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International Trade Administration
Washington, D.C. 20230

C-570-968
Administrative Review
POR: 01/01/2014 – 12/31/2014
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Office VI: DF, TRW

DATE: December 12, 2016

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 Countervailing Duty Administrative Review: Aluminum Extrusions from the People's Republic of China, 2014 (Fourth Review)

Summary

We analyzed the case and rebuttal briefs of interested parties in the fourth administrative review of the countervailing duty (CVD) order on aluminum extrusions from the People's Republic of China (PRC) for the period of review (POR) January 1, 2014 through December 31, 2014. The two mandatory respondents are: Jangho[1] and Zhongya[2] There are also 45 non-

[1] For purposes of this administrative review, "Jangho" refers to the crossed-owned entities consisting of the following members and affiliates of the Jangho Group: Guangzhou Jangho Curtain Wall System Engineering Co., Ltd.; Guangzhou Jangho's parent company, Jangho Group Co., Ltd.; Jangho Group Company's corporate parent, Beijing Jiangheyuan Holding Com., Ltd.; and Jangho Group Company's producer subsidiaries, Beijing Jangho Curtain Wall System Engineering Co., Ltd., Shanghai Jangho Curtain Wall System Engineering Co., Ltd., and Chengdu Jangho Curtain Wall System Engineering Co., Ltd.. As stated above, we have used "Jangho" to refer to the cross-owned entities to which we will assign a subsidy rate. *See* "Final Results of Administrative Review," below. We have used "the Jangho Group" and "Jangho Group" to refer to the corporate group consisting of Jangho Group Company and its subsidiaries (*i.e.*, not including Beijing Jiangheyuan Holding Com., Ltd. and Jangho Group Company's other corporate parent, Xinjiang Jianghe Huizhong Equity Investment Limited Partnership). We have used "the Jangho companies," to refer to the members of the Jangho Group as well as Beijing Jiangheyuan Holding Com., Ltd.and Xinjiang Jianghe Huizhong Equity Investment Limited Partnership. Further, Jangho Curtain Wall Hong Kong Ltd. is an affiliated Hong Kong reseller/trading company and member of the Jangho Group. For these final results, we are treating Jangho Curtain Wall Hong Kong Ltd. as a Hong Kong, or non-PRC, company, and have not attributed any subsidies to Jangho Curtain Wall Hong Kong Ltd., consistent with 19 CFR 351.525(b) (7). Any shipments of subject merchandise to the United States by Jangho Curtain Wall Hong Kong Ltd. will be subject to the Department's cash deposit requirements. For entries of subject merchandise exported by Jangho Curtain Wall Hong Kong Ltd., the Department intends to instruct CBP to collect cash deposits according to the appropriate rates assigned to the producer, or the all-others rate if the producer does not have its own assigned cash deposit rate.

individually examined companies for which a review was requested and not rescinded. Petitioner is the Aluminum Extrusions Fair Trade Committee. The period for which we are measuring subsidies, *i.e.*, the period of review (POR), is January 1, 2014 through December 31, 2014. We are conducting this administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act).

Background

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).[3] The Department issued the *Preliminary Results* of this administrative review on June 3, 2016, and published them in the *Federal Register* on June 13, 2016.[4] At that time, we invited interested parties to comment on the *Preliminary Results*. On June 9, 2016, we received a case brief from Wuxi Huida Aluminum Co., Ltd. (Wuxi Huida), a non-selected respondent.[5] On July 13, 2016 and July 22, 2016, we granted parties extensions of time to submit case and rebuttal briefs.[6] On July 18, 2016, we received case briefs from the Aluminum Extrusions Fair Trade Committee (Petitioner), the Government of China (GOC), Jangho, and RMD Kwikform North America, Inc. (RMD).[7] On July 28, 2016, we received rebuttal briefs from the Petitioner and

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[2] For purposes of the final results of this administrative review, "Zhongya" refers to the following companies: Guangdong Zhongya Aluminium Company Limited, Zhaoqing New Zhongya Aluminum Co., Ltd., New Zhongya Aluminum Factory, Karlton Aluminum Company Ltd., and Zhongya Shaped Aluminum (HK) Holding Limited (collectively, "Zhongya"). "Zhongya" includes companies selected as mandatory respondents, as well as companies that responded to the Department's initial questionnaire as a group by submitting a letter indicating that they would not be participating in this administrative review. *See "Application of Adverse Facts Available to Non-Cooperative Mandatory Respondent Zhongya"* for more information. We inadvertently omitted Zhongya Shaped Aluminum (HK) Holding Limited from the list of companies included in "Zhongya" in the *Preliminary Results*, but did include all companies in the Department's draft cash deposit and liquidation instructions, which were released to interested parties for comment. We clarify that it was the Department's intent to include Zhongya Shaped Aluminum (HK) Holding Limited in "Zhongya." No parties commented in case briefs on the Department's treatment of these companies as a group in the *Preliminary Results* or on the Department's draft instructions. Use of "Zhongya" to refer to these companies collectively does not denote a cross-ownership determination with respect to any of these companies in this administrative review.

[3] *See Aluminum Extrusions from the People's Republic of China: Countervailing Duty Order*, 76 FR 30653 (May 26, 2011) (the *Order*) and *Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order*, 76 FR 30650 (May 26, 2011) (the *AD Order*), (collectively, the *Orders*).

[4] *See Aluminum Extrusions from the People's Republic of China: Preliminary Results of the Countervailing Duty Administrative Review and Preliminary Intent to Rescind, in Part; 2014*, 81 FR 38137 (June 13, 2016) (the *Preliminary Results*) and accompanying Preliminary Decision Memorandum (the Preliminary Decision Memorandum).

[5] *See* Letter from Wuxi Huida Aluminum Co., Ltd., Regarding: "Aluminum Extrusions from the People's Republic of China: Case Brief of Wuxi Huida," dated June 9, 2016 (Wuxi Huida's Case Brief).

[6] *See* Letter from Robert James, Program Manager, Office VI, to Interested Parties, Regarding: "2014 Countervailing Duty Review of the Antidumping Duty Order on Aluminum Extrusions from the People's Republic of China: Deadline to Provide Case Briefs," dated July 13, 2016, and Letter from Robert James, Program Manager, Office VI, to Interested Parties, Regarding: "2014 Countervailing Duty Review of the Antidumping Duty Order on Aluminum Extrusions from the People's Republic of China: Deadline to Provide Rebuttal Briefs," dated July 22, 2016.

[7] *See* Letter from Petitioners, Regarding: "Aluminum Extrusions from the People's Republic of China: Case Brief," dated July 18, 2016 (Petitioner's Case Brief); Letter from the GOC, Regarding: " Aluminum Extrusions from China; 4th CVD Administrative Review GOC Case Brief," dated July 18, 2016 (the GOC's Case Brief); Letter from Guangzhou Jangho Curtain Wall System Engineering Co., Ltd. and Jangho Curtain Wall Hong Kong

Jangho.[8] On August 4, 2016, the Department released draft cash deposit and liquidation instructions. On August 9, 2016, the Department released a letter inviting comments on these draft cash deposit and liquidation instructions.[9] On August 11, 2016, RMD and Jangho Americas, importers of subject merchandise, submitted comments on the draft customs instructions.[10]

List of Comments

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

Comment 1: Whether the Department Should Revise the Sales Denominator for Jangho Group Company to Exclude Revenues Derived from Services.

Comment 2: Whether Jangho's Curtain Wall and Window Wall Products Fall Within the Scope of the Aluminum Extrusions Order, Such That They Are Subject to this Review.

Comment 3: Whether the Department Can Countervail the Provision of Aluminum Extrusions for Less Than Adequate Remuneration (LTAR).

Comment 4: Whether the Department Can Countervail the Provision of Glass for LTAR.

Comment 5: Whether the Department Can Include the Subsidy Rates Determined for the Aluminum Extrusions for LTAR and Glass for LTAR Programs in its Calculation of the CVD Rate For Non-Selected Respondents.

Comment 6: Whether the Producers and Suppliers From Which Jangho Purchased Aluminum Extrusions and Glass During the Period of Review (POR) Are Government Authorities Within the Meaning of Section 771(5)(B) of the Act.

Ltd. regarding: "Aluminum Extrusions from the People's Republic of China: Case Brief," dated July 18, 2016 (Jangho's Case Brief); and Letter from RMD regarding: "Aluminum Extrusions from the People's Republic of China," dated July 18, 2016 (RMD's Case Brief).

[8] *See* Letter from Petitioners Regarding: "Aluminum Extrusions from the People's Republic of China: Rebuttal Brief," dated July 28, 2016 (Petitioner's Rebuttal Brief), and Letter from Guangzhou Jangho Curtain Wall System Engineering Co., Ltd. and Jangho Curtain Wall Hong Kong Ltd. Regarding: "Aluminum Extrusions from the People's Republic of China: Rebuttal Brief," dated July 28, 2016 (Jangho's Rebuttal Brief).

[9] *See* Letter from the Department to interested parties regarding: "Aluminum Extrusions from the People's Republic of China: Submission of Comments on Draft Customs Instructions for the Preliminary Results," dated August 9, 2016.

[10] *See* Letter from RMD to the Department, regarding: "Aluminum Extrusions from People's Republic of China {sic.} – Comments on Draft Customs Instructions," dated August 11, 2016 (RMD's Customs Instructions Comments); and Letter from Jangho Americas to the Department, regarding: "Aluminum Extrusions from the People's Republic of China: Submission of Comments on Draft Customs Instructions for the Preliminary Results," dated August 11, 2016 (Jangho Americas' Customs Instructions Comments).

Comment 7: Whether the Provision of Aluminum Extrusions for Less-Than-Adequate Remuneration (LTAR) Program and the Glass for LTAR Program are Specific.

Comment 8: Whether the Department Should Use Tier I (China) Benchmarks to Determine the Adequacy of Remuneration for Jangho's Aluminum Extrusions and Glass Purchases.

Comment 9: Whether "Commercial Loans" from PRC Banks to Aluminum Extrusions Producers are Covered by the Policy Loans Program Previously Countervailed by the Department.

Comment 10: Whether the Department's Benchmark Interest Rate Computations are Arbitrary, Unsupported by the Record, or Unlawful.

Comment 11: Whether the Preferential Tax Policies for High or New Technology Enterprises Program and the Tax Offset for Research and Development Program are Specific.

Comment 12: Whether the Department has the Authority to Investigate or Countervail the Technology Innovation Assistance Fund (the Niulanshan Industrial Development Center – Technology Products Fund), Enterprise Technology Center Fund, and Trade Promotion and Brand Building Fund (the 2014 Guangdong Trade Promoting by Science & Tech and Brand Building fund).

Comment 13: Whether the Department Erred in its Calculations of Benchmark Aluminum Extrusions and Glass Prices.

Comment 14: Whether the Department Should Include Exports of Merchandise Under Harmonized Tariff Schedule (HTS) Classification 7610.10 in its Calculation of Benchmark Aluminum Extrusions Prices.

Comment 15: Whether the Department Erred by Excluding Wuxi Huida From the List of Companies for Which the Department Calculated a Net Countervailable Subsidy Rate.

Comment 16: Whether the Department Erred by Including Jiangsu Susun Among the List of Companies for Which the Department Intends to Rescind the Administrative Review.

Comment 17: The Department's Liquidation Instructions to United States Customs and Border Protection (CBP) Should Ensure That All of Jangho's Entries Remain Suspended Pursuant to the Preliminary Injunction Granted in December 2014.

Scope of the Orders

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

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

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

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

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

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

The scope also excludes finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry, such as finished windows with glass, doors with glass or vinyl, picture frames with glass pane and backing material, and solar panels. The scope also excludes finished goods containing aluminum extrusions that are entered unassembled in a "finished goods kit." A finished goods kit is understood to mean a packaged combination of parts that contains, at the time of importation, all of the necessary parts to fully assemble a final finished good and requires no further finishing or fabrication, such as cutting or punching, and is assembled 'as is' into a finished product. An imported product will not be considered a 'finished goods kit' and therefore excluded from the scope 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.[11]

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

[11] *See* the *Order*.

Partial Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department is rescinding the instant administrative review for certain companies for which it received timely requests for withdrawal of this administrative review, and for which no other party requested an administrative review of such companies. Those companies are listed in the *Federal Register* notice issued concurrently with this decision memorandum.[12] Included in the rescinded companies are certain companies for which the Department received a no-shipment certification, and for which CBP provided no evidence to contradict the claims made by these companies.[13] These companies were also included in Petitioner's timely withdrawal of its review requests, and because no party other than Petitioner requested a review of these companies, the Department is also rescinding the administrative review with respect to them, pursuant to 19 CFR 351.213(d)(1).

Subsidies Valuation Information

Allocation Period

The Department has made no changes to the allocation period and the allocation methodology used in the *Preliminary Determination* and no party commented on the allocation period or the allocation methodology. For a description of the allocation period and the methodology used for this final determination, *see* the *Preliminary Determination*.[14]

Attribution of Subsidies

As explained at Comment 1 below, in a change from the *Preliminary Results,* we have also included service revenues in the denominators used for the Jangho Group Company's cross-owned producers. The Department has made no other changes to the methodologies used in the *Preliminary Determination* for attributing subsidies and no party commented on the method used by the Department to attribute subsidies. For descriptions of the methodologies used for this final determination, *see* the *Preliminary Determination*.[15]

Loan Benchmark Rates

As explained at Comment 10 below, the Department has made no changes to the loan benchmarks and discount rates used in the *Preliminary Determination*. For a description of the benchmarks and discount rates used for this final determination, *see* the *Preliminary Determination* and the Final Calculation Memorandum.

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[12] *See Aluminum Extrusions from the People's Republic of China: Final Results, and Partial Rescission of Countervailing Duty Administrative Review; 2014*, dated concurrently with this memorandum, at Appendix II.
[13] *See* the Preliminary Results, under the section entitled "Intent to Partially Rescind Review." The list of no-shipment companies was modified for the final results of review based on comments received from interested parties, as further discussed in comments 22 and 23 of this decision memorandum.
[14] *See* the *Preliminary Determination* at 9.
[15] *Id.,* at 9.

Use of Facts Otherwise Available and Adverse Facts Available

Sections 776(a)(1) and (2) of the Act provide that the Department shall, subject to section 782(d) of the Act, apply "facts otherwise available" if necessary information is not on the record or 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.[16]

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party with an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.

Section 776(b) of the Act further provides that the Department may use an adverse inference in selecting from among 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. Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. When selecting an adverse facts available (AFA) rate from among the possible sources of information, the Department's practice is to ensure that the rate 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."[17] 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."[18]

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[16] On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015, which made numerous amendments to the AD and CVD law, including amendments to sections 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act, as summarized below. *See Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015). Because the amendments to the Act are applicable to all determinations made on or after August, 6, 2015, they apply to this administrative review.

[17] *See*, *e.g.*, *Drill Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011), and accompanying Issues and Decision Memorandum at "V. Use of Facts Otherwise Available and Adverse Inferences;" *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).

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

Section 776(c) of the Act provides that, in general, 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 defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.[19] Further, under the TPEA, the Department is not required to corroborate any countervailing duty applied in a separate segment of the same proceeding.[20]

Finally, under the new section 776(d) of the Act, when applying an adverse inference in selecting from the facts available, the Department may use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a CVD rate for a subsidy program from a proceeding that the Department considers reasonable to use.[21] The TPEA also makes clear that, when selecting facts available with an adverse inference, the Department is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.[22]

For purposes of this final determination, we are applying AFA with respect to Zhongya as described below under the sub-section entitled, "Application of Adverse Facts Available Rate for Non-Cooperative Mandatory Respondent Zhongya."

Concerning Jangho, we are also applying AFA with regard to the following subsidy programs: (1) "Technology Innovation Assistance Fund" ("Niulanshan Industrial Development Center – Technology Products Fund"), (2) "Enterprise Technology Center Fund," and (3) Trade Promotion and Brand Building Fund" (financial contribution and specificity); and (4) Aluminum Extrusions for LTAR and (5) Glass for LTAR (the "authorities" analysis).

Application of Adverse Facts Available to Non-Cooperative Mandatory Respondent Zhongya

As discussed in the "Background" section above, Zhongya was selected as one of two mandatory respondents in this review. However, Zhongya submitted a letter in response to the Department's Initial Questionnaire, indicating that it would not be participating in this administrative review, and as such, it did not submit any additional information on the record of this review.[23] In particular, the GOC did not submit Zhongya-related information in response to the Department's Initial Questionnaire. Based on Zhongya's non-participation letter and the fact that the GOC did not respond to the Department's request for information as it pertains to Zhongya, we find that Zhongya and the GOC withheld information that had been requested and failed to provide information within the established deadlines. Furthermore, by

[19] *See*, *e.g.*, SAA at 870.
[20] *See* section 776(c)(2) of the Act; TPEA, section 502(2).
[21] *See* section 776(d)(1) of the Act; TPEA, section 502(3).
[22] *See* section 776(d)(3) of the Act; TPEA, section 502(3).
[23] *See* Zhongya's Non-Participation Letter.

not responding to the Department's Initial Questionnaire, we determine that Zhongya significantly impeded this segment of the proceeding. Also, because the GOC did not respond to the Department's Initial Questionnaire as it pertains to Zhongya, we determine that the GOC significantly impeded this segment of the proceeding. Thus, in reaching a final determination, pursuant to sections 776(a)(2)(A), (B) and (C) of the Act, we based the CVD rates for Zhongya and our findings regarding specificity and financial contribution on facts otherwise available.

Moreover, we determine that an adverse inference in selecting the facts otherwise available is warranted, pursuant to section 776(b) of the Act, because, by not responding to the Department's questionnaires regarding Zhongya, neither Zhongya nor the GOC cooperated to the best of its ability to comply with the Department's requests for information in this administrative review.

For purposes of calculating the AFA rate for the final results of review, the Department finds that all programs that have been countervailed in this proceeding, including those used by Jangho in this segment of the proceeding, and those previously countervailed in prior segments of this proceeding, remain countervailable – that is, they provide a financial contribution within the meaning of sections 771(5)(B)(i) and (D) of the Act, confer a benefit within the meaning of section 771(5)(B) of the Act, and are specific within the meaning of 771(5A) of the Act. We are, therefore, including these programs among those we look to in determining the AFA rate.[24] Further, we selected an AFA rate for each such program in determining the AFA rate that we applied to Zhongya.

When selecting AFA rates, section 776(d) of the Act provides that the Department may use any countervailable subsidy rate applied for the same or similar program in a countervailing duty proceeding involving the same country, or, if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates. Because Zhongya failed to participate in this review, consistent with section 776(d) of the Act and our established practice,[25] for each subsidy program being reviewed in this segment of the proceeding, we applied the following approach to select the appropriate subsidy rates for the respective programs at issue: (a) we first applied, where available, the highest above *de minimis* subsidy rate calculated for an identical program from any segment of this proceeding; (b) 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; (c) absent an above *de minimis* subsidy rate calculated for the same or similar program in any segment of this proceeding, we applied the highest above *de minimis* calculated subsidy rate for identical, or if not available, a similar program from any CVD proceeding involving the country in which the subject is produced

[24] *See* Appendix I.

[25] *See 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), and accompanying Issues and Decision Memorandum at "Non-Cooperative Companies" section; *see also Aluminum Extrusions From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 14, 2011) (*Aluminum Extrusions from the PRC Investigation*), and accompanying Issues and Decision Memorandum at "Application of Adverse Inferences: Non-Cooperative Companies" section; *Galvanized Steel Wire From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 17418 (March 26, 2012), and accompanying Issues and Decision Memorandum at "Non-Cooperative Companies" section.

(*i.e.*, the PRC), provided the producer of the subject merchandise or the industry to which it belongs could have used the program for which the rates were calculated.[26] Absent an above *de minimis* rate for the same or similar program from any CVD proceeding involving the PRC, we applied the highest calculated rate from any program in any CVD proceeding for the PRC.

With respect to the income tax rate reduction or exemption programs to apply to Zhongya for these final results, we are applying an adverse inference in selecting from the facts available, and therefore assume that Zhongya 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.[27] Accordingly, we 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.[28]

The 25 percent AFA rate for income tax rate reduction and exemption programs does not apply to income tax credit and rebate, accelerated depreciation, or import tariff and value added tax exemption programs because such programs do not provide benefits through a reduced income tax rate, but rather through reductions in taxable income or other reductions in other non-income tax liabilities. Therefore, for all programs other than those involving income tax rate reduction or import tariff and value add tax 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. 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.

Based on the methodology described above, we determine that the AFA rate for Zhongya for the final results of review is 195.69 percent, *ad valorem*.[29]

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

[27] *See* the GOC's Initial Response at Exhibit 34. *see also Aluminum Extrusions from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010-2011*, 79 FR 106 (June 10 , 2013) (*Aluminum Extrusions from the PRC First Review*); *Aluminum Extrusions from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 78788 (December 31, 2014) (*Aluminum Extrusions from the PRC Second Review*); *Aluminum Extrusions from the PRC Third Review; 2013*, 80 FR 77325 (December 14, 2015) (Aluminum Extrusions from the PRC Third Review), and accompanying Issues and Decision Memorandum at "Application of Adverse Inferences: Non-Cooperative Companies."

[28] *See Aluminum Extrusions from the PRC Second Review and Aluminum Extrusions from the Third Review*, and their respective accompanying Issues and Decision Memorandums at "Application of Total Adverse Facts Available to Non-Cooperative Companies."

[29] See Department Memorandum regarding "AFA Calculation Memorandum for the Final Results" dated concurrently with this memorandum (AFA Calculation Memorandum), for a table detailing the derivation of the AFA rate applied.

Corroboration of Secondary Information

Section 776(c) of the Act provides that, in general, 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 defined as "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."[30] The SAA provides that to "corroborate" secondary information, the Department will satisfy itself that the secondary information to be used has probative value.[31] Further, as mentioned above, under the TPEA, the Department is not required to corroborate any countervailing duty applied in a separate segment of the same proceeding.[32]

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.[33] Furthermore, the Department is not required to estimate what the countervailable subsidy rate would have been if the interested party had cooperated, and is not required to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.[34]

With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. We find the AFA rates applied here to be reliable based on their calculation and application in previous CVD proceedings pertaining to the PRC, and because no information on the record calls their reliability into question. With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. The Department will not use information where circumstances indicate that the information is not appropriate as AFA.[35]

As explained above, in applying the AFA hierarchy, the Department seeks to identify identical or similar program rates calculated for a cooperative respondent from another segment of this proceeding. Alternatively, the Department seeks to identify identical or similar program rates calculated in any proceeding covering imports from the PRC. Actual rates calculated based on actual usage by PRC companies are reliable where they have been calculated in the context of an administrative proceeding. Moreover, under our CVD AFA methodology, we strive to assign AFA rates that are the same in terms of the type of benefit (*e.g.*, grant-to-grant, loan-to-loan, indirect tax-to-indirect tax), because these rates are relevant to the respondent. Additionally, by selecting the highest rate calculated for a cooperative respondent, we arrive at

[30] *See* SAA at 870.
[31] *Id.*
[32] *See* section 776(c)(2) of the Act; TPEA, section 502(2).
[33] *See* SAA at 869-870.
[34] *See* section 776(d) of the Act.
[35] *See*, *e.g.*, *Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

a reasonably accurate estimate of the respondent's actual rate, and a rate that also ensures, as mentioned above, "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[36] Finally, the Department will not use information where circumstances indicate that the information is not appropriate as AFA.[37]

In the absence of record evidence concerning Zhongya's usage of the subsidy programs at issue, and the company's decision not to participate in this POR, we reviewed the information concerning subsidy programs in prior segments of this proceeding and in other PRC proceedings. Where we have a found program-type match (*i.e.*, same or similar programs), we were able to utilize these programs in determining AFA rates for Zhongya (*i.e.*, the programs and their rates are relevant). We find this to be a reasonable basis for calculating AFA, because such rates reflect the actual behavior of cooperative respondents in this segment or in previous segments of this proceeding. As previously mentioned, under the TPEA, the Department is not required to corroborate any countervailing duty rates taken from a separate segment of the same proceeding.

For those programs for which we did not find a program-type match, we have selected the highest calculated subsidy rate for any program in the PRC from which Zhongya could actually receive a benefit. The relevance of those programs and rates is that they are actual calculated CVD rates for PRC subsidy programs from which the non-cooperative respondent could actually receive a benefit. Due to the lack of participation by Zhongya and the resulting lack of record information concerning its use of various subsidy programs, the Department has corroborated the rates it selected to use as AFA, to the extent practicable.

Application of Adverse Facts Available with Regard to the Technology Innovation Assistance Fund (Niulanshan Industrial Development Center – Technology Products Fund)

On December 10, 2015, in Jangho Group Company's Initial Response, the Jangho Companies self-reported benefits under the "Technology Innovation Assistance Fund" ("Niulanshan Industrial Development Center – Technology Products Fund") program during the POR, and responded to questions in the standard and usage appendices contained in the Department's Initial Questionnaire.[38] However, in its initial response to the Department, the GOC made no mention of Jangho Group Company's receipt or award of benefits under this program, and did not provide responses to any of the question in the Department's standard and usage appendices, as required in the Department's Initial Questionnaire to the GOC.[39] The Department's Initial Questionnaire to the GOC instructed the GOC to provide responses for such programs:

[36] *See* SAA, at 870.
[37] *See*, *e.g.*, *Non-Oriented Electrical Steel From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 79 FR 61606 (October 14, 2014) and Accompanying Issues and Decision Memorandum, at 7-8.
[38] *See* Jangho Group Company's Initial Response at Exhibit JG-42 – JG-43.
[39] *See* the Department's Initial Questionnaire to the GOC at II-20.

> "Has the government, or entities owned in whole or in part by the government, directly or indirectly, provided to the producers or exporters of the subject merchandise under review any other non-recurring benefits over the 12-year AUL (i.e., the POR and preceding 11 years), or recurring benefits during the POR? Please coordinate with the respondent companies to determine if they are reporting usage of any subsidy program(s) not previously examined. For each such program, please answer all questions in the Standard Questions Appendix and any other applicable appendices to this section separately for each program. If the government has not provided any other benefits, then please so state."[40]

Nevertheless, the GOC claimed that it was not required to provide responses to any self-reported programs: "In the absence of sufficient allegations and evidence respecting other programs, consistent with Article 11.2 and other relevant articles of the WTO Agreement on Subsidies and Countervailing Measures, no reply to this question is warranted or required."[41] However, the Jangho Companies' self-reporting of such programs and the content of the Jangho Companies' responses to questions contained in the Department's Standard and Usage appendices, provide ample indication that benefits were received by the Jangho Companies. Accordingly, the GOC was fully aware of the need to answer the Department's questions regarding these programs.

Accordingly, in the Department's March 22, 2016 Supplemental Questionnaire to the GOC, we instructed the GOC to provide responses to the questions in the Department's Standard and Usage appendices for the Technology Innovation Assistance Fund (Niulanshan Industrial Development Center – Technology Products Fund) program. In the GOC's April 22, 2016 supplemental response, the GOC confirmed the Jangho Group Company's receipt of benefits under the program and explained, without any further explanation, that it could not provide the requested information: "The GOC is unable to provide a response to the appendices for this program."[42] Other than this statement, the GOC provided no explanation or excuse whatsoever as to why it twice failed to provide the requested information. Further, the GOC made no request for additional time to submit the requested information.

For these reasons, we find that necessary information is not available on the record within the meaning of section 776(a)(1). We also find that the GOC failed to provide this information within the deadlines established, or in the form and manner requested by the Department within the meaning of section 776(a)(2)(B) of the Act. Further, because the GOC twice refused to provide the requested information and gave no further explanation of why it failed to provide the requested information or what steps it took to provide the requested information, we find that the GOC significantly impeded this administrative review within the meaning of section 776(a)(2)(C) of the Act. Further, for the reasons stated above, we find that the GOC failed to cooperate by not acting to the best of its ability to comply with a request for

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[40] *Id.*
[41] *See* the GOC's Initial Response at 75.
[42] *See* the GOC's April 13, 2016, Supplemental Response at 80-81.

information, within the meaning of section 776(b) of the Act. Thus, in accordance with section 776(b) of the Act, we are applying an adverse inference in selecting from the facts available to determine that the GOC provided a financial contribution within the meaning of section 771(5)(D)(i) of the Act, and that the program is specific within the meaning of section 771(5A)(D) of the Act.[43]

Application of Adverse Facts Available with Regard to Enterprise Technology Center Fund

On December 10, 2015, in Jangho Group Company's Initial Response, the Jangho Companies self-reported benefits under the "Enterprise Technology Center Fund" program during the POR, and responded to questions in the standard and usage appendices contained in the Department's Initial Questionnaire.[44] However, in its initial response to the Department, the GOC made no mention of Jangho Group Company's receipt or award of benefits under this program, and did not provide responses to any of the questions in the Department's Standard and Usage appendices, as required in the Department's Initial Questionnaire to the GOC.[45] As explained above, the Department's Initial Questionnaire to the GOC instructed the GOC to provide responses for such programs.[46]

Nevertheless, as explained above, the GOC claimed that it was not required to provide responses to any self-reported programs.[47] However, the Jangho Companies' self-reporting of such programs and the content of the Jangho companies' responses to questions contained in the Department's Standard and Usage appendices, provide ample indication that benefits were received by the Jangho Companies. Accordingly, the GOC was fully aware of the need to answer the Department's questions regarding these programs.

Accordingly, in the Department's March 22, 2016 Supplemental Questionnaire to the GOC, we instructed the GOC to provide responses to the questions in the Department's Standard and Usage appendices for the Enterprise Technology Center Fund. In the GOC's April 22, 2016 supplemental response, the GOC confirmed the Jangho Group Company's receipt of benefits under the program and explained, without any further explanation, that it could not provide the requested information: "Jangho Group was approved and disbursed an assistance in a lump sum {} under this program during the POR. The GOC is unable to provide a response to the appendices for this program."[48] Other than this statement, the GOC provided no explanation or reason whatsoever as to why it twice failed to provide the requested information.

For these reasons, we find that necessary information is not available on the record within the meaning of section 776(a)(1). We also find that the GOC failed to provide this information within the deadlines established, or in the form and manner requested by the Department within the meaning of section 776(a)(2)(B) of the Act. Further, because the GOC twice

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[43] We note that relying solely on 776(b)(2) of the Act in this case, would reasonably lead to the same conclusion.
[44] *See* Jangho Group Company's Initial Response at Exhibit JG-58 – JG-59.
[45] *See* the Department's Initial Questionnaire to the GOC at II-20.
[46] *Id.*
[47] *See* the GOC's Initial Response at 75.
[48] *See* the GOC's April 13, 2016, Supplemental Response at 80-81.

refused to provide the requested information and gave no further explanation of why it failed to provide the requested information or what steps it took to provide the requested information, we find that the GOC significantly impeded this administrative review within the meaning of section 776(a)(2)(C) of the Act. Further, we find that the GOC failed to cooperate by not acting to the best of its ability to comply with a request for information, within the meaning of section 776(b) of the Act. Thus, in accordance with section 776(b) of the Act, we are applying an adverse inference in selecting from the facts available to determine that the GOC provided a financial contribution within the meaning of section 771(5)(D)(i) of the Act, and that the program is specific within the meaning of section 771(5A)(D) of the Act.[49]

Application of Adverse Facts Available with Regard to the Trade Promotion and Brand Building Fund

On December 10, 2015, in Guangzhou Jangho's Initial Response, the Jangho Companies self-reported benefits under the "Trade Promotion and Brand Building Fund" program during the POR, and provided responses to questions in the Department's Standard and Usage appendices.[50] However, in the GOC's Initial Response, the GOC made no mention of Guangzhou Jangho's receipt or award of benefits under this program, and did not provide responses to the questions in the Department's standard and usage appendices, as required in the Department's Initial Questionnaire.[51] As explained above, the Department's Initial Questionnaire to the GOC instructed the GOC to provide responses for such programs.[52]

Nevertheless, as explained above, the GOC claimed that it was not required to provide responses to any self-reported programs.[53] However, the Jangho Companies' self-reporting of such programs and the content of the Jangho companies' responses to questions contained in the Department's Standard and Usage appendices, provide ample indication that benefits were received by the Jangho Companies. Accordingly, the GOC was fully aware of the need to answer the Department's questions regarding these programs.

Accordingly, in the Department's March 22, 2016 Supplemental Questionnaire, we instructed the GOC to provide responses to the questions in the standard and usage appendices for this program. In the GOC's April 22, 2016 supplemental response, the GOC confirmed the amount of Jangho Group Company's award under the program and explained that it could not provide the requested information: "The GOC had contacted the local authority multiple times to obtain the relevant information to provide responses, however, the local authority did not provide the GOC with any documentation and information regarding this program. Therefore, despite the efforts the GOC has made, the GOC is unable to provide a response to the Standard Questions and Usage Appendices."[54] The GOC provided no additional explanation or reason as to why it twice failed to submit the requested information.[55] Further, the GOC made no request for additional time by which it might provide the requested information.

[49] We note that relying solely on 776(b)(2) of the Act in this case, would reasonably lead to the same conclusion.
[50] *See* Jangho Group Company's Initial Response at Exhibit JG-26 – JG-27.
[51] *See* the Department's Initial Questionnaire to Jangho at II-20.
[52] *See* the Department's Initial Questionnaire to the GOC at II-20.
[53] *See* the GOC's Initial Response at 75.
[54] *See* the GOC's April 13, 2016, Supplemental Response at 72.
[55] In the Department's Initial questionnaire to the GOC, we informed the department that: "The government is

For these reasons, we find that necessary information is not available on the record within the meaning of section 776(a)(1). We also find that the GOC failed to provide this information within the deadlines established, or in the form and manner requested by the Department within the meaning of section 776(a)(2)(B) of the Act. Further, because the GOC twice refused to provide the requested information and gave no further explanation of why it failed to provide the requested information or what steps it took to provide the requested information, we find that the GOC significantly impeded this administrative review within the meaning of section 776(a)(2)(C) of the Act. Further, we find that the GOC failed to cooperate by not acting to the best of its ability to comply with a request for information, within the meaning of section 776(b) of the Act. Thus, in accordance with section 776(b) of the Act, we are applying an adverse inference in selecting from the facts available to determine that the GOC provided a financial contribution within the meaning of section 771(5)(D)(i) of the Act, and that the program is specific within the meaning of section 771(5A) of the Act.[56] Also, because the name of the program indicates that it is an export program, we determine as adverse facts available, that the program is contingent upon export performance, and is therefore specific, within the meaning of section 771(5A)(A)-(B) of the Act and with 19 CFR 351.525(b)(2).[57] Therefore, in accordance with 19 CFR 351.525(b)(2), we are calculating the subsidy rate for this program using the export sales of the relevant cross-owned companies as the denominator.[58]

Application of Adverse Facts Available to Aluminum Extrusions for Less than Adequate Remuneration

GOC – Whether Aluminum Extrusions Producers Are "Authorities"

As discussed below under "Programs Found to Be Countervailable," the Department examined whether the GOC provided aluminum extrusions for less than adequate remuneration (LTAR) to the Jangho Companies. We asked the GOC to provide information regarding the specific companies that produced aluminum extrusions which the Jangho Companies purchased during the POR. Specifically, we sought information from the GOC which would allow us to analyze whether these producer-suppliers are "authorities" within the meaning of section 771(5)(B) of the Act. 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 an "authority" within the meaning of section 771(5)(B) of the Act and the price paid by the respondent for the input was for LTAR.[59]

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responsible for submitting the responses for all central, provincial, state, and local governments, as well as any company information requested in the government section of this questionnaire" See the Department's Initial Questionnaire to the GOC at I-5.

[56] We note that relying solely on 776(b)(2) of the Act in this case, would reasonably lead to the same conclusion.

[57] *See*, *e.g.*, *Aluminum Extrusions from the PRC First Review* at 11.

[58] *Id.*

[59] *See*, *e.g.*, *Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 37012 (July 27, 2009), and accompanying Issues and Decision Memorandum at "Provision of Wire Rod for Less than Adequate Remuneration."

In the Department's Initial Questionnaire to the GOC, we asked the GOC to respond to specific questions regarding the producers of aluminum extrusions and to respond to the Input Producer Appendix for each producer that produced the aluminum extrusions purchased by the Jangho Companies.[60] We instructed the GOC to coordinate with respondents to obtain a complete list of their aluminum extrusions producers, including the producers of inputs purchased through a supplier.[61] 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."[62] In addition to the Department's Initial Questionnaire to the GOC,[63] the Department issued a supplemental questionnaire to the GOC regarding purchases of aluminum extrusions for LTAR.[64]

The Jangho Companies reported purchasing aluminum extrusions from several producer-suppliers, whose names are proprietary. The GOC failed to provide responses for certain aluminum extrusions producer-suppliers (Group One).[65] The GOC provided incomplete responses to the questions contained in the Department's Input Producer Appendix for two aluminum extrusions producer-suppliers (Group Two).

Regarding Group One, the GOC provided no explanation as to why it failed to provide responses to the Input Producer Appendix.[66] In a supplemental questionnaire, we gave the GOC a second opportunity to provide responses to the Input Producer Appendix with respect to Group One.[67] However, the GOC again failed to provide responses to the Input Producer Appendix with regard to Group One.[68] In its supplemental response, the GOC stated:

> All the aluminum extrusions producers identified in Jangho's input purchases templates are commercial entities under the Chinese law, the GOC is unable to provide producer appendix response for all of the remaining producers and suppliers.[69]

Thus, the GOC did not provide a response to the Input Producer Appendix with regard to Group One, and thereby failed to provide information the Department needs to determine the individual owners of the producer-suppliers and to determine the extent of GOC control over these producer-suppliers. The GOC provided no information at all regarding the identification of owners, directors, the degree of government control, or senior managers who were also GOC or CCP officials for these producer-suppliers. Consequently, information requested by

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[60] *See* the Department's Initial Questionnaire to the GOC at II-10 – II-12 and at Section II, "Input Producer Appendix."
[61] *Id.*
[62] *See* the Department's Initial Questionnaire to the GOC at II-10.
[63] *Id.,* at II-10 – II-12 and at Section II, "Input Producer Appendix."
[64] *See* the Department's March 22, 2016, Supplemental Questionnaire to the GOC at 9.
[65] *See* the GOC's Initial Response at 34, Attachment A ("Aluminum Extrusions Producers") and Exhibits A-1 – A-25, Exhibits 25-38; and the GOC's April 13, 2016, Supplemental Response at 15.
[66] *See* the GOC's Initial Response at 34.
[67] *See* the Department's March 22, 2016, Supplemental Questionnaire to the GOC.
[68] *See* the GOC's April 13, 2016, Supplemental Response at 15.
[69] *Id*.

the Department, which is necessary for an analysis of whether these producer-suppliers are "authorities" within the meaning of section 771(5)(B) of the Act, is not on the record.

Regarding Group Two, the GOC reported that neither producer-supplier was a majority government-owned enterprise. However, the GOC's responses were insufficient. As explained below, the GOC provided articles of association and amendments thereto, capital verification reports, business licenses, explanations of the ownership structures of the firms, shareholder ID cards, shareholders and managers certifications, lists of senior management, share transfer agreements, and business registration documents.[70] However, the GOC did not provide other relevant documentation requested in the Department's Initial Questionnaire to the GOC, including articles of incorporation, articles of groupings, company by-laws, annual reports, business group registration, and tax registration certificates, all of which are necessary to identify the ultimate owners of these producer-suppliers and to determine the presence and degree of government control.[71] For these and other reasons, we issued a supplemental questionnaire to the GOC on March 22, 2016.[72]

With regard to the annual reports, the GOC explained that "{t}he GOC does not have annual reports of the two companies for the POR and the two preceding years is {sic.} on the record because these documents are not required for private companies to file with the GOC under the *Company Law of the PRC* (*Company Law*) during the POR and the two preceding years."[73] The GOC further explained that for Group Two, the producer-suppliers are "directly and wholly owned by natural persons, and are both non-publicly-listed companies governed by the *Company Law*."[74] Additionally, the GOC explained, "{d}uring the POR, the only transparency and disclosure obligations for them are to file a record to the local branch of the State Administration of Industry and Commerce (SAIC) of changes in the company's major registration matters, such as changes in shareholders, in ownership structure, in capital, in business scope, in representative of the legal person, and in domicile, among others."[75] Thus, the GOC explained, "{p}reparation and issuance of annual reports is not an obligation for them."[76]

Despite the GOC's claims, the GOC at no point indicated whether the firms had maintained annual reports, or any other financial reports, in the ordinary course of business, regardless of whether such reports had been provided to the SAIC. Nor did the GOC submit any financial reports in response to our requests in the initial and supplemental questionnaires. Instead, as explained above, the GOC explained why, if the annual reports existed, they might not be provided to the GOC in the ordinary course of business. However, this explanation is unavailing, because, as explained above, in the Department's Initial Questionnaire to the GOC, we informed the GOC that: "The government is responsible for submitting the responses for all central, provincial, state, and local governments, as well as any company information

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[70] *See* the GOC's Initial Response at 34, Appendix A, and Exhibits A-1 – A-25.
[71] *Id.*, at 34, Appendix A, and Exhibits A-1 – A-25; and the GOC's April 13, 2016, Supplemental Response, at 54 – 56.
[72] *See* the Department's March 22, 2016, Supplemental Questionnaire to the GOC at 22-23.
[73] *See* the GOC's Initial Response, Appendix A at 2.
[74] *Id.*, at Appendix A at 8.
[75] *See* the GOC's Initial Response, Appendix A at 8.
[76] *Id.*

requested in the government section of this questionnaire."[77] Accordingly, we again attempted to obtain the reports, or alternatively to determine why the GOC was unable to obtain them from the respective companies.[78] Despite the GOC's earlier claims, in the GOC's April 13, 2016 Supplemental Response, the GOC claimed that it had attempted to acquire such annual reports through the GOC's own administrative channels and had failed to obtain a response from its own agencies:

> In the preparation of the Initial Response, the GOC requested information from local branches of China State Administration of Industry & Commerce ("SAIC") to provide annual reports for some Jangho reported aluminum extrusion providers. The GOC has received no responses from local branches of the SAIC so far. The GOC would further advise that under the *Company Law of China*, an annual report is not a mandatory document requested for private companies, i.e. {*sic.*} companies that are not publicly traded/listed on any of the stock exchanges. Further, the preparation of annual report is financially burdensome for private companies.[79]

Thus, the GOC claimed to have attempted to obtain such reports from one of its own agencies, but failed to ensure the agency provided a response. However, as explained above and in the Department's Initial Questionnaire, "{t}he government is responsible for submitting the responses for all central, provincial, state, and local governments, as well as any company information requested in the government section of this questionnaire."[80]

With regard to articles of incorporation, articles of groupings, and company by-laws, the GOC initially claimed to not know which type of documents the Department meant by "articles of incorporation," "articles of groupings," and "company by-laws," and asked that the Department clarify which documents were being requested.[81] Therefore, in the Department's March 22, 2016 Supplemental Questionnaire, we specifically identified the provisions of the *Company Law of the PRC* placed on the record by the GOC in which articles of incorporation and company by-laws are mentioned.[82] In response to our requests, the GOC advised that the "articles of incorporation" mentioned in the *Company Law of the PRC* are only applicable to foreign firms with "branches" within the PRC.

Thus, the GOC failed to provide articles of groupings, company by-laws, annual reports, business group registration, and tax registration certificates, all of which are applicable to this review, and are indeed necessary to identify the ultimate owners of these companies and to determine the presence and degree of government control. The GOC did not state or demonstrate that these documents do not exist for the firms in question. Regarding the annual

[77] *See* the Department's Initial Questionnaire to the GOC at I-5.
[78] *See* the Department's March 22, 2016, Supplemental Questionnaire to the GOC at 22-23.
[79] *See* the GOC's April 13, 2016, Supplemental Response at 54.
[80] *See* the Department's Initial Questionnaire to the GOC at I-5.
[81] S*ee* the GOC's Initial Response, Appendix A, at 2.
[82] *See* the Department's March 22, 2016, Supplemental Questionnaire to the GOC at 22 - 23 and 24 – 25.

reports, we requested this information in both the initial and supplemental questionnaires, regardless of whether such reports were filed with SAIC. Indeed, the Department's Initial Questionnaire makes clear that for those companies that are not majority government-owned, an annual report is required; and that for each level of ownership of the non-majority government-owned enterprises, documentation, such as financial statements, are required to trace ownership back to the ultimate individuals.[83] Further, it is the prerogative of the Department, not the GOC, to determine what information is needed to conduct this administrative review.[84] Thus, the fact that the *Company Law of the PRC* does not require that annual reports be produced or provided to the GOC does not address our request for the missing documents. As explained above, it is the GOC's responsibility to provide this information.[85]

In response to questions regarding the presence of CCP or government officials in the management staff of the producer-suppliers, the GOC explained, with respect to one of the aluminum extrusions producers in Group Two, that "there is no evidence on its record to show that there is any government owner or any CCP committee/representative of any kind in the firm during the POR. Also, there is no decision taken by the entity that is subject to review or approval by the Government as regulator except for environmental protection matters during the entire POR."[86] The GOC made a similar statement with respect to the second aluminum extrusions producer in Group Two: "as shown in {the second aluminum extrusions producer's Shareholders or Managers Certification}, and the Articles of Association, there was neither government owner nor party committee/representative of any kind as mentioned in this questionnaire in {aluminum extrusions producer } {*sic.*} during the POR. Also, there is no decision taken by the entity that is subject to review or approval by the Government as regulator except for production safety, environmental protection matters during the entire POR."[87] The GOC also provided certifications from company officials, certifying that company officials are not officials of the CCP or of the GOC.[88]

However, the information provided by the GOC does not constitute an adequate response to our question. The GOC was required to provide information about CCP involvement in the ownership/management of the input providers and whether a CCP committee, branch, or "primary organization" existed within the pertinent companies, not merely explain whether such entities are identified in the documents provided by the GOC on the record.[89] We also note that the GOC's statement is applicable only to those documents that the GOC managed to

[83] *See* Initial Questionnaire, at Input Producer Appendix, Section II.A.3; *see also*, *Certain Oil Country Tubular Goods From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 52301 (September 3, 2014) and accompanying decision memorandum, at 10.
[84] *See*, *e.g.*, *Essar Steel Ltd. v. United States*, 721 F. Supp. 2d 1285, 1298-99 (CIT 2010); *NSK Ltd. v. United States*, 919 F. Supp. 442, 447 (CIT 1996); *Ansaldo Componenti, S.p.A. v. United States*, 628 F. Supp. 198, 205 (CIT 1986); and *Boltless Steel Shelving Units Prepackaged for Sale From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 80 FR 51775 (August 26, 2015), and accompanying Issues and Decision Memorandum, at 34 (Comment III).
[85] *See* the Department's Initial Questionnaire to the GOC at I-5.
[86] *See* the GOC's Initial Response, Section II, "Input Producer Appendix," at 6.
[87] *Id*.
[88] *Id.,* at Exhibit A-12.
[89] *See* the Department's Initial Questionnaire to the GOC, at Section II, "Input Producer Appendix," at II-29 – II-30.

place on the record, and not to those documents that the GOC was required to, but ultimately did not, place on the record. Therefore, in a supplemental questionnaire, we asked the GOC to "{p}ositively state whether there were 'the party committee/representative' {*sic.*} or other CCP officials in each of these firms (*i.e.*, state yes or no)," and if so, to "fully explain all such person's role(s) in the firm(s)."[90] The GOC responded that, "{t}he GOC is unable to positively confirm whether there were party committee(s)/representative(s) or other CCP official(s) in each of the companies referred above."[91] However, as explained above, it is the GOC's responsibility to provide this information.[92]

Also related to questions of CCP ownership and involvement, we asked the GOC to:

- explain how it developed the information used in its response regarding input producers and whether or not company owners, managers, board members were CCP or government officials;
- explain what records the GOC reviewed;
- explain whether there are sources at the national, provincial, municipal, or local level, to determine whether company owners, board members, or senior management were government or CCP officials;
- explain whether there are any other company records or company documents that are submitted to the government that would indicate a person's official role with the government, or the CCP.

However, the GOC failed to provide explanations, any official CCP or government documentation, and other evidence demonstrating whether CCP or GOC officials are among the owners or management of the companies in Group Two. The GOC merely provided certifications from company officials that those officials are not also officials of the CCP or the GOC.[93] The GOC failed to explain why it did not provide government or CCP documents (for example, member lists for the CCP entities at the national and provincial levels), did not explain why direct information of this type is not available to the GOC, and did not explain what steps it took, if any, to obtain such information.

In short, requested information is not on the record of this segment of the proceeding. Despite multiple attempts to solicit the requisite input-producer information for the producer-suppliers in Group Two, the GOC did not provide key information (*i.e.*, articles of groupings, company by-laws, annual reports, business group registration, tax registration certificates, and information regarding the presence and role of CCP committees and CCP and government officials in the firms) which is necessary for us to confirm statements on the record, to perform further analysis to trace ownership of the enterprises in question back to the ultimate individual owners, and to analyze the extent and significance of government control.

As discussed above, with respect to the producer-suppliers in Group One, the GOC failed to provide responses to the Input Producer Appendix. With respect to the producer-suppliers in

[90] *See* the Department's March 22, 2016, Supplemental Questionnaire to the GOC at 28.
[91] *See* the GOC's April 13, 2016, Supplemental Response at 121.
[92] *See* the Department's Initial Questionnaire to the GOC at I-5.
[93] *See* the GOC's Initial Response at Exhibit B-14 and B-15.

Group Two, the GOC did not provide complete responses to our repeated requests for information, including requests for information pertaining to ownership or control by GOC and CCP officials. Such information is necessary for our determination of whether the input producers are authorities within the meaning of section 771(5)(B) of the Act.[94] The responses provided for the producer-suppliers in Group Two, as explained above, lacked key documents and other pieces of information necessary for the Department to conduct an authorities' analysis, including information needed to determine the extent of the CCP's involvement in and potential control over input producers, information needed to determine the ultimate owners of the input producers, and information concerning the GOC's possible ownership and control of the producers or the producers' parents or other affiliates.

Regarding the GOC's responses for Group Two concerning CCP committees and CCP and Government officials, the Department has an established practice of not accepting the statements of companies in lieu of official documentation for the purposes of examining whether CCP committees or CCP or Government officials exist within input producers.[95] While the Department recognizes that companies themselves directly possess some information, such as in the case of affiliations and corporate structure, when examining whether a company has owners, senior managers, or directors that are CCP officials, or whether a company has a CCP committee or other primary organization, the party possessing direct knowledge of these facts is the CCP or the GOC.[96] Accordingly, we find that the statements of the GOC referencing the limited company documents placed on the record and the company officials' certifications are insufficient evidence that the management of the companies within Group Two lack CCP or government officials, or that CCP committees do not exist within these firms. The Department considers information regarding the CCP's involvement in the PRC's economic and political structure to be essential because public information suggests that the CCP exerts significant control over activities in the PRC.[97]

Moreover, our findings are not based solely on the GOC's provision of record evidence of state ownership or GOC or CCP involvement in the management of input producers. Rather, in the Public Bodies Memorandum the Department has previously concluded that, in the Chinese political and economic institutional setting, producers in the PRC that are majority-owned by the government possess, exercise, or are vested with governmental authority.[98] Our finding in this regard is based on record evidence demonstrating 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. 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

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[94] *See* Aluminum Extrusions from the PRC Third Review and the accompanying issues and Decision Memorandum at 22 - 23, 30 - 32, 37 – 38, and Comment 11, where we applied AFA because the GOC likewise failed to provide many of the same documents for certain producers.
[95] *See*, *e.g.*, *Citric Acid Fourth Review* and the accompanying Issues and Decision Memorandum at Comment 3.
[96] *Id.*, at 68 – 69.
[97] *See* Public Bodies Memorandum.
[98] *See* Memorandum from Tyler Weinhold to the File regarding "Administrative Review of Countervailing Duty Order on Aluminum Extrusions from the People's Republic of China; Additional Documents for Preliminary Decision," dated concurrently with the Preliminary Decision Memorandum at Attachment 1 (Public Bodies Memorandum).

that such organizations may wield a controlling influence in the company's affairs.[99] For example, Article 19 of the *Company Law* provides that an organization of the CCP shall be established in a company to carry out the activities of the CCP pursuant to the CCP constitution and the company shall provide the necessary conditions for the activities of this CCP organization.[100] Also, Article 32 of the CCP constitution explicitly states that "{i}n a non-public economic institution, the primary Party organization carries out the Party's principles and policies, provides guidance to and oversees the enterprise in observing the laws and regulations of the state, {} safeguards the legitimate rights and interests of all quarters and stimulates the healthy development of the enterprise."[101]

As discussed above, the Department provided the GOC an opportunity to provide requested information to enable the Department's "authorities" analysis under section 771(5)(B), and the GOC failed to provide such information. The Department provided the GOC multiple opportunities to provide the requested information, which, as discussed above, was relevant and necessary to the Department's analysis. The limited information that was provided by the GOC was not sufficient, in light of the remaining missing information.

Further, the GOC's attempted justification for failing to provide all of the requested information on the basis that the laws governing these firms do not require privately-held firms to provide certain documents to the government is unavailing. The GOC must provide all documents that the Department considers relevant. Likewise, the GOC's claim that producers and suppliers are private firms does not relieve the GOC's burden of responding fully and providing all documents requested.

Therefore, we determine that necessary information is not available on the record, and that the GOC withheld information that was requested of it with regard to purchases by the Jangho Companies.[102] Accordingly, the Department must rely on "facts otherwise available" in reaching a determination in this respect. Further, we find that the GOC failed to cooperate by not acting to the best of its ability to comply with requests for information regarding the ownership and CCP and government involvement in the management of producers of aluminum extrusions from which the Jangho Companies purchased said inputs during the POR. Specifically, the GOC did not provide the requested information and failed to provide a reasonable explanation of why it could not provide such information.[103] Consequently, we find that an adverse inference in selecting from the facts available is warranted in the application of facts available.[104] As AFA, and in light of our prior findings and the GOC's failure to provide requested information,[105] we determine that all of the producers that produced the aluminum extrusions purchased by the Jangho Companies during the POR are "authorities" within the meaning of section 771(5)(B) of the Act.[106]

[99] *See* Public Bodies Memorandum at 35 – 36.
[100] *See* the GOC's Initial Questionnaire Response, at Exhibit 22 (Article 19).
[101] *See* Public Bodies Memorandum at 35, and footnote 149.
[102] *See* sections 776(a)(1) and (a)(2)(A) of the Act.
[103] *See* sections 776(a) and (b) of the Act.
[104] *See* section 776(b) of the Act.
[105] *See* Public Bodies Memorandum.
[106] *See* Aluminum Extrusions from the PRC Third Review and the accompanying issues and Decision Memorandum at 22 - 23, 30 - 32, 37 – 38, and Comment 11, where we applied AFA because the GOC likewise

Application of Adverse Facts Available to Glass for LTAR

GOC – Whether Glass Producers Are "Authorities"

As discussed below under "Programs Found to Be Countervailable," the Department examined whether the GOC provided glass for LTAR to the Jangho Companies. We asked the GOC to provide information regarding the specific companies that produced glass from which the Jangho 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. As noted above, 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 an "authority" within the meaning of section 771(5)(B) of the Act and the price paid by the respondent for the input was for LTAR.[107]

In the Department's Initial Questionnaire to the GOC, we asked the GOC to respond to the specific questions regarding the producers of glass and to respond to the Input Producer Appendix for each producer which produced the glass purchased by the Jangho Companies.[108] We instructed the GOC to coordinate with the respondents to obtain a complete list of the glass producers, including the producers of inputs purchased through a supplier.[109] 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."[110] In addition to the Department's Initial Questionnaire to the GOC,[111] the Department issued a supplemental questionnaire to the GOC regarding purchases of glass for LTAR.[112]

The Jangho Companies reported purchasing aluminum extrusions from several producer-suppliers, whose names are proprietary. The GOC failed to provide responses for certain glass producer-suppliers (Group One).[113] The GOC provided incomplete responses to the questions contained in the Department's Input Producer Appendix for two glass producer-suppliers (Group Two).

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failed to provide many of the same documents for certain producers.

[107] *See*, *e.g.*, *Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 37012 (July 27, 2009), and accompanying Issues and Decision Memorandum at "Provision of Wire Rod for Less than Adequate Remuneration."

[108] *See* the Department's Initial Questionnaire to the GOC at II-13 – II-15 and at Section II, "Input Producer Appendix."

[109] *Id.*

[110] *See* the Department's Initial Questionnaire to the GOC at II-13.

[111] *Id.,* at II-13 – II-15 and at Section II, "Input Producer Appendix."

[112] *See* the Department's March 22, 2016, Supplemental Questionnaire to the GOC at 13.

[113] *See* the GOC's Initial Response at 34, 39, Appendix B ("Glass Producers"), Attachment B ("Glass Producers"), Exhibits A-1 – A-25, Exhibits B-1 – B-29, Exhibits 25 - 38 and 34 – 43; and the GOC's April 13, 2016, Supplemental Response at 15.

Regarding Group One, the GOC provided no explanation as to why it failed to provide responses to the Input Producer Appendix.[114] In a supplemental questionnaire, we gave the GOC a second opportunity to provide responses to the Input Producer Appendix with respect to Group One.[115] However, the GOC failed to provide responses to the Input Producer Appendix with regard to these glass producer-suppliers.[116] The GOC stated:

> All the glass producers identified in Jangho's input purchases templates are commercial entities under the Chinese law, the GOC is unable to provide producer appendix response for all of the remaining producers and suppliers.[117]

Thus, the GOC did not provide a response to the Input Producer Appendix with respect to Group One, and therefore failed to provide requested and necessary information for the Department to determine the individual owners of the producer-suppliers and to determine the extent of GOC control. The GOC provided no information regarding the identification of owners, directors, the degree of government control, or senior managers who were also GOC or CCP officials for these producer-suppliers. Consequently, information requested by the Department is not on the record of this segment of the proceeding for an analysis of whether the these producers of glass purchased by the Jangho Companies are "authorities" within the meaning of section 771(5)(B) of the Act.

Regarding Group Two, the GOC reported that neither producer-supplier was a majority government-owned enterprise. However, the GOC's responses were in several ways incomplete, as explained below. The GOC provided articles of association and amendments thereto, capital verification reports, business licenses, explanations of the ownership structures of the firms, shareholder ID cards, shareholders and manager certifications, lists of senior management, share transfer agreements, and business registration documents.[118] However, the GOC did not provide other relevant documentation requested by the Department, including articles of incorporation, articles of groupings, company by-laws, annual reports, business group registration, and tax registration certificates, all of which are necessary to identify the ultimate owners of these companies and to determine the presence and degree of government control.[119] For these and other reasons, we issued a supplemental questionnaire to the GOC on March 22, 2016.[120]

With regard to the annual reports, the GOC explained "{t}he GOC does not have annual reports of the two companies for the POR and the two preceding years is on the record because these documents are not required for private companies to file with the GOC under the *Company Law* of China {}during the POR and the two preceding years."[121] Despite the

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[114] *See* the GOC's Initial Response at 39.
[115] *See* the Department's March 22, 2016, Supplemental Questionnaire to the GOC at 13.
[116] *See* the GOC's April 13, 2016, Supplemental Response at 21.
[117] *Id.*
[118] *See* the GOC's Initial Response at 39, Appendix B, and Exhibits B-1 – B-25.
[119] *Id.,* at 39, Appendix B, and Exhibits A-1 – A-25; and the GOC's April 13, 2016, Supplemental Response at 56-58.
[120] *See* the Department's March 22, 2016, Supplemental Questionnaire to the GOC at 24-25.
[121] *See* the GOC's Initial Response, Appendix B at 2.

GOC's claims, the GOC at no point indicated whether the firms had maintained annual reports, or any other financial reports, in the ordinary course of business, regardless of whether such reports had been provided to the SAIC; nor did the GOC submit any financial reports in response to our requests in the initial and supplemental questionnaires. Instead, as stated above, the GOC explained why, if the annual reports existed, they might not be provided to the GOC in the ordinary course of business. However, this explanation is unavailing, because, as discussed above, in the Department's Initial Questionnaire to the GOC, we informed the GOC that: "The government is responsible for submitting the responses for all central, provincial, state, and local governments, as well as any company information requested in the government section of this questionnaire."[122] Accordingly, we again attempted to obtain the reports, or alternatively to determine why the GOC was unable to obtain them from the respective companies.[123] Despite the GOC's earlier claims, in the GOC's April 13, 2016 Supplemental Response, the GOC claimed that it had attempted, subsequent to the GOC's Initial Response, to acquire such annual reports through the GOC's own administrative channels, and had failed to obtain a response from its own agencies:

> In the preparation of the Initial Response, the GOC requested information from local branches of China State Administration of Industry & Commerce ("SAIC") to provide annual reports for some Jangho reported aluminum extrusion providers. The GOC has received no responses from local branches of the SAIC so far. The GOC would further advise that under the *Company Law of China*, an annual report is not a mandatory document requested for private companies, i.e. {*sic.*} companies that are not publicly traded/listed on any of the stock exchanges. Further, the preparation of annual report is financially burdensome for private companies.[124]

Thus, the GOC claimed to have attempted to obtain such reports from one of its own agencies, but failed to ensure the agency provided a response. However, as explained above and in the Department's Initial Questionnaire, "{t}he government is responsible for submitting the responses for all central, provincial, state, and local governments, as well as any company information requested in the government section of this questionnaire."[125]

With regard to articles of incorporation, articles of groupings, and company by-laws, the GOC initially claimed to not know what type of documents the Department meant by "articles of incorporation," "articles of groupings," and "company by-laws," and asked that the Department clarify what documents were being requested.[126] Therefore, in the Department's March 22, 2016 Supplemental Questionnaire to the GOC, we specifically identified the provisions of the *Company Law* placed on the record by the GOC in which articles of

[122] *See* the Department's Initial Questionnaire to the GOC at I-5.
[123] *See* the Department's March 22, 2016, Supplemental Questionnaire to the GOC at 24 - 25.
[124] *See* the GOC's April 13, 2016, Supplemental Response at 58.
[125] *See* the Department's Initial Questionnaire to the GOC at I-5.
[126] *See* the GOC's Initial Response, Appendix B, at 2.

incorporation and company by-laws are mentioned.[127] In response to our requests, the GOC advised that the "articles of incorporation" mentioned in the *Company Law* are only applicable to foreign firms with "branches" within the PRC.

Thus, the GOC failed to provide articles of groupings, company by-laws, annual reports, business group registration, and tax registration certificates, all of which *are* applicable to this review, and are indeed necessary to identify the ultimate owners of these companies and to determine the presence and degree of government control. The GOC did not state or demonstrate that these documents do not exist for the firms in question. Regarding the annual reports, we requested this information in both the initial and supplemental questionnaires, regardless of whether such reports were filed with SAIC. Indeed, the Department's Initial Questionnaire makes clear that for those companies that are not majority government-owned, an annual report is required, and that for each level of ownership of the non-majority government-owned enterprises, documentation, such as financial statements, are required to trace ownership back to the ultimate individuals.[128] Further, it is the prerogative of the Department, not the GOC, to determine what information is needed to conduct this administrative review.[129] Thus, the fact that the *Company Law* does not require that annual reports be produced or provided to the GOC does not address our request for the missing documentation. As explained above, it is the GOC's responsibility to provide this information.[130]

In response to questions regarding the presence of CCP or government officials in the management staff of the producer-suppliers, the GOC explained, with regard to the producers in Group Two, that "there is no CCP organization of any kind," that "there are no CCP members out of all the senior management," and that "none of their owners, managing directors, or managers was a CCP official or Government official during the POR"[131] To support their contentions, the GOC also provided certifications from company officials, certifying that company officials are not officials of the CCP or of the GOC.[132] However, the information provided by the GOC does not constitute an adequate response to our question. The GOC was required to provide information about CCP involvement in the ownership/management of the input providers and whether a CCP committee, branch, or "primary organization" existed within the pertinent companies, not merely to refer to

[127] *See* the Department's March 22, 2016, Supplemental Questionnaire to the GOC at 24 - 25.
[128] *See* Initial Questionnaire, at Input Producer Appendix, Section II.A.3; *see also, Certain Oil Country Tubular Goods From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 52301 (September 3, 2014) and accompanying decision memorandum, at 10.
[129] *See*, *e.g.*, *Essar Steel Ltd. v. United States*, 721 F. Supp. 2d 1285, 1298-99 (CIT 2010); *NSK Ltd. v. United States*, 919 F. Supp. 442, 447 (CIT 1996); *Ansaldo Componenti, S.p.A. v. United States*, 628 F. Supp. 198, 205 (CIT 1986); and *Boltless Steel Shelving Units Prepackaged for Sale From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 80 FR 51775 (August 26, 2015), and accompanying Issues and Decision Memorandum, at 34 (Comment III).
[130] *See* the Department's Initial Questionnaire to the GOC at I-5.
[131] *See* the GOC's Initial Response, Section II, "Input Producer Appendix," at 9-10.
[132] *Id.,* at Exhibit B-14 and B-15.

information provided by the companies within Group Two.[133] Moreover, as explained above, it is the GOC's responsibility to provide this information.[134]

Also related to questions of CCP ownership and involvement, we also asked the GOC to:

- explain how it developed the information used in its response regarding input producers and whether or not company owners, managers, board members were CCP or government officials;
- explain what records the GOC reviewed;
- explain whether there are sources at the national, provincial, municipal, or local level, to determine whether company owners, board members, or senior management were government or CCP officials;
- explain whether there are any other company records or company documents that are submitted to the government that would indicate a person's official role with the government, or the CCP.

However, the GOC failed to provide explanations, any official CCP or government documentation, and other evidence demonstrating whether CCP or GOC officials are among the owners or management of the companies in Group Two. The GOC merely provided certifications from company officials that those officials are not also officials of the CCP or of the GOC.[135] The GOC failed to explain why it did not consult or provide government or CCP documents (for example, member lists for the CCP entities at the national and provincial levels), did not explain why direct information of this type is not available to the GOC, and did not explain what steps it took, if any, to obtain or provide such information.

In short, requested information is not on the record of this segment of the proceeding. Despite multiple attempts to solicit the requisite input-producer information for the two producer-suppliers in Group Two, the GOC did not provide key information (*i.e.*, articles of groupings, company by-laws, annual reports, business group registration, tax registration certificates, and information regarding the presence and role of CCP committees and CCP and government officials in the firms) which is necessary for us to confirm statements on the record, to perform further analysis to trace ownership of the enterprises in question back to the ultimate individual owners, and to analyze the extent and significance of government control.

As discussed above, with respect to the producer-suppliers in Group One, the GOC failed to provide responses to Input Producer Appendix. With respect to the producer-suppliers in Group Two, the GOC did not provide complete responses to our repeated requests for information, including requests for information pertaining to ownership or control by GOC and CCP officials. Such information is necessary for our determination of whether the input producers are authorities within the meaning of section 771(5)(B) of the Act.[136]

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[133] *See* the Department's Initial Questionnaire to the GOC, at Section II, "Input Producer Appendix," at II-29 – II-30.
[134] *Id.,* at I-5.
[135] *See* the GOC's Initial Response at Exhibit B-14 and B-15.
[136] *See* Aluminum Extrusions from the PRC Third Review and the accompanying issues and Decision Memorandum at 22 - 23, 30 - 32, 37 – 38, and Comment 11, where we applied AFA because the GOC likewise

The responses provided for the producer-suppliers in Group Two, as explained above, lacked key documents and other pieces of information necessary for the Department to conduct an authorities analysis, including information needed to determine the extent of the CCP's involvement in and potential control over input producers, information needed to determine the ultimate owners of the input producers, and information concerning the GOC's possible ownership and control of the producers or the producers' parents or other affiliates.

Regarding the GOC's responses for Group Two concerning CCP committees and CCP and Government officials, the Department has an established practice of not accepting the statements of companies in lieu of official documentation for the purposes of examining whether CCP committees or CCP or Government officials exist within input producers.[137] While the Department recognizes that companies themselves directly possess some information, such as in the case of affiliations and corporate structure, when examining whether a company has owners, senior manager, or directors which are CCP officials or whether a company has a CCP committee or other primary organization, the party possessing direct knowledge of these facts is the CCP or the GOC.[138] Accordingly, we find that the statements of the GOC referencing the limited company documents placed on the record and the company officials' certifications are insufficient evidence that the management of the companies within Group Two lack CCP or government officials or that CCP committees do not exist within these firms. The Department considers information regarding the CCP's involvement in the PRC's economic and political structure to be essential because public information suggests that the CCP exerts significant control over activities in the PRC.[139]

Moreover, our findings are not based solely on the GOC's provision of record evidence of state ownership or GOC or CCP involvement in the management of input producers. Rather, in the Public Bodies Memorandum the Department has previously concluded that, in the Chinese political and economic institutional setting, producers in the PRC that are majority-owned by the government possess, exercise, or are vested with governmental authority.[140] Our finding in this regard is based on record evidence demonstrating 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. 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.[141] For example, Article 19 of the *Company Law* provides that an organization of the CCP shall be established in a company to carry out the activities of the CCP pursuant to the CCP constitution and the company shall provide the necessary conditions for the activities of this CCP organization.[142] Also, Article 32 of the CCP constitution explicitly states that "{i}n a non-public economic institution, the primary Party organization carries out the Party's

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failed to provide many of the same documents for certain producers.

[137] *See*, *e.g.*, *Citric Acid Fourth Review* and the accompanying Issues and Decision Memorandum at Comment 3.

[138] *Id.*, at 68 – 69.

[139] *See* Public Bodies Memorandum.

[140] *Id.*

[141] *See* Public Bodies Memorandum at 35 – 36.

[142] *See* the GOC's Initial Questionnaire Response, at Exhibit 22 (Article 19).

principles and policies, provides guidance to and oversees the enterprise in observing the laws and regulations of the state, {} safeguards the legitimate rights and interests of all quarters and stimulates the healthy development of the enterprise."[143]

As discussed above, the Department provided the GOC an opportunity to provide requested information to enable the Department's "authorities" analysis under section 771(5)(B), and the GOC failed to provide such information. The Department provided the GOC multiple opportunities to provide the requested information, which, as discussed above, was relevant and necessary to the Department's analysis. The limited information that was provided by the GOC was not sufficient, in light of the remaining missing information.

Further, the GOC's attempted justification for failing to provide all of the requested information on the basis that the laws governing these firms do not require privately-held firms to provide certain documents to the government is unavailing. The GOC must provide all documents that the Department considers relevant. Likewise, the GOC's claim that producers and suppliers are private firms does not relieve the GOC's burden of responding fully and providing all documents requested.

Therefore, we determine that necessary information is not available on the record, and that the GOC withheld information that was requested of it with regard to purchases by the Jangho Companies.[144] Accordingly, the Department must rely on "facts otherwise available" in reaching a determination in this respect. Further, we find that the GOC failed to cooperate by not acting to the best of its ability to comply with requests for information regarding the ownership and CCP and government involvement in the management of producers of glass from which the Jangho Companies purchased said inputs during the POR. Specifically, the GOC did not provide the requested information and failed to provide a reasonable explanation of why it could not provide such information.[145] Consequently, we find that an adverse inference in selecting from the facts available is warranted in the application of facts available.[146] As AFA, and in light of our prior findings and the GOC's failure to provide requested information,[147] we determine that all of the producers that produced the glass purchased by the Jangho Companies during the POR are "authorities" within the meaning of section 771(5)(B) of the Act.[148]

<u>Programs Determined to Be Countervailable</u>

The Department made no changes to its *Preliminary Determination* with regard to the methodology used to calculate the subsidy rates for the following programs, except for the incorporation of Jangho's corrected denominator where appropriate.[149] For the descriptions,

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[143] *See* Public Bodies Memorandum at 35, and footnote 149.
[144] *See* sections 776(a)(1) and (a)(2)(A) of the Act.
[145] *See* sections 776(a) and (b) of the Act.
[146] *See* section 776(b) of the Act.
[147] *See* Public Bodies Memorandum.
[148] *See* Aluminum Extrusions from the PRC Third Review and the accompanying issues and Decision Memorandum at 22 - 23, 30 - 32, 37 – 38, and Comment 11, where we applied AFA because the GOC likewise failed to provide many of the same documents for certain producers.
[149] *See* "Attribution of Subsidies" section above, Comment 1 below, Jangho Final Calculation Memorandum, and

analyses, and calculation methodologies of these programs, *see* the *Preliminary Determination*. Except where noted, no issues were raised by interested parties in case briefs regarding these programs. Finally, one program which was preliminarily determined to be countervailable, the Guangzhou Service Contracting Program, was not found to provide measurable benefits to the Jangho Companies for the final results.[150] The final program rates calculated for the Jangho Companies are as follows.

Policy Loans to Chinese Aluminum Extrusion Producers

0.23 percent *ad valorem*.[151]

Preferential Tax Policies for High or New Technology Enterprises

0.38 percent, *ad valorem*.[152]

Tax Offset for Research and Development (R&D)

0.14 percent, *ad valorem*.[153]

Export Increase Fund

0.03 percent, *ad valorem*.

Private Enterprise Award

0.01 percent, *ad valorem*.

Guangzhou Engineering Technology R&D Center Fund

0.01 percent, *ad valorem*.

Beijing Industry Development Fund

0.02 percent, *ad valorem*.

Technology Innovation Assistance Fund

0.05 percent, *ad valorem*.[154]

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the accompanying Microsoft Excel spreadsheet.

[150] As a result of changes for the final results, there are no measurable benefits for this program, *See* Jangho Final Calculation Memorandum, and the accompanying Microsoft Excel spreadsheet.

[151] *See* "Attribution of Subsidies" section above and Comments 9 and 10 below.

[152] *See* Comment 11 below.

[153] *Id.*

[154] *See* Comment 12 below.

Enterprise Technology Center Fund

0.03 percent, *ad valorem*.[155]

Trade Promotion and Brand Building Fund

0.02 percent, *ad valorem*.[156]

Provision of Aluminum Extrusions for LTAR

12.54 percent *ad valorem*.[157]

Provision of Glass for LTAR

2.61 percent *ad valorem*[158]

<u>Programs Determined Not to Confer Measurable Benefits</u>

We find that the following programs did not confer a measurable benefit to the Jangho Companies during the POR:[159]

- 2014 SME Loan Discount Fund (Provincial Loan Discount Special Fund for SMEs)
- 2014 Brand Internationalization Development Fund (Self-Owned Brand Award / Award for Self-Innovation Brand / Grant for Self-Innovation Brand and Enterprise Listing / Income Tax Reward for Listed Enterprises / Self-Innovation Brand / 2014 Brand Internationalization Development Fund / Guangzhou Internationalization Development of Self Innovation Brand / 2014 Brand Build Special Fund / (Shanghai Brand Build Special Fund)
- Advantaged Traditional Manufacturing Industry Transformation and Upgrading Model Enterprise Award (Industry Upgrading Model Award)
- SME International Market Exploration Fund (2014 International Market Exploration /International Market Exportation Fund / SME Fund)
- Intellectual Property Award (Intellectual Property Award / Beijing Patent Assistance / Beijing Domestic Patent Application Financial Assistance)

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[155] *Id.*
[156] *Id.*
[157] For an explanation for the changes to the calculations for this program, *see* Comments 13 and 14. *See also* Comments 3, 6, 7, and 8.
[158] For an explanation for the changes to the calculations for this program, *see* Comments 13. *See also* Comments 4, 6, 7, and 8.
[159] If the subsidy rate calculated for any particular grant was less than 0.005 percent *ad valorem*, that grant was determined to have no impact on the overall subsidy rate, and was, therefore treated as providing no measurable benefit. *See*, *e.g.*, *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007), and accompanying Issues and Decision Memorandum at 15.

- Disabled Employee Assistance (Support for Disabled Persons)
- Post Doctor Allowances
- Post Doctor Center Research Fund
- Shurtyl District Mang Post Doctor (Young Talent) Innovation Practice Base Assistance
- Beijing Cultural Innovative Industry Personnel Training Base Fund
- 2013 Oversea Investment Cooperation Fund
- Industrialization and Informationization Assistance (Industrialization and Information Integration Assistance)
- 2014 Science and Technology Service Industry Promotion Fund
- Unemployment Insurance - Employees Training Assistance
- Oversea Investment and Contracting Encouragement Fund (Overseas Investment and Contracting Encouragement Fund)
- Shunyi Local Employment Award
- Wuhan Hannan SME Development Fund
- Niulanshan Company Events Grant (Niulanshan Government Grant)
- Hubei Branch Plant Rent Allowance (Wuhan Hannan SME development special fund / Wuhan Hannan Plant Rent Allowance)
- 2012 Employee Training Fund
- Guangzhou Service Contracting Program.[160]

<u>Programs Determined Not to be Used</u>
We find that the respondents did not use the following programs:

- "Large and Excellent" Enterprises Grant
- 2009 Special Fund
- Accelerated Depreciation for Enterprises Located in the Northeast Region
- Advanced Science/Technology Enterprise Grant
- Allocated Land Use Rights for State-Owned Enterprises
- Assistance for Science Research and Technology Development Planning Projects of Nanning Municipality
- Assistances for Research & Development ("R&D") projects under Funds of Nanning Municipality for Foreign Trade Development
- Award for Excellent Enterprise
- Award of Nanning Municipality for Industrial Enterprises Completing Energy Saving Tasks
- Awarding Funds of Guangxi Autonomous Region for Renovation of Energy-Saving Technologies
- Awards of Guangxi Autonomous Region for Advancement of Science and Technology
- Awards of Guangxi Autonomous Region for Emission Reduction of Main Pollutants
- Awards of Guangxi Autonomous Region for New Products
- Awards of Nanning High-tech Zone for Annual top Tax Payers of Industrial Enterprises

[160] As a result of changes for the final results, we have determined that this program provided no measurable benefits, *see* Jangho Final Calculation Memorandum, and the accompanying Microsoft Excel spreadsheet.

- Awards of Nanning Municipality for Advancement of Science and Technology
- Awards of Nanning Municipality for Excellent Foreign Trade Enterprises
- Awards of Nanning Municipality for New Products
- Awards to Key Enterprises for Large Consumption of Electricity
- Bonus for 2009 Excellent Sewage Treatment Management Companies
- Clean Production Technology Fund
- Development Assistance Grants from the Zhaoqing New and High-Tech Industrial Development Zone ("ZHTDZ") Local Authority
- Exemption from City Construction Tax and Education Tax for Foreign-Invested Enterprises ("FIEs")
- Exemptions from Administrative Charges for Companies in the ZHTDZ
- Expanding Production and Stabilizing Jobs Fund of Jiangsu Province
- Export Credit Subsidy Program: Export Buyer's Credits
- Export Credit Subsidy Program: Export Seller's Credits
- Export Incentive Payments Characterized as Value Added Tax ("VAT") Rebates
- Export Rebate for Mechanic, Electronic, and High-Tech Products
- Financial Assistance (interest subsidy) of Nanning Municipality for Key Technology Renovation
- Financial Supporting Funds of Nanning Municipality for Technology Renovation for Production Safety
- Forgiveness of Tax Arrears for Enterprises in the Old Industrial Bases of Northeast China
- Foshan City Government Technology Renovation and Technology Innovation Special Fund Grants
- Fund for Economic, Scientific, and Technology Development
- Fund for SME Bank-Enterprise Cooperation Projects
- Funds for Demonstration Bases of Introducing Foreign Intellectual Property
- Funds for Projects of Science and Technology Professionals serving the Enterprises
- Funds of Guangxi Autonomous Region for Energy Saving and Emission Reduction
- Funds of Guangxi Autonomous Region for Enterprises' Technology Renovation
- Funds of Guangxi Autonomous Region for Promotion of Foreign Trade Development of the West Region
- Funds of Nanning Municipality for Project Preliminary Works
- Funds of Nanning Municipality for Sustainable Development of Foreign Trade
- Funds of Nanning Municipality for Technology Innovation
- Government Provision of Land-Use Rights to Enterprises Located in the Yongji Circular Economic Park for Less Than Adequate Remuneration
- Government Purchase of Aluminum Extrusions for More Than Adequate Remuneration
- Grants for Listing Shares: Liaoyang City (Guangzhou Province), Wenzhou Municipality (Zhejiang Province), and Quanzhou Municipality (Fujian Province)
- Grants to Cover Legal Fees in Trade Remedy Cases in Zhenzhen
- Guangxi Awards for Private Enterprises Designated as Pilot Innovation-Oriented Enterprises

- Guangxi Technology R&D Funds
- Import and Export Credit Insurance Supporting Development Fund for Changzhou
- Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries
- Income Tax Rewards for Key Enterprises
- Labor and Social Security Allowance Grants in Sanshui District of Guangdong Province
- Land Use Rights in the Liaoyang High-Tech Industry Development Zone
- Loans and Interest Subsidies Provided Pursuant to the Northeast Revitalization Program
- Membership Fee Refunds for Members of Rescue Sub-team of Guangxi Emergency and Rescue Association for Production Safety
- Migrant Workers Training Subsidy
- Nanhai District Grants to High or New Technology Enterprises ("HNTEs")
- Nanhai District Grants to State and Provincial Enterprise Technology Centers and Engineering Technology R&D Centers
- 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"
- National Funds for the Industry Revitalization and Technology Renovation of the Key Fields
- National Special Funds for Emission of Main Pollutants (Assistance for Construction of Automatic Surveillance of Key Pollutant Sources)
- Northeast Region Foreign Trade Development Fund
- PGOG and Foshan City Government Patent and Honor Award Grants
- PGOG Science and Technology Bureau Project Fund (*aka*, Guangdong Industry, Research, University Cooperating Fund)
- PGOG Special Fund for Energy Saving Technology Reform
- Preferential Tax Policies for the Development of Western Regions of China
- Preferential Tax Policies for the Opening and Development of Beibu Gulf Economic Zone of Guangxi Zhuang Autonomous Region (Local Income Tax Exemption)
- Preferential Tax Program for FIEs Recognized as HNTEs
- Provincial Fund for Fiscal and Technological Innovation
- Provincial Loan Discount Special Fund for SMEs
- Provincial Tax Exemptions and Reductions for "Productive" FIEs
- Provision of Electricity for LTAR to FIEs Located in the Nanhai District of Foshan City
- Provision of Land-Use Rights and Fee Exemptions to Enterprises Located in the LHTDZ for LTAR
- Provision of Steam Coal for LTAR
- Refund of Land-Use Tax for Firms Located in the ZHTDZ
- Refund of VAT on Products Made Through Comprehensive Utilization of Resources
- Returns for Land-Transferring Fee
- Social Insurance Subsidy
- Special Fund for 2010 Provincial-Level Foreign Economy and Foreign Trade

Development
- Special Fund for Environment Protection
- Special Fund for External Economy
- Special Fund for Foreign Trade
- Special Fund for Industrial Development
- Special Fund for Significant Science and Technology in Guangdong Province
- Special Fund Subsidy for Export-Oriented Economy
- Special Fund Subsidy for Industrial Development
- Special Funds for Projects of National Science and Technology Supporting Plan
- Special Funds for the Development of Five Industries
- Special Funds of Guangxi Autonomous Region for Production Safety (Supporting Fund for Eliminating Potential and Seriously Dangerous Projects)
- Special Funds of Guangxi Autonomous Region for Small Highland of Talents
- Special Funds of Guangxi Beibu Gulf Economic Zone for the Development of Key Industries
- Special Funds of Nanning Municipality for Academic and Technical Leaders of the New Century
- Special Funds of Nanning Municipality for Key Planning Project of Professionals Cultivation
- Special Funds of Nanning Municipality for Small Highland of Talents
- Special Guiding Fund
- Special Guiding Fund for Key Industries
- Special Reward Fund for Industrial Economy Transformation and Upgrading of the Whole District
- State Key Technology Renovation Project Fund
- Support for Disabled Persons
- Support for the Tax Refund Difference Program
- Supporting Funds for Trade with the Minority Nationalities and Production of Goods Specially Needs by Minority Nationalities
- Supporting Funds of Nanning Municipality for "Informatization-industrialization Integration" and Development of Information Industry
- Tax Credits for Domestically-Owned Companies Purchasing Chinese-Made Equipment
- Tax Reductions for Export-Oriented FIEs
- Tax Reductions for FIEs in Designated Geographic Locations
- Tax Reductions for FIEs Purchasing Chinese-Made Equipment
- Tax Reductions for Technology- or Knowledge-Intensive FIEs
- Tax Refunds for Enterprises Located in the ZHTDZ
- Tax Refunds for Reinvesting of FIE Profits in Export-Oriented Enterprises
- Technical Reform Subsidy for Changzhou City
- Technical Standards Awards
- Tiaofeng Electric Power Subscription Subsidy Funds
- Two Free, Three Half Income Tax Exemptions for FIEs
- VAT Rebates on FIE Purchases of Chinese-Made Equipment

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, we did not calculate the non-selected rate using a methodology of weight-averaging the rates of Jangho and Zhongya because the subsidy rate for Zhongya is based on total AFA. Instead, we based the non-selected rate on Jangho's subsidy rate.[161] As such, for each of the 43 companies for which a review was requested and not rescinded, but were not selected as mandatory respondents, and that did not fail to cooperate, we derived a final subsidy rate of 16.08 percent *ad valorem.*[162]

Ad Valorem Rate for Non-Cooperative Companies Under Review

In this administrative review, Zhongya submitted a letter in response to the Department's Initial Questionnaire to Zhongya, indicating that it would not be participating in this administrative review. 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 Zhongya the total AFA rate of 195.69 percent *ad valorem.*[163]

Analysis of Comments

Comment 1: Whether the Department Should Revise the Sales Denominator for Jangho Group Company to Exclude Revenues Derived from Services.

Petitioner's Case Brief:

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[161] *See* memorandum to the file regarding "Administrative Review of Countervailing Duty Order on Aluminum Extrusions from the People's Republic of China: Non-Selected Rate Calculation for the Amended Final Results," dated June 3, 2016.

[162] For a list of the non-selected companies, *see Aluminum Extrusions from the People's Republic of China: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2014*, at Appendix II, signed concurrently with this decision memorandum.

[163] *See* Memorandum to The File regarding "Administrative Review of Countervailing Duty Order on Aluminum Extrusions from the People's Republic of China: Non-Selected Rate Calculation for the Preliminary Results of Review," dated June 1, 2014," dated June 3, 2016.

- The subsidy benefit for a particular countervailed subsidy program in a CVD proceeding is typically calculated by dividing the program benefit or disbursement amount by total sales revenue (company-wide, export sales, or sales of all producers of the merchandise under investigation). However, for Jangho Group Company, the Department included certain revenues from sources other than the production and sale of products (*i.e.* services).[164] Therefore, the Department should revise its denominator for the Jangho Group Company to exclude revenues from sources other than the sale of manufactured products.[165]
- Section 351.525(a) of the Department's regulations requires that the denominator be based upon the sales value of the product or products manufactured by the respondent company.[166]
- The Department's practice is to exclude from the denominator any revenues derived from non-production operations, both at the company and consolidated levels.[167]

Jangho's Rebuttal Brief:

- The Department used the correct denominator in its preliminary CVD calculations. There is no information on the record indicating that Jangho Group Company's revenue includes non-product revenue. Therefore, there is no basis to adjust Jangho Group's consolidated revenue.[168]
- Jangho Group Company's consolidated income statement segregates revenue into operating revenue, interest income, premium income, and fees and commissions income. Jangho Group Company's entire reported revenue is categorized as operating revenue. The standard definition for operating revenue is revenue generated from normal business activities (*i.e.*, the sale of products). Accordingly, there is no basis to adjust the denominator.[169]
- The fact that the reported operating revenue is directly related to sales of products manufactured by the Jangho Group is supported by Note 5.39 of the 2014 consolidated financial statement. Specifically, in Note 5.39, operating revenue is split into "Principal activities" and "Other activities." All of the revenue associated with "Principal activities" is derived from the sale of Jangho's products.[170]

[164] *See* Memorandum from Tyler Weinhold to Robert James, Program Manager, Office VI regarding: "Preliminary Determination Calculation Memorandum for the Jangho Companies," dated June 3, 2016 (Preliminary Calculation Memorandum) at Exhibit 1, Exhibit 2, Exhibit 3, and Letter from Jangho to the Department, regarding: "Aluminum Extrusions from the People's Republic of China: Sections II and III Questionnaire Response," dated December 10, 2015 (Jangho's Initial Response) at Exhibit JG-3.
[165] Petitioner's Case Brief at 1 to 5.
[166] *Id.,* at 2.
[167] *Id,.* at 4 to 5, citing *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) and accompanying Issues and Decision Memorandum at Comment 29.c (*Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the PRC*), and *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products From the Republic of Korea: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35310 (June 2, 2016) at section V.C. (*Corrosion-Resistant Steel Products From the Republic of Korea*).
[168] *See* Jangho's Rebuttal Brief at 1 and 3 to 4.
[169] *Id.,* at 3 to 4.
[170] *Id.,* at 4.

- Petitioner failed to provide a reconciliation of the revenue reported for the Jangho Group's subsidiaries' and Jangho Group Company's consolidated revenue. In doing so, petitioner's suggested correction ignores any adjustments made to the company-specific revenues at the consolidated level.[171]

Department's Position:

We agree with Jangho that we should not make an adjustment to Jangho Group Company's consolidated revenue. The Department's practice is to use total sales, including service revenues, as the denominator for subsidies, unless the Department determines that the subsidy is tied to productive activities.[172] Given that we have not determined that the investigated subsidies used by Jangho are tied to productive activities, we find that all of the service revenues are properly included in the denominator for these companies. However, we erroneously excluded services income from the sales denominators of the cross-owned affiliates of Jangho Group Company in the *Preliminary Results*. For this reason, in a change from the *Preliminary Results,* we have also included service revenues in the denominators used for the Jangho Group Company's cross-owned producers.

Comment 2: Whether Jangho's Curtain Wall and Window Wall Products Fall Within the Scope of the Aluminum Extrusions Orders, Such That They Are Subject to this Review.

Jangho's Case Brief:

- Jangho's curtain wall and window wall products fall outside the scope of the order on aluminum extrusions and, hence, are not subject to this review.[173]
- The Department selected Jangho as a mandatory respondent in this review, despite the fact that its products fall outside the scope of the *Orders*.[174]
- The Department has twice confirmed that window wall units imported pursuant to a window wall contract fall outside the scope of the *Orders*.[175] Likewise Jangho's curtain wall products should not be included in this administrative review.
- In *Shenyang Yuanda III*, the Department found, pursuant to court remand, that curtain wall units imported pursuant to a contract to supply curtain wall fall outside the scope

[171] *Id.,* at 4.
[172] *See. e.g.*, *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 81 FR 47349 (July 21, 2016), and the accompanying Issues and Decision Memoranmum at Comment 4; *Melamine From Trinidad and Tobago: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Determination*, 80 FR 21708 (April 20, 2015) and the accompanying Decision Memorandum at 4 (unchanged in *Melamine From Trinidad and Tobago: Final Affirmative Countervailing Duty Determination*, 80 FR 68849 (November 6, 2015)); and *Final Affirmative Countervailing Duty Determination: Certain Steel Products From Austria*, 58 FR 37217 (July 9, 1993) and the accompanying General Issues Appendix at section "C. Services."
[173] *See* Jangho's Case Brief, at 1 and 4 to 7.
[174] *Id.*, at 4.
[175] *Id.*, at 4 to 6, citing Memorandum from Melissa Skinner to Christian Marsh re: "Final Scope on Window Kits," (June 19, 2014) (NR Windows), and Memorandum from Scot Fullerton to Christian Marsh, re: "Antidumping and Countervailing Duty Orders on Aluminum Extrusions from the People's Republic of China: Final Scope Ruling on Ventana's Window Wall Kits," (January 19, 2015) (Ventana).

of the *Order*.[176] As was the case in *Shenyang Yuanda III*, Jangho's curtain wall units are imported pursuant to a contract to supply curtain wall. At the time of import, Jangho's products have all parts needed to assemble a curtain wall on a building. Accordingly, they must be excluded from the scope of this review.[177]

Petitioner's Rebuttal Brief:

- The Department should reject Jangho's arguments that its curtain wall products are not subject merchandise.[178] As noted by the Court of International Trade (CIT) and as affirmed by the Court of Appeals for the Federal Circuit (CAFC), the Department has had an extensive and established history of confirming that curtain walls, like those produced by Jangho, are subject merchandise.[179]
- Jangho's reliance upon the ongoing appeal of the Department's scope determination with regard to Shenyang Yuanda Aluminum Engineering Industry Co.'s (Shenyuang Yuanda) curtain wall units imported pursuant to a contract is misplaced, as the ultimate outcome of that litigation is specific to Shenyang Yuanda's products. Scope ruling requests are specific to the importer that makes the request. The determinations in the Shenyang Yuanda litigation were issued only after considering information specific to and provided by Shenyang Yuanda, including the company's specific product description, contemporary business documents provided by Shenyang Yuanda, and the method of importation used for Shenyang Yuanda's curtain wall units.[180]
- Jangho's reliance on the Department's scope determinations with regard to window kits is inapposite, as the Department has already rendered more specific determinations finding that products much more similar to Jangho's products are properly considered subject merchandise, *i.e.* curtain wall and curtain wall units.[181]

Department's Position:

We disagree with Jangho. The Department has previously determined that Jangho's products are subject to the *Order*,[182] and there is no evidence on the record of this review that calls into

[176] *Id.*, at 6, citing *Shenyang Yuanda Alum. Indus. Eng'g Co. v. United States*, Consol. Court No. 14-00106, Slip Op. 16-11 (February 9, 2016) (*Shenyang Yuanda III*) and *Shenyang Yuanda Alum. Indus. Eng'g Co. v United States Consol. Court No. 14-00106 (February 9, 2016), Final Results of Redetermination Pursuant to Court Remand*, Bar Code 3468795-01 (May 13, 2016).
[177] *Id.,* at 6 to 7.
[178] *See* Petitioner's Rebuttal Brief at 2 and 36 to 39.
[179] *Id.* at 36, citing *Shenyang Yuanda Aluminum Industry Engineering, Inc. v. United States*, Slip Op. 14-10 (CIT Jan. 30, 2014) (*Shenyang Yuanda I*), and *Shenyang Yuanda Aluminum Industry Engineering, Inc. v. United States*, 776 F.3d 1351, 1357 (Fed. Cir. 2015) (*Shenyang Yuanda II*).
[180] *See* Petitioner's Rebuttal Brief at 36 and 38.
[181] *Id*., at 38. Citing Jangho's Case Brief at 5 to 6. Petitioners also make reference to Jangho's discussion of the Fan Blade Assemblies Scope Ruling. *See* Jangho's Case Brief at 20 and Memorandum from Christopher Hargett, Analyst, Office III, through Melissa Skinner, Office III, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations regarding, "Final Scope Ruling on Fan Blade Assemblies," dated July 25, 2014 (Fan Blade Assemblies Scope Ruling). However, Jangho does not discuss Fan Blade Assemblies Scope in its discussions of this issue.
[182] *Aluminum Extrusions From the People's Republic of China: Final Results, and Partial Rescission of Countervailing Duty Administrative Review; 2013*, 80 FR 77325 (December 14, 2015), and accompanying Issues

question that determination. We therefore continue to find that Jangho's merchandise is subject to the *Order* and thus determine that the Department appropriately selected Jangho as a mandatory respondent in this review. Additionally, Jangho's reliance on prior scope rulings is misplaced; not only are those rulings and related court determinations company- and product-specific, Jangho has not demonstrated that its products are similar to those evaluated by the Department in prior scope rulings.

Jangho did not provide evidence on the record of this review demonstrating that its products are outside the scope of the order, a responsibility which rests with Jangho. Jangho merely makes a few vague assertions regarding the nature of the products it exports to the United States and a few unsubstantiated claims that its products are outside the scope of the *Order*. Jangho has not provided even a rudimentary description of its products, much less the specific evidence or information that would be necessary for the Department to determine whether its products are outside the scope of the *Order*.[183]

Jangho's statements are insufficient evidence for the Department to rely upon because they do not establish that it produced (and/or exported to the United States) the type of merchandise that might potentially be excluded from the *Orders*, e.g., curtain wall units that are produced pursuant to a long-term contract to supply a curtain wall. Jangho merely states: "Guangzhou Jangho clarifies that it does not produce aluminum extrusions *per se,* but rather, downstream products such as curtain wall units.… While Jangho continues to believe that its finished curtain wall units are non-subject merchandise, Jangho realizes that, pursuant to the Final Scope Ruling on Curtain Wall Units that are Produced and Imported Pursuant to a Contract to Supply a Curtain Wall dated March 27, 2014, the Department considers these products to be subject merchandise."[184] However, the record does include statements by Jangho indicating that it did produce merchandise other than curtain wall units during the POR.[185] Finally, Jangho's responses do not specify which types of subject merchandise it exported to the United States or whether it exported curtain wall units, curtain wall units subject to a long-term contract, or other subject merchandise to the United States.[186]

We disagree with Jangho that the Department's prior scope rulings are relevant to this administrative review. Although Jangho relies upon the Department's rulings in NR Windows, Ventana, Curtain Wall 2012, Curtain Wall 2014, and the Department's remand redetermination in *Shenyang Yuanda III*, the Department's scope determinations are issued only after

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and Decision Memorandum at Comment 1.

[183] *See* Curtain Wall 2014 at 23 (Curtain Wall 2014).

[184] *See* Jangho's Affilliations Response at 2 to 3, and Jangho's Initial Response, Gunagzhou Jangho Response, at IIII-3.

[185] Jangho claims to be "a manufacturer of the "curtain wall products," "products such as curtain wall units," "finished curtain wall units," and "mainly…unitized curtain wall, component curtain wall, point supported curtain wall, full-glass curtain wall, intelligent respiratory double skin curtain wall and photoelectric curtain wall," *See*, *e.g*., Jangho's Affiliations Response at 2 to 3, and Jangho's Initial Response, Guangzhou Jangho Response, at III-3. *See also* Jangho's Initial Response, Gunagzhou Jangho Response, at III-3.

[186] Jangho identifies the products which it exported to the United States merely as "curtain wall products," and "subject merchandise." In addition, Jangho reported that "Guangzhou Jangho exports the subject merchandise via Jangho HK under the HTSUS subheading 7610 9000 00 and 7008 0010 00." *See*, e.g., Jangho's Affiliations Response at 2 to 3, and Jangho's Initial Response, Guangzhou Jangho Response, at III-3. *See also* Jangho's Initial Response, Guangzhou Jangho Response, at III-3.

considering information specific to the scope proceeding before it, including company-specific products, and, as applicable, the method of importation.[187] Accordingly, those prior scope determinations apply to the companies whose products are the subject of the Department's examination, not to Jangho. Moreover, and as explained below, Jangho fails to demonstrate how the Department's findings in prior scope determinations would lead to the conclusion in this review that Jangho's merchandise is outside the scope of the *Orders*.

In addition, during the underlying investigation, the Department determined that a "final finished good" under the scope is a completed curtain wall, and "components" of a curtain wall, including another company's "unitized curtain wall product" exported by that company, was subject to the *Orders*.[188] Moreover, the CIT affirmed this understanding of the investigation and curtain wall units in Shenyang Yuanda, holding that "liquidation of parts for curtain walls has been suspended since publication of the preliminary determinations for the countervailing duty order on September 7, 2010 and November 12, 2010 for the antidumping duty order."[189]

Since the investigation, the Department has conducted several scope inquiries with regard to curtain wall and related products. For example, as the Jangho Companies indicate, in Curtain Wall 2012, the Department found that curtain wall units, curtain wall systems, and parts thereof, other than those which "fall short of the final finished curtain wall that envelopes an entire building structure" are within the scope of the *Orders*.[190] Specifically, the Department explained that parts of curtain walls are explicitly included in the scope of the preliminary and final determinations of the original investigation, which states that "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."[191] Further, the CIT and the Court of Appeals for the Federal Circuit (CAFC) have both affirmed the Department's ruling.[192]

In Curtain Wall 2014, the Department ruled that curtain wall units produced and imported pursuant to a contract to supply a complete curtain wall system are within the scope of the

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[187] *See Shenyang Yuanda III*.
[188] *Id*., at Comment 6, citing the Department's memorandum entitled "Aluminum Extrusions from the People's Republic of China, Preliminary Determinations: Comments on the Scope of the Investigations," dated October 27, 2010.
[189] *See Shenyang Yuanda Aluminum Industry Engineering Co., Ltd. v. United States,* 961 F. Supp. 2d 1291, 1304-05 (CIT 2014) (*Shenyang Yuanda*), *aff'd* by *Shenyang Yuanda Aluminum Indus. Eng'g Co. v. United States*, 776 F.3d 1351 (Fed. Cir. 2015).
[190] *See* scope ruling memorandum regarding: "Antidumping Duty (AD) and Countervailing (CVD) Orders: Curtain Wall Units and Other Parts of a Curtain Wall System from the People's Republic of China (PRC): Final Scope Ruling on Curtain Wall Units and Other Parts of Curtain Wall Systems" (November 30, 2012)). *See also* CBP message number 3003305 (January 3, 2013), available at *http://enforcement.trade.gov/download/prc-ae/scope/prc-ae-scope-index.html*.
[191] *See Aluminum Extrusions From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, and Preliminary Determination of Targeted Dumping,* 75 FR 69403 (November 12, 2010) (*Aluminum Extrusions Preliminary Determination*) at 69404; and *Aluminum Extrusions From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 76 FR 18524 (April 4, 2011) (*Aluminum Extrusions Investigation*) at 18525-18526.
[192] *See Shenyang Yuanda*, 961 F. Supp. 2d at 1304-05, *aff'd*, 776 F.3d 1351.

Orders.[193] This scope ruling is currently in litigation, and there is thus no final decision with respect to the scope ruling.[194] Moreover, the Jangho Companies have provided no argument as to why this scope ruling should not be followed in the instant review.

Moreover, in NR Windows, which Jangho points to, the Department determined that window walls were different in several respects from curtain wall products which had been previously examined. In particular, unlike curtain walls, window walls do not envelop or enclose the entire façade of the building, and instead leave significant areas of the building façade uncovered. In this sense, the Department determined that the window walls are akin to the window frames with glass that are expressly excluded from the scope. Further, based on evidence on the record of the NR Window Scope Ruling —which is not on the record of this review, or challenged by the Jangho Companies here—the Department distinguished between curtain walls and window walls, explaining that the American Architectural Manufacturers Association distinguishes between window walls and curtain walls by describing curtain walls as "exterior cladding" while defining window walls as "fenestration systems."[195] Moreover, while Jangho asserts that its "window wall units imported pursuant to a contract supply window wall are the same as those considered in NR Windows and Ventura" {sic.}, Jangho has failed to demonstrate how the application of the finished goods kit exclusion, as applied in those scope rulings, would lead the Department to conclude that Jangho's merchandise is not subject to the *Order*.

Thus, the Jangho Companies have not provided evidence or clearly articulated the rationale to support its claim that its products are outside the scope of the *Orders*. Further, as stated above, because the Jangho Companies have not requested a scope ruling nor provided the requisite evidence concerning its products, the Department has no basis to determine that its merchandise is excluded from the scope of the *Orders*.

Comment 3: Whether the Department Can Countervail the Provision of Aluminum Extrusions for Less Than Adequate Remuneration (LTAR).

The GOC's Case Brief:

- Aluminum Extrusions, the subject merchandise, are not an input into the subject merchandise, as the Department preliminarily determined. Accordingly, no program for the provision of aluminum extrusions or LTAR can exist, and the Department cannot lawfully countervail the provision of Aluminum Extrusions for LTAR.[196]
- Section 701(a)(1) of the Act provides that countervailing duties are only permissible

[193] *See* scope ruling memorandum regarding: "Curtain Wall Units that are Produced and Imported Pursuant to Contract to Supply a Curtain Wall," March 27, 2014 (Curtain Wall 2014), available at *http://enforcement.trade.gov/download/prc-ae/scope/prc-ae-scope-index.html*.
[194] *See Shenyang Yuanda Aluminum Industry Engineering Co., Ltd. v. United States*, Ct. No. 14-00106, Slip Op. 16-94 (CIT October 6, 2016) (*Shenyang Yuanda IV*).
[195] *See* scope ruling memorandum regarding: "Antidumping and Countervailing Duty Orders on Aluminum Extrusions from the People's Republic of China; Final Scope Ruling on Finished Window Kits," June 19, 2014 (*NR Windows Scope Ruling*) at 9 to 10, available *at http://enforcement.trade.gov/download/prc-ae/scope/prc-ae-scope-index.html.*
[196] *See* the GOC's Case Brief at 1 and 4 to 6.

when a countervailable subsidy is provided "with respect to the manufacture, production, or export of a class or kind of merchandise imported, or sold (or likely to be sold) for importation, into the United States." Section 771(5)(E)(iv) of the Act and Section 351.511(a)(1) of the Department's regulations provide that, where goods or services are provided to the foreign manufacturer or producer of the subject merchandise and such goods or services are provided for less than adequate remuneration, a benefit shall normally be conferred to the recipient." Therefore, the plain language of the statute and the Department's regulations do not recognize the subject merchandise itself as a "good" provided for LTAR to a foreign producer in manufacturing the subject merchandise.[197]

- As far as the GOC is aware, the Department has not investigated a claim, in any other proceeding, that the class or kind of subject merchandise itself is provided for LTAR in the production of subject merchandise and that the provision of this good confers a benefit.[198]
- It is circular and unlawful to treat the subject merchandise itself as a "good" provided at LTAR to a respondent in calculating a benefit to that manufacturer in producing the subject merchandise.[199]
- By treating aluminum extrusions as an input into aluminum extrusions, the Department has countervailed subject merchandise produced by non-selected respondent(s) and, as a result, has unlawfully assessed countervailing duties on two producers of the same imported merchandise: the producer of the aluminum extrusions that are considered an input, and the respondent. As there can only be one producer of the subject merchandise, the Department cannot countervail subsidies received by two producers for the same subject merchandise.[200]

Jangho's Case Brief:

- The Department may not apply a countervailing duty related to alleged purchases at LTAR of aluminum extrusions, the subject merchandise. Countervailing duties may only apply to goods purchased for LTAR where they relate to the manufacture and production of the subject merchandise. Aluminum extrusions are the subject merchandise; therefore aluminum extrusions may not be an input into aluminum extrusions.[201]
- The Department's findings are inconsistent with the administrative record.[202] While the Department has found certain curtain wall products to be subject to the *Orders*, only the aluminum extrusions portion of these products constitutes the subject merchandise. The scope of the order explicitly excludes the non-aluminum components of subassemblies and kits. Thus, the aluminum extrusions (the subject merchandise) cannot be an input into themselves.[203]

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[197] *Id.,* at 4 to 5.
[198] *Id.,* at 5.
[199] *Id.*
[200] *Id*.
[201] See Jangho's Case Brief at 1-2 and 13 to 15.
[202] *See* Preliminary Decision Memorandum at 52.
[203] *See* Jangho's Case Brief at 13 to 14.

- The Department's reasoning in the preliminary results fails, as it treats a curtain wall as the subject merchandise. According to the plain language of the *Orders*, only the aluminum extrusions components are the subject merchandise; the non-aluminum components fall outside the scope of the *Orders*.[204]
- The Department's decision to apply CVDs relating to Jangho's aluminum extrusions purchases would have the effect of assessing CVDs twice; once relating to the aluminum extrusions purchase as an input of aluminum extrusions and once with respect to the aluminum extrusions as the subject merchandise.[205]
- The Department's analysis levies countervailing duties on two separate producers, the producer of aluminum extrusions that form parts of Jangho's merchandise and also Jangho. However, there can only be one manufacturer in the Department's analysis.[206]
- Section 701(a)(1) of the Act and section 351.511(a) of the Department's regulations instruct that where goods or services are provided to the producer of the subject merchandise for LTAR, this will be considered a benefit conferred on the producer. However, Section 771(5)(E)(iv) of the Act and the Department's regulations only permit the Department to find a subsidy countervailable if such subsidy relates to the manufacture or production of the subject merchandise. Here the aluminum extrusions are the subject merchandise; aluminum extrusions cannot be provided for the manufacture of aluminum extrusions.[207]

Petitioner's Rebuttal Brief:

- The Department has already found multiple times that aluminum extrusions have been provided for LTAR.[208]
- There is no prohibition against finding that a countervailable benefit exists if a good that is subject to a CVD order happens to be produced from inputs that are also subject to the same CVD order.[209]
- The Act and the Department's regulations speak only of a "good" or a "service." In this proceeding, aluminum extrusions, a good, have been provided for LTAR to producers of a downstream product subject to the *Orders*.[210]
- To adopt the position advocated by Jangho and the GOC would deprive domestic industries of the ability to seek relief for classes of merchandise that are broad in nature or that include a good and a good's downstream products.[211]
- The scope of the *Orders* encompasses both aluminum extrusions and downstream products explicitly identified in the scope of the *Orders*. Therefore, both are countervailable.[212]
- The mere fact that producers of the extrusion and producers of the downstream article

[204] *Id.*, at 15.
[205] *Id.,* at 1 to 2 and 14 to 15.
[206] *Id.*
[207] *Id.*, at 14.
[208] *See* Petitioner's Rebuttal Brief at 8.
[209] *Id.,* at 8.
[210] *Id.*
[211] *Id.,* at 8 to 9.
[212] *Id.,* at 9.

are not affiliated, does not sever the benefit stream and render the benefits non-countervailable.[213]

Department's Position:

We continue to find that the Department may countervail benefits arising from the provision of aluminum extrusions for LTAR. Because both the curtain walls produced by Jangho and the aluminum extrusion inputs used to produce Jangho's curtain walls are subject to the *Order*, and because the aluminum extrusion inputs are provided to Jangho for LTAR, the Department appropriately countervailed the provision of aluminum extrusions for LTAR, which benefits Jangho.

Section 771(5)(E)(iv) of the Act and section 351.511(a) of the Department's regulations instruct that where goods or services are provided to the producer of the subject merchandise for LTAR, this will be considered a benefit conferred on the producer. Therefore, where an authority provides inputs used in the respondent's production of subject merchandise for LTAR, a benefit is conferred.

Jangho argues that only the aluminum extrusion components of its curtain walls, and not the curtain walls themselves, are subject to the *Order* and that, accordingly, the Department inappropriately treated the subject merchandise as an input into a downstream product by countervailing the provision of aluminum extrusions at LTAR. However, as discussed in further detail in Comment 2, the Department has repeatedly determined that parts of curtain walls, including certain curtain wall units, are covered by the scope of the *Order*.[214] The CIT and CAFC have both affirmed that curtain wall units, which are made from aluminum extrusions and other components, are subject to the scope of the *Order*.[215]

Further, contrary to Jangho's assertion, the Department's approach is consistent with the scope of the *Order*. Specifically, the scope states that: "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)." The scope also states that "{t}he scope does not include the non-aluminum extrusion components of subassemblies or subject kits."[216] Accordingly, the Department calculates benefits accruing to Jangho which are related to the production of its subject downstream curtain wall products, including benefits accruing from the provision of aluminum extrusions for LTAR. To give effect to the latter provision*s*, CVDs calculated for Jangho are not assessed on the non-aluminum components of its downstream products. Thus, under Department's methodology, countervailing the provision of aluminum extrusions for LTAR does not double count benefits. Jangho's proposed approach—to exclude benefits accruing to Jangho from the provision of inputs for LTAR if such inputs are covered by the scope—would not eliminate any purported double counting of benefits or double assessment of

[213] *Id.,* at 9.
[214] *See* Curtain Wall 2012 and Curtain Wall 2014.
[215] *Shenyang Yuanda I* and *Shenyang Yuanda II*.
[216] *See* the *Orders*.

duties, but would instead cause benefits accruing from the provision of aluminum extrusions for LTAR to be wholly overlooked.

As explained in Comment 2, above, the Department has found that certain curtain wall units are subject merchandise, inclusive of aluminum extrusions, glass, and all other components. The scope language states:

> 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.[217]

Thus, the scope of the *Orders* covers not only up-stream aluminum extrusion components, but also certain downstream aluminum extrusion products, such as subject kits and subject assemblies, which incorporate those components. Curtain walls, such as those produced by the Jangho Companies, are considered subject merchandise, *i.e.*, a downstream aluminum extrusion product that incorporates aluminum extrusions, as well as other non-aluminum extrusions components. In other words, subject curtain wall, which contains aluminum extrusions and non-aluminum extrusions components, is a single commercial product.

There is nothing in the Act or in the Department's regulations that prohibits the Department from countervailing a good provided for LTAR when the scope of the order includes the good, which may serve as an input into downstream products, as well as certain downstream products produced using the good. Also, the Act and the Department's regulations speak to goods and services, irrespective of whether a good and a downstream product made using that good are subject to the same CVD order.[218] Given that the scope broadly covers basic aluminum extrusions (which are goods in their own right but may also serve as inputs or components) and certain downstream products (which incorporate up-stream subject merchandise), we find that it is appropriate for the Department to countervail the aluminum extrusions for LTAR program.

We disagree with the GOC's and Jangho's argument that the Department is assessing duties twice and/or on two producers for the same merchandise. Duties have not been assessed on the aluminum extrusions provided to Janhgo as inputs, nor could they have been, as such inputs had not been exported to the United States. The record evidence reflects that Jangho used subject merchandise in the production of subject curtain wall products that were subsequently exported to the United States.[219] Contrary to the GOC's contention, duties are assessed on entries of Jangho's subject merchandise. The assessment rate for Jangho is based on the subsidies provided to Jangho, which include the provision of an input (in this case, aluminum extrusions) for LTAR. The CVDs calculated for Jangho are applied to Jangho's exports of

[217] *Id.*
[218] *See* section 771(5)(E)(iv) of the Act and 19 CFR 351.511.
[219] *See, e.g.,* Jangho's Q&V Response, and Jangho's Initial Response, Gunagzhou Jangho Response, at III-27.

subject merchandise, and duties are not being assessed on two producers for the same product. Conversely, if the Department were to refrain from assessing duties on the provision of aluminum extrusions for LTAR, the benefits resulting from the program would not be countervailed by the CVDs calculated for the countervailable subsidy programs used by Jangho, nor would such benefits be countervailed by CVDs imposed on the exports of the aluminum extrusion inputs (such that any exports exist). As a result, producers of the aluminum extrusion inputs would have effectively provided benefits to Jangho in the form of the subsidized aluminum extrusions sold for LTAR, and such subsidized aluminum extrusions could potentially enter the United States through Jangho's U.S. sales and exports of downstream curtain wall products containing the aluminum extrusions purchased for LTAR. For these reasons, we find that the Department can countervail the provision of aluminum extrusions for LTAR.

Comment 4: Whether the Department Can Countervail the Provision of Glass for LTAR.

The GOC's Case Brief:

- Glass, as a component, is incorporated into certain downstream products that are also constructed with aluminum extrusions, such as part of a curtain wall. However, the scope of the *Orders* specifically excludes the non-aluminum components of subject assemblies and kits. Therefore, glass is not an input used in producing the subject merchandise and is outside the scope of the subject merchandise covered by this review. Accordingly, the Department cannot calculate benefits from the provision of glass for LTAR.[220]

Jangho's Case Brief:

- The Department justified its conclusion that the provision of glass for LTAR was a countervailable subsidy by stating "{a}s a downstream subject aluminum extrusions product, the Jangho Companies' products also include glass components as inputs." However the *Orders* and the record of this proceeding demonstrate that glass is not an input of aluminum extrusions, the subject merchandise, and thus, purchases of glass may not be treated as a countervailable subsidy in this proceeding.[221]
- The *Orders* state: "The scope does not include the non-aluminum extrusion components of subassemblies or subject kits."[222] Glass is not an input for aluminum extrusions. The Department may interpret the scope, but may not ignore this exclusion, and may not expand the scope of the *Orders* to include non-aluminum components.[223]
- The WTO Agreement on Subsidies and Countervailing Measures ("*SCM Agreement*") requires a finding of injury prior to the imposition of CVD duties. The product

[220] *See* the GOC's Case Brief at 1 to 2 and 6 to 7.
[221] *See* Jangho's Case Brief at 1 and 7 to 9 and 10.
[222] *See* the *Order*.
[223] *Id.,* at 1, 7 to 9, and 10, citing *Allegheny Bradford Corp. v. United States*, 342 F. Supp. 2d 1172, 1183 (CIT 2004) , and *Duferco Steel, Inc. v. United States*, 296 F. 3d 1087 (Fed. Cir. 2002) (*quoting Eckstrom Indus., Inc. v United States*, 254 F 3d 1068, 1072 (Fed. Cir. 2001).

investigated was aluminum extrusions, not glass, which is a product separate and distinct from the subject merchandise. There was no injury finding with respect to glass.[224]

- Article 10 of the *SCM Agreement* provides that "{c}ountervailing duties may only be imposed pursuant to investigations initiated and conducted in accordance with the provisions of this Agreement…." Article 11 of the *SCM Agreement* provides that countervailing duties may not be assessed absent an injury determination. Article 19.2 further indicates that countervailing duties may not be assessed absent an injury determination.[225]
- Imposition of CVD duties also violates U.S. law. Glass was not part of the underlying CVD investigation. As a result, the International Trade Commission (ITC) made no injury determination and Commerce made no countervailing subsidy findings with respect to glass.[226]
- It is "black letter law" that countervailing duties may not be imposed unless the Department finds a countervailable subsidy and the ITC finds material injury to the domestic industry of the subject merchandise by reason of those imports.[227] The Department never investigated sales of glass. The ITC never investigated whether the domestic industry was materially injured by imports of glass.[228]
- A countervailing duty order on one product may not be extended to cover another product manufactured by a different domestic industry without violating the countervailing duty statute and well-established law.[229] However, the Department's decision to apply a subsidy to glass unlawfully extends the *Order* to cover products different from those for which an affirmative injury determination was made.[230]
- Under the Department's well-established practice, Commerce does not countervail benefits conferred on non-subject merchandise.[231]
- Continuing to treat the provision of glass for LTAR as a countervailable subsidy would create serious policy concerns and lead to absurd results in future segments of this case. The administrative record demonstrates that aluminum extrusions are typically parts or

[224] *See* Jangho's Case Brief at 1 and 9 to 10.
[225] *Id.,* at 9 to 10.
[226] *Id.,* at 1 and 11 to 13.
[227] *See* sections 705(a) and (b) of the Act.
[228] *See* Jangho's Case Brief at 11.
[229] *Id.,* at 11, *citing Wheatland Tube Co. v. United States*, 161 F.3d 1365, 1369 (Fed. Cir. 1998) ("{i}t is possible that the ITC would not have found domestic injury if it had examined line pipe imports.") (citation omitted) (*Wheatland Tube)*; *Badger-Powhatan, A Div. of Figgie Intl, Inc. v. United States*, 608 F. Supp. 653, 656 (CIT 1985) (*Badger-Powhatan*) (holding that an antidumping order may be applied only to imports covered by an affirmative ITC determination); *Target Corp. v. United States*, 578 F. Supp. 2d 1369, 1373 (CIT 2008) ("an antidumping duty order must be supported by an ITC determination of material injury covering the merchandise in question.") (citation omitted).
[230] *See* Jangho's Case Brief at 11.
[231] *Id.,* at 12, citing *Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 69 FR 51063 (August 17, 2004) and accompanying Issues and Decision Memorandum at Comment 8 (*Pet Film from India*), 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 People's Republic of China*), and Accompanying Issues and Decision Memorandum at the section entitled "II. Programs Determined Not To Provide Countervailable Benefits During the POI….B. Revitalization of Key Industry and Technology Renovation of 2010 Special Fund."

inputs to an infinite variety of goods, such as parts for automobiles. Yet clearly, the countervailing duty law does not contemplate finding countervailable subsidies relating the non-aluminum components of these products.[232]

Petitioner's Rebuttal Brief:

- For the reasons discussed below, for its Final Results, the Department should continue to find that the provision of glass for LTAR is countervailable.[233]
- The language of the scope that both the GOC and Jangho cite as excluding non-subject components in a subassembly that contains subject extrusions misses the point; the subassembly exclusion does not apply in this instance. Both Jangho and the GOC fail to recognize that the Department has already explicitly found that a curtain wall unit is subject merchandise and that all of the components contained within are covered by the *Orders*.[234]
- While the *Orders* cover aluminum extrusions in general, the scope of the *Orders* contains explicit language that curtain walls are within the scope of the order: "{s}ubject 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."[235]
- The Department has ruled in Curtain Wall 2012 and Curtain Wall 2014 that curtain walls with glass are not excluded from the scope of the *Orders*.[236]
- Jangho's references to past Department determinations concerning the countervailability of assets that were not used in the production of subject merchandise or the conferring of a benefit to a revenue stream not related to the sale of subject merchandise are irrelevant, as curtain walls were specifically identified in the scope of the countervailing duty order and were confirmed as being within the scope of the order in at least two separate scope proceedings.[237]
- Jangho's reliance on several Department memoranda concerning the countervailability of a benefit ignores other proceedings where the Department found inputs to be countervailable despite the fact that the good was not explicitly identified as being an in-scope product. In *Solar I Investigation (2012)*, the Department found that while solar modules were subject merchandise, photovoltaic cells that were acquired from sources outside of China and converted into a solar module in China were not subject merchandise, as the essence of merchandise is conferred through the cell. However, in *Solar I 2012 Review*, despite the fact that the goods subject to the antidumping and countervailing duty orders were crystalline silicon photovoltaic cells, the Department found that producers of photovoltaic cells benefitted from the provision of aluminum

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[232] *See* Jangho's Case Brief at 13.
[233] *See* Petitioner's Rebuttal Brief at 1.
[234] *Id.,* at 3.
[235] *See* Petitioner's Rebuttal Brief at 4-5, citing *Aluminum Extrusions Investigation* and the *Orders.*
[236] *Id.,* citing Curtain Wall 2012 (where the Department noted: "the scope of the Orders specifically includes curtain walls and window frames, but specifically excludes windows with glass. The scope does not specifically exclude curtain walls with glass"), and Curtain Wall 2014 (where the Department confirmed its prior holding that curtain walls were not excluded from the countervailing duty order) (Petitioner notes that, as discussed in greater detail below, this determination is currently subject to ongoing litigation).
[237] *See* Petitioner's Rebuttal Brief at 5 to 6. *See also* Curtain Wall 2012 and Curtain Wall 2014.

extrusions for LTAR and the provision of glass for LTAR.[238]

- Because glass and aluminum extrusions are both integral inputs in curtain wall, a good that was explicitly identified as being subject merchandise, the Department can properly countervail the provision of glass for LTAR.[239]
- By providing these inputs for LTAR, the GOC provides countervailable benefits to the entire subject curtain wall unit and distorts the pricing against which U.S. extruders must compete.[240]

Department's Position:

We continue to find that the Department may countervail benefits arising from the provision of glass for LTAR. As an initial matter, as discussed in Comment 2, the Department has repeatedly determined that parts of curtain walls, including certain curtain wall units, are covered by the scope of the *Orders*.[241] Moreover, the CIT and CAFC have both affirmed that certain curtain wall products, including curtain wall units, which are made up of aluminum extrusions and other components such as glass, are subject to the scope of the *Orders*.[242] Accordingly, because Jangho produces curtain walls, which are subject to the *Orders*, and because the glass used to create curtain walls are provided to Jangho for LTAR, the Department appropriately countervailed the provision of glass for LTAR, which benefits Jangho.

As explained in *PET Film from India*, the Department does not normally countervail benefits found to be tied to non-subject merchandise.[243] However, the Jangho Companies' comparisons to *PET Film from India* and *Steel Wheels from the PRC* are not pertinent because, in those cases, the subsidy programs examined in those proceedings were found to be tied to the production of non-subject merchandise.[244] However, as discussed above, curtain wall units, such as those produced by the Jangho Companies, are subject merchandise. In other words, a subject curtain wall unit containing glass is a single commercial product, which is subject to the CVD order. Glass is, therefore, an input used in the manufacture of subject merchandise, *i.e.*, certain curtain wall products. Jangho receives a benefit from the provision of glass for

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[238] *Id.* at 6, citing *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part*, 77 FR 63791 (October 17, 2012) (*Solar I Investigation (2012)*) and accompanying Issues and Decision Memorandum at Comment 1, and *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 41003 (July 14, 2015) and accompanying Issues and Decision Memorandum (*Solar I 2012 Review*), at 22 to 23 and Comment 3.

[239] *See* Petitioner's Rebuttal Brief at 7.

[240] *Id.*

[241] *See*, *e.g.*, Curtain Wall 2012 and Curtain Wall 2014.

[242] *Shenyang Yuanda*, 961 F. Supp. 2d at 1298, aff'd, 776 F.3d at 1358.

[243] *See*, *e.g.*, *PET Film From the India*, and accompanying Issues and Decision Memorandum at Comment 8, where the Department did not countervail the benefits from a subsidy program where they were tied to non-subject merchandise.

[244] *See PET Film From the India*, and the accompanying Issues and decision Memorandum at Comment 8, and *Steel Wheels From the People's Republic of China*, and the accompanying Issues and Decision Memorandum at the section entitled "II. Programs Determined Not to Provide Countervailable Benefits During the POI….B. Revitalization of Key Industry and Technology Renovation of 2010 Special Fund."

LTAR irrespective of the fact that glass itself is not subject merchandise.[245] Thus, we find that benefits arising from the provision of glass for LTAR are not tied to non-subject merchandise.

Jangho's argument that the Department cannot extend a countervailing duty order to cover another product manufactured by a different domestic industry is inapposite. The Department has not expanded the scope to cover merchandise not included in the order or examined by the ITC. Specifically, curtain walls are subject to the scope of the order and are covered by the ITC's affirmative injury determination. This approach is consistent with multiple scope rulings, in which certain curtain wall products were found to be explicitly covered by the scope of the *Order*. Accordingly, the Department properly treated certain curtain wall products as subject merchandise, and countervailing the provision of inputs, *i.e.* glass, for LTAR that are used in the manufacture of the subject merchandise. Moreover, refraining from assessing duties on the provision of glass for LTAR would result in a failure to countervail the benefit received by Jangho in using subsidized glass inputs to produce subject curtain walls because such benefit would not be countervailed by the CVDs calculated for Jangho's other countervailable subsidy programs.

Also, as Petitioners point out, the Department has countervailed the provision of aluminum extrusions for LTAR and solar glass for LTAR in the *Solar I 2012 Review*.[246] We note that the Solar I order covers both photovoltaic cells and certain downstream photovoltaic modules which contain photovoltaic cells as components.[247] Likewise, in this case, the *Order* covers aluminum extrusions and certain downstream products containing aluminum extrusions as components, such as certain subject curtain wall products. Therefore, like in *Solar I 2012 Review*, we find in this case that it is appropriate to countervail the provision of glass for LTAR.

We also disagree with the Jangho Companies and the GOC that the scope language at issue – "{t}he scope does not include the non-aluminum extrusion components of subassemblies or subject kits provides" – indicates that benefits from the provision of glass cannot be countervailed. Regardless of the Jangho Companies' and the GOC's arguments with respect to this language, we are nonetheless able to countervail glass for LTAR. As discussed, curtain wall units are subject merchandise and the inputs at issue are used in the production of subject merchandise. Thus, there is no basis to make a finding that the subsidy benefits for glass are tied to non-subject merchandise. For these reasons, we find that the Department can countervail the provision of glass for LTAR.

Comment 5: Whether the Department Can Include the Subsidy Rates Determined for the Aluminum Extrusions for LTAR and Glass for LTAR Programs in its Calculation of the CVD Rate For Non-Selected Respondents.

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[245] This is similar to a hypothetical where a steel producer might receive a benefit from subsidized coal in a CVD investigation of steel products, irrespective for the fact that coal would not be subject merchandise.

[246] *See Solar I 2012 Review* and the accompanying Issues and Decision Memorandum at 22 to 23 and Comment 3.

[247] In its substantial transformation analysis, the Department found that solar cells are the "essential active component" that defines the module/panel. *See Solar I Investigation (2012)* and the accompanying Issues and Decision Memorandum at Comment 1.

The GOC's Case Brief:

- The Department must not include the subsidy rates for these alleged programs in its calculation of the final subsidy rate for the non-selected companies.[248]
- The Department initiated the new subsidy investigation in *Aluminum Extrusions Third Review* with respect to the provision of aluminum extrusions and glass for LTAR for only one particular product, curtain wall units. In the Third Review NSA Decision Memo, the Department clearly stated that its "initiation of the allegation is limited to the situation of the mandatory respondent, Jangho {Companies}."[249]
- There is no record evidence that any of the non-selected companies produced curtain walls and no evidence that these companies purchased aluminum extrusions and glass during the period of review.[250]
- The Department cannot determine that financial contributions in the form of the provision of goods were provided to the non-selected companies under section 771(5)(D)(iii) of the Act. Moreover, the Department cannot determine the existence and amount of any benefit conferred by aluminum extrusions and glass producers to the non-selected companies, pursuant to section 771(5)(E)(iv) of the Act.[251]

Petitioner's Rebuttal Brief:

- The GOC has ignored and mischaracterized the nature of Petitioner's allegations with regard to these programs. Petitioner's allegations were not limited to a single company; rather, they relied on Jangho and its curtain walls as one example of where certain groups of goods and certain producers of subject merchandise use glass in their products.[252]
- Entities other than curtain wall manufacturers could benefit from the provision of glass for less than adequate remuneration. The scope of the countervailing duty order encompasses further processed items such as solar module frames, window frames, door frames, unfinished heat sinks, and curtain wall units.[253]
- The GOC's claim that the Department's initiation on either program was intended to be limited in application to only curtain walls or to a particular producer of curtain walls, Jangho, is false. As the Department stated in its third administrative review final results, "{w}e did not limit our initiation of investigations of {the provision of aluminum extrusions for LTAR and the provision of glass for LTAR} to Jangho, but to situations akin to Jangho's, specifically, situations in which aluminum extrusions and

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[248] *See* the GOC's Case Brief at 2 and 7 to 9.
[249] *Id.,* at 8. See also, *Aluminum Extrusions From the People's Republic of China: Final Results, and Partial Rescission of Countervailing Duty Administrative Review; 2013,* 80 FR 77325 (December 14, 2015) (*Aluminum Extrusions Third Review*), and accompanying Issues and decision Memorandum, and *Aluminum Extrusions From the People's Republic of China: Amended Final Results of Countervailing Duty Administrative Review; 2013*, 81 FR 15238 (March 22, 2016) (*Aluminum Extrusions Third Review Amended Final Results*) (corrected in *Aluminum Extrusions From the People's Republic of China: Notice of Correction to Amended Final Results of Countervailing Duty Administrative Review; 2013*, 81 FR 31227 (May 18, 2016)).
[250] *See* the GOC's Case Brief at 8.
[251] *Id.,* at 2 and 7 to 9.
[252] *See* Petitioner's Rebuttal Brief at 39 to 40.
[253] *Id.,* at 40, citing the *Order*.

glass are inputs into downstream subject merchandise."[254]

- The Act requires the Department to calculate a weight-averaged subsidy rate for all non-mandatory respondents based upon "the weighted average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates determined entirely under section 1677e {of the Act}." There is no language requiring that the Department adjust the net countervailable subsidy rate based upon a supposition that certain other entities may or may not have taken advantage of a given program.[255]

Department's Position:

We continue to find that it is appropriate to determine an all-others rate by weight-averaging the individual countervailable subsidy rates of each of the companies individually examined (which inludes the subsidy rates for aluminum extrusions for LTAR and glass for LTAR), excluding zero and *de minimis* rates, or any rates based solely on the facts available. As a matter of course, where it is not practicable to examine all known producers or exporters, the Department limits its individual examination of companies to certain mandatory respondents, consistent with section 777A(e)(2) of the Act. In the instant review, the Department's examination was limited to Jangho and the Zhongya group, which encompassesg the following companies: Guangdong Zhongya Aluminium Company Limited, Zhaoqing New Zhongya Aluminum Co., Ltd., New Zhongya Aluminum Factory, Karlton Aluminum Company Ltd., and Zhongya Shaped Aluminum (HK) Holding Limited.

Although the statute does not directly instruct the Department on how to determine a rate in administrative reviews for companies not selected for individual examination, we look to section 705(c)(5) of the Act—which relates to determining the all-others rate in investigations—for guidance. Sections 703(d) and 705(c)(5)(A) of the Act state that, for companies not individually investigated, the Department will determine an all-others rate by weight-averaging the individual countervailable subsidy rate of each of the companies individually investigated, excluding zero and *de minimis* rates, and any rates based solely on the facts available.[256] Beyond these provisions, the statute does not provide for adjustments to the all other rates to account for subsidies benefits that the non-selected respondents did or did not receive. Therefore, for the final results, we have determined the rate for cooperative non-selected respondents based on the calculated subsidy rate of Jangho, because it is the only rate that is not zero, *de minimis*, or determined entirely on the basis of facts available. This is what the statute instructs the Department to do and is fully consistent with our practice. The experience of non-selected companies – here, whether or not they purchase aluminum extrusions or glass – is not relevant to the methodology employed by the Department in calculating the all others rate. Accordingly, the Department properly determined the all others rate based on the experience of the mandatory respondent, Jangho.

[254] *Id.*, citing *Aluminum Extrusions Third Review* and accompanying Issues and Decision Memorandum at Comment 10. *See also Aluminum Extrusions Third Review Amended Final Results.*
[255] *See* Petitioner's Rebuttal Brief, citing section 705(c)(5)(A)(i) of the Department's Regulations.
[256] *See* section 705(c)(5)(A)(i) of the Act.

Furthermore, the Department's review of the glass for LTAR and aluminum extrusions for LTAR programs is not limited to Jangho. We did not limit our initiation of investigations of these programs to Jangho, but to situations akin to Jangho's; specifically, situations in which aluminum extrusions and glass are inputs into downstream products that are subject merchandise.[257] The Department initiated the new subsidies investigations of glass for LTAR and aluminum extrusions for LTAR, finding that sufficient grounds for initiation existed based on evidence of the situation of the Jangho Companies:

> our initiation of the allegation is limited to the situation of the mandatory respondent, Jangho. That is, our initiation of this program rests solely upon 1) the nature of the scope of the order, which expressly covers aluminum extrusions and certain products into which aluminum extrusions are incorporated and 2) evidence that one of the mandatory respondents uses aluminum extrusions as a basic input into its product which, in this case, is curtain wall.[258]

The GOC made similar arguments in the third administrative review final results as those it raises here. In the final results of that review we explained that the Department's language in at the time of initiation did not mean to limit the investigation of these programs to the Jangho Companies. Rather, the Jangho Companies were simply the only one of the two respondents selected for individual examination in that review that used the programs.[259]

The Department frequently encounters situations where some producers of subject merchandise, but not others, use a subsidy program.[260] In such situations, the Department does not remove such programs when calculating a rate for non-selected respondents. Rather, section 705(c)(5)(A)(i) of the Act, which guides the Department in reviews, instructs that the Department base the subsidy rate for non-selected companies on "the weighted-average subsidy rate established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates determined entirely {on the basis of the facts available}."[261] Therefore, for the final results, we have calculated the rate for cooperative non-selected respondents based Jangho's rate because it is the only rate that is not zero, *de minimis*, or determined entirely on the basis of facts available.

Comment 6: Whether the Producers and Suppliers From Which Jangho Purchased Aluminum Extrusions and Glass During the POR Are Government Authorities Within the Meaning of Section 771(5)(B) of the Act.

The GOC's Case Brief:

- There is no "program" to provide aluminum extrusions or glass to the aluminum

[257] *See Aluminum Extrusions Third Review* and the accompanying Issues and Decision Memorandum *at Comment 10*.
[258] *Id.*
[259] *Id.*
[260] *Id.*
[261] *See Aluminum Extrusions Third Review* and accompanying Issues and Decision Memorandum at 31. *See also* Section 705(c)(5)(A)(i) of the Act.

extrusions industry in China.[262] Chinese producers of aluminum extrusions and glass are not government "authorities" within the meaning of the U.S. CVD law.[263]

- The GOC provided a significant amount of information demonstrating that aluminum extrusions and glass suppliers generally, and Jangho's aluminum extrusions and glass suppliers specifically are either privately owned or operate on market principles, without state interference and, therefore, are not government authorities.[264]
- Chinese state-owned enterprises (SOEs) are not government authorities within meaning of section 771(5)(B) of the Act.[265]
- The Department's unfounded presumption that government ownership alone indicates that the entity "possesses, exercises or is vested with government authority," fails to comply with U.S. WTO obligations.[266] Instead, the Department must "give due consideration to all relevant characteristics of the entity and … avoid focusing exclusively or unduly on any single characteristic."[267]
- The Department's analysis that aluminum extrusions and glass suppliers are government authorities is deficient and fails to consider the realities of the Chinese aluminum extrusions and glass markets.[268]
- Nothing on the record in this review indicates that the SOE aluminum extrusions and glass suppliers act as "government authorities," and no record evidence in this review demonstrates 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."[269]
- The *Company Law* does not distinguish between SOEs and other enterprises.[270]
- The GOC has noted clearly that "there is no company producer that is majority government-owned that produced the aluminum extrusions purchased by the respondent companies during the POR."[271]

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[262] *See* the GOC's Case Brief at 9 to 10.
[263] *Id.*
[264] *Id.,* at 2 to 3 and 7 to 9.
[265] *Id.,* at 10.
[266] *See* the GOC's Case Brief at 10 to 11*, citing* Appellate Body Report, *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/AB/R (March 11, 2011) (*U.S. – CVDs I*), para. 318 ("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"); Appellate Body Report, United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India, WT/DS436/AB/R (Dec. 8, 2014), para. 4.10 (*U.S. – Carbon Steel Flat Products from India*) (noting the Department's policy of finding that the share of suppliers the Department considers are authorities "is equal to the percentage of production accounted for by {SOEs} and collectives").
[267] *See* the GOC's Case Brief at 10 to 11*, citing U.S. – CVDs I*, para. 319; Panel Report, United States – Countervailing Duty Measures on Certain Products from China, WT/DS437/R (July 14, 2014) (*U.S. – CVDs II*), para. 7.75 ("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 based solely on the grounds that these enterprises were (majority) owned, or otherwise controlled, by the Government of China").
[268] *See* the GOC's Case Brief at 2.
[269] *Id*., at 11 to 12, citing the Preliminary Decision Memorandum at 32 to 39.
[270] *Id*. at 11, citing the *Company Law of the PRC (Company Law)* (contained in Letter from the GOC to the Department regarding: "Aluminum Extrusions from China; 4th CVD Administrative Review GOC Initial Questionnaire Response," dated December 11, 2015 (the GOC's Initial Questionnaire Response) at Exhibit 22).
[271] *Id.,* at 12, citing the GOC's Initial Response at Input Appendix A at 9, Question D.2.1.

- The record demonstrates that owners, members of the board of directors and managers of aluminum extrusions and glass suppliers are not eligible to be Chinese Communist Party (CCP) officials.[272]
- The Department's preliminarily finding, using AFA, that non-state-owned aluminum extrusions and glass producers are "authorities" within the meaning of section 771(5)(B) of the Act is contradicted by the record evidence.[273]
- Evidence on the record in this review establishes that the CCP affiliations or activities of suppliers are not relevant.[274]
- The CCP is not a government authority, but is a political party in China, and CCP and village committees are not government "authorities."[275]
- CCP officials are not eligible to be owners, members of the board of directors or managers of aluminum extrusions and glass producers.[276]
- The *Company Law* establishes that Chinese companies are ultimately responsible to their shareholders and that CCP committees have no decision-making authority. The Department has previously found that *Company Law* demonstrates the absence of legal state control over private Chinese companies.[277]

Jangho's Case Brief:

- The GOC and Jangho cooperated with the Department and responded to the best of their ability, providing thousands of pages of information and documentation, as well as detailed information regarding two Chinese producers. It is unreasonable to apply AFA in this proceeding to Jangho for information that the GOC did not possess or was unable to obtain.[278]
- Where information was missing, the GOC informed Commerce that it did not have the information or was not able to obtain it.[279]
- The GOC explained that all of Jangho's aluminum extrusion suppliers were commercial entities under Chinese law.[280]

Petitioner's Rebuttal Brief:

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[272] *Id.,* at 11 to 12.
[273] *Id.,* at 12, citing Preliminary Decision Memorandum at 32 to 33, 39 to 40.
[274] *Id.,* at 17 to 19.
[275] *Id.*, at 12 to 13.
[276] *Id.,* at 13 to 14, citing *Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 28557 (May 21, 2010) (*Pre-Stressed Concrete Strand*), and accompanying Issues and Decisions Memorandum at Comment 8 (where the Department found that CCP or National Party Conference membership was "insufficient…to conclude than {sic.} the relationships between individuals owners and the GOC or CCP evidence government control"), and the GOC's Initial Response at Input Appendix A at 9, Question D.2.
[277] *Id.,* at 14 to15, citing the *Company Law*; and *Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China: Final Results of the 2007-2008 Administrative Review of the Antidumping Duty Order*, 75 FR 8301 (February 24, 2010) (*CTL Plate*) ("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").
[278] *See* Jangho's Case Brief at 2 and 15 to 16.
[279] *Id.*, at 15.
[280] *Id*.

- The GOC's arguments that the Department inappropriately determined, as AFA, that aluminum extrusions and glass producers are government authorities are unpersuasive and unsupported by record evidence.[281]
- The GOC has severely impeded this proceeding by failing to provide critical information concerning state influence over the aluminum extrusions and glass industries.[282]
- Throughout this proceeding, the GOC has failed to act to the best of its ability to provide information necessary for the Department to determine whether aluminum extrusions and glass producers are "authorities" within the meaning of section 771(5)(B) of the Act. The GOC failed to provide a complete response to the appropriate input producer appendices for the vast majority of Jangho's extrusions and glass producers and suppliers, despite having been repeatedly asked to do so by the Department.
- With regard to the two extrusions and two glass producers for which the GOC did provided a response, the GOC's responses were sparse and failed to provide necessary information.[283]
- In prior cases, the Department has found that it must rely on AFA in instances in which the GOC refuses to provide the complete set of facts needed to conduct an appropriate analysis of government control. Likewise the Department should apply AFA with regard to aluminum extrusions and glass suppliers.[284]
- The GOC's arguments that state ownership alone does not make an entity a government authority are unpersuasive because the GOC refused to answer questions that go directly to the role of SOEs and whether they act as government authorities.[285]
- The GOC's arguments that CCP affiliation and activities are irrelevant to the Department's authorities analysis are unpersuasive and unsupported by record evidence.[286]
- The GOC's reliance on WTO decisions is misplaced. The Department has consistently found that the applicability of *U.S. – CVDs I* and *U.S. – CVDs II* are limited to the specific countervailing duty proceedings involved; the decisions do not apply to 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" established pursuant to the Uruguay Round Agreements

[281] *See* Petitioner's Rebuttal Brief at 10 to 11.
[282] *Id.,* at 10 to 14.
[283] *Id.,* at 10 to 12.
[284] *Id.,* at 12 to 13, citing *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) (*Tow-Behind Lawn Groomers*), and accompanying Issues and Decision Memorandum at Comment 5; *Utility Scale Wind Towers From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 75978 (December 26, 2012) (*Wind Towers*), and accompanying Issues and Decision Memorandum at Comment 12.
[285] *See* Petitioner's Rebuttal Brief at 10 and 12 to 15, citing *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) (*Tow-Behind Lawn Groomers*), and accompanying Issues and Decision Memorandum at Comment 5; *Utility Scale Wind Towers From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 75978 (December 26, 2012) (*Wind Towers*), and accompanying Issues and Decision Memorandum at Comment 12.
[286] *See* Petitioner's Rebuttal Brief at 10 and 17.

Act. The WTO's Appellate Body Reports have yet to be implemented pursuant to U.S. law and so have no bearing on this proceeding.[287]

- As the Department has repeatedly found, operating to maximize returns does not necessarily indicate that a company is independent from the government.[288]
- The GOC failed to provide any new information or arguments that would undermine the Department's prior findings with regard to aluminum extrusions and glass producers.[289]

Department's Position:

We continue to find, as AFA, that Jangho's aluminum extrusions and glass producers are "authorities" within the meaning of section 771(5)(B) of the Act. The Department concluded in the *Preliminary Results* that the GOC failed to cooperate by not acting to the best of its ability, and that it had withheld certain information with regard to all producers of aluminum extrusions and glass. Accordingly, the Department applied AFA, finding all producers to be "authorities" within the meaning of section 771(5)(B) of the Act.[290] We have made no changes to the *Preliminary Results* in these final results.

Since the issuance of the initial questionnaire in this review, the GOC was on notice of the information sought by the Department with respect to input producers. In that questionnaire, the Department laid out each of the items it deems necessary to trace all ownership back to the individual or state owners and to determine the presence of government control over input producers.[291] We repeated our request for this information in the Supplemental Questionnaire to the GOC.[292]

Nevertheless, as explained in Preliminary Decision Memorandum, the GOC failed to provide complete responses for two glass producer/suppliers and two aluminum extrusions producer/suppliers and failed to provide adequate responses to specific supplemental questions regarding these producer/suppliers.[293] Specifically, as explained in the *Preliminary Results*, for these producers, the GOC twice failed to provide articles of groupings, company by-laws, annual reports, business group registration, tax registration certificates, registries of shareholders, and capital contribution certificates, all of which are applicable to this review,

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[287] *Id.,* at 14 to 15, citing the GOC's Case Brief at 10 to 11, *CVDs I*, *CVDs II*, *U.S. – Carbon Steel Flat Products from India, Wind Towers* and accompanying Issues and Decision Memorandum at Comment 11, *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 Appliance Shelving*) and accompanying Issues and Decision Memorandum at Comment 4, *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).
[288] *See* Petitioner's Rebuttal Brief at 10 and 15 to 16.
[289] *Id.,* at 17 to 19.
[290] *See* Preliminary Decision Memorandum at 25 to 40, 53, and 59 to 60.
[291] *See* GOC Initial Questionnaire, at Section II, "Input Producer Appendix."
[292] *See* Letter from the Department to the GOC regarding: "Administrative Review of the Countervailing Duty Order on Aluminum Extrusions from the People's Republic of China: First Supplemental Questionnaire to the Government of the People's Republic of China," dated March 22, 2016 (Supplemental Questionnaire to the GOC).
[293] *See* Preliminary Decision Memorandum at 25 to 40.

and are, indeed, necessary to identify the ultimate owners of these companies and to determine the presence and degree of government control.[294] For the remaining producers of aluminum extrusions and glass, aside from confirming the identity of certain producer and suppliers and other limited information, the GOC failed to provide any of the information we requested, which was necessary for our analysis.[295]

We disagree with the GOC that it has cooperated to the best of its ability in responding to the Department's requests for information. The Department provided the GOC multiple opportunities to provide the requested information, which, as discussed below, was relevant and necessary to the Department's "authorities" analysis under section 771(5)(B) of the Act. Moreover, the GOC had been granted considerable extensions of time to respond to both the Department's initial and supplemental questionnaires, which included specific detailed questions regarding Jangho's producers of aluminum extrusions and glass. Ultimately, the GOC provided incomplete and inadequate responses for only two glass producers, and only two aluminum extrusions producers.

The responses that were provided lacked some of the most important pieces of information necessary for the Department to conduct an analysis as to whether any of the producers that produced the aluminum extrusions and glass purchased by the Jangho Companies during the POR are authorities within the meaning of section 771(5)(B) of the Act. Specifically, the GOC did not provide information needed to determine the extent of the CCP's involvement in and control over input producers, and the information needed to determine the ultimate owners of the input producers, and the GOC's possible ownership and control of the producers or the producers' parents or other affiliates.[296]

The limited information that was provided by the GOC was not sufficient, in light of the remaining missing information. In response to multiple requests for certain documents (*i.e.*, articles of groupings, company by-laws, annual reports, business group registration, and tax registration certificates) which the Department requires in every CVD proceeding involving goods allegedly provided for LTAR, the GOC first responded by claiming to not know what these terms mean. When we repeated our requests for these documents, and in certain cases clarified which documents we were asking for, the GOC claimed to be unable to provide them.[297] However, this response is unavailing. As we informed the GOC in the Department's Initial Questionnaire to the GOC, "The government is responsible for submitting the responses for all central, provincial, state, and local governments, as well as any company information requested in the government section of this questionnaire."[298]

Additionally, the GOC claims that evidence on the record in this review establishes that the CCP affiliations or activities of suppliers are not relevant.[299] However, it is the prerogative of the Department, not the GOC, to determine what information is relevant to our proceedings.

[294] *Id.,* at 25 to 28 and 31 to 33.
[295] *Id.*
[296] *Id.,* at 25 to 40.
[297] *See* Preliminary Decision Memorandum at 26 to 28 and 32 to 33.
[298] *See* the Department's Initial Questionnaire to the GOC at I-5. *See also* Preliminary Decision Memorandum *at* 28 and 35.
[299] *See* Preliminary Decision Memorandum at 17 to 19.

As the Department explained in the *Preliminary Results* and in *Aluminum Extrusions Third Review*, information regarding CCP affiliations or activities of suppliers is necessary to our authorities analysis.[300] Moreover, in the Public Bodies Memorandum the Department has previously concluded that, in the Chinese political and economic institutional setting, producers in the PRC that are majority-owned by the government possess, exercise, or are vested with governmental authority.[301] Our finding in this regard is based on record evidence demonstrating 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. 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.[302] For example, Article 19 of the *Company Law* provides that an organization of the CCP shall be established in a company to carry out the activities of the CCP pursuant to the CCP constitution and the company shall provide the necessary conditions for the activities of this CCP organization.[303] Also, Article 32 of the CCP constitution explicitly states that "{i}n a non-public economic institution, the primary Party organization carries out the Party's principles and policies, provides guidance to and oversees the enterprise in observing the laws and regulations of the state, {} safeguards the legitimate rights and interests of all quarters and stimulates the healthy development of the enterprise."[304] Therefore with respect to the "authorities" analysis, the Department appropriately determined in the *Preliminary Results* that the requests for this information were necessary and warranted, and that the GOC's failure to provide such information rendered the application of AFA appropriate.

For these reasons we continue to find that the aforementioned producers are "authorities" within the meaning of section 771(5)(B). However, contrary to the GOC's assertions, our findings are not based solely on a finding of state ownership. Rather, as explained in

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[300] *Id.,* at 27 and 34 and Aluminum Extrusions Third Review and the accompanying Issues and Decision Memorandum at 24 and 32.

[301] *See* Memorandum from Tyler Weinhold, analyst, Office VI, to the file regarding: "Additional Documents for Preliminary Decision" (June 3, 2016), 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). These documents were placed on the record at the time of *Preliminary Results*.

[302] *See* Public Bodies Memorandum at 35 – 36.

[303] *See* the GOC's Initial Questionnaire Response, at Exhibit 22 (Article 19).

[304] *See* Public Bodies Memorandum at 35, and footnote 149.

Preliminary Decision Memorandum at the "Use of Facts Otherwise Available and Adverse Inferences" section, in the Public Bodies Memorandum the Department has previously concluded that, in the Chinese political and economic institutional setting, producers in the PRC that are majority-owned by the government possess, exercise, or are vested with governmental authority.[305] Our finding in this regard is based on record evidence that demonstrates 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. Although the GOC contends that it does not play a role in any ordinary business operations, including those in which the state holds an ownership interest, as discussed above, the Department provided the GOC multiple opportunities to provide requested information necessary for the Department's "authorities" analysis under section 771(5)(B), but the GOC refused to provide the necessary information.

Despite the GOC's claims that the GOC holds little influence on the business operations of privately-held Chinese companies, the Department seeks certain information to inform its own analysis of the extent of government involvement in those entities serving as input producers. When the Department receives only a portion of the requested information, or none at all, and the documentation and other information it does receive does not enable the Department to perform a complete "authorities" analysis (for example, to establish that intermediate or ultimate owners are not government authorities), the Department cannot conclude that GOC or CCP officials exert no control over producers.

The GOC also raises several other arguments with respect to the Department's questions pertaining to CCP affiliations or activities: 1) that Jangho's aluminum extrusions and glass suppliers specifically are either privately owned or operate on market principles;[306] 2) that CCP officials are not eligible to be owners, members of the board of directors or managers of aluminum extrusions and glass producers;[307] 3) that the CCP is not a government authority; [308] 4) that CCP and village committees are not government authorities;[309] and 5) that the *Company Law* establishes that Chinese companies are ultimately responsible to their shareholders and that CCP committees have no decision-making authority.[310].

The Department has previously concluded in the Public Bodies Memorandum and CCP Memorandum that information regarding the CCP's involvement in the PRC's economic and political structure is relevant and essential to our "authorities" analysis, as information on the record suggests that the CCP exerts significant control over activities in the PRC.[311] Also, in *Aluminum Extrusions Investigation*, *Aluminum Extrusions First Review*, *Aluminum Extrusions Second Review*, *Aluminum Extrusions Third Review,* and *Solar Cells from the PRC,* we

[305] *See* Preliminary Decision Memorandum at 15 to 17 and Public Bodies Memorandum.
[306] *See* the GOC's Case Brief at 2 to 3 and 7 to 9.
[307] *Id.,* at 13 to 14, citing *Pre-Stressed Concrete Strand*, and accompanying Issues and Decisions Memorandum at Comment 8, and the GOC's Initial Response at Input Appendix A at 9, Question D.2.
[308] *See* the GOC's Case Brief at 12 to 13.
[309] *Id.*, at 12 to 13.
[310] *Id.,* at 14 to15, citing the *Company Law* and *CTL Plate*.
[311] *See* Public Bodies Memorandum and the CCP Memorandum.

informed the GOC of the information required regarding the CCP's involvement in the PRC's economic and political structure that is considered essential to our "authorities" analysis.[312]

Notably, the GOC simply failed to respond to many of the Department's questions in this regard. Moreover, 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. We have also addressed these issues in detail in Comment 7 of *Aluminum Extrusions PRC Second Review*, which we incorporate here by reference.[313] The GOC has failed to provide any argument or evidentiary basis for the Department to alter its analysis, as explained in Comment 7 of *Aluminum Extrusions PRC Second Review*.

For the reasons stated above, the GOC's reliance on *Pre-Stressed Concrete Strand, CTL Plate, U.S. CVDs I, and U.S. CVDs II* is also misplaced. The Department ultimately based its findings with regard to the "authorities" analysis on AFA because the GOC failed to cooperate with the Department and failed to provide the information needed to make a determination. Moreover, as explained in the CCP Memorandum, the Department has determined that "the CCP may, for the limited purposes of applying the U.S. CVD law to China, properly be considered to be the 'government.'"[314] The GOC also cites both the Department's statement in *Pre-Stressed Concrete Strand* that certain company officials were members, and not officials, of the CCP and the National Party Conference (NPC), and the Department's statement in *CTL Plate* that the *Company Law* indicates an absence of *de jure* control. However, these statements do not conflict with the Department's conclusion that complete information is essential in determining whether primary aluminum producers are "authorities" within the meaning of section 771(5)(B) of the Act, particularly with respect to 1) whether any senior company officials were government or CCP officials and 2) the role of any CCP committee within the companies. Given that the GOC did not provide the information 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 constitutes part of the "government" in the PRC for the limited purposes of applying the CVD law to the PRC.

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[312] *See Aluminum Extrusions From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 75 FR 54302 (September 7, 2010) (*Aluminum Extrusions Preliminary Determination*) at 54306 (unchanged in *Aluminum Extrusions Investigation)*; *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 First Review*), and accompanying Issues and Decision Memorandum at Comment 10; *Aluminum Extrusions From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 78788 (December 31, 2014) (*Aluminum Extrusions Second Review*) and accompanying Issues and Decision Memorandum at Comment 7; *Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Affirmative Countervailing Duty Determination; 2012,* 79 FR 76962 (December 23, 2014) (Solar I), and accompanying Issues and Decision Memorandum at Comment 6; and *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2012; and Partial Rescission of Countervailing Duty Administrative Review,* 80 FR 1019 (January 8, 2015) (*Solar I 2012 Review Prelim)*, and accompanying Issues and Decision Memorandum, under section entitled "Provision of Aluminum Extrusions for LTAR," (unchanged in *Solar I 2012 Review* at 22 to 23 and Comment 3. *See also* Public Bodies Memorandum at 35-36, and the sources cited therein.
[313] *See Aluminum Extrusions Second Review* and accompanying Issues and Decision Memorandum at Comment 7.
[314] *See* CCP Memorandum at 33.

Comment 7: Whether the Aluminum Extrusions for LTAR Program and the Glass for LTAR Programs Are Specific.

The GOC's Case Brief:

- The provisions of aluminum extrusions and glass are not "limited to an enterprise or industry or group of enterprises or industries" (*i.e.*, specific) under section 771(5A)(D)(iii)(I) of the Act.[315]
- The Department's preliminary findings are contrary to the record evidence in this instant review. The recipients of aluminum extrusions and glass are not limited because those inputs are used in a wide variety of industries.[316]
- The GOC has placed on the record evidence showing the broad and diverse uses of aluminum extrusions. For example, the GOC has provided an Input-Output Table showing the diverse uses of aluminum extrusions, in which it shows that there are 115 industrial sectors out of 139 sectors that consume manufacturing products of non-ferrous metals, including aluminum extrusions.[317]
- As noted in the GOC's questionnaire responses, aluminum extrusions are used in a variety of downstream sectors, as evidenced by the comprehensive coverage and large number of Harmonized Tariff Schedule (HTS) codes and by the wide variety of scope rulings with respect to the subject merchandise in this proceeding.[318]
- It is commonly known that tempered glass, and to some extent, laminated glass, are used in a variety of downstream sectors, including, but not limited to, doors and windows, building, construction, model forging, curtain walls, internal decoration, furniture and ancillaries, televisions, air-conditioning, refrigerators, toaster ovens, electronics, watches, mobile phones, musical players, cars and land-transportation vehicles, and home instruments, among others.[319]
- Even if the GOC provided aluminum extrusions and glass at LTAR, these inputs are used too broadly to be considered specific under section 771(5A)(D)(iii)(I) of the Act. In *Chlorinated Isocyanurates*, the Department determined that even if the agricultural sector is the predominant user of urea, accounting for over 70 percent of consumption, the program is not specific because urea is consumed by at least nine different industries.[320]

Jangho's Case Brief:

- The administrative record in this proceeding demonstrates that aluminum extrusions and glass are widely consumed in China by a wide variety of industries and groups of

[315] *See* the GOC's Case Brief at 2 to 3 and 24 to 26.
[316] *Id.,* at 25.
[317] *Id.,* at 25, citing Letter from the GOC to the Department regarding: "Aluminum Extrusions from China; 4th CVD Administrative Review GOC 1st Supplemental Questionnaire Response," dated April 13, 2015 (GOC Supplemental Response) at 34 and Exhibit 32.
[318] *Id.,*citing the GOC's Supplemental Response at 34.
[319] *See* the GOC's Case Brief *at 25 to 26,* citing the GOC's Supplemental Response at 39 to 40.
[320] *Id., at 26,* citing *Chlorinated Isocyanurates from the People's Republic of China*, 79 FR 67424 (November 13, 2014) (*Chlorinated Isocyanurates*) and accompanying Issues and Decision Memorandum at 23 and Comment 4.

industries. There is no disproportionate use by the curtain wall industry.[321]

- The GOC reported that glass was included in a number of downstream sectors including, doors and windows, construction, forging, curtain wall, internal decoration, furniture and ancillaries, television, air conditioning, refrigerators, toasters, ovens, electronics watches, mobile phones, music players, cars and land transportation.[322]
- The GOC provided a chart at Exhibit 32 of its questionnaire response showing that out of 139 sectors covered by the table 124 used glass.[323]
- The *Order* itself demonstrates that glass serves various applications and industries, such as solar panels, windows, doors, and picture frames. These products are expressly excluded from the scope of the order because they contain glass.[324]
- Aluminum extrusions used in curtain walls are not one of the categories listed by the Department (*i.e.*, transportation, machinery and equipment, and electric power engineering industries). Accordingly, users of aluminum extrusions are not limited to a small group of industries and the provision of aluminum extrusions for LTAR cannot be considered specific.[325]
- The administrative record in this case further demonstrates that aluminum extrusions are used in a number of diverse industries. The Department has had over 50 scope requests on a wide variety of products.[326]
- In *Chlorinated Isocyanurates*, the Department found that nine sectors used urea, and because the industry producing the subject merchandise was not a predominate user, the provision of urea was not specific and, therefore, not countervailable.[327]

Petitioner's Rebuttal Brief:

- With regard to both aluminum extrusions and glass, the Department properly found that the GOC provided no new information in the instant review to warrant reconsideration of the Department's specificity finding.[328] Neither party has provided any new information that refutes the Department's findings with regard to specificity and these

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[321] *See* Jangho's Case Brief at 2 and 15 to 22.
[322] *Id.,* at 17, citing the GOC's Supplemental Response at 39.
[323] *Id.*, citing the GOC's Supplemental Response at Exhibit 32.
[324] *See* Jangho's Case Brief at 17, and the *Order*, 76 FR at 30653.
[325] *Id.,* at 17 to 18, citing Preliminary Decision Memorandum at 53.
[326] *Id.,* at 18 to 21, citing, e.g., Memorandum from Brian Davis through Scot Fullerton, Director, Office VI, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Enforcement, regarding: "Antidumping and Countervailing Duty Orders on Aluminum Extrusions from the People's Republic of China: Final Scope Ruling on Clam Corporation's Certain Aluminum Spreader Poles," dated October 28, 2015; Memorandum from Tyler Weinhold through Scot Fullerton, Director, Office VI, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Enforcement, regarding: "Antidumping and Countervailing Duty Orders on Aluminum Extrusions from the People's Republic of China: Final Scope Ruling on Agilent's KF16 Hose Adapter," dated October 14, 2015; and Memorandum from Davina Friedmann, through Robert James, Program Manager, Office VI and Scot Fullerton, Director, Office VI, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Enforcement, regarding: "Antidumping and Countervailing Duty Orders on Aluminum Extrusions from the People's Republic of China: Final Scope Ruling on Blue Blade Inc. 's Extension Tension Poles," dated September 30, 2015.
[327] *See* Jangho's Case Brief *at 26,* citing *Chlorinated Isocyanurates* and accompanying Issues and Decision Memorandum at Comment 4.
[328] *See* Petitioner's Rebuttal Brief at 20 to 23.

inputs from the previous review.[329]

- The Department has, in the past, found the provision of a benefit to an even larger number of industries to be "limited" for purposes of specificity.[330]
- Regarding the provision of aluminum extrusions for LTAR, the Department has already confirmed that the input-output table submitted by the GOC does not support the conclusion proffered by the GOC. The Act clearly directs the Department to conduct its analysis of whether the provision of aluminum extrusions and glass for less than adequate remuneration is specific on an enterprise or industry basis.[331]
- Information provided by Petitioner in a prior segment of this proceeding demonstrates that users of aluminum extrusions are limited to a number of enterprises and industries: transportation, machinery and equipment, and electric power engineering industries, into which many, if not all, of the consumer entities named by Jangho in support of its objection to the Department's specificity finding fit.[332]
- The GOC did not provide any evidence to undermine the Department's previous findings regarding the specificity of the aluminum extrusions for LTAR program; indeed, it largely ignored the Department's repeated requests that it provide quantity, value, and consumption information with regard to the entities in the PRC that purchase aluminum extrusions and glass.[333]
- With regard to the provision of glass for LTAR, the Department noted that information provided by Petitioner also demonstrates that users are limited to a number of enterprises and industries, such as the construction and automobile industries.[334]
- The majority of consumers of glass named by Jangho in its opposition to the Department's specificity finding concerning glass are covered by the construction and automobile industries.[335]
- When prompted to provide information about the amounts of glass purchased by individual industries, the GOC responded that it "does not collect official data regarding the industries in China that purchase either tempered plate glass or laminated glass directly" and, when prompted by the Department again for the requested information, merely "reiterate{d} and reaffirm{ed}" its previous evasive and unsatisfactory response. The GOC's responses did nothing to refute information on the record that users of tempered and laminate glass are limited to a number of enterprises

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[329] *Id.,* at 22, citing accompanying Decision Memorandum at 53 and 59.
[330] *Id.*, citing *Certain Oil Country Tubular Goods From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination*, 74 FR 64045 (December 7, 2009) (*OCTG Investigation*) and accompanying Issues and Decision Memorandum at Comment 5; *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, 2016), and accompanying Issues and Decision Memorandum at 9 to 12; and *Light-Walled Rectangular Pipe and Tube From People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination*, 73 FR 35642 (June 24, 2008), and accompanying Issues and Decision Memorandum at 8 to 9.
[331] *See* Petitioner's Rebuttal Brief at 20 to 21, citing *Solar I 2012 Review Prelim* and accompanying Decision Memorandum at 28 to 29.
[332] *Id.,* at 21, citing the Preliminary Decision Memorandum at 53, and Jangho's Case Brief at 17 to 21. See also *Aluminum Extrusions Third Review* and accompanying Issues and Decision Memorandum at 52 to 53, and Comment 12.
[333] *See* Petitioner's Rebuttal Brief at 21, citing the Preliminary Decision Memorandum at 54 to 55.
[334] *Id.,* at 21 to 22, citing the Preliminary Decision Memorandum at 59.
[335] *Id.,* at 22, citing Jangho's Case Brief at 17.

and industries (e.g., construction and automobile).[336]

Department's Position:

We continue to find that the provision of aluminum extrusions for LTAR and the provision of glass for LTAR programs are specific, pursuant to section 771(5A)(D)(iii)(I) of the Act. The Department does not normally re-assess specificity findings made in previous segments of the same proceeding if no new information is placed on the record.[337] Accordingly, where the Department has previously found a program to be countervailable in an earlier segment of the proceeding, the Department does not normally require the foreign government to provide a response to the questions in the Standard Questions Appendix with respect to that program, which speak to a program's specificity.[338] In such cases, and if there were any changes in the program during the POR, the foreign government is instructed to explain the changes and answer all relevant questions in the Standard Questions Appendix.[339]

In this case, at the time of the issuance of the Department's Initial Questionnaire to the GOC, the provision of aluminum extrusions for LTAR and the provision of glass for LTAR programs had not yet been found to be countervailable in a previous segment of this proceeding.[340] Therefore, with regard to both of these programs, we instructed the GOC to provide a full response to the questions in the Standard Questions Appendix.[341] However, the GOC did not respond to any of these questions. Subsequent to the issuance of the Initial Questionnaire but prior to the *Preliminary Results*, the Department found both of these programs to be countervailable subsidies in *Aluminum Extrusions Third Review*. As explained above, it is not the Department's practice to re-assess specificity in each segment, absent new information. For this reason, we did not ask the GOC to provide responses to the Standard Questions Appendix in our Supplemental Questionnaire to the GOC. Rather, in the Preliminary Decision Memorandum, we found that the GOC had provided no new information which would lead us to revisit our specificity finding in *Aluminum Extrusions Third Review*.[342]

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[336] *See* Petitioner's Rebuttal Brief, citing GOC Supplemental Response, and the Preliminary Decision Memorandum at 59.
[337] *See*, *e.g.*, *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) (*Citric Acid First Review*), and accompanying Issues and Decision Memorandum at Comments 2 and 3 (where the Department continued to find the provision of sulfuric acid for LTAR program and the provision of steam coal for LTAR program to be specific because the GOC had not provided new information and had not reported changes to these programs).
[338] *See*, *e.g.*, the Department's Initial Questionnaire to the GOC at II-1: "Absent new information warranting a program reexamination, we will not reevaluate prior determinations regarding the countervailability of programs. Thus, as noted below, if you think that determinations regarding the countervailability of programs should be revisited, it is incumbent upon you to provide the new information which you claim warrants such a Reexamination."
[339] *Id.*
[340] These programs were found countervailable, and final decisions of specificity were made four days before we received the GOC's Initial Response. *See Aluminum Extrusions Third Review* and accompanying Issues and Decision Memorandum at 32 to 33, 52 to 53, 57 to 58, and Comment 12.
[341] *See* the Department's Initial Questionnaire to the GOC at 33 and 38.
[342] *See* Preliminary Decision Memorandum at 45 to 46 and 55.

Provision of Aluminum Extrusions for LTAR

With respect to the provision of aluminum extrusions for LTAR, as explained above, in *Aluminum Extrusions Third Review*, the Department determined that the aluminum extrusions for LTAR program was specific under section 771(5A)(D)(iii)(I) of the Act, based on information provided by Petitioner demonstrating that users of aluminum extrusions are limited to a number of enterprises and industries (*e.g.*, transportation, machinery and equipment, and electric power engineering industries).[343] In particular, the Department found the provision of aluminum extrusions in the PRC to be specific on the basis of AFA, and determined that the users of aluminum extrusions as an input are limited in number.[344] We also note that the Department has previously found the provision of aluminum extrusions in the PRC to be specific because the users of aluminum extrusions as an input are limited in number to certain industries.[345]

The GOC placed certain information (the "Input-Output Table of China") detailing the industries producing and consuming aluminum extrusions and glass on the administrative record in *Aluminum Extrusions Third Review*.[346] In that review, the Department found that the table did not provide the type of information required to determine if the provision of primary aluminum is specific to aluminum extrusion producers.[347] The GOC placed the same information on the record of this review.[348] We have examined the Input-Output Table of China and continue to find that it does not provide the type of information which the Department requires to evaluate the specificity of the provision of aluminum extrusions for LTAR program, such as the number of enterprises or industries that purchase aluminum extrusions. Also, the Input-Output Table of China does not contain any information regarding the aluminum extrusions industry as consumer or producer, focusing instead on the smelting and rolling of non-ferrous metals in general.[349] Because this information does not constitute new information or provide the necessary specificity information, we find that it does not warrant a reconsideration of our previous findings in *Aluminum Extrusions Third Review* with regard to the specificity of the aluminum extrusions for LTAR program. As such, consistent with the *Aluminum Extrusions Third Review*, we find that the industries that purchased aluminum extrusions are limited in number and, hence, the subsidy is specific under section 771(5A)(D)(iii)(I) of the Act.[350]

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343 *See Aluminum Extrusions Third Review* and accompanying Issues and Decision Memorandum at "Provision of Aluminum Extrusions for LTAR" and Comment 12, citing *See Solar I 2012 Review Prelim*, and accompanying Decision Memorandum at 28 to 29 (unchanged in *Solar I 2012 Review* at 22 to 23 and Comment 3).
344 *Id.*
345 *See Solar I 2012 Review* and the accompanying Issues and Decision Memorandum at 22 to 23 and Comment 3. *See also Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 76962 (December 23, 2014) (*Solar II Investigation (2014)*, and the accompanying Issues and Decision Memorandum at Comment 6.
346 *See Aluminum Extrusions Third Review*, and accompanying Issues and Decision Memorandum at 116 and Comment 12.
347 *See Aluminum Extrusions Third Review*, and accompanying Issues and Decision Memorandum at 116 and Comment 12.
348 *See* the GOC's Initial Response at 34 and Exhibit 32.
349 *Id.*
350 *Id.,* at Comment 12.

Jangho's arguments with respect to aluminum extrusions – that the list of industries identified by the Department as users of aluminum extrusions is flawed because it fails to include the construction industry in which Jangho operates and in which the curtain wall industry is found, as well as other industries represented in the scope of the *Orders* and various scope rulings – are misplaced. We noted in *Aluminum Extrusions Third Review* that Petitioner provided information in a prior segment of this proceeding demonstrating the alleged largest aluminum extrusions producer in Asia, Zhongwang Holdings Ltd, has three categories of customers: transportation, machinery and equipment, and electric power engineering industries.[351] Also, in *Aluminum Extrusions Third Review,* we noted that the GOC had identified a list of six industries in *Solar I 2012 Review*, including the construction industry, the transportation industry, the mechanical and electrical equipment industry, the consumer durable goods industry, and electricity.[352] However, our finding of specificity with regard to aluminum extrusions in *Aluminum Extrusions Third Review* was based on AFA. Specifically, we found the program to be specific based on AFA because the GOC declined to provide a list of industries.[353] Our determination in *Solar I 2012 Review* simply noted that evidence available on the record (provided by the Petitioner) identified no more than three industries, and the GOC's unsupported identification of certain industries. We also noted that the GOC's identification of certain industries included the construction industry, and that these industries were found to be limited in *Solar I 2012 Review.* Furthermore, while a specificity finding does not require one or more industries to be predominant in use of a good,[354] we note that in *Solar I 2012 Review*, the Department concluded that "the predominant or disproportionate user of aluminum extrusions is the construction industry."[355]

Further, the various scope rulings and the scope of the *Orders* do not indicate a precise number or list of consuming industries different from the three indicated in *Aluminum Extrusions Third Review*. Although the GOC pointed to the large number of products which are within the scope of the order as evidence that aluminum extrusions are used in diverse industries, the GOC has not demonstrated that these products do not fall into any of the six industries included in Zhongwang Holdings Ltd.'s financial statements or considered in *Solar I (2012) Review.*[356] On the contrary, in *Solar II Investigation (2014)*, and in *Solar I (2012) Review*, the GOC identified (with respect to a prior period) the six industries identified in the ITC's report in the aluminum extrusions investigation.[357]

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[351] *See Aluminum Extrusions Third Review* and accompanying Issues and Decision at 32 to 33 and Comment 12.

[352] *Id.*, and *Solar I 2012 Review* at s22 to 23 and Comment 3 (As explained below, in *Solar II Investigation (2014)*, and in *Solar I (2012) Review*, the GOC identified (with respect to a prior period) the six industries identified in the ITC's report in the aluminum extrusions investigation).

[353] *Id.*

[354] *See Solar I 2012 Review* at Section at 22 to 23 and Comment 3. *See also Solar II Investigation (2014)* at Comment 6.

[355] *See Solar I 2012 Review* at 22 to 23 and Comment 3.

[356] In *Solar I 2012 Review*, the GOC indicated that consumption of aluminum extrusions was limited to the construction, transportation industry, mechanical & electrical equipment, consumer durable goods, electricity, and other industries. As explained above, Petitioners provided evidence indicating usage by the transportation, machinery and equipment, and electric power engineering industries. *Id.,* at 22-23 and Comment 3 and *Aluminum Extrusions Third Review* and the accompanying Issues and Decision Memorandum at 32 to 33 and Comment 12.

[357] *Id.*

Finally, the GOC's reliance on *Chlorinated Isocyanurates*[358] is also misplaced because the circumstances in *Chlorinated Isocyanurates*, where the Department concluded that the alleged urea LTAR program was not specific because of the presence of nine separate industries which consumed urea, are not found here. Specifically, in that proceeding the Department found, based on record evidence, that urea was found to be consumed by nine broad industries: (1) agriculture (both as fertilizer and feed additives), (2) chemicals, (3) wood products, (4) textiles, (5) paper, (6) automotive, (7) industrial pollution control, (8) medicine, and (9) cosmetics. Further, we found that producers of the subject merchandise were not a predominant or disproportionately large user of urea.[359] In this review, the GOC has provided no new specificity information from that provided in the *Aluminum Extrusions Third Review* regarding the industries consuming aluminum extrusions. Furthermore, the GOC has provided no evidence to demonstrate that the industry in which Jangho operates, the construction industry, is a not a predominant or disproportionate user of aluminum extrusions.

Provision of Glass for LTAR

With respect to the provision of glass for LTAR (*i.e.*, the provision of laminate and tempered glass, the types of glass considered in this proceeding), in *Aluminum Extrusions Third Review*, we explained that Petitioner's new subsidies allegation (NSA) in that review provided information demonstrating that users of tempered and laminate glass are limited to two industries (*i.e.*, construction and automobile).[360] We further explained that the GOC has identified several "uses" but did not classify these "uses" into industries or otherwise identify the industries which cover these various uses.[361] The GOC claimed, without providing specific evidence, that there are vast "uses" of glass, and claimed that it is common knowledge that glass is "used in a variety of downstream sectors, including but not limited to doors and windows, building, construction, model forging, curtain wall, internal decoration, furniture and ancillaries, television, air-conditioning, refrigerator, toaster, oven, electronics, watch, mobile phone, musical players, cars and land-transportation vehicles, home instrument, among others."[362] Therefore, we concluded in that review that the GOC provided no verifiable evidence that the industries consuming tempered and laminate glass are more than the two identified by Petitioner.[363] Therefore, we found that the industry recipients of such glass are limited in number to a minimum of two (based on information provided by Petitioner) and as many as four industries, based on an analysis of the information regarding "uses" provided by the GOC, and that the provision of such glass is therefore *de facto* specific.[364]

The GOC made the same statement on this record of this review, claiming that it is common knowledge that glass is "used in a variety of downstream sectors, including but not limited to

[358] *See Solar I 2012 Review* at Section 22 to 23 and Comment 3, *Solar II Investigation (2014)*) at Comment 6, and *Chlorinated Isocyanurates* and accompanying Issues and Decision Memorandum at Comment 4.
[359] *See Chlorinated Isocyanurates* and accompanying Issues and Decision Memorandum at Comment 4.
[360] *Id.*
[361] *Id.,* at Comment 4.
[362] *Id.*
[363] *See Aluminum Extrusions Third Review* and accompanying Issues and Decision Memorandum at section "J. Provision of Glass for LTAR" and Comment 12. See also *Aluminum Extrusions Third (2013) Review Amended Final Results.*
[364] *Id.*

doors and windows building, construction model forging, curtain wall, internal decoration, furniture and ancillaries, television, air-conditioning, refrigerator, toaster, oven, electronics, watch, mobile phone, musical players, cars and land-transportation vehicles, home instrument, among others."[365] We find that these claims regarding common knowledge are not verifiable evidence. Moreover, consistent with our conclusion in *Aluminum Extrusions Third Review,* an analysis of these "uses" indicates no more than four industries. Therefore, we find that these statements do not constitute new information and do not warrant a reconsideration of our previous findings with regard to the specificity of the glass for LTAR program.

As explained above, the GOC also placed certain information (the "Input-Output Table of China") detailing the industries producing and consuming aluminum extrusions and glass in *Aluminum Extrusions Third Review*.[366] As also explained above, GOC placed the same information on the record of this review.[367] However, we find that the Input-Output Table of China does not provide the type of information which the Department requires to determine if the provision of glass is specific, such as the number of enterprises or industries that purchase glass. Also, the Input-Output Table of China does not contain any information regarding the tempered and laminate glass industries as consumer or producer, focusing on glass products generally.[368] Because this information does not constitute new information, or provide the necessary specificity information, we find that it does not warrant a reconsideration of our previous findings with regard to the specificity of the glass for LTAR program.

Jangho's arguments that the *Order* demonstrates that glass serves various applications and industries, such as solar panels, windows, doors and picture frames, is unavailing, as these applications and industries are all included among the industries indicated by evidence placed on the record by Petitioner and certain claims (based on purported common knowledge) made by the GOC in *Aluminum Extrusions Third Review*.[369] In the absence of evidence indicating that the Department should revisit its determination from the prior review, Jangho's arguments do not contradict our prior finding that the recipients of glass are limited to between two and four industries, (including construction, the industry in which Jangho's curtain wall products business operates).

In addition, we find that *Chlorinated Isocyanurates*[370] is also not relevant to our determination regarding the provision of glass for LTAR because circumstances in that proceeding are not present here.[371] Unlike *Chlorinated Isocyanurates*, where the record contained evidence regarding the industries that consumed urea, in this review the GOC has provided no evidence of any industries consuming glass. Even if we had verifiable information on the record

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[365] *See* the GOC's Initial Response at 39 and Exhibit 32.
[366] *See Aluminum Extrusions Third Review* and accompanying Issues and Decision Memorandum at 116 and Comment 12.
[367] *See* the GOC's Initial Response at 39 and Exhibit 32.
[368] *Id.*
[369] *See Aluminum Extrusions Third Review* at section "J. Provision of Glass for LTAR" and Comment 12. *See also Aluminum Extrusions Third Review Amended Final Results.*
[370] *See the GOC's Case brief at 26,* citing *Chlorinated Isocyanurates* and accompanying Issues and Decision Memorandum at Comment 4.
[371] *See Chlorinated Isocyanurates* and accompanying Issues and Decision Memorandum at Comment 4. *See also Aluminum Extrusions Third Review*, at Comment 12.

confirming the GOC's list of purported uses of glass, that list would not necessarily reflect the diversity of users which were found to consume urea in *Chlorinated Isocyanurates*. Furthermore, the GOC's arguments do not attempt to address the issue of whether the construction industry is a predominant or disproportionate user of glass.

For these reasons, we find that there is no basis for us to reconsider our prior findings that the industries consuming aluminum extrusions are limited and that the aluminum extrusions for LTAR program is specific.[372] We also find that there is no basis for us to reconsider our prior findings that the industries consuming glass are limited in number and that the glass for LTAR program is specific.[373]

Comment 8: Whether the Department Should Use Tier I (China) Benchmarks to Determine the Adequacy of Remuneration for Jangho's Aluminum Extrusions and Glass Purchases.

The GOC's Case Brief:

- The Department's preliminary results unlawfully resorted to benchmarks outside of China (tier two benchmarks).[374]
- The Department's conclusion that the Chinese aluminum extrusion and glass markets are "significantly distorted" is contradicted by the record evidence of this review.[375]
- The Department's preliminary determination in this review not to the use an in-China benchmark is inconsistent with its WTO obligations. The WTO Appellate Body has found that "{e}vidence relating to government ownership of SOEs and their respective market shares does not, in and of itself, provide a sufficient basis for concluding that in-country prices are distorted," that "... the distortion of in-country prices must be established on the basis of *the particular facts underlying each* countervailing duty investigation," and that "an investigating authority cannot . . . refuse to consider evidence relating to factors other than government market share." Therefore, the Department's determinations that aluminum extrusions and glass markets are distorted cannot be based on a finding from a previous administrative review.[376]
- The Department preliminarily concluded that the record is incomplete with regard to whether the PRC markets for aluminum extrusions and glass are distorted. Therefore, the Department's determinations that aluminum extrusions and glass markets are distorted cannot be based on findings that the government is the predominant supplier in each of these two markets.[377]
- The GOC has provided evidence showing that the prices in China for aluminum extrusions and glass reflect market forces. The GOC has noted clearly in its questionnaire response that there are no laws, plans or policies in China during the POR that specifically address the pricing, levels of production, exportation or importation, or

[372] *See Citric Acid First Review* at Comments 2 and 3.
[373] *Id.*
[374] *See* the GOC's Case brief at 10 and 26 to 28.
[375] *Id.,* at 27.
[376] *See* Petitioner's Rebuttal Brief at 27, citing *U.S. - CVDs II,* paragraph 4.51, 4.62, and 4.95.
[377] *Id.,* at 26 to 27, citing *Preliminary Decision Memorandum* at 55 and 62.

the development of aluminum extrusions and glass capacities. The GOC has also provided both the original list and the renewed list of goods/service that are subject to government pricing.[378]

Petitioner's Rebuttal Brief:

- The GOC's claim that the Department erred in using a "tier two" benchmark to calculate benefits for the provision of aluminum extrusions and glass for LTAR should be rejected. In light of the GOC's failure to cooperate and the lack of any tier one pricing data for these inputs, the Department properly utilized a tier two benchmark for both aluminum extrusions and glass.[379]
- The Department noted that, as an initial matter, no interested party provided a tier one benchmark for valuing either aluminum extrusions or glass, and that the Department had no benchmark prices from actual transactions in the Chinese market for either input.[380]
- The GOC has not provided any evidence to undermine the Department's prior findings. The information presented by the GOC does nothing to alleviate the Department's concerns regarding market distortions that may exist in the aluminum extrusions and glass markets.[381]
- The Department asked the GOC in its initial and subsequent questionnaires a series of questions in order to gain insight as to the GOC's presence in the market and determine whether such presence resulted in price distortion. The GOC, however, refused to provide the total number of producers in the industries; the total volume and value of Chinese domestic consumption and production of aluminum extrusions and glass; the percentage of domestic consumption accounted for by domestic production; the total quantity and value of aluminum extrusion and glass imports; the total volume and value of domestic production accounted for in which the government maintains an ownership or management interest; and information regarding the laws, plans, or policies involving aluminum extrusions and glass.[382]
- China's CCP, a government authority, permeates society and maintains committees within various entities, including potentially, aluminum extrusions and glass producers.[383]

Department's Position:

We continue to find that the use of "tier two" benchmarks is appropriate, pursuant to 19 CFR 351.511(a)(2)(ii). As an initial matter, it is important to reiterate that no party has provided "tier-one" benchmark prices for aluminum extrusions or glass on the record of this review. [384]

[378] *Id.,* at 26 to 27, citing the GOC's Initial Response at 35, 40, Exhibit 28, and Exhibit 29.
[379] *See* Petitioner's Rebuttal Brief at 23 to 27.
[380] *Id.,* at 25.
[381] *Id.*
[382] *See* Petitioner's Rebuttal Brief at 23 to 24, citing Preliminary Decision Memorandum at 55 and 60 to 62.
[383] *Id.,* at 25, citing the Public Bodies Memorandum at 56 and 62.
[384] *See* Preliminary Decision Memorandum at 56 and 62.

Additionally, as explained in the *Preliminary Decision Memorandum*, the GOC twice failed to answer several important questions or provide all of the information required to perform a distortion analysis for the aluminum extrusions, and glass markets Specifically, with regard to aluminum extrusions, the GOC failed to provide or explain: the amounts of domestic consumption of aluminum extrusions; the percentage of domestic consumption accounted for by domestic production; trade publications; the objectives of the GOC in holding shares in aluminum extrusions enterprises; whether the aluminum extrusions industries or respondents themselves are covered by any five-year plans or other government plans, guides, or similar documents; and how aluminum extrusions producers or respondents are subject to governmental approval for mergers, restructuring, etc. With regard to glass, the GOC also twice failed to provide or explain: the amounts of domestic consumption of glass; the percentage of domestic consumption accounted for by domestic production; trade publications; the objectives of the GOC in holding shares in glass enterprises; whether the glass industries or respondents themselves are covered by any five-year plans or other government plans, guides, or similar documents; and how glass producers or respondents are subject to governmental approval for merger, restructuring, etc.

A market distortion analysis requires that we analyze several factors, including the percentage of production accounted for by companies in which the GOC maintains controlling ownership or management interest, in light of the volume and value of total domestic consumption, and the percentage of domestic consumption accounted for by domestic production. Without information on domestic consumption and the percentage of domestic consumption accounted for by domestic production, other information provided, including information on domestic production in total and production by companies in which the GOC maintains controlling ownership or management interest, does not form a sufficient basis for a distortion analysis. As discussed above, we continue to find that there is no record information of tier-one benchmark prices for aluminum extrusions or glass, and for this reason, we have used tier-two benchmark prices for these final results for aluminum extrusions and glass.

Comment 9: Whether Commercial Loans from Banks in the PRC to Aluminum Extrusions Producers Are Covered by the Policy Loans Program Previously Countervailed by the Department.

The GOC's Case Brief:

- The Department failed in the preliminary results to establish that an industrial policy to encourage the aluminum extrusions industry through policy loan program exists. No loans to the mandatory respondent in this review were issued pursuant to an industrial policy.[385]
- The GOC placed on the record the *Interim Measures*, which establish rules relating to the issuance of working capital loans and provide that industrial policy is not a consideration for loans made to the mandatory respondent in this review.[386]
- The *Interim Measures* do not call for banks to consider "industrial policy." All of the considerations in deciding issuance of working capital loans are purely commercial in

[385] *See* the GOC's Case Brief at 30 to 34, citing the GOC's Initial Response at 3.
[386] *Id.,* at 30 to 31, citing the GOC's Initial Response at 3 and 4 to 5, and Exhibit 13.

nature.[387]

- 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." Further, the language under Article 34 also states that banks are to carry out their business "upon the needs of national economy and the social development." There are no other provisions in the entire *Banking Law* specifying any detailed instructions as to how Chinese commercial banks should exercise loan management and activities in accordance with the state industrial policies.[388] Article 34 has not been incorporated into any specific provisions of other applicable laws or regulations and thus has no enforceable regulatory function.[389]
- The *Capital Rules for Commercial Banks* (provisional), enacted by the China Regulatory Commission (*Capital Rules*) establish tight disciplines over the size of capital and related ratios that impinge heavily on loan management in general and risk management of loans in particular. Article 3 provides that "{t}he capital of a commercial bank shall be adequate to help the bank withstand the risks, including both the firm-specific risks and systemic risks." Article 4 requires that "{c}ommercial banks shall meet the regulatory requirements on capital adequacy ratios as prescribed in the Rules," and Article 7 stipulates that the capital adequacy ratios should be "calculated on the basis of making sufficient provisions for loan losses and other impairments of assets."[390]
- The People's Bank of China has deregulated China's interest rates and enlarged the floating range of interest rates, issued a notice to reduce the deposit and loan benchmark interest rates and to enlarge the floating range of interest rates, and issued another notice to further deregulate entirely the loan interest rates of financial institutions in China.[391]
- The GOC provided amended *Guidelines on Internal Control of Commercial Banks* (*Guidelines*), which came into effective in 2014, in which it notes clearly that China Banking Regulatory Commission (CBRC) promulgates this guideline to "facilitate the establishment of commercial banks and improvement of internal control" in all respects of the management of high level autonomy with respect to setting up the interest rates.[392]
- The GOC provided on the record in this review extensive evidence confirming that interest rates in China in fact have fluctuated in line with market economic conditions during the POR.[393]
- CBRC and the People's Bank of China joined the Basel Committee on Banking Supervision (Basel Committee) as a regular member in March 2009, and participated fully in the process of formulation of Basel III: *A Global Regulatory Framework for More Resilient Banks and Banking Systems*. The CBRC has also signed agreements

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[387] *See* the GOC's Case Brief at 31, citing the GOC's Initial Response at 3 and 4 to 5, and Exhibit 13.
[388] *Id., at 31 to 32*, citing the GOC's Initial Response at 3 at Exhibit 21, the *Banking Law,* at Article 34.
[389] *Id.*
[390] *Id.,* at 32, citing the GOC's Initial Response at 3 and 7.
[391] *See* the GOC's Case Brief at 32, citing the GOC's Initial Response at 1 to 2.
[392] *Id.,* at 32 to 33, citing the GOC's Initial Response at 3.
[393] *Id*., at 33, citing the GOC's Initial Response at 2.

with 55 overseas regulators.[394]

- The Basel Committee determined that *Capital Rules* are compliant with the international framework in the commercial banking sector, and therefore provide no advantages to Chinese banks. The Basel Committee also confirmed that the legal measures governing details of the banks in China comply with the Basel Committee's recommendations.[395]

Jangho's Case Brief:

- The Department's findings of a "GOC policy to encourage the development of the production of aluminum extrusions through policy lending" contradict the administrative record of this proceeding.[396]
- The record demonstrates that banks made lending decisions based upon sound commercial considerations, not government policy goals.[397]
- Jangho did not receive policy loans as an aluminum extrusions producer. Jangho and its manufacturers and sell window/curtain wall products; they are not manufacturers of aluminum extrusions. The Department in no way connects loans provided to Jangho with any policy or practice to support the aluminum extrusions industry.[398]
- Jangho clarified in its response that its loans were regular commercial loans.[399]
- Jangho's questionnaire responses were consistent with those of the GOC, which reported that during the POR, Jangho received loans from banks owned by foreign investors or with a majority ownership by private parties.[400]
- *Interim Measures for the Administration of Working Capital Loans* (*Interim Measures*), which require banks to make lending decisions on strict commercial considerations, state that "banking financial institution established in China upon the CBRC's approval, including those at issue during this review, all make their decisions on issuance of working capital loans on a pure commercial basis."[401]
- It is an implicit requirement of the *Interim Measures* that the issuance of working capital loans shall be prudently decided by banks based upon a reasonable estimation of the borrower's working capital demand and a fair consideration of cash flow, liabilities, repayment ability, guarantee status, and other factors of the borrower.[402]
- During the POR, the *Capital Rules* were in effect, creating strict fiscal controls on loan management.[403]
- Article 34 of the Banking Law does not require banks to make banking decisions based upon policy goals, as the Department preliminarily concluded. This provision does not

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394 *See* the GOC's Case Brief *at 34*, citing the GOC's Initial Response at 5.
395 *Id., at 34*, citing the GOC's Initial Response at 3 to 4.
396 *See* Jangho's Case Brief at 24 to 28, citing Preliminary Decision Memorandum at 40.
397 *Id.,* at 24.
398 *See* Jangho's Case Brief at 24 to 25 and 27, citing Jangho's Initial Response at III-10.
399 *Id.*, at 24 to 25, citing Jangho's Initial Response, at "Beijing Jiangheyuan Holding Co., Ltd. Questionnaire Response," III-11; at "Chengdu Jangho Curtain Wall System Engineering Co., Ltd. Questionnaire Response," III-11; and at "Jangho Group Questionnaire Response," II-10.
400 *See* Jangho's Case Brief at 25, citing GOC Initial Response at 1.
401 *Id.,* at 25 to 26, citing GOC Initial Response at 3, 9, and 40 and *Interim Measures* at Article 6.
402 *Id.*, at 26, citing GOC Initial Response at 9.
403 *Id.*, at 25 to 26, citing GOC Initial Response at 3.

create a mandatory action for banks to undertake, but rather provides for banks to carry out business "with the spirit of state industrial policies."[404]
- The GOC provided significant documentation that commercial banks in China are regulated under applicable Chinese laws and regulations, as well as the rules enacted by the CBRC, which incorporate international best practices, such as those developed under auspices of the Basel Committee and/or the Bank of International Settlement to guard against a variety of risks including: credit risks, market risks as well as operational risks.[405]
- Chinese commercial banks are not government authorities for purposes of U.S. CVD law.[406]

Petitioner's Rebuttal Brief:

- A program of policy lending remains alive and well in China, despite alleged reforms. State-owned commercial banks (SOBCs) like the Bank of China, the China Construction Bank, and the Agricultural Bank of China remain government authorities.[407]
- With respect to the *Capital Rules* that were promulgated in 2013, Petitioner notes that many of the rules either contain little new potency, or can be totally ignored by certain banks. Rather, the central government's oversight authority has given free rein to major state-owned commercial banks (SOCB) to create their own internal policies and controls to lend money and assume risk as they see fit.[408]
- The *Interim Measures* still strongly encourages lending to industries for purposes of maintaining the "needs of {the} national economy and the social development" and acting to upholding the "spirit of the state industrial policies."[409]
- SOCB are authorities. As noted by the Department in this proceeding, in *Oil Country Tubular Goods From the People's Republic of China,* and in *Crystalline Silicon Photo voltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China,* the issue of state ownership is but one consideration in assessing whether or not an entity is an authority.[410]
- The GOC has made no effort to address the fact that there are many inherent features of the banking system within China which lend credence to the notion that SOCBs within China are authorities. The government has not divested itself of ownership in 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

[404] *Id.*, citing GOC Initial Response at 3.
[405] *Id.*, at 27, citing GOC Initial Response at 7.
[406] *Id.*, at 28.
[407] *See* Petitioner's Rebuttal Brief at 2 and 28 to 32.
[408] *See* Petitioner's Rebuttal Brief at 29, Citing, Letter from Petitioners to the Department regarding: *Aluminum Extrusions from the People's Republic of China: Comments on Questionnaire Reponses of the Government of the People's Republic of China, dated* December 29, 2015 (Petitioner Dec. 29 Comments) at Exhibit 10.
[409] *Id.,* at 32.
[410] *Id.,* at 32, citing *Certain Oil Country Tubular Goods From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 52301 (August 25, 2014) (*OCTG 2012 Review*) and accompanying Issues and Decision Memorandum at Comment 12; and *Solar I Investigation (2012) at Comment 13.*

> floors set by the government the GOC has failed to address both de jure and *de facto* reforms within the Chinese banking sector.[411]

Department's Position:

The Department finds, as it has in prior segments of this proceeding, that the GOC had a policy in place to encourage the development of the production of aluminum extrusions through policy lending, and that Chinese SOCBs are authorities under the countervailing duty law.[412]

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.[413] As such, loans provided by PRC banks reflect significant government intervention and are considered SOCBs.[414]

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 that:

> 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.[415]

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,[416] it

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[411] *Id.,* at 32, citing *OCTG 2012 Review* and accompanying Issues and Decision Memorandum at Comment 12.

[412] *See Aluminum Extrusions Investigation* and accompanying Issues and Decision Memorandum at the section entitled, "Policy Loans to Chinese Aluminum Extrusion Producers," *Aluminum Extrusions First Review* and accompanying Issues and Decision Memorandum at the section entitled "Policy Loans to Chinese Aluminum Extrusion Producers," *Aluminum Extrusions Second Review* and accompanying Issues and Decision Memorandum at the section entitled "Policy Loans to Chinese Aluminum Extrusion Producers," *and Aluminum Extrusions from the PRC Third Review* and accompanying Issues and Decision Memorandum at the sections entitled "Policy Loans to Chinese Aluminum Extrusion Producers" and Comment 3.

[413] *See Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (*CFS from the PRC*), and accompanying Issues and Decision Memorandum at Comment 10.

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

[415] *Id*.

[416] *See*, *e.g.*, *Aluminum Extrusions First Review,* and accompanying Issues and Decision Memorandum at Comment 7; *Aluminum Extrusions from the PRC 2012 Review*, and accompanying Issues and Decision Memorandum at Comment 5; *Wind Towers from the PRC*, and accompanying Issues and Decision Memorandum at Comment 4; *OCTG Investigation*, and accompanying Issues and Decision Memorandum at Comment 20; Solar, and accompanying Issues and Decision Memorandum at Comment 15.

has never provided sufficient evidence suggesting that many of the most basic facts of the *CFS from the PRC* analysis have changed. For example, in *OCTG Investigation*, 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}.[417]

Similarly, the GOC did not provide a sufficient factual basis for reconsidering the *CFS from the PRC* decision in this instant review. The GOC's arguments about the lending practices of financial institutions echo arguments that have been rejected in previous administrative reviews.[418] In the *Aluminum Extrusions First Review*, the GOC reported that in February 2010, the CBRC promulgated the *Interim Measures for the Administration of Working Capital Loans* (*Interim Measures*), which, according to the GOC, 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."[419] The GOC points out that in addition to the *Interim Measures,* 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, remained in effect during the current POR.[420]

We considered this information in the *Aluminum Extrusions First Review* and determined that there is no basis to conclude that the GOC's policy lending activities ceased with the issuance of the *Interim Measures*.[421] As we explained in the *Aluminum Extrusions Investigation* and *Aluminum Extrusions 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."[422] Thus, because the *Interim Measures* are "fully consistent" with the *Banking Law*, we determine, consistent with prior determinations, that they do not constitute evidence that the GOC ceased policy lending to the aluminum extrusions industry, despite any changes to lending practices asserted by the GOC.

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[417] *See OCTG Investigation*, and accompanying Issues and Decision Memorandum at Comment 20.
[418] *See* the GOC's Initial Response, at 1-7.
[419] *See Aluminum Extrusions Second Review*, and accompanying Issues and Decision Memorandum at "Policy Loans to Chinese Aluminum Extrusion Producers."
[420] *See* the GOC's Initial Questionnaire Response, at 1-7. A copy of the *Banking Law* was provided in the GOC's Initial Response at Exhibit 21.
[421] *See Aluminum Extrusions First Review*, and accompanying Issues and Decision Memorandum at "Policy Loans to Chinese Aluminum Extrusion Producers" and Comment 6.
[422] *Id.*, and *Aluminum Extrusions Investigation*, and accompanying Issues and Decision Memorandum at Comment 28.

In the current administrative review, the GOC indicated that the *Capital Rules*, as enacted by the China Banking Regulatory Commission, went into effect on January 1, 2013. According to the GOC, the *Capital Rules* establish tight disciplines on loan management. According to the GOC, these changes, combined with deregulation of floor interest rates by commercial banks, demonstrate substantial changes in China's commercial banking sector.[423] The GOC also directs our attention to certain new regulations (*i.e. 2013 PBC Notice of Deregulation of Interest Rates*, *2014 Notice of Deregulation of Interest Rates*, and *2015 PBC Notice of Deregulation of Interest Rates*), that came into effect in 2014. We find that the *Capital Rules* and these other regulations address changes in the regulatory environment governing systemic risk in the banking sector from such issues as potential bank exposure to over-leverage or non-performing loans. However, such changes do not necessarily lead to any to any changes in the pricing of lending instruments; nor has the GOC provided any factual information to suggest there has been such an impact. We find that these changes alone do not call into question the Department's prior findings regarding the Chinese banking sector. The GOC has cited certain specific regulatory initiatives concerning bank loan management and lending rate floors that the GOC has recently undertaken. However, insufficient time elapsed to see clearly the definitive, *de facto* results of these incremental reforms and regulatory initiatives. More importantly, even under the assumption that sufficient time might have elapsed, the GOC has offered no evidence of how these incremental reforms and regulatory initiatives have fundamentally changed, or relate to fundamental changes in: (i) core features of the state-commercial bank relationship and (ii) the economic and institutional roles of banks and the banking sector in China (the Department noted these features and roles in its analysis in *CFS from the PRC*[424]). In the absence of any argument or evidence of such change, the Department sees no basis at this time to depart from its analysis of China's banking sector.

Regarding the GOC's statements concerning *US-CVD I*, we note that the Appellate Body in that dispute affirmed the Department's finding in a previous proceeding that SOCBs are "public bodies" or "authorities."[425] The Department's determination in this review that the PRC banks at issue are "authorities" within the meaning of section 771(5)(B) of the Act is in accordance with U.S. law, which is consistent with our WTO obligations. For these reasons, we continue to find that SOCBs are "authorities" capable of providing financial contributions to the respondents.

Comment 10: Whether the Department's Benchmark Interest Rate Computations Are Arbitrary, Unsupported by the Record or Unlawful.

The GOC's Case Brief:

- The Department's benchmark interest rates are arbitrary, unsupported by the record and unlawful. The Department's failure in this case to apply a Chinese interest rate benchmark is contrary to the Department's express regulations and past case precedent. The Department, in the final results, should abandon its flawed attempt to construct a third-country basket benchmark interest rate for China and use instead the actual

[423] *See* GOC's Initial Questionnaire Response, at 4.
[424] *See CFS from the PRC*, and accompanying Issues and Decision Memorandumat Comment 10.
[425] *See US-CVD I WTO AB Decision* at para. 34.

interest rates on comparable bank loans in China, as its own regulations require.[426]

- Given the substantial changes regarding bank loan management stipulated under the *Capital Rules*, the deregulation of interest rates in China's banking sector, and especially combined with the evidence that indicates several of loans received by the Jangho Companies were from banks owned by foreign investors or majority-owned by private parties, the application of external interest rates as benchmarks is unsupported on the record of this case.[427]
- The Department has relied upon an arbitrary collection of International Monetary Fund (IMF) published rates that are in many cases not actually short-term rates, yet the Department has made no adjustment to correct for this.[428]
- In some cases the interest rates used in the Department's calculations do not even reflect business loans.[429]
- The Department has, in addition, arbitrarily excluded negative inflation-adjusted rates from its calculations.[430]
- The Department has used an invalid regression analysis to determine a short-term interest rate for China based on a composite governance indicator factor.
- The Department has arbitrarily calculated an adjustment spread or factor between short- and long-term rates using United States dollar "BB" bond rates, an illogical approach with no rational explanation.[431]

Petitioner's Rebuttal Brief:

- The benchmark interest rate used by the Department to calculate the benefit derived from the GOC's program of policy lending for the aluminum extrusions industry is consistent with the Department's practice, reflects conditions of lending within China, accounts for changes in China's level of economic development in recent years, properly excludes negative interest rates that do not reflect interest rates for commercial loans and which no commercial bank under normal market conditions would find sustainable.[432]
- The Department has responded to the arguments raised by the GOC multiple times in prior proceedings and has rejected them each time.[433]
- With respect to negative interest rates, the Department has noted that negative interest rates are anomalies in the commercial market and are not sustainable in a commercial market.[434]
- With respect to the countries and products upon which the Department chooses to rely, and the term of loans, the Department has addressed this argument in previous cases and has found that the approaches taken are consistent with its practices and with

[426] *See* the GOC's Case Brief at 3 and 37 to 38.
[427] *Id.,* at 37.
[428] *Id.*
[429] *Id.*
[430] *See* the GOC's Case Brief at 37.
[431] *Id.*, at 38.
[432] *See* Petitioner's Rebuttal Brief at 2 and 32 to 34.
[433] *Id.,* at 32.
[434] *Id.,* at 32 to 33, citing *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 Investigation*).

Section 351.505(a)(2)(i) of the Department's regulations.[435]

- The Department has previously found the GOC's claim regarding the use of U.S. dollar denominated "BB" bond rates is an illogical and irrational unpersuasive. The Department has explained its rationale with respect to the utilization of U.S. Dollar "BB" bonds in several proceedings. There is no new information in this review that would lead the Department to make a contrary finding.[436]

Department's Position:

We continue to find that the Department's benchmark interest rate calculations are reasonable and appropriate. The Department has fully addressed the arguments raised by the GOC regarding the Department's rationale for relying on an external benchmark and its authority to do so in prior cases and the *Aluminum Extrusions Preliminary Determination*.[437] The GOC has not presented sufficient information to warrant reconsideration of the Department's prior findings, including on the issue of whether certain regulatory initiatives have had an impact on the Department's prior findings.

Additionally, the Department has previously fully addressed the arguments raised by the GOC regarding the calculation of the Department's benchmark interest rate, including the use of certain rates published by the IMF,[438] the Department's practice with respect to certain negative inflation-adjusted rates,[439] its regression analysis based on a composite governance factor,[440] and adjustment of rates based on the spread between U.S. short and long-term "BB"

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[435] *Id.,* at 33, citing *Aluminum Extrusions First Review* and accompanying Issues and Decision Memorandum at Comment 8, and *Aluminum Extrusions Second Review* and accompanying Issues and Decision Memorandum at Comment 5.

[436] *Id.,* at 33 to 34, citing *OCTG 2012 Review*, and accompanying Issues and Decision Memorandum at Comment 13.

[437] *See*, *e.g.*, *Aluminum Extrusions Preliminary Determination* and the accompanying Issues and Decision Memorandum at 12 to 16 and 40 to 43 (unchanged in *Aluminum Extrusions Investigation*); *see also*, *e.g.*, *CFS from the PRC*, and accompanying Issues and Decision Memorandum at Comment 10 and *Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) (*Thermal Paper from the PRC*), and accompanying Issues and Decision Memorandum at 8-10. We are, therefore, incorporating our response to the GOC's comments in these other decisions by reference herein. This issue, in general terms, has also been raised in numerous PRC CVD proceedings.

[438] *See Aluminum Extrusions From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 75 FR 54302, (September 7, 2010) (*Preminary Determination*). *See also*, *e.g.*, *Aluminum Extrusions First Review* and accompanying Issues and Decision Memorandum at Comment 8, *Aluminum Extrusions Second Review* and accompanying Issues and Decision Memorandum at Comment 4, *Aluminum Extrusions Third Review* and accompanying Issues and Decision Memorandum at Comment 4, *Citric Acid Investigation* and the accompanying Issues and Decision Memorandum at Comment 10, and *OCTG Investigation* at Comment 24 and Comment 26.

[439] *See Preliminary Determination*. *See also*, *e.g.*, *Aluminum Extrusions First Review* and accompanying Issues and Decision Memorandum at Comment 8, *Aluminum Extrusions Second Review* and accompanying Issues and Decision Memorandum at Comment 4, *Aluminum Extrusions Third Review* and accompanying Issues and Decision Memorandum at Comment 4, and *Solar Cells* and accompanying Issues and Decision Memorandum at Comment 16.

[440] *See*, *e.g.*, *Aluminum Extrusions First Review* and accompanying Issues and Decision Memorandum at Comment 8, *Aluminum Extrusions Second Review* and accompanying Issues and Decision Memorandum at Comment 4, *Aluminum Extrusions Third Review* and accompanying Issues and Decision Memorandum at Comment 4, *Citric Acid Investigation* and accompanying Issues and Decision Memorandum at Comment 12, and

bond rates.[441] Given that the GOC has offered no more than mere restatements of these previously rejected arguments, we find the GOC has not presented new arguments or information sufficient to warrant reconsideration of the Department's prior findings.

Comment 11: Whether the Preferential Tax Policies for High or New Technology Enterprises Program and the Tax Offset for Research and Development Program are Specific.

The GOC's Case Brief:

- The record shows that both the Preferential Tax Policies for High and New Technology Enterprises (HTNEs) and the Tax Offset for Research and Development (R&D) programs are available to diverse industries. The Preferential Tax Policies for HTNEs Program was available to eight industries and any projects in line with national and Guangdong, Shanghai, and Beijing provincial technological policies and industrial policies would be eligible for the Tax Offset for R&D Program.[442]
- The Department's simple recitation that alleged benefits under a program are limited to certain industries of the Chinese economy meeting certain eligibility does not mean those programs are limited to a specific enterprise or industry within meaning of the U.S. CVD law. The industries and sectors eligible for assistance are broad and diverse. Further, the Department cites objective criteria which only indicate that a subsidy is not specific. [443]

Jangho's Case Brief:

- The Department's Preliminary Decision Memorandum recognizes that the Preferential Tax Policies for HTNEs program is available to eight diverse industries deemed by the GOC to be HTNEs, which are further broken down into 39 sub-areas and more than 200 specific areas. Therefore, the program is not limited to a specific industry.[444]
- Article 5 of the Trial Administrative Measures for the Pre-Tax Deduction of Enterprise R&D Expenses states that eligible R&D projects shall be in line with national and Guangdong provincial technology and industrial policies. The Department concluded that this program was specific, finding the GOC has targeted the aluminum extrusions industry for development and assistance. Yet, the Department points to no evidence on the administrative record that such a policy exits. On the contrary, there is no policy targeting the aluminum extrusions industry for development and assistance.[445]

OCTG Investigation at Comment 23.

[441] *See*, *e.g.*, *Aluminum Extrusions First Review* and accompanying Issues and Decision Memorandum at Comment 8, *Aluminum Extrusions Second Review* and accompanying Issues and Decision Memorandum at Comment 4, *Aluminum Extrusions Third Review* and accompanying Issues and Decision Memorandum at Comment 4, *Citric Acid Investigation* and accompanying Issues and Decision Memorandum at Comment 13, and *OCTG Investigation* at Comment 27.

[442] *See* the GOC's Case Brief at 38 to 39, citing Preliminary Decision Memo at 44.

[443] *Id.,* at 39, citing Preliminary Decision Memo at 44, and Sections 771(5A)(D)(i) and 771(5A)(D)(iii) of the Act.

[444] *See* Jangho's Case Brief at 28 to 29, citing the Preliminary Decision Memorandum at 43.

[445] *Id.,* at 28 to 29, citing the Preliminary Decision Memorandum at 46.

- As explained by the GOC, this policy is applied nationwide, not just in Guangdong.[446]

Petitioner's Rebuttal Brief:

- The Department should also continue to countervail the Preferential Tax Policies for HTNEs and the Tax Offset for R&D programs.[447]
- The Preferential Tax Policies for HTNEs program is countervailable as the program is directed at particular industries, *i.e.,* high and new technology enterprises. By identifying the classes of industries at which the program is targeted, the program is – by definition - *not* available to certain other industries.[448]
- By applying for and satisfying certain stringent criteria, the Preferential Tax Policies for HTNEs is *de jure* specific under Section 771(5A) of the Act because it is limited by law to a select group of enterprises or industries.[449]
- The Department has previously found the Tax Offset for R&D program to be countervailable. In the current administrative review, the Department asked the GOC whether there were any changes to the program during the period of review, to which the GOC responded that "{t}here were no changes to this program." As there is no additional information on the record concerning the nature of the program or any changes since the original determination in the underlying investigation, the Department should continue to find that its recipients are targeted and, thus, specific.[450]

Department's Position:

We have not reconsidered our prior findings[451] that the Preferential Tax Policies for HTNEs Program and Tax Offset for R&D Program are specific. There is no new information regarding these programs on the record of this review. Accordingly, there is no basis for us to reconsider our prior findings.[452] In the Department's Initial Questionnaire to the GOC, we requested that the GOC to provide standard appendix responses with regard to changes in any programs previously countervailed by the Department, and to provide income tax program appendix responses with regard to respondents' use of such programs. In response to our first set of questions regarding changes in these programs and respondents' use of both of these programs, the GOC explained that "{t}here were no changes to this program affecting income tax returns filed during the POR," and provided a response to the questions contained in the income tax program appendix (related only to the respondent's usage of the program).[453] Because Jangho reported benefits under these programs, an income tax program appendix response was required. Nothing in the GOC's responses indicates changes in these programs, or speaks to the specificity of these programs generally. Accordingly, there is no factual basis for us to reconsider our previous findings.

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[446] *Id.,* citing the GOC's initial response at 18.
[447] *See* Petitioner's Rebuttal Brief at 34 to 36.
[448] *Id.,* at 35.
[449] *Id.*
[450] *See* Petitioner's Rebuttal Brief at 35 to 36, *citing Aluminum Extrusions Third Review* and accompanying Issues and Decision Memorandum at 50-51, and the GOC's Initial Response at 20.
[451] *See Aluminum Extrusions Third Review* at 45 to 47, 50 to 51, and Comments 5 and 6.
[452] *Id.*
[453] *See* the GOC's Initial Response at 18 to 22.

Regarding the GOC's claims that record evidence shows that the programs are available to diverse industries, the GOC has not shown that any new information exists regarding the specificity of these programs. With respect to the Preferential Tax Policies for HTNEs Program, the GOC merely points to information contained in the Preliminary Decision Memorandum, and taken from *Citric Acid from the PRC First Review*, *Citric Acid from the PRC Second Review*, and *Citric Acid from the PRC Third Review*, indicating that the program was limited to certain industries, namely: 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, and was therefore specific.[454] The Department considered this information in *Aluminum Extrusions from the PRC Third Review*, and the Department found that this information indicated that the HTNE Program was specific because limited to these industries.[455]

With respect to the Tax Offset for R&D Program, the GOC merely points to information contained in the Preliminary Decision Memorandum. In our preliminary results the Department, citing *Aluminum Extrusions Investigation,* stated that the GOC targeted the aluminum extrusions industry for development and assistance in a manner that is specific under section 771(5A)(D)(i) of the Act, as illustrated in the government plans and directives, to encourage and support the growth and development of the aluminum extrusions industry. On this basis, the Department found this program to be *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act in *Aluminum Extrusions Investigation*. Because there is no new information regarding these programs on the record of this review, we continue to find that these programs are specific.

Comment 12: Whether the Department has the Authority to Investigate or Countervail the Technology Innovation Assistance Fund (the Niulanshan Industrial Development Center – Technology Products Fund), Enterprise Technology Center Fund, and Trade Promotion and Brand Building Fund (the 2014 Guangdong Trade Promoting by Science & Tech and Brand Building Fund).

The GOC's Case Brief:

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[454] *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 Issues and Decision Memorandum at "Reduced Income Tax Rate for High or New Technology Enterprises;" *Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010*, 77 FR 72323 (December 5, 2012) (*Citric Acid from the PRC Second Review*), and accompanying Issues and Decision Memorandum at "Reduced Income Tax Rate for High or New Technology Enterprises;" *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) (*Citric Acid from the PRC Third Review*), and accompanying Issues and Decision Memorandum at "Reduced Income Tax Rate for High or New Technology Enterprises;"

[455] *See Aluminum Extrusions from the PRC Third Review* and accompanying Issues and Decision Memorandum at "Preferential Tax Policies for High or New Technology Enterprises."

- The Department has no authority to seek information on these new, purported "grant programs" under either the statute or the Department's regulations.[456]
- 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.[457]
- While the *SCM Agreement* provides the right to self-initiate an investigation in "special circumstances," the right can only be exercised on the basis of sufficient evidence of the existence of a subsidy, consistent with Article 11.6 of the *SCM Agreement*, and after an opportunity to consultation has been properly offered to the government of exporting country under investigation, consistent with Article 13.1 and 13.2 of the *SCM Agreement*.[458]
- None of these grant programs were alleged by Petitioner or duly initiated by the Department. There was no proper showing by Petitioner of the existence of the required elements of a countervailable subsidy, nor was there a subsequent initiation by the Department of a review of such additional "programs."[459]
- Because the Department failed to initiate lawfully an investigation of the purported "grant programs," it should withdraw its preliminary findings related to them, and remove from the record all the information obtained through improper questionnaire requests.[460]
- The Department applied AFA to these "grant programs" in its preliminary results, asserting that the GOC made no mention of the Jangho Companies' receipt or award of benefits under these programs. However, these purported "grant programs" were not included in the Department's initial questionnaire in this proceeding.[461]

Department's Position:

We disagree with the GOC's contention that the Department lacks authority to investigate and analyze these programs. The Department's purpose in conducting an administrative review is to determine the actual net countervailable subsidy received during the review period in order to assess countervailing duties and to set a deposit rate for future entries. Section 775 of the Act provides that if the Department, during the course of a proceeding, discovers a practice that "appears to be a countervailable subsidy," it shall include that practice in the proceeding.[462]

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[456] *See* the GOC's Case Brief at 40 to 41, citing Preliminary Decision Memorandum at 21 to 22 and 51 to 52.
[457] *Id.,* at 41, citing *SCM Agreement* at Article 11.1 and 11.2.
[458] *See* the GOC's Case Brief at 41, citing *SCM Agreement* at Article 11.2, 11.6, 13.1, and 13.2.
[459] *Id.,* at 40 to 41.
[460] *See* the GOC's Case Brief at 41.
[461] *Id.,* at 40 to 41, citing Preliminary Decision Memorandum at 21 to 22.
[462] *See* section 751(a) of the Act. *See also*, *e.g.*, *Stainless Steel Plate in Coils From Belgium: Final Results of Countervailing Duty Administrative Review*, 74 FR 57627 (November 9, 2009), and accompanying Issues and Decision Memorandum at Comment 2 (where he Department affirmed the Department's authority to examine and analyze a Program which "appeared to be a countervailable subsidy") and *Stainless Steel Plate in Coils from Belgium: Final Results of Countervailing Duty Administrative Review*, 73 FR 75673 (December 12, 2008), and accompanying Issues and Decision Memorandum at Comment 1.

In addition to questions regarding the programs upon which the Department initiated this review, the Department's CVD questionnaires ask the GOC and respondent companies to report other forms of assistance provided to the respondent by the GOC or local or provincial governments, or by government-owned entities.[463] Jangho provided complete standard questions responses and usage responses with regard to these programs, in which Jangho identified the programs as grants and indicated which government entities provided the assistance.[464]

In the Department's Initial Questionnaire we requested information on other forms of assistance provided to Jangho:

> "Has the government, or entities owned in whole or in part by the government, directly or indirectly, provided to the producers or exporters of the subject merchandise under review any other non-recurring benefits over the 12-year AUL (i.e., the POR and preceding 11 years), or recurring benefits during the POR? Please coordinate with the respondent companies to determine if they are reporting usage of any subsidy program(s) not previously examined. For each such program, please answer all questions in the Standard Questions Appendix and any other applicable *appendices* to this section separately for each program. If the government has not provided any other benefits, then please so state."[465]

In the GOC's initial questionnaire, it did not respond to the request for information on other forms of assistance provided to Jangho, claiming that there was an "absence of sufficient allegations and evidence respecting other programs," and therefore that "no reply to this question is warranted or required."[466] Accordingly, we requested in the Department's supplemental questionnaire to the GOC that it provide information on these programs reported by Jangho,[467] However, the GOC again failed to provide this information.[468]

With regard to these programs, we find that the GOC was uncooperative and prevented the Department from obtaining any further information regarding these reported government grants, particularly such information which might speak to the countervailability of these reported grant programs. The GOC initially replied, with regard to all of these programs, and many others, that "no reply to this question is warranted or required."[469] In response to the Department's supplemental questions regarding these programs, the GOC replied that it was unable to respond to any of the standard and usage appendix questions contained in the

[463] *See* the Department's Initial Questionnaire to the GOC at III-21.
[464] *See* Jangho's Initial Response, Jangho Group Company Response at Exhibits JG-42, JG-43, JG-58, JG-59, and JG-64, and Guangzhou Jangho Response, at 47 and Exhibits GZ-26 and GZ-27.
[465] *See* Department's Initial Questionnaire at II-20.
[466] *See* GOC response at 75.
[467] *See* Supplemental Questionnaire to the GOC at 25 to 27.
[468] *See* the GOC's Supplemental Response at 80 to 81, 109.
[469] *See* the GOC's Initial Response at 75.

Department's initial and supplemental questionnaire.[470] With regard to two of these programs, the Enterprise Technology Center Fund and the Trade Promotion and Brand Building Fund (the 2014 Guangdong trade promoting by science & tech and brand building fund), and with regard to the Technology Innovation Assistance Fund (the Niulanshan Industrial Development Center – Technology Products Fund), the GOC claimed that "the local authority did not provide the GOC with any documentation and information regarding this program."[471] However, as we explained in the Department's initial Questionnaire to the GOC, "the government is responsible for submitting the responses for all central, provincial, state, and local governments, as well as any company information requested in the government section of this questionnaire."[472]

Accordingly, we preliminarily found that the GOC had been unresponsive and uncooperative and, applying AFA, preliminarily found that financial contribution and specificity existed with regard to these programs.[473] We also found that information provided by Jangho indicated that benefits had been provided under these programs.[474]

We disagree with the GOC's claim that it was denied an opportunity to comment or to consult with the Department regarding the countervailability of these programs, particularly in light of the fact that the elements bearing on the countervailabliity of these programs are the subject of the very questions the GOC refused to answer. Also, contrary to the GOC's arguments, the Department afforded the GOC notice and an opportunity to comment on its decision to analyze these programs. Jangho reported these programs as assistance in the form of grants provided by the government.[475] We also requested that the GOC provide information on these programs in the Department's supplemental questionnaire to the GOC.[476] In addition, when the *Preliminary Results* were published, interested parties received notice that we were investigating these programs and were afforded an opportunity to comment on our decision to analyze these programs. Therefore, we find that we sufficiently notified the GOC and other interested parties that these programs were being examined in the preliminary results and provided the GOC an opportunity to comment before the final results.

Comment 13: Whether the Department Erred in its Calculations of Benchmark Aluminum Extrusions and Glass Prices by Double Counting Certain Export Quantities.

- Jangho alleges that Petitioner's export data used by the Department double counts exports to the "world" and to the EU-27, even though these values represent summaries

[470] *Id.,* at 75, and the GOC's Supplemental Response at 80 to 81, 109
[471] *See* the GOC's Supplemental Response at 80 to 81, 109.
[472] *See* the Department's initial Questionnaire to the GOC at I-5.
[473] *See* the Preliminary Decision Memorandum at 17, 21 to 25, and 51 to 52.
[474] *Id.,* at 44 to 45.
[475] *See* Jangho's Initial Response at III-50, Exhibit JG-42, and Exhibit JG-64.
[476] *See* Letter from the Department to The GOC regarding: "Administrative Review of the Countervailing Duty Order on Aluminum Extrusions from the People's Republic of China: First Supplemental Questionnaire to the Government of the People's Republic of China," dated March 22, 2016 (the Department's Supplemental Questionnaire to the GOC).

of exports already accounted for.[477]

- Jangho alleges that Petitioner's export data erroneously included export statistics for which there was no quantity reported; rather, only value was reported.[478]
- Jangho alleges that Petitioner's export data erroneously included exports to and from China; thus, the Department's benchmark calculations are distorted.[479]

Department's Position:

We agree with Jangho, in part, and have made certain changes for these final results. In the *Preliminary Results*, the Department calculated Jangho's subsidies under the provision of aluminum extrusions for LTAR and provision of glass for LTAR programs by comparing Jangho's purchases of aluminum extrusions and glass to certain "tier two" benchmark prices (*i.e.*, export prices of aluminum extrusions and glass from outside China). The data used in our glass and aluminum extrusions benchmark calculations included aluminum extrusions exports from the EU-27, aluminum extrusions exports identified as being to the "world," aluminum extrusions exports to China, glass exports to China, and certain aluminum extrusions and glass export statistics with either zero value or zero quantities.[480] In calculating the benchmark used in the *Preliminary Results*, we preliminarily excluded aluminum extrusions exports from the EU-27, aluminum extrusions exports to China, and all aluminum extrusions and glass exports with either zero quantity or zero value, but did not exclude aluminum extrusions exports from the "world" or glass exports to China.

We find that the Department inadvertently failed to exclude aluminum extrusions exports identified as being to the "world."[481] We find that it is appropriate to exclude aluminum extrusions and glass exports to the "world" for these final results because, like exports of aluminum extrusions from the EU-27, these exports are summaries which are represented elsewhere in the export statistics. Therefore, including them would result in double counting.

Excluding exports to a particular country from our calculations normally requires a finding of distortion.[482] The Department has not made a distortion finding with respect to the domestic aluminum extrusions and glass markets in China.[483] Therefore, we find that the Department inadvertently erred in excluding exports of aluminum extrusions to China from our benchmark calculations.

However, Jangho is mistaken in its contention that our benchmark calculations are distorted because we did not exclude other export statistics (*i.e.*, aluminum extrusions exports to the EU-27, aluminum extrusions exports to and from China, aluminum extrusions export statistics with

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[477] *See* Jangho's Case Brief at 22 to 23. See also
[478] *Id.*
[479] *Id.*
[480] *See* Jangho Preliminary Analysis Memorandum and the accompanying Microsoft Excel spreadsheet *at* tab "10B World AE Exports (raw)."
[481] *See* Jangho Preliminary Analysis Memorandum, and the accompanying Microsoft Excel spreadsheet at tab "10D. -China, EU, 0, NR, Estonia."
[482] *See*, *e.g.*, *Aluminum Extrusions Second Review; Citric Acid 2011 Review; and Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review; 2013*, 80 FR 77318 (December 14, 2015).
[483] *See infra*, Comment 8.

either zero quantity or zero value, glass exports to the world, glass exports to the EU-27, and aluminum extrusions and glass exports export statistics with either zero quantity or zero value). With the exception of aluminum extrusions exports from the "world" and glass exports to China discussed above, the calculations for the *Preliminary Results* excluded these export statistics at later stages of the calculations.[484]

Based on the above, we have modified the aluminum extrusions and glass benchmark calculations for the provision of aluminum extrusions for LTAR program to exclude aluminum extrusions exports to the "world" and to include aluminum extrusions exports to China.[485] Accordingly, for the final results, these benchmark calculations include exports of aluminum extrusions and glass to China and exclude exports to the world and from the EU-27.[486]

Comment 14: Whether the Department Should Include Exports of Merchandise Under HTS Classification 7610 in its Calculation of Benchmark Aluminum Extrusions Prices.

Jangho's Rebuttal Benchmark Comments:

- Jangho argues that it is inappropriate for the Department to use exports under HTS classification 7610.10 ("Aluminum Structures and Parts of Structures…Aluminum Doors, Windows And Their Frames And Thresholds For Doors") to value its purchases of aluminum extrusions. Jangho argues that curtain walls have been classified by CBP under HTS 7610.90 ("Aluminum Structures and Parts of Structures…Other").[487]
- Jangho insists that HTS classification 7610.10 would not apply unless the curtain walls are not exterior walls of buildings, but are instead windows or doors or frames for windows or thresholds for doors. Jangho argues, however, that the Department found in a past scope ruling that curtain walls are not windows or doors, but part of a building.[488]

Petitioner's Rebuttal Brief:

- Petitioner argues that Jangho provided benchmark export statistics which include HTS classifications 7604.21 ("Aluminum Alloy Hollow Profiles"), 7604.29 ("Aluminum Alloy Bars, Rods And Profiles, Other Than Hollow Profiles"), and 7610.10.[489]

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[484] *Id.,* and the accompanying Microsoft Excel spreadsheet at tab "10D. -China, EU, 0, NR, Estonia."
[485] *See* Memorandum from Tyler Weinhold to Erin Kearney, Program Manager Office VI regarding, "Final Analysis Memorandum for the Jangho Companies," dated concurrently with this memorandum (Jangho Final Analysis Memorandum).
[486] Neither the data submitted by Petitioners nor the calculations provided by Jangho contain exports of aluminum extrusions of glass from China or exports of glass from the EU-27.
[487] *Id.,* at 23 to 24, citing Letter from Jangho to the Department regarding" "Aluminum Extrusions from the People's Republic of China: Rebuttal Benchmark Comments," dated April 28, 2016 (Jangho's Rebuttal Benchmark Comments) at Exhibit 6.
[488] *Id.*
[489] *See* Petitioner's Rebuttal Brief at 26 to 27. See also Letter from Jangho to the Department regarding "2014 Administrative Review of Aluminum Extrusions from the People's Republic of China: Submission of Factual Information-Benchmark Data," dated April 18, 2016 (Jangho's Benchmark Submission).

- Petitioner argues that consistent with our past practice, we should continue to use HTS classification 7610.10.10 to value aluminum extrusions.[490]
- Finally, Petitioner argues that Jangho's argument for the use of HTS classification 7610.90 should be rejected, because this classification applies to curtain wall, not its inputs.[491]

Department's Position:

In both the *Preliminary Results* and the *Aluminum Extrusions Third Review*, the Department used world benchmark prices related to three HTS categories to value aluminum extrusions for purposes of the provision of aluminum extrusions for LTAR program: HTS classification 7604.21, HTS classification 7604.29, and HTS classification 7610.10.[492]

While the Department is not required to use prices for identical merchandise, the Department normally considers product similarity; quantities sold, imported, or auctioned; and other factors affecting comparability.[493]

In this case, no party has commented on the Department's use of HTS classifications 7604.21 or 7604.29 in the *Preliminary Results*; therefore, we continue to find that the benchmark prices under these HTS categories are appropriate for use in these final results.

We have analyzed the arguments regarding the third HTS category and have made a change for the final results. HTS classification 7610 covers "Aluminum Structures… and parts of structures (for example, bridges and bridge-sections, towers, lattice masts, roofs, roofing frameworks, doors and windows and their frames and thresholds for doors, balustrades, pillars and columns); aluminum plates, rods, profiles, tubes and the like, prepared for use in structures."[494] HTS category 7610.10 and HTS category 7610.90 are both sub-categories of HTS 7610 that cover "Aluminum Doors, Windows And Their Frames And Thresholds For Doors"[495] and "Other,"[496] respectively.

Information on the record indicates that curtain walls and certain parts thereof have been classified by CBP under HTS 7610.90.[497] In contrast, the record does not contain any similar information related to the applicability of HTS category 7610.10. Because record evidence shows that curtain walls and certain parts thereof have been classified in this category, we find that HTS category 7610.90 forms a more appropriate benchmark for valuing the aluminum inputs for curtain walls than HTS category 7610.10. Accordingly, we have used benchmark prices under HTS classifications 7604.21, 7604.29, and 7610.90 for these final results.

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[490] *Id.*
[491] *Id.*
[492] *See* Jangho Preliminary Analysis Memorandum.
[493] *See* Section 351.511(a)(2)(i) of the Department's Regulations.
[494] *See, e.g.,* Jangho's Benchmark Submission at Exhibit 9.
[495] *Id.*
[496] *Id.*
[497] *See* Jangho's Rebuttal Benchmark Comments at Exhibit 6.

Comment 15: Whether the Department Erred by Excluding Wuxi Huida From the List of Companies for Which the Department Calculated a Net Countervailable Subsidy Rate.

- Wuxi Huida argues that the Department inadvertently erred in the *Preliminary Results* by including Wuxi Huida in the list of companies for which the Department intends to rescind the instant review.[498]
- Wuxi maintains that it should be included among the pool of companies for which the Department calculates the non-selected countervailable subsidy rate, given that it requested a review on itself and at no point withdrew its request for review.[499]
- No other interested party commented on this issue.

Department's Position:

We agree with Wuxi Huida. Because Wuxi Huida requested a review of itself and did not withdraw that request, the company is still subject to this administrative review. Accordingly, we have included this company among the pool of companies for which we calculated the non-selected countervailable subsidy rate for the final results of review.

Comment 16: Whether the Department Erred by Including Jiangsu Susun Among the List of Companies for Which the Department Intends to Rescind the Administrative Review.

- RMD Qwikform North America, Inc. (RMD), an importer of subject merchandise from Jiangsu Susun, contends that the Department inadvertently erred in the *Preliminary Results* by including Jiansu Susun among the list of companies for which the Department intends to rescind the instant review.[500]
- RMD states that pursuant to its request for review of Jiangsu Susun, it did not submit a no shipments certification, nor did it submit a timely request for withdrawal of Jiangsu Susun.[501]
- Therefore, RMD asserts that Jiangsu Susun should be assigned the non-selected countervailable subsidy rate for the final results of review.[502]

Department's Position:

We agree with RMD. Because the RMD requested a review of Jiangsu Susun and did not withdraw that request, the company is still subject to this administrative review. Accordingly, we have included Jiangsu Susun among the pool of companies for which we determined the non-selected countervailable subsidy rate for the final results of review.

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[498] *See* Wuxi Huida's Case Brief at 1 to 2
[499] *Id.*
[500] *See* RMD's Case Brief at 1 to 3 and RMD's Customs Instructions Comments at 1 to 2.
[501] *Id.*
[502] *Id.*

Comment 17: The Department's Liquidation Instructions to CBP Should Ensure That All of Jangho's Entries Remain Suspended Pursuant to the Preliminary Injunction Granted in December 2014.

- Jangho Americas points out that the Court of International Trade (CIT) granted a preliminary injunction to Jangho Americas on December 23, 2014 in *Shenyang Yuanda Alum. Indus. Eng'g Co. Ltd. et al v. United States* (Court No. 14-00106).[503] According to Jangho Americas, this injunction enjoins liquidation of entries it imported during POR.[504]
- Jangho Americas contends that, pursuant to this injunction, the Department make clear in the liquidation instructions issued to CBP that the entries at issue remain suspended.[505] Jangho Americas attached a copy of said injunction to its comments on the draft liquidation instructions provided by the Department to the parties for comment following issuance of the preliminary results of review.[506]

Department's Position:

We have not modified our final liquidation instructions to CBP as a result of Jangho America's comments. We agree with Jangho Americas that the Department should ensure that any liquidation instructions issued to CBP are consistent with injunctions issued by the CIT and should not liquidate entries enjoined from liquidation by an injunction order. It is incumbent upon the Department to ensure that all liquidation instructions issued to CBP contain clear and accurate language, particularly in those instances where injunction language is concerned. The injunction referenced by Jangho Americas, which the Department referenced in its draft liquidation instructions,[507] is applicable to relevant entries imported by Jangho Americas.

The injunction enjoins the Department from ordering the liquidation of unliquidated entries of curtain wall units that are produced and imported pursuant to a contract to supply a curtain wall identified in the scope proceeding for the countervailing duty order on aluminum extrusions from the People's Republic of China (C-570-968), entitled "Final Scope Ruling on Curtain Wall Units that are Produced and Imported Pursuant to a Contract to Supply a Curtain Wall," dated March 27, 2014, that were imported by Jangho Curtain Wall Americas Co., Ltd. and were entered or withdrawn from warehouse, for consumption on or after September 8, 2010 and remain unliquidated as of December 23, 2014.[508] In this instance, the draft liquidation instructions released for comment after the issuance of the *Preliminary Results* includes a paragraph notifying CBP of the injunction at issue, and instructs CBP not to liquidate the relevant entries.[509]

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503 *See* Jangho Americas' Customs Instructions Comments at 1 to 2.
504 *Id.*
505 *Id.*
506 *Id.,* at Attachment 1.
507 *See* draft liquidation instructions placed on the record of this review on August 5, 2016. *See also* letter from the Department to Interested Parties regarding, "Aluminum Extrusions from the People's Republic of China: Submission of Comments on Draft Customs Instructions for the Preliminary Results," dated August 9, 2016 ("Draft Liquidation Instructions") at paragraph 5b.
508 *See* Jangho Americas' Customs Instructions Comments at Attachment 1.
509 *Id.*

To the extent that Jangho Americas' entries during the POR include curtain wall units identified in the scope proceeding at issue in *Shenyang Yuanda Alum. Indus. Eng'g Co. Ltd. et al v. United States* (Court No. 14-00106), such entries would be covered by the injunction and would be recognized as such in the liquidation instructions.[510] However, to the extent that Jangho Americas imported subject merchandise other than said curtain wall units, such merchandise is not covered by the injunction or otherwise enjoined. Accordingly, the Department intends to issue liquidation instructions to CBP, as is its normal practice following issuance of the final results of review.

We note that no interested party submitted arguments concerning the language included in the injunction instruction issued to CBP (public message number 5005303), which was incorporated in the draft liquidation instructions. Further, Jangho Americas' comments do not allege that Department's draft liquidation instructions contain any errors, nor does Jangho America provide any alternative language. Rather, Jangho America simply states that its intention is to "bring to the attention" the preliminary injunction granted to Jangho on December 23, 2014.[511] As evidenced by the inclusion of this injunction in the draft liquidation instructions, the Department is aware of the injunction referenced by Jangho Americas. Given that the language of our draft liquidation instructions already reflect the language of the injunction issued by the CIT in *Shenyang Yuanda*, we find that there is no basis to make any changes to the draft liquidation instructions. Therefore, we do not intend to modify our final liquidation instructions to CBP as a result of Jangho America's comments, and will continue to ensure that all applicable injunctions are properly reflected in the Department's liquidation instructions.

[510] *See* Draft Liquidation Instructions at paragraph 5b..
[511] *See* Jangho Americas' Customs Instructions Comments

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*.

XX ☐

AGREE DISAGREE

12/12/2016

X

Signed by: PAUL PIQUADO

Paul Piquado
Assistant Secretary
for Enforcement and Compliance