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Scope: 5050 Series

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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 Trending Imports LLC's 5050 Series
Products

SUMMARY

On December 12, 2013, the Department of Commerce (Department) received a scope ruling request from Trending Imports LLC (Trending),¹ to determine whether products manufactured from 5050 aluminum alloy material (5050 series products) that it imports are subject to the antidumping (AD) and countervailing duty (CVD) orders on aluminum extrusions from the People's Republic of China (PRC).² 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 Trending's 5050 series products were not covered by the scope of the *Orders*.³ Since that determination, the

¹ See letter from Trending, "Aluminum Extrusions from the People's Republic of China: Trending Imports LLC Request for Scope Ruling Concerning 5050 Alloy Extrusions," dated December 12, 2013 (Trending's Scope Request).

² 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*).

³ See memorandum, "Preliminary Scope Ruling on Trending Imports LLC's 5050 Series Products," dated March 14,



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*.⁴ Pursuant to 19 CFR 351.225(f)(4) and (k)(1), we determine that Trending's 5050 series products are covered by the scope of the *Orders*.

BACKGROUND

On December 12, 2013, Trending, the importer of the products at issue, requested that the Department determine whether its 5050 Series products imported from the PRC are outside the scope of the *Orders*.⁵ The Department initiated a formal scope inquiry on November 7, 2014, pursuant to 19 CFR 351.225(e).⁶ 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.⁷ On April 4, 2016, Regal Ideas, Inc. (Regal) and the Aluminum Extrusion Fair Trade Committee (the petitioner) submitted comments on the Department's preliminary scope ruling.⁸ On April 21, 2016, four parties, Trending, IKEA Supply AG (IKEA), Regal, and the petitioner, submitted rebuttal comments related to the preliminary scope ruling.⁹ The Department has extended the deadline for a ruling most recently on July 13, 2017 to July 20, 2017.¹⁰

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

2016 (Preliminary Scope Ruling).

⁴ See memorandum, "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).

⁵ See Trending's Scope Request.

⁶ See memorandum, "Aluminum Extrusions from the People's Republic of China (PRC): Initiation of Scope Inquiry on Trending Imports' 5050 Series," dated November 7, 2014.

⁷ See Preliminary Scope Ruling. For a full discussion of the background leading up to the Preliminary Scope Ruling, see Preliminary Scope Ruling at 2-4.

⁸ 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); 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).

⁹ See letter from Trending, "Aluminum Extrusions from the People's Republic of China – Scope Inquiry (5050 Series): Trending Imports' Rebuttal Brief," dated April 21, 2016 (Trending's Rebuttal Comments); 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); 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).

¹⁰ See memorandum, "Aluminum Extrusions from the People's Republic of China – Trending Imports 5050 Series Scope Inquiry: Extension of Time for the Final Scope Inquiry Determination for Alignment with the Concurrent Anti-Circumvention Inquiry," dated July 13, 2017.

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 affiliates, are circumventing the *Orders*.¹¹ 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*.¹²

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 and issue both findings pursuant to the same deadline.¹³ Both determinations are due July 20, 2017.¹⁴

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*.¹⁵

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

¹¹ See *Aluminum Extrusions From the People’s Republic of China: Initiation of Anti-Circumvention Inquiry*, 81 FR 15039 (March 21, 2016).

¹² 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) (*Anti-Circ Preliminary Determination*) and accompanying Preliminary Determination Memorandum (PDM) at 13.

¹³ See memorandum, “Aluminum Extrusions from the People’s Republic of China - Trending Imports 5050 Series Scope Inquiry: Extension of Time for the Final Scope Inquiry Determination for Alignment with the Concurrent Anti-Circumvention Inquiry,” dated November 7, 2016.

¹⁴ See memorandum, “Aluminum Extrusions from the People’s Republic of China - Trending Imports 5050 Series Scope Inquiry: Updated Deadline for the Final Scope Inquiry Determination in Alignment with the Concurrent Anti-Circumvention Inquiry,” dated July 13, 2017.

¹⁵ See *Anti-Circumvention Final Determination*.

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

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

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

Subject aluminum extrusions may be described at the time of importation as parts for final finished products that are assembled after importation, including, but not limited to, window frames, door frames, solar panels, curtain walls, or furniture. Such parts that otherwise meet the definition of aluminum extrusions are included in the scope. The scope includes 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 *Order* are finished heat sinks. Finished heat sinks are fabricated heat sinks made from aluminum extrusions the design and production of which are organized around meeting certain specified thermal performance requirements and which have been fully, albeit not necessarily individually, tested to comply with such requirements.

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States (“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.¹⁶

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.¹⁷ 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.¹⁸ 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.

¹⁶ See *Orders*.

¹⁷ *Walgreen Co. v. United States*, 620 F.3d 1350, 1357 (Fed. Cir. 2010).

¹⁸ 19 CFR 351.225(k)(1).

DESCRIPTION OF MERCHANDISE SUBJECT TO THIS SCOPE INQUIRY

Trending's 5050 series products are aluminum extrusions made from 5050 grade aluminum alloy material.¹⁹ The 5050 alloy designation is a standard established by the Aluminum Association.²⁰ Aluminum of this designation must have certain chemical properties, including a magnesium content of between 1.1 percent and 1.8 percent by weight and a silicon content of less than 0.4 percent by weight.²¹ The extrusions are imported into the United States for sale to U.S. customers who manufacture various styles of aluminum fences, gates and railings.²²

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 products made with 5050 grade aluminum alloy materials are subject to the scope of the *Orders* cannot be resolved through reliance on the language of the scope alone.²³ The petitioner claims that manipulating the alloy's chemistry and temper is enough to negate the designation of Trending'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.²⁴
- The petitioner contends that the Department's consideration of the chemical composition of Trending'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.²⁵ 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.

Trending's Comments

- Trending argues the Department has correctly determined that Trending's 5050 grade products are not lawfully subject to the scope of the *Orders*.²⁶ It argues that no other determination is legally or factually permissible given the absolute clarity of the scope language at issue, as well as the consistent descriptions of the merchandise contained in the petition, the initial investigations, a previous ruling made by the Department, and the U.S. International Trade Commission's (ITC's) determination in the original

¹⁹ See Trending's Scope Request at 2 and Exhibits 1-2.

²⁰ See Trending's Scope Request at 3-4 and Exhibit 3.

²¹ *Id.*

²² *Id.*, at 2.

²³ See Petitioner's Case Brief at 4.

²⁴ *Id.*, at 5 and 7-9.

²⁵ *Id.*, at 10.

²⁶ See Trending's Rebuttal Comments at 2.

investigations, all of which expressly exclude extrusions made from 5xxx series aluminum from the scope of the *Orders*.²⁷

- That Trending’s extrusions are made from a 5050 alloy, containing in excess of 1.0 percent magnesium by weight was an established and verified by qualified metallurgists.²⁸ Trending submitted samples of its products to two independent accredited third-party testing agencies. The petitioner has not identified any flaw in the credentials of the testing companies, errors in the procedures they employed, or in the results themselves, and, therefore, it is clear that Trending’s 5050 series products fall within the scope exception.²⁹
- Trending contends that Aluminum Association “Teal Sheets” set forth the specifications for aluminum alloy products, including series 5 and 6, which show that the designation of an alloy is determined by its chemical composition at the time of melting, not subsequent heat treatment or tempering that may be applied after an extrusion is made.³⁰ Trending states a credentialed expert consulted in this proceeding has offered that “it is technologically impossible to change a 5050 aluminum into a different type of the alloy such as 1xxx, 3xxx and 6xxx, *i.e.*, the aluminum alloys series with the commencing numbers of, 3 or 6.”³¹ It argues that the core premise of the petitioner’s position that a product can be simultaneously both a 5xxx and a 6xxx series alloy is simply wrong, and finds no support in the record of this proceeding.³²
- Trending avers that the Department correctly found that the ANSI response letter does not state that the extrusions at issue are not 5xxx series aluminum alloys based on the tempering of the extrusion.³³

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 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.³⁴
- 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.³⁵ 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

²⁷ *Id.*

²⁸ *Id.*, at 3.

²⁹ *Id.*, at 3-4.

³⁰ *Id.*, at 4.

³¹ *Id.*

³² *Id.*

³³ *Id.* at 5.

³⁴ See Regal’s Case Brief at 1 and Regal Rebuttal Comments at 3-4, and 9-10.

³⁵ See Regal’s Rebuttal Comments at 5.

extrusions are only a 5xxx series if they meet the requirements of the Aluminum Association teal sheets.³⁶

- 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 5050 series products under the scope of the *Orders* based on the alleged overlap or the temper of the product would constitute such an unlawful expansion.³⁷
- 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.³⁸ 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.³⁹

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.⁴⁰
- IKEA contends there is no "overlap" as claimed by the petitioner.⁴¹ It argues the precondition to being subject merchandise requires that the goods be manufactured from 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.⁴²

³⁶ *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.

³⁷ *Id.*, at 7-8.

³⁸ *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) and placed on the record of the instant proceeding at attachment I to "AD/CVD Orders on Aluminum Extrusions from the PRC: Transmittal of Scope Determinations and referenced material to the File," dated March 15, 2016.

³⁹ *Id.*

⁴⁰ See IKEA Rebuttal Comments at 2.

⁴¹ *Id.*, at 3.

⁴² *Id.*

- 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.⁴³

Department’s Position

In the Department’s Preliminary Scope Ruling, we preliminarily found Trending’s 5050 series products to be excluded from the scope of the *Orders* based on their chemical composition.⁴⁴ Trending’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 it submitted laboratory testing and product specification information to substantiate its claim.⁴⁵ The Department preliminarily determined that the products at issue satisfied the scope exclusion for 5xxx series products based on their chemical composition.⁴⁶ We also preliminarily found that it would be improper to consider heat-treatment, or temper, in the context of this scope inquiry.⁴⁷

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*.⁴⁸ 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, we note that Trending’s scope request provided sample technical specifications for [] products and [].⁴⁹ For the other []), there is no temper designation; however, based on the entire scope request, the Department finds it reasonable to conclude that these products [].

In a later submission, Trending stated that “the alloys that are imported by Trending Imports for use in the fencing and related products have “H” (strain-hardened) temper designations, not “T” temper designations (thermally treated).”⁵⁰ In response, the petitioner argued that “Trending’s

⁴³ *Id.*

⁴⁴ See Preliminary Scope Ruling at 14.

⁴⁵ See Trending’s Scope Request at 2 and Exhibits 1-2.

⁴⁶ See Preliminary Scope Ruling at 14-15.

⁴⁷ *Id.*, at 17.

⁴⁸ See Anti-Circumvention Final Determination.

⁴⁹ See Trending’s Scope Request at Exhibit 1.

⁵⁰ See letter from Trending Imports, “Aluminum Extrusions from the People’s Republic of China – Scope Inquiry (5050 Series): Response to Petitioner’s August 17, 2015 Letter,” dated September 3, 2015 (Trending Comments on ANSI Response) at 4 and Exhibit 1. See also The Aluminum Association, *Tempers for Aluminum and Aluminum Alloy Products* (revised July 2011), at I-7 to I-8 (provided as Exhibit 3 to the letter from the petitioner, “Aluminum

apparently revised description of the merchandise at issue in this proceeding simply does not conform to the product descriptions and specifications it included in its original scope request{.}"⁵¹ Trending responded that: "The 'specifications' referenced by the petitioner are engineering drawings for the extrusions at issue. These were submitted for the record to demonstrate the form and dimensional characteristics of the extrusions, not their grade or chemistry."⁵² In other words, Trending argues that the information in its scope request may only be considered for purposes of form and dimensional characteristics, and other information concerning grade and tempering should be ignored. The Department declines to do so. In addition, of the [] listed in the later submission, only [] of those appear in Trending's scope request ([]).⁵³ We find that the merchandise that is the subject of this scope inquiry is the merchandise described in the scope request. Thus, to the extent that Trending'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*.

Moreover, Trending's 5050 series products, *i.e.*, aluminum extrusions, 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{.}" Trending's 5050 series products, which are intended for use by customers in fencing applications, 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 Trending's products, to the extent they are heat-treated extruded aluminum products that meet the chemical specifications for 5050 grade aluminum alloy, are covered by the scope of the *Orders*. For this

Extrusions from the People's Republic of China: Comments on Request for Scope Ruling Trending Imports LLC," dated June 20, 2014 (Petitioner's First Response), describing T Temper as thermal treated tempers, *i.e.*, "T3" as "solution heat-treated, cold-worked, and naturally aged to a substantially stable condition," "T6" as "solution heat-treated and then artificially aged").

⁵¹ See letter from Petitioner, "Aluminum Extrusions from the People's Republic of China: Comments on New Factual Information Contained in Trending's September 3, 2015 Letter," dated September 8, 2015 (Petitioner NFI Allegation) at 2-3.

⁵² See letter from Trending, "Aluminum Extrusions from the People's Republic of China – Scope Inquiry (5050 Series): Response to Petitioner's September 8, 2015 Letter," dated September 16, 2015 (Trending NFI Response) at 2.

⁵³ Compare Trending's Scope Request at Exhibit 1 with Trending Comments on ANSI Response at Exhibit 1.

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 the certification accompany the entry.⁵⁴
- 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 extrusion.⁵⁵ 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 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.⁵⁶
- 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.⁵⁷ 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.⁵⁸
- Similarly, the petitioner argues the claims with regard to the Department's authority to "instruct CBP when to liquidate non-subject merchandise" are unavailing. In instructing {U.S. Customs and Border Protection (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.⁵⁹

⁵⁴ See Petitioner's Case Brief., at 11-14.

⁵⁵ *Id.*, at 15.

⁵⁶ *Id.*

⁵⁷ See Petitioner's Rebuttal Comments at 5-6.

⁵⁸ *Id.*

⁵⁹ *Id.*

Trending's Comments

- Trending disagrees with the Department's proposal to require importers to certify that their products satisfy the exclusion language for 5050 grade aluminum alloys.⁶⁰ It argues that such certification is completely unnecessary and redundant, as CBP already has ample authority to investigate claims made in entry documentation that products are not subject to AD or CVD orders.⁶¹
- Trending contends recent changes in the law have considerably strengthened this authority and created an unprecedented role for other interested parties to participate in CBP's investigative process, and it urges the Department to drop the proposal for an importer certification and yet another wasteful burden placed on the trading public and CBP.⁶²
- Trending asks that the petitioner's proposal to expand the certification process beyond the Department's proposal be rejected based on three arguments:
 - First, the premise of the petitioner's proposal – namely, that Trending and other importers are somehow “circumventing” the *Orders* at issue – is false. Importing an article that is expressly excluded from the scope of an order is not a “circumvention” that is recognized under U.S. law.⁶³
 - Second, the proposal to expand the proposal to include certification as to the type of tempering of the product is unnecessary and unlawful because, as the Department has already found, the scope of the *Orders* does not consider tempering.⁶⁴
 - Third, there is no reason or need for the certification to be presented as part of the entry documentation provided to CBP. In other contexts – for example, the orders on solar cells from the People's Republic of China – the Department has required only that the relevant certification must be maintained by the importer and produced upon request. The petitioner has identified no problems or flaws in that system that warrant a different approach here that would impose additional burdens on importers and CBP.⁶⁵
- Lastly, the Department should reject the petitioner's proposal to create a “certified” list of Chinese producers of 5xxx series products, as the petitioner does not suggest how, and employing what criteria, the Department use to identify and confirm such entities. The proposal is unworkable and would be unlawful as it would effectively impose an additional element to the scope of the *Orders* that is not present in, or supported by, the scope language itself.⁶⁶

⁶⁰ *Id.*, at 5.

⁶¹ *Id.*

⁶² *Id.*, at 5-6.

⁶³ *Id.*, at 6.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*, at 6-7.

Regal's Comments

- Regal argues that the certification requirement proposed by the Department is both burdensome and unnecessary,⁶⁷ as 5xxx series extrusions have been confirmed to be outside of the scope multiple times.⁶⁸ 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*.⁶⁹
- 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.⁷⁰ Regal avers that CBP has adequate investigative and enforcement mechanisms in place.⁷¹
- 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.⁷²

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 it, therefore, strongly opposes certification requirement for imports of merchandise that have now three times been confirmed to be non-subject merchandise.⁷³
- 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*.⁷⁴
- IKEA avers that CBP has effective provisions to protect against the unlawful import of goods, including both civil and criminal penalties.⁷⁵
- IKEA argues the certification requirement allows the Department/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.⁷⁶

⁶⁷ See Regal's Case Brief at 2, and Regal's Rebuttal Comments at 11.

⁶⁸ See Regal's Case Brief at 2, and Regal's Rebuttal Comments at 13.

⁶⁹ See Regal's Rebuttal Comments at 11.

⁷⁰ *Id.*

⁷¹ *Id.*, at 3.

⁷² *Id.*, at 2-3.

⁷³ *Id.*, at 2.

⁷⁴ *Id.*, at 2-3.

⁷⁵ *Id.*, at 3-4.

⁷⁶ *Id.*, at 5.

- 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 the Department has no legal authority to set up certification requirements where importers must certify their suppliers of fairly traded, non-subject merchandise prior to import.⁷⁷

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.⁷⁸ In addition, in the anti-circumvention final determination, based on party comments, the Department determined that a certification requirement was unnecessary.⁷⁹ 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.

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 Trending’s products, to the extent they are heat-treated extruded aluminum products that meet the chemical specifications for 5050 grade aluminum alloy, 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

⁷⁷ *Id.*, at 5.

⁷⁸ See Anti-Circumvention Final Determination.

⁷⁹ *Id.*