



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

A-570-967

C-570-968

Scope Inquiry: Louver Assemblies

Public Document

IA AD/CVD O8: BCQ

September 9, 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: Brendan Quinn
International Trade Compliance Analyst, Office 8
Antidumping and Countervailing Duty Operations

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

SUBJECT: Final Scope Ruling on Port-A-Cool LLC's Louver Assemblies

SUMMARY

On June 4, 2013, the Department of Commerce ("Department") received a scope ruling request from Port-A-Cool LLC ("Port-A-Cool"),¹ to determine whether the louver assemblies installed on certain "Cyclone" models of Port-A-Cool's cooling systems (hereafter, "louvers") are subject to the antidumping ("AD") and countervailing duty ("CVD") orders on aluminum extrusions from the People's Republic of China ("PRC").² Based on our analysis of the comments

¹ See letters from Port-A-Cool entitled: "Antidumping Duty and Countervailing Duty Orders on Aluminum Extrusions from the People's Republic of China: Scope Inquiry {A-570-967}" and "Antidumping Duty and Countervailing Duty Orders on Aluminum Extrusions from the People's Republic of China: Scope Inquiry {C-570-968}," dated June 4, 2013 (collectively, "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").

received, we have determined that the louvers are not included in the scope of the AD and CVD *Orders* on aluminum extrusions from the PRC.

BACKGROUND

On June 4, 2013, Port-A-Cool requested that the Department determine whether its louvers are outside the scope of the *Orders*.³ On June 6, 2013, the Department sent Port-A-Cool a supplemental questionnaire requesting additional details regarding Port-A-Cool's louvers.⁴ On June 11, 2013, Port-A-Cool submitted its response to the Department's supplemental questionnaire.⁵ On July 17, 2013, the Department extended the deadline for a final scope ruling a further 45 days, to September 9, 2013.⁶ Petitioner did not submit comments regarding this scope inquiry.⁷

SCOPE OF THE ORDERS

The merchandise covered by these *Orders* are 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.

³ See Scope Request.

⁴ See letter from James Terpstra to Port-A-Cool entitled "Aluminum Extrusions from the People's Republic of China – Scope Ruling Request Supplemental Questionnaire," dated June 6, 2013. The Department filed this document to the proper electronic record on IAACCESS on July 16, 2013.

⁵ See letter from Port-A-Cool entitled "Antidumping Duty and Countervailing Duty Orders on Aluminum Extrusions from the People's Republic of China: Response to Supplemental Questionnaire for Scope Ruling Request of Port-A-Cool, LLC," dated June 11, 2013 ("Port-A-Cool's SQR").

⁶ See letter from Eugene Degnan to all interested parties entitled "Aluminum Extrusions from the People's Republic of China: Extension of Time for Scope Ruling," dated July 17, 2013.

⁷ Petitioner is the Aluminum Extrusions Fair Trade Committee.

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 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”): 7610.10.00, 7610.90.00, 7615.10.30, 7615.10.71, 7615.10.91, 7615.19.10, 7615.19.30, 7615.19.50, 7615.19.70, 7615.19.90, 7615.20.00, 7616.99.10, 7616.99.50, 8479.89.98, 8479.90.94, 8513.90.20, 9403.10.00, 9403.20.00, 7604.21.00.00, 7604.29.10.00, 7604.29.30.10, 7604.29.30.50, 7604.29.50.30, 7604.29.50.60, 7608.20.00.30, 7608.20.00.90, 8302.10.30.00, 8302.10.60.30, 8302.10.60.60, 8302.10.60.90, 8302.20.00.00, 8302.30.30.10, 8302.30.30.60, 8302.41.30.00, 8302.41.60.15, 8302.41.60.45, 8302.41.60.50, 8302.41.60.80, 8302.42.30.10, 8302.42.30.15, 8302.42.30.65, 8302.49.60.35, 8302.49.60.45, 8302.49.60.55, 8302.49.60.85, 8302.50.00.00, 8302.60.90.00, 8305.10.00.50, 8306.30.00.00, 8418.99.80.05, 8418.99.80.50, 8418.99.80.60, 8419.90.10.00, 8422.90.06.40, 8479.90.85.00, 8486.90.00.00, 8487.90.00.80, 8503.00.95.20, 8516.90.50.00, 8516.90.80.50, 8708.80.65.90, 9401.90.50.81, 9403.90.10.40, 9403.90.10.50, 9403.90.10.85, 9403.90.25.40, 9403.90.25.80, 9403.90.40.05, 9403.90.40.10, 9403.90.40.60, 9403.90.50.05, 9403.90.50.10, 9403.90.50.80, 9403.90.60.05, 9403.90.60.10, 9403.90.60.80, 9403.90.70.05, 9403.90.70.10, 9403.90.70.80, 9403.90.80.10, 9403.90.80.15, 9403.90.80.20, 9403.90.80.30, 9403.90.80.41, 9403.90.80.51, 9403.90.80.61, 9506.51.40.00, 9506.51.60.00, 9506.59.40.40, 9506.70.20.90, 9506.91.00.10, 9506.91.00.20, 9506.91.00.30, 9506.99.05.10, 9506.99.05.20, 9506.99.05.30, 9506.99.15.00, 9506.99.20.00, 9506.99.25.80, 9506.99.28.00, 9506.99.55.00, 9506.99.60.80, 9507.30.20.00, 9507.30.40.00, 9507.30.60.00, 9507.90.60.00, and 9603.90.80.50.

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: 8418.99.80.50 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.⁸

⁸ See *Orders*.

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.⁹ 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.¹⁰ 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.¹¹ If the Department determines that these sources are not sufficient to decide the matter, the Department will consider the five additional factors set forth at 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.

DESCRIPTION OF MERCHANDISE SUBJECT TO THIS INQUIRY

Port-A-Cool produces large portable cooling units which generate cooled air by an evaporative process.¹² On many of Port-A-Cool's models, a fan apparatus blows the cooled air outward through a basic non-adjustable vent/grate.¹³ For Port-A-Cool's Cyclone model line, however, an internal air pump blows the cooled air outward and a louver is installed on the cooling unit after importation (or is sold as an accessory or replacement part).¹⁴ A louver is an adjustable vent and directs airflow for more concentrated or more dispersed airflow.¹⁵ These two Cyclone-model-specific louvers are produced in the PRC from aluminum extrusions and other parts, and undergo no further fabrication in the United States and are the subject of the instant scope request.¹⁶ Once the louver is imported, Port-A-Cool or the downstream user needs only to screw the louvers onto the rest of the assembled Cyclone model. Each of the two Cyclone-specific louvers are made of several parts permanently assembled together in one assembly, some made of extruded aluminum (*i.e.*, rivets, connection bars, louvers, and frames) and others made of iron (*i.e.*, wire mesh and mounting brackets), galvanized steel (*i.e.*, frame mounts), and stainless steel (*i.e.* wire adjustors).¹⁷

ARGUMENTS FROM INTERESTED PARTIES

Port-A-Cool's Request

Port-A-Cool notes that the aluminum, iron, and steel components go through a complex end forming process which imparts the necessarily precise finished shape and form to the louver.

⁹ See *Walgreen Co. v. United States*, 620 F.3d 1350, 1357 (Fed. Cir. 2010).

¹⁰ See 19 CFR 351.225(k)(1).

¹¹ See 19 CFR 351.225(d).

¹² See Scope Request at 2-3; see also <www.port-a-cool.com/products>.

¹³ *Id.*

¹⁴ *Id.* at 6 and Exhibit 5.

¹⁵ *Id.* at 3.

¹⁶ The Cyclone models are Cyclone 2000 and Cyclone 3000. The louvers are: LOUVERS-CYC-11 and LOUVERS-CYC-16.

¹⁷ *Id.* at 5-6 and Exhibits 3 and 4.

According to Port-A-Cool, this end forming process, rather than the extrusion process, is the most critical processing to creating the louvers in question and, because end forming is not discussed in the scope of the *Orders*, the louvers are excluded pursuant to 19 CFR 351.225(k)(1). Moreover, Port-A-Cool argues, the louvers are not parts of aluminum products, but are finished goods used in conjunction with cooling units composed of aluminum extrusions and non-aluminum extrusions.¹⁸

Port-A-Cool asserts that both of the louvers in question are fully manufactured in the PRC and entered ready for either installation on a new cooling unit or for sale as accessory/replacement parts with no further finishing or fabrication. Port-A-Cool argues that because they have passed through the last stage of manufacture, the louvers constitute “finished merchandise” and should, thus, be found outside of the scope of the *Orders* pursuant to 19 CFR 351.225(k)(1) based on the plain language which explicitly excludes finished products from the scope.¹⁹ According to Port-A-Cool, though the louvers are used as part of a larger cooling unit, a determination that the louvers are out of scope would be consistent with the Department’s clarification that certain subassemblies may be considered finished goods or finished goods kits in the recent SMVCs scope ruling as well as the *Valeo Remand*.²⁰

Port-A-Cool argues that the Department’s determination to exclude housing stators not comprised entirely of aluminum in the Motor Cases and Housing Stators scope ruling²¹ further supports a finding that the louvers in question should be found out of scope since, regardless of whether the louvers are considered a finished product or a part of the larger cooling unit, the louvers consist only partially of aluminum extrusions.²²

Finally, Port-A-Cool argues that the louvers are not an integral component of the cooling units but, rather, work in conjunction with the units to direct the airflow (*i.e.*, the cooling unit itself would perform its essential function – cooling the air – with or without the louver attached). Thus, a finding that the louvers are not in-scope is consistent with the Department’s finding in the Anodes scope ruling,²³ in which the Department determined that water heater anodes work in conjunction with water heaters, but that the anode was a separate product since the water heater could heat water with or without the anode.²⁴

Petitioner’s Comments

Petitioner did not submit comment on Port-A-Cool’s scope request.

¹⁸ *Id.* at 9-10.

¹⁹ *Id.* at 10-11.

²⁰ See Scope Request at 12-14 and 15-17, citing Memorandum to Christian Marsh entitled “Final Scope Ruling on Side Mount Valve Controls” dated October 25, 2012 (“SMVCs scope ruling”) and *Valeo, Inc. v. United States*, Court No. 12-381, *Final Results of Redetermination Pursuant to Court Remand* (May 13, 2013) (“*Valeo Remand*”).

²¹ See Memorandum to Christian Marsh entitled, “Final Scope Ruling on Motor Cases, Assembled and Housing Stators,” dated November 19, 2012 (“Motor Cases and Housing Stators scope ruling”).

²² See Scope Request at 14-15.

²³ See Memorandum to Christian Marsh entitled “Final Scope Ruling on Aluminum Anodes for Water Heaters” dated October 17, 2012 (“Anodes scope ruling”).

²⁴ See Scope Request, at 17-19.

RELEVANT SCOPE DETERMINATION²⁵

Anodes

In the Anodes scope ruling, the Department considered whether a water heater anode is excluded from the scope of the *Orders* as finished merchandise. Petitioner argued that a water heater anode is not a finished product because it is a component of another product (*i.e.*, a water heater). However, the Department disagreed and found that water heater anodes were finished merchandise that fell outside the scope of the *Orders*. In reaching its decision, the Department concluded that the water heater anode is a finished product because it contains all the components of a water heater anode (*i.e.*, the aluminum, the steel/carbon steel rod, and the carbon steel cap) which are permanently assembled, completed and ready to use as an aluminum anode which works to prevent corrosion in a water heater. Additionally, the Department found that a water heater anode is not an integral component of a water heater because a water heater can heat water with or without a water heater anode. Rather, a water heater anode is a finished product that works in conjunction with another finished product, a water heater, much in the same fashion as a window with glass is a finished product that works in conjunction with a house or structure.²⁶

DEPARTMENT'S POSITION

We have examined the description of the products in the Scope Request and Port-A-Cool's SQR, the scope language, and the Department's Anodes scope ruling. Pursuant to 19 CFR 351.225(k)(1), we find that the scope and the Department's prior ruling are dispositive as to whether the louvers are outside of the scope of the *Orders*. The scope of the *Orders* excludes "finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry."

In the Anodes scope ruling, the Department considered a similar product to the louvers. As discussed above, in the Anodes scope ruling, we found that the product in question, a water heater anode, is finished merchandise excluded from the scope because it contains all of the components of a water heater anode which are permanently assembled, completed and ready to use as an anode, and because the anode is not an integral component of a water heater in that the heater can perform its essential function (*i.e.*, heating water) without the anode.²⁷ We determined that the anode is a finished product that works in conjunction with another finished product (a water heater), much in the same fashion as a window with glass is a finished product that works in conjunction with a house or structure. Further, the water heater anode includes non-aluminum extrusion components.²⁸

²⁵ See the Department's memorandum entitled: "Antidumping ("AD") and Countervailing Duty ("CVD") Orders on Aluminum Extrusions from the People's Republic of China ("PRC"): Transmittal of Scope Determinations to the File," dated September 9, 2013.

²⁶ See Anodes scope ruling, at 5-7.

²⁷ *Id.*, at 6.

²⁸ *Id.*

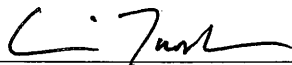
In the same manner, the louvers in question, as imported, each contain all of the components of a louver (including non-aluminum extrusion parts, such as wire mesh) permanently assembled, completed, and ready for use as a louver to direct airflow for Port-A-Cool's "Cyclone" portable cooling unit. Like the water heater anode, the louvers are finished merchandise and are not an integral component of the cooling unit because the Cyclone models can cool air with or without the louver. Rather, the louver is a finished product that works in conjunction with the Cyclone model to direct airflow as a complementary function, which is not essential to the air cooling system. This is further demonstrated by the fact that the louver is also sold as an "accessory" part. Thus, a finding that the louvers in question are outside the scope of the *Orders* is consistent with the scope of the *Orders*' exclusion for finished merchandise and the Anodes scope ruling.

RECOMMENDATION

For the reasons discussed above, and in accordance with 19 CFR 351.225(d) and 351.225(k)(1), we recommend finding that the louvers described in the Scope Request are not subject to the scope of the AD and CVD orders on aluminum extrusions from the PRC.

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

Agree Disagree



Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

9/5/13
Date