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Scope Ruling: AEFTC 6xxx Series Pallets

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AD/CVD Operations, OVI: SHoefke

June 13, 2017

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

THROUGH: Scot Fullerton
Director
Antidumping and Countervailing Duty Operations, Office VI

FROM: Scott Hoefke
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 Certain Aluminum Pallets

SUMMARY

On March 3, 2017, the Aluminum Extrusion Fair Trade Committee (the petitioner) filed a scope ruling request asking the Department of Commerce (Department) to determine that certain aluminum extrusions from the People's Republic of China (PRC) made of series 6xxx aluminum alloy,¹ which are cut-to-length and welded together in the form of a pallet, regardless of producer or exporter, are subject to the antidumping duty (AD) and countervailing duty (CVD) orders on aluminum extrusions from the PRC.² Based on the Scope Ruling Request and additional record evidence, the Department determines that certain aluminum extrusions from the PRC made of series 6xxx aluminum alloy which are cut-to-length and welded together in the form of a pallet, regardless of producer or exporter, are included within the scope of the *Orders*.

¹ "6xxx" refers to alloy series designations published by The Aluminum Association commencing with the number "6."

² See Petitioner Letter re: Aluminum Extrusions from the People's Republic of China: Ruling Request for 6xxx Series Aluminum Pallets, dated March 3, 2017 (Scope Ruling Request); *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*).

BACKGROUND

On March 3, 2017, the petitioner requested that the Department determine that certain aluminum pallets are included within the scope of the *Orders*.³ On March 9, 2017, the petitioner filed supplemental factual information on China Zhongwang Holdings Limited and its affiliates⁴ (collectively, Zhongwang) pallets.⁵ On March 15, 2017, the petitioner filed additional supplemental factual information and comments.⁶ On March 28, 2017, Perfectus Aluminum, Inc. (Perfectus) filed comments on the scope ruling request.⁷ On March 29, 2017, the petitioner filed rebuttal comments to Perfectus' comments.⁸ On April 19, 2017, Zhongwang filed comments on the scope ruling request.⁹ On April 25, 2017, the Department extended the deadline for this scope ruling by 45 days, until June 13, 2017.¹⁰ On May 11, 2017, the Department held an *ex parte* meeting with the petitioner at its request.¹¹ On May 15, 2017, the Department placed on the record a Wall Street Journal (WSJ) article regarding Zhongwang's aluminum stockpile which was published on May 11, 2017.¹² On May 17, 2017, the Department received comments from the petitioner and Perfectus regarding the WSJ article that the Department placed on the record.¹³

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

³ See Scope Ruling Request.

⁴ The petitioner identified the following known affiliates: Pencheng Aluminum Enterprise Inc. USA; Zhongwang China Investment HK Ltd.; Lianoning Zhongwang Group Co., Ltd.; Liaoning Zhongwang Import and Export Trade Co., Ltd.; Dalian Liwan Trade Co., Ltd.; Yingkou Qianxiang Trading Co., Ltd.; Tianjin Boruxin Trading Co., Ltd.; Dragonluxe Limited; Global Aluminum (USA) Inc.; Aluminum Shapes, LLC; Perfectus Aluminum Inc.; and Perfectus Aluminum Acquisitions LLC. See Scope Ruling Request, at 3-4.

⁵ See Petitioner Letter re: Aluminum Extrusions from the People's Republic of China: Supplement to Scope Ruling Request for 6xxx Series Aluminum Pallets, dated March 9, 2017 (First Scope Supplemental).

⁶ See Petitioner Letter re: Aluminum Extrusions from the People's Republic of China: Supplement to Scope Ruling Request for 6xxx Series Aluminum Pallets and Opposition to Perfectus EOA and APO Application, dated March 15, 2017 (Second Scope Supplemental). The Department's deadline for issuing its scope ruling was set to 45 days after Petitioner's submission of supplemental new factual information.

⁷ See Perfectus Letter re: Aluminum Extrusions from the People's Republic of China; Request that the Department Decline to Initiate a Scope Inquiry as to 6xxx Series Aluminum Pallets, dated March 28, 2017 (Perfectus Comments).

⁸ See Petitioner Letter re: Aluminum Extrusions from the People's republic of China: Response to Perfectus' March 28, 2017 Submission, dated March 29, 2017 (Petitioner's Perfectus Rebuttal Comments).

⁹ See Zhongwang Letter re: Aluminum Extrusions from the People's Republic of China: Response to Scope Ruling Request for 6xxx Series Aluminum Pallets, dated April 19, 2017 (Zhongwang Comments).

¹⁰ See Department Letter re: Aluminum Extrusions from the People's Republic of China (PRC): Extension of Deadline for the Final Scope Ruling, dated April 25, 2017.

¹¹ See Memorandum, "Ex Parte Meeting with Petitioner," dated May 15, 2017.

¹² *Id.*

¹³ See Petitioner Letter re: Aluminum Extrusions from the People's Republic of China: Comments in Response to the Department's May 15, 2017 Memorandum, dated May 17, 2017 (Petitioner's WSJ Comments); see also Perfectus Letter re: Aluminum Extrusions from the People's Republic of China; Request that the Department Decline to Initiate a Scope Inquiry as to 6xxx Series Aluminum Pallets, dated May 17, 2017 (Perfectus WSJ Comments).

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 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 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 (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 these orders is dispositive.

LEGAL FRAMEWORK

When a request for a scope ruling is filed, the Department examines the scope language of the order at issue and the description of the product contained in the scope ruling request.¹⁴ 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.¹⁵ 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.¹⁶

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 351.225(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 MERCHANDISE SUBJECT TO THIS SCOPE REQUEST

The merchandise subject to the Scope Ruling Request is extruded aluminum profiles made of series 6xxx aluminum alloy, which are cut-to-length and welded together in the form of a pallet, from the PRC, regardless of producer or exporter. The merchandise does not contain any non-extruded aluminum component.¹⁷

¹⁴ See *Walgreen Co. v. United States*, 620 F.3d 1350, 1357 (Fed. Cir. 2010).

¹⁵ See 19 CFR 351.225(k)(1).

¹⁶ See 19 CFR 351.225(d).

¹⁷ See Scope Ruling Request, at 5, 11.

RELEVANT SCOPE DETERMINATIONS¹⁸

Geodesic Domes Kits Scope Ruling¹⁹

In the Geodesic Domes Kits Scope Ruling, J.A. Hancock Co., Inc. (J.A. Hancock), an importer of geodesic structure kits (a set of aluminum poles and assembly hardware that can be assembled into landscaping structures or climbing structures for children), argued that its kits contained all parts necessary to fully assemble a final geodesic structure. J.A. Hancock further noted that the components in its kits required no further fabrication or additional parts. The Department determined that the geodesic structure kits met the initial requirements for exclusion as a “finished goods kit,” as they are a packaged combination of parts containing all necessary components to fully assemble a final finished good.²⁰ However, the Department noted that the scope of the *Orders* states that an “imported product will not be considered a ‘finished goods kit’ ...merely by including fasteners such as screws, bolts, etc. in the packaging with an aluminum extrusions product.”²¹ As J.A. Hancock’s kits only consisted of extruded aluminum poles and fasteners, the Department found that the exception to the “finished goods kit” exclusion applies. Therefore, the Department determined J.A. Hancock’s kits to not be excluded finished goods kits, and hence covered by the scope of the *Orders*.

Cutting and Marking Edges Scope Ruling²²

In the Cutting and Marking Edges Scope Ruling, the products at issue were finished cutting and marking straight edges suitable for immediate use in drafting and cutting applications without further manufacturing, assembly, mounting, or combination with any other component, apparatus, or fixture.²³ Because the products at issue consisted of a single hollow extrusion made of aluminum alloy, the Department found that the merchandise was covered by the language of the scope, was not covered by the exclusion for “finished merchandise,” nor any other exclusion, and was therefore covered.²⁴

¹⁸ See Memorandum, “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 (Relevant Scope Rulings Memorandum).

¹⁹ See Memorandum, “Final Scope Ruling on J.A. Hancock, Inc.’s Geodesic Structures,” dated July 17, 2012 (Geodesic Domes Kits Scope Ruling); see also Relevant Scope Rulings Memorandum, at Attachment 1.

²⁰ See Geodesic Domes Kits Scope Ruling, at 7.

²¹ *Id.*

²² See Memorandum, “Aluminum Extrusions from the People’s Republic of China: Final Scope Ruling on Aluminum Rails for Cutting and Marking Edges,” dated November 23, 2012 (Cutting and Marking Edges Scope Ruling) at 2; see also Relevant Scope Rulings Memorandum, at Attachment 2.

²³ See Cutting and Marking Edges Scope Ruling, at 2.

²⁴ *Id.*, at 10-11. The scope ruling was later appealed to the Court of International Trade (CIT) and subsequently dismissed. See Order of Dismissal in *Plasticoid Manufacturing Inc. v. United States*, Ct. No. 12-00407 (CIT March 25, 2015).

Delphi Core Heater Tubes²⁵

In the Delphi Core Heater Tubes Scope Ruling, the products at issue were “core tubes” for automotive heating and cooling (HVAC) systems, comprised of extruded hollow, tubular parts fabricated from aluminum extrusions that are bent and end-formed based on customer designs.²⁶ In other words, the products in question were comprised entirely of extruded aluminum. The Department determined that this product did not meet the requirements of the exclusions for “finished merchandise” or “finished goods kits” because it is comprised solely of extruded aluminum parts and fasteners. The Department thus found that the products at issue did not meet the Department’s first test for determining whether a good constitutes a finished good or finished good kit, *i.e.*, whether the product contains parts other than aluminum extrusions and mere fasteners.²⁷

TSS Wind Sign Frames Scope Ruling²⁸

At issue in this ruling were certain Wind Sign Frames that were designed to display or incorporate customizable materials such as graphics or retail advertisements.²⁹ The Wind Sign Frames consisted of extruded aluminum parts assembled with other non-extruded aluminum components, such as a plastic insert, galvanized steel corner supports, and flexible, heavy steel springs.³⁰ In this ruling, the Department determined that these non-extruded aluminum components go beyond mere fasteners.³¹ Also, the Department found that the product at issue was fully and permanently assembled and completed at the time of entry. Lastly, the Department found that the Wind Sign Frames can be used after importation with interchangeable bases made of plastic or steel, chosen by the end user. Similar to prior scope rulings, the Department found that it was unreasonable to require the TSS Wind Sign Frames to be imported with interchangeable bases in order to meet the provisions of the finished goods exclusion set forth in the scope description.³² The Department concluded that TSS, Inc.’s Wind Sign Frames satisfied the exclusion for “finished merchandise” and thus, were excluded from the scope of the *Orders*.³³

1xxx Series Pallets Scope Ruling³⁴

In the 1xxx Series Pallets Scope Ruling, the products at issue were extruded aluminum profiles made of 1xxx Series aluminum alloy, which were cut-to-length and welded together in the form

²⁵ See Memorandum, “Final Scope Ruling on Delphi Core Heater Tubes,” dated October 14, 2014 (Delphi Core Heater Tubes Scope Ruling), *see also* Relevant Scope Ruling Memorandum, at Attachment 3.

²⁶ *Id.*, at 4-5.

²⁷ *Id.*, at 10-11.

²⁸ See Memorandum, “Antidumping and Countervailing Duty Orders on Aluminum Extrusions from the People’s Republic of China: Final Scope Ruling on TSS, Inc.’s Wind Sign Frames,” dated June 15, 2015 (Wind Sign Frames Scope Ruling), *see also* Relevant Scope Rulings Memorandum, at Attachment 4.

²⁹ *Id.*, at 5.

³⁰ *Id.*, at 12.

³¹ *Id.*, at 12-13.

³² *Id.*, at 13.

³³ *Id.*

³⁴ See Memorandum, “Antidumping and Countervailing Duty Orders on Aluminum Extrusions from the People’s Republic of China: Final Scope Ruling on Certain Aluminum Pallets,” dated December 7, 2016 (1xxx Series Pallets Scope Ruling); *see also* Relevant Scope Rulings Memorandum, at Attachment 5.

of a pallet, from the PRC, regardless of producer or exporter.³⁵ The merchandise did not contain any non-extruded aluminum component.³⁶ The Department determined that this product did not meet the requirements of the exclusion for “finished merchandise” because it was composed entirely of aluminum extrusions, in this case extruded aluminum profiles that were welded together.³⁷

ARGUMENTS FROM INTERESTED PARTIES

The Petitioner’s Comments

The petitioner argues that “the scope of the *Orders* covers aluminum extrusions made from 1xxx, 3xxx, and 6xxx series aluminum alloys.”³⁸ For the same reasons as expressed in the 1xxx Series Pallets Scope Ruling, the petitioner explains that the plain language of the *Orders* cover series 6xxx pallets because they are “nothing more than aluminum extrusions produced from subject 6xxx series aluminum alloy with no non-aluminum materials or components, cut-to-length, and welded together.”³⁹ The petitioner also argues that the fact that the series 6xxx aluminum pallets can be identified and referenced by their alleged end use does not remove the product from the scope of the *Orders*.⁴⁰ The petitioner asserts that “the scope expressly covers the production processes that the pallets undergo.”⁴¹

The petitioner argues that the series 6xxx aluminum pallets do not qualify for the finished merchandise exclusion.⁴² The petitioner notes that the Department has recently found that products made entirely of extruded aluminum with no non-extruded aluminum components – which the petitioner contends are exactly like the products at issue – are not considered finished merchandise.⁴³ The petitioner further states that the series 6xxx aluminum pallets lack the necessary size, thickness, weight, and other requisite physical characteristics to perform the key functions of pallets – *i.e.*, to bear the loads required of pallets or to function with forklifts.⁴⁴ Therefore, the petitioner avers, the product at issue “cannot be used as pallets” and does not qualify for the finished merchandise exclusion.⁴⁵

The petitioner cites to a September 15, 2016, Wall Street Journal article, which concerned Zhongwang’s stockpile of aluminum pallets.⁴⁶ The petitioner argues that the quote in the article from Mr. Goehring, a former manager of the U.S. company Aluminum Shapes that stored subject merchandise, underpins its assertion that the series 6xxx aluminum pallets are not actual pallets because the products at issue are “too heavy” (*e.g.*, 150-250 pounds) to be true pallets, which are typically 50 pounds or less.⁴⁷ The petitioner asserts that shipments of merchandise which are this

³⁵ *Id.*, at 5.

³⁶ *Id.*

³⁷ *Id.*, at 10-11.

³⁸ *See* Scope Ruling Request, at 11.

³⁹ *Id.*, at 11 and Exhibit 4, Declaration of Jeff Henderson.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*, at 12.

⁴³ *Id.*, at 12, *citing* 1xxx Series Pallets Scope Ruling.

⁴⁴ *Id.*, at 12-13 and Exhibits 9-10.

⁴⁵ *Id.*, at 13.

⁴⁶ *Id.*, at 14.

⁴⁷ *Id.*, at 14 and Exhibit 11, WSJ article, dated September 15, 2016.

heavy are apparently “useful only as a way of getting a big mass of aluminum past Customs.”⁴⁸ The petitioner states the fact that the series 6xxx aluminum pallets are three times heavier than actual commercial pallets further demonstrates that the “pallets” entered by Zhongwang are not, in fact, pallets.

The petitioner further contends that the 6xxx series aluminum extrusions could not, and were never intended to, be used as pallets. The petitioner supports this contention with “photographic evidence from 2015” showing “sizable extrusion stockpiles” at Zhongwang’s affiliates’ (e.g., Perfectus) warehouses, with “some of the aluminum being at least five years old.”⁴⁹ The petitioner also notes that the Wall Street Journal published an article on Zhongwang’s stockpiling of a similar “pallet” at a Mexican affiliate, which, in turn, shipped the aluminum “pallets” to other affiliates.⁵⁰ The petitioner argues that Zhongwang’s affiliates’ decision to transport and remove its significant stockpile of “pallets” is a further indication that Zhongwang is acting to evade responsibility for its improperly entered imports. Finally, the petitioner argues that it is clear that the series 6xxx aluminum pallets imported by Zhongwang and U.S. affiliates (i.e., Aluminum Shapes) entered to evade duties.⁵¹ Thus, the petitioner argues, this merchandise fails to satisfy the “finished merchandise” exclusion in the scope.⁵² In sum, the petitioner claims that the series 6xxx aluminum pallets are expressly covered under the plain language of the scope and do not qualify for the “finished merchandise exclusion” in the scope.

Perfectus’ Comments

Perfectus avers that the petitioner failed to provide sufficient evidence of the existence of 6xxx pallets in its scope request.⁵³ Perfectus argues that the petitioner’s request is facially deficient to make a scope determination because no determination can be made on an allegation of a fake product.⁵⁴ Perfectus argues that the facts in the instant case parallel the 1xxx Series Pallets Scope Ruling, wherein the Department ruled there was insufficient evidence to make a ruling on 6xxx series pallets.⁵⁵ Perfectus also argues that the petitioner did not provide definitive evidence that the fake pallets are currently in production in China; rather, Perfectus asserts, the petitioner relied on hearsay statements and articles that have since been debunked.⁵⁶

Perfectus further argues that the petitioner’s conspiracy theory is nonsensical. Perfectus notes that the petitioner asserts that the pallets scheme began in 2007, but the *Orders* were not issued until 2011.⁵⁷ Because Perfectus began shipping the merchandise four years prior to the establishment of the *Orders*, Perfectus states that “pallets created years before the AD/CVD orders could have not been created with the intent of avoiding non-existent orders.”⁵⁸ Perfectus further argues that the petitioner’s theory starts too soon and it ends too early, with the last

⁴⁸ *Id.*, at 14-15 and Exhibit 11.

⁴⁹ *Id.*, at 16 and Exhibit 2A, Dupre Report, China Zhongwang Holdings Ltd. at 27.

⁵⁰ *Id.*, at 16 and Exhibit 7, WSJ article, dated September 13, 2016.

⁵¹ *Id.*, at 16-17.

⁵² *Id.*, at 15.

⁵³ See Perfectus Comments, at 2.

⁵⁴ *Id.*, at 1-2.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*, at 3.

⁵⁸ *Id.*

shipments of supposedly “fake pallets” arriving in 2015.⁵⁹ Perfectus avers that, by the petitioner’s own admission, the supposed “fake pallets” are currently not in production and do not present a current competitive threat to the U.S. producers of aluminum extrusions or pallets because the 6xxx series pallets are, by the petitioner’s own admission, “destined for export from the United States.”⁶⁰

Finally, Perfectus argues that administrative considerations further warrant denial of the petitioner’s request. Perfectus reiterates that, similar to the 1xxx Series Pallets Scope Ruling, the petitioner provided no evidence of the existence of 6xxx series pallets.⁶¹ Reiterating its contention that the petitioner’s request is based on conjecture and stories, Perfectus states that the Department does not rule on “hypothetical products,” as the Department expressed in the 1xxx Series Pallets Scope Ruling.⁶² Perfectus contends that the petitioner has failed to demonstrate whether any of its members are producers of 6xxx series aluminum pallets.⁶³ In addition, Perfectus argues that an affirmative ruling would impose administrative burdens on the U.S. International Trade Commission (ITC), because it would impact the ITC’s injury analysis.⁶⁴ In sum, Perfectus claims that the petitioner’s scope ruling request should be denied, because it is not supported by evidence showing that there are current imports of genuine 6xxx series aluminum pallets from China.

The Petitioner’s Rebuttal Comments

The petitioner rebuts that Perfectus’ arguments are irrelevant and inapposite. The petitioner argues that the Department previously found that the fake pallets made from 1xxx series aluminum alloy imported by Zhongwang are within the scope of the *Orders*.⁶⁵ The petitioner states that, at the time of the 1xxx Series Pallets Scope Ruling, the petitioner had evidence of Zhongwang’s alleged pallets being made of 1xxx series aluminum alloy.⁶⁶ The petitioner avers that it presented evidence in the current scope ruling request that the same fake pallets that the Department reviewed in the 1xxx series pallets scope proceeding are also constructed of 6xxx series aluminum alloy.⁶⁷

The petitioner further argues that Perfectus’ assertions represent a complete misunderstanding of the Tariff Act of 1930, as amended (the Act), the Department’s regulations, and the Department’s practice.⁶⁸ The petitioner counters Perfectus’ claims that evidence either of current production or exportation from China of these pallets is necessary for a scope ruling request. The petitioner further argues that Zhongwang’s pallets, which were imported by Perfectus and remained for years in Perfectus’ warehouses, were seized by Customs and Border Protection (CBP) when Perfectus attempted to re-export these pallets before duties could be properly assessed.⁶⁹ The petitioner notes that the Department’s practice does not allow for advisory

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*, at 3-4.

⁶² *Id.*, at 4.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *See* Petitioner’s Perfectus Rebuttal Comments, at 2.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*, at 3.

⁶⁹ *Id.*

opinions on scope inquiries, but contends that these pallets are precisely what the Department's regulations pertaining to scope rulings are intended to address.⁷⁰ Contrary to Perfectus' claim, the petitioner points out that it provided evidence showing that imports of Zhongwang's fake pallets to its U.S. affiliates began entering the United States in 2011, shortly after duties were imposed.⁷¹

The petitioner rebuts Perfectus' claim that it did not provide evidence concerning Zhongwang's imports of fake pallets.⁷² The petitioner contends that it presented evidence relating to the average weight of real aluminum pallets in its ruling request.⁷³ The petitioner further contends that it is also presented evidence of the weight of Zhongwang's fake pallets.⁷⁴ The petitioner asserts that Perfectus' entry documentation submitted with its APO application corroborates the petitioner's evidence and supports the conclusion that the majority of Zhongwang's fake pallets are well over the average weight of legitimate aluminum pallets.⁷⁵

The petitioner further argues that it properly submitted its scope ruling request, and that its request does not relate to an anti-circumvention proceeding under section 781(d) of the Act.⁷⁶ The petitioner asserts that section 781(d) assesses whether merchandise developed subsequent to an investigation can be included within the scope of an order, while a scope inquiry, pursuant to 19 CFR 351.225(k), assesses whether the merchandise is within the literal scope of the *Orders*.⁷⁷ The petitioner avers that Perfectus' claim regarding the U.S. ITC injury determination in the original antidumping and countervailing duty investigations for aluminum extrusions from China are simply irrelevant.⁷⁸

Zhongwang's Comments

Zhongwang argues that its pallets are clearly "finished merchandise" that are excluded from the scope of *Orders*.⁷⁹ Zhongwang denies the petitioner's allegations that Zhongwang's 6xxx series aluminum pallets should be included in the scope of the *Order* and requests the Department to reject the petitioner's scope request.⁸⁰

Perfectus' May 11, 2017, WSJ Article Comments

Perfectus argues that the petitioner's submission of the WSJ article is further evidence that petitioner is using antidumping and countervailing proceedings to conduct a smear campaign.⁸¹ Perfectus further argues that, based on the recent CIT decision (*United Steel and Fasteners, Inc.*

⁷⁰ *Id.*

⁷¹ *Id.*, at 3-4; *see also* Petitioner Letter re: Aluminum Extrusions from the People's Republic of China: Supplement to Scope Ruling Request for 6xxx Series Aluminum Pallets and Opposition to Perfectus EOA and APO Application at 3, dated March 15, 2017; Scope Ruling Request, at Exhibit 3.

⁷² *See* Petitioner's Perfectus Rebuttal Comments, at 3-4.

⁷³ *Id.*, at 4.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*, at 4-5.

⁷⁸ *Id.*, at 5.

⁷⁹ *See* Zhongwang Comments, at 2.

⁸⁰ *Id.*

⁸¹ *See* Perfectus' WSJ Comments.

v. United States), the Department cannot retroactively assess duties on merchandise imported prior to the issuance of the scope determination; therefore, the ongoing scope inquiry will have no impact on the merchandise that is the subject of the May 11, 2017, WSJ article.⁸² Perfectus reiterated arguments raised in its March 28, 2017, submission (*see* Perfectus Comments) and further argued that the May 11, 2017, WSJ article has no impact on its position.⁸³

Petitioner's May 11, 2017 WSJ Article Comments

The petitioner states that the May 11, 2017, WSJ article corroborates its evidence that it has submitted in this proceeding.⁸⁴ The petitioner also states that the May 11, 2017, WSJ article reveals that Zhongwang has been using its global network of affiliates to move giant stockpiles aluminum to evade U.S. duties and exploit Chinese VAT rebates.⁸⁵ The petitioner further asserts that the May 11, 2017, WSJ article provides information on how the scheme was financially possible through funding from state-owned enterprises.⁸⁶

The petitioner argues that the pallets do not qualify for the “finished merchandise” exclusion as Perfectus claims, and that substantial evidence supports the petitioner’s position.⁸⁷ The petitioner also points out that Perfectus made a belated appearance in this proceeding and has not provided evidence contrary to what the petitioner has placed on the record.⁸⁸ The petitioner disagrees with Perfectus’ argument that the petitioner is using the antidumping and countervailing proceedings to conduct a smear campaign, because Zhongwang and its affiliates are being investigated by three U.S. agencies.⁸⁹ The petitioner also argues that the CIT decision relied upon by Perfectus, *United Steel and Fasteners, Inc. v. United States*, addresses the date for the suspension of liquidation following a final scope determination, not whether a scope ruling can be obtained on products that have clearly been produced and have entered the United States.⁹⁰ Finally, the petitioner argues that it has presented substantial evidence that 6xxx series aluminum pallets are in existence.⁹¹

DEPARTMENT’S POSITION

The Department examined the language of the *Orders*, the description of the product contained in the petitioner’s Scope Ruling Request, prior scope rulings, and the Petitions. We find that the description of the product, the scope language, and prior rulings are, together, dispositive as to whether the product at issue is subject merchandise, in 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).

As noted above, the scope of the *Orders* includes “aluminum extrusions which are shapes and forms, produced by an extrusion process, made from aluminum alloys having metallic elements

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *See* Petitioner’s May 11, 2017, WSJ Comments, at 2.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*, at 3-4.

⁸⁸ *Id.*

⁸⁹ *Id.*, at 5.

⁹⁰ *Id.*

⁹¹ *Id.*, at 6.

corresponding to the alloy series designations published by The Aluminum Association commencing with the numbers 1, 3, and 6{.}”⁹² In addition, subject “{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{,}”⁹³ and “may also be fabricated, *i.e.*, prepared for assembly{,}... {which} include{s}, but {is} not limited to, extrusions that are cut-to-length, machined, drilled, punched, notched, bent, stretched, knurled, swedged, mitered, chamfered, threaded, and spun.”⁹⁴ Finally: “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.”⁹⁵

We find that the products at issue satisfy the definition of the scope of the *Orders* because they are extruded aluminum profiles consisting of series 6xxx aluminum alloy which are cut-to-length and welded together. Furthermore, although the products are identified and referenced by their alleged 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.”⁹⁶ Thus, we agree with the petitioner that the products at issue are included in the *Orders* based on the plain language of the scope. This is consistent with our findings in the 1xxx Series Pallets Scope Ruling, which is virtually identical to the product at issue in this scope ruling, with the exception of the series of aluminum alloy.

In addition, we agree with the petitioner that the products at issue do not qualify for the finished merchandise exclusion, which excludes “finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry.”⁹⁷ We find that the scope language describes excluded finished merchandise as “containing aluminum extrusions *as parts*...” As previously explained in the Wind Sign Frames Scope Ruling, this language means that the excluded “finished merchandise” must contain both aluminum extrusions “as parts” as well as an additional non-extruded aluminum component.⁹⁸ 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 both aluminum extrusions as parts, as well as some component besides aluminum extrusions.⁹⁹

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

⁹² See the *Orders*.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ See the *Orders*.

⁹⁸ See Wind Sign Frames Scope Ruling, at 11-12; see also 1xxx Series Pallets Scope Ruling, at 10.

⁹⁹ See Delphi Core Heater Tubes Scope Ruling, at 10-11; see also 1xxx Series Pallets Scope Ruling, at 11.

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*, 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."¹⁰⁰ An interpretation which would allow products which consist entirely of aluminum extrusions to be excluded from the scope of the *Orders* would allow the finished merchandise exclusion to swallow the rule embodied by the scope. Therefore, we do not find such an interpretation to be supported by the plain language of the *Orders* or reasonable.

For similar reasons, in the Delphi Core Heater Tubes Scope Ruling, the Department found that the products at issue in that scope ruling, which consisted only of aluminum extrusions, were not finished merchandise under this exclusionary scope language.¹⁰¹ The Department also explained that the products identified by their end use and consisting solely of aluminum extrusions do not meet the exclusion for finished goods because "the products consist entirely of aluminum extrusions."¹⁰² The Department reached a similar finding in the Cutting and Marking Edges Scope Ruling.¹⁰³ Thus, in the instant case, because the products at issue are only composed of aluminum extrusions, they do not meet the requirements for the finished merchandise exclusion.

In addition, the description of the merchandise in the Petitions, which is a factor identified in 19 CFR 351.225(k)(1), does not support the exclusion of extruded aluminum profiles made from series 6xxx aluminum which are cut-to-length and welded together in the form of a pallet. In Exhibit I-5 to the Petitions, the petitioner provided several "product examples" which it said were examples of subject merchandise, and provided three examples of products which would meet the exclusion for "fully assembled finished goods containing aluminum extrusions:" windows, doors and solar panels.¹⁰⁴ Unlike the product that is the subject of this scope ruling, all three of these "finished merchandise" examples have both non-aluminum extrusions and aluminum extrusion components.

We also agree with the petitioner that assuming, *arguendo*, that the product at issue did not need to contain a non-aluminum extruded component to satisfy the finished merchandise exclusion, the product, nonetheless, would fail the exclusionary language, because the record demonstrates that it is not finished merchandise. The petitioner has provided information that the product at issue is not suitable for use as a pallet. In particular, the evidence provided by the petitioner demonstrates that the product lacks the necessary size, thickness, weight, strength, rigidity, and series of aluminum alloy to perform the key functions of a pallet – *i.e.*, to bear the loads required of pallets or to function with forklifts.¹⁰⁵ We find that the aluminum extrusions made from series

¹⁰⁰ See *Meridian Products, LLC v. United States*, 851 F.3d 1375 (Fed. Cir. 2017).

¹⁰¹ See *Delphi Core Heater Tubes Scope Ruling*, at 9-14; see also *1xxx Series Pallets Scope Ruling*, at 11.

¹⁰² See *Delphi Core Heater Tubes Scope Ruling*, at 11; see also *1xxx Series Pallets Scope Ruling*, at 11.

¹⁰³ See *Geodesic Domes Scope Ruling*, at 7; see also *Cutting and Marking Edges Scope Ruling*, at 10-11; see also *1xxx Series Pallets Scope Ruling*, at 11.

¹⁰⁴ See *Relevant Scope Rulings Memorandum*, at Attachment 5, see also *Relevant Scope Ruling Memorandum*, at Attachment 6.

¹⁰⁵ See *Scope Ruling Request*, at 13 and Exhibits 9-10.

6xxx aluminum alloy and welded together in the form of a pallet do not qualify for the “finished merchandise” exclusion if they are not suitable for use as the finished merchandise, *i.e.*, a pallet. This is consistent with our finding in the 1xxx Series Pallets Scope Ruling.

We agree with the petitioner that Perfectus’ arguments are inapposite and irrelevant. We find that the petitioner’s submission contained sufficient evidence to: 1) meet the requirements of 19 CFR 351.225(k); 2) demonstrate the existence of the product in question; and 3) enable the Department to make a ruling on the product in question. Although, at the time of the 1xxx Series Pallets Scope Ruling, the petitioner had not provided relevant evidence concerning 6xxx series aluminum extrusions welded together in the form of a pallet,¹⁰⁶ we find that for purposes of this scope ruling, the petitioner has provided the requisite evidence.¹⁰⁷ Moreover, the Department’s practice with respect to scope ruling requests is not limited to products which are continuously being imported, but, rather, the requesting party must be able to show that the product is in existence, for instance, by demonstrating that the product is in commercial production or has been imported.¹⁰⁸ We find that the petitioner has satisfied this burden, regardless of whether the merchandise is already imported. Were we to adopt the view of Perfectus, this would limit our scope rulings only to products which were continually subject to importation, creating a loophole for parties to avoid a ruling on merchandise which might otherwise be subject to an AD/CVD order.

Additionally, Perfectus and Zhongwang did not place any information on the record that contradicts information placed on the record by the petitioner. We also disagree with Perfectus that an affirmative ruling would result in additional administrative burden on the ITC, as we are making a ruling under 19 CFR 351.225(k)(1), which does not require the Department to notify the ITC. Furthermore, we disagree with Zhongwang, for the reasons outlined above, in particular, that the product in question falls under the “finished good” exclusion because the merchandise at issue contains nothing but aluminum extrusions. We further find it unnecessary to address Perfectus’ comments regarding an alleged “conspiracy,” since this allegation is not relevant to making a scope ruling pursuant to 19 CFR 351.225(k)(1).

Perfectus relies on *United Steel and Fasteners, Inc. v. United States*;¹⁰⁹ however, that court decision is not binding on the Department in the context of this scope ruling.¹¹⁰ Furthermore, this scope ruling does not present a situation in which Commerce is clarifying what might be considered in relevant part an ambiguous order.¹¹¹ As such, we continue to follow our practice of instructing customs to continue to suspend liquidation of entries back to the date of first suspension of subject merchandise, consistent with our regulations that provide when we issue a final scope ruling that a product is within the scope of an order “any suspension of liquidation . . . will continue.”¹¹²

Finally, we agree with the petitioner that the scope ruling should be applied to all extruded

¹⁰⁶ See 1xxx Series Pallets Scope Ruling at 12.

¹⁰⁷ See Scope Ruling Request, at Exhibit 4

¹⁰⁸ See *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures*, 73 FR 3634, 3639 (January 22, 2008) (discussing requirements for importers).

¹⁰⁹ See *United Steel and Fasteners, Inc. v. United States*, Slip Op. 17-43 (Ct Int’l Trade April 17, 2017).

¹¹⁰ Cf. *Algoma Steel Corp. v. United States*, 865 F.2d 240, 243 (Fed. Cir. 1989) (*Algoma*) (finding that individual judges on the Court of International Trade are not bound by the decisions of another).

¹¹¹ See, e.g., *AMS Associates, Inc. v. United States*, 737 F.3d 1338 (Fed. Cir. 2013).

¹¹² See 19 CFR 351.225(l)(3).

aluminum profiles from the PRC consisting of series 6xxx aluminum alloy which are cut-to-length and welded together in for the form of a pallet, regardless of producer or exporter. We also note that our analysis above is not contingent on any specific company, but rather, focuses on the description of the product at issue provided by the petitioner. Additionally, information on the record suggests that Zhongwang's affiliate network is growing, thereby creating the opportunity to evade the *Orders*.¹¹³ Therefore, we find that all 6xxx series pallets, regardless of producer or exporter from the PRC, are covered by the *Orders*.

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 extruded aluminum profiles consisting of series 6xxx aluminum alloy, which are cut-to-length and welded together in the form of a pallet, regardless of producer or exporter, are included in 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, as directed by 19 CFR 351.225(d).



Agree



Disagree

6/13/2017

X



Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

¹¹³ See Scope Ruling Request, at Exhibit 2L, *see also* 1xxx Series Pallets Scope Ruling, at 12.