

Aluminum Extrusions from the People’s Republic of China
Asia Sourcing Corp. v. United States
Court No. 13-00161 (CIT June 30, 2014)

Final Results of Redetermination Pursuant to Court Remand

SUMMARY

The U.S. Department of Commerce (“Department”) has prepared these final results of redetermination pursuant to the remand order of the U.S. Court of International Trade (“CIT” or “the Court”), issued on June 30, 2015, in *Asia Sourcing Corp. v. United States*, Court No. 13-00161.¹ This redetermination concerns the Final Scope Ruling² on boat and dock ladders and strip door mounting brackets issued in connection with the antidumping duty and countervailing duty *Orders*³ on aluminum extrusions from the People’s Republic of China, and addresses the issue of whether three dock ladder kits models (ASE, ASH, and DJX3-W) imported by Asia Sourcing Corporation (“ASC”) are covered by the scope.

In its *Remand Order*, the Court remanded the underlying scope ruling and directed the Department to “clarify or reconsider, as appropriate, its inclusion of the ASE, ASH, and DJX3-W dock ladder kit models within the scope of the *Orders*”⁴ The Court also requested that the

¹ See *Asia Sourcing Corp. v. United States*, No. 13-00161 (Ct. Int’l Trade June 30, 2015) (memorandum and order, CM/ECF No. 53) (“*Remand Order*”).

² See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on Asia Sourcing Corporation’s Boat and Dock Ladders and Strip Door Mounting Brackets” (March 20, 2013) (“Final Scope Ruling”).

³ See *Aluminum Extrusions from the People’s Republic of China: Antidumping Duty Order*, 76 FR 30650 (May 26, 2011) (“*Antidumping Duty Order*”) and *Aluminum Extrusions from the People’s Republic of China: Countervailing Duty Order*, 76 FR 30653 (May 26, 2011) (collectively, the “*Orders*”).

⁴ See *Remand Order* at 5.

Department consider whether the exception to the “finished goods kit” exclusion in the scope is inapplicable because the non-aluminum components of the kits at issue are not fasteners.⁵

On July 31, 2015, the Department issued a draft redetermination in which, pursuant to the Court’s remand, we reconsidered our findings in the Final Scope Ruling.⁶ ASC submitted comments on August 6, 2015.⁷ No other party submitted comments. In this final redetermination pursuant to remand we continue to find that the plastic coated cables included in dock ladder kit model DJX3-W and that the plastic end caps included in all three dock ladder kit models are not fasteners. Because all three of the ladder kit models under consideration contain at least one non-extruded aluminum component that we find not to be fasteners, and we determined in the Final Scope Ruling that these three kits contained all the parts needed to fully assemble a finished good with no further fabrication,⁸ the kits at issue fall within the finished goods kits exclusion and, thus, are not covered by the scope of the *Orders*.

SCOPE OF THE ORDERS

On May 26, 2011, the Department published the *Orders* in the *Federal Register*.

The scope of the *Orders* reads as follows:

The merchandise covered by the *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

⁵ *Id.*

⁶ See document titled “Draft Results of Redetermination Pursuant to Court Remand,” released on July 31, 2015 (“Draft Redetermination”).

⁷ See Letter from ASC titled “Aluminum Extrusions from the People’s Republic of China: Asia Sourcing Corporation’s Comments on the Draft Remand Redetermination Issued in Connection with *Asia Sourcing Corp. v. United States*, CIT Court No. 13-00161,” dated August 6, 2015 (“ASC’s Comments on Draft Redetermination”).

⁸ See Final Scope Ruling at 8.

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, 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”): 7610.10.00, 7610.90.00, 7615.10.30, 7615.10.71, 7615.10.91, 7615.19.10, 7615.19.30, 7615.19.50, 7615.19.70, 7615.19.90, 7615.20.00, 7616.99.10, 7616.99.50, 8479.89.98, 8479.90.94, 8513.90.20, 9403.10.00, 9403.20.00, 7604.21.00.00, 7604.29.10.00, 7604.29.30.10, 7604.29.30.50, 7604.29.50.30, 7604.29.50.60, 7608.20.00.30, 7608.20.00.90, 7609.00.00.00, 8302.10.30.00, 8302.10.60.30, 8302.10.60.60, 8302.10.60.90, 8302.20.00.00,

8302.30.30.10, 8302.30.30.60, 8302.41.30.00, 8302.41.60.15, 8302.41.60.45, 8302.41.60.50, 8302.41.60.80, 8302.42.30.10, 8302.42.30.15, 8302.42.30.65, 8302.49.60.35, 8302.49.60.45, 8302.49.60.55, 8302.49.60.85, 8302.50.00.00, 8302.60.90.00, 8305.10.00.50, 8306.30.00.00, 8414.59.60.90, 8415.90.80.45, 8418.99.80.05, 8418.99.80.50, 8418.99.80.60, 8419.90.10.00, 8422.90.06.40, 8473.30.20.00, 8473.30.51.00, 8479.90.85.00, 8486.90.00.00, 8487.90.00.80, 8503.00.95.20, 8508.70.00.00, 8515.90.20.00, 8516.90.50.00, 8516.90.80.50, 8517.70.00.00, 8529.90.73.00, 8529.90.97.60, 8536.90.80.85, 8538.10.00.00, 8543.90.88.80, 8708.29.50.60, 8708.80.65.90, 8803.30.00.60, 9013.90.50.00, 9013.90.90.00, 9401.90.50.81, 9403.90.10.40, 9403.90.10.50, 9403.90.10.85, 9403.90.25.40, 9403.90.25.80, 9403.90.40.05, 9403.90.40.10, 9403.90.40.60, 9403.90.50.05, 9403.90.50.10, 9403.90.50.80, 9403.90.60.05, 9403.90.60.10, 9403.90.60.80, 9403.90.70.05, 9403.90.70.10, 9403.90.70.80, 9403.90.80.10, 9403.90.80.15, 9403.90.80.20, 9403.90.80.41, 9403.90.80.51, 9403.90.80.61, 9506.11.40.80, 9506.51.40.00, 9506.51.60.00, 9506.59.40.40, 9506.70.20.90, 9506.91.00.10, 9506.91.00.20, 9506.91.00.30, 9506.99.05.10, 9506.99.05.20, 9506.99.05.30, 9506.99.15.00, 9506.99.20.00, 9506.99.25.80, 9506.99.28.00, 9506.99.55.00, 9506.99.60.80, 9507.30.20.00, 9507.30.40.00, 9507.30.60.00, 9507.90.60.00, and 9603.90.80.50.

The subject merchandise entered as parts of other aluminum products may be classifiable under the following additional Chapter 76 subheadings: 7610.10, 7610.90, 7615.19, 7615.20, and 7616.99 as well as under other HTSUS chapters. In addition, fin evaporator coils may be classifiable under HTSUS numbers: 8418.99.80.50 and 8418.99.80.60. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the *Orders* is dispositive.⁹

BACKGROUND

At issue in this scope proceeding is the “finished goods kit” exclusion in the scope of the *Orders* which provides:

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.¹⁰

⁹ See *Orders*.

¹⁰ See, e.g., *Antidumping Duty Order*, 76 FR at 30651.

The *Orders* also include an exception to the “finished goods kit” exclusion, which provides that an imported product will not be considered a “finished goods kit” . . . merely by including fasteners such as screws, bolts, *etc.* in the packaging with an aluminum extrusion product.”¹¹

On August 31, 2012, the Department received a scope ruling request from ASC to determine whether its aluminum boat and dock ladders and strip door mounting brackets are subject to the *Orders*.¹² ASC provided model-specific documentation for only three dock ladder kit models – ASE, ASH, and DJX3-W – but little narrative explanation of how this information supported its claim, beyond stating that at the “time of importation, {its} ladders contain all of the necessary parts to fully assemble the final finished ladders depicted in materials appended in Attachments 4, 5, and 6, including the frame, steps, fasteners necessary to assemble the ladder, and fasteners necessary to attach the ladder to a dock.”¹³ To determine whether the three dock ladder kit models met the finished goods kit exclusion, the Department examined whether all parts necessary for assembly were included at the time of entry, and whether non-aluminum extrusion components beyond fasteners were included.¹⁴ In its March 20, 2013, Final Scope Ruling, the Department found dock ladder kit models ASE, ASH, and DJX3-W did not qualify for the finished goods kit exclusion, and thus were covered by the scope of the *Orders*, because they did not contain any non-aluminum extrusion components beyond fasteners, such as plastic steps.¹⁵

On April 16, 2013, ASC requested that the Department reconsider this ruling and issue an amended determination finding the three dock ladder kit models to be outside the scope of the

¹¹ *Id.*

¹² See letter from ASC, “Aluminum Extrusions from the People’s Republic of China: Request for Scope Ruling,” dated August 31, 2012 (“ASC Scope Request”).

¹³ *Id.*, at 8.

¹⁴ See *Final Scope Ruling* at 8.

¹⁵ *Id.*

Orders. ASC argued that these three ladder kit models qualified for the finished goods kit exclusion, and for the first time, argued that these models included parts other than aluminum extrusions and fasteners.¹⁶ Specifically, ASC argued that the ladder kit models included one or more of four components that are not fasteners: 1) plastic coated cables, 2) J-hooks, 3) footman’s loops, and 4) plastic end caps.¹⁷ On April 25, 2013, the Department responded to ASC’s request for reconsideration and found no grounds to reconsider its scope ruling because ASC did not identify in its original scope ruling request that the dock ladder kits contained non-aluminum extrusion components beyond fasteners or present any argument that these components provided a basis for finding the dock ladder kits to be outside the scope.¹⁸ As the Department explained, ASC “made no mention of the information it { }assert{ed} the Department should have considered (*i.e.*, eight of 129 exhibit pages, which contain technical specification drawings with extremely small text and several contradictory and/or unclear indications regarding component materials) other than providing general references to its exhibits.”¹⁹ ASC challenged the Department’s decision before the Court. This remand ensued.

ANALYSIS

In following the instructions in the Court’s *Remand Order*, we examined the record evidence related to the four components ASC claimed were not fasteners. In doing so, we considered the arguments related to these components that ASC presented in its April 16, 2013, request for reconsideration.

¹⁶ See Letter from ASC “Request for Reconsideration and Issuance of Amended Scope Ruling – Asia Sourcing” dated April 16, 2013 (“Request for Reconsideration”).

¹⁷ *Id.*, at 4-10.

¹⁸ See Letter to ASC “Aluminum Extrusions from the People’s Republic of China: Response to Request for Partial Scope Re-determination and Partial Scope Ruling,” dated April 25, 2013 (“Reconsideration Response”) at 2.

¹⁹ *Id.*

1. Record Information

Plastic Coated Cables

Citing marketing materials and schematics provided in Attachment 6 of its scope ruling request, ASC stated that dock ladder kit model DJX3-W included plastic-coated cables as components.²⁰ ASC explained that the plastic-coated stainless steel cables are used to facilitate the retraction of the steps from the water when the dock ladder is not in use.²¹

J-hooks and Footman's Loops

Citing marketing materials and schematics provided in Attachment 4 of its scope ruling request, ASC stated that J-hooks and footman's loops are stainless steel components that are included in ladder kit models ASE and ASH. The J-hooks are shaped like the letter J and are bolted to the ladder, while the footman's loops are brackets that are bolted to the dock and allow the ladder to be attached to the dock by hooking the J-hooks under the footman's loops.²² ASC argued that the components are used to ensure the dock ladder is securely attached to the dock.²³

Plastic End Caps

Citing schematics provided in Attachments 4, 5, and 6 of its scope ruling request, ASC stated that all three of the ladder kit models at issue include plastic end caps.²⁴ According to ASC, the purpose of the plastic end caps is to prevent water from collecting inside the aluminum

²⁰ See Request for Reconsideration at 4-5 (citing ASC Scope Request, at Attachment 6 at 1, 3, 4, 5, 7-8, 11, 13, and 17).

²¹ See Request for Reconsideration at 4; see also ASC Scope Request, at Attachment 6 at 4.

²² See Request for Reconsideration at 6; see also ASC Scope Request at Attachment 4 at 2, 4, 5, 10, 15, and 18; *id.*, at Attachment 5 at 2, 3-4, 11, 16, and 19.

²³ See Request for Reconsideration at 6 and 8; see also ASC Scope Request at Attachment 4 at 4-5; *id.*, at Attachment 5 at 3-4.

²⁴ See Request for Reconsideration at 8-9; see also ASC Scope Request at Attachment 4 at 15 (depicting plastic end cap as component "D"), 18 (depicting component "D" at ends of ladder's tubular arms); *id.*, at Attachment 5 at 16 (depicting plastic end cap as component "D"), 19 (depicting component "D" at ends of ladder's tubular arms); *id.*, Attachment 6 at 16 (depicting plastic end cap as component "G").

extrusion parts and oxidizing or corroding the parts.²⁵ ASC argued that, as such, these end caps are not fasteners as defined by the Department's precedents because they serve an important function in helping to ensure a long useful life for the dock ladder.²⁶ ASC further argued that finding these components not to be fasteners would be consistent with the Department's ruling in *Shower Door Kits*,²⁷ which included plastic parts that serve to prevent water from coming to rest within an aluminum extrusion (*i.e.*, seals, drip rails with end plugs, and snap-in fillers), and none of which were found to be fasteners.²⁸

2. Discussion

Regarding the plastic coated steel cables, we reconsidered the record evidence provided by ASC, *i.e.*, the marketing information and schematics in Attachment 6 of ASC's Ruling Request. In its original scope ruling, the Department had not considered in its analysis that ladder kit model DJX3-W included plastic coated cables because ASC had not stated as much, because in many of the materials provided by ASC the cables are not clearly visible due to poor image quality,²⁹ and because the pages that clearly depict the cables do not specifically reference dock ladder kit model DJX3-W.³⁰ However, ASC provided a document titled "Marine Part Specification," which identifies model DJX3-W in the "Sample #" line, describes the product as a "3-Wide Step Dock Lift Ladder," and lists numbers for six schematics in the "Drawings" line.³¹ These six schematics depict different components of ladder kit model DJX3-W, with

²⁵ See Request for Reconsideration at 9.

²⁶ *Id.*, at 9.

²⁷ *Id.* (citing Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Final Scope Ruling: Shower Door Kits," dated November 7, 2011 ("*Shower Door Kits*")); see also Memorandum to the File, "Transmittal of Past Scope Determinations to the Record" dated November 29, 2012.

²⁸ See Request for Reconsideration at 9-10.

²⁹ See ASC Scope Request, Attachment 6 at 1, 3, 4, and 5; see also Reconsideration Response at 2.

³⁰ *Id.*, at Attachment 6 at 7, 8, 11, 13, and 17.

³¹ *Id.*, at Attachment 6 at 2.

schematics DJX-2 and DJX3-7W depicting cables.³² We also note that the marketing materials provided by ASC demonstrate that wide step lifting ladders include plastic coated cables.³³ In light of this information, and ASC's explanations as to the function of these components (*i.e.*, that they are used to facilitate the retraction of the steps from the water when the dock ladder is not in use), we find that the plastic coated cables in ladder kit model DJX3-W do not constitute fasteners because they do not have a fastening function, *i.e.* they do not attach the product to something else or attach components of the product to each other.

Regarding the J-hooks and the footman's loops, we have reconsidered the record evidence provided by ASC, *i.e.*, the marketing information and schematics in Attachments 4 and 5 of ASC's Ruling Request. Specifically, the marketing materials state that ladder kit models ASE and ASH include these components as part of each model's "Ladder Attachment Hardware Kit,"³⁴ that the dock ladder "easily attaches to the dock with included J-hook hardware," and that the kit includes "footman loops that can be installed on your dock to allow easy attachment and release."³⁵ Similarly, the schematics for ladder kit models ASE and ASH depict the J-hook and footman's loops included in each kit.³⁶ In light of this information, and ASC's explanations as to the function of these components, we find the J-hooks and footman's loops to be fasteners because they have a fastening function, *i.e.*, are components used to attach or fasten the ladder to the dock.

Regarding the plastic end caps, we reconsidered the record evidence provided by ASC, *i.e.*, the schematics in Attachments 4, 5, and 6 of ASC's Ruling Request.³⁷ These technical

³² *Id.*, at Attachment 6 at 13 and 17.

³³ *Id.*, at Attachment 6 at 7 and 11.

³⁴ *Id.*, at Attachment 4 at 5; *id.*, at Attachment 5 at 4.

³⁵ *Id.*, at Attachment 4 at 8; *id.*, at Attachment 5 at 6.

³⁶ *Id.*, at Attachment 4 at 10, 15, and 18; *id.*, at Attachment 5 at 11, 16, and 19.

³⁷ *Id.*, at Attachment 4 at 15 and 18; *id.*, at Attachment 5 at 16 and 19; *id.*, at Attachment 6 at 16.

drawings demonstrate that the three models covered by this request, ASE, ASH, and DJX3-W contain plastic end caps.³⁸ In light of this information, and ASC's explanations as to the function of these components, we find the plastic end caps are not fasteners because there is no record evidence that these components have a fastening function. Instead, these components prevent "water from collecting inside the aluminum extrusion parts and oxidizing or corroding the parts."³⁹ However, we note that ASC's reliance on *Shower Door Kits* is misplaced. Although the Department determined in that scope proceeding that the respondent's shower door kits met the criteria for the finished goods kit exclusion, the ruling neither addressed nor relied upon the function of the seals, drip rails with end plugs, and snap-in fillers, nor distinguished between parts used to prevent water from entering the product and fasteners used to assemble the product.

COMMENTS FROM INTERESTED PARTIES

The Department released the draft remand results on July 31, 2015.⁴⁰ ASC submitted comments on August 6, 2015.⁴¹ No other party submitted comments.

ASC's Comments

ASC agrees with the Department's conclusion in the Draft Redetermination and urges the Department to adopt its conclusion that dock ladder kit models ASE, ASH, and DJX3-W are outside the scope of the *Orders* because they fall within the finished goods kit exclusion.⁴²

FINAL RESULTS OF REDETERMINATION

Because the Department found that dock ladder kits ASE, ASH, and DJX3-W each include non-aluminum extrusions components other than fasteners (*i.e.*, plastic coated cables and/or plastic end caps), and we found in the Final Scope Ruling that these

³⁸ *Id.*

³⁹ See Request for Reconsideration at 9.

⁴⁰ See Draft Redetermination.

⁴¹ See ASC's Comments on Draft Redetermination.

⁴² *Id.*, at 1-2.

kits contained all the parts needed to fully assembly a finished good with no further fabrication,⁴³ we also find that all three models qualify for the finished goods kit exclusion and thus are outside the scope of the *Orders*.



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

20 AUGUST 2015

Date

⁴³ See Final Scope Ruling at 8.