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Scope: Cleats

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April 2, 2015

MEMORANDUM TO: Gary Taverman
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for Antidumping and Countervailing Duty Operations

THROUGH: Melissa G. Skinner
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Erin Begnal
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FROM: Paul Stolz
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Antidumping and Countervailing Duty Operations

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

SUBJECT: Final Scope Ruling on All Points Industries Inc.'s Cleats

SUMMARY

On July 18, 2014, the Department of Commerce (“Department”) received a scope ruling request from All Points Industries Inc. (“All Points”),¹ to determine whether the cleats it imports 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 All Points’ request and comments received, we determine that the cleats imported by All Points are subject merchandise covered by the scope of the *Orders* on aluminum extrusions from the PRC.

¹ See letter from All Points entitled: “Aluminum Extrusions from the People’s Republic of China: Scope Ruling Request on Cleats,” dated July 18, 2014 (“All Points’ 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 July 18, 2014, All Points requested that the Department determine whether the cleats it imports are outside the scope of the *Orders*. On September 22, 2014, the Aluminum Extrusions Fair Trade Committee (“Petitioner”), submitted comments in response to All Points’ scope ruling request. All Points submitted rebuttal comments with respect to Petitioner’s September 22, 2014 comments on October 10, 2014. On October 16, 2014, the Department initiated a formal scope inquiry pursuant to 19 CFR 351.225(e). On November 12, 2014, in accordance with the schedule the Department established in the initiation of this inquiry pursuant to 19 CFR 351.225(f)(1)(iii), All Points and the Petitioner submitted additional comments. On November 24, 2014 All Points and the Petitioner submitted rebuttal comments. On February 10, 2015, the Department extended the time limit for the issuance of this scope ruling until March 16, 2015 (as clarified in the February 11, 2015 memorandum to interested parties, the Department had misstated the new time limit as March 12, 2015 in the February 10, 2015 extension). On March 13, 2015, the Department extended the time limit for the issuance of this scope ruling until April 14, 2015.

SCOPE OF THE *ORDERS*

The merchandise covered by the *Orders* is aluminum extrusions which are shapes and forms, produced by an extrusion process, made from aluminum alloys having metallic elements corresponding to the alloy series designations published by The Aluminum Association commencing with the numbers 1, 3, and 6 (or proprietary equivalents or other certifying body equivalents). Specifically, the subject merchandise made from aluminum alloy with an Aluminum Association series designation commencing with the number 1 contains not less than 99 percent aluminum by weight. The subject merchandise made from aluminum alloy with an Aluminum Association series designation commencing with the number 3 contains manganese as the major alloying element, with manganese accounting for not more than 3.0 percent of total materials by weight. The subject merchandise is made from an aluminum alloy with an Aluminum Association series designation commencing with the number 6 contains magnesium and silicon as the major alloying elements, with magnesium accounting for at least 0.1 percent but not more than 2.0 percent of total materials by weight, and silicon accounting for at least 0.1 percent but not more than 3.0 percent of total materials by weight. The subject aluminum extrusions are properly identified by a four-digit alloy series without either a decimal point or leading letter. Illustrative examples from among the approximately 160 registered alloys that may characterize the subject merchandise are as follows: 1350, 3003, and 6060.

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

Aluminum extrusions are produced and imported with a variety of finishes (both coatings and surface treatments), and types of fabrication. The types of coatings and treatments applied to subject aluminum extrusions include, but are not limited to, extrusions that are mill finished (*i.e.*, without any coating or further finishing), brushed, buffed, polished, anodized (including bright-

dip anodized), liquid painted, or powder coated. Aluminum extrusions may also be fabricated, *i.e.*, prepared for assembly. Such operations would include, but are not limited to, extrusions that are cut-to-length, machined, drilled, punched, notched, bent, stretched, knurled, swedged, mitered, chamfered, threaded, and spun. The subject merchandise includes aluminum extrusions that are finished (coated, painted, etc.), fabricated, or any combination thereof.

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

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

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

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

The scope also excludes aluminum alloy sheet or plates produced by other than the extrusion process, such as aluminum products produced by a method of casting. Cast aluminum products are properly identified by four digits with a decimal point between the third and fourth digit. A letter may also precede the four digits. The following Aluminum Association designations are representative of aluminum alloys for casting: 208.0, 295.0, 308.0, 355.0, C355.0, 356.0,

A356.0, A357.0, 360.0, 366.0, 380.0, A380.0, 413.0, 443.0, 514.0, 518.1, and 712.0. The scope also excludes pure, unwrought aluminum in any form.

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

Also excluded from the scope of the *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"): 7610.10.00, 7610.90.00, 7615.10.30, 7615.10.71, 7615.10.91, 7615.19.10, 7615.19.30, 7615.19.50, 7615.19.70, 7615.19.90, 7615.20.00, 7616.99.10, 7616.99.50, 8479.89.98, 8479.90.94, 8513.90.20, 9403.10.00, 9403.20.00, 7604.21.00.00, 7604.29.10.00, 7604.29.30.10, 7604.29.30.50, 7604.29.50.30, 7604.29.50.60, 7608.20.00.30, 7608.20.00.90, 8302.10.30.00, 8302.10.60.30, 8302.10.60.60, 8302.10.60.90, 8302.20.00.00, 8302.30.30.10, 8302.30.30.60, 8302.41.30.00, 8302.41.60.15, 8302.41.60.45, 8302.41.60.50, 8302.41.60.80, 8302.42.30.10, 8302.42.30.15, 8302.42.30.65, 8302.49.60.35, 8302.49.60.45, 8302.49.60.55, 8302.49.60.85, 8302.50.00.00, 8302.60.90.00, 8305.10.00.50, 8306.30.00.00, 8418.99.80.05, 8418.99.80.50, 8418.99.80.60, 8419.90.10.00, 8422.90.06.40, 8479.90.85.00, 8486.90.00.00, 8487.90.00.80, 8503.00.95.20, 8516.90.50.00, 8516.90.80.50, 8708.80.65.90, 9401.90.50.81, 9403.90.10.40, 9403.90.10.50, 9403.90.10.85, 9403.90.25.40, 9403.90.25.80, 9403.90.40.05, 9403.90.40.10, 9403.90.40.60, 9403.90.50.05, 9403.90.50.10, 9403.90.50.80, 9403.90.60.05, 9403.90.60.10, 9403.90.60.80, 9403.90.70.05, 9403.90.70.10, 9403.90.70.80, 9403.90.80.10, 9403.90.80.15, 9403.90.80.20, 9403.90.80.30, 9403.90.80.41, 9403.90.80.51, 9403.90.80.61, 9506.51.40.00, 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.³

³ See *Orders*.

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.⁴ 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.⁵ 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.

Conversely, where the descriptions of the merchandise are not dispositive, the Department will consider the five additional factors set forth at 19 CFR 351.225(k)(2). These factors are: (i) the physical characteristics of the merchandise; (ii) the expectations of the ultimate purchasers; (iii) the ultimate use of the product; (iv) the channels of trade in which the product is sold; and (v) the manner in which the product is advertised and displayed. The determination as to which analytical framework is most appropriate in any given scope proceeding is made on a case-by-case basis after consideration of all evidence before the Department.

DESCRIPTION OF MERCHANDISE SUBJECT TO THIS INQUIRY

The merchandise subject to this scope inquiry is cleats. In All Points' Request, All Points states that "Cleats are mounting devices used to mount items such as pictures and mirrors to a wall for display."⁶ In addition, All Points states that "All Points' cleats, manufactured with aluminum extrusions, are a final finished product at the time of import. No further manufacturing, processing or finishing is necessary."⁷

ARGUMENTS FROM INTERESTED PARTIES

All Points' Comments

All Points argues that its cleats fall outside the scope of the *Orders*. All Points argues that cleats are finished goods, fully and permanently assembled, completed, and ready for use by the end customer at the time of importation. Furthermore, All Points claims that the scope excludes finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry. All Points cites finished windows with glass, doors with glass or vinyl, picture frames with glass pane and backing material, and solar panels as examples of finished goods excluded from the scope of the *Orders*.⁸ In addition, All Points cites prior scope determinations wherein the Department found similar mounting and display system products outside the scope of the *Orders*: Solar Mounting Systems,⁹ Banner Stands and

⁴ See *Walgreen Co. v. United States*, 620 F.3d 1350, 1357 (Fed. Cir. 2010) ("*Walgreen*").

⁵ See 19 CFR 351.225(k)(1).

⁶ See All Points' Request at 2.

⁷ *Id.*

⁸ See the *Orders* at 76 FR 30651, and 76 FR 30654, respectively.

⁹ See the memorandum, "Final Scope Ruling on Clenergy (Xiamen) Technology's Solar Panel Mounting Systems, dated October 31, 2012 ("*Solar Mounting Systems*").

Backwall Kits,¹⁰ Fabric Wall Systems,¹¹ and Décor Kits.¹² Furthermore, citing the Auto Parts Redetermination,¹³ All Points argues that the Department has previously determined that finished goods comprised entirely of aluminum extrusions are not subject merchandise.

Furthermore, All Points claims that there is no aluminum content requirement stipulated in the scope description or the finished goods exclusion. All Points argues that stipulating an aluminum content requirement in determining whether merchandise is subject to the *Orders* would illegally expand the scope of the *Orders*. Furthermore, All Points argues that finding cleats to be subject merchandise would be inconsistent with the Department's policy of avoiding "absurd" results, *i.e.*, should the Department ignore the *Orders*' finished goods exclusion and place finished products (such as cleats) under the scope of the *Orders*, diligent importers such as All Points would have no way to determine whether their goods were subject to dumping or countervailing duties. Moreover, All Points maintains that application of the Department's k(2) analysis demonstrates that All Points' cleats fall outside the scope of the *Orders*.

All Points argues that the Petition¹⁴ and the International Trade Commission's ("ITC") preliminary report¹⁵ include language consistent with All Points' view that cleats are not subject merchandise. The Petition states that fully assembled finished goods containing aluminum extrusions are non-subject merchandise. In addition, the *ITC Prelim*, when discussing the domestic like product, stated that "all subject extrusions share general physical characteristics and tolerances along a continuum and are all used as inputs (*i.e.*, an intermediate product) in the production of downstream products."¹⁶ All Points argues that its cleats are finished goods, ready for use by the end user at the time of importation, not semi-finished intermediate goods that require further processing, and thus are not subject merchandise.

Finally, All Points argues that in *Rubbermaid*,¹⁷ the Court of International Trade ("CIT") rejected the Department's attempts to impose scope language from the exclusion for finished goods kits upon the exclusion for finished goods.

¹⁰ See Memorandum entitled, "Final Scope Ruling on Banner Stands and Backwall Kits," dated October 19, 2011 ("Banner Stands and Backwall Kits").

¹¹ See Memorandum entitled, "Final Scope Ruling on EZ Fabric Wall Systems," dated November 9, 2011 ("Fabric Wall Systems").

¹² See Memorandum entitled, "Final Scope Ruling on Traffic Brick Network, LLC's Event Decor Parts and Kits," dated December 2, 2013 ("Décor Kits").

¹³ See *Aluminum Extrusions from the People's Republic of China: Notice of Court Decision Not in Harmony With Final Scope Ruling and Notice of Amended Final Scope Ruling Pursuant to Court Decision*, 78 FR 42491 (July 16, 2013) and 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 (Order) (February 13, 2013) dated May 13, 2013 (collectively, "Auto Parts Redetermination").

¹⁴ See Petitions for the Imposition of Antidumping and Countervailing Duties: Aluminum Extrusions from the People's Republic of China dated March 31, 2010 ("Petition").

¹⁵ See USITC Publication 4153 (June 2010), entitled *Certain Aluminum Extrusions from China, Investigation Nos. 701-TA-475 and 731-TA-1177 (Preliminary)* ("ITC Prelim")

¹⁶ See USITC Publication 4229 (May 2011), entitled *Certain Aluminum Extrusions from China, Investigation Nos. 701-TA-475 and 731-TA-1177 (Final)* ("ITC Final").

¹⁷ See *Rubbermaid Commercial Products LLC v. United States*, Slip. Op. 14-113 (CIT, September 23, 2014) ("*Rubbermaid*").

Petitioner's Rebuttal Comments

All Points' cleats are properly included within the scope of the antidumping and countervailing duty *Orders* on aluminum extrusions from the PRC. All Points' cleats are nothing more than fabricated extruded aluminum strips that meet the description of subject merchandise set forth in the scope of the *Orders*, and they are not eligible for exclusion as finished goods. All Points fails to recognize that the language of the scope of the *Orders* demonstrates both through description and through the provision of several examples that a "finished good" qualifying for exclusion from the scope of the *Orders* must be comprised of more than merely extruded aluminum that otherwise conforms to the description of subject merchandise. The scope language quoted by All Points, which excludes "finished merchandise containing aluminum extrusions *as parts* that are fully and permanently *assembled and completed* at the time of entry," also provides four examples of properly-excluded finished merchandise, all of which are comprised of both extruded aluminum and some other material: finished windows with glass, doors with glass or vinyl, picture frames with glass pane and backing material, and solar panels. The aluminum extrusions in these products do not provide the primary function of the final finished good.

Petitioner relies on Geodesic Domes,¹⁸ Cutting and Marking Edges,¹⁹ Mounting Plates²⁰ and Pocket Door Tracks²¹ in support of its position that cleats are subject merchandise. Petitioner argues that the Court's decision in *Rubbermaid*, does not preclude the application of tenets of the finished goods kits exclusion to a "finished" good. The Court made clear that, where the Department applies language from the finished goods kits exclusion to the finished goods exclusion, it must provide a reasoned explanation for doing so. Furthermore, the Court's decision in *Rubbermaid* is not final. For example, in *Whirlpool*,²² the Department, consistent with the CIT's findings in *Rubbermaid*, provided a reasoned explanation for concluding that the "fasteners" language in the scope is not limited to "finished goods kits."

Furthermore, All Points wrongly concludes that excluding a product consisting entirely of extruded aluminum from the finished goods exclusion is contrary to the language of the *Orders* and the Department's prior determinations. All Points' claim that the Department has previously rejected an "aluminum content limitation" is not availing. Though the Department declined to expand the scope to include finished goods kits and final finished goods comprised of at least 70 to 75 percent aluminum, the Department did not reject the idea that the scope covers products comprised only of extruded aluminum.

¹⁸ See Memorandum entitled, "Final Scope Ruling on J.A. Hancock Co., Inc.'s Geodesic Structures," dated July 17, 2012 ("Geodesic Domes").

¹⁹ See Memorandum entitled, "Aluminum Extrusions from the People's Republic of China, Final Scope Ruling on Aluminum Rails for Cutting & Marking Edges," dated November 23, 2012 ("Cutting and Marking Edges").

²⁰ See Memorandum entitled, "Antidumping and Countervailing Duty Orders on Aluminum Extrusions from the People's Republic of China: Final Scope Ruling on Signtex Lighting's Aluminum Mounting Plates," dated November 14, 2012 ("Mounting Plates").

²¹ See Memorandum entitled, "Antidumping and Countervailing Duty Orders on Aluminum Extrusions from the People's Republic of China, Final Scope Ruling on Five Lakes Trading, Inc.'s Pocket Door Tracks," dated July 22, 2014 ("Pocket Door Tracks").

²² See Memorandum entitled, "Antidumping and Countervailing Duty Orders on Aluminum Extrusions from the People's Republic of China (PRC): Final Scope Ruling on Kitchen Appliance Door Handles With Plastic End Caps and Kitchen Appliance Door Handles Without Plastic End Caps," dated August 4, 2014 ("Whirlpool").

All Points' argument that cleats are excluded because the Petition distinguishes between finished goods containing aluminum extrusions and intermediate goods is flawed. The petition excludes only "*fully assembled finished goods* containing aluminum extrusions." The Petition provides several examples of final finished goods, all of which feature aluminum extrusions being joined with non-aluminum components.

All Points' reliance on Solar Mounting Systems, Banner Stands and Backwall Kits, Drapery Rod Kits,²³ Fabric Wall Systems, and Décor Kits²⁴ is erroneous because the products evaluated in those proceedings all included non-extruded aluminum components.

Petitioner's analytical matrix is relevant to this and other active scope proceedings as a decisional tool for application in the department's determinations.

Petitioner's Comments

The language of the scope and the Department's prior scope rulings confirm that All Points' cleats are expressly covered under the *Orders* pursuant to 19 CFR 351.225(k)(1). The physical description of the cleats matches the description of subject merchandise in the scope of the *Orders*, they have been machined and finished as provided for in the *Orders*, and they are nothing more than fabricated extruded aluminum strips. Cleats are not captured or excluded by any exception enumerated in the scope description. The language of the scope of the *Orders* excludes "finished merchandise containing aluminum extrusions *as parts* that are fully and permanently assembled and completed at the time of entry." Excluded finished goods must contain both extruded aluminum components and non-extruded aluminum components, or non-aluminum parts/components, beyond mere fasteners regardless of whether they are suitable for immediate use at time of importation. Cleats include no non-extruded aluminum or non-aluminum parts/components.

Prior scope determinations made by the Department with respect to similar merchandise, *i.e.*, merchandise comprised entirely of subject aluminum extrusions and ready for immediate use at time of importation, demonstrate that cleats are subject merchandise, *e.g.*, Cutting and Marking Edges, Geodesic Domes, Pocket Door Tracks, and Mounting Plates.

A diversified products analysis, which addresses the criteria set forth under 19 CFR 351.225(k)(2), demonstrates that All Points' cleats are subject merchandise.

All Points' Rebuttal Comments

Petitioner misconstrues the fact that All Points' cleats are finished goods and are sold as such. There is a distinction between a "finished goods kit" and a "finished product." All Points' cleats are "finished products." Petitioner's insinuation that the cleats may not be excluded from the

²³ See Redetermination Pursuant to Court Remand Order in *Rowley Company v. United States*, Cl. No. 12-00055 (February 28, 2013) ("Drapery Rod Kits").

²⁴ See Décor Kits.

Orders unless they are parts of other products is absurd and unreasonable. A standard definition for “finished product” is “...*the product that emerges at the end of the manufacturing process.*”

Petitioner also ignores the fact that the Department has recognized that a good may be considered finished merchandise even if it is imported without components of the combination of goods with which it is meant to function. For example, in the scope ruling on Banner Stands and Back Wall Kits, Banner Stands and Backwall Kits were imported without the graphic materials which they were solely designed to display.

Petitioner’s assertion that cleats do not qualify for the finished goods exclusion because they consist entirely of aluminum extrusions is flawed. The petition confirmed that “{f}ully assembled finished goods containing aluminum extrusions” were “non-subject merchandise.” The scope exclusion for finished goods is separate and distinct from the scope exclusion for finished goods kits. The scope of the *Orders* covers aluminum extrusions that are not fully finished goods, *i.e.*, aluminum extrusions that could be further processed into something else after importation.

Petitioner’s reliance on prior scope rulings is misplaced. A comparison of cleats to certain products found to be subject merchandise is incongruous. The Cutting and Marking Edges scope determination was based on the dispositive nature of the description of the merchandise in the scope request, the scope language, and the Department’s previous scope determinations. However, with respect to cleats, the Department initiated a formal scope inquiry pursuant to 19 CFR 351.225(e) because a determination cannot be made based solely upon the application and descriptions of the merchandise. Petitioner’s reliance on Geodesic Domes is also misplaced because the product at issue in Geodesic Domes was a finished goods kit. Furthermore, Petitioner’s reliance on Mounting Plates and Pocket Door Tracks is misplaced because the products at issue in those scope determinations were one component of a finished product.

Contrary to Petitioner’s claim, application of the Diversified Products Criteria does not demonstrate that cleats are subject merchandise. Also, Petitioner’s “analytical matrix” is not controlling for this proceeding and is an unlawful attempt to expand the scope of the aluminum extrusions *Orders*. The antidumping statute sets forth strict guidelines that the Department must follow when determining whether a product falls under the scope of an antidumping order.

RELEVANT SCOPE DETERMINATIONS²⁵

A. Mounting Plates²⁶

In the Mounting Plates decision, Sigtex Lighting, Inc. (“Sigtex”), an importer, argued that its imported parts are the same as components included in unassembled kits and permanently assembled products imported from the PRC by other importers that are not covered by the *Orders*. In addition, Sigtex argued that additional labor and parts are

²⁵ See the Department’s memorandum entitled, “AD/CVD Orders on Aluminum Extrusions from the PRC: Transmittal of Scope Determinations to the File,” dated concurrently with this memorandum and placed on the record of this proceeding.

²⁶ See Mounting Plates.

added to its imported parts in the United States in order to complete its finished product. The Department stated to be considered a “finished goods kit” which is excluded from the *Orders*, a product must meet two criteria from the *Orders*, namely: 1) it must contain all the parts necessary for assembly (without further processing) of a completed product at the time of entry, and it must contain parts other than fasteners that are made of a material other than aluminum extrusions. The Department found that as imported, the mounting plates did not contain all the parts necessary for assembly (without further processing) of a completed product at the time of entry. In addition, the Department found that even if the mounting plates were imported with all the parts necessary for assembly (without further processing) of a completed product, the three parts that that comprise the mounting plates “. . . are solely constructed of extruded aluminum, and so they are expressly covered by the *Orders*, and do not meet the finished goods or finished goods kit exclusions.”

B. Pocket Door Tracks²⁷

Five Lakes Trading, Inc. submitted a request for a scope ruling concerning whether the pocket door tracks it imports are subject merchandise covered by the scope of the *Orders*. Petitioner argued that “. . . each pocket door track is constituted of nothing more than a single extruded piece of aluminum, which is crafted of 6063 alloy,” which is not covered by any of the exclusions stated in the scope of the *Orders*. In the Pocket Door Tracks decision, the Department found that the scope language was dispositive as to whether the product at issue was subject merchandise. The Department found that Pocket Door Tracks are covered by the scope of the *Orders* because the pocket door track is extruded from alloy series designation 6063 aluminum and is solely a fabricated aluminum extrusion, that it is a part that is incorporated into a final finished product (*i.e.* a pocket door frame assembly) after importation.

DEPARTMENT’S POSITION

We find the description of the products in All Points’ Request, the scope language, and the Department’s previous scope determinations in these proceedings to be dispositive concerning whether All Points’ cleats are subject to the *Orders*. Accordingly, the Department finds it unnecessary to consider the additional factors specified in 19 CFR 351.225(k)(2), and has not summarized or considered interested parties’ arguments in this respect.

In order to fully consider the comments received in connection with All Points’ scope request by both All Points and Petitioner, the Department initiated a formal scope inquiry pursuant to 19 CFR 351.225(e) and solicited additional comments, in accordance with 19 CFR 351.225(f)(1)(iii). After receiving comments from interested parties on November 12, 2014, and rebuttal comments on November 24, 2014, concerning whether All Points’ products are within the scope of the *Orders*, we determine that the scope of the *Orders* and other sources listed in 19 CFR 351.351.225(k)(1) are dispositive. Thus, it is unnecessary to consider the additional criteria under 19 CFR 351.225(k)(2) for this scope ruling.²⁸

²⁷ See Pocket Door Tracks.

²⁸ See Memorandum entitled, “Final Scope Ruling on Curtain Wall Units that are Produced and Imported Pursuant

The product at issue consists of a single aluminum extrusion, cut to various lengths, with holes drilled every two inches along the product's length.²⁹ Attachment 2 of All Points' Request includes a picture of cleats which shows that its cleats are single-piece aluminum extrusions without accessories, attachments, fasteners, or other non-extruded parts of aluminum or any other material. The physical characteristics of the products at issue (*e.g.*, aluminum extrusion profile) match the physical description of subject merchandise:

The merchandise covered by the order is aluminum extrusions which are shapes and forms, produced by an extrusion process including, but not limited to, hollow profiles, other solid profiles, pipes, tubes, bars, and rods.³⁰

The scope of the *Orders* also includes extrusions "that are cut-to-length, machined, drilled, {and} punched." The Department finds that All Points' products are "aluminum extrusions which are shapes and forms," made of an aluminum alloy that is covered by the scope of the *Orders* and have been fabricated, *i.e.*, machined. Therefore, the products at issue meet the description of subject extrusions.³¹

Like Pocket Door Tracks and Mounting Plates, which were found by the Department in a prior scope determination to be subject merchandise, and products specifically referred to in the scope of the *Orders* as examples of subject merchandise, *e.g.*, door thresholds, or carpet trim, All Points' products are merely aluminum extrusions that meet the physical description of subject merchandise, referred to by their end use: *i.e.*, as cleats used to hang artwork/mirrors.

The scope of the *Orders* states that "{s}ubject 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." In this case, the cleats are subject extrusions identified with reference to their end use, *i.e.*, cleats. Further, contrary to All Points' argument, the fact that its products are ready for use at the time of importation does not, by itself, result in the products' exclusion from the *Orders*. The language of the scope indicates that products otherwise meeting the scope definition for subject merchandise are covered under the *Orders* regardless of whether they are ready for use at the time of importation.

In addition, the scope determinations cited by All Points in support of its argument that cleats are not subject merchandise, *i.e.*, Solar Mounting Systems, Banner Stands and Backwall Kits, Fabric Wall Systems, and Décor Parts, are not applicable because these products all include parts/components/materials that are not aluminum extrusions (or mere fasteners), and thus satisfied the scope exclusion for finished goods kits.

to a Contract to Supply a Curtain Wall," dated March 27, 2014 ("Curtain Wall Units"), where the Department similarly initiated a scope inquiry and ultimately determined that the sources listed in 19 CFR 351.225(k)(1) are dispositive, and so did not consider the additional criteria under 19 CFR 351.225(k)(2).

²⁹ See Attachment 2 of All Points' Request.

³⁰ See scope of the *Orders*.

³¹ All Points did not identify the aluminum alloy or the Aluminum Association series designation used to produce the cleats it imported but did not claim that the cleats it imported should be excluded on this basis.

All Points argues that the Petition states that fully assembled finished goods containing aluminum extrusions are non-subject merchandise. However, All Points does not consider the language of the scope. Specifically, the scope excludes “finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry.” Thus, the scope language describes excluded finished merchandise as “containing aluminum extrusions *as parts* . . .” (emphasis added). We take this language to mean that 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 therefore must include some non-extruded aluminum component.

Our interpretation in this regard is supported by the illustrative examples of excluded “finished merchandise” contained in the scope, all of which contain extruded aluminum and non-extruded aluminum components (*e.g.*, finished windows with glass, doors with glass or vinyl, etc.). In comparison, we note that those products specifically included in the *Orders*, such as window frames and door frames, do not constitute finished merchandise because they cannot be considered to “contain[] aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry.” Rather, the in-scope window frames and door frames are the only parts of the product.

Moreover, we find that the term “as parts” in the scope exclusion necessarily requires a plural construction, rather than encompassing both the singular “part” and plural “parts,” given the context provided by other terms in the exclusion, such as “containing” and “assembled” as well as the examples of excluded finished merchandise, all of which contain at least an aluminum extrusion component and non-extruded aluminum component. Cleats are not comprised of aluminum extrusions as parts, a cleat itself is an aluminum extrusion; thus cleats do not meet the requirements of the finished goods exclusion.

In addition, All Points claims that in the *ITC Prelim*, when discussing the domestic like product, the ITC stated that “all subject extrusions share general physical characteristics and tolerances along a continuum and are all used as inputs (*i.e.*, an intermediate product) in the production of downstream products.”³² However, in considering scope inquiries based on the descriptions of the merchandise in the sources identified in 19 CFR 351.225(k)(1), the Department relies on the scope language of the *Orders*, the description of the product contained in the scope-ruling request, the description of the merchandise contained in the petition, the records from the investigations, and prior scope determinations.³³ No single element, considered in isolation, is controlling with respect to the Department’s determination. The statement above, referenced by All Points, is considered in the context of all relevant information the Department considers. Moreover, the language of the *Orders* is paramount in determining whether a product is subject merchandise. To determine whether a particular product is included within the scope of an

³² This statement is also made in the *ITC Final*.

³³ See 19 CFR 351.225(k)(1).

antidumping or countervailing duty order, the Department *first* analyzes the language of the order at issue.³⁴ Thus, before considering the *ITC Prelim* (or the *ITC Final*), the Department will consider the language of the scope of the *Orders*. The scope of the *Orders* does not state that subject aluminum extrusions are “all used as inputs (*i.e.*, an intermediate product) in the production of downstream products.” Moreover, this language, from the *ITC Prelim* (and the *ITC Final*), appears to differ in this respect from the express language of the scope of the *Orders* that lists door thresholds and carpet trim, which are not “intermediate products,” as examples of subject merchandise covered by the scope of the *Orders*.

All Points claims that a standard definition for “finished product” is “. . . *the product that emerges at the end of the manufacturing process.*” However, the description of the finished goods/merchandise stated in the language of the scope exclusions is more precise, and defines finished goods not in the general sense, but specifically for defining what finished merchandise is excluded from the scope for purposes of implementation of the *Orders*. The finished goods exclusion covers finished merchandise/goods “containing” aluminum extrusions as “*parts.*” Cleats do not contain aluminum extrusions as parts; a cleat itself is an aluminum extrusion. Furthermore, a cleat is a single machined piece of extruded aluminum; it is not “assembled” as described in the exclusionary language of the Petition referred to by All Points as described above.

All Points argues that finding cleats to be subject merchandise would lead to the absurd result that importers such as All Points would have no way to determine whether their goods were subject to dumping or countervailing duties. We disagree. As explained above, finished goods meeting the finished goods exclusion must include parts that are not aluminum extrusions. Thus, on this basis, importers have guidance as to whether products such as cleats may be covered by the scope of the *Orders*.

Furthermore, finding that a cleat, a single piece of machined, extruded aluminum, is subject merchandise does not create a requirement for aluminum “content.” Our determination in this case is based on the fact that a cleat does not contain items that are not aluminum extrusions *as parts*. A cleat is an aluminum extrusion as described by the scope of the *Orders*. As stated in the scope of the *Orders* above, the “merchandise covered by the *Orders* is aluminum extrusions which are shapes and forms, produced by an extrusion process . . .” Additionally, we find that Petitioner’s rejection of a proposal in the underlying investigation to include within the scope all merchandise with at least 70 to 75 percent aluminum extrusion by weight, notwithstanding whether the merchandise otherwise met the finished merchandise or finished good kit exclusion, is not indicative of Petitioner’s intent with respect to products such as All Points’ cleats that are 100 percent aluminum extrusions. The proposal at issue in the investigation concerned whether the scope should cover products comprised *largely*, by weight, of aluminum extrusions. When considered in that light, we do not conclude that Petitioner’s rejection necessarily contemplated merchandise comprised *entirely* of aluminum extrusions.

³⁴ See *Duferco Steel, Inc. v. United States*, 296 F.3d 1087, 1097 (Fed. Cir. 2002) (explaining that “a predicate for the interpretive process is language in the order that is subject to interpretation”).

Citing *Rubbermaid*,³⁵ All Points argues that the Department cannot rely on the language of the finished goods kit exclusion to determine whether cleats are subject merchandise. All Points contends that in *Rubbermaid*, Rubbermaid Commercial Products LLC argued that although its products were finished goods, the Department relied on the language in the finished goods kit exclusion, and prior scope determinations regarding finished goods kits, to determine that its finished goods were within the scope of the *Orders*. In this scope ruling we are not relying on the language of the finished goods kit exclusion in reaching our determination that cleats are not products excluded from the scope of the *Orders*. As described above, cleats are not finished goods containing aluminum extrusions “as parts” as described in the finished goods exclusion. Moreover, the *Rubbermaid* litigation remains on-going.³⁶

In addition, All Points’ reliance on the Auto Parts Redetermination is misplaced. In the Auto Parts Redetermination, the Department examined two models of automotive heating and cooling components, a T-Series, which was comprised of a shaped and bent extruded aluminum tube that also contained foam material at one end and an M-Series model that was comprised of a shaped extruded aluminum tube. The Department applied the “subassembly finished goods” test to both products.³⁷ We disagree with the contention that the products at issue in the Auto Parts Redetermination were excluded despite consisting entirely of aluminum extrusions. In the Auto Parts Redetermination, the products at issue included “an additional foam material that adds three millimeters of aluminum to one segment of the tube” and end pieces.³⁸ Even if the products at issue in the Auto Parts Redetermination consist entirely of aluminum extrusions, as All Points suggests, it is clear from the Auto Parts Redetermination that no arguments were made on this point and, further, that the Department did not find the products to consist entirely of aluminum extrusion content when it found that the products were excluded as subassemblies.³⁹

Finally, with regard to All Points’ argument that the Department should not use Petitioner’s decision matrix in its analysis, we did not find it necessary to consider Petitioner’s decision matrix here because we find that All Points’ cleats are subject to the *Orders* based on the language of the scope and prior scope rulings.

³⁵ See *Rubbermaid*.

³⁶ *Id.*

³⁷ See Auto Parts Redetermination at 10-11.

³⁸ *Id.*, at 5.

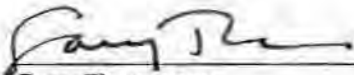
³⁹ *Id.*, at 5 (describing products at issue).

RECOMMENDATION

For the reasons discussed above, and in accordance with 19 CFR 351.225(k)(1) and 19 CFR 351.225(f)(4), we recommend finding that the cleats imported by All Points are subject merchandise covered by the scope of the AD and CVD *Orders* on aluminum extrusions from the PRC based on the language of the scope of the *Orders*.

If the recommendation in this memorandum is accepted, we will serve a copy of this determination to all interested parties on the scope service list *via* first-class mail, as directed by 19 CFR 351.225(f)(4).

Agree Disagree



Gary Taverman
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

4/2/15

Date