



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
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Scope Request/Kitted Fences

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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 Degnan
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 Ameristar Fence Products' Aluminum
Kitted Fences

SUMMARY

On June 1, 2012, in response to a request from an importer, Ameristar Fence Products ("Ameristar"), the Department of Commerce ("Department") issued a preliminary scope ruling¹ that kitted fence consisting of fifteen pickets, two or three rails, two or three rods, one post, and bagged grommets and screws, are within the scope of the antidumping duty ("AD") and countervailing duty ("CVD") orders on aluminum extrusions from the People's Republic of

¹ See Memorandum regarding: Antidumping (AD) and Countervailing Duty (CVD) Orders on Aluminum Extrusions from the People's Republic of China (PRC); Preliminary Scope Ruling on Ameristar Fence Products' Aluminum Kitted Fences, dated June 1, 2012 ("Preliminary Scope Ruling").



China.² The Department based its preliminary analysis on the *Diversified Products*³ criteria enumerated at 19 CFR 351.225(k)(2), explaining that Ameristar’s kitted fence is covered by the scope of the *Orders* because: 1) Ameristar’s kitted fence has physical characteristics similar to products covered by the *Orders*; 2) the ultimate purchasers of Ameristar’s kitted fence share the same expectations as ultimate purchasers of products covered by the *Orders*; 3) the ultimate use of Ameristar’s kitted fence is similar to the ultimate use of products covered by the *Orders*; 4) Ameristar’s kitted fence is sold through the same channels of trade as products covered by the *Orders*; and 5) Ameristar’s kitted fence is displayed and advertised similarly to products covered by the scope of the *Orders*.

For the final scope ruling, we continue to find that Ameristar’s kitted fence products are covered by the scope of the *Orders*.

BACKGROUND

On July 28, 2011, Ameristar Fence Products (“Ameristar”) filed a submission with the Department, requesting a scope clarification on whether the aluminum kitted fences it imports are included within the scope of the *Orders*.⁴

On November 14, 2011, the Department initiated a formal scope inquiry on Ameristar’s kitted fences to analyze the factors set forth at 19 CFR 351.225(k)(2).⁵

On June 1, 2012, the Department, in accordance with 19 CFR 351.225(k)(2), preliminarily determined that kitted fences meet the description of subject merchandise and do not qualify for the finished goods kit exclusion described in the *Orders* because they do not contain all of the parts necessary to assemble a final finished fence system.⁶

Interested parties did not provide any comments on the Preliminary Scope Ruling.

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.⁷ Pursuant to the Department’s regulations, the Department may also examine other information, including

² See *Aluminum Extrusions from the People’s Republic of China: Antidumping Duty Order*, 76 FR 30650 (May 26, 2011); *Aluminum Extrusions from the People’s Republic of China: Countervailing Duty Order*, 76 FR 30653 (May 26, 2011) (“*Orders*”).

³ *Diversified Products Corporation v. United States*, 572 F. Supp. 883 (CIT 1983) (“*Diversified Products*”).

⁴ See Ameristar’s July 28, 2011 Scope Ruling Request on “Kitted Items” (“Ameristar’s Scope Ruling Request”).

⁵ See Department’s Scope Inquiry Initiation letter, dated November 14, 2011 (“Scope Inquiry Initiation”).

⁶ See Preliminary Scope Ruling.

⁷ See *Walgreen Co. v. United States*, 620 F.3d 1350, 1357 (Fed. Cir. 2010).

the description of the merchandise contained in the petition, the records from the investigations, and prior scope determinations made for the same product.⁸ 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 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.

SCOPE OF THE ORDERS

The scope language of the *Orders* reads as follows:

The merchandise covered by the order 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.

⁸ See 19 CFR 351.225(k)(1).

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

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

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

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

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

investigation merely by including fasteners such as screws, bolts, *etc.* in the packaging with an aluminum extrusion product.

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

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

Also excluded from the scope of 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 is dispositive.

ANALYSIS

Interested parties did not comment on the Preliminary Scope Ruling. Thus, there is no additional information on the record for the Department to consider in making its final scope determination.

The Department’s Preliminary Scope Ruling explained why, based on the totality of the *Diversified Products* criteria, and pursuant to 19 CFR 351.225(k)(2), Ameristar’s “kitted fence” fits the description of subject merchandise described in the scope of the *Orders*. Therefore, for the reasons provided in our Preliminary Scope Ruling we continue to find that the kitted fences imported by Ameristar are within the scope of the *Orders*. Specifically, the kitted fences at issue are comprised of 6000 series extruded aluminum that are identified with reference to their end use (fence posts, rods, pickets and panels), thereby meeting the description of merchandise

subject to the *Orders*. Further, the kitted fence does not meet the description of an excluded “finished goods kit” because it does not contain all of the parts necessary to fully assemble a final finished fence system and consists solely of subject aluminum extrusions (*i.e.*, fence posts, pickets and rails) and fasteners (screws and grommets).

RECOMMENDATION

We recommend that the Department continue to find that, based on the *Diversified Products* criteria specified at 19 CFR 351.225(k)(2), Ameristar’s kitted fences are within the scope of the *Orders* because: 1) Ameristar’s kitted fence has physical characteristics similar to products covered by the *Orders*; 2) the ultimate purchasers of Ameristar’s kitted fence share the same expectations as ultimate purchasers of products covered by the *Orders*; 3) the ultimate use of Ameristar’s kitted fence is similar to the ultimate use of products covered by the *Orders*; 4) Ameristar’s kitted fence is sold through the same channels of trade as products covered by the *Orders*; and 5) Ameristar’s kitted fence is displayed and advertised similarly to products covered by the scope of the *Orders*. We also recommend finding that the kitted fence does not meet the description of the “finished goods kit” because it does not contain all of the parts necessary to fully assemble a final finished fence system and consists solely of subject aluminum extrusions (*i.e.*, fence posts, pickets and rails) and fasteners (screws and grommets).

If you agree, we will notify U.S. Customs and Border Protection (“CBP”) of our final ruling and instruct CBP to continue to suspend liquidation and to require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the product entered or withdrawn from warehouse, for consumption on or after the date of initiation of the scope inquiry as directed by 19 CFR 351.225(l). Also, we will send a copy of this memorandum to all interested parties on the scope service list via first class mail as directed by 19 CFR 351.303(f).

Agree

Disagree

Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

Date