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

THROUGH: Melissa G. Skinner
Director, Office 3
Antidumping and Countervailing Duty Operations

Eugene Degnan
Program Manager, Office 3
Antidumping and Countervailing Duty Operations

FROM: Eve Wang
International Trade Analyst

RE: Antidumping (AD) and Countervailing Duty (CVD) Orders on
Aluminum Extrusions from the People's Republic of China (PRC)

SUBJECT: Final Scope Ruling on Aluminum Anodes for Water Heaters

Summary

On July 2, 2011, in response to a request from A.O. Smith Corporation (“A.O. Smith”), the Department of Commerce (“Department”) issued a preliminary scope ruling that the aluminum anodes for water heaters (“water heater anodes”) A.O. Smith imports are finished merchandise and thus are excluded from the scope of the *Orders*.¹ The Department determined that water heater anodes are finished merchandise because at the time of the entry, the components of a water heater anode (*i.e.*, the aluminum, the steel/carbon steel rod, and the carbon steel cap) are permanently assembled, completed and ready for use as an aluminum anode.

For the final scope ruling, the Department continues to find that water heater anodes are finished merchandise and thus are excluded from the scope of the *Orders*.

¹ See *Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order*, 76 FR 30650 (May 26, 2011) (“AD Order”), and *Aluminum Extrusions From the People's Republic of China: Countervailing Duty Order*, 76 FR 30653 (May 26, 2011) (“CVD Order”) (collectively, “Orders”).



Background

On September 12, 2011, the Department initiated a formal scope inquiry in response to a request from A.O. Smith² to determine whether the water heater anodes the company imports are excluded from the scope of the *Orders*.³ On July 2, 2012, the Department preliminarily determined, in accordance with 19 CFR 351.225(k)(1), that the water heater anodes met the description of finished merchandise that is excluded from the scope of the *Orders*.⁴ Both the Aluminum Extrusions Fair Trade Committee (“Petitioner”) and A.O. Smith submitted comments on the preliminary scope ruling on July 23, 2012, and rebuttal comments on August 2, 2012, (collectively, parties’ respective “Post-Prelim Comments”).

Applicable Regulations

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.⁵ 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.⁶ 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.

Conversely, where the descriptions of the merchandise are not dispositive, the Department will consider the five additional factors set forth at 19 CFR 351.225(k)(2). These criteria 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 inquiry is made on a case-by-case basis after consideration of all evidence before the Department.

Scope of the Orders

The merchandise covered by these orders is aluminum extrusions which are shapes and forms, produced by an extrusion process, made from aluminum alloys having metallic elements corresponding to the alloy series designations published by The Aluminum Association commencing with the numbers 1, 3, and 6 (or proprietary equivalents or other certifying body equivalents). Specifically, the subject merchandise made from aluminum alloy with an

² See A.O. Smith’s submission, “Antidumping and Countervailing Duty Orders on Aluminum Extrusions from China: Scope Ruling Request,” dated June 13, 2011.

³ See the Department’s scope initiation letter, “Aluminum Extrusions from the People’s Republic of China (the “PRC”): Initiation of Scope Inquiry on A.O. Smith Corporation’s Aluminum Anodes for Water Heaters,” dated September 12, 2011.

⁴ See The Department’s memorandum, “Antidumping (AD) and Countervailing Duty (CVD) Orders on the Aluminum Extrusions from the People’s Republic of China (PRC),” dated July 2, 2012 (“Preliminary Scope Ruling”).

⁵ See *Walgreen Co. v. United States*, 620 F.3d 1350, 1357 (Fed. Cir. 2010).

⁶ See 19 CFR 351.225(k)(1).

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 bright-dip anodized), liquid painted, or powder coated. Aluminum extrusions may also be fabricated, *i.e.*, prepared for assembly. Such operations would include, but are not limited to, extrusions that are cut-to-length, machined, drilled, punched, notched, bent, stretched, knurled, swaged, mitered, chamfered, threaded, and spun. The subject merchandise includes aluminum extrusions that are finished (coated, painted, etc.), fabricated, or any combination thereof.

Subject aluminum extrusions may be described at the time of importation as parts for final finished products that are assembled after importation, including, but not limited to, window frames, door frames, solar panels, curtain walls, or furniture. Such parts that otherwise meet the definition of aluminum extrusions are included in the scope. The scope includes the aluminum extrusion components that are attached (*e.g.*, by welding or fasteners) to form subassemblies, *i.e.*, partially assembled merchandise unless imported as part of the finished goods ‘kit’ defined further below. The scope does not include the non-aluminum extrusion components of subassemblies or subject kits.

Subject extrusions may be identified with reference to their end use, such as fence posts, electrical conduits, door thresholds, carpet trim, or heat sinks (that do not meet the finished heat sink exclusionary language below). Such goods are subject merchandise if they otherwise meet the scope definition, regardless of whether they are ready for use at the time of importation.

The following aluminum extrusion products are excluded: aluminum extrusions made from aluminum alloy with an Aluminum Association series designations commencing with the number 2 and containing in excess of 1.5 percent copper by weight; aluminum extrusions made from aluminum alloy with an Aluminum Association series designation commencing with the

number 5 and containing in excess of 1.0 percent magnesium by weight; and aluminum extrusions made from aluminum alloy with an Aluminum Association series designation commencing with the number 7 and containing in excess of 2.0 percent zinc by weight.

The scope also excludes finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry, such as finished windows with glass, doors with glass or vinyl, picture frames with glass pane and backing material, and solar panels. The scope also excludes finished goods containing aluminum extrusions that are entered unassembled in a “finished goods kit.” A finished goods kit is understood to mean a packaged combination of parts that contains, at the time of importation, all of the necessary parts to fully assemble a final finished good and requires no further finishing or fabrication, such as cutting or punching, and is assembled ‘as is’ into a finished product. An imported product will not be considered a ‘finished goods kit’ and therefore excluded from the scope of the investigation merely by including fasteners such as screws, bolts, etc. in the packaging with an aluminum extrusion product.

The scope also excludes aluminum alloy sheet or plates produced by other than the extrusion process, such as aluminum products produced by a method of casting. Cast aluminum products are properly identified by four digits with a decimal point between the third and fourth digit. A letter may also precede the four digits. The following Aluminum Association designations are representative of aluminum alloys for casting: 208.0, 295.0, 308.0, 355.0, C355.0, 356.0, A356.0, A357.0, 360.0, 366.0, 380.0, A380.0, 413.0, 443.0, 514.0, 518.1, and 712.0. The scope also excludes pure, unwrought aluminum in any form.

The scope also excludes collapsible tubular containers composed of metallic elements corresponding to alloy code 1080A as designated by the Aluminum Association where the tubular container (excluding the nozzle) meets each of the following dimensional characteristics: (1) length of 37 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 (“HTS”): 7604.21.0000, 7604.29.1000, 7604.29.3010, 7604.29.3050, 7604.29.5030, 7604.29.5060, 7608.20.0030, 7608.20.0090, 9506.11.4080, 9506.51.4000, 9506.51.6000, 9506.59.4040, 9506.70.2090, 9506.99.0510, 9506.99.0520, 9506.99.0530, 9506.99.1500, 9506.99.2000, 9506.99.2580, 9506.99.2800, 9506.99.6080, 9507.30.2000, 9507.30.4000, 9507.30.6000, 9507.90.6000, 8419.90.1000, 8302.10.3000, 8302.10.6030, 8302.10.6060, 8302.10.6090, 8302.30.3010, 8302.30.3060, 8302.41.3000, 8302.41.6015, 8302.41.6045, 8302.41.6050, 8302.41.6080, 8302.42.3010, 8302.42.3015, 8302.42.3065, 8302.49.6035, 8302.49.6045, 8302.49.6055, 8302.49.6085, 8302.60.9000, 8306.30.0000, 9403.90.8061, 9403.90.1040, 9403.90.1050, 9403.90.1085, 9403.90.2540, 9403.90.2580, 9403.90.4005, 9403.90.4010, 9403.90.4060, 9403.90.5005, 9403.90.5010, 9403.90.5080, 9403.90.6005, 9403.90.6010,

9403.90.6080, 9403.90.7005, 9403.90.7010, 9403.90.7080, 9403.90.8010, 9403.90.8015, 9403.90.8020, 9403.90.8041, 9403.90.8051, 9403.10.00, 9403.20.00, 8479.89.98, 8479.90.94, 8513.90.20, 8302.50.0000, 9506.91.0010, 9506.91.0020, 9506.91.0030, 7615.19.30, 7615.19.50, 7615.19.70, 7615.19.90, 7615.19.10, 7615.20.00, 7616.99.10, and 7616.99.50. 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 HTS chapters. In addition, fin evaporator coils may be classifiable under HTS numbers: 8418.99.80.50 and 8418.99.80.60. While HTS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Petitioner's Post-Prelim Comments

Petitioner comments that water heater anodes are not finished merchandise because they are components of water heaters in the same way that motor cases are parts of electric motors, fin evaporators are parts of refrigerators, and mop frames are parts of mops. Petitioner claims that in those rulings, the Department found that motor cases, fin evaporators, or mop frames cannot qualify for the finished merchandise because they are merely a component of a larger downstream product. Petitioner claims that the Department ruling that anodes comprise finished merchandise directly conflicts with established practice.

A.O. Smith's Post-Prelim Comments

A.O. Smith comments that the Department correctly concluded that water heater anodes are finished merchandise because “at the time of entry, the components of water heater anodes (*i.e.*, the aluminum, the steel/carbon steel rod, and the carbon steel cap) are permanently assembled, completed and ready for use as an aluminum anode.”

In response to Petitioner's comments, A. O. Smith rebuts that a water heater anode is unlike a motor case, fin evaporator, or mop frame, all of which are respectively integral parts of another product (*i.e.*, an electric motor, refrigerator, or mop). A.O. Smith argues that a water heater anode is not a necessary part of a water heater; rather, a water heater anode is a finished downstream product that functions separately from a water heater. A.O. Smith explains that the function of a water heater is to heat water, while the function of a water heater anode is to prevent corrosion of a water heater and thereby extend the life of the water heater. In contrast to a water heater, which functions with or without a water heater anode, A.O. Smith argues, an electric motor is not functional without a motor case, a refrigerator is not functional without a fin evaporator, and a mop is not functional without a mop frame.

A.O. Smith further comments that the Department correctly concluded that water heater anodes are not subassemblies because they are fully assembled at the time of importation and no additional assembly or part is required before the anode is used.

Department's Analysis

The Department continues to find that the water heater anodes that A.O. Smith imports are finished merchandise and thus are excluded from the scope of the *Orders*, based on the language

of the scope. The Department disagrees with Petitioner's argument that a water heater anode is not a finished product because it is a component of another product (*i.e.*, a water heater). Rather, as explained in the Preliminary Scope Ruling, the Department determines that a water heater anode is a finished product because it contains all the components of a water heater anode (*i.e.*, the aluminum, the steel/carbon steel rod, and the carbon steel cap) which are permanently assembled, completed and ready to use as an aluminum anode which works to prevent corrosion in a water heater. Additionally, contrary to Petitioner's assertion, the Department finds that a water heater anode is not an integral component of a water heater because a water heater can heat water with or without a water heater anode. Rather, a water heater anode is a finished product that works in conjunction with another finished product, a water heater. Much in the same fashion as a window with glass is a finished product that works in conjunction with a house or structure.

The Department further concludes that the Preliminary Scope Ruling does not conflict with its rulings on motor cases, fin evaporators, and mop frames because it is distinguishable from the latter rulings.⁷ In the ruling on motor cases, the Department found that the motor cases were covered under the scope of the *Orders* based on the *Diversified Products* criteria pursuant to 19 CFR 351.225(k)(2).⁸ More specifically, the Department found that the motor cases were not distinct from precision machine extrusions which were covered under the scope of the *Orders*, in terms of physical characteristics, expectations of the ultimate purchaser, ultimate use of the products, and advertising and display.⁹ In this case, Petitioner did not identify any products which are covered by the scope of the *Orders* and from which the water heater anodes are indistinguishable under the *Diversified Products* criteria.

In the scope ruling on fin evaporator systems, the Department found that such products were unfinished subassemblies for refrigeration units made from extruded aluminum tubes and that there was no material difference between the fin evaporator systems at issue and the fin evaporator coils that were found during the original investigation to be subassemblies covered by the scope of the *Orders*.¹⁰ Here, however, we continue to find that a water heater anode is not simply an unfinished subassembly. Rather, we find that the subject water heater anode is finished merchandise, and thus excluded from the scope of the *Orders*, based on the language of the scope.

In the scope ruling on mop frames, the Department found that the mop frames are not finished merchandise because they do not meet the exclusion for "finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry," because they lacked a mop head or cloth to be a final cleaning device at the time of

⁷ The Department has placed on the record the final scope rulings on motor cases, fin evaporator systems, and mop frames; *see* the Department's memorandum to the file, "Inclusion of Aluminum Extrusions Final Scope Rulings, dated October 17, 2012.

⁸ *See* the Department's memorandum, "Antidumping Duty (AD) and Countervailing Duty (CVD) Orders: Aluminum Extrusions from the People's Republic of China (PRC): Final Scope Ruling on Motor Cases," dated July 6, 2012.

⁹ *See id.*, at 16, 18, 19-20, 22.

¹⁰ *See* the Department's memorandum, "Antidumping Duty (AD) and Countervailing Duty (CVD) Orders on Aluminum Extrusions from the People's Republic of China (PRC): Final Scope Ruling on Electrolux's Fin Evaporator Systems," dated July 13, 2012.

importation.¹¹ Unlike mop frames, water heater anodes are finished merchandise containing all the necessary components to be used as a water heater anode whose function is to prevent corrosion in a water heater.

Contrary to Petitioner's comparison, water heater anodes are not components in the same way that motor cases are parts of electric motors, fin evaporators are parts of refrigerators, or mop frames are parts of mops. As A.O. Smith points out, a water heater can function with or without a water heater anode, but a motor cannot function without a motor case, a refrigerator cannot function without a fin evaporator system, and a mop does not function without a mop frame.

Department's Recommendation

For the reasons discussed above, and pursuant to 19 CFR 351.225(k)(1), we continue to recommend finding that the water heater anodes addressed by the instant scope request are not subject to the scope of the *Orders*.

If the recommendations in this memorandum are accepted, we will serve a copy of this memorandum to all interested parties on the scope service list via first class mail as directed by 19 CFR 351.303(f).

Agree

Disagree

Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

Date

¹¹ See the Department's memorandum, "Antidumping Duty (AD) and Countervailing Duty (CVD) Orders on Aluminum Extrusions from the People's Republic of China (PRC): Final Scope Ruling on Certain Cleaning System Components," dated October 25, 2011, at page 9.