



A-570-967

C-570-968

Scope Ruling: Ferguson Air Duct Fixtures
Public Document
E&C VI: MJH

May 10, 2017

MEMORANDUM TO: Gary Taverman
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

THROUGH: Scot Fullerton
Director
AD/CVD Operations, Office VI

FROM: Michael J. Heaney
International Trade Compliance Analyst
Antidumping and Countervailing Duty Operations, Office VI

SUBJECT: Antidumping and Countervailing Duty Orders on Aluminum
Extrusions from the People's Republic of China: Final Scope
Ruling on Ferguson Enterprises Inc. Air Duct Fixtures

Summary

On September 9, 2015, the Department of Commerce (the Department) received a scope ruling request from Ferguson Enterprises (Ferguson),¹ to determine whether its Air Duct Fixtures are subject to the antidumping duty (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 information received, we determine that Ferguson's air duct diffusers and registers (collectively, air duct fixtures) are excluded from the scope of the AD and CVD *Orders* on aluminum extrusions from the PRC.³

¹ See Letter from Ferguson, "Aluminum Extrusions from the People's Republic of China Request for Confirmation of Scope Exclusion for Air Duct Registers," dated September 9, 2015 (Scope Request); see also Letter from Ferguson, dated April 4, 2016, confirming that Ferguson had served all parties listed on the Department's comprehensive scope service list on November 18, 2015.

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*).

³ Ferguson also included a request for a scope ruling on its air duct grilles. See Scope Request at 2, and exhibit 2. In its June 8, 2016, submission, Ferguson indicated that it was removing this item, *i.e.*, PSARGW, from its scope request. See June 8, 2016, second supplemental questionnaire response, at 1 (Second Supplemental Response) to the Department's April 22, 2016, supplemental questionnaire (Second Supplemental Questionnaire). Accordingly, we have not considered this grille in this scope determination.

Background

On September 9, 2015, Ferguson submitted its request that the Department issue a scope ruling that Ferguson's air duct diffusers and registers are outside the scope of the *Orders*.⁴ Additionally, on December 4, 2015, and April 22, 2016, the Department issued supplemental questionnaires to Ferguson for clarification of its scope request,⁵ to which Ferguson responded on December 21, 2015 and June 8, 2016, respectively.⁶ On April 4, 2016 Ferguson confirmed that it had served a copy of its Scope Request upon all parties listed on the Department's comprehensive scope service list.⁷ On July 25, 2016, September 6, 2016, October 21, 2016, December 5, 2016, January 18, 2017, February 9, 2017, March 23, 2017, April 19, 2017, April 26, 2017, and May 3, 2017, we extended the deadline for issuing this scope determination.⁸ The current deadline for issuing this scope ruling is May 10, 2017. We have received no comments from the Aluminum Extrusion Fair Trade Committee, the petitioner in this proceeding.

Scope of the Orders

The merchandise covered by the *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

⁴ See Scope Request.

⁵ See Letter to Ferguson: "Aluminum Extrusions from the People's Republic of China: Supplemental Questionnaire on Ferguson Air Duct Registers" dated December 4, 2015 (First Supplemental Questionnaire); see also Letter to Ferguson "Scope Inquiry submitted by Ferguson Enterprises on Certain Bathroom Fixtures" dated April 22, 2016 (Second Supplemental Questionnaire).

⁶ See Letter from Ferguson, "Aluminum Extrusions from the People's Republic of China: Re-Filing of Ferguson's Questionnaire Response" dated December 21, 2016 (Supplemental Response), which Ferguson served on all parties to the proceeding on March 9, 2016; see also Letter from Ferguson, "Aluminum Extrusions from the People's Republic of China: Re-Filing of Ferguson's Questionnaire Response" dated June 8, 2016 (Second Supplemental Response).

⁷ See Letter from Ferguson, "Aluminum Extrusions from the People's Republic of China: Confirmation of Service for Scope Inquiry for Ferguson Air Duct Registers," dated April 4, 2016.

⁸ See Letter from Robert James to Ferguson, dated July 25, 2016; see also Letter from Robert James to Ferguson, dated September 6, 2016; Letter from Erin Kearney to Ferguson, dated October 21, 2016; Letter from Erin Kearney to Ferguson, dated December 5, 2016; Letter from Erin Kearney to Ferguson, dated January 18, 2017; Letter from Erin Kearney to Ferguson, dated February 9, 2017; Letter from Erin Kearney to Ferguson dated March 2, 2017; Letter from Erin Kearney to Ferguson dated March 23, 2017; Letter from Erin Kearney to Ferguson dated April 19, 2017; Letter from Erin Kearney to Ferguson dated April 26, 2017 and Letter from Erin Kearney to Ferguson dated April 19, 2017; and Letter from Erin Kearney to Ferguson dated May 3, 2017.

percent but not more than 3.0 percent of total materials by weight. The subject aluminum extrusions are properly identified by a four-digit alloy series without either a decimal point or leading letter. Illustrative examples from among the approximately 160 registered alloys that may characterize the subject merchandise are as follows: 1350, 3003, and 6060.

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

Aluminum extrusions are produced and imported with a variety of finishes (both coatings and surface treatments), and types of fabrication. The types of coatings and treatments applied to subject aluminum extrusions include, but are not limited to, extrusions that are mill finished (*i.e.*, without any coating or further finishing), brushed, buffed, polished, anodized (including brightdip anodized), liquid painted, or powder coated. Aluminum extrusions may also be fabricated, *i.e.*, prepared for assembly. Such operations would include, but are not limited to, extrusions that are cut-to-length, machined, drilled, punched, notched, bent, stretched, knurled, swaged, mitered, chamfered, threaded, and spun. The subject merchandise includes aluminum extrusions that are finished (coated, painted, *etc.*), fabricated, or any combination thereof.

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

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

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

The scope also excludes finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry, such as finished windows with glass, doors with glass or vinyl, picture frames with glass pane and backing material, and solar panels. The scope also excludes finished goods containing aluminum extrusions that are entered unassembled in a "finished goods kit." A finished goods kit is understood to mean a packaged combination of parts that contains, at the time of importation, all of the necessary parts

to fully assemble a final finished good and requires no further finishing or fabrication, such as cutting or punching, and is assembled “as is” into a finished product. An imported product will not be considered a “finished goods kit” and therefore excluded from the scope of the *Orders* merely by including fasteners such as screws, bolts, *etc.* in the packaging with an aluminum extrusion product.

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

The scope also excludes collapsible tubular containers composed of metallic elements corresponding to alloy code 1080A as designated by the Aluminum Association where the tubular container (excluding the nozzle) meets each of the following dimensional characteristics:

- (1) length of 37 millimeters (“mm”) or 62 mm, (2) outer diameter of 11.0 mm or 12.7 mm, and
- (3) wall thickness not exceeding 0.13 mm.

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

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States (HTSUS): 6603.90.8100, 7616.99.51, 8479.89.94, 8481.90.9060, 8481.90.9085, 9031.90.9195, 8424.90.9080, 9405.99.4020, 9031.90.90.95, 7616.10.90.90, 7609.00.00, 7610.10.00, 7610.90.00, 7615.10.30, 7615.10.71, 7615.10.91, 7615.19.10, 7615.19.30, 7615.19.50, 7615.19.70, 7615.19.90, 7615.20.00, 7616.99.10, 7616.99.50, 8479.89.98, 8479.90.94, 8513.90.20, 9403.10.00, 9403.20.00, 7604.21.00.00, 7604.29.10.00, 7604.29.30.10, 7604.29.30.50, 7604.29.50.30, 7604.29.50.60, 7608.20.00.30, 7608.20.00.90, 8302.10.30.00, 8302.10.60.30, 8302.10.60.60, 8302.10.60.90, 8302.20.00.00, 8302.30.30.10, 8302.30.30.60, 8302.41.30.00, 8302.41.60.15, 8302.41.60.45, 8302.41.60.50, 8302.41.60.80, 8302.42.30.10, 8302.42.30.15, 8302.42.30.65, 8302.49.60.35, 8302.49.60.45, 8302.49.60.55, 8302.49.60.85, 8302.50.00.00, 8302.60.90.00, 8305.10.00.50, 8306.30.00.00, 8414.59.60.90, 8415.90.80.45, 8418.99.80.05, 8418.99.80.50, 8418.99.80.60, 8419.90.10.00, 8422.90.06.40, 8473.30.20.00, 8473.30.51.00, 8479.90.85.00, 8486.90.00.00, 8487.90.00.80, 8503.00.95.20, 8508.70.00.00, 8515.90.20.00, 8516.90.50.00, 8516.90.80.50, 8517.70.00.00, 8529.90.73.00, 8529.90.97.60, 8536.90.80.85, 8538.10.00.00, 8543.90.88.80, 8708.29.50.60, 8708.80.65.90, 8803.30.00.60, 9013.90.50.00, 9013.90.90.00, 9401.90.50.81, 9403.90.10.40, 9403.90.10.50, 9403.90.10.85, 9403.90.25.40, 9403.90.25.80, 9403.90.40.05, 9403.90.40.10, 9403.90.40.60, 9403.90.50.05, 9403.90.50.10, 9403.90.50.80, 9403.90.60.05, 9403.90.60.10, 9403.90.60.80, 9403.90.70.05, 9403.90.70.10, 9403.90.70.80, 9403.90.80.10, 9403.90.80.15, 9403.90.80.20, 9403.90.80.41, 9403.90.80.51, 9403.90.80.61, 9506.11.40.80, 9506.51.40.00, 9506.51.60.00, 9506.59.40.40, 9506.70.20.90, 9506.91.00.10, 9506.91.00.20,

9506.91.00.30, 9506.99.05.10, 9506.99.05.20, 9506.99.05.30, 9506.99.15.00, 9506.99.20.00, 9506.99.25.80, 9506.99.28.00, 9506.99.55.00, 9506.99.60.80, 9507.30.20.00, 9507.30.40.00, 9507.30.60.00, 9507.90.60.00, and 9603.90.80.50.

The subject merchandise entered as parts of other aluminum products may be classifiable under the following additional Chapter 76 subheadings: 7610.10, 7610.90, 7615.19, 7615.20, and 7616.99, as well as under other HTSUS chapters. In addition, fin evaporator coils may be classifiable under HTSUS numbers: 8418.99.80.50 and 8418.99.80.60. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the *Orders* is dispositive.⁹

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.¹⁰ 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.¹¹ 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.¹²

Conversely, where the descriptions of the merchandise in the sources described in 19 CFR 351.225(k)(1) are not dispositive, the Department will consider the five additional factors set forth at 19 CFR 351.25(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 SCOPE REQUEST

Ferguson describes its air duct fixtures, specifically its, diffusers and registers, as follows:

... {C}omplete and finished aluminum diffusers, grilles, and registers used for directing the airflow of heating and cooling ducts and are manufactured in China... Each air duct register is made of several parts—including extruded aluminum alloy series 1050 and/or 6063, aluminum lamellar plate, aluminum rivets, brass rivets, cold-rolled steel (SPCC), structural steel (ABS), and carbon steel- that undergo extensive stamping and assembly via welding.¹³

⁹ See the *Orders*.

¹⁰ See *Walgreen Co. v. United States*, 620 F.3d 1350, 1357 (Fed. Cir. 2010).

¹¹ See 19 CFR 351.225(k)(1).

¹² See 19 CFR 351.225(d).

¹³ See Scope Request, at 3-5 and at Exhibit 1; Supplemental Response, at Exhibit 1. Also, as noted previously, in its June 8, 2016 submission (Second Supplemental Response), Ferguson indicated that it was removing the PSARGW

Ferguson indicates that its diffusers and registers are “used in conjunction with heating and cooling systems” to meet “specific customer and end-use requirements.”¹⁴

Additionally, Ferguson notes that each of its air duct diffusers and registers are imported under heading 7601.90.0080 as:

“aluminum structures (excluding prefabricated buildings of heading 9405) and parts of structures (for example, bridges and bridge-sections, towers, lattice masts, roofs, roofing frameworks, doors and windows and their frames and thresholds for doors, balustrades, pillars and columns); aluminum plates, rods, profiles, tubes, and the like, prepared for use in structures; other...”¹⁵

Ferguson states that the aluminum diffusers and registers direct “the airflow of heating and cooling ducts.”¹⁶ The diffusers and registers come in a variety of sizes and shapes depending on the intended location (*e.g.*, sidewall, ceilings) and application (*e.g.*, return, dampen, and diffuse). Some models include louvered faces (adjustable straight fins that direct airflow for more concentrated or more dispersed airflow), while other models’ fins are not adjustable. Some models include additional features such as fingertip levers for air volume control. Exhibit 2 of Ferguson’s Scope Inquiry contains product specifications for Ferguson’s air duct fixtures, sold under the brand ProSelectTM.¹⁷

1-,2-,3-,and 4-Way Curved Sidewall/Ceiling Register and Sidewall Register¹⁸

Ferguson describes its registers as a fully finished product, which works in conjunction with the larger heating/cooling system, containing faceplate blades made of extruded aluminum 6063. In addition, the register contains a faceplate frame made of aluminum lamellar 1050, a damper box, blades, and a lever made of SPCC steel, and brass rivets which permanently attach the frame to the damper box and the lever to the damper box.¹⁹ Finally, the registers are packaged with carbon screws used to attach the register to the user’s ceiling/wall surface and are not part of the finished product.²⁰

3-Way Ceiling Diffuser (PSA3W) and 4-way Ceiling Diffuser (PSA4W)

Ferguson describes its diffusers as a fully assembled finished product, which works in conjunction with the larger heating/cooling system, and contains the following extruded aluminum 60663 parts: a faceplate frame, faceplate blade, and damper box. In addition, the diffuser contains blades made of ABS, a lever made of SPCC Steel, and SS shrapnel

model (grilles) from its scope request.

¹⁴ *Id.*, at 4.

¹⁵ *See* Scope Request, at 2.

¹⁶ *Id.*

¹⁷ *See* Scope Request, at 2 and Exhibits 1-2.

¹⁸ Products PSA1CW, PSA2CW, PSA3CW, PSA4CW, and PSAASW, respectively.

¹⁹ *See* Second Supplemental Response, at 1-2.

²⁰ *See* Scope Request, at 4 and Exhibits 1-2.

and aluminum rivets which permanently attach the blades to the frame.²¹ Finally, the diffusers are packaged with carbon steel screws which are used to attach the diffuser to the user’s ceiling/wall surface and are not part of the finished product.²²

The product number, product description, inclusion of non-aluminum componentry, and HTSUS heading for each product is listed below.

<u>Product Number</u>	<u>Product Description</u>	<u>Non-Aluminum Parts</u>	<u>HTSUS</u>
PSA3W	3 WAY CEIL DIFF	Steel Blades and Levers	7610.90.0080
PSA4W	4 WAY CEIL DIFF	Steel Blades and Levers	7610.90.0080
PSA1CW	1 WAY CURV SIDWALL CEIL REG	Steel Blades and Levers, Brass Rivets	7610.90.0080
PSA2CW	2 WAY CURV SIDWALL CEIL REG	Steel Blades and Levers, Brass Rivets	7610.90.0080
PSA3CW	3 WAY CURV SIDWALL CEIL REG	Steel Blades and Levers, Brass Rivets	7610.90.0080
PSA4CW	4 WAY CURV SIDWALL CEIL REG	Steel Blades and Levers, Brass Rivets	7610.90.0080
PSAASW	SIDEWALL REG	Steel Blades and Levers, Brass Rivets	7610.90.0080

RELEVANT SCOPE DETERMINATIONS²³

A. Unger Pole Handles Scope Ruling²⁴

In the Unger Pole Handles Scope Ruling, the products at issue were several pole handles designed to work with a variety of cleaning/tool heads that are attached to the poles. In addition to aluminum tubes of various lengths and diameters, each pole handle incorporates a polypropylene hand grip, a polypropylene tool, and one of several accessory attachment heads that accept a variety of tools and attachments.²⁵ The Department found that the products at issue

²¹ See Second Supplemental Response, at 1-2.

²² See Scope Request, at 4 and Exhibits 1-2.

²³ See Memorandum from Michael J. Heaney to The File, “Antidumping and Countervailing Duty Orders on Aluminum Extrusions from the People’s Republic of China: Prior Scope Rulings Relevant to this Proceeding,” dated concurrently with this memorandum (Prior Scopes Memorandum).

²⁴ See Memorandum from James Terpstra to Christian Marsh, “Final Scope Ruling on Unger Enterprises Inc.’s Pole Handles,” dated April 22, 2015 (Unger Pole Handles Scope Ruling); see also Prior Scopes Memorandum at Attachment 1.

²⁵ See Unger Pole Handles Scope Ruling, at 5-6.

met the exclusion criteria for “finished goods.” The Department noted that the “finished merchandise” exclusion specifies that excluded merchandise contain aluminum extrusions “as parts.” Thus, to give effect to this “as parts” language, the Department found that to qualify for the finished merchandise exclusion, the product must contain both aluminum extrusions and some non-extruded aluminum components. Accordingly, noting that the products at issue contained non-extruded aluminum parts (which are more than mere fasteners), in addition to extruded aluminum components, the Department found that Unger’s pole handles were merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry, and thus, excluded by the finished merchandise exclusion.²⁶

B. SMVC Kits Scope Ruling²⁷

At issue in the scope ruling were certain side-mount valve controls (SMVC) kits used in pumping apparatuses that attached to fire engines. The requestor argued that an SMVC kit, as imported, contained all the components necessary to complete the product and that all SMVC components and hardware were fully fabricated and required no further finishing or fabrication prior to being assembled. On this basis, the requestor argued that the product in question met the exclusion criteria for “finished goods kits.”²⁸

In the scope ruling, the Department explained that, upon further reflection of the language in the scope of the *Orders*, it was revising the manner in which it determines whether a given product was “finished merchandise” or a “finished goods kit.” The Department explained that it identified a concern with its prior analysis, namely that it may lead to unreasonable results. The Department explained that an interpretation of “finished goods kit” which requires all parts to assemble the ultimate downstream product may lead to absurd results, particularly where the ultimate downstream product is, for example, a fire truck. The Department explained that such an interpretation may expand the scope of the *Orders*, which are intended to cover aluminum extrusions.²⁹

The Department determined that the scope, taken as a whole, indicates that “subassemblies” (*i.e.*, “partially assembled merchandise”) may be excluded from the scope provided that they enter the United States as “finished merchandise” or a “finished goods kits” and that the “subassemblies” require no further “finishing” or “fabrication.” Therefore, the Department analyzed whether the SMVC kits at issue constituted a subassembly that enters the United States as a “finished goods kit.” In order for the SMVC kit to be excluded from the scope of the *Orders*, the Department found that: (1) the SMVC kit must contain all of the parts necessary to assemble a complete SMVC; (2) all of the components and hardware of the SMVC kit must be fully fabricated and required no further finishing or fabrication prior to being assembled; and (3) once assembled, the

²⁶ *Id.*, at 12-13.

²⁷ See Memorandum from John Conniff and Eric B. Greynolds to Christian Marsh, entitled “Final Scope Ruling on Side Mount Valve Controls,” (October 26, 2012) (*SMVC Kits Scope Rulings*). See also Prior Scopes Memorandum at Attachment 2.

²⁸ See Memorandum from John Conniff and Eric B. Greynolds to Christian Marsh entitled, “Initiation and Preliminary Scope Ruling on Side Mount Valve Controls,” dated September 24, 2012 (*Preliminary SMVC Kits Scope Ruling*), at 2. See also Prior Scopes Memorandum at Attachment 3.

²⁹ *Id.*, at 7.

SMVC must be ready for use in conjunction with the downstream product upon installation.³⁰ Based on this analysis, the Department found that the SMVC kits at issue met the exclusion criteria for subassemblies that enter the United States as “finished goods kits.”³¹

C. Fan Blade Assemblies³²

The Department determined that the fan blade assemblies imported by SPX Cooling Technologies, Inc. (SPX) were excluded from the order under the finished merchandise exclusion because they are finished goods, fully assembled and ready for installation at the time of importation. In addition to fan blades that are manufactured from extruded aluminum, the Department noted that the fan blade assemblies imported by SPX include carbon and stainless steel, and glass filled polypropylene materials.³³ The Department further found that the fan blade assemblies imported by SPX contain parts that were fully and permanently assembled at the time of entry and require no further finishing or fabrication.³⁴ Relying on the *SMVC Kits Scope Ruling*, the Department determined that the fan blade assemblies, once assembled, created a finished good ready for installation into the larger cooling tower system.³⁵ The Department therefore determined that SPX’s fan blade assemblies are excluded from the scope of the orders under the finished merchandise exclusion.³⁶

ARGUMENTS FROM INTERESTED PARTIES

Ferguson argues that its air duct diffusers and registers are excluded from the scope of the *Orders* as finished merchandise. First, Ferguson claims its aluminum diffusers and registers are all permanently assembled and contain all of “the necessary components permanently assembled, completed, and ready for use as grilles, registers, dampers and diffusers for directing the airflow of heating and cooling ducts.”³⁷ Additionally, Ferguson argues that its aluminum diffusers and registers undergo “complex end processing” and that the finished shape of the merchandise is imparted to the merchandise from this end-process rather than from the aluminum extrusion process.³⁸ Ferguson further argues that language in the petition and prior scope rulings also indicate that its products should be excluded from the scope of the *Orders*. No other party submitted comments regarding Ferguson’s Scope Ruling Request.

Ferguson states that its air duct diffusers and registers are “finished goods produced using raw materials that include (but are not limited to) extruded aluminum to meet unique specifications for the direction of airflow when used in conjunction with heating and cooling systems.”³⁹ Ferguson argues that the non-extrusion componentry is significant, with only two pieces (the brass rivets and steel screws) functioning as fasteners.⁴⁰ Ferguson states that its air duct diffusers

³⁰ *Id.*

³¹ *Id.*, at 7-8.

³² See Memorandum from Christopher Hargett to Christian Marsh, “Final Scope Ruling on Fan Blade Assemblies dated July 25, 2014 (Fan Blade Assemblies). See also Prior Scopes Memorandum at Attachment 4.

³³ *Id.*, at 15.

³⁴ *Id.*, at 16.

³⁵ *Id.*

³⁶ *Id.*, at 19.

³⁷ *Id.*

³⁸ *Id.*, at 4-5.

³⁹ *Id.*

⁴⁰ See *Scope Request*, at 6; see also Second Supplemental Response, at 1.

and registers qualify as “finished merchandise” because these air duct fixtures “have passed through the last stage of manufacture, are in a final stage of importation because they are fully completed, and they are ready for packaging, shipment or sale.”⁴¹

Ferguson further argues that its air duct diffusers and registers “are subject to complex end forming processes (stamping and spot welding), which enables these parts to meet specific customer and end-use requirements and preference for heating and cooling systems.”⁴² Ferguson argues that it is these end-forming processes, rather than the aluminum-extruding process, which produces the finished shape or form of the air duct diffuser or register.⁴³

Thus, Ferguson claims that its air duct diffusers and registers undergo no further fabrication in the United States and are ready for surface mounting upon importation. Ferguson confirms that the merchandise enters into the United States in an assembled state, except for the steel screws, which are contained in the package and used to attach the assembled product to a wall or ceiling.⁴⁴ Ferguson also asserts that the description of merchandise in Exhibit 1 is all inclusive.⁴⁵

Ferguson further argues that the chart provided at exhibit I-5 of the Petition, confirms that the petitioner intended to exclude products such as Ferguson’s air duct diffusers and registers from the scope of the *Orders* because none of the categories of “covered products” describe Ferguson’s products.⁴⁶ Instead, Ferguson states, its diffusers and registers are “finished downstream products that simply *contain* an extrusion” (emphasis in original).⁴⁷

Last, Ferguson argues that, similar to water heater anodes, its diffusers and registers work in conjunction with another finished product, *i.e.* the heating/cooling systems.⁴⁸ Ferguson argues that its diffusers and registers are “finished merchandise” which “are not an integral components of the heating and cooling system they are used in because the heating and cooling system can heat or cool air with or without the air duct register.”⁴⁹ Thus, Ferguson argues that finding its registers and diffusers outside the scope of the *Orders* is consistent with prior scope rulings.

DEPARTMENT’S POSITION

Pursuant to 19 CFR 351.225(k)(1), the Department examined the language of the *Orders* and the description of the products contained in Ferguson’s Scope Ruling Request and supplemental questionnaire responses, as well as previous rulings made by the Department. We find that the description of the products, the scope language, and prior rulings are, together, dispositive as to whether the products at issue (air duct diffusers and registers) are subject merchandise, in

⁴¹ *Id.*, at 5.

⁴² *Id.* at 4-5.

⁴³ *Id.*

⁴⁴ See Supplemental Response, at 1; *see also* Second Supplemental Response, at 1.

⁴⁵ *Id.*

⁴⁶ See Scope Request at 5 citing Petition at 4-7.

⁴⁷ *Id.*, at 6.

⁴⁸ See Memorandum to Christian Marsh entitled “Final Scope Ruling on Aluminum Anodes for Water Heaters” dated October 17, 2012 (*Anodes Scope Ruling*). See also Prior Scopes Memorandum at Attachment 5.

⁴⁹ *Id.*, at 8.

accordance with 19 CFR 351.225(k)(1). Accordingly, for this determination, the Department finds it unnecessary to consider the additional factors specified in 19 CFR 351.225(k)(2).

General Scope Language Analysis

As an initial matter, we first examined whether the air duct diffusers and registers fall within the general scope language. The scope of the *Orders* includes, in relevant part, “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).” In addition, the scope provides that “{a}luminum 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 “with a variety of finishes...and types of fabrication” are also included.

As provided by Ferguson, each of the air duct diffusers and registers contain parts made from aluminum extrusions of series 6063 or 1050 (*i.e.*, for the diffusers: faceplate frames and faceplate blades, and damper box, all made of 6063 aluminum; for the registers: faceplate frames made of 1050 aluminum lamellar plate and 6063 aluminum faceplate blades).⁵⁰ Thus, we find that Ferguson’s air duct diffusers and registers contain aluminum extrusions, as parts, which satisfy the general scope language.

Further, we find that the incorporation of additional non-extruded aluminum components (*i.e.*, for the diffusers: ABS blades and SPCC levers; for the registers: SPCC damper box, SPCC blades, and SPCC lever),⁵¹ which are assembled with the aluminum extrusion components do not remove the aluminum extrusion components from the general scope language. As noted above:

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.

With respect to Ferguson’s air duct diffusers and registers, in accordance with the scope, we consider that the aluminum extrusion components are attached with non-aluminum extrusion components to form subassemblies which work in conjunction with a downstream product, *i.e.*, the entire heating/cooling system.⁵² Furthermore, in accordance with the scope, we view the subassembly as a whole to be subject to the general scope language; however, only the aluminum extrusion components are considered subject merchandise for purposes of assessment of duties. This is consistent with documents from the investigation in which the petitioner made it clear that it intended CBP only to assess duties on the aluminum extrusion components of such products, as long as “importers of such products” could “separately identify, classify, and value the subject and non-subject components at the time of entry.”⁵³

⁵⁰ See Scope Request at Exhibit 1.

⁵¹ *Id.*

⁵² *Id.*, at 8.

⁵³ See “Petitioner’s Response to the Department’s Inquiry Regarding the Subassemblies and Unfinished Kits,” dated March 9, 2011, which is attached to the Prior Scopes Memo of this proceeding at Attachment 6.

Additionally, although the air duct diffusers and registers are identified and referenced by their end use, regardless of whether they are ready for use at the time of importation, this does not remove the products from the scope of the *Orders*. The language of the scope explains that “subject extrusions may be identified with reference to their end use . . .” and that products “are subject merchandise if they otherwise meet the scope definition, regardless of whether they are ready for use at the time of importation.”

Finally, we note that Ferguson does not dispute that its air duct diffusers and registers are within the general scope language.⁵⁴ Thus, in light of the above, we find that the air duct diffusers and registers are within the general scope language, and are subject to the *Orders*, unless an exclusion applies, which we discuss below.

Finished Merchandise Exclusion Analysis

The scope of the *Orders* excludes “finished merchandise containing aluminum extrusions *as parts* that are fully and permanently assembled and completed at the time of entry...” (emphasis added). Thus, the scope language describes excluded finished merchandise as “containing aluminum extrusions *as parts*...” As previously explained in the Unger Pole Handles Scope Ruling, we take this language to mean that the excluded “finished merchandise” must contain aluminum extrusions “as parts” plus an additional non-extruded aluminum component.⁵⁵ Otherwise, this specific language (*i.e.*, “as parts”) would be read out of the scope, resulting in the different condition “containing aluminum extrusions that are fully and permanently assembled and completed at the time of entry.” Thus, to give effect to this “as parts” language, we find that to qualify for the finished merchandise exclusion the product must contain aluminum extrusions as parts and, therefore, must include some non-extruded aluminum component.

Moreover, we find that the term “as parts” in the scope exclusion necessarily requires a plural construction, rather than encompassing both the singular “part” and plural “parts,” given the context provided by other terms in the exclusion, such as “containing” and “assembled,” as well as the examples of excluded finished merchandise, all of which contain at least an aluminum extrusion component and non-extruded aluminum component. This is further bolstered by the Court of Appeals for the Federal Circuit’s (CAFC) analysis in *Meridian Products II*, in which, in reviewing the Department’s interpretation of the companion finished goods kit exclusion, the CAFC found that “the *Orders* thus contemplate { } a basic divide between products whose components relevant to the scope inquiry consist of non-aluminum extrusion parts, which are excluded from the scope of the *Orders*, and products whose components relevant to the scope inquiry contain only aluminum extrusion parts, which are not excluded.”⁵⁶

We also find that the non-extruded aluminum component must go beyond a fastener to qualify

⁵⁴ See Scope Request at 4.

⁵⁵ See Unger Pole Handles Scope Ruling, at 12-13.

⁵⁶ *Meridian Products LLC v United States*, 851 F.3d 1375 (CAFC 2017) (*Meridian Products II*). In *Meridian Products II*, the CAFC reversed the Court of International Trade (CIT’s) decision in *Meridian Products LLC v. United States*, 145 F. Supp. 3d 1329 (CIT 2016) (*Meridian Products*), and agreed with the Department that Meridian’s refrigerator/freezer trim kits were within the scope of the *Orders* because they consisted of aluminum extrusions and mere fasteners.

for the finished merchandise exclusion. Aside from the finished merchandise exclusion, the scope language also excludes: “{F}inished 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...” Thus, we find that the difference between “finished merchandise” and “finished goods kits,” as described in the scope, is that the former is assembled upon entry while the latter is unassembled upon entry. The scope goes on to say that “{a}n 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.” Thus, even if a product initially satisfies the finished goods kit exclusion, the exception language provides that the product ultimately will not qualify for the exclusion if the product does not contain additional non-aluminum extrusion components beyond mere fasteners. The CAFC has affirmed this interpretation of the finished goods kit exclusion.⁵⁷

In light of this, we find unconvincing the notion that an unassembled product in kit-form that consists solely of extruded aluminum, save for fasteners, would fall within the scope of the *Orders* while the identical product, entering the United States as an assembled good, would fall outside the scope of the *Orders*. Accordingly, to read the scope to apply in a consistent manner to a given product – whether the product enters assembled as finished merchandise or unassembled as a finished goods kit – we apply the fasteners language when considering whether a product constitutes finished merchandise that is excluded from the *Orders*.

As discussed above, the record reflects that the air duct diffusers and registers contain aluminum extrusions as parts. We further find that the non-aluminum extrusion components go beyond mere fasteners. For instance, we find that Ferguson has demonstrated that the ABS blades and SPCC levers in the diffusers, and the SPCC damper box, SPCC blades, and SPCC lever in the registers, do not perform a fastening function, as they direct airflow and control air levels.⁵⁸

The finished merchandise exclusion also requires that the product at issue be “fully and permanently assembled and completed at the time of entry.” We find that Ferguson has demonstrated that the air duct diffusers and registers are fully and permanently assembled and completed at the time of entry.⁵⁹ Therefore, we find that Ferguson’s aluminum diffusers and registers meet the requirement in the scope definition that they enter into the United States as fully and permanently assembled and completed products. Moreover, we note that Ferguson’s air duct registers and diffusers work in conjunction with heating and cooling systems to direct airflow which is not an essential function of the heating and cooling system.⁶⁰ As such, we find that Ferguson’s air duct registers serve as a subassembly of the cooling or heating system rather than as an integral portion of the heating or cooling system itself.

⁵⁷ See *Meridian Products II*, 851 F.3d 1375.

⁵⁸ See Scope Request, at 4-5 and Exhibit 1; Supplemental Response, at 1; and Second Supplemental Response, at 1-3.

⁵⁹ See Scope Request, at 4-5 and Supplemental Response, at 1.

⁶⁰ *Id.*, at 7-8.

Furthermore, the Department revised its analysis of the finished merchandise and finished goods kits exclusions to include subassemblies of ultimate downstream products or systems provided that they enter the United States as fully and permanently assembled and completed at the time of entry and ready for installation in the downstream product with no further finishing or fabrication.⁶¹

As discussed above, Ferguson’s diffusers and registers enter as fully-assembled merchandise that are permanently assembled and completed at the time of entry, and are ready to be installed into a downstream product. Namely, the diffusers and registers are ready for surface mounting and use in conjunction with heating and cooling systems upon importation.⁶²

In summary, as explained above, we determine that Ferguson’s air duct diffusers and registers contain non-extruded aluminum components beyond mere fasteners, and are fully and permanently assembled and completed at the time of entry, ready for use in conjunction with a larger system. As such, we find these products meet the definition of the finished merchandise exclusion and, therefore, are excluded from the scope of the *Orders* as “finished merchandise.”

RECOMMENDATION

For the reasons discussed above, and in accordance with 19 CFR 351.225(d) and 19 CFR 351.225(k)(1), we recommend finding that Ferguson’s air duct diffusers and registers are finished merchandise and, thus, not subject to the scope of the *Orders*. 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(d).

Agree

Disagree

5/9/2017

X



Signed by: GARY TAVERMAN

Gary Taverman
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

⁶¹ See *SMVC Kits Scope Ruling*; *Fan Blade Assemblies Scope Ruling*.

⁶² See *Scope Request*, at 4.