



A-570-967

C-570-968

Scope: Advertising Flag Pole Sets

Public Version

E&C AD/CVD OIII: ECB

February 5, 2015

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

THROUGH: Melissa G. Skinner *mg*
Director, Office III
Antidumping and Countervailing Duty Operations

FROM: Erin Begnal *ecb*
Program Manager, Office III
Antidumping and Countervailing Duty Operations

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

SUBJECT: Scope Ruling on 5 Diamond Promotions, Inc.'s Individually
Packaged Advertising Flag Pole Kits

SUMMARY

On June 27, 2013, 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 kits ("flag pole kits") are subject to the antidumping ("AD") and countervailing duty ("CVD") orders on aluminum extrusions from the People's Republic of China ("PRC").² We have analyzed the record evidence and determined that the flag pole kits are included in the scope of the AD and CVD orders on aluminum extrusions from the PRC.

¹ See 5 Diamond's letter, "Aluminum Extrusions from the People's Republic of China (A-570-967, C-570-968): 5 Diamond Promotions Scope Request: Individually Packaged Advertising Flag Pole Kits," dated June 27, 2013 ("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").



BACKGROUND

On June 27, 2013, 5 Diamond requested that the Department determine whether its aluminum flag pole kits were outside the scope of the *Orders*.³ On August 26, 2013, Petitioner filed comments regarding 5 Diamond's Scope Request.⁴ 5 Diamond submitted rebuttal comments on October 17, 2013.⁵

The Department has extended the deadline for the final scope ruling several times. The Department's most recent extension set the revised deadline to February 5, 2015.⁶ Meanwhile, on January 30, 2014, Petitioner met with the Department to discuss pending scope ruling requests and other aluminum extrusion proceedings.⁷ On March 6, 2014, Petitioner submitted additional comments.⁸

SCOPE OF THE ORDERS

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

³ See 5 Diamond's Scope Request.

⁴ See Petitioner's letter, "Aluminum Extrusions from the People's Republic of China: Comments in Opposition to the Scope Ruling Request Regarding Aluminum Advertising Flag Pole Sets," dated August 23, 2013 ("Petitioner's Comments").

⁵ See 5 Diamond's letter, "5 Diamond Scope Inquiry Comments: Aluminum Extrusions from the People's Republic of China (A-570-967): 5 Diamond Promotions Scope Request: Advertising Flag Pole Kits," dated October 17, 2013 ("5 Diamond's Rebuttal Comments").

⁶ See Memorandum entitled "Deadlines Affected by the Shutdown of the Federal Government," dated October 18, 2013; see also Department's letters, "Scope Inquiry: Antidumping Duty Orders on Aluminum Extrusions from People's Republic of China," dated October 25, 2013, December 2, 2013, January 29, 2014, February 27, 2014, April 30, 2014, and June 17, 2014; see also Department's letter, "Aluminum Extrusions from the People's Republic of China: Extension of Time for Scope Ruling," dated September 2, 2014, November 3, 2014, and December 19, 2014.

⁷ See Memorandum entitled "Ex Parte Meeting with Petitioner," dated January 30, 2014.

⁸ See Petitioner's letter, "Aluminum Extrusions from the People's Republic of China: Additional Comments in Response to 5 Diamond's Scope Ruling Request," dated March 6, 2014.

leading letter. Illustrative examples from among the approximately 160 registered alloys that may characterize the subject merchandise are as follows: 1350, 3003, and 6060.

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

Aluminum extrusions are produced and imported with a variety of finishes (both coatings and surface treatments), and types of fabrication. The types of coatings and treatments applied to subject aluminum extrusions include, but are not limited to, extrusions that are mill finished (*i.e.*, without any coating or further finishing), brushed, buffed, polished, anodized (including bright-dip anodized), liquid painted, or powder coated. Aluminum extrusions may also be fabricated, *i.e.*, prepared for assembly. Such operations would include, but are not limited to, extrusions that are cut-to-length, machined, drilled, punched, notched, bent, stretched, knurled, swedged, mitered, chamfered, threaded, and spun. The subject merchandise includes aluminum extrusions that are finished (coated, painted, *etc.*), fabricated, or any combination thereof.

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

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

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

The scope also excludes finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry, such as finished windows with glass, doors with glass or vinyl, picture frames with glass pane and backing material, and solar panels. The scope also excludes finished goods containing aluminum extrusions that are entered unassembled in a “finished goods kit.” A finished goods kit is understood to mean a packaged combination of parts that contains, at the time of importation, all of the necessary parts

to fully assemble a final finished good and requires no further finishing or fabrication, such as cutting or punching, and is assembled 'as is' into a finished product. An imported product will not be considered a 'finished goods kit' and therefore excluded from the scope of the investigation merely by including fasteners such as screws, bolts, *etc.* in the packaging with an aluminum extrusion product.

The scope also excludes aluminum alloy sheet or plates produced by other than the extrusion process, such as aluminum products produced by a method of casting. Cast aluminum products are properly identified by four digits with a decimal point between the third and fourth digit. A letter may also precede the four digits. The following Aluminum Association designations are representative of aluminum alloys for casting: 208.0, 295.0, 308.0, 355.0, C355.0, 356.0, A356.0, A357.0, 360.0, 366.0, 380.0, A380.0, 413.0, 443.0, 514.0, 518.1, and 712.0. The scope also excludes pure, unwrought aluminum in any form.

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

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

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States ("HTS"): 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: 8418.99.8050 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.⁹

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.¹⁰ 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.¹¹ 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.¹²

Conversely, where the descriptions of the merchandise in the sources described in 19 CFR 351.225(k)(1) are not dispositive, the Department will consider the five additional 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 MERCHANDISE SUBJECT TO THIS REQUEST

At issue are flag pole kits designed to hold advertising flags.¹³ These kits fall into two types – three-section kits and four-section kits. Both types come with one of three different top sections (full curved, half curved, and straight), each of which includes a dimple that allows the sections to interlock and a plastic end cap that prevents advertising flags that are attached to the flag pole set from ripping. In total, 5 Diamond's request includes six different possible kits, each with either three or four sections, and with one of three possible top sections.¹⁴ In addition, 5 Diamond's kits 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.¹⁵ The kits are sold without flags. Each kit includes a plastic cap for the

⁹ *See Orders*.

¹⁰ *Walgreen Co. v. United States*, 620 F.3d 1350, 1357 (Fed. Cir. 2010).

¹¹ 19 CFR 351.225(k)(1).

¹² 19 CFR 351.225(d).

¹³ *See* 5 Diamond's Scope Request, at 2 – 5.

¹⁴ *Id.*, at 3.

¹⁵ *Id.*, at 4.

top section that is used to prevent the attached flag from ripping.¹⁶ Users are expected to attach their own advertising flags based on personal preferences and changing needs.¹⁷

Before entering the United States, each flag pole set is individually packed in heavy-duty plastic and labeled according to which of the six possible kits it comprises. No re-sorting or re-bundling is needed after importation and before delivery to the end customer.¹⁸

ARGUMENTS FROM INTERESTED PARTIES

5 Diamond's Scope Request and Rebuttal Comments

5 Diamond argues that its flag pole kits are excluded from the *Orders* as finished goods kits.¹⁹ It notes that in a prior scope ruling on 5 Diamond's flag pole kits, the Department indicated that the flag pole kits were covered by the scope of the *Orders* because, while they did not require further finishing or fabrication, each set did not contain all parts needed to fully assemble a finished flag pole.²⁰ 5 Diamond further notes that the Department based its determination on the fact that the flag pole kits entered the United States with similarly-sized flag pole components packaged together, and required sorting and re-packaging into individual kits after importation.²¹

In the instant case, 5 Diamond emphasizes that the flag pole kits analyzed are identical to those analyzed in the prior scope ruling; the only difference is that 5 Diamond addressed the Department's prior scope ruling by modifying its packaging so that flag pole kits now enter the United States as individual kits, with all parts necessary to assemble a finished flag pole.²² 5 Diamond cites the Department's scope rulings on Banner Stands,²³ EZ Wall Systems,²⁴ and Drapery Rail Kits (Redetermination).²⁵ 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.²⁶

¹⁶ *Id.*, at 3-4.

¹⁷ *Id.*, at 2-3.

¹⁸ *Id.*, at 5.

¹⁹ See 5 Diamond's Scope Request, at 2; see also 5 Diamond's Rebuttal Comments, at 2.

²⁰ See 5 Diamond's Scope Request, at 13 – 19; see also 5 Diamond's Rebuttal Comments, at 2 – 4.

²¹ *Id.*

²² See 5 Diamond's Scope Request, at 18 – 19; see also 5 Diamond's Rebuttal Comments, at 4.

²³ See Memorandum entitled "Final Scope Ruling on Banner Stands and Back Wall Kits," dated October 19, 2011 ("Banner Stands").

²⁴ See Memorandum entitled "Final Scope Ruling on EZ Fabric Wall Systems," dated November 9, 2011 ("EZ Wall Systems").

²⁵ See "Final Results of Redetermination Pursuant to Court Remand: *Rowley Company v. United States* (Court No. 12-0005) (Order)," dated February 27, 2013 (sustained in *Rowley Company v. United States*, Ct. No. 12-00055, CM/ECF No. 25 (CIT May 23, 2013) (Court Order affirming Remand Redetermination)) ("Drapery Rail Kits (Redetermination)").

²⁶ See 5 Diamond's Scope Request, at 16 – 17; see also 5 Diamond's Rebuttal Comments, at 4.

Petitioner's Comments

Petitioner argues that 5 Diamond's flag pole kits are not finished goods kits, and therefore included within the scope, for three primary reasons. First, similar to Kitchen Appliance Door Handles,²⁷ Geodesic Domes,²⁸ and other cases,²⁹ these products consist purely of six series hollow fabricated extruded aluminum and a fastener (*i.e.*, a plastic end cap used to fasten a flag).

Second, 5 Diamond did not prove that the kits actually enter the United States as individually-packaged finished goods because: 1) the photographs submitted show flimsy packaging that likely would not be used for delivery to an end customer; and 2) no sales or entry documentation was provided.

Third, as the kits are imported without an accompanying flag, they lack an essential element to the central function of an advertising flag pole. 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 Mechanisms³⁰ and Drapery Rail Kits³¹ 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.

RELEVANT SCOPE DETERMINATIONS³²

Geodesic Domes³³

J.A. Hancock Co., Inc. ("J.A. Hancock"), an importer of geodesic structure kits (a set of aluminum poles and assembly hardware that can be assembled into landscaping structures or climbing structures for children), argued that its kits contained all parts necessary to fully assemble a final geodesic structure. J.A. Hancock further noted that the components in its kits

²⁷ See Memorandum entitled "Aluminum Extrusions from the People's Republic of China: Final Scope Ruling on Meridian Kitchen Appliance Door Handles," dated June 21, 2013 ("Kitchen Appliance Door Handles").

²⁸ See Memorandum entitled "Antidumping ('AD') and Countervailing Duty ('CVD') Orders on Aluminum Extrusions from the People's Republic of China ('PRC'): Final Scope Ruling on J.A. Hancock Co., Inc.'s Geodesic Structures," dated July 17, 2012 ("Geodesic Domes").

²⁹ See Memorandum entitled "Aluminum Extrusions from the People's Republic of China: Final Scope Ruling on Refrigerator/Freezer Trim Kits," dated December 17, 2012; *see also* memorandum entitled "Aluminum Extrusions from the People's Republic of China: Final Scope Ruling on Cutting and Marking Edges," dated November 13, 2012.

³⁰ See Memorandum entitled "Final Scope Ruling on Certain Retractable Awning Mechanisms," dated October 14, 2011 ("Retractable Awning Mechanisms").

³¹ See Memorandum entitled "Final Scope Ruling on Drapery Rail Kits," dated February 6, 2012 ("Drapery Rail Kits").

³² See Memorandum entitled "Antidumping ('AD') and Countervailing Duty ('CVD') Orders on Aluminum Extrusions from the People's Republic of China ('PRC'): Aluminum Flag Pole Kits from the PRC: Transmittal of Scope Determinations to the File," dated concurrently with this memorandum.

³³ See Geodesic Domes.

required no further fabrication or additional parts. The Department found that the geodesic structure kits meet the initial requirements for exclusion as a “finished goods kit,” as they are a packaged combination of parts containing all necessary components to fully assemble a final finished good.³⁴ However, the Department noted an exception to the “finished goods kits” exclusion, which states that a product will not be considered a “finished goods kit” simply by including fasteners in the packaging.³⁵ As J.A. Hancock’s kits only consist of extruded aluminum poles and fasteners, the Department found that the exception to the “finished goods kit” exclusion applies. Therefore, the Department found J.A. Hancock’s kits to not be excluded finished goods kits, and hence covered by the scope of the *Orders*.

Whirlpool Kitchen Door Handles With Caps³⁶

Whirlpool Corporation (“Whirlpool”) imports aluminum extrusion kitchen door handles with plastic end caps that are attached by metal screws to the handle and the surface of the kitchen appliance door. Whirlpool argued that the handles are “finished merchandise” outside the scope of the *Orders* because they are comparable to “finished windows with glass” and “doors with glass or vinyl,” the illustrative examples in the scope language for excluded “finished merchandise.” Whirlpool stated that, likewise, its handles consist of extruded aluminum with other non-aluminum parts permanently assembled and ready for use as is upon importation. Whirlpool further argued that its handles are also consistent with the exclusion for finished goods kits because the plastic end caps are not akin to fasteners; similarly, Whirlpool argued that its handles could also be excluded from the scope as sub-assemblies, like side-mounted valve controls.

The Department found the door handles with caps to be within the scope of the *Orders* because they consist entirely of aluminum extrusions and non-aluminum extrusion components that function as fasteners.

DEPARTMENT’S POSITION

Pursuant to 19 CFR 351.225(k)(1), the Department 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). For the reasons set forth below, we find that 5 Diamond’s individually packaged flag pole kits do not meet the exclusion criteria for a “finished goods kit” and are covered by the scope of the *Orders*.

³⁴ *Id.* at 7.

³⁵ *Id.*

³⁶ See Memorandum entitled “Final Scope Ruling on Kitchen Appliance Door Handles With Plastic End Caps and Kitchen Appliance Door Handles Without Plastic End Caps,” dated August 4, 2014 (“Whirlpool Kitchen Door Handles With Caps”).

The scope of the *Orders* covers aluminum extrusions “which are shapes and forms, produced by an extrusions process, made from aluminum alloys having metallic elements corresponding to the alloy series designation ... commencing with the numbers 1, 3, and 6.” Further, subject aluminum extrusions are produced and imported “with a variety of finishes (both coatings and surface treatments), and types of fabrication.” The aluminum extrusion components of 5 Diamond’s individually packaged flag pole kits satisfy the description above because they are produced from 6 series aluminum extrusions, in various shapes and forms, and with an alkali matte anodized silver finish.

Additionally, 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 scope language further stipulates that an imported product will not be considered for exclusion from the scope of the *Orders* as a “finished goods kit” merely by including fasteners such as screws, bolts, *etc.*, in the packaging with an aluminum extrusion product.

5 Diamond describes its flag pole kits as extruded aluminum poles with a plastic end cap inserted into the top to prevent the attached flag from ripping. The language of the scope states, “[a]n 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.” In determining if the finished goods kit exclusion applies in this case, the first test the Department conducts, in accordance with the Geodesic Domes Kits scope ruling,³⁷ is whether the product at issue contains, upon importation, aluminum extrusions and non-extruded components other than fasteners. We agree with Petitioner that 5 Diamond’s aluminum flag pole kits do not qualify for the finished goods kit exclusion because each kit consists of in-scope aluminum extrusions with a plastic fastener.³⁸ The record indicates that the end user displays the flag by [].³⁹ The record also indicates that the plastic end cap is the only non-extruded aluminum component in 5 Diamond’s individually packaged flag pole kits, and that this cap prevents the flag from ripping.⁴⁰ We find that in the products at issue the plastic end cap is a fastener that keeps the flag in place by preventing the [] of the flag from ripping, which could allow the flag to slide from its intended position on the flag pole.⁴¹ Therefore, because 5 Diamond’s flag pole kits do not contain any non-aluminum extruded components beyond fasteners, and the language of the scope expressly states that an imported product will not be considered for exclusion from the scope of the *Orders* as a “finished goods kit” merely by including fasteners such as screws, bolts, *etc.*, in the packaging with an aluminum extrusion product, we find that the products do not meet the

³⁷ See Geodesic Domes at 7, where the Department found that since the products at issue consisted solely of extruded aluminum and fasteners, the exception to the finished goods kit exclusion provision applied. Accordingly, the Department found that the products at issue did not meet the exclusion criteria for a finished goods kit.

³⁸ See Petitioner’s Comments, at 10.

³⁹ See 5 Diamond’s request, Exhibit 2 at 1, 8, 15.

⁴⁰ See 5 Diamond’s Scope Request, at 3-4, Exhibit 2 at 10-11.

⁴¹ See 5 Diamond’s request at 3 and Exhibit 2.

finished goods kit exclusion and thus are covered by the scope of the *Orders*. This is further supported by the Department's ruling on Geodesic Domes, where the Department found that since the products at issue consisted solely of extruded aluminum and fasteners, the exception to the finished goods kit exclusion provision applied. Accordingly, the Department found that the products at issue did not meet the exclusion criteria for a finished goods kit.⁴²

In a recent aluminum extrusion scope proceeding, the Department found plastic end caps are analogous to washers, and that these components would not render the products at issue eligible for the finished goods kit exclusion.⁴³ In the scope proceeding regarding Whirlpool Kitchen Door Handles With Caps, we determined the plastic ends caps to be analogous to washers, a type of fastener.⁴⁴ While Whirlpool argued that the plastic end caps in its door handles "do not operate to 'join together separate parts' of the handle,"⁴⁵ we found that the end caps "are involved in attaching the handle to the refrigerator door in a manner that allows the handle to fit tightly to the refrigerator door and relieves friction between the door and the handle."⁴⁶ Therefore, we found the plastic end caps constitute fasteners. Similarly, we find the plastic end caps in 5 Diamond's flag poles, are fasteners which serve to hold the flag fast to the flag pole in its intended position to prevent the attached flag from ripping.

Petitioner argues that consistent with Drapery Rail Kits and Retractable Awning Mechanisms, the Department should find 5 Diamond's flag pole kits to be covered by the scope of the *Orders* because the products lack an integral component necessary to assemble a complete and finished good. In contrast, 5 Diamond cites to EZ Wall Systems, Banner Stands and Drapery Rail Kits (Redetermination), where the Department found the products at issue to be outside the scope of the *Orders*, as it would be unreasonable to require these products to be imported with their interchangeable/replaceable attachments. Since we find that 5 Diamond's individually packaged flag pole kits do not meet the criteria for the finished goods kit exclusion (*i.e.*, 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), we need not make a determination whether 5 Diamond's flag pole kits are imported with all of the necessary parts to fully assemble a final finished good.

⁴² See Geodesic Domes at 7.

⁴³ See Whirlpool Kitchen Door Handles With Caps.

⁴⁴ See Whirlpool Kitchen Door Handles With Caps, at 17 - 18.

⁴⁵ *Id.*, at 11.


⁴⁶ *Id.*, at 17 - 18.

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 5 Diamond aluminum flag pole kits 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(d).

Agree Disagree



Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

2/5/15
Date