

Shenyang Yuanda Alum. Indus. Eng'g Co. Ltd, et. al. v. United States
Court Nos. 14-00106, 14-00107, and 14-00108 (December 9, 2014)
FINAL RESULTS OF REDETERMINATION
PURSUANT TO COURT REMAND

I. Summary

The Department of Commerce (“the Department”) prepared these final results of redetermination pursuant to the remand order of the U.S. Court of International Trade (“CIT” or “the Court”) in *Shenyang Yuanda Alum. Indus. Eng'g Co. Ltd, et. al v. United States*, Court Nos. 14-00106, 14-00107, and 14-00108 (December 9, 2014) (“Remand Order”). These final remand results concern the Department’s March 27, 2014, scope ruling concerning Yuanda USA Corporation, and Shenyang Yuanda Aluminum Industry Engineering Co., Ltd.’s (collectively, “Yuanda”) curtain wall units that are produced and imported pursuant to a contract to supply a complete curtain wall system.¹ The Court directed the Department on remand to “consider relevant language in the petition identified in the plaintiffs’ motions for judgment on the agency record, receive comments from the parties on the issue, and issue an amended final scope ruling consistent with its reevaluation.”² In light of our consideration of the relevant information in the Petition, and in accordance with 19 CFR 351.225(k), on remand, we revised our analysis from the Yuanda Scope Ruling. On February 9, 2015, we issued draft remand results and allowed parties to comment.³ Interested parties submitted comments on February 18, 2015. These

¹ See the Department’s memorandum entitled, “Final Scope Ruling on Curtain Wall Units that are Produced and Imported Pursuant to a Contract to Supply a Curtain Wall,” dated March 27, 2014 (“Yuanda Scope Ruling”).

² See Petitions for the Imposition of Antidumping and Countervailing Duties: Aluminum Extrusions from the People’s Republic of China, March 30, 2010 (“Petition”) and Remand Order.

³ See *Shenyang Yuanda Alum. Indus. Eng'g Co. Ltd, et. al. v. United States*, Court Nos. 14-00106, 14-00107, and 14-00108, Draft Results of Redetermination Pursuant to Court Remand, dated February 9, 2015 (“Draft Remand”).

comments are addressed below. As a result of this revised analysis and after reviewing parties' comments, we continue to find Yuanda's merchandise to be subject to the *Orders*.⁴

II. Background

On March 26, 2013, Yuanda filed a scope request, arguing that its merchandise is excluded from the *Orders* under two different exclusion provisions in the scope of the *Orders*.⁵ First, it argued that each of its "curtain wall units" (consisting of aluminum extrusion frames and glass or another infill material that make up a curtain wall) were finished merchandise, and therefore should be excluded based on the "finished goods" exclusion.⁶ Second, Yuanda argued that certain "complete and finished curtain wall units that are produced and imported pursuant to a contract to supply a complete curtain wall" were outside the scope of the *Orders* because each shipment was part of a "finished goods kit," and once all the pieces of the kit were imported and assembled in the United States, in accordance with the contract, the result was a "finished good" -- the curtain wall.⁷ We issued the scope ruling addressing Yuanda's merchandise on March 27, 2014, and determined that the products at issue were subject merchandise, covered by the *Orders*.⁸

With respect to curtain wall units, we determined that curtain wall units were "a part{ } for . . . curtain walls" and therefore did not qualify for the "finished goods" exclusion, based on the language of the scope, which states: "Subject aluminum extrusions may be described at the time of importation as *parts for final finished products* that are assembled after importation,

⁴ See *Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order*, 76 FR 30650 (May 26, 2011) and *Aluminum Extrusions From the People's Republic of China: Countervailing Duty Order*, 76 FR 30653 (May 26, 2011) (collectively, the "*Orders*").

⁵ See *Aluminum Extrusions from the People's Republic of China; Scope Ruling Request Regarding Complete and Finished Curtain Wall Units that Are Produced and Imported Pursuant to a Contract to Supply a Complete Curtain Wall* (March 26, 2013) ("*Scope Request*").

⁶ *Id.* at 9-11, 13-22.

⁷ *Id.* at 11-22.

⁸ See *Yuanda Scope Ruling* at 20-28.

including, but not limited to, window frames, door frames, solar panels, *curtain walls*, or furniture.”⁹

With respect to curtain wall units imported in stages pursuant to a long-term contract, we determined that “curtain wall units imported in various combinations and staged to ultimately form a curtain wall are not finished goods” because even when “imported in a shipment of two or more units,” the imported merchandise was still merely parts of curtain walls, and parts of curtain walls are expressly covered by the scope of the *Orders*.¹⁰ We concluded that the language of the scope of the *Orders* did not provide for the exclusion of parts of curtain walls imported over time pursuant to a long-term contract, nor did any additional information on the record indicate that the finished goods kit exclusion in the scope of the *Orders* was intended to apply to such curtain wall parts.¹¹

Permasteelisa North America Corp., Permasteelisa South China Factory and Permasteelisa Hong Kong Limited (collectively, “Permasteelisa”), Jangho Curtain Wall Americas Co., Ltd. (“Jangho”) and Yuanda appealed the Department’s ruling to the CIT. In their briefs to the Court, Jangho, Yuanda, and Permasteelisa cited to Exhibit I-5 in the Petition¹² in which Petitioner¹³ included “unassembled unitized curtain walls” in a chart as possible examples of merchandise which might meet the “finished goods kits” exclusion, which is described in the chart as “‘kits’ that at the time of importation comprise all necessary parts to assemble finished goods.”¹⁴ No party referenced this exhibit from the Petition during the underlying scope

⁹ *Id.* at 22.

¹⁰ *Id.* at 24.

¹¹ *Id.*

¹² See Exhibit I-5 to the scope section of the Petition (Attachment 1).

¹³ Petitioner is the Aluminum Extrusions Fair Trade Committee.

¹⁴ See “Memorandum of Points and Authorities in Support of Yuanda’s Motion for Judgment on the Agency Record,” filed by Yuanda at 4 (“Yuanda’s Brief”), “Memorandum in Support of Plaintiff Jangho’s Motion for Judgment on the Agency Record,” filed by Jangho at 14 (“Jangho’s Brief”), and “Plaintiffs’ Rule 56.2 Motion for Judgment on the Agency Record,” filed by Permasteelisa at 24 (“Permasteelisa’s Brief”).

proceeding and the Department did not address this exhibit from the Petition in the Yuanda Scope Ruling.

The Department's regulations at 19 CFR 351.225(k)(1) state that the Department "will take into account" the descriptions of the merchandise in the Petition in making our scope determinations. Accordingly, we requested a voluntary remand. On December 9, 2014, the Court granted the remand and ordered the Department to "consider relevant language in the petition identified in the plaintiffs' motions for judgment on the agency record, receive comments from the parties on the issue, and issue an amended final scope ruling consistent with its reevaluation."¹⁵

On February 9, 2015, we issued draft remand results to the parties and allowed them the opportunity to comment.¹⁶ Yuanda, Jangho and the U.S. Curtain Wall Coalition ("CWC")¹⁷ submitted comments.¹⁸ These comments are addressed below.

III. 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

¹⁵ See Remand Order.

¹⁶ See Draft Remand at 18.

¹⁷ The CWC consists of Walters & Wolf, Architectural Glass & Aluminum, and Bagatelos Architectural Glass Systems, Inc.

¹⁸ See Comments on the Department's Draft Redetermination, on behalf of Yuanda USA Corporation, February 18, 2015 ("Yuanda Comments"), Comments on the Department's Draft Redetermination, on behalf of Jangho Curtain Wall Americas Co., February 18, 2015 ("Jangho Comments"), and Comments on the Draft Remand Redetermination, on behalf of CWC, February 16, 2015 ("CWC Comments").

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, wedged, mitered, chamfered, threaded, and spun. The subject merchandise includes aluminum extrusions that are finished (coated, painted, *etc.*), fabricated, or any combination thereof.

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

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

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

The scope also excludes finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry, such as finished windows with glass, doors with glass or vinyl, picture frames with glass pane and backing material, and solar panels. The scope also excludes finished goods containing aluminum

extrusions that are entered unassembled in a “finished goods kit.” A finished goods kit is understood to mean a packaged combination of parts that contains, at the time of importation, all of the necessary parts to fully assemble a final finished good and requires no further finishing or fabrication, such as cutting or punching, and is assembled ‘as is’ into a finished product. An imported product will not be considered a ‘finished goods kit’ and therefore excluded from the scope of the investigation merely by including fasteners such as screws, bolts, *etc.* in the packaging with an aluminum extrusion product.

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

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

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

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States (“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, 8418.99.80.05, 8418.99.80.50, 8418.99.80.60, 8419.90.10.00, 8422.90.06.40, 8479.90.85.00, 8486.90.00.00, 8487.90.00.80, 8503.00.95.20, 8516.90.50.00, 8516.90.80.50, 8708.29.50.60, 8708.80.65.90, 9401.90.50.81, 9403.90.10.40, 9403.90.10.50, 9403.90.10.85, 9403.90.25.40, 9403.90.25.80, 9403.90.40.05, 9403.90.40.10, 9403.90.40.60, 9403.90.50.05, 9403.90.50.10, 9403.90.50.80, 9403.90.60.05, 9403.90.60.10, 9403.90.60.80, 9403.90.70.05, 9403.90.70.10, 9403.90.70.80, 9403.90.80.10, 9403.90.80.15, 9403.90.80.20, 9403.90.80.30, 9403.90.80.41, 9403.90.80.51, 9403.90.80.61, 9506.11.40.80, 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 the *Orders* is dispositive.

IV. Analysis

In the Yuanda Scope Ruling at issue, we found that curtain wall units are parts of curtain walls, and therefore are covered by the scope of the *Orders*. Specifically, the scope of the *Orders* states:

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.¹⁹

Accordingly, we determined that, “a curtain wall unit is a ‘part{ } for ... curtain walls’ because it is but one piece of the finished product which forms the entire outer structure of the building.”²⁰

This determination was consistent with the Department’s previous Curtain Wall Parts Scope Ruling,²¹ which was sustained by both the CIT in *Shenyang Yuanda Aluminum Indus. Eng’g Co. v. United States*, 961 F. Supp. 2d 1291 (CIT 2014) (“*Yuanda I*”) and the Court of Appeals for the Federal Circuit (“CAFC”) in *Shenyang Yuanda Aluminum Indus. Eng’g Co. v. United States*, Court No. 2014-1386, -1387, -1388 (January 21, 2015) (“*Yuanda II*”) (*mandate pending*). In *Yuanda I*, the CIT held that curtain wall units are not a finished good:

An individual curtain wall unit, on its own, has no consumptive or practical use because multiple units are required to form the wall of a building. Therefore, a curtain wall unit’s sole function is to serve as a part for a much larger, more comprehensive system: a curtain wall. All of this being the case, it is clear that curtain wall units are not finished merchandise but, rather, are parts for curtain walls.²²

¹⁹ See scope of the *Orders*.

²⁰ See Yuanda Scope Ruling at 22.

²¹ See Final Scope Ruling on Curtain Wall Units and Other Parts of a Curtain Wall System (November 30, 2012) (“Curtain Wall Parts Scope Ruling”) at 9.

²² See *Yuanda I*, 961 F. Supp. 2d at 1298-1299.

The CAFC subsequently affirmed the CIT’s ruling, holding that “the CIT correctly determined Yuanda’s curtain wall parts are not finished merchandise because it is nonsensical to construe ‘parts for . . . curtain walls’ to mean finished merchandise” and that it discerned “no flaw in Commerce’s determination that Yuanda’s curtain wall parts are within the plain language of the Orders.”²³

The Petition exhibit at issue, Exhibit I-5, does not address curtain wall units individually, but references unitized curtain walls which are imported unassembled. In the Petition, Petitioner provided examples of merchandise that it intended would be subject to the investigation, and merchandise that would meet the exclusions. For the “finished goods kit” exclusion, unassembled unitized curtain walls were included as an example (emphasis added):

**Petition Exhibit I-5
Non-Subject Merchandise**

Product Type	Product Examples
Unassembled products containing aluminum extrusions, e.g. “kits” that at the time of importation comprise all necessary parts to assemble finished goods	Shower frame kits, window kits, <i>unassembled unitized curtain walls</i>

Exhibit I-5 of the Petition describes a “kit” as unassembled products containing aluminum extrusions that, at the time of importation, comprise all necessary parts to assemble finished goods. Thus, it appears from this language in the Petition that Petitioner intended that curtain walls which are composed of curtain wall units which enter the United States unassembled, and meet the requirements of the “finished goods kit” exclusion language of the scope, could be considered a “finished goods kit” and be excluded from the scope of the investigations and any resulting *Orders*.

²³ See *Yuanda II*, Court No. 2014-1386, -1387, -1388 at 12, 15.

Accordingly, on remand, we are revising our analysis from the Yuanda Scope Ruling of curtain wall units exported pursuant to a curtain wall contract in consideration of this language.

The scope of the *Orders* defines “finished goods kits” as:

a packaged combination of parts that contains, at the time of importation, all of the necessary parts to fully assemble a final finished good and requires no further finishing or fabrication, such as cutting or punching, and is assembled ‘as is’ into a finished product. 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.²⁴

The plain language requires that the exclusion at issue can only apply if there is: 1) a packaged combination of parts; 2) all of the parts necessary to assemble a final finished good are contained in that packaged combination of parts at the time of importation; 3) no further finishing or fabrication, such as cutting or punching is required; and 4) the parts can be assembled ‘as is’ into the finished product.

Yuanda’s Scope Request made clear that it imports curtain wall units in combinations of curtain wall units in stages, over a lengthy period of time, pursuant to a contract or contracts to build curtain walls which are not assembled all at once.²⁵ That is, Yuanda’s curtain wall units are exported in multiple shipments, but rather than importing all curtain wall units at one time such that upon importation a final finished curtain wall can be assembled, the curtain wall units enter the United States in stages, over a period of time, as set by contract.²⁶

We therefore determine that an issue for the Department to address on remand is the term “at the time of importation,” which appears in the “finished goods kits” scope exclusion, with respect to Yuanda’s merchandise. In accordance with 19 CFR 351.225(k)(1), we reviewed the additional language in the Petition, but found that the Petition provides no further clarification on

²⁴ See scope of the *Orders*.

²⁵ See Yuanda’s May 31, 2013, submission at 3 – 6, 17, and Ex. 2 at 4 - 5.

²⁶ *Id.*

what this term meant in relation to “unassembled unitized curtain walls” or any other product which may enter the United States through multiple imports, rather than in one single entry.²⁷ In the underlying antidumping and countervailing duty investigations, however, the Department did address this issue in the context of unassembled unitized curtain walls.²⁸ Yuanda, identified in the Prelim Scope Memo as “CNYD,”²⁹ argued that its unitized curtain wall product and its assorted parts should be considered “outside the scope of these investigations because the product comprises a ‘kit’.”³⁰ Just as Yuanda described the process by which its unitized curtain walls are produced in this scope proceeding, during the investigations, Yuanda explained that its established “construction process requires the unitized curtain wall and its assorted parts to be shipped at separate times and in separate batches, according to the construction schedule. { Yuanda } states, however, in the end the unitized curtain wall and its assorted parts result in a complete set, or ‘kit.’”³¹

Significantly, Petitioner disagreed with Yuanda in the underlying investigations that its unassembled unitized curtain wall parts met the requirements of the finished goods kit exclusion language contained within the Petition. Petitioner argued that because Yuanda’s curtain wall

²⁷ See Attachment 1.

²⁸ See Preliminary Determination: Comments on the Scope of the Investigations (October 27, 2010) at 11 (“Prelim Scope Memo”). Pages 1, 4, 11 and 12 of the Prelim Scope Memo are attached to this remand as Attachment 2. The Department’s preliminary scope determination on CNYD’s merchandise was unchanged in the Final Determinations. See *Aluminum Extrusions From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 18524, 18525 (April 4, 2011); *Aluminum Extrusions From the People’s Republic of China: Final Countervailing Duty Determination*, 76 FR 18521, 18521 (April 4, 2011).

²⁹ See Prelim Scope Memo at 4; see also *Aluminum Extrusions from the People’s Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, and Preliminary Determination of Targeted Dumping*, 75 FR 69403, 69405 (November 12, 2010) (noting that “On May 11, 2010, Shenyang Yuanda Aluminum Industry Engineering Co., Ltd. (“CNYD”), a Chinese exporter of assorted aluminum components, made a request for its unitized curtain walls and component parts to be considered kits excluded from the scope of the investigation.”)

³⁰ See Prelim Scope Memo at 11; Attachment 2.

³¹ *Id.*

parts consisted “of various aluminum extrusions components” that were “not imported together as a kit,” the finished goods kit exclusion did not apply to Yuanda’s merchandise.³²

The Department concluded that it agreed “with Petitioner that {Yuanda} has not established that the curtain wall components it exports comprise a kit that includes all necessary parts to assemble a final finished good, as specified by the scope. Rather, {Yuanda} has in fact stipulated that its components do not enter as complete kits as defined by the scope of these investigations.”³³ The Department therefore determined that “curtain wall components exported by {Yuanda} are covered by the scope because {Yuanda} has not established that it imports its merchandise in a kit that contains at the time of importation all of the necessary parts to fully assemble a finished good.”³⁴

Thus, it appears from the positions taken by Petitioner during the investigations that Petitioner intended for the “finished goods kits” scope exclusion language introduced in the Petition, and further clarified by the text in Exhibit I-5, to apply according to the plain meaning of its terms with respect to unassembled unitized curtain walls. That is, Petitioner intended the exclusion only to apply if “all necessary parts to assemble the finished good,” the curtain wall, were imported at the same time, such that at the time of importation, the “finished goods kit” contained all parts necessary to assemble the finished curtain wall. The Department’s response to Yuanda’s and Petitioner’s arguments in the Prelim Scope Memo indicates that this was the Department’s interpretation of the scope language during the investigations as well.

Notably, in this scope proceeding, Petitioner stated that it agreed with the Curtain Wall Coalition that Yuanda’s curtain wall units, as shipped to the United States in multiple imports at

³² *Id.*

³³ *Id.*

³⁴ *Id.*

multiple times pursuant to a single contract were not intended to be excluded from the *Orders*.³⁵ Petitioner pointed out that “the Department has already considered and rejected, conclusively” in the “original investigation” that “only a finished curtain wall was excluded from the orders” and that for a “kit” to be excluded from the *Orders*, it would have to be “completed” and “enter with all the parts necessary to assemble a final finished good.”³⁶ Petitioner’s argument in this proceeding is fully consistent with its interpretation of the “finished goods kits” exclusion text, as introduced in the Petition, in the underlying investigations.

Furthermore in its Scope Request, Yuanda itself actually provided an exhibit which quoted Petitioner’s counsel in National Glass Magazine taking, yet again, the same position with respect to the finished goods kit exclusion and curtain walls:

The scope of the aluminum extrusions investigation excludes finished merchandise, such as a curtain wall, that contains aluminum extrusions, as long as the product is fully and permanently assembled at the time of entry or is entered unassembled but contains all of the parts necessary to assemble the final finished good, said Stephen A Jones, partner and chair of the International Trade practice group at King & Spalding, Washington, D.C., and lead counsel to the Aluminum Extrusions Fair Trade Committee. “In our view, a curtain-wall system would need to contain all of the window glass at the time of entry in order to be excluded. If it did not, it would not be “completed,” or capable of completion, at the time of entry.”³⁷

Accordingly, we determine that in referencing “unassembled unitized curtain walls” as an example of “unassembled products containing aluminum extrusions, *e.g.*, ‘kits’ that at the time of importation comprise all necessary parts to assemble finished goods” in Exhibit I-5 of the Petition, Petitioner specifically intended for that exclusion only to apply in the situation in which all of the necessary curtain wall units are imported into the United States at the same time as a combination of parts which can be assembled “as is” into a finished curtain wall.

³⁵ See Petitioner’s June 7, 2013 comments at 2 – 3 (Attachment 4).

³⁶ *Id.* (Petitioner also argued that the products subject to this scope request also undergo additional fabrication after importation, *e.g.*, waterproofing and on-site cutting and punching).

³⁷ See Yuanda’s March 26, 2013, Scope Request at Exhibit 5.

Such an interpretation of that exclusion is not only consistent with the plain text of the scope exclusion text, the language in Petition Exhibit I-5 and both the Petitioner's and Department's expressed interpretation of the exclusion text during the investigations, but also with the Department's consistent application of that exclusion in its scope rulings concerning "finished goods kits" following the investigations.³⁸

Kits which the Department has determined to satisfy the "finished goods kit" exclusion requirements contained all of the necessary parts to assemble the finished good and those parts were all imported at the same time, as part of the same entry (*e.g.*, they were listed on one U.S. Customs and Border Protection ("CBP") 7501 Entry Summary).³⁹ For example, in the Sunshades Kits Scope Ruling, the Department determined as part of its analysis that one factor which supported its determination that the merchandise at issue was a "finished goods kit," excluded from the scope of the *Orders*, was "that the product in the amended request will be imported from Canada in a single shipment that is reflected on the same commercial invoice, bill of lading, and CBP 7501 form. In this sense, as described in the amended request, the kit is distinct from" other products which the Department had earlier concluded were not "finished goods kits," such as "the fence products addressed in Fence Sections Scope Ruling," . . . "the

³⁸ Exhibit I-5 of the Petition was not raised or addressed in the two previous scope proceedings concerning curtain wall units. *See* Curtain Wall Parts Scope Ruling and Final Scope Ruling on Tesla Curtain Walls with Non-PRC Extrusions (March 14, 2013). However, the "finished goods kits" exclusion has been analyzed in many of the Department's scope rulings subsequent to the investigations.

³⁹ *See, e.g.*, Memorandum entitled, "Antidumping (AD) and Countervailing Duty (CVD) Orders on Aluminum Extrusions from the People's Republic of China (PRC): Final Scope Ruling on Window Kits," dated December 9, 2011, at 5 ("Window Kits Scope Ruling"); *see also* Memorandum entitled, "Antidumping (AD) and Countervailing Duty (CVD) Orders on Aluminum Extrusions from the People's Republic of China (PRC): Final Scope Ruling on Solarmotion Controllable Sunshades," dated August 17, 2012, at 11 ("Sunshades Kits Scope Ruling"); *see also* Memorandum entitled "Final Scope Ruling on Ameristar Fence Product's Aluminum Fence and Post Parts," dated December 13, 2011, at 6 ("Fence Sections Scope Ruling") (in which the Department concluded that the finished goods kit exclusion did not apply). Each of these scope rulings is included as Attachment 3.

pieces of which were imported piece-meal and subsequently assembled and sold in the United States as a kit.”⁴⁰

We therefore conclude that consistent with the language of the “finished goods kits” exclusion in the scope of the *Orders*, language of the Petition, including Exhibit I-5, information derived from the investigation and our previous scope rulings, a unitized curtain wall shipped as curtain wall units can be excluded as a “finished goods kit,” but only if all of the necessary curtain wall units are imported at the same time in a manner that they can be assembled into a finished curtain wall upon importation.

Further, we find that the fact that an unassembled unitized curtain wall may be so large when it enters the United States that it must be shipped in separate containers does not, in of itself, prohibit the merchandise from being excluded from the scope of the *Orders* as a finished goods kit. In the Window Kits Scope Ruling, for example, the finished product at issue entered the United States in pieces in multiple containers, but was listed on a single CBP 7501 form.⁴¹ The means of shipment, whether or not shipped in multiple containers, did not prohibit the Department from determining that the merchandise at issue was a finished goods kit and therefore excluded from the scope of the *Orders*. What distinguished that merchandise from Yuanda’s products is that the separate parts of the finished goods kit were all imported as part of the same entry, and at the time of importation, the kit contained all of the necessary parts to assemble a final, finished good.⁴²

⁴⁰ See Sunshades Kits Scope Ruling at 11 (citing to the Fence Sections Scope Ruling). In the Fence Sections Scope Ruling, the Department determined that the finished goods kit did not apply because individual parts were imported separately: “Ameristar stated in its SQR that individual posts, pickets and rails are imported separately from other fencing system components. Based on this information, the Department therefore finds that Ameristar’s individual fence parts, whether packed in bulk or individually, do not fit within the finished goods kit exclusion because they do not contain all of the parts necessary to fully assemble a final finished product.” Fence Sections Scope Ruling at 6.

⁴¹ See Window Kits Scope Ruling at 4.

⁴² *Id.* at 5.

The evidence on the record indicates that many curtain walls are constructed in stages, and that Yuanda in particular does not import all of the necessary curtain wall units to assemble a curtain wall at one time, but rather imports the necessary curtain wall units over time.⁴³ Indeed, following each importation of curtain wall units, Yuanda's various curtain wall units are sometimes transported from the port and used in the construction of part of a curtain wall, and other times warehoused for a bit of time until the project is ready to incorporate the curtain wall unit or units into the ongoing construction.⁴⁴ We do not believe that this system of multiple imports was intended to be excluded from the scope of the *Orders* as "finished goods kits," and there is no language in the Petition or the scope itself which would indicate otherwise.

Furthermore, an additional concern we have with interpreting the "at the time of importation" language to cover numerous imports over an unspecified period of time, is that it would appear to be very difficult, if not impossible, for CBP to administer, monitor, and enforce an exclusion to the *Orders* which would be contingent on piecemeal imports over a period of time. At the time of each of Yuanda's imports, the imported product could not be assembled "as is" into the finished product, the curtain wall, which is the requirement of the specific language of the scope exclusion.

As an example of a difficulty CBP could experience in trying to assure that a company's entries satisfy the requirements of the scope language, it is possible that a situation might arise in which a curtain wall project has been contracted, curtain wall units have been produced and exported, and imports of curtain wall units have commenced, but for whatever reason, the project cannot be completed. In that situation, there would be no "finished good." If CBP had already permitted the entry of some imports of curtain wall units pursuant to the "finished goods kits"

⁴³ See Yuanda's May 31, 2013 submission at 3 – 6, 17, and Ex. 2 at 4 - 5.

⁴⁴ *Id.*

exclusion, the importer would effectively have benefited from not paying duties on curtain walls parts, which are otherwise explicitly covered by the scope of the *Orders*, without meeting all of the necessary requirements of the exclusion. Yuanda argues that the Department, and therefore CBP, should presume that because each importation is shipped pursuant to a curtain wall contract, that contractual arrangement would be enough to meet the completed assembly requirement, but under the described hypothetical scenario, it is evident why a contract alone would not satisfy the requirements of the exclusion language. We therefore do not agree with this interpretation.

As the CIT has held, “[s]ince the antidumping law and antidumping duty orders are remedial in nature, exceptions to them should be construed narrowly and limited to effect the remedy intended.”⁴⁵ We do not believe that the scope of the *Orders* or the Petition intended to allow multiple imports of parts of a finished good over a period of time to be excluded as a finished goods kit when: 1) those very same parts would otherwise be explicitly covered by the language of the scope of the *Orders*; 2) each of the individual imports is not a “complete” kit; and 3) at the time of importation, none of the imports would contain all of the necessary parts to assemble the finished good.

Accordingly, we conclude that for the “finished goods kit” exclusion to be met in the context of unassembled unitized curtain walls, *all* the necessary curtain wall units must be imported at the same time as a single entry to assemble the curtain wall. As this does not describe Yuanda’s merchandise, the “finished goods kit” exclusion does not apply to its curtain wall units exported pursuant to a curtain wall contract.

⁴⁵ See *Russ Berrie & Company, Inc., v. United States*, 57 F. Supp. 2d 1184, 1194-1195 (July 13, 1999).

V. Interested Party Comments

Comment 1: Whether the Draft Remand confused curtain walls with curtain wall systems and unlawfully applied the “finished goods kits” scope requirements to Yuanda’s merchandise

In the underlying Scope Request, Yuanda explained that “curtain wall units form part of a larger curtain wall system specifically designed for a building.”⁴⁶ Yuanda argued that the Department should find that “complete curtain wall units” that “are delivered along with other units that are to be joined together under a contract to supply a curtain wall system” should be treated as a “finished goods kit.”⁴⁷

Yuanda argues that in the Draft Remand, the Department committed two errors in its interpretation of Scope Exhibit I-5.⁴⁸ First, Yuanda argues that “the trade refers consistently to erected curtain walls as ‘systems’” and that the Department confused “systems” with “curtain walls” in its analysis of the scope exhibit. It claims that the terms “curtain wall units” are used interchangeably in the trade as “curtain walls,” and in support of this claim, it refers to a CBP tariff classification ruling not on the record. Yuanda claims that therefore, when Petitioner referred to “unassembled unitized curtain walls” in the Petition exhibit, it was not speaking to a completed curtain wall on the side of a building, because that would have been appropriately referred to as a “curtain wall system.”⁴⁹ Instead, it argues that Petitioner actually meant curtain wall units when it used the term “unassembled unitized curtain walls.” Yuanda argues that if Petitioner had intended an “unassembled unitized curtain wall” to be a curtain wall that makes up

⁴⁶ See Yuanda Scope Ruling at 8.

⁴⁷ See Scope Request at 7-9.

⁴⁸ See Yuanda Comments at 5-7.

⁴⁹ See Yuanda Scope Request at Exhibit 2, pages 3-8 (stating that a unit “system” “provides assembly {of curtain walls} under controlled shop conditions, where the work can be carefully inspected, and facilitates rapid enclosure of the building with a minimum of field labor and relatively few field joints). The “AAMA Curtain Wall Design Manual” defines five different kinds of curtain wall systems: 1) Stick System, 2) Unit System, 3) Unit and Mullion System, 4) Panel System, and 5) Column-Cover-and-Spandrel System. Yuanda explained that the products covered by the scope request were in the Unit System.

the side of a building and is unassembled and in units, it would have used the term “system” after that terminology in Exhibit I-5. Yuanda argues that the Department’s Draft Remand is in error because it presumes that the language in the exhibit intended to address a completed curtain wall which is erected alongside a building, instead of only a unit or a lesser combination of the units. Yuanda argues that under its argued interpretation of the term “unassembled unitized curtain walls,” at the time of entry, the unassembled unitized curtain walls were, in fact, finished “curtain walls,” and therefore the “Petition exclusion applies to such imports.”

Second, Yuanda argues that the Department too narrowly interpreted the language of Exhibit I-5. The exhibit lists two examples of “Non-subject merchandise”: “Fully assembled finished goods containing aluminum extrusions” (with examples provided as “windows, doors and solar panels”) and “Unassembled products containing aluminum extrusions, *e.g.*, “kits” that at the time of importation comprise all necessary parts to assemble finished goods” (with examples provided as “shower frame kits, window kits, and unassembled unitized curtain walls”).⁵⁰ Yuanda argues that the Department incorrectly limited its analysis of the unassembled unitized curtain walls to the “finished goods kits” definition in the exclusion of the scope of the *Orders*. Yuanda argues that the Petition did not limit unassembled unitized curtain walls to a requirement that they satisfy the definition of “kits.” Instead, Yuanda points out that the Petition included the Latin abbreviation “*exempli gratia*” followed by the “kits” definition. Yuanda also points out that all of the other examples listed for that exclusion in Exhibit I-5 have the word “kit” following the description, but not unassembled unitized curtain walls. Therefore, Yuanda argues that Petitioner must have intended that some other exclusion criteria be applied to unassembled unitized curtain walls, besides the criteria making up a “finished goods kits” articulated in the scope of the *Orders*.

⁵⁰ See Yuanda Comments at 6-7.

Department’s Position: We disagree with both of Yuanda’s arguments. As the CAFC explained in *Yuanda II*, the “scope language is the ‘cornerstone’ of any scope determination” and an analysis of the plain language of the scope is the first step of the Department’s analysis.⁵¹ By its plain language there are only two exclusions which could potentially apply in this case—the finished goods exclusion and the finished goods kits exclusion:

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.⁵²

Yuanda’s argument that Exhibit I-5 of the Petition indicates that Petitioner intended for factors different from the “finished goods kit” definition in the exclusion of the scope of the *Orders* to apply to “unassembled unitized curtain walls” finds no support in the language of the scope of the *Orders*. The scope language explains that 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 there is no language in the scope that indicates that Petitioner intended an additional category of merchandise, curtain wall units, to be covered by that exclusion, as alleged by Yuanda.

Furthermore, in footnote 7 on page 8 of the Petition, the same page which refers to Exhibit I-5, Petitioner explained that there were two descriptive exclusions it included in the proposed scope language:

⁵¹ See *Yuanda II*, Court No. 2014-1386, -1387, -1388 at 9.

⁵² See Scope of the *Orders* section above.

The scope of the subject merchandise excluded fully assembled final goods containing aluminum extrusions. The scope also excludes “kits” of finished goods that, at the time of importation, comprise all necessary parts to assemble finished goods.⁵³

Thus, the Petition supports the Department’s determination that Petitioner did not intend the reference to unassembled unitized curtain walls in Exhibit I-5 to exclude merchandise from the scope of the *Orders* that does not meet the “finished goods kits” description in the scope of the *Orders*.

To the extent that the “*exempli gratia*” refers to “kits,” in Exhibit I-5, and that “unassembled unitized curtain walls” are not referred to specifically by name as “kits” in the examples, the Department interprets that narration to mean that sometimes merchandise, such as curtain walls, may be shipped in pieces, such as curtain wall units, and then assembled upon importation. The merchandise may not be identified to CBP upon importation as “kits,” like shower frame kits and window frame kits, but nonetheless the merchandise may meet the criteria spelled out in the scope of the *Orders* of 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.” Unlike the interpretation argued by Yuanda of Exhibit I-5, this interpretation is fully consistent with the language of the scope of the *Orders*.

With respect to Yuanda’s argument about an “unassembled unitized curtain wall” being a curtain wall unit, such an interpretation is illogical and inconsistent with the findings of the Department, the CIT, and the CAFC. First, the term unassembled unitized curtain walls is listed in Exhibit I-5 as a possible example of “unassembled products” in a “kit” that “at the time of

⁵³ See the Petition at 8, footnote 7.

importation” comprise all necessary parts to assemble finished goods.” Thus, by its very terms, the phrase “unassembled unitized curtain walls” indicates that a curtain wall is made up of more than one unit, is unassembled, and upon assembly, is a “curtain wall.”

Second, the Department determined in the underlying Yuanda Scope Ruling that “a curtain wall is generally described as a building façade that is non-load bearing,” while “(i)n contrast, the ‘complete curtain wall units’ subject to Yuanda’s request are parts which are used, along with other parts, to create a complete curtain wall, which is a non-load bearing building façade.”⁵⁴ This is consistent with the CIT’s conclusion in *Yuanda I* that curtain wall units are “parts for curtain walls,” specifically covered by the scope of the *Orders*, because “(a)n individual curtain wall unit, on its own, has no consumptive or practical use because multiple units are required to form the wall of a building. Therefore, a curtain wall unit’s sole function is to serve as a part for a much larger, more comprehensive system: a curtain wall.”⁵⁵

Furthermore, the CAFC cited the CIT’s conclusions in this regard, as well as the Department’s determination that a “curtain wall” is “‘an aluminum extrusion framed non-weight bearing exterior wall’ that is supported by the structure of the building to which it is secured,” in affirming the determination that curtain wall units are not excluded finished goods.⁵⁶

Finally, Yuanda cites to a CBP tariff classification ruling as support for its argument that the “trade” allegedly uses the terms curtain wall and curtain wall units interchangeably. As a preliminary matter, this CBP tariff classification ruling is not on the administrative record, and thus, the Department has not considered it for purposes of its analysis. However, even if that document were on the record before the agency, we fail to see how the use of the terms “curtain wall units” and “curtain walls” by CBP in the context of a tariff classification ruling

⁵⁴ See Yuanda Scope Ruling at 21.

⁵⁵ See *Yuanda I*, 961 F. Supp. 2 at 1298-1299.

⁵⁶ See *Yuanda II*, Court No. 2014-1386, -1387, -1388 at 13-14 (citing Curtain Wall Parts Scope Ruling at 3).

demonstrates the intentions of Petitioner in describing the merchandise excluded from the *Orders* or reflects terms of the “trade” as alleged by Yuanda.

In addition, as the Department noted in the Draft Remand, Yuanda participated in the underlying investigation and argued at that time that its unassembled unitized curtain wall parts should be excluded under the “kits” exclusion of the scope.⁵⁷ Petitioner disagreed that Yuanda’s unassembled unitized curtain wall parts met the requirements of the finished goods kits exclusion language contained within the Petition because not all of Yuanda’s aluminum extrusions parts which made up the finished good were “imported together as a kit.”⁵⁸ Petitioner’s arguments during the investigation reveal that Petitioner did not intend for the term “unassembled unitized curtain walls” in Exhibit I-5 of the Petition to be used interchangeably with curtain wall units, and that Petitioner believed that Yuanda’s curtain wall units, in particular, did not satisfy the finished goods kit exclusion to the scope of the investigation and *Orders*.

Thus, the evidence on the record supports an interpretation of Exhibit I-5 that Petitioner did not, as Yuanda argues, intend for the term “unassembled unitized curtain walls” to refer to the curtain wall units themselves, and also supports the Department’s analysis that unassembled unitized curtain walls, as used in Exhibit I-5 of the Petition, did not mean something different than a complete curtain wall because it did not use the word “system” in the narration.

Comment 2: Whether the requirement that all elements of a curtain wall unit must be imported simultaneously is reasonable

Yuanda argues that the Draft Remand arbitrarily defines the scope of the *Orders* by reference to the size of a given curtain wall project.⁵⁹ According to Yuanda, the Department’s interpretation of the term “at the time of importation” to mean that all the parts of a complete

⁵⁷ See Prelim Scope Memo at 4.

⁵⁸ See *id.*

⁵⁹ See Yuanda Comments at 8-9.

system must be imported at one time to be excluded as a finished goods kit is unreasonable.

Yuanda claims that the Department stated in the Draft Remand that the only way an unassembled unitized curtain wall could be excluded under the “kit” exclusion of the scope of the *Orders* is if all of the components of a given erected curtain wall system fit into a single container or can be transported on a single ship and covered by a single entry. Yuanda claims that such an interpretation discriminates against large projects, because a 60-story project, for example, “cannot be shipped all at once” and delivery of units is contracted to occur over “the course of months.” Yuanda states that the importation of shipments over a staggered time period makes “the job site safe and orderly,” and alleges that the Department’s interpretation “disregards these safety concerns.”

Yuanda argues that nothing in Exhibit I-5 to the Petition indicated that one-story curtain wall projects were to be excluded from the scope of the *Orders*, but 60-story projects were to be included. Further, Yuanda argues that nothing in the phrase “unassembled unitized curtain walls” puts any limit on the length or height of the “curtain wall.”

Yuanda argues that the CIT remanded a similar determination back to the Department for further analysis in a similar case. In *Polites v. United States*, the Court remanded to the Department its finding that only fully assembled scaffolding could be excluded from the scope of the antidumping and countervailing duty orders as “finished scaffolding.”⁶⁰ The CIT found that the Department’s definition rendered the scope exclusion inutile because “(n)othing in the record demonstrates merchandise matching this definition {fully assembled scaffolding} is imported into the United States or is even possibly imported into the United States.”⁶¹ Yuanda argues that the factual record of this case is directly comparable, and thus the Department must act

⁶⁰ See *Polites v. United States*, 755 F. Supp. 2d 1352 (Ct. Int’l Trade 2011).

⁶¹ See *id.* at 1357.

consistent with “practical reality” and modify its interpretation of the exclusion language to make that exclusion “meaningful.”

Yuanda also argues that the record in this case is directly comparable to that in the Window Wall Kits Scope Ruling,⁶² where the Department found the merchandise excluded from the scope. According to Yuanda, in the Window Wall Kits Scope Ruling, the products were “installed in sections that are imported as completed sections in phases with each phase comprising of approximately 30 or more cartons.”⁶³ Yuanda argues that the fact that the Department’s Draft Remand results in a requirement that all the sections for a project must be imported at one time is inconsistent with the results of that scope ruling.⁶⁴ According to Yuanda, the shipment pattern for curtain walls is directly comparable to that of window walls.

Jangho also argues that it makes no sense that the Department finds window wall units imported for a specific stage of a project outside the scope of the *Orders*, yet finds finished curtain wall units covered when imported under the same scenario. In the Window Wall Kits Scope Ruling, Jangho argues that the importer did not import the window wall units required for the entire building/project under one CBP 7501 form. Rather, the importer imported window wall units only for one phase of the construction process.⁶⁵

Department’s Position: We disagree with Yuanda and Jangho that the Draft Remand defines the scope by reference to the size of a project or that requiring all the parts to be imported as part of a single entry is arbitrary. As the Department explained above, the scope of the *Orders* states that “(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

⁶² See Memorandum entitled “Antidumping and Countervailing Duty Orders on Aluminum Extrusions from the People’s Republic of China: Final Scope Ruling on Finished Window Kits,” dated June 19, 2014 (“Window Wall Kits Scope Ruling”). Attached to this Remand Redetermination as Attachment 5.

⁶³ See *id.* at 5.

⁶⁴ See Yuanda Comments at 9.

⁶⁵ See Jangho Comments at 6-8.

good and requires no further finishing or fabrication” (emphasis added). Exhibit I-5 also references “kits” that at the time of importation comprise all necessary parts to assemble finished goods. The term “at the time of importation” is undefined. However, Petitioner argued during the investigation, and the Department agreed, that Yuanda’s unassembled unitized curtain walls did not, “at the time of importation” contain all of the necessary parts to fully assemble a final finished good.⁶⁶

Furthermore, also as described above, in examining whether certain merchandise satisfies the criteria of the finished goods kit exclusion, the Department has consistently considered whether all parts necessary to assemble the finished good were imported as part of the same entry.⁶⁷ Both Yuanda and Jangho refer to the Window Walls Kits Scope Ruling⁶⁸ in support of their arguments, but the facts of that scope ruling support the Department’s interpretation of the finished goods kit exclusion. Window walls reviewed in that case were essentially large windows that served the function as walls for hotel rooms, for example, and offices and, “when assembled” were “able to be inserted into the larger building using only the material included in the imported cartons.”⁶⁹ Each window wall, once assembled, was a finished good:

The language of the scope of the *Orders* explicitly excludes finished goods kits, which are defined as “a packaged combination of parts that contains, at the time of importation, all of the necessary parts to fully assemble a final finished good and requires no further finishing or fabrication, such as cutting or punching, and is assembled ‘as is’ into a finished product.” The scope of the *Orders* also excludes finished merchandise containing aluminum extrusions, such as “finished windows with glass.” NR Windows’ window wall kits contain **at the time of importation** all of the necessary parts to be fully assembled, including the glass panes (emphasis added). Therefore, the exclusion language of the scope of the *Orders* appears to explicitly cover this product.

⁶⁶ See Prelim Scope Memo at 11.

⁶⁷ See, *infra*, 15-16, and footnote 40 (citing as examples Window Kits Scope Ruling at 5 and Sunshades Kits Scope Ruling at 11)

⁶⁸ See Window Wall Kits Scope Ruling at 9.

⁶⁹ See *id.* at 5.

Such an interpretation of the scope is consistent with the Department's analysis in the Window Kits Scope Ruling. In that ruling, the Department examined and ultimately found that window kits, provided they contained all items required to assemble the window unit, including the glass pane, satisfied the finished goods kits exclusion in the scope. In so doing the Department also noted that the window kits entered the United States in multiple containers "but will be listed on one 7501 Entry Summary and will be part of one Customs entry."⁷⁰

The Department determined that information on the record provided by "NR Windows (*e.g.*, 7501 entry summary forms)" indicated that the kits were "sold in multiple containers and cartons" but that they entered "under a single entry."⁷¹ Thus, the window wall kits contain at the time of importation all of the necessary parts to be fully assembled into the final, finished good, and enter under a single entry,⁷² whereas Yuanda's curtain wall units are imported in stages over a period of time and eventually are attached and incorporated into the final, finished good, the curtain wall. Accordingly, the Department's interpretation of the term "at the time of importation" in the Window Wall Kits Scope Ruling was fully consistent with the Department's interpretation of that term in these remand results.

Yuanda incorrectly argues that the only way an unassembled unitized curtain wall system could meet the requirements of the exclusion as interpreted in the Draft Remand is if it could fit in a single container or be transported on a single ship. We note that the Department stated in the Draft Remand that "the fact that an unassembled unitized curtain wall may be so large when it enters the United States that it must be shipped in separate containers does not, in of itself, prohibit the merchandise from being excluded from the scope of the *Orders* as a finished goods kit."⁷³ Additionally, in the Window Wall Kits Scope Ruling, the Department explained that "A window wall must be installed in sections and are imported as completed sections in phases with

⁷⁰ See *id.* at 9.

⁷¹ See *id.* at 9.

⁷² See *id.* at 9.

⁷³ See Draft Remand at 15-16.

each phase comprising of approximately 30 or more cartons.”⁷⁴ Additionally in the Department’s scope ruling on Sunshades⁷⁵ we explained that the products at issue in that scope ruling also entered the United States in separate containers, but still entered the United States under a single entry:

Further, we find that the fact that the product at issue may enter the United States in separate containers does not constitute a basis on which to find that it is within the scope of the Orders. In the Window Kits Scope Ruling, the product at issue entered the United States in multiple containers but was listed on a single CBP 7501 form. This fact did not detract from the determination that the product at issue was outside the scope of the Orders because it contained, at the time of importation, all of the necessary parts to assemble a final, finished good.⁷⁶

We do not disagree with Yuanda that the bigger the project, it is possible that the more complex it may be for an exporter and importer to arrange for all of the necessary pieces of the finished product to enter the United States under a single entry. However, the complexity does not “render” the exclusion to “mere surplusage,” as was found to be the case in *Polites v. United States*, 755 F. Supp. 2d 1352, 1354 (CIT 2011) (“*Polites*”). In *Polites*, the CIT held that “an exclusion from a scope determination must therefore encompass merchandise which is or may be imported into the United States in order to act as a meaningful exclusion; anything less renders the exclusion hollow and improperly changes the meaning of the exclusion” of the scope of the antidumping or countervailing duty order.⁷⁷ As we have explained above, to date, the Department has determined that several products have been excluded from the *Orders* under the “finished goods kits” exclusion in numerous scope rulings.⁷⁸ Under the Department’s analysis in each of those scope rulings, merchandise which was imported into the United States was excluded. Thus, the Department’s interpretation of “at the time of importation” has not rendered

⁷⁴ See Window Walls Kits Scope Ruling at 5.

⁷⁵ See Sunshades Kits Scope Ruling at 11.

⁷⁶ See *id.*

⁷⁷ See *Polites*, 755 F. Supp. 2d at 1357.

⁷⁸ See, e.g., Window Kits Scope Ruling; Window Walls Kits Scope Ruling; Sunshades Kits Scope Ruling.

the exclusion meaningless and *Polites* is, therefore, inapposite in this respect. Furthermore, the Department's interpretation of the scope exclusion would not require curtain wall parts be imported in different forms from those which are already imported – just that all of the necessary curtain wall parts needed to assemble the curtain wall upon importation are imported as part of the same entry.

Furthermore, we find misplaced Yuanda's claim that the Department "disregarded safety concerns" through its interpretation of the scope of the *Orders*. The Department is required by statute to administer its antidumping and countervailing duty procedures in accordance with the scope of the *Orders*, and its interpretation of the scope of the *Orders* is unrelated to the reasons for which shipments may be staged to arrive in multiple entries over a period of time.

Comment 3: Whether the Department's Draft Remand is consistent with the Window Wall Kits Scope Ruling

Yuanda argues that Window Wall Kits are functionally equivalent to Curtain Walls. Therefore, it argues that the Department is obligated to follow the Window Wall Kits Scope Ruling in this case and determine that its merchandise is excluded from the scope of the *Orders*. According to Yuanda, the administrative record establishes that curtain walls and window wall are indistinguishable in industry parlance.⁷⁹ Yuanda cites a trade publication on the record, which states that curtain wall and window wall "are used interchangeably, with no clear distinction being made between them." The publication defines "curtain wall" as "any building wall, of any material." Likewise, the publication defines "window wall" as "{a} type of metal curtain wall installed between floors..."⁸⁰ Yuanda claims that the Department's Draft Remand and the Window Wall Kits Scope Ruling have created an unreasonable distinction in the industry where no such distinction had existed before. That is, one type of curtain wall (*i.e.*, a window

⁷⁹ See Yuanda Comments at 10.

⁸⁰ See Yuanda Scope Ruling Request at Exhibit 2 at 2.

wall) is excluded so long as it is called “window wall,” while one type of curtain wall (*i.e.*, unitized curtain wall with glass) is included in the scope as long as it is called “curtain wall.”

Yuanda continues that there is no distinction between curtain walls and window walls for purposes of the scope language. The Department’s scope ruling on Window Wall Kits noted that “the American Architectural Manufacturers Association (“AAMA”) defines curtain walls as ‘exterior wall cladding,’ whereas it defines window walls as a ‘fenestration system.’”⁸¹ Yuanda argues that the cited definition of a curtain wall, however, simply describes the manner in which curtain wall units are hung from the vertical components of the building frame. Window wall units rest on the horizontal components of the building frame, typically inside the face of the floor slabs. However, whether hung from a vertical frame or resting on a horizontal frame, Yuanda argues that curtain wall units and window wall units both consist of a fully assembled aluminum frame containing glass in-fill. Both are “unitized” and are assembled on-site. Both may be shipped in phases for installation according to a construction schedule (particularly in the case of a large project). Given no distinction of any relevance to the scope language, Yuanda argues that the Department should find that the scope ruling on Window Wall Kits controls the outcome of this Remand Redetermination.⁸²

Jangho also argues that the Department’s Draft Remand is inconsistent with the Window Wall Kits Scope Ruling.⁸³ Like Yuanda, Jangho argues that the administrative record in this proceeding indicates that Jangho and Yuanda also import finished curtain wall units in stages as set forth in the agreement with their customer. This is the identical fact pattern that the Department considered in Window Wall Kits Scope Ruling. According to Jangho, as in the Window Wall Kits Scope Ruling, the curtain wall units are imported pursuant to a contract to

⁸¹ See *id.* at 7.

⁸² See Yuanda Comments at 13-14.

⁸³ See Jangho Comments at 6-8.

install a curtain wall with respect to a particular building. The curtain wall is designed and manufactured specifically for use in that specific building and cannot be used interchangeably for a different construction project.⁸⁴

Jangho argues that the products in both rulings (both non-weight bearing) are virtually identical. Window wall units consist of extruded aluminum framing, sheet aluminum, fasteners, gaskets, glazing sealants, and glass. The extruded aluminum framing is a relatively minor component of the finished window wall unit. Finished curtain wall units also consist of extruded aluminum framing, sheet aluminum (or steel), fasteners, gaskets, glazing sealants and glass. Identical to window wall units, Jangho claims that the extruded aluminum framing is only a minor component of the finished curtain wall unit. Based upon the similarities between the products and fact patterns under consideration, Jangho claims that the Department's findings are inconsistent and must be revised in the final remand.

Jangho also claims that the Department appears to claim in the Draft Remand that the fact that the goods under consideration may be placed in a warehouse until needed on a construction site, while at other times are shipped directly to the construction site, demonstrates that they are not a finished goods kit. Jangho argues that where the goods are stored after importation into the United States is not relevant to the scope analysis; the decision as to whether to ship directly to the construction site or to store in a warehouse is a business decision based upon the project at issue.⁸⁵

Department's Position: We disagree with Yuanda and Jangho. While Yuanda and Jangho allege certain similarities between window walls and curtain walls, the Department finds the differences between them relevant to our analysis. The differences between the products

⁸⁴ *See id.*

⁸⁵ *See* Jangho Comments at 7 -8.

covered by Window Wall Kits Scope Ruling and the Yuanda Scope Ruling are specifically addressed in that determination:

We further find that the window wall kits at issue are distinct from the previously examined curtain walls parts, which the Department found to be inside the scope of the *Orders*, in that unlike curtain walls, window walls do not envelop or enclose the entire façade of the building. Rather, when inserted into the opening of a building, window walls leave significant areas of the building façade uncovered. In this sense, the window walls are akin to the window frames with glass that are expressly excluded from the scope and the window kits that the Department excluded as part of the Window Kits Scope Ruling: products that, when installed, do not completely cover the facades of buildings. Further, information submitted by NR Windows indicates that the AAMA distinguishes between window walls and curtain walls. Specifically, the AAMA describes curtain walls as “exterior cladding” while defining window walls as “fenestration systems.” In addition, unlike curtain walls, window walls are not specifically identified as subject merchandise in the scope of the *Orders*. Therefore, we find that the window walls assembled from the kits at issue are distinct from subject curtain walls.”⁸⁶

As highlighted in the above paragraph, the Department distinguished window walls from parts for curtain walls. Unlike curtain walls, window walls do not envelop or enclose the façade of a building. In addition, unlike parts for curtain walls, such as curtain wall units, window walls are not specifically identified as subject merchandise in the scope of the *Orders*. Put another way, the scope of the *Orders* specifically excludes finished merchandise containing aluminum extrusions, such as “finished windows with glass,” but no such exclusion is contained in the scope for curtain wall units. Accordingly, the facts specific to the Department’s determination in the Window Walls Kits Scope Ruling were not the facts addressed in Yuanda’s Scope Ruling.

Yuanda and Jangho argue that a building project in which multiple window walls are inserted into the structure of a building is the same as the construction of a finished curtain wall system. However, these two projects are not comparable for purposes of the Department’s analysis. Window walls, once assembled, are each a finished good. Curtain wall units, on the other hand, which attach to other curtain wall units, are parts for the finished good, the curtain

⁸⁶ See Window Wall Kits Scope Ruling at 9 and 10.

wall itself. As explained in Comment 2 above, we found in the Window Wall Kits Scope Ruling that the window wall kits contain at the time of importation all of the necessary parts to be fully assembled into the final, finished good, including the glass panes, and that the kits are sold in multiple containers and cartons that enter under a single entry.⁸⁷ To the extent that there are “stages” of imports in the window wall context, as claimed by Yuanda and Jangho, it is stages of finished goods kits, the window wall kits, each to be separately inserted into sections of the walls of a building. This is unlike Yuanda’s unassembled unitized curtain walls, which are imported in parts over a period of time and eventually those imported stages of parts, curtain wall units, are attached and incorporated into a larger curtain wall.

Additionally, contrary to Jangho’s contention, the Department did not consider in the Draft Remand the location of the storage of goods after importation to be relevant in making its scope determination. The Department instead considered whether the merchandise at the time of importation contained all of the necessary parts to fully assemble a final finished good. Again, as explained above, the Department consistently interpreted the phrase “at the time of importation” in the scope exclusion language to mean that the all of the goods necessary to fully assemble the final finished good must enter on one CBP 7501 form. Therefore, to the extent that some curtain wall units are imported into the United States that make up the finished curtain wall and are kept in storage until a later date, while other curtain wall units that will be used in the finished curtain wall are imported and shipped directly to the project site, it is undisputed that for Yuanda’s curtain wall units, all of the necessary parts of the curtain wall are not imported as one entry, which is the relevant factor for purposes of the Department’s analysis.

Comment 4: Whether the Draft Remand is consistent with the SMVC subassemblies test

⁸⁷ See *id.* at 9.

Jangho argues that the Department’s findings are inconsistent with the Department’s subassembly test as set forth in the SMVC Scope Ruling.⁸⁸ According to Jangho, the subassemblies text articulated in the SMVC Scope Ruling means that a complete, finished product that is part of a larger product can be excluded from the *Orders*.⁸⁹ Jangho argues that the curtain wall units subject to this scope request should be considered a subassembly and be excluded from the *Orders* because they are subassemblies, *i.e.* curtain wall units are subassemblies to complete a finished curtain wall.

Department’s Position: We disagree with Jangho that the Draft Remand is inconsistent with our findings in the SMVC Scope Ruling. The basis for Jangho’s argument is that the curtain wall parts subject to the Yuanda Scope Ruling should be considered a “subassembly.” The analysis of a “subassembly” relates to a product that is a unique subsidiary component of a larger finished product. For example, a side mount valve is mounted on a fire truck, where it is ready for use upon installation.⁹⁰

We already addressed the issue as to whether curtain wall units are subassemblies under the findings of the SMVC Scope Ruling in the Yuanda Scope Ruling.⁹¹ There is nothing in the Draft Remand that contradicts the findings on this issue in the underlying scope ruling. Specifically, in the Yuanda Scope Ruling, we explained the difference between finished goods under the subassemblies test and curtain wall units, which have no identity outside of the overall curtain wall:

Yuanda and Jangho argue that the Final SMVC Scope Ruling supports a finding that so-called curtain wall “kits” are excluded from the scope of the *Orders*. The subassemblies test discussed in the Final SMVC Scope Ruling is designed to avoid the unreasonable

⁸⁸ See Memorandum entitled, “Final Scope Ruling on Side Mount Valves Controls” (October 26, 2012) (“SMVC Scope Ruling”).

⁸⁹ See Jangho Comments at 2-3.

⁹⁰ See SMVC Scope Ruling at 7.

⁹¹ See Yuanda Scope Ruling at 25.

application of the “finished goods” exclusion in the scope for certain partially assembled downstream products, while remaining consistent with the scope language that excludes merchandise like windows with glass or doors with glass or vinyl, each of which includes all of the parts necessary to assemble a complete window or door, but is necessarily assembled into a larger structure, such as a house. The test provides that products that might otherwise be considered subassemblies of larger downstream products may be excluded from the scope provided that they enter the United States as finished goods or finished goods kits and require no further finishing or fabrication. While a curtain wall unit is a component of a larger structure, *i.e.*, a building, it cannot be construed to be a finished product itself because it has no identity of its own other than as part of a curtain wall, and curtain wall parts are specifically covered by the scope.⁹²

Further, as we also noted in the Yuanda Scope Ruling, unlike the various products covered by the rulings cited by Jangho,⁹³ there is specific scope language identifying parts for curtain walls as subject to the *Orders*:

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.⁹⁴

As noted above, both the CIT and the CAFC have affirmed the Department’s conclusion that curtain wall units are “parts of curtain walls,” for purposes of that language.⁹⁵ Accordingly, the Department’s subassembly test does not apply in this case.

Comment 5: Whether CBP can effectively administer the scope exclusion if imports of curtain wall parts enter over a period of time

Yuanda argues that the Department’s concern that CBP would have difficulty administering the “finished goods kits” scope exclusion with respect to curtain wall units exported in multiple entries pursuant to a long term contract for a finished curtain wall system is without merit. Yuanda points out that CBP is already enforcing the scope ruling on Window

⁹² *See id.*

⁹³ Jangho cited numerous cases including: 1) Memorandum entitled, “Final Scope Ruling on Aluminum Anodes for Water Heaters” (October 17, 2012) (“Aluminum Anodes Scope Ruling”), 2) Memorandum entitled, “Final Scope Ruling on Motor Cases, Assembled and Housing Stators” (November 19, 2012) (“Assembled Motor Cases”), and 3) Memorandum entitled, “Final Scope Ruling on Storm Door Accessory Kits” (August 1, 2014) (“Storm Door Accessory Kits”).

⁹⁴ *See* scope of the *Orders*.

⁹⁵ *See Yuanda I*, 961 F. Supp. 2d at 1297-1298; *Yuanda II*, Court No. 2014-1386, -1387, -1388 at 10-14.

Wall Kits Scope Ruling, which is similar to this case. Yuanda argues that the Department is concerned that an importer will “subsequently break” a contract “to have access to duty-free imports of curtain wall units,” but that such a thing would not occur and “ignores key principles in the curtain wall industry.” Yuanda also points out that it has consistent, detailed records that are readily available to CBP, which would make enforcement reasonable.⁹⁶

Jangho also argues that the Department’s concern that CBP would have difficulty administering the ruling is without merit.⁹⁷ According to Jangho, it would be easy to demonstrate how all the necessary curtain wall units required for a given construction project were being imported. It is important that each curtain wall unit is designed for a specific project, and each relevant entry could thus be linked to that project.

Department’s Position: As discussed above, our determination as to whether Yuanda’s merchandise is subject to the scope is based on the language of the scope of the *Orders*, the language of the Petition, the underlying investigation, the Department’s interpretation of the scope in other scope rulings, and the factual information on the record of this proceeding. As curtain wall units are “parts for curtain walls,” subject to the scope of the *Orders*, those curtain wall units will be excluded from the *Orders* pursuant to the finished goods kit exclusion only if all of the necessary parts to fully assemble a complete curtain wall are present at the time of importation. Multiple entries of curtain wall units over an extended period of time pursuant to a long term curtain wall contract do not satisfy this requirement.

CBP administers antidumping and countervailing duty orders based on the language of the scope of the *Orders* and based on instructions the Department sends to CBP with respect to specific products that the Department has found to be inside or outside the scope of the *Orders*.

⁹⁶ See Yuanda Comments at 14-16.

⁹⁷ See Jangho Comments at 8.

As the Department has determined that window wall kits are excluded as finished goods kits under the scope of the *Orders*, it has communicated that determination to CBP for CBP to administer on an entry-by-entry basis. This is because the window wall kit considered by the Department in the Window Wall Kits Scope Ruling is 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.

Yuanda's merchandise, curtain wall units that are produced and imported pursuant to a contract to supply a complete curtain wall system, do not contain at the time of importation all of the necessary parts to fully assemble the final finished curtain wall. All of the parts are not imported in a single entry, like window wall kits, but are imported over time.

Thus, if the Department were to instruct CBP to exclude entries of merchandise as finished goods kits which do not contain at the time of importation all of the necessary parts to fully assemble the finished good, CBP would be required to treat certain products which are otherwise subject merchandise as excluded the scope of the *Orders*, despite the fact that the products do not meet, at the time of entry, the exclusion criteria set forth in the language of the scope. Furthermore, the underlying presumption of Yuanda's desired interpretation of the finished good kit exclusion would be that the curtain wall units would eventually be attached to other curtain wall units to form the finished good at some point in the future. However, if the curtain wall were never completed, for any reason,⁹⁸ detailed records provided at entry for a project that ceased construction at a later date would be of no assistance to CBP in administering

⁹⁸ Yuanda claims that the Department is concerned about contracts being broken by importers, but that is only one scenario among several that could lead to a project's suspension or cessation. The Department's concern is not limited to an importer potentially breaking a contract. Construction projects may be suspended or stopped for a number of reasons.

the *Orders* in a manner that assures that Yuanda’s merchandise will be assembled into a fully assembled finished curtain wall.

Accordingly, we continue to believe that it would appear to be very difficult for CBP to administer, monitor, and enforce an exclusion to the *Orders* which would be contingent on piecemeal imports of Yuanda’s curtain wall parts over a period of time.

Comment 6: Whether the ITC injury finding for aluminum extrusions in the underlying investigations addressed curtain wall units

Yuanda argues that the Department’s Draft Remand failed to address the fact that the ITC’s injury finding in the aluminum extrusions investigations did not cover curtain wall units, and accordingly, it is unlawful to include them in the scope. According to Yuanda, because the petition excluded “unassembled unitized curtain walls,” and because the curtain wall units at issue in this scope request meet that definition, these products are not lawfully covered by the scope because the ITC did not consider them in making its injury determination.⁹⁹

Department’s Position: While Yuanda argues that the Department failed to address the ITC’s injury determination in the Draft Remand, the Department requested a voluntary remand from the CIT to supplement its scope analysis with an examination of Exhibit I-5 to the Petition. There is nothing in Exhibit I-5 to the Petition that would change the Department’s determination from the Yuanda Scope Ruling that the ITC considered curtain wall parts, including curtain wall units, as part of its analysis in the underlying investigation:

We also find that the descriptions of the merchandise in the investigation and the *ITC Final Report* support a determination that curtain wall units are included in the scope of the *Orders*. . . . Further, the *ITC Final Report* supports a finding that curtain walls are included in the scope of the *Orders*. The *ITC Final Report* recognized that aluminum extrusions include parts of curtain walls and that there is a wide-range of end-use applications for subject aluminum extrusions including construction, such as “high-rise

⁹⁹ See Yuanda Comments at 16-17.

curtainwall” products.¹⁰⁰ Further, the *ITC Final Report* indicates that the scope of the *Orders* encompasses many industries.¹⁰¹

Concerning Yuanda’s argument that the ITC did not collect information from domestic producers of curtain wall units or that these companies were not involved in the ITC’s investigation, which Yuanda argues means that the ITC “viewed them as different products produced by different industries,”¹⁰² we disagree. The ITC specifically mentioned curtain walls as a type of aluminum extrusion in its description of the products, “Major end-use applications for aluminum extrusions...include...”windows, doors, railings, high-rise curtainwall, highway and bridge construction, framing members, other various structures...”¹⁰³ Additionally, the ITC found two domestic like products: 1) finished heat sinks; and 2) all aluminum extrusions corresponding to the scope of the investigation.¹⁰⁴ The ITC made no mention of curtain wall units as a different domestic like product or a different industry. Thus we disagree with Yuanda’s assertion that the ITC thought curtain wall units to be a different product or different industry because domestic producers of curtain wall units were not active in the ITC’s investigation.¹⁰⁵

Further, the Federal Circuit agreed with this conclusion in *Yuanda II*, finding that the ITC considered curtain wall units as part of its analysis:

The ITC Final Report also indicates the ITC considered curtain wall units in its initial investigation. *See Certain Aluminum Extrusions from China*, Inv. Nos. 701-TA-475 & 731-TA-1177, USITC Pub. 4229 (May 2011) (Final). Appellants insist the “record shows that the Commission never collected data or otherwise investigated the condition of, and the effect of subject imports on, domestic producers of curtain wall units.” Appellants’ Br. 23 (citing J.A. 1163). Yuanda provides no legal support for its contention that such an investigation is necessary, and, in fact, the purpose of a scope proceeding is to clarify whether a specific product is covered. As the Government points out, “appellants’ suggestion that the ITC must find injury as to all domestic producers is akin to requiring every producer of aluminum extrusion products expressly listed in the scope, and those covered by an order but not expressly listed, to participate in an investigation.” United States’ Br. 18. Yuanda’s unsupported contention accordingly fails.

In addition to the plain language of the Orders, Commerce will also consider the descriptions of the merchandise contained in the petition, the initial investigation, and the prior determinations of Commerce and the ITC. *See King Supply*, 674 F.3d at 1345. Those descriptions in the petition initiating the antidumping and countervailing duty orders as well as the ITC investigation also show parts for curtain walls are included within the Orders’ scope. The ITC noted “aluminum extrusions serve in a wide variety of applications such as window and door frames and sills, curtain walls, thresholds, gutters,

¹⁰⁰ *See ITC Final Report* at 119-20 and Exhibit 23.

¹⁰¹ *See id.* at 18.

¹⁰² *See Yuanda’s Initiation Comments* at 11.

¹⁰³ *See ITC Final Report* at I-10.

¹⁰⁴ *See id.* at 7.

¹⁰⁵ *See Yuanda Scope Ruling* at 26.

solar panel frames, and vehicle parts” and emphasized the broad range of end uses for the subject aluminum extrusions, including “{b}uilding and {c}onstruction,” which specifically included “high-rise *curtain wall*” products. J.A. 1128–30 (emphasis added). The ITC noted “{a}ccording to petitioners, the wide and varied uses of aluminum extrusions are due to their combination of desirable performance characteristics such as high strength, low weight, high corrosion-resistance, and relative workability and/or machineability.” J.A. 1128. Accordingly, the petition and investigation support the CIT’s holding.¹⁰⁶

Accordingly, Yuanda is mistaken in its argument that it is unlawful to determine that its curtain wall parts are subject to the *Orders* on the basis of ITC’s injury determination.

Comment 7: Whether curtain wall units require further finishing and fabrication upon importation

CWC argues that curtain wall units undergo layout engineering, finishing, cutting, adjoining, punching, sealing, and waterproofing to be installed together to form a proper curtain wall. It argues that therefore curtain walls cannot be assembled “upon importation” under the exclusion.¹⁰⁷

Department’s Position: This issue was addressed in the underlying Yuanda Scope Ruling as well. In that determination, we concluded that it was not necessary to address the issue because we had already determined that the products at issue were not finished goods kits for purposes of the scope exclusion:

Because we determine that curtain wall units imported in various combinations and staged to ultimately form a curtain wall are not finished goods kits, we do not find it necessary to address CWC’s arguments that Yuanda’s curtain wall units require additional finishing or fabrication before being installed, or that Yuanda has not demonstrated that all component parts are imported along with each shipment of curtain wall units.¹⁰⁸

As explained above, we determined on remand that all of the necessary parts to fully assemble a final finished curtain wall are not present at the time of importation of Yuanda’s curtain wall

¹⁰⁶ See *Yuanda II*, Court No. 2014-1386, -1387, -1388 at 12. See also *Yuanda I*, 961 F. Supp. 2d at 1299.

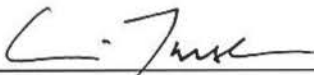
¹⁰⁷ See CWC comments at 8.

¹⁰⁸ See *Yuanda Scope Ruling* at 24.

parts. As a result, we continue to find that we do not need to reach an analysis of whether Yuanda's merchandise "requires no further finishing or fabrication, such as cutting or punching, and is assembled 'as is' into a finished product."

I. Final Results of Redetermination

After reviewing the "finished goods kits" exclusion in the scope of the *Orders*, the language of the Petition, including Exhibit I-5, the underlying investigations, the Department's previous scope rulings which have applied the "finished goods kits" exclusion, in addition to interested parties' comments on the Draft Remand, we continue to determine that Yuanda's merchandise is subject to the *Orders*. For the reasons discussed above, we determine that Petitioner intended for certain unassembled unitized curtain walls to be covered by the "finished goods kit" exclusion, but only if all of the criteria required by the plain meaning of that exclusion are met.



Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

3/11/15

Date