



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

C-570-968; A-570-967

Scope Inquiry

Curtain Walls with Non-PRC Extrusions

Public Document

Office 8; Operations: JRT

DATE: March 14, 2013

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

THROUGH: 
Melissa G. Skinner
Director, Office 8
Antidumping and Countervailing Duty Operations

FROM: 
James Terpstra
Senior International Trade Analyst, Office 8
Antidumping and Countervailing Duty Operations

RE: Aluminum Extrusions from the People's Republic of China

SUBJECT: Final Scope Ruling on Tesla Curtain Walls with Non-PRC Extrusions

Summary

Tesla Wall Systems and MBM Supply Company LLC (collectively, Tesla) requested that the Department of Commerce (the Department) issue a scope ruling confirming that aluminum extrusions produced in Thailand which are shipped to the People's Republic of China (PRC) and assembled with other materials to form curtain wall units and components of curtain walls in the PRC are not within the scope of the *Orders*.¹ For the reasons described below, we recommend determining that the products at issue are outside the scope of the *Orders*.

Background

Tesla submitted its request for a scope inquiry on January 30, 2013, and provided a physical sample on February 6, 2013. We received comments from the Aluminum Extrusion Fair Trade

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) (collectively, the *Orders*).



Committee, the petitioner in the underlying investigations, on February 8, 2013. On February 22, 2013, the Curtain Wall Coalition (CWC) submitted comments. On March 1, 2013, Tesla rebutted CWC's comments.

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.² 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.³ 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.⁴ 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 Issue

Tesla's request covers curtain wall units which are assembled from aluminum extrusions which are produced in Thailand and shipped to the PRC, where they are further processed and assembled, together with other non-aluminum-extrusion parts and materials, to produce curtain wall units.⁵ Tesla states that operations are performed on the aluminum extrusions in the PRC, such as cutting to length and assembling together into a frame. Tesla notes that while its current manufacturing operations involve aluminum extrusions produced in Thailand, the ruling on this request should apply equally to the inclusion of aluminum extrusions produced in any country other than the PRC and to curtain walls produced in the PRC from such non-PRC aluminum extrusions.

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

² See *Walgreen Co. v. United States*, 620 F.3d 1350, 1357 (Fed. Cir. 2010).

³ 19 CFR 351.225(k)(1).

⁴ 19 CFR 351.225(d).

⁵ See Scope Ruling Request Regarding Curtain Walls Containing only Non-Chinese Extrusions, dated January 30, 2013 (Scope Request) at 3.

materials by weight. The subject merchandise is made from an aluminum alloy with an Aluminum Association series designation commencing with the number 6 contains magnesium and silicon as the major alloying elements, with magnesium accounting for at least 0.1 percent but not more than 2.0 percent of total materials by weight, and silicon accounting for at least 0.1 percent but not more than 3.0 percent of total materials by weight. The subject aluminum extrusions are properly identified by a four-digit alloy series without either a decimal point or leading letter. Illustrative examples from among the approximately 160 registered alloys that may characterize the subject merchandise are as follows: 1350, 3003, and 6060.

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

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

Subject aluminum extrusions may be described at the time of importation as parts for final finished products that are assembled after importation, including, but not limited to, window frames, door frames, solar panels, curtain walls, or furniture. Such parts that otherwise meet the 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 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 Ruling

On November 30, 2012, in response to a request by CWC, the Department issued a final scope ruling that curtain wall units and other parts of curtain wall systems are within the scope of the *Orders* (“Curtain Wall Scope Ruling”).⁶

Arguments of the Interested Parties

Tesla argues that neither the plain language of the *Orders*, nor the antidumping and countervailing duty petitions, include aluminum extrusions from Thailand or curtain walls made using those extrusions. Tesla also points out that none of the Department’s prior scope rulings on the *Orders* provide support for including aluminum extrusions from Thailand or curtain walls made using those extrusions within the scope of the *Orders*. Finally, the use of Thai aluminum extrusions in curtain walls manufactured in the PRC does not make the extrusion Chinese as the process in the PRC is minor and does not alter the “essential component.”⁷ Tesla adds that any ruling on this request should apply equally to the treatment of aluminum extrusions produced in any country other than the PRC (and to curtain walls produced in the PRC from such third-country extrusions).

The petitioner states that to the extent that Tesla’s aluminum extrusions are produced in Thailand and incorporated into curtain walls assembled in the PRC, such products are outside the scope of the *Orders*.⁸ However, the petitioner asserts that “because of the strong incentive to circumvent” the *Orders*, the Department should require Tesla to certify that the country of origin of the subject aluminum extrusions is Thailand or another relevant third country.⁹ The petitioner suggests that Tesla be required to maintain such certificates for a period of three years and to present such certificates as a condition of entry.

The CWC supported the same points outlined by the petitioner, but added that the Department should initiate a formal scope inquiry pursuant to 19 CFR 351.225(e) in order to fully and carefully evaluate the request. The CWC also argued that the Department should issue a questionnaire to Tesla to prove the origin of the aluminum extrusions and provide information concerning the Thai producer.

Tesla rebutted that the basis for the scope ruling is clear on the basis of the application and the initiation of a formal scope inquiry is not warranted. In addition, while not taking a position on whether requiring certification is appropriate, it indicated it would not object to such an approach if the Department found it appropriate.

⁶ See Memorandum from Eric B. Greynolds, Program Manager and John Conniff, Senior Trade Analyst, through Melissa Skinner, Director, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, re: *Antidumping (AD) and Countervailing Duty (CVD) Orders: Curtain Wall Units and Other Parts of Curtain Wall Systems from the People’s Republic of China: Final Scope Ruling* (November 30, 2012).

⁷ See Tesla January 30, 2013, Scope Ruling Request, at 5.

⁸ See Comments on Tesla and MBM’s Scope Ruling Request Regarding Curtain Walls Containing only Non-Chinese Extrusions (February 8, 2013).

⁹ *Id.*, at 3.

Analysis

In the Curtain Wall Scope Ruling, the Department determined that curtain wall parts which incorporated PRC aluminum extrusions were subject to the scope of the *Orders*. However, as Tesla points out, the scope of an order is limited to merchandise that originates in the country covered by the order.¹⁰ As such, aluminum extrusions produced in Thailand cannot be considered within the scope of the *Orders* on aluminum extrusions from the PRC. Moreover, the scope of the *Orders* does not include the non-aluminum extrusion components of subassemblies or subject kits, thus the non-aluminum extrusion components that are assembled into curtain wall units and other curtain wall parts and components in the PRC are not subject merchandise. Additionally, the petitioner and the CWC do not dispute that curtain walls that incorporate Thai or non-PRC aluminum extrusions are not within the scope of the *Orders*. Therefore, we find that we are able to make a ruling based on Tesla's scope request, pursuant to 19 CFR 351.225(d) and 19 CFR 351.225(k)(1), and thus have not initiated a scope inquiry as the CWC suggests. The scope request, which has been certified, indicates that the aluminum extrusions which are incorporated into the curtain wall components are not produced in the PRC. Other information, such as the name of the Thai producer, is irrelevant to the question of whether curtain wall components which incorporate Thai or non-PRC aluminum extrusions are within the scope of the *Orders*. Because this question can be answered by reference to the scope application, the scope of the *Orders*, and the prior scope rulings, we have declined to initiate a scope inquiry.

Regarding the petitioner's and the CWC's requests that we require Tesla to certify the country of origin for its imports of aluminum extrusions, we disagree that such a requirement is appropriate at this time. The petitioner and the CWC argue that there is an incentive to circumvent the *Orders* by falsely claiming that the aluminum extrusions incorporated into the curtain wall components exported by Tesla are not of PRC-origin, and although it is hypothetically possible that this could occur, we note that Tesla properly certified its submissions in this scope proceeding. Any allegation that Tesla is falsifying entry documentation concerning the country of origin of aluminum extrusions which are incorporated into curtain wall components is a matter for inquiry by U.S. Customs and Border Protection.

Recommendation

Based upon the above analysis and pursuant to 19 CFR 351.225(d) and 351.225(k)(1), we recommend determining that aluminum extrusions manufactured in Thailand or other non-PRC countries which are shipped to the PRC and further processed and assembled with other non-aluminum extrusion materials to form curtain wall units and components of curtain walls in the PRC are not within the scope of the *Orders*. Further, we recommend determining that country of origin certifications are not appropriate at this time.

¹⁰ See, e.g., *Stainless Steel Plate in Coils from Belgium: Final Results of Anti-dumping Duty Administrative Review*, 69 FR 74495 (December 14, 2004), and accompanying Issues and Decision Memorandum at Comment 1.

If the recommendations in this memorandum are accepted, we will serve a copy of this memorandum to all interested parties on the scope service list as directed by 19 CFR 351.303(f), and will notify U.S. Customs and Border Protection of our determination.

✓

Agree

Disagree



Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

Date 3/14/13