warmwater Shrimp from the People's Republic of China and Diamond Sawblades and Parts Thereof from the People's Republic of China: Notice of Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Orders*, 78 FR 18958, 18960 (March 28, 2013).

[236] *See* 19 CFR 351.304(c)(1).

- By allowing the mandatory respondents to choose the level of public ranging that is applied to their data at this stage of the review permits them to directly determine the rates that will be applied to their competitors and creates opportunities for manipulation. The same holds true if the Department ranges the data, because the Department would have to choose whether to range the data up or down, which would be arbitrary and capricious.

- Whether weight-averaging advantages respondents or petitioners varies from case to case, and the impact of one methodology over the other cannot be predicted prior to the preliminarily results.[237] Therefore, allowing Petitioner to wait until after the preliminary results to raise such claims is troubling.

- Despite Petitioner's arguments, the Department's regulations do not require that all of the figures provided in business proprietary exhibits be ranged in the public version.[238]

- Petitioner's claim that the mandatory respondents' public summaries of sales data were inadequate is untimely, being made for the first time in the case brief months after the companies' responses were filed with the Department.

Department's Position: We agree with Petitioner and have modified the calculation of the non-selected rate for these final results. Section 705(c)(5) of the Act provides that, in CVD investigations, the Department will calculate an all others rate "equal to the weighted average countervailable subsidy rates established for exporters and producers individually investigated." Although the Act does not contain a parallel provision for calculating a rate for non-selected respondents in an administrative review, the Department has relied on this provision as guidance in administrative reviews.[239] In situations where the Department cannot apply its normal methodology of calculating a weighted-average subsidy rate or dumping margin due to requests to protect business proprietary information, but where use of a simple average does not yield the best proxy of the weighted-average subsidy rates or dumping margins relative to publicly available data, the Department will normally use publicly available figures as a matter of practice in both AD and CVD proceedings.[240] Although there are more instances in AD proceedings in which this practice is discussed, we disagree with the interested parties that this practice is not utilized in CVD proceedings.[241] Further, we agree with Petitioner that there is no meaningful difference between the calculation of the non-selected rate in CVD and AD reviews as far as

[237] The interested parties differ on whether a weighted-average rate would be higher or lower than the simple average used in the *Preliminary Results*.
[238] Section 351.304(c)(1) of the Act provides that "{i}f an individual portion of the numerical data is voluminous, at least one percent representative of that portion must be summarized."
[239] *See Preliminary Results*, and accompanying Issues and Decision Memorandum at "Preliminary *Ad Valorem* Rate for Non-Selected Companies under Review."
[240] *See Ball Bearings from France*, and accompanying Issues and Decision Memorandum at Comment 1; *Certain Frozen Warmwater Shrimp from Ecuador: Final Affirmative Countervailing Duty Determination*, 78 FR 50389, 50390 (August 19, 2013) (*Shrimp from Ecuador*); *Solar Cells from the PRC*, 77 FR at 63789; and *Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 17410, 17412 (March 26, 2012) (*Refrigerator-Freezers from Korea); see also* Department Memorandum regarding "Placing on the Record Information from the CVD Investigation of Refrigerator-Freezers from Korea," dated concurrently with, and hereby adopted by, this memorandum.
[241] *See e.g., Refrigerator-Freezers from Korea* and *Solar Cells from the PRC.*

using weighted, or simple, averages of individually-examined companies is concerned. No interested party has raised a rebuttal argument that moves the Department to reconsider its practice.

As explained in the *Preliminary Results*, we cannot calculate a weighted-average subsidy rate for the 49 non-selected companies because doing so risks disclosure of proprietary information of the mandatory respondents.[242] Therefore, on August 23 and December 6, 2013, we instructed the Alnan Companies and Changzheng Evaporator to submit, in accordance with 19 CFR 351.304(c), adequate public summaries of their sales values for 2010 and 2011, which were submitted in exhibits to their respective questionnaire responses.[243] On September 3 and 12 and December 9, 2013, the companies re-submitted the public versions of their sales value exhibits containing adequate public summaries of their sales data, which included publicly ranged data for export sales of subject merchandise to the United States.[244] Both companies provided total value of export sales of subject merchandise to the United States in U.S. dollars for 2010 and 2011.

To arrive at the non-selected rate for 2010 and 2011, we calculated a weighted-average subsidy rate using the publicly available, ranged sales values reported in U.S. dollars for the Alnan Companies' and Changzheng Evaporator's exports of subject merchandise to the United States for each year. We find that, given the diversity of the merchandise subject to the order, the use of sales value is more appropriate than the use of quantity in this calculation because parties maintain their quantity data in differing units, *e.g.*, pieces versus KG.[245] We also calculated a simple-average rate using the Alnan Companies' and Changzheng Evaporator's final subsidy rates for 2010 and 2011. We then compared those rates to the actual weighted-average rate calculated using the proprietary export values. We found that the weighted-average rate using publicly available, ranged sales values, rather than the simple-average rate, is the rate closer to the actual weighted-average subsidy rate (based on proprietary export values) and, thus, the better proxy.[246] Therefore, for these final results we have assigned, as the non–selected rate, the weighted-average rate using publicly available, ranged sales values. On this basis, we determine that the non-selected rate is 10.23 percent *ad valorem* for 2010, and 9.67 percent for 2011 *ad valorem*.

Concerning the rebuttal arguments presented by the interested parties regarding possible manipulation by the mandatory respondents when publicly ranging their sales data, 19 CFR 351.304(c) states that "generally, numerical data will be considered adequately summarized if grouped or presented in terms of indices or figures within 10 percent of the actual figure." As such, the Alnan Companies' and Changzheng Evaporator's ability to range their sales data was

[242] *See Preliminary Results*, and accompanying Issues and Decision Memorandum at "Preliminary *Ad Valorem* Rate for Non-Selected Companies under Review."
[243] *See* Request for Publicly Ranged Sales Data Memorandum.
[244] *See* Letters from Kromet regarding "Resubmission of Public Version of Sales Data Exhibit" (September 3, 2013 and December 9, 2013); and Letters from Changzheng Evaporator regarding "Submission of Publicly Ranged Sales Data for 2010 and 2011" (September 3 and 12, 2013).
[245] *Id*.
[246] *See* Non-Selection Rate Memorandum. *See also Shrimp from Ecuador*, 78 FR at 50390; *Solar Cells from the PRC*, 77 FR at 63789; *Refrigerator-Freezers from Korea*, 77 FR at 17412; and *Ball Bearings from France*, 75 FR at 53662, and accompanying Issues and Decision Memorandum at Comment 1.

limited. Further, we disagree with the parties' assertion that publicly ranged data would have to be coordinated between the mandatory respondents to calculate an accurate weighted-average rate. First, such coordination would not be possible without the exchange of proprietary data and the regulations do not require mandatory respondents to divulge proprietary information to one another. Second, as explained above, the calculation of a weighted-average rate using publicly available, ranged sales values by the Department is simply to derive a rate that, in some circumstances such as here, is a better proxy than a simple-average for the actual weighted-average subsidy rate (based on proprietary export values) of the subsidy rates for those companies individually investigated. We further disagree that the language in section 705(c)(5) of the Act which provides that the all others rate be a weighted-average of the rates established prohibits the Department from calculating a weighted-average rate using publicly available, ranged sales values. As discussed above, this provision of the Act does not apply to reviews, but is rather used as guidance in determining the rate for non-selected companies. Moreover, by comparing the weighted-average rate using publicly available, ranged sales values to the simple-average rate and determining which rate is the rate closer to the actual weighted-average subsidy rate (based on proprietary export values), we are able to determine which rate more closely reflects the actual weighted-average subsidy rate.

To arguments raised about whether the weighted-average rate of the mandatory respondents represents the non-selected companies' experience, we do not find the interested parties' claims persuasive. When selecting the mandatory respondents in this review, the Department intentionally selected the companies with the largest volume of subject merchandise[247] as expressly provided for in section 777A(e)(2)(A)(ii) of the Act. Further, section 777A(e)(2) of the Act goes on to state that, "The individual countervailable subsidy rates determined under subparagraph (A) shall be used to determine the all-others rate…" Thus, sections 777A(e)(2) and 777A(e)(2)(A)(ii) of the Act make clear that the Department may use mandatory respondents' relative size, in terms of shipment of subject merchandise, as the basis for determining the rate ultimately applied to the all-others rate. We find that this logic applies equally in determining the non-selected rate in reviews, because the Department selected mandatory respondents based on which companies accounted for the largest volume of subject merchandise from the exporting country. As such, we find that a weighted-average rate based on the Alnan Companies' and Changzheng Evaporator's publicly ranged sales values is an appropriate representation of the rates for the 49 non-selected companies.

As to the interested parties' arguments that Petitioner's argument is untimely because it was made in its case brief and not made immediately after the mandatory respondents failed to submit ranged data, or at least before the *Preliminary Results*, we disagree. Although Petitioner could have submitted this argument earlier in the proceeding, nothing in the Department's regulations required the Petitioner to make this argument before the *Preliminary Results*, or at any time prior to the submission of case briefs, should it deem the issue relevant for the Department's consideration for the final results.[248] Although some of the interested parties raise

[247] *See* Department Memorandum regarding "Respondent Selection" (November 5, 2012) (Respondent Selection Memorandum) at 3, in which the Department selected the exporters and/or producers accounting for the largest volume of the subject merchandise that can reasonably be examined, consistent with section 777A(e)(2)(A)(ii) of the Act.
[248] 19 CFR 351.309(c)(2) (requiring parties to raise all arguments deemed relevant in their case briefs).

concerns that the Petitioner's argument could lead to gamesmanship of the non-selected rate, it is unclear how the Petitioner could manipulate the non-selected rate because the mandatory respondents, not the Petitioner, ranged the data within 10 percent of the actual figure (above or below), nor does weight-averaging necessarily result in a higher non-selected rate than simple-averaging.

Lastly, as to the interested parties' arguments that the mandatory respondents had the option of indexing the data, which would not enable the Department to calculate a weighted-average non-selected rate based on publicly available data, or that the mandatory respondents are not required to range or index all of their data, we find that this issue is moot because both mandatory respondents have submitted ranged data pursuant to the Department's request.

Comment 4: Calculation of the AFA Rate

Case Brief of Kam Kiu:

- If the Department determines to apply AFA to Taishan City Kam Kiu, it should not assign the rate of 170.66 percent because it is not based on commercial reality.

- The Department's authority under section 776(b) of the Act is not unlimited as the courts have made clear (with reference to *DeCecco*,[249] *Gallant Ocean*,[250] and *MacLean-Fogg I*[251]). The company notes that the Federal Circuit's ruling in *Gallant Ocean* is based on the premise that the Department must apply an AFA rate that reflects commercial reality because the AD and CVD laws are remedial statutes.[252]

- The Department has failed to provide any evidence or explanation which demonstrates that the 170.66 percent rate bears a relationship to Taishan City Kam Kiu's business reality and nothing on the record ties the AFA rate to the company.

- In calculating the AFA rate, the Department attributed numerous subsidies to Taishan City Kam Kiu that are location specific in the southern, western, and northern regions of China. However, it is physically impossible for Taishan City Kam Kiu to be located in all of these localities.

- The Department knows from the company name and address on the record that Taishan City Kam Kiu is located in Taishan City, Guangdong Province, and not in Guangxi, Nanning, the Western China, or Northeastern China. It is arbitrary and unreasonable for the Department to conclude that Taishan City Kam Kiu benefits from subsidies associated with these other cities or regions.

[249] *See F.lli DeCecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F. 3d 1027 (Fed. Cir. 2000) (*DeCecco*).
[250] *See Gallant Ocean (Thailand) Co., Ltd. v. United States*, 602 F.3d 1319 (Fed. Cir. 2010) (*Gallant Ocean*).
[251] *See MacLean-Fogg Company v. United States*, Slip Op. 12-47 (April 4, 2012) (*MacLean-Fogg I*).
[252] *See Gallant Ocean*, 602 F.3d at 1323.

- The Department must be consistent with case law and calculate an AFA rate that represents commercial reality for Taishan Kam Kiu, not for other producers.[253]

Rebuttal Brief of Petitioner:

- Taishan City Kam Kiu does not argue with most of the individual program rates, but argues that the overall subsidy rate is too high. However, the reasonableness or commercial reality of subsidy rates can rationally only be judged with respect to the individual, program-specific determinations that are summed to create an overall rate, and not to the overall rate itself. To find otherwise would render irrational results as reasonable determinations as to individual subsidies could be rendered unreasonable simply by virtue of the fact that many subsidies were investigated.

- For similar reasons, the requirement that adverse rates not be punitive can only be judged with respect to the individual subsidy program determinations, and not with respect to the overall, summed subsidy rate.

- To the extent that Taishan City Kam Kiu contests the reasonableness of any particular individual subsidy program's rate, it simply avers that it could not have used certain of the subsidy program countervailed, because it does not have locations in the relevant localities. However, the knowledge that the company attributes to the Department does not exist. Responding to a Q&V questionnaire is not the same as determining the number and locations of facilities owned by a company. There is no evidence on the record to show that Taishan City Kam Kiu does not have facilities in the areas which benefit from subsidies available to facilities located in those areas.

- Taishan City Kam Kiu has not demonstrated any flaws in the Department's preliminary AFA subsidy rate, which should also be applied for the final results.

Department's Position: Taishan City Kam Kiu's argument that the subsidy rate assigned as AFA is unreasonable and not reflective of commercial reality because it bears no relationship to the company's business is without merit. As an initial matter, the CIT has rejected the argument that a high margin alone renders an AFA rate unreasonable, and instead has reasoned that the Department "is unfettered by absolute numerical limitations" when selecting an AFA rate.[254]

To determine the AFA rate assigned to Taishan City Kam Kiu and the other non-cooperative companies, we applied the Department's CVD AFA methodology, as discussed in detail above at "Use of Facts Otherwise Available and Adverse Inferences." When applying the methodology, the Department considers all information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. The Department will not use

[253] With reference to *Gallant Ocean, Lifestyle Enterprise Inc. et al v. United States*, 844 F. Supp. 2d 1283 (CIT 2012), and *MacLean-Fogg Company v. United States*, 853 F. Supp. 2d 1336, 1342 (CIT 2012) (*MacLean Fogg II*).
[254] *See Universal Polybag Co. v. United States*¸ 577 F. Supp. 2d 1284, 1301 (CIT 2008); *see also KYD, Inc. v. United States*, 613 F. Supp. 2d 1371, 1381 (CIT 2009), affd, *KYD, Inc. v. United States*, 607 F.3d 760 (Fed. Cir. 2010).

information where circumstances indicate that the information is not appropriate as AFA, such as applying a rate calculated for a program that a company could not use based on its industry.

Following the methodology, we computed for the non-cooperative companies an AFA rate that is based on actual program rates calculated for the mandatory respondents for the same or similar programs in this review, or calculated for respondents in other PRC CVD proceedings. In terms of relevance, the CVD AFA methodology relies on the premise that the behavior of the government (in this case the GOC) with regard to other companies examined in the segment, or alternatively with regard to companies in another proceeding, provides a reasonable estimate of the level of subsidization provided by the government in the case at issue. The rates for the various subsidy programs on which we are relying were calculated in this review, or recent CVD final investigations or final results of review for fully cooperating companies.[255] Therefore, these rates reflect the actual subsidy practices of the PRC's national, provincial, and local governments. Further, the calculated rates were based upon information about the same or similar programs for periods close in time to the POR in the instant case. As such, we find that the program rates calculated for cooperative respondents provide a non-punitive and reasonably accurate estimate of the subsidization of the non-cooperative companies.[256] No information has been presented in this review that calls into question the reliability of these calculated rates that we are applying as AFA. Thus, the Department has calculated an appropriate and reasonable rate for the non-cooperative companies based on the level of subsidization in the PRC.

Lastly, Taishan City Kam Kiu's argument that the Department has unjustly attributed location-specific subsidies to the company is also without merit. With the exception of the company's mailing address, the record contains no information on the location of facilities owned by Taishan City Kam Kiu or facilities of any possible subsidiaries or other cross-owned affiliated companies. Although Taishan City Kam Kiu relies on the CIT's decision in *MacLean Fogg I* and *MacLean Fogg II* for the proposition that it would be unreasonable to assume that all of the companies subject to the all others rate received subsidies in every region in China, importantly, in affirming the Department's determination not to calculate specific rates for each all others company based on the addresses of the companies, the CIT held: "Plaintiffs' reliance on the addresses provided in the Petition is unavailing because Commerce raises the reasonable concern that these addresses do not accurately convey locations of manufacturing facilities nor does they account for potential cross-ownership."[257] It is possible that Taishan City Kam Kiu or an affiliated company has facilities in the areas where the Department has found that subsidies are available. As such, because the Department has no knowledge as to Taishan City Kam Kiu's locations and/or cross ownership, the application of AFA for regional, provincial subsidy programs is warranted.

[255] *See* AFA Calculation Memorandum.
[256] *See DeCecco*, 216 F.3d at 1032.
[257] *See MacLean-Fogg Co. v. United States*, 885 F. Supp. 2d 1337, 1342 (CIT 2012).

Comment 5: Assessment of Duties On or After Date of Formal Initiation of a Scope Ruling

Case Brief of IDEX:

- The Department should issue liquidation instructions that are consistent with the regulations, and only assess CVDs on or after the date of the formal initiation of a scope ruling.[258] The Department initiated a formal scope ruling concerning IDEX's precision-machined parts on December 1, 2011.

- On March 28, 2012, the Department issued a final scope ruling in which it found that the precision-machined parts were included within the scope.

- In *Candles from the PRC*, the Department specified that its authority to assess CVDs applies to entries only after the formal initiation of a scope investigation.[259]

- The CIT has also ruled that the Department cannot suspend liquidation prior to the initiation of a scope ruling, with reference to *AMS Associates*.[260]

- If the Department fails to follow the regulations, then it should nevertheless continue with the review despite that IDEX has no type 3 entries (entries were liquidated without the assessment of full duties). As explained in *Hubbell*, it would not be futile for the Department to calculate a rate for liquidated entries because the liquidation will not bar collection by U.S. Customs and Border Protection (CBP) of the CVDs owed by IDEX.[261]

- Further, even if IDEX did not have entries, the company still had exports and sales of subject merchandise during the POR, which is all that is required of IDEX to seek an administrative review.[262] Thus, it would incongruous for the Department to find that IDEX's merchandise is subject to the CVD order while simultaneously refusing to review IDEX.

Rebuttal Brief of Newell:

- Newell agrees with IDEX. The Department is prohibited from assessing duties prior to the date of the formal initiation of scope rulings, and this prohibition applies to products of any party in this review.

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[258] *See* 19 CFR 351.225(1)(3).
[259] *See Later-Developed Merchandise Anticircumvention Inquiry of the Antidumping Duty Order on Petroleum Wax Candles from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 71 FR 194 (October 6, 2006) (*Candles from the PRC*).
[260] *See AMS Associates, Inc. v. United States*, 881 F. Supp. 2d 1374, 1382 (CIT 2012) (*AMS Associates*).
[261] *See Hubbell Power Systems and GEM Year Industrial Co., Ltd. v. United States*, 89993 F. Supp. 2d 1283 (CIT 2012) (*Hubbell*).
[262] *See* 19 CFR 351.213(d)(3).

Rebuttal Brief of Petitioner:

- To the extent that IDEX has no suspended entries corresponding to the POR, the Department should rescind the review as to IDEX. This approach is consistent with the Department's practice, which is "to rescind an administrative review pursuant to 19 CFR. 351.213(d)(3) when there are no reviewable entries of subject merchandise during the POR ... for which liquidation is suspended."[263]

- IDEX argues that the CIT has found this practice unreasonable. However, while the CIT remanded a rescission determination in *Hubbell*,[264] the facts with respect to IDEX are different than the facts in that case.

- In *Hubbell*, the Department rescinded a review as to one of the mandatory respondents, *i.e.*, one of the largest exporters of the subject merchandise.[265] The CIT opined that rescission therefore implicated the accuracy of the Department's calculations, particularly with respect to the all others rate, raising questions as to whether it was reasonable to rescind the review.[266]

- IDEX is not a mandatory respondent and, therefore, rescission of IDEX's review would not affect the accuracy of the all others rate.

Department's Position: Consistent with 19 CFR 351.225(1)(3), the Department will instruct CBP to suspend liquidation and to require a cash deposit of estimated CVDs, at the applicable rate, for each unliquidated entry, if any, of the IDEX's subject merchandise entered, or withdrawn from warehouse, for consumption on or after December 1, 2011, the date of initiation of IDEX's scope inquiry for precision-machined parts.

We disagree with Newell that the Department should apply this decision to "all" products of any party in this review. It is incumbent on each individual interested party to present to the Department specific arguments about their particular circumstances under the order.[267] As such, the Department's application of 19 CFR 351.225(1)(3) is limited to IDEX.

We also disagree with Petitioner that IDEX's review should be rescinded if there are no suspended entries of subject merchandise during the POR. We are not rescinding the review as to IDEX on the basis that we have not determined that IDEX has no reviewable entries. Rather, in this review, where the number of companies for which we initiated a review was so large that we determined to limit the number of individually reviewed companies, in the process of respondent selection, we requested evidence of a Type 3 suspended entry from companies in

[263] *See e.g., Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation: Rescission of Antidumping Duty Administrative Review*, 77 FR 65532 (October 29, 2012), and accompanying Issues and Decision Memorandum at Issue 2.
[264] *See Hubbell*.
[265] *Id*., at 1288.
[266] *Id*.
[267] *See* 19 CFR 351.309(c)(2) (case brief must present all arguments that continue to be relevant to the final results). We also note that Newell did not make its argument with regard to any specific products which are subject to the review.

order to be considered as a mandatory respondent in the review.[268] Because IDEX did not present evidence of a Type 3 entry, it was not considered as a mandatory respondent. Such a determination is different from a determination that there are no reviewable entries of subject merchandise.

Comment 6: Whether There Is a Link Between Policy Lending and Respondents' Bank Loans

Case Brief of GOC:

- Record evidence demonstrates that PRC banks issue loans according to market conditions and commercial considerations.

- The GOC placed on the record the *Interim Measures*, which establish rules relating to the issuance of working capital loans.[269] The *Interim Measures* provide that industrial policy is not a consideration for loans made to respondents in this review.[270]

- The GOC disagrees with the Department's preliminary assessment that because the *Interim Measures* are consistent with the *Banking Law*, and because the *Banking Law* calls for loans to be carried out under the guidance of industrial policies, a policy of preferential lending to aluminum extrusion producers remains in place.[271] The GOC asserts that Article 34 of the *Banking Law* does not provide any mandatory action for banks to undertake, but merely provides for banks to carry out their business "with the spirit of the state industrial policies."[272]

- The Department may not lawfully rely on general statements of broad economic goals such as to "create favorable conditions for enterprises {mergers and acquisitions} and restructuring, and accelerating enterprises' merger and restructuring" to reach a conclusion that specific preferential lending to the respondents was directed pursuant to industrial policies benefitting the subject industry.[273]

- Further, while the Department relies on the *Aluminum Industry Guidelines*, those guidelines call for loans to be made "in accordance with ordinary lending principles."[274]

- Because the Department fails to demonstrate the existence of an industrial policy to support the aluminum extrusions industry through preferential lending, it must reconsider its finding.

[268] *See* Respondent Selection Memorandum
[269] *See* GOC's IQR (January 9, 2013) at Exhibit A-2.
[270] *Id*., at 6-7.
[271] *See Preliminary Results*, and accompanying Issues and Decision Memorandum at 19-20.
[272] *See* GOC's IQR (January 9, 2013) at Exhibit A-8 (Article 34).
[273] *See Preliminary Results*, and accompanying Issues and Decision Memorandum at 17.
[274] *Id*.,at 18.

Rebuttal Brief of Petitioner:

- Record evidence demonstrates that the GOC engages in preferential policy lending and directs financing to the aluminum extrusions industry, including subject producers.

- When determining whether a program of policy lending exists, "the Department looks to whether government plans or other policy directives lay out objectives or goals for developing the industry and call for lending to support objectives or goals."[275]

- In its preliminary analysis, the Department noted that the stated policy of the GOC, as evidenced in the *Aluminum Industry Guidelines*, emphasized the goal that financial support, including credits, be directed towards the domestic aluminum industry.[276]

- Further, the Department noted that the GOC's *Nonferrous Metal Plan* references financing to the aluminum extrusions industry.[277]

- These policies all appear to be in effect during the POR, and there has been no effort by the GOC or any respondent to dispute their continued existence.

- Given the evidence of the GOC's plans and policy directives mandating preferential financial support for the aluminum industry, the Department is correct to find that a policy lending program exists for the aluminum industry.

Department's Position: Contrary to the GOC's assertion, the Department is not relying on general statements of broad economic goals to reach the determination that preferential lending is being provided pursuant to industrial policies to the aluminum extrusions industry, but is relying on specific government directives for developing and supporting the industry. With a loan program, the Department looks to whether government plans or other policy directives lay out objectives or goals for developing the industry and call for lending to support objectives or goals. We find that this standard was satisfied in the underlying investigation[278] and that no new evidence was presented in this review to warrant a reconsideration of the Department's finding. As discussed more fully above in "Policy Loans to Chinese Aluminum Extrusion Producers," we determine that the GOC has placed an emphasis on the development of high-end, value-added aluminum products. The GOC's support of the subject industry is evident in numerous official policies, plans, and directives, such as (1) the *Encouraged Industries Catalogue*, which identifies products, technologies, and infrastructure facilities for business promotion, including aluminum extrusion products under the non-ferrous metals heading; (2) the *Industrial Catalogue*, which outlines the projects deemed "encouraged," "restricted," and "eliminated," and lists aluminum as an "encouraged project," eligible for several support options, including financing under *Decision*

[275] *See e.g., Aluminum Extrusions from the PRC Investigation*, and accompanying Issues and Decision Memorandum at Comment 28; and *Steel Wheels from the PRC*, and accompanying Issues and Decision Memorandum at Comment 22.
[276] *See Preliminary Results*, and accompanying Issues and Decision Memorandum at 17.
[277] *Id*.
[278] *See Aluminum Extrusions from the PRC Investigation*, and accompanying Issues and Decision Memorandum at "Policy Loans to Chinese Aluminum Extrusion Producers" and Comment 28.

40; (3) the *Nonferrous Metal Plan*, which references financing to the aluminum extrusions industry under the heading, "Continue to Implement the Financing Policy of 'Encouragement and Discouragement;'" and (4) the *Aluminum Industry Guidelines*, which outline support for producers of aluminum extrusions, including lending activities. [279]

We disagree with the GOC's assertion that the *Aluminum Industry Guidelines* simply call for loans to be made in accordance with ordinary lending principles. While the *Aluminum Industry Guidelines* do mention "ordinary lending principles," the guidelines, more importantly, direct financial institutions to allocate lending credits taking into account the "national macroeconomic adjustments" and "industrial policies" and to provide credits to enterprises that are "in compliance with national industrial policies." Under the heading, "Strengthen the Coordination and Cooperation of Credit Policy and Industrial Policy and Establish Withdrawal Mechanism Under the Policies," the *Aluminum Industry Guidelines* state:

> Financial institutions shall rationally allocate the lending credits taking into account the national macroeconomic adjustments, industrial policies, and ordinary lending principles. Financial institutions may continue to provide credits to oxide aluminum or electrolytic aluminum enterprises that are in compliance with national industrial policies and the market entrance threshold, provided such lending is in accordance with the ordinary lending principles. No credit shall be provided to those enterprises that do not conform to national industrial policies, do not satisfy the market entrance threshold, have obsolete manufacturing processes, have been classified as prohibited, or have been ordered to cease operation. In the event that credits are mistakenly provided to such enterprises, the financial institutions shall take appropriate measures to reclaim the credits and avoid financial risk.[280]

We also disagree with the GOC's claim that the *Interim Measures* indicate that industrial policy is not a consideration with regard to the loans made to respondents in this review. First, the GOC provided no evidence to demonstrate that the official policies and plans named above, which call for the provision of loans to the aluminum extrusions industry, were no longer in effect when the respondents received their loans. Thus, there is no basis to conclude that the GOC's policy lending activities ceased with the issuance of the *Interim Measures*.

Second, the GOC reported that the *Interim Measures* are fully consistent with Article 34 of the *Banking Law* and stated that Article 34 "does not specify any specific obligation imposed by the government on commercial banks."[281] However, contrary to the GOC's claim, which is not supported by any new information submitted on the record, we have previously determined, as explained in the *Investigation*, that Article 34 of the *Banking Law* states that banks should carry out their loan business "under the guidance of the state industrial policies."[282] Thus, because the *Interim Measures* are "fully consistent" with the *Banking Law* and Article 34 of the *Banking Law*

[279] *See* "Policy Loans to Chinese Aluminum Extrusion Producers," above.
[280] *See Aluminum Extrusions from the PRC Investigation*, and accompanying Issues and Decision Memorandum at "Policy Loans to Chinese Aluminum Extrusion Producers" and Comment 28.
[281] *See* GOC's IQR (January 9, 2013) at 3.
[282] *See Aluminum Extrusions from the PRC Investigation*, and accompanying Issues and Decision Memorandum at Comment 28.

remains in effect, we determine that the *Interim Measures* do not constitute evidence that the GOC has ceased policy lending to the aluminum extrusions industry. As such, we continue to find that the loans provided to aluminum extrusion producers were made pursuant to government directive.

Comment 7: Whether PRC Commercial Banks Are Government Authorities

Case Brief of GOC:

- The Department provides no independent analysis of whether PRC commercial banks are government authorities, and simply references the analysis from *CFS from the PRC*.[283]

- There is a six-year gap between the POI in *CFS from the PRC* and this review's POR.

- The Department's analysis fails to comply with the WTO Appellate Body's findings that incorporating by reference findings from one determination into another determination will not suffice as an adequate explanation unless there is close temporal overlap.[284]

- Commercial banks in China operate on commercial principles, even where there is some state ownership of the banks. The record is devoid of evidence that PRC banks had their conduct meaningfully controlled by the GOC, or that could meet the definition of government authorities within the meaning of section 771(5)(B) of the Act or "public body" in the Agreement on Subsidies and Countervailing Measures (SCM Agreement).

Rebuttal Brief of Petitioner:

- Under U.S. CVD law, it is well-established that PRC government-owned banks are considered to be public entities or government authorities.[285]

- The GOC's objections are not predicated upon any factual record, but upon the claim that the basis for such a conclusion is dated evidence from *CFS from the PRC*.

- However, subsequent to the *WTO AB Decision*,[286] the Department has continued to find that record evidence supports the long-established existence of government-controlled or government-influenced SOCBs.[287]

[283] *See Preliminary Results*, and accompanying Issues and Decision Memorandum at 17, citing *CFS from the PRC*, and accompanying Issues and Decisions Memorandum at Comment 10.
[284] See *WTO AB Decision* at para. 354.
[285] *See e.g.*, *Solar Cells from the PRC*, and accompanying Issues and Decision Memorandum at Comment 13; and *Aluminum Extrusions from the PRC Investigation*, and accompanying Issues and Decision Memorandum at Comment 27.
[286] *See WTO AB Decision* at para. 354.
[287] *See Wind Towers from the PRC*, and accompanying Issues and Decision Memorandum at Comment 4.

- In this review, there is no evidence to justify the reversal of the Department's finding on this issue and, therefore, the Department should continue to follow its practice of considering PRC banks to be government authorities under the CVD law.

Department's Position: The Department has repeatedly affirmed its finding in *CFS from the PRC* that the PRC's banking sector does not operate on a commercial basis and is subject to significant distortions, primarily arising out of the continued dominant role of the government in the financial system and the government's use of banks to effectuate policy objectives.[288] As such, loans provided by PRC banks reflect significant government intervention and are considered SOCBs.[289]

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

> . . . information on the record indicates that the PRC's banking system remains under State control and continues to suffer from the legacies associated with the longstanding pursuit of government policy objectives. These factors undermine the SOCBs ability to act on a commercial basis and allow for continued government control resulting in the allocation of credit in accordance with government policies. Therefore, treatment of SOCBs in China as commercial banks is not warranted in this case.[290]

In order to revisit the determination in *CFS from the PRC*, there must be evidence warranting reconsideration. However, there is no such evidence on the record of this administrative review. While the GOC has made similar claims in other recent PRC CVD proceedings,[291] it has never provided evidence suggesting that even the most basic facts of the *CFS from the PRC* analysis have changed. For example, in *OCTG from the PRC*, we noted:

> {T}he GOC has failed to provide evidence that the government has divested itself of ownership in Chinese banks. The GOC has failed to address the issue of real risk assessment within the Chinese banking sector. The GOC has failed to address interest rate and deposit rate ceilings and floors set by the government. The GOC has failed to address both *de jure* and *de facto* reforms within the Chinese banking sector. The GOC has failed to address the elimination of policy-based lending within the Chinese banking sector. Therefore, the GOC has failed to provide the information that would warrant a reconsideration of the Department's determination in {the *CFS from the PRC* investigation}.[292]

Similarly, the GOC did not provide a factual basis for reconsidering the *CFS from the PRC* decision in this instant review. In its case brief, the GOC fails to cite to any record information

[288] *Id.*, citing *CFS from the PRC*, and accompanying Issues and Decision Memorandum at Comment 10; *see also* Banking Memoranda.
[289] *Id*.
[290] *See CFS from the PRC*, and accompanying Issues and Decision Memorandum at Comment 10
[291] *See e.g., Wind Towers from the PRC*, and accompanying Issues and Decision Memorandum at Comment 4; and *OCTG from the PRC*, and accompanying Issues and Decision Memorandum at Comment 20.
[292] *See OCTG from the PRC*, and accompanying Issues and Decision Memorandum at Comment 20.

to support its argument and simply states "the record is devoid of evidence that PRC banks had their conduct meaningfully controlled by the GOC, or that could meet the definition of government 'authorities' within the meaning of {section 771(5)(B) of the Act} or 'public body'" in the SCM Agreement.[293]

Regarding the GOC's statements concerning the *WTO AB Decision*, we note that the Appellate Body in that dispute affirmed the Department's finding that SOCBs are "public bodies" or "authorities" because they pursue and effectuate government policies. The GOC's arguments therefore are misplaced.

For these reasons, we continue to find that SOCBs are "authorities" capable of providing financial contributions to the respondents.

Comment 8: Computation of Benchmark Loan Interest Rate

Case Brief of GOC:

- The Department's short-term interest rate benchmark computations, which rely on a regression analysis, are fundamentally flawed.

- The Department relies upon an arbitrary collection of IFS published rates that are in many cases not actually short-term rates (or rates for business loans), yet there is no adjustment for this.

- The Department arbitrarily excludes negative inflation-adjusted rates from the computation, and uses an invalid regression analysis to determine a short-term interest rate for China based on a composite governance indicator factor.

- The Department arbitrarily calculates an adjustment spread or factor between short-and long-term rates using U.S. dollar "BB" bond rates.

- For the final results, the Department should instead use the actual interest rates on comparable bank loans in China, as the regulations require.

Rebuttal Brief of Petitioner:

- The Department has properly determined that loans provided by PRC banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market.[294]

- Where the Department determines that interest rates in a country are distorted, "such interest rates are unusable to measure the benefit from government loans,"[295] because

[293] *See* GOC's Case Brief at 36.
[294] *See e.g.*, *Preliminary Results*, and accompanying Issues and Decision Memorandum at 13-14; and *Steel Wheels from the PRC*, and accompanying Issues and Decision Memorandum at Comment 23.

loan benchmarks must be market-based. Moreover, it is not possible to adjust domestic benchmarks to account for market distortions, as any attempt to do so would be a "highly complex, speculative and impracticable exercise."[296]

- The Department has no choice but to use an external benchmark interest rate to calculate the benefit conferred under the GOC's preferential policy lending program. This approach is consistent with the Department's practice of using external market-based benchmarks where a domestic benchmark does not provide an appropriate market-based price,[297] including when measuring the benefits received from preferential policy lending.[298]

Department's Position: With respect to the suitability of using a regression-based methodology that relies on World Bank governance indicators and lending rates to calculate a short-term benchmark interest rate, we disagree that the Department's methodology was arbitrary. The benchmark interest rate is based on several variables, the inflation-adjusted interest rates of countries with per capita gross national incomes similar to that of the PRC as well as variables that take into account the quality of a country's institutions (as reflected by World Bank governance indicators). While the Department's regulations do not explicitly address the use of governance factors for making comparisons, as with the inflation adjustment, they facilitate cross-country comparisons because they incorporate other important factors that can influence interest rate formation. Thus, the inclusion of the governance factors are consistent with the intent of 19 CFR 351.505(a)(2)(i).

Further, banks and other lenders in each of the countries included in the constructed benchmark will take into account various factors such as the quality of governance in a country, political stability, government involvement, and interference in the respective economies in assessing risk associated with lending to businesses in a country. To the extent that there are differences across countries in these factors (in such areas as political stability, government effectiveness, and rule of law) they will give rise to differences in perceived risk associated with the particular country, which will be reflected in a country's overall level of interest rates, *i.e.* all else equal, a company in a highly unstable country will pay a higher interest rate than a similar company in a relatively stable country. Further, our decision to incorporate governance factors into our external loan benchmark calculation methodology is consistent with the Department's long-standing practice.[299]

The short-term benchmark interest rate is a robust computation based on several variables, which include the inflation-adjusted interest rates of countries with per capita gross national incomes similar to that of the PRC as well as variables that take into account the quality of a country's

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[295] *See e.g.*, *Tires from the PRC*, and accompanying Issues and Decision Memorandum at Comment E.3; and *Steel Wheels from the PRC*, and accompanying Issues and Decision Memorandum at Comment 23.
[296] *See e.g.*, *CFS from the PRC*, and accompanying Issues and Decision Memorandum at Comment 10; and *Solar Cells from the PRC*, and accompanying Issues and Decision Memorandum at Comment 16.
[297] *See e.g.*, *Solar Cells from the PRC*, and accompanying Issues and Decision Memorandum at Comment 15.
[298] *See e.g.*, *Tires from the PRC*, and accompanying Issues and Decision Memorandum at Comment E.3; and *Steel Wheels from the PRC*, and accompanying Issues and Decision Memorandum at Comment 23.
[299] *See, e.g.*, *Tires from the PRC* and accompanying Issues and Decision Memorandum at Comment E.4.

institutions (as reflected by World Bank governance indicators), as fully explained in the "Loan Benchmark Rates" section, above.

To the issue of characterizing some IFS lending rates as short-term rates, the Department has previously addressed the GOC's concerns, agreeing that certain of the interest rates used in the regression analysis may reflect maturities of longer than one-year.[300] To resolve this issue, we decided to continue to use the same interest rate data and regression-based benchmark rate methodology, but apply it to loans with terms of two years or less.[301]

The Department has also previously addressed the issue of excluding inflation-adjusted, negative interest rates from the short-term benchmark, explaining that negative-adjusted rates are not common, tend to be anomalous, and, moreover, are not sustainable commercially.[302] As such, we exclude negative real interest rates in calculating our regression-based benchmark rates. No new evidence or argument has been presented in this review to warrant a change in the Department's approach to exclude negative interest rates.

For the same reasons outlined in prior cases, we continue to disagree with the GOC's objection to the derivation of the long-term benchmark, which consists of the short-term benchmark plus a spread that is a function of U.S. dollar "BB" bond rates.[303] As the Department has explained, 19 CFR 351.505(a)(3)(iii) requires the Department to use ratings of AAA to BAA and CAA to C- in deriving a probability of default in the stated formula. However, there is no statutory or regulatory language requiring that these rates apply to the calculation of long-term rates under 19 CFR 351.505(a)(3)(i) or (ii). Moreover, the transitional nature of PRC financial accounting standards and practices, as well as the PRC's underdeveloped credit rating capacity, suggests that a company-specific mark-up (to account for investment risk) should not be the general rule. The Department therefore determined that a uniform rate would be appropriate, which would reflect average investment risk in the PRC associated with companies not found uncreditworthy. We have received no other objective basis upon which to determine this average investment risk or a basis to presume it is only for companies with an investment grade rating. We therefore have selected the highest non-investment rate. As no new arguments have been presented, we will continue to use the BB corporate bond rate for these final results in any long-term loan calculations or discount rate calculations.

Lastly, we disagree with the GOC's argument that the Department should use actual PRC interest rates from comparable bank loans in China as the basis for the benchmark interest rates.

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[300] *See e.g., Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 70961 (November 24, 2008) (*Line Pipe from the PRC*), and accompanying Issues and Decision Memorandum at Comment 12; *Light-Walled Pipe from the PRC*, and accompanying Issues and Decision Memorandum at "Benchmark and Discount Rates;" and *Aluminum Extrusions from the PRC Investigation*, and accompanying Issues and Decision Memorandum at Comment 29.

[301] *See Aluminum Extrusions from the PRC Investigation*, and accompanying Issues and Decision Memorandum at Comment 29.

[302] *See e.g., OCTG from the PRC*, and accompanying Issues and Decision Memorandum at Comment 25; *Steel Wheels from the PRC*, and accompanying Issues and Decision Memorandum at Comment 24; and *Aluminum Extrusions from the PRC Investigation*, and accompanying Issues and Decision Memorandum at Comment 29.

[303] *See e.g., OCTG from the PRC*, and accompanying Issues and Decision Memorandum at Comment 27; and *Aluminum Extrusions from the PRC Investigation*, and accompanying Issues and Decision Memorandum at Comment 30.

As discussed above in Comment 7 and the "Loan Benchmark Rates" section, we find that the GOC's involvement in the banking sector results in significant distortions that render the lending rates in the PRC unsuitable as market benchmarks. We also find that it is not possible to adjust for these market distortions given that such an endeavor would be a highly complex, speculative, and impracticable exercise.[304] Further, no new information has been submitted on the record to warrant a reconsideration of the use of an external benchmark to measure the benefit of loans found to be countervailable. As such, we continue to find that it is appropriate to apply an external benchmark with regard to GOC policy lending programs.

Comment 9: Whether State Ownership Makes an Entity a Government Authority

Case Brief of GOC:

- The GOC disagrees with the Department's preliminary finding that SOEs are government authorities within the meaning of section 771(5)(B) of the Act.[305] The GOC explains that under Chinese law, SOEs are required to maximize returns for their owners. Therefore, the law applicable to SOEs provides for a separation of government bodies and enterprises.[306] As such, it is contrary to the factual record to assume that SOEs are government authorities.

- The Department's failure to provide any analysis beyond ownership fails to comply with the *WTO AB Decision*, which states that "the mere fact that a government is the majority shareholder of an entity does not demonstrate that the government exercises meaningful control over the conduct of that entity" and the Department must "give due consideration to all relevant characteristics of the entity and … avoid focusing exclusively or unduly on any single characteristic."[307]

Rebuttal Brief of Petitioner:

- The GOC attempts to disclaim the motivations of SOEs by claiming that they are there simply to "maximize returns for their owners."[308] However, this line of reasoning has been considered and rejected by the Department.[309]

- Maximizing returns does not necessarily indicate that a company is independent from the government. Nor is the goal of maximizing returns incongruous of the goals of the government. Profit maximization and state ownership are not mutually exclusive.

- The GOC has not placed on the record any new factual information or persuasive argument that would call the Department's findings into question. The GOC's assertions

[304] *See CFS from the PRC*, and accompanying Issues and Decision Memorandum at Comment 10; *see also* Banking Memoranda.
[305] *See Preliminary Results*, and accompanying Issues and Decision Memorandum at 24-25.
[306] *See* GOC's IQR (January 9, 2013) at Exhibit E-19.
[307] *See WTO AB Decision* at paras. 318 and 319.
[308] *See* GOC's Case Brief at 19.
[309] *See e.g.*, *Wind Towers from the PRC*, and accompanying Issues and Decision Memorandum at Comment 12.

that the SOEs do not constitute government authorities that provided a financial contribution should, therefore, be rejected.

Department's Position: The Department generally treats entities that are majority-owned by the government or a government entity as controlled by the government and, hence, as "authorities" within the meaning of section 771(5)(B) of the Act. This treatment is reflected in the *Preamble*,[310] which identifies "treating most government-owned corporations as the government itself" as a longstanding practice. It is also reflected in numerous determinations in which the Department has treated government-owned firms providing such goods and services as electricity, water, and natural gas without questioning of this treatment by the parties to the proceeding.[311]

However, contrary to the GOC's assertion, the Department's analysis of whether an entity is an authority is not limited to ownership. In the initial questionnaire, we informed the GOC that if it wanted to argue that any majority government-owned companies that produced the primary aluminum purchased by the respondents are not "authorities," then the GOC needed to submit for each company the information requested in the *Information Regarding Input Producers in the PRC Appendi*x (*Input Producers Appendix*).[312] As discussed in "Provision of Primary Aluminum for LTAR" section, the GOC did not provide a complete response to the appendix for these companies.

We do not dispute that government-owned firms may act in a commercial manner. Indeed, the Department's own regulations recognize this in the case of government-owned banks by stating that loans from government-owned banks may serve as benchmarks in determining whether loans given under government programs confer a benefit.[313] However, this line of argument conflates the issues of the "financial contribution" being provided by an authority and "benefit." If firms with majority-government ownership provide loans or goods or services at commercial prices, *i.e.*, act in a commercial manner, then the borrower or purchaser of the good or service receives no benefit. Nonetheless, if the loan or good or service is still being provided by an authority, it, thus, constitutes a financial contribution within the meaning of the Act.

[310] *See Preamble*, 63 FR at 65402.
[311] *See e.g.*, *Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium from Canada*, 57 FR 30946 (July 13, 1992) at "Exemption from Payment of Water Bills;" and *Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 64 FR 30636 (June 8, 1999) at "Electricity Discounts Under the Requested Load Adjustment Program."
[312] *See* Department Letter to the GOC regarding "Initial Questionnaire" (November 5, 2012) at "Provision of Primary Aluminum for LTAR," (p. II-4 and II-5).
[313] *See* 19 CFR 351.505(a)(2)(ii); *see also Kitchen Racks from PRC*, and accompanying Issues and Decision Memorandum at Comment 4.

Comment 10: Whether CCP Affiliations/Activities By Company Officials Make an Entity a Government Authority and Whether Such Affiliations/Activities Are Relevant to the Department's Analysis

Case Brief of GOC:

- The CCP is not a government authority, but a political party, and members of the CCP do not legally have authority to direct business operations.[314] The CCP, CCP Congresses, CCP Committees, CCP Standing Committees, People's Congresses, Standing Committees of People's Congresses, and Chinese People's Political Consultative Conferences are not part of the GOC.[315] Village committees are not government authorities because there is no government at the village level.[316]

- The *Chinese Civil Servant Law* prohibits owners, members of the board of directors, and managers of primary aluminum producers from being GOC or CCP officials.[317]

- The *Chinese Company Law* states that PRC companies are ultimately responsible to their shareholders and, thus, shareholders exercise ultimate power over the company.[318] CCP committees have no decision-making authority over enterprises.[319]

- The Department has previously found that the *Chinese Company Law* demonstrates the absence of legal state control over privately-owned PRC companies[320] and, therefore, should find here that CCP officials/committees have no decision-making authority in enterprises.

- Contrary to the *Preliminary Results*, the finding from *PC Strand from the PRC* does not address the issue of whether PRC law permits owners, members of the board of directors, and managers of companies can be CCP officials.[321] Instead, the finding in *PC Strand from the PRC* concerned membership in the CCP and National Party Conference (NPC).[322] The Department found that membership in the CCP or NPC was "insufficient … to conclude than {sic} the relationships between individual owners and the GOC or CCP evince government control."[323] As such, *PC Strand from the PRC* does not support the proposition that CCP officials are permitted to serve as owners, members of board of directors, or senior managers of companies.

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[314] *See* GOC's SQR (February 8, 2013) at 5 of Exhibit ISA-1.
[315] *Id*.
[316] *Id*.
[317] *Id*., at 2 of Exhibit ISA-1.
[318] *Id*., at 4 of Exhibit ISA-1.
[319] *Id*., at 10 of Exhibit ISA-1.
[320] *See e.g., Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China: Final Antidumping Administrative Review*, 75 FR 8301 (February 24, 2010) (*Steel Plate from the PRC – AD*), and accompanying Issues and Decision Memorandum at Comment 2, where the Department stated "we have analyzed the *Company Law* and have found it to establish sufficiently an absence of *de jure* control over privately owned companies in the PRC."
[321] *See Preliminary Results*, and accompanying Issues and Decision Memorandum at 23.
[322] *See PC Strand from the PRC*, and accompanying Issues and Decision Memorandum at Comment 8.
[323] *Id*., at 72.

- Also, in the *Preliminary Results*, the Department provides no evidence specific to this case to support the assertion that CCP affiliations or activities are relevant to the analysis of government authorities. The Department simply cites to its Section 129 memorandum (*Public Body Memorandum*) concerning public bodies, claiming that the memorandum "suggests that the CCP exerts significant control over activities in the PRC,"[324] with no explanation of how the CCP's alleged influence over such activities in China are relevant.

- The *Public Body Memorandum* however discusses SOEs, the structure of the CCP and its influence on the GOC. The memo provides little analysis or explanation as to the basis for the Department's conclusion that CCP officials or committees influence non-SOEs.

- The *Public Body Memorandum* also does not support the Department's assertion that, in making a determination of whether private companies are government authorities under U.S. law (or a public body under the applicable WTO agreements), it must determine whether private enterprises have CCP committees and whether the owners, members of the board of directors, and managers are CCP officials.

- The Department has misread the Chinese law where it is stated that CCP committees "shall be set up in all companies, whether state, private, domestic, or foreign-invested, 'to carry out activities of the Chinese Communist Party.'"[325] The *Chinese Company Law* only requires that companies establish committees if the enterprise employs three CCP members, pursuant to the CCP Constitution.[326]

Rebuttal Brief of Petitioner:

- The Department has fully addressed and rejected the GOC's arguments in numerous CVD proceedings, finding that the role of the CCP is highly relevant to its analysis of the function of input suppliers,[327] that the Department requires "complete information regarding the CCP to analyze whether input producers are government authorities,"[328] and that the Department's findings contradict the GOC's claims that CCP officials cannot serve in leadership roles in private companies.[329]

- Despite multiple opportunities, the GOC failed to provide information relevant to the Department's requests concerning the companies and entities that supply primary aluminum for use in the production of subject merchandise.

[324] *See Preliminary Results*, and accompanying Issues and Decision Memorandum at 23.
[325] *Id*.
[326] *See* GOC's IQR (January 9, 2013) at Exhibit A-1 (for Article 19), and GOC's SQR (February 8, 2013) at Exhibit App-19 (for Article 29).
[327] *See e.g., Wind Towers from the PRC*, and accompanying Issues and Decision Memorandum at Comment 12; and *Seamless Pipe from the PRC*, and accompanying Issues and Decision Memorandum at Comment 7.
[328] *See Wind Towers from the PRC*, and accompanying Issues and Decision Memorandum at Comment 12.
[329] *Id*.

- The GOC also failed to provide any new information or arguments that would lead the Department to reconsider its previous findings concerning the companies and entities that supply primary aluminum for use in the production of subject merchandise.

Department's Position: As explained in the *Preliminary Results*, in order to do a complete analysis of whether the primary aluminum producers are "authorities" within the meaning of section 771(5)(B) of the Act, we sought information related to whether any individual owners, board members, or senior managers were government or CCP officials and to the role of any CCP committee within the companies.[330] Specifically, to the extent that the owners, managers, or directors of a producer are CCP officials or otherwise influenced by certain entities, the Department inquired into the means by which the GOC may exercise control over company operations and other CCP-related information.[331] The Department has explained to the GOC its understanding of the CCP's involvement in the PRC's economic and political structure in prior PRC CVD proceedings,[332] and has explained why it considers the information regarding the CCP's involvement in the PRC's economic and political structure to be relevant.[333]

In this review, the GOC however provided none of the requested information which the Department finds relevant to its analysis.[334] Instead, the GOC argued that pursuant to Article 53 of the *Civil Servant Law*, government officials cannot serve as owners, members of the board of directors, or managers of the input producer without violating the law.[335] The GOC also asserted that CCP officials are restrained from serving as employees in enterprises, pursuant to the *Trial Implementation of Civil Servants in CCP Organs*, which reflects the CCP's intent to model its personnel management system after the *Civil Servant Law*, including restrictions on enterprise employment.[336] The GOC therefore concluded that none of the individual owners, members of the board of directors, or senior managers of the aluminum producer are eligible to be government or CCP officials[337] and refused to answer the CCP-related questions contained in the *Input Producers Appendix*, requesting that further investigation in this regard be terminated.[338] Contrary to the GOC's assertions and objections to our questions, it is the prerogative of the Department, not the GOC, to determine what information is relevant to our analysis.[339] As noted, the Department considers information regarding the CCP's involvement in the PRC's

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[330] *See Preliminary Results*, and accompanying Issues and Decision Memorandum at "Provision of Primary Aluminum for Less Than Adequate Remuneration (LTAR)."
[331] *See* Department Letter to the GOC regarding "Initial Questionnaire" (November 5, 2012) at "Provision of Primary Aluminum for LTAR," (p. II-4 and II-5) and referenced "Input Producers Appendix."
[332] *See, e.g., Solar Cells from the PRC*, and accompanying Issues and Decision Memorandum at Comment 6.
[333] *Id. See also* Additional Documents Memorandum at Attachment II, which includes the Public Body Memorandum and its attachment the CCP Memorandum.
[334] *See Preliminary Results*, and accompanying Issues and Decision Memorandum at "Provision of Primary Aluminum for LTAR."
[335] *Id*.
[336] *Id*.
[337] *Id*.
[338] *Id*.
[339] *See NSK Ltd. v. United States*, 919 F. Supp. 442, 447 (CIT 1996), quoting *Ansaldo*, 628 F. Supp. at 205, ("NSK's assertion that the information it submitted to Commerce provided a sufficient representation of NSK's cost of manufacturing misses the point that 'it is Commerce, not the respondent, that determines what information is to be provided for an administrative review.'")

economic and political structure to be essential because public information suggests that the CCP exerts significant control over activities in the PRC.[340]

Specifically, the Department has determined that "available information and record evidence indicates that the CCP meets the definition of the term 'government' for the limited purpose of applying the U.S. CVD law to China."[341] Further, publicly available information indicates that Chinese law requires the establishment of CCP organizations "in all companies, whether state, private, domestic, or foreign-invested" and that such organizations may wield a controlling influence in the company's affairs.[342] The GOC argues that the Department mischaracterized Chinese law as requiring such CCP organizations in *all* enterprises, rather than only those with three party members or more. While the Department notes that the qualifications to this requirement were not spelled out in the summary of the Public Body Memorandum or the CCP Memorandum, the section addressing this topic begins with the sentence: "In accordance with the *CCP Constitution*, all organizations, including private commercial enterprises, are required to establish "primary organizations of the party" (or "Party committees") if the firm employs at least three party members."[343]

Further this section of the report cites to expert, third-party sources, noting that:

> The party has cells in most big companies—in the private as well as the state-owned sector -- complete with their own offices and files on employees. It controls the appointment of captains of industry and, in the SOEs, even corporate bodies. It holds meetings that shadow formal board meetings and often trump their decisions, particularly on staff appointments. It often gets involved in business planning and works with management to control pay.[344]

Further the Public Body Memorandum notes that {a}ccording to the Xinhua News Agency, there were a total of "178,000 party organs in private firms in 2006, a rise of 79.8 percent over 2002."[345] While focusing on the instances in which the Department did not note that these CCP organizations are only required by the CCP Constitutions in enterprises with three or more party members, the GOC fails to acknowledge or address that Primary Party Organizations are present in private enterprises in growing numbers and may be imbued with significant power according to expert, third-party sources. Even if the Department had failed to understand this qualification – which it did not – the GOC's argument misses the point that it was reasonable for the Department to inquire about the presence of such committees in the input producers at issue, regardless of whether there is such a committee in every single enterprise in the PRC.

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[340] *See* Additional Documents Memorandum at Attachment II, which includes the Public Body Memorandum and its attachment the CCP Memorandum.
[341] *Id.*, at CCP Memorandum at 33.
[342] *Id*., at Public Body Memorandum at 35-36, and sources cited therein.
[343] *Id*.
[344] *Id.*, at 35-36, citing to "A Choice of Models," *The Economist* (January 2012).
[345] *Id.*, at 36, citing to Brief Introduction of the Communist Party of China," ChinaToday.com, current as of April 2012 at http://www.chinatoday.com/org/cpc/.

Notably, the GOC has simply failed to respond to the Department's questions and explain the purpose of these committees, which might shed light on the purpose, meaning and role of these committees in private enterprises as well as state-invested enterprises. Importantly, neither has the GOC addressed the substantive concerns raised by third-party experts cited in the Public Body Memorandum and the CCP Memorandum with anything other than unsupported assertions.

Because the GOC did not provide the information we requested regarding this issue, we are not reevaluating the Department's prior factual findings on the role of the CCP. We continue to find that the CCP, like the formal state apparatus, constitutes the "government" in China for purposes of the CVD law.

Taking into account the information that the CCP in the PRC meets the definition of government for U.S. CVD law, the observation that certain company officials were members and not officials of the CCP and NPC in *PC Strand from the PRC* does not diminish the Department's position that complete information related to whether any individual owners, board members, or senior managers were government or CCP officials and to the role of any CCP committee within the companies is essential to determine whether primary aluminum producers are "authorities" within the meaning of section 771(5)(B) of the Act.

Lastly, the GOC argues that the Department has previously found that the *Company Law* of China as well as capital verification reports, articles of association and business registrations -- all of which were examined in this proceeding -- demonstrate the absence of legal state control over privately-owned Chinese companies. However, this argument relies exclusively on examples involving the Department's findings with respect to separate rate applications in AD proceedings,[346] which involve a different test, standard, and focus with regard to "control." In the context of a separate rate analysis, the Department's sole focus is on the government's control over export activities. For example, the Department has repeatedly noted that an SOE may receive a separate rate given that the focus of the separate rate test is limited to control over export activities and not other aspects of the enterprise's operations.[347] By contrast, the Department is concerned here with whether the key positions within a company are filled by personnel who are also CCP or GOC officials, and may exert control over the company's activities more broadly.

Comment 11: Whether the GOC Responded to the Best of Its Ability Concerning Ownership Information and CCP Affiliations and Activities

Case Brief of GOC:

- The Department's analysis with regard to CCP officials makes it impossibly difficult for the GOC and company respondents to provide the requested information. For example, for one producer, the GOC reported that the entity was partially owned by four companies, one of which was, in turn, owned by 85 other entities or individuals.[348] For

[346] *See Steel Plate from the PRC – AD*, and accompanying Issues and Decision Memorandum at 11 and Comment 2.
[347] *See Wind Towers from the PRC*, and accompanying Issues and Decision Memorandum at Comment 6.
[348] *See* GOC's SQR (February 8, 2013) at 4 of Exhibit ISA-2.

this particular supplier, the Department continued to demand that the GOC provide more information, stating that the GOC needed to provide "ownership back to the ultimate individual or state owners."[349]

- To have fully responded, the GOC would have had to provide information as to the CCP affiliates or activities of hundreds or perhaps thousands of natural persons serving as owners, members of the board of directors, and managers of suppliers, which is not only intrusive, but also burdensome.

- The GOC however responded to the best of its ability, providing evidence that owners, members of the board of directors, and managers of suppliers could not be GOC or CCP officials[350] and submitted business registration documents, capital verification reports, and articles of association.[351] The Department however ignored these documents, though in a prior case stated that such documents can demonstrate state control of an entity.[352]

- The application of AFA is not warranted because: (1) the information requested by the Department is not necessary within the meaning of section 776(a)(1) of the Act; (2) there is enough information on the record to determine whether primary aluminum producers are government authorities; and (3) the GOC did not withhold information or impede the proceeding, but provided an adequate response concerning CCP affiliations and activities – namely, that owners, members of the board of directors, and managers of primary aluminum producers were not eligible to be GOC/CCP officials, and that CCP committees do not have decision-making authority in enterprises.

- Further, the record does not warrant a finding that all primary aluminum producers are government authorities because information shows that many primary aluminum producers are not SOEs.[353] As such, the Department should find that those entities having ownership by private enterprises and individuals are not government authorities.

- If the Department continues to find that necessary information is missing concerning ownership as well as CCP affiliations and activities, it should only apply facts available to determine the proportion of primary aluminum supplies that are government authorities. This approach is consistent with how the Department treated primary aluminum supplied to Changzheng Evaporator from a trading company.[354] Thus, the Department should only use facts available and reduce the proportion of primary aluminum supplied to the ratio of primary aluminum produced by SOEs in the investigation.

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[349] *See* GOC's Input Suppliers QR (May 23, 2013) at 2-3.
[350] *See* GOC's SQR (February 8, 2013) at 2 of Exhibit ISA-1 at 2.
[351] *Id*.
[352] *See e.g., Steel Plate from the PRC – AD*, and accompanying Issues and Decision Memorandum at 11, where the Department stated "{T}he Department has consistently found an absence of *de jure* control when a company has supplied business licenses and export licenses, each of which have been found to demonstrate an absence of restrictive stipulations and decentralization of control of the company."
[353] *See* GOC's SQR (February 8, 2013) at 4-5 of Exhibit ISA-2 at 4-5.
[354] *See Preliminary Results*, and accompanying Issues and Decision Memorandum at 24-25.

Rebuttal Brief of Petitioner:

- As discussed in the *Preliminary Results*, the GOC took it upon itself to answer those questions that it deemed relevant and to refuse to provide information to the questions that it deemed too sensitive for a response.[355]

- The GOC impeded this review by failing to provide critical information concerning state influence over the primary aluminum industry, in addition to basic industrial information.

- The GOC's refusal to cooperate is a violation of U.S. law, and is contrary to its WTO commitments. Because the GOC failed to provide the necessary information in this investigation, the Department must apply AFA.

Department's Position: It is for the Department, and not the GOC or company respondents, to determine what information is considered relevant and necessary, and must be submitted on the record.[356] Thus, regardless of whether the GOC finds our explanations concerning the relevance of this information persuasive, by substantially failing to respond to our questions, the GOC withheld information requested of it. By stating that the requested information is not relevant, the GOC has placed itself in the position of the Department, and only the Department can determine what is relevant to the administrative review. Additionally, while the GOC argues that not all aluminum producers are authorities because many are not SOEs, as we explained in Comment 9, above, our analysis is not limited to ownership alone. Further, by claiming that it is unable to obtain the information requested, the GOC is effectively telling the Department that it must reach a conclusion based on the statements of the GOC alone, without any of the information that the Department considers necessary and relevant for a complete analysis.

The GOC also argues that the burden of providing the requested information is "impossibly difficult," and stating that it would be "tremendously burdensome" to supply the Department with information regarding the CCP affiliations of "hundreds, perhaps thousands, of natural persons owning suppliers or persons serving as owners, members of the board of directors and managers of suppliers."[357] It is important to note that the Department has not requested information regarding all possible CCP affiliations, but rather only whether owners, members of the board of directors, and managers are also CCP or government officials. Assuming the GOC is not misconstruing the Department's request for information, the Department fails to see how the GOC can assert that there may be "hundreds, perhaps thousands" of CCP officials potentially acting as company owners, board members or managers, and yet also assert that all CCP officials are prohibited from simultaneous involvement in the commercial sphere.

[355] *Id*., at 21-22, 24.
[356] *See e.g., Ansaldo*, 628 F. Supp. at 205 (stating that "{i}t is Commerce, not the respondent, that determines what information is to be provided"). The Court in *Ansaldo* criticized the respondent for refusing to submit information which the respondent alone had determined was not needed, for failing to submit data which the respondent decided could not be a basis for the Department's decision, and for claiming that submitting such information would be "an unreasonable and unnecessary burden on the company."
[357] *See* GOC's Case Brief at 23-24.

If the GOC was not able to submit the required information in the requested form and manner, it should have promptly notified the Department, in accordance with section 782(c) of the Act. It did not do so, nor did it suggest any alternative forms for submitting this information. Further, the GOC did not indicate that it had attempted to contact the CCP, or that it consulted any other sources.[358] Instead, the GOC chose not to respond to our questions regarding CCP officials for any input producer. In response to the Department's supplemental questionnaires, the GOC again failed to answer the questions asked and requested that further investigation in this regard be terminated. [359] However, the GOC's responses in prior proceedings demonstrate that it is, in fact, able to access the information we requested.[360] Therefore, we do not consider the GOC to have cooperated to the best of its ability.

Further, the GOC has not presented any persuasive argument to warrant a reconsideration of the application of AFA. We therefore continue to determine, as explained above in "Provision of Primary Aluminum for LTAR," that the GOC withheld necessary information that was requested of it and, thus, the Department must rely on facts otherwise available in issuing our final results for these input producers. Moreover, we determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with our requests for information. Consequently, we find that an adverse inference is warranted in the application of facts available.[361] As AFA, for those input producers for which the GOC failed to provide ownership information, failed to identify whether the members of the board of directors, owners or senior managers were government/CCP officials, or failed to report if the companies had CCP committees, we are finding them to be "authorities" within the meaning of section 771(5)(B) of the Act. Because we determine that the application of AFA is warranted based on the GOC's actions, the suggestion that the Department only apply facts available to determine the proportion of primary aluminum suppliers that are authorities (*i.e.*, assume that the percentage of primary aluminum purchased by domestic trading companies during the POR was equal to the ratio of primary aluminum produced by SOEs and collectives during the POI) is baseless.

Finally, to support its statement that the Department has found that business registration documents, capital verification reports, and articles of association can demonstrate whether there is state control of an entity, the GOC cites to *Steel Plate from the PRC – AD*, where the Department stated "{T}he Department has consistently found an absence of *de jure* control when a company has supplied business licenses and export licenses, each of which have been found to demonstrate an absence of restrictive stipulations and decentralization of control of the company."[362] As explained in Comment 10, AD PRC proceedings are separate and distinct from

[358] Section 782(c)(1) of the Act states that "{i}f an interested party, promptly after receiving a request from the administering authority or the Commission for information, notifies the administering authority or the Commission (as the case may be) that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the administering authority or the Commission (as the case may be) shall consider the ability of the interested party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party."
[359] *See* GOC's SQR (March 8, 2013) at 16-18, and SQR (May 23, 2013) at 1-5.
[360] *See PC Strand from the PRC*, and accompanying Issues and Decision Memorandum at Comment 8.
[361] *See* section 776(a) and (b) of the Act.
[362] *See Steel Plate from the PRC – AD*, and accompanying Issues and Decision Memorandum at Comment 11.

CVD PRC proceedings with the application of different analyses and methodologies. As such, the Department's finding *Steel Plate from the PRC – AD* is not germane to this review.

Comment 12: Whether the Provision of Primary Aluminum is Specific

Case Brief of GOC:

- The recipients of primary aluminum are not limited within the meaning of section 771(5A)(D)(iii)(I) of the Act because primary aluminum is used in a wide variety of industries.

- The GOC provided input-output tables which show the diverse uses of primary aluminum.[363]

- Even if the GOC provided primary aluminum for LTAR, the aluminum is used too broadly to be considered specific.

Department's Position: The Department has addressed the GOC's arguments in this regard in the underlying investigation as well as prior PRC CVD investigations. For example, in *Kitchen Racks from the PRC*, we examined information supplied by the GOC regarding the end uses for wire rod and concluded that, while numerous companies may comprise the listed industries, section 771(5A)(D)(iii)(I) of the Act clearly directs the Department to conduct its analysis on an industry or enterprise basis.[364] In *Kitchen Racks from the PRC*, we concluded that the industries named by the GOC were limited in number and, hence, the subsidy was specific.[365] We conducted the same type of analysis in the aluminum extrusions investigation[366] and in this review,[367] based on information supplied by the GOC, and we continue to find that the industries named by the GOC are limited in number.

Concerning the input-output table published by the State Statistics Bureau (SSB), as discussed in the "Provision of Primary Aluminum for LTAR" section, we considered the data provided by the GOC and found that the table does not provide the type of information needed to determine if the provision of primary aluminum is specific to aluminum extrusion producers. For instance, the table does not delineate data specific to primary aluminum, which is contained within the large, comprehensive category of "nonferrous metal smelting products and manufacture of alloy," and does not report data on sales or purchases of primary aluminum across industrial sectors.

Because the SSB's input-output table is too general, and does not detail the spectrum of industrial sectors that purchase primary aluminum, by value and/or volume, we determine that the table not only fails to provide the information required for a specificity analysis, but also

[363] *See* GOC's IQR (January 9, 2013) at 29 of Exhibit E-15 and Exhibit 16.
[364] *See Kitchen Racks from PRC*, and accompanying Issues and Decision Memorandum at "Provision of Wire Rod for Less than Adequate Remuneration."
[365] *Id*.
[366] *See Aluminum Extrusions from the PRC Investigation*, and accompanying Issues and Decision Memorandum at "Provision of Primary Aluminum for LTAR" and Comment 19.
[367] *See* "Provision of Primary Aluminum for LTAR" section, above.

does not undermine our finding that the provision of primary aluminum is specific to aluminum extrusion producers. We, therefore, find that the GOC has not provided information to warrant a reconsideration of our determination that the provision of primary aluminum is specific under section 771(5A)(D)(iii)(I) of the Act.

Comment 13: Whether to Use an In-Country Benchmark to Determine Adequacy of Remuneration for Primary Aluminum

Case Brief of GOC:

- Record evidence shows that prices in China for primary aluminum reflect market forces (*i.e.*, no interference or influence pricing by the GOC) and parallels prices on the London Metal Exchange (LME).[368]

- The PRC market for primary aluminum has undergone changes since the investigation, *e.g.*, Shanghai Futures Exchange (SHFE) introduced transactions for futures of imported aluminum in December 2010, and PRC inventories of aluminum have important market effects on the LME, indicating that prices on the PRC market and foreign markets have been converging since early 2011.[369]

- The Department's conclusion that the PRC primary aluminum market is "significantly distorted" is contradicted by record evidence and, thus, the Department should use a tier-one benchmark.

Rebuttal Brief of Petitioner:

- There is no evidence to support a change from a tier-two to a tier-one benchmark involving pricing from a country where there is clear governmental influence and control.

- Contrary to the GOC's arguments, transaction prices within China cannot be used, owing to the pervasive influence of the government in the aluminum market. First, the GOC maintains direct ownership interests in the overwhelming majority of aluminum producers in China. Second, the CCP permeates society and likely includes managers, company owners, members of various boards of directors, and officers of any number of other aluminum suppliers, as well as maintaining committees within various entities. Third, the GOC has acted to directly influence pricing for aluminum within China.[370] Fourth, the GOC is known to have been making purchases from the Aluminum Corporation of China, a "backbone state-owned enterprise" whose existence is "authorized by the state."[371]

[368] *See* GOC's IQR (January 9, 2013) at 32 and Exhibit E-25.
[369] *Id*., at 31, as well as Exhibit E-24., Exhibit E-25, and Exhibit E-26.
[370] According to an article from *Bloomberg News*, the Chinese State Bureau of Material Reserve "signed agreements today with six smelters to buy 300,000 metric tons of aluminum at 15,137 yuan ($2,434) a ton in a bid to bolster local prices." *See* Letter from Wiley Rein regarding "Comments on Upcoming Preliminary Results" (May 10, 2013) at 13.
[371] *See* Letter from Wiley Rein regarding "Comments on Questionnaire Responses of the GOC" (April 2, 2013) at 8.

- Given that the GOC is actively seeking to influence market prices in China, the fact that one single component of the SHFE futures contract is based upon pricing derived from the availability of imported and bonded products does little to negate the distortions that are inherent in the Chinese market and the SHFE.

Department's Position: As explained above in "Provision of Primary Aluminum for LTAR," we determine that primary aluminum supplied by companies determined to be government authorities constitutes a financial contribution in the form of a governmental provision of a good and that the respondents received a benefit to the extent that the price they paid for primary aluminum produced by these suppliers was for LTAR.[372]

The basis for identifying appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services is set forth under 19 CFR 351.511(a)(2). These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (*e.g.*, actual sales, actual imports or competitively run government auctions) (tier-one); (2) world market prices that would be available to purchasers in the country under investigation (tier-two); or (3) an assessment of whether the government price is consistent with market principles (tier-three). While we agree with the GOC that the Act directs the Department to determine the adequacy of remuneration in relation to the prevailing market conditions in the country where the good is being provided, in this case we determine that the market for primary aluminum is significantly distorted by the involvement of the government.[373] Therefore, the use of domestic prices of aluminum in China, including import prices, is not suitable for our analysis. Although the GOC contends that the prices in China parallel prices on the LME and there are other factors indicating that prices in the PRC and foreign markets are converging, because the Department has determined that the prices in the primary aluminum market in China are significantly distorted because of the government's involvement in the market, using a price from within China would not be appropriate.

Further, the Department's decision to use tier-two prices is consistent with the *Preamble*, which states that, "where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative…"[374] This decision to rely on world market prices is also consistent with the underlying investigation as well as other PRC CVD cases.[375]

[372] *See* sections 771(5)(D)(iv) and 771(5)(E)(iv) of the Act.
[373] *See supra* at "Provision of Primary Aluminum for LTAR."
[374] *See Preamble*, 63 FR at 65377.
[375] *See Aluminum Extrusions from the PRC Investigation*, and accompanying Issues and Decision Memorandum at "Provision of Primary Aluminum for LTAR;" *see also Wind Towers from the PRC*, and accompanying Issues and Decision Memorandum at "Provision of Hot-Rolled Steel for LTAR."

Comment 14: Whether the Department's Investigation of Uninitiated Programs Is Unlawful

Case Brief of GOC:

- The Department has no lawful authority to impose countervailing duties with regard to 32 additional purported "grants programs" benefiting the Alnan Companies.

- Although Kromet cooperated fully by responding to the Department's request for information, none of these were in response to any "programs" alleged by Petitioner or duly initiated by the Department. There was no proper showing by Petitioner of the existence of the required elements of a countervailable subsidy, nor was there a subsequent initiation with regard to these "programs" or inclusion of them in the initial or new subsidy questionnaires.

- The Department has no authority to seek information on these new, purported "grant programs" under either the statute or the Department's regulations. Under U.S. law, investigations by the Department are initiated on a program-by- program basis after the Department evaluates the petitioner's allegations and finds sufficient evidence of the existence of a financial contribution, benefit, and specificity.[376] . If, during the course of an investigation, the Department discovers a practice that appears to provide countervailable subsidy that was not alleged, the Department's regulations require it to notify the parties whether the practice will be included in the investigation.[377]

- Articles 11.1 and 11.2 of the WTO SCM Agreement provide that an investigation of any alleged subsidy may be initiated only upon written application that must include sufficient evidence of a subsidy, injury, and a causal link between the subsidy and alleged injury. "Simple assertion, unsubstantiated by relevant evidence" is not sufficient to meet the requirements.378 While the SCM Agreement provides the right to self-initiate an investigation in "special circumstances," the right can only be exercised on the basis of sufficient evidence of the existence of a subsidy, consistent with Article 11.6 of the SCM Agreement, and after an opportunity to consultation has been properly offered to the government of exporting country under investigation, consistent with Article 13.1 and 13.2 of the SCM Agreement.

- The Department required Kromet and the GOC to provide information on purported "grant programs" that were never properly initiated in a petition or new subsidy allegation, in clear violation of U.S. CVD law and the Department's regulations. Because the Department failed to initiate lawfully an investigation of the 32 purported "grant programs," it should withdraw its preliminary findings related to them, and remove from the record all the information obtained through improper questionnaire requests.

[376] *See* 19 CFR 351.203.
[377] *See* 19 CFR 351.311.
[378] *See* SCM Agreement at Article 11.2

Rebuttal Brief of Petitioner:

- The regulation cited by the GOC, 19 CFR. 351.203, applies to initial petitions. The Department retains the authority to self-initiate on potential subsidies during the course of a countervailing duty investigation or review. The Act allows the Department to "examine the practice, subsidy, or subsidy program" where it "discovers a practice that appears to provide a countervailable subsidy with respect to the subject merchandise and the practice was not alleged or examined in the proceeding."[379]

- With respect to these programs, the Department discovered that certain grant programs were potentially countervailable through the process of issuing questionnaire responses to the Alnan Companies and analyzing them. These actions are plainly within the Department's authority and were taken at the urging of Petitioner. On February 15, 2013, Petitioner submitted deficiency comments identifying proprietary information submitted in the Alnan Companies' initial questionnaire response that warranted examination by the Department.

- The fact that Petitioner did not formally request initiation of these programs did not prevent the Department from investigating potential subsidies on its own.

- In *Multilayered Wood Flooring from the People's Republic of China,* the Department self-initiated lines of inquiry on several potential subsidies, relying upon 19 CFR 351.311 and Section 775 of the Act as authority for the Department to do so.[380]

Department's Position: Section 775 of the Act states that if, during a proceeding, the Department discovers "a practice that appears to provide a countervailable subsidy, but was not included in the matters alleged in a countervailing duty petition," the Department "shall include the practice, subsidy, or subsidy program if the practice, subsidy or subsidy program appears to be a countervailable subsidy with respect to the merchandise which is the subject of the proceeding." Under 19 CFR 351.311(b), the Department will examine the practice, subsidy or subsidy program if the Department "concludes that sufficient time remains before the scheduled date for the final determination or final results of review."

In *Wood Flooring from the PRC*, the Department found that the respondents' financial statements identified assistance programs from the GOC which had not been provided in the questionnaire responses. The Department found that it was able to include the practice in the proceeding pursuant to the Act and its regulations.[381]

As explained above in "Application of AFA for Programs Discovered Through the Analysis of the Alnan Companies' Financial Statements," the Department reviewed the financial statements of the Alnan Companies and identified grants and funding from provincial and local

[379] *See* 19 CFR 351.311(b); *see also* section 775 of the Act.
[380] *See Multilayered Wood Flooring from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 64313 (October 18, 2011*)* (*Wood Flooring from the PRC*), and accompanying Issues and Decision Memorandum at Comment 3.
[381] *Id.*

governments which were not part of any of the other programs included in this administrative review. Thus, the Department determined that it was necessary to issue supplemental questionnaires to the Alnan Companies and the GOC regarding information contained in these financial statements. The Alnan Companies and the GOC provided information regarding a number of grant programs and a tax program in supplemental responses to these questions. Thus, in light of the information contained in the financial statements and based on the guidelines established under section 775 of the Act and 19 CFR 351.311(b), the Department acted well within its authority to examine the programs within this proceeding and seek additional information from the GOC and the Alnan Companies. This approach is consistent with the Department's practice.[382]

We disagree that the Department's regulations prevent the Department from investigating these programs. The GOC's citation to 19 CFR 351.203 is misplaced, because that provision concerns the determination of sufficiency of a petition, not programs discovered during the course of a review. We agree that 19 CFR 351.311(d) provides that the Department will notify the parties to the proceeding of any subsidy discovered in any ongoing proceeding, and whether or not it will be included in the ongoing proceeding. The parties were notified of the discovery of these grants and tax program, and their inclusion in the proceeding based on the issuance of supplemental questionnaires concerning the programs, and such notice is evident in the fact that Petitioner, Kromet and the GOC commented on the issues surrounding these programs for the final results.[383] Accordingly, as discussed above, the Department's determination is consistent with both the Act and the Department's regulations.

Comment 15: Whether the Reduced Tax Rate Provided Under Article 28 of the Enterprise Income Tax Law For High or New Technology Enterprises Is Countervailable

Case Brief of GOC:

- Even though the products (or services) of the recipients fall into the high and new technology categories as prescribed in the relevant provisions, application for or benefit from the reduced tax rate under Article 28 of the Enterprise Income Tax Law (EITL) is not limited to specific industries or sectors. Accordingly, this alleged subsidy should not be countervailed because it is not specific.[384]

- The scope of the high and new technology fields encouraged by the GOC as part of this program covers eight general high- and new-technology fields (or "areas"), which further include 39 sub-areas and more than 200 specific areas. In other words, it is far-ranging

[382] The Department has addressed these same arguments within the context of nearly identical fact patterns before. *See e.g., Steel Wheels from the PRC*, and accompanying Issues and Decision Memorandum at 45-46 ; and *Citric Acid from the PRC*, and accompanying Issues and Decision Memorandum at Comment 30. *See also Solar Cells from the PRC*, and accompanying Issues and Decision Memorandum at Comment 23.
[383] *See Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013), and accompanying Issues and Decision Memorandum at Comment 14.
[384] *See* 19 CFR 351.502 (referring to the factors in section 771(5A)(D)(iii).

and diversified "technology areas" that are supported, rather than only some limited and selected industries or sectors.

- Furthermore, in practice, many of the specific technologies falling into primarily supported technology areas can be applied to various industries and the listed technology areas cover virtually all industries such as agriculture, transportation, energy, chemical industry, light industry, manufacturing, pharmaceutical industry, and textiles, among others.

Rebuttal Brief of Petitioner:

- The GOC has not provided any documentation listing which sectors or fields are eligible for the tax benefit. Indeed, the only documentation on the record concerning this program is the regulation itself entitled the "Regulation on the Implementation of the Enterprise Income Tax Law."

- The Department has previously addressed the issue of specificity as it pertains to the Article 28 tax benefit program in *Steel Wheels from the PRC*.[385] Despite the GOC's attempts to broaden the eligibility of the program, the Department found that the coverage or breadth is largely irrelevant given that the program is open only to *certain* enterprises which produce within *certain* segments of the Chinese industry. By definition, a program that is open only to certain enterprises (and one that is open only through an application process) is specific within the meaning of Section 771(5A)(D) of the Act. Moreover, one of the Act's elements for finding a lack of specificity is not met under the terms of this program, namely that access to the program is not automatic.

- There is no information on the record that would differentiate the record from that which existed in *Steel Wheels from the PRC* and given that the same structural barriers to entry that existed in *Steel Wheels from the PRC* continue to exist during this POR, Article 28 benefits are specific and are, therefore, countervailable.

Department's Position: We agree with Petitioners. As we explained in *Steel Wheels from the PRC*, where a program is limited to a group of enterprises, specifically defined by law, the program is specific within the meaning of section 771(5A)(D) of the Act. This provision refers to "an enterprise or industry" or "a group of such enterprises or industries." (Emphasis added.) Thus, the law anticipates groupings of enterprises that may otherwise belong to different industries. Moreover, under section 771(5A)(D)(ii), among the conditions that must be met for a program to be found not specific as a matter of law is that eligibility is automatic.[386] Article 28 of the EITL expressly limits the benefits to enterprises with a specific designation, "important high-tech enterprises to be supported by the State,"[387] as defined under Article 93 of the Regulation on the Implementation of the Enterprise Income Tax Law. This Article specifies additional conditions such as the proportions of R&D expense, revenue and staffing relating to

[385] *See Steel Wheels from the PRC*, and accompanying Issues and Decision Memorandum at Comment 25.
[386] *Id*.
[387] *See* GOC's IQR (January 9, 2013) at Exhibit B-2

high and new technology production.[388] In addition, eligibility for the Article 28 tax benefits is not automatic; the enterprise must undergo an application, designation and certification process and, upon approval by the relevant authorities, be issued a High and New Tech Enterprise Certificate, before it can claim those tax benefits.[389] Thus, notwithstanding the GOC's claim that such enterprises come from a variety of industries, the benefits under Article 28 are clearly limited to a well-defined and specific group of enterprises within the meaning of section 771(5A)(D)(i) of the Act.

Comment 16: Attribution of Subsidies Received by Alnan Foil

Case Brief of Kromet:

- Alnan Foil does not produce subject aluminum extrusions. Instead, Alnan Foil produces aluminum strips, flats, and foils from aluminum ingots and billets. During the POR, Alnan Foil purchased aluminum ingots and billets as raw material for its production of non-subject merchandise and used the vast majority of these purchases for its own production.

- Alnan Foil supplied aluminum ingots and billets to Alnan for the production of various products, including the subject aluminum extrusions. Alnan Foil acted as a reseller of inputs it purchased. Alnan Foil did not produce the inputs it sold to Alnan.

- In the *Preliminary Results*, the Department found Alnan Aluminum, Alnan Foil, Shanglin Industry, and Shanglin Power to be cross-owned affiliates within the meaning of 19 CFR 351.525(b)(6)(vi) by virtue of direct or common ownership. The Department further found that Alnan Foil, Shanglin Industry, and Shanglin Power supplied inputs to Alnan Aluminum that are primarily dedicated to the production of the downstream product, aluminum extrusions, pursuant to 19 CFR 351.525(b)(6)(iv), and attributed the subsidies received by each company to the combined sales of the company and Alnan Aluminum, net of inter-company sales. The Department attributed subsidies received by Alnan Aluminum its own sales, net of inter-company sales.

- Since Alnan Foil is not an input producer pursuant to 19 CFR 351.525(b)(6)(iv), the Department should not attribute all subsidies received by Alnan Foil to the combined sales of Alnan Foil and Alnan.

- Only the subsidy that Alnan Foil received relating to its resale to Alnan of aluminum ingots and billets can be attributed to Alnan pursuant to the "transfer" provisions in 19 CFR 351.525(b)(6)(v).

- None of the other subsidies calculated by the Department for Alnan Foil (such as preferential lending benefits, grants, or Alnan Foil's purchases of primary aluminum

[388] *See* GOC's NSA QR (March 21, 2013) at 13-18 and Exhibit NSA-E-1.
[389] *Id*.,at 15.

for its own use in producing non-subject merchandise) can be attributed to Alnan under the Department's cross-ownership regulations because none of these other subsidies were "transferred" to Alnan pursuant to 19 CFR 351.525(b)(6)(v).

- The *Preamble* makes clear that subparagraph (iv) applies only where the supplier of the input to the downstream producer is the "producer" of the input.[390]

- Prior determinations which confirm that it is Department's practice to apply subparagraph (v) with regard to the attribution of subsidies received by input suppliers that do not produce the input include *OCTG from the PRC,* [391] *CWP from the PRC,*[392] and *Light-Walled Pipe from the PRC.*[393]

Rebuttal Brief of Petitioner:

- In the *Preamble,* the Department states that it "recognize{s} that there may be many scenarios where these attribution rules do not fit precisely the facts of a particular case."[394] Such scenarios include those that involve non-producing suppliers of inputs to subject production.

- In *Refrigerator-Freezers from Korea,* the Department stated that "neither the regulations nor the CVD Preamble identify all situations in which it is appropriate to attribute subsidies."[395] In *Refrigerator-Freezers from Korea*, an affiliated party purchased and resold inputs for the production of subject merchandise to its parent company. The respondent argued that subsidies received by the supplier could not be attributed to the parent, but the Department disagreed, finding that these subsidies benefitted the parent.

- In *Ribbons from the PRC*, a respondent that was affiliated with a company that supplied inputs into the production of subject merchandise.[396] The Department concluded that, regardless of whether the supplier produced or simply purchased the inputs, attribution of the supplier's subsidies to the parent company was proper.

> The supplier relationship between Yama and Yama Trading may fall under 19 CFR 351.525(b)(6)(iv) (subsidies to cross-owned input suppliers) or 19 CFR 351.525(b)(6)(v) (transfer of subsidies). Because Yama consolidates Yama Trading's sales into its own sales, the

[390] *See Preamble,* 63 FR at 65348.
[391] *See Certain Oil Country Tubular Goods from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination*, 74 FR 47210 (September 15, 2009), and accompanying Issues and Decision Memorandum at Comment 39.
[392] *See CWP from the PRC*, and accompanying Issues and Decision Memorandum at "Attribution of Subsidies."
[393] *See Light-Walled Pipe from the PRC* and accompanying Issues and Decision Memorandum at "Attribution of Subsidies."
[394] *See Preamble*, 63 FR at 65400.
[395] *See Refrigerator-Freezers from Korea*, and accompanying Issues and Decision Memorandum at Comment 21.
[396] *See Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China,* 75 FR. 41801 (July 19, 2010) (*Ribbons from the PRC*), and accompanying Issues and Decision Memorandum at "Attribution of Subsidies."

> attribution of Yama Trading's subsidies to Yama is identical under 19 CFR 351.525(b)(6)(iv) or 19 CFR 351.525(b)(6)(v). Under both sections of the regulations, the attribution of Yama Trading's subsidies is to Yama's unconsolidated sales. Thus, we are attributing any subsidies that Yama Trading received to Yama's unconsolidated sales, which includes Yama Trading's sales (net of inter-company sales).

- This decision undermines the argument that, if 19 CFR 351.525(b)(6)(iv) is inapplicable, then the only subsidy transferred between Alnan Foil and Alnan Aluminum is that relating to the provision of aluminum inputs at less than adequate remuneration. The Department stated that "any subsidies" received by Yama Trading should be attributed to its parent, Yama.

- Alnan Aluminum is the parent company, and it consolidates all group members' financial statements. Accordingly, pursuant to the decision in *Ribbons from the PRC*, all subsidies received by Alnan Foil should be deemed transferred, and attributed in a manner identical with that employed by the Department in the *Preliminary Results*.

- In *PC Strand from the PRC*, the Department deemed that *all* subsidies received by an affiliated company that purchased and supplied inputs to the manufacturer of the subject merchandise had been transferred, not just subsidies that the input supplier obtained by virtue of purchasing inputs at less than adequate remuneration.[397] In that case, Fasten, the manufacturer, was the parent company of Hongsheng, a company that supplied (but did not produce) input wire rod for Fasten's production. Hongsheng purchased wire rod inputs at LTAR and benefitted from policy lending programs. Both types of subsidies were attributed to the manufacturer's sales.

- If the Department accepts Kromet's argument that the attribution of subsidies received by Alnan Foil should be reviewed under 19 CFR. 351.525(b)(6)(v), it should reject the claim that the only subsidy that should be deemed to have transferred relates to the provision of aluminum at LTAR.

- Kromet's argument is based on a narrow reading of the regulations that ignores the Department's past practice with respect to the transfer of subsidies. For the final results, the agency should continue to attribute all subsidies received by Alnan Foil to Alnan, as it did in the *Preliminary Results*.

Department's Position: We agree with Kromet. In the *Preliminary Results*, we countervailed all of the purchases of aluminum made by Alnan Foil during the POR. We also countervailed other subsidies received by Alnan Foil. However, as in *CWP from the PRC*,[398] information on the record indicates that Alnan Foil does not produce subject merchandise and does not produce

[397] *See PC Strand from the PRC*, and accompanying Issues and Decision Memorandum at "Attribution of Subsidies."

[398] *See CWP from the PRC*, and accompanying Issues and Decision Memorandum at "Attribution of Subsidies;" *see also Preamble*, 64 FR at 65401.

aluminum and so 19 CFR 351.525(b)(6)(iv), which provides for the attribution of subsidies received by an input producer to the combined sales of the input and downstream products produced by both the input supplier and a downstream producer, does not apply. While the Department may have been inconsistent in this regard, we find that 19 CFR 351.525(b)(6)(v), which concerns the transfer of a subsidy between corporations with cross-ownership producing different products, better applies in this case, because Alnan Foil and Alnan Aluminum are cross-owned but produce different products. Because Alnan Foil supplies aluminum to Alnan Aluminum that it purchased, we determine that under 19 CFR 351.525(b)(6)(v), Alnan Foil transfers the subsidies it received under the Provision of Aluminum for LTAR program on aluminum it purchased and then transferred to Alnan Aluminum. Therefore, for these final results, we did not include in the benefit calculation all of Alnan Foil's purchases of aluminum. Rather, we included only the amount of aluminum that Alnan Foil transferred in the benefit calculation. In addition, because Alnan Foil is neither a producer of the subject merchandise nor an input, we did not countervail any other subsidies received by Alnan Foil.

Comment 17: Attribution of Subsidies Received by Alnan Aluminum

Case Brief of Kromet:

- Alnan is a holding or parent company pursuant to 19 CFR. 351.525(b)(6)(iii). As reported in the initial response, Alnan is the corporate parent of Alnan Foil.

- Alnan prepares consolidated financial statements in the normal course of business and these contain consolidated sales information, including Alnan Foil's sales, net of inter-company sales.

- In the *Preliminary Results* the Department stated that "{f}or subsidies received by Alnan Aluminum, we are attributing subsidies received by the company to its own sales, net of inter-company sales."[399] In using Alnan's unconsolidated sales as the denominator in this subsidy calculation, however, the Department failed to apply the express terms of 19 CFR 351.525(b)(6)(iii), which provides that "if the firm that received a subsidy is a holding company, including a parent company with its own operations, the Secretary will attribute the subsidy to the consolidated sales of the holding company and its subsidiaries" (emphasis added).

- The use of Alnan's unconsolidated "own sales" as the denominator for attribution of subsidies resulted in an overstatement of Alnan's subsidy rate. The Department should use Alnan's consolidated sales as the denominator in the attribution of subsidies received by Alnan, consistent with 19 CFR 351.525(b)(6)(iii).

- Consistent with the Department's determinations in *Wind Towers from the PRC,*[400] *Coated Paper from the PRC,*[401] *Seamless Pipe from the PRC,*[402] and *OCTG from the*

[399] *See Preliminary Results*, and accompanying Issues and Decision Memorandum at 12.

[400] *See Wind Towers from the PRC*, and accompanying Issues and Decision Memorandum at Comment 21.

PRC,[403] the Department should use Alnan's consolidated sales, as reflected in Exhibits 52 and 53 to the January 9, 2013, IQR, as the denominator in the Final Results for purposes of attributing subsidies received by Alnan.

Rebuttal Brief of Petitioner:

- In the *Preliminary Results*, the Department properly attributed subsidies received by Alnan to its own sales, net of inter-company sales. This calculation methodology is consistent with the agency's regulations at 19 CFR 351.525(b)(5), which require that subsidies be attributed only to the products that directly benefit from the subsidy.

- The regulations appropriately recognize that subsidies may be tied to the production or sale of particular goods, such that it makes no sense to attribute them over sales of other products that are wholly unrelated to the production of subject merchandise. The Department's policy is to closely match benefits with production.

- In the *Preamble*,[404] the Department recognized that it would be inappropriate to attribute subsidies received by a plastics company to a cross-owned producer of automobiles, given that the subsidy would not benefit the latter's production. Similarly, some of the subsidies that benefitted certain Alnan companies are not logically attributable to the sales of other members. In particular, any subsidy that Alnan received by virtue of its purchases of aluminum at less than adequate remuneration are clearly meant to benefit products made from aluminum.

- In addition, any benefit that Alnan received by virtue of its purchases did not extend to its affiliates. In the *Preliminary Results*, the Department recognized these facts and attributed subsidies in light of the products they were intended to benefit.

- Kromet wrongly argues that the Department should attribute the aluminum subsidies that Alnan received over sales wholly unrelated to the production of subject merchandise. As the Department has recognized in *OCTG from the PRC*, the regulation regarding parent companies does not invalidate the requirement that subsidies be attributed in a manner that matches subsidy amounts to the sales that benefit from the subsidies regulation.[405] By tying the subsidies provided as closely as possible to the production of the subject

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[401] *See Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 59212 (September 27, 2010) (*Coated Paper from the PRC*) and accompanying Issues and Decision Memorandum at Comment 35.
[402] *See Seamless Pipes from the PRC*, and accompanying Issues and Decision Memorandum at 123.
[403] *See OCTG from the PRC*, and accompanying Issues and Decision Memorandum at Comment 39. *See also Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Countervailing Duty Determination*, 78 FR 33342 (June 4, 2013) (*Frozen Shrimp from Vietnam*); *Certain Frozen Warmwater Shrimp From India: Preliminary Countervailing Duty Determination*, 78 FR 33344 (June 4, 2013) (*Frozen Shrimp from India*); *Certain Frozen Warmwater Shrimp from the People's Republic of China: Preliminary Countervailing Duty Determination*, 78 FR 33346 (June 4, 2013) (*Frozen Shrimp from the PRC).*
[404] *See Preamble*, 63 FR at 65401.
[405] *See e.g., OCTG from the PRC*, and accompanying Issues and Decision Memorandum at Comment 39.

merchandise, the Department applied the regulations "as harmoniously as possible"[406] and accurately calculated the effects of the subsidies on the production of the subject products.

Department's Position: We agree with Kromet. Because Alnan is the parent company of the Alnan Companies, 19 CFR 351.525(b)(6)(iii) is the applicable provision of the Department's regulations with regard to the attribution of subsidies received by Alnan. The regulation provides that, "if the firm that received a subsidy is a holding company, including a parent company with its own operations" the Department "will attribute the subsidy to the consolidated sales of the holding company and its subsidiaries."[407] We find that this is consistent with the Department's determination in *OCTG from the PRC*, where we attributed subsidies to the parent company to the company's consolidated sales.[408] With respect to the Petitioner's citations to the *Preamble*, we find that these are summaries of the Department's attribution practice, but that section 351.525(b)(6)(iii) is directly applicable to the facts of this case and, thus, controls. Further, although the Petitioner cites to *OCTG from the PRC* in support of its argument, in that case, the Department found that "it is most appropriate to follow the Department's regulation for subsidies provided to parent companies under 19 CFR 351.525(b)(6)(iii)."[409] Therefore, in the calculations for these final results, we are attributing the subsidies received by Alnan using the Alnan Companies' 2010 and 2011 consolidated sales figures as the denominators. Alnan Companies' 2010 and 2011 consolidated sales figures are listed in the income statements ("Profit Sheet"), appearing at the beginning of Exhibits 52 and 53 of the January 9, 2013, IQR

In addition, we are using the consolidated sales figures as the denominators for the test to determine whether a grant received by Alnan is allocable over time (*i.e.*, the 0.5 percent test) and for the test to determine whether a grant confers a benefit greater than 0.005 percent. As a result of the using the Alnan Companies' consolidated sales figures (instead of Alnan's unconsolidated sales figures) for these tests, we determine that some of the grants found to be allocable in the *Preliminary Results* are not allocable. We also determine that some of the grants found to confer benefits in the *Preliminary Results* do not confer a benefit.

Comment 18: The Department's Use of Facts Available Regarding Suppliers of Aluminum

Case Brief of Kromet:

- In the *Preliminary Results*, the Department treated all of Alnan's purchases of aluminum billets and ingots from unrelated suppliers as potentially countervailable purchases from governmental "authorities," notwithstanding that the information provided by Alnan which showed that a substantial proportion of these purchases were from privately owned suppliers rather than SOEs and collectives.

[406] *See Preamble*, 63 FR at 65400.
[407] *See* 19 CFR 351.526(b)(6)(iii).
[408] *See OCTG from the PRC*, and accompanying Issues and Decision Memorandum at Comment 39; *see also Wind Towers from the PRC*, and accompanying Issues and Decision Memorandum at Comment 21.
[409] *See OCTG from the PRC*, and accompanying Issues and Decision Memorandum at Comment 39

- The effect of the application of adverse facts available against the GOC, which the Department preliminarily concluded to have "withheld necessary information that was requested of it" was to penalize Kromet and its supplier Alnan, which the Department has acknowledged were fully cooperative on this issue by having "identified all of the firms that produced the primary aluminum they purchased during the POR."[410]

- The Department may only apply AFA to a company which has failed to cooperate.[411] The CIT has held that, although the Department may use AFA which "collaterally affect a cooperating respondent," but this result is "disfavored" and "should not be employed when facts not collaterally adverse to a cooperative party are available."[412]

- In *GPX VII*, the Department applied adverse facts available against the GOC based on a failure to supply certain debt forgiveness documents.[413] This application of adverse facts available directly affected the CVD rate calculated for TUTRIC, a cooperative respondent in the investigation. The Court noted however, that in the CVD context an exception may be applied to this general principle to allow the Department "to draw an adverse inference with regard to government-held information, with possible collateral effects on a respondent." However, the Court held that this is a limited exception and that, if alternative, appropriate benchmark data are available, that these are superior to data which adversely affects a cooperating party.

- In its questionnaire response, Kromet provided a complete list of all Chinese producers that supplied primary aluminum to Alnan during the POR. The Department did not request ownership information from Alnan, but instead requested that the GOC supply ownership information for each of these entities, including (for privately-owned and less- than-majority state owned companies) whether the owners, directors or officers of each of these companies were CPP officials or representatives of a CCP organization in 2011. The GOC's response provided detailed ownership information for two of Alnan's privately-owned primary aluminum suppliers, and further advised the Department (as it has in several prior proceedings) that CCP officials are not eligible to be enterprise employees. The GOC reaffirmed its position in a subsequent supplemental questionnaire relating to input suppliers.

- In the *Preliminary Results*, the Department found that the GOC "has failed to cooperate by not acting to the best of its ability to comply with our requests for information," and applied, as adverse facts available, an assumption that all Alnan suppliers were "authorities" within the meaning of section 771(5)(B) of the Act. The Department treated all of the entities that supplied primary aluminum to Alnan as governmental "authorities", regardless of whether the companies were privately-owned, foreign-invested entities, or had unknown ownership.

[410] *See Preliminary Results*, and accompanying Issues and Decision Memorandum at 24.
[411] *See* section 776(b) of the Act.
[412] *Fine Furniture (Shanghai) Ltd. v. United States*, 865 F. Supp. 1254, 1262 (CIT 2012), at footnote 10.
[413] *See GPX VII*. *See also Archer Daniels Midland Co. v. United States*, 917 F. Supp. 2d 1331 (CIT 2013).

- The "non-cooperation" found by the Department in this instance was in no way attributable to either Kromet or its supplier Alnan. Kromet and Alnan provided full responses to the Department's questions and "identified all of the firms that produced the primary aluminum they purchased during the POR."[414]

- The Department had such a neutral facts available alternative on the record. In the *Investigation*, the Department requested and received from the Government of China information on the share of primary aluminum produced by SOEs, collectives, and private enterprises during the period of investigation (Primary Aluminum Production Data). These data were used as neutral facts available for aluminum bar purchased from a trading company by the supplier to the other mandatory respondent, Changzheng Evaporator. The Department accepted the supplier's statement that it was not able to identify the producer of the aluminum bar and thus used these data as a neutral surrogate. The Department should therefore recalculate the benefit that Alnan allegedly received from purchases of aluminum at less than adequate remuneration from suppliers other than majority state-owned entities by applying this "authorities" ratio to these suppliers.

- The rationale for using these data as neutral facts available is even more compelling in the case of Alnan, which was able to identify all of its suppliers of primary aluminum and provided this detail to the Department as requested. Had Alnan possessed no information concerning the identity of its aluminum suppliers, the Department would have applied, as neutral facts available, the same approach it did for Changzheng Evaporator, and concluded that slightly less than 60 percent of its purchases of primary aluminum were from "authorities." There is no conceivable reason why Alnan, which exhibited exemplary cooperation in identifying all of its primary aluminum suppliers, should be subjected to worse treatment than the other respondent relating to the Department's concern with the ownership information provided by the Government of China. By treating all of Alnan's purchases of primary aluminum as purchases from "authorities," but less than 60 percent of other respondent's trading company purchases as such purchases, the Department effectively penalized Alnan for its full cooperation and responses to the Department's request for information on its suppliers.

- Alnan purchased primary aluminum from five suppliers that are majority or 100 percent privately-owned. Even application of the Primary Aluminum Data ratio as neutral facts available to these suppliers will grossly overstate the extent to which any of these suppliers could reasonably be considered to be "authorities" within the meaning of Section 771(5)(B) of the Act. As noted above, the Primary Aluminum Data ratio expressly assumes that only "SOEs and collectives" and not "private producers" are "authorities," which represents an implicit judgment that privately-owned companies are not such "authorities."

[414] *See Preliminary Results*, and accompanying Issues and Decision Memorandum at 24.

Rebuttal Brief of Petitioner:

- The GOC did not supply the Department with requested information for a number of Alnan's suppliers. Rather, it followed its stated practice of delay and obfuscation, withholding information as it has done in many prior cases.[415] Thus, the Department appropriately applied AFA and found that all of the Alnan suppliers for which the GOC withheld ownership information were authorities. This inference was consistent with the agency's practice in a large number of prior proceedings.[416]

- The "neutral" data that Kromet advocates in no way responds to the GOC's failure to cooperate. The point of adverse inferences is to provide an incentive to future cooperation.[417] In particular, the Department has discretion to apply adverse inferences to a party "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully" and Congress has directed the agency to consider "the extent to which a party may benefit from its own lack of cooperation."[418] If GOC's failure to cooperate does not result in any inference adverse to the GOC, then the GOC benefits from its lack of cooperation, and there is no incentive to future cooperation.

- By focusing solely on whether or not it should suffer collateral adverse effects by reason of the GOC's failure to cooperate, Kromet ignores the need to incentivize the GOC. And the necessity of such incentives is particularly apparent in this case, where the record contains information showing that the GOC has a stated policy of withholding information and otherwise attempting to undermine the Department's work.

- Significant differences exist in the record "gaps" for Alnan and Changzheng. Changzheng was unable to identify the producer of aluminum that one of its suppliers purchased from a trading company, and explained why. Because the producer could not be identified, GOC could not obtain information on the producer's ownership. This record gap was small. It affected only a portion of the aluminum obtained from a single supplier, and it resulted despite both Changzheng and GOC acting to the best of their ability to provide requested data. By contrast, the record gap with respect to Alnan resulted from a party's failure to act to the best of its ability to provide information. Moreover, that failure affects a greater number of producer/supplier companies, and a greater volume of purchases.

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[415] *See e.g., Steel Sinks from the PRC*, and accompanying Issues and Decision Memorandum at 8-16; and *CWASPP from the PRC*, and accompanying Issues and Decision Memorandum at Section III.A.

[416] *See e.g., Kitchen Racks from the PRC*, and accompanying Issues and Decision Memorandum at Section IV; *Citric Acid from the PRC Second Review*, and accompanying Issues and Decision Memorandum at Section VI and Comment 6*; CWP from the PRC*, and accompanying Issues and Decision Memorandum at 9*;* and *Light-Walled Pipe from the PRC*, and accompanying Issues and Decision Memorandum at 8.

[417] *See e.g., DeCecco*, 2I6 F.3d at 1032.

[418] *See* Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Rep. I03-3I6, vol. I at 870 (1994), reprinted in I994 U.S.C.C.A.N. 4040, 4I99.

- Further, *Fine Furniture (Shanghai) Limited v. United States*[419] does not support Kromet's argument because there were no alternative data on the record and so the Court affirmed the Department's use of AFA. Here, there are no data on the record with respect to the ownership of many of the companies that Alnan reported as having supplied it with primary aluminum during the review period. Alnan or Kromet, despite knowing of the GOC's failure to provide ownership data, did not step forward to attempt to place such ownership data on the record. Indeed, the data that Kromet asks the agency to rely on was not supplied by Kromet/Alnan; the agency itself obtained the data from the record of the original investigation, after finding that it lacked the information necessary to determine the identity of one of Changzheng's suppliers.

- The countervailing duty law, unlike antidumping duty law, does not seek to address the respondent's own commercial activity in isolation. While Kromet objects to any adverse inference that affects it collaterally, such inferences are a natural consequence of the countervailing duty laws, which do not address individual companies' behavior so much as individual companies' participation in government-wide systems of subsidization. The GOCs information is absolutely required if the agency is to make a determination on the issues in a subsidy case.

- One of the parties responsible for providing data failed to provide the requested data, despite having access to it. In these circumstances, the statute clearly permits an inference adverse to the non-cooperative party's interests. That this inference is collaterally adverse to Kromet is not a "punishment." of Kromet. There are no data on the record as to the actual ownership of a number of Alnan's aluminum suppliers. Nor is there any reason to believe that the data Kromet would have the agency employ as neutral facts available are any more accurate than the adverse inference. Indeed, given GOC's extreme lack of cooperation, it is likely that the extent of the Government's ownership in Alnan's suppliers more closely approximates the adverse inference than it does Kromet's desired alternative.

Department's Position: We disagree with Kromet that the GOC's failure to provide the requested information warrants the application of "neutral" facts available as opposed to AFA. By failing to respond to the questions, the GOC withheld information requested of it and failed to cooperate by not acting to the best of its ability.[420] In response to the Department's supplemental questionnaires, the GOC failed to provide information requested regarding the ownership of certain aluminum producers. The GOC's questionnaire responses in prior proceedings and its answers in in this review to the Department's questions regarding other producers demonstrate that it is, in fact, able to access and provide the information we requested.[421] Therefore, and for the reasons discussed in the "Use of Facts Otherwise Available and Adverse Inferences" section, we determine that the GOC did not cooperate to the best of its ability and an adverse inference is warranted in the application of facts available.[422] As AFA, regardless of Kromet's reporting of alleged majority or wholly-private ownership, for those input

[419] *See Fine Furniture (Shanghai) Ltd. v. United States,* 865 F. Supp. 2d 1254 (CIT 2012).
[420] *See* sections 776(a) and (b) of the Act.
[421] *See PC Strand from the PRC*, and accompanying Issues and Decision Memorandum at Comment 8.
[422] *See* sections 776(a) and (b) of the Act.

producers for which the GOC failed to provide ownership information, we are finding them to be "authorities" within the meaning of section 771(5)(B) of the Act whose sales of primary aluminum constitute a financial contribution as described under section 771(5)(D)(iii) of the Act.

We disagree that we should apply the same facts available ratio to the Alnan Companies as we did for Changzheng Evaporator. As explained in "Provision of Primary Aluminum for LTAR" section above, Changzheng Evaporator explained that it was not able to obtain the identity of the producer(s) of primary aluminum which its affiliate, Liaoning Changzheng, purchased from a trading company, because the trading company "sources from many aluminum bar suppliers and cannot recognize the source of the aluminum bar when it sells the product to its customers."[423] Because Changzheng Evaporator was unable to identify the producer of the aluminum bar, the GOC was not able to provide a response to the *Input Producers Appendix* for that company.[424] Under these circumstances, it was reasonable not to expect Changzheng Evaporator to ascertain the producers of all of its purchases of aluminum that it obtained through the particular trading company. As such, Changzheng Evaporator did not fail to cooperate by not acting to the best of its ability because it identified the producers of as many of its aluminum purchases as possible. Because it is not reasonable to expect the GOC to provide ownership information for (an) unknown producer(s), it is reasonable to fill this gap in the information on the record by applying "neutral" facts available. We thus included a portion of these purchases in the calculations equal to the ratio of primary aluminum produced by SOEs and collectives during the POI. Because there is no information on the record about whether the purchases of aluminum from the trading company were produced by government authorities or private parties and it is reasonable to conclude that the aluminum could be produced by a government authority or private party or a combination of producers of either type, the application of this ratio of production as neutral facts available results in a reasonable estimate of the amount of the purchased aluminum that stemmed from government authorities.

Although the Alnan Companies identified the producers of the aluminum extrusions that they purchased, the GOC then did not act to the best of its ability because it refused to provide ownership information for some of those producers. As explained above, in situations where a party is having difficulties providing requested information, it is incumbent upon the party to be proactive. If the GOC was not able to submit the required information in the requested form and manner, it should have promptly notified the Department, in accordance with section 782(c) of the Act. It did not do so, nor did it suggest any alternative forms for submitting this information. Further, the GOC did not indicate, for example, that it attempted to gather the requested information but discovered that the information was no longer available or somehow had been destroyed. The GOC provide no explanation why it was unable to provide the information. Therefore, we find that it is not appropriate to apply facts available in this instance and so have not used the ratio from the *Investigation*.

With regard to Kromet's arguments that the GOC's actions result in a punishment of the Alnan Companies, we disagree. The application of AFA with regard to the input producers for which the GOC refused to provide ownership information is warranted. Kromet cites *Archer Daniels Midland* and *Fine Furniture (Shanghai)* in support of its argument that the Department should

[423] *See* Changzheng Evaporator's SQR (April 3, 2013) at 2.
[424] *See* GOC's SQR (April 4, 2013) at 1.

have used alternative information rather than AFA. In *Archer Daniels Midland*, the CIT considered an analogous situation, where a respondent company provided information concerning the identities of input suppliers but the GOC did not provide information about whether the suppliers were government- or publicly-controlled.[425] The Court held that "identifying {the respondent company's} sulfuric acid producers, however, could not tell Commerce whether those producers were authorities. To make that determination, Commerce needed ownership information."[426] Finding that there was no indication that the respondent company had this information, or that it could have been obtained from another source, the Court held that:

> These facts follow the previously articulated pattern that "typically, foreign governments are in the best position to provide information regarding the administration of their alleged subsidy programs… {and} respondent companies, on the other hand, will have information pertaining to the existence and amount of benefit conferred on them by the program." For this reason, "where the foreign government fails to act to the best of its ability, Commerce will usually find that the government has provided a financial contribution to a specific industry."[427]

Thus, although acknowledging the CIT's holding in *Fine Furniture (Shanghai*) that the Department should avoid impacting a cooperating party when applying AFA, if relevant information exists elsewhere on the record, the CIT held that the Department was dependent on the GOC's responses concerning whether the input suppliers were "authorities" pursuant to section 771(5)(A) of the Act. Thus, the CIT upheld the Department's application of AFA.[428] As in *Archer Daniels Midland*, in this case, Kromet does not claim that it, or the Alnan Companies, possesses the ownership information that the Department requested from the GOC, information which is necessary for the Department to determine whether the suppliers are authorities pursuant to the Act.

As explained above, regardless of whether Kromet provided information indicating that certain of its input producers were held by individuals during the POR, the fact remains that the Department sought information from the GOC, information that we find is solely in the possession of the GOC, concerning the extent to which the owners of the input producers were officials in the CCP or otherwise members of the PRC government. As explained above, we find that the GOC refused to provide the requested information. As a result, the Department determines as adverse facts available that the input producers were government authorities whose sales of the input at issue to the Alnan Companies constitutes a financial contribution under

[425] *See Archer Daniels Midland*, 917 F. Supp. 2d at 1341.
[426] *Id.*
[427] *Id.*, at 1342 (internal citation omitted).
[428] *Id.* Similarly, in *Fine Furniture (Shanghai)*, 865 F. Supp. 2d at 1261-62, the CIT affirmed the Department's application of AFA where the GOC failed to provide necessary information, despite an impact on a cooperating party.

section 771(5)(D)(iii) of the Act. For the same reasons, we find that Kromet's reliance upon *Fine Furniture (Shanghai) is* misplaced.[429]

Comment 19: Whether Prices of Imports Into the PRC Should Be Used as "Tier One" Benchmark Prices

Case Brief of Kromet:

- In the *Preliminary Results*, the Department relied on a "tier two" benchmark consisting of worldwide export data for primary aluminum published by GTIS. However, the Act and the Department's regulations establish a preference for the use of a "market-determined price for the good or service resulting from actual transactions in the country in question" as a benchmark value.

- The Department should use the data on the record on "actual imports" into China as a "tier one" benchmark for the *Final Results*. The potential tier one benchmarks on the record include both Alnan's records of primary aluminum purchases from private parties in the PRC[430] and PRC import data for primary aluminum included in Petitioner's benchmark values submission.[431]

- In the *Preliminary Results*, the Department found that the total production of primary aluminum in the PRC by SOEs and collectives exceeded 50 percent of total production and that "this majority share by SOEs makes it reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market." The Department's analysis did not specifically address the possibility of using PRC import prices as a tier one benchmark for primary aluminum.

- The Chinese import prices are not tainted by the significant distortion of the PRC domestic market that the Department found with respect to actual transaction prices among private parties in the PRC. Basic economics dictates that a seller of primary aluminum in this global market will seek the transaction that provides the most favorable return to the seller. There is no reason why a foreign seller would willingly accept lower prices from PRC purchasers than it could otherwise obtain in other global markets. The import data reveal imports of primary aluminum into the PRC from no fewer than 35 market economy countries during 2010 and 2011. Whatever the effect of governmental involvement in primary aluminum production in China may be on purely domestic transactions, that effect does not extend to import prices.

[429] *See Fine Furniture (Shanghai*), 865 F. Supp. 2d at 1262 (rejecting the respondent company's argument that alternative information was available and should have been used because the alternative information was not consistent with the regulation and, further, the application of AFA was warranted because "the price proposals {for electricity} were necessary to determine the benchmark rate, and the GOC refused to provide them").
[430] Exhibits 57 and 59 of IQR and Exhibit 2S-1 of the Second Supplemental Response.
[431] *See* Petitioner's Benchmark Data Submission at Exhibit 7, (Partner Country China data), as corrected at Exhibit 1 of Kromet's Resubmission of Rebuttal Comments regarding Petitioner's Benchmark Submission (March 7, 2013).

- The Department has applied and defended exactly this principle in the analogous circumstance of factor valuation in a recent antidumping administrative review[432] and subsequent CIT litigation. In *Clearon Corp. v. United States*, the CIT upheld the Department's use of Indian import data as a surrogate value even though there was evidence that the Government of India exercised complete control over all imports into the country.[433] The CIT held that "while it is, in fact, the case that three domestic Indian companies are authorized to contract for all of the country's urea imports based on the government's assessment of need, there is no indication that the price of the urea is set by other than market forces."[434] Thus, the Department's position and the Court's holding relied expressly on the economic principle outlined above: that governmental interference in a domestic market does not distort or otherwise invalidate the market forces involved in the import transactions from market-economy countries.

- The Department cannot reject use of prices for imports of primary aluminum into the PRC as a tier one benchmark simply because of the GOC's government's participation in the domestic market. There is no evidence on the record to suggest that the GOC's involvement distorts or in any way affects import prices of primary aluminum into the PRC.

- Third, the Department's willingness to rely on export data as a tier two "world market price" for primary aluminum necessarily implies that the PRC import prices must be an acceptable tier one benchmark. Section 351.511(a)(2)(ii) of the Department's regulations provides that the Department may use a world market price "where it is reasonable to conclude that such price would be available to purchasers in the country in question." In other words, export prices are only usable as a tier two benchmark to the extent they are "available" to purchasers (importers) in the PRC. Needless to say, the result of a PRC buyer taking advantage of the world market price for primary aluminum would be an import of primary aluminum to the PRC. It would make no sense for the Department, having found that export prices are a valid world market price based on their "availabil{ity} to purchasers in" China, to nevertheless conclude that actual imports (*i.e.*, transactions confirming and reflecting the availability of those world market prices) are not an acceptable benchmark.

- Although the Department has rejected use of import prices in some recent CVD decisions, the Department's precedents are not consistent and the reasoning used to dismiss import prices is not apparent. In the recent administrative review of *Citric Acid from the PRC*, for example, the Department described the role of state-owned entities in the domestic the PRC market, rejected the use of domestic prices, and then stated "the Department considers imports as tier one,

[432] *See Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 73 FR 52645 (September 10, 2008), and accompanying Issues and Decision Memorandum at Comment 1.
[433] *See Clearon Corp. v. United States*, Ct. No. 08-364, Slip Op. 2013-22 (CIT 2013).
[434] *Id. at* 25.

given that imports are priced according to the market to which they are being imported into and, thus, not an appropriate benchmark."[435]

- Notwithstanding this comment, however, the Department had actually relied on import prices as tier one benchmarks in several prior proceedings in which a respondent imported the input in question from a market economy country.[436]

- It does not appear, from these other decisions, that the Department has ever (i) articulated a reason why governmental involvement in the Chinese domestic market would preclude the use of import prices, or (ii) explained why aggregate import prices are not suitable tier one benchmarks given the Department's willingness to rely on prices of imports by individual respondents. Accordingly, the Department's prior proceedings are of limited utility in considering the use of the Chinese import prices on the record as a tier one benchmark for primary aluminum.

Rebuttal Brief of Petitioner:

- Basic economics dictate that a supplier must compete with prices that have been influenced by government ownership and by government policies that limit exports.[437] Here, those prices have been influenced by Government ownership and by Government policies that limit exports. Kromet also makes too much of the requirement that a benchmark price be available to purchasers in the PRC. This does not mean, as Kromet would have it, that the price must be an actual import price. Rather, it must be a price that would not be technically foreclosed to Chinese purchasers, as would a price for a product that cannot be traded across borders.

- Kromet has not argued that imports account for a significant amount of PRC consumption of primary aluminum. In past cases, the Department has looked to the level of import penetration to determine whether import prices are likely to be distorted by Government involvement.[438] The less significant the volumes of imports into a country, the more likely that the prices of those volumes are to be distorted or otherwise unreliable. In the *Investigation*, for example, the Department noted the relatively low percentage of imported aluminum consumed relative to domestically-produced aluminum in its decision that there were no market-determined prices resulting from actual in-country transactions on the record.

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[435] *See Citric Acid from the PRC*, and accompanying Issues and Decision Memorandum at Comment 5.
[436] *See e.g., CWASPP from the PRC*, and accompanying Issues and Decision Memorandum at 19-20, and *CWP from the PRC*, and accompanying Issues and Decision Memorandum at 65-66.
[437] *See e.g., Citric Acid from the PRC*, and accompanying Issues and Decision Memorandum at 43-44 (noting that imports are priced in accordance with conditions in the country of import).
[438] *See e.g., Steel Sinks from the PRC*, and accompanying Issues and Decision Memorandum at 19-21; *Citric Acid from the PRC*, and accompanying Issues and *Decision Memorandum* at 43-44; *Cylinders from the PRC*, and accompany Issues and Decision Memorandum at 17-18*;* and *Aluminum Extrusions from the PRC Investigation*, and accompanying Issues and Decision Memorandum at Section VII.S and Comment 21.

- *Clearon Corp.* concerned an AD review, and involved an analysis regarding surrogate values. Thus it has no bearing on a CVD review which concerns whether an import price is market determined.

- Finally, Kromet argues that, in certain past cases, the Department has used import prices as benchmarks. Kromet cites two cases, neither of which is apposite. In both cases, the respondent purchased imports, and the Department had available the respondent's actual import prices. Prior to accepting these prices as a benchmark, the agency tested them for distortion against certain world prices. And while the agency found that the import prices were comparable with world prices, it did not in fact use the import prices as its benchmark. Rather, it resorted to world market prices.[439]

- Kromet does not allege that Alnan actually purchased imports. Moreover, even in the cases that Kromet cites, world prices were actually used. Finally, these cases do not undermine the validity of the agency's more recent practice and precedent, which has consistently found that, where a government's ownership percentage and regulatory strategies distort a market, import prices into that market will also be distorted.

Department's Position: Petitioners provided on the record export pricing data that they obtained from the Global Trade Atlas, a service provided by Global Trade Information Services, Inc. We used these data as tier-two benchmark prices, as described under 19 CFR 351.511(a)(2)(ii), for the Provision of Primary Aluminum for LTAR program calculations. We excluded the pricing data pertaining to exports of aluminum to ports located in the PRC.

We disagree with Kromet that Alnan's purchases of aluminum from private parties should be used as tier-one benchmark prices. As explained above in "Benchmarks for Provision of Primary Aluminum" and in Comment 13, under tier one of the hierarchy, actual transactions may be used as benchmark prices. However, in the *Preamble*, the Department recognizes that distortion can occur when the government provider constitutes a majority or, in certain circumstances, a substantial portion of the market.[440] As discussed above, due to the government's involvement in the aluminum market in the PRC, we determine that the market for aluminum is distorted. In addition, as further evidence of the government's involvement in the market, the GOC has imposed export tariffs on two of the three HTS categories that cover primary aluminum.[441] Such export restraints can discourage exports and increase the supply of primary aluminum in the domestic market, with the result that domestic prices are lower than they would be otherwise.[442] Therefore, we determine that domestic prices charged by privately-owned primary aluminum producers based in the PRC do not serve as viable, tier one benchmark prices. As a result, the data pertaining to Alnan's purchases of aluminum from private domestic sources are not viable tier one benchmark prices.

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[439] *See CWASPP from the PRC*, and accompanying Issues and Decision Memorandum at Section V.A.1; *see also Seamless Pipe from the PRC*, and accompanying Issues and Decision Memorandum at 64-66.
[440] *See Preamble*, 63 FR at 65377.
[441] *See Aluminum Extrusions from the PRC Investigation*, and accompanying Issues and Decision Memorandum at 34
[442] *See e.g., Kitchen Racks from the PRC*, and accompanying Issues and Decision Memorandum at "Provision of Wire Rod for Less Than Adequate Remuneration."

We also disagree with Kromet that the pricing data provided by Petitioner pertaining to exports of aluminum to ports located in the PRC are viable tier-one benchmark prices. We have determined that the market for aluminum in the PRC is distorted by the government's involvement in the market. Because imports are in direct competition with the prices of aluminum produced by domestic producers, the prices paid for imported aluminum are influenced by domestic prices. Therefore, we have determined that it is reasonable to conclude that the prices of goods that are imported into the domestic market are also significantly distorted as a result of the government's involvement in the market.[443] Therefore, due to the distortion in this case, we find that any price for aluminum paid by a purchaser in China is distorted and unusable as a tier- one benchmark, including prices reported as exports to China and prices reported as imports into China.

With regard to Kromet's argument that *Clearon Corp.* supports the use of import prices even where the government is involved in the market, we disagree. That case concerned whether import data were the "best available information" pursuant to section 773(c) of the Act, which concerns the use of surrogate values in AD NME proceedings. In this case, the Department must determine whether goods are being provided at LTAR by comparing the government price to a "market-determined price" or, where a market-determined price is unavailable, a world market price.[444] Thus, the issue before the Department is different than in an AD NME proceeding, and so *Clearon Corp.* is inapposite.

For these reasons, we reject domestic prices and import prices for aluminum for benchmark purposes and continue to use the GTIS prices published by Global Trade Information Services, Inc. (GTIS), with the exception of the data involving parties in the PRC, as a tier-two benchmark prices under 19 CFR 351.511(a)(2)(ii) for determining whether the Alnan Companies and Changzheng Evaporator received a benefit on their purchases of primary aluminum from government authorities.

Comment 20: Errors in the Conversions of the Benchmark Prices Used in the Provision of Aluminum for LTAR Program Calculations

Case Brief of Kromet:

- In the calculations of the benchmark prices for the Provision of Aluminum for LTAR program, the Department used incorrect exchange rates in converting the benchmark prices from US dollars to Chinese renminbi (RMB).

- The Department mistakenly used 2011 exchange rates to convert benchmark prices for 2010, and 2010 exchange rates to convert the benchmark prices for 2011.

[443] *See Aluminum Extrusions from the PRC Investigation*, and accompanying Issues and Decision Memorandum at 35.
[444] *See* 19 CFR 351.511(a)(2).

Department's Position: We agree and have corrected the calculations by using the 2010 exchange rates to convert the 2010 benchmark prices and the 2011 exchange rate to convert the 2011 benchmark prices.

Comment 21: Errors in the Calculation of the Benefit to Alnan Aluminum from the Provision of Aluminum for LTAR Program

Case Brief of Kromet:

- In *Preliminary Results*, the Department treated Alnan, Alnan Foil, and Shanglin Industry as cross-owned affiliates and therefore did not countervail Alnan's purchases of aluminum that were produced by Shanglin Industry.

- However, the Department inadvertently included certain purchases of aluminum ingots and billets from Shanglin Industry by Alnan in the calculation of Alnan's benefits under the Provision of Aluminum for LTAR program. This ministerial error should be corrected by not calculating benefit amounts for those purchases.

Department's Position: We agree and have corrected this ministerial error by removing the benefit amounts that were inadvertently calculated for certain purchases of aluminum ingots and billets from Shanglin Industry by Alnan.

Comment 22: Application of AFA to Foshan Yong

Case Brief of Newell:

- Newell, an importer of subject merchandise which requested a review of Foshan Yong, states that, in its October 24, 2012, letter, it informed the Department that Foshan Yong is a manufacturer and not an exporter and, thus, did not have any exports of subject merchandise to the United States.[445]

- Newell argues that, contrary to the Department's preliminary analysis that Foshan Yong did not respond to the Department's October 1, 2012, Q&V questionnaire and so the application of adverse facts available was warranted, Foshan Yong did respond to the October 1, 2012, Q&V questionnaire via Newell's October 24, 2012, submission which was certified by both Newell and its counsel and attests to the absence of direct exports by Foshan Yong.

- Newell claims that the Q&V questionnaire was addressed to Newell via its counsel. Therefore, as the party that filed the response was the same party to which the questionnaire was issued, it is inaccurate to conclude that no response was received.

[445] *See* Letter from Newell regarding "No Shipment Regarding Foshan Yong Li Jian Aluminum Ltd." (October 24, 2012).

Rebuttal Brief of Petitioner:

- Foshan Yong itself did not file either a case brief or certification of no shipments. The Department has yet to hear from the company that is the subject of the review.

- In the absence of a timely no-shipment certification from Foshan Yong, the Department should continue to apply AFA to Foshan Yong for the final results.

Department's Position: The Department continues to find that Foshan Yong failed to respond to the October 1, 2012, Q&V questionnaire. The Department cannot conclude, based on Newell's letter, that Foshan Yong had no entries, exports, or shipments of subject merchandise during the POR. As explained in the *Preliminary Results*, a no-shipment claim must be submitted and certified by the producer/exporter for which the review was requested.[446] In other words, the non-shipment claim must come from the party which has direct knowledge of production/exports during the POR. Newell is not the producer/exporter, but the importer that requested the administrative review of Foshan Yong.[447] Thus, we disagree with Newell's claim that Foshan Yong responded to the Q&V questionnaire because Newell submitted a response. Either the Q&V questionnaire response, or a no-shipment claim, had to be submitted and certified by Foshan Yong.

Contrary to Newell's statement, the Q&V questionnaire was addressed neither to Newell nor its counsel, but to Foshan Yong and sent via UPS to Foshan Yong's location in Guangdong, China.[448] As indicated on the cover letter of the questionnaire, the party to whom the questionnaire is addressed is Foshan Yong.[449] In the section of the Q&V questionnaire to which Newell refers, the Department simply noted for Foshan Yong's reference the interested party which requested the review of Foshan Yong (*i.e.*, Newell) and that Newell is represented by counsel (*i.e.*, Crowell & Moring).[450]

Because Foshan Yong failed to submit either a response to the Q&V questionnaire or a letter, accompanied by a certification, that it had no entries, exports, or shipments of subject merchandise during the POR, we continue to find that Foshan Yong withheld information, significantly impeded the review and failed to cooperate by not acting to the best of its ability.[451] As explained in "Use of Facts Otherwise Available and Adverse Inferences," we are assigning to Foshan Yong and the other non-cooperative companies, which did not act to the best of their ability in this review, a CVD rate based on AFA.

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[446] *See Preliminary Results*, and accompanying Issues and Decision Memorandum at "Application of Total AFA to Non-Cooperative Companies" and footnote 19.
[447] *See* Letter from Newell regarding "Request for Administrative Review" (May 31, 2012).
[448] *See* Department Letter to Foshan Yong regarding "Issuance of Quantity and Value Questionnaire" (October 1, 2012) (Q&V Questionnaire to Foshan Yong); and Department Memorandum regarding "Contacting Potential Respondents" (October 4, 2012) (Contacting Potential Respondents Memorandum). As noted above, we contacted by telephone the counsel that represented the importers of subject merchandise from the three producers to notify them that the Department's Q&V questionnaire was issued, but the Q&V Questionnaire was not sent to Newell.
[449] *See* Q&V Questionnaire to Foshan Yong at cover letter.
[450] *Id*., at 4.
[451] *See* sections 776(a)(2) and (b) of the Act.

Comment 23: Application of AFA to Taishan City Kam Kiu

Case Brief of Taishan City Kam Kiu:

- Although Taishan City Kam Kiu's Q&V questionnaire response was submitted after the deadline,[452] the Department should accept the company's June 3, 2013, response as it was filed prior to the final results.

- Taishan City Kam Kiu claims that the importer did not inform the company that it had requested a review of Taishan City Kam Kiu. Taishan City Kam Kiu further claims that, because the Q&V questionnaire was sent to the factory with no addressee, it was mistaken for promotional materials. Taishan City Kam Kiu asserts that it did not realize that it was named in the current review and that a questionnaire was issued to the company until May 2013.

- In *Grobest*,[453] the CIT found that even though a separate rate application in an AD case was submitted 95 days after the deadline, the Department should accepted it. The CIT determined that "the interests in fairness and accuracy outweigh the burden upon Commerce; therefore, Commerce's rejection of Amanda Foods' late-filed submission was an abuse of discretion."[454]

- The importer requested the review for its single import from Taishan City Kam Kiu.[455] Pursuant to 19 CFR 351.213(b)(3), "an importer of the merchandise may request in writing that the Secretary conduct an administrative review of only an exporter or producer … *of the subject merchandise imported by that importer*" (emphasis added). As stated in the respondent selection memorandum,[456] the Department selected the mandatory respondents based on total quantity of shipments during the POR. Because Taishan City Kam Kiu would not have been chosen as a respondent, the company's late filing has not impeded the Department's review. There is no burden on the Department in accepting the late submission.

- The Department should accept Taishan City Kam Kiu's late response, consider the company to be a cooperative respondent, and assign to it the average of the subsidy rates calculated for the mandatory respondents (*i.e.*, the non-selected rate).

[452] The deadline for Q&V responses was October 18, 2012, (*see* Department Memorandum regarding "Issuance of Quantity and Value Questionnaires" (October 1, 2012)), and not December 31, 2012, as indicated in Taishan City Kam Kiu's July 26, 2013 case brief at 2.
[453] *See Grobest & I-Mei Industrial v. United States*, 815 F. Supp. 2d 1342, 1365 (CIT 2012) (*Grobest*).
[454] *Id*., at 1348.
[455] *See* Letter from MacLean-Fogg Company (MacLean) regarding "MacLean-Fogg Company Submission of Customs Entry of Aluminum Extrusions from the People's Republic of China" (September 25, 2012), which contained the customs entry summary for its entry of Kam Kiu merchandise; *see also* Letter from Hodes Keating & Pilon regarding "Certain Aluminum Extrusions from PRC" (June 18, 2013).
[456] *See* Respondent Selection Memorandum.

Rebuttal Brief of Petitioner:

- The Department has determined not to apply AFA in situations which a respondent fails to respond because it did not receive a questionnaire in time to submit a timely response; however, that is not the situation with regard to Taishan City Kam Kiu. Rather, the company timely received the Q&V questionnaire, but chose not to open the package containing the questionnaire.

- Taishan City Kam Kiu, a participant in the investigation and which is thus aware of the Department's procedures, cannot claim ignorance of the Department's procedures.

- Contrary to Taishan City Kam Kiu's argument, by failing to respond to the Q&V questionnaire, Taishan City Kam Kiu impeded the agency's review, because the Department relies on Q&V responses to ensure that proper mandatory respondents are selected.

- Where a company has failed to submit a Q&V response, it is the Department's practice to apply adverse inferences,[457] and this practice has been upheld by the courts.[458]

- Taishan City Kam Kiu's cite to *Grobest* is misplaced. That case involved a separate rate application submitted two months late, but seven months prior to the issuance of the preliminary results.[459] Here, Taishan City Kam Kiu's Q&V response was submitted eight months late and on the day of signature of the preliminary results, which was more than an inconvenience as the company's failure to file a Q&V response left the Department without complete information to select mandatory respondents and thus complete the review.

- Given Taishan City Kam Kiu's failure to cooperate to the best of its ability in submitting necessary information requested by the Department, the Department should continue to apply AFA for the final results.

Department's Position: We continue to find that the application of AFA to Taishan City Kam Kiu is warranted. Pursuant to the Act, where an interested party withholds requested information, fails to provide information by the deadlines or in the form and manner requested, subject to sections 782(c)(1) and (e) or the Act, significantly impedes a proceeding, or provides information which cannot be verified, the Department may apply facts available to that party.[460] Further, if the Department finds that an interested party failed to cooperate by not acting to the best of its ability, it may apply facts available with an adverse inference.[461]

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[457] *See e.g., Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Rescission of Administrative Review in Part*, 75 FR 10207 (March 5, 2010); and *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52065 (September 12, 2007), and accompanying Issues and Decision Memorandum at Comment 5.
[458] *See Hyosung Corporation v. United States*, Court No. 10-00114, Slip Op. 11-34 (CIT 2011).
[459] *See Grobest.*
[460] *See* section 776(a)(2) of the Act.
[461] *See* section 776(b) of the Act.

Taishan City Kam Kiu attempts to dismiss its failure to respond to the Q&V questionnaire eight months after it was due as trivial and thus argue that the application of facts available with an adverse inference is not warranted. However, the failure to respond to the Q&V questionnaire by the Department's set deadline is no trivial matter. In cases such as this, where there are numerous requests for review,[462] responses to the Department's Q&V questionnaire form the basis for choosing the mandatory respondents under the Act.[463] If a company fails to respond to a Q&V questionnaire, it impedes the Department's ability to determine which companies account for the largest volume of export merchandise, and thus to conduct respondent selection. Further, the Department's choice of mandatory respondents has important consequences for all other producers and exporters as well because the rates calculated for those companies may be used to derive the rate for the non-selected companies. The application of AFA where a respondent fails to respond to a Q&V questionnaire is also consistent with the Department's past practice.[464]

Taishan City Kam Kiu's claim that it would not have been selected as a mandatory respondent because the importer, which requested the review, had just a single import from the company is without merit. The Department's Q&V questionnaire instructed Taishan City Kam Kiu to report the "total quantity in kilograms and total value (in U.S. dollars) of all your sales of merchandise covered by the scope of this review (see enclosed scope description in Attachment II), produced in the People's Republic of China, and exported/shipped to, or entered into, the United States during the period September 7, 2010 through December 31, 2011."[465] Because Taishan City Kam Kiu failed to provide information regarding its quantity and value of shipments during the POR, the Department was precluded from evaluating the full universe of potential respondents and Taishan City Kam Kiu's place in that universe. Neither Taishan City Kam Kiu nor any other selected respondent can assume that it would not be selected as a mandatory respondent and thus that it need not file its Q&V response on time. As such, Taishan City Kam Kiu failed to provide information in a timely manner, and its failure to submit a timely Q&V response significantly impeded the Department's conduct of this administrative review.[466]

Further, contrary to Taishan City Kam Kiu's claim, there is a burden on the Department in considering the late submission. Taishan City Kam Kiu submitted its Q&V response on June 3, 2013, which was the signature date of the *Preliminary Results*.[467] The Department selected mandatory respondents on November 5, 2012. [468] Further, the Department was required to issue its preliminary results based on information it had received and had the opportunity to consider. Taishan City Kam Kiu's response was submitted egregiously late, well beyond the Department's November 5, 2012, selection of mandatory respondents for this review, and with insufficient time to be considered for the preliminary results.

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[462] We received requests for review of 71 companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 77 FR 40565 (July 10, 2012) (*Initiation Notice*).
[463] *See* section 777A(e)(2)(A)(ii) of the Act.
[464] *See e.g., Wood Flooring from the PRC*, and accompanying Issues and Decision Memorandum at Comment 5.
[465] *See* Department Letter to Taishan City Kam Kiu regarding "Issuance of Quantity and Value Questionnaire" (October 1, 2012) at Attachment 1.
[466] *See* section 776(a)(2) of the Act.
[467] *See Preliminary Results*, 78 FR at 34652.
[468] *See* Respondent Selection Memorandum.

The facts of *Grobest* differ significantly from the facts of this review. In *Grobest,* the CIT held that rejecting a separate rate certification (SRC) that was three months late, but seven months prior to the issuance of the preliminary results, was an abuse of discretion because, *inter alia,* the certification had been submitted early in the proceeding and the burden on the agency to consider the certification would have been minimal.[469] The Court explained that the facts of that case suggested that the administrative burden of reviewing the SRC rejected by the Department would not have been great because the Department had granted the respondent company separate-rate status in the preceding three administrative reviews without needing to conduct a separate-rate analysis.[470]

Conversely, in the instant case, Taishan City Kam Kiu submitted its Q&V response, which was due on October 18, 2012, to the Department on the review's preliminary results signature date, *i.e.*, June 3, 2013. By submitting its response so egregiously late, Taishan City Kam Kiu precluded the Department from considering the company's data in the analysis and selection of mandatory respondents, which occurred on November 5, 2012. Failure to timely file a separate rate application may inconvenience the Department in the separate rate analysis is distinguishable from Taishan City Kam Kiu's failure to timely submit a Q&V response because it does not impact the Department's ability to select respondents according to the provisions of the Act (*i.e.*, selecting mandatory respondents based on those companies accounted for the largest volume of exports during the POR).

Further, as noted by the CIT in *Grobest*, the Department has the discretion to "set and enforce deadlines," and although that discretion is not "absolute," the deadlines in this case were reasonable and necessary for the submission of information in advance of statutory time limits.[471] The Department had sound reason for setting the October 18, 2012, deadline for Q&V responses. Having to conduct the review under a strict statutory timeline, the Department needed to identify mandatory respondents in order to issue to them and the GOC the initial questionnaire in the administrative review.

It is Taishan City Kam Kiu's own actions in not submitting a timely Q&V response that have resulted in the application of AFA. Taishan City Kam Kiu does not dispute receiving the Department's package which contained the Q&V questionnaire. However, instead of opening the package, the company chose to ignore the correspondence from the Department. To Taishan City Kam Kiu's statement that it did not know it was under review, we note that, in addition to the Department's correspondence, in its request for a review of Taishan City Kam Kiu, MacLean Fogg, the U.S. importer, certified that it served a copy of the review request on the company.[472] The Department also publicly notified all parties of the initiation of this administrative review and identified the companies for which a review was requested.[473]

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[469] *See Grobest*, at 1367.
[470] *Id*.
[471] *Id*., at 1365.
[472] *See* Letter from MacLean Fogg Systems regarding "Aluminum Extrusions from the People's Republic of China" (May 30, 2012).
[473] *See Initiation Notice*.

Therefore, for the above stated reasons, we continue to find that, consistent with the *Preliminary Results* and past practice,[474] the application of an AFA rate, and not the non-selected rate, is warranted for Taishan City Kam Kiu.

Comment 24: Correct Spelling of ZAA

Case Brief of ZAA:

- The draft liquidation instructions and draft cash deposit instructions accurately spell the company's name. However the parenthetical "ZAA" is not part of the company's name and, therefore the parenthetical should not be included.

No other parties commented on this issue.

Department's Position: We will not include the parenthetical "ZAA" in the liquidation and cash deposit instructions to be issued subsequent to the publication of these final results.

Conclusion

We recommend applying the above methodology for these final results.

✓
Agree

Disagree

Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

12/26/13
(Date)

[474] *See e.g., Wood Flooring from the PRC*, and accompanying Issues and Decision Memorandum at Comment 5.