



A-570-967, C-570-968  
Circumvention Inquiries  
**Public Document**  
E&C/VI: PW

July 31, 2019

**MEMORANDUM TO:** Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

**FROM:** James Maeder  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Issues and Decision Memorandum for the Final Affirmative  
Determination of Circumvention Concerning Aluminum  
Extrusions from the People's Republic of China

---

## I. SUMMARY

We have analyzed the case and rebuttal briefs submitted by the Aluminum Extrusions Fair Trade Committee (the petitioner), East Asia Aluminum Company Ltd. (East Asia Aluminum) and Primus Pipe and Tube (Primus), in the anti-circumvention inquiries of imports of extruded aluminum products (aluminum extrusions) exported from the Socialist Republic of Vietnam (Vietnam) that are made from aluminum previously extruded in the People's Republic of China (China), and otherwise meet the description of in-scope merchandise. Consistent with the *Preliminary Determination*<sup>1</sup> and based on our analysis of the comments received, we continue to find that imports of aluminum extrusions exported from Vietnam that are made from aluminum previously extruded in China are circumventing the *Orders*.<sup>2</sup> We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of issues for which we received comments:

- Comment 1: Inquiry Merchandise is Circumventing the *Orders*
- Comment 2: Inclusion of East Asia Aluminum in the Country-Wide Determination
- Comment 3: Certification Requirements

---

<sup>1</sup> See *Aluminum Extrusions from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping and Countervailing Duty Orders*, 84 FR 22445 (May 17, 2019) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum (PDM).

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

## II. BACKGROUND

On March 5, 2018, the Department of Commerce (Commerce) initiated these inquiries pursuant to sections 781(b) and (c) of the Tariff Act of 1930, as amended (the Act).<sup>3</sup> Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.<sup>4</sup> On May 17, 2019, Commerce published the *Preliminary Determination* in the *Federal Register*.<sup>5</sup> In accordance with 19 CFR 351.309, we invited interested parties to comment on the *Preliminary Determination*. On June 3, 2019, Commerce extended the time period for issuing the final determination of these inquiries by 60 days, until August 1, 2019.<sup>6</sup> On June 17, 2019, we received timely filed case briefs from East Asia Aluminum and the petitioner.<sup>7</sup> On June 24, 2019, we received timely filed rebuttal briefs from East Asia Aluminum, the petitioner, and Primus.<sup>8</sup>

## III. 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

---

<sup>3</sup> See *Aluminum Extrusions from the People's Republic of China: Initiation of Anti-Circumvention Inquiry*, 83 FR 9267 (March 5, 2018) (*Initiation Notice*).

<sup>4</sup> See Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

<sup>5</sup> See *Preliminary Determination*.

<sup>6</sup> See Commerce's Letter, "Aluminum Extrusions from the People's Republic of China: Extension of Anti-Circumvention Final Determination," dated June 3, 2019.

<sup>7</sup> See Petitioner's Letter, "Aluminum Extrusions from the People's Republic of China: Petitioner's Case Brief," dated June 17, 2019 (Petitioner's Case Brief); East Asia Aluminum's Letter, "Aluminum Extrusions from China; Zhongwang Pallets Vietnam A/C; East Asia Aluminum Case Brief," dated June 17, 2019 (East Asia Aluminum's Case Brief).

<sup>8</sup> See East Asia Aluminum's Letter, "Aluminum Extrusions from China; Zhongwang Pallets Vietnam A/C; East Asia Aluminum Rebuttal Brief," dated June 24, 2019 (East Asia Aluminum's Rebuttal Brief); Petitioner's Letter, "Aluminum Extrusions from the People's Republic of China: Rebuttal Brief," dated June 24, 2019 (Petitioner's Rebuttal Brief); letter from Primus, "Aluminum Extrusions from China," dated June 24, 2019 (Primus's Rebuttal Brief).

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 brightdip 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 *Orders* 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 the *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): 6603.90.8100, 7616.99.51, 8479.89.94, 8481.90.9060, 8481.90.9085, 9031.90.9195, 8424.90.9080, 9405.99.4020, 9031.90.9095, 7616.10.9090, 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, 7604.21.0000, 7604.29.1000, 7604.29.3010, 7604.29.3050, 7604.29.5030, 7604.29.5060, 7608.20.0030, 7608.20.0090, 8302.10.3000, 8302.10.6030, 8302.10.6060, 8302.10.6090, 8302.20.0000, 8302.30.3010, 8302.30.3060, 8302.41.3000, 8302.41.6015, 8302.41.6045, 8302.41.6050, 8302.41.6080, 8302.42.3010, 8302.42.3015, 8302.42.3065, 8302.49.6035, 8302.49.6045, 8302.49.6055, 8302.49.6085, 8302.50.0000, 8302.60.9000, 8305.10.0050, 8306.30.0000, 8414.59.6090, 8415.90.8045, 8418.99.8005, 8418.99.8050, 8418.99.8060, 8419.90.1000, 8422.90.0640, 8473.30.2000, 8473.30.5100, 8479.90.8500, 8486.90.0000, 8487.90.0080, 8503.00.9520, 8508.70.0000, 8515.90.2000, 8516.90.5000, 8516.90.8050, 8517.70.0000, 8529.90.7300, 8529.90.9760, 8536.90.8085, 8538.10.0000, 8543.90.8880, 8708.29.5060, 8708.80.6590, 8803.30.0060, 9013.90.5000, 9013.90.9000, 9401.90.5081, 9403.90.1040, 9403.90.1050, 9403.90.1085, 9403.90.2540, 9403.90.2580, 9403.90.4005, 9403.90.4010, 9403.90.4060, 9403.90.5005, 9403.90.5010, 9403.90.5080, 9403.90.6005, 9403.90.6010, 9403.90.6080, 9403.90.7005, 9403.90.7010, 9403.90.7080, 9403.90.8010, 9403.90.8015, 9403.90.8020, 9403.90.8041, 9403.90.8051, 9403.90.8061, 9506.11.4080, 9506.51.4000, 9506.51.6000, 9506.59.4040, 9506.70.2090, 9506.91.0010, 9506.91.0020, 9506.91.0030, 9506.99.0510, 9506.99.0520, 9506.99.0530, 9506.99.1500, 9506.99.2000,

9506.99.2580, 9506.99.2800, 9506.99.5500, 9506.99.6080, 9507.30.2000, 9507.30.4000, 9507.30.6000, 9507.90.6000, and 9603.90.8050.

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: 8418.99.8050 and 8418.99.8060. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the *Orders* is dispositive.

#### **IV. MERCHANDISE SUBJECT TO THE CIRCUMVENTION INQUIRIES**

These inquiries cover aluminum extrusions that are made from aluminum previously extruded in China that meet the description of the *Orders* and are exported from Vietnam, regardless of producer, exporter or importer (inquiry merchandise).<sup>9</sup>

#### **V. PERIOD OF INQUIRY**

The period for this inquiry covers seven years (*i.e.*, January 1, 2010 through December 31, 2017), which coincides with the data provided by the petitioner alleging imports of aluminum extrusions from China to Vietnam increased, and imports of aluminum extrusions from Vietnam to the United States increased.<sup>10</sup>

#### **VI. RESCISSION OF MINOR ALTERATIONS OF MERCHANDISE**

In the *Preliminary Determination*, we stated that because of the affirmative determination of circumvention with respect to merchandise that has been completed or assembled in other foreign countries, pursuant to section 781(b) of the Act, we did not make a determination with respect to the minor alterations inquiries, pursuant to section 781(c) of the Act.<sup>11</sup> For these final results, because we continue to find circumvention with respect to merchandise that has been completed or assembled in other foreign countries, we are rescinding the minor alterations circumvention inquiries.

#### **VII. CHANGES SINCE THE *PRELIMINARY DETERMINATION***

As discussed below in the “Statutory Analysis” section, Commerce has made no changes to its *Preliminary Determination* with regard to its analysis under the factors of section 781(b) of the

---

<sup>9</sup> As noted in the PDM, although Commerce initiated these circumvention inquiries to determine whether aluminum extrusions that meet the description of the *Orders* exported from Vietnam by Zhongwang Holdings Ltd. and its affiliates Aluminicaste Fundicion de Mexico, Global Vietnam Aluminum Co., Ltd. (GVA), Perfectus Aluminum Acquisitions LLC, and Perfectus Aluminum Inc. (collectively, Zhongwang) are circumventing the *Orders* on aluminum extrusions from China, we preliminarily found that all Vietnamese aluminum extrusions made from aluminum previously extruded in China, regardless of the producer or exporter, are covered by the *Orders*. See *Preliminary Determination* PDM at 5.

<sup>10</sup> See Circumvention Request at 48-50.

<sup>11</sup> See *Preliminary Determination* PDM at 15.

Act. For a complete description of our analysis, *see* the *Preliminary Determination* and accompanying memoranda, which are incorporated herein by reference.

## VIII. STATUTORY FRAMEWORK

Section 781 of the Act addresses circumvention of antidumping duty (AD) and/or countervailing duty orders.<sup>12</sup> Section 781(b)(1) of the Act provides that Commerce, after taking into account any advice provided by the ITC under section 781(e) of the Act, may include imports of merchandise assembled or completed in a third country within the scope of an order at any time an order is in effect if: (A) the merchandise imported in the United States is of the same class or kind as any merchandise produced in a foreign country that is the subject of an AD order, (B) before importation into the United States, such imported merchandise is completed or assembled in a third country from merchandise which is subject to such an order or is produced in the foreign country with respect to which such order applies, (C) the process of assembly or completion in a third country is minor or insignificant, (D) the value of the merchandise produced in the foreign country to which the AD order applies is a significant portion of the total value of the merchandise exported to the United States, and (E) Commerce determines that action is appropriate to prevent evasion of an order.

In determining whether or not the process of assembly or completion in a third country is minor or insignificant under section 781(b)(1)(C) of the Act, section 781(b)(2) of the Act directs Commerce to consider (A) the level of investment in the third country, (B) the level of research and development in the third country, (C) the nature of the production process in the third country, (D) the extent of production facilities in the third country, and (E) whether or not the value of processing performed in the third country represents a small proportion of the value of the merchandise imported into the United States. However, no single factor, by itself, controls Commerce's determination of whether the process of assembly or completion in a third country is minor or insignificant.<sup>13</sup> Accordingly, it is Commerce's practice to evaluate each of these five factors as they exist in the third country, depending on the totality of the circumstances of the particular anti-circumvention inquiry.<sup>14</sup>

Furthermore, section 781(b)(3) of the Act sets forth additional factors to consider in determining whether to include merchandise assembled or completed in a third country within the scope of an AD order. Specifically, this section directs Commerce to take into account (A) the pattern of trade, including sourcing patterns; (B) whether the manufacturer or exporter of the merchandise is affiliated with the person who, in the third country, uses the merchandise to complete or assemble the merchandise which is subsequently imported into the United States; and (C)

---

<sup>12</sup> Specifically, the legislative history to section 781(b) indicates that Congress intended Commerce to make determinations regarding circumvention on a case-by-case basis, in recognition that the facts of individual cases and the nature of specific industries are widely variable. *See* Senate Report, 103<sup>rd</sup> Congress, S. Rep. No. 103-412 (1994), at 81-82.

<sup>13</sup> *See* Statement of Administrative Action (SAA), accompanying the Uruguay Round Agreements Act (URAA), H. Doc. No. 103-316 (1994), at 893.

<sup>14</sup> *See Certain Tissue Paper Products from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 73 FR 57591, 57592 (October 3, 2008) (*Tissue Paper from China*) and accompanying Issues and Decision Memorandum (IDM).

whether imports of the merchandise into the third country have increased after the initiation of the AD investigation that resulted in the issuance of an order.

## IX. 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 Commerce, (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, Commerce 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 Commerce 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.

As discussed in the *Preliminary Determination*, Zhongwang failed to respond to our questionnaire, and we preliminarily determined that: (1) necessary information is missing from the record; (2) Zhongwang withheld information requested by Commerce; and (3) Zhongwang significantly impeded the proceeding.<sup>15</sup> No party challenged this finding. Accordingly, we continue to find that a determination on the basis of facts available pursuant to sections 776(a)(1), (2)(A) and (C) of the Act, is warranted.<sup>16</sup> In selecting from among the facts available, we determine that an adverse inference is warranted, pursuant to section 776(b) of the Act, because we find that, by providing no response to Commerce's questionnaire, Zhongwang failed to cooperate to the best of its ability in complying with a request for information.<sup>17</sup>

Section 781(b) of the Act directs Commerce to consider the criteria described above in the "Statutory Framework" section to determine whether merchandise completed or assembled in a third country circumvents an order. As explained below, based on an analysis of these criteria and consistent with the *Preliminary Determination*, we find that inquiry merchandise is circumventing the *Orders*.

Commerce found in the *Preliminary Determination* that the records of these inquiries contain factual information from the petitioner which supported a preliminary finding that multiple parties are producing and/or exporting inquiry merchandise to the United States.<sup>18</sup> No party challenged these findings in their case or rebuttal briefs. Moreover, in light of the evidence showing that numerous companies produce aluminum extrusions in Vietnam from previously extruded Chinese aluminum and export inquiry merchandise from Vietnam to the United States, we continue to find that the record supports applying the results of these inquiries to all imports of inquiry merchandise from Vietnam, regardless of producer, exporter, or importer.<sup>19</sup>

---

<sup>15</sup> See *Preliminary Determination* PDM at 7-8.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> See Petitioner's Letter, "Aluminum Extrusions from the People's Republic of China: Request for Anti-Circumvention Inquiry," dated January 9, 2018 (Circumvention Request) at 17-23; and *Preliminary Determination* PDM at 7.

<sup>19</sup> See *Preliminary Determination* PDM at 7-8, 16.

Additionally, we continue to find that: (a) record information indicates that Zhongwang and its affiliates continue to set up and create commercial relationships in various markets, thereby creating the opportunity to further evade the *Orders*;<sup>20</sup> (b) Zhongwang has a history of evading the *Orders*;<sup>21</sup> (c) because Zhongwang is one of the largest extruders in the world and it accounts for the largest volume of aluminum extrusions exported from China to Vietnam, we find that Zhongwang's production processes are representative of the experience of other aluminum extruders in China;<sup>22</sup> and, (d) Vietnamese imports of Chinese aluminum extrusions have increased during the relevant time period, which is additional evidence supporting a finding of circumvention.<sup>23</sup> As a result, for these final determinations, we find that the record *in toto* supports the application of the results of these inquiries to all exports of aluminum previously extruded in China that meet the description of the *Orders* and are exported from Vietnam.<sup>24</sup>

## X. STATUTORY ANALYSIS

Section 781(b) of the Act directs Commerce to consider the criteria described above to determine whether merchandise completed or assembled in a third country is circumventing an order. No party challenged our preliminary analysis of the factors found in section 781(b) of the Act. Therefore, as explained below, we continue to find that inquiry merchandise is circumventing the *Orders*.

### *Is the Merchandise Imported into the United States of the Same Class or Kind as Merchandise that is Subject to the Orders*

Our analysis of this factor, including the application of AFA, is unchanged from the *Preliminary Determination*. Pursuant to section 781(b)(1)(A) of the Act, we continue to find that the inquiry merchandise is of the same class or kind as merchandise that is subject to the *Orders*.<sup>25</sup> Therefore, we find that this factor supports the conclusion that Zhongwang and its affiliates are circumventing the *Orders*.

### *Whether Before Importation into the United States, Such Merchandise is Completed or Assembled in a Third Country from Merchandise that is Subject to the Order, or Produced in the Foreign Country that is Subject to the Orders*

---

<sup>20</sup> See Circumvention Request at Exhibits 1, 4, 6, 10, 11, 30.

<sup>21</sup> Commerce has issued three affirmative circumvention determinations involving Zhongwang. See Memorandum, "Antidumping and Countervailing Duty Orders on Aluminum Extrusions from the People's Republic of China: Relevant Zhongwang Proceedings," dated May 10, 2019.

<sup>22</sup> See Circumvention Request at 12, 29, and Exhibits 13, 33. We note that this reasoning was the basis for Commerce's country-wide determination in *CORE from China*. See *Certain Corrosion-Resistant Steel Flat Products from India, Italy, the People's Republic of China, the Republic of Korea, and Taiwan*, 81 FR 48387 (December 5, 2017) and accompanying PDM, unchanged in *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty and Countervailing Duty Orders*, 83 FR 23895 (May 23, 2018) and accompanying IDM at Comment 3 (collectively, *CORE from China*).

<sup>23</sup> See Circumvention Request at Exhibit 17.

<sup>24</sup> See *Preliminary Determination* PDM at 8.

<sup>25</sup> *Id.*

Our analysis of this factor, including the application of AFA, is unchanged from the *Preliminary Determination*. Pursuant to section 781(b)(1)(B) of the Act, we continue to find that the inquiry merchandise is being completed in Vietnam.<sup>26</sup> Therefore, we find that this factor supports the conclusion that Zhongwang and its affiliates are circumventing the *Orders*.

#### *Whether the Process of Assembly or Completion in the Third Country is Minor or Insignificant*

Section 781(b)(2) of the Act provides the criteria for determining whether the process of assembly or completion in the third country is minor or insignificant. The SAA explains that no single factor listed in section 781(b)(2) of the Act will be controlling.<sup>27</sup> Accordingly, it is Commerce's practice to evaluate each of the factors as they exist in the third country, depending on the particular circumvention scenario.<sup>28</sup> Therefore, the importance of any one of the factors listed under section 781(b)(2) of the Act can vary from case to case, depending on the particular circumstances unique to each anti-circumvention inquiry. In accordance with section 781(b)(2) of the Act, Commerce has considered all of the listed factors to determine whether the process of assembling or completing inquiry merchandise in Vietnam is minor or insignificant.

##### (1) Level of Investment in Vietnam

Our analysis of this factor, including the application of AFA, is unchanged from the *Preliminary Determination*. Pursuant to section 781(b)(2)(A) of the Act, we continue to find that that the level of investment in Vietnam for inquiry merchandise is minor compared to the investment in China for merchandise that is subject to the *Orders*.<sup>29</sup> Therefore, we find that this factor supports the conclusion that Zhongwang and its affiliates are circumventing the *Orders*.

##### (2) Level of Research and Development (R&D) in Vietnam

Our analysis of this factor, including the application of AFA, is unchanged from the *Preliminary Determination*, and pursuant to section 781(b)(2)(B) of the Act, we continue to find that that the level of R&D in Vietnam is insignificant in comparison to Zhongwang's overall R&D investments.<sup>30</sup> Therefore, we find that this factor supports the conclusion that Zhongwang and its affiliates are circumventing the *Orders*.

##### (3) Nature of the Production Process in Vietnam

Our analysis of this factor, including the application of AFA, is unchanged from the *Preliminary Determination*, and pursuant to section 781(b)(2)(C) of the Act, we continue to find that the nature and sophistication of inquiry merchandise is minor when examined on the basis of overall production cost, and, pursuant to section 781(b)(2)(D) of the Act, that Zhongwang's production

---

<sup>26</sup> *Id.* at 9.

<sup>27</sup> See SAA at 893.

<sup>28</sup> See *Tissue Paper from China*, 73 FR at 57592.

<sup>29</sup> See *Preliminary Determination PDM* at 9-10.

<sup>30</sup> *Id.* at 10-11.

facility is not extensive.<sup>31</sup> Therefore, we find that this factor supports the conclusion that Zhongwang and its affiliates are circumventing the *Orders*.

#### (4) Extent of the Production Facilities in Vietnam

Our analysis of this factor, including the application of AFA, is unchanged from the *Preliminary Determination*. Pursuant to section 781(b)(2)(D) of the Act, we continue to find that the extent of Zhongwang's production facilities in Vietnam is minor in comparison to its production facilities in China.<sup>32</sup> Therefore, we find that this factor supports the conclusion that Zhongwang and its affiliates are circumventing the *Orders*.

#### (5) Whether the Value of the Processing Performed in Vietnam Represents a Small Proportion of the Value of the Merchandise Imported into the United States

Our analysis of this factor, including the application of AFA, is unchanged from the *Preliminary Determination*. Pursuant to section 781(b)(2)(E) of the Act, we continue to find that the value added to the inquiry merchandise is minor in comparison to the overall value of production of Zhongwang's merchandise.<sup>33</sup> Therefore, we find that this factor supports the conclusion that Zhongwang and its affiliates are circumventing the *Orders*.

#### *Other Factors to Consider*

Section 781(b)(3) of the Act directs Commerce to consider additional factors in determining whether to include merchandise assembled or completed in a foreign country within the scope of an order, including: pattern of trade, affiliation, and increase in imports.

##### A. Pattern of Trade and Sourcing

Our analysis of this factor, including the application of AFA, is unchanged from the *Preliminary Determination*. Pursuant to section 781(b)(3)(A) of the Act, we continue to find that the pattern of trade contributes to a circumvention determination.<sup>34</sup> Therefore, we find that this factor supports the conclusion that Zhongwang and its affiliates are circumventing the *Orders*.

##### B. Affiliation

Our analysis of this factor, including the application of AFA, is unchanged from the *Preliminary Determination*. Pursuant to section 781(b)(3)(B) of the Act, we continue to find that affiliation contributes to a circumvention determination.<sup>35</sup> Therefore, we find that this factor supports the conclusion that Zhongwang and its affiliates are circumventing the *Orders*.

---

<sup>31</sup> *Id.* at 11.

<sup>32</sup> *Id.* at 12.

<sup>33</sup> *Id.* at 12-13.

<sup>34</sup> *Id.* at 13.

<sup>35</sup> *Id.* at 14.

### C. Increased Imports

Our analysis of this factor, including the application of AFA, is unchanged from the *Preliminary Determination*. Pursuant to section 781(b)(3)(C) of the Act, we continue to find that the increase of aluminum extrusions shipments from China to Vietnam following the initiations of the AD and CVD investigations supports the conclusion that circumvention has occurred.<sup>36</sup> Therefore, we find that this factor supports the conclusion that Zhongwang and its affiliates are circumventing the *Orders*.

## XI. DISCUSSION OF THE ISSUES

### Comment 1: Inquiry Merchandise is Circumventing the *Orders*

#### *The Petitioner's Arguments*

- In the Circumvention Request, the petitioner provided substantial evidence indicating that: (a) Chinese aluminum extrusions are shipped to Vietnam to be re-melted and made into other aluminum extrusion products before being exported to the United States to avoid duties;<sup>37</sup> (b) Zhongwang ships aluminum extrusions to its Vietnamese affiliate, GVA, to be re-melted, re-extruded, and exported to the United States as Vietnamese-origin;<sup>38</sup> and, (c) GVA provides billet made from re-melted subject aluminum extrusions to other Vietnamese producers who export aluminum extrusions to the United States.<sup>39</sup> Commerce found this substantial evidence provided by the petitioner provided a sufficient basis for initiating these inquiries pursuant to sections 781(b) and (c) of the Act.<sup>40</sup>
- While Commerce issued a questionnaire to GVA, the company did not provide any response, and refused to participate in this proceeding.<sup>41</sup> Further, no evidence was placed on the record that contradicted the evidence provided by the petitioner indicating that inquiry merchandise is circumventing the *Orders*. Accordingly, Commerce properly found in its *Preliminary Determination*, based on the information on the record, as well as Zhongwang's failure to cooperate to the best of its ability, that inquiry merchandise is circumventing the *Orders*.<sup>42</sup> There is no information on the record that would warrant a departure from Commerce's preliminary findings.
- Whether or not East Asia Aluminum has circumvented the *Orders* thus far has no bearing on Commerce's circumvention determination. East Asia Aluminum does not challenge Commerce's finding with respect to inquiry merchandise circumventing the *Orders*, only that it does not engage in circumvention.<sup>43</sup>

*No other party commented on this issue.*

---

<sup>36</sup> *Id.* at 14-15.

<sup>37</sup> See Petitioner's Case Brief at 3-6 (citing the Circumvention Request at 1, and 8-17).

<sup>38</sup> *Id.* (citing the Circumvention Request at 1-2, 8-17).

<sup>39</sup> *Id.* (citing the Circumvention Request at 15-16).

<sup>40</sup> *Id.* (citing *Initiation Notice*).

<sup>41</sup> *Id.* (citing *Preliminary Determination PDM* at 2, 7).

<sup>42</sup> *Id.* (citing *Preliminary Determination PDM* at 8-15).

<sup>43</sup> *Id.* (citing, generally, East Asia Aluminum's Case Brief; and East Asia Aluminum's Rebuttal Brief).

**Commerce’s Position:** We agree with the petitioner. As noted in the “Use of Facts Available with an Adverse Inference” section, no party challenged our application of AFA to Zhongwang and its affiliates, including GVA. Moreover, no party challenged our preliminary analysis of the factors found in section 781(b) of the Act, and as such, we continue to find that inquiry merchandise is circumventing the *Orders*. We also continue to find that a country-wide determination is applicable. Congress enacted section 781 of the Act to combat certain forms of circumvention of AD and CVD orders. The legislative history explains that the purpose of the circumvention statute “is to authorize {Commerce} to apply {AD and CVD} orders in such a way as to prevent circumvention and diversion of U.S. law.”<sup>44</sup> Further, it indicates that Congress was concerned with the existence of “loopholes” because such scenarios “seriously undermine the effectiveness of the remedies provided by the {AD and CVD} proceedings, and frustrated the purposes for which these laws were enacted.”<sup>45</sup> Congress also recognized that “aggressive implementation of {the circumvention statute} by {Commerce} can foreclose these practices.”<sup>46</sup> When implementing the Uruguay Round Agreements Act in 1994, Congress expressed similar concerns with scenarios limiting the effectiveness of the AD law.<sup>47</sup> U.S. courts have determined that Commerce has discretion under the circumvention statute to act with the purpose of preventing evasion or circumvention of orders, stating that Commerce “has been vested with authority to administer the {AD} laws in accordance with the legislative intent” and, thus, “has a certain amount of discretion {to act} . . . with the purpose in mind of preventing the intentional evasion or circumvention of the {AD} law.”<sup>48</sup> Accordingly, we continue to hold the view that the statute confers Commerce with the authority to issue country-wide determinations of circumvention, where appropriate. This is consistent with Commerce’s approach in other circumvention inquiries, where the facts warrant such a finding.<sup>49</sup>

## **Comment 2: Inclusion of East Asia Aluminum in the Country-Wide Determination**

### *East Asia Aluminum’s Arguments*

- Although in the *Initiation Notice* Commerce stated that it intended to consider whether these inquiries should apply to all exports of aluminum extrusions from Vietnam, it only identified a list of Zhongwang’s affiliates (including GVA) that it intended to examine, issued a questionnaire to only GVA, and did not request information from other Vietnamese producers or exporters.<sup>50</sup> Moreover, the petitioner never alleged any wrongdoing by East Asia Aluminum, only Zhongwang.<sup>51</sup>

---

<sup>44</sup> See Omnibus Trade Act, Report of the Senate Finance Committee, S. Rep. No. 71, 100<sup>th</sup> Cong., 1<sup>st</sup> Sess. 100 (1987).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> See SAA at 892-95.

<sup>48</sup> See *Mitsubishi Elec. Corp. v. United States*, 700 F. Supp. 538, 555 (CIT 1988), *aff’d* 898 F. 2d 1577 (Fed. Cir. 1990).

<sup>49</sup> See *Certain Cold-Rolled Steel Flat Products from the People’s Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty and Countervailing Duty Orders*, 83 FR 23891 (May 23, 2018), and accompanying IDM at Comment 3.

<sup>50</sup> See East Asia Aluminum’s Case Brief at 4 – 9 (citing *Initiation Notice*).

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

- In the *Preliminary Determination*, Commerce did not consider East Asia Aluminum’s individual status and arbitrarily ignored the substantial factual information it submitted, which contradicts Commerce’s regulations and own practice in prior cases.<sup>52</sup> For example, in the previous circumvention inquiry of Zhongwang’s aluminum pallets, Commerce specifically offered an opportunity for interested parties to submit factual information, and then accepted and considered in its final determination the factual information submitted by multiple interested parties in that proceeding.<sup>53</sup>
- Commerce’s reliance on *CORE from China* is misplaced, as that determination is fundamentally inapposite.<sup>54</sup> The country-wide determinations in *CORE from China* were not premised on allegations of the behavior of a few specific firms, but instead requested on a country-wide basis.<sup>55</sup> The country-wide determinations in that case were made only after Commerce issued quantity and value questionnaires (Q&V) to a large number of producers and exporters, selected the largest producers/exporters to be individually examined based on Q&V responses, and verified the questionnaire responses submitted by the selected producers/exporters.<sup>56</sup> Commerce engaged in no such procedures in the instant inquiries.<sup>57</sup>
- The Court of International Trade (CIT) has long held that Commerce “must consider the record as whole, including evidence that supports as well as evidence that fairly detracts from the substantiality of the evidence” in reaching a determination.<sup>58</sup> The country-wide determination in this case is premised partially on the proposition that Zhongwang’s alleged production process is representative of the experience of other aluminum extruders in China, however, East Asia Aluminum has a different production experience.<sup>59</sup>
- As demonstrated in its submissions, East Asia Aluminum does not use aluminum extrusions as raw materials in any of its production; it uses aluminum ingots which are sourced outside of China and Vietnam, which it casts in its own facilities into bars, which are extruded into shapes using the company’s own molds.<sup>60</sup> Therefore, East Asia Aluminum’s aluminum extrusions are not circumventing the *Orders*, and there is no factual information on the record that indicates otherwise.<sup>61</sup>

---

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* (citing *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, 79446 (November 14, 2016), and accompanying PDM; and *Aluminum Extrusions from the People’s Republic of China: Affirmative Final Determination of Circumvention of the Antidumping and Countervailing Duty Orders and Rescission of Minor Alterations Anti-Circumvention Inquiry*, 82 FR 34630 (July 26, 2017), and accompanying IDM (collectively, *Aluminum Extrusions Circumvention*)).

<sup>54</sup> *Id.* (citing *CORE from China* IDM at Comment 3).

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

<sup>56</sup> *Id.* (citing *CORE from China* IDM at Comment 7).

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* (citing *Nucor Corp. v. United States*, 594 F. Supp. 2d 1320, 1332 (CIT 2008) (internal quotation marks omitted), *aff’d*, 601 F. 3d 1291 (Fed. Cir. 2010)).

<sup>59</sup> *Id.* (citing East Asia Aluminum’s Letter, “Aluminum Extrusions from China; Circumvention-Zhongwang Pallets Vietnam,” dated June 22, 2018 (East Asia Aluminum’s June 22, 2018 submission) at 1-6; and East Asia Aluminum’s Letter, “Aluminum Extrusions from China; Anticircumvention Inquiry-Zhongwang Pallets Vietnam; East Asia Aluminum Factual Information Submission,” dated February 21, 2019 (East Asia Aluminum’s February 21, 2019 submission) at 1-13).

<sup>60</sup> *Id.* at 9-14 (citing East Asia Aluminum’s February 21, 2019 submission at 1-6).

<sup>61</sup> *Id.*

- The preliminary country-wide determination was also based on the non-cooperation of GVA and the resulting application of AFA.<sup>62</sup> Because Commerce’s findings do not exclude East Asia Aluminum, the *Preliminary Determination* constitutes an application of AFA to East Asia Aluminum, which is unlawful given that there is no basis to find that East Asia Aluminum was uncooperative.<sup>63</sup> That is, there is no “gap” in the record regarding whether East Asia Aluminum engaged in the circumvention of the *Orders*, and there is no basis for Commerce to apply adverse inferences due to missing information on the record.<sup>64</sup> Further, the CIT has held that an application of AFA is not lawful when there is sufficient information on the record for Commerce to reach a conclusion on the matter in question.<sup>65</sup> East Asia Aluminum has demonstrated its best efforts to be fully cooperative by submitting substantial record evidence to support its statements that it has never purchased aluminum extrusions of Chinese origin, nor has it purchased raw aluminum ingots from China, and even met with Commerce officials to discuss its requests to submit factual information and the company’s own experience in producing inquiry merchandise.<sup>66</sup>
- In addition, because Commerce chose not to conduct verification of the information in East Asia Aluminum’s submissions, it must assume for purposes of its final determination that the factual statements submitted by East Asia Aluminum are accurate. The CIT has found that a “deliberate refusal to subject certain factual information to a verification procedure is not the equivalent of a valid finding that ... such information ‘cannot be verified.’”<sup>67</sup>
- As East Asia Aluminum demonstrated in its case brief, it’s submissions of factual information in these inquiries confirm that it has not, and does not, purchase or use aluminum of Chinese origin in the production of aluminum extrusions shipped to the United States.<sup>68</sup> Accordingly, the scope of any affirmative determination, and any remedy imposed as a result of such an affirmative determination, cannot extend to East Asia Aluminum.<sup>69</sup> East Asia Aluminum should be specifically excluded from the final determination and from any certification requirements premised on an affirmative circumvention finding.<sup>70</sup>

---

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

<sup>63</sup> *Id.* (citing Section 776(b)(1) of the Act).

<sup>64</sup> *Id.* (citing *Zhejiang DunAn Hetian Metal Co. v. United States*, 652 F. 3d 1333, 1348 (Fed. Cir. 2011) (“it is clear that Commerce can only use facts otherwise available to fill a gap in the record”)).

<sup>65</sup> *Id.* (citing *Gerber Food (Yunnan) Co., Ltd. v. United States*, 387 F. Supp. 2d 1270, 1284 (CIT 2005)).

<sup>66</sup> *Id.* (citing East Asia Aluminum’s June 22, 2018 submission at 1-6; East Asia Aluminum’s February 21, 2019 submission at 1-13; and Memorandum, “Antidumping and Countervailing Duty Orders on Aluminum Extrusions from the People’s Republic of China: *Ex-Parte* Meeting with East Asia Aluminum Company Ltd.,” dated September 26, 2018).

<sup>67</sup> *Id.* (citing *China Kingdom Import & Export Co., Ltd. v. United States*, 507 F. Supp. 2d 1337, 1341 (CIT 2007) (*China Kingdom*); *Boltless Steel Shelving Units Prepackaged for Sale from China: Final Affirmative Countervailing Duty Determination*, 80 FR 51775 (August 26, 2015) and accompanying IDM at Comment X (“In this investigation, {Commerce} decided not to conduct verification of the GOC.... Without verification, {Commerce} must assume for purposes of its determination that every factual statement submitted by the GOC is accurate” (citing *China Kingdom*, 507 F. Supp. 2d at 1341))).

<sup>68</sup> See East Asia Aluminum’s Rebuttal Brief at 2 – 4 (citing East Asia Aluminum’s June 22, 2018 submission at 1 – 13).

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

### *The Petitioner's Rebuttal Arguments*

- Commerce has broad authority to address circumvention of AD/CVD orders and has made clear in prior inquiries that it has the authority to apply its determinations on a country-wide basis, if necessary.<sup>71</sup> Commerce explicitly stated in the *Initiation Notice* that it would consider whether these inquiries should apply to all exports of aluminum extrusions from Vietnam that meet the description of the *Orders*, *i.e.*, on a country-wide basis, and based on the record evidence, properly applied the *Preliminary Determination* on a country-wide basis.<sup>72</sup>
- East Asia Aluminum attempts to distinguish the instant inquiry from *CORE from China*, but in that case the petitioner explicitly requested that Commerce make a finding of circumvention on a country-wide basis and provided ample evidence in support.<sup>73</sup> Here, the petitioner demonstrated that Zhongwang is not one company but a complex web of entities and affiliated businesses spanning numerous countries, and as such, to fully address circumvention, a country-wide remedy is necessary.<sup>74</sup> In addition, the petitioner provided substantial evidence that other Vietnamese producers circumvent the *Orders* using the same general approach.<sup>75</sup> In fact, the Vietnam Chamber of Commerce and Industry announced that it would no longer issue certificates of origin to GVA, based on a concern that GVA's stock of aluminum in Vietnam may be linked to the global transshipment scheme that GVA has been accused of both in this proceeding and elsewhere.<sup>76</sup>
- East Asia Aluminum's argument that Commerce did not issue Q&V questionnaires to other Vietnamese exporters/producers, and select companies for individual examination or conduct verification, is inapposite.<sup>77</sup> The instant proceeding is a circumvention inquiry conducted pursuant to section 781 of the Act, not an AD/CVD investigation, and Commerce has previously emphasized the distinction.<sup>78</sup> In *CORE from China*, Commerce selected mandatory respondents based on Q&V data to understand the third-country completion process to determine whether such processes are minor or insignificant, and whether the other section 781(b) criteria had been satisfied, not to identify which producers or exporters might be circumventing or to calculate a margin for those companies.<sup>79</sup> In that case, Commerce stated that, unlike an AD investigation, rulings in circumvention inquiries do not focus on individual companies, but instead focus on whether the processing in the third-country is such that the products imported into the United States should be subject to the China orders.<sup>80</sup> It was for this reason that, while Commerce verified that one of the

---

<sup>71</sup> See Petitioner's Rebuttal Brief at 3-6 (citing *Affirmative Final Determination of Circumvention of the Antidumping Duty Order on Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China*, 76 FR 50996, 50997 (August 17, 2011) and accompanying IDM).

<sup>72</sup> *Id.* (citing *Initiation Notice*; and *Preliminary Determination PDM* at 7-8).

<sup>73</sup> *Id.* (citing *Circumvention Inquiry Request* at 17-23).

<sup>74</sup> *Id.* (citing *Circumvention Inquiry Request* at 19).

<sup>75</sup> *Id.* (citing *Circumvention Inquiry Request* at 18).

<sup>76</sup> *Id.* (citing *Circumvention Inquiry Request* at 22, and Exhibit 28).

<sup>77</sup> *Id.*

<sup>78</sup> *Id.* (citing *CORE from China* IDM at Comment 3).

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

mandatory Vietnamese producers did not use Chinese substrate in its products exported to the United States, the company was included in the country-wide determination.<sup>81</sup>

- With regard to East Asia Aluminum’s claims that the country-wide decision is contrary to Commerce’s practice, in past cases Commerce stated, as it has here, that it may solicit new factual information and that if a party submits new factual information, Commerce will consider the requests on a case-by-case basis.<sup>82</sup> East Asia Aluminum otherwise points to no authority requiring Commerce to affirmatively solicit factual information from all parties in conducting a circumvention inquiry, and East Asia Aluminum submitted new factual information in this proceeding, twice, which Commerce accepted.<sup>83</sup> Moreover, there were various deficiencies with the new factual information provided by East Asia Aluminum, which the petitioner previously detailed, and East Asia Aluminum never addressed these deficiencies.<sup>84</sup>
- Commerce does not exclude specific companies from country-wide circumvention rulings based on the contention that a firm may not have shipped inquiry merchandise during the period examined.<sup>85</sup> As Commerce has emphasized in prior proceedings, to affirmatively exclude a producer from a country-wide circumvention determination and certification requirements because it may not currently be engaging in the circumventing activity creates the possibility of future circumvention.<sup>86</sup>
- While East Asia Aluminum argues that its aluminum extrusions are produced exclusively from raw aluminum ingots sourced outside of China and Vietnam, in a normal billet production process, a mixture of aluminum ingot, aluminum scrap, and additional alloying elements are melted together to form an aluminum alloy billet.<sup>87</sup> If Chinese aluminum extrusions are re-melted and used as either the ingot or scrap to produce the billet to re-extrude, such merchandise would be circumventing the *Orders*.<sup>88</sup>
- While the certification requirement is country-wide, AD/CVD duties apply only to aluminum extrusions made from aluminum previously extruded in China, not legitimate Vietnamese aluminum extrusions.<sup>89</sup> Thus, East Asia Aluminum’s contention that Commerce’s determination did not take into account East Asia Aluminum’s evidence is misplaced.<sup>90</sup> For the same reasons, East Asia Aluminum’s claim that Commerce should have verified its factual information is thus also misplaced.<sup>91</sup> Moreover, Commerce is not required to conduct verification in circumvention inquiries.<sup>92</sup>

---

<sup>81</sup> *Id.*

<sup>82</sup> *Id.* (citing East Asia Aluminum’s Case Brief at 7-8; *generally, Aluminum Extrusions Circumvention*).

<sup>83</sup> *Id.* at 1.

<sup>84</sup> *Id.* at 10-13 (citing Petitioner’s Letter, “Aluminum Extrusions from the People’s Republic of China: Comments Regarding East Asia Aluminum’s Factual Information Submission,” dated April 17, 2019 (Petitioner’s April 17, 2019 submission) at 1-7). We note that the discussion of these deficiencies is proprietary.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.* (citing *CORE from China* IDM at Comment 3).

<sup>87</sup> *Id.* (citing Circumvention Request at Exhibit 32). According to the petitioner, in a typical billet production operation, aluminum scrap makes up the majority of the “charge,” *i.e.*, the mixture of aluminum ingot, aluminum scrap, and alloying elements. *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*, citing 19 CFR 351.307.

- East Asia Aluminum’s claim that Commerce applied AFA to it is inaccurate.<sup>93</sup> If East Asia Aluminum’s products do not meet the definition of inquiry merchandise, and the proper certifications are submitted, no AD/CVD cash deposits are due.<sup>94</sup>

**Commerce’s Position:** We agree with the petitioner. As explained in Comment 1, the legislative history, practice, and the courts provide Commerce with broad authority to address circumvention of AD/CVD orders, and we have been clear in prior inquiries that we have the authority to apply circumvention determinations on a country-wide basis, in particular when multiple firms circumvent the underlying AD/CVD order using the same general approach.<sup>95</sup> Although East Asia Aluminum argues that Commerce did not consider its individual status and ignored the factual information it submitted, there is no statutory requirement that circumvention inquiries conducted pursuant to section 781 (b) of the Act must be limited to individual companies.<sup>96</sup> In this case, Commerce has consistently treated the allegations as country-wide. In our *Initiation Notice*, we clearly stated that: “Commerce intends to consider whether these inquiries should apply to all exports of extruded aluminum products from Vietnam that meet the description of the *Orders*.”<sup>97</sup> Even in *Glycine*, for example, where Commerce focused on individual enterprises named in the allegations, we still determined, in the concurrent scope inquiry, to apply a “country-wide importer certification requirement.”<sup>98</sup> Thus, the end result of the *Glycine* proceeding is the same as that of these inquiries; that all companies, including those not named in the original request, are subject to the certification process, regardless of their individual experiences during the time examined.

As we stated in the *Preliminary Determination*, we concluded that our findings were representative because Zhongwang is one of the largest extruders in the world and it, along with its trading company, accounts for the largest volume of aluminum extrusions exported from China to Vietnam; therefore, Zhongwang’s production processes are representative of the experience of other aluminum extruders in China.<sup>99</sup> While East Asia Aluminum contests the reasonableness of extrapolating country-wide conclusions from the experience of Zhongwang, it has not provided any details or specific arguments as to how the production of Zhongwang might differ from that of other extruders such that the production experiences would be unrepresentative of aluminum extruders in China; only that its experience is different than Zhongwang’s.

Although East Asia Aluminum argues that our country-wide determination amounts to an application of AFA, this is a mischaracterization of the nature of the inquiry. Commerce did not limit its finding to a determination of which companies were using Chinese aluminum extrusions

---

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> See *CORE from China* IDM at Comment 3; *Carbon Steel Butt-Weld Pipe Fittings from the People’s Republic of China: Final Affirmative Determination of Circumvention of the Antidumping Duty Order*, 84 FR 29164 (June 21, 2019) (*Butt-welds from China*) and accompanying IDM at Comment 1; see also *Aluminum Extrusions Circumvention* IDM at Comment 4.

<sup>96</sup> See *CORE from China* IDM at Comment 3; see also *Butt-welds from China* IDM at Comment 1.

<sup>97</sup> See *Initiation Notice*.

<sup>98</sup> See *Glycine from the People’s Republic of China: Final Partial Affirmative Determination of Circumvention of the Antidumping Duty Order*, 77 FR 73426 (December 10, 2012) (*Glycine*) and accompanying IDM at Comment 2.

<sup>99</sup> See *Preliminary Determination* PDM at 8.

and re-melting those extrusions to create new extrusions, but whether that processing could be considered minor or insignificant. The questions issued to GVA at the outset of these inquiries were not designed to determine whether it was circumventing, but to determine if it had relevant information needed in applying the criteria of section 781(b) of the Act. We did not include East Asia Aluminum's information in our analysis addressing the 781(b) criteria because we concluded its experience was not informative as to the issue of re-melting Chinese extrusions and extruding them in Vietnam, given East Asia Aluminum's credible claims that it does not produce its aluminum extrusions in this manner. Our decision to include East Asia Aluminum in a country-wide determination is not based on a finding that it failed to cooperate or that it failed to demonstrate that it did not consume Chinese aluminum extrusions in its production process. To be clear, our application of a country-wide finding, and consequent certification requirements, to East Asia Aluminum and all other Vietnamese exporters is not based on AFA. The decision is based on information provided by the petitioner and draws no adverse inferences from the record information submitted by East Asia Aluminum. Assuming, *arguendo*, that East Asia Aluminum and its importers submit proper certifications, no duties are due on its aluminum extrusions exported to the United States.

In the *Preliminary Determination*, we created a certification process whereby non-subject exports could be exempted from duties. East Asia Aluminum appears to draw an analogy between circumvention inquiries and AD or CVD investigations, wherein if we were to determine that a company had not dumped or had not been subsidized, we would reach a negative determination for that company and exclude it from the order and future cash deposit requirements. However, Commerce does not make such an exclusion for a company that had no shipments during the period of investigation (POI) of an AD or CVD investigation. There would simply be no determination for a company without shipments during the POI, and if it decided to ship in the future, it would be subject to the all others' rate (or the country-wide rate, as the case may be).

We continue to find that a country-wide finding inclusive of East Asia Aluminum is appropriate, given the representativeness of the producers examined, the lack of direction in the Act that section 781(b) inquiries must necessarily be limited to individual companies,<sup>100</sup> and the general nature of the allegations and of our conduct of this inquiry. Here, absent a country-wide finding, our concern is that additional unidentified companies could circumvent the *Orders* in the future. Limiting the affirmative country-wide determination, and the accompanying certification requirements, to only certain companies creates the possibility of future circumvention by other companies that may not be identified. To try to ensure that circumvention does not happen now or will not happen in the future, Commerce finds that company-specific exclusions are not appropriate in these inquiries and will not be available to any company. We find that a better approach, balancing the dual goals of preventing circumvention and recognizing companies who do not engage in such activity, such as, apparently, East Asia Aluminum, is to offer a transaction-specific exemption through a certification process (*see* discussion below).

---

<sup>100</sup> *See Aluminum Extrusions Circumvention* IDM at Comment 4 (finding a country-wide determination to be appropriate under section 781(d) as that provision also includes no indication that it was intended to apply only to individual companies and citing other instances of country-wide rulings).

### Comment 3: Certification Requirements

#### *The Petitioner's Arguments*

- Pursuant to the *Preliminary Determination*, Commerce established certification and documentation requirements for importers and exporters of inquiry merchandise.<sup>101</sup> Currently, importers and exporters are required to complete and maintain their certifications and supporting documentation to provide to Customs and Border Protection (CBP) and Commerce upon request, but are not required to submit the certifications or supporting documentation to CBP as part of the entry process.<sup>102</sup> Moreover, while the importer and exporter are required to maintain “sufficient documentation” to support their certifications, the certifications do not mandate the inclusion of specific types of documentation.<sup>103</sup>
- Importantly, the certifications do not require importers and exporters to affirmatively identify the country of origin of the billet used to produce the aluminum extrusions from Vietnam covered by the specific entry.<sup>104</sup> Importers are not even required to provide the certifications and/or supporting documentation to CBP with each entry; they must be provided only if requested.<sup>105</sup> Thus, importers and exporters enjoy substantial discretion in selecting what supporting documentation to maintain, creating a high incentive for evasion, which is why a circumvention determination was necessary in the first place.<sup>106</sup> This is especially important in the instant case as there is a longstanding history of circumvention and duty evasion with respect to the *Orders* on aluminum extrusions from China.<sup>107</sup>
- To ensure the efficacy of this circumvention inquiry, Commerce should modify the certification requirements to: (a) require that importers and exporters affirmatively identify the country of origin of the aluminum billet used in the extrusion process in Vietnam (the country of origin of the billet must be based on where the billet was cast) and indicate whether the billet was created using re-melted Chinese extrusions; (b) require that the importer and exporter certifications be provided to CBP with each entry; and, (c) require that the importers and exporters provide, with each U.S. entry, chemical testing certificates, commercial invoices, and production records for the substrate used to produce the aluminum extrusions completed in Vietnam.<sup>108</sup>

#### *East Asia Aluminum's Arguments*

- In the *Preliminary Determination*, Commerce imposed a requirement that all entries of aluminum extrusions from Vietnam that were completed in Vietnam using aluminum not previously extruded in China be certified pursuant to its proposed certification language.<sup>109</sup> This remedy, however, is based entirely on Commerce's affirmative determination that circumvention has occurred in Vietnam on a country-wide basis, which the record fails to

---

<sup>101</sup> See Petitioner's Case Brief at 6-8 (citing *Preliminary Determination* PDM at 15).

<sup>102</sup> *Id.* (citing *Preliminary Determination* PDM at 15).

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.* While the certifications provide examples of supporting documentation, they do not require the importers or exporters to maintain specific types of documentation.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> See East Asia Aluminum's Case Brief at 14-16 (citing *Preliminary Determination* PDM at 15 – 16).

support with respect to East Asia Aluminum.<sup>110</sup> Accordingly, Commerce has no lawful basis to subject East Asia Aluminum and its U.S. importers to the complex and burdensome certification remedy it proposes.<sup>111</sup>

#### *Primus' Rebuttal Arguments*

- Certification conditions should be as strong as possible to ensure that aluminum extrusions are not from a country subject to AD and CVD duties. Circumvention is extremely difficult to monitor and prevent, and it undermines fair trade, including as to those companies which respect U.S. law in their own importations and exportations.<sup>112</sup> The strongest possible certification requirements help importers to prevent or reduce the risk of imports being involved in circumvention, with huge retroactive duties imposed on the importer.<sup>113</sup> As such, Commerce's certification requirements should be strengthened.<sup>114</sup>
- Respondents who fail to fully cooperate and answer Commerce questionnaires in a circumvention investigation should not be entitled to the use of Commerce's certification procedures, and their exports should be subject to AD and CVD duties. Non-cooperating producers/exporters should have to go through a changed circumstances review or administrative review to earn the right to certify. In such reviews, Commerce should verify their accounting systems and records, to see if (a) they reliably indicate if there is circumvention or not, and (b) whether the respondent has the attitude to and can respect U.S. law against transshipment.<sup>115</sup> Commerce should verify certifications at least every three or less years, consistent, generally, with Commerce's administrative reviews.<sup>116</sup> A failure to cooperate should lead to the loss of the ability to certify, including retroactively back to the time of the last verification, with retroactive AD/CVD import duties owed.<sup>117</sup>

#### *East Asia Aluminum's Rebuttal Arguments*

- Commerce's existing proposed certification requirements are already excessive and create unnecessary burdens, which are unwarranted in these inquiries given that CBP already has effective tools to enforce the *Orders*.<sup>118</sup> False statements to CBP, including failure to properly report entries to CBP as subject to AD and CVD duties, subject importers to significant penalties pursuant to the Act.<sup>119</sup> Moreover, Section 421 of the Trade Facilitation and Trade Enforcement Act of 2015 (EAPA) establishes formal procedures for submitting

---

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *See* Primus's Rebuttal Brief at 1.

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.* at 2 (citing *Butt-welds from China* IDM at Comment 1; *Glycine from the People's Republic of China: Final Results of the Changed Circumstances Review*, 83 FR 5611 (February 8, 2018) and accompanying IDM at Comment 1.

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *See* East Asia Aluminum's Rebuttal Brief at 4-8.

<sup>119</sup> *Id.* (citing section 1592 of the Act).

and investigating AD or CVD allegations of evasion against U.S. importers (*i.e.*, EAPA investigations).<sup>120</sup>

- The petitioner’s proposed additional certification requirements would result in excessive and undue burdens on East Asia Aluminum and its U.S. importers. For example, the petitioner’s request that importers and exporters affirmatively identify the country of origin of the aluminum billets used in the extrusion process in Vietnam and indicate whether the billets were created using re-melted Chinese aluminum extrusions, is irrelevant unless such billets have been made from aluminum previously extruded in China.<sup>121</sup> In addition, certification requirements on billet origin are unnecessary and excessively burdensome, especially since the record is clear that East Asia Aluminum’s products are produced using raw aluminum ingots sourced from countries other than Vietnam and China.<sup>122</sup> Moreover, the petitioner’s requests that importer certifications be accompanied by chemical testing certificates, commercial invoices and production records provide no improvement in enforcement but rather would create additional complexities and unnecessary burdens for U.S. importers, exporters and CBP alike. Commerce has previously rejected such additional requirements for this very reason.<sup>123</sup>

**Commerce’s Position:** We find that the certification requirements implemented in the *Preliminary Determination* are adequate and appropriate. CBP cannot determine the country of origin of the inquiry merchandise through physical inspection of the imported product, and thus, cannot confirm through physical inspection whether a particular entry has been properly designated as a “type 1” or “type 3” entry. Moreover, the sales documentation provided with the entry package may not be dispositive, as the country of origin of the extrusions may not be apparent from invoices, bills of lading, *etc.*, especially for aluminum that has passed through multiple hands (producer, exporter, trading company) obscuring the source of the aluminum.

East Asia Aluminum is correct that there are procedures in place to deter false statements to CBP through the application of penalties. That being said, enforcement of the AD and CVD laws, including taking steps to prevent evasion and circumvention of orders by exporters and importers, is of paramount importance to Commerce. The addition of the certification requirements in these inquiries strengthens the administration and enforcement of the AD and CVD orders by reducing the possibility that entries may be inaccurately classified by importers. Given the complex supply chains that may be involved with the inquiry merchandise, the certification requirement provides additional assurance that the exporter and importer sought adequate information regarding the source of their aluminum extrusions in order to accurately certify whether a particular shipment is not subject to the *Orders*. While East Asia Aluminum argues this is complicated and burdensome, it did not demonstrate or provide details illustrating its burden, or demonstrate why the certification requirement is not in line with the reasonable care standard in determining country of origin when entering goods into the United States.

---

<sup>120</sup> *Id.* (citing section 1517 of the Act). An EAPA investigation authorizes CBP to collect and verify relevant information and to determine if the imported inquiry merchandise from Vietnam was made from aluminum previously extruded in China and thereby effectively prevent evasion of the *Orders*. *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.* (citing East Asia Aluminum’s June 22, 2018 submission).

<sup>123</sup> *Id.* (citing *CORE from China* IDM at Comment 4).

We disagree with East Asia Aluminum that we do not have the authority to impose reasonable certification requirements. Commerce has imposed certification requirements in the past, including on a country-wide basis. Specifically, we have stated:

{Commerce} disagrees ... that {it} is creating a burdensome requirement. {T}he certification being asked for is in line with the “reasonable care” statutory standard in determining the country of origin, which is incumbent on all U.S. importers when entering goods into the United States.... {Commerce} agrees with the domestic interested parties that a country-wide importer certification requirement will ensure that all importers are exercising the “reasonable care” statutory standard when importing {subject merchandise} and believes the minimum paperwork involved will ensure that all parties importing {subject merchandise} take reasonable care when determining the country of origin.<sup>124</sup>

As explained above, we continue to find that a country-wide determination is appropriate because there are risks of potential future circumvention given the specific facts of the underlying allegations and our investigation that justify the requirement of country-wide certification requirements.<sup>125</sup> Additionally, these certification requirements provide a means for respondents like East Asia Aluminum to avoid application of AD and CVD duties under the *Orders* for merchandise not produced from Chinese extrusions. As noted above, East Asia Aluminum did not demonstrate how the certification requirements overly burden importers or exporters, and therefore, we see no reason to assume that the alleged burdens outweigh the risks discussed above from removing the certification requirements in whole, or in part. The certification at issue is a one-page document requesting basic information that can be taken from entry summaries and invoices.

We also disagree, in part, with the petitioner that the current certification requirements are insufficient and that additional requirements are necessary. If, in the context of later segments of these proceedings, evidence is provided that the certification requirements implemented in these circumvention inquiries are failing to prevent entries from circumventing the *Orders*, we will consider additional steps to ensure the identification of such entries and collect cash deposits as appropriate. For now, we have concluded that it is reasonable to continue to rely on CBP’s own analysis mechanisms to determine when to request certifications and we will request certifications and supporting documentation as part of our own enforcement efforts. In this regard, we note that the certifications require timely completion at the time of shipment. Thus, while the certifications are only provided to CBP and Commerce on request, the certifications must be completed in real time on an entry- and shipment-specific basis. In addition, while importers and exporters are required to maintain supporting documentation to support their certifications, we do not believe it is appropriate to specify exactly which documents should be

---

<sup>124</sup> See *CORE from China* IDM at Comment 4 (citing Memorandum, “Final Scope Ruling Concerning the Antidumping Duty Order on Glycine from the People’s Republic of China,” dated December 3, 2012, at 10).

<sup>125</sup> See *Appleton Papers, Inc. v. United States*, 929 F. Supp. 2d 1329, 1337 (CIT 2013) (“Commerce has a certain amount of discretion to act in order to ‘prevent ... the intentional evasion or circumvention’ of the Act. To that end, Commerce may impose measures such as mandatory certification programs where it believes they will be effective in preventing future circumvention of its orders.”) (internal citations omitted).

maintained. We cannot know, given the number of companies involved and the potential complexity of the supply chain, precisely which documents may be kept in the normal course of business by each importer and exporter. However, we agree with the petitioner that the certifications should confirm that the billet was not created using re-melted Chinese extrusions and have altered the certifications accordingly. Given that record evidence indicates that GVA sells billets to other Vietnamese extruders,<sup>126</sup> such a requirement would help ensure the efficacy of this circumvention determination.

Regarding Primus' arguments concerning the ability to certify, as explained above, the record contains no evidence that East Asia Aluminum sources its aluminum from re-melted Chinese-origin aluminum extrusions. As explained in the *Preliminary Determination*, to administer this country-wide affirmative finding, Commerce has established a certification process for entries of inquiry merchandise from Vietnam. Accordingly, importers and exporters of aluminum extrusions from Vietnam, including East Asia Aluminum, must certify that their aluminum extrusions were not sourced from re-melted Chinese-origin aluminum extrusions, as provided for in the certifications attached to the *Preliminary Determination*. Conversely, Zhongwang and GVA, along with their affiliates Aluminicaste Fundicion de Mexico, Dalian Liwan Trade Co., Ltd., Tianjin Boruxin Trading Co., Ltd., Dragon Luxe Limited, Perfectus Aluminum Inc., Perfectus Aluminum Acquisitions LLC, Pencheng Aluminum Enterprise Inc. USA, Transport Aluminum Inc., Aluminum Source Inc., Aluminum Industrial Inc., Global Aluminum (USA) Inc., Aluminum Shapes, LLC, Century American Aluminum Inc., American Apex Aluminum Inc., and Global Tower Worldwide Ltd., are not eligible to participate in the certification process at this time. As explained above, these companies have not participated in these inquiries, and therefore, have not demonstrated that their shipments of aluminum extrusions from Vietnam to the United States during the period of inquiry were made from non-Chinese materials. Commerce finds it necessary to limit eligibility for the certification process to prevent circumvention by Zhongwang, GVA, and their affiliates. Commerce will reconsider these companies' eligibility to participate in the certification process if they can demonstrate in a future segment of the proceeding (*e.g.*, a changed circumstances review or administrative review) that the aluminum extrusions being entered into the United States that they produce are no longer sourced from Chinese-origin aluminum extrusions which have been re-melted into new extrusions.<sup>127</sup>

---

<sup>126</sup> See Circumvention Request at 15-16.

<sup>127</sup> See *Glycine China* IDM at Comment 1.

**XII. RECOMMENDATION**

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final determination of these circumvention inquiry in the *Federal Register*.

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

7/31/2019

**X** 

\_\_\_\_\_  
Jeffrey I. Kessler  
Assistant Secretary  
Signed by: JEFFREY KESSLER  
for Enforcement and Compliance