



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-570-967

C-570-968

Scope Inquiry/Solar Panel Mounting Systems

Public Document

IA/AD/CVD/O8: BDK/BCQ

October 31, 2012

MEMORANDUM TO: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

THROUGH: Melissa G. Skinner
Director, Office 8
Antidumping and Countervailing Duty Operations

Eugene Degnan
Program Manager, Office 8
Antidumping and Countervailing Duty Operations

FROM: Brooke Kennedy
International Trade Analyst, Office 8
Antidumping and Countervailing Duty Operations

RE: Antidumping and Countervailing Duty Orders on Aluminum
Extrusions from the People's Republic of China

SUBJECT: Final Scope Ruling on Clenergy (Xiamen) Technology's Solar
Panel Mounting Systems

SUMMARY

On September 9, 2011, the Department of Commerce ("Department") received a scope ruling request from Clenergy (Xiamen) Technology Co. Ltd. ("Clenergy"),¹ to determine whether its solar panel mounting systems are subject to the antidumping ("AD") and countervailing duty ("CVD") orders on aluminum extrusions from the People's Republic of China ("PRC").² On the basis of our analysis of the comments received under 19 CFR 351.225(k)(1), we have determined

¹ See Clenergy's September 9, 2011 Scope ruling request, *Aluminum Extrusions from the People's Republic of China* (A-570-967, C-570-968), Solar Panel Mounting Systems ("Clenergy's September 9, 2011 Request").

² 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").



that Clenergy's solar panel mounting systems are excluded from the scope of the AD and CVD orders on aluminum extrusions from the PRC.

BACKGROUND

On September 9, 2011, Clenergy requested a ruling by the Department holding that solar panel mounting systems ("mounting systems") are excluded from the scope of the *Orders*.³ Clenergy claimed interested party status under section 771(9)(C) of the Tariff Act of 1930, as amended ("the Act"), as an exporter of the mounting systems. On October 11, 2011, the Aluminum Extrusions Fair Trade Committee ("Petitioner") submitted comments responding to the Clenergy's scope ruling request.⁴ Clenergy responded to Petitioner's comments on October 14, 2011.⁵ Between October 19, 2011, and September 5, 2012, the Department extended the deadline for the scope inquiry numerous times.

SCOPE OF THE ORDERS

The merchandise covered by the order{s} 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.*,

³ See Clenergy's September 9, 2011 Request at 6.

⁴ See Petitioner's October 11, 2011 Response to Scope Ruling Request of Clenergy ("Petitioner's October 11, 2011 Response").

⁵ See Clenergy's October 14, 2011 Reply to Petitioner's Response ("Clenergy's October 14, 2011 Rebuttal").

without any coating or further finishing), brushed, buffed, polished, anodized (including bright-dip anodized), liquid painted, or powder coated. Aluminum extrusions may also be fabricated, *i.e.*, prepared for assembly. Such operations would include, but are not limited to, extrusions that are cut-to-length, machined, drilled, punched, notched, bent, stretched, knurled, 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 investigation merely by including fasteners such as screws, bolts, *etc.* in the packaging with an aluminum extrusion product.

The scope also excludes aluminum alloy sheet or plates produced by other than the extrusion process, such as aluminum products produced by a method of casting. Cast aluminum products are properly identified by four digits with a decimal point between the third and fourth digit. A letter may also precede the four digits. The following Aluminum Association designations are representative of aluminum alloys for casting: 208.0, 295.0, 308.0, 355.0, C355.0, 356.0,

A356.0, A357.0, 360.0, 366.0, 380.0, A380.0, 413.0, 443.0, 514.0, 518.1, and 712.0. The scope also excludes pure, unwrought aluminum in any form.

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

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

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States (“HTS”): 7604.21.0000, 7604.29.1000, 7604.29.3010, 7604.29.3050, 7604.29.5030, 7604.29.5060, 7608.20.0030, 7608.20.0090, 8513.90.20, 8302.50, 9403.90.8030, 9506.91.0010, 9506.91.0020, 9506.91.0030, 7615.19.30, 7615.19.50, 7615.19.70, 7615.19.90, 7615.19.10, 7616.99.10, and 7616.99.50. 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 HTS chapters. In addition, fin evaporator coils may be classifiable under HTS numbers: 8418.99.8050 and 8418.99.8060. While HTS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.⁶

LEGAL FRAMEWORK

When a request for a scope ruling is filed, the Department examines the scope language of the order at issue and the description of the product contained in the scope-ruling request.⁷ Pursuant to the Department’s regulations, the Department may also examine other information, including the description of the merchandise contained in the petition, the records from the investigations, and prior scope determinations made for the same product.⁸ If the Department determines that these sources are sufficient to decide the matter, it will issue a final scope ruling as to whether the merchandise is covered by an order.

Conversely, where the descriptions of the merchandise are not dispositive, the Department will initiate a scope inquiry under 19 CFR 351.225(e) and analyze the factors set forth at 19 CFR 351.225(k)(2). These factors are: (i) the physical characteristics of the merchandise; (ii) the expectations of the ultimate purchasers; (iii) the ultimate use of the product; (iv) the channels of trade in which the product is sold; and (v) the manner in which the product is advertised and displayed. The determination as to which analytical framework is most appropriate in any given scope inquiry is made on a case-by-case basis after consideration of all evidence before the Department.

⁶ See *Orders*.

⁷ See *Walgreen Co. v. United States*, 620 F.3d 1350, 1357 (Fed. Cir. 2010).

⁸ See 19 CFR 351.225(k)(1).

RELEVANT SCOPE DETERMINATIONS

1. Investigation – Scope Determination on Kits and Finished Products Exclusion

During the investigations, five domestic manufacturers of aluminum fences and gates submitted comments arguing for the inclusion of certain aluminum extrusions, packaged as kits or fully assembled finished products.⁹

The producers argued that kits and fully assembled finished products composed of at least 70 to 75 percent aluminum extrusions by weight should be included in the scope of the proceedings. These producers contended that such items are simply aluminum extrusions that have been boxed or assembled, with a few minor parts added, and excluding these products from the scope would harm certain domestic manufacturers of aluminum fences and gates. Further, these five manufacturers argued that the proposed criteria, *i.e.*, percentage of the kit by weight, would be more useful than listing specific products to be excluded, as there are many types of products with a high content of extruded aluminum.

Petitioner opposed the proposed modification, arguing that although the Petition is not intended to harm domestic producers of aluminum fences and gates, the Petition is also not intended to cover imports of fully-assembled finished aluminum fencing systems or fully finished aluminum fencing systems in kit form.

The Department agreed with Petitioner that kits and finished products are excluded from the scope, regardless of the percentage content of aluminum extrusions. Finished merchandise and unassembled kits containing aluminum extrusions are specifically excluded from the scope, with no specification as to the percentage content of aluminum extrusions.¹⁰ The Department determined that finished products and unassembled kits that contain all the components for the finished product, regardless of the percentage content of aluminum extrusions by weight, are excluded from the scope of these investigations.¹¹

⁹ See *Aluminum Extrusions From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, and Preliminary Determination of Targeted Dumping*, 75 FR 69403 (November 12, 2010) and *Preliminary Determinations: Comments on the Scope of the Investigations*, dated October 27, 2010 at Comment 3 (“*Preliminary Scope Comments*”), unchanged in *Aluminum Extrusions from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 18524 (April 4, 2011) (“*Final Determination*”), and accompanying Issues and Decision Memorandum.

¹⁰ Under the statutory scheme, {the Department} owes deference to the intent of the proposed scope of an antidumping investigation as expressed in an antidumping petition. See, e.g., *Ad Hoc Shrimp Trade Action Committee v. United States*, 637 F. Supp. 2d 1166, 1174 (CIT 2009)(citing 19 CFR 1673, 1673a(h)); see also *NTN Bearing Corp. of Am. v. United States*, 747 F. Supp. 726, 730 (CIT 1990)). Moreover, {w}hile the Department does have the authority to define or clarify the scope of an investigation, the Department must exercise this authority in a manner which reflects the intent of the petition and the Department generally should not use its authority to define the scope of an investigation in a manner that would thwart the statutory mandate to provide the relief requested in the petition. See *Narrow Woven Ribbons with Woven Selvedge from Taiwan, Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 75 FR 7236,7240 (February 18, 2010) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Narrow Woven Ribbons with Woven Selvedge from Taiwan*, 75 FR 41804 (July 19, 2010)). Thus, absent an overarching reason to modify the scope in the petition, the Department accepts it. See *id.*

¹¹ See *Preliminary Scope Comments* at Comment 3, unchanged in *Final Determination*.

2. Banner Stands and Back Wall Kits¹²

In its scope inquiry request, Skyline Displays Inc. (“Skyline”) argued that banner stands and back wall kits, used to showcase graphics and other marketing materials, fell outside the scope of the Orders because they met the exclusion criteria of the scope of the Orders, namely that the products at issue constituted “finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry.”

Petitioners argued that Skyline had not provided sufficient evidence that its products constitute a finished good and thus are outside the scope of the Orders. It urged the Department to seek more information regarding the extent to which Skyline produced and sold the graphical materials that users attach to the products at issue. Petitioners further argued that the fact that additional accessories could be added to the products at issue (*e.g.*, shelving and lighting) called into question Skyline’s claim that the products constituted finished goods.

In the Banner Stands Scope Ruling, the Department found that the banner stands and back wall kits described in Skyline’s scope inquiry request met the exclusion criteria.¹³ The Department explained that the products at issue contained all of the parts required to assemble a completed exhibition frame on which printed graphical materials may be hung and, thus, met the exclusion criteria in the scope of the Orders for “finished goods kits.”¹⁴ The Department further explained that in the Preliminary Scope Comments it found that Nexxt Show’s exhibition kits would be excluded if the kits contained all necessary parts to be fully assembled finished good. Thus, in the Banner Stands Scope Ruling, the Department found that because Skyline’s merchandise contained all the necessary parts, it was excluded as a “finished goods kit.”

In the Banner Stands Scope Ruling, the Department agreed that the products at issue were analogous to completed picture frames, which are explicitly excluded from the scope.¹⁵ The Department disagreed with Petitioners’ claim that the products at issue failed to meet the exclusion criteria because they lacked printed graphical materials at the time of entry. The Department found that the products at issue were designed to incorporate interchangeable graphical materials that can change with users’ needs. Therefore, the Department found that it would be unreasonable to require that the products at issue be accompanied at the time of importation with affixed graphical material that cannot be removed or altered at a later date.¹⁶

DESCRIPTION OF MERCHANDISE SUBJECT TO THIS INQUIRY

Clenergy exports four mounting system models to the United States. These mounting systems enable solar panels to be mounted on roofs or on the ground in the creation of solar power systems.¹⁷ These unassembled mounting systems predominantly consist of extruded aluminum

¹² See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on Banner Stands and Back Wall Kits,” (October 19, 2011) (“Banner Stands Scope Ruling”).

¹³ See *id.* at 9-10.

¹⁴ *Id.* at 9 – 10.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ See Clenergy’s September 9, 2011 Request at 2.

rails, but also incorporate extruded and cast aluminum kedges, galvanized steel posts, and various stainless steel bolts, clamps, brackets, and fasteners.¹⁸

ARGUMENTS FROM INTERESTED PARTIES

Clenergy's Comments

In its initial request, Clenergy claims that its mounting systems are excluded from the *Orders* as finished goods kits.¹⁹ First, Clenergy argues that its mounting systems contain all of the components necessary to assemble complete mounting systems.²⁰ Clenergy explains that all of the components are fully fabricated, and that no additional work is required prior to assembly of the finished mounting system.²¹ The mounting systems contain extruded aluminum parts and additional parts necessary to create a mounting system.²² Second, Clenergy argues that its mounting systems are finished products. Clenergy describes its mounting systems as complete units not intended to form part of a larger structure, and finds support for this in a Customs and Border Protection (“CBP”) ruling²³ which held that similar mounting system products were classified “under the provision for aluminum structures.”²⁴ Clenergy analogizes its mounting systems to picture frames, defined in the scope as excluded finished products, with the mounting system corresponding to the frame and the solar panels to the picture.²⁵ Clenergy also notes that the petition classified solar panels as finished products, even though a solar panel by itself cannot be used unless mounted.²⁶

On October 14, 2011, Clenergy submitted a response to Petitioner’s comments (summarized below). In this rebuttal, Clenergy argues that Petitioner’s arguments are contradicted by both the language of the *Orders* and by examples provided in Petitioner’s own analysis.²⁷ According to Clenergy, Petitioner’s argument that the mounting systems are useless on their own and are merely parts of finished products negates the examples provided in the *Orders*. Clenergy argues that both “finished windows with glass” and “doors with glass or vinyl” are commercially and realistically useless until incorporated into a larger building structure; however, the *Orders* identify them as finished merchandise.²⁸ Clenergy further submits that its mounting systems are more analogous to picture frames with glass pane and backing material than baluster kits.²⁹ As a picture frame is a structure that frames a picture, Clenergy argues, a mounting system is a structure that mounts a solar panel; thus, both products perform an intended purpose and are not “useless.”³⁰ Finally, Clenergy argues that under Petitioner’s analysis, solar panels on their own

¹⁸ See *id.* at 3.

¹⁹ See *id.* at 1.

²⁰ See *id.* at 2.

²¹ See *id.* at 4.

²² See *id.* at 5.

²³ See *id.* at Ex. C, Customs and Border Protection ruling, *The tariff classification of solar panel racks from Canada and Germany*, NY N163076, dated May 25, 2011.

²⁴ *Id.* at 5.

²⁵ See *id.* at 5-6.

²⁶ See *id.* at 6.

²⁷ See Clenergy’s October 14, 2011 Rebuttal at 1.

²⁸ See *id.* at 3.

²⁹ See *id.*

³⁰ See *id.*

would be “useless” and part of a larger structure; however, they are excluded from the *Orders*.³¹ Clenergy submits that instead of adopting Petitioner’s argument, the Department should recognize mounting systems as individual commercial entities that, like solar panels, windows and doors, are later incorporated with other finished goods into a larger combination.³²

Petitioners Comments

On October 11, 2011, Petitioner submitted comments to the Department, arguing that Clenergy’s mounting systems are not finished products and are therefore encompassed within the scope of the *Orders*.³³ In this submission, Petitioner asserts that a mounting system is only “*part of a finished product*” because it does not contain a solar panel, and states that a mounting system without a solar panel “is useless and does not function as a final finished product.”³⁴ Petitioner likens a mounting system to Maine Ornamental’s baluster kits, “designed to work with other parts to form a larger structure.”³⁵ According to Petitioner, the mounting systems are not finished products, but are elements of finished products.

In a subsequent submission, Petitioner pointed to the Department’s final scope ruling on certain retractable awning mechanisms and submitted that this ruling supports the position that Clenergy’s mounting systems should not be considered a “finished good” that is outside the scope of the *Orders*.³⁶

DEPARTMENT’S POSITION

The Department has examined the language of the *Orders* and the description of the products contained in this scope request. We find that the scope is dispositive as to whether the products at issue are subject merchandise. Accordingly, for this determination, the Department finds it unnecessary to consider additional factors specified in 19 CFR 351.225(k)(1) and 19 CFR 351.225(k)(2).

The scope of the *Orders* provides an exclusion for a “finished goods kit” which is defined by the scope language as 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 such a finished product.” The Department’s analysis of whether Clenergy’s mounting systems fit this exclusion, therefore, examined the two criteria in the scope that define finished goods kits: 1) inclusion of all necessary parts to fully assemble a finished good with no further fabrication, and; 2) can be assembled “as is” into a finished product.

With regard to the first criterion, the Department finds that Clenergy’s products, at the time of importation, contain all of the parts necessary to fully assemble a finished good without further

³¹ See *id.* at 4.

³² See *id.*

³³ See Petitioner’s October 11, 2011 Response at 2.

³⁴ *Id.* at 2-3.

³⁵ *Id.* at 3-4.

³⁶ See Petitioner’s October 20, 2011 Notice of Supplemental Authority at 1.

fabrication. With regard to the second criterion, the Department finds that Clenergy's mounting system kits, at the time of importation, can be assembled "as is" into finished products for mounting solar panels. Like picture frames, banner stands, and backwall kits, the mounting systems are designed to work with removable/replaceable components (Clenergy's sales brochures indicate that all four systems are generally compatible with solar panels available in the market), and need not include these non-essential parts to constitute a finished good (*i.e.*, a complete solar panel mounting system). The mounting systems are therefore finished goods in their own right, distinct from products like cleaning system components and retractable awning mechanisms, which lack the components to fully assemble a finished good.

RECOMMENDATION

Pursuant to 19 CFR 351.225(d), we recommend finding, for the reasons discussed above, that Clenergy's solar panel mounting systems are not subject to the *Orders* because they meet the criteria for finished goods kits (*i.e.*, they contain, at the time of importation, all of the necessary parts to fully assemble a final finished good and require no further finishing or fabrication for assembly) which are expressly excluded from the *Orders* by the plain language of the scope. If the recommendation in this memorandum is accepted, we will serve a copy of this determination to all interested parties on the scope service list via first-class mail, as directed by 19 CFR 351.303(f).

_____ Agree _____ Disagree

Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

Date