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Scope Inquiry/Geodesic Domes

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July 17, 2012

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

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

Eugene Degan
Program Manager, Office 8
Antidumping and Countervailing Duty Operations

FROM: Brooke Kennedy
International Trade Analyst, Office 8
Antidumping and Countervailing Duty Operations

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

SUBJECT: Final Scope Ruling on J.A. Hancock Co., Inc.’s Geodesic
Structures

SUMMARY

J.A. Hancock Co., Inc. (“J.A. Hancock”),¹ filed a scope inquiry in which it requested that the Department of Commerce (“Department”) determine whether two models of geodesic structures²

¹ See J.A. Hancock Co., Inc.’s letter to the Department regarding: Aluminum Extrusions from China: Request of J.A. Hancock & Co. Inc. for a Scope Ruling Confirming the Exclusion of Aluminum Geodesic Dome Frame Kits from the AD and CVD Orders, dated March 23, 2012 (“Scope Ruling Request”).

² J.A. Hancock referred to its products as “geodesic domes” and “geodesic dome frame kits” in its Scope Ruling Request, however, we refer to them as “geodesic structure kits” within this scope ruling.



(“geodesic structure kits”) imported and sold by J.A. Hancock are outside the scope of the AD and CVD orders on aluminum extrusions from the PRC.³ On the basis of our analysis of the comments received, we have determined that the unassembled geodesic structure kits at issue are within the scope of the *Orders* and do not fall under the “finished goods kit” exclusion.

BACKGROUND

J.A. Hancock filed its scope ruling request on March 26, 2012. Petitioners⁴ did not submit comments.

SCOPE OF THE ORDERS

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

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

³ See *Aluminum Extrusions from the People’s Republic of China: Antidumping Duty Order*, 76 FR 30650 (May 26, 2011) and *Aluminum Extrusions from the People’s Republic of China: Countervailing Duty Order*, 76 FR 30653 (May 26, 2011) (collectively referred to as “*Orders*”).

⁴ Petitioners are the Aluminum Extrusions Fair Trade Committee.

are cut-to-length, machined, drilled, punched, notched, bent, stretched, knurled, swedged, mitered, chamfered, threaded, and spun. The subject merchandise includes aluminum extrusions that are finished (coated, painted, *etc.*), fabricated, or any combination thereof.

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

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

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

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

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

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

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

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States (“HTS”): 7604.21.0000, 7604.29.1000, 7604.29.3010, 7604.29.3050, 7604.29.5030, 7604.29.5060, 7608.20.0030, 7608.20.0090, , 8302.10.3000, 8302.10.6030, 8302.10.6060, 8302.10.6090, 8302.30.3010, 8302.30.3060, 8302.41.3000, 8302.41.6015, 8302.41.6045, 8302.41.6050, 8302.41.6080, 8302.42.3010, 8302.42.3015, 8302.42.3065, 8302.49.6035, 8302.49.6045, 8302.49.6055, 8302.49.6085, 8302.50.0000, 8302.60.9000, 8306.30.0000, 8479.89.98, 8479.90.94, 8513.90.20, 9403.10.00, 9403.20.00, 9403.90.1040, 9403.90.1050, 9403.90.1085, 9403.90.2540, 9403.90.2580, 9403.90.4005 9403.90.4010, 9403.90.4060, 9403.90.5005, 9403.90.5010, 9403.90.5080, 9403.90.6005, 9403.90.6010, 9403.90.6080, 9403.90.7005, 9403.90.7010, 9403.90.7080, 9403.90.8010, 9403.90.8015, 9403.90.8020, 9403.90.8041, 9403.90.8051, 9403.90.8061, 9506.91.0010, 9506.91.0020, and 9506.91.0030. The subject merchandise entered as parts of other aluminum products may be classifiable under the following additional Chapter 76 subheadings: 7610.10, 7610.90, 7615.19, 7615.20, and 7616.99 as well as under other HTS chapters. In addition, fin evaporator coils may be classifiable under HTS numbers: 8418.99.8050 and 8418.99.8060. While HTS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.⁵

LEGAL FRAMEWORK

When a request for a scope ruling is filed, the Department examines the scope language of the order at issue and the description of the product contained in the scope-ruling request.⁶ 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.⁷ 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 are not dispositive, the Department will initiate a scope inquiry under 19 CFR 351.225(e) and analyze the factors set forth at 19 CFR

⁵ See *Orders*.

⁶ See *Walgreen Co. v. United States*, 620 F.3d 1350, 1357 (Fed. Cir. 2010).

⁷ See 19 CFR 351.225(k)(1).

351.225(k)(2). These factors are: (i) the physical characteristics of the merchandise; (ii) the expectations of the ultimate purchasers; (iii) the ultimate use of the product; (iv) the channels of trade in which the product is sold; and (v) the manner in which the product is advertised and displayed. The determination as to which analytical framework is most appropriate in any given scope inquiry is made on a case-by-case basis after consideration of all evidence before the Department.

DESCRIPTION OF MERCHANDISE SUBJECT TO THIS INQUIRY

The merchandise subject to this scope inquiry is two models of geodesic structure kits. J.A. Hancock describes both models as being made from aluminum extrusion tubing that has been cut to various lengths, fabricated at the ends with crimping and boring, and color coded through the anodization process.

At the time of importation, the 11.5-foot model contains 120 extruded aluminum poles; 48 nuts, bolts and washers; and assembly instructions. The 11.5-foot model is imported and sold in three 40-pound cartons, labeled “box 1 of 3,” “box 2 of 3,” and “box 3 of 3.” The eight-foot model contains 64 extruded aluminum poles; 28 nuts, bolts and washers; and assembly instructions. The 8-foot model is imported and sold in two 40-pound cartons, labeled “box 1 of 2” and “box 2 of 2.” Both models, once assembled, can be used for landscaping, gardening or as a climbing structure for children. J.A. Hancock states that no further fabrication, cutting, punching, finishing or other processing is necessary to complete the finished products. Further, no additional materials are needed to complete the finished product.

INTERESTED PARTY COMMENTS

J.A. Hancock

J.A. Hancock submits that both of its imported geodesic structure kits qualify for the “finished goods kit” exclusion described in the scope of the *Orders*. J.A. Hancock states that its unassembled geodesic structure kits contain all components necessary to assemble final finished goods and that the Department should not require that all components be included in a single carton to qualify as a kit. J.A. Hancock explains that the unassembled geodesic structure kits require no further fabrication and are assembled “as is” from the components provided in the kits.

J.A. Hancock further asserts that the kits would qualify as excluded finished goods kits under a *Diversified Products* criteria⁸ analysis. With regard to *physical characteristics* of the products, J.A. Hancock explains that both models are designed as components of a completed geodesic dome frame with a particular and specific configuration. Unlike subject aluminum extrusions which have numerous ultimate applications, these products have no use or purpose apart from creating a geodesic dome frame.⁹

⁸ See 19 CFR 351.225(k)(2); see also *Diversified Products Corp. v. United States*, 572 F. Supp. 883 (CIT 1983) (“*Diversified Products*”).

⁹ See Scope Ruling Request at 7.

With regard to *expectations of ultimate purchasers*, J.A. Hancock states that these kits are ready at the time of importation for sale to ultimate customers who can purchase and use these products to assemble a geodesic dome frame. Consumers expect these kits to be suitable only for assembling geodesic dome frames, whereas purchasers of subject extrusions expect to further manufacture the product into different end uses.¹⁰

With regard to *ultimate use of the product*, J.A. Hancock explains that the dome frame kit is ultimately used for the single specific purpose of assembling a geodesic dome frame; however, subject extrusions are suitable for a wide variety of uses.¹¹

With regard to *channels of trade in which the product is sold*, J.A. Hancock states that it imports the product into its warehouse, and then sells it to individual consumers, clubs or groups, and possibly small distributors in its original packaging with no additional handling, assembly, or fabrication. On the other hand, subject extrusions are sold to manufacturers or large-scale distributors who resell to manufacturers; these manufacturers in turn process and fabricate these extrusions into an end product.¹²

Finally, with regard to *the manner in which the product is advertised and displayed*, J.A. Hancock notes that it sells directly to customers on-line, at home and at garden fairs, or markets the product through small retailers. Advertising may be online, word-of-mouth, and through advertising targeting “back-to-nature” groups, gardeners, landscapers, playground designers, and other classes who may find a geodesic dome attractive. This marketing is aimed at the retail consumer level. Retail outlets will display the product in a manner demonstrating that it is intended to be assembled into a geodesic dome frame. In contrast, subject extrusions are advertised in trade publications and websites and in trade shows aimed at manufacturers and fabricators, with very little retail or consumer-level advertising.¹³

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

DEPARTMENT POSITION

We find that the description of the product and the scope language is dispositive concerning whether J.A. Hancock’s geodesic structure kits are subject to the *Orders*. Accordingly, for this determination, the Department finds it unnecessary to consider the additional factors specified in 19 CFR 351.225(k)(2).

The scope of the *Orders* covers aluminum extrusions made from aluminum alloys with Aluminum Association designations commencing with the numbers 1, 3, and 6 (or proprietary

¹⁰ See *id.* at 7-8.

¹¹ See *id.* at 8.

¹² See *id.* at 8-9.

¹³ See *id.* at 9-10.

equivalents or other certifying body equivalents). The scope further defines subject merchandise as “a wide variety of shapes and forms, including... tubes, bars, and rods” as well as extrusions that are “anodized” or “prepared for assembly” such as, “extrusions that are cut-to-length, machined, drilled, punched” The scope also makes clear that “subject merchandise includes aluminum extrusions that are finished (coated, painted, *etc.*), fabricated, or any combination thereof.” Record evidence demonstrates that the geodesic structure kits at issue in this scope inquiry are aluminum extrusions that have been cut, crimped, bored and colored before importation and, therefore, meet the description of subject extrusions.

Indeed, the scope specifies an exclusion for a “finished good kit,” defined 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 a finished product.” At the time of importation, J.A. Hancock’s geodesic structure kits contain the poles and fasteners necessary to construct a complete geodesic dome frame. These poles require no further fabrication for assembly and, once assembled, can be considered a finished good, *e.g.*, a climbing structure for children, a growing frame for plants or vines, or a unique yard feature like a gazebo. Therefore, the geodesic structure kits meet the initial requirements for inclusion into the finished goods kit exclusion.

However, the scope language specifies an exception to the “finished goods kits” exclusion: “an imported product will not be considered a ‘finished goods kit’ ... merely by including fasteners such as screws, bolts, *etc.* in the packaging with an aluminum extrusion product.” Record evidence demonstrates that J.A. Hancock’s geodesic structure kits consist only of extruded aluminum tubes, which are accompanied by nuts, bolts, and washers (*i.e.*, fasteners). Since the geodesic structure kits consist solely of extruded aluminum tubes and fasteners, the exception applies. Accordingly, the geodesic structure kits do not meet the finished goods kit exclusion and thus fall within the scope of the *Orders*.

RECOMMENDATION

For the reasons discussed above, and in accordance with 19 CFR 351.225(d), we recommend finding that the geodesic structure kits addressed by the instant request are subject to the scope of the orders on aluminum extrusions from the PRC because they fit the description of the merchandise described in the scope of the *Orders* and do not meet the criteria for excluded products.

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

_____Agree _____Disagree

Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

Date