



17: CURTAIN WALL COALITION

A brief history of the Aluminum Extruder Council's trade case against China

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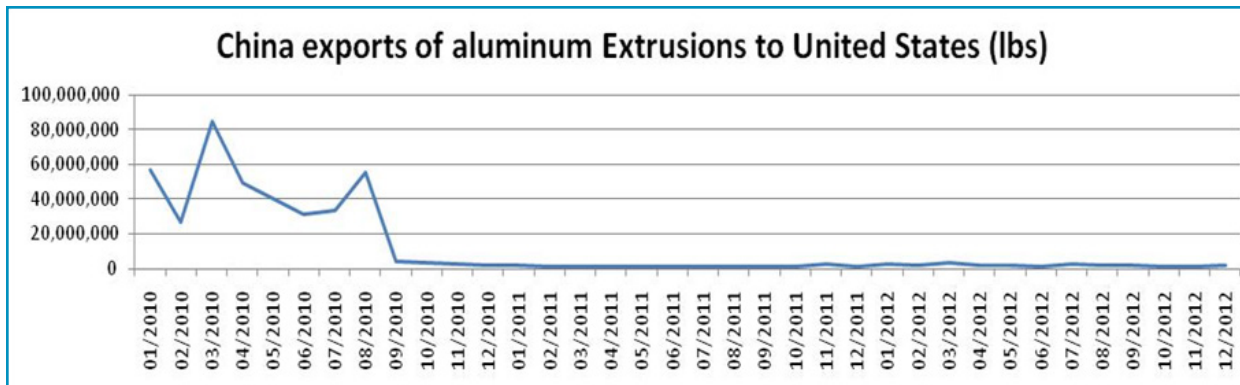
DEVIL'S DETAIL

INTRODUCTION

After the financial collapse of the U.S. economy and subsequent recession in 2008, the Chinese aluminum extrusion industry began to set its sights on the U.S. market. Aluminum extrusion imports from China began a meteoric rise that took their U.S. market share from 6 percent to a run rate of 25 percent by mid-2010. The one-two punch of the Great Recession and unrelenting Chinese dumping nearly destroyed the domestic industry.

American Architectural Manufacturers Association (AAMA) defines a curtain wall as any non-load bearing exterior facade that collectively hangs like a curtain beyond the face of floor slabs, regardless of construction or cladding material.

The industry had no choice but to band together and seek trade protection from these imports. In April 2011, the U.S. Department of Commerce (DOC) sided with the domestic industry in both its anti-dumping (AD) and countervailing duty (CVD) cases. In October 2010, prior to this final determination, the DOC issued its preliminary finding and instituted temporary duties on all Chinese aluminum extrusion imports. As soon as those preliminary orders took hold, China's position plummeted to 1 percent in the first month!



Data source: The Aluminum Association

The chart above shows the monthly shipping volume from China imported into the U.S. from January 2010 through December 2012. Note the abrupt halt in imports in October 2010. Chinese imports have not recovered.

At that time, the Aluminum Extrusion Fair Trade Committee, the platform from which the industry launched the case, believed that winning protection was essentially the end of the matter. Little did the committee know it was the start of a roller-coaster ride that continues to run.

Before outlining the history of the aluminum extrusion orders, the following provides an overview of the elements of a typical trade case.



WHAT IS A TRADE CASE?

A trade case consists of the initial filing and pursuit of trade protection. In this matter, the Aluminum Extrusion Fair Trade Committee filed an anti-dumping (AD) and countervailing duty (CVD) case. Dumping relates to unfair selling practices, when a country sells products well below market prices for the sole benefit of causing harm to the targeted domestic industry. CVD relates to unfair or illegal subsidies, such as subsidized energy costs, land deals, access to capital below cost, etc. During trade cases, the government investigates the allegations, and if injury is found, will calculate an AD and CVD rate to create a level playing field. If enacted, the federal government reviews, and decides whether or not to renew, the orders every five years through a process known as the Sunset Review.

EXTRUSION CASE

The Aluminum Extruders Council (AEC) participated in the Sunset Review in 2016, and in early 2017 won the review. In the original extrusion case, there was virtually no opposition to the petition, so the DOC issued the strongest tariffs it could. CVD rates were announced at 374 percent and AD rates were 33 percent. These two duties are combined, thus creating an aluminum extrusion tariff of 407 percent. Over time, those rates have been challenged, and have come down. This leads to the next element of a trade case, the annual administrative review.

Each year, the DOC conducts an investigation to determine if current duty rates are proper based on industry developments. This is done in the AD and CVD case. The DOC reviews a list of all Chinese producer-exporters in order to find up to three companies to investigate what they believe are indicative of overall Chinese imports. The DOC contacts the companies and notifies them that they have been selected as Mandatory Respondents to the DOC annual review. The DOC will ask for production and sales data to see how it compares with their findings in the original case. If it is determined that the rates should be changed, the DOC will do so. Typically, the DOC announces its preliminary results in June, and in the case of extrusions, issues final results in December. Unlike nearly every country in the world, in the U.S., those rates will not only affect the next calendar year, but also affect the current year. This puts importers into a scenario in which they could have been under- or over-paying duties all year. That is why the preliminary decision in June is so important.

EFFECTS

In the AEC case, rates came down quickly. By year two of the orders, CVD rates tumbled to about 10 percent while AD rates stayed at 33 percent. Even so, imports from China did not return.

However, in the case of curtain wall, these lower rates left the curtain wall industry vulnerable to Chinese curtain wall extrusions and unitized curtain wall products, since only the extrusions were subject to the duty. Therefore, the overall cost of the unitized curtain wall sub-assemblies was only marginally impacted. However, in the last three years as the number of extrusions imported from China has decreased, the DOC has been selecting Chinese curtain wall extruders as Mandatory Respondents. The AEC was able to successfully argue that the other components of unitized curtain wall are also heavily subsidized, so those items, such as glass, should also be calculated into the CVD formula. As a result, AD rate has climbed to 86 percent and the CVD rate has risen to 20 percent for a combined rate of 106 percent. The preliminary numbers for the 2018 review were announced in March, and those rates are holding.

SCOPE OF ORDERS

The next key element of a trade case is the scope of the orders: i.e., what exactly is covered by the duties. In most trade cases this is quite binary. However, this is not the case with extruded aluminum.

Aluminum extrusions are open to interpretation because they are typically custom engineered designs used for a specific purpose in a specific application. Unlike a three-inch steel tube or an iPhone, extrusions can't be simply categorized in the same way as most other products. There are thousands of applications using aluminum extrusions in production today. A typical U.S. extruder will have over 30,000 dies, each cut with its buyer's proprietary design. Consequently, when protecting aluminum extruders from unfair and illegal trade practices of the Chinese aluminum extrusion industry, the domestic industry needed to find the right language in its petition and scope request to protect these products.

Furthermore, the U.S. industry learned from the Canadian case, which preceded the U.S. case by three years, that if only the extrusion is covered, the Chinese will simply punch a hole into one end of the extrusion and call it a fabricated part. Since most domestic extruders also fabricate and even kit extrusions for their customers, a scope was needed to protect that aspect of the value chain. The scope of the orders as defined by the DOC in the extrusion case is quite broad:

"The scope includes the aluminum extrusion components that are attached (e.g., by welding or fasteners) to form sub-assemblies, i.e., partially assembled merchandise unless imported as part of the finished goods 'kit'..."

You can read the full scope here:

<https://www.gpo.gov/fdsys/pkg/FR-2011-05-26/pdf/2011-13103.pdf>

It should be noted that once these orders are issued, the scope cannot be changed.

100+ SCOPE CHALLENGES

Because of the nature of extrusions, their many applications and forms, and the broad language in the scope (which was never challenged in the original filing), the AEC and the DOC experienced the largest number of scope challenges in the history of U.S. trade law. To date, more than 100 scope challenges have been filed against the orders, and more come each month. In fact, the DOC has told the committee that it has more people working on this case than any other trade case in U.S. history!

BATTLEFIELD

The scope of the orders became the battlefield for the curtain wall industry and Chinese manufacturers. In August 2012, AGA, Bagatelos, and Walters & Wolf (the "Curtain Wall Coalition") petitioned the DOC to clarify whether the aluminum in curtain wall units constituted "parts ... of curtain walls" subject to the aluminum extrusion tariffs. The petition was opposed by Yuanda, Jangho, and Permasteelisa, three of China's largest curtain wall producers. They argued that curtain wall units were like finished windows and were "final finished goods" not covered by the tariffs.

FIRST RULING

In November 2012, DOC ruled in favor of the Curtain Wall Coalition. DOC found that "curtain wall units and other parts of curtain wall systems are within the scope of the [anti-dumping and countervailing duty] orders [on aluminum extrusions from China]." The DOC sent instructions to U.S. Customs, requiring ports to collect tariffs on Chinese imports of curtain wall units and other curtain wall parts.

This decision was appealed to the U.S. Court of International Trade (CIT). The CIT affirmed DOC's decision in January 2014. That decision was again appealed, this time to the Court of Appeals for Federal Circuit (CAFC), which in January 2015 affirmed the CIT's decision. In its decision, the CAFC found curtain wall units generally, and Yuanda's specifically, are covered by the aluminum extrusion tariffs. Thus, this matter was settled, as the only court to which this decision could be appealed is the Supreme Court.

Meantime, while the Curtain Wall Coalition's scope litigation was pending, Yuanda filed its own scope request with DOC, arguing that Yuanda's "complete and finished curtain wall units imported

pursuant to a contract to build a curtain wall" were not covered by the tariffs. In March 2014, DOC ruled in favor of the domestic industry, so Yuanda sued a second time.

SECOND RULING

In February 2016, the CIT ruled a second time on whether the tariffs apply to curtain wall units. This time, the court remanded (sent back) the matter to DOC. The court opined that Yuanda should be able to build a "finished goods kit" by importing curtain wall units over weeks and months, and that it was "unreasonable" for DOC to require all parts of a "finished curtain wall kit" to be imported on one U.S. Customs entry.

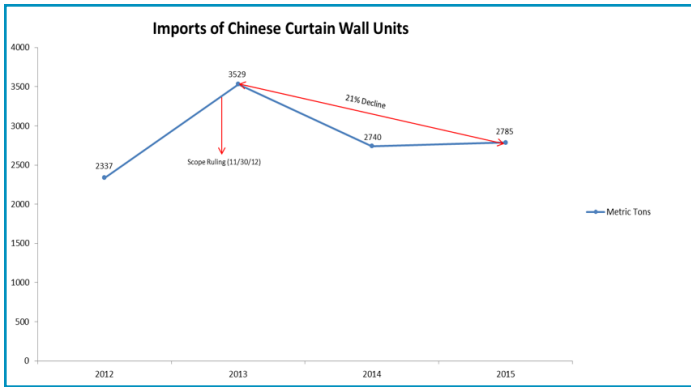
In May 2016, DOC found, "under protest," that Yuanda's curtain wall units were outside the scope of the tariffs. Nevertheless, DOC filed a lengthy explanation as to why the judge was wrong, and why the units should be covered by the tariffs. DOC claimed the judge's opinion gave DOC no choice but to find in Yuanda's favor.

In October 2016, the judge issued a second opinion. The judge again remanded the case to DOC, asking DOC to further explore whether Yuanda's curtain wall units are covered by the tariffs. Two important findings: 1) the court said its prior decision did not require DOC to exclude Yuanda's curtain wall units from the tariffs; and 2) the court asked DOC to explore whether Yuanda's curtain wall units require further finishing and fabrication (and therefore can't be a "kit").

The judge gave DOC until mid-November to file its redetermination with the court, gave Yuanda until the end of November to file its brief, and gave the Curtain Wall Coalition and the US. government until mid-December to file any reply. On October 26, the judge passed away.

In December, a new judge was assigned. The new judge set a schedule that required DOC to file its redetermination by mid-January. In mid-January, DOC reversed itself, finding that Yuanda's curtain wall units were covered by the tariffs. DOC reasoned that Yuanda's curtain wall units required finishing and fabrication (and so can't be excluded "finished good kits") and individually are "parts" for curtain walls (and therefore can't be excluded "finished goods"). AGA, Bagatelos, and Walters & Wolf filed a brief in support of DOC's decision.

In December 2017, the Court of International Trade rejected Yuanda's latest claims in court, ruling that imports of curtain wall units from China are subject to anti-dumping and anti-subsidy tariffs. Since then, this decision has been appealed. So, the



ABOUT NCGMA

The Northern California Glass Management Association (NCGMA) represents union glazing contractors and manufacturers. Its primary purpose is to represent and promote the best interests of members in all areas of labor relations. NCGMA also keeps members informed about current business trends, provides a place for members to go for legislation and regulatory issues, and provides educational training programs for owners and their office personnel. Learn more at <http://www.ncgma.org>.

Locally, the Architectural Glass Institute (AGI), the Architectural Glass and Metal Association (AGMA), and DC21 have all supported the Curtain Wall Coalition.



ABOUT AGMA

The Architectural Glass and Metal Association (AGMA) is a trade association serving regional glazing contractors. AGMA represents our member companies by building mutually beneficial relationships and forming strategic alliances with key influencers to shape the greater Philadelphia construction environment. AGMA members understand working together has greater impact than working alone. Learn more at <https://www.agma.glass>.

Curtain Wall Coalition will find itself back in the courtroom at the CAFC at a later date.

These scope challenges and decisions have made an impact on curtain wall imports to the U.S. As the graph above shows, rulings in favor of the domestic industry have deterred Chinese imports.

Prior to the 2012 original scope challenge by the Northern California Glass Management Association (NCGMA), and while that decision was pending, imports of curtain wall extrusions and units from China increased. After the rulings, they declined. Clearly, support of this issue does make a difference. The NCGMA is committed to seeing this matter to its conclusion. However, the Chinese industry will continue to fight.

Trade orders are fundamentally comprised of the original orders, administrative reviews, and scope challenges. Beyond that, the AEC has learned that trade enforcement is a major component of defending orders.

FUTURE DETAILS TO COME

Over the coming months, additional Devil's Details articles will discuss the AEC's role in defending the orders and protecting the industry from a range of illegal tactics, including transshipments, circumvention, and mislabeling. Look for future articles to provide more insights and updates regarding this very important issue.

About the Devil's Details

The AGI educational series illustrates and describes common glazing challenges as a means to communicate best practices for the design and construction industry, not as a sole source for design guidance. AGI recommends design professionals consult with an AGI contractor regarding specific project challenges. AGI contractor profiles may be accessed at www.theagi.org. To share a devilish detail of your own, contact info@theagi.org.