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November 21, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Results of the 2014-2015 Administrative Review of the Antidumping Duty Order on Aluminum Extrusions from the People's Republic of China

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SUMMARY

The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order[1] on aluminum extrusions from the People's Republic of China (PRC).[2] The period of review is May 1, 2014 through April 30, 2015. These final results cover 46 companies.[3] The Department selected the following companies as mandatory respondents: Guangzhou Jangho Curtain Wall System Engineering Co., Ltd. and Jangho Curtain Wall Hong Kong Ltd. (collectively, Jangho) and Guang Ya Aluminium Industries Co., Ltd., Foshan Guangcheng Aluminium Co., Ltd., Kong Ah International Company Limited, and Guang Ya Aluminium Industries (Hong Kong) Ltd. (collectively, Guang Ya Group); Guangdong Zhongya Aluminium Company Limited, Zhongya Shaped Aluminium (HK) Holding Limited, and Karlton

[1] *See Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order*, 76 FR 30650 (May 26, 2011) (*Order*).
[2] The Department initiated this review on July 1, 2015. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 80 FR 37588 (July 1, 2015) (*Initiation Notice*).
[3] This administrative review initially covered 175 companies. *See Initiation Notice*. However, the Department rescinded this review with respect to 129 companies for which all administrative review requests were timely withdrawn. Thus, 46 companies remain under review. *See Aluminum Extrusions From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Rescission of Review in Part; 2014-2015*, 81 FR 38664 (June 14, 2016) (*Preliminary Results*) and accompanying preliminary decision memorandum (Preliminary Decision Memorandum), at 5-6.

Aluminum Company Ltd. (collectively, Zhongya); and Xinya Aluminum & Stainless Steel Product Co., Ltd. (Xinya) (collectively, Guang Ya Group/Zhongya/Xinya).[4]

We recommend making a change from the *Preliminary Results* for these final results in accordance with the position described in the "Application of Facts Available and Use of Adverse Inference" section of this memorandum.

BACKGROUND

On June 14, 2016, the Department published the *Preliminary Results* of this administrative review.[5] In accordance with 19 CFR 351.309(c)(1)(ii), we invited interested parties to comment on the *Preliminary Results*. On July 6, 2016, we received a letter from JMA (HK) Company Limited (JMA), one of the companies found eligible for a separate rate in the *Preliminary Results*. In its letter, JMA stated that it was officially withdrawing from participation in this review and requested that the Department remove all of its submissions from the record of this proceeding.[6] On July 14, 2016, we received a case brief from the Aluminum Extrusions Fair Trade Committee (Petitioner).[7] On July 19, 2016, we received a rebuttal brief from Jangho.[8] On October 3, 2016, the Department extended the deadline for the final results of this administrative review until November 21, 2016.[9]

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

[4] In prior segments of this proceeding, the Department found that Guang Ya Group, Zhongya, and Xinya were affiliated with each other and should be treated as a single entity. *See, e.g., 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 From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 78784 (December 31, 2014); and *Aluminum Extrusions From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013–2014*, 80 FR 75060 (December 1, 2015) (*2013-2014 Final Results*). *See also Zhaoqing New Zhongya Aluminium Co., Ltd. v. United States*, 70 F. Supp. 3d 1298 (CIT May 27, 2015) and *Zhaoqing New Zhongya Aluminum Co., Ltd. et al. v. United States*, 887 F. Supp. 2d 1301, 1310 (CIT 2012).

[5] *See Preliminary Results*, 81 FR at 38664.

[6] *See* Letter from JMA to the Department, "Aluminum Extrusions from China; Withdrawal from Participation," dated July 6, 2016 (JMA Withdrawal Letter).

[7] *See* Letter from Petitioner to the Department, "Aluminum Extrusions from the People's Republic of China: Case Brief," dated July 14, 2016 (Petitioner's Case Brief).

[8] *See* Letter from Jangho to the Department, "Aluminum Extrusions from the People's Republic of China: Rebuttal Brief," dated July 19, 2016 (Jangho's Rebuttal Brief).

[9] *See* Memorandum from Chelsey Simonovich to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Aluminum Extrusions from the People's Republic of China: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review," dated October 3, 2016.

Aluminum Association series designation commencing with the number 3 contains manganese as the major alloying element, with manganese accounting for not more than 3.0 percent of total materials by weight. The subject merchandise is made from an aluminum alloy with an Aluminum Association series designation commencing with the number 6 contains magnesium and silicon as the major alloying elements, with magnesium accounting for at least 0.1 percent but not more than 2.0 percent of total materials by weight, and silicon accounting for at least 0.1 percent but not more than 3.0 percent of total materials by weight. The subject aluminum extrusions are properly identified by a four-digit alloy series without either a decimal point or leading letter. Illustrative examples from among the approximately 160 registered alloys that may characterize the subject merchandise are as follows: 1350, 3003, and 6060.

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

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

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

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

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

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

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

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

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States (HTSUS): 8481.90.9060, 8481.90.9085, 9031.90.9195, 8424.90.9080, 9405.99.4020, 9031.90.90.95, 7616.10.90.90, 7609.00.00, 7610.10.00, 7610.90.00, 7615.10.30, 7615.10.71, 7615.10.91, 7615.19.10, 7615.19.30, 7615.19.50, 7615.19.70, 7615.19.90, 7615.20.00, 7616.99.10, 7616.99.50, 8479.89.98, 8479.90.94, 8513.90.20, 9403.10.00, 9403.20.00, 7604.21.00.00, 7604.29.10.00, 7604.29.30.10, 7604.29.30.50, 7604.29.50.30, 7604.29.50.60, 7608.20.00.30, 7608.20.00.90, 8302.10.30.00, 8302.10.60.30, 8302.10.60.60, 8302.10.60.90, 8302.20.00.00, 8302.30.30.10, 8302.30.30.60, 8302.41.30.00, 8302.41.60.15, 8302.41.60.45, 8302.41.60.50, 8302.41.60.80, 8302.42.30.10, 8302.42.30.15, 8302.42.30.65, 8302.49.60.35, 8302.49.60.45, 8302.49.60.55, 8302.49.60.85, 8302.50.00.00, 8302.60.90.00, 8305.10.00.50, 8306.30.00.00, 8414.59.60.90, 8415.90.80.45, 8418.99.80.05, 8418.99.80.50, 8418.99.80.60, 8419.90.10.00, 8422.90.06.40, 8473.30.20.00, 8473.30.51.00, 8479.90.85.00, 8486.90.00.00, 8487.90.00.80, 8503.00.95.20, 8508.70.00.00, 8515.90.20.00, 8516.90.50.00, 8516.90.80.50, 8517.70.00.00, 8529.90.73.00, 8529.90.97.60,

8536.90.80.85, 8538.10.00.00, 8543.90.88.80, 8708.29.50.60, 8708.80.65.90, 8803.30.00.60, 9013.90.50.00, 9013.90.90.00, 9401.90.50.81, 9403.90.10.40, 9403.90.10.50, 9403.90.10.85, 9403.90.25.40, 9403.90.25.80, 9403.90.40.05, 9403.90.40.10, 9403.90.40.60, 9403.90.50.05, 9403.90.50.10, 9403.90.50.80, 9403.90.60.05, 9403.90.60.10, 9403.90.60.80, 9403.90.70.05, 9403.90.70.10, 9403.90.70.80, 9403.90.80.10, 9403.90.80.15, 9403.90.80.20, 9403.90.80.41, 9403.90.80.51, 9403.90.80.61, 9506.11.40.80, 9506.51.40.00, 9506.51.60.00, 9506.59.40.40, 9506.70.20.90, 9506.91.00.10, 9506.91.00.20, 9506.91.00.30, 9506.99.05.10, 9506.99.05.20, 9506.99.05.30, 9506.99.15.00, 9506.99.20.00, 9506.99.25.80, 9506.99.28.00, 9506.99.55.00, 9506.99.60.80, 9507.30.20.00, 9507.30.40.00, 9507.30.60.00, 9507.90.60.00, and 9603.90.80.50.

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

APPLICATION OF FACTS AVAILABLE AND USE OF ADVERSE INFERENCE

In the *Preliminary Results*, the Department found that the use of facts otherwise available was warranted with respect to Jangho and Guang Ya Group/Zhongya/Xinya pursuant to sections 776(a)(2)(A)-(D) of the Tariff Act of 1930, as amended (the Act).[10] In addition, the Department preliminarily determined that both Jangho and Guang Ya Group/Zhongya/Xinya failed to cooperate by not acting to the best of their abilities to comply with the Department's requests for information, thereby warranting an adverse inference pursuant to section 776(b) of the Act.[11]

Upon further consideration, the Department finds for these final results that the application of adverse facts available (AFA) to Jangho and Guang Ya Group/Zhongya/Xinya is not necessary. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in a non-market economy (NME) country under the test established in *Sparklers*,[12] as further developed by *Silicon Carbide*.[13] Neither Jangho nor Guang Ya Group/Zhongya/Xinya provided the Department with factual information that affirmatively demonstrates an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports.[14] Accordingly, the Department's policy regarding conditional review of the NME-wide entity applies to this administrative review.[15] As a result, those companies not establishing their eligibility for a

[10] *See Preliminary Results*, 81 FR at 38666-67; *see also* Preliminary Decision Memorandum, at 18-19.
[11] *Id.*; *see also* Preliminary Decision Memorandum, at 19-20.
[12] *See Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*).
[13] *See Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*).
[14] *See* Preliminary Decision Memorandum, at 11-12.
[15] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963, 65970 (November 4, 2013) (*Conditional Review of NME Entity Notice*).

separate rate in this review are to be considered part of the PRC-wide entity.[16] Under the Department's policy, the PRC-wide entity will not be under review unless a party specifically requests, or the Department self-initiates, a review of the entity.[17] In this review, no party requested, nor did the Department self-initiate, a review of the PRC-wide entity; therefore, the PRC-wide entity is not under review.

Because Jangho and Guang Ya Group/Zhongya/Xinya failed to demonstrate eligibility for a separate rate, they are properly considered to be part of the PRC-wide entity, which is not subject to this administrative review. For further discussion of the Department's application of its policy regarding conditional review of the PRC-wide entity, *see* Comment 1 below. As a result of this application of the Department's policy, the Department need not reach the issue of whether application of AFA is warranted with respect to Jangho and Guang Ya Group/Zhongya/Xinya. Therefore, we make no such determination for these final results.

DISCUSSION OF THE ISSUES

Comment 1: Rate to Assign to Jangho

In the *Preliminary Results*, as noted above, the Department found applied AFA to Jangho and, pursuant to that analysis, determined that Jangho was not eligible for a separate rate and was part of the PRC-wide entity. Moreover, the Department stated that since the PRC-wide entity was not currently under review, its rate from the previous administrative review (33.28 percent) was not subject to change.[18]

Petitioner argues that it is the Department's practice to assign, as the AFA rate, the higher of the petition rate or the highest calculated rate, provided that the rate assigned is not unduly punitive.[19] Petitioner further contends that the Department has often applied the highest calculated rate as AFA.[20] Citing to Jangho's letter withdrawing from participation in this review, Petitioner argues that this is the third administrative review in which Jangho failed to fully participate.[21] According to Petitioner, Jangho's behavior over the course of these reviews "has become increasingly more egregious because the Department has not applied an AFA rate to Jangho that is sufficient to induce cooperation."[22] Accordingly, Petitioner urges the Department to apply to Jangho, as AFA, the highest rate calculated in this proceeding, 86.01 percent, which is the rate calculated for mandatory respondent Union Industry (Asia) Co., Ltd. (Union) in the

[16] *Id.*
[17] *Id.*
[18] *See Preliminary Results*, 81 FR at 38667; *see also* Preliminary Decision Memorandum, at 16-17.
[19] *See* Petitioner's Case Brief, at 3 (citing *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Affirmative Preliminary Determination of Critical Circumstances*, 77 FR 31309, 31318 (May 25, 2012) (*CSPC from China*)).
[20] *Id.*, at 3-4 (citing *Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 12034, 12035 (February 21, 2013); *CSPC from China*, 77 FR at 31309-31324; and *Pure Magnesium from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 66089 (December 14, 2009), and accompanying Issues and Decision Memorandum at Comment 1).
[21] *Id.*, at 4 (citing Letter from Jangho to the Department, "2014-2015 Administrative Review of Aluminum Extrusions from the People's Republic of China," dated May 5, 2016).
[22] *Id*.

2013-2014 Final Results.[23] Petitioner maintains that Union's rate can be corroborated and is not unduly punitive because it was determined on the basis of Union's own sales data.[24]

Jangho responds that in the *Preliminary Results*, the Department followed its separate rate methodology and found that there was insufficient information on the record to grant Jangho a separate rate.[25] According to Jangho, the Department only assigns separate rates in NME cases when an applicant establishes "an absence of both *de jure* and *de facto* government control over its export activities in accordance with the separate-rates test criteria."[26] Jangho further argues that under the Department's practice, it would be impermissible to assign to Jangho the company-specific rate advocated by Petitioner, not only because Jangho did not qualify for a separate rate, but also because doing so would result in there being two PRC-wide rates: one for Jangho and one for the existing PRC-wide entity.[27]

Moreover, Jangho asserts that Petitioner, in asking the Department assign Union's rate to Jangho, does not disagree with the Department's decision not to grant a separate rate to Jangho, but, rather, contends that the PRC-wide rate is not punitive enough.[28] According to Jangho, AFA determinations are not meant to be punitive in nature and, in this case, the Department applied the PRC-wide rate to Jangho after finding that the company did not qualify for a separate rate.[29] Jangho further asserts that, even if the Department were to assign a rate other than the PRC-wide rate, assignment of Union's rate would be inappropriate because of the greatly-varying nature of the products sold by Jangho (*i.e.*, architectural facades) and Union (*i.e.*, trim kits and handles).[30] As Jangho claims, AFA rates "must bear a reasonable relationship to respondent's commercial reality."[31]

Finally, Jangho contends that Petitioner's request to apply Union's rate to Jangho is contrary to the Department's current policy with respect to the PRC-wide entity.[32] Jangho argues that, as explained in the Preliminary Decision Memorandum, the PRC-wide rate did not change under the Department's current policy, which states that there is no conditional review of the PRC-wide entity.[33] Jangho states that the PRC-wide entity is not subject to review in this segment of the proceeding because no party requested an administrative review of the PRC-wide entity, nor did the Department initiate a review of the entity. According to Jangho, Petitioner could have requested a review of the PRC-wide entity, but elected not to do so.[34]

Based on the foregoing, Jangho argues that the Department should not make any changes to its margin for these final results.

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[23] *Id.*, at 4-5 (citing *2013-2014 Final Results*).
[24] *Id.*, at 4.
[25] *See* Jangho's Rebuttal Brief, at 2-3 (citing Preliminary Decision Memorandum at 11, 16 and 18).
[26] *Id.* (citing the Department's separate rate application at http://enforcement.trade.gov/nme/sep-rate-files/app-20150323/prc-sr-app-20150323.pdf, at 1).
[27] *Id*., at 3.
[28] *Id*., at 4.
[29] *Id*.
[30] *Id.*, at 5 (citing *2013-2014 Final Results*).
[31] *Id.* (citing *Lifestyle Enters, Inc. v. United States*, 865 F. Supp. 2d 1284 (CIT 2012)).
[32] *Id.*
[33] *Id.*, at 5-6 (citing Preliminary Decision Memorandum at 17).
[34] *Id.*, at 6.

Department's Position:

We disagree with Petitioner. As an initial matter, as discussed above in the "Application of Facts Available and Use of Adverse Inference" section, we no longer find the application of AFA to Jangho necessary in light of the Department's current practice regarding the conditional review of the PRC-wide entity, which applies to this administrative review and these final results. We further note that the cases cited by Petitioner predate the *Conditional Review of NME Entity Notice* as a statement of the Department's policy.

The *Conditional Review of NME Entity Notice* states, in part:

> The Department will no longer consider the NME entity as an exporter conditionally subject to administrative reviews. Accordingly, the NME entity will not be under review unless the Department specifically receives a request for, or self-initiates, a review of the NME entity. In administrative reviews of AD orders from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, the Department will issue a final decision indicating that the company in question is part of the NME entity.[35]

We find the wording of the *Conditional Review of NME Entity Notice* unambiguous. Because no party requested an administrative review of the PRC-wide entity, nor did the Department self-initiate a review of the PRC-wide entity in this segment of the proceeding, the PRC-wide entity is not subject to review. In the *Preliminary Results*, we determined that Jangho did not establish, in this administrative review, its eligibility for a separate rate, and no party has challenged this determination. Thus, in accordance with the *Conditional Review of NME Entity Notice,* Jangho is part of the PRC-wide entity.

The *Conditional Review of NME Entity Notice* further explains that, in a situation where a review of the NME entity was not initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, "the NME entity's entries were not subject to the review and the rate for the NME entity is not subject to change as a result of that review...."[36]

Under the Department's current policy, the PRC-wide entity will not be under review unless a party specifically requests, or the Department self-initiates, a review of the entity. It remains the fact that no party, including Petitioner, requested a review of the PRC-wide entity in the instant review despite the Department's publication of the *Conditional Review of NME Entity Notice* prior to the opportunity to request the instant administrative review. The Department agrees with Jangho that Petitioner could have requested a review of the PRC-wide entity, but chose not to do so. Consequently, pursuant to our change in policy regarding conditional review of the PRC-wide entity, the PRC-wide entity (which includes the following companies: Jangho; Guang Ya

[35] *See Conditional Review of NME Entity Notice*, 78 FR at 65970.
[36] *Id.*

Group/Zhongya/Xinya; Atlas Integrated Manufacturing Ltd.; Belton (Asia) Development Ltd.; Classic & Contemporary Inc.; Danfoss Micro Channel Heat Exchanger (Jia Xing) Co., Ltd.; Dongguan Golden Tiger Hardware Industrial Co., Ltd.; Ever Extend Ent. Ltd.; Fenghua Metal Product Factory; FookShing Metal & Plastic Co. Ltd.; Foshan Golden Source Aluminum Products Co., Ltd.; Genimex Shanghai, Ltd.; Global Point Technology (Far East) Limited; Gold Mountain International Development Limited; Golden Dragon Precise Copper Tube Group, Inc.; Hebei Xusen Wire Mesh Products Co., Ltd.; Jackson Travel Products Co., Ltd.; New Zhongya Aluminum Factory; Shanghai Automobile Air-Conditioner Accessories Co., Ltd.; Southwest Aluminum (Group) Co., Ltd.; Suzhou NewHongJi Precision Part Co., Ltd.; Union Aluminum (SIP) Co.; Whirlpool Canada L.P.; Whirlpool Microwave Products Development Ltd.; and Xin Wei Aluminum Co.) is not currently under review. As such, the PRC-wide rate from the previous administrative review remains unchanged at 33.28 percent.[37]

Therefore, in keeping with this policy, we have not applied Union's rate to Jangho for these final results. Instead, in this final determination, we continue to find that Jangho is part of the PRC-wide entity. Accordingly, we have applied the rate in effect for the PRC-wide entity to Jangho.

Comment 2: Rate to Assign to JMA

Petitioner states that in the *Preliminary Results*, the Department determined JMA was eligible for a separate rate and assigned it the separate rate of 86.01 percent, the sole calculated rate in this proceeding.[38] Petitioner notes that, after the *Preliminary Results*, JMA notified the Department it was withdrawing from participation in the instant review and requested that the Department remove all of its proprietary and public submissions from the record.[39] According to Petitioner, JMA's actions seem to be a flagrant attempt to manipulate the company's dumping margin by purposefully trying to become part of the PRC-wide entity, and thereby receiving the lower rate assigned to the PRC-wide entity.[40] Citing to the Department's regulations, Petitioner claims there is no basis for the Department to remove JMA's submissions from the record.[41]

Petitioner argues that JMA's separate rate application and supplemental filings preliminarily showed that JMA was eligible for a separate rate, and, therefore, the Department should continue to grant JMA a separate rate, despite its withdrawal from this review.[42] Petitioner asserts JMA did not place any new factual information on the record after the *Preliminary Results* establishing that it is controlled by the Chinese government and, thus, the record shows that JMA is eligible for a separate rate.[43] For these reasons, Petitioner urges the Department to continue to assign JMA the separate rate of 86.01 percent for these final results, and not permit JMA to "game the system."[44] Alternatively, Petitioner contends that, if the Department determines JMA is not eligible for a separate rate, the Department should assign the highest calculated rate, 86.01

[37] *See 2013-2014 Final Results*, 80 FR at 75063.
[38] *See* Petitioner's Case Brief, at 5 (citing *Preliminary Results*, 81 FR at 38666, and *2013-2014 Final Results*, 80 FR 75063).
[39] *Id.* (citing JMA Withdrawal Letter).
[40] *Id.*, at 5-6.
[41] *Id*., at 6 (citing 19 CFR 351.104(a)(1) and 19 CFR 351.104(c)).
[42] *Id.* (citing Preliminary Decision Memorandum at 13).
[43] *Id.*, at 6-7.
[44] *Id*., at 5.

percent, to JMA as AFA for the final results. Petitioner maintains that JMA's withdrawal shows the company would benefit from not participating in the remainder of this segment of the proceeding, which runs contrary to the purpose of the AFA provision.[45]

No other interested parties commented on this issue.

Department's Position:

We agree with Petitioner that JMA's proprietary and public submissions should not be removed from the record of this segment of the proceeding. In the instant review, JMA filed the following substantive documents prior to the *Preliminary Results*: a response to the Department's quantity and value questionnaire;[46] a separate-rate application;[47] and a response to the Department's supplemental questionnaire regarding JMA's separate-rate application.[48] *In the Preliminary Results*, the Department found that JMA's separate-rate application and supplemental questionnaire response provided sufficient information to preliminarily establish that JMA was entitled to a separate rate.[49] Pursuant to the Department's practice, we preliminarily assigned a margin of 86.01 percent to JMA and the other non-examined separate-rate companies.[50] Subsequent to the *Preliminary Results*, JMA filed a letter informing the Department that it was withdrawing from participation in the instant review and requested that the Department remove all of its proprietary and public submissions from the record.[51]

In the context of this administrative review, the Department finds that JMA's request to remove all of its submissions from the record appears to be an attempt to manipulate the administrative review process. As noted above, the documents that JMA submitted prior to the *Preliminary Results* showed that JMA was eligible for a separate rate, and JMA did not request to withdraw those documents until after the issuance of the *Preliminary Results*. There is nothing on the record that would lead the Department to revisit or amend our finding with respect to JMA's eligibility for a separate rate. In *Live Cattle from Canada*, the Department rejected a request by one of the respondents to withdraw its proprietary submissions from the record because doing so would have allowed that respondent to manipulate the administrative process in that investigation.[52] In making the determination in *Live Cattle from Canada*, the Department stated:

> The Department is tasked with administering the antidumping law and possesses the inherent authority to protect the integrity of that process. In determining whether to permit {the respondent} to

[45] *Id*., at 7.
[46] *See* Letter from JMA to the Department, "Aluminum Extrusions from China; Quantity and Value Response," dated July 14, 2015.
[47] *See* Letter from JMA to the Department, "Aluminum Extrusions from China; Separate Rate Application," dated July 30, 2015.
[48] *See* Letter from JMA to the Department, "Aluminum Extrusions from China; Supplemental Questionnaire Response," dated April 18, 2016.
[49] *See Preliminary Results*, 81 FR at 38665-66; *see also* Preliminary Decision Memorandum at 13.
[50] *See Preliminary Results*, 81 FR at 38666; *see also* Preliminary Decision Memorandum at 15-16.
[51] *See* JMA Withdrawal Letter.
[52] *See Notice of Final Determination of Sales at Less Than Fair Value: Live Cattle From Canada*, 64 FR 56739, 56743 (October 21, 1999) (*Live Cattle from Canada*).

> withdraw information, the agency must weigh competing interests, both of which are important to administration of the antidumping law. The Department must balance any potential negative impact that refusing to allow a respondent to withdraw information may have on its ability to obtain business proprietary information in future proceedings, against any negative impact on the integrity of the proceeding if withdrawal is permitted, and determine where the public interest lies.
>
> The Department does not have subpoena power. The submission of information is voluntary. To administer the antidumping law, the Department depends heavily upon the willingness of the parties to provide extensive business proprietary information.…
>
> Equally compelling is the public's interest in the agency enforcing the antidumping law and preserving the integrity of its proceedings. While there is no statutory provision expressly dealing with the withdrawal of business proprietary information once it has been submitted, the courts have recognized "the inherent power of an administrative agency to protect the integrity of its own proceedings." *Alberta Gas Chemicals, Ltd. v. Celanese Corp.*, 650 F.2d 9, 12. Thus, the agency has the discretion to deny a respondent's request to withdraw information where it is necessary to preserve the fundamental integrity of the process and the remedial purpose of the law.[53]

As in *Live Cattle from Canada*, the use of AFA in this proceeding cannot protect the integrity of the proceeding.[54] Here, JMA requested an administrative review[55] and submitted certain information on the record, and, based on this information, the Department determined for the *Preliminary Results* that JMA was entitled to a separate rate.[56] Upon issuance of the *Preliminary Results*, it became known to all parties that the Department had preliminarily assigned a rate of 86.01 percent to the non-examined separate-rate companies, and that the rate for the PRC-wide entity from the previous administrative review, 33.28 percent, was not subject to change because the PRC-wide entity was not under review in this segment of the proceeding.[57] We acknowledge the unusual circumstance present in this review – companies that are part of the PRC-wide entity are assigned lower antidumping duty rates than the separate-rate companies that cooperated in the proceeding. However, as discussed in Comment 1 above, under the Department's current

[53] *See Live Cattle from Canada*, 64 FR at 56743 (citing to *Alberta Gas Chemicals, Ltd. v. Celanese Corp*., 650 F.2d 9 (1981)).
[54] *See Allegheny Ludlum Corp. v. United States*, 27 C.I.T. 1461, 1467 (Ct. Int'l Trade 2003) (finding *Live Cattle from Canada* was a unique situation where the use of AFA could not protect the integrity of the proceedings).
[55] *See* the letter from JMA (HK) Company Limited to the Secretary of Commerce entitled, "Aluminum Extrusions from China; Administrative Review Request," dated May 20, 2015.
[56] *See Preliminary Results*, 81 FR at 38665-66; *see also* Preliminary Decision Memorandum, at 12-13.
[57] *Id.*, 81 FR at 38666-68; *see also* Preliminary Decision Memorandum, at 15-17.

policy,[58] this circumstance is a function of the fact that the PRC-wide entity was not under review in this segment of the proceeding.

JMA did not inform the Department of its withdrawal from participation in the instant review or request that the Department remove all of its submissions from the record until after the Department issued the *Preliminary Results* and the ensuing margins became publicly known. Were the Department to remove all of JMA's submissions from the record pursuant to JMA's post-*Preliminary Results* request, it would be as if JMA never participated in this administrative review. As such, pursuant to the Department's practice, JMA would be considered part of the PRC-wide entity, thereby receiving the lower PRC-wide entity rate. Accordingly, we find that JMA's request to remove all of its information from the record is an attempt at manipulating the administrative review process, since its request was submitted subsequent to the *Preliminary Results*, *i.e.*, at a time when the preliminary outcome of the administrative review was already known to the parties. Allowing such an attempt at manipulation in this administrative review would substantially impair the integrity of this proceeding because it would effectively allow a respondent to select the antidumping duty rate that it found most favorable to its own interests. Therefore, in order to preserve the integrity of this proceeding and the remedial purpose of the antidumping duty law, and consistent with the reasoning advanced in *Live Cattle from Canada*, the Department determines in the instant review that it is appropriate to deny JMA's request to remove all of its submissions from the record of this proceeding.

Thus, in order to protect the integrity of this proceeding, we have not removed JMA's information from the record, and that information remains on the record for these final results. Based on this record information, we continue to find that JMA is eligible for a separate rate. No party has submitted any information on the record of this proceeding that would lead the Department to determine that JMA is not eligible for a separate rate. Accordingly, we find that it is appropriate to continue to assign JMA the separate rate of 86.01 percent for these final results.

[58] *See Conditional Review of NME Entity Notice*, 78 FR at 65970.

CONCLUSION

We recommend following the above methodology for these final results.

☒	☐
_____	_____
Agree	Disagree

11/21/2016

X 

Signed by: PAUL PIQUADO
Paul Piquado
Assistant Secretary
for Enforcement and Compliance