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Scope Proceeding: Foot Assembly
Public Version
AD/CVD6:FBaker

June 20, 2016

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

THROUGH: Scot Fullerton
Director, Office 6
Antidumping and Countervailing Duty Operations

Robert James
Program Manager, Office 6
Antidumping and Countervailing Duty Operations

FROM: Fred Baker
Analyst, Office 6
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 Ancra International's Lift-A-Deck II Foot
Assembly

SUMMARY

On April 23, 2015, Ancra International LLC (Ancra) filed with the Department of Commerce (the Department) a scope ruling request,¹ in which Ancra requested that the Department confirm that its product known as a "Lift-a-Deck II foot assembly" (foot assembly) is excluded from the scope of the antidumping and countervailing Orders on aluminum extrusions from the People's Republic of China (PRC).² For the reasons described below, we determine that Ancra's foot assemblies are not covered by the scope of the Orders.

¹ See Ancra's letter entitled "Aluminum Extrusions from China: Request for Scope Ruling," dated April 23, 2015 (Ancra'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").



BACKGROUND

On January 28, 2015, Ancra requested that the Department issue a scope ruling that its foot assemblies are not subject to the antidumping and countervailing duty Orders on aluminum extrusions from the People's Republic of China.³ On February 23, 2015, the Department rejected the scope ruling request because of issues regarding its request for business proprietary treatment of information.

On April 23, 2015, Ancra resubmitted its request that the Department determine that its foot assemblies imported from the PRC are outside the scope of the Orders.⁴ The Department extended the deadline for ruling on Ancra's foot assemblies on May 14, 2015.⁵ The petitioner⁶ submitted comments on June 18, 2015.⁷ The Department issued a questionnaire to Ancra about the foot assemblies on June 25, 2015.⁸ On September 30, 2015, Ancra responded to the Department's June 25, 2015, questionnaire.⁹ The Department issued an additional supplemental questionnaire about the foot assemblies on January 19, 2016.¹⁰ On January 27, 2016, the Department tolled all administrative deadlines four additional days as a result of a government closure during snowstorm "Jonas."¹¹ On January 28, 2016, Ancra responded to the Department's January 19, 2016, supplemental questionnaire.¹² Ancra submitted additional comments on February 4, 2016.¹³ We extended the deadline for ruling on the scope request on March 21, 2016, and May 2, 2016.¹⁴

³ Ancra initially submitted the request on November 24, 2014, and referenced both the antidumping (AD) and countervailing duty (CVD) cases in the caption, but it filed the request on the scope record of only the AD case. Subsequently, on January 28, 2015, Ancra submitted its request on the scope record of the CVD case. Therefore, we consider the latter date of January 28, 2015, to be the official filing date of the scope request.

⁴ See Ancra's scope request.

⁵ See the Department's letter entitled, "Aluminum Extrusions from the People's Republic of China Extension of Time for Scope Ruling," dated May 14, 2015.

⁶ Petitioner is the Aluminum Extrusion Fair Trade Committee (petitioner).

⁷ See Letter from petitioner to The Honorable Penny Pritzker, Re: "Aluminum Extrusions from the People's Republic of China: Comments on Ancra International's Scope Ruling Request Regarding Lift-a-Deck II Foot Assembly," dated June 18, 2015.

⁸ See letter to Ancra, Re: "Scope Inquiry on Lift-A-Deck II Foot Assembly," dated June 25, 2015.

⁹ See Ancra's letter to the Honorable Penny Pritzker, Re: "Aluminum Extrusions from the PRC – Scope Request." Ancra submitted the response to the record of the antidumping scope determination on September 14, 2015, and to the record of the CVD scope determination on September 30, 2015. Therefore, we consider the latter date of September 30, 2015, to be the official filing date of the questionnaire response.

¹⁰ See letter to Ancra dated January 19, 2016.

¹¹ See Memorandum from Ronald Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, to the Record, Re: "Tolling of Administrative Deadlines as a Result of the Government Closure during Snowstorm 'Jonas,'" dated January 27, 2016.

¹² See Letter to the Honorable Penny Pritzker, Re: "Aluminum Extrusions from the PRC – Response to Request for Further Information Pertaining to Ancra's Scope Request," dated January 28, 2016.

¹³ See letter to the Honorable Penny Pritzker, Re: "*Whirlpool v. U.S.* U.S. CIT Slip Op 16-8 in Support of Ancra's Scope Request," dated February 4, 2016.

¹⁴ See the Department's letters entitled "Aluminum Extrusions from the People's Republic of China Extension of Time for Scope Ruling," dated March 21, 2016, and May 2, 2016.

DESCRIPTION OF MERCHANDISE SUBJECT TO THIS SCOPE INQUIRY

The “Lift-a-Deck foot assembly” is a product used in a cargo handling system marketed by Ancra called the “Lift-a-Deck II system” (Lift-a-Deck system). The Lift-a-Deck system is an adjustable system of tracks, beams, and other components designed to maximize the usage of cargo space in trucks and trailers. Its patent describes the system as an “adjustable decking system for supporting freight.” The foot assembly is used within the Lift-a-Deck system as a means to raise, lower, and secure a horizontal beam on a vertical track to provide support for pallets, planking, and similar items.¹⁵ The foot assembly requires no modification subsequent to entry into the United States, but is ready for immediate installation “as is” into the Lift-a-Deck system.¹⁶

Each foot assembly is manufactured in China, and is fully and permanently assembled in China prior to entry into the United States. The foot assembly is made out of [] parts. The [] main parts are a [] tube and a “guide shoe” that is made of [] separate parts. The [] parts include [

[]]. The [] and the [] are fully and permanently attached to each other by the []. The [] tube and the [] are permanently attached by a [] and [].¹⁷

Ancra states that only [] parts, both used in the guide shoe, are extruded aluminum: the part in the guide shoe that is also called the “[]” and the part that is called the “[].” The extruded aluminum [] and the [] components account for only about [] percent of the total weight of the foot assembly, and about [] percent of the product’s value.¹⁸

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

¹⁵ Id., at 6.

¹⁶ See Ancra’s scope request at 8.

¹⁷ Id., at 7-8 and Ancra’s September 11, 2015, submission at 4.

¹⁸ See Ancra’s scope request at 8.

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 brightdip 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 (HTSUS): 8424.90.9080, 9405.99.4020, 9031.90.90.95, 7616.10.90.90, 7609.00.00, 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, 8414.59.60.90, 8415.90.80.45, 8418.99.80.05, 8418.99.80.50, 8418.99.80.60, 8419.90.10.00, 8422.90.06.40, 8473.30.20.00, 8473.30.51.00, 8479.90.85.00, 8486.90.00.00, 8487.90.00.80, 8503.00.95.20, 8508.70.00.00, 8515.90.20.00, 8516.90.50.00, 8516.90.80.50, 8517.70.00.00, 8529.90.73.00, 8529.90.97.60, 8536.90.80.85, 8538.10.00.00, 8543.90.88.80, 8708.29.50.60, 8708.80.65.90, 8803.30.00.60, 9013.90.50.00, 9013.90.90.00, 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, 9403.90.80.41, 9403.90.80.51, 9403.90.80.61, 9506.11.40.80, 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 HTSUS chapters. In addition, fin evaporator coils may be classifiable under HTSUS numbers: 8418.99.80.50 and 8418.99.80.60. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these Orders is dispositive.

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.¹⁹ 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.²⁰ 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.²¹

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.

¹⁹ See Walgreen Co. v. United States, 620 F.3d 1350, 1357 (Fed. Cir. 2010) (Walgreen).

²⁰ See 19 CFR 351.225(k)(1).

²¹ See 19 CFR 351.225(d).

RELEVANT SCOPE DETERMINATIONS²²

A. Side Mount Valve Control Kits²³

At issue in the ruling were certain side-mount valve controls (SMVCs) that are used in pumping apparatuses attached to fire engines. The requestor argued that an SMVC, as imported, contains all the components necessary to complete the product and that all SMVC components and hardware are fully fabricated and require no further finishing or fabrication prior to being assembled. On this basis, the requestor argued that the product in question met the exclusion criteria for “finished goods.”²⁴

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 determined whether a given product was a “finished good” or “finished goods kit.” The Department explained that it had identified a concern with its prior analysis, namely that it may lead to unreasonable results. The Department explained that an interpretation of “finished goods kit” which requires all parts to assemble the ultimate downstream product may lead to absurd results, particularly where the ultimate downstream product is, for example, a fire truck. The Department explained that such an interpretation may expand the scope of the Orders, which are intended to cover aluminum extrusions.²⁵

The Department determined that the scope, taken as a whole, indicates that “subassemblies” (*i.e.*, “partially assembled merchandise”) may be excluded from the scope provided that they enter the United States as “finished goods” or “finished goods kits” and that the “subassemblies” require no further “finishing” or “fabrication.” Therefore, the Department analyzed whether the SMVC at issue constituted a subassembly that enters the United States as a “finished goods kit.” In order for such a kit to be excluded from the scope of the Orders, the Department found that the SMVC had to be ready for installation and require no further finishing or fabrication.²⁶

The Department concluded that the product at issue contained all of the parts necessary to assemble a complete SMVC and that all the components and hardware of the SMVC were fully fabricated, required no further finishing or fabrication prior to being assembled, and was ready

²² See the Department’s memorandum entitled “AD/CVD Orders on Aluminum Extrusions from the PRC: Transmittal of Past Scope Determinations to the File,” dated concurrently with this memorandum and placed on the record of this segment. This memorandum contains the scope rulings primarily relied upon in the Department’s analysis. Other rulings referenced by interested parties, or by the Department in response to arguments made by interested parties, as well as other scope rulings for aluminum extrusions from the PRC, can be found on the Department’s website: <http://enforcement.trade.gov/download/prc-ae/scope/prc-ae-scope-index.html>.

²³ See the Department’s memorandum entitled, “Antidumping (AD) and Countervailing Duty (CVD) Orders: Aluminum Extrusions from the People’s Republic of China (PRC): Preliminary Scope Rulings on Side Mount Valve Controls,” dated September 24, 2012 (Preliminary SMVC Ruling); unchanged in the Department’s memorandum entitled, “Antidumping Duty (AD) and Countervailing Duty (CVD) Orders: Aluminum Extrusions from the People’s Republic of China (PRC): Final Scope Ruling on Side Mount Valve Controls,” dated October 26, 2012 (Final SMVC Ruling) (collectively, SMVC Ruling).

²⁴ *Id.*, at 2.

²⁵ *Id.*, at 7.

²⁶ *Id.*, at 7.

for use upon installation. Based on this information, the Department found that the SMVCs at issue met the exclusion criteria for subassemblies that enter the United States as “finished goods kits.”²⁷

B. Aluminum Flag Pole Sets²⁸

In Aluminum Flag Pole Sets, the Department found that 5 Diamond’s flag pole sets do not meet the “finished goods kit” exclusion. Although 5 Diamond’s flag pole sets required no further fabrication once imported, the Department found that the flag pole sets do not constitute finished goods kits because, at the time of importation, similarly-sized unassembled flag pole sections are bundled together for shipment, meaning that all of the sections necessary to assemble a final finished product (i.e., the flag pole) are not packaged together as a complete set in one package. Even though 5 Diamond imported a sufficient number of packages of unassembled sections to create a predetermined number of three- and/or four-section assembled flag pole sets together on the same CBP 7501 form, after importation, the packages had to be opened, and the parts needed to fully assemble an entire flag pole had to be re-packaged before being sold to the end user.

C. Foreline Hose Assembly²⁹

At issue was Agilent Technologies, Inc.’s (Agilent) Foreline Hose Assembly (FHA) that is to be used with Agilent’s Gas Chromatography Mass Spectrometer. The FHA consists of extruded aluminum parts assembled with other non-extruded aluminum components, such as flexible PVC foreline hose tubing.³⁰ Also, at the time of importation, the FHA could be imported as an assembled article, or as a complete, unassembled kit.³¹ Agilent argued that the hose assemblies contained all the necessary components such that, once assembled, the product would be ready for installation and used with the Gas Chromatography Mass Spectrometer. Since the product could be imported into the United States as an assembled article or a complete, unassembled kit, the Department made determinations for both of these forms in which the product could be imported. Regarding the assembled article, the Department found that the FHA is excluded from the scope of the Orders as “finished merchandise,” since it is imported as a finished product that contains finished parts, including those comprised of extruded and non-extruded aluminum components, beyond mere fasteners, that are fully and permanently assembled at the time of importation.³² With respect to the product being imported as a complete, unassembled kit, the Department also found that the FHA is excluded from the scope of the Orders as a “finished goods kit,” since the parts contained in the kit are ready to be fully assembled into a final finished product in an “as is” state upon importation.³³ The Department also found that the FHA

²⁷ Id., at 7-8.

²⁸ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, Subject: “Final Scope Ruling on 5 Diamond Promotions Inc.’s Aluminum Flag Pole Sets,” (April 19, 2013) (Aluminum Flag Pole Sets).

²⁹ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on Agilent Technologies, Inc.’s Foreline Hose Assembly,” (August 27, 2015) (FHA Scope Ruling).

³⁰ Id., at 5-6.

³¹ Id.

³² Id., at 12-13.

³³ Id., at 13.

is consistent with the “subassemblies test,” as described in the Valeo Final Remand Redetermination.³⁴

D. Valeo Final Remand Redetermination³⁵

This remand redetermination pertained to certain automotive heating and cooling system components which the Department originally determined were encompassed within the scope of the Orders. The products at issue were two distinct types of automotive heating and cooling parts/components, T-Series and M-Series.³⁶ In the final remand redetermination, the Department, applying the subassemblies test from the SMVC Scope Ruling, 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 was no meaningful distinction between the products at issue and those examined in the SMVC Scope Ruling.³⁷ As a result, the Department determined that the products at issue were subassemblies that constituted excluded “finished goods,” as described in the Orders, and were not covered by the scope.

E. Woven Polypropylene Seats³⁸

At issue in this ruling were woven polypropylene baskets (baskets) with extruded aluminum side rails that serve as the upper seating areas for outdoor chairs. The polypropylene rope is weaved around the fully formed and welded rail, ensuring permanent attachment and forming the finished basket.³⁹ Additionally, the imported products include four to six pre-drilled and tapped mounting positions to attach the baskets to the chair bases.⁴⁰ Homecrest argued that the baskets meet the exclusion provision of “finished goods” because its product may be imported as a finished product or as a finished goods kit. The Department determined that the baskets are excluded from the scope of the Orders as “finished merchandise” since they are imported as finished products that contain finished parts, including those comprised of extruded and non-extruded aluminum components, beyond mere fasteners, that are fully and permanently assembled at the time of importation. Additionally, consistent with the “subassemblies test,” the baskets are ready for installation into the downstream product at the time of entry into the United States, requiring no further finishing or fabrication.⁴¹

³⁴ Id., at 13-14.

³⁵ 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 Remand Redeterminations), 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 (October 31, 2012) (Auto Heating/Cooling Systems Scope Ruling). The Valeo Final Remand Redetermination was affirmed by the Court of International Trade of June 20, 2013. See Valeo Inc. v. United States, Ct. No. 12-00381, dkt. #23 (June 20, 2013) (Court Order affirming Remand Redetermination).

³⁶ See Valeo Remand Redetermination at 5.

³⁷ Id., at 10.

³⁸ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling of Homecrest’s Woven Polypropylene Seats,” (January 22, 2016) (Homecrest).

³⁹ Id., at 5.

⁴⁰ Id.

⁴¹ Id., at 9-10.

ARGUMENTS FROM INTERESTED PARTIES

Ancra's April 23, 2015 Scope Request

Ancra argues that its foot assemblies fall under the “finished merchandise” exclusion of the Orders because the foot assemblies (1) are made out of several separate components containing some aluminum extrusions as parts, and (2) are fully and permanently assembled at entry.⁴² Additionally, Ancra argues that its foot assemblies do not fall under the scope of the Orders because the merchandise at issue meets the Department’s subassemblies test.

In support of its argument, Ancra cites three recent scope rulings.

- In Ladders and Brackets,⁴³ the Department addressed the issue of whether a finished boat ladder, certain strip door mounting brackets, and a boat ladder kit were excluded from the scope of the Orders as finished merchandise. The Department found that the ladder was covered by the exclusion. In contrast, the strip door mounting brackets were found to fall within the scope of the Orders because “although fully assembled at the time of entry, (the brackets) consist solely of aluminum extrusions and do not include any non-extruded aluminum parts other than fasteners.” Ancra argues that by applying the Department’s reasoning in Ladders and Brackets, the foot assembly is covered by the exclusion because all the parts are fully assembled and completed at the time of entry, and consists of [] and [] parts in addition to extruded aluminum parts.
- In SMVC, the Department determined that a part or accessory, a valve control, meant to be installed in or on a larger system or apparatus, a fire truck, could be excluded from the Orders because of the finished goods exclusion. According to the ruling, a part may be considered a “finished good” or a “finished good kit” if it is “ready for installation” (if already assembled) or “require(s) no further finishing or fabrication prior to being assembled.” The ruling also stated that “products that might otherwise be considered subassemblies of larger downstream products may be excluded from the scope (of the Orders) provided that they enter the United States as finished goods or finished goods kits and require no further finishing or fabrication.” Ancra argues that its foot assemblies meet the subassemblies test. It states that its foot assemblies are, first, one part of a larger system, the Lift-a-Deck system, and second, they enter the United States as finished goods requiring no further finishing or fabrication.
- In Scaffolding Planks,⁴⁴ the Department affirmed its conclusion from Ladders and Brackets, that “the inclusion of non-extruded components (beyond fasteners) in a finished product (is) sufficient to exclude the product from the scope of the Orders.” The Department also reiterated its ruling regarding subassemblies in SMVC Kits and related rulings, stating that “fully assembled subassemblies ready for immediate installation and use in a larger system” are within the exclusion for finished merchandise.” Ancra argues that according to the

⁴² See Ancra’s scope request at 12-13.

⁴³ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, Subject: “Final Scope Ruling on Asia Sourcing Corporation’s Boat and Dock Ladders and Strip Door Mounting Brackets,” (March 20, 2013) (Ladders and Brackets).

⁴⁴ See Memorandum to Christian Marsh, “Subject: Final Scope Ruling on Titan’s Scaffolding Planks,” dated July 8, 2014 (Scaffolding Planks).

express language of Scaffolding Planks, the inclusion of non-extruded aluminum components in each finished foot assembly is sufficient to exclude the foot assembly from the scope of the Orders. Specifically: (1) each foot assembly consists of aluminum and non-aluminum components that are permanently assembled at entry into the United States, and the non-aluminum components are more than just fasteners; (2) The foot assemblies meet the Department's subassemblies test because upon import each fully-assembled foot assembly is ready for immediate installation and use in a larger system (i.e., the Lift-a-Deck system).

Alternatively, Ancra argues that if the foot assemblies are found to be covered by the Orders, the Department should find that antidumping and countervailing duties should apply only to the components made out of aluminum, and should not be assessed on the value of the entire product.⁴⁵ In support of its argument, Ancra cites the scope of the Orders, which states that the scope "does not include the non-aluminum extrusion components of subassemblies."

Petitioner's June 18, 2015 Comments

Petitioner argues that Ancra's foot assemblies are not final finished goods or subassemblies, but are merely fabricated aluminum extrusions (with incidental fastener components) that match the physical description of the subject merchandise, and are products that do not enter the United States with all of the components necessary to complete a final finished good. Thus, petitioner argues, the foot assemblies are covered under the Orders.

With respect to whether the foot assemblies are subassemblies, petitioner first notes that the foot assemblies consist of [] main components: the aluminum extruded guide shoe and a [] tube. The guide shoe, petitioner states, consists of [] critical components, which are the "[]". The remaining parts of the guide shoe are a []. These parts, petitioner states, are merely [], and constitute [], which do not remove the product from the scope of the Orders.

The other main part of the foot assembly, the [], petitioner states, appears to merely [] the system. Thus, petitioner concludes, the [] is []. Furthermore, petitioner notes that Ancra's product brochure indicates that it []. This fact, petitioner states, confirms that the [] is not permanently fixed to the aluminum extruded guide shoe to form the foot assembly.

With respect to whether the foot assemblies constitute finished merchandise, petitioner argues that, contrary to Ancra's argument, the fact that a product is comprised of different components, especially when those components are fasteners, does not automatically remove the product from the scope of the Orders. Furthermore, petitioner states that while Ancra claims its foot assemblies are a separate, stand-alone product, its position is contrary to its website and record evidence. Specifically, Ancra's foot assemblies, petitioner states, are merely an attachment to the end beams of the Lift-a-Deck system. Nothing in Ancra's product brochure suggests that Ancra's foot assemblies are stand-alone finished products that have any function outside of the

⁴⁵ Id., at 17-18.

use in its Lift-a-Deck system.

Furthermore, petitioner argues that Ancra has not demonstrated that its foot assemblies enter the United States as finished goods or finished goods kits. Instead, petitioner states, Ancra has made only the self-serving assertion that the foot assemblies are “fully and permanently manufactured in China.” Petitioner states that without copies of entry documentation showing how the foot assemblies enter the United States, the Department is unable to make a determination that the foot assemblies enter the United States with all the components necessary to assemble a final, finished good. As a result, petitioners state that the Department should find that the foot assemblies do not constitute finished goods or finished goods kits in accordance with the Department’s scope determinations in Aluminum Flag Pole Sets⁴⁶ and Disappearing Screen Door Kits.⁴⁷

In Aluminum Flag Pole Sets the Department found that 5 Diamond’s products did not meet the finished goods exclusion because “at the time of importation... all of the sections necessary to assemble a finished product are not packaged together... {and} after importation, the packages must be opened and the parts needed to fully assemble an entire flag pole must be re-packaged before being sold to the end user.”⁴⁸ The Department further explained that “5 Diamond ships multiple flag pole sets on the same CBP 7501 Form, but does not package them as individual sets that allow its U.S. customer(s) to assemble, after importation, individual finished flag poles directly from the 5 Diamond’s shipment and import packaging.”⁴⁹

Similarly, in the Disappearing Screen Door Kits scope determination, the Department found that the “disappearing screens do not constitute finished good kits because, at the time of importation, *like parts are packaged together for shipment*, meaning that all of the pieces necessary to assemble a final finished produce (*i.e.*, a disappearing screen) are not packaged together at the time of importation.”⁵⁰ The Department noted that “the packages must be opened, and the parts needed to fully assemble an entire disappearing door screen must be rearranged and re-packaged, after importation, before being sold to the end user.”⁵¹

DEPARTMENT’S POSITION

Pursuant to 19 CFR 351.225(k)(1), the Department examined the language of the Orders and the description of the products contained in this scope request and previous rulings made by the Department. We find that the scope and the descriptions of the merchandise contained in the sources listed in 19 CFR 351.225(k)(1) are dispositive as to whether the foot assemblies at issue are covered by the scope of the Orders. Accordingly, for this determination, the Department finds it unnecessary to consider additional factors specified in 19 CFR 351.225(k)(2). For the reasons set forth below, we find that Ancra’s foot assemblies are not covered by the scope.

⁴⁶ See Memorandum to Christian Marsh, “Subject: Final Scope Ruling on 5 Diamond Promotions, Inc.’s Aluminum Flag Pole Sets,” dated April 19, 2013 (Aluminum Flag Pole Kits).

⁴⁷ See Memorandum to Christian Marsh, “Subject: Final Scope Ruling on Law St. Enterprises, LLC’s Disappearing Door Screens,” dated September 12, 2013 (Disappearing Screen Door Kits).

⁴⁸ See Aluminum Flag Pole Kits at 9.

⁴⁹ *Id.* at 10.

⁵⁰ Disappearing Screen Door Kits at 9 (emphasis added by petitioner).

⁵¹ *Id.*

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 ...” (emphasis added). Thus, the scope language describes excluded finished merchandise as “containing aluminum extrusions *as parts*...” As previously explained in FHA and Homecrest, we take this language to mean that the excluded “finished merchandise” must contain aluminum extrusions “as parts” plus an additional non-extruded aluminum component.⁵² Otherwise, this specific language (i.e., “as parts”) would be read out of the scope, resulting in the different condition “containing aluminum extrusions that are fully and permanently assembled and completed at the time of entry.” Additionally, we find that the term “as parts” in the scope exclusion necessarily requires a plural construction.⁵³ Thus, to give effect to this “as parts” language, we find that the product must contain aluminum extrusions as parts and, therefore, must include some non-extruded aluminum component to qualify for the finished merchandise exclusion.

Ancra’s scope ruling request and subsequently-submitted documents demonstrate that the foot assemblies contain aluminum extrusions “as parts” plus additional non-extruded aluminum components. Specifically, in addition to the [] parts made of extruded aluminum, one part is made of [], while another [] parts are made of [].⁵⁴

Furthermore, contrary to petitioner’s argument, we find that some of the non-extruded aluminum parts of the foot assemblies are more than mere fasteners. Subsequent to submission of petitioner’s June 18, 2015, comments, we issued a questionnaire to Ancra, in which we asked Ancra to identify all parts in the foot assemblies that it considered to not constitute fasteners.⁵⁵ In response, Ancra identified four non-extruded aluminum parts as being more than fasteners. Those parts, along with the accompanying explanation of their functions, are as follows:

- The spring provides a force to keep the locking key biased into engagement with the track.
- The spacers are used on each side of the guide shoe to center the guide shoe in the [] tube.
- The sleeve is used to create an improved pivot between the locking key and guide shoe. It also provides a clear through hole for the fastener that connects the guide shoe to the steel tube.
- The [] tube provides added length as well as structure to the overall beam assembly.⁵⁶

Based on the above information and consistent with the FHA and Homecrest determinations, we find that Ancra’s foot assemblies meet the “as parts” requirement of the finished merchandise exclusion because they contain non-extruded aluminum components that go beyond mere fasteners.

The finished merchandise exclusion also requires that the product at issue be “fully and permanently assembled and completed at the time of entry.” Information on the record of this

⁵² See FHA Scope Ruling, 12-13 (August 27, 2015); Homecrest Ruling, 9 (January 22, 2016).

⁵³ See FHA Scope Ruling at 12.

⁵⁴ See Ancra’s scope request at 7.

⁵⁵ See questionnaire to Ancra, dated June 25, 2015.

⁵⁶ See Ancra’s September 11, 2015, submission at 2.

scope ruling request shows that Ancra's foot assemblies are merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry. Entry documents, for example, refer to the imported product as "lift-a-deck foot assembly," and not by any of the constituent parts that compose the product.⁵⁷ That the product is fully assembled upon entry is demonstrated by the photographs Ancra submitted that show that these products are completely assembled when they enter the United States.⁵⁸ Thus, we do not agree with petitioner's argument that the record contains only Ancra's self-serving assertion that the foot assemblies are "fully and permanently manufactured in China."⁵⁹

Moreover, petitioner's arguments from Aluminum Flag Pole Sets and Disappearing Screen Door Kits are not relevant because they both concern products alleged to be finished good kits. Ancra has not argued that the foot assemblies are finished good kits, but has instead argued that they are finished merchandise. Furthermore, in those rulings, the Department found that the products at issue did not meet the exclusion for finished goods kits because at the time of importation, "all sections necessary to assemble a final finished product" were not "packaged together" and "after importation," the packages had to be "opened and the parts needed to be fully assemble" the product. . . "re-packaged" prior to the products' sale in the United States.⁶⁰ Different from the items at issue in those rulings, as noted above, we find that Ancra's foot assemblies contain parts that are fully and permanently assembled and completed at the time of entry.

Furthermore, based on our findings in the SMVC ruling and, as described below, the Department's analysis as to whether the foot assemblies constitute subassemblies that satisfy the exclusion for finished merchandise, we do not find relevant petitioner's argument that the foot assemblies are not separate stand-alone products, and have no functionality apart from the Lift-a-Deck system. In the SMVC ruling, the Department explained that 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*" (emphasis added). We further explained that the scope excludes "finished goods containing aluminum extrusions that are entered unassembled in a 'finished goods kit'" and that the scope defines a "finished goods kit" as a "packaged combination of parts that contains, at the time of importation, all of the necessary parts and *requires no further finishing or fabrication, such as cutting or punching, and is assembled 'as is' into a finished product*" (emphasis added).⁶¹

Thus, in the SMVC ruling, the Department found that, taken together, these passages from the scope indicate 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."⁶² Therefore, in light of the Department's finding that determining whether a product meets the exclusions for "finished goods" and "finished goods kits" simply by examining whether it is part of a larger

⁵⁷ See Ancra's September 14, 2015, submission at Exhibit 9-12.

⁵⁸ See Ancra's January 28, 2016, submission at 1 and Exhibit 1.

⁵⁹ See petitioner's June 17, 2015, comments at 10.

⁶⁰ See Flag Pole Sets Scope Ruling at 9; Disappearing Door Screens Ruling at 9.

⁶¹ See Preliminary SMVC Ruling at 7; unchanged in Final SMVC Ruling.

⁶² See, *e.g.*, Preliminary SMVC Ruling at 7; unchanged in the Final SMVC Ruling.

structure or system fails to account for scope language that expressly allows for the exclusion of kits that contain “subassemblies,” *i.e.*, merchandise that is “partially assembled” and inherently part of a larger whole, the Department does not find petitioner’s argument persuasive.⁶³

We agree with Ancra that the foot assemblies meet the Department’s requirements for constituting “subassemblies,” that qualify for exclusion from the Orders. The requirements are that “subassemblies” may be excluded from the scope provided that they enter the United States as “finished goods” or “finished goods kits,” and that they are ready for installation in the downstream product with no further “finishing” or “fabrication.” We explained these requirements in Screen Printing Frames (August 7, 2014).⁶⁴ We stated:

In Side Mount Valve Controls, the Department ...examined the enumerated exclusions for finished goods and finished goods kits. Taken together, the Department found that these passages from the scope indicate that “subassemblies” (*i.e.*, “partially assembled merchandise” which were inherently part of a larger whole) may be excluded from the scope provided that they enter the United States as “finished goods” or “finished goods kits” and that they require no further “finishing” or “fabrication” prior to being assembled.

The Side Mount Valve Controls ruling also concluded that the “subassemblies test” is consistent with the scope of the *Orders* because subassemblies that enter the United States as “finished goods” and are later integrated into a larger structure or system, are analogous to products that are explicitly excluded from the scope, such as “windows with glass” or “doors with glass or vinyl,” which are necessarily integrated into a larger structure.⁶⁵ (Citations omitted.)

Here, we find that because the foot assemblies enter the United States as finished goods, and require no further processing after importation, but are installed “as-is” into a larger system (*i.e.*, the Lift-a-Deck system), they constitute subassemblies that qualify for exclusion from the Orders. That they are not stand-alone products does not disqualify them from exclusion from the Orders, as petitioners have argued.

In conclusion, we determine that Ancra’s foot assemblies are fully and permanently assembled and completed at the time of entry, contain non-extruded aluminum components beyond mere fasteners, and upon importation are ready for installation in the downstream product with no further “finishing” or “fabrication.” As such, we find these products to be subassemblies that enter the United States as “finished merchandise,” and accordingly are excluded from the Orders.

Because the foot assemblies are excluded from the scope of the Orders as finished merchandise, we need not address Ancra’s alternative contention that if its foot assemblies are found to be within the scope of the Orders, the Department should determine that the Orders exclude the non-aluminum extrusion components.

⁶³ Id.


⁶⁴ See Memorandum to Christian Marsh, Subject: “Final Scope Ruling on Rheetech Sales & Services Inc.’s Screen Printing Frames with Mesh Screen Attached,” dated August 7, 2014 (Screen Printing Frames).

⁶⁵ See Screen Printing Frames at 11.

RECOMMENDATION

For the reasons discussed above, and in accordance with 351.225(k)(1) and 19 CFR 351.225(d), we recommend finding that Ancra's Lift-a-Deck foot assemblies are not subject to 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



Date