C-570-968
Administrative Review
POR: 01/01/2015 – 12/31/2015
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DATE: December 4, 2017

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Senior Director
performing the duties of 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, 2015

Summary

We analyzed the case and rebuttal briefs of interested parties in the 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, 2015 through December 31, 2015. Consistent with our *Preliminary Determination*,[1] we have found that both mandatory respondents, Changzhou Jinxi Machinery Co., Ltd. (Changzhou Jinxi) and tenKsolar (Shanghai) Co., Ltd. (tenKsolar), failed to cooperate to the best of their ability with the Department's requests for information. We have also found that that Changzhou Jinxi and tenKsolar failed to provide sufficient information to permit us to calculate the extent to which either company received countervailable subsidies benefits during the POR. Therefore, in accordance with sections 776(a) and (b) of the Tariff Act of 1930, as amended (the Act), as adverse facts available (AFA) we have found that Changzhou Jinxi or tenKsolar both received countervailable subsidies during the POR and have used total AFA to determine subsidy rates for both Changzhou Jinxi or tenKsolar. We are conducting this administrative review in accordance with section 751(a)(1)(A) of the Act.

[1] *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; 2015*, 82 FR 26438 (June 7, 2017) (Preliminary Results) and accompanying decision memorandum (Preliminary Decision Memorandum).

Background

On May 26, 2011, the Department of Commerce (the Department) published a CVD order on aluminum extrusions from the PRC.[2] The Department published the *Preliminary Results* of this administrative review in the *Federal Register* on June 7, 2017.[3] At that time, we invited interested parties to comment on the *Preliminary Results*. On July 7, 2017, we received case briefs from the petitioner,[4] the Government of the PRC, and tenKsolar.[5] On July 13, 2017, we received a rebuttal brief from the petitioner.[6] On June 28, 2017, the Department released draft cash deposit and liquidation instructions and invited comments from interested parties.[7] No parties commented on the draft cash deposit or liquidation instructions. Between October 5, 2017, and November 15, 2017, the Department extended the date of the final results in this proceeding.[8] Accordingly, the deadline for the final results is December 4, 2017.

Scope of the Order

The merchandise covered by the order is aluminum extrusions which are shapes and forms, produced by an extrusion process, made from aluminum alloys having metallic elements corresponding to the alloy series designations published by The Aluminum Association commencing with the numbers 1, 3, and 6 (or proprietary equivalents or other certifying body equivalents). Specifically, the subject merchandise made from aluminum alloy with an Aluminum Association series designation commencing with the number 1 contains not less than 99 percent aluminum by weight. The subject merchandise made from aluminum alloy with an Aluminum Association series designation commencing with the number 3 contains manganese as the major alloying element, with manganese accounting for not more than 3.0 percent of total materials by weight. The subject merchandise is made from an aluminum alloy with an Aluminum Association series designation commencing with the number 6 contains magnesium and silicon as the major alloying elements, with magnesium accounting for at least 0.1 percent but not more than 2.0 percent of total materials by weight, and silicon accounting for at least 0.1 percent but not more than 3.0 percent of total materials by weight. The subject

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[2] *See Aluminum Extrusions from the People's Republic of China: Countervailing Duty Order*, 76 FR 30653 (May 26, 2011) (the *Order*).
[3] *See Preliminary Results* and accompanying decision memorandum (Preliminary Decision Memorandum).
[4] The petitioner is the Aluminum Extrusions Fair Trade Committee.
[5] *See* Letter from the Petitioner, "Aluminum Extrusions from the People's Republic of China: Case Brief," dated July 7, 2017 (Petitioner Case Brief); *see also* Letter from the Government of the PRC, "Aluminum Extrusions from China; 5th CVD Administrative Review GOC Case Brief," dated July 7, 2017 (Government of the PRC Case Brief); *and* Letter from tenKsolar, "C-570-968 Ten K Solar CVD Comment/Case Brief," dated July 7, 2017 (tenKsolar Case Brief).
[6] *See* Letter from the Petitioner, "Aluminum Extrusions from the People's Republic of China: Corrected Rebuttal Brief of the Aluminum Extrusions Fair Trade Committee," dated July 13, 2017 (Petitioner Rebuttal Brief).
[7] *See* Letter, "Aluminum Extrusions from the People's Republic of China: Draft Customs Instructions," dated July 5, 2017; *see also* Letter, "Rescission of administrative review in part of countervailing duty order on extrusions from the People's Republic of China," dated June 29, 2017.
[8] *See* Memorandum, "Aluminum Extrusions from the People's Republic of China: Extension of Deadline for Final Results of Countervailing Duty Administrative Review," dated October 5, 2017; *see also* Memorandum, "Aluminum Extrusions from the People's Republic of China: Second Extension of Deadline for Final Results of Countervailing Duty Administrative Review," dated October 27, 2017 *and* Memorandum, "Aluminum Extrusions from the People's Republic of China: Third Extension of Deadline for Final Results of Countervailing Duty Administrative Review," dated November 15, 2017.

aluminum extrusions are properly identified by a four-digit alloy series without either a decimal point or leading letter. Illustrative examples from among the approximately 160 registered alloys that may characterize the subject merchandise are as follows: 1350, 3003, and 6060.

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

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

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

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

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

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

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

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

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States (HTSUS): 6603.90.8100, 7616.99.51, 8479.89.94, 8481.90.9060, 8481.90.9085, 9031.90.9195, 8424.90.9080, 9405.99.4020, 9031.90.90.95, 7616.10.90.90, 7609.00.00, 7610.10.00, 7610.90.00, 7615.10.30, 7615.10.71, 7615.10.91, 7615.19.10, 7615.19.30, 7615.19.50, 7615.19.70, 7615.19.90, 7615.20.00, 7616.99.10, 7616.99.50, 8479.89.98, 8479.90.94, 8513.90.20, 9403.10.00, 9403.20.00, 7604.21.00.00, 7604.29.10.00, 7604.29.30.10, 7604.29.30.50, 7604.29.50.30, 7604.29.50.60, 7608.20.00.30, 7608.20.00.90, 8302.10.30.00, 8302.10.60.30, 8302.10.60.60, 8302.10.60.90, 8302.20.00.00, 8302.30.30.10, 8302.30.30.60, 8302.41.30.00, 8302.41.60.15, 8302.41.60.45, 8302.41.60.50, 8302.41.60.80, 8302.42.30.10, 8302.42.30.15, 8302.42.30.65, 8302.49.60.35, 8302.49.60.45, 8302.49.60.55, 8302.49.60.85, 8302.50.00.00, 8302.60.90.00, 8305.10.00.50, 8306.30.00.00, 8414.59.60.90, 8415.90.80.45, 8418.99.80.05, 8418.99.80.50, 8418.99.80.60, 8419.90.10.00, 8422.90.06.40, 8473.30.20.00, 8473.30.51.00, 8479.90.85.00, 8486.90.00.00, 8487.90.00.80, 8503.00.95.20, 8508.70.00.00, 8515.90.20.00, 8516.90.50.00, 8516.90.80.50, 8517.70.00.00, 8529.90.73.00, 8529.90.97.60, 8536.90.80.85, 8538.10.00.00, 8543.90.88.80, 8708.29.50.60, 8708.80.65.90, 8803.30.00.60, 9013.90.50.00, 9013.90.90.00, 9401.90.50.81, 9403.90.10.40, 9403.90.10.50, 9403.90.10.85, 9403.90.25.40, 9403.90.25.80, 9403.90.40.05, 9403.90.40.10, 9403.90.40.60, 9403.90.50.05, 9403.90.50.10, 9403.90.50.80, 9403.90.60.05, 9403.90.60.10, 9403.90.60.80, 9403.90.70.05, 9403.90.70.10, 9403.90.70.80, 9403.90.80.10, 9403.90.80.15, 9403.90.80.20, 9403.90.80.41, 9403.90.80.51, 9403.90.80.61, 9506.11.40.80, 9506.51.40.00, 9506.51.60.00, 9506.59.40.40, 9506.70.20.90, 9506.91.00.10, 9506.91.00.20, 9506.91.00.30, 9506.99.05.10, 9506.99.05.20, 9506.99.05.30, 9506.99.15.00, 9506.99.20.00, 9506.99.25.80, 9506.99.28.00, 9506.99.55.00, 9506.99.60.80, 9507.30.20.00, 9507.30.40.00, 9507.30.60.00, 9507.90.60.00, and 9603.90.80.50.

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

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

Analysis of Comments

We analyzed the comments submitted by interested parties in their case and rebuttal briefs below.

Comment 1: Application of AFA to tenKsolar

Government of the PRC Case Brief:

- The Department's application of total AFA to tenKsolar in the *Preliminary Results* is not warranted based on record information.[9]
- The Department has enough information on the record to calculate a subsidy rate for tenKsolar based on non-adverse "facts available," which it should do for the final results.[10]
- The Government of the PRC responded fully and in a timely manner to the Department's request for information and has cooperated to the best of its ability in this review and provided a full response pursuant to the Department's instructions.[11]
- tenKsolar had been making its best efforts to supply all the information requested by the Department within the extremely limited time window, and the company was completely upfront about its difficulties in responding to the Department's questions.[12]
- The information requested in tenKsolar's April 21, 2017 supplemental questionnaire (SQ) and in tenKsolar's April 27, 2017 SQ was particularly burdensome for tenKsolar,

[9] *See* Government of the PRC Case Brief at 1.
[10] *Id*.
[11] *Id.* at 1 and 4.
[12] *Id.* at 3 and 9 to 10 (citing tenKsolar May 1, 2017 SQR at 1-2).

since the deadline for both responses fell directly on international Labor Day, an official Government Holiday in China (and many other countries around the world).[13]

- As acknowledged by the Department, tenKsolar provided a complete response and a partial response to several questions contained in both tenKsolar's April 21, 2017 SQ and in tenKsolar's April 27, 2017 SQ, and provided exhibits to support its statements.[14]
- Despite significant information being reported on the record by both the Government of the PRC and tenKsolar, the Department ignored the information submitted in its preliminary findings.[15]
- Because the Department declined to conduct verification, the Department must assume for purposes of its final results that every factual statement submitted by the Government of the PRC and tenKsolar are accurate. The Court of International Trade has found that "{a} deliberate refusal to subject certain factual information to a verification procedure is not the equivalent of a valid finding that … such information 'cannot be verified.'"[16]
- Because tenKsolar does not have access to the complete financial statements of its unaffiliated aluminum extrusions input suppliers, Kunshan Tongtuo Ruida Hardware Device Co. Ltd. (Tongtuo) and Jiangyin Zehua Aluminum Technology Co. Ltd. (Zehua), or other requested information, the Department cannot penalize tenKsolar for not being able to provide every piece of information requested with respect Tongtuo and Zehua.[17]

tenKsolar Case Brief:

- tenKsolar cooperated to the best of its ability, responding to demanding, and often unreasonable requests for information and provided all information reasonably available to tenKsolar, sufficient to accurately calculate a CVD rate for tenKsolar.[18]
- The *Preliminary Results* describes numerous failures of tenKsolar to respond to the Department's requests, but the time constraints to which tenKsolar was subjected were largely the result of the Department's own actions. Commerce waited over six months from the date of the initiation to select tenKsolar for review, constraining the time available for tenKsolar to respond to supplemental questionnaires and for the Department to analyze tenKsolar's responses. Nevertheless, tenKsolar was able to submit four responses to the Department's questions.[19]
- The Department waited 50 days to issue an enormous supplemental questionnaire

[13] *See* Government of the PRC Case Brief at 9.
[14] *Id.* at 10 (citing tenKsolar May 1, 2017 SQR and the Preliminary Decision Memorandum at 9).
[15] *Id.* at 5.
[16] *Id.* at 1 to 2 (citing *China Kingdom Import & Export Co., Ltd. v. United States*, 507 F. Supp. 2d 1337, 1341 (Ct. Int'l Trade 2007) (*China Kingdom*); *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) (*Shelving from the PRC*), and accompanying Issues and Decision Memorandum at 45 to 46.)
[17] *Id.* at 1 and 12 (citing *Olympic Adhesives, Inc. v. United States*, 899 F.2d 1565, 1572 (Fed. Cir. 1990) (*Olympic*); and *AK Steel Corp. v. United States*, 21 CIT 1204, 1223 (1997) (*AK Steel*); *NSK Ltd. v. United States*, 416 F. Supp. 2d 1334, 1341 (CIT 2006) (*NSK*)).
[18] *See* tenKsolar Case Brief at 1 to 3.
[19] *Id.* at 2.

regarding tenKsolar's Section III Response.[20] This supplemental questionnaire was filled with seemingly irrelevant questions, was issued close to the fully extended preliminary results deadline, and provided only a limited amount of time for tenKsolar to respond. Accordingly, tenKsolar was forced to submit a limited response indicating its inability to respond due to limited resources, limited time, and the unreasonableness of the Department's supplemental questions.[21]

- Because tenKsolar does not control Tongtuo and Zehua, tenKsolar cannot be found to be non-compliant for its inability to demand complete financial statements from Tongtuo and Zehua.[22]
- The Department's requirement that tenKsolar submit responses to its questions regarding purchases of aluminum extrusions for less than adequate remuneration (LTAR), value added tax (VAT) exemptions, and downstream processes would have placed an unbearable operational and financial burden on tenKsolar.[23]
- While tenKsolar failed to notify the Department of its difficulties until the due date of tenKsolar's May 1, 2017 SQR, the Department could have focused its analysis on important questions rather than every possible question that may be relevant.[24]
- The Department's decision to assign a 198.61 percent CVD rate, ignoring tenKsolar's actual responses, despite tenKsolar's efforts to cooperate, while applying a 16.08 percent CVD rate to cooperative non-selected respondents, is prejudicial to tenKsolar.[25]
- The Department should assign a more reasonable and accurate CVD rate to tenKsolar by either assigning the same 16.08 percent CVD rate assigned to cooperative non-selected respondents or by calculating tenKsolar's CVD rate based on the information tenKsolar provided.[26]

Petitioner Case Brief:

- The Department should continue to apply total AFA to tenKsolar in the final results.[27]
- tenKsolar failed to provide critical information despite multiple requests from the Department.[28]
- The information tenKsolar submitted is so incomplete that it cannot serve as a reliable basis for calculating a subsidy rate.[29]

Petitioner Rebuttal Brief:

- The Department's ability to apply AFA is critical to its ability to effectively administer

[20] *See* tenKsolar Case Brief at 2; *see also* tenKsolar April 21, 2017 SQ.
[21] *Id.* at 2.
[22] *Id.*
[23] *Id.*
[24] *Id.* (citing tenKsolar's May 1, 2017 SQR).
[25] *Id.*
[26] *Id.*, at 3.
[27] *See* Petitioner Case Brief at 1.
[28] *Id.*
[29] *Id.* at 1 to 2.

the antidumping and countervailing duty laws.[30]

- The Department, in applying AFA "may use an inference that is adverse to the interests of that party" if the party "has failed to cooperate by not acting to the best of its ability to comply with a request for information."[31]
- The "best of its ability" standard "assumes that {respondents} are familiar with the rules and regulations" and "does {not} require findings of motivation or intent." The Department must only find that (i) "a reasonable and responsible {respondent} would have known that the requested information was required to be kept and maintained under the applicable statutes, rules and regulations"; and (ii) that the respondent under investigation has failed to cooperate by either "failing to keep and maintain all required records, or failing to put forth its maximum efforts to investigate and obtain the information from its records."[32]
- The Department has the discretion to apply AFA to a party "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully" and should consider "the extent to which a party may benefit from its own lack of cooperation."[33]
- tenKsolar consistently failed to provide critical information throughout this proceeding, despite repeated requests from the Department, failed to act to the best of its ability, deprived the Department of fundamental information necessary for confirming the accuracy of tenKsolar's responses, for confirming the non-use of certain programs, for calculating individual program subsidy rates for the programs reportedly used by tenKsolar and its unaffiliated suppliers, and for calculating a net subsidy rate for tenKsolar, and significantly impeded this proceeding.[34]
- tenKsolar failed to provide complete responses to the Initial CVD Questionnaire,[35] ignoring certain questions entirely, and again failed to provide complete responses to tenKsolar's April 21, 2017 SQ and tenKsolar's April 27, 2017 SQ.[36]
- tenKsolar failed to provide useful answers the Department's supplemental questions pertaining to the financial statements and tax returns of tenKsolar, Tongtuo, and Zehua, affiliations and cross ownership, tenKsolar's purchases of subject merchandise, and inputs, descriptions of the products tenKsolar produces, and information necessary to confirm non-use of certain programs and to accurately calculate a net subsidy rate.[37]
- tenKsolar claims that the Department's questions were irrelevant and unreasonable. However, the Department, not the respondent, determines what information is

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[30] *See* Petitioner Case Brief at 2 (citing *Essar Steel Ltd v. United States*, 678 F.3d 1268, 1276 (Fed. Cir. 2012) (*Essar 2012*); *Rhone Poulenc, Inc. v. United States,* 899 F.2d 1185, 1191 (Fed. Cir. 1990) (*Rhone Poulenc*); *and* SAA, at 868).
[31] *Id.* at 2 (citing Section 776(b) of the Act).
[32] *Id.* at 3 (citing *Nippon Steel Corp. v. United States,* 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) (*Nippon Steel*)).
[33] *Id.* at 7 (citing SAA at 870).
[34] *Id.* at 2 to 3 (citing Preliminary Decision Memorandum at 10).
[35] *See* Letter to tenKsolar, "2015 Administrative Review of the Countervailing Duty Order on Aluminum Extrusions from the People's Republic of China: Countervailing Duty Questionnaire," dated January 17, 2017 (Initial Questionnaire).
[36] *See* Petitioner's Rebuttal Brief at 3 to 4 (citing Preliminary Decision Memorandum at 9).
[37] *Id.*, at 4 to 5 (citing Preliminary Decision Memorandum at 9-21).

necessary.[38]

- tenKsolar requested an administrative review, and should have been prepared to fully participate in this review, but chose to provide selective information to the Department, culminating in an outright refusal to respond.[39]
- tenKsolar claimed that it was providing notice of difficulty of meeting the Department's requirements in accordance with section 782(c)(1) of the Act. However, tenKsolar did not meet the requirements of section 782(c)(1) of the Act[40] because tenKsolar claimed that it was having difficulties on the due date of its supplemental questionnaire responses, did not request an extension for its responses, did not suggest alternative forms to provide the requested information, and conclusively stated that it was providing a "limited response."[41]
- The Court of International Trade and the U.S. Court of Appeals for the Federal Circuit have confirmed that the statutory requirements of section 782(c) of the Act are not met where the party does not fully explain why it is unable to submit the requested information or does not suggest alternatives for supplying the deficient information.[42]
- The SAA also states that this statutory provision "is not intended to exempt small firms from the requirements of the antidumping and countervailing duty laws."[43]
- The fact that a respondent company has "limited resources" does not alleviate the company's burden from cooperating with the Department.[44]
- It would greatly prejudice the Department's proceedings to reward tenKsolar with the same rate assigned to cooperative non-selected respondents, as tenKsolar suggests, after tenKsolar requested a review, submitted only selective information, and ultimately refused to answer many of the Department's questions outright.[45]
- The Government of the PRC's insistence that the Department accept all of the factual statements and information submitted by the Government of the PRC and tenKsolar

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[38] *See* Petitioner's Rebuttal Brief, at 5 (citing *Certain Oil Country Tubular Goods from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2011*, 78 FR 49475 (Aug. 14, 2013) (*Oil Country Tubular Goods*); *Ansaldo Componenti, S.p.A.* v. *United States*, 10 CIT 28, 37, 629 F. Supp. 198, 205 (1986) (*Ansaldo*); and Essar Steel Ltd v. United States, 34 CIT 1057, 1073, 721 F. Supp. 2d 1285, 1298-99 (2010) (*Essar 2010*)).
[39] *Id.*, at 7 to 8 (citing Letter from tenKsolar, "Aluminum Extrusions from China - Request for Administrative Review," dated May 31, 2016 at 1 and tenKsolar's May 1, 2017 SQR at 1).
[40] Section 782(c)(1) of the Act provides that "{i}f an interested party, promptly after receiving a request from the administering authority . . . notifies the administering authority . . . that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the administering authority . . . shall consider the ability. of the interested party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party."
[41] *See* Petitioner's Rebuttal Brief at 5 to 6.
[42] *Id.* at 6 to 7 (citing *China Steel Corp. v. United States*, 27 CIT 715, 732 (2003) (*China Steel*); *Maverick Tube Corp. v, United States,* 857 F. 3d 1353, 1361 (Fed. Cir. 2017) (*Maverick*); and *Kawasaki Steel Corp. v. United States*, 24 CIT 684, 691 (2000) (*Kawasaki*)).
[43] *Id.* at 7 (citing SAA at 865).
[44] *Id.* at 7 (citing *Glycine from the People's Republic of China: Final Partial Affirmative Determination of Circumvention of the Antidumping Duty Order*, 77 FR 73426 (Dec. 10, 2012) (*Glycine*) and the accompanying Issues and Decision Memorandum (*Glycine* IDM) at Issue 6).
[45] *Id.*, at 8 (citing SAA at 865).

because the Department did not conduct verification is unavailing.[46] The Department has provided that the "purpose of verification is not to examine new information, but to verify information that is already on the record."[47]

Department's Position:
We agree with the petitioners. For the reasons explained below, we continue to apply total AFA to tenKsolar for these final results.

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.[48]

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) states that use of AFA 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 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."[49] The

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[46] *See* Petitioner's Rebuttal Brief at 1 and 9 (citing Government of the PRC Case Brief at 8).
[47] *Id.* at 1 and 9 (citing *Glycine* IDM at Issue 6).
[48] On June 29, 2015, the Trade Preferences Extension Act of 2015, 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). Accordingly, the amendments apply to this administrative review.
[49] *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) (*Drill Pipe from the PRC*); *see also 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) (*SRAMS from Taiwan*).

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."[50]

In addition to the provisions regarding the use of facts available, sections 351.302(b) and (c) of the Department's regulations describe the circumstances under which the Department may grant extensions of applicable time limits, and the manner in which requests for extensions of time limits may be considered. Also, section 782(c)(1) of the Act provides that "{i}f an interested party, promptly after receiving a request from the administering authority . . . notifies the administering authority . . . that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the administering authority . . . shall consider the ability of the interested party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party."

In tenKsolar's Section III Response, tenKsolar did not respond to certain questions contained in the Initial CVD Questionnaire, and provided only a partial response to certain other questions. Significantly, tenKsolar failed to provide certain requested information which is necessary (1) for confirming the non-use of unreported subsidies programs, (2) to our analysis regarding cross-ownership, (3) to our analysis regarding attribution and allocation of subsidies benefits, and (4) to our calculation of benefits for reported subsidies programs, as explained below.

The Initial CVD Questionnaire directed tenKsolar to provide complete audited financial statements for the last three years, (*i.e.*, the audited financial statements provided to the Government of the PRC or to Tongtuo's and Zehua's creditors), including statements of cash flows, statements of owners' equity, auditor's report, and all notes thereto.[51] This request included the financial statements of cross-owned companies and producer-suppliers of the subject merchandise, like Tongtuo and Zehua.[52] tenKsolar provided its own complete audited financial statements for the last three years, but provided only balance sheets and income statements for the last three years for Tongtuo or Zehua.[53] Further, tenKsolar did not explain the omission of complete audited financial statements for Tongtuo and Zehua, and did not explain the source of the submitted balance sheets and income statements for Tongtuo and Zehua.[54] All of the information contained in Tongtuo's and Zehua's complete audited financial statements is necessary for our cross-ownership analysis, and to confirm the non-use of unreported subsidies programs. In particular, the notes to the financial statements typically provide information which is necessary to make determinations of non-use of subsidy programs and to identify cross-owned affiliates.

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[50] *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) at 870.
[51] *See* the Initial Questionnaire, at III-6.
[52] *Id.* at III-2.
[53] *See* Letter from tenKsolar, "Aluminum Extrusions from the People's Republic of China: Section III Questionnaire Response," dated March 2, 2017 (tenKsolar's Section III Response), at 7-8 and Exhibit 3, and Letter from tenKsolar, "Aluminum Extrusions from the People's Republic of China: Supplemental Questionnaire Response," dated March 6, 2017 (tenKsolar's March 6, 2017 SQR) at 10.
[54] *See* tenKsolar's Section III Response, at 7-8 and Exhibit 3.

In tenKsolar's Affilliation Response and tenKsolar's Section III Response, tenKsolar stated that it had no affiliates in the PRC.[55] However, we requested necessary information regarding the sources of the paid-in capital, other operating income, and non-operating income reported in Tongtuo's and Zehua's financial statements related to potential unreported subsidies and potential affiliations and cross-ownership.[56] Further, tenKsolar's responses to certain questions in the Initial Questionnaire raised additional questions regarding potential affiliations and cross-ownership between tenKsolar and other companies. Therefore, we asked certain questions regarding tenKsolar and its potential affiliations and cross-ownership.[57] This information is also needed to confirm tenKsolar's statements regarding affiliates and cross-ownership, and ultimately, to rule out unreported subsidies programs.

In the Department's Initial Questionnaire, we also asked tenKsolar to report its glass purchases and to respond to certain questions regarding the Glass for LTAR Program.[58] However, in tenKsolar's Section III Response, tenKsolar did not provide a response to these questions, but only indicated that tenKsolar used glass as an input into solar modules or solar laminate. tenKsolar explained that it produced solar modules and solar laminate, which are covered by the countervailing duty orders on crystalline silicon photovoltaic cells, whether or not assembled into modules, from the People's Republic of China and crystalline silicon photovoltaic products from the People's Republic of China.[59] The Department's questionnaire clearly states, "You should report this purchase information regardless of whether your company used the input to produce the subject merchandise during the POR."[60] tenKsolar did not provide its glass purchases, explaining that such purchases relate to non-subject merchandise.[61]

tenKsolar also reported certain purchases of aluminum extrusions made by its upstream aluminum extrusions suppliers, but failed to respond to our requests that it report its own purchases of aluminum extrusions, as directed in the Initial Questionnaire.[62] Further, tenKsolar did not explain whether Zehua purchased aluminum extrusions for purposes other than the production of subject merchandise.[63] This information is needed to calculate subsidy rates under

[55] *See, e.g.,* tenKsolar's February 3, 2017 Affiliation Response (tenKsolar AFFR), Attachment A, page 1 and tenKsolar's Section III Response at 6 and Exhibit 3.
[56] *See* tenKsolar April 21, 2017 SQ, at 7.
[57] *See* tenKsolar's Section III Response at III-6, tenKsolar's March 6, 2017 SQR at Exhibits 2, 10, and 15, and tenKsolar April 21, 2017 SQ, at 1.
[58] *See* the Initial Questionnaire, at III-15 to III-16.
[59] *See* tenKsolar's Section III Response at 6 and 20.
[60] *See* the Initial Questionnaire, at III-16.
[61] *See* tenKsolar's Section III Response at 20.
[62] *Id.* at 18-19.
[63] In tenKsolar's Section III Response, tenKsolar stated that Zehua "did not purchase aluminum extrusions *for the production of the subject merchandise* during the POR." However, the Department's questions were not limited to Zehua's purchases of aluminum extrusions "for the production of the subject merchandise," and specifically directed tenKsolar to "report this purchase information regardless of whether your company used the input to produce the subject merchandise during the POR." Therefore, because of the specific wording of tenKsolar's response, the Department reasonably concluded that tenKsolar may not have answered our question completely, and requested a clarification, and as necessary a complete response to this question. *See* Initial Questionnaire at III-14 to III-15, tenKsolar's Section III Response at 18 to 19, and tenKsolar April 21, 2017 SQ, at 7.

the aluminum extrusions for LTAR program and to allocate subsidy benefits received by upstream suppliers (and other potentially cross-owned companies or unreported upstream suppliers) to tenKsolar's total sales, or to tenKsolar's sales of subject merchandise.

The Department's Initial Questionnaire directed tenKsolar to provide "complete, translated tax returns filed during the POR (preferably a copy of the tax return stamped by the government)." The Department's Initial Questionnaire also directed tenKsolar to "{i}nclude all schedules and attachments included with {tenKsolar's} return" and "any amendments to {tenKsolar's} return." tenKsolar failed to provide any statements, schedules, attachments, or amendments with its tax return, as directed, and failed to identify any statements, schedules, attachments, or amendments included with its tax return.[64] These documents are necessary to confirm tenKsolar's statements regarding non-use of unreported tax programs and, potentially, to confirm tenKsolar's reported total sales revenue. tenKsolar also failed to explain whether tenKsolar, Tongtuo, or Zehua had other forms of financing besides certain reported commercial loans.[65] This information is necessary to our calculation of benefits under the policy loans program.

The Initial CVD Questionnaire also requested that tenKsolar identify "the products the company produces and/or sells."[66] tenKsolar indicated that it produced certain downstream products incorporating aluminum extrusions, including "solar panel products," "solar laminate," and "solar modules," subject to the countervailing duty orders on crystalline silicon photovoltaic cells, whether or not assembled into modules, from the People's Republic of China (C-570-980) and crystalline silicon photovoltaic products from the People's Republic of China (C-570-011). However, tenKsolar gave no further substantive information describing the products it produced.[67] tenKsolar reported that it was an exporter of both aluminum extrusions produced by upstream suppliers, and of certain downstream products incorporating aluminum extrusions. tenKsolar's very limited descriptions of its downstream products raised serious questions about whether its downstream products incorporating aluminum extrusions components as well as glass components are covered by the scope of the aluminum extrusions order. However, tenKsolar did not provide sufficient information to validate its claims that the downstream products were out-of-scope. Accordingly, the Department required additional information to conduct a complete and accurate analysis of tenKsolar's downstream products containing aluminum extrusions.

It is incumbent upon tenKsolar to fully respond to our specific requests for information in order to provide the Department with the information necessary to conduct our analysis. However, in addition to several significant omissions, as explained above, tenKsolar's Section III responses to many important questions were incomplete, leaving many questions unanswered. In particular, tenKsolar's responses to our questions regarding the glass for LTAR program were deficient.

Furthermore, because tenKsolar provided only limited descriptions of its downstream products which it claimed were not subject to the order and failed to provide any specific information about its glass purchases, we continued to lack the necessary information which would have

[64] *See* tenKsolar's Section III Response at 8 and Exhibit 4 and tenKsolar April 21, 2017 SQ, at 6.
[65] *See* tenKsolar's Section III Response at 11 and Exhibit 3 and tenKsolar April 21, 2017 SQ, at 6.
[66] *See* the Initial Questionnaire, at III-5.
[67] *See* tenKsolar's Section III Response at 6 and 20.

allowed us to determine whether tenKsolar's downstream products were out-of-scope or whether tenKsolar's purchases of glass represented subsidy benefits under the provision of glass for LTAR program. We also continued to lack necessary information concerning whether any such provision of glass for LTAR represented subsidies which were tied to non-subject merchandise in accordance with section 351.525(b)(5) of the Department's regulations, or whether tenKsolar's purchases of aluminum extrusions from Tongtuo and Zehua constitute benefits under the Aluminum Extrusions for LTAR program.

Given the complexity of scope issues in aluminum extrusions proceedings, and because we have been faced with scope-related arguments in *Aluminum Extrusions 2013*, *Aluminum Extrusions 2014*, scope inquiries, and litigation related to potentially subject downstream products and kits containing aluminum extrusions, we attempted here to determine which of tenKsolar's products and exported merchandise are subject to the order, and thereby, the instant review.[68] Thus, the information requested by the Department was necessary for this administrative review.

Further, tenKsolar did not explain how it determined that tenKsolar has not received benefits under the "Import Tariff and Value Added Tax Exemptions for Foreign Invested Enterprises and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries Program."[69] tenKsolar also did not indicate whether it leases any land-use rights in the Zhaoqing New and High-Tech Industrial Development Zone, which is necessary to confirm non-use of this program.[70] Finally tenKsolar did not provide necessary information about tenKsolar's, Tongtuo's, and Zehua's freight expenses, which are necessary for our calculation of benefits for the aluminum extrusions for LTAR program.[71]

For these reasons, we did not have sufficient information necessary to evaluate: (1) whether tenKsolar purchased glass covered by the Provision of Glass for LTAR Program; (2) whether any benefits received under the Provision of Glass for LTAR Program can be tied to non-subject merchandise in accordance with 19 CFR 351.525(b)(5); (3) whether tenKsolar purchased aluminum extrusions to be incorporated into products which also contained tempered or laminate glass; (4) whether tenKsolar benefited from the Provision of Glass for LTAR program; (5) whether tenKsolar (as opposed to only tenKsolar's upstream suppliers) was a producer of subject merchandise; (6) whether further information is necessary to calculate benefits under the Provision of Glass for LTAR Program; and (7) whether further information is necessary to calculate benefits under the Aluminum Extrusions for LTAR Program.

Accordingly, in tenKsolar's April 21, 2017 SQ and in tenKsolar's April 27, 2017 SQ, we asked tenKsolar additional questions. Included among these questions, we repeated our requests for information included in the Initial Questionnaire, including requests for Tongtuo's and Zehua's complete audited financial statements, tenKsolar's complete tax return, tenKsolar's aluminum extrusions and glass purchases data, tenKsolar's, Tongtuo's, and Zehua's freight expenses, and

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[68] *See, e.g., Aluminum Extrusions 2013* and the accompanying Issues and Decision Memorandum at Comment 1, Comment 8, and Comment 9; and *Aluminum Extrusions 2014* and the accompanying Issues and Decision Memorandum at Comment 2, Comment 3, and Comment 4.
[69] *See* tenKsolar's Section III Response at 23 and tenKsolar April 21, 2017 SQ, at 1.
[70] *See* tenKsolar's Section III Response at 21 and Exhibit 3 and tenKsolar April 21, 2017 SQ, at 16.
[71] *See* tenKsolar's Section III Response at 18 to 20 and Exhibit and tenKsolar April 21, 2017 SQ, at 8 to 12.

complete responses to questions about Zehua's purchases of aluminum extrusions. In short, in tenKsolar's April 21, 2017 SQ and in tenKsolar April 27, 2017 SQ, we asked tenKsolar to provide information necessary for our calculation of subsidy benefits and subsidy rates for all reported programs, and information needed to allocate subsidy benefits received by Tongtuo and Zehua to tenKsolar.

tenKsolar submitted a combined response to these supplemental questionnaires.[72] In its response, tenKsolar claimed that it was providing notice of difficulty of meeting the Department's requirements in accordance with section 782(c)(1) of the Act.[73] Nevertheless, tenKsolar did not make any request for an extension of time to submit its responses, did not further elaborate on the specific nature of its difficulties, and did not suggest alternative forms to provide the requested information. tenKsolar merely stated "{t}enKsolar informs the department that the costs of responding fulling {*sic.*} to the supplemental questionnaires cannot be borne by tenKsolar at this time. Thus, tenKsolar provides notice of difficulty meeting the department's requirements in accordance with 19 U.S.C section 1777m(c)."[74] Furthermore, tenKsolar made a statement acknowledging that despite these difficulties, it was providing only a "very limited response."[75]

In response to tenKsolar's April 21, 2017 SQ and tenKsolar's April 27, 2017 SQ, tenKsolar provided commercial invoices and U.S. CBP entry documentation for importation of aluminum extrusions parts and solar modules or solar panels. tenKsolar also explained that: (1) the solar modules and solar panels which it exported were imported under, and are subject to, the order on crystalline silicon photovoltaic cells, whether or not assembled into modules, from the People's Republic of China (C-570-980) and not the aluminum extrusions order; (2) the aluminum extrusions parts which it exported as separate products were imported under the aluminum extrusions order; (3) the order on crystalline silicon photovoltaic cells, whether or not assembled into modules, from the People's Republic of China (C-570-980) already includes duties related to glass provided for LTAR; and (4) it did not export glass as a stand-alone item, but only incorporated into a solar module or solar panel.[76] tenKsolar also confirmed the Department's list of tenKsolar's reported subsidy programs.[77] In response to tenKsolar April 21, 2017 SQ, tenKsolar answered certain questions regarding Tongtuo's processing of aluminum extrusions inputs, provided the relevant HTSUS numbers of aluminum extrusions inputs purchased from Tongtuo, explained that the aluminum extrusions parts it incorporated as inputs into downstream products which it exported to the United States and the aluminum extrusions parts it exported to the United States were one and the same, and provided publicly ranged POR sales data.[78] In summary, tenKsolar provided a complete response to two of our questions, incomplete responses to three questions, and provided no response to the remaining 29 questions contained in tenKsolar's April 21, 2017 SQ and tenKsolar April 27, 2017 SQ.

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[72] *See* tenKsolar's May 1, 2017 SQR.
[73] *Id.* at 1 to 2.
[74] *Id.* at 2.
[75] *Id.* at 2.
[76] *Id.* at 2 to 3.
[77] *Id.* at 3 to 4.
[78] *Id.* at 4 to 5.

Despite providing the above information, tenKsolar failed to provide the vast majority, and indeed certain of the most important, necessary information requested. tenKsolar failed to provide: (1) Tongtuo's and Zehua's complete audited financial statements; (2) tenKsolar's complete tax returns (including attachments and schedules); (3) additional information regarding tenKsolar's, Tongtuo's, and Zehua's financial statements; (4) additional information regarding tenKsolar's managing director; (5) additional information regarding tenKsolar's downstream products; (6) additional information about tenKsolar's purchases of glass; (7) additional information about other forms of financing; (8) additional information about Zehua's purchases of aluminum extrusions; (9) additional information about the Import Tariff and Value Added Tax Exemptions for Foreign Invested Enterprises and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries Program; (10) additional information about the Provision of Land-Use Tax for Firms Located in the Zhaoqing New and High-Tech Industrial Development Zone Program; (11) additional information about tenKsolar's Tongtuo's and Zehua's freight expenses; and (12) additional information about tenKsolar's purchases of aluminum extrusions (including information needed to allocate Tongtuo and Zehua subsidy benefits to tenKsolar, and to calculate tenKsolar's subsidy benefits under the aluminum extrusions for LTAR program).[79] Most significantly, by failing to provide Zehua's and Tongtuo's complete financial statements and tenKsolar's complete tax returns, and by failing to provide other information regarding affiliation, the administrative record contained only limited information regarding cross-ownership, and for confirming non-use other countervailable subsidies programs, rather than the complete range of information necessary for making such determinations.

Regarding the Government of the PRC's and tenKsolar's arguments that AFA is not warranted, and that sufficient information is on the record to calculate a subsidy rate for tenKsolar, we disagree.[80] Because tenKsolar failed to respond to a large number of the Department's questions, we reasonably concluded that necessary information is not on the record, in accordance with section 776(a)(1) of the Act. Further, in accordance with sections 776(a)(2)(A)-(C) of the Act, the Department reasonably concluded that tenKsolar withheld requested information, failed to provide information in the form and manner requested by the Department, and significantly impeded this proceeding. Furthermore, AFA is warranted in accordance with section 776(b)(2) of the Act because tenKsolar failed to cooperate by not acting to the best of its ability to comply with a request for information. Finally, we find that the information which tenKsolar failed to provide is fundamentally necessary and critically important to our analysis of tenKsolar's affiliations and establishing non-use of countervailable subsidy programs, such that partial AFA is not adequate to ensure that that tenKsolar "does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[81]

Regarding the Government of the PRC's argument that it responded and cooperated fully to the Department's questionnaires to the Government of the PRC, that may or may not be true; however, given tenKsolar's lack of cooperation, this argument is one we need not assess.[82] tenKsolar did not cooperate, and did not respond to the Department's questions. Whether the

[79] *See* Initial Questionnaire, at III-15 to III-16.
[80] *See* Government of the PRC Case Brief at 1 and 10 (citing tenKsolar's May 1, 2017 SQR and the Preliminary Decision Memorandum at 9), and tenKsolar's Submission at 1 to 3.
[81] *Id.*
[82] *See* Government of the PRC Case Brief at 1 and 4.

Government of the PRC cooperated is not the basis for our decision to use FA or AFA with regard to tenKsolar.

Regarding the Government of the PRC's argument that tenKsolar made its best efforts to provide all the information requested by the Department and tenKsolar's argument that it cooperated to the best of its ability, and provided all information available to it, we disagree. tenKsolar provided no evidence or any compelling (or indeed specific) reasons as to why it was unable to provide the information requested by the Department. tenKsolar merely stated that "the costs of responding to the supplemental questionnaire cannot be borne by tenKsolar at this time."[83] Furthermore, tenKsolar's argument that it provided all information reasonably available to it is contradicted by the plain fact that tenKsolar failed to answer the Department's questions about its products, potential affiliations, and financial statements, or to provide its own complete tax returns (or alternatively, to explain why this information and these documents were not available).[84]

Regarding the Government of the PRC's argument that tenKsolar alerted the Department as to its difficulties in responding to Department questions, we disagree.[85] Modifications necessary to avoid placing an unreasonable burden on a respondent are contemplated by the statute, if respondents promptly report difficulties in responding to requests for information, together with "a full explanation and suggested alternative forms in which such party is able to submit the information."[86] As explained above, section 782(c)(1) of the Act also provides:

> {i}f an interested party, promptly after receiving a request from the administering authority…notifies the administering authority…that such party is unable to submit the information requested in the requested form and manner, together *with a full explanation and suggested alternative forms in which such party is able to submit the information*, the administering authority… {the Department} shall consider the ability of the interested party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party. (Emphasis added.)

tenKsolar did not promptly notify the Department of its difficulties in accordance with section 782(c)(1) of the Act and made no requests for modification, explanations of its difficulties, or suggestions for alternative reporting.

For the Department to consider a respondent's inability to provide specific information and potentially to modify the reporting requirements, the respondent needs to provide the "a full

[83] *See* tenKsolar's May 1, 2017 SQR at 1.
[84] *See* Initial CVD Questionnaire at III-6, III-14 to III-16 tenKsolar's Section III Response at 7, 8, 18, and 20; tenKsolar April 21, 2017 SQ at 4 to 6, and 7 to 10; tenKsolar April 27, 2017 SQ at 4; and tenKsolar's May 1, 2017 SQR.
[85] *Id.* at 3 and 9-10 (citing tenKsolar's May 1, 2017 SQR at 1 to 2).
[86] *See* section 782(c)(1) of the Act.

explanation" of such difficulties, as well as "suggested alternative forms in which such party is able to submit the information."[87] The Court of International Trade and the U.S. Court of Appeals for the Federal Circuit have confirmed that the statutory requirements of section 782(c) of the Act are not met where the party does not fully explain why it is unable to submit the requested information or does not suggest alternatives for supplying the deficient information.[88] tenKsolar did neither.[89] In fact, tenKsolar did not suggest in any way that it was prepared to cooperate further.[90] Rather, tenKsolar, in explaining its failure to respond fully, merely claimed that it was unable to cooperate further because the costs of responding further could not be borne by the company.[91] However, the SAA states that section 782(c) of the Act is "intended to alleviate some of the difficulties encountered by small firms and firms in developing countries, particularly with regard to the submission of data in computerized form {but}is not intended to exempt small firms from the requirements of the antidumping and countervailing duty laws."[92] Thus, to benefit from a modification of the reporting requirements, all respondents, even small firms, must fully explain why they are unable to submit the requested information and must suggest alternatives for supplying the requested information.

Moreover, tenKsolar failed to "promptly" notify the Department in accordance with section 782(c)(1) of the Act and did not notify the Department until the final hour of the day on which it was required to submit a response, failed to explain its difficulties (besides tenKsolar's general inability to bear the costs), failed to suggest any sort of modification in the reporting requirements, and did not make any request for additional time.[93] Accordingly, the Department reasonably did not interpret these statements as an adequate request for a modification of the reporting requirements under Section 782(c)(1) of the Act.[94] Moreover, tenKsolar did not request additional time to respond, or for the Department to consider its claim of reporting difficulties.[95] Rather, by notifying the Department of its difficulties on the deadline for its responses, by not fully explaining its difficulties, by not requesting any modifications of the reporting requirements, and by not requesting additional time by which to respond or for the Department to consider its claim of difficulties under section 782(c)(1) of the Act, tenKsolar indicated that it was prepared to let its "limited response" suffice as its answer to the Department's supplemental questions.[96]

There is no basis for tenKsolar's claims that it reported difficulties to the Department and that the Department was subsequently required to respond. Given tenKsolar's broad claim of difficulties related to the overall costs of responding fully, made at the final hour of the due date of a series of supplemental questionnaire responses, without a full explanation of tenKsolar's difficulties or a request for any specific accommodation (such as an extension of time or specific modifications

[87] *See* section 782(c)(1) of the Act.
[88] *See China Steel*, *Maverick*, and *Kawasaki*.
[89] *See* tenKsolar's May 1, 2017 SQR at 1-2.
[90] *Id.* at 1-2.
[91] *Id.* at 1-2.
[92] *Id.* at 7 (citing SAA at 865).
[93] *See* tenKsolar's May 1, 2017 SQR at 1-2.
[94] *See* Section 782(c)(1) of the Act.
[95] *See* Section 351.302(b) and (c) of the Department's regulations.
[96] *See* tenKsolar's May 1, 2017 SQR at 1-2.

of the reporting requirements), it would, therefore, not be appropriate for the Department to modify its reporting requirements. Therefore, given the inadequacies of tenKsolar's responses, the use of facts available is necessary, and tenKsolar's failure to cooperate to the best of its ability warrants the application of AFA.

Regarding the Government of the PRC's arguments that the information requested in tenKsolar's April 21, 2017 SQ and in tenKsolar's April 27, 2017 SQ was particularly burdensome and tenKsolar's argument that requested information was demanding and unreasonable, we disagree.[97] The information requested by the Department in its supplemental questionnaire was carefully limited to the information which the Department needed to complete its analysis and make an accurate calculation of tenKsolar's subsidies benefits. The Department requested several pieces of information that we lacked, including several pieces of information which tenKsolar had previously failed to provide.[98] As explained above, these include Tongtuo's and Zehua's complete financial statements and tenKsolar's tax returns, additional information regarding tenKsolar's, Tongtuo's, and Zehua's financial statements, information about tenKsolar's potential affiliations, and purchases of aluminum extrusions, and glass and aluminum extrusions purchases data.[99] All of this information is necessary to our analysis, and the Department's request for complete information and available documentation necessary to conduct our analysis is not unreasonable. Moreover, tenKsolar never explained why it was unable to provide specific documents and specific pieces of information. Rather, tenKsolar indicated that the cost of providing the requested information (in general) was the decisive factor.[100]

Regarding the Government of the PRC's argument that because the Department declined to verify tenKsolar's reported information, the Department must use this information to calculate subsidy benefits for tenKsolar, we disagree.[101] As further explained below, the Department need not verify a respondent's reported information if the respondent has demonstrated that it is uncooperative, and has failed to provide significant amounts of information which are crucial to the Department's overall analysis.[102] The Government of the PRC cites *China Kingdom Import & Export Co., Ltd. v. United States*, arguing that the refusal to verify factual information is not the equivalent of finding that such information cannot be verified.[103] However, the Department does not find information on the record of this review to be unverifiable because the Department has determined not to verify tenKsolar. Rather, necessary information is unverifiable because of tenKsolar failed to cooperate to the best of its ability by declining to provide the requested information and supporting documentation that the Department would need to verify the reported information, and because the record evidence which has been provided is insufficient to fully confirm claims related to affiliation and non-use of certain programs. For example, tenKsoalar failed to provide Zehua's and Tongtuo's complete financial statements and information

[97] *See* Government of the PRC Case Brief at 9 and tenKsolar's Submission at 1-3.
[98] *See* tenKsolar April 21, 2017 SQ; and tenKsolar April 27, 2017 SQ.
[99] *See, e.g.,* tenKsolar's Section III Response at 6 to 8, Exhibit 3, and Exhibit 4; and tenKsolar April 21, 2017 SQ at 4-6.
[100] *See* tenKsolar's May 1, 2017 SQR at 1.
[101] *See* Government of the PRC Case Brief at 1 to 2 (citing *China Kingdom*). *See also Shelving* and the accompanying Issues and Decision Memorandum at 45-46.
[102] *See Glycine* IDM, at Issue 6.
[103] *See* Government of the PRC Case Brief, at 8.

regarding its own purchases of aluminum extrusions. The Department would need to examine and ask questions regarding the parts of the financial statements at verification, and indeed to reconcile figures in the financial statements to Tongtuo's and Zehua's normal books and records. Because tenKsolar failed to provide these financial statements and failed to answer questions about them prior to verification, the Department's conclusions that tenKsolar's statements regarding Tongtuo's and Zehua use of subsidy programs and affiliations cannot be verified within the meaning of 776(a)(2)(B) of the Act are entirely reasonable. In *Glycine*, the Department explained that the objective of verification was "not to examine new information, but to verify information that is already on the record."[104] Having found in the *Preliminary Results* that there was insufficient information on the record to establish non-use of certain programs, the Department could not alter that decision without accepting new factual information while conducting verification.

In this case, the missing information prevented the Department from making an accurate calculation of tenKsolar's subsidy rates, including through determination of additional cross-owned affiliates and confirmation of unreported subsidy benefits. Moreover, tenKsolar failed to respond to several questions and to provide its own complete tax returns, provided no specific reasons why these pieces of information were not available, and claimed to be unable to bear the cost of responding to the vast majority of the Department's supplemental questions.[105] Therefore, there is no reasonable basis to claim that tenKsolar's reported information could have been subject to verification.

Further, in order to conduct a verification, the Department would have needed to examine the very documents tenKsolar had repeatedly failed to provide in its responses and to confirm the very information which tenKsolar reportedly could not answer in its supplemental questionnaire responses. The Government of the PRC implies that the Department would have been able to acquire these necessary pieces of information and documents if the Department had proceeded to verify tenKsolar, and had accepted at verification the new information and documents tenKsolar previously failed to provide, and claimed to be generally unable to provide. However, the Department cannot verify information which tenKsolar previously failed to provide, and which tenKsolar has claimed to be generally unable to provide, by collecting such information at verification.[106] As explained above, this information included information related to affiliations, tax returns, and complete financial statements, tenKsolar's and Zehua's glass and aluminum extrusions purchases, and complete descriptions of tenKsolar's downstream products containing aluminum extrusions and/or glass, information which serves as the starting place of our analyses regarding cross-ownership, use of countervailable subsidy programs, allocation of subsidy benefits, and scope-related issues bearing on the identification of certain subsidy benefits and attribution thereof.[107] It is not possible for the Department to conduct a proper analysis upon the collection of such complex, necessary, and fundamental information for the first time at verification.

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[104] *See Glycine* IDM, at Issue 6.
[105] *See* tenKsolar's May 1, 2017 SQR.
[106] *See, e.g., Glycine* IDM, at Issue 6.
[107] *See* tenKsolar April 21, 2017 SQ at 4 to 6, and 7 to 10; tenKsolar April 27, 2017 SQ at 4; and tenKsolar's May 1, 2017 SQR at 2 to 6; and tenKsolar's May 1, 2017 SQR.

Regarding the Government of the PRC's argument that tenKsolar does not have access to the complete financial statements of its unaffiliated suppliers, Zehua and Tongtuo, and other requested information, and therefore cannot be expected to provide all information requested with respect to Tongtuo and Zehua, and tenKsolar's argument that it does not control Tongtuo and Zehua, and so cannot be held responsible for its inability to demand complete financial statements from Tongtuo and Zehua, we disagree.[108] tenKsolar stated clearly in this proceeding that it was responding on behalf of its upstream suppliers.[109] Also, tenKsolar reported that Tongtuo and Zehua produced the subject merchandise tenKsolar exported, and although its responses were not complete, tenKsolar provided extensive detailed information, including BPI information, about Tongtuo and Zehua and submitted company certifications of the information contained in tenKsolar's responses.[110] Further, tenKsolar did not claim in tenKsolar's May 1, 2017 SQR or elsewhere on the record that Tongtuo or Zehua had failed to provide information to tenKsolar or had failed to cooperate with the Department's requests for information, did not report any difficulties in terms of getting Tongtuo and Zehua to provide information or documents, and did not suggest any modifications in the reporting requirements due to any such circumstances.[111] On the contrary, tenKsolar merely cited the costs of responding further as the reason for its failure to respond fully.[112] Indeed, tenKsolar's and the Government of the PRC's arguments that tenKsolar should not be expected to induce Tongtuo and Zehua to cooperate and that tenKsolar should not be penalized for Tongtuo and Zehua's failure to cooperate appear for the first time in tenKsolar's case brief and are contradicted by tenKsolar's original explanation that the costs involved were the reason for its failure to respond, as indicated in tenKsolar's May 1, 2017 SQR. Finally, the Government of the PRC's argument that tenKsolar was incapable of inducing Tongtuo and Zehua to provide information does not account for the fact that tenKsolar failed to provide some of the most crucial information which it clearly possesses and could clearly provide without undue difficulty, such as its own complete tax returns, information about its products, information about its potential affiliations, and information about its own glass and aluminum extrusions purchases.

Regarding tenKsolar's argument that it was subjected to time constraints which were the result of the Department waiting over six months to select tenKsolar for review, we disagree.[113] As an initial matter, the Department's respondent selection process in the aluminum extrusions proceedings, and in this review in particular, have been uniquely time-consuming and complicated, given the number of companies for whom a review was requested, and subsequent issues regarding review withdrawal requests.

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[108] *See* Government of the PRC Case Brief at 1 and 12 (citing *Olympic Adhesives, Inc. v. United States*, 899 F.2d 1565, 1572 (Fed. Cir. 1990) (*Olympic*); and *AK Steel Corp. v. United States*, 21 CIT 1204, 1223 (1997) (*AK Steel*); *NSK Ltd. v. United States*, 416 F. Supp. 2d 1334, 1341 (CIT 2006) (*NSK*)).
[109] *See* e.g., tenKsolar's February 3, 2017 Affiliation Response (tenKsolar AFFR) at Tongtuo company certification, Zehua company certification and 1 to 2, 1 to 2, and Attachments B and C; and tenKsolar's Section III Response at Tongtuo company certification, Zehua company certification, 1-37, and Exhibits 1, 3, 5, 7, 8, and 9.
[110] *Id.*
[111] *See* tenKsolar's May 1, 2017 SQR at 1 to 2.
[112] *Id.*, at 1 to 2.
[113] *See* tenKsolar's May 1, 2017 SQR at 2.

However, regardless of these time constraints, none of these facts are relevant to tenKsolar's failure to respond, because these time constraints were not a direct constraint on the amount of time tenKsolar had to respond to the Departments questions. The amount of time tenKsolar had to respond to the Department's requests hinged on deadlines set by the Department, consistent with deadlines set in administrative reviews for responding to such requests, and not on the statutory deadline for the Department to complete the *Preliminary Results*. However, tenKsolar did not request additional time to respond to the Department's questionnaire or any modification of the reporting requirements.

Furthermore, as explained above, tenKsolar gave no indication that it was having difficulty responding to the Department's supplemental questionnaires until the final hour of the final day on which tenKsolar's submissions were due.[114] Also, tenKsolar's final questionnaire responses do not point to issues with deadlines set by the statute or the Department in this segment.[115] Rather, tenKsolar's argument regarding the deadlines set by the Department appears for the first time in tenKsolar's case brief and is contradicted by tenKsolar's original explanation that the costs involved were the reason for its failure to respond, as indicated in tenKsolar's May 1, 2017 SQR.[116] In light of the failure to make any attempt to inform the Department of its difficulties, to request additional time, to describe specific difficulties, or to suggest alternative reporting, tenKsolar's responses can only be viewed as so inadequate as to be clearly uncooperative.

Because of the foregoing, we find that use of facts available is warranted, that total AFA is warranted. Therefore, consistent with our findings in the *Preliminary Results*, we continue to apply a CVD rate based on total AFA to tenKsolar in these final results.

Comment 2: Inclusion of Alleged Non-Use Programs in TenKsolar's Rate Calculation.

Government of the PRC Case Brief:

- The record information submitted by both the Government of the PRC and tenKsolar confirms that many programs were not used by tenKsolar during the POR. Accordingly, the Department must not apply total AFA to these "non-use" subsidy programs.[117]
- The record evidence shows that the Department has sufficient information to conclude in the final results that several subsidy programs included in the AFA rate calculation were not used by tenKsolar during the period of review.[118]

tenKsolar Case Brief:

- tenKsolar confirmed that it only used certain programs. Yet, the Department calculated

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[114] *See* tenKsolar's May 1, 2017 SQR at 1-2.
[115] *Id.*, at 1-2.
[116] *See* tenKsolar Case Brief at 2.
[117] *See* Government of the PRC Case Brief at 1-2 and 5-9.
[118] *Id.*, at 1-9.

a 198.61 AFA rate, including AFA rates from a 10-page list of programs, only a few of which were used by tenKsolar and its suppliers.[119]

- If the Department persists in ignoring the record information provided by tenKsolar, the Department should assign a more reasonable and accurate CVD rate to tenKsolar by using AFA rates only for those programs which tenKsolar and its upstream suppliers actually used.[120]

Petitioner Rebuttal Brief:

- The Department should continue to include certain programs in its calculation of a subsidy rate for tenKsolar, as the record contains insufficient evidence to confirm non-use of these programs.[121]
- The Department properly found that the selective information that tenKsolar submitted "is so incomplete that it cannot serve as a reliable basis for calculating a subsidy rate and cannot be used without undue difficulties."[122]

Department's Position:
We disagree with the Government of the PRC and tenKsolar. As explained above, when selecting an 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."[123] 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."[124] Therefore, the Department's practice when applying total AFA has been to determine, as AFA, that the respondent used each of the programs examined in the proceeding which were found to be countervailable, unless the record information fully confirmed that the respondent company could not have received benefits from the program.[125] This includes self-reported programs and programs which the Department has found countervailable as AFA.[126]

The Government of the PRC and tenKsolar argue that the Department should revise tenKsolar's rate to omit programs for which tenKsolar claimed non-use. The Government of the PRC cites 60 individual programs for which it claims that record evidence confirms non-

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[119] *See* tenKsolar Case Brief at 3.
[120] *See* tenKsolar Case Brief at 1 and 3.
[121] *See* Petitioner Rebuttal Brief at 1 and 9-10 (citing Preliminary Decision Memorandum at 10-12).
[122] *Id.*, at 1 and 9 (citing Preliminary Decision Memorandum at 23).
[123] *See SRAMS from Taiwan*; *see also Drill Pipe from the PRC.*
[124] *See* SAA, at 870.
[125] *See Aluminum Extrusions from the PRC Investigation*, and accompanying Issues and Decision Memorandum at "Application of Adverse Inferences: Non-Cooperative Companies" section.
[126] *See, e.g.*, *Aluminum Extrusions 2013* and *Aluminum Extrusions 2014*; *see also, e.g.*, *Certain Cold-Rolled Carbon Steel Flat Products from Korea; Final Affirmative CVD Determination*, 67 FR 62102 (October 3, 2002), and accompanying Issues and Decision Memorandum at "Methodology and Background Information"; *and Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2017), at 60646-47.

use.[127] However, as explained in the *Preliminary Results*, we were unable to confirm non-use of certain programs based on the available record information. Although we issued supplemental questionnaires to tenKsolar in an effort to obtain the necessary information, tenKsolar's "limited response" to the Department's supplemental questionnaires failed to provide information necessary to confirm non-use of certain programs. Specifically, tenKsolar failed to provide complete financial statements for its upstream producers or to respond to certain questions about the incomplete financial statements.[128] Due to the lack of information necessary to confirm non-use of certain programs, the Department calculated a subsidy rate for tenKsolar on the basis of total AFA and including those programs that the Government of the PRC and tenKsolar claim, without supporting evidence, that tenKsolar did not use.

Comment 3: Inclusion of Geographically Limited Programs intenKsolar's Rate Calculation.

Government of the PRC Case Brief:

- The Government of the PRC has confirmed that the mandatory respondent, tenKsolar, and its unaffiliated aluminum producers of the subject merchandise or input suppliers, Tongtuo Zehua only have a presence in Shanghai, Jiangyin City, and Suzhou City.[129]
- The Department should exclude the subsidy rates calculated for programs that are only applicable to enterprises located in particular areas that are outside of the geographic areas where tenKsolar and its upstream suppliers have a presence.[130]
- A respondent company or its cross-owned affiliate(s) could not apply for, use, or benefit from programs which are geographically limited if the respondent does have a presence in the area.[131]

tenKsolar Case Brief:

- tenKsolar and its suppliers could not have used many of the programs included in the Department's AFA rate calculation because they relate to specific regions of China to which tenKsolar and its suppliers have no connection.[132]

Petitioner Rebuttal Brief:

- The Department properly included programs pertaining to specific regions or areas in calculating the total AFA subsidy rate.[133]
- tenKsolar failed to provide critical information regarding potential affiliations and

[127] *See* Government of the PRC Case Brief, at 5-8.
[128] *See* Preliminary Decision Memorandum, at 11-12.
[129] *See* Government of the PRC Case Brief at 14 (citing Government of the PRC March 2, 2017 IQR at 1).
[130] The Government of the PRC identifies 42 programs which they claim tenKsolar, Tongtuo, and Zehua could not have benefited from because tenKsolar, Tongtuo, and Zehua have no presence in specific geographic region. *See* Government of the PRC Case Brief at 2 and 15 to 16.
[131] *See* Government of the PRC Case Brief at 14.
[132] *See* tenKsolar Case Brief at 3.
[133] *See* Petitioner Rebuttal Brief at 13.

cross-ownership, preventing the Department from confirming the identity of any potential cross-owned companies.[134]

- The Department cannot confirm the non-use of certain regional or provincial programs because tenKsolar deprived the Department of the ability to confirm the specific areas that tenKsolar has a presence in, directly or through any potentially cross-owned companies.[135]

Department's Position:
We disagree with the Government of the PRC and tenKsolar. As explained above, when selecting an 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."[136] 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."[137] Therefore, the Department's practice when applying total AFA has been to make a determination that the respondent used each of the programs examined in the proceeding which were found countervailable, unless the record information fully confirmed that the respondent company could not have received benefits from the program.[138] This includes programs for which the Department initiated the original CVD investigation or, based upon a new subsidy allegation, requested information about the program from the Government of the PRC and for which the Government of the PRC did not provide the requested information or provided incomplete information, and other programs for which the Department found countervailability as AFA.[139]

The Government of the PRC and tenKsolar argue that the Department should revise tenKsolar's rate calculation to omit programs which tenKsolar claimed neither it nor its suppliers used, due to specific geographic requirements of those programs. tenKsolar cites to 44 individual geographically limited programs for which it claims the record evidence confirms tenKsolar's non-use.[140] We were unable to confirm non-use of certain programs based on the available record information. Although we sent multiple supplemental questionnaires to tenKsolar in an effort to obtain the necessary information, tenKsolar's "limited response" to the Department's supplemental questionnaires failed to provide

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[134] *Id.* (citing Preliminary Decision Memorandum at 12; letter from the petitioners, "Aluminum Extrusions from the People's Republic of China: Comments on tenKsolar's Affiliation Response," Feb. 21, 2017; *and* Letter from the petitioners, "Aluminum Extrusions from the People's Republic of China: Comments on tenKsolar's Affiliated Companies Supplemental Questionnaire Response," March 16, 2017).
[135] *Id*.
[136] *See SRAMS from Taiwan*; *see also Drill Pipe from the PRC*.
[137] *See* SAA, at 870.
[138] *See Aluminum Extrusions from the PRC Investigation*, and accompanying Issues and Decision Memorandum at "Application of Adverse Inferences: Non-Cooperative Companies" section.
[139] *See, e.g., Aluminum Extrusions 2013* and *Aluminum Extrusions 2014*; *see also, e.g., Certain Cold-Rolled Carbon Steel Flat Products from Korea; Final Affirmative CVD Determination*, 67 FR 62102 (October 3, 2002), and accompanying Issues and Decision Memorandum at "Methodology and Background Information"; *and Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2017), at 60646-47.
[140] *See* Government of the PRC Case Brief, at 5-8.

information necessary to confirm non-use of certain programs. Specifically, tenKsolar failed to provide complete financial statements for its upstream producers or to respond to specific questions about aspects of the incomplete financial statements placed on the record and to other specific questions related to tenKsolar's potential affiliations and cross-ownership.[141] Furthermore, the information requested by the Department would have included details about the locations of tenKsolar's operations; without this information on the record, there is insufficient information to allow us to determine whether tenKsolar or its cross-owned companies availed themselves of regional subsidy programs. Due to the lack of information necessary to confirm non-use of certain programs, the Department calculated a subsidy rate for tenKsolar on the basis of total AFA. We continue to find that there is insufficient record evidence to confirm the non-use of certain programs by tenKsolar. Therefore, we will continue to calculate an AFA rate inclusive of programs for which tenKsolar claimed non-use for these final results.

Comment 4: Inclusion of Programs Which Have Allegedly Been Terminated in the AFA Rate Calculation.

Government of the PRC Case Brief:

- The Department should not include the following programs in an AFA rate calculation, as these programs have been terminated: the State Key Technology Renovation Project Fund Program; the Import Tariff and VAT Exemptions for Foreign-Invested Enterprises (FIEs) and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries Fund Program; and the VAT Rebates on FIE Purchases of Chinese-Made Equipment Fund Program.[142]

[141] *See* Preliminary Decision Memo, at 11-12. *See also* tenKsolar April 27, 2017 SQ at 4 and tenKsolar's May 1, 2017 SQR.

[142] The Government of the PRC argues that the Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries Program was terminated in 2008 and that the VAT Rebates on FIE Purchases of Chinese-Made Equipment Program was terminated in 2009. *See* Government of the PRC Case Brief at 14 (citing *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2014*, 81 FR 71056 (Oct. 14, 2016) (*Off-Road Tires 2014 Preliminary Results*) and the accompanying Preliminary Decision Memorandum at 36-37 (Off-Road Tires 2014 Preliminary Decision Memorandum) (unchanged in *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2014*, 82 FR 18285 (April 18, 2017) (*Off-Road Tires 2014 Final Results*), in which the Government of the PRC claimed that the State Key Technology Renovation Project Fund Program was terminated in 2008; *Certain Uncoated Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 81 FR 3110 (Jan. 20, 2016) (*Paper*) and the accompanying Issues and Decision Memorandum (*Paper* IDM) at 35-36; *Truck and Bus Tires from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, in Part, and Alignment of Final Determination With Final Antidumping Determination,* 81 FR 43557 (July 5, 2016) (*Truck and Bus Tires Preliminary Determination*) and the accompanying Decision Memorandum at 36-37 (*Truck and Bus Tires Preliminary Determination* PDM)).

Petitioner Rebuttal Brief:

- The Department should continue to include in the AFA rate calculation certain allegedly terminated programs, specifically the State Key Technology Renovation Project Fund Program; the Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries Program; and the VAT Rebates on FIE Purchases of Chinese-Made Equipment Program.[143]
- In the Government of the PRC's March 2, 2017 IQR, the Government of the PRC indicated that tenKsolar, Tongtuo, and Zehua did not benefit from the State Key Technology Renovation Project Fund Program, the Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries Program, or the VAT Rebates on FIE Purchases of Chinese-Made Equipment Program, but in never indicated that these particular programs had been terminated.[144]
- The Government of the PRC provided no evidence the VAT Rebates on FIE Purchases of Chinese-Made Equipment Program has been terminated.[145]
- The Government of the PRC cites *Off-Road Tires 2014 Preliminary Results*, *Uncoated Paper*, and *Truck and Bus Tires Preliminary Determination* to support its claims that the State Key Technology Renovation Project Fund Program, the Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries Program have been terminated.[146] However, the Department rejected the Government of the PRC's arguments regarding the termination of these programs in *Steel Cut-to-Length Plate*, where the Department also noted that the Government of the PRC had not affirmatively stated in its questionnaire response that the programs were terminated.[147]
- The Department determined in *Off-Road Tires 2014 Preliminary Results*, *Uncoated Paper*, and *Truck and Bus Tires Preliminary Determination* that the State Key Technology Renovation Project Fund Program and the Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries Fund Program were still providing benefits, and reiterated this assessment in *Steel Cut-to-Length Plate*.[148]
- The Department also found in *Steel Cut-to-Length Plate* that even a previously terminated program could be countervailable if it provided residual benefits, and therefore included the State Key Technology Renovation Project Fund and the Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries subsidy programs in the total AFA rate in that proceeding.[149]

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[143] *See* Petitioner's Rebuttal Brief at 2 and 10.
[144] *Id.* at 11.
[145] *Id.* at 12.
[146] *Id.* at 11-12 (citing Government of the PRC Case Brief at 14).
[147] *Id.* at 12 (citing *Certain Carbon and Alloy Steel Cut-to-Length Plate from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 82 FR 8507 (January 26, 2017) (*Cut-to-Length Plate*) and the accompanying Issues and Decision Memorandum (*Cut-to-Length Plate* IDM) at Comment 3).
[148] *Id.* at 12 (citing *Cut-to-Length Plate* and the accompanying Issues and Decision Memorandum at Comment 3). *See also Off-Road Tires 2014 Preliminary Results*, *Paper*, and *Truck and Bus Tires Preliminary Determination*.
[149] *Id.* at 12 (citing *Cut-to-Length Plate* IDM at Comment 3).

Department's Position:
We disagree with the Government of the PRC. To determine whether a respondent could have benefitted from an allegedly terminated program, the Department must consider whether a program-wide change has occurred with respect to the alleged termination of the program. Under 19 CFR 351.526(d), a program-wide change consists of the termination of the program, and a determination that: (1) no residual benefits continue to be received under the program; and (2) no substitute program has been introduced.[150]

Further, as the Department explained in *Off-Road Tires 2014 Preliminary Results*, "even if the program is terminated, the Department must determine if any past receipt of this grant is still benefitting the responding companies."[151] To determine whether a terminated program could have benefitted a respondent, the Department must also determine whether the program could provide non-recurring benefits (residual or otherwise).[152] If the program does not provide non-recurring benefits, the Department must determine whether any benefits (residual or otherwise) might have been provided to the respondent(s) during the POR.[153] If the program could provide non-recurring benefits, the Department must determine whether any benefits (residual or otherwise) might have been provided to the respondent(s) during the period including the POR, and a period encompassing a certain number of years in addition to the POR which are equal to the average useful life (AUL) of the firm's assets (the AUL period).[154]

The Government of the PRC argues that in determining tenKsolar's AFA rate, the Department should not utilize two programs which the Government of the PRC has claimed on the record of other proceedings were terminated in 2008: the State Key Technology Renovation Project Fund Program; and the Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries Fund Program. The Government of the PRC further argues that we should also not include the VAT Rebates on FIE Purchases of Chinese-Made Equipment Fund Program, which the Government of the PRC argues was terminated in 2009.

Benefits received under non-recurring programs are allocated across the AUL of the firm's assets.[155] Because the AUL established for aluminum extrusions producers in this proceeding

[150] *See e.g., Countervailing Duty Investigation of Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Final Affirmative Determination*, 81 FR 75037 (October 28, 2016) (*Transfer Drive Components*) and the accompanying Issues and Decision Memorandum (*Transfer Drive Components* IDM) at Comment 18; *Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People's Republic of China: Final Affirmative Determination*, 82 FR 8405 (January 25, 2017) (*Silica Fabric*) and the accompanying Issues and Decision Memorandum (*Silica Fabric* IDM) at Comment 23; and *Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017) and the accompanying Issues and Decision Memorandum (*Flanges* IDM) at Comment 2.
[151] *See* Off-Road Tires 2014 Preliminary Decision Memorandum at 37 (unchanged in *Off-Road Tires 2014 Final Results*).
[152] *See* 19 CFR 351.524(c)(2)(i)-(iii); *see also*, *e.g.*, *Transfer Drive Components* IDM, at Comment 18; *Silica Fabric* IDM, at Comment 23; *and Flanges* IDM, at Comment 2.
[153] *See* 19 CFR 351.524(c)(2)(i)-(iii).
[154] *See* 19 CFR 351.524(d).
[155] *Id.*

is 12 years, a benefit received under a non-recurring program during or after 2003 would be allocated into the POR.[156] In the instant review, tenKsolar failed to provide information central to our examination of affiliations and cross-ownership of itself and its upstream suppliers.[157] Therefore, as explained above, the record contains insufficient information to determine whether tenKsolar or its upstream suppliers, or any potentially cross-owned affiliates thereof, received benefits under these programs prior to their alleged termination date. Likewise, since Changzhou Jinxi did not respond to any of the Department's requests for information, we have no record evidence as to its use of these programs.

Accordingly, the Government of the PRC's claim that these programs were terminated is not compelling unless it can be established: (1) that the program was in fact terminated; (2) that a substitute program was not introduced; (3) that these programs did not continue to confer residual benefits; and (4) that none of the benefits received under these programs, including residual benefits, were non-recurring benefits which were received during or after 2003.

Regarding the State Key Technology Renovation Project Fund Program, the program has been found by the Department to provide non-recurring benefits.[158] The Government of the PRC claims that the program has been terminated as of 2008, and that, therefore, tenKsolar, Zehua, and Tongtuo could not have benefited from this program.[159] However, the Department has not found in this or other proceedings that the program no longer provides benefits, or that such benefits (including residual benefits) must necessarily have stopped prior to the 12 year AUL period (*i.e.*, prior to 2003).[160] Furthermore, in *Off-Road Tires from PRC*, the Department noted the Government of the PRC's claim that the program was terminated in 2008, but explained that the Department must determine whether any non-recurring benefits should be allocated to the POR.[161] As the petitioners point out, the Department confirmed this assessment in *Steel Cut-to-Length Plate.*[162] Furthermore, paralleling the fact pattern described in *Steel Cut-to-Length Plate*, the Government of the PRC did not report any changes to this program in Government of the PRC March 2, 2017 IQR, when specifically asked to do so, did not state anywhere on the record that this program had been terminated, and did not point to any

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[156] *See Aluminum Extrusions from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) (*Aluminum Extrusions Final Determination*), and the accompanying Issues and Decision Memorandum at 6.
[157] *See* Preliminary Decision Memorandum at 10-12 and 15-16.
[158] *See Aluminum Extrusions from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010 and 2011*, 79 FR 106 (January 2, 2014) (*Aluminum Extrusions 2010 to 2011*) and the Accompanying Issues and Decision Memorandum at 33-34 (citing *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances*, 73 FR 40480 (July 15, 2008) (*Off-Road Tires Final Determination*), and accompanying Issues and Decision Memorandum (*Off-Road Tires Final Determination* IDM) at 23-24).
[159] *See* Government of the PRC Case Brief at 14.
[160] *See e.g.*, Initial CVD Questionnaire at II-4.
[161] As the Department explained in *Off-Road Tires 2014 Preliminary Results*, "even if the program is terminated, the Department must determine if any past receipt of this grant is still benefitting the responding companies."
[162] *See* Petitioner's Rebuttal Brief at 12 (citing *Cut-to-Length Plate* and the accompanying Issues and Decision Memorandum at Comment 3).

evidence to that effect. Rather the Government of the PRC claims that these programs were terminated appears for the first time in the Government of the PRC's Case Brief.[163]

Regarding the Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries Fund Program, the Government of the PRC claims that the Program has been terminated as of 2008, and that, therefore, tenKsolar, Zehua, and Tongtuo could not have benefited from this program.[164] However, in *Uncoated Paper*, the Department treated benefits received under the Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries Fund Program as non-recurring, because they were found to have been tied to the capital assets of the firm.[165] Also, in *Uncoated Paper*, the Department found that a program-wide change had not occurred with respect to program (including the termination of the program).[166] Therefore, the Department found that the program continued to provide benefits, and the Department continued to countervail benefits received under this program. Furthermore, paralleling the fact pattern described in *Steel Cut-to-Length Plate*, the Government of the PRC did not report any changes to this program in Government of the PRC March 2, 2017 IQR, when specifically asked to do so, did not state anywhere on the record that this program had been terminated, and did not point to any evidence to that effect.[167] Rather, the Government of the PRC's claims that these programs were terminated appears for the first time in the Government of the PRC's Case Brief.

Regarding the VAT Rebates on FIE Purchases of Chinese-Made Equipment Program, the Government of the PRC claims that the program was terminated in 2009, before the formation of tenKsolar,[168] and that, therefore, tenKsolar could not have benefited from this program.[169] However, the Government of the PRC has not previously claimed on the record that the VAT Rebates on FIE Purchases of Chinese-Made Equipment Program was terminated, and the

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[163] *See* Government of the PRC March 2, 2017 IQR at 24-25. *See also Cut-to-Length Plate* and the accompanying Issues and Decision Memorandum at Comment 3.

[164] *See* Government of the PRC Case Brief at 14.

[165] As explained in *Uncoated Paper*, "{W}hen an indirect tax or import charge exemption is provided for, or tied to, the capital structure or capital assets of a firm, the Department may treat it as a non-recurring benefit and allocate the benefit to the firm over the AUL. *See* Paper IDM at 34-36.

[166] As the Department explained in *Paper* IDM: "the {Government of the PRC} reported that, pursuant to the "Announcement of Ministry of Finance, China Customs, and State Administration of Taxation," No. 43 (2008), the VAT exemption was terminated. Under 19 CFR 351.526(a)(1) and (2), the Department may take a program-wide change to a subsidy program into account in establishing the cash deposit rate if it determines that subsequent to the POI, but before the final determination, a program-wide change occurred and the Department is able to measure the change in the amount of countervailable subsidies provided under the program in question. Based on a prior investigation with regard to this program, we determined that a program-wide change has not occurred. Under 351.526(d)(1), the Department will only adjust the cash deposit rate of a possibly terminated program if there are no residual benefits. However, this program still provides for residual benefits because import tariff and VAT exemptions were provided for the importation of capital equipment and, thus, those exemptions are treated as non-recurring subsidies pursuant to 19 CFR 351.524(c)(2)(iii)."

[167] *See* Government of the PRC IQR at 23.

[168] According to tenKsolar's Section III Response, Tongtuo and Zehua are domestically-owned enterprises and tenKsolar Shanghai was formed in 2009. *See* tenKsolar's Section III Response at 6.

[169] *See* Government of the PRC Case Brief at 14.

record contains no evidence of termination.[170] Notably, the Department also found in *Uncoated Paper* that the VAT Rebates on FIE Purchases of Chinese-Made Equipment Program provided non-recurring benefits in 2008 and 2009 because such benefits were found to have been tied to the capital assets of the firm.[171] The Government of the PRC acknowledges in its brief that this program is non-recurring in nature.[172] The Government of the PRC also does not reference in its case brief any previous decisions of the Department respecting the termination of this program.[173]

The State Key Technology Renovation Project Fund Program and the Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries Fund Program have both previously been found to have provided non-recurring benefits. This indicates that respondents may have received non-recurring benefits prior to the alleged effective date of the termination of these programs, or residual benefits after the alleged effective date of the termination of these programs, including both during the AUL period and during the POR. Such benefits could also potentially include benefits tied to capital assets. Regarding the VAT Rebates on FIE Purchases of Chinese-Made Equipment Program, the Department has not been presented with any evidence that the program was terminated, much less terminated with no substitute program, and with no residual benefits prior to the beginning of the AUL period, and no interested party has pointed to any Department finding to that effect.

The Department has not previously found, and the record of this review does not establish, that: (1) these programs were terminated; (2) a substitute program was not introduced; (3) the programs did not continue to confer residual benefits; or (4) that none of the benefits received under these programs, including residual benefits, were non-recurring benefits which were received during or after 2003. Because there is no new information regarding these programs, the Department cannot determine that such programs have been terminated without residual benefits, that substitute programs have not been introduced, that the programs did not provide recurring benefits after the effective date of their alleged termination, or that the programs did not confer non-recurring benefits to respondents during the AUL period. Accordingly, we have continued to include the State Key Technology Renovation Project Fund, Program, the Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries Program, and the VAT Rebates on FIE Purchases of Chinese-Made Equipment Program in the calculation of the AFA rate.

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[170] As explained above, the Department found the VAT Rebates on FIE Purchases of Chinese-Made Equipment Program provided benefits in 2008 and 2009 in *Paper*. The Department also examined benefits received under the VAT Rebates on FIE Purchases of Chinese-Made Equipment Program in *Solar II 2012-2014 Preliminary Results*. *See Paper* IDM at 36-37 and *Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review and Preliminary Intent to Rescind, in Part; 2014-2015,* 82 FR 12562, (March 6, 2017) (*Solar II 2012-2014 Preliminary Results*) and the accompanying Decision Memorandum (Solar II 2012-2014 Preliminary Decision Memorandum) at 30-31.
[171] *See Paper* IDM at 36-37.
[172] *See* tenKsolar Case Brief at 14.
[173] *See* Government of the PRC Case Brief at 14.

Comment 5: AFA Subsidy Rates for Certain Income Tax Rebate, Depreciation, Refund, Offset, and Arrears Forgiveness Programs

Government of the PRC Case Brief:

- The Department should not calculate separate, additional subsidy rates for the following programs: Accelerated Depreciation for Enterprises Located in the Northeast Region, Forgiveness of Tax Arrears for Enterprises in the Old Industrial Bases of Northeast China, Tax Offset for Research & Development, Tax Refunds for Enterprises Located in Zhaoqing New and High-Tech Industrial Development Zone (ZHTDZ), or Tax Refunds for Reinvesting of FIE Profits in Export-Oriented Enterprises.
- Instead, the Department should capture those programs within the 25 percent AFA income tax subsidy rate used to cover other income tax programs.[174]

Petitioner Rebuttal Brief:

- The Department should continue to calculate separate rates for the Accelerated Depreciation for Enterprises Located in the Northeast Region, Forgiveness of Tax Arrears for Enterprises in the Old Industrial Bases of Northeast China, Tax Offset for Research & Development, Tax Refunds for Enterprises Located in ZHTDZ, and Tax Refunds for Reinvesting of FIE Profits in Export-Oriented Enterprises programs, separate from the 25 percent AFA rate for income tax rate reduction or exemption programs.[175]
- The Department has consistently found that 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 reductions in other non-income tax liabilities.[176]

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[174] *See* Government of the PRC Case Brief at 2 and 13 (citing *Certain Carbon and Alloy Steel Cut-to- Length Plate from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 81 FR 62871 (September 13, 2016) and the accompanying Decision Memorandum at 22; and Department Memorandum, "Administrative Review of Countervailing Duty Order on Aluminum Extrusions from the People's Republic of China: AFA Calculation Memorandum for the 2015 Final Results of Review," May 31, 2017).

[175] *See* Petitioner's Rebuttal Brief at 1-2 and 9.

[176] *Id.*, at 9 (citing *Aluminum Extrusions Final Determination* and the accompanying Issues and Decision Memorandum at Section VI; and *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 2013*) and the accompanying Issues and Decision Memorandum at 17); and *Aluminum Extrusions from the People's Republic of China: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2014*, 81 FR 92778 (*Aluminum Extrusions 2014*) and the accompanying Issues and Decision Memorandum at 12).

Department's Position:
We disagree with the Government of the PRC. In the *Preliminary Determination*, in calculating the rate to be applied to total AFA companies, we used a single 25 percent rate to cover all national income tax programs which represent a reduction in the national income tax rate to be applied.[177] We calculated separate subsidy rates for four other tax programs, including national income tax programs which do not represent a reduction in the national income tax rate to be applied, based on the highest subsidy rate calculated for the same or similar program in a PRC CVD investigation or administrative review.[178]

Section 351.509(a) of the Department's regulations describes subsidy benefits arising from income tax programs and states that for a program which "provides for a full or partial exemption or remission of a direct tax…or a reduction in the base used to calculate a direct tax, a benefit exists to the extent that the tax paid by the firm as a result of the program is less than the tax the firm would have paid in the absence of the program." It has been the Department's practice to apply the 25 percent AFA rate, based on the standard national corporate income tax rate in the PRC, to tax programs which reduce the national income tax rate applied.[179] The Department also normally calculates separate AFA subsidy rates for income tax credit, rebate, accelerated depreciation, and import tariff and value add tax (VAT) exemption programs, based on the highest subsidy rate calculated for the same or similar program in a PRC CVD investigation or administrative review, because such programs may not affect the tax rate.[180]

We continue to find that our calculation of CVD rates for Accelerated Depreciation for Enterprises Located in the Northeast Region, Forgiveness of Tax Arrears for Enterprises in the Old Industrial Bases of Northeast China, Tax Offset for Research & Development, Tax

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[177] *See* Memorandum, "Administrative Review of Countervailing Duty Order on Aluminum Extrusions from the People's Republic of China: AFA Calculation Memorandum for the 2015 Final Results of Review," dated May 31, 2017 (Preliminary AFA Memorandum) at Attachment.
[178] *Id*. at 2 and Attachment (citing *Certain Steel Grating from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 32362 (June 8, 2010) (Grating INV), and accompanying IDM at "Income Tax Credits for Domestically Owned Companies Purchasing Domestically Produced Equipment").
[179] *See, e.g., Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 80 FR 34888 (June 18, 2015); *Certain Uncoated Paper from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 80 FR 36968 (June 29, 2015), *Non-Oriented Electrical Steel from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 79 FR 61607 (October 15, 2014) and the accompanying Issues and Decision Memorandum at 5 (citing *Aluminum Extrusions Final Determination* at "Application of Adverse Inferences: Non-Cooperative Companies."). *See also Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008) (*CWP from the PRC*), and the accompanying Issues and Decision Memorandum at 2; *Aluminum Extrusions 2010 to 2011* and the Accompanying Issues and Decision Memorandum at 8; *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 2012*), and accompanying Issues and Decision Memorandum at "Application of Total Adverse Facts Available to Non-Cooperative Companies;" *Aluminum Extrusions 2013* and the accompanying Issues and Decision Memorandum at 17, and *Aluminum Extrusions 2014* and the accompanying Issues and Decision Memorandum at 12.
[180] *Id.*

Refunds for Enterprises Located in ZHTDZ, and Tax Refunds for Reinvesting of FIE Profits in Export-Oriented Enterprises, separate from the 25 percent AFA rate for income tax rate reduction or exemption programs, was consistent with the Department's regulations and prior practice. Accordingly, we have not departed from our normal practice in this and other proceedings, as reflected in the *Preliminary Results*. For these final results, we have continued to calculate separate AFA subsidy rates for the Accelerated Depreciation for Enterprises Located in the Northeast Region, Forgiveness of Tax Arrears for Enterprises in the Old Industrial Bases of Northeast China, Tax Offset for Research & Development Program, Tax Refunds for Enterprises Located in ZHTDZ Program, and Tax Refunds for Reinvesting of FIE Profits in Export-Oriented Enterprises Programs, based on the highest subsidy rate calculated for the same or similar program in a PRC CVD investigation or administrative review.[181]

Comment 6: Selection of Respondents

Government of the PRC Case Brief:

- The Department did not fulfill the statutory requirement to select those "exporters and producers accounting for the largest volume of the subject merchandise from the exporting country," resulting in the selection of an unrepresentative mandatory respondent.[182]
- On October 5, 2016, the petitioner withdrew its request for administrative review of most of the companies for which it had requested a review, leaving 19 companies subject to review.[183] However, because only three of these remaining companies had previously submitted Q&V responses, and because the Department chose not to request quantity and value information from additional companies covered by this review, the Department selected tenKsolar and Changzhou Jinxi[184] as mandatory respondents for individual examination.[185] Changzhou Jinxi did not respond to the Initial CVD Questionnaire, so the Department only examined tenKsolar.[186]
- The list of the remaining 19 companies had very limited overlap with the top ten companies that received a Q&V Questionnaire from the Department.[187] Yet, the Department failed to issue Q&V Questionnaires to all the exporters and producers that remained subject to this review while it had ample time to do so, as the Department failed to select tenKsolar and Changzhou for individual examination until January 17,

[181] *See* Preliminary AFA Memorandum at 2 and Attachment (citing *Certain Steel Grating from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 32362 (June 8, 2010) (Grating INV), and accompanying IDM at "Income Tax Credits for Domestically Owned Companies Purchasing Domestically Produced Equipment").
[182] *See* Government of the PRC Case Brief at and 17-19 and Section 777A(e)(1) and (2) of the Act.
[183] *See* Government of the PRC Case Brief at 17-18 (citing Respondent Selection Memorandum, at 5). *See also* Letter from the Petitioners, "Aluminum Extrusions from the People's Republic of China: Withdrawal of Request for Administrative Review," October 5, 2016 (Petitioner's Withdrawal).
[184] Pursuant to a correction of notice of initiation, the Department issued a Q&V questionnaire to Changzhou Jinxi in early January 2017. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 FR 294 (January 13, 2017) and Initial CVD Questionnaire.
[185] *See* Government of the PRC Case Brief at 17-18.
[186] *Id.* at 2 and 18-20.
[187] *Id*.

2017, more than 3 months after Petitioner's Withdrawal.[188]

- After Petitioner's Withdrawal, the Department had sufficient time to issue Q&V Questionnaires and to ensure that representative mandatory respondents were selected for individual examination, but the Department chose not to do so.[189]
- It would have been practical and reasonable for the Department to issue an additional sixteen Q&V Questionnaires, receive and analyze the responses, and then properly select the mandatory respondents.[190]
- After Changzhou Jinxi failed to respond to the Initial CVD Questionnaire, the Department also had a nearly three months to use a proper methodology to select another respondent for individual examination, but the Department chose not to do so. The Department was aware that Changzhou Jinxi was not participating in this review as early as February 3, 2017, and continued to collect information until May 1, 2017.[191]

Petitioner Rebuttal Brief:

- The Department should reject the Government of the PRC's arguments that the Department's mandatory respondent selection methodology was flawed, as the Department appropriately selected mandatory respondents in this review.[192]
- The Department has great latitude in selecting mandatory respondents and properly selected mandatory respondents based on the Q&V questionnaires available after the timely withdrawal of review requests with respect to certain companies.[193]

Department's Position:
We disagree with the Government of the PRC. The Department stated in the *Initiation Notice* that it would select mandatory respondents in this review based on volume data contained in responses to Q&V questionnaires, and that it would limit the number of Q&V questionnaires issued based on import values in the CBP data.[194] The Department further stated:

> Parties subject to the review to which the Department does not send a Q&V questionnaire may file a response to the Q&V questionnaire by the applicable deadline if they desire to be included in the pool of companies from which the Department will select mandatory respondents.[195]

The Department made the Q&V questionnaire available to all interested parties on the Department's website.[196] It also issued the Q&V questionnaire directly to the 10 companies

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[188] *Id.*
[189] *Id.* at 2.
[190] *Id.* at 19.
[191] *See* Government of the PRC Case Brief, at 2-3 and 20.
[192] *See* Petitioner's Rebuttal Brief at 2 and 14.
[193] *Id.* at 14 (citing *Mid Continent Nail Corp. v. United States*, 949 F. Supp. 2d 1247, 1276 (CIT 2013) (*Mid Continent*)).
[194] *See Initiation Notice*, 81 FR at 44261.
[195] *Id.*
[196] *Id.*

with the largest import volume, based on CBP data.[197] After the petitioner withdrew its request for review of all but five of the companies upon which the Department initiated a review, three companies that submitted Q&V questionnaire responses continued to be under review. Changzhou Jinxi and tenKsolar were selected as mandatory respondents because, among the companies under review that submitted Q&V data, they reported the largest volume of exports of subject merchandise in their Q&V responses.[198]

The Government of the PRC argues that the Department did not fulfill the statutory requirement to select the exporters and producers under review that account for the largest volume of the subject merchandise from the exporting country. However, the Department provided an opportunity for any company subject to this review to submit a Q&V questionnaire response in order to be considered in the pool of potential mandatory respondents,[199] and several companies to which the Department did not directly send a Q&V questionnaire did, in fact, submit voluntary Q&V questionnaire responses. Because all companies that wished to be considered for selection as a mandatory respondent had the opportunity to submit Q&V questionnaire responses, as announced in the *Initiation Notice*, we disagree with the Government of the PRC that we were required to issue Q&V questionnaires directly to additional companies. Therefore, by selecting respondents based on the Q&V data on the record, we find that we satisfied, to the extent practicable, the requirement to select exporters and producers accounting for the largest volume of subject merchandise from the exporting country.

With regard to Changzhou Jinxi's non-cooperation in this review, we disagree with the Government of the PRC's argument that a different mandatory respondent should have been chosen. In the event that a mandatory respondent in a review is non-cooperative, the Department is not required to choose a different mandatory respondent. In its decision in *Mid Continent*, the CIT upheld the Department's methodology for respondent selection, affirming the Department's great latitude with respect to "a wide range of matters (including the minutiae of respondent selection) in individual cases."[200]

Comment 7: Application of AFA to Changzhou Jinxi

Petitioner Case Brief:

- The Department properly applied total AFA to in determining subsidy rates for Changzhou Jinxi and the Department should continue to do so in the final results.[201]
- Changzhou Jinxi failed to respond at all to the Initial CVD Questionnaire in this review.[202]

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[197] *See* Memorandum, "Fifth Administrative Review of the Countervailing Duty Order on Aluminum Extrusions from the People's Republic of China - Issuance of Quantity and Value Questionnaires," dated August 31, 2016 (Q&V Issuance Memorandum).[198] *See* Respondent Selection Memorandum, at 8.
[198] *See* Respondent Selection Memorandum, at 8.
[199] *See Initiation Notice*, 81 FR at 44261.
[200] *See Mid Continent*, citing *Torrington Co. v. United States*, 68 F. 3d 1347, 1351 (Fed. Cir. 1995).
[201] *See* Petitioner's Case Brief at 1.
[202] *Id.* at 2.

- The Government of the PRC also failed to submit any requested information pertaining to Changzhou Jinxi in its questionnaire responses.[203]

No other parties commented on this issue.

Department's Position:

We agree with the petitioner, and we have continued to apply a subsidy rate based on AFA to Changzhou Jinxi for these final results, for the reasons discussed in the *Preliminary Results*.[204]

Recommendation

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*.

☒ ☐

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Agree Disagree

12/4/2017

X __________________________

Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

[203] *Id*.
[204] *See* Preliminary Decision Memorandum at 23-24.