



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

A-570-967

C-570-968

Scope Ruling: Mass Filter Radiator

Public Document

AD/CVD Operations, OVI: TRW

August 10, 2016

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

THROUGH: Scot Fullerton
Director
AD/CVD Operations, Office VI

FROM: Tyler Weinhold
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SUBJECT: Antidumping and Countervailing Duty Orders on Aluminum
Extrusions from the People's Republic of China: Final Scope
Ruling on Agilent Technologies, Inc.'s Mass Filter Radiator

SUMMARY

The Department of Commerce (the Department) received a request from Agilent Technologies, Inc. (Agilent)¹ for a scope ruling to determine whether its mass filter radiator (MFR) is covered by the scope of the antidumping and countervailing duty orders on aluminum extrusions from the People's Republic of China (PRC).² Based on our analysis, we find that Agilent's MFR is covered by the scope of the *Orders*.

¹See Letter from Agilent to the Department, regarding "Scope Inquiry on Certain Finished Aluminum Components from the People's Republic of China (Case Nos. A-570-967 and C-570-968): Mass Filter Radiator," dated November 20, 2014, (Agilent's Scope Ruling Request).

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

BACKGROUND

The Department published the antidumping and countervailing duty orders on aluminum extrusions from the PRC on May 26, 2011.³ On November 20, 2014, we received a letter from Agilent requesting a scope ruling on its MFR.⁴ We extended the deadline for this scope ruling between May 2015 and June 2016.⁵ Most recently, on June 22, 2016, we extended the deadline for a ruling until August 11, 2016.

On February 6, 2015, we issued a supplemental questionnaire to Agilent.⁶ Agilent responded to our supplemental questionnaire on March 23, 2015.⁷ Department officials met with representatives of Agilent on April 16, 2015.⁸ On April 24, 2015, Agilent submitted additional information related to topics discussed in this meeting.⁹ The Aluminum Extrusions Fair Trade Committee (Petitioner) submitted comments on Agilent's Scope Ruling Request and Agilent's March 23, 2015 Response on April 21, 2015.¹⁰ Petitioner submitted further comments regarding Agilent's submissions on May 21, 2015, and June 16, 2015.¹¹ Agilent submitted comments and additional information to rebut Petitioner's comments on May 22, 2016 and on October 13, 2015.¹² We issued additional supplemental questionnaires to Agilent on January 15, 2016,¹³ and

³ See the *Orders*.

⁴ See Agilent's Scope Ruling Request.

⁵ See, e.g., Letter from the Department to all interested parties, regarding "Aluminum Extrusions from the People's Republic of China: Extension of Time for Scope Ruling," dated May 7, 2015; Letter from the Department to all interested parties, regarding "Aluminum Extrusions from the People's Republic of China: Extension of Time for Scope Ruling," dated June 17, 2015; Letter from the Department to all interested parties, regarding "Aluminum Extrusions from the People's Republic of China: Extension of Time for Scope Ruling," dated August 13, 2015; Letter from the Department to all interested parties, regarding "Aluminum Extrusions from the People's Republic of China: Extension of Time for Scope Ruling," dated November 2, 2015; Letter from the Department to all interested parties, regarding "Aluminum Extrusions from the People's Republic of China: Extension of Time for Scope Ruling," dated November 16, 2015; Letter from the Department to all interested parties, regarding "Aluminum Extrusions from the People's Republic of China: Extension of Time for Scope Ruling," dated December 16, 2015; and Letter from the Department to all interested parties, regarding "Aluminum Extrusions from the People's Republic of China: Extension of Time for Scope Ruling," dated June 22, 2016.

⁶ See Letter from the Department to Agilent, regarding "Aluminum Extrusions from the People's Republic of China: Mass Filter Radiators," dated February 6, 2015 (The Department's February 6, 2015 Supplemental Questionnaire).

⁷ See Letter from Agilent to the Department, regarding "Agilent Technologies: Scope Request (Mass Filter Radiator): Response to Questionnaire," dated March 23, 2015, (Agilent's March 23, 2015 Response).

⁸ See Memorandum from to the file regarding "Ex Parte Meeting with Agilent Technologies, Inc.," dated April 17, 2015.

⁹ See Letter from Agilent to the Department dated April 24, 2015, (Agilent's April 24, 2015 Submission).

¹⁰ See Letter from Petitioner, to the Department, regarding "Aluminum extrusions from the People's Republic of China: Comments on Agilent's Request for Scope Ruling on its Mass Filter Radiator," dated April 21, 2015, (Petitioner's April 21, 2015, Comments).

¹¹ See Letter from Petitioner, to the Department, regarding "Aluminum Extrusions from the People's Republic of China: Comments in Advance of the Department's Scope Determination," dated May 21, 2015, (Petitioner's May 21, 2015, Comments); and Letter from Petitioner, to the Department, regarding "Aluminum Extrusions from the People's Republic of China: Additional Comments in Advance of the Department's Upcoming Scope Determination Regarding Agilent's Mass Filter Radiator," dated June 16, 2015, (Petitioner's June 16, 2015, Comments).

¹² See Letter from Agilent to the Department dated May 22, 2015 (Agilent's May 22, 2015 submission) and Letter from Agilent to the Department dated October 10, 2015 (Agilent's October, 2015 submission).

¹³ See Letter from the Department to Agilent, regarding "Aluminum Extrusions from the People's Republic of China

April 8, 2016,¹⁴ to which Agilent responded on February 10, 2016,¹⁵ and May 13, 2016,¹⁶ respectively.

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 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, swedged, mitered, chamfered, threaded, and spun. The subject merchandise includes aluminum

(PRC): Scope Inquiry on Agilent's Mass Filter Radiator," dated January 15, 2016 (The Department's January 15, 2016 Supplemental Questionnaire).

¹⁴ See Letter from the Department to Agilent, regarding "Aluminum Extrusions from the People's Republic of China (PRC): Scope Inquiry on Agilent's Mass Filter Radiator," dated April 8, 2016 (The Department's April 8, 2016 Supplemental Questionnaire).

¹⁵ See Letter from Agilent to the Department, regarding "Aluminum Extrusions from the People's Republic of China (PRC): Scope Inquiry on Agilent's Mass Filter Radiator: supplemental questionnaire," dated February 10, 2016, (Agilent's February 10, 2016, Response).

¹⁶ See Letter from Agilent to the Department, regarding "Aluminum Extrusions from the People's Republic of China (PRC): Scope Inquiry on Agilent's Mass Filter Radiator: April 8—Request For Information," dated May 13, 2014, (Agilent's May 13, 2016, Response).

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 this *Order* is dispositive.¹⁷

LEGAL FRAMEWORK

When a request for a scope ruling is filed, the Department examines the scope language of the order{s} at issue and the description of the product contained in the scope-ruling request.¹⁸

¹⁷ See the *Orders*.

¹⁸ See *Walgreen Co. v. United States*, 620 F.3d 1350, 1357 (Fed. Cir. 2010).

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.¹⁹ 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.²⁰

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

Agilent explained in its request that it designs and manufactures gas chromatography mass spectroscopy (mass spectrometer) instruments, which incorporate the MFR, a finished aluminum component which is manufactured from extruded aluminum.²¹ Agilent also indicated that the MFR is classified under subheading 9027.90.54 of the HTSUS.²²

According to the description and photographs of the product in Agilent's Scope Ruling Request and Agilent's Questionnaire Response, Agilent's MFR is a solid cohesive aluminum extrusion product consisting of machined extruded aluminum, which is plated with a proprietary material, and which is specifically designed and fabricated for use in Agilent's mass spectrometer.²³ Agilent explained that in a quadrupole mass spectrometer, the quadrupole filters sample ions.²⁴ The sample is vaporized and ionized using a high temperature ion source and the resulting ions are then accelerated in an electric field and deflected by the quadrupole into a curved trajectory that produces a distinctive mass spectrum.²⁵ The MFR is the structure that houses the mass selection quadrupole and the ion source, which are central components for the functioning of the mass spectrometer.²⁶ According to Agilent, the MFR also transfers heat from the high temperature ion source to the quadrupole, thus preventing the collection of ion burn on the surface of the quadrupole.²⁷ The MFR's role in heat transfer within the mass spectrometer is also critically important because mass selection quadrupole and the ion source operate in a vacuum, which limits the transfer of heat from the ion source to the mass selection quadrupole.²⁸

¹⁹ See 19 CFR 351.225(k)(1).

²⁰ See 19 CFR 351.225(d).

²¹ See Agilent's Scope Ruling Request at 2 to 5.

²² See Agilent's April 24, 2015 Submission at 2.

²³ *Id.* at 2 to 3 and Attachment A.

²⁴ See Agilent's March 23, 2015, Response at 2.

²⁵ *Id.*

²⁶ See Agilent's Scope Ruling Request at 2 to 5.

²⁷ See Agilent's March 23, 2015, Response at 2.

²⁸ *Id.* at 4.

Agilent also explains that the MFR has been precision fabricated using computer numerical control (CNC) processing.²⁹ The precision design and heat conductivity of the MFR helps to stabilize the ion ratios of the output signal in the quadrupole mass spectrometer, allowing strong correlations to data stored in a chemical library.³⁰

RELEVANT SCOPE DETERMINATIONS:³¹

ECCO LED Light Bars Scope Ruling

In the LED Light Bars Scope Ruling, the product at issue was heat sinks for bars of LED emergency lights designed to be mounted to the roof of the vehicle and to serve as the housing for LED lights. Requestor ECCO provided a design-specification document identifying certain specifications for symmetry, twist, straightness, flatness, and material, and a thermal testing document and explained that “The ECCO heat sink extrusions are manufactured in strict accordance with specifications provided by ECCO that minimize thermal resistance and maximize the heat conductivity of the extrusions.”³² Nevertheless, the Department concluded that “ECCO failed to identify the specific thermal performance requirements that the products at issue are intended to meet anywhere on the record,” and “ECCO did not identify the target thermal resistance that the products at issue are designed to meet, nor did it provide any evidence showing how or why the design and production of the product was organized to meet the cooling requirements of the specific electronic devices in the LED light bar.”³³ Further, the Department found that the evidence submitted by ECCO failed to demonstrate how the product at issue is ‘fully, albeit not necessarily individually, tested to comply with specified thermal performance requirements.’³⁴ Therefore, the Department determined that ECCO’s heat sinks for LED light bars at issue did not meet the exclusion criteria for finished heat sinks.

Side Mount Valve Controls (SMVCs) Scope Ruling

In the SMVCs Scope Ruling, the product at issue was a side mount valve control, which manually controls water or foam pressure and flow in firefighting equipment, specifically from hoses or their pumper discharges, such as deck guns and monitors.³⁵ The Department

²⁹ See Agilent’s Scope Ruling Request at 2 to 5.

³⁰ See Agilent’s March 23, 2015, Response at 2.

³¹ See Memorandum from Tyler Weinholt, international trade compliance analyst, to the file, regarding: “Scope Ruling on Agilent’s mass filter radiator: Excerpt from the Petition and Relevant Scope Rulings,” dated concurrently with this memorandum (Petition Scope Section and Relevant Scope Rulings Memorandum).

³² See Memorandum from Laurel LaCivita to Christian Marsh, regarding: “Antidumping and Countervailing Duty Orders on Aluminum Extrusions from the People’s Republic of China: Final Scope Ruling on ECCO’s Heat Sinks for LED Lights Bars,” dated November 24, 2014 (ECCO LED Light Bars Scope Ruling) at 17 to 18.

³³ *Id.* at 19 to 21.

³⁴ *Id.* at 21 to 22.

³⁵ See Memorandum from John Conniff, Analyst and Eric B. Greynolds, Program Manager, Office 3, through Melisa Skinner, Director, Office 3, to Christian Marsh, Deputy Assistant Secretary-Antidumping and Countervailing Duty Operations regarding: “Initiation and Preliminary Scope Ruling on Side Mount Valve Controls,” (September 24, 2012) and Memorandum from John Conniff, Analyst and Eric B. Greynolds, Program Manager, Office 3, through Melisa Skinner, Director, Office 3, to Christian Marsh, Deputy Assistant Secretary-Antidumping and Countervailing Duty Operations, regarding: “Antidumping Duty (AD) and Countervailing Duty (CVD) Orders on

determined that the product at issue was outside the scope of the *Orders*, because it fulfilled the exclusion for “finished goods kits,” as described in the scope of the *Orders*, as SMVCs are imported with all necessary components and hardware and require no further fabrication prior to being assembled.³⁶ Once assembled, a SMVC is mounted on a fire truck, where it is ready for use upon installation. The Department’s analysis in the SMVCs Preliminary Scope Ruling yielded the subassemblies test, which considers whether the product subject to a scope proceeding constitutes a subassembly, *i.e.*, merchandise that is partially assembled and inherently part of a larger whole.³⁷ The Department explained that aluminum extrusion subassemblies may be excluded from the scope of the *Orders* as “finished goods” or “finished goods kits” provided that they require no further “finishing” or “fabrication” prior to assembly, contain all the necessary hardware and components for assembly, and are ready for installation at the time of entry.³⁸ The Department found that the “subassemblies test” is consistent with the scope of the *Orders* because subassemblies that enter the United States as “finished goods” or “finished goods kits” are later integrated into a larger structure or system and are analogous to products that are explicitly excluded from the scope, such as “windows with glass, or doors with glass or vinyl,” each of which includes all of the parts necessary to assemble a complete window or door, but is necessarily integrated into a larger structure.³⁹

Cutting and Marking Edges Scope Ruling

In the Cutting and Marking Edges Scope Ruling, the products at issue were finished cutting and marking straight edges suitable for immediate use in drafting and cutting applications without further manufacturing, assembly, mounting, or combination with any other component, apparatus, or fixture.⁴⁰ Because the products at issue consisted of a single hollow extrusion made of aluminum alloy, the Department found that the merchandise was covered by the inclusive language of the scope, was not covered by the exclusion for “finished merchandise,” nor any other exclusion, and was therefore covered.⁴¹

Valeo Automotive Heating and Cooling Systems Scope Ruling

In Valeo Automotive Heating and Cooling Systems Scope Ruling, the Department ruled that Valeo’s products were aluminum extrusions that have undergone extensive fabrication, but that that the production processes applied by Valeo only constituted such further fabrication as specifically described in the scope and that the products are specifically covered by the *Orders*.

Aluminum Extrusions from the People’s Republic of China (PRC); Final Scope Ruling on Side Mount Valve Controls,” (October 26, 2012) (SMVCs Scope Ruling)).

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ See Memorandum from John Conniff, International Trade Analyst, through Eric B. Greynolds, Program Manager, Office III, and Melissa G. Skinner, Director, Office III, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, regarding: “Aluminum Extrusions from the People’s Republic of China: Final Scope Ruling on Cutting and Marking Edges,” dated November 13, 2012 (Cutting and Marking Edges Scope Ruling) at 2.

⁴¹ *Id.* at 10-11. The scope ruling was later appealed to the Court of International Trade (CIT) and subsequently dismissed. See Order of Dismissal in *Plasticoid Manufacturing Inc. v. United States*, Ct. No. 12-00407 (CIT March 25, 2015).

Additionally, the Department noted its previous findings that “complex machining processes and other post-extrusion processes amounted to additional fabrication that did not place products outside the scope.”⁴² Subsequently, Valeo, Inc. challenged the Department’s decision at the CIT, alleging that the Department did not address or apply the “subassemblies test” that was established in SMVCs Scope Ruling. In response, the Department requested and was granted a voluntary remand to consider whether components for cooling and heating systems are covered by the *Orders* based upon the Department’s new subassembly test. In the *Valeo Redetermination*, the Department revised its earlier decision and found the parts outside the scope of the *Orders*.⁴³ In reaching its decision, the Department explained that the subassemblies test is consistent with the scope of the *Orders* because subassemblies that enter the United States as “finished goods” or “finished goods kits” 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,” each of which includes all of the parts necessary to assemble a complete window or door, but is necessarily integrated into a larger structure.⁴⁴

Motor Cases Scope Ruling⁴⁵

In the Motor Cases Scope Ruling, the products at issue were inner and outer motor cases for use in connection with high-efficiency, water-cooled electric motors.⁴⁶ The Department found that the motor cases at issue were within the scope of the *Orders*. Specifically, the Department determined 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.⁴⁷

All Points Cleats Scope Ruling

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

⁴² See Memorandum from Brooke Kennedy, Analyst, through Eugene Degnan, Program Manager, Office 8, and Wendy J. Frankel, Director, Office 8, 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 Valeo’s Automotive Heating and Cooling Systems,” October 31, 2012 (Valeo Automotive Heating and Cooling Systems Scope Ruling) at 1 to 2.

⁴³ 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 Redetermination*) and *Valeo, Inc. et al. v. United States*, CIT No. 12-00381, dkt. #23, dated June 20, 2013 (court order affirming remand redetermination). See also Valeo Automotive Heating and Cooling Systems Scope Ruling.

⁴⁴ See *Valeo Redetermination* at 9 to 10.

⁴⁵ 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).

⁴⁶ *Id.* at 2-3.

⁴⁷ See Motor Cases Scope Ruling at 14-15.

product's length.⁴⁸ 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 goods" 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.⁴⁹

Unger Pole Handles Scope Ruling

In the Unger Pole Handles Scope Ruling, the products at issue were several pole handles designed to work with a variety of cleaning/tool heads that are attached to the poles. In addition to aluminum tubes of various lengths and diameters, each pole handle incorporates a polypropylene hand grip, a polypropylene tool and one of several accessory attachment heads that accept a variety of tools and attachments.⁵⁰ The Department found that the products at issue met the exclusion criteria for "finished goods." As with the All Points Cleats Scope Ruling, 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. Accordingly, noting that the products at issue contained non-extruded aluminum parts (which are more than mere fasteners), in addition to extruded aluminum components, the Department found that Unger's pole handles were merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry, and thus, excluded by the "finished merchandise exclusion."⁵¹

Delphi Core Heater Tubes Scope Ruling

In the Delphi Core Heater Tubes Scope Ruling, the products at issue were "core tubes" for automotive heating and cooling (HVAC) systems, comprised of extruded hollow, tubular parts fabricated from aluminum extrusions that are bent and end-formed based on customer designs.⁵² 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

⁴⁸ 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, Re: "Final Scope Ruling on All Points Industries Inc.'s Cleats," April 2, 2015 (All Points Cleats Scope Ruling) at 5.

⁴⁹ *Id.* at 12.

⁵⁰ See Memorandum from James Terpstra, Senior International Trade Analyst, through Erin Begnal Program Manager, Office III, and Melissa G. Skinner, Director, Office III, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, Re: "Final Scope Ruling on Unger Enterprises Inc.'s Pole Handles," April 22, 2015 (Unger Pole Handles Scope Ruling) at 5-6.

⁵¹ *Id.* at 12-13.

⁵² See Memorandum from Eric B. Greynolds, International Trade Analyst, Office III, 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) at 4 to 5.

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 good kit, *i.e.*, whether the product contains parts other than aluminum extrusions and mere fasteners.⁵³

Precision Machine Parts Scope Ruling

In the Precision Machine Parts Scope Ruling, the Department determined that the products at issue subject to the scope of the Orders. The Department found that the fabrication process (*e.g.*, the CNC machine process) used to produce the products at issue is not distinct from the fabrication processes used to produce aluminum extrusions (*e.g.*, laboratory equipment) that are covered under the scope of the *Orders* and that scope of the *Orders* above encompasses the manufacturing processes utilized to create the products at issue. Moreover, the Department found that information from the ITC and the Department indicated that the scope of the *Orders* places no such limits on the degree of fabrication, concluding that the description and treatment of heat sinks and finished heat sinks by the Department and ITC makes this fact apparent.⁵⁴

TSS Wind Sign Frames Scope Ruling

In the TSS Wind Sign Frames Scope Ruling, the products at issue were “wind sign” frames which contained extruded aluminum frames, plastic parts, and steel springs, which are designed to display “customizable materials or work (retail advertisements),” which open and shut to allow removal and replacement of display signs, and which are designed to withstand wind.⁵⁵ The Department found that products met the exclusion criteria for “finished merchandise.” As with the All Points Cleats Scope Ruling, as well as the Unger Pole Handles Scope Ruling, 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. Accordingly, because the products at issue contained non-extruded aluminum parts (which are more than mere fasteners), in addition to extruded aluminum components, the Department found that TSS's wind signs were merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry, and thus, excluded by the finished merchandise exclusion.⁵⁶

⁵³ *Id.* at 10 to 11.

⁵⁴ See Memorandum From John Conniff, Analyst and Eric B. Greynolds, Program Manager, Office 3, through Melisa Skinner, Director, Office 3, to Christian Marsh, Deputy Assistant Secretary-Antidumping and Countervailing Duty Operations, regarding: “Antidumping Duty (AD) and Countervailing Duty (CVD) Orders on Aluminum Extrusions from the People's Republic of China (PRC); Final Scope Ruling on Precision Machine Parts,” (March 28, 2012) (Precision Machine Parts Scope Ruling) at 14.

⁵⁵ See Memorandum from Mark Flessner, Analyst, through Abdelali Elouaradia, Acting Director, Office VI, 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 TSS, Inc.'s Wind Sign Frames,” June 15, 2015 (TSS Wind Sign Frames Scope Ruling) at 5-7.

⁵⁶ See TSS Wind Sign Frames Scope Ruling at 11-12.

Agilent Hose Adapter Scope Ruling

In Agilent Hose Adapter Scope Ruling, the product at issue was a hose adapter designed for use in Agilent's mass spectrometer. Agilent argued that its hose adapter was covered by the finished merchandise exclusion. Agilent argued that the finished merchandise exclusion does not require that excluded merchandise contain multiple parts or non-aluminum parts. Agilent argued that examples of merchandise which would meet the exclusion for finished goods provided in the Petition and information in the *ITC Report*⁵⁷ indicated that merchandise which require no further assembly or fabrication after importation are excluded under the finished merchandise exclusion, whether or not they contain only aluminum extrusions. Agilent also provided evidence that its hose adapter was precision machined from extruded aluminum using CNC processing. However, the Department determined that Agilent's hose adapter was not covered by the finished merchandise exclusion in part because it was a single aluminum extrusion component, further processed in a manner consistent with the scope of the *Orders*, and contained no non-aluminum parts.⁵⁸

Delphi Tube and Block Assemblies Scope Ruling

In Delphi Tube and Block Assemblies Scope Ruling, the products at issue were evaporator core parts for Delphi's automotive heating and cooling systems, consisting of aluminum blocks and inlet-outlet tubes. Delphi argued that its hose adapter was covered by the finished merchandise exclusion. Agilent argued that the finished merchandise exclusion does not require that excluded merchandise contain non-aluminum parts. Delphi argued that examples of merchandise which would meet the exclusion for finished goods provided in the Petition and information in the ITC Report indicated that merchandise which require no further assembly or fabrication after importation are excluded under the finished merchandise exclusion, whether or not they contain only aluminum extrusions. The Department determined that Delphi's Tube and Block Assemblies were not covered by the finished merchandise exclusion, in part because they contained no non-aluminum parts.⁵⁹

Adams Thermal Systems Fittings for Engine Cooling Systems Scope Ruling⁶⁰

⁵⁷ See Petition for the Imposition of Antidumping and Countervailing Duties on Imports from the PRC, dated March 31, 2010 (Petition) and Certain Aluminum Extrusions from China, Inv. Nos. 701-TA-475 and 731-TA-117 (final), USITC Pub. 4229 (May 2011) (*ITC Report*).

⁵⁸ See Memorandum from Tyler Weinhold, Analyst, and Robert James, Program manager, Office VI, through Scot Fullerton, Office Director, Office VI, to Christian Marsh, Deputy Assistant Secretary-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," (October 14, 2015) (Agilent Hose Adapter Scope Ruling).

⁵⁹ See Memorandum from Victoria Cho, Analyst, through Scot Fullerton, Office Director, Office VI, to Christian Marsh, Deputy Assistant Secretary-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 Delphi Tube and Block Assemblies," (November 25, 2015) (Delphi Tube and Block Assemblies Scope Ruling) at 11 to 16.

⁶⁰ See Memorandum from Moses Song, International Trade Compliance Analyst through Scot Fullerton, Director, Office VI, 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 Adams Thermal Systems' Certain Fittings and Related Products for Engine Cooling

In the Adams Thermal Systems Fittings for Engine Cooling Systems Scope Ruling, the products at issue were cooling modules, radiators, charge air coolers, oil coolers, fuel coolers, and condensers used in agricultural equipment, construction equipment, on-highway trucks, diesel engines, and automotive and light truck applications.⁶¹ Adams Thermal Systems argued that subject merchandise must have a shape or form produced by an extrusion process, and that the CNC machining process involved in the manufacture of the merchandise at issue creates shapes that are fundamentally different from the extruded feedstock, that the machining process fundamentally and substantially transforms the rough extruded aluminum blank to a new and different product by removing a significant portion of the via the CNC machine processes, and that the Department should apply its substantial transformation test.⁶² However, the Department determined that Adams Thermal Systems' fittings were not covered by the finished merchandise exclusion, in because they contained no non-aluminum parts, in part because the Department determined that the CNC machining process does not in and of itself render merchandise outside the scope of the *Orders*, and because the scope of the *Orders* includes "aluminum extrusions ... produced by an extrusion process" which may also be "fabricated."⁶³

ARGUMENTS FROM INTERESTED PARTIES

Agilent's Scope Ruling Request and Questionnaire Response

Agilent argues that the MFR is excluded under the finished merchandise exclusion.⁶⁴ Regarding the finished merchandise exclusion, Agilent submits that the language in the scope description "finished windows with glass, doors with glass or vinyl, picture frames with glass pane and backing material, and solar panels" was intended merely to provide examples of "finished merchandise," generally, rather than specifically those finished merchandise excluded from the *Orders*.⁶⁵

Agilent also argues that examples of excluded merchandise given in the language of the scope of the Petition (*i.e.*, "window frames, door frames, picture frames")⁶⁶ are all comprised exclusively of aluminum extrusions.⁶⁷ Agilent further points to the scope of the Petition (subsequently altered in the *Orders*), which states "parts of products that are assembled or otherwise further processed after importation."⁶⁸ Based on this, Agilent argues that "Petitioners envisioned that the aluminum extrusions within the scope would be otherwise further processed {or assembled}

Systems" (July 11, 2016) (Adams Thermal Systems Fittings for Engine Cooling Systems Scope Ruling).

⁶¹ See Adams Thermal Systems Fittings for Engine Cooling Systems Scope Ruling at 8 to 15.

⁶² *Id.* at 15 to 18.

⁶³ *Id.* at 20 to 26.

⁶⁴ See the *Orders*.

⁶⁵ See Agilent's Scope Ruling Request at 5 to 6.

⁶⁶ See Petition for the Imposition of Antidumping and Countervailing Duties: Aluminum Extrusions from the People's Republic of China, (March 31, 2010) (Petition) at 4 and Exhibit I-5.

⁶⁷ See Agilent's Scope Ruling Request at 5 to 6.

⁶⁸ See Petition at 4 and Exhibit I-5.

after importation.”⁶⁹ Accordingly, Agilent maintains that merchandise comprised exclusively of aluminum extrusions can be excluded from the scope of the *Orders* as “finished goods.”⁷⁰

Further, noting language in the *ITC Report* which indicated that subject extrusions are “used as inputs (*i.e.*, an intermediate product) in the production of downstream products,” Agilent argues that the ITC did not exclude products comprised entirely of aluminum extrusions from its definition of finished goods. Instead, it focused on aluminum extrusions used as an input into other products.⁷¹

In addition, Agilent notes that in *Valeo Redetermination*, the Department concluded that certain products that consisted entirely of aluminum extrusions were excluded as “finished merchandise.”⁷²

Finally, Agilent notes that in the SMVCs Scope Ruling and *Valeo Redetermination*, the Department excluded certain “subassemblies” from the scope of the order, which were completed and finished at the time of entry and later integrated into a larger system or structure.⁷³ Agilent maintains that on this basis, the MFR falls within the finished merchandise exclusion.⁷⁴

Agilent also argues that MFR is a heat sink, precisely designed according to specific specifications to absorb and transfer heat away from the heat source of the mass spectrometer to the quadrupole.⁷⁵ Agilent further argues that the MFR “performs within very specific thermal resistance parameters.”⁷⁶ Agilent advances that Agilent research and development (R&D) developed drawing specifications for the MFR which were “developed around the thermal properties of the MFR.”⁷⁷ However, Agilent explains that the specific thermal resistance properties of the MFR are not “published,” but rather are functionally necessary for the proper performance of the mass spectrometer.⁷⁸

Agilent provides a “R&D Declaration,” dated May 21, 2015, which supports Agilent’s statements that the MFR transfers heat, provides structural support for the quadrupole, and blocks electromagnetic fields.⁷⁹ Agilent’s R&D Declaration also describes certain material specifications, and certain required temperature changes, or thermal resistance specifications.⁸⁰

⁶⁹ See Agilent’s Scope Ruling Request at 6.

⁷⁰ *Id.* at 6 to 8.

⁷¹ *Id.* at 6 to 7 (citing to *ITC Report* at I-10).

⁷² *Id.* at 6 to 7 (citing to *Valeo Redetermination*). See also *Valeo, Inc. et al. v. United States*, CIT No. 12-00381, dkt. #23, dated June 20, 2013. See also *Valeo Automotive Heating and Cooling Systems Scope Ruling*.

⁷³ See Agilent’s Scope Ruling Request at 7 to 8 (citing to *Valeo Redetermination* and SMVCs Scope Ruling)

⁷⁴ *Id.* at 7 to 8.

⁷⁵ See Agilent’s Scope Ruling request at 2 to 5 and 11 and Agilent’s March 23, 2015, Response at 5 to 6.

⁷⁶ See Agilent’s Scope Ruling request at 11.

⁷⁷ See Agilent’s February 10, 2016, Response at 7, Attachment 3, and Attachment 7. See also Agilent’s Scope Ruling Request at Attachment A, Figure 3.

⁷⁸ See Agilent’s March 23, 2015, Response at 6.

⁷⁹ See Agilent’s February 10, 2016, Response at 7 and Attachment 7.

⁸⁰ *Id.* Agilent previously provided this table (without the additional contextual information and description) in Agilent’s Scope Ruling Request. See Agilent’s Scope Ruling Request at Attachment A, Figure 3.

Regarding the testing performed, Agilent explains that original test data which existed at or prior to the development of the MFR are not available, but that the MFR was more recently tested according to a “reproduction of the original thermal performance goals” in order to confirm the original thermal performance of the MFR within the greater system.⁸¹

Agilent further argues that the MFR is differentiated from other aluminum extrusions because it has been precision fabricated using CNC processing, and therefore, the CNC processing differentiates it from other aluminum extrusions.⁸² Also, Agilent argues the MFR is sold through different channels of distribution and at higher prices than other aluminum extrusions.⁸³ Finally, should the Department find that the parts at issue are within the scope of the cases, Agilent request that the Department’s scope ruling be effective only on and after the date of the Department’s scope ruling.⁸⁴

Petitioner’s Comments

Citing the ECCO LED Light Bars and Precision Machine Parts Scope Rulings, Petitioner contends that the MFR does not satisfy the Department’s criteria for “finished merchandise.”⁸⁵ Petitioner argues that Agilent’s product “is no more than an wholly-extruded aluminum sub-component and is not imported with the other components to which it must be attached in order to create a complete subassembly, much less a full mass spectrometer, of which it is but one sub-part.”⁸⁶ Petitioner also notes that in Precision Machine Parts Scope Ruling, the Department found certain technical instruments to be subject merchandise despite having been precision fabricated using CNC processing.⁸⁷

Petitioner insists that the MFR is not covered by the finished merchandise exclusion because, for a product to qualify for the finished merchandise exclusion, it must be: 1) comprised of extruded aluminum and other non-extruded aluminum parts; and 2) fully and permanently assembled and completed at the time of entry.⁸⁸ Citing Auto Trim Kits Scope Ruling, among others, Petitioner argues further that “{t}he Department has ruled in multiple scope determinations that, for a

⁸¹ See Agilent’s May 13, 2016, Response at 2 to 5.

⁸² See Agilent’s March 23, 2015, Response at 4.

⁸³ See, e.g., Agilent’s Scope Ruling Request at 11.

⁸⁴ See Agilent’s April 24, 2015 submission at 1.

⁸⁵ See Letter from Petitioner to the Department, regarding “*Aluminum Extrusions from the People’s Republic of China*: Comments on Agilent’s Request for Scope Ruling on its Mass Filter Radiator,” dated April 21, 2015 (Petitioner’s April 21, 2015 Comments) at 2 to 3 (citing to Memorandum from Laurel LaCivita to Christian Marsh, regarding: “Antidumping and Countervailing Duty Orders on Aluminum Extrusions from the People’s Republic of China: Final Scope Ruling on ECCO’s Heat Sinks for LED Lights Bars,” dated November 24, 2014 (ECCO LED Light Bars Scope Ruling) and (Precision Machine Parts Scope Ruling).

⁸⁶ See Petitioner’s April 21, 2015 Comments at 5. See also Letter from Petitioner to the Department, regarding “*Aluminum Extrusions from the People’s Republic of China*: Comments in advance of the Department’s Scope Determination,” dated May 21, 2015 (Petitioner’s May 21, 2015 Comments) at 2 and 5 to 6. See also the *Orders*.

⁸⁷ See Petitioner’s April 21, 2015 Comments at 5 to 6, 8 to 9, and 11 and Petitioner’s May 21, 2015 Comments at 3 to 4 (citing to Precision Machine Parts Scope Ruling). See also the *Orders*.

⁸⁸ See Petitioner’s May 21, 2015 Comments at 5 and Petitioner’s April 21, 2015 Comments at 11 and 13 to 14. See also the *Orders*.

product to be ‘finished merchandise,’ it cannot lack one or more components, or consist solely of extruded aluminum, much less a single part made of extruded aluminum.”⁸⁹

Also, Petitioner points out that while Agilent cites the SMVC Scope Ruling⁹⁰ and *Valeo Redetermination* to advance its argument that finished merchandise need not contain more than extruded aluminum, the products examined in SMVC Scope Ruling, Valeo Automotive Heating and Cooling Systems Scope Ruling, and *Valeo Redetermination* included both extruded aluminum and non-extruded aluminum components.⁹¹ Further, Petitioner argues, the Department has largely discredited its approach since *Valeo Redetermination*, and refined its analysis of the finished merchandise exclusion.⁹²

Petitioner further maintains that the MFR is not a “finished heat sink.”⁹³ Petitioner contends that in its decision with regard to whether the products in ECCO LED Light Bars Scope Ruling constitute in-scope merchandise, the Department laid out a two part test. For a product to qualify under the exclusion for “finished heat sinks,” the party seeking the exclusion must: 1) demonstrate how the design and production of the item are organized around meeting specified thermal performance requirements; and 2) demonstrate how the item is fully, though not necessarily individually, tested to comply with those specified thermal performance requirements.⁹⁴ Petitioner argues that MFR fails to satisfy both portions of the Department's two-part test.⁹⁵ Further, Petitioner argues that in ECCO LED Light Bars Scope Ruling, the Department found that physical (*e.g.*, dimensional) specifications intended to produce heat-sink performance characteristics were not enough to satisfy this two-prong test.⁹⁶

⁸⁹ See Petitioner's April 21, 2015 Comments at 10 and 14 to 18 and Petitioner's May 21, 2015 Comments at 5 (citing Memorandum from Raquel Silva, Senior international Trade Compliance Analyst, Office III, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, re: *Antidumping and Countervailing Duty Orders on Aluminum Extrusions from the People's Republic of China- Final Scope Ruling on Signature Partners Inc.'s Auto Trim Kits* (July 16, 2014) (Auto Trim Kits Scope Ruling); Memorandum from John Conniff, Senior Trade Analyst, and Eric B. Greynolds, Program Manager, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, re: *Antidumping (AD) and Countervailing (CVD) Orders on Aluminum Extrusions from the People's Republic of China (PRC)-Final Scope Ruling on Certain Retractable Awning Mechanisms* (October 14, 2011) (Retractable Awning Mechanisms Scope Ruling); Memorandum from Paul Stolz, Senior Int'l Trade Compliance Analyst, Office III, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, re: *Antidumping and Countervailing Duty Orders on Aluminum Extrusions from the People's Republic of China -Final Scope Ruling on Five Lakes Trading, Inc.'s Pocket Door Tracks* (July 22, 2014) (Pocket Door Tracks Scope Ruling); Memorandum from Susan H. Kuhbach, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, re: *Aluminum Extrusions from the People's Republic of China ("PRC") – Preliminary Determination: Comments on the Scope of the Investigations* (October 27, 2010) (Preliminary Determination Scope Memorandum) at 12 to 13, and All Points Cleats Scope Ruling at 10 to 15).

⁹⁰ See SMVCs Scope Ruling.

⁹¹ See Petitioner's April 21, 2015, Comments at 17 (citing SMVC Scope Ruling, Valeo Automotive Heating and Cooling Systems Scope Ruling, and *Valeo Redetermination*).

⁹² *Id.* at 17 (citing Delphi Core Heater Tubes Scope Ruling at 12).

⁹³ *Id.* at 5 and 18 to 23.

⁹⁴ See Petitioner's April 21, 2015 Comments at 18 to 19 (citing ECCO LED Light Bars Scope Ruling at 15 to 23).

⁹⁵ *Id.* at 18, and Petitioner's May 21, 2015 Comments at 2 to 3 and 6 to 8.

⁹⁶ *Id.* at 20.

Additionally, Petitioner argues that by failing to provide any R&D information, Agilent failed to document that “the design and production” of the MFR had been “organized around meeting specified thermal performance requirements,” as required by the scope of the *Orders*.⁹⁷ Petitioner therefore maintains that Agilent’s claims that its product is an excludable “finished heat sink” is unsupported by record evidence.⁹⁸

Finally, citing *Shenyang Yuanda*,⁹⁹ Petitioner argues that Agilent’s request that the Department deem the MFR to be subject effective as of the date of the Department’s scope ruling is contrary the Department’s practice.¹⁰⁰

DEPARTMENT’S POSITION

We find that the description of the product, the scope language, the Petition, and prior rulings are, together, dispositive as to whether the product at issue is subject merchandise, in accordance with 19 CFR 351.225(k)(1).¹⁰¹ 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 Agilent’s MFR is covered by the scope of the *Orders*.

Information in Agilent’s Scope Ruling Request indicates that its MFR aluminum extrusions component consists entirely of a single piece of extruded aluminum and is further processed in a manner described in the scope of the *Orders*.¹⁰² The MFR requires no further assembly or fabrication after importation; it is ready for immediate use as a component in a mass spectrometer.¹⁰³

The scope of the *Orders* explicitly excludes “finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry, such as finished windows with glass, doors with glass or vinyl, picture frames with glass pane and backing material, and solar panels,” and “finished goods kits” which are defined as “a packaged combination of parts that contains, at the time of importation, all of the necessary parts to fully assemble a final finished good and requires no further finishing or fabrication, such as cutting or punching, and is assembled ‘as is’ into a finished product.” The scope also provides that 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.

As previously explained in the All Points Cleats Scope Ruling, the Unger Pole Handles Scope

⁹⁷ *Id.* at 20 to 23, Petitioner’s May 21, 2015 Comments at 2 and 8, and Petitioner’s June 16, 2015 Comments. *See also* Agilent’s March 23, 2015 Response at 4 to 5, 8, and Exhibit 6 and the *Orders*.

⁹⁸ *See* Petitioner’s June 16, 2015 Comments at 2 and 6 to 7.

⁹⁹ *See* Petitioner’s May 21, 2015 Comments at 12 to 12 (citing to *Shenyang Yuanda Aluminum Ind. Eng’g Co. v. United States*, 961 F. Supp. 2d 1291, 1304-1305 (Ct. Int’l Trade 2014) (*Shenyang Yuanda*)).

¹⁰⁰ *See* Petitioner’s May 21, 2015 Comments at 2 to 3 and 10 to 14. *See also* Agilent’s April 24, 2015 submission at 1.

¹⁰¹ *See* Petition Scope Section and Relevant Scope Rulings Memorandum.

¹⁰² *See* Scope Ruling Request at 9.

¹⁰³ *Id.*

Ruling, the TSS Wind Sign Frames Scope Ruling, the Agilent Hose Adapter Scope Ruling, and the Delphi Tube and Block Assemblies Scope Ruling, we take the “as parts” language in the finished merchandise exclusion to mean that the excluded “finished merchandise” must contain both aluminum extrusions “as parts” as well as one or more non-extruded aluminum components.¹⁰⁴ 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.” Thus, to give effect to this “as parts” language, we find that to qualify for the finished merchandise exclusion the product must contain both aluminum extrusions as parts, as well as some component besides aluminum extrusions. As such, because Agilent’s MFR is composed entirely of aluminum extrusions, it not excluded from the scope of the order under the “finished merchandise” exclusion.

However, Agilent maintains that merchandise comprised exclusively of aluminum extrusions can be excluded from the scope of the *Orders* as “finished goods.”¹⁰⁵ In support of this contention, Agilent argues that the scope, as proposed in the Petition, envisioned that the aluminum extrusions within the scope would be otherwise further processed after importation.¹⁰⁶ We disagree, as the Petition itself does not support Agilent’s contention.

In Exhibit I-5 to the Petition, Petitioner provided several “product examples” which it said were examples of subject merchandise, and provided three examples of products which would meet the exclusion for “fully assembled finished goods containing aluminum extrusions:” windows, doors, and solar panels.¹⁰⁷ All three of these “finished merchandise” examples have both non-aluminum extrusions and aluminum extrusion components. On the other hand, the examples of in-scope merchandise in the Petition appear include products such as Agilent’s MFR:

Subject Merchandise	
Product Type	Product Examples
Aluminum extrusions, not further fabricated	Mill finish, painted, powder coated, anodized, or otherwise coated aluminum extrusions

¹⁰⁴ See the All Points Cleats Scope Ruling at 12; Unger Pole Handles Scope Ruling at 12 to 13; Memorandum from Mark Flessner, Analyst, through Abdelali Elouaradia, Acting Director, Office VI, 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 TSS, Inc.'s Wind Sign Frames,” June 15, 2015 (TSS Wind Sign Frames Scope Ruling) at 11 to 12; Memorandum from Tyler Weinhold, Analyst, and Robert James, Program manager, Office VI, through Scot Fullerton, Office Director, Office VI, to Christian Marsh, Deputy Assistant Secretary-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,” (October 14, 2015) (Agilent Hose Adapter Scope Ruling) at 14, and Delphi Tube and Block Assemblies Scope Ruling at 11 to 16.

¹⁰⁵ See Agilent’s Scope Ruling Request at 6 to 8.

¹⁰⁶ *Id.* at 6 to 8.

¹⁰⁷ See Petition at 4 and Exhibit I-5.

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
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
Non-Subject Merchandise	
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).	

Agilent’s MFR is an example of “aluminum extrusions, with fabrication,” and therefore would be considered subject merchandise under the examples provided in the Petition.

With respect to Agilent’s argument regarding the *ITC Report*, we disagree that the ITC did not exclude products comprised entirely of aluminum extrusions from its definition of finished goods, but instead focused on aluminum extrusions used as an input into other products. The ITC considered subject aluminum extrusions to be inputs in the manufacture of many other products within broad downstream industries.¹⁰⁸ The *ITC Report* explains that subject aluminum extrusions are often finished and further processed.¹⁰⁹ However, the *ITC Report* does not indicate that products which are composed entirely of aluminum extrusions, even aluminum

¹⁰⁸ See the *ITC Report* at I-3 and I-10.

¹⁰⁹ *Id.* at I-3, I-10, and I-11.

extrusions which are fabricated in a manner described in the scope as indicative of subject merchandise are excluded “finished merchandise” under the scope of the *Orders*. Accordingly, we do not agree with Agilent that the *ITC Report* supports its contention that the MFR meets the requirement of “finished merchandise” and should be excluded from the scope of the *Orders*.

Indeed, if the Department were to determine that a product consisting only of aluminum extrusions satisfied the finished merchandise exclusion, such a determination would, in fact, “expand” that scope exclusion to such an extent that it would encompass the entire scope of the *Orders*. That is, all aluminum extrusion products could be considered finished merchandise, and therefore would be excluded. Under Agilent’s proposed interpretation, any aluminum extrusion product, as long as it can be identified by end use, could be considered finished merchandise. This is contrary to the text of the scope which clearly covers aluminum extrusions meeting certain physical descriptions which “may be identified with reference to their end use.” It is unclear under such a scenario what products, if any, would be left to be covered by the scope of the *Orders*. We therefore disagree with Agilent’s interpretation of the scope of the *Orders*.

Agilent’s interpretation is also consistent with our past scope rulings. As explained above, in Cutting and Marking Edges Scope Ruling, the Delphi Core Heater Tubes Scope Ruling, the All Points Cleats Scope Ruling, the Unger Pole Handles Scope Ruling, the TSS Wind Sign Frames Scope Ruling, the Agilent Hose Adapter Scope Ruling, and the Delphi Tube and Block Assemblies Scope Ruling, the Department found that products which consist only of aluminum extrusions are excluded under the “finished merchandise: exclusion and were covered by the scope.”¹¹⁰

With respect to Agilent’s argument that in *Valeo Redetermination*, the Department found merchandise consisting entirely of aluminum extrusions to be excluded under the finished goods exclusion, as explained in Delphi Core Heater Tuber Scope Ruling, it is the Department’s practice to apply the “subassembly finished goods test” to subassembly products (to determine whether merchandise is covered by the “finished merchandise” exclusion).¹¹¹ However, as the Department explained in Delphi Core Heater Tubes, its analysis in the *Valeo Redetermination* was incomplete for one of the two models of products it was analyzing because the Department did not first confirm that the products at issue do not consist solely of extruded aluminum:

Concerning the Valeo Final Remand Redetermination, the Department issued the redetermination in May 2013, which was shortly after the October 2012 establishment of the “subassembly finished goods” test in the SMVC Kits Scope Ruling and the Department’s determination that products that consist solely of extruded aluminum are subject merchandise in the November 2012 Cutting & Marking Edges Scope Ruling. In the Valeo Final Remand Redetermination, the Department examined two models

¹¹⁰ See Cutting and Marking Edges Scope Ruling at 10 to 11, Delphi Core Heater Tubes Scope Ruling at 10 to 11, All Points Cleats Scope Ruling at 12, Unger Pole Handles Scope Ruling at 12 to 13, TSS Wind Sign Frames Scope Ruling at 11 to 12, Agilent Hose Adapter Scope Ruling at 14, and Delphi Tube and Block Assemblies Scope Ruling at 11 to 16.

¹¹¹ See Delphi Core Heater Tubes Scope Ruling at 10 to 11.

of automotive heating and cooling components, a T-Series, which was comprised of a shaped and bent extruded aluminum tube that also contained foam material at one end and an M-Series model that was comprised of a shaped extruded aluminum tube. The Department applied the “subassembly finished goods” test to both products. Upon review of the Valeo Final Remand Redetermination, we conclude that the Department did not consider at the time it issued the remand redetermination that the M-Series model did not contain non-aluminum materials. In that regard, the Department’s analysis in the Valeo Final Remand Redetermination is not consistent with the manner in which the Department previously or subsequently analyzed whether products meet the exclusion criteria for finished goods and finished goods kits.

Accordingly, the Department determines that its application of the “subassembly finished goods test” in the Valeo Final Remand Redetermination was consistent with its practice with respect to the T-Series model, but was inconsistent with its treatment of aluminum extruded products in other scope determinations with regard to the M-Series model. As explained above, it is the Department's practice to apply the “subassembly finished goods test” to subassembly products only after it has first confirmed that the products at issue do not consist solely of extruded aluminum.¹¹²

Accordingly, because Agilent’s MFR consists entirely of extruded aluminum, further processed in a manner consistent with the scope of the *Orders*, and meets the physical description of an aluminum extrusion product covered by the scope of the *Orders* for the reasons indicated above, we have determined that it is not covered by the “finished merchandise” exclusion to the scope of the *Orders*.

Regarding Agilent’s argument that the MFR is “akin to”¹¹³ a finished heat sink, and therefore excluded as a “finished heat sink,” we disagree.¹¹⁴ The exclusion for heat sinks describes a specific category of excluded “finished heat sinks,” which meet the following requirements: (1) the design and production of the product must be “organized around meeting specified thermal performance requirements;” and, (2) the product must be “fully, but not necessarily individually, tested to meet those specified thermal performance requirements.”¹¹⁵

¹¹² *Id.* at 11 to 12 (citing as an example, Cutting & Edging Scope Ruling at 9 to 10, which pre-dates the Valeo Final Remand Redetermination).

¹¹³ See Agilent’s Scope Ruling Request at 9 and 11 to 12.

¹¹⁴ See, e.g., *Id.* at 9 to 12.

¹¹⁵ See the *Orders*.

Agilent does not provide compelling evidence that the “design and production” of its MFR is “organized around meeting specified thermal performance requirements.”¹¹⁶ Agilent identified specific surface finish, flatness, perpendicularity, and locational tolerances for its MFR.¹¹⁷ However, as explained in ECCO LED Light Bars Scope Ruling, such requirements are not in and of themselves “specified thermal performance requirements,” around which the design and production of the product is organized.¹¹⁸ Agilent also provides certain thermal performance metrics under which the MFR is tested.¹¹⁹ However, Agilent has not demonstrated that the “design and production” of its MFR was “organized around meeting any specified thermal performance requirements,” or that such thermal performance specifications existed at that time.¹²⁰ We noted that the design of the MFR was reportedly developed several years ago, but that Agilent’s R&D Declaration is a May 2015 document.¹²¹ Agilent’s R&D Declaration further explains: “{a}lthough minor revisions have been made in recent years the thermal design has not changed since it was developed {} over 15 years ago.”¹²² For these reasons, it is also not possible for the MFR to be “fully, but not necessarily individually, tested to meet such specified thermal performance requirements, as required by the scope of the *Orders*.”¹²³

Agilent also claims that the CNC processing used to precision machine the MFR differentiates it from subject aluminum extrusions.¹²⁴ We disagree. We find that the CNC processing does not serve to render the MFR out of scope. Agilent’s MFR is not distinct from subject merchandise merely because it was produced by means of CNC processing. In the Machine Parts Scope Ruling, the Department examined whether the CNC processing produced a product that was distinct from the aluminum extrusions covered by the scope of the *Orders*.¹²⁵ In that ruling, the Department determined that the CNC process did not yield products that are distinct from subject aluminum extrusions. In particular, the Department found that the scope of the *Orders* “... encompasses the manufacturing processes utilized to create the products at issue.”¹²⁶ The Department further stated “... 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.”¹²⁷ Furthermore, in the Motor Cases Scope Ruling and the Adams Thermal Systems Fittings for Engine Cooling Systems Scope Ruling, the Department continued to find

¹¹⁶ *Id.*

¹¹⁷ See Agilent’s March 23, 2015, Response at 6; Agilent’s February 10, 2016, Response at 7 and Attachment 7; Agilent’s Scope Ruling Request at Attachment A, Figure 3; and Agilent’s May 13, 2016, Response at 3 to 5. See also the *Orders*.

¹¹⁸ See ECCO LED Light Bars Scope Ruling at 17 to 18.

¹¹⁹ See Agilent’s March 23, 2015, Response at 6; Agilent’s February 10, 2016, Response at 7 and Attachment 7; Agilent’s Scope Ruling Request at Attachment A, Figure 3; and Agilent’s May 13, 2016, Response at 3 to 5.

¹²⁰ *Id.* See also the *Orders*.

¹²¹ See Agilent’s February 10, 2016, Response at 7 and Attachment 7. See also Agilent’s Scope Ruling Request at Attachment A, Figure 3.

¹²² See Agilent’s February 10, 2016, Response at Attachment 7. See also Agilent’s May 13, 2016, Response at 3 to 4.

¹²³ See the *Orders*.

¹²⁴ See, e.g., Agilent’s Scope Ruling Request at 11.

¹²⁵ See Machine Parts Scope Ruling at 14.

¹²⁶ *Id.*, at 14.

¹²⁷ *Id.* at 14 to 22 (Comments 1 through 5), and Adams Thermal Systems Fittings for Engine Cooling Systems Scope Ruling at 24 to 25.

that a 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*.¹²⁸ As the Department pointed out in both those cases, as well as the Machine Parts Scope Ruling, heat sinks which are manufactured using a CNC process, but which do not meet the specific scope requirements for finished heat sinks, are nonetheless covered by the scope of the *Orders*.¹²⁹ The *Orders* explain that “the design and production of {“finished heat sinks”} are organized around meeting certain specified thermal performance requirements and which have been fully, albeit not necessarily individually, tested to comply with such requirements.” Thus, heat sinks whose “design and production” are not “organized around meeting certain specified thermal performance requirements” or which have not been “fully, albeit not necessarily individually, tested to comply with such requirements,” yet are fabricated by means of a CNC machine process, are not “finished heat sinks,” but are instead subject merchandise.¹³⁰ Accordingly, this indicates that the CNC machining process does not render aluminum extrusions out of scope.

Finally, with respect to Agilent’s request that that Department’s decision be effective only with regard to entries made on or after the date of the Department’s ruling, the Department is issuing this scope ruling in accordance with 19 CFR 351.225(d). Therefore, in accordance with 19 CFR 351.225(l)(3), we will instruct Customs and Border Protection (CBP) to continue suspension of liquidation of entries of Agilent’s MFR.¹³¹

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 Agilent’s MFR is not a “finished heat sink,” and is not “finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry,” and therefore does not meet the exclusion criteria for finished merchandise. Agilent’s MFR is therefore 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).

¹²⁸ See Machine Parts Scope Ruling at 14 to 22 (Comments 1 through 5), and Adams Thermal Systems Fittings for Engine Cooling Systems Scope Ruling at 24 to 25.

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ 19 CFR 351.225(l)(3) provides “If the Secretary issues a final scope ruling, under either paragraph (d) or (f)(4) of this section, to the effect that the product in question is included within the scope of the order, any suspension of liquidation under paragraph (l)(1) or (l)(2) of this section will continue. Where there has been no suspension of liquidation, the Secretary will instruct the Customs Service to suspend liquidation and to require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the product entered, or withdrawn from warehouse, for consumption on or after the date of initiation of the scope inquiry.

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

8/11/16

Date