



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

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Scope Ruling: Aluminum Pallets

Public Document

AD/CVD Operations, OVI: SHOefke

December 7, 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: Scott Hoefke
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 Certain Aluminum Pallets

SUMMARY

On December 30, 2016, the Aluminum Extrusion Fair Trade Committee (Petitioner)¹ filed a scope ruling request asking the Department of Commerce (Department) to determine whether certain aluminum extrusions from the People's Republic of China (PRC) made of series 1xxx aluminum alloy, which are cut-to-length and welded together in the form of a pallet, produced/exported by China Zhongwang Holdings Limited and its affiliates² (collectively, Zhongwang) are subject to the antidumping duty (AD) and countervailing duty (CVD) orders on aluminum extrusions from the PRC.³ Based on the Scope Ruling Request and additional record evidence, the Department determines that certain aluminum extrusions from the PRC made of

¹ See Letter from Petitioner to the Secretary of Commerce, "Aluminum Extrusions from the People's Republic of China: Resubmission of Scope Clarification and Circumvention Inquiry Request Pursuant to the Department's Request," dated December 30, 2016 (Scope Ruling Request).

² Petitioner provided the following known affiliates: Dalian Liwan Trade Co., Ltd.; Tianjin Boruxin Trading Co., Ltd.; and Dragon Luxe Limited; Pencheng Aluminum Enterprise Inc. USA; Global Aluminum (USA) Inc.; Signature Aluminum Canada Inc.; Aluminum Shapes, LLC; Perfectus Aluminum Inc.; and Perfectus Aluminum Acquisitions LLC.

³ 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*).

series 1xxx aluminum alloy which are cut-to-length and welded together in the form of a pallet, regardless of producer or exporter, are included the scope of the *Orders*.

BACKGROUND

On December 30, 2015, Petitioner requested that the Department determine whether certain aluminum pallets are inside the scope of the *Orders*.⁴ On January 29, 2016, and February 2, 2016, the Department requested further information from Petitioner.⁵ On July 7, 2016, Petitioner submitted its response to the Department's supplemental questionnaires.⁶ On August 18, 2016, the Department extended the deadline for issuing a scope ruling or initiating a scope inquiry to October 5, 2016.⁷ On September 7, 2016, Petitioner filed factual information and comments on the recent acquisition activity of Zhongwang.⁸ On September 9, 2016, the Department extended the deadline for issuing a scope ruling or initiating a scope inquiry to November 19, 2016.⁹ On September 15, 2016, Petitioner filed additional factual information and comments.¹⁰ On September 16, 2016, Petitioner filed additional factual information and comments pertaining to Zhongwang's stockpiling of aluminum pallets.¹¹ On October 25, 2016, Petitioner filed a request for removal of business proprietary treatment for certain information and comments, which reset the deadline for issuing a scope ruling or initiating a scope inquiry to December 9, 2016.¹²

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

⁴ See Scope Ruling Request.

⁵ See Letter from the Department to the Petitioner dated January 29, 2016; *see also* Letter from the Department to the Petitioner dated February 2, 2016.

⁶ See Letter from Petitioner "Aluminum Extrusions from the People's Republic of China: Response to the Department's Requests for Supplementary Information" dated July 7, 2016 (SQR).

⁷ See Letter from the Department to the Petitioner dated August 18, 2016.

⁸ See Letter from Petitioner "Aluminum Extrusions from the People's Republic of China: Comments Regarding Zhongwang's Recent Aluminum Industry Acquisition Activity" dated September 7, 2016 (Comments on Zhongwang's Acquisition).

⁹ See Letter from the Department to the Petitioner dated September 9, 2016.

¹⁰ See Letter from Petitioner "Aluminum Extrusions from the People's Republic of China: Comments on Recent Aluminum Shapes LLC Developments" dated September 14, 2016 (Comments on Aluminum Shapes).

¹¹ See Letter from Petitioner "Aluminum Extrusions from the People's Republic of China: Comments on Developments Connected with Zhongwang's Stockpiling of Pallets," dated September 16, 2016 (Stockpiling of Pallets).

¹² See Letter from the Petitioner "Aluminum Extrusions from the People's Republic of China: Request to Withdraw Business Proprietary Treatment for Alloy Designations Concerning Aluminum Pallets and Comments in Advance of the Department's Final Scope Ruling" dated October 25, 2016 (BPI Treatment Removal Request and Comments).

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 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): 9031.90.90.95, 7616.10.90.90, 7609.00.00, 7610.10.00, 7610.90.00, 7615.10.30, 7615.10.71, 7615.10.91, 7615.19.10, 7615.19.30, 7615.19.50, 7615.19.70, 7615.19.90, 7615.20.00, 7616.99.10, 7616.99.50, 8479.89.98, 8479.90.94, 8513.90.20, 9403.10.00, 9403.20.00, 7604.21.00.00, 7604.29.10.00, 7604.29.30.10, 7604.29.30.50, 7604.29.50.30, 7604.29.50.60, 7608.20.00.30, 7608.20.00.90, 8302.10.30.00, 8302.10.60.30, 8302.10.60.60, 8302.10.60.90, 8302.20.00.00, 8302.30.30.10, 8302.30.30.60, 8302.41.30.00, 8302.41.60.15, 8302.41.60.45, 8302.41.60.50, 8302.41.60.80, 8302.42.30.10, 8302.42.30.15, 8302.42.30.65, 8302.49.60.35, 8302.49.60.45, 8302.49.60.55, 8302.49.60.85, 8302.50.00.00, 8302.60.90.00, 8305.10.00.50, 8306.30.00.00, 8414.59.60.90, 8415.90.80.45, 8418.99.80.05, 8418.99.80.50, 8418.99.80.60, 8419.90.10.00, 8422.90.06.40, 8473.30.20.00, 8473.30.51.00, 8479.90.85.00, 8486.90.00.00, 8487.90.00.80, 8503.00.95.20, 8508.70.00.00, 8515.90.20.00, 8516.90.50.00, 8516.90.80.50, 8517.70.00.00, 8529.90.73.00, 8529.90.97.60, 8536.90.80.85, 8538.10.00.00, 8543.90.88.80, 8708.29.50.60, 8708.80.65.90, 8803.30.00.60, 9013.90.50.00, 9013.90.90.00, 9401.90.50.81, 9403.90.10.40, 9403.90.10.50, 9403.90.10.85, 9403.90.25.40, 9403.90.25.80, 9403.90.40.05, 9403.90.40.10, 9403.90.40.60, 9403.90.50.05, 9403.90.50.10, 9403.90.50.80, 9403.90.60.05, 9403.90.60.10, 9403.90.60.80, 9403.90.70.05, 9403.90.70.10, 9403.90.70.80, 9403.90.80.10, 9403.90.80.15, 9403.90.80.20, 9403.90.80.41, 9403.90.80.51, 9403.90.80.61, 9506.11.40.80, 9506.51.40.00, 9506.51.60.00, 9506.59.40.40, 9506.70.20.90, 9506.91.00.10, 9506.91.00.20, 9506.91.00.30, 9506.99.05.10, 9506.99.05.20, 9506.99.05.30, 9506.99.15.00, 9506.99.20.00, 9506.99.25.80, 9506.99.28.00, 9506.99.55.00, 9506.99.60.80, 9507.30.20.00, 9507.30.40.00, 9507.30.60.00, 9507.90.60.00,

and 9603.90.80.50

The subject merchandise entered as parts of other aluminum products may be classifiable under the following additional Chapter 76 subheadings: 7610.10, 7610.90, 7615.19, 7615.20, and 7616.99, as well as under other HTSUS chapters. In addition, fin evaporator coils may be classifiable under HTSUS numbers: 8418.99.80.50 and 8418.99.80.60. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these *Orders* is dispositive.

LEGAL FRAMEWORK

When a request for a scope ruling is filed, the Department examines the scope language of the order at issue and the description of the product contained in the scope-ruling request.¹³ 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.¹⁴ 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.¹⁵

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

The merchandise subject to the Scope Ruling Request is extruded aluminum profiles made of series 1xxx aluminum alloy, which are cut-to-length and welded together in the form of a pallet, from the PRC, regardless of producer or exporter. The merchandise does not contain any non-aluminum extruded component.¹⁶

¹³ See *Walgreen Co. v. United States*, 620 F.3d 1350, 1357 (Fed. Cir. 2010).

¹⁴ See 19 CFR 351.225(k)(1).

¹⁵ See 19 CFR 351.225(d).

¹⁶ See Scope Ruling Request at 16-17; see also SQR at 1-2, see also BPI Treatment Removal Request and Comments at 2.

RELEVANT SCOPE DETERMINATIONS¹⁷Geodesic Domes Kits Scope Ruling¹⁸

J.A. Hancock Co., Inc. (J.A. Hancock), an importer of geodesic structure kits (a set of aluminum poles and assembly hardware that can be assembled into landscaping structures or climbing structures for children), argued that its kits contained all parts necessary to fully assemble a final geodesic structure. J.A. Hancock further noted that the components in its kits required no further fabrication or additional parts. The Department determined that the geodesic structure kits met the initial requirements for exclusion as a “finished goods kit,” as they are a packaged combination of parts containing all necessary components to fully assemble a final finished good.¹⁹ However, the Department noted that the scope of the *Orders* states that an “imported product will not be considered a ‘finished goods kit’ . . . merely by including fasteners such as screws, bolts, etc. in the packaging with an aluminum extrusions product.”²⁰ As J.A. Hancock’s kits only consisted of extruded aluminum poles and fasteners, the Department found that the exception to the “finished goods kit” exclusion applies. Therefore, the Department determined J.A. Hancock’s kits to not be excluded finished goods kits, and hence covered by the scope of the *Orders*.

Cutting and Marking Edges Scope Ruling²¹

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.²² 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.²³

¹⁷ See the memorandum from Scott Hoefke to The File, “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 (Relevant Scope Rulings Memorandum).

¹⁸ See the memorandum from Brooke Kennedy to Christian Marsh, “Final Scope Ruling on J.A. Hancock, Inc.’s Geodesic Structures,” dated July 17, 2012 (Geodesic Domes Kits Scope Ruling); see also (Relevant Scope Rulings Memorandum at Attachment 1.

¹⁹ See Geodesic Domes Kits Scope Ruling at 7.

²⁰ *Id.*

²¹ 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; see also (Relevant Scope Rulings Memorandum at Attachment 2.

²² See Cutting and Marking Edges Scope Ruling at 2.

²³ *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).

Delphi Core Heater Tubes²⁴

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.²⁵ In other words, the products in question were comprised entirely of extruded aluminum. The Department determined that this product did not meet the requirements of the exclusions for “finished merchandise” or “finished goods kits” because it 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 good kit, *i.e.*, whether the product contains parts other than aluminum extrusions and mere fasteners.²⁶

TSS Wind Sign Frames Scope Ruling²⁷

At issue in this ruling were certain Wind Sign Frames that were designed to display or incorporate customizable materials such as graphics or retail advertisements.²⁸ The Wind Sign Frames consisted of extruded aluminum parts assembled with other non-extruded aluminum components, such as a plastic insert, galvanized steel corner supports, and flexible, heavy steel springs.²⁹ In this ruling, the Department determined that these non-extruded aluminum components go beyond mere fasteners.³⁰ Also, the Department found that the product at issue was fully and permanently assembled and completed at the time of entry. Lastly, the Department found that the Wind Sign Frames can be used after importation with interchangeable bases made of plastic or steel, chosen by the end user. Similar to prior scope rulings, the Department found that it was unreasonable to require the TSS Wind Sign Frames to be imported with interchangeable bases in order to meet the provisions of the finished goods exclusion set forth in the scope description.³¹ The Department concluded that TSS, Inc.’s Wind Sign Frames satisfied the exclusion for “finished merchandise” and thus, were excluded from the scope of the *Orders*.³²

²⁴ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “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 3.

²⁵ *Id.* at 4 - 5.

²⁶ *Id.* at 10 – 11.

²⁷ See Memorandum entitled, “Final Scope Ruling on TSS, Inc.’s Wind Sign Frames,” dated June 15, 2015. (“Wind Sign Frames Scope Ruling”), *see also* Prior Scopes Memorandum at Attachment 4.

²⁸ *Id.* at 5.

²⁹ *Id.* at 12.

³⁰ *Id.* at 12-13.

³¹ *Id.* at 13.

³² *Id.*

ARGUMENTS FROM INTERESTED PARTIES

Petitioner's Comments

Petitioner argues that the series 1xxx aluminum pallets in question are subject merchandise based on the plain language of the scope of the *Orders*, *i.e.*, “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.”³³ Petitioner also states the series 1xxx aluminum pallets are made of aluminum extrusions that have been cut-to-length and welded together, which are covered by the scope of the *Orders*.³⁴ Petitioner also argues that the fact that the series 1xxx aluminum pallets can be identified and referenced by their alleged end use does not remove the product from the scope of the *Orders*.³⁵

Petitioner argues that the series 1xxx aluminum pallets are not excludable under the finished merchandise exclusion.³⁶ Petitioner points out that the Department has repeatedly found that products made entirely of extruded aluminum with no non-extruded aluminum components – like the products at issue – are not considered finished merchandise.³⁷ Petitioner acknowledges that the Court of International Trade has questioned the Department’s reasoning, and argues that even under the Court’s interpretation, the product would not satisfy the finished merchandise exclusion because it is not useable as a “final finished product,” *i.e.*, a pallet.³⁸ Petitioner states that the series 1xxx aluminum pallets lack the necessary size, thickness, weight, strength, rigidity, and series of aluminum alloy to perform the key functions of pallets – *i.e.*, to bear the loads required of pallets or to function with forklifts.³⁹ Therefore, Petitioner avers, they do not qualify for the finished merchandise exclusion.

Petitioner argues that Zhongwang’s acquisition of Ohio-based Aleris Corporation (Aleris), illustrates Zhongwang’s continued focus on and drive to find and maintain outlets for what Petitioner calls “fake” semi-finished aluminum extrusions (*e.g.* aluminum pallets) in the U.S. aluminum market.⁴⁰ Petitioner asserts that Zhongwang’s acquisition of Aleris is an attempt to stay ahead of the Department’s investigation into its importation practices.⁴¹ Therefore, Petitioner avers the Department should also find that imports of these pallets by Zhongwang and its affiliates, including the latest entities identified in the Aleris acquisition, Zhongwang USA and Zhongwang Aluminum, are subject to duties, meaning that Zhongwang and its affiliates should be paying duties on imports of these fake pallets.⁴²

³³ See Scope Ruling Request at 19.

³⁴ *Id.* at 20.

³⁵ *Id.* at 20.

³⁶ *Id.* at 21.

³⁷ *Id.* at 21-22 citing Cutting and Marking Edges Scope Ruling, Geodesic Domes Kits Scope Ruling, and Delphi Core Heater Tubes Scope Ruling.

³⁸ *Id.* at 22-23 referencing *Meridian Products, LLC v. United States*, CIT No. 13-00018 and *Plasticoid Mfg. Inc. v. United States*, 28 F. Supp. 3d 1352 (CIT 2014).

³⁹ *Id.* at 16-17, 21-24, & Exhibits 9-14.

⁴⁰ See Zhongwang’s Acquisition at 3-4.

⁴¹ *Id.* at 5.

⁴² *Id.* at 6.

Petitioner argues that Zhongwang's affiliate Aluminum Shapes LLC (Aluminum Shapes) is involved in the importation of series 1xxx aluminum pallets.⁴³ Petitioners point out that the Wall Street Journal published a article on Zhongwang's stockpiling of a similar "pallet" at Aluminum Shapes and its shipment of aluminum "pallets" to other affiliates.⁴⁴ Petitioner argues that Aluminum Shapes' decision to transport and remove its significant stockpile of "pallets" is an indication that Zhongwang is acting to evade responsibility for its improperly entered imports. Further, Petitioner argues that it is clear that the series 1xxx aluminum pallets imported by Zhongwang and U.S. affiliates like Aluminum Shapes were entered to evade duties.⁴⁵ Petitioner stresses that series 1xxx aluminum pallets are nothing more than a stack of aluminum extrusions that are welded together into a shape that facilitates evasion of the duties otherwise owed on such imports, and that they are not excludable as "finished merchandise," nor under any other exception carved out in the scope of the *Orders*.⁴⁶

Petitioner pointed out that the Wall Street Journal published another article on September 15, 2016, about Zhongwang's stockpiling of aluminum pallets.⁴⁷ Petitioner argues that the quote in the article from Mr. Goehring underpins its assertion that the series 1xxx aluminum pallets are not real pallets because the series 1xxxx aluminum pallets are "too heavy" to be true pallets, apparently "useful only as a way of getting a big mass of aluminum past Customs."⁴⁸ Petitioner states that series 1xxx aluminum pallets are three times heavier than actual commercial pallets, further demonstrating that the "pallets" entered by Zhongwang are not in fact pallets and do not satisfy the "finished merchandise" exclusion in the scope and should, therefore, be included in the scope of the *Orders*.⁴⁹

Lastly, Petitioner argues that the Department should apply the scope ruling country-wide regardless of producer or exporter and regardless of alloy (*i.e.*, incorporating not just series 1xxx aluminum alloy, but 3xxx and 6xxx as well).⁵⁰ Petitioner argues that the series 1xxx aluminum pallets were entered into the United States with the sole purpose of re-melting the alleged pallets at its affiliates cast house furnace.⁵¹ Petitioner stresses that the series 1xxx aluminum pallets were never intended to be used as pallets and any limitation of alloy would provide a "roadmap" to producers to circumvent the *Orders* by producing aluminum pallets of other alloys used for extrusion applications (*i.e.*, series 3xxx, series 6xxx, 5050 which is currently the subject of a scope segment of this proceeding).⁵² Petitioner argues that there is evidence which demonstrates that Zhongwang's pallets were never intended to be used as aluminum pallets, are comprised solely of aluminum extrusions, and, thus, should be subject to the scope of *Orders*.⁵³

No other party submitted comments.

⁴³ See Comments on Aluminum Shapes at 2.

⁴⁴ *Id.* at 3 referencing Exhibit 1.

⁴⁵ *Id.* at 3.

⁴⁶ *Id.* at 4.

⁴⁷ See Stockpiling of Pallets at 1-2.

⁴⁸ *Id.* at 2 referencing Exhibit 1.

⁴⁹ *Id.* at 3-4.

⁵⁰ See BPI Treatment Removal Request and Comments at 3.

⁵¹ *Id.* at 3, referencing Comments on Aluminum Shapes at 3 and Exhibit 1.

⁵² *Id.* at 3-4.

⁵³ *Id.* at 4-5.

DEPARTMENT'S POSITION

The Department examined the language of the *Orders*, the description of the product contained in Petitioner's Scope Ruling Request, prior scope rulings, and the Petition. We find that the description of the product, the scope language, 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). Accordingly, for this determination, the Department finds it unnecessary to consider the additional factors specified in 19 CFR 351.225(k)(2).

As noted above, the scope of the *Orders* includes "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{.}"⁵⁴ In addition, subject "{a}luminum 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{,}"⁵⁵ and "may also be fabricated, *i.e.*, prepared for assembly{,}... {which} include{s}, but {is} not limited to, extrusions that are cut-to-length, machined, drilled, punched, notched, bent, stretched, knurled, swaged, mitered, chamfered, threaded, and spun."⁵⁶ Finally: "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."⁵⁷

We find that the products at issue satisfy the definition of the scope of the *Orders* because they are extruded aluminum profiles consisting of series 1xxx aluminum alloy which are cut-to-length and welded together. Furthermore, although the products are identified and referenced by their alleged end use, regardless of whether they are ready for use at the time of importation, this does not remove the products from the scope of the *Orders*. The language of the scope explains that "subject extrusions may be identified with reference to their end use . . ." and that products "are subject merchandise if they otherwise meet the scope definition, regardless of whether they are ready for use at the time of importation."⁵⁸ Thus, we agree with Petitioner that the products at issue are included in the *Orders* based on the plain language of the scope.

In addition, we agree with Petitioner that the products at issue do not qualify for the finished merchandise exclusion, which excludes "finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry."⁵⁹ We find that the scope language describes excluded finished merchandise as "containing aluminum extrusions *as parts*..." As previously explained in the Wind Sign Frames Scope Ruling, this language means that the excluded "finished merchandise" must contain both aluminum extrusions "as parts" as well as an additional non-extruded aluminum component.⁶⁰ Otherwise, this specific language (*i.e.*, "as parts") would be read out of the scope, resulting in the different

⁵⁴ See the *Orders*.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ See the *Orders*.

⁶⁰ See Wind Sign Frames Scope Ruling at 11-12.

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.⁶¹

An interpretation which would allow products which consist entirely of aluminum extrusions to be excluded from the scope of the *Orders* would allow the finished merchandise exclusion to swallow the rule embodied by the scope. Therefore, we do not find such an interpretation to be supported by the plain language of the *Orders* or reasonable.

For similar reasons, in the Delphi Core Heater Tubes Scope Ruling, the Department found that the products at issue in that scope ruling, which consist only of aluminum extrusions, are not finished merchandise under this exclusionary scope language.⁶² The Department also explained that the products identified by their end use and consisting solely of aluminum extrusions do not meet the exclusion for finished goods because “the products consist entirely of aluminum extrusions.”⁶³ The Department reached a similar finding in the Cutting and Marking Edges Scope Ruling.⁶⁴ Thus, in the instant case, because the products at issue are only composed of aluminum extrusions, they therefore do not meet the requirements for the finished merchandise exclusion.

In addition, the description of the merchandise in the Petition, which is a factor identified in 19 CFR 351.225(k)(1), does not support the exclusion of extruded aluminum profiles made from series 1xxx aluminum which are cut-to-length and welded together in the form of a pallet. In Exhibit I-5 to the Petition, the 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.⁶⁵ Unlike the product that is the subject of this scope ruling, all three of these “finished merchandise” examples have both non-aluminum extrusions and aluminum extrusion components.

We also agree with Petitioner that assuming, *arguendo*, that the product at issue did not need to contain a non-aluminum extruded component to satisfy the finished merchandise exclusion, the product nonetheless would fail the exclusionary language because the record demonstrates that it is not finished merchandise. Petitioner has provided information that the product at issue is not suitable for use as a pallet. In particular, the evidence provided by Petitioner demonstrates that the products lack the necessary size, thickness, weight, strength, rigidity, and series of aluminum alloy to perform the key functions of pallets – *i.e.*, to bear the loads required of pallets or to function with forklifts.⁶⁶ We find that the aluminum extrusions made from series 1xxx aluminum alloy and welded together in the form of a pallet do not qualify for the “finished merchandise” exclusion if they are not suitable for use as the finished merchandise, *i.e.*, a pallet.

Finally, we agree with Petitioner that the scope ruling should be applied to all extruded

⁶¹ See Delphi Core Heater Tubes Scope Ruling at 10-11.

⁶² See Delphi Core Heater Tubes Scope Ruling at 9-14.

⁶³ *Id.* at 11.

⁶⁴ See Geodesic Domes Scope Ruling at 7; see also Cutting and Marking Edges Scope Ruling at 10-11.

⁶⁵ See Relevant Scope Rulings Memorandum at Attachment 5.

⁶⁶ Scope Ruling Request at 16-17, 21-24, & Exhibits 9-14.

aluminum profiles from the PRC consisting of series 1xxx aluminum alloy which are cut-to-length and welded together in the form of a pallet, regardless of producer or exporter. We note that our analysis above is not contingent on any specific company, but rather, focuses on the description of the product at issue provided by Petitioner. Additionally, information on the record suggests that Zhongwang's affiliate network is growing.⁶⁷ Therefore, we agree with Petitioner and find that all such products regardless of producer or exporter from the PRC are covered by the *Orders*.

However, we disagree with Petitioner that the Department should expand the scope ruling to include all such products, regardless of aluminum alloy. We find that Petitioner has not provided sufficient evidence or argument demonstrating that it would be appropriate to make a ruling with respect to merchandise made from other aluminum alloy series because, for example, the evidence provided only pertains to extruded aluminum profiles consisting of series 1xxx aluminum alloy which are cut-to-length and welded together to form the shape of a pallet. Petitioner has provided no evidence demonstrating that such products, regardless of aluminum alloy, are in existence. The Department's practice with respect to scope ruling requests is that the product need not have been imported, but that the requesting party must be able to show that the product is currently in production (*i.e.*, the Department does not conduct hypothetical scope rulings on products that are not yet in production).⁶⁸ Because there is no evidence on the record of production of merchandise in the shape of pallets made from extruded aluminum profiles consisting of aluminum alloys other than series 1xxx in Petitioner's ruling request, the Department is unable to issue a ruling at this time on products other than extruded aluminum profiles consisting of series 1xxx aluminum alloy. Thus, if Petitioner wishes to seek a scope ruling with respect to other products, it should file a scope ruling request providing the requisite evidence regarding such products' existence.

⁶⁷ See Zhongwang's Acquisitions, *see also* Comments on Aluminum Shapes, *see also* Stockpiling of Aluminum Pallets.

⁶⁸ See *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures*, 73 FR 3634, 3639 (January 22, 2008).

RECOMMENDATION

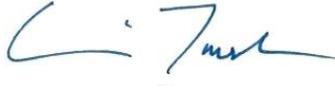
For the reasons discussed above, and in accordance with 19 CFR 351.225(d) and 19 CFR 351.225(k)(1), we recommend finding that extruded aluminum profiles consisting of series 1xxx aluminum alloy, which are cut-to-length and welded together in the form of a pallet, regardless of producer or exporter, are included within 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, as directed by 19 CFR 351.225(d).

Agree

Disagree

12/7/2016

X 

Signed by: CHRISTIAN MARSH
Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations