



A-570-967 / C-570-968
Scope Inquiry: Event Décor Parts
Public Document
E&C AD/CVD OIII: RS

December 2, 2013

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

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

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

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

SUBJECT: Antidumping and Countervailing Duty Orders on Aluminum
Extrusions from the People's Republic of China: Final Scope
Ruling on Traffic Brick Network, LLC's Event Décor Parts and
Kits

SUMMARY

On April 26, 2013, the Department of Commerce ("Department") received a scope ruling request from Traffic Brick Network, LLC ("Traffic Brick"),¹ to determine whether its aluminum event décor parts and kits ("event décor parts and kits") 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 that the event décor kits (specifically, Pipe Kits and Pipe and Drape Kits) are excluded from the

¹ See letter from Traffic Brick entitled "Aluminum Extrusions from the People's Republic of China Scope Ruling Request Regarding Event Décor Parts," dated April 26, 2013 ("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").

scope of the *Orders* on aluminum extrusions from the PRC, while the event décor parts (individual Gorilla Pipes) are included in the scope of the *Orders*.

BACKGROUND

On April 26, 2013, Traffic Brick requested that the Department determine whether its aluminum event décor parts and kits were outside the scope of the *Orders*.³ On April 29, 2013, the Department issued a supplemental questionnaire,⁴ to which Traffic Brick responded on May 13, 2013.⁵ The Department issued a second supplemental questionnaire on May 17, 2013.⁶ Traffic Brick responded on May 24, 2013.⁷ On May 28, 2013, Petitioner⁸ submitted comments regarding Traffic Brick's first supplemental questionnaire response.⁹ On June 28, 2013, Traffic Brick submitted a request for an extension of time to file its rebuttal to Petitioner's Comments.¹⁰ On June 28, 2013, the Department extended the deadline to release its final scope ruling until August 22, 2013.¹¹ Traffic Brick filed its rebuttal comments on August 22, 2013.¹² In order to have sufficient time to review Traffic Brick's August 22, 2013, rebuttal comments, pursuant to 19 CFR 351.302(b), the Department extended the deadline for the release of the final scope ruling by 45 days, to October 6, 2013. Due to the closure of the Federal Government from October 1 through October 16, 2013, the Department exercised its discretion to toll deadlines for the duration of the closure.¹³ Subsequently, the deadline for the final scope ruling was revised to December 7, 2013.¹⁴ Since December 7, 2013, falls on a Saturday, in accordance with the Department's practice,¹⁵ the deadline became Monday, December 9, 2013.

³ See Scope Request.

⁴ See Department's letter entitled "Aluminum Extrusions from the People's Republic of China – Scope Ruling Request Supplemental Questionnaire," dated April 29, 2013.

⁵ See Traffic Brick's letter entitled "Response to Supplemental Questionnaire Aluminum Extrusions from the People's Republic of China Scope Ruling Request Regarding Event Décor Components," dated May 13, 2013 ("SQR1").

⁶ See Department's letter entitled "Aluminum Extrusions from the People's Republic of China – Scope Ruling Request Supplemental Questionnaire," dated May 17, 2013.

⁷ See Traffic Brick's letter entitled "Response to Second Supplemental Questionnaire Aluminum Extrusions from the People's Republic of China Scope Ruling Request Regarding Event Décor Components," dated May 24, 2013 ("SQR2").

⁸ The Petitioner is the Aluminum Extrusions Fair Trade Committee.

⁹ See Petitioner's letter entitled "Aluminum Extrusions from the People's Republic of China: Comments on Traffic Brick's Supplemental Questionnaire Response," dated May 28, 2013 ("Petitioner's Comments").

¹⁰ See Traffic Brick's letter entitled "Event Décor Direct Extension of Time Request for Pending Scope Ruling Request," dated June 28, 2013.

¹¹ See Department's letter entitled "Aluminum Extrusions from the People's Republic of China: Extension of Time for Scope Ruling," dated June 28, 2013.

¹² See Traffic Brick's letter entitled "Response to Petitioner's Comments: Aluminum Extrusions from the People's Republic of China: Scope Ruling Request Regarding Event Décor Direct Display Systems," dated August 22, 2013 ("Traffic Brick's Rebuttal").

¹³ See Department's memorandum entitled "Deadlines Affected by the Shutdown of the Federal Government," dated October 18, 2013.

¹⁴ See Department's letter entitled "Aluminum Extrusions from the People's Republic of China: Extension of Time for Scope Ruling," dated October 22, 2013.

¹⁵ See *Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

SCOPE OF THE ORDERS

The merchandise covered by the *Orders* is aluminum extrusions which are shapes and forms, produced by an extrusion process, made from aluminum alloys having metallic elements corresponding to the alloy series designations published by The Aluminum Association commencing with the numbers 1, 3, and 6 (or proprietary equivalents or other certifying body equivalents). Specifically, the subject merchandise made from aluminum alloy with an Aluminum Association series designation commencing with the number 1 contains not less than 99 percent aluminum by weight. The subject merchandise made from aluminum alloy with an Aluminum Association series designation commencing with the number 3 contains manganese as the major alloying element, with manganese accounting for not more than 3.0 percent of total materials by weight. The subject merchandise is made from an aluminum alloy with an Aluminum Association series designation commencing with the number 6 contains magnesium and silicon as the major alloying elements, with magnesium accounting for at least 0.1 percent but not more than 2.0 percent of total materials by weight, and silicon accounting for at least 0.1 percent but not more than 3.0 percent of total materials by weight. The subject aluminum extrusions are properly identified by a four-digit alloy series without either a decimal point or leading letter. Illustrative examples from among the approximately 160 registered alloys that may characterize the subject merchandise are as follows: 1350, 3003, and 6060.

Aluminum extrusions are produced and imported in a wide variety of shapes and forms, including, but not limited to, hollow profiles, other solid profiles, pipes, tubes, bars, and rods. Aluminum extrusions that are drawn subsequent to extrusion (“drawn aluminum”) are also included in the scope.

Aluminum extrusions are produced and imported with a variety of finishes (both coatings and surface treatments), and types of fabrication. The types of coatings and treatments applied to subject aluminum extrusions include, but are not limited to, extrusions that are mill finished (*i.e.*, without any coating or further finishing), brushed, buffed, polished, anodized (including bright-dip anodized), liquid painted, or powder coated. Aluminum extrusions may also be fabricated, *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 millimeters (“mm”) or 62 mm, (2) outer diameter of 11.0 mm or 12.7 mm, and (3) wall thickness not exceeding 0.13 mm.

Also excluded from the scope of these *Orders* are finished heat sinks. Finished heat sinks are fabricated heat sinks made from aluminum extrusions the design and production of which are organized around meeting certain specified thermal performance requirements and which have been fully, albeit not necessarily individually, tested to comply with such requirements.

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States (“HTS”): 7610.10.00, 7610.90.00, 7615.10.30, 7615.10.71, 7615.10.91, 7615.19.10, 7615.19.30, 7615.19.50, 7615.19.70, 7615.19.90, 7615.20.00, 7616.99.10, 7616.99.50, 8479.89.98, 8479.90.94, 8513.90.20, 9403.10.00,

9403.20.00, 7604.21.00.00, 7604.29.10.00, 7604.29.30.10, 7604.29.30.50, 7604.29.50.30, 7604.29.50.60, 7608.20.00.30, 7608.20.00.90, 8302.10.30.00, 8302.10.60.30, 8302.10.60.60, 8302.10.60.90, 8302.20.00.00, 8302.30.30.10, 8302.30.30.60, 8302.41.30.00, 8302.41.60.15, 8302.41.60.45, 8302.41.60.50, 8302.41.60.80, 8302.42.30.10, 8302.42.30.15, 8302.42.30.65, 8302.49.60.35, 8302.49.60.45, 8302.49.60.55, 8302.49.60.85, 8302.50.00.00, 8302.60.90.00, 8305.10.00.50, 8306.30.00.00, 8418.99.80.05, 8418.99.80.50, 8418.99.80.60, 8419.90.10.00, 8422.90.06.40, 8479.90.85.00, 8486.90.00.00, 8487.90.00.80, 8503.00.95.20, 8516.90.50.00, 8516.90.80.50, 8708.80.65.90, 9401.90.50.81, 9403.90.10.40, 9403.90.10.50, 9403.90.10.85, 9403.90.25.40, 9403.90.25.80, 9403.90.40.05, 9403.90.40.10, 9403.90.40.60, 9403.90.50.05, 9403.90.50.10, 9403.90.50.80, 9403.90.60.05, 9403.90.60.10, 9403.90.60.80, 9403.90.70.05, 9403.90.70.10, 9403.90.70.80, 9403.90.80.10, 9403.90.80.15, 9403.90.80.20, 9403.90.80.30, 9403.90.80.41, 9403.90.80.51, 9403.90.80.61, 9506.51.40.00, 9506.51.60.00, 9506.59.40.40, 9506.70.20.90, 9506.91.00.10, 9506.91.00.20, 9506.91.00.30, 9506.99.05.10, 9506.99.05.20, 9506.99.05.30, 9506.99.15.00, 9506.99.20.00, 9506.99.25.80, 9506.99.28.00, 9506.99.55.00, 9506.99.60.80, 9507.30.20.00, 9507.30.40.00, 9507.30.60.00, 9507.90.60.00, and 9603.90.80.50.

The subject merchandise entered as parts of other aluminum products may be classifiable under the following additional Chapter 76 subheadings: 7610.10, 7610.90, 7615.19, 7615.20, and 7616.99 as well as under other 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 of these *Orders* is dispositive.¹⁶

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.¹⁷ Pursuant to the Department's regulations, the Department may also examine other information, including the description of the merchandise contained in the petition, the records from the investigations, and prior scope determinations made for the same product.¹⁸ 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.

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.

¹⁶ See *Orders*.

¹⁷ See *Walgreen Co. v. United States*, 620 F.3d 1350, 1357 (Fed. Cir. 2010).

¹⁸ See 19 CFR 351.225(k)(1).

DESCRIPTION OF MERCHANDISE SUBJECT TO THIS INQUIRY

At issue are décor parts and kits used to construct display booths and backdrops for wedding receptions, conventions and other events.¹⁹ The parts and kits are comprised primarily of “Gorilla Pipes,” aluminum extrusion upright and crossbar tubes of varying lengths and fabrications. Traffic Brick offers three models of Gorilla Pipes, which are sold in three different ways.²⁰ All Gorilla Pipe models utilize the same universal telescoping crossbars, which are fitted with two cast aluminum hook ends, and a chrome-coated steel button lock.²¹

The three Gorilla Pipe models are: (1) EZ Series, two inch diameter two- or three- piece telescoping upright pipes with a locking system composed of steel locking collars and steel ball bearings; (2) Pro Series, two inch diameter upright pipes, either: i) telescoping, with chrome-coated steel spring-loaded button-locks and locking clamps; or ii) non-telescoping; and (3) Valu Series, one and a half inch diameter upright pipes, either: i) telescoping, with chrome-coated steel spring-loaded button-locks and locking clamps; or ii) non-telescoping.²²

The Gorilla Pipe models are sold in three different ways: (1) individual Gorilla Pipes, which can be ordered in any quantity and combination and with additional parts, such as steel bases and decorative materials; (2) Pipe Kits, which contain a minimum of two upright Gorilla Pipes, one crossbar Gorilla Pipe, and two weighted steel bases, in order to form a minimum of one complete display structure; and (3) Pipe and Drape Kits, which are Pipe Kits with additional decorative materials of the customer’s choosing, such as drapes, garlands and lighting.²³

The Gorilla Pipes and other kit components are shipped to a Canadian distribution warehouse before entering the United States. In Canada, the components are organized into individual customer orders and shipped to the respective United States customers. When the packaging of components from the PRC does not align with individual customer orders, the Canadian facility re-packages the components to create the individual customer orders. Regardless of whether components are re-packaged, like components enter the United States packaged together in the same boxes; boxes of like components are always packaged together into the individual kits before entering the U.S. in the same shipment.²⁴ The products are imported into the U.S. for direct shipment to U.S. customers, and do not enter U.S. inventory.²⁵

ARGUMENTS FROM INTERESTED PARTIES

Traffic Brick

Traffic Brick asserts that, based on a 19 CFR 351.225(k)(1) analysis, its event décor parts and kits should be excluded from the scope of the *Orders* because they constitute excluded “finished

¹⁹ See Scope Request, at 1.

²⁰ See *id.*, at 2 – 3.

²¹ See SQR2, at Attachment 2.

²² See Scope Request, at 2; and SQR1, at 1 – 2; and SQR2, at 1 – 2 and Attachment 2.

²³ See Scope Request, at 2 – 3; and SQR1, at 2 – 3; and SQR2, at 2 - 3.

²⁴ See Traffic Brick’s Rebuttal, at 4; see also SQR2 at 3 - 4.

²⁵ See SQR1, at 3 – 5 and Attachment 3; and SQR2, at 3 – 4 and Attachment 3.

merchandise”²⁶ and excluded “finished goods kits.”²⁷ Specifically, Traffic Brick contends that whether its Gorilla Pipes are sold individually or in kits they contain, at the time of import, all the parts necessary to assemble a backdrop structure, and do not require further finishing or fabrication.²⁸

In support of its assertion, Traffic Brick draws an analogy between its event décor parts and kits, and two products which the Department has found to be excluded from the scope of the *Orders* in prior scope rulings – EZ Fabric Wall Systems, and banner stands and back wall kits. Like EZ Fabric Wall Systems and banner stands and back wall kits, Traffic Brick notes that its event décor parts and kits are also “designed to be used with the individual end user’s choice of interchangeable material that can be removed and altered at a date subsequent to importation.”²⁹

In response to Petitioner’s Comments, Traffic Brick argues that the issue Petitioner raises of Traffic Brick’s alleged transshipment is irrelevant to the scope ruling proceeding.³⁰ Furthermore, Traffic Brick states it does not transship the merchandise at issue, as it concedes the merchandise is of Chinese origin, and it has never attempted to alter the facts related to its supply and distribution chains.³¹

With regard to Petitioner’s allegation that the non-aluminum extrusion components in Traffic Brick’s Gorilla Pipes are mere fasteners, Traffic brick asserts that the non-aluminum extrusion locking mechanisms are value-added features included to target a specific customer base and provide a product of enhanced convenience.³² Traffic Brick notes the price point of Gorilla Pipe products -- \$28 - \$179 – and contends that if its products were, in fact, mere fabricated aluminum extrusion pipes as covered by the scope, customers would be able to find such aluminum extrusion pipes at significantly lower prices with other vendors.³³

Petitioner

Petitioner alleges that Traffic Brick is transshipping its products by assembling them and slightly altering them in Canada before importing them into the U.S. Specifically, Petitioner notes that Traffic Brick’s Gorilla Pipes and kits are “nothing more than fabricated extruded aluminum pipes and poles, which do not satisfy the finished goods exclusion within the scope” of the *Orders*.³⁴ Furthermore, Petitioner notes that Canada permits companies to establish customs bonded warehouses in Canada and avoid Canadian AD duties.³⁵ As such, Petitioner concludes that Traffic Brick is attempting to circumvent the *Orders* and avoid AD and CVD duties at the U.S. border by shipping its merchandise through Canada, where it can also avoid AD duties.³⁶

²⁶ See Scope Request, at 4 – 5 and 7.

²⁷ See Traffic Brick’s Rebuttal, at 2.

²⁸ See *id.*, see also Scope Request, at 7.

²⁹ See *id.*, at 5 – 6.

³⁰ See Traffic Brick’s Rebuttal, at 2.

³¹ See *id.*, at 2 – 5.

³² See *id.*, at 7 – 8.

³³ See *id.*, at 8.

³⁴ See Petitioner’s Comments, at 8.

³⁵ See *id.*, at 4.

³⁶ See *id.*, at 2 – 6.

In addition to the circumvention allegation, Petitioner argues that, based on a 19 CFR 351.225(k)(1) analysis, Traffic Brick's event décor parts and kits should be found in scope for several reasons. First, the event décor parts and kits are shipped out of the PRC with similar components packaged together; save for the re-packaging into individual kits that is done in Canada, which should be disregarded, the event décor parts and kits are not shipped and packaged together with all the necessary components for a final and complete finished product.³⁷ Second, the only non-aluminum extrusions contained in Traffic Brick's products are friction locks and button lock-stops, which appear to be fasteners that merely connect the telescoping Gorilla Pipes together. Petitioner notes that the scope language expressly includes finished goods kits which only contain fasteners as their non-aluminum extrusion components.³⁸ Lastly, Petitioner highlights the following scope language: "The scope includes aluminum extrusion components that are attached ... to form subassemblies.... The scope does not include the non-aluminum extrusion components of subassemblies or subject kits." Based on the quoted scope language, Petitioner concludes that Traffic Brick's event décor parts and kits are covered by the scope regardless of whether the Department finds the non-aluminum extrusion locking mechanisms to be fasteners.³⁹

RELEVANT SCOPE DETERMINATIONS⁴⁰

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, *i.e.*, an exhibition frame to which interchangeable fabric covers can be mounted.⁴¹ 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.⁴² 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

³⁷ See *id.*, at 6 – 8.

³⁸ See *id.*, at 8 – 10.

³⁹ See *id.*, at 10 – 11.

⁴⁰ See Department's memorandum entitled "Antidumping and Countervailing Duty Orders on Aluminum Extrusions from the People's Republic of China: Ladders and Brackets: Transmittal of Past Scope Determinations to the Record," dated November 29, 2012.

⁴¹ See Department's memorandum entitled "Final Scope Ruling on EZ Fabric Wall Systems," dated November 9, 2011 ("EZ Fabric Scope Ruling").

⁴² See Department's memorandum entitled "Final Scope Ruling on Banner Stands and Back Wall Kits," dated October 19, 2011 ("Banner Stands Scope Ruling").

specifications. As in the Banner Stands Scope Ruling, the Department found that it would be unreasonable to require that fabric covers with graphics to accompany the EZ fabric 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.⁴³

B. Shower Doors and Enclosures

In the underlying antidumping duty investigation on aluminum extrusions from the PRC, the Shower Door Manufacturers contended that it is normal industry practice to purchase glass panels and shower door kits from different suppliers.⁴⁴ Therefore, they averred, any kit purchased from the shower door manufacturer would not include glass panels but, nonetheless, would be considered in the industry to be a complete finished product. The Shower Door Manufacturers urged the Department to clarify the scope language to be explicit that a kit for shower door enclosures does not include the glass, so as to avoid confusion on the part of importers and CBP.

In turn, the Petitioner urged the Department to conclude that unassembled shower door frames without glass panels do not qualify for the "kit" scope exclusion. The Petitioner noted that aluminum frames without glass would only be considered a "complete finished product" from the perspective of the dealer or distributor, but not a final finished good according to the scope language. The Department agreed with the Petitioner that, at the time of importation, the Shower Door Manufacturers' unassembled shower door frames did not contain all of the necessary parts to create a final finished good, *i.e.*, a shower door.

DEPARTMENT'S POSITION

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 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 the additional factors specified in 19 CFR 351.225(k)(2).

While Traffic Brick argues in certain submissions that its event décor parts and kits are excluded from the scope of the *Orders* as "finished merchandise,"⁴⁵ the Department notes that, as stated in the scope, to meet the exclusion, "finished merchandise" must contain aluminum extrusion as parts that are "fully and permanently assembled and completed at the time of entry." In contrast, Traffic Brick's event décor parts and kits are not fully and permanently assembled into a display structure when imported into the United States. As Traffic Brick states in its scope ruling

⁴³ See *id.*, at 10.

⁴⁴ See Department's memorandum entitled "Preliminary Determinations: Comments on the Scope of the Investigations," dated October 27, 2010, at Comment 7 ("Investigation Prelim Scope Comments"), as upheld 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)

⁴⁵ See Scope Request, at 4 – 7; see also Traffic Brick's Rebuttal, at 1.

request, the merchandise at issue is designed to allow users to assemble and disassemble the display structures with ease.⁴⁶

In other submissions,⁴⁷ Traffic Brick argues that its event décor parts and kits are excluded from the scope of the *Orders* as 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.” Therefore, in order for Traffic Brick’s event décor parts and kits to be considered excluded finished goods kits, they must enter the United States containing all the components necessary to assemble at least one complete display structure. Traffic Brick states that it sells its Gorilla Pipes individually or in kits (*i.e.*, Pipe Kits and Pipe and Drape Kits).⁴⁸ It defines the Gorilla Pipes as upright and crossbar aluminum extrusion tubes of varying models, each with non-aluminum extrusion mechanisms to adjust the length of each Gorilla Pipe.⁴⁹ Traffic Brick describes its Pipe Kits and Pipe and Drape Kits as comprised of the individual Gorilla Pipes as well as the additional components to either assemble a complete display structure without the display materials, or a complete display structure with display materials of the customer’s choosing.⁵⁰

Based on Traffic Brick’s descriptions, we find the individual Gorilla Pipes to be included in the scope of the *Orders* because they do not contain all parts necessary to fully assemble a complete display structure. Specifically, the individual Gorilla Pipes, when sold alone, without the requisite weighted-steel bases to form a complete display structure, and/or in numbers that are not sufficient to form complete display structures, are covered by the scope because they are not imported with the necessary parts to keep the structure(s) erect and stable for the addition of the customer’s display materials and, therefore, do not contain all of the necessary parts to fully assemble a final finished good, the display structure. For example, a shipment containing one upright, one crossbar and one weighted-steel base will not be excluded from the scope because it is missing the second upright and second weighted-steel base needed to form a complete display structure. Similarly, a shipment containing ten uprights and ten crossbars will be covered by the scope. In other words, we find Traffic Brick’s individually-sold Gorilla Pipes akin to shower door frames and enclosures, which were determined to be covered by the scope language during the underlying investigation. Similar to shower door enclosures that do not contain the glass panels at the time of importation, Traffic Brick’s individual Gorilla Pipes do not enter the United States with all the components necessary to assemble a complete, finished product, as defined by the scope language.⁵¹

In contrast, we find Traffic Brick’s Pipe Kits and Pipe and Drape Kits to be excluded from the scope of the *Orders* because they are finished goods kits that contain at the time of importation all parts necessary to fully assemble a complete display structure.⁵² For example, a shipment with a Pipe Kit containing four uprights, four bases, and three crossbars will be excluded from

⁴⁶ See Scope Request, at 7.

⁴⁷ See Traffic Brick’s Rebuttal, at 2, 5 – 7.

⁴⁸ See *id.*, at 2; see also Traffic Brick’s Rebuttal, at 2.

⁴⁹ See *id.*, at 2.

⁵⁰ See *id.*, at 2 – 3.

⁵¹ See *id.*, at 2 – 3; see also Investigation Prelim Scope Comments, at 12.

⁵² See SQR2, at 3 – 4; see also Traffic Brick’s Rebuttal, at 5 – 7.

the scope of the *Orders* as a finished goods kit.⁵³ However, a shipment with four uprights, two bases and one crossbar will comprise one excluded Pipe Kit and two individual upright Gorilla Pipes that will be subject to the *Orders*.⁵⁴ The record indicates that customized orders may include Pipe Kits and/or Pipe and Drape Kits (which are excluded from the *Orders*) as well as individual Gorilla Pipes (which are subject to the *Orders*).⁵⁵ The record also indicates that excluded kits are often “packaged as kits” at the time of exportation from the PRC to Canada, where the components are organized into customized orders and distributed.⁵⁶ Based on this information, the Department finds that the excluded kits may be packaged along with in-scope individual Gorilla Pipes in the same shipment for sale to the same customer.⁵⁷

We also agree with Traffic Brick and find that the Pipe Kits and Pipe and Drape Kits are analogous to Moss’s EZ fabric wall systems. Like Moss’s EZ fabric wall systems, which do not enter the United States with interchangeable fabric coverings but are excluded from the *Orders*, we find that the drapes, lighting and other display materials used with Traffic Brick’s display structures are not necessary and integral to the finished product because the product is designed to allow the end user to utilize his/her own display materials and change them as needed.⁵⁸ As such, Traffic Brick’s Pipe Kits and Pipe and Drape Kits, sold with or without the interchangeable display materials, contain all parts necessary to assemble a complete display structure and are, thus, not covered by the scope of the *Orders*.

With regard to Petitioner’s allegation that Traffic Brick is attempting to circumvent the *Orders* by transshipping through Canada, we agree with Traffic Brick. Traffic Brick submitted multiple U.S. customs entry documents, which clearly list the PRC as the country of origin of the merchandise at issue.⁵⁹ Traffic Brick also submitted a packing list for a shipment of the merchandise at issue from its PRC supplier to its Canadian destination.⁶⁰ The submitted documents indicate that Traffic Brick is reporting its merchandise, which is produced in the PRC, as having a Chinese country of origin. Because the record does not contain evidence indicating that Traffic Brick is circumventing the *Orders*, falsifying documents, or misrepresenting the origin of the merchandise at issue, we find that Petitioner’s allegations with respect to transshipment are unsupported.

Furthermore, Petitioner asserts that save for Traffic Brick’s repacking of kit components in Canada, the Pipe Kits and Pipe and Drape Kits would not enter the United States with all components necessary to assemble a finished product. The Department does not consider this assertion relevant to its analysis, as it is not the Department’s practice to evaluate hypothetical situations, but rather sales transactions that have taken place.

⁵³ See, e.g., SQR2 at attachment 6 (sample order containing Pipe Kit); see also *id.*, at 3 and attachment 3 (discussing and depicting a Pipe and Drape Kit); see also Traffic Brick’s Rebuttal, at 6.

⁵⁴ See, e.g., SQR2 at attachment 7 (sample order with Pipe Kit and additional components).

⁵⁵ See, e.g., SQR2 at attachment 5, 6, and 7 (sample packing lists).

⁵⁶ See Traffic Brick’s Rebuttal, at 4.

⁵⁷ So, for example, in the purchase order provided in SQR2, at attachment 7, we understand that, at the time of importation, the listed kit is packaged separately from the individual Gorilla Pipes and display materials itemized in the purchase order.

⁵⁸ See *id.*, at 4 – 7; see also EZ Fabric Scope Ruling, at 7.

⁵⁹ See SQR2, at Attachments 5 – 7.

⁶⁰ See *id.*, at Attachment 4.

RECOMMENDATION

For the reasons discussed above, and in accordance with 19 CFR 351.225(d) and 19 CFR 351.225(k)(1), we recommend finding that the Pipe Kits and Pipe and Drape Kits are finished goods kits and thus not subject to the scope of the AD and CVD orders on aluminum extrusions from the PRC. We further recommend finding that the individual Gorilla Pipes are subject to the scope of the *Orders*.

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

12/3/13

Date