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Scope Ruling: IOS Products

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MEMORANDUM TO: Gary Taverman  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

THROUGH: Scot Fullerton  
Director  
AD/CVD Operations, Office VI

Erin Kearney  
Program Manager  
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FROM: Chelsey Simonovich  
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SUBJECT: Antidumping and Countervailing Duty Orders on Aluminum  
Extrusions from the People's Republic of China: Final Scope  
Ruling on IOS Certain Products

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## **Summary**

On April 29, 2015, the Department of Commerce (the Department) received a scope ruling request from Innovative Outdoor Solutions, Inc.<sup>1</sup> (IOS) to determine whether certain products (*i.e.*, certain Ice Fishing Frame Kits, certain Blind Frame Kits, certain Kayak Stabilizer Kits, certain Swim Raft Ladder Kits, certain Cushioned Bracket Seat Kits, and certain Power Rails) are subject to the antidumping duty (AD) and countervailing duty (CVD) orders on aluminum extrusions from the People's Republic of China (PRC).<sup>2</sup> We determine that the Ice Fishing Frame Kit, the Blind Frame Kit, Kayak Stabilizer Kit, and Cushioned Bracket Seat Kit are

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<sup>1</sup> See Letter from IOS to the Secretary of Commerce entitled, "Aluminum Extrusions from the People's Republic of China: Entry of Appearance – Scope Inquiry for Certain Ice Fishing Frame Kits, Blind Frame Kits, Kayak Stabilizer Kits, Power Rails, Swim Raft Ladder Kits, and Cushioned Bracket Seat Kits," dated April 29, 2015 (Scope Request).

<sup>2</sup> See *Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order*, 76 FR 30650 (May 26, 2011) and *Aluminum Extrusions from the People's Republic of China: Countervailing Duty Order*, 76 FR 30653 (May 26, 2011) (collectively, the *Orders*).

excluded from the scope, while the Swim Raft Ladder Kit and Power Rails are included within the scope.

## **Background**

On April 29, 2015, IOS submitted its Scope Request, in which it asked that the Department issue a scope ruling that certain products (*i.e.*, certain Ice Fishing Frame Kits, certain Blind Frame Kits, certain Kayak Stabilizer Kits, certain Swim Raft Ladder Kits, certain Cushioned Bracket Seat Kits, and certain Power Rails) are outside the scope of the *Orders*.<sup>3</sup> On June 29, 2015, the Department issued a supplemental questionnaire to IOS for clarification of its Scope Request,<sup>4</sup> to which IOS responded on September 10, 2015.<sup>5</sup> On October 29, 2015, the Aluminum Extrusions Fair Trade Committee (the petitioner) submitted comments on IOS's initial Scope Request and First Supplemental Questionnaire.<sup>6</sup> On November 24, 2015, IOS responded to the First Petitioner's Response.<sup>7</sup> On January 20, 2016, the petitioner responded to IOS's November 24, 2015 comments.<sup>8</sup> On February 2, 2016, the Department issued a second supplemental questionnaire to IOS,<sup>9</sup> to which IOS responded on February 4, 2016.<sup>10</sup> Additionally, IOS responded to the Second Petitioner Response on February 4, 2016.<sup>11</sup> On November 1, 2016, the Department issued a third supplemental questionnaire to IOS.<sup>12</sup> IOS responded to the Department's third supplemental questionnaire on November 17, 2016.<sup>13</sup> The petitioner submitted comments on IOS's Third Supplemental Response on January 5, 2017.<sup>14</sup> On January

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<sup>3</sup> See Scope Request.

<sup>4</sup> See Letter from the Department to IOS regarding, "Aluminum Extrusions from the People's Republic of China: Supplemental Questionnaire on IOS Scope Inquiry Request," dated June 29, 2015 (First Supplemental Questionnaire).

<sup>5</sup> See Letter from IOS to the Department regarding, "Aluminum Extrusions from the People's Republic of China: Response of IOS to the Department's June 29, 2015 Questionnaire Regarding IOS Finished Goods Kits Scope Request," dated September 10, 2015 (First Supplemental Response).

<sup>6</sup> See Letter from the petitioner to the Department, "Re: Aluminum Extrusions from the People's Republic of China: Comments on Innovative Outdoor Solutions Inc.'s Scope Ruling Request on Blind Frame Kits, Kayak Stabilizer Kits, Swim Ladder Kits, and Power Rails and Supplemental Questionnaire Response," dated October 29, 2015 (First Petitioner's Response).

<sup>7</sup> See Letter from IOS to the Department, "Re: Aluminum Extrusions from the People's Republic of China: Response of IOS to Petitioners' October 29 Comments Regarding IOS Finished Goods Kits Scope Request," dated November 24, 2015 (First Response to Petitioner's Comments).

<sup>8</sup> See Letter from the petitioner to the Department, "Re: Aluminum Extrusions from the People's Republic of China: Reply to IOS's November 24, 2015 Response Comments," dated January 20, 2016 (Second Petitioner's Response).

<sup>9</sup> See Letter from the Department to IOS regarding, "Aluminum Extrusions from the People's Republic of China: Scope Inquiry on IOS Finished Goods Kits," dated February 2, 2016 (Second Supplemental Questionnaire).

<sup>10</sup> See Letter from IOS to the Department regarding, "Aluminum Extrusions from the People's Republic of China: Response to the Department's February 2, 2016 Questionnaire," dated August 19, 2016" (Second Supplemental Response).

<sup>11</sup> See Letter from IOS to the Department regarding "Aluminum Extrusions from the People's Republic of China: Reply to the petitioners' January 21, 2016 Comments," dated February 4, 2016 (Second Response to the Petitioners Comments).

<sup>12</sup> See Letter from the Department to IOS regarding, "Aluminum Extrusions from the People's Republic of China: Supplemental Questionnaire on IOS Scope Inquiry Request," dated November 1, 2016 (Third Supplemental Questionnaire).

<sup>13</sup> See Letter from IOS to the Department regarding, "Aluminum Extrusions from the People's Republic of China: Response to the Department's November 1, 2016 Questionnaire," dated November 16, 2016" (Third Supplemental Response).

<sup>14</sup> See Letter from the petitioner to the Department, "Re: Aluminum Extrusions from the People's Republic of

3, 2017, the Department extended the deadline for issuing the results of this scope review by 45 days.<sup>15</sup> IOS responded to the petitioner's comments on January 26, 2017.<sup>16</sup> Between March 13 and April 26, 2017, the Department extended the final analysis of this scope inquiry; therefore, the deadline for this scope ruling is June 12, 2017.<sup>17</sup>

## SCOPE OF THE ORDERS

The merchandise covered by the orders is aluminum extrusions which 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, the subject merchandise made from aluminum alloy with an Aluminum Association series designation commencing with the number 1 contains not less than 99 percent aluminum by weight. The subject merchandise made from aluminum alloy with an Aluminum Association series designation commencing with the number 3 contains manganese as the major alloying element, with manganese accounting for not more than 3.0 percent of total materials by weight. The subject merchandise is made from an aluminum alloy with an Aluminum Association series designation commencing with the number 6 contains 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 subject aluminum extrusions are properly identified by a four-digit alloy series without either a decimal point or leading letter. Illustrative examples from among the approximately 160 registered alloys that may characterize the subject merchandise are as follows: 1350, 3003, and 6060.

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.

Aluminum extrusions are produced and imported with a variety of finishes (both coatings and surface treatments), and types of fabrication. The types of coatings and treatments applied to subject 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 bright-dip anodized), liquid painted, or powder coated. Aluminum extrusions may also be fabricated,

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China: Comments on IOS's Fourth Supplemental Questionnaire Response," dated January 6, 2016 (Third Petitioner's Response). We note that the title of the petitioner's submission reflects that this is a response to IOS's fourth supplemental questionnaire, although it is in response to IOS's third supplemental questionnaire response. The Department did not issue a fourth supplemental questionnaire to IOS.

<sup>15</sup> See Letter to IOS from Erin Kearney, dated January 3, 2017; *see also* Memo to the File from Chelsey Simonovich, dated January 2, 2017.

<sup>16</sup> See Letter from IOS to the Department regarding "Aluminum Extrusions from the People's Republic of China: Response of Innovative Outdoor Solutions Inc. to Petitioner's Comments on IOS's Fourth Supplemental Questionnaire Response," dated January 26, 2017 (Third Response to the Petitioner's Comments).

<sup>17</sup> See Extension Letter from the Department to IOS, dated March 13, 2017; *see also* Extension Letter from the Department to IOS, dated April 5, 2017, *see also* Extension Letter from the Department to IOS, dated April 17, 2017; *see also* Extension Letter from the Department to IOS, dated April 26, 2017.

*i.e.*, prepared for assembly. Such operations would include, but are not limited to, extrusions that are cut-to-length, machined, drilled, punched, notched, bent, stretched, knurled, swedged, mitered, chamfered, threaded, and spun. The subject merchandise includes aluminum extrusions that are finished (coated, painted, *etc.*), fabricated, or any combination thereof.

Subject aluminum extrusions may be described at the time of importation as parts for final finished products that are assembled after importation, including, but not limited to, window frames, door frames, solar panels, curtain walls, or furniture. Such parts that otherwise meet the definition of aluminum extrusions are included in the scope. 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. The scope does not include the non-aluminum extrusion components of subassemblies or subject kits.

Subject 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 below). 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.

The following aluminum extrusion products are 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 percent 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 percent 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 percent zinc by weight.

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. 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 orders merely by including fasteners such as screws, bolts, etc. in the packaging with an aluminum extrusion product.

The scope also excludes aluminum alloy sheet or plates produced by other than the extrusion process, such as aluminum products produced by a method of casting. Cast aluminum products are properly identified by four digits with a decimal point between the third and fourth digit. A letter may also precede the four digits. The following Aluminum Association designations are representative of aluminum alloys for casting: 208.0, 295.0, 308.0, 355.0, C355.0, 356.0, A356.0, A357.0, 360.0, 366.0, 380.0, A380.0, 413.0, 443.0, 514.0, 518.1, and 712.0. The scope also excludes pure, 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 62 mm, (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 orders are finished heat sinks. Finished heat sinks are fabricated heat sinks made from aluminum extrusions the design and production of which are organized around meeting certain specified thermal performance requirements and which have been fully, albeit not necessarily individually, tested to comply with such requirements.

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States (HTSUS): 8481.90.9060, 8481.90.9085, 9031.90.9195, 8424.90.9080, 9405.99.4020, 9031.90.90.95, 7616.10.90.90, 7609.00.00, 7610.10.00, 7610.90.00, 7615.10.30, 7615.10.71, 7615.10.91, 7615.19.10, 7615.19.30, 7615.19.50, 7615.19.70, 7615.19.90, 7615.20.00, 7616.99.10, 7616.99.50, 8479.89.98, 8479.90.94, 8513.90.20, 9403.10.00, 9403.20.00, 7604.21.00.00, 7604.29.10.00, 7604.29.30.10, 7604.29.30.50, 7604.29.50.30, 7604.29.50.60, 7608.20.00.30, 7608.20.00.90, 8302.10.30.00, 8302.10.60.30, 8302.10.60.60, 8302.10.60.90, 8302.20.00.00, 8302.30.30.10, 8302.30.30.60, 8302.41.30.00, 8302.41.60.15, 8302.41.60.45, 8302.41.60.50, 8302.41.60.80, 8302.42.30.10, 8302.42.30.15, 8302.42.30.65, 8302.49.60.35, 8302.49.60.45, 8302.49.60.55, 8302.49.60.85, 8302.50.00.00, 8302.60.90.00, 8305.10.00.50, 8306.30.00.00, 8414.59.60.90, 8415.90.80.45, 8418.99.80.05, 8418.99.80.50, 8418.99.80.60, 8419.90.10.00, 8422.90.06.40, 8473.30.20.00, 8473.30.51.00, 8479.90.85.00, 8486.90.00.00, 8487.90.00.80, 8503.00.95.20, 8508.70.00.00, 8515.90.20.00, 8516.90.50.00, 8516.90.80.50, 8517.70.00.00, 8529.90.73.00, 8529.90.97.60, 8536.90.80.85, 8538.10.00.00, 8543.90.88.80, 8708.29.50.60, 8708.80.65.90, 8803.30.00.60, 9013.90.50.00, 9013.90.90.00, 9401.90.50.81, 9403.90.10.40, 9403.90.10.50, 9403.90.10.85, 9403.90.25.40, 9403.90.25.80, 9403.90.40.05, 9403.90.40.10, 9403.90.40.60, 9403.90.50.05, 9403.90.50.10, 9403.90.50.80, 9403.90.60.05, 9403.90.60.10, 9403.90.60.80, 9403.90.70.05, 9403.90.70.10, 9403.90.70.80, 9403.90.80.10, 9403.90.80.15, 9403.90.80.20, 9403.90.80.41, 9403.90.80.51, 9403.90.80.61, 9506.11.40.80, 9506.51.40.00, 9506.51.60.00, 9506.59.40.40, 9506.70.20.90, 9506.91.00.10, 9506.91.00.20, 9506.91.00.30, 9506.99.05.10, 9506.99.05.20, 9506.99.05.30, 9506.99.15.00, 9506.99.20.00, 9506.99.25.80, 9506.99.28.00, 9506.99.55.00, 9506.99.60.80, 9507.30.20.00, 9507.30.40.00, 9507.30.60.00, 9507.90.60.00, and 9603.90.80.50.

The subject merchandise entered as parts of other aluminum products may be classifiable under the following additional Chapter 76 subheadings: 7610.10, 7610.90, 7615.19, 7615.20, and 7616.99 as well as under other HTSUS chapters. In addition, fin evaporator coils may be classifiable under HTSUS numbers: 8418.99.80.50 and 8418.99.80.60. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these orders is dispositive.

## LEGAL FRAMEWORK

When a request for a scope ruling is filed, the Department examines the scope language of the order and the description of the product contained in the scope ruling request.<sup>18</sup> Pursuant to the Department's regulations, the Department may also examine other information, including the description of the merchandise contained in the petition, the records from the investigations, and prior scope determinations made for the same product.<sup>19</sup> If the Department determines that these sources are sufficient to decide the matter, it will issue a final scope ruling as to whether the merchandise is covered by an order.<sup>20</sup>

Conversely, where the descriptions of the merchandise in the sources described in 19 CFR 351.225(k)(1) are not dispositive, the Department will consider the five additional factors set forth at 19 CFR 351.225(k)(2). These factors are: (i) the physical characteristics of the merchandise; (ii) the expectations of the ultimate purchasers; (iii) the ultimate use of the product; (iv) the channels of trade in which the product is sold; and (v) the manner in which the product is advertised and displayed. The determination as to which analytical framework is most appropriate in any given scope proceeding is made on a case-by-case basis after consideration of all evidence before the Department.

## DESCRIPTION OF THE MERCHANDISE SUBJECT TO THIS SCOPE REQUEST

IOS requests exclusion from the scope of the *Orders* for six products, encompassing a total of twelve models, which are part of its line of "outdoor sporting goods." IOS's scope request includes five products (and eleven models) that IOS describes as kits (including two methods of importation for one kit), and one product that IOS describes as finished merchandise.

The alleged finished goods kits at issue in IOS's scope request are as follows:

1. Ice Fishing Frame Kit
  - Cottage complete frame (item 200213)
  - Cabin complete frame (item 200212)
  - Lodge complete frame (item 200215)
  - Resort complete frame (item 200216)
2. Blind Frame Kit (item 400495)
3. Kayak Stabilizer Kit (item 300117)

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<sup>18</sup> See *Walgreen Co. v United States*, 620 F.3d 1350, 1357 (Fed. Cir. 2010).

<sup>19</sup> See 19 CFR 351.225(k)(1).

<sup>20</sup> See 19 CFR 351.225(d).

4. Swim Raft Ladder Kit
  - Swim Raft Ladder Bottom (item 300295)
  - Swim Raft Ladder Top (item 300296)
  - Swim Raft Ladder Hardware (item 300256)
  
5. Cushioned Bracket Seat Kit
  - Seat Bracket Assembly: Small, Medium, and Magnum (item 200381)
  - Seat Bracket Assembly: Large (item 200374)

The alleged finished merchandise at issue in IOS's scope request is as follows:

6. Power Rails (item 100445)

According to IOS, the kits listed above contain all components necessary to complete the product at the time of importation, and are fully fabricated and require no further finishing or fabrication prior to being assembled.<sup>21</sup> IOS makes a distinction that the Power Rails are not a kit, and should be excluded from the scope based on the scope exclusion for finished merchandise.

## **RELEVANT SCOPE DETERMINATIONS**

### **Banner Stands and Back Wall Kits Scope Ruling**<sup>22</sup>

This ruling addressed banner stands and back wall kits, used to showcase graphics and other marketing materials. The requestor argued that the banner stands and back wall kits fell outside the scope of the *Orders* because they met the exclusion criteria of the scope of the *Orders*, namely that the products at issue constituted “finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry.”

In the ruling, the Department found that the banner stands and back wall kits met the exclusion criteria.<sup>23</sup> The Department explained that the products at issue contained all of the parts required to assemble a completed exhibition frame on which printed graphical materials may be hung and, thus, met the exclusion criteria in the scope of the *Orders* for “finished goods kits.”<sup>24</sup>

Furthermore, the Department agreed with the requestor's claim that the products at issue were analogous to completed picture frames, which are explicitly excluded from the scope of the *Orders*.<sup>25</sup> Specifically, the Department found that the products at issue were designed to incorporate interchangeable graphical materials that can change with users' needs. Therefore, the Department concluded it would be unreasonable to require that the products at issue be

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<sup>21</sup> See Scope Request, at 10.

<sup>22</sup> See Memorandum from John Conniff and Eric B. Greynolds to Christian Marsh entitled, “Final Scope Ruling on Banner Stands and Back Wall Kits,” dated October 19, 2011 (*Banner Stands and Back Wall Kits Scope Ruling*); see also Memorandum entitled, “Antidumping and Countervailing Duty Orders on Aluminum Extrusions from the People's Republic of China: Prior Scopes Rulings Relevant to the IOS Products Scope Ruling,” dated concurrently with this scope ruling (Prior Scopes Memorandum), at Attachment 1.

<sup>23</sup> See *Banner Stands and Back Wall Kits Scope Ruling*, at 9-10.

<sup>24</sup> *Id.*, at 9.

<sup>25</sup> *Id.*, at 10.

accompanied at the time of importation with affixed graphical material that could not be removed or altered at a later date.<sup>26</sup>

### Geodesic Domes Kits Scope Ruling<sup>27</sup>

At issue in the ruling were certain geodesic dome frame kits consisting solely of extruded aluminum parts along with nuts, bolts, and washers. The requestor argued that the products at issue constituted finished goods kits because the kits contained all the components necessary to assemble a final finished geodesic dome playground set. It further argued that the products at issue required no further fabrication and are assembled “as is” from the components provided in the kits.

In the ruling, the Department explained that the product at issue met the “initial requirements for inclusion into the finished goods kit exclusion.”<sup>28</sup> However, the Department noted that the scope of the *Orders* states that an “imported product will not be considered a ‘finished goods kit’ . . . merely by including fasteners such as screws, bolts, *etc.* in the packaging with an aluminum extrusion product.”<sup>29</sup> The Department found that since the products at issue consisted solely of extruded aluminum and fasteners, the exception to the exclusion provision applied. Accordingly, the Department found that the products at issue did not meet the exclusion criteria for a finished goods kit.<sup>30</sup>

### Solarmotion Controllable Sunshades Scope Ruling<sup>31</sup>

Construction Specialties Inc. (CS Group), an importer of Solarmotion controllable sunshades, stated that its kits constituted finished merchandise because after importation they were intended to be inserted directly into a frame (albeit one shipped separately and already attached to a building). According to CS Group, these components could not be treated as a single part of a larger system. The petitioner responded that the sunshades CS Group imported from the PRC were merely components of the complete sunshade system it sold. They highlighted a Customs and Border Protection (CBP) ruling determining that parts needed for the sunshades to rotate and track the sun throughout the day (*i.e.*, necessary parts to assemble a final finished good) were missing from the imported kits. The petitioner also pointed out that CS Group’s marketing materials advertised a complete system as including components not present in the kit.

Approximately five weeks after its initial filing, CS Group submitted a revised scope request. The revised scope request stated that the sunshades would now be shipped from the PRC to Canada and consolidated with Canadian-manufactured parts to form a finished goods kit before

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<sup>26</sup> *Id.*

<sup>27</sup> See Memorandum from Brooke Kennedy to Christian Marsh entitled, “Final Scope Ruling on J.A. Hancock, Inc.’s Geodesic Structures,” dated July 17, 2012 (*Geodesic Domes Kits Scope Ruling*); see also Transmittal of Scope Rulings Relevant to the FHA Scope Ruling Memorandum; see also Prior Scopes Memorandum, at Attachment 2.

<sup>28</sup> See *Geodesic Domes Kits Scope Ruling*, at 7.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> See Memorandum from Raquel Silva to Christian Marsh, entitled, “Final Scope Ruling on Solarmotion Controllable Sunshades,” dated August 17, 2012 (*Solarmotion Controllable Sunshades Scope Ruling*); see also Prior Scopes Memorandum, at Attachment 3.

entry into the United States. The new kit would contain all parts necessary (*e.g.*, blade frames, motors, brackets) to assemble a final finished good. Owing to their large size, each kit could not be transported in a single trailer, but would be imported in the same shipment and with the same commercial invoice, bill of lading, and CBP 7501 form.

The Department determined that CS Group's original kit did not constitute finished merchandise or a finished goods kit.<sup>32</sup> However, the Department found that the revised kit included the components necessary to qualify as a finished goods kit as described in the scope of the *Orders*.<sup>33</sup> That the revised kit was to be imported from Canada in a single shipment with the same commercial invoice, bill of lading, and CBP 7501 form further supported this conclusion, according to the Department. In addition, the Department found that the revised kit was excluded from the scope of the *Orders*, although shipped in separate containers, because, in addition to being listed on a single CBP 7501 form, the revised kit ultimately contained all of the necessary parts to assemble a final finished good.<sup>34</sup> Therefore, the Department determined that the revised kits should fall outside the scope of the *Orders*.

#### Solar Panel Mounting Systems Kits Scope Ruling<sup>35</sup>

At issue were certain solar panel mounting systems which consisted of the extruded aluminum rails, extruded and cast aluminum kedges, galvanized steel posts, and additional fasteners, bolts, brackets, and smaller parts.<sup>36</sup> These products did not include the solar panels themselves. However, the requester asked that the products be excluded from the scope, as they were analogous to mounting systems for pictures frames and were complete products in their own right and offered the final customers the option to add their preferred solar panels.<sup>37</sup> The petitioners claimed that this merchandise constituted only part of a finished product, as they lacked necessary components to make the merchandise function.<sup>38</sup>

The Department determined that the solar mounting systems met the criteria of the exclusion and, therefore, were excluded from the scope. The kits contained extruded aluminum parts and many non-aluminum parts that were beyond mere fasteners. Additionally, all of the pieces were included and ready to be assembled 'as is.' The Department found that while the kits did not include the solar panels, the kit was designed to accommodate solar panels chosen by the end consumer, which were readily available in the market (similar to the aforementioned picture frames).<sup>39</sup>

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<sup>32</sup> *Id.*, at 11.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*, at 11-12.

<sup>35</sup> See Memorandum from Brooke Kennedy to Christian Marsh entitled, "Final Scope Ruling on Clenergy (Xiamen) Technology's Solar Panel Mounting Systems," dated October 21, 2012 (*Solar Panel Mounting Systems Scope Ruling*); see also Prior Scope Memorandum, at Attachment 4.

<sup>36</sup> See *Solar Panel Mounting Systems*, at 7.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*, at 8.

<sup>39</sup> *Id.*, at 9.

## SMVC Kits Scope Rulings<sup>40</sup>

At issue in the scope ruling were certain side-mount valve controls (SMVC) kits used in pumping apparatuses that attached to fire engines. The requestor argued that an SMVC kit, as imported, contained all the components necessary to complete the product and that all SMVC components and hardware were fully fabricated and required no further finishing or fabrication prior to being assembled. On this basis, the requestor argued that the product in question met the exclusion criteria for “finished goods kits.”<sup>41</sup>

In the scope ruling, the Department explained that, upon further reflection of the language in the scope of the *Orders*, it was revising the manner in which it determines whether certain subassemblies are “finished merchandise” or are entered as a “finished goods kit.” The Department identified a concern with its prior analysis; namely that it could lead to unreasonable results. The Department explained that an interpretation of “finished goods kit” which requires all parts to assemble the ultimate downstream product in all cases may lead to absurd results, particularly where the ultimate downstream product is, for example, a fire truck. The Department explained that such an interpretation may expand the scope of the *Orders*, which are intended to cover aluminum extrusions.<sup>42</sup>

The Department determined that the scope, taken as a whole, indicates that certain “subassemblies” (*i.e.*, “partially assembled merchandise”) may be excluded from the scope provided that they enter the United States as “finished merchandise” or as a “finished goods kits” which requires no further “finishing” or “fabrication.” Therefore, the Department analyzed whether the SMVC kits at issue constituted a subassembly that enters the United States as a “finished goods kit.” In order for the SMVC kit to be excluded from the scope of the *Orders*, the Department found that: (1) the SMVC kit must contain upon importation all of the parts necessary to assemble a complete SMVC; (2) all of the components and hardware of the SMVC kit must be fully fabricated and required no further finishing or fabrication prior to being assembled; and (3) once assembled, the SMVC must be ready for use in conjunction with the downstream product upon installation.<sup>43</sup> Based on this analysis, the Department found that the SMVC kits at issue met the exclusion criteria for subassemblies that enter the United States as “finished goods kits.”<sup>44</sup>

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<sup>40</sup> See Memorandum from John Conniff and Eric B. Greynolds to Christian Marsh entitled, “Initiation and Preliminary Scope Ruling on Side Mount Valve Controls,” dated September 24, 2012 (*Preliminary SMVC Kits Scope Ruling*); Memorandum from John Conniff and Eric B. Greynolds to Christian Marsh, entitled “Final Scope Ruling on Side Mount Valve Controls,” dated October 26, 2012 (collectively *SMVC Kits Scope Rulings*); see also Prior Scopes Memorandum, at Attachment 5.

<sup>41</sup> See *Preliminary SMVC Kits Scope Ruling* at 2.

<sup>42</sup> *Id.*, at 7.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*, at 7-8.

### Drapery Rail Kits Scope Ruling (Redetermination)<sup>45</sup>

In the original drapery rail kits scope ruling, the Department determined that certain drapery rail kits imported by the Rowley Company (Rowley) were covered by the scope of the *Orders* because the kits were not imported with draperies. The Department subsequently requested a voluntary remand, and on remand, determined that Rowley's drapery rail kits were excluded from the *Orders* as finished goods kits. In its redetermination, the Department noted that the drapery rail kits were designed to be used with readily interchangeable drapes or curtains that could be changed to fit the end customer's needs. The Department found it unreasonable to require that the drapery rail kits be imported with the customizable draperies or curtains and, in determining that Rowley's drapery rail kits were outside the scope of the *Orders*, determined that they contained all the parts necessary to fully assemble a final, finished product.

### Flag Pole Sets Scope Ruling<sup>46</sup>

In the *Flag Pole Sets Scope Ruling*, the Department found that 5 Diamond's flag pole sets did not meet the "finished goods kit" exclusion. The Department found that the flag pole sets did not constitute finished goods kits because, at the time of importation, similarly-sized unassembled flag pole sections were bundled together for shipment, meaning that all of the sections necessary to assemble a final finished product (*i.e.*, the flag pole) were not packaged together as a complete set in one package or in multiple packages ready for assembly upon entry into the finished good.<sup>47</sup> Even though 5 Diamond imported a sufficient number of packages of unassembled sections to create a predetermined number of three- and/or four-section assembled flag pole sets together on the same CBP 7501 form, after importation, the packages had to be opened, accompanying parts had to be separated, the parts needed to assemble the flag poles had to be organized together, the parts had to be fully assembled as an entire flag pole, and then finally the assembled merchandise had to be re-packaged before being sold to the end user. Accordingly, the Department determined that the merchandise was not entered as a kit containing all the components for assembly 'as is' into a finished good, and therefore did not meet the "finished goods kit" exclusion of the scope of the *Orders*.<sup>48</sup>

### Disappearing Door Screens Scope Ruling<sup>49</sup>

At issue were certain disappearing door screens which were comprised of both extruded

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<sup>45</sup> See *Final Results of Redetermination Pursuant to Court Remand, Aluminum Extrusions from the People's Republic of China, Rowley Company v United States*, Court No. 12-00055 (February 27, 2013) (*Drapery Rail Kits (Redetermination)*); see also *Rowley Company v. United States*, Consol. Ct. No. 12-00055 (CIT May 23, 2013) (Court Order affirming Remand Redetermination) (*Drapery Rail Kits Redetermination*). See also Prior Scopes Memorandum at Attachment 6.

<sup>46</sup> See Memorandum from Raquel Silva to Christian Marsh entitled, "Final Scope Ruling on 5 Diamond Promotions, Inc.'s Aluminum Flag Pole Sets," dated April 19, 2013 (*Flag Pole Sets Scope Ruling*); see also Prior Scopes Memorandum, at Attachment 7.

<sup>47</sup> *Id.*, at 9.

<sup>48</sup> *Id.*, at 10-11.

<sup>49</sup> See Memorandum from Andrew Medley to Christian Marsh entitled, "Final Scope Ruling on Law St. Enterprises, LLC's Disappearing Door Screens," dated September 12, 2013 (*Disappearing Door Screens Scope Ruling*); see also Prior Scopes Memorandum, at Attachment 8.

aluminum and non-subject parts. Included in the disappearing door screens were aluminum top and bottom tracks, a track protector, and a side profile. Additionally, there was a mesh screen, a rubber magnet, and an accessory kit.<sup>50</sup> At the time the kit was imported, the like parts were packaged together rather than as complete kits in a single box. All of the necessary parts arrived as part of the same shipment and no additional pieces were added from any other sources after entry.<sup>51</sup> The requestor cited many previous scope rulings, including *Solar Panel Mounting Systems*, where products which were not imported in a single package were found to be excluded from the scope.

The Department found that disappearing screen doors in question were within the scope of the *Orders* as they did not meet the first criterion of the scope exclusion.<sup>52</sup> In other words, the disappearing screen door kits did not form “a packaged combination of parts that contains, at the time of importation, all of the necessary parts to fully assemble a final finished good.”<sup>53</sup> The Department explained:

Law St. imports multiple packages of disappearing screen parts as part of a single entry but does not package them as individual sets that would allow the final U.S. customers, to assemble individual, finished disappearing screens directly from the Law St.’s shipment and import packaging. Specifically, the merchandise, as described in the request, at the time of importation, does not constitute a packaged combination of parts to fully assemble a disappearing screen. Rather, the merchandise constitutes separately packaged parts that, after importation, must be un-packaged, re-arranged, and re-packaged before being sold to the end user as a finished goods kit that includes all of the parts needed to fully assemble finished disappearing screens.<sup>54</sup>

#### Subparts for Metal Bushings Scope Ruling<sup>55</sup>

The Department reviewed a request for subparts for metal bushings used in automotive suspension systems. The subparts for metal bushings are produced of aluminum alloy covered by the scope through an extrusion process. After importation, the subparts are grit-blasted to clean the surface and a paint primer is then sprayed or rolled on to the parts, followed by a coat of adhesive paint to facilitate the bonding of a rubber filler. The rubber filler is then added to the subparts. The product is ready to be assembled into complete bushings and inserted into automotive suspension systems after these processes. The Department determined that the subparts for metal bushings are subject merchandise under the plain language of the scope, as

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<sup>50</sup> See *Disappearing Door Screens Scope Ruling*, at 5.

<sup>51</sup> *Id.*, at 6.

<sup>52</sup> *Id.*, at 9.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*, at 10.

<sup>55</sup> See Memorandum from Andrew Medley and Yasser Clor to Christian Marsh entitled, “Final Scope Ruling on Kam Kiu’s Subparts for Metal Bushings,” dated November 21, 2013 (*Subparts for Metal Bushings Scope Ruling*); see also Prior Scope Memorandum, at Attachment 9.

extruded aluminum, and that the exclusions did not apply because the subparts must be further finished and fabricated prior to installation.

The Department's final scope ruling was challenged at the CIT. The respondents alleged in the challenge that the merchandise qualified for the finished goods kit exclusion because they claimed that the additional preparation did not constitute further finishing or fabrication. The CIT affirmed the Department's scope ruling, holding that the merchandise is "neither an assembled good nor a kit containing all the components for assembly 'as is' into a finished good."<sup>56</sup> The CIT further held that the Department's determination to include the subparts within the scope of the *Orders* was based on a reasonable construction of the *Orders*.<sup>57</sup>

#### Trade Booth Kits Scope Ruling<sup>58</sup>

At issue were certain trade booth kits which were comprised of extruded aluminum headers, posts, columns, and crossbeams, along with polyester knit fabric-covered aluminum wall panels and connectors.<sup>59</sup> The requestor argued that the kits should be excluded from the scope as they were complete kits with all the necessary parts to assemble a final finished product. The requestor also disclosed that the booths were shipped with like pieces together, due to size limitations. The petitioner argued that the manner in which the kits entered did not satisfy the criteria for a finished goods kit.<sup>60</sup> Furthermore, petitioner argued that the request lacked the necessary information as it did not appear that the kits had been imported yet in the method described or at all, and that "the Department should limit itself to transactions that have taken place."<sup>61</sup>

The Department found that the kits met the criteria for the finished goods kits exclusion. The kits included all of the parts necessary to assemble a complete trade booth and included parts beyond fasteners that were made of materials other than extruded aluminum.<sup>62</sup> Additionally, the Department agreed with the requestor that size limitations applied to the importation of the trade booth kits and that these factors necessitated the method of shipping like parts in separate containers, as was the case in the *Solar Motion Controllable Sunshades Scope Ruling*<sup>63</sup> and *Window Kits Scope Rulings*.<sup>64</sup> Furthermore, the method of importation and repackaging was only to accommodate size rather than to create the sale packaging:

Additionally, the information from Glenmore indicates that after importation the trade booth kits will not be unpacked, rearranged, and repackaged prior to sale to the end-user in the United States. Instead, following importation they are

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<sup>56</sup> *Kam Kiu Aluminum Prods. v. United States*, 91 F. Supp. 3d 1341, 1346 (CIT 2015).

<sup>57</sup> *Id.*, at 1348.

<sup>58</sup> See Memorandum from Eric B. Greynolds to Christian Marsh entitled, "Final Scope Ruling on Trade Booth Kits," dated June 23, 2014 (*Trade Booth Kits Scope Ruling*); see also Prior Scope Memorandum, at Attachment 10

<sup>59</sup> See *Trade Booth Kits Scope Ruling*, at 5.

<sup>60</sup> *Id.*, at 12.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*, at 15.

<sup>63</sup> See *Solarmotion Controllable Sunshades Scope Ruling*.

<sup>64</sup> See Memorandum from John Conniff and Eric B. Greynolds to Christian Marsh, "Final Scope Ruling on Window Kits," dated December 6, 2011 (*Window Kits Scope Ruling*).

delivered directly to the United States customer. Thus, we find the trade booth kits are distinct from the disappearing door screens, flag pole sets, and individually-sold Gorilla Pipes that the Department found to be within the scope of the Orders.<sup>65</sup>

#### Exercise Equipment Bases Scope Ruling<sup>66</sup>

Star Trac, an importer of treadmill and exercise bike bases, requested a scope ruling on merchandise. The Department determined that each model was a subassembly, composed of both extruded aluminum and non-extruded aluminum parts.<sup>67</sup> The Department explained that in accordance with the *SMVC Kits Scope Rulings*, if upon assembly at importation each base was “ready for incorporation into a downstream product with no further finishing or fabrication,” the Department would determine it satisfied the requirements of the “finished goods kit” exclusion.<sup>68</sup> The Department concluded that for three of the bases at issue, each contained “all of the necessary parts to fully assemble a finished subassembly (e.g., a finished exercise base) that upon assembly is ready to be attached to, as is, to other products (a console) which, together, form the ultimate downstream product (e.g., exercise apparatuses with console).”<sup>69</sup> The Department also determined that “upon importation, these exercise base kits require no further finishing or fabrication prior to being attached into the completed exercise equipment, the ultimate downstream product.”<sup>70</sup>

#### Telescoping Poles Scope Ruling<sup>71</sup>

Unger Enterprises, Inc. (Unger) argued that its telescoping poles were finished goods and therefore not subject to the orders. The Department found that, in addition to extruded aluminum components, Unger’s telescoping poles included non-extruded aluminum materials such as plastic tube plugs, hand grips, locking collars, locking buttons and cones which go beyond mere fasteners.<sup>72</sup> The petitioner argued that the non-extruded aluminum parts were mere fasteners and merely “incidental” to the function of the product.<sup>73</sup> The Department determined that the *Orders* contain no requirement regarding “incidental” function, and found that the non-extruded aluminum components integrate into the product in a variety of ways beyond that of a mere fastener.<sup>74</sup> The Department additionally found that the telescoping poles were fully and permanently assembled and completed at the time of entry.<sup>75</sup>

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<sup>65</sup> See *Trade Booth Kits Scope Ruling*, at 14.

<sup>66</sup> See Memorandum from Eric B. Greynolds to Christian March entitled, “Final Scope Ruling on Exercise Equipment Bases,” dated October 23, 2014 (*Exercise Equipment Bases Scope Ruling*); see also Prior Scope Memorandum, at Attachment 11.

<sup>67</sup> See *Exercise Equipment Bases Scope Ruling*, at 12.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> See Memorandum from James Terpstra to Christian Marsh, entitled, “Final Scope Ruling on Unger Enterprises Inc.’s Telescoping Poles,” dated February 19, 2015 (*Telescoping Poles Scope Ruling*); see also Prior Scope Memorandum, at Attachment 12.

<sup>72</sup> See *Telescoping Poles Scope Ruling*, at 10-11.

<sup>73</sup> *Id.*, at 8-9.

<sup>74</sup> *Id.*, at 11.

<sup>75</sup> *Id.*

In addition, similar to the products considered in *Drapery Rail Kits Scope Ruling (Redetermination)*,<sup>76</sup> *Banner Stands Kits Scope Ruling*,<sup>77</sup> and *Solar Panel Mounting Systems Scope Ruling*,<sup>78</sup> Unger’s telescoping poles were designed to work with removable/interchangeable attachments.<sup>79</sup> The various products that may be attached to Unger’s telescoping poles by end users after importation were interchangeable and were available from Unger and a variety of other suppliers. As a result, the Department determined that the product in question was excluded from the scope of the orders under the finished goods exclusion.<sup>80</sup>

#### Towel Racks Scope Ruling<sup>81</sup>

The Department reviewed two models of towel racks imported by IKEA which were comprised of extruded aluminum and non-aluminum gaskets and extruded aluminum and steel brackets, respectively. In the first model, the Department found that the gaskets were analogous to washers, which the Department had previously determined to be fasteners because the brackets acted as a restraint which served to hold the rack itself in place against the wall.<sup>82</sup> In the second model, the Department determined that the steel brackets were also fasteners.<sup>83</sup> To make this determination, the Department further relied on the Webster dictionary definition of a fastener, “a restraint that attaches to something or holds something into place,” and of a gasket, “a piece of rubber or some other material that is used to make a tight seal between two parts that are joined together.”<sup>84</sup> Thus, the Department concluded that the towel racks failed to meet the threshold for exclusion as a finished goods kit because the non-extrusion component of the towel racks (plastic gaskets or steel brackets) functioned as fasteners.<sup>85</sup> Upon appeal, the CIT sustained the Department’s determination.<sup>86</sup>

#### Aluminum Spreader Poles Scope Ruling<sup>87</sup>

The Department found that certain adjustable spreader poles were excluded from the scope of the *Orders*, as they were finished merchandise and composed of both extruded aluminum components and non-extruded materials (*i.e.*, plastic and nylon fittings or caps on the ends, plastic studs, plastic snap-on C connectors). The Department concluded that the poles’ non-aluminum parts went beyond mere fasteners, and, thus, the products at issue met the initial

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<sup>76</sup> See *Drapery Rail Kits Scope Ruling (Redetermination)*.

<sup>77</sup> See *Banner Stands Kits Scope Ruling*.

<sup>78</sup> See *Solar Panel Mounting Systems Kits Scope Ruling*; see also Prior Scopes Memorandum at Attachment 5.

<sup>79</sup> *Id.*, at 11-12.

<sup>80</sup> *Id.*, at 13.

<sup>81</sup> See Memorandum from Eve Wang to Christian Marsh, Deputy entitled, “Final Scope Ruling on IKEA’s Towel Racks,” dated April 27, 2015 (*Towel Racks Scope Ruling*); see also Prior Scope Memorandum at Attachment 13.

<sup>82</sup> *Id.*, at 12.

<sup>83</sup> *Id.*, at 11-12.

<sup>84</sup> *Id.*, at 11.

<sup>85</sup> *Id.*, at 13.

<sup>86</sup> See *IKEA Supply AG v. United States*, 180 F. Supp. 3d 1202 (CIT 2016), reconsideration denied by 2017 Ct. Int’l Trade LEXIS 5, Slip. Op. 17-8 (Jan. 31, 2017).

<sup>87</sup> See Memorandum from Brian Davis to Christian Marsh entitled, “Final Scope Ruling on Clam Corporation’s Certain Aluminum Spreader Poles,” dated October 28, 2015 (*Aluminum Spreader Poles Scope Ruling*); see also Prior Scope Memorandum, at Attachment 14.

*Geodesic Dome Kits Scope Ruling* test for determining whether a good constitutes finished merchandise or a finished goods kit.<sup>88</sup> The Department determined that the poles were interchangeable and could be used and sold with a variety of shelters, or sold as an independent and complete product. Furthermore, because the information on record indicated that the requested products were fully and permanently assembled and completed merchandise at the time of entry, the Department found that the spreader poles met the exclusion criteria for finished merchandise and were, therefore, excluded from the scope of the *Orders*.<sup>89</sup>

## THE DEPARTMENT’S ANALYSIS

Each of the products and models described in the IOS Scope Inquiry is described in detail below. The Department considered comments submitted by the petitioner and IOS on each of the products and models and has analyzed each of them to determine whether each product and each model is covered by the scope of the *Orders*, in accordance with 19 CFR 351.225 and the legal standards outlined above.

Notably, according to IOS, four of the products (the Ice Fishing Frame Kit, the Blind Frame Kit, the Kayak Stabilizer Kit, and the Power Rails) are classified under Harmonized Tariff System of the United States (HTSUS) number 7616.99.5090, while the remaining two (the Swim Raft Ladder Kit and the Cushioned Bracket Seat Kit) are classified under HTSUS number 7616.99.5030.<sup>90</sup> IOS’s full description of each product and model follows below.

As explained in more detail below, we find that each model of the Ice Fishing Frame Kit, the Blind Frame Kit, the Kayak Stabilizer Kit, and the Cushioned Seat Brackets Kit meet the criteria for the finished goods kit exclusion and are, therefore, excluded from the scope of the *Orders*. On the other hand, we find that the Swim Raft Ladder Kit does not meet the criteria for the finished goods kit exclusion and is, therefore, covered by the scope of the *Orders*. Additionally, we find that the Power Rails do not meet the criteria for the finished merchandise exclusion and are covered by the scope of the *Orders*.

### 1. Ice Fishing Frame Kit

IOS states that the Ice Fishing Frame Kit is available in four models (*i.e.*, the “Cottage,” the “Cabin,” the “Lodge,” and the “Resort”), which use similar kits and nearly identical components.<sup>91</sup> According to IOS, the Ice Fishing Frame Kit, when assembled, serves as a complete assembly that, when subsequently attached to a plastic sled, seating system, and insulated canvas shell, constitute a full enclosure/shelter (called an Otter Fish House). The Ice Fishing Frame Kit includes the following aluminum and non-aluminum components:

- a frame and wind poles made from extruded aluminum;
- self-tapping screws and nylock nuts;

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<sup>88</sup> See Aluminum Spreader Poles Scope Ruling, at 11.

<sup>89</sup> *Id.*, at 12.

<sup>90</sup> See Scope Request, at 3, 5.

<sup>91</sup> *Id.*, at 3.

- two steel frame brackets that allow the frame to pivot over a separate sled;<sup>92</sup>
- a plastic sleeve that allows the frame to glide up and down;
- plastic plugs which allow the smaller aluminum tubes to slide into larger aluminum tube pieces;
- a plastic end cap;
- washers; and
- plastic protectors.<sup>93</sup>

In its scope request, IOS states that the Ice Fishing Frame Kit is available in four separate models with distinct item numbers.<sup>94</sup> The four models are distinguished from one another in that they contain different numbers and lengths of wind poles, which are part of the extruded aluminum frame; however, the kits are otherwise identical.<sup>95</sup> IOS states that (1) the Cottage frame (item 200213) contains one back wind support poles (1029mm), one top back wind support pole (676mm), one top front wind support pole (838m), and one adjustable front wind pole (1778mm); (2) the Cabin frame (item 200212) contains one back wind support pole (1219 mm), one top back wind support pole (651mm), one top front wind support pole (1029mm), and one adjustable front wind pole (1778mm); (3) the Lodge frame (item 200215) contains one back wind support pole (1257mm), one top back wind support pole (879.5mm), one top front wind support pole (1136.5mm), and one adjustable front wind pole (1778mm); and (4) the Resort frame (item 200216) contains two back wind support poles (1257mm each), two top back wind support poles ( 879.5mm each), two top front wind support poles (1136.5mm each), and two adjustable front wind pole (1778mm each). Aside from the wind poles, IOS states that all other pieces are the same among the four models.<sup>96</sup>

IOS explains that, for each item number, the entire kit is sold to the end customer with all of the pieces of the kit to complete a finished good included at the time of entry. IOS explains that two options of canvas shells can also be purchased by the customer to complete the specific model (except for the Resort, which can only accommodate one of the two canvasses, due to size), though the canvasses are not part of the frame kit.<sup>97</sup> The canvasses are chosen by the customer, as are many other optional accessories, such as hooks, pole holders, nets, *etc.* The kit does not include any portions of the shell, seating, or sled.<sup>98</sup>

#### **A. Interested Parties' Comments**

IOS requests that the Department find that the Ice Fishing Frame Kit is excluded from the scope of the *Orders* based on the finished goods kit exclusion. In its initial Scope Ruling Request, IOS argues that the Ice Fishing Frame Kit meets the qualifications of a finished goods kit because the kit, when assembled, constitutes a full shelter/enclosure frame subassembly composed of aluminum and non-aluminum components to be used as part of the Otter Fish House when ice fishing. In the First Supplemental Questionnaire Response, IOS asserts that the Ice Fishing

<sup>92</sup> The sled is not part of the Ice Frame Fishing Kit.

<sup>93</sup> See Scope Request, at 3.

<sup>94</sup> *Id.*

<sup>95</sup> See First Supplemental Response, at 24.

<sup>96</sup> *Id.*, at Exhibits R-U.

<sup>97</sup> *Id.*, at 27.

<sup>98</sup> *Id.*, at 22.

Frame Kit meets the qualifications of a subassembly because the Kit meets the requirements of the Department's subassembly test, and the canvas shells are interchangeable for three of the four models and chosen by the consumer. IOS claims that with respect to the canvas shells in particular, the shells are analogous to the graphic materials in the *Banner Stands and Back Wall Kits Scope Ruling*.<sup>99</sup>

In IOS's November 24, 2015, and February 4, 2016, submissions, it notes that the petitioner did not dispute IOS's claim that the Ice Fishing Frame Kits are finished subassembly kits. IOS further cites the Department's *Aluminum Spreader Poles Scope Ruling* in arguing that the function of the plastic parts contained in the Ice Fishing Frame Kits is more than that of mere fasteners.<sup>100</sup>

The petitioner did not comment on IOS's Ice Fishing Frame Kit.

## **B. Department's Position**

As an initial matter, we first examined whether the Ice Fishing Frame Kit falls within the general scope language. As stated above, the scope of the *Orders* includes, in relevant part, "aluminum extrusions which 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)." In addition, the scope provides that "{a}luminum 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 "with a variety of finishes...and types of fabrication" are also included.

As provided by IOS, each Ice Fishing Frame Kit includes a frame and wind poles made from extruded aluminum.<sup>101</sup> Thus, we find that the aluminum extrusion components of the kit satisfy the general scope language. The scope also "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" a "finished goods kit." IOS's Ice Fishing Frame Kit includes both extruded aluminum and non-extruded aluminum components. Specifically: self-tapping screws and nylock nuts; two steel frame brackets that allow the frame to pivot over a separate sled; a plastic sleeve that allows the frame to glide up and down; plastic plugs which allow the smaller aluminum tubes to slide into larger aluminum tube pieces; a plastic end cap; washers; and plastic protectors, included in the kits remove the aluminum extrusions components from the general scope language.<sup>102</sup> Accordingly, we agree with IOS that all four models of its Ice Fishing Frame, once assembled, are incorporated into the Otter Fish House, are by definition "subassemblies," and satisfy the requirements of the *Geodesic Domes Kits Scope Ruling* test – the requirement that there be more than extruded aluminum and mere fasteners in the alleged "finished goods kit."

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<sup>99</sup> *Id.*, at 26, citing *Banner Stands and Back Wall Kits Scope Ruling*.

<sup>100</sup> See First Response to Petitioner's Comments, at 3, citing *Aluminum Spreader Poles Scope Ruling*.

<sup>101</sup> See Scope Request, at 3.

<sup>102</sup> *Id.*, at 3.

We also agree with IOS that because these four models are “subassemblies,” and are not otherwise listed as “parts” explicitly covered by the scope of the *Orders*, in accordance with the *SMVC Kits Scope Rulings*, the Department might consider those subassemblies the “finished good” for purposes of the “finished goods kit” scope exclusion if all of the criteria of that exclusion are met.<sup>103</sup>

With respect to the question of whether the four models in consideration can be a “finished good” despite not being the ultimate downstream product (the Otter Fish House), we first analyzed the products in light of the Department’s “interchangeability” test, as articulated in *Banner Stands and Back Wall Kits Scope Ruling*. Although the seat and the sled do not appear to be interchangeable, we have determined for three of the models, the Cottage, Cabin and Lodge frame models, the canvas shells which would be added to the Ice Fishing Frame Kit to manufacture an Otter Fish House each satisfy the Department’s “interchangeability” test. The canvas shells for each of those models are selected by the end consumer and may be interchanged with other canvas shells of the same size. In this manner, these three frame models are akin to the customizable products at issue in the *Banner Stands and Back Wall Kits Scope Ruling*.

In addition, we considered the Department’s analysis in the *Exercise Equipment Bases Scope Ruling* and determined that each of the four frame kits, including the Resort model frame kit, contains “all of the necessary parts to fully assemble a finished subassembly” which, “upon assembly, is ready to be attached to, as is, to other products,” which, “together form the ultimate downstream product.”<sup>104</sup> Accordingly, each of the subassemblies at issue can be integrated into the Otter Fish House without further finishing or fabrication, consistent with the products at issue in the *Exercise Equipment Bases Scope Ruling*.

After consideration of the scope language and relevant prior scope rulings, we find that each of the four models of the Ice Fishing Frame Kit identified in IOS’s Scope Request are “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 require no further finishing or fabrication before being assembled into a finished product. Accordingly, in accordance with 19 CFR 351.225(d), we determine that IOS’s Fishing Frame Kit meets the criteria for the finished goods kit scope exclusion and are, therefore, excluded from the scope of the *Orders*.

## **2. Blind Frame Kit**

A hunting “blind” is a device, including a camouflage cover, which is used by sportspersons to avoid detection by wildlife while hunting. According to IOS, the Blind Frame Kit, when assembled, is installed on special “blind boats” manufactured in the United States by IOS, to be used while floating on water. IOS states that the Blind Frame Kit consists of the following components:

- Four extruded aluminum tubes to construct the frame;
- nylon end pieces which form a hinge for the door of the blind to pivot;

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<sup>103</sup> *Id.*, at 4.

<sup>104</sup> See *Exercise Equipment Bases Scope Ruling*, at 13.

- a group or bundle of hardware and brackets<sup>105</sup>; and
- a blind cover made of canvas.<sup>106</sup>

In its scope inquiry, IOS indicated that the Blind Frame Kit was imported by one of two different packaging and importation methods. In the first importation method, the blind cover made of canvas is imported at the same time as the extruded aluminum tubes and the nylon end pieces, though in a separate box; these pieces are unpacked, reassembled, and repackaged after importation. The hardware is produced domestically in the United States and this group or bundle of hardware and brackets is added to the repackaged kits after importation.<sup>107</sup> According to record evidence, the Blind Frame Kit is no longer imported in this manner.<sup>108</sup>

IOS currently imports all components of the kit using the second importation method -- at the same time, in one box.<sup>109</sup> The group of hardware and fasteners is not added as a bundle after importation, but is packaged and imported as part of the complete kit with the other parts. With this method, IOS does not repackage any part of the kits after importation.

#### **A. Interested Parties' Comments**

IOS requests that the Department find that the Blind Frame Kit is excluded from the scope of the *Orders* based on the finished goods kit exclusion. As noted, when IOS filed its Scope Request, it imported its Blind Frame Kit using one method of importation, but on November 16, 2016, IOS indicated that it had completely changed over to its second method of importation, in which all components are packaged in one box for entry into the United States, and provided photographs and entry documents relating to the new method of importation.<sup>110</sup> As indicated in IOS's supplemental questionnaire, "the Blind Frame Kits are currently being imported in a complete retail ready box as described in the scope request."<sup>111</sup>

The petitioner commented that because IOS did not import its merchandise at the time of its initial Scope Request using the method that it now uses to import its Blind Frame Kit, the Department should reject IOS's request to rule on the all-in-one-box method of importation and require IOS to submit a new request for the Blind Frame Kit.<sup>112</sup>

In IOS's February 4, 2016, submission, IOS repeated its claim that the new all-in-one-box packaging of the Blind Frame Kit should be found to be outside of the scope,<sup>113</sup> and the petitioner, in its subsequent response, reiterated its objection to IOS's Scope Request and

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<sup>105</sup> IOS refers to hardware and brackets interchangeably when discussing the Blind Frame Kit. *See, e.g.*, Scope Request at 5; *see also* First Supplemental Response at 9; *see also* First Response to Petitioner's Comments at 7.

<sup>106</sup> *See* Scope Request, at 5; *see also* First Supplemental Response, at 10.

<sup>107</sup> *See* First Supplemental Response, at 10.

<sup>108</sup> *See* Third Supplemental Response, at 2.

<sup>109</sup> *Id.*, at 2.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *See* Second Petitioner's Response, at 11.

<sup>113</sup> *See* Second Response to Petitioner's Comments, at 2.

continued to claim that IOS must file a new request for the second importation method since the second method had yet to begin when the initial Scope Request was filed.<sup>114</sup>

## B. Department's Position

As an initial matter, we first examined whether the Blind Frame Kit falls within the general scope language. As stated above, the scope of the *Orders* includes, in relevant part, “aluminum extrusions which 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).” In addition, the scope provides that “{a}luminum 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 “with a variety of finishes...and types of fabrication” are also included.

As provided by IOS, each Blind Frame Kit includes four extruded aluminum tubes to construct the frame.<sup>115</sup> Thus, we find that the aluminum extrusion components of the kit satisfy the general scope language. The scope also “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” a “finished goods kit.” IOS’s Blind Frame Kit includes both extruded aluminum and non-extruded aluminum components. Specifically, its non-extruded aluminum components are: nylon end pieces which form a hinge for the door of the blind to pivot; a group or bundle of hardware and brackets; and a blind cover made of canvas. Accordingly, we agree with IOS that its Blind Frame Kit, once assembled, is by definition a “subassembly” and satisfies the requirements of the *Geodesic Domes Kits Scope Ruling* test – the requirement that there be more than extruded aluminum and mere fasteners in the alleged “finished goods kit.”

We also agree with IOS that because the Blind Frame Kit is a “subassembly,” and is not otherwise listed as “parts” explicitly covered by the scope of the *Orders*, in accordance with the *SMVC Kits Scope Rulings*, the Department might consider this subassembly the “finished good” for purposes of the “finished goods kit” scope exclusion if all of the criteria of that exclusion are met.<sup>116</sup>

With respect to the question of whether the Blind Frame Kit can be a “finished good” despite not being the ultimate downstream product (the “blind boat”), we considered the Department’s analysis in the *Exercise Equipment Bases Scope Ruling* and determined that the Blind Frame Kit contains “all of the necessary parts to fully assemble a finished subassembly” which, “upon assembly, is ready to be attached to, as is, to other products,” which, “together form the ultimate downstream product.”<sup>117</sup> Accordingly, the subassembly at issue can be integrated into the “blind boat” without further finishing or fabrication, consistent with the products at issue in *Exercise Equipment Bases Scope Ruling*.

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<sup>114</sup> See Third Petitioner’s Response, at 2. See also Second Response to Petitioner’s Comments (IOS argued against Petitioner’s claim a second time).

<sup>115</sup> See Scope Request, at 5; see also First Supplemental Response, at 10.

<sup>116</sup> *Id.*

<sup>117</sup> See *Exercise Equipment Bases Scope Ruling*, at 13.

Finally, with respect to the arguments of the parties over IOS' methods of importation of the Blind Frame Kit, as described above, IOS presented two forms of importation for the Blind Frame Kit: (1) certain components of the Blind Frame Kit are imported at the same time, but in separate boxes, and hardware pieces are added after importation; and (2) all components, including hardware, are imported at the same time, in one box.

#### *First Method of Importation*

The Department has confirmed with IOS that the first method of importations has ceased, and that the method used at the time of this ruling is only the second method described by IOS. IOS stated that, “While the above description covers the product as imported in the past, IOS has changed its importation method going forward. Beginning with importations for next season, all of the materials will be imported in the same box, including the canvas and the hardware/brackets. In other words, beginning with importations next season, IOS will no longer be adding U.S.-origin hardware/brackets after importation, but rather will be importing the hardware/brackets, in the same box as the other kit materials.” IOS confirmed that this change had occurred in its November, 17, 2016, submission, stating, “the Blind Frame Kits are currently being imported in a complete retail ready box as described in the scope request.”

Because the first importations method is no longer being used, the Department will not issue a ruling with respect to this method. It is not the Department's practice to issue scope rulings retroactively for products or importation methods which are no longer in production or in use. Furthermore, we do not believe the fact that IOS was using a different means of importation at the time it filed its Scope Request from that now being used requires IOS to file a new Scope Request. IOS has responded fully to the Department's supplemental questionnaires and the facts on the record at the time of the issuance of this scope ruling are not in dispute.<sup>118</sup>

#### *Second Method of Importation*

Consistent with the description of a finished goods kit, IOS demonstrated that the Blind Frame Kit is imported in one box containing all pieces and are ready for use by the end consumer at the time of entry. Accordingly, its Blind Frame Kit is currently “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 before being assembled into a finished product.

Thus, after consideration of the scope language and relevant prior scope rulings, we find that the Blind Frame Kit identified in IOS's Scope Request is “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 fabrication before being assembled into a finished product. Accordingly, in accordance with 19 CFR 351.225(d), we determine that IOS's Blind Frame Kit meets the criteria for the finished goods kit scope exclusion and are, therefore, excluded from the scope of the *Orders*.

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<sup>118</sup> IOS's Third Supplemental Response provides the relevant documentation which shows actual shipment of the product under the second importation method. See Third Supplemental Response, at Attachment 2.

### **3. Kayak Stabilizer Kit**

IOS states that the Kayak Stabilizer Kit, when assembled, mounts to canoes or kayaks to affix plastic floats, widening the footprint of the canoe or kayak to increase stability. IOS states that the Kayak Stabilizer Kit includes the following components:

- an extruded aluminum adjustable center section with stainless steel buttons;
- extruded aluminum tubes with stainless steel pins;
- an aluminum bar custom-machined end piece;
- an adjustable extruded aluminum tube;
- brackets made from stamped series 5052 aluminum;
- stainless steel brackets and U-bolts, which both have plastic knobs;
- stainless steel pins and bolts<sup>119</sup>

IOS states that all pieces are imported at the same time and in the same box.<sup>120</sup> After importation, the Kayak Stabilizer Kit is sold either as a standalone item, or along with plastic floats that IOS manufactures in the United States, which would sit on either side of the stabilizer kit.<sup>121</sup> IOS states that the packaging containing the Kayak Stabilizer Kit is not opened after importation, and that the plastic floats can be combined with the Kayak Stabilizer Kit box and shipped to the customer in a larger box. The consumer has the option of purchasing IOS's floats with the Kayak Stabilizer Kit or using a different float product that the consumer purchases separately.<sup>122</sup>

#### **A. Interested Parties' Comments**

IOS requests that the Department find that the Kayak Stabilizer Kit is excluded from the scope of the *Orders* based on the finished goods kit exclusion. In its initial Scope Ruling Request, IOS argues that the Kayak Stabilizer Kit meets the qualifications of a finished goods kit because it contains all of the necessary parts, which require no further fabrication, to construct a kayak stabilizer to be used on a range of kayaks and canoes. In its First Supplemental Response, IOS additionally claims that the kit is a subassembly and meets the criteria for a finished goods kit and is, thus, outside of the scope.

In the petitioner's October 29, 2015, submission, it argues that the Kayak Stabilizer Kit should be found to be within the scope because the product consists solely of extruded aluminum and fasteners, and that the product is incomplete as entered because it does not contain the necessary plastic floats. The petitioner claims that the brackets are merely fasteners and that IOS admits that the brackets are fasteners when IOS stated that the brackets, "serve to fasten the center section support bar and extension bars to the kayak..."<sup>123</sup> The petitioner also claims that the

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<sup>119</sup> See Scope Request, at 6.

<sup>120</sup> See First Supplemental Response, at 16.

<sup>121</sup> *Id.*, at 20.

<sup>122</sup> See First Response to Petitioner's Comments, at 19.

<sup>123</sup> See First Petitioner's Response, at 12, citing IOS's First Supplemental Response, at 17.

brackets' stabilization functions are secondary to the primary function of fastening.<sup>124</sup> The petitioner cites the Department's *Towel Racks Scope Ruling*,<sup>125</sup> where the Department found, "the steel brackets constitute fasteners because the brackets act as a restraint."<sup>126</sup> The petitioner also argues that IOS does not classify "brackets" as fasteners in its description of the Kayak Stabilizer Kit, but does classify them as fasteners in the Blind Frame Kit.<sup>127</sup>

The petitioner references the Department's findings in the *Flag Pole Sets Scope Ruling*, as well.<sup>128</sup> It claims that the Department established a practice of requiring kits to include all necessary pieces packaged and ready for assembly in order to be considered complete and excluded from the scope.<sup>129</sup>

The petitioner also disagrees that the brackets in the Kayak Stabilizer Kit provide stability, pointing out that IOS claims the plastic floats stabilize the kayak. By that logic, the petitioner claims that the Kayak Stabilizer Kit cannot be considered complete without the plastic floats, which stabilize the kayak.<sup>130</sup> As such, the petitioner argues that the Department should find that the Kayak Stabilizer Kit does not enter the United States as a finished goods kit.<sup>131</sup> The petitioner claims that by placing the Kayak Stabilizer Kit box into a larger box after entry, along with the plastic floats, IOS is repackaging the Kayak Stabilizer Kit.<sup>132</sup>

Lastly, the petitioner alludes to the *Drapery Rail Kits Scope Ruling*<sup>133</sup> regarding interchangeable graphic material chosen by the end consumer. The petitioner claims that the Department allowed for a kit to be considered complete if the kit contains "interchangeable graphic material."<sup>134</sup> The petitioner claims that the floats are not interchangeable graphic material, therefore the Kayak Stabilizer Kit should not be considered complete without the floats.

In IOS's November 24, 2015, submission, IOS disagrees with the petitioner's comments that the Kayak Stabilizer Kit consists of only aluminum extrusions and fasteners. IOS claims that the steel U-shaped brackets and the steel gunwale clamp brackets are more than fasteners, as these parts serve to stabilize the apparatus.<sup>135</sup> IOS explains that these brackets are multi-functional and provide flexibility to the Kayak Stabilizer Kit; the brackets are also comprised of many pieces, such as bolts, pins, vinyl caps, and plastic knobs, to accommodate the requirements for flexibility.<sup>136</sup> IOS claims that both the U-shaped brackets and the steel gunwale clamp brackets contain bolts – which are specifically mentioned by the *Orders* as a type of fasteners – within the brackets, and that this demonstrates that the U-shaped brackets and the steel gunwale clamp brackets go beyond the function of a fastener. IOS claims that this indicates that these brackets

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<sup>124</sup> *Id.*, at 12.

<sup>125</sup> *See Towel Racks Scope Ruling*.

<sup>126</sup> *See* First Petitioner's Response, at 14.

<sup>127</sup> *Id.*, at 17.

<sup>128</sup> *See Flag Poles Sets Scope Ruling*.

<sup>129</sup> *See* First Petitioner's Response, at 17.

<sup>130</sup> *Id.*, at 15.

<sup>131</sup> *Id.*, at 17.

<sup>132</sup> *Id.*, at 18.

<sup>133</sup> *See* First Petitioner's Response at 19, citing *Drapery Rail Kits Scope Ruling*.

<sup>134</sup> *See* First Petitioner's Response, at 19.

<sup>135</sup> *See* First Response to Petitioner's Comments, at 10.

<sup>136</sup> *Id.*, at 11.

cannot be mere fasteners, as the brackets themselves contain materials the *Orders* names as fasteners.<sup>137</sup> These parts also contain other elements, such as plastic knobs, plastic vinyl protective caps, and stainless steel pins.

IOS further disagrees with the petitioner's assertion that the stabilizing functions of the brackets are secondary. IOS states that not only does this argument contradict the manner in which IOS described the function of the brackets, but IOS claims that the Department determined in its *Telescoping Poles Scope Ruling*<sup>138</sup> that parts with functions beyond that of mere fasteners are not categorized under the fastener provision established in the *Geodesic Dome Scope Ruling*.<sup>139</sup> In other words, IOS claims that the Department established in its *Telescoping Poles Scope Ruling* that parts which fasten, but also perform another essential function to the product, are considered to be full components of a kit.

IOS also disagrees with the petitioner's claim that the brackets contained in the IOS's Blind Frame Kit should be considered fasteners while the brackets in the Kayak Stabilizer Kit are not. IOS describes the brackets contained in each of the two kits, and claims that while both are termed "brackets," they are very different pieces and perform different functions. IOS states that even if the Department considers the brackets in the Kayak Stabilizer Kit to be fasteners, the Kayak Stabilizer Kit also contains other non-aluminum parts which are not fasteners, such as stainless steel spring snap buttons and adjustable stainless steel and plastic knobs.<sup>140</sup>

Lastly, IOS disagrees with the petitioner that the Kayak Stabilizer Kit is incomplete because it does not include plastic floats. IOS claims that the petitioner's citation to the Department's *Drapery Rail Kits Scope Ruling* is out of context, as it was that ruling that led the Department to reevaluate its interpretation of complete kits upon remand.<sup>141</sup> IOS further disagrees with the petitioner's claim that the Kayak Stabilizer Kit should be included within the scope because the kit is not sold without the floats "in the ordinary course of business." IOS claims that there is nothing within the scope or established Department practice requiring IOS to demonstrate that it advertises the sale of the kit without the floats.<sup>142</sup> IOS references the *SMVC Kits Scope Rulings* in which the Department determined that a kit "does not require all parts to assemble the ultimate downstream product."<sup>143</sup>

In the petitioner's January 20, 2016, submission, the petitioner again claims that the Kayak Stabilizer Kit should not be excluded from the scope because it is not a complete kit. The petitioner argues that the Kayak Stabilizer Kit is simply extruded aluminum and fasteners. The petitioner counters that IOS's reading of the scope to mean that only screws and bolts are fasteners is incorrect and doesn't reflect the nature of the language. The petitioner reiterates that

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<sup>137</sup> *Id.*, at 12.

<sup>138</sup> *Id.*, at 14, citing *Telescoping Poles Scope Ruling*, at 5.

<sup>139</sup> *Id.*, at 13.

<sup>140</sup> *Id.*, at 16.

<sup>141</sup> *Id.*, at 17 citing *Final Results of Redetermination Pursuant to Court Remand Rowley Company v United States, dated February 27, 2013, aff'd Rowley Co. v. United States, Court No.12-00055* (CIT May 23, 2013). This remand can be found at the Department's website, <http://enforcement.trade.gov/remands/12-00055.pdf>

<sup>142</sup> *Id.*, at 19.

<sup>143</sup> *Id.*, at 19, citing *SMVC Kits Scope Rulings*.

any functions performed by the brackets beyond fastening, such as stabilizing, are incidental.<sup>144</sup> The petitioner also restates its position that the plastic floats are an essential piece of an assembled kayak stabilizer, which is not included in the Kayak Stabilizer Kit. According to the petitioner, the absence of the plastic floats makes the Kayak Stabilizer Kit incomplete, meaning the kit fails to meet the criteria of the scope exclusion.<sup>145</sup>

The petitioner reiterates its objection to the floats not being included in the Kayak Stabilizer Kit and cites the *Patio Door Kits Scope Ruling* and the *Event Décor Parts and Kits Scope Ruling* to argue that the Department does not allow for any packaged combination of extruded and non-extruded aluminum parts to be considered exempt from the scope, but rather the parts must constitute a full and complete kit.<sup>146</sup> Additionally, it claims that these two rulings postdate the *SMVC Scope Rulings*, and should, therefore, be considered above any standards set in the *SMVC Scope Rulings*. The petitioner argues that without the floats, the Kayak Stabilizer Kit remains incomplete.

In IOS's February 4, 2016, response, IOS disagrees with the petitioner's interpretation of the scope language regarding fasteners. IOS claims that "not every part that has a fastening function is deemed to be a 'fastener.'"<sup>147</sup> IOS argues that there is no precedent for the Department implementing a "primary" or "incidental" function test to the brackets. IOS cites the Department's *Geodesic Domes Kits Scope Ruling*<sup>148</sup> and *Aluminum Spreader Poles Scope Ruling* in support of its interpretation of the Department's standard for fasteners.<sup>149</sup> IOS restates its position that even if the brackets were found to be fasteners, the Kayak Stabilizer Kit still contains steel spring snap buttons which adjust for the width of different models of canoes and kayaks; these parts are not aluminum and, according to IOS, should qualify the kits for the finished good kit exclusion.<sup>150</sup>

Lastly, IOS disagrees with the petitioner's citation of the Department's *Patio Door Kits Scope Ruling* and *Event Décor Parts Kits Scope Ruling*, and claim that while these two rulings postdate the *SMVC Scope Rulings*, they do not address the Department's position regarding subassemblies. Based on *SMVC Scope Rulings*, IOS believes the Kayak Stabilizer Kit is a subassembly without the plastic floats and is, thus, excluded from the scope.<sup>151</sup>

## **B. Department's Position**

As an initial matter, we first examined whether a Kayak Stabilizer Kit falls within the general scope language. As stated above, the scope of the *Orders* includes, in relevant part, "aluminum

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<sup>144</sup> See Second Petitioner's Response, at 13.

<sup>145</sup> *Id.*, at 14, citing Memorandum from Andrew Medley to Christian Marsh entitled, "Final Scope Ruling on Circle Glass Co.'s Screen and Storm Door Grille and Patio Door Kits," dated December 5, 2014 (*Patio Door Kits Scope Ruling*) and Memorandum from Raquel Silva to Christian Marsh, entitled, "Final Scope Ruling on Traffic Brick Network, LLC's Event Decor Parts and Kits," dated December 2, 2013 (*Event Décor Parts and Kits Scope Ruling*).

<sup>146</sup> *Id.*, at 15.

<sup>147</sup> See Second Response to Petitioner's Comments, at 5.

<sup>148</sup> *Id.*, at 6, citing *Geodesic Domes Kits Scope Ruling*.

<sup>149</sup> See Second Response to Petitioner's Comments, at 6.

<sup>150</sup> *Id.*, at 8.

<sup>151</sup> *Id.*, at 10.

extrusions which 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).” In addition, the scope provides that “{a}luminum 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 “with a variety of finishes...and types of fabrication” are also included.

As provided by IOS, each Kayak Stabilizer Kit includes an extruded aluminum adjustable center section, extruded aluminum tubes, an aluminum bar custom-machined end piece, and an adjustable extruded aluminum tube.<sup>152</sup> Thus, we find that the aluminum extrusion components of the kit satisfies the general scope language.

The scope also “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” a “finished goods kit.” Each Kayak Stabilizer Kit also contains non-extruded aluminum components which are intended to be attached to the aluminum extrusion components, including stainless steel buttons; stainless steel pins; brackets made from stamped series 5052 aluminum; stainless steel brackets and U-bolts, which both have plastic knobs; and stainless steel pins and bolts.<sup>153</sup> The Kayak Stabilizer, once assembled, is intended to be attached to a kayak. It is therefore, by definition, a subassembly. Thus, we find that the Kayak Stabilizer Kit falls within the scope of the *Orders* unless an exclusion applies.<sup>154</sup>

We also agree with IOS that because the Kayak Stabilizer Kit is a “subassembly,” and is not otherwise listed as “parts” explicitly covered by the scope of the *Orders*, in accordance with the *SMVC Kits Scope Rulings*, the Department might consider this subassembly the “finished good” for purposes of the “finished goods kit” scope exclusion if all of the criteria of that exclusion are met.

The scope of the *Orders* 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.

First, IOS demonstrated that the Kayak Stabilizer Kit satisfies the requirements of the *Geodesic Domes Kits Scope Ruling* test – the requirement that there be more than extruded aluminum and mere fasteners in the alleged “finished goods kit.”<sup>155</sup> As explained above, each kit contains both extruded and non-extruded aluminum parts.

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<sup>152</sup> See Scope Request, at 6.

<sup>153</sup> *Id.*, at 6.

<sup>154</sup> *Id.*

<sup>155</sup> See *Geodesic Domes Kits Scope Ruling* at 7.

Second, IOS demonstrated with respect to the Kayak Stabilizer's stainless steel brackets, that the brackets are more than mere fasteners, as analyzed in the *Towel Racks Scope Ruling*.<sup>156</sup> We find that these particular brackets provide flexibility in the Kayak Stabilizer's functions. This is demonstrated with the knobs of the brackets which allow them to adjust for flexibility and provide greater levels of stability for the apparatus. Far from merely fastening to pieces of a Kayak Stabilizer together, these brackets actually contribute to the ultimate, overarching "stabilization" function of the product itself. Thus, we disagree with the petitioner that the Kayak Stabilizer's brackets are similar to those found in the *Towel Racks Scope Ruling* to be mere fasteners, as those brackets had no intended function other than to fasten the towel bar to the wall.<sup>157</sup> Were these pieces simply screwed or bolted together, as the brackets were in that case, we find that the Kayak Stabilizer Kit would not have the same functionality.

Third, we find that the record indicates that all of the parts of the Kayak Stabilizer Kit enter together, that there is no need for the parts to be unpacked or rearranged, and that none of the parts require further finishing or fabrication. The petitioner argues that the kit is not complete without the floats, but we disagree with this assessment of the facts. In fact, there is no requirement that the package containing the Kayak Stabilizer Kit contain the floats. Citing to the *Drapery Rail Kits Scope Ruling*, the petitioner claims that the floats are not akin to interchangeable graphic material, and as such, the floats should be considered missing pieces of the kit. However, we find that IOS demonstrated that the kit is sold with or without the floats, at the customer's choosing, and produced a proof of a sale without the floats. We find the Kayak Stabilizer Kit to be comparable, instead, to the products in the *Telescoping Poles Scope*<sup>158</sup> and *Solar Panel Mounting Systems Kits Scope Rulings*.<sup>159</sup> In both of those cases, the kits needed customizable parts to function, but those customizable parts were chosen based on the end customer's individual needs. Here, the record indicates that if the customer purchases floats from IOS along with the Kayak Stabilizer Kit, then the floats will be combined with the Kit after importation. However, because the end customer can purchase the plastic floats from IOS, or from a range products available on the market, the Kayak Stabilizer Kit is also sold as a stand-alone item. We, therefore, find that the floats are a customizable piece, more comparable to those in the *Aluminum Spreader Poles Kits Scope Rulings*<sup>160</sup> and the *Drapery Rails Kits Scope Ruling*,<sup>161</sup> rather than a necessary item for the assembly of the kit.

We also disagree with the petitioner that the kit is repackaged when the boxed kit is placed into a larger box with the floats before sale to a customer.<sup>162</sup> As stated, IOS produced a sample of a sale in which the floats were not purchased. If the consumer chooses to purchase the floats, IOS may package those two products together, as any retailer may do with individual items which are part of the same order. However, such packaging is based on the purchase order of the end customer and is not a repackaging of the Kayak Stabilizer Kit itself. In other words, there is no requirement that the end customer purchase floats at the time it purchases the Kayak Stabilizer

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<sup>156</sup> See *Towel Racks Scope Ruling*.

<sup>157</sup> *Id.*, at 12.

<sup>158</sup> See *Telescoping Poles Scope Ruling* at 5-6.

<sup>159</sup> See *Solarmotion Controllable Sunshades Scope Ruling* at 2-3.

<sup>160</sup> See *Aluminum Spreader Poles Scope Ruling* at 11-12.

<sup>161</sup> See *Drapery Rail Kits Scope Ruling* at 9.

<sup>162</sup> See First Petitioner's Response, at 18.

Kit, and no requirement that the Kayak Stabilizer Kit be imported alongside a float to be considered a “finished goods kit” under the terms of that scope exclusion.

Accordingly, consistent with the description of a finished goods kit, IOS demonstrated that its Kayak Stabilizer Kit includes “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 require no further finishing or fabrication before being assembled into a finished product.

Based on this review of the relevant prior scope rulings and the description of the product, we find that this kit satisfies the criteria of the exclusion and that the Kayak Stabilizer Kit is excluded from the scope of the *Orders* as a finished goods kit.

#### **4. Swim Raft Ladder Kit**

IOS states that, when assembled, the ladder in the Swim Raft Ladder Kit is designed to attach to another product manufactured by IOS: the Otter Island Swim Raft.<sup>163</sup> IOS states that the Swim Raft Ladder Kit may be sold along with the Otter Island Swim Raft, or sold separately. IOS identified the Swim Raft Ladder Kit as having different model numbers for different parts of the kit.<sup>164</sup> The Swim Raft Ladder Kit consists of the following components:

- a ladder top, made of extruded series 6061 aluminum;
- a ladder bottom, made of extruded series 6061 aluminum;
- four vinyl caps;
- stainless steel bolts, pins, and nuts; and
- nylon washers.<sup>165</sup>

The ladder top and bottom are not assembled or packaged together at the time of entry; they are imported in the same shipping container as the bolts, pins, nuts, washer, and caps, with like pieces together. These items are repackaged for sale after entry.<sup>166</sup>

Imported at the same time as the components for the Swim Raft Ladder Kit are a plastic table top and an aluminum backrest support bar. These items can be combined with the pieces for the Swim Raft Ladder into a larger box known as the Wave Island Accessory box.<sup>167</sup> This box can be sold to consumers as a group of accessories for the Otter Island Swim Raft. However, the Swim Raft Ladder can continue to be sold a singular accessory, separate from the Otter Island Swim Raft or the Wave Island Accessory box.<sup>168</sup> IOS only requested a scope determination on the Swim Raft Ladder Kit itself, and did not request scope determinations on the Wave Island Accessory box or the Otter Island Swim Raft.

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<sup>163</sup> See Scope Request, at 8.

<sup>164</sup> See Third Supplemental Response, at 1-2.

<sup>165</sup> *Id.*, at 8.

<sup>166</sup> See First Supplemental Response, at 29.

<sup>167</sup> *Id.*, at 30.

<sup>168</sup> *Id.*

## A. Interested Parties' Comments

IOS requests that the Department find that the Swim Raft Ladder Kit is excluded from the scope of the *Orders* based on the finished goods kit exclusion. In its initial Scope Ruling Request, IOS argues that the Swim Raft Ladder Kit meets the qualifications of a finished goods kit because it will form a complete product which is made of both extruded aluminum and non-aluminum parts. In the First Supplemental Questionnaire Response IOS claims that these kits and their importation method are analogous to the products in the *Trade Booth Kits Scope*<sup>169</sup> and *Solarmotion Controllable Sunshades Scope Rulings*.<sup>170</sup>

In the petitioner's October 29, 2015, submission, the petitioner claims that Swim Raft Ladder Kit consists only of extruded aluminum and fasteners. The petitioner argues that the plastic end caps are fasteners, analogous to the end caps in *Flag Pole Kits Scope Ruling*.<sup>171</sup> The petitioner further points to the *Appliance Door Handles Scope Ruling*<sup>172</sup> to demonstrate that Department considers plastic end caps to be fasteners.<sup>173</sup> It also contends that IOS uses the terms "hardware" and "fasteners" interchangeably, and since IOS lists the plastic end caps as hardware, IOS is essentially identifying the end caps as fasteners.<sup>174</sup> Additionally, the petitioner claims that the parts are shipped with groups of ladder tops, bottoms, and hardware imported separately and not in the same quantity.<sup>175</sup>

The petitioner also claims that, even if the end caps are not fasteners, the Swim Raft Ladder Kit is not a complete kit and should not be excluded from the scope. The petitioner argues that if the end caps are more than mere fasteners, then the Swim Raft Ladder Kit, which is imported with like pieces together in uneven quantities, are not complete at the time of entry, which is necessary according to *Flag Pole Kits Scope Ruling*.<sup>176</sup> The petitioner argues that if the end caps are essential, non-fastening pieces, then all of those pieces must be imported as a complete packaged kit.

In IOS's November 24, 2015, response, IOS disagrees with the petitioner's claims that the plastic end caps are fasteners. While the petitioner points to the Department's *Flag Pole Kits Scope Ruling* to make the claim that plastic end caps are fasteners, IOS argues that the flag pole end caps were found to hold the flag in place, which is not the same function as the plastic end caps in the Swim Raft Ladder Kit. IOS asserts that the purpose of the plastic end caps on the Swim Raft Ladder Kit is to prevent cuts and injuries from the sharp aluminum edges of the ladder.<sup>177</sup> IOS points to the *Aluminum Spreader Poles Scope Ruling* to show the Department's precedent of

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<sup>169</sup> *Id.*, citing *Trade Booth Kits Scope Ruling*.

<sup>170</sup> *Id.*, at 31, citing *Trade Booth Kits Scope Ruling* and *Solarmotion Controllable Sunshades Scope Ruling*.

<sup>171</sup> See First Petitioner's Response, at 21, citing *Flag Pole Kits Scope Ruling*.

<sup>172</sup> *Id.*, at 21, citing Memorandum from Eric B. Greynolds and John Coniff to Christian Marsh entitled, "Final Scope Ruling on Meridian Kitchen Appliance Door Handles," dated June 21, 2013 (*Appliance Door Handles Scope Ruling*).

<sup>173</sup> *Id.*, at 21.

<sup>174</sup> *Id.*, at 23.

<sup>175</sup> *Id.*, at 26.

<sup>176</sup> *Id.*, at 24, citing Memorandum from Erin Begnal to Christian Marsh entitled, "Scope Ruling on 5 Diamond Promotions, Inc.'s Individually Packaged Flag Pole Kits," dated February 5, 2015 (*Flag Pole Kits Scope Ruling*).

<sup>177</sup> See First Response to Petitioner's Comments, at 19.

acknowledging functions of plastic end caps beyond fastening.<sup>178</sup> IOS also disagrees the petitioner's reference to the *Flag Pole Sets Scope Ruling*, which the petitioner claims demonstrates that the quantity of parts must match and that the parts must be packaged together as individual kits. IOS argues that, while more bags of hardware pieces than ladder pieces enter the United States, this demonstrates nothing more than an excess of the hardware pieces, which are not subject to the scope.<sup>179</sup> Lastly, IOS disagrees with the petitioner's comments that because the pieces are shipped in separate boxes, that this is not a complete kit. IOS states that the Department found in the *Trade Booth Kits Scope Ruling* that individually boxed pieces are not disqualifying if they enter on the same 7501 customs entry form.<sup>180</sup>

In the petitioner's January 20, 2016, response, the petitioner restates its claim that the Swim Raft Ladder Kit is made up solely of extruded aluminum pieces and fasteners. The petitioner claims that the cap nuts are nuts, which the Department considers to be fasteners.<sup>181</sup> The petitioner claims that IOS failed to justify why the size of the Swim Raft Ladder Kit would necessitate shipping in separate boxes. The petitioner also restates that if the Department finds that the plastic end caps are not fasteners, then that would only emphasize that essential parts are not packaged together and do not form a complete packaged kit.<sup>182</sup>

In IOS's February 4, 2016, response, IOS reiterates that the plastic end caps are not fasteners for the reasons previously stated,<sup>183</sup> and that any importation of extra hardware is not relevant to the scope ruling.<sup>184</sup>

## **B. Department's Position**

As an initial matter, we first examined whether the Swim Raft Ladder Kit falls within the general scope language. As stated above, the scope of the *Orders* includes, in relevant part, "aluminum extrusions which 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)." In addition, the scope provides that "{a}luminum 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 "with a variety of finishes...and types of fabrication" are also included.

As provided by IOS, each Swim Raft Ladder Kit includes a ladder top and bottom, both made of extruded series 6061 aluminum.<sup>185</sup> Thus, we find that the aluminum extrusion components of the kit satisfy the general scope language. As explained above, under the "finished goods kit" exclusion to the scope of the *Orders*, 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

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<sup>178</sup> *Id.*, at 21.

<sup>179</sup> *Id.*, at 22.

<sup>180</sup> *Id.*, at 23.

<sup>181</sup> See Second Petitioner's Response, at 13.

<sup>182</sup> *Id.*, at 18.

<sup>183</sup> See Second Response to Petitioner's Comments, at 11.

<sup>184</sup> *Id.*, at 13.

<sup>185</sup> See Scope Request, at 8.

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.

Significantly, for purposes of our analysis of the Swim Raft Ladder Kit, an imported product will not be considered a “finished goods kit” and, therefore, be excluded from the scope of the orders merely by including fasteners such as screws, bolts, *etc.* in the packaging with an aluminum extrusion product. The non-excluded aluminum parts reported by IOS for this product are four vinyl caps; stainless steel bolts, pins, and nuts; and nylon washers. Therefore, one relevant question for the Department, as argued by the petitioner, is whether these items are considered mere fasteners for purposes of the scope exclusion.

Furthermore, a significant question for the Department, also argued by the petitioner, is whether the Swim Raft Ladder Kit can be considered a complete “finished goods kit” if it is not imported in one box, but rather with like parts together. At the time of importation, the Swim Raft Ladder Kit is in three separate boxes: two ladder tops are in one carton, five ladder bottoms are in another, and the remaining parts are in the third.<sup>186</sup> The parts are then combined and repackaged.<sup>187</sup> The parts of the Swim Raft Ladder Kit should be “a packaged combination of parts that contains, at the time of importation, all of the necessary parts to fully assemble a final finished good.”<sup>188</sup>

We find that the Swim Raft Ladder Kit does not meet the finished goods kit exclusion criteria and is within the scope of the *Orders* because it is not imported as a complete kit with all parts included, but rather as individual pieces of extruded aluminum and other materials which is intended to then be repackaged to form a Swim Raft Ladder Kit. We find that IOS imports the kit with like parts packaged together, such that they do not constitute a packaged collection of goods that may be assembled to form a complete product.<sup>189</sup> The ladder tops, bottoms, vinyl caps, and other various parts are imported grouped by like pieces, rather than packaged together as a kit. This is similar to the product at issue in *Disappearing Door Screens Scope Ruling*, where the Department concluded that the requestor’s product did not form a packaged collection of goods which could be assembled to form a complete product upon importation.<sup>190</sup>

We agree with IOS that in certain cases we have determined that because of its size, parts of a finished good kit could be imported in separate containers, as long as those parts could be assembled into the finished good upon importation, and all of the merchandise entered under a single section CBP 7501 Form. For example, in the *Trade Booth Kits Scope Ruling*<sup>191</sup> and *Solarmotion Controllable Sunshade Ruling*,<sup>192</sup> the requestor demonstrated a physical need to import like parts together due to size. However, that physical requirement does not appear to exist with respect to the product at issue, and IOS does not offer any explanation for this method which would appear to pertain to the unique nature of the product. Accordingly, similar to the

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<sup>186</sup> See First Supplemental Response, at 31.

<sup>187</sup> *Id.*, at 29.

<sup>188</sup> *Disappearing Door Screens Scope Ruling*, at 10.

<sup>189</sup> *Id.*

<sup>190</sup> See *Disappearing Door Screens*, at 9.

<sup>191</sup> See *Trade Booth Kits Scope Ruling*, at 5, 15.

<sup>192</sup> See *Solarmotion Controllable Sunshades Scope Ruling*, at 10-11.

*Flag Pole Sets Scope Ruling*, here, the end caps and hardware, the top, and the bottom are sent separately in mismatched quantities, and do not constitute a complete kit when imported.<sup>193</sup>

Furthermore, after the ladder pieces are unpacked, they must be repackaged. Specifically, when the ladder is part of the Wave Island Accessory box, it is added to that box with other products. If the ladder is sold with the Otter Island Swim Raft, the ladder pieces are packaged in a large plastic bag. These are not parts that are ready to be sold to an end customer, but rather parts that must undergo a range of potential repackaging methods after entry. We find that, similar to the *Disappearing Door Screens Scope Ruling*, the pieces of the ladder do not constitute a complete kit at the time of importation. Thus, in addition we find that the Swim Raft Ladder Kit is not a complete kit because the components must be unpacked and repackaged after entry to sell to the end consumer.

Additionally, the petitioner claims that the caps in the Swim Raft Ladder Kit are comparable to those found in the *Appliance Door Handle Scope*<sup>194</sup> and *Flag Pole Kits Scope Rulings*.<sup>195</sup> As the Swim Raft Ladder Kit has already been ruled incomplete, it is unnecessary for the Department to determine the status of the end caps. Therefore, we find that it does not meet the criteria for a finished goods kit and is, therefore, within the scope of the *Orders*.

## **5. Cushioned Bracket Seat Kit**

IOS states that the Cushioned Bracket Seat Kit, when assembled, can be attached to a sled and used in IOS's Portable Ice Fishing Shelters.<sup>196</sup> IOS also states that the Cushioned Bracket Seat Kit is available in four different size models with two different item numbers, but that the kits are physically the same except for size.<sup>197</sup> The Cushioned Bracket Seat Kit includes the following components:

- one primary piece of extruded aluminum with a spring snap steel button;
- a second primary piece of extruded aluminum, which has a rectangular rolled aluminum sheet welded onto it, with four drilled holes, and a glued plastic protective edging.

The pieces are all imported together in one box. IOS states that the Cushioned Bracket Seat Kit is normally purchased together with the seat itself, although the kit can be purchased separately without the seat. After importation, the complete box containing the Cushioned Bracket Seat Kit can be added to a larger box containing the seat and seat hardware, based on the purchase of the customer.<sup>198</sup> IOS explains that this allows for the final consumer to choose a custom seat. IOS sells such a seat that can be added downstream.<sup>199</sup>

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<sup>193</sup> See *Flag Pole Sets Scope Ruling*, at 9.

<sup>194</sup> See *Appliance Door Handles Scope Ruling*.

<sup>195</sup> See *Flag Pole Kits Scope Ruling*.

<sup>196</sup> See Scope Request, at 9.

<sup>197</sup> See First Supplemental Response, at 34.

<sup>198</sup> *Id.*, at 9.

<sup>199</sup> *Id.*, at 34.

## A. Interested Parties' Comments

IOS requests that the Department find that the Cushioned Bracket Seat Kit is excluded from the scope of the *Orders* based on the finished goods kit exclusion. In its initial Scope Request, IOS argues that the Cushioned Bracket Seat Kit meets the qualifications of a finished goods kit because it assembles a complete product which can be combined with customizable seat options and is comprised of extruded aluminum and non-extruded aluminum pieces. In the First Supplemental Response IOS claims that the possibility of the kit being further assembled downstream should not preclude it from being considered as a complete kit and references the SMVC Scope Rulings<sup>200</sup> to support its downstream argument.<sup>201</sup>

In IOS's November 24, 2015, and February 4, 2016, comments, IOS notes that the petitioner did not dispute that the Cushioned Bracket Seat Kit is a complete kit. It claims that this is an implicit acceptance by the petitioner that the Cushioned Bracket Seat Kit is a finished goods kit.<sup>202</sup>

The petitioner did not comment on the Cushioned Bracket Seat Kit.

## B. Department's Position

As an initial matter, we first examined whether the Cushioned Bracket Seat Kit falls within the general scope language. As stated above, the scope of the *Orders* includes, in relevant part, "aluminum extrusions which 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)." In addition, the scope provides that "{a}luminum 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 "with a variety of finishes...and types of fabrication" are also included.

As provided by IOS, each Cushioned Bracket Seat Kit includes two primary pieces of extruded aluminum.<sup>203</sup> Thus, we find that the aluminum extrusion components of the kit satisfy the general scope language.

The scope also "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" a "finished goods kit." Each Cushioned Bracket Seat Kit also contains non-extruded aluminum components which are intended to be attached to the aluminum extrusion components, including spring snap steel buttons, a rolled aluminum sheet, and a plastic protective edging.<sup>204</sup> The Cushioned Bracket Seat, once assembled, is intended to be attached to IOS Portable Ice Fishing Shelter. It is, therefore, by definition, a subassembly. Thus, we find that the Cushioned Bracket Seat falls within the scope of the *Orders* unless an exclusion applies.<sup>205</sup>

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<sup>200</sup> *Id.*, at 35, citing SMVC Kits Scope Rulings.

<sup>201</sup> *Id.*, at 35.

<sup>202</sup> See First Response to Petitioner's Comments, at 3; see also Second Response to Petitioner's Comments, at 2.

<sup>203</sup> See Scope Request, at 9.

<sup>204</sup> *Id.*

<sup>205</sup> *Id.*

We also agree with IOS that because the Cushioned Bracket Seat Kit is a “subassembly,” and is not otherwise listed as “parts” explicitly covered by the scope of the *Orders*, in accordance with the *SMVC Kits Scope Rulings*, the Department might consider this subassembly the “finished good” for purposes of the “finished goods kit” scope exclusion if all of the criteria of that exclusion are met.

The scope of the *Orders* 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.

Consistent with the description of a “finished goods kit,” IOS demonstrated that its Cushioned Seat Bracket Kit includes “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 before being assembled into a finished product. Furthermore, IOS has demonstrated that the Cushioned Bracket Seat Kit satisfies the requirements of the *Geodesic Domes Kits Scope Ruling* test – the requirement that there be more than extruded aluminum and mere fasteners in the alleged “finished goods kit.”<sup>206</sup> As explained above, each kit contains both extruded and non-extruded aluminum parts. For example, the spring snap steel button and the plastic protective edging are more than mere fasteners, as they allow the tubing to adjust to fit more narrow or wider sleds and keep the frame from ripping the canvas exterior shell of the Portable Ice Fishing Shelter, respectively.<sup>207</sup>

In addition, we find that the evidence provided by IOS demonstrates that all of the parts of the Cushioned Seat Bracket Kit enter the United States packaged together, although a separate seat sold by IOS can also be packaged together with the Cushioned Seat Bracket Kit after importation. We find this kit to be analogous to the products in the *Solar Panel Mounting Systems Kits Scope Ruling* and *Telescoping Poles Scope Ruling*,<sup>208</sup> in which the Department found that excluding customizable pieces chosen by the end customer does not necessarily prevent a kit from being considered complete. Accordingly, we find that, as in the *SMVC Scope Rulings*, the Cushioned Seat Bracket Kit can be used in conjunction with other products and remain a complete kit.<sup>209</sup>

Thus, in sum, we find that this product satisfies the Department’s understanding of a product meeting “finished goods kit” exclusion criteria, and therefore that the Cushioned Bracket Seat Kit is excluded from the scope of the *Orders*.

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<sup>206</sup> See *Geodesic Domes Kits Scope Ruling* at 7.

<sup>207</sup> See *Scope Request*, at 9; see also *First Supplemental Response*, at 37.

<sup>208</sup> See *Solarmotion Controllable Sunshades Scope Ruling*; see also *Telescoping Poles Scope Ruling*.

<sup>209</sup> See *SMVC Kits Scope Rulings*.

## 6. Power Rails

IOS states that it manufactures all-terrain vehicle (ATV) power-rail trailers as an accessory for ATVs. IOS describes the Power Rails as a subassembly of the power-rail trailer, though the scope request is strictly for the Power Rails and not the trailer itself.<sup>210</sup> IOS states that after importation of the Power Rails, IOS manufactures a plastic trailer body to which the Power Rails are molded. An axle system can then be bolted to the Power Rails to form the overall ATV power-rail trailer.

IOS states that the Power Rails consist of the following:

- a hollow extruded aluminum tube; and
- a rolled aluminum 5052 series end cap.<sup>211</sup>

IOS states that the rolled aluminum 5052 series end cap is welded onto the tube prior to importation.<sup>212</sup> IOS claims that the welded aluminum caps cannot be considered fasteners, as they do not attach to anything other than the Power Rails themselves.<sup>213</sup> Rather, IOS states that the rolled aluminum cap creates an air-tight seal.<sup>214</sup> The rails are attached to the trailer and pressurized via fittings through the Power Rails.<sup>215</sup> This process is done so as to prevent any air bubbles from forming on the plastic sections of the trailer which is molded to the rails.

### A. Interested Parties' Comments

IOS requests that the Department find that its Power Rails are excluded from the scope of the *Orders* based on the finished merchandise exclusion. IOS describes each of the components of the rails and the rails' installation in the initial Scope Request, and argues that the product qualifies as finished merchandise because it is comprised of an extruded aluminum piece and a rolled aluminum piece, requires no further fabrication, and is a finished product when imported.

In its First Supplemental Response, IOS claims that the Power Rails are finished merchandise with non-extruded aluminum parts that are not fasteners (*i.e.*, the rolled aluminum end cap) and references *Cf Plasticoid Mfg. Inc. v. United States* to show that end caps performing other functions should not be viewed as fasteners.<sup>216</sup> IOS also claims that the *SMVC Scope Rulings* and *Geodesic Domes Scope Ruling* are relevant to IOS's request for Power Rails, as those scope rulings establish the parameters for subassemblies and fasteners, respectively.

In the petitioner's October 29, 2015, response, the petitioner claims that IOS's Power Rails are only extruded aluminum and a rolled aluminum end cap, which is a fastener. Therefore, the petitioner asserts that the product does not meet the qualifications for the finished merchandise

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<sup>210</sup> See Scope Request, at 7.

<sup>211</sup> *Id.*, at 7.

<sup>212</sup> See First Supplemental Response, at 2.

<sup>213</sup> See Second Response to Petitioner's Comments, at 15.

<sup>214</sup> See First Supplemental Response, at 2.

<sup>215</sup> *Id.*, at 2.

<sup>216</sup> *Id.*, at 2, citing *Cf Plasticoid Mfg. Inc. v. United States*, 28 F. Supp. 3d 1352, 1372-73 (CIT 2014).

exclusion.<sup>217</sup> The petitioner claims that the rolled aluminum end cap should be considered a fastener because the Department has previously ruled that end caps are fasteners.<sup>218</sup> The petitioner compares the air tight seal that the rolled aluminum end caps create to “a sealing screw or plug.”<sup>219</sup>

The petitioner also claims that the Power Rails are not added “as is” to the power-rail ATV trailer to form the finished product. Rather, the petitioner argues that IOS “uses its power rails in the manufacturing process of the trailer body” by pumping air into the rails and molding the rails into the trailer body.<sup>220</sup>

In IOS’s November 24, 2015, response, IOS disagrees with the petitioner’s claims that the Power Rails should not be considered finished merchandise because they are not added “as is” to a finished product. IOS claims that no further processing is done to the Power Rails themselves, but that they are molded into the plastic trailer body.<sup>221</sup> IOS cites the Department’s *SMVC Scope Rulings* in arguing that adding finished merchandise to a larger whole does not disqualify a product from the finished merchandise exclusion.<sup>222</sup> IOS also disputes the petitioner’s claim that the rolled aluminum end cap is a fastener. IOS claims that the petitioner admits that the purpose of the cap is to provide an air tight seal, and IOS disagrees that this is the same function as screws, bolts, or other fasteners.<sup>223</sup> IOS claims that the end caps are made of rolled aluminum to withstand the 550-degree heat of the oven that is used to mold trailer around the rails. The rails must be air tight to withstand the 50 PSI of hot air that is forced into the rails during the molding process.<sup>224</sup> IOS also disagrees with the petitioner’s claim that the Power Rails are simply extruded aluminum pieces pushed through a die. IOS outlines the process of manufacturing the Power Rails, which includes drilling holes and welding on the end caps. IOS explains that this process occurs before importation.<sup>225</sup>

In the petitioner’s January 20, 2016, response, the petitioner again claims that the Power Rails are not complete merchandise and are only made of extruded aluminum and a fastener. The petitioner points to a chart of in-scope merchandise which it identifies as being included in the petition underlying these *Orders*. The petitioner claims that the particularly relevant language in this chart is “extrusions partially assembled into intermediate goods,” which is listed under Subject Merchandise on the chart. The petitioner claims that the Power Rails fall into this category.<sup>226</sup>

In IOS’s February 4, 2016, response, IOS claims that the Power Rails should be considered finished merchandise, rather than a finished goods kit, because they are fully manufactured and

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<sup>217</sup> See First Petitioner’s Response, at 26.

<sup>218</sup> *Id.*, at 28.

<sup>219</sup> *Id.*, at 29.

<sup>220</sup> *Id.*, at 26.

<sup>221</sup> See First Response to Petitioner’s Comments, at 24.

<sup>222</sup> *Id.*, at 24.

<sup>223</sup> *Id.*

<sup>224</sup> *Id.*, at 25.

<sup>225</sup> *Id.*, at 26.

<sup>226</sup> See Second Petitioner’s Comments, at 24.

assembled before importation.<sup>227</sup> Lastly, IOS reiterates its position that the rolled aluminum end caps are not fasteners as they execute no fastening function.<sup>228</sup>

## **B. Department's Position**

As an initial matter, we first examined whether the Power Rails fall within the general scope language. As stated above, the scope of the *Orders* includes, in relevant part, “aluminum extrusions which 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).” In addition, the scope provides that “{a}luminum 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 “with a variety of finishes...and types of fabrication” are also included. As provided by IOS, each Power Rail includes a hollow extruded aluminum tube.<sup>229</sup> Thus, we find that the aluminum extrusion components of the kits satisfy the general scope language.

The scope also “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” a “finished goods kit.” The Power Rail, which is installed into the power rail trailers, is by definition a subassembly, and is therefore included in the scope of the *Orders* unless an exclusion applies.<sup>230</sup>

The Department has determined that the scope, taken as a whole, indicates that “subassemblies” (*i.e.*, “partially assembled merchandise”) may be excluded from the scope provided that they enter the United States as “finished merchandise” or a “finished goods kits” and that the “subassemblies” require no further “finishing” or “fabrication.”<sup>231</sup> For a finished good, in particular, to be excluded from the scope of the *Orders* as a subassembly, the merchandise must be fully and permanently assembled at the time of entry and must require no further finishing or fabrication to be incorporated into the ultimate downstream product.

In this case, we find that, despite IOS’s claims to the contrary, the Power Rails do not meet the criteria for the “finished merchandise” exclusion and, therefore, are covered by the scope of the *Orders*. The Power Rails are made of an extruded aluminum tube and rolled aluminum end cap, which provides an airtight seal and is welded to one end. Although the Power Rails enter the United States requiring no further pieces, we find that the Power Rails are not ready for use in conjunction with the downstream product upon importation because they require further finishing or fabrication.

The Power Rails require further finishing and fabrication prior to installation in the ATV Power Rail Trailer because, prior to installation, the Power Rails go through a pressurization process.

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<sup>227</sup> See Second Response to Petitioner’s Comments, at 15.

<sup>228</sup> *Id.*, at 15.

<sup>229</sup> See Scope Request, at 7.

<sup>230</sup> *Id.*, at 7.

<sup>231</sup> See *Exercise Equipment Bases Scope Ruling*, at 13.

Despite IOS's claims that no further finishing happens to the Power Rails themselves, and that the Power Rails are molded into the trailer body, we find that the Power Rails are not ready for installation into the downstream product. Instead the Department finds that the pressurization and molding process alters the structural integrity of the Power Rails and is necessary finishing that occurs prior to use. The absence of this pressurization would render the Power Rails unusable and unfinished, whether attached to the downstream product or not. We find that the pressurization process is an essential next step, after importation, to further finish the Power Rails, making them functional parts of the ATV Power Rail Trailer. This is in contrast to the *Preliminary SMVC Kits Scope Ruling*, which involved a product which required no finishing or further fabrication to be incorporated into the ultimate downstream product upon importation.<sup>232</sup> Instead, similar to the analysis in the *Subparts for Metal Bushings Scope Ruling*, we find that adding pressurized air to the hollow tubes alters the Power Rails themselves and is not merely part of the installation process.<sup>233</sup>

Thus, we agree with the petitioner's claim that adding pressurized air to the power rails amounts to further finishing or manufacturing to the Power Rails. To be considered finished merchandise on that exclusion to the scope of the *Orders*, an item must be installed as-is with no further manufacturing or finishing. Accordingly, we find that IOS's Power Rails are not ready to be incorporated into the downstream product without further finishing, and are therefore not excluded from the scope of the *Orders*.

## RECOMMENDATION

For the reasons discussed above, and in accordance with 19 CFR 351.225(d) and 19 CFR 351.225(k)(1), we recommend finding the following:

- 1) the Ice Fishing Frame Kits, the Kayak Stabilizer Kits, and the Cushioned Bracket Seat Kits, and the Blind Frame Kits (second importation method) meet the criteria for a finished goods kit, which the language of the *Orders* expressly excludes (*i.e.*, "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...and is assembled 'as is' into a finished product");
- 2) the Power Rails, which require further finishing upon importation to be incorporated into the ultimate downstream product do not meet the criteria for finished merchandise, are included in the scope of the *Orders*; and
- 3) the Swim Raft Ladders, which are imported unassembled in an incomplete kit form, do not meet the criteria for a finished goods kit and, as such, are included in the scope of the *Orders*.

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<sup>232</sup> See *Preliminary SMVC Kits Scope Ruling*, at 7.

<sup>233</sup> See *Subparts for Metal Bushings Scope Ruling*, at 9.

If the recommendation in this memorandum is accepted, we will serve a copy of this determination to the participating interested parties on the scope service list *via* first-class mail, as directed by 19 CFR 351.225(d).

\_\_\_\_\_ Agree \_\_\_\_\_  Disagree

6/9/2017

X   
\_\_\_\_\_

Signed by: GARY TAVERMAN

\_\_\_\_\_  
Gary Taverman  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations