



A-570-967

C-570-968

Scope Inquiry/Heating Cooling Systems

Public Document

IA/AD/CVD/O8: BDK, RS

October 31, 2012

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

THROUGH: Wendy J. Frankel
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Antidumping and Countervailing Duty Operations

Eugene Degnan
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Antidumping and Countervailing Duty Operations

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

RE: Antidumping and Countervailing Duty Orders on Aluminum
Extrusions from the People's Republic of China

SUBJECT: Final Scope Ruling on Valeo's Automotive Heating and Cooling
Systems

SUMMARY

On May 16, 2012, the Department of Commerce ("Department") received a scope ruling request from Valeo Group and its affiliates ("Valeo") to determine whether certain aluminum inlet parts for automotive heating and cooling systems are subject to the antidumping ("AD") and countervailing duty ("CVD") orders on aluminum extrusions from the People's Republic of China ("PRC").¹ On the basis of our analysis of the comments received under 19 CFR 351.225(k)(1), we have determined the automotive heating and cooling systems are within the scope of the AD and CVD orders on aluminum extrusions from the PRC.

¹ 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) ("Orders").

BACKGROUND

On May 16, 2012, Valeo requested the Department determine whether certain automotive heating and cooling systems were outside the scope of the AD and CVD orders. On June 15, 2012, the Department issued an extension letter² to interested parties extending the time period for issuing a scope ruling or initiating a formal scope inquiry by 45 days, until August 14, 2012. On June 19, 2012, the Aluminum Extrusions Fair Trade Committee (“Petitioners”), submitted comments responding to the scope ruling request by Valeo.³

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 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.

² See Department’s letter “Extension of the Preliminary Ruling,” dated June 15, 2012.

³ See Petitioners’ submission regarding: Aluminum Extrusions From The People’s Republic Of China: Comments Regarding The Scope Ruling Request Of Valeo, dated June 19, 2012 (“Petitioners’ Comments”).

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, 8513.90.20, 8302.50, 9403.90.8030, 9506.91.0010, 9506.91.0020, 9506.91.0030, 7615.19.30, 7615.19.50, 7615.19.70, 7615.19.90, 7615.19.10, 7616.99.10, and 7616.99.50. The subject merchandise entered as parts of other aluminum products may be classifiable under the following additional Chapter 76 subheadings: 7610.10, 7610.90, 7615.19, 7615.20, and 7616.99 as well as under other 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.⁴

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.⁵ 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.⁶ 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.

DESCRIPTION OF MERCHANDISE SUBJECT TO THIS INQUIRY

The products at issue in this scope request are two distinct automotive heating and cooling systems, T-series and M-series products, which are produced from aluminum extrusion raw materials.

⁴ See *Orders*.

⁵ See *Walgreen Co. v. United States*, 620 F.3d 1350, 1357 (Fed. Cir. 2010).

⁶ See 19 CFR 351.225(k)(1).

T-series parts are characterized by their bent, tubular shape and fitted endforms. After a straightening and cutting stage, the tubes are machined to achieve a specific diameter and wall thickness. Each tube is then chamfered, deburred, and bent to precise angles in four places. Next, the ends are shaped by a five-step endforming and double-bead endforming process that includes fitting with end pieces and an additional foam material that adds three millimeters of aluminum to one segment of the tube.

M-series parts consist of bent, tubular aluminum parts that are brazed onto shaped blocks. The first stage is the same process as T-series parts. The shaped aluminum block made from aluminum bar undergoes cutting, smoothing, lathing, milling, grooving, drilling holes, chamfering, tapping, washing, and thread checking. The part is then assembled via brazing using two finished tubes, the finished block, and rings. The brazing process involves ring installation, coating, assembly, pre-heating, heating, and cooling steps, which permanently affix the components into a finished M-series product.

ARGUMENTS FROM INTERESTED PARTIES

Valeo

In its scope ruling request, Valeo argues its products should be excluded from the scope of the *Orders*. Valeo argues the post-extrusion processing its parts undergo is extensive, and meets unique criteria required by the auto industry. Since the language of the *Orders* and scope of the investigation do not include parts for automotive heating and cooling systems, the parts must be outside the scope. Moreover, if the Department determines the language of the *Orders* and the scope of the investigation to be ambiguous, then it should find the parts outside the scope of the *Orders* based on the Diversified Products Criteria factors set forth in 19 C.F.R. 351.225(k)(2). Finally, if the Department finds that the automotive parts for heating and cooling systems produced from Chinese-origin aluminum extrusions are within the scope of the *Orders* based on the Diversified Products Criteria, then Commerce must rule that automotive parts produced from U.S.-origin or non-Chinese origin aluminum extrusion metals are not subject to the *Orders* based on the same factors and analysis.

Valeo argues that its products are not hypothetical, as Petitioners assert, but real items produced and shipped to the United States. The firm is also a recognized interested party entitled to this scope ruling. Valeo's request for a ruling on M and T-series products made from U.S. or non-Chinese extrusions is therefore valid.

Petitioners

Petitioners argue that the automotive heating and cooling systems are within the scope because the scope explicitly includes "aluminum extrusions that are...fabricated."⁷ The endforming and brazing processes are nothing more than fabrications that the *Orders* intended to include. Additionally, while Valeo claims the *Orders* never state that aluminum auto parts fall within the scope, this argument is irrelevant because the scope is not defined by any particular end-uses.

⁷ See Petitioners' Comments at 3.

Lastly, the Department should not consider the hypothetical question of whether, if the parts were made from non-Chinese extrusions, they might fall outside the scope. Valeo provides no evidence that it currently makes these parts from anything but Chinese extrusions. “If the Department finds that Valeo’s T-Series and M-Series parts are in-scope and Valeo begins manufacturing those parts from imported aluminum extrusions, then the company should submit a new scope request at that time.”⁸

RELEVANT SCOPE DETERMINATIONS

1. Precision Machine Parts (IDEX)

The products at issue in this case included an aluminum housing for a vacuum pump, aluminum bodies for high pressure valves, and an aluminum light guided flowcell holder used with an optical subassembly. The respondent argued that the products at issue were not covered by the scope of the *Orders* because they obtained their essential shape and form by means of a computer numerical controlled (“CNC”) precision machine process, while extruded products that are subject to the *Orders* obtain their essential shape and form through the extrusion process. Applying the Diversified Products Criteria factors set forth in 19 CFR 351.225(k)(2), the Department determined that: (1) 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*; (2) the notion that the CNC machine process distinguished the precision machine parts in terms of the expectations of the ultimate consumers was unpersuasive because the scope of the *Orders* encompasses fabricated, extruded aluminum products; (3) the CNC machine process did not distinguish the precision machine parts from those covered by the scope of the *Orders*; (4) the fact that heat sinks are covered by the scope of the *Orders* and that they are sold as CNC machined products undermined the claims that the products at issue were sold through distinct channels of trade; and (5) in terms of advertising and display, the precision machine parts were not distinct from precision machined extrusions covered under the scope of the *Orders*.⁹

2. Motor Cases (UQM)

The products at issue were inner and outer motor cases for use with high-efficiency, water-cooled electric motors. The feedstock of these products consisted of extruded aluminum alloy tubing that was subsequently cut into motor casings through a CNC precision machine process. Much like IDEX, UQM claimed the post-extrusion process its parts underwent placed them outside the scope. The Department determined that the UQM parts are covered by the scope of the *Orders* because of similarities to the parts covered by the IDEX request, which were also found to be within the scope, and because UQM presented no information or argument that would lead the Department to reach a conclusion that differed from that of precision machine parts scope ruling. The products examined in the two cases were both manufactured using a

⁸ See Petitioners’ Comments at 11.

⁹ See the Department’s memorandum regarding: Antidumping Duty (AD) and Countervailing Duty (CVD) Orders: Aluminum Extrusions from the People’s Republic of China (PRC): Final Scope Ruling on Precision Machine Parts, dated March 28, 2012.

CNC machining process that, while resulting in very exact specifications, was not distinct from the fabrication processes described in the language of the *Orders*.¹⁰

ANALYSIS

The description of the automotive heating and cooling parts provided by Valeo indicates that these parts are aluminum extrusions that have undergone extensive fabrication. As the record demonstrates that the production processes applied by Valeo only constitute further fabrication, the Department finds that the resultant items are specifically covered by the *Orders*, which specifically state that “subject merchandise includes aluminum extrusions that are finished..., fabricated, or any combination thereof.” In past cases, discussed above, the Department has consistently found that complex machining processes and other post-extrusion processes amounted to additional fabrication that did not place products outside the scope. Valeo has presented no information or argument that would lead the Department to reach a conclusion that differs from its precision machine parts and motor cases scope rulings. Further, we find that Valeo’s argument that its parts are not covered because the scope does not specifically mention auto parts is without merit. The scope does not attempt to limit the parts that are covered as aluminum extrusions. Indeed, the illustrative nature of the lists contained in the scope is apparent from the frequent use of the phrases “such as” and “including, but not limited to” throughout the scope language.

Additionally, in keeping with its practice of only issuing scope rulings for existing products, the Department has not considered whether Valeo’s merchandise would be subject to the *Orders* if made from U.S. or non-Chinese aluminum extrusions. Valeo may be correct in stating that the products described in its scope request are not hypothetical.¹¹ However, Valeo’s brief allusion to automotive parts produced from non-Chinese origin aluminum being necessarily excluded from the *Orders* if parts made from Chinese aluminum are deemed subject merchandise, is hypothetical in nature. The record does not contain an affirmative statement nor any supporting evidence that Valeo produces M- and T- series parts using non-Chinese origin aluminum. Accordingly, the Department has not considered such hypothetical scenarios in this scope inquiry. However, the Department would consider a request for a scope ruling on automotive heating and cooling systems produced in the PRC from non-Chinese origin aluminum extrusions if such a request were submitted with evidence that such products are being manufactured and imported into the United States.

¹⁰ See the Department’s memorandum regarding: Antidumping Duty (AD) and Countervailing Duty (CVD) Orders: Aluminum Extrusions from the People’s Republic of China (PRC): Final Scope Ruling on Motor Cases, dated July 6, 2012.

¹¹ See Valeo’s statement: “both products are currently produced by Valeo and imported into the U.S. As such, these products are not purely hypothetical and Valeo’s request is premised on a product that is currently imported into the United States...” found in Valeo’s submission regarding: “Antidumping and Countervailing Duty Orders on Aluminum Extrusions for the People’s Republic of China: Rebuttal to Petitioners’ Scope Comments,” dated August 31, 2012, at 9.

RECOMMENDATION

For the reasons discussed above, and in accordance with 19 CFR 351.225(d) and 351.225(k)(1), we recommend finding that the automotive heating and cooling systems addressed by the instant request are subject to the scope of the AD and CVD orders on aluminum extrusions from the PRC.

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