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Scope Inquiry

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Operations/Office 3: EBG, JSC

October 31, 2011

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

THROUGH: Melissa G. Skinner
Director
Office 3, Operations

FROM: John Conniff
Senior Trade Analyst

Eric B. Greynolds
Program Manager

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

SUBJECT: Final Scope Ruling on Certain Decorative Waste Containers

Summary

On July 7, 2011, Rubbermaid Commercial Products LLC (Rubbermaid) filed a scope inquiry in which it requested that the Department of Commerce (the Department) determine whether certain decorative waste containers are encompassed within the scope of the AD and CVD orders on aluminum extrusions from the PRC.¹

Based on our analysis of the comments received, we have determined that the decorative waste containers at issue are outside the scope of the AD and CVD Orders on aluminum extrusions from the PRC.

Background

On July 7, 2011, Rubbermaid, an importer of decorative waste containers, submitted a scope inquiry request.² On July 26, 2011, petitioners submitted comments responding to the scope

¹ See Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order, 76 FR 30,650 (May 26, 2011) and Aluminum Extrusions From the People's Republic of China: Countervailing Duty Order, 76 FR 30,653 (May 26, 2011) (the Orders).

² See Rubbermaid's July 7, 2011, submission.



inquiry request filed by Rubbermaid.³ At the request of the Department, on September 12, 2011, Rubbermaid re-filed its initial scope inquiry request with information concerning the manufacturing process of the products at issue as well as the harmonized tariff schedule (HTS) category under which it imported the products at issue. Rubbermaid's September 12, 2011, submission reset the due date of the scope inquiry to October 31, 2011. See 19 CFR 351.225(c)(2).

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 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

³ Petitioners are the Aluminum Extrusions Fair Trade Committee.

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 these orders 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, and 7608.20.0090. 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.

Legal Framework

The Department examines scope ruling requests in accordance with its scope regulations. See 19 CFR 351.225. On matters concerning the scope of an order, the Department first examines the language of the order(s) at issue and the description of the product contained in the scope request. If the language in the order(s) is not dispositive, the Department will then examine the description of the merchandise contained in the petition, the initial investigation, the determinations of the Secretary (including prior scope determinations) and the International Trade Commission (ITC). See 19 CFR 351.225(k) (1). This determination may take place with or without a formal inquiry. See 19 CFR 351.225(d) and (e). If the Department determines that these descriptions are dispositive of the matter, the Department will issue a final scope ruling as to whether or not the subject merchandise is covered by the order(s). See 19 CFR 351.225(d).

Conversely, where the descriptions of the merchandise are not dispositive, the Department will initiate a scope inquiry under 19 CFR 351.225(e) and analyze the 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 inquiry is made on a case-by-case basis after consideration of all evidence before the Department.

Prior Scope Determinations

Although the Department has issued prior scope determinations concerning the Orders we find that those determinations are not relevant to the instant scope inquiry request on Rubbermaid's decorative waste containers.

Description of the Merchandise

Rubbermaid states that the products at issue are manufactured by first rolling aluminum ingot into sheets. It explains that the sheets are then manufactured into decorative waste containers

utilizing deep drawing and welding production processes. Rubbermaid states that the aluminum products at issue are not produced using an extrusion process. Rubbermaid provides pictures of the products at issue in its scope inquiry request. See Rubbermaid’s July 7, 2011, submission at Exhibits A and B, which contain photos of the following decorative waste container product lines: Model 9070 Atrium Aluminum container, model AOT35 Open Top Container, and Model AOT62 Open Top container. Rubbermaid states that these models are representative examples of all the decorative waste containers manufactured using the production process described above. Rubbermaid states that it imports the products at issue under HTS 7615.19.9000.

Arguments from Interested Parties

Rubbermaid

Rubbermaid states that merchandise subject to the Orders is limited to “aluminum extrusions which are shapes and forms, produced by an extrusion process” Rubbermaid argues that the products at issue are not produced by an extrusion process but are formed via deep drawing and welding processes. Therefore, argues Rubbermaid, the products at issue fall outside the scope of the Orders. Thus, Rubbermaid contends that the Department should find the products at issue are not covered by the scope of the Orders pursuant to 19 CFR 351.225(k)(1).

Petitioners

In their July 26, 2011, submission, petitioners note that the scope includes aluminum extrusions that “are drawn subsequent to extrusion” or that are subsequently “fabricated.” Petitioners argue that the Department must therefore inquire whether the aluminum material in the products at issue was produced using an extrusion process. Petitioners contend that it is not clear whether the sheet metal from which the decorative waste containers were made utilized an extrusion process. If so, argue petitioners, the products at issue are covered by the scope.

Department’s Position: The scope of the Orders states that, “the merchandise covered by this order is aluminum extrusions which are shapes and forms, produced by an extrusion process. . . .” This language makes clear that the scope is limited to aluminum products produced using an extrusion process. Therefore, the scope of the Orders does not cover aluminum products produced using processes other than the extrusion process.

We do not agree with petitioners’ claim that it is uncertain as to whether the products at issue underwent an extrusion process at some point in the production chain. Rubbermaid states that the “aluminum sheet used in the manufacturing process is made from aluminum ingots, which are rolled into sheet.” See Rubbermaid’s September 12, 2011, submission at 1 (emphasis added). Rubbermaid further states that the aluminum sheet is subsequently formed into the decorative waste containers at issue via deep drawing and welding processes. See Rubbermaid’s July 7, 2011, submission at 1. The information from Rubbermaid demonstrates that the initial feedstock used to produce the decorative waste containers were aluminum ingots that were subsequently rolled, drawn, and welded. Thus, based on this information we conclude that the decorative waste containers at issue are not produced using an extrusion process. Therefore, pursuant to 19 CFR 351.225(k)(1), we find the products at issue are not covered by the scope of the AD and CVD orders.

Recommendation

For the reasons discussed above and pursuant to 19 CFR 351.225(d) and 351.225(k)(1), we recommend finding that the certain decorative waste containers addressed by the instant scope request are outside the scope of the Orders on aluminum extrusions from the PRC because they are not produced using an extrusion process.

If the recommendation 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(d).

Agree

Disagree

Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

Date