

Case History

On March 31, 2010, the Department received the petition filed in proper form by the petitioners.¹ The Department initiated the investigation on April 20, 2010. *See Aluminum Extrusions from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 75 FR 22114 (April 27, 2010) (*Initiation*), and accompanying Initiation Checklist.²

On May 18, 2010, the Department of Commerce (the Department) selected the following firms as mandatory respondents in this countervailing duty (CVD) investigation: Dragonluxe Limited (Dragonluxe), Miland Luck Limited (Miland), and Liaoyang Zhongwang Aluminum Profile Co. Ltd./ Liaoning Zhongwang Group (collectively, the Zhongwang Group) and concurrently issued to them, as well as the Government of China (GOC), the initial questionnaire.³ We confirmed that the three mandatory respondents received the CVD questionnaire.⁴ Responses were due on June 24, 2010. However, the June 24, 2010, deadline passed with none of the mandatory respondents submitting a questionnaire response or requesting an extension.

The Department received requests for individual examination on a voluntary basis. On May 6, 2010, we received a request for treatment as a voluntary respondent from Zhaoqing New Zhongya Aluminum Co., Ltd. (New Zhongya), Zhongya Shaped Aluminum HK Holding Ltd. (Zhongya HK), and Karlton Aluminum Company Ltd. (Karlton) (collectively the Zhongya Companies), Chinese producers of subject merchandise. On May 26, 2010, Guang Ya Aluminum Industries Co., Ltd. (Guang Ya), Foshan Guangcheng Aluminum Co., Ltd. (Guangcheng), Guang Ya Aluminum Industries Hong Kong (Guang Ya HK), Kong Ah

International Company Limited (Kong Ah), and Yongji Guanghai Aluminum Industry Co., Ltd. (Guanghai) (collectively the Guang Ya Companies), producers of subject merchandise, requested treatment as a voluntary respondent. In response to requests from the Zhongya and Guang Ya Companies, on June 21 and 22, 2010, we extended, by two weeks, the deadline for the submission of questionnaire responses by these companies to July 8, 2010. Both the Zhongya and Guang Ya Companies submitted questionnaire responses on July 8, 2010.

On June 21, 2010, the Department postponed the deadline for the preliminary determination until August 30, 2010. *See Aluminum Extrusions from the People's Republic of China: Notice of Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 75 FR 34982 (June 21, 2010).

On July 8, 2010, petitioners' submitted new subsidy allegations regarding the Zhongya and Guang Ya Companies.

On July 21, 2010, the Department selected the Zhongya and Guang Ya Companies as voluntary respondents. *See the Memorandum to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, "Acceptance of Requests for Treatment As Voluntary Respondents" (July 21, 2010) (Voluntary Respondent Selection Memorandum)*, a public document on file in room 1117 of the CRU. In addition, because Dragonluxe, Miland, and the Zhongwang Group did not submit responses to the Department's initial questionnaire, we found the firms to be non-cooperative, mandatory respondents. *Id.*

On July 21, 2010, we postponed the GOC's deadline for submitting a response to the Department's May 18, 2010, initial questionnaire until August 4, 2010. We subsequently extended the deadline until August 9, 2010. The GOC submitted its initial questionnaire response on August 9, 2010.

On July 21, 2010, we also issued supplemental questionnaires to the Zhongya Companies, the Guang Ya Companies, and the GOC. We issued addenda to these supplemental questionnaires on July 28, 2010. The Zhongya and Guang Ya companies submitted responses to the supplemental questionnaires on August 6 and August 9, 2010, respectively. The GOC submitted its supplemental questionnaire response on August 4 and August 9, 2010. The GOC and the Zhongya and Guang Ya companies submitted their responses to the

DEPARTMENT OF COMMERCE

International Trade Administration

[C-570-968]

Aluminum Extrusions From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of aluminum extrusions from the People's Republic of China (the PRC). For information on the estimated subsidy rates, see the "Suspension of Liquidation" section of this notice.

DATES: *Effective Date:* September 7, 2010.

FOR FURTHER INFORMATION CONTACT: Eric B. Greynolds, AD/CVD Operations, Office 3, Import Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: 202-482-6071.

SUPPLEMENTARY INFORMATION:

¹ Petitioners are Aluminum Extrusion Fair Trade Committee: Aerolite Extrusion Company; Alexandria Extrusions Company; Beneda Aluminum of Florida, Inc.; William L. Bonnell Company, Inc.; Frontier Aluminum Corporation; Futura Industries Corporation; Hydro Aluminum North American Inc.; Kaiser Aluminum Corporation; Profile Extrusion Company; Sapa Extrusions, Inc.; Western Extrusions Corporation; and the United Steel, Paper, and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union.

² Public and public versions of Departmental memoranda referenced in this Notice are on file in the Central Records Unit (CRU), Room 1117 in the main building of the Commerce Department.

³ *See Memorandum to John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Respondent Selection," (May 18, 2010).*

⁴ *See Memorandum to the File, "Confirmation of Delivery of Initial Questionnaire to Firms Selected As Mandatory Respondents," (June 4, 2010) (Delivery of Questionnaire Memorandum).*

addendum to the supplemental questionnaire on August 9, 2010.

On July 28, 2010, petitioners submitted additional new subsidy allegations regarding the Zhongya and Guang Ya Companies. On August 11, 2010, the Department issued a new subsidy memorandum concerning petitioners' July 13 and July 28, 2010, new subsidy allegations. See the Department's August 11, 2010, Memorandum, "New Subsidy Allegations for the Guang Ya and Zhongya Companies," (August 11, 2010) (New Subsidy Memorandum), a public document on file in room 1117 of the CRU. The Department issued new subsidy questionnaires to the GOC and the Zhongya and Guang Ya companies on August 11, 2010. The new subsidy questionnaires are due on September 3, 2010, and, as a result, the Department is not able to incorporate the responses to the questionnaire into the preliminary determination.

On August 16, 19, and 23, 2010, the Zhongya Companies, Guang Ya Companies, and the GOC submitted their second supplemental questionnaire responses, respectively.

In the *Initiation*, the Department deferred initiating on petitioners' allegation that the GOC, in an effort to benefit domestic producers, intervenes in the currency market in order to ensure that the RMB/U.S. dollar exchange rate understates the value of the RMB. See *Initiation*, 75 FR at 22117. On August 30, 2010, the Department issued a decision memorandum concerning petitioners' currency manipulation allegation. Specifically, the Department has determined not to initiate an investigation of the allegation. See Memorandum to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, "Subsidy Allegation—Currency," (August 30, 2010).

Period of Investigation

The period of investigation (POI) for which we are measuring subsidies is January 1, 2009, through December 31, 2009, which corresponds to the most recently completed fiscal year. See 19 CFR 351.204(b)(2).

Scope of the Investigation

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

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

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

Subject aluminum extrusions may be described at the time of importation as

parts for final finished products that are assembled after importation, including, but not limited to, window frames, door frames, solar panels, curtain walls, or furniture. Such parts that otherwise meet the definition of aluminum extrusions are included in the scope. The scope includes aluminum extrusions that are attached (*e.g.*, by welding or fasteners) to form subassemblies, *i.e.*, partially assembled merchandise.

Subject extrusions may be identified with reference to their end use, such as heat sinks, door thresholds, or carpet trim. Such goods are subject merchandise if they otherwise meet the scope definition, regardless of whether they are finished products and 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, picture frames, and solar panels. The scope also excludes finished goods containing aluminum extrusions that are entered unassembled in a "kit." A 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.

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.

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States (“HTS”): 7604.21.0000, 7604.29.1000, 7604.29.3010, 7604.29.3050, 7604.29.5030, 7604.29.5060, 7608.20.0030, and 7608.20.0090. The subject merchandise entered as parts of other aluminum products may be classifiable under the following additional Chapter 76 subheadings: 7610.10, 7610.90, 7615.19, 7615.20, and 7616.99 as well as under other HTS chapters. While HTS subheadings are provided for convenience and customs purposes, the written description of the scope in this proceeding is dispositive.

Scope Comments

In accordance with the *Preamble* to the Department’s regulations (see *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*)), in the *Initiation*, we set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation*.

The Department received several scope comments from interested parties. The Department is evaluating the comments submitted by the parties and will issue its decision regarding the scope of the antidumping (AD) and CVD investigations in the preliminary determination of the companion AD investigation, which is due for signature on October 27, 2010.

Injury Test

Because the PRC is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Tariff Act of 1930 (the Act), the International Trade Commission (the ITC) is required to determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry. On May 17, 2010, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of certain aluminum extrusions from the PRC. See *Certain Aluminum Extrusion from China*, Investigation Nos. 701-TA-475 and 731-TA-1177 (Preliminary), 75 FR 34482 (May 17, 2010).

Application of the Countervailing Duty Law to Imports From the PRC

On October 25, 2007, the Department published *Coated Free Sheet Paper From the People’s Republic of China*:

Final Affirmative Countervailing Duty Determination, 72 FR 60645 (October 25, 2007) (*CFS from the PRC*), and accompanying Issues and Decision Memorandum (CFS Decision Memorandum). In *CFS from the PRC*, the Department found that

* * * given the substantial differences between the Soviet-style economies and China’s economy in recent years, the Department’s previous decision not to apply the CVD law to these Soviet-style economies does not act as a bar to proceeding with a CVD investigation involving products from China.

See CFS Decision Memorandum at Comment 6. The Department has affirmed its decision to apply the CVD law to the PRC in subsequent final determinations. See, e.g., *Circular Welded Carbon Quality Steel Pipe From the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008) (*CWP from the PRC*), and accompanying Issues and Decision Memorandum (CWP from the PRC Decision Memorandum) at Comment 1.

Additionally, for the reasons stated in the CWP Decision Memorandum, we are using the date of December 11, 2001, the date on which the PRC became a member of the World Trade Organization (WTO), as the date from which the Department will identify and measure subsidies in the PRC for purposes of this investigation. See CWP Decision Memorandum at Comment 2.

Use of Facts Otherwise Available and Adverse Inferences

Sections 776(a)(1) and (2) of the Tariff Act of 1930, as amended (the Act), provide that the Department shall apply “facts otherwise available” if, inter alia, 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.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

Application of Adverse Inferences: Non-Cooperative Companies

As explained above in the “Background” section, the Department selected Dragonlux, Miland, and the Zhongwang Group as mandatory respondents. Accordingly, the Department sent the initial questionnaire to the three companies on May 18, 2010. The Department confirmed that the three firms received copies of the initial questionnaire. See *Delivery of Questionnaire Memorandum*. Dragonlux, Miland, and the Zhongwang Group failed to respond to the Department’s initial questionnaire. As a result of the failure of Dragonlux, Miland, and the Zhongwang Group to submit responses to the Department’s initial questionnaire, we found the firms to be non-cooperative, mandatory respondents. See the *Voluntary Respondent Memorandum*.

We find that, by not responding to the Department’s initial questionnaire, Dragonlux, Miland, and the Zhongwang Group withheld requested information and significantly impeded this proceeding. Thus, in reaching our preliminary determination, pursuant to sections 776(a)(2)(A) and (C) of the Act, we are basing the CVD rate for Dragonlux, Miland, and the Zhongwang Group on facts otherwise available.

We further preliminarily determine that an adverse inference is warranted, pursuant to section 776(b) of the Act. By failing to submit responses to the Department’s initial questionnaire, Dragonlux, Miland, and the Zhongwang Group did not cooperate to the best of their ability in this investigation. Accordingly, we preliminarily find that an adverse inference is warranted to ensure that the three companies will not obtain a more favorable result than had they fully complied with our request for information. For purposes of this preliminary determination, we have limited our application of adverse inferences under section 776(b) of the Act to those programs included in the *Initiation*.

In deciding which facts to use as adverse facts available (AFA), section 776(b) of the Act and 19 CFR 351.308(c)(1) and (2) authorize the Department to rely on information derived from: (1) The petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any other information placed on the record. The Department’s practice when selecting an adverse rate from among the possible sources of information 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.” See, e.g., *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). 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.” See Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103–316, Vol. I, at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199.

It is the Department’s practice in CVD proceedings to select, as AFA, the highest calculated rate in any segment of the proceeding. See, e.g., *Laminated Woven Sacks From the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008) (*LWS from the PRC*), and accompanying Issues and Decision Memorandum (LWS from the PRC Decision Memorandum) at “Selection of the Adverse Facts Available.” In previous CVD investigations of products from the PRC, we adapted the practice to use the highest rate calculated for the same or similar program in other PRC CVD proceeding. See *id.* and *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof From the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination*, 73 FR 70971, 70975 (November 24, 2008) (unchanged in the *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof From the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 29180 (June 19, 2009), and accompanying Issues and Decision Memorandum (Lawn Groomers Decision Memorandum) at “Application of Facts Available, Including the Application of Adverse Inferences”).

Thus, under this practice, for investigations involving the PRC, the Department computes the total AFA rate for non-cooperating companies generally using program-specific rates calculated for the cooperating respondents in the instant investigation or calculated in prior PRC CVD cases. Specifically, for programs other than those involving income tax exemptions and reductions, the Department applies

the highest calculated rate for the identical program in the investigation if a responding company used the identical program, and the rate is not zero. If there is no identical program match within the investigation, the Department uses the highest non-*de minimis* rate calculated for the same or similar program (based on treatment of the benefit) in another PRC CVD proceeding. Absent an above-*de minimis* subsidy rate calculated for the same or similar program, the Department applies the highest calculated subsidy rate for any program otherwise listed that could conceivably be used by the non-cooperating companies. See, e.g., *Lightweight Thermal Paper From the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) (*LWTP from the PRC*), and accompanying Issues and Decision Memorandum (LWTP from the PRC Decision Memorandum) at “Selection of the Adverse Facts Available Rate.”

However, in the instant investigation the cooperating firms are voluntary respondents. Under 19 CFR 351.204(d)(3), in calculating an all-others rate under section 705(c)(5) of the Act, the Department will exclude net subsidy rates calculated for voluntary respondents. Thus, as discussed in further detail below in the “Suspension of Liquidation” section, in accordance with section 705(c)(5)(A)(ii) of the Act and 19 CFR 351.204(d)(3), we have equated the all-others rate with the AFA rates calculated for the non-cooperative companies. We have adopted this approach because the inclusion of self-selected respondents in the derivation of the all-others rate could result in the distortion or manipulation of the all-others rate. See *Preamble to Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27310 (May 19, 1997) (*Preamble to Procedural Regulations*). Furthermore, in light of this concern, we determine that it is not appropriate to compute total AFA rates for non-cooperative companies using company-specific rates calculated for participating respondents, because to do so would require the use of program rates calculated for voluntary respondents. In addition, our reasoning not to base the AFA rate on program rates calculated for voluntary respondents extends to our use of program rates from other CVD proceedings involving the PRC. Thus, in deriving the AFA rate for the three non-cooperating mandatory respondents in the instant investigation, we have not utilized company-specific program rates

that were calculated for voluntary respondents.

Therefore, for purposes of deriving the AFA rate for the three non-cooperating mandatory respondents, we are using the highest non-*de minimis* rate calculated for the same or similar program (based on treatment of the benefit) in another PRC CVD investigation. Absent an above-*de minimis* subsidy rate calculated for the same or similar program, we are applying the highest calculated subsidy rate for any program otherwise listed that could conceivably be used by the non-cooperating companies. See, e.g., LWTP from the PRC Decision Memorandum at “Selection of the Adverse Facts Available Rate.”

Further, where the GOC can demonstrate through complete, verifiable, positive evidence that Dragonluxe, Miland, and the Zhongwang Group (including all their facilities and cross-owned affiliates) are not located in particular provinces whose subsidies are being investigated, the Department will not include those provincial programs in determining the countervailable subsidy rate for those companies. See, e.g., *Certain Kitchen Shelving and Racks from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 37012 (July 27, 2009) (*Racks From the PRC*), and accompanying Issues and Decision Memorandum (Racks Decision from the PRC Decision Memorandum) at “Use of Facts Otherwise Available and Adverse Facts Available.” In this investigation, the GOC has not provided any such information. Therefore, we are making the adverse inference that the three non-cooperative companies, Dragonluxe, Miland, and the Zhongwang Group, had facilities and/or cross-owned affiliates that received subsidies under all of the sub-national programs on which the Department initiated.

For the seven income tax rate reduction or exemption programs at issue in the instant investigation, we are applying an adverse inference that Dragonluxe, Miland, and the Zhongwang Group paid no income taxes during the POI. The seven programs are: (1) Tax Reductions for High or New Technology Enterprises (HNTEs) Involved in Designated Projects, (2) Two Free, Three Half Tax Exemptions for Productive FIEs, (3) Local Income Tax Exemption and Reduction Programs for “Productive” FIEs, (4) Income Tax Benefits for FIEs in Designated Geographic Location, (5) Income Tax Benefits for Technology- or Knowledge-Intensive FIEs, (6) Income Tax Benefits for FIEs That Are Also High or New

Technology Enterprises (HNTEs), and (7) Income Tax Reductions For Export-Oriented FIEs.

The standard income tax rate for corporations in the PRC during the POI was 25 percent. *See, e.g.*, “Notification of the State Council on Carrying out the Transition Preferential Policies Concerning Enterprise Income Tax, Guo Fa 2007, No. 39 as included in the March 31, 2010, petition at Exhibit III–65. Further, the GOC response indicates that the three percent provincial income tax was no longer in effect during the POI. *See* the GOC’s August 4, 2010, supplemental questionnaire at 4. Therefore, the highest possible benefit for all income tax reduction or exemption programs combined is 25 percent. Therefore, we are applying a CVD rate of 25 percent on an overall basis for these seven income tax programs (*i.e.*, these seven income tax programs combined provide a countervailable benefit of 25 percent). This 25 percent AFA rate does not apply to tax credit or tax refund programs. This approach is consistent with the Department’s past practice. *See, e.g.*, CWP from the PRC Decision Memorandum at 2, and LWTP from the PRC Decision Memorandum at “Selection of the Adverse Facts Available Rate.”

The 25 percent AFA rate does not apply to the following nine income tax credit and rebate or accelerated depreciation programs found countervailable because such programs may not affect the tax rate and, hence, the subsidy conferred, in the current year: (1) Value Added Tax (VAT) and Tariff Exemptions on Imported Equipment to FIEs and Certain Domestic Enterprises, (2) VAT Rebates on FIEs Purchases of Chinese-Made Equipment, (3) City Tax and Surcharge Exemptions for FIEs, and (4) Tax Offsets for Research and Development, (5) Income Tax Credits for Domesticall-Owned Companies Purchasing Chinese-Made Equipment, (6) Tax Reductions for FIEs Purchasing Chinese-Made Equipment, (7) Tax Refunds for Reinvesting of FIE Profits in Export-Oriented Enterprises, (8) Accelerated Depreciation for Enterprises Located in Northeast Region, and (9) Forgiveness of Tax Arrears for Enterprises in the “Old Industrial Bases” of Northeast China.

Based on the methodology discussed above, we preliminarily determine to use the highest non-*de minimis* rate for any indirect tax program from a China CVD investigation. The rate we select is 1.51 percent, calculated for the “Value-Added Tax and Tariff Exemptions on Imported Equipment” program in *CFS from the PRC*. *See* CFS Decision

Memorandum at “VAT and Tariff Exemptions on Imported Equipment”.

Regarding the Preferential Loans as Part of the Northeast Revitalization Program and the Policy Loans for Aluminum Extrusion Producers, we preliminarily determine to apply the highest non-*de minimis* subsidy rate for any loan program in a prior China CVD investigation. The highest non-*de minimis* subsidy rate is 8.31 percent calculated for the “Government Policy Lending Program,” from *LWTP from the PRC*. *See Lightweight Thermal Paper From the People’s Republic of China: Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order*, 73 FR 70958 (November 24, 2008) (*Amended LWTP from the PRC*).

We are investigating a number of grant programs including: (1) State Key Technology Renovation Fund, (2) GOC and Sub-Central Government Grants, Loans, and Other Incentives for Development of Famous Brands and China World Top Brands, (3) Grants to Cover Legal Fees in Trade Remedy Cases in Shenzhen, (4) Special Fund for Energy Saving Technology Reform: Guangdong Province, (5) The Clean Production Technology Fund, (6) Grants for Listing Shares: Liaoyang City (Guangdong Province), Wenzhou Municipality (Zhejiang Province), and Quanzhou Municipality (Fujian Province), (7) Northeast Region Foreign Trade Development Fund, and (8) Northeast Region Technology Reform Fund. The Department has not calculated above *de minimis* rate for any of these programs in prior investigations, and, moreover, all previously calculated rates for grant programs from prior China CVD investigations have been *de minimis*. Therefore, for each of these grant programs, we preliminarily determine to use the highest calculated subsidy rate for any program otherwise listed, which could have been used by the non-cooperative companies. We preliminarily determine that this rate is 8.31 percent from the “Government Policy Lending Program,” in the

Amended LWTP From the PRC

The Department is also investigating several provision of a good or service for less than adequate remuneration (LTAR) programs: Provision of Land-Use Rights for LTAR in Liaoyang High-Tech Industry Development Zone, Provision of Land-Use Rights for LTAR to SOEs, and Provision of Primary Aluminum for LTAR. For two of these LTAR programs, we are applying the highest non-*de minimis* subsidy rate for any provision of land-use rights for LTAR program in

a prior China CVD investigation. The highest non-*de minimis* subsidy rate is 2.55 percent calculated for the “Subsidies Provided in the TBNA and the Tianjin Economic and Technological Development Area” from *OCTG from the PRC*. *See* OCTG from the PRC Decision Memorandum at “Subsidies Provided in the TBNA and the Tianjin Economic and Technological Development Area.” Concerning the provision of Primary Aluminum for LTAR, the Department has not previously investigated allegations concerning this input product. Therefore, for this program, we are applying the highest calculated subsidy rate for any program otherwise listed that could conceivably be used by the non-cooperating companies. We preliminarily determine that this similar program rate is 2.55 percent from *OCTG from the PRC*. *Id.*

In addition, the Department is investigating government purchases of aluminum extrusions for more than adequate remuneration (MTAR). The Department has not previously investigated allegations concerning this input. Therefore, for this program, we are applying the highest calculated subsidy rate for any program otherwise listed that could conceivably be used by the non-cooperating companies. We preliminarily determine that this rate is 8.31 percent from the *Amended LWTP from the PRC*.

On this basis, we preliminarily determine the AFA countervailable subsidy rate for the non-cooperative respondents (Dragonluxe, Miland, and the Zhongwang Group) to be 137.65 percent *ad valorem*. *See* AFA Memorandum.

As noted above, on July 8 and July 28, 2010, petitioners submitted new subsidy allegations. On August 11, 2010, the Department initiated investigations of all the allegations included in petitioners’ July 8 and July 28, 2010, submissions. *See* New Subsidy Memorandum. On August 11, 2010, the Department also sent a new subsidy questionnaire to the GOC as well as to the Zhongya and Guang Ya Companies regarding these new subsidy allegations. The new subsidy questionnaire responses are currently due on September 5, 2010. Therefore, for purposes of the preliminary determination, we have not included these additional subsidy programs under investigation in this proceeding in the total AFA rates calculated for Dragonluxe, Miland, and the Zhongwang Group. We invite interested parties to comment on whether the Department should include the additional alleged programs and the various programs self-reported by the

Guang Ya and Zhongya companies into the AFA rate calculated for the non-cooperating, mandatory respondents.

Various Grant Programs Self-Reported by the Guang Ya Companies

The Guang Ya Companies self-reported receiving various lump sum cash grants from the GOC. As a result, the Department sent questionnaires to the GOC regarding these programs. See the July 21, 2010, first supplemental questionnaire sent to the GOC. In its supplemental questionnaire responses the GOC provided information concerning the nature of the programs and indicated that the programs were not contingent upon exports, and thus are not specific under section 771(5A)(B) of the Act. However, the GOC failed to respond to the Department's questions concerning the distribution of benefits, which is information that the Department uses to determine whether alleged subsidy programs are *de facto* specific under section 771(5A)(D)(iii) of the Act. See the GOC's August 9, 2010, supplemental questionnaire response. Further, the GOC failed to supply the requested benefit distribution data in its second supplemental questionnaire response, despite the Department's request that it do so. See the GOC's August 19, 2010, second supplemental questionnaire response.

Because the GOC failed to provide the requested benefit distribution data, we find that necessary information is not on the record, pursuant to section 776(a) of the Act and that the GOC has not cooperated to the best of its ability. Therefore, for those programs for which we lack the necessary information and for which the GOC failed to cooperate, in accordance with section 776(b) of the Act, we are assuming as an adverse inference that the programs are *de facto* specific as domestic subsidies within the meaning of section 771(5A)(D)(iii) of the Act.

The Zhongya Companies' Failure To Report All of Its Sales of Aluminum Extrusions Under the Purchase of Aluminum Extrusions for MTAR Program

In its July 8, 2010, questionnaire response, the Zhongya Companies failed to provide any information concerning the purchase of aluminum extrusions for MTAR program. In response to the Department's July 21, 2010, supplemental questionnaire, the Zhongya Companies provided MTAR data. See the Zhongya Companies' August 6, 2010, first supplemental questionnaire response. However, the dataset was not complete. Specifically,

the Zhongya Companies provided data for its "top 10 domestic customers." *Id.* The Zhongya Companies state that the top 10 customers accounted for "more than 70 percent of New Zhongya's total domestic sales of subject merchandise during the POL." *Id.* The Zhongya Companies did not identify its other customers; therefore we have determined that necessary information is not on the record and that the Zhongya Companies have therefore "significantly impeded the proceeding," pursuant to sections 776(a)(1) and (a)(2) of the Act.

In light of its failure to provide the requested benefit distribution data, we find that the Zhongya Companies have failed to cooperate to the best of its ability. See section 776(b) of the Act. Therefore, we are applying facts available with an adverse inference with respect to the 30 percent of the sales that the Zhongya Companies did not report to the Department.

Materials used in certain government projects are subject to the GOC's "Government Procurement Law of the PRC" (Procurement Law). See the March 31, 2010, petition at Exhibit III-153. Under the Procurement Law, government authorities are permitted to procure imported goods or services only when domestic goods or services are either unavailable or cannot be obtained under "reasonable commercial conditions." The "Implementing Measures on the Government Procurement Law of the PRC" (Implementing Measures of the Procurement Law) state that:

The situation where reasonable commercial terms are not available for procurement under Article 10 of the Government Procurement Law refers to instances where the lowest offered price for domestic goods, construction, or services, that meet the requirements of procurement documents, exceeds the lowest offered price for foreign goods, construction, or services by more than 20 percent.

See the March 31, 2010, petition at Exhibit III-155.

Based on the information in the Implementing Measures of the Procurement Law, we are assuming as AFA under section 776(b) of the Act that the Zhongya Companies' unreported sales were made to GOC authorities and, thus, constitute a financial contribution under section 771(5)(D)(iv) of the Act. We are further assuming as AFA that the Zhongya Companies received a 20 percent price premium on the unreported sales volumes of aluminum extrusions. For further information concerning the derivation of the benefit, see the

"Purchase of Aluminum Extrusions for MTAR" section below.

Regarding our decision to apply AFA, we acknowledge that the GOC has stated in its questionnaire response that the Zhongya Companies did not sell its aluminum extrusions under any procurement program. See, e.g., the GOC's August 9, 2010, questionnaire response at 38. However, we preliminarily determine that the Zhongya Companies' failure to provide any information concerning the missing "30 percent" of its customers has impeded the Department's ability to adequately investigate whether these customers acquired subject merchandise from the Zhongya Companies for MTAR. Thus, we preliminarily determine that the application of AFA with regard to the Zhongya Companies' use of this program is warranted.

Attribution of Subsidies

The Department's regulations at 19 CFR 351.525(b)(6)(i) state that the Department will normally attribute a subsidy to the products produced by the corporation that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provides that the Department will attribute subsidies received by certain other companies to the combined sales of those companies when: (1) Two or more corporations with cross-ownership produce the subject merchandise; (2) a firm that received a subsidy is a holding or parent company of the subject company; (3) a firm that produces an input that is primarily dedicated to the production of the downstream product; or (4) a corporation producing non-subject merchandise received a subsidy and transferred the subsidy to a corporation with cross-ownership with the subject company.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This regulation states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations. The Court of International Trade (CIT) has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits. See *Fabrique de Fer de Charleroi v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

The Guang Ya Companies

As discussed above, the Guang Ya Companies are Guang Ya, Guangcheng, Guanghai, Guang Ya HK, and Kong Ah. Guang Ya and Guangcheng are the producers of subject merchandise. Guanghai produces aluminum billet that it supplies to Guangcheng. Guang Ya HK and Kong Ah are Hong Kong-based trading companies that export merchandise produced by Guang Ya and Guangcheng. According to the Guang Ya Companies, only Guang Ya HK exported subject merchandise to the United States that was produced by the Guang Ya Companies. We find that the Guang Ya Companies are cross-owned with each other via common ownership within the meaning of 19 CFR 351.525(b)(6)(vi). See the Guang Ya Companies July 8, 2010, questionnaire response at Exhibit 1.

Guang Ya and Guangcheng are the members of the Guang Ya Companies that produce subject merchandise. Therefore, in accordance with 19 CFR 351.525(b)(6)(ii), we have attributed subsidies received by Guang Ya and Guangcheng to the products produced by the two firms. According to the questionnaire response of the Guang Ya Companies, Guanghai is an input supplier to Guangcheng. Therefore, in accordance with 19 CFR 351.525(b)(6)(iv), we would attribute subsidies received by Guanghai to the combined sales of the input made by Guanghai and downstream products produced by Guang Ya and Guangcheng, excluding the sales between corporations.⁵

As explained above, during the POI Guang Ya HK exported to the United States aluminum extrusions produced by Guang Ya and Guangcheng. In supplemental questionnaires issued to the Guang Ya Companies, the Department inquired about the sales value of extrusions destined for the United States that Guang Ya and Guangcheng made to Guang Ya HK during the POI. The Department also inquired about the sales value of aluminum extrusions Guang Ya HK made to the United States that during the POI. The purpose of these questions was to ascertain the extent to which the "export values" recorded in the books of Guang Ya and Guangcheng did not reflect the actual U.S. prices because there was a mark-up on those sales by Guang Ya HK, the Hong Kong-based affiliate. The Department has six criteria it uses to determine whether such a difference in sales values exists and

whether an adjustment to the net subsidy rate calculations is warranted. See, e.g., *Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 4936 (January 28, 2009) (*CWASPP from the PRC*), and accompanying Issues and Decision Memorandum (CWASPP from the PRC Decision Memorandum) at "Adjustment to Net Subsidy Rate Calculation," in which the Department describes the six criteria utilized by the Department.

We have analyzed the sales information supplied by the Guang Ya Companies. Based on our review, we preliminarily determine that an adjustment to the net subsidy rate, as described in CWASPP from the PRC, is not warranted. We preliminarily determine that the sales data reported by the Guang Ya Companies indicate that the sales value of aluminum extrusions destined for the United States that Guang Ya and Guangcheng made to Guang Ya HK during the POI exceed the sales value of aluminum extrusions that Guang Ya HK made to the United States during the POI. See the Guang Ya Companies' August 23, 2010, supplemental questionnaire at Exhibit 93 and the Guang Ya Companies' August 9, 2010, supplemental questionnaire at Exhibit 56.

The Zhongya Companies

As discussed above, the Zhongya Companies are New Zhongya, Zhongya HK, and Karlton. New Zhongya is the producer of subject merchandise. Zhongya HK and Karlton are Hong-Kong based firms that are cross-owned with New Zhongya, within the meaning of 19 CFR 351.525(b)(6)(vi). During the POI, Zhongya HK exported products, including subject merchandise, produced by New Zhongya. During the POI, New Zhongya did not export aluminum extrusions to the United States through Karlton. In this preliminary determination, in accordance with 19 CFR 351.525(b)(6)(ii), we are attributing subsidies received by New Zhongya to products produced by New Zhongya and exported through Zhongya HK.

In supplemental questionnaires issued to the Zhongya Companies, the Department inquired about the sales value of extrusions destined for the United States which New Zhongya produced and sold to Zhongya HK during the POI. As explained above, the Department also inquired about the sales value of aluminum extrusions which New Zhongya produced and which Zhongya HK sold to the United

States that during the POI. The purpose of these questions was to ascertain the extent to which the "export values" recorded in the books of New Zhongya did not reflect the actual U.S. prices due to a mark-up on those sales by Zhongya HK, the Hong Kong-based affiliate. Based on our review of the information submitted by the Zhongya Companies, we preliminarily determine that no such mark-up exists and, as a result, an adjustment to the net subsidy rate, as discussed in *CWASPP from the PRC*, is not necessary. See Zhongya Companies July 8, 2010, questionnaire response at 6 for information concerning the sales of aluminum extrusions Zhongya HK made to the United States and the Zhongya Companies August 16, 2010, second supplemental questionnaire response at 2 for information concerning the sales of aluminum extrusions destined for the United States that New Zhongya made to Zhongya HK. In addition, we find that the Zhongya Companies have not adequately responded to the Department's questions concerning the extent to which the price charged by New Zhongya to Zhongya HK differs from the price Zhongya HK charges to its U.S. Customers, which is one of the six criteria the Departments examines when determining whether to adjust the net subsidy rate. See the Zhongya Companies August 6, 2010, first supplemental questionnaire response at 12.

Benchmarks and Discount Rates

The Department is investigating loans received by the Guang Ya Companies from Chinese policy banks and state-owned commercial banks (SOCBs), which are alleged to have been granted on a preferential, non-commercial basis. Therefore, the derivation of the Department's benchmark and discount rates is discussed below.

Benchmark for Short-Term RMB Denominated Loans: Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the "difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market." Normally, the Department uses comparable commercial loans reported by the company for benchmarking purposes. See 19 CFR 351.505(a)(3)(i). If the firm did not have any comparable commercial loans during the period, the Department's regulations provide that we "may use a national interest rate for comparable commercial loans." See 19 CFR 351.505(a)(3)(ii).

As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark

⁵ For purposes of the preliminary determination, we have not calculated net subsidy rates for Guanghai.

should be a market-based rate. However, for the reasons explained in *CFS from the PRC*, loans provided by Chinese banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market. See *CFS Decision Memorandum* at Comment 10. Because of this, any loans received by respondents from private Chinese or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). Similarly, because Chinese banks reflect significant government intervention in the banking sector, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, the Department is selecting an external market-based benchmark interest rate. The use of an external benchmark is consistent with the Department's practice. For example, in *Softwood Lumber from Canada*, the Department used U.S. timber prices to measure the benefit for government-provided timber in Canada. See *Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada*, 67 FR 15545 (April 2, 2002) (*Softwood Lumber from Canada*), and accompanying Issues and Decision Memorandum (*Softwood Lumber from Canada Decision Memorandum*) at "Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit."

We are calculating the external benchmark using the regression-based methodology first developed in *CFS from the PRC* and more recently updated in *LWTP from the PRC*. See *CFS Decision Memorandum* at Comment 10; see also *LWTP from the PRC Decision Memorandum* at "Benchmarks and Discount Rates." This benchmark interest rate is based on the inflation-adjusted interest rates of countries with per capita gross national incomes (GNIs) similar to the PRC. The benchmark interest rate takes into account a key factor involved in interest rate formation (*i.e.*, the quality of a country's institutions), which is not directly tied to the state-imposed distortions in the banking sector discussed above.

This methodology relies on data published by the World Bank and International Monetary Fund (*see* further discussion below). For the year 2009, the World Bank, however, has not yet published all the necessary data relied on by the Department to compute

a short-term benchmark interest rate for the PRC. Specifically, the following data are not yet available: World Governance Indicators and World Bank classifications of lower-middle income countries based on GNI per capita in U.S. dollars. Therefore, for purposes of this preliminary determination, where the use of a short-term benchmark rate for 2009 is required, we have applied the 2008 short-term benchmark rate for the PRC, as calculated by the Department (*see* discussion below). The Department notes that the current 2008 loan benchmark may be updated, by the final determination, pending the release of all the necessary 2009 data.

The 2008 short-term benchmark was computed following the methodology developed in *CFS from the PRC*. We first determined which countries are similar to the PRC in terms of GNI, based on the World Bank's classification of countries as: low income; lower-middle income; upper-middle income; and high income. The PRC falls in the lower-middle income category, a group that includes 55 countries as of July 2007. As explained in *CFS from the PRC*, this pool of countries captures the broad inverse relationship between income and interest rates.

Many of these countries reported lending and inflation rates to the International Monetary Fund and are included in that agency's international financial statistics (IFS). With the exceptions noted below, we have used the interest and inflation rates reported in the IFS for the countries identified as "low middle income" by the World Bank. First, we did not include those economies that the Department considered to be non-market economies for AD purposes for any part of the years in question, for example: Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS for those years. Third, we removed any country that reported a rate that was not a lending rate or that based its lending rate on foreign-currency denominated instruments. For example, Jordan reported a deposit rate, not a lending rate, and the rates reported by Ecuador and Timor L'Este are dollar-denominated rates; therefore, the rates for these three countries have been excluded. Finally, for the calculation of the inflation-adjusted short-term benchmark rate, we also excluded any countries with aberrational or negative real interest rates for the year in question.

For the resulting inflation-adjusted benchmark lending rate, *see*

Memorandum to the File from Eric B. Greynolds, Program Manager, AD/CVD Operations, Office 3, regarding "2008 Short-Term Interest Rate Benchmark" (August 30, 2010). Because these are inflation-adjusted benchmarks, it is necessary to adjust the respondent's interest payments for inflation. This was done using the PRC inflation rate as reported in the IFS.

Benchmark for Long-Term RMB Denominated Loans: The lending rates reported in the IFS represent short- and medium-term lending, and there are no sufficient publicly available long-term interest rate data upon which to base a robust long-term benchmark. To address this problem, the Department has developed an adjustment to the short- and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates. See *Light-Walled Rectangular Pipe and Tube From the People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination*, 73 FR 35642 (June 24, 2008) (*LWRP from the PRC*), and accompanying Issues and Decision Memorandum (*LWRP Decision Memorandum*) at "Discount Rates." In *Citric Acid from the PRC*, this methodology was revised by switching from a long-term mark-up based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where n equals or approximates the number of years of the term of the loan in question. See *Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 16836 (April 13, 2009) (*Citric Acid from the PRC*), and accompanying Issues and Decision Memorandum (*Citric Acid from the PRC Decision Memorandum*) at Comment 14.

Discount Rates: Consistent with 19 CFR 351.524(d)(3)(i)(A), we have used, as our discount rate, the long-term interest rate calculated according to the methodology described above for the year in which the government provided the subsidy.

Analysis of Programs

Programs Preliminarily Determined To Be Countervailable

A. Exemption From City Construction Tax and Education Tax for FIEs

Pursuant to the Circular Concerning Temporary Exemption from Urban Maintenance and Construction Tax and Additional Education Fees for Foreign-Funded and Foreign Enterprises (GUOSHUIFA {1994} No. 38), the local tax authorities exempt all FIEs and

foreign enterprises from the city maintenance and construction tax and education fee surcharge. The construction tax is based on the amount of product tax; value added tax, and/or business tax actually paid by the taxpayer. For taxpayers located in urban areas, the rate is seven percent; for taxpayers located in counties or townships, the rate is five percent; and for taxpayers located in areas other than urban areas, counties, and townships, the rate is one percent. Regarding the education fee surcharge, FIEs pay only one percent of the actual amount of the product tax, value-added tax, and business tax paid, whereas other entities pay four percent of that amount. Guangcheng and New Zhongya are FIEs and, therefore, received exemptions under this program.

Consistent with our finding in *Racks from the PRC*, we preliminarily determine that the exemptions from the city construction tax and education surcharge under this program confer a countervailable subsidy. See *Racks from the PRC Decision Memorandum* at “Exemption from City Construction Tax and Education Tax for FIEs in Guangdong Province.” The exemptions are financial contributions in the form of revenue forgone by the government and provide a benefit to the recipient in the amount of the savings. See section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also preliminarily determine that the exemptions afforded by this program are limited as a matter of law to certain enterprises, *i.e.*, FIEs, and, hence, specific under section 771(5A)(D)(i) of the Act. To calculate the benefit, we treated the tax savings and exemptions received by Guangcheng and New Zhongya as recurring benefits, consistent with 19 CFR 351.524(c)(1). Guangcheng and New Zhongya both reported that they are exempted from the city construction tax and education fee surcharge.

To compute the amount of city construction tax savings, we first determined the rate the companies would have paid in the absence of the program. Both Guangcheng and New Zhongya reported that a seven percent construction tax would have been applied to them absent the program. They further reported that they paid a one percent education tax instead of a four percent education tax that would have been applicable absent the program. Thus, we compared the rates the companies would have paid during the POI in the absence of the program (seven percent for the construction tax and 4 percent on the education tax) with the rate the companies paid (zero percent construction tax and 1 percent

education tax), because they are FIEs. To calculate the total benefit under the program, we summed the savings from the construction tax exemption and education fee exemption.

To calculate the program rate, we divided the companies' tax savings received during the POI by their total consolidated sales, net of intra-company sales. Specifically, for New Zhongya, we divided the benefit by Zhongya's total sales for the POI. For Guangcheng, we divided the benefit the combined total sales of Guangcheng and Guang Ya.

On this basis, we preliminarily determine the countervailable subsidy to be 0.01 percent *ad valorem* for the Guang Ya Companies and 0.07 percent *ad valorem* for the Zhongya Companies.

B. GOC and Sub-Central Government Grants, Loans, and Other Incentives for Development of Famous Brands and China World Top Brands

The Famous Brand program is administered at the central, provincial, and municipal government level. During the POI, New Zhongya and Guang Ya reported receiving grants under the Famous Brand program from their respective local governments.

Though operated at the local level, the GOC issued “Measures for the Administration of Chinese Top-Brand Products,” which state that the requirements for application require that firms provide information concerning their export ratio as well as the extent to which their product quality meets international standards. See Chapter 3 of the “Measures for the Administration of Chinese Top-Brand Products” at Exhibit 24 of the Guang Ya Companies July 8, 2010, questionnaire response.

Based on the information available on the record of the investigation, we determine that the grants that the Zhongya and Guang Ya Companies received under the famous brand program constitute a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Regarding specificity, section 771(5A)(B) of the Act states that an export subsidy is a subsidy that is, in law or in fact, contingent upon export performance, alone or as one of two or more conditions. Based on the information on the record of the investigation, we determine that grants provided to the Zhongya and Guang Ya Companies under the famous brands program are contingent on export activity. Therefore, we find that the program is specific under section 771(5A)(B) of the Act. Our approach in this regard is consistent with the Department's findings in prior CVD

proceedings involving the PRC. See, *e.g.*, *Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 28557 (May 21, 2010) (*PC Strand from the PRC*), and accompanying Issues and Decision Memorandum (PC Strand from the PRC Decision Memorandum) at “Subsidies for Development of Famous Export Brands and China World Top Brands at Central and Sub-Central Level.”

The grants that the Zhongya and Guang Ya Companies received during the POI were less than 0.5 percent of their respective total export sales in the year of approval/receipt. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount year of receipt. Guang Ya also received a grant prior to the POI that was greater than 0.5 percent of its total export sales in the year of approval/receipt. Therefore, we allocated the benefit over time using the methodology provided under 19 CFR 351.524(d)(2).

On this basis, we calculated a total net subsidy rate of 0.32 percent *ad valorem* for the Guang Ya Companies. Concerning the Zhongya Companies, the benefit it received under the program was fully expensed prior to the POI.

C. Two Free, Three Half Income Tax Exemptions for FIEs

The Foreign Invested Enterprise and Foreign Enterprise Income Tax Law (FIE Tax Law), enacted in 1991, established the tax guidelines and regulations for FIEs in the PRC. The intent of this law is to attract foreign businesses to the PRC. According to Article 8 of the FIE Tax Law, FIEs that are “productive” and scheduled to operate not less than 10 years are exempt from income tax in their first two profitable years and pay half of their applicable tax rate for the following three years. FIEs are deemed “productive” if they qualify under Article 72 of the Detailed Implementation Rules of the Income Tax Law of the People's Republic of China of Foreign Investment Enterprises and Foreign Enterprises. New Zhongya reported receiving benefits under this program that are attributable to the POI.

We determine that the exemption or reduction in the income tax paid by “productive” FIEs under this program confers a countervailable subsidy. The exemption/reduction is a financial contribution in the form of revenue forgone by the GOC and it provides a benefit to the recipients in the amount of the tax savings. See sections 771(5)(D)(ii) and 771(5)(E) of the Act and 19 CFR 351.509(a)(1). We further determine that the exemption/reduction afforded by this program is limited as a

matter of law to certain enterprises, “productive” FIEs, and, hence, is specific under section 771(5A)(D)(i) of the Act. Our approach in this regard is consistent with the Department’s practice. See CFS from the PRC Decision Memorandum at “Two Free/Free Half Program.”

To calculate the benefit from this program, we treated the income tax exemption claimed as a recurring benefit, consistent with 19 CFR 351.524(c)(1). We then compared the tax rate paid to the rate that otherwise would have been paid by New Zhongya and multiplied the difference by the company’s taxable income. We divided the benefit by the total sales of the Zhongya Companies during the POI.

On this basis, we determine a countervailable subsidy of 0.53 percent *ad valorem* for the Zhongya Companies.

D. Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries

Enacted in 1997, the Circular of the State Council on Adjusting Tax Policies on Imported Equipment (Guofa No. 37) (Circular 37) exempts both FIEs and certain domestic enterprises from the VAT and tariffs on imported equipment used in their production so long as the equipment does not fall into prescribed lists of non-eligible items. The National Development and Reform Commission (NDRC) and the General Administration of Customs are the government agencies responsible for administering this program. Qualified enterprises receive a certificate either from the NDRC or one of its provincial branches. To receive the exemptions, a qualified enterprise only has to present the certificate to the customs officials upon importation of the equipment. The objective of the program is to encourage foreign investment and to introduce foreign advanced technology equipment and industry technology upgrades. The Department has previously found this program to be countervailable. See, e.g., Citric Acid Decision from the PRC Memorandum at “VAT Rebate on Purchases by FIEs of Domestically Produced Equipment.”

New Zhongya, an FIE, reported receiving VAT and tariff exemptions under this program for imported equipment prior to and during the POI. Guangcheng, also an FIE, reported receiving VAT and tariff exemptions under this program for imported equipment prior to the POI.

We determine that the VAT and tariff exemptions on imported equipment confer a countervailable subsidy. The exemptions are a financial contribution

in the form of revenue forgone by the GOC and the exemptions provide a benefit to the recipients in the amount of the VAT and tariff savings. See section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We further determine that the VAT and tariff exemptions under this program are specific under section 771(5A)(D)(iii)(I) of the Act because the program is limited to certain enterprises. As described above, only FIEs and certain domestic enterprises are eligible to receive VAT and tariff exemptions under this program. No information has been provided to demonstrate that the beneficiary companies are a non-specific group. As noted above, the Department finds FIEs to be a specific group under section 771(5A)(D)(i) of the Act. In addition, the additional certain enterprises requiring approval by the NDRC does not render the program to be non-specific. See, e.g., CFS from the PRC Decision Memorandum at Comment 16, and *Certain New Pneumatic Off-the-Road Tires From the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances*, 73 FR 40480 (July 15, 2008) (*Tires from the PRC*), and accompanying Issues and Decision Memorandum (*Tires from the PRC Decision Memorandum*) at “VAT and Tariff Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment on Encouraged Industries.”

Normally, we treat exemptions from indirect taxes and import charges, such as the VAT and tariff exemptions, as recurring benefits, consistent with 19 CFR 351.524(c)(1) and allocate these benefits only in the year that they were received. However, when 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 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(1). Therefore, we have examined the VAT and tariff exemptions that New Zhongya received under the program during the POI and prior years.

To calculate the amount of import duties exempted under the program, we multiplied the value of the imported equipment by the import duty rate that would have been levied absent the program. To calculate the amount of VAT exempted under the program, we multiplied the value of the imported equipment (inclusive of import duties) by the VAT rate that would have been levied absent the program. Our derivation of VAT in this calculation is

consistent with the Department’s approach in prior cases. See, e.g., *Circular Welded Carbon Quality Steel Line Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 70961 (November 24, 2008) (*Line Pipe from the PRC*), and accompanying Issues and Decision Memorandum (*Line Pipe from the PRC Decision Memorandum*) at Comment 8 (“* * * we agree with Petitioners that VAT is levied on the value of the product inclusive of delivery charges and import duties”). Next, we summed the amount of duty and VAT exemptions received in each year. For each year, we then divided the total grant amount by the corresponding total sales of the respondents for the year in question.

For each company, we divided the total amount of VAT and tariff exemptions by the corresponding total sales for year in which the exemptions were received. Those exemptions that were less than 0.5 percent of total sales were expensed to the year of receipt. Those exemptions that were greater than 0.5 percent of total sales were allocated over the AUL using the methodology described under 19 CFR 351.524(d)(2).

On this basis, we determine the countervailable subsidy to be 0.52 percent *ad valorem* for the Zhongya Companies and less than 0.005 percent *ad valorem* for the Guang Ya Companies.⁶

E. International Market Exploration Fund (SME Fund)

The SME Fund, established under CQ (2000) No. 467, encourages the development of small and medium-sized enterprises (SMEs) by reducing the risk of operation for these enterprises in the international market. To qualify for the program, a company needs to satisfy the criteria in CQ (2000), which provides that the SME should have export and import rights, exports of less than \$15,000,000, an accounting system, personnel with foreign trade skills, and a plan for exploring the international market. Guang Ya reported receiving funds under this program in 2008 and 2009 from the Shishan Town Economic Development Office.

We further preliminarily determine that the grants provided under the SME Fund constitute a financial contribution and benefit under sections 771(5)(D)(i)

⁶ Consistent with our past practice, we did not include this program in the Guang Ya Companies’ total net subsidy rate because it is not numerically insignificant. See, e.g., CFS from the PRC Decision Memorandum at “Analysis of Programs, Programs Determined Not To Have Been Used or Not To Have Provided Benefits During the POI for GE.”

and 771(5)(E) of the Act, respectively. We also determine that this program is an export subsidy, under section 771(5A)(B) of the Act, because the program supports the international market activities of SMEs and is limited to enterprises that have exports of less than \$15,000,000. Our findings in this regard are consistent with the Department's practice. *See Wire Decking from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 32902 (June 10, 2010) (*Wire Decking from the PRC*), and accompanying Issues and Decision Memorandum (Wire Decking from the PRC Decision Memorandum) at "International Market Exploration Fund (SME Fund)." Information on the record indicates that the SME Fund provides one-time assistance. Therefore, consistent with 19 CFR 351.524(c)(1), we are treating the grants received under this program as "non-recurring." To measure the benefits of each grant that are allocable to the POI, we first conducted the "0.5 percent test" for the grant. *See* 19 CFR 351.524(b)(2). We divided the total amount approved in 2008 and 2009 by the total export sales of Guang Ya and Guangcheng in 2008 and 2009. As a result, we found that the grants received by Guang Ya are less than 0.5 percent and fully expensed to the year of receipt.

Therefore, for the POI, we calculated a total net subsidy rate of 0.01 percent *ad valorem* for the Guang Ya Companies.

F. Preferential Tax Program for FIEs Recognized as High or New Technology Enterprises (HNTEs)

According to the "Circular of the State Council Concerning the Approval of the National Development Zones for New and High Technology Industries and the Relevant Policies and Provisions" at Article 2 and 4 of Appendix III "Regulations on the Tax Policy for the National New and High Technology Industries Parks), FIEs designated as HNTEs in high and new technology parks pay a reduced income tax rate of 15 percent.

We preliminarily determine that the reduction in the income tax paid by FIEs designated as HNTEs under this program confers a countervailable subsidy. The reduction is a financial contribution in the form of revenue forgone by the government and it provides a benefit to the recipient in the amount of the tax savings. *See* sections 771(5)(D)(ii) and 771(5)(E) of the Act, respectively, and 19 CFR 351.509(a)(1). We also determine that the reduction afforded by this program is limited as a matter of law to certain enterprises, *i.e.*,

FIEs designated as HNTEs, and, hence, is specific under section 771(5A)(D)(i) of the Act. The program is also specific pursuant to section 771(5A)(D)(iv) of the Act, as only ratified new and high technology enterprises located in new and high technology parks approved by the State Council can pay the reduced tax rate. Guang Ya and Guangcheng reported receiving tax benefits attributable to the POI under this program.

We treated the income tax savings enjoyed by the companies as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To compute the amount of the tax savings, we compared the rate Guang Ya and Guangcheng would have paid in the absence of the program (25 percent) with the rate the company paid (15 percent), and divided the tax savings received during the POI by the combined total sales of Guang Ya and Guangcheng.

On this basis, we determine the countervailable subsidy attributable to Guang Ya Companies to be 0.11 percent *ad valorem* under this program.

G. Policy Loans to Chinese Aluminum Extrusion Producers

The Department is examining whether aluminum extrusion producers receive preferential lending through SOCBs or policy banks. According to the allegation, preferential lending to the aluminum extrusion industry is supported by the GOC through the issuance of national and provincial five-year plans, industrial plans for the steel sector, catalogues of encouraged industries, and other government laws and regulations. Based on our review of the responses and documents provided by the GOC, we preliminarily determine that loans received by the aluminum extrusion industry from SOCBs and policy banks were made pursuant to government directives.

Record evidence demonstrates that the GOC, through its directives, has highlighted and advocated the development of the aluminum extrusion industry. At the national level, the GOC has placed an emphasis on the development of high-end, value-added steel products through foreign investment as well as through technological research, development, and innovation. In laying out this strategy, the GOC has identified specific products selected for development. For example, the "Catalogue of Major Industries, Products, and Technologies Encouraged for Development in China" (Encouraged Industries Catalogue), issued by the GOC in 2000, identifies 526 products, technologies, and infrastructure facilities for business

promotion. *See* the GOC's August 4, 2010, questionnaire response at Exhibit 3. The Encouraged Industries Catalogue specifically mentions aluminum extrusion products under the non-ferrous metals heading. *Id.*

Similarly, there is the Decision of the State Council on Promulgating the "Interim Provisions on Promoting Industrial Structure Adjustment" for Implementation (No. 40 (2005)) (Decision 40). The GOC implemented Decision 40 in order to achieve the objectives of the Eleventh Five-Year Plan. *See* the GOC's August 4, 2010, questionnaire response at Exhibit 6. Decision 40 references the Directory Catalogue on Readjustment of Industrial Structure (Industrial Catalogue), which outlines the projects which the GOC deems "encouraged," "restricted," and "eliminated," and describes how these projects will be considered under government policies. *Id.* Aluminum is mentioned as an industry in the Industrial Catalogue as an "encouraged project." *Id.* For the "encouraged" projects, Decision 40 outlines several support options available from the government, including financing. *Id.*

In addition, the "Guidelines on Acceleration of the Adjustment of the Aluminum Industry Structure" (Aluminum Industry Guidelines), issued by the GOC in 2006, discusses support that is to be provided to producers of aluminum extrusions. *See* the GOC's August 4, 2010, questionnaire response at Exhibit 9. For instance, under the heading "Increase Industry Concentration, Encourage Comprehensive Usage and Conservation of Resources," the Aluminum Industry Guidelines state:

Create favorable conditions for enterprises M&A and restructuring, and accelerate enterprises' merger and restructuring via economic means. Support aluminum, electrolytic aluminum, and aluminum processing enterprises to undertake merger and restructuring, establish internationally competitive enterprise group, realize advantage complementation, and increase industry concentration. Encourage private capital and foreign capital to participate in the reform, restructuring and transformation of state-owned enterprises. Encourage backbone enterprises to keep raising technology and management levels, accelerate medium and small-sized aluminum processing enterprises' technology transformation, and improve resource utilization.

Id. The Aluminum Industry Guidelines also make reference to lending activities. Under the heading, "Strengthen the Coordination and Cooperation of Credit Policy and Industrial Policy and Establish Withdrawal Mechanism Under the

Policies,” the Aluminum Industry Guidelines state:

It is required to strictly abide by the rule that the minimum self-owned capital requirement for electrolytic aluminum projects shall be no less than 35 percent of the total investment. *Financial institutions shall rationally allocate the lending credits taking into account the national macroeconomic adjustments, industrial policies, and ordinary lending principles. Financial institutions may continue to provide credits to oxide aluminum or electrolytic aluminum enterprises that are in compliance with national industrial policies and the market entrance threshold, provided such lending is in accordance with the ordinary lending principles. No credit shall be provided to those enterprises that do not conform to national industrial policies, do not satisfy the market entrance threshold, have obsolete manufacturing processes, have been classified as prohibited, or have been ordered to cease operation.* In the event that credits are mistakenly provided to such enterprises, the financial institutions shall take appropriate measures to reclaim the credits and avoid financial risk.

Id. (emphasis added). Additionally, under the heading “Enhance the Implementation of Environmental Protection Regulations, Eliminate Capacities,” the Aluminum Industry Guidelines state that different “financing means” shall be used “to support enterprises’ environmental protection and energy savings.” *Id.*

Support, in the form of financing, is also discussed in the “Nonferrous Metal Industry Adjustment and Revitalization Plan” (Nonferrous Metal Plan) that was issued by the GOC in 2009. *See* the GOC’s August 4, 2010, questionnaire response at Exhibit 10. Under the heading “Increase Dedication to Technology Improvement and Technology Reform,” the Nonferrous Metal Plan states:

Set aside some funds from new central investment. Use loan interest subsidies to support R&D and technology reform in the nonferrous metals industry. Increase the level of financial support directed toward reform of energy conservation technologies.

The Nonferrous Metal Plan further references financing to the aluminum extrusions industry under the heading, “Continue To Implement the Financing Policy of ‘Encouragement and Discouragement:”

Increase financing support to backbone enterprises in the nonferrous metals industry. Provide support to certain enterprises in issuing stock, enterprise bonds, and corporate bonds. *Enterprises eligible to receive such support are those which are engaged in projects which, in addition to adhering to investment management prescriptions, are in compliance with industry policy as well as relevant environmental and land regulations; and*

implement acquisitions, restructuring, “Going Abroad” {sic} and technological reformation.

Id. (emphasis added).

As noted in *Citric Acid from the PRC*, in general, the Department looks to whether government plans or other policy directives lay out objectives or goals for developing the industry and call for lending to support those objectives or goals. *See Citric Acid from the PRC Decision Memorandum at Comment 5.* Where such plans or policy directives exist, then it is the Department’s practice to determine that a policy lending program exists that is specific to the named industry (or producers that fall under that industry). *See CFS Decision Memorandum at Comment 8, and LWTP from the PRC Decision Memorandum at “Government Policy Lending Program.”* Once that finding is made, the Department relies upon the analysis undertaken in *CFS from the PRC* to further conclude that national and local government control over the SOCBs results in the loans being a financial contribution by the GOC. *See CFS Decision Memorandum at Comment 8.* Therefore, on the basis of the record information described above, we preliminarily determine that the GOC has a policy in place to encourage the development of the production of aluminum extrusions through policy lending.

The GOC and the Guang Ya Companies provided source documents concerning the largest loans the Guang Ya Companies had outstanding during the POI.⁷ Information in these business proprietary documents further supports our preliminary determination that the GOC has a policy in place to encourage the development of the production of aluminum extrusions through policy lending. For further information, see the Memorandum to the File from Eric B. Greynolds, Program Manager, Office 3, Operations, “Excerpts of Internal Loan Documents of the Guang Ya Companies,” (August 30, 2010) (Internal Loan Document Memorandum).

The GOC has argued in its August 4, 2010, questionnaire response that the People’s Bank of China (PBOC) revoked the PRC’s policy lending programs in 1999 pursuant to the “Circular on Improving Administration of Special Loans” (YINFA (1999)) No. 228 (Special Loans Circular). *See* the GOC’s August 4, 2010, questionnaire response at Exhibit 18. We preliminarily determine that there is no basis to conclude that the GOC’s policy lending activities ceased with the issuance of the Special Loans Circular. The Special Loans

Circular states that, while banks shall make lending decisions on their own, “authorities” may continue to “give advice on the choice of project.” Further, the Special Loans Circular states that firms may continue to receive formerly designated “special loans.”

For those (former special) loans which do not meet the commercial lending conditions, if the authorities can provide loan interest grant or other subsidies so that the commercial lending conditions are fulfilled, the banks may continue to provide the loans.

Id. The Special Loans Circular goes on to state that:

Wholly State-owned banks shall make efforts to implement the requirements above, and shall actively communicate with the authorities in charge of relevant industries, with a view to gaining their understanding and support.

Id. Thus, despite the GOC’s claims, the Special Loans Circular provides a means by which what it refers to as “special loans” may continue to be provided to firms in the PRC. In addition, the Special Loans Circular states government authorities will continue to “advise” and monitor the actions of the PRC state-owned lending institutions. Furthermore, the Aluminum Industries Guidelines and the Nonferrous Metal Plan, both of which mention directing credit to members of the aluminum extrusions industry, as well as the loans discussed in the Internal Loan Document Memorandum, were issued after the GOC released the Special Loans Circular.

The Guang Ya Companies reported that they had outstanding loans from PRC-based banks during the POI. Consistent with our determination in prior proceedings, we preliminarily find these PRC-based banks to be state-owned commercial banks (SOCBs). *See, e.g., Certain Oil Country Tubular Goods From the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination*, 74 FR 64045 (December 7, 2009) (*OCTG from the PRC*), and accompanying Issues and Decision Memorandum (*OCTG Decision Memorandum*) at Comment 20.

We preliminarily determine that the loans to aluminum extrusion producers from SOCBs in the PRC constitute a direct financial contribution from the government, pursuant to section 771(5)(D)(i) of the Act, and they provide a benefit equal to the difference between what the recipients paid on their loans and the amount they would have paid on comparable commercial loans (see section 771(5)(E)(ii) of the Act). We further preliminarily determine that the loans are *de jure* specific within the

⁷ The Zhongya Companies reported that they did not have any loans outstanding during the POI.

meaning of section 771(5A)(D)(i) of the Act because of the GOC's policy, as illustrated in the government plans and directives, to encourage and support the growth and development of the aluminum extrusions industry.

To determine whether a benefit is conferred under section 771(5)(E)(ii) of the Act, we compared the amount of interest the Guang Ya Companies paid on their outstanding loans to the amount they would have paid on comparable commercial loans. See 19 CFR 351.505(a). In conducting this comparison, we used the interest rates described in the "Benchmarks and Discount Rates" section above. We have attributed benefits under this program to the combined total sales of Guang Ya and Guangcheng.

On this basis, we preliminarily determine a countervailable subsidy of 2.11 percent *ad valorem* for the Guang Ya Companies.

H. Fund for SME Bank-Enterprise Cooperation Projects

According to the GOC, 1,000 eligible SMEs along with several financial institutions were selected to participate in the program. Under the program, financial institutions in the PRC decide whether to extend credit to certain eligible SMEs. If they decide to do so, the Provincial Government of Guangdong (PGOG) provides loan interest assistance to the SME that received the financing from the financial institution. The program is administered by the PGOG's Department of Finance and the Bureau of SMEs pursuant to the Circular on Printing and Distributing of the Measures on Implementing the 2009 Government-Bank-Enterprise Cooperation Special Fund Program (YUECAIGONG (2009) No. 54) (Bank Enterprise Cooperation Measures). See the GOC's August 9, 2010 supplemental questionnaire response at Supp-1. The Guang Ya Companies reported that Guang Ya received a grant under this program during the POI.

We preliminarily determine that the grants issued by the GOC under this program constitute a financial contribution under section 771(5)(D)(i) of the Act, in the form of a direct transfer of funds, and a benefit under section 771(5)(E) of the Act.

According to the Bank Enterprise Cooperation Measures, the 500 SMEs deemed as having the "greatest potential" as well as enterprises that manufacture key equipment, or pursue creative technologies, or engage in advanced manufacturing activities backed by both the PGOG and the corresponding city will receive

preferential treatment under the program. In light of the selection process described in the Bank Enterprise Cooperation Measures, we preliminarily determine that this program is *de jure* specific under section 771(5)(D)(i) of the Act because the measures expressly limit access to certain enterprises.

To calculate the benefit, we divided the amount of the grant by the total sales of Guang Ya and Guangcheng. The grant was less than 0.5 percent of the export sales of Guang Ya and Guangcheng in the year of approval/receipt. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POI (year of receipt).

On this basis, we calculated a total net subsidy rate of 0.05 percent *ad valorem* for the Guang Ya Companies.

I. Special Fund for Significant Science and Technology in Guangdong Province

Under this program, the PGOG seeks to support major, generic, and key technology research and development of Guangdong industries and promote technology achievements and diffusion of technological knowledge. The program is administered by the Guangdong Science and Technology Department pursuant to the Provisional Measures on Administration of Guangdong Important Science-Technology Project Special Fund (YUECAIGONG (2009) No. 166). The Guang Ya Companies reported that Guang Ya received a grant under this program during the POI.

We preliminarily determine that the grants issued by the GOC under this program constitute a financial contribution under section 771(5)(D)(i) of the Act, in the form of a direct transfer of funds, and a benefit under section 771(5)(E) of the Act. As explained in the "Various Grant Programs Self-Reported by the Guang Ya Companies" section, the GOC failed to provide benefit distribution data for this program. As a result, the Department is applying AFA and assuming that the program is specific under section 771(5A)(D)(iii) of the Act.

To calculate the benefit, we divided the amount of the grant by the total sales of Guang Ya and Guangcheng in the year of approval/receipt. The grant was less than 0.5 percent of the total sales of Guang Ya and Guangcheng. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POI (year of receipt).

On this basis, we calculated a total net subsidy rate of 0.12 percent *ad valorem* for the Guang Ya Companies.

J. Fund for Economic, Scientific, and Technology Development

Under this program, the Government of Foshan City distributes grants to firms with the aim of fostering technological and economic development. The program is administered by the Science and Technology Bureau of Foshan Municipality and the Finance Bureau of Foshan Municipality pursuant to the Circular on Printing and Distributing of the Measures on Administration of Foshan Sci-Tech Development Special Fund (FOFUBAN (2008) No. 402). See the GOC's August 9, 2010, supplemental questionnaire at Supp-4. The Guang Ya Companies, which are located in Foshan City, reported that Guang Ya received a grant under this program during the POI.

We preliminarily determine that the grants issued by the GOC under this program constitute a financial contribution under section 771(5)(D)(i) of the Act and a benefit under section 771(5)(E) of the Act. As explained in the "Various Grant Programs Self-Reported by the Guang Ya Companies" section, the GOC failed to provide benefit distribution data for this program. As a result, the Department is applying AFA and assuming that the program is specific under section 771(5A)(D)(iii) of the Act.

To calculate the benefit, we divided the amount of the grant by the total sales of Guang Ya and Guangcheng in the year of approval/receipt. The grant was less than 0.5 percent of the total sales of Guang Ya and Guangcheng. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POI (year of receipt).

On this basis, we calculated a total net subsidy rate of 0.01 percent *ad valorem* for the Guang Ya Companies.

K. Provincial Fund for Fiscal and Technological Innovation

Under this program, the PGOG provides grants to firms for the purpose of promoting technological and fiscal innovation. The program is administered by the Provincial Department of Finance and Economic and Trade Commission of Guangdong Province pursuant to the Provisional Measures on Administration of Exploration and Renovation Provincial Level Fund (YUECAIQI (2003) No. 140). See the GOC's August 9, 2010, supplemental questionnaire at Supp-1. The Guang Ya Companies reported that Guangcheng received a grant under this program during the POI.

We preliminarily determine that the grants issued by the GOC under this

program constitute a financial contribution under section 771(5)(D)(i) of the Act and a benefit under section 771(5)(E) of the Act. As explained in the "Various Grant Programs Self-Reported by the Guang Ya Companies" section, the GOC failed to provide benefit distribution data for this program. As a result, the Department is applying AFA and assuming that the program is specific under section 771(5A)(D)(iii) of the Act.

To calculate the benefit, we divided the amount of the grant by the total sales of Guang Ya and Guangcheng in the year of approval/receipt. The grant was less than 0.5 percent of the total sales of Guang Ya and Guangcheng. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POI (year of receipt).

On this basis, we calculated a total net subsidy rate of 0.04 percent *ad valorem* for the Guang Ya Companies.

L. Provincial Loan Discount Special Fund for SMEs

Under this program, the PGOG provides interest subsidy grants in order to promote and support SMEs. The program is administered by the Provincial Department of Finance and the Guangdong Provincial SME Bureau pursuant to the Measures on Administration of SME Loan Interest Assistance Special Fund (YUECAIGONG (2009) No. 124). See the GOC's August 9, 2010 supplemental questionnaire at Supp-9. The Guang Ya Companies reported that Guangcheng received a grant under this program during the POI.

We preliminarily determine that the grants issued by the GOC under this program constitute a financial contribution under section 771(5)(D)(i) of the Act and a benefit under section 771(5)(E) of the Act. As explained in the "Various Grant Programs Self-Reported by the Guang Ya Companies" section, the GOC failed to provide benefit distribution data for this program. As a result, the Department is applying AFA and assuming that the program is specific under section 771(5A)(D)(iii) of the Act.

To calculate the benefit, we divided the amount of the grant by the total sales of Guang Ya and Guangcheng. The grant was less than 0.5 percent of the total sales of Guang Ya and Guangcheng in the year of approval/receipt. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POI (year of receipt).

On this basis, we calculated a total net subsidy rate of 0.04 percent *ad valorem* for the Guang Ya Companies.

M. Export Rebate for Mechanic, Electronic, and High-Tech Products

The Guang Ya Companies reported that Guangcheng received a grant under this program during the POI. See the Guang Ya Companies' July 8, 2010 initial questionnaire response at 60. The Department sent two questionnaires to the GOC concerning this program. In its responses, the GOC indicated that it could not find any "meaningful information" concerning the program. See, e.g., the GOC's August 18, 2010 second supplemental questionnaire at 1.

We preliminarily determine that the grants issued by the GOC under this program constitute a financial contribution under section 771(5)(D)(i) of the Act and a benefit under section 771(5)(E) of the Act. Concerning specificity, we are resorting to the use of FA within the meaning of section 776(a)(1) of the Act because the necessary information concerning the manner in which this program is administered is not on the record. Based on the information contained in the July 8, 2010 questionnaire response of the Guang Ya Companies indicating that it received the grant in the form of an "export rebate," we are relying upon FA and preliminarily determine that the program is contingent upon exports and therefore specific under section 771(5A)(B) of the Act.

To calculate the benefit, we divided the amount of the grant by the total export sales of Guang Ya and Guangcheng in the year of approval/receipt. The grant was less than 0.5 percent of the total export sales of Guang Ya and Guangcheng. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POI (year of receipt).

On this basis, we calculated a total net subsidy rate of 0.02 percent *ad valorem* for the Guang Ya Companies.

N. PGOG Special Fund for Energy Saving Technology Reform

Under this program, the PGOG provides grants in the amount of RMB 200 for every one MT of standard coal saved through increased energy efficiency during a given year. Firms must demonstrate annual energy savings equivalent to 2,000 MT of standard coal in order to be eligible to apply for grants under the program. The program is administered by the PGOG's Department of Finance and the Economic Trade Commission of Guangdong pursuant to the "Provisional Measures on Administration of Guangdong Energy-Saving Special Fund (YUECAIGONG) (2008) No. 126. See the GOC's August 4, 2010, initial questionnaire at Exhibit 46.

The Guang Ya Companies reported that Guangcheng received a grant under this program during the POI.

We preliminarily determine that the grant issued by the GOC under this program constitute a financial contribution under section 771(5)(D)(i) of the Act and a benefit under section 771(5)(E) of the Act. As explained in the "Various Grant Programs Self-Reported by the Guang Ya Companies" section, the GOC failed to provide adequate benefit distribution data for this program. In its initial questionnaire, the GOC provided the amount of grants received by all firms (including Guangcheng) during the POI. It also provided for the POI the amount of grants received by aluminum extrusions producers as well as the total amount of grants issued under the program. However, the GOC did not provide, as requested by the Department, the amounts disbursed to other industries during the POI. In addition, the GOC did not provide, as requested by the Department, information concerning the distribution of benefits provided to firms and industry groups in the three years preceding the POI. See the GOC's August 4, 2010, initial questionnaire at 104-111 and Exhibit 46. Further, the GOC did not provide the requested information concerning the distribution of benefits in its second supplemental questionnaire response. See the GOC's August 19, 2010, second supplemental questionnaire at 1. As a result, the Department is applying AFA and assuming that the program is specific under section 771(5A)(D)(iii) of the Act.

To calculate the benefit, we divided the amount of the grant by the total sales of Guang Ya and Guangcheng in the year of approval/receipt. The grant was less than 0.5 percent of the total sales of Guang Ya and Guangcheng. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POI (year of receipt).

On this basis, we calculated a total net subsidy rate of 0.06 percent *ad valorem* for the Guang Ya Companies.

O. PGOG Science and Technology Bureau Project Fund (Also Referred to as Guangdong Industry, Research, University Cooperating Fund)

Under this program, the PGOG distributes grants to universities and firms to support, among other things, industrial development and innovation in the province. The program is administered by the PGOG's Department of Finance and Department of Science and Technology. See the GOC's August 9, 2010, first supplemental questionnaire response at 41-50 and Exhibit Supp-5. The Guang Ya

Companies reported that Guang Ya received a grant under this program during the POI.

We preliminarily determine that the grant issued by the GOC under this program constitutes a financial contribution under section 771(5)(D)(i) of the Act and a benefit under section 771(5)(E) of the Act. As explained in the “Various Grant Programs Self-Reported by the Guang Ya Companies” section, the GOC failed to provide benefit distribution data for this program. As a result, the Department is applying AFA and assuming that the program is specific under section 771(5A)(D)(iii) of the Act.

To calculate the benefit, we divided the amount of the grant by the total sales of Guang Ya and Guangcheng in the year of approval/receipt. The grant was less than 0.5 percent of the total sales of Guang Ya and Guangcheng. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POI (year of receipt).

On this basis, we calculated a total net subsidy rate of 0.03 percent *ad valorem* for the Guang Ya Companies.

P. PGOG Tax Offsets Grants for Research and Development (R&D)

Under this program, for R&D expenses incurred for developing new products and technologies that cannot be treated as intangible assets, 50 percent of the R&D expense shall be deducted as a tax offset. For R&D expenses considered intangible assets, the tax offset shall be amortized based on 150 percent of the R&D expenses. The program is administered by the PGOG’s Science and Technology Department and the Economic Trade Commission pursuant to the “Trial Administrative Measures for the Pre-Tax Deduction of Enterprises R&D Expenses” (R&D Measures). See the Guang Ya Companies’ July 8, 2010, questionnaire response at Exhibit 23. Article 5 of the R&D Measures states that eligible R&D projects:

shall be in line with national and Guangdong provincial technological policies and industrial policies. Any projects belonging to producer projects, technological projects, or process projects eliminated or restricted by the central or Guangdong provincial government shall not enjoy the policy of additional calculation of R&D expenses.

Id. The Guang Ya Companies reported that Guangcheng received a grant under this program during the POI.

We preliminarily determine that the grant issued by the GOC under this program constitutes a financial contribution under section 771(5)(D)(i) of the Act and a benefit under section 771(5)(E) of the Act. Concerning

specificity, as noted above in the “Policy Loans to Chinese Aluminum Extrusion Producers” section, we have preliminarily determined that the GOC and the PGOG have targeted the aluminum extrusions industry for development and assistance in a manner that is specific under section 771(5A)(D)(i) of the Act, as illustrated in the government plans and directives, to encourage and support the growth and development of the aluminum extrusions industry. Given this preliminary finding and in light of the language in Article 5 of the R&D Measures, we preliminarily determine that the grants provided under this program are *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act.

To calculate the benefit, we divided the amount of the grant by the total sales of Guang Ya and Guangcheng in the year of approval/receipt. The grant was less than 0.5 percent of the total sales of Guang Ya and Guangcheng. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POI (year of receipt).

On this basis, we calculated a total net subsidy rate of 0.04 percent *ad valorem* for the Guang Ya Companies.

Q. Refund of Land-Use Tax for Firms Located in the Zhaoqing New and High-Tech Industrial Development Zone (ZHTDZ)

The Zhongya Companies reported that New Zhongya received a refund during the POI of land-use taxes paid to the ZHTDZ local authority in 2007. According to the Zhongya Companies, the ZHTDZ local authority reduced its land-use tax rate from 5 RMB per square meter to 2 RMB per square meter. The Zhongya Companies state that receipt of the land-use tax refund was contingent upon New Zhongya’s location in the ZHTDZ. See the Zhongya Companies August 6, 2010, supplemental questionnaire response at 27. The Zhongya Companies reported that New Zhongya recorded the tax refund in its “subsidy income” ledger. *Id.*

We preliminarily determine that the land-use tax refund received by the Zhongya Companies constitutes a financial contribution, in the form of revenue foregone, and a benefit, equal to the amount of the refund, as described under sections 771(5)(D)(ii) and 771(5)(E) of the Act. Because the tax refund is limited to firms located in the ZHTDZ, we preliminarily determine that the program is regionally-specific under section 771(5A)(D)(iv) of the Act.

To calculate the benefit, we divided the amount of the land-use tax received during the POI by the Zhongya

Companies’ total sales. On this basis, we calculated a total net subsidy rate of 0.13 percent *ad valorem* for the Zhongya Companies.

R. Development Assistance Grants From the ZHTDZ Local Authority

The Zhongya Companies reported that New Zhongya received a one-time development assistance grant from the ZHTDZ local authority during the POI. According to the Zhongya Companies, in determining eligibility, the ZHTDZ local authority examines firms’ output, tax payments, the level of foreign investment, and whether the firms’ have received famous brand designation. See the Zhongya Companies’ August 6, 2010, supplemental questionnaire response at 17.

We preliminarily determine that the grant issued by the GOC under this program constitutes a financial contribution under section 771(5)(D)(i) of the Act and a benefit under section 771(5)(E) of the Act. Concerning specificity, as explained above in the “GOC and Sub-Central Government Grants, Loans, and Other Incentives for Development of Famous Brands and China World Top Brands” section, we have preliminarily determined that the Famous Brand program is contingent upon export activity and, thus, is specific under section 771(5A)(B) of the Act. The Zhongya Companies indicate that famous brand designation is among the factors considered when determining eligibility under this program. Section 771(5A)(B) of the Act states that a program shall be deemed an export subsidy if receipt of the subsidy is contingent upon export performance, alone or as one of two or more conditions. Accordingly, because famous brand designation is among the factors the ZHTDZ local authority considers when determining eligibility and because the famous brand designation is contingent upon export activity, we preliminarily determine that the program is specific under section 771(5A)(B) of the Act. Our interpretation of section 771(5A)(B) of the Act in this regard is consistent with the Department’s practice. See, e.g., PC Strand from the PRC Decision Memorandum at “Subsidies for Development of Famous Export Brands and China World Top Brands at Central and Sub-Central Level.”

To calculate the benefit, we divided the amount of the grant by the total export sales of the Zhongya Companies in the year of approval/receipt. The grant was less than 0.5 percent of the export sales of the Zhongya Companies. Therefore, pursuant to 19 CFR

351.524(b)(2), we expensed the grant amount to the POI (year of receipt).

On this basis, we calculated a total net subsidy rate of 0.13 percent *ad valorem* for the Zhongya Companies.

S. Provision of Primary Aluminum for LTAR

The Department is investigating whether producers and suppliers, acting as Chinese government authorities, sold primary aluminum to the Guang Ya and Zhongya Companies for LTAR. The Guang Ya and Zhongya Companies reported obtaining primary aluminum during the POI from trading companies as well as directly from primary aluminum producers. In the case of the Zhongya Companies, they were able to identify all of the firms that produced the primary aluminum that the Zhongya Companies purchased during the POI. Concerning the Guang Ya Companies, in some instances they were not able to identify the producers of the primary aluminum that the Guang Ya Companies purchased during the POI.

In *Tires from the PRC*, the Department determined that majority government ownership of an input producer is sufficient to qualify it as an “authority.” See *Tires from the PRC Decision Memorandum* at “Government Provision of Rubber for Less than Adequate Remuneration.” Based on the record in the instant investigation, we determine that primary aluminum producers, which supplied respondents, and that are majority-government owned are “authorities.” As a result, we determine that primary aluminum supplied by companies deemed to be government authorities constitute(s) a financial contribution in the form of a governmental provision of a good and that the respondents received a benefit to the extent that the price they paid for primary aluminum produced by these suppliers was for LTAR. See sections 771(5)(D)(iv) and 771(5)(E)(iv) of the Act. We will follow-up with the GOC to determine whether suppliers that have less than majority government ownership should also be determined to be “authorities” under our CVD regulations.

In prior CVD proceedings involving the PRC, the Department has determined that when a respondent purchases an input from a trading company or non-producing supplier, a subsidy is conferred if the producer of the input is an “authority” within the meaning of section 771(5)(B) of the Act and the price paid by the respondent for the input was sold for LTAR. See CWP from the PRC Decision Memorandum at “Hot-Rolled Steel for Less Than Adequate Remuneration;” Racks from

the PRC Decision Memorandum at “Provision of Wire Rod for Less than Adequate Remuneration;” and CWASPP from the PRC Decision Memorandum at “Provision of SSC for LTAR.” Therefore, in our initial questionnaire, we requested that the respondent companies and the GOC together identify the producers from whom the trading companies acquired the primary aluminum that was subsequently sold to respondents during the POI and to provide information that would allow the Department to determine whether those producers were government authorities.

The Zhongya Companies were able to identify the entities that produced the primary aluminum that they acquired during the POI. Regarding the Guang Ya Companies, for certain purchases, they were able to identify the producers. However, for several other purchases, although they identified their primary aluminum suppliers and indicated whether the suppliers were trading companies in the business of reselling primary aluminum, the Guang Ya Companies did not identify the producers that supplied the trading companies. For purposes of this preliminary determination, where available, we are relying on the information supplied by the GOC and by the Guang Ya and Zhongya Companies when determining whether the suppliers identified in the firms’ questionnaires responses are government authorities. We will follow-up with the Guang Ya Companies with respect to the identity of the producers that supplied the trading companies.

Because the Guang Ya Companies have not been able to supply the requested information, we find that the necessary information is not on the record and, as a result, we are resorting to the use of facts available (FA) within the meaning of sections 776(a)(1) and (2) of the Act. In its response, the GOC provided information on the amount of primary aluminum produced by state-owned enterprises (SOEs) and private producers in the PRC. Using these data, we derived the ratio of primary aluminum produced by SOEs during the POI. Thus, pursuant to sections 776(a)(1) and (2) of the Act, we have resorted to the use of FA with regard to the primary aluminum sold to the Guang Ya Companies by certain domestic trading companies. Specifically, we assumed that the percentage of primary aluminum supplied by these domestic trading companies that is produced by government authorities is equal to the ratio of primary aluminum produced by

SOEs during the POI.⁸ Regarding this ratio, we note that the GOC classified the CHALCO Aluminum Corporation of China (CHALCO) as a privately-owned primary aluminum producer. However, based on publicly available information, we are treating CHALCO as a GOC authority. See the Memorandum to the File, “Factual Information Placed On Record Regarding the Ownership of a Primary Aluminum Producer,” (August 16, 2010) (CHALCO Memorandum), a public document on file in room 1117 of the CRU. Our use of FA in this regard is consistent with the Department’s practice. See, e.g., CWP from the PRC Decision Memorandum at “Hot-Rolled Steel for Less Than Adequate Remuneration;” see also LWRP from the PRC Decision Memorandum at “Hot-Rolled Steel for Less Than Adequate Remuneration.” The Department will continue to examine the identities of the firms that produced the primary aluminum that was purchased by the Guang Ya Companies during the POI and will continue to investigate whether the firms that produced the primary aluminum for both the Guang Ya and the Zhongya Companies operated as government authorities.

Having addressed the issue of financial contribution, we must next analyze whether the sale of primary aluminum to the mandatory respondents by suppliers designated as government authorities conferred a benefit within the meaning of section 771(5)(E)(iv) of the Act. The Department’s regulations at 19 CFR 351.511(a)(2) set forth the basis for identifying appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services. These potential benchmarks are listed in hierarchical order by preference: (1) Market prices from actual transactions within the country under investigation (e.g., actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As we explained in *Softwood Lumber from Canada*, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation because

⁸ In other words, in instances where we are applying FA, we are assuming that the percentage of primary aluminum purchased by domestic trading companies during the POI was equal to the ratio of primary aluminum produced by SOEs during the POI, as indicated by the aggregate data supplied in the questionnaire responses of the GOC.

such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation. See *Softwood Lumber from Canada Decision Memorandum* at “Market-Based Benchmark” section.

Beginning with tier one, we must determine whether the prices from actual sales transactions involving Chinese buyers and sellers are significantly distorted. As explained in the *Preamble*:

Where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government’s involvement in the market, we will resort to the next alternative {tier two} in the hierarchy.

See *Preamble to Countervailing Duty Regulations*, 63 FR 65377, (November 25, 1998) (*Preamble*). The *Preamble* further recognizes that distortion can occur when the government provider constitutes a majority or, in certain circumstances, a substantial portion of the market. *Id.*

In the instant investigation, the GOC reported the total primary aluminum production by SOEs during the POI. The share of production number of these SOEs, after adjustment by the Department, accounted for more than 50 percent of the PRC’s production. See *Memorandum to the File from Eric B. Greynolds, Program Manager, “Share of Primary Aluminum Production During Period of Investigation,”* (August 30, 2010). We find this majority share by SOEs makes it reasonable to conclude that actual transaction prices are significantly distorted as a result of the government’s involvement in the market. See *Preamble*, 63 FR at 65337. Our finding in this regard is in accordance with the Department’s practice. See, e.g., *Wire Decking from the PRC Decision Memorandum* at “Provision of Zinc for LTAR.” In addition, as further evidence of the government’s predominant role in the market, we note that GOC has imposed export tariffs on two of the three HTS categories that cover primary aluminum. Such export restraints can discourage exports and increase the supply of primary aluminum in the domestic market, with the result that domestic prices are lower than they would be otherwise. See, e.g., *Racks from the PRC Decision Memorandum* at 15. For this reason, we preliminarily determine that domestic prices charged by privately-owned primary aluminum producers based in the PRC may not serve as viable, tier one benchmark prices.

The Department has on the record primary aluminum prices, as published

by the London Metals Exchange (LME). We find that these prices may serve as a tier-two benchmark, as described under 19 CFR 351.511(a)(2)(ii), when determining whether the Zhongya Companies received a benefit on its purchases of primary aluminum from government authorities. Concerning the LME prices, we note that the Department has relied on pricing data from industry publications in prior CVD proceedings involving the PRC. See, e.g., *CWP from the PRC Decision Memorandum* at “Hot-Rolled Steel for Less Than Adequate Remuneration” section; see also *LWRP from the PRC Decision Memorandum* at “Hot-Rolled Steel for Less Than Adequate Remuneration” section. For purposes of the preliminary determination, we find prices from the LME to be sufficiently reliable and representative for use in the benchmark calculation.

The Zhongya and Guang Ya Companies reported that they imported primary aluminum. In past cases, the Department has incorporated prices on company-specific imports into the LTAR benchmark provided that the Department’s analysis indicates that the company-specific import prices are not distorted by the dominance of government production in the PRC. See, e.g., *Circular Welded Austenitic Stainless Pressure Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, (74 FR 4936) January 28, 2009, (*CWASPP from the PRC*), and accompanying Issues and Decision Memorandum (*CWASPP from the PRC Decision Memorandum*) at “Provision of SSC for LTAR;” see also *CWP from the PRC Decision Memorandum* at Comment 7.

However, upon further examination, we preliminarily determine that when the Department has determined that it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government’s involvement in the market, it is not appropriate to utilize company-specific prices as a tier-one benchmark. This is consistent with the language of the *Preamble*. We preliminarily determine that it is reasonable to conclude that the prices of goods that are imported into the domestic market are also significantly distorted as a result of the government’s involvement in the market.

To determine whether primary aluminum suppliers, acting as government authorities, sold primary aluminum to respondents for LTAR, we compared the prices the respondents paid to the suppliers to our primary aluminum benchmark price. We

conducted our comparison on a monthly basis. When conducting the price comparison, we converted the benchmark to the same currency and unit of measure as reported by the mandatory respondents for their purchases of primary aluminum.

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one or tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Accordingly, in deriving the benchmark prices, we ensured that ocean freight and inland freight were included. Specifically, we included ocean freight pricing data from the Maersk shipping company pertaining to shipments of aluminum, articles of aluminum, and metal products from the port of Busan, South Korea, to Hong Kong. See petitioners’ August 20, 2010, submission at Exhibit 4. We used this information because it was the only information on the record for ocean freight. Concerning inland freight, we calculated company-specific inland freight rates using cost data supplied by the Guang Ya and Zhongya Companies. Further, we added to the benchmark import duties and the VAT applicable to imports of primary aluminum into the PRC as reported by the GOC. In deriving the benchmark we did not include marine insurance. In prior CVD investigations involving the PRC, the Department has found that while the PRC customs authorities impute an insurance cost on certain imports for purposes of levying duties and compiling statistical data, there is no evidence to suggest that PRC customs authorities require importers to pay insurance charges. See, e.g., *PC Strand from the PRC Decision Memorandum* at Comment 13. Further, we have not added separate brokerage, handling, and documentation fees to the benchmark because we find that such costs are already reflected in the ocean freight cost from Maersk that is being used in this preliminary determination. See petitioners’ August 20, 2010, submission at Exhibit 4.

Regarding the primary aluminum prices that respondents paid to government authorities, both the Zhongya and Guang Ya Companies reported their prices to the Department inclusive of inland freight and indicated the domestic VAT applied to their purchases. Accordingly, when performing our comparison, we included the domestic VAT paid on purchases from government authorities. In this manner, we find the Department

has conducted the comparison on an apples-to-apples basis.

Comparing the benchmark unit prices to the unit prices paid by respondents for primary aluminum, we determine that primary aluminum was provided for LTAR and that a benefit exists in the amount of the difference between the benchmark and what the respondent paid. See section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a).

Finally, with respect to specificity, the third subsidy element specified under the Act, the GOC has provided information on end uses for primary aluminum. The GOC stated that the end uses of primary aluminum relate to the type of industry involved as a direct purchaser of the input. The GOC further stated that the consumption of primary aluminum occurs across a broad range of industries. While numerous companies may comprise the listed industries, section 771(5A)(D)(iii)(I) of the Act clearly directs the Department to conduct its analysis on an industry or enterprise basis. Based on our review of the data and consistent with our past practice, we determine that the industries named by the GOC are limited in number and, hence, the subsidy is specific. See section 771(5A)(D)(iii)(I) of the Act. See LWRP from the PRC Decision Memorandum at Comment 7; see also Racks from the PRC Decision Memorandum at "Provision of Wire Rod for Less Than Adequate Remuneration."

We find that the GOC's provision of primary aluminum for LTAR to be a domestic subsidy as described under 19 CFR 351.525(b)(3). Therefore, to calculate the net subsidy rate, we divided the benefit by a denominator comprised of total sales. Regarding the Zhongya Companies, we divided the benefit by the companies' total sales during the POI. Regarding the Guang Ya Companies, we divided the benefit by combined total sales of Guang Ya and Guangcheng.

On this basis, we calculated a total net subsidy rate of 2.36 percent *ad valorem* for the Zhongya Companies and 3.07 percent *ad valorem* for the Guang Ya Companies.

T. Purchase of Aluminum Extrusions for MTAR

We initiated on a program that alleged that the GOC, under the Government Procurement Law and the Indigenous Innovation program, purchases aluminum extrusions for MTAR. Therefore, the Department requested information on whether the GOC or GOC authorities purchased aluminum extrusions from respondents for MTAR. The GOC and the two company

respondents stated that neither the two companies nor their products are listed in local government indigenous innovation catalogues; therefore, we preliminarily determine that the companies did not use the Indigenous Innovation programs. However, information provided in the companies' responses indicate that they may have benefited from the government's purchase of aluminum extrusions under the Government Procurement Law.

The Guang Ya and Zhongya Companies provided information concerning their sales of aluminum extrusions during the POI. The Guang Ya Companies provided complete sales information. The Guang Ya Companies report in their questionnaire response which customers were GOC authorities and which were private companies. See the Guang Ya Companies August 9, 2010, supplemental questionnaire response at Exhibits 68 and 69. The Zhongya Companies provided the requested sales information for 70 percent of its sales, which corresponded to its top ten customers.⁹ The Zhongya Companies report that these top ten customers were private companies. See Attachment 4 of the Zhongya Companies' August 6, 2010, supplemental questionnaire. However, as discussed above in the "Adverse Facts Available" section, the Zhongya Companies failed to report the requested information for the remaining 30 percent of its sales value.

The Department also requested information from the GOC regarding the ownership structure of the customers that purchased aluminum extrusions from the Guang Ya and Zhongya Companies. Specifically, the Department requested ownership information that would enable it to determine whether the two firms' customers were government authorities capable of providing a financial contribution under section 771(5)(D)(iv) of the Act. In the case of the Guang Ya Companies, the GOC provided ownership information for a portion of the companies' customers. For the Zhongya Companies, the GOC provided ownership information for six out of the ten customers.

For purposes of this preliminary determination, we are relying on the information supplied by the GOC and by the Guang Ya and Zhongya Companies when determining whether the customers identified in the firms' questionnaire responses are government authorities. Accordingly, we determine

⁹For purposes of this preliminary determination, we are assuming that the Zhongya Companies made this statement in reference to their sales value.

that the aluminum extrusions the Guang Ya Companies sold to GOC authorities constitute a financial contribution under section 771(5)(D)(iv) of the Act. Concerning the Zhongya Companies, as explained in the "Adverse Facts Available" section, we are assuming as AFA that the Zhongya Companies' unreported sales values were made to GOC authorities and, thus, constitute a financial contribution under section 771(5)(D)(iv) of the Act. We will continue to solicit information from the GOC, the Zhongya Companies, and Guang Ya Companies concerning the identities and ownership structure of their customers.

Having addressed the issue of financial contribution, we must next analyze whether the sales of aluminum extrusions to GOC authorities conferred a benefit within the meaning of section 771(5)(E)(iv) of the Act. The Department has investigated subsidy allegations involving the sale of a good for MTAR in relatively few proceedings. The most recent proceeding in which the Department investigated the provision of a good for MTAR was Low Enriched Uranium (LEU) from France. See, e.g., *Notice of Final Affirmative Countervailing Duty Determination: Low Enriched Uranium From France*, 66 FR 65901 (December 21, 2001) (*LEU from France*), and accompanying Decision Memorandum (LEU from France Decision Memorandum) at "Purchase at Prices that Constitute More Than Adequate Remuneration." In *LEU from France*, the Department measured whether a benefit was conferred by comparing the price the government authority paid to the respondent for LEU compared to the prices the government authority paid to other foreign suppliers of LEU. *Id.* In *LEU from France*, the Department indicated that it was conducting the benefit calculation in this manner because it was the only means by which the Department would be able to utilize benchmark prices paid in the country of provision. *Id.* Thus, in *LEU from France*, the Department's aim was to utilize a benchmark available in the country of provision. In *LEU from France*, such a benchmark was only available using pricing data supplied by the Government of France (e.g., pricing data from the perspective of the buyer).

In the instant investigation, we preliminarily determine that there are benchmark data available from the perspective of the seller. The Guang Ya Companies provided information concerning the sales of aluminum extrusions made to private customers. For purposes of the preliminary determination, we find that these prices

constitute prices available in the PRC and, thus, are suitable for use as a benchmark. Further, at this time, we preliminarily determine there is no information on the record of the investigation to suggest that the prices paid by private purchasers of aluminum extrusions in the PRC are distorted as a result of the GOC's involvement in the market for aluminum extrusions.

Thus, to determine whether a benefit was conferred on the Guang Ya Companies' sale of aluminum extrusions to GOC authorities, we compared the prices the Guang Ya Companies charged to state-owned firms to the prices the Guang Ya Companies charged to privately-owned customers. As stated above, for purposes of the preliminary determination, we have relied on information supplied by the Guang Ya Companies and the GOC in determining which customers were government authorities and which were private companies. We conducted our comparison on a monthly basis using average unit prices. In deriving the benchmark, we used weighted average, monthly prices. We will continue to examine the benchmark used in this MTAR benefit calculation in order to determine the most appropriate benchmark for the final determination and we invite interested parties to comment on this issue.

Comparing the benchmark unit sales prices to the unit sales prices the Guang Ya Companies sold to GOC authorities, we determine that a benefit exists in the amount of the difference between the benchmark sales price and the sale prices charged to GOC authorities. See section 771(5)(E)(iv). To calculate the benefit on each transaction, we multiplied the unit benefit by the corresponding quantity. We then summed the benefits on each transaction to calculate the total benefit attributable to the Guang Ya Companies.

Regarding the Zhongya Companies, as noted above they failed to provide any information regarding 30 percent of its sales value. Therefore, we are assuming as AFA that the unreported sales were made to GOC authorities and, thus, we must determine whether a benefit was conferred on the sales. Therefore, to calculate the benefit, we first used the total sales value reported by the Zhongya Companies (70 percent of its total sales) to derive the Zhongya Companies' total sales of aluminum extrusions. Next, we calculated the difference between these two sales values to derive the total sales value for the 30 percent of aluminum extrusion sales that the Zhongya Companies failed to report to the Department. As discussed in the "Adverse Facts

Available" section, we are assuming as AFA that the Zhongya Companies made these sales to GOC authorities. Further, as discussed in the "Adverse Facts Available" section, as AFA we assumed that the Zhongya Companies received a 20 percent price premium on its sales to GOC authorities. Accordingly, we calculated the benefit by multiplying the derived total sales value for the sales that were not reported by the Zhongya Companies by 20 percent. In this manner, we determine that the Zhongya Companies received a benefit under the program within the meaning of section 771(5)(E)(iv) of the Act.

Finally, with respect to specificity, we preliminarily determine that this program is specific under section 771(5A)(C) of the Act because the government procurement program is contingent upon the use of domestic goods over imported goods, as evidenced by the price premium set forth in the Implementing Measures of the Procurement Law.

On this basis, we calculated a total net subsidy rate of 6.63 percent *ad valorem* for the Zhongya Companies and 0.14 percent *ad valorem* for the Guang Ya Companies.

Programs Preliminarily Determined Not To Confer a Benefit During the POI

Regarding programs listed below, benefits from these programs result in net subsidy rates that are less than 0.005 percent *ad valorem* or constitute benefits that were fully expensed prior to the POI. Consistent with our past practice, we therefore have not included these programs in our net countervailing duty rate calculations. See, e.g., CFS from the PRC Decision Memorandum at "Analysis of Programs, Programs Determined Not To Have Been Used or Not To Have Provided Benefits During the POI for GE."

- A. Labor and Social Security Allowance Grants in Sanshui District of Guangdong Province
- B. "Large and Excellent" Enterprises Grant
- C. Advanced Science/Technology Enterprise Grant
- D. Advanced Science/Technology Enterprise Grant
- E. Award for Self-Innovation Brand/Grant for Self-Innovation Brand and Enterprise Listing
- F. Tiaofeng Electric Power Subscription Subsidy Funds
- G. Award for Excellent Enterprise
- H. Export Incentive Payments Characterized as Value Added Tax (VAT) Rebates

*Programs Preliminarily Determined Not To Be Used*¹⁰

- A. Loans and Interest Subsidies Provided Pursuant to the Northeast Revitalization Program
- B. Provincial Tax Exemptions and Reductions for "Productive" FIEs
- C. Tax Reductions for FIEs Purchasing Chinese-Made Equipment
- D. Tax Reductions for FIEs in Designated Geographic Locations
- E. Tax Reductions for Technology- or Knowledge-Intensive FIEs
- F. Tax Credits for Domestically-Owned Companies Purchasing Chinese-Made Equipment
- G. Tax Reductions for Export-Oriented FIEs
- H. Tax Refunds for Reinvesting of FIE Profits in Export-Oriented Enterprises
- I. Accelerated Depreciation for Enterprises Located in the Northeast Region
- J. Forgiveness of Tax Arrears for Enterprises in the Old Industrial Bases of Northeast China
- K. VAT Rebates on FIE Purchases of Chinese-Made Equipment
- L. Exemptions from Administrative Charges for Companies in the ZHTIDZ
- M. The State Key Technology Renovation Project Fund
- N. Grants to Cover Legal Fees in Trade Remedy Cases in Shenzhen
- O. The Clean Production Technology Fund
- P. Grants for Listing Shares: Liaoyang City (Guangzhou Province), Wenzhou Municipality (Zhejiang Province), and Quanzhou Municipality (Fujian Province)
- Q. The Northeast Region Foreign Trade Development Fund
- R. The Northeast Region Technology Reform Fund
- S. Land Use Rights in the Liaoyang High-Tech Industry Development Zone
- T. Allocated Land Use Rights for SOEs

Verification

In accordance with section 782(i)(1) of the Act, we intend to verify the information submitted by the Zhongya Companies, the Guang Ya Companies, and the GOC prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated an individual rate for subject merchandise produced and exported by the entities individually investigated. We have also calculated an all-others

¹⁰In this section we refer to programs preliminarily determined to be not used by the two participating respondent companies.

rate. We preliminarily determine the total estimated net countervailable subsidy rates to be:

Company	Ad valorem net subsidy rate
Guang Ya Aluminum Industries Co., Ltd. (Guang Ya), Foshan Guangcheng Aluminum Co., Ltd. (Guangcheng), Guang Ya Aluminum Industries Hong Kong (Guang Ya HK), Kong Ah International Company Limited (Kong Ah), and Yongji Guanghai Aluminum Industry Co., Ltd. (Guanghai) (collectively the Guang Ya Companies).	6.18 percent <i>ad valorem</i> .
Zhaoqing New Zhongya Aluminum Co., Ltd. (New Zhongya), Zhongya Shaped Aluminum HK Holding Ltd. (Zhongya HK), and Karlton Aluminum Company Ltd. (Karlton) (collectively the Zhongya Companies).	10.37 percent <i>ad valorem</i> .
Dragonluxe Limited (Dragonluxe)	137.65 percent <i>ad valorem</i> .
Miland Luck Limited (Miland)	137.65 percent <i>ad valorem</i> .
Liaoyang Zhongwang Aluminum Profile Co. Ltd./Liaoning Zhongwang Group (collectively, the Zhongwang Group) ..	137.65 percent <i>ad valorem</i> .
All Others Rate	137.65 percent <i>ad valorem</i> .

We note that section 705(c)(5)(A)(i) of the Act states that for companies not investigated, we will determine an all-others rate equal to the weighted average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates determined entirely under section 776 of the Act. However, as discussed above in the “Application of Adverse Inferences: Non-Cooperative Companies” section, the companies under individual investigation that participated in the investigation are voluntary respondents. The Department’s regulations state that in calculating the all-others rate under section 705(c)(5) of the Act, the Department will exclude net subsidy rates calculated for voluntary respondents. See 19 CFR 351.204(d)(3). The *Preamble to Procedural Regulations* further explains that while this principle of excluding voluntary rates from the all-others rate is not directly addressed in the statute, Article 9.4 of the Antidumping Agreement implies that the all-others rate cannot be a function of subsidy rates calculated for voluntary respondents. See *Preamble to Procedural Regulations*, 62 FR at 27310. The *Preamble to Procedural Regulations* further explains that the purpose of excluding voluntary respondents from the all-others rate calculation is to prevent the “distortion or outright manipulation of the all others rate.” *Id.*

We acknowledge that in a prior CVD investigation involving the PRC the Department, despite the language in the *Preamble to Procedural Regulations* and 19 CFR 351.204(d)(3), calculated the all-others rate by simple-averaging the AFA rates of the non-cooperating, mandatory respondents with the rate calculated for a voluntary respondent. See LWS from the PRC Decision Memorandum at Comment 21. However, upon further examination, we now determine that the potential for voluntary respondents’ net

subsidy rates to distort or manipulate the all-others rate is too great and, thus, we find that reliance on the approach from *LWS from the PRC* is no longer appropriate.

Accordingly, because we lack subsidy rates established for exporters and producers individually investigated, we must resort to “any reasonable method” to derive the all-others rate, as described under section 705(c)(5)(A)(ii) of the Act. We preliminarily determine that equating the all-others rate with the total AFA rate applied to the non-cooperating, mandatory respondents constitutes a “reasonable method” under 705(c)(5)(A)(ii) of the Act. See, e.g., *Certain Potassium Phosphate Salts From the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Termination of Critical Circumstances Inquiry*, 75 FR 30375 (June 1, 2010) (in an investigation where all of the mandatory respondents received a rate based on adverse facts available, using the AFA rate assigned to the mandatory respondents as the all-others rate).

In accordance with sections 703(d)(1)(B) and (2) of the Act, we are directing U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of the subject merchandise from the PRC that are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of the merchandise in the amounts indicated above.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files,

provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Disclosure and Public Comment

In accordance with 19 CFR 351.224(b), the Department will disclose to the parties the calculations for this preliminary determination within five days of its announcement. Case briefs for this investigation must be submitted no later than one week after the issuance of the last verification report. See 19 CFR 351.309(c) (for a further discussion of case briefs). Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the deadline for submission of case briefs. See 19 CFR 351.309(d). A list of authorities relied upon, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

In accordance with 19 CFR 351.310(c), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties will be notified of the schedule for the hearing and parties should confirm the time, date, and place of the hearing 48 hours before the

scheduled time. Requests for a public hearing should contain: (1) Party's name, address, and telephone number; (2) the number of participants; and (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.221(b)(4).

Dated: August 30, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

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