
THE GLOBAL TRADE LAW JOURNAL

Volume 1, Number 4

July–August 2024

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Publisher: Leanne Battle

Production Editor: Sharon D. Ray

Cover Art Design: Morgan Morrisette Wright and Sharon D. Ray

This journal's cover features a 1855 depiction of the American clipper ship *Red Jacket* on her journey from Melbourne, Australia, to Liverpool, England. The artwork was originally created by Charles Parsons and Joseph B. Smith, and later lithographed and published by Nathaniel Currier. It is reproduced courtesy of The Met Museum's public domain library.

Cite this publication as:

The Global Trade Law Journal (Fastcase)

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A Full Court Press, Fastcase, Inc., Publication

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729 15th Street, NW, Suite 500, Washington, D.C. 20005

<https://www.fastcase.com/>

POSTMASTER: Send address changes to THE GLOBAL TRADE LAW JOURNAL, 729 15th Street, NW, Suite 500, Washington, D.C. 20005.

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ISSN 2995-1089

Imported Products Containing an Aluminum Extrusion Part or Any Extruded Aluminum Are Subject to Countervailing Duties; Additional Antidumping Duties Are on the Horizon

Nancy A. Noonan, Leah Scarpelli, Jessica Dipietro, Yun Gao, Diana Dimitriuc Quaia, and Mario A. Torrico*

In this article, the authors explain that importers of products containing an aluminum extrusion part or a part that includes extruded aluminum may now be subject to additional duties.

In October 2023, antidumping (AD) and countervailing (CVD) duty petitions were filed on aluminum extrusions from Colombia, the Dominican Republic, Ecuador, India, Indonesia, Italy, Malaysia, Mexico, People's Republic of China, South Korea, Taiwan, Thailand, Turkey, United Arab Emirates, and Vietnam. The investigation against the Dominican Republic has since been terminated. The U.S. Department of Commerce (DOC) is investigating these allegations and announced preliminary CVD duties to be imposed on products from Indonesia, Mexico, People's Republic of China, and Turkey, on March 4, 2024. Preliminary AD duties on imports from the 14 countries are expected to be determined on May 1, 2024 (typically announced the following day) and will go into effect shortly thereafter.

The proposed scope of products that are covered by the investigations is extremely broad and ill-defined. Some changes to that scope are under consideration by the DOC. For now, importers should be aware that if their product contains an aluminum extrusion part or a part that contains extruded aluminum, it may be subject to additional duties as of March 11, 2024. While this result seems absurd, it is a very real possibility. This article provides responses to some commonly asked questions regarding this investigation. Be advised that the interpretation of the scope can be quite complex,

and specific questions on the applicability of these tariffs to a particular company's imports should be addressed to counsel.

How Do I Know If My Imported Product Is Subject to the Duties, and If It Is, How Do I Calculate the Value of My Imported Product That Is Subject to the Duties?

The current scope of the investigations covers the aluminum extrusion portion of a product. Even if the aluminum extrusion has been processed in a third country (such as a country not named in the investigations), the aluminum extrusion portion of the product is still covered by the investigations. There are some exclusions from the scope such as for discrete kits entered on the same customs entry form, extrusions made from certain Aluminum Association series designations, products from continuous casting or rolling, cast aluminum products or unwrought aluminum products, among other exclusions.

The importer should review all components of its product to determine whether any aluminum extrusions were used. This will likely require reviewing the bill of materials, schematics, product brochures, and the like.

If the product contains any extruded aluminum, duty deposits may be required on the aluminum extrusion portion of a product. The company will need to determine the following:

- The producer of the aluminum extrusion,
- The country (or countries) in which the extrusion process was carried out,
- The Aluminum Association Series Designation Number for the extruded aluminum, and
- The percent of value attributed to the extruded aluminum raw materials (likely this would be a percentage of sold cost).

Documentation on the condition of the merchandise at the time of importation and on how the merchandise is sold, installed, and used after importation may need to be reviewed to determine whether any of the exclusions from the scope are applicable.

The amount of the duties will be calculated based on the value of the product that is subject to the duties and the applicable rate from the producer of the aluminum extrusion. If the product

includes aluminum extrusions from multiple countries or multiple producers, separate calculations and deposits will be required for each producer/country.

What if My Product Was Excluded Under the Original China Aluminum Extrusions Order?

It is likely included under these new investigations. These investigations include products from China and are a follow-up to the much-litigated 2011 AD/CVD Orders on Aluminum Extrusions from China. The scope of products that would be covered by any AD/CVD duties imposed in this new case is much broader than the existing cases against China. Petitioners have specifically written the scope in this case to include products the DOC has previously found to be excluded from the China AD/CVD orders so that those products will now be subject to any AD/CVD duties resulting from these investigations.

What Entry Type Do I Use for My Product That Has an Aluminum Extrusion Portion and Who Deposits the Duties?

Products subject to AD or CVD duties must be entered as type 03 entries and cash deposits to cover the duties must be made for the subject entries. The importer of record is responsible for entering the product correctly, for depositing the duties, and for ultimately paying the duties to U.S. Customs and Border Protection (CBP) when the entries are liquidated. The liquidation rates for AD or CVD duties can be higher or lower than the deposit rates, and typically are the result of a lengthy administrative review process conducted by the DOC. The importer of record will have to certify to CBP that it was not reimbursed for the duties from the foreign producer.

Are There Any Opportunities to Challenge This Decision?

Yes. The U.S. International Trade Commission is beginning the final phase of its investigations to determine whether the U.S.

industry that produces aluminum extrusions is being materially injured, or threatened with material injury, from subject imports. Importers and purchasers can participate by completing questionnaire responses, submitting letters or briefs, testifying at the hearing, and taking other action to voice concerns. There may also be an opportunity to file comments on the scope of the investigations with the DOC.

Conclusion

The scope of these investigations is extraordinarily complex, as is how to calculate the value of the aluminum extrusion portion of a product to ensure payment of the correct AD or CVD deposit. Opportunities still exist to challenge the scope of this case and whether AD or CVD orders are needed to protect aluminum extrusion producers in the United States.

Note

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