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Scope Ruling: Liberty Shower Door Kits
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December 9, 2015

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

THROUGH: Scot Fullerton
Director
AD/CVD Operations, Office VI

Robert James
Program Manager
AD/CVD Operations, Office VI

FROM: Davina Friedmann
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Antidumping and Countervailing Duty Operations

SUBJECT: Antidumping and Countervailing Duty Orders on Aluminum
Extrusions from the People's Republic of China: Final Scope
Ruling on Liberty Hardware Manufacturing Company's Shower
Door Kits.

Summary

On June 23, 2015, the Department of Commerce (the Department) received a scope ruling request from Liberty Hardware Manufacturing Company¹ (Liberty), to determine whether its Shower Door Kits are subject to the antidumping duty (AD) and countervailing duty (CVD) orders on aluminum extrusions from the People's Republic of China (PRC).² On the basis of our analysis of the comments received, we determine that Liberty's Shower Door Kits are excluded from the scope of the AD and CVD orders on aluminum extrusions from the PRC.

¹ See letter from Liberty Hardware Manufacturing Company to the Secretary of Commerce entitled, "Scope Determination Ruling Request – *Aluminum Extrusion from the People's Republic of China: Shower Door Kits*," dated June 23, 2015 (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 23, 2015, Liberty submitted its request that the Department issue a scope ruling that Liberty's Shower Door Kits are outside the scope of the Orders.³ On July 17, 2015, the Department received comments from the Petitioner regarding Liberty's scope request.⁴ On July 24, 2015, the Department issued a supplemental questionnaire to Liberty for clarification of its scope request,⁵ to which Liberty responded on August 27, 2015.⁶ On August 21, 2015, the Department submitted a letter extending the deadline for this scope ruling until October 5, 2015.⁷ On October 1, 2015, the Department held an *ex parte* telephone conversation with counsel for Liberty in which the Department requested additional information.⁸ Liberty submitted the requested information on October 5, 2015.⁹ On November 19, 2015, the Department extended the deadline for this scope ruling. The current deadline for issuing this scope ruling is on January 4, 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 leading letter. Illustrative examples from among the approximately 160 registered alloys that may characterize the subject merchandise are as follows: 1350, 3003, and 6060.

³ See Scope Request.

⁴ See Letter from Petitioner regarding, "*Aluminum Extrusions from the People's Republic of China: Comments in Response to Liberty's Scope Determination Request*," dated July 17, 2015 (Petitioner's Comments). Petitioner is the Aluminum Extrusions Fair Trade Committee.

⁵ See letter from the Department of Commerce (Department) to Liberty: "Supplemental Questions," dated July 24, 2015 (Supplemental Questionnaire).

⁶ See Letter from Liberty regarding "*Aluminum Extrusions from the People's Republic of China: Response to Supplemental Questionnaire*," dated August 27, 2015 (Supplemental Response).

⁷ See Letter to All Interested Parties regarding, "*Aluminum Extrusions from the People's Republic of China: Extension of Time for Scope Ruling*," dated August 21, 2015.

⁸ See Memorandum to The File regarding, "*Aluminum Extrusions from the People's Republic of China: Ex Parte Telephone Conversation Concerning Scope Request from Liberty Hardware Manufacturing Company*," dated October 5, 2015.

⁹ See Letter from Liberty regarding, "*Aluminum Extrusions from the People's Republic of China: Response to Supplemental Question*," dated October 5, 2015 (Liberty's Numerical Designation Response).

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

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

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

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

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

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

investigation merely by including fasteners such as screws, bolts, etc. in the packaging with an aluminum extrusion product.

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

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

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

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States (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, 8302.42.30.10, 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, 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.¹⁰

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 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 351.25(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 SCOPE REQUEST

Liberty described the Shower Door Kits as follows:

Liberty's imported product is commonly and commercially described as a glass shower door kit. All parts needed for the completion of the finished glass shower door kits are included in its shower door kit at the time of importation, and have the capability to be assembled "as is" into a finished product. In its condition at the time of importation into the United States, each shower door kit will contain the following items:

- Two clear glass shower panels, part number 26011
- Four trolleys that allow the glass panel doors to slide along the shower kit tracks, part number 27205
- One 60" dual-profile aluminum top track, part number 28076
- One 60" aluminum bottom track, part number 27386
- Two aluminum side jambs, part number 25997

¹⁰ See the *Orders*.

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

¹² See 19 CFR 351.225(k)(1).

¹³ See 19 CFR 351.225(d).

- Six long Philips head screws, part number 25165
- Six toggle wall anchors to mount the shower door kits to bathroom walls, part number 25189
- Four rubber bumpers, part number 25187
- Two captive bumpers, part number 30092
- One injection plastic molded center guide, part number 30658
- One low profile gasket, part number 30115
- Two stainless steel trapping screws
- Two short T-straps, part number 30736
- Two pan head screws
- One set of installation instructions.¹⁴

Liberty explains that the Shower Door Kits are used by the end user with the purpose of installing sliding, clear glass shower doors to isolate the bathing area, prevent shower overspray outside of the bathing area, and aesthetically improve the appearance of new or remodeled bathrooms.¹⁵ The kits are classified under HTSUS subheading 7610.10.0030.¹⁶ In its Supplemental Response, Liberty clarifies that Shower Door Kits have been produced, have already been imported into the United States and that Liberty will continue to import Shower Door Kits in the future.¹⁷

Liberty describes that, at the time of importation, the Shower Door Kits will be filed under a single Customs entry distributed between two matched boxes.¹⁸ The two matched boxes will cumulatively contain all the Shower Door Kits components, and each imported kit will contain exactly and only the components listed above, without any extra or superfluous components.¹⁹ In its response to the supplemental questionnaire, Liberty explains that the two boxes that contain the Shower Door Kits will be shipped to the end user in the same manner as imported, *i.e.* in the two separate boxes in which they are imported under the following numerical designations: (a) SDGT060-CL-R for box 1 and (b) SDLT060-C-R for box 2.²⁰ In other words, they will not be repackaged prior to shipment to the end user.²¹

¹⁴ See Scope Request, at 2-3.

¹⁵ *Id.*, at 3

¹⁶ *Id.*

¹⁷ See Liberty's Supplemental Response, at 1

¹⁸ See Scope Request, at 5

¹⁹ *Id.*, at 6

²⁰ See Liberty's Numerical Designation Response, at 1.

²¹ See Liberty's Supplemental Response, at 2

Relevant Scope Determinations²²

Geodesic Dome Kits Scope Ruling²³

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 required no further fabrication or additional parts. The Department determined that the geodesic structure kits met 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.²⁴ However, the Department noted that the scope of the Orders states that an “imported product will not be considered a ‘finished goods kit’ . . . merely by including fasteners such as screws, bolts, etc. in the packaging with an aluminum extrusions product.”²⁵ 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 determined J.A. Hancock’s kits to not be excluded finished goods kits, and hence covered by the scope of the *Orders*.

Shower Doors and Enclosures Scope Determination²⁶

In the underlying antidumping duty investigation on aluminum extrusions from the PRC, the Shower Door Manufacturers Alliance (Shower Door Manufacturers) contended that it is normal industry practice to purchase glass panels and shower door kits from different suppliers. Therefore, the Shower Door Manufacturers argued, any kit purchased from the shower door manufacturer would not include glass panels but, nonetheless, would be considered in the industry to be a complete finished product. The Shower Door Manufacturers therefore urged the Department to clarify the scope language to exclude shower door enclosure kits without glass panels from the *Orders*. On the other hand, Petitioner urged the Department to conclude that unassembled shower door frames without glass panels do not qualify for the “kit” scope exclusion. Petitioner noted that aluminum frames without glass would only be considered a “complete finished product” from the perspective of the dealer or distributor, but not a final finished good according to the scope language. The Department agreed with the Petitioner that, at the time of importation, the Shower Door Manufacturers’ unassembled shower door frames did not contain all of the necessary parts to create a final finished good, *i.e.*, a shower door. The

²² See the Department’s Memorandum “Prior Scope Rulings Relevant to this Proceeding,” dated concurrently with this memorandum.

²³ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on J.A. Hancock, Inc.’s Geodesic Structures,” (July 17, 2012) (Geodesic Dome Kits Scope Ruling”).

²⁴ *Id.*, at 7.

²⁵ *Id.*

²⁶ See the Department’s memorandum entitled “Preliminary Determinations: Comments on the Scope of the Investigations,” dated October 27, 2010, at Comment 7 (“Investigation Prelim Scope Comments”); see also *Aluminum Extrusions from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 18524 (April 4, 2011) (A-570-967) and accompanying Issues and Decision Memorandum at Comment 3D (collectively, “Shower Doors and Enclosures Scope Determination”).

Department therefore determined that the shower doors and enclosures were not excluded from the *Orders*.

Shower Door Kits Scope Ruling²⁷

The products at issue were shower door kits consisting of: a glazed shower door panel (glass surrounded by an aluminum frame), door handles, pivot and strike door jambs (with seals), a drip rail (with vinyl and end plugs), snap-in fillers, and the required screws, spacer, washers, and tape for assembly. The importer, Sapa Extrusions, Inc. (Sapa), argued that all parts needed for the completion of a finished good were included in its shower door kit at the time of importation, and had the capability to be assembled “as is” into a finished product.²⁸ In the Shower Door Kits scope ruling, the Department determined that the product at issue contained all the parts necessary to assemble a final finished good—a shower door—at the time of importation.²⁹ The Department therefore determined that the shower door kits were excluded from the *Orders*.

Window Kits Scope Ruling³⁰

IAP Enclosures, an exporter, requested a scope ruling on two products: punched window kits and ribbon window kits. IAP Enclosures argued that, at the time of importation, the kits contained all of the parts, including frame and glass, necessary to assemble a finished window.

Petitioner argued that IAP Enclosures failed to provide sufficient information to support its claim that the products at issue constitute “finished goods kits.”

The Department found that the product kits at issue contained all of the necessary parts, including glass panels to fully assemble a final, finished good, and, as such, they constituted “finished goods kits” that are excluded from the *Orders*.

Arguments from Interested Parties

Liberty’s Initial Scope Comments and Supplemental Response

Liberty argues that the Shower Door Kits are excluded from the scope of the Orders because they are finished goods kits. At the time of importation, the user has all the necessary parts to fully assemble the glass shower door without further finishing or fabrication.³¹ Liberty bases its analysis on prior scope rulings, with particular attention given to the Sapa Shower Door Kits Scope Ruling, where the Department found that the shower door kits were excluded from the scope of the orders because they contained all of the necessary parts to assemble a final finished product at the time of importation.³²

²⁷ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling: Shower Door Kits,” dated November 7, 2011 (“Shower Door Kits Scope Ruling”).

²⁸ *Id.*, at 5.

²⁹ *Id.*, at 6.

³⁰ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on Window Kits,” (December 6, 2011) (Window Kits Scope Ruling).

³¹ See Scope Request, at 3-4.

³² *Id.*, at 4.

In its Supplemental Response, Liberty maintains that the product in question has not only been produced, but it has also been, and will continue to be, imported into the United States.³³ Liberty indicated in its Scope Request that the components of its Shower Door Kits are distributed between two boxes. However, according to Liberty, the product boxes would enter on the same Customs entry form and would subsequently be shipped to the end user without any repackaging.³⁴ Liberty explains in its Supplemental Response that a large entry of finished goods kits could be shipped in multiple containers, depending on the number of Shower Door Kits imported on a given Customs entry.³⁵ Liberty also points out that the Department previously excluded certain window kits in prior scope determinations, such as the IAP Shower Doors and Enclosures Window Kits Scope Determination and the Solar Motion Controllable Sunshades scope ruling, where the product was shipped in multiple containers, but listed on one Customs Entry Summary.³⁶

Petitioner's Comments

Petitioner makes the claim that Liberty's scope request should be rejected by the Department, basing its claim on three different arguments.³⁷ First, Petitioner argues (in comments that preceded Liberty's Supplemental Response) that Liberty's request is in reality nothing more than a request for an advisory position. Petitioner states that, following language included in the scope request as, for example, "will be imported" and "will contain," Liberty's request is premature since there is no evidence indicating that Liberty has imported the product and component aluminum extrusions that are subject to its scope request.³⁸

Second, Petitioner argues that there is no evidence that the Shower Door Kits will be imported as a complete kit, *i.e.*, that all the components of any given shower door kit are imported at the same time, as a single shipment. Although Liberty states that its Shower Door Kits will be imported in paired sets of boxes, Petitioner contends that there is no information as to whether and how the pair of boxes will be connected or otherwise shipped together. According to Petitioner, in order to meet the Department's exclusionary requirements, the kit at issue must be listed on the same entry, *i.e.*, CBP Form 7501 (Entry Summary) as evidence of the manner in which the product enters into the United States.³⁹

Third, Petitioner argues that there are numerous inconsistencies in Liberty's Scope Request. Even though Liberty provides a list of the components that supposedly comes with each Shower Door Kit, Petitioner explains that there are discrepancies between the components list⁴⁰ and the technical drawings provided in an attachment accompanying the Scope Request (Attachment

³³ See Supplemental Response, at 1.

³⁴ See Scope Request, at 5.

³⁵ See Supplemental Response, at 2.

³⁶ *Id.*, at 5.

³⁷ See letter from the Aluminum Extrusions Fair Trade Committee to the Secretary of Commerce entitled, "Re: *Aluminum Extrusions from the People's Republic of China*: Comments in Response to Liberty's Scope Determination Request," dated July 17, 2015 (Petitioner's Comments).

³⁸ *Id.*, at 2-3

³⁹ *Id.*, at 3-4

⁴⁰ See Scope Request, at 2-3.

A).⁴¹ Petitioner points out, for example, that two parts that are included in Attachment A⁴² do not appear in the list of components provided in the narrative of the Scope Request.⁴³ As another example, Petitioner also points to one component that is included in Attachment A, but for which there is no description or indication as to whether that component is made of extruded aluminum. Petitioner posits that these inconsistencies undermine the validity of Liberty's description of the Shower Door Kits that it intends to import, calling into question Liberty's Scope Request in its entirety.⁴⁴

Department Position

The Department examined the language of the *Orders* and the description of the products contained in Liberty's Scope Request, as well as previous rulings made by the Department. We find that the description of the products, the scope language, and prior rulings are, together, dispositive as to whether the products at issue are 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 merchandise at issue, the Shower Door Kits, meets the exclusion criteria for "finished goods kit."

As an initial matter, we disagree with Petitioner's assertion that Liberty's Scope Request seeks merely an "advisory opinion." We also disagree with Petitioner's argument that the scope request is premature because the Shower Door Kits have yet to be imported. In its Supplemental Response, Liberty clarified that its product is in the production phase, and that it has already imported the Shower Door Kits into the United States.⁴⁵ As the Department explained in the *Amended APO Regulations Final Rule*,⁴⁶ if a party can demonstrate that a product is, at the very least, "actually in production," that party may seek a scope ruling by the Department. Liberty has supported the fact that the Shower Door Kits are not "hypothetical" with pictures of the end product in its packaging.⁴⁷ There is nothing on record to suggest the product at issue is "hypothetical," nor does Petitioner point to any such evidence to the contrary. Therefore, for these reasons, we find Petitioner's description of Liberty's Scope Request as seeking an "advisory opinion" to be without merit; we instead, determine that the record supports the Department's consideration of a scope ruling on Liberty's Shower Door Kits.

While Petitioner maintains there is no evidentiary support that the Shower Door Kits will be imported as a complete kit, *i.e.*, that all the components of any given shower door kit are imported at the same time, as a single shipment, we find that the record supports that Liberty's shipments of its Shower Door Kits appear on a single Customs entry form. Similar to the situation experienced by the exporter's product and experience in the Window Kits Scope Ruling, Liberty explained in its Scope Request that the product at issue enters into the United

⁴¹ See Scope Request, at Attachment A.

⁴² *Id.*, at 1.

⁴³ See Scope Request, at 2-3.

⁴⁴ *Id.*, at 5-6

⁴⁵ See Liberty's Supplemental Response, at 1.

⁴⁶ See *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures, Final Rule*, 73 FR 3627, 3639 (Jan. 22, 2008) (*Amended APO Regulation Final Rule*).

⁴⁷ See Liberty's Supplemental Response, at 4-6.

States distributed between two boxes, but is reported on one Entry Summary.^{48,49} In this regard, Liberty acknowledges that in the event there is a large shipment, the Shower Door Kits would still enter the United States on the same entry summary though may enter in multiple containers.

While we agree with Petitioner that inconsistencies exist with respect to the list of components in the narrative of Liberty's Scope Request compared with those in Attachment A, we also find that Liberty reasonably justified such inconsistencies in its Supplemental Response wherein Liberty explained that these differences were intentional. According to Liberty, these differences stem from the fact that Attachment A was provided as a visual example of how certain components fit together, and was not meant to be an exhaustive diagram of those components listed in the narrative portion of Liberty's Scope Request.⁵⁰ Moreover, the remaining drawings in Attachment A of Liberty's Scope Request are specific to the components that comprise its Shower Door Kits. In its Supplemental Response, Liberty provided a visual drawing of its shower door kit that is the subject of its Scope Request,⁵¹ thus adequately addressing Petitioner's concerns regarding inconsistencies in Liberty's Scope Request.

In accordance with our practice in scope rulings covering these *Orders* involving the "finished goods kits" exclusion language, we first examined whether, consistent with our test established in the Geodesic Domes Kits Scope Ruling, the parts composing the Shower Door Kits consist of only aluminum extrusions or a mix of extruded aluminum components and non-extruded aluminum components beyond mere fasteners. We determine that this product contains both extruded and non-extruded aluminum components, beyond mere fasteners. In particular, as a finished goods kit, the Shower Door Kits would include extruded aluminum parts, *i.e.*, the 60" dual profile aluminum top track, the 60" aluminum bottom track, and the two aluminum side jambs, and non-extruded aluminum components, *i.e.*, the two clear glass shower panels.⁵² The clear glass shower panels serve as an integral part of the kit and clearly go beyond mere fasteners, a requirement of the "finished goods kits" exclusion language in the scope of the *Orders*.

Next, we considered whether Liberty's Shower Doors Kits meet the definition of a "finished goods kit" 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." Based on the description of the product in its unassembled "kits" state, coupled with the corresponding diagrams included in Liberty's Scope Request⁵³ and Liberty's Supplemental Response,⁵⁴ we find that that the parts contained in the Shower Door Kits package require no further finishing or fabrication and are ready to be fully assembled into a final finished product in an "as is" state upon importation. Accordingly, consistent with the Department's analysis in the Shower Doors and Enclosures Scope Ruling, and Sapa's Shower Door Kits Scope Ruling, Liberty's Shower

⁴⁸ See Scope Request, at 5.

⁴⁹ See Window Kits Scope Ruling, at 4, wherein it states "...that the punched window kits are shipped in one or more containers, but will be listed on one 7501 Entry Summary and will be part of one Customs Entry."

⁵⁰ See Liberty's Supplemental Response, at 7.

⁵¹ *Id.*, at Attachment A.

⁵² See Scope Request, at 2-3.

⁵³ *Id.*, at Attachment A.

⁵⁴ See Liberty's Supplemental Response, at 3-6.

Door Kits are “finished goods kits,” as that term is defined in the scope of the *Orders*. Therefore, we find that Liberty’s Shower Door Kits meet the definition of the exclusion for “finished goods kits.”

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 Liberty’s Shower Door Kits are “finished goods kits” and, thus, should be excluded from 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

12/9/15

Date