



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

C-570-968; A-570-967

Scope Inquiry

Meridian Kitchen Appliance Door Handles

Public Document

Office 8; Operations: JRT

DATE: June 21, 2013

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

THROUGH: Melissa G. Skinner
Director
Office 8, Operations

FROM: James Terpstra
Senior International Trade Analyst

RE: Aluminum Extrusions from the People's Republic of China

SUBJECT: Final Scope Ruling on Meridian Kitchen Appliance Door Handles

Summary

Meridian Products LLC (Meridian) filed a scope inquiry in which it requested that the Department of Commerce (the Department) determine that certain kitchen appliance door handles which it imports are excluded from the scope of the Orders.¹ For the reasons described below, we recommend determining that the products at issue are within the scope of the Orders.

Background

Meridian submitted its request for a scope inquiry on January 11, 2013.² Petitioners³ submitted comments on the Scope Request on February 19, 2013.⁴ On February 25, 2013, the Department initiated a formal scope inquiry.⁵ On March 18, 2013, Meridian filed scope comments,⁶ as did

¹ 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).

² See Scope Ruling Request of Meridian (January 11, 2013) (Scope Request).

³ Petitioners are the Aluminum Extrusions Fair Trade Committee.

⁴ See Petitioners' February 19, 2013 submission.

⁵ See Letter from Melissa Skinner, Initiation of Formal Scope Inquiry (February 25, 2013).

⁶ See Meridian's March 18, 2013 submission.

Whirlpool Corporation⁷ and Electrolux Home Products, Inc.⁸ On March 25, 2013, Petitioners submitted rebuttal comments.⁹ On April 1, 2013, Meridian and Whirlpool submitted rebuttal comments.¹⁰

Legal Framework

When a request for a scope ruling is filed, the Department examines the scope language of the order and the description of the product contained in the scope ruling request.¹¹ Pursuant to the Department's regulations, the Department may also examine other information, including the description of the merchandise contained in the petition, the records from the investigations, and prior scope determinations made for the same product.¹² If the Department determines that these sources are sufficient to decide the matter, it will issue a final scope ruling as to whether the merchandise is covered by an order.¹³ If the Department determines that these sources are not sufficient to decide the matter, the Department will consider the five additional factors set forth in 19 CFR 351.225(k)(2). The determination as to which analytical framework is most appropriate in any given scope inquiry is made on a case-by-case basis after consideration of all evidence before the Department.

Descriptions of the Products at Issue

Meridian's products are kitchen appliance door handles for ovens, refrigerators or freezers. The kitchen appliance door handles consist of three different types of handles. The products are classified under subheading 8418.99.8060 of the Harmonized Tariff Schedule of the United States.

Type A handles are for attachment to oven doors. They are made of aluminum extrusions, which are brushed and anodized. Holes are drilled in the handles.

Type B handles are for attachment to oven doors. The handles are made of aluminum extrusions, plus two plastic injection molded end caps at each end. The end caps are used to fasten the handle to the door. Holes are drilled in the handles.

Type C handles are for attachment to freezer doors. They are made of aluminum extrusions and include an allen wrench and installation instructions. Holes are drilled in the handles.¹⁴

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

⁷ See Whirlpool's March 18, 2013, submission.

⁸ See Electrolux's March 18, 2013, submission.

⁹ See Petitioners' March 25, 2013, submission.

¹⁰ See Meridian and Whirlpool's April 1, 2013, submissions.

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

¹² 19 CFR 351.225(k)(1).

¹³ 19 CFR 351.225(d).

¹⁴ See Scope Request at 1-2 and Attachment 1.

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.

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”): 7604.21.0000, 7604.29.1000, 7604.29.3010, 7604.29.3050, 7604.29.5030, 7604.29.5060, 7608.20.0030, and 7608.20.0090. 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.

Prior Scope Rulings

A. Geodesic Domes Scope Ruling¹⁵

J.A. Hancock Co., Inc. (“JA Hancock”), an importer, requested a scope ruling on certain geodesic dome frame kits. The products at issue consisted solely of extruded aluminum parts along with nuts, bolts, and washers. JA Hancock argued that the products at issue constituted finished goods kits. JA Hancock argued that the product at issue contained all the components necessary to assemble a final finished good. It further argued that the products at issue required no further fabrication and are assembled “as is” from the components provided in the kits.

In the Geodesic Domes Scope Ruling, the Department explained that the product at issue met the “initial requirements for inclusion into the finished goods kit exclusion.”¹⁶ However, the Department noted that the scope of the Orders states that an “imported product will not be considered a ‘finished goods kit’ . . . merely by including fasteners such as screws, bolts, etc. in the packaging with an aluminum extrusion product.”¹⁷ The Department found that since the products at issue consisted solely of extruded aluminum and fasteners, the exception to the exclusion provision applied. Accordingly, the Department found that the products at issue did not meet the exclusion criteria for a finished goods kit.¹⁸

B. Cutting & Edging Scope Ruling¹⁹

In its scope inquiry request, Plasticoid Manufacturing Inc. (“Plasticoid”) argued that certain finished cutting and marking straight edges that it imports are outside the scope of the Orders. Plasticoid argued that the products at issue constituted finished goods and, therefore, met the exclusion criteria in the scope of the Orders.

The Department found that the physical characteristics of the products at issue (e.g., aluminum extrusion of a rectangular shape) match the physical description of subject merchandise, which includes aluminum extrusions in a wide variety of shapes and forms, including, but not limited to, hollow profiles, other solid profiles, pipes, tubes, bars, and rods. The Department also disagreed that the product at issue constituted a “finished good.” The Department explained that like the door thresholds or carpet trim, both of which are provided as examples of subject extrusions, Plasticoid’s products are merely aluminum extrusions that meet the physical description of subject merchandise, referred to by their end use: as cutting and marking edges.

¹⁵ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on J.A. Hancock, Inc.’s Geodesic Structures,” (July 17, 2012) (“Geodesic Domes Scope Ruling”).

¹⁶ See id., at 7.

¹⁷ Id.

¹⁸ Id.

¹⁹ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on Cutting and Marking Straight Edges,” (November 13, 2012) (“Cutting & Edging Scope Ruling”).

Accordingly, the Department found that the products at issue did not meet the exclusion criteria for finished merchandise.

C. Refrigerator/Freezer Trim Kits Scope Ruling²⁰

In its scope inquiry request, Meridian Products LLC request that the Department find that its refrigerator/freezer trim kits are excluded from the scope of the Orders. The trim kits consist of three different styles of aluminum trim kits which are used as a frame around the perimeter (though not attached to) a major home kitchen appliance, such as a refrigerator.²¹ Meridian argued that the trim kits meet the definition of “finished goods kits” because they include all of the necessary components to assemble a complete frame to surround a major home appliance, and are, therefore, excluded from the Orders.

The Department found that Meridian’s products meet the physical description of merchandise subject to the Orders (“aluminum extrusions which are shapes and forms, produced by an extrusion process”) and that, rather than being “finished goods kits,” the trim kits are merely aluminum extrusions which are identified with reference to their end use.²² Further, as in the Geodesic Domes Scope Ruling, the Department found that, because the trim kits at issue consist entirely of aluminum extrusions (aside from assembly tool, fastener, and an instruction booklet), they cannot meet the exclusion for finished merchandise.²³

Arguments of the Interested Parties

Meridian’s Scope Request

Meridian argues that its kitchen appliance door handles should be excluded from the Orders as “finished goods kits.” First, Meridian’s kitchen appliance door handles are a packaged combination of parts that contain, at time of importation, all of the necessary components to assemble a complete handles to be mounted to an oven, refrigerator, or freezer. All of the components are fully fabricated and do not require further cutting, punching, or other processing prior to their assembly and installation. Because the handles is assembled “as is” from the components provided, the Department should confirm that Meridian’s kitchen appliance door handles under the exclusion for finished goods kits and thus are not within the scope of the Orders. In addition, each of Meridian’s kitchen appliance door handles are in a form ready to be sold directly to, and used by, the consumer/end-user.

Meridian pointed to three different scope rulings which support its argument: Side Mount Control Valves Scope Ruling, Aluminum Anodes Scope Ruling and Solar Panel Mounting

²⁰ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on Refrigerator/Freezer Trim Kits” (December 18, 2012) (“Refrigerator/Freezer Trim Kits”).

²¹ See *id.*, at 2.

²² *Id.*, at 10, quoting Orders.

²³ *Id.*, at 11.

Systems Scope Ruling.²⁴ Meridian argues that the products covered by this scope inquiry request meet the definition of the Department’s “new test” for finished goods kits, as stated in the Side Mount Control Valves Scope Ruling:

determining whether a product meets the exclusions for “finished goods” and “finished goods kits” simply by examining whether it is part of a larger structure or system fails to account for scope language that expressly allows for the exclusion of “subassemblies,” i.e., merchandise that is “partially assembled” and inherently part of a larger whole. Therefore, in the instant scope inquiry, we have analyzed whether the SMVC at issue constitutes a subassembly that enters the United States as a “finished goods kit.” In order for such a kit to be excluded from the scope of the Orders, it must be ready for installation and require no further finishing or fabrication. This is consistent with 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 are necessarily assembled into a larger structure, such as a house.²⁵

Similarly, in the Aluminum Anodes Scope Ruling, the Department found “a water heater anode is a finished product that works in conjunction with another finished product, a water heater.”²⁶ To reach this conclusion, the Department compared the function of the water heater anode with windows with glass, noting that a water heater anode works in the same fashion as a window with glass, which “works in conjunction with a house or structure.”²⁷ This comparison also applies to Meridian’s kitchen appliance door handles, because the kitchen appliance door handles are complete and ready-to-use products and merely enhance the aesthetics of refrigerators and freezers.

In addition, in Solar Panel Mounting Systems Scope Ruling, the Department applied two standards to exclude the product from the scope: 1) the inclusion of all necessary parts to fully assemble a finished good with no further fabrication, and 2) whether it can be assembled ‘as is’ into a finished product.

Thus, the functionality of a product is decisive to identify finished merchandise in the scope determinations for Aluminum Anodes Scope Ruling and Solar Panel Mounting Systems Scope Ruling. The same analysis applies to kitchen appliance door handles. Based on these rulings, the Department should find that Meridian’s kitchen appliance door handles are finished goods kits that are excluded from the scope of the Orders.

²⁴ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Regarding Initiation and Preliminary Scope Ruling on Side Mount Valve Controls” (September 24, 2012) (“Side Mount Valve Controls Scope Ruling”); See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on Aluminum Anodes for Water Heaters” (October 10, 2012) (“Aluminum Anodes Scope Ruling”); See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on Clenergy (Xiamen) Technology’s Solar Panel Mounting Systems” (October 31, 2012) (“Solar Panel Mounting Systems Scope Ruling”).

²⁵ See Side Mount Valve Controls Scope Ruling, at 7.

²⁶ See Aluminum Anodes Scope Ruling, at 6.

²⁷ Id.

Petitioners' February 19, 2013 Submission

Petitioners argue that Meridian's products are included within the scope of the Orders. Petitioners articulate a principle they believe the Department should apply in determining whether a product is a "final finished product." According to Petitioners, in order to be a final finished product, a subassembly or component must have some essential function outside of the aluminum extrusions that it contains. Petitioners argue that the word "finished" must be interpreted by looking at the entire scope. First, the scope includes "finished" extrusions such as fence posts, electrical conduit, door thresholds, or carpet trim. Each of these products are "finished" components of a larger downstream products but are nonetheless covered by the scope. Only if the product is a final finished product containing more than just aluminum extrusions is it excluded from the scope. When evaluating whether a product that contains more than just aluminum extrusions is a final finished product, the Department should consider whether the aluminum extrusion provides the fundamental characteristic to the product. Petitioners rebut Meridian's claim that appliance door handles are like aluminum anodes, because the aluminum anodes consist of more than just aluminum extrusions, in contrast to Meridian's products. Also, according to Petitioners, the Department did not correctly apply the fundamental characteristic test in the Aluminum Anodes Scope Ruling because the aluminum extrusion component, not the other non-aluminum extrusion components, performs the essential function of the anode.

Petitioners argue that Meridian's products are within the scope of the Orders because they meet the physical description of subject aluminum extrusions and are not "final" finished goods. Moreover, Meridian's products are not "finished goods kits" because they are solely extruded aluminum, like the products at issue in the Geodesic Domes Scope Ruling and the Refrigerator/Freezer Trim Kits Scope Ruling. Meridian's products are not complete sets or stand-alone finished goods kits and so do not qualify for the finished goods kits exclusion. Identifying the products by end use does not remove them from the scope of the Orders.

Meridian's March 18, 2013 Submission

Meridian cites to prior scope rulings where the Department found products which contain subject aluminum extrusions outside of the scope.²⁸ Meridian argues that the exclusion for finished goods applies to its products. Meridian cites to Solar Panel Mounting Systems Scope Ruling, the Side Mount Valve Control Scope Ruling, and the Department's Drapery Rail Kits Scope Redetermination²⁹ in support of its argument that finished goods are completely and permanently processed to the extent that they can only be used for their ultimate intended purpose. Meridian's products are completely and permanently processed to the point that they are only suitable for a single, specialized purpose. In addition, kitchen appliance door handles are

²⁸ Meridian cites to: 1) Solar Panel Mounting Systems, 2) Aluminum Anodes, 3) Drapery Rail Kits, 4) Side Mount Control Valves, 5) EZ Fabric Wall Systems, 6) Window Kits, 7) Shower Door Kits, 8) Rails for Showers and Carpets, 9) Motor Case Housing Stators, 10) Solarmotion Controllable Sunshades, 11) Banner Stands and Back Wall Kits, and 12) Decorative Waste Containers.

²⁹ See Final Results of Redetermination Pursuant to Court Remand, *Rowley Co. v. United States*, No. 12-00055 (February 28, 2013) ("Drapery Rail Kits Scope Redetermination").

finished goods, despite the fact that they are applied to a downstream product. This is consistent with the Department's "new test" articulated in the Side Mount Control Valves Scope Ruling.

Meridian argues that, in a scope inquiry, the Department is required to conduct an analysis of the criteria listed in 19 CFR 351.225(k)(2).³⁰ Meridian's products are excluded when they are compared to excluded finished goods under these criteria.

Electrolux's March 18, 2013 Submission

Electrolux argues that the kitchen appliance door handles are finished goods excluded from the Orders. Like the Department's findings in the Solar Panel Mounting Systems Scope Ruling, the Aluminum Anodes Scope Ruling and the Drapery Rail Kits Scope Redetermination, kitchen appliance door handles require no further processing or fabrication and have reached a state where they are no longer useful for any other purpose than their intended use. The fact that the door handles are used on a downstream product does not change the analysis.

Electrolux argues that the Department is required to analyze the criteria under 19 CFR 351.225(k)(2). Application of this analysis in the context of the Department's rulings on other excluded goods demonstrates that Meridian's products are also excluded from the scope of the Orders.

Whirlpool's March 18, 2013 Submission

Whirlpool argues that the kitchen appliance door handles are clearly finished goods excluded from the Orders, such as windows with glass or picture frames with glass pane and backing material. Like the Department's prior scope rulings, including the Side Mount Valves Scope Ruling, the Aluminum Anodes Scope Ruling and Solar Panel Mounting System Scope Ruling, kitchen appliance door handles are excluded from the scope because they require no further processing or fabrication and have reached a state where they are no longer useful for any other purpose than their intended use.

Whirlpool also argues that kitchen appliance door handles were clearly finished goods according to dictionary definitions. For example, *Webster's Third New International Dictionary* defines "finished" as it relates to goods as "ready for packing, shipment, or sale-used or material goods." Whirlpool also argued that kitchen appliance door handles were finished goods according to accounting practice. For example, according to *Barron's Dictionary of Accounting Terms*, the term "finished goods inventory" is the "amount of manufactured product on hand that awaits sale to customers." Whirlpool also argued that kitchen appliance door handles were finished goods according to U.S. Government publications to support its argument. For example it cites the *Bureau of Labor Statistics in the U.S. Department of Labor* which defines "finished goods" as "commodities that are ready for sale to the final demand user – either an individual consumer or a business firm."

³⁰ Meridian cites to 19 CFR 351.225(e).

Petitioners' March 18, 2013 Submission

The Department should apply the interpretive principles set out in Petitioners' February 19, 2013, submission and find that Meridian's products are covered by the scope of the Orders. Meridian's kitchen appliance door handles are nothing more than fabricated aluminum extrusions, which do not meet the "finished goods kit" exclusion. They consist solely of aluminum extrusions, made from aluminum alloy having elements corresponding to the alloy series designation published by the Aluminum Association commencing with the number six. Therefore, they clearly meet the definition of subject merchandise in the scope of the Orders, and the inclusion of fasteners does not take them outside of the Orders.

Meridian's kitchen appliance door handles do not meet the scope exception for finished goods kits. These products are comparable to those in the Geodesic Domes Scope Ruling, where the products consisted solely of aluminum extrusions and nuts bolts and washers. Moreover, the kitchen appliance door handles are not complete sets or stand-alone finished goods. Even if these kitchen appliance door handles have all the components necessary to assemble them, like fence posts and carpet tack strips, are included within the scope because they contain aluminum extrusions and some fasteners. Meridian's products are just extruded aluminum parts, and have no independent function apart from the larger finished good, *i.e.*, the kitchen appliance.

Petitioners point out identifying a product by reference to its end use does not remove it from the scope. The scope does not exclude parts based on their end use. Petitioners state that a mandatory respondent in the ongoing administrative review, Kromet International, Inc., imports similar types of kitchen appliance door handles as Meridian. A finding that Meridian's products are outside of the scope, while permitting Kromet to participate in the current administrative review is in direct conflict.

Petitioners' March 25, 2013 Submission

Petitioners argue that Meridian, Whirlpool and Electrolux attempt to impermissibly expand the final finished goods exclusion by analyzing the term "finished" in isolation. The dictionary terms provided by the parties are too broad as to be of use in defining what constitutes a final, finished good, and under these definitions, fence posts would be excluded as "finished" even though they are expressly included in the scope. Nothing in the scope removes aluminum extrusions just on the basis of being a subassembly or part of a larger downstream product. Petitioners reiterate their argument that the extruded aluminum provides the essential characteristic of Meridian's products and as such cannot be a final, finished good. Further, although the Department can determine that Meridian's products are within the scope by reference to the language of the scope of the *Orders*, the criteria under 19 CFR 351.225(k)(2) also demonstrate that Meridian's products are within the scope. However, the proper analysis is to compare Meridian's products with products that are included within the scope, not products that the Department determined to be outside of the scope.

Meridian's April 1, 2013 Submission

Meridian argues that Petitioners are asserting that finished goods should be evaluated based on their aluminum extrusion content, which was clearly not what the scope specifies. In addition, they disputed Petitioners' argument that the finished goods exclusion requires an "essential function" test—nothing in the petition or scope supports this test. This is also evident from the products which are listed in the petition as excluded, such as shower door kits, which are produced predominantly from aluminum extrusions. The Department has affirmed this in its scope rulings on solar mounting systems and drapery rail kits, both of which are comprised predominantly of aluminum extrusions. The finished goods exclusion does not require an essential function test. In addition, Meridian argued that the petition did not intend to cover kitchen appliance door handles because no petitioning company produces them, and no domestic producer currently produces them.³¹

Whirlpool's April 1, 2013 Submission

Whirlpool rebutted Petitioners' arguments that kitchen appliance door handles are within the scope. According to Whirlpool, Petitioner's argument is based solely on the scope language regarding "finished goods kits" rather than the scope language regarding "finished merchandise," which is different. Because kitchen appliance door handles are finished merchandise, Petitioners' argument is without merit.

In addition, Petitioners' reliance on the scope language that "subject aluminum extrusions may be described as 'parts for final finished products that are assembled after importation'" to support its argument that door handles are included, is unpersuasive. First, the word "may" does not necessarily mean that it covers all products. In addition, some of products included in this section of the scope ("window frames" and "door frames") are clearly distinguishable from other examples of "finished merchandise" described elsewhere in the scope ("finished windows with glass" and "doors with glass or vinyl"). Appliance door handles are finished and completely assembled and are thus comparable to finished windows with glass.

Whirlpool also rebuts Petitioners' assertion that there is a product must have an "essential function" outside the aluminum extrusions that it contains. First, this statement is clearly contradicted by prior scope rulings. In the Aluminum Anodes Scope Ruling, the Department found that they were a "component that could be installed in a larger product." Similarly, in the Side Mount Valves Scope Ruling, the Department rejected Petitioners' argument that the product is not a "final finished good because it is a component of a large firefighting apparatus." The Department explained that Petitioners' interpretation "may lead to absurd results." Whirlpool points out that no language in the scope references any "essential function" requirement in order to be considered a finished good.

Finally, Whirlpool argues that the Petitioner's argument is clearly inconsistent with a recent decision by the United States Court of International Trade in *Legacy Furniture Inc. v. United States*, 867 F. Supp. 2d 1321 (CIT 2012), confirming that specific exclusion language trumps more general language in an order.

³¹ See Meridian's April 1, 2013 submission at 7-8 (listing petitioners and the products they produce).

Department's Position: We have examined the description of the products in the Scope Request, the scope language, and the Department's previous scope rulings concerning the Orders. Pursuant to 19 CFR 351.225(k)(1), we find that the scope and prior rulings are dispositive as to whether the products at issue are subject merchandise. Contrary to Meridian and Electrolux's arguments, the Department is not required to consider the criteria set forth in 19 CFR 351.225(k)(2) where the Department initiates a scope inquiry. 19 CFR 351.225(e) provides that, if the Department finds that "the issue of whether a product is included within the scope of an order ... cannot be determined solely upon the basis of the application and the description of the merchandise referred to in paragraph (k)(1) of this section" the Department will initiate a scope inquiry. As the Department explained in its initiation letter, the Department found that it could not determine whether Meridian's products are within the scope based solely on its application. It also cited to Petitioners' February 19, 2013, submission concerning Meridian's products as a basis for initiating a scope inquiry.³² After receiving comments from interested parties concerning Meridian's products after initiation, we have determined that the scope of the Orders and prior scope rulings are dispositive. Thus, it is unnecessary to consider the additional factors specified in 19 CFR 351.225(k)(2).

Aside from the inclusion of fasteners for Type B handles, the products at issue consist of aluminum extrusions extrusion made of 6000 series aluminum alloy. Thus, the physical characteristics of the products at issue (e.g., aluminum extrusion frames of a particular rectangular shape) match the physical description of subject merchandise:

The merchandise covered by the order is aluminum extrusions which are shapes and forms, produced by an extrusion process, 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... 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.³³

The scope of the Orders also includes extrusions "that are cut-to-length, machined, drilled, {and} punched." We find that Meridian's products are "aluminum extrusions which are shapes and forms," made of an aluminum alloy that is covered by the scope of the Orders. Therefore, the products at issue meet the description of subject extrusions. Moreover, the scope of the Orders indicates that the inclusion of fasteners in the packaging will not transform an aluminum extrusion product into a "finished goods kit."

Concerning Meridian's argument that its products are excluded because they are "finished goods kits," or "finished merchandise," we disagree. The scope expressly includes aluminum extrusions which are identified by reference to their end use. Like the door thresholds or carpet trim, both of which are provided as examples of subject extrusions, Meridian's products are merely aluminum extrusions that meet the physical description of subject merchandise, referred to by their end use: as door handles for kitchen appliances, such as refrigerators and ovens. The

³² See Letter from Melissa Skinner, Initiation of Formal Scope Inquiry (February 25, 2013).

³³ See scope of the Orders.

Department also finds that, contrary to Whirlpool's argument, the issue is whether Meridian's products are finished goods kits, not finished merchandise, because the record is undisputed that the aluminum extrusion parts are not fully and permanently assembled with non-aluminum extrusion parts at the time of entry. Rather, the issue is whether Meridian's products are "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 good."

Further, the fact that the products at issue are ready for use "as is" at the time of importation does not, by itself, result in the products' exclusion from the Orders. The language of the scope indicates that products otherwise meeting the scope definition for subject merchandise are covered under the Orders regardless of whether they are ready for use at the time of importation:

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.

Meridian, Electrolux and Whirlpool argue that the products at issue are analogous to the products examined in the Aluminum Anodes Scope Ruling as well as the product examined in the Solar Mounting Panels Scope Ruling and the products examined in the Drapery Rail Kits Scope Redetermination. We disagree. Importantly, in each of these scope rulings, the Department considered finished merchandise or finished goods kits which were fully assembled with, as in the Aluminum Anodes Scope Ruling, or contained at the time of importation, as in the Solar Mounting Panels Scope Ruling and the Drapery Rail Kits Redetermination, components which were made of material other than aluminum extrusions. Meridian's products consist entirely of aluminum extrusions, with the exception of fasteners, which, by the language of the scope, do not remove the aluminum extrusion product from the scope. Meridian argues that the products at issue in the Drapery Rail Kits Scope Redetermination were mostly aluminum extrusion products, but in that case, the finials—a component of the finished product—are made of steel.

The Department has frequently considered whether products that consist solely of aluminum extrusions meet the exclusion for finished merchandise or finished goods kits. In the Geodesic Domes Scope Ruling, the Department found that the geodesic dome frame kits at issue contained all the parts necessary to assemble a complete geodesic dome and, thus, met the "initial requirements for inclusion into the finished goods kit exclusion."³⁴ However, the Department nonetheless found the geodesic dome kits at issue to be within the scope of the Orders based on the fact that the scope states that the "finished goods kits" exclusion does not apply "... merely by including fasteners such as screws, bolts, etc. in the packaging with an aluminum extrusion product." Thus, in the Geodesic Domes Scope Ruling, the Department concluded that since the products at issue consisted entirely of extruded aluminum, the exception to the exclusion provision applied. Accordingly, the Department found that the products at issue did not meet the exclusion criteria for finished goods kits.³⁵ Similarly, in the Cutting & Marking Edges Scope

³⁴ See Geodesic Dome Scope Ruling, at 7.

³⁵ Id.

Ruling, the Department considered products which, although identified by their end use, consist only of aluminum extrusions. The Department found that they did not meet the exclusion for finished merchandise because “the products consist entirely of aluminum extrusions.”³⁶ In addition, in the Refrigerator/Freezer Trim Kits Scope Ruling, the Department considered similar products to those at issue: aluminum extrusion frames which are intended to be installed around refrigerators and freezers. The Department found that these kits consist only of aluminum extrusions, with the exception of fasteners and installation accessories, and thus cannot be considered finished goods kits. Meridian’s kitchen appliance door handles are analogous to geodesic domes, cutting and marking edges, and refrigerator/freezer trim kits because they consist entirely of aluminum extrusions. Thus, consistent with these scope rulings, the Department finds that Meridian’s products do not meet the exclusion for finished goods kits. Because Meridian’s products are entirely aluminum extrusions, it is unnecessary to consider Petitioners’ proposed “essential function” test.

Furthermore, to consider a product which consists only of aluminum extrusions as a finished goods kit or final, finished good would mean that the exception to the scope of the Orders would swallow the scope, because any aluminum extrusion product, as long as it can be identified by end use, could be considered a finished product. This is contrary to the scope itself, which covers aluminum extrusions. Meridian’s products are not analogous to windows with glass, or picture frames with glass and backing material, because they consist only of aluminum extrusions. Thus, they are akin to window frames without glass, which are expressly covered by the scope.

We disagree with Meridian’s argument that the Department has considered many products which consist of aluminum extrusions to be outside of the scope, because in each of the cases cited by Meridian in its March 18, 2013, submission,³⁷ the kits either included non-aluminum extrusion components or were finished goods kits that were intended to display customizable, interchangeable materials. The fact that the products may have consisted “primarily” of aluminum extrusions does not change the fact that Meridian’s products consist only of aluminum extrusions, with the exception of fasteners, which are included under the language of the scope. Meridian’s products do not include non-aluminum extrusion components and are not intended to display customizable materials.

Meridian argues that, under the Department’s “new test” articulated in Side Mount Valve Control Scope Ruling, its products are finished goods kits because, even though the door handles are part of a larger structure or system, they nevertheless constitute a finished product which is ready for installation, and requires no further finishing or fabrication.³⁸ However, unlike the products at issue in this scope inquiry, the kit in the Side Mount Valve Control Scope Ruling consisted of numerous products other than aluminum extrusions, and so the reasoning in that case does not apply to Meridian’s products.

We also find Whirlpool’s reliance on dictionary definitions of terms such as “finished” to be unpersuasive, because the scope of the Orders defines whether an aluminum extrusion product or

³⁶ See Cutting & Marking Edges Scope Ruling, at 11.

³⁷ See Meridian’s March 18, 2013, Submission, at 2.

³⁸ See Meridian’s Scope Request; see also Side Mount Valve Control Scope Ruling, at 7.

kit will be considered “finished”: it must either contain “aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry,” or “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.” Further, referring to a product by reference to its end use (e.g., “door threshold,” “carpet trim”) will not exclude a product from the scope of the Orders.

Finally, we disagree that the scope of the investigations did not intend to include kitchen appliance door handles. The scope covers “aluminum extrusions which are shapes and forms” made from aluminum alloys of a certain series designation, which describes Meridian’s products. In addition, there is no requirement that a petitioning industry make each product which is covered by the scope of an order, or that every domestic producer participate in an investigation.

We find that the kitchen appliance door handles at issue, with the exception of fasteners, consist entirely of aluminum extrusions and, thus, are similar to the products examined in the Geodesic Dome Scope Ruling, Cutting & Edging Scope Ruling and Refrigerator/Freezer Trim Kits Scope Ruling. This is also consistent with the express inclusion of subject extrusions in the scope of the Orders that may be identified by reference to their end use, which are subject to the Orders provided they “otherwise meet the scope definition.” Thus, Meridian’s products do not meet the exclusion for finished goods kits.

Recommendation:

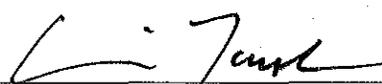
For the reasons discussed above, and in accordance with 19 CFR 351.225(d) and 351.225(k)(1), we recommend finding that the products described in the Scope Request do not meet the exclusions for “finished merchandise” and “finished goods kits.” Therefore, we recommend finding that the products at issue are within the scope of the Orders. Further, we recommend finding that this scope ruling constitutes a final ruling as provided under 19 CFR 351.225(f)(4).

If the recommendation in this memorandum is accepted, we will serve a copy of this memorandum to all interested parties on the scope service list via first class mail as directed by 19 CFR 351.303(f).

✓

Agree

Disagree



Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

Date

6/21/13