



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

C-570-968; A-570-967
Scope Inquiry
Gallery Assemblies for Wind Turbines
Public Document
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DATE March 27, 2014

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

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

FROM: James Terpstra
Senior International Trade Analyst, Office III
Antidumping and Countervailing Duty Operations

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

SUBJECT: Final Scope Ruling on Gallery Assemblies for Wind Turbines

Summary

Aluwind Inc. (Aluwind) filed a scope ruling request in which it sought that the Department of Commerce (Department) determine whether gallery assemblies for wind turbines, which it imports, are within the scope of the Orders.¹ For the reasons described below, we recommend determining that the gallery assemblies for wind turbines are excluded from the scope of the Orders.

Background

On January 16, 2013, Aluwind requested a ruling that its gallery assemblies are outside the scope of the Orders.² On February 13, 2013, we issued a deficiency letter to Aluwind, and Aluwind

¹ See Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order, 76 FR 30,650 (May 26, 2011) and Aluminum Extrusions From the People's Republic of China: Countervailing Duty Order, 76 FR 30,653 (May 26, 2011) (collectively, the Orders).

² See Letter from Aluwind entitled, "Scope Ruling Request, Aluminum Extrusions from People's Republic of China (A-570-967, C-570-968), Gallery Assemblies for Wind Turbines," dated January 16, 2013.



resubmitted its request for a scope ruling on March 11, 2013.³ On April 23, 2013, Petitioner⁴ submitted comments on the Scope Request.⁵

Scope of the Orders

The merchandise covered by these Orders is aluminum extrusions which are shapes and forms, produced by an extrusion process, made from aluminum alloys having metallic elements corresponding to the alloy series designations published by The Aluminum Association commencing with the numbers 1, 3, and 6 (or proprietary equivalents or other certifying body equivalents). Specifically, the subject merchandise made from aluminum alloy with an Aluminum Association series designation commencing with the number 1 contains not less than 99 percent aluminum by weight. The subject merchandise made from aluminum alloy with an Aluminum Association series designation commencing with the number 3 contains manganese as the major alloying element, with manganese accounting for not more than 3.0 percent of total materials by weight. The subject merchandise is made from an aluminum alloy with an Aluminum Association series designation commencing with the number 6 contains magnesium and silicon as the major alloying elements, with magnesium accounting for at least 0.1 percent but not more than 2.0 percent of total materials by weight, and silicon accounting for at least 0.1 percent but not more than 3.0 percent of total materials by weight. The subject aluminum extrusions are properly identified by a four-digit alloy series without either a decimal point or leading letter. Illustrative examples from among the approximately 160 registered alloys that may characterize the subject merchandise are as follows: 1350, 3003, and 6060.

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

Aluminum extrusions are produced and imported with a variety of finishes (both coatings and surface treatments), and types of fabrication. The types of coatings and treatments applied to subject aluminum extrusions include, but are not limited to, extrusions that are mill finished (*i.e.*, without any coating or further finishing), brushed, buffed, polished, anodized (including 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, wedged, 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

³ See Letter from Aluwind entitled, "Scope Ruling Request, Aluminum Extrusions from People's Republic of China (A-570-967, C-570-968), Gallery Assemblies for Wind Turbines," dated January 16, 2013 and submitted on March 11, 2013 ("Scope Request").

⁴ Petitioner is the Aluminum Extrusion Fair Trade Committee.

⁵ See Letter from Petitioner entitled, "Aluminum Extrusions from the People's Republic of China: Comments on Aluwind's Scope Request for Gallery Assemblies for Wind Turbines (April 23, 2013) (Petitioner's Comments).

definition of aluminum extrusions are included in the scope. The scope includes the aluminum extrusion components that are attached (e.g., by welding or fasteners) to form subassemblies, i.e., partially assembled merchandise unless imported as part of the finished goods 'kit' defined further below. The scope does not include the non-aluminum extrusion components of subassemblies or subject kits.

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

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

The scope also excludes finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry, such as finished windows with glass, doors with glass or vinyl, picture frames with glass pane and backing material, and solar panels. The scope also excludes finished goods containing aluminum extrusions that are entered unassembled in a "finished goods kit." A finished goods kit is understood to mean a packaged combination of parts that contains, at the time of importation, all of the necessary parts to fully assemble a final finished good and requires no further finishing or fabrication, such as cutting or punching, and is assembled 'as is' into a finished product. An imported product will not be considered a 'finished goods kit' and therefore excluded from the scope of the investigation merely by including fasteners such as screws, bolts, etc. in the packaging with an aluminum extrusion product.

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

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

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

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States (HTS): 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, 8418.99.80.05, 8418.99.80.50, 8418.99.80.60, 8419.90.10.00, 8422.90.06.40, 8479.90.85.00, 8486.90.00.00, 8487.90.00.80, 8503.00.95.20, 8516.90.50.00, 8516.90.80.50, 8708.29.50.60, 8708.80.65.90, 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, 9403.90.80.30, 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 HTS chapters. In addition, fin evaporator coils may be classifiable under HTS numbers: 8418.99.80.50 and 8418.99.80.60. While HTS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

There have been numerous scope rulings with regard to this order. For further information, see a listing of these at the webpage titled Final Scope Rulings of the Enforcement and Compliance website at <http://enforcement.trade.gov/download/prc-ae/scope/prc-ae-scope-index.html>.

Legal Framework

When a request for a scope ruling is filed, the Department examines the scope language of the order and the description of the product contained in the scope-ruling request.⁶ 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.⁷ If the Department determines that these

⁶ See Orders.

⁷ Walgreen Co. v. United States, 620 F.3d 1350, 1357 (Fed. Cir. 2010). 19 CFR 351.225(k)(1).

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 consider the five additional 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 proceeding is made on a case-by-case basis after consideration of all evidence before the Department.

Description of the Merchandise Subject to this Request

According to the description provided in the Scope Request, Aluwind's gallery assemblies are structural frames that are mounted inside a wind turbine tower and function as protective barriers for technicians working within the wind turbine tower. Aluwind's request covers three different gallery assemblies, which differ in shape based on the wind turbine for which it is designed, but each containing the same basic component parts.⁸ Aluwind provided schematics indicating that each gallery assembly is comprised of aluminum extrusions, fiberglass tubes, non-extruded aluminum sheet, rubber bumpers, steel mounting parts, and fasteners.⁹ According to Aluwind, the gallery assemblies enter the United States fully assembled in a form ready to be used by the customer, needing only to be mounted inside a wind turbine.¹⁰

Relevant Scope Ruling¹¹

Anodes Scope Ruling¹²

In the Anodes Scope Ruling, the Department considered whether a water heater anode is excluded from the scope of the Orders as finished merchandise. Petitioner argued that a water heater anode is not a finished product because it is a component of another product (i.e., a water heater). However, the Department disagreed and found that water heater anodes were finished merchandise that fell outside the scope of the Orders. In reaching its decision, the Department concluded that the water heater anode is a finished product because it contains all the components of a water heater anode (i.e., the aluminum, the steel/carbon steel rod, and the carbon steel cap) which are permanently assembled, completed and ready to use as an aluminum anode which works to prevent corrosion in a water heater.

⁸ See Scope Request at 1-2 and Appendix A.

⁹ See *id.*

¹⁰ See *id.*

¹¹ See the Department's memorandum entitled: "Antidumping (AD) and Countervailing Duty (CVD) Orders on Aluminum Extrusions from the People's Republic of China (PRC): Transmittal of Scope Determinations to the File," dated concurrently with this memorandum.

¹² See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Final Scope Ruling on Aluminum Anodes for Water Heaters," dated October 17, 2012 (Anodes Scope Ruling).

Interested Party Arguments

Aluwind Arguments

Aluwind notes that the scope of the Orders excludes finished goods containing aluminum extrusions that are imported as a “finished goods kit.” Aluwind argues that its gallery assemblies are consistent with the finished goods kit exclusion as the merchandise is a product kit that has all the parts necessary to assemble a final finished good without further fabrication at the time of importation. Aluwind further states that the gallery assemblies are in a form ready to be used by the customer, they join a collection of other finished products from various manufacturers and suppliers to form a functional wind turbine, and from the perspective of the customer a gallery assembly is a complete product simply mounted to a platform or walkway inside the turbine tower and requires no modification prior to installation inside the turbine.¹³

Petitioner’s Argument

Petitioner does not oppose Aluwind’s claim that these products are “final finished” products and not covered by the scope of these Orders.¹⁴ However, Petitioner argues that when the Department considers whether certain products, such as gallery assemblies, are included within the scope of the Orders, the Department should apply the interpretative principles it proposed in its February 19, 2013, submission regarding Meridian Products LLC’s request for a scope ruling on kitchen appliance door handles¹⁵ in determining whether a product is a “final finished product.”

According to Petitioner, in order to be a final finished product, a subassembly or component must be “something more than a subassembly or component that can be installed in a larger product” and must have some “essential function outside of the aluminum extrusions that it contains.”¹⁶ Petitioner argues that the word “finished” must be interpreted by looking at the entire scope. The scope includes “finished” extrusions such as fence posts, electrical conduit, door thresholds, or carpet trim. Each of these products are “finished” components of a larger downstream products but are nonetheless covered by the scope. Only if the product is a final finished product containing more than just aluminum extrusions is it excluded from the scope.¹⁷ When evaluating whether a product that contains more than just aluminum extrusions is a final finished product, the Department should consider whether the aluminum extrusion provides the fundamental characteristic to the product.

Petitioner also argues that simply because subassemblies, like wind tower galleries, contain non-extruded parts does not mean that those products are automatically excluded from the scope of

¹³ See Scope Request at 2.

¹⁴ See Petitioner’s Comments at 3.

¹⁵ See *id.*, at 2. See the Department’s memorandum entitled: “Antidumping (AD) and Countervailing Duty (CVD) Orders on Aluminum Extrusions from the People’s Republic of China (PRC): Transmittal of Petitioner’s February 19, 2013 Comments on Meridian’s Scope Ruling Request Regarding Kitchen Appliance Door Handles to the File,” dated concurrently with this memorandum (Petitioner’s Meridian Comments).

¹⁶ See Petitioner’s Meridian Comments at 7.

¹⁷ See *id.*, at 9.

the Orders.¹⁸ Petitioner notes that the scope language specifically contemplates that extruded aluminum products may be parts of larger subassemblies by stating that, “{t}he scope includes the aluminum extrusion components that are attached... to form subassemblies,” in that the inclusion of the term “components” contemplates that there may be other non-extruded or non-aluminum components.¹⁹ Thus, according to Petitioner, the scope language expressly recognized that subassemblies that contain more than just aluminum extrusions are included within the scope.²⁰

Based on its proposed interpretative principles, Petitioner states that Aluwind’s gallery assemblies are not covered by the scope of the Orders because the non-extruded components in this case provide the essential function of product, not the extruded aluminum.²¹

Department Position:

We examined the description of the products in the Scope Request, the scope language, and the Department’s previous scope rulings concerning the Orders. Pursuant to 19 CFR 351.225(k)(1), we find that the scope and prior rulings are dispositive as to whether the products at issue are subject merchandise. Thus, it is unnecessary to consider the additional factors specified in 19 CFR 351.225(k)(2).

The description of the gallery assemblies provided by Aluwind indicates that these products are comprised of aluminum extrusions and non-extruded aluminum components. Furthermore, the products enter as fully assembled finished goods that are permanently assembled, completed, and are ready to use as protective barriers. Subsequent to importation, these products require no further modification to be a gallery assembly. These products are subsequently incorporated into a larger product, a wind turbine. Consistent with our Anodes Scope Ruling, in which we found the water heater anode to be a finished product because it contained all the components of a water heater anode and was permanently assembled, completed and ready to use as an aluminum water heater anode,²² Aluwind’s gallery assemblies are finished goods that are excluded from the Orders.

Regarding Petitioner’s argument that we should evaluate this scope request based on whether the aluminum extrusion content of Aluwind’s gallery assemblies provides an essential function, we declined to adopt such a test in this scope proceeding. While Petitioner asserts that Aluwind’s gallery assemblies would not be covered by the Orders if the Department were to apply Petitioner’s proposed interpretive principles, Petitioner has not argued that the gallery assemblies at issue are covered by the Orders or demonstrated that the gallery assemblies at issue are covered by the scope of the Orders. Therefore, we find that, based on the analysis above, Aluwind’s gallery assemblies at issue are not covered by the scope of the Orders.

¹⁸ See Petitioner’s Comments at 2.

¹⁹ See *id.*

²⁰ See *id.*

²¹ See *id.*, at 3.

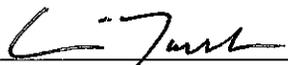
²² See Anodes Scope Ruling at 6.

Recommendation

For the reasons discussed above, and in accordance with 19 CFR 351.225(d) and 351.225(k)(1), we recommend finding that the gallery assemblies for wind turbines at issue in the instant request are finished goods and not subject to the scope of the antidumping and countervailing duty Orders on aluminum extrusions from the PRC.

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 351.225(f)(4).

Agree Disagree



Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

3/27/14

Date