



(BILLING CODE: 3510-DS-P)

DEPARTMENT OF COMMERCE

International Trade Administration

A-570-967/C-570-968

Aluminum Extrusions from the People's Republic of China: Initiation of Anti-Circumvention Inquiry

AGENCY: Enforcement & Compliance, International Trade Administration, Department of Commerce

SUMMARY: In response to a request from the Aluminum Extrusions Fair Trade Committee (Petitioner), the Department of Commerce (the Department) is initiating an anti-circumvention inquiry pursuant to sections 781(c) and (d) of the Tariff Act of 1930, as amended, (the Act) to determine whether 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 (collectively, Zhongwang) are circumventing the antidumping duty (AD) and countervailing duty (CVD) orders on aluminum extrusions from the People's Republic of China (PRC).¹

DATE: Effective (Insert date of publication in the Federal Register).

FOR FURTHER INFORMATION CONTACT: Scott Hoefke or Robert James, AD/CVD Operations, Office VI, Enforcement & Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482-4947 or (202) 482-0649, respectively.

¹ 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*).

SUPPLEMENTARY INFORMATION:

Background

In October 2015, Petitioner filed a joint Scope Clarification and Anti-Circumvention Inquiry Request for certain merchandise from Zhongwang. At the request of the Department, on December 30, 2015, Petitioner refiled its request that the Department conduct an anti-circumvention inquiry pursuant to sections 781(c) and (d) of the Act with respect to extruded aluminum products that meet the chemical specifications for 5050-grade aluminum alloy, which are heat-treated, and exported by Zhongwang.² In its request, Petitioner contends that Zhongwang's 5050-grade aluminum alloy extrusion products are circumventing the scope of the *Orders*, and requests that the Department address this alleged circumvention by initiating both a "minor alterations" anti-circumvention inquiry pursuant to section 781(c) of the Act, as well as a "later-developed merchandise" anti-circumvention inquiry pursuant to section 781(d) of the Act.³ With this refiling, we accepted the Petitioner's submission and set the deadline for action as February 22, 2016. On February 22, 2016, the Department extended the deadline to initiate 21 days to March 14, 2016.

The scope of the *Orders* expressly includes extruded products made of alloy "with an Aluminum Association series designation commencing with the number 6" where "magnesium account{s} for at least 0.1 percent but not more than 2.0 percent of total materials by weight, and silicon account{s} for at least 0.1 percent but not more than 3.0 percent of total materials by weight."⁴ In addition, expressly excluded from the *Orders* are extruded products made of alloy

² See Letter to the Secretary, Re "Aluminum Extrusions from the People's Republic of China: Resubmission of Circumvention Inquiry Request Pursuant to the Department's Request," dated December 30, 2015 (Petitioner's Resubmission of Circumvention Inquiry).

³ *Id.* at 39-66.

⁴ See *Orders*, 76 FR 30653.

“with an {Aluminum Association} series designation commencing with the number 5 and containing in excess of 1.0 percent magnesium by weight.”⁵ Petitioner argues that the scope of the *Orders* “creates an overlap between the chemical composition standards {in that} there is a narrow window in which a 5xxx-series alloy may and does exist that is comprised of more than one percent but less than two percent magnesium by weight{,}” and that “{i}n order to use 5xxx-series alloy (*i.e.*, 5050 alloy) in an extrusion application,...the metal would have to be heat-treated to achieve the mechanical properties that make 6xxx-series alloy so attractive for extrusion applications{.}”⁶

Thus, Petitioner maintains that the aluminum alloy extrusion products at issue are manipulated in two ways to evade the scope of the *Orders*: First, the billet producer must create a precise ratio of silicon to magnesium to result in an alloy that satisfies the chemical composition limits of a 5050 alloy, but behaves and is extrudable like an in-scope 6xxx-series alloy.⁷ Second, once the alloy is subject to a heat-treatment tempering process, this allows the extruded alloy to achieve the desired tensile strength to mimic the functionality of in-scope 6xxx-series alloy.⁸ Petitioner argues that The Aluminum Association, the certifying body for the domestic aluminum industry, does not currently recognize heat-treatment as a tempering process for 5050-grade aluminum alloy, which is historically tempered through strain-hardening and/or cold-working processes.⁹ Rather, The Aluminum Association recognizes heat-treatment as a tempering process for 6xxx-series alloy.¹⁰ In short, Petitioner alleges that these aluminum alloy

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 42-44.

⁸ *Id.* at 42-45

⁹ *Id.* at 46-47.

¹⁰ *Id.* at Exhibit 21.

products are subject to chemical and mechanical manipulation, *i.e.*, tempering, which results in circumvention of the *Orders*.

Petitioner provided evidence that was reasonably available of Zhongwang's alleged circumvention of the *Orders* through its shipment of such 5050-grade aluminum alloy extrusion products.¹¹ Petitioner provided Zhongwang's financial statements.¹² Petitioner points out that Zhongwang has yet to be selected for an administrative review for the *Orders*, because there were no reported entries of subject merchandise.¹³ Petitioner also points out that after the imposition of the *Orders*, the volume of Zhongwang's U.S. exports decreased, but subsequently rebounded since the "sudden" appearance and timing of its importation of such 5050-grade aluminum alloy products.¹⁴ Petitioner argues that these facts taken together indicate that Zhongwang is engaging in manipulation to avoid duties.

Scope of *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

¹¹ *Id.* at 41 and 62.

¹² *Id.* at 50 and Exhibit 3.

¹³ *Id.* at 50.

¹⁴ *Id.* at 50.

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 leading letter. Illustrative examples from among the approximately 160 registered alloys that may characterize the subject merchandise are as follows: 1350, 3003, and 6060.

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

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

Subject aluminum extrusions may be described at the time of importation as parts for final finished products that are assembled after importation, including, but not limited to,

window frames, door frames, solar panels, curtain walls, or furniture. Such parts that otherwise meet the definition of aluminum extrusions are included in the scope. The scope includes the aluminum extrusion components that are attached (*e.g.*, by welding or fasteners) to form subassemblies, *i.e.*, partially assembled merchandise unless imported as part of the finished goods ‘kit’ defined further below. The scope does not include the non-aluminum extrusion components of subassemblies or subject kits.

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

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

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

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

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

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

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

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States (HTSUS): 7609.00.00, 7610.10.00,

7610.90.00, 7615.10.30, 7615.10.71, 7615.10.91, 7615.19.10, 7615.19.30, 7615.19.50,
7615.19.70, 7615.19.90, 7615.20.00, 7616.99.10, 7616.99.50, 8479.89.98, 8479.90.94,
8513.90.20, 9403.10.00, 9403.20.00, 7604.21.00.00, 7604.29.10.00, 7604.29.30.10,
7604.29.30.50, 7604.29.50.30, 7604.29.50.60, 7608.20.00.30, 7608.20.00.90, 8302.10.30.00,
8302.10.60.30, 8302.10.60.60, 8302.10.60.90, 8302.20.00.00, 8302.30.30.10, 8302.30.30.60,
8302.41.30.00, 8302.41.60.15, 8302.41.60.45, 8302.41.60.50, 8302.41.60.80, 8302.42.30.10,
8302.42.30.15, 8302.42.30.65, 8302.49.60.35, 8302.49.60.45, 8302.49.60.55, 8302.49.60.85,
8302.50.00.00, 8302.60.90.00, 8305.10.00.50, 8306.30.00.00, 8414.59.60.90, 8415.90.80.45,
8418.99.80.05, 8418.99.80.50, 8418.99.80.60, 8419.90.10.00, 8422.90.06.40, 8473.30.20.00,
8473.30.51.00, 8479.90.85.00, 8486.90.00.00, 8487.90.00.80, 8503.00.95.20, 8508.70.00.00,
8515.90.20.00, 8516.90.50.00, 8516.90.80.50, 8517.70.00.00, 8529.90.73.00, 8529.90.97.60,
8536.90.80.85, 8538.10.00.00, 8543.90.88.80, 8708.29.50.60, 8708.80.65.90, 8803.30.00.60,
9013.90.50.00, 9013.90.90.00, 9401.90.50.81, 9403.90.10.40, 9403.90.10.50, 9403.90.10.85,
9403.90.25.40, 9403.90.25.80, 9403.90.40.05, 9403.90.40.10, 9403.90.40.60, 9403.90.50.05,
9403.90.50.10, 9403.90.50.80, 9403.90.60.05, 9403.90.60.10, 9403.90.60.80, 9403.90.70.05,
9403.90.70.10, 9403.90.70.80, 9403.90.80.10, 9403.90.80.15, 9403.90.80.20, 9403.90.80.41,
9403.90.80.51, 9403.90.80.61, 9506.11.40.80, 9506.51.40.00, 9506.51.60.00, 9506.59.40.40,
9506.70.20.90, 9506.91.00.10, 9506.91.00.20, 9506.91.00.30, 9506.99.05.10, 9506.99.05.20,
9506.99.05.30, 9506.99.15.00, 9506.99.20.00, 9506.99.25.80, 9506.99.28.00, 9506.99.55.00,
9506.99.60.80, 9507.30.20.00, 9507.30.40.00, 9507.30.60.00, 9507.90.60.00, and 9603.90.80.50.

The subject merchandise entered as parts of other aluminum products may be classifiable under the following additional Chapter 76 subheadings: 7610.10, 7610.90, 7615.19, 7615.20, and 7616.99 as well as under other HTSUS chapters. In addition, fin evaporator coils may be

classifiable under HTSUS numbers: 8418.99.80.50 and 8418.99.80.60. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these orders is dispositive.

Merchandise Subject to the Anti-Circumvention Inquiry

This anti-circumvention inquiry covers extruded aluminum products that meet the chemical specifications for 5050-grade aluminum alloy, which are heat-treated, and exported by Zhongwang.¹⁵ The Department intends to consider whether the inquiry should apply to all imports of extruded aluminum products that meet the chemical specifications for 5050-grade aluminum alloy and are heat-treated, regardless of producer, exporter, or importer, from the PRC.

Request for a Minor Alterations Anti-Circumvention Inquiry

Section 781(c)(1) of the Act provides that the Department may find circumvention of an AD or CVD order when products which are of the class or kind of merchandise subject to an AD or CVD order have been “altered in form or appearance in minor respects . . . whether or not included in the same tariff classification.” Section 781(c)(2) of the Act provides an exception that “{p}aragraph 1 shall not apply with respect to altered merchandise if the administering authority determines that it would be unnecessary to consider the altered merchandise within the scope of the {AD or CVD} order{.}”

The Department notes that, while the statute is silent as to what factors to consider in determining whether alterations are properly considered “minor,” the legislative history of this

¹⁵ Petitioner provided names of known Zhongwang’s Chinese and U.S. affiliates. Through the course of inquiry, we intend to examine in addition to Zhongwang the following affiliated companies: Dalian Liwan Trade Co., Ltd.; Tianjin Boruxin Trading Co., Ltd.; and Dragon Luxe Limited; Pencheng Aluminum Enterprise Inc. USA; Global Aluminum (USA) Inc.; Signature Aluminum Canada Inc.; Aluminum Shapes, LLC; Perfectus Aluminum Inc.; and Perfectus Aluminum Acquisitions LLC. We also intend to examine whether any Zhongwang’s affiliates are the producers of the merchandise at issue.

provision indicates there are certain factors which should be considered before reaching an anti-circumvention determination. In conducting an anti-circumvention inquiry under section 781(c) of the Act, the Department has generally relied upon “such criteria as the overall physical characteristics of the merchandise, the expectations of the ultimate users, the use of the merchandise, the channels of marketing and the cost of any modification relative to the total value of the imported product.”¹⁶ The Department will examine these factors in evaluating an allegation of minor alteration under section 781(c) of the Act and 19 CFR 351.225(i). Each case is highly dependent on the facts on the record, and must be analyzed in light of those specific facts. Thus, although not specified in the statute, the Department has also included additional factors in its analysis, such as the circumstances under which the products at issue entered the United States and the timing and quantity of said entries during the circumvention review period.¹⁷

As discussed above, Petitioner argues that the manipulation in chemical composition and tempering to create an aluminum extrusions product which technically meets the scope exclusion for 5xxx-series but behaves like in-scope 6xxx-series subject merchandise results in circumvention of the *Orders* as a minor alteration of in-scope merchandise, pursuant to section 781(c) of the Act.¹⁸ Specifically, Petitioner argues that the products at issue, given their heat-treatment, would otherwise be subject 6xxx-series alloy but for the minor increase in

¹⁶ See S. Rep. No.71, 100th Cong., 1st Sess. 100 (1987) (“In applying this provision, the Commerce Department should apply practical measurements regarding minor alterations, so that circumvention can be dealt with effectively, even where such alterations to an article technically transform it into a differently designated article.”).

¹⁷ See, e.g., *Brass Sheet and Strip From West Germany; Negative Preliminary Determination of Circumvention of Antidumping Duty Order*, 55 FR 32655 (August 10, 1990) unchanged in *Brass Sheet and Strip From Germany; Negative Final Determination of Circumvention of Antidumping Duty Order*, 56 FR 65884 (December 19, 1991), see also, e.g., *Small Diameter Graphite Electrodes From the People's Republic of China: Initiation of Anticircumvention Inquiry*, 77 FR 37873 (June 25, 2012).

¹⁸ See Petitioner’s Resubmission of Circumvention Inquiry at 52-53.

magnesium levels, which allows for a superficial designation as a 5050 alloy.¹⁹ According to Petitioner, this would require a shift in chemistry of a 6063 alloy at the top end of its magnesium content range (*i.e.*, 0.45 to 0.90 percent by weight) by increasing the magnesium content level by a mere 0.2 percent by weight to achieve a magnesium content of 1.1 percent by weight, which is within the low end of the range of the magnesium content range for 5050 alloy.²⁰ Petitioner states this increase at today's magnesium market price would result in a 4.63 percent increase to the 5050 billet's overall per pound alloying cost, which in turn represents a negligible 0.52 percent increase to the overall per-pound billet production cost.²¹ Petitioner states that in *Cut-to-Length Plate from China*,²² the Department found similar minor changes to alloying elements are not sufficient to remove what would otherwise be subject merchandise from the scope.²³

Finally, once a precise ratio of silicon to magnesium is achieved, which falls within the chemical composition limits for a 5050 alloy, but is virtually indistinguishable from the chemical composition limits for a 6xxx-series alloy, the product is ready to be heat-treated – the same tempering process used for 6xxx-series alloy, and which is not recognized by The Aluminum Association as a tempering process for 5050 alloy – which results in a product similar to a 6xxx-series aluminum extrusion product, save for the minor increase in magnesium.

In its request for a minor alterations anti-circumvention inquiry, Petitioner presented the following evidence with respect to each of the aforementioned criteria.

¹⁹ *Id.*

²⁰ *Id.* at 52.

²¹ *Id.*

²² See *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 (August 17, 2011) (*Cut-to-Length Plate from China*).

²³ See Petitioner's Resubmission of Circumvention Inquiry at 52.

A. Overall Physical Characteristics

Petitioner contends that companies such as Zhongwang have created and shipped extruded aluminum products meeting the chemical specifications for 5050-grade aluminum alloy and which are heat-treated, which results in aluminum extrusion products whose chemical and mechanical properties have been manipulated to be similar to those of in-scope 6xxx-series alloy products. Petitioner has provided information relating to an importer that has admitted to sourcing 5050-grade aluminum alloy products for use in products and applications which have traditionally used 6xxx-series alloys, as well as information relating to a domestic producer that has been asked to provide price quotes for the manufacture of products using 5050 alloy which have been made previously with 6xxx-series alloy. Petitioner also obtained and tested specimens labeled as 5050-grade aluminum alloy products, which demonstrated that the chemical composition overlapped with 6xxx-series standards, and had been heat-treated. While Petitioner did not test specimens of Zhongwang's products, information reasonably available to Petitioner indicates that the overall physical characteristics of Zhongwang's 5050-grade aluminum alloy extrusion products would be no different from the tested products, and therefore should be found similar to products made of series 6xxx aluminum alloys.²⁴

B. Expectations of the Ultimate Users and Use of the Merchandise

Petitioner alleges that the expectations of the purchasers and ultimate use of Zhongwang's 5050-grade aluminum alloy extrusion products are identical to those of products produced from 6xxx-series alloy.²⁵ Petitioner states that the specific alloy out of which the aluminum extrusion is produced has no apparent bearing or impact on the ultimate use.²⁶

²⁴ See Petitioner's Resubmission of Circumvention Inquiry at page 56-58.

²⁵ *Id.* at 58-60.

²⁶ *Id.*

Petitioner provided evidence suggesting that the type of alloy had no bearing on customers' selection of aluminum extrusion products, and that, in some cases, 5050-grade aluminum alloy products were used specifically to avoid antidumping and countervailing duties.²⁷ Petitioner also provided information indicating that domestic producers are competing with Chinese-sourced 5050-grade aluminum alloy products for the same shower enclosure components designed to be manufactured in 6463 alloy.²⁸ Petitioner further contends that, although it does not have access to Zhongwang's specific 5050-grade aluminum alloy extrusion products, evidence confirms that Zhongwang began importing a large volume of 5050-grade aluminum alloy products after the *Orders* came into place.²⁹ Further, Petitioner contends that there is no indication that Zhongwang's products are any different from the 5050-grade aluminum alloy products which have been competing directly with the U.S. industry.³⁰

C. Channels of Marketing

Petitioner maintains that there is no difference between the channels of marketing for aluminum extrusions made from in-scope alloy, *i.e.*, 6xxx-series aluminum extrusions, and those of 5050-grade aluminum alloy extrusion products. For instance, Petitioner provided evidence showing that such 5050-grade aluminum alloy extruded products are marketed by Chinese producers to purchasers in the same manner that 6xxx-series are marketed, and such marketing demonstrates to customers and end-users that these products are interchangeable with 6xxx-series products.³¹ Moreover, Petitioner states that Zhongwang's website advertises a collection of products in a single location on its website without designation or differentiation

²⁷ *Id.* at 58-60, Exhibit 30, Exhibit 28, and Exhibit 22.

²⁸ *Id.* at 59 and Exhibit 28.

²⁹ *Id.* at 65.

³⁰ *Id.* at 59.

³¹ *Id.* at 60.

between products crafted or capable of being crafted of different alloys. This demonstrates, Petitioner contends, that Zhongwang's 5050-grade aluminum alloy extrusion products are not marketed any differently from merchandise produced from in-scope 6xxx-series alloy.³²

D. Cost of Modification

Petitioner indicates that the cost of the minor alterations to shift the chemistry of a high-magnesium series 6xxx alloy to one that one could be designated as 5050 alloy is minimal at best.³³ As discussed above, Petitioner specifically mentions that one would need to increase a 6063 alloy's maximized magnesium content level by 0.2 percent by weight.³⁴ Petitioner states that this increase at magnesium's market price at the time of filing would result in a 4.63 percent increase to the 5050 billet's overall per pound alloying cost which, Petitioner avers, is insignificant given the *Orders* antidumping and countervailing duties are over 180 percent.³⁵

E. Circumstance Under Which the Subject Products Entered the United States

Petitioner argues that at the completion of the original investigations, the PRC-wide antidumping rate was 33.28 percent, and the PRC-wide countervailing duty rate was 374.15 percent.³⁶ Petitioner asserts that these considerable margins have given Zhongwang tremendous financial incentive to circumvent the *Orders* so as not to incur the costs associated with the duties levied on the entries of subject merchandise.³⁷

³² *Id.* at 60-61 and Exhibit 19.

³³ *Id.* at 63.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* at 63-64.

³⁷ *Id.* at 64.

F. Timing of Entries

Petitioner asserts that the timing of the entries of Zhongwang's 5050-grade aluminum alloy products show Zhongwang's attempt to circumvent the *Orders*.³⁸ Petitioner supported this assertion by providing import data showing Zhongwang's shipments of 5050-grade aluminum alloy products began after the imposition of the *Orders* in 2011.³⁹

Request for a Later-Developed Merchandise Anti-Circumvention Inquiry

Section 781(d)(1) of the Act provides that the Department may initiate an anti-circumvention inquiry to determine whether merchandise developed after an AD or CVD investigation is initiated ("later-developed merchandise") is within the scope of the order(s). In conducting later-developed merchandise anti-circumvention inquiries under section 781(d)(1) of the Act, the Department will evaluate whether the general physical characteristics of the merchandise under consideration are the same as subject merchandise covered by the order, whether the expectations of the ultimate purchasers of the merchandise under consideration are no different than the expectations of the ultimate purchasers of subject merchandise, whether the ultimate use of the subject merchandise and the merchandise under consideration are the same, whether the channels of trade of both products are the same, whether there are any differences in the advertisement and display of both products,⁴⁰ and if the merchandise under consideration was commercially available at the time of the investigation, *i.e.*, the product was present in the commercial market or the product was tested and ready for commercial production.⁴¹

³⁸ *Id.*

³⁹ *Id.* at 65.

⁴⁰ See section 781(d)(1) of the Act.

⁴¹ See *Later-Developed Merchandise Anticircumvention Inquiry of the Antidumping Duty Order on Petroleum Wax Candles from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order*, 71 FR 32033, 32035 (June 2, 2006) unchanged in *Later-Developed Merchandise Anticircumvention Inquiry of the Antidumping Duty Order on Petroleum Wax Candles from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 71 FR 59075 (October

As discussed above, Petitioner argues that the manipulation in chemical composition and tempering to create an aluminum extrusions product which technically meets the scope exclusion for 5xxx-series but behaves like in-scope 6xxx-series subject merchandise results in circumvention of the *Orders* as later-developed merchandise, pursuant to section 781(d) of the Act. Specifically, Petitioner argues that the products constitute later-developed merchandise because: (1) while the 5050-grade alloy designation existed at the time of the investigation, The Aluminum Association did not, and still does not, recognize heat-treatment as a tempering process for 5050-grade aluminum alloy; (2) documents from the investigation indicate that soft alloys, *i.e.*, 1xxx-, 3xxx-, and 6xxx-series alloys, were used in a wide variety of aluminum extrusion products, while hard alloys – such as 5xxx-series – were extremely limited and highly specific, appearing primarily in marine and aerospace applications; and (3) at the time of the filing of the petition, The Aluminum Association recognized only four 5xxx-series alloys employed in extrusion applications – which did not include 5050-grade aluminum alloy.⁴²

As described in the “Request for a Minor Alterations Anti-Circumvention Inquiry” section above, Petitioner has provided evidence and argument pertaining to the general physical characteristics of the merchandise under consideration as being the same as subject merchandise covered by the order, whether the expectations of the ultimate purchasers of the merchandise under consideration are no different than the expectations of the ultimate purchasers of subject merchandise, and whether the ultimate use of the subject merchandise and the merchandise under consideration are the same. In the context of its later-developed merchandise request, Petitioner has further provided the following evidence pertaining to the remaining aforementioned criteria.

6, 2006).

⁴² See Petitioner’s Resubmission of Circumvention Inquiry at 54-55.

A. Advertisement, Display, and Channel of Trade

Petitioner maintains that the advertisement, display, and channels of trade of manipulated 5050-grade aluminum alloy extruded products are identical to those of merchandise produced from in-scope alloys, *i.e.*, 6xxx-series.⁴³ With respect to advertisement and display, Petitioner provided evidence showing that such 5050-grade aluminum alloy extruded products are advertised by Chinese producers to purchasers in the same manner that 6xxx-series are advertised, which demonstrates to customers and end-users that these products are interchangeable with 6xxx-series products.⁴⁴ Moreover, Petitioner states that Zhongwang's website advertises and displays a collection of products in a single location on its website without designation or differentiation between products crafted or capable of being crafted of different alloys, thus demonstrating that Zhongwang's 5050-grade aluminum alloy extrusion products are not advertised or displayed any differently from merchandise produced from in-scope 6xxx-series alloy.⁴⁵

With respect to channels of trade, Petitioner provided information relating to a domestic producer that has been asked to provide price quotes for the manufacture of products using 5050-grade alloy which have been made previously with 6xxx-series alloy.⁴⁶ In addition, Petitioner provided evidence demonstrating a company's loss of business as a result of the replacement of 6xxx-series alloy in products with Chinese 5050-grade alloy.⁴⁷ Petitioner argues

⁴³ *Id.* at 60-62.

⁴⁴ *Id.* at 60.

⁴⁵ *Id.* at 60-61 and Exhibit 19.

⁴⁶ *Id.* at 61, Exhibit 22.

⁴⁷ *Id.* at 61, Exhibit 30.

that these 5050-grade aluminum alloy extrusion products, which caused lost U.S. business, are likely being sold in the identical channels of trade as the original series 6xxx alloy versions.⁴⁸

With respect to Zhongwang, Petitioner notes that the importer of record for nearly all of Zhongwang's shipments of aluminum product to the United States from 2009 to date was the same, regardless of whether those shipments were 6xxx-series profiles prior to the imposition of the orders or 5050-grade products after the imposition of the orders.⁴⁹ According to Petitioner, there is no evidence reasonably available which indicates that the channels of trade in which Zhongwang's 5050-grade aluminum alloy extrusion products are sold are different from those in which similar 6xxx-series products are sold.⁵⁰ However, the evidence that is reasonably available, *i.e.*, Zhongwang's website, shows that Zhongwang advertises a collection of products manufactured exclusively from series 6xxx-series alloy and one product manufactured from 7xxx-series alloy, but makes no mention of series 5xxx products.⁵¹ Petitioner contends that given Zhongwang's importation levels of 5050-grade aluminum alloy extrusion products into the United States it would be advertising these products separately or at the very least mentioned on its website.⁵² Petitioner argues that the silence with which Zhongwang's website treats 5xxx-series products which it is manufacturing and shipping to the United States demonstrates that these products are interchangeable with 6xxx-series alloy products and intended to circumvent the orders.⁵³

⁴⁸ *Id.* at 61.

⁴⁹ *Id.* at 61, Exhibit 8.

⁵⁰ *Id.* at 61-62.

⁵¹ *Id.* at 62 and Exhibit 19.

⁵² *Id.* at 62.

⁵³ *Id.*

B. Commercial Availability

Petitioner states that, at the time of the investigation, series 5050 alloy existed but was associated with rolling applications, rather than extrusions.⁵⁴ Furthermore, Petitioner states that heat-treated 5050 alloy extrusions are not recognized by The Aluminum Association for the purposes of aluminum extrusions.⁵⁵ Additionally, Petitioner adds that The Aluminum Association did not recognize heat-treating series 5050 alloys at the time of the Petition, and still does not recognize doing so to the present day.⁵⁶ Thus, Petitioner argues that extruded aluminum products meeting the chemical specifications for 5050-grade aluminum alloy and which are heat-treated were not commercially available at the time of the investigations; they were developed and made available after the publication of the *Orders*.

Conclusion

Based on the information provided by Petitioner, the Department finds there is sufficient basis to initiate an anti-circumvention inquiry, pursuant to sections 781(c) and 781(d) of the Act. The Department will determine whether the merchandise subject to the inquiry (identified in the “Merchandise Subject to the Anti-Circumvention Inquiry” section above) involves either a minor alteration to subject merchandise in such minor respects that it should be subject to the *Orders*, and/or represents a later-developed product that can be considered subject to the *Orders*.

The Department will not order the suspension of liquidation of entries of any additional merchandise at this time. However, in accordance with 19 CFR 351.225(l)(2), if the Department issues a preliminary affirmative determination, we will then instruct U.S. Customs and Border Protection to suspend liquidation and require a cash deposit of estimated duties, at the applicable

⁵⁴ *Id.* at 54.

⁵⁵ *See* Petitioner’s Resubmission of Circumvention Inquiry at 54.

⁵⁶ *Id.* at 54, Exhibit 21, and Exhibit 27.

rate, for each unliquidated entry of the merchandise at issue, entered or withdrawn from warehouse for consumption on or after the date of initiation of the inquiry.

In the event we issue a preliminary affirmative determination of circumvention pursuant to section 781(d) of the act (later-developed merchandise), we intend to notify the International Trade Commission, in accordance with section 781(e)(1) of the Act and 19 CFR 351.225(f)(7)(i)(C), if applicable.

The Department will, following consultation with interested parties, establish a schedule for questionnaires and comments on the issues. The Department intends to issue its final determination within 300 days of this initiation, in accordance with section 781(f) of the Act.

This notice is published in accordance with sections 781(c) and 781(d) of the Act and 19 CFR 351.225(i) and (j).

Dated: March 14, 2016.

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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