



C-570-968; A-570-967
Scope Inquiry
Curtain Wall Units
Public Document
Office 3; Operations: JSC, EBG

DATE: November 30, 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: Curtain Wall Units and Other Parts of a Curtain Wall Systems from the People's Republic of China (PRC)

SUBJECT: Final Scope Ruling on Curtain Wall Units and Other Parts of a Curtain Wall System

Summary

Northern California Glass Management Association (NCGMA) filed a scope inquiry requesting that the Department of Commerce (the Department) confirm that curtain wall units and other parts of curtain wall systems (curtain wall systems) are within the scope of the Orders.¹ The Curtain Wall Coalition (CWC) filed an amended scope inquiry.² For the reasons described below, we recommend determining that the curtain wall systems are within the scope of the Orders.

Background

NCGMA filed its request for a scope inquiry on August 24, 2012.³ On September 25, 2012, Shenyang Yuanda Aluminum Industry Engineering Co., Ltd. and Yuanda USA Corporation

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, the Orders).

² See the October 11, 2012, Amended Scope Request by CWC (Amended Scope Request).

³ See the August 24, 2012, Scope Request of NCGMA (Scope Request).



(collectively, Yuanda), filed a letter in opposition to NCGMA's request in which Yuanda contested the NCGMA's standing to submit a scope request as an interested party under section 771(9) of the Tariff Act of 1930, as amended (the Act). On September 27, 2012, the Aluminum Extrusions Fair Trade Committee (petitioner) filed a letter in support of NCGMA's scope request. On October 2, 2012, NCGMA disputed Yuanda's allegations that it did not have standing. On October 9, 2012, Yuanda responded to NCGMA's October 2, 2012, letter. On October 9, 2012, the Department rescinded NCGMA's scope inquiry request on the basis that NCGMA had not demonstrated that it qualified as an interested party. On October 11, 2012, Walters & Wolf, Architectural Glass & Aluminum Company, and Bagatelos Architectural Glass Systems, Inc., collectively submitted an amended request for a scope inquiry on behalf of the Curtain Wall Coalition (CWC), which is a member of NCGMA. On October 17, 2012, the Department initiated the scope inquiry because CWC had demonstrated its interested party status under section 771(9) (C) of the Act, specifically because the three members of the CWC certified that they are each a U.S. manufacturer, producer or wholesaler of a domestic like product because they each produce, manufacture and fabricate aluminum extrusions for the production of curtain wall units and parts of curtain wall systems in the United States.⁴ On October 19, 2012, Yuanda submitted a letter to the Department challenging CWC's standing as an interested party.

On November 16, 2012, Jangho Curtain Wall Americas Co., Ltd. (Jangho), an importer of curtain wall units, submitted comments that reiterate and support those submitted by Yuanda. In a separate filing submitted on the same day, Jangho reiterates Yuanda's contention that the CWC lacks standing to request a scope inquiry.

On November 21, 2012, Overgaard Limited (Overgaard), a foreign producer of curtain wall units, and Bucher Glass Inc. (Bucher), an importer, (collectively Overgaard & Bucher) also submitted comments that support those submitted by Yuanda.

The Department finds that CWC has demonstrated that its members are each interested parties under section 771(9) (C) of the Act, as manufacturers, producers, or wholesalers of a domestic like product, and thus have standing to bring the Amended Scope Request.⁵

Legal Framework

When a request for a scope ruling is filed, the Department examines the scope language of the order and the description of the product contained in the scope-ruling request.⁶ 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.⁷ 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.⁸ If the Department determines that these sources are not sufficient to decide the matter, the Department will consider the five additional factors set forth

⁴ See Amended Scope Request at Appendix IV (Company Certifications).

⁵ See 19 CFR 351.225(c) (providing that any interested party may apply for a scope ruling).

⁶ See *Walgreen Co. v. United States*, 620 F.3d 1350, 1357 (Fed. Cir. 2010).

⁷ 19 CFR 351.225(k) (1).

⁸ 19 CFR 351.225(d).

in 19 CFR 351.225(k) (2). 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.

Descriptions of the Products at Issue

The scope request covers curtain walls and curtain wall systems.

Definition and Description of a Curtain Wall and Curtain Wall Systems

The CWC states that a curtain wall is an aluminum extrusion framed non-weight bearing exterior wall, secured to and supported by the structural frame of a building. Curtain wall systems are the outer cover of typically multi-level buildings designed to envelope an entire building and provide architectural and functional goals. According to the American Society of Testing and Materials, a curtain wall is “a nonbearing exterior wall, secured to and supported by the structural members of the building.” It is a building façade from the roof top to the ground floor that does not carry any building dead loads (*i.e.*, the weight of all materials of construction incorporated into the building). The weight of the curtain wall is transferred to the building structure at the floors and columns of the building structure based on the interlocking connections of the curtain wall.

Curtain Wall Parts and Components of Curtain Walls

The CWC states that curtain wall parts fall short of the final finished curtain wall that envelopes an entire building structure. Certain curtain wall parts are assembled into modules that are designed to be interlocked with other curtain wall parts, like pieces of a puzzle.

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 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 millimeters (mm) or 62 mm, (2) outer diameter of 11.0 mm or 12.7 mm, and (3) wall thickness not exceeding 0.13 mm.

Also excluded from the scope of 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 these Orders is dispositive.

Arguments of the Interested Parties

Production of Curtain Walls

The CWC argues that single curtain wall pieces or units are never purchased for consumption. A unitized curtain wall system is comprised of many curtain wall units and must be assembled and installed with additional components added before a complete curtain wall is completed. Furthermore, the CWC adds that curtain walls entail factory fabrication and assembly of panels and generally include factory glazing. The CWC argues that each unit is merely a part which must be assembled with other parts or units that are specifically designed and matched so they can be imbedded in concrete.

The CWC asserts that the language of the scope clearly states that curtain wall units and other parts of curtain walls are covered by the scope of the Orders:

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.⁹

The CWC further contends that the Department found the scope language of the investigations explicitly states that curtain walls assembled after importation are within the scope.¹⁰ The CWC argues that curtain wall units fall within the scope of the Orders because these products are imported as aluminum extrusion frames, with or without the infill material, for further assembly into a curtain wall system for further installation in construction and building and that each unit is akin to a piece of a puzzle with custom-built locks into adjoining units.¹¹

Additionally, the CWC argues that the Department found during the investigation that the exclusion for “kits” does not apply to curtain wall units and parts, and that in numerous other scope decisions on aluminum extrusions the Department found that certain products were not excluded as kits because they did not include all the necessary parts and components for a final finished product upon importation.¹²

Petitioners¹³ reiterate CWS’s contention that it is simply not possible for a complete curtain wall to enter as a “kit” because the entire installation process is designed to work with other parts to form a larger structure and represent a collection of individual parts that comprise a single element as opposed to complete system.¹⁴

Yuanda argues that imports of fully assembled curtain wall units are in ready-to-hang condition, which makes them a finished product and excluded from the scope of the order. Yuanda claims that both of the commonly imported curtain wall systems, utilized and stick-built, arrive in the U.S. market as complete, full-fabricated units ready for installation. These curtain wall systems, which include in-fill glass windows, are excluded by the scope language and, like windows with glass, are excluded from the scope of the Orders.¹⁵

Finally, Yuanda argues that other parts of curtain wall systems may be excluded when imported together--specifically the connectors, the aluminum frame and aluminum brackets--as stated in

⁹ See scope of the Orders.

¹⁰ See the Department’s memorandum entitled “Aluminum Extrusions from the People’s Republic of China, Preliminary Determinations: Comments on Scope of the Investigations, dated October 27, 2010, at Comment 6.

¹¹ See AD Order.

¹² See Aluminum Extrusions From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 76 FR 18524 (April 4, 2011), and accompanying Issues and Decision Memorandum at Comment 3H; Final Scope Ruling on Certain Modular Aluminum Railing Systems (October 31, 2011); Final Scope Ruling on American Fence Manufacturing Co. LLC’s Fence Sections, Posts and Gates (December 2, 2011) at 10-11; Final Scope Ruling on Certain Retractable Awning Mechanisms (October 14, 2011).

¹³ Petitioners are the Aluminum Extrusions Fair Trade Committee.

¹⁴ See Petitioners’ September 27, 2012 submission at 2 and 3.

¹⁵ See Final Scope Ruling on Window Kits (December 6, 2011) at 5.

the Department's previous scope rulings regarding aluminum extrusions, particularly in regards to qualifying as a "kit."¹⁶

Jangho states that a unitized curtain wall system is comprised of curtain wall units that are manufactured off-site at a factory and consist of an extruded aluminum or steel frame, pre-assembled, pre-painted or coated, into which the glazing or panel materials have already been installed.¹⁷ Jangho argues that the curtain wall units are fully assembled as complete and finished products that only need to be aligned and fixed onto pre-positions brackets on the buildings structural exterior. Jangho asserts that the curtain wall units do not need to undergo any further manufacturing, fabrication, finishing, or assembly after importation. They simply need to be unpacked and installed on the exterior of the building. Thus, in the words of the scope, Jangho contends the products at issue are "fully and permanently assembled and completed at the time of entry."¹⁸

Further, according to Jangho curtain wall units containing in-fill glass constitute windows and, thus, per the language of the scope, constitute excluded products. The products at issue are also outside the scope of the Orders per the exclusion language regarding finished goods kits. The products at issue qualify as finished goods kits because, at the time of importation, they contain all the necessary parts to fully assemble a final finished good and require no further finishing or fabrication and are assembled "as is" into a finished product.¹⁹

Jangho also argues that the products at issue are excluded from the scope of the Orders pursuant to Diversified Products criteria enumerated under 19 CFR 351.225(k) (2).²⁰

Overgaard & Bucher argue that the products at issue are finished merchandise and, thus, outside the scope of the Orders. The products at issue, such as those produced by Overgaard, are not subassemblies or parts.²¹ At the time of importation, no further manufacturing is required; the curtain wall units produced by Overgaard are in their final form, with all parts necessary for their use.

Overgaard argues that is wrong to claim that a curtain wall is not a 100 percent complete product since it does not fully enclose a building and is, therefore, a part of a larger system. Such logic is flawed. Curtain wall is normally released as a specific package of work under building contract. Curtain walls, such as those shipped by Overgaard, fulfills 100 percent of the building contract. The curtain walls are by their nature very specific parts of the building envelope, just like other components including concrete slabs, plumbing, electrical, etc. Construction pieces, such as curtain walls, are not akin to a Lego City construction set. In other words, the building itself is not a kit.

¹⁶ See Final Scope Ruling on Certain Retractable Awning Mechanisms at 9 (October 14, 2011); Final Scope Ruling on Drapery Rail Kits (February 3, 2012); Final Scope Ruling on Banner Wall Stands and Back Wall Kits (February 3, 2012) at 6.

¹⁷ See Jangho's November 16, 2012, submission.

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

²¹ See Overgaard & Bucher's November 21, 2012, submission.

Overgaard & Bucher further argue that curtain wall units, where the in-fill glass, are by definition, windows, which are listed in the scope as examples of finished merchandise. The glass lends the curtain walls their essential character. The curtain walls as issue should be excluded from the Orders based on this fact.

Overgaard & Bucher argue that their curtain walls arrive at the construction site and are installed without the need to add any other parts or components. Thus, the curtain wall units constitute a finished goods kit that is excluded from the Orders.

Overgaard & Bucher argue that curtain wall units (as distinct from parts of curtain wall units that otherwise meet the definition of subject merchandise) were not part of the International Trade Commission's (ITC) injury determination and the resulting Orders. Overgaard & Bucher argue that the Department may not expand the scope of an order once it is issued and that an order "must be supported by an ITC injury determination and a determination that have been" dumped or subsidized sales.²²

Standing as an Interested Party

NCGMA stands by its assertion that the majority of its members are U.S. producers or wholesalers of curtain wall units qualify as an interested party under 19 U.S.C. § 1677(9), but found it more expeditious to simply have certain companies file the amended scope request on NCGMA and its members' behalf. Each company is a U.S. manufacture and produces aluminum extrusions into curtain wall units and parts of curtain wall systems in the United States and owns and operates plants and facilities that process and fabricate aluminum extrusions as defined by the order.

Yuanda argues that the CWC does not qualify as an interested party because the majority of its members are not engaged in manufacturing, producing or wholesaling aluminum extrusions, which would qualify it as an interested party under the section 771(9)(E) of the Act. It further contends that the CWC exists mainly to represent and promote the best interests of its members in areas of labor relations and that none of its members have standing because the companies that comprise the new entity have not provided any evidence that they were manufacturers of aluminum extrusions as opposed to only purchasers of aluminum extrusions.

Echoing the comments of Yuanda, Overgaard & Bucher further argue that there is no evidence that the CWC manufacture aluminum extrusions.

Department's Position

The Department has examined the language of the Orders and the description of the products contained in this scope request, as well as the description of subject merchandise in the investigation. We find that the scope and descriptions of the merchandise in the investigation are dispositive as to whether the products at issue are subject merchandise. Accordingly, for this determination, the Department finds it unnecessary to consider additional factors specified in 19 CFR 351.225(k) (2).

²² See A.L. Patterson, Inc. v. United States, 2012, 161 F.3d 1365, 1371 (CIT August 6, 212) (Patterson).

The scope of the Orders specifically lists curtain walls as being subject to the Orders:

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.²³

Furthermore, the Department addressed this issue in its Preliminary Determinations: Comments on the Scope of the Investigations stating:

...curtain walls assembled after importation are within the scope: “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.” Further, the scope excludes “kits” and defines a “kit” as a packaged combination of parts that contains, at the time of importation, all of the necessary parts to fully assemble a final finished good.²⁴

Concerning arguments of Yuanda Jangho, and Overgaard & Bucher that curtain wall units with glass are excluded from the scope of the Orders, like windows with glass, the scope of the Orders specifically includes curtain walls and window frames, but specifically excludes windows with glass. The scope does not specifically exclude curtain walls with glass. Concerning argument of Yuanda, Jangho, and Overgaard & Bucher that a complete curtain wall unit could qualify as a “finished goods kit” and, thus, be excluded from the scope of the Orders as in prior scope rulings, we note that the CWC’s Amended Scope Request does not seek a scope ruling on complete curtain walls units, but rather “parts of curtain walls,”²⁵ and this scope ruling is limited to the products discussed in the CWC’s Amended Scope Request. In conclusion, because both the scope of the Orders and the description of the merchandise in the initial investigation explicitly state that curtain walls are included within the scope of the Orders, the Department finds that the products at issue are included.

Lastly, we disagree with the arguments Yuanda, Jangho, and Overgaard & Bucher make in their submissions that the CWC does not qualify as an interested party under section 771(9) of the Act because none of the CWC’s members are manufacturers of aluminum extrusions.²⁶ Yuanda primarily bases its argument in this regard on the statements made in the narrative portion of the CWC’s Amended Scope Request. However, Yuanda does not address the company certifications contained in the Amended Scope Request that were submitted by each of the three firms that comprise the CWC.²⁷ These certifications indicate that each member of the CWC:

. . . is a manufacturer, producer or wholesaler of a domestic like production under section 771(9)(C) of the Act because it produces, manufactures and fabricates aluminum

²³ See scope of the Orders.

²⁴ See the Department’s memorandum entitled “Aluminum Extrusions from the People’s Republic of China, Preliminary Determinations: Comments on Scope of the Investigations, dated October 27, 2010, at Comment 6 (emphasis added).

²⁵ See Amended Scope Request at 2.

²⁶ See Yuanda’s October 19, 2012, submission at 2; see also Jangho’s November 16, 2012, submission.

²⁷ See Amended Scope Request.

extrusions for the production of curtain wall units and parts of curtain wall systems in the United States.²⁸

We find there is no evidence on the record that calls the accuracy of these certifications into question.

We also disagree with the claims of Yuanda, Jangho, and Overgaard & Bucher that that the CWC's lack of standing is evidenced by the fact that none of its members were identified in the underlying petition nor were identified as members of the U.S. industry the by the ITC. The mere fact that a domestic manufacturer was not identified in the underlying petition or the ITC may not serve as a basis for concluding that an entity lacks standing. This is especially true with regard to a scope and a product (aluminum extrusions) that encompasses a myriad of industries. Thus, we continue to find that the CWC has standing to request a scope inquiry pursuant to section 771(9) (C) of the Act.

Department's Recommendation

For the reasons discussed above, and in accordance with 19 CFR 351.225(d) and 351.225(k) (1), we recommend finding that the products described in CWC's Amended Scope Request are within the scope of the Orders. Further, we recommend finding that the products at issue in the Amended Scope Request do not present a significant difficulty within the meaning of 19 CFR 351.225(f)(3) and, thus, we further recommend that this scope ruling constitutes 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 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

²⁸ Id.