



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-570-967

C-570-968

Scope Inquiry: Flag Pole Sets

Public Document

IA AD/CVD O8: RS

April 19, 2013

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

THROUGH: Melissa Skinner
Director, Office 8
Antidumping and Countervailing Duty Operations

Eugene Degnan
Program Manager, Office 8
Antidumping and Countervailing Duty Operations

FROM: Raquel Silva
International Trade Specialist, Office 8
Antidumping and Countervailing Duty Operations

RE: Antidumping and Countervailing Duty Orders on Aluminum
Extrusions from the People's Republic of China

SUBJECT: Final Scope Ruling on 5 Diamond Promotions, Inc.'s Aluminum
Flag Pole Sets

SUMMARY

On July 31, 2012, the Department of Commerce ("Department") received a scope ruling request from 5 Diamond Promotions, Inc. ("5 Diamond"),¹ to determine whether its aluminum flag pole sets ("flag pole sets") 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

¹ See letter from 5 Diamond entitled: "Scope ruling request, *Aluminum Extrusions from the People's Republic of China* (A-570-967, C-570-968), Aluminum Flag Pole Sets," dated July 31, 2012 ("5 Diamond's Scope 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) (collectively the "Orders").

our analysis of the comments received, we have determined that the flag pole sets are included in the scope of the AD and CVD orders on aluminum extrusions from the PRC.

BACKGROUND

On July 31, 2012, 5 Diamond requested that the Department determine whether its aluminum flag pole sets were outside the scope of the *Orders*. On August 30, 2012, Petitioner³ submitted a request to extend the September 14, 2012, deadline for the issuance of a final scope ruling or the initiation of a formal scope inquiry by 45 days. The Department granted this request and extended the deadline until October 29, 2012.⁴ On October 24, 2012, Petitioner filed comments regarding 5 Diamond's Scope Request. In order to incorporate Petitioner's comments into our analysis and allow 5 Diamond time for rebuttal comments, the Department, on October 26, 2012, extended the time period for a final scope ruling or initiation of a formal scope inquiry until December 18, 2012. 5 Diamond submitted their rebuttal comments on November 6, 2012.

The Department had originally extended the deadline for this final ruling until December 18, 2012. As explained in the memorandum from the Assistant Secretary for Import Administration, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 29, through October 30, 2012. Thus, all deadlines in this segment of the proceeding were extended by two days. The revised deadline for the final ruling of this scope inquiry became December 20, 2012.⁵

On December 20, 2012, the Department initiated a formal scope inquiry. 5 Diamond submitted comments on January 9, 2013, and Petitioner submitted its comments on January 10, 2013. Both parties submitted rebuttal comments on January 22, 2013.

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

³ Petitioner is the Aluminum Extrusions Fair Trade Committee.

⁴ See the Department's letter entitled: "Aluminum Extrusions from the People's Republic of China: Scope Ruling Request – Extension of Time," dated September 5, 2012.

⁵ See Memorandum from Paul Piquado, AS for Import Administration, entitled: "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Hurricane," dated October 31, 2012.

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 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 millimeters (“mm”) or 62 mm, (2) outer diameter of 11.0 mm or 12.7 mm, and (3) wall thickness not exceeding 0.13 mm.

Also excluded from the scope of 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.⁶

LEGAL FRAMEWORK

When a request for a scope ruling is filed, the Department examines the scope language of the order at issue and the description of the product contained in the scope-ruling request.⁷ Pursuant to the Department’s regulations, the Department may also examine other information, including the description of the merchandise contained in the petition, the records from the investigations,

⁶ See *Orders*.

⁷ *Walgreen Co. v. United States*, 620 F.3d 1350, 1357 (Fed. Cir. 2010).

and prior scope determinations made for the same product.⁸ If the Department determines that these sources are sufficient to decide the matter, it will issue a final scope ruling as to whether the merchandise is covered by an order.⁹ If the Department determines that these sources are not sufficient to decide the matter, the Department will consider the five additional factors set forth at 19 CFR 351.225(k)(2). The determination as to which analytical framework is most appropriate in any given scope inquiry is made on a case-by-case basis after consideration of all evidence before the Department.

DESCRIPTION OF MERCHANDISE SUBJECT TO THIS INQUIRY

At issue are two models of flag pole sets designed to hold banners.¹⁰ These models are identical with the exception that one model has three sections while the other has four sections.¹¹ Both models come with one of three different top sections, each of which includes a dimple that allows the sections to interlock and a plastic end cap that prevents banners that are attached to the flag pole set from ripping. In addition, both sets are made of series 6 aluminum alloy, have an anodized silver finish, and are designed such that each section is to be connected with the others in the set at certain heights by interlocking dimples. The sets are sold without banners. Users are expected to attach their own banner based on personal preferences.

Similarly-sized sections of both models of flag pole sets are bundled together for importation and enter as separately bundled packages.¹² Each shipment contains a set number of packages of unassembled sections designed and intended to create a predetermined number of three- and/or four-section assembled flag poles sets after the packages enter U.S. customs territory. These packages are entered together on the same Customs Entry Summary (Form 7501).

ARGUMENTS FROM INTERESTED PARTIES

5 Diamond's Request and Rebuttal Comments

5 Diamond argues that its aluminum flag pole sets are excluded from the *Orders* as finished goods kits. In support of its statement, 5 Diamond elaborates that the sets contain all the parts needed to fully assemble a final finished product with no additional fabrication; all that remains to be done after users assemble the interlocking pole sections is to attach an interchangeable flag. 5 Diamond also cites the Department's scope rulings on Banner Stands¹³ and EZ Wall Systems.¹⁴ In these cases, 5 Diamond asserts, the Department concluded that the products at issue were analogous to picture frames, which the scope explicitly defines as excluded merchandise even though users add their own pictures after importation. 5 Diamond also asserts that the Department should follow Customs and Border Protection ("CBP") procedures and treat

⁸ 19 CFR 351.225(k)(1).

⁹ 19 CFR 351.225(d).

¹⁰ See 5 Diamond's Scope Request, at 2-4.

¹¹ See 5 Diamond's July 31, 2012 Request, at 3.

¹² See 5Diamond's Scope Request, at 3.

¹³ See Memorandum to Christian Marsh entitled "Final Scope Ruling on Banner Stands and Back Wall Kits," dated October 19, 2011 ("Banner Stands").

¹⁴ See Memorandum to Christian Marsh entitled "Final Scope Ruling on EZ Fabric Wall Systems," dated November 9, 2011 ("EZ Wall Systems").

its bundled packages of flag pole sections as individual sets ready for direct sale. In support of its assertion, 5 Diamond cites to the Department's scope rulings on Solarmotion Controllable Sunshades¹⁵ and Window Kits.¹⁶ 5 Diamond argues that, in these cases, the Department found that all parts necessary to assemble a final product were packaged together at the time of importation despite the various necessary parts being housed in multiple containers. As the product at issue is the whole shipment of flag pole sets and not the individual bundles of flag pole sections, 5 Diamond claims, its product is analogous to the controllable sunshades and window kits products. Finally, 5 Diamond also argues that its flag pole sets also qualify as excluded finished goods kits based on the Diversified Products Criteria factors set forth in 19 CFR 351.225(k)(2).

Petitioner's Comments

The Petitioner argues that 5 Diamond's flag pole sets are not finished goods kits for two reasons. First, as the kits are imported without an accompanying flag, they lack an integral component needed to assemble a final finished good. The Petitioner asserts that absent a flag, the imported goods are mere aluminum extrusions clearly subject to the scope of the *Orders*. It cites the Department's decisions in the Retractable Awning Mechanisms¹⁷ and Drapery Rail Kits¹⁸ scope rulings. In both instances, the Department found that the kits at issue lacked components (textile covers and curtains/drapes, respectively) necessary to assemble final goods. Petitioner also cites to a signed statement by a U.S. manufacturer of flag pole parts in asserting that telescoping flag poles, such as those manufactured by 5 Diamond, typically require various additional parts not mentioned in 5 Diamond's scope inquiry, such as buttons and clips.

Second, the packages imported by 5 Diamond do not contain all the parts needed to assemble a finished flag pole. As 5 Diamond states in its scope request, "similar unassembled flag pole sections are bundled together at importation." According to the Petitioner, this indicates that a given flag pole package includes only one type of part (*e.g.*, the top sections of a pole) and not the full set of sections needed to assemble a full pole. The Petitioner also points out that, although CBP considers 5 Diamond's bundled packages to be a single shipment, it is unclear whether CBP treated 5 Diamond's imports as flag poles or flag pole sets. The Petitioner also asserts that CBP's practice is not binding on the Department. Rather, the Department should rely on the scope language, which states that to qualify for the finished goods kit exception, a *packaged* combination of parts must contain, at the time of importation, *all* components necessary to be assembled "as is" into a final product.

¹⁵ See Memorandum to Christian Marsh entitled "Final Scope Ruling on Solarmotion Controllable Sunshades," dated October 19, 2011 ("Solarmotion Controllable Sunshades").

¹⁶ See Memorandum to Christian Marsh entitled "Final Scope Ruling on Window Kits," dated December 6, 2011 ("Window Kits").

¹⁷ See Memorandum to Christian Marsh entitled "Final Scope Ruling on Certain Retractable Awning Mechanisms," dated October 14, 2011 ("Retractable Awning Mechanisms").

¹⁸ See Memorandum to Christian Marsh entitled "Final Scope Ruling on Drapery Rail Kits," dated February 6, 2012 ("Drapery Rail Kits").

RELEVANT SCOPE DETERMINATIONS¹⁹

A. EZ Fabric Wall Systems

Moss Holding Company d/b/a Moss Inc. (“Moss”), an importer of EZ fabric wall systems (used to assemble complete, lightweight, portable, and temporary commercial displays), argued that its kits contained all parts necessary to fully assemble a final wall system.²⁰ Moss also drew an analogy to picture frames, excluded from the scope of the *Orders*, saying that its wall systems were similar in that they too were designed to allow buyers to add an interchangeable graphic design of their choice. Petitioner countered that the fact that the graphic display could be purchased separately or replaced by the customer in fact meant that an imported product omitting that part may not be considered a “final finished product” under the scope of the *Orders*.

The Department found that the product at issue was similar to those examined in the Banner Stands Scope Ruling (discussed below). The Department disagreed with the Petitioner, saying that Moss’ products did not lack any integral components necessary to assemble a complete mounting system at the time of importation. The fabric covers were akin to the pictures in picture frames or the graphic materials affixed to banner stands and back wall kits, all of which are designed to be readily interchangeable and to be modified according to the end user’s needs and specifications. As in the Banner Stands Scope Ruling, the Department found that it would be unreasonable to require that fabric covers with graphics accompany the EZ wall systems. As Moss’ products contained all of the parts required to assemble a completed exhibition frame on which readily interchangeable fabric covers with graphics could be attached, they met the exclusion criteria in the scope of the *Orders* for finished goods kits.²¹

B. Banner Stands and Back Wall Kits

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.”

Petitioner argued that Skyline had not provided sufficient evidence that its products constitute a finished good and thus are outside the scope of the *Orders*. It urged the Department to seek more information regarding the extent to which Skyline produced and sold the graphical materials that users attach to the products at issue. Petitioner further argued that the fact that additional accessories could be added to the products at issue (*e.g.*, shelving and lighting) called into question Skyline’s claim that the products constituted finished goods.

¹⁹ See the Department’s memorandum entitled: “Antidumping (“AD”) and Countervailing Duty (“CVD”) Orders on Aluminum Extrusions from the People’s Republic of China (“PRC”): Aluminum Flag Pole Sets from the PRC: Transmittal of Scope Determinations to the File,” dated October 26, 2012.

²⁰ See EZ Fabric Wall Systems.

²¹ *Id.*, at 10.

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.²² 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, thereby meeting the exclusion criteria in the scope of the *Orders* for “finished goods kits.”²³ The Department further explained that in the preliminary scope comments, it found that Nexxt Show’s exhibition kits would be excluded if the kits contained all necessary parts to be fully assembled finished good. Thus, 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.”

In the Banner Stands Scope Ruling, the Department agreed with Skyline’s claim that the products at issue were analogous to completed picture frames, which are explicitly excluded from the scope.²⁴ The Department disagreed with Petitioner’s claim that the products at issue failed to meet the exclusion criteria because they lacked printed graphical materials at the time of entry. The Department found that the products at issue were designed to incorporate interchangeable graphical materials that can change with users’ needs. Therefore, the Department concluded it would be unreasonable to require that the products at issue be accompanied at the time of importation with affixed graphical material that could not be removed or altered at a later date.²⁵

C. Controllable Sunshades

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

Approximately five weeks after its initial filing, CS Group submitted a revised scope request. This filing stated that the sunshades would now be shipped from the PRC to Canada and consolidated with Canadian-manufactured parts to form a finished goods kit before entry into the United States. The new kit would contain all parts necessary (*e.g.*, blade frames, motors, brackets) to assemble a final finished good. Owing to their large size, each kit could not be transported in a single trailer, but would be imported in the same shipment and with the same commercial invoice, bill of lading, and customs entry summary (CBP 7501 form).

²² See Banner Stands.

²³ *Id.*, at 9-10.

²⁴ *Id.*

²⁵ *Id.*, at 10.

The Department determined that CS Group's original kit did not constitute finished merchandise or a finished goods kit.²⁶ However, the Department found that the revised kit included the components necessary to qualify as a finished goods kit as described in the scope of the *Orders*.²⁷ That the kit was to be imported from Canada in a single shipment with the same commercial invoice, bill of lading, and CBP 7501 form further supported this conclusion, according to the Department. In addition, the Department found that the kits were not subject to the *Orders* merely because they were shipped in separate containers.²⁸ This was because, in addition to being listed on a single CBP 7501 form, they ultimately contained all of the necessary parts to assemble a final finished good. Therefore, the Department ruled that the revised kits should fall outside the scope of the *Orders*.

DEPARTMENT'S POSITION

Pursuant to 19 CFR 351.225(k)(1), the Department has examined the language of the *Orders* and the description of the products contained in this scope request, as well as previous rulings made by the Department. We find that the scope and the Department's prior rulings are dispositive as to whether the products at issue are subject merchandise. Accordingly, for this determination, the Department finds it unnecessary to consider additional factors specified in 19 CFR 351.225(k)(2).

The scope of the *Orders* 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." The Department's analysis of whether 5 Diamond's mounting systems fit this exclusion, therefore, examined the two criteria in the scope that define finished goods kits: 1) 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 2) requires no further finishing or fabrication, such as cutting or punching, and is assembled "as is" into a finished product.

The Department finds that 5 Diamond's flag pole sets do not meet the first criterion. Although the flag pole sets require no further fabrication once imported, the flag pole sets do not constitute finished good kits because at the time of importation, similarly-sized unassembled flag pole sections are bundled together for shipment, meaning that all of the sections necessary to assemble a final finished product (*i.e.*, the flag pole) are not packaged together as a complete set in one package.²⁹ Although 5 Diamond imports a sufficient number of packages of unassembled sections to create a predetermined number of three- and/or four-section assembled flag pole sets together on the same Customs Entry Summary, after importation, the packages must be opened, and the parts needed to fully assemble an entire flag pole must be re-packaged before being sold to the end user.³⁰

²⁶ See the Department's memorandum entitled: "Final Scope Ruling on Solarmotion Controllable Sunshades," dated August 17, 2012, at 11.

²⁷ *Id.*

²⁸ *Id.* at 11-12.

²⁹ See 5 Diamond's Scope Request, at 3.

³⁰ See 5 Diamond's Scope Request, at 3 and 13.

In support of its position, 5 Diamond cites to the Department's previous scope rulings on Solarmotion controllable sunshades and window kits. The Department finds that Solarmotion Controllable Sunshades does not apply because the method by which 5 Diamond's flag pole sets are packaged and shipped is not analogous to the method by which the merchandise was packaged and shipped. While the Solarmotion controllable sunshades were shipped using multiple containers, those containers constituted one large kit, which required no re-arrangement or re-packaging of components before reaching its ultimate customer for assembly.³¹ In contrast, 5 Diamond ships multiple flag pole sets on the same CBP 7501 form, but does not package them as individual sets that allow its U.S. customer(s) to assemble, after importation, individual, finished flag poles directly from the 5 Diamond's shipment and import packaging. The Department also finds that the scope ruling on window kits does not apply. Although the merchandise at issue was shipped in one of more containers and listed on a single CBP 7501 form, the Department's determination that window kits constitute finished good kits was not based on the manner in which the merchandise was packaged at the time of importation. As such, the ruling is not relevant to the Department's analysis in the instant case.

The Department finds that 5 Diamond's flag pole sets meet the second criterion of its analysis and require no further finishing or fabrication, such as cutting or punching, after importation. As such, we do not agree with Petitioner's argument that the exclusion of a flag or banner from the shipment results in a finding that 5 Diamond's flag pole sets are included in the scope of the *Orders*. Specifically, because the flag pole sets are designed to incorporate readily interchangeable graphical materials that can change with users' needs, we find that the flag pole sets are analogous to banner stands and back wall kits and EZ fabric wall systems, which the Department previously determined did not need to include graphical displays upon entry to qualify for exclusion as finished goods kits. In particular, 5 Diamond has provided photographs and narrative that demonstrate that the flag pole sets are "designed to hold and display specially fitted flags as described by the ultimate customer and, thus, are designed to incorporate interchangeable graphic flags that can be changed with users' need."³² Therefore, as in the scope rulings on banner stands and EZ fabric wall systems, we find it unreasonable to require that 5 Diamond's flag pole sets be accompanied with advertising banners.³³

In support of its arguments, the Petitioner cites the Department's scope rulings on drapery rail kits and retractable awning mechanisms. We find that the scope ruling on drapery rail kits is not relevant to the instant case, as the scope ruling is the subject of litigation that has resulted in the Department issuing a redetermination, following a remand order of the U.S. Court of International Trade, which is currently under judicial review.³⁴ Further, we do not find that flag pole sets are analogous to retractable awnings, where the integral textile fabric coverings were not designed to be readily interchangeable.³⁵ Rather, we find that the flag pole sets are analogous to picture frames, banner stands, and EZ fabric wall systems, which are designed to accept interchangeable components, such as graphical displays. Therefore, like picture frames, banner stands, and EZ fabric wall systems, we find that the flag pole sets need not include an

³¹ See Solarmotion Controllable Sunshades, at 2-3.

³² See 5 Diamond's Scope Request, at 2-3 and Exhibit 2.

³³ See Banner Stands at 10; see also EZ Wall Systems, at 10.

³⁴ See *Rowley Company v. United States*, No. 12-00055 (CIT 2012).

³⁵ See Retractable Awning Mechanisms, at 9-10.

interchangeable flag in order to qualify for exclusion as “finished goods kits.” Finally, we note that, despite Petitioner’s assertion that 5 Diamond’s flag pole sets are telescopic, the record evidence demonstrates that 5 Diamond’s flagpoles are not telescopic, and therefore, Petitioner’s arguments based on this assertion are irrelevant.

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 flag pole sets addressed by the instant request are subject to the scope of the AD and CVD orders on aluminum extrusions from the PRC.

If the recommendation in this memorandum is 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 351.225(f)(4).

_____ Agree _____ Disagree

Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

Date