



A-570-967, C-570-968  
Anti-Circumvention Inquiry  
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November 3, 2016

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

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

SUBJECT: Anti-Circumvention Inquiry Regarding the Antidumping Duty and  
Countervailing Duty Orders on Aluminum Extrusions from the  
People's Republic of China: Preliminary Determination Decision  
Memorandum

### Summary

In response to a request from the Aluminum Extrusions Fair Trade Committee (Petitioner), the Department of Commerce (the Department) initiated an anti-circumvention inquiry pursuant to sections 781(c) and (d) of the Tariff Act of 1930, as amended (the Act).<sup>1</sup> The Department initiated its anti-circumvention inquiry to determine whether extruded aluminum products that meet the chemical specifications for 5050-grade aluminum alloy, which are heat-treated, and are exported by China Zhongwang Holdings Ltd. and its affiliates (collectively, Zhongwang), are circumventing the antidumping (AD) and countervailing duty (CVD) orders on aluminum extrusions from the People's Republic of China (PRC).<sup>2</sup> We also indicated in our *Initiation Notice* that we intended to consider whether the inquiry should apply to all such imports of extruded aluminum products, regardless of producer, exporter, or importer, from the PRC. Based on the information submitted by interested parties and the analysis below, we recommend that the Department preliminarily find that heat-treated extruded aluminum products from the PRC that meet the chemical specifications for 5050-grade aluminum alloy, regardless of producer, exporter, or importer, are circumventing the *Orders*.

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<sup>1</sup> See *Aluminum Extrusions from the People's Republic of China: Initiation of Anti-Circumvention Inquiry*, 81 FR 15039 (March 21, 2016) (*Initiation Notice*).

<sup>2</sup> See *Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order*, 76 FR 30650 (May 26, 2011) and *Aluminum Extrusions from the People's Republic of China: Countervailing Duty Order*, 76 FR 30653 (May 26, 2011) (collectively, the *Orders*).

## Background

On March 21, 2016, in response to Petitioner's anti-circumvention inquiry request,<sup>3</sup> the Department published the initiation of an anti-circumvention inquiry.<sup>4</sup> On April 21, 2016, the Department issued an anti-circumvention questionnaire to Zhongwang.<sup>5</sup> On April 25, 2016, the questionnaire was delivered to and signed for at one of the addresses for Zhongwang provided by Petitioner in its anti-circumvention inquiry request.<sup>6</sup> Also, on April 25, 2016, the questionnaire was refused by the recipient for the other address for Zhongwang provided by Petitioner in its anti-circumvention inquiry request.<sup>7</sup> The Department received no response to its questionnaire to Zhongwang. On September 28, 2016, the Department received comments and factual information from Endura Products Inc. (Endura), a domestic interested party, relating to other PRC producers of heat-treated extruded aluminum products that meet the chemical specifications for 5050-grade aluminum alloy, as well as U.S. importers of such products.<sup>8</sup> On October 7, 2016, the Department received comments and factual information from Petitioner relating to other Chinese producers of heat-treated extruded aluminum products that meet the chemical specifications for 5050-grade aluminum alloy.<sup>9</sup>

## Scope of the Orders

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

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<sup>3</sup> See Letter to the Secretary, "Aluminum Extrusions from the People's Republic of China: Resubmission of Circumvention Inquiry Request Pursuant to the Department's Request," dated December 30, 2015 (Petitioner's Resubmission of Circumvention Inquiry).

<sup>4</sup> See *Initiation Notice*.

<sup>5</sup> See Memorandum to the File, "Aluminum Extrusions from the People's Republic of China: Mailing of Anti-Circumvention Questionnaire," dated April 21, 2016 (Anti-Circumvention Questionnaire).

<sup>6</sup> See Memorandum to the File, "Anti-circumvention Inquiry Regarding the Antidumping Duty and Countervailing Duty Order on Aluminum Extrusions from the People's Republic of China: Questionnaire Responses," dated August 8, 2016.

<sup>7</sup> *Id.*

<sup>8</sup> See Letter to the Secretary from Endura, "Aluminum Extrusions from the People's Republic of China - AntiCircumvention Submission of Endura Products. Inc.," dated September 28, 2016 (Endura Submission).

<sup>9</sup> See Letter to the Secretary from Petitioner, "Aluminum Extrusions from the People's Republic of China: Resubmission of Request to Issue a Final Determination," dated October 7, 2016 (Petitioner's Additional Information).

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

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

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

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

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

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

The scope also excludes finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry, such as finished windows with glass, doors with glass or vinyl, picture frames with glass pane and backing material, and solar panels. The scope also excludes finished goods containing aluminum extrusions that are entered unassembled in a "finished goods kit." A finished goods kit is understood to mean a

packaged combination of parts that contains, at the time of importation, all of the necessary parts to fully assemble a final finished good and requires no further finishing or fabrication, such as cutting or punching, and is assembled “as is” into a finished product. An imported product will not be considered a “finished goods kit” and therefore excluded from the scope of the investigation merely by including fasteners such as screws, bolts, *etc.* in the packaging with an aluminum extrusion product.

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

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

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

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

9506.70.20.90, 9506.91.00.10, 9506.91.00.20, 9506.91.00.30, 9506.99.05.10, 9506.99.05.20, 9506.99.05.30, 9506.99.15.00, 9506.99.20.00, 9506.99.25.80, 9506.99.28.00, 9506.99.55.00, 9506.99.60.80, 9507.30.20.00, 9507.30.40.00, 9507.30.60.00, 9507.90.60.00, and 9603.90.80.50.

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

### **Merchandise Subject to the Anti-Circumvention Inquiry**

The products covered by this inquiry are heat-treated extruded aluminum products from the PRC that meet the chemical specifications for 5050-grade aluminum alloy, regardless of producer, exporter, or importer.<sup>10</sup>

### **Analytical Framework For Later-Developed Merchandise Anti-Circumvention Inquiry**

Section 781(d)(1) of the Act provides that the Department may find circumvention of an antidumping or countervailing duty order when merchandise is developed after an investigation is initiated (later-developed merchandise).<sup>11</sup> In conducting a later-developed merchandise anti-circumvention inquiry under section 781(d)(1) of the Act, the Department first determines whether the merchandise under consideration is “later developed”. In doing so, the Department examines whether the merchandise at issue was commercially available at the time of the initiation of the AD and CVD investigation.<sup>12</sup> We define commercial availability as “present in the commercial market or fully developed, *i.e.*, tested and ready for commercial production, but

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<sup>10</sup> Metallurgists state that the heat treatment is necessary, while maintaining a necessary magnesium to silicon ratio, to create  $Mg_5Si_6$  in the alloy to make it malleable enough to not impact the extrusion process’ speed, productivity, and per-unit production cost. Petitioner’s Resubmission of Circumvention Inquiry. at 45-48, Exhibit 23, and Exhibit 26.

<sup>10</sup> *Id.*, at 17 and Exhibit 5.

<sup>11</sup> See also 19 CFR 351.225(j).

<sup>12</sup> See *Later-Developed Merchandise Anticircumvention Inquiry of the Antidumping Duty Order on Petroleum Wax Candles from the People’s Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order*, 71 FR 32033, 32037-40 (June 2, 2006) unchanged in *Later-Developed Merchandise Anticircumvention Inquiry of the Antidumping Duty Order on Petroleum Wax Candles from the People’s Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 71 FR 59075 (October 6, 2006) (*Candles Anticircumvention Final*); *Candles Anticircumvention Final*, 71 FR at 59077 and accompanying Issues and Decision Memorandum at Comment 4, amended by Redetermination Pursuant to Court Remand Order in *Target Corporation v. United States*, 578 F. Supp. 2d 1369 (CIT 2008) (*Target I*) (November 7, 2008) (*Candles Anticircumvention Remand*), available at <http://enforcement.trade.gov/remands/08-101.pdf> affirmed by *Target Corp. v. United States*, 626 F. Supp. 2d 1285 (CIT 2009) (*Target II*), and *Target Corp. v. United States*, 609 F.3d 1352, 1358-1360 (Fed. Cir. 2010) (*Target III*) (holding that the Department’s interpretation of later-developed, as turning on whether the merchandise was commercially available at the time of the investigation, is reasonable). See also *Erasable Programmable Read Only Memories from Japan; Final Scope Ruling*, 57 FR 11599 (April 6, 1992) (*EPROMs from Japan*); *Electrolytic Manganese Dioxide from Japan; Final Scope Ruling*, 57 FR 395 (January 6, 1992) (*EMD from Japan*); *Portable Electronic Typewriters from Japan*, 55 FR 47358 (November 13, 1990).

not yet in the commercial market{,}”<sup>13</sup> which has been affirmed by the Court of International Trade (CIT) and Court of Appeals for the Federal Circuit (CAFC).<sup>14</sup>

If the Department determines that such merchandise was not commercially available at the time of the investigation, and is, thus, later-developed, the Department will consider whether the later-developed merchandise is covered by the orders pursuant to the statutory factors identified in section 781(d)(1) of the Act: (A) whether the general physical characteristics of the merchandise under consideration are the same as subject merchandise covered by the order(s), (B) whether the expectations of the ultimate purchasers of the merchandise under consideration are the same as the expectations of the ultimate purchasers of subject merchandise, (C) whether the ultimate use of the subject merchandise and the merchandise under consideration are the same, (D) whether the channels of trade of both products are the same, and (E) whether both products are advertised and displayed in a similar manner. The statute does not indicate whether any one of these factors is dispositive. Thus, we find that because each case is highly dependent on the facts on the record, these factors must be analyzed in light of those specific facts.<sup>15</sup>

In accordance with section 781(d)(1), the Department, after taking into account any advice provided by the United States International Trade Commission (ITC) under section 781(e) of the Act where applicable, may include such imported merchandise within the scope of an order. Section 781(e)(1)(C) of the Act provides that the Department shall notify the ITC of its finding under section 781(d) with respect to any later-developed merchandise which incorporates a significant technological advance or significant alteration of an earlier product. Thus, the Department finds,<sup>16</sup> as affirmed by the CIT,<sup>17</sup> that not all types of merchandise which are found to be later-developed require notification to the ITC – only those for which the Department has determined incorporate a significant technological advance or significant alteration of an earlier product.

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<sup>13</sup> *Candles Anticircumvention Final*, 71 FR at 59077, and accompanying Issues and Decision Memorandum at Comment 4.

<sup>14</sup> See *Target I*, 578 F. Supp. 2d at 1375-76; *Target III*, 609 F.3d at 1358-60 (“{T}he later-developed merchandise provision is designed to prevent circumvention of an antidumping order by a comparable product (as determined by the *Diversified Products* analysis) to the subject merchandise. Commerce’s interpretation accomplishes this objective since it reaches comparable products that emerge in the market after imposition of the antidumping order.”).

<sup>15</sup> See *Small Diameter Graphite Electrodes From the People’s Republic of China: Initiation of Anticircumvention Inquiry*, 77 FR 37873, 37876 (June 25, 2012).

<sup>16</sup> See *Candles Anticircumvention Remand*, at 8-10.

<sup>17</sup> See *Target I*, 578 F. Supp. 2d at 1377-78 (“The ITC consultation provision does not define or limit the meaning of later-developed merchandise. What it does is identify specific types of later-developed merchandise that may raise ‘significant injury issue{s}’ and require Commerce to consult with the ITC before including those specific types of later-developed merchandise within the scope of an order.”) (citing H.R. Rep. No. 100-576, at 603 (1988) (Conf. Rep.), reprinted in 1988 U.S.C.C.A.N. 1547, 1636).

## Use of Facts Available with an Adverse Inference

Section 776(a)(1) and (2) of the Act provides that, if necessary information is not available on the record, or if an interested party: (A) withholds information that has been requested by the Department, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the AD statute, or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination. 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 fails to cooperate by not acting to the best of its ability to comply with a request for information.

### Analysis

As discussed above, in conducting a later-developed merchandise anti-circumvention inquiry, we first consider whether the merchandise subject to the inquiry is later developed. We also then consider the statutory factors identified in section 781(d)(1) of the Act. This analysis is provided below.

As an initial matter however, we find that Zhongwang failed to respond to the Department's questionnaires and, accordingly, we preliminarily determine that (1) necessary information is missing from the record; (2) that Zhongwang withheld information requested by the Department; and (3) that Zhongwang significantly impeded the proceeding. Accordingly, we have preliminarily reached a circumvention determination on the basis of facts available pursuant to sections 776(a)(1) and (2)(A) and (C) of the Act. Additionally, in selecting from among the facts available, we preliminarily determine that an adverse inference is warranted, pursuant to section 776(b) of the Act, because we find that, by not responding at all, Zhongwang has failed to cooperate to the best of its ability in providing the requested information.

Furthermore, as noted above, the Department indicated in the *Initiation Notice* that it intended to consider applying the inquiry to all imports of extruded aluminum products that meet the chemical specifications for 5050-grade aluminum alloy and are heat-treated, regardless of producer, exporter, or importer, from the PRC.<sup>18</sup> We received comments and factual information from Petitioner and Endura which support a preliminary finding that multiple parties are producing and/or exporting inquiry merchandise. For instance, aside from evidence indicating that Zhongwang and its numerous affiliates are producing, exporting, and/or importing inquiry merchandise,<sup>19</sup> Petitioner also provided information indicating at least 25 other Chinese companies that are producing and/or exporting inquiry merchandise.<sup>20</sup> Additionally, Endura similarly provided evidence that multiple companies, such as Columbia Aluminum Products LLC (Columbia), Global Products International Group, LLC (Global), and Worldwide Door Components, Inc. (Worldwide), are importing inquiry merchandise from multiple

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<sup>18</sup> See *Initiation Notice*, 81 FR at 15042.

<sup>19</sup> See Petitioner's Resubmission of Circumvention Inquiry.

<sup>20</sup> See Petitioner's Additional Information.

producers/exporters.<sup>21</sup> Finally, the Department’s prior and ongoing scope proceedings concerning 5050 products demonstrate that companies such as Sinobec Resources LLS, Kota International LTD, Trending Imports LLC, and Regal Ideas, Inc. are likewise producing, exporting, and/or importing inquiry merchandise.<sup>22</sup>

In light of the fact that numerous companies produce and/or export inquiry merchandise, the Department finds that the record supports applying this inquiry to all imports from the PRC of extruded aluminum products that meet the chemical specifications for 5050-grade aluminum alloy and are heat-treated. The Department has applied rulings in other anti-circumvention inquiries on a country-wide basis.<sup>23</sup> Furthermore, the Department preliminarily determines, in light of the analysis below, that all imports from the PRC of extruded aluminum products that meet the chemical specifications for 5050-grade aluminum alloy and are heat-treated, regardless of producer, exporter, or importer, are within the scope of the orders.

### **A. Commercial Availability**

Evidence on the record provided by Petitioner indicates that, at the time of the AD and CVD investigations on aluminum extrusions from the PRC in 2010-2011, series 5050 alloy existed but was used for rolling and plate applications through strain hardening and/or cold working processes, rather than being used for extrusions.<sup>24</sup> Furthermore, this evidence indicates that heat-treated 5050 alloy extrusions are not recognized by The Aluminum Association<sup>25</sup> for the purposes normally associated with aluminum extrusions.<sup>26</sup> Additionally, this evidence indicates that The Aluminum Association did not recognize heat-treating series 5050 alloys at the time of the investigations, and still does not recognize doing so to the present day.<sup>27</sup> In addition, Petitioner provided a letter from an importer of inquiry merchandise, which states that PRC companies developed heat-treated 5050 alloy to meet the requirements of the extrusion industry around the time of the imposition of the tariffs.<sup>28</sup> This evidence supports a finding that inquiry merchandise was not commercially available at the time of the investigations; it was present in the commercial market, or developed, after the publication of the *Orders*.

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<sup>21</sup> See Endura Submission at Exhibit 4.

<sup>22</sup> See Memorandum to the File, “Antidumping and Countervailing Duty Orders on Aluminum Extrusions from the People’s Republic of China: Scope Rulings Relevant to this Proceeding,” dated concurrently with this memorandum (Relevant Scope Rulings Memorandum).

<sup>23</sup> See, e.g., *Affirmative Final Determination of Circumvention of the Antidumping Order on Folding Metal Tables and Chairs from the People’s Republic of China*, 74 FR 20920 (May 6, 2009), and *Candles Anticircumvention Final*, 71 FR 59075.

<sup>24</sup> Petitioner’s Resubmission of Circumvention Inquiry, at 54.

<sup>25</sup> The Aluminum Association maintains the standards for the aluminum industry for aluminum alloy designations, the chemical composition for the alloys, and the approved tempering methods for the different alloys. See Petitioner’s Resubmission of Circumvention Inquiry at Exhibit 21, Exhibit 23, and Exhibit 24.

<sup>26</sup> *Id.*, at 54.

<sup>27</sup> *Id.*, at 54, Exhibit 21, and Exhibit 27.

<sup>28</sup> *Id.*, at Exhibit 28 (“It was at that time that the Chinese developed the 5050 alloy that met the requirements of our industry.”) Metallurgists state on the record that the heat treatment is necessary, while maintaining a necessary magnesium to silicon ratio, to create Mg<sub>5</sub>Si<sub>6</sub> in the alloy to make it fungible enough for the extrusion process. *Id.* at 45-48, Exhibit 23, and Exhibit 26.

Additionally, Endura submitted product brochures from importer Columbia from 2009, 2010, and 2012 demonstrating that all of Columbia's door threshold products at that time were made from 6xxx-series aluminum alloy, *i.e.*, generally, in-scope merchandise.<sup>29</sup> However, after the issuance of the *Orders* in 2012, Columbia began marketing in its product brochures from 2015 and 2016 that its products could also be produced from 5050 alloy.<sup>30</sup> Additional evidence provided by Endura, which is proprietary, demonstrates that Columbia has now become one of the largest sources of inquiry merchandise for door thresholds and sills.<sup>31</sup> To support Petitioner's commercial availability claim, Endura submitted a test results of a Chinese producer's product from 2009, *i.e.*, before the initiation of the investigations, which demonstrates that products from that time were made from 6xxx-series aluminum alloy.<sup>32</sup> Endura also submitted similar test results of an identical product from 2015, *i.e.*, after the initiation of the investigations, which demonstrates that the products from that time were made from 5050 aluminum alloy.<sup>33</sup> Furthermore, Endura provided evidence demonstrating that Chinese producers are actively offering inquiry merchandise to potential customers, well after the imposition of the *Orders*.<sup>34</sup> This evidence indicates that inquiry merchandise became commercially available sometime after the initiation of the investigations.

Finally, as noted above, Zhongwang did not respond to the Department's questionnaire in which the Department asked for information pertaining to the commercial availability of Zhongwang's merchandise at the time of the investigations.<sup>35</sup> Thus, we are preliminarily making our determination relying on facts otherwise available, applying an adverse inference, pursuant to sections 776(a) and (b) of the Act.

Based on the information on the record and Zhongwang's failure to cooperate, the Department preliminarily finds that inquiry merchandise was not commercially available at the time of the investigations, and thus, constitutes later-developed merchandise within the meaning of section 781(d) of the Act.

## **B. Same General Physical Characteristics**

Petitioner has provided evidence on the record that an importer has admitted to sourcing extruded 5050-grade aluminum alloy products for use in products and applications which have traditionally used 6xxx-series alloys, as well as evidence relating to a domestic producer that has been asked to provide price quotes for the manufacture of products using 5050 alloy which have been made previously with 6xxx-series alloy.<sup>36</sup> Petitioner has also provided evidence that, to mimic the characteristics of in-scope 6xxx series (*i.e.*, the extrudable qualities of in-scope merchandise), the 5050 alloy must contain a precise magnesium to silicon content ratio, and be heat-treated.<sup>37</sup> This information suggests that aluminum extrusions formed from 5050 series

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<sup>29</sup> *Id.*, at 17 and Exhibit 5.

<sup>30</sup> *Id.*, at 17 and Exhibits 3 and 5.

<sup>31</sup> *Id.*, at 17 and Exhibit 4.

<sup>32</sup> *Id.*, at 17 and Exhibit 1A.

<sup>33</sup> *Id.*, at 18 and Exhibit 1A.

<sup>34</sup> *Id.*, at 19 and Exhibit 11.

<sup>35</sup> See Anti-Circumvention Questionnaire.

<sup>36</sup> See Petitioner's Resubmission of Circumvention Inquiry, at 56-57.

<sup>37</sup> *Id.* at Exhibit 23.

aluminum alloy which has been heat-treated and aluminum extrusion formed from 6xxx series aluminum alloy which has been heat-treated appear to be interchangeable. Petitioner and Endura also obtained and tested specimens labeled as 5050-grade aluminum alloy products from various producers, which demonstrate that the chemical composition overlapped with 6xxx-series standards, and had been heat-treated.<sup>38</sup> Although Petitioner did not test specimens of Zhongwang's products, information reasonably available to Petitioner indicates that the overall physical characteristics of Zhongwang's 5050-grade aluminum alloy extrusion products would be no different from the tested products.<sup>39</sup> Endura did test products from a Chinese producer of aluminum extrusions of an identical model door threshold produced before and after the issuance of the *Orders* showing they have the same general physical characteristics as in-scope merchandise.<sup>40</sup>

As noted above, Zhongwang did not respond to the Department's questionnaire in which the Department asked for information pertaining to the general physical characteristics of Zhongwang's merchandise. Thus, we are preliminarily making our determination relying on facts otherwise available, applying an adverse inference, pursuant to sections 776(a) and (b) of the Act.

Based on the information on the record and Zhongwang's failure to cooperate, the Department preliminarily finds that the inquiry merchandise has the same general physical characteristics as merchandise that is subject to the *Orders*.

### **C. Expectations of the Ultimate Purchasers and Use of Merchandise**

Petitioner and Endura have provided evidence that the expectations of the ultimate purchasers and use of 5050-grade aluminum alloy extrusion products are identical to those of products produced from 6xxx-series alloy.<sup>41</sup> This evidence suggests that the type of alloy had no bearing on customers' selection of aluminum extrusion products, and that, in some cases, 5050-grade aluminum alloy products were used specifically to avoid antidumping and countervailing duties.<sup>42</sup> The record also indicates that domestic producers are competing with Chinese-sourced 5050-grade aluminum alloy products for the same products designed to be manufactured in 6463 alloy.<sup>43</sup> Record evidence confirms that Zhongwang began importing a large volume of 5050-grade aluminum alloy products after the date of the *Orders*.<sup>44</sup> Furthermore, the record shows that multiple companies are exporting inquiry merchandise to the United States.<sup>45</sup>

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<sup>38</sup> *Id.*, at 57-58; *see also* Endura Submission, at 29 and Exhibit 1A.

<sup>39</sup> *See* Petitioner's Resubmission of Circumvention Inquiry, at page 56-58.

<sup>40</sup> *See* Endura Submission, at 29 and Exhibit 1A.

<sup>41</sup> *See* Petitioner's Resubmission of Circumvention Inquiry, at 58-60, Exhibit 22, Exhibit 28, and Exhibit 30; *see also* Endura Submission, at 30-32 and Exhibit 3.

<sup>42</sup> *See* Petitioner's Resubmission of Circumvention Inquiry, at Exhibit 30, Exhibit 28, and Exhibit 22; *see also* Endura Submission, at Exhibit 3.

<sup>43</sup> *See* Petitioner's Resubmission of Circumvention Inquiry, at 59 and Exhibit 28; *see also* Endura Submission, at 30-31, and Exhibit 3.

<sup>44</sup> *See* Petitioner's Resubmission of Circumvention Inquiry, at 65.

<sup>45</sup> *See* Petitioner's Additional Information, at Exhibit 1.

As noted above, Zhongwang did not respond to the Department's questionnaire in which the Department asked for information pertaining to the expectations of the ultimate purchasers and use of Zhongwang's merchandise. Thus, we are preliminarily making our determination relying on facts otherwise available, applying an adverse inference, pursuant to sections 776(a) and (b) of the Act.

Based on the information on the record and Zhongwang's failure to cooperate, the Department preliminarily finds that the expectations of the ultimate purchasers and use of merchandise for inquiry merchandise are the same as for merchandise that is subject to the *Orders*.

#### **D. Advertisement, Display, and Channels of Trade**

Evidence provided by Petitioner and Endura indicates that the advertisement, display, and channels of trade of inquiry merchandise are identical to those of merchandise produced from in-scope alloys, *i.e.*, 6xxx-series.<sup>46</sup> With respect to advertisement and display, record evidence shows that such 5050-grade aluminum alloy extruded products are advertised by Chinese producers to purchasers in the same manner that 6xxx-series are advertised, which demonstrates to customers and end-users that these products are interchangeable with 6xxx-series products.<sup>47</sup> Zhongwang's website advertises and displays a collection of products on its website without designation or differentiation between products crafted or capable of being crafted of different alloys, thus demonstrating that Zhongwang's 5050-grade aluminum alloy extrusion products are not advertised or displayed any differently from merchandise produced from in-scope 6xxx-series alloy.<sup>48</sup> Endura provided product catalogs from an importer (*i.e.* Columbia) that mentions that all products are made from series 6xxx or 5050 aluminum, but makes no distinction whether the product is manufactured from in-scope 6xxx series extrusions and inquiry merchandise.<sup>49</sup>

With respect to channels of trade, the product catalog provided by Endura shows the channels of trade for Columbia's inquiry merchandise are the same as in-scope merchandise, as it makes no distinction in the alloys used.<sup>50</sup> Additionally, evidence on the records shows a domestic producer that has been asked to provide price quotes for the manufacture of products using 5050-grade alloy which have been made previously with 6xxx-series alloy.<sup>51</sup> In addition, Petitioner provided evidence demonstrating a company's loss of business as a result of the replacement of 6xxx-series alloy in products with Chinese 5050-grade alloy.<sup>52</sup>

The record indicates that the respective importers of record were the same both pre- and post-initiation of the investigations for nearly all of Zhongwang's and other Chinese producers' shipments of aluminum product to the United States from 2009 to the present, regardless of whether those shipments were 6xxx-series profiles or 5050-grade products.<sup>53</sup> Based on the

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<sup>46</sup> See Petitioner's Resubmission of Circumvention Inquiry, at 60-62; *see also* Endura Submission, at 32-34.

<sup>47</sup> See Petitioner's Resubmission of Circumvention Inquiry, at 60; *see also* Endura Submission, at 32-34.

<sup>48</sup> See Petitioner's Resubmission of Circumvention Inquiry, at 60-61 and Exhibit 19.

<sup>49</sup> See Endura Submission, at 32-34, Exhibit 3, and Exhibit 5.

<sup>50</sup> *Id.*, at 32 and Exhibit 5.

<sup>51</sup> *Id.*, at 61, Exhibit 22.

<sup>52</sup> *Id.*, at 61, Exhibit 30.

<sup>53</sup> See Petitioner's Resubmission of Circumvention Inquiry, at 61, Exhibit 8, *see also* Endura Submission, at 32 and Exhibit 6.

above evidence, combined with the product catalogs from Columbia on the record, we find that the channels of trade are identical for Chinese producers of inquiry merchandise and subject merchandise.<sup>54</sup>

Regarding Zhongwang, there is no evidence reasonably available which indicates that the channels of trade in which Zhongwang's 5050-grade aluminum alloy extrusion products are sold are different from those in which similar 6xxx-series products are sold.<sup>55</sup> However, the evidence that is reasonably available, *i.e.*, Zhongwang's website, shows that Zhongwang advertises a collection of products manufactured exclusively from series 6xxx-series alloy and one product manufactured from 7xxx-series alloy, but makes no mention of series 5xxx products.<sup>56</sup> Given Zhongwang's importation levels of 5050-grade aluminum alloy extrusion products into the United States it raises questions about why Zhongwang does not advertise these products separately or at the very least mention them on its website.<sup>57</sup>

As noted above, Zhongwang did not respond to the Department's questionnaire in which the Department asked for information pertaining to the advertisement, display, and channels of trade of Zhongwang's merchandise. Thus, we are preliminarily making our determination relying on facts otherwise available, applying an adverse inference, pursuant to sections 776(a) and (b) of the Act.

Based on the information on the record and Zhongwang's failure to cooperate, the Department preliminarily finds that the advertisement, display, and channels of trade for inquiry merchandise are the same as for merchandise that is subject to the *Orders*.

### **E. Additional Analysis**

The Department may also consider other factors beyond those described above when making an anti-circumvention ruling in determining whether a producer or exporter created later-developed merchandise for the purpose of circumventing duties otherwise owed on subject merchandise.

At the completion of the original investigations, the PRC-wide antidumping rate was 33.28 percent, and the PRC-wide countervailing duty rate was 374.15 percent.<sup>58</sup> Both Petitioner and Endura assert that these considerable margins have given Chinese producers a financial incentive to circumvent the *Orders* so as not to incur the costs associated with the duties levied on the entries of subject merchandise.<sup>59</sup> Additionally, import data shows Zhongwang's shipments of 5050-grade aluminum alloy products began after the initiation of the investigations in 2010.<sup>60</sup> Finally, since the initiation of the investigations, many other producers have exported inquiry merchandise to the United States.<sup>61</sup>

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<sup>54</sup> See Endura Submission, at 32, Exhibit 3, and Exhibit 5.

<sup>55</sup> See Petitioner's Resubmission of Circumvention Inquiry, at 61-62.

<sup>56</sup> *Id.*, at 62 and Exhibit 19.

<sup>57</sup> *Id.*, at 62.

<sup>58</sup> *Id.*, at 63-64.

<sup>59</sup> See Petitioner's Resubmission of Circumvention Inquiry, at 64; *see also* Endura Submission, at 35-36.

<sup>60</sup> See Petitioner's Resubmission of Circumvention Inquiry, at 65.

<sup>61</sup> See Endura Submission, at Exhibit 6; *see also* Petitioner's Additional Information, at Exhibit 1.

Therefore, based on information on the record, and because Zhongwang did not respond to the Department's questionnaire, we are preliminarily making our determination on the basis of the facts otherwise available, applying an adverse inference, pursuant to sections 776(a) and (b) of the Act. Based on the foregoing, the Department preliminarily finds that the circumstance under which the products enter the United States; the timing of entries; and the quantity of merchandise entered contribute to the Department's preliminary finding.

Lastly, in accordance with sections 781(d)(1) and (e) of the Act, the Department has considered whether the inquiry merchandise incorporates a significant technological advance or significant alteration of an earlier product. As discussed in our *Initiation Notice*, and based on the record evidence provided by Petitioner, the inquiry merchandise requires a 0.2 percent by weight magnesium increase and precise silicon to magnesium ratio, which makes it virtually indistinguishable from the chemical composition limits for a 6xxx-series alloy, *i.e.*, in-scope merchandise. Further, once a precise ratio of silicon to magnesium is achieved, the same tempering process used for 6xxx-series alloy – heat-treatment – results in a product similar to a 6xxx-series aluminum extrusion product, save for the minor increase in magnesium.<sup>62</sup> We find that the manipulation in chemical composition and heat-treatment of 5050 aluminum alloy does not constitute a significant technological advancement or a significant alteration of in-scope merchandise. In light of this finding, the Department will not notify the ITC of its preliminary determination.

### **Preliminary Determination**

Based on our analysis, we preliminarily find that heat-treated extruded aluminum products that meet the chemical specifications for 5050-grade aluminum alloy, regardless of producer, exporter, or importer, from the PRC constitute later-developed merchandise that is circumventing, and should be included within, the scope of the *Orders*.<sup>63</sup>

### **Intent to Rescind Minor Alterations Anti-Circumvention Inquiry**

Because we are recommending an affirmative preliminary determination of circumvention with respect to later-developed merchandise pursuant to section 781(d) of the Act, we find that it is not necessary to make a determination with respect to a minor alterations anti-circumvention inquiry pursuant to section 781(c) of the Act. Thus, if the Department affirms this preliminary determination of circumvention in its final determination, we recommend rescinding the minor alterations anti-circumvention inquiry at that time.

### **Intent to Consider Certification Requirement**

In light of the Department's preliminary finding of circumvention, the Department intends to consider whether to require importers of certain aluminum extrusions who claim their merchandise is not subject to the *Orders* to maintain a certification certifying that their aluminum extrusions were not produced from heat-treated 5050 grade aluminum alloy. The Department intends to invite comments on this issue.

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<sup>62</sup> See *Initiation Notice*, 81 FR at 15042; see also Petitioner's Resubmission of Circumvention Inquiry, at 52-53.

<sup>63</sup> See section 781(d) of the Act and 19 CFR 351.225(j).

**Recommendation**

The Department recommends a preliminary determination that, pursuant to section 781(d) of the Act and 19 CFR 351.225(j), heat-treated extruded aluminum products from the PRC that meet the chemical specifications for 5050-grade aluminum alloy, regardless of producer or exporter, are circumventing the *Orders*. If we uphold this ruling in the final determination, we recommend that the section 781(c) inquiry be rescinded.

  
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Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

3 NOVEMBER 2016  
Date