



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

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Scope Ruling: IRT Scissor Strut
Public Document
AD/CVD Operations, OVI: JD

November 18, 2015

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

THROUGH: Scot Fullerton
Director
Antidumping and Countervailing Duty Operations, Office VI

FROM: John K. Drury *JKD*
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SUBJECT: Antidumping and Countervailing Duty Orders on Aluminum
Extrusions from the People's Republic of China: Final Scope
Ruling on Immediate Response Technologies' Scissor Struts

SUMMARY

Based on three concurrent scope ruling requests from Immediate Response Technologies (IRT)¹ to determine whether its IRT Scissor Strut, IRT Scissor Strut – 29” Tube with Holes, and IRT Scissor Strut - 29” Tube without Holes (collectively, IRT scissor struts) are subject to the antidumping duty (AD) and countervailing duty (CVD) orders on aluminum extrusions from the People's Republic of China (PRC),² the Department of Commerce (the Department) determines that the IRT scissor struts at issue are included in the scope of the *Orders*.

¹ See Letters from Immediate Response Technologies to the Secretary of Commerce, “Scope Ruling: IRT Scissor Strut” (Scope Request I), “Scope Ruling: IRT Scissor Strut - 29” Tube Without Holes” (Scope Request II) and “Scope Ruling: IRT Scissor Strut – 29” Tube With Holes” (Scope Request III), dated May 7, 2015.

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 May 7, 2015, IRT requested that the Department determine whether its IRT scissor struts are outside the scope of the *Orders*. On May 26, 2015, the Aluminum Extrusions Fair Trade Committee (Petitioner) filed comments regarding IRT's request. On June 19, 2015, the Department extended the deadline for a determination in this scope request by 45 days, until August 6, 2015. On August 4, 2015, the Department issued a supplemental questionnaire to IRT. On August 5, 2015, the Department placed a memorandum to the file clarifying that the 45-day deadline under 19 CFR 351.225(c)(2) starts when the Department receives a properly filed request pursuant to 19 CFR 351.225(c)(1), and that the scope requests submitted by IRT were deficient.³ IRT submitted its response to the supplemental questionnaire on August 18, 2015.⁴ On August 21, 2015, Petitioner filed comments on IRT's supplemental questionnaire response. Petitioner stated in part that the Department should reject the filing as IRT did not serve a copy of the response to Petitioner. Petitioner further argued that the Department should reject IRT's scope request because Petitioner contends that the request is "an impermissible request for an advisory opinion from the Department." On September 23, 2015, the Department requested that IRT serve paper copies of its supplemental questionnaire response to all parties on the service list.

On October 5, 2015, IRT submitted a letter indicating that IRT served interested parties with paper copies of its August 18, 2015, supplemental questionnaire response; thereby rendering its requests to meet the requirements of 19 CFR 351.225(c)(1). Accordingly, pursuant to 19 CFR 351.225(c)(2), the deadline for action on IRT's applications is November 19, 2015.

SCOPE OF THE ORDERS

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

³ See Memorandum to the File, "Scope Request concerning the Antidumping and Countervailing Duty Orders of Aluminum Extrusions from the People's Republic of China: Clarification of Deadline," dated August 5, 2015.

⁴ See Letter from Immediate Response Technologies to the Secretary of Commerce, "Scope Ruling: Scissor Strut (Cases A-570-967 and C-570-968) - Response to Supplemental Questionnaire," dated August 18, 2015 (Supplemental Response) at Attachment 1.

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 brightdip 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 (HTSUS): 7609.00.00, 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, 8302.42.30.1 0, 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, 8414.59.60.90, 8415.90.80.45, 8418.99.80.05, 8418.99.80.50, 8418.99.80.60, 8419.90.10.00, 8422.90.06.40, 8473.30.20.00, 8473.30.51.00, 8479.90.85.00, 8486.90.00.00, 8487.90.00.80, 8503.00.95.20, 8508.70.00.00, 8515.90.20.00, 8516.90.50.00, 8516.90.80.50, 8517.70.00.00, 8529.90.73.00, 8529.90.97.60, 8536.90.80.85, 8538.10.00.00, 8543.90.88.80, 8708.29.50.60, 8708.80.65.90, 8803.30.00.60, 9013.90.50.00, 9013.90.90.00, 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, 9403.90.80.41, 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 HTSUS chapters. In addition, fin evaporator coils may be classifiable under HTSUS numbers: 8418.99.80.50 and 8418.99.80.60. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the *Orders* is dispositive.

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.⁵ 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.⁶ 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.⁷

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 THESE SCOPE REQUESTS

IRT describes its three scissor strut products as follows:

IRT Scissor Strut - 29" Tube without Holes: IRT describes this merchandise as “an Aluminum 6 extrusion (specifically 6061 and/or 6063)” and one of three forms of finished product for which IRT is requesting a scope ruling.⁸ IRT additionally describes the product as “{o}ne finished product, 29" Tube Without Holes, which is comprised of one 29" tube fully cut, finished and coated/anodized.”⁹ IRT further states that “The 29" Tube Without Holes is a finished product used in all of our shelter systems. This product will be fully fabricated and finished in China with no additional materials or labor used to fabricate or finish this specific product following importation into the U.S., including no additional ‘cutting’ or ‘punching.’ Holes are simply drilled into this finished product and then combined with other tubes to form the shelter frame.”¹⁰

⁵ See *Walgreen Co. v. United States*, 620 F.3d 1350, 1357 (Fed. Cir. 2010).

⁶ See 19 CFR 351.225(k)(1).

⁷ See 19 CFR 351.225(d).

⁸ See Scope Ruling Request II at 1.

⁹ *Id.* at 2.

¹⁰ *Id.*

IRT Scissor Strut – 29” Tube With Holes: IRT describes this merchandise as “an Aluminum 6 extrusion (specifically 6061 and/or 6063)” and one of three forms of finished product for which IRT is requesting a scope ruling.¹¹ IRT additionally describes the product as “{o}ne finished product, 29” Tube Without Holes, which is comprised of one 29” tube fully cut, finished and coated/anodized with pre-drilled holes.”¹² IRT further states that “The 29” Tube Without Holes is a finished product used in all of our shelter systems. This product will be fully fabricated and finished in China with no additional materials or labor used to fabricate or finish this specific product following importation into the U.S., including no additional ‘cutting’ or ‘punching.’”¹³

IRT Scissor Strut: IRT describes this merchandise as “an Aluminum 6 extrusion (specifically 6061 and/or 6063)” and one of three forms of finished product for which IRT is requesting a scope ruling.¹⁴ IRT additionally describes the product as “{o}ne finished product, ‘Scissor Strut,’ which is comprised of two 29” tubes and a central fastener, fully assembled.”¹⁵ IRT further states that “The Scissor Strut is a finished product used in all of our shelter systems. This product will be fully fabricated and finished in China with no additional materials or labor used to fabricate or finish this specific product following importation into the U.S., including no additional ‘cutting’ or ‘punching.’”¹⁶ The fastener for this product consists of a plastic spacer between the two poles and a connecting rivet through both poles and the spacer. The plastic spacers may have different coloration.¹⁷

IRT states that its articles are currently classified under item 7608.20.0090 of the HTSUS.¹⁸

RELEVANT SCOPE DETERMINATIONS¹⁹

A. All Points Cleats Scope Ruling²⁰

In the All Points Cleats Scope Ruling, the products at issue were Cleats, which are mounting devices used to mount items such as pictures and mirrors to a wall, and consist of a single piece of extruded aluminum cut to various lengths with holes drilled every two inches along the product’s length.²¹ The Department found that the cleats were not excluded by the finished merchandise exclusion, in part, because they did not contain parts other than aluminum

¹¹ See Scope Ruling Request III at 1.

¹² *Id.* at 2.

¹³ *Id.*

¹⁴ See Scope Ruling Request I at 1.

¹⁵ *Id.*

¹⁶ *Id.* at 3.

¹⁷ *Id.* at 12.

¹⁸ See Scope Ruling Request I at 3, Scope Ruling Request II at 2, and Scope Ruling Request III at 2.

¹⁹ For information regarding the scope rulings referenced in this section, see the Memorandum to the File entitled, “Prior Scope Rulings Relevant to this Proceeding,” dated concurrently with this memorandum.

²⁰ See Memorandum from Paul Stolz, Senior International Trade Analyst, through Erin Begnal Program Manager, Office III, and Melissa G. Skinner, Director, Office III, to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, Re: “Final Scope Ruling on All Points Industries Inc.’s Cleats,” April 2, 2015 (All Points Cleats Scope Ruling).

²¹ See All Points Cleats Scope Ruling at 5.

extrusions. The Department noted that the finished merchandise exclusion specifies that excluded merchandise contain aluminum extrusions “as parts.” Thus, to give effect to this “as parts” language, the Department found that to qualify for the finished merchandise exclusion the product must contain both aluminum extrusions and some non-extruded aluminum component.²²

B. Delphi Core Heater Tubes Scope Ruling²³

In the Delphi Core Heater Tubes Scope Ruling, the products at issue were “core tubes” for automotive heating and cooling systems, comprised of extruded hollow, tubular parts fabricated from aluminum extrusions that are bent and end-formed based on customer designs.²⁴ In other words, the products in question were comprised entirely of extruded aluminum. The Department determined that a product cannot meet the requirements of the exclusions for “finished merchandise” or “finished goods kits” when such merchandise is comprised solely of extruded aluminum parts and fasteners. The Department thus found that the products at issue did not meet the Department’s first test for determining whether a good constitutes a finished good or finished good kit, *i.e.*, whether the product contains parts other than aluminum extrusions and mere fasteners.²⁵

C. Solar Panels Scope Ruling²⁶

At issue in this ruling were solar panels mounting systems comprised of extruded aluminum rails as well as extruded and cast aluminum kedges, galvanized steel posts, and various steel bolts, clamps, and brackets.²⁷ In the ruling, the Department found that the products at issue contained, at the time of importation, all of the parts necessary to fully assemble a finished good without further fabrication. The Department also found that these products could be assembled “as is” into finished products for mounting solar panels. The Department further found that, like picture frames and banner stands and back wall kits, the mounting systems were designed to work with removable/replaceable components, and need not include these removable/replaceable components to constitute a finished good. Thus, the Department concluded that the products at issue were not subject to the *Orders* because they met the criteria for exclusion from the *Orders* as finished goods kits.²⁸

²² See All Points Cleats Scope Ruling at 12.

²³ See Memorandum from Eric B. Greynolds, International Trade Analyst, Office III, Melissa G. Skinner, Director, Office III, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, Regarding: “Final Scope Ruling on Delphi Core Heater Tubes,” October 14, 2014 (Delphi Core Heater Tubes Scope Ruling).

²⁴ See Delphi Core Heater Tubes Scope Ruling at 4-5.

²⁵ *Id.* at 10-11.

²⁶ See memorandum from Brooke Kennedy to Christian Marsh, “Final Scope Ruling on Clenergy (Xiamen) Technology’s Solar Panel Mounting Systems,” dated October 31, 2012 (Solar Panels Scope Ruling).

²⁷ See Solar Panels Scope Ruling at 6-7.

²⁸ *Id.* at 8-9.

D. Components for Auto Cooling and Heating Systems²⁹ and Valeo Remand Redetermination³⁰

In the Valeo Scope Ruling, the Department determined that Valeo's T-Series and M-Series parts for heating/cooling systems were covered by the scope of the *Orders* because the products were aluminum extrusions that had undergone further fabrication and such products are specifically covered by the *Orders*. Subsequently, Valeo, Inc. filed a complaint with the CIT alleging that the Department did not address or apply the "subassemblies test" that was established in a determination concerning Side Mount Valve Controls to the merchandise at issue in Valeo's initial scope request.³¹ In response, the Department requested and was granted a voluntary remand to consider whether components for cooling and heating systems are covered by the *Orders* based upon the Department's new subassembly test.³² In the *Valeo Remand Redetermination*, the Department revised its earlier decision and found the parts outside the scope of the *Orders*. In reaching its decision, the Department noted that the subassemblies test is consistent with the scope of the *Orders* because subassemblies that enter the United States as "finished goods" or "finished goods kits" and are later integrated into a larger structure or system are analogous to products that are explicitly excluded from the scope, such as "windows with glass, or doors with glass or vinyl," each of which includes all of the parts necessary to assemble a complete window or door, but is necessarily integrated into a larger structure.³³

E. Cutting and Marking Edges Scope Ruling³⁴

In the Cutting and Marking Edges Scope Ruling, the products at issue were finished cutting and marking straight edges suitable for immediate use in drafting and cutting applications without further manufacturing, assembly, mounting, or combination with any other component, apparatus, or fixture.³⁵ Because the products at issue consisted of a single hollow extrusion made of aluminum alloy, the Department found that the merchandise was covered by the inclusive language of the scope, was not covered by the exclusion for "finished merchandise," nor any other exclusion, and was therefore covered.³⁶

²⁹ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Final Scope Ruling on Valeo's Automotive Heating and Cooling Systems," dated October 31, 2012 (Valeo Scope Ruling).

³⁰ See *Valeo, Inc. v. United States*, Court No. 12-381, dated February 13, 2013 (*Valeo*) and the Final Results of Redetermination Pursuant to Court Remand, Aluminum Extrusions from the People's Republic of China, *Valeo, Inc., Valeo Engine Cooling Inc., and Valeo Climate Control Corp. v. United States*, Court No. 12-00381, dated May 13, 2013 (*Valeo Remand Redetermination*). The *Valeo Remand Redetermination* was affirmed by the CIT. See *Valeo, Inc. et al v. United States*, Court No. 12-00381.

³¹ See *Valeo Remand Redetermination* at 1-2.

³² *Id.* at 2.

³³ *Id.* at 8-9.

³⁴ See Memorandum from John Conniff, International Trade Analyst, through Eric B. Greynolds, Program Manager, Office III, and Melissa G. Skinner, Director, Office III, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, Regarding: "Aluminum Extrusions from the People's Republic of China: Final Scope Ruling on Cutting and Marking Edges," dated November 13, 2012 (Cutting and Marking Edges Scope Ruling).

³⁵ See Cutting and Marking Edges Scope Ruling at 2.

³⁶ *Id.* at 10-11. The scope ruling was later appealed to the CIT and subsequently dismissed. See Order of Dismissal in *Plasticoid Manufacturing Inc. v. United States*, Ct. No. 12-00407 (CIT March 25, 2015).

F. TSS Wind Sign Frames Scope Ruling³⁷

In the TSS Wind Sign Frames Scope Ruling, the products at issue were “wind sign” frames which contained extruded aluminum frames, plastic parts, and steel springs, which are designed to display “customizable materials or work (retail advertisements),” which open and shut to allow removal and replacement of display signs, and which are designed to withstand wind.³⁸ The Department found that products met the exclusion criteria for “finished merchandise.” As with the All Points Cleats Scope Ruling, as well as the Unger Pole Handles Scope Ruling, the Department noted that the finished merchandise exclusion specifies that excluded merchandise contain aluminum extrusions “as parts.” Thus, to give effect to this “as parts” language, the Department found that to qualify for the finished merchandise exclusion the product must contain both aluminum extrusions and some non-extruded aluminum component. Accordingly, because the products at issue contained non-extruded aluminum parts (which are more than mere fasteners), in addition to extruded aluminum components, the Department found that TSS’s wind signs were merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry, and thus, excluded as finished merchandise.³⁹

G. Unger Pole Handles Scope Ruling⁴⁰

In the Unger Pole Handles Scope Ruling, the products at issue were several pole handles designed to work with a variety of cleaning/tool heads that are attached to the poles. In addition to aluminum tubes of various lengths and diameters, each pole handle incorporates a polypropylene hand grip, a polypropylene tool and one of several accessory attachment heads that accept a variety of tools and attachments.⁴¹ The Department found that the products at issue met the exclusion criteria for “finished goods.” As with the All Points Cleats Scope Ruling, the Department noted that the “finished merchandise” exclusion specifies that excluded merchandise contain aluminum extrusions “as parts.” Thus, to give effect to this “as parts” language, the Department found that to qualify for the finished merchandise exclusion the product must contain both aluminum extrusions and some non-extruded aluminum component. Accordingly, noting that the products at issue contained non-extruded aluminum parts (which are more than mere fasteners), in addition to extruded aluminum components, the Department found that Unger’s pole handles were merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry, and thus, excluded as finished merchandise.⁴²

³⁷ See Memorandum from Mark Flessner, Analyst, through Melissa G. Skinner, Director, Office III, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, Regarding: “Antidumping and Countervailing Duty Orders on Aluminum Extrusions from the People’s Republic of China: Final Scope Ruling on TSS, Inc.’s Wind Sign Frames,” October 14, 2014 (TSS Wind Sign Frames Scope Ruling).

³⁸ See TSS Wind Sign Frames Scope Ruling at 5-7.

³⁹ *Id.* at 11-12.

⁴⁰ See Memorandum from James Terpstra, Senior International Trade Analyst, through Erin Begnal Program Manager, Office III, and Melissa G. Skinner, Director, Office III, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, Re: “Final Scope Ruling on Unger Enterprises Inc.’s Pole Handles,” April 22, 2015 (Unger Pole Handles Scope Ruling).

⁴¹ See Unger Pole Handles Scope Ruling at 5-6.

⁴² *Id.* at 12-13.

H. IKEA Cabinet/Drawer Handles Scope Ruling⁴³

In the IKEA Cabinet/Drawer Handle Scope Ruling, the products at issue were cabinet/drawer handles used to facilitate the opening and closing of a door or drawer. Each handle consisted of one series 6 aluminum extrusion. In addition, the handles came in packages which included a steel screw and nut to hold the handle in place.⁴⁴ The Department found that the merchandise at issue was of subject aluminum extrusions and did not contain non-aluminum extrusions beyond fasteners. Thus, the handles did not meet the exclusion criteria for finished merchandise. The Department stated that the scope language regarding fasteners applies to both the finished merchandise and finished goods kit exclusion. Specifically, the Department noted that the “finished merchandise” exclusion specifies that excluded merchandise contain aluminum extrusions “as parts.” Thus, to give effect to this “as parts” language, the Department found that to qualify for the finished merchandise exclusion the product must contain both aluminum extrusions and some non-extruded aluminum component beyond mere fasteners. As IKEA’s cabinet/drawer handles did not contain some other non-extruded aluminum product, the handles were covered by the scope of the order.⁴⁵

ARGUMENTS FROM INTERESTED PARTIES

IRT’s Comments

IRT states that it is a “{m}anufacturer of various tent and shelter systems and components” and that all of the merchandise for which IRT requested a scope ruling is used in the shelter systems.⁴⁶ IRT included a catalog titled “Misc Parts List for Shelters” in Scope Request I, which is specifically for scissor struts. The catalog contains a list of various pieces made of various materials. The catalog contains an entry for scissor struts, but not for the individual 29” tubes.

In addition to the comments listed above, IRT contends that, in all three requests, IRT considers the merchandise to be a “finished good” as defined by the scope of the *Orders*.⁴⁷ In its supplemental questionnaire response, IRT requests scope exclusions for all three of the named products “because IRT scissor struts are considered finished merchandise or can be part of a finished goods kit.”⁴⁸ IRT further explained that “{a}n IRT scissor strut can be purchased as separate finished merchandise and used in an existing shelter system. This situation would occur when a customer has already purchased a shelter system and is looking for a replacement scissor strut.”⁴⁹ Additionally, IRT further stated that “{a}n IRT scissor strut would be considered part of a finished goods kit because IRT may purchase multiple finished scissor struts as part of a larger finished goods kit. This kit will contain scissor struts that will be assembled together to

⁴³ See Memorandum from Eve Wang, Senior International Trade Analyst, through Erin Begnal Program Manager, Office III, and Melissa G. Skinner, Director, Office III, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, Re: “Final Scope Ruling on IKEA’s Cabinet/Drawer Handles,” April 27, 2015 (IKEA Cabinet/Drawer Handles Scope Ruling).

⁴⁴ See IKEA Cabinet/Drawer Handles Scope Ruling at 26.

⁴⁵ *Id.* at 12-13.

⁴⁶ See Scope Request I at 1, Scope Request II at 1, and Scope Request III at 1.

⁴⁷ See Scope Request I at 3, Scope Request II at 2, and Scope Request III at 2.

⁴⁸ *Id.*

⁴⁹ *Id.*

make a finished good.”⁵⁰ IRT further states, in all three requests, that each item “{c}learly qualifies under the “finished goods” exclusion as that term set forth in the *Orders*, as complete and finished when imported and undergoes no further processing after importation.”⁵¹

Petitioner’s Comments

In its May 26, 2015, letter, Petitioner asserts that IRT’s products are “{n}othing more than in-scope extruded aluminum products and do not qualify for exclusion” from the *Orders*.”⁵² Petitioner further states that all three of the products covered by IRT’s requests “{a}re precisely the type of extruded products envisioned since the issuance of the *Orders* to be subject merchandise.”⁵³ Petitioner states that the language of the scope of the *Orders* covers aluminum alloys corresponding to the alloy series numbers 1, 3, and 6, and are finished, fabricated, or a combination thereof, and that examples of such covered merchandise include fabricated extrusions that are cut-to-length, machined, drilled, and punched.⁵⁴ IRT’s products, according to Petitioner, are to be produced to aluminum alloys 6061 or 6063, which is covered by the scope.⁵⁵ Petitioner further states that the cutting, drilling, and coating/anodizing processes described by IRT are all within the language of the scope of the *Orders*, and that IRT’s products thus match the physical description of the merchandise that is covered by the scope.⁵⁶

Petitioner further argues that none of the merchandise in IRT’s requests qualifies as finished merchandise.⁵⁷ Petitioner argues that, in order to qualify as “finished merchandise” and be excluded from the scope, merchandise must be crafted of both extruded aluminum and non-extruded aluminum beyond simple fasteners and must be fully and permanently assembled and complete at the time of entry into the United States.⁵⁸ Petitioner argues that IRT’s products are neither fully assembled and completed nor do they contain non-aluminum products beyond fasteners. Thus they cannot be considered to be “finished merchandise.”⁵⁹ Finally, Petitioner notes that all of the products in question either require further fabrication and/or must be combined with other tubes and components to create other products (such as an emergency shelter).⁶⁰ Therefore, Petitioner states that none of the items should be excluded from the scope of the *Orders*. In addition, Petitioner argues that the Department may not issue a scope ruling to the extent that the products in question are not yet being produced and imported. Petitioner points in particular to IRT’s “hypothetical” descriptions of its products as evidence that its request is premature.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² See Letter from the Aluminum Extrusions Fair Trade Committee to the Secretary of Commerce, dated May 26, 2015 (Petitioner Comments) at 2.

⁵³ *Id.*

⁵⁴ *Id.* at 2-3.

⁵⁵ *Id.* at 3.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.* at 3-4.

⁵⁹ *Id.* at 4.

⁶⁰ *Id.* at 4-5.

DEPARTMENT'S POSITION

The Department examined the language of the *Orders* and the description of the product contained in IRT's scope ruling requests, as well as previous rulings made by the Department. We find that the description of the product, the scope language, and prior rulings are, together, dispositive as to whether the product at issue is subject merchandise, in accordance with 19 CFR 351.225(k)(1). Accordingly, for this determination, the Department finds it unnecessary to consider the additional factors specified in 19 CFR 351.225(k)(2). For the reasons set forth below, we find that the IRT scissor struts are covered by the scope of the *Orders*.

With respect to Petitioner's argument that the Department may not issue a scope ruling to the extent that the products in question are not yet being produced and imported, we note that all of IRT's requests include photographs of the merchandise in question.⁶¹ Thus, information on the record indicates that the merchandise in question is being produced and is available for importation. Therefore, we believe that it is appropriate to issue a scope ruling on these products.

As noted above, the scope of the *Orders* explicitly 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," and "finished goods kits" which are defined 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 a finished product." The scope also provides that 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. This scope language describes excluded finished merchandise as "containing aluminum extrusions as parts" Thus, the excluded "finished merchandise" must contain aluminum extrusions "as parts" plus an additional non-extruded aluminum component. Otherwise, this specific language (*i.e.*, "as parts") would be read out of the scope, resulting in the different condition "containing aluminum extrusions that are fully and permanently assembled and completed at the time of entry." Thus, to give effect to this "as parts" language, we find that to qualify for the finished merchandise exclusion the product must contain aluminum extrusions as parts, and must include some non-extruded aluminum component. The Department frequently refers to this as the "finished goods" exclusion.

We also draw guidance from the "finished goods kit" exclusionary language in the scope. The scope language states: "{ t } he 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*"⁶² Thus, we find that the difference between "finished goods" and "finished goods kits," as described in the scope, is that the former is assembled upon entry while the latter is unassembled upon entry. While the scope goes on to say that "{ a } n imported product will not be considered a 'finished goods kit' and

⁶¹ See Scope Request I at 2, Scope Request II at 4, and Scope Request III at 4.

⁶² See the *Orders* (emphasis added).

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 dispute the notion that an unassembled product in kit-form that consists solely of extruded aluminum, save for fasteners, would fall within the scope of the *Orders* while the identical product, entering the United States as an assembled good, would fall outside the scope of the *Orders*. Accordingly, to read the scope to apply in a consistent manner to a given product—whether the product enters assembled as a finished good or unassembled as a finished good kit—we are considering the fasteners language when considering whether a product constitutes a finished good that is excluded from the order.

The description of IRT’s products demonstrates that they are composed either of aluminum extrusions alone⁶³ or aluminum extrusions attached by a fastener.⁶⁴ Accordingly, because we find that IRT’s products do not contain non-extruded aluminum material beyond fasteners, the products do not qualify under the exclusion for finished merchandise.

Our past scope rulings are consistent with this approach. IRT’s merchandise in Scope Request II and Scope Request III, as previously noted, consist solely of aluminum tubes (one with holes, one without).⁶⁵ In the Cutting and Marking Edges Scope Ruling, the Department found merchandise which consisted merely of a single hollow aluminum extrusion was not excluded under the “finished merchandise” exclusion and were covered by the scope.⁶⁶ Likewise, in the Delphi Core Heater Tubes Scope Ruling, and the All Points Cleats Scope Ruling, the Department also found that products which consist only of aluminum extrusions are not finished merchandise under this scope language.⁶⁷

With respect to IRT’s merchandise in Scope Request I, we find that the IKEA Cabinet/Drawer Handles Scope Ruling is consistent with our findings here. As noted, the IKEA Cabinet/Drawer Handles Scope Ruling found that merchandise comprised only of subject aluminum extrusions which “do not contain non-aluminum extrusions beyond fasteners” did not qualify for the finished merchandise exclusion and is thus covered by the scope of the *Orders*.⁶⁸

In addition, we do not believe that IRT’s definition of a “finished good” as any good that is complete and finished when imported is correct. In particular, IRT’s definition overlooks other requirements, such as that a product contain aluminum extrusions “as parts” as well as non-extruded aluminum material beyond fasteners. Indeed, IRT’s interpretation of the scope of the *Orders* would allow the “finished merchandise” exception to swallow the rule embodied by the scope. If a single cohesive piece of extruded aluminum, or a collection or combination of such pieces which has been merely fabricated in the manner described in the scope of the orders⁶⁹ is

⁶³ See Scope Request II at 1-2 and Scope Request III at 1-2.

⁶⁴ See Scope Request I at 1-3.

⁶⁵ See Scope Request II at 1-2 and Scope Request III at 1-2.

⁶⁶ See Cutting and Marking Straight Edge Scope Ruling at 10-11.

⁶⁷ See Delphi Core Heater Tubes Scope Ruling at 10-11 and All Points Cleats Scope Ruling at 12.

⁶⁸ See IKEA Cabinet/Drawer Handle Scope Ruling at 13.

⁶⁹ See the *Orders* and the “Scope of the Orders” section, above: “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

rendered out of scope merely because it is “finished” in the sense that such fabrication has been completed, or in some more general sense, then every further fabricated aluminum extrusion article is also excluded. We do not find that interpretation to be reasonable.

Accordingly, because IRT’s products either consist entirely of extruded aluminum, or extruded aluminum attached with a fastener, we have determined that they are not excluded from the scope of the *Orders* as finished merchandise.

Furthermore, IRT’s products also do not satisfy the criteria for the “finished goods kits” exclusion. That exclusion defines finished goods kits as:

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.

In the first instance, as explained above, IRT’s scissor struts do not contain non-extruded material beyond fasteners. Rather, the scissor struts either consist of subject aluminum extrusions exclusively or of subject aluminum extrusions and fasteners.⁷⁰ As a result, the scissor struts do not meet one necessary condition of the finished goods kit exclusion.

In its scope requests, IRT states that the products in question are to be imported “as is” and not part of a complete finished kit.⁷¹ The scope defines a finished goods kit, in part, 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 “is assembled ‘as is’ into a finished product.” However, the record evidence indicates that IRT’s products do not enter the in unassembled form or as a packaged combination of parts that may assemble to form a finished good.⁷² Instead, IRT’s scissor struts are imported as either single pieces of extruded aluminum or two pieces of extruded aluminum already attached by a fastener.⁷³

Accordingly, because IRT’s scissor strut products do not meet certain requirements of the finished goods kit exclusion at the time of importation, we have determined that they are not covered by the “finished goods kit” exclusion to the scope of the *Orders*.

combination thereof.”

⁷⁰ See Scope Request I at 1-3, Scope Request II at 1-2 and Scope Request III at 1-2.

⁷¹ See Scope Request I at 3, Scope Request II at 2, Scope Request III at 2.

⁷² *Id.*

⁷³ *Id.*

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 IRT scissor struts at issue do not meet the exclusion criteria for finished merchandise or for “finished goods kits,” and thus 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(d).

Agree Disagree



Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

10/18/15

Date