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International Trade Administration
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Scope Inquiry
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December 13, 2011

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

THROUGH: Wendy J. Frankel
Director, Office 8
Antidumping and Countervailing Duty Operations

Eugene Degnan
Program Manager, Office 8
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FROM: Brooke Kennedy
International Trade Analyst, Office 8
Antidumping and Countervailing Duty Operations

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

SUBJECT: Final Scope Ruling on Ameristar Fence Products' Aluminum
Fence and Post Parts

SUMMARY

On July 28, 2011, the Department of Commerce ("Department") received a scope ruling request from Ameristar Fence Products ("Ameristar"),¹ to determine whether its panel and post kits consisting of aluminum posts, post caps, rails, pickets, grommets, rods and screws are subject to the antidumping ("AD") and countervailing duty ("CVD") orders on aluminum extrusions from the People's Republic of China ("PRC").² In a subsequent submission, Ameristar distinguished

¹ See Ameristar Fence Products' letter to the Department, dated July 20, 2011 ("Ameristar's 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) ("Orders").

between its kits and the individual components that it imports: aluminum fence posts, rails, and pickets (“individual fence parts”). On the basis of our analysis of the comments received, we have determined that the individual aluminum fence posts, rails, and pickets, *i.e.*, the individual fence parts, that Ameristar imports are within the scope of the AD and CVD orders on aluminum extrusions from the PRC. The Department will make a determination regarding Ameristar’s “panel and post kits” at the conclusion of its scope inquiry and in a separate ruling.

BACKGROUND

On July 28, 2011, Ameristar, a company located in Tulsa, Oklahoma, requested a ruling by the Department as to whether its aluminum ornamental fence and post products are excluded from the scope of the *Orders*.³ Ameristar claimed interested party status under section 771(9)(A) of the Tariff Act of 1930, as amended (“the Act”), *i.e.*, as an importer of aluminum fence products from the PRC. On September 2, 2011, the Department issued a supplemental questionnaire to Ameristar, requesting clarification of information contained in its scope ruling request.⁴ On September 7, 2011, Ameristar filed its response to the Department’s supplemental questionnaire.⁵ On October 28, 2011, the Department notified interested parties that the ruling deadline would be extended by 45 days, in accordance with 19 CFR 351.225(c)(1)(ii)(C)(2).⁶ On November 14, 2011, the Department initiated a scope inquiry on Ameristar’s “panel and post kits” to analyze the factors set forth at 19 CFR 351.225(k)(2); however, the Department excluded from the inquiry individual fence parts.⁷

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.

³ See Ameristar’s Request at 8.

⁴ See the Department’s supplemental questionnaire to Ameristar, dated September 2, 2011 (“1SQ”).

⁵ See Ameristar’s letter to the Department, dated September 6, 2011 (“Ameristar SQR”).

⁶ See the Department’s letter “Extension of Preliminary Ruling,” dated October 28, 2011.

⁷ See Department’s Scope Inquiry Initiation letter, dated November 14, 2011 (“Scope Inquiry Initiation”).

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 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.⁸

LEGAL FRAMEWORK

The Department examines scope ruling requests in accordance with its scope regulations. *See* 19 CFR 351.225. On matters concerning the scope of an antidumping or countervailing duty order, the Department first examines the language of the order at issue and the description of the product contained in the scope request. If the language in the order 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

⁸ *See Orders.*

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.

DESCRIPTION OF MERCHANDISE SUBJECT TO THIS INQUIRY

Ameristar's Request

Ameristar described the aluminum panel and post kits covered by its scope inquiry as a “fence system” comprised of punched posts, post caps, pickets, rails, grommets, retaining rods and screws, manufactured from 6000-series alloy aluminum extrusions.⁹ Ameristar requested that the Department issue a ruling on whether its panel and post kits are excluded from the scope of the *Orders* as finished merchandise or finished goods kits.¹⁰

Department's Supplemental Questionnaire

On September 2, 2011, the Department issued a supplemental questionnaire (“SQ”) to Ameristar.

Ameristar's Response

On September 7, 2011, Ameristar filed its response to the Department's SQ.¹¹ In its response, Ameristar distinguished between its “panel and post kits” and the individually-sold posts, pickets and rails that are at issue here.¹²

The Department did not receive comments from any other interested party.

On November 14, 2011, the Department notified interested parties that it was initiating a formal scope inquiry to analyze Ameristar's “panel and post kits” based on the factors set forth at 19 CFR 351.225(k)(2). *See* Background section above.

⁹ *See* Ameristar's Request at 8.

¹⁰ *Id.*

¹¹ *See* Ameristar SQR.

¹² In its response, Ameristar stated that it imports panel and post kits as well as individual “posts, pickets, and rails” for use as replacement parts. *See Id.* at 10.

ANALYSIS

1. Individual Fence Parts

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 individual fence parts, *i.e.*, posts, pickets and rails, whether packed in bulk or individually, are subject merchandise. Accordingly, for this determination, the Department finds it unnecessary to consider the additional factors specified in 19 CFR 351.225(k)(1) and 19 CFR 351.225(k)(2).

The scope of the *Orders* covers aluminum extrusions made from aluminum alloys with Aluminum Association designations commencing with the numbers 1, 3, and 6 (or proprietary equivalents or other certifying body equivalents). The scope of the *Orders* also covers aluminum extrusions that may be identified with reference to their end-use, such as fence posts. In its initial request, Ameristar stated that it imports from the PRC, aluminum fence products that are manufactured from 6000 series alloy aluminum extrusions.¹³ Ameristar also noted, in its SQR, that it sells series 6000 aluminum extruded individual fence parts individually as, for example, replacement parts. Accordingly, the Department finds that Ameristar's individual fence parts, *i.e.*, posts, rails, and pickets, fit the description of subject merchandise.

The scope of the *Orders* also 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." Ameristar stated in its SQR that individual posts, pickets and rails are imported separately from other fencing system components.¹⁴ Based on this information, the Department therefore finds that Ameristar's individual fence parts, whether packed in bulk or individually, do not fit within the finished goods kit exclusion because they do not contain all of the parts necessary to fully assemble a final finished product.

Because Ameristar's individual fence parts meet the description of the subject merchandise and do not meet the definition of finished goods kits, as defined by the plain language of the scope, the Department has determined that the individual fence parts constitute subject merchandise.

RECOMMENDATION

For the reasons discussed above, and in accordance with 19 CFR 351.225(d), we recommend finding that the individual fence parts addressed by the instant request are subject to the scope of the orders on aluminum extrusions from the PRC because they fit the description of the subject merchandise and because they do not meet the criteria for the finished products exclusion or the finished goods 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

¹³ See Ameristar's Request at 1.

¹⁴ See note 12, *infra*.

determination 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