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Scope Inquiry

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October 31, 2011

**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

Eric B. Greynolds  
Program Manager

**RE:** Antidumping (“AD”) and Countervailing Duty (“CVD”) Orders on  
Aluminum Extrusions from the People’s Republic of China

**SUBJECT:** Final Scope Ruling on Certain Modular Aluminum Railing  
Systems

### Summary

On August 1, 2011, Peak Products America Inc. (Peak Products) filed a scope inquiry in which it requested that the Department of Commerce (the Department) determine whether certain individual components of modular aluminum railing systems (railing systems) it intends to import from the People’s Republic of China (“PRC”) are excluded from the scope of the AD and CVD Orders.<sup>1</sup> On the basis of our analysis of the comments received, we have determined that Peak Product’s modular railing system components are within the scope of the Orders.

### Background

On August 1, 2011, Peak Products, a Canadian corporation which exports exterior home improvement products to retail organizations in the United States, requested that the Department determine that certain modular aluminum railing components that it intends to import into the United States constitute finished merchandise and finished good kits that are outside the scope of

<sup>1</sup> See Aluminum Extrusions from the People’s Republic of China: Antidumping Duty Order, 76 FR 30650 (May 26, 2011) (AD Order) and Aluminum Extrusions from the People’s Republic of China: Countervailing Duty Order, 76 FR 30653 (May 26, 2011) (CVD Order) (collectively the “Orders”).



the Orders.<sup>2</sup> On August 24, 2011, the Aluminum Extrusions Fair Trade Committee (“Petitioner”), submitted comments in opposition to the scope ruling request filed by Peak Products.<sup>3</sup> On October 7, 2011, Peak submitted a response to Petitioner’s comments.<sup>4</sup> On October 20, 2011, Petitioners submitted a prior scope ruling concerning the scope of the Orders.<sup>5</sup>

### 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, swaged, 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

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<sup>2</sup> See Peak Products, August 1, 2011 submission at 1.

<sup>3</sup> See Petitioner’s August 24, 2011 submission.

<sup>4</sup> See Peak Products, October 7, 2011 submission.

<sup>5</sup> See Petitioner’s October 20, 2011 submission.

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 this order 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 the order is dispositive.

### **Legal Framework**

The Department examines scope ruling requests in accordance with its regulations. See 19 CFR 351.225. On matters concerning the scope of an antidumping duty order, the Department first examines the language of the order(s) at issue and the description of the product contained in the scope request. If the language in the order(s) is not dispositive, the Department will then examine the description of the merchandise contained in the petition, the initial investigation, the determinations of the Secretary (including prior scope determinations) and the International Trade Commission (“ITC”). See 19 CFR 351.225(k)(1). This determination may take place with or without a formal inquiry. See 19 CFR 351.225(d) and (e). If the Department determines that these descriptions are dispositive of the matter, the Department will issue a final scope ruling as to whether or not the subject merchandise is covered by the Orders. See 19 CFR 351.225(d).

Conversely, where the descriptions of the merchandise are not dispositive, the Department will initiate a scope inquiry under 19 CFR 351.225(e) and analyze the 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 inquiry is made on a case-by-case basis after consideration of all evidence before the Department.

### **Relevant Scope Determinations**

#### **A. Investigation – Scope Determinations**

During the AD and CVD investigations of aluminum extrusions from the PRC, the Department considered numerous comments from interested parties on the scope of the investigations. The Department summarized these comments and explained its analysis and determinations in the Preliminary Scope Comments.<sup>6</sup>

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<sup>6</sup> See Preliminary Determinations: Comments on the Scope of the Investigations, October 27, 2010 (“Preliminary

## **1. Kits and Finished Products Exclusion**

During the investigation, five domestic manufacturers of aluminum fences and gates submitted comments arguing for the inclusion of certain aluminum extrusions, packaged as kits or fully assembled finished products. The producers argued that kits and fully assembled finished products comprising at least 70 to 75 percent aluminum extrusions by weight should be included in the scope of the proceeding. Further, these five manufacturers argued that the proposed criteria, *i.e.*, percentage of the kit by weight, would be more useful than listing specific products to be excluded, as there are many types of products with a high content of extruded aluminum.

The Petitioner opposed the proposed modification. The Petitioner argued that it was not the intent of the Petition to cover imports of either fully-assembled finished aluminum fencing systems or fully-finished aluminum fencing systems in kit form.

The Department determined that finished products and finished goods kits that contained all the components for the finished product, regardless of the percentage content of aluminum extrusions by weight are excluded from the scope of these investigations.<sup>7</sup>

## **2. Exhibition Kits**

During the investigation, an importer, Next Show, argued that its exhibition frames and unassembled pavilion kits consist of all the components to assemble a finished goods kit and so should be excluded from the Orders. The importer provided assembly illustrations to demonstrate that all necessary components are included in each kit.

The Department found that it was unable to determine whether Next Show's kits included all the necessary materials to assemble a finished product. The Department stated that "if at the time of importation, however, the kits do contain all of the necessary parts to fully assemble a final finished good then they would be excluded from the scope of these proceedings."<sup>8</sup>

## **B. Investigation – Final Scope Determinations**

### **1. Baluster Kits<sup>9</sup>**

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.

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Scope Comments").

<sup>7</sup> See Preliminary Scope Comments at Comment 3.

<sup>8</sup> *Id.* at Comment 8 (unchanged in the final determination);

<sup>9</sup> 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

In Comment 3H of the AD Final Determination, 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.<sup>10</sup>

## **C. Prior Scope Rulings**

### **1. Retractable Awning Mechanisms<sup>11</sup>**

Tri Vantage, the requesting party, argued that it imported the retractable awning mechanisms at issue ready for use and that the merchandise constituted a final finished good. Thus, Tri Vantage argued that the products at issue met the exclusion criteria concerning “finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled at the time of entry.”

The Department determined that because the retractable awning mechanisms at issue lacked the integral components necessary to assemble a full and complete finished goods kit, they did not constitute 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.” Therefore, the Department determined that the products at issue did not meet the exclusion criteria of the scope.

### **2. Banner Stands and Back Wall Kits<sup>12</sup>**

In its scope inquiry request, Skyline Displays Inc. (Skyline) argued that banner stands and back wall kits, used to showcase graphics and other marketing materials, 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 Banner Stands Scope Ruling, the Department found that the banner stands and back wall kits described in Skyline’s scope inquiry request met the exclusion criteria. 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

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<sup>10</sup> See AD Decision Memorandum at Comment 3H.

<sup>11</sup> 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).

<sup>12</sup> See 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).

criteria in the scope of the Orders for “finished goods kits.”<sup>13</sup> In reaching its conclusion the Department found that the products at issue were analogous to completed picture frames, which are explicitly excluded from the scope.<sup>14</sup> Thus, consistent with its finding in the Preliminary Scope Comments regarding exhibition kits, in the Banner Stands Scope Ruling, the Department found that because Skyline’s merchandise contained all the necessary parts, it was excluded as a “finished goods kit.”<sup>15</sup>

### **3. Cleaning System Components<sup>16</sup>**

Rubbermaid Commercial Products LLC (Rubbermaid) argued that aluminum extruded mop handles, mop frame heads, and mopping kits met the exclusion criteria for “finished goods” and “finished goods kits” because, at the time of entry, they were fully assembled and ready for sale to the ultimate consumer.

The Department found that, individually, the products at issue did not constitute final, finished goods but instead constituted products designed to function collaboratively in order to form a completed cleaning device. For this reason, the Department found the products to be within the scope of the Orders.<sup>17</sup>

#### **Description of the Merchandise**

The products subject to this scope determination are components of an aluminum modular railing system each of which are packaged and imported individually: (a) posts “kits,” (b) gate “kits,” (c) hand and base rail “kits,” (d) pickets and spacer “kits,” and (e) glass panelette “kits.” The products at issue fall under heading 7610.90.0080 of the Harmonized Tariff Schedule (HTS). Peak Products provides tables containing descriptions of each of the components subject to its request as well as the contents of each “kit,” the SKU number, and HTS classification number. See Peak Products’ August 1, 2011, submission at 18 – 28.

#### **Summary of Arguments**

##### **Peak Products’ August 1, 2011, Scope Ruling Request**

Peak Products argues that the products at issue are excluded from the scope of the Orders because they are finished products or finished goods kits. Peak Products notes that during the investigation, prior to the preliminary determinations, certain U.S. fencing producers requested the Department to expand the scope of the Orders to include fencing system components, both fully-assembled finished aluminum fencing systems or fully-finished aluminum fencing systems in kit form, unless they contained less than 75 percent aluminum extrusions. According to Peak Products, the Petitioner disagreed with the proposed expansion of the scope arguing that fencing

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<sup>13</sup> Id. at 9 – 10.

<sup>14</sup> Id.

<sup>15</sup> Id.

<sup>16</sup> See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on Certain Cleaning System Components” (October 25, 2011) (Cleaning System Components Scope Ruling) at 9.

<sup>17</sup> See Cleaning System Components Scope Ruling) at 9.

systems are not intended to be included in the scope. Peak Products quotes from Petitioner's Pre-Preliminary Scope Comments, which were placed on the record of the investigations. According to Peak Products, Petitioner stated that:

. . . it is not the intent of the Petition to cover imports of either (1) fully-assembled finished aluminum fencing systems; or (2) fully-finished fencing systems in kit form.

Peak Products further argues that the Department did not expand the scope to cover fencing systems, and in the Preliminary Scope Comments, the Department confirmed that:

Finished merchandise and unassembled kits containing aluminum extrusions are specifically excluded from the scope, with no specification as to the percentage content of aluminum extrusions.<sup>18</sup>

Thus, according to Peak Products, there is clear intent to exclude fencing systems, finished or in kit form. Peak Products claims its railing system components are, for purposes of the scope determination, indistinguishable from the fencing systems components that have already been affirmed as outside the scope of the Orders. It further argues that fencing systems are collections of extruded aluminum parts, consisting of posts, top and bottom rails (or stringers), pickets, gates, and various related fasteners, and spacers.<sup>19</sup>

Regarding posts and gates, Peak Products contends that, at the time of entry, each article will constitute finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed. According to Peak Products, each post and gate will constitute finished merchandise at the time of entry because each will be imported into the United States fully finished and ready for sale to ultimate consumers who will purchase the products for the specific purpose for which they were intended. Peak Products argues that because the posts and gates are designed to integrate with other components in the configuration of a railing system and these products will have no utility for any other purpose. Further, Peak Products argues that before importation each post and gate will be pre-sold by to a particular retailer located in the United States and the aluminum extruded part that is contained within each post and gate will be fully and permanently assembled and completed at the time of entry. Peak Products argues that in the case of the posts, the aluminum extruded column of each will be permanently affixed to a die cast base support with a die-cast aluminum cap that is affixed to the top of each stair post and an aluminum extruded hand and base rail bracket that is welded onto the top and near the bottom of the column of each corner post, mid-post, and end-post. As the final stage of production, the entire completed post will be powder coated, pre-packaged for retail with all necessary fasteners, and labeled prior to entry. Peak Products contends that this, and other further permanent additions, constitutes a finished product. Peak Products argues that at the final stage of production, the entire completed gate will be powder coated, pre-packaged for retail with all necessary fasteners and accessories and labeled prior to entry.

Concerning the hand and base rail kits, pickets and spacer kits and glass panelette kits at issue,

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<sup>18</sup> See Preliminary Scope Comments at Comment 3.

<sup>19</sup> See Scope Comments of Alumi-Guard Inc. (June 15, 2010) at 2; Scope Comments of Delair Group LLC (July 19, 2010) at 3-4.



Peak Products argues that such articles constitute finished goods containing aluminum extrusions that are entered unassembled in a “finished goods kit.” Peak Products explains that, in the case of the picket and spacer kits, the kits will not contain any non-aluminum extruded element. Peak Products explains that for hand and base rail kits and the glass panelette kits, the kits will contain other non-aluminum extruded elements. In all cases, argues Peak Products, the elements within each kit are imported as unassembled components of a railing system in the form of a finished goods kit. Peak Products explains that each of the hand and base rail kits, picket and spacer kits, and glass panelette kits will contain, at the time of importation, all of the necessary parts to fully assemble a finished good and will not require any further finishing or fabrication.

Thus, Peak Products argues, that all of the kits at issue constitute finished goods in a disassembled form and that the Department should not require that an entire railing system be imported in a single package to qualify as an excludable kit. According to Peak Products, because the kits will be sold separately, each component qualifies as a final finished product in unassembled kit form.

Peak Products argues that a requirement that a kit must include the entire railing system would ignore the fact that no two consumers purchase and install the same railing system configuration. Thus, Peak Products contends that it is impossible to identify a standard railing system that could be imported as a unit, and, consequently, it is impossible to characterize the complete railing system as the final finished product.

Peak Products also argues that if the Department determines that the descriptions of the merchandise contained in the petition and the initial investigation are not dispositive, the Department should consider the additional factors set forth at 19 CFR 351.225(k)(2).

#### Petitioner’s August 24, 2011, Filing

Petitioner argues that Peak Products’ components are not finished products regardless of whether they are imported in assembled or unassembled kit form. Petitioner contends that the components imported by Peak Products serve no other function other than as parts of a complete final finished good (e.g., an aluminum railing system).<sup>20</sup>

Petitioner notes that the scope of the Orders specifically includes “parts for final finished products that are assembled after importation” and “aluminum extrusion components that are attached (e.g., by welding or fasteners) to form subassemblies, i.e., partially assembled merchandise.”<sup>21</sup> Conversely, the scope excludes (1) “finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry,” as well as (2) “finished goods kits,” which, inter alia, contain “all of the necessary parts to fully assemble a final finished good.”<sup>22</sup> Petitioner argues that individual components of aluminum railing systems, whether assembled or unassembled, are not, however, “final finished goods,” and thus they fall within the scope of the Orders.

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<sup>20</sup> See Petitioner’s August 24, 2011, submission at 3.

<sup>21</sup> See AD Order, 76 FR at 30650-51.

<sup>22</sup> Id. at 30651.

Petitioner argues that Peak Products' request is analogous to the baluster kits addressed in the AD Final Determination, where the Department explained:

Finally, we disagree with Maine Ornamental's contention that its balusters are excluded from the scope of the investigations because the ITC Preliminary Report (June 2010) states that the scope excludes unassembled final finished goods containing aluminum extrusions, and describes the merchandise subject to the investigations as inputs for the production of downstream products. Although Maine Ornamental argues that its baluster kits are final finished goods, its own description of baluster kits indicates that the balusters function as an input for the production of a downstream product, such as a balustrade or a deck rail. As a result, Maine Ornamental's citation to the ITC Preliminary Report (June 2010) does not support its contention that the baluster kits should be excluded from the scope of the order.<sup>23</sup>

Petitioner notes that, just as baluster kits "represent parts of structures to form a balustrade or deck rail," posts, gates, rails, pickets, spacers, and glass panelettes represent structures to form a complete railing system. Thus, Petitioner argues that the Department's analysis of baluster kits which "comprise a single element of a railing or deck system, and, therefore, do not represent a finished product,"<sup>24</sup> also applies to Peak Products' merchandise because the components represent elements of finished product, not the finished products themselves. Petitioner asserts that because the components themselves are not final finished products, they do not fall within scope exclusion (whether imported in assembled form or in "kits"). Petitioner argues that many of the products are "nothing more than aluminum extrusions with identified end uses."<sup>25</sup>

Furthermore, Petitioner argues that even Peak Products cannot argue that its components serve any function other than to be incorporated into downstream products (*i.e.*, railing systems), thereby demonstrating that such upstream inputs cannot be considered "finished goods."<sup>26</sup> Petitioner disagrees with Peak Products' assertion that the products at issue are outside the scope of the Orders because "each component of the railing system will be sold to the ultimate consumer separately," and so each component may be considered a "finished good" from the perspective of that customer.<sup>27</sup> According to Petitioner, the Department rejected the identical argument in the context of baluster kits, and Peak Products makes no attempt to address or distinguish the products at issue from baluster kits.<sup>28</sup>

Petitioner argues that to be considered a "final finished good," a product must have completed its final stage of production or assembly. Any other interpretation, Petitioner argues, would nullify the intent of the petition. According to Petitioner, every unfinished or intermediate product would be considered a "final finished product" from the perspective of some purchaser under the theory espoused by Peak Products. Petitioner contends that under such an interpretation, shower doors without glass could be considered a "final finished product" from the perspective of

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<sup>23</sup> See AD Decision Memorandum at Comment 3H, citing Certain Aluminum Extrusion from China: Investigation Nos. 701-TA-475 and 731-TA-1177 (Preliminary) (June 2010).

<sup>24</sup> Id. AD Decision Memorandum at Comment 3H.

<sup>25</sup> Petitioner's August 24, 2011, submission at 11.

<sup>26</sup> Petitioner's August 24, 2011, submission at 5.

<sup>27</sup> Id. at 5-6, quoting Peak Product's August 1, 2011, submission at 9.

<sup>28</sup> See AD Decision Memorandum at Comment 3D and 3H.

customers who purchase such units, a result the Department has already determined would conflict with the intent of the petition. Petitioner argues that the interpretation proposed by Peak Products is simply not a reasonable reading of the scope of the Orders.

Petitioner notes that the Department recently examined a similar issue in the remand redetermination filed in Constantine N. Polites v. United States, 751 F. Supp. 2d 1352 (CIT 2011), where the Department examined whether certain steel tubes could be considered “finished scaffolding.”<sup>29</sup> According to Petitioner, the importer argued that “finished scaffolding” includes “any component which is ready for use in a scaffold.”<sup>30</sup> Petitioner argues that the Department rejected that interpretation because it “would effectively undermine the intent of the petition.”<sup>31</sup> Instead, argues Petitioner, the Department found that scaffolding tubes themselves, without all other required scaffolding component parts, did not meet the definition of “finished scaffolding” and should not be excluded from the relevant Orders. Petitioner contends that components of railing systems, like components of scaffolding, are not “finished goods” and are not excluded from the scope.

Moreover, Petitioner argues the fact that a product or kit is sold to customers does not make it a “final finished good.” Petitioner argues that the Department found baluster kits fall within the scope even though Maine Ornamental stated that “the kits are packed ready for retail customer sales and customer installation.”<sup>32</sup> Petitioner argues that the Department similarly found that shower door “knock down units” (without glass) fall within the scope of the Orders, even though the importers had argued that such units “are sold to builders, contractors and homeowners as a finished product.”<sup>33</sup> Petitioner argues the fact that Peak Products sells its components individually to customers does not qualify those components for exclusion from the Orders. Thus, Petitioner argues that it is the complete railing system and not the individual components of that system that comprises a “final finished product” for purposes of the scope.

Petitioner urges the Department to reject Peak Products’ argument that it is untenable to require that only an entire railing system kit falls outside the Orders because fencing systems are assembled in numerous sizes and configurations. Petitioner explains that during the investigation parties argued that “shower door aluminum extrusions have unique or proprietary shapes” and “the industry standard is to purchase the glass component separately because the tempered door glass cannot be cut or sized if there is any adjustment to the frame.”<sup>34</sup> Petitioner argues that despite such comments, the Department ultimately concluded that shower doors without the glass cannot be considered “final finished products.”<sup>35</sup>

Petitioner also disputes the claim of Peak Products that it is “impossible” to sell kits containing all of the necessary components for a complete railing system. Petitioner argues that it is entirely possible for complete finished railing systems in standardized forms, such as those used for hotel and apartment balconies, to be sold in large quantities. Moreover, Petitioner argues that it is

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<sup>29</sup> Constantine N. Polites v. United States, Ct. No. 09-00387, Final Results of Redetermination Pursuant to Remand (June 25, 2010) at 9, attached as Exhibit 1 to Petitioner’s August 24, 2011 submission.

<sup>30</sup> Id. at 12.

<sup>31</sup> Id.

<sup>32</sup> See AD Decision Memorandum at Comment 3H.

<sup>33</sup> See AD Decision Memorandum at Comment 3H; see also Preliminary Scope Comments at Comment 7.

<sup>34</sup> See Preliminary Scope Comments at Comment 7.

<sup>35</sup> See AD Decision Memorandum at Comment 3D.

possible for complete finished railing systems to be individually configured prior to importation. Regardless, argues Petitioner, the relative ease or difficulty of finishing the product prior to importation is irrelevant to the scope of the Orders. Thus, Petitioner contends that because individual aluminum extrusion railing system components are not themselves “final finished products,” they fall within the scope of the Orders.

Alternatively, Petitioner argues that Peak Product’s merchandise fall within the scope because they are comprised solely of aluminum extrusions.

#### Peak Products’ October 7, 2011, Filing

Peak Products contends that Petitioner has misapplied the “finished goods kit” exclusion in its submissions. Peak Products argues that Petitioner mischaracterizes the entire railing system as the final finished good. Peak Products disagrees with Petitioner’s argument that because only those elements needed to assemble a particular component of a railing system will be imported, the products at issue do not qualify for the “finished goods kit” exclusion. Peak Products argues that there are two separate classes of finished goods that are contemplated within the scope’s exclusion. The first class consists of finished goods that contain aluminum extrusions that enter unassembled, in a finished goods kit. Peak Products argues that “each of the unassembled elements in the finished goods kit must be considered individually and each such individual element must constitute a finished good if they are to qualify for the exclusion.”<sup>36</sup> The second class consists of “the finished good which is formed when each of the elements within the finished goods kit are fully assembled.”<sup>37</sup> Peak Products argues that the unassembled elements of the kit must be considered together, and that together must constitute a finished good, to qualify for the exclusion. Peak Products argues that the scope of the Orders distinguishes between the two classes by referring to “finished goods kits” (the first class) and “final finished good” (the second class). Peak Products argues that by using these terms interchangeably, Petitioner misapplies the exclusion for finished goods kits.

Peak Products asserts that fence posts and gates, described in its scope inquiry request, are “finished merchandise” containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry and consequently they are per se excluded from the Orders.”<sup>38</sup>

Peak Products argues that the products at issue are distinct from the baluster kits discussed in the AD Final Determination. According to Peak Products, baluster kits represent parts of structures to form a balustrade or deck rail in which the types and numbers of elements required to assemble a balustrade or deck rail are limited and are known in advance. Thus, argues Peak Products, it would be a simple matter to import a kit containing all of the elements to assemble a balustrade or deck rail. Peak Products argues the same is not true of the products it intends to import because the products can be installed in an infinite variety of configurations and, therefore, it is impossible to identify a standard railing system that could be imported unassembled as a kit. Peak Products further argues that the products at issue are distinct from

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<sup>36</sup> Peak Products’ October 7, 2011, submission at 3.

<sup>37</sup> Id.

<sup>38</sup> Id. at 5.

balusters because the products include elements (other than fasteners) that are not aluminum extrusions.

Peak Products disagrees with Petitioner's contention that it is possible for complete finished railing systems to be individually configured prior to importation and disputes Petitioner's contention that the relative ease or difficulty of finishing the product prior to importation is irrelevant to whether merchandise is excluded from the scope of the Orders. Peak Products claims that the logistical challenges and added costs of shipping made-to-order modular railing systems to the United States are prohibitive. Peak Products further argues that enforcing such an interpretation of the scope would run counter to Polites I in which the Court held that the Department may not interpret a scope in a manner that would nullify an exclusion explicitly stated in the scope of the Orders.<sup>39</sup>

Peak Products contends that even if the Department finds that the products at issue are akin to baluster kits, such a finding would only apply to the "finished goods kit" exclusion and would not apply to the posts and gates included in the scope request of Peak Products, because this merchandise falls under the exclusion covering "finished merchandise." Peak Products argues that the aforementioned exclusion does not contain the phrase "final finished goods" within its ambit and, therefore, Petitioner's argument that all of the products at issue, including fence posts and gates, fall within the scope of the Orders is irrelevant to whether the merchandise should be excluded. Peak Products contends that to find otherwise would render "finished merchandise," such as finished windows with glass, as falling within the scope of the Orders, an outcome that is clearly at odds with the scope language.

Peak Products contests Petitioner's claim that the products at issue are nothing more than aluminum extrusions with identified end uses. According to Peak Products, Petitioner's claims are correct only to the extent that the products at issue "otherwise meet the scope definition, regardless of whether they are ready for use at the time of importation." See Orders. According to Peak Products, the products at issue do not "otherwise meet the scope definition" because they clearly fall under the exclusion on "finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry." Id.

**Department's Position:** The Department examines scope ruling requests in accordance with the Department's scope regulations. See 19 CFR 351.225. On matters concerning the scope of an antidumping duty order, the Department first examines the language of the order(s) at issue and the description of the product contained in the scope request. If the language in the order(s) is not dispositive, the Department will then examine the description of the merchandise contained in the petition, the initial investigation, the determinations of the Secretary (including prior scope determinations) and the ITC. See 19 CFR 351.225(k)(1). This determination may take place with or without a formal inquiry. See 19 CFR 351.225(d)-(e). If the Department determines that these descriptions are dispositive of the matter, the Department will issue a final scope ruling as to whether or not the subject merchandise is covered by the order. See 19 CFR 351.225(d).

Conversely, where the descriptions of the merchandise are not dispositive, the Department will consider the five additional factors set forth at 19 CFR 351.225(k)(2). These criteria are: (i) the

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<sup>39</sup> See Constantine N. Polites v. United States, 755 F. Supp. 2d 1352 (CIT 2011) (Polites I).

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 inquiry is made on a case-by-case basis after consideration of all evidence before the Department.

The Department examined the language of the Orders and finds that the scope is not dispositive as to whether the products at issue are subject merchandise. Accordingly, for this case, the Department evaluated the instant scope inquiry request in accordance with 19 CFR 351.225(k)(1) because it finds that a determination by the Secretary in the investigation and prior scope determinations is helpful in reaching its determination. Because the Department finds this evidence dispositive with respect to products at issue, the Department finds it unnecessary to consider the additional factors in 19 CFR 351.225(k)(2).

As noted above, the scope 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 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.

We find that the modular aluminum railing systems components described in Peak Product’s scope inquiry request do not meet the exclusion criteria. Because these individual component products at issue do not contain all of the parts required to assemble a final finished railing system, the products do not constitute complete and finished products.

Peak Product’s reliance upon comments filed by certain U.S. fencing producers during the investigation is misplaced. First, the primary thrust of the producers’ argument was on the percentage content of aluminum extrusions that would or would not be excluded, not on whether the fencing products at issue were or were not finished goods. Second, the Department indicated that fencing products would be excluded regardless of the percentage content of aluminum extrusions by weight, but only if the products entered as finished products or as unassembled kits that contained all the components for a fully-finished product.<sup>40</sup>

While Peak Products contends that all of the products at issue are “finished goods” or “finished goods kits,”<sup>41</sup> Peak Products acknowledges that its individual components are designed to integrate with other components into, and only into, a specific configuration of a railing system.<sup>42</sup> Thus, we find that the “finished goods kits” components (exclusion number two) that Peak Products intends to import serve no other purpose than to be incorporated into a railing system. Our finding is consistent with the Department’s determination involving baluster kits.<sup>43</sup>

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<sup>40</sup> See Preliminary Scope Comments at Comment 3.

<sup>41</sup> Peak Products requests two exclusions; one for posts and gates (Exclusion number one) and the other for hand and base rail kits, pickets, spacer kits and glass panelette kits (exclusion number two). See Peak Product’s August 1, 2011, submission at 4-11 and 18-38.

<sup>42</sup> See Peak Product’s August 2, 2011, submission at 4 and 7.

<sup>43</sup> See AD Final Decision Memorandum at Comment 3H where the Department determined that a baluster kit represents a packaged collection of individual parts, which comprised a single element of a railing or deck system,

The scope of the Orders specifically exclude “finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry.”<sup>44</sup> 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. Indeed, 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 together with other items. This 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.”<sup>45</sup> On this point, we note that the scope explicitly covers such items as fence posts and, thus, we disagree with Peak Products that the fence posts included in its scope inquiry request constitute “finished merchandise” that are excluded from the scope. We also disagree with Peak Product’s argument that such a reading contravenes the scope’s exclusion of finished windows with glass.

Concerning the gates at issue, Peak Products states that each gate “will be imported ready for sale to ultimate consumers who will purchase these products for the specific purpose for which they were intended (i.e., to assemble a component of a railing system)” and, for this reason, the Department should exclude the products on the basis that they constitute “finished goods.”<sup>46</sup> In the AD Final Determination, Maine Oriental presented the same argument in the context of the scope comments concerning baluster kits. The Department rejected this argument and found the balusters at issue to be within the scope of the Orders.<sup>47</sup> In arguing that the gates at issue should be excluded from the scope, Peak Products further states that because the gates “are specifically designed to integrate with other components in the configuration of a railing system...these products have no utility for any other purpose.” In the AD Final Determination, the Department found baluster kits to be within the scope based on the same fact pattern, namely that the products were not “finished goods kits” because they were designed to work within a larger system:

Maine Ornamental’s own description of the product indicates that such balusters are designed to work with other parts to form a larger structure. Specifically, although Maine Ornamental contends that its baluster kits contain all the necessary components to assemble a final finished good, it also states that the balusters, if used as directed, represent parts of structures to form a balustrade or deck rail. Thus, we agree with Petitioners that a baluster kit represents a packaged collection of individual parts, which comprise a single element of a railing or deck system, and, therefore, do not represent a finished product.<sup>48</sup>

The Department made a similar finding in the Cleaning System Components Scope Ruling.<sup>49</sup> In

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and, therefore, did not represent a finished product.

<sup>44</sup> See AD Order, 76 FR at 30650-51.

<sup>45</sup> See Orders.

<sup>46</sup> See Peak Product’s August 1, 2011, submission at 4.

<sup>47</sup> See AD Decision Memorandum at Comment 3H.

<sup>48</sup> See AD Decision Memorandum at Comment 3H.

<sup>49</sup> See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on Certain Cleaning System Components” (October 25, 2011) (Cleaning System

this scope ruling, the Department found that the cleaning system components at issue did not constitute final, finished goods:

. . . the products at issue are 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 are not part of a packaged combination at the time of importation. As a result, we find that the Quick-Connect frames and Quick-Connect handles do 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....”<sup>50</sup>

For the same reasons, we find that the gates at issue in the instant scope inquiry are also covered by the scope.

We also disagree with Peak Products’ claim that finding the products at issue within the scope of the Orders conflicts with the Court’s decision in Polites I, where the Court held that the Department may not interpret a scope in a manner that would nullify an exclusion explicitly provided for in the scope.<sup>51</sup> In Polites I, the Court considered the Department’s definition of the scope of that order’s exclusion for “finished scaffolding” as 1) completed fully assembled scaffolding, or 2) scaffolding kits. The Court held that the first definition was not reasonable because nothing in the record demonstrated that fully assembled scaffolding was imported into the United States.<sup>52</sup> Importantly, the Court agreed that the Department had the discretion to define “finished scaffolding” as “scaffolding kits,” but remanded back to the Department to determine whether scaffolding kits are, or may be, imported into the United States.<sup>53</sup> In Polites II, the Court affirmed Commerce’s definition of finished scaffolding as scaffolding kits, based on substantial evidence on the record that scaffolding kits are, or may be, imported into the United States.<sup>54</sup> Importantly, Commerce concluded, and the Court affirmed, that the requestor’s scaffolding tubes did not meet the definition of “scaffolding kits” because the scaffolding tubes “may be one component of a scaffolding kit, such tubes by themselves are obviously not kits which contain all necessary components to fully assemble a final, finished scaffolding.”<sup>55</sup> We do not find that Peak Products’ components are different than the requestor’s scaffolding tubes, simply because the components enter with the relevant screws, fittings, etc.<sup>56</sup> The scope of the Orders expressly states that merchandise will not be considered a kit if it is an aluminum extrusions product that “merely... includes fasteners such as screws, bolts, etc. in the packaging.”

As with the requestor’s scaffolding tubes in Polites I-II, Peak Products’ merchandise consists of certain components of a railing system. Each of these individual components lacks all the

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Components Scope Ruling) at 9; see also Awnings Scope Ruling at 9 – 10.

<sup>50</sup> Id.

<sup>51</sup> Polites I, 755 F. Supp. 2d at 1357.

<sup>52</sup> Id.

<sup>53</sup> Id. at 1358-59.

<sup>54</sup> Constantine N. Polites v. United States, 780 F. Supp. 2d 1351, 1357 (CIT 2011) (Polites II).

<sup>55</sup> Constantine N. Polites v. United States, Ct. No. 09-00387, Final Results of Redetermination Pursuant to Remand (March 23, 2011) at 9.

<sup>56</sup> Peak Product’s October 7, 2011, submission at 8.



necessary parts to fully assemble a final, finished railing system. However, unlike in Polites I-II, in this case, the record supports a determination that a railing system may be imported into the United States because a finished railing system of a standardized form may be imported with all component parts. We disagree with Peak Products that, simply because there are a variety of different types of railing systems, it would be impossible to import a finished railing system in kit form.

Thus, we find it reasonable that a manufacturer in the PRC could produce a finished railing system that is customized to the ultimate consumer's use and size specifications, and import these components in a kit. As Petitioner notes, railing systems for hotel and apartment balconies, for example, are one example of products that could be sized-to-order and imported from the PRC in large quantities. Simply because Peak Products does not trade in imported railing systems for this purpose does not detract from the very real potential for imports of such finished railing systems.

In conclusion, because the products at issue are neither finished products nor finished goods kits the Department finds that the products do not meet the exclusion criteria set forth in the scope of the Orders.

**Department's Recommendation**

In accordance with 19 CFR 351.225(k)(1) and Duferco, we have determined, through our review of the description of the products contained in the scope of the Orders, that the modular railing systems at issue are inside the scope. If you agree, 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) and will notify U.S. Customs and Border Protection of our determination.

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

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

\_\_\_\_\_  
Date