



A-570-967

C-570-968

Scope Inquiry/Heat Sink Parts for LED Lamps

Public Version

E&C III: LRL

May 14, 2015

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

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

Erin Begnal
Program Manager, Office III
Antidumping and Countervailing Duty Operations

FROM: Laurel LaCivita
Senior International Trade Analyst, Office III
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 Streamlight's Heat Sink Parts for LED
Lamps

SUMMARY

On September 23, 2013, the Department of Commerce ("Department") received a letter from Streamlight, Inc. ("Streamlight"), requesting the Department to determine whether certain heat sinks parts for light-emitting-diode ("LED") lamps are subject to the antidumping duty ("AD") and countervailing duty ("CVD") *Orders*¹ on aluminum extrusions from the People's Republic of China ("PRC").² On May 19, 2014, the Department initiated a formal scope inquiry on heat

¹ See *Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order*, 76 FR 30650 (May 26, 2011) ("AD Order") and *Aluminum Extrusions from the People's Republic of China: Countervailing Duty Order*, 76 FR 30653 (May 26, 2011) ("CVD Order") (collectively, "*Orders*").

² See letter from Streamlight entitled, "Aluminum Extrusions from the People's Republic of China: Request for Initiation of Scope Inquiry on Certain Finished Heat Sink Parts for High-Powered Battery LED Lamps/Lights," dated September 23, 2013 ("Streamlight's Scope-Review Request").



sink parts for LED lamps.³ On the basis of our analysis of the information contained in Streamlight's submissions and the comments received, we determined the heat sink parts for LED lamps are within the scope of the *Orders* on aluminum extrusions from the PRC in accordance with 19 CFR 351.225(k)(1).

BACKGROUND

On September 23, 2013, Streamlight requested the Department to determine whether heat sink parts for LED lamps were outside the scope of the *Orders*.⁴ Streamlight is an American importer of Chinese aluminum extruded products and a manufacturer of battery powered LED lamps and lights.⁵ On November 15, 2013, Aluminum Extrusions Fair Trade Committee ("Petitioner") submitted comments on Streamlight's scope ruling request.⁶ On December 11, 2013, Streamlight responded to Petitioner's comments.⁷ On February 5, 2014, Petitioner provided comments on the Court of International Trade's ("CIT's") heat-sink scope ruling.⁸ On February 18, 2014, Streamlight responded to Petitioner's comments on the CIT's heat-sink ruling.⁹

On April 2, 2014, Department of Commerce officials visited the Eagleville, Pennsylvania production facility of Streamlight, to meet with Streamlight company representatives and counsel in order to observe how the components subject to this inquiry were designed and manufactured, and to discuss product characteristics, including the product characteristics addressed in submissions by interested parties during the course of the scope proceeding.¹⁰ On April 21, 2014, Streamlight provided comments and additional information concerning the plant tour.¹¹ On May 19, 2014, the Department initiated a full scope inquiry pursuant to 19 CFR 351.225(e).¹² On June 23, 2014, Petitioner, Streamlight and Aavid Thermalloy, LLC ("Aavid"), a domestic

³ See letter to All Interested Parties, entitled, "Aluminum Extrusions from the People's Republic of China ("PRC"): Initiation of Scope Inquiry on Heat Sinks Parts for LED Lamps," May 19, 2014 ("Initiation").

⁴ See Streamlight's Scope-Review Request.

⁵ *Id.* at 1.

⁶ See Petitioner's submission, "Aluminum Extrusions from the People's Republic of China: Comments on Streamlight's Scope Ruling Request Regarding 'Heat Sink Parts' for LED Lamps/Lights," dated September 14, 2013 ("Petitioner's Comments on Streamlight's Scope-Review Request").

⁷ See Streamlight's submission, "Aluminum Extrusions from the People's Republic of China: Streamlight's Response to Petitioner's Comments Concerning Scope Inquiry on Certain Finished Heat Sink Parts for High-Powered Battery LED Lamps/Lights," dated December 11, 2014 ("Streamlight's Response to Petitioner's Comments").

⁸ See Petitioner's submission, "Aluminum Extrusions from the People's Republic of China: Comments on In Light of *Aluminum Extrusions Fair Trade Committee v. United States*," dated February 5, 2014 ("Petitioner's Comments on the CIT Scope Decision"), which includes *Aluminum Extrusions Fair Trade Committee v. United States*, 968 F. Supp. 2d 1244 (CIT 2014) ("*AEFTC*") in Exhibit 1.

⁹ See Streamlight's submission, "Aluminum Extrusions from the People's Republic of China: Streamlight's Response to Petitioner's Comments Concerning Significance of CIT Opinion in *Aluminum Extrusions Fair Trade Committee v. United States*," dated February 18, 2014 ("Streamlight's Response to Petitioner's CIT Comments").

¹⁰ See Memorandum to the File entitled, "Aluminum Extrusions from the People's Republic of China: Scope Review Request of Heat Sinks Parts for High-Energy LED Lamps: Streamlight, Inc. ("Streamlight") Plant Tour," dated May 19, 2014.

¹¹ See Streamlight's submission, "Aluminum Extrusions from the People's Republic of China: Information From April 2, 2014 Meeting with Department Officials at Streamlight's Facility," dated April 21, 2014.

¹² See letter to All Interested Parties, "Aluminum Extrusions from the People's Republic of China ("PRC"): Initiation of Scope Inquiry on Heat Sinks Parts for LED Lamps," May 19, 2014 ("Initiation").

producer and importer in the underlying investigation, provided comments on the Initiation.¹³ On July 7, 2014, Petitioner and Streamlight each responded to the other's comments on the Initiation.¹⁴ On July 11, 2014, Streamlight commented further on Petitioner's rebuttal comments with respect to the initiation of the scope proceeding.¹⁵ On July 28, 2014, Petitioner provided comments on Streamlight's July 11 comments.¹⁶ On August 4, 2014, Streamlight responded to those comments.¹⁷ On August 29, 2014, Streamlight submitted comments regarding the suspension of liquidation of entries should the Department find Streamlight's merchandise to be in-scope.¹⁸

On December 3, 2014, Streamlight provided comments on the Department's final scope ruling on ECCO's heat sinks for LED light bars.¹⁹ Petitioner provided rebuttal comments on January 14, 2015.²⁰ Aavid provided rebuttal comments to Petitioner's January 14, 2015, comments on

¹³ See letter from Petitioner, "Aluminum Extrusions from the People's Republic of China: Comments on the Department's Initiation of a Formal Scope Inquiry on 'Heat Sink Parts' for LED Lamps/Lights," dated June 23, 2014 ("Petitioner's Comments on the Initiation"); letter from Streamlight, "Aluminum Extrusions from the People's Republic of China: Comments of Streamlight Concerning Scope Inquiry on Heat Sink Parts for LED Lamps," dated June 23, 2014 ("Streamlight's Comments on the Initiation"); and, letter from Aavid, "Aluminum Extrusions from the People's Republic of China: Aavid Thermalloy LLC Comments on Initiation of Scope Ruling Inquiry into Heat Sink Parts for LED Lamps/Lights," dated June 23 2014 ("Aavid's Comments on the Initiation").

¹⁴ See letter from Petitioner, "Aluminum Extrusions from the People's Republic of China: Rebuttal Comments on Initiation," dated July 7, 2014 ("Petitioner's Rebuttal Comments on the Initiation"); and, letter from Streamlight, "Aluminum Extrusions from the People's Republic of China: Rebuttal Comments of Streamlight Concerning Scope Inquiry on Heat Sink Parts for LED Lamps," dated July 7, 2014 ("Streamlight's Rebuttal Comments on the Initiation").

¹⁵ See letter from Streamlight, "Aluminum Extrusions from the People's Republic of China: Response of Streamlight to the Committee's Accusation That Streamlight is 'Misleading' the Department Concerning Scope Inquiry on Heat Sink Parts for LED Lamps," dated July 11, 2014 ("Streamlight's Rebuttal Comments to Petitioner's Rebuttal on the Initiation").

¹⁶ See letter from Petitioner, "Aluminum Extrusions from the People's Republic of China: Response to Streamlight's July 11, 2014 Comments," dated July 28, 2014 ("Petitioner's Response to Streamlight's 7.11 Comments").

¹⁷ See letter from Streamlight, "Aluminum Extrusions from the People's Republic of China, Scope Inquiry on Heat Sinks for LED Lamps/Lights: Response of Streamlight to the Committee's July 25, 2014 Letter," dated August 4, 2014 ("Streamlight's Response to Petitioner's 7.28 Comments").

¹⁸ See letter from Streamlight, "Aluminum Extrusions from the People's Republic of China (Heat Sink Parts for LED Lamps): Streamlight Comments Regarding Liquidation of Entries Entered Prior to Initiation of Formal Scope Inquiry," dated August 29, 2014 ("Streamlight's Suspension Comments").

¹⁹ See letter from Streamlight, "Aluminum Extrusions from the People's Republic of China, Scope Inquiry on Heat Sinks for LED Lamps/Lights: Comments by Streamlight Regarding the Department's ECCO Scope Ruling," dated December 3, 2014. ("Streamlight's Comments on ECCO's LED Lightbar Scope Ruling"). See also, Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, Antidumping and Countervailing Duty Orders on Aluminum Extrusions from the People's Republic of China: Final Scope Ruling on ECCO's Heat Sinks For LED Light Bars," dated November 24, 2014.

²⁰ See letter from Petitioner, "Aluminum Extrusions from the People's Republic of China: Comments in Advance of the Department's Scope Ruling and Response to Streamlight's December 3, 2014 Comments," dated January 14, 2014 ("Petitioner's Comments on Streamlight's 12.3 Submission").

January 23, 2015.²¹ Streamlight provided comments on Petitioner's January 14, 2015 comments on February 2, 2015.²²

The Department extended the deadline for issuance of its final scope ruling on several occasions and, pursuant to the most recent extension, the final scope ruling is currently de May 20, 2015.²³

LEGAL FRAMEWORK

When a party files a request for a scope ruling, the Department examines the scope language of the order at issue and the description of the product contained in the scope-ruling request.²⁴ 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.²⁵ If the Department determines that these sources are sufficient to decide the matter, it will issue a final scope ruling concerning 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 distribution. 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 components subject to this inquiry are certain components which Streamlight identifies as heat sink parts, used in the production of Streamlight's high-powered battery LED flashlights and/or tactical lights.²⁶ Streamlight maintains that for purposes of thermal analysis, these parts are assembled into "a multi-component assembly, called a thermal stack, in which all components contribute in varying degrees to the total system thermal performance."²⁷ Streamlight claims that the industry standard is to design the aluminum housing of a battery-powered light or lamp so that the metal-core printed-circuit-board ("MCPCB") module or the emitter (*i.e.*, the LED) is in direct contact with the aluminum housing in order to allow the entire flashlight body to function as a heat sink."²⁸ According to Streamlight, most aluminum lights

²¹ See letter from Aavid, "Aluminum Extrusions from the People's Republic of China: Aavid Thermalloy LLC Rebuttal Comments- AEFTC's January 14 Comments," dated January 23, 2015 ("Aavid's Rebuttal to Petitioner's 1.14 Submission").

²² See letter from Streamlight, "Aluminum Extrusions from the People's Republic of China, Scope Inquiry on Heat Sinks for LED Lamps/Lights: Rebuttal to the Committee's January 14, 2015 Comments," dated February 13, 2015 ("Streamlight's Rebuttal to Petitioner's 1.14 Comments").

²³ See letter to All Interested Parties, "Aluminum Extrusions from the People's Republic of China: Extension of Time for Scope Ruling: Heat Sink Parts for LED Lamps," dated March 10, 2015.

²⁴ See *Walgreen Co. v. United States*, 620 F.3d 1350, 1357 (Fed. Cir. 2010) ("*Walgreen*").

²⁵ See 19 CFR 351.225(k)(1).

²⁶ See Streamlight's Scope-Review Request at 3.

²⁷ *Id.* at 3, and Exhibit 3 at 10.

²⁸ *Id.* at 3-4, and Exhibit 4, at 4.

use the entire flashlight body as a heat sink.²⁹ Exhibit 10 of Streamlight's Scope-Review Request provides the specific part numbers and HTS numbers for the components which Streamlight requests to be excluded from the *Orders*.³⁰ Streamlight notes that it purchases the products at issue, both domestically and abroad, then inspects the parts to determine whether they were produced to meet its specific design criteria.³¹ Streamlight maintains that once the products are inspected, it assembles them into thermal stacks, and then into finished lights and lamps.³²

SCOPE OF THE ORDERS

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

²⁹ *Id.* at 4, and Exhibit 6, at 4.

³⁰ *Id.* at 6 and Exhibit 10.

³¹ *Id.* at 2.

³² *Id.*

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

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States (HTS): 7610.10.00, 7610.90.00, 7615.10.30, 7615.10.71, 7615.10.91, 7615.19.10, 7615.19.30, 7615.19.50, 7615.19.70, 7615.19.90, 7615.20.00, 7616.99.10, 7616.99.50, 8479.89.98, 8479.90.94, 8513.90.20, 9403.10.00, 9403.20.00, 7604.21.00.00, 7604.29.10.00, 7604.29.30.10, 7604.29.30.50, 7604.29.50.30, 7604.29.50.60, 7608.20.00.30, 7608.20.00.90, 8302.10.30.00, 8302.10.60.30, 8302.10.60.60, 8302.10.60.90, 8302.20.00.00, 8302.30.30.10, 8302.30.30.60, 8302.41.30.00, 8302.41.60.15, 8302.41.60.45, 8302.41.60.50, 8302.41.60.80, 8302.42.30.10, 8302.42.30.15, 8302.42.30.65, 8302.49.60.35, 8302.49.60.45, 8302.49.60.55, 8302.49.60.85, 8302.50.00.00, 8302.60.90.00, 8305.10.00.50, 8306.30.00.00, 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, 8516.90.50.00, 8516.90.80.50, 8517.70.00.00, 8529.90.73.00, 8529.90.97.60, 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 HTS chapters. In addition, fin evaporator coils may be classifiable under HTS numbers: 8418.99.80.50 and 8418.99.80.60. While HTS subheadings are provided for convenience and customs purposes, the written description of the scope of these *Orders* is dispositive.

DESCRIPTION OF THE MERCHANDISE CONTAINED IN THE NOTICES OF THE ORDERS

On April 4, 2011, the Department published its affirmative final determination in the LTFV and CVD investigations,³³ specifically identifying heat sinks as subject extrusions.³⁴ However, on May 13, 2011, the International Trade Commission (“ITC”) notified the Department of its affirmative finding of injury with respect to imports of certain aluminum extrusions from the PRC, and its negative injury finding with respect to imports of finished heat sinks from the PRC.³⁵ Therefore, consistent with sections 701 and 731 of the Tariff Act of 1930, as amended (the “Act”), the Department revised the scope of the subject merchandise stated in the *Final Determinations* so that the *Orders* would exclude finished heat sinks and thereby conform to, and be coterminous with, the ITC’s industry and injury determinations.³⁶ In its instructions to the investigation questionnaire, the ITC described heat sinks as a subset of aluminum extrusions typically used in electronic equipment as a thermal controlling tool and stated that they are usually referred to as (1) heat sink blanks, (2) fabricated heat sinks, or (3) finished heat sinks.³⁷ The Department adopted the ITC’s descriptions, in large part. For purposes of the *Orders*, “heat sink blanks” are defined as “full length aluminum extrusions used to produce finished heat sinks” that “are generally the pre-fabricated, pre-tested inputs in the production of heat sinks (post any stretching or aging processes applied).”³⁸ “Fabricated heat sinks” are defined as “any heat sink blank that has been cut-to-length, precision machined, and or otherwise fabricated to the end product specifications, but not yet tested, assembled onto other materials, or packaged.”³⁹ Further, “{f}inished heat sinks differ from fabricated heat sinks in that they have been fully, albeit not necessarily individually, tested and assured to comply with the required thermal performance end-use specifications.”⁴⁰ Only finished heat sinks are excluded from the scope of the *Orders*.⁴¹

³³ See *Aluminum Extrusions From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 18524 (April 4, 2011), corrected by *Aluminum Extrusions From the People’s Republic of China: Notice of Correction to the Final Determination of Sales at Less Than Fair Value*, 76 FR 20627 (April 13, 2011) and *Aluminum Extrusions From the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011), (collectively, “*Final Determinations*”).

³⁴ See *Final Determination*, 76 FR at 18525, which states, “{s}ubject extrusions may be identified with reference to their end use, such as fence posts, electrical conduits, heat sinks, door thresholds, or carpet trim.”

³⁵ See *Certain Aluminum Extrusions from China*, Investigation Nos. 701-TA-475 and 731-TA-1177 (Final), Publication 4229 (May 2011) (“ITC Final Report”).

³⁶ See also *Cleo Inc. v. United States*, 30 CIT 1380, 1383 (2006) (citing *Badger–Powhatan v. United States*, 608 F. Supp. 653, 656 (CIT 1985) (holding that the term “such merchandise” in section 731 of the Act refers to merchandise that satisfies both the less than fair value sales and injury criteria)).

³⁷ See *AD Order*, 76 FR at 30650; *CVD Order*, 76 FR at 30653.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* See *Aluminum Extrusions Fair Trade Committee*, 968 F. Supp. 2d at 1249-1253 (affirming the finished heat sink exclusion as published in the *Orders*) (“*AEFTC*”).

PRIOR SCOPE RULINGS RELEVANT TO THIS PROCEEDING

Heat Sinks for LED Light Bars⁴²

At issue in the prior heat sinks ruling were heat sinks for bars of LED emergency lights designed to be mounted to the roof of an emergency vehicle. The requestor argued that the products at issue constitute finished heat sinks because they are manufactured in strict accordance with the requestor's specifications to minimize thermal resistance and maximize the heat conductivity of the extrusions, and thus are precisely and optimally suited to cool the specific electronic devices for which they have been designed.

The Department's Scope Ruling found that the requestor failed to demonstrate how the product at issue met the two exclusion criteria for heat sinks. Specifically, the requestor failed to:

- (1) Demonstrate how the design and production of the product at issue is organized around meeting specified thermal performance requirements;⁴³ and,
- (2) Demonstrate how the product at issue is fully, albeit not necessarily individually, tested to comply with the specified thermal performance requirements.⁴⁴

Accordingly, the Department found that the products at issue did not meet the exclusion criteria for a finished heat sink.⁴⁵

ITC FINAL INJURY DETERMINATION⁴⁶

During its injury investigation, the ITC considered whether an industry in the United States was materially injured or threatened with material injury, or the establishment of an industry in the United States was materially retarded, by reason of imports of finished heat sinks ("FHS") from China. The ITC's analysis of how FHS differ from subject aluminum extrusions follows:⁴⁷

For the reasons discussed below, we find that there are two domestic like products:

- (1) FHS; and,
- (2) all other aluminum extrusions corresponding to the scope of these investigations.

Physical characteristics and uses. All aluminum extrusions within the scope of these investigations share certain basic physical characteristics. All are made from aluminum alloys in the 1, 3, and 6 series of the Aluminum Association (so-

⁴² See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Antidumping and Countervailing Duty Orders on Aluminum Extrusions from the People's Republic of China: Final Scope Ruling on ECCO's Heat Sinks For LED Light Bars," dated November 24, 2014 ("ECCO Scope Ruling").

⁴³ *Id.* at 19.

⁴⁴ *Id.* at 21.

⁴⁵ *Id.* at 22.

⁴⁶ See ITC Final Report.

⁴⁷ *Id.* at 7-9 (all internal footnotes omitted).

called “soft alloys”), all are produced by an extrusion process, and many aluminum extrusions are further fabricated (for example, cut to length, machined, drilled, punched, notched, bent, stretched, or assembled by welding or fastening) after they are mill finished. Also, many aluminum extrusions are produced in custom shapes and sizes.

FHS are not different from other aluminum extrusions in terms of their metallurgic chemistry, or by virtue of being further fabricated or produced in custom shapes. FHS are different from most other aluminum extrusions, however, by virtue of the specific and precise tolerances to which they are generally produced. FHS are designed to remove damaging heat from electronic equipment. The flat surface tolerance for FHS is often 1/1000 of an inch per inch, compared to 4/1000 to 14/1000 of an inch per inch for ordinary aluminum extrusions. The precise flatness of FHS allows for close contact between the FHS and the heat-generating components for which they have been designed and to which they are attached, thereby reducing or eliminating heat-trapping “dead air.”

FHS also differ from other aluminum extrusions (including heat sinks that are not “finished”) because of their customized thermal resistance properties. Whereas most aluminum extrusions are differentiated by shape and dimension, FHS are also characterized by their thermal resistance properties. In fact, FHS are certified to perform within thermal resistance parameters. Although these thermal resistance properties are not visible, they are clearly relevant to the customers for whom FHS have been designed. They make FHS precisely or optimally suited to cool the specific electronic devices for which they have been designed.

The principal end-use applications of aluminum extrusions are in the building and construction, transportation, and engineered products sectors. FHS have a specific end use (thermal management of electronic devices), but many other aluminum extrusions also have distinct individual end-use applications.

Interchangeability. FHS are not interchangeable with other aluminum extrusions. Many types of aluminum extrusions, however, also have a specific functionality and are not interchangeable with other aluminum extrusions. Aluminum extrusions in custom shapes are proprietary to specific users and specific applications, and thus by definition one type of custom shape is not interchangeable with another. Similarly, the interchangeability of standard shapes is limited by size and cross-dimensional shape; for example, one would not ordinarily use an angle and a tube interchangeably.

Common manufacturing facilities, production processes, and production employees. Aluminum extrusions are principally produced from aluminum billets. A billet is softened by being heated to the necessary temperature before extrusion. The heated billet is then pushed or squeezed into a precision opening,

or die, to produce the desired shape. Thus, the shape of the die will dictate the shape of the extrusion. After emerging from the die, the extrusion is cooled, stretched, cut, aged, and finished, as appropriate.

FHS are produced from aluminum extrusions in a process in which a cut part of an extrusion is held in and fabricated by a computer controlled milling machine to add holes, clearance pockets, and attachment points for heat generating devices. The machined part is typically cleaned and deburred, and it can have one of a variety of finishes applied to it. Specialized equipment, including wind tunnels, flow calibration equipment, testing equipment, and specialized design and data collection software, are used to design FHS and to produce prototypes. Highly trained employees manage the FHS design and testing equipment. Substantial thermal analysis and testing are associated with the front end of FHS production.

Conclusion. On balance, we find that there is a clear dividing line separating FHS from other aluminum extrusions. Our conclusion is based particularly on the customized thermal resistance properties of FHS; the unique aspects of the design, testing and production of FHS; differences between FHS and other aluminum extrusions in the channels of trade through which they are sold; evidence that the thermal management industry is perceived by producers and customers as being different from the general aluminum extrusions industry; and the fact that FHS are sold at much higher prices because of high value-added than most other aluminum extrusions.

INTERESTED PARTY COMMENTS

Streamlight

Components Subject to this Inquiry

In its Scope-Review Request and subsequent submissions, Streamlight argues that the components subject to this inquiry should be excluded from the scope of the *Orders* because they constitute parts of finished heat sinks.⁴⁸ Streamlight explains that, for the purposes of thermal analysis, “a LED system consists of a multi-component assembly, called a thermal stack, in which all components contribute in varying degrees to the total system thermal performance.”⁴⁹ Streamlight argues that the industry standard is to design the aluminum housing of a battery powered light or lamp to be the heat sink.⁵⁰ Thus, Streamlight argues that the components subject to this inquiry also serve as the housing for a battery powered lamp or light.⁵¹

⁴⁸ See, e.g., Streamlight’s Scope-Review Request at 3.

⁴⁹ *Id.* (citing Exhibit 3, CREE Application Note, “Thermal Management of Cree® XLamp LEDs,” at 10).

⁵⁰ *Id.* at 4 (citing Exhibit 4, “Luxeon® for Flashlight Applications, “Reference Design DR02,” at 4).

Streamlight also cites a competitor in Exhibit 5, “StormLighter Tactical Lighting Systems x8 Tactical Flashlight,” and Exhibit 6, “LED-Resource, ‘Flashlight Specifications,’” at 4.

⁵¹ *Id.*

Streamlight contends that a comparative temperature test between an operating product, with and without a thermal stack, shows that the module without the thermal stack exceeds the thermal design limits established by the manufacturer.⁵² Thus, Streamlight argues, it designed a passive thermal stack to dissipate heat along the entire body of the battery-powered LED light or lamp, by attaching a spreader to both the LED board and to the body of the light or lamp in question.⁵³ As a result, Streamlight maintains that the spreader absorbs the heat from the LED and passes it on to the thermal stack.⁵⁴ In this way, Streamlight argues, each of the parts of the thermal stack contributes in varying degrees to the total system thermal performance.⁵⁵

Streamlight identified the specific components subject to this inquiry as follows:⁵⁶

| Description | Component Number | HTS | Description |
|-------------------------------------|--|--------------|---|
| Adapter | 748007 | 7604.10.3050 | aluminum and articles thereof; <i>aluminum bars, rods and profiles</i> : of aluminum, not alloyed: bars and rods: <i>having a round cross section with an outside diameter of 10 mm or more.</i> |
| Barrel | 881107-20 | | |
| click switch tail housing | 881106 | | |
| Facecap | 692157, 692215, 692524, 750979, 754308 | | |
| Head | 747001, 757004, 748001, 851001, 881098 | | |
| k2 reflector | 691234, 691284 | | |
| outer sleeve | 757033 | | |
| reflector housing | 748003, 881101 | | |
| reflector assembly adaptor | 881099 | | |
| tactical barrel | 747029, 748004 | | |
| tail cap housing | 757052 | | |
| tail cap | 757003 | | |
| threaded adapter | 750977, 757082 | | |
| threaded connector | 747021 | | |
| rebel reflector, anodized reflector | 691306, 691306-1 | 8513.10.4000 | electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles: <i>portable electric lamps</i> designed to function by their own source of energy (for example, dry batteries, storage batteries, magnetos), other than lighting equipment of heading 8512; parts thereof: lamps: other (<i>i.e., other than flashlights</i>). |
| threaded retainer | 715006 | 8513.90.2000 | |

⁵² Streamlight cites to Exhibit 7, “Stinger LED HL Temperature Test.”

⁵³ See Streamlight’s Scope-Review Request at 6.

⁵⁴ *Id.* at 7.

⁵⁵ *Id.* See also Streamlight’s Comments on ECCO’s LED Lightbar Scope Ruling at 2-4 (citing Streamlight’s Scope-Review Request at Exhibits 7, 9, 10, 11, 12, 13 and 14).

⁵⁶ See Streamlight’s Scope-Review Request at Exhibit 10 for a list of these products by title and component number.

| Description | Component Number | HTS | Description |
|-------------|------------------|-----|---|
| | | | own source of energy (for example, dry batteries, storage batteries, magnetos), other than lighting equipment of heading 8512; parts thereof: lamps: other (<i>i.e., other than flashlights</i>). |

Streamlight maintains that the components subject to this inquiry are excluded by the plain language of the *Orders* because they: (1) are fabricated from aluminum extrusions that meet specific thermal performance requirements; (2) have been tested to comply with such requirements; (3) are continuously inspected to ensure that the parts meet Streamlight’s requirements; and, (4) function as finished heat sinks, as opposed to heat sink blanks.⁵⁷ Streamlight maintains that its thermal stack assemblies can be distinguished from heat sink blanks based on their “customized thermal resistance properties.”⁵⁸

Streamlight also contends that because it assembles the components subject to this inquiry, first into thermal stacks and then into finished lamps or lights, does not mean that such products do not constitute finished heat sinks.⁵⁹ Streamlight maintains that in previous scope rulings, the Department found that assembly does not constitute “finishing” in the context of the *Orders*.⁶⁰ Therefore, Streamlight argues, pursuant to the interpretive process specified in *Mid Continent Nail Corporation*, the Department should determine that the components subject to this inquiry are not included within the scope of the *Orders*.⁶¹

Moreover, Streamlight argues that the fact that the components subject to this inquiry serve as a [], does not mean that they are not also heat sinks, because, according to Streamlight, the components subject to this inquiry 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.”⁶²

⁵⁷ *Id.* at 12.

⁵⁸ *Id.* at 17.

⁵⁹ *Id.*

⁶⁰ Streamlight cites to Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Antidumping Duty (AD) and Countervailing Duty (CVD) Orders: Aluminum Extrusions from the People’s Republic of China (PRC): Final Scope Ruling on Motor Cases, Assembled and Housing Stators,” dated November 19, 2012 (“*Housing Stators*”); Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Antidumping Duty (AD) and Countervailing Duty (CVD) Orders: Aluminum Extrusions from the People’s Republic of China (PRC): Initiation and Preliminary Scope Ruling on Side Mount Valve Controls,” September, 24, 2012, at 6-7 (footnotes omitted) (“*SMVCs Initiation and Prelim*”), and upheld in the final scope ruling, Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Antidumping Duty (AD) and Countervailing Duty (CVD) Orders: Aluminum Extrusions from the People’s Republic of China (PRC): Final Scope Ruling on Side Mount Valve Controls,” dated October 26, 2012 (“*SMVCs Final*”)(collectively, “*SMVCs*”).

⁶¹ Streamlight cites to *Mid Continent Nail Corporation v. United States*, 725 F.3d 1295 (Fed. Cir. 2013), *remanded by Mid Continent Nail Corporation v. United States*, 925 F. Supp. 2d 1327 (CIT 2013); 24 F. Supp. 3d 1279 (CIT 2014).

⁶² See Streamlight’s Response to Petitioner’s Comments at 3; Streamlight’s Rebuttal Comments on the Initiation at 2 (citing *AD Order*, 76 FR at 30651; *CVD Order*, 76 FR at 30654). See also Streamlight’s Rebuttal Comments on the Initiation at 7.

Critical Physical Properties

Streamlight argues further that the scope exclusion language of the *Orders* does not: (1) exclude only those heat sinks that have no purpose other than heat dissipation or have heat dissipation as the “primary” purpose; (2) require the addition of fins or posts to the heat sink; (3) require tolerances of 1/1000 inch per inch; (4) require post-production testing; and/or, (5) require “certificates” of post-production testing.⁶³ Rather, Streamlight argues that, because the heat sinks scope exclusion requires only two things: (1) the design and production of the heat sinks must be organized around meeting certain specified thermal performance requirements; and (2) the heat sinks must be fully, albeit not necessarily individually, tested to comply with such requirements,⁶⁴ it does not exclude any product that may be designed around both thermal performance requirements and structural requirements.⁶⁵

Streamlight contends that the primary holding of the CIT in *AEFTC* is that the Department did not err by failing to limit the finished heat sink exclusion of the *Orders* to products “sold to electronics manufacturers,”⁶⁶ because, according to Streamlight, the ITC relies primarily on physical properties to define finished heat sinks, making the term “sold to electronics manufacturers” redundant.⁶⁷ Streamlight notes, that even if such a requirement were added, it is an electronics manufacturer, and would therefore meet such a proposed end-user certification requirement.⁶⁸

Parts of Heat Sinks

Streamlight reiterates that neither the ITC Final Report nor the *Orders* mention parts of heat sinks.⁶⁹ As a consequence, Streamlight maintains that the Department should examine closely the distinctions that the ITC drew between finished heat sinks and ordinary aluminum extrusions that led the ITC to find two separate like products, and determine whether heat sink parts more resemble heat sinks or all other aluminum extrusions.⁷⁰ Specifically, Streamlight contends that the ITC Final Report determined that thermal resistance properties were most relevant to the customers for whom FHS have been designed, because they render FHS precisely or optimally suited to cool the specific electronic devices for which they have been designed.”⁷¹ Because these characteristics are as true for finished heat sink parts as they are for the fully assembled thermal stack, which must then be tested for thermal performance, Streamlight argues that the components subject to this inquiry should be excluded from the *Orders*.⁷²

⁶³ See Streamlight’s Response to Petitioner’s Comments at 18.

⁶⁴ *Id.* at 19.

⁶⁵ See Streamlight’s Response to Petitioner’s Comments at 3.

⁶⁶ See Streamlight’s Response to Petitioner’s CIT Comments at 2.

⁶⁷ *Id.* at 4 (citing *AEFTC*, 968 F. Supp. 2d at 1249 - 1250).

⁶⁸ See Streamlight’s Response to Petitioner’s CIT Comments at 4.

⁶⁹ See Streamlight’s Rebuttal Comments on the Initiation at 25.

⁷⁰ *Id.*

⁷¹ *Id.* at 26 (citing ITC Final Report at 7).

⁷² *Id.* at 26.

Final Finished Products

Streamlight contends that both the “final finished product” and “kits” exclusion clauses of the scope of the *Orders* do not apply to the finished heat sink exclusion.⁷³ Specifically, Streamlight maintains that generally aluminum parts for most products are considered subject merchandise, unless those parts are “fully and permanently assembled” upon importation under the language for the “final finished product” exclusion, or are imported as a “combination of parts” that can be fully assembled after importation under the “kits” exclusion.⁷⁴ Streamlight argues that the “heat sinks” exclusion has no such “parts” language. Therefore, it argues that because the “heat sinks” exclusion lacks such restrictive language, Streamlight maintains that its heat sink parts qualify under the “finished heat sink” scope exclusion of the *Orders*.⁷⁵

Tests of Thermal Performance Requirements

Streamlight argues that its products are designed to dissipate heat.⁷⁶ Moreover, Streamlight explains that the conditions under which the tests were performed in Exhibits 7 and 14 of Streamlight’s Scope-Review Request were somewhat different.⁷⁷ Specifically, Streamlight explains that the test performed for Exhibit 7 was an “open bench” test, performed to demonstrate that the LED apparatus will overheat without a heat sink.⁷⁸ Streamlight explains that in the normal course of thermal performance requirements testing, Streamlight fully tests its products in thermal test chambers.⁷⁹ Thus, Streamlight notes that Exhibit 14 “did *not* measure the temperature of the LED apparatus *unattached*, but merely tested the temperature of the fully assembled device at the heat sink body of the assembled device, and at the LED juncture of the assembled device.”⁸⁰ Streamlight additionally claims that, despite the difference in testing conditions, the results of the two tests are similar.⁸¹ Finally, Streamlight maintains that it manufacturers its components subject to this inquiry to provide sufficient “headroom” to accommodate a large range of expected ambient temperatures in which the fully assembled devices will be used, and to accommodate minor variations in LED configuration from model to model.⁸²

Pins and/or Fins

Streamlight argues that neither the scope of the *Orders* nor the ITC Final Report define finished heat sinks as containing fins, pins and/or posts.⁸³ Specifically, Streamlight highlights that the references to heat sinks with fins in the ITC Final Report was not intended to catalogue the

⁷³ See Streamlight’s Rebuttal Comments on the Initiation at 22-23.

⁷⁴ *Id.* at 23.

⁷⁵ *Id.*

⁷⁶ See Streamlight’s Response to Petitioner’s Comments at 4-5 (citing Streamlight’s Scope-Review Request at Exhibit 7).

⁷⁷ See Streamlight’s Response to Petitioner’s Comments at 7.

⁷⁸ *Id.* See also Streamlight’s Rebuttal Comments on the Initiation at 12.

⁷⁹ *Id.*

⁸⁰ *Id.* at 8.

⁸¹ *Id.* at 7-8.

⁸² *Id.* at 9.

⁸³ See Streamlight’s Response to Petitioner’s Comments at 9. See also Streamlight’s Rebuttal Comments on the Initiation at 6-8 arguing that the plain language of the scope does not address fins, pins or flat surfaces.

universe of products within the scope of the injury investigation,⁸⁴ or even to catalogue the types of “finished heat sinks” included in the separate like-product category.⁸⁵ Rather, Streamlight argues that such products were selected for pricing analysis.⁸⁶ Moreover, Streamlight maintains that even in the dissenting opinions of the ITC Final Report,⁸⁷ the dissenting Commissioners did not assert or imply that all “heat sinks” must include “projecting fins or posts,” but that rather, that they represent a typical, but not defining, characteristic of a product that “come{s} in hundreds of different sizes and shapes.”⁸⁸

Flat Surfaces

Streamlight maintains that neither the ITC Final Report nor the scope of the *Orders* mandate flat surfaces as a defining characteristic of finished heat sinks.⁸⁹ Similarly, Streamlight contends that the reference to a specific flat surface tolerance level in the ITC Final Report does not mean that the product must be engineered specifically to that tolerance in order to be classified as a “finished heat sink.”⁹⁰

Close Contact

Nevertheless, Streamlight maintains that its part-to-part thermal contact tolerances are very tight, and gauged precisely depending on the particular surface contact connection, so that they reach the specified tolerances in the thermal contact area.⁹¹

Post-Production Testing and Inspection

Streamlight maintains that the *Orders* do not require post-production testing in order for the heat sinks to be deemed “finished” for purposes of the exemption.⁹² Streamlight argues that the plain language of the exclusion does not require post-production testing for each individual product or thermal testing certificates at the time of importation.⁹³ Moreover, Streamlight argues that the Petitioner’s comparison of a thermal testing certificate to a mill certificate is faulty.⁹⁴ According to Streamlight, the steel mill certificate certifies to the chemical composition of the steel, not that every imported piece has been tested for the relevant mechanical properties.⁹⁵ In addition, Streamlight contends that mechanical testing can only be done by testing a prototype, not by

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.* at 10.

⁸⁷ *Id.* (citing ITC Final Report, Dissenting Views of Vice Chairman Irving A. Williamson and Commissioner Charlotte R. Lane, at 31).

⁸⁸ *Id.*

⁸⁹ See Streamlight’s Response to Petitioner’s Comments at 11.

⁹⁰ *Id.* at 12. See also Streamlight’s Rebuttal Comments on the Initiation at 7. See also Streamlight’s Comments on ECCO’s LED Lightbar Scope Ruling at 7.

⁹¹ *Id.* (citing Streamlight’s Scope-Review Request at Exhibit 11). See also Streamlight’s Comments on ECCO’s LED Lightbar Scope Ruling at 7.

⁹² *Id.* See also Streamlight’s Rebuttal Comments on the Initiation at 17. See also Streamlight’s Comments on ECCO’s LED Lightbar Scope Ruling at 9.

⁹³ *Id.* at 15-16.

⁹⁴ *Id.* 17.

⁹⁵ *Id.*

testing each individual piece of aluminum, because to do so would require destroying the test sample.⁹⁶ Thus, Streamlight argues that the scope exclusion language does not require certificates with each individual entry of the components subject to this inquiry to prove that they have the heat dissipation qualities necessary to be a “heat sink” or to be “finished.”⁹⁷ Streamlight claims, however, that it tests each prototype, and then separately spot inspects the shipments prior to importation, according to the ANSI/ASQ Z 1.4-2008 normal sampling standard.⁹⁸ Streamlight explains that it also provided an exhibit that contains examples of the inspection instructions for Streamlight’s heat sink thermal stack assemblies, along with the receiving records indicating the timing, receipt quantity, and the quantity inspected.⁹⁹

Streamlight also contends that the CIT in *AEFTC* held that the post-production testing and certification requirements are not ripe for adjudication. Thus, Streamlight maintains that the CIT’s analysis in *AEFTC* does not suggest that “post-production” thermal testing is necessary for a product to receive the finished heat sink exclusion.¹⁰⁰

Streamlight also disagrees with Aavid’s proposal that in order to be considered a finished heat sink, the item must undergo thermal performance testing in the PRC.¹⁰¹ Streamlight contends that nothing in the *Orders* requires prototype testing in the PRC.¹⁰² Streamlight argues that the timing of the pre-production testing is the important point, not the location.¹⁰³ Thus, Streamlight disagrees with Aavid’s contention that “{b}y requiring prototype thermal analysis and testing to occur in China, the Department would guarantee that only manufacturers of FHS would invest the technology and capital equipment to conduct these tests.”¹⁰⁴ Streamlight notes further that it has invested in the technology and capital equipment required to conduct thermal performance tests for heat sink prototypes in the United States, as indicated in the Plant Tour.¹⁰⁵

(k)(2) Analysis

Streamlight also argues that an analysis of the factors established in 19 CFR 351.225(k)(2) demonstrates that the components subject to this inquiry are outside the scope of the *Orders* based on the physical characteristics of the product, the expectations of the ultimate purchaser, the ultimate use of the product, the channels of trade, and the manner of advertising and display.¹⁰⁶

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ See Streamlight’s Comments on ECCO’s LED Lightbar Scope Ruling at 8 (citing Streamlight’s Scope-Review Request at 15).

⁹⁹ *Id.* at 8-9 (referring to Streamlight’s Scope-Review Request at Exhibit 16).

¹⁰⁰ See Streamlight’s Response to Petitioner’s CIT Comments at 8.

¹⁰¹ *Id.* at 21 (citing Attachment 5, letter from Streamlight on the record of the scope inquiry concerning heat sinks for LED light bars entitled, “Aluminum Extrusions from the People’s Republic of China: Comments of Streamlight, Inc. on Scope Inquiry on Heat Sinks for LED Light Bars Scope Request,” dated July 11, 2013).

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 22 (citing Aavid’s Comments on the Initiation at 10).

¹⁰⁵ *Id.* at 22.

¹⁰⁶ See Streamlight’s Scope-Review Request at 18-20. See also Streamlight’s Comments on the Initiation at 9.

Assessment Instructions

Finally, Streamlight argues that if the Department's scope ruling finds that Streamlight's components subject to this inquiry are within the scope of the *Orders*, the Department may not issue assessment instructions covering imports prior to May 19, 2014, the date that the Department initiated the formal scope inquiry.¹⁰⁷ According to Streamlight, 19 CFR 351.225(1)(3) states that when the Department initiates a scope inquiry, the Department is authorized to assess duties only for entries on or after the date of the initiation of the formal scope inquiry.¹⁰⁸ Streamlight contends that the Department's past practice supports the position that the Department does not have the authority to assess AD or CVD duties prior to the initiation of a formal scope ruling.¹⁰⁹ Thus, Streamlight argues that any suspension of liquidation and cash deposit requirements should be limited to merchandise entered on or after May 19, 2014, the date on which the Department initiated this formal scope inquiry.¹¹⁰

Additionally, in Streamlight's Suspension Comments, Streamlight argues that its situation is different than that discussed in *Shenyang Yuanda*.¹¹¹ In *Shenyang Yuanda*, Streamlight contends, the plaintiffs appealed the Department's scope ruling and instructions to CBP, arguing that the Department's instructions effectively suspended liquidation retroactively, contrary to 19 CFR 351.225(1), as interpreted by the Court of Appeals for the Federal Circuit (CAFC) in *AMS Associates*.¹¹² Additionally, Streamlight contends that in *Shenyang Yuanda*, the CIT upheld the Department's instructions to U.S. Customs and Border Protection ("CBP") to continue suspension of liquidation of a product that the Department determined was covered by the scope.¹¹³ Streamlight argues that the product at issue in *Shenyang Yuanda* was expressly covered by the scope, while its products are not expressly mentioned within the scope, and thus have not been subject to suspension of liquidation since the preliminary determination of the investigation. Therefore, the Department should instruct CBP to begin suspension of liquidation of Streamlight's products on or after May 19, 2014, pursuant to 19 CFR 351.225(1)(3).

¹⁰⁷ See Streamlight's Comments on the Initiation at 16.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 17 (citing to *Aluminum Extrusions from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission, in Part, 2010/12*, 79 FR 96 (January 2, 2014), and accompanying Issues and Decision Memorandum at Comment 14 (where the Department stated that "{C}onsistent with 19 CFR 351.225(1)(3), the Department will instruct CBP to suspend liquidation and to require a cash deposit of estimated AD duties, at the applicable rate, for each unliquidated entry, if any, of IDEX's subject merchandise entered, or withdrawn from warehouse, for consumption on or after December 1, 2011, the date of initiation of IDEX's scope inquiry for precision-machined parts").

¹¹⁰ *Id.* at 18.

¹¹¹ See *Shenyang Yuanda Aluminum Industry Engineering Co., Ltd. v. United States*, 961 F. Supp. 2d 1291 (Ct. Int'l Trade 2012) ("*Shenyang Yuanda*"), *aff'd* 2015 U.S. App. LEXIS 854 (Fed. Cir. 2015) (mandate not yet issued).

¹¹² See *AMS Associates Inc. v. United States*, 771 F. Supp. 2d 1374, 1382 (CIT 2012), *aff'd*, 737 F.3d 1338 (Fed. Cir. 2013) ("*AMS Associates*").

¹¹³ See Streamlight's Suspension Comments at 5 -6 (citing *Shenyang Yuanda*, 961 F. Supp. 2d at 1302-1305).

Petitioner

Main Argument

Petitioner argues that the components subject to this inquiry are neither heat sinks nor parts of heat sinks, but rather, represent fabricated aluminum extruded profiles that do not represent final finished goods, and are therefore, expressly covered by the scope of the *Orders*.¹¹⁴ Petitioner maintains that the scope of the *Orders* covers “aluminum extrusions which are shapes and forms, produced by an extrusion process, made from aluminum alloys having metallic elements . . . 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.”¹¹⁵ In addition, Petitioner contends that the *Orders* also include extrusions “that are cut-to-length, machined, drilled, {and} punched . . .¹¹⁶ (and) produced and imported with a variety of finishes” which 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 coated¹¹⁷ . . . {that} may be described at the time of importation as parts for final finished products {and} are assembled after importation.”¹¹⁸ Petitioner also argues that the *Orders* define finished heat sinks as fabricated heat sinks that have been subjected to certain additional operations or testing;¹¹⁹ and fabricated heat sinks that are “heat sink blank{s} that {have} been cut-to-length, precision-machined, and/or otherwise fabricated to end product specifications, but not yet tested.”¹²⁰ Thus, Petitioner argues that, because the components subject to this inquiry match “the descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the Commission,”¹²¹ the Department should find the components subject to this inquiry included in the scope of the orders in accord with 19 CFR 351.225(k)(1).¹²²

Petitioner claims further that the Department must determine as a threshold matter whether the components subject to this inquiry are heat sink parts or subject aluminum extrusions designed primarily to provide structural support to Streamlight’s flashlight.¹²³ Although Petitioner believes that substantial evidence exists on the record to make this determination in accord with 19 CFR 351.225(k)(1), Petitioner argues that, if the Department believes the evidence is insufficient, it should use the *Diversified Products* criteria to determine whether the components subject to this inquiry are aluminum extrusions subject to the order or heat sinks parts in accord with 19 CFR 351.225(k)(2).¹²⁴ If the Department determines that the components subject to this inquiry represent heat sink parts, Petitioner maintains that the Department must analyze the

¹¹⁴ See Petitioner’s Comments on Streamlight’s Scope-Review Request at 4.

¹¹⁵ *Id.* at 6 (citing *AD Order*, 76 FR at 30650 and *CVD Order*, 76 FR at 30653).

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 8 (citing *AD Order*, 76 FR at 30650 and *CVD Order*, 76 FR at 30654).

¹¹⁹ *Id.* at 14 (citing *AD Order*, 76 FR at 30651 and *CVD Order*, 76 FR at 30653).

¹²⁰ *Id.* at 14 (citing *AD Order*, 76 FR at 30650 and *CVD Order*, 76 FR at 30653).

¹²¹ Petitioner cites 19 CFR 351.225(k)(1). See also Petitioner’s Comments on Streamlight’s Scope-Review Request at 6, Exhibit 11; and Petitioner’s Comments on the Initiation at 6.

¹²² See Petitioner’s Comments on the Initiation at 5.

¹²³ See Petitioner’s Rebuttal Comments on the Initiation at 4.

¹²⁴ *Id.*

scope language to clarify the requirements of the finished heat sinks exclusion in favor of post-production thermal testing.¹²⁵ Thus, Petitioner argues that the instant scope analysis must be a two-fold process of determining whether (1) the components subject to this inquiry represent heat sink parts, and, if so, (2) clarifying the requirements of the heat sink exclusion.¹²⁶

Physical Properties

Petitioner argues further that the components subject to this inquiry do not have the same physical properties as finished heat sinks.¹²⁷ Petitioner maintains that they have never been regarded as heat sink blanks or fabricated heat sinks.¹²⁸ Moreover, Petitioner argues that Streamlight’s technical documentation does not support Streamlight’s claims that the components subject to this inquiry represent finished heat sinks. Specifically, Petitioner contends that:

- (1) Streamlight’s assembly drawings do not [] components subject to this inquiry [];¹²⁹ Streamlight’s testing documents indicate that aluminum has heat dissipating thermal properties,¹³⁰ and do not demonstrate that the []¹³¹ Streamlight’s additional test results show that []¹³² so that the aluminum “heat sink part” referenced in Exhibit 14 did not [] observed in Exhibit 7.¹³³
- (2) Documents placed on the record after Streamlight’s plant tour, show that:
 - a. the demonstrations that Streamlight conducted for the Department on its plant tour and included in Streamlight’s Scope-Review Request at Exhibit 7 were conducted on an open bench, as opposed to Streamlight’s normal testing chamber, and were thus outside the “normal course of thermal performance requirements testing.”¹³⁴
 - b. the components subject to this inquiry do not represent finished heat sinks but []¹³⁵ or []¹³⁶

¹²⁵ *Id.* at 5.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.* at 14.

¹²⁹ *Id.* at 10 (citing Streamlight’s Scope-Review Request at Exhibit 11). *See also* Petitioner’s Comments on Streamlight’s 12.3 Submission at 6.

¹³⁰ *Id.* at 10-11 (citing Streamlight’s Scope-Review Request at Exhibit 7).

¹³¹ *Id.* at 11. *See also* Petitioner’s Response to Streamlight’s 7.11 Comments at 15, and Petitioner’s Comments on Streamlight’s 12.3 Submission at 5.

¹³² *Id.* (citing Streamlight’s Scope-Review Request at Exhibit 14).

¹³³ *Id.* at 11-12 (comparing results in Streamlight’s Scope-Review Request at Exhibits 7 and 14).

¹³⁴ *See* Petitioner’s Rebuttal Comments on the Initiation at 11.

¹³⁵ *See* Petitioner’s Comments on the Initiation at 8 (citing Streamlight’s Comments on the Plant Tour at Exhibit 4).

(3) Streamlight's [] does not mention that its products function as heat sinks.¹³⁷

Thus, Petitioner contends that Streamlight has failed to demonstrate that its [] are fully, albeit not necessarily individually, tested to comply with the specified thermal performance requirements.¹³⁸

In addition, Petitioner contends that the components subject to this inquiry do not share the same physical properties as the heat sinks excluded from the ITC's like product analysis.¹³⁹ Specifically, Petitioner contends that the ITC found that finished heat sinks differ from most other aluminum extrusions "by virtue of the specific and precise tolerances to which they are generally produced . . . The flat surface tolerance for {finished heat sinks} is often 1/1000 of an inch per inch"¹⁴⁰

Petitioner further notes that the tolerances that Streamlight identified in its assembly drawings reference the tolerances between two fabricated aluminum extruded parts, not an extruded part and the heat generating component of a [] (*i.e.*, the LED), and that none of the tolerances specified in Streamlight's Response to Petitioner's Comments have anything to do with making contact with a LED light or group of LED lights.¹⁴¹ Petitioner also claims that the ITC described excluded finished heat sinks as made of "6063 T6 aluminum with an overall width of 18.624 +/- .160 inches wide, 1.75 +/- .06 inches thick by 18.260 +/- .005 inches long with 41 fins."¹⁴² Finally, Petitioner notes that Vice Chairman Williamson and Commissioner Lane, in dissenting opinions, described heat sinks as "includ{ing} a set of spaced projecting fins or posts that air can flow between in order to dissipate heat."¹⁴³

Petitioner contends that components subject to this inquiry do not share the same critical physical properties as the finished heat sinks indicated in the ITC Final Report, and, thus, are not finished heat sinks excluded by the *Orders*.¹⁴⁴ Specifically, Petitioner alleges that:

- The components subject to this inquiry are fabricated in the shape of [], rather than flat.¹⁴⁵ The surface tolerances appear to be [] 1/1000 of an inch per inch, and often []

¹³⁶ See Petitioner's Comments on the Initiation at 9 (citing Streamlight's Comments on the Plant Tour at Exhibit 11).

¹³⁷ See Petitioner's Comments on the Initiation at 9, and Exhibit 4.

¹³⁸ See Petitioner's Comments on Streamlight's 12.3 Submission at 14-15.

¹³⁹ *Id.* at 13.

¹⁴⁰ *Id.* (citing ITC Final Report at 7).

¹⁴¹ See Petitioner's Comments on Streamlight's 12.3 Submission at 13.

¹⁴² See Petitioner's Comments on Streamlight's Scope-Review Request at 13 and Attachment 1 (citing ITC Final Report at Part V-5).

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 13.

¹⁴⁵ *Id.*

],¹⁴⁶ and do not indicate that the components subject to this inquiry are in close contact with, or attached to, an LED light.¹⁴⁷

- The components subject to this inquiry do not have fins, pins, or fans,¹⁴⁸ and Streamlight admits that its “heat sinks are not the ‘traditional fin-type heat sink.’”¹⁴⁹

Heat Sink Parts

Petitioner also maintains that even if the Department finds that the components subject to this inquiry represent heat sinks, the heat sink exclusion clause of the scope of the *Orders* does not exclude finished heat sinks parts.¹⁵⁰ Petitioner argues that the scope of the *Orders* explicitly covers heat sinks with the exception of finished heat sinks.¹⁵¹ In addition, Petitioner notes that the scope exclusionary language does not mention heat sink parts.¹⁵² Moreover, Petitioner reiterates that the scope states, “subject aluminum extrusions may be described at the time of importation as parts for final finished products that are assembled after importation. . . . Such parts that otherwise meet the definition of aluminum extrusions are included in the scope.”¹⁵³ As a consequence, Petitioner argues, that in instances where the scope of the *Orders* intends to exclude parts of an aluminum extrusion, the scope contains a specific exclusion.¹⁵⁴

Petitioner argues that the information on the record demonstrates that Streamlight’s products, at best, represent “parts of heat sinks.”¹⁵⁵ Petitioner notes that Streamlight’s Scope-Review Request identified the components subject to this inquiry as “certain extruded aluminum finished heat sink parts for battery powered LED lamps and lights.”¹⁵⁶ Petitioner reiterates that Streamlight additionally describes the components subject to this inquiry as “heat sink parts” that form a “thermal stack.”¹⁵⁷ Petitioner claims further that Streamlight’s internal documentation shows that [

],¹⁵⁸ and that, each part is not separately tested or designed to meet specific thermal requirements.¹⁵⁹ Accordingly, Petitioner contends that such “parts of finished heat sinks,” are not covered by the *Orders*.¹⁶⁰

¹⁴⁶ *Id.* See also Petitioner’s Comments on Streamlight’s 12.3 Submission at 11 for a long discussion on the issue of flatness and contact.

¹⁴⁷ See Petitioner’s Comments on Streamlight’s 12.3 Submission at 12.

¹⁴⁸ *Id.* (citing Streamlight’s Scope-Review Request at 6).

¹⁴⁹ *Id.*

¹⁵⁰ See Petitioner’s Comments on the Initiation at 17.

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.* at 18 (citing *AD Order*, 76 FR at 30651; *CVD Order*, 76 FR at 30654).

¹⁵⁴ *Id.*

¹⁵⁵ See Petitioner’s Comments on the Initiation at 18.

¹⁵⁶ *Id.* at 19 (citing Streamlight’s Scope-Review Request at 1).

¹⁵⁷ *Id.* (citing Streamlight’s Scope-Review Request at 2-3).

¹⁵⁸ *Id.* (citing Streamlight’s Scope-Review Request at Exhibit 16; and Streamlight’s Comments on the Plant Tour at Exhibit 4).

¹⁵⁹ *Id.* at 19.

¹⁶⁰ *Id.*

Petitioner argues that the Department should not expand the heat sink exclusion of the scope to products that are not heat sinks.¹⁶¹ Petitioner claims that “[h]eat sinks are designed for the purpose of cooling and not primarily to serve as structural components”¹⁶² and that the components subject to this inquiry serve primarily as structural components for Streamlight’s [], not all of which are constructed of aluminum.¹⁶³ Moreover, Petitioner contends that the vast majority, if not all of the components subject to this inquiry, do not have direct contact with the LED heat source,¹⁶⁴ which, according to Petitioner, Aavid proposes as a criteria for the definition of heat sinks.¹⁶⁵ Petitioner notes that Exhibit 4 of Streamlight’s plant tour summary demonstrates that none of the aluminum [] contacts the electronic components. However, Petitioner notes that one component of the alleged thermal stack appears to be the actual H-shaped heat sink described in its patent, and [].¹⁶⁶ Thus, according to Petitioner, because the components subject to this inquiry function primarily as structural components and do not directly contact the electronic components to be cooled, they represent aluminum extrusions subject to the *Orders*.¹⁶⁷

Petitioner argues that based on the CIT’s ruling in *AEFTC*, the Department should determine that finished heat sinks are excluded from the scope of the *Orders* only if a portion of each shipment undergoes post-production thermal testing and is accompanied by a certification to that effect.¹⁶⁸ According to Petitioner, the CIT agreed that requiring evidence of post-production thermal testing is reasonable and a certification requirement is a means of demonstrating that such testing that occurred.¹⁶⁹

Petitioner also contends that the ITC and Aavid note that finished heat sinks should comply with customer specifications.¹⁷⁰ Petitioner maintains that the record contains only thermal requirements provided by the manufacturers of LEDs, but none provided by the customers.¹⁷¹ As a consequence, Petitioner argues that even if the Department regards Streamlight as the customer, the testing conducted by Streamlight does not demonstrate the components subject to this inquiry were designed to meet certain thermal properties, because, according to Petitioner, none of Streamlight’s specific thermal performance requirements are on the record.¹⁷² Thus, Petitioner contends that the components subject to this inquiry do not meet specific and measureable heat dissipation requirements in order to function as intended.¹⁷³

¹⁶¹ See Petitioner’s Rebuttal Comments on the Initiation at 13.

¹⁶² *Id.* at 14 (citing also Aavid’s Comments on the Initiation at 10).

¹⁶³ *Id.* at 14.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.* (citing Aavid’s Comments on the Initiation at 10).

¹⁶⁶ *Id.* at 14.

¹⁶⁷ *Id.* at 15.

¹⁶⁸ See Petitioner’s Comments on the CIT Scope Decision at 2.

¹⁶⁹ *Id.* at 4.

¹⁷⁰ *Id.* at 11 (citing Aavid’s Comments on the Initiation at 6).

¹⁷¹ *Id.* at 11.

¹⁷² *Id.* (citing Streamlight’s Response to Petitioner’s Comments at 4).

¹⁷³ *Id.* at 12.

Production Process

Petitioner contends that Streamlight's production process demonstrates that the components subject to this inquiry are not heat sinks because they do not appear to follow the production method outlined in Aavid's Comments on the Initiation.¹⁷⁴ Specifically, Petitioner alleges that Streamlight's production process does not begin with a heat sink blank, or include fabricated heat sinks (that {have} been cut-to-length, precision-machined, and/or otherwise fabricated to end product specifications, but not yet tested) which after additional operations or testing become finished heat sinks.¹⁷⁵ Petitioner claims that Streamlight's Scope Ruling Request states that Streamlight's heat sink thermal stack assemblies are not heat sink blanks.¹⁷⁶ Thus, because the production of the components subject to this inquiry do not commence with a heat sink blank, Petitioner contends that Streamlight's production process confirms that its products are not heat sinks at all.¹⁷⁷

Petitioner contends that the Department previously determined that products that consist solely of extruded aluminum parts are covered by the scope of the *Orders*.¹⁷⁸ Thus, Petitioner argues that the Department should find components subject to this inquiry, which are made solely of aluminum alloys covered by the *Orders*, included in the scope.¹⁷⁹

Thermal Testing

Petitioner notes that all aluminum extrusions dissipate heat, but all things produced from aluminum extrusions are not "finished heat sinks."¹⁸⁰ Petitioner argues that Streamlight's thermal testing results confirm that aluminum extrusions dissipate heat without demonstrating that the components subject to this inquiry were designed to lower LED temperatures to a certain specified thermal standard.¹⁸¹ As a consequence, Petitioner argues that the components subject to this inquiry lower the temperature of the heat-generating LED, not as a function of the design, but because the relevant parts are made of aluminum.¹⁸² Therefore, Petitioner argues that the

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* (citing *AD Order*, 76 FR at 30650 and *CVD Order*, 76 FR at 30653).

¹⁷⁶ *Id.* at 13 (citing Streamlight's Scope-Review Request at 17).

¹⁷⁷ *Id.* at 13.

¹⁷⁸ See Petitioner's Comments on Streamlight's Scope-Review Request at 7-15; and Petitioner's Comments on the Initiation at 7 where Petitioner cites to: Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Aluminum Extrusions from the People's Republic of China: Final Scope Ruling on Refrigerator/Freezer Trim Kits," date December 17, 2012 ("*Refrigerator/Freezer Trim Kits*"); Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Antidumping ("AD") and Countervailing Duty ("CVD") Orders on Aluminum Extrusions from the People's Republic of China ("PRC"): Final Scope Ruling on J.A. Hancock Co., Inc.'s Geodesic Structures," date July 17, 2012 ("*Geodesic Structures*"); and, Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Aluminum Extrusions from the People's Republic of China: Final Scope Ruling on Cutting and Marking Edges," dated November 13, 2012 ("*Cutting and Marking Edges*").

¹⁷⁹ See Petitioner's Comments on Streamlight's Scope-Review Request at 7 and 8; see also Petitioner's Comments on the Initiation at 6.

¹⁸⁰ See Petitioner's Comments on Streamlight's Scope-Review Request at 10.

¹⁸¹ See Petitioner's Comments on the Initiation at 9. See also, Petitioner's Rebuttal Comments on the Initiation at 10; and, Petitioner's Comments on Streamlight's 12.3 Submission at 7.

¹⁸² See Petitioner's Comments on Streamlight's Scope-Review Request at 10.

components subject to this inquiry are not designed “around meeting certain specified thermal performance requirements” within the meaning of the scope of the *Orders*.¹⁸³

Petitioner also points out that the thermal tests that Streamlight conducts in the normal course of business, provided in Exhibits 12, 13, 14 and 15 of Streamlight’s Scope-Review Request, refer to the [] as a heat sink.¹⁸⁴ However, Petitioner claims that not a single document on the record identifies a single design in Streamlight’s flashlights that was implemented solely for the purpose of reducing or dissipating heat.¹⁸⁵ In addition, Petitioner alleges that Streamlight failed to quantify how much more the aluminum [] should lower the temperature of the LED below the manufacturer’s maximum rated temperature and whether the aluminum flashlight body is required to meet specific thermal requirements.¹⁸⁶

Post-Production Testing

Petitioner argues that if the Department determines that the components subject to this inquiry are in fact heat sinks, the Department should still find them covered by the scope of the *Orders*,¹⁸⁷ because only “finished heat sinks” are excluded from the scope of the *Orders*.¹⁸⁸ To be considered “finished,” Petitioner maintains that heat sinks must be accompanied by documentation demonstrating that they have undergone post-production testing to meet the scope exclusion criteria stating that the “{f}inished 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.”¹⁸⁹ Petitioner argues that in order to be *fully* tested to comply with those specifications, heat sinks must undergo post-production thermal testing in order to be considered “finished.”¹⁹⁰ According to Petitioner, relaxing the testing requirements effectively collapses the distinction in the scope language between fabricated and finished heat sinks.¹⁹¹ Thus, Petitioner argues that the scope of the *Orders* requires that criteria be established to determine the difference between finished and unfinished heat sinks.¹⁹² Because, no substantial physical differences exist between finished heat sinks and unfinished heat sinks,¹⁹³ the Department’s criteria for distinguishing between a finished heat sink and an unfinished heat sink cannot be based on testing procedures common to all heat sinks.¹⁹⁴ Thus, Petitioner argues that imports of the components subject to this inquiry must be accompanied by a thermal testing certificate at the time of importation in order to be excluded from the *Orders*.¹⁹⁵

¹⁸³ See Petitioner’s Comments on the Initiation at 12.

¹⁸⁴ See Petitioner’s Comments on Streamlight’s 12.3 Submission at 7.

¹⁸⁵ *Id.* at 7-8.

¹⁸⁶ *Id.* at 9.

¹⁸⁷ *Id.* at 15.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.* at 16 (citing *AD Order*, 76 FR at 30651; *CVD Order*, 76 FR at 30654). See also Petitioner’s Comments on the Initiation at 13-14; and, Petitioner’s Comments on Streamlight’s 12.3 Submission at 16.

¹⁹⁰ *Id.* at 17. See also Petitioner’s Comments on the Initiation at 14-15; Petitioner’s Rebuttal Comments on the Initiation at 25; and, Petitioner’s Comments on Streamlight’s 12.3 Submission at 16.

¹⁹¹ *Id.* at 18.

¹⁹² *Id.* at 19. See also Petitioner’s Comments on the Initiation at 15.

¹⁹³ *Id.* (citing ITC Final Report at 7).

¹⁹⁴ *Id.* at 20. See also Petitioner’s Comments on the Initiation at 14-15.

¹⁹⁵ *Id.* at 20-21.

Comments on Aavid's Testing Comments

Petitioner contends that the ITC and the scope language expressly require that a finished heat sink be “fully tested and assured” to comply with certain thermal performance requirements.¹⁹⁶ Petitioner claims that the geometrical measurement of a finished heat sink does not constitute “fully testing” a heat sink.¹⁹⁷ According to Petitioner, Aavid explains “if postproduction testing demonstrates that these {geometric} specifications are met, then the FHS will have the same thermal performance as the prototypes that were subject to pre-production testing. In this manner, post-production testing ensures that FHS are ‘tested and assured’ to comply with thermal performance requirements.”¹⁹⁸ The scope language does not require that finished heat sinks be simply “tested and assured.”¹⁹⁹ Petitioner also contends that Aavid represented to the ITC that after it purchases heat sink blanks, the heat sink blanks must be fabricated and thermally tested before they are sold to end users.²⁰⁰ Thus, Petitioner maintains that Aavid never argued or stated before the ITC that the extensive testing it conducts is performed only on a single prototype.²⁰¹ Rather, Petitioner attests that Aavid stated at the ITC hearing, “{o}ur machine and testing procedures transform the extrusion into a new and different product that requires a level of engineering and testing that goes well beyond anything in the extrusion industry.”²⁰²

Comments on Aavid's Description of Heat Sink Production Process

Petitioner argues further that Aavid's description of its production process confirms that post-production thermal testing is required to produce a finished heat sink.²⁰³ Petitioner claims that the steps that Aavid and other finished heat sink manufacturers follow to produce a finished heat sink are as follows:

1. Produce a heat sink blank;
2. Make a fabricated heat sink prototype from a heat sink blank;²⁰⁴
3. Conduct thermal testing on the fabricated heat sink prototype in order to confirm that it meets the customer's end-use thermal requirements;²⁰⁵
4. Develop the heat sink prototype after the tests confirm that customer's thermal requirements are met;²⁰⁶
5. Mass produce the finished heat sink based on the prototype.²⁰⁷

According to Petitioner, the scope definition of a finished heat sink does not permit mass production of finished heat sinks based on the thermal tests of a single prototype,²⁰⁸ and Aavid's

¹⁹⁶ *Id.* (citing Petitioner's Comments on Streamlight's Scope-Review Request at 15-17).

¹⁹⁷ *Id.*

¹⁹⁸ See Petitioner's Rebuttal Comments on the Initiation at 26 (citing Aavid's Comments on the Initiation at 7-8).

¹⁹⁹ *Id.*

²⁰⁰ See Petitioner's Rebuttal Comments on the Initiation at 26.

²⁰¹ *Id.*

²⁰² *Id.*, and Exhibit 6, “Hearing Transcript, Aluminum Extrusions from China, Inv. Nos. 701-TA-475 and 731-TA-1177 (Final) at 220-221 (Mar. 29, 2011).”

²⁰³ *Id.* at 23.

²⁰⁴ *Id.*, (citing Aavid's Comments on the Initiation at 6).

²⁰⁵ *Id.* at 24 (citing Aavid's Comments on the Initiation at 6).

²⁰⁶ *Id.*

²⁰⁷ *Id.*

description of its own production process shows that a finished heat sink starts with a heat sink blank, which is then cut to the customer specifications (*i.e.*, fabricated) and fully tested to become a finished heat sink.²⁰⁹ According to Petitioner, Aavid’s own description of a fabricated heat sink and finished heat sink demonstrate that all of the thermal characteristics of the heat sink are present once the heat sink is fabricated to customer specifications.²¹⁰ Thus, Petitioner maintains that the only thing that distinguishes a finished heat sink from a fabricated heat sink is that the heat sink is fully tested.²¹¹ It claims further that the scope language does not mention that thermal compliance testing only applies to prototypes, as Petitioner claims that Streamlight and Aavid seem to argue at times.²¹² Petitioner claims that such a reading of the scope would significantly broaden the coverage of the narrow heat sink exclusion.²¹³

(k)(2) Analysis

Petitioner maintains that the *Diversified Products* criteria confirm that the components subject to this inquiry are subject aluminum extrusions.

Aavid

Finished Goods Kits

Aavid disagrees that, to be excluded from the *Orders*, finished heat sinks must be imported with all parts necessary for attachment of the heat sink to the heat source, including thermal interface materials and/or an attachment device.²¹⁴ Aavid contends that this criterion is appropriate to the “finished goods kits” exclusion of the scope, which is separate and independent from the finished heat sinks exclusion of the scope.²¹⁵ As a consequence, Aavid argues that the Department should reject any attempt to link the two exclusions.²¹⁶

Pre- and Post-Production Testing

Aavid also claims that Petitioner’s emphasis on post-production thermal testing fails to reflect the finished-heat-sink production process or the ITC’s like-product analysis.²¹⁷ Although Aavid fully recognizes that post-production testing is an important part of the FHS production process, it contends that post-production testing is quite different from pre-production testing.²¹⁸ Specifically, Aavid argues that thermal performance is a function of: (a) a precise specification of the exact composition of the alloy, and, in particular, its thermal conductivity; (b) the geometry of the part, among other thing, the length, width, height, fin thickness, and fin spacing;

²⁰⁸ See Petitioner’s Rebuttal Comments on the Initiation at 24.

²⁰⁹ *Id.*

²¹⁰ *Id.* at 24-25.

²¹¹ See Petitioner’s Rebuttal Comments on the Initiation at 25.

²¹² *Id.*

²¹³ *Id.*

²¹⁴ See Aavid’s Comments on the Initiation at 3.

²¹⁵ *Id.* at 4.

²¹⁶ *Id.*

²¹⁷ *Id.* at 4-5.

²¹⁸ *Id.* at 7.

and, (c) the flatness of the part in the region where the electronic component is attached to the heat sink.²¹⁹ Aavid maintains that once pre-production testing is complete and a finished heat sink is manufactured from an extrusion, thermal resistance can be assured based on a validation of the particular alloy used in the manufacturing process and the geometry/flatness of the finished heat sink.²²⁰ Thus Aavid claims that when post-production testing demonstrates that these specifications are met, then the finished heat sink will have the same thermal performance as the prototypes that were subject to pre-production testing.²²¹ According to Aavid, based on the information submitted to the ITC during the investigation, the ITC understood that no post-production thermal testing is required to produce a finished heat sink.²²² Thus, Aavid objects to Petitioner's characterization that it (Aavid) supports post-production thermal testing.²²³

Aavid also argues that the ITC acknowledges that pre-production thermal testing characterizes finished heat sinks because "specialized equipment, including wind tunnels, flow calibration equipment, testing equipment, and specialized design and data collection software, are used to design finished heat sinks and produce a prototype."²²⁴

Certification Requirements

Aavid contends that the Department is not required to impose a certification requirement on importers relying on the finished heat sink exclusion.²²⁵ Aavid disagrees with Petitioner's statement that "the CIT believes that the Committee's proposed testing and certification requirements to determine whether a heat sink meets the FHS criteria are 'reasonable'"²²⁶ Specifically, Aavid claims that the CIT dismissed the issue as "unripe for adjudication."²²⁷ Aavid further claims that the CIT never stated that a failure to impose such requirements is unlawful.²²⁸

Aavid contends that the imposition of a certification and testing requirement is unnecessary in order to apply the finished heat sink scope exclusion.²²⁹ Aavid notes that parties have filed more than 52 scope inquiries since the inception of the *Orders*, and none of the rulings has resulted in the imposition of a testing requirement.²³⁰ Thus, Aavid argues that the existence of scope inquiries related to the finished heat sinks exclusion imposes no such burden on the Department.²³¹

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ *Id.* at 7-8.

²²² *Id.* at 8.

²²³ See Aavid's Rebuttal to Petitioner's 1.15 Submission at 2.

²²⁴ See Aavid's Comments on the Initiation at 7.

²²⁵ *Id.* at 8.

²²⁶ *Id.* (citing generally to *AEFTC*, 968 F. Supp. 2d at 1244).

²²⁷ *Id.* at 8.

²²⁸ *Id.*

²²⁹ *Id.* at 9

²³⁰ *Id.*

²³¹ *Id.*

Aavid's Criteria for a Heat-Sink Exclusion

Aavid proposes that the Department adopt the following two criteria to determine whether an aluminum extrusion qualifies for the heat-sink exclusion from the orders.²³²

- (1) Is the article primarily designed to cool electronic components?

Aavid maintains that any piece of aluminum can disperse heat, so that heat sinks must be manufactured to cool electronic components.²³³ As a corollary, Aavid maintains that an article is primarily designed to cool electronic components if it comes into contact (either directly or through a suitable thermal interface material, like grease or a pad) with the electrical components that are to be cooled.²³⁴ Thus, Aavid contends that if the article in question does not come into such contact with the electronic components that require cooling, it suggests that the article may not be primarily designed to cool an electronic component.²³⁵

- (2) Has the article been tested for thermal performance in the PRC?

Aavid maintains that, the ITC Report stated that thermal analysis and testing is associated with “the front end of finished-heat-sink production.”²³⁶ By requiring prototype thermal analysis and testing to occur in the PRC, Aavid maintains that the Department would guarantee that only manufacturers of FHS would invest in the technology and capital equipment required to conduct these tests.²³⁷

ANALYSIS

We determine that finished heat sink components are not finished heated sinks for purposes of the finished heat sink scope exclusion. Accordingly, for the reasons set forth below, we find that Streamlight’s heat sink parts for LED lamps at issue are covered by the scope of the *Orders*.

As noted above, 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.²³⁸ Pursuant to 19 CFR 351.225(k)(1), the Department may also “take into account” the “descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations)” and the ITC. Accordingly, we have reviewed the text of the scope of the *Orders*, the “Revision of the Scope” section in the *Federal Register* notices publishing the scope of the *Orders* at the conclusion of the initial investigation, the Department’s prior scope ruling on heat sinks, and the ITC Final Report, as well as the comments of the parties to this scope inquiry, and determined that the (k)(1) factors are dispositive as to whether the components subject to this inquiry are subject

²³² *Id.*

²³³ *Id.* at 10.

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ *Id.* (citing the ITC Final Report at 8).

²³⁷ See Aavid’s Comments on the Initiation at 10.

²³⁸ See *Walgreen*, 620 F.3d at 1357.

merchandise. Accordingly, for this determination, the Department finds it unnecessary to consider the additional factors specified in 19 CFR 351.225(k)(2).

The scope of the *Orders* states that, “excluded from the scope of {these *Orders*} are finished heat sinks. Finished heat sinks are fabricated heat sinks made from aluminum extrusions the design and production of which are organized around meeting certain specified thermal performance requirements and which have been fully, albeit not necessarily individually, tested to comply with such requirements.”²³⁹

Additionally, as noted above, as a result of the ITC’s “negative injury finding with respect to imports of finished heat sinks from the PRC” in the underlying investigations, the Department included a “Revision of Scope” section in the published *Orders* that explained:

Fabricated heat sinks are generally understood to be any heat sink blank that has been cut-to-length, precision machined, and or otherwise fabricated to the end product specifications, but not yet tested, assembled onto other materials, or packaged. Finished heat sinks differ from fabricated heat sinks in that they have been fully, albeit not necessarily individually, tested and assured to comply with the required thermal performance end-use specifications.”²⁴⁰

Accordingly, the heat-sink exclusion language contained in the scope of *Orders*, as clarified by the “Revision of the Scope” language in the *Federal Register* notices initially publishing those *Orders*, establishes that for a product to be excluded from the *Orders* as a FHS: (1) the design and production of the product must be organized around meeting specified thermal performance requirements; and, (2) the product must be fully, but not necessarily individually, tested to meet those specified thermal performance requirements.

The ITC Final Report provides additional context for the meaning of the phrases: (1) “the design and production of which are organized around meeting specified thermal performance requirements”; and, (2) “which have been fully, albeit not necessarily individually, tested to comply with such requirements.” Specifically, the ITC Final Report states that FHS are “designed to remove damaging heat from electronic equipment.”²⁴¹ Moreover, it explains that the “flat surface tolerance for FHS is often 1/1000 of an inch per inch, compared to 4/1000 to 14/1000 of an inch per inch for ordinary aluminum extrusions,”²⁴² so that the “precise flatness of FHS allows for close contact between the FHS and the heat-generating components for which they have been designed and to which they are attached, thereby reducing or eliminating heat-trapping ‘dead air.’”²⁴³

The ITC Final Report also states that “FHS also differ from other aluminum extrusions (including heat sinks that are not ‘finished’) because of their customized thermal resistance

²³⁹ See *AD Order*, 76 FR at 30651; *CVD Order*, 76 FR at 30654.

²⁴⁰ See *AD Order*, 76 FR at 30650; *CVD Order*, 76 FR at 30653.

²⁴¹ See ITC Final Report at 7.

²⁴² *Id.*

²⁴³ *Id.*

properties;”²⁴⁴ “FHS are also characterized by their thermal resistance properties;”²⁴⁵ and FHS “are certified to perform within thermal resistance parameters.”²⁴⁶ The ITC Final Report explains that although these thermal resistance properties are not visible, they make finished heat sinks precisely or optimally suited to cool the specific electronic devices for which they have been designed.²⁴⁷

With respect to testing, the ITC Final Report explains, “specialized equipment, including wind tunnels, flow calibration equipment, testing equipment, and specialized design and data collection software, are used to design FHS and to produce prototypes.”²⁴⁸ It explains further that, “highly trained employees manage the FHS design and testing equipment,” so that “substantial thermal analysis and testing are associated with the front end of FHS production.”²⁴⁹

Thus, congruent with the finished heat-sink scope exclusion language of the *Orders*, as clarified by the “Revision of the Scope” language in the *Federal Register* notices publishing those *Orders*, the ITC Final Report stresses that finished heat sinks have specific, identified thermal resistance properties, and, the devices are tested to ensure that they function within the specified thermal resistance parameters. Further, the ITC Final Report underscores that heat sinks are designed to remove damaging heat and that design specifications, such as precise surface flatness, serve the purpose of reducing heat in the heat-generating components for which they have been designed and to which they are attached.

In the Department’s ECCO Scope Ruling, the Department set forth this analysis of the plain language of the scope of the *Orders*, the “Revision of the Scope” language, and the ITC Final Report in relation to heat sinks.²⁵⁰ At issue in that scope ruling was “heat sinks for bars of LED emergency lights designed to be mounted to the roof of the vehicle” that also served “as the housing for the lights.”²⁵¹ ECCO argued that each of the products it imported had a “Certificate of Compliance to confirm” that it was “produced by the manufacturer in accordance with ECCO specifications” and that even if its products did not meet the “finished heat sinks” description of the scope of the *Orders*, its products still met the (k)(2) criteria and should be excluded on that basis.²⁵² In determining that ECCO’s imported product was “not a finished heat sink,” for purposes of the heat sink exclusion language in the scope, the Department explained that ECCO failed to “demonstrate how the design and production of the product at issue is organized around meeting specified thermal performance requirements,” and in fact did not even “demonstrate that the product at issue was attached to the heat-generating components it is designed to cool.”²⁵³ Furthermore, the Department concluded that ECCO failed to “demonstrate how the product at

²⁴⁴ *Id.*

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ *Id.*

²⁴⁸ *Id.* at 8.

²⁴⁹ *Id.*

²⁵⁰ See ECCO Scope Ruling at 15-17.

²⁵¹ *Id.* at 4.

²⁵² *Id.* at 11.

²⁵³ *Id.* at 21-22.

issue is fully, albeit not necessarily individually, tested to comply with the specified thermal performance requirements.”²⁵⁴

In light of this information, it is important to initially determine what products are subject to this scope inquiry. The *Orders* explicitly refer to aluminum extrusions which are “imported” pursuant to certain HTS classifications, and merchandise which is “entered as parts of other aluminum products.”²⁵⁵ This is because AD and CVD orders apply to merchandise which “enters the United States,” and subsequent administrative reviews of those orders apply to “entries” of subject merchandise.²⁵⁶ Accordingly, the merchandise which the Department must consider for purposes of this scope ruling is the product or products which Streamlight imports. Streamlight refers in its Scope-Review Request to these products as “parts for the finished heat sinks.”²⁵⁷ Specifically, Streamlight’s request covers the following components: adapter, barrel, click switch tail housing, facecap, head, k2 reflector, outer sleeve, reflector housing, reflector assembly adaptor, tactical barrel, tail cap housing, tail cap, threaded adapter, threaded connector, anodized reflector, reflector, and threaded retainer.²⁵⁸

We are therefore conducting our (k)(1) analysis on each of these imported parts. As Streamlight explains, it imports these “parts for heat sinks,” then “assembles” those parts into a “heat sink thermal stack” in the United States, that is then integrated into “finished lights and lamps.”²⁵⁹ Streamlight explains that the components subject to this inquiry make up “a multi-component assembly, called a thermal stack, in which all components contribute in varying degrees to the total system thermal performance.”²⁶⁰ Streamlight maintains that the thermal stack dissipates heat along the entire body of the battery-powered LED flashlight, by attaching a spreader to both the LED board and the body of the light or lamp (*i.e.*, flashlight) in question,²⁶¹ in accordance with that the industry standard.^{262, 263} However, to be clear, the merchandise at issue in this scope ruling is not the “finished heat sink thermal stacks,” which are assembled from the imported parts in the United States, but instead each of the separately named parts which are exported from the PRC and, upon importation, enter the commerce of the United States.

As Petitioner points out, one problem is that although Streamlight has made its Scope-Review Request on the parts of its thermal stacks, the majority of its scope exclusion arguments, in fact,

²⁵⁴ *Id.* at 22.

²⁵⁵ *AD Order*, 76 FR at 30651; *CVD Order*, 76 FR at 30654

²⁵⁶ See Sections 705(c)(1)(B)(ii) and 735(c)(1)(B)(ii) of the Act (stating that the Department “shall order the posting of a cash deposit” for “each entry of the subject merchandise”); Section 751(a)(2) of the Act (stating the Department “shall determine (i) the normal value and export price (or constructed export price) of each entry of the subject merchandise, and (ii) the dumping margin for each such entry”).

²⁵⁷ Streamlight Scope-Review Request at 2.

²⁵⁸ See Streamlight’s Scope-Review Request at Exhibit 10 for a list of these products by title and component number.

²⁵⁹ *Id.* at 2, 6-7.

²⁶⁰ *Id.* (citing Exhibit 3, CREE Application Note, “Thermal Management of Cree® XLamp LEDs,” at 10).

²⁶¹ See Streamlight’s Scope-Review Request at 6.

²⁶² *Id.* at 4 (citing Exhibit 4, “Luxeon® for Flashlight Applications, “Reference Design DR02,” at 4).

Streamlight also cites a competitor in Exhibit 5, “StormLighter Tactical Lighting Systems x8 Tactical Flashlight,” and Exhibit 6, “LED-Resource, ‘Flashlight Specifications,’” at 4.

²⁶³ Streamlight does not identify which of the components for which it is requesting exclusion from the scope functions as a “spreader.”

do not pertain to each of the separately-named components subject to this inquiry.²⁶⁴ Instead, Streamlight’s arguments are that the thermal stack assembled from the components *after importation* is the “heat sink” subject to the exclusion language. Streamlight claims “the fact that Streamlight assembles the parts into finished products in the United States does not mean that they are not finished heat sinks as specified in the *Orders*.”²⁶⁵ That argument is illogical – the merchandise at issue is not products that are fabricated or assembled after importation, but the products as they exist upon importation.

As the parties argued, there are additional exclusions to the scope of the *Orders* which cover “finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry” and “finished goods kits” which “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.” Streamlight argues that the language of these two exclusions is significant, because unlike heat sinks, most aluminum extrusion product “parts” will be subject to the *Orders* unless they meet the requirements of those exclusions.²⁶⁶ Streamlight claims that neither the ITC Final Report nor the *Orders* mention “parts” of heat sinks,²⁶⁷ while the ITC distinguished heat sinks from “ordinary” aluminum extrusions as two separate like products, and on that basis, it claims that the Department should presume that parts for heat sinks, unlike parts for other aluminum extrusion products, were intended to be excluded from the *Orders*.²⁶⁸

We do not find support in the plain meaning of the text of the scope for Streamlight’s argument in this regard. The exclusion applies only to “finished heat sinks,” similar to the exclusion for “finished” merchandise containing aluminum extrusions as parts. If the scope language had intended for something other than “finished heat sinks,” such as “parts of finished heat sinks” to be excluded in some circumstances from the *Orders*, such language would have been included, as is the case in the context of the “finished goods kit” exclusion. No such language exists in the scope of the *Orders*.

With respect to Streamlight’s argument that the Department found in *Housing Stators* and *SMVCs* that assembly is not “finishing” in the context of the scope of the *Orders*, Streamlight is conflating the exclusion for finished merchandise and finished goods kits, with the exclusion for finished heat sinks. In *Housing Stators*, the Department found that the scope includes products that are produced using the computer numerical controlled (“CNC”) production process, but there is no discussion in the scope ruling of whether assembly constitutes finishing.²⁶⁹ In *SMVCs*, the Department determined that it would be unreasonable to interpret the “finished goods kit” exclusion as requiring all parts to assemble the ultimate downstream product.²⁷⁰ Rather, the Department determined that merchandise that is “partially assembled” and inherently part of a larger whole downstream product (*i.e.*, a subassembly) can satisfy the exclusion for a

²⁶⁴ Petitioner’s Comments on the Initiation at 4-5.

²⁶⁵ See Streamlight’s Scope-Review Request at 17.

²⁶⁶ See Streamlight’s Rebuttal Comments on the Initiation at 22-26.

²⁶⁷ *Id.* at 23-24.

²⁶⁸ *Id.* at 26.

²⁶⁹ See *Housing Stators* at 9-16.

²⁷⁰ See *SMVCs Initiation and Prelim* at 7, upheld in *SMVCs Final*.

finished goods kit if the subassembly is ready for installation with the other parts of the downstream product and requires no further finishing or fabrication after importation.²⁷¹ That analysis, however, was specific to language in the finished goods kit exclusion that includes specific text which pertains to “a packaged combination of parts” that “contain at the time of importation, all of the necessary parts to fully assemble a final finished good.” Even the “finished good” exclusion pertains to “finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry.” The finished heat sinks exclusion in the scope, in contrast, contains no reference to “parts of heat sinks” or any reference to the assembly of “parts of heat sinks” at “the time of importation.” Thus, the Department’s analysis of the finished merchandise and finished goods kits exclusions in *Housing Stators* and *SMVCs* does not apply with respect to the scope exclusion at issue in this case. Each exclusion may contain the word “finished,” but the criteria to satisfy those exclusions are separate and distinct.

Accordingly, we determined that the correct analysis in this case is of Streamlight’s imported products – the adapter, barrel, click switch tail housing, facecap, head, k2 reflector, outer sleeve, reflector housing, reflector assembly adaptor, tactical barrel, tail cap housing, tail cap, threaded adapter, threaded connector, anodized reflector, reflector, and threaded retainer – to determine if each of those products is a “finished heat sink” under the (k)(1) factors which should be excluded from the *Orders*.

However, such an analysis is hampered by the lack of evidence in this regard on the record. All of the evidence Streamlight placed on the record concerning whether the product was organized around meeting specified thermal performance requirements refers to the thermal stack assembled *after importation*, not to the specific components that cross the border. In addition, Streamlight did not provide any evidence on the record explaining why the specific components subject to this inquiry individually should be regarded as a heat sink, other than its claim that the parts of its lamps and lights are assembled into thermal stacks which dissipate heat.

Streamlight also did not place information on the record concerning the production of the components subject to this inquiry, but rather focused its evidence on the assembled thermal stack. Streamlight states that its “heat sink thermal stack assemblies are not heat sink blanks.”²⁷² However, the record is silent with respect to how the specific component parts subject to this inquiry have been designed and/or produced, first as heat sink blanks, then as fabricated heat sinks, and finally, as finished heat sinks as described in the ITC Final Report.²⁷³

Further, Streamlight did not place any information on the record identifying the specific thermal performance requirements for any of the specific components subject to this inquiry. Again, all of the analysis Streamlight presented was based on the performance of the assembled thermal stack. Specifically, Streamlight contends that Exhibit 7 of its Scope-Review Request shows “a comparative temperature test between an operating product, with and without a thermal stack, shows that the module without the thermal stack exceeds the thermal design limits established by

²⁷¹ *Id.*

²⁷² See Streamlight’s Scope-Review Request at 17.

²⁷³ See ITC Final Report at 7. See also *AD Order*, 76 FR at 30650; *CVD Order*, 76 FR at 30653.

the manufacturer.”²⁷⁴ Streamlight contends that Exhibit 12 of its Scope-Review Request “contains a summary of the thermal performance characteristics of the finished heat sink thermal stacks that contain the components for which it is requesting exclusion.”²⁷⁵

However, these documents fail to demonstrate that the specific component parts subject to this inquiry are designed and produced to be organized around meeting specific thermal requirements, as described in the scope of the *Orders*, the ITC Final Report, and the ECCO Scope Ruling. Specifically:

- Streamlight does not argue that the specific components subject to this inquiry (such as, facecap, reflector, clicker switch tail housing, *etc.*), are designed and/or produced for the purpose of dissipating heat in the LED;
- Streamlight does not identify which components, if any, have contact with the LED;
- Exhibit 12 reports the maximum temperature for the LED with and without the “housing.” However, Streamlight does not identify which of the components subject to this inquiry are included in the housing, and at which location for which device.
- Exhibit 12 does not report any data showing how any of the specific components subject to this inquiry are specifically designed to maintain a specific temperature at the relevant solder joint. The relevant device tested is “the housing” not the individual components subject to this inquiry.
- Exhibit 11 provides representative technical drawings of most components and devices. But, these drawings fail to identify how or whether the device has contact with the LED. Moreover, although the drawing for part number 750977 is entitled “[],” in contrast to its identification in Exhibit 10 as a “threaded adaptor,” there is nothing on the record to explain why, if Streamlight’s devices incorporate a “[],” it is arguing that its devices were designed to use the entire thermal stack as a heat sink.

Streamlight also fails to demonstrate that the component parts subject to this inquiry are fully, but not necessarily individually, tested to meet specified thermal performance requirements. Streamlight provided Exhibit 14, “Reports Detailing the Results of the Testing on all the Subject Light/Lamp Products.”²⁷⁶ These tests do not show that the products (*i.e.* the individual components subject to this inquiry) are fully, but not necessarily individually, tested to meet those specified thermal performance requirements, for the following reasons:

- Like Exhibit 12, the tests in Exhibit 14 provide the maximum temperature achieved for the specific LED, and for the “housing/heat sink,” but do not address any of the specific components subject to this inquiry.
- The tests did not identify the role that the specific components subject to this inquiry played in keeping the LED temperature below the manufacturer’s specifications.
- Exhibit 15 explains the procedures that Streamlight used to conduct these tests. However, this exhibit does not address the role of any specific component subject to this

²⁷⁴ See Streamlight’s Scope-Review Request at Exhibit 7, “Stinger LED HL Temperature Test.”

²⁷⁵ See Streamlight’s Scope-Review Request at 13.

²⁷⁶ *Id.* at Exhibit 14.

inquiry, but rather refers to the [], and does not identify what elements are included [].

- Exhibit 15 explains that the “[]”.²⁷⁷ However, this document does not connect the specific test to any of the specific components subject to this inquiry, only the “[].”
- Exhibit 16 – Examples of Inspection Instructions:
 - Provides inspection instructions and technical drawing for 4 component parts subject to this inquiry.²⁷⁸
 - The visual inspection instruction are as follows, and do not include any tests to measure their design and performance as a heat sink:

| Exhibit | Part # | Part Name | Instructions |
|---------|--------------------|--------------------|--------------|
| 16(a) | [] | [] | [] |
| 16(b) | [] | [] | [] |
| 16(c) | [] | [] ²⁷⁹ | [] |
| 16(d) | [] ²⁸⁰ | [] | [] |

Based on our analysis above, we find that evidence submitted with Streamlight’s Scope-Review Request and subsequent comments does not demonstrate how the components subject to this inquiry (*i.e.* the components subject to this inquiry) are fully, albeit not necessarily individually, tested to comply with specified thermal performance requirements.

Because Streamlight fails to demonstrate that the specific components subject to this inquiry meet the two criteria to qualify for the finished heat sink exclusion in the scope, we find that the imported products are not “finished heat sinks” and are covered by the *Orders*.

Consequently, we need not reach a decision as to whether finished heat sinks must undergo pre- or post-production testing and/or certification as proposed by Petitioner and Aavid or whether finished heat sinks must be imported with accompanying documentation demonstrating the results of the thermal testing, as requested by Petitioner.

Similarly, we are not addressing the criteria Aavid provides for determining whether an aluminum extrusion constitutes a heat sink because, in this instance, we found the components

²⁷⁷ *Id.* at Exhibit 15.

²⁷⁸ *Id.* at Exhibit 16(a) through 16(d).

²⁷⁹ *Id.* See also Exhibit 10, where it is identified as a threaded adapter.

²⁸⁰ *Id.* See also Exhibits 10 and 11, where this part number does not appear.

subject to this inquiry to be within the scope of the *Orders* based on the plain meaning of the scope of the *Orders*, the “Revision of the Scope” section in the *Federal Register* notices publishing the scope of the *Orders* at the conclusion of the initial investigation, the tests applied in the ECCO Scope Ruling and the ITC Final Report.

With respect to the Department’s instructions to CBP, Streamlight claims that its merchandise has not been suspended since the preliminary determination of the investigation,²⁸¹ but it placed no evidence on the record of this scope inquiry to substantiate such a claim. However, Streamlight did report that the majority of the components subject to this inquiry are entered under HTS numbers which are not identified in the scope of the *Orders* – that is HTS numbers 7604.10.3050 and 8513.90.2000.²⁸² On the other hand, Streamlight reported that the rebel reflector and anodized reflector, part numbers 691306 and 691306-1, are imported under HTS 8513.90.4000,²⁸³ which is identified in the scope of *Orders*.²⁸⁴ We therefore believe it is reasonable to conclude that some of the components at issue in this scope inquiry may have been suspended following the preliminary determination of the investigation, while others may not have been suspended.

Section 19 CFR 351.225(l)(3) states as follows:

If the Secretary issues a final scope ruling, under either paragraph (d) or (f)(4) of this section, to the effect that the product in question is included within the scope of the order, any suspension of liquidation under paragraph (l)(1) or (l)(2) of this section will continue. Where there has been no suspension of liquidation, the Secretary will instruct the Customs Service to suspend liquidation and to require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the product entered, or withdrawn from warehouse, for consumption on or after the date of initiation of the scope inquiry.²⁸⁵

In accordance with this regulation, we will therefore instruct CBP to continue to suspend liquidation of merchandise imported by Streamlight which has been, to date, suspended pursuant to the *Orders* (or liquidate in accordance with liquidation instructions already issued, if the suspension of liquidation has been lifted). Likewise, also in accordance with this regulation, where Streamlight’s merchandise is not already suspended, we will instruct CBP to suspend liquidation and require a cash deposit at the applicable rate for each unliquidated entry of the specific products entered, or withdrawn from warehouse, for consumption on or after the date of initiation of the scope inquiry, *i.e.* May 19, 2014.

This understanding of the Department’s regulation is not only consistent with the plain meaning of the regulation, but is also consistent with the CAFC’s holding in *AMS Associates* and the CIT’s holding in *Shenyang Yuanda*. As the CIT found in *Shenyang Yuanda*, “*AMS* is inapplicable to this case because here, the instructions added no new products to the scope, and because liquidation of plaintiffs’ curtain wall units have been suspended since publication of the

²⁸¹ See Streamlight’s Suspension Comments at 4.

²⁸² See Streamlight’s Scope-Review Request at Exhibit 10.

²⁸³ *Id.*

²⁸⁴ See *AD Order*, 76 FR at 30651 and *CVD Order*, 76 FR at 30654.

²⁸⁵ See 19 CFR 351.225(l)(3) (emphasis added).

preliminary determinations.”²⁸⁶ The CIT held that “{w}here, as here, a scope ruling confirms that a product is, and has been, the subject of an order, the Department has not acted beyond its authority by continuing the suspension of the liquidation of the product.”²⁸⁷

Streamlight tries to distinguish *Shenyang Yuanda* by claiming that its situation is entirely different because the heat sink parts subject to this inquiry are not specifically named in the scope, while it claims that the merchandise at issue in that litigation was specifically named in the scope of the *Orders*. Streamlight misunderstands the facts in the underlying scope inquiry at issue in *Shenyang Yuanda*. The language at issue in that litigation was the term “parts for curtain walls” in the scope of the *Orders*. Plaintiff importers argued that this language meant that only unadulterated aluminum extrusion parts and not “curtain wall units,” which are aluminum extruded squares, filled with glass and used as building blocks for non-load bearing curtain walls, were intended to be included in the scope of the *Orders*.²⁸⁸ In the scope ruling at issue in the *Shenyang Yuanda* litigation, the Department determined that the merchandise was subject to the *Orders* based on an analysis of the scope language and the factors listed in 19 CFR 351.225(k)(1), and the CIT and CAFC upheld that determination.²⁸⁹ Likewise, in this scope inquiry, we have concluded using those same factors that Streamlight’s merchandise is subject to the scope of the *Orders*.

RECOMMENDATION

For the reasons discussed above, and in accordance with 19 CFR 351.225(f)(4) and 351.225(k)(1), we recommend finding that the components subject to this inquiry are subject to the scope of the AD and CVD *Orders* on aluminum extrusions from the PRC.

²⁸⁶ See *Shenyang Yuanda*, 961 F. Supp. 2d at 1303.

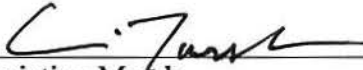
²⁸⁷ *Id.* at 1304.

²⁸⁸ See *Shenyang Yuanda*, 961 F. Supp. 2d at 1296.

²⁸⁹ See *Shenyang Yuanda*, 961 F. Supp. 2d at 1295 -1305 and *Shenyang Yuanda*, 2015 U.S. App. LEXIS 854 at 9-16.

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) and 351.225(n).

Agree Disagree



Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

5/14/15

Date