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C-570-968

Scope Ruling: ATS Fittings

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July 11, 2016

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

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

**FROM:** Moses Song *MS*  
International Trade Compliance Analyst  
Antidumping and Countervailing Duty Operations, Office VI

**SUBJECT:** Antidumping and Countervailing Duty Orders on Aluminum  
Extrusions from the People's Republic of China: Final Scope  
Ruling on Adams Thermal Systems' Certain Fittings and Related  
Products for Engine Cooling Systems

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## SUMMARY

On October 21, 2015, the Department of Commerce (the Department) received a scope ruling request on behalf of Adams Thermal Systems, Inc.,<sup>1</sup> (ATS) to determine whether its "Certain Fittings and Related Products for Engine Cooling Systems" (fittings) are subject to the antidumping and countervailing duty (AD/CVD) orders on aluminum extrusions from the People's Republic of China (PRC).<sup>2</sup> On the basis of our analysis of ATS's Scope Ruling Request, supplemental responses, and comments received, we determine that ATS's fittings at issue are within the scope of the *Orders*.

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<sup>1</sup> See letter from ATS to the Department, regarding "Aluminum Extrusions from the People's Republic of China: Request for Scope Ruling for Certain Fittings and Related Products for Engine Cooling Systems," dated October 20, 2015 (ATS's Scope Ruling Request).

<sup>2</sup> 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 October 21, 2015, ATS submitted its scope request in which it requested that the Department issue a scope ruling that its fittings are outside the scope of the *Orders*.<sup>3</sup> On December 11, 2015, ATS submitted physical samples of the fittings subject to the scope request.<sup>4</sup> On January 27, 2016, Petitioner submitted comments on ATS's submissions.<sup>5</sup> Between February 2016 and April 2016, the Department issued supplemental questionnaires to ATS.<sup>6</sup> Between February 2016 and May 2016, ATS responded to our supplemental questionnaires.<sup>7</sup> On February 18, 2016, ATS submitted rebuttal comments to Petitioner's Comments.<sup>8</sup>

## SCOPE OF THE ORDERS

The merchandise covered by the order{ s} 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

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<sup>3</sup> See ATS's Scope Ruling Request.

<sup>4</sup> See letter from ATS to the Department, regarding "Aluminum Extrusions from the People's Republic of China: Physical Samples of ATS's fittings in Connection with Scope Inquiry for Certain Fitting for Engine Cooling Systems," dated December 11, 2015.

<sup>5</sup> See letter from Petitioner to the Department, regarding "Aluminum Extrusions from the People's Republic of China: Comments on Adams Thermal Systems, Inc.'s Scope Ruling Request and Physical Samples," dated January 22, 2016 (Petitioner's Comments).

<sup>6</sup> See letter from the Department to ATS, regarding "Aluminum Extrusions from the People's Republic of China: Supplemental Questionnaire on ATS's fittings for Engine Cooling Systems," dated February 1, 2016; see also letter from the Department to ATS, regarding "Aluminum Extrusions from the People's Republic of China: Second Supplemental Questionnaire on ATS's fittings for Engine Cooling Systems," dated April 28, 2016.

<sup>7</sup> See letter from ATS to the Department, regarding "Aluminum Extrusions from the People's Republic of China: Response to the Department's February 1, 2016 Supplemental Questionnaire on ATS's fittings for Engine Cooling Systems," dated February 5, 2016; see also letter from ATS to the Department, regarding "Aluminum Extrusions from the People's Republic of China: - Scope Inquiry for Certain Fittings and Related Products for Engine Cooling Systems – Resubmission of Video DVD," dated April 8, 2016; see also letter from ATS to the Department, regarding "Aluminum Extrusions from the People's Republic of China: Response to the Department's April 28, 2016 Second Supplemental Questionnaire on ATS's fittings for Engine Cooling Systems," dated May 13, 2016 (ATS's Second Supplemental Questionnaire Response); see also letter from ATS to the Department, regarding "Aluminum Extrusions from the People's Republic of China: Submission of Product Descriptions: Fittings for Engine Cooling Systems," dated May 20, 2016; see also letter from ATS to the Department, regarding "Aluminum Extrusions from the People's Republic of China: Submission of Product Descriptions: Fittings for Engine Cooling Systems," dated May 25, 2016 (ATS's Product Descriptions).

<sup>8</sup> See letter from ATS to the Department, regarding "Aluminum Extrusions from the People's Republic of China: Response to Petitioner's Comments on ATS's Scope Request Regarding Fittings for Engine Cooling Systems," dated February 19, 2016 (ATS's Response to Petitioner's Comments).

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 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 this order 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.<sup>9</sup>

## 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.<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup>

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 REQUEST

ATS explained in its Scope Ruling Request that it manufactures cooling modules, radiators, charge air coolers, oil coolers, fuel coolers, and condensers. Its cooling components and engineered cooling systems are used in agricultural equipment, construction equipment, on-highway trucks, diesel engines, and automotive and light truck applications.<sup>13</sup> ATS explained that it imports various styles of fittings from the PRC (*i.e.*, certain fittings for oil coolers, certain fittings for condensers, certain fittings for radiators, a plug for an oil cooler, a mounting pin for

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<sup>9</sup> See the *Orders*.

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

<sup>11</sup> See 19 CFR 351.225(k)(1).

<sup>12</sup> See 19 CFR 351.225(d).

<sup>13</sup> See ATS's Scope Ruling Request at 6-7.

an oil cooler, and a fastener for an oil cooler) that are machined from an extruded aluminum blank.<sup>14</sup>

ATS described its fittings as follows:

“Each fitting that is the subject of this request is designed in conjunction with vehicle manufacturers’ system integration teams, in order to achieve leak-free sealing points between the heat exchanger and the vehicle subsystem within the space allotted. The designed process must balance the typical tight space claims demanded in today’s vehicles, with the need for minimal resistance to fluid flow.”<sup>15</sup>

Additionally, ATS provided the following chart<sup>16</sup> with its product descriptions:

<b>Fitting or Plug Number</b>	<b>Fitting or Plug Description</b>
<b><u>Certain Fittings for Oil Coolers:</u></b>	
709151	Leak free and structurally robust oil flow path between the hydraulic system and the oil cooler ( <i>i.e.</i> , the heat exchanger) and are designed to direct oil into and out of the oil cooler without imparting excessive flow resistance to the hydraulic system.
807603	Leak free and structurally robust oil flow path between the power transmission system and the oil cooler ( <i>i.e.</i> , the heat exchanger) and are designed to direct oil into and out of the oil cooler without imparting excessive flow resistance to the respective system.
808963	Leak free and structurally robust oil flow path between the power transmission system and the oil cooler ( <i>i.e.</i> , the heat exchanger) and are designed to direct oil into and out of the oil cooler without imparting excessive flow resistance to the respective system.
812129	Leak free and structurally robust oil flow path between the hydraulic system and the oil cooler ( <i>i.e.</i> , the heat exchanger) and are designed to direct oil into and out of the oil cooler without imparting excessive flow resistance to the hydraulic system.

<sup>14</sup> *Id.*, at 1-2.

<sup>15</sup> See ATS’s Second Supplemental Questionnaire Response at 3.

<sup>16</sup> See ATS’s Product Descriptions at 2-7.

812246	Leak free and structurally robust oil flow path between the hydraulic system and the oil cooler ( <i>i.e.</i> , the heat exchanger) and are designed to direct oil into and out of the oil cooler without imparting excessive flow resistance to the hydraulic system.
812247	Leak free and structurally robust oil flow path between the hydraulic/power transmission system and the oil cooler ( <i>i.e.</i> , the heat exchanger) and are designed to direct oil into and out of the oil cooler without imparting excessive flow resistance to the respective system.
812929	Leak free and structurally robust oil flow path between the hydraulic system and the oil cooler ( <i>i.e.</i> , the heat exchanger) and are designed to direct oil into and out of the oil cooler without imparting excessive flow resistance to the hydraulic system.
813138	Leak free and structurally robust oil flow path between the hydraulic/power transmission system and the oil cooler ( <i>i.e.</i> , the heat exchanger) and are designed to direct oil into and out of the oil cooler without imparting excessive flow resistance to the respective system.
823108	Leak free and structurally robust oil flow path between the hydraulic system and the oil cooler ( <i>i.e.</i> , the heat exchanger) and are designed to direct oil into and out of the oil cooler without imparting excessive flow resistance to the hydraulic system.
823377	Leak free and structurally robust oil flow path between the hydraulic/fuel system and the oil/fuel cooler ( <i>i.e.</i> , the heat exchanger) and are designed to direct oil/fuel into and out of the oil/fuel cooler without imparting excessive flow resistance to the respective system.
824026	Leak free and structurally robust oil flow path between the hydraulic/fuel system and the oil/fuel cooler ( <i>i.e.</i> , the heat exchanger) and are designed to direct oil/fuel into and out of the oil/fuel cooler without imparting excessive flow resistance to the respective system.

824682	Leak free and structurally robust cap for oil cooler
824741	Leak free and structurally robust oil flow path between the hydraulic system and the oil cooler ( <i>i.e.</i> , the heat exchanger) and are designed to direct oil into and out of the oil cooler without imparting excessive flow resistance to the hydraulic system.
824884	Leak free and structurally robust oil flow path between the hydraulic system and the oil cooler ( <i>i.e.</i> , the heat exchanger) and are designed to direct oil into and out of the oil cooler without imparting excessive flow resistance to the hydraulic system.
824885	Leak free and structurally robust oil flow path between the hydraulic/power transmission system and the oil cooler ( <i>i.e.</i> , the heat exchanger) and are designed to direct oil into and out of the oil cooler without imparting excessive flow resistance to the respective system.
824886	Leak free and structurally robust oil flow path between the hydraulic system and the oil cooler ( <i>i.e.</i> , the heat exchanger) and are designed to direct oil into and out of the oil cooler without imparting excessive flow resistance to the hydraulic system.
824970	Leak free and structurally robust oil flow path between the hydraulic system and the oil cooler ( <i>i.e.</i> , the heat exchanger) and are designed to direct oil into and out of the oil cooler without imparting excessive flow resistance to the hydraulic system.
824971	Leak free and structurally robust oil flow path between the hydraulic system and the oil cooler ( <i>i.e.</i> , the heat exchanger) and are designed to direct oil into and out of the oil cooler without imparting excessive flow resistance to the hydraulic system.
825710	Leak free and structurally robust oil flow path between the hydraulic system and the oil cooler ( <i>i.e.</i> , the heat exchanger) and are designed to direct oil into and out of the oil cooler without imparting excessive flow resistance to the hydraulic system.



825741	Leak free and structurally robust oil flow path between the hydraulic system and the oil cooler ( <i>i.e.</i> , the heat exchanger) and are designed to direct oil into and out of the oil cooler without imparting excessive flow resistance to the hydraulic system.
826146	Leak free and structurally robust oil flow path between the hydraulic system and the oil cooler ( <i>i.e.</i> , the heat exchanger) and are designed to direct oil into and out of the oil cooler without imparting excessive flow resistance to the hydraulic system.
826152	Leak free and structurally robust oil flow path between the hydraulic/power transmission system and the oil cooler ( <i>i.e.</i> , the heat exchanger) and are designed to direct oil into and out of the oil cooler without imparting excessive flow resistance to the respective system.
826153	Leak free and structurally robust oil flow path between the hydraulic system and the oil cooler ( <i>i.e.</i> , the heat exchanger) and are designed to direct oil into and out of the oil cooler without imparting excessive flow resistance to the hydraulic system.
826184	Leak free and structurally robust oil flow path between the power transmission system and the oil cooler ( <i>i.e.</i> , the heat exchanger) and are designed to direct oil into and out of the oil cooler without imparting excessive flow resistance to the respective system.
826431	Leak free and structurally robust oil flow path between the hydraulic/power transmission system and the oil cooler ( <i>i.e.</i> , the heat exchanger) and are designed to direct oil into and out of the oil cooler without imparting excessive flow resistance to the respective system.
827240	Leak free and structurally robust oil flow path between the hydraulic system and the oil cooler ( <i>i.e.</i> , the heat exchanger) and are designed to direct oil into and out of the oil cooler without imparting excessive flow resistance to the hydraulic system.

827782	Leak free and structurally robust oil flow path between the hydraulic system and the oil cooler ( <i>i.e.</i> , the heat exchanger) and are designed to direct oil into and out of the oil cooler without imparting excessive flow resistance to the hydraulic system.
828391	Leak free and structurally robust oil flow path between the hydraulic system and the oil cooler ( <i>i.e.</i> , the heat exchanger) and are designed to direct oil into and out of the oil cooler without imparting excessive flow resistance to the hydraulic system.
828434	Leak free and structurally robust oil flow path between the hydraulic system and the oil cooler ( <i>i.e.</i> , the heat exchanger) and are designed to direct oil into and out of the oil cooler without imparting excessive flow resistance to the hydraulic system.
828694	Leak free and structurally robust oil flow path between the hydraulic system and the oil cooler ( <i>i.e.</i> , the heat exchanger) and are designed to direct oil into and out of the oil cooler without imparting excessive flow resistance to the hydraulic system.
829217	Leak free and structurally robust oil flow path between the fuel system and the fuel cooler ( <i>i.e.</i> , the heat exchanger) and are designed to direct fuel into and out of the fuel cooler without imparting excessive flow resistance to the respective system.
831197	Leak free and structurally robust oil flow path between the hydraulic system and the oil cooler ( <i>i.e.</i> , the heat exchanger) and are designed to direct oil into and out of the oil cooler without imparting excessive flow resistance to the hydraulic system.
831198	Leak free and structurally robust oil flow path between the hydraulic system and the oil cooler ( <i>i.e.</i> , the heat exchanger) and are designed to direct oil into and out of the oil cooler without imparting excessive flow resistance to the hydraulic system.

832119	Leak free and structurally robust oil flow path between the fuel system and the fuel cooler ( <i>i.e.</i> , the heat exchanger) and are designed to direct fuel into and out of the fuel cooler without imparting excessive flow resistance to the respective system.
<b><u>Certain Fittings for Condensers:</u></b>	
823375	Leak free and structurally robust refrigerant flow path between the air conditioning system and the condenser (heat exchanger)
826926	Leak free and structurally robust refrigerant flow path between the air conditioning system and the condenser (heat exchanger)
830456	Leak free and structurally robust refrigerant flow path between the air conditioning system and the condenser (heat exchanger)
830463	Leak free and structurally robust refrigerant flow path between the air conditioning system and the condenser (heat exchanger)
<b><u>Fittings for Radiators:</u></b>	
826493	Leak free and structurally robust coolant flow path between the engine cooling system and the radiator; designed to direct coolant into and out of the radiator without imparting excessive flow resistance to the cooling system.
829507	Leak free and structurally robust coolant flow path between the engine cooling system and the radiator; designed to direct coolant into and out of the radiator without imparting excessive flow resistance to the cooling system.
<b><u>Mounting Pin for Oil Cooler:</u></b>	
828105	Leak free and structurally robust mounting pin for the purpose of attaching a heat exchanger into a vehicle
<b><u>Plug for Oil Cooler:</u></b>	
826142	Leak free and structurally robust threaded plug that attaches to a heat exchanger
<b><u>Fastener for Oil Cooler:</u></b>	

824879	Leak free and structurally robust threaded fastener for the purpose of attaching a heat exchanger into a vehicle
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ATS indicated that its fittings are classified under subheading 7609.00.0000 of the HTSUS.<sup>17</sup> ATS also stated that the imported merchandise is Chinese-origin completed fittings and related products for use in engine cooling systems.<sup>18</sup> When imported, ATS’s fittings are finished and ready for inclusion in engine cooling systems. ATS confirmed that none of the merchandise at issue enters into the United States as non-finished merchandise that requires further finishing or fabrication.<sup>19</sup>

According to the description and photographs of the product in ATS’s Scope Ruling Request and ATS’s Second Supplemental Questionnaire Response, ATS’s products at issue are solid cohesive aluminum extrusion products consisting entirely of aluminum and manufactured entirely from extruded aluminum blanks.<sup>20</sup>

## RELEVANT SCOPE DETERMINATIONS<sup>21</sup>

### A. Machine Parts Scope Ruling<sup>22</sup>

In its scope inquiry request, IDEX Health & Science LLC (IDEX) argued that certain precision machine parts fell outside the scope of the *Orders* because they met the five *Diversified Products* criteria enumerated under 19 CFR 351.225(k)(2).<sup>23</sup> At the heart of IDEX’s arguments was the contention that the products at issue obtained their essential shape and form by means of a computer numerical control (CNC) precision machine process while extruded products that are subject to the *Orders* obtain their essential shape and form through the extrusion process.

The Department determined that the products at issue were covered under the scope of the *Orders* based on the criteria of the five *Diversified Products* criteria enumerated under 19 CFR 351.225(k)(2). Concerning the first criterion, physical characteristics, the Department found that the fabrication process (*e.g.*, the CNC machine process) used to produce the products at issue

<sup>17</sup> See ATS’s Scope Ruling Request at 16.

<sup>18</sup> *Id.*, at 1-2.

<sup>19</sup> See ATS’s Second Supplemental Questionnaire Response at 5.

<sup>20</sup> See ATS’s Scope Ruling Request at 2 (“The fittings in question are all machined from an extruded aluminum blank.”) and Exhibits 1-6; see also ATS’s Second Supplemental Questionnaire Response at Exhibits 1-11.

<sup>21</sup> See the Memorandum from Moses Song to the File, regarding, “Antidumping and Countervailing Duty Orders on Aluminum Extrusions from the People’s Republic of China: Prior Scope Rulings Relevant to this Proceeding,” dated concurrently with this memorandum (Prior Scopes Memorandum); See also the Memorandum from Moses Song to the File, regarding “Scope Ruling on Adams Thermal Systems, Inc.’s Certain Fittings and Related Products for Engine Cooling Systems: International Trade Commission’s Final Determination and Petition Scope Section,” dated concurrently with this memorandum (ITC Final Determination and Petition Scope Section Memorandum).

<sup>22</sup> See the Memorandum from John Conniff, Senior Trade Analyst, and Eric B. Greynolds, Program Manager, Office III, through Melissa G. Skinner, Director, Office III, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, regarding “Final Scope Ruling on Precision Machine Parts,” dated March 28, 2012 (Machine Parts Scope Ruling); see also Prior Scopes Memorandum at Attachment 1.

<sup>23</sup> These factors were affirmed as a reasonable test by the Court of International Trade in *Diversified Products Corp. v. United States*, 572 F. Supp. 883 (C.I.T. 1983) (*Diversified Products*).

was not distinct from the fabrication processes used to produce “machined” aluminum extrusions that are subject to the scope of the *Orders*.

Concerning the second criterion, expectations of the ultimate consumers, the Department found that, since the scope of the *Orders* encompasses fabricated, extruded aluminum products, (including products produced by means of the CNC machine process) the notion that the CNC machine process distinguishes the products at issue in terms of the expectations of the ultimate consumers was unpersuasive.

Concerning the third criterion, the ultimate use of the product, the Department found that the CNC machine process did not distinguish the products at issue from those covered by the scope of the *Orders*.

Concerning the fourth criterion, channels of trade, the Department noted that the scope of the *Orders* covers non-fabricated extrusions and fabricated extrusions, including heat sinks that have been fabricated by means of a CNC machine process. Thus, the Department found the fact that heat sinks are covered by the scope of the *Orders* and that they are sold as CNC machined products undermines IDEX’s claims that the products at issue were sold through distinct channels of trade.

Regarding the fifth criterion, the manner in which products are advertised and displayed, the Department noted that the scope of the *Orders* includes extruded products (*e.g.*, heat sinks) that are fabricated by means of a CNC machine process. In light of this fact, the Department concluded that it is reasonable to assume that producers of such subject extrusions might also tout the capabilities of their CNC machinery in their marketing materials. Thus, in terms of advertising and display, the Department concluded that the products at issue were not distinct from precision machined extrusions covered under the scope of the *Orders* with regard to the fifth criterion.

On this basis, the Department concluded that the certain precision machine parts at issue were covered under the scope of the *Orders*.

#### B. Motor Cases Scope Ruling<sup>24</sup>

In its scope inquiry request, UQM argued that certain inner and outer motor cases that it imports met the exclusion criteria for “finished goods.” UQM’s scope request used the same arguments as those used by IDEX in the Machine Parts Scope Ruling.

The Department determined whether the products at issue are within the scope of the *Orders* by analyzing the criteria under 19 CFR 351.225(k)(2), also known as the *Diversified Products* criteria. The Department found that the motor cases at issue were analogous to the products examined in the Machine Parts Scope Ruling and, thus, it determined that the motor cases were

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<sup>24</sup> See the Memorandum from John Conniff, Senior Trade Analyst, and Eric B. Greynolds, Program Manager, Office III, through Melissa G. Skinner, Director, Office III, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, regarding “Final Scope Ruling on Motor Cases,” dated July 6, 2012 (Motor Cases Scope Ruling); see also Prior Scopes Memorandum at Attachment 2.

within the scope of the *Orders*. Specifically, the Department noted that the scope of the *Orders* covers heat sinks, which the International Trade Commission (ITC) found are produced by means of a CNC machine process. Thus, in this regard, the Department found that the products at issue were not distinct from products within the scope. The Department further found that the information and arguments of UQM failed to distinguish the motor cases at issue from subject merchandise in terms of the *Diversified Products* criteria.

### C. Assembled Motor Cases Scope Ruling<sup>25</sup>

At issue in the ruling were certain assembled motor cases and certain assembled motor cases in stators. The assembled motor cases consisted of two extruded aluminum cylinders in which an inner motor case is inserted into an outer motor case. The stator, one of two major components of an electric motor (the other being the rotor), consisted of an extruded aluminum frame around which copper wire is wound using an automatic winding machine. The stator was then pressed into the inner motor case, which was in turn surrounded by the outer motor case.<sup>26</sup>

The Department found that the assembled motor cases consisted entirely of extruded aluminum materials, and thus found the motor cases to be inside the scope of the *Orders*.<sup>27</sup> Regarding the assembled motor cases in stators, the Department found that “due to the inclusion of the stator (which contains insulated copper wire) the assembled motor cases housing stators do not consist entirely of extruded aluminum.”<sup>28</sup> As a result, the Department found that the assembled motor cases housing stators constituted subassembly finished goods and were thus outside the scope of the *Orders*.<sup>29</sup>

### D. Delphi Core Heater Tubes Scope Ruling<sup>30</sup>

In the Delphi Core Heater Tubes Scope Ruling, the products at issue were “core tubes” for automotive heating and cooling systems, comprised of extruded hollow, tubular parts fabricated from aluminum extrusions that are bent and end-formed based on customer designs.<sup>31</sup> In other words, the products in question were comprised entirely of extruded aluminum. The Department determined that a product cannot meet the requirements of the exclusions for “finished merchandise” or “finished goods kits” when such merchandise is comprised solely of extruded aluminum parts and fasteners. The Department thus found that the products at issue did not meet the Department’s first test for determining whether a good constitutes a finished good or finished

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<sup>25</sup> See Memorandum from John Conniff, Senior Trade Analyst, and Eric B. Greynolds, Program Manager, Office VIII, through Melissa G. Skinner, Director, Office VIII, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, regarding “Final Scope Ruling on Motor Cases, Assembled and Housing Stators,” dated November 19, 2012 (Assembled Motor Cases Scope Ruling); see also Prior Scopes Memorandum at Attachment 3.

<sup>26</sup> See Assembled Motor Cases Scope Ruling at 3.

<sup>27</sup> *Id.*, at 12.

<sup>28</sup> *Id.*, at 13-14.

<sup>29</sup> *Id.*, at 14.

<sup>30</sup> See Memorandum from Eric B. Greynolds, Program Manager, Office III, through Melissa G. Skinner, Director, Office III, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, regarding “Final Scope Ruling on Delphi Core Heater Tubes,” dated October 14, 2014 (Delphi Core Heater Tubes Scope Ruling); see also Prior Scopes Memorandum at Attachment 4.

<sup>31</sup> See Delphi Core Heater Tubes Scope Ruling at 4-5.

good kit, *i.e.*, whether the product contains parts other than aluminum extrusions and mere fasteners.<sup>32</sup>

#### E. All Points Cleats Scope Ruling<sup>33</sup>

In the All Points Cleats Scope Ruling, the products at issue were cleats, which are mounting devices used to mount items such as pictures and mirrors to a wall, and consist of a single piece of extruded aluminum cut to various lengths with holes drilled every two inches along the product's length.<sup>34</sup> The Department found that the cleats were not excluded by the finished merchandise exclusion, in part, because they did not contain parts other than aluminum extrusions. The Department noted that the finished merchandise exclusion specifies that excluded merchandise contain aluminum extrusions "as parts." Thus, to give effect to this "as parts" language, the Department found that to qualify for the finished merchandise exclusion the product must contain both aluminum extrusions and some non-extruded aluminum component.<sup>35</sup>

#### F. KF16 Hose Adapter Scope Ruling<sup>36</sup>

At issue was Agilent Technologies, Inc.'s (Agilent) KF16 Hose Adapter (hose adapter) that is to be used to secure Agilent's Foreline Hose Assembly to a roughing pump, which pulls a vacuum on Agilent's Gas Chromatography Mass Spectrometer. The hose adapter consists entirely of aluminum and is manufactured entirely from aluminum bar stock.<sup>37</sup> Also, at the time of importation, the hose adapter is a finished aluminum component which does not contain and is not assembled from multiple parts or pieces, but rather a "single item."<sup>38</sup> Agilent argued that the hose adapter is a "finished good" that meets the exclusion requirement in the scope because there is no requirement within the language of the scope that "finished merchandise" must contain non-aluminum extrusion parts. Since the product was composed entirely of aluminum extrusions and did not contain parts other than aluminum extrusions, the Department found that the hose adapter was not covered by the "finished merchandise" exclusion to the scope of the *Orders*.<sup>39</sup> The Department noted that the finished merchandise exclusion specifies that excluded merchandise contain aluminum extrusions "as parts." Thus, to give effect to this "as parts" language, the Department found that to qualify for the finished merchandise exclusion the product must contain both aluminum extrusions and some non-extruded aluminum component.<sup>40</sup>

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<sup>32</sup> *Id.*, at 10-11.

<sup>33</sup> See Memorandum from Paul Stolz, Senior International Trade Analyst, through Erin Begnal, Program Manager, Office III, and Melissa G. Skinner, Director, Office III, to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, regarding "Final Scope Ruling on All Points Industries Inc.'s Cleats," dated April 2, 2015 (All Points Cleats Scope Ruling); see also Prior Scopes Memorandum at Attachment 5.

<sup>34</sup> See All Points Cleats Scope Ruling at 5.

<sup>35</sup> *Id.*, at 12.

<sup>36</sup> See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, regarding "Antidumping and Countervailing Duty Orders on Aluminum Extrusions from the People's Republic of China: Final Scope Ruling on Agilent's KF16 Hose Adapter," dated October 14, 2015. (KF16 Hose Adapter Scope Ruling); see also Prior Scopes Memorandum at Attachment 6.

<sup>37</sup> See KF16 Hose Adapter Scope Ruling at 5-6.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*, at 13-14 and 19.

<sup>40</sup> *Id.*, at 13-14.

## ARGUMENTS FROM INTERESTED PARTIES

### ATS's Comments

- ATS argues its fittings, as imported from the PRC, are not covered by the scope of the *Orders* because the scope of the *Orders* intends to cover only those fabrication processes that prepare the aluminum extrusions for assembly and does not include fittings that are *not* merely “fabricated, *i.e.*, prepared for assembly.”<sup>41</sup>
- The *Orders* contain a specific limitation that circumscribes the fabricated products that are included in the *Orders*. The use of the qualifying language “*i.e.*, prepared for assembly” means not all extruded aluminum products that have undergone “fabrication” are covered, but rather only those extrusions that have undergone operations that amount to preparation for assembly are covered. If all “fabrication” were allowed, there would be no need for this limiting language.<sup>42</sup> The *Orders* cannot encompass multiple classes or kinds of merchandise within one set of orders under U.S. law.<sup>43</sup>
- A broader interpretation of the scope would violate the rule against surplusage because if all “fabrication” were allowed, there would be no need for the limiting language “*i.e.*, prepared for assembly.” In addition, a broader interpretation would implicate serious due process concerns because it is unreasonable for an importer to conclude that anything born of an aluminum extrusion, regardless of the level or nature of additional fabrication, will be considered subject merchandise.<sup>44</sup>
- Examination of the April 9, 2010, Petition Amendment (Petition Amendment)<sup>45</sup> that led to the insertion of the phrase “Aluminum extrusions may also be fabricated, *i.e.*, prepared for assembly” confirms that the purpose of the term “*i.e.*, prepared for assembly” was to circumscribe the types of “fabricated” products that are in scope to those that are fabricated merely to prepare the extrusion for assembly.<sup>46</sup>

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<sup>41</sup> See ATS's Scope Ruling Request at 23 and 26.

<sup>42</sup> *Id.*, at 23 and 32.

<sup>43</sup> *Id.*, at 30.

<sup>44</sup> *Id.*, at 31-35.

<sup>45</sup> See letter from Petitioner to the Department, regarding “Aluminum Extrusions From The People's Republic of China: Petitioner's Response To the Department's April 6, 2010, Request for Clarification Of Certain Items Contained In The Petition,” dated at April 9, 2010, (Petitioner's Petition Clarification Response) at Attachment 3 where Petitioner amended this passage of the scope to read as follows: “Aluminum extrusions are produced and imported with a variety of coatings, finishes, and types of fabrication. ~~The Coated or Finished~~ 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. ~~Fabricated aluminum extrusions~~ Such operations would include, but are not limited to, extrusions that are cut-to-length, machined, drilled, punched, notched, bent, ~~or~~ stretched, knurled, swedged, mitered, chamfered, threaded, and spun. ~~Aluminum extrusions may also be taped or coated (e.g., with plastic) to protect finishes.~~ The subject merchandise includes aluminum extrusions that are ~~coated~~, finished (coated, painted, *etc.*), fabricated, or any combination thereof, ~~and regardless of tape, plastic, or other protective coatings.”~~

<sup>46</sup> See ATS's Scope Ruling Request at 24-25.



- The machining and the type of fabrication performed on the extrusion for all of the fittings in question are *beyond* those that simply prepare the extrusion for assembly.<sup>47</sup> Moreover, the complex machining process, not the extrusion process, creates the essential shape or form of the fittings at issue and therefore is not merely preparing the extrusion for assembly.<sup>48</sup> As a result, the rough extruded aluminum blank undergoes a fundamental change in form, appearance, nature, and/or character so as to result in a new and different product from the rough blank.<sup>49</sup>
- As the Department used its substantial transformation test in other cases to determine the outer edges of ambiguous product scopes,<sup>50</sup> the Department should apply the principles of the test to determine whether the machining process involved fundamental changes to the name, character, or use of the aluminum extrusion feedstock so as to result in a product that cannot be fairly characterized as within the same class or kind of merchandise as the “aluminum extrusion” covered by the *Orders*.<sup>51</sup>
- Based on the Department’s substantial transformation test, ATS asserts that the fabrication performed to convert the rough extruded aluminum blank feedstock to the finished fittings is so substantial or extensive that it has “transformed” the piece of aluminum from an extruded shape or form that is merely “prepared for assembly” to a new and different class of specific merchandise that can no longer be considered to be within the scope of the *Orders*.<sup>52</sup>
- If the Department does not determine that ATS’s fittings are outside of the scope of the *Orders* based on the (k)(1) factors, the Department should conduct a formal scope inquiry pursuant to 19 CFR 351.225(k)(2).<sup>53</sup>
- Petitioner does not properly analyze the “prepared for assembly” language, as the Department has never construed this phrase in any other scope rulings for the *Orders* and Petitioner never addresses the point that this language limits the term “fabricated” in the scope language.<sup>54</sup>
- Petitioner’s interpretation of the “prepared for assembly” phrase as “merely recognizing that fabrication typically occurs before assembly” does not make sense in light of the Petition Amendment, which indicates that only those metalworking processes that *prepare the extrusion for assembly* are the type of “fabrication” operations that keep a product within the scope. Moreover, Petitioner’s interpretation would make the insertion of this qualifying phrase “superfluous.”<sup>55</sup>

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<sup>47</sup> *Id.*, at 2-4, 27 and 31.

<sup>48</sup> *Id.*, at 3-4, 27-28 and 35.

<sup>49</sup> *Id.*, at 9-11 and 27-28.

<sup>50</sup> *See, e.g., Crawfish Processors v. United States*, 483 F.3d 1358-1363 (Fed. Cir. 2007) (*Crawfish*).

<sup>51</sup> *See* ATS’s Scope Ruling Request at 5 and 35.

<sup>52</sup> *Id.*, at 6 and 36-43.

<sup>53</sup> *Id.*, at 6 and 43-55.

<sup>54</sup> *See* ATS’s Response to Petitioner’s Comments at 2-3.

<sup>55</sup> *Id.*, at 3-5.

- A careful review of the determination and final report of the International Trade Commission (ITC) confirms that the ITC’s injury investigation did not contemplate fittings, like those imported by ATS, which undergo complex metalworking processes to fundamentally change the product, as “aluminum extrusions” under investigation.<sup>56</sup>
- Pursuant to 19 USC 1671 and 1673, the Department should reject Petitioner’s attempt to make an unreasonably expansive interpretation of the *Orders* that would cover multiple classes or kinds of merchandise.<sup>57</sup>

### Petitioner’s Comments

- ATS’s Scope Ruling Request and the physical samples submitted by ATS confirm that its fittings are merely fabricated aluminum extrusions, which meet the definition of subject aluminum extrusions under the scope and are similar to other in-scope aluminum extrusions. Accordingly, the Department should find that ATS’s fittings are covered by the scope of the *Orders*.<sup>58</sup>
- The physical characteristics of ATS’s fittings match the physical description of subject merchandise covered in the scope as its products consist solely of fabricated extruded aluminum and undergo similar fabrication processes. Moreover, virtually every production process identified by ATS is identified in the scope language.<sup>59</sup>
- The scope intends to cover all fabrication that may be performed on aluminum extrusions, regardless of the degree of complexity.<sup>60</sup>
- Consistent with Machine Parts, Delphi Core Heater Tubes, and KF16 Hose Adapter Scope Rulings, the Department should find that aluminum extrusions that consist solely of fabricated aluminum are covered by the scope of the *Orders*, regardless of the amount of alleged fabrication, as they otherwise fit the description of subject merchandise set forth in the language of the scope. Moreover, the specificity and technical means of fabrication and finishing are insufficient to justify an otherwise subject product’s exclusion from coverage under the scope of the *Orders*.<sup>61</sup>
- In the Machine Parts scope ruling, the Department has analyzed and rejected arguments based on the language “prepared for assembly,” explaining that this language does not limit the type of fabrication included in the scope but rather “encompasses the manufacturing processes utilized to create the products at issue.” ATS’s argument is merely a variation of the arguments rejected in that ruling and should be rejected here. In

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<sup>56</sup> *Id.*, at 5-11; *see also* Certain Aluminum Extrusions From China, USITC Pub. 4153, Inv. Nos. 701-TA-475 and 731-TA-1177 (June 2010) (*ITC Preliminary Determination*) at I-8; *see also* Certain Aluminum Extrusions From China, USITC Pub. 4229, Inv. Nos. 701-TA-475 and 731-TA-1177 (May 2011) (*ITC Final Determination*) at I-9.

<sup>57</sup> *See* ATS’s Response to Petitioner’s Comments at 11-13.

<sup>58</sup> *See* Petitioner’s Comments at 2-3.

<sup>59</sup> *Id.*, at 4-5.

<sup>60</sup> *Id.*, at 6.

<sup>61</sup> *Id.*, at 6-9.

addition, ATS has not provided any new information that should change the Department's determination.<sup>62</sup>

- The phrase “fabricated, *i.e.*, prepared for assembly” merely recognizes that fabrication typically occurs before assembly, which is the case concerning ATS's fittings. Nothing in the scope limits the degree of fabrication that may be performed prior to assembly.<sup>63</sup>
- Petitioner argues that its explanation regarding the amendment to the scope language during the investigation merely indicates that there is a distinction between fabricated aluminum extrusions and finished merchandise under the scope. In this regard, contrary to ATS's assertion, the phrase “*i.e.*, prepared for assembly” does not limit the degree or type of fabrication that an otherwise solely extruded aluminum may undergo.<sup>64</sup>
- Even if it is assumed that only aluminum extrusions which are “prepared for assembly” are covered by the scope of the *Orders*, the overall fabrication process of ATS's fittings confirms that its products are “prepared for assembly” since ATS's fittings must be assembled or “fit” into other engine cooling systems.<sup>65</sup>
- Inclusion of ATS's fittings will not result in an overly broad interpretation and “impermissible” expansion of the scope as the plain language of the scope, examples of aluminum extrusions fabricated with a CNC machine, and the Department's own prior scope rulings, put importers on notice that downstream fabricated and heavily machined aluminum extrusions are covered by the scope of the *Orders*. In addition, ATS's interpretation of the scope to exclude heavily machined aluminum extrusions creates ambiguity.<sup>66</sup>
- In prior scope rulings, the Department has rejected requests to conduct a substantial transformation analysis to determine whether other aluminum extrusion products were covered by the scope and should decline to do so here.<sup>67</sup>
- Petitioner argues that while citing the Federal Circuit's decision in *Crawfish*, ATS's assertions ignore that the scope of the *Orders* expressly includes aluminum extrusions that are fabricated with a CNC machine such as heat sinks. Petitioner further argues that the Department has already explained that the facts in *Crawfish* differ significantly from the facts related to aluminum extrusions that undergo CNC machine processes.<sup>68</sup>
- Petitioner argues that while ATS has failed to support its request for the Department to engage in a substantial transformation analysis, ATS's analysis is flawed because it compares fabricated aluminum fittings to non-fabricated aluminum extruded feedstock

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<sup>62</sup> *Id.*, at 9-11.

<sup>63</sup> *Id.*, at 11.

<sup>64</sup> *Id.*, at 11-12.

<sup>65</sup> *Id.*, at 12-13.

<sup>66</sup> *Id.*, at 13-15.

<sup>67</sup> *Id.*, at 15-16; *see also* Machine Parts Scope Ruling at 15-16.

<sup>68</sup> *See* Petitioner's Comments at 16-17; *see also* Machine Parts Scope Ruling at 15-16.

(*i.e.*, aluminum blanks). Petitioner further argues that the proper analysis is to compare the products at issue with other extruded products that have undergone some form of fabrication which are subject to the scope. Lastly, Petitioner asserts that, in light of the proper analysis, ATS's fittings have not been substantially transformed into a separate class or kind of merchandise.<sup>69</sup>

- The descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Department (including prior scope determinations) demonstrate that ATS's fittings are covered by the scope of the *Orders*, and thus, the Department is not required to conduct a formal scope inquiry pursuant to 19 CFR 351.225(k)(2).<sup>70</sup>
- ATS's (k)(2) analysis is based on a flawed comparison between the fittings at issue and the most basic aluminum extruded products (*i.e.*, aluminum extruded blanks). The proper analysis, which compares ATS's fittings with similar products that are covered by the scope, confirms that ATS's fittings are covered by the scope. Moreover, based on the proper analysis and prior scope rulings,<sup>71</sup> ATS has failed to distinguish its fittings from other in-scope aluminum extrusions.

## DEPARTMENT'S POSITION

The Department examined the language of the *Orders* and the description of the products contained in ATS's Scope Ruling Request and subsequent submissions, as well as previous rulings made by the Department. We find 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 the reasons set forth below, we find that ATS's fittings are covered by the scope of the *Orders*.

### ATS's Fittings Are Solid Aluminum Products and Therefore Do Not Meet the Requirements of the Finished Merchandise Exclusion

The merchandise covered by the *Order{s}* 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)." 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." In addition, the scope states that "{a}luminum extrusions are produced and imported with a variety of finishes (both coatings and surface treatments), and types of fabrication" and "{t}he types of coatings and treatments applied to subject aluminum extrusions include, but not limited to, extrusions that are mill finished (*i.e.*, without any coating

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<sup>69</sup> See Petitioner's Comments at 17-23.

<sup>70</sup> *Id.*, at 23-24.

<sup>71</sup> *Id.*, at 24-30.

or further finishing), brushed, buffed, polished, anodized (including bright-dip anodized), liquid painted, or powder coated.” The scope also states that “{a}luminum extrusions may also be fabricated, *i.e.*, prepared for assembly” and “{s}uch operations would include, but limited to extrusions that are cut-to-length, machined, drilled, {and} threaded...”<sup>72</sup>

Based on the information provided by ATS (*e.g.*, physical samples, narrative statements, product descriptions, schematics and pictures, along with the step-by-step production processes), we find that its fittings at issue are solid cohesive aluminum extrusion products consisting entirely of aluminum and manufactured entirely from extruded aluminum blanks.<sup>73</sup> Thus, physical characteristics of the products at issue match the physical description of subject merchandise, as identified in the scope of the *Orders*. Moreover, the scope of the *Orders* includes extrusions that are produced and imported in a wide variety of shapes and forms and with a variety of finishes (*e.g.*, mill finished), which we find applicable to the fittings at issue. The scope of the *Orders* also includes extrusions “that are cut-to-length, machined, drilled, {and} threaded,” production processes that we find match those employed to produce the fittings at issue. For these reasons, we determine that ATS’s fittings at issue are within in the scope of the *Orders*.

This conclusion is further supported by language in the Petition. In Exhibit I-5 to the Petition, the Petitioner provided several “product examples” which it said were examples of subject merchandise.<sup>74</sup> The examples of in-scope merchandise in the Petition appear to include products such as ATS’s products at issue:

<b>Subject Merchandise</b>	
Product Type	Product Examples
Aluminum extrusions, not further fabricated	Mill finish, painted, powder coated, anodized, or otherwise coated aluminum extrusions
Aluminum extrusions with subsequent drawing	Drawn aluminum tubing
Aluminum extrusions with fabrication	Precision cut, machined, punched, drilled, bent, or otherwise fabricated aluminum extrusions
Aluminum extrusions that are parts intended for use in intermediate or finished goods	Aluminum extrusions designed for use in, <i>e.g.</i> , a door, window, or solar panel

<sup>72</sup> See the *Orders*.

<sup>73</sup> See ATS’s Scope Ruling Request at 2 (“The fittings in question are all machined from an extruded aluminum blank.”) and Exhibits 1-6; see also ATS’s Second Supplemental Questionnaire Response at Exhibits 1-11.

<sup>74</sup> See Petition for the Imposition for Antidumping and Countervailing Duties: Aluminum Extrusions from the People’s Republic of China, (March 31, 2010) (Petition) at Exhibit I-5 (attached to ITC Final Determination and Petition Scope Section Memorandum).

Aluminum extrusions partially assembled into intermediate goods	Two or more aluminum extrusions partially assembled ( <i>e.g.</i> , via welding, mechanical fasteners, or other attachment mechanism) into an intermediate good where the aluminum extrusions constitute the essential material component of the subassembly
Aluminum extrusions that are also identified as other goods	Carpet, window, or door thresholds; fence posts; heat sinks
<b>Non-Subject Merchandise</b>	
Product Type	Product Examples
Unassembled products containing aluminum extrusions, <i>e.g.</i> “kits” that at the time of importation comprise all necessary parts to assemble finished goods	Shower frame kits, window kits, unassembled unitized curtain walls
Fully assembled finished goods containing aluminum extrusions	Windows, doors, solar panels
The subject merchandise also excludes the following: 1) pure, unwrought aluminum in any form; 2) aluminum extrusions falling within the 2000, 5000, or 7000 series of The Aluminum Association; and 3) aluminum products produced by other than the extrusion process ( <i>e.g.</i> by casting or rolling).	

ATS’s products at issue are “aluminum extrusions with fabrication,” and therefore would be considered subject merchandise under the examples provided in the Petition, unless they meet one of the two express exclusions listed in the scope of the *Orders*.

Specifically, 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 materials, 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.”<sup>75</sup>

ATS has confirmed that none of the products that are subject to its Scope Ruling Request enters into the United States as non-finished merchandise that requires further finishing or fabrication.<sup>76</sup> Accordingly, the “finished goods kit” exclusion does not apply to this case.

<sup>75</sup> See the *Orders*.

<sup>76</sup> See ATS’s Second Supplemental Questionnaire Response at 5.

With respect to the “finished merchandise” exclusion, ATS’s fittings are finished merchandise, but as explained above, they are also comprised solely of aluminum extrusions. Therefore, they do not meet the Department’s requirements of the finished merchandise exclusion, as established in the Assembled Motor Cases Scope Ruling and followed in Delphi Core Heater Tubes Scope Ruling, All Points Cleats Scope Ruling and KF16 Hose Adapter Scope Ruling.<sup>77</sup> In the Assembled Motor Cases Scope Ruling, the Department found that the assembled motor cases at issue, which consist solely of aluminum extrusions, “did not meet the exclusion for finished merchandise” because “they consist entirely of aluminum extrusions.”<sup>78</sup> Similarly, in the Delphi Core Heater Tubes Scope Ruling, the Department found that “the core tubes at issue did not meet the exclusion criteria” because “the core tubes are comprised entirely of extruded aluminum.”<sup>79</sup> Moreover, in the All Points Cleats Scope Ruling, the Department also found that the cleats at issue “did not meet the requirements of the finished goods exclusion” because “cleats are single-piece aluminum extrusions without ... other non-extruded parts of aluminum or any other material.”<sup>80</sup> Likewise, in KF16 Hose Adaptor Scope Ruling, the Department found that the hose adapter at issue, which consists solely of aluminum extrusions and is manufactured entirely from aluminum bar stock, was not covered by the “finished merchandise” exclusion to the scope of the *Orders* because it is “composed entirely of aluminum extrusions.”<sup>81</sup>

Notably, Exhibit I-5 to the Petition provides three examples of products which would meet the exclusion for “fully assembled finished goods containing aluminum extrusions:” windows, doors, and solar panels. Consistent with the Department’s analysis in the Assembled Motor Cases Scope Ruling and the other cited cases, all three of these “finished merchandise” examples have both non-aluminum extrusions and aluminum extrusion components.

#### ATS’s Additional Arguments Do Not Support Exclusion from the Scope of the *Orders*

ATS provides several additional arguments which do not otherwise support exclusion of its fittings from the scope of the *Orders*.

First, ATS argues that the “prepared for assembly” language of the scope limits the degree or type of fabrication.<sup>82</sup> Specifically, ATS argues that the petition was amended to make clear that subject merchandise is limited to those fabrication processes that merely prepare the extrusion for assembly.<sup>83</sup> ATS also argues that the ITC’s injury investigation did not contemplate complex fittings like those imported by ATS.<sup>84</sup> Under both of these arguments, it claims that its merchandise should therefore not be considered subject to the scope of the *Orders*. We disagree

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<sup>77</sup> See Assembled Motor Cases Scope Ruling at 12, where the Department found that since the products at issue consisted solely of extruded aluminum, the exception to the exclusion provision applied. Accordingly, the Department found that the products at issue did not meet the requirements of the finished merchandise exclusion; see also Delphi Core Heater Tubes Scope Ruling at 10, where the Department followed the same approach; see also All Points Cleats Scope Ruling at 11-12, where the Department followed the same approach; see also KF16 Hose Adapter Scope Ruling at 13-19, where the Department followed the same approach.

<sup>78</sup> See Assembled Motor Cases Scope Ruling at 12.

<sup>79</sup> See Delphi Core Heater Tubes Scope Ruling at 10.

<sup>80</sup> See All Points Cleats Scope Ruling at 11-12.

<sup>81</sup> See KF16 Hose Adapter Scope Ruling at 13-14 and 19.

<sup>82</sup> See ATS’s Scope Ruling Request at 2, 4 and 23-27.

<sup>83</sup> *Id.*, at 3 and 25.

<sup>84</sup> See ATS’s Response on Petitioner’s Comments at 5-11.

with ATS. The Department addressed and rejected such arguments in the Machine Parts Scope Ruling, stating “... information from the ITC and the Department indicates that the scope of the *Orders* places no such limits on the degree of fabrication such as that involving the CNC process.”<sup>85</sup> The Department further stated that “[t]he description and treatment of heat sinks and finished heat sinks by the Department and ITC makes this fact apparent.”<sup>86</sup> Due to a negative injury finding by the ITC, the scope of the *Orders* excluded finished heat sinks.<sup>87</sup> However, the scope of the *Orders* nonetheless continues to include heat sinks that have not been “finished,” which are fabricated by means of a CNC machine process.<sup>88</sup>

Additionally, the Department explained that “We find that the investigation *contemplated* that subject merchandise would undergo specialized machining processes, and did not include a limit on the amount or specialty of the fabrication (emphasis added).”<sup>89</sup> The Department made a similar determination in the Motor Cases Scope Ruling.<sup>90</sup> All of these show that, in the original investigation, the Department and ITC *did* contemplate complex fittings like the ones imported by ATS.

Furthermore, we agree with Petitioner that the Petition was amended, in part, to indicate that there is a distinction between fabricated aluminum extrusions and finished merchandise under the scope. Based on Petitioner’s response to the Department’s question at that time, it is clear that the Department requested that Petitioner make a distinction between “fabricated products” that are covered and “finished products” that are not covered since the term “fabrication” as it was in the initial scope could include final finished goods.<sup>91</sup> Therefore, we find that ATS’s argument regarding the amendment of the Petition is without merit.

Second, ATS attempts to argue that, based on the definition of aluminum extrusions in the *Orders*, that subject merchandise must have a shape or form produced by an extrusion process.<sup>92</sup> ATS further argues that the complex machining process, not the extrusion process, creates the essential shape or form of the fittings at issue and therefore is not merely preparing the extrusion for assembly.<sup>93</sup> ATS also asserts that the machining process involved creates shapes that are fundamentally different from the extruded feedstock.<sup>94</sup> ATS’s fittings are not distinct from subject merchandise merely because they were produced by means of a CNC precision machine process. In the Machine Parts Scope Ruling, the Department examined whether the CNC precision machine process produced a product that was distinct from the aluminum extrusions covered by the scope of the *Orders*.<sup>95</sup> In that ruling, the Department determined that the CNC precision machine process did not yield products that are distinct from subject aluminum

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<sup>85</sup> See Machine Parts Scope Ruling at 14.

<sup>86</sup> *Id.*

<sup>87</sup> See *ITC Final Determination* at 24; see also Aluminum Extrusions from the People’s Republic of China: Antidumping Duty Order, 76 FR 30650 (May 26, 2011) (*AD Order*).

<sup>88</sup> See Machine Parts Scope Ruling at 14-16; see also *ITC Final Determination* at I-12.

<sup>89</sup> See Machine Parts Scope Ruling at 15.

<sup>90</sup> See Motor Cases Scope Ruling at 14-15.

<sup>91</sup> See Petitioner’s Petition Clarification Response at 3.

<sup>92</sup> See ATS’s Scope Ruling Request at 27-28.

<sup>93</sup> *Id.*, at 3-4, 27-28 and 35.

<sup>94</sup> *Id.*, at 31.

<sup>95</sup> See Machine Parts Scope Ruling at 14.



extrusions. In particular, the Department found that the scope of the *Orders* “... encompasses the manufacturing processes utilized to create the products at issue (emphasis added).”<sup>96</sup> In this regard, we find that the scope of the *Orders* does not specify that the shape must be imparted by the extrusion process. The illustrative list of fabrication processes included in the scope (*i.e.*, ... operations would include but are not limited to, extrusions that are cut-to-length, machined, drilled, ... {and} threaded... {t}he subject merchandise includes aluminum extrusions that are finished, ... fabricated, or any combination thereof) demonstrates that many different shapes could be created in the fabrication process. In addition, in the Motor Cases Scope Ruling, the Department continued to find that CNC production process used to produce motor cases is a fabrication process that does *not* result in a product being distinct from subject merchandise included the scope of the *Orders*.<sup>97</sup>

ATS also attempts argue that the machining process fundamentally and substantially transforms the rough extruded aluminum blank to a new and different product by stating that a significant portion of the aluminum is removed by the CNC machine processes.<sup>98</sup> We disagree with the notion that the products at issue are outside of the scope of the *Orders* by virtue of the fact that relatively large amounts of the extruded feedstock are removed during the CNC machine process. The scope of the *Orders* provides no exclusions based upon numerical thresholds regarding the amount of material removed in the process of fabrication.

Third, ATS claims that the Department should apply its substantial transformation test in the instant scope inquiry, and on that basis its products should be considered excluded from the scope of the *Orders*. We disagree that the application of the substantial transformation test is warranted in this case.

While it is true that the Department applied the substantial transformation test in *Crawfish* to determine if merchandise was subject, or not subject to the scope of an order, the facts in that case differ significantly from the facts in this case. In *Crawfish*, the Department considered whether etouffee was subject to the AD order on crawfish tail meat.<sup>99</sup> The Department conducted an analysis under 19 CFR 351.225(k)(2), and in considering the physical characteristics, considered whether the crawfish tail meat had been transformed into a different product. The Department “found that etouffee, when cooked in the manner described by Coastal Foods, LLC, an importer of crawfish etouffee, had undergone a substantial transformation into a new and different product” because the overall physical characteristics, including the integration of the crawfish with other ingredients were altered from tail meat on its own.<sup>100</sup> The Department’s determination was affirmed by the United States Court of Appeals for the Federal Circuit (CAFC), which held that “as a mixture of many ingredients in addition to crawfish tail meat, Commerce could reasonably have determined that etouffee is not freshwater tail meat and therefore is not included within the scope of the order.”<sup>101</sup> In this case, the scope of the *Orders* includes “aluminum extrusions ... produced by an extrusion process” which may also be

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<sup>96</sup> *Id.*, at 14.

<sup>97</sup> See Motor Cases Scope Ruling at 14-15.

<sup>98</sup> See ATS’s Scope Ruling Request at 40.

<sup>99</sup> See *Crawfish*, 483 F.3d at 1360.

<sup>100</sup> *Id.*, at 1360.

<sup>101</sup> *Id.*, at 1363.

“fabricated.” ATS’s fittings are aluminum extrusions that have been fabricated, using some of the same processes (*e.g.*, the CNC machine process) which were discussed in the investigation and in the *ITC Final Determination*. Therefore, unlike the etouffee considered in *Crawfish*, fabricated aluminum extrusions are expressly included in the scope of the *Orders*. Furthermore, the scope of the *Orders*, the *ITC Final Determination*, and the *AD Final Determination*<sup>102</sup> do not indicate that fabrication may only reach a certain point before an aluminum extrusion is no longer within the scope of the *Orders*.

ATS argues that its fabrication is so significant and extensive that it has substantially “transformed” the piece of aluminum from an extruded shape that is merely “prepared for assembly” to some specific merchandise that can no longer be considered to be within the scope of the *Orders*.<sup>103</sup> Although it is true that a fabricated aluminum extrusion may no longer be described as a mere extrusion by virtue of fabrication, the scope of the *Orders* includes merchandise, such as heat sinks, which are fabricated. As discussed above, the physical descriptions of subject merchandise include products which undergo similar processes (*e.g.*, the CNC machine process) to those described by ATS; thus, there is no basis to distinguish ATS’s products from those subject to the scope based on the extent of fabrication.

Finally, ATS argues that the *Orders* cannot legally encompass aluminum extrusions of multiple shapes, types and sizes of merchandise within one set of AD and CVD orders.<sup>104</sup> ATS argues that such an expansive interpretation of the scope would implicate serious due process concerns.<sup>105</sup> We disagree. We find that the scope of the *Orders* expressly includes aluminum extrusions with a variety of finishes and in a wide variety of shapes and forms. As explained above, we also find that the scope language encompasses various types and degrees of fabrications and does not limit them. Moreover, as explained above, in prior rulings, the Department has found that aluminum extrusions that are fabricated with a CNC machine are covered by the scope.<sup>106</sup> Accordingly, as the scope of the *Orders* is clear that aluminum extrusions of different sizes and types are considered subject merchandise, no due process concerns are implicated.

## CONCLUSION

Having considered the scope language of the *Orders*, the description of the product contained in the instant scope inquiry, the Petition, and prior Department scope rulings, we therefore determine that ATS’s fittings are subject to the scope of the *Orders*.

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<sup>102</sup> See *Aluminum Extrusions from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 18524 (April 4, 2011) (*AD Final Determination*).

<sup>103</sup> See ATS’s Scope Ruling Request at 36-43.

<sup>104</sup> *Id.*, at 30.

<sup>105</sup> *Id.*, at 32-35; see also ATS’s Response to Petitioner’s Comments at 11-13.

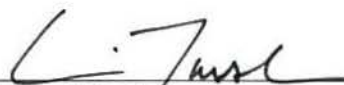
<sup>106</sup> See *Machine Parts Scope Ruling*; see also *Motor Cases Scope Ruling*.

**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 ATS's fittings at issue do not meet the exclusion criteria for finished merchandise and, thus, are 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

7/11/16  
\_\_\_\_\_  
Date