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Scope Inquiry

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December 2, 2011

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

THROUGH: Wendy J. Frankel
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Antidumping and Countervailing Duty Operations

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FROM: Brooke Kennedy
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Antidumping and Countervailing Duty Operations

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

SUBJECT: Final Scope Ruling on American Fence Manufacturing Company
LLC's Fence Sections, Posts and Gates

SUMMARY

On June 15, 2011, the Department of Commerce ("Department") received a scope ruling request from American Fence Manufacturing Company LLC ("AFMC"),¹ to determine whether its aluminum fence sections, posts and gates are subject to the antidumping ("AD") and countervailing duty ("CVD") orders on aluminum extrusions from the People's Republic of China ("PRC").² On the basis of our analysis of the comments received, we have determined

¹ See American Fence Manufacturing Company's letter to the Department, dated June 4, 2011 ("AFMC's Request").

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

that aluminum fence sections, bulk pickets, posts and gates are within the scope of the AD and CVD orders on aluminum extrusions from the PRC.

BACKGROUND

On June 15, 2011, AFMC, a company located in Cedar Hill, Missouri, requested a ruling by the Department as to what constitutes a fully assembled product in the fencing industry.^{3,4} AFMC claimed interested party status under Sections 771(9)(A) and (C) of the Tariff Act of 1930, as amended (“the Act”), *i.e.*, as an importer of aluminum fence products from the PRC and a domestic manufacturer of aluminum fence products. On July 8, 2011, the Aluminum Extrusions Fair Trade Committee (“Petitioner”), submitted comments responding to the scope ruling request by AFMC.⁵ On July 12, 2011, the Department issued a supplemental questionnaire to AFMC.⁶ On July 25, 2011, the Department received AFMC’s responses to the supplemental questionnaire.⁷ On September 2, 2011, the Department issued a second supplemental questionnaire to AFMC, requesting clarification for the information provided in its first response.⁸ AFMC filed a response to the Department’s second supplemental questionnaire on September 15, 2011.⁹ On October 28, 2011, the Department notified interested parties that the ruling deadline would be extended by 45 days, in accordance with 19 CFR 351.225(c)(1)(ii)(C)(2).¹⁰

SCOPE OF THE ORDERS

The merchandise covered by the order{s} 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

³ See AFMC’s Request at 2.

⁴ The Department subsequently informed AFMC that it will not make a ruling that applies to “the fencing industry,” but it may make a ruling that pertains to AFMC’s particular product. See *infra* n.5.

⁵ See “Aluminum Extrusions From China: Response to American Fence Manufacturing Company’s Scope Ruling Request,” dated July 8, 2011 (“Petitioner’s Comments”).

⁶ See the Department’s supplemental questionnaire to AFMC, dated July 12, 2011 (“1SQ”).

⁷ See AFMC’s letter to the Department, dated July 16, 2011 (“AFMC 1SQR”).

⁸ See the Department’s second supplemental questionnaire to AFMC, dated September 2, 2011 (“2SQ”).

⁹ See AFMC’s letter to the Department, dated September 11, 2011 (“AFMC 2SQR”).

¹⁰ See the Department’s letter “Extension of Preliminary Ruling,” dated October 28, 2011.

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 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, 7608.20.0090, 8513.90.20, 8302.50, 9403.90.8030, 9506.91.0010, 9506.91.0020, 9506.91.0030, 7615.19.30, 7615.19.50, 7615.19.70, 7615.19.90, 7615.19.10, 7616.99.10, and 7616.99.50. The subject merchandise entered as parts of other aluminum products may be classifiable under the following additional Chapter 76 subheadings: 7610.10, 7610.90, 7615.19, 7615.20, and 7616.99 as well as under other HTS chapters. In addition, fin evaporator coils may be classifiable under HTS numbers: 8418.99.8050 and 8418.99.8060. While HTS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.¹¹

LEGAL FRAMEWORK

The Department examines scope ruling requests in accordance with its scope regulations. *See* 19 CFR 351.225. On matters concerning the scope of an antidumping or countervailing duty order, the Department first examines the language of the order at issue and the description of the product contained in the scope request. If the language in the order 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

¹¹ *See Orders.*

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 order. 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

1. Kits and Finished Products Exclusion

During the underlying investigations, 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.¹²

The producers argued that kits and fully assembled finished products composed of at least 70 to 75 percent aluminum extrusions by weight should be included in the scope of the proceedings. All producers contended that such items are simply aluminum extrusions that have been boxed or assembled, with a few minor parts added, and excluding these products from the scope would harm certain domestic manufacturers of aluminum fences and gates. Further, these five manufacturers argued that the proposed criterion, *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.

Petitioner opposed the proposed modification, arguing that although the Petition is not intended to harm domestic producers of aluminum fences and gates, the Petition also is not intended to cover imports of fully-assembled finished aluminum fencing systems or fully finished aluminum fencing systems in kit form.

The Department agreed with Petitioner and determined that finished goods kits and finished

¹² See *Aluminum Extrusions From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, and Preliminary Determination of Targeted Dumping*, 75 FR 69403 (November 12, 2010) (“*Aluminum Extrusions/PRC AD Preliminary (11/12/2010)*”) and *Preliminary Determinations: Comments on the Scope of the Investigations* (“*Preliminary Scope Comments*”), dated October 27, 2010, at Comment 3, unchanged in *Aluminum Extrusions from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 18524 (April 4, 2011) and accompanying Issues and Decision Memorandum (“*Aluminum Extrusions/PRC AD Final (4/4/2011) IDM*”).

products are excluded from the scope, regardless of the percentage content of aluminum extrusions. 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.^{13, 14}

2. Baluster Kits

During the underlying investigations, the Department also considered comments and made a determination regarding baluster kits.¹⁵ Scope inquiry requestor Maine Ornamental explained that it imported baluster kits, which contained aluminum extrusions in a variety of powder coated finishes to match wood and composite wood decking and railings. It contended that the kits were packed ready for retail customer sales and customer installation and contained five to ten balusters, assembly fasteners, connectors, and detailed installation instructions, thus containing all the necessary components to assemble a final finished good, and as such, represent unassembled finished goods.

Maine Ornamental argued that its baluster kits are analogous to shower doors with glass, or exhibition kits, which the Department excluded from the scope of the investigations, rather than a package of plastic and screws combined with aluminum powder coated extrusions. Therefore, Maine Ornamental argued that its baluster kits are not inputs for the production of downstream products but rather are unassembled finished goods and should be excluded from the scope of the investigations.

Petitioner countered that the Department should reject Maine Ornamental's request to exclude baluster kits from the scope of the investigations because the kits represented a packaged collection of individual balusters, which composed a single element of a railing or deck system, and, therefore, do not represent a finished product. The Petitioner further argued that a single baluster is analogous to carpet trim, which is a final good that is also a basic aluminum extrusion, covered by the scope of these investigations.

The Department agreed with Petitioner that baluster kits are not excluded "finished goods kits" as defined by the scope of the investigations, but rather constitute subject merchandise.¹⁶ The Department noted that the scope of the petitions defined an excluded kit as "a packaged combination of parts that contains, at the time of importation, all of the necessary parts to fully

¹³ See *Preliminary Scope Comments* at Comment 3.

¹⁴ Under the statutory scheme, {the Department} owes deference to the intent of the proposed scope of an antidumping investigation as expressed in an antidumping petition. See, e.g., *Ad Hoc Shrimp Trade Action Committee v. United States*, 637 F. Supp. 2d 1166,1174 (CIT 2009)(citing 19 CFR 1673, 1673a(h)); see also *NTN Bearing Corp. of Am. v. United States*, 747 F. Supp. 726, 730 (CIT 1990)). Moreover, {w}hile the Department does have the authority to define or clarify the scope of an investigation, the Department must exercise this authority in a manner which reflects the intent of the petition and the Department generally should not use its authority to define the scope of an investigation in a manner that would thwart the statutory mandate to provide the relief requested in the petition. See *Narrow Woven Ribbons with Woven Selvedge from Taiwan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 75 FR 7236,7240 (Feb. 18, 2010) (unchanged in the *Final Results*), 75 FR 41804 (July 19, 2010)). Thus, absent an overarching reason to modify the scope in the petition, the Department accepts it. See *Id.*

¹⁵ See *Aluminum Extrusions/PRC AD Final* (4/4/2011) IDM at Comment 3H.

¹⁶ *Id.*

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.”

The Department explained that Maine Ornamental’s own description of the product indicates that such balusters are designed to work with other parts to form a larger structure. The Department further explained that although Maine Ornamental contended that its baluster kits contain all the necessary components to assemble a final finished good, it also stated that the balusters, if used as directed, represent parts of structures to form a balustrade or deck rail. Thus, the Department agreed with Petitioner that a baluster kit represents a packaged collection of individual parts, which comprise a single element of a railing or deck system, and, therefore, did not represent a finished product.

B. Prior Scope Rulings

Modular Railing Systems¹⁷

In its scope request, Peak Products America Inc. (“Peak Products”), argued that its modular aluminum railing system components are excluded from the scope of the *Orders* because they are finished products or finished goods kits. Specifically, the products at issue were: (a) post “kits,” (b) gate “kits,” (c) hand and base rail “kits,” (d) pickets and spacer “kits,” and (e) glass panelette “kits.” Peak Products contended that its post and gate kits are excluded from the scope because, at the time of importation, each product constitutes finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed. Peak Products also contended that its hand and base rail kits, pickets and spacer kits and glass panelette kits, would be excluded from the *Orders* as finished goods containing aluminum extrusions that are entered unassembled in a “finished goods kit.”

The Department determined that all of the modular aluminum railing system components at issue in Peak Products’ request were neither finished products nor finished goods kits and thus did not meet the exclusion criteria delineated in the scope of the *Orders*. Based on the descriptions of Peak Products’ merchandise, the Department found that the products did not constitute complete and finished products because these individual component products at issue did not contain all of the parts required to assemble a final finished railing system. The Department found Peak Products’ merchandise to be analogous to the baluster kits, which were examined in the investigation and were found to be included in the scope as parts for finished products.

DESCRIPTION OF MERCHANDISE SUBJECT TO THIS INQUIRY

AFMC’s Request

AFMC described the aluminum fence products covered by its scope inquiry as sections, posts with caps, and gates, manufactured from 6000-series alloy aluminum extrusions. AFMC stated that the aluminum fence products are imported “assembled or in kit form” and that all products,

¹⁷ 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, 2011) (“Railing Systems Scope Ruling”).

sections, posts and gates, are packaged separately.¹⁸ AFMC requested that the Department determine “what constitutes a fully assembled product in the fencing industry.”¹⁹

Department’s Supplemental Questionnaire

On July 12, 2011, the Department issued a supplemental questionnaire (“1SQ”) to AFMC, explaining that while it will not make a ruling that applies to the “the fencing industry,” it may make a ruling that pertains to AFMC’s particular product, pursuant to 19 CFR 351.225(c)(1).²⁰ The Department’s 1SQ requested specific information from AFMC as to the nature of its products at the time of importation, assembly instructions and/or diagrams for each product, and whether the components are imported for specific installations. In addition, pursuant to 19 CFR 351.225(c)(1)(i), the Department requested the HTS categories under which AFMC imports its aluminum fence products.²¹

AFMC’s Response

On July 25, 2011, AFMC filed its response to the Department’s 1SQ.²² In its supplemental questionnaire response (“SQR”), AFMC provided photos and installation instructions for one type of fence section that it imports. AFMC also provided a link to a website that contains a video of the assembly and packaging process for its fence sections. AFMC stated that it imports its aluminum fence products under HTS categories 7610.30 and 7610.90.²³

AFMC specified in its SQR that it was requesting a ruling on fence sections “assembled together or in kit form,” packed together or packed individually; fence posts “with or without...cap attached,” that “may or may not be shipped in the same container” as the fence sections and gates; and fence gates “with or without the hardware (hinges and latches) shipped in the same container” as the sections and posts.²⁴

AFMC also stated in its SQR that its fence products are imported together “in virtually every case” and that the components are “brought in for inventory and not a job already sold.”²⁵ AFMC noted that it generally sells its products to distributors, large companies or retail stores and stated that installation requires half a bag of concrete to set the posts.²⁶

Department’s Second Supplemental Questionnaire

On September 2, 2011, the Department issued a second supplemental questionnaire (“2SQ”) to AFMC that requested specific information regarding how AFMC’s products are packaged at

¹⁸ See AFMC’s Request at 1.

¹⁹ *Id.* at 2.

²⁰ See 1SQ.

²¹ *Id.* at 3.

²² See AFMC 1SQR.

²³ *Id.* at 1.

²⁴ *Id.* at 2.

²⁵ *Id.*

²⁶ *Id.*

importation, whether the products require further fabrication for assembly, how the products are packaged for inventory, and which components compose one unit-price.²⁷

AFMC's Second Response

On September 11, 2011, AFMC submitted its response ("2SQR") to the Department's 2SQ.²⁸ AFMC described its fence sections as being imported in three configurations: fully assembled panels that are stored in the original packaging until sale; panel "kits" that contain 15 pickets, two rails and a packet of 30 screws, stored and sold in the same packaging, or; individually-wrapped pickets that are packed in bulk. AFMC explained that its fence posts are imported in two forms: posts with attached caps are packed nine to a box, or posts with attached caps are individually wrapped in plastic sleeves and bulk-packed, 81 to a pallet. AFMC further explained that its fence gates are imported in two forms: fully-assembled, boxed individually, with a packet of hinges and screws included, or; packed in bulk, 20 gates per box with no hardware included. AFMC noted that hinges, latches and screws accompany shipments of gates but are packaged separately.

In its 2SQR, AFMC described its aluminum fence sections, posts and gates as being transferred to inventory exactly as they are packaged at the time of importation.²⁹ AFMC stated that, at the time of sale, the aluminum fence components are repackaged to meet the quantities ordered by the customer because each fence installation is different and requires a unique combination of components. Finally, AFMC noted that most of its fence installations require cutting.³⁰ AFMC also provided diagrams of its fence section, posts and gates at the time of importation, as well as a packing list detailing the contents of its average imported container.³¹

ARGUMENTS FROM INTERESTED PARTIES

AFMC

In its scope ruling request, AFMC does not argue that its products should be excluded from the scope of the *Orders*. AFMC referenced the baluster kits examined by the Department in the less-than-fair-value investigation to posit that its imported fence components are inputs for a completed fence and would, therefore, fit the description of merchandise subject to the *Orders*.³²

Petitioner

On July 8, 2011, Petitioner submitted comments to the Department, arguing that AFMC's fence panels, posts and gates are merely parts for final finished products and, as such, are included in the scope of the *Orders*.³³ Petitioner contended that each product described by AFMC is only

²⁷ See "Aluminum Extrusions from the People's Republic of China- Scope Ruling Request 2nd Supplemental Questionnaire," dated September 2, 2011 ("Department's 2SQ") at 3.

²⁸ See AFMC's letter to the Department, dated September 11, 2011 ("AFMC's 2SQR").

²⁹ *Id.*

³⁰ *Id.* at 2-4.

³¹ *Id.* at Attachments 1-3.

³² AFMC's Request at 2.

³³ Petitioner's Comments at 2.

one component of a finished fence and, as such, cannot stand alone as a finished good. Petitioner argued that AFMC is importing subassemblies (*i.e.*, sections, gates, and posts), or “kits” containing the parts required to make those subassemblies.³⁴ Petitioner noted that aluminum fence sections, gates and posts that are imported independently and not as part of a complete fencing system, are not a final finished good and are, therefore, subject to the scope of the *Orders*.³⁵ Petitioner considered AFMC’s aluminum fence sections to be analogous to the baluster kits examined during the investigation, because they “are designed to work with other parts to form a larger structure.”³⁶ Petitioner stated that because AFMC’s fence sections, posts and gates themselves are not stand-alone final finished products, they do not fall within the scope exclusion.

ANALYSIS

1. Bulk Pickets and Fence Posts (With or Without Caps)

The Department has examined the language of the *Orders* and the description of the products contained in this scope request. We find that the scope is dispositive as to whether individually-wrapped pickets that are packed in bulk, and posts that are packed nine to a box or 81 to a pallet, are subject merchandise. Accordingly, for this determination, the Department finds it unnecessary to consider the additional factors specified in 19 CFR 351.225(k)(1) and 19 CFR 351.225(k)(2).

The scope of the *Orders* covers aluminum extrusions made from aluminum alloys with Aluminum Association designations commencing with the numbers 1, 3, and 6 (or proprietary equivalents or other certifying body equivalents). The scope of the *Orders* also covers aluminum extrusions that may be identified with reference to their end use, such as fence posts. In its initial request, AFMC stated that it imports from the PRC, aluminum fence products that are manufactured from 6000 series alloy aluminum extrusions.³⁷ AFMC also noted, in its 1SQR and 2SQR, that it imports series 6000 aluminum extruded fence posts that are packaged individually or in bulk quantities. Accordingly, the Department finds that AFMC’s bulk pickets and fence posts (with or without caps) fit these descriptions of subject merchandise.

The scope of the *Orders* also provides an exclusion for a “finished goods kit,” which is defined by the scope language 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.” AFMC stated that it imports bulk pickets and fence posts as individual components and, upon sale, repackages these products to fill a specific order. Further, AFMC noted that most of its fence installations require cutting.³⁸ Based on this information, the Department therefore finds that AFMC’s bulk pickets, and fence posts (with or without caps) do

³⁴ *Id.* at 3.

³⁵ *Id.*

³⁶ *Id.*

³⁷ See AFMC’s Request at 1, stating that it imports “aluminum fence products from the People’s Republic of China that are manufactured from 6000 series alloy aluminum extrusions.”

³⁸ *Id.* at 2-4.

not fit within the finished goods kit exclusion because they do not contain all of the parts necessary to fully assemble a final finished product. This is consistent with the Department's determination regarding the aluminum modular railing components at issue in Peak Products' scope request, which we determined to be individual components that are designed to integrate with other components into a finished product and therefore found them to meet the description of merchandise covered by the scope of the AD and CVD proceedings on aluminum extrusions.

Because AFMC's bulk pickets and fence posts (with or without caps) meet the description of the subject merchandise and do not meet the definition of finished goods kits, as defined by the plain language of the scope, the Department has determined that the individual pickets and posts constitute subject merchandise.

2. Panels (Whether Assembled or in Kit Form) and Gates

The Department has examined the language of the *Orders* and finds that the scope is not dispositive as to whether fully assembled panels, panel "kits," and fence gates are subject merchandise. Accordingly, for this determination, the Department evaluated the instant 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 rulings are helpful in reaching a determination for the products at issue in this request. Because the Department finds this evidence to be dispositive, the Department finds it unnecessary to consider the additional factors specified 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 aluminum fence panels (whether assembled or in kit form) and gates described in AFMC's scope inquiry request do not meet these exclusion criteria because they do not meet the definition of a finished goods kit, *i.e.*, they do not contain all of the parts necessary to fully assemble a final finished fence system.

In accordance with 19 CFR 351.225(k)(1), the Department considered the description of merchandise contained in the underlying investigations in making its determination on the products at issue in this request. First, we looked to the investigation and the Department's determination on baluster kits, which stated that a baluster kit represents a packaged collection of individual parts that comprises a single element of a railing or deck system, and, therefore, does not represent a finished product. Second, the Department also looked to its prior scope ruling on modular railing systems, in which it determined that the aluminum railing system components did not meet the scope exclusion because the individual component products at issue did not contain all of the parts required to assemble a final finished railing system and thus did not constitute complete and finished products. We find that these descriptions of merchandise from

the investigations and prior scope rulings provide a basis on which to examine AFMC's fence panels, panel kits, and gates.

The record evidence on AFMC's aluminum fence panels and gates indicates that these products are manufactured from 6000 series alloy aluminum extrusions. The evidence also shows that at the time of importation, this merchandise does not constitute a finished product, that is, a complete fence system. Indeed, AFMC itself explained that its panels and gates are packaged and imported individually, each as a single component for a finished fence. Further, AFMC's own descriptions of its products indicate that panels and gates are designed to be an input for a downstream product, a finished fence. Finally, AFMC stated that it is not possible to import kits or assembled products to fit a specific, finished fence installation because each job requires a unique combination of components based on customer specifications. Based on this evidence, the Department finds the aluminum fence panels (whether assembled or in kit form) and gates imported by AFMC to be analogous with the baluster kits examined in the investigation. Like balusters, AFMC's fence panels and gates are a packaged collection of individual parts, which compose only a single element of a finished product. Indeed, the fence sections and gates, alone, cannot constitute a finished good because each component is an individual part of a larger finished fence system that is designed to work with other parts to form the larger structure. Similarly, we equate AFMC's aluminum fence components with the aluminum railing components at issue in Peak Products' scope request, which were determined to be individual components that are designed to integrate with other components into, and only into, a specific configuration of a railing system. The panels and gates that are the subject of the instant request, are designed to work with other components to create a larger structure, a finished fence, and cannot stand alone. The Department has determined, therefore, that AFMC's aluminum fence panels and gates do not fit the description of a fully-assembled finished aluminum fencing system or a fully finished aluminum fencing system in kit form.

Because AFMC's fence panels (whether assembled or in kit form) and gates fit the description of the subject merchandise and do not meet the definition of finished goods kits, the Department has determined that the fence panels, panel kits, and gates constitute subject merchandise.

RECOMMENDATION

For the reasons discussed above, and in accordance with 19 CFR 351.225(d) and 351.225(k)(1), we recommend finding that the aluminum bulk pickets and posts (with or without caps), fence panels (whether assembled or in kit form), and gates addressed by the instant request are subject to the scope of the orders on aluminum extrusions from the PRC because they fit the description of the subject merchandise and because they do not meet the criteria for the finished products exclusion or the finished goods kit or exclusion; *i.e.*, they do not contain, at the time of importation, all of the necessary parts to fully assemble a final finished good.

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

_____ Agree _____ Disagree

Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

Date