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Admin. Review
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October 11, 2019

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decisions Memorandum for the Final Results of the
Antidumping Duty Administrative Review: Aluminum Extrusions
from the People's Republic of China; 2017-2018

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order¹ on aluminum extrusions from the People's Republic of China (China) for the period of review (POR) May 1, 2017 through April 30, 2018. These final results cover 26 companies for which an administrative review was initiated and not rescinded.² We recommend making no changes from the *Preliminary Results* for these final results, in accordance with the position described in the "Discussion of the Issues" section of this memorandum.

II. BACKGROUND

On April 16, 2019, Commerce published the *Preliminary Results* of this administrative review in the *Federal Register*.³ At that time, we invited interested parties to comment on the *Preliminary Results*.⁴ On May 16, 2019, Houztek Architectural Products Co., Ltd. (Houztek) and Columbia

¹ See *Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order*, 76 FR 30650 (May 26, 2011) (the *Order*).

² Initially, this administrative review covered 243 companies. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 32270 (July 12, 2018) (*Initiation Notice*), corrected by *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 39688 (August 10, 2018). However, Commerce rescinded this administrative review with respect to 217 companies for which all review requests were timely withdrawn. See *Aluminum Extrusions from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Rescission of Review, in Part; 2017-2018*, 84 FR 15587 (April 16, 2019) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum (PDM).

³ See *Preliminary Results*, 84 FR at 15587.

⁴ *Id.*, 84 FR at 15589; see also 19 CFR 351.309.

Aluminum Products, LLC (Columbia) submitted their case brief.⁵ On May 21, 2019, the petitioner⁶ submitted its rebuttal brief.⁷ No other party submitted case or rebuttal briefs.

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018 through the resumption of operations on January 29, 2019.⁸ Between August 8 and September 11, 2019, we extended the deadline for these final results, until October 11, 2019.⁹

III. SCOPE OF THE *ORDER*

The merchandise covered by the *Order* 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

⁵ See Houztek and Columbia's Letter, "Aluminum Extrusions from the People's Republic of China: Houztek/Columbia Aluminum Case Brief," dated May 16, 2019 (Houztek and Columbia Case Brief).

⁶ The petitioner is the Aluminum Extrusions Fair Trade Committee.

⁷ See Petitioner's Letter, "Aluminum Extrusions from the People's Republic of China: Rebuttal Brief," dated May 21, 2019 (Petitioner Rebuttal Brief).

⁸ See Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

⁹ See Memoranda, "Aluminum Extrusions from the People's Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review," dated August 8, 2019 and September 11, 2019.

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 *Order* 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): 7604.29.3060; 7604.29.3090; 7604.29.5050; 7604.29.5090; 8541.90.00.00, 8708.10.30.50, 8708.99.68.90, 6603.90.8100, 7616.99.51, 8479.89.94, 8481.90.9060, 8481.90.9085, 9031.90.9195, 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.

IV. DISCUSSION OF THE ISSUES

Comment: Houztek's Separate Rate Eligibility

Houztek and Columbia's Comments:

- Columbia requested a scope ruling from Commerce as to whether the door thresholds imported by Columbia were within the scope of the AD or countervailing duty (CVD) orders on aluminum extrusions from China.¹⁰ On December 19, 2018, Commerce ruled that Columbia's door thresholds are covered by the scope of the *AD/CVD Orders*.¹¹
- Commerce's extensions of the deadline for making a determination regarding Columbia's door threshold scope request illustrates that it was unclear whether Columbia's door thresholds were included within the scope of the *AD/CVD Orders*. In fact, Commerce stated in the PDM of this proceeding that it was "an open issue with respect to the applicability of the *Order* to certain door threshold products" until the December 19, 2018, Commerce scope decision.¹²
- When Commerce "clarifies" the scope of an existing AD/CVD order that has an unclear scope, the suspension of liquidation and imposition of cash deposits may not be retroactive, but can only take effect on or after the date of initiation of the scope inquiry.¹³ Accordingly, Commerce's suspension of liquidation and requirement for AD/CVD cash deposits should not apply to door thresholds that Columbia imported before December 19, 2018, which is the date that Commerce initiated and ruled on Columbia's scope inquiry request.¹⁴
- Commerce's scope rulings apply to the product described in the scope ruling, and are not specific to an importer or foreign producer.¹⁵
- Commerce has also not ruled whether door thresholds that are assembled in Vietnam using Chinese extruded aluminum are within the scope of the *AD/CVD Orders*. The scope of the *AD/CVD Orders* does not cover third-country processing. Thus, Commerce should instruct U.S. Customs and Border Protection (CBP) that door thresholds assembled in Vietnam using Chinese aluminum extrusions are not covered by the *AD/CVD Orders* and are not covered by the liquidation instructions in this review.¹⁶
- The petitioner and Commerce are correct that there were no Type 3 AD/CVD entries during the POR from Houztek. Given that fact, Houztek should not get a separate rate.¹⁷
- Houztek's separate rate application (SRA) would only have merit if Commerce found the company to have had Type 3 entries during the POR, which Houztek did not.¹⁸

¹⁰ See the *Order*, 76 FR at 30650; and *Aluminum Extrusions from the People's Republic of China: Countervailing Duty Order*, 76 FR 30653 (May 26, 2011) (collectively, *AD/CVD Orders*).

¹¹ See Houztek and Columbia Case Brief at 2; see also Memorandum, "Aluminum Extrusions from the People's Republic of China, 2017-2018 Administrative Review: Placement of Final Scope Ruling on the Record," dated concurrently with this memorandum (Scope Ruling Memorandum).

¹² See Houztek and Columbia Case Brief at 2 (citing PDM at 12).

¹³ *Id.* (citing *AMS Associates, Inc. v. United States*, 737 F. 3d 1338, 1344 (Fed. Cir. 2013) (*AMS Associates*)).

¹⁴ *Id.* at 2.

¹⁵ *Id.*

¹⁶ *Id.* at 1.

¹⁷ *Id.* at 2.

¹⁸ *Id.* at 3.

Commerce and the petitioners said that Houztek had no Type 3 entries in this administrative review, so it is inconsistent to argue elsewhere that Houztek did have Type 3 entries. Houztek's intent was to highlight this apparent inconsistency in Commerce's position.¹⁹

- Commerce failed to consider *AMS Associates* in the *Preliminary Results*.²⁰

The Petitioner's Rebuttal Comments:

- Houztek and Columbia concede that Houztek is ineligible for a separate rate because it did not place on the record any evidence of Type 3 entries during this review. Commerce should continue to conclude that Houztek provided no evidence of any Type 3 entries of merchandise. Commerce should continue to deny Houztek a separate rate in this review, and instead assign the China-wide rate to Houztek.²¹
- Houztek and Columbia fail to demonstrate any errors in the *Preliminary Results*, and their new arguments regarding Commerce's door thresholds scope ruling are misleading, unrelated to the final results of this review, and should be dismissed.²²
- Houztek and Columbia's arguments regarding Commerce's door thresholds scope ruling have no bearing on whether Houztek demonstrated eligibility for a separate rate in this review. Further, Houztek has not itself requested a scope ruling from Commerce, and no evidence on record supports Houztek and Columbia's argument that Commerce should instruct CBP that door thresholds assembled in Vietnam from Chinese extruded aluminum are not covered by the *Order* and the liquidation instructions issued in this review.²³
- As Commerce correctly noted in the *Preliminary Results*, Commerce issued a scope ruling confirming that Columbia's door thresholds are covered by the scope of the *Order*, and found that the scope and meaning of the *Order* is clear.²⁴
- The fact that there may have been entries of subject merchandise from Houztek during the POR that were not identified as Type 3 does not mean that such merchandise was not subject to the scope of the *Order*. Houztek failed to place evidence on the record of this proceeding of a suspended entry during the POR on which to base its SRA and, thus, failed to demonstrate its eligibility for a separate rate, but this does not limit the authority of either Commerce or CBP with respect to enforcement actions to address evasion of the *Order*.²⁵
- Houztek and Columbia provide a misleading description of Commerce's scope ruling on door thresholds. Commerce's ruling confirmed that door thresholds, including those imported by Columbia, are covered by the scope of the *Order* pursuant to 19 CFR 351.225(d) and (k)(1), *i.e.*, that the descriptions of the products, the scope language, and prior rulings, are dispositive as to whether the products are subject merchandise. Thus,

¹⁹ *Id.*

²⁰ *Id.* (citing *AMS Associates*, 737 F. 3d at 1344).

²¹ See Petitioner Rebuttal Brief at 2-5.

²² *Id.* at 2 and 6.

²³ *Id.* at 2-4.

²⁴ *Id.* at 6-7.

²⁵ *Id.* at 5-6.

Commerce found that the scope and meaning of the *Orders* is clear, and that door thresholds have always been covered by the scope.²⁶

- Houztek and Columbia provide an incomplete description of the Court of Appeals for the Federal Circuit (CAFC)'s decision in *AMC Associates*. The CAFC found that Commerce does not have to initiate a formal scope proceeding when it wishes to issue a ruling that does not clarify the scope of an unambiguous original order, and that importers cannot circumvent AD and CVD orders by contending that their products are outside the scope of existing orders when such orders are clear as to their scope.²⁷
- Houztek and Columbia's claim that their door thresholds were outside the scope of the *AD/CVD Orders* prior to December 19, 2018 is inaccurate. In its scope ruling, Commerce confirmed the express inclusion of door thresholds in the scope language.²⁸
- The fact that Houztek did not provide evidence in this review of a Type 3 entry of subject merchandise does not lead to the conclusion that there were no entries of subject merchandise exported by Houztek that should have been marked as Type 3.²⁹

Commerce's Position: The sole issue before Commerce is whether Houztek is eligible for a separate rate in this segment of the proceeding. Houztek itself concedes that it is ineligible for a separate rate as it states: "Petitioner and Commerce are correct that there were no '03' AD/CVD entries during the review period here from Houztek. Given that fact, Houtzek should not get a separate rate."³⁰ Accordingly, for these final results, we have made no changes from the *Preliminary Results*, in which we found that Houztek did not demonstrate eligibility for a separate rate, and we continue to find that the record contains no evidence of any dutiable entries of merchandise from Houztek during the POR (and that, consequently, its entries of subject merchandise would be subject to the China-wide rate).

Houztek also argues that there is an inconsistency between Commerce's position in this administrative review and in the litigation stemming from the Columbia scope inquiry.³¹ According to Houztek, Commerce has said there were no "Type 3" entries during the POR.³² However, we have made no such statement. In fact, Commerce has indicated that Houztek provided no evidence on the record of this administrative review that it made "Type 3" entries, and that it is, therefore, ineligible for a separate rate in the absence of such evidence.³³ Consequently, we address the rest of Houztek's assertions below.

As we stated in the *Preliminary Results*, Houztek applied for a separate rate without evidence establishing at least one dutiable entry during the POR upon which to base its separate rate application.³⁴ In the *Initiation Notice*, Commerce notified parties of the application process by

²⁶ *Id.* at 6-7.

²⁷ *Id.* (citing *AMS Associates*, 737 F. 3d at 1344).

²⁸ *Id.* at 7.

²⁹ *Id.* at 8.

³⁰ See Houztek and Columbia Case Brief at 2.

³¹ *Id.* at 2-3.

³² *Id.* at 2.

³³ See *Preliminary Results*, 84 FR at 15588, and accompanying PDM at 12.

³⁴ See *Preliminary Results* PDM at 12.

which exporters may obtain separate-rate status in a non-market economy (NME) proceeding.³⁵ It is Commerce’s policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports.³⁶ In order to demonstrate eligibility for separate-rate status, Commerce requires an entity to submit an SRA.³⁷ Commerce’s SRA questionnaire instructs respondents that “{f}or reviews, an exporter cannot obtain a separate rate without providing {Commerce} the relevant U.S. Customs 7501 Entry Summary for a suspended entry....”³⁸ Houztek submitted its SRA on September 7, 2018,³⁹ and Commerce preliminarily found that the company provided no evidence of a suspended “Type 3” (for consumption and subject to AD or CVD) entry during the POR.⁴⁰ Consequently, because Houztek provided no evidence establishing at least one dutiable entry during the POR upon which to base its application for a separate rate, Commerce preliminarily found that Houztek was not eligible for a separate rate.⁴¹

We note that Commerce addressed the necessity of a separate rate applicant providing evidence of a suspended entry of subject merchandise in order to be eligible for a separate rate in a prior segment of this proceeding.⁴² Specifically, in the *First Administrative Review Final Results*, Commerce noted that one of its “primary functions in the course of an administrative review is to determine an AD margin to assess to subject merchandise.”⁴³ Here, Houztek provided no evidence to demonstrate that any of its entries were made as being subject to AD duties (*i.e.*, “Type 3”) and, thus, that it had suspended entries upon which to apply an assessment rate. AD duty rates serve as the basis for estimated AD duties.⁴⁴ When there is no evidence of suspended entries upon which to assess AD duties for an exporter, consistent with the Act and with Commerce’s long-standing practice,⁴⁵ the company that failed to provide such evidence is not

³⁵ See *Initiation Notice*, 83 FR at 32271-32272.

³⁶ See *Preliminary Results* PDM at 9-13.

³⁷ See *Initiation Notice*, 83 FR at 32271-32272.

³⁸ See Commerce’s NME Separate Rate Applications, available at <https://enforcement.trade.gov/nme/nme-sep-rate.html>.

³⁹ See Houztek’s Letter, “Aluminum Extrusions from the People’s Republic of China: Separate Rates Application,” dated September 7, 2018.

⁴⁰ See *Preliminary Results* PDM at 9-13.

⁴¹ *Id.*

⁴² See *Aluminum Extrusions from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission, in Part, 2010/12*, 79 FR 96 (January 2, 2014) (*First Administrative Review Final Results*), and accompanying Issues and Decisions Memorandum (IDM) at Comment 8.

⁴³ *Id.*, 79 FR at 101, citing to section 751(a)(2)(C) of the Tariff Act of 1930, as amended (the Act) (stating that Commerce’s determination will be the basis for assessment of merchandise covered by Commerce’s determination) and sections 751(a)(1)(B) and 751(a)(2)(A) of the Act (stating that Commerce will review the amount of any antidumping duty and determine dumping margins for entries of subject merchandise).

⁴⁴ See section 751(a)(2)(C) of the Act.

⁴⁵ See, e.g., *First Administrative Review Final Results* IDM at Comment 8; see also *Certain Steel Threaded Rod From the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 21101 (April 9, 2013), unchanged in *Certain Steel Threaded Rod Final Results of Third Antidumping Duty Administrative Review; 2011-2012*, 78 FR 66330 (November 5, 2013); and *Certain Tissue Paper Products from the People’s Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 18497 at 18500 (April 4, 2008), unchanged in *Certain Tissue Paper Products from the People’s Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review*, 73 FR 58113 (October 6, 2008).

eligible for a separate rate. The requirement for a suspended AD duty entry is consistent with the retrospective nature of duty assessment under U.S. law and the stated purpose of administrative reviews to “review, and determine the amount of any antidumping duty” to be assessed upon imports of subject merchandise entered during the applicable POR.⁴⁶

Houztek and Columbia’s case brief refers to Columbia’s scope ruling request concerning door threshold units imported by Columbia.⁴⁷ Commerce determined on December 19, 2018, that the door thresholds imported by Columbia are included within the scope of the *AD/CVD Orders*.⁴⁸ Houztek and Columbia argue that Commerce states in the *Preliminary Results* that it was “an open issue with respect to the applicability of the {AD/CVD} Orders {here} to certain door threshold products” until the December 19, 2018 Commerce scope decision.”⁴⁹ Contrary to Houztek and Columbia’s claim, the PDM stated:

Furthermore, Houztek states the reverse of the correct course of action when it claims, “{u}ntil a decision by Commerce thereon, it does not seem that Columbia Aluminum itself can unilaterally classify its U.S. imports from Houztek as “03” within the scope of the AD/CVD Order.” On the one hand, it is up to Houztek (rather than any other company) to do so, as it is Houztek (rather than any other company) which has applied for a separate rate. On the other hand, it would have been reasonable to expect that Houztek, knowing that the *Order* was in place and that there was an open issue with respect to the applicability of the Order to certain door threshold products, would classify whatever entries it might have had as dutiable until it had before it a Commerce scope ruling stating otherwise. CBP or Commerce would not expect Houztek (or its importer) to ignore the fact that there was a scope issue involving products similar to the merchandise it was exporting to the United States in classifying its own merchandise.⁵⁰

This was an “open issue” at the time of Houztek’s declaration of its entry as a “Type 1” product – a time when the issue was undecided with regard to the scope inquiry. Indeed, a party that knows its products might be subject to duties should proceed with caution and declare such merchandise as subject to the AD duty, pending a possible Commerce scope ruling to the contrary; having failed to do so, that party could not now contend that it had done so. Furthermore, following Commerce’s scope ruling, Houztek could have placed evidence on the record of this proceeding demonstrating that it had reclassified its entries as Type 3. Houztek failed to do so. The fact that the scope ruling is currently in litigation is not relevant to the issue as to whether Houztek is eligible for a separate rate in this administrative review absent evidence of “Type 3” entries.

⁴⁶ See section 751(a)(1)(B) of the Act; *see also Dofasco Inc. v. United States*, 390 F. 3d 1370, 1372 (Fed. Cir. 2004) (stating that the purpose of the administrative review is to determine the duty liability for the review period).

⁴⁷ See Houztek and Columbia Case Brief at 1-3; *see also* Scope Ruling Memorandum.

⁴⁸ See Scope Ruling Memorandum at Attachment 2 at 37-38.

⁴⁹ See Houztek and Columbia Case Brief at 1-3

⁵⁰ See *Preliminary Results* PDM at 12 (emphasis added, footnotes omitted).

Additionally, we disagree with Houztek's reliance upon *AMS Associates*.⁵¹ The wording of Houztek's case brief is not clear, but we understand it to claim that we are disallowed from instructing CBP to liquidate Houztek's entries at the China-wide rate if they entered the United States prior to the date of the ruling on Columbia's door threshold units scope request.⁵² This is inapposite to *AMS Associates*, "a case about what procedures Commerce must follow when the scope of an existing antidumping duty order is unclear and Commerce seeks to further clarify that scope."⁵³ Commerce's primary error in *AMS Associates* was failing to conduct the requested scope inquiry; but, here, Commerce did conduct the scope inquiry, finding that the products under consideration were within the scope of the *Orders*.⁵⁴ We further note that Columbia could have requested an injunction which might have continued the suspension of liquidation of any entries the company imported during the POR which were the subject of Columbia's scope ruling request, but neither Columbia nor Houztek requested an injunction. Because the facts of the instant review (in combination with the Columbia door thresholds scope ruling) differ from those in *AMS Associates*, we disagree with Houztek and Columbia on the applicability of that case to the circumstances in the instant review. Further, we agree with the petitioners that no evidence on record of this administrative review supports Houztek and Columbia's assertion⁵⁵ that Commerce should instruct CBP that door thresholds assembled in Vietnam from Chinese extruded aluminum are not covered by the *Order* and the liquidation instructions issued in this segment of the proceeding.⁵⁶

With regard to Houztek and Columbia's arguments concerning assessment, liquidation, and cash deposit rates, we disagree. We shall treat Houztek in the CBP instructions as we treat any other non-selected company which has applied for, but failed to establish its eligibility for, a separate rate. We note that the CBP instructions pertaining to Houztek were placed on the record for comments by parties,⁵⁷ and that no party, including Houztek, submitted any comments. The CBP Information Memorandum reflects no entries by Houztek.⁵⁸ The record of this administrative review contains no evidence of entries which could serve as the basis for a separate rate eligibility determination. Any determination as to whether there were, in fact, entries which should have been – but were not – declared as "Type 3" is left to CBP.

Based on the above analysis, we have made no changes for these final results to our treatment of Houztek from the methodology described in the *Preliminary Results*.

⁵¹ See Houztek and Columbia Case Brief at 2 (citing *AMS Associates*, 737 F. 3d at 1344).

⁵² *Id.* at 2-3.

⁵³ *Id.* at 2 (citing *AMS Associates*, 737 F. 3d at 1344).

⁵⁴ See Scope Ruling Memorandum at Attachment 2 at 37-38.

⁵⁵ See Houztek and Columbia Case Brief at 2-3.

⁵⁶ See Petitioner Rebuttal Brief at 5-6.

⁵⁷ See Memorandum, "2017-2018 Administrative Review of the Antidumping Duty Order on Aluminum Extrusions from the People's Republic of China: Draft Customs Instructions for Comment by Parties," dated September 23, 2019.

⁵⁸ See Memorandum, "2017-2018 Administrative Review of the Antidumping Duty Order on Aluminum Extrusions from the People's Republic of China: U.S. Customs and Border Protection Data," dated August 29, 2018 (CBP Information Memorandum). That a company has no entries is not proprietary information.

V. RECOMMENDATION

We recommend applying the above methodology for these final results.

Agree

Disagree

10/11/2019

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance