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December 26, 2013

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

FROM: Melissa G. Skinner *mgf*
Director, Office III
for Antidumping and Countervailing Duty Operations

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

SUMMARY

We have analyzed the case and rebuttal briefs of interested parties in the first administrative review of the antidumping duty order on aluminum extrusions from the People's Republic of China ("PRC") for the period of review ("POR") November 12, 2010, through April 30, 2012. The review covers two mandatory respondents, Guangya Aluminum Industrial Co., Ltd. ("Guangya"), and Foshan Guangcheng Aluminum Co., Ltd. ("Guangcheng") (collectively "Guang Ya Group"); Guangdong New Zhongya Aluminum Co., Ltd., ("Zhongya"); Foshan Nanhai Xinya ("Xinya") (collectively "Guang Ya Group/ Zhongya/Xinya"); and Kromet International, Inc. ("Kromet") and 33 separate-rate applicants. As a result of our analysis of the case and rebuttal briefs, we have made certain changes to the margin calculations for Kromet and our treatment of some of the separate-rate applicants. We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this review for which we received comments and rebuttal comments by parties:

Issues Relating to Kromet

- Comment 1: Whether to continue to use the Philippines as the surrogate country
- Comment 2: Whether to continue to treat Kromet as the exporter
- Comment 3: Whether to adjust Kromet's sales prices to account for taxes paid

Issues Relating to Zhongya

- Comment 4: Whether to Collapse Zhongya, the Guang Ya Group, and Xinya



Comment 5: Whether the Guang Ya Group and Xinya Should be Treated as Part of the PRC-wide Entity

Comment 6: Whether AFA should be Applied to Zhongya

Comment 7: Whether the Department should Request Certain Additional Information from Zhongya

Issues Relating to Separate Rate Applicants

Comment 8: Whether Absence of a Suspended Entry is a Basis for Denying a Separate Rate

Comment 9: Calculation of the AD Margin Assigned to the Separate Rate Respondents

Comment 10: How to Adjust the Separate Rate for Double Counting Under Section 777A(f) of the Act

Comment 11: Whether the Margin Assigned to the Separate Rate Respondents in the Preliminary Results was an AFA Rate

Comment 12: Whether GMID and Zhongshan Gold Mountain Aluminium Factory Ltd. are Both Eligible for Separate Rate Status

Comment 13: Whether Suppliers for Electrolux and Newell Should be Subsumed Within Their Exporter's Rate

Comment 14: Whether AD Duties Should Only Be Assessed on IDEX After the Date of the Department's Initiation of a Formal Scope Inquiry

Background

On June 11, 2013, we published *Aluminum Extrusions 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) ("*Preliminary Results*") and accompanying Preliminary Decision Memorandum ("PDM"). We invited interested parties to comment on the *Preliminary Results*. In response, we received case briefs from Petitioners,¹ Zhongya, the Government of

¹ The Aluminum Extrusions Fair Trade Committee, which is comprised of Aerolite Extrusion Company; Alexandria Extrusion Company; Benada Aluminum of Florida, Inc.; William L. Bonnell Company, Inc.; Frontier Aluminum Corporation; Futural Industries Corporation; Hydro Aluminum North America, Inc.; Kaiser Aluminum Corporation; Profile Extrusion Company; Sapa Extrusions, Inc.; and Western Extrusions Corporation. ("Petitioners")

China (“GOC”), and numerous exporters and separate rate applicants.² Petitioners, Kromet, Zhongya, the GOC, and several exporters and separate rate applicants filed rebuttal briefs on September 12, 2013.³ On September 26, 2013, we extended the deadline of the final results of review, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930 as amended (“the Act”).⁴ Zhongya requested a hearing on July 11, 2013, which the Department of Commerce (“the Department”) held on November 20, 2013.

² See Letter from Shenzhen Jiuyuan Co., Ltd. and UQM Technology, Inc. (“Jiuyuan-UQM”) entitled, “Administrative Review of the Antidumping Duty Order on Aluminum Extrusions from the People’s Republic of China: Case Brief of Shenzhen Jiuyuan Co., Ltd. and UQM Technology, Inc.,” dated July 29, 2013 (“Jiuyuan-UQM Case Brief”); Letter from IDEX Health & Science LLC and BAND-IT-IDEX, Inc. (“collectively “IDEX”) entitled, “Aluminum Extrusions from China: IDEX Antidumping Case Brief,” dated August 2, 2013 (“IDEX Case Brief”); Letter from Shenzhen Hudson Technology Development Co., Ltd. (“Shenzhen Hudson”) entitled, “Shenzhen Hudson Administrative Case Brief in the First Administrative Review of the Antidumping Duty Order on Aluminum Extrusions from the People’s Republic of China,” dated August 26, 2013 (“Shenzhen Hudson Case Brief”); Letter from Skyline Exhibit Systems (Shanghai) Co., Ltd. (“Skyline”) entitled, “Administrative Review of the Antidumping Duty Order on Aluminum Extrusions from the People’s Republic of China: Case Brief of Skyline,” dated August 26, 2013 (“Skyline Case Brief”); Letter from Newell Rubbermaid Inc. (“Newell”) entitled, “Aluminum Extrusions from the People’s Republic of China: Case Brief,” dated August 26, 2013. (“Newell Case Brief”); Letter from Zhongshan Gold Mountain Aluminium Factory Ltd. (“ZGM”) and Gold Mountain International Development, Ltd. (“GMID”) entitled, “Administrative Review of the Antidumping Duty Order on Aluminum Extrusions from the People’s Republic of China: Case Brief for Consideration Prior to the Final Results,” August 26, 2013 (“ZGM-GMID Case Brief”); Letter from Dongguan Golden Tiger Hardware Industrial Co., Ltd. (“Golden Tiger”), Guangdong Whirlpool Electrical Appliances Co. Ltd. (“Guangdong Whirlpool”), Hanyung Alcobis Co., Ltd. (“Hanyung Alcobis”), Henan New Kelong Electrical Appliances Co., Ltd. (“New Kelong”), and Shanghai Tongtai Precise Aluminum Alloy Manufacturing Co., Ltd. (“Tongtai”) (collectively, “Whirlpool Suppliers”) entitled, “Aluminum Extrusions from The People’s Republic of China (First Antidumping Duty Administrative Review): Case Brief of Dongguan Golden Tiger Hardware Industrial Co., Ltd., Guangdong Whirlpool Electrical Appliances Co. Ltd., Hanyung Alcobis Co., Ltd., Henan New Kelong Electrical Appliances Co., Ltd., and Shanghai Tongtai Precise Aluminum Alloy Manufacturing Co., Ltd.,” dated August 26, 2013 (“Whirlpool Suppliers Case Brief”); Letter from Xin Wei Aluminum Company Limited, Guang Dong Xin Wei Aluminum Co., Ltd., and Xin Wei Aluminum Co., Ltd. (collectively, “Xin Wei”) entitled, “Administrative Review of the Antidumping Duty Order on Aluminum Extrusions from the People’s Republic of China: Case Brief of Xin Wei,” dated August 26, 2013 (“Xin Wei Case Brief”); Letter from GOC entitled, “Aluminum Extrusions from China; 1st AD Administrative Review GOC Case Brief,” dated August 26, 2013 (“GOC Case Brief”); Letter from Electrolux North America, Inc., Electrolux Home Products, Inc. and Electrolux Major Appliances (“Electrolux”) entitled, “Aluminum Extrusions from the People’s Republic of China: Case Brief,” dated August 26, 2013 (“Electrolux Case Brief”); Letter from Zhongya entitled, “Aluminum Extrusions from China,” dated August 26, 2013 (“Zhongya Case Brief”); and Letter from Petitioners entitled, “Aluminum Extrusions from the People’s Republic of China: Case Brief,” dated August 26, 2013 (“Petitioners’ Case Brief”).

³ See Letter from ZGM and GMID entitled, “Administrative Review of the Antidumping Duty Order on Aluminum Extrusions from the People’s Republic of China: Rebuttal Brief for Consideration Prior to the Final Results,” dated September 12, 2013 (“ZGM GMID Rebuttal Brief”); Letter from GOC entitled, “Aluminum Extrusions from China; 1st AD Administrative Review GOC Rebuttal Brief,” dated September 12, 2013 (“GOC Rebuttal Brief”); Letter from Kromet entitled, “Aluminum Extrusions from The People’s Republic of China (First Antidumping Duty Administrative Review): Rebuttal Brief of Respondent Kromet International Inc.,” dated September 12, 2013 (“Kromet Rebuttal Brief”); Letter from Zhongya entitled, “Aluminum Extrusions from China - Zhongya Rebuttal Brief,” dated September 12, 2013 (“Zhongya Rebuttal Brief”); and Letter from Petitioners entitled, “Aluminum Extrusions from the People’s Republic of China: Rebuttal Brief,” dated September 13, 2013 (“Petitioners’ Rebuttal Brief”).

⁴ See memorandum dated September 26, 2013 titled “Aluminum Extrusions from the People’s Republic of China: Extension of deadline for Final Results of Review.”

As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013.⁵ Therefore, all deadlines in this segment of the proceeding have been extended by 16 days. If the new deadline falls on a non-business day, in accordance with the Department's practice, the deadline will become the next business day.⁶ The revised deadline for the final results of this review is now December 26, 2013.

Scope of the Order

The merchandise covered by this *Order*⁷ is aluminum extrusions which are shapes and forms, produced by an extrusion process, made from aluminum alloys having metallic elements corresponding to the alloy series designations published by The Aluminum Association commencing with the numbers 1, 3, and 6 (or proprietary equivalents or other certifying body equivalents). Specifically, the subject merchandise made from aluminum alloy with an Aluminum Association series designation commencing with the number 1 contains not less than 99 percent aluminum by weight. The subject merchandise made from aluminum alloy with an Aluminum Association series designation commencing with the number 3 contains manganese as the major alloying element, with manganese accounting for not more than 3.0 percent of total materials by weight. The subject merchandise is made from an aluminum alloy with an Aluminum Association series designation commencing with the number 6 contains magnesium and silicon as the major alloying elements, with magnesium accounting for at least 0.1 percent but not more than 2.0 percent of total materials by weight, and silicon accounting for at least 0.1 percent but not more than 3.0 percent of total materials by weight. The subject aluminum extrusions are properly identified by a four-digit alloy series without either a decimal point or leading letter. Illustrative examples from among the approximately 160 registered alloys that may characterize the subject merchandise are as follows: 1350, 3003, and 6060.

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

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

⁵ See Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Shutdown of the Federal Government" (October 18, 2013).

⁶ See *Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2008).

⁷ See *Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order*, 76 FR 30650 (May 26, 2011) ("Order").

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 these *Orders* 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 these *Orders* is dispositive.

There have been numerous scope rulings with regard to this order. For further information, see a listing of these at the webpage titled “Aluminum Extrusions from the People's Republic of China: Final Scope Rulings” at <http://enforcement.trade.gov/download/prc-ae/scope/prc-ae-scope-index.html>.

Discussion of the Issues

Comment 1: Selection of Surrogate Country

Petitioners' Comments:

- The Philippines is not an appropriate source for surrogate values (“SVs”) as it has significantly fewer exports than most other countries on the list of surrogate countries.
- Using the Philippines is contrary to the Department’s preference for a single surrogate country to value all factors of production (“FOPs”).
- Thailand is the more appropriate choice as it has much higher exports of comparable merchandise, contains import data for all FOPs, and has more specific data for alloy aluminum billet. The lack of financial statements from Thailand has been resolved as there are now several usable statements on the record.

Kromet’s Rebuttal:

- The Philippines is a significant exporter of aluminum extrusions and comparisons between export industries is contrary to the Department’s surrogate country selection practice.
- Petitioners are incorrect to identify alloy aluminum billet as the most significant input. Non-alloy ingot is the most significant and the Philippines has more specific data on that input.
- Thai labor data is less contemporaneous than Philippine labor data.

Department’s Position:

We disagree with Petitioners with regard to the Philippines, and find that data from that country represent the best information available for purposes of valuing FOPs utilized to produce subject merchandise. First, with regard to Petitioners’ argument that the level of Philippine aluminum extrusions production is less significant when compared to other countries on the list of surrogate countries, *Policy Bulletin 04.1* explains how such an analysis is counter to the Department’s practice: “The extent to which a country is a significant producer should not be judged against the non-market economy (“NME”) country’s production level or the comparative production of the five or six countries on the Office of Policy’s surrogate country list.”⁸ It is not the Department’s practice to exclude potential surrogate countries from consideration based on relative comparisons of export volumes.⁹ Instead, we examine the record for evidence that the country is a significant producer of identical or comparable merchandise.¹⁰ In the instant case, we find that evidence on the record demonstrates that the Philippines is a significant producer of comparable merchandise. Specifically, export data show that approximately 6,265 metric tons (“MT”) of aluminum extrusions were exported from the country during the POR.¹¹ Further, a report from the *Aluminum Extruders of the World* indicates that Philippine producers maintain

⁸ See Policy Bulletin 04.1.

⁹ See, e.g., *Hardwood and Decorative Plywood From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 58273 (September 23, 2013) and accompanying Issues and Decision Memorandum at Comment 7.

¹⁰ See, e.g., *Frontseating Service Valves From the People's Republic of China; 2010-2011 Antidumping Duty Administrative Review; Final Results*, 77 FR 67334 (November 9, 2012) and accompanying Issues and Decision Memorandum at Comment 1.

¹¹ See letter titled “Aluminum Extrusions from the People's Republic of China: Comments on Surrogate Country Selection” dated March 4, 2013 at Exhibit 1.

capacity to manufacture at least 60,000 MT annually.¹² Finally, we have multiple financial statements from Philippine aluminum extrusion producers on the record of this review.¹³ Therefore, we continue to find that the Philippines is a significant producer of comparable merchandise and thus appropriate as a potential surrogate country.

Next, with regard to data considerations, as noted by Petitioners, our preference is to value all FOPs using data collected from a single surrogate country. However, the Department will resort to using data from a secondary surrogate country in instances where data from the primary surrogate country are unavailable or unreliable.¹⁴ Thus, the lack of Philippine input data with which to value certain inputs is not a reason to exclude it as a potential surrogate country.

Below, we address the remaining comments which Petitioners and Kromet advanced in arguing for or against Thailand or the Philippines as the primary surrogate country.

Major Inputs

In the *Preliminary Results*, the Department based its decision to rely on the Philippines as the primary surrogate country in part on its determination that the Philippines has the best quality data available for the most significant inputs into subject merchandise.¹⁵ Petitioners argue that “non-alloyed aluminum ingot” is a much less significant input to Kromet’s production of subject merchandise than “alloyed billet;” however, record evidence indicates otherwise. For example, in its questionnaire response, Kromet describes its “principal input” as being “aluminum ingots” and explains that its production process begins with the introduction of “aluminum ingot (not alloyed).”¹⁶

As we noted in the *Preliminary Results*, Philippine import data are more specific to this FOP than are data from Thailand.¹⁷ The relevant Philippine HTS category is 7601.11.00.00.01 – “Non-alloyed aluminum ingots and pigs,” while the six-digit Thai HTS category, 7901.10 – “Aluminum, not alloyed, unwrought,” is a basket category that includes many other types of unwrought articles of aluminum. Thus, consistent with our findings in the *Preliminary Results*,

¹² See *Aluminum Extruders of World Directory*, *Aluminum Times*, January 2012, submitted in letter from Kromet titled “Aluminum Extrusions from The People’s Republic of China (First Antidumping Duty Administrative Review): Comments on Surrogate Country Selection” dated March 4, 2013 at Attachment 1.

¹³ See *id.*

¹⁴ See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People’s Republic of China: Final Results of the 2007-2008 Administrative Review of the Antidumping Duty Order*, 75 FR 844 (January 6, 2010), and accompanying Issues and Decision Memorandum at Comment 3; see also *Certain Cut-to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 12651 (March 15, 2005), and accompanying Issues and Decision Memorandum at Comment 3; see also *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results and Partial Rescission of the Seventh Antidumping Duty Administrative Review*, 77 FR 15039 (March 14, 2012), and accompanying Issues and Decision Memorandum at Comment 2A; see also *Steel Wire Garment Hangers from the People’s Republic of China: Preliminary Results and Preliminary Rescission, in Part, of the Second Antidumping Duty Administrative Review*, 76 FR 66903, 66905 (October 28, 2011), unchanged in final *Steel Wire Garment Hangers from the People’s Republic of China: Final Results and Final Partial Rescission of Second Antidumping Duty Administrative Review*, 77 FR 12553 (March 1, 2012).

¹⁵ See *Preliminary Results* at 19.

¹⁶ See Kromet’s Section D response dated March 22, 2013 at page D-17, footnote 10, and at page D-21.

¹⁷ See PDM at 19.

we determine that Philippine import data is more specific to Kromet's major input of non-alloyed aluminum ingot.

Further, with regard to Kromet's alloyed aluminum input, because both the Thai and Philippine HTS categories for alloyed aluminum (Thai HTS category 7601.20 – "unwrought aluminum alloys" and Philippine HTS category 7601.20 – "unwrought aluminum alloys") are basket categories which include many types of alloyed aluminum and make no reference to the specifics of the billets that Kromet consumes, we find no significant difference between their specificity levels.

Financial Statements

In the *Preliminary Results*, another basis for the Department's selection of the Philippines as the primary surrogate country was that it was the sole country for which the Department had useable audited surrogate financial statements.¹⁸ Subsequent to the *Preliminary Results*, Petitioners placed on the record the financial statements of several Thai producers for purposes of calculating surrogate financial ratios. Those producers are Tostem Thai Co., Ltd. ("Tostem"), United Aluminum Industry Co., Ltd. ("United Aluminum"), Thai Metal Co., Ltd. ("Thai Metal"), Gold Star Metal Co., Ltd. ("Gold Star"), Ratana Damrong Aluminum Co., Ltd. ("Ratana"), and MT Aluminum Industry Co., Ltd. ("MT Aluminum").¹⁹ Petitioners also argued that the financial statements from Rian Chai Aluminum Co., Ltd. ("Rian Chai"), which the Department preliminarily determined was unusable at the *Preliminary Results*, should be used for these final results. Kromet placed two additional sets of Thai financial statements on the record, one for Gold Star, and another for USAM Inter Group Co., Ltd. ("USAM").²⁰ However, for the reasons discussed below, we find that only three of these Thai statements are appropriate to use for purposes of calculating surrogate financial ratios. With usable financial statements from both the Philippines and Thailand on the record, the financial statements do not weigh more heavily in favor of selecting either the Philippines or Thailand over the other as the primary surrogate country.

First, with regard to Rian Chai's statements, we find them unusable as the company appears to operate primarily as a smelter and equipment trader rather than as a producer of aluminum extrusions or comparable merchandise. The company's financial statements indicate that it is mainly a "rolled aluminum smelter," and a "purchase[r] of equipment old and new."²¹ Furthermore, the statements do not provide sufficient detail on selling, general, and administrative ("SG&A") expenses or labor expenses to allow for the Department to accurately calculate surrogate financial ratios. For example, the statements do not segregate labor expenses between SG&A and production, and also fail to allow for the exclusion of SG&A and administrative expenses from production overhead expenses.

¹⁸ See *Preliminary Results* at 29.

¹⁹ See Petitioner's submission titled "Aluminum Extrusions from the People's Republic of China: Submission of Post-Preliminary Surrogate Value Information" dated July 15, 2013 at Exhibits 1 through 6.

²⁰ See Kromet's submission titled "Aluminum Extrusions from The People's Republic of China (First Antidumping Administrative Review): Kromet International Inc.'s Submission of Information Regarding Surrogate Values for Factors of Production for the Final Results" dated July 15, 2013 at Exhibit 1.

²¹ See Petitioner's submission titled "Aluminum Extrusions from the People's Republic of China: Submission of Surrogate Values" dated March 29, 2013, at Exhibit 3.

Second, we find Tostem's statements unusable as the company recorded an operating loss during the reporting period due to flooding damages.²² The Department has a practice of disregarding financial statements of companies which show either no profit or a loss.²³

Third, with regard to Thai Metal's statements, we find them unusable as they do not provide sufficient detail on expenses to allow the Department to calculate accurate surrogate financial ratios. For example, the statements do not detail the company's cost of goods sold, SG&A expenses, or labor expense.²⁴ Fourth, we find MT Aluminum's statements unusable for similar reasons. Specifically, the statements do not separately report direct labor costs, energy costs, or overhead.²⁵

Finally, we find Ratana's financial statements unusable as they do not provide sufficient detail to confirm that Ratana engages primarily in the production of aluminum extrusions. Although the statements confirm that Ratana produces aluminum products, record evidence indicates that Ratana's production may be limited to aluminum sheet, plate, and foil.²⁶

In contrast, we find the Thai financial statements from Gold Star, United Aluminum, and USAM to be useable to calculate surrogate financial ratios because each company appears to be primarily involved in aluminum extrusion production. Each company's website indicates that it produces aluminum extrusions through an extrusion process similar to Kromet's.²⁷ Moreover, the audited statements are complete, and sufficiently detailed to disaggregate materials, labor, overhead, and SG&A expenses.²⁸

In sum, we find three financial statements from Thailand on the record that can be used to calculate surrogate financial ratios, in addition to the two statements from Philippine producers which the Department used in the *Preliminary Results*.

Labor

Finally, with regard to the labor input, wage rate data on the record from the Philippines is more contemporaneous than the labor data from Thailand. The Thai wage rate data come from the

²² Tostem reported a loss of over 2 million Thai Baht in its 2012 fiscal year. See Petitioner's submission titled "Aluminum Extrusions from the People's Republic of China: Submission of Post-Preliminary Surrogate Value Information" dated July 15, 2013 at Exhibit 1.

²³ See, e.g., *Magnesium Metal From the People's Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review of the Antidumping Duty Order*, 75 FR 65450 (October 25, 2010) and accompanying Issues and Decision Memorandum at Comment 1.

²⁴ See Petitioner's submission titled "Aluminum Extrusions from the People's Republic of China: Submission of Post-Preliminary Surrogate Value Information" dated July 15, 2013 at Exhibit 4.

²⁵ See *id.*

²⁶ See Kromet's submission titled "Aluminum Extrusions from The People's Republic of China (First Antidumping Administrative Review): Rebuttal Comments of Kromet International Inc. Regarding Petitioner's Submission of Post-Preliminary Surrogate Value Information" dated July 22, 2013 at Exhibit 5.

²⁷ See Kromet's SV submission dated July 13, 2013 at Exhibit 1.

²⁸ The Department prefers financial statements that are sufficiently detailed to disaggregate materials, labor, overhead, and SG&A expenses. See, e.g., *Frontseating Service Valves From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 73825, (December 9, 2013) and accompanying Issues and Decision Memorandum at Comment 8.

year 2000, whereas more contemporaneous, and thus preferable, data is available from the Philippines, from 2008.

In consideration of the above analysis, we find that the Thai and Philippine data with regard to surrogate financial statements are equally viable, and do not point us towards selecting one potential surrogate country or the other. However, we view the specificity of the major input of non-alloyed aluminum ingot as an important factor in our determination of the best available information. Further, we find the wage data from the Philippines to be more contemporaneous than comparable data from Thailand. Consequently, in view of the totality of circumstances, we have continued to use the Philippines as the primary surrogate country because it is economically comparable to the PRC, is a significant producer of comparable merchandise, and has the best available information with which to value key inputs for the subject merchandise.

Comment 2: Whether to Treat Kromet as the Exporter

Petitioners' Comments:

- Kromet's PRC supplier, Alnan Aluminum Co., Ltd. ("Alnan"), had to have knowledge that many of its sales were destined for the United States and so the Department should recalculate Kromet's weighted-average dumping margin using prices between Alnan and Kromet, not those between Kromet and the U.S. customers.

Kromet's Rebuttal:

- Kromet was the price-setter and the only entity with any involvement in the sales to the U.S. customer, and so its sales prices are the proper starting prices for the margin calculations.
- Alnan did not have knowledge or reason to know that the subject merchandise was destined for the United States

Department's Position:

After considering all factual information on the record of this review, we continue to find that Kromet is the appropriate exporter to review in this case. The Department's "knowledge test" standard for establishing the party that is the proper respondent is well-established.²⁹ In general, the Department's practice has been to consider documentary or physical evidence that the party knew or should have known its goods were destined for the United States, because this type of evidence is more probative, reliable and verifiable than unsubstantiated statements or declarations.³⁰ This is not the only type of evidence that the Department will consider. An admission by the producer or a representative of the producer to the Department that it knew

²⁹ See *Certain Circular Welded Non-Alloy Steel Pipe From Mexico: Final Results of Antidumping Duty Administrative Review*, 76 FR 36086 (June 21, 2011) and accompanying Issues and Decisions Memorandum at Comment 1.

³⁰ See *Wonderful Chemical Industrial, Ltd. v. United States*, 259 F. Supp. 2d 1273, 1279-80 (CIT 2003).

of the ultimate U.S. destination can also establish knowledge.³¹ In some situations, the Department might find other evidence to be relevant to the knowledge issue. In prior determinations, for example, the Department has considered whether the relevant party prepared or signed certificates, shipping documents, contracts, or other such documents stating that the merchandise was destined for the United States.³² The Department has also considered whether the relevant party used packaging or labeling stating that the merchandise was destined for the United States.³³ Additionally, the Department has examined whether the features, brands, or specifications of the merchandise indicated that it was destined for the United States.³⁴ These factors considered by the Department in past knowledge determinations were relied upon by the Department in order to determine whether Alnan knew or should have known that the goods were destined for the United States.

It is important to note that a general knowledge or belief on the part of a producer that an exporter generally sells to the United States is insufficient to establish knowledge with respect to particular sales. Rather, the standard for making a knowledge determination is that the producer must have reason to know at the time of the sale that the merchandise was destined for the United States.³⁵ The possibility that the producer may have speculated that the goods might ultimately be destined for the United States is insufficient for a knowledge determination. As described below, with the exception of a particular subset of sales discussed below, none of the normal factors indicative of knowledge are present for Kromet in this review. In the absence of such evidence, we find that the record does not support a finding that Alnan either knew or should have known at the time of the sale that its specific sales of aluminum extrusions to Kromet were ultimately destined for the United States.

Specifically, the record is void of documentary evidence stating that Alnan's sales were destined for the United States. Instead, the sales trace documents on the record, including packing lists, commercial invoices, bills of lading, and payment documentation, only indicate that sales were destined for Kromet's factories in either Canada or Mexico.³⁶ Further, there were no unique features of the merchandise, such as product specifications, that would otherwise indicate that it was destined only for the United States. While Petitioners argue that Alnan must have known the ultimate purchaser of the merchandise because of the product specifications, we find no record evidence indicating that any particular product specification

³¹ In *Dynamic Random Access Memory Semiconductors of One Megabit or Above from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Order in Part*, 64 FR 69694 (December 14, 1999), the individual who had been the world-wide sales manager for the relevant company during the POR told the Department that he knew that the merchandise was destined for the United States. Customs and Border Protection ("CBP") entry information corroborated the admissions of this individual. Therefore, based on this information, including the statements of admission, the Department found that the company had knowledge of the ultimate U.S. destination.

³² See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Synthetic Indigo from the People's Republic of China*, 64 FR 697236, 69727 (December 14, 1999).

³³ See *Certain Pasta from Italy: Termination of New Shipper Antidumping Duty Administrative Review*, 62 FR 66602 (December 19, 1997).

³⁴ See, e.g., *GSA, S.R.L. v. United States*, 77 F. Supp. 2d 1349, 1355 (CIT 1999).

³⁵ See *Final Results of Antidumping Duty Administrative Review: Certain In-Shell Raw Pistachios from Iran*, 70 FR 7470 (Feb. 14, 2005) and accompanying Issues and Decisions Memorandum ("Pistachios from Iran") at Comment 1; see also *Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium from the Russian Federation*, 66 FR 49347 (September 27, 2001), and accompanying Issues and Decision Memorandum at Comment 3.

³⁶ See Kromet's post-preliminary supplemental questionnaire response dated August 8, 2013, at exhibits 5 and 6.

would be unique to the U.S. market, or that the market for aluminum extrusions was limited to the United States during the POR. Accordingly, the facts here differ from *Fuel Ethanol From Brazil*, cited by Petitioners, in which the Department found knowledge based on the fact that the United States was “the only” export market available during the POR.³⁷

Additionally, nowhere on the record of this proceeding is there any statement from either Kromet or Alnan admitting, indicating, or even implying actual knowledge by Alnan of a destination in the United States for any of the merchandise sold by Alnan to Kromet. Rather, Alnan has expressly denied actual knowledge of a destination in the United States for any of the merchandise sold to Kromet, and Kromet has stated that it never informed Alnan, either directly or indirectly, of its products’ ultimate destination.³⁸

With the exception of the particular subset of sales mentioned below, the record of this review is devoid of the normal factors, as developed in other proceedings, which would indicate knowledge on the part of Alnan. We find that, in the absence of substantive evidence to the contrary indicating knowledge, there is insufficient record evidence to find that Alnan knew or should have known the ultimate destination of the aluminum extrusions sold to Kromet. Accordingly, as Kromet was the party which exported the subject merchandise to the United States, negotiated the terms of sale,³⁹ arranged shipment,⁴⁰ and ultimately collected payment for the sales,⁴¹ we have determined that Kromet is the appropriate respondent to examine and have continued to use Kromet’s sales prices as the basis for our calculation of U.S. price.

However, for the subset of Kromet’s sales which Alnan shipped directly to the United States, we find that Alnan, and not Kromet, would be the appropriate respondent, if examined, because Alnan was aware that these shipments were destined for the United States. These shipments were not related to Alnan’s sales that were shipped to Canada or Mexico, but were sent to a different customer, under different terms. Therefore, because Kromet did not make those sales, we have excluded them from the margin calculation.⁴²

Comment 3: Whether to Adjust Kromet’s Prices for Canada Taxes

Petitioners’ Comments:

- Kromet failed to report its Canadian tax expenses and so the Department should adjust Kromet’s prices to reflect those expenses.

Kromet’s Rebuttal:

- No adjustment to Kromet’s prices is warranted, as taxes are typically excluded from the Department’s margin calculations.

³⁷ See *Fuel Ethanol From Brazil; Final Determination of Sales at Less Than Fair Value* (February 14, 1986), 55 FR 5572 (“*Fuel Ethanol From Brazil*”).

³⁸ See Kromet’s post-preliminary supplemental questionnaire response dated August 8, 2013, at exhibits 3 and 4.

³⁹ See Kromet’s Section A response dated February 26, 2013 at pages 8-9.

⁴⁰ See *id.* at Exhibit 5.

⁴¹ See *id.* at Exhibit 5.

⁴² See memorandum titled “First Administrative Review of the Antidumping Duty Order on Aluminum Extrusions from the People’s Republic of China: Analysis of the Final Results Margin Calculation for Kromet International” dated concurrently with, and adopted by, this memo, at page 3.

Department's Position:

We agree with Kromet with respect to its reporting of Canadian tax expenses. It is not the Department's practice to include value-added taxes of the type Petitioners describe in our margin calculations.⁴³ Accordingly, we find that Kromet did not fail to report Canadian tax expenses and have made no adjustment to Kromet's sales prices.

Comment 4: Whether to Collapse Zhongya, the Guang Ya Group, and Xinya*Zhongya's Comments:*

- Zhongya argues that the determination to collapse Zhongya, the Guang Ya Group, and Xinya in the *Preliminary Results* violates the statute.
 - The statute only authorizes collapsing where producers and exporters are jointly involved in the production and sale of the same subject merchandise.
 - The statute does not provide for collapsing affiliates purely on the basis of countering a future potential to manipulate.
 - Commerce did not collapse Zhongya with the Guang Ya Group and Xinya in the countervailing duty ("CVD") investigation.
 - There is no "common control" or "common ownership" among Zhongya, the Guang Ya Group, and Xinya. A sibling relationship, in and of itself, does not constitute control, or potential control. Furthermore, the Department erred in finding that "a family Grouping" is "a person" to reach its affiliation and collapsing findings.
 - There is no substantial evidence of intertwined operations between the companies on the record of this review. The Department's assertion that a transaction between an individual at Zhongya and Xinya found at verification in the initial less-than-fair-value ("LTFV") investigation is not evidence of a potential for manipulation of price or production of subject merchandise.
 - Zhongya no longer has a familial relationship with Xinya, thus they are not affiliated and should not be collapsed.

Petitioners' Comments:

- Petitioners argue that the Department correctly collapsed the Zhongya/Guang Ya Group/Xinya entity's members for the *Preliminary Results* and should continue to collapse them in the final results, as the Act inherently contemplates collapsing.
 - 19 U.S.C. § 1677(33)(A) exists to address the distortive price and costs effects that may arise in an antidumping investigation or review among family members by treating the family members as affiliates so that family members cannot shift or direct exports to a different company owned by another family member with a lower dumping margin. The collapsing regulation, 19 CFR 351.401(f), requires the Department to treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities to prevent producers from circumventing antidumping

⁴³ See, e.g., *Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Review*, 73 FR 14216 (Mar. 17, 2008) and accompanying Issues and Decision Memorandum at Comment 2.

duties by channeling production through affiliates to whom the Department may have assigned a lower antidumping duty rate.

- o The Court of International Trade (“CIT”) has confirmed that the Department’s collapsing practice, which addresses future manipulation concerns, arises out of the Department’s mandate to determine current margins as accurately as possible, as well as the Department’s responsibility to prevent circumvention of the antidumping law.
- o The Department’s collapsing regulation does not require companies to produce the same merchandise, as Zhongya claims. Rather, the Department’s regulations expressly allow the collapsing of companies that have the capability to produce similar products. Moreover, the Department has previously collapsed affiliates that do not produce the same subject merchandise.
- o Because the Guang Ya Group and Xinya did not participate in this review, it is appropriate, as an adverse inference, for the Department to conclude that the Zhongya entity’s members were affiliated and to require collapsing to address potential price and cost distortion.
- o Members of the Zhongya/Guang Ya Group/Xinya entity are affiliated by familial relationships and there is a potential for future manipulation. Zhongya is effectively judicially foreclosed from making a plausible argument that the members of the Zhongya/Guang Ya Group/Xinya entity are not affiliated. In *Zhaoqing New Zhongya*,⁴⁴ the CIT found that the determination to collapse Zhongya, the Guang Ya Group, and Xinya was appropriate based on substantial record evidence that the Kwong family owned each member of the Zhongya/Guang Ya Group/Xinya collapsed entity. The CIT also found that there was a reasonable basis to determine that a significant potential existed for price or production manipulation because there was sole ownership among the companies, members of the Kwong family sit on the boards of directors and hold management positions within the companies, and there were intertwined operations among the companies.
- o The facts of this review regarding the affiliation among members of the Zhongya/Guang Ya Group/Xinya entity have not changed since the original investigation except that the Guang Ya Group, an entity that participated in the original investigation, has decided not to participate in the administrative review.

Department’s Position: The Department determines that the determination to collapse Zhongya, the Guang Ya Group and Xinya is in accordance with the statute and the Department’s regulations, and that it will continue to collapse these companies and treat them as a single entity for the final results of this administrative review.

We disagree with Zhongya’s contention that companies must be jointly involved in the production or sale of the same merchandise in order for the Department to collapse them. Indeed, 19 CFR 351.401(f) contains no such requirement. Instead, the regulation says the Department will collapse companies where, *inter alia*, they have “production facilities for *similar or identical products* that would not require substantial retooling” to restructure manufacturing

⁴⁴ See *Zhaoqing New Zhongya Aluminum Co. v. United States*, 887 F. Supp. 2d 1301 (CIT 2012) (“*Zhaoqing New Zhongya*”).

priorities. 19 CFR 351.401(f) (emphasis added).⁴⁵ As support for its contention that the statute permits collapsing only where producers and exporters are jointly involved in the production and sale of the same subject merchandise, Zhongya relies on section 771(28) of the Act, the Statement of Administrative Action (“SAA”) accompanying the Uruguay Round Agreements Act (“URAA”), H.R. Rep. No. 103-826, and Sen. Rep. No. 103-412.⁴⁶ Such reliance is misplaced. These references indicate that the term “exporter or producer” includes both the exporter of the subject merchandise and the producer of the subject merchandise to the extent necessary to calculate the total amount incurred and realized for costs, expenses, and profits in connection with production and sale of that merchandise. This language is not intended to address collapsing issues; rather, the purpose of this provision is to clarify that the Department has the authority to require unaffiliated suppliers of exporters of subject merchandise to provide cost and factors of production data to calculate cost of production, constructed value, or normal value in nonmarket economy cases.⁴⁷ The SAA explains that “the purpose of section 771(28), . . . is to clarify that where different firms perform the production and selling functions, Commerce may include the costs, expenses, and profits of each firm *in calculating cost of production and constructed value*.”⁴⁸ Thus, the intent of this section was to ensure that the Department had the authority to capture all costs in situations where various companies were engaged in the production and sale of the merchandise under consideration.

We disagree with Zhongya’s claim that treating affiliates as a single entity to counter a future potential to manipulate is a violation of the statute’s mandate that the Department accurately calculate a current weighted-average dumping margin. To the contrary, the Department’s authority to collapse affiliated producers into a single entity has been affirmed by the CIT as a reasonable interpretation of the statute.⁴⁹ Indeed, the CIT has recognized that the Department “treats closely related parties as a single entity in order to ‘ensure that {the Department} reviews the entire producer or reseller, not merely a part of it.’”⁵⁰ In addition, the CIT has recognized that the Department’s “discretion to group or define companies arises out of the ‘basic purposes of the statute—determining current margins as accurately as possible.’”⁵¹

The Department has therefore exercised its authority to fill a gap and treat as a single entity two or more affiliated producers with production facilities for similar or identical products that would

⁴⁵ See *Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value*, 73 FR 33985 (June 16, 2008).

⁴⁶ Zhongya cites 19 U.S.C. § 1677(28); SAA, H.R. Doc. 103-316 at 835 (1994), *reprinted in* 1994 U.S.C.C.A.N. 4040, 4172; H.R. Rep. No. 103-826 at 77 (1994), *reprinted in* 1994 U.S.C.C.A.N. 3773; Sen. Rep. No. 103-412 at 61 (1994).

⁴⁷ See *Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part*, 73 FR 52823 (September 11, 2008).

⁴⁸ See SAA, H.R. Doc. Nos. 103-465, at 835 (1994) (emphasis added), *reprinted in* 1994 U.S.C.C.A.N. 4040, 4172.

⁴⁹ See *Mid Continent Nail Corp. v. United States*, No. 08-224, slip op. 20-47 (CIT May 4, 2010); *Hontex Enterprises, Inc. v. United States*, 248 F. Supp. 2d 1323, 1338 (CIT 2003); *Queen’s Flowers de Colombia v. United States*, 981 F. Supp. 617, 622 (CIT 1997); *Koenig Bauer-Albert Ag. V. United States*, 90 F. Supp. 2d 1284, 1287-88 (CIT 2000).

⁵⁰ *Queen’s Flowers de Colombia*, 981 F. Supp. 617, 622 (CIT 1997) (quoting *Certain Fresh Cut Flowers From Colombia: Final Results of Antidumping Duty Administrative Reviews*, 61 FR 42833, 42853 (August 19, 1996)).

⁵¹ *Fischer S.A. Comercio, Industria, and Agricultura v. United States* (“Fischer”), No. 10-281, slip op. 12-59 at 11 (CIT Apr. 30, 2012).

not require substantial retooling of either facility in order to restructure manufacturing priorities, and where there is a significant potential for manipulation of price or production.⁵² In considering the “potential” for manipulation, the Department “. . . considers both actual manipulation in the past and the possibility of future manipulation, which does not require evidence of actual manipulation during the period of review.”⁵³ In addition, the Department makes no presumption about whether the companies manipulated prices in the past, but rather, considers future manipulation.⁵⁴ The Department’s “standard {is} based on the potential for manipulation focuses on what may transpire in the future.”⁵⁵

With respect to accurately calculating current weighted-average dumping margins, in this segment of the proceeding, the Department has continued to consider Zhongya, the Guang Ya Group, and Xinya, as a single entity, and that single entity has failed to provide information necessary to accurately calculate its weighted-average dumping margin. Ordinarily, the Department would calculate a current weighted-average dumping margin for the collapsed entity based on FOP and sales data provided by each of the companies comprising the single entity. However, in this segment of the proceeding, the Guang Ya Group and Xinya did not provide FOP or sales information requested by the Department, and thus the record lacks critical data necessary for the Department to accurately calculate a weighted-average dumping margin for the combined entity.

Further, Zhongya is correct that the Department did not consider Zhongya with the Guang Ya Group and Xinya to be a single entity (*i.e.*, find them to be cross-owned) in the CVD investigation of aluminum extrusions from the PRC. However, antidumping (“AD”) and CVD proceedings involve different analyses with different criteria. Namely, the standard for collapsing entities in the AD context is different from the cross-ownership criteria applicable in the CVD context.⁵⁶ Furthermore, AD and CVD proceedings are separate proceedings that provide separate remedies for distinct unfair trade practices.⁵⁷ The CVD law provides for the

⁵² See 19 CFR 351.401(f).

⁵³ See *Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Final Results of Antidumping Duty Administrative Review*, 74 FR 65518, 65518 (December 10, 2009); *Freshwater Crawfish Tail Meat From the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind Review in Part*, 73 FR 58115 (October 6, 2008); and *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews*, 71 FR 40064 (July 14, 2006).

⁵⁴ See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27346 (May 19, 1997) (“. . . the Department must consider future manipulation.... In this regard, we selected the standard of ‘significant potential’ to deal with precisely this point.... {A} standard based on the potential for manipulation focuses on what may transpire in the future. *FAG Kugelfischer Georg Schafer KGaA v. United States*, slip op. 96-108 at 23 (July 10, 1996).”); see *Chlorinated Isocyanurates from the People’s Republic of China: Final Results of New Shipper Review (“Chlorinated Isocyanurates”)*, 74 FR 68575 (December 28, 2009), and accompanying Issues and Decision Memorandum at Comment 3.

⁵⁵ See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR at 27346.

⁵⁶ Compare 19 CFR 351.401(f) with 19 CFR 351.525(b)(6)(vi).

⁵⁷ See *Certain Cut-to-Length Carbon Steel Plate From the People’s Republic of China: Final Results of the 2007-2008 Administrative Review of the Antidumping Duty Order*, 75 FR 8301 (February 24, 2010); *Certain Oil Country Tubular Goods from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010); 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).

imposition of duties to offset foreign government subsidies. In contrast, in antidumping proceedings, the Department considers producers' and exporters' pricing behavior. AD duties are imposed to offset the extent to which foreign merchandise is sold in the United States at prices below its fair value.⁵⁸ Thus, the findings in an AD proceeding may be different from, and irrelevant to, findings in a CVD proceeding.⁵⁹

Citing *Yangzhou Bestpak Gifts & Crafts Co., Ltd. v. United States*, 716 F.3d 1370, 1378 (Fed. Cir. 2013) ("*Bestpak*"), Zhongya argues that even where "various methodologies are permitted by the statute, it is possible for the application of a particular methodology to be unreasonable in a given case." This case is inapposite and does not support Zhongya's argument that the Department's determination to collapse Zhongya, the Guang Ya Group and Xinya is unreasonable. In *Bestpak*, the Court of Appeals for the Federal Circuit ("CAFC") did not consider the reasonableness of a collapsing determination, but rather the appropriateness of a particular separate-rate calculation in light of case-specific circumstances.⁶⁰

With respect to the Department's determination to collapse Zhongya, the Guang Ya Group, and Xinya in the investigation, the CIT found that "on this record, Commerce's decision to collapse the affiliated companies, the Guang Ya Group, Zhongya, and Xinya, is supported by substantial evidence that there was potential for manipulation of price or production."⁶¹ Zhongya's appeal of the CIT's decision was dismissed by the CAFC on June 18, 2013.⁶² To determine whether we should continue to treat these three companies as a collapsed entity, the Department investigated whether there were any changes during the POR in ownership, management, operations, and changes in merchandise produced.⁶³ The relevant facts on the record of this segment of the proceeding are essentially the same as those in the investigation, except for unsubstantiated assertions on the part of Zhongya that Xinya is no longer owned by a Kwong family member.⁶⁴ We find it reasonable to accord such evidence less weight than the record evidence verified in the investigation indicating that Zhongya, the Guang Ya Group, and Xinya are closely related to the extent that they should be treated as a single entity pursuant to 19 CFR 351.401(f).⁶⁵ Accordingly, because relevant facts have not changed, we are continuing to collapse Zhongya, the Guang Ya Group, and Xinya in these final results.

⁵⁸ See section 751(a)(2) of the Act.

⁵⁹ See e.g., *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 27, 2005) and accompanying Issues and Decision Memorandum at Comment 25 ("The Department does not engage in a comparison of the price paid by the importer with any other price for purposes of determining the amount of countervailing duties. The terms 'export price' and 'constructed export price' have no relevance to a CVD proceeding.").

⁶⁰ *Bestpak*, 716 F.3d at 1378-79.

⁶¹ See *Zhaoqing New Zhongya Aluminum Co., Ltd. et al v. United States* ("*New Zhongya*"), 887 F. Supp. 2d 1301, 1310 (CIT 2012)

⁶² See *Zhaoqing New Zhongya Aluminum Co., Ltd. v. United States*, 2013 U.S. App. LEXIS 12508 (Fed. Cir. June 18, 2013) (order dismissing appeal).

⁶³ See the *Preliminary Results* and the memorandum "2010/2012 Administrative Review of Aluminum Extrusions from the People's Republic of China: Preliminary Determination Regarding Affiliation and Collapsing of Guang Ya Aluminum Industrial Co., Ltd., Foshan Guangcheng Aluminum Co., Ltd., Kong Ah International Co., Ltd., Guang Ya Aluminum Industries (Hong Kong) Ltd., Guang Ya, Guangdong Zhongya Aluminum Co., Ltd., Zhongya Shaped Aluminum (HK) Holding Ltd., Karlton Aluminum Co., Ltd., and Foshan Nanhai Xinya Aluminum & Stainless Steel Product Co., Ltd." dated June 3, 2012 ("*Affiliation/Collapsing Memo*").

⁶⁴ See Zhongya's Section A Supplemental Response, dated April 22, 2013, at Exhibit SA-16.

⁶⁵ See *Affiliation/Collapsing Memo*.

Although Zhongya claims that the statute contains alternative mechanisms (*i.e.*, annual administrative reviews, certified questionnaire responses, channel rates, and existing statutory provisions addressing transactions among affiliated parties) to address potential manipulation, we find it appropriate to follow the regulations that explicitly address treatment of affiliated companies meeting specified criteria and the potential for manipulation of price or production. In other words, the existence of other tools that may exist does not preclude the Department from applying its collapsing analysis pursuant to its regulations, which has been upheld by the Court.

First, administrative reviews, certified questionnaire responses, and collapsing analyses are not mutually exclusive. Indeed, Commerce conducts collapsing analyses in the context of administrative reviews and based on information it requests in questionnaires. Additionally, these processes require the cooperation of the respondents, which may or may not occur within each distinct review. In this administrative review, the Guang Ya Group and Xinya did not cooperate and submitted no data or information requested by the Department. Second, “channel rates,” or “combination rates,” where the cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation, were established to prevent the avoidance of payment of antidumping duties by firms shifting exports through exporters with the lowest assigned cash-deposit rates.⁶⁶ The Department’s collapsing regulations on the other hand, are designed to address the potential for future manipulation of pricing and production among affiliated parties. Third, a certification that a producer or exporter will not manipulate price or production in the future is at best a statement of intent regarding future sales and production activity, which is subject to change based on many factors. Furthermore, a statement of intent does not overcome the potential for future manipulation of price or production. Fourth, while the statute addresses several issues relating to affiliated parties, *e.g.*, duty absorption, arms-length transactions, export price, constructed export price, transactions outside the ordinary course of trade and the treatment of inputs supplied by affiliated parties, the statute does not include explicit directions on how to address the potential manipulation of price or production among affiliated parties. In the absence of such provisions, the Department may exercise authority in a reasonable manner in order to effectuate the purposes of the antidumping duty law.⁶⁷

With respect to Zhongya’s argument that there is no common ownership or control among Zhongya, the Guang Ya Group, and Xinya, we find that the Kwong family grouping constitutes a person and that person controls the collapsed Zhongya/Guang Ya Group/Xinya entity by virtue of majority ownership of Zhongya, the Guang Ya Group and Xinya by Kwong siblings.⁶⁸ Regarding Xinya, though Zhongya has claimed that there is no longer Kwong family ownership of Xinya and the spouse of a Kwong is no longer general manager of Xinya, Zhongya has put forth no evidence to support its contentions other than signed statements that purport to have been signed by company officials representing Xinya.⁶⁹ Xinya made these very same assertions

⁶⁶ See Import Administration Policy Bulletin Number: 05.1, Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries dated April 5, 2005.

⁶⁷ See *Chevron*, 467 U.S. at 843-44 (1984).

⁶⁸ See Affiliation and Collapsing Memo.

⁶⁹ See Zhongya’s Section A Response dated March 5, 2013, at Exhibit A-7 and the Affiliation and Collapsing Memo.

in the investigation, and we found at verification that such claims were unsupported by documentary evidence. Without additional documentary evidence, the Department cannot accord Zhongya's unsubstantiated signed statements the same weight as other record information that has been verified.⁷⁰ While no single individual may be directing the activities of Zhongya, the Guang Ya Group, and Xinya, as each is owned by an individual Kwong sibling, consistent with its practice, the Department considers the Kwong family to be "a person" for purposes of section 771(33)(F) of the Act and determines that this person has the ability and financial incentive to coordinate its actions to direct Zhongya, the Guang Ya Group and Xinya to act in concert or out of common interest.⁷¹ Although Zhongya argues that there is no control by any of these companies or the others, in defining family groupings, the Department is not required to find that a group acted in concert. Rather, the Department is concerned with the potential of a group to act in concert out of common interest.⁷² Thus, while no single individual may be directing the activities of Zhongya, the Guang Ya Group, and Xinya, the Department considers the Kwong family to be "a person" for purposes of section 771(33)(F) of the Act. Because this family grouping has the potential to control Zhongya, the Guang Ya Group and Xinya concerning pricing or production of the subject merchandise, we have determined that Zhongya, the Guang Ya Group and Xinya should be treated as a single entity. Further, the CIT has held that "the intent of {section 771(33) of the Act} was to identify control exercised through 'corporate or family groupings,'" and that the Department was giving effect to this intent by interpreting "family" as a control person.⁷³ Where there is a family grouping at issue, the Department considers the control factors of individual members of the group (*e.g.*, stock ownership, management positions, board membership) in the aggregate.⁷⁴

Moreover, we disagree with Zhongya that its interpretation of "control" within the context of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (Public Law 94-435), 16 CFR 801.1(c)(2), is relevant to the term "control" as used for purposes of the Department's affiliation analysis. The Hart-Scott-Rodino Antitrust Improvements Act of 1976 is not the Tariff Act of 1930, as amended, which governs antidumping duty proceedings. Therefore, this legislation does not govern the Department's determination of what constitutes control in the context of section 771(33)(F) of the Act.

Regarding Zhongya's claims that there were no intertwined operations as specified in 19 CFR 351.401(f)(2)(iii) between Zhongya and Xinya during the POR, the Department's evidence with respect to the period of review at issue is limited wholly as a result of the Guang Ya Group's and Xinya's failure to provide information or data in this review. Information from the investigation,

⁷⁰ See *New Zhongya*, 887 F. Supp. 2d at 1309 (holding that the Court could not give weight to Zhongya's claim that certain financial transactions did not support a finding of intertwined operations because there was no record evidence to support Zhongya's assertion that the transactions were personal in nature) (*citing Pure Gold, Inc. v. Syntex*, 739 F.2d 624, 627 (Fed. Cir. 1984) ("Mere conclusory assertions do not raise a genuine issue of fact.")).

⁷¹ See *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Results and Rescission in Part of Antidumping Duty Administrative Review* ("Steel Plate from Korea"), 69 FR 26361 (May 12, 2004) and accompanying Issues and Decision Memorandum at Comment 1; *Chlorinated Isocyanurates*, Issues and Decision Memorandum at Comment 3.

⁷² *Steel Plate from Korea*, Issues and Decision Memorandum at Comment 1..

⁷³ *Ferro Union, Inc. v. United States*, 44 F. Supp. 2d 1310, 1325 (CIT 1999) (*citing SAA* at 838).

⁷⁴ *Steel Plate from Korea*, Issues and Decision Memorandum at Comment 1.

however, indicates that Xinya has previously made payments to the owner of Zhongya.⁷⁵ Moreover, it is not required that all elements specified in 19 CFR 351.401(f)(2) exist in order to collapse. Section 351.401(f)(2) of the Department's regulations specifies only that this is one of the factors that the Department "may" consider.

Comment 5: Whether the Guang Ya Group and Xinya Should be Treated as Part of the PRC-wide Entity

Zhongya's Comments:

- Zhongya argues that the preliminary determination violates Commerce's separate rate practice.
 - The Guang Ya Group and Xinya did not respond to the Department's request for information. Thus, in accordance with the Department's practice, they should be treated as part of the PRC-wide entity, and are not eligible for consideration in the collapsing analysis. In the investigation, the Department found that a fourth company (Da Yang), a company owned and managed by a Kwong family sibling, was uncooperative and thus was considered part of the PRC-wide entity and was not collapsed with Zhongya, Xinya, and the Guang Ya Group.

Department's Position: As discussed above, the Department determines that it appropriately treated the Guang Ya Group and Xinya as part of the collapsed entity, in accordance with its practice. The Department applied adverse facts available ("AFA"), pursuant to Section 776(a) of the Act and section 351.308(b) of the Department's regulations, to Da Yang and treated it as part of the PRC-wide entity in the LTFV investigation because it did not submit a response to the quantity and value questionnaire issued to Da Yang by the Department. Da Yang failed to cooperate at the outset of the investigation and thus was part of the PRC-wide entity prior to the point at which the Department had acquired the information necessary to consider whether Zhongya, the Guang Ya Group and Xinya should be treated as a single entity pursuant to 19 CFR 351.401(f).

At the outset of this segment of the proceeding, in the initiation notice, the Department stated the Department "... will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.*, investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes."⁷⁶ In addition, the Department stated that "... the Department will assume for purposes of respondent selection that the Guang Ya Group, New Zhongya⁷⁷ and Xinya are

⁷⁵ See the memorandum "Verification of the Sales and Factors Responses of Zhaoqing New Zhongya Aluminum Co., Ltd. ("ZNZ"), Zhongya Shaped Aluminium (HK) Holding Limited ("Shaped Aluminium") and Karlton Aluminum Company Ltd. ("Karlton") (collectively "New Zhongya") in the Less-Than-Fair Value Investigation of Aluminum Extrusions from the People's Republic of China" dated January 28, 2010, at 10.

⁷⁶ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 77 FR 40565 (July 10, 2012).

⁷⁷ Zhongya was referred to as "New Zhongya" in the LTFV investigation.

affiliated and should continue to be treated as a single entity, and requests that the Guang Ya Group, New Zhongya and Xinya submit consolidated factors of production and U.S. sales databases in response to this questionnaire. We will continue to analyze this issue during the course of this review.”⁷⁸ The Department has examined the record evidence and determined that these companies should continue to be treated as a single entity, *see* Comment 4 above. Once the collapsing determination is made, the Department does not “remove” parties from the single entity and treat them as part of the PRC-wide entity due to those parties’ respective failure to participate.⁷⁹ Allowing parties to exit the collapsed entity as a consequence of their refusing to participate would allow manipulation by the parties to obtain a different rate than the one for the collapsed entity.

Comment 6: Whether AFA should be Applied to Zhongya.

Zhongya, GOC, and ZGM-GMID’s Comments:

- AFA should not be applied to Zhongya.
 - Application of AFA to Zhongya violates the Department’s obligation to calculate weighted-average dumping margin on a fair and equitable basis.
 - AFA may only be imposed if it is shown that the missing information is significant to calculating the weighted-average dumping margin in the review.
 - The AFA rate applied to Zhongya in the *Preliminary Results* does not accurately calculate Zhongya’s own weighted-average dumping margin and exceeds any actual dumping for deterrence purposes.
- Information based on a miniscule amount of outlier transactions to a third country market does not constitute the commercial realities of other Chinese producers subject to the PRC-wide rate.
- *Lifestyle*⁸⁰ holds that the “{s}election of an AFA rate based on minuscule data will not suffice. An AFA rate must not be aberrant or punitive, and should bear a rational relationship to respondent’s commercial reality.”
- Petitioners’ proposed rate is unnecessarily punitive, far beyond what is necessary to ensure future cooperation, and inconsistent with the directive in *Bestpak* that even AFA rates must not be unreasonably high and unrelated to a respondent’s actual dumping margin.
- The Department’s practice to select as AFA the higher of the either the highest margin alleged in the petition or the highest calculated rate of any respondent in the investigation; not a transaction-specific margin. As such, Petitioners’ proposal directly contravenes the Department’s current and long-standing practice.
- Petitioners provide no basis for their unreasonable proposal.

⁷⁸ See the antidumping questionnaire issued to Guang Ya Aluminum Industrial Co., Ltd., Zhaoqing New Zhongya Aluminum Co., Ltd., a.k.a. Guangdong Zhongya Aluminum Co., Ltd., and Foshan Nanhai Xinya Aluminum & Stainless Steel Product Co., Ltd., Dated January 28, 2013, at 2.

⁷⁹ See *Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People’s Republic of China*, 61 FR 19026 (April 30, 1996) and accompanying Issues and Decision Memorandum at Comment 8 and *Light-Walled Rectangular Pipe and Tube From Turkey: Notice of Final Determination of Sales at Less Than Fair Value*, 69 FR 53675 (September 2, 2004) and accompanying Issues and Decision Memorandum at Comment 11.

⁸⁰ *Lifestyle Enters. Inc. v. United States*, 865 F. Supp. 2d 1284 (CIT 2012) (“*Lifestyle*”).

Petitioners' Comments:

- The Department should apply AFA to the Zhongya/Guang Ya Group/Xinya entity
 - The Department's longstanding practice in calculating a weighted-average dumping margin for a collapsed entity is to apply AFA to the entire entity when one producer within it fails to cooperate
 - The Department should revise the PRC-wide margin using a rate based on the Alnan-to-Kromet price because the current rate is too low to ensure compliance with the Department's information requests.

Department's Position: Zhongya/Guang Ya Group/Xinya, as a collapsed entity, did not establish in this administrative review that it is eligible for a separate rate and it will be treated as part of the PRC-wide entity for the final results of this review in accordance with the Department's practice.⁸¹ Significant information necessary to determine whether the Zhongya/Guang Ya Group/Xinya entity is eligible for a separate rate is lacking from the record because two of the three companies comprising the collapsed Zhongya/Guang Ya Group/Xinya entity, *i.e.*, the Guang Ya Group and Xinya, did not provide critical information necessary, *i.e.*, a separate rate application/certification or section A questionnaire response, to conduct the Department's separate rate analysis.

However, the Department is not revising the rate for the PRC-wide entity using a rate based on the Alnan-to-Kromet price as requested by Petitioners (*see* Comment 2). In any case, the Department has determined that Alnan is not an exporter under review in this segment of the proceeding, and thus calculation of an AFA rate based on its sales is not appropriate. The only calculated rate in this proceeding is Kromet's weighted-average dumping margin of zero percent which is less than the 33.28 percent AFA rate established in the investigation.

Comment 7: Whether the Department should Request Certain Additional Information from Zhongya

- Zhongya argues that in the event that the Department does not collapse Zhongya with the Guang Ya Group and Xinya, and calculates a separate weighted-average dumping margin for Zhongya in the final results, certain information should be placed on the record.
 - The Department should allow Zhongya to (1) answer the double remedy questionnaire as to itself alone, and (2) provide surrogate value information until 20 days after any decision in which Zhongya is not collapsed with other producers or exporters of subject merchandise.
 - The Department should accept onto the record and consider using the "clerical error corrections" rejected by the Department as untimely on July 9, 2013 as it was submitted early enough such that its untimeliness is immaterial to the timely

⁸¹ See *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 19026, 19036 (April 30, 1996) ("If any company fails to respond, the entire entity receives a rate based on facts available."); *Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Final Results of Antidumping Duty Administrative Review*, 74 FR 65518 (December 10, 2009) and accompanying Issues and Decision Memorandum at Comment 2; and *Light-Walled Rectangular Pipe and Tube From Turkey: Notice of Final Determination of Sales at Less Than Fair Value*, 69 FR 53675, 53,677 (September 2, 2004).

completion of the review. Zhongya argues that the statutory objective to accurately calculate dumping margins supports acceptance of untimely information. In addition, Kromet states that subsequent to July 9, 2013, the Department issued a supplemental questionnaire to Kromet on July 24, 2013. Moreover, Zhongya claims that the final results might not be issued until the end of 2013.

Department's Position: The Department has determined to continue to collapse Zhongya with the Guang Ya Group and Xinya for the final results of this review, and therefore will not seek this information from Zhongya.

Comment 8: Whether Absence of a Suspended Entry is a Basis for Denying a Separate Rate

Electrolux, Xin Wei, and Newell's Comments:

- Neither the regulations nor the statute requires a suspended AD/CVD entry as a precondition for review and separate rate eligibility.
- An importer's misclassification of entries should not foreclose on an exporter's ability to seek review of its deposit rate.
- *Hubbell v. United States*⁸² holds that an exporter's interest in obtaining a separate deposit rate and the potential application of an import-prohibiting rate when considered part of the PRC-wide entity is sufficient to warrant a review.
- Eligibility for separate rate status in this review was demonstrated based on:
 - A timely request for review;
 - The timely submission of a separate rate application;
 - A timely provided a certified 7501;
 - The timely submission of a quantity and value ("Q&V") response for the POR;
 - Evidence of continued suspension.

Shenzhen Hudson's Comments:

- The totality of evidence submitted by Shenzhen Hudson demonstrates that it had reviewable entries during the POR and that liquidation has been suspended.
- A response to the Department's supplemental questionnaire regarding suspended entries was not necessary because information had already been placed on the record.
- *Fine Furniture (Shanghai) Ltd. v. United States*⁸³ holds that AFA cannot be applied to companies that did not submit information when evidence on the record indicated that doing so was unnecessary.

Whirlpool Suppliers' Comments:

- Entitlement to a separate rate was established based on demonstrated *de jure* and *de facto* independence from the PRC Government and timely filed responses to the Department's supplemental questionnaire regarding suspended entries.

⁸² See *Hubbell Power Sys., Inc. v. United States*, 884 F. Supp. 2d 1283 (CIT 2012) ("*Hubbell*").

⁸³ See *Fine Furniture (Shanghai) Ltd. v. United States*, 865 F. Supp. 2d 1254 (CIT 2012) ("*Fine Furniture*").

Petitioners' Comments:

- The Department's long-standing practice requires companies to have suspended entries of subject merchandise in order to qualify for a separate rate. Reclassifying entries after the time of importation does not remedy the injury caused by entering the merchandise duty-free.
- The decision in *Hubbell* did not address the fact that allowing merchandise to enter the U.S. duty free at dumped prices denies the domestic industry the relief that it is owed under the law. Moreover, *Hubbell* involved a mandatory respondent and denying it a separate rate would affect the accurate calculation of the "all-others" rate; thus, the facts underlying *Hubbell* are not applicable to the instant review.

Department's Position: In the *Preliminary Results*, the Department explained that 27 separate rate applicants under review submitted a separate rate application ("SRA") that did not demonstrate an entry of subject merchandise during the POR by means of a CBP entry summary form (CBP Form 7501) showing a suspended AD/CVD entry.⁸⁴ On May 14, 2013, the Department issued a supplemental questionnaire to these separate rate applicants and requested an explanation as to why their respective SRAs did not pertain to a suspended AD/CVD entry, and requested supporting documentation for the a suspended AD/CVD entry with subject merchandise made during the POR.⁸⁵

In response to the Department's supplemental questionnaire, five separate rate respondents (Dongguan Golden Tiger, Hanyung Alcobis, Guangdong Whirlpool, Shanghai Tongtai, and Shenzhen Hudson) did not provide a CBP 7501 showing a suspended AD/CVD entry but provided some other form of documentation pertaining to a particular entry number that the respondent claimed was suspended. The entry numbers contained in documentation provided by those respondents, however, could not be verified as suspended based on the CBP data on the record of this review. Other respondents submitted supplemental responses that contained correspondence with CBP regarding misclassified entries and duty liability; however, these documents showed no conclusive evidence that entries during the POR had, in fact, been suspended. The remaining applicant companies have placed no evidence on the record substantiating that they had a suspended entry during the POR.

For the final results, the Department has examined the supplemental information provided by the respondents applying for a separate rate identified in the preceding paragraphs as well as the CBP import data, and finds that these respondents did not have entries of aluminum extrusions subject to suspension of liquidation.

Specifically, in the separate rate applications submitted to the Department during this review, certain respondents in question certified that they made export sales of subject aluminum extrusions to the United States during the POR. Furthermore, certain respondents provided sales

⁸⁴ See *Preliminary Results* at 34987-34988. In the *Preliminary Results*, the Department considered Xin Wei Aluminum Company Limited, Guang Dong Xin Wei Aluminum Products Co., Ltd., and Xin Wei Aluminum Co. Ltd. as one company where as they are three separate entities. For these final results, these three separate entities have been considered individually. As a result, the 27 companies referenced in footnote 8 of the *Preliminary Results* encompass 29 companies for which a review was initiated.

⁸⁵ See the Department's letter, "Aluminum Extrusions from the People's Republic of China: Supplemental Questionnaire—Separate Rate Application," dated May 14, 2013.

and shipping documentation demonstrating that the shipments were sales of subject aluminum extrusions during the POR. However, in examining the CBP data for imports of aluminum extrusions from the PRC into the United States, we found that these respondents had no suspended antidumping entries of subject aluminum extrusions during the POR, indicating that the reported sales were not declared as subject to AD duties and accordingly suspended. The Department finds that respondents seeking eligibility for a separate rate are not eligible for an administrative review when they cannot demonstrate a suspended AD/CVD entry during the POR to serve as the basis for assessment.⁸⁶

We note that one of the Department's primary functions in the course of an administrative review is to determine an antidumping duty margin to assess to subject merchandise.⁸⁷ The record demonstrates that these respondents' entries of subject merchandise were made as not being subject to AD duties and, thus, that they had no suspended entries upon which to apply an assessment rate. Antidumping duty rates serve as the basis for estimated AD duties.⁸⁸ Where there is no evidence of suspended entries upon which to assess AD duties for certain exporters, consistent with the Act and with the Department's long-standing practice,⁸⁹ we find that these exporters are not eligible for a review. Accordingly, for these exporters, we do not arrive at the issue of whether the additional separate-rate application documentation they submit demonstrates entitlement to a separate rate.

In response to the Department's supplemental questionnaire, three applicants (Changzhou Tenglong, Dynamic Technologies, and Zhejiang Xinlong) submitted a CBP 7501 showing a suspended AD/CVD entry of subject merchandise. Another separate rate applicant, Xin Wei Aluminum Company Limited, did not provide a CBP form 7501 showing a suspended entry in its supplemental questionnaire response. However, Xin Wei Aluminum Company Limited submitted documentation of an entry that was verified in the CBP data on the record as being suspended and subject to AD duties during the POR. Thus, we find these four separate rate applicants eligible for separate rate consideration in the final results.

Lastly, the company Allied Maker Limited is not under review, and therefore is not under consideration for a separate rate.

Parties cite to *Hubbell* to contend that a lack of a suspended AD/CVD entries of subject merchandise during the POR should not affect the Department's evaluation of timely filed

⁸⁶ See SRA supplemental questionnaire responses submitted to the Department on May 21, 2013. See also Analysis Memo.

⁸⁷ See section 751(a)(2)(C) of the Act (stating that the Department's determination will be the basis for assessment of merchandise covered by the Department's determination). See also sections 751(a)(1)(B) and 751(a)(2)(A) of the Act (stating that the Department will review the amount of any antidumping duty and determine dumping margins for entries of subject merchandise.)

⁸⁸ See section 751(a)(2)(C) of the Act.

⁸⁹ See *Certain Tissue Paper Products from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 18497 at 18500 (April 4, 2008), unchanged in *Certain Tissue Paper Products from the People's Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review*, 73 FR 58113 (October 6, 2008); see also *Certain Steel Threaded Rod From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 21101 (April 9, 2013); unchanged in *Certain Steel Threaded Rod Final Results of Third Antidumping Duty Administrative Review; 2011-2012*, 78 FR 66330 (November 5, 2013).

separate rate applications. However, unlike the respondent in *Hubbell*, the parties at issue here are not mandatory respondents in this review and denying them a separate rate will not affect the calculation of the rate for non-examined separate rate respondents. Moreover, the Department asserts that the requirement for a suspended AD/CVD entry is consistent with the retrospective nature of duty assessment under U.S. law and the stated purpose of administrative reviews to “review, and determine the amount of any antidumping duty” to be assessed upon imports of subject merchandise entered during the applicable period of review.⁹⁰

Comment 9: Calculation of the AD Margin Assigned to the Separate Rate Respondents

GMID and ZGM’s Comments:

- The Court decision in *Bestpak* made clear that AD margin determinations for non-examined, cooperating separate rate respondents must bear some relationship to their actual dumping margins.
- The Department must assess whether the AFA rate assigned to GMID and ZGM reasonably reflects the commercial reality with respect to the mandatory respondent, Kromet.
- According to the controlling statute, if all margins are zero, *de minimis*, or based on total facts available (“FA”), the Department may use another reasonable method to assign a separate rate to non-examined, cooperative, separate rate respondents.
- The SAA explains that the expected method for calculating the separate rate is to weight average the zero and *de minimis* margins and margins determined pursuant to total FA, provided that volume data are available.
- If the Department continues to calculate a *de minimis* rate for Kromet, and this is the only rate calculated for an individually-examined respondent, then the Department should apply the *de minimis* rate to the non-examined, separate rate.

Jiuyuan’s Comments:

- If Kromet’s rate is not zero, *de minimis*, or based on total FA, the Department should assign Kromet’s margin as the separate rate. This is consistent with *PET Film China*⁹¹, in which one respondent’s zero rate was excluded and the other respondent’s calculated rate was used as the separate rate.
- If Kromet’s margin is zero or *de minimis* and Guang Ya Group/Zhongya/Xinya continues to be found uncooperative and treated as part of the PRC-wide entity, then the continued application of the petition rate as the separate rate, as in the *Preliminary Results*, is unreasonable, inconsistent section 735(c)(5)(B) of the Act, and unsupported by case precedent.

⁹⁰ See section 751(a)(1)(B) of the Act; see also *Dofasco Inc. v. United States*, 390 F.3d 1370, 1372 (CAFC 2004) (stating that the purpose of the administrative review is to determine the duty liability for the review period).⁹¹ See *Polyethylene Terephthalate Film, Sheet, and Strip From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 35245 (June 12, 2013) (“*PET Film China*”).

⁹¹ See *Polyethylene Terephthalate Film, Sheet, and Strip From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 35245 (June 12, 2013) (“*PET Film China*”).

- *Changzhou Wujin v. United States*⁹² holds that the application of a hypothetical rate to cooperating parties is not supported by the statute.
 - A methodology can be unreasonable, as noted in *Thai Pineapple Canning Indus. Corp. v. United States*⁹³ and *Bestpak*.
 - *United States v. Eurodif, S.A.*⁹⁴ and *Gallant Ocean (Thail.) Co. v. United States*⁹⁵ hold that a separate rate must be based on economic reality.
 - *Amanda Foods (Vietnam) Ltd. v. United States*⁹⁶ rejected the Department's practice of assigning margins based on prior proceedings because it overlooked substantial data on the record.
- A reasonable methodology for determining the separate rate in the instant case would be to rely on Q&V data or, alternatively, a weighted-average of the weighted-average AD margins.

Electrolux's Comments:

- The Department should calculate the separate rate using the simple average of the *de minimis* and AFA rates, as in the *China Ribbons*⁹⁷ investigation.
- Averaging the *de minimis* and AFA margins for the mandatory respondents when no other calculated margins are available is a well-established "reasonable method" under section 735(c)(5)(B) of the Act, and consistent with *Amanda Foods*.

Xin Wei's Comments:

- The separate rate must be the same rate assigned to Kromet because it is unlawful to base the separate rate on an AFA rate. In *Yantai Oriental*⁹⁸ the CIT objected to use of an AFA rate in the calculation of a separate rate.
- A reasonable method must be used to calculate the rate for exporters not individually examined. The petition rate is not reasonable because it is not based on respondents' actual production and sales. In *Changzhou Wujin* the CAFC cautioned that use of a hypothetical rate is not supported by the statute.
- In *Amanda Foods*, the court explained that mandatory respondents are presumed to be representative of the respondents as a whole. Thus, it is reasonable to use weighted average dumping margins determined for the individually examined exporters, as the Department did in *Brake Rotors*,⁹⁹ when it assigned a *de minimis* rate to the separate rate respondents.
- Alternatively, it would be reasonable under the SAA to weight average the zero and *de minimis* margins and margins determined pursuant to total facts available based on data in the record from Q&Vs and CBP.

⁹² See *Changzhou Wujin Chemical Factory Co., Ltd. v. United States*, 701 F. 3d 1367 (CAFC 2012) ("*Changzhou Wujin*").

⁹³ See *Thai Pineapple Canning Indus. Corp. v. United States*, 273 F.3d 1077 (CAFC 2001) ("*Thai Pineapple*").

⁹⁴ See *United States v. Eurodif, S.A.*, 555 U.S. 305, 317-18 (2009) ("*Eurodif*").

⁹⁵ See *Gallant Ocean (Thail.) Co. v. United States*, 602 F. 3d 1319 (CAFC 2010) ("*Gallant Ocean*").

⁹⁶ See *Amanda Foods (Vietnam) Ltd. v. United States*, 647 F. Supp. 2d 1368 (CIT 2009) ("*Amanda Foods*").

⁹⁷ See *Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China and Taiwan*, 74 FR 39291 (August 6, 2009) ("*China Ribbons*").

⁹⁸ *Yantai Oriental Juice Co. v. United States*, 27 CIT 477 (CIT 2003) ("*Yantai Oriental*").

⁹⁹ *Brake Rotors From the People's Republic of China: Final Results of 2006-2007 Administrative and New Shipper Reviews and Partial Rescission of 2006-2007 Administrative Review*, 73 FR 32678 (June 10, 2008) ("*Brake Rotors*").

In addition, Whirlpool Suppliers, Newell, and Skyline, each submitted comments on the selection of the separate rate. However, these comments were identical to those forwarded by the parties summarized above and thus addressed in the Department's position, below.

Petitioners' Comments:

- Applying the petition rate as the separate rate constitutes a reasonable method under the statute and conforms to the Department's long-standing practice. Further, it bears a reasonable relationship to the separate rate respondents' pricing behaviors and was explained in the *Preliminary Results* as being within the range of the transaction-specific dumping margins calculated for Kromet.
- Applying Kromet's preliminary zero percent weighted-average dumping margin to the separate rate respondents is unreasonable because of Kromet's unconventional sales process, which is not representative of the separate rate respondents' commercial experience.
- Applying a weighted average of Kromet's zero percent rate and Zhongya's AFA rate is unreasonable because information is not available to determine the volume of sales to attribute to the entire Zhongya entity.

Department's Position: The Department has applied the separate rate assigned in the LTFV investigation of this proceeding as the separate rate in these final results. Neither the Act nor the Department's regulations address the establishment of the rate applied to individual companies not selected for examination where the Department limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. The Department's practice in cases involving limited selection based on exporters accounting for the largest volumes of trade has been to look to section 735(c)(5) of the Act for guidance, which provides instructions for calculating the all-others rate in an investigation. Section 735(c)(5)(A) of the Act instructs the Department to avoid calculating an all-others rate using any rates that are zero, *de minimis*, or based entirely on facts available in investigations. Section 735(c)(5)(B) of the Act provides that, where all rates are zero, *de minimis*, or based entirely on facts available, the Department may use "any reasonable method" for assigning a rate to non-examined respondents.

In the SAA, Congress stated that when "the dumping margins for all of the exporters and producers that are individually investigated are determined entirely on the basis of the facts available or are zero or *de minimis*"... "{t}he expected method in such cases will be to weight-average the zero and *de minimis* margins and margins determined pursuant to the facts available."¹⁰⁰ However, Congress also stated that "if this method is not feasible, or if it results in an average that would not be reasonably reflective of potential dumping margins for non-investigated exporters or producers, {the Department} may use other reasonable methods."¹⁰¹

In this instance, one of the two selected respondents, Guang Ya Group/Zhongya/Xinya obtained a rate based on AFA and has not demonstrated its eligibility for a separate rate. The other respondent, Kromet, obtained the only calculated rate in this proceeding. However, because

¹⁰⁰ See SAA accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316 at 873 (1994), reprinted in 1994 U.S.C.C.A.N. 4040, 4200.

¹⁰¹ *Id.*

Kromet's rate is zero, averaging is not a reasonable method for determining the AD margin for separate rate respondents. Further, Kromet's unconventional sales process is not representative of the separate rate respondents in this review. Therefore, we have concluded that applying Kromet's *de minimis* rate as the separate rate does not reasonably reflect the potential weighted-average dumping margins for non-examined exporters and does not constitute a reasonable method under the statute.

The Department has used other reasonable means to assign rates to non-examined companies in instances in which the use of an "average" of calculated zero and *de minimis* rates, or rates based entirely on facts available was not possible.¹⁰² In *Vietnam Shrimp AR3 Final*, the Department assigned to those non-examined separate rate companies with no history of an individually calculated weighted-average dumping margin the rate determined for cooperative separate rate respondents from the underlying investigation.¹⁰³ However, for those non-examined separate rate respondents that had received a calculated weighted-average dumping margin in a completed, prior segment, concurrent with or more recent than the calculated rate in the underlying investigation, the Department assigned that calculated rate as the company's individual separate rate in the review at hand.¹⁰⁴ In recent *China Staple Fiber* administrative review the two selected mandatory respondents received *de minimis* margins and, as a result, the Department articulated a standard to apply the most recently calculated rate from a completed prior segment for each current, non-examined, separate rate respondents.¹⁰⁵

In the instant case, the only other company with a calculated weighted-average dumping margin during the history of this proceeding is not currently a non-examined separate rate respondent, and no other non-zero, non-*de minimis* or non-FA-based rates are available. However, we find the methodology used in both *China Staple Fiber* and *Vietnam Shrimp* to be instructive, based on the otherwise similar fact pattern. As such, we determine that the application of the rate from the investigation to the non-examined separate rate respondents is consistent with precedent and the most appropriate method to determine the separate rate in the instant review. Pursuant to this method, we are assigning the rate of 32.79 percent, the most recent rate (from the LTFV investigation) calculated for the non-examined separate rate respondents, to the non-examined separate rate respondents in the instant review.

Applying the petition rate from the LTFV investigation as the separate rate is a reasonable methodology under the statute because it is an average of margins calculated in the petition.

¹⁰² See, e.g., *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 47191, 47194 (September 15, 2009) ("*Vietnam Shrimp*"); see also *Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR at 10131 (February 13, 2013).

¹⁰³ See *Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 75 FR 49460, 49463 (August 13, 2010) ("*Vietnam Shrimp*").

¹⁰⁴ *Id.*

¹⁰⁵ *Certain Polyester Staple Fiber From the People's Republic of China: Notice of Preliminary Results of the Antidumping Duty Administrative Review, and Intent To Revoke Order in Part*, 76 FR 40329 (July 8, 2011), unchanged in *Certain Polyester Staple Fiber From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, and Revocation of an Order in Part*, 76 FR 69702 (November 9, 2011) ("*China Staple Fiber*").

Specifically, the margins in the petition were based on actual selling prices of a Chinese exporter of subject merchandise, and therefore represent economic reality. Furthermore, evidence on the record of this review also demonstrates that this rate is an accurate representation of the commercial experience of a segment of the aluminum extrusions industry because it does not lie outside the realm of actual selling prices.¹⁰⁶ Accordingly, we are not persuaded by Jiuyuan's reference to *Eurodif* and *Gallant Ocean*, because those cases dealt with a different factual scenario. In addition, neither of these cases examined what constitutes a reasonable separate rate, let alone whether the separate rate determined in this administrative review is reasonable. Moreover, as our above methodology is based on a reasonable and supported practice, we do not find Jiuyuan's reference to *Thai Pineapple* relevant to the instant determination. Indeed, while the CIT stated that the methodology applied in the underlying case was unreasonable in the face of a more accurate methodology, the court, indeed, affirmed that "various methodologies are permitted by the statute."¹⁰⁷

In employing the reasonable methodology of relying on the separate rate assigned in a completed prior segment of this proceeding rather than averaging the *de minimis* and AFA rates assigned to the mandatory respondents, the CAFC's decision in *Bestpak* is inapposite. In *China Ribbons*, the investigation that underlies *Bestpak*, the Department averaged the *de minimis* and AFA rates of the mandatories in order to calculate the rate for *Bestpak*, the non-examined, separate rate respondent. While the CAFC stated that Commerce may be permitted to use a simple average methodology to calculate a separate rate, it did not uphold the separate-rate calculation at issue in light of case-specific circumstances. In this case, we are not implicating the averaging methodology at issue in *Bestpak*.

We also do not find the facts on the record of this review to be comparable to those underlying *Amanda Foods*. In that case, the Department was confronted with calculated, albeit *de minimis*, rates for three mandatory respondents and, on remand, averaged those rates to determine the separate rate. In this case, as explained, *supra*, we have only one mandatory respondent with a calculated rate and, therefore, rely on facts entirely distinguishable from those in *Amanda Foods*. Finally, because we are not including the AFA margin in the calculation of the separate rate, arguments with respect to whether it is lawful to base the separate rate on the PRC-wide rate are moot.

In this review, we preliminarily found that a reasonable method was to assign to the non-examined, separate rate respondents, none of which have a history of an individually calculated weighted-average dumping margin, the rate calculated for non-examined separate rate respondents in the underlying investigation, 32.79 percent. We continue to find that this is a reasonable method and sustain our assignment of this separate rate for the final results.

¹⁰⁶ See PDM at 16, in which we explained that the petition rates are within the range of Kromet's individual dumping margins.

¹⁰⁷ *Thai Pineapple Canning Indus. Corp. v. United States* 273 F.3d 1077 (2001).

Comment 10: How to Adjust the Separate Rate for Double Counting Under Section 777A(f) of the Act

GOC's Comments:

- The Department should adjust separate-rate respondents' antidumping duty margins under section 777A(f) of the Act. The Department failed to make any findings or to make any adjustment under section 777A(f) for separate-rate respondents.
- In *GPX*¹⁰⁸ the CAFC held that section 777A(f) is intended to bring the United States into compliance with its World Trade Organization ("WTO") obligations.
- By failing to make findings or any double-remedy adjustment with respect to separate-rate respondents, the Department fails to implement section 777A(f) and violates U.S. WTO obligations.
- In order to comply with section 777A(f), the Department should fully offset separate-rate respondents' weighted-average dumping margins by the countervailing duty margins calculated for non-selected respondents in the corresponding countervailing duty administrative review.

Petitioners' Comments:

- Section 777A(f)(1) makes clear that the Department is only required to make subsidy offsets when there is evidence demonstrating a countervailable subsidy reduced the average price of imports and where the Department can reasonably estimate the extent of the countervailable subsidy. However, there is no evidence that countervailable subsidies have passed through to any of the separate rate respondents.
- None of the separate rate respondents responded to a double-remedy questionnaire. Thus, the Department does not have the information necessary to determine what, if any, offset should be granted. As a result, there is no evidence that the separate rate respondents received a subsidy.
- Moreover, some of the separate rate respondents in the AD review are not participating in the contemporaneous CVD review, which suggests that CVD subsidies may not have passed through to the separate rate respondents.
- Zhongya, a mandatory respondent in the AD case, recognized that the Department should not apply a subsidy offset to a company not participating in the CVD case.
- Given the state of the record, the agency lacks the information necessary to make accurate offsetting determinations. Accordingly, the Department should decline to perform any offsets in determining the separate rate final margin.
- The current CVD margin is based largely on the subsidies provided to Kromet's supplier and, thus, the offset is applied to a subsidy margin that bears little or no relationship to the separate rate applicant's actual sales practice.

Department's Position: We are making an adjustment to the weighted-average dumping margins to establish the AD assessment and cash deposit rate for the respondents in this administrative review, pursuant to section 777A(f) of the Act. To make the adjustment, we are

¹⁰⁸ See *GPX Int'l Tire Corp. v. United States*, 678 F.3d 1308, 1311 (Fed. Cir. 2012).

using information from the original CVD investigation to derive program-specific rates for subsidized inputs for the respondents in this AD review.¹⁰⁹

We agree with Petitioners that the separate rate respondents in the instant review were not provided with the opportunity to demonstrate their eligibility for an offset. Accordingly, necessary information relating to the separate-rate respondents' eligibility for an offset is not on the record. Therefore, the Department is applying facts available pursuant to section 776(a)(1) of the Act. Information provided by Kromet indicates that subsidies provided to Kromet in the form of aluminum billets provided for less-than-adequate-remuneration ("LTAR") impact U.S. selling prices. Therefore, as facts available, we determine that the separate rate respondents have a similar subsidy-to-price linkage and are also entitled to an offset. To calculate the domestic subsidy offset granted to the separate rate respondents, we use the subsidy-to-cost and cost-to-price linkage demonstrated by Kromet between the aluminum billet LTAR subsidy and Kromet's U.S. prices. To determine an offset amount for the separate rate respondents, we apply Kromet's pass-through rate to the aluminum billet LTAR rate determined for the "all others" rate in the CVD investigation, as amended.¹¹⁰ We used this CVD "all-others" rate, because, as explained above in Comment 9, we are applying the separate rate from the AD investigation (*i.e.*, an average of the dumping margins included in the petition) to the separate rate respondents in this review and the petition rate was derived from data from a company that would receive the all-others CVD rate. The PRC exporter whose sales are the basis for the AD petition rates was not examined in the CVD investigation, and, therefore, would be considered as part of the group of all-other exporters in the CVD investigation. The amended "all others" rate of 137.65 percent in the CVD investigation included a rate of 2.55 percent for the provision of primary aluminum LTAR. The pass-through rate for these domestic subsidies (*i.e.*, 2.55 percent) is based on that determined for Kromet in this review, which is 57.71 percent, based on data derived from Bloomberg.¹¹¹

In making this adjustment, the Department notes that it is not concluding that concurrent application of NME antidumping and countervailing duties necessarily and automatically results in overlapping remedies. Rather, whether there is an overlap in remedies, and any resulting adjustment is based on a case-by-case analysis of the totality of facts on the administrative record in the relevant segment of the proceeding, as required by the statute. We also note that because this is only the third time that the Department applied section 777A(f) of the Act,¹¹² we intend to continue to refine our practice, based on the record evidence in each case, in applying this statutory provision.

We disagree with Petitioners that the record lacks the information necessary to determine offsets to address double remedies. As described above, the record contains information with which to

¹⁰⁹ See *Aluminum Extrusions From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Affirmative Countervailing Duty Determination and Notice of Amended Final Affirmative Countervailing Duty Determination*, 77 FR 74466 (December 14, 2012) ("CVD Amended Final").

¹¹⁰ *Id.*

¹¹¹ See PDM at Attachment 2.

¹¹² See *Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act: Certain New Pneumatic Off-the-Road Tires; Circular Welded Carbon Quality Steel Pipe; Laminated Woven Sacks; and Light-Walled Rectangular Pipe and Tube From the People's Republic of China*, 77 FR 52683, 52686 (August 30, 2012); see also *Drawn Stainless Steel Sinks From the People's Republic of China: Investigation, Final Determination*, 78 FR 13019 (February 26, 2013).

estimate an offset amount based on the actual experience of the mandatory respondent, Kromet. First, based on Kromet's experience, Bloomberg data represent an appropriate and reasonable basis from which to estimate the pass-through amount of countervailable subsidies to the separate-rate respondents. Second, domestic subsidy rates determined for the other exporters in the CVD investigation are an appropriate estimate of the subsidy rates that would be applied to the sales transactions comprising the petition rates in the AD investigation. For instance, as noted above, we are using the rate applied to separate-rate entities from the AD investigation as the basis for the separate rate in this review. Moreover, the rate determined for the all others in the CVD investigation is contemporaneous with the rate being applied to the separate-rate respondents in this review. Thus, we continue to find that the Bloomberg data, the industry experience represented by Kromet, and the actual subsidy rates calculated for all other exporters in the CVD investigation are an appropriate means by which to satisfy section 777A(f) of the Act and make a reasonable estimate of the double-remedy offset amount for non-examined, separate rate respondents in this review.

We do not agree with the GOC's argument that a double remedy arises in all instances of concurrent imposition of countervailing and antidumping duties calculated pursuant to the NME methodology such that section 777A(f) of the Act requires that an adjustment be made in this case. As discussed above, the Department examines on a case-by-case basis whether evidence supports a finding that an estimated domestic subsidy pass-through has occurred. In this case, as described above, we find that the record evidence warrants an adjustment to account for estimated domestic subsidies pass-through as well as for export subsidies not accounted for in the underlying petition rates.

Finally, in addition, the amended all others rate of 137.65 percent from the original CVD investigation includes an export subsidy rate of 8.31 percent covering Government of China and Sub-Central Government Grants, Loans, and Other Incentives for Development of Famous Brands and China World Top Brands.¹¹³ Further, an adjustment for the export subsidies is appropriate in the final results because the petition rates, which are the basis for the separate rate assigned to non-examined respondents in the investigation, include no such offset. The pass-through rate for the export subsidies is 100 percent.

Comment 11: Whether the Margin Assigned to the Separate Rate Respondents in the Preliminary Results was an AFA Rate

*Jiuyuan and Xin Wei's Comments*¹¹⁴:

- Jiuyuan and Xin Wei are entitled to a separate rate because they demonstrated *de jure* and *de facto* independence from the PRC-wide entity.
- An adverse inference is not warranted because Jiuyuan and Xin Wei cooperated to the best of their ability by providing all requested information.

¹¹³ See *Aluminum Extrusions From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) and accompanying Issues and Decision Memorandum.

¹¹⁴ Similar arguments resulting from the confusion over the Department's transcription error stating that the PRC-wide rate was identical to the separate rate in the *Preliminary Results*, as discussed below, were also forwarded by Skyline.

- In *Hubbell v. United States*,¹¹⁵ the CIT found that the Department may only determine that separate rate applicant failed to cooperate if it either did not act to the best of its ability or if the party failed to rebut the presumption of state control.
- In *Changzhou Wujin v. United States*,¹¹⁶ the CAFC held that applying an adverse rate to cooperative respondents undercuts the cooperation-promoting goal of the AFA statute.
- Thus, the record does not support the preliminary determination to assign Jiuyuan and Xin Wei the rate for the PRC-wide entity, and the Department must assign a rate to Jiuyuan and Xin Wei that is distinct from the AFA rate assigned to PRC-wide entity.

Department’s Position: For the *Preliminary Results*, we assigned to the non-examined separate rate respondents – including Xin Wei and Jiuyuan – a rate of 32.79 percent,¹¹⁷ and to the PRC-wide entity an AFA rate of 33.28 percent, the highest rate from the petition or rate calculated in a completed segment of the proceeding.¹¹⁸ However, in the *Preliminary Results*, we incorrectly noted that the PRC-wide entity received a rate of 32.79 percent (*i.e.*, the separate rate) rather than 33.28 percent (*i.e.*, the AFA rate).¹¹⁹ As such, while the *Preliminary Results* included a transcription error with respect to the rate for the PRC-wide entity, Jiuyuan and the other non-examined separate rate respondents were indeed assigned the correct separate rate and not the AFA rate. We agree with the contention that the separate rate-eligible respondents in this review are entitled to a non-AFA rate and will sustain our preliminary determination of assigning the separate rate respondents a rate distinct from the AFA rate in the final results. Thus, all other arguments on this issue, including those based on Jiuyuan’s references to *Hubbell* and *Changzhou Wujin*, are moot.

Comment 12: Whether GMID and ZGM Are Both Eligible for Separate Rate Status in the Final Results

GMID and ZGM’s Comments:

- In the *Preliminary Results*, GMID was found eligible for a separate rate. To avoid confusion, the Department must publish GMID’s full legal name in both the final results Federal Register notice and the liquidation instructions sent to CBP.
- GMID’s affiliate, ZGM, was granted a separate rate in the *LTFV Final Determination*¹²⁰ and filed a separate rate certification in this administrative review but was not granted a separate rate in the *Preliminary Results*. The Department must correct this omission and clarify in the final results that ZGM is eligible for a separate rate.

Department’s Position: We agree with GMID and ZGM that both exporters have demonstrated *de facto* and *de jure* independence over export activities sufficient to warrant eligibility for a separate rate in the final results. In the *Preliminary Results*, we inadvertently conflated GMID

¹¹⁵ See *Hubbell Power Sys., Inc. v. United States*, 884 F. Supp. 2d 1283, 1293 (CIT 2012) (“*Hubbell v. United States*”).

¹¹⁶ See *Changzhou Wujin Chemical Factory Co., Ltd. v. United States*, 701 F. 3d 1367, 1378 (Fed. Cir 2012) (“*Changzhou Wujin v. United States*”).

¹¹⁷ See PDM at 14.

¹¹⁸ *Id.* at 15.

¹¹⁹ See *Preliminary Results* at 34988.

¹²⁰ See *Aluminum Extrusions from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 18524 (April 4, 2011) (“*LTFV Final Determination*”).

and ZGM as one exporting entity rather than two distinct separate rate respondents. We will include both exporter names in the final liquidation instructions for CBP and, in addition, we will publish GMID's full legal name in the final results.

Comment 13: Whether Suppliers for Electrolux and Newell Should Be Subsumed Within Their Exporter's Rate

Electrolux and Newell's Comments:

- The Department erred in the *Preliminary Results* by assigning Electrolux and Newell's producers an AFA rate based on the absence of a separate rate application ("SRA").
- The Department should ensure that the producers incorporated into Electrolux and Newell's SRAs are subsumed within their associated exporters' separate rate.

Department's Position: We do not agree with Electrolux and Newell that producers included in an exporter's SRA should be subsumed within that exporter's separate rate in a non-market economy ("NME") AD administrative review. The Department's separate rates analysis focuses exclusively on export activities and, thus, pertains only to exporters covered by an SRA. It is the Department's practice to assign producer-exporter chain rates only in the course of an NME AD investigation or an NME new shipper review,¹²¹ not in an NME AD administrative review. As such, Electrolux and Newell's comments are not applicable to the instant review.

Comment 14: Whether AD Duties Should Only Be Assessed on IDEX after the Date of the Department's Initiation of a Formal Scope Inquiry

IDEX's Comments:

- The Department issued a final scope ruling finding that IDEX's pre-machined parts were within the scope of the *Order*. Though the scope ruling itself did not mention the suspension of liquidation, the Department issued instructions for CBP to continue the suspension of liquidation of the relevant merchandise subsequent to the scope ruling.
- When a formal scope inquiry is initiated, the Department is prohibited from suspending liquidation and assessing AD/CVD duties prior to the date of initiation, in accordance with its regulations at 19 CFR 351.225(l)(3).
- The Department's finding in, e.g., *Candles/PRC Circumvention*¹²² supports the fact that the Department does not have the authority to assess antidumping or countervailing duties for entries prior to a formal scope ruling.

¹²¹ See Policy Bulletin 05.1, "Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries," April 5, 2005, available at: <http://enforcement.trade.gov/policy/bull05-1.pdf>.

¹²² 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 59075 (October 6, 2006) ("*Candles/PRC Circumvention*").

- The recent CIT ruling on *AMS Associates, Inc. v. United States*,¹²³ as upheld by the CAFC,¹²⁴ further clarifies that the Department does not have the authority to suspend liquidation prior to initiation date of scope ruling.
- If the Department does not follow the requirements of 19 CFR 351.225(l)(3), then the Department should complete its review with respect to IDEX despite the fact that IDEX had no suspended entries during the POR.

Department's Position: Consistent with 19 CFR 351.225(l)(3), the Department will instruct CBP to suspend liquidation and to require a cash deposit of estimated AD duties, at the applicable rate, for each unliquidated entry, if any, of IDEX's subject merchandise entered, or withdrawn from warehouse, for consumption on or after December 1, 2011, the date of initiation of IDEX's scope inquiry for precision-machined parts. Because the Department will instruct CBP to suspend liquidation from the date of initiation consistent with 19 CFR 35.225(l)(3), we are not addressing IDEX's alternative argument.

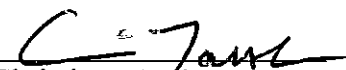
Conclusion

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)

¹²³ See *AMS Associates, Inc. v. United States*, 881 F. Supp. 2d 1374, 1382 (CIT 2012).

¹²⁴ See *AMS Assocs., Inc. v. United States*, 2013 U.S. App. LEXIS 24761 (Fed. Cir. December 13, 2013).