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Scope Inquiry: Ladders & Brackets

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March 20, 2013

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

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

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

FROM: Raquel Silva
International Trade Specialist, 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 Asia Sourcing Corporation's Boat and Dock
Ladders and Strip Door Mounting Brackets

SUMMARY

On August 31, 2012, the Department of Commerce ("Department") received a scope ruling request from Asia Sourcing Corporation ("ASC"),¹ to determine whether its aluminum boat and dock ladders ("ladders") and strip door mounting brackets ("brackets") are subject to the antidumping ("AD") and countervailing duty ("CVD") orders on aluminum extrusions from the People's Republic of China ("PRC").² On the basis of our analysis of the comments received, we have determined that certain ladder models (ESG2 and ASC4) are excluded from the scope of

¹ See letter from ASC entitled: "Aluminum Extrusions from the People's Republic of China: Request for Scope Ruling," dated August 31, 2012 ("ASC's Scope Request").

² 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").

the *Orders* on aluminum extrusions from the PRC, while certain other ladder models (ASE, ASH, and DJX3-W) and brackets are included in the scope of the *Orders*.

BACKGROUND

On August 31, 2012, ASC requested that the Department determine whether its aluminum boat and dock ladders and certain strip door mounting brackets were outside the scope of the *Orders*. On September 25, 2012, Petitioners³ submitted a request to extend the deadline of October 15, 2012, by 45 days.⁴ The Department therefore extended the time period until November 29, 2012.⁵ Subsequently, on November 21, 2012, and December 21, 2012, ASC requested extensions of the deadline.⁶ The Department granted both requests in full, ultimately extending the time period until January 18, 2013.^{7,8} No party submitted comments responding to the scope ruling request by ASC.

SCOPE OF THE ORDERS

The merchandise covered by the 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

³ Petitioners are the Aluminum Extrusions Fair Trade Committee.

⁴ See letter from Petitioners entitled: “*Aluminum Extrusions from the People’s Republic of China: Request for Extension of Deadline to Issue a Scope Ruling or Initiate a Formal Scope Inquiry*,” dated September 25, 2012.

⁵ See the Department’s letter entitled: “*Aluminum Extrusions from the People’s Republic of China: Scope Ruling Request – Extension of Time*,” dated September 28, 2012.

⁶ See letter from ASC entitled: “*Aluminum Extrusions from the People’s Republic of China: Request for Extension of Deadline for Issuance of Preliminary Scope Ruling*,” dated November 21, 2012; letter from ASC entitled: “*Aluminum Extrusions from the People’s Republic of China: Request for Second Extension of Deadline for Issuance of Preliminary Scope Ruling*,” dated December 21, 2012.

⁷ See the Department’s letter entitled: “*Aluminum Extrusions from the People’s Republic of China: Extension of Time for Scope Ruling Request*,” dated November 21, 2012; Department’s letter entitled: “*Aluminum Extrusions from the People’s Republic of China: Extension of Time for Scope Ruling Request*,” dated December 21, 2012.

⁸ As explained in the memorandum from the Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 29, through October 30, 2012. Thus, all deadlines in this segment of the proceeding have been extended by two days. See Memorandum to the Record from Paul Piquado, AS for Import Administration, regarding “*Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Hurricane*,” dated October 31, 2012.

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 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, 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.⁹

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.¹⁰ 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

⁹ See *Orders*.

¹⁰ See *Walgreen Co. v. United States*, 620 F.3d 1350, 1357 (Fed. Cir. 2010).

investigations, and prior scope determinations made for the same product.¹¹ 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

At issue are a finished aluminum boat ladder, a boat ladder kit, three dock ladder kits, and strip door mounting brackets. The boat ladder kit (Model ESG2) contains aluminum extrusion handrails, with steps made of plastic. It is shipped in one carton box with assembly instructions and mounting hardware. The finished aluminum boat ladder (Model ASC4) consists of aluminum extrusion handrails with attached steps made of plastic. It is shipped in one carton box with plastic mounting cups and steel fasteners included. The three aluminum dock ladder kits (Models ASE, ASH, and DJX3-W) contain extruded aluminum handrails and extruded aluminum steps, and fasteners to assemble the product and to attach it to a dock. Finally, strip door mounting brackets consist of an aluminum profile to which aluminum bullets are attached at regular intervals. After importation, plastic strips are hung from the bullets to create a type of flexible door. The plastic strips are not imported with the mounting brackets, however.

ARGUMENTS FROM INTERESTED PARTIES

ASC's Request

ASC argues that the aluminum boat ladder models which form the basis of this scope ruling request are excluded from the *Orders* as finished merchandise. It further argues that other models of its aluminum boat ladders, and all models of its dock ladders are excluded from the *Orders* as finished goods kits. Finally, ASC argues that certain models of its strip door mounting brackets are also excluded from the *Orders* as finished goods kits.

Regarding the boat ladders and strip door mounting brackets it claims are excluded from the *Orders* as finished merchandise, ASC avers that they: 1) contain aluminum extrusions as parts; and 2) are fully and permanently assembled and completed at the time of entry into the United States. With regard to the boat and dock ladder kits ASC claims are excluded from the *Orders* as finished goods kits, ASC alleges that, at the time of importation, the ladder kits contain all the materials necessary to fully assemble the final, finished ladders. ASC cites the Department's scope rulings on shower door kits, banner stands and back wall kits, and window kits in support of its argument regarding finished goods kits. In these cases, ASC asserts, the Department

¹¹ See 19 CFR 351.225(k)(1).

concluded that the finished goods kits containing all of the parts necessary to assemble a finished product are outside the scope of the *Orders*.

RELEVANT SCOPE DETERMINATIONS¹²

A. Geodesic Structure Kits

J.A. Hancock Co., Inc. (“J.A. Hancock”), an importer of geodesic structure kits (a set of aluminum poles and assembly hardware that can be assembled into landscaping structures or climbing structures for children), argued that its kits contained all parts necessary to fully assemble a final geodesic structure.¹³ J.A. Hancock further noted that the components in its kits required no further fabrication or additional parts. In addressing the *Diversified Products*¹⁴ criteria, J.A. Hancock differentiated its kits from subject aluminum extrusions by noting that its kits can only be used to build geodesic dome frames with a specific configuration, while subject extrusions have numerous applications. Also, J.A. Hancock stated that while subject extrusions are often sold to manufacturers or large-scale distributors for further manufacture into varied end-use products, its geodesic structure kits are mostly sold to individual consumers or small groups (such as clubs or playground designers) for ultimate assembly without further manufacture. As such, J.A. Hancock requested that the Department find its two models of geodesic structure kits at issue excluded from the scope of the *Orders*.

The Department found the plain language of the scope to be dispositive with regard to the kits at issue, and, accordingly, did not consider the *Diversified Products* criteria. The Department further found that the geodesic structure kits did meet the initial requirements for inclusion into the “finished goods kit” exclusion, as they were a packaged combination of parts containing all necessary components to fully assemble a final finished good. However, the Department noted an exception to the “finished goods kits” exclusion, which states that a product will not be considered a “finished goods kit” simply by including fasteners in the packaging. As J.A. Hancock’s kits only consisted of extruded aluminum poles and fasteners, the Department found that the exception to the “finished goods kit” exclusion applied. Therefore, the Department found J.A. Hancock’s kits to not be excluded finished goods kits, and hence covered by the scope of the *Orders*.

B. Shower Door Kits

In its scope ruling request, Sapa Extrusions, Inc. (“Sapa”) argued that shower door kits, which include glass shower door panels, vinyl drip rails, and aluminum frame components, fell outside the scope of the *Orders* because they met the exclusion criteria for “finished goods kits.”¹⁵

¹² See the Department’s memorandum entitled: “Antidumping and Countervailing Duty Orders on Aluminum Extrusions from the People’s Republic of China: Ladders and Brackets: Transmittal of Past Scope Determinations to the Record,” dated November 29, 2012.

¹³ See the Department’s memorandum entitled: “Final Scope Ruling on J.A. Hancock Co., Inc.’s Geodesic Structures,” dated July 17, 2012.

¹⁴ See 19 CFR 351.225(k)(2); see also *Diversified Products Corp. v. United States*, 572 F. Supp. 883 (CIT 1983)(“*Diversified Products*”).

¹⁵ See the Department’s memorandum entitled: “Final Scope Ruling: Shower Door Kits,” dated November 7, 2011.

Specifically, Sapa stated that, at the time of importation, their kits contain all of the parts necessary to assemble a finished product. Sapa further noted that all the parts included in its shower door kits are uniquely made for the final completion of a finished shower door. In support of its argument, Sapa cited to the underlying investigation, in which a party had argued that a kit containing a shower door or enclosure but no glass door panel could be considered a “knock-down” finished goods kit. Sapa explained that the Department found the shower door kits with no shower door panel to not constitute a “finished goods kit” because a shower door panel is a major component in completing a shower door.

The Department agreed with Sapa’s claim that its shower door kits were explicitly excluded from the scope of the *Orders*, as the record indicated that, at the time of importation, the kits contained all the parts necessary to assemble a final finished product.

C. Cutting and Marking Straight Edges

Plasticoid Manufacturing Inc. (“Plasticoid”) argued that its cutting and marking straight edges were covered by the “finished merchandise” exclusion described in the scope of the *Orders* because they were imported ready for use, as evidenced by the fact that their end-use application required only the cutting and marking edge itself.¹⁶ Specifically, the products at issue were single hollow extrusions with all of the necessary machine holes and grooves, and without other integral components required to complete them. In its argument, Plasticoid drew an analogy to the Department’s findings regarding the exhibition kits examined in the Banner Stands Scope Ruling, in which the Department found that the exhibition kits at issue met the “finished goods kits” exclusion despite the fact that they lacked graphical display materials. Plasticoid noted that, similarly, although the cutting and marking edge could be used in conjunction with a drafting board, the board would serve merely as an accessory and not as a component that is integral to the function of the products at issue.

The Department disagreed with Plasticoid, finding its cutting and marking straight edges more analogous with Geodesic Domes.¹⁷ In particular, the Department found that Plasticoid’s products, like geodesic domes, consisted solely of aluminum extrusions. Furthermore, the Department noted that the scope language expressly includes aluminum extrusions that are identified by reference to their end use, provided they “otherwise meet the scope definition.” Plasticoid’s products consist of subject aluminum alloy and undergo fabrication and finishing covered by the scope, and therefore otherwise met the scope definition.

DEPARTMENT’S POSITION

The Department has examined the language of the *Orders* and the description of the products contained in this scope request, as well as previous rulings made by the Department. We find that the scope and prior rulings are dispositive as to whether certain of the products at issue are

¹⁶ See the Department’s memorandum entitled: “Aluminum Extrusions from the People’s Republic of China: Final Scope Ruling on Cutting and Marking Edges,” dated November 13, 2012 (“Ruling on Cutting and Marking Edges”).

¹⁷ See *Ibid*, at 11.

subject merchandise. Accordingly, for this determination, the Department finds it unnecessary to consider the additional factors specified in 19 CFR 351.225(k)(2).

The scope of the *Orders* provides an exclusion for finished merchandise, which the scope defines as that which contains “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.” Based on this language, the Department has analyzed whether ASC’s finished ladders and brackets contained aluminum extrusion parts that are fully and permanently assembled at the time of entry. However, the Department will not find a simple aluminum extrusion, without non-extruded aluminum parts, to be an excluded finished product regardless of whether it is ready for use upon importation.¹⁸ As such, the Department finds that ASC’s finished boat ladder model ASC4 is excluded from the scope because it consists of permanently and fully assembled plastic steps and aluminum extrusion handrails. In contrast, ASC’s strip door mounting brackets, although fully assembled at the time of entry, consist solely of aluminum extrusions and do not include any non-extruded aluminum parts other than fasteners. Therefore, the Department finds that ACS’s brackets fall within the scope of the *Orders*.

The scope of the *Orders* also provides an exclusion for a “finished goods kit,” which is defined by the scope language as a “packaged combination of parts that contains, at the time of importation, all of the necessary parts to fully assemble a final finished good and requires no further finishing or fabrication, such as cutting or punching, and is assembled ‘as is’ into such a finished product.” The scope further states that “an imported product will not be considered a ‘finished goods kit’ and therefore excluded from the scope of the investigation merely by including fasteners” The Department’s analysis of whether ASC’s boat and dock ladder kits meet this exclusion, therefore, examined: i) whether all parts necessary for assembly were included at the time of entry; and ii) whether non-aluminum extrusion components beyond fasteners were included.

As regards the first criterion, the Department finds that the ladder kits at issue (models ESG2, ASE, ASH, and DJX3-W) contain all the parts needed to fully assemble a finished good with no further fabrication. With regard to the second criterion, the Department finds that while boat ladder kit model ESG2 contains non-aluminum extrusion components (*i.e.*, plastic steps), dock ladder kit models ASE, ASH, and DJX3-W do not. Therefore, we find that ladder kit model ESG2 falls within the finished goods kit exclusion and is not covered by the scope of the *Orders*. In contrast, dock ladder kit models ASE, ASH, and DJX3-W do not fall within the finished goods kit exclusion and are covered by the scope of the *Orders*.

The Department finds that it is unable to make a determination regarding the 99 other ladder models for which ASC requested a scope ruling. The record evidence provided by ASC with respect to these 99 models was limited to a simple list containing model numbers and very general descriptions of the merchandise.¹⁹ For example, ASC mentions finished ladder model BDD-5A-2 in its first exhibit, but only provides the following information with respect to this model: “12' ladder 14" wide w/ 2 handrails.” The Department finds that this short description,

¹⁸ See Ruling on Cutting and Marking Edges, at 10-11.

¹⁹ See ASC’s Scope Request, at Attachment 1.

like those provided for the other 98 models, does not contain sufficient product-specific information for the Department to determine whether the particular model is fully and permanently assembled at the time of entry and contains non-aluminum extruded components. Accordingly, the Department has not made a determination with respect to the other 99 models listed in ASC's scope ruling request. If it so chooses, ASC may submit a scope ruling request for the Department's consideration with detailed information adequate for the Department to properly conduct a product-specific analysis for these other models.

RECOMMENDATION

For the reasons discussed above, and in accordance with 19 CFR 351.225(d) and 351.225(k)(1), we recommend finding that boat ladder kit model ESG2 and finished boat ladder model ASC4 are not subject to the scope of the AD and CVD orders on aluminum extrusions from the PRC. We further recommend finding that dock ladder kit models ASE, ASH, and DJX3-W, in addition to strip door mounting brackets, are subject to the scope of the *Orders*. We are unable to make a determination regarding the remainder of the models for which ASC requested a ruling because ASC failed to present sufficient record evidence on which to make a determination as to those products.

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

_____ Agree _____ Disagree

Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

Date