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Scope Inquiry
Motor Cases/Assembled & in Stators;
COO - Motor Cases/Assembled & in Stators
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Office 8, Operations: EBG

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

THROUGH: Melissa G. Skinner
Director
Office 8, Operations

FROM: John Conniff
Senior Trade Analyst

Eric B. Greynolds
Program Manager

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, Assembled and Housing
Stators

Summary

UQM Technologies Inc. (UQM) filed a scope inquiry in which it requested that the Department of Commerce (the Department) determine whether certain assembled motor cases and certain assembled motor cases in stators, which it imports, are within the scope of the Orders.¹ For the reasons described below, we recommend determining that the assembled motor cases at issue are not excluded from the scope of the Orders and that the assembled motor cases housing stators at issue are excluded from the scope of the Orders.

In the same filing, UQM requests that the Department undertake a country of origin analysis to determine whether feedstock consisting of extruded aluminum alloy tubing produced in the PRC that is subsequently machined into assembled motor cases in a third country is outside the scope of the Orders. For the reasons described below, we recommend determining that the Department lacks sufficient information to issue a scope ruling under 19 CFR 351.225(d) or to initiate a

¹ 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).



scope inquiry pursuant to 19 CFR 351.225(e) with respect to UQM's request regarding a country of origin analysis.

Background

UQM submitted its request for a scope inquiry on October 1, 2012.² Petitioners did not submit comments regarding the Scope Request.³

Legal Framework

When a request for a scope ruling is filed, the Department examines the scope language of the order and the description of the product contained in the scope-ruling request.⁴ 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.⁵ 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.⁶ If the Department determines that these sources are not sufficient to decide the matter, the Department will consider the five additional factors set forth in 19 CFR 351.225(k)(2). The determination as to which analytical framework is most appropriate in any given scope inquiry is made on a case-by-case basis after consideration of all evidence before the Department.

Descriptions of the Products at Issue⁷

Motor cases are used in high-efficiency, water-cooled electric motors for electric, hybrid-electric, and plug-in electric vehicles. The various products at issue in the instant scope inquiry are described below.

Assembled Motor Cases

Assembled motor cases consist of two extruded aluminum cylinders in which an inner motor case is inserted into an outer motor case. In the case of assembled motor cases, the production process starts with feedstock consisting of extruded aluminum alloy tubing. The feedstock is then cut into an inner and outer motor case using a computer numerical controlled (CNC) precision machine process. Prior to importation, the outer case is heated causing it to expand. The smaller inner case is then pressed inside the outer cases. Affixing the casings in this manner creates a motor housing with an internal channel through which coolant can flow during the operation of the electric motor. The assembled motor case is then imported into the United States.

² See the October 1, 2012, Scope Ruling Request of UQM (Scope Request).

³ Petitioners are the Aluminum Extrusions Fair Trade Committee.

⁴ Walgreen Co. v. United States, 620 F.3d 1350, 1357 (Fed. Cir. 2010).

⁵ 19 CFR 351.225(k)(1).

⁶ 19 CFR 351.225(d).

⁷ UQM provides schematics and pictures of the products at issue in Appendices A and B of the Scope Request.

Assembled Motor Cases Housing Stators

A stator is one of two major components of an electric motor (the other being the rotor). The stator consists of an extruded aluminum frame around which copper wire is wound using an automatic winding machine. After winding, the stator is placed in a vacuum pressure machine and insulation material is applied to the surface of the coils. The stator is then baked in a curing oven. The stator is then pressed into the inner motor case, which is in turn surrounded by the outer motor case.

Assembled Motor Cases That are Further Manufactured in a Third Country

UQM further requests that the Department determine, as part of a country of origin analysis, whether aluminum alloy tubing extruded in the PRC that is subsequently fabricated in a third country into inner and outer motor cases and connected to form, and assembled into, “finished” motor cases yields a product that is not of Chinese origin and, thus, not subject to the scope of the Orders. UQM filed its request for a country of origin analysis on a prospective basis.

Scope of the Orders

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

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

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

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

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

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

The following aluminum extrusion products are excluded: aluminum extrusions made from aluminum alloy with an Aluminum Association series designations commencing with the number 2 and containing in excess of 1.5 percent copper by weight; aluminum extrusions made from aluminum alloy with an Aluminum Association series designation commencing with the number 5 and containing in excess of 1.0 percent magnesium by weight; and aluminum extrusions made from aluminum alloy with an Aluminum Association series designation commencing with the number 7 and containing in excess of 2.0 percent zinc by weight. The scope also excludes finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry, such as finished windows with glass, doors with glass or vinyl, picture frames with glass pane and backing material, and solar panels. The scope also excludes finished goods containing aluminum extrusions that are entered unassembled in a "finished goods kit." A finished goods kit is understood to mean a packaged combination of parts that contains, at the time of importation, all of the necessary parts to fully assemble a final finished good and requires no further finishing or fabrication, such as cutting or punching, and is assembled 'as is' into a finished product. An imported product will not be considered a 'finished goods kit' and therefore excluded from the scope of the investigation merely by including fasteners such as screws, bolts, etc. in the packaging with an aluminum extrusion product.

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

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

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

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

Relevant Scope Determinations

Machine Parts Scope Ruling⁸

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).⁹ 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

⁸ 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).

⁹ 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).

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 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.

Motor Cases Scope Ruling¹⁰

In its scope inquiry request, UQM argued that certain inner and outer motor cases, that it imports, met the exclusion criteria for "finished goods." UQM's scope request used the same arguments as those used by IDEX in the Machine Parts Scope Ruling.

The Department determined 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. The Department found that the motor cases at issue were analogous to the products examined in the Machine Parts Scope Ruling and, thus, it determined that the motor cases were within the scope of the Orders. Specifically, the Department noted that the scope of the Orders covers heat sinks, which the ITC found are produced by means of a CNC machine process. Thus, in this regard, the Department found that the products at issue were not distinct from products within the scope. The Department further found that the information and arguments of UQM failed to distinguish the motor cases at issue from subject merchandise in terms of the Diversified Products criteria.

¹⁰ See the Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Final Scope Ruling on Motor Cases," (July 6, 2012) (Motor Cases Scope Ruling).

Geodesic Domes Scope Ruling¹¹

In its scope inquiry request, J.A. Hancock argued that certain geodesic structure kits that it imports qualify for the “finished goods kit” exclusion described in the scope of the Orders. J.A. Hancock argued 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 argued that the unassembled geodesic structure kits require no further fabrication and are assembled “as is” from the components provided in the kits.

The Department explained that the scope of the Orders 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 Department found that the geodesic structure kits at issue in this scope inquiry are aluminum extrusions that have been cut, clipped, bored and colored before importation and, therefore, meet the description of subject extrusions.

In addition, the Department found that 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 Department further explained that 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.” The Department found that J.A. Hancock’s geodesic structure kits consisted only of extruded aluminum tubes, which are accompanied by nuts, bolts, and washers (i.e., fasteners). Since the geodesic structure kits consisted solely of extruded aluminum tubes and fasteners, the Department found that the exception applied. Accordingly, the Department found that the geodesic structure kits did not meet the finished goods kit exclusion and thus fall within the scope of the Orders.

Cutting and Edging Scope Ruling¹²

In its scope inquiry request, Plasticoid Manufacturing Inc. (Plasticoid) argued that certain finished cutting and marking straight edges that it imports are outside the scope of the Orders. Plasticoid argued that the product at issue constituted a finished good and, therefore, met the exclusion criteria in the scope of the Orders.

¹¹ See the Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on J.A. Hancock Co., Inc.’s Geodesic Structures,” (July 17, 2012).

¹² See the Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on Cutting and Marking Straight Edges,” (November 13, 2012) (Cutting and Edging Scope Ruling).

The Department found that the physical characteristics of the products at issue (e.g., aluminum extrusion of a rectangular shape) match the physical description of subject merchandise, which includes aluminum extrusions in a wide variety of shapes and forms, including, but not limited to, hollow profiles, other solid profiles, pipes, tubes, bars, and rods. The Department also disagreed that the product at issue constituted a “finished good.” The Department explained that like the door thresholds or carpet trim, both of which are provided as examples of subject extrusions, Plasticoid’s products are merely aluminum extrusions that meet the physical description of subject merchandise, referred to by their end use: as cutting and marking edges.

Side Mount Valve Controls Scope Ruling¹³

In its scope inquiry request, Innovative Controls Inc. (Innovative Controls) argued that certain side mount valve controls (SMVCs) that it imports are finished goods that are outside the scope of the Orders. Innovative argued that an SMVC, as imported, contains all the components necessary to complete the product and that all SMVC components and hardware are fully fabricated and require no further finishing or fabrication prior to being assembled. On this basis, Innovative argued that the product in question met the exclusion criteria for “finished goods.”

Petitioners argued that the SMVC itself is not a “final finished good” because it is a component of a larger fire fighting apparatus and it is imported under an HTS subheading for “parts and accessories” of such larger systems. They further argued that in order for the SMVC to perform any function it must be attached to the valve, and ultimately to the fire fighting apparatus, that it is designed to control. As a result, the SMVC could not be considered a finished product.

The Department explained that, upon further reflection of the language in the scope of the Orders, it was revising the manner in which it determines whether a given product is a “finished good” or “finished goods kit.” The Department explained that it had identified a concern with its prior analysis, namely that it may lead to unreasonable results. The Department explained that an interpretation of “finished goods kit” which requires all parts to assemble the ultimate downstream product may lead to absurd results, particularly where the ultimate downstream product is, for example, a fire truck. The Department explained that such an interpretation may expand the scope of the Orders, which are intended to cover aluminum extrusions.

The Department determined that the scope, taken as a whole, indicates that “subassemblies” (i.e., “partially assembled merchandise”) may be excluded from the scope provided that they enter the United States as “finished goods” or “finished goods kits” and that the “subassemblies” require no further “finishing” or “fabrication.” Therefore, the Department analyzed whether the SMVC at issue constituted a subassembly that enters the United States as a “finished goods kit.” In order for such a kit to be excluded from the scope of the Orders, the Department found that the SMVC had to be ready for installation and require no further finishing or fabrication.

¹³ See the Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Initiation and Preliminary Scope Ruling on Side Mount Valve Controls,” (September 24, 2012) (Preliminary SMVC Scope Ruling), unchanged in Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on Side Mount Valve Controls,” (October 26, 2012) (Final SMVC Scope Ruling).

The Department concluded that the product at issue contained all of the parts necessary to assemble a complete SMVC and that all the components and hardware of the SMVC are fully fabricated and require no further finishing or fabrication prior to being assembled. The Department further found that upon assembly, the SMVC is mounted on a fire truck where it is ready for use upon installation. Based on this information, the Department found that the SMVC at issue met the exclusion criteria for subassemblies that enter the United States as “finished goods kits.”

Arguments of Parties

Assembled Motor Cases

Arguments of UQM

According to UQM, a finished motor case is ready for assembly for use as housings for stators or electric motors. It further argues that, as imported, the assembled motor case is a finished motor housing that is outside the scope of the Orders. It argues that the assembled motor cases are akin to the products examined in the Banner Stands and Wall Systems Scope Rulings in that the assembled motor cases serve as a frame on which additional devices (e.g., a stator and, ultimately, an electric motor) are attached.¹⁴ Thus, as completed frames, the assembled motor cases are “finished goods.” That the internal copper wire coils and other components used in an electric motor are not also imported with the assembled motor case frames is no different than the fact that the printed graphical materials are not included with the banner stand or that picture is not included with a finished picture frame.¹⁵

Further, assembled motor cases are sold as finished goods, thereby demonstrating that a market exists for assembled motor cases.¹⁶ Additionally, assembled motor cases are fully capable of functioning as housings for stators or electric motors in their condition as imported. In contrast to the products examined in the Motor Cases Scope Ruling, the products at issue in the instant inquiry are sufficiently advanced to function as a motor case without any additional assembly or processing. The assembled motor case is able to accept the stator that will be inserted and positioned precisely inside the housing.¹⁷ As such, the assembled motor case itself is “fully and permanently assembled and completed.”¹⁸

Furthermore, aside from the extrusion process, additional processing steps (e.g., the CNC production process) lend the assembled motor cases their essential characteristics. For example, the purpose of the finished motor case is to allow liquid coolant to circulate inside the motor case. The extrusion production process cannot, by itself, produce housing with internal,

¹⁴ See the Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on Banner Stands and Back Wall Kits,” (October 19, 2011) (Banner Stands Scope Ruling) at 9-10; see also the Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on EZ Fabric Wall Systems,” (November 9, 2011) (Wall Systems Scope Ruling) at 10.

¹⁵ See Scope Request at 16, *citing* Banner Stands Scope Ruling at 10.

¹⁶ See, e.g., Scope Request at Appendix F, which contains advertisements for stator housings.

¹⁷ See Scope Request at Appendices B-8 and B-9.

¹⁸ See Scope Request at 16, *citing* Orders, 76 FR at 30651.

hollowed-out channels through which the coolant can flow.¹⁹ Nor will the extrusion process produce an outer housing with sufficient precision to be coupled to the inner housing and remain water-tight, under pressure in the operating conditions required of a water-cooled electric motor. Thus, more than machining is required to produce a finished motor case for the water-cooled motor produced by UQM. The inner and outer halves must be assembled. Without the additional thermal expansion, sealant, assembly and testing, the inner and outer motor cases considered in the Motor Case Scope Ruling cannot function as a water-cooled housing for a stator. On the other hand, after these further processing steps are completed, the assembled motor case does not require further assembly in order to function as a water-cooled motor case.

Additionally, the value added and level of investment involved in producing the finished motor cases from extruded tubing is substantial. The imported motor cases were engineered and designed in the United States as part of an American Recovery and Reinvestment Act of 2009 funded project to develop high-efficiency electric motors in the United States.²⁰ The investment in designing a water-cooled housing was substantial, as well as essential to the project. Also, the investment by the PRC-based manufacturer to produce the assembled motor cases (namely the CNC machinery) was substantial.²¹ In fact, it is the CNC process that imparts the critical characteristics of the assembled motor cases, not the extrusion of aluminum into the shape of a tube.²²

Lastly, the majority of the value of the assembled motor cases is attributable to the CNC production process. Further, it is estimated that significant additional value is added by heating the outer case, applying sealant, assembling the inner and outer cases, testing and finish machining the inner surface of the housing.

Therefore, for the reasons discussed above, the Department should find that the assembled motor cases at issue constitute “finished goods” that are excluded from the scope of the Orders.

Department’s Position

The assembled motor cases at issue are comprised entirely extruded aluminum.²³ Thus, the physical characteristics of the products at issue match the physical description of subject merchandise:

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.... 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

¹⁹ See Scope Request at Appendix C at 5 and Appendix 3 at 3.

²⁰ See Scope Request at Appendix C, Exhibits 1 and 2.

²¹ See Scope Request at Appendix C, Exhibit 3.

²² See Scope Request at Appendix C at 3-4.

²³ The Scope Request indicates that assembled motor cases will also contain a certain degree of latex sealant. However, we find the sealant akin to the “screws and fasteners” which the scope of the Orders states shall not be considered when determining whether a product constitutes a finished good.

extrusions that are drawn subsequent to extrusion (drawn aluminum) are also included in the scope.²⁴

The scope of the Orders also includes extrusions “that are cut-to-length, machined, drilled, {and} punched,” production processes that we find match those employed to produce the assembled motor cases at issue. Furthermore, consistent with the Department’s finding in the Motor Cases Scope Ruling, we continue to find that CNC production process used to produce motor cases (whether or not assembled) is a fabrication process that does not result in a product being excluded from the scope of the Orders.²⁵ As noted in the Motor Cases and Machine Parts Scope Rulings, the scope includes products that are produced using the CNC production process.²⁶

We also disagree with UQM’s argument that the assembled motor cases at issue should be excluded from the scope of the Orders due to the fact that high levels of investment went into developing the products’ production process and substantial value is added to the products by virtue of the CNC production process and during the final finishing process. The Department addressed and rejected such arguments in the Machine Parts Scope Ruling, stating “{w}e find that 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.”²⁷ The Department made a similar determination in the Motor Cases Scope Ruling.²⁸

Further, contrary to UQM’s argument, the fact that its products are ready for use at the time of importation does not, by itself, result in the products’ exclusion from the Orders. The language of the scope indicates that products otherwise meeting the scope definition for subject merchandise are covered under the Orders regardless of whether they are ready for use at the time of importation:

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.²⁹

We further disagree with UQM that the assembled motor cases at issue constitute finished good that meet the exclusion criteria contained in the scope of the Orders. In the Geodesic Scope Ruling, the Department found that the products contained all the parts necessary to assemble a complete geodesic dome and, thus, met the “initial requirements for inclusion into the finished goods kit exclusion.”³⁰ However, the Department nonetheless found the geodesic dome kits at issue to be within the scope of the Orders based on the fact that the scope states that the “finished goods kits” exclusion does not apply “. . . merely by including fasteners such as screws, bolts, etc. in the packaging with an aluminum extrusion product.” Thus, in the Geodesic Scope Ruling,

²⁴ See scope of the Orders.

²⁵ See Machine Parts Scope Ruling at 14-15.

²⁶ Id.

²⁷ See Machine Parts Scope Ruling at 15.

²⁸ See Motor Cases Scope Ruling at 14-15.

²⁹ See Scope of the Orders.

³⁰ See Geodesic Dome Scope Ruling at 7; see also Cutting and Edging Scope Ruling at 11.

the Department concluded that since the products at issue consisted entirely of extruded aluminum, the exception to the exclusion provision applied. Accordingly, the Department found that the products at issue did not meet the exclusion criteria for finished goods kits.³¹ The assembled motor cases at issue, which consist solely of aluminum extrusions, are similar to the geodesic dome kits examined by the Department because they consist entirely of aluminum extrusions. The Department's conclusion in the Geodesic Scope Ruling is also consistent with the express inclusion of subject extrusions in the scope of the Orders that may be identified by reference to their end use, which are subject to the Orders provided they "otherwise meet the scope definition." Thus, the assembled motor cases at issue do not meet the exclusion for finished merchandise. Our finding in this regard is consistent with the Department's prior findings.³²

Contrary to UQM's claims, we further find that the Banner Stands and Wall Systems Scope Rulings are not analogous to the assembled motor cases at issue. The assembled motor cases at issue consist entirely of extruded aluminum. The products examined in the Banner Stands and Wall Systems Scope rulings did not consist entirely of extruded aluminum. Rather, the products examined in those rulings also included carrying/shipping cases that consisted of non-aluminum materials.³³ Thus, for the reasons discussed above, we find the assembled products at issue are analogous to the facts the Department examined in the Geodesic Dome and Cutting and Edging Scope Rulings and are not analogous to the facts examined in the Banner Stands and Wall Systems Scope Rulings.

Having considered the scope language of the Orders and the description of the product contained in the scope-ruling request, and for the reasons discussed above, we find the assembled motor cases at issue are not excluded from the scope of the Orders pursuant to 19 CFR 351.225(k)(1).

Assembled Motor Cases Housing Stators

Arguments of UQM

The assembled motor cases housing stators at issue are further advanced than assembled motor cases and, thus, constitute a more compelling example of merchandise that are "finished goods" that should be excluded from the scope of the Orders. The assembly and testing of assembled motor cases housing stators requires multiple additional manufacturing and assembly operations described in the scope of the Orders. Unlike the fabrication processes described in the scope of the Orders, assembled motor cases housing stators involve winding copper wire around a frame and sealing the coils to prevent any movement or dislodging of the coils. The value added and level of investment involved in producing assembled motor cases housing stators is greater than that of assembled motor cases. Business proprietary information in the Scope Request indicates that the vast majority of the value in assembled motor cases housing stators is imparted by the stator.³⁴

³¹ Id.

³² See Cutting and Edging Scope Ruling at 10-11.

³³ See Banner Stands Scope Ruling at 7; see also Wall Systems Scope Ruling at 7.

³⁴ See Scope Request at 25.

The complex machining process employed to produce the assembled motor cases housing stators results in a substantially new and different product, with different physical characteristics and uses, incorporating substantial value-added and requiring substantial investment in equipment and training that is not characteristic of the aluminum extrusions industry. In this sense, the assembled motor cases housing stators at issue are analogous to the products examined in 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.³⁵ 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.

UQM argues that like banner stands, assembled motor cases housing stators consist of the frame (the assembled motor case) with the content (the stator) already inserted. Further, with assembled motor cases housing stators, the motor case frame is secondary to the stator in terms of the function of the merchandise and its value. As imported, therefore, assembled motor cases housing stators are “finished goods” outside the scope of the Orders.

Assembled motor cases housing stators constitute a more advanced product relative to assembled motor cases in several ways. Assembled motor cases housing stators are articles of commerce distinct from electric motors. Further, there are manufacturers, sellers, and repairers of stators.³⁶ Further, pursuant to CBP rulings, there are distinct tariff headings for the classification of stators, depending upon their use in a motor or generator.³⁷ Additionally, the value of assembled motor cases housing stators is substantially higher than the value of assembled motor cases that lack stators.

Additionally, assembled motor cases housing stators will not be disassembled after importation. There is no market for assembled motor cases housing stators other than to produce the electric motor produced by UQM. Thus, in keeping with the scope, the assembled motor cases housing stators contain “all of the necessary parts to fully assemble a final finished good.” As such, the assembled motor cases in stators constitute “finished goods” that are excluded from the scope of the Orders.

Furthermore, none of the petitioners or domestic manufacturers of aluminum extrusions produce assembled motor cases housing stators and, thus, one can conclude that such products were not covered by the International Trade Commission’s investigation.³⁸ In other words, there is no indication whatsoever that the domestic industry was injured by unfairly trade aluminum extrusions in the form of assembled motor cases housing stators.

Department’s Position:

First, due to the inclusion of the stator (which contains insulated copper wire) the assembled motor cases housing stators at issue do not consist entirely of extruded aluminum. As a result,

³⁵ See Crawfish Processors Alliance v. United States, 483 F.3d 1358 (Fed. Circ. 2007) (Crawfish).

³⁶ See Scope Request at Appendix G.

³⁷ See Scope Request at 22, footnote 16.

³⁸ Id. at 24.

we determine that the Department’s findings in the Geodesic Domes and Cutting and Edging Scope Rulings, which focused primarily on the fact that the products under examination consisted entirely of extruded aluminums, do not apply. Rather, we find that the assembled motor cases housing stators at issue are analogous to the merchandise examined in the scope ruling on SMVCs. In the SMVC scope ruling, the Department examined a product that consisted on extruded aluminum and non-aluminum products.³⁹ In the SMVC scope ruling, the Department found that “subassemblies” (i.e., “partially assembled merchandise”) may be excluded from the scope provided that they enter the United States as “finished goods” or “finished goods kits” and that the “subassemblies” require no further “finishing” or “fabrication.”⁴⁰ In the SMVC scope ruling, the Department further found that for a subassembly to be excluded it must be ready for installation and require no further finishing or fabrication.⁴¹ We find that the assembled motor cases housing stators at issue meets the criteria for exclusion as outlined in the SMVC Scope Ruling. As noted above, the assembled motor cases housing stators at issue do not consist entirely of extruded aluminum. Further, we find that the assembled motor cases housing stators require no further finishing or fabrication upon importation. Thus, having considered the scope language of the Orders and the description of the product contained in the scope-ruling request, and consistent with the Department’s prior findings, we determine that the assembled motor cases housing stators at issue constitute “finished goods” that are excluded from the scope of the Orders pursuant to 19 CFR 351.225(k)(1).

Assembled Motor Cases That are Further Manufactured in a Third Country

Arguments of UQM

As exported from China, extruded aluminum tubing, grade 6061-T6, is classified under subheading 7608.20.0090 of the Harmonized Tariff Schedules of the United States (HTSUS) as “aluminum tubes and pipes ... of aluminum alloys ... seamless.” After fabrication in a third country and upon importation, the motor cases would be classified under subheading 8503.00.9520, HTSUS, as “other ... parts of {electric} motors {not commutators, stators or rotors, not less than 18.65 W}.” Given that the machining of the extruded tubing creates a finished motor case, a substantial transformation occurs, and the country of origin would be the third country in which the operations took place.

Commerce applies the “substantial transformation” test to determine the country of origin of imported merchandise so that it can determine whether such merchandise is covered by an antidumping or countervailing duty order.⁴² The assembled motor cases at issue are substantially transformed because the processing employed is sophisticated and substantial, the value added is

³⁹ See Preliminary SMVC Scope Ruling at 2.

⁴⁰ Id. at 7.

⁴¹ Id.

⁴² 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 15, 2006) (Diamond Sawblades from the PRC) and accompanying Issues and Decision Memorandum (Diamond Sawblades from the PRC Decision Memorandum); see also 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.

more than the value of the Chinese extrusions, the processing changes the essential characteristics such that the extruded tubing is no longer fit to be used as tubing and is dedicated to a new use, the level of investment is substantial, and the ultimate use of the product is fundamentally different from the use of aluminum tubing.

Department's Position:

UQM's claim that proceedings such as 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 that administrative review, 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).⁴³

In this regard, UQM's request lacks sufficient information to issue a scope ruling under 19 CFR 351.225(d). Nor are we able to examine UQM's request concerning motor cases fabricated and assembled in a third country under 19 CFR 351.225(e) of the Department's regulations, i.e., rulings where further inquiry is warranted. We find that UQM has not provided the necessary information that enables the Department to initiate an inquiry pursuant to 19 CFR 351.225(e). UQM's request frequently uses "would" to describe the manufacturing process and does not contain any evidence of actual production.⁴⁴ Indeed, UQM has not even identified the third country in which the further manufacturing is to take place. Thus, UQM's submission does not establish that the product for which UQM is requesting a scope ruling is in commercial production at the current time in the PRC or in some hypothetical, unnamed third country. As indicated in the Preamble, the Department requires actual production data and evidence of an actual production chain in order for it to conduct an inquiry under 19 CFR 351.225(e):

The Department's practice is to issue a scope ruling or conduct a scope inquiry when the party requesting the ruling can show that the specific product in question is actually in production. The product need not be imported into the United States so long as the requestor can show evidence that the product is in production. The Department will not issue a scope ruling or conduct a scope inquiry on a purely hypothetical product.⁴⁵

Therefore, we determine that the Department lacks sufficient information to initiate an inquiry under 19 CFR 351.225(e).

⁴³ 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. Further, see the Motor Cases Scope Ruling at 16 in which the Department reached the same conclusion concerning the applicability of the substantial transformation test.

⁴⁴ See, e.g., Scope Request at 3 ("Extruded aluminum tubing *would* be transported to a machine shop in a third country (i.e., not China or the United States)" (emphasis added)).

⁴⁵ See Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures, 73 FR 3634, 3639 (January 22, 2008) (Preamble); see also the Department's January 11, 2012, letter to AMS Associates Inc. (AMS) in which the Department declined to pursue the scope request filed by AMS in connection with the AD and CVD orders on laminated woven sacks from the PRC because it concerned a hypothetical product that was not yet in production.

Department's Recommendation

For the reasons discussed above, we recommend finding that (1) the assembled motor cases described in the Scope Request are not excluded from the scope of the Orders; and (2) the assembled motor cases housing stators described in the Scope Request are excluded from the scope of the Orders. Further, for the reasons discussed above, we recommend determining that the Department lacks sufficient information to initiate the requested third country analysis under 19 CFR 225(e).

Additionally, we recommend finding that the products at issue in the Scope Request do not present a significant difficulty within the meaning of 19 CFR 351.225(f)(3) and, thus, that this scope ruling constitutes a final ruling as provided under 19 CFR 351.225(f)(4).

If the recommendation in this memorandum is accepted, we will serve a copy of this memorandum to all interested parties on the scope service list via first class mail as directed by 19 CFR 351.225(f)(4).

Agree

Disagree

Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

Date