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International Trade Administration
Washington, D.C. 20230

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Scope Ruling
Delphi Core Heater Tubes
Public Document
E&C AD/CVD OIII: EBG

October 14, 2014

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

THROUGH: Melissa G. Skinner *EBG* for MS
Director, Office III
Antidumping and Countervailing Duty Operations

FROM: Eric B. Greynolds *EBG*
Program Manager, Office III
Antidumping and Countervailing Duty Operations

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

SUBJECT: Final Scope Ruling on Delphi Core Heater Tubes

SUMMARY & BACKGROUND

Delphi Automotive Systems, LLC (Delphi) filed a scope request on certain aluminum heater core inlet and outlet tubes (core tubes) on July 24, 2014,¹ in which Delphi requests that the Department of Commerce (Department) determine whether the core tubes it imports are subject to the antidumping (AD) and countervailing duty (CVD) *Orders*.² On August 25, 2014, we extended the deadline for an initial decision until October 22, 2014.³ To date, the Aluminum Extrusions Fair Trade Committee (hereinafter referred to as Petitioners) has not submitted comments on the Scope Request.

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

¹ See Delphi's July 24, 2014, submission (Scope Request).

² See *Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order*, 76 FR 30650 (May 26, 2011) (*AD Order*) and *Aluminum Extrusions from the People's Republic of China: Countervailing Duty Order*, 76 FR 30653 (May 26, 2011) (*CVD Order*) (collectively, the *Orders*).

³ See the Department's August 25, 2014, memorandum to the file.



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, 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): 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: 8418.99.8050 and 8418.99.8060. While HTS subheadings are provided for convenience and customs purposes, the written description of the scope of these *Orders* is dispositive.⁴

LEGAL FRAMEWORK

When a request for a scope ruling is filed, the Department examines the scope language of the order at issue and the description of the product contained in the scope ruling request.⁵ Pursuant to the Department's regulations, the Department may also examine other information, including the description of the merchandise contained in the petition, the records from the investigations, and prior scope determinations made for the same product.⁶ If the Department determines that these sources are sufficient to decide the matter, it will issue a final scope ruling as to whether the merchandise is covered by an order.

Conversely, where the descriptions of the merchandise in the sources described in 19 CFR 351.225(k)(1) are not dispositive, the Department will consider the five additional 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 proceeding is made on a case-by-case basis after consideration of all evidence before the Department.

DESCRIPTION OF MERCHANDISE SUBJECT TO THIS SCOPE RULING

The products at issue are core tubes used for Delphi's automotive heating or cooling systems (also referred to HVAC systems). The request covers four models of core tubes that are

⁴ See *Orders*.

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

⁶ See 19 CFR 351.225(k)(1).

distinguished only by their length and profile. All four models are comprised of extruded hollow, tubular aluminum articles that are bent and end-formed based on customer designs. Delphi imports the core tubes for use in automotive HVAC systems for specific brands of vehicles. Delphi indicates that the raw material of the tubes at issue are manufactured and finished in the PRC using extruded aluminum raw materials with an Aluminum Association 3000 designation. Delphi's PRC-based suppliers then bend and form the core tubes to the customers' designs, at which point Delphi imports the core tubes into the United States. Upon importation, Delphi attaches the core tubes to heater cores. At the time of entry, the core tubes at issue consist exclusively of aluminum materials.⁷ The core tubes at issue are currently classified under item 8415.90.8045 of the HTS.⁸

PRIOR SCOPE RULINGS RELEVANT TO THIS PROCEEDING⁹

Geodesic Domes Kits Scope Ruling¹⁰

At issue in the ruling were certain geodesic dome frame kits consisting solely of extruded aluminum parts along with nuts, bolts, and washers. The requestor argued that the products at issue constituted finished goods kits because the kits contained all the components necessary to assemble a final finished good. It further argued that the products at issue required no further fabrication and are assembled "as is" from the components provided in the kits.

In the Geodesic Domes Kits Scope Ruling, the Department explained that because the kits at issue contained all of the parts necessary at the time of importation "to fully assemble a final, finished good," it met the "initial requirements for inclusion into the finished goods kit exclusion."¹¹ However, the Department noted that the scope of the *Orders* states that 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."¹² The Department found that because the kits at issue consisted solely of extruded aluminum tubes and fasteners, the exception to the exclusion provision applied. Accordingly, the Department found that the products at issue did not meet the exclusion criteria for a finished goods kit.¹³

⁷ See Scope Request at 2-3.

⁸ *Id.* at 4.

⁹ For information regarding the scope rulings referenced in this section, see the Memorandum to the File from Eric B. Greynolds, Program Manager, Office III, Operations, "Prior Scope Rulings Relevant to this Proceeding," dated concurrently with this memorandum.

¹⁰ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Final Scope Ruling on J.A. Hancock, Inc.'s Geodesic Structures," (July 17, 2012) (Geodesic Domes Kits Scope Ruling).

¹¹ *Id.* at 7.

¹² *Id.*

¹³ *Id.*

Cutting & Edging Scope Ruling¹⁴

At issue were certain finished cutting and marking straight edges. The requestor argued that the products at issue constituted finished goods and, therefore, met the exclusion criteria in the scope of the *Orders*.¹⁵

The Department found that the physical characteristics of the products at issue (*e.g.*, an 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 scope of the *Orders* includes a description of subject merchandise as including “fence posts, electrical conduits, door thresholds, carpet trim, or heat sinks,” and the Department explained that like the door thresholds and carpet trim, the cutting and marking edges at issue were merely aluminum extrusions that met the physical description of subject merchandise and were referred to by their end use. Accordingly, the Department found that the products at issue did not meet the exclusion criteria for finished merchandise.¹⁶

Side Mount Valve Controls Kits Scope Rulings¹⁷

At issue in the scope ruling were certain side-mount valve controls (SMVCs) that are used in pumping apparatuses that attached to fire engines. The requestor argued that a SMVC kit, 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, the requestor argued that the kit in question met the exclusion criteria for “finished goods kit.”¹⁸

In the ruling, 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

¹⁴ See 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 & Edging Scope Ruling).

¹⁵ *Id.* at 1-2.

¹⁶ *Id.* at 9-10.

¹⁷ 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 Kits 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 Kits Scope Ruling) (together, SMVC Scope Kits Rulings).

¹⁸ See Preliminary SMVC Kits Scope Ruling at 2 unchanged in Final SMVC Kits Scope Ruling.

interpretation may expand the scope of the *Orders*, which are intended to cover aluminum extrusions.¹⁹

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 kits 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: 1) the SMVC kit contained all of the parts necessary to assemble a complete SMVC; 2) all the components and hardware of the SMVC were fully fabricated and required no further finishing or fabrication prior to being assembled; and 3) once assembled, the SMVC was ready for use in conjunction with the downstream product upon installation.²⁰ Based on this information, the Department found that the SMVC kits at issue met the exclusion criteria for subassemblies that enter the United States as “finished goods kits.”²¹

Valeo Final Remand Redetermination²²

At issue was whether certain automotive heating and cooling system components were encompassed within the scope of the *Orders*. The products at issue were comprised of two distinct types of automotive heating and cooling parts/components, T-Series and M-Series.²³ In the final remand determination, the Department, applying the subassemblies test from the SMVC Scope Rulings, concluded that “at the time of importation, the products at issue contain all of the necessary components required for integration into a larger system,” and, thus, there is no meaningful distinction between the products at issue and those examined in the SMVC Scope Rulings. As a result, the Department determined that the products at issue were subassemblies that constitute excluded “finished goods,” as described in the *Orders*, and were not covered by the scope.²⁴

Kitchen Door Handles Without Plastic End Caps Scope Ruling²⁵

At issue were kitchen door handles consisting of alloy 6 series aluminum extrusions. The handles were ready for attachment to the refrigerator door upon importation.²⁶ The Department

¹⁹ See Preliminary SMVC Kits Scope Ruling at 7 unchanged in Final SMVC Kits Scope Ruling.

²⁰ *Id.*

²¹ *Id.*

²² See Final Results of Redetermination Pursuant to Court Remand Aluminum Extrusions from the People’s Republic of China, *Valeo Inc., Valeo Engine Cooling Inc., and Valeo Climate Control Corp. v. United States*, No. 12-00381, (May 14, 2013) (Valeo Final Remand Redetermination), addressing the Department’s findings in the Memorandum regarding: Antidumping and Countervailing Duty Orders on Aluminum Extrusions from the People’s Republic of China – Final Scope Ruling on Valeo’s Automotive Heating and Cooling Systems, dated October 31, 2012 (“Auto Heating/Cooling Systems Scope Ruling”). The Valeo Final Remand Redetermination was affirmed by the Court of International Trade. See *Valeo, Inc. et al v. United States*, CIT No. 12-00381.

²³ See Valeo Final Remand Redetermination at 5.

²⁴ *Id.* at 10.

²⁵ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on Kitchen Appliance Door Handles With Plastic End Caps and Kitchen Appliance Door Handles Without Plastic End Caps,” August 4, 2014 (Kitchen Handles Scope Ruling).

found that the handles at issue consisted entirely of extruded aluminum described by their end use,²⁷ and met the description of subject merchandise. Thus, consistent with the Cutting & Marking Edges Scope Ruling, the Department found that products identified by their end use do not meet the exclusion for finished merchandise where such products consist entirely of aluminum extrusions.²⁸ Accordingly, the Department found that the handles did not meet the exclusion criteria for finished merchandise and, as a result, were subject to the scope of the *Orders*.²⁹

Exhibit Booths Kits Scope Ruling³⁰

The exhibition booth kits at issue were composed of an “upright aluminum extrusion” or pole, extruded aluminum beams, and various iron buckles that are used to connect the extruded aluminum pieces together.³¹ The Department explained that, in the Geodesic Domes Kits Scope Ruling, the Department found that since the products at issue consisted solely of extruded aluminum and fasteners, the exception to the exclusion provision applied. Accordingly, in the Geodesic Domes Kits Scope Ruling, the Department found that the products at issue did not meet the exclusion criteria for a finished goods kit.³² Thus, in the Exhibition Booths Scope Ruling, because the products did not contain non-extruded aluminum parts other than fasteners, the Department found that the exhibition booth kits failed to meet the Department’s initial tests for determining whether a good constitutes a finished goods kit, as established in the scope of the *Order* and the Geodesic Domes Kits Scope Ruling.³³ As a result, the Department found the product inside the scope of the *Orders*.

ARGUMENTS FROM INTERESTED PARTIES

Delphi

- The scope covers extrusions that may be described at the time of importation as parts for final finished products that are assembled after importation.
- Delphi’s core tubes are finished products themselves. They share no similarities with any of the examples of in-scope merchandise listed in the scope (*e.g.*, window frames, door frames, solar panels, curtain walls, or furniture).
- The record of the original investigation suggests that Petitioners did not contemplate including core tubes in the scope.
- For example, the International Trade Commission (ITC) explained during the investigation that in-scope merchandise is commonly referenced as “aluminum extrusions” and is

²⁶ *Id.* at 5.

²⁷ *Id.* at 17.

²⁸ *Id.* at 21, citing the Cutting & Edging Scope Ruling at 9-10.

²⁹ *Id.* at 21.

³⁰ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on Exhibition Booth Kits,” August 14, 2014 (Exhibition Booths Scope Ruling).

³¹ *Id.* at 4.

³² See Exhibition Booths Scope ruling at 9, citing to the Geodesic Domes Kits Scope Ruling at 7.

³³ *Id.*

principally produced from aluminum billet,³⁴ unlike Delphi's core tubes that are referenced as "automotive parts" and produced from aluminum tube stock.

- Because the ITC never considered the downstream aluminum auto parts industry and market in the injury investigation, the scope should not be expanded to include automotive parts.
- Delphi's core tubes are used in automotive HVAC systems, a use that is entirely different from the end uses of products mentioned in the scope.
- The products at issue meet the exclusion criteria for finished goods contained in the scope, as interpreted in the SMVC Kits Scope Ruling, and later applied in the Valeo Final Remand Determination.
- As with the products examined in these prior proceedings, the core tubes at issue are fully manufactured automotive parts. After importation, they are installed on Delphi's HVAC systems without any fabrication or finishing.
- Thus, based on the language of the scope and the "finished goods test" first established in the SMVC Kits Scope Rulings, the Department should find the core tubes at issue outside the scope.
- The core tubes at issue are similar to the products examined and found outside the scope in the Valeo Final Remand Redetermination, which also addressed aluminum heater core tubes used from HVAC systems.³⁵
- In the Valeo Final Remand Redetermination, the Department applied the "subassembly test" to determine that the products at issue were components that "at the time of importation, contain all of the necessary components required for integration into a larger system, *i.e.*, an automotive heating and cooling system, like a window with glass, or a door with glass or vinyl."³⁶ Thus, in the redetermination, the Department applied the "subassemblies test" and concluded "that there is no meaningful distinction between the extruded aluminum parts described in Valeo's Scope Request and the products considered in the SMVCs Scope Rulings."³⁷ Accordingly, the Department found the products at issue in the Valeo Final Remand Redetermination outside the scope of the *Orders*.
- There is no meaningful distinction between the facts of the Valeo Final Remand Redetermination and those of the Scope Request. The core tubes are produced to precise customer specifications, are fully finished products ready for use for installation into a larger HVAC system, and require no additional finishing for assembly after importation.
- If the Department finds that scope language and prior rulings are not dispositive as to whether the core tubes at issue are covered by the scope, then an analysis under 19 CFR.351.225(k)(2) will demonstrate that the core tubes constitute non-subject merchandise.

DEPARTMENT'S POSITION: The Department examined the language of the *Orders* and the description of the products contained in the Scope Request, as well as previous rulings made by the Department. We determine that the description of the products, the scope language, and prior rulings, are, together, dispositive as to whether the products at issue are subject merchandise, in accordance with 19 CFR 351.225(k)(1). Accordingly, for this determination, the Department finds it unnecessary to consider the additional factors specified in 19 CFR 351.225(k)(2). For

³⁴ See ITC Investigation Nos. 701-TA-475 and 731-TA-117 (ITC Preliminary Determination) at I-7.

³⁵ See Valeo Final Remand Redetermination at 5.

³⁶ *Id.* at 10.

³⁷ *Id.*

the reasons set forth below, we find that the core tubes at issue do not meet the exclusion criteria for “finished merchandise” and, therefore, are inside the 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).³⁸ The scope further states that 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.”³⁹ The scope further states that “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.”⁴⁰

The scope of the *Orders* explicitly 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,” and “finished goods kits” which are defined 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 a finished product.” The scope also provides that “{a}n 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.”⁴¹

Based on the information provided by Delphi (*e.g.*, narrative statements, photographs, and product specifications), we find that the core tubes at issue are comprised entirely of extruded aluminum.⁴² Therefore, we find the core tubes do not meet the Department’s first test for determining whether a good constitutes a finished good or finished goods kit, as established in the Geodesic Domes Scope Ruling and followed in the Cutting and Marking Edges Scope Ruling.⁴³

The Department has previously considered whether products that consist solely of aluminum extrusions or are comprised only of aluminum extrusions, save for fasteners, meet the exclusions for finished merchandise or finished goods kits and determined that they are covered by the scope of the *Orders*. For example, in the Geodesic Domes Kits Scope Ruling, the Department analyzed a children’s jungle gym that was comprised of extruded aluminum poles that were

³⁸ See, *e.g.*, *CVD Order*, 76 FR at 30653.

³⁹ *Id.*, 76 FR at 30654.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² See Scope Request at 2-3.

⁴³ See Geodesic Scope Domes Kits Scope Ruling at 7, where the Department found that since the products at issue consisted solely of extruded aluminum and fasteners, the exception to the exclusion provision applied. Accordingly, the Department found that the products at issue did not meet the exclusion criteria for a finished goods kit; see also Cutting & Edging Scope Ruling at 9-10, where the Department followed the same approach.

accompanied by “nuts, bolts, and washers (i.e., fasteners).”⁴⁴ In the Geodesic Domes Kits Scope Ruling, the Department explained that the scope of the *Orders* states that 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.”⁴⁵ Thus, the Department found that since the products at issue consisted solely of extruded aluminum tubes and fasteners, the products at issue did not meet the exclusion criteria for a finished goods kit.⁴⁶

Similarly, in the Cutting & Marking Edges Scope Ruling, the Department considered products which, although identified by their end use, consisted only of aluminum extrusions. The Department found that they did not meet the exclusion for finished goods because “the products consist entirely of aluminum extrusions.”⁴⁷

Delphi argues that, under the test articulated in SMVC Kits Scope Rulings, the core tubes at issue are finished goods because, even though the core tubes are part of a larger HVAC system, they nevertheless constitute a finished product which is ready for installation, and requires no further finishing or fabrication.⁴⁸ We disagree with this interpretation. The SMVC Kits Scope Rulings involved a product that contained non-aluminum components that went beyond mere fasteners. Specifically, the product examined in the SMVC Kits scope proceeding consisted of extruded aluminum as well as such non-aluminum components, such as a chrome-plated die cast zinc T-handle and bronze split brushings.⁴⁹ As discussed above, because we find the core tubes at issue consist entirely of aluminum extrusions, they do not meet the exclusion for finished goods.

We also disagree with Delphi that the fact that the core tubes at issue are ready for installation into an HVAC system at the time of importation, by itself, results in the products’ exclusion from the *Orders*. The language of the scope indicates that products which otherwise meet 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.⁵⁰

Delphi attempts to distinguish this language, stating that its core tubes are excluded because they constitute finished merchandise that share no similar end use with the examples of covered merchandise contained in the scope of the *Orders*. Those products and their uses, however, are just examples, and there is no language in the scope that indicates that the scope is limited to products with only particular end uses. Indeed, the core tubes at issue share a similar trait with

⁴⁴ See Geodesic Domes Kits Scope Ruling at 5 and 7 (emphasis added).

⁴⁵ *Id.* at 7.

⁴⁶ *Id.*

⁴⁷ See Cutting & Edges Scope Ruling at 11.

⁴⁸ See Preliminary SMVC Kits Scope Ruling at 7, unchanged in Final SMVC Kits Scope Ruling.

⁴⁹ See Preliminary SMVC Kits Scope Ruling at 2, unchanged in Final SMVC Kits Scope Ruling.

⁵⁰ See *CVD Order*, 76 FR at 30654.

for example, door thresholds and carpet trim, as well the merchandise found to be in-scope in the Cutting & Marking Edges Scope Ruling, because all of those products are merely aluminum extrusions that meet the physical description of subject merchandise (*e.g.* extruded aluminum tubes) and are referred to by their end use (in this case, core tubes used in HVAC systems).

Delphi further implies that because the core tubes at issue are produced from “aluminum tube stock” they are distinct from subject extrusions produced from aluminum billet. However, the Scope Request indicates that the tubes at issue are “manufactured and finished” in the PRC “using extruded aluminum raw materials with an Aluminum Association designation 3000 designation.”⁵¹ As such, the tubes at issue constitute an extruded product. While Delphi indicates that the extruded tubes at issue undergo additional fabrication in the PRC prior to importation in the United States, the language of the scope explicitly states that further fabrication will not result in the exclusion of an extruded aluminum product: “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.”

Concerning the Valeo Final Remand Redetermination, the Department issued the redetermination in May 2013, which was shortly after the October 2012 establishment of the “subassembly finished goods” test in the SMVC Kits Scope Ruling and the Department’s determination that products that consist solely of extruded aluminum are subject merchandise in the November 2012 Cutting & Marking Edges Scope Ruling. In the Valeo Final Remand Redetermination, the Department examined two models of automotive heating and cooling components, a T-Series, which was comprised of a shaped and bent extruded aluminum tube that also contained foam material at one end and an M-Series model that was comprised of a shaped extruded aluminum tube. The Department applied the “subassembly finished goods” test to both products.⁵² Upon review of the Valeo Final Remand Redetermination, we conclude that the Department did not consider at the time it issued the remand redetermination that the M-Series model did not contain non-aluminum materials. In that regard, the Department’s analysis in the Valeo Final Remand Redetermination is not consistent with the manner in which the Department previously or subsequently analyzed whether products meet the exclusion criteria for finished goods and finished goods kits.⁵³

Accordingly, the Department determines that its application of the “subassembly finished goods test” in the Valeo Final Remand Redetermination was consistent with its practice with respect to the T-Series model, but was inconsistent with its treatment of aluminum extruded products in other scope determinations with regard to the M-Series model. As explained above, it is the Department’s practice to apply the “subassembly finished goods test” to subassembly products

⁵¹ See Scope Request at 2.

⁵² See *Valeo* Final Remand Redetermination at 10-11.

⁵³ See, *e.g.*, Cutting & Edging Scope Ruling at 9-10, which pre-dates the *Valeo* Final Remand Redetermination; see also, Kitchen Door Handles Without Plastic End Caps Scope Ruling at 21, which post-dates the *Valeo* Final Remand Redetermination.

only after it has first confirmed that the products at issue do not consist solely of extruded aluminum.⁵⁴

Finally, we disagree with Delphi's argument that the Department would be "expanding" the scope if it "include(d) the automotive parts at issue" because the ITC did not address the downstream aluminum auto parts industry and market in the injury investigation.⁵⁵ As an initial matter, the ITC found that aluminum extrusions "are used as inputs into the manufacture and construction of a wide variety of other products within the following broad downstream industries: building and construction; *automotive* and transportation; engineering products; and electric and alternative energy."⁵⁶ Therefore we disagree that the ITC did not contemplate the numerous downstream products and industries that utilize aluminum extrusions, including the automotive industry. Additionally, even if the ITC did not specifically analyze the automotive parts segment of the economy in the underlying investigation that does not mean the products at issue were intended to be excluded from the *Orders*. In fact, Delphi's product meets the physical description of an aluminum extrusion product covered by the scope of the *Orders*. Indeed, if the Department were to determine that a product consisting only of aluminum extrusions satisfies the finished good exclusion, such a determination would, in fact, "expand" that scope exclusion to such an extent that it would swallow the scope of the *Orders*. Further, under Delphi's proposed interpretation, any aluminum extrusion product, as long as it can be identified by end use, could be considered a finished product. This is contrary to the text of the scope which clearly covers aluminum extrusions meeting certain physical descriptions – which "may be identified with reference to their end use."⁵⁷

Lastly, we reject Delphi's argument that the tubes at issue should be excluded from the scope of the *Orders* because Petitioners did not contemplate including core tubes in the scope proposed in the petition. The scope of the *Orders* states:

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.⁵⁸

The scope provides illustrative examples of subject merchandise; however the scope language makes clear that such subject merchandise are not limited to these examples. Furthermore, the scope further indicates that products that otherwise meet the definition of subject merchandise are included in the scope. As discussed above, we find the tubes at issue constitute merchandise

⁵⁴ See, e.g., Kitchen Door Handles Without Plastic End Caps Scope Ruling at 21, in which the Department found the "subassembly finished goods" test did not apply because the handles at issue were comprised solely of extruded aluminum; see also Exhibition Booths Scope Ruling at 9-10, in which the Department found the product at issue to be within the scope and did not consider whether the product constituted a "subassembly finished good" because the product was comprised entirely of aluminum extrusions, save for fasteners, and thus did not pass the initial test established in the Geodesic Domes Kits Scope Ruling; see also Cutting and Marking Edges Scope Ruling at 10-11.

⁵⁵ See Scope Request at 11.

⁵⁶ See ITC Preliminary Determination at I-2, (emphasis added), which is included as Exhibit 6 of the Scope Request.

⁵⁷ See *CVD Order*, 76 FR at 30654.

⁵⁸ *Id.*

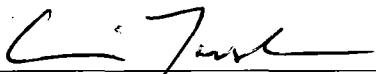
comprised solely of extruded aluminum materials and, thus, are covered by the scope of the *Orders*.

RECOMMENDATION

For the reasons discussed above, and in accordance with 19 CFR 351.225(d) and 19 CFR 351.225(k)(1), we recommend finding that the core tubes at issue do not meet the exclusion criteria for finished merchandise and, thus, are inside the scope of the *Orders*.

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(d).

Agree Disagree



Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

10/15/14

Date