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Scope Ruling: Pool Poles, Skimmers, & Rakes

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DATE: November 24, 2014

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

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

FROM: Eric B. Greynolds *EBG*
Program Manager
Antidumping and Countervailing Duty Operations

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

SUBJECT: Final Scope Ruling on Pool Poles, Skimmers, & Rakes

SUMMARY

On July 10, 2014, the Department of Commerce (Department) received a scope ruling request from JED Pool Tools, Inc. (JED),¹ to determine whether its telescopic pool poles, detachable skimmer poles, and leaf skimmers and rakes are subject to the antidumping (AD) and countervailing duty (CVD) orders on aluminum extrusions from the People's Republic of China (PRC).² On the basis of our analysis of the Scope Request, we have determined that the products at issue are excluded from the scope of the *Orders*.

BACKGROUND

On July 10, 2014, JED, an importer of telescopic pool poles, detachable skimmer poles, and leaf skimmers and rakes filed the Scope Request. On August 18, 2014, the Department extended the deadline for the ruling until September 23, 2014.³ On September 12, 2014, the Department extended the deadline for the ruling until November 24, 2014.⁴

¹ See JED's July 10, 2014, submission (Scope Request).

² See *Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order*, 76 FR 30650 (May 26, 2011) and *Aluminum Extrusions from the People's Republic of China: Countervailing Duty Order*, 76 FR 30653 (May 26, 2011) (collectively the *Orders*).

³ See the Department's August 18, 2014, letter.

⁴ See the Department's September 12, 2014, letter.



To date, no other interested party has filed comments on the Scope Request.

SCOPE OF THE ORDERS

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

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

Aluminum extrusions are produced and imported with a variety of finishes (both coatings and surface treatments), and types of fabrication. The types of coatings and treatments applied to subject aluminum extrusions include, but are not limited to, extrusions that are mill finished (*i.e.*, without any coating or further finishing), brushed, buffed, polished, anodized (including bright-dip anodized), liquid painted, or powder coated. Aluminum extrusions may also be fabricated, *i.e.*, prepared for assembly. Such operations would include, but are not limited to, extrusions that are cut-to-length, machined, drilled, punched, notched, bent, stretched, knurled, swedged, mitered, chamfered, threaded, and spun. The subject merchandise includes aluminum extrusions that are finished (coated, painted, *etc.*), fabricated, or any combination thereof.

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

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

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

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

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

The scope also excludes collapsible tubular containers composed of metallic elements corresponding to alloy code 1080A as designated by the Aluminum Association where the tubular container (excluding the nozzle) meets each of the following dimensional characteristics: (1) length of 37 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 this order are finished heat sinks. Finished heat sinks are fabricated heat sinks made from aluminum extrusions the design and production of which are organized around meeting certain specified thermal performance requirements and which have been fully, albeit not necessarily individually, tested to comply with such requirements.

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States ("HTS"): 7610.10.00, 7610.90.00, 7615.10.30,

7615.10.71, 7615.10.91, 7615.19.10, 7615.19.30, 7615.19.50, 7615.19.70, 7615.19.90, 7615.20.00, 7616.99.10, 7616.99.50, 8479.89.98, 8479.90.94, 8513.90.20, 9403.10.00, 9403.20.00, 7604.21.00.00, 7604.29.10.00, 7604.29.30.10, 7604.29.30.50, 7604.29.50.30, 7604.29.50.60, 7608.20.00.30, 7608.20.00.90, 8302.10.30.00, 8302.10.60.30, 8302.10.60.60, 8302.10.60.90, 8302.20.00.00, 8302.30.30.10, 8302.30.30.60, 8302.41.30.00, 8302.41.60.15, 8302.41.60.45, 8302.41.60.50, 8302.41.60.80, 8302.42.30.10, 8302.42.30.15, 8302.42.30.65, 8302.49.60.35, 8302.49.60.45, 8302.49.60.55, 8302.49.60.85, 8302.50.00.00, 8302.60.90.00, 8305.10.00.50, 8306.30.00.00, 8414.59.60.90, 8415.90.80.45, 8418.99.80.05, 8418.99.80.50, 8418.99.80.60, 8419.90.10.00, 8422.90.06.40, 8473.30.20.00, 8473.30.51.00, 8479.90.85.00, 8486.90.00.00, 8487.90.00.80, 8503.00.95.20, 8508.70.00.00, 8516.90.50.00, 8516.90.80.50, 8517.70.00.00, 8529.90.73.00, 8529.90.97.60, 8538.10.00.00, 8543.90.88.80, 8708.29.50.60, 8708.80.65.90, 8803.30.00.60, 9013.90.50.00, 9013.90.90.00, 9401.90.50.81, 9403.90.10.40, 9403.90.10.50, 9403.90.10.85, 9403.90.25.40, 9403.90.25.80, 9403.90.40.05, 9403.90.40.10, 9403.90.40.60, 9403.90.50.05, 9403.90.50.10, 9403.90.50.80, 9403.90.60.05, 9403.90.60.10, 9403.90.60.80, 9403.90.70.05, 9403.90.70.10, 9403.90.70.80, 9403.90.80.10, 9403.90.80.15, 9403.90.80.20, 9403.90.80.41, 9403.90.80.51, 9403.90.80.61, 9506.11.40.80, 9506.51.40.00, 9506.51.60.00, 9506.59.40.40, 9506.70.20.90, 9506.91.00.10, 9506.91.00.20, 9506.91.00.30, 9506.99.05.10, 9506.99.05.20, 9506.99.05.30, 9506.99.15.00, 9506.99.20.00, 9506.99.25.80, 9506.99.28.00, 9506.99.55.00, 9506.99.60.80, 9507.30.20.00, 9507.30.40.00, 9507.30.60.00, 9507.90.60.00, and 9603.90.80.50.

The subject merchandise entered as parts of other aluminum products may be classifiable under the following additional Chapter 76 subheadings: 7610.10, 7610.90, 7615.19, 7615.20, and 7616.99 as well as under other HTS chapters. In addition, fin evaporator coils may be classifiable under HTS numbers: 8418.99.8050 and 8418.99.8060. While HTS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.⁵

LEGAL FRAMEWORK

When a request for a scope ruling is filed, the Department examines the scope language of the order at issue and the description of the product contained in the scope-ruling request.⁶ 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.⁷ 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.⁸

Conversely, where the descriptions of the merchandise in the sources described in 19 CFR 351.225(k)(1) are not dispositive, the Department will consider the five additional factors set forth at 19 CFR 351.225(k)(2). These factors are: (i) the physical characteristics of the merchandise; (ii) the expectations of the ultimate purchasers; (iii) the ultimate use of the product;

⁵ See *Orders*.

⁶ See *Walgreen Co. v. United States*, 620 F.3d 1350, 1357 (Fed. Cir. 2010).

⁷ See 19 CFR 351.225(k)(1).

⁸ See 19 CFR 351.225(d).

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

DESCRIPTION OF MERCHANDISE SUBJECT TO THIS INQUIRY

The Scope Request covers 19 models of pool poles, skimmers, and rakes:

Name	Description	Category
Professional Deluxe Telepole 1	16 ft, 2 piece	Telescopic Pool Pole
Professional Deluxe Telepole 2	16 ft, 2 piece	Telescopic Pool Pole
Professional Deluxe Telepole 3	24 Foot, 2 piece	Telescopic Pool Pole
Deluxe 3-Piece Telescopic Pole	15 foot, 3-piece	Telescopic Pool Pole
Deluxe 2-Piece Telescopic Pole 1	8 foot, 2-piece	Telescopic Pool Pole
Deluxe 2-Piece Telescopic Pole 2	12 foot, 2-piece	Telescopic Pool Pole
Deluxe 2-Piece Telescopic Pole 3	16 foot 2-piece	Telescopic Pool Pole
Deluxe 2-Piece Telescopic Pole 4	16 foot 2-piece	Telescopic Pool Pole
3-Piece Telescopic Skimmer Pole 1	8 foot, 3-piece	Detachable Skimmer Pole
3-Piece Telescopic Skimmer Pole 2	4 foot, 3-piece	Detachable Skimmer Pole
Pro Leak Skimmer		Leaf Skimmer
Deluxe Leaf Skimmer Head		Leaf Skimmer
Econo Aluminum Frame Deep Leaf Skimmer		Leaf Skimmer
Econo Aluminum Frame Deep Leaf Rake		Leaf Rake
Deluxe Deep Leaf Rake	With Rigid Scoop	Leaf Rake
Pro Deep Leaf Rake	With soft vinyl rim	Leaf Rake
Pro Deep Leaf Rake	with rigid rim	Leaf Rake
Pro Deep Leaf Rake	with rigid rim	Leaf Rake
Pro Deep Leaf Rake	with rigid rim	Leaf Rake

The telescopic pool poles are manufactured for use in cleaning and maintaining swimming pools. The telescopic pool poles are distributed to JED customers and sold directly to the consumer individually without accessory tools.⁹ The telescopic pool poles come in different sizes, but all

⁹ See Scope Request at 8.

consist of separate hollow pieces of extruded aluminum tubes that are connected by a plastic threaded locking mechanism. Additionally, the telescopic pool poles come with a plastic handle at the base.¹⁰ No further finishing or fabrication is performed on the telescopic pool poles after importation. Additionally, the telescopic pool poles enter the United States enclosed in their final consumer packaging.¹¹

The detachable skimmer poles are designed for use with plastic leaf skimmer and plastic leaf rake tools manufactured by JED in the United States and with similar tools distributed by other companies.¹² The detachable skimmer poles, which come in two different sizes, are similar to the poles described above in that, at the time of importation, they are telescopic skimmer poles comprised of extruded aluminum pole sections, plastic locking mechanisms, and plastic handles. JED imports the detachable skimmer poles in boxes that contain only poles of the same design and without any accessory tools attached.¹³ After importation, JED employees attach various leaf skimmer or leaf rakes to the skimmer poles prior to shipment to a JED retail customer. The exception is model 40-359, which JED sells as a combination package that includes a detachable skimmer pole as well as a leaf skimmer and leaf rake attachments.¹⁴

The leaf skimmers and leaf rakes are tools that can be used by hand or attached to professional or deluxe poles to collect leaves and other debris from a pool. A leaf skimmer typically has a more squared opening as compared to the elongated oval opening of the leaf rake. The leaf skimmer has a shallow net and is used for collecting of leaves floating on the surface or suspended in the water of a pool. The leaf rake has a deeper net and is designed for collection of leaves at or near the bottom of a pool and permits collection of leaves in greater volume. The leaf skimmers and rakes come in a range of sizes and colors. All models at issue include a plastic frame, extruded aluminum handle, and nylon net.¹⁵ At the time of importation, the leaf skimmers and leaf rakes are permanently assembled and completed with all necessary parts attached.¹⁶

RELEVANT SCOPE DETERMINATIONS¹⁷

Banner Stands Kits Scope Ruling¹⁸

This ruling addressed banner stands and back wall kits, used to showcase graphics and other marketing materials. The requestor argued that the banner stands and back wall kits fell outside the scope of the *Orders* because they met the exclusion criteria of the scope of the *Orders*, namely that the products at issue constituted “finished merchandise containing aluminum

¹⁰ *Id.* at 7-13 and Exhibits 1-10, which contain photographs of the products.

¹¹ *Id.* at 10 and 12.

¹² *Id.* at 13.

¹³ *Id.* at 13-15 and Exhibits 16-18, which contain photographs of the products.

¹⁴ *Id.* at 13-15.

¹⁵ *Id.* at 16-18 and Exhibits 19-22, which contain photographs of the products.

¹⁶ *Id.* at 17-18.

¹⁷ See the Department’s Memorandum “Prior Scope Rulings Relevant to this Proceeding, dated concurrently with this memorandum.

¹⁸ See the Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on Banner Stands and Back Wall Kits,” (October 19, 2011) (Banner Stands Kits Scope Ruling).

extrusions as parts that are fully and permanently assembled and completed at the time of entry.”¹⁹

In the Banner Stands Kits Scope Ruling, the Department found that the banner stands and back wall kits met the exclusion criteria.²⁰ The Department explained that the products at issue contained all of the parts required to assemble a completed exhibition frame on which printed graphical materials may be hung and, thus, met the exclusion criteria in the scope of the *Orders* for “finished goods kits.” The Department noted that in the Preliminary Scope Memorandum that a similar product would have been excluded if the kits contained all necessary parts to be fully assembled finished good.²¹ Thus, in the Banner Stands Kits Scope Ruling, the Department found that because Skyline’s merchandise contained all the necessary parts, it was excluded as a “finished goods kit.”²²

Cleaning System Components Scope Ruling²³

Rubbermaid Commercial Products LLC (Rubbermaid) argued that aluminum extruded mop handles, mop frame heads, and mopping kits met the exclusion criteria for “finished goods” and “finished goods kits” because, at the time of entry, they were fully assembled and ready for sale to the ultimate consumer.

The Department found that, individually, the products at issue did not constitute final, finished goods but instead constituted products designed to function collaboratively in order to form a completed cleaning device. For this reason, the Department found the products to be within the scope of the *Orders*.²⁴

Geodesic Domes Kits Scope Ruling²⁵

At issue in the ruling were certain geodesic dome frame kits consisting solely of extruded aluminum parts along with nuts, bolts, and washers. The requestor argued that the products at issue constituted finished goods kits because the kits contained all the components necessary to assemble a final finished geodesic dome playground set. It further argued that the products at issue required no further fabrication and are assembled “as is” from the components provided in the kits.

¹⁹ *Id.* at 7.

²⁰ *Id.* at 9-10.

²¹ See Memorandum to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, “Preliminary Determinations: Comments on the Scope of the Investigations,” (October 27, 2010).

²² *Id.* at 9 – 10.

²³ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on Certain Cleaning System Components” (October 25, 2011) (Cleaning System Components Scope Ruling).

²⁴ *Id.* at 9.

²⁵ 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 Kits Scope Ruling).

In the Ruling, the Department explained that the product at issue met the “initial requirements for inclusion into the finished goods kit exclusion.”²⁶ 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.”²⁷ 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.²⁸

Side Mount Valve Control Kits Scope Rulings²⁹

At issue in the scope ruling were certain side-mount valve controls (SMVC) kits that are used in pumping apparatuses that attached to fire engines. The requestor argued that a SMVC kit, as imported, contains all the components necessary to complete the product and that all SMVC components and hardware are fully fabricated and require no further finishing or fabrication prior to being assembled. On this basis, the requestor argued that the product in question met the exclusion criteria for “finished goods.”³⁰

In the scope ruling, the Department explained that, upon further reflection of the language in the scope of the *Orders*, it was revising the manner in which it determines whether a given product is a “finished good” or “finished goods kit.” The Department explained that it identified a concern with its prior analysis, namely that it may lead to unreasonable results. The Department explained that an interpretation of “finished goods kit” which requires all parts to assemble the ultimate downstream product may lead to absurd results, particularly where the ultimate downstream product is, for example, a fire truck. The Department explained that such an interpretation may expand the scope of the *Orders*, which are intended to cover aluminum extrusions.³¹

The Department determined that the scope, taken as a whole, indicates that “subassemblies” (*i.e.*, “partially assembled merchandise”) may be excluded from the scope provided that they enter the United States as “finished goods” or “finished goods kits” and that the “subassemblies” require no further “finishing” or “fabrication.” Therefore, the Department analyzed whether the SMVC kits at issue constituted 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*, the Department found that: 1) the SMVC kit contained all of the parts necessary to assemble a complete SMVC; 2) all of the components and hardware of the SMVC kit were fully fabricated and required no further finishing or fabrication prior to being assembled; 3) once assembled, the SMVC was ready for

²⁶ *Id.* at 7.

²⁷ *Id.*

²⁸ *Id.*

²⁹ See the Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Initiation and Preliminary Scope Ruling on Side Mount Valve Controls,” (September 24, 2012) (Preliminary SMVC Kits Scope Ruling), unchanged in Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on Side Mount Valve Control Kits,” (October 26, 2012) (Final SMVC Scope Ruling) (together, “SMVC Kits Scope Rulings”).

³⁰ See Preliminary SMVC Kits Scope Ruling at 2.

³¹ *Id.* at 7.

use in conjunction with the downstream product upon installation.³² Based on this information, the Department found that the SMVC kits at issue met the exclusion criteria for subassemblies that enter the United States as “finished goods kits.”³³

Anodes Scope Ruling³⁴

At issue in the ruling were aluminum anodes for water heaters. The water heater anodes at issue consisted of a rod made of aluminum alloy formed around a stainless steel or carbon steel core with a carbon steel cap.³⁵ The requestor argued that a water heater anode is a finished downstream product that functions separately from a water heater and, thus, the product satisfied the exclusion criteria for finished merchandise.³⁶

In the ruling, the Department found that the water heater anode at issue was finished merchandise and thus is excluded from the scope of the *Orders*. In reaching its decision, the Department concluded that the water heater anode is a finished product because it contains all the components of a water heater anode (*i.e.*, the aluminum, the steel/carbon steel rod, and the carbon steel cap) which are permanently assembled, completed and ready to use as an aluminum anode which works to prevent corrosion in a water heater.³⁷

Solar Panel Kits Scope Ruling³⁸

At issue in this scope ruling were solar panel mounting systems kits, comprised of extruded aluminum rails as well as extruded and aluminum casted kedges, galvanized steel posts, and various steel bolts, clamps, and brackets.³⁹

In the scope ruling, the Department found that the products at issue contained at the time of importation all of the parts necessary to fully assemble a finished good without further fabrication. The Department further found that the products could be assembled “as is” into finished products for mounting solar panels. The Department explained pursuant to this determination that like “picture frames, banner stands and backwall kits, the mounting systems are designed to work with removable/replaceable components . . . and need not include these non-essential parts to constitute a finished good (*i.e.*, a complete solar panel mounting

³² *Id.*

³³ *Id.* at 7-8.

³⁴ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on Aluminum Anodes for Water Heaters,” dated October 17, 2012 (Anodes Scope Ruling).

³⁵ *Id.* at 1.

³⁶ *Id.*

³⁷ *Id.* at 5-7.

³⁸ 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); see also Past Scopes Memo at Attachment 4.

³⁹ *Id.* at 6-7.

system).”⁴⁰ Thus, the Department concluded that the products at issue were excluded from the scope of the *Orders* as “finished good kits.”⁴¹

Assembled Motor Cases and Certain Assembled Motor Case Housing Stators Scope Ruling⁴²

At issue in the ruling were certain assembled motor cases and certain assembled motor cases which house stators, copper wire and insulation material. The assembled motor cases consisted of two extruded aluminum cylinders in which an inner motor case is inserted into an outer motor case. The stator, one of two major components of an electric motor (the other being the rotor), consisted of an extruded aluminum frame around which copper wire is wound using an automatic winding machine. The stator was then pressed into the inner motor case, which was in turn surrounded by the outer motor case.⁴³

In the ruling, the Department found that the assembled motor cases consisted entirely of extruded aluminum materials, and thus, per the Department’s findings in the Geodesic Dome Kits Scope Ruling, found the assembled motor cases, alone, to be inside the scope of the *Orders*.⁴⁴ Regarding the assembled motor cases housing stators, copper wire and insulation materials, the Department found that “due to the inclusion of the stator (which contains insulated copper wire) the assembled motor cases housing stators do not consist entirely of extruded aluminum.”⁴⁵ As a result, the Department found the assembled motor cases housing stators constituted subassembly finished goods and thus, as in the SMVC Kits scope ruling, were outside the scope of the *Orders*.⁴⁶

Drapery Rail Kits Redetermination⁴⁷

In the original drapery rail kits scope ruling, the Department determined that certain drapery rail kits imported by the Rowley Company (Rowley) were covered by the scope of the *Orders* because the kits were not imported with drapes.

The Department subsequently requested a voluntary remand, and on remand, determined that Rowley’s drapery rail kits were excluded from the *Orders* as finished goods kits. In its redetermination, the Department noted that the drapery rail kits were designed to be used with readily interchangeable drapes or curtains that could be changed to fit the end customer’s needs. The Department found it unreasonable to require that the drapery rail kits be imported with the

⁴⁰ *Id.* at 9 (citing the Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on Banner Stands and Back Wall Kits,” (October 19, 2011), in which the Department determined the kits at issue were excluded from the scope of the *Orders*).

⁴¹ *Id.* at 9.

⁴² See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on Motor Cases, Assembled and Housing Stators,” (November 19, 2012).

⁴³ *Id.* at 3.

⁴⁴ *Id.* at 12.

⁴⁵ *Id.* at 13-14.

⁴⁶ *Id.*

⁴⁷ See Final Results of Redetermination Pursuant to Court Remand, Aluminum Extrusions from the People’s Republic of China, *Rowley Company V. United States*, Court No. 12-0005 (February 27, 2013) (Drapery Rail Kits Redetermination); see also *Rowley Company v. United States*, Consol Ct. No. 12-0005 (CIT May 23, 2013).

customizable drapes or curtains and, in determining that Rowley's drapery rail kits were outside the scope of the *Orders*, determined that they contained all the parts necessary to fully assemble a final, finished product.⁴⁸

Flag Pole Sets Scope Ruling⁴⁹

At issue in the ruling were flag pole sets designed to hold banners. Both sets came with one of three different top sections, each of which includes a dimple that allows the sections to interlock and a plastic end cap. The sets were sold without hammers. The requestor explained that similarly-sized sections of both models of flag pole sets were bundled together for importation and entered as separately bundled packages. Each shipment contained a set number of packages of unassembled sections designed and intended to create a predetermined number of three- and/or four-section assembled flag poles sets after the packages enter U.S. customs territory. The packages are entered together on the same Customs Entry Summary (form 7501).⁵⁰

In the ruling, the Department determined that the flag pole kits did not meet the criteria for an excluded finished goods kit because, at the time of importation, similarly-sized unassembled flag pole sections were bundled together for shipment, meaning that all of the sections necessary to assemble a final finished product were not packaged together as a complete section in one package but, instead, it was necessary for the packages to be opened, and repackaged before being sold to the end user.⁵¹

Valeo Final Remand Redetermination⁵²

This remand redetermination pertained to certain automotive heating and cooling system components which the Department originally determined were encompassed within the scope of the *Orders*. The products at issue were comprised of two distinct types of automotive heating and cooling parts/components, T-Series and M-Series.⁵³

In the final remand redetermination, the Department, applying the subassemblies test from the SMVC Scope Ruling, concluded that "at the time of importation, the products at issue contain all of the necessary components required for integration into a larger system," and, thus, there was no meaningful distinction between the products at issue and those examined in the SMVC Scope

⁴⁸ *Id.* at 8-9.

⁴⁹ See Memorandum to Christian Marsh, Deputy Assistant Secretary for AD and CVD Operations, "Aluminum Extrusions from the People's Republic of China: Final Scope Ruling on 5 Diamond Promotions Inc.'s Aluminum Flag Pole Sets," (April 19, 2013) (Flag Pole Sets Scope Ruling).

⁵⁰ *Id.* at 5.

⁵¹ *Id.* at 9.

⁵² See Final Results of Redetermination Pursuant to Court Remand Aluminum Extrusions from the People's Republic of China, *Valeo Inc., Valeo Engine Cooling Inc., and Valeo Climate Control Corp. v. United States*, No. 12-00381, (May 14, 2013) (Valeo Final Remand Redetermination), addressing the Department's findings in the Memorandum regarding: Antidumping and Countervailing Duty Orders on Aluminum Extrusions from the People's Republic of China – Final Scope Ruling on Valeo's Automotive Heating and Cooling Systems, dated October 31, 2012 ("Auto Heating/Cooling Systems Scope Ruling"). The Valeo Final Remand Redetermination was affirmed by the Court of International Trade on June 20, 2013. See *Valeo Inc. v. United States*, Ct. No. 12-00381, dkt. #23, dated June 20, 2013.

⁵³ See Valeo Final Remand Redetermination at 5.

Ruling. As a result, the Department determined that the products at issue were subassemblies that constituted excluded “finished goods,” as described in the *Orders*, and were not covered by the scope.⁵⁴

Louver Assemblies Scope Ruling⁵⁵

At issue in the ruling were adjustable vents that directed airflow for more concentrated or more dispersed airflow in portable cooling units. The products at issue consisted of several parts permanently assembled together in one assembly. All of the product models at issue were comprised of extruded aluminum (e.g., extruded aluminum in the form of rivets, connection bars, louvers, and frames) as well as non-aluminum parts such as wire mesh.⁵⁶

In the Ruling, the Department concluded that the products at issue were akin to the products examined in the Anodes Scope Ruling. Specifically, the Department found that the louver assemblies, as imported, each contained all of the components of a louver (including non-aluminum extrusion parts; such as wire mesh) permanently assembled, completed, and ready for use as a louver to direct airflow for Port-A-Cool’s “Cyclone” portable cooling unit. Like the previously examined water heater anode, the Department found that the products at issue were finished merchandise and were not an integral component of the cooling unit because the Cyclone models can cool air with or without the louver. Rather, the Department found the products at issue were a finished product that worked in conjunction with the Cyclone model to direct airflow as a complementary function, which is not essential to the air cooling system. On this basis, the Department found the products outside the scope of the *Orders*.⁵⁷

Meridian Products⁵⁸

At issue in this scope ruling were certain refrigerator/freezer trim kits designed to frame the space occupied by a refrigerator or freezer. In the underlying scope ruling, the Department found the product to be inside the scope of the *Orders* on the grounds that the product, which consisted solely of extruded aluminum, save for fasteners, failed to meet the Department’s first test for determining whether a good constitutes a finished good, as established in the Geodesic Domes Scope Ruling.⁵⁹

The Court of International Trade remanded to the Department to consider whether the trim kits at issue were designed to display customizable materials or work with removable or replaceable parts, and therefore potentially warrant exclusion from the *Orders*.⁶⁰

To date, the litigation in *Meridian Products* is still ongoing.

⁵⁴ *Id.* at 10.

⁵⁵ See Memorandum to Christian Marsh, Deputy Assistant Secretary for AD and CVD Operations, “Final Scope Ruling on Port-A-Cool Louver Assemblies,” (September 9, 2013) (Louver Assemblies Scope Ruling).

⁵⁶ *Id.* at 5, 8.

⁵⁷ *Id.* at 7-8.

⁵⁸ See *Meridian Products v. United States*, 971 F. Supp. 2d 1259, 1265 (CIT March 26, 2014) (*Meridian Products*).

⁵⁹ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on Refrigerator/Freezer Trim Kits,” (December 17, 2014) at 10-11.

⁶⁰ See *Meridian Products*, 971 F. Supp. 2d at 1261-1271.

Gallery Assemblies Scope Ruling⁶¹

At issue were three models of gallery assemblies consisting of structural frames that are mounted inside a wind turbine tower and function as protective barriers for technicians working within the wind turbine tower. The gallery assemblies were comprised of aluminum extrusions, fiberglass tubes, non-extruded aluminum sheet, rubber bumpers, steel mounting parts, and fasteners. The gallery assemblies entered the United States fully assembled in a form ready to be used by the customer, needing only to be mounted inside a wind turbine.⁶²

In the ruling, the Department found that the gallery assemblies entered as fully assembled finished goods that are permanently assembled, completed, and were ready to use as protective barriers. The Department further found that subsequent to importation, these products required no further modification to be a gallery assembly. The Department concluded that, consistent with the Anodes Scope Ruling, the gallery assemblies were finished merchandise because they permanently assembled, completed and ready to use in a wind turbine tower and, thus, were excluded from the scope of the *Orders*.⁶³

ARGUMENTS FROM INTERESTED PARTIES

JED's Comments

- As evidenced by dictionary definitions provided in the Scope Request, the products at issue constitute excluded “finished merchandise” according to the ordinary and plain meaning of the phrase.⁶⁴
- As indicated above, the scope states that extruded aluminum products are subject merchandise if they otherwise meet the scope definition, regardless of whether they are ready for use at the time of importation.
- However, the term “finished merchandise” does not come with a similar qualification. Rather, the plain meaning of “finished merchandise” indicates that items consisting of extruded aluminum and non-aluminum, imported in final form and ready for sale as merchandise are excluded.
- To interpret the scope in a different manner would contravene notice requirements imposed by due process obligations, as discussed by the Federal Circuit in *Mid Continent Nail*.⁶⁵
- Concerning the telescopic poles and detachable skimmer poles at issue, the language of the scope contemplates that some excluded finished merchandise will have post-import attachments added by purchasers according to their needs. Specifically, the scope excludes such merchandise as doors with glass or vinyl, picture frames with glass frames and backing material and solar panels.
- All of these aforementioned products require post-import attachments by the purchaser in order to be functional and fulfill their purpose.

⁶¹ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on Gallery Assemblies for Wind Turbines,” (March 27, 2014) (Gallery Assemblies Scope Ruling).

⁶² *Id.* at 5.

⁶³ *Id.* at 7.

⁶⁴ See Scope Request at 20-21.

⁶⁵ See *Mid Continent Nail Corp. v. United States*, 725 F.3d 1295, 1300-1301 (Fed. Cir. 2013) (*Mid Continent Nail*).

- Thus, it is clear that the *Orders* contemplate the exclusion of imported finished goods requiring no further fabrication or finishing, even if consumers purchase those goods and then attach another item necessary to perform a desired task.
- The Department's prior scope rulings support the exclusion of the telescopic poles and detachable skimmer poles at issue.
- In the Anodes Scope Ruling the Department concluded that the anode at issue was finished merchandise and not an integral component of the water heater given that a water heater could heat water without the anode. The Department further concluded that the anode was a separate product because it worked in conjunction with the water heater.⁶⁶
- In the Louver Assemblies Scope Ruling the Department excluded the products at issue even though, subsequent to importation, the products were attached (containing both extruded and non-extruded products) to a cooling unit to promote the efficiency of the culling unit.⁶⁷
- The telescopic poles and detachable skimmer poles at issue are analogous to the products examined in the Anodes and Louver Assemblies Scope Rulings. The products at issue are not integral components that must be attached to the vacuum, brushes, skimmers, rakes or other tools with which the poles may be used because such tools may be used without a pole and held directly in the user's hand to perform their core function, which is to scoop up leaves and debris from a pool.
- Thus, the telescopic pool poles and detachable skimmer poles at issue simply complement the attachment tools by expanding the area over which an attachment can be used without requiring the user to enter the water.
- The Department's prior scope rulings involving finished goods kits also serve as a basis to find that the telescopic pool poles and detachable skimmer poles should be excluded from the *Orders*.
- Specifically, the telescopic pool poles and detachable skimmer poles at issue are analogous to the products examined in the Solar Panel Kits Scope Ruling, in which the Department found the solar panels were designed to work with "removable/replaceable components" and "need not include non-essential components (e.g., solar panels) to constitute a finished good." Therefore, in the Solar Panel Kits Scope Ruling, the Department found the products at issue were akin to previously excluded products like picture frames, banner stands, and backwall kits.⁶⁸
- Likewise, the telescopic pool poles and detachable skimmer poles at issue are designed to work with a multitude of removable/replaceable tools available on the market and, therefore, they should not need to be imported with an accessory tool to qualify as excluded finished merchandise or finished goods kits.
- The scope's explicit exclusion of picture frames with glass and backing is noteworthy in this regard because it indicates the intended exclusion of items that are complete at the time of

⁶⁶ See Anodes Scope Ruling at 6.

⁶⁷ See Louver Assemblies Scope Ruling at 5.

⁶⁸ See Solar Panel Kits Scope Ruling at 9 (citing the Banner Stands Scope Ruling, in which the Department determined the kits at issue were excluded from the scope of the *Orders*).

entry but lack discretionary, interchangeable components later added by purchasers. The Department has consistently adhered to this interpretation of the scope.⁶⁹

- Notably, in the Banner Stands Kits and EZ Wall Systems Scope Rulings, the Department specifically rejected Petitioners' argument that "the fact that a part can be purchased separately or replaced by the customer means that an imported product omitting that part may not be considered a 'final finished product' under the scope of the Order."⁷⁰
- The Drapery Rail Kits Redetermination should also lead the Department to find the telescopic pool poles and detachable skimmer poles at issue are excluded from the scope of the *Orders*. At issue were drapery rails consisting of extruded aluminum as well as aluminum components that went beyond mere fasteners. Though initially finding the product to be inside the scope of the *Orders*, on remand the Department found that the product was analogous to previously excluded products like banner stands because the products contained "all the parts necessary to assemble a drapery rail system, save for the decorative drapes or curtains that may be affixed at a later date, and are designed to meet the specifications of the end customer."⁷¹
- The Department further determined that "it would be unreasonable to require that the drapery rail kits at issue be accompanied at the time of importation with decorative drapes that are intended to be customizable."⁷²
- The Department reached a similar conclusion in this regard in the Flag Pole Sets Scope Ruling. Though ultimately finding the products at issue inside the scope of the *Orders*, the Department nonetheless noted that it would be unreasonable to require the flag pole sets include a flag in order to be considered a fully finished product."⁷³
- The Department reiterated this particular interpretation of the scope in *Meridian Products* in which it stated that ". . . a finished goods kit which is designed to display or incorporate customizable materials or work with removable/replaceable components will be excluded if it contains, at the time of importation, all of the parts necessary to assemble a final finished good for such purposes."⁷⁴
- Thus, in keeping with the Department's reasoning in the Drapery Rail Kits Redetermination, the Department should find the telescopic poles and detachable skimmer poles at issue to be excluded from the scope of the *Orders*. Moreover, consistent with Drapery Rail Kits Redetermination, the Department should dismiss any arguments that the telescopic poles and detachable skimmer poles at issue must include an accessory tool in order to meet the exclusion criteria for "finished merchandise." As with drapery rails, the telescopic poles and detachable skimmer poles at issue readily incorporate a variety interchangeable tools.
- The telescopic poles and detachable skimmer poles at issue are distinct from products in the Retractable Awning Mechanism Scope Ruling. In the Retractable Awning Scope Ruling, the Department found that the retractable awning kit constituted subject merchandise because at

⁶⁹ See, e.g., Banner Stand Kits Scope Ruling at 9-10; see also See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Final Scope Ruling on EZ Fabric Wall Systems," (November 9, 2011) (EZ Wall Systems Scope Ruling) at 9-10, where the Department applied the same rationale to find the products at issue were excluded from the scope of the *Orders*.

⁷⁰ See EZ Wall Systems Scope Ruling at 8-10.

⁷¹ See Drapery Rail Kits Redetermination at 8-9.

⁷² *Id.*

⁷³ See Flag Pole Sets Scope Ruling at 10-11.

⁷⁴ See *Meridian Products* at 8.

the time of importation the kits did not include a textile covering and, therefore, “lacked the integral components necessary to assemble a full and complete finished goods kit.”⁷⁵

- The textile covering that accompanies the retractable awning mechanism is not designed to be easily interchangeable. Rather, the coverings are permanent fixtures to the product. As such, the covering is an “integral component” of the finished product.⁷⁶
- In contrast and as noted above, the telescopic poles and detachable skimmer poles at issue readily incorporate a variety interchangeable tools.
- The telescopic poles and detachable skimmer poles at issue are also distinct from the products examined in the Cleaning Systems Scope Ruling. In the Cleaning Systems Scope Ruling, the Department examined a “mopping kit,” which included an extruded aluminum tube, a trigger handle, a soap reservoir, and a wet/dry frame on which disposable mops are attached. The Department found the mopping kit was not excluded from the scope of the *Orders* because it did not include the disposable mop heads and, therefore, was not a final cleaning device.⁷⁷
- The telescopic poles and detachable skimmer poles at issue are distinct because they are used as extension devices to perform a variety of pool maintenance tasks whereas as the mopping kit from the Cleaning Systems Scope Ruling was simply a mopping device.
- Further, the purpose of the telescopic poles and detachable skimmer poles at issue is to provide a vehicle to reach into the large space of a pool and are not a final cleaning device like the mopping kit.⁷⁸
- Also, the mopping kits the Department previously examined included a “quick connect” attachment device that was unique to the producer’s line of products. In contrast, the telescopic poles and detachable skimmer poles at issue can incorporate accessory tools produced by a variety of manufacturers.
- Applying the subassemblies test the Department developed in the SMVC Kits Scope Rulings also leads to the telescopic poles and detachable skimmer poles at issue being excluded from the scope of the *Orders*.
- Like the SMCVs examined by the Department, the telescopic poles and detachable skimmer poles at issue are made of non-aluminum materials that go beyond mere fasteners, replaceable, customizable to meet end-users’ needs, imported in their final form, and do not require additional fabrication or processing subsequent to importation.
- Concerning the leaf skimmers and leaf rakes at issue, at the time of importation, they are permanently assembled and completed with all necessary parts attached. They do not require the inclusion of a pole or any other accessory in order to be ready for use as a pool cleaning tool. Further, the leaf skimmers and leaf are comprised of extruded aluminum as well as non-aluminum materials that go beyond mere fasteners. Therefore, the leaf skimmers and leaf rakes meet the exclusion criteria for “finished merchandise.”
- As was the case with the products examined in the Anode and Gallery Assemblies Scope Rulings, the leaf skimmers and leaf rakes at issue should be excluded from the *Orders*

⁷⁵ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on Certain Retractable Awning Mechanisms” (October 14, 2011) at 9-10.

⁷⁶ *Id.*

⁷⁷ See Cleaning System Components Scope Ruling at 9.

⁷⁸ *Id.* at 9.

because, they are permanently assembled, completed and ready for use at the time of importation.⁷⁹

- Additionally, the leaf skimmers and leaf rakes do not constitute subject merchandise for the same reasons discussed above with regard to the telescopic poles and detachable skimmer poles at issue.⁸⁰
- In the event that the Department finds that language of the scope and prior scope rulings are not dispositive as to whether the products at issue are subject merchandise, in accordance with 19 CFR 351.225(k)(1), then an examination pursuant to criteria enumerated under 19 CFR 351.225(k)(2), will demonstrate that the products do not constitute subject merchandise.⁸¹

DEPARTMENT'S POSITION

The Department examined the language of the *Orders* and the description of the products contained in this Scope Request, as well as previous rulings made by the Department. We find that the description of the products, the scope language, and prior rulings are, together, dispositive as to whether the products at issue are subject merchandise, in accordance with 19 CFR 351.225(k)(1). Accordingly, for this determination, the Department finds it unnecessary to consider the additional factors specified in 19 CFR 351.225(k)(2). For the reasons set forth below, we find that JED's telescopic pool poles, detachable skimmer poles and leaf skimmers and rakes meet the exclusion criteria for "finished goods." The materials that comprise all of the products at issue indicate that in addition to extruded aluminum components, the products include non-extruded aluminum materials. Specifically, the products at issue contain plastic handles and, in the case of the leaf skimmers and rakes also include a plastic frame and nylon netting. We find that these non-extruded aluminum materials go beyond mere fasteners.⁸² Therefore, we find that the products at issue meet our initial test for determining whether a good constitutes a finished good or finished goods kit, as established in the Geodesic Domes Kits Scope Ruling.⁸³

As noted above, the scope of the *Orders* excludes "finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry."⁸⁴ Information in JED's Scope Request (*e.g.*, narrative statements and photographs), indicates that the leaf skimmers and rakes are, upon importation, ready for use as hand-held cleaning tools without any additional attachments required.⁸⁵ Therefore, based on this information we find that the leaf skimmers and rakes constitute fully and permanently assembled and completed merchandise (*e.g.*, fully functional pool cleaning tools) at the time of entry. Thus, we find that the leaf skimmers and rakes meet the exclusion criteria for "finished merchandise."

⁷⁹ See, *e.g.*, Gallery Assemblies Scope Ruling at 7.

⁸⁰ See Scope Request at 41-44.

⁸¹ See Scope Request at 36-41.

⁸² See Scope Request at 7-13 and Exhibits 1-10 with regard to telescopic pool poles, 13-15 and Exhibits 16-18 with regard to detachable skimmer poles, and 16-18 and Exhibits 19-22 with regard to leaf skimmers and rakes.

⁸³ See Geodesic Dome Kits Scope Ruling at 7, where 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.

⁸⁴ See *Orders*.

⁸⁵ See Scope Request at 16 and 42 and Exhibits 19-22.

Concerning the telescopic pool pole, we find that the products at issue enter the United States as fully and permanently assembled and completed merchandise. For example, photographs of the products indicate that the telescopic pool poles are completely assembled when they enter the United States.⁸⁶ Further, similar to the products examined in the Drapery Rail Kits (Redetermination)⁸⁷ and the Solar Panel Kits Scope Rulings,⁸⁸ the telescopic pool poles are designed to work with removable/interchangeable attachments. Specifically, the various products that may be attached to the telescopic pool poles at issue by end users after importation are interchangeable and are available from JED and a wide variety of other suppliers.⁸⁹ Further, each end user chooses which product to use as an attachment.⁹⁰ Therefore, consistent with the Drapery Rail Kits (Redetermination), and the Solar Panel Kits Scope Rulings, the Department finds that it would be unreasonable to require the inclusion of interchangeable attachments that can change with users' needs at the time of importation in order for the Department to consider the telescopic pool poles at issue to constitute "finished merchandise" for purposes of the scope exclusion. Consequently, as we determine that the telescopic pool poles at issue are "finished merchandise," the Department determines that they are excluded from the scope of the *Orders*.

In addition, we find that the telescopic pool poles at issue in this scope proceeding are not unpacked, rearranged, and repackaged upon importation and prior to sale in the United States.⁹¹ Unlike the products examined in the Flag Pole Sets Scope Ruling, we find the telescopic pool poles are, upon importation, finished merchandise that do not require any additional repackaging or rearranging in order to be constitute a finished good.⁹²

With respect to the detachable skimmer poles at issue, the skimmer poles are, at the time of entry, very similar to the telescopic pool poles discussed above. The detachable skimmer poles are comprised of telescopic poles comprised of extruded aluminum pole sections, plastic locking mechanisms, and plastic handles.⁹³ Based on information in JED's Scope Request, we find that the detachable skimmer poles enter the United States as fully and permanently assembled and completed merchandise and therefore are excluded from the scope of the *Orders* as "finished merchandise."⁹⁴

We acknowledge that the detachable skimmer poles differ from the telescopic skimmer poles in the manner in which they are packaged following importation and ultimately sold to the end-user. Unlike the telescopic pool poles, which are imported and sold as is, JED employees attach various leaf skimmer or leaf rakes to the detachable skimmer poles after importation and prior to

⁸⁶ See Scope Request at 7-13 and Exhibits 1-10 with regard to telescopic pool poles.

⁸⁷ See Drapery Rail Kits (Redetermination) at 8.

⁸⁸ See Solar Panel Kits Scope Ruling at 9.

⁸⁹ See Scope Request at 8-9 and Exhibit 8 with regard to telescopic pool poles.

⁹⁰ *Id.*

⁹¹ See Scope Request at 9, 12 and Exhibits 10, 15 with regard to telescopic pool poles, 15 and Exhibit 18 with regard to detachable skimmer poles, and 17-18 and Exhibits 21 with regard to leaf skimmers and rakes.

⁹² See Flag Pole Sets Scope Ruling at 9, in which the Department found that the flag pole kits did not meet the criteria for an excluded finished goods kit because, at the time of importation, similarly-sized unassembled flag pole sections were bundled together for shipment, meaning that all of the sections necessary to assemble a final finished product were not packaged together as a complete section in one package and, thus it was necessary for the packages to be opened, and repackaged before being sold to the end user.

⁹³ See Scope Request at 13-15 and Exhibits 16-18, which contain photographs of the products.

⁹⁴ *Id.* at 13-15 and Exhibits 16-18, which contain photographs of the products.

shipment to a JED retail customer. The exception is model 40-359, which JED sells as a combination package that includes a detachable skimmer pole as well as a leaf skimmer and leaf rake attachments.⁹⁵ However, we find this difference does not result in the detachable skimmer poles failing to meet the exclusion criteria for “finished merchandise,” because at the time of entry the detachable skimmer poles are fully and permanently assembled poles that are designed to work with removable/interchangeable attachments.. Additionally, the extent to which JED includes a particular accessory with the finished merchandise, the detachable skimmer poles, after importation, before the sale of the merchandise to the ultimate consumer, does not diminish the fact that the detachable skimmer poles enters the United States as a finished product. Accordingly, because we find that the detachable skimmer poles at issue are, at the time of entry, “finished merchandise,” they are distinct from the products examined in the Flag Pole Sets Scope Ruling, which addressed a product kit that did not contain at the time of entry all of the parts necessary to assemble a finished goods kit”⁹⁶

Because we find that the products at issue constitute “finished merchandise” as opposed to finished merchandise subassemblies that are incorporated into a larger product, we do not find it necessary to address JED’s arguments concerning the Department’s analysis from the SMVC Kits Scope Ruling.⁹⁷

RECOMMENDATION

For the reasons discussed above, and in accordance with 19 CFR 351.225(d) and 19 CFR 351.225(k)(1), we recommend finding that the telescopic pool poles, detachable skimmer poles, and leaf skimmers and rakes constitute “finished merchandise” and, thus, are excluded from the scope of the *Orders*.


⁹⁵ See Scope Request at 13-15.

⁹⁶ See Flag Pole Sets Scope Ruling at 9, in which the Department found that the flag pole kits did not meet the criteria for an excluded finished goods kit because, at the time of importation, similarly-sized unassembled flag pole sections were bundled together for shipment, meaning that all of the sections necessary to assemble a final finished product were not packaged together as a complete section in one package and, thus it was necessary for the packages to be opened, and repackaged before being sold to the end user.

⁹⁷ See Preliminary SMVC Kits Scope Ruling at 6-7; unchanged in Final SMVC Kits Scope Ruling. Additionally, we note that in the Cleaning Systems Scope Ruling, the Department found the requestor’s mopping kits to be inside the scope of the *Orders* because the mop system, which included an extruded aluminum tube, a trigger handle, a soap reservoir, and a wet/dry frame on which disposable mops are attached, did not constitute a final finished good, but rather constituted a single part of a system that was designed to function collaboratively. In light of the Department’s subsequent determinations in the Banner Stands Kits and EZ Wall Systems Scope Rulings, the Court of International Trade remanded the Department’s decision in the Cleaning System Scope Ruling for further consideration. To date, the litigation in *Rubbermaid* is still ongoing.

If the recommendation in this memorandum is accepted, we will serve a copy of this determination to all interested parties on the scope service list as directed by 19 CFR 351.225(d).

Agree Disagree



Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

11/24/14

Date