

TRADE ALERT: New U.S. Action Against Extruded Aluminum Imports

Article By:

International Trade Practice at Squire Patton Boggs

Today, October 4, 2023, the U.S. Aluminum Extruders Coalition and the United Steelworkers (USW) union filed antidumping (AD) and countervailing duty (CVD) petitions against extruded aluminum imports claimed to be (a) dumped – i.e., sold into the United States at less than fair normal value prices and (b) government subsidized. The AD petitions cover China, Colombia, the Dominican Republic, Ecuador, India, Indonesia, Italy, Malaysia, Mexico, South Korea, Taiwan, Thailand, Turkey, the United Arab Emirates, and Vietnam. The CVD petitions cover China Indonesia, Mexico and Turkey. See <https://ids.usitc.gov/case/8145/investigation/8464> for the petitions.

For market economies, normal value is home market or third-country price, or actual cost plus reasonable profit of the foreign producer/exporter. For deemed non-market economies China and Vietnam, normal value is a constructed cost plus deemed reasonable profit based on surrogate values in a market economy deemed of comparable level of economic development to China or Vietnam. Vietnam has now petitioned for market economy status.

Offsetting U.S. AD/CVD import duties are imposed if (a) DOC finds

dumping or subsidies based on responses to DOC questionnaires (and verification audit thereof) by the accused foreign exporters/producers, and (b) the U.S. International Trade Commission (ITC) finds that there is material injury (or threat thereof) by reason of the dumped or subsidized imports to a U.S. industry.

The rates of dumping alleged in the petitions are:

- China 256.58%
- Colombia 181.76%
- Dominican Republic 28.29%
- Ecuador 64.57%
- India 35.67%
- Indonesia 112.21%
- Italy 37.52%
- Malaysia 54.87%
- Mexico 111.38%
- South Korea 66.45%
- Taiwan 99.80%
- Thailand 84.71%
- Turkey 33.79%
- UAE 39.80%
- Vietnam 53.75%

See the below Addendum 1 for the scope of product covered by the petitions. Note that the scope is broader than the prior AD/CVD petition just covering China by (a) removing the prior finished merchandise and finished kits exclusions from scope, (b) now adding explicit language on aspects of the scope that were the subject of litigation since the AD/CVD orders on China were issued, including language addressing subassemblies and how fasteners are considered when determining whether aluminum extrusion

components are subject to AD/CV duties, and (c) stating that various products which the U.S. Department of Commerce (DOC) previously said were out of the scope of the prior China AD/CVD order are now in scope of this new petition, such as certain extruded aluminum heat sinks, solar panel mounting racks, shower door kits, telescoping poles, vehicle roof rails and sun/moon roof framing, solar panel racking rails and framing, tradeshow display fixtures and framing, parts for tents or clear span structures, fence posts, drapery rails or rods, electrical conduits, door thresholds, flooring trim, electric vehicle battery trays, signage or advertising poles, picture frames, and cleaning system components.

The most immediate upcoming deadlines in this investigation are the ITC preliminary injury investigation, roughly as follows (to be set soon by ITC):

- October 9, 2023: ITC questionnaires issued
- October 19, 2023: questionnaire responses due (short extension possible)
- October 25, 2023: ITC preliminary staff conference (witness testimony)
- October 30, 2023: written comments to ITC
- November 15, 2023: ITC preliminary injury decision.

Actual dates for the above will soon appear in the ITC website at <https://ids.usitc.gov/case/8145/investigation/8464>

Generally, the ITC finds sufficient indicia of injury to a U.S. industry from the accused imports at this preliminary stage to continue the AD/CVD investigation (i.e., not end it). If so, then the investigation moves to DOC.

The ITC threshold to find injury at this preliminary stage is low. Still,

participation in ITC preliminary injury investigation can lay the factual foundation for a later final negative ITC injury decision, ending the case, which happens around 30%-50% of the time (varies over time). It is critical not to make statements in the rushed ITC preliminary injury stage that hurt at the final stage. Some AD/CVD petitions on their face indicate might be ITC injury issues, themselves giving hope for a negative ITC injury decision. In this regard, this petition for instance requests a four-year ITC period of investigation, versus the normal three, arguably suggesting the injury case is weaker if the ITC normal three year investigation period is used, and the need to request four years. Further, the petition indicates domestic industry operating income levels and trends that show less support for injury than the normal petition.

The DOC preliminary CVD subsidy decisions are about December 28, 2023. But this date is generally extended about 65 days (here to about March 3, 2024) if an investigated foreign producer/exporter satisfactorily fully participates at DOC by accurately answering DOC questionnaires as to the extent (if any) of subsidies and survives a rigorous DOC verification audit thereof. Then the exporter can get a subsidy CVD import duty margin based on its actual extent of received subsidies (if any). In contrast, failure to so participate results in a prohibitively high, adverse DOC CVD import duty.

The DOC preliminary AD decision is about March 12, 2024. But this date too is generally extended about 50 days (here to about May 2, 2024) if an investigated foreign producer/exporter satisfactorily participates at DOC, fully and accurately answering DOC questionnaires as to the extent (if any) of dumping and (later) survives a rigorous DOC verification audit thereof. If so, the exporter gets a dumping margin based on its actual extent of dumping (if any), and not the petitioner claimed dumping margins.

In contrast, failure to so participate generally results in the highest petitioner alleged dumping margin.

AD and CVD import duty liability generally begins as to imports at the time of the DOC preliminary AD or CVD decision. But it can be retroactive 90 days before then. The earliest theoretical date for retroactive AD duties is **December 13, 2023**; and for CVD is **October 24, 2023**. Retroactivity cannot be earlier than 20 days after petition filing. Retroactivity is to address certain 15% or more import surges following the filing of a petition that seek to avoid AD/CVD. But all the conditions to so find are generally, but not always, not found – e.g., the ITC must find that retroactivity is necessary to avoid the AD/CVD remedy being undermined, which generally (but not always) the ITC does not find, and AD margins must be found above 15% (U.S. affiliate to exporter resale)/25% (importer not affiliated to exporter) or an export subsidy found.

DOC generally issues dumping and subsidy questionnaires to the two largest exporters to the United States from each accused country, to determine their AD/CVD margin. All other exporters from a particular country usually get an AD/CVD margin based on the DOC findings as to the two largest exporters from that country.

The date of the DOC final CVD and AD decisions is about September 13, 2024, if all deadlines are fully extended (which is common).

The date of the ITC final injury decision is about October 28, 2024, if all deadlines are fully extended (which, again, is common).

Squire Patton Boggs members have successfully done hundreds of AD/CVD cases throughout the world over four plus decades, and served in key positions at DOC and ITC, as well as key

Congressional and U.S. Administration positions. SPB has a premier Government lobbying practice. SPD has in-house PhD Economists to assist. SPB has also been heavily and successfully involved in prior extruded aluminum AD/CVD litigation. SPB is a global, full service, law firm with 42 offices world-wide, plus local counsel, in all accused countries here.

ADDENDUM: SCOPE OF THE INVESTIGATION

Per the petition:

The merchandise subject to this investigation is aluminum extrusions, regardless of form, finishing, or fabrication, whether assembled with other parts or unassembled, whether coated, painted, anodized, or thermally improved. Aluminum extrusions 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, subject aluminum extrusions made from an aluminum alloy with an Aluminum Association series designation commencing with the number 1 contain not less than 99 percent aluminum by weight. Subject aluminum extrusions made from an aluminum alloy with an Aluminum Association series designation commencing with the number 3 contain manganese as the major alloying element, with manganese accounting for not more than 3.0 percent of total materials by weight. Subject aluminum extrusions made from an aluminum alloy with an Aluminum Association series designation commencing with the number 6 contain 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 scope also includes merchandise made from an aluminum alloy with an Aluminum Association series designation commencing with the number 5 (or proprietary equivalents or other certifying body equivalents) that have a magnesium content accounting for up to but not more than 2.0 percent of total materials by weight. The country of origin of the aluminum extrusion is determined by where the metal is extruded (i.e., pressed through a die).

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. Subject aluminum extrusions are produced and imported with a variety of coatings and surface treatments, and types of fabrication. The types of coatings and treatments applied to 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 brightdip), liquid painted, electroplated, chromate converted, powder coated, sublimated, wrapped, and/or bead blasted. Subject aluminum extrusions may also be fabricated, i.e., prepared for assembly, or thermally improved. Such operations would include, but are not limited to, extrusions that are cut-to-length, machined, drilled, punched, notched, bent, stretched, stretch-formed, hydroformed, knurled, swedged, mitered, chamfered, threaded, and spun. Performing such operations in third countries does not otherwise remove the merchandise from the scope of the investigation. The types of products that meet the definition of subject merchandise include but are not limited to, vehicle roof rails and sun/moon roof framing, solar panel racking rails and framing, tradeshow display fixtures and framing, parts for tents or clear span structures, fence posts, drapery rails or rods,

electrical conduits, door thresholds, flooring trim, electric vehicle battery trays, heat sinks, signage or advertising poles, picture frames, telescoping poles, or cleaning system components. Heat sinks are included in the scope, regardless of whether the design and production of the heat sinks are organized around meeting specified thermal performance requirements and regardless of whether they have been tested to comply with such requirements. Merchandise that is comprised solely of aluminum extrusions or aluminum extrusions and fasteners, whether assembled at the time of importation or unassembled, is covered by the scope in its entirety. The scope also covers aluminum extrusions that are imported with non-extruded aluminum components beyond fasteners, whether assembled at the time of importation or unassembled, that are designed to be a part or subassembly of a larger product or system. Only the aluminum extrusion portion of the merchandise described in this paragraph, whether assembled or unassembled, is subject to duties. Examples of merchandise that is designed to be a part or subassembly of a larger product or system include, but are not limited to, window parts or subassemblies; door unit parts or subassemblies; shower and bath system parts or subassemblies; solar panel mounting systems; fenestration system parts or subassemblies, such as curtain wall and window wall units and parts or subassemblies of storefronts; furniture parts or subassemblies; appliance parts or subassemblies, such as fin evaporator coils and systems for refrigerators; railing or deck system parts or subassemblies; fence system parts or subassemblies; motor vehicle parts or subassemblies, such as bumpers for motor vehicles; trailer parts or subassemblies, such as side walls, flooring, and roofings; electric vehicle charging station parts or subassemblies; or signage or advertising system parts or subassemblies. The scope excludes assembled merchandise containing non-extruded aluminum components beyond fasteners that is not a part or subassembly of a larger product or system and

that is used as imported, without undergoing after importation any processing, fabrication, finishing, or assembly or the addition of parts or material, regardless of whether the additional parts or material are interchangeable. Examples of such excluded assembled merchandise include windows with glass, door units with door panel and glass, motor vehicles, trailers, furniture, appliances, and solar panels. The scope also includes aluminum extrusions that have been further processed in a third country, including, but not limited to, the finishing and fabrication processes described above, assembly, whether with other aluminum extrusion components or with non-aluminum extrusion components, or any other processing that would not otherwise remove the merchandise from the scope if performed in the country of manufacture of the in-scope product. Third-country processing; finishing; and/or fabrication, including those processes described in the scope, does not alter the country of origin of the subject aluminum extrusions. The following aluminum extrusion products are excluded: aluminum extrusions made from an aluminum alloy with an Aluminum Association series designations commencing with the number 2 (or proprietary equivalents or other certifying body equivalents) and containing in excess of 1.5 percent copper by weight; aluminum extrusions made from an aluminum alloy with an Aluminum Association series designation commencing with the number 5 (or proprietary equivalents or other certifying body equivalents) and containing in excess of 2.0 percent magnesium by weight; and aluminum extrusions made from an aluminum alloy with an Aluminum Association series designation commencing with the number 7 (or proprietary equivalents or other certifying body equivalents) and containing in excess of 2.0 percent zinc by weight. The scope also excludes aluminum alloy sheet or plates produced by means other than the extrusion process, such as aluminum products produced by a method of continuous casting or rolling. Cast aluminum products are also excluded. The scope also

excludes 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 (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 investigations is certain rectangular wire, imported in bulk rolls or precut strips and produced from continuously cast rolled aluminum wire rod, which is subsequently extruded to dimension to form rectangular wire with or without rounded edges. The product is made from aluminum alloy grade 1070 or 1370, with no recycled metal content allowed. The dimensions of the wire are 2.95 mm to 6.05 mm in width, and 0.65 mm to 1.25 mm in thickness. Imports of rectangular wire are provided for under HTSUS categories 7605.19.0000, 7604.29.1090, or 7616.99.5190. Also excluded from the scope of these investigations are all products covered by the scope of the antidumping and countervailing duty orders on Aluminum Extrusions from the People’s Republic of China. See Aluminum Extrusions from the People’s Republic of China: Antidumping Duty Order, 76 FR 30,650 (May 26, 2011); Aluminum Extrusions from the People’s Republic of China: Countervailing Duty Order, 76 FR 30,653 (May 26, 2011). Imports of the subject merchandise are primarily provided for under the following categories of the Harmonized Tariff Schedule of the United States (HTSUS): 7604.10.1000; 7604.10.3000; 7604.10.5000; 7604.21.0010; 7604.21.0090; 7604.29.1010; 7604.29.1090; 7604.29.3060; 7604.29.3090; 7604.29.5050; 7604.29.5090; 7608.10.0030; 7608.10.0090; 7608.20.0030; 7608.20.0090; 7609.00.0000; 7610.10.0010; 7610.10.0020; 7610.10.0030; 7610.90.0040; and 7610.90.0080. Imports of the subject merchandise, including subject merchandise entered as parts of other products, may also

be classifiable under the following additional HTSUS categories, as well as other HTSUS categories: 6603.90.8100; 7606.12.3091; 7606.12.3096; 7615.10.2015; 7615.10.2025; 7615.10.3015; 7615.10.3025; 7615.10.5020; 7615.10.5040; 7615.10.7125; 7615.10.7130; 7615.10.7155; 7615.10.7180; 7615.10.9100; 7615.20.0000; 7616.10.9090; 7616.99.1000; 7616.99.5130; 7616.99.5140; 7616.99.5190; 8302.10.3000; 8302.10.6030; 8302.10.6060; 8302.10.6090; 8302.20.0000; 8302.30.3010; 8302.30.3060; 8302.41.3000; 8302.41.6015; 8302.41.6045; 8302.41.6050; 8302.41.6080; 8302.42.3010; 8302.42.3015; 8302.42.3065; 8302.49.6035; 8302.49.6045; 8302.49.6055; 8302.49.6085; 8302.50.0000; 8302.60.9000; 8305.10.0050; 8306.30.0000; 8414.59.6590; 8415.90.8045; 8418.99.8005; 8418.99.8050; 8418.99.8060; 8419.50.5000; 8419.90.1000; 8422.90.0640; 8424.90.9080; 8473.30.2000; 8473.30.5100; 8479.89.9599; 8479.90.8500; 8479.90.9596; 8481.90.9060; 8481.90.9085; 8486.90.0000; 8487.90.0080; 8503.00.9520; 8508.70.0000; 8513.90.2000; 8515.90.2000; 8516.90.5000; 8516.90.8050; 8517.71.0000; 8517.79.0000; 8529.90.7300; 8529.90.9760; 8536.90.8585; 8538.10.0000; 8541.90.0000; 8543.90.8885; 8708.10.3050; 8708.29.5160; 8708.80.6590; 8708.99.6890; 9013.90.8000; 9031.90.9195; 9401.99.9081; 9403.91.0005; 9403.91.0010; 9403.91.0080; 9403.99.1085; 9403.99.2040; 9403.99.2080; 9403.99.3080; 9403.99.4004; 9403.99.4010; 9403.99.5010; 9403.99.5080; 9403.99.9010; 9403.99.9040; 9403.99.9045; 9403.99.9051; 9506.11.4080; 9506.51.4000; 9506.51.6000; 9506.91.0010; 9506.91.0020; 9506.91.0030; 9506.99.0530; 9506.99.1500; 9506.99.2000; 9506.99.5500; 9506.99.6080; 9507.30.2000; 9507.30.8000; 9507.90.6000; and 9603.90.8050; 8807.30.0060; 9403.10.0040; 9403.99.1040; 9403.99.3005; 9403.99.4080; 9403.99.9015; 9403.99.9061; 9506.59.4040; 9506.99.0510; 9506.99.2580; 9507.30.4000; 9013.90.7000; 9403.20.0086; 9403.99.1050;

9403.99.3010; 9403.99.5005; 9403.99.9020; 9405.99.4020; 9506.70.2090; 9506.99.0520; 9506.99.2800; 9507 .30.6000; While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

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National Law Review, Volume XIII, Number 278

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