A-570-967, C-570-968
Anti-Circumvention Inquiry
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May 10, 2019

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

FROM: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,

SUBJECT: Anti-Circumvention Inquiry Regarding the Antidumping Duty and Countervailing Duty Orders on Aluminum Extrusions from the People's Republic of China: Preliminary Determination Decision Memorandum

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I. Summary

In response to a request from the Aluminum Extrusions Fair Trade Committee (the petitioner), the Department of Commerce (Commerce) initiated anti-circumvention inquiries pursuant to sections 781(b) and (c) of the Tariff Act of 1930, as amended (the Act).[1] Commerce initiated its anti-circumvention inquiries to determine whether certain extruded aluminum products from the Socialist Republic of Vietnam (Vietnam) manufactured by 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 (China).[2] We also indicated in our *Initiation Notice* that we intended to consider whether the inquiry should apply to all such imports of extruded aluminum products, regardless of producer, exporter, or importer.[3]

Based on the information submitted by interested parties and the analysis below, we recommend that Commerce preliminarily find that extruded aluminum products that meet the description of merchandise subject to these anti-circumvention inquiries, as described below,[4] regardless of producer, importer, or exporter, constitute merchandise completed or assembled in a foreign country and are, therefore, circumventing the *Orders.*

[1] *See Aluminum Extrusions from the People's Republic of China: Initiation of Anti-Circumvention Inquiry*, 83 FR 9267 (March 5, 2018) (*Initiation Notice*).
[2] *See Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order*, 76 FR 30650 (May 26, 2011)*; see also Aluminum Extrusions from the People's Republic of China: Countervailing Duty Order*, 76 FR 30653 (May 26, 2011) (collectively, the *Orders*).
[3] *See Initiation Notice*, 83 FR at 9268-9269.
[4] *See infra* section IV "Merchandise Subject to the Anti-Circumvention Inquiries."

II. Background

On March 5, 2018, in response to the petitioner's anti-circumvention inquiry request,[5] Commerce published the initiation of anti-circumvention inquiries.[6] On March 23, 2018, Commerce issued an anti-circumvention questionnaire to Zhongwang.[7] On March 26, 2018, the questionnaire was delivered to, and signed for, at the address for Global Vietnam Aluminum Co., Ltd. (GVA) provided by the petitioner in its anti-circumvention inquiry request.[8] Also, on March 26, 2018, the questionnaire was delivered to and signed for at the address identified on GVA's website.[9] Commerce received no response to its questionnaire from Zhongwang. On May 25, 2018, the petitioner filed comments and a request for Commerce to issue an affirmative preliminary determination.[10] On June 22, 2018, East Asia Aluminum Company Ltd. (East Asia Aluminum) filed rebuttal comments to the petitioner's comments.[11] On July 5, 2018, the petitioner filed rebuttal comments to East Asia Aluminum's submission.[12] On September 21, 2018, Commerce met with East Asia Aluminum.[13] On October 10, 2018, Commerce met with the petitioner.[14]

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.[15] If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. On February 22, 2019, we extended the final determination deadline until June 7, 2019.[16]

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[5] *See* Petitioner's Letter, "Aluminum Extrusions from the People's Republic of China: Request for Anti-Circumvention Inquiry," dated January 9, 2018 (Anti-Circumvention Request).
[6] *See Initiation Notice*.
[7] *See* Commerce Letters re: Anti-Circumvention Questionnaire, dated March 23, 2018 (Anti-Circumvention Questionnaires).
[8] *See* Memorandum, "Anti-circumvention Inquiry Regarding the Antidumping Duty and Countervailing Duty Order on Aluminum Extrusions from the People's Republic of China: Questionnaire Responses," dated February 21, 2019.
[9] *Id.*
[10] *See* Petitioner's Letter, "Aluminum Extrusions from the People's Republic of China: Request to Issue Preliminary Determination," dated May 25, 2018.
[11] *See* East Asia Aluminum's Letter, "Aluminum Extrusions from China; Anticircumvention - Zhongwang Pallets Vietnam," dated June 22, 2018.
[12] *See* Petitioner's Letter, "Aluminum Extrusions from the People's Republic of China: Response to East Asia Aluminum's Comments," dated June 5, 2018.
[13] *See* Memorandum, "Aluminum Extrusions from the People's Republic of China: Ex-Parte Meeting," dated September 26, 2018.
[14] *See* Memorandum, "Aluminum Extrusions from the People's Republic of China: Ex-Parte Meeting," dated February 7, 2019.
[15] *See* Memorandum to the Record from 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, "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.
[16] *See* Commerce Letter, "Aluminum Extrusions from the People's Republic of China: Extension of Anti-Circumvention Final Ruling Deadline," dated February 22, 2019.

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

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

IV. Merchandise Subject to the Anti-Circumvention Inquiries

These anti-circumvention inquiries cover extruded aluminum products 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).[17]

[17] Commerce initiated its anti-circumvention inquiries to determine whether extruded aluminum products that meet the description of the *Orders* exported from Vietnam by Zhongwang are circumventing the *Orders* on aluminum extrusions from China. Commerce also stated in the *Initiation Notice* that it intended to consider applying the inquiries to all imports of inquiry merchandise from Vietnam, regardless of producer, exporter, or importer. The petitioner provided names of known, and potential, entities involved in Zhongwang's import and export of Vietnamese aluminum extrusions. In addition to Zhongwang, the following companies were reported by the petitioner as being affiliated with Zhongwang: 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.; GVA; and Global Tower Worldwide Ltd. Additionally, information on the record suggests that Zhongwang continues to set up and create commercial relationships in different markets, thereby creating the opportunity to further evade the *Orders*. *See* Anti-Circumvention Request, at Exhibits 1, 4, 5, 6, 10, 11, and 30. Therefore, we preliminarily find that all Vietnamese aluminum extrusions made from aluminum previously extruded in China, regardless of the producer or exporter, are covered by the *Orders.*

V. Analytical Framework for Merchandise Completed or Assembled in Other Foreign Countries in Accordance with Section 781(b)

Section 781 of the Act addresses circumvention of AD and/or CVD orders.[18] Section 781(b)(1) of the Act provides that Commerce, after taking into account any advice provided by the U.S. International Trade Commission (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.[19] 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.[20]

Furthermore, section 781(b)(3) of the Act sets forth the factors to consider in determining whether to include merchandise assembled or completed in a third country in an AD/CVD order. Specifically, Commerce shall 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) whether or not imports of the merchandise into the third country have increased after the initiation of the AD and/or CVD investigation that resulted in the issuance of an order.

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[18] 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* S. Rep. No. 103-412 (1994), at 81-82.

[19] *See* Statement of Administrative Action, Accompanying the Uruguay Round Agreements Act (URAA), H. Doc. No. 103-316 (1994) (SAA), at 893.

[20] *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 Final Circumvention Determination*).

VI. 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.

Zhongwang failed to respond to Commerce's questionnaire and, accordingly, we preliminarily determine that: (1) necessary information is missing from the record; (2) Zhongwang withheld information requested by Commerce; and (3) Zhongwang significantly impeded the proceeding. Accordingly, we have preliminarily reached a determination on the basis of facts available pursuant to sections 776(a)(1), (2)(A) and (C) of the Act. Additionally, in selecting from among the facts available, we preliminarily 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. A detailed analysis of our application of adverse facts available follows below.

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 circumvents an order. As explained below, based on an analysis of these criteria, we preliminarily find that inquiry merchandise is circumventing the *Orders*.

Furthermore, as noted above, Commerce indicated in the *Initiation Notice* that it intended to consider applying the inquiries to all imports of inquiry merchandise from Vietnam, regardless of producer, exporter, or importer.[21] The records of these inquiries contain factual information from the petitioner which supports a preliminary finding that multiple parties are producing and/or exporting inquiry merchandise to the United States.[22] In light of the evidence showing that numerous companies produce aluminum extrusions in Vietnam from previously extruded Chinese aluminum and/or export inquiry merchandise from Vietnam to the United States, we preliminarily 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.

Additionally, information on the record suggests that Zhongwang continues to set up and create commercial relationships in different markets, thereby creating the opportunity to further evade the *Orders*.[23] Furthermore, Zhongwang has a history of evading the *Orders*, with Commerce

[21] *See Initiation Notice*, 83 FR at 9268-9269.
[22] *See* Anti-Circumvention Request at 17-23.
[23] *Id.* at Exhibits 1, 4,-6, 10, 11, and 30.

having issued three affirmative circumvention determinations involving Zhongwang.[24] Given that Zhongwang is one of the largest extruders in the world and that it, along with its trading company, accounts for the largest volume of aluminum extrusions exported from China to Vietnam,[25] we find that Zhongwang's production processes are representative of the experience of other aluminum extruders in China. This reasoning was the basis for Commerce's country-wide determination in *CORE from China*.[26] Finally, we find that Vietnamese imports of Chinese aluminum extrusions have increased during the relevant time period, which we consider as additional evidence supporting a finding of circumvention.[27] Therefore, we preliminarily 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.

A. Merchandise of the Same Class or Kind

Evidence on the record provided by the petitioner indicates that the aluminum extrusions exported to the United States from Vietnam are of the same physical description as merchandise covered by the *Orders*.[28] Additionally, the petitioner provided evidence indicating that the inquiry merchandise from Vietnam enters the United States under the same tariff classification as subject merchandise.[29]

As noted above, Zhongwang did not respond to Commerce's questionnaire requesting information pertaining to the products produced by the company. As such, Zhongwang withheld necessary information that had been requested by Commerce and failed to act to the best of its ability to comply with our request for information. Accordingly, we are preliminarily relying on facts otherwise available and applying an adverse inference, pursuant to sections 776(a) and (b) of the Act, with respect to Zhongwang.

Based on the information on the record and Zhongwang's failure to cooperate to the best of its ability, we preliminarily find that the inquiry merchandise is of the same class or kind as merchandise that is subject to the *Orders*. Therefore, we determine that this factor supports the conclusion that Zhongwang is circumventing the *Orders*.

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[24] *See* Memorandum, "Antidumping and Countervailing Duty Orders on Aluminum Extrusions from the People's Republic of China: Relevant Zhongwang Proceedings," dated concurrently with this memorandum (Relevant Zhongwang Proceedings Memorandum).
[25] *See* Anti-Circumvention Request at 12, 29, Exhibit 13 and 33.
[26] *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 (Dec. 5, 2017) and accompanying Preliminary Decision Memorandum 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) (*CORE from China*).
[27] *See* Anti-Circumvention Request at Exhibit 17.
[28] *Id.* at 25 and Exhibits 5, 7, and 8.
[29] *Id.* at 25 and Exhibits 20, and 23.

B. Completion of Merchandise in a Foreign Country

Evidence on the record provided by the petitioner reveals Zhongwang's long history of using its extensive network of global affiliates to circumvent and evade the *Orders*.[30] The petitioner also provided information indicating that imports of aluminum extrusions into Vietnam from China, as well as imports of aluminum extrusions into the United States from Vietnam, significantly increased after the imposition of the *Orders*.[31]

As noted above, Zhongwang did not respond to Commerce's questionnaire requesting information pertaining to the completion of its merchandise in Vietnam. As such, Zhongwang withheld necessary information that had been requested by Commerce and failed to act to the best of its ability to comply with our request for information. Accordingly, we are preliminarily relying on facts otherwise available, and applying an adverse inference, pursuant to sections 776(a) and (b) of the Act, with respect to Zhongwang.

Based on the information on the record and Zhongwang's failure to cooperate to the best of its ability, we preliminarily find that the inquiry merchandise is being completed in Vietnam. Therefore, we determine that this factor supports the conclusion that Zhongwang is circumventing the *Orders*.

C. Minor or Insignificant Process

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.[32] 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.[33] 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

Evidence on the record provided by the petitioner suggests that the level of investment by Zhongwang in Vietnam is less than the level of investment in China to produce billets and extrusions.[34] Specifically, Zhongwang's 2016 financial report indicates that the company's investment in China includes 90 aluminum extrusion production lines and orders for an additional 99 extrusion presses.[35] The petitioner also submitted evidence that Zhongwang has

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[30] *Id.* at 8, n.33 and 34.
[31] *Id.* at 28 and Exhibit 20.
[32] *See* SAA at 893.
[33] *See Tissue Paper Final Circumvention Determination* at 57592.
[34] *See* Anti-Circumvention Request at 29-30.
[35] *Id.* at 30 and Exhibit 33.

built a "world-leading" aluminum tilt smelting and casting facility at its extrusion facility in China, and possesses the largest customized aluminum extrusions product die design manufacturing center in Asia.[36] Evidence provided by the petitioner indicates that the level of Zhongwang's investment in its Vietnamese affiliate GVA, however, appears to be relatively small in comparison to Zhongwang's total aluminum extrusions investments across its company and all of its affiliates.[37] Thus, this evidence supports a finding that the level of investment in Vietnam may be minor in comparison to Zhongwang's level of investment in China.

As noted above, Zhongwang did not respond to Commerce's questionnaire requesting information pertaining to the level investment of Zhongwang's production facilities related to inquiry merchandise. As such, Zhongwang withheld necessary information that had been requested by Commerce and failed to act to the best of its ability to comply with our request for information. Accordingly, we are preliminarily relying on facts otherwise available, and applying an adverse inference, pursuant to sections 776(a) and (b) of the Act, with respect to Zhongwang. Based on the information on the record and Zhongwang's failure to cooperate to the best of its ability, we preliminarily find, as adverse facts available, 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*. Therefore, we preliminarily determine that this factor supports the conclusion that Zhongwang is circumventing the *Orders*.

(2) Level of Research and Development

Evidence on the record provided by the petitioner shows that Zhongwang's level of research and development (R&D) in Vietnam is smaller when compared to its Chinese operations.[38] Specifically, Zhongwang's financial reports indicate that it invested heavily in R&D in China.[39] Zhongwang's financial reports also show an integrated production line and 1,288 R&D and quality control personnel (which account for 7.7 percent of all Zhongwang employees).[40] On the other hand, the petitioner indicated that Zhongwang's Vietnamese operation (as well as those of other Vietnamese extruders) consists of merely re-melting and re-extruding, neither of which requires unique technology or significant R&D.[41] Therefore, evidence on the record suggests that Zhongwang's level of R&D in Vietnam is significantly smaller than its level of R&D in China.

As noted above, Zhongwang did not respond to Commerce's questionnaire requesting information pertaining to the company's R&D. As such, Zhongwang withheld necessary information that had been requested by Commerce and failed to act to the best of its ability to comply with our request for information. Accordingly, we are preliminarily relying on facts otherwise available, and applying an adverse inference, pursuant to sections 776(a) and (b) of the Act, with respect to Zhongwang.

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[36] *Id.*
[37] *Id.*
[38] *Id.* at 31.
[39] *Id.* at 31 and Exhibit 33.
[40] *Id.*
[41] *Id.*

Based on the information on the record and Zhongwang's failure to cooperate to the best of its ability, we preliminarily find, as adverse facts available, that the level of R&D in Vietnam is insignificant in comparison to Zhongwang's overall R&D investments. Therefore, we preliminarily determine that this factor supports the conclusion that Zhongwang is circumventing the *Orders*.

(3) Nature of Production Process

Evidence on the record provided by the petitioner indicates that the nature and sophistication of the aluminum extrusion production process undertaken by Vietnamese producers is the same as the process of extruding merchandise subject to the *Orders*.[42] Specifically, evidence on the record indicates that the process employed by GVA requires re-melting the Chinese aluminum extrusions in a furnace and then pushing the reheated extrusion through a die (by either GVA or other Vietnamese producers) for a desired end shape.[43] The costs incurred by Vietnamese extruders for this process are labor, energy, and overhead, which allegedly account for only 8.8 percent of total extrusion costs.[44] Evidence on the record also shows that after re-melting the Chinese aluminum extrusions, the production process of Vietnamese extruders is the same as the process for merchandise subject to the *Orders*.[45] Additionally, information provided by the petitioner suggests that 90 percent of the cost of production of aluminum extrusions in China relates to the metal materials (*i.e.*, aluminum ingots, aluminum scrap, and additional elements), which is extruded for export to Vietnam. Thus, the nature and sophistication of processing in Vietnam is minor when measured on the basis of overall production cost.[46] This evidence supports a finding that the nature and sophistication of processing inquiry merchandise is the same as that for the extruded merchandise described in the scope of the *Orders.*

As noted above, Zhongwang did not respond to Commerce's questionnaire requesting information pertaining to the nature and sophistication of processing inquiry merchandise. As such, Zhongwang withheld necessary information that had been requested by Commerce and failed to act to the best of its ability to comply with our request for information. Accordingly, we are preliminarily relying on facts otherwise available, and applying an adverse inference, pursuant to sections 776(a) and (b) of the Act, with respect to Zhongwang.

Based on the information on the record and Zhongwang's failure to cooperate to the best of its ability, we preliminarily find, as adverse facts available, that the nature and sophistication of inquiry merchandise is minor when examined on the basis of overall production cost. Accordingly, we preliminarily determine that this factor supports the conclusion that Zhongwang is circumventing the *Orders*.

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[42] *Id.* at 32.
[43] *Id.* at 32-33 and Exhibits 32 and 34.
[44] *Id.*
[45] *Id.*
[46] *Id.* at 33 and Exhibits 32 and 34.

(4) Extent of Production Facilities in Vietnam

Evidence on the record provided by the petitioner shows that Zhongwang's production facilities in Vietnam are more limited than its facilities in China.[47]

As noted above, Zhongwang did not respond to Commerce's questionnaire requesting information pertaining its production facilities in Vietnam. As such, Zhongwang withheld necessary information that had been requested by Commerce and failed to act to the best of its ability to comply with our request for information. Accordingly, we are preliminarily relying on facts otherwise available, and applying an adverse inference, pursuant to sections 776(a) and (b) of the Act, with respect to Zhongwang.

Based on the information available on the record, and Zhongwang's failure to cooperate to the best of its ability, we preliminarily find, as adverse facts available, that the extent of Zhongwang's production facilities in Vietnam is minor in comparison to its production facilities in China. Therefore, we preliminarily determine that this factor supports the conclusion that Zhongwang is circumventing the *Orders*.

(5) Value of Processing in Vietnam

Evidence on the record provided by the petitioner shows that the value added to the aluminum extrusions in Vietnam is limited in comparison to the total cost of production and the total value of the aluminum extrusions.[48] Evidence on the record shows that Vietnamese producers are only melting and re-extruding the aluminum; the production which takes place in Vietnam appears to amount to only minimal additional processing.[49] Record evidence shows that this processing (*i.e.*, re-melting and re-extruding) takes place in two steps: (1) GVA melts the Chinese extrusion into a billet; and (2) GVA extrudes the billet.[50] Record evidence further indicates that GVA avoids the costs of billet production in Vietnam by simply melting aluminum extrusions that already contain the desired amounts of aluminum alloy,[51] which allows GVA to save over 90 percent of the cost of producing a billet (which comprises 80 percent of the cost of producing an extrusion).[52] Record evidence shows that the remaining processing that takes place in Vietnam is approximately 10 percent of the total value of the aluminum extrusions; these costs are broken down between labor, energy, and additional overhead, and are insignificant in comparison to the AD/CVD duties avoided.[53] Therefore, evidence shows that the value added to inquiry merchandise appears to be minor compared to Zhongwang's Chinese merchandise subject to the *Orders*.

As noted above, Zhongwang did not respond to Commerce's questionnaire in which we asked for information pertaining to the value added to Zhongwang's merchandise in Vietnam. As such, Zhongwang withheld necessary information that had been requested by Commerce and failed to

[47] *Id.* at 34-35.
[48] *Id.* at 44.
[49] *Id.*
[50] *Id.* at 44-45 and Exhibits 32 and 34.
[51] *Id.* at 44-46 and Exhibits 32 and 34.
[52] *Id.*
[53] *Id.* at 46-47 and Exhibit 34.

act to the best of its ability to comply with our request for information. Thus, we are preliminarily relying on facts otherwise available, applying an adverse inference, pursuant to sections 776(a) and (b) of the Act, with respect to Zhongwang.

Based on the information on the record and Zhongwang's failure to cooperate to the best of its ability, we preliminarily find, as adverse facts available, that the value added to the inquiry merchandise is minor in comparison to the overall value of production of Zhongwang's merchandise. Therefore, we determine that this factor supports the conclusion that Zhongwang is circumventing the *Orders*.

D. Additional Factors to Consider in Determining whether Action Is Necessary

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, such as: "{1} the pattern of trade, including sourcing patterns, {2} whether the manufacturer or exporter of the merchandise… is affiliated with the person who uses the merchandise… to assemble or complete in the foreign country the merchandise that is subsequently imported into the United States, and {3} whether imports into the foreign country of the merchandise… have increased after the initiation of the investigation which resulted in the issuance of such order or finding." Each of these factors is examined below.

(1) Pattern of Trade

Evidence on the record provided by the petitioner shows that Vietnam's imports of aluminum extrusions from China, as well as Vietnam's exports of aluminum extrusions to the United States, have surged since the petitions were filed in the investigations of aluminum extrusions from China.[54] As Zhongwang's 2017 interim financial report indicates, the "sales volume of {Zhongwang}'s deep processing business" decreased by 80.7 percent compared to the same period in 2016 "due to the declined sales volume of deep-processed product exporting to the United States… caused by the increasingly heating up trade friction in aluminum industry {sic} between U.S. and China."[55] Thus, record evidence shows that there is a pattern of trade that supports a preliminary determination of circumvention of the *Orders*.

As noted above, Zhongwang did not respond to Commerce's questionnaire requesting information pertaining to the pattern of trade under examination. As such, Zhongwang withheld necessary information that had been requested by Commerce and failed to act to the best of its ability to comply with our request for information. Accordingly, we are preliminarily relying on facts otherwise available, and applying an adverse inference, pursuant to sections 776(a) and (b) of the Act, with respect to Zhongwang.

Based on the information on the record and Zhongwang's failure to cooperate to the best of its ability, we preliminarily find, as adverse facts available, that the pattern of trade contributes to a circumvention determination. Therefore, we determine that this factor supports the conclusion that Zhongwang is circumventing the *Orders*.

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[54] *Id.* at 38 and Exhibit 9.
[55] *Id.* at 39 and Exhibit 36.

(2) Affiliation

Commerce considers circumvention to be more likely to occur when the manufacturer of the subject merchandise is affiliated with the third-country entity.[56] Here, although Zhongwang did not respond to our questionnaire, evidence on the record provided by the petitioner shows that GVA is affiliated with Zhongwang on the following bases: (1) Zhongwang's employees have been seconded to GVA;[57] (2) containers of Zhongwang's aluminum from China can be traced to GVA in Vietnam;[58] (3) most of GVA's imports into Vietnam come from Zhongwang;[59] (4) GVA is owned in part by Jacky Cheung, who has been involved with Zhongwang affiliated companies PCA/Perfectus and Alumincaste;[60] and (5) GVA is a supplier to Zhongwang's U.S. affiliate PCA/Perfectus.[61] Therefore, evidence indicates that GVA is affiliated with Zhongwang, which supports a finding that it is circumventing the *Orders*.

As noted above, Zhongwang did not respond to Commerce's questionnaire requesting information pertaining to it affiliations. As such, Zhongwang withheld necessary information that had been requested by Commerce and failed to act to the best of its ability to comply with our request for information. Accordingly, we are preliminarily relying on facts otherwise available, applying an adverse inference, pursuant to sections 776(a) and (b) of the Act, with respect to Zhongwang. With respect to this factor, however, even absent the use of facts available, the record supports a relationship between Zhongwang and GVA which suggests that the two entities are "affiliated persons" under sections 771(33)(B) through (F) of the Act.

Based on the information on the record, as well as Zhongwang's failure to cooperate to the best of its ability, we preliminarily find that affiliation contributes to a circumvention determination. Therefore, we preliminarily determine that this factor supports the conclusion that Zhongwang is circumventing the *Orders*.

(3) Increased Imports

Evidence on the record provided by the petitioner shows that imports of aluminum extrusions from China to Vietnam increased since the initiation of the AD and CVD investigations of aluminum extrusions from China.[62] No other factual information on the record contradicts this claim.

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[56] *See, e.g.*, *Certain Tissue Paper Products from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order and Extension of Final Determination*, 73 FR 21580 (April 22, 2008), unchanged in *Tissue Paper Final Circumvention Determination*.
[57] *See* Anti-Circumvention Request at 39.
[58] *Id.*
[59] *Id.* at 39-40 and Exhibits 2 and 3.
[60] *Id.* at 40 and Exhibits 2, 3, 10, and 14.
[61] *Id.* at 40 and Exhibits 3 and 16.
[62] *Id.* at 40 and Exhibits 17 and 18.

We, therefore, preliminarily 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 Zhongwang is circumventing the *Orders*.

VII. Preliminary Determination

Based on our analysis, we preliminarily find that inquiry merchandise from Vietnam constitutes merchandise completed and assembled in a foreign country that is circumventing, and should be included within, the scope of the *Orders*.[63]

VIII. Minor Alterations of Merchandise: Intent to Rescind

Because we are recommending an affirmative preliminary determination of circumvention with respect to merchandise has been completed or assembled in other foreign countries pursuant to section 781(b) of the Act, we find that it is not necessary to make a determination with respect to a minor alterations anti-circumvention inquiry pursuant to section 781(c) of the Act. Thus, if Commerce affirms this preliminary determination of circumvention in its final determination, we recommend rescinding the minor alterations anti-circumvention inquiry at that time.

IX. Certification Requirement

Commerce must administer the law in a manner that prevents evasion of the *Orders*.[64] Section 781(b)(1)(E) of the Act directs Commerce to take necessary action to "prevent evasion" of AD and CVD orders when it concludes that "merchandise has been completed or assembled in other foreign countries" and is circumventing an order. As discussed above, we preliminarily find that imports of inquiry merchandise are circumventing the *Orders*. Accordingly, we find that action is warranted to prevent evasion of the *Orders*.

To administer this affirmative preliminary finding, Commerce is requiring that entries into the United States of aluminum extrusions from Vietnam that were completed in Vietnam using aluminum not previously extruded in China be certified as such. Accordingly, for entries of aluminum extrusions from Vietnam entered, or withdrawn from warehouse, for consumption on or after March 5, 2018 (the date of initiation of these anticircumvention inquiries), for which the importer or exporter claims the aluminum extrusions were completed in Vietnam using aluminum not previously extruded in China, the importer and exporter are required to meet the certification and documentation requirements provided in the *Federal Register* notice accompanying this memorandum,[65] in order for no AD and/or CVD cash deposits to be required on such entries. Importers and exporters are required to complete and maintain their certifications and supporting documentation to provide to CBP and/or Commerce upon request. Properly certified entries are not subject to ADs and CVDs under the *Orders*. Exemption from

[63] *See* section 781(b) of the Act and 19 CFR 351.225(h).
[64] *See, e.g., Tung Mung Development v. United States*, 219 F. Supp. 2d 1333, 1343 (CIT 2002), *aff'd* 354 F.3d 1371 (Fed. Cir. 2004) (finding that Commerce has a responsibility to prevent the evasion of payment of antidumping duties).
[65] *See Federal Register* notice, "Aluminum Extrusions from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping and Countervailing Duty Orders," dated concurrently with this memorandum.

ADs and CVDs under the *Orders* is permitted only if the certification and documentation requirements specified in the *Federal Register* notice are satisfied. For further details regarding this certification requirement, *see* Appendices II through IV attached to the accompanying *Federal Register* notice.

X. Recommendation

We recommend preliminarily finding, pursuant to section 781(b) of the Act and 19 CFR 351.225(h), that extruded aluminum products 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, constitute merchandise completed or assembled in other foreign countries and are circumventing the *Orders*. If we uphold this ruling in the final determination, we recommend that the section 781(c) inquiry be rescinded.

☒	☐
Agree	Disagree

X

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance