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Scope Inquiry
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Operations/Office 3: JSC

February 3, 2012

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

THROUGH: Melissa G. Skinner
Director
Office 3, Operations

FROM: John Conniff
Senior Trade Analyst

Eric B. Greynolds *EBG*
Program Manager

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

SUBJECT: Final Scope Ruling on Drapery Rail Kits

Summary

The Rowley Company (Rowley) filed a scope inquiry in which it requested that the Department of Commerce (the Department) determine whether certain drapery rail kits it is considering for importation are encompassed within the scope of the Orders.¹ Based on our analysis of the comments received, we have determined that the drapery rail kits at issue are within the scope of the Orders.

Background

Rowley filed its scope request on November 16, 2011. Petitioners did not submit comments.²

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

² Petitioners are the Aluminum Extrusions Fair Trade Committee.



Applicable Regulations

The regulations governing the Department's AD and CVD scope determinations can be found at 19 CFR 351.225. On matters concerning the scope of an order, the Department first examines the language of the order at issue and the description of the product contained in the scope request. If the language in the order is not dispositive, the Department will then examine the descriptions of the product contained in the petition, the initial investigation, and the prior determinations of the Secretary (such as prior scope rulings) and the International Trade Commission. See 19 CFR 351.225(d) and 351.225(k)(1). Such scope determinations may take place with or without a formal scope inquiry. See 19 CFR 351.225(d) and (e). If the Department determines that these descriptions are dispositive of the matter, the Department will issue a final scope ruling as to whether the subject merchandise is covered by the order. See 19 CFR 351.225(d). In contrast, where the descriptions of the merchandise are not dispositive, the Department will consider the five additional factors set forth in 19 CFR 351.225(k)(2). The determination as to which analytical framework is most appropriate in any given scope inquiry is made on a case-by-case basis after consideration of all evidence before the Department.

Scope of the Orders

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

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

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

dip anodized), liquid painted, or powder coated. Aluminum extrusions may also be fabricated, *i.e.*, prepared for assembly. Such operations would include, but are not limited to, extrusions that are cut-to-length, machined, drilled, punched, notched, bent, stretched, knurled, swedged, mitered, chamfered, threaded, and spun. The subject merchandise includes aluminum extrusions that are finished (coated, painted, etc.), fabricated, or any combination thereof.

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

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

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

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

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

also excludes pure, unwrought aluminum in any form.

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

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

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States (HTS): 7604.21.0000, 7604.29.1000, 7604.29.3010, 7604.29.3050, 7604.29.5030, 7604.29.5060, 7608.20.0030, and 7608.20.0090. The subject merchandise entered as parts of other aluminum products may be classifiable under the following additional Chapter 76 subheadings: 7610.10, 7610.90, 7615.19, 7615.20, and 7616.99 as well as under other HTS chapters. In addition, fin evaporator coils may be classifiable under HTS numbers: 8418.99.80.50 and 8418.99.80.60. While HTS subheadings are provided for convenience and customs purposes, the written description of the scope of these Orders is dispositive.

Relevant Scope Determinations

A. Shower Doors and Enclosures

In comments submitted prior to the AD and CVD preliminary determinations on aluminum extrusions from the PRC, the Shower Door Manufacturers and Shower Enclosures Alliance (Shower Door Manufacturers) requested clarification of the scope language covering “kits” and “finishes.” With regard to a “kit,” the Shower Door Manufacturers noted that it is normal industry practice to purchase glass panels and shower door kits from different suppliers. Therefore, any kit purchased from the shower door manufacturer would not include glass panels but, nonetheless, is considered in the industry to be a complete finished product. The Shower Door Manufacturers argued that the Department should clarify the scope language to be explicit that a kit for shower door enclosures does not include the glass so as to avoid confusion on the part of importers and the U.S. Customs and Border Protection (CBP).³

Petitioners rebutted the assertions of the Shower Door Manufacturers, arguing that unassembled shower door frames without glass did not qualify for the scope exclusion for “kits” because they are not final finished goods. As an example, Petitioners noted that the scope specifically references “windows with glass” as a finished good.

³ See Preliminary Determinations: Comments on the Scope of the Investigations, October 27, 2010 at Comment 7 (Preliminary Scope Comments).

The Department stated that the scope language as articulated in the Petition and the Notices of Initiation clearly defined a kit as “a packaged combination of parts that contains, at the time of importation, all of the necessary parts to fully assemble a final finished good.”⁴ Thus, at the time of importation, the Shower Door Manufacturers’ unassembled shower door frames did not constitute a kit because they did not contain all of the necessary parts to create a final finished good, i.e., a shower door.⁵

B. Exhibition Frames and Unassembled Pavilion Kits

In comments submitted prior to the AD and CVD preliminary determinations on aluminum extrusions from the PRC, Nexxt Show, an importer, argued that its exhibition frames and unassembled pavilion kits consisted of all the components necessary to assemble a “finished goods kit” and so should be excluded from the Orders.⁶ Nexxt Show provided assembly illustrations to demonstrate that all necessary components are included in each kit.

The Department found that it was unable to determine whether Nexxt Show’s kits included all the necessary materials to assemble a finished product. The Department further stated that “if at the time of importation, however, the kits do contain all of the necessary parts to fully assemble a final finished good then they would be excluded from the scope of these proceedings.”⁷

C. Banner Stands and Back Wall Kits

After the issuance of the Orders, Skyline Displays Inc. (Skyline) requested a scope ruling regarding its banner stands and back wall kits, used to showcase graphics and other marketing materials. Skyline argued that banner stands and back wall kits fell outside the scope of the Orders because they met the exclusion criteria of the scope of the Orders, namely that the products at issue constituted “finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry.”

Petitioners argued that the fact that additional accessories could be added to the products at issue (e.g., shelving and lighting) called into question Skyline’s claim that the products constituted finished goods.

In the Banner Stands Scope Ruling, the Department found that the banner stands and back wall kits described in Skyline’s scope inquiry request met the exclusion criteria.⁸ The Department explained that the products at issue contained all of the parts required to assemble a completed exhibition frame on which printed graphical materials may be hung and, thus, met the exclusion

⁴ See, e.g., Aluminum Extrusions from the People’s Republic of China: Initiation of Countervailing Duty Investigation, 75 FR 22114 (April 27, 2010) and Aluminum Extrusions from the People’s Republic of China: Initiation of Antidumping Duty Investigation, 75 FR 22108 (April 27, 2010) (Notices of Initiation).

⁵ See Preliminary Scope Comments at Comment 7.

⁶ See Preliminary Scope Comments at Comment 8.

⁷ Id. at Comment 8.

⁸ See the Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on Banner Stands and Back Wall Kits,” (October 19, 2011) (Banner Stands Scope Ruling).

criteria in the scope of the Orders for “finished goods kits.”⁹ The Department further explained that in the Preliminary Scope Comments it found that Nexxt Show’s exhibition kits would be excluded if the kits contained all necessary parts to be fully assembled finished good. Thus, in the Banner Stands Scope Ruling, the Department found that because Skyline’s merchandise contained all the necessary parts, it was excluded as a “finished goods kit.”

In the Banner Stands Scope Ruling, the Department agreed that the products at issue were analogous to completed picture frames, which are explicitly excluded from the scope.¹⁰ The Department disagreed with Petitioners’ claim that the products at issue failed to meet the exclusion criteria because they lacked printed graphical materials at the time of entry. The Department found that the products at issue were designed to incorporate interchangeable graphical materials that can change with users’ needs. Therefore, the Department found that it would be unreasonable to require that the products at issue be accompanied at the time of importation with affixed graphical material that cannot be removed or altered at a later date.¹¹

D. Retractable Awning Mechanisms

After the issuance of the Orders, Tri Vantage requested a scope ruling regarding its retractable awning mechanisms. Tri Vantage argued that its retractable awning mechanisms consist of all components necessary to assemble a complete retractable awning. Tri Vantage argued that its merchandise is imported ready for use, and constitute a final finished good. Therefore, it argued, the products at issue meet the exclusion criteria concerning “finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled at the time of entry.” Tri Vantage stated that, at the time of importation, the retractable awning mechanisms do not include textile covers.

Petitioner argued that a retractable awning mechanism without the textile covering serves no function as an awning and, thus, cannot be considered a “final finished good.”

The Department found that the scope of the Orders define an excluded “finished goods kit” as a “packaged combination of parts that contains, at the time of importation, all of the necessary parts to fully assemble a final finished good and requires no further finishing or fabrication, such as cutting or punching, and is assembled ‘as is’ into such a finished product.”¹² Tri Vantage itself acknowledged that the textile covers designed for attachment to the retractable awning mechanisms at issue, and necessary to assemble a fully functioning awning, are purchased separately and are not included with such awning mechanisms at the time of importation. Thus, the Department concluded that a finished retractable awning mechanism or complete retractable awning mechanism kit would require inclusion of a textile cover at the time of importation to

⁹ Id. at 9 – 10.

¹⁰ Id.

¹¹ Id. Shortly after the Banner Stands Scope Ruling, the Department reached the same conclusion with regard to a similar wall display unit product. See the Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on EZ Fabric Wall Systems” (November 9, 2011) (EZ Wall Systems Scope Ruling).

¹² See the Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on Certain Retractable Awning Mechanisms” (October 14, 2011) (Awnings Scope Ruling).

meet the exclusionary language that defines a finished goods kit or finished product.

Description of the Merchandise

According to Rowley, the products subject to the scope inquiry request are drapery rails consisting of a rail that is made of extruded aluminum with an approximately 1.1" outer diameter. The cross section of the rail is designed so that it has a slot to accept the decorative brackets with a locking piece specifically designed to lock onto the slot. The decorative bracket consists of several parts assembled together. A base and a shaft are designed to support the rail while taking aesthetics into consideration. At one end of the shaft, there is a locking piece to engage and lock with the rail. A threaded round bracket piece for installing on a wall is threaded into the base of the decorative bracket. Decorative finials fit on two ends of the rail and have set screws. Both finials and brackets are made of steel. Rails, decorative brackets and decorative finials are matching, finished by plating or painting or powder coating.

Rowley explains that the products at issue would be classifiable under Harmonized Tariff Classification (HTS) heading 8302.41.6050, which includes "base metal mountings . . . suitable for buildings . . . for curtains, draperies and Window Shades."

In its scope inquiry request, Rowley provides photographs for two drapery rails that it claims are representative of the products at issue. See Rowley's November 16, 2011, submission at 5 – 6.

Arguments of Interest Parties

Rowley's November 16, 2011 Submission

Referencing the exclusion language for "finished goods kits," Rowley asserts that the products at issue provide all of the pieces that a consumer needs to install and use for drapery purposes. Rowley argues that the brackets and finials included as part of the drapery kits at issue are integral parts of the kits in that they complete the kit for both functional and aesthetic purposes. Though the products at issue include fasteners used to install the brackets, Rowley contends that the general public and the drapery and window treatment industry will not regard either the brackets or the finials as fasteners. Referencing various retail websites, Rowley further argues that it is industry practice to treat the products at issue as "sets" or "kits."

On this basis, Rowley argues that the Department should treat the products at issue as "finished goods kits" that are excluded from the scope of the Orders.

Department's Position: The scope of the Orders excludes finished goods kits, which are described as a "packaged combination of parts that contains, at the time of importation, all of the necessary parts to fully assemble a final finished good and requires no further finishing or fabrication, such as cutting or punching, and is assembled 'as is' into such a finished product." The Department also looked to prior scope determinations which have considered the finished goods kit exclusion, and has found that these prior determinations are instructive. See 19 CFR 351.225(k)(1). Because the Department finds this evidence dispositive with respect to products at issue, the Department finds it unnecessary to consider the additional factors set forth in 19

CFR 351.225(k)(2).

In the Banner Stands Scope Ruling and EZ Wall System Scope Ruling, the Department found that the wall display units, in and of themselves, constituted finished goods kits.¹³ Thus, the Department found that it was unnecessary for the wall display units to be accompanied by graphical materials in order for the products to meet the exclusion criteria for finished goods kits. However, the drapery rails at issue clearly are designed with the intention of attaching curtains or drapes. Furthermore, we find that the products at issue are analogous to those examined in the Awnings Scope Ruling, which are included in the scope, as opposed to the Banner Stands Scope Ruling or the EZ Wall System Scope Ruling.

In the Awnings Scope Ruling, the Department found that the requested products did not constitute a “packaged combination of parts that contains, at the time of importation, all of the necessary parts to fully assemble a final finished good and requires no further finishing or fabrication, such as cutting or punching, and is assembled ‘as is’ into such a finished product.”¹⁴

The respondent in the Awnings Scope Ruling itself acknowledged that the textile covers designed for attachment to the retractable awning mechanisms at issue, and necessary to assemble a fully functioning awning, are purchased separately and are not included with such awning mechanisms at the time of importation.¹⁵ Thus, we concluded that a complete retractable awning mechanism kit would require inclusion of a textile cover at the time of importation to meet the exclusionary language that defines a finished goods kit or finished product.

We find that curtains or drapes are integral components necessary to assemble a complete finished goods kit for drapery rails. Rowley’s description of the products at issue indicates that they do not include curtains or drapes at the time of importation. We therefore find Rowley’s requested scope inquiry similar to the facts of the Awnings Scope Ruling. Just as the products at issue in the Awnings Scope Ruling did not include a textile cover, the drapery rail kits at issue do not include curtains or drapes to form all of the necessary parts for a complete kit. We disagree with Rowley’s contention that all of the pieces that a consumer needs to install and used for drapery purposes are included in their shipments. Consistent with the Awnings Scope Ruling, we find that an assembled drapery rail kit absent the integral drape or curtain does not function as a finished good. Thus, because the drapery rail kits lack all of the necessary components to constitute a final finished good we find the products at issue to be analogous to those examined in the Awnings Scope Ruling and, therefore, find the products to be within the scope of the Orders.

The decision with respect to banner stands, back wall kits, and wall display units was supported by a clear analogy to the explicit scope exclusion for picture frames. The drapery rail kits at issue in this proceeding share no such clear analogy, and are more comparable to the retractable awning mechanisms which were deemed to be covered by the scope language.

We do not find that Rowley’s description of the drapery rails as “sets” or “kits” among retailers

¹³ See Banner Stands Scope Ruling at 10.

¹⁴ See Awnings Scope Ruling at 9-10.

¹⁵ *Id.*

constitutes evidence that the products at issue are “finished goods kits” as that term is used in the scope of the Orders, or according to the Department’s prior scope rulings. A kit, according to the scope of the Orders, must contain all necessary parts to fully assemble a final finished good. Because the drapery rails do not include the necessary curtains or drapes, they do not constitute a “finished goods kit.”

Department’s Recommendation

For the reasons discussed above, we recommend finding that the drapery rails addressed by the instant scope request are subject to the scope of the Orders and do not meet the exclusion for “finished goods kits.” Accordingly, we recommend finding that the products at issue are not subject to the scope of the Orders pursuant to 19 CFR 351.225(k)(1) based on the language of the scope of the Orders and prior scope rulings by the Department. We recommend finding that the scope request does not present a significant difficulty within the meaning of 19 CFR 351.225(f)(3) and, thus, we further recommend that this scope ruling constitutes a final ruling as provided under 19 CFR 351.225(f)(4).

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

Agree

Disagree

Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

Date