

October 14, 2011

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

THROUGH: Melissa G. Skinner
Director
Office 3, Operations

FROM: John Conniff
Senior Trade Analyst

Eric B. Greynolds
Program Manager

RE: Antidumping (AD) and Countervailing Duty (CVD) Orders on
Aluminum Extrusions from the People's Republic of China (PRC)

SUBJECT: Final Scope Ruling on Certain Retractable Awning Mechanisms

Summary

On August 30, 2011, the Department of Commerce (the Department) initiated a formal scope inquiry in response to a request from Tri Vantage to determine whether certain retractable awning mechanisms are encompassed within the scope of the AD and CVD orders on aluminum extrusions from the PRC.¹

Based on our analysis of the comments received, we have determined that certain retractable awning mechanisms are within the scope of the AD and CVD Orders on Aluminum Extrusions from the PRC.

Background

On August 30, 2011, Tri Vantage, a company headquartered in Glenn Raven, North Carolina, and an international supplier in the retractable awning market submitted a scope ruling request.²

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) (the Orders).

² See Tri Vantage's August 30, 2011, Scope Request on Retractable Awning Mechanisms at 2.

On October 3, 2011, the Aluminum Extrusions Fair Trade Committee (Petitioner), submitted comments responding to the scope ruling request by Tri Vantage.³

Scope of the Order:

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, swedged, mitered, chamfered, threaded, and spun. The subject merchandise includes aluminum extrusions that are finished (coated, painted, etc.), fabricated, or any combination thereof.

Subject aluminum extrusions may be described at the time of importation as parts for final finished products that are assembled after importation, including, but not limited to, window frames, door frames, solar panels, curtain walls, or furniture. Such parts that otherwise meet the definition of aluminum extrusions are included in the scope. The scope includes the aluminum extrusion components that are attached (e.g., by welding or fasteners) to form subassemblies, i.e., partially assembled merchandise unless imported as part of the finished goods ‘kit’ defined

³ Petitioner’s September 9, 2011, Response to Skyline’s Scope Ruling Request Regarding Banner Stands and Back Wall Kits.

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, and 7608.20.0090. 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.

Legal Framework

The Department examines scope ruling requests in accordance with the its scope regulations. See 19 CFR 351.225. On matters concerning the scope of an antidumping duty order, the Department first examines the language of the order(s) at issue and the description of the product contained in the scope request. If the language in the order(s) is not dispositive, the Department will then examine the description of the merchandise contained in the petition, the initial investigation, the determinations of the Secretary (including prior scope determinations) and the International Trade Commission (ITC). See 19 CFR 351.225(k) (1). This determination may take place with or without a formal inquiry. See 19 CFR 351.225(d) and (e). If the Department determines that these descriptions are dispositive of the matter, the Department will issue a final scope ruling as to whether or not the subject merchandise is covered by the order. See 19 CFR 351.225(d).

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.

Relevant Scope Determinations

A. Investigation –Scope Determinations

During the AD and CVD investigations of aluminum extrusions from the PRC, the Department considered numerous comments from interested parties on the scope of the investigations. The Department summarized these comments and explained its analysis and determinations in the Preliminary Scope Comments.⁴

⁴ See Preliminary Determinations: Comments on the Scope of the Investigations, October 27, 2010 (Preliminary Scope Comments).

1. Kits and Finished Products Exclusion

During the investigation, 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.

The producers argued that kits and fully assembled finished products comprising at least 70 to 75 percent aluminum extrusions by weight should be included in the scope of the proceeding. All 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 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.

The 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.⁵ 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.⁶ The Department determined that finished products and unassembled kits that contained 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.⁷

2. Exhibition Kits

During the investigation, an importer, Nexxt Show, argued that its exhibition frames and unassembled pavilion kits consist of all the components to assemble a finished goods kit and so should be excluded from the Orders. The importer provided assembly illustrations to demonstrate that all necessary components are included in each kit.

⁵ *Id.* at Comment 3.

⁶ “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.” Ad Hoc Shrimp Trade Action Committee v. United States, 637 F. Supp. 2d 1166,1174 (CIT 2009)(citing 19 CFR 1673, 1673a(h)) 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 (Feb. 18, 2010)(unchanged in the Final Results), 75 FR 41804 (July 19, 2010)). Thus, “absent an overarching reason to modify the scope in the petition, the Department accepts it.” *See Id.*

⁷ *See* Preliminary Scope Comments at Comment 3 (unchanged in the final determination).

The Department found that it was unable to determine whether Nexxt Show's kits included all the necessary materials to assemble a finished product. The Department stated that "if at the time of importation, however, the kits do contain all of the necessary parts to fully assemble a final finished good then they would be excluded from the scope of these proceedings."⁸

B. Investigation – Final Scope Determinations

1. Baluster Kits

During the investigation the Department also considered comments and made a determination regarding baluster units. Maine Ornamental explained that it imported baluster kits, which contained aluminum extrusions in a variety of powdered coated finishes to match wood and composite wood decking and railings.⁹ It contended that the kits were packed ready for retail customer sales and customer installation and contained five to ten balusters, assembly fasteners, connectors, and detailed installation instructions, thus containing all the necessary components to assemble a final finished good, and as such, represent unassembled finished goods.

Maine Ornamental argued that its baluster kits are more similar to shower doors with glass, or exhibition kits, which the Department excluded from the scope of the investigations, rather than a package of plastic and screws combined with aluminum powder coated extrusions. Therefore, Maine Ornamental argued that its baluster kits are not inputs for the production of downstream products but rather are unassembled finished goods and should be excluded from the scope of the investigations.

Maine Ornamental argued that if its baluster kits could not be excluded from the scope of these investigations based on product specifications and description of its use, then the Department should analyze the factors provided for in 19 CFR 351.225(k)(2) of the Department's regulations: (a) the physical characteristics of the baluster kits; (b) the expectations of the ultimate purchasers; (c) the ultimate use of the product; (d) the channels of trade; and, (e) the manner in which the product is advertised and displayed.

Petitioner countered that the Department should reject Maine Ornamental's request to exclude baluster kits from the scope of the investigations because the kits represented a packaged collection of individual balusters, which comprised a single element of a railing or deck system, and, therefore, do not represent a finished product. The Petitioner further argued that a single baluster is analogous to carpet trim, which is a final good that is also a basic aluminum extrusion, covered by the scope of these investigations.

Petitioner further noted that contrary to Maine Ornamental's claim, the baluster kits do not include the railing or the decking necessary to install a finished railing or decking system, but rather include only the baluster extrusions in addition to fastener components. Thus, argued Petitioner, the essential character of Maine Ornamental's baluster kits is that they are powder coated aluminum balusters. As a result, Petitioner asserted, the written description of the merchandise is dispositive and the baluster kits are within the scope of the investigations.

⁸ Id. at Comment 8 (unchanged in the final determination).

⁹ See Aluminum Extrusions From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 76 FR 18524, (April 4, 2011), and the accompanying Issues and Decisions Memorandum (Aluminum Extrusions I&D Memorandum) at Comment 3H.

In Comment 3 of its Aluminum Extrusions I&D Memorandum, the Department agreed with Petitioner that baluster kits are not excluded “kits” as defined by the scope of the investigations and therefore constitute subject merchandise. The Department also noted that the scope of the petitions defined an excluded kit 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 a finished product.”¹⁰

The Department explained that Maine Ornamental’s own description of the product indicates that such balusters are designed to work with other parts to form a larger structure. The Department further explained that although Maine Ornamental contended that its baluster kits contain all the necessary components to assemble a final finished good, it also stated that the balusters, if used as directed, represent parts of structures to form a balustrade or deck rail. Thus, the Department agreed with Petitioner that a baluster kit represents a packaged collection of individual parts, which comprised a single element of a railing or deck system, and, therefore, did not represent a finished product.¹¹

Finally, the Department disagreed with Maine Ornamental’s contention that its balusters are excluded from the scope of the investigations because the ITC Aluminum Extrusions Report stated that the scope excludes unassembled final finished goods containing aluminum extrusions, and described the merchandise subject to the investigations as inputs for the production of downstream products.¹² The Department found that although Maine Ornamental argued that its baluster kits are final finished goods, its own description of baluster kits indicates that the balusters function as an input for the production of a downstream product, such as a balustrade or a deck rail. As a result, the Department determined that Maine Ornamental’s citation to the ITC Aluminum Extrusions Report did not support its contention that the baluster kits should be excluded from the scope of the order.

Description of the Merchandise Subject to this Inquiry:

Tri Vantage states that the retractable awning mechanisms included in its scope inquiry request are classified under HTS 8479.89.9899 which provides for machines and mechanical appliances having individual function, not specified or included elsewhere.¹³ Tri Vantage states that the products at issue are ready for use at the time of importation. Tri Vantage states that the products consist of the same basic components: an 8:1 reduction gear, support arms, wall or ceiling support boxes, and a steel roller onto which a textile cover is wound when the unit is retracted.¹⁴ Tri Vantage states that at the time of importation the retractable awning mechanisms at issue do not include textile covers. Tri Vantage states that the textile covers are sold separately.

¹⁰ Id. at 28.

¹¹ Id. at 28.

¹² Certain Aluminum Extrusions From China, Investigation Nos. 701-TA-475 and 731-TA-1177 (Preliminary), Publication 4153 June 2010, U.S. International Trade Commission (ITC Aluminum Extrusions Report).

¹³ See Tri Vantage’s August 30, 2011, submission at Attachment 3, which contains correspondence from U.S. Customs and Border Protection (CBP) referencing an August 14, 2000, HTS ruling for retractable awning mechanisms.

¹⁴ Id. at 2-3 and Attachment 4.

Arguments from Interested Parties:

Tri Vantage

In its August 30, 2011, submission, Tri Vantage argues that the retractable awning mechanisms are imported, ready for use, and constitute a final finished good. Therefore, argues Tri Vantage, the products at issue meet the exclusion criteria concerning “finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled at the time of entry.” It explains that the products at issue are manufactured from over 24 components of a variety of materials that are aluminum and not derived from the aluminum extrusion process.

Tri Vantage further argues that the retractable awning mechanisms at issue do meet the in-scope descriptions for “partially assembled merchandise” or aluminum extrusion components attached by “welding” or “fasteners.” However, Tri Vantage argues, CBP has previously found retractable awning mechanisms similar to those included in its request to be “machines and mechanical appliances having individual functions.”¹⁵ Tri Vantage asserts that a machine or appliance with its own function is not a “partially assembled” good or a subassembly. Thus, Tri Vantage concludes retractable awning mechanisms, as a finished product, fall outside the scope of the order.

Petitioner

In their October 3, 2011, submission Petitioner states that Tri Vantage acknowledges that the textile awning, which is purchased separately, is assembled and attached onto the product at issue after importation. Petitioner further argues that a retractable awning mechanism without the textile awning serves no function as an awning and, thus, cannot be considered a “final finished good.” Instead, argues Petitioner, the Department should consider the product at issue as “subassemblies, i.e., partially assembled merchandise,” which is explicitly covered by the scope.

Petitioner asserts that the fact that the product at issue contains non-aluminum extrusion materials is irrelevant to whether the product constitutes “partially assembled merchandise” because the scope explicitly covers subassemblies made out of combinations of aluminum and non-aluminum products.

Petitioner disputes Tri Vantage’s claim that CBP has previously found retractable awnings to be “finished goods.” Petitioner argues that the full description of HTS heading 8479 is “Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof.” According to Petitioner, the inclusion of the phrase “parts thereof” includes subassemblies, such as the products at issue, that serve no individual function by themselves. Petitioner also argues that the CBP tariff classification decision is irrelevant because such decisions are not dispositive of whether a product falls within the scope of the order.

¹⁵ See Tri Vantage’s August 30, 2011, submission at Attachment 3, in which it claims CBP found retractable awnings to be “finished goods” under HTS heading 8479.

Tri Vantage

In its October 11, 2011, submission Tri Vantage reiterates its claim that CBP's treatment of retractable awning mechanisms as a machine/appliance demonstrates that the product at issue is a final product, not subject to the order. Tri Vantage argues that while the Department is not bound by CBP determinations, they are extremely authoritative and informative. Tri Vantage argues that the fact that a government official with a specialized background in the product under consideration found retractable awning mechanisms to be a machine/appliance with its own function (i.e., a finished product) is germane to the instant scope inquiry and cannot be ignored.

Tri Vantage contends that Petitioner erroneously argues that the CBP's classification decision demonstrates that retractable awning mechanisms should be treated as parts. Tri Vantage argues that it made no arguments regarding the scope of HTS heading 8479, which covers machines, mechanical appliances, as well as parts to these machines. Tri Vantage claims that had CBP considered a retractable awning mechanism to be a part, CBP would have classified the product under 8479.90.9594, which provides for parts of machines and mechanical appliances having individual functions not specified or included elsewhere. Tri Vantage further argues that in the same ruling CBP, in fact, considered replacement parts for retractable awning mechanisms and correctly classified them as parts rather than a final product.

Tri Vantage argues that the products at issue are analogous to picture frames, which are expressly excluded from the scope. According to Tri Vantage, the Department treats picture frames, where they are imported as finished form, as non-subject merchandise. Tri Vantage contends that the fact that a picture frame is imported without a photo/graphic does not place the picture frame within the scope of the order. Rather, asserts Tri Vantage, the Department treats the picture frame and the graphic ultimately placed inside it as distinct finished products. Tri Vantage argues the same is true of the products at issue. Tri Vantage argues it sells retractable awning mechanisms to customers on a stand-alone basis or with a textile awning, depending on the customer's needs. Tri Vantage claims the fact that retractable awning mechanisms are sold without the textile covering does not place the product within the scope of the order.

Department's Position: As noted above, the scope of the order defines an excluded "finished goods kit" 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." Tri Vantage itself acknowledges that the textile covers designed for attachment to the retractable awning mechanisms at issue, and necessary to assemble a fully functioning awning, are purchased separately and are not included with such awning mechanisms at the time of importation. Thus, we conclude that a finished retractable awning mechanism or complete retractable awning mechanism kit would require inclusion of a textile cover at the time of importation to meet the exclusionary language that defines a finished goods kit or finished product.

Because the retractable awning mechanisms at issue lack the integral components necessary to assemble a full and complete finished goods kit, we find that they do not constitute 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.” We, therefore, determine that the products at issue do not meet the exclusion criteria of the scope. Our finding in this regard is consistent with the Department’s prior interpretation of the scope.¹⁶

Recommendation

For the reasons discussed above and pursuant to 19 CFR 351.225(d) and 351.225(k)(1), we recommend finding that the certain retractable awning mechanisms addressed by the instant scope request are subject to the scope of the orders on aluminum extrusions from the PRC because they do not meet the criteria for the finished good kit exclusion; i.e., they do not contain, at the time of importation, all of the necessary parts to fully assemble a final finished good.

If the recommendations in this memorandum are accepted, we will serve a copy of this memorandum to all interested parties on the scope service list via first class mail as directed by 19 CFR 351.303(d).

Agree

Disagree

Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

Date

¹⁶ See Aluminum Extrusions I&D Memorandum at Comment 3H, in which the Department determined that baluster kits represent a packaged collection of individual parts, which comprise a single element of a larger system, and, therefore did not represent a finished product.