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Washington, D.C. 20230

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Administrative Review
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DATE: December 22, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

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

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Summary

On May 26, 2011, the Department of Commerce (the Department) published a countervailing duty (CVD) order on aluminum extrusions from the People's Republic of China (PRC).[1] The Department published the *Preliminary Results* of this administrative review on June 25, 2014,[2] covering the Alnan Companies/Kromet International Inc. (Kromet)[3] (collectively referred to as Alnan/Kromet) and Jiangsu Changfa Refrigeration Co., Ltd. (Jiangsu Changfa), the two mandatory respondents, as well as the 58 companies not selected for individual review and the four companies which did not cooperate in the review. The period for which we are measuring subsidies, *i.e.*, the period of review (POR), is January 1, 2012, through December 31, 2012.

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

[2] *See Aluminum Extrusions from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2012*, 79 FR 36009 (June 25, 2014) (*Preliminary Results*).

[3] The Alnan Companies are Alnan Aluminum Co., Ltd. (Alnan Aluminum or Alnan), Alnan Aluminum Foil Co., Ltd. (Alnan Foil), Alnan (Shanglin) Industry Co., Ltd. (Shanglin Industry), Shanglin Alnan Aluminum Comprehensive Utilization Power Co., Ltd. (Shanglin Power), Nanning Alnan Aluminum Industry Co., Ltd., Quinzhou Alnan Aluminum Precision Processing Co., Ltd., and Guangxi Alnan Aluminum Technology Research & Development Center (collectively referred to as the Alnan Companies). Kromet, one of the selected mandatory respondents in this administrative review, reported that it is a Canadian-based company that sold subject merchandise produced by the Alnan Companies to the United States during the review period.

Following the *Preliminary Results*, we issued a supplemental questionnaire to Alnan/Kromet on June 26, 2014,[4] regarding a benchmark price, and received the company's response on July 15, 2014.[5] Interested parties submitted case briefs on August 6, 2014,[6] and rebuttal briefs on August 18, 2014.[7] Jiangsu Changfa did not file a case or rebuttal brief.

On August 26, 2014, we extended the final results of this administrative review until December 22, 2014.[8] On October 17, 2014, we held a public hearing regarding this review at the Department.[9]

We are conducting this administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act).

List of Comments

We analyzed the comments submitted by the interested parties in their case and rebuttal briefs in the "Analysis of Comments" section below, which also contains the Department's responses to the issued raised in the briefs. Below is a complete list of the issues raised in this administrative review for which we received comments and rebuttal comments from interested parties.

General Subsidy Issues

Comment 1: Application of the CVD Law to the PRC
Comment 2: Countervailing Subsidies Received Prior to January 1, 2005

Program-Specific Issues

Comment 3: Whether There Is a Link Between Policy Lending and Respondents' Bank Loans
Comment 4: Whether PRC Commercial Banks Are Government Authorities
Comment 5: Computation of Benchmark Loan Interest Rate
Comment 6 Whether State Ownership Makes an Entity a Government Authority
Comment 7: Whether Chinese Communist Party (CCP) Affiliations/Activities by Company Officials Make the Company a Government Authority

[4] *See* Letter from the Department to Alnan/Kromet regarding "Third Supplemental Questionnaire" (June 26, 2014).
[5] *See* Letter from Alnan/Kromet regarding "Response to the Third Supplemental Questionnaire" (July 15, 2014).
[6] The Department received case briefs from the following parties: the Aluminum Extrusions Fair Trade Committee (the Petitioner), Alnan/Kromet, Permasteelisa South China Factory, Streamlight, Inc., Taishan City Kam Kiu Aluminium Extrusion Co. Ltd., and the Government of the PRC (GOC).
[7] The Department received rebuttal briefs from the following parties: the Petitioner, Alnan/Kromet, and Guangzhou Jangho Curtain Wall System Engineering Co., Ltd.
[8] *See* Department Memorandum regarding "Aluminum Extrusions from the People's Republic of China: Extension of Deadline for Final Results of Countervailing Duty Administrative Review" (August 26, 2014).
[9] The transcript of the hearing is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). On November 24, 2014, Enforcement and Compliance changed the name of Enforcement and Compliance's AD and CVD Centralized Electronic Service System (IA ACCESS) to AD and CVD Centralized Electronic Service System (ACCESS). The website location was changed from http://iaaccess.trade.gov to http://access.trade.gov. The Final Rule changing the references to the regulations can be found at 79 FR 69046 (November 20, 2014). ACCESS is available to registered users at http://access.trade.gov and is available to all parties in the Central Records Unit, room 7046 of the main Department of Commerce building.

Comment 8: Whether the GOC Responded to the Best of Its Ability Regarding Ownership and CCP Affiliation for Primary Aluminum Producers and Provided Sufficient Evidence to Find that Some Producers Were Not Government Authorities
Comment 9: Benchmark Price for Primary Aluminum
Comment 10: Prices Must Be Properly Weight-averaged
Comment 11: Whether the Provision of Primary Aluminum Is Specific
Comment 12: Use of a Tier-One Price for the Provision of Primary Aluminum
Comment 13: Whether Certain Programs Were Limited to an Enterprise or Industry
Comment 14: Whether the Department's Investigation of Uninitiated Programs Is Unlawful

Company-Specific Issues
Comment 15: Attribution of Subsides Received by the Alnan Companies
Comment 16: Allocation of Grant Program for Alnan Aluminum
Comment 17: Benefits Received by Alnan Aluminum Prior to 2012
Comment 18: Whether Alnan Foil[10] Is an Input Producer and Subsidies Received by Alnan Foil Should Be Attributed to Alnan Aluminum
Comment 19: Whether Grants Received by Shanglin Industry Should be Attributed to Alnan Aluminum
Comment 20: Errors in Alnan Aluminum's Trade Financing Calculation

Other Issues
Comment 21: Whether to Collect Duties or to Lift Any Suspension and Liquidate Without Regard to Duties for Permasteelisa, Jangho, and Streamlight[11]
Comment 22: Correct Spelling of Company Name

Scope of the Order

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

[10] Alnan/Kromet made the company's name public in its case brief. *See* Alnan/Kromet Case Brief at 17.
[11] We refer to Permasteelisa South China Factory and its affiliated company Permasteelisa Hong Kong Limited, collectively as Permasteelisa. We refer to Guangzhou Jangho Curtain Wall System Engineering Co., Ltd. and Jangho Curtain Wall Hong Kong Ltd., collectively as Jangho. We refer to Streamlight, Inc. as Streamlight.

leading letter. Illustrative examples from among the approximately 160 registered alloys that may characterize the subject merchandise are as follows: 1350, 3003, and 6060.

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

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

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

Subject extrusions may be identified with reference to their end use, such as fence posts, electrical conduits, door thresholds, carpet trim, or heat sinks (that do not meet the finished heat sink exclusionary language below). Such goods are subject merchandise if they otherwise meet the scope definition, regardless of whether they are ready for use at the time of importation.

The following aluminum extrusion products are excluded: aluminum extrusions made from aluminum alloy with an Aluminum Association series designations commencing with the number 2 and containing in excess of 1.5 percent copper by weight; aluminum extrusions made from aluminum alloy with an Aluminum Association series designation commencing with the number 5 and containing in excess of 1.0 percent magnesium by weight; and aluminum extrusions made from aluminum alloy with an Aluminum Association series designation commencing with the number 7 and containing in excess of 2.0 percent zinc by weight.

The scope also excludes finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry, such as finished windows with glass, doors with glass or vinyl, picture frames with glass pane and backing material, and solar panels. The scope also excludes finished goods containing aluminum extrusions that are entered unassembled in a "finished goods kit." A finished goods kit is understood to mean a packaged combination of parts that contains, at the time of importation, all of the necessary parts to fully assemble a final finished good and requires no further finishing or fabrication, such as cutting or punching, and is assembled 'as is' into a finished product. An imported product will not be considered a 'finished goods kit' and therefore excluded from the scope merely by including fasteners such as screws, bolts, *etc.* in the packaging with an aluminum extrusion product.

The scope also excludes aluminum alloy sheet or plates produced by other than the extrusion process, such as aluminum products produced by a method of casting. Cast aluminum products are properly identified by four digits with a decimal point between the third and fourth digit. A letter may also precede the four digits. The following Aluminum Association designations are representative of aluminum alloys for casting: 208.0, 295.0, 308.0, 355.0, C355.0, 356.0, A356.0, A357.0, 360.0, 366.0, 380.0, A380.0, 413.0, 443.0, 514.0, 518.1, and 712.0. The scope also excludes pure, unwrought aluminum in any form.

The scope also excludes collapsible tubular containers composed of metallic elements corresponding to alloy code 1080A as designated by the Aluminum Association where the tubular container (excluding the nozzle) meets each of the following dimensional characteristics: (1) length of 37 millimeters (mm) or 62 mm, (2) outer diameter of 11.0 mm or 12.7 mm, and (3) wall thickness not exceeding 0.13 mm.

Also excluded from the scope of the order are finished heat sinks. Finished heat sinks are fabricated heat sinks made from aluminum extrusions the design and production of which are organized around meeting certain specified thermal performance requirements and which have been fully, albeit not necessarily individually, tested to comply with such requirements.

Also excluded from the scope of the order is certain rectangular wire produced from continuously cast rolled aluminum wire rod, which is subsequently extruded to dimension to form rectangular wire. The product is made from aluminum alloy grade 1070 or 1370, with no recycled metal content allowed. The dimensions of the wire are 5 mm (+/- 0.05 mm) in width and 1.0 mm (+/- 0.02 mm) in thickness. Imports of rectangular wire are provided for under Harmonized Tariff Schedule of the United States (HTSUS) category 7605.19.000.

Imports of the subject merchandise are provided for under the following categories of the HTSUS: 7610.10.00, 7610.90.00, 7615.10.30, 7615.10.71, 7615.10.91, 7615.19.10, 7615.19.30, 7615.19.50, 7615.19.70, 7615.19.90, 7615.20.00, 7616.99.10, 7616.99.50, 8479.89.98, 8479.90.94, 8513.90.20, 9403.10.00, 9403.20.00, 7604.21.00.00, 7604.29.10.00, 7604.29.30.10, 7604.29.30.50, 7604.29.50.30, 7604.29.50.60, 7608.20.00.30, 7608.20.00.90, 8302.10.30.00, 8302.10.60.30, 8302.10.60.60, 8302.10.60.90, 8302.20.00.00, 8302.30.30.10, 8302.30.30.60, 8302.41.30.00, 8302.41.60.15, 8302.41.60.45, 8302.41.60.50, 8302.41.60.80, 8302.42.30.10, 8302.42.30.15, 8302.42.30.65, 8302.49.60.35, 8302.49.60.45, 8302.49.60.55, 8302.49.60.85, 8302.50.00.00, 8302.60.90.00, 8305.10.00.50, 8306.30.00.00, 8414.59.60.90, 8415.90.80.45, 8418.99.80.05, 8418.99.80.50, 8418.99.80.60, 8419.90.10.00, 8422.90.06.40, 8473.30.20.00, 8473.30.51.00, 8479.90.85.00, 8486.90.00.00, 8487.90.00.80, 8503.00.95.20, 8508.70.00.00, 8516.90.50.00, 8516.90.80.50, 8517.70.00.00, 8529.90.73.00, 8529.90.97.60, 8538.10.00.00, 8543.90.88.80, 8708.29.50.60, 8708.80.65.90, 8803.30.00.60, 9013.90.50.00, 9013.90.90.00, 9401.90.50.81, 9403.90.10.40, 9403.90.10.50, 9403.90.10.85, 9403.90.25.40, 9403.90.25.80, 9403.90.40.05, 9403.90.40.10, 9403.90.40.60, 9403.90.50.05, 9403.90.50.10, 9403.90.50.80, 9403.90.60.05, 9403.90.60.10, 9403.90.60.80, 9403.90.70.05, 9403.90.70.10, 9403.90.70.80, 9403.90.80.10, 9403.90.80.15, 9403.90.80.20, 9403.90.80.41, 9403.90.80.51, 9403.90.80.61, 9506.11.40.80, 9506.51.40.00, 9506.51.60.00, 9506.59.40.40, 9506.70.20.90, 9506.91.00.10, 9506.91.00.20, 9506.91.00.30, 9506.99.05.10, 9506.99.05.20, 9506.99.05.30, 9506.99.15.00, 9506.99.20.00, 9506.99.25.80, 9506.99.28.00, 9506.99.55.00, 9506.99.60.80, 9507.30.20.00, 9507.30.40.00, 9507.30.60.00, 9507.90.60.00, and 9603.90.80.50.

The subject merchandise entered as parts of other aluminum products may be classifiable under the following additional Chapter 76 subheadings: 7610.10, 7610.90, 7615.19, 7615.20, and 7616.99 as well as under other HTSUS chapters. In addition, fin evaporator coils may be classifiable under HTSUS numbers: 8418.99.80.50 and 8418.99.80.60. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.[12]

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

Subsidies Valuation Information

Allocation Period

The average useful life (AUL) period in this proceeding, as described in 19 CFR 351.524(d)(2), is 12 years according to the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System, as revised. No party in this proceeding disputed this allocation period.

For non-recurring subsidies, we applied the "0.5 percent expense test" described in 19 CFR 351.524(b)(2). Under this test, we compare the amount of subsidies approved under a given program in a particular year to sales (total sales or total export sales, as appropriate) for the same year. If the amount of subsidies is less than 0.5 percent of the relevant sales, then the benefits are expensed to the year of receipt rather than allocated over the AUL period.

Consistent with other PRC CVD proceedings,[13] we continue to find that it is appropriate and administratively desirable to identify a uniform date from which the Department will identify and measure subsidies in the PRC for purposes of the CVD law, and adopted December 11, 2001, the date on which the PRC became a member of the World Trade Organization (WTO), as that date.

[12] *See Order*.
[13] *See, e.g., Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008) (*CWP from the PRC*), and accompanying Issues and Decision Memorandum (IDM).

<u>*Attribution of Subsidies*</u>

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

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

> the interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits). … Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.[14]

Thus, the Department's regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists. The U.S. Court of International Trade (CIT) upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.[15]

Alnan Companies and Kromet

Kromet is a Canadian company that exported to the United States, during the POR, the subject aluminum extrusions that were produced and exported by Alnan Aluminum. Alnan Aluminum is a PRC company located in Nanning City, Guangxi Province of the PRC. Based on the information on the record provided by Kromet and the Alnan Companies, we find that Alnan Aluminum, Alnan Foil, Shanglin Industry, Shanglin Power, Nanning Alnan Aluminum Industry Co., Ltd., Quinzhou Alnan Aluminum Precision Processing Co., Ltd., and Guangxi Alnan

[14] *See Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998) (*Preamble*).
[15] *See Fabrique de Fer de Charleroi v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

Aluminum Technology Research & Development Center are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi) by virtue of direct or common ownership.[16]

Pursuant to 19 CFR 351.525(b)(6)(iii), because Alnan Aluminum is the parent company of Alnan Foil, Shanglin Industry, Shanglin Power, Nanning Alnan Aluminum Industry Co., Ltd., Quinzhou Alnan Aluminum Precision Processing Co., Ltd., and Guangxi Alnan Aluminum Technology Research & Development Center, we are attributing subsidies received by Alnan Aluminum to the consolidated sales of the parent company and its subsidiaries, *i.e.,* the consolidated sales of the Alnan Companies, net of inter-company sales.

Kromet and the Alnan Companies reported that certain of these affiliated companies supplied inputs to Alnan Aluminum during the POR.[17] Because these affiliated companies were not the producers of the inputs, we are attributing, pursuant to 19 CFR 351.525(b)(6)(v), only those subsidies received by these companies that were transferred to Alnan Aluminum. Our approach in this regard is consistent with the Department's practice.[18] Because Alnan Aluminum is a parent company, pursuant to 19 CFR 351.525(b)(6)(iii), the denominator for attributing subsidies transferred from these affiliates is the value of the consolidated sales of the Alnan Companies (which is net of inter-company sales). *See* Comments 15, 18 and 19, below.

Jiangsu Changfa

Jiangsu Changfa, a Chinese-owned producer and exporter of evaporators, was established in 2002, in Jiangsu Province.[19] Jiangsu Changfa reported that approximately 50 percent of its shares are owned by Jiangsu Changfa Industry Group Co., Ltd. (Changfa Group), which, in turn, is owned by several individuals.[20] Jiangsu Changfa's remaining shares are minority-owned by two other PRC companies and public shareholders.[21] Jiangsu Changfa was publicly listed on the Shenzhen Stock Exchange in 2010.[22] The Changfa Group, established in 2000, in Jiangsu Province, operates as a holding company of diverse industries with a focus on agricultural equipment manufacturing and refrigeration equipment.[23] We find that Jiangsu Changfa and the Changfa Group are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi) by virtue of direct or common ownership.

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[16] *See* Alnan/Kromet Initial Response (December 16, 2013), at Volume 2, III-3 through III-7 and Exhibits 1-3. As the ownership information is business proprietary, for further explanation, *see* Department Memorandum regarding "Final Results Calculations for Kromet International Inc. and the Alnan Companies" (December 22, 2014) (Alnan/Kromet Final Calculations).
[17] For further details, which are proprietary, *see* Alnan/Kromet Final Calculations.
[18] *See Aluminum Extrusions from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010 and 2011*, 79 FR 106 (January 2, 2014) (*Aluminum Extrusions from the PRC First Review*), and accompanying IDM at "Attribution of Subsidies" (Alnan Companies and Kromet).
[19] *See* Jiangsu Changfa Initial Response (December 16, 2013), at 6-7, and Exhibit 3.B (Jiangsu Changfa's Annual Report 2012), at 92.
[20] *Id.*, at 3-4.
[21] *Id.*, at 4. The three PRC companies which own shares of Jiangsu Changfa are described as "domestic non-state owned legal person" (*see* Exhibit 3.B at 45).
[22] *Id.*, at 9.
[23] *Id.*, at 6, 9, and Exhibit 3.B at 47.

Jiangsu Changfa reported that it has three wholly-owned subsidiaries: Changzhou Changfa Cooling Equipment Trading Co., Ltd. (Changfa Cooling), Changzhou Changfa Chengbei Cooling Co., Ltd. (Chengbei Cooling), and Changzhou City Wujin River South Aluminum Oxidation Co., Ltd. (Wujin).[24] Changfa Cooling is a Chinese sales company of refrigeration devices, steel tubes, aluminum plate, strip, and foil, and copper pipe.[25] Chengbei Cooling, incorporated in 2011, processes and produces cooling parts, rolled or welded steel tube, and machine parts.[26] Wujin, founded in 2001, copperizes and oxides aluminum machine parts.[27] All subsidiaries are located in Jiangsu Province.[28] Because Changfa Cooling, Chengbei Cooling, and Wujin are wholly-owned by Jiangsu Changfa, we find that all companies are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi) by virtue of direct or common ownership.

Jiangsu Changfa reported that Chengbei Cooling and Wujin provided goods and services to it, and that the Changfa Group received and transferred a subsidy to it during the POR.[29] As such, Jiangsu Changfa submitted a questionnaire response for itself, the Changfa Group, Chengbei Cooling, and Wujin. Among the responding companies, Jiangsu Changfa is the only company that produces and exports the subject merchandise.[30]

We determine, as discussed below in "Analysis of Programs," that Jiangsu Changfa and the Changfa Group received benefits from countervailable subsidy programs during the POR. To attribute a subsidy received by Jiangsu Changfa, we used as the denominator the total consolidated sales of the company, net of inter-company sales, or total exports, as appropriate, in accordance with 19 CFR 351.525(b)(6)(iii). To attribute a subsidy received by Changfa Group, we used as the denominator the total consolidated sales of the Changfa Group. Lastly, to attribute a subsidy received by the Changfa Group, but then transferred to Jiangsu Changfa, we used Jiangsu Changfa's consolidated sales as the denominator, as described above.

Grant Programs Discovered Through Analysis of Jiangsu Changfa's Financial Statements

We examined Jiangsu Changfa's financial statements and discovered several grants that were not reported in either the company's or GOC's initial questionnaire responses. We issued supplemental questionnaires to Jiangsu Changfa and the GOC, and received responses regarding those grants.[31] We determine that, in total, 43 grants were received by Jiangsu Changfa and the Changfa Group and that these grants are "non-recurring" consistent with 19 CFR 351.524(c)(1). With regard to those programs, we performed the "0.5 percent test" of 19 CFR 351.524(b)(2). Under this test, we divide the amount of subsidies approved under a given program in a particular year by the relevant sales value (*e.g.*, total sales or export sales) for the year in which the assistance was approved. If the amount of the subsidies is less than 0.5 percent of the

[24] *Id.*, at 3.
[25] *Id.*, at Exhibit 3.B at 27.
[26] *Id.*, at 9-10.
[27] *Id.*, at 10.
[28] *Id.*, at 6.
[29] *Id.*, at 3.
[30] *Id.*, at 10.
[31] *See* Jiangsu Changfa Supplemental Response (February 19, 2014), and GOC Supplemental Response (March 18, 2014).

relevant sales value, then the benefits are allocated to the year of receipt rather than over the AUL.

For four programs, under which Jiangsu Changfa received benefits during the POR, we determine that the benefits received were less than 0.5 percent *ad valorem* (*i.e.*, expensed in the POR) but greater than 0.005 percent *ad valorem.*[32] Therefore, we find that those grants conferred benefits on the company during the POR. Our determinations with regard to the countervailability of those programs are included below in "Programs Determined To Be Countervailable."

For the remaining grant programs, which were received prior to the POR, all but one grant (*i.e.*, "Award for Self-Innovation Brand/Grant for Self-Innovation Brand and Enterprise Listing"), did not exceed 0.5 percent *ad valorem* and were expensed prior to the POR. Because no benefits from those grants are allocated to the POR, they are not included in the CVD rate calculations. Thus, it is not necessary for the Department to make determinations with regard to the countervailability of the programs at this time.[33] Therefore, we listed these grant programs in the section "Programs Determined Not to Confer a Benefit or Not Used."

Our determination with regard to the countervailability of the "Award for Self-Innovation Brand/Grant for Self-Innovation Brand and Enterprise Listing" is discussed below in the "Programs Determined To Be Countervailable" section.

We considered comments that the GOC submitted on the Department's investigation of the 43 grant programs and findings of specificity for certain of them. We determine, however, not to make any modifications to the Department's analysis of the programs. *See* Comments 13 and 14, below.

<u>Loan Benchmark Rates</u>

The Department examined loans received by the respondents from Chinese policy banks and state-owned commercial banks (SOCBs), as well as non-recurring, allocable subsidies.[34] We received comments from the GOC concerning the derivation of the benchmark interest rates. We considered the GOC's comments, but made no modification to the methodology used to construction the benchmarks. *See* Comment 5, below. The derivation of the benchmark rates used to value these subsidies is discussed below.

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[32] For more information on the grant calculations, *see* Department Memorandum regarding "Final Results Calculations for Jiangsu Changfa" (December 22, 2014) (Jiangsu Changfa Final Calculations).

[33] This approach is consistent with the Department's practice. *See, e.g.*, *Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 28557 (May 21, 2010) (*PC Strand from the PRC*), and accompanying IDM at "Programs Determined Not To Provide Countervailable Benefits During the POI;" and *Utility Scale Wind Towers from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 75978 (December 26, 2012) (*Wind Towers from the PRC*), and accompanying IDM at "Programs Determined Not To Provide Countervailable Benefits During the POI."

[34] *See* 19 CFR 351.524(b)(1).

Short-Term RMB Denominated Loans

Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the "difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market." Normally, the Department uses comparable commercial loans reported by the company as a benchmark.[35] If the firm did not have any comparable commercial loans during the period, the Department's regulations provide that we "may use a national average interest rate for comparable commercial loans."[36] As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate.

For the reasons explained in *CFS from the PRC*,[37] loans provided by Chinese banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market.[38] Because of this, any loans received by respondents from private Chinese or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). Similarly, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). There is no new information on the record of this review that would lead us to deviate from our prior determinations regarding government intervention in the PRC's banking sector. Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, the Department is selecting an external market-based benchmark interest rate. The use of an external benchmark is consistent with the Department's practice.[39]

We first developed in *CFS from the PRC*,[40] and more recently updated in *Thermal Paper from the PRC*,[41] the methodology used to calculate the external benchmark. Under that methodology, we first determine which countries are similar to the PRC in terms of gross national income, based on the World Bank's classification of countries as: low income; lower-middle income; upper-middle income; and high income. For 2001 through 2009, the PRC fell in the lower-middle income category.[42] Beginning with 2010, however, the PRC fell in the upper-middle income category and remained there for 2011 to 2012.[43] Accordingly, as explained below, we are using the interest rates of lower-middle income countries to construct the benchmark and discount rates for 2001 – 2009, and the interest rates of upper-middle income countries to

[35] *See* 19 CFR 351.505(a)(3)(i).
[36] *See* 19 CFR 351.505(a)(3)(ii).
[37] *See Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (*CFS from the PRC*), and accompanying IDM at Comment 10.
[38] *See* Department Memorandum regarding "Placement of China-NME Status Memoranda on the Record" (June 18, 2014) (China-NME Status Memoranda) (discussing the status of the Chinese commercial banking sector).
[39] *See Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products from Canada*, 67 FR 15545 (April 2, 2002) (*Softwood Lumber from Canada*), and accompanying IDM at "Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit."
[40] *See CFS from the PRC*, and accompanying IDM at Comment 10.
[41] *See Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) (*Thermal Paper from the PRC*), and accompanying IDM at 8-10.
[42] *See* World Bank Country Classification, http://econ.worldbank.org/; *see also* Department Memorandum regarding "Interest Rate Benchmark Memorandum" (June 18, 2014).
[43] *See* World Bank Country Classification.

construct the benchmark and discount rates for 2010 – 2012. As explained in *CFS from the PRC*, by pooling countries in this manner, we capture the broad inverse relationship between income and interest rates.

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

In each year from 2001 – 2009, and 2011 – 2012, the results of the regression-based analysis reflected the intended, common sense result: stronger institutions meant relatively lower real interest rates, while weaker institutions meant relatively higher real interest rates. For 2010, however, the regression does not yield that outcome for the PRC's income group. This contrary result for a single year does not lead the Department to reject the strength of governance as a determinant of interest rates. Therefore, we continue to rely on the regression-based analysis used since *CFS from the PRC* to compute the benchmark for the years from 2001 – 2009, and 2011 – 2012. For the 2010 benchmark, we are using an average of the interest rates of the upper-middle income countries.

Many of the countries in the World Bank's upper-middle and lower-middle income categories reported lending and inflation rates to the International Monetary Fund, and they are included in that agency's international financial statistics (IFS). With the exceptions noted below, we used the interest and inflation rates reported in the IFS for the countries identified as "upper-middle income" by the World Bank for 2010 – 2012, and "lower-middle income" for 2001 –2009.[44]

First, we did not include those economies that the Department considers to be non-market economies (NMEs) for antidumping (AD) purposes for any part of the years in question, for example: Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS for those years. Third, we removed any country that reported a rate that was not a lending rate or that based its lending rate on foreign-currency denominated instruments.[45] Finally, for each year the Department calculated an inflation-adjusted short-term benchmark rate and excluded any countries with aberrational or negative real interest rates for the year in question.[46] Because the resulting rates are net of inflation, we adjusted the benchmark rates to include an inflation component before comparing them to the interest rates on loans issued to the respondents by SOCBs.[47]

[44] *See* Interest Rate Benchmark Memorandum.
[45] For example, in certain years Jordan reported a deposit rate, not a lending rate, and Ecuador and Timor L'Este reported dollar-denominated rates; therefore, such rates were excluded.
[46] For example, we excluded Brazil from the 2010 and 2011 benchmarks because the country's real interest rate was 34.95 percent and 37.25 percent, respectively. *See* Interest Rate Benchmark Memorandum.
[47] *See* Interest Rate Benchmark Memorandum for the adjusted benchmark rates including an inflation component.

Long-Term RMB-Denominated Loans

The lending rates reported in the IFS represent short- and medium-term lending, and there are not sufficient publicly available long-term interest rate data upon which to base a robust benchmark for long-term loans. To address this problem, the Department developed an adjustment to the short- and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates.[48]

In *Citric Acid from the PRC*, this methodology was revised by switching from a long-term mark-up based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where 'n' equals or approximates the number of years of the term of the loan in question.[49] Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.[50]

Foreign Currency-Denominated Loans

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

For any long-term foreign currency-denominated loans, the Department added the applicable short-term LIBOR rate to a spread which is calculated as the difference between the one-year BB bond rate and the n-year BB bond rate, where "n" equals or approximates the number of years of the term of the loan in question.[51]

Discount Rates

Consistent with 19 CFR 351.524(d)(3)(i)(A), we are using as the discount rate the long-term interest rate calculated according to the methodology described above for the year in which the government provided non-recurring subsidies.[52]

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

[49] *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 16836 (April 13, 2009) (*Citric Acid from the PRC*), and accompanying IDM at Comment 14.

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

[51] *Id*., for the LIBOR rates.

[52] *Id*., for the discount rates.

Use of Facts Otherwise Available and Adverse Inferences

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

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. The Department's practice when selecting adverse information from among the possible sources of information is to ensure that the result is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner."[53] The Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[54]

Application of Total Adverse Facts Available to Non-Cooperative Companies

Dragonluxe Limited, Henan New Kelong Electrical Appliances Co., Ltd., Press Metal International Ltd., and Tianjin Ruxin Electric Heat Transmission Technology Co., Ltd. (collectively, the non-cooperative companies) failed to respond to the Department's August 6, 2013, Quantity and Value (Q&V) questionnaire.[55] We sent a questionnaire via United Parcel Service (UPS) to the address provided for each company[56] and confirmed that each company received the questionnaire.[57] None of these companies, however, submitted a response by the August 27, 2013, deadline, or requested an extension to respond to the questionnaire.

As a result of the companies' failure to submit a response to the questionnaire, we find them to be non-cooperative. By not responding to the request for information regarding the Q&V of their sales, the companies withheld information that was requested by the Department. Thus, we are basing the CVD rate for these non-cooperative companies on the facts otherwise available, pursuant to sections 776(a)(2)(A) of the Act.

We further find that an adverse inference is warranted, pursuant to section 776(b) of the Act. By failing to submit a response to the Department's questionnaire, the companies did not cooperate

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[53] *See Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998).
[54] *See* Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol. 1 at 870 (1994).
[55] *See* Department Memorandum regarding "Issuance of Quantity and Value Questionnaires" (August 7, 2013); *see also* Department Memorandum regarding "Respondent Selection" (September 30, 2013) at "Attachment – Q&V Data."
[56] *See* Department Memorandum regarding "Delivery Status of Quantity & Value Questionnaire" (August 27, 2013).
[57] *Id*.

by not acting to the best of their ability in this review. Accordingly, we find that adverse facts available (AFA) is warranted.

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) and (2) authorize the Department to rely on information derived from: (1) the petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any other information placed on the record.

In applying AFA to the non-cooperative companies, we are guided by the Department's approach in earlier segments of this proceeding and other recent PRC CVD investigations and reviews.[58] Under this practice, the Department computes the total AFA rate for non-cooperative companies generally using program-specific rates calculated for the cooperating respondents in the instant review or in prior segments of the instant proceeding, or calculated in prior CVD cases involving the country under review (in this case, the PRC), unless it is clear that the industry in which the respondents operate cannot use the program for which the rates were calculated.

In these final results, for the income tax rate reduction or exemption programs, we are applying an adverse inference that the non-cooperative companies paid no income taxes during the POR. The standard income tax rate for PRC corporations filing income tax returns during the POR was 25 percent.[59] We, therefore, find that the highest possible benefit for all income tax reduction or exemption programs combined is 25 percent (*i.e.*, the income tax programs combined provide a countervailable benefit of 25 percent). This approach is consistent with the Department's past practice.[60]

The 25 percent AFA rate does not apply to income tax credit and rebate, accelerated depreciation, or import tariff and value add tax exemption programs because such programs may not affect the tax rate. Therefore, for all programs other than those involving income tax rate reduction or exemption programs, we first sought to apply, where available, the highest above *de minimis* subsidy rate calculated for an identical program from any segment of this proceeding.[61] Absent such a rate, we applied, where available, the highest above *de minimis* subsidy rate calculated for a similar program from any segment of this proceeding.

[58] *See Aluminum Extrusions from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) (*Aluminum Extrusions from the PRC Investigation*), and accompanying IDM at "Application of Adverse Inferences: Non-Cooperative Companies;" *Aluminum Extrusions from the PRC First Review*, and accompanying IDM at "Application of Adverse Inferences: Non-Cooperative Companies;" and *see, e.g., Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Results of the Countervailing Duty Administrative Review*, 77 FR 21744 (April 11, 2012) (*Kitchen Shelving and Racks from the PRC Review 2009*), and accompanying IDM at "Use of Facts Otherwise Available and Adverse Inferences: Application of Adverse Inferences: Non-Cooperative Companies."
[59] *See* GOC Initial Response (December 16, 2013), at 22.
[60] *See, e.g.*, *Aluminum Extrusions from the PRC First Review*, and accompanying IDM at "Application of Adverse Inferences: Non-Cooperative Companies."
[61] Because the rates calculated in the underlying investigation were calculated for voluntary respondents we are not using any of those rates as AFA rates in this administrative review. *See Aluminum Extrusions from the PRC Investigation*, and accompanying IDM at "Application of Adverse Inferences: Non-Cooperative Companies." As such, for this instant review, the only segment of the proceeding from which we are sourcing program rates is *Aluminum Extrusions from the PRC First Review*.

In the absence of an above *de minimis* subsidy rate calculated for the same or similar program in any segment of this proceeding, we applied the highest non-*de minimis* rate calculated for the same or similar program (based on treatment of the benefit) in another PRC CVD proceeding. Absent an above *de minimis* subsidy rate calculated for the same or similar program in any PRC CVD proceeding, we applied the highest calculated subsidy rate for any program otherwise listed from any prior PRC CVD case, so long as the non-cooperating companies conceivably could have used the program for which the rate was calculated. Regarding certain programs (*i.e.*, self-reported or discovered in the course of a segment) for which we did not request financial contribution and specificity data from the GOC (because the programs did not provide a measureable benefit (*i.e.*, less than 0.005 percent)), we are not applying an AFA rate. For these final results, we determine that the AFA rate for the non-cooperative companies is 160.09 percent *ad valorem*.[62]

Corroboration of Secondary Information Used to Derive AFA Rates

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."[63] The Department considers information to be corroborated if it has probative value.[64] To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information.[65]

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

With respect to the relevance aspect of corroborating the rates selected, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Where circumstances indicate that the information is not appropriate as AFA, the Department will not use it.[66]

[62] *See* Department Memorandum regarding "AFA Calculation Memorandum for the Final Results" (December 22, 2014) (AFA Calculation Memorandum), for a table detailing the derivation of the AFA rate applied.
[63] *See* SAA at 870.
[64] *Id*.
[65] *Id*., at 869-870.
[66] *See, e.g.*, *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

In the absence of record evidence concerning the programs under review resulting from the non-cooperative companies' decision not to participate in the review, we reviewed the information concerning PRC subsidy programs in this and other cases. For those programs for which the Department found a program-type match, we find that, because these are the same or similar programs, they are relevant to the programs under review in this case. For the programs for which there is no program-type match, we selected the highest calculated subsidy rate for any PRC program from which the non-cooperative companies could receive a benefit to use as AFA. The relevance of these rates is that they are actual calculated CVD rates for a PRC program from which the non-cooperative companies could actually receive a benefit. Further, these rates were calculated for periods close to the POR. Moreover, the failure of these companies to respond to the Department's request for information "resulted in an egregious lack of evidence on the record to suggest an alternative rate."[67] Due to the lack of participation by the non-cooperative companies and the resulting lack of record information concerning their use of programs under review, the Department corroborated the rates it selected to the extent practicable.

GOC – Whether Primary Aluminum Producers Are "Authorities"

As discussed below under "Programs Found To Be Countervailable," the Department examined whether the GOC provided primary aluminum for LTAR to the respondent companies. We asked the GOC to provide information regarding the specific companies that produced primary aluminum which the respondent companies purchased during the POR. Specifically, we sought information from the GOC which would allow us to analyze whether the producers are "authorities" within the meaning of section 771(5)(B) of the Act.[68] In prior PRC CVD proceedings, the Department determined that when a respondent purchases an input from a trading company or non-producing supplier, a subsidy is conferred if the producer of the input is

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[67] *See Shanghai Taoen Int'l Trading Co., Ltd. v. United States*, 360 F. Supp. 2d 1339, 1348 (CIT 2005).

[68] For entities in the PRC, the Department previously described an analytical framework for addressing the question of whether such entities are "authorities" within the meaning of the Act. *See* Department Memorandum regarding "Additional Documents for Preliminary Decision" (June 18, 2014), which contains the Memorandum for Paul Piquado, Assistant Secretary for Import Administration, through Lynn Fischer Fox, Deputy Assistant Secretary for AD/CVD Policy and Negotiation, Christian Marsh, Deputy Assistant Secretary for AD/CVD Operations, and John D. McInerney, Chief Counsel for Import Administration, from Shauna Biby, Christopher Cassel, Timothy Hruby, Office of Policy, Import Administration, "Section 129 Determination of the Countervailing Duty Investigation of Circular Welded Carbon Quality Steel Pipe; Light-Walled Rectangular Pipe and Tube; Laminated Woven Sacks; and Off-the-Road Tires from the People's Republic of China: An Analysis of Public Bodies in the People's Republic of China in Accordance with the WTO Appellate Body's Findings in WTO DS379," dated May 18, 2012 (Public Bodies Memorandum); and its attachment, Memorandum for Paul Piquado, Assistant Secretary for Import Administration, through Lynn Fischer Fox, Deputy Assistant Secretary for AD/CVD Policy and Negotiation, Christian Marsh, Deputy Assistant Secretary for AD/CVD Operations, and John D McInerney, Chief Counsel for Import Administration, from Shauna Biby, Christopher Cassel, Timothy Hruby, Office of Policy, Import Administration, "The relevance of the Chinese Communist Party for the limited purpose of determining whether particular enterprises should be considered to be 'public bodies' within the context of a countervailing duty investigation," dated May 18, 2012 (CCP Memorandum).

an "authority" within the meaning of section 771(5)(B) of the Act and that the price paid by the respondent for the input was for less than adequate remuneration (LTAR).[69]

Jiangsu Changfa stated that it was unable to identify the companies that produced the primary aluminum which it purchased through unaffiliated trading companies during the POR.[70] Jiangsu Changfa explained that it requested the cooperation of the suppliers to provide the identity of the producers, but they were reluctant to provide the information.[71] As such, because Jiangsu Changfa was unable to identify the producers for the purchase transactions made in the POR, it listed "unknown" for producer name/address within its input purchases worksheet.[72] The Alnan Companies identified the PRC companies that produced the primary aluminum which it purchased during the POR, with the exception of the producer(s) of primary aluminum purchased from a supplier during one month of the POR.[73] *See "Application of AFA for Producer(s) Not Identified by the Alnan Companies,"* below.

In the Department's initial questionnaire, we asked the GOC to respond to the specific questions regarding the producers of primary aluminum and to respond to the *Input Producer Appendix* for each producer which produced the primary aluminum purchased by the respondent companies.[74] We instructed the GOC to coordinate with the respondents to obtain a complete list of the primary aluminum producers, including the producers of inputs purchased through a supplier.[75] We notified the GOC that it is "the GOC's responsibility to ensure that the respondent companies provide the identities of their producers in sufficient time to enable the GOC to include the information requested in this questionnaire in the initial response."[76] As noted above, Jiangsu Changfa was unable to identify its producers and, therefore, did not provide the GOC with any information concerning the identity of its producers, and thus the GOC was unable to provide a response for those companies. The Alnan Companies, however, knew the identities of the companies that produced the primary aluminum which was purchased during the POR, and was instructed to share that information with the GOC.[77]

In its initial response, the GOC provided only a table that lists the name, address, and company type for suppliers of primary aluminum and the business registration forms for some of those

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[69] *See, e.g.*, *CWP from the PRC*, and accompanying IDM at "Hot-Rolled Steel for LTAR;" *Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 37012 (July 27, 2009) (*Kitchen Shelving and Racks from the PRC*), and accompanying IDM at "Provision of Wire Rod for LTAR;" and *Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 4936 (January 28, 2009), and accompanying IDM at Comment 5.
[70] *See* Jiangsu Changfa Supplemental Response (February 19, 2014), at 135-136.
[71] *Id*.
[72] *Id*.
[73] *See* Alnan/Kromet Initial Response (December 16, 2013), at Exhibit 16, and Supplemental Response (May 12, 2014), at Exhibit 2S-19 and Exhibit 2S-20.
[74] *See* Letter from the Department to the GOC regarding "Initial Questionnaire" (October 18, 2013), at Section II "Provision of Primary Aluminum for LTAR."
[75] *Id*.
[76] *Id*.
[77] *See* Letter from the Department to Kromet regarding "Initial Questionnaire" (October 18, 2013), at Section III "Provision of Primary Aluminum for LTAR."

firms.[78] It did not provide the requested information concerning the producers of primary aluminum identified by the Alnan Companies. In the January 2, 2014, supplemental questionnaire, we again instructed the GOC to respond to the "Questions Regarding the Primary Aluminum Industry"[79] and "Questions Regarding the Producers of Primary Aluminum" for the PRC producers that produced the primary aluminum and not the suppliers from which the aluminum was purchased by the respondent companies.[80] In its supplemental response, the GOC submitted an incomplete response to the *Input Producer Appendix* for one supplier, rather than any producers.[81] The GOC also stated that "the GOC chooses not to provide any additional response to the 'Questions Regarding the Primary Aluminum Industry' and 'Questions Regarding the Producers of Primary Aluminum.'"[82]

We received comments from the GOC concerning the Department's "government authorities" analysis and whether sufficient information was provided with regard to certain primary aluminum producers. We considered those comments but determine that no changes are warranted to the Department's findings. *See* Comments 6, 7, and 8, below.

We continue to find that the GOC withheld necessary information with regard to the Alnan Companies' producers that was requested of it twice and, thus, the Department must rely on "facts otherwise available" in issuing these final results.[83] Further, we find that the GOC failed to cooperate by not acting to the best of its ability regarding the producers of the primary aluminum from which the Alnan Companies purchased during the POR because the GOC did not provide the requested information, which it has in its possession. Consequently, we find that an adverse inference is warranted in the application of facts available.[84] As AFA, we determine that all of the producers that produced the primary aluminum that the Alnan Companies purchased during the POR are "authorities" within the meaning of section 771(5)(B) of the Act.

Application of AFA for Producer(s) Not Identified by Jiangsu Changfa

As discussed above, Jiangsu Changfa was unable to learn the identities of the producers from its suppliers. In such circumstances, the Department may make a facts available assumption that the percentage supplied from authorities is equal to the percentage of production accounted for by state-owned enterprises (SOEs) and collectives.[85] However, as noted below, the GOC failed to provide information on the total volume and value of domestic production that is accounted for by companies in which the government maintained an ownership or management interest in 2012. Because those data are not on the record, we are unable to derive the share of primary aluminum produced by SOEs and collectives for 2012. As such, we find as AFA that the

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[78] *See* GOC Initial Response (December 16, 2013), at 36 and Exhibit E-1-18.
[79] This set of questions includes instruction to respond to the *Input Producer Appendix*.
[80] *See* Letter from the Department to the GOC regarding "First Supplemental Questionnaire" (January 2, 2014), at "Provision of Primary Aluminum for LTAR."
[81] *See* GOC Supplemental Response (January 28, 2014), at 20-27.
[82] *Id.*, at 19.
[83] *See* section 776(a)(2)(A) of the Act.
[84] *See* section 776(b) of the Act.
[85] *See Aluminum Extrusions from the PRC First Review*, and accompanying IDM at "Provision of Primary Aluminum for LTAR;" *see also CWP from the PRC*, and accompanying IDM at "Hot-Rolled Steel for LTAR;" and *Light-Walled Pipe from the PRC*, and accompanying IDM at "Hot-Rolled Steel for LTAR."

percentage of primary aluminum produced by SOEs and collectives is equal to 100 percent. Further, because the GOC failed to provide the data requested on the primary aluminum market/industry, we determine that all of the producers which produced the primary aluminum purchased by Jiangsu Changfa during the POR are "authorities" within the meaning of section 771(5)(B) of the Act. *See "Provision of Primary Aluminum for LTAR,"* below.

Application of AFA for Producer(s) Not Identified by the Alnan Companies

For one month's purchases from a supplier during the POR, the Alnan Companies did not identify the producer(s) of aluminum purchased by one of its affiliated companies, although the purchase information was requested twice.[86] Thus, we find that the application of facts available is warranted, pursuant to section 776(a)(2)(A) of the Act because the Alnan Companies withheld information that was requested of it. Further, we find that the Alnan Companies failed to cooperate by not acting to the best of its ability to comply with the Department's request for information because the company failed to submit the identity of the producer(s) or to explain why it could not provide that information, and thus that the application of facts available with an adverse inference is warranted, pursuant to section 776(b) of the Act. As partial AFA, we determine that all producers of primary aluminum for transactions during that month of the POR are government authorities. For these transactions, we determine that a financial contribution was provided to the Alnan Companies in the form of the provision of a good under section 771(5)(D)(iii) of the Act. *See "Provision of Primary Aluminum for LTAR,"* below.

<u>*GOC – Whether Primary Aluminum Market Is Distorted*</u>

In the Department's initial questionnaire, we asked the GOC to respond to specific questions regarding the PRC primary aluminum industry and market for the POR.[87] Specifically, we asked the GOC to:

- Provide the following information concerning the primary aluminum industry in the PRC for the POR, including an explanation of the sources used to compile the information:

  a. The total number of producers.
  b. The total volume and value of Chinese domestic consumption of primary aluminum and the total volume and value of Chinese domestic production of primary aluminum.
  c. The percentage of domestic consumption accounted for by domestic production.
  d. The total volume and value of imports of primary aluminum.
  e. The total volume and value of domestic production that is accounted for by companies in which the government maintains an ownership or management interest either directly or through other government entities.
  f. A discussion of what laws, plans or policies address the pricing of primary aluminum, the levels of production of primary aluminum, the importation or

[86] *See* Letter from the Department to Kromet regarding "Initial Questionnaire" (October 18, 2013), and Department Letter to Kromet regarding "Second Supplemental Questionnaire" (April 10, 2014).
[87] *See* Letter from the Department to the GOC regarding "Initial Questionnaire" (October 18, 2013), at Section II "Provision of Primary Aluminum for LTAR," at "Questions Regarding the Primary Aluminum Industry."

exportation of primary aluminum, or the development of primary aluminum capacity. Please state which, if any, central and sub-central level industrial policies pertain to the primary aluminum.

- If there is a primary aluminum industry or aluminum industry association in the PRC, please provide the rules or guidelines under which it operates and a list of its members.
- Were there any export or price controls on primary aluminum or any price floors or ceilings established in the POR?
- Please state the value added tax (VAT) and import tariff rates in effect for primary aluminum in 2012.
- Was there an export tariff or quota on primary aluminum during the POR? If so, please report the tariff rate or quota amount in effect and provide a translated copy of the regulation/law in which the export tariff rate or quota is reported.
- Indicate whether export licensing requirements were in place during the POR with regard to primary aluminum. If so, please provide a translated copy of the regulation/law in which the export licensing requirements are explained.

The Department requests such information to inform its analysis of the degree of the GOC's presence in the market and whether such presence results in the distortion of prices. In its initial response, the GOC did not provide a response to the above-listed questions.[88] In the January 2, 2014, supplemental questionnaire, we again instructed the GOC to respond to the "Questions Regarding the Primary Aluminum Industry."[89] In its supplemental response, the GOC again did not submit a response to the "Questions Regarding the Primary Aluminum Industry."[90] The GOC also stated that "beyond what the GOC has already provided in its responses in the original investigation and the first administrative review with regard to this industry, as well as its detailed response to the Department's initial questionnaire in this review, the GOC chooses not to provide any additional response to the Questions Regarding the Primary Aluminum Industry and Questions Regarding the Producers of Primary Aluminum."[91]

We determine that the GOC withheld necessary information with regard to the PRC primary aluminum industry and market for the POR that was requested of it twice and, thus, the Department must rely on "facts otherwise available" in issuing these final results.[92] Further, we find that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information necessary for our analysis of the primary aluminum industry and market during the POR. Consequently, we find that an adverse inference is warranted in the application of facts available.[93] Because the GOC failed to provide the requested information, we find, as AFA, that the market for primary aluminum in the PRC is distorted through the GOC's

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[88] *See* GOC Initial Response (December 16, 2013), at 44-45.
[89] *See* Letter from the Department to the GOC regarding "First Supplemental Questionnaire" (January 2, 2014), at "Provision of Primary Aluminum for LTAR."
[90] *See* GOC Supplemental Response (January 28, 2014), at 20-27.
[91] *Id.*, at 19.
[92] *See* section 776(a)(2)(A) of the Act.
[93] *See* section 776(b) of the Act.

predominant role in the market by means of government-owned or managed producers of primary aluminum and market controls. Further, we find that the GOC's involvement in the market in the PRC for this input results in significant distortion of the prices such that they cannot be used as a tier one benchmark and, hence, the use of an external benchmark, as described under 19 CFR 351.511(a)(2)(ii), is warranted to calculate the benefit for the Provision of Primary Aluminum for LTAR.
The GOC submitted comments on the use of in-country primary aluminum prices as a tier-one benchmark. We considered those comments but determine that no changes are warranted to the Department's finding to use an external, tier-two benchmark price. *See* Comment 12, below.

Application of AFA for Certain Grants Received by the Alnan Companies

In *Aluminum Extrusions from the PRC First Review*, we found 13 programs used by the Alnan Companies to be countervailable based on AFA because the GOC withheld the requested program information and failed to cooperate by not acting to the best of its ability to comply with the Department's request for information.[94] For those programs for which the GOC provided the relevant legislation and for which the laws do not provide the basis for a finding of *de jure* specificity, we determined, as AFA, that the programs are *de facto* specific.[95]

Similarly, in its initial questionnaire response submitted in this review, with regard to each of the programs listed below under "*Grant Programs for Which the GOC Did Not Provide the Requested Laws, Regulations, and Specificity Information*," the GOC did not provide the requested program information or reported that "there were no changes during the POR to this program."[96] In its responses to the Department's supplemental questionnaires, which contain additional requests for information about each of these programs, the GOC again did not provide the requested information regarding the specificity of each of these programs and whether assistance under each of these programs constitutes a financial contribution.[97] In addition, the GOC did not provide copies of the laws and regulations pertaining to any of these programs.[98]

Because the GOC twice refused to provide requested information with regard to each of these programs and did not provide any reason to explain why it unable to provide the requested information, we find that the GOC withheld the requested program information and failed to cooperate by not acting to the best of its ability to comply with the Department's request for information.[99] Therefore, as AFA, we find that each of the programs provides countervailable subsidies within the meaning of section 771(5) of the Act in that each is specific within the meaning of section 771(5A) of the Act, and constitutes a financial contribution in the form of a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act. Based on

[94] *See Aluminum Extrusions from the PRC First Review*, and accompanying IDM at "Grant Programs for Which the GOC Did Not Provide the Requested Laws, Regulations, and Specificity Information;" *see also* sections 776(a) and (b) of the Act.
[95] *See Aluminum Extrusions from the PRC First Review*, and accompanying IDM at "Grant Programs for Which the GOC Did Not Provide the Requested Laws, Regulations, and Specificity Information."
[96] *See* GOC Initial Response (December 16, 2013), at 29-30.
[97] *See* GOC Supplemental Response (January 27, 2014), at 1-44, and GOC Supplemental Response (March 27, 2014), at 1-9.
[98] *Id.*
[99] *See* sections 776(a) and (b) of the Act.

information provided by the GOC and the Alnan Companies, we determine that each of these programs conferred a benefit under section 771(5)(E) of the Act and 19 CFR 351.504(a) during the POR. For those programs which GOC did not provide the legislation and regulations but for which the name of the program indicates that it is an export program, as AFA, we calculated the program rate using export sales as the denominator. *See* "*Grant Programs for Which the GOC Did Not Provide the Requested Laws, Regulations, and Specificity Information*," below.

Analysis of Programs

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

I. Programs Determined To Be Countervailable

A. Policy Loans to Chinese Aluminum Extrusion Producers

In the *Aluminum Extrusions from the PRC Investigation* and *Aluminum Extrusions from the PRC First Review*, we determined that the GOC had a policy in place to encourage the development of the production of aluminum extrusions through policy lending.[100] Furthermore, in the *Aluminum Extrusions from the PRC Investigation* and *Aluminum Extrusions from the PRC First Review*, we determined, consistent with *CFS from the PRC*, that PRC banks which provide such policy loans constitute "authorities" within the meaning of section 771(5)(B) of the Act.[101] In our initial questionnaire for this review, we notified parties that we did not intend to reevaluate the countervailability of this policy unless parties demonstrated that there were changes during the POR.[102]

As in the first administrative review, the GOC reported that in February 2010, the China Banking Regulatory Commission (CBRC) promulgated the *Interim Measures for the Administration of Working Capital Loans* (*Interim Measures*), which state that "banking financial institutions established in China upon the CBRC's approval, including those at issue in this review, all make their decisions on issuance of working capital loans on a pure commercial basis."[103] The GOC also again reported that the *Interim Measures* are "fully consistent with Article 34 of the *Law of the People's Republic of China on Commercial Banks (Banking Law)*, which does not specify any specific obligation imposed by the government on commercial banks."[104]

We considered this information in the *Aluminum Extrusions from the PRC First Review* and determined that there is no basis to conclude that the GOC's policy lending activities ceased with

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[100] *See Aluminum Extrusions from the PRC Investigation*, and accompanying IDM at "Policy Loans to Chinese Aluminum Extrusion Producers;" and *Aluminum Extrusions from the PRC First Review*, and accompanying IDM at "Policy Loans to Chinese Aluminum Extrusion Producers."
[101] *Id*.; *see also CFS from the PRC*, and accompanying IDM at Comment 10; and China-NME Status Memoranda (discussing the status of the Chinese commercial banking sector).
[102] *See* Letter from the Department to the GOC regarding "Initial Questionnaire" (October 18, 2013), at Section II "Programs Previously Found To Be Countervailable – Government Policy Lending."
[103] *See* GOC Initial Response (December 16, 2013), at 6.
[104] *Id*., at 7.

the issuance of the *Interim Measures*.[105] As we explained in the *Aluminum Extrusions from the PRC Investigation* and *Aluminum Extrusions from the PRC First Review*, we determined that Article 34 of the *Banking Law* states that banks should carry out their loan business "under the guidance of the state industrial policies."[106] Thus, because the *Interim Measures* are "fully consistent" with the *Banking Law*, we determine that they do not constitute evidence that the GOC ceased policy lending to the aluminum extrusions industry. In the instant review, the GOC did not provide any new information to warrant a reconsideration of the Department's prior finding on the *Interim Measures* and Article 34 of the *Banking Law*.

We received and considered the GOC's comments on the existence of a policy lending program and whether PRC banks are government authorities. We made no changes, however, with regard to the Department's findings for this program. *See* Comments 3 and 4, below. We therefore find that the GOC's policy lending program to Chinese aluminum extrusions producers continued in the POR. As such, we find that the loans to aluminum extrusion producers from SOCBs and policy banks in the PRC were made pursuant to government directives and, thus, constitute a direct financial contribution from "authorities," pursuant to section 771(5)(D)(i) of the Act. The policy lending provides a benefit equal to the difference between what the recipients paid on their loans and the amount they would have paid on comparable commercial loans (*see* section 771(5)(E)(ii) of the Act). Further, the loans are *de jure* specific under section 771(5A)(D)(i) of the Act because of the GOC's policy, as illustrated in the government plans and directives, to encourage and support the growth and development of the aluminum extrusions industry.[107] Additionally, because the Alnan Companies reported trade financing,[108] we find that such loans are specific under section 771(5A)(B) of the Act because receipt of the financing is contingent upon exporting.

Jiangsu Changfa and, its parent, the Changfa Group, reported receiving loans from SOCBs that were outstanding during the POR.[109] The Alnan Companies also reported loans from SOCBs that were outstanding during the POR.[110] The Alnan Companies submitted a comment on the Department's preliminary calculation of the company's policy lending benefit. *See* Comment 20, below. After considering that comment, we made changes to the company's benefit calculation. *Id*.

Pursuant to section 771(5)(E)(ii) of the Act, to calculate the benefit under this program for each respondent, we compared the amount of interest paid on each outstanding loan to the amount that would have been paid on a comparable commercial loan during the POR.[111] In conducting this comparison, we used the interest rates described in the "Loan Benchmark Rates" section above. To calculate the subsidy rate for each respondent, we divided the benefit by the total sales or

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[105] *See Aluminum Extrusions from the PRC First Review*, and accompanying IDM at "Policy Loans to Chinese Aluminum Extrusion Producers" and Comment 6.
[106] *Id.*, and *Aluminum Extrusions from the PRC Investigation*, and accompanying IDM at Comment 28.
[107] *See Aluminum Extrusions from the PRC Investigation*, and accompanying IDM at "Policy Loans to Chinese Aluminum Extrusion Producers."
[108] *See* Alnan/Kromet Initial Response (December 16, 2013), at Exhibit 14.
[109] *See* Jiangsu Changfa Initial Response (December 16, 2013), at Exhibit 30 and 31.
[110] *See* Alnan/Kromet Initial Response (December 16, 2013), at Volume 2, III-14 through III-15 and Exhibit 14.
[111] *See* 19 CFR 351.505(a).

total export sales, as appropriate, for the POR, attributing benefits under this program according to the methodology described in the "Subsidies Valuation Information" section.

On this basis, we calculate a countervailable subsidy of 0.99 percent *ad valorem* for the Alnan Companies and 0.01 percent *ad valorem* for Jiangsu Changfa.

B. Provision of Primary Aluminum for LTAR

In the *Aluminum Extrusions from the PRC Investigation* and *Aluminum Extrusions from the PRC First Review*, we determined that this program is a countervailable domestic subsidy as described under sections 771(5)(A) and (5A)(D) of the Act.[112] In our initial questionnaire for this review, we notified parties that we did not intend to reevaluate the countervailability of this program unless parties demonstrated that there were changes during the POR.[113] The Alnan Companies and Jiangsu Changfa reported purchasing primary aluminum during the POR.

In the *Aluminum Extrusions from the PRC Investigation* and *Aluminum Extrusions from the PRC First Review*, the Department determined that this subsidy is specific under section 771(5A)(D)(iii)(I) of the Act.[114] No new information or persuasive argument was submitted on the record to warrant a reconsideration of the Department's specificity finding. *See* Comment 11, below. For the same reasons discussed in the *Aluminum Extrusions from the PRC First Review*, we continue to find that the Chinese Input-Output Table of 2007 does not provide the type of information which the Department requires to determine if the provision of primary aluminum is specific to aluminum extrusion producers, such as the number of enterprises or industries that purchase primary aluminum.[115] As such, based on our findings in *Aluminum Extrusions from the PRC Investigation* and *Aluminum Extrusions from the PRC First Review*, we continue to find that, based on data provided by the GOC in the investigation on the end uses for primary aluminum, the industries which purchase primary aluminum are limited in number and, hence, the subsidy is specific under section 771(5A)(D)(iii)(I) of the Act.[116]

As discussed above under "*Use of Facts Otherwise Available and Adverse Inferences: GOC – Whether Certain Primary Aluminum Producers Are 'Authorities*,'" we requested information related to whether the companies which produced the primary aluminum purchased by the Alnan Companies are "authorities" within the meaning of section 771(5)(B) of the Act. Because we find that the GOC withheld necessary information with regard to the Alnan Companies' producers that was requested of it twice and, because we find that the GOC failed to cooperate by not acting to the best of its ability regarding the producers of the primary aluminum from which the Alnan Companies purchased during the POR, as AFA, we determine that all of the

[112] *See Aluminum Extrusions from the PRC Investigation*, and accompanying IDM at "Provision of Primary Aluminum for LTAR;" and *Aluminum Extrusions from the PRC First Review*, and accompanying IDM at "Provision of Primary Aluminum for LTAR."
[113] *See* Letter from the Department to the GOC regarding "Initial Questionnaire" (October 18, 2013), at Section II "Programs Previously Found To Be Countervailable – Provision of Primary Aluminum for LTAR."
[114] *Id.*
[115] *See Aluminum Extrusions from the PRC First Review*, and accompanying IDM at "Provision of Primary Aluminum for LTAR."
[116] *See Aluminum Extrusions from the PRC Investigation*, and accompanying IDM at "Provision of Primary Aluminum for LTAR."

producers that produced the primary aluminum that the Alnan Companies purchased during the POR are "authorities" within the meaning of section 771(5)(B) of the Act. Further, based on this AFA determination, we find that a financial contribution in the form of the provision of a good was provided to the Alnan Companies within the meaning of section 771(5)(D)(iii) of the Act.

Additionally, as discussed above in "*Use of Facts Otherwise Available and Adverse Inferences: GOC – Whether Certain Primary Aluminum Producers Are 'Authorities,'*" Jiangsu Changfa was unable to identify the producers of the primary aluminum which it purchased from unaffiliated trading companies during the POR and, therefore, the GOC was unable to provide a response for those companies. Because the GOC failed to provide information on the total volume and value of domestic production that is accounted for by companies in which the government maintained an ownership or management interest in 2012, we find that the percentage of primary aluminum sourced from Jiangsu Changfa's suppliers which was produced by SOEs and collectives is equal to 100 percent. *See* "*Use of Facts Otherwise Available and Adverse Inferences: Application of AFA for Producer(s) Not Identified by Jiangsu Changfa*," above. Further, because the GOC failed to provide the aluminum market data, we determine, based on AFA, that all of the producers of the primary aluminum from which Jiangsu Changfa purchased during the POR are government authorities. As such, we determine that a financial contribution was provided to Jiangsu Changfa in the form of the provision of a good under section 771(5)(D)(iii) of the Act.

As discussed above in "*Use of Facts Otherwise Available and Adverse Inferences: Application of AFA for Producer(s) Not Identified by the Alnan Companies*," we determine that the application of AFA is warranted where the Alnan Companies did not identify the producer(s) of aluminum purchased by one of its affiliated companies, for one month of the POR. As partial AFA, we determine that all producers of primary aluminum for transactions during that month of the POR are government authorities. For these transactions, we determine that a financial contribution was provided to the Alnan Companies in the form of the provision of a good under section 771(5)(D)(iii) of the Act.

In order to determine the existence and amount of any benefit conferred by the producers to the respondent companies pursuant to section 771(5)(E)(iv) of the Act, we followed the methodology described in 19 CFR 351.511(a)(2) to identify a suitable benchmark for primary aluminum. This provision sets forth the basis for identifying appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services. The potential benchmarks listed in the regulation, in order of preference, are: (1) market prices from actual transactions within the country under investigation for the government-provided good (*e.g.*, actual sales, actual imports or competitively run government auctions) (tier-one); (2) world market prices that would be available to purchasers in the country under investigation (tier-two); or (3) prices consistent with market principles based on an assessment by the Department of the government-set price (tier-three).[117]

No evidence has been submitted in this review that would cause us to revisit our prior determination that domestic prices in the PRC cannot be used as benchmarks due to the government's extensive involvement in the PRC primary aluminum market. As discussed above under "*Use of Facts Otherwise Available and Adverse Inferences: GOC – Whether Primary*

[117] *See* 19 CFR 351.511(a)(2)(i)-(iv).

Aluminum Market Is Distorted," the GOC did not respond to the Department's questions regarding the primary aluminum industry during the POR, which covered such items as total PRC domestic consumption and production of primary aluminum, imports of primary aluminum, volume/value of domestic production accounted for by companies in which the GOC maintains an ownership/management interest, export prices/controls, and export licensing requirements.[118]

Because the GOC failed to provide the requested information, we find, as AFA, that the market for primary aluminum is distorted through the GOC's predominant involvement in the market through government-owned or managed producers of primary aluminum in the market and market controls. Further, we find that the GOC's involvement in the market in the PRC for this input results in significant distortion of the prices such that they cannot be used as a tier-one benchmark pursuant to 19 CFR 351.511(a)(2)(i) and, hence, the use of an external benchmark is warranted to calculate the benefit for the provision of primary aluminum.

As in the first administrative review, the GOC, on the instant record, again submits that the prices for primary aluminum on the Shanghai Futures Exchange parallel prices on the London Market Exchange (LME), suggesting the use of a tier-one benchmark.[119] The GOC asserts that the convergence of prices indicates that there can be no benefit arising from price differentials between the aluminum markets in the PRC and those in foreign countries.[120] For the reasons outlined in the *Aluminum Extrusions from the PRC First Review*,[121] and in Comment 12, below, because the Department determines that the prices in the primary aluminum market in the PRC are distorted based on the government's involvement in the market, we find that the use of a price from within the PRC as the benchmark would not be appropriate.

Consistent with the *Aluminum Extrusions from the PRC Investigation* and *Aluminum Extrusions from the PRC First Review*, we determine that domestic prices in the PRC cannot serve as viable, "tier-one" benchmark prices. Instead, we are relying on "tier-two" prices, *i.e.*, world market prices. In accordance with the Department's regulations, where there is more than one commercially available world market price, the Department will average such prices to the extent practicable, making due allowance for factors affecting comparability.[122]

Parties to this review placed benchmark pricing data on the record for the POR.[123] Specifically, Petitioner submitted (1) Global Trade Information Services, Inc. (GTIS) pricing data for

[118] *See* Letter from the Department to the GOC regarding "Initial Questionnaire" (October 18, 2013), at "Provision of Primary Aluminum for LTAR."
[119] *See* GOC Initial Response (December 16, 2013), at 44-45, and GOC Supplemental Response (January 28, 2014), at 20-27.
[120] *Id.*
[121] *See Aluminum Extrusions from the PRC First Review*, and accompanying IDM at Comment 13.
[122] *See* 19 CFR 351.511(a)(2)(ii).
[123] *See* Letter from Petitioner regarding "Submission of Factual Information – Benchmark Data" (April 21, 2014) (Petitioner Benchmark Data); Letter from Alnan/Kromet regarding "Benchmark Data Submission" (April 21, 2014 (Alnan/Kromet Benchmark Data); Letter from Petitioner regarding "Submission of Information in Rebuttal to Kromet's Benchmark Data Submission" (May 1, 2014) (Petitioner Rebuttal Benchmark Data); Letter from Alnan/Kromet regarding "Rebuttal Comments of Kromet International Inc. regarding Petitioner's Benchmark Data Submission" (May 1, 2014) (Alnan/Kromet Rebuttal Benchmark Data); and Letter from Petitioner regarding "Submission of Further Factual Information to Measure Adequacy of Remuneration" (May 19, 2014) (Petitioner Additional Factual Information).

harmonized tariff schedule (HTS) subheadings 7601.10 (aluminum not alloyed) and 7601.20 (aluminum alloys), which excludes pricing for products exported from and imported into the PRC,[124] and (2) LME pricing data for primary aluminum and aluminum alloy inclusive of regional premiums and upcharges.[125] Alnan/Kromet provided (1) LME cash prices for primary aluminum and aluminum alloy (*i.e.*, non-inclusive of regional premiums and upcharges), (2) GTIS pricing data for HTS 7601.10 (aluminum not alloyed), and (3) World Bank Commodity Price Data for aluminum.

For the *Preliminary Results*, we used the following pricing data to construct the monthly benchmark prices for primary aluminum: (1) GTIS pricing data for 7601.10 (aluminum not alloyed) and 7601.20 (aluminum alloys), where pricing for products exported from and imported into the PRC are excluded, and (2) LME cash settlement prices for primary aluminum and aluminum alloy.[126] After considering the parties' benchmark arguments and reviewing all benchmark data and input purchase information on the record, we modified the derivation of benchmark prices for the final results. *See* Comment 9, below. As discussed in Comment 9, the regulations state that the Department should make due allowance for factors affecting comparability.[127] During the POR, the respondents purchased both primary aluminum ingots and billets.[128] The record demonstrates that ingots and billets are two distinct types of inputs with different pricing structures.[129] The GTIS data reports separate and distinct pricing categories for ingot (*i.e.*, GTIS unalloyed aluminum (HTS 7601.10)) and billet (*i.e.*, GTIS alloyed aluminum (HTS 7601.20)).[130] We thus determine that the GTIS data allows the Department to ensure proper comparability of the inputs by matching an ingot benchmark to ingot purchases and billet benchmark to billet purchases.[131] Relying solely on the GTIS pricing data, we calculated monthly weight-averaged prices (by quantity) for ingots and monthly weight-average prices (by quantity) for billets.[132]

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under "tier-two," the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Accordingly, to derive the benchmark prices, we included ocean freight and inland freight. Petitioner submitted ocean freight expenses sourced from Maersk Shipping Line for shipping aluminum, articles of aluminum, and metal products from various points around the world to Shanghai, PRC.[133] Alnan/Kromet reported that the nearest port to its facility is Fangcheng Port in Guangxi Province[134] and provided ocean freight expenses sourced from Maersk Shipping Line

[124] *See* Petitioner Benchmark Data at Exhibit 6.
[125] *Id.*, at Exhibit 7.
[126] *See Preliminary Results*, and accompanying IDM at "Provision of Primary Aluminum for LTAR."
[127] *See* 19 CFR 351.511(a)(2)(ii).
[128] *See* Alnan/Kromet Final Calculations, and Jiangsu Changfa Final Calculations.
[129] *See* Petitioner Benchmark Data at Exhibit 6; Petitioner Rebuttal Benchmark Data at Exhibit 3C; Alnan/Kromet Final Calculations; Jiangsu Changfa Final Calculations; and Comment 9, below.
[130] *Id*.
[131] *See* Comment 9, below.
[132] *See* Comment 10, below.
[133] *See* Petitioner Benchmark Data at Exhibit 2.
[134] *See* Alnan/Kromet Initial Response (December 16, 2013), at 48.

for shipping cargo from Japan and India to Shenzhen, PRC.[135] Jiangsu Changfa reported that the nearest port to its facility is Shanghai.[136]

For construction of the benchmark prices used to calculate the benefit for the provision of primary aluminum for Jiangsu Changfa, consistent with the *Preliminary Results*, we continued to rely on only the ocean freight expense data for shipping aluminum, articles of aluminum, and metal products to Shanghai. For the Alnan Companies, there are no data on the record pertaining to ocean freight expenses for shipping to Fangcheng Port. Therefore, to construct the benchmark prices used to calculate the benefit for the provision of primary aluminum for the Alnan Companies, consistent with the *Preliminary Results*, we continued to rely on the monthly ocean freight expenses for shipping to Fancheng Port that were used in in the benchmark calculations in *Aluminum Extrusions from the PRC First Review.*[137] Because these monthly shipping costs pertain to 2011 rather than the POR, we indexed them using monthly producer prices for industrial commodities as queried from the International Monetary Fund's website under the heading "International Financial Statistics."[138]

Concerning inland freight, we continued to rely on the calculated company-specific inland freight rates using cost data supplied by the Alnan Companies[139] and Jiangsu Changfa.[140] Further, we added to the benchmark prices the appropriate import duties applicable to imports of primary aluminum into the PRC as provided by Petitioner.[141] Additionally, we added to the benchmark prices, the appropriate VAT of 17 percent.[142]

In deriving the benchmark prices, we did not include marine insurance. In prior PRC CVD investigations, the Department determined that while the PRC customs authorities impute an insurance cost on certain imports for purposes of levying duties and compiling statistical data, there is no evidence to suggest that PRC customs authorities require importers to pay insurance charges.[143] Further, we did not add separate brokerage, handling, and documentation fees to the benchmark because we find that such costs are already reflected in the ocean freight cost from Maersk that is being used.

To determine whether the government authorities sold primary aluminum for LTAR, we compared the adjusted benchmark prices to the respondents' actual purchase prices, inclusive of taxes and delivery charges. We conducted the comparison on a monthly basis and used the same currency and unit of measure in which each respondent purchased its primary aluminum during the POR.

[135] *See* Alnan/Kromet Benchmark Data at Exhibit 6.
[136] *See* Jiangsu Changfa Initial Response (December 16, 2013), at 34.
[137] *See* Alnan/Kromet Final Calculations.
[138] *Id.*
[139] *See* Alnan/Kromet Initial Response (December 16, 2013), at "the Alnan Companies" section, page 48.
[140] *See* Jiangsu Changfa Initial Response (December 16, 2013), at 34.
[141] *See* Petitioner Benchmark Data at Exhibit 8. The import duty is five percent for aluminum not alloyed, and seven percent for aluminum alloys.
[142] *Id*.
[143] *See, e.g.*, *PC Strand from the PRC*, and accompanying IDM at Comment 13.

Comparing the benchmark unit prices to the unit prices paid by the respondents, we find that primary aluminum was provided for LTAR and that a benefit exists in the amount of the difference between the benchmark price and the price that the respondent paid.[144] To calculate the subsidy rate for each respondent, we divided the benefit by the total sales for the POR, attributing benefits under this program according to the methodology described in the "Subsidies Valuation Information" section.

On this basis, we calculate a countervailable subsidy of 7.59 percent *ad valorem* for the Alnan Companies and 2.12 percent *ad valorem* for Jiangsu Changfa.

C. <u>Special Reward Fund for Industrial Economy Transformation and Upgrading of the Whole District</u>

Jiangsu Changfa reported that it received a grant under this program during the POR because it is within the transformation and upgrading industry of Wujin District.[145] The GOC reported that the program was established in January 2010, with the purpose of promoting transformation and upgrading industries in Wujin District.[146] To be considered for assistance, a company must submit an application to the Wujin District authorities responsible for administration of the program, which are the Bureau of Finance, Economic and Information Technology Bureau, and Bureau of Statistics.[147] The GOC reported that the assistance under the program is provided pursuant to local government notice that establishes the conditions governing the operation of the program, such as eligibility criteria and amounts.[148] The GOC reported that the program is specific, explaining that only those industries that achieve a prescribed level of energy savings are considered eligible for assistance under the program.[149] The GOC submitted a comment on the Department's specificity finding; however, after considering the comment, we did not modify our determination. *See* Comment 13, below.

For these final results, we continue to find that this program provides a financial contribution in the form of a direct transfer of funds under section 771(5)(D)(i) of the Act, confers a benefit pursuant to section 771(5)(E) of the Act and 19 CFR 351.504, and is specific under section 771(5A)(D)(i) of the Act because only those industries that achieve a prescribed level of energy savings are considered eligible for assistance under the program.

To calculate the countervailable subsidy, we divided the grant amount received during the POR by Jiangsu Changfa's total consolidated sales for the POR. On this basis, we calculate a countervailable subsidy of 0.01 percent *ad valorem* for Jiangsu Changfa.

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[144] *See* section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a).
[145] *See* Jiangsu Changfa Supplemental Response (February 19, 2014), at 7-8.
[146] *See* GOC Supplemental Response (March 18, 2014), at 1.
[147] *Id*., at 1 and 7.
[148] *Id*., at 2.
[149] *Id*., at 5.

D. Import and Export Credit Insurance Supporting Development Fund for Changzhou[150]

Jiangsu Changfa reported that it received a grant under this program during the POR because it is engaged in international trade.[151] The GOC stated that this program was established in 2005, for the purpose of encouraging businesses to cover their exposure to credit risks that arise in import and export trades by purchasing credit insurance.[152] The program is administered by the Department of Finance of Jiangsu Province, the Department of Commerce of Jiangsu Province, and the Bureau of Finance of Changzhou.[153] To obtain assistance, the GOC stated that the exporter needs to file an application together with insurance payment invoice for the grant to be paid.[154] The GOC explained that the grant amount disbursed is based on the amount paid for the credit insurance policy.[155]

We find that this program provides a financial contribution in the form of a direct transfer of funds under section 771(5)(D)(i) of the Act, confers a benefit pursuant to section 771(5)(E) of the Act and 19 CFR 351.504, and is specific under section 771(5A)(A) and (B) of the Act because it is contingent upon export activity.

To calculate the countervailable subsidy, we divided the grant amount received during the POR by Jiangsu Changfa's total export sales for the POR. On this basis, we calculate a countervailable subsidy of 0.19 percent *ad valorem* for Jiangsu Changfa.

E. Special Fund for External Economy

During the POR, Jiangsu Changfa stated that it received a grant under this program from the Wujin district government.[156] The GOC reported that this program was established in January 2011, for the purpose of upgrading industrial structures and maintaining a stable economic development by means of opening and internationalizing the economy.[157] The Wujin district agencies responsible for administering the program are the Bureau of Finance and Bureau of Commerce.[158] The GOC stated that if a company's application meets the program criteria, then assistance is disbursed.[159] The GOC reported that export performance or export potential of the applicant is considered when determining eligibility for assistance.[160]

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[150] Program is also known as "Credit Insurance Supporting Fund Appropriated Changzhou Financial Bureau," "Export Credit Insurance Support Development Fund," "Export Credit Guarantee Supporting Fund," "Export Credit Subsidy Fund," and "Export Credit Insurance Supporting Development Fund." *See* Jiangsu Changfa Supplemental Response (February 19, 2014), at 11.
[151] *Id.*, at 12.
[152] *See* GOC Supplemental Response (March 18, 2014), at 8.
[153] *Id.*
[154] *Id.*, at 11.
[155] *Id.*, at 15.
[156] *See* Jiangsu Changfa Supplemental Response (February 19, 2014), at 16.
[157] *See* GOC Supplemental Response (March 18, 2014), at 16.
[158] *Id.*
[159] *Id.*, at 18.
[160] *Id.*, at 19.

We find that this program provides a financial contribution in the form of a direct transfer of funds under section 771(5)(D)(i) of the Act, confers a benefit pursuant to section 771(5)(E) of the Act and 19 CFR 351.504, and is specific under section 771(5A)(A) and (B) of the Act because it is contingent upon export activity.

To calculate the countervailable subsidy, we divided the grant amount received during the POR by Jiangsu Changfa's total export sales for the POR. On this basis, we calculate a countervailable subsidy of 0.01 percent *ad valorem* for Jiangsu Changfa.

F. Special Funds for the Development of Five Industries[161]

Jiangsu Changfa reported that the Changfa Group received a grant under this program in 2012, which was transferred to several of its subsidiaries, including Jiangsu Changfa.[162] Jiangsu Changfa stated that the "five industries" are the equipment manufacturing industry, new energy industry, new materials industry, electronic information industry, and biological and pharmaceutical industry.[163] In addition to being in one of the five industries, Jiangsu Changfa stated that, to be eligible for assistance, a company needs to be located in Changzhou City, paid taxes that exceed RMB 0.1 billion, or its total investment amount is more than RMB 0.5 billion (or the current year investment exceeds RMB 0.2 billion), or the offsetting amount of the enterprise's fixed assets VAT exceeds RMB 10 million.[164]

The GOC reported that the program was established in February 2009, with the objective to facilitate industrial transformation and upgrading in Changzhou City.[165] The GOC stated that the assistance was provided to the Changfa Group pursuant to the guidelines for operation of the program and that the industry or sector to which an applicant operates is taken into account when determining eligibility for assistance under the program.[166] The GOC also reported that a company must file an application for consideration of assistance with the local authorities[167] and that such assistance is not recurring.[168] The GOC submitted a comment on the Department's specificity finding; however, after considering the comment, we did not modify our determination. *See* Comment 13, below.

For these final results, we continue to find that this program provides a financial contribution in the form of a direct transfer of funds under section 771(5)(D)(i) of the Act, confers a benefit pursuant to section 771(5)(E) of the Act and 19 CFR 351.504, and is specific under section 771(5A)(D)(i) of the Act because the program is limited to five industries.

[161] This program is also known as "Receipt of Financial Subsidy." *See* GOC Supplemental Response (March 18, 2014), at 30.
[162] *See* Jiangsu Changfa Supplemental Response (February 9, 2014), at 19-21.
[163] *Id*., at 20.
[164] *Id*.
[165] *See* GOC Supplemental Response (March 18, 2014), at 22.
[166] *Id.*, at 24 and 26.
[167] The authorities that administer the program are: Bureau of Economy and Informationization of Changzhou Economy and Information Technology Commission of Changzhou, Bureau of Finance of Changzhou, and Bureau of Finance of Wujin District. *Id.*, at 23.
[168] *Id.*, at 29.

Jiangsu Changfa also reported that it received a grant under the "Receipt of Financial Subsidy" program in 2012.[169] The GOC stated that the "Receipt of Financial Subsidy" is the same program as the "Special Funds for the Development of Five Industries."[170]

For the grant received by the Changfa Group and transferred to Jiangsu Changfa, because the Changfa Group served as a conduit for the transfer of the subsidy from the government to the subsidiary, we attributed the subsidy to Jiangsu Changfa. As such, for the subsidy calculation, we used only the amount of the grant that was transferred to Jiangsu Changfa. For the grant received by Jiangsu Changfa, we summed that grant amount with the grant amount that the company received through the Changfa Group. We then divided the total grant amount by Jiangsu Changfa's total consolidated sales for the POR. On this basis, we calculate a countervailable subsidy of 0.44 percent *ad valorem* for Jiangsu Changfa.

G. Award for Self-Innovation Brand/Grant for Self-Innovation Brand and Enterprise Listing (aka, Income Tax Reward for Listed Enterprises)[171]

Jiangsu Changfa reported that it received assistance under this program in 2010 and 2011, because the company publicly listed its shares in 2010.[172] The GOC reported that the program is administered jointly by the financial office of the Changzhou municipal government and the finance bureau of Wujin District.[173] The official documents of the Changzhou municipal government and Wujin District indicate that the purpose of the subsidy program is "to seize the favorable opportunities brought by the development of the current capital market, actively promote the enterprise listing of our district, encourage and guide the enterprises to develop and become stronger through the capital market and promote the faster economic development of the whole district."[174] Jiangsu Changfa reported that it applied for a grant through its local financial bureau, which reviews applications and approves assistance on a case-by-case basis.[175] The GOC submitted a comment on the Department's specificity finding; however, after considering the comment, we did not modify our determination. *See* Comment 13, below.

For these final results, we continue to find that this program provides a financial contribution in the form of a direct transfer of funds under section 771(5)(D)(i) of the Act, confers a benefit pursuant to section 771(5)(E) of the Act and 19 CFR 351.504, and is specific under section 771(5A)(D)(i) of the Act because only companies that publicly list shares are eligible for assistance.

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[169] *See* Jiangsu Changfa Supplemental Response (February 19, 2014), at 24.
[170] *See* GOC Supplemental Response (March 18, 2014), at 30.
[171] Within Jiangsu Changfa's financial statements, this program is also listed at "Listing Reward for 2010," and "Bonus of Listing of Enterprises." *See* Jiangsu Changfa Supplemental Response (February 19, 2014), at 27-28.
[172] *See* Jiangsu Changfa Initial Response (December 16, 2013), at 40, and Jiangsu Changfa Supplemental Response (February 19, 2014), at 27-31.
[173] *See* GOC Supplemental Response (January 27, 2014), at 28.
[174] *See* Document by Wujin District People's Government of Changzhou City, WZF (2007) No. 192 "Opinions on Promoting Enterprise Listing," and Document by Changzhou Municipal People's Government, CZF (2007) No. 89 "Opinions of Municipal Government on Promoting Enterprise Listing," at Jiangsu Changfa Supplemental Response (March 28, 2014), at Exhibit S-34.
[175] *See* Jiangsu Changfa Initial Response (December 16, 2013), at 40 and Exhibit 37, which contains a copy of the application form retained by Jiangsu Changfa.

We conducted the "0.5 percent expense test" pursuant to 19 CFR 351.524(b)(2) and find that the benefit from the grant received in 2011 is less than 0.5 percent of Jiangsu Changfa's total sales for the relevant year.[176] Thus, we find that this grant is expensed in the year of receipt, with no benefit allocated to the POR. With regard to the grants received in 2010, we calculate that the total amount of the grants is greater than 0.5 percent of the company's total sales for the relevant year,[177] and, thus allocated the grant amount over the 12-year AUL, using a discount rate as discussed above in "Loan Benchmark Rates." For that 2010 grant, we calculate a countervailable subsidy of 0.16 percent *ad valorem* for Jiangsu Changfa for the POR.

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

In *Aluminum Extrusions from the PRC First Review*, we found that the Alnan Companies received a countervailable, allocable benefit under this program.[178] No new information was placed on the record of this administrative review to warrant a change in our finding. As such, we continue to find that this program provides countervailable subsidies within the meaning of section 771(5) of the Act.

In *Aluminum Extrusions from the PRC First Review*, the GOC reported that this this program was established in 2008 in accordance with the regulation titled *Several Policies on the Opening and Development of Beibu Gulf Economic Zone of Guangxi (GUIZHENGFA {2008} No.61)* and that that purpose of the program is to promote development of the economic zone.[179] Under this program, companies which qualify for the program under Article 9 of *GUIZHENGFA {2008} No. 61* are exempted from paying the local portion of their yearly corporate income taxes.[180] From January 1, 2008, to December 31, 2012, enterprises located within the economic zone, which qualify for the reduced corporate income tax rate of 15 percent under the Preferential Tax Program for High and New Technology Enterprises program (*see* below), qualify for the same amount of additional exemption of corporate income taxes.[181] Therefore, under this program, qualified enterprises receiving a reduced corporate income tax rate of 15 percent were eligible to have their corporate income tax rate further reduced to 9 percent.

The GOC reported that the program is administered by the State Administration of Taxation (SAT) and is implemented by the SAT branches at the local level within their respective jurisdictions and that the exemption is claimed on line 36 of the Statement of Tax Preferences Table, which is an appendix to the corporate tax return.[182]

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[176] Where "date of approval" is not known, we used the "date of receipt" for the annual sales denominator to conduct the 0.5 percent test.
[177] *Id*.
[178] *See Aluminum Extrusions from the PRC First Review*, and accompanying IDM at " Preferential Tax Policies for the Opening and Development of Beibu Gulf Economic Zone of Guangxi Zhuang Autonomous Region (Local Income Tax Exemption)."
[179] *Id*.
[180] *Id*.
[181] *Id*.
[182] *Id*.

We determine that this program constitutes a financial contribution in the form of revenue forgone under section 771(5)(D)(ii) of the Act and a benefit under section 771(5)(E) of the Act. The GOC reported that only the enterprises located within Beibu Gulf Economic Zone of Guangxi Zhuang Autonomous Region may benefit from this tax exemption.[183] Therefore, we determine that the program is regionally-specific pursuant to section 771(5A)(D)(iv) of the Act.

Alnan Aluminum reported that it received benefits under this program during 2012, as indicated on its tax returns. To calculate the countervailable subsidy rate for the POR, we divided the benefit by a denominator comprised of the consolidated sales of the Alnan Companies (which is net of inter-company sales), according to the methodology described above in the "Subsidies Valuation Information" section.

On this basis, we calculate a countervailable subsidy of 0.26 percent *ad valorem* for the Alnan Companies.

I. Preferential Tax Program for High or New Technology Enterprises[184]

In *Aluminum Extrusions from the PRC First Review*, the GOC reported that this program was established on January 1, 2008. Pursuant to Article 28.2 of the *Enterprise Income Tax Law* (*EITL*) of the PRC, the government provides for the reduction of the corporate income tax rate from 25 percent to 15 percent for enterprises that are recognized as a High or New Technology Enterprise (HNTEs).[185] The conditions to be met by an enterprise to be recognized as an HNTE set are forth in Article 93 of the *Regulation on the Implementation of the Enterprise Income Tax Law*. [186]

In the *Citric Acid from the PRC First Review* and *Citric Acid from the PRC Second Review*, the Department found this program to be countervailable.[187] Article 28.2 of the EITL authorizes a reduced income tax rate of 15 percent for HNTEs. The criteria and procedures for identifying eligible HTNEs are provided in the *Measures on Recognition of High and New Technology Enterprises* (GUOKEFAHUO {2008} No. 172) (*Measures on Recognition of HNTEs*) and the *Guidance on Administration of Recognizing High and New Technology Enterprises* (GUOKEFA HUO {2008} No.362).[188] Article 8 of the *Measures on Recognition of HNTEs* provides that the science and technology administrative departments of each province, autonomous region, and municipality directly under the central government or cities under separate state planning shall collaborate with the finance and taxation departments at the same level to recognize HTNEs in

[183] *Id*.
[184] In the *Preliminary Results*, this program was incorrectly titled "Preferential Tax Policies for High or New Technology Enterprises."
[185] *See Aluminum Extrusions from the PRC First Review*, and accompanying IDM at "Preferential Tax Program for High or New Technology Enterprises."
[186] *Id.*
[187] *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*, 76 FR 77206 (December 12, 2011) (*Citric Acid from the PRC First Review*), and accompanying IDM at "Reduced Income Tax Rate for High or New Technology Enterprises;" and *Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010*, 77 FR 72323 (December 5, 2012) (*Citric Acid from the PRC Second Review*), and accompanying IDM at "Reduced Income Tax Rate for High or New Technology Enterprises."
[188] *Id*.

their respective jurisdictions.[189] The GOC reported that the program is administered by the SAT and is implemented by the SAT branches at the local level within their respective jurisdictions and that the exemption is claimed on line 28 of the Statement of Tax Preferences Table, which is an appendix to the corporate tax return.[190] The annex of the *Measures on Recognition of HNTEs* lists eight high- and new-technology areas selected for the State's "primary support:" 1) Electronics and Information Technology; 2) Biology and New Medicine Technology; 3) Aerospace Industry; 4) New Materials Technology; 5) High-tech Service Industry; 6) New Energy and Energy-Saving Technology; 7) Resources and Environmental Technology; and 8) High-tech Transformation of Traditional Industries.[191]

The Alnan Companies reported that Alnan Aluminum received tax savings under this program in the amounts indicated on income tax returns filed during the POR.[192] They also reported that to qualify for the program Alnan Aluminum submitted its "High and New Technology Enterprise Certification" with its income tax return.[193]

The GOC submitted a comment on the Department's specificity finding; however, after considering the comment, we did not modify our determination. *See* Comment 13, below. As such, consistent with the *Citric Acid from the PRC First Review, Citric Acid from the PRC Second Review*, and *Aluminum Extrusions from the PRC First Review,* we continue to find that the reduced income tax rate paid by the Alnan Companies is a financial contribution under section 771(5)(D)(ii) of the Act in the form of revenue foregone by the GOC, and provides a benefit to the recipient in the amount of the tax savings.[194] We also determine, consistent with the *Citric Acid from the PRC First Review* and *Citric Acid from the PRC Second Review*, that the reduction afforded by this program is limited as a matter of law to certain new and high technology companies selected by the government pursuant to legal guidelines specified in *Measures on Recognition of HNTEs* and, hence, is specific under section 771(5A)(D)(i) of the Act. Both the number of targeted industries (eight) and the narrowness of the identified project areas under those industries support a finding that the legislation expressly limits access to the program to a specific group of enterprises or industries.

To calculate the benefit, we compared the income tax rate that Alnan Aluminum would have paid in the absence of the program (25 percent) to the income tax rate that the companies actually paid. We treated the income tax savings as a recurring benefit, consistent with section 771(5)(E) of the Act and 19 CFR 351.524(c)(1). To calculate the countervailable subsidy rate, we divided the benefit by a denominator comprised of the consolidated sales of the Alnan Companies (which is net of inter-company sales), according to the methodology described above in the "Subsidies Valuation Information" section.

On this basis, we calculate a countervailable subsidy of 0.43 percent *ad valorem* for the Alnan Companies.

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[189] *Id*.
[190] *Id.*
[191] *Id*.
[192] *See* Alnan/Kromet Initial Response (December 16, 2013), at 21 and Exhibit 8, which contains the 2012 income tax return.
[193] *Id.*, at 21.
[194] *See* section 771(5)(D)(ii) of the Act, section 771(5)(E) of the Act, and 19 CFR 351.509(a)(1).

J. International Market Exploration Fund (SME Fund)

In the *Aluminum Extrusions from the PRC Investigation*, we determined that the SME Fund provides countervailable subsidies that are contingent on export activity because, to quality for the program, a small and medium-sized enterprise (SME) must have export and import rights, exports of less than $15,000,000 in the previous year, an accounting system, personnel with foreign trade skills, and an international marketing plan.[195]

In *Aluminum Extrusions from the PRC First Review*, the GOC reiterated that this program was established in 2000, pursuant to the *Circular of the Ministry of Finance, the Ministry of Foreign Trade and Economic Cooperation Concerning Printing and Distributing the Measures for the Administration of International Market Developing Funds of Small- and Medium-Sized Enterprises (for Trial Implementation)*, and *Detailed Rules for the Implementation of the Measures for the Administration of International Market Developing Funds of Small- and Medium-Sized Enterprise (for Provisional Implementation)* to support the development of SMEs.[196] The GOC also stated that in May 2010, this program was renewed and the above listed legislation was replaced by the *Measures for Administration of International Market Developing Funds of Small- and Medium-Sized Enterprises (Market Developing Funds Measure)*.[197] The GOC explained that after the promulgation of the *Market Developing Funds Measure*, the export value eligibility criterion was modified to state that an applicant enterprise must have had an export value in the previous year of less than $45,000,000.[198]

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

Alnan Aluminum reported that it received non-recurring grants under this program in 2012.[199] The Department treats grants under this program as non-recurring subsidies under 19 CFR 351.524(c).[200] We, thus, conducted the "0.5 percent test" of 19 CFR 351.524(b)(2), by dividing the total amount of the grants received by Alnan Aluminum over the Alnan Companies' total export sales for the year the grants were approved/received.[201]

[195] *See Aluminum Extrusions from the PRC Investigation*, and accompanying IDM at "International Market Exploration Fund (SME Fund)."
[196] *See Aluminum Extrusions from the PRC First Review*, and accompanying IDM at "International Market Exploration Fund (SME Fund)."
[197] *Id*.
[198] *Id*.
[199] *See* Alnan/Kromet Initial Response (December 16, 2013), at 23-25
[200] *See Aluminum Extrusions from the PRC Investigation*, and accompanying IDM at "International Market Exploration Fund (SME Fund)."
[201] Where the company was unable to report the date/year of approval of the grant, we used the date/year of receipt of the grant for the yearly sales denominator used in the 0.5 percent test.

We find that the grants received in 2012 were less than 0.5 percent of the total export sales denominator for the year of approval/receipt. Therefore, we expensed the grant amounts to the year of receipt. To calculate the subsidy rate, we divided the full amount of the grant by Alnan Companies' total export sales for 2012. On this basis, we calculate a countervailable subsidy of 0.01 percent *ad valorem* for the Alnan Companies.

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

In *Aluminum Extrusions from the PRC First Review*, the GOC reported that this program was established in July 2004, by the Finance Department and the Department of Human Resources and Social Security of Guangxi Autonomous Region. The purpose of the program is to attract and cultivate high-level and innovative talents pursuant to *Measures for Administration of Special Funds of Guangxi Autonomous Region for Small Highland of Talents*. To qualify for an award under the program an enterprise must meet these requirements: "(1) have intensive human resources of high-level talents; (2) the specialization structure of its talents must be in line with the development orientations of important industries, important projects, important disciplinary fields and superior enterprises and government-sponsored institutions that have strong innovation capacity; (3) have a sound innovation environment and relatively strong economic capacity; and (4) have a work plan for construction of the small highland of talents."[202] The Alnan Companies reported that benefits were received under this program based on an application that was subject to the government's approval.[203] The GOC submitted a comment on the Department's specificity finding; however, after considering the comment, we did not modify our determination. *See* Comment 13, below.

Based on our analysis of the laws and regulations provided by the GOC for this program, we determine that grants provided under this program are financial contributions in the form of a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act and provide a benefit to the Alnan Companies in the amount of the grant, pursuant to section 771(5)(E) of the Act and 19 CFR 351.504(a). We also determine that this program is *de jure* specific under section 771(5A)(D)(i) of the Act due to provisions in the laws and/or regulations indicating that eligibility for benefits under the program is limited to a group of companies or industries, namely enterprises that are "approved and publicly announced carrier entities" which must meet innovation criteria and a criterion requiring involvement in important industries, projects, or fields.[204]

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

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[202] *See Aluminum Extrusions from the PRC First Review*, and accompanying IDM at "Special Funds of Guangxi Autonomous Region for Small Highland of Talents."
[203] *See* Alnan/Kromet Initial Response (December 16, 2013), at 27-29.
[204] *Id*.

On this basis, we calculate a countervailable subsidy of 0.01 percent *ad valorem* for the Alnan Companies.

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

As explained above in *Application of AFA for Certain Grants Received by the Alnan Companies,* as AFA, we find that each of the following programs provides countervailable subsidies within the meaning of section 771(5) of the Act in that each is specific within the meaning of section 771(5A) of the Act, and constitutes a financial contribution in the form of a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act. Based on information provided by the GOC and the Alnan Companies, we also determine that each program conferred a benefit under section 771(5)(E) of the Act and 19 CFR 351.504(a) during the POR

Consistent with 19 CFR 351.524(c)(1), we are treating grants received under these programs as "non-recurring." We performed the "0.5 percent test" of 19 CFR 351.524(b)(2) with regard to each grant program. For those programs that passed the "0.5 percent test," we allocated the benefit received by the Alnan Companies over 12 years. For those programs, that did not pass the "0.5 percent test," we expensed the grants amounts in the years they were received. To calculate the countervailable subsidy rate for each year, we divided the benefit by a denominator comprised of the sales of the Alnan Companies (which is net of inter-company sales), according to the methodology described above in the "Subsidies Valuation Information" section.

On this basis, we find that the following grant programs are countervailable and calculated the following *ad valorem* countervailable subsidy rates for the Alnan Companies.

	Name of Program	2012 *Ad Valorem* Rate
1.	Funds of Nanning Municipality for Technology Innovation	0.02%
2.	Funds of Guangxi Autonomous Region for Enterprises' Technology Renovation[205]	0.32%
3.	Financial Assistance (interest subsidy) of Nanning Municipality for Key Technology Renovation	0.35%
4.	National Funds for the Industry Revitalization and Technology Renovation of the Key Fields	0.12%
5.	National Funds for Construction of Ten "Key Energy Saving Projects," "Key Demonstration Bases for Recycling Economy and Resource Saving," and "Key Industrial Pollution Control Projects"	0.08%
6.	Special Funds of Guangxi Beibu Gulf Economic Zone for the Development of Key Industries	0.05%
7.	Awards of Guangxi Autonomous Region for Advancement of Science and Technology	0.01%

[205] The GOC submitted a comment on this grant program. *See* Comment 16, below.

8.	Awards of Guangxi Autonomous Region for New Products	0.02%
9.	Awards to Key Enterprises for Large Consumption of Electricity	0.03%
10.	Awards of Nanning Municipality for New Products	0.01%
11.	Intellectual Property Reward	0.01%
12.	Assistance for Science Research and Technology Development Planning Projects of Nanning Municipality	0.01%

II. Programs Determined Not to Confer Measurable Benefit or Not Used

We find that the respondent companies did not use the following programs, or the following programs did not confer a measurable benefit to the respondent companies during the POR:

1. Exemption from City Construction Tax and Education Tax for Foreign-Invested Enterprises (FIEs)
2. Two Free, Three Half Income Tax Exemptions for FIEs
3. Preferential Tax Program for FIEs Recognized as High or New Technology Enterprises (HNTEs)
4. Provincial Government of Guangdong (PGOG) Tax Offset for Research & Development (R&D)
5. Refund of Land-Use Tax for Firms Located in the Zhaoqing New and High-Tech Industrial Development Zone (ZHTDZ)
6. Tax Reductions for FIEs Purchasing Chinese-Made Equipment
7. Preferential Tax Policies for the Development of Western Regions of China
8. Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries
9. Refund of VAT on Products Made Through Comprehensive Utilization of Resources
10. GOC and Sub-Central Government Grants, Loans, and Other Incentives for Development of Famous Brands and China World Top Brands (Famous Brands Program)
11. Fund for SME Bank-Enterprise Cooperation Projects
12. Special Fund for Significant Science and Technology in Guangdong Province
13. Fund for Economic, Scientific, and Technology Development
14. Provincial Fund for Fiscal and Technological Innovation
15. Provincial Loan Discount Special Fund for SMEs
16. Export Rebate for Mechanic, Electronic, and High-Tech Products
17. PGOG Special Fund for Energy Saving Technology Reform
18. PGOG Science and Technology Bureau Project Fund (*aka*, Guangdong Industry, Research, University Cooperating Fund)
19. Development Assistance Grants from the ZHTDZ Local Authority
20. Expanding Production and Stabilizing Jobs Fund of Jiangsu Province
21. Technical Standards Awards
22. Guangxi Awards for Private Enterprises Designated as Pilot Innovation-Oriented Enterprises
23. Special Funds of Nanning Municipality for Small Highland of Talents

24. Special Funds of Nanning Municipality for Academic and Technical Leaders of the New Century
25. Guangxi Technology R&D Funds
26. Supporting Funds of Nanning Municipality for "Informatization-industrialization Integration" and Development of Information Industry
27. Funds for Projects of Science and Technology Professionals serving the Enterprises
28. Financial Supporting Funds of Nanning Municipality for Technology Renovation for Production Safety
29. Assistances for R&D projects under Funds of Nanning Municipality for Foreign Trade Development
30. Funds of Nanning Municipality for Sustainable Development of Foreign Trade
31. Awards of Guangxi Autonomous Region for Emission Reduction of Main Pollutants
32. Special Funds of Guangxi Autonomous Region for Production Safety (Supporting Fund for Eliminating Potential and Seriously Dangerous Projects)
33. Funds of Guangxi Autonomous Region for Promotion of Foreign Trade Development of the West Region
34. Awards of Nanning Municipality for Excellent Foreign Trade Enterprises
35. Special Funds for Projects of National Science and Technology Supporting Plan
36. Provision of Land-Use Rights and Fee Exemptions To Enterprises Located in the ZHTDZ for LTAR
37. Provision of Land-Use Rights To Enterprises Located in the South Sanshui Science and Technology Industrial Park for LTAR
38. Labor and Social Security Allowance Grants in Sanshui District of Guangdong Province
39. "Large and Excellent" Enterprises Grant
40. Advanced Science/Technology Enterprise Grant
41. Tiaofeng Electric Power Subscription Subsidy Funds
42. Award for Excellent Enterprise
43. Export Incentive Payments Characterized as VAT Rebates
44. PGOG and Foshan City Government Patent and Honor Award Grants
45. Foshan City Government Technology Renovation and Technology Innovation Special Fund Grants
46. Nanhai District Grants to State and Provincial Enterprise Technology Centers and Engineering Technology R&D Centers
47. Loans and Interest Subsidies Provided Pursuant to the Northeast Revitalization Program
48. Provincial Tax Exemptions and Reductions for "Productive" FIEs
49. Tax Reductions for FIEs in Designated Geographic Locations
50. Tax Reductions for Technology- or Knowledge-Intensive FIEs
51. Tax Credits for Domestically-Owned Companies Purchasing Chinese-Made Equipment
52. Tax Reductions for Export-Oriented FIEs
53. Tax Refunds for Reinvesting of FIE Profits in Export-Oriented Enterprises
54. Accelerated Depreciation for Enterprises Located in the Northeast Region
55. Forgiveness of Tax Arrears for Enterprises in the Old Industrial Bases of Northeast China
56. VAT Rebates on FIE Purchases of Chinese-Made Equipment
57. Exemptions from Administrative Charges for Companies in the ZHTDZ
58. Grants to Cover Legal Fees in Trade Remedy Cases in Zhenzhen
59. Clean Production Technology Fund

60. Grants for Listing Shares: Liaoyang City (Guangzhou Province), Wenzhou Municipality (Zhejiang Province), and Quanzhou Municipality (Fujian Province)
61. Northeast Region Foreign Trade Development Fund
62. Land Use Rights in the Liaoyang High-Tech Industry Development Zone
63. Allocated Land Use Rights for State-Owned Enterprises
64. Tax Refunds for Enterprises Located in the ZHTDZ
65. Provision of Electricity for LTAR to FIEs Located in the Nanhai District of Foshan City
66. Nanhai District Grants to HNTEs
67. Government Provision of Land-Use Rights to Enterprises Located in the Yongji Circular Economic Park for LTAR
68. Support for Disabled Persons
69. Awards of Nanning Municipality for Advancement of Science and Technology
70. Award of Nanning Municipality for Industrial Enterprises Completing Energy Saving Tasks
71. Membership Fee Refunds for Members of Rescue Sub-team of Guangxi Emergency and Rescue Association for Production Safety
72. Funds for Demonstration Bases of Introducing Foreign Intellectual Property
73. Funds of Nanning Municipality for Project Preliminary Works
74. Special Funds of Nanning Municipality for Key Planning Project of Professionals Cultivation
75. Funds of Guangxi Autonomous Region for Energy Saving and Emission Reduction
76. Awards of Nanning High-tech Zone for Annual top Tax Payers of Industrial Enterprises
77. Awarding Funds of Guangxi Autonomous Region for Renovation of Energy-Saving Technologies
78. National Special Funds for Emission of Main Pollutants (Assistance for Construction of Automatic Surveillance of Key Pollutant Sources)
79. Support for the Tax Refund Difference Program
80. Export Credit Subsidy Program: Export Seller's Credits
81. Export Credit Subsidy Program: Export Buyer's Credits
82. Government Purchase of Aluminum Extrusions for More Than Adequate Remuneration
83. 2009 Special Fund
84. Special Fund Subsidy for Export-Oriented Economy
85. Bonus for 2009 Excellent Sewage Treatment Management Companies
86. Special Fund Subsidy for Industrial Development
87. Special Fund for 2010 Provincial-Level Foreign Economy and Foreign Trade Development
88. Special Fund for Environment Protection
89. Special Guiding Fund
90. Special Fund for Foreign Trade
91. Special Fund for Industrial Development
92. Special Guiding Fund for Key Industries
93. Social Insurance Subsidy
94. Migrant Workers Training Subsidy
95. Technical Reform Subsidy for Changzhou City
96. Income Tax Rewards for Key Enterprises
97. Returns for Land-Transferring Fee

98. State Key Technology Renovation Project Fund
99. Supporting Funds for Trade with the Minority Nationalities and Production of Goods Specially Needs by Minority Nationalities
100. Provision of Steam Coal for LTAR

On May 18, 2014, the Department initiated on the new subsidy allegation (NSA) "Provision of Steam Coal for LTAR" with regard to the Alnan Companies.[206] On April 4, 2014, we received the company's questionnaire response on steam coal.[207] In the response, the Alnan Companies reported that, during the POR, Shanglin Power was not operational and did not purchase any steam coal.[208] The Alnan Companies provided a copy of Shanglin Power's 2012 financial statements in support of their statement.[209] Based on the information on the record, we find that the Alnan Companies did not use this program during the POR.

Ad Valorem Rate for Non-Selected Companies under Review

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

Calculating the non-selected rate by weight-averaging the rates of the respondents with their actual export sales of subject merchandise to the United States for the POR, however, risks disclosure of proprietary information. Therefore, for these final results, we calculated the rate for the non-selected companies by weight-averaging the rates of Jiangsu Changfa and the Alnan Companies using their publicly-ranged sales data. As such, for each of the 58 cooperative companies for which a review was requested and not rescinded, but were not selected as mandatory respondents,[210] we derived a subsidy rate of 8.54percent *ad valorem*.[211]

[206] *See* Department Memorandum regarding "Decision Memorandum on New Subsidy Allegations" (March 18, 2014).
[207] *See* Letter from Alnan/Kromet regarding "New Subsidies Allegation Response" (April 4, 2014).
[208] *Id.*, at 5-7.
[209] *Id.*, at Exhibit NSA-1.
[210] For a list of the non-selected companies, *see* the *Federal Register* notice issued concurrently with this decision memorandum.
[211] *See* Department Memorandum regarding "Non-Selected Rate Calculation for the Final Results" (December 22, 2014).

Ad Valorem Rate for Non-Cooperative Companies under Review

In this administrative review, we must also assign a rate to the four companies which failed to respond to the Department's Q&V questionnaire. As discussed above in the *"Use of Facts Otherwise Available and Adverse Inferences – Application of Total AFA to Non-Cooperative Companies*" section we find that it is appropriate to assign to these companies the total AFA rate of 160.09 percent *ad valorem.*[212]

Analysis of Comments

Comment 1: Application of the CVD Law to the PRC

GOC's Affirmative Arguments:

- The WTO Appellate Body and the Court of Appeals for the Federal Circuit (Federal Circuit) determined that the application of the CVD law to the PRC while simultaneously using the NME methodology to calculate AD duties on the same merchandise is inconsistent with WTO obligations and U.S. law, respectively.[213]
- The GOC contends that the retroactive application of Public Law 112-99[214] changed the trade law in violation of the U.S. Constitution[215] and U.S. WTO obligations (*i.e.*, Article X of the GATT)[216] and, therefore, this review should be terminated.
- Public Law 112-99 violates the U.S. Constitution's Fifth Amendment guarantee of due process which requires laws to promote a legitimate legislative purpose by rational means,[217] and prohibits laws that are harsh and oppressive or that are arbitrary and irrational.[218] The application of the CVD law to the PRC, while at the same time considering the PRC to be an NME under the AD law, is harsh, oppressive, and arbitrary because the Department acknowledged that it cannot identify or accurately measure subsidies in NME countries,[219] including in this review.[220] Thus, without an accurate

[212] *See* AFA Calculations Memorandum.
[213] *See* Appellate Body Report, *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/AB/R (March 11, 2011) (*US-CVD I WTO AB Decision*), and *GPX Int'l Tire Corp. v. United States*, 666 F.3d 732 (Fed. Cir. 2011) (*GPX CAFC 2011*).
[214] Public Law No. 112-99, 126 Stat. 265-66 (2012) (codified at 19 U.S.C. § 1671(f)(2)).
[215] With reference to *Guangdong Wireking Housewares & Hardware Co. v. United States*, 745 F.3d 1194 (Fed. Cir. 2014) (*Guangdong Wireking CAFC 2014*) and *GPX Int'l Tire Corp. v. United States*, 893 F. Supp. 2d 1296 (CIT 2013) (*GPX CIT 2013*).
[216] Concerning WTO obligations, the GOC considers that the retroactive application of the CVD law to aluminum extrusions from the PRC violates Articles X:1, X:2, and X:3(b) of the General Agreement of Tariffs and Trade (GATT).
[217] *See United States v. Carlton*, 512 U.S. 26, 30-31 (1994).
[218] *Id.*, at 30; *see also Pension Benefit Guar. Corp. v. R.A. Gray & Co.*, 467 U.S. 717, 733 (1984) (*Gray*).
[219] *See* 19 U.S.C. § 1677(18) (stating that because China does not operate on market principles, sales in that country do not reflect the fair value of merchandise); Memorandum from the Office of Policy to David M. Spooner, *Antidumping Duty Investigation of Certain Lined Paper Products from the People's Republic of China – China's Status as a Non-Market Economy*, at 4, 6 (August 30, 2006) (maintaining that market forces in the PRC do not permit the use of prices and costs for purposes of an antidumping analysis, and noting the importance of accurately measuring prices and costs). In determining whether financial contributions confer "benefits" in accordance with 19 U.S.C. § 1677(5)(E), the Department must find a market baseline for comparison. The Department previously concluded that subsidies "cannot be found in an NME" because "the notion of a subsidy is, by definition, a market phenomenon." *GPX CAFC 2011*, 666 F.3d at 740 (internal citations omitted).

value for goods or services provided to Chinese respondents, there is no way to determine whether a benefit exists within the meaning of the CVD law.

- The retroactivity of Public Law 112-99 to more than five years before it was legal for the Department to impose CVDs on aluminum extrusions is severe and oppressive and must be viewed with stricter scrutiny than legislation that is prospective.[221] This severe retroactivity is further exacerbated by the Department's previous public commitments not to apply the CVD law to NME countries,[222] and its determination to account for subsidies dating back to 2001.
- Public Law 112-99 also violates the *ex post facto* clause of the Constitution, which prohibits laws with retroactive application that impose penalties.[223] In accordance with Federal Circuit precedent,[224] because 1) Public Law 112-99 imposes costs on Chinese shippers of aluminum extrusions which are punitive, not related to the amount of harm suffered by the industry or the size of the subsidy, and result in double-counting of domestic subsidies in AD and CVD proceedings,[225] 2) the proceeds are collected by the U.S government, and 3) the law is meant to address harm to the public rather than harm to certain individuals, it violates the *ex post facto* clause of the Constitution.

Petitioner's Rebuttal Arguments:

- The GOC made the same arguments in numerous cases and fora (including, the Department, CIT, and Federal Circuit), and all bodies rejected the GOC's claims.
- At the administrative level, the Department repeatedly considered the GOC's claims and repeatedly determined that the arguments advanced by the GOC are without merit.[226]
- The CIT and Federal Circuit affirmed the viewpoints adopted by the Department and found the identical arguments of the GOC to be equally without merit. Specifically, the CIT rejected the objections raised by the GOC in two cases (*i.e.*, *GPX CIT 2013* and *Guangdong Wireking CIT 2013*), finding that 19 U.S.C. § 1671(f) is constitutional and does not violate the due process or equal protection clauses of the Constitution, nor

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[220] *See, e.g.*, *Preliminary Results*, and accompanying IDM at 12, 23, and 29.
[221] *See Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 16-17 (1976); *Eastern Enterprises v. Apfel*, 524 U.S. 498, 528 (1998).
[222] *See, e.g.*, *Preamble*, 63 FR at 65361.
[223] *See Landgraf v. USI Film Prods.*, 511 U.S. 244, 266, 269-70 (1994); *Salmon v. Burges*, 97 U.S. 381, 382 (1878).
[224] *See Huayin Foreign Trade Corp. v. United States*, 322 F.3d 1369 (1380) (Fed. Cir. 2003).
[225] The CIT noted that the Department did not have a method for identifying overlapping remedies between CVD and AD proceedings using the NME methodology, leading the CIT to conclude "it is difficult for Commerce to determine…whether and to what degree double counting is occurring." *See GPX Int'l Tire Corp. v. United States,* 715 F. Supp.2d 1337, 1345 (CIT 2010). The GOC asserts that if the Department cannot determine whether double counting is occurring, then it will not be able to avoid it.
[226] *See, e.g.*, *Drawn Stainless Steel Sinks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 13017 (February 26, 2013), and accompanying IDM at Comment 1; *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (October 17, 2012) (*Solar Cells from the PRC)*, and accompanying IDM at Comment 13; and *Citric Acid from the PRC Second Review,* and accompanying IDM at Comment 1.

constitute an impermissible *ex post facto* law.[227] The Federal Circuit affirmed the CIT's decision in *Guangdong Wireking CAFC 2014*.[228]

- The GOC's claim that applying the CVD law to the PRC violates Article X of the GATT is also without merit. Petitioner asserts that the instant review is governed by U.S. law and not the terms set forth in the GATT. Moreover, the WTO Dispute Settlement Body has never issued a finding that the Department's application of CVD law to the PRC violates the GATT.
- Concerning double counting, Public Law 112-99 requires that any adjustment for an alleged "double remedy" be made in the context of the AD proceeding.[229] The Act prohibits the Department from making an adjustment to the CVD rates for any respondent.[230]

Department's Position: The GOC's reliance upon *GPX CAFC 2011* to contend that the Department lacks the authority to apply the CVD law to imports from NME countries, such as the PRC, is misplaced. In 2012, before the court's decision in *GPX CAFC 2011* became final, Congress enacted Public Law 112-99. Public Law 112-99 confirmed the Department's ability to apply the CVD law to NMEs and thus, rendered the non-final decision in *GPX CAFC 2011* without effect.[231] The CIT and the Federal Circuit have affirmed the constitutionality of Public Law 112-99, rejecting the same claims that the GOC raises in this case.[232]

As the CIT confirmed, Public Law 112-99 does not violate the Fifth Amendment's due process clause.[233] The GOC's argument that the law is harsh, oppressive, arbitrary and irrational is without merit. As discussed in more detail in Comment 2, we disagree that the Department cannot accurately identify or measure subsidies in NMEs. In addition, contrary to the GOC's argument, section 1 of Public Law 112-99 is not retroactive. Rather, it clarifies existing law by ensuring that the Department will continue to apply the CVD law to NME countries. Congress enacted the legislation to prevent the Court's holding in *GPX CAFC 2011* – a decision that would have changed existing law – from becoming final and taking effect.[234] In any event, even if section 1 of Public Law 112-99 were considered retroactive, it does not violate the due process clause. As the Supreme Court has held, retroactive economic legislation will withstand due process scrutiny so long as the government can demonstrate a legitimate purpose furthered by

[227] *See GPX CIT 2013*, 893 F. Supp. 2d at 1334; *Guangdong Wireking Housewares & Hardware Co., Ltd. v. United States*, 900 F. Supp. 2d 1362, 1371, 1372, and 1375-76 (CIT 2013) (*Guangdong Wireking CIT 2013*).
[228] *See Guangdong Wireking CAFC 2014*, 745 F.3d 1194.
[229] *See* section 777A(f) of the Act.
[230] *Id*.
[231] *See GPX Int'l Tire Corp. v. United States*, 678 F.3d 1308, 1313 (Fed. Cir. 2012) (*GPX CAFC 2012*) (granting a petition for rehearing of *GPX CAFC 2011* and remanding to the CIT in light of Public Law 112-99); *see also Guangdong Wireking CAFC 2014*, 745 F.3d at 1195-96 (noting that the new legislation overruled the CAFC's previous decision in *GPX CAFC 2011*).
[232] *See GPX CIT* 2013, 893 F. Supp. 2d at 1334; *Guangdong Wireking CIT 2013*, 900 F. Supp. 2d at 1371, *affirmed*, *Guangdong Wireking CAFC 2014*, 745 F.3d 1194.
[233] *See GPX CIT 2013*, 893 F. Supp. 2d at 1334 (finding Public Law 112-99 "is rationally related to the legitimate government interests and therefore does not violated the due process or equal protection clauses of the Constitution."); *Guangdong Wireking CIT 2013*, 900 F. Supp. 2d at 1372.
[234] *See, e.g.*, 158 Cong. Rec. at H1167–68 (daily ed. March 6, 2012) (statements of Representatives Camp, Levin, Rohrabacher, and Boustany).

rational means for the retroactive nature of the legislation.[235] According to the CIT, "{t}he retroactive period of section 1 {of Public Law 112-99}, although lengthy, is a rational means of achieving Congress's objectives…. {considering} a shorter retroactive period would have resulted in the possible termination of approximately twenty four CVD orders and investigations, harming domestic industries."[236]

With respect to the GOC's argument, that Public Law 112-99 is a prohibited *ex post facto* law, we note that this argument has been expressly rejected by both the CIT and the Federal Circuit. The *ex post facto* clause of the Constitution bars retroactive application of penal legislation, but, as just described, section 1 of Public Law 112-99 is not retroactive. Even if that section were considered retroactive, it is not penal, because it merely clarifies that the government can collect duties proportional to the harm caused by unfair foreign subsidization.[237] In this regard, as affirmed by the Federal Circuit, the CVD law is remedial, not punitive in nature, and thus does not constitute a prohibited *ex post facto* law.[238]

With respect to the GOC's argument that retroactive application of Public Law 112-99 violates Article X of the GATT, we again note that Public Law 112-99 is not retroactive but rather confirms existing law. Further, we agree with Petitioner that there is currently no finding by the WTO Dispute Settlement Body that the application of the CVD law in this case (or in any other PRC CVD case) is in violation of Article X of the GATT. Accordingly, our determination in this review is fully consistent with our obligations under the GATT and the Agreement on Subsidies and Countervailing Measures (SCM Agreement).

Lastly, we disagree with the GOC and determine that the Department can apply CVD measures in these final results while at the same time treating the PRC as an NME in the overlapping AD administrative reviews. The legislative history for Public Law 112-99 makes clear that Congress had a rational basis for confirming the Department's authority to apply the CVD law to products from NME countries while ensuring that, for WTO compliance purposes, the Department could, going forward, make adjustments to ADs to account for any overlap in AD and CVD remedies demonstrated to exist.[239]

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[235] *See Gray*, 467 U.S. at 730 ("{R}etroactive legislation does have to meet a burden not faced by legislation that has only future effects,….{t}he retroactive aspects of legislation, as well as the prospective aspects, must meet the test of due process, and the justifications for the latter may not suffice for the former. But that burden is met simply by showing that the retroactive application of the legislation is itself justified by a rational legislative purpose.") (internal quotation marks and citations omitted); *Gen. Motors Corp. v. Romein*, 503 U.S. 181, 191 (1992) (*Romein*) ("Retroactive legislation presents problems of unfairness that are more serious than those posed by prospective legislation, because it can deprive citizens of legitimate expectations and upset settled transactions. For this reason, 'the retroactive aspects of {economic} legislation, as well as the prospective aspects, must meet the test of due process': a legitimate legislative purpose furthered by rational means.") (quoting *Gray*, 467 U.S. at 730).
[236] *See Guangdong Wireking CIT 2013*, 900 F. Supp. 2d at 1374; *see also Id.* at 1373 (citing *Romein*, 503 U.S. at 191 (upholding retroactive legislation that corrected unexpected results of judicial opinion)).
[237] *See GPX CIT 2013*, 893 F. Supp. 2d at 1310-11, 1334 (finding that Public Law 112-99 "does not run afoul of the *Ex Post Facto* Clause because it is remedial and note penal in nature."); *Guangdong Wireking CIT 2013*, 900 F. Supp. 2d at 1370-71.
[238] *Guangdong Wireking CAFC 2014*, 745 F.3d at 1207.
[239] *See, e.g.,* 158 Cong. Rec. H1167 (daily ed. March 6, 2012) (statement of Representative Camp).

Section 1 of Public Law 112-99 makes clear that the CVD law applies to products from NME countries and, therefore, applies in this review. The Federal Circuit stated that the "clear implication of this new provision is that the pre-existing statute did not contain a prohibition against double counting."[240] The Federal Circuit concluded "that the statute prior to the enactment of the new legislation did not impose a restriction on Commerce's imposition of countervailing duties on goods imported by {sic} NME countries to account for double counting."[241]

As such, the law provides for a process by which an adjustment can be made for any alleged double remedy, and is clear that any such adjustment must be made in the context of the AD calculation and not the CVD calculation.[242] Thus, if parties wish to request an adjustment for any alleged double counting, they may request an AD review, and then submit a request within that proceeding. Accordingly, there is no basis for the Department to adjust the final calculated CVD rates in this review, and we have not done so.

Comment 2: Countervailing Subsidies Received Prior to January 1, 2005

GOC's Affirmative Arguments:

- The Department may not countervail non-recurring subsidies received prior to January 1, 2005, because, based on its long-standing practice, the Department stated that it would not countervail subsidies prior to a change in the PRC's status as an NME.[243]
- Public Law 112-99 indicates that the Department should not countervail subsidies prior to 2005. Section 1 provides that countervailing duties are not required if the Department is "unable to identify and measures subsidies provided by the government of the nonmarket economy country or a public entity within the territory of the nonmarket economy country because the economy of that country is essentially comprised of a single entity."[244]
- Only as of January 1, 2005, did the Department "believe that it is possible to determine whether the PRC Government has bestowed a benefit upon a Chinese producer (*i.e.*, the subsidy can be identified and measured) and whether any such benefit is specific."[245]
- The GOC asserts that the Department effectively "graduated" the PRC to market economy status when it made its decision to apply the CVD law in *CFS from the PRC*, which covered an investigation period beginning January 1, 2005.

Petitioner's Rebuttal Arguments:

- The use of December 11, 2001, the date on which the PRC became a member of the WTO, does not unfairly subject PRC exports to the CVD law with respect to subsidies

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[240] *See GPX CAFC 2012*, 678 F.3d at 1312.
[241] *Id*.
[242] *See* section 777A(f)(1) of the Act.
[243] *See Sulfanilic Acid from Hungary: Final Determination*, 67 FR 60221 (September 25, 2002) (*Sulfanilic Acid from Hungary*), and accompanying IDM at 8 and14; *see also Preamble*, 63 FR at 65361; and *GPX Int'l Tire Corp. v. United States*, 645 F.Supp.2d 1231, 1247 (CIT 2009) (*GPX CIT 2009*).
[244] 19 U.S.C. § 1671(f)(2).
[245] *See* Department Memorandum regarding "Countervailing Duty Investigation of Coated Free Sheet Paper from the People's Republic of China – Whether the Analytical Elements of the Georgetown Steel Opinion are Applicable to China's Present-Day Economy" (March 29, 2007) (Georgetown Steel Memorandum) at 10.

received "prior to when China had a reasonable expectation that the CVD law applied,"[246] nor is it contrary to Department practice.

- Petitioner asserts that the GOC was on notice well in advance of the GOC's proposed 2005 date that exports could be subject to the CVD law. The Act's unambiguous language requires the Department to countervail illegal subsidies where they exist, regardless of an entity's political or economic status.[247]
- Additionally, the GOC's WTO accession documents provided notice that the GOC could be held accountable for prior subsidies. For example, by ratifying Article 10.1 of its Protocol of Accession, the GOC agreed to "notify the WTO of any subsidy within the meaning of Article 1 of the SCM Agreement, granted or maintained in its territory, organized by specific product, including those subsidies defined in Article 3 of the SCM Agreement."[248]
- Further, the SCM Agreement states that, in calculating the total *ad valorem* subsidization pursuant to Article 6 of the agreement, "{s}ubsidies granted prior to the date of entry into force of the WTO Agreement {*i.e.*, April 15, 1994}, the benefits of which are allocated to future production, shall be included in the overall rate of subsidization."[249]
- Petitioner also discusses that the GOC's reliance on Department precedent to support a January 1, 2005, cutoff date is misplaced. Subsequent to *Sulfanilic Acid from Hungary*, the Department changed its practice, as it is legally authorized to do.[250] Specifically, the Department clarified that the PRC's economy, in contrast to Soviet-style NMEs, includes market mechanisms which enable the Department to identify and measure subsidies.[251]
- To the GOC's claims that the PRC did not "graduate" to market economy status until January 1, 2005, Petitioner notes that the Department explained in the Georgetown Steel Memorandum that changes in the PRC economy began to occur in the 1990s, prompting the Department's change of approach with regard to the PRC and CVD law.[252]

Department's Position: Since *CFS from the PRC*, the Department has consistently applied December 11, 2001, the date of the PRC's WTO accession, as the cut-off date for measuring subsidies in the PRC. The Department addressed the GOC's arguments raised in this review several times in the past.[253] For example, in *Steel Wheels from the PRC*, we responded to these same arguments as follows:

> We have selected December 11, 2001, because of the reforms in the PRC's economy in the years leading up to that country's WTO accession and the linkage between those reforms and the PRC's WTO membership. {*See Report of the Working Party on the Accession of China*, WT/ACC/CHN/49 (October 1, 2001).} The changes in the PRC's

[246] *See* GOC Case Brief at 32.
[247] *See* section 701(a) of the Act.
[248] *See Protocol of the People's Republic of China to the WTO*, WT/L/432 (November 10, 2001), at Article 10.1.
[249] *See* SCM Agreement, Annex IV at para. 7.
[250] *See CFS from the PRC*, and accompanying IDM at 33; *see also Rust v. Sullivan*, 500 U.S. 173, 186-87 (1991).
[251] *See CFS from the PRC*, and accompanying IDM at Comment 3.
[252] *See* Georgetown Steel Memorandum.
[253] *See, e.g., Solar Cells from the PRC*, and accompanying IDM at Comment 1; and *Certain Steel Wheels from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 77 FR 17017 (March 23, 2012) (*Steel Wheels from the PRC*), and accompanying IDM at Comment 4.

economy that were brought about by those reforms permit the Department to determine whether countervailable subsidies were being bestowed on Chinese producers. For example, the GOC eliminated price controls on most products; since the 1990s, the GOC has allowed the development of a private industrial sector; and in 1997, the GOC abolished the mandatory credit plan. Additionally, the PRC's Accession Protocol contemplates application of the CVD law. While the Accession Protocol, in itself, would not preclude application of the CVD law prior to the date of accession, the Protocol's language in Article 15(b) regarding benchmarks for measuring subsidies and the PRC's assumption of obligations with respect to subsidies provide support for the notion that the PRC economy had reached the stage where subsidies and disciplines on subsidies (*e.g.*, CVDs) were meaningful.

We disagree with the notion that adoption of the December 11, 2001, date is unfair because parties did not have adequate notice that the CVD law would be applied to the PRC prior to January 1, 2005 (the start of the POI {period of investigation} in the investigation of *CFS from the PRC*). Initiation of CVD investigations against imports from the PRC and possible imposition of duties was not a settled matter even before the December 11, 2001, date. For example, in 1992, the Department initiated a CVD investigation on lug nuts from the PRC. *See Initiation of Countervailing Duty Investigation: Chrome-Plated Lug Nuts and Wheel Locks from the People's Republic of China*, 57 FR 877 (January 9, 1992). In 2000, Congress passed PNTR Legislation (as discussed in Comment 1) which authorized funding for the Department to monitor "compliance by the People's Republic of China with its commitments under the WTO, assisting United States negotiators with the ongoing negotiations in the WTO, and defending United States antidumping and countervailing duty measures with respect to products of the People's Republic of China." {*See* 22 U.S.C. § 6943(a)(1).} Thus, the GOC and PRC importers were on notice that CVDs were possible well before January 1, 2005.

We further disagree that *Sulfanilic Acid from Hungary* is controlling in this case. The Department has revisited its original decision not to apply the CVD law to NMEs and has determined that it will reexamine the economic and reform situation of the NME on a case-by-case basis to determine whether the Department can identify subsidies in that country.[254]

For the same reasons, we continue to find that December 11, 2001, not January 1, 2005, is the appropriate cut-off date for measuring subsidies in the PRC.

Comment 3: Whether There Is a Link Between Policy Lending and Respondents' Bank Loans

GOC's Affirmative Arguments:

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

[254] *See Steel Wheels from the PRC*, and accompanying IDM at Comment 4 (original citations included).

- The GOC placed on the record the *Interim Measures*, which establish rules relating to the issuance of working capital loans.[255] The *Interim Measures* provide that industrial policy is not a consideration for working capital loans made to respondents in this review.[256]
- The GOC disagrees with the Department's assessment that the *Interim Measures* are consistent with the *Banking Law*. The GOC contends that Article 34 of the *Banking Law* does not provide any mandatory action for banks to undertake, but merely provides for banks to carry out their business "with the spirit of the state industrial policies."[257]
- Because the Department fails to establish there is an industrial policy that encourages the aluminum extrusions industry through preferential lending, it should reconsider its finding that there is a link between policy lending and respondents' bank loans.

Petitioner's Rebuttal Arguments:

- Record evidence demonstrates that the GOC engages in preferential policy lending and directs financing to the aluminum extrusions industry, including subject producers.
- When determining whether a program of policy lending exists, "the Department looks to whether government plans or other policy directives lay out objectives or goals for developing the industry and call for lending to support objectives or goals."[258]
- In the investigation, first administrative review, and preliminary results of this review, the Department found the GOC has a stated policy of directing financial support, including credits, towards the domestic aluminum industry.[259] The policy continues to be in effect during the POR, and there was no effort by the GOC or any respondent to dispute the policy's continued existence.
- Further, Department properly found that the *Interim Measures* alone "do not constitute evidence that the GOC ceased policy lending to the aluminum extrusions industry."[260]

Department's Position: With a loan program, the Department looks to whether government plans or other policy directives lay out objectives or goals for developing the industry and call for lending to support objectives or goals. We find that this standard was satisfied in the underlying investigation[261] and first administrative review,[262] and that no new evidence or arguments were presented in this review to warrant a reconsideration of the Department's finding that there are specific government directives for developing and supporting the aluminum extrusions industry.

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[255] *See* GOC Initial Response (December 16, 2013), at Exhibit A-1-2.
[256] *Id.*, at 6-7.
[257] *Id*., at A-1-8 at Article 34.
[258] *See, e.g.*, *Aluminum Extrusions from the PRC Investigation*, and accompanying IDM at Comment 28; and *Steel Wheels from the PRC*, and accompanying IDM at Comment 22.
[259] *See Aluminum Extrusions from the PRC First Review*, and accompanying IDM at 19-20; and *Preliminary Results*, and accompanying IDM at 24-25.
[260] *See Preliminary Results*, and accompanying IDM at 25.
[261] *See Aluminum Extrusions from the PRC Investigation*, and accompanying IDM at "Policy Loans to Chinese Aluminum Extrusion Producers" and Comment 28.
[262] *See Aluminum Extrusions from the PRC First Review*, and accompanying IDM at 19-20

As fully discussed in *Aluminium Extrusions from the PRC Investigation*,[263] we determined that the GOC has placed an emphasis on the development of high-end, value-added aluminum products. The GOC's support of the subject industry is evident in numerous official policies, plans, and directives, such as (1) the *Encouraged Industries Catalogue*, which identifies products, technologies, and infrastructure facilities for business promotion, including aluminum extrusion products under the non-ferrous metals heading; (2) the *Industrial Catalogue*, which outlines the projects deemed "encouraged," "restricted," and "eliminated," and lists aluminum as an "encouraged project," eligible for several support options, including financing under *Decision 40*; (3) the *Nonferrous Metal Plan*, which references financing to the aluminum extrusions industry under the heading, "Continue to Implement the Financing Policy of 'Encouragement and Discouragement;'" and (4) the *Aluminum Industry Guidelines*, which outline support for producers of aluminum extrusions, including lending activities.[264] There is no evidence or argument on the record of the instant review that the official policies, plans, and directives examined in the investigation were no longer in effect during the POR.

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

Second, the GOC reported that the *Interim Measures* are fully consistent with Article 34 of the *Banking Law* and that Article 34 "does not provide any mandatory action for banks to undertake, but merely provides for banks to carry out their business 'with the spirit of the state industrial policies.'"[265] However, contrary to the GOC's claim, which is not supported by any new information submitted on the record, we previously determined that under Article 34 of the *Banking Law* banks should carry out their loan business "under the guidance of the state industrial policies."[266] Thus, because the *Interim Measures* are "fully consistent" with the *Banking Law* and Article 34 of the *Banking Law* remains in effect, we continue to determine that the *Interim Measures* do not constitute evidence that the GOC has ceased policy lending to the aluminum extrusions industry. As such, for these final results, we continue to find that the loans provided to aluminum extrusion producers were made pursuant to government directive.

Comment 4: Whether PRC Commercial Banks Are Government Authorities

GOC Affirmative Arguments:

- The Department provides no independent analysis of whether PRC commercial banks are government authorities, and simply references the analysis from *CFS from the PRC*.[267]
- There is a seven-year gap between the POI in *CFS from the PRC* and this review's POR.

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[263] *See Aluminum Extrusions from the PRC Investigation*, and accompanying IDM at "Policy Loans to Chinese Aluminum Extrusion Producers" and Comment 28.
[264] *Id*.
[265] *See* GOC Case Brief at 29.
[266] *See Aluminum Extrusions from the PRC Investigation*, and accompanying IDM at Comment 28.
[267] *See Preliminary Results*, and accompanying IDM at 17, citing *CFS from the PRC*, and accompanying IDM at Comment 10.

- The Department's analysis fails to comply with the WTO Appellate Body's findings that incorporating by reference findings from one determination into another determination will not suffice as an adequate explanation unless there is close temporal overlap.[268]
- Commercial banks in the PRC operate on commercial principles, even where there is some state ownership of the banks. The record is devoid of evidence that PRC banks had their conduct meaningfully controlled by the GOC, or that could meet the definition of government authorities within the meaning of section 771(5)(B) of the Act or "public body" in the SCM Agreement.

Petitioner's Rebuttal Arguments:

- Under U.S. CVD law, it is well-established that PRC government-owned banks are considered to be public entities or government authorities.[269]
- The GOC's objections are not predicated upon any factual record, but upon the claim that the basis for such a conclusion is dated evidence from *CFS from the PRC*.
- Subsequent to the *US-CVD I WTO AB Decision*,[270] the Department continued to find that record evidence supports the long-established existence of government-controlled or government-influenced SOCBs.[271]
- In this review, there is no evidence to justify the reversal of the Department's finding on this issue and, therefore, the Department should continue to follow its practice of considering PRC banks to be government authorities under the CVD law.

Department's Position: The Department has repeatedly affirmed its finding in *CFS from the PRC* that the PRC's banking sector does not operate on a commercial basis and is subject to significant distortions, primarily arising out of the continued dominant role of the government in the financial system and the government's use of banks to effectuate policy objectives.[272] Because PRC banks reflect significant government intervention, they are considered to be SOCBs.[273]

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

> . . . information on the record indicates that the PRC's banking system remains under State control and continues to suffer from the legacies associated with the longstanding pursuit of government policy objectives. These factors undermine the SOCBs ability to act on a commercial basis and allow for continued government control resulting in the allocation of credit in accordance with government policies. Therefore, treatment of SOCBs in China as commercial banks is not warranted in this case.[274]

[268] *See US-CVD I WTO AB Decision* at para. 354.
[269] *See, e.g., Solar Cells from the PRC*, and accompanying IDM at Comment 13; and *Aluminum Extrusions from the PRC Investigation,* and accompanying IDM at Comment 27.
[270] *See US-CVD I WTO AB Decision* at para. 354.
[271] *See Wind Towers from the PRC*, and accompanying IDM at Comment 4.
[272] *Id.*, citing *CFS from the PRC*, and accompanying IDM at Comment 10; *see also* China-NME Status Memoranda (discussing the status of the Chinese commercial banking sector).
[273] *Id*.
[274] *See CFS from the PRC,* and accompanying IDM at Comment 10

In order to revisit the determination in *CFS from the PRC*, there must be evidence warranting reconsideration. However, there is no such evidence on the record of this administrative review. While the GOC has made similar claims in other recent PRC CVD proceedings,[275] it has never provided evidence suggesting that even the most basic facts of the *CFS from the PRC* analysis have changed. For example, in *OCTG from the PRC*, we noted:

> {T}he GOC has failed to provide evidence that the government has divested itself of ownership in Chinese banks. The GOC has failed to address the issue of real risk assessment within the Chinese banking sector. The GOC has failed to address interest rate and deposit rate ceilings and floors set by the government. The GOC has failed to address both *de jure* and *de facto* reforms within the Chinese banking sector. The GOC has failed to address the elimination of policy-based lending within the Chinese banking sector. Therefore, the GOC has failed to provide the information that would warrant a reconsideration of the Department's determination in {the *CFS from the PRC* investigation}.[276]

Similarly, the GOC did not provide a factual basis for reconsidering the *CFS from the PRC* decision in this instant review. In its case brief, the GOC fails to cite to any record information to support its argument and simply states "the record is devoid of evidence that PRC banks had their conduct meaningfully controlled by the GOC, or that could meet the definition of government 'authorities' within the meaning of {section 771(5)(B) of the Act} or 'public body'" in the SCM Agreement.[277]

Regarding the GOC's statements concerning the *US-CVD I WTO AB Decision*, we note that the Appellate Body in that dispute affirmed the Department's finding based on a previous proceeding that SOCBs are "public bodies" or "authorities," as both determinations concerned the nature of SOCBs in the PRC.[278] The Department's determination in this review that the PRC banks at issue are "authorities" is within the meaning of section 771(5)(B) of the Act and in accordance with U.S. law and WTO obligations. For these reasons, we continue to find that SOCBs are "authorities" capable of providing financial contributions to the respondents.

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[275] *See, e.g.*, *Aluminum Extrusions from the PRC First Review*, and accompanying IDM at Comment 7; *Wind Towers from the PRC*, and accompanying IDM at Comment 4; and *Oil Country Tubular Goods from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination*, 74 FR 64045 (December 7, 2009) (*OCTG from the PRC)*, and accompanying IDM at Comment 20.
[276] *See OCTG from the PRC*, and accompanying IDM at Comment 20.
[277] *See* GOC Case Brief at 31.
[278] *See US-CVD I WTO AB Decision* at para. 34.

Comment 5: Computation of Benchmark Loan Interest Rate

GOC's Affirmative Arguments:

- The Department's short-term interest rate benchmark computations, which rely on a regression analysis, are fundamentally flawed.[279]
- The Department relies upon an arbitrary collection of IFS published rates that are in many cases not actually short-term rates (or rates for business loans), yet there is no adjustment for this.[280]
- The Department arbitrarily excludes negative inflation-adjusted rates from the computation, and uses an invalid regression analysis to determine a short-term interest rate for the PRC based on a composite governance indicator factor.[281]
- The Department arbitrarily calculates an adjustment spread or factor between short-and long-term rates using U.S. dollar "BB" bond rates.[282]
- For the final results, the Department should instead use the actual interest rates on comparable bank loans in the PRC, as the regulations require.

Petitioner's Rebuttal Arguments:

- The Department properly determined that loans provided by PRC banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market.[283]
- Where the Department determines that interest rates in a country are distorted, "such interest rates are unusable to measure the benefit from government loans,"[284] because loan benchmarks must be market-based. Moreover, it is not possible to adjust domestic benchmarks to account for market distortions, as any attempt to do so would be a "highly complex, speculative and impracticable exercise."[285]
- The Department has no choice but to use an external benchmark interest rate to calculate the benefit conferred under the GOC's preferential policy lending program. This approach is consistent with the Department's practice of using external market-based benchmarks where a domestic benchmark does not provide an appropriate market-based price,[286] including when measuring the benefits received from preferential policy lending.[287]

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[279] *See* GOC Case Brief at 31-32.
[280] *Id.*
[281] *Id.*
[282] *Id.*
[283] *See, e.g.*, *Preliminary Results*, and accompanying IDM at 13-14; and *Steel Wheels from the PRC*, and accompanying IDM at Comment 23.
[284] *See, e.g.*, *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances*, 73 FR 40480 (July 15, 2008) *(Tires from the PRC)*, and accompanying IDM at Comment E.3; and *Steel Wheels from the PRC*, and accompanying IDM at Comment 23.
[285] *See, e.g.*, *CFS from the PRC*, and accompanying IDM at Comment 10; and *Solar Cells from the PRC*, and accompanying IDM at Comment 16.
[286] *See, e.g.*, *Solar Cells from the PRC*, and accompanying IDM at Comment 15.
[287] *See, e.g.*, *Tires from the PRC*, and accompanying IDM at Comment E.3; and *Steel Wheels from the PRC*, and accompanying IDM at Comment 23.

Department's Position: The GOC raised the same arguments in *Aluminum Extrusions from the PRC First Review*, and for the reasons explained there, we continue to disagree with the GOC.[288] First, the regression-based methodology to calculate a short-term benchmark interest rate is not arbitrary. The benchmark interest rate is based on several variables, the inflation-adjusted interest rates of countries with per capita gross national incomes similar to that of the PRC as well as variables that take into account the quality of a country's institutions (as reflected by World Bank governance indicators). While the Department's regulations do not explicitly address the use of governance factors for making comparisons, as with the inflation adjustment, they facilitate cross-country comparisons because they incorporate other important factors that can influence interest rate formation. Thus, the inclusion of the governance factors are consistent with the intent of 19 CFR 351.505(a)(2)(i).

Further, banks and other lenders in each of the countries included in the constructed benchmark will take into account various factors such as the quality of governance in a country, political stability, government involvement, and interference in the respective economies in assessing risk associated with lending to businesses in a country. To the extent that there are differences across countries in these factors (in such areas as political stability, government effectiveness, and rule of law) they will give rise to differences in perceived risk associated with the particular country, which will be reflected in a country's overall level of interest rates, *i.e.* all else equal, a company in a highly unstable country will pay a higher interest rate than a similar company in a relatively stable country. Further, our decision to incorporate governance factors into our external loan benchmark calculation methodology is consistent with the Department's long-standing practice.[289]

The short-term benchmark interest rate is a robust computation based on several variables, which include the inflation-adjusted interest rates of countries with per capita gross national incomes similar to that of the PRC as well as variables that take into account the quality of a country's institutions (as reflected by World Bank governance indicators), as fully explained in the "Loan Benchmark Rates" section, above.

To the issue of characterizing some IFS lending rates as short-term rates, we agree that certain of the interest rates used in the regression analysis may reflect maturities of longer than one-year.[290] To resolve this issue, we decided to continue to use the same interest rate data and regression-based benchmark rate methodology, but apply it to loans with terms of two years or less.[291]

Concerning the exclusion of inflation-adjusted, negative interest rates from the short-term benchmark, we explained that negative-adjusted rates are not common, tend to be anomalous,

[288] *See Aluminum Extrusions from the PRC First Review*, and accompanying IDM at Comment 8.
[289] *See, e.g., Tires from the PRC* and accompanying IDM at Comment E.4.
[290] *See, e.g., Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 70961 (November 24, 2008), and accompanying IDM at Comment 12; *Light-Walled Pipe from the PRC*, and accompanying IDM at "Benchmark and Discount Rates;" and *Aluminum Extrusions from the PRC Investigation*, and accompanying IDM at Comment 29.
[291] *See Aluminum Extrusions from the PRC Investigation*, and accompanying IDM at Comment 29.

and, moreover, are not sustainable commercially.[292] As such, we exclude negative real interest rates in calculating our regression-based benchmark rates. No new evidence or argument was presented in this review to warrant a change in the Department's approach to exclude negative interest rates.

For the same reasons outlined in prior cases, we continue to disagree with the GOC's objection to the derivation of the long-term benchmark, which consists of the short-term benchmark plus a spread that is a function of U.S. dollar "BB" bond rates.[293] As explained, 19 CFR 351.505(a)(3)(iii) requires the Department to use ratings of AAA to BAA and CAA to C- in deriving a probability of default in the stated formula. However, there is no statutory or regulatory language requiring that these rates apply to the calculation of long-term rates under 19 CFR 351.505(a)(3)(i) or (ii). Moreover, the transitional nature of PRC financial accounting standards and practices, as well as the PRC's underdeveloped credit rating capacity, suggests that a company-specific mark-up (to account for investment risk) should not be the general rule. The Department therefore determined that a uniform rate would be appropriate, which would reflect average investment risk in the PRC associated with companies not found uncreditworthy. We received no other objective basis upon which to determine this average investment risk or a basis to presume it is only for companies with an investment grade rating. We therefore selected the highest non-investment rate. As no new arguments were presented, we continue to use the BB corporate bond rate for these final results in any long-term loan calculations or discount rate calculations.

Lastly, we disagree with the GOC's argument that the Department should use actual PRC interest rates from comparable bank loans in the PRC as the basis for the benchmark interest rates. As discussed above in Comment 4 and the "Loan Benchmark Rates" section, we find that the GOC's involvement in the banking sector results in significant distortions that render the lending rates in the PRC unsuitable as market benchmarks. We also find that it is not possible to adjust for these market distortions given that such an endeavor would be a highly complex, speculative, and impracticable exercise.[294] Further, no new information was submitted on the record to warrant a reconsideration of the use of an external benchmark to measure the benefit of loans found to be countervailable. As such, we continue to find that it is appropriate to apply an external benchmark with regard to GOC policy lending programs.

Comment 6: Whether State Ownership Makes an Entity a Government Authority

GOC's Affirmative Arguments:

- The Department's preliminary results assume that where primary aluminum suppliers are majority-owned by the government, those suppliers are "authorities" within the meaning

[292] *See, e.g.*, *OCTG from the PRC*, and accompanying IDM at Comment 25; *Steel Wheels from the PRC*, and accompanying IDM at Comment 24; and *Aluminum Extrusions from the PRC Investigation*, and accompanying IDM at Comment 29.
[293] *See, e.g.*, *OCTG from the PRC*, and accompanying IDM at Comment 27; and *Aluminum Extrusions from the PRC Investigation*, and accompanying IDM at Comment 30.
[294] *See CFS from the PRC*, and accompanying IDM at Comment 10; *see also* China-NME Status Memoranda (discussing the status of the Chinese commercial banking sector).

of section 771(5)(B) of the Act.[295] Chinese SOEs are not government authorities within the meaning of section 771(5)(B) of the Act. The law applicable to SOEs provides for a "separation of government bodies and enterprises, separation of the administrative functions of public affairs and the functions of state-owned assets contributor, and non-intervention in the legitimate and independent business operations of enterprises."[296] Further, owners of SOEs are to maximize the profits and act in the best interests of the company.[297] As such, the GOC argues that it is contrary to the factual record to assume that SOEs are "government authorities."

- Further, the Department's assumption that ownership alone makes an entity a government authority fails to comply with *US-CVD I WTO AB Decision*, which states "the mere fact that a government is the majority shareholder of an entity does not demonstrate that the government exercises meaningful control over the conduct of that entity, much less that the government has bestowed it with government authority."[298]

Petitioner's Rebuttal Arguments:

- The GOC's reliance on WTO case law is misplaced.
- The GOC failed to supply the ownership information necessary for the Department to conduct the analysis that the GOC claims it was required to do.
- The Department has consistently found that, as an "as applied challenge," the applicability of the *US-CVD I WTO AB Decision* is limited to the specific CVD proceedings involved[299] and, therefore, does not apply in this case.
- Moreover, WTO Panel and Appellate Body reports have no effect on U.S. trade remedy proceedings "unless and until such a {report} has been adopted pursuant to the specified statutory scheme."[300]
- With respect to the role of SOEs and whether they can act as government authorities, the GOC attempts to disclaim the motivations of these entities by claiming that their purpose is to maximize returns for their owners. However, as the Department has repeatedly found, maximizing returns does not necessarily indicate that a company is independent

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[295] *See Preliminary Results*, and accompanying IDM at 21 (noting the Department's policy of finding that the share of suppliers which the Department considers are authorities "is equal to the percentage of production accounted for by state-owned enterprises (SOEs) and collectives").

[296] *See* GOC Initial Response (December 16, 2013), at Exhibit E-1-19, Article 6.

[297] *Id.*, at page 37 and Exhibit A-1-1.

[298] *See US-CVD I WTO AB Decision* at para. 318. *See also United States – Countervailing Duty Measures on Certain Products from China,* WT/DS437/R (July 14, 2014) (Panel Report) ("the Panel finds that … the United States acted inconsistently with Article 1.1(a)(1) of the SCM Agreement when the USDOC found that SOEs were public bodies bases solely on the grounds that these enterprises were (majority) owned, or otherwise controlled by the Government of China.").

[299] *See, e.g., Wind Towers from the PRC,* and accompanying IDM at Comment 11; and *Kitchen Shelving and Racks from the PRC Review 2009,* and accompanying IDM at Comment 4.

[300] *See, e.g., Corus Staal BV v. Department of Commerce*, 395 F.3d 1343, 1347-1349 (Fed. Cir. 2005); *Corus Staal BV v. United States,* 502 F.3d 1370, 1375 (Fed. Cir. 2007); and *NSK Ltd. v. United States,* 510 F.3d 1375, 1380 (Fed. Cir. 2007).

from the government.[301] Nor is the goal of maximizing returns incongruous of the goals and desires of the government.[302]

Department's Position: We continue to find that certain primary aluminum producers, which are majority-owned by the GOC, are "authorities." However, contrary to the GOC's arguments, our finding on this point is not based solely on state ownership. Rather, as explained in the Public Bodies Memorandum, we found that majority state-owned enterprises in the PRC possess, exercise, or are vested with governmental authority.[303] Our finding is based on the fact that the GOC exercises meaningful control over these entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector.

Therefore, we determine that these entities are "authorities" within the meaning of section 771(5)(B) of the Act and that the respondent companies received a financial contribution from them in the form of the provision of a good, pursuant to section 771(5)(D)(iii) of the Act. Further, in the initial questionnaire, we informed the GOC that if it wanted to argue that any majority government-owned companies that produced the primary aluminum purchased by the respondents are not "authorities," then the GOC needed to submit for each company the information requested in the *Information Regarding Input Producers in the PRC Appendi*x.[304] As fully discussed above in "*GOC –Whether Primary Aluminum Producers are Authorities*," the GOC did not provide a complete response to the appendix for the producers of the primary aluminum.

Lastly, *U.S.-CVDs I* is a decision that involved an "as applied" challenge to the CVD determinations at issue in that case. The decisions of the panel and the appellate body regarding whether a producer is an authority (a "public body" within the WTO context) were limited to those four investigations and their respective records.[305] Those decisions do not apply to this proceeding.

Comment 7: Whether CCP Affiliations/Activities by Company Officials Make the Company a Government Authority

GOC's Affirmative Arguments:

- The CCP is a political party and not a government authority, or part of the government. Members of the CCP do not legally or factually have authority to direct business operations.[306] The CCP, CCP Congress, CCP Committees, CCP Standing Committees,

[301] *See, e.g., Wind Towers from the PRC*, and accompanying IDM at Comment 5; *Kitchen Shelving and Racks from the PRC*, and accompanying IDM at Comment 16; and *Aluminum Extrusions from the PRC First Review*, and accompanying IDM at Comment 9.
[302] *Id*.
[303] *See* Public Bodies Memorandum at 35-36.
[304] *See* Letter from the Department to the GOC regarding "Initial Questionnaire" (October 18, 2013), at Section II "Provision of Primary Aluminum for LTAR."
[305] *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 (August 30, 2012).
[306] *See* GOC Supplemental Response (April 27, 2014), at 24.

People's Congresses, Standing Committees of People's Congresses, and Chinese People's Political Consultative Conferences are not part of the GOC.[307] Similarly, village committees are not government authorities because there is no government at the village level.[308]

- The *Civil Servant Law* prohibits the owners, members of the board of directors, and managers (collectively, senior company officials) of primary aluminum producers from being GOC or CCP officials.[309]
- The GOC notes the Department found that the *Civil Servant Law* does not apply to CCP officials because, in a prior proceeding, "the GOC stated that Article 53 of the *Law on Civil Servants* did not pertain to CCP officials."[310] The GOC asserts that the quote is a misstatement. As evidenced on the record of this review, the CCP has modeled its personnel management on the *Civil Servant Law*, including the law's restriction on employment in private enterprises. [311]
- The GOC also notes that the Department has previously stated that CCP officials "can, in fact, serve as owners, members of the board of directors, or senior managers of companies," with reference to *PC Strand from the PRC*.[312] However, the GOC states that the finding in *PC Strand from the PRC* concerned membership in the CCP and National Party Conference (NPC).[313] Specifically, in *PC Strand from the PRC*, the Department found that membership in the CCP or NPC was "insufficient … to conclude that {sic} the relationships between individual owners and the GOC or CCP evince government control."[314] As such, the GOC asserts that *PC Strand from the PRC* does not support the proposition that CCP officials are permitted to serve as senior company officials.
- The GOC adds that the *Company Law* provides that shareholders exercise ultimate power over the company and that the board of directors and managers of companies are ultimately responsible to shareholders.[315] Additionally, CCP committees have no decision-making authority in enterprises.[316]
- The GOC notes that the Department previously found that the *Company Law* demonstrates the absence of state control over privately-owned PRC companies[317] and,

[307] *Id*.
[308] *Id*.
[309] *Id*., at Exhibit 1-5, containing the *Civil Servant Law*, which provides that "{a} civil servant shall observe disciplines and shall not undertake any of the following acts: (14) undertaking or participating in any profit-making activity or holding a concurrent post in an enterprise or any other profit-making organization."
[310] *See* Department Memorandum regarding "Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Post-Preliminary Analysis and Calculation Memorandum" (August 13, 2010), at 72.
[311] *See* GOC Supplemental Response (April 27, 2014), at 24.
[312] *See PC Strand from the PRC*, and accompanying IDM at Comment 8.
[313] *Id*.
[314] *Id*.
[315] *See* GOC Initial Response (December 16, 2013), at Exhibit A-1-1, containing the *Company Law* (*see* Articles 37, 47, 50, and 148).
[316] *Id*., at 10.
[317] *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 Order*, 75 FR 8301 (February 24, 2010) (*Steel Plate from the PRC AD Review*), and accompanying IDM at Comment 2 ("we have analyzed the *Company Law* and have found it to establish sufficiently an absence of *de jure* control over privately-owned companies in the PRC.").

thus, the Department should find that CCP officials and committees have no decision-making authority in enterprises.

- Additionally, the GOC contends that the Department provides no evidence to support its assertion that CCP affiliations or activities are relevant to the "government authorities" analysis. The GOC states that in the *Preliminary Results,* the Department simply cited to the Public Bodies Memorandum.[318] However, the GOC claims the Public Bodies Memorandum provides little analysis as to the basis of the Department's conclusion that CCP officials or committees influence non-SOEs. The GOC adds that the Public Bodies Memorandum misstates Chinese law. The 2006 *Company Law* only allows that companies establish a branch if the enterprise employs three CCP members or more.[319] Thus, the GOC asserts that it is incorrect to state that all enterprises are required to establish CCP committees.
- Lastly, the GOC notes that, in the Public Bodies Memorandum, the Department concluded that it did not know the role of CCP committees in the affairs of non-SOEs.[320]

Petitioner's Rebuttal Arguments:

- Maximizing returns does not necessarily indicate that a company is independent from the government.[321] Nor is the goal of maximizing returns incongruous of the goals and desires of the government.[322]
- In this review, the GOC did not placed any new information on the record or persuasive argument that undermines the Department's prior findings. The GOC simply presented arguments that were previously considered and rejected by the Department.[323]

Department's Position: As explained in the *Preliminary Results*, in order to do a complete analysis of whether the primary aluminum producers are "authorities" within the meaning of section 771(5)(B) of the Act, we sought information related to whether senior company officials were government or CCP officials and to the role of any CCP committee within the companies.[324] Specifically, to determine the extent to which senior company officials of a producer are CCP officials or otherwise influenced by certain entities, the Department inquired into the means by which the GOC may exercise control over company operations and other

[318] *See Preliminary Results*, and accompanying IDM at footnote 98.
[319] *See* GOC Initial Response (December 16, 2013), at Exhibit A-1-1, Article 199.
[320] *See* Public Bodies Memorandum at 36 ("The role of this party presence is unclear: it may exert varying degrees of control in different circumstances.").
[321] *See, e.g., Wind Towers from the PRC*, and accompanying IDM at Comment 5; *Kitchen Shelving and Racks from the PRC*, and accompanying IDM at Comment 16; and *Aluminum Extrusions from the PRC First Review*, and accompanying IDM at Comment 9.
[322] *Id*.
[323] *See, e.g., Wind Towers from the PRC*, and accompanying IDM at Comment 12; *Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 75 FR 57444 (September 21, 2010) (*Seamless Pipe from the PRC*), and accompanying IDM at Comment 7; *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 29180 (June 19, 2009) (*Lawn Groomers from the PRC*), and accompanying IDM at Comment at 5; and *Aluminum Extrusions from the PRC First Review*, and accompanying IDM at 25 and Comment 10.
[324] *See Preliminary Results,* and accompanying IDM at "GOC – Whether Primary Aluminum Producers are 'Authorities.'"

CCP-related information.[325] We explained to the GOC our understanding of the CCP's involvement in the PRC's economic and political structure in the first administrative review as well as other PRC CVD proceedings,[326] and explained why we consider the information regarding the CCP's involvement in the PRC's economic and political structure to be relevant.[327] In this review, as discussed in "*GOC – Whether Primary Aluminum Producers are 'Authorities*,'" above, the GOC provided none of the requested information which we find relevant to our analysis. Because the GOC failed to provide the requested information, we cannot determine whether the GOC made a misstatement about the *Civil Servant Law* in a prior PRC CVD case.[328]

As noted, the Department considers information regarding the CCP's involvement in the PRC's economic and political structure to be essential because information on the record suggests that the CCP exerts significant control over activities in the PRC.[329] Specifically, the Department determined that "available information and record evidence indicates that the CCP meets the definition of the term 'government' for the limited purpose of applying the U.S. CVD law to China."[330] Further, publicly available information indicates that Chinese law requires the establishment of CCP organizations "in all companies, whether state, private, domestic, or foreign-invested" and that such organizations may wield a controlling influence in the company's affairs.[331] The GOC argues that the Department mischaracterized Chinese law as requiring such CCP organizations in *all* enterprises, rather than only those with three party members or more. While the Department notes that the qualifications to this requirement were not spelled out in the summary of the Public Bodies Memorandum or the CCP Memorandum, the section addressing this topic begins with the sentence: "In accordance with the *CCP Constitution*, all organizations, including private commercial enterprises, are required to establish "primary organizations of the party" (or "Party committees") if the firm employs at least three party members."[332]

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

> The party has cells in most big companies – in the private as well as the state-owned sector – complete with their own offices and files on employees. It controls the appointment of captains of industry and, in the SOEs, even corporate bodies. It holds meetings that shadow formal board meetings and

[325] *See* Letter from the Department to the GOC regarding "Initial Questionnaire" (October 18, 2013), at "Provision of Primary Aluminum for LTAR" and referenced "Input Producer Appendix."
[326] *See Aluminum Extrusions from the PRC First Review*, and accompanying IDM at Comment 10; *and Solar Cells from the PRC*, and accompanying IDM at Comment 6.
[327] *Id. See also* Public Bodies Memorandum and its attachment the CCP Memorandum.
[328] *See* GOC Case Brief at 14 (footnote 4).
[329] *See* Public Bodies Memorandum and its attachment the CCP Memorandum. *See also Aluminum Extrusions from the PRC First Review*, and accompanying IDM at Comment 10; and *Solar Cells from the PRC*, and accompanying IDM at Comment 6.
[330] *See* CCP Memorandum at 33.
[331] *See* Public Bodies Memorandum at 35-36, and sources cited therein.
[332] *Id*.

> often trump their decisions, particularly on staff appointments. It often gets involved in business planning and works with management to control pay.[333]

Further, the Public Bodies Memorandum notes that {a}ccording to the Xinhua News Agency, there were a total of "178,000 party organs in private firms in 2006, a rise of 79.8 percent over 2002."[334] While focusing on the instances in which the Department did not note that these CCP organizations are only required by the CCP Constitutions in enterprises with three or more party members, the GOC did not acknowledge or address record evidence that demonstrates that Primary Party Organizations are present in private enterprises in growing numbers and may be imbued with significant power according to expert, third-party sources. Even if the Department had failed to understand this qualification – which it did not – it was reasonable for the Department to inquire about the presence of such committees in the input producers at issue, regardless of whether there is such a committee in every single enterprise in the PRC.

Notably, the GOC simply failed to respond to the Department's questions and explain the purpose of these committees, which might shed light on the purpose, meaning and role of these committees in private enterprises as well as state-invested enterprises. Importantly, the GOC failed to address the substantive concerns raised by third-party experts cited in the Public Bodies Memorandum and the CCP Memorandum with anything other than unsupported assertions.

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

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

Lastly, the GOC argues that the Department previously found that the *Company Law* of the PRC as well as capital verification reports, articles of association, and business registrations demonstrate the absence of legal state control over privately-owned Chinese companies. However, this argument relies on the Department's findings with respect to separate rate applications in AD proceedings,[335] which involve a different test, standard, and focus with regard to "control." In the context of a separate rate analysis, the Department's focus is on the government's control over export activities. By contrast, the Department is concerned here with, among other things, whether the key positions within a company are filled by

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[333] *Id.*, at 35-36, citing to "A Choice of Models," *The Economist* (January 2012).
[334] *Id.*, at 36, citing to Brief Introduction of the Communist Party of China," ChinaToday.com, current as of April 2012 at http://www.chinatoday.com/org/cpc/.
[335] *See Steel Plate from the PRC AD Review*, and accompanying IDM at 11 and Comment 2.

personnel who are also CCP or GOC officials, and may exert meaningful control over the company's activities more broadly.

Comment 8: Whether the GOC Responded to the Best of Its Ability Regarding Ownership and CCP Affiliation for Primary Aluminum Producers and Provided Sufficient Evidence to Find that Some Producers Were Not Government Authorities

GOC's Affirmative Arguments:

- The Department's request for ownership and CCP information is intrusive and burdensome. The large number of suppliers made it impossible for the GOC to provide full responses to all questions asked by the Department. As such, the GOC responded to the Department's questionnaires to the best of its ability.
- The GOC states that not only did it report that senior company officials of suppliers are not eligible to be GOC or CCP officials, but it also provided additional information: (1) list of owners of primary aluminum suppliers with business registration forms; (2) information to show that some suppliers are not SOEs; and (3) articles of association, business registration form, and capital verification report for a supplier.[336] The GOC asserts that the Department has stated that such documents, which were submitted on the record of this review, can demonstrate whether there is state control of an entity.[337]
- As such, the application of AFA is not warranted because (1) all the information the Department requested is not necessary and there is enough information on the record to determine whether primary aluminum suppliers are government authorities, and (2) the GOC did not withhold information or impede the review as there is no information missing and no gap in the record.[338]
- However, if the Department continues to find that necessary information is missing, then it should only apply facts available to determine the proportion of primary aluminum suppliers that are government authorities. Specifically, the GOC suggests that the Department should reduce the proportion of primary aluminum supplied to the ratio of primary aluminum produced by SOEs in the original investigation.
- Additionally, the GOC asserts that entities with ownership by private enterprises/individuals should not be found to be government authorities.

Petitioner's Rebuttal Arguments:

- The record is clear that the GOC impeded this proceeding by failing to provide information in its possession regarding ownership and state influence over the primary

[336] *See* GOC Initial Response (December 16, 2013), at Exhibit-1-18, and GOC Supplemental Response (January 28, 2014) at Exhibits 1-1, 1-2, and 1-3.
[337] *See Steel Plate from the PRC AD Review*, and accompanying IDM at 11 ("{T}he Department has consistently found an absence of *de jure* control when a company has supplied business licenses and export licenses, *each of which have been found to demonstrate an absence of restrictive stipulations and decentralization of control of the company*." (emphasis added)).
[338] *See* 19 USC 1677e(a)(1); *see also Zheijiang Dunan Hetian Metal Co. v. United States*, 652 F.3d 1333, 1348 (Fed. Cir. 2011) ("it is clear that Commerce can only use facts otherwise available to fill a gap in the record.").

aluminum industry and, therefore, in the *Preliminary Results*, the Department appropriately concluded, as AFA, that these companies are government authorities.[339]

- To the extent the GOC provided any information on ownership and control of the primary aluminum producers, the information was limited in scope and selectively provided. Petitioner notes that the GOC provided scant information for certain of Alnan Aluminum's primary aluminum suppliers (*i.e.*, name, addresses, company type, and business registration forms) and no information for any of the producers of its purchased primary aluminum.
- Petitioner discusses that though "choos{ing}"[340] to ignore the Department's information requests, the GOC asserts that the application of AFA is inappropriate because the requested information was "deeply intrusive"[341] and "not necessary."[342] Petitioner notes that the Department has repeatedly emphasized that it, not a respondent, determines what information is relevant to a proceeding.

Department's Position: It is the prerogative of the Department, not the government or company respondents, to determine what information is considered relevant and necessary to our analysis and therefore must be submitted on the record.[343] Thus, regardless of whether the GOC finds our requests for information intrusive or burdensome, by substantially failing to respond to our questions, the GOC withheld information requested of it. By stating that the requested information is not relevant and that there is enough information on the record to determine whether primary aluminum producers are government authorities, the GOC is trying to place itself in the position of the Department, and only the Department can determine what is relevant to the administrative review. Further, by claiming that it is too burdensome to obtain the information requested, the GOC is effectively telling the Department that it must reach a conclusion based on the statements of the GOC and the limited information that it placed on the record, without complete information that the Department considers necessary and relevant for a complete analysis.

Concerning CCP affiliations, it is important to note that the Department did not request information regarding all possible CCP affiliations, but rather only whether owners, members of the board of directors, and managers are also CCP or government officials. Assuming the GOC is not misconstruing the Department's request for information, the Department fails to see how the GOC can assert that this is burdensome, and yet also assert that CCP officials are prohibited from simultaneous involvement in the commercial sphere.

If the GOC was not able to submit the required ownership and CCP affiliation information in the requested form and manner, it should have promptly notified the Department, in accordance with

[339] The Department determined that it must rely on AFA when the GOC refuses to provide complete information required to conduct an analysis of government control. *See, e.g., Lawn Groomers from the PRC*, and accompanying IDM at Comment 5; and *Wind Towers from the PRC*, and accompanying IDM at Comment 12.
[340] *See Preliminary Results*, and accompanying IDM at 20.
[341] *See* GOC Case Brief at 19.
[342] *Id.*, at 23.
[343] *See NSK Ltd. v. United States*, 919 F. Supp. 442, 447 (CIT 1996), quoting *Ansaldo Componenti, S.p.A. v. United States*, 628 F. Supp. 198, 205 (CIT 1986) ("NSK's assertion that the information it submitted to Commerce provided a sufficient representation of NSK's cost of manufacturing misses the point that 'it is Commerce, not the respondent, that determines what information is to be provided for an administrative review.'")

section 782(c) of the Act.[344] Instead, as discussed above in "*GOC – Whether Primary Aluminum Producers Are "Authorities*," the GOC chose not to respond to any of our questions regarding CCP officials and provided an incomplete response for one input supplier. No information was provided for the Alnan Companies' primary aluminum input producers, the firms about which the GOC was twice instructed to provide information.[345] Therefore, we do not consider the GOC to have cooperated to the best of its ability.

Further, in its brief, the GOC did not present any persuasive argument to warrant a reconsideration of the application of AFA. While the GOC may have provided some information, *i.e.*, a table that lists the name, address, and company type for *suppliers* of primary aluminum with the business registration forms for some of those firms,[346] and incomplete response to the *Input Producer Appendix* for one *supplier*, not a producer,[347] the fact is that the GOC failed to provide the requested information on the primary aluminum producers, which the Department concluded is necessary to conduct a complete, thorough analysis to determine if an entity is a government authority. As stated above, the Department, not a government or respondent, determines what information is relevant and necessary to the analysis and must be submitted. We therefore continue to determine that the GOC withheld necessary information that was requested of it and, thus, the Department must rely on facts otherwise available in issuing our final results for the Alnan Companies' input producers.

Moreover, we continue to determine that the GOC failed to cooperate by not acting to the best of its ability to fully comply with our requests for information. Consequently, we find that an adverse inference is warranted in the application of facts available.[348] As AFA, because the GOC failed to provide ownership information, failed to identify whether the members of the board of directors, owners or senior managers were government/CCP officials, and failed to report if there were CCP committees, we are finding the input producers to be "authorities" within the meaning of section 771(5)(B) of the Act. Since we determine that the application of AFA is warranted based on the GOC's actions, the suggestion that we only apply facts available to determine the proportion of primary aluminum producers that are authorities (*i.e.*, assume that the percentage of primary aluminum purchased by domestic trading companies during the POR was equal to the ratio of primary aluminum produced by SOEs and collectives during the POI) is baseless. Moreover, in this review, despite two requests for the GOC to respond to questions regarding the primary aluminum industry and market, the GOC failed to provide the requested

[344] Section 782(c)(1) of the Act states that "{i}f an interested party, promptly after receiving a request from the administering authority or the Commission for information, notifies the administering authority or the Commission (as the case may be) that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the administering authority or the Commission (as the case may be) shall consider the ability of the interested party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party." *See also* Letter from the Department to the GOC regarding "Initial Questionnaire" (October 18, 2013), at cover letter.

[345] Jiangsu Changfa reported that it was unable to identify the companies that produced the primary aluminum which it purchased through unaffiliated trading companies during the POR. As such, it could not provide to the GOC information on the input producers for its questionnaire response for the Department. *See* "GOC – Whether Primary Aluminum Producers are "Authorities,'" above.

[346] *See* GOC Initial Response (December 16, 2013), at 36 and Exhibit E-1-18.

[347] *See* GOC Supplemental Response (January 28, 2014), at 20-27.

[348] *See* section 776(a) and (b) of the Act.

information as discussed in "*GOC – Whether Primary Aluminum Market Is Distorted*," above. As AFA, we find that the market for primary aluminum in the PRC is significantly distorted through the GOC's predominant role in the market by means of government-owned or managed producers of primary aluminum and market controls.

Finally, to support its claim that the Department has found that business registration documents, capital verification reports, and articles of association can demonstrate whether there is state control of an entity, the GOC cites to *Steel Plate from the PRC AD Review*, which states: "{T}he Department has consistently found an absence of *de jure* control when a company has supplied business licenses and export licenses, each of which have been found to demonstrate an absence of restrictive stipulations and decentralization of control of the company."[349] As explained in *Aluminum Extrusions from the PRC First Review*, AD PRC proceedings are separate and distinct from CVD PRC proceedings with the application of different analyses and methodologies.[350] As such, the Department's finding in *Steel Plate from the PRC AD Review* is not germane to this review.

Comment 9: Benchmark Price for Primary Aluminum

Both Petitioner and Alnan/Kromet made several arguments for and against the use of the GTIS and LME benchmark pricing data on the record. Below we address the arguments in one Department Position.

a. <u>Whether to Use the LME Cash Prices</u>

Petitioner's Affirmative Arguments:

- The Department should not use the LME cash prices (*a.k.a.*, base prices or cash settlement prices) to derive the primary aluminum benchmark. The LME cash prices are distorted, reflect pricing not available to PRC producers of aluminum extrusions, and are effectively theoretical futures prices. Only the GTIS pricing data reflect actual export transaction prices for primary aluminum and should be the only benchmark source used in the final results.
- The LME is a commodity trading exchange (for aluminum and 10 other industrial base metals), which is a price-discovery and price-hedging mechanism for the metals traded. Only a small percentage of trades result in delivery of product as the LME is considered a "source of last resort for the physical delivery of those metals."[351]
- The LME cash prices do not reflect the actual transaction prices to obtain physical possession of the aluminum and, thus, are not reflective of the total price paid.[352] The LME cash price is merely a reference price for a particular warrant, to which additional costs (*i.e.*, regional and/or material premiums) must be applied to arrive at the actual "all-in" price paid by a purchaser to take possession of the aluminum.[353]

[349] *See Steel Plate from the PRC AD Review*, and accompanying IDM at Comment 11.
[350] *See Aluminum Extrusions from the PRC First Review*, and accompanying IDM at Comment 10.
[351] *See* Petitioner Benchmark Data at Exhibit 7E.
[352] *Id*.
[353] *Id.*, at 3-4 and Exhibit 7.

- The LME and other entities that own and operate LME-approved warehouses were sued in the United States and United Kingdom based upon the allegation that the LME and the warehouse owner-operators colluded to constrain the supply of aluminum and thus distort the LME's final "all-in" pricing.[354]
- Given the long wait-time and increase in regional premium levels charged for physical possession of the aluminum, there is a disparity between the LME cash prices and the actual global prices to obtain aluminum.[355] As such, the Department cannot rely on LME cash prices as a source of benchmark pricing, because such prices do not reflect the actual price paid.
- Additionally, the LME pricing is flawed because the cash price is based in large part upon pricing for primary aluminum produced in the PRC and LME warehouses that are located within the PRC.[356] Because the Department determined that primary aluminum pricing within the PRC is distorted, a benchmark index which derives a substantial proportion of its component pricing from distorted pricing will be equally distorted and should be ineligible for consideration as a benchmark.

Alnan/Kromet's Rebuttal Arguments:

- The Department should continue to rely on LME cash prices as benchmark prices for aluminum ingots and billets. The function of the LME prices for "price discovery" and as "reference prices" for physical contracts supports the Department's preliminary determination that the LME cash prices are "sufficiently reliable and representative for use in the benchmark calculations."[357]
- Reliance on the LME data is supported by evidence of the use of these prices in dealings by private parties. Alnan/Kromet contends the record confirms that market participants use the LME cash price data in their commercial arrangements.[358]
- Further, reliance on the LME data is consistent with the Department's actions in the investigation and other PRC CVD cases.[359]
- To Petitioner's assertion that the LME cash prices "are simply not reflective of the total price paid by purchasers of aluminum…,"[360] Alnan/Kromet notes that a comparison between the average unit prices of GTIS data for HTS 7601.10 and LME cash prices for primary aluminum demonstrates a consistency in the POR.[361] Alnan/Kromet argues that this comparison shows that the LME cash prices are not distorted.

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[354] *Id.*, and at Exhibit 7F.
[355] *See* Petitioner Case Brief at Exhibit 3, originally submitted as part of Exhibit 7C to Petitioner Benchmark Data.
[356] *See* Petitioner Benchmark Data at Exhibit 7A. *See also Certain Oil Country Tubular Goods from the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 79 FR 41964 (July 18, 2014) (*OCTG from Turkey*), and accompanying IDM at 47.
[357] *See* Petitioner Case Brief at 7; *see also Preliminary Results*, and accompanying IDM at 29.
[358] The details of the commercial arrangement provided by Alnan/Kromet are proprietary information and cannot be publicly summarized. *See* Alnan/Kromet Rebuttal Brief at 6.
[359] *See* Department Memorandum regarding "Information for Preliminary Results" (June 18, 2014), at Attachment I for information on use of LME pricing in *Aluminum Extrusions from the PRC Investigation; see also Drill Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011), and accompanying IDM at "Provision of Steel Rounds for LTAR," and *Seamless Pipe from the PRC*, and accompanying IDM at "Provision of Steel Rounds for LTAR," and Comment 9 (at Benchmarks for Steel Rounds – Pricing Data).
[360] *See* Petitioner Case Brief at 5-6.
[361] *See* Alnan/Kromet Case Brief at 8.

- Lastly, to Petitioner's argument that the LME pricing is flawed because of the involvement of the PRC market, Alnan/Kromet states the LME cash price is a prototypical "world market price" that "would be available to purchasers in the country in question," as required under the regulations.[362]

b. <u>If Used in the Benchmark, Whether to Make Adjustments to the LME Cash Prices</u>

Petitioner's Affirmative Arguments:

- The LME cash price tells only a portion of the full pricing story, *i.e.*, just the in-warehouse pricing; the particular regional premium applicable to the warehouse where the metal is located and from which it is drawn must also be included in the price.
- It is not possible to convert the LME cash price into an export price simply by adding ocean freight and import duties. The only way to build an export price using the LME cash price is to add the various regional premiums that would be charged to extract the aluminum from the warehouse.
- Further, for aluminum extruders that do not cast their own billets from ingots, a "billet premium" is also added to the LME cash price and regional premium for the ingot.[363]
- By not adding the premiums to the LME cash prices, but adding ocean freight and import duties, the Department is applying ocean freight and import duties to aluminum that never leaves the warehouse.
- Also on the record is information to address any double-counting of transportation and import expenses. Petitioner states that all of the premiums reflect expenses for product offered for sale within the country or area of the quote. At most, the premium would reflect freight, warehousing, insurance, and financing cost to a port of exportation.

Alnan/Kromet's Rebuttal Arguments:

- The Department should not increase the LME cash price by any regional premiums or upcharges, and continue to find that the addition of these amounts would lead to the double-counting of transportation and import charges, which the Department already includes in the benchmark price.[364]
- In the *Preliminary Results*, the Department added ocean freight, import duties, VAT, and Alnan-specific inland freight as adjustments to the benchmark prices for primary aluminum. Alnan/Kromet asserts that those costs parallel the costs included in the regional premiums submitted by Petitioner and, thus, to add the regional premiums would result in double-counting of delivery costs.[365]
- The claim that these regional premiums are artificially inflated due to "collusion" and other improper conduct by LME warehouse operators supports the Department's decision not to include such distorted amounts in its benchmark calculations.

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[362] *See* 19 CFR 351.511(a).
[363] *See* Petitioner Benchmark Data at Exhibits 7A and 7B.
[364] *See Preliminary Results*, and accompanying IDM at 29.
[365] Alnan/Kromet states that the definition of these premiums on the record makes clear that they include costs for which the Department already adjusts in calculating benchmark prices. *See* Petitioner Benchmark Data at Exhibit 7B, at 3; *see also* Petitioner Rebuttal Benchmark Data at Exhibits 1 and 2.

- Additionally, as Petitioner's information confirms, actual physical withdrawals from the LME warehouses occur infrequently and, thus, these premiums do not involve the type of "world market prices" required by the Department's regulations.
- Further, the regional premium data on the record have other deficiencies, such as Petitioner's effort to overstate the premiums by excluding any regional premiums for Asian deliveries.

c. <u>Whether to Exclude the LME "Aluminum Alloy" Prices</u>

Petitioner's Affirmative Arguments:

- If the Department continues to use the LME, then it should exclude from the benchmark the pricing data for "aluminum alloy."
- Secondary aluminum – like that which defines the LME "aluminum alloy"[366] – is principally produced from scrap aluminum.[367] Alnan does not purchase such aluminum because secondary aluminum is not used in the production of aluminum extrusions.[368] Secondary aluminum products are used in cast aluminum applications.[369]
- The LME's "aluminum alloy" product is identified in the scope of the order as an "aluminum alloy {} for casting" and a product that is excluded from the scope.[370]

No interested party submitted a rebuttal argument.

d. <u>Ensure Proper Comparability of the Inputs</u>

Petitioner's Affirmative Arguments:

- The record shows that Alnan acquired two different types of primary aluminum: (1) unalloyed aluminum ingot that is processed into alloyed billet, and (2) alloyed billet that is ready for extrusion.[371] These types of primary aluminum are two distinct classes of inputs with different pricing structures.
- The regulations, with respect to tier-two benchmarks, state that the Department should "mak{e} due allowance for factors affecting comparability."[372] Where a respondent has reported a specific class of input, the Department should apply to that input a benchmark that is most comparable to it.[373]
- On the record are benchmark prices for unalloyed primary aluminum and benchmark prices for alloyed primary aluminum. The Department should apply the unalloyed aluminum benchmark (*i.e.*, GTIS for HTS 7601.10) to Alnan's purchases of primary

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[366] *See* Letter from Petitioner regarding "Comments on Kromet's Third Questionnaire Response" (July 25, 2014), at Exhibits 1 and 4.
[367] *See* Petitioner Rebuttal Benchmark Data at Exhibit 2A.
[368] *Id.*, and Alnan/Kromet Supplemental Response (July 15, 2014), at 1.
[369] *See* Petitioner Rebuttal Benchmark Data at Exhibit 2A, and Petitioner Benchmark Data at Exhibit 5.
[370] *See Aluminum Extrusions from the PRC Investigation*, 76 FR at 18521-22.
[371] *See* Alnan/Kromet Supplemental Response (July 15, 2014), and Alnan/Kromet Rebuttal Benchmark Data at 3.
[372] *See* 19 CFR 351.511(a)(2)(ii).
[373] *See Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 79 FR 38490 (July 8, 2014), and accompanying IDM at "Provision of Electricity for LTAR."

aluminum ingot and apply the alloyed aluminum benchmark (*i.e.*, GTIS for HTS 7601.20) to Alnan's purchases of primary aluminum alloy billet.

Alnan/Kromet's Rebuttal Arguments:

- The LME cash price for primary aluminum provides a much closer relationship to, and thus comparable benchmark data for, the purchase of both ingots of billets than the GTIS data. (*See* Alnan/Kromet's affirmative arguments to "Whether to Base the Benchmark Solely on the LME Primary Aluminum Cash Price," below.)

e. <u>Whether to Base the Benchmark Solely on the LME Primary Aluminum Cash Price</u>

Alnan/Kromet's Affirmative Arguments:

- The most appropriate benchmark for the primary aluminum ingots and billets purchased by Alnan is the LME primary aluminum cash price, because:
  - The LME prices "are used the world over as the reference price for physical negotiations."[374]
  - The LME nonalloy aluminum prices involve prices for primary aluminum with a 99.7 percent minimum aluminum percentage, which is identical to the minimum aluminum percentage required for the aluminum ingots that Alnan purchased. Also, the aluminum percentage of the 6060 and 6063 alloys purchased by Alnan are close in composition to the 99.7 percent minimum aluminum percentage reflected in the LME primary aluminum pricing data. As such, the LME primary aluminum price data is the most reasonable benchmark for Alnan's purchases of aluminum alloy billets as well as for its purchase of aluminum ingots.
  - Alnan/Kromet claims that their commercial operations provide justification for the use of the LME primary aluminum cash prices as the benchmark value.[375]
  - The Department used LME data as the tier-two benchmark in the underlying investigation at the urging of Petitioner's counsel.[376] In the investigation, to support the use the LME prices, Petitioner noted that the Department found the LME prices to be reliable in other cases, and that a respondent relied on LME prices for transactions between affiliated companies.[377]

Petitioner's Rebuttal Arguments:

- The LME cash prices for primary aluminum do not reflect actual transaction prices paid to obtain primary aluminum and, thus, are not an appropriate benchmark.
- The LME is not a price reporting service like the Steel Business Briefing which contacts traders and distributers to obtain their sales prices, but operates primarily to facilitate trades of warrants and futures pricing.
- Additionally, just because prior counsel to the U.S. industry submitted LME data in the investigation, does not mean that the LME data was ever or is now a suitable benchmark.

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[374] *See* Alnan/Kromet Benchmark Data at Exhibits 1 and 3.
[375] The details of the companies' commercial operations are proprietary information and cannot be publicly summarized. *See* Alnan/Kromet Case Brief at 4.
[376] *See Aluminum Extrusions from the PRC Investigation*, and accompanying IDM at Comment 21.
[377] *See* Letter from Petitioner in the underlying investigation regarding "Additional Comments on the Upcoming Preliminary Determination" (August 20, 2010), at 4-5.

- In the years since the investigation, the relationship between the LME cash price and actual market price of primary aluminum deteriorated such that the cash price no longer reflects anything more than just a portion of the overall market price.[378]

f. <u>GTIS Data Is Inferior to LME, But If Used Then Rely on Only GTIS 7601.10</u>

Alnan/Kromet's Affirmative Arguments:

- The primary aluminum that Alnan purchased to produce the aluminum extrusions were entirely in ingot and billet form. The products included in HTS 7601, however, include a wide variety of alloy shapes and compositions with intended use beyond aluminum extrusions.[379] HTS 7601 includes remelted aluminum waste and scrap.[380]
- The inclusion of values for the many forms of aluminum beyond ingots and billets and inclusion of secondary aluminum (*i.e.*, aluminum obtained by remelting metal waste or scrap) render the HTS 7601 data overbroad and an inappropriate benchmark.
- However, if the Department decides to use both LME prices and GTIS data to derive the benchmark, then Alnan/Kromet argues that it should use only the GTIS HTS 7601.10 and not GTIS HTS 7601.20.
- Alnan's purchases of primary aluminum ingots contain a minimum of 99.7 percent aluminum content and Alnan's purchase of primary aluminum billets contain a minimum of 98.7 percent or 98.9 percent aluminum content, while the minimum aluminum content in HTS 7601.20 alloy aluminum could be as low as 50 percent.[381] The aluminum content in HTS 7601.10 unalloyed aluminum is 99 percent, which is much closer to Alnan's purchases of primary aluminum ingots and billets.[382]

Petitioner's Rebuttal Arguments:

- The possibility of remelted scrap in HTS 7601.20 should not disqualify it. An aluminum product is considered an alloy (and classifiable under HTS 7601.20) when its aluminum level, by weight, drops below 99 percent.[383]
- Alnan purchased alloyed billets for use in extrusion production.[384] Those billets are alloyed and, thus, have aluminum content below the 99 percent aluminum content threshold set forth in the HTS notes.[385] As such, Alnan's billets do not qualify for consideration under HTS 7601.10 (as they do not contain at least 99 percent aluminum by weight) and instead fall under HTS 7601.20.
- The presence of alloying elements is often achieved through the addition of small amounts of scrap, which lowers the aluminum content to below 99 percent.[386] The

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[378] Petitioner claims that the divergence between the LME cash price and the "all-in" price began to increase in 2010. *See* Petitioner Benchmark Data at Exhibit 7C.
[379] *Id.*, at Exhibit 5.
[380] *Id.*, at Exhibit 3.
[381] *See* Alnan/Kromet Supplemental Response (July 15, 2014), at Exhibit 3S-1; Alnan/Kromet Benchmark Data at Exhibits 3 and 5; and Petitioner Benchmark Data at Exhibit 5.
[382] *Id*.
[383] *See* Petitioner Benchmark Data at Exhibit 3, p. 3.
[384] *See* Alnan/Kromet Benchmark Data at 2.
[385] *See* Petitioner Benchmark Data at Exhibit 3, p. 3; *see also* Alnan/Kromet Case Brief at 6.
[386] *See* Petitioner Rebuttal Benchmark Data at Exhibit 3C, para. 4-6.

inclusion of small amounts of scrap does not define the billet as remelted scrap – the billets remain primary aluminum alloy billets.

- Use of only 7601.10 would not provide an adequate match comparison to the actual input, *i.e.*, alloyed billet. The Department must consider HTS 7601.10 and 7601.20 to provide for both "not alloyed" aluminum ingot and alloyed aluminum billet.
- To Alnan/Kromet's claim that HTS 7601 is overboard because the "wide variety of alloy shapes" represented,[387] Petitioner states the provision of primary aluminum for LTAR is not specific to the shape that the aluminum takes and that HTS 7601 covers aluminum that is used in extrusion applications.

Department's Position: After considering the parties' benchmark arguments, the benchmark pricing data, and the respondents' primary aluminum purchase information on the record, we modified the derivation of the benchmark prices for the final results. Pursuant to 19 CFR 351.511(a)(2)(ii), with respect to tier-two benchmarks, the Department should make due allowance for factors affecting comparability. Record evidence demonstrates that primary aluminum ingots and billets, both of which were purchased by the respondents during the POR,[388] are two distinct types of inputs. Billets are produced from ingots.[389] Ingots are modified through re-casting, the addition of certain alloys, and processed into a billet of a particular chemistry with a specified grade.[390] Ingots must be alloyed with other elements to gain strength or other physical properties.[391] The alloying process involves placing the non-alloyed aluminum ingot into a furnace and adding elements[392] to create an alloy chemistry that meets the necessary specifications.[393] After the alloy is created and cast in billet form, it can be extruded.[394]

The record also demonstrates that ingots and billets have different pricing structures. Because a primary aluminum billet is produced from an ingot to which elements are added, an alloyed billet is sold at a higher price than an unalloyed aluminum ingot.[395] Pricing data sources on the record reflect significant and consistent price differences between ingot and billets, with the markets charging higher prices for billet.[396] Based on the aforementioned differences between ingots and billets, and the fact that the record contains separate pricing data for both ingots and billets, we determine that it is more appropriate to match an ingot benchmark to ingot purchases and billet

[387] *See* Alnan/Kromet Case Brief at 11.
[388] *See* Alnan/Kromet Final Calculations, and Jiangsu Changfa Final Calculations.
[389] *See* Petitioner Rebuttal Benchmark Data at Exhibit 3C, and Petitioner Benchmark Data at Exhibit 7B.
[390] *Id*.
[391] *See* Petitioner Benchmark Data at Exhibit 10.
[392] Some of the common elements alloyed with aluminum include copper, magnesium, manganese, chromium, silicon, iron, nickel, and zine. *See* Petitioner Benchmark Data at Exhibit 10.
[393] *See* Petitioner Benchmark Data at Exhibit 7B.
[394] *Id*.
[395] *See* Petitioner Benchmark Data at Exhibits 6 and 7B, and Petitioner Rebuttal Benchmark Data at Exhibit 3C.
[396] *See* Petitioner Benchmark Data at Exhibit 6.

benchmark to billet purchases for the final results. This approach is consistent with the Department's practice.[397]

We reviewed the GTIS and LME pricing data that the parties placed on the record. The GTIS reports separate and distinct categories for ingot and billet – *i.e.*, GTIS unalloyed aluminum (HTS 7601.10) and GTIS alloyed aluminum (HTS 7601.20), respectively.[398] The LME contains only a cash price for primary aluminum (unalloyed ingots) with a minimum aluminum content of 99.7 percent.[399] The GTIS unalloyed aluminum category reflects ingots that have a minimum aluminum content of 99 percent.[400] Thus, the GTIS data reflect a larger universe of ingots than the LME, which only captures a subset of ingots (*i.e.*, those with 99.7 percent minimum aluminum content).[401] Thus, we find that the GTIS data better captures the entire range of ingots that could be purchased by the respondents.

Alnan/Kromet argues that the minimum aluminum content for the LME primary aluminum cash price (*i.e.*, 99.7 percent) is "identical to the minimum content of the primary aluminum ingots that Alnan purchased."[402] However, the record evidence does not support Alnan/Kromet's claim.[403]

Alnan/Kromet also asserts that the LME cash price is a more appropriate benchmark for Alnan's purchases of alloyed billets than the HTS 7601.20 data contained in the GTIS dataset. Alnan/Kromet bases its argument on the claim that the minimum aluminum content of its purchased billets was 98.7 to 98.9 percent, which is only slightly below the 99.7 percent threshold for the LME primary aluminum.[404] Further, Alnan/Kromet claims that there is a minimum aluminum content of 50 percent for the aluminum alloy in HTS 7601.20 data contained in the GTIS dataset.[405] We, however, find no basis for Alnan/Kromet's argument. The evidence on the record does not indicate that HTS 7601.20 requires only that the aluminum predominate (*i.e.*, a minimum aluminum content of 50 percent). On the contrary, evidence on

[397] *See, e.g.*, *Steel Wheels from the PRC*, and accompanying IDM at Comment 15 (where, based on available, distinct pricing data and information on respondents' hot-rolled steel purchases, the Department determined to derive and apply separate benchmark prices for hot-rolled plate and hot-rolled coil); *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Countervailing Duty Administrative Review*, 73 FR 40295 (July 14, 2008), and accompanying IDM at "Sale of High-Grade Iron Ore for LTAR" (where the Department conducted the benefit analysis on a lump-to-lump and fine-to-fine basis); and *Notice of Final Results of Countervailing Duty Administrative Review: Certain Softwood Lumber Products from Canada*, 70 FR 73448 (December 12, 2005), and accompanying IDM at "Calculation of Provincial Benefit" and "Methodology for Adjusting the Unit Prices of the Crown Stumpage Program Administered by the GOBC" (where the Department computed species-specific benefits).
[398] *See* Petitioner Benchmark Data at Exhibit 6.
[399] *See* Alnan/Kromet Benchmark Data at Exhibit 3, at page titled "Physical Specifications" and at page titled "The Metals" contained with "A Guide to the LME."
[400] *See* Petitioner Benchmark Data at Exhibit 3.
[401] *See* Alnan/Kromet Benchmark Data at Exhibit 3 (for LME Physical Specifications).
[402] *See* Alnan/Kromet Rebuttal Brief at 14.
[403] In this case brief, Alnan/Kromet references specific submissions for minimum aluminum percentages. *See* Alnan/Kromet Case Brief at 6 (footnote 4). However, those referenced submissions do not contain evidence that the minimum content of the primary aluminum ingots that Alnan purchased was identical to the LME primary aluminum.
[404] *See* Alnan/Kromet Rebuttal Brief at 15.
[405] *Id.*; *see also* Transcript for Public Hearing regarding "CVD Administrative Review of Aluminum Extrusions from the PRC" (October 14, 2014), at 28-29.

the record indicates that HTS 7601.20 covers aluminum alloy with an aluminum content up to 99 percent.[406] Even if the HTS category includes billets with aluminum content as low as 50 percent, there is no basis to assume that the majority of primary aluminum in HTS 7601.20 is comprised of an aluminum content at the lower end of the spectrum, as opposed to reflecting primary aluminum inputs that span the entire aluminum content spectrum (50 to 98.99 percent). Further, the fact remains that HTS 7601.20 reflects world market prices for primary aluminum billets, which is one of the two primary aluminum inputs purchased by Alnan during the POI. Customs ruling documents on the record declare that ingots are classified under HTS 7601.10 for "aluminum, not alloyed," and billets are classified under HTS 7601.20 for "aluminum alloys."[407] Therefore, Alnan's billet purchases with a minimum aluminum content of 98.7 or 98.9 percent fall under HTS 7601.20.

Alnan/Kromet also argues that HTS 7601 includes, in addition to ingots and billets, a variety of alloy shapes and compositions and remelted aluminum waste and scrap with intended use beyond aluminum extrusion. We do not find this argument persuasive to our selection of a benchmark for aluminum. The provision of primary aluminum for LTAR is not specific to the shape of the aluminum and HTS 7601 covers aluminum that is used in extrusion applications.[408] Additionally, evidence on the record indicates that the alloying process can include the addition of small amounts of scrap to lower the aluminum content to below 99 percent.[409] Such inclusion of scrap in the billet casting process does not however define the billet as remelted scrap (*i.e.*, secondary aluminum); the billet remains an aluminum alloy.[410]

Contrary to the Alnan/Kromet's assertions, using the GTIS data, we are able to construct benchmarks that are specific to inputs for which they are designed to assess. We attain a comparability of inputs by applying a GTIS unalloyed aluminum benchmark (HTS 7601.10) to purchases of ingots and applying a GTIS alloyed aluminum benchmark (HTS 7601.20) to purchases of billets.

To derive these benchmarks, using the GTIS pricing data, we calculated monthly weight-averaged benchmark prices using the quantity exported by each country. As discussed above in "Provision of Primary Aluminum for LTAR," consistent with 19 CFR 351.511(a)(2)(iv), to the monthly weighted-average prices we added ocean freight, VAT, import tariff duties, and inland freight to construct delivered prices.

Lastly, because we determine to use only the GTIS pricing data to derive the benchmark prices for the final results, we need not address the arguments made by Petitioner and Alnan/Kromet with regard to the LME pricing source.

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[406] *See* HTS Notes contained in Petitioner Benchmark Data at Exhibit 3 (page 3).
[407] *See* Petitioner Rebuttal Benchmark Data at Exhibit 3A, and Petitioner Benchmark Data at Exhibit 4.
[408] *Id*.
[409] *See* Petitioner Rebuttal Benchmark Data at Exhibit 3C (para. 4-6).
[410] *Id*.

Comment 10: Prices Must Be Properly Weight-averaged

Alnan/Kromet's Affirmative Arguments:

- A weighted-average price is calculated by dividing the total value by the total quantity; a calculation that Petitioner did not do with the GTIS data, used in the preliminary calculations.
- Alnan/Kromet states that Petitioner developed a new averaging methodology which resulted in monthly benchmark prices weighted not by the quantity exported by each country, but rather by the number of countries.[411] The net result of this new methodology was to create monthly average GTIS prices for each HTS number on the basis of simple averages of the per-unit amounts calculated for the 75+ countries.[412] Whether a reporting country exported one ton or one million tons of aluminum, the unit price calculated for each country was given equal weighting in Petitioner's methodology.
- Petitioner's new methodology is not the Department's standard practice in calculating values from GTIS data, because it results in distorted results. Specifically, the Petitioner's methodology greatly elevates the importance of small quantity, aberrational values by assigning an equal weight to the per-unit amounts from all reporting sources.
- The specific GTIS data supplied by Petitioner demonstrates that this is not a hypothetical concern. For example, the distortive calculation proposed by Petitioner results in an average unit value for November 2012, of $4.1098/kg, which is almost twice as high as the $2.0668/kg result of the weighted-average calculation methodology.[413]

Petitioner's Rebuttal Arguments:

- Petitioner argues that the Department's preliminary calculations are in line with current Department practice.[414] When presented with more than one commercially available and comparable world market price, the Department simple averages those prices to calculate a single benchmark by month.

Department's Position: We agree that the GTIS monthly pricing data, used in the preliminary calculations, were weighted not by the quantity exported by each country, but rather by the number of countries and, therefore, were incorrect weight-averaged prices. For these final results, using the raw GTIS pricing data, we correctly calculated monthly weighted-average prices for each month of the POR by dividing the total value by the total quantity and used those resulting monthly weight-averaged prices in the final calculations for the Alnan Companies and Jiangsu Changfa.[415]

We find that Petitioner's argument about simple-averaging is not relevant. The issue regarding the preliminary calculations is not about simple-averaging, but that the weight-averaging of the GTIS prices included in the calculations was not correctly calculated.

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[411] *See* Petitioner Benchmark Data at Exhibits 5A and 6.
[412] *Id*.
[413] *See* Alnan/Kromet Case Brief at Exhibit A.
[414] *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2011*, 79 FR 108 (January 2, 2014), and accompanying IDM at 20-22.
[415] *See* Alnan/Kromet Final Calculations, and Jiangsu Changfa Final Calculations.

Comment 11: Whether the Provision of Primary Aluminum for LTAR Is Specific

GOC's Affirmative Arguments:

- The recipients of primary aluminum are not limited within the meaning of section 771(5A)(D)(iii)(I) of the Act because primary aluminum is used too broadly in a wide variety of industries.
- The GOC placed on the record an input-output table which shows the diverse uses of primary aluminum.[416] The GOC contends that this information reflects the level of consumption of primary aluminum.[417]
- The GOC adds that the wide use of aluminum is also confirmed in the U.S. Bureau of Economic Analysis' input-output table, which it also placed on the record.[418]

Petitioner's Rebuttal Arguments:

- In the investigation and first administrative review, the Department considered and rejected the same specificity arguments advanced by the GOC.
- In the first review, the Department determined that the input-output tables do not support the conclusion of diverse uses of aluminum extrusions.[419]
- Also, the GOC did not provide any evidence to refute the Department's finding in the investigation, which was affirmed in the first review, that over 50 percent of primary aluminum production in the PRC was produced by SOEs.[420] The Department therefore should continue to find that the provision of primary aluminum for LTAR is specific.

Department's Position: We addressed the GOC's arguments in this regard in the investigation, first administrative review, as well as prior PRC CVD investigations,[421] and concluded that, while numerous companies may comprise the listed industries, section 771(5A)(D)(iii)(I) of the Act directs the Department to conduct its analysis based on whether the actual recipients of the subsidy, whether considered on an industry or enterprise basis, are limited in number. In the investigation, we concluded that the industries named by the GOC were limited in number and, hence, the subsidy was specific.[422] In this instant review, the GOC provided no new evidence to cause the Department to reconsider its finding that the industries which benefit from the provision of primary aluminum are limited in number. The GOC submitted the same evidence in this review (*i.e.*, the 2007 input-output table) as in the first administrative review and, for the same reasons, we continue to conclude that such information does not warrant a reconsideration of the Department's specificity finding.

[416] *See* GOC Initial Response (December 16, 2013), at Exhibit E-1-16.
[417] *Id.*, at 35-36.
[418] *Id.*, at Exhibit 1-17.
[419] *See Aluminum Extrusions from the PRC First Review*, and accompanying IDM at 29.
[420] *Id.*, at 25-27.
[421] *See Aluminum Extrusions from the PRC Investigation*, and accompanying IDM at "Provision of Primary Aluminum for LTAR" and Comment 19; *Aluminum Extrusions from the PRC First Review*, and accompanying IDM at "Provision of Primary Aluminum for LTAR" and Comment 12; and *Kitchen Shelving and Racks from the PRC*, and accompanying IDM at "Provision of Wire Rod for LTAR."
[422] *See Aluminum Extrusions from the PRC Investigation*, and accompanying IDM at "Provision of Primary Aluminum for LTAR" and Comment 19. The specificity finding was maintained in *Aluminum Extrusions from the PRC First Review* (*see* accompanying IDM at "Provision of Primary Aluminum for LTAR" and Comment 12).

Concerning the 2007 input-output table,[423] as in *Aluminum Extrusions from the PRC First Review*, we considered the data and again found that the table does not provide the type of information needed to determine if the provision of primary aluminum is specific to aluminum extrusion producers. For instance, the table does not delineate data specific to primary aluminum, which is contained within the large, comprehensive category of "smelting of non-ferrous metals and manufacture of alloy," and does not report data on sales or purchases of primary aluminum across industrial sectors.

Because the input-output table is too general, and does not detail the spectrum of industrial sectors that purchase primary aluminum, by value and/or volume, we continue to conclude that the table not only fails to provide the information required for a specificity analysis, but also does not undermine our finding that the provision of primary aluminum is specific to aluminum extrusion producers. We, therefore, find that the GOC did not provide information to warrant a reconsideration of our determination that the provision of primary aluminum is specific under section 771(5A)(D)(iii)(I) of the Act.

Comment 12: Use of a Tier-One Price for the Provision of Primary Aluminum

GOC's Affirmative Arguments:

- The Department should apply a tier-one PRC benchmark because evidence on the record shows that (1) the GOC does not interfere or influence pricing in the primary aluminum market,[424] and (2) the prices for primary aluminum in the PRC reflect market forces and parallel those on the LME.[425]
- The GOC claims that the PRC market for primary aluminum has undergone changes since the investigation, *i.e.*, the Shanghai Futures Exchange (SHFE) introduced transactions for futures of imported aluminum in December 2010.[426] Additionally, the GOC states it provided evidence showing that PRC inventories of aluminum have important market effects on the LME, indicating that prices on the PRC market and foreign markets have been converging since 2011.[427]

Petitioner's Rebuttal Arguments:

- The Department asked the GOC questions regarding the primary aluminum industry and market in the PRC to determine the GOC's presence in the market and whether such presence results in price distortion.[428] The GOC however refused to provide a response to the questions in its initial and supplemental responses.[429]
- Given the GOC's failure to cooperate to the best of its ability to provide the requested information, the Department appropriately concluded, as AFA, that the GOC's

[423] The table is published by the PRC's State Statistics Bureau.
[424] *See* GOC Initial Response (December 16, 2013), at 34.
[425] *Id.*, at Exhibit E-1-25.
[426] *Id.*, at 33.
[427] *Id.*, at Exhibits E-1-25 and E-1-26.
[428] *See* Letter from the Department to the GOC regarding "Initial Questionnaire" (October 18, 2013), at Section II "Provision of Primary Aluminum for LTAR."
[429] *See* GOC Initial Response (December 16, 2013), at 44-45, and GOC Supplemental Response (January 27, 2014), at 19-27.

predominant role in the primary aluminum market causes distortion and, therefore, the use of an external benchmark is warranted.[430]

- The GOC did not provide any evidence to undermine the Department's finding that a tier-two benchmark is appropriate.
- Concerning the SHFE, Petitioner argues the fact that one component of the SHFE futures contract is based upon pricing derived from the availability of imported and bonded products does little to negate the distortions that are inherent in the PRC market and the SHFE. The existence of prices obtained from bonded warehouses also does little to ameliorate the distortions created by the fact that the SHFE trading is limited only to companies that are "organized and registered in China."[431] Further, the existence of bonded warehouse pricing does not ameliorate the distortions inherent in the fact that the vast majority of the SHFE's pricing is based upon internal PRC transactions, which are by their very nature subject to distortions from government control and influence.

Department's Position: As explained above in "*GOC – Whether Primary Aluminum Market Is Distorte*d," we twice asked the GOC to respond to specific questions regarding the PRC primary aluminum industry and market during the POR.[432] We requested such information to gauge the degree of the GOC's presence in the market and whether such presence may result in the distortion of prices for primary aluminum. The GOC however did not provide the requested information.[433] Because the GOC failed to provide the information, we find, as AFA, that the market for primary aluminum in the PRC is distorted through the GOC's predominant role in the market by means of government-owned or managed producers of primary aluminum and market controls. Further, we find that the GOC's involvement in the market in the PRC for this input results in significant distortion of the prices such that they cannot be used as a tier-one benchmark and, hence, the use of an external benchmark, as described under 19 CFR 351.511(a)(2)(ii), is warranted to calculate the benefit for the Provision of Primary Aluminum for LTAR.

Given the finding that the use of a tier-one price is not appropriate, we find the GOC's arguments for use of an in-country price as the benchmark – because the prices for primary aluminum in the PRC market parallel prices on the LME and other factors (*i.e.*, SHFE) indicate that prices in the PRC and foreign markets are converging – to be moot. The fact is that the use of prices in the PRC would be akin to comparing the benchmark to itself (*i.e.*, such a benchmark would reflect the distortions of the government presence).[434] As we explained in *Softwood Lumber from Canada*:

> Where the market for a particular good or service is so dominated by the presence of the government, the remaining private prices in the country in question cannot be considered

[430] *See Preliminary Results*, and accompanying IDM at 22-23.
[431] *See* GOC Case Brief at 27.
[432] *See* Letter from the Department to the GOC regarding "Initial Questionnaire" (October 18, 2013), at Section II "Provision of Primary Aluminum for LTAR;" and Letter from the Department to the GOC regarding "First Supplemental Questionnaire" (January 2, 2014), at "Provision of Primary Aluminum for LTAR."
[433] *See* GOC Initial Response (December 16, 2013), at 44-45; and GOC Supplemental Response (January 28, 2014), at 20-27.
[434] *See Softwood Lumber from Canada*, and accompanying IDM at "Provincial Stumpage Programs Determined to Confer Subsidies: Market-Based Benchmark Analysis."

> to be independent of the government price. It is impossible to test the government price using another price that is entirely, or almost entirely, dependent upon it. The analysis would become circular because the benchmark price would reflect the very market distortion which the comparison is designed to detect.[435]

Further, our decision to use tier-two prices is consistent with the *Preamble*, which states that, "where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative…"[436]

Comment 13: Whether Certain Programs Were Limited to an Enterprise or Industry

GOC's Affirmative Arguments:

- Contrary to the Department's preliminary finding that certain alleged subsides[437] are specific because they are limited to an enterprise or industry (or group thereof), pursuant to section 771(5A)(D)(i) of the Act, the record shows that these programs are available to diverse industries.
- The GOC argues that the Department's recitation that alleged benefits under a program are limited to certain industries meeting certain eligibility does not mean those programs are limited to a specific enterprise or industry.
- The objective criteria cited by the Department as evidence of specificity do not support the conclusion that the alleged programs are limited to a specific enterprise or industry.
- Instead, the GOC asserts that the context of section 771(5A)(D)(i) of the Act demonstrates that objective criteria are indicia that a subsidy is not specific.[438]

No interested party submitted a rebuttal argument.

Department's Position: Where a program is limited to a group of enterprises, specifically defined by law, the program is specific within the meaning of section 771(5A)(D) of the Act, which refers to "an enterprise or industry" or "a group of enterprises or industries." Thus, the law anticipates groupings of enterprises that may otherwise belong to different industries. Based on the record evidence for the programs addressed in the GOC's argument, we determine that each program is *de jure* specific pursuant to section 771(5A)(D)(i) of the Act.

Each of the five programs[439] expressly limits the benefits to enterprises with specific designations, and, as fully analyzed at "Programs Determined To Be Countervailable," eligibility

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[435] *Id*., at 38-39.
[436] *See Preamble*, 63 FR at 65377.
[437] The programs are: Special Reward Fund for Industrial Economy Transformation and Upgrading of the Whole District, Special Funds for the Development of Five Industries, Award for Self-Innovation Brand/Grant for Self-Innovation Brand and Enterprise Listing, Preferential Tax Program for High or New Technology Enterprises, and Special Funds of Guangxi Autonomous Region for Small Highlands of Talents.
[438] *See* section 771(5A)(D)(iii) of the Act (listing objective criteria as one of the elements to proving non-specificity).
[439] The programs are: Special Reward Fund for Industrial Economy Transformation and Upgrading of the Whole District, Special Funds for the Development of Five Industries, Award for Self-Innovation Brand/Grant for Self-Innovation Brand and Enterprise Listing, Preferential Tax Program for High or New Technology Enterprises, and Special Funds of Guangxi Autonomous Region for Small Highlands of Talents.

for the benefit is not automatic.[440] As discussed above, benefits under these programs are limited to enterprises with certain designations, such as (1) enterprises within the transformation and upgrading industry of Wujin District that achieve a prescribed level of energy savings (*see* Special Reward Fund for Industrial Economy Transformation and Upgrading of the Whole District); (2) the "five industries" covering equipment manufacturing industry, new energy industry, new materials industry, electronic information industry, and biological and pharmaceutical industry (*see* Special Funds for the Development of Five Industries); (3) companies that publicly list shares (*see* Award for Self-Innovation Brand/Grant for Self-Innovation Brand and Enterprise Listing); (4) new and high technology companies (*see* Preferential Tax Program for High or New Technology Enterprises); and (5) enterprises that are approved and publicly announced carrier entities (*see* Special Funds of Guangxi Autonomous Region for Small Highlands of Talents). Record evidence also demonstrates that eligibility for the programs is not automatic as a company must submit an application or certification,[441] and obtain approval by the relevant authorities.

Thus, contrary to the GOC's claim that the programs are available to diverse industries, the provision of benefits under the programs are clearly limited to a well-defined and specific group of enterprises within the meaning of section 771(5A)(D)(i) of the Act. Therefore, we affirm the preliminary finding that these programs are limited as a matter of law to certain enterprises and, therefore, specific under section 771(5A)(D)(i) of the Act.

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

GOC's Affirmative Arguments:

- The Department preliminarily countervailed five grant programs and investigated 43 grant programs discovered through a review of Jiangsu Changfa's financial statements.[442] However, there was no proper showing by Petitioner of the existence of the required elements of a countervailable subsidy, nor was there a subsequent initiation by the Department of the programs.
- The GOC contends that the Department has no authority to seek information on these new, purported "grant programs" under either the statute or the regulations.
- Articles 11.1 and 11.2 of the SCM Agreement provide that an investigation of any alleged subsidy may be initiated only upon written application that must include sufficient evidence of a subsidy, injury, and a causal link between the subsidy and alleged injury. "Simple assertion, unsubstantiated by relevant evidence" is not sufficient to meet the requirements.[443]
- While the SCM Agreement provides the right to self-initiate an investigation in "special circumstances," the right can only be exercised on the basis of sufficient evidence of the existence of a subsidy, consistent with Article 11.6 of the SCM Agreement, and after a

[440] We note that, among the conditions that must be met for a program to be found not specific as a matter of law, section 771(5A)(D)(ii) of the Act states that eligibility is automatic.
[441] A certification and not an application is required for "Preferential Tax Program for High or New Technology Enterprises."
[442] *See Preliminary Results*, and accompanying IDM at 11-12.
[443] *See* SCM Agreement at Article 11.2

- consultation is offered to the government under investigation, consistent with Article 13.1 and 13.2 of the SCM Agreement.
- Because the Department failed to lawfully initiate an investigation of the programs, it should withdraw its preliminary findings and remove from the record all information regarding the grants.

Petitioner's Rebuttal Arguments:

- The Department acted within its authority[444] to identify and investigate the grants it discovered through examination of Jiangsu Changfa's financial statements and acted consistent with its practice.[445]
- Petitioner adds that, in its new subsidies submission, it identified and made allegations regarding many of the grant programs, including the five programs preliminarily countervailed by the Department.[446] However, the Department had already begun to investigate the programs based on information available in Jiangsu Changfa's financial statement and, therefore, declined to address the grants in the New Subsidy Allegations Memorandum.[447]
- For the final results, the Department should continue to find that it has the authority to countervail new subsidy programs as reflected in respondents' financial statements.

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

As explained above in "*Grant Programs Discovered Through Analysis of Jiangsu Changfa's Financial Statements*," the Department reviewed the financial statements of Jiangsu Changfa and identified grants and funding from provincial and local governments which were not part of any of the other programs included in this administrative review. Thus, the Department determined that it was necessary to issue supplemental questionnaires to Jiangsu Changfa and the GOC regarding the information contained in the financial statements. Jiangsu Changfa and the GOC provided information regarding the programs in supplemental responses to these questions. Therefore, in light of the information contained in the financial statements and based on the guidelines established under section 775 of the Act and 19 CFR 351.311(b), the Department acted well within its authority to examine the programs within this proceeding and

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[444] *See* section 775 of the Act and 19 CFR 351.311(b).
[445] *See Preliminary Results*, and accompanying IDM at 11-12; *see also Steel Wheels from the PRC*, and accompanying IDM at Comment 5; *Tires from the PRC*, and accompanying IDM at Comment E.7; and *Drawn Stainless Steel Sinks from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 77 FR 46717, 46721 (August 6, 2012).
[446] *See* Letter from Petitioner regarding "New Subsidy Allegation" (January 22, 2014), at 20-24.
[447] *See* Department Memorandum regarding "Decision Memorandum on New Subsidy Allegations" (March 18, 2014).

seek additional information from Jiangsu Changfa and the GOC. This approach is consistent with the Department's practice.[448]

Further, as stated in 19 CFR 351.311(d), the Department will notify the parties to the proceeding of any subsidy discovered in any ongoing proceeding, and whether or not it will be included in the ongoing proceeding. Jiangsu Changfa and the GOC were notified of the discovery of these programs, and their inclusion in the proceeding based on the issuance of supplemental questionnaires concerning the programs. Such notice is evident in the fact that the GOC commented on the issues surrounding these programs for the final results.

Comment 15: Attribution of Subsides Received by the Alnan Companies

Petitioner's Affirmative Arguments:

- In the *Preliminary Results*, the Department attributed subsidies received by Alnan Aluminum, as the parent company, to the consolidated sales of the Alnan Companies, net of inter-company sales. However, because certain affiliated companies were not the producers of the inputs they supplied to Alnan Aluminum during the POR, the Department attributed only those subsidies received by these companies that were ultimately transferred to Alnan Aluminum.
- As a result, the Department's numerator does not reflect the countervailable subsidies from which the Alnan Company entities benefited as a whole. The Department's calculation and attribution of subsidies is then incorrect and prevents an accurate "apples-to-apples" comparison between the numerator and denominator.
- Consistent with *Large Residential Washers from Korea*, the Department should decline to base its attribution of subsidy benefits to non-producer Alnan Company affiliates based on whether the subsidies they received were ultimately transferred to Alnan Aluminum.[449] If the Department does not include all countervailable programs in the numerator, it must construct an extrusion-specific denominator as it did in its preliminary determination in the first administrative review.
- Alternatively, if the Department uses the Alnan Companies consolidated sales in the denominator, it must also include all the countervailable subsidies provided to those entities in the numerator as well.[450]

Alnan/Kromet's Rebuttal Arguments:

- The Department's use of Alnan Companies' consolidated sales as the denominator in its preliminary calculation of the benefits attributable to Alnan/Kromet is required by the

[448] The Department addressed these same arguments within the context of nearly identical fact patterns before. *See, e.g., Aluminum Extrusions from the PRC First Review*, and accompanying IDM at Comment 14; *Steel Wheels from the PRC*, and accompanying IDM at Comment 5; *Solar Cells from the PRC*, and accompanying IDM at Comment 23; and *Multilayered Wood Flooring from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 64313 (October 18, 2011), and accompanying IDM at Comment 3.
[449] *See Large Residential Washers from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 75975 (December 26, 2012) (*Large Residential Washers from Korea*), and accompanying IDM at Comment 14.
[450] *See* Petitioner Case Brief at 27.

Department's regulations[451] and is consistent with the Department's final determination in the first administrative review.[452]

Department's Position: We disagree with Petitioner's attribution arguments with respect to this issue. Petitioner suggests that the Department should use the Alnan Companies' unconsolidated sales as the denominator in the subsidy calculation. In the final results of the first review, the Department determined that using Alnan Companies' unconsolidated sales as the denominator is contrary to the express terms of 19 CFR 351.525(b)(6)(iii), which provides that "if the firm that received a subsidy is a holding company, including a parent company with its own operations, the Secretary will attribute the subsidy to the consolidated sales of the holding company and its subsidiaries."[453] Because Alnan Aluminum is the parent company, the use of the consolidated sales in the denominator in the calculation of the attribution of subsidies received by Alnan/Kromet is required by the regulations, and is consistent with the Department's determination in *OCTG from the PRC*.[454]

In addition, Alnan/Kromet reported that certain of their affiliated companies supplied inputs to Alnan Aluminum during the POR.[455] Because these affiliated companies were not the producers of the inputs, we are attributing, pursuant to 19 CFR 351.525(b)(6)(v), only those subsidies received by these companies that were transferred to Alnan Aluminum. Our approach in this regard is consistent with the Department's final determination in the first review.[456]

We disagree with Petitioner that *Large Residential Washers from Korea* is applicable here. In the Korean case, the issue centered on a lump sum grant that the producer of subject merchandise received. The Korean respondent argued that the Department should reduce the amount of the grant included in the numerator in order to account for the fact that it purportedly transferred a portion of the grant to affiliated parties that were not subject to the Department's subsidy analysis. In rejecting the respondent's argument, the Department noted that respondent's claims regarding the transfer of the grant were based on untimely filed information. The Department also noted that it does not generally trace the actual use of funds once they are received by a company. The situation in the instant review is distinct. Here, the Department is examining cross-owned affiliates that received inputs for LTAR from government authorities but which do not otherwise meet the necessary criteria for them to submit questionnaire responses (*e.g.*, while the cross-owned companies supplied inputs to the Alnan Companies during the POR, the companies were not producers of subject merchandise, parent companies, or producers of primary inputs, which they supplied to the Alnan Companies during the POR). Therefore, we find the only regulation that applies to these cross-owned firms is 19 CFR 351.525(b)(6)(v), which states that in situations where 19 CFR 351.525(b)(6)(i) – (iv) do not apply, "if a corporation producing non-subject merchandise received a subsidy and transferred the subsidy to a corporation with cross-ownership, the Secretary will attribute the subsidies to products sold by the recipient of the transferred subsidy."

[451] *See* 19 CFR 351.525(b)(6)(iii).
[452] *See* Alnan/Kromet Rebuttal Brief at 17.
[453] *See* 19 CFR 351.526(b)(6)(iii); *see also Aluminum Extrusions from the PRC First Review*, and accompanying IDM at Comment 17.
[454] *See OCTG from the PRC*, and accompanying IDM at Comment 39.
[455] *See* Alnan/Kromet Final Calculations.
[456] *See Aluminum Extrusions from the PRC First Review*, and accompanying IDM at Comment 17.

Additionally, we disagree with Petitioner that, in the alternative, the Department should narrow the denominator to sales of aluminum extrusions for subsidies involving the input suppliers discussed above. As indicated in the "Provision of Primary Aluminum for LTAR" section, there is no evidence indicating that the Alnan Companies' receipt of primary aluminum for LTAR is contingent upon the production of subject merchandise. Rather, we treated subsidies received under this program as an untied subsidy and, accordingly, we used the Alnan Companies' total sales as our denominator. Accordingly, there is no basis for the Department to change the subsidy attribution methodology in the final results of the current review.

Comment 16: Allocation of Grant Program for Alnan Aluminum

Petitioner's Affirmative Arguments:

- Petitioner disputes the Department's treatment of the grants received by Alnan under Guangxi Autonomous Region for Enterprises' Technology Renovation. Alnan reported receiving under this grant program four different times in 2012; while one of them was approved in 2011, the remaining three were all approved in 2012. However, the Department incorrectly allocated the benefits of all four grants based upon 19 CFR 351.504(c).[457]

Alnan/Kromet's Rebuttal Arguments:

- Since the amount of subsidies received under this grant was more than 0.5 percent of the relevant sales, the Department's allocation of the benefits over the AUL period was consistent with the regulations.[458]

Department's Position: We agree with Petitioner that in conducting the 0.5 percent test to determine whether the benefit is recurring or non-recurring, we incorrectly included the value of all four programs in the numerator. Pursuant to the Department's regulations, we should have instead performed the test based on the year in which the subsidy was approved. Section 19 CFR 351.524(b)(2) of the Department's regulations provide:

> The Secretary will normally allocate (expense) non-recurring benefits provided under a particular subsidy program to the year in which the benefits are received if the total amount approved under the subsidy program is less than 0.5 percent of relevant sales (*e.g.*, total sales, export sales, the sales of a particular product, or the sales to a particular market) of the firm in question *during the year in which the subsidy was approved* (emphasis added).

Accordingly, the Department conducted the 0.5 percent test based on the approval date. As a result of our revisions, we found one grant, which was approved in 2011, was fully expensed prior to the POR of the instant review. Concerning the three remaining three grants, we find they pass the 0.5 percent test and, thus, we allocated the benefits over the AUL using our standard grant allocation methodology described under 19 CFR 351.524(d)(1).

[457] *See* Alnan/Kromet Rebuttal Brief at 28.
[458] *Id.*, at 19-21.

Comment 17: Benefits Received by Alnan Aluminum Prior to 2012

Petitioner's Affirmative Arguments:

- The Department did not conduct proper analyses with respect to the twelve programs received by Alnan prior to 2012 and reported in Exhibit 18 of the Alnan/Kromet initial response.[459] Because most of these grants were non-recurring, the Department must allocate the benefits over the AUL of Alnan's productive assets if the value of the benefit exceeded 0.5 percent of total sales in the year of approval.
- In its final results, the Department should analyze each of the programs and determine whether the programs are recurring or non-recurring in nature, and whether a benefit continues to exist from those programs during the POR.[460]

Alnan/Kromet's Rebuttal Arguments:

- All the programs listed in Exhibit 18 of Alnan/Kromet initial response are identical to the list provided by Alnan in the first administrative review. In its *Preliminary Results* for the current review period, the Department properly accounted for all subsidy programs relating to prior years, so that no further analyses as claimed by Petitioner are necessary.

Department's Position: We disagree with Petitioner's assertion that the Department failed to properly account for various grants that the Alnan Companies reported receiving in various years prior to the POR. The Department properly accounted for all grant programs reported by the Alnan Companies in its questionnaire responses. As indicated in the IDM of *Aluminum Extrusions from the PRC First Review*, the GOC and the Alnan Companies used different names to refer to the same programs.[461] The Department provided cross-references to enable the reader to identify the various programs. Thus, the cross-references included in the IDM of *Aluminum Extrusions from the PRC First Review* demonstrate that the Department properly accounted for all of the programs in the first review that the Petitioner now references in the context of the second review. Specifically, in the first review, the Department expensed all of the Alnan Companies' grants to the year of receipt, except for four grant programs: 1) Funds of Guangxi Autonomous Region for Enterprises' Technology Renovation; 2) Financial Assistance (interest subsidy) of Nanning Municipality for Key Technology Renovation; 3) National Funds for Construction of Ten Key Energy Saving Projects, Key Demonstration Bases for Recycling Economy and Resource Saving", and Key Industrial Pollution Control Projects; and 4) Special Funds of Guangxi Beibu Gulf Economic Zone for the Development of Key Industries). In the first review the Department determined that, for these four grant programs, the amounts approved exceeded the relevant sales denominator in the year of approval and, thus, the Department allocated each of the four grants over the AUL.[462] In the instant review, we continue to allocate these four grants over time using our grant standard grant allocation methodology. In this manner, we properly accounted for all grants originally reported in the first review that are large enough to be allocated over the AUL.

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[459] *See* Alnan/Kromet Initial Response (December 16, 2013), at Exhibit 18.
[460] *Id.*, at 31.
[461] *See, e.g.*, *Aluminum Extrusions from the PRC First Review*, and accompany IDM at 37 (footnote 169) and 44, (footnote 186), in which the Department provided cross-references for the various names used for each grant program.
[462] *Id.*, at 44.

Comment 18: Whether Alnan Foil[463] Is an Input Producer and Subsidies Received by Alnan Foil Should Be Attributed to Alnan Aluminum

Petitioner's Affirmative Arguments:

- The Department did not attribute subsidies received by Alnan Foil to Alnan for the *Preliminary Results* because the Department found that Alnan Foil was not the producer of the inputs. The Department only attributed those subsidies that were transferred to Alnan by Alnan Foil pursuant to 19 CFR 351.525(b)(6)(v).
- Record evidence indicates that Alnan/Kromet has misstated the relationship between Alnan and Alnan Foil. The record indicates that Alnan Foil, in fact, supplied Alnan with billets that Alnan Foil processed as evidenced by the fact that Alnan Foil's purchases of billets exceeds the total quantity of primary billets that Alnan reports as having purchased from Alnan Foil.
- Therefore, the Department must conclude that Alnan Foil is a producer of the input product, and, therefore, the Department should attribute all subsidies received by Alnan Foil to Alnan Aluminum.[464]

Alnan/Kromet's Rebuttal Argument:

- Petitioner's claim that Alnan Foil is not only a seller of an input dedicated to the production of the downstream product, but is also a producer of the input product is inconsistent with the record information in this review. Information submitted by Alnan/Kromet demonstrates that Alnan Foil is not the producer of the aluminum billets that it sold to Alnan, and that Petitioner's argument is essentially a speculation.
- Furthermore Petitioner's claim is untimely.[465]

Department's Position: We disagree with Petitioner. We find that there is no information indicating that Alnan Foil supplied billets that Alnan Foil produced or processed. The mere fact that the Alnan Foil's purchases of billets do not match the total quantity of billets it supplied to Alnan does not demonstrate that Alnan Foil was an input producer. First, the difference between the two quantities is small. Further, firms often sell non-perishable commodities from inventory and, thus, it is entirely reasonable to consider that the small difference in quantities is attributable to such a practice. Lastly, we find there is no evidence on the record indicating that Alnan Foil is a producer or processor of aluminum billets. Accordingly, pursuant to 19 CFR 351.525(b)(6)(v), we continue to attribute the subsidies that were transferred to Alnan by Alnan Foil in the final results. And, moreover, we will continue to find that 19 CFR 351.525(b)(6)(iv) does not apply with regard to Alnan Foil.

[463] Alnan/Kromet made the company's name public in its case brief. *See* Alnan/Kromet Case Brief at 17.
[464] *Id.*, at 31-32. As Petitioner's citation of the record is business proprietary, for further explanation, *see* Alnan/Kromet Final Calculations.
[465] *See* Alnan/Kromet Rebuttal Brief at 24-27.

Comment 19: Whether Grants Received by Shanglin Industry Should be Attributed to Alnan Aluminum

Alnan/Kromet's Affirmative Arguments:

- Alnan/Kromet argues that grants received by Shanglin Industry prior to the POR that were allocated to the Alnan Companies in the *Aluminum Extrusions from the PRC First Review* should not be attributed to the Alnan Companies in this review because Shanglin Industry was not an input producer during the second review period and, thus, subsidies to the firm are not attributable under 19 CFR 351.525(b)(6)(iv).[466]

No interested party submitted a rebuttal argument.

Department's Position: We disagree with Alnan/Kromet that grants received by Shanglin Industry, which the Department allocated to the Alnan Companies in the prior review, should not be attributed to the Alnan Companies in the current review. In the *Aluminum Extrusions from the PRC First Review*, the Department found that Shanglin Industry was an input producer that was cross-owned with the Alnan Companies.[467] Thus, in keeping with 19 CFR 351.525(b)(6)(vi), the Department determined that Alnan was able to use or direct the assets of Shanglin Industry in essentially the same way that Alnan could use or direct assets of its own.[468] Accordingly, in the *Aluminum Extrusions from the PRC First Review*, the Department attributed subsidies, including non-recurring grants, received by Shanglin Industry to the combined sales of the Shanglin Industry and Alnan, net of inter-company sales.[469] In other words, in the first review the Department treated subsidies received by Shanglin Industry in 2011, including non-recurring allocable grants, as fungible assets subject to Alnan's use and direction. Thus, the extent to which Shanglin Industry altered its operations such that it is no longer an input producer during the POR of the instant review is not relevant to the issue of attributing allocable subsidies received by Shanglin Industry prior to the POR. Rather, the key fact here is that in 2011, Shanglin Industry was cross-owned with and controlled by Alnan, thereby enabling Alnan to use and direct subsidies (including allocable subsidies) received by Shanglin Industry in 2011, as if the subsidies were received directly by Alnan. Therefore, we continued to attribute the grants received by Shanglin Industry in 2011, to the Alnan Companies in the instant review.

Comment 20: Errors in Alnan Aluminum's Trade Financing Calculation

Alnan/Kromet's Affirmative Arguments:

- Alnan/Kromet alleges that the Department incorrectly used 360 days instead of 365 days in its calculation of "Benchmark Interest Payment." In doing so the Department overstated "2012 Benefit" amounts.[470]

No interested party submitted a rebuttal argument.

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[466] *See* Alnan/Kromet Case Brief at 17-18.
[467] *See Aluminum Extrusions from the PRC First Review*, and accompanying IDM at 13.
[468] *Id*.
[469] *Id*.
[470] *Id.*, at 19.

Department's Position: We agree with Alnan/Kromet and changed the benefit calculation so that it is based on 365 days rather than on 360 days. For further information, *see* Alnan/Kromet Final Calculations.

Comment 21: Whether to Collect Duties or to Lift Any Suspension and Liquidate Without Regard to Duties for Permasteelisa, Jangho, and Streamlight

Permasteelisa's Affirmative Arguments:

- As a result of the Department's final scope ruling concerning curtain wall units that are produced and imported pursuant to a contract to supply a curtain wall, Permasteelisa's curtain wall units are now subject to the antidumping and countervailing duty orders on aluminum extrusions from the PRC.[471] The Department's instructions to CBP regarding the scope ruling provide that "CBP should suspend liquidation of entries of curtain wall units that are produced and imported pursuant to a contract to supply a curtain wall effective 05/10/2013, which is the date of initiation of the scope inquiry."[472]
- There is no question that the final scope ruling applies to Permasteelisa's curtain wall units,[473] and, therefore, the effective date for assessing antidumping and countervailing duties on Permasteelisa's curtain wall units is the date of initiation of the formal scope inquiry: May 10, 2013. In the final results, the Department should instruct CBP not to assess duties, *i.e.*, liquidate without regard to duties, on Permasteelisa's entries that entered during this review period, which pre-dates May 10, 2013.
- It is clear that no suspension should occur for assessment purposes prior to May 10, 2013 because the Department could not even determine from the scope ruling application whether complete and finished curtain wall units were within the scope of the orders.
- To continue to issue assessment instructions to collect duties for the shipments outside of the effective date of the scope ruling is contrary to 19 CFR 351.225(1)(3).
- Here, like in the *AMS Assocs., Inc. v. United States*, 881 F. Supp. 2d 1374 (Fed. Cir. 2013) (*AMS*) ruling, the scope language of the orders was unclear, and therefore the unambiguous language of the regulations only permitted the Department to act on a prospective basis, *i.e.*, the scope ruling can only take effect on or after the date of the initiation of the scope inquiry.

Jangho's Rebuttal Arguments:

- Jangho reiterates Permasteelisa's arguments that countervailing duties may not be assessed upon finished curtain wall units for the current POR in light of Commerce's formal scope inquiry on finished curtain wall units and liquidation instructions issued. Jangho relies on *AMS*, as well as the Department's regulations and previous

[471] *See Aluminum Extrusions from the People's Republic of China; Scope Ruling Request Regarding Complete and Finished Curtain Wall Units that Are Produced and Imported Pursuant to a Contract to Supply a Complete Curtain Wall* (March 26, 2013) (*Curtain Wall Units Scope Ruling*). The scope ruling was requested by Yuanda USA Corporation and Shenyang Yuanda Aluminum Industry Engineering (collectively, Yuanda).
Co., Ltd., a foreign producer/exporter
[472] *See* CBP Message No. 4101301 (April 11, 2014).
[473] *See* 19 CFR 351.225(a) ("{T}he Department issues 'scope rulings' that clarify the scope of an order…with respect to particular products.")

determination with respect to IDEX in the first administrative review of the antidumping duty order.[474]

Streamlight's Affirmative Arguments:

- The Department should not collect duties on Streamlight's imports which entered prior to the Department's initiation on May 19, 2014 of a formal scope inquiry concerning Streamlight's extruded aluminum heat sink parts for battery-powered LED lamps and lights.[475]
- Under 19 CFR 351.225(l)(3), if the Department conducts a formal scope inquiry and ultimately determines that the product in question is within the scope of the order, the Department is only authorized to assess duties for entries on or after the date of initiation of the formal scope inquiry.
- The Department initiated a formal scope inquiry because it could not determine from the scope application and the 19 CFR 351.225(k)(1) sources whether Streamlight's products were within the scope of the orders. To date, Commerce has not issued a final scope ruling on Streamlight's products. Even if the Department finds that Streamlight's products are within scope, the regulations prohibit it from assessing duties on merchandise entered prior to the date of the formal scope initiation, *i.e.*, entries entered during the POR.
- In previous cases, the Department has specified that its authority to assess duties applies to entries only after the formal scope initiation. For instance, in the first administrative review of the antidumping duty order, the Department stated: "Consistent with 19 CFR 351.225(1)(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."[476]

Petitioner's Rebuttal Arguments:

- Permasteelisa's interpretation of 19 CFR 351.225(1)(3) is flawed. In *Shenyang Yuanda*, the Court expressly addressed and rejected Permasteelisa's argument that the Department cannot "retroactively" collect duties on curtain wall units. The Court confirmed that "the Department did not act beyond its authority by continuing the suspension of liquidation of the product."[477]
- In *Shenyang Yuanda* the Court found that *AMS* is inapplicable because in *AMS*, the Department "issued clarification instructions that interpreted the scope of an existing

[474] *See Aluminum Extrusions from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission, in Part, 2010/12*, 79 FR 96 (January 2, 2014) (*Aluminum Extrusions 2010-2012 AD Final Results)*, and accompanying IDM at Comment 14 (where the Department determined that consistent with 19 CFR 351.225(1)(3), antidumping duties could be assessed on IDEX Health & Science LLC's (IDEX) imports of precision machine parts only after the date of the initiation of a formal scope inquiry).

[475] *See* Streamlight Case Brief at 2.

[476] *See Aluminum Extrusions 2010-2012 AD Final Results.*

[477] *See Shenyang Yuanda Aluminum Industry Engineering Co., Ltd. v. United States,* 961 F. Supp. 2d 1291, 1302-03 (CIT 2014) (*Shenyang Yuanda*).

antidumping duty order to cover new products."[478] The Department did not add any new products to the scope in its curtain wall units scope ruling. Therefore, in its final results, the Department should assess and collect duties on Permasteelisa's curtain walls entered during the POR, and not just on those entries entered after the date of the formal scope proceeding's initiation.[479]

- With regard to Streamlight, to the extent that any of Streamlight's products were classified as Type 3 merchandise prior to May 19, 2014, then 19 CFR 351.225(l)(3) does not apply to those products, and the Department should continue to collect duties of found to be in scope. If the Department finds Streamlight's heat sink parts to be merely fabricated aluminum extrusions, the Department should suspend liquidation of Streamlight's imports prior to the formal initiation of the scope inquiry.[480]

Department's Position: We disagree with Permasteelisa, Jangho and Streamlight that the Department has no authority to assess duties on imports prior to the initiation of a scope inquiry. Further, we disagree with Permasteelisa and Jangho that 19 CFR 351.225(l)(3) prohibits the Department from assessing duties on their entries as a result of this administrative review. Permasteelisa, Jangho and Streamlight mischaracterize 19 CFR 351.225(1)(3), which states that "the Secretary will instruct the Customs Service to suspend liquidation and to require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the product entered, or withdrawn from warehouse, for consumption on or after the date of initiation of the scope inquiry," by failing to include the words, "*{w}here there has been no suspension of liquidation*" (emphasis added). With respect to Permasteelisa and Jangho, we note that neither company requested a scope ruling from the Department. Nothing in 19 CFR 351.225(l)(3) prohibits CBP from suspending liquidation of their entries prior to the initiation of a scope inquiry. Likewise, nothing in this provision prohibits the Department from instructing CBP to assess duties on these entries, which are properly subject to this review.

We also disagree with the arguments of Permasteelisa, Jangho and Streamlight that the initiation of a formal scope inquiry is an indicator that, prior to the date of the initiation, the Department could not determine if the products were within the scope in the order, and therefore it is improper for CBP to suspend liquidation prior to the date of initiation. As evidenced by 19 CFR 351.225(l)(1)-(3), the Department may initiate a formal scope inquiry even where products have already been suspended prior to the date of initiation. Nothing in 19 CFR 351.225(l)(3) prohibits CBP from suspending liquidation of these entries prior to the initiation of a scope inquiry.

We also disagree with Jangho's, Permasteelisa's and Streamlight's contention that the Department's treatment of IDEX in the final results of the *Aluminum Extrusions from the PRC First Review* is applicable to the parties in this review. In that review, the Department stated:

> Consistent with 19 CFR 351.225(1)(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

[478] *Id.*, at 1303 (citing *AMS Associates Inc. v. United States*, 881 F. Supp. 2d 1374, 1377 (CIT 2012) (*AMS CIT*), *affirmed*, 737 F.3d 1338 (Fed. Cir. 2013)).
[479] *See* Petitioner Rebuttal Brief at 50-52.
[480] *Id.*, at 53.

> 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. [481]

Contrary to Jangho, Permasteelisa and Streamlight's contention, the *Aluminum Extrusions from the PRC First Review Final Results* did not say that the Department would not assess duties on IDEX's entries of subject merchandise prior to the initiation of its scope inquiry, but rather that the Department would instruct CBP to "suspend liquidation and require a cash deposit" on or after the date of the initiation of IDEX's scope inquiry. Thus, we do not find that the *Aluminum Extrusions from the PRC First Review Final Results* is applicable to the parties in this review.

Moreover, Permasteelisa's and Jangho's reliance on *AMS Associates* is misplaced. In *AMS Associates*, the CAFC held that the Department (1) erred in failing to conduct a formal scope inquiry because the scope of the order was unclear, and (2) exceeded its authority under 19 CFR 351.225(l)(2) by ordering the suspension of liquidation retroactive to the beginning of the period of review when the order did not clearly cover the product at issue.[482] In contrast, here, at the request of Yuanda, the Department initiated a formal scope inquiry on certain curtain wall units to determine whether the products were subject to the order. The Department found the products were within the scope of the order pursuant to the unambiguous scope language covering parts for curtain walls[483] and ordered CBP to "suspend liquidation of entries of curtain wall units that are produced and imported pursuant to a contract to supply a curtain wall effective May 10, 2013, which is the date of initiation of the scope inquiry."[484] Importantly, nothing in those instructions prohibited the Department from continuing suspension of liquidation for products that were already suspended prior to the date of initiation of the formal scope inquiry.

In *Shenyang Yuanda*, another case related to a scope ruling on curtain wall units, the CIT expressly addressed and rejected the argument presented here by Permasteelisa and Jangho that the Department cannot "retroactively" collect duties on curtain wall units. The CIT confirmed that "{w}here, as here, a scope ruling confirms that a product is, and has been, the subject of an order, the Department has not acted beyond its authority by continuing the suspension of liquidation of the product."[485] The CIT in *Shenyang Yuanda* further dismissed the argument that Permasteelisa and Jangho rely on here with respect to *AMS Associates*. According to the CIT, "{i}n *AMS*, Commerce issued clarification instructions that interpreted the scope of an existing antidumping duty order to cover new products and then retroactively suspended liquidation of these products."[486] The CIT went on to find *AMS Associates* "inapplicable to this case because, here, the instructions added no new products to the scope, and because liquidation of plaintiffs' curtain wall units has been suspended since publication of the preliminary determinations{,}…{thus,} merely confirm{ing} what had previously been the case."[487]

[481] *See Aluminum Extrusions from the PRC First Review*, and accompanying IDM at Comment 5.
[482] *See AMS Associates*, 737 F. 3d at 1343-44.
[483] *See Curtain Wall Units Scope Ruling* at 20-27.
[484] *See* CBP Message No. 4101301 (April 11, 2014).
[485] *See Shenyang Yuanda*, 961 F. Supp. 2d at 1302-03.
[486] *Id.*, at 1303 (citing *AMS Associates CIT*, 881 F. Supp. 2d at 1377).
[487] *Id.*

Here, the Department has not retroactively ordered the suspension of liquidation of any of these parties' merchandise, though such merchandise may already be properly suspended by CBP. Thus, we find the ruling in *AMS Associates* does not stand for the proposition that the Department cannot liquidate a party's entries of subject merchandise prior to the initiation of that a scope inquiry.

With respect to Streamlight, in accordance with 19 CFR 351.225(l)(1), to the extent that any of Streamlight's entries subject to the scope inquiry are already suspended, such suspension will continue pending a preliminary or final scope ruling. Any other issues raised by Streamlight or petitioners on this issue should be raised in Streamlight's on-going scope proceeding.

Comment 22: Correct Spelling of Company Name

Kam Kiu's Affirmative Arguments:

- Kam Kiu Aluminium Products Sdn. Bhd., a U.S. importer, and Taishan City Kam Kiu Aluminium Extrusion Co. Ltd., a Chinese producer and exporter (collectively, Kam Kiu) requested an administrative review.[488]
- The *Preliminary Results* and corresponding draft cash deposit and liquidation instructions list "Kam Kiu Aluminum Products Sdn Bhd" using the American English spelling, "Aluminum," and not the actual company name using the British English spelling "Aluminium."[489]
- To avoid potential complications with U.S. Customs and Border Protection (CBP), the Department should use "Kam Kiu Aluminium Products Sdn. Bhd." in the *Federal Register* notice of the final results of review and in any instructions issued to CBP.

No interested party submitted a rebuttal argument.

Department's Position: We agree that "Aluminum" and not "Aluminium" was used in the *Preliminary Results* and corresponding customs instructions. However, because Kam Kiu Aluminium Products Sdn. Bhd. is a U.S. importer, the company should not have been listed in those documents.[490] We note that Taishan City Kam Kiu Aluminium Extrusion Co. Ltd., the Chinese producer and exporter, is listed in the *Preliminary Results* and corresponding customs instructions. As such, within the notice of final results of review and any subsequent instructions issued to CBP, we will not include Kam Kiu Aluminium Products Sdn. Bhd. as a producer or exporter and continue to list Taishan City Kam Kiu Aluminium Extrusion Co. Ltd.

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[488] *See* Letter from Kam Kiu regarding "Request for Administrative Review" (May 29, 2013).

[489] *See Preliminary Results*, 79 FR at 36011; s*ee also* Department Memorandum regarding "Draft Customs Instructions" (June 19, 2014).

[490] Petitioner requested a review of "Kam Kiu Aluminum Products Sdn Bhd." *See* Letter from Petitioner regarding "Request for Administrative Review" (May 31, 2013). Petitioner did not withdraw its review request of "Kam Kiu Aluminum Products Sdn Bhd." *See* Letter from Petitioner regarding "Withdrawal of Request for Administrative Review" (September 26, 2013). Petitioner, however, did not submit a rebuttal brief arguing that "Kam Kiu Aluminum Products Sdn Bhd" is a Chinese producer/exporter that is different than "Kam Kiu Aluminium Products Sdn. Bhd.," the U.S. importer.

Conclusion

Based on our analysis of the comments received, we recommend adopting all of the above positions. If accepted, we will publish the final results of review in the *Federal Register*.

✓ Agree

____ Disagree

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

22 DECEMBER 2014
(Date)