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International Trade Administration
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Scope Inquiry

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December 13, 2011

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

THROUGH: Wendy J. Frankel
Director, Office 8
Antidumping and Countervailing Duty Operations

Eugene Degnan
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FROM: Brooke Kennedy
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Antidumping and Countervailing Duty Operations

RE: Antidumping (AD) and Countervailing Duty (CVD) Orders on
Aluminum Extrusions from the People's Republic of China (PRC)

SUBJECT: Final Scope Ruling on Origin Point Brands, LLC's Fence Panels,
Posts and Gates

SUMMARY

On July 8, 2011, the Department of Commerce ("Department") received a scope ruling request from Origin Point Brands, LLC ("OPB"),¹ to determine whether its aluminum fence panels, posts and gates are subject to the antidumping ("AD") and countervailing duty ("CVD") orders on aluminum extrusions from the People's Republic of China ("PRC").² On the basis of our analysis of the comments received, we have determined that OPB's aluminum fence sections, posts and gates are within the scope of the AD and CVD orders on aluminum extrusions from the PRC.

¹ See Origin Point Brands, LLC's July 8, 2011 submission ("OPB's 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) ("Orders").

BACKGROUND

On July 8, 2011, OPB, a company located in Charleston, South Carolina, requested a ruling by the Department confirming that the fencing systems imported by OPB are excluded from the scope of the *Orders*.³ OPB claimed interested party status under section 771(9)(C) of the Tariff Act of 1930, as amended (“the Act”), *i.e.*, as an importer and distributor of certain fencing systems – including gates, panels and posts. On July 26, 2011, the Aluminum Extrusions Fair Trade Committee (“Petitioner”), submitted comments responding to the scope ruling request by OPB.⁴ On September 2, 2011, the Department issued a supplemental questionnaire to OPB.⁵ On September 16, 2011, the Department received OPB’s responses to the supplemental questionnaire.⁶ On October 28, 2011, the Department notified interested parties that the ruling deadline would be extended by 45 days, pursuant to 19 CFR 351.225(c)(1)(ii)(C)(2).⁷

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.

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

³ See OPB’s Request at 1.

⁴ See “Aluminum Extrusions From China: Response to Origin Point Brands’ Scope Ruling Request,” dated July 26, 2011 (“Petitioner’s Comments”).

⁵ See the Department’s supplemental questionnaire to OPB, dated September 2, 2011 (“OPB SQ”).

⁶ See OPB’s letter to the Department, dated September 16, 2011 (“OPB SQR”).

⁷ See the Department’s letter “Extension of Preliminary Ruling,” dated October 28, 2011.

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 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”): 7604.21.0000, 7604.29.1000, 7604.29.3010, 7604.29.3050, 7604.29.5030, 7604.29.5060, 7608.20.0030, 7608.20.0090, 8513.90.20, 8302.50, 9403.90.8030, 9506.91.0010, 9506.91.0020, 9506.91.0030, 7615.19.30, 7615.19.50, 7615.19.70, 7615.19.90, 7615.19.10, 7616.99.10, and 7616.99.50. 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 is dispositive.⁸

LEGAL FRAMEWORK

The Department examines scope ruling requests in accordance with its scope regulations. *See* 19 CFR 351.225. On matters concerning the scope of an antidumping or countervailing duty order, the Department first examines the language of the order at issue and the description of the product contained in the scope request. If the language in the order is not dispositive, the Department will then examine the description of the merchandise contained in the petition, the initial investigation, the determinations of the Secretary (including prior scope determinations) and the International Trade Commission (ITC). *See* 19 CFR 351.225(k)(1). This determination may take place with or without a formal inquiry. *See* 19 CFR 351.225(d) and (e). If the Department determines that these descriptions are dispositive of the matter, the Department will issue a final scope ruling as to whether or not the subject merchandise is covered by the order. *See* 19 CFR 351.225(d).

Conversely, where the descriptions of the merchandise are not dispositive, the Department will initiate a scope inquiry under 19 CFR 351.225(e) and analyze the factors set forth at 19 CFR 351.225(k)(2). These factors are: (i) the physical characteristics of the merchandise; (ii) the expectations of the ultimate purchasers; (iii) the ultimate use of the product; (iv) the channels of

⁸ *See Orders.*

trade in which the product is sold; and (v) the manner in which the product is advertised and displayed. The determination as to which analytical framework is most appropriate in any given scope inquiry is made on a case-by-case basis after consideration of all evidence before the Department.

RELEVANT SCOPE DETERMINATIONS

A. Investigation - Scope Determinations

1. Kits and Finished Products Exclusion

During the underlying investigations, five domestic manufacturers of aluminum fences and gates submitted comments arguing for the inclusion of certain aluminum extrusions, packaged as kits or fully assembled finished products.⁹

The manufacturers argued that kits and fully assembled finished products composed of at least 70 to 75 percent aluminum extrusions by weight should be included in the scope of the proceedings. All producers contended that such items are simply aluminum extrusions that have been boxed or assembled, with a few minor parts added, and excluding these products from the scope would harm certain domestic manufacturers of aluminum fences and gates. Further, these five manufacturers argued that the proposed criterion, *i.e.*, percentage of the kit by weight, would be more useful than listing specific products to be excluded, as there are many types of products with a high content of extruded aluminum.

Petitioner opposed the proposed modification, arguing that although the Petition is not intended to harm domestic producers of aluminum fences and gates, the Petition is also not intended to cover imports of fully-assembled finished aluminum fencing systems or fully finished aluminum fencing systems in kit form.

The Department agreed with Petitioner that finished goods kits and finished products are excluded from the scope, regardless of the percentage content of aluminum extrusions. Finished merchandise and unassembled finished goods kits containing aluminum extrusions are specifically excluded from the scope, with no specification as to the percentage content of aluminum extrusions.¹⁰

⁹ See *Aluminum Extrusions From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, and Preliminary Determination of Targeted Dumping*, 75 FR 69403 (November 12, 2010) (“*Aluminum Extrusions/PRC AD Preliminary (11/12/2010)*”) and *Preliminary Determinations: Comments on the Scope of the Investigations (“Preliminary Scope Comments”)*, dated October 27, 2010, at Comment 3, unchanged in *Aluminum Extrusions from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 18524 (April 4, 2011) and accompanying Issues and Decision Memorandum (“*Aluminum Extrusions/PRC AD Final (4/4/2011) IDM*”).

¹⁰ Under the statutory scheme, {the Department} owes deference to the intent of the proposed scope of an antidumping investigation as expressed in an antidumping petition. See, e.g., *Ad Hoc Shrimp Trade Action Committee v. United States*, 637 F. Supp. 2d 1166, 1174 (CIT 2009)(citing 19 CFR 1673, 1673a(h)); see also *NTN Bearing Corp. of Am. v. United States*, 747 F. Supp. 726, 730 (CIT 1990)). Moreover, {w}hile the Department does have the authority to define or clarify the scope of an investigation, the Department must exercise this authority in a manner which reflects the intent of the petition and the Department generally should not use its authority to define the scope of an investigation in a manner that would thwart the statutory mandate to provide

2. Baluster Kits

During the underlying investigations, the Department also considered comments and made a determination regarding baluster kits.¹¹ Maine Ornamental explained that it imported baluster kits, which contained aluminum extrusions in a variety of powder coated finishes to match wood and composite wood decking and railings. It contended that the kits were packed ready for retail customer sales and customer installation and contained five to ten balusters, assembly fasteners, connectors, and detailed installation instructions, thus containing all the necessary components to assemble a final finished good, and as such, represent unassembled finished goods.

Maine Ornamental argued that its baluster kits are analogous to shower doors with glass, or exhibition kits, which the Department excluded from the scope of the investigations, rather than a package of plastic and screws combined with aluminum powder coated extrusions. Therefore, Maine Ornamental argued that its baluster kits are not inputs for the production of downstream products but rather are unassembled finished goods and should be excluded from the scope of the investigations.

Petitioner countered that the Department should reject Maine Ornamental's request to exclude baluster kits from the scope of the investigations because the kits represented a packaged collection of individual balusters, which composed a single element of a railing or deck system, and, therefore, do not represent a finished product. The Petitioner further argued that a single baluster is analogous to carpet trim, which is a final good that is also a basic aluminum extrusion, covered by the scope of these investigations.

The Department agreed with Petitioner that baluster kits are not excluded "finished goods kits" as defined by the scope of the investigations, but rather, constitute subject merchandise.¹² The Department noted that the scope of the petitions defined an excluded 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."

The Department explained that Maine Ornamental's own description of the product indicates that such balusters are designed to work with other parts to form a larger structure. The Department further explained that although Maine Ornamental contended that its baluster kits contain all the necessary components to assemble a final finished good, it also stated that the balusters, if used as directed, represent parts of structures to form a balustrade or deck rail. Thus, the Department agreed with Petitioner that a baluster kit represents a packaged collection of individual parts, which comprise a single element of a railing or deck system, and, therefore, did not represent a finished product.

the relief requested in the petition. *See Narrow Woven Ribbons with Woven Selvedge from Taiwan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 75 FR 7236,7240 (Feb. 18, 2010) (unchanged in the *Final Results*), 75 FR 41804 (July 19, 2010)). Thus, absent an overarching reason to modify the scope in the petition, the Department accepts it. *See Id.*

¹¹ *See Aluminum Extrusions/PRC AD Final* (4/4/2011) IDM at Comment 3H.

¹² *Id.*

B. Prior Scope Rulings

Modular Railing Systems¹³

In its scope request, Peak Products America Inc. (“Peak Products”), argued that its modular aluminum railing system components are excluded from the scope of the *Orders* because they are finished products or finished goods kits. Specifically, the products at issue were: (a) post “kits,” (b) gate “kits,” (c) hand and base rail “kits,” (d) pickets and spacer “kits,” and (e) glass panelette “kits.” Peak Products contended that its post and gate kits are excluded from the scope because, at the time of importation, each product constitutes finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed. Peak Products also contended that its hand and base rail kits, pickets and spacer kits and glass panelette kits, would be excluded from the *Orders* as finished goods containing aluminum extrusions that are entered unassembled in a “finished goods kit.”

The Department determined that all of the modular aluminum railing system components at issue in Peak Products’ request were neither finished products nor finished goods kits and thus did not meet the exclusion criteria delineated in the scope of the *Orders*. Based on the descriptions of Peak Products’ merchandise, the Department found that the products did not constitute complete and finished products because these individual component products at issue did not contain all of the parts required to assemble a final finished railing system. The Department found Peak Products’ merchandise to be analogous to the baluster kits, which were examined in the investigation and were found to be included in the scope as parts for finished products.

DESCRIPTION OF MERCHANDISE SUBJECT TO THIS INQUIRY

OPB’s Request

In its request, OPB described the aluminum items covered by its scope inquiry as: gates, the aluminum pieces of which are welded together, and are generally imported in their finished, assembled form; panels, imported in finished, assembled form or in unassembled kits; and three types of posts (end, line and corner). OPB stated that, of these three products, panels are most commonly imported in unassembled form but contain all of the parts necessary to assemble finished panels.¹⁴ OPB conceded that its fence posts, when imported by themselves, are not excluded from the scope of the *Orders*.¹⁵ OPB stated that its fence system components are imported under HTS category 7610.90.¹⁶ OPB likened its fencing systems to those examined during the investigations, contending that their products constitute a “kit,” and, therefore, are excluded from the scope of the *Orders*. First, citing Petitioner’s pre-preliminary scope comments and the comments of the five domestic fence manufacturers during the investigations,

¹³ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on Certain Modular Aluminum Railing Systems” (October 31, 2011) (“Railing Systems Scope Ruling”).

¹⁴ See OPB’s Request at 2.

¹⁵ *Id.*, at 5, 9.

¹⁶ *Id.*

OPB noted that Petitioner did not intend to harm importers of fencing kits.¹⁷ Second, citing the Department's memorandum regarding the preliminary determination, OPB argued that the Department's exclusion of "finished merchandise" or "finished good kit" applies to its fencing products.¹⁸ Finally, OPB argued that its "finished" fencing systems or kits are not covered by the scope because the Department's final determination did not explicitly reject Petitioners' intention to not harm importers of fencing kits.¹⁹

Department's Supplemental Questionnaire

On September 2, 2011, the Department issued a supplemental questionnaire ("SQ") to OPB, requesting specific information from OPB as to the nature of its products at the time of importation, assembly instructions and/or diagrams for each product, and whether the components are imported for specific installations.

OPB's Response

On September 16, 2011, OPB filed its response to the Department's SQ.²⁰ OPB stated in its response that it has traditionally imported gates, panels, and posts in their finished, assembled form, along with the hardware needed to combine the finished gates, panels and posts into fences of designs and lengths determined by residential and commercial customers.²¹ OPB explained that gates, panels and posts are often shipped together, but in separate boxes, each separately itemized on the invoice from the supplier.²² OPB further explained that the hardware that accompanies each component is as follows: assembled panels (no additional hardware), assembled gates (screws, hinges and a latch), and posts (screws and post caps).²³ OPB also noted that a single shipment may include: aluminum panel, aluminum gate, aluminum line post, aluminum end post, aluminum corner post.

ARGUMENTS FROM INTERESTED PARTIES

American Fence Manufacturing Company LLC

On July 16, 2011, American Fence Manufacturing Company LLC ("AFMC") submitted comments on the scope request filed by OPB.²⁴ AFMC contended that OPB's fence sections, posts and gates are sub-assemblies of a finished, installed fence. AFMC cited OPB's attachments to its scope request to note that multiple sections and posts are required to create a finished fence. Further, AFMC argued that OPB is importing its fence products in bulk form, not as a finished kit, and that all of the components required to install a fence are not present at

¹⁷ *Id.*, at 6-7.

¹⁸ *Id.*, at 7-8.

¹⁹ *Id.*, at 8-9.

²⁰ See Origin Point Brands' response to the Department's supplemental questionnaire," dated September 16, 2011 ("OPB's SQR").

²¹ *Id.*, at 2.

²² *Id.*

²³ *Id.*

²⁴ See AFMC's letter to the Department, "Response to product determination request for Origin Point Brands," dated July 16, 2011.

the time of importation. Therefore, AFMC likened OPB's products to the baluster kits examined during the investigations, and requested that the Department find the products at issue to be within the scope of the *Orders*.²⁵

Petitioner

On July 26, 2011, Petitioner submitted comments to the Department, arguing that OPB's individual fence components, "when not imported as 'kits' containing all of the parts (including gates, panels, posts, and fasteners) required for a fully-finished fencing system," are encompassed within the scope of the *Orders*.²⁶ Petitioner argued that OPB is importing subassemblies (*i.e.*, panels, gates, and posts), or "kits" containing the parts required to make those subassemblies, which are analogous to baluster kits and, therefore, are not a final finished good or finished goods kit excluded from the scope of the *Orders*.²⁷

OPB

On July 29, 2011, OPB rebutted the comments filed by AFMC and Petitioner.²⁸ OPB argued that the Department must reject AFMC's and Petitioner's position that separately imported panels and gates do not constitute finished goods excluded from the scope of the *Orders*. OPB countered AFMC's comparison of fence components to baluster kits, instead asserting that fence panels and gates are equivalent to a balustrade and would, therefore, be excluded from the scope. OPB requested that the Department confirm that "kits containing a combination of gates, panels and posts" are excluded from the *Orders* and further requested that the Department clarify that the scope "does not include imports of finished fence gates or fence panels, whether unassembled or assembled."²⁹

ANALYSIS

1. Fence Posts

The Department has examined the language of the *Orders* and the description of the products contained in this scope request. We find that the scope is dispositive as to whether posts are subject merchandise. Accordingly, for this determination, the Department finds it unnecessary to consider the additional factors specified in 19 CFR 351.225(k)(1) and 19 CFR 351.225(k)(2).

The scope of the *Orders* covers aluminum extrusions made from aluminum alloys with Aluminum Association designations commencing with the numbers 1, 3, and 6 (or proprietary equivalents or other certifying body equivalents). The scope of the *Orders* also covers aluminum extrusions that may be identified with reference to their end use, such as fence posts. In its initial request, OPB stated that it imports from the PRC³⁰ aluminum fence products that are

²⁵ *Id.*, at 2.

²⁶ Petitioner's Comments at 2.

²⁷ *Id.*

²⁸ See OPB's "Reply to Responses Filed by American Fence Manufacturing and the Petitioner Regarding Origin Point Brands' Request for a Scope Ruling," dated July 29, 2011 ("OPB's Reply").

²⁹ *Id.*, at 6.

³⁰ See OPB's Request at 1.

manufactured from 6000 series alloy aluminum extrusions.³¹ Accordingly, the Department finds that OPB's fence posts (end, corner and line) meet the descriptions of subject merchandise.

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." OPB acknowledged that fence posts, when imported by themselves, are expressly included in the scope.³² OPB also explained that its posts are sold and boxed separately from its gates and panels, and can be imported separately.³³ The Department therefore finds that OPB's fence posts (end, corner and line) do not fit within the finished goods kit exclusion because they do not contain all of the parts necessary to fully assemble a final finished fence system.

Because OPB's fence posts (end, corner and line) meet the description of the subject merchandise and do not meet the definition of excluded finished goods kits, as defined by the plain language of the scope, the Department has determined that the individual posts constitute subject merchandise.

2. Panels (Whether Assembled or in Kit Form) and Gates

The Department has examined the language of the *Orders* and finds that the scope is not dispositive as to whether fully assembled panels, panel "kits," and fence gates are subject merchandise. Accordingly, for this determination, the Department evaluated the instant request in accordance with 19 CFR 351.225(k)(1) because it finds that a determination by the Secretary in the investigation and prior scope rulings are helpful in reaching a determination for the products at issue in this request. Because the Department finds this evidence to be dispositive, the Department finds it unnecessary to consider the additional factors specified in 19 CFR 351.225(k)(2).

As noted above, the scope 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 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.

We find that the aluminum fence panels (whether assembled or in kit form) and gates described in OPB's scope inquiry request do not meet these exclusion criteria because they do not meet the definition of a finished goods kit, *i.e.*, they do not contain all of the parts necessary to fully assemble a final finished fence system.

³¹ *Id.*, at 3, stating that its fences are "no different from the... 'typical fence system' as defined [in Attachment B]"; *see also id.* at Attachment B, stating "most, if not all manufacturers utilize 6000 series aluminum alloy."

³² *Id.*, at 8.

³³ *See* OPB's SQR at 2.

In accordance with 19 CFR 351.225(k)(1), the Department considered the description of merchandise contained in the underlying investigations in making its determination on the products at issue in this request. First, we looked to the investigation and the Department's determination on baluster kits, which stated that a baluster kit represents a packaged collection of individual parts that comprises a single element of a railing or deck system, and, therefore, does not represent a finished product. Second, the Department also looked to its prior scope ruling on modular railing systems, in which it determined that the aluminum railing system components did not meet the scope exclusion because the individual component products at issue did not contain all of the parts required to assemble a final finished railing system and thus did not constitute complete and finished products. We find that these descriptions of merchandise from the investigations and prior scope rulings provide a basis on which to examine OPB's fence panels, panel kits, and gates.

The record evidence on OPB's aluminum fence panels, panel kits, and gates indicates that these products are manufactured from 6000 series alloy aluminum extrusions. The evidence also shows that at the time of importation, this merchandise does not constitute a finished product, that is, a complete fence system. Although OPB explained that its finished and assembled panels and gates are often shipped in the same shipment, OPB also stated that each product is shipped in separate boxes, each separately itemized on the invoice.³⁴ OPB explained that its finished and assembled panels and gates can also be imported separately.³⁵ Further, OPB's own descriptions of its products indicate that panels and gates are designed to be an input for a downstream product, a finished fence.

Based on the above evidence, the Department finds the aluminum fence panels (whether assembled or in kit form) and gates imported by OPB to be analogous with the baluster kits examined in the investigation. Like balusters, OPB's fence panel kits are a packaged collection of individual parts, which compose only a single element of a finished product. OPB's fence panels and gates are also similar to balusters in that they are individual parts that compose only a single element of a finished product. Indeed, the fence sections and gates, alone, cannot constitute a finished good because each component is an individual part of a larger finished fence system that is designed to work with other parts to form the larger structure. Similarly, we equate OPB's aluminum fence components with the aluminum railing components at issue in Peak Products' scope request, which were determined to be individual components that are designed to integrate with other components into a specific configuration of a railing system. The panels and gates that are the subject of the instant request are designed to work with other components to create a larger structure, a finished fence, and cannot stand alone. The Department has determined, therefore, that OPB's aluminum fence panels and gates do not fit the description of a fully-assembled finished aluminum fencing system or a fully finished aluminum fencing system in kit form.

Because OPB's fence panels (whether assembled or in kit form) and gates fit the description of the subject merchandise and do not meet the definition of excluded finished goods kits, the

³⁴ *Id.*

³⁵ See OPB's SQR at 2 ("Gates, panels, and posts, (and their hardware)...can also be shipped separately (that is, gates in one shipment, panels in another, posts in another)").

Department has determined that the assembled fence panels, unassembled panel kits, and gates constitute subject merchandise.

RECOMMENDATION

For the reasons discussed above, and in accordance with 19 CFR 351.225(d) and 351.225(k)(1), we recommend finding that posts (end, corner and line), fence panels (whether assembled or in kit form), and gates addressed by the instant request are subject to the scope of the orders on aluminum extrusions from the PRC because they fit the description of subject merchandise and because they do not meet the criteria for the finished products exclusion or the finished goods kit exclusion; *i.e.*, they do not contain, at the time of importation, all of the necessary parts to fully assemble a final finished good.

If the recommendations in this memorandum are 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 351.303(d).

_____ Agree _____ Disagree

Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

Date