



ARCHITECTURAL GLASS & METAL CONTRACTORS  
ADVISORY COMMITTEE  
~ UPDATE ~  
ALUMINUM EXTRUSIONS TARIFF

Glazing Leaders,

As you may recall, on November 30, 2012, the United States Department of Commerce (DOC) issued its final scope ruling on curtain wall units and other parts of a curtain wall system imported from the Peoples Republic of China. The DOC ruled that curtain wall units and other parts of curtain wall systems are within the scope of the Orders, and therefore subject to aluminum extrusion trade tariffs. Yuanda (a Chinese aluminum manufacturer) and two other manufacturers filed a scope petition request with the United States Court of International Trade seeking confirmation of the DOC's final scope ruling. The Court has nationwide jurisdiction over civil actions arising out of the customs and international trade laws of the United States.

On September 25, 2013, the Court heard arguments from both side's legal counsels during a hearing. Yuanda was the only of the three plaintiffs in attendance, while defense comprised of the Department of Justice, the DOC and the Curtain Wall Coalition (CWC). The judge made it clear from the start that he read the scope as our industry does: parts of finished products, such as curtain walls, are covered by the scope of the Orders. However, the judge still challenged both sides. The majority of the hearing consisted of education for the Court regarding curtain walls, curtain wall units and parts of curtain walls.

Yuanda's counsel spent most of the hearing answering the judge's questions. It acknowledged that curtain walls are within the scope of the Orders, but claimed that curtain wall units are finished goods and its completed curtain wall units were imported as kits, therefore they shouldn't be subject to tariffs. Additionally, Yuanda compared the scope ruling with finished windows and tried to discuss the CWC's lack of standing to request a scope ruling. Overall, according to industry representatives present at the hearing, Yuanda had difficulty providing satisfactory responses for the court.

The defense, on the other hand, was well prepared. It utilized U.S. industry experience and perspective to provide factual clarifications and clear, accurate information regarding curtain walls, curtain wall units and parts of curtain walls. The defense pointed out the clarity of the scope language, which clearly states that parts of curtain wall are subject to the scope of the Orders, and it clarified that the scope ruling was about curtain wall units and parts of curtain wall units as a whole (not finished products or kits).

A decision regarding Yuanda's scope request is expected soon, but it could take until the end of this year. In the meantime, presentations focusing on enforcement of the aluminum tariff continue being delivered to Customs agents up and down the West coast by David Spooner (Squire Sanders, LLP) and contractor representatives. The presentations are intended to educate and update port employees on what to look for and how to recognize the specific products in question.

The FCA Architectural Glass & Metal Contractors Advisory Committee and the FCA Government Relations Advisory Committee will continue monitoring this ruling, and we will update you when the Court reaches a decision. Stay tuned!