



Aluminum Extrusions: Everything You Wanted To Know

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Topics Covered

- ❑ 1. What are antidumping duties?
- ❑ 2. What are countervailing duties?
- ❑ 3. Administrative reviews and retroactive system
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AD and CVD Overview

- ❑ Unfair import pricing and foreign government subsidies:
 - distort the free flow of goods;
 - adversely affect American business in the U.S. market.
- ❑ Intended to offset these unfair practices by imposing duties equal to the amount of the dumping or subsidies. The amount of the offset is called the AD or CVD “margin.”



What Are AD Cases?

- The antidumping laws are designed to protect a U.S. industry from imports that:
 - Are sold at a lower price to the U.S. market than in the foreign producer's home (or comparison) market; and
 - are causing material injury or threat of material injury to the U.S. industry.





AD Fundamentals

- ❑ Basis of Calculation: DOC calculates the difference between two weighted average prices:
 - 1) The foreign producer's ex-factory home (or comparison) market prices of merchandise; and
 - 2) The foreign producer's ex-factory prices for sales to its customers in the United States.
- ❑ When Does Dumping Occur: Dumping occurs if the foreign producer's ex-factory price to the U.S. is below its ex-factory home (or comparison) market price.



Non-Market Economies: Watch Out!

- ❑ Exception: cases involving China and Vietnam.
- ❑ Why? DOC considers China and Vietnam to be non-market economies. DOC believes that the home market prices cannot be trusted because of communist governmental influences.
- ❑ As such, DOC compares the net U.S. prices to a constructed price based in part on “factors of production” in a “surrogate country,” i.e., estimated costs if the product were produced in a market economy of comparable economic development.

Non-Market Economy Calculation

- ❑ For example, if it takes a Chinese company 1 ton of coal to make 10 tons of steel, DOC will value the coal based on the cost of coal imported into a market economy, such as Indonesia.
- ❑ Because of this methodology, the dumping margins are usually unpredictable and high.





What Are CVD Cases?

- ❑ The United States imposes countervailing duties (“CVDs”) when:
 - foreign producers receive government subsidies;
 - importation of subsidized goods causes (or threatens) material injury to U.S. industry.
- ❑ Intended to offset the subsidy.
- ❑ May be imposed **in addition to** any applicable antidumping duties.

CVD Fundamentals

- ❑ Subsidies are financial contributions or benefits conferred by a foreign government to a particular firm or industry, usually to achieve some economic or social goal.
- ❑ Subsidies can take many forms, such as direct cash payments, credits against taxes, loans at terms that do not reflect market conditions, and subsidized inputs and raw materials.





Overview Of Investigations

U.S. Antidumping Investigations are Conducted Between Two Different Federal Agencies

- ❑ U.S. Department of Commerce (“DOC”)
 - Collects extensive sales, price and cost information and calculates antidumping margins
- ❑ U.S. International Trade Commission (“ITC”)
 - Determines whether domestic industry suffers from material injury or threat thereof by reason of imports



Cash Deposits vs. Actual Assessments

- ❑ Your company should understand that the initial investigation establishes cash deposits – it does not result in actual assessments.
- ❑ Actual assessments occur pursuant to administrative reviews, and actual assessment may be higher, lower, or the same as the cash deposit paid for the period.
- ❑ Note that foreign companies are prohibited from reimbursing their importers for AD/CVD duties.



The Retrospective System

- ❑ For example, the respondent could be assigned a cash deposit rate of 10 percent pursuant to an AD investigation.
- ❑ One year after the Order is put into effect, the company (or petitioner) has the opportunity to request an administrative review.
- ❑ If no review is requested, then actual liquidation of past entries will be liquidated at the 10 percent rate.
- ❑ However, if respondent or petitioner go through the administrative review, then a different rate will be determined for the company for sales in that period.
- ❑ If the new calculated rate is 15 percent, then the importer must pay an additional 5 percent, plus interest, for all of those past entries.
- ❑ If the new calculated rate is 7 percent, then the importer of record receives the difference (3 percent) back from CBP, plus interest.



Understanding the Collection System

- ❑ It is crucial that the importer understand the retrospective nature of the AD/CVD collection system. Otherwise, the company could be surprised to receive notifications from CBP for additional duties owed on past entries, and these additional duties could be significant.
- ❑ The retroactivity aspect catches many importers by surprise.
- ❑ Creates business uncertainty because importer does not know actual cost for at least 18 months after importation.

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Scope Questions

- Role of DOC
- Role of Customs



DOC's Responsibilities Regarding AD/CVD

- ❑ DOC issues the final order which defines the scope of the order's application to covered products.
- ❑ The scope of ADD/CVD orders are intentionally drafted with broad language.
- ❑ HTSUS tariff classification numbers are provided for reference.
- ❑ Written language controls.

Customs' Responsibilities Regarding AD/CVD

- ❑ **Customs is responsible for enforcing ADD/CVD orders and collecting revenue.**
 - This includes antidumping and countervailing duties.
- ❑ **Customs has no discretion in interpreting the final orders.**





Scope Issue Considerations (cont.)

- ❑ Written description in AD/CVD Order is controlling, **not** HTSUS classification.
- ❑ Customs may provide opinion on scope of ADD/CVD Order, but only Commerce can provide a binding interpretation.
- ❑ Scope Ruling Requests are submitted to DOC.
 - Reasonable Care.
 - Opinion from Expert.



Scope Details

- Scope Inquiry: 45 day for decision on whether to initiate formal scope ruling.
 - Whether DOC believes within existing language of petition, order and ITC ruling.
 - If DOC finds the imported product is clearly within the scope, it will not initiate a formal scope ruling.
 - If no formal scope ruling, DOC will tell Customs to continue collecting AD and CVD duties.
 - Importer required to post AD and CVD deposits.



Scope Details (cont.)

- ❑ If DOC issues a formal scope ruling, DOC may ask for additional information.
 - After obtaining additional information, DOC will either rule that the product is within the scope or not within the scope.
 - If not within the scope, DOC will instruct Customs to refund AD and CVD deposits.
 - If within the scope, DOC is supposed to issue instructions saying to begin collection of AD and CVD deposits and not to collect AD and CVD deposits before the initiation date.



Sources for ADD/CVD Scope Information

- ❑ **Customs website - <http://addcvd.cbp.gov/>**
 - Prior Scope Rulings
 - Liquidation Instructions
 - Customs rulings - <http://rulings.cbp.gov/>

- ❑ **Federal Register - <http://www.gpoaccess.gov/fr/index.html>**
 - ADD/CVD Orders
 - Other Notices (e.g., administrative review results, scope rulings)

- ❑ **ITC website - <http://usitc.gov/>**
 - Preliminary and Final Results

- ❑ **Dep't of Commerce - ITA website - <http://www.trade.gov/ia/>**
 - Scope Language
 - Scope Rulings Notices
 - Federal Register Notices



Aluminum Extrusions – Applicable Rates

- ❑ Countervailing Duty Rates
 - ❑ Sept. 7, 2010 – Jan. 6, 2011: 137.65% cash-deposit rate (based on preliminary determination “All-Other” rate) (message # 0256301).
 - ❑ Jan. 6, 2011 – May 19, 2011: No suspension of liquidation and no cash deposits for estimated CVD duties - gap period (message # 1005303).
 - ❑ After May 19, 2011: CVD: Based on final determination rate of 374.15% (“All Other” Rate) (message # 1153306).
 - ❑ After Dec. 10, 2012, 137%.



Applicable Rates (cont.)

❑ Antidumping Duty Rates

- ❑ Nov. 12, 2010 – April 3, 2011: 59.31% (based on preliminary determination “PRC-Wide Entity” rate) (message # 0330301).
- ❑ April 4, 2011 – May 10, 2011 : 33.28% (based on final determination “PRC-Wide Entity” rate) (message # 1115303).
- ❑ May 11, 2011 – May 19, 2011: No suspension of liquidation and no cash deposits for estimated ADD duties - gap period (message # 1153305).
- ❑ After May 19, 2011: 33.28% (based on final determination “PRC-Wide Entity” rate) (message # (message # 1173304).



Scope of Aluminum Extrusion Orders

- ❑ 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.
- ❑ The merchandise covered by the order is aluminum extrusions 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).



Scope (Cont.)

- ❑ The 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).
- ❑ 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.



Scope (Cont.)

- 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.



Exclusions from the Scope

- ❑ **Aluminum Types 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% 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% 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% zinc by weight



Exclusions from the Scope (Cont.)

- ❑ **Treatment of Finished Goods Assembled with Aluminum Extrusions**
- ❑ 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.



Exclusions from the Scope (Cont.)

□ Treatment of Kits

- 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.



Exclusions from the Scope (Cont.)

- ❑ Other Exclusions
 - ❑ Cast aluminum
 - ❑ Finished heat sinks
 - ❑ Collapsible aluminum tubular containers



What's In and What's out

- ❑ The scope of the Orders are extremely vague.
- ❑ Numerous scope rulings have been filed and many more are likely to be filed.
- ❑ Many importers have been caught by surprise that their imports and included within the scope.



Are Your Products Included or Excluded?

- ❑ Is it finished merchandise?
- ❑ DOC recently changed interpretation of what satisfies the exclusion criteria for “finished merchandise.”
- ❑ Subassemblies (*i.e.*, ‘partially assembled merchandise’) may be excluded from the scope provided that they enter the United States as ‘finished goods’ or ‘finished goods kits’ and that the ‘subassemblies’ require no further ‘finishing’ or ‘fabrication’.



Are Your Products Included or Excluded?

- Is it a “finished goods kit”?
 - A packaged combination of parts that contain, at the time of importation, all of the necessary parts to fully assemble a final finished good, and requires no further finishing or fabrications.
 - Assembled “as is”?
 - In a form ready to be sold directly to, and used by, consumers/end users.



Administrative Review Request

- ❑ Must be filed in May by end of May.
- ❑ For CVD, it would apply to all entries from January 1, 2012 through December 31, 2012.
- ❑ For AD, it would be from May 1, 2012 through April 30, 2013.



Administrative Reviews (cont.)

- ❑ Individual versus “all others” rate
- ❑ Timing of administrative review and change of rates.
- ❑ Purpose of CVD review: liquidation of entries during POR and new cash deposit rate.

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