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Scope Inquiry: Dynasty Fence Kits

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

THROUGH: Melissa G. Skinner
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FROM: James Terpstra 
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Antidumping and Countervailing Duty Operations

RE: Aluminum Extrusions from the People's Republic of China

SUBJECT: Final Scope Ruling on Dynasty's Complete Aluminum Fence Kits

Summary

Dynasty Profiles, LLC ("Dynasty") requested that the Department of Commerce ("Department") issue a scope ruling that certain aluminum fence systems are not within the scope of the *Orders*.¹ For the reasons described below, we recommend determining that the products subject to this scope inquiry are within the scope of the *Orders*.

¹ 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").



Background

Dynasty submitted its request for a scope ruling on January 7, 2013.² We received comments from the Aluminum Extrusion Fair Trade Committee (“AEFTC” or “Petitioner”) on February 22, 2013.³ On February 26, 2013, we issued a supplemental questionnaire to Dynasty, to which it responded on March 15, 2013.⁴ On April 26, 2013, Petitioner submitted additional comments.⁵ On May 3, 2013, both Petitioner and Dynasty submitted additional comments.⁶ On May 21, 2013, Dynasty submitted comments.⁷ On June 6, 2013 we initiated a scope inquiry. On February 27, 2014, Petitioner submitted additional comments.⁸ On April 23, 2014, Dynasty submitted additional comments,⁹ to which Petitioner responded to May 7, 2014.¹⁰

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

² See Dynasty’s January 7, 2013 scope request.

³ See Petitioner’s February 22, 2013 Comments.

⁴ See Dynasty’s March 15, 2013 Submission.

⁵ See Petitioner’s April 26, 2014 Comments.

⁶ See Dynasty’s and Petitioner’s May 3, 2013 Comments.

⁷ See Dynasty’s May 21, 2013 Submission.

⁸ See Petitioner’s February 27, 2014 Comments.

⁹ See Dynasty’s April 23, 2014 Comments.

¹⁰ See Petitioner’s May 7, 2014 Comments.

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, wedged, mitered, chamfered, threaded, and spun. The subject merchandise includes aluminum extrusions that are finished (coated, painted, *etc.*), fabricated, or any combination thereof.

Subject aluminum extrusions may be described at the time of importation as parts for final finished products that are assembled after importation, including, but not limited to, window frames, door frames, solar panels, curtain walls, or furniture. Such parts that otherwise meet the definition of aluminum extrusions are included in the scope. The scope includes the aluminum extrusion components that are attached (*e.g.*, by welding or fasteners) to form subassemblies, *i.e.*, partially assembled merchandise unless imported as part of the finished goods 'kit' defined further below. The scope does not include the non-aluminum extrusion components of subassemblies or subject kits.

Subject extrusions may be identified with reference to their end use, such as fence posts, electrical conduits, door thresholds, carpet trim, or heat sinks (that do not meet the finished heat sink exclusionary language below). Such goods are subject merchandise if they otherwise meet the scope definition, regardless of whether they are ready for use at the time of importation.

The following aluminum extrusion products are excluded: aluminum extrusions made from aluminum alloy with an Aluminum Association series designations commencing with the number 2 and containing in excess of 1.5 percent copper by weight; aluminum extrusions made from aluminum alloy with an Aluminum Association series designation commencing with the number 5 and containing in excess of 1.0 percent magnesium by weight; and aluminum extrusions made from aluminum alloy with an Aluminum Association series designation commencing with the number 7 and containing in excess of 2.0 percent zinc by weight.

The scope also excludes finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry, such as finished windows with glass, doors with glass or vinyl, picture frames with glass pane and backing material, and solar panels. The scope also excludes finished goods containing aluminum extrusions that are entered unassembled in a "finished goods kit." A finished goods kit is understood to mean a packaged combination of parts that contains, at the time of importation, all of the necessary parts to fully assemble a final finished good and requires no further finishing or fabrication, such as cutting or punching, and is assembled 'as is' into a finished product. An imported product will not be considered a 'finished goods kit' and therefore excluded from the scope of the investigation merely by including fasteners such as screws, bolts, *etc.* in the packaging with an aluminum extrusion product.

The scope also excludes aluminum alloy sheet or plates produced by other than the extrusion process, such as aluminum products produced by a method of casting. Cast aluminum products are properly identified by four digits with a decimal point between the third and fourth digit. A letter may also precede the four digits. The following Aluminum Association designations are

representative of aluminum alloys for casting: 208.0, 295.0, 308.0, 355.0, C355.0, 356.0, A356.0, A357.0, 360.0, 366.0, 380.0, A380.0, 413.0, 443.0, 514.0, 518.1, and 712.0. The scope also excludes pure, unwrought aluminum in any form.

The scope also excludes collapsible tubular containers composed of metallic elements corresponding to alloy code 1080A as designated by the Aluminum Association where the tubular container (excluding the nozzle) meets each of the following dimensional characteristics: (1) length of 37 mm or 62 mm, (2) outer diameter of 11.0 mm or 12.7 mm, and (3) wall thickness not exceeding 0.13 mm.

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

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States (“HTS”): 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, 8708.29.50.60, 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, 9506.11.40.80, 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: 8418.99.80.50 and 8418.99.80.60. While HTS subheadings are provided for convenience and customs purposes, the written description of the scope of these *Orders* is dispositive.

There have been numerous scope rulings with regard to these *Orders*. For further information, see a listing of these at the webpage titled “Aluminum Extrusions from the People’s Republic of

China: Final Scope Rulings” at <http://enforcement.trade.gov/download/prc-ae/scope/prc-ae-scope-index.html>.

Legal Framework

When a request for a scope ruling is filed, the Department examines the scope language of the order and the description of the product contained in the scope ruling request.¹¹ 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.¹² 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.¹³

Conversely, where the descriptions of the merchandise are not dispositive, the Department will consider 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 proceeding is made on a case-by-case basis after consideration of all evidence before the Department.

Description of the Merchandise Subject to this Inquiry

Dynasty provided a detailed description of these products in its January 7, 2013 scope request:

1 - Pool Enclosures Fence System – This product is designed to enclose an area surrounding a pool. This product comes in 10 different sizes based on the exterior perimeter being fenced in. Each system has different combinations of the following parts: A) Panels, B) Gate Kits, C) Gate Post Kits, D) Line Post Kits, and E) Corner Post Kits. Each part is the same size, but different numbers of each part are used based on the size of the area being enclosed.

2 - Fence System for Single Family Home – This product is designed to enclose an area surrounding a house. This product comes in 16 different sizes based on the exterior perimeter being fenced in. Each system has different combinations of the following parts: A) Panels, B) Gate Kits, C) Gate Posts, D) Line Posts, and E) Corner Posts. Each part is the same size, but different numbers of each part are used based on the size of the area being enclosed.

3 - Fence System for Perimeter Wall – This product is designed to enclose an area surrounding a house. The fence panels themselves cannot stand alone, and can only be used with existing structures, which are not part of the imported fence kit. This product comes in 134 different sizes based on the exterior perimeter being fenced in. Each system has a different combination of the following parts: A) Panels, B) Gate Kits, C) Line Post Kits, and D) Gate Post Kits. Each

¹¹ See *Walgreen Co. v. United States*, 620 F.3d 1350, 1357 (Fed. Cir. 2010).

¹² 19 CFR 351.225(k)(1).

¹³ 19 CFR 351.225(d).

part is the same size, but different numbers of each part are used based on the size of the area being enclosed.

4 - Front Yard Fence System – This product is designed to form a boundary along the front of a house. This product comes in 17 different sizes based on the area covered. Each system has a different combination of the following part: A) Panels, B) Gate Kits, C) Line Posts, D) End Posts, and E) Gate Post Kits. Each part is the same size, but different numbers of each part are used based on the size of the area being enclosed.

5 - Corner Fence System – This product is designed to form a boundary around the corner of a property. This product comes in 29 different sizes based on the area covered. Each system has a different combination of the following parts: A) Panels, B) Line Post Kits, C) End Posts, and D) Corner Posts. Each part is the same size, but different numbers of each part are used based on the size of the area being enclosed.

6 - Entry Gate System – This product is an entry gate that can be free standing using its own posts, or can be linked to other existing structures, *i.e.*, other fence systems or existing brick balustrades. This product comes in 29 different sizes. Each system has the following parts: A) Gate Kits, and, B) Gate Posts. The size of these parts varies based on the size of the gate being constructed.

In addition to parts listed above, each system also contains screws, fasteners, hinges, and gravity latches.

Relevant Scope Rulings¹⁴

*AFMC Fence Sections*¹⁵

The Department determined that American Fence Manufacturing Company LLC's ("AFMC") bulk pickets and fence posts (with or without caps) were covered by the scope of the *Orders* because they met the description of the subject merchandise and did not meet the definition of finished goods kits, as defined by the plain language of the scope.¹⁶ The Department also determined that AFMC's aluminum fence panels (whether assembled or in kit form) and gates did not meet the finished goods kit exclusion because they did 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 or a fully finished aluminum fencing system in kit form.¹⁷ Specifically, in that ruling with respect to AFMC's panels and gates, we stated, “{i}ndeed, AFMC itself explained that its panels and gates are packaged and imported individually, each as a single

¹⁴ See the Department's memorandum entitled: "Antidumping ("AD") and Countervailing Duty ("CVD") Orders on Aluminum Extrusions from the People's Republic of China ("PRC"): Transmittal of Scope Determinations to the File," dated concurrently with this memorandum.

¹⁵ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations entitled, "Final Scope Ruling on American Fence Manufacturing Company LLC's Fence Sections, Post and Gates," dated December 2, 2011 ("AFMC Fence Sections").

¹⁶ *Id.* at 10-11.

¹⁷ *Id.* at 11-12.

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."¹⁸

*Ameristar Fences and Post Parts*¹⁹

The Department found that Ameristar Fence Products' ("Ameristar") individual fence parts, *i.e.*, posts, pickets and rails, whether packed in bulk or individually, were subject merchandise. Specifically, the Department determined that the individual fence parts do not fit within the finished goods kit exclusion because they did not contain at the time of importation, all of the necessary parts to fully assemble a final finished product. Here, the Department found that Ameristar's products were "individual posts, pickets, and rails {that} are imported separately from other fencing system components."²⁰

*Origin Point Brands ("OPB") Fence Posts, Panels, and Gates*²¹

The Department found that OPB's fence posts did not meet the description of an excluded finished goods kit because they did not contain all the parts necessary to fully assemble a final finished fence system, and are, thus, included within the scope of the *Orders*.

The Department also examined the record evidence concerning OPB's aluminum fence panels, (whether assembled or in kit form) and gates, and found that this merchandise did not meet the definition of a finished goods kit because at the time of importation, they did not contain all of the parts necessary to fully assemble a finished fence system. We noted that, "although OPB explained that its finished and assembled panels and gates are often shipped in the same shipment, OPB also stated that each product is shipped in separate boxes, and each separately itemized on the invoice. OPB explained that it's finished and assembled panels and gates can also be imported separately. Further, OPB's own descriptions of its products indicate that panels and gates are designed to be an input for a downstream product, a finished fence."²²

Additionally, we stated that, "the panels and gates...are designed to work with other components to create a larger structure, a finished fence, and cannot stand alone."²³ Thus, the Department determined that OPB's aluminum fence panels and gates did not fit the description of a fully-assembled finished aluminum fencing system or a fully finished fencing system in kit form.

¹⁸ *Id.* at 12.

¹⁹ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations entitled, "Final Scope Ruling on Ameristar Fence Products Aluminum Fence and Post Parts," dated December 13, 2011 ("Ameristar Fence and Post Parts").

²⁰ *Id.* at 6.

²¹ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, entitled, "Final Scope Ruling on Origin Point Brands LLC's Fence Panels, Posts and Gates," dated December 13, 2011 ("OPB Fence Posts, Panels, and Gates").

²² *Id.* at 11.

²³ *Id.*

*Ameristar Kitted Fences Final*²⁴

Ameristar described its “kitted fence” products as containing “punched posts, post caps, pickets, rails, grommets, retaining rods and screws. They are imported with ‘one panel and post kit’ in the same box; each box contains fifteen pickets, two or three rails, two or three rods, one post, and some bagged grommets and screws. The pickets, rails, post, and rods are extruded, punched, and coated prior to entry into the United States.”²⁵ The Department found, based on the Diversified Products criteria specified at 19 CFR 351.225(k)(2), that Ameristar’s “kitted fences” were within the scope of the *Orders* because: (1) Ameristar’s kitted fences had physical characteristics similar to products covered by the *Orders*; (2) the ultimate purchasers of Ameristar’s kitted fences shared the same expectations as ultimate purchasers of products covered by the *Orders*; (3) the ultimate use of Ameristar’s kitted fences was similar to the ultimate use of products covered by the *Orders*; (4) Ameristar’s kitted fences were sold through the same channels of trade as products covered by the *Orders*; and (5) Ameristar’s kitted fence is displayed and advertised similarly to products covered by the scope of the *Orders*.²⁶

The Department also determined that the merchandise in question did not meet the description of the “finished goods kit” because it did not contain all of the parts necessary to fully assemble a final finished fence system at the time of importation.²⁷ Specifically, we found that “at least one more post is required to install a fence panel, complete a fence, or enable a panel preventing a ‘pass-through’ to stand on its own, and additional components would be needed to install a complete fence.”²⁸ In addition, we found that the product was placed in inventory for sale to installers and distributors, and that it was predominantly installers, or Ameristar, itself, that would combine the panels to create a complete “fence system,” generally incorporating additional posts.²⁹

Arguments of the Parties

Dynasty

Dynasty argues that its “complete aluminum fence kits” (“fence kits”) are clearly finished goods kits, which are expressly excluded from the *Orders* because the fence kits contain at the time of importation: 1) all of the necessary parts to fully assemble a final finished good; and, 2) require no further finishing or fabrication, such as cutting or punching. Once assembled, as is, the fence kits are complete finished fence systems, which are finished goods. They are standalone products and are complete at the time of import and assembly. Dynasty asserts that these factors differentiate its fence kits from several prior fence-related scope rulings (*e.g.*, AFMC’s Fence

²⁴ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, entitled, “Final Scope Ruling on Ameristar Fence Products and Kitted Fences,” dated August 15, 2012 (“Ameristar Kitted Fences Final”).

²⁵ See Ameristar Kitted Fences Final at 6; *see also* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, entitled, “Preliminary Scope Ruling on Ameristar Fence Products and Kitted Fences,” (“Ameristar Kitted Fences Prelim”) dated June 1, 2012 at 3.

²⁶ See Ameristar Kitted Fences Final at 6; *see also* at 7-9.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* at 8.

Sections, OPB Fence Panels, and Kitted Fences). Dynasty argues that none of the products subject to these prior scope rulings were “Complete Fences,” and each was expressly subject to the *Orders* as mere fence parts. Dynasty contends that its fence products are different from those addressed in each of these scope rulings, in that as imported, Dynasty’s products assemble as is into a complete fence system. Indeed, Dynasty contends, the prior fence scope rulings support finding Dynasty’s fence systems out of scope since they suggest that “finished fence system{s}” are not subject to the *Orders*. Notably, the Department determined in the AFMC Fence Sections scope ruling that AFMC’s bulk pickets, fence posts and panels were within the scope of the *Orders* primarily because the products were not parts of kits containing *all* the parts necessary to fully assemble a finished fence system. The Department found it dispositive that AMFC’s bulk pickets and fence posts were imported as individual components that are combined into a kit subsequent to purchase in the United States. The Department arrived at the same conclusion in the other two prior fence scope rulings: *i.e.*, none of the companies’ fence parts were imported as complete fence kits. Thus, Dynasty asserts that its complete fence kits, as described above, are distinct from the prior scope rulings because its fence kits contain *all* the parts necessary to fully assemble a finished fence system “as is” at the time of importation, and require no further fabrication.³⁰

Dynasty rebuts Petitioner’s contention that the kits do not contain all the necessary components at importation by citing to the sample invoices and packing lists that demonstrate that all parts are shipped together at importation.³¹ Dynasty further rebuts Petitioner’s argument that fence systems are not normally sold individually. Dynasty points out that it sells through multiple channels of distribution, some of which require shipments of individual fence systems and/or groups of individual fence systems of the kind provided in their examples.³²

Additionally, Dynasty submitted import and commercial documentation about a September 12, 2011 shipment, where Dynasty claims to have imported a complete fence kit. Dynasty claimed that this rebutted Petitioner’s contention that it was not commercially reasonable to import complete fence systems.³³

Petitioner

Petitioner argues that Dynasty’s fence kits are nothing more than preassembled aluminum extruded bars accompanied by various fasteners. Without something more than fasteners and screws, Petitioner contends that the extruded aluminum fence parts do not satisfy the “finished goods kit” exclusion. In this manner, Dynasty’s aluminum fence kits are analogous to the products the Department explicitly found to be included within the scope of the *Orders* in the Geodesic Domes ruling.³⁴ Thus, Petitioner argues, the Department should find that Dynasty’s fence kits are merely fabricated aluminum extrusions thus covered by the scope of the *Orders*.

³⁰ See Dynasty January 7, 2013 scope request at 25.

³¹ See Dynasty May 21, 2013 submission at 3.

³² See *id.*

³³ See Dynasty’s April 23, 2014 Comments.

³⁴ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations entitled “Final Scope Ruling on J.A. Hancock, Inc.’s Geodesic Structures” dated July 17, 2012. (“Geodesic Domes”)

Petitioner points out that, from the information provided, Dynasty's fence kits do not meet the finished goods kit exclusion. While Dynasty's customers may receive a fence kit that has a gate, posts, and panels, the focus of the analysis for a finished good kit is whether, at the time of entry into the United States, the fence enters with all of the parts necessary to complete the fence. Based on the documentation provided, Petitioner contends that it appears that Dynasty merely orders fence parts from its PRC supplier, assembles the packaging in the United States, and ships the product to the end user. When these products enter the United States they are merely fabricated aluminum extrusion components for a larger downstream fence and thus are covered by the scope of the *Orders*.

Petitioner points out that Dynasty has failed to provide essential documentation regarding how it imports its fence kits. There are no Customs entry documents or bills of lading. Moreover, Dynasty provided no packing lists or invoices from its PRC supplier. Although Dynasty has generated a sample of packing lists and invoices that it intends to send to its customers, such information is insufficient to demonstrate that all the necessary components to assemble a complete final finished fence system are together at the time of importation.

Petitioner also argues that the normal practice in the fence industry is for fence wholesalers to maintain an inventory of finished fence systems; based on this, it would be unusual for fence wholesalers to order fence systems to be shipped one a time, as demonstrated by the examples provided by Dynasty. Thus, Petitioner argues, it is more likely that Dynasty would be shipping container loads of parts, which is the normal practice, rather than individual systems. In support of this contention, Petitioner provided an affidavit by the president of Ameristar Fence Products, a U.S. manufacturer and importer of fence panels, posts, and gates; this company was the requestor of the previous scope ruling described above. In the affidavit, the president of Ameristar Fence Products provided a detailed description of the distribution methods of the fence industry.³⁵ The president of Ameristar Fence Products indicated that fence wholesalers and installers normally maintain an inventory of separate and individual fence parts so as to be able to quickly supply customers with the parts needed to assemble an entire fence system. Without such inventories, fence wholesalers and installers would have to separately order parts for every project, with significant lead times, which can be at least six weeks. Fence wholesalers and installers cannot operate their businesses efficiently if they have to wait for fence parts to be produced and shipped on an individual order basis, much less wait until sufficient orders exist to fill a complete container load. Thus, the theoretical business model that Dynasty's scope request is based on is inconsistent with normal commercial practices.³⁶

Petitioner also provided a copy of a Dynasty advertisement, where Dynasty described itself as "Manufacturers of PVC and Aluminum ornamental products for the Fence Industry." Petitioner argues that the advertisement does not mention complete fence kits, but rather, lists the following Dynasty products: "Pre-Fabricated Fence Panels, Post & Picket Caps, and Aluminum Fences."³⁷

Petitioner also pointed out that Dynasty's claim to have imported complete fence systems in September 2011 is both false and irrelevant. Petitioner argues that Dynasty has not demonstrated

³⁵ See Petitioner's May 3, 2013 submission at Exhibit 1.

³⁶ See *id.*

³⁷ See Petitioner's February 22, 2013 Comments at Exhibits 2 and 3.

that the 2011 shipment was a complete fence system; in addition, the products covered by that shipment are different than those covered by this scope request.³⁸

Analysis

We have examined the description of the products in Dynasty's scope request and subsequent submissions, the scope language, and the Department's prior rulings on fence products (*e.g.*, AFMC Fence Sections, Ameristar Fences and Post Parts, OPB Fence Posts, Panels, and Gates, and Ameristar Kitted Fences Final). Pursuant to 19 CFR 351.225(k)(1), we find that the scope and the Department's prior rulings are dispositive as to whether Dynasty's fence products are subject merchandise.

In describing how its products will be sold and distributed, Dynasty stated “{a}ll sales will be through ‘unaffiliated fence wholesalers’. The fence wholesaler will receive orders from the end users for specific models and styles of Dynasty products. Then, the wholesaler accumulates several orders together and provides them to Dynasty. Once there are enough orders to fill a container load, Dynasty will ship all the orders together inside a container directly to the Fence Wholesaler.”³⁹ When asked to describe how these products are packaged at the time of importation, Dynasty indicated that this was a “new program” and provided a “Composite Exhibit” showing that all of the relevant components would be imported together. Dynasty also provided a sample packing list and sample invoice for the products it intends to start importing.⁴⁰

However, in its comments, Petitioner submitted information providing a detailed description of the typical business practices in the fencing industry. Specifically:

Generally, fence wholesalers and installers maintain an inventory of separate and individual fence parts, so as to be able to quickly supply customers with enough fence parts to assemble an entire fence or to supplement an existing order. In the absence of such inventories, fence wholesalers and installers would have to separately order parts for every project, with significant lead times. Based on Ameristar's experience with ordering fence parts from abroad, the lead time for a shipment of aluminum fence parts from China to be delivered to the United States is approximately six weeks.

Wholesalers and installers cannot operate their businesses efficiently if they must wait for fence parts to be produced and shipped on an individual-order basis, much less wait until they receive a sufficient amount of additional orders to fill a container load. This is because consumers placing fence orders with a fence wholesaler and installers are not willing to wait a minimum of six weeks to have the product delivered to the United States for installation.

A fence wholesaler simply cannot operate or conduct business efficiently in the manner described by Dynasty's importation and distribution process. The

³⁸ See Petitioner's May 7, 2014 Comments at 3 – 6.

³⁹ See Dynasty's March 15, 2013 submission at 8.

⁴⁰ See *id.* at Ex. 1.

commercial realities facing fence wholesalers and distributors in the industry suggest that Dynasty will be merely importing separate panels, posts, and gates.⁴¹

We find that this description of the fence industry is consistent with the business practices in the fence industry that we have examined in prior scope rulings. In each of these rulings the Department found that at the time of importation, the merchandise did not comprise a packaged combination of parts to fully assemble a complete fence system. Rather, each company imported a collection of fence parts, which were to be combined after importation with other parts to make a complete fence system. For example, OPB's aluminum fence panels, panel kits, and gates were individual parts that composed only a single element of a complete fence system.⁴² OPB's own description of its products shows that they were designed to be an input for a downstream product, a finished fence.⁴³ OPB also stated that it imported gates, panels and posts, along with the hardware needed to combine the merchandise into fences and of designs and lengths determined by residential and commercial customers.⁴⁴ Similarly, AFMC's fence sections are components "brought in for inventory and not a job already sold," and are generally sold to distributors, large companies, or retail stores.⁴⁵ AFMC stated that it imports bulk pickets and fence posts as individual components, and upon sale, repackages these products to fill a specific order.⁴⁶ AFMC also 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.⁴⁷ As a result, at the time of sale, the aluminum fence components are repackaged to meet the quantities ordered by the customer.⁴⁸ In addition, Ameristar's kitted fences are placed in inventory for sale to installers and distributors, and the "record evidence shows that it is predominantly installers, or Ameristar, itself, that will combine the panels to create a complete 'fence system,' generally incorporating additional posts."⁴⁹

As indicated by information on the record and prior scope rulings described above, generally fence wholesalers and installers maintain an inventory of separate and individual fence parts so as to be able to customize a complete fence based on the customer's specifications. Additionally, the prior scope rulings on fence products indicate that such merchandise is usually imported as individual parts of fences that themselves did not comprise a complete fence system. While Dynasty has asserted that its business model will be based on the accumulation of individual orders for complete fence systems from final customers, we find that the typical commercial practice in the fence industry is for fence wholesalers and installers to deliver complete fence systems to end users by combining individual fence parts that are imported from the PRC and placed into inventory pending customer orders.

Therefore, we find that information provided by Dynasty (*i.e.*, example invoices and packing lists of merchandise that might be shipped in the future) is not substantial enough to overcome

⁴¹ See Petitioner's May 3, 2013 submission at Exhibit 1.

⁴² See OPB Fence Posts, Panels, and Gates at 11.

⁴³ *Id.*

⁴⁴ See OPB Fence Posts, Panels, and Gates at 8.

⁴⁵ See AFMC Fence Sections at 8.

⁴⁶ *Id.* at 10.

⁴⁷ *Id.* at 12.

⁴⁸ *Id.* at 9.

⁴⁹ See Ameristar Kitted Fences Prelim at 8, unchanged in Ameristar Kitted Fences Final.

the weight of the evidence regarding the clear business pattern of the fence industry that the Department has seen in prior scope rulings. The record evidence of this inquiry, as well as those of previous rulings demonstrate that the logistical and economic considerations of shipping aluminum extrusion fence components to the United States causes similar parts to be combined in bulk, and then be reprocessed or repackaged the United States.⁵⁰ Indeed, we note that Dynasty's current business practice, as identified in the May 2012 advertisement provided by Petitioner, shows that Dynasty currently operates using the same standard business practices in the fence industry, *i.e.*, it imports/provides fence parts for the fence industry.⁵¹ Thus, given that there is a shipment pattern that has been dispositive in previous scope rulings, the theoretical example provided by Dynasty is insufficient to overcome the clear industry pattern described above and to demonstrate that its fencing products are not covered by the scope of the *Orders*.

Finally, we find that Dynasty's submission of import documentation from a 2011 shipment does not demonstrate that Dynasty is importing kits for complete fence systems, as it contends. While Dynasty states that only the labeling and packaging of the products need to be modified to be considered a complete fence system, we find that the invoice provided merely lists the fence parts included in the shipment; there is no clear evidence that the shipment contained all of the parts necessary to fully assemble a complete fence system, or that the parts comprised a specified number of complete fence systems. In addition, the items listed on that invoice do not appear to correlate with the products described in this scope request.⁵² Thus, we find that this information does not support Dynasty's arguments.

⁵⁰ See, e.g. AFMC Fence Sections at 12.

⁵¹ See Petitioner's May 3, 2013 submission at Exhibit 1.

⁵² See Dynasty's April 23, 2014, submission at Exhibit A.

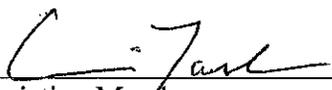
Recommendation: For the reasons discussed above, and in accordance with 19 CFR 351.225(f)(5) and (k)(1), we recommend finding that Dynasty's fence products, as described in its request and subsequent submissions, are subject to the scope of the *Orders*.

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

7/22/14

Date