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Scope: Door Thresholds  
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July 20, 2017

**MEMORANDUM TO:** James Maeder  
Senior Director  
Performing the duties of Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**THROUGH:** Erin Begnal  
Director, Office III  
Antidumping and Countervailing Duty Operations

**FROM:** Mandy Mallott  
International Trade Compliance Analyst, Office III  
Antidumping and Countervailing Duty Operations

**RE:** Antidumping and Countervailing Duty Orders on Aluminum  
Extrusions from the People's Republic of China

**SUBJECT:** Final Scope Ruling on Kota International, LTD's ACS-50 Series  
Products

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## SUMMARY

On October 21, 2013, the Department of Commerce (Department) received a scope ruling request from Kota International, LTD (Kota),<sup>1</sup> to determine whether its ACS-50 aluminum extrusions<sup>2</sup> are subject to the antidumping (AD) and countervailing duty (CVD) orders on aluminum extrusions from the People's Republic of China (PRC).<sup>3</sup> The Department initiated a formal scope inquiry on November 7, 2014, pursuant to 19 CFR 351.225(e). On March 14, 2016, the Department issued a preliminary scope ruling in which we preliminarily determined that Kota's ACS-50 products were not covered by the scope of the *Orders*.<sup>4</sup> Since that

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<sup>1</sup> See letter from Kota, "Antidumping Duty and Countervailing Duty Orders on Aluminum Extrusions from the People's Republic of China: Scope Ruling Request," dated October 21, 2013 (Kota's Scope Request).

<sup>2</sup> Kota describes its product as ACS-50 aluminum alloy, which corresponds to the Aluminum Association 5050 grade designation. See Kota's Scope Request, at 2. Because the requesting company uses this language, the extrusions will be referred to as ACS-50 through the ruling, rather than by the 5050 grade designation.

<sup>3</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*).

<sup>4</sup> See memorandum from the Department, "Preliminary Scope Ruling on Kota International, LTD's ACS-50 Series Products," dated March 14, 2016 (Preliminary Scope Ruling).



determination, the Department conducted a concurrent anti-circumvention inquiry in which it determined 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, constitute later-developed merchandise that is circumventing the *Orders*, and is included within the scope of the *Orders*.<sup>5</sup> Pursuant to 19 CFR 351.225(f)(4) and (k)(1), we determine that Kota's ACS-50 products are covered by the scope of the *Orders*.

## BACKGROUND

On October 21, 2013, Kota, through OHL International, the importer of the product at issue, requested that the Department determine whether the ACS-50 aluminum extrusions it imports from the PRC are outside the scope of the *Orders*.<sup>6</sup> The Department initiated a formal scope inquiry on November 7, 2014, pursuant to 19 CFR 351.225(e).<sup>7</sup>

On March 14, 2016, the Department issued a preliminary scope ruling, including relevant factual information relied upon in the preliminary analysis, and invited interested parties to comment on the preliminary scope ruling and the Department's proposed certification.<sup>8</sup> On April 4, 2016, Regal Ideas Inc. (Regal) and the Aluminum Extrusion Fair Trade Committee (the petitioner) submitted comments on the Department's preliminary ruling.<sup>9</sup> On April 21, 2016, three parties, IKEA Supply AG (IKEA), Regal, and the petitioner, submitted rebuttal comments related to the preliminary scope ruling.<sup>10</sup> The Department has extended the deadline for a ruling most recently on July 13, 2017 to July 20, 2017.<sup>11</sup>

On March 21, 2016, the Department initiated a concurrent anti-circumvention inquiry pursuant to sections 781(c) and (d) of the Tariff Act of 1930, as amended (the Act), to determine whether certain extruded aluminum products that meet the chemical specifications for 5050-grade aluminum alloy, which are heat-treated, and exported by China Zhongwang Holdings Ltd. and its

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<sup>5</sup> See memorandum from the Department, "Anti-Circumvention Inquiry Regarding the Antidumping Duty and Countervailing Duty Orders on Aluminum Extrusions from the People's Republic of China: Issues and Decision Memorandum," dated concurrently with this memorandum (Anti-Circumvention Final Determination).

<sup>6</sup> See Kota's Scope Request.

<sup>7</sup> See memorandum from the Department, "Aluminum Extrusions from the People's Republic of China (PRC): Initiation of Scope Inquiry on Kota International, LTD's 5050 Series," dated November 7, 2014.

<sup>8</sup> See Preliminary Scope Ruling. For a full discussion of the background leading up to the Preliminary Scope Ruling, see Preliminary Scope Ruling at 2-3.

<sup>9</sup> See letter from Regal, "Aluminum Extrusions from the People's Republic of China: Regal Ideas, Inc. Comments on Preliminary Scope Rulings," dated April 4, 2016 (Regal's Case Brief); see also letter from the petitioner, "Aluminum Extrusions from the People's Republic of China: Case Brief of the Aluminum Extrusions Fair Trade Committee," dated April 4, 2016 (Petitioner's Case Brief).

<sup>10</sup> See letter from IKEA, "Aluminum Extrusions from the People's Republic of China: IKEA Supply AG's Comments on Preliminary Rulings," dated April 21, 2016 (IKEA's Rebuttal Comments); see also letter from Regal, "Aluminum Extrusions from the People's Republic of China: Regal Ideas Inc. - Rebuttal Comments on Preliminary Scope Rulings," dated April 21, 2016 (Regal's Rebuttal Comments); and see letter from the petitioner, "Aluminum Extrusions from the People's Republic of China: Rebuttal Brief of the Aluminum Extrusions Fair Trade Committee," dated April 21, 2016 (Petitioner's Rebuttal Comments).

<sup>11</sup> See Memorandum, "Aluminum Extrusions from the People's Republic of China - Kota International Door Thresholds Scope Inquiry: Updated Deadline for the Final Scope Inquiry Determination in Alignment with the Concurrent Anti-Circumvention Inquiry," dated July 13, 2017 (Scope Ruling Extension).

affiliates, are circumventing the *Orders*.<sup>12</sup> On November 4, 2016, the Department issued its preliminary affirmative determination of circumvention, in which it determined that the circumvention inquiry concerned all imports from the PRC of heat-treated extruded aluminum products that meet the chemical specifications for 5050-grade aluminum alloy, regardless of producer, exporter, or importer, and preliminarily found that that these products constitute later-developed merchandise that is circumventing, and should be included within, the scope of the *Orders*.<sup>13</sup>

On November 7, 2016, the Department notified interested parties in this proceeding that, “because the concurrent anti-circumvention inquiry and the scope inquiry at issue here cover the same type of merchandise,” good cause existed to align the final scope inquiry determination with that of the anti-circumvention proceeding.<sup>14</sup> Both determinations are due July 20, 2017.<sup>15</sup>

Concurrent with this final scope ruling, the Department is issuing its final determination of circumvention and determines that all imports from the PRC of heat-treated extruded aluminum products that meet the chemical specifications for 5050-grade aluminum alloy, regardless of producer, exporter, or importer, constitute later-developed merchandise that is circumventing, and is included within, the scope of the *Orders*.<sup>16</sup>

## **SCOPE OF THE *ORDERS***

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

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<sup>12</sup> See *Aluminum Extrusions From the People’s Republic of China: Initiation of Anti-Circumvention Inquiry*, 81 FR 15039 (March 21, 2016).

<sup>13</sup> See *Aluminum Extrusions from the People’s Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping and Countervailing Duty Orders and Intent to Rescind Minor Alterations Anti-Circumvention Inquiry*, 81 FR 79444 (November 14, 2016) (“5050 Alloy Extrusions Circumvention Preliminary Determination”) and accompanying Preliminary Determination Memorandum, at 13.

<sup>14</sup> See Memorandum from the Department, “Aluminum Extrusions from the People’s Republic of China - Kota International Door Thresholds Scope Inquiry: Extension of Time for the Final Scope Inquiry Determination for Alignment with the Concurrent Anti-Circumvention Inquiry,” dated November 7, 2016.

<sup>15</sup> See *Scope Ruling Extension*.

<sup>16</sup> See *Anti-Circumvention Final Determination*.

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 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 (“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. In addition, fin evaporator coils may be classifiable under HTS numbers: 8418.99.80.50 and 8418.99.80.60. While HTS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

Additional subject products may be classifiable under the following HTS categories: 6603.90.8100, 7616.99.51, 8479.89.94, 8481.90.9060, 8481.90.9085, 9031.90.9195, 8424.90.9080, 9405.99.4020, 9031.90.90.95, 7616.10.90.90, 7609.00.00, 7610.10.00, 7610.90.00, 7615.10.30, 7615.10.71, 7615.10.91, 7615.19.10, 7615.19.30, 7615.19.50, 7615.19.70, 7615.19.90, 7615.20.00, 7616.99.10, 7616.99.50, 8479.89.98, 8479.90.94, 8513.90.20, 9403.10.00, 9403.20.00, 7604.21.00.00, 7604.29.10.00, 7604.29.30.10, 7604.29.30.50, 7604.29.50.30, 7604.29.50.60, 7608.20.00.30, 7608.20.00.90, 8302.10.30.00, 8302.10.60.30, 8302.10.60.60, 8302.10.60.90, 8302.20.00.00, 8302.30.30.10, 8302.30.30.60, 8302.41.30.00, 8302.41.60.15, 8302.41.60.45, 8302.41.60.50, 8302.41.60.80, 8302.42.30.10, 8302.42.30.15, 8302.42.30.65, 8302.49.60.35, 8302.49.60.45, 8302.49.60.55, 8302.49.60.85, 8302.50.00.00, 8302.60.90.00, 8305.10.00.50, 8306.30.00.00, 8414.59.60.90, 8415.90.80.45,

8418.99.80.05, 8418.99.80.50, 8418.99.80.60, 8419.90.10.00, 8422.90.06.40, 8473.30.20.00, 8473.30.51.00, 8479.90.85.00, 8486.90.00.00, 8487.90.00.80, 8503.00.95.20, 8508.70.00.00, 8515.90.20.00, 8516.90.50.00, 8516.90.80.50, 8517.70.00.00, 8529.90.73.00, 8529.90.97.60, 8536.90.80.85, 8538.10.00.00, 8543.90.88.80, 8708.29.50.60, 8708.80.65.90, 8803.30.00.60, 9013.90.50.00, 9013.90.90.00, 9401.90.50.81, 9403.90.10.40, 9403.90.10.50, 9403.90.10.85, 9403.90.25.40, 9403.90.25.80, 9403.90.40.05, 9403.90.40.10, 9403.90.40.60, 9403.90.50.05, 9403.90.50.10, 9403.90.50.80, 9403.90.60.05, 9403.90.60.10, 9403.90.60.80, 9403.90.70.05, 9403.90.70.10, 9403.90.70.80, 9403.90.80.10, 9403.90.80.15, 9403.90.80.20, 9403.90.80.41, 9403.90.80.51, 9403.90.80.61, 9506.11.40.80, 9506.51.40.00, 9506.51.60.00, 9506.59.40.40, 9506.70.20.90, 9506.91.00.10, 9506.91.00.20, 9506.91.00.30, 9506.99.05.10, 9506.99.05.20, 9506.99.05.30, 9506.99.15.00, 9506.99.20.00, 9506.99.25.80, 9506.99.28.00, 9506.99.55.00, 9506.99.60.80, 9507.30.20.00, 9507.30.40.00, 9507.30.60.00, 9507.90.60.00, and 9603.90.80.50.

The subject merchandise entered as parts of other aluminum products may be classifiable under the following additional Chapter 76 subheadings: 7610.10, 7610.90, 7615.19, 7615.20, and 7616.99, as well as under other HTSUS chapters. In addition, fin evaporator coils may be classifiable under HTSUS numbers: 8418.99.80.50 and 8418.99.80.60. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the *Orders* is dispositive.<sup>17</sup>

## LEGAL FRAMEWORK

When a request for a scope ruling is filed, the Department examines the scope language of the order at issue and the description of the product contained in the scope-ruling request.<sup>18</sup> Pursuant to the Department's regulations, the Department may also examine other information, including the description of the merchandise contained in the petition, the records from the investigations, and prior scope determinations made for the same product.<sup>19</sup> If the Department determines that these sources are sufficient to decide the matter, it will issue a final scope ruling as to whether the merchandise is covered by an order.

Conversely, where the descriptions of the merchandise in the sources described in 19 CFR 351.225(k)(1) are not dispositive, the Department will analyze the factors set forth at 19 CFR 351.225(k)(2). These factors are: (i) the physical characteristics of the merchandise; (ii) the expectations of the ultimate purchasers; (iii) the ultimate use of the product; (iv) the channels of trade in which the product is sold; and (v) the manner in which the product is advertised and displayed. The determination as to which analytical framework is most appropriate in any given scope proceeding is made on a case-by-case basis after consideration of all evidence before the Department.

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<sup>17</sup> See *Orders*.

<sup>18</sup> *Walgreen Co. v. United States*, 620 F.3d 1350, 1357 (Fed. Cir. 2010).

<sup>19</sup> 19 CFR 351.225(k)(1).

## DESCRIPTION OF MERCHANDISE SUBJECT TO THIS SCOPE INQUIRY

Kota's products are aluminum extrusions made from ACS-50 aluminum alloy material tempered through heat treating.<sup>20</sup> According to Kota, ACS-50 is an aluminum alloy composed of 1.4 percent magnesium by weight and the chemical composition of which "falls within the magnesium and other chemical tolerance requirements for UNS A95050, Aluminum Alloy 5050."<sup>21</sup> The 5050 alloy is used to create billets, which are heated to create the final product.<sup>22</sup> The final products are aluminum profiles custom made to customer-provided drawings and specifications, packaged according to customer requirements, and imported into the United States under HTSUS 7604.29.1000 for sale to U.S. customers who manufacture various window and door applications and are rarely used as end products.<sup>23</sup>

## INTERESTED PARTY COMMENTS

### A. Whether the Department Should Consider the *Diversified Products* Criteria under 19 CFR 351.225(k)(2)

#### *The Petitioner's Comments*

- The petitioner argues that, because the language of the scope creates an overlap with respect to an alloy's magnesium content, whether or not ACS-50 aluminum alloy materials are subject to the scope of the *Orders* cannot be resolved through reliance on the language of the scope alone.<sup>24</sup> The petitioner claims that manipulating the alloy's chemistry and temper is enough to negate the designation of Kota's extrusions as 5050 alloy and, therefore, reference to the Aluminum Association series number and silicon or magnesium content does not resolve the inherent overlap in coverage between 6xxx series and 5xxx series alloy groups.<sup>25</sup>
- The petitioner contends that the Department's consideration of the chemical composition of Kota's 5xxx series alloy (other than magnesium, which is the only element listed in the scope of the *Orders*), goes beyond a (k)(1) analysis.<sup>26</sup> The petitioner argues that if the Department continues to consider other chemical elements in the final scope ruling, the Department should conduct a (k)(2) analysis.

#### *Regal's Comments*

- Regal contends that the Department correctly relied upon the plain language of the scope in reaching its preliminary finding that merchandise manufactured from 5050 aluminum

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<sup>20</sup> See Kota's Scope Request at 1 and letter from Kota, "Antidumping Duty and Countervailing Duty Orders on Aluminum Extrusions from the People's Republic of China: Kota's Response to the Department's February 28, 2014 Request for Additional Information," dated March 14, 2014 (Kota Supplemental Questionnaire Response) at 2-3 and 5.

<sup>21</sup> See Kota's Scope Request at 1-2.

<sup>22</sup> See Kota Supplemental Questionnaire Response at 5.

<sup>23</sup> *Id.* at 1 and 3.

<sup>24</sup> See Petitioner's Case Brief at 4.

<sup>25</sup> *Id.*, at 5 and 7-9.

<sup>26</sup> *Id.*, at 10.

alloy is excluded from the scope of the *Orders* through a proper, comprehensive analysis pursuant to 19 CFR 351.225(k)(1) and consideration of the *Diversified Products* factors pursuant to 19 CFR 351.225(k)(2) is not necessary.<sup>27</sup>

- Regal argues the petitioner’s overlap claims are false, as an aluminum product may be either a series 5xxx alloy or 6xxx alloy; it may not be both.<sup>28</sup> Regal notes in the *Aluminum Water Heater Anodes* scope ruling, the Aluminum Association stated that Aluminum alloy designations are mutually exclusive and defined by the plain language of the teal sheets; an alloy cannot be designated to more than one series. Therefore, the extrusions are only a 5xxx series if they meet the requirements of the Aluminum Association teal sheets.<sup>29</sup>
- Regal states that the Department cannot unlawfully expand the scope of the *Orders* to include merchandise not considered during the underlying investigation; inclusion of the ACS-50 products under the scope of the *Orders* based on the alleged overlap or the temper of the product would constitute such an unlawful expansion.<sup>30</sup>
- Regal argues that the Court of Appeals for the Federal Circuit has cautioned against a petitioner limiting the scope of an investigation in an effort to obtain a favorable injury and AD/CVD determination in an investigation and then subsequently trying to expand the scope of an order once it is put into effect, and therefore places great importance on representations made by the petitioner in the course of the underlying investigation.<sup>31</sup> In the instant case, the petitioner made numerous representations to the Department that aluminum extrusions manufactured with series 5 aluminum alloy were excluded from the investigations.<sup>32</sup>

#### *IKEA’s Comments*

- IKEA argues the Department should not ignore the relevant (k)(1) factors on the administrative record (including the Petition, comments made in the underlying investigation, the *Orders* themselves, and the Department’s prior scope determinations) and impermissibly ‘bootstrap’ the current *Orders* in an attempt to encompass a broader base of non-subject products, as the petitioner requests.<sup>33</sup>
- IKEA contends there is no “overlap” as claimed by the petitioner.<sup>34</sup> It argues the precondition to being subject merchandise requires that the goods are manufactured from

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<sup>27</sup> See Regal’s Case Brief at 1 and Regal’s Rebuttal Comments at 3-4, and 9-10.

<sup>28</sup> See Regal’s Rebuttal Comments at 5.

<sup>29</sup> *Id.*, at 5-6, citing Letter from Stephen Jones to the Honorable Gary Locke, “Re: Aluminum Extrusions from China: Response to Scope Ruling Request Regarding Aluminum Water Heater Anodes” dated June 29, 2001, and Letter from Michael H. Skillinberg, VP Standards & Technology, the Aluminum “Re: PN 11-70-Department of Commerce Inquiry on Alloy Series Designations,” dated July 20, 2011 as submitted in the underlying proceeding related to the Department’s memorandum, “Final Scope Ruling on Aluminum Anodes for Water Heaters,” dated October 17, 2012 (*Water Heater Anodes*) and placed on the record of the instant proceeding at attachment II to “AD/CVD Orders on Aluminum Extrusions from the PRC: Transmittal of Scope Determinations and referenced material to the File,” dated March 15, 2016.

<sup>30</sup> *Id.*, at 7-8.

<sup>31</sup> *Id.*, at 8-9, citing the Department’s memorandum, “Final Scope Ruling on Aluminum Rails for Showers and Carpets,” dated September 6, 2012 (*Sinobec Aluminum Rails*).

<sup>32</sup> *Id.*

<sup>33</sup> See IKEA Rebuttal Comments at 2.

<sup>34</sup> *Id.*, at 3.



an alloy having an Aluminum Association series designation beginning with 1, 3, or 6. If the merchandise is a series 5 article, it is excluded from the scope of the *Orders* provided that magnesium requirements are met.<sup>35</sup>

- Moreover, IKEA states that the petitioner's request to including processing, such as tempering as part of the certification, has no legal basis. The scope of the *Orders* is based upon chemical composition; processing (including tempering) is not relevant.<sup>36</sup>

### *Department's Position*

In the Department's Preliminary Scope Ruling, we preliminarily found Kota's ACS-50 products to be excluded from the scope of the *Orders* based on their chemical composition.<sup>37</sup> Kota stated that the products at issue are manufactured from Aluminum Association designated 5050 grade aluminum alloy material, which contains in excess of 1.0 percent magnesium by weight and were heat-treated,<sup>38</sup> and it submitted laboratory testing and product specification information to substantiate its claim.<sup>39</sup> The Department preliminarily determined that the products at issue satisfied the scope exclusion for 5xxx series products based on their chemical composition.<sup>40</sup> We also preliminarily found that it would be improper to consider heat-treatment, or temper, in the context of this scope inquiry.<sup>41</sup>

Since the Department's Preliminary Scope Ruling, the Department has conducted a concurrent anti-circumvention inquiry, in which it determined 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, constitute later-developed merchandise that is circumventing the *Orders*, and is included within the scope of the *Orders*.<sup>42</sup> As a result of the Department's concurrent anti-circumvention final determination, and pursuant to 19 CFR 351.225(k)(1), the Department is now considering the heat-treatment of the merchandise subject to this scope inquiry.

With respect to heat-treatment, or temper, as stated above, the record evidence demonstrates that Kota's products at issue are manufactured from Aluminum Association designated 5050 grade aluminum alloy material, which contains in excess of 1.0 percent magnesium by weight and were heat-treated.<sup>43</sup> Thus, because Kota's products are heat-treated extruded aluminum products that meet the chemical specifications for 5050 grade aluminum alloy, we find them covered by the scope of the *Orders*.

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<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> See Preliminary Scope Ruling at 14.

<sup>38</sup> See Kota Supplemental Questionnaire Response at 5.

<sup>39</sup> *Id.*, and Kota's Scope Request at 1.

<sup>40</sup> *Id.*; see also letter from Petitioner, "Aluminum Extrusions from the People's Republic of China: Additional Comments on Kota International, Ltd.'s Scope Ruling Request," dated September 8, 2014 (Petitioner's Second Response) at Exhibit 1; letter from Regal, "Kota Scope International Ltd.'s Scope Inquiry; Comments on Petitioner's September 9, 2014 Submission," dated October 3, 2014 (Regal's First Response) at Appendix A.

<sup>41</sup> See Preliminary Scope Ruling at 18.

<sup>42</sup> See Anti-Circumvention Final Determination.

<sup>43</sup> See Kota Supplemental Questionnaire Response at 5.

Moreover, Kota's products, *i.e.*, aluminum extrusion profiles, otherwise satisfy the scope of the *Orders* as "aluminum extrusions which are shapes and forms, produced by an extrusion process," and "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{.}"<sup>44</sup> Kota's products, which are intended for use by customers in window and door applications,<sup>45</sup> also satisfy the scope language which provides that

Subject aluminum extrusions may be described at the time of importation as parts for final finished products that are assembled after importation, including, but not limited to, window frames, door frames, solar panels, curtain walls, or furniture. Such parts that otherwise meet the definition of aluminum extrusions are included in the scope.

....

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.

As a result, pursuant to 19 CFR 351.225(f)(4) and (k)(1), we determine that Kota's products, aluminum extrusions made from ACS-50 aluminum alloy material tempered through heat treating, are covered by the scope of the *Orders*. For this reason, we find that arguments concerning 19 CFR 351.225(k)(2) and the *Diversified Products* criteria are moot.

## **B. Certification Requirement**

### *The Petitioner's Comments*

- The petitioner supports the necessity of a certification, which would require minimal additional work by importers to complete. However, the petitioner claims the language of the proposed certification has several flaws:
  - First, the proposed certification should require importers to certify that the product being imported is made from aluminum alloy bearing an alloy series designation including both chemical composition designation and temper treatment designation registered with the Aluminum Association, and
  - Second, the Department should require that the certification accompany the entry.<sup>46</sup>
- The petitioner requests that the Department assemble an advance certified supplier list of all of the Chinese producers who are able to produce 5xxx-series alloy extrusions.<sup>47</sup> The petitioner asserts that unliquidated entries of merchandise for which the 5xxx-series alloy exclusion is claimed and which are manufactured by a producer not on the Department's

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<sup>44</sup> See Kota Scope Request at 1-2, and Kota Supplemental Questionnaire Response at 1 and 3.

<sup>45</sup> See Kota Supplemental Questionnaire Response at 3.

<sup>46</sup> See Petitioner's Case Brief, at 11-14.

<sup>47</sup> *Id.*, at 15.

advance list should be subject to suspension and require the posting of a cash deposit equal to the rate in effect at the time of the entry for subject merchandise.<sup>48</sup>

- The petitioner also contends that the claim by Regal and IKEA (*see below*) that the Department's imposition of its proposed certification requirement is "inconsistent with its role in the AD/CVD process" is flawed.<sup>49</sup> The petitioner states that the Department is not expanding the scope of the *Orders* by imposing certification requirements on entries claiming exclusion from the *Orders* based on alloy designation; rather, the certification simply requires an importer to certify as to the appropriateness and the veracity of a product's alloy designation where the alloy designation is being used to claim exception from the *Orders*, which is necessary as the appropriateness of a party's use of this exclusion for its merchandise is undetectable on mere visual inspection.<sup>50</sup>
- Similarly, the petitioner argues the claims with regard to the Department's authority to "instruct {U.S. Customs and Border Protection (CBP)} when to liquidate non-subject merchandise" are unavailing. In instructing CBP to suspend all unliquidated entries for which the certification requirements have not been met and requiring the posting of a cash deposit on those entries, the Department is simply treating those entries as they should be treated absent a certification as to their designation as an excluded alloy: *i.e.*, as subject merchandise.<sup>51</sup>

#### *Regal's Comments*

- Regal argues that the certification requirement proposed by the Department is both burdensome and unnecessary,<sup>52</sup> as 5xxx series extrusions have been confirmed to be outside of the scope multiple times.<sup>53</sup> Regal contends a certification is designed to prevent evasion, and that there can be no evasion when a product has been found outside the scope of the *Orders*.<sup>54</sup>
- Regal argues that there are already ample protections when importing these non-subject imports into the United States, as all importers are required to properly declare their goods to CBP. Where a company, improperly declares merchandise, whether by fraud or criminal intent, they face strict criminal and civil sanctions.<sup>55</sup> Regal avers that CBP has adequate investigative and enforcement mechanisms in place.<sup>56</sup>
- Regal also contends that the Department is creating an unnecessary certification beyond the existing CBP requirements which adequately identify non-subject merchandise which oversteps their authority.<sup>57</sup>

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<sup>48</sup> *Id.*

<sup>49</sup> *See* Petitioner's Rebuttal Comments at 5-6.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *See* Regal's Case Brief at 2, and Regal's Rebuttal Comments at 11.

<sup>53</sup> *See* Regal's Case Brief at 2, and Regal's Rebuttal Comments at 13.

<sup>54</sup> *See* Regal's Rebuttal Comments at 11.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*, at 3.

<sup>57</sup> *Id.*, at 2-3.

## *IKEA Comments*

- IKEA argues that the Department has explicitly concluded that products manufactured with 5050 aluminum extrusions fall outside the scope of the *Orders* and, therefore, strongly opposes a certification requirement for imports of merchandise that have now three times been confirmed to be non-subject merchandise.<sup>58</sup>
- IKEA contends that the certification requirement is unduly burdensome on importers of non-subject merchandise. IKEA disagrees with the petitioner's claims that the certification would be put in place to prevent circumvention arguing that products manufactured with series 5050 aluminum are non-subject merchandise which cannot and do not circumvent the *Orders*.<sup>59</sup>
- IKEA avers that CBP has effective provisions to protect against the unlawful import of goods, including both civil and criminal penalties.<sup>60</sup>
- IKEA argues the certification requirement allows the Department and CBP to unlawfully expand the scope of the *Orders* by placing a product under the scope where a certificate is not provided. The petitioner's proposal that the Department instruct CBP to suspend liquidation on unliquidated entries without an accompanying certificate both places a requirement on non-subject material, expanding the scope of the *Orders*, as well as assuming CBP's jurisdiction over non-subject merchandise.<sup>61</sup>
- Finally, IKEA states its opposition to an advance certified list of producers and exporters. IKEA argues that when a product is specifically excluded from an order and a scope ruling confirms this exclusion, this must be the end of the matter. It contends that the Department has no legal authority to institute certification requirements where importers must certify their suppliers of fairly traded, non-subject merchandise prior to import.<sup>62</sup>

## *Analysis*

Certification requirements were proposed in the concurrent anti-circumvention proceeding concerning heat-treated extruded aluminum products that meet the chemical specifications for 5050 grade aluminum alloy.<sup>63</sup> In addition, in the anti-circumvention final determination, based on party comments, the Department determined that a certification requirement was unnecessary.<sup>64</sup> Accordingly, we find that a certification requirement in the context of this final scope ruling is not necessary, and we will not be including a certification requirement as a part of this final scope ruling.

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<sup>58</sup> *Id.*, at 2.

<sup>59</sup> *Id.*, at 2-3.

<sup>60</sup> *Id.*, at 3-4.

<sup>61</sup> *Id.*, at 5.

<sup>62</sup> *Id.*

<sup>63</sup> See Anti-Circumvention Final Determination.

<sup>64</sup> *Id.*

**RECOMMENDATION**

For the reasons discussed above, and in accordance with 19 CFR 351.225(f)(4) and (k)(1), we recommend that the Department find Kota’s ACS-50 products to be within the scope of the *Orders*.

If the recommendation in this memorandum is accepted, we will serve a copy of this determination to all interested parties on the scope service list, as directed by 19 CFR 351.225(f)(4).

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

7/20/2017

**X** *James Maeder*

Signed by: JAMES MAEDER

\_\_\_\_\_  
James Maeder  
Senior Director  
performing the duties of Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations