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Re: Enforce and Protect Act (“EAPA”) Case Number 7232; *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); Columbia Aluminum Products LLC; 19 U.S.C. § 1517

Dear Messrs. Dutra and Koenig:

This is in response to a request for *de novo* administrative review of a determination of evasion dated March 20, 2019, made by the Trade Remedy & Law Enforcement Directorate (“TRLED”), Office of Trade (“OT”), U.S. Customs and Border Protection (“CBP”), pursuant to 19 U.S.C. § 1517(c), in Enforce and Protect Act (“EAPA”) Case Number 7232 (hereinafter referred to as the “March 20 Determination”).<sup>1</sup> The request for review, dated May 1, 2019, was submitted to CBP OT Regulations and Rulings (“RR”) by Squire Patton Boggs (US) LLP, on behalf of Columbia Aluminum Products LLC (“Columbia”), pursuant to 19 U.S.C. § 1517(f) and 19 CFR § 165.41(a).

For the reasons set forth below, the record evidence does not establish that Columbia entered “covered merchandise”, as that term is defined in 19 U.S.C. § 1517(a)(3),<sup>2</sup> into the

<sup>1</sup> See Notice of Final Determination of Evasion in EAPA Case Number 7232, dated March 20, 2019.

<sup>2</sup> 19 U.S.C. § 1517(a)(3) provides as follows: The term “covered merchandise” means merchandise that is subject to—

- (A) an antidumping duty order issued under section 1673e of this title; or
- (B) a countervailing duty order issued under section 1671e of this title.

commerce of the United States, on entries of door thresholds from Vietnam before December 19, 2018,<sup>3</sup> in violation of the EAPA. Columbia's door thresholds from Vietnam entered on or after December 19, 2018, were entered into the United States by means of evasion, as defined in 19 U.S.C. § 1517(a)(5)(A). Thus, the March 20 Determination of evasion due to transshipment is affirmed, in part, and reversed, in part (further, the determination of no evasion as to misclassification is affirmed, as also discussed below).

## I. Background

### A. Procedural History

Inasmuch as the facts in this case were fully set forth in the March 20 Determination,<sup>4</sup> we will not repeat the entire factual history in this decision.

In brief, according to the record evidence, on February 9, 2018, TRLED initiated a formal investigation under Title IV, section 421 of the Trade Facilitation and Trade Enforcement Act of 2015, in response to an allegation of evasion.

On January 11, 2018, Endura Products, Inc. ("Endura"), a domestic producer of fabricated extruded aluminum door thresholds, filed an EAPA allegation against Columbia. CBP acknowledged receipt of the properly filed allegation on January 19, 2018. Endura alleged that Columbia was importing extruded aluminum door thresholds—also referred to as door sills—from China, and misclassifying the door thresholds under the Harmonized Tariff Schedule of the United States ("HTSUS"), as plastic wall plates of subheading 3925.20.0091, HTSUS, to evade the payment of antidumping duties on aluminum extrusions from China under Case No. A-570-967.<sup>5</sup> On March 20, 2018, in a supplemental filing, Endura newly alleged that Columbia was importing door thresholds assembled by Houztek Architectural Products Company, Ltd. ("Houztek") in Vietnam using Chinese-origin aluminum extrusions furnished by Shanghai Top Ranking Aluminum Products Co., Ltd. ("STR") of China, and exported from Vietnam, to evade the payment of antidumping duties on aluminum extrusions from China under Case No. A-570-967.<sup>6</sup>

On May 17, 2018, in accordance with 19 CFR § 165.24, CBP issued a notice of initiation of investigation to all interested parties, and notified the parties of CBP's decision to take interim measures based upon reasonable suspicion that Columbia, as the importer of record, entered covered merchandise into the customs territory of the United States through evasion.<sup>7</sup> The entries covered by the investigation were

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<sup>3</sup> See Memorandum, *Final Scope Rulings on Worldwide Door Components Inc., MJB Wood Group Inc., and Columbia Aluminum Products Door Thresholds*, dated December 19, 2018 (Dep't Commerce).

<sup>4</sup> See Notice of Final Determination of Evasion in EAPA Case Number 7232, dated March 20, 2019.

<sup>5</sup> In the March 20 Determination, CBP concluded that it was unable to corroborate Endura's allegation that Columbia misclassified door thresholds as plastic wall plates. Endura does not contest this finding. The record evidence supports that conclusion, which is hereby affirmed.

<sup>6</sup> See Notice of Initiation of Investigation and Interim Measures in EAPA Case Number 7232, dated May 17, 2018.

<sup>7</sup> See Notice of initiation of an investigation and interim measures taken as to Columbia Aluminum Products, LLC concerning evasion of the antidumping duty order on *Aluminum Extrusions from the People's Republic of China*,



those entered for consumption, or withdrawn from a warehouse for consumption, from January 19, 2017, one year before receipt of the allegation, through the pendency of the investigation.<sup>8</sup> TRLED concluded that, based on the record evidence, there was reasonable suspicion that Columbia had entered covered merchandise into the customs territory of the United States through evasion, and imposed interim measures.<sup>9</sup>

On March 20, 2019, TRLED issued a Notice of the determination of evasion in EAPA Consolidated Case Number 7232. TRLED found substantial evidence<sup>10</sup> to demonstrate that Columbia entered aluminum door thresholds that were covered by antidumping (AD) order A-570-976 and countervailing duty (CVD) order C-570-968 by transshipping Chinese-origin aluminum extrusions through Vietnam and falsely entering door thresholds assembled in Vietnam into the customs territory of the United States as a product of Vietnam. As a result, no cash deposits were applied to the merchandise.<sup>11</sup>

## B. The *Orders* and the Scope

The U.S. Department of Commerce (“Commerce”) issued antidumping and countervailing duty orders on imports of certain aluminum extrusions from the People’s Republic of China (“PRC”). 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*).

Commerce defined the scope of the *Orders* as follows:

...[A]luminum 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

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(May 17, 2018) (“Notice of Initiation and Interim Measures”). Available at: <https://www.cbp.gov/sites/default/files/assets/documents/2018-Jun/EAPA%20Case%207232%20Columbia%20Aluminum%20Products%20LLC%20Notice%20of%20Investigation%20May%2017%202018.pdf>.

<sup>8</sup> See 19 CFR § 165.2.

<sup>9</sup> The record evidence supporting the finding of reasonable suspicion can be found in the Notice of Initiation and Interim Measures (May 17, 2018).

<sup>10</sup> Substantial evidence is not defined in the statute. The U.S. Court of Appeals for the Federal Circuit has stated that “substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *A.L. Patterson, Inc. v. United States*, 585 Fed. Appx. 778, 781-82 (Fed. Cir. 2014) (quoting *Consol. Edison Co. of N.Y. v. NLRB*, 305 U.S. 197, 229 (1938)).

<sup>11</sup> See March 20 Determination, available at:

<https://www.cbp.gov/sites/default/files/assets/documents/2019-Apr/TRLED%20-%20Notice%20of%20Final%20Determination%20-%20March%2020%2C%202019%20-%20%287232%29%20-%20PV.pdf>.

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, swaged, 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.<sup>12</sup>

Thus, the scope includes various shapes and forms of aluminum extrusions that may be produced and imported with various finishes (coatings, surface treatments) and/or types of fabrication (including but not limited to cutting to length, machining, drilling, punching, notching, bending, stretching, knurling, swedging, mitering, chamfering, threading, and spinning), except as otherwise specified. The scope also includes aluminum extrusion components that are attached in some way to form subassemblies, but the scope does not cover the non-aluminum extrusion components of those subassemblies.<sup>13</sup>

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<sup>12</sup> 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).

<sup>13</sup> See *Certain Aluminum Extrusions from China, Inv. Nos. 701-TA-475 and 731-TA-1177 (Review)*, USITC Publication 4677, March 2017, p. 10.



The scope excludes final finished goods containing aluminum extrusions that are imported in finished form, that is, goods that are fully and permanently assembled, such as finished window frames, doorframes, picture frames, and solar panels. The scope also excludes unassembled final finished goods containing aluminum extrusions. Additionally, the scope excludes aluminum alloy sheet or plates produced by methods other than the extrusion process; aluminum products produced by the casting method; pure, unwrought aluminum in any form; and certain aluminum extrusions falling within alloy series designations of the Aluminum Association commencing with the numbers 2, 5, and 7. Also excluded from the scope are finished heat sinks.<sup>14</sup>

### C. Aluminum extrusions: descriptions and applications

Aluminum extrusions are shapes and forms, produced via an extrusion process, of aluminum alloys having metallic elements falling within the alloy series designation published by the Aluminum Association commencing with the numbers 1, 3, and 6 (or proprietary equivalents or other certifying body equivalents). 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 subsequently drawn are also included in the scope, as are aluminum extrusions that have been subjected to one or more finishing or fabrication processes, as specified in the scope language.<sup>15</sup>

Extrusion is one of the most widely used aluminum forming processes. Aluminum is one of the easiest materials to process through an extrusion press due to the relatively low temperatures (600-700 degrees Celsius) at which aluminum extrudes. Manufacturers produce aluminum extrusions from heated aluminum alloy billets forced under pressure through a metal die by a hydraulic extrusion press. The pressure capacity of the extrusion press determines the size of the extrusion it can produce, and the die inserted in the press matches precisely the profile of the shape produced. Common extrusion shapes include bar, rod, pipe, and tube, hollow profiles and solid profiles such as angles, tees, I-beams, H-beams, channels, tracks, rails, mullions, stiles, gutters, and other shapes. After the extrusion process, the aluminum extrusion can be sold as “mill finished”, without any further surface treatment or it can be further fabricated, that is, cut-to-length, machined, drilled, punched, notched, bent, stretched, and assembled into a finished product by welding or fastening. Surface finishes for extrusions include mechanical finishes such as brushing, buffing, polishing, sanding, anodizing, and other chemical and paint finishes.<sup>16</sup>

Aluminum extrusions have a wide variety of finished goods applications. Major end-use applications for aluminum extrusions as defined by the Aluminum Extruders Council include: building and construction (windows, doors, railings, high-rise curtainwall, highway and bridge construction, framing members, other various structures); transportation (automotive, heavy rail, light rail and other mass transit vehicles, recreational vehicles, aircraft, aerospace, marine); and engineered products (consumer and

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<sup>14</sup> See *Certain Aluminum Extrusions from China, Inv. Nos. 701-TA-475 and 731-TA-1177 (Final)*, USITC Publication 4229, May 2011, pp. I-21-I-22.

<sup>15</sup> *Id.* at I-21.

<sup>16</sup> *Id.* at I-22.

commercial products—air conditioners, appliances, furniture, lighting, sports equipment, personal watercraft; electrical power units, heat sinks, coaxial cables, bus bars; machinery and equipment, food displays, refrigeration, medical equipment, display structures, laboratory equipment and apparatus).<sup>17</sup>

#### **D. The Merchandise at Issue**

The merchandise at issue is door thresholds. The door thresholds imported into the United States by Columbia emerged from assembly operations conducted by Houztek in Vietnam. Houztek is an affiliate in Vietnam of STR of China. Houztek used aluminum extrusion and non-aluminum extrusion components that STR had produced in China and shipped to Houztek to complete and assemble the door thresholds in Vietnam. After completion and assembly by Houztek in Vietnam, the door thresholds were exported from Vietnam, and entered into the United States by Columbia.

#### **E. The Parties**

Columbia Aluminum Products LLC (“Columbia”) is the U.S. importer seeking *de novo* administrative review of the March 20 Determination of evasion in EAPA Case Number 7232.<sup>18</sup>

Endura Products, Inc. (“Endura”) is a domestic producer of fabricated extruded aluminum door thresholds. Endura participated in this administrative review proceeding by filing a response to Columbia’s request for review.

#### **F. Tariff treatment of door thresholds**

Columbia requested a tariff classification ruling on aluminum door thresholds from China.<sup>19</sup> In NY Ruling N142677, dated February 10, 2011, the merchandise was described as follows:

. . .three door thresholds identified as styles 9900, 9820 and 8810. The thresholds are specifically manufactured for installation with outside doors in homes and other buildings and will be imported in lengths of 30, 32 and 36 inches.

The door thresholds are composite goods made up of different materials. Product 9900 is comprised of an aluminum extrusion, a PVC extrusion and an extruded PVC substrate. Product 9820 consists of an aluminum extrusion, a PVC extrusion and insert bar, and an injection molded wood filled plastic substrate. Product 8810 is comprised of an aluminum extrusion, a high density PVC extrusion and a pine wood substrate.

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<sup>17</sup> *Id.* at I-22.

<sup>18</sup> See Columbia Request for Administrative Review, dated May 1, 2019.

<sup>19</sup> Pursuant to 19 C.F.R. Part 177, rulings on the tariff classification and treatment of imported goods are within the authority of U.S. Customs and Border Protection.



The merchandise in NY Ruling N142677 was classified in subheading 7610.10.0020, HTSUS.<sup>20</sup>

## II. Discussion

### A. Administrative Review and Standard of Review

Pursuant to 19 U.S.C. § 1517(f)(1) and 19 CFR § 165.45, CBP will apply a *de novo* standard of review and will render a determination appropriate under the law according to the specific facts and circumstances on the record. For that purpose, CBP will review the entire administrative record upon which the initial determination was made, the timely and properly filed request(s) for review and responses, and any additional information that was received pursuant to § 165.44. The administrative review will be completed within 60 business days of the commencement of the review.

Pursuant to 19 U.S.C. § 1517(f)(1), Columbia's May 1, 2019 request for administrative review is timely.

Pursuant to 19 CFR § 165.41(i), the commencement date of the administrative review is June 6, 2019. This is the date that CBP accepted the last properly filed request for administrative review and transmitted electronically the assigned administrative review case number to all parties to the investigation.

Pursuant to 19 CFR § 165.42, Endura submitted a written response, dated June 20, 2019, to Columbia's request for administrative review. Endura's response both complies with the requirements of 19 CFR § 165.42, and is timely.

CBP did not request additional written information from the parties to the investigation pursuant to 19 CFR § 165.45.

The administrative review was completed within 60 business days of the commencement of the review.<sup>21</sup>

### B. March 20 Determination of Evasion and Key Facts

The March 20 Determination states the following:

Pursuant to an examination of the record in Enforce and Protect Act (EAPA) Investigation Number 7232, U.S. Customs and Border Protection (CBP) has determined that there is substantial evidence that your client, Columbia Aluminum Products, LLC (Columbia), entered into the customs territory of the

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<sup>20</sup> Subheading 7610.10.0020, HTSUS (2011), provides for: Aluminum structures (excluding prefabricated buildings of heading 9406) and parts of structures (for example, bridges and bridge-sections, towers, lattice masts, roofs, roofing frameworks, doors and windows and their frames and thresholds for doors, balustrades, pillars and columns); aluminum plates, rods, profiles, tubes and the like, prepared for use in structures: Doors, windows and their frames and thresholds for doors, Thresholds for doors.

<sup>21</sup> The deadline was August 30, 2019.

United States through evasion merchandise covered by antidumping duty (AD) order A-570-976 (sic) and covered by countervailing duty (CVD) order C-570-968. Substantial evidence demonstrates that Columbia imported aluminum door thresholds made from aluminum extruded in China by transshipping the thresholds through Vietnam and falsely declaring the country of origin.<sup>22</sup> As a result, no cash deposits were applied to the merchandise.<sup>23</sup>

In addition, the March 20 Determination states:

CBP was unable to corroborate Endura's initial claim that Columbia misclassified subject merchandise as wall plates. However, substantial evidence demonstrates that Columbia transshipped Chinese-origin aluminum extrusions through Vietnam and falsely entered the merchandise<sup>24</sup> into the customs territory of the United States as a product of Vietnam without requisite AD/CVD imposed under the orders.<sup>25</sup>

In light of the apparent inconsistencies in the above statements, we clarify the specific facts for which there is substantial record evidence. Columbia imported aluminum door thresholds made from aluminum extruded in China, which aluminum extrusions were shipped to Vietnam. In Vietnam, the aluminum extrusions were assembled with other components, into aluminum door thresholds. Columbia then imported those thresholds into the United States as products of Vietnam.

### C. Law

Title 19 U.S.C. § 1517(c)(1) provides, in relevant part, as follows:

(1) Determination of Evasion

(A) In general

Except as provided in subparagraph (B), not later than 300 calendar days after the date on which the Commissioner initiates an investigation under subsection (b) with respect to covered merchandise, the Commissioner shall make a determination, based on substantial evidence, with respect to whether such covered merchandise was entered into the customs territory of the United States through evasion.

The term evasion is defined in 19 U.S.C. § 1517(a)(5), as follows:

(5) Evasion

(A) In general

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<sup>22</sup> The country of origin declared at the time of entry was Vietnam.

<sup>23</sup> See March 20 Determination at p. 1.

<sup>24</sup> The merchandise that was entered by Columbia is door thresholds, not aluminum extrusions.

<sup>25</sup> *Id.* at 6.



Except as provided in subparagraph (B), the term “evasion” refers to entering covered merchandise into the customs territory of the United States by means of any document or electronically transmitted data or information, written or oral statement, or act that is material and false, or any omission that is material, and that results in any cash deposit or other security or any amount of applicable antidumping or countervailing duties being reduced or not being applied with respect to the merchandise.

*See also* 19 CFR § 165.1.

Examples of evasion could include, but are not limited to, the misrepresentation of the merchandise’s true country of origin (e.g., through false country of origin markings on the product itself or false sales), false or incorrect shipping and entry documentation, or misreporting of the merchandise’s physical characteristics. *See Investigation of Claims of Evasion of Antidumping and Countervailing Duties, Interim Regulations*, 81 Fed. Reg. 56477, 56478 (August 22, 2016).

Covered merchandise is defined as “merchandise that is subject to a CVD order issued under section 706, Tariff Act of 1930, as amended (19 U.S.C. 1671e), and/or an AD order issued under section 736, Tariff Act of 1930, as amended (19 U.S.C. 1673e).” 19 CFR § 165.1.

Therefore, CBP must determine whether a party has entered merchandise that is subject to an AD or CVD order into the United States for consumption by means of any document or electronically transmitted data or information, written or oral statement, or act that is material and false, or any omission that is material that resulted in the reduction or avoidance of applicable AD or CVD cash deposits or duties being collected on such merchandise.

#### **D. Columbia’s Arguments**

Columbia requests that we reverse the March 20 determination of evasion. Its arguments are summarized below.

1. CBP lacked a legal or factual basis for its determination that Columbia entered merchandise into the customs territory of the United States through evasion.

CBP failed to articulate a factual basis for its evasion determination against Columbia. The record fails to support a conclusion of transshipment. Columbia does not import extruded aluminum, nor did it route Chinese-extruded aluminum through a third country and identify a false country of origin. Instead, Columbia imports finished door thresholds that merely include as a component extruded aluminum.

CBP failed to identify any evidence of a false act or material omission by Columbia. CBP failed to identify any instance in which Columbia falsified the identity of the producer or the country of origin of the finished door thresholds. Absent any evidence of evasion, CBP accuses Columbia of participating in a “transshipment scheme.” There is no

evidence Columbia merely routed covered merchandise, i.e., aluminum extrusions from China, through Vietnam to disguise the country of origin.

Columbia does not import aluminum extrusions. Columbia imports finished door thresholds of which aluminum profiles are a component used in assembly. While CBP states Columbia “falsely declare[ed] the country of origin”, it fails to identify any factual support for such a conclusion. The record demonstrates that Houztek, the manufacturer in Vietnam that assembled the finished door thresholds imported by Columbia, may have used Chinese-extruded aluminum in some unspecified number of finished door thresholds. Even if Houztek used Chinese-extruded aluminum, the undisputed record demonstrates that those aluminum profiles underwent substantial transformation in Vietnam, and that the processing that occurred in Vietnam to assemble the finished door thresholds was neither minimal nor insignificant.

CBP has no authority to determine whether products undergoing transformation in a third country are within the scope of the *Orders*. Even if CBP had authority to make such determinations, it failed to establish a factual record that the processing in Vietnam was minimal or insignificant. Nor could CBP make such a determination. The record is undisputed that extruded aluminum profiles are a minor component in terms of value and weight in the completed door thresholds Columbia imports from Vietnam, i.e., they undergo substantial transformation. The Commerce scope ruling of December 19, 2018, does not cover imports from a third country and cannot be invoked with respect to imports before December 19, 2018.

2. CBP exceeded its authority when it extended the scope of Commerce’s *Orders* to include finished goods assembled and processed in a third country not named in the *Orders*.

The *Orders* cover only “aluminum extrusions from the People’s Republic of China.” Specifically excluded from the scope of the *Orders* are “finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry. . . .” Whether the completed thresholds fall within the scope of the *Orders* is beyond CBP’s authority to determine. There has been no ruling by Commerce that completed thresholds assembled in Vietnam using Chinese-extruded aluminum are included within the scope of the *Orders*.

Even if Congress authorized CBP to determine whether third-country processing is within the scope of an AD/CVD order, CBP failed to support such a finding. Merchandise routed through a third country cannot be included within the scope of an AD/CVD order unless: (1) “the process of assembly or completion in the foreign country. . . is minor or insignificant” and (2) the value added in the country subject to the AD/CVD order is a significant portion of the total value of the merchandise. *See* 19 USC 1677j(b)(1)(C)-(E). CBP failed to make any such factual findings. Nor could it.

While the finished door thresholds Columbia imports from Vietnam contain aluminum extrusions, the aluminum component is not the principal contributor to the weight, value, or functionality of the finished threshold products. Each threshold contains a continuous PVC sill composite and plastic screws (the risers) that allow the end-user to adjust the



threshold to ensure that it is flush to the door. These non-aluminum components are fundamental to the functionality of the finished product and provide a competitive advantage in terms of weatherproofing and energy conservation. The non-aluminum components also substantially outweigh the aluminum components in terms of cost and quantity.

Whether the finished merchandise falls within the scope of the *Orders* is a question for Commerce to determine, not CBP. CBP acted *ultra vires* in determining that importations of completed thresholds from Vietnam are within the scope of the *Orders*.

3. Even if completed thresholds assembled in Vietnam are within the scope of the *Orders*, CBP has no basis to suspend liquidation or demand AD/CVD cash deposits on finished thresholds imported by Columbia before December 19, 2018.

CBP suspended liquidation and demanded AD/CVD cash deposits from February 9, 2018, the date it initiated this investigation. But CBP can only do so from initiation of an EAPA investigation if “covered merchandise” was entered into the customs territory of the United States through evasion.

CBP’s role is to implement Commerce’s instructions. “To act within its designated role, CBP must be able to point to clear language in the scope of the *Orders*, including any exclusions, that places goods within the scope based upon observable facts.” See *Sunprime Inc. v United States*, 190 F. Supp. 3d 1185, 1196 (Ct. Int’l Trade 2016) (citing *Xerox Corp. v. United States*, 289 F.3d 792, 794-95 (Fed. Cir. 2002)). Where there is ambiguity about whether an AD/CVD order covers an imported product, “the good must be considered outside the scope until Commerce interprets the order and clarifies that the merchandise should be included.”

Here, CBP did not—and could not—match the physical characteristics of the imported Columbia merchandise within the language of the *Orders*. As noted, the *Orders* cover only “aluminum extrusions from the People’s Republic of China” while specifically excluding “finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry. . . .” To resolve the ambiguity, Columbia sought a scope ruling on March 14, 2018. Commerce decided the scope inquiry on December 19, 2018, and determined that completed door thresholds were covered by the *Orders*. Commerce’s delay in issuing the ruling highlights that there was not an overt or obvious case that completed thresholds are within the scope of the *Orders*. Because the scope ruling was issued on December 19, 2018, CBP’s suspension of liquidation and requirement for cash deposits should not apply to completed door thresholds Columbia imported before December 19, 2018, the date Commerce decided the scope inquiry. All pertinent Columbia imports at issue occurred before that date.

### **E. Endura’s Arguments**

Endura requests that we affirm the March 20 determination of evasion. Its arguments are summarized below.

1. CBP's finding of evasion is supported by substantial record evidence and is in accordance with law.

a. Columbia engaged in evasion within the meaning of the EAPA.

The record evidence establishes that Columbia engaged in a concerted effort with STR and Houztek to ship extruded aluminum profiles from China to Vietnam to be assembled into door thresholds in Vietnam and exported to the United States for the purpose of evading AD/CVD.

As CBP stated in its notice of interim measures, the *Orders* cover aluminum extrusions within scope, regardless of subsequent assembly. This means that a door threshold from Vietnam, made with an aluminum profile extruded in China, would be subject to AD/CVD. As CBP recognized, the scope of the *Orders* "expressly includes 'the aluminum extrusion components that are attached (e.g., by welding or fasteners) to form subassemblies, i.e., partially assembled merchandise' . . . ." Indeed, Commerce has confirmed that door thresholds are, and have always been, covered by the scope of the *Orders* because "door thresholds, which constitute aluminum extrusion components attached to non-aluminum extrusion components, may also be described as subassemblies pursuant to the scope of the *Orders*" and because aluminum extrusion components which are assembled with the non-aluminum extrusion components are in-scope merchandise. Columbia engaged in evasion within the meaning of the EAPA statute because Chinese extruded aluminum profiles were shipped to Vietnam to be assembled with Chinese origin non-aluminum extrusion components to produce door thresholds that were exported from Vietnam and entered by Columbia as products of Vietnam to avoid duties.

b. Substantial record evidence supports CBP's finding of evasion.

The record evidence includes CBP's verification of Houztek's facilities in Vietnam. CBP's verification report indicates that Columbia's door thresholds contained Chinese extruded aluminum. CBP indicated that the only extrusions that CBP discovered in Houztek's Vietnam facility were labeled as having been manufactured by STR in China. CBP's verification report also indicated that Houztek had no method of distinguishing between extruded aluminum profiles manufactured by STR in China and aluminum profiles produced by other companies in Vietnam.

CBP's verification report indicated that the door thresholds likely do not contain legitimate aluminum extruded in Vietnam, and that any quantity of aluminum extruded in Vietnam and used in the door thresholds is substantially limited. The record evidence from a Vietnamese company that Houztek allegedly used to purchase aluminum extrusions indicates that the Vietnamese company had only provided a limited quantity of extruded aluminum profiles to Houztek. In fact, the record evidence indicates that the Vietnamese company does not have the capability to produce aluminum extrusions for the full range of Columbia's product catalog. In addition, CBP discovered that door thresholds that Columbia claimed were made using aluminum extruded in Vietnam were actually made using aluminum profiles supplied by STR in China.



The record evidence indicates that in November 2017, Columbia became aware that Houztek used Chinese extruded aluminum to assemble the door thresholds in Vietnam, and continued to import the door thresholds knowing that they were made of Chinese aluminum extrusions. The record evidence confirms that Houztek is affiliated with STR, who has been a supplier to Columbia since at least 2008. Independent market research also confirms that Houztek is the Vietnamese branch of the Top-Ranking group of companies based in China, which includes STR, and that Houztek, which was established in 2016, is solely engaged in the assembly of door thresholds from components sourced from STR.

The record evidence includes emails between Houztek and Columbia in which Columbia directed its supplier STR to ship extruded aluminum to Vietnam, and that all shipments to the United States must be from Vietnam, not China. Independent market research revealed that Houztek had a large stockpile of Chinese aluminum extrusions. The record evidence confirms that while Houztek continued to use Chinese aluminum extrusions, it substituted invoices for aluminum procured locally in Vietnam. Even if Houztek sourced some aluminum extrusions from non-Chinese suppliers, there was no way of distinguishing between those aluminum extrusions produced in Vietnam and those produced in China.

- c. Columbia has not provided sufficient factual information or analysis to support its assertion that Chinese aluminum extrusions are substantially transformed in Vietnam.

Columbia asserts the extruded aluminum profiles for its door thresholds are substantially transformed in Vietnam, and that the processing that occurs in Vietnam to assemble the door threshold is neither minimal nor insignificant. However, Columbia never requested a substantial transformation analysis from either Commerce or CBP. Regardless, the scope of the *Orders* covers Chinese aluminum extrusions, regardless of whether they were shipped to Vietnam to be assembled into door thresholds. Commerce's scope ruling on door thresholds states that the aluminum extrusion components of door thresholds are covered. Any assembly in Vietnam is irrelevant.

The record evidence supports a finding that the door thresholds were not substantially transformed in Vietnam. For instance, Columbia submitted a CBP Form 28 response that indicated that the Chinese aluminum profiles shipped to Vietnam for assembly into thresholds were already extruded and cut to certain lengths for U.S. standard exterior doors. In addition, the non-aluminum extrusion components used to assemble the door thresholds in Vietnam were also manufactured in China. Houztek merely assembles the door thresholds in Vietnam using Chinese origin inputs provided by STR in China. STR has confirmed in its own response to a CBP request for information that it ships extruded aluminum profiles and other parts, including plastic injections, plastic extrusions, top cap, plugs, and screws to Houztek. Contrary to Columbia's claim, the record evidence does not establish that the extruded aluminum profiles undergo a substantial transformation in Vietnam.



2. CBP did not extend the scope of the *Orders*.

Columbia argues that CBP exceeded its authority by extending the scope of the *Orders* to include finished goods assembled and processed in a third country not named in the *Orders*. Columbia asserts that the *Orders* only cover aluminum extrusions from China and exclude finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry. Commerce expressly rejected this argument and confirmed that door thresholds are within the scope of the *Orders*. Thus, Commerce has made it clear that door thresholds are not excluded as “finished merchandise.”

Columbia argues that only Commerce can determine the scope of AD/CVD orders and that there has been no ruling by Commerce that completed door thresholds assembled in Vietnam using Chinese-extruded aluminum are included within the scope of the *Orders*. Columbia fails to recognize that Congress provided CBP with the authority to investigate and determine whether certain merchandise is evading AD/CVD orders. If CBP is unable to determine whether merchandise at issue in an allegation of evasion is merchandise subject to an AD/CVD order, the EAPA statute provides that the agency shall refer the matter to Commerce to determine whether the merchandise is covered merchandise. However, if CBP is able to determine that merchandise is covered merchandise, the agency may determine whether such merchandise is evading the relevant AD/CVD order.

Columbia claims that merchandise imported through a third country cannot be included within the scope of an AD/CVD order unless the process of assembly or completion in the foreign country is minor or insignificant and the value added in the country subject to the order is a significant portion of the total value of the merchandise, citing factors that Commerce considers in anti-circumvention inquiries pursuant to 19 U.S.C. § 1677j(b). The burden is on Columbia to provide sufficient evidence of the nature and extent of the processing done in Vietnam, and there is no record evidence in this regard. Columbia’s assertion that the aluminum component is not the principal contributor in terms of weight, value, or functionality of the door thresholds is inapposite. Columbia previously made similar arguments to Commerce that were rejected.

CBP properly exercised the authority granted to it by the EAPA statute in determining that Columbia’s imports of door thresholds containing Chinese extruded aluminum from Vietnam constitute covered merchandise that is evading the *Orders*.

3. CBP has direct authority to suspend liquidation and to collect AD/CVD cash deposits pursuant to its finding of evasion.

Columbia challenges CBP’s authority to suspend liquidation and collect AD/CVD cash deposits pursuant to its finding of evasion, arguing that the agency’s role is to implement instructions from Commerce. Columbia then argues that when Commerce clarifies the scope of an AD/CVD order that has an unclear scope, the suspension of liquidation and imposition of cash deposits may not be retroactive but may only take effect on or after the date of initiation of the scope inquiry. However, Columbia ignores the fact that the scope language is not ambiguous, and that the EAPA statute provides CBP clear authority



to suspend liquidation and to collect AD/CVD cash deposits pursuant to a finding of evasion.

First, the scope language is not ambiguous. Commerce confirmed in its scope ruling that door thresholds are expressly included within the scope of the *Orders*, and that they have always been covered by the scope. Indeed, Commerce made its decision under 19 CFR § 351.225(k)(1), and did not initiate a formal inquiry pursuant to 19 CFR § 351.225(k)(2). Columbia's attempt to characterize Commerce's decision as a clarification of an ambiguous scope is unsupported by the facts. That importers like Columbia evaded the *Orders* for years before finally being pushed to request a scope ruling from Commerce does not mean that such products were not expressly covered by the scope of the *Orders*. Indeed, the Federal Circuit has stated that "[i]mporters cannot circumvent [AD/CVD] orders by contending that their products are outside the scope of existing orders when such orders are clear as to their scope."

Second, by arguing that CBP's suspension of liquidation and collection of AD/CVD cash deposits cannot apply to door thresholds imported by Columbia prior to the date of Commerce's scope ruling for door thresholds, Columbia ignores the fact that EAPA investigations and scope inquiries are different. In the EAPA statute, Congress gave CBP express authority to suspend the liquidation of merchandise subject to an evasion determination as of the date of the initiation of the investigation, and also to extend the period for liquidating unliquidated entries of covered merchandise that entered prior to the date of initiation. Therefore, here, where CBP properly found that Columbia evaded the *Orders* on its imports of door thresholds, CBP's suspension of liquidation and collection of cash deposits in accordance with the authority granted to the agency through the EAPA statute are proper and in accordance with law.

#### **F. Administrative Review Analysis**

The term "evasion" under the EAPA refers to entering covered merchandise into the customs territory of the United States by means of any document or electronically transmitted data or information, written or oral statement, or act that is material and false, or any omission that is material, and that results in any cash deposit or other security or any amount of applicable antidumping or countervailing duties being reduced or not being applied with respect to the merchandise.<sup>26</sup>

The term "covered merchandise" means merchandise that is subject to a countervailing duty order issued under section 706, Tariff Act of 1930, as amended (19 U.S.C. § 1671e), and/or an antidumping order issued under section 736, Tariff Act of 1930, as amended (19 U.S.C. § 1673e).<sup>27</sup>

It is well established that for merchandise to be subject to an AD and/or CVD order it must be (1) the type of merchandise described in the order, and (2) from the particular

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<sup>26</sup> See 19 U.S.C. § 1517(a)(5)(A).

<sup>27</sup> See 19 U.S.C. § 1517(c)(1) and 19 CFR § 165.1.



country covered by the order.<sup>28</sup> Whether particular merchandise meets these parameters involves two separate inquiries (i.e., whether the product is of the type described in the order, and whether the country of origin of the product is that of the subject country).<sup>29</sup> In determining the country of origin of a product, Commerce's usual practice has been to conduct a substantial transformation analysis.<sup>30</sup> The substantial transformation analysis asks whether, "as a result of manufacturing or processing steps. . . [ ] the [product] loses its identity and is transformed into a new product having a new name, character and use"<sup>31</sup> and whether "[t]hrough that transformation, the new article becomes a product of the country in which it was processed or manufactured."<sup>32</sup> Commerce may examine a number of factors<sup>33</sup> in conducting its substantial transformation analysis, and the weight of any one factor can vary from case to case and depends on the particular circumstances unique to the products at issue.<sup>34</sup>

**1. There is substantial record evidence that door thresholds are described in the *Orders*.**

The record evidence shows that Commerce has determined that door thresholds from China are in-scope merchandise and that door thresholds from China made from 5050-grade aluminum alloy extrusions constitute "later-developed merchandise" and are also within the scope of the *Orders*.

**a. Columbia's scope request on door thresholds**

On March 14, 2018, Columbia submitted a scope request<sup>35</sup> asking Commerce to issue a scope ruling that Columbia's door thresholds are outside the scope of the *Orders*.<sup>36</sup>

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<sup>28</sup> See *Bell Supply Co. LLC v. United States*, 179 F. Supp. 3d 1082, 1091 (Ct. Int'l Trade 2016) (*Bell Supply II*); *Sunpower Corp. v. United States*, 179 F. Supp. 3d 1286, 1298 (Ct. Int'l Trade 2016) (*Sunpower*); *Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, 58 FR 37062, 37065 (July 9, 1993) (*Cold-Rolled from Argentina*).

<sup>29</sup> See *Sunpower*, 179 F. Supp. 3d at 1298; *Final Determination of Sales at Less Than Fair Value: 3.5" Microdisks and Coated Media Thereof from Japan*, 54 FR 6433, 6435 (February 10, 1989).

<sup>30</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Glycine from India*, 73 FR 16640 (March 28, 2008) and accompanying Issues and Decision Memorandum at Comment 5; see also *Stainless Steel Plate in Coils from Belgium: Final Results of Antidumping Duty Administrative Review*, 69 FR 74494 (December 14, 2004) (*SS Plate in Coils from Belgium*), and accompanying Issues and Decision Memorandum at Comment 4.

<sup>31</sup> See *Bell Supply Co. v. United States*, 888 F.3d 1222, 1228 (Fed. Cir. 2018).

<sup>32</sup> See *Cold-Rolled from Argentina*, 58 FR at 37065 (quoted in *Ugine and Alz. Belgium N.V. v. United States*, 517 F. Supp. 2d 1333, 1337 n.5 (2007)).

<sup>33</sup> Commerce's analysis includes such factors as: (1) the class or kind of merchandise; (2) the physical properties and essential component of the product; (3) the nature/sophistication/extent of the processing in the country of exportation; (4) the value added to the product; (5) the level of investment; (6) ultimate use. See e.g., *Laminated Woven Sacks from the People's Republic of China: Final Results of First Antidumping Duty Administrative Review*, 76 FR 14906 (March 18, 2011) (*LWS from China*), and accompanying Issues and Decision Memorandum at Comment 1b; *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review*, 76 FR 3086 (January 19, 2011) and accompanying Issues and Decision Memorandum at Comment 6; *Final Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People's Republic of China*, 71 FR 16116 (March 30, 2006) and accompanying Issues and Decision Memorandum at Comment 1.

<sup>34</sup> See *LWS from China*, and accompanying Issues and Decision Memorandum at Comment 1b.

<sup>35</sup> Columbia submitted a scope ruling request, which is different from an anti-circumvention proceeding under section 781(b) of the Act. Section 781(b) assesses whether merchandise completed or assembled in foreign



Columbia described its merchandise as a door threshold containing an aluminum extrusion plate threshold attached to the following non-aluminum extrusion components: PVC extrusions, insert bars, injection molded wood filled plastic substrates, extruded PVC substrates. Columbia stated in its First Supplemental Response that its door thresholds contain an extrusion of series 6XXX aluminum.<sup>37</sup> Columbia maintained, among other arguments, that its door thresholds are “finished merchandise” because the thresholds contain non-aluminum parts which, along with the extrusion are “fully and permanently assembled at the time of entry.”<sup>38</sup> According to Columbia, the merchandise is fully boxed at the time of import, and no further finishing or fabrication (such as cutting or punching) is needed.<sup>39</sup> Therefore, Columbia maintained that its door thresholds should be excluded from the scope of the *Orders*.<sup>40</sup>

Commerce found that Columbia’s door thresholds may be described as parts for final finished products, i.e., parts for doors, which are assembled after importation (with additional components) to create the final finished product, and otherwise meet the definition of in-scope merchandise.<sup>41</sup>

Additionally, Commerce found that the door thresholds, which constitute aluminum extrusion components attached to non-aluminum extrusion components, may also be described as subassemblies pursuant to the scope of the *Orders*. Thus, the non-aluminum extrusion components (the PVC extrusions, insert bars, injection molded wood filled plastic substrates, extruded PVC substrates in Columbia’s door thresholds) which are assembled with the in-scope aluminum extrusion components, are not included in the scope of the *Orders*.<sup>42</sup>

The scope of the *Orders* also expressly covers aluminum extrusions that may be identified with reference to their end-use, such as door thresholds. The plain language of the scope of the *Orders* specifies that “door thresholds” are included within the scope “if they otherwise meet the scope definition, regardless of whether they are ready for use at the time of importation.”<sup>43</sup>

In accordance with 19 CFR 351.225(k)(1),<sup>44</sup> Commerce determined that the plain language of the scope of the *Orders* specifies that “door thresholds” are included within

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countries can be included within the scope of an order, while a scope inquiry, pursuant to 19 CFR 351.225(k), assesses whether the merchandise is within the literal scope of an order.

<sup>36</sup> See Memorandum, *Final Scope Rulings on Worldwide Door Components Inc., MJB Wood Group Inc., and Columbia Aluminum Products Door Thresholds*, dated December 19, 2018, at p. 4.

<sup>37</sup> *Id.* at 33.

<sup>38</sup> *Id.* at 14.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 28.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 34.

<sup>43</sup> *Id.*

<sup>44</sup> 19 CFR 351.225(k)(1) provides as follows:

(k) *Other scope determinations.* With respect to those scope determinations that are not covered under paragraphs (g) through (j) of this section, in considering whether a particular product is included within the scope of an order or a suspended investigation, the Secretary will take into account the following:

the scope “if they otherwise meet the scope definition, regardless of whether they are ready for use at the time of importation.”<sup>45</sup> Commerce thus determined that the door thresholds imported by Columbia are included within the scope of the *Orders*.<sup>46</sup> Further, based on the specific inclusion of “door thresholds” within the scope of the *Orders*, Commerce ruled that the finished merchandise scope exclusion is inapplicable.<sup>47</sup> This scope ruling was rendered by Commerce on December 19, 2018. Notably, the completion or assembly of the door thresholds in Vietnam from Chinese-origin inputs and other parts was not at issue in the scope inquiry. At issue was whether the door thresholds were included by the literal scope of the *Orders* on aluminum extrusions from China.

### **b. Commerce’s anti-circumvention inquiry under Section 781(d) of the Tariff Act of 1930; 19 CFR 351.225(j); later-developed merchandise**

Commerce and the courts have recognized the difference between scope rulings and anti-circumvention inquiries.<sup>48</sup> In scope rulings, governed by 19 CFR 351.225(k), Commerce determines whether a product is within the scope of an order, based on, e.g., descriptions of merchandise in the petition, the initial investigation, and determinations of Commerce and the U.S. International Trade Commission (“ITC”).<sup>49</sup> In an anti-circumvention inquiry, Commerce may find circumvention of an AD or CVD order when merchandise is completed or assembled in the United States; completed or assembled in other foreign countries; altered in a minor way; or created after the initiation of an investigation.<sup>50</sup>

The merchandise subject to the anti-circumvention inquiry is described as follows:

The products covered by this inquiry are heat-treated extruded aluminum products that meet the chemical specifications for 5050-grade aluminum alloy (inquiry merchandise)<sup>51</sup>, regardless of producer, exporter, or importer, from the PRC.

The petitioner argued 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

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(1) The descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the Commission.

<sup>45</sup> See the *Orders*.

<sup>46</sup> See Memorandum, *Final Scope Rulings on Worldwide Door Components Inc., MJB Wood Group Inc., and Columbia Aluminum Products Door Thresholds* (December 19, 2018) at p. 34.

<sup>47</sup> *Id.* at 37.

<sup>48</sup> See *Target Corp. v. United States (“Target III”)*, 609 F.3d 1352, 1362 (Fed. Cir. 2010) (holding that, in the context of later-developed merchandise inquiry, “Commerce [was not] precluded by its earlier conventional scope rulings that had previously found mixed-wax candles not within the scope of the antidumping order”) (“Conventional scope inquiries are different from anticircumvention inquiries because they are separate proceedings and address separate issues.”).

<sup>49</sup> See 19 CFR 351.225(k).

<sup>50</sup> See also 19 CFR 351.225(j).

<sup>51</sup> Aluminum extrusions of a 5050-grade aluminum alloy are not described in the scope of the original *Orders*.



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[.]” Thus, the petitioner maintained 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. 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 an in-scope 6xxx-series alloy. The petitioner argued 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. Rather, The Aluminum Association recognizes heat-treatment as a tempering process for 6xxx-series alloy. In short, the petitioner alleged that the heat-treated extruded aluminum products that meet the chemical specifications for 5050-grade aluminum alloy are subject to chemical and mechanical manipulation, i.e., tempering, which results in circumvention of the *Orders*.<sup>52</sup>

On November 14, 2016, Commerce published a notice of its preliminary determination of circumvention of the antidumping and countervailing duty orders with respect to heat-treated 5050-grade aluminum alloy extrusions, which Commerce defined as “later-developed merchandise.”<sup>53</sup> Commerce preliminarily determined that producers in China circumvented the orders with “later-developed merchandise” by manipulating the chemistry of 5050 series aluminum, a series not intended for use in aluminum extrusions, in order to manufacture aluminum extrusions that would perform and function in a manner similar to the aluminum series that are covered by the scope of the orders.

On July 26, 2017, Commerce published a notice of its final determination of circumvention of the antidumping and countervailing duty orders with respect to heat-treated 5050-grade aluminum alloy extrusions, which Commerce defined as “later-developed merchandise.”<sup>54</sup>

## **2. There is insufficient record evidence that the door thresholds are from the PRC, the country covered by the *Orders*.**

The record evidence shows that the door thresholds were completed or assembled in Vietnam using Chinese-origin aluminum and non-aluminum extrusions components. The record evidence also shows that the door thresholds were exported from Vietnam.

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<sup>52</sup> See *Issues and Decision Memorandum, Anti-Circumvention Inquiry Regarding the Antidumping Duty and Countervailing Duty Orders on Aluminum Extrusions from the People’s Republic of China* (July 20, 2017) at p. 6.

<sup>53</sup> See *Aluminum Extrusions from the People’s Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping and Countervailing Duty Orders and Intent To Rescind Minor Alterations Anti-Circumvention Inquiry*: 81 FR 79444, November 14, 2016.

<sup>54</sup> See *Aluminum Extrusions from the People’s Republic of China: Affirmative Final Determination of Circumvention of the Antidumping and Countervailing Duty Orders and Intent To Rescind Minor Alterations Anti-Circumvention Inquiry*: 82 FR 34630, July 26, 2017.

The *Orders*, as written, do not expressly address goods completed or assembled in other foreign countries, and/or goods exported from other foreign countries. The *Orders*, as written, do not address the country of origin of products assembled in other foreign countries from aluminum profiles extruded in China. There is no indication that the *Orders*, as written, were intended to cover door thresholds completed or assembled in another foreign country, and exported from another foreign country.

The March 20 Determination cites to two arguments made by Endura which are not correct, as a matter of law and fact, as applied to this case. Specifically, the March 20 Determination states:

As Endura noted, under the AD/CVD order on aluminum extrusions, **if the origin of the extruded aluminum profile is China, the product remains subject to the order, regardless of where the product is assembled.**<sup>55</sup>  
(Emphasis added.)

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As Endura noted, **under the Order, it does not matter whether the door threshold itself is of Vietnamese origin, if the origin of the extruded aluminum profile is China, the product remains subject to the order.**<sup>56</sup>  
(Emphasis added.)

Endura's argument that such a blanket rule exists is incorrect. If the scope of the *Orders* were in fact as Endura claims, there would be no reason for Commerce to conduct, as it is currently conducting, for example, an anti-circumvention and scope inquiry into whether aluminum profiles extruded in China and assembled into aluminum jalousie shutters in the Dominican Republic are within the scope of the *Orders*.<sup>57</sup> Commerce, in indicating that it is conducting such an inquiry, has recognized that the analysis is very fact-specific. No such fact-specific inquiry has been undertaken by Commerce with respect to the fact pattern at issue here. As such, the facts and law do not support the following conclusions reached by TRLED:

[S]ubstantial evidence demonstrates that Columbia transshipped Chinese-origin aluminum extrusions through Vietnam and falsely entered the merchandise into the customs territory of the United States **as a product of Vietnam without requisite AD/CVD imposed under the orders.**<sup>58</sup> (Emphasis added.)

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As the AD order on aluminum extrusions from China applies to aluminum extrusions within scope, **regardless of subsequent assembly, a door threshold**

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<sup>55</sup> See March 20 Determination at p. 4.

<sup>56</sup> See Notice of Initiation and Interim Measures at p. 4.

<sup>57</sup> See *Aluminum Extrusions From the People's Republic of China: Initiation of Anti-Circumvention and Scope Inquiries on the Antidumping Duty and Countervailing Duty Orders*; 84 FR 19757, May 6, 2019.

<sup>58</sup> *Id.* at 6.



**from Vietnam, made from an aluminum profile extruded in China, would be subject to AD duties.**<sup>59</sup> (Emphasis added.)

TRLED's conclusions that door thresholds are covered merchandise regardless of assembly and origin were based upon a Commerce scope ruling on fin evaporator systems.<sup>60</sup> The *Final Scope Ruling on Electrolux's Fin Evaporator Systems* (July 13, 2012) was issued by Commerce in accordance with 19 CFR 351.225(d) and 351.225(k)(1).<sup>61</sup> Fin evaporator systems, or "FESs", are heat dissipation systems for refrigerators.<sup>62</sup> The merchandise covered by the Electrolux scope inquiry was described as fin evaporator coils ("FECs") that undergo further manufacturing steps to be processed into FESs before importation.<sup>63</sup> Electrolux stated that the FESs are composed of extruded aluminum tubes that are bent and welded together to form a coil, to which "fins" made of aluminum alloy sheet are attached, followed by the attachment of copper "stub" fittings.<sup>64</sup> Commerce ruled during the original investigations, and in response to Electrolux's request for a scope ruling, that the aluminum extrusion components of FESs are within the scope of the *Orders*.<sup>65</sup> As a result, duties were owed on the components.<sup>66</sup> Stated differently, the imported subject merchandise within the scope of Commerce's reviews included the aluminum extrusion components of the FESs<sup>67</sup>, but not the entire FESs.<sup>68</sup>

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<sup>59</sup> *Id.* at 6.

<sup>60</sup> See Memorandum *re: Final Scope Ruling on Electrolux's Fin Evaporator Systems* (July 13, 2012).

<sup>61</sup> Electrolux submitted a scope ruling request, which does not relate to an anti-circumvention proceeding under section 781(b) of the Act. Section 781(b) assesses whether merchandise completed or assembled in foreign countries can be included within the scope of an order, while a scope inquiry, pursuant to 19 CFR 351.225(k), assesses whether the merchandise is within the literal scope of an order.

<sup>62</sup> See Memorandum *re: Final Scope Ruling on Electrolux's Fin Evaporator Systems* (July 13, 2012) at p. 4.

<sup>63</sup> *Id.* at 5.

<sup>64</sup> *Id.* at 5.

<sup>65</sup> See *Final Scope Ruling on Electrolux's Fin Evaporator Systems* (July 13, 2012).

<sup>66</sup> Moreover, this is not the first instance in which Commerce defined the scope of an investigation that provided for the assessment of duties on only the covered portions of a subassembly (such as the aluminum extrusions components of a fin evaporator coil system). See, e.g., *Certain Steel Wheels from China, Inv. Nos. 701-TA-478 and 731-TA-1182* (Final), USITC Pub. 4319 at 5 (May 2012) (scope includes "steel wheels, whether or not attached to tires or axles" but if imported as an assembly, "the tire or axle is not covered by the scope"); *Certain New Pneumatic Off-the-Road Tires from China, India, and Sri Lanka, Inv. Nos. 701-TA-551 to 553 and 731-TA-1307 to 1308* (Final), USITC Pub. 4669 at 7 (Mar. 2017) (scope includes "certain off road tires, whether or not mounted on wheels or rims" although "if a subject tire is imported mounted on a wheel or rim, only the tire is covered by the scope" and if the tires are attached to a vehicle, they are "not covered by the scope"); *DRAMs and DRAM Modules from Korea, Inv. 701-TA-431* (Final), USITC Pub. 3616 (Aug. 2003) (scope included removable memory modules on motherboards).

<sup>67</sup> The scope language of the *Orders* provides, in relevant part, as follows: "In addition, fin evaporator coils may be classifiable under HTSUS numbers: 8418.99.80.50 and 8418.99.80.60."

<sup>68</sup> Additionally, the *Orders* state that fin evaporator coils may be classified in subheadings 8418.99.8050 and 8418.99.8060, HTSUS; both are parts provisions in heading 8418, HTSUS. Subheading 8418.99.8050, HTSUS (2011), provides for: Refrigerators, freezers and other refrigerating or freezing equipment, electric or other; heat pumps, other than the air conditioning machines of heading 8415; parts thereof: Parts: Other: Other: Other: Parts of combined refrigerator-freezers fitted with separate external doors and parts of household type refrigerators. Subheading 8418.99.8060, HTSUS (2011) provides for: Refrigerators, freezers and other refrigerating or freezing equipment, electric or other; heat pumps, other than the air conditioning machines of heading 8415; parts thereof: Parts: Other: Other: Other: Other: Other.



This is an example of a scope ruling where Commerce ruled that only part of an imported product was covered by the *Orders*, and duties were owed on only part of an imported product. In that regard, the Commerce decision is similar to the December 19, 2018 scope ruling issued to Columbia. But as with the December 19 ruling, the fin evaporator ruling did not address assembly in a third country or the substantial transformation issue. Accordingly, this scope ruling is not instructive as to the question of whether door thresholds completed or assembled in Vietnam, and exported from Vietnam, are covered merchandise under the *Orders*.

Thus, the statement that “it does not matter whether the door threshold itself is of Vietnamese origin” is incorrect.<sup>69</sup> The country of origin of the door thresholds **does** matter because the *Orders* cover door thresholds **from China**. (Emphasis added.) In addition, the effect that the assembly of the door thresholds in Vietnam may or may not have on the country of origin of the door thresholds for purposes of determining whether the door thresholds are of Chinese origin, is a determination for Commerce to make, not CBP. There is no record evidence that Commerce applied a substantial transformation analysis, or that Commerce otherwise determined that the completion or assembly of door thresholds in Vietnam from Chinese inputs **does not** constitute a substantial transformation.<sup>70</sup> However, Commerce has determined that the third-country processing operations constitute circumvention of existing trade remedy orders, as discussed below.

### **3. Aluminum extrusions exported from Vietnam that are produced from aluminum previously extruded in China are circumventing the *Orders*.**

On March 5, 2018, Commerce published notice of the initiation of an anti-circumvention inquiry under Sections 781(b) and (c)<sup>71</sup> of the Tariff Act of 1930 to determine whether extruded aluminum products that are exported from Vietnam by China Zhongwang Holdings Ltd. and its affiliates (collectively, Zhongwang) are circumventing the AD and CVD orders on aluminum extrusions from China.<sup>72</sup> The merchandise subject to the anti-circumvention inquiries was described therein as follows:

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<sup>69</sup> See Notice of Initiation and Interim Measures at p. 4.

<sup>70</sup> In general, the substantial transformation analysis is used to determine country of origin for an imported article. See, e.g., *Bell Supply Co.*, 888 F.3d at 1228 (citing *E.I. Du Pont de Nemours & Co. v. United States*, 8 F. Supp. 2d 854, 859 (Ct. Int'l Trade 1998)). A substantial transformation occurs where, “as a result of manufacturing or processing steps. . .[.] the [product] loses its identity and is transformed into a new product having a new name, character and use.” See *id.* at 1228 (citing *Bestfoods v. United States*, 165 F. 3d 1371, 1373 (Fed. Cir. 1999)). To determine whether there has been a substantial transformation, Commerce looks to factors such as (1) the class or kind of merchandise; (2) the nature and sophistication of processing in the country of exportation; (3) the product properties, essential component of merchandise, and intended end-use; (4) the cost of production/value added; and (5) level of investment. See *id.* at 1228-29.

<sup>71</sup> Section 781(c) is a “minor alterations” anti-circumvention inquiry. Section 781(c)(1) of the Act provides that Commerce 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[.]”

<sup>72</sup> See *Aluminum Extrusions From the People's Republic of China: Initiation of Anti-Circumvention Inquiries*: 83 FR 9267, March 5, 2018.



These anti-circumvention inquiries cover extruded aluminum products that meet the description of the *Orders* exported from Vietnam by Zhongwang.

Commerce intends to consider whether these inquiries should apply to all exports of extruded aluminum products from Vietnam that meet the description of the *Orders*.

Section 781(b) of the Tariff Act of 1930 provides that Commerce may include merchandise completed or assembled in foreign countries within the scope of an order if the merchandise imported into the United States is of the same class or kind as any merchandise produced in a foreign country that is the subject of an antidumping duty order, and such imported merchandise “is completed or assembled. . . from merchandise which . . . is produced in the foreign country with respect to which such order [ ] applies. . . .” To include such merchandise within the scope of an AD or CVD order, Commerce must determine that: the process of assembly or completion in the foreign country is minor or insignificant; the value of the merchandise produced in the country subject to the AD or CVD order is a significant portion of the merchandise exported to the United States; and, the action is appropriate to prevent evasion of such order or finding.<sup>73</sup> As part of this analysis, Commerce also considers additional factors such as: the pattern of trade, including sourcing patterns; whether the manufacturer or exporter of the parts or components is affiliated with the person who assembles or completes the merchandise sold in the United States from the parts or components produced in the foreign country; and, whether imports into the United States of the parts or components produced in such foreign country have increased after the initiation of the investigation which resulted in the issuance of such order or finding.<sup>74</sup> The purpose of this anti-circumvention inquiry under section 781(b) of the Act is to determine whether merchandise from the country subject to the AD and/or CVD orders that is processed (i.e., completed or assembled into a finished product) in a third country into merchandise of the type subject to the AD and/or CVD order should be considered to be within the scope of the AD and/or CVD order at issue.

On May 17, 2019, Commerce preliminarily determined that extruded aluminum products that are made from aluminum previously extruded in China and are exported from Vietnam, regardless of producer, exporter, or importer, constitute merchandise completed or assembled in other foreign countries and are circumventing the AD and CVD orders on aluminum extrusions from China. Commerce also preliminarily intended to rescind its minor alterations anti-circumvention inquiry.<sup>75</sup> The merchandise subject to the anti-circumvention inquiries is described therein as follows:

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).

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<sup>73</sup> See Sections 781(b)(1)(C)-(E) of the Act.

<sup>74</sup> See Section 781(b)(3) of the Act.

<sup>75</sup> See *Aluminum Extrusions From the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping and Countervailing Duty Orders*: 84 FR 22445, May 17, 2019.



In the notice, Commerce also directed CBP to suspend liquidation of inquiry merchandise from Vietnam sourced from aluminum previously extruded in China, regardless of producer, exporter, or importer, entered, or withdrawn from warehouse, for consumption, on or after March 5, 2018, the date of publication of the initiation of the anti-circumvention inquiries. As such, starting with entries on March 5, 2018 (as confirmed on May 17, 2019 and August 12, 2019), exports from Vietnam of products incorporating aluminum previously extruded in China, were potentially subject to the AD/CVD Orders. Commerce also instructed CBP to require a cash deposit of estimated duties at the rate applicable to the exporter, on all unliquidated entries of inquiry merchandise entered, or withdrawn from warehouse, for consumption on or after March 5, 2018.

On August 12, 2019, Commerce determined that aluminum extrusions exported from Vietnam, that are produced from aluminum previously extruded in China, are circumventing the AD and CVD Orders on aluminum extrusions from China. Commerce also rescinded the minor alterations circumvention inquiry.<sup>76</sup> The scope of the circumvention inquiries is described therein as follows:

These inquiries cover aluminum extrusions that are made from aluminum previously extruded in China (including billets created from re-melted Chinese extrusions) that meet the description of the Orders and are exported from Vietnam, regardless of producer, exporter or importer (inquiry merchandise). This final ruling applies to all shipments of inquiry merchandise on or after the date of publication of the initiation of these inquiries.

In the notice, Commerce also directed CBP to suspend liquidation and to require a cash deposit of estimated duties on unliquidated entries of inquiry merchandise that were entered or withdrawn from warehouse, for consumption on or after March 5, 2018, the date of publication of the initiation of these inquiries.

#### **4. The legal effects of Commerce's anti-circumvention and scope determinations must be considered together.**

Pursuant to 19 U.S.C. § 1517(f)(1) and 19 CFR § 165.45, in an administrative review CBP will apply a *de novo* standard of review and will render a determination appropriate under the law according to the specific facts and circumstances on the record. Pursuant to 19 CFR § 165.2, entries that may be the subject of an allegation made under § 165.11 or a request for an investigation under § 165.14 are those entries of allegedly covered merchandise made within one year before the receipt of an allegation under § 165.11 or of a request for an investigation under § 165.14. In addition, at its discretion, CBP may investigate other entries of such covered merchandise.

Accordingly, the entries covered by this investigation are those entered for consumption, or withdrawn from a warehouse for consumption, from January 19, 2017 through the

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<sup>76</sup> See *Aluminum Extrusions From the People's Republic of China: Final Affirmative Determination of Circumvention of the Antidumping and Countervailing Duty Orders and Partial Rescission*: 84 FR 39805, August 12, 2019.



pendency of the investigation.<sup>77</sup> The administrative record as to the facts here at issue closed on March 20, 2019.<sup>78</sup> The legal effect of Commerce’s anti-circumvention inquiry under Section 781(b) and subsequent determination is to bring aluminum extrusions entered on or after May 5, 2018 from Vietnam, and made from aluminum previously extruded in China, within the scope of the *Orders*. However, not all aluminum extrusions exported from Vietnam are brought within the scope of the *Orders*, rather only those that meet the description of the *Orders*. On December 19, 2018, the date that Commerce decided Columbia’s scope inquiry, Columbia’s door thresholds exported from Vietnam were brought within the description and scope of the *Orders* and became “covered merchandise” under 19 U.S.C. § 1517(a)(3).<sup>79</sup>

The record evidence indicates that between December 19, 2018 and March 20, 2019, Columbia entered door thresholds exported from Vietnam. The door thresholds were classified in subheading 7610.10.0020, HTSUS. Although the record evidence shows that some door thresholds assembled in Vietnam by Houztek may have been made using aluminum extruded in Vietnam, CBP’s site verification of Houztek’s facility revealed that the inventory of aluminum profiles did not contain marks, stamps or serial numbers, and was not otherwise segregated to allow for the separate identification of such products.<sup>80</sup> In addition, inventory records could not be provided to demonstrate that a particular lot of aluminum profiles was removed from inventory and used in a particular assembly operation run.<sup>81</sup> Accordingly, the record supports a conclusion that aluminum previously extruded in China was used in Houztek’s production of aluminum door thresholds exported to the United States. Columbia thus falsely entered the door thresholds exported from Vietnam on entry type “01” consumption entries, instead of on entry type “03” AD/CVD entries. Columbia also omitted Case Nos. A-570-967 and C-570-968 from the entry summary documentation. These false statements and omissions were material because they resulted in the non-payment, i.e., evasion, of applicable AD and CVD cash deposits. Therefore, we conclude that there is substantial record evidence that on or after December 19, 2018, covered merchandise, that is, door thresholds with aluminum extruded in China and exported from Vietnam, was entered into the United States by means of evasion, as defined in 19 U.S.C. § 1517(a)(5)(A).

### III. Decision

Based upon our *de novo* review of the administrative record in this case, including the timely and properly filed request for administrative review and response, with respect to the issue of transshipment, the March 20 Determination of evasion under 19 USC § 1517(c) is:

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<sup>77</sup> See Notice of Initiation and Interim Measures.

<sup>78</sup> See March 20 Determination. We note that the EAPA statute imposes strict deadlines for CBP’s investigations and administrative reviews. Accordingly, CBP must at some point cut off the entries to be investigated to be able to render its decisions.

<sup>79</sup> On March 5, 2018, the door thresholds completed or assembled in Vietnam did not meet the description of the *Orders*. The door thresholds became in-scope as of the date of Commerce’s scope decision on December 19, 2018. See *Sunpreme Inc. v. United States*, 924 F.3d 1198 (Fed. Cir. 2019), stating that CBP cannot resolve a scope issue, and that Commerce’s scope determination is dispositive.

<sup>80</sup> See March 20 Determination at p. 8.

<sup>81</sup> *Id.* at 8.

AFFIRMED, IN PART, with respect to entries of door thresholds on or after December 19, 2018; and

REVERSED, IN PART, with respect to entries of door thresholds before December 19, 2018.

With respect to the issue of misclassification, the March 20 Determination finding of no evasion is AFFIRMED.

A copy of this determination is being provided to TRLED so that the interim measures may be modified, consistent with this decision. TRLED may also take any other appropriate actions consistent with this decision.

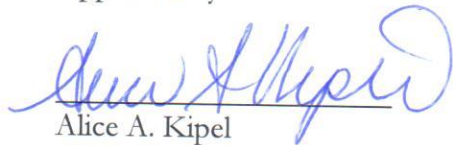
This decision does not preclude CBP or other agencies from pursuing additional enforcement actions or penalties. Pursuant to 19 CFR § 165.46(a), this final administrative determination is subject to judicial review pursuant to section 421 of the EAPA.

Sincerely,



Coraly Schreiber  
Acting Chief, Penalties Branch, Regulations & Rulings  
Office of Trade  
U.S. Customs & Border Protection

Approved by:



Alice A. Kipel  
Executive Director, Regulations & Rulings  
Office of Trade  
U.S. Customs & Border Protection