



C-570-968; A-570-967
Scope Inquiry
Precision Machine Parts
Public Document
Office 3; Operations: JC, EBG

March 28, 2012

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

SUBJECT: Final Scope Ruling on Precision Machine Parts

Summary

On December 1, 2011, in response to a request from an importer, IDEX Health & Science LLC (IDEX), the Department of Commerce (the Department) initiated a formal scope inquiry¹ in order to determine whether certain precision machine parts are within the scope of the Orders² in the above mentioned proceedings. On the basis of our analysis of the comments received, we determine that the precision machine parts in question are within of the scope of the Orders.

¹ See the Department's December 1, 2011, letter to interested parties in which it announced the initiation of a formal scope inquiry (Initiation).

² 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 30,652 (May 26, 2011) (the Orders).



Background

On August 30, 2011, IDEX requested that the Department issue a scope ruling finding that certain precision machine parts are not subject to the scope of the Orders. In their September 23, 2011, submission, Petitioners³ submitted comments in opposition to the Scope Ruling Request.⁴ On October 3, 2011, IDEX submitted comments responding to the First Petitioner Filing.⁵ On December 1, 2011, the Department initiated a formal scope inquiry.⁶ In the Initiation, the Department requested that IDEX and Petitioners submit comments and factual information concerning the factors described in 19 CFR 351.225(k)(2). On December 20, 2011, IDEX and Petitioners submitted comments and factual information.⁷ On December 30, 2011, IDEX and Petitioners submitted rebuttal comments and clarifying/factual information.⁸

Applicable Regulations

The regulations governing the Department's AD and CVD scope determinations can be found at 19 CFR 351.225. On matters concerning the scope of an AD and/or CVD order, the Department first examines the language of the order and the scope request. If this is not dispositive, the Department then examines the descriptions of the product contained in the petition, the initial investigation, and the prior determinations of the Secretary (such as prior scope rulings) and the International Trade Commission (ITC). See 19 CFR 351.225(d) and 351.225(k)(1). Such scope determinations may take place with or without a formal scope inquiry. See 19 CFR 351.225(d).

Conversely, where the descriptions of the merchandise contained in the petition, the initial investigation, and the prior determinations of the Secretary and the ITC are not dispositive, the Department will consider the additional factors set forth at 19 CFR 351.225(k)(2). These criteria are as follows: (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. These factors are known commonly as the Diversified Products criteria.⁹ 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 record evidence before the Department.

Descriptions of the Products at Issue

The products subject to this scope inquiry are: (1) an aluminum housing for a vacuum pump assembly used in laboratory, chemical, biotechnical and pharmaceutical research applications, (2) aluminum bodies for high pressure valves for liquid chromatography scientific instruments,

³ Petitioners are the Aluminum Extrusions Fair Trade Committee.

⁴ See Petitioners' September 23, 2011, submission (First Petitioner Filing).

⁵ See IDEX's October 3, 2011, submission (Second IDEX Filing).

⁶ See Initiation.

⁷ See the December 20, 2011, submissions of IDEX and Petitioners (IDEX Case Brief and Petitioner Case Brief, respectively).

⁸ See the December 30, 2011, submissions of IDEX and Petitioners (IDEX Rebuttal Brief and Petitioner Rebuttal Brief, respectively).

⁹ These factors were affirmed as a reasonable test by the Court of International Trade in Diversified Products Corp. v. United States, 572 F. Supp. 883 (C.I.T. 1983) (Diversified Products).

and (3) an aluminum light guided flowcell holder used to hold an optical subassembly that is part of a high performance liquid chromatography (HPLC) instrument that is used in laboratory, chemical, biotechnical, and pharmaceutical research applications.

IDEX states that all of the products at issue start with an extruded block of aluminum upon which various cutting, edging, and drilling operations are performed by means of a computer numerical control (CNC) precision machine process. For example, in the case of the aluminum housing for a vacuum pump assembly described above the extruded block is cut into a rectangular shape, the sides are end-milled to create a flat and parallel surface, and, by means of the CNC process, the block is drilled and lathed to product specifications.¹⁰

Descriptions of Subject Merchandise

1. 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, swedged,

¹⁰ For a detailed description of the products at issue, see IDEX’s August 30, 2011, submission at 5 – 11.

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, 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.

2. The ITC's Description

In its final injury analysis, the ITC described subject merchandise in the following manner:

For the reasons discussed below, we find that there are two domestic like products: (1) Finished Heat Sinks (FHS) and (2) all other aluminum extrusions corresponding to the scope of these investigations.

Physical characteristics and uses: All aluminum extrusions within the scope of these investigations share certain basic physical characteristics. All are made from aluminum alloys in the 1, 3, and 6 series of the Aluminum Association (so-called "soft alloys"), all are produced by an extrusion process, and many aluminum extrusions are further fabricated (for example, cut to length, machined, drilled, punched, notched, bent, stretched, or assembled by welding or fastening) after they are mill finished. Also, many aluminum extrusions are produced in custom shapes and sizes. FHS are not different from other aluminum extrusions in terms of their metallurgic chemistry, or by virtue of being further fabricated or produced in custom shapes. FHS are different from most other aluminum extrusions, however, by virtue of the specific and precise tolerances to which they are generally produced. FHS are designed to remove damaging heat from electronic equipment. The flat surface tolerance for FHS is often 1/1000 of an inch per inch, compared to 4/1000 to 14/1000 of an inch per inch for ordinary aluminum extrusions. The precise flatness of FHS allows for close contact between the FHS and the heat-generating components for which they have been designed and to which they are attached, thereby reducing or eliminating heat-trapping "dead air." FHS also differ from

other aluminum extrusions (including heat sinks that are not “finished”) because of their customized thermal resistance properties. Whereas most aluminum extrusions are differentiated by shape and dimension, FHS are also characterized by their thermal resistance properties. In fact, FHS are certified to perform within thermal resistance parameters. Although these thermal resistance properties are not visible, they are clearly relevant to the customers for whom FHS have been designed. They make FHS precisely or optimally suited to cool the specific electronic devices for which they have been designed.

The principal end-use applications of aluminum extrusions are in the building and construction, transportation, and engineered products sectors. FHS have a specific end use (thermal management of electronic devices), but many other aluminum extrusions also have distinct individual end-use applications.¹¹

Summary of Arguments¹²

IDEX’s Case Brief

IDEX argues that the products at issue meet the five Diversified Products criteria enumerated under 19 CFR 351.225(k)(2) and, thus, should be considered to be outside the scope of the Orders. Concerning the first criteria, IDEX argues that the physical characteristics of the products at issue are distinct from subject merchandise. IDEX argues that the products at issue can be produced using non-extruded feedstock (e.g., semi-finished aluminum blanks that are cast or rolled) whereas shapes and forms produced by the aluminum extrusion process and subject to the Orders can only be produced by the extrusion process. IDEX asserts that the solid cross section bar or rod of the input used to make the products at issue are not necessarily linked to any finished product. In contrast, argues IDEX, extruded intermediate products, which are subject to the Orders, are linked to the final extruded product. In addition, IDEX contends that the feedstock used to make the products at issue do impart the essential form of the finished product whereas an extruded product that is subject to the Orders maintains its essential shape and form from the intermediate stage to the final product. IDEX further asserts that the products at issue obtain their essential shape and form by means of a CNC precision machine process while extruded products that are subject to the Orders obtain their essential shape and form through the extrusion process. IDEX adds that any additional processing of extruded products that are subject to the Orders is typically performed in an extrusion facility, whereas the additional processing of the products at issue is typically performed in machine shop equipped with

¹¹ See Certain Aluminum Extrusions from China, USITC Pub. 4229, Inv. Nos. 701-TA-475 and 731-TA-1177 (Final) (May 2011) (ITC Final Determination) at I-7 – I-8, available at: http://www.usitc.gov/publications/701_731/Pub4229.pdf.

¹² As noted above, on December 20 and December 30, 2011, IDEX and Petitioners submitted case briefs and factual information concerning whether the products at issue fulfill the Diversified Products criteria described in 19 CFR 351.225(k)(2). Prior to these filings IDEX and Petitioners had submitted multiple submissions concerning the whether the products at issue meet the description of the merchandise described in the scope, as well as providing arguments under 19 CFR 351.225(k)(1), and the Diversified Products criteria. See IDEX’s August 30 and October 3, 2011, submissions and Petitioners’ September 23 and December 1, 2011, submissions. The information in these filings reflects the information contained in parties’ December 20 and December 30, 2011, case briefs. Therefore, for the sake of brevity, we have limited the summary of arguments received from IDEX and Petitioners to the arguments and information contained in the parties’ case and rebuttal briefs.

precision machine equipment.

IDEX acknowledges that the scope of the Orders includes aluminum extrusions that are “prepared for assembly.” However, IDEX argues its precision machined parts are not merely “prepared for assembly” but rather owe their essential shape and form to the CNC machining process, as evidenced by the fact that up to 50 to 70 percent of the feedstock is removed by the machining process. IDEX asserts that the “prepared for assembly” language in the scope of the Orders refers to secondary machining operations that are less complex than the CNC machine process due to the fact that the extrusion process allows designers to put material only where it is structurally needed, thereby minimizing the amount of material that will later be milled or machined away.

IDEX argues that by virtue of removing a substantial amount of the feedstock (approximately 50 to 70 percent), the CNC machine process transforms the resulting finished precision machine parts at issue into a product that is separate and distinct from subject merchandise. IDEX argues that the holding of the Court of Appeals for the Federal Circuit (CAFC) in Crawfish supports its argument because in that case the CAFC supported the Department’s finding that turning crawfish tail meat into etouffee substantially transformed the etouffee into a product outside the scope of the order. See Crawfish Processors Alliance v. United States, 483 F.3d 1358 (Fed. Circ. 2007) (Crawfish). IDEX argues that a similar use of the substantial transformation test will result in the Department concluding that the physical characteristics of the products at issue are distinct from subject merchandise.

Concerning the second criteria, IDEX argues that there are differences in the expectations of the ultimate purchasers of the products at issue and the subject merchandise. With regard to the products at issue, IDEX asserts that the underlying feedstock has no value other than as a raw material and that the essential shape and form of the products at issue, along with most of the value added, comes from the CNC precision machine process. In contrast, IDEX argues that for purchasers of subject merchandise formed simply by the extrusion process, the extrusion process itself adds considerable value and essential characteristics to the overall finished extruded product.

With regard to the third criteria, IDEX argues that the precision machine process creates the essential character and determines the ultimate use of the products at issue. IDEX argues that the same cannot be said of subject merchandise, which it claims owes its essential shape and form to the extrusion process. It further argues that any finishing operations performed on subject merchandise do not alter its essential end use.

Concerning channels of trade, the fourth criteria, IDEX argues that virtually all of the products at issue are produced by machine shops and sold directly to end users, as evidenced by the fact that IDEX purchases the products at issue from Chinese machine shops and not from Chinese extruders. IDEX argues that subject merchandise is either sold to machine shops as a raw material (e.g., in the form of bar or rod stock) for machining or to end users directly as an extruded shape or profile. On this basis, IDEX argues that the channels of trade by which the products at issue are sold differ from those for subject merchandise.

IDEX argues that the manner in which the products at issue are advertised and displayed, the fifth prong of the Diversified Products criteria, differ from the methods utilized to market subject merchandise. According to IDEX, the producers of precision machine parts advertise the capabilities of their CNC machinery to make precision machined parts. IDEX contends that such producers do not, however, advertise the extruded bar or rod stock that they used as feedstock. IDEX argues that, in contrast, manufacturers of extruded aluminum products, such as those covered by the scope of the Orders, advertise the capabilities of their extrusion processes.

IDEX notes that the AD order on Bearings from the PRC specifically includes parts, such as housing units, some of which are made precision machined from extruded aluminum bar. See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review, 76 FR 3086 (January 19, 2011) (Bearings from the PRC). IDEX argues that if the Department were to find that precision machined parts made from aluminum extruded bar or rod are within the scope of the Orders, the Department would be determining that certain merchandise subject to the Orders is also subject to the order on Bearings from the PRC because that order includes certain aluminum parts, such as housing and races.

IDEX further argues that the scope of the Orders does not and cannot as a matter of law include any and all objects of aluminum that went through an extruder at some point in the manufacturing process, regardless of the number or nature of the fabrication steps that occurred after the extrusion itself, or regardless of the function of the product yielded by the further manufacturing. IDEX contends such an approach would lead to absurd results in which a single order encompasses multiple classes or kinds of merchandise. For example, IDEX argues that under such an interpretation a block of extruded aluminum hand carved by an artist into an eagle statue would lead to its absurd inclusion in the Orders as subject merchandise.

Petitioners' Case Brief

As to the first criteria under Diversified Products, the physical characteristics of the products at issue, Petitioners state that the scope of the Orders explicitly covers extrusions that are “cut-to-length, machined, drilled, punched, notched, bent, stretched, knurled, swedged, mitered, threaded, and spun.” Petitioners assert these fabrication processes are the same processes used to make the products at issue.

Petitioners further argue that there is no language limiting the scope of the Orders to extrusions fabricated within certain dimensional tolerances or other measures of precision. Furthermore, Petitioners argue that the scope specifically covers heat sinks, which have been “cut-to-length, precision machined, and or otherwise fabricated to the end product specifications, but not yet tested.”¹³ Petitioners note that finished heat sinks were ultimately excluded from the scope of the Orders due to a finding of no injury by the ITC. However, Petitioners contend that the Department's finding that precision machined extrusions, such as heat sinks, fall within the

¹³ See Orders; see also Aluminum Extrusions from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 76 FR 18524 (April 4, 2011) (AD Final Determination) and accompanying Issues and Decision Memorandum (AD Final Determination Decision Memorandum) at Comment 3G; See also ITC Final Determination at I-12, stating that heats sinks are produced using computer controlled milling machines.

scope of the Orders still stands. Petitioners further note that that the ITC found that “the use of precision manufacturing” is insufficient “to distinguish a particular aluminum extrusion from the wide variety of aluminum extrusions.”¹⁴

Petitioners dispute the notion that the CNC machine process alters the essential shape or form of the feedstock, thereby causing the resulting finished goods to be excluded from the Orders. Petitioners argue that the scope of the Orders covers extrusions transformed by “subsequent” processes such as drawing, stretching, finishing, and fabricating. Petitioners contend that these subsequent production processes, by their very nature, alter the shape or form of the aluminum extrusion. Thus, argue Petitioners, the scope of the Orders cannot be read as to require that the final shape and form of the product be imparted exclusively by the extrusion process.

Petitioners disagree with IDEX’s claim that the inclusion of the products at issue within the scope of the Orders will lead to an overly broad interpretation of the scope. Petitioners argue that the scope was crafted to encompass all downstream products that have undergone subsequent processes, such as drawing, finishing, fabricating, etc. and that this may indeed cover many thousands of aluminum parts. However, Petitioners argue that the scope does not encompass downstream products that have been converted into finished merchandise. According to Petitioners, IDEX makes no claim that its products, which are parts of scientific instruments, should be considered finished merchandise.

Petitioners point out that the illustrative fabrication operations provided in the scope necessarily result in the removal of material from the extrusion. Petitioners further note that the scope establishes no numerical threshold regarding the amount of material that may be so removed. Thus, according to Petitioners, the fact that a certain percentage of feedstock is removed during the production of the products at issue does not mean that the products are excluded. Petitioners also argue that 50 percent or more of the aluminum blank used to produce a heat sink is removed during the production process.¹⁵ Petitioners argue that other aluminum extrusions products, such as those used in the aerospace industry, similarly experience a reduction in material during the production process.¹⁶

Petitioners argue that IDEX’s comments regarding substantial transformation have no relevance in the context of a scope inquiry conducted under 19 CFR 351.225(k)(2). Citing to Tissue Paper from the PRC, Petitioners contend that substantial transformation analysis is a test used to determine country of origin but is not used in scope inquiries.¹⁷

According to Petitioners, in prior filings IDEX has argued that a product that has undergone subsequent fabrication can no longer be considered as an extrusion subject to the order unless it retains a “fixed cross-sectional profile” after such fabrication.¹⁸ Petitioners contest this notion arguing that the fabrication processes listed in the scope (e.g., drilling and miter cutting)

¹⁴ See ITC Final Determination at 11.

¹⁵ See Petitioners Case Brief at Attachment I.

¹⁶ See ITC Final Determination at I-10.

¹⁷ See, e.g., Certain Tissue Paper Products from the People’s Republic of China: Notice of Rescission of the 2009-2010 Antidumping Duty Administrative Review, 76 FR 47550 (August 5, 2011) (Tissue Paper from the PRC).

¹⁸ See Petitioners Case Brief at 9, quoting IDEX’s October 3, 2011, submission at 6.

necessarily alter an extrusion's cross-section. Similarly, Petitioners argue that the Department should reject IDEX's prior claims that the removal of primary edges from the feedstock used to produce the products at issue renders the products outside the scope. Petitioners argue that the scope specifically encompasses extrusions that have been drawn and polished, which they claim alters and removes material from all sides of the extrusion.¹⁹

Concerning expectations of the ultimate purchasers, the second prong in the Diversified Products criteria, Petitioners assert that the relevant question is whether purchasers' expectations for IDEX's precision machine parts are fundamentally different from their expectations regarding other fabricated parts that are subject to the Orders. Petitioners maintain that IDEX has presented no evidence to show that there is a fundamental difference.

Petitioners argue that the ultimate use of the products at issue demonstrate that they do not meet the third prong of the Diversified Products criteria. Petitioners note that the ITC found that "many types of aluminum have a specific functionality" that are not interchangeable with other extrusions and that they may be dedicated to "specific applications."²⁰ Further, Petitioners note that the ITC found that the "major end-use" for extrusions includes laboratory equipment and apparatus.²¹ Thus, Petitioners argue that the end uses of the products at issue are not distinct from subject merchandise.

Concerning the channels of trade in which the goods travel, the fourth prong of the Diversified Products criteria, Petitioners argue that IDEX has failed to adequately distinguish the products at issue from subject merchandise. Petitioners dispute IDEX's argument that the products at issue are sold in channels of trade that differ from subject merchandise. Petitioners argue that in both cases extruders sell aluminum profiles to machine shops, and machine shops sell the fabricated extrusions to end users. Petitioners contend that IDEX fails to demonstrate that the precision machined parts at issue are sold through different channels of trade than other fabricated extrusions that are encompassed by the Orders. Petitioners assert that many other subject aluminum extrusions (e.g., fabricated heat sinks) can be fabricated and sold by machine shops, as opposed to being sold by extruders. According to Petitioners, the fact that IDEX does not purchase the products at issue directly from an extruder does not differentiate the products at issue from subject merchandise.

Regarding the fifth prong of the Diversified Products criteria, the manner of advertising and display, Petitioners argue that IDEX fails to establish that there are fundamental differences between the products at issue and subject merchandise. Petitioners point out that IDEX itself acknowledges that producers of aluminum extrusions subject to the Orders advertize their ability to finish subject merchandise, which include the use of CNC machinery.²² Petitioners further argue that producers of subject merchandise market bar and rod extrusions along with fabricated extrusions in the same brochure, which demonstrates that there is no difference between the way that extruded products which are not fabricated and the way that extruded products, which are

¹⁹ See Petitioners Case Brief at 10, referencing IDEX's October 3, 2011, submission at 6-7.

²⁰ See ITC Final Determination at I-8.

²¹ See ITC Final Determination at I-10.

²² See IDEX's August 30, 2011, submission at 47.

fabricated, are advertised.²³

IDEX's Rebuttal Brief

IDEX reiterates its contention that the scope of the Orders cannot, as a matter of law, include any and all objects of aluminum that went through an extruder at some point in the manufacturing process, regardless of the number or nature of the fabrication steps that occurred after the extrusion itself or regardless of the product yielded by the further manufacturing. IDEX claims such an interpretation would be akin to imposing an AD order on continuously cast steel and claiming that all steel products produced from a continuous cast steel process would be covered by the order, even though such downstream products constitute separate classes and kinds of merchandise. IDEX asserts that its argument in this regard is not hypothetical. According to IDEX, the adoption of Petitioners' interpretation of the scope will result in products simultaneously falling under the scope of the Orders as well as the scope of Bearings from the PRC. Thus, IDEX contends such an interpretation is untenable and contrary to law.

IDEX argues that Petitioners quote the scope of the Orders out of context when they claim that subject merchandise includes "fabricated" extrusions. IDEX maintains that the scope, in fact, states that "aluminum extrusions may also be fabricated, *i.e.*, prepared for assembly." IDEX argues that the CNC precision machine process performed on extruded aluminum feedstock cannot reasonably be considered to be a raw material that is "prepared for assembly." Rather, IDEX asserts that the phrase "prepared for assembly" implies that the secondary machining operations performed on extruded aluminum parts are less complicated than the operations performed on the products at issue.

IDEX disputes Petitioners' argument that the substantial transformation test has no application in scope inquiries conducted under 19 CFR 351.225(k)(2). IDEX argues Crawfish refutes Petitioners' claim in this regard. According to IDEX, in Crawfish, the CAFC addressed the issue of whether "crawfish etouffee" is included within the scope of the AD order on freshwater crawfish tail meat from the PRC.²⁴ Specifically, IDEX argues that the CAFC analyzed whether crawfish tail meat, when processed into etouffee, had been transformed into a new and different product, such that it could no longer be considered a product covered by the scope of the AD order.²⁵ IDEX argues that the Department similarly should apply the substantial transformation test to the products at issue. For the reasons discussed above, IDEX argues that such an analysis will demonstrate that the CNC precision machine process fundamentally transforms the extruded aluminum feedstock into a product that is distinct from subject merchandise.

Concerning the physical characteristics of the products at issue, IDEX disputes the notion that the degree to which fabricated aluminum extrusions are physically different from raw aluminum profiles is irrelevant. IDEX argues that scope of the Orders encompass extrusions that "may also be fabricated, *i.e.*, prepared for assembly." According to IDEX, the "prepared for assembly" language implies that the secondary machining operations performed on extruded aluminum parts are less complicated than those performed the products at issue. Otherwise, maintains

²³ See Petitioners' Case Brief at 16.

²⁴ See Crawfish, 483 F.3d 1358, 1359.

²⁵ Id. at 1363.

IDEX, the Orders would have specified that the scope cover all products product by the aluminum extrusion process, regardless of the amount of subsequent fabrication. IDEX asserts that the CNC machine process alters the essential form of the products at issue and, thus, are they not encompassed by the less complicated processes used to produce subject merchandise as implied by the “prepared for assembly” language in the scope of the Orders.

With regard to expectations of the ultimate purchasers, IDEX argues that for the products at issue, it is the CNC machining process that is paramount to purchasers, not the extrusion process that produced the aluminum feedstock. IDEX argues that this fact distinguishes the products at issue from subject merchandise in the eyes of the ultimate purchasers. IDEX asserts that the extrusion process is, in fact, entirely unnecessary to the production of the products at issue. According to IDEX, depending on the size of the part, the products at issue could easily be manufactured from semi-finished aluminum blanks that are either cased or rolled.

Regarding the ultimate use of the product, IDEX argues that for the products at issue, the extrusion process does not dictate the essential character and use of the precision machined part. Rather, argues IDEX, it is the CNC machine process that creates the essential character and use of the products at issue.

Concerning channels of trade, IDEX maintains that aluminum extrusions subject to the Orders are sold to end users and to distributors, whereas the products at issue are sold only to end users. IDEX further argues that the products at issue are sold by the piece to end users, while aluminum extrusions are typically sold on a basis of a metal price plus a per-pound fabrication charge.

IDEX argues that the products at issue are advertized in a manner that distinguishes them from aluminum extrusions subject to the Orders. Specifically, IDEX argues that producers of the products at issue advertise the capabilities of the CNC machines used to make the precision machine parts. In contrast, argues IDEX, most producers of aluminum extrusions that are subject to the Orders advertise their capability to make standard or custom shapes based on their extrusion technology.

Petitioners’ Rebuttal Brief

Petitioners contest IDEX’s claim that the extrusion process is entirely unnecessary in the manufacture of the products at issue. Petitioners argue that if this claim were true then there would be no need for IDEX’s scope request. According to Petitioners, the existence of IDEX’s scope inquiry demonstrates that extrusion process is sufficiently important to the manufacture of the products at issue. Petitioners further argue that IDEX neglects to mention that the extrusion process imparts certain grain structure and strength characteristics that improve machinability and final product performance.

Petitioners disagree with the claim that the phrase “fabricated, i.e., prepared for assembly” implies that the secondary machining operations performed on subject merchandise are less complicated than those performed on the products at issue. Petitioners assert that there is absolutely no basis for such an assertion. Rather, Petitioners contend the phrase “fabricated, i.e., prepared for assembly” merely recognizes that fabrication typically occurs before assembly,

which is the case concerning the products at issue. Petitioners further argue that the scope of the Orders imposes no limit on the degree of fabrication that may be performed prior to assembly. In addition, Petitioners note that the illustrative fabrication processes included in the scope of the Orders (i.e., cutting, drilling, spinning, etc.) are the same processes used to manufacture the products at issue.

Petitioners argue that the scope clearly encompasses products shaped solely by the extrusion process as well as extruded products that undergo such further processing as drawing, finishing, fabrication, and assembly. Thus, Petitioners maintain that the products at issue fall within the scope of the Orders regardless of whether the precision machine process is considered a substantial transformation. Petitioners further argue that the instant scope inquiry is distinct from Crawfish because the scope in Crawfish did not explicitly include etouffee (the purportedly transformed item) whereas the scope of the Orders explicitly includes fabricated extrusions. Citing to Sacks from the PRC, Petitioners further argue that the substantial transformation test is used to determine country of origin and has no place as part of a scope inquiry conducted under 19 CFR 351.225(k)(2):

Therefore, self-initiation of a scope inquiry is not necessary when it is decided that the country of origin can be determined through analysis of the information on the record in conjunction with the current administrative review. Furthermore, the Department has previously made country-of-origin determinations within an administrative review without initiating a separate scope proceeding.²⁶

Petitioners add that the first of several factors considered under the substantial transformation test is whether the downstream product falls within the same class or kind of merchandise encompassed by the scope of an order. Petitioners argue that this is the ultimate and only question that must be resolved in the instant scope inquiry. Petitioners assert that the Department should make an affirmative finding in the instant scope inquiry because the scope of the Orders encompasses a single class or kind of merchandise that explicitly includes fabricated aluminum extrusions. In addition, Petitioners argue that even if the Department were to apply the substantial transformation test to the products at issue it would not be able to complete the analysis because IDEX has not provided additional information required by the Department. Citing to Bearings from the PRC, Petitioners argue that IDEX has not provided any information concerning the cost of production and value-added by the downstream processing, which they claim is necessary in order for the Department to conduct substantial transformation test.²⁷

According to Petitioners, in its Diversified Products analysis, IDEX wrongly contrasts the products at issue with the extruded aluminum feedstock from which they are made. Petitioners counter that any such differences are irrelevant because the scope of the Orders encompasses both fabricated and non-fabricated extrusions. Petitioners argue that IDEX has failed to demonstrate that the products at issue differ from other fabricated extrusions that are

²⁶ See Tissue Paper from the PRC, 76 FR at 47550; see also Laminated Woven Sacks From the People's Republic of China: Final Results of Second Antidumping Duty Administrative Review, 76 FR 21333 (April 15, 2011) (Sacks from the PRC), and accompanying Issues and Decision Memorandum at Comment 1.

²⁷ See Bearings from the PRC at Comment 6D (discussing the factors evaluated under the Department's substantial transformation test).

encompassed within the scope of the Orders.

Petitioners assert that the Department need not consider IDEX's hypothetical scenario of whether an affirmative finding in the instant scope inquiry will result in tapered roller bearings falling within the scope of the Orders. Petitioners argue that tapered roller bearings are not the subject to the instant inquiry and that IDEX makes no claim that its precision machined parts might be subject to any other AD or CVD Orders.

Department's Position: As discussed above, in scope proceedings, the Department first considers whether the products at issue meet the description of the merchandise in the scope of the Orders. In this case, the Department finds that the description of the merchandise contained in the scope is not dispositive, because, although the scope covers merchandise that is further fabricated, it does not address the products at issue, which are made from aluminum extrusions that undergo various fabrication processes, which IDEX argues brings the merchandise outside the scope of the Orders. We also find that the descriptions of the merchandise contained in the petition, the investigation, prior determinations of the Secretary and the ITC are not dispositive of the products at issue for the same reason. Therefore, we have analyzed whether the products at issue are within the scope of the Orders by analyzing the criteria under 19 CFR 351.225(k)(2), also known as the Diversified Products criteria.

Concerning physical characteristics, the first prong of the Diversified Products criteria, for the following reasons we find that the fabrication process (e.g., the CNC machine process) used to produce the products at issue is not distinct from the fabrication processes used to produce aluminum extrusions (e.g., laboratory equipment) that are covered under the scope of the Orders. The scope of the Orders states:

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.²⁸

We find that the language cited above encompasses the manufacturing processes utilized to create the products at issue. For example, the products at issue are cut-to-length, machined, drilled, and lathed (i.e., spun). We also disagree with IDEX's argument that the phrase "prepared for assembly" in the fabrication language of the scope implies that the secondary machining operations performed on extruded subject merchandise are less complicated than the products at issue. We find there is nothing in the petition, the scope of the Orders, prior scope rulings, or the ITC Final Determination to support IDEX's claim in this regard.

In fact, information from the ITC and the Department indicates that the scope of the Orders places no such limits on the degree of fabrication, such as that involving the CNC process, in the manner suggested by IDEX. The description and treatment of heat sinks and finished heat sinks by the Department and ITC makes this fact apparent. Due to a negative injury finding by the

²⁸ See Orders.

ITC, the scope of the Orders excludes finished heat sinks.²⁹ However, the scope of the Orders nonetheless continues to include heat sinks that have not been “finished:”

Finished heat sinks differ from fabricated heat sinks in that they have been fully, albeit not necessarily individually, tested and assured to comply with the required thermal performance end-use specifications. Only finished heat sinks are excluded from the scope of the order.³⁰

Regarding heat sinks, the ITC states that:

. . . in the production of a heat sink from an aluminum extrusion, the cut part is held in and fabricated by a computer controlled (CNC) milling machine to add mounting holes, clearance pockets, threaded holes and attachment points for heat generating devices. Other types of machine tools such as a lathe are also used depending on the part shape. This fabricated, machined part is typically cleaned, deburred (sharp edges removed) and can have one of a variety of finishes applied.³¹

In ITC Final Determination, in regards to OPC tubes, which were described as made from a specialized aluminum which “require very distinct and proprietary manufacturing processes” and which are not interchangeable with other products, the ITC stated that “a lack of interchangeability and the use of precision manufacturing are not by themselves sufficient to distinguish a particular aluminum extrusion product from the wide variety of aluminum extrusions in this investigation.”³² We find that the investigation contemplated that subject merchandise would undergo specialized machining processes, and did not include a limit on the amount or specialty of the fabrication. Also, the information from the ITC Final Determination demonstrates that the utilization of the CNC production process does not distinguish the products at issue from other products subject to the scope of the Orders, such as heat sinks, that are also produced using the CNC production process.

We also disagree with the notion that the products at issue are outside the scope of the Orders by virtue of the fact that relatively large amounts of the extruded feedstock are removed during the CNC machine process. As Petitioners explain, the scope of the Orders provides no exclusions based upon numerical thresholds regarding the amount of material removed in the process of fabrication. The scope of the Orders also does not specify that the shape must be imparted by the extrusion process. The illustrative list of fabrication processes included in the scope demonstrates that many different shapes could be created in the fabrication process.

We further find IDEX’s claim that the products at issue can be produced using non-extruded feedstock to be irrelevant. IDEX’s scope inquiry pertains to fabricated products that are the result of the extrusion process and, thus, we must limit our analysis to those products.

While we disagree with the notion that the substantial transformation analysis cannot be

²⁹ See ITC Final Determination at 24; see also AD Final Determination, 76 FR at 30650.

³⁰ See AD Final Determination, 76 FR 30650.

³¹ See ITC Final Determination at I-12.

³² See ITC Final Determination at 11.

considered within the context of the factors enumerated under 19 CFR 351.225(k)(2), we find that the facts in Crawfish differ significantly from the facts in this case. In Crawfish, the Department considered whether etouffee was subject to the AD order on crawfish tail meat.³³ The Department conducted an analysis under 19 CFR 351.225(k)(2), and in considering the physical characteristics, considered whether the crawfish tail meat had been transformed into a different product. The Department “found that etouffee, when cooked in the manner described by Coastal, had undergone a substantial transformation into a new and different product,” because the overall physical characteristics, including the integration of the crawfish with other ingredients were altered from tail meat on its own.”³⁴ The Department’s determination was affirmed by the CAFC, which held that “as a mixture of many ingredients in addition to crawfish tail meat, Commerce could reasonably have determined that etouffee is not freshwater tail meat and therefore is not included within the scope of the order.”³⁵ In this case, the scope of the Orders includes “aluminum extrusions . . . produced by an extrusion process” which may also be “fabricated.” IDEX’s products are aluminum extrusions that have been fabricated, using some of the same processes (e.g., the CNC machine process) which were discussed in the investigation and in the ITC Final Determination. Therefore, unlike the etouffee considered in Crawfish, fabricated aluminum extrusions are expressly included in the scope of the Orders. Furthermore, the scope of the Orders, the ITC Final Determination, and the AD Final Investigation do not indicate that fabrication may only reach a certain point before an aluminum extrusion is no longer within the scope of the Orders.

IDEX argues that “the relevant question is whether the ‘fabrication’ process is so fundamental or extensive in scope that it has ‘transformed’ the piece of aluminum from a mere ‘extrusion’ to some specific part that can no longer be fairly described simply as an aluminum extrusion.”³⁶ Although it is true that a fabricated aluminum extrusion may no longer be described as a mere “extrusion” by virtue of the fabrication, IDEX ignores the fact that the scope of the Orders includes merchandise, such as heat sinks, which is fabricated. We also disagree with IDEX’s argument that the Department may not rely on the word “fabricated” in the scope for finding that the products at issue are within the scope of the Orders. As discussed above, the physical descriptions of subject merchandise include products which undergo similar processes (e.g., the CNC machine process) to those described by IDEX, and so there is no basis to distinguish IDEX’s products from those subject to the scope based on the extent of fabrication.

Concerning the expectations of the ultimate purchasers, the second prong of the Diversified Products analysis, we agree with Petitioners that the proper analysis cannot begin by comparing the products at issue, which are fabricated, to non-fabricated extruded products. Rather, we find that the products at issue must be compared with other extruded products that have undergone some form of fabrication which are subject to the scope. As noted above, the scope of the Orders encompasses fabricated, extruded aluminum products, including products produced by means of the CNC machine process. This includes fabricated heat sinks which the Department and the ITC found to be within the scope of the Orders.³⁷ In light of this fact, we find IDEX’s arguments

³³ See Crawfish, 483 F.3d at 1360.

³⁴ Id. at 1361.

³⁵ Id. at 1363.

³⁶ IDEX Case Brief at 16.

³⁷ See AD Final Determination, 76 FR at 30650.

concerning how the CNC machine process distinguishes the products at issue in terms of the expectations of the ultimate consumers to be unpersuasive. In conclusion, we find that the expectations of the ultimate purchasers to be the same for subject merchandise and the products at issue.

Concerning the third prong of the Diversified Products analysis, we disagree with IDEX's claims that the CNC machine process determines the ultimate use of the products at issue and that this fact distinguishes the products from those covered under the scope of the Orders. As noted above, we find that the scope of the Orders includes extrusions that have been fabricated by means of the CNC machine process, and that the ITC found that these products may include laboratory equipment.³⁸ For this reason, we find that the ultimate use of the products at issue is not distinct from those of subject merchandise.

Regarding channels of trade, the fourth prong of the Diversified Products analysis, IDEX argues that the products at issue are distinct because for the products at issue the extruded aluminum feedstock is first sold to machine shops before being sold to end-users as a precision machined product whereas subject extrusions are sold without precision fabrication directly to end-users or as extruded feedstock to machine shops. IDEX's argument incorrectly compares the products at issue, in which aluminum extrusions undergo precision fabrication prior to sale, to subject extrusions that are not subject to precision fabrication prior to sale. As noted above, the scope of the Orders covers non-fabricated extrusions and fabricated extrusions, including heat sinks that have been fabricated by means of a CNC machine process. Thus, the fact that heat sinks are covered by the scope of the Orders and that they are sold as CNC machined products undermines IDEX's claims that the products at issue are sold through distinct channels of trade.³⁹ In light of this fact, we find the appropriate analysis is one that compares the channels of trade of the fabricated products at issue to fabricated extrusions subject to the Orders, such as fabricated heat sinks. Using this approach, we find that the channels of trade of the products at issue are not distinct from fabricated extrusions that are subject to the scope of the Orders.

Concerning the manner in which products are advertised and displayed, the fifth prong of the Diversified Products criteria, we find IDEX's claim that the producers of the products at issue advertise the capabilities of their CNC machinery over the qualities of the extruded feedstock to be an incorrect comparison. As noted above, we find the scope of the Orders includes extruded products (e.g., heat sinks) that are fabricated by means of a CNC machine process. In light of this fact, it is reasonable to assume that producers of such subject extrusions might also tout the capabilities of their CNC machinery in their marketing materials. Statements made by IDEX support such an assumption. In a prior filing, IDEX states, "many of the aluminum extrusion companies advertise their ability to finish extruded products, including the use of CNC machinery." See IDEX's August 30, 2011, submission. Thus, in terms of advertising and display, we find that the products at issue are not distinct from precision machined extrusions covered under the scope of the Orders.

Lastly, we disagree with the argument that inclusion of the products at issue will result in an overly broad interpretation of the scope. We find IDEX's claims that an affirmative finding in

³⁸ See ITC Final Determination at I-10.

³⁹ ITC Final Determination at I-12

the instant scope inquiry would lead to the inclusion of certain bearings in aluminum housings to be within the scope of the Orders as well as within the scope of Bearings from the PRC to be off point. No interested party has come forward to argue that products covered by the scope of Bearings from the PRC are also covered by the scope of the Orders. Further, IDEX has not claimed that the products at issue would be covered under the scope of Bearings from the PRC. As such, we find that IDEX's comments in this regard are not relevant to this scope ruling. Furthermore, the scope of the Orders expressly excludes finished products and, thus, the exclusion criteria impose a limit on the products covered by the scope of the Orders. Thus, the hypothetical scenario of the hand-carved eagle fashioned from extruded aluminum offered up by IDEX would likely constitute a finished product that would be excluded from the scope of the Orders. Notably, IDEX does not contend that the precision machine parts at issue are finished products.

Department's Recommendation

For the reasons discussed above, we recommend finding that the products addressed by the instant scope request are subject to the scope of the Orders pursuant to 19 CFR 351.225(k)(2). In light of the numerous submissions made by interested parties and the issues addressed in the scope request itself, we recommend finding that the scope request does not present a significant difficulty within the meaning of 19 CFR 351.225(f)(3) and, thus, further recommend that this scope ruling constitute a final ruling as provided under 19 CFR 351.225(f)(4).

If the recommendation in this memorandum is accepted, we will serve a copy of this memorandum to all interested parties on the scope service 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