



A-570-882

Scope Inquiry  
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February 3, 2004

**MEMORANDUM TO:** Jeffrey A. May  
Deputy Assistant Secretary  
Import Administration, Group I

**FROM:** Team

**THROUGH:** Irene Darzenta Tzafolias <sup>IDT</sup>  
Program Manager  
AD/CVD Enforcement Group I, Office 2  
Import Administration

**RE:** Antidumping Duty Investigation: Refined Brown Aluminum Oxide (Otherwise known as Refined Brown Artificial Corundum or Brown Fused Alumina) from the People's Republic of China

**SUBJECT:** Final Scope Ruling - Whether Crude Brown Aluminum Oxide (Otherwise Known as Crude Artificial Corundum) from the People's Republic of China that is Refined in a Third Country is Included in the Antidumping Duty Order on Refined Brown Aluminum Oxide (Otherwise Known as Refined Brown Artificial Corundum or Brown Fused Alumina) from the People's Republic of China

### Background

On December 22, 2003, Cometals Division of Commercial Metals Company (Cometals), an importer and interested party, submitted an application requesting that the Department of Commerce (the Department) issue a scope ruling that crude brown aluminum oxide (otherwise known as crude artificial corundum) (CBAO) from the People's Republic of China (PRC) that is refined in a third country (e.g., South Africa, Poland, Mexico, etc.) is not subject to the antidumping order on refined brown aluminum oxide (otherwise known as refined brown artificial corundum or brown fused alumina) (RBAO) from the PRC upon importation into the United States. See Notice of Antidumping Duty Order: Refined Brown Aluminum Oxide (Otherwise known as Refined Brown Artificial Corundum or Brown Fused Alumina) from the People's Republic of China, 68 FR 65249, November 19, 2003 (AD Order). On January 6, 2004,



Wester Mineralien SA (Pty) Ltd., Jacobs, South Africa, and Polmineral Sp.z.o.o., Lodz, Poland, (Wester companies) also submitted a similar review application requesting that the Department find that CBAO from the PRC that is refined in the manufacturing facilities operated by their firms in South Africa and Poland, respectively, and exported directly to the United States is not subject to the AD Order upon importation into the United States. Both Cometals and Wester companies requested that the Department make a final scope ruling within 45 days of the submission of their applications under 19 CFR 351.225(d). Since both Cometals and Wester companies are making the same request, this memorandum covers both applications. C-E Minerals, Treibacher Schleifmittel Corporation, and Washington Mills Company, Inc., the petitioners in this proceeding, submitted comments on January 15, 2004, requesting that the Department initiate a formal scope inquiry into the matter as provided for under 19 CFR 351.225(e).

The scope of the AD Order is ground, pulverized or refined brown artificial corundum, also known as refined brown aluminum oxide or brown fused alumina, in grit size of 3/8 inch or less. Excluded from the scope of the order is crude artificial corundum in which particles with a diameter greater than 3/8 inch constitute at least 50 percent of the total weight of the entire batch. The scope includes brown artificial corundum in which particles with a diameter greater than 3/8 inch constitute less than 50 percent of the total weight of the batch. The merchandise under the order is currently classifiable under subheading 2818.10.20.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under the order is dispositive.

This scope language is consistent with the scope in the petition, as amended<sup>1</sup>, the notice of initiation, and the Department's preliminary and final less-than-fair-value determinations. See Initiation of Antidumping Duty Investigation: Refined Brown Aluminum Oxide (Otherwise known as Refined Brown Artificial Corundum or Brown Fused Alumina) from the People's Republic of China, 67 FR 77223 (December 17, 2002) (Initiation Notice); Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Refined Brown Aluminum Oxide (Otherwise known as Refined Brown Artificial Corundum or Brown Fused Alumina) from the People's Republic of China, 68 FR 23966 (Preliminary Determination); Notice of Final Determination of Sales at Less Than Fair Value: Refined Brown Aluminum Oxide (Otherwise known as Refined Brown Artificial Corundum or Brown Fused Alumina) from the People's Republic of China, 68 FR 55589 (Final Determination); and the AD Order.

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<sup>1</sup> The petition defines crude aluminum oxide as "consist[ing] of a mixture of sizes in which the particles with a diameter of 3/8 inch or more constitute at least 70 percent of the total weight of the entire batch." See Petition at page 6. This definition, however, was later revised after U.S. Customs and Border Protection (Customs) raised an enforceability concern. Petitioners submitted an amendment to the petition on December 9, 2002, which stated in part that: "In order to facilitate Customs enforcement of an eventual order on the subject products and without changing the coverage of imported refined brown aluminum oxide and the exclusion of crude brown aluminum oxide, petitioners offer the following revision to the Department's proposed scope: . . . Excluded from the scope of the investigation is crude aluminum oxide, in which particles with a diameter of 3/8 inch or more constitute at least 50 percent of the total weight of the entire batch." See Amendment to the Petition at page 2.

## Summary of Requests

Cometals and Wester companies on December 22, 2003 and January 6, 2004, respectively, submitted the following information and comments:

- Wester companies are now purchasing and will continue to purchase CBAO in the PRC. The purchase of CBAO in the PRC consists of particles, the majority of which have a diameter greater than  $\frac{3}{8}$  inch. If such product was imported into the United States, the CBAO would be classified under HTSUS subheading 2818.10.10.00. Wester companies will then ship the PRC CBAO to their manufacturing facilities in South Africa and Poland for refining. The refining process involves crushing, grinding, screening, sizing, and packaging. The refined product, RBAO, will then be exported directly to the United States. Upon importation into the United States, the RBAO would be classified under HTSUS subheading 2818.10.20.00.
- Cometals is requesting that the Department issue a scope ruling that CBAO<sup>2</sup> from the PRC that is refined in a third country (e.g., South Africa, Poland, Mexico, etc.) is not subject to the antidumping order on RBAO from the PRC upon importation into the United States. Specifically, Cometals intends on purchasing the RBAO from Wester companies, as described above. Cometals will act as the U.S. importer of record.
- The scope description in the amended petition, the notice of initiation and the order, all differentiate between CBAO and RBAO. Specifically, all three of these documents state that “[e]xcluded from the scope of the investigation is crude artificial corundum in which particles with a diameter greater than  $\frac{3}{8}$  inch constitute at least 50 percent of the total weight of the entire batch. The scope includes brown artificial corundum in which particles with a diameter greater than  $\frac{3}{8}$  inch constitute less than 50 percent of the total weight of the batch.” See Petition, Initiation Notice, and the AD Order.
- Accordingly, if CBAO in which particles with a diameter greater than  $\frac{3}{8}$  inch constitute at least 50 percent of the total weight of the entire batch is outside the scope of the order, then it follows that such product exported to a third country for refining before being imported into the United States is also outside the scope.

## Summary of the Petitioners’ Comments

On January 15, 2004, the petitioners filed the following comments:

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<sup>2</sup> Excluded from the AD Order is CBAO in which particles with a diameter greater than  $\frac{3}{8}$  inch constitute at least 50 percent of the total weight of the entire batch. The AD Order includes CBAO in which particles with a diameter greater than  $\frac{3}{8}$  inch constitute less than 50 percent of the total weight of the batch. Cometals and Wester companies state that the CBAO from the PRC consists of particles with a diameter greater than  $\frac{3}{8}$  inch which constitute more than 50 percent of the total weight of the entire batch.

- The petitioners ask that the Department not grant Cometals and Wester companies a ruling based upon their applications. Instead, the petitioners ask that the Department initiate a detailed and complete inquiry under into the particular operations and parties involved, in accordance with 19 CFR 351.225(e).
- The petitioners believe an ongoing European Union investigation involving the Wester companies' German parent, Wester Mineralien GmbH, and general industry knowledge raise substantial questions as to the true nature of the processing operations in South Africa or Poland (or Mexico). Furthermore, the petitioners state that even such fundamental questions as to whether Poland or Mexico presently possess the processing capability to perform the operations are unanswered. Moreover, the extent of actual processing to be performed in South Africa on merchandise to be exported to the United States must be definitely established.
- The petitioners state that circumvention by means of purported third-country processing was well known within the industry and admitted at the International Trade Commission (ITC) hearing by an importer who was opposed to the RBAO antidumping relief sought by the petitioners.

### **Analysis**

Rulings by the Department on whether a product is included within the scope of an order are governed under 19 CFR 351.225, pursuant to the anticircumvention provisions of Section 781 of the Tariff Act of 1930, as amended. Under 19 CFR 351.225(d), the Department may issue a scope ruling based solely on the application and the descriptions of the merchandise contained in the petition, the initial investigation, and the final determinations of the Department's and the ITC's investigations if this information is dispositive for determining if the product is included in the scope of the order. If the Department cannot make that determination based on those sources of information alone, pursuant to 19 CFR 351.225(e), the Department may initiate a scope inquiry. In the instant segment of the proceeding, we recommend issuing a scope ruling pursuant to 19 CFR 351.225(d) based on the analysis which follows below. Since both Cometals and Wester companies are making the same request, this analysis covers both applications.

As indicated above, in their scope ruling applications, Cometals and Wester companies provided detailed descriptions of the product, its technical characteristics and uses, and its current HTSUS classification number. Cometals and Wester companies also provided statements that the product falls outside the scope of the AD Order, summarizing the reasons for this conclusion and providing supporting factual information based on the underlying investigation. Therefore, we find that Cometals and Wester companies satisfied the procedural requirements of 19 CFR 351.225(c)(1)(i)-(ii).

Cometals and Wester companies also provided evidence sufficient to allow a final ruling pursuant to 19 CFR 351.225(d), *i.e.*, a ruling based solely on their applications and descriptions of the merchandise as set forth under 19 CFR 351.225(k). As Cometals and Wester companies noted in their applications, the AD Order states that "[e]xcluded from the scope of the investigation is crude artificial corundum in which particles with a diameter greater than 3/8 inch

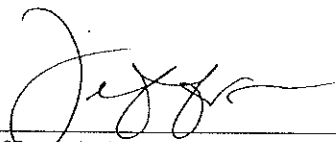
constitute at least 50 percent of the total weight of the entire batch.” We agree with Cometals and Wester companies that the requirements of 19 CFR 351.225(k)(1) have been met, i.e., that CBAO from the PRC that is refined in a country other than the PRC does not fall within the scope of the AD Order based on the descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Secretary. Moreover, U.S. Customs and Border Protection has advised these companies that based on the clear wording of the scope of the AD Order, as a result of an informal discussion of this with the Department, CBAO from the PRC that is refined in a third country would not be covered under the AD Order, provided it can be established to Customs satisfaction that the imported RBAO was exported to the United States from, and refined in, a country other than the PRC. See Attachment B of Cometals’ December 22, 2003 Application Requesting a Scope Inquiry. Furthermore, while the petitioners have questioned the ability of Wester companies to refine CBAO, the petitioners have not objected to the exclusion of this material from the scope of the AD Order if it meets the characteristics specified for excluded merchandise in the AD Order.

**Recommendation**

Based on the information and arguments presented by the parties, we recommend finding that CBAO, in which particles with a diameter greater than 3/8 inch constitute at least 50 percent of the total weight of the entire batch, that is purchased from the PRC and then refined in a country other than the PRC is outside the scope of the AD Order. However, importers will need to establish to the satisfaction of U.S. Customs and Border Protection that the imported RBAO was exported to the United States from, and refined in, a country other than the PRC.

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Agree

\_\_\_\_\_  
Disagree

  
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Jeffrey A. May  
Deputy Assistant Secretary  
Import Administration, Group I

February 3, 2004  
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Date

