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

SUBJECT: Final Scope Ruling on Motor Cases

Summary

On March 13, 2012, in response to a request from an importer, UQM Technologies, Inc. (UQM), the Department of Commerce (the Department) initiated a formal scope inquiry¹ in order to determine whether certain motor cases are within the scope of the Orders² in the above mentioned proceedings. On the basis of our analysis of the comments received, we determine that the motor cases in question are within of the scope of the Orders.

Background

On February 21, 2012, UQM requested that the Department issue a scope ruling finding that certain motor cases are not subject to the scope of the Orders.³ On March 13, 2012, the

¹ See the Department's March 13, 2012, letter to interested parties in which it announced the initiation of a formal scope inquiry (Initiation).

² See Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order, 76 FR 30,650 (May 26, 2011) (AD Order) and Aluminum Extrusions From the People's Republic of China: Countervailing Duty Order, 76 FR 30,653 (May 26, 2011) (CVD Order) (collectively, the Orders).

³ See the February 21, 2012, Scope Request of UQM (Scope Request).



Department initiated a formal scope inquiry.⁴ In the Initiation, the Department requested that UQM and petitioners⁵ submit comments and factual information concerning the factors described in 19 CFR 351.225(k)(2). On April 2, 2012, UQM and petitioners submitted comments and factual information.⁶ On April 12, 2012, UQM and petitioners submitted rebuttal submissions.⁷ On April 20, 2012, petitioners responded to UQM's rebuttal submission.⁸

Applicable Regulations

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.⁹ 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.¹⁰ 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.

Conversely, where the descriptions of the merchandise contained in the petition, the initial investigation, and the prior determinations of the Secretary and the ITC are not dispositive, the Department will consider the additional factors set forth at 19 CFR 351.225(k)(2). These criteria are as follows: (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. These factors are known commonly as the Diversified Products criteria.¹¹ 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 record evidence before the Department.

Descriptions of the Products at Issue

The products subject to this scope inquiry are inner and outer motor cases (hereinafter referred to as motor cases) for use in connection with high-efficiency, water-cooled electric motors. The feedstock of the products at issue consists of extruded aluminum alloy tubing that is subsequently cut into motor casings by means of a computer numerical controlled (CNC) precision machine process.¹² The inner and outer cases are imported together in equal numbers and are assembled by UQM after importation.¹³

⁴ See Initiation.

⁵ Petitioners are the members of the Aluminium Extrusions Fair Trade Committee.

⁶ See the April 2, 2012, submissions of UQM and Petitioners (UQM Case Brief and Petitioner Case Brief, respectively).

⁷ See the April 12, 2012, submissions of UQM and Petitioners (UQM Rebuttal Brief and Petitioner Rebuttal Brief, respectively).

⁸ See the April 20, 2012, submission of Petitioners (Petitioner Surrebuttal Brief).

⁹ See *Walgreen Co. v. United States*, 620 F.3d 1350, 1357 (Fed. Cir. 2010).

¹⁰ See 19 CFR 351.225(k)(1).

¹¹ These factors were affirmed as a reasonable test by the Court of International Trade in *Diversified Products Corp. v. United States*, 572 F. Supp. 883 (C.I.T. 1983) (Diversified Products).

¹² For more information concerning the products at issue, see Scope Request at Appendix B-1 – B-16 and Exhibits 1 – 2.

¹³ UQM explains that after importation it heats the slightly larger outer casing, causing it to expand. It then applies a

UQM states that the products at issue are currently classifiable under United States Harmonized Tariff Schedule (USHTS) sub-heading 8503.00.9520, as “other . . . parts of {electric} motors” not commutators, stators or rotors, net less than 18.65 W.

Descriptions of Subject Merchandise

1. 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, 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

sealant to the inner casing and presses the two casings together to create a motor housing with an internal channel through which coolant can flow during the operation of the electric motor.

definition of aluminum extrusions are included in the scope. The scope includes the aluminum extrusion components that are attached (e.g., by welding or fasteners) to form subassemblies, i.e., partially assembled merchandise unless imported as part of the finished goods 'kit' defined further below. The scope does not include the non-aluminum extrusion components of subassemblies or subject kits.

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

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

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

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

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

Also excluded from the scope of this order are finished heat sinks. Finished heat sinks are

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

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

2. The ITC's Description

In its final injury analysis, the ITC described subject merchandise in the following manner:

For the reasons discussed below, we find that there are two domestic like products: (1) Finished Heat Sinks (FHS) and (2) all other aluminum extrusions corresponding to the scope of these investigations.

Physical characteristics and uses: All aluminum extrusions within the scope of these investigations share certain basic physical characteristics. All are made from aluminum alloys in the 1, 3, and 6 series of the Aluminum Association (so-called "soft alloys"), all are produced by an extrusion process, and many aluminum extrusions are further fabricated (for example, cut to length, machined, drilled, punched, notched, bent, stretched, or assembled by welding or fastening) after they are mill finished. Also, many aluminum extrusions are produced in custom shapes and sizes. FHS are not different from other aluminum extrusions in terms of their metallurgic chemistry, or by virtue of being further fabricated or produced in custom shapes. FHS are different from most other aluminum extrusions, however, by virtue of the specific and precise tolerances to which they are generally produced. FHS are designed to remove damaging heat from electronic equipment. The flat surface tolerance for FHS is often 1/1000 of an inch per inch, compared to 4/1000 to 14/1000 of an inch per inch for ordinary aluminum extrusions. The precise flatness of FHS allows for close contact between the FHS and the heat-generating components for which they have been designed and to which they are attached, thereby reducing or eliminating heat-trapping "dead air." FHS also differ from other aluminum extrusions (including heat sinks that are not "finished") because of their customized thermal resistance properties. Whereas most aluminum extrusions are differentiated by shape and dimension, FHS are also characterized by their thermal resistance properties. In fact, FHS are certified to perform within thermal resistance parameters. Although these thermal resistance properties are not visible, they are clearly relevant to the customers for whom FHS have been designed. They make FHS precisely or optimally suited to cool the specific electronic devices for which they have been designed.

The principal end-use applications of aluminum extrusions are in the building and construction, transportation, and engineered products sectors. FHS have a specific end use (thermal management of electronic devices), but many other aluminum extrusions also have distinct individual end-use applications.¹⁴

Relevant Scope Ruling: Certain Precision Machine Parts¹⁵

In its scope inquiry request, IDEX Health & Science LLC (IDEX) argued that certain precision machine parts fell outside the scope of the Orders because they met the five Diversified Products criteria enumerated under 19 CFR 351.225(k)(2). At the heart of IDEX's arguments was the contention that the products at issue obtained their essential shape and form by means of a CNC precision machine process while extruded products that are subject to the Orders obtain their essential shape and form through the extrusion process.

The Department determined that the products at issue were covered under the scope of the Orders based on the criteria of the five Diversified Products criteria enumerated under 19 CFR 351.225(k)(2). Concerning the first criterion, physical characteristics, the Department found that the fabrication process (e.g., the CNC machine process) used to produce the products at issue was not distinct from the fabrication processes used to produce "machined" aluminum extrusions that are subject to the scope of the Orders.

Concerning the second criterion, expectations of the ultimate consumers, the Department found that, since the scope of the Orders encompasses fabricated, extruded aluminum products, (including products produced by means of the CNC machine process) the notion that the CNC machine process distinguishes the products at issue in terms of the expectations of the ultimate consumers was unpersuasive.

Concerning the third criterion, the ultimate use of the product, the Department found that the CNC machine process did not distinguish the products at issue from those covered by the scope of the Orders.

Concerning the fourth criterion, channels of trade, the Department noted that the scope of the Orders covers non-fabricated extrusions and fabricated extrusions, including heat sinks that have been fabricated by means of a CNC machine process. Thus, the Department found the fact that heat sinks are covered by the scope of the Orders and that they are sold as CNC machined products undermines IDEX's claims that the products at issue were sold through distinct channels of trade.

Regarding the fifth criterion, the manner in which products are advertised and displayed, the Department noted that the scope of the Orders includes extruded products (e.g., heat sinks) that are fabricated by means of a CNC machine process. In light of this fact, the Department

¹⁴ See Certain Aluminum Extrusions from China, USITC Pub. 4229, Inv. Nos. 701-TA-475 and 731-TA-1177 (Final) (May 2011) (ITC Final Determination) at I-7 – I-8, available at: http://www.usitc.gov/publications/701_731/Pub4229.pdf.

¹⁵ See the Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Final Scope Ruling on Precision Machine Parts," (March 28, 2012) (Machine Parts Scope Ruling).

concluded that it is reasonable to assume that producers of such subject extrusions might also tout the capabilities of their CNC machinery in their marketing materials. Thus, in terms of advertising and display, the Department concluded that the products at issue were not distinct from precision machined extrusions covered under the scope of the Orders with regard to the fifth criterion.

On this basis, the Department concluded that the certain precision machine parts at issue were covered under the scope of the Orders.

Arguments of Interested Parties

As discussed above, in scope proceedings, the Department first considers whether the products at issue meet the description of the merchandise in the scope of the Orders. In this case, the Department finds that the description of the merchandise contained in the scope is not dispositive, because, although the scope covers merchandise that is further fabricated, it does not address the products at issue, which are made from aluminum extrusions that undergo various fabrication processes that UQM argues brings the merchandise outside the scope of the Orders. We also find that the descriptions of the merchandise contained in the petition, the investigation, prior determinations of the Secretary and the ITC are not dispositive of the products at issue for the same reason. Therefore, we have analyzed whether the products at issue are within the scope of the Orders by analyzing the criteria under 19 CFR 351.225(k)(2), also known as the Diversified Products criteria.

Comment 1: First Criterion of Diversified Products Test – Physical Characteristics

UQM’s Case Brief

The products at issue must meet more exacting specifications than those extruded products produced using a metal die. Specifically, the inner and outer casings are produced using a CNC precision machine process which distinguishes them from the extruded products covered under the scope of the Orders. As such, the products at issue are fundamentally different from the extrusions covered by the Orders. Aluminum extrusions cannot be used in their extruded form to make the imported motor cases. Nor can aluminum extrusions be modified in a minor way to create a product similar to the products at issue. Rather, complex and expensive machining is required to impart the essential physical characteristics required to assemble the products at issue. The machining operations change the physical characteristics of the feedstock (extruded aluminum tubes) so that the finished part is suitable for a new use.

Unlike the types of surface finishing operations described in the scope of the Orders (e.g., “mill finished . . . brushed, buffed, polished, anodized . . . liquid painted or powder coated”), the products at issue are machined to remove material on nearly every side of the part. Thus, the products at issue are not “mill finished” extrusions. Instead, the CNC precision machine process removes a substantial amount of material in order to achieve a precise shape and dimension that cannot be obtained from the extrusion process.

The scope of the Orders describes certain fabrication processes (e.g. cut-to-length, machined,

drilled, punched, notched, bent, stretched, knurled, swedged, mitered, chamfered, threaded, and spun). These fabrication processes do not apply to the motor cases at issue due to the fact that the CNC precision machine process used to manufacture them is applied to nearly the entire surface area of the products, a fact that distinguishes them from the extruded products covered by the scope of the Orders.

Further, the CNC precision machine tools used to produce the products at issue require significant investment. In addition, UQM did not work with an extruder to produce the products at issue. Rather, UQM worked extensively with a company capable of utilizing CNC precision machines.

Applying the substantial transformation test to the products at issue demonstrates that they have been transformed into a significantly different product thereby fulfilling the first criterion of the Diversified Products test. The Department applied the Diversified Products test in Crawfish. See Crawfish Processors Alliance v. United States, 483 F.3d 1358 (Fed. Circ. 2007) (Crawfish) in which the CAFC held that the Department's finding that turning crawfish tail meat into etouffee substantially transformed the etouffee into a product outside the scope of the order. A similar use of the substantial transformation test will demonstrate that the physical characteristics of the products at issue are distinct from the products covered by the scope of the Orders.

The Department examines six factors when determining whether substantial transformation exists: 1) whether the further processing led to a change in class or kind; 2) the nature, sophistication and extent of the further processing; 3) the costs or value added by further processing; 4) whether the further processing imparts essential characteristics to the product; 5) the level of investment in further processing; and 6) whether the further processing changed the ultimate use of the product.¹⁶ The products at issue fulfill each of these criteria.

Concerning the first two factors of the substantial transformation test, the multiple CNC precision machine processes required to produce the products at issue are complex and significantly alter the product. For example, the machining processes remove a significant percentage of the aluminum alloy tubes that serve as the feedstock.¹⁷ In the First Review of Laminated Sacks from the PRC, the Department found the product at issue was substantially transformed due to the complexity of the manufacturing process.¹⁸ The facts of the instant scope inquiry are not distinct from First Review of Laminated Sacks from the PRC.

Further, as discussed above, the CNC precision machine process alters the feedstock to such a degree that the essential shape and characteristic of the resulting product is distinct from the

¹⁶ See, e.g., Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China, 71 FR 29303 (May 22, 2006) (Diamond Sawblades from the PRC), and accompanying Issues and Decision Memorandum (Diamond Sawblades from the PRC Decision Memorandum) at Comment 4.

¹⁷ The exact amount of feedstock material removed during the production process is proprietary. See UQM's Case Brief at 6 – 7 for more information.

¹⁸ See Laminated Woven Sacks From the People's Republic of China: Final Results of First Antidumping Duty Administrative Review, 76 FR 14906 (March 18, 2011) (First Review of Laminated Sacks from the PRC), and accompanying Issues and Decision Memorandum (First Review of Laminated Sacks from the PRC Decision Memorandum) at Comment 1b and 1c.

extruded products covered under the scope of the Orders. It is the CNC precision machines and not the extrusion process that imparts the necessary functionality to the motor cases. In Diamond Sawblades from the PRC, the Department examined the production process that imparted the functionality of the product at issue when conducting its substantial transformation test.¹⁹

The petition and the ITC's injury determination make clear that it is the extrusion process and not the fabrication processes described in the scope of the Orders (e.g. cut-to-length, machined, drilled, punched, notched, bent, stretched, knurled, swaged, mitered, chamfered, threaded, and spun) that impart the essential characteristics of subject merchandise. Thus, for example, drilling a hole into an extruded aluminum door threshold does not impart the essential shape of the threshold.²⁰ In contrast, the feedstock used to produce the products at issue cannot function as a motor case for a water-cooled electric motor. Rather, the motor cases are created only after the CNC precision machine process imparts their essential form and characteristics.

The costs and value added by the CNC precision machine process also demonstrates that the products at issue are substantially transformed in terms of physical characteristics. The level of investment by the PRC-based manufacturer was substantial and made specifically to produce motor cases. The level of value added by the CNC precision machine process accounts for the majority of the value of the imported motor cases.²¹ The precision and complexity of the products at issue is evident in the fact that they are not sold off-the-shelf, but rather are customized to meet the needs of the customer for which it is produced.

Petitioners' Case Brief

The scope states that “the subject merchandise includes aluminum extrusions that are fabricated.”²² “Fabrication” encompasses a wide range of operations that alter the form and shape of the extruded profile. As stated in the scope, 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. Significantly, many of the illustrative fabrication processes set forth in the scope are the same ones used to make motor cases.²³ In this respect, UQM's motor cases are similar to the products examined in the Machine Parts Scope Ruling. In that scope ruling, the Department found that parts, such as precision machine parts, which “are cut-to-length, machined, drilled, and lathed (i.e., spun),” fall within the scope of the Orders: “the investigation contemplated that subject merchandise would undergo specialized machining processes, and did not include a limit on the amount or specialty of the fabrication.”²⁴

Moreover, the scope of the Orders specifically includes heat sinks, which have been “cut-to-length, precision machined, and or otherwise fabricated to the end product specifications, but not yet tested.”²⁵ Further, the Department found that precision machine parts are within the scope of

¹⁹ See Diamond Sawblades from the PRC Decision Memorandum at Comment 4.

²⁰ See Petition at Exhibit I-5.

²¹ See Scope Request at 5 of Appendix C.

²² See AD Order, 76 FR at 30650.

²³ See Scope Request at 11 – 12 and Appendix C.

²⁴ See Machine Parts Scope Ruling at 14 – 15.

²⁵ See AD Order, 76 FR at 30650.

the Orders.²⁶ In addition, the ITC found that “the use of precision manufacturing” is insufficient “to distinguish a particular extrusion product from the wide variety of aluminum extrusions in these investigations.”²⁷

Further, UQM’s assertion that the products at issue are out of the scope of the Orders because they owe their “essential shape” to a CNC machine process, and not an extrusion process, has been recently rejected by the Department. In the Machine Parts Scope Ruling, the Department determined that the scope “does not specify that the shape must be imparted by the extrusion process,” rather the “illustrative list of fabrication processes included in the scope demonstrates that many different shapes could be created in the fabrication process.”²⁸

That fact that portions of the extruded feedstock are removed during the production of the products at issue provides no basis for the products to be excluded from the scope of the Orders. As noted above, the processes employed to produce the products at issue are identical to those listed in the scope of the Orders (e.g., cutting, machining, drilling, etc.). These processes necessarily result in the removal of material from the resulting extrusion. It is therefore contemplated that the scope of the Orders includes products shaped by removing material after the extrusion process. The Department confirmed this interpretation in the Machine Parts Scope Ruling when it found that the products at issue were not excluded from the Orders “by virtue of the fact that relatively large amounts of the extruded feedstock are removed during the CNC machine process.”²⁹ The Department also found that the scope of the Orders “provides no exclusions based upon numerical thresholds regarding the amount of material removed in the process of fabrication.”³⁰

UQM’s reference to the substantial transformation test is off point. The substantial transformation test is used to determine country-of-origin.³¹ Such a test is not used in scope inquiries conducted under 19 CFR 351.225(k). Further, the substantial transformation analysis does not even make sense in the context of a scope inquiry because the six factors examine whether downstream products fall within the same class or kind of merchandise covered under the scope of an order. In other words, if the products at issue fall within the same class or kind of merchandise as subject merchandise, then they must be subject to the scope of the Orders regardless of whether the other factors are considered as part of the substantial transformation test. In the case of the instant scope inquiry, the scope of the Orders encompass a single class or kind of merchandise that explicitly includes fabricated aluminum extrusions, including those extrusions fabricated by means of a CNC machine process.

UQM cites only to a single instance in which the Department applied the substantial transformation test in the context of a scope proceeding, Crawfish. However, in the Precision

²⁶ See Machine Parts Scope Ruling at 18.

²⁷ See ITC Final Determination at 11.

²⁸ See Machine Parts Scope Ruling at 15.

²⁹ See Machine Parts Scope Ruling at 15.

³⁰ Id.

³¹ See Laminated Woven Sacks From the People's Republic of China: Final Results of Second Antidumping Duty Administrative Review, 76 FR 21333 (April 15, 2011) (Second Review of Laminated Sacks from the PRC) and accompanying Issues and Decision Memorandum (Second Review of Laminated Sacks from the PRC Decision Memorandum) at Comment 1.

Machine Parts Scope Ruling, the Department found that Crawfish was distinguishable from the precision machine parts under consideration. The Department stated “unlike the etouffee” (i.e., the downstream transformed item) “considered in Crawfish, fabricated aluminum extrusions are expressly included in the scope of the Orders.”³²

The Department should also reject UQM’s claim that the precise specifications of the end-user somehow distinguish the products at issue in terms of physical characteristics. The ITC has found that “many aluminum extrusions are produced in custom shapes and sizes” and “are proprietary to specific users and specific applications.”³³ Thus, the fact that the products at issue are “not bought-off-the-shelf” does not distinguish them in terms of physical characteristics.

UQM’s Rebuttal Brief

Whether the products at issue have undergone a substantial transformation is central to the instant scope inquiry. Further, contrary to petitioners’ claims, in the Machine Parts Scope Ruling the Department did not find that the substantial transformation test is irrelevant to scope inquiries.³⁴ Rather, even though the Department ultimately determined that the products at issue were covered under the scope of the Orders, in the Machine Parts Scope Ruling the Department nonetheless closely examined the transformation that took place.³⁵

Even accepting that the first factor of the substantial transformation test is limited to country-of-origin decisions, the remaining factors are instructive, especially when comparing the products at issue to those examined in the Machine Parts Scope Ruling and to FHS, a product that was ultimately exclude from the scope of the Orders.

The CNC machine process examined in the Machine Parts Scope Ruling is distinct from the CNC machine process used to produce the products at issue because IDEX, the requesting party, did not identify a specific level of precision characterizing its products. UQM has provided information concerning the precise tolerances required to produce the products at issue.³⁶ This information demonstrates that the products at issue are similar to FHS in this regard. The ITC found that specialized equipment, design, and testing distinguished FHS from other fabricated aluminum extrusions.³⁷ In this sense, the products at issue are analogous to FHS.

In the Machine Parts Scope Ruling, IDEX did not submit information concerning the costs and value added by the CNC machine process. In contrast, UQM has submitted evidence indicating that a significant majority of the export value of the products at issue is attributable to the CNC machine process and subsequent testing.³⁸ This information demonstrates that the products at issue are analogous to FHS, which the ITC found owe most of their value to the CNC machine process used to produce the finished product.³⁹

³² See Machine Parts Scope Ruling at 16.

³³ See ITC Final Determination at 7.

³⁴ See Machine Parts Scope Ruling at 16.

³⁵ See Machine Parts Scope Ruling at 15- 16.

³⁶ See Scope Request at Appendix C.

³⁷ See ITC Final Determination at 8.

³⁸ See Scope Request at Appendix C and Exhibit 3.

³⁹ Id.

Further, the products at issue are distinct from other fabrication processes previously examined by the Department (such as precision machine parts) because the machining of UQM's motor cases necessarily involves extensive feedback between the supplier and end-user.⁴⁰ Plus, the production process of the products at issue involves numerous quality control and testing steps.⁴¹ Thus, the nature, sophistication, and extent of the further processing of the products at issue are significantly beyond that considered in the Machine Parts Scope Ruling and more comparable to processing used to produce FHS.

In the Machine Parts Scope Ruling, IDEX failed to compare the processing of its precision machine parts with the processing of other fabricated aluminum extrusions covered by the Orders.⁴² Unlike IDEX, UQM has provided information comparing the CNC machine process used to produce the products at issue to the production process used to manufacture FHS.⁴³ This information demonstrates that the motor cases at issue are comparable to FHS and, in both instances, that the CNC machine process imparts essential characteristics to the finished good.

The Machine Parts Scope Ruling does not identify any specific investment associated with the processing operations. In the case of FHS, the ITC also did not identify specific investments, but did take account of the use of specialized equipment used to test and design the product as well as the necessity for highly trained employees.⁴⁴ The level of investment required to test, produce, and maintain the quality of the products at issue is also significant.⁴⁵ Thus, the products at issue are analogous to FHS in terms of level of investment.

Concerning the last factor of the substantial transformation test, whether further processing changed the ultimate use of the product, this factor is not particularly useful given that the Orders cover aluminum extrusions and fabricated aluminum extrusions. This view is based on the fact that the ITC ultimately concluded that FHS should be excluded from the like product notwithstanding the lack of any strong distinction in terms of the ultimate use of the fabricated product.

Petitioners cite to the Machine Parts Scope Ruling to argue that the CNC machine process may not serve as a basis to distinguish the products at issue from products covered by the scope of the Orders. However, it is clear that the degree of precision manufacturing of FHS was a significant factor considered by the ITC in its decision to exclude FHS from the scope of the Orders.⁴⁶ The level of precision required to produce the products at issue are analogous to FHS and, thus, should also be excluded from the scope of the Orders.⁴⁷

⁴⁰ See Scope Request at Appendix C at 2 – 3.

⁴¹ Id.

⁴² See Machine Parts Scope Ruling at 15.

⁴³ See UQM Rebuttal Brief at 8 – 9.

⁴⁴ See ITC Final Determination at 8.

⁴⁵ See Scope Request at Appendix C.

⁴⁶ See ITC Final Determination at 7 – 8.

⁴⁷ See Scope Request at Exhibit 2.

Petitioners' Rebuttal Brief

The Department must conduct the Diversified Products analysis by comparing the products at issue to other fabricated extrusions. The Department has found that other products formed by substantial CNC machining, such as “precision machine parts” for scientific instruments, are subject to the scope of the Orders.⁴⁸ UQM has not demonstrated that motor cases are fundamentally different from those other machined extrusions.

It is irrelevant whether the products at issue can be made from solid shapes or purportedly non-extruded feedstock. First, UQM fails to specifically establish that the alternative feedstock is, in fact, produced by a process that does not involve the extrusion process. Second, the Department has rejected this line of argument in a prior scope ruling.⁴⁹

It is also irrelevant how producers/suppliers price the products at issue. The Diversified Products analysis does not include a criterion that addresses the manner in which products are priced. Further, fabricated extrusions that undergo significant machining (such as processes that remove a substantial amount of feedstock) are typically quoted on a per-piece basis. For example, FHS are priced on a per-piece basis.⁵⁰ Further, products such as heat sinks that have not yet been finished are included in the scope of the Orders.⁵¹

Petitioners' Surrebuttal Brief

In its rebuttal comments, UQM raises an entirely new theory as to why the products at issue should be excluded from the scope of the Orders. The Department should reject these new comments as untimely. However, should it decide to address this comments, the Department should conclude that they do not have merit. UQM's comments concerning how the products at issue are analogous to FHS and, thus, should be excluded from the scope of the Orders, are misplaced. The ITC never concluded that FHS do not fall within the scope. It is solely the province of the Department, not the ITC, to define the scope. During the investigation, the Department determined that all heat sinks, including FHS, fall within the scope.⁵² According to the Department, “heat sinks, regardless of the specialization of the end-use, testing or engineering, are covered by the plain language of the scope of these investigations.”⁵³ The ITC fully accepted the Department's scope determination, as it was required to do.⁵⁴ After the Department's final determination, the ITC found that there were two like products, FHS and all other aluminum extrusions and, with regard to FHS, material injury did not exist.⁵⁵ Thus, FHS were removed from the scope of the Orders due to lack of injury. UQM makes no argument, nor could it, that motor cases are a separate “like product,” and that imports of subject motor cases caused “no injury” to the domestic industry. Further, UQM operates from a flawed premise by

⁴⁸ See Machine Parts Scope Ruling at 16.

⁴⁹ Id. at 15.

⁵⁰ See ITC Final Determination at 26.

⁵¹ See Machine Parts Scope Ruling at 15 -17.

⁵² See Extrusions from the PRC Decision Memorandum at Comment 3G.

⁵³ Id.

⁵⁴ As the ITC stated, “the Commission must accept Commerce's determination as to the scope of the imported merchandise that is subsidized or sold at less than fair value.” See ITC Final Determination at 4.

⁵⁵ See ITC Final Determination at 24.

urging the Department to base its scope inquiry determination using the factors examined by the ITC when it conducts its “like product” analysis. Therefore, the basis for excluding FHS from the scope of the Orders cannot be applied in the instant scope inquiry.

Furthermore, to the extent that motor cases are similar to FHS in terms of physical characteristics and other respects, such as the “specialization of the end-use, testing or engineering,” those factors only further support a finding that motor cases fall within the scope of the Orders for the same reasons that the Department found FHS fell within the scope of the investigation in Extrusions from the PRC.⁵⁶

Department’s Position: In its comments, UQM takes great pains to demonstrate how the products at issue are similar to FHS.⁵⁷ UQM then argues that because the ITC removed FHS from the scope of the Orders, the Department should similarly find the products at issue are outside the scope of the Orders. UQM then uses this premise to frame many of its arguments concerning the extent to which the products at issue fulfill the Diversified Products criteria, including the first criterion, physical characteristics. Therefore, as an initial matter, we have addressed UQM’s comments in this regard. In making this line of argument, UQM fundamentally misunderstands the ITC’s findings with regard to FHS. During the investigation, the Department found heat sinks and FHS to be within the scope of the Orders.⁵⁸ The ITC, in turn, determined that there were two like products, FHS and all other aluminum extrusions and, concerning FHS, it found that material injury did not exist.⁵⁹ However, the like-product analysis and the analysis conducted under 19 CFR 351.225(k)(2) are separate and distinct; the former is used solely by the ITC for determining material injury and the latter is used exclusively by the Department for determining whether products are subject to the scope of an order. Thus, UQM wrongly calls for the Department to apply the ITC’s like-product analysis to a scope inquiry conducted by the Department under 19 CFR 351.225(k)(2). For the same reasons, we find this line of argument is also off point with regard to the four remaining criteria of the Diversified Products test.

We reject the argument that the products at issue are distinct from subject merchandise because they were produced by means of a CNC precision machine process. In the Machine Parts Scope Ruling, the Department examined whether the CNC precision machine process produced a product that was distinct from the aluminum extrusions covered by the scope of the Orders.⁶⁰ In that ruling, the Department determined that the CNC precision process did not yield products that are distinct from subject aluminum extrusions. Specifically, the Department found that the scope of the Orders:

⁵⁶ See Extrusions from the PRC Decision Memorandum at Comment 3G: “heat sinks, regardless of the specialization of the end-use, testing or engineering, are covered by the plain language of the scope of these investigations.”

⁵⁷ See UQM’s Rebuttal Brief.

⁵⁸ See Extrusions from the PRC Decision Memorandum at Comment 3G.

⁵⁹ See ITC Final Determination at 24.

⁶⁰ See Machine Parts Ruling at 14.

. . . encompasses the manufacturing processes utilized to create the products at issue. For example, the products at issue are cut-to-length, machined, drilled, and lathed (i.e., spun).⁶¹

The Department further stated that information from the ITC and the Department indicates that the scope of the Orders places no such limits on the degree of fabrication, such as that involving the CNC process, and that the “description and treatment of heat sinks and finished heat sinks by the Department and ITC makes this fact apparent.”⁶² The Department further explained how, due to a negative injury finding by the ITC, the scope of the Orders excludes FHS, but that the scope of the Orders nonetheless continues to include heat sinks, which are precision machined.⁶³ Furthermore, the Department explained that, in regards to organic photoreceptor/photoconductor tubes, which were described as made from a specialized aluminum which “require very distinct and proprietary manufacturing processes” and which are not interchangeable with other products, the ITC determined that “a lack of interchangeability and the use of precision manufacturing are not by themselves sufficient to distinguish a particular aluminum extrusion product from the wide variety of aluminum extrusions in this investigation.”⁶⁴ Thus, in the Machine Parts Scope Ruling, the Department rejected the notion that the CNC precision machine process may serve as a basis to exclude products from the scope of the Orders.⁶⁵

The products produced examined in the Machine Parts Scope Ruling and the products subject to the instant scope inquiry are both produced using a CNC precision machine process. In addition, contrary to UQM’s claims, the IDEX-manufactured products examined in the Machine Parts Scope Ruling were, in fact, produced using a CNC machine process that resulted in very exact specification and tolerances.⁶⁶ Further, the CNC precision machines that produced the products examined in the Machine Parts Scope Ruling and the precision machines used to produce the products at issue in this inquiry both required considerable investment.⁶⁷ In addition, the fact that UQM itself argues that the motor cases at issue are similar to FHS, a product that the Department found to be within the scope of the Orders, further demonstrates that the motor cases are not distinct from subject merchandise in terms of physical characteristics.

We also disagree with the notion that the products at issue are outside the scope of the Orders by virtue of the fact that relatively large amounts of the extruded feedstock are removed during the CNC machine process. The scope of the Orders provides no exclusions based upon numerical thresholds regarding the amount of material removed in the process of fabrication. We also find UQM’s claim that the products at issue can be produced using non-extruded feedstock to be

⁶¹ Id.; see Orders (“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.”).

⁶² Id.

⁶³ See Machine Parts Ruling at 15.

⁶⁴ See ITC Final Determination at 11.

⁶⁵ See Machine Parts Scope Ruling at 15.

⁶⁶ See the August 30, 2011, Scope Request of IDEX (IDEX Scope Request) at Exhibit 1(a), a public document which contains a schematic of the precision machine part at issue. The schematic indicates tolerances that are measured in one-thousandths of an inch. The IDEX Scope Request is a public document that can viewed via IA Access. See IA Access barcode number 3026667-01.

⁶⁷ See IDEX Scope Request at 33; see also Scope Request at 4.

irrelevant. UQM's scope inquiry pertains only to fabricated products that are the result of the extrusion process and, thus, we must limit our analysis to those products.⁶⁸

We also disagree that the sale of the products at issue on a per-piece basis distinguishes them from subject merchandise. Information from the ITC indicates that subject aluminum extrusions are, in fact, sold on a per-piece basis.⁶⁹ However, more importantly, the Diversified Products test contains no provision for examining the manner in which products are priced when evaluating the physical characteristics criterion.

Therefore, we find that UQM presents no information or argument that leads us to reach a conclusion that differs from that of the Machine Parts Scope Ruling. Accordingly, we determine that the products at issue do not meet the first criterion of the Diversified Products test.

UQM's claim that Diamond Sawblades from the PRC and the First Review of Laminated Sacks from the PRC should lead the Department to apply the substantial transformation test in the instant scope inquiry is not on point. While it is true that the Department applied the substantial transformation test in those proceedings, it did so in the context of determining country-of-origin, an analysis that is separate and distinct from the analysis the Department conducts under 19 CFR 351.225(k).⁷⁰

In addition, we find that the facts in Crawfish differ significantly from the facts in this case. In Crawfish, the Department considered whether etouffee was subject to the AD order on crawfish tail meat.⁷¹ The Department conducted an analysis under 19 CFR 351.225(k)(2), and in considering the physical characteristics, considered whether the crawfish tail meat had been transformed into a different product. The Department "found that etouffee, when cooked in the manner described by Coastal, had undergone a substantial transformation into a new and different product," because the overall physical characteristics, including the integration of the crawfish with other ingredients were altered from tail meat on its own."⁷² The Department's determination was affirmed by the CAFC, which held that "as a mixture of many ingredients in addition to crawfish tail meat, Commerce could reasonably have determined that etouffee is not freshwater tail meat and therefore is not included within the scope of the order."⁷³ In this case, the scope of the Orders includes "aluminum extrusions . . . produced by an extrusion process" which may also be "fabricated." UQM's products are aluminum extrusions that have been fabricated, using some of the same processes (e.g., the CNC machine process) which were discussed in the investigation and in the ITC Final Determination. Therefore, unlike the etouffee considered in Crawfish, fabricated aluminum extrusions are expressly included in the scope of the Orders. Furthermore, the scope of the Orders, the ITC Final Determination, and the AD Final Investigation do not indicate that fabrication may only reach a certain point before an aluminum extrusion is no longer within the scope of the Orders.

⁶⁸ See the Machine Parts Scope Ruling at 15, in which the Department reached the same conclusion.

⁶⁹ See ITC Final Determination at 26.

⁷⁰ See First Review of Laminated Sacks from the PRC Decision Memorandum at Comments 1b and 1c; see also Diamond Sawblades from the PRC Decision Memorandum at Comment 4.

⁷¹ See Crawfish, 483 F.3d at 1360.

⁷² Id. at 1361.

⁷³ Id. at 1363.

Comment 2: Second Criterion of Diversified Products Test – Expectations of the Ultimate Purchasers

UQM’s Case Brief

Aluminum extrusions “are used as inputs (*i.e.*, intermediate products) in the production of downstream products.”⁷⁴ Customers seeking to purchase aluminum tubing (the feedstock used to produce the products at issue) expect an intermediate good that must be further processed to yield a finished product. In contrast, UQM expects to receive precision machined components that have been manufactured precisely to its specifications. UQM expects to quickly assemble the finished parts (*i.e.*, the inner and outer motor cases) to produce the complete electric motor housing. Thus, the customer expectations with regard to motor cases are fundamentally different than other fabricated parts subject to the scope of the Orders because the essential nature of the motor cases are not present until the aluminum tubing feedstock is cut-to-length and machined to exacting specifications.⁷⁵

The products at issue are distinct in terms of customer expectations as further evidenced by the fact that they are priced differently than other fabricated extrusions subject to the scope of the Orders. Most fabricated extrusions subject to the scope of the Orders are sold on the basis of the price of metal plus a per pound charge.⁷⁶ This pricing method is due to the fact that what the customer is buying is the metal with a minimal amount of value added to it. In contrast, the products at issue are sold per-piece because of the significant value added to the products.⁷⁷

Petitioners’ Case Brief

It is irrelevant whether purchasers of aluminum tubing (the feedstock material) have different expectations from purchasers of motor cases (the fabricated extrusions). The Department has stated that “the proper analysis cannot begin by comparing the products at issue, which are fabricated, to non-fabricated extruded products.”⁷⁸ Rather, “the products at issue must be compared with other extruded products that have undergone some form of fabrication which are subject to the scope.”⁷⁹ Here, UQM makes no argument that purchaser expectations for motor cases are fundamentally different from purchaser expectations regarding other fabricated parts that are subject to the orders. Again, there is no clear dividing line between motor cases and other fabricated extrusions in terms of purchaser expectations.

UQM’s Rebuttal Brief

The products at issue are unique because customers expect that production will be difficult, to the extent that a specialized machine shop will be required, backed up by extensive technical support from the customer. Therefore, the products at issue are analogous to FHS. For example,

⁷⁴ See ITC Final Determination at I-10 (May 2011) (citing petitioners’ pre-hearing brief at 3).

⁷⁵ In fact, the production of motor cases does not require the use of extruded aluminum feedstock.

⁷⁶ See ITC Final Determination at V-2.

⁷⁷ See UQM Case Brief at Appendix C, Exhibit 7.

⁷⁸ See Machine Parts Scope Ruling at 16.

⁷⁹ Id.

the ITC found that FHS were sold to distinct classes of end users and distributors, including various computer manufacturers, and that the customers that purchase FHS have specific requirements regarding thermal resistance.⁸⁰ By contrast, the Machine Parts Scope Ruling does not identify any similar expectations that customers would have the same relationship with suppliers as UQM or purchasers of FHS. The ITC also found that customers perceived FHS as a different line of business than other aluminum extrusions.⁸¹ Likewise, UQM perceived that a motor case supplier would be a highly skilled machining center, not a producer of extrusions. Hence, UQM did not seek out a supplier among producers of aluminum extrusions, but instead sought out a producer capable of producing a high quality, precision machine product. In addition, the prices of FHS and the products at issue are substantially higher than aluminum extrusions. Further, the prices for FHS and the products at issue are quoted on a per-piece basis as opposed to aluminum extrusions which are typically sold on a per-unit basis.⁸² Thus, because the products at issue are analogous to FHS in terms of customer expectations, they should also be excluded from the scope of the Orders.

Department's Position: We agree with petitioners that the proper analysis cannot begin by comparing the products at issue, which are fabricated, to non-fabricated extruded products. Rather, we find that the products at issue must be compared with other extruded products that have undergone some form of fabrication which are subject to the scope. In the Machine Parts Scope Ruling, the Department found that the scope of the Orders encompasses fabricated, extruded aluminum products, including products produced by means of the CNC machine process, including heat sinks which the Department and the ITC found to be within the scope of the Orders.⁸³ As explained above, we do not find that the CNC machine process used to produce the products examined in the Machine Parts Scope Ruling to be distinct from the CNC machine process used to produce the products at issue. In light of this fact, we find UQM's arguments concerning how the CNC machine process distinguishes the products at issue in terms of the expectations of the ultimate consumers to be unpersuasive.

We also find UQM's arguments regarding the manner in which the products at issue are priced and their similarity to FHS to be unpersuasive for the same reasons discussed in Comment 1 above. In conclusion, we find that the expectations of the ultimate purchasers to the same for subject merchandise and the products at issue.

Comment 3: Third Criterion of Diversified Products Test – Ultimate Use of the Product

UQM's Case Brief

High efficiency, water cooled electric motors for automobiles, trucks, and other vehicles are not among the end-uses identified by the scope of the Orders, the Petition, or ITC Final Determination.⁸⁴ None of the identified end-uses specified in these documents are highly

⁸⁰ See ITC Final Determination at 7 - 8.

⁸¹ Id. at 8 - 9.

⁸² See ITC Final Determination at 8, I-17, and V-2; see also Scope Request at Appendix C at 5 and Exhibit 7 at 20.

⁸³ See Machine Parts Scope Ruling at 16 - 17; see also AD Final Determination, 76 FR at 30650.

⁸⁴ See AD Order, 76 FR at 30651, Petition at 8 and Exhibit I-5, Petition Supplement at 3 - 4, ITC Final Determination at I-8.

engineered products that require the level of precision present in the products at issue. For example, fence posts, electrical conduits, door thresholds, or heat sinks do not require the same degree of precision and can be readily fabricated from an aluminum extrusion. In sum, the finished inner and outer motor cases have uses that are imparted by the CNC machine process and not by the extrusion process. In this sense, the products are analogous to tap hole sleeve systems examined in Magnesia Carbon Bricks from the PRC in that the imported product is produced from in-scope merchandise, but is used for a very different and more narrow purpose, dictated by the physical characteristics of the finished product.⁸⁵

Petitioners' Case Brief

UQM argues that the scope does not specifically identify electric motor vehicles as an end-use for aluminum extrusions. The scope is not, however, defined by end-use. However, notwithstanding this fact, the ITC has found that extrusions are used “in a wide variety of finished good applications” and that “major end-use applications for aluminum extrusion{s}” include “automotive” vehicles and “electrical power units.”⁸⁶ Further, there is no basis to support UQM’s claim that the scope of the Orders establishes exclusions for precision tolerance extrusions. The scope of the Orders includes products that have been precision machined.⁸⁷

UQM’s Rebuttal Brief

The ITC found that “[t]he principal end-use applications of aluminum extrusions are in the building and construction, transportation, and engineered products sectors. FHS have a specific end use (thermal management of electronic devices), but many other aluminum extrusions also have distinct individual end-use applications.”⁸⁸ However, the fact that various fabricated aluminum extrusions “have distinct individual end-use applications” did not dissuade the ITC from excluding FHS. At best, therefore, this factor contributes little support to either side of the debate.

Department’s Position: In the Machine Parts Scope Ruling the Department disagreed with the notion that the CNC machine process determines the ultimate use of the products at issue and that this fact distinguishes the products produced from that process from those covered under the scope of the Orders.⁸⁹ As noted above, we find that the CNC machine process used to produce the items examined in the Machine Parts Scope Ruling are indistinct from the machine process used to produce the products at issue. Moreover, we find that the scope of the Orders includes extrusions that have been fabricated by means of the CNC machine process, and that the ITC found that these products may include “automotive” vehicles and “electrical power units.”⁹⁰ Further, the CNC machine process, by its very nature, produces products that require very precise tolerances. Thus, we find unpersuasive UQM’s argument that the precise specifications of the products at issue somehow distinguish the products at issue from subject merchandise in

⁸⁵ See Final Scope Ruling on Tap Hole Sleeve Systems from the People’s Republic of China (May 3, 2011) (Tap Hole Scope Ruling).

⁸⁶ See ITC Final Determination at I-10.

⁸⁷ See AD Order, 76 FR at 30650.

⁸⁸ See ITC Final Determination at 7 – 8.

⁸⁹ See Machine Parts Scope Ruling at 17.

⁹⁰ See ITC Final Determination at I-10.

terms of end-use. On this basis, we find that the ultimate use of the products at issue is not distinct from those of subject merchandise.

Comment 4: Fourth Criterion of Diversified Products Test – Channels of Trade in Which the Product Is Sold

UQM’s Case Brief

Like most intermediate goods, aluminum extrusions are sold through distributors and also directly to manufacturers of products that incorporate extrusions. Motor cases are sold only to end users. In fact, they must be manufactured to the precise specifications of the end-user. These are not off-the-shelf products, such as window frames, electrical conduits or door sills. The end user in this case not only expects delivery of a finished part, but provides technical assistance and engineering drawings to guide the production process. Ultimately, given that the essential physical characteristics are imparted by machining operations – not by extrusion – and given that the finished motor cases are designed and adapted for use in a specific model of water-cooled electric motor, the channel of distribution points to the same result dictated by the physical characteristics. That is, the various machining processes are essential to produce the imported motor cases, thus taking them outside the scope of the Orders.

Petitioners’ Case Brief

UQM acknowledges that both fabricated and non-fabricated aluminum extrusions are sold through the same channels of trade, and it makes no argument that there is a dividing line between motor cases and other subject extrusions in terms of the channels of trade. The Department recently found that the fabricated parts imported by IDEX are sold through the same channels of trade as other subject products.⁹¹ There is no reason to reach a different conclusion regarding fabricated motor cases.

UQM’s Rebuttal Brief

The products at issue are distinct from those examined in the Machine Parts Scope Ruling in terms of channels of trade. As are most intermediate goods, aluminum extrusions are sold through distributors and also directly to manufacturers of products that incorporate extrusions. Motor cases, however, are sold only to end users due to the fact that the customers require specifications that are specific to their production needs. Further, the products at issue are not manufactured by an extruder. In fact, the entire focus of UQM’s quality control is on the PRC-based CNC precision machine process and not on the extrusion process used to produce the extruded feedstock. The ITC found that FHS were sold to end-users and distributors. Thus, in this sense, the channels of distribution of the products at issue are narrower than the channels identified with respect to FHS. Given that the ITC excluded FHS from the scope of the Orders and that the channels of trade of the products at issue are narrower than FHS, the Department should similarly find the products outside the scope.

⁹¹ See Machine Parts Scope Ruling at 17.

Department's Position: As explained in Comment 1 above, UQM's arguments concerning the ITC's findings on FHS are misplaced. The ITC did not exclude FHS from the scope of the Orders. Rather, the ITC determined that FHS constituted a separate like product for which material injury did not exist.⁹² The ITC's like product analysis is separate and distinct from the Diversified Products test the Department conducts under 19 CFR 351.225(k)(2). Moreover, as noted above, the Department, which is the sole authority in terms of determining the products covered under the scope of the Orders, specifically found heat sinks and FHS (products produced using the CNC precision machine process) to be within the scope of the Orders.⁹³ Thus, UQM's claims that the products at issue are similar to FHS, precision machined products the Department found were within the scope of the Orders, only serve to demonstrate that the products are not distinct from subject merchandise in terms of channels of trade.

Comment 5: Fifth Criterion of Diversified Products Test – Manner in Which the Product Is Advertised and Displayed

UQM's Case Brief

The imported motor cases are not advertised or displayed because they are not sold off the shelf. They are made to order specifically for a given customer, like UQM. Thus, manufacturers of this class of product advertise their machining capabilities and their ability to meet exacting customer specifications. Conversely, extruders advertise their products, the extrusions, and perhaps any ability to perform minor fabrication. Examples of advertisements from extruders demonstrate that their marketing efforts emphasize the equipment required to produce aluminum extrusions (*i.e.*, presses, dies, and casting equipment).⁹⁴

Extruders do not advertise or promote the ability to manufacture machined parts and components, as opposed to extruded profiles. Yet, the essential characteristics of the imported motor cases are imparted by machining operations, not by an extrusion press. It follows that the industry producing and marketing aluminum extrusions is not the same industry that manufactures motor cases.

Petitioners' Case Brief

UQM makes no argument that there is a dividing line between its motor cases and other subject extrusions in terms of the manner of advertising or display. There is no such dividing line. In fact, companies market fabricated extrusions in the same way that they market raw extrusions. Sapa, for example, markets non-fabricated pipe and tube extrusions along with fabricated products in the same brochure.⁹⁵ The Department recently found that the fabricated parts imported by IDEX are advertised and displayed in the same manner as other subject products.⁹⁶ There is no reason to reach a different conclusion regarding fabricated motor cases.

⁹² See ITC Final Determination at 24.

⁹³ See Extrusions from the PRC Decision Memorandum at Comment 3G.

⁹⁴ See Petitioner at Exhibits II-16 and III-29.

⁹⁵ See Petitioners Case Brief at Attachment 5.

⁹⁶ See Machine Parts Scope Ruling at 17.

UQM's Rebuttal Brief

In their case briefs, petitioners included a brochure from a manufacturer purportedly showing that producers of extrusions also advertise their capabilities to product fabricated extrusions.⁹⁷ However, the brochure does not identify any particular type of fabricated extrusion nor does it describe a production process that is not already included in the scope of the Orders. In contrast, the marketing materials of producers of motor housings reference specific industry standards (e.g., frame size) or even specific motor manufacturers (e.g., ABB).⁹⁸ Notably, the marketing materials for motor housings do not advertise or identify the products as aluminum extrusions. Thus, as with FHS, the producers of the products at issue “specialize” in electric motor parts as distinct from fabricated aluminum extrusions.⁹⁹

Department's Position: As noted above, we find the scope of the Orders includes extruded products (e.g., heat sinks) that are fabricated by means of a CNC machine process. In light of this fact, it is reasonable to assume that producers of such subject extrusions might also tout the capabilities of their CNC machinery in their marketing materials. Petitioners have provided information in the instant scope ruling that supports this assumption. For example, Petitioners provide information from Sapa indicating that the firm markets non-fabricated pipe and tube extrusions along with fabricated products in the same brochure.¹⁰⁰ Moreover, in the Machine Parts Scope Ruling, the Department found that IDEX itself acknowledged that “many of the aluminum extrusion companies advertise their ability to finish extruded products, including the use of CNC machinery.”¹⁰¹ Thus, in terms of advertising and display, we find that the products at issue are not distinct from precision machined extrusions covered under the scope of the Orders.

Comment 6: Whether the Products at Issue Constitute Finished Goods and/or Finished Goods Kits

Petitioners' Case Brief

The products at issue cannot be excluded from the scope of the Orders as finished goods. First, the products at issue are not ready to be assembled upon importation because additional processing and machining is necessary in order for the goods to be produced into a complete motor case or housing. In order for the inner case to be fitted within the outer case, the outer case must be heated and cooled and a sealant applied to the inner housing. Further, upon assembly, the completed case is pressure tested followed by additional machining to the inner bore of the case.¹⁰²

But regardless of the assembly process, the motor cases at issue are not final finished goods because they are merely one component of a complete electric motor, which requires additional

⁹⁷ See Petitioners Case Brief at Attachment 5.

⁹⁸ See UQM Rebuttal Brief at Exhibit 5.

⁹⁹ See ITC Final Determination at 8.

¹⁰⁰ See Petitioners Case Brief at Attachment 5.

¹⁰¹ See the Precision Machine Parts Scope Ruling at 17.

¹⁰² See Scope Request at 4 – 5.

components. The Department has repeatedly found that that a product cannot be excluded as a “finished goods kit” where the assembled item is merely a component of a larger, downstream product.¹⁰³

UQM’s Rebuttal Brief

Petitioners are wrong to argue that the products at issue are not finished goods because further assembly is required after importation and because motor cases are only part of a larger system, in this case an electric motor. The FHS already excluded from the scope of the Orders are themselves parts or components of other products. Thus, it is not true that all parts are covered by the scope of the Orders. Rather, it follows that there are finished parts that are excluded from the scope of the Orders. The products at issue are imported with all their essential and integral components included. In this sense, the products at issue are distinct from prior scope inquiries in which the Department found products were not finished goods or finished goods kits due to the lack of integral components.¹⁰⁴

Petitioners’ Surrebuttal

UQM is also wrong when it disputes the idea that extrusions that are parts or components of downstream products cannot be excluded as finished merchandise. UQM references the ITC’s injury findings concerning FHS to make this flawed argument. Whether FHS are parts or components of larger devices had no bearing on their exclusion. FHS were excluded solely because of the ITC’s “no injury” finding. Absent such a finding, FHS would be included in the scope.¹⁰⁵

Department’s Position: We disagree with UQM’s argument that the products at issue constitute finished goods. Contrary to UQM’s claims, the inner and outer motor cases subject to this scope inquiry are not fully assembled upon importation. As UQM indicates, additional processing and assembly is required after importation.¹⁰⁶ In addition, the products at issue are merely components of an electric motor. In this sense they are no different from the products examined in the Machine Parts Scope Inquiry. In that ruling, the Department found that the products at issue, precision machine parts for use in laboratory equipment, were covered by the scope of the Orders.¹⁰⁷ Furthermore, the Department has previously determined that a product cannot be excluded as a “finished good” or “finished goods kit” where the assembled item is

¹⁰³ See, e.g., Aluminum Extrusions From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 76 FR 18524 (April 4, 2011) (Extrusions from the PRC), and accompanying Issues and Decision Memorandum (Extrusions from the PRC Decision Memorandum) at Comment 3h; see also Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on Certain Modular Aluminum Railing Systems” (October 31, 2011) (Railing Systems Scope Ruling) at 15 – 17.

¹⁰⁴ See 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) at 9; see also Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on Drapery Rail Kits” (February 3, 2012) (Drapery Rail Kits Scope Ruling).

¹⁰⁵ See Extrusions from the PRC Decision Memorandum at Comment 3G.

¹⁰⁶ See Petitioners Case Brief at Attachment 5.

¹⁰⁷ See the Machine Parts Scope Ruling at 18.

merely a component of a larger, downstream product.¹⁰⁸

Comment 7: Whether to Expand the Parameters of the Scope Inquiry to Include Assembled Motor Cases

UQM's Rebuttal Brief¹⁰⁹

The question of whether a fully assembled motor case is within the scope of the Orders is implicit in the arguments of the parties and logically necessary to decide the fate of the inner and outer motor cases. Therefore, the Department should address whether fully assembled motor cases (e.g., motor cases with the inner case inserted into the outer case) are within the scope of the Orders.

Petitioners' Surrebuttal Brief

UQM's belated attempt to expand the parameters of its scope inquiry request is untimely. The Department should not, at this late stage, expand the inquiry to include additional products that were not the subject of UQM's Scope Request. If UQM wishes for the Department to address assembled motor cases, it should file a new scope request.

Department's Position: The Department issued the Initiation based on the product description included in the Scope Request, in which UQM described the products at issue as "inner" and "outer motor" cases that are "assembled by UQM after importation."¹¹⁰ In addition, as part of the Initiation, the Department solicited comments from interested parties concerning the information contained in the Scope Request.¹¹¹ Therefore, we find it is inappropriate for the Department to expand the parameters of a scope inquiry at such a late stage of the proceeding, particularly when interested parties have already submitted their comments.

Recommendation:

For the reasons discussed above, we recommend finding that the products addressed by the instant scope request are subject to the scope of the Orders pursuant to 19 CFR 351.225(k)(2). In light of the numerous submissions made by interested parties and the issues addressed in the Scope Request itself, 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, further recommend that this scope ruling constitute a final ruling as provided under 19 CFR 351.225(f)(4).

¹⁰⁸ See the Railing Systems Scope Ruling at 15 – 17.

¹⁰⁹ UQM makes this argument for the first time in its rebuttal brief.

¹¹⁰ See Scope Request at 4.

¹¹¹ See Initiation at 1 – 2.

If the recommendation in this memorandum is accepted, we will serve a copy of this memorandum to all interested parties on the scope service 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