



C-570-968; A-570-967
Scope Inquiry
Solarmotion Controllable Sunshades
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Office 3; Operations: JC, EBG

DATE: August 17, 2012

MEMORANDUM TO: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

THROUGH: Melissa G. Skinner
Director
Office 3, Operations

FROM: John Conniff
Senior Trade Analyst

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RE: Antidumping Duty (AD) and Countervailing Duty (CVD) Orders:
Aluminum Extrusions from the People's Republic of China (PRC)

SUBJECT: Final Scope Ruling on Solarmotion Controllable Sunshades

Summary

Construction Specialties Inc. (CS Group) filed a scope inquiry in which it requested that the Department of Commerce (the Department) determine whether certain Solarmotion controllable sunshades (solar sunshades) which it imports are within the scope of the Orders.¹ Based on our analysis of the comments received, we have determined that the solar sunshade at issue is outside the scope of the Orders.

Background

The CS Group filed its scope request on May 22, 2012.² Petitioners submitted comments on June 22, 2012.³ The CS Group submitted a response to Petitioners' comments and a revised its

¹ See Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order, 76 FR 30,650 (May 26, 2011) (AD Order) and Aluminum Extrusions From the People's Republic of China: Countervailing Duty Order, 76 FR 30,653 (May 26, 2011) (CVD Order) (collectively, the Orders).

² See the May 22, 2012, Scope Request of the CS Group (Scope Request).

³ See the June 22, 2012, Response to Scope Ruling Request Of CS Group (Petitioners' Comments). Petitioners are the Aluminum Extrusions Fair Trade Committee.



scope request on June 27, 2012.⁴

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.⁵ 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.⁶ 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.⁷ If the Department determines that these sources are not sufficient to decide the matter, the Department will consider the five additional factors set forth in 19 CFR 351.225(k)(2). The determination as to which analytical framework is most appropriate in any given scope inquiry is made on a case-by-case basis after consideration of all evidence before the Department.

Descriptions of the Product at Issue

In its May 22, 2012, submission, the CS Group describes the product at issue as a Solarmotion controllable sunshade. The product is produced from non-extruded aluminum sheet by perforating it, cutting it to length, forming/rolling the piece into an airfoil shape, and painting the surface. The assembly of the product at issue is completed once the non-extruded perforated sheet is attached to a vertical mullion and a hollow tube. The tube is an extruded aluminum product. The vertical mullion and hollow tube are attached to the center of the non-extruded perforated sheet (a.k.a., the blade), to act as a pivot point. Upon importation the product will be delivered directly to the job site where it will be attached to a building via horizontal Solarmotion mullions. The horizontal mullions are attached to the building. The horizontal Solarmotion mullions house the actuator, linkages, and motor necessary for making the blades rotate and track the sunlight as it moves throughout the day. CS Group states that the non-extruded perforated sheet accounts for approximately 80 percent of the value and 70 percent of the material of the product at issue. The product is classified under Harmonized Tariff Schedule of the United States subcategory 8479.90.9496.

In its June 27, 2012, submission the CS Group revised its Scope Request. The CS Group explained that, because its request is based on a "prospective transaction that has not yet been shipped, CS Group has made some modifications in the method of importation" from the Scope Request.⁸ The CS Group states that the aluminum blades will be shipped from the PRC to Canada and consolidated with Canadian-manufactured parts to form a finished goods kit. Specifically, the aluminum blades will be grouped with blade frames, mullions, trim, brackets,

⁴ See the June 27, 2012, Response to Domestic Producers Submitted on June 21, 2012 Supplemental Request for Scope Ruling, Exclusion of Certain Machines and Mechanical Appliances from the Antidumping Duty and Countervailing Duty Orders on Aluminum Extrusions from the People's Republic of China — Case Nos. A-570-967 and C-570-968 (Revised Scope Request).

⁵ Walgreen Co. v. United States, 620 F.3d 1350, 1357 (Fed. Cir. 2010).

⁶ 19 CFR 351.225(k)(1).

⁷ 19 CFR 351.225(d).

⁸ Revised Scope Request at 2.

linkages, motors, hardware, and controls, all which constitute all the necessary parts to assemble a Solarmotion controllable sunshade. The CS Group states that all parts of the products at issue (the PRC and Canadian parts) will be imported from Canada in a single shipment that is reflected on the same commercial invoice, bill of lading, and CBP 7501 form. The CS Group further explains that, because of its size, the finished goods kit may be in more than one trailer and the trailers will be imported together and delivered to the warehouse together. The CS Group states that, upon importation into the United States, the parts will be staged at a warehouse for delivery directly to the job site in New York. It further states that no parts or components will be added in the warehouse, no assembly will be done, and that all parts in the kit will be utilized only for the specific project described in this request. The CS Group adds that no additional inventory will be kept by CS Group and no parts of the kit or product can be sold individually. The CS Group states that the product at issue is classified under Harmonized Tariff Schedule (HTS) of the United States subcategory 8479.90.9496.

Scope of the Orders

The merchandise covered by these 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, *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 investigation 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 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 (HTS): 7604.21.0000, 7604.29.1000, 7604.29.3010, 7604.29.3050, 7604.29.5030, 7604.29.5060, 7608.20.0030, and 7608.20.0090. 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 HTS chapters. In addition, fin evaporator coils may be classifiable under HTS numbers: 8418.99.80.50 and 8418.99.80.60. While HTS subheadings are provided for convenience and customs purposes, the written description of the scope of these Orders is dispositive.

Relevant Scope Determinations

A. Baluster Kits⁹

During the underlying investigation the Department considered comments and made a determination regarding baluster kits. Maine Ornamental explained that it imported baluster kits, which contained aluminum extrusions in a variety of powdered coated finishes to match wood and composite wood decking and railings. It contended that the kits contained all the necessary components to assemble a final finished good, and as such, represented unassembled finished goods.

In Comment 3H of the AD Decision Memorandum, the Department found that baluster kits were not excluded “kits” as defined by the scope of the investigations and therefore constitute subject merchandise. The Department determined that Maine Ornamental’s own description of the product indicated that such balusters were designed to work with other parts to form a larger structure. The Department further explained that if used as directed, the balusters represented parts of structures to form a balustrade or deck rail. Thus, the Department found that the baluster kits represented a packaged collection of individual parts, which comprised a single element of a railing or deck system, and, therefore, did not represent a finished product.¹⁰

⁹ See Aluminum Extrusions from the People’s Republic of China: Final Determination in the Less-Than-Fair-Value, 76 FR 18524 (April 4, 2011) (AD Final Determination), and accompanying Issues and Decision Memorandum (AD Decision Memorandum) at Comment 3H.

¹⁰ Id.

B. Retractable Awning Mechanisms¹¹

Tri Vantage requested a scope ruling regarding its retractable awning mechanisms. Tri Vantage argued that its retractable awning mechanisms consist of all components necessary to assemble a complete retractable awning. Tri Vantage argued that its merchandise is imported ready for use, and constitute a final finished good. Therefore, it argued, the products at issue meet the exclusion criteria concerning “finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled at the time of entry.” Tri Vantage stated that, at the time of importation, the retractable awning mechanisms do not include textile covers. Petitioners argued that a retractable awning mechanism without the textile covering serves no function as an awning and, thus, cannot be considered a “final finished good.”

The Department found that the scope of the Orders define an excluded “finished goods kit” as 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 such a finished product.” Tri Vantage itself acknowledged that the textile covers designed for attachment to the retractable awning mechanisms at issue, and necessary to assemble a fully functioning awning, are purchased separately and are not included with such awning mechanisms at the time of importation. Thus, the Department concluded that a finished retractable awning mechanism or complete retractable awning mechanism kit would require inclusion of a textile cover at the time of importation to meet the exclusionary language that defines a finished goods kit or finished product.

C. Cleaning System Components¹²

Rubbermaid Commercial Products LLC (Rubbermaid) filed a scope inquiry in which it requested that the Department determine whether certain cleaning system components (e.g., mop heads, mop handles, and mop frames (or poles)) were encompassed within the scope of the Orders. Rubbermaid argued that the frames, handles, and mopping kits at issue were fully and permanently assembled with other components at the time of entry and are ready for sale and, thus, fell squarely under the “finished merchandise” exclusion language of the scope of the Orders.

Petitioners argued that the products at issue, even if they were fully assembled at the time of entry, were merely subassemblies (i.e., components for mops). Thus, petitioners argued that the frames and handles at issue were within the scope of the Orders.

The Department found that the products at issue were analogous to those examined in the Awnings Scope Ruling. It found that, individually, the cleaning system components at issue did not constitute a final, finished good. Rather, the Department found the products at issue were

¹¹ See the Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on Certain Retractable Awning Mechanisms” (October 14, 2011) (Awnings Scope Ruling).

¹² See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on Certain Cleaning System Components,” (October 25, 2012) (Cleaning System Scope Ruling).

designed to function collaboratively in order to form a completed cleaning device (e.g., a pole connected to a frame head, which in turn is connected to a mop head or cloth), but the components to make a final cleaning device were not part of a packaged combination at the time of importation. As a result, the Department found the mop handles and frames at issue did not meet the exclusion for “finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry.”

The Department further found that a complete mopping kit would require inclusion of a mop end to meet the exclusionary language that defines a finished goods kit. Because the mopping kits at issue lacked the disposable mop ends at the time of importation, the Department found that they did not constitute a “finished goods kit,” and, thus, fell within the scope of the Orders.

D. Window Kits¹³

IAP Enclosures, an exporter, requested a scope ruling on two products: punched window kits and ribbon window kits. IAP Enclosures argued that, at the time of importation, the kits contained all of the parts, including frame and glass, necessary to assemble a finished window.

Petitioners argued that IAP Enclosures failed to provide sufficient information to support its claim that the products at issue constitute “finished goods kits.”

The Department found that the product kits at issue contained all of the necessary parts, including glass panels, and, as such, they constituted “finished goods kits” that are excluded from the Orders.

E. Modular Railing Systems¹⁴

Peak Products, an exporter, sought to export various components of aluminum railing systems (e.g., posts, gates, hand/base rails, pickets, spacers, and glass panels) in individual “kits” to the United States. It argued that each component of an aluminum railing system constituted a completed and fully assembled kit that is ready for sale to the ultimate consumer and, thus, fell under the finished goods kit exclusion of the scope of the AD and CVD orders.

Petitioners argued that the products at issue were analogous to other products (e.g., baluster kits) that the Department previously determined did not constitute “finished goods kits.”

The Department determined that, based on Peak Product’s description of the products at issue, the products cannot be classified as anything other than parts, as opposed to stand-alone, fully-finished products. It added that Peak Products’ interpretation that components of a kit should be excluded would result in all aluminum extrusions, which otherwise fall within the scope of the Orders, being included in the scope if, after importation, the components would be assembled

¹³ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on Window Kits,” (December 6, 2011) (Window Kits Scope Ruling).

¹⁴ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on Certain Modular Aluminum Railing Systems,” (October 31, 2012) (Railing Systems Scope Ruling).

together with other items. The Department found this interpretation is in direct opposition to the scope of the Orders, which excluded finished goods kits that are “packaged combination of parts that contains, at the time of importation, all of the necessary parts to fully assemble a final finished good.”

F. Fence Sections, Posts, and Gates¹⁵

American Fence Manufacturing Company LLC (AFMC), an importer, requested a scope ruling on aluminum fence post sections, posts, and gates. AFMC argued that the products at issue constituted finished goods kits.

The Department found that the products at issue were subject to the scope of the Orders because they did not contain all of the parts necessary to fully assemble a final finished product. For example, the Department found that several fence sections required cutting after importation. It further found that other products at issue did not meet the exclusion for finished goods kits because they were merely parts of a larger system, namely inputs for a downstream product, a finished fence.

Arguments of the Interested Party

CS Group’s May 22, 2012, Filing

The controllable sunshades at issue are finished merchandise, because following importation the products are delivered to the job site and inserted directly into a Solarmotion frame that is located on the side of a building. The product at issue cannot be viewed as single element of a larger system and, therefore, is not analogous to the baluster kits that the Department found to be within the scope of the Orders. Thus, the product at issue (consisting of a non-extruded perforated sheet is attached to a vertical mullion and a hollow tube) constitutes “finished merchandise” and, thus, should be excluded from the scope of the Orders pursuant to 19 CFR 351.225(k)(1). Further, the domestic companies represented in the petition are extruders, or manufacturers with extrusion presses, and not machine fabricators, and therefore the merchandise contemplated in the petition are predominantly extruded parts, rather than finished merchandise. The information on domestic capacity, anticipated injury, and other measures submitted in the investigation dealt with aluminum extrusions and not machines like the product at issue.

The product at issue is imported under HTS number, 8479.90.9496, which is not listed in the scope of the Orders. The CBP issued ruling # 20795, dated April 5, 2012, specifically with regards to the product at issue and, thus, constitutes a binding ruling that the products fall under HTS 8479.90.9496.¹⁶

Although the plain language of the scope of the Orders is sufficient to determine that its product

¹⁵ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on American Fence Manufacturing Company LLC’s Fence Sections, Posts and Gates,” (December 2, 2011) (Fence Sections Scope Ruling).

¹⁶ See Scope Request at Exhibit A.

is outside of the scope, the additional factors in 19 CFR 351.225(k)(2) support the exclusion.¹⁷

Petitioners' Comments

It is essential to distinguish between the complete system sold by the CS Group, *i.e.*, Solarmotion controllable sunshades, and the part of that system imported from the PRC, *i.e.*, aluminum blades. The CBP ruling demonstrates that the imported sunshades, or blades, are only a component of the Solarmotion controllable sunshades sold by the CS Group:

Frames, horizontal mullions, trim, linages, and motors are not present at time of importation. Subsequent to the blades' importation, motors will be added to enable the blades to rotate and track the sun throughout the day.¹⁸

The Department has consistently ruled that an imported item cannot qualify for the "finished merchandise" exemption exclusion when it is missing an "integral component" needed to assemble a complete and functional product¹⁹ or merely part of a larger, downstream product.²⁰ In the instant scope inquiry, the "frames, horizontal mullions, trim, linkages, and motors" are integral components of the CS Group's Solarmotion systems. Marketing materials from the CS Group demonstrate that all of these parts are marketed together as part of a single "Solarmotion system."²¹ Further, the frames, horizontal mullions, and linkages are needed to allow the blades to be affixed to a building while the motors are required to enable the blades to move.²² The blades, without all of the other components, serve no function. Further, the blades themselves are a component of a larger, downstream product, a Solarmotion system.

CBP appropriately classified the product at issue under 8479.90.96, as "parts" of "machines or mechanical appliances having individual functions."²³ The product at issue, the blade, is thus a part of the Solarmotion system, which is the functional machine. The blade itself is not a "machine" or "mechanical appliance" with an "individual function." On this basis, the product at issue cannot be considered to be "finished merchandise," and therefore, cannot be excluded from the scope of the Orders.

CS Group's June 27, 2012, Filing

As indicated in the product description above, the kit to be imported contains perforated aluminum blades, blade frames, mullions, trim, brackets, linkages, motors, hardware, and controls, which are all of the necessary parts to fully assemble a final finished good, the Solarmotion Controllable Sunshades. Each of these parts require no further finishing or fabrication and are fully assembled as imported and consisting of the finished product. The imported product is consistent with other scope rulings when the Department determined the

¹⁷ See Scope Request at 5-6.

¹⁸ See Scope Request at Exhibit A.

¹⁹ See Drapery Rail Kits Scope Ruling at 7; see also Awnings Scope Ruling at 7-8.

²⁰ See, e.g., AD Decision Memorandum at Comment 3H.

²¹ See Petitioners' Comments at Attachment 2, containing excerpts from the CS Group's product catalogue.

²² Id.

²³ See Scope Request at 3.

product at issue consisted of a finished goods kit since it contained all of the necessary parts for assembly.²⁴

Although the parts are packaged together and will be imported together, given the size of the overall finished good (essentially the size of a building), it is logistically impossible to ship the entire kit in a single container. However, all containers will be listed on the same commercial invoice, Bill of Lading, and Customs Entry Summary (Form 7501) and enter the U.S. together. In the scope ruling for finished window kits imported by IAP Enclosures, LLC, shipments of window kits in one or more containers as part of a single Customs entry did not preclude the Department from ruling that the kits were excluded from the Order as "finished good kits."²⁵

If the Department does not accept that the components of the Solarmotion system as a finished good kit, it should alternatively accept the Solarmotion system as a finished product. Following importation, it is shipped to a job site where it is attached to a building. No further work is necessary for the imported Solarmotion system to be used, nor are they inputs for the production of downstream products. They are a final finished good which, due to the large size of the overall system, must be then mounted to the building exterior at the job site. Unlike the components of modular aluminum railing systems produced by Peak Products which the Department found to be within the scope of the Order, components of the Solarmotion system are not intended to be sold separately to the ultimate consumer.²⁶ Also unlike the products examined in the Railing Systems Scope Ruling, in which the requestor asserted it would be impossible to sell kits containing all of the necessary components for a railing system, but where the Department later determined that it could be done; in this case, the total area of the four sides of an entire Manhattan high-rise simply cannot fit fully assembled in a single shipping container.²⁷ Finally, the Solarmotion system here is individually configured prior to importation.

Unlike the "baluster kit" examined in the underlying investigation, which contained only baluster extrusions and fastener components, and which was comprised of a single element of a railing or deck system, or alternatively the components were the input for the production of a downstream product and therefore not a finished product, the Solarmotion system in the instant case is a complete finished product.²⁸

Department's Position: The scope of the Orders excludes "finished merchandise" as well as "finished goods kits." Finished merchandise which contains "aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry" is excluded, as well as "finished goods kits," described as 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 such a finished product." In addition to the scope of the Orders, the Department also looked to prior scope determinations which have considered the "finished merchandise" and "finished goods

²⁴ See Revised Scope Request at 6, citing the Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Final Scope Ruling on Banner Stands and Back Wall Kits," (October 19, 2011) (Banner Stands Scope Ruling) at 10 - 11.

²⁵ See Window Kits Scope Ruling at 4.

²⁶ See Railing Systems Scope Ruling at 8.

²⁷ *Id.* at 11.

²⁸ See AD Decision Memorandum at Comment 3H.

kit” exclusions. See 19 CFR 351.225(k)(1). Because the Department finds this evidence dispositive with respect to the product at issue, the Department finds it unnecessary to consider the additional factors set forth in 19 CFR 351.225(k)(2).

In its Scope Request, CS Group stated that it would be importing components, which, when assembled onto a horizontal mullion already attached to the side of the building, constitute a Solarmotion controllable sunshade. The horizontal mullion, not imported, housed the motor, actuator and linkages which operate the sunshade. The Department agrees with Petitioners that the components described in CS Group’s Scope Request would not constitute either finished merchandise or a finished goods kit. First, it is not “finished merchandise” according to the definition in the scope of the Orders, because it does not constitute a product that is “fully and permanently assembled and completed at the time of entry.” Thus, the product at issue is more akin to windows without glass, or picture frames without the glass pane and backing material.²⁹

As discussed above, on June 27, 2012, CS Group revised its scope inquiry to include, along with the aluminum blades, the importation of the blade frames, mullions, trim, brackets, motors, hardware, and controls.³⁰ We find the parts described in the amended filing of the CS Group, taken together, constitute a “finished goods kit” as described in the scope of the Orders. At the time of importation, the product at issue contains all the parts necessary to assemble a Solarmotion controllable sunshade, namely the perforated aluminum blades, blade frames, mullions, trim, brackets, linkages, motors, hardware, and controls. Thus, unlike the product described in the CS Group’s May 22, 2012, the product in the amended filing contains all the necessary integral parts (such as the motor) necessary for making the sunshades track the sunlight during the day. Further supporting this conclusion is the claim that the product in the amended request will be imported from Canada in a single shipment that is reflected on the same commercial invoice, bill of lading, and CBP 7501 form. In this sense, as described in the amended request, the kit is distinct from the fence products addressed in Fence Sections Scope Ruling or baluster kits, the pieces of which were imported piece-meal and subsequently assembled and sold in the United States as a kit.³¹

Further, we find that the fact that the product at issue may enter the United States in separate containers does not constitute a basis on which to find that it is within the scope of the Orders. In the Window Kits Scope Ruling, the product at issue entered the United States in multiple containers but was listed on a single CBP 7501 form.³³ This fact did not detract from the determination that the product at issue was outside the scope of the Orders because it contained, at the time of importation, all of the necessary parts to assemble a final, finished good. We have reached the same conclusion with regard to the product described in the June 27, 2012, filing of the CS Group. We also note that, although Petitioners did not comment on CS Group’s Revised Scope Request, this determination is consistent with the Petitioners’ view that “CS Group’s complete system thus includes not just the imported blades, but also ‘frames, horizontal mullions, trim, linkages and motors.’”³⁴ Because the merchandise subject to the Revised Scope

²⁹ See Orders.

³⁰ See Revised Scope Request at 2.

³¹ See Fence Sections Scope Ruling at 12 and AD Decision Memorandum at Comment 3H.

³³ See Window Kits Scope Ruling at 4.

³⁴ See Petitioners’ Comments at 4, quoting CS Group’s Scope Request.

Request does contain all of the parts to make the complete system, we find that the kit constitutes a “finished goods kit” and is thus excluded from the scope of the Orders. Concerning the HTS category under which the kit is entered, HTS subheadings are provided for convenience and customs purposes. It is the language of the scope of Orders that is dispositive.³⁵ Therefore, based on our reasoning above, whether the product at issue is imported under an HTS that is listed in the scope of the Orders is also not controlling to our analysis.

Department’s Recommendation

For the reasons discussed above, we recommend finding that the product described in the CS Group’s Revised Scope Ruling meets the exclusion for a “finished goods kit” and, therefore, is outside the scope of the Orders. Further, we recommend finding that the products at issue in the Revised Scope Ruling do not present a significant difficulty within the meaning of 19 CFR 351.225(f)(3) and, thus, we further recommend that this scope ruling constitutes a final ruling as provided under 19 CFR 351.225(f)(4).

If the recommendations in this memorandum are accepted, we will serve a copy of this memorandum to all interested parties on the scope service list via first class mail as directed by 19 CFR 351.303(f).

✓
Agree

Disagree

Christian Marsh
Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

8/17/12
Date