

C-570-968
Investigation
POI: 1/1/09 – 12/31/09
Public Document
Office 3: RC, JC, EBG

March 28, 2011

MEMORANDUM TO: Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

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

SUBJECT: Issues and Decision Memorandum for the Final Determination in
the Countervailing Duty Investigation of Aluminum Extrusions
from the People's Republic of China (PRC)

I. Summary

On August 30, 2010, the Department of Commerce (the Department) issued the Preliminary Determination in the above-mentioned countervailing duty (CVD) investigation. See Aluminum Extrusions From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, 75 FR 54302 (September 7, 2010) (Preliminary Determination). On October 29, 2010, the Department issued a post-preliminary determination decision memorandum concerning new subsidy allegations alleged by Petitioners on July 13 and July 28, 2010.¹ See Memorandum to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, "Post-Preliminary Determination Decision Memorandum," (October 2, 2010) (Post-Prelim Memorandum).²

We conducted verification of the questionnaire responses submitted by 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) from December 3 through December 7, 2010. See Memorandum to Eric B. Greynolds, Program Manager, Office 3, Operations, "Verification of the Questionnaire Responses Submitted by the Zhaoqing New Zhongya Aluminum Co., Ltd. (New Zhongya) and its Hong Kong affiliate Zhongya Shaped Aluminum (HK) Holding, Ltd. (Zhongya HK) (collectively the Zhongya Companies)" (January 28, 2011) (Zhongya Companies Verification Report). We conducted verification of the questionnaire responses submitted by the Government

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 proprietary Departmental memoranda referenced in this document are on file in the Central Records Unit (CRU), Room 7046 in the main building of the Commerce Department.

of the PRC (GOC) from December 9 through December 10, 2010. See Memorandum to Eric B. Greynolds, Program Manager, Office 3, Operations, “Verification of Information Submitted by the Government of the People’s Republic of China” (January 20, 2011) (GOC Verification Report). We conducted verification of the questionnaire responses submitted by 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) from December 14 through December 17, 2010. See Memorandum to Eric B. Greynolds, Program Manager, Office 3, Operations, “Verification of Guang Ya Aluminum Industries Co., Ltd., Foshan Guangcheng Aluminum Co., Ltd., Guang Ya Aluminum Industries Hong Kong, Kong Ah International Company Limited, and Yongji Guanghai Aluminum Industry Co., Ltd. (collectively the Guang Ya Companies)” (January 25, 2011) (Guang Ya Companies Verification Report).

The “Analysis of Programs” and “Subsidies Valuation Information” sections below describe the subsidy programs and the methodologies used to calculate benefits for the programs under examination. Additionally, we have analyzed the comments submitted by the interested parties in their case and rebuttal briefs in the “Analysis of Comments” section below, which contains the Department’s response to the issues raised in the briefs. Based on the comments received and our verification findings, we have made certain modifications to the Preliminary Determination. We recommend that you approve the positions described in this memorandum.

Below is a complete list of the issues in this investigation for which we received case briefs and rebuttal comments from interested parties:

- Comment 1:** Application of CVD Law to the PRC
- Comment 2:** Whether Application of the CVD Law to Imports from the PRC Violates the Administrative Procedure Act (APA)
- Comment 3:** Double Counting
- Comment 4:** Cutoff Date for Identifying Subsidies
- Comment 5:** Whether the Guang Ya Companies Inaccurately Reported Their Affiliates Thereby Warranting the Application of Adverse Facts Available (AFA)
- Comment 6:** Whether the Zhongya Companies Failed to Report Their Affiliates Thereby Warranting the Application of AFA
- Comment 7:** Whether the AFA Calculation is Accurate and Reasonable
- Comment 8:** Whether to Include Newly Alleged and Self-Reported Programs in the AFA Calculation
- Comment 9:** Whether the All Others Rate Should Equal the Total AFA Rate
- Comment 10:** Whether the Department Should Have Collected Information from Firms Subject to the All Others Rate
- Comment 11:** Whether the Department Should Have Selected Additional Mandatory Respondents
- Comment 12:** Whether the Department Should Retroactively Revise the All Others Rate from the Preliminary Determination
- Comment 13:** Whether the Sales of Aluminum Extrusions for More Than Adequate Remuneration (MTAR) Program Was Used by the Voluntary Respondents
- Comment 14:** Whether the Sales of Aluminum Extrusions for MTAR Program Is Specific

- Comment 15:** Whether the Sales of Aluminum Extrusions for MTAR Program Confers a Benefit
- Comment 16:** Whether the Department Improperly Rejected Data From The Zhongya Companies Pertaining to the Sale of Aluminum Extrusions For MTAR Program
- Comment 17:** Whether the Ownership Information of Respondents' Customers Was Complete and Fully Verified
- Comment 18:** Whether a Financial Contribution Exists Under the Provision of Primary Aluminum for Less Than Adequate Remuneration (LTAR) Program
- Comment 19:** Whether the Provision of Primary Aluminum for LTAR Program is Specific
- Comment 20:** Whether the Benchmark Used for the Provision of Primary Aluminum for LTAR Program Should Include Import Duties
- Comment 21:** Whether the Department Should Use In-Country Benchmarks Under the Provision of Primary Aluminum for LTAR Program
- Comment 22:** Whether the Guang Ya Companies Properly Reported Their Purchases of Primary Aluminum and Whether the Application of AFA is Warranted
- Comment 23:** Whether the Land for LTAR Program Constitutes a Financial Contribution, Provides a Benefit, and is Specific
- Comment 24:** Whether the Department Should Revise the Benchmark Used Under the Land for LTAR Program
- Comment 25:** Whether the Department Erred in Rejecting Factual Information Concerning the Benchmark Used Under the Land for LTAR Program
- Comment 26:** Whether the Guang Ya Companies Received an Additional Subsidy in Connection With the GOC's Purchase of Land-Use Rights and Buildings
- Comment 27:** Whether PRC Commercial Banks Are GOC Authorities That Provide a Financial Contribution
- Comment 28:** Whether there is a Link Between the Alleged Policy Lending Program and Actual Loans Received by Respondents
- Comment 29:** Whether the Derivation of the Short-Term Benchmark Interest Rate is Arbitrary
- Comment 30:** Whether the Derivation of the Long-Term Benchmark Interest Rate is Arbitrary
- Comment 31:** Whether the Department Committed Ministerial Errors Concerning the Famous Brands Program
- Comment 32:** Whether the Department Should Provide an Entered Value Adjustment to the Zhongya Companies to Account for Price Mark-Ups Made by Their Hong-Kong Affiliate
- Comment 33:** Whether the Department Improperly Declined to Initiate an Investigation of the GOC's Alleged Currency Undervaluation

II. 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 PRC's and the respondents' most recently completed fiscal year at the time we initiated this investigation. See 19 CFR 351.204(b)(2).

under 19 CFR 351.302(d)(1)(i). As a result, the Department returned the submission to the Guang Ya Companies. At verification, the Department confirmed, in the aggregate, the magnitude of the previously unreported volume of primary aluminum purchased by Guangcheng. See Guang Ya Companies Verification Report, Exhibit 14 at 16 – 17.

Because the Guang Ya Companies failed to provide all of its purchases of primary aluminum in a timely manner, we find, pursuant to section 776(a) of the Act, that the necessary information is not on the record. We further find that the Guang Ya Companies have failed to cooperate by not acting to the best of their ability. Therefore, in accordance with section 776(b) of the Act, we are applying partial AFA with regard to the primary aluminum purchased domestically by Guangcheng. Specifically, as partial AFA, we have multiplied the single highest unit benefit calculated on Guang Ya's purchases of primary aluminum under this program by the total volume of primary aluminum purchased by the Guang Ya Companies. See "Provision of Primary Aluminum for LTAR" section below.

ANALYSIS OF PROGRAMS

VII. Programs 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, VAT, 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, VAT, 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 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 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. Our findings in this regard are unchanged from the Preliminary Determination. See 75 FR at 54310.

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 four percent on the education tax) with the rate the companies paid (zero percent construction tax and one 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 its total sales for the POI. For Guangcheng, we divided the benefit by the combined total sales of Guangcheng and Guang Ya.

On this basis, we 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 the Guang Ya Companies July 8, 2010, questionnaire response at Exhibit 24 (Chapter 3 of the "Measures for the Administration of Chinese Top-Brand Products").

We determine that the grants that the Zhongya Companies and the 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. We determine that grants provided to the Zhongya Companies and the 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)(A) and (B) of the Act. Our approach in this regard is unchanged from the Preliminary Determination and consistent with the Department's findings in prior CVD proceedings involving the PRC. See 75 FR at 54310; see also Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 75 FR 28557 (May 21, 2010), 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 New Zhongya and Guang Ya received during the POI were less than 0.5 percent of their respective total export sales denominators in the year of approval/receipt. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the 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 denominator in the year of approval/receipt. Therefore, we allocated the