A-570-967
Admin. Review
05/01/2015-04/30/2016
Public Document
E&C VI: MF

DATE: November 3, 2017

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

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

SUBJECT: Issues and Decisions Memorandum for the Final Results of the Antidumping Duty Administrative Review: Aluminum Extrusions from the People's Republic of China; 2015-2016

I. SUMMARY

The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order[1] on aluminum extrusions from the People's Republic of China (PRC).[2] The period of review is May 1, 2015, through April 30, 2016. These final results cover 10 companies and the PRC-wide entity for which an administrative review was initiated and not rescinded. We recommend finding that mandatory respondent Kam Kiu Aluminium Products Sdn. Bhd. (Kam Kiu) did not demonstrate eligibility for a separate rate and is, therefore, part of the PRC-wide entity. We also recommend appling adverse facts available (AFA) to the PRC-wide entity because it did not respond to the Department's initial quantity and value (Q&V) questionnaire. Further, because we lack sufficient record information to allow the Department to calculate a margin for mandatory respondent tenKsolar (Shanghai) Co., Ltd. (tenKsolar) for the POR, we recommend that the rate applied to tenKsolar's merchandise upon entry should continue to be the AD rate previously applied to tenKsolar, except to adjust for countervailable duty (CVD) subsidies determined under the companion aluminum extrusions CVD order. These recommendations make no changes from the *Preliminary Results* for these final results, in accordance with the position described in the "Discussion of the Issues" section of this

[1] *See Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order*, 76 FR 30650 (May 26, 2011) (*Order*).
[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 81 FR 44260 (July 7, 2016) (*Initiation Notice*).

memorandum.

II. BACKGROUND

On June 6, 2017, the Department published the *Preliminary Results* in the *Federal Register*.[3] In accordance with 19 CFR 351.309(c)(1)(ii), we invited interested parties to comment on the *Preliminary Results*. On July 6, 2017, the petitioner[4] submitted its case brief.[5] No other party submitted case or rebuttal briefs. On September 26, 2017, the Department extended the deadline for the final results of this administrative review.[6] The current deadline for these final results is November 3, 2017.

III. SCOPE OF THE ORDER

The merchandise covered by the *Order* 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 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

[3] *See Preliminary Results*, 82 FR at 26055.
[4] The petitioner is the Aluminum Extrusions Fair Trade Committee.
[5] *See* Petitioner Letter re: Aluminum Extrusions from the People's Republic of China: Case Brief, dated July 6, 2017 (Petitioner Case Brief).
[6] *See* Memorandum, "Aluminum Extrusions from the People's Republic of China: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review, 2015-2016," dated September 26, 2017.

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

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States (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, 9031.90.90.95, 7616.10.90.90, 7609.00.00, 7610.10.00, 7610.90.00, 7615.10.30, 7615.10.71, 7615.10.91, 7615.19.10, 7615.19.30, 7615.19.50, 7615.19.70, 7615.19.90, 7615.20.00, 7616.99.10, 7616.99.50, 8479.89.98, 8479.90.94, 8513.90.20, 9403.10.00, 9403.20.00, 7604.21.00.00, 7604.29.10.00, 7604.29.30.10, 7604.29.30.50, 7604.29.50.30, 7604.29.50.60, 7608.20.00.30, 7608.20.00.90, 8302.10.30.00, 8302.10.60.30, 8302.10.60.60, 8302.10.60.90, 8302.20.00.00, 8302.30.30.10, 8302.30.30.60, 8302.41.30.00, 8302.41.60.15, 8302.41.60.45, 8302.41.60.50, 8302.41.60.80, 8302.42.30.10, 8302.42.30.15, 8302.42.30.65, 8302.49.60.35, 8302.49.60.45, 8302.49.60.55, 8302.49.60.85, 8302.50.00.00, 8302.60.90.00, 8305.10.00.50, 8306.30.00.00, 8414.59.60.90, 8415.90.80.45, 8418.99.80.05, 8418.99.80.50, 8418.99.80.60, 8419.90.10.00, 8422.90.06.40, 8473.30.20.00, 8473.30.51.00, 8479.90.85.00, 8486.90.00.00, 8487.90.00.80, 8503.00.95.20, 8508.70.00.00, 8515.90.20.00, 8516.90.50.00, 8516.90.80.50, 8517.70.00.00, 8529.90.73.00, 8529.90.97.60, 8536.90.80.85, 8538.10.00.00, 8543.90.88.80, 8708.29.50.60, 8708.80.65.90, 8803.30.00.60, 9013.90.50.00, 9013.90.90.00, 9401.90.50.81, 9403.90.10.40, 9403.90.10.50, 9403.90.10.85, 9403.90.25.40, 9403.90.25.80, 9403.90.40.05, 9403.90.40.10, 9403.90.40.60, 9403.90.50.05, 9403.90.50.10, 9403.90.50.80, 9403.90.60.05, 9403.90.60.10, 9403.90.60.80, 9403.90.70.05, 9403.90.70.10, 9403.90.70.80, 9403.90.80.10, 9403.90.80.15, 9403.90.80.20, 9403.90.80.41, 9403.90.80.51, 9403.90.80.61, 9506.11.40.80, 9506.51.40.00, 9506.51.60.00, 9506.59.40.40, 9506.70.20.90, 9506.91.00.10, 9506.91.00.20, 9506.91.00.30, 9506.99.05.10, 9506.99.05.20, 9506.99.05.30, 9506.99.15.00, 9506.99.20.00, 9506.99.25.80, 9506.99.28.00, 9506.99.55.00, 9506.99.60.80, 9507.30.20.00, 9507.30.40.00, 9507.30.60.00, 9507.90.60.00, and 9603.90.80.50.

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

IV. DISCUSSION OF THE ISSUES

Comment: The Margin Assigned to the PRC-Wide Entity

Petitioner's Case Brief

- The Department should increase the rate assigned, as AFA, to the PRC-wide entity in the *Preliminary Results*, because it is too low to induce compliance.[7]
- Respondents in every review of this order have refused to participate, electing, instead, to receive the PRC-wide entity rate from the less-than-fair-value (LTFV) investigation (*i.e.*, 33.28 percent), because they have determined it is more beneficial to do so.[8]
- The fact that Kam Kiu withdrew from this administrative review, despite having participated as a separate rate respondent in every segment of this proceeding since the LTFV investigation and knowing that the PRC-wide entity's rate would increase as a result of this administrative review, further demonstrates that the rate assigned to the PRC-Wide entity (*i.e.*, to 86.01 percent) is not sufficient.[9]
- The fact that Kam Kiu withdrew from this proceeding, electing, instead, to become part of the PRC-wide entity and have its sales assessed at the 86.01 percent rate can only mean that the company believes it was dumping at higher rates.[10]
- One of the main purposes of the statute is to prevent the type of gamesmanship displayed by Kam Kiu in this proceeding from occurring.[11]
- The record contains information that would reasonably allow the Department to assign an AFA rate, which incorporates an increase intended to induce compliance.[12]
    - The Department should use certain tenKsolar sales to corroborate an increased AFA rate for the PRC-wide entity.[13]
    - In the alternative, the Department should assign the PRC-wide entity a rate based on certain sales by Union Industry (Asia) Co., Limited (Union) from the 2013-2014 review that generate a margin above 86.01 percent.[14]
    - If the Department elects not to use tenKsolar's sales or Union's sales, it should assign the PRC-wide entity a rate of 119.29 percent, which reflects the highest calculated rate of a mandatory respondent (*i.e.*, 86.01 percent) plus a "built-in increase" of the petition rate (*i.e.*, 33.28 percent).[15]

Department's Position:

We disagree with the petitioner and have continued to assign the PRC-wide entity, as AFA, a rate of 86.01 percent – the highest calculated rate on the record of any segment of this proceeding.

[7] *See* Petitioner Case Brief, at 6.
[8] *Id.*, at 8.
[9] *Id.*, at 5-6, and 8.
[10] *Id.*, at 7.
[11] *Id.*
[12] *Id.*, at 1.
[13] *Id.*, at 8-10.
[14] *Id.*, at 10-11
[15] *Id.*, at 11-12.

As we stated in the *Preliminary Results*, pursuant to "{t}he Department's change in policy regarding conditional review of the PRC-wide entity … the PRC-wide entity will not be under review unless a party specifically requests, or the Department self-initiates, a review of the entity."[16] The Department further stated that, consistent with this change in policy, the PRC-wide entity is currently under review because the petitioner requested a review of that entity.[17] For purposes of the *Preliminary Results*, the Department applied total AFA to the PRC-wide entity.[18] In reaching its preliminary determination, the Department stated that:

> …the use of facts otherwise available is warranted with respect to the PRC-wide entity, in accordance with sections 776(a)(1) and (2)(A) & (C) of the Act, because the PRC-wide entity withheld necessary information that was requested by the Department and, by not providing requested information, significantly impeded the proceeding.[19]

The Department further stated that because the PRC-wide entity failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information, an adverse inference is warranted pursuant to section 776(b) of the Act.[20] In deciding which facts to use as AFA, the Department stated that:

> … section 776(b) of the Act and 19 CFR 351.308(c)(1) provide that the Department may rely on information derived from: (1) the petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any information placed on the record. The Department's practice is to select an AFA rate that is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner" and that ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." Specifically, the Department's practice in reviews, in selecting a rate as total AFA, is to use the highest rate on the record of the proceeding which, to the extent practicable, can be corroborated (assuming the rate is based on secondary information).
>
> The Court of International Trade and the Court of Appeals for the Federal Circuit have affirmed decisions to select the highest margin from any prior segment of the proceeding as the AFA rate on numerous occasions. In choosing the appropriate balance between providing a respondent with an incentive to respond accurately and imposing a rate that is reasonably related to the

[16] *See* Preliminary Decision Memorandum, at 14.
[17] *Id*.
[18] *Id*., at 16.
[19] *Id*.
[20] *Id*.

> respondent's prior commercial activity, selecting the highest prior margin reflects "a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less." Therefore, as AFA, the Department has assigned the PRC-wide entity a weighted-average dumping margin of 86.01 percent (which will be adjusted for countervailable subsidies, *see* the section entitled, "Adjustments for Countervailable Subsidies," below), the highest calculated rate on the record of any segment of this proceeding.[21]

As stated above, the Department's practice in reviews, in selecting a rate as AFA, is to use the highest rate on the record of the proceeding, which, to the extent practicable, can be corroborated. Consistent with this practice, we assigned to the PRC-wide entity, as AFA, the rate calculated for Union in the 2013-2014 administrative review.[22]

As an initial matter, we disagree with the petitioner's rationale for increasing the AFA rate assigned to the PRC-wide entity. According to the petitioner, neither a 33.28 percent margin, nor an 86.01 percent margin, is sufficient to induce compliance.[23] Although in prior segments of this proceeding, cooperative separate rate companies that were not selected as mandatory respondents received a rate of 86.01 percent, rather than the 33.28 percent they could have received had they remained part of the PRC-wide entity,[24] it is speculative whether, as the petitioner argues, this situation encouraged companies to not comply. Similarly, we disagree with the petitioner's argument that Kam Kiu's withdrawal from participation in this segment of the proceeding demonstrates that "the PRC-wide rate is not sufficient 'to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'"[25] Specifically, the former situation no longer exists, and the effects of the latter can be assessed once the PRC-wide entity's rate of 86.01 percent becomes effective (*i.e.*, following the publication of these final results). At this time, we are unable to determine whether assigning a rate, which more than doubles that previously assigned to the PRC-wide entity (*i.e.*, 33.28 percent), will be ineffective at inducing cooperation. We note that under the Department's policy regarding conditional review of the PRC-wide entity, parties can continue to request a review of the PRC-wide entity in future segments of the proceeding.

Regarding the petitioner's suggestions for increasing the AFA rate assigned to the PRC-wide entity, we find that, because they are inconsistent with the Department's standard practice, they could be viewed as non-remedial in nature. The Court of Appeals for the Fedeal Circuit has consistently confirmed that the antidumping statute is remedial, and not punitive, in nature.[26]

---

[21] *Id.*, at 16-17 (internal citations omitted).
[22] *See Aluminum Extrusions from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013–2014*, 80 FR 75060, 75063 (December 1, 2015) (*2013-2014 Final Results*), and accompanying Issues and Decisions memorandum, at 9-10.
[23] *See* Petitioner Case Brief, at 6.
[24] *See*, *e.g.*, *2013-2014 Final Results*.
[25] *See* Petitioner Case Brief, at 6.
[26] *See*, *e.g.*, *C.J. Tower & Sons v. U.S.*, 71 F.2d 438, 444-445 (CCPA 1934); *Guangdong Wireking Housewares &*

The Court of International Trade has also stated, in litigation related to Kam Kiu in the companion CVD proceeding, that "{t}his building of adverse inferences on top of each other to create a rate … leaves the court with the impression that the rate is punitive."[27]

The 86.01 percent rate assigned to the PRC-wide entity in the *Preliminary Results* is based on the Department's standard practice.[28] Were the Department to increase the rate beyond that amount absent any evidence that the 86.01 rate will not "induce compliance" as claimed by the petitioner, such a determination could be perceived as non-remedial in nature. As noted, should the facts change, interested parties have the option of requesting a review of the PRC-wide entity in future administrative review proceedings.

Based on the above, we have made no change from the *Preliminary Results* with respect to the AFA rate assigned to the PRC-wide entity.

V. RECOMMENDATION

We recommend applying the above methodology for these final results.

☒ Agree ☐ Disagree

11/3/2017

X

Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

Hardware Co., Ltd. v. U.S., 745 F.3d 1194, 1203 (Fed. Cir. 2014) (Congress intended to create a civil remedy rather than impose punishment.); *Nucor Corp. v. U.S.*, 414 F.3d 1331, 1336 (Fed. Cir. 2005) ("{T}he purpose of antidumping and countervailing duty laws is remedial, not punitive or retaliatory."); and *Huaiyin Foreign Trade Corp. (30) v. U.S.*, 322 F.3d 1369, 1380-1381 (Fed. Cir. 2003) (noting that the purpose of dumping duties is to assure "competitive conditions between foreign exporters and domestic industries affected by dumping" and that the law is "remedial").

[27] *See Tai Shan City Kam Kiu Aluminium Extrusion Co. Ltd. v. U.S.*, 58 F.Supp.3d 1384, 1392 (CIT 2015).

[28] *See* Preliminary Decision Memorandum, at 16-17.