



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

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Scope: Unger Pole Handles

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AD/CVD OIII: JRT

DATE: April 22, 2015

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

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

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

FROM: James Terpstra
Senior International Trade Analyst, Office III
Antidumping and Countervailing Duty Operations

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

SUBJECT: Final Scope Ruling on Unger Enterprises Inc.'s Pole Handles

SUMMARY

On July 17, 2014, the Department of Commerce ("Department") received a scope ruling request from Unger Enterprises Inc. ("Unger")¹ to determine whether its Pole Handles are subject to the antidumping duty ("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 request, we have determined that the Pole Handles are excluded from the scope of the AD and CVD orders on aluminum extrusions from the PRC.

¹ See letter from Unger: Request for a Scope Ruling on Certain Aluminum Pole Handles, dated July 17, 2014 ("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").

BACKGROUND

On July 17, 2014, Unger requested that the Department determine whether its Pole Handles are outside the scope of the *Orders*. On November 6, 2014, the Aluminum Extrusions Fair Trade Committee (“Petitioner”) submitted a letter requesting that the Department extend the deadline for issuing the scope ruling so that it could have time to submit comments.³ On November 17, 2014, the Department extended the deadline and invited interested parties to submit comments by November 24, 2014.⁴ On November 24, 2014, Petitioner and Unger submitted comments.⁵ On December 3, 2014, Unger submitted additional comments;⁶ to which Petitioner replied on March 4, 2015.⁷ We extended the deadline in this proceeding several times, most recently on March 19, 2015.⁸

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.

³ See Petitioner’s submission “Aluminum Extrusions from the People’s Republic of China: Request for an Extension of Deadline to Issue a Scope Ruling or Initiate a Formal Scope Inquiry” dated November 6, 2014.

⁴ See Letter to Interested Parties: Extension of Time for Scope Ruling (November 17, 2014).

⁵ See Petitioner’s submission “Aluminum Extrusions from the People’s Republic of China: Comments on Unger’s Scope Exclusion Request” dated November 24, 2014 (Petitioner’s Comments”) and Unger’s submission “Aluminum Extrusions from the People’s Republic of China: Comments on Unger’s Scope Ruing Request” dated November 24, 2014 (“Unger Comments”).

⁶ See Unger’s submission “Aluminum Extrusions from the People’s Republic of China: Reply to Petitioner’s Comments on Unger’s Scope Ruing Request” dated December 3, 2014 (“Unger Reply Comments”).

⁷ See Petitioner’s submission “Aluminum Extrusions from the People’s Republic of China: Comments on in Response to Unger’s December 3, 2014 Comments” dated March 4, 2015 (“Petitioner’s Response Comments”).

⁸ See Letter from Erin Begnal, Program Manager, to Interested Parties: Extension of Time for Scope Ruling (March 19, 2015).

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.⁹

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.¹⁰ 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.¹¹ 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.¹²

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; (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

There are nine models of Unger's pole handle products: model numbers 964520, 964500, AL14A, AL140, 91012, 960373, 961880, AL14G and MS14G.¹³ The nine models share the same essential characteristics and similar parts, but vary in tube length and number of parts, according to the nominal length of the poles and their use. The following general description applies to all nine models. Unger's pole handles are designed to work with a variety of cleaning/tool heads that are attached to one end of the poles. These include, but are not limited to, squeegees, brushes, light bulb changers, dusters, push brooms, gutter paddles and paint rollers.¹⁴

Each model of pole handle is made up of multiple parts. In addition to aluminum tubes of various lengths and diameters, each pole handle incorporates a polypropylene hand grip, a polypropylene tool and accessory attachment head (one of several designs) that accepts a variety of tools and attachments, including those not produced by Unger. The polypropylene grip is attached to one end of the largest diameter tube in each product. It is ergonomically shaped to provide a better grip for the consumer.¹⁵ Certain models also include the "optiloc" plastic

⁹ See *Orders*.

¹⁰ *Walgreen Co. v. United States*, 620 F.3d 1350, 1357 (Fed. Cir. 2010).

¹¹ 19 CFR 351.225(k)(1).

¹² 19 CFR 351.225(d).

¹³ See *Scope Ruling Request* at 3.

¹⁴ *Id.*, at 4.

¹⁵ *Id.*, at 5.

locking collars which are used to connect different pole components together and adjust them. The “optiloc” plastic locking collars are different between products based on the number, length, and width of the pole components being connected and adjusted.¹⁶

The attachment heads differ slightly depending on the specific model of pole handle. Models 964520, 964500, AL14A and AL140 feature a permanently affixed, non-removable head that accepts tools and accessories with ACME-type threads. This allows attachment of several types of heads and accessories, including those not made by Unger. The consumer screws on their choice of tool or accessory head and unscrews it as described, providing for easy customization based on consumer use and need. Models 91012, 960373 961880, AL14G, and MS14G use an Unger-designed removable threaded head system that provides for tools and cleaning accessories to be attached using ACME-type threads.¹⁷

RELEVANT SCOPE DETERMINATIONS¹⁸

A. Drapery Rail Kits (Redetermination)¹⁹

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 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.

B. Solar Panel Scope Ruling²⁰

At issue in this ruling were solar panel mounting systems comprised of extruded aluminum rails as well as extruded and cast aluminum kedges, galvanized steel posts, and various steel bolts, clamps, and brackets.²¹ In the 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, like picture frames, banner stands and

¹⁶ *Id.*, at 10.

¹⁷ *Id.*, at 4.

¹⁸ See the Department’s Memorandum “Prior Scope Rulings Relevant to this Proceeding,” dated concurrently with this memorandum.

¹⁹ 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. 12-00055 (Court of International Trade (“CIT”) May 23, 2013) (Court Order affirming Remand Redetermination).

²⁰ 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 Scope Ruling”).

²¹ *Id.*, at 6-7.

backwall kits, the mounting systems were designed to work with removable/replaceable components, and need not include these removable/replaceable components to constitute a finished good. These products could be assembled “as is” into finished products for mounting solar panels. Thus, the Department concluded that the products at issue were analogous to picture frames with glass excluded from the scope and exhibition booths that the Department found were outside the scope of the *Orders*.²²

C. Banner Stands and Back Wall Kits²³

Skyline Displays Inc. (“Skyline”) argued that banner stands and back wall kits, used to showcase graphics and other marketing materials, 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 extrusions as parts that are fully and permanently assembled and completed at the time of entry.” Petitioner argued that the fact that additional accessories could be added to the products at issue (*e.g.*, shelving and lighting) called into question Skyline’s claim that the products constituted finished goods.

The Department found that the banner stands and back wall kits met the exclusion criteria because they contained all of the parts required to assemble a completed exhibition frame on which printed graphical materials may be hung, thereby meeting the exclusion criteria in the scope of the *Orders* for “finished goods kits.” Furthermore, the Department agreed with Skyline’s claim that the products at issue were analogous to completed picture frames, which are explicitly excluded from the scope. Specifically, the Department found that the products at issue were designed to incorporate interchangeable graphical materials that can change with users’ needs. Therefore, the Department concluded it would be unreasonable to require that the products at issue be accompanied at the time of importation with affixed graphical material that could not be removed or altered at a later date.

D. KIK Telescoping Poles²⁴

KIK Custom Products argued that its telescoping poles were finished goods and were not subject to the orders. The Department found that the telescoping poles contained non-aluminum extruded components such as a plastic handle, a plastic cap, plastic connector(s) and plastic peg(s), which went beyond mere fasteners.²⁵ In addition, the Department found that KIK’s telescoping poles are fully and permanently assembled and completed at the time of entry.²⁶

In addition, similar to the Drapery Rail Kits (Redetermination), Banner Stands and Back Wall Kits, and Solar Panels, these products are designed to work with removeable/interchangeable

²² *Id.*, at 8-9, 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) (“Banner Stands and Back Wall Kits”).

²³ See Banner Stands and Back Wall Kits.

²⁴ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on KIK Customs Products’ Telescoping Poles” (November 03, 2014) (“KIK Telescoping Poles”).

²⁵ *Id.*, at 9.

²⁶ *Id.*

attachments.²⁷ The various accessories that may be attached to KIK's telescoping pole by end users after importation are interchangeable and are available from KIK and a wide variety of other suppliers.²⁸ Further, each end user chooses which product to use as an attachment.²⁹ The Department therefore determined that it would be unreasonable to require that KIK's telescoping poles be imported with these attachments, and found the product to qualify for the finished goods exclusion.

E. Unger Telescoping Poles³⁰

Unger argued that its telescoping poles are finished goods and therefore not subject to the orders. The Department found that, in addition to extruded aluminum components, Unger's telescoping poles include non-extruded aluminum materials such as plastic tube plugs, hand grips, locking collars, locking buttons and cones which go beyond mere fasteners.³¹ In response to arguments by Petitioner that the non-extruded aluminum parts are mere fasteners or that they are merely "incidental" to the function of the product, the Department observed that the *Orders* contain no requirement regarding "incidental" function, and found that the non-extruded aluminum components integrate into the product in a variety of ways beyond that of a mere fastener.³² The Department additionally found that the telescoping poles were fully and permanently assembled and completed at the time of entry.³³

In addition, similar to the products considered in Drapery Rail Kits (Redetermination), Banner Stands and Back Wall Kits, and Solar Panels, Unger's telescoping poles are designed to work with removable/interchangeable attachments.³⁴ The various products that may be attached to Unger's telescoping poles by end users after importation are interchangeable and are available from Unger and a variety of other suppliers. As a result, the Department determined that the product in question is excluded from the scope of the orders under the finished goods exclusion.³⁵

F. Clik-Clik MagPole³⁶

Clik-Clik argued that its MagPole pole product is a finished good and not subject to the orders. The Department found that, in addition to extruded aluminum components, the MagPole included non-extruded aluminum materials such as fiberglass tubes, plastic handles, plastic buttons, rubber bumpers and steel rolling pins which go beyond mere fasteners.³⁷ In addition,

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Final Scope Ruling on Unger Enterprises Inc.'s Telescoping Poles" (February 19, 2015) ("Unger Telescoping Poles"), at 10.

³¹ *Id.*, at 10-11.

³² *Id.*, at 11.

³³ *Id.*

³⁴ *Id.*, at 11-12.

³⁵ *Id.*, at 13.

³⁶ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Final Scope Ruling on Clik-Clik Systems Inc. Magpole" (November 19, 2014) ("Clik-Clik MagPole").

³⁷ *Id.*, at 8.

the Department found that the MagPole is fully and permanently assembled and completed at the time of entry.³⁸ Although the MagPole may be used with separate tools, those attachments are removeable/interchangeable, available from a wide variety of suppliers, and selected based on the preference of the end user.³⁹ The Department therefore determined that Klik-Klik's MagPoles are excluded from the scope of the orders as finished goods.⁴⁰

ARGUMENTS FROM INTERESTED PARTIES

Petitioner's Comments

Petitioner argues that Unger's pole handles are nothing more than extruded aluminum poles and are clearly subject to the scope of the *Orders* on aluminum extrusions from the PRC. Petitioner points out that one of their members, Alexandria Extrusion Company ("Alexandria"), during the original investigation of aluminum extrusions from the PRC, submitted a response to the International Trade Commission's ("ITC") U.S. Producer Questionnaire, and included information on its extruded aluminum pole production.⁴¹ As such, Petitioner contends that pole handles have always been considered to be included in the scope of the *Orders*. Petitioner also points out that even if pole handles are not specifically mentioned in the ITC Final Report, they are still covered by the scope.

Unger's pole handles consist primarily of fabricated extruded aluminum. The pole handles also feature a tool and accessory attachment head, and for certain models, a locking collar, which, by Unger's own description, function as fasteners, and an incidental plastic hand grip that are insufficient to exclude an otherwise entirely extruded aluminum product from the scope of the *Orders*. Petitioner argues that the Federal Circuit's decision in *Shenyang Yuanda* supports its argument that the non-extruded aluminum components are only incidental to the extruded aluminum poles and do not form a sufficient basis to exclude these products.⁴²

Petitioner argues that Unger's pole handles are integral parts of a final finished product (*i.e.*, a cleaning apparatus) and, therefore, do not qualify for the finished goods exclusion. According to Petitioner, Unger's pole handles "are designed to work with a variety of cleaning/tool heads that are attached to one end of the poles," including "squeegees, brushes, light bulb changers, dusters, push brooms, gutter paddles, and paint rollers." Therefore, cleaning and other tools - the finished products into which Unger's component pole handles are incorporated - are *not functional* until the cleaning/tool heads are attached to the pole handles.

This case, Petitioner claims, is in contrast to the Department's ruling on Vico Plastics's Cam-Lock Poles,⁴³ where the Department found telescoping support poles designed and shipped as

³⁸ *Id.*

³⁹ *Id.*, at 9.

⁴⁰ *Id.*

⁴¹ See Certain Aluminum Extrusions from China, Inv. Nos. 701-TA-475 and 731-TA-117 (final), USITC Pub. 4229 (May 2011) at III-2.

⁴² See *Shenyang Yuanda Aluminum Industry Engineering Co., Ltd. Et al. v. United States* CAFC Slip OP. 2014-1386, 1387, 1388 (January 21, 2015) ("*Shenyang Yuanda*").

⁴³ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Final Scope Ruling on Vico Plastic Inc.'s Cam-Lock Support Poles" (September 12, 2014) ("Vico

products used to prop up canvas and tarpaulin boat covers to be “final finished merchandise” excluded from the scope of the *Orders*. In that case, the poles were comprised of extruded aluminum lengths, but they also included such significant non-extruded aluminum materials as nylon cam levers, rubber crutch tips, die-cast aluminum collars, springs, and plastic swivel bases and balls.

Petitioner also argues that the attachments to Unger’s pole handles are limited in number, which distinguishes the pole handles at issue from other rulings, including Banner Stands and Back Wall Kits and Drapery Rail Kits, where there were arguably an infinite number of customizable products that could accompany these products.

Additionally, Petitioner argues that the plastic locking mechanism is similar to the plastic end caps that the Department considered to be fasteners in the 5 Diamond Flag Pole Kits,⁴⁴ Kitchen Appliance Door Handles,⁴⁵ Cutting and Marking Edges,⁴⁶ and Whirlpool⁴⁷ rulings on products that the Department found to be in-scope. Petitioner also argues that the plastic handle is incidental to the extruded aluminum pole handle, as its only function is to prevent the user from slipping. Thus, similar to Geodesic Domes, Unger’s pole handles consist merely of aluminum extrusions and fasteners, and thus should be found to be subject to the scope. Finally, Petitioner submitted an Analytical Matrix, which it requested that the Department use to analyze this scope request and as a basis for finding these products to be covered by the scope.

Petitioner disagrees with Unger’s argument that the Court’s finding in *Rubbermaid*⁴⁸ undermines Petitioner’s own “finished product” analysis. Petitioner asserts that nothing in the *Rubbermaid* finding indicates that a product composed entirely of extruded aluminum and incidental non-extruded aluminum components and is also part of a larger product can be excluded under the finished goods exclusion. Similarly, in *Plasticoid*,⁴⁹ the Court’s findings actually support Petitioner’s analysis because the Court found that the Department must evaluate other characteristics of the merchandise.

Petitioner also argues that the Department’s findings in KIK Telescoping Poles actually support its position because, in contrast to the products in KIK Telescoping Poles, the non-extruded

Plastics Cam-Lock Poles”)

⁴⁴ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on 5 Diamond Promotions, Inc.’s Individually Packaged Advertising Flag Pole Kits” (February 5, 2015) (“5 Diamond Flag Pole Kits”).

⁴⁵ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on Meridian Kitchen Appliance Door Handles” (June 21, 2013) (“Kitchen Appliance Door Handles”).

⁴⁶ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on Aluminum Rails for Cutting and Marking Edges” (November 23, 2012) (“Cutting and Marking Edges”).

⁴⁷ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on Kitchen Appliance Door Handles With Plastic End Caps and Kitchen Appliance Door Handles Without Plastic End Caps” (August 4, 2014) (“Whirlpool”).

⁴⁸ See *Rubbermaid Commercial Products LLC v. United States*, No. 11-00463, Slip. OP. 14-113 (CIT September 23, 2014) (“*Rubbermaid*”).

⁴⁹ See *Plasticoid Manufacturing Inc. v. United States*, No. 12-00407, Slip. Op. 14-136 (CIT November 24, 2014) (“*Plasticoid*”).

components of the product here merely function as fasteners; moreover, unlike the products in KIK Telescoping Poles, Unger's handles are not fully assembled at the time of entry because they do not include the various attachments needed to make them final finished goods.

Unger's Comments

Unger argues that its Pole Handles are finished merchandise at the time of entry to the United States. All the components of the pole handles are permanently assembled and ready to use at the time of importation. In addition, the pole handles are designed to incorporate readily interchangeable attachments.

Unger argues that the fact that its products are excluded from the scope was clearly supported by a recent cases involving KIK Telescoping Poles where the Department found that the poles imported by KIK Custom Products met the criteria for exclusion from the order as "finished goods" because (1) "in addition to extruded aluminum components, the telescoping poles are comprised of non-aluminum extruded components such as a plastic handle, a plastic cap, plastic connector(s), and plastic peg(s) which go beyond mere ... fasteners;" (2) "KIK's telescoping poles are merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry;" and (3) "these products are designed to work with removable/interchangeable attachments."⁵⁰

Like the extension poles in KIK Telescoping Poles, Unger contends that its pole handles are designed to enable the user to adjust the length of the pole by sliding an aluminum tube inside another aluminum tube of slightly larger diameter and locking it in position by twisting a polypropylene locking collar. Also like the extension poles in KIK Telescoping Poles, Unger argues that its pole handles are designed to work with a variety of cleaning/tool heads that are attached to one end of the poles. These include, but are not limited to, squeegees, brushes, light bulb changers, dusters, push brooms, gutter paddles and paint rollers. These accessory heads are not limited to those produced by Unger, as any accessory head that is capable of attachment *via* a so-called "ACME" thread can be used with Unger's extension poles.

According to Unger, the only components of its pole handles that are made of aluminum are the aluminum tubes; each model of extension pole is made up of multiple parts in addition to the extruded aluminum tubes, establishing that Unger's pole handles meet the criteria for exclusion from the *Orders* set forth in KIK Telescoping Poles. Specifically, the pole handles incorporate a polypropylene hand grip, one or more polypropylene locking collars that comprise both inner and outer components, a plastic locking button, a nylon locking cone that is designed to accept a variety of attachments employing either Unger's attachment system or ACME threads, and a permanently affixed retail sales label printed with the retail vendor's universal product code.

Unger notes that, as in the case of KIK Telescoping Poles, all of its pole handles are individually packaged for retail sale at the time of importation. All are shipped to Unger's distribution facility in the United States in cardboard cartons containing either six or ten completely finished and labeled individual pole handles. All parts of the pole handles are present at the time of importation, and they are fully assembled, including the application of a retail sales label that

⁵⁰ See KIK Telescoping Poles at 9.

incorporates both a safety/warning label and the retail vendor's universal product code. The pole handles are not repackaged or repacked before Unger ships them to its customers.

Unger also points out that Petitioner's argument that its pole handles "are not finished at the time of importation" is based on the "finished product" analysis rejected by the CIT in *Rubbermaid*. Similarly, though Petitioner relies on Cutting and Marking Edges⁵¹ to support its position that products containing solely extruded aluminum and fasteners are subject to the scope, the Court rejected the analysis employed in that ruling in *Plasticoid*. Accordingly, there is no basis to find that Unger's pole handles are within the scope.

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 Unger's pole handles, which might be better described as poles with handles, meet the exclusion criteria for "finished goods."

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."⁵² Thus, the scope language describes excluded finished merchandise as "containing aluminum extrusions *as parts*...."⁵³ We take this language to mean that the excluded "finished merchandise" must contain aluminum extrusions "as parts" plus an additional non-extruded aluminum component. Otherwise, this specific language (*i.e.*, "as parts") would be read out of the scope, resulting in the different condition "containing aluminum extrusions that are fully and permanently assembled and completed at the time of entry." Thus, to give effect to this "as parts" language, we find that to qualify for the finished merchandise exclusion the product must contain aluminum extrusions as parts, and therefore must include some non-extruded aluminum component.

Our interpretation in this regard is supported by the illustrative examples of excluded "finished merchandise" contained in the scope, all of which contain extruded aluminum and non-extruded aluminum components (*e.g.*, finished windows with glass, doors with glass or vinyl, etc.). In comparison, we note that those products specifically included in the *Orders*, such as window frames and door frames, do not constitute finished merchandise because they cannot be considered to "contain" aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry."⁵⁴ Rather, the in-scope window frames and door frames are

⁵¹ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Final Scope Ruling on Cutting and Marking Edges" (November 13, 2012) ("Cutting and Marking Edges").

⁵² See *Orders*.

⁵³ *Id.* (emphasis added).

⁵⁴ *Id.*

the only parts of the product.

Moreover, we find that the term, “as parts,” in the scope exclusion necessarily requires a plural construction, rather than encompassing both the singular “part” and plural “parts,” given the context provided by other terms in the exclusion, such as “containing” and “assembled,” as well as the examples of excluded finished merchandise, all of which contain at least an aluminum extrusion component and non-extruded aluminum component.

Information in Unger’s Scope Request (*e.g.*, narrative statements, photographs, and schematics) indicates that its pole handles are merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry.⁵⁵ The list of components in the scope request demonstrates that, in addition to extruded aluminum components, Unger’s pole handles include non-extruded aluminum parts such as polypropylene hand grips, a polypropylene tool and an accessory attachment head, with some models containing plastic locking mechanisms.⁵⁶ In addition, packing lists and photographs show that Unger’s products are completely assembled when they enter the United States.⁵⁷ On such basis, we conclude that Unger’s pole handles meet the requirements of the finished goods exclusion.

To the extent that Petitioner draws upon the “finished goods kit” exclusionary language to contend that the non-extruded aluminum parts of Unger’s pole handles are mere fasteners as a basis to conclude that the product does not satisfy the criteria for the finished goods exclusion, we disagree. As noted above, Unger’s pole handles, in addition to extruded aluminum components, include non-extruded aluminum materials such as polypropylene hand grips, a polypropylene tool and an accessory attachment head, and some models contain plastic locking mechanisms, all of which go beyond mere fasteners.⁵⁸ We note that plastic handles have been found to be beyond mere fasteners in other cases, including Unger Telescoping Poles⁵⁹ and Klik-Clik MagPole.⁶⁰

Moreover, we disagree with Petitioner that the locking mechanism is a mere fastener. In particular, record evidence demonstrates the locking mechanisms are complex mechanical devices structured to interact with a wide variety of products that will be attached to the pole handles and used in a variety of manners, *e.g.*, light bulb changers and squeegees. This is consistent with our findings in Telescoping Boat Cover Poles where a non-aluminum locking device was one of the components that we determined went beyond a mere fastener.⁶¹

Additionally, we find Petitioner’s citations to the 5 Diamond Flag Pole Kits, Kitchen Appliance Door Handles and Whirlpool rulings to be inapposite. Specifically, in 5 Diamond Flag Pole Kits, the only non-extruded aluminum part is a plastic end cap which “is a fastener that keeps the flag

⁵⁵ See Scope Request at 5, and Exhibits 3-9.

⁵⁶ *Id.* at 3-4.

⁵⁷ *Id.* at 11, and Exhibit 11.

⁵⁸ *Id.* at 3-4.

⁵⁹ See Unger Telescoping Poles at 10-11.

⁶⁰ See Klik-Clik MagPole at 8.

⁶¹ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on Telescoping Boat Cover Poles, Fishing Rod Holders, and Fishing Rod Racks” (August 18, 2014) (“Telescoping Boat Cover Poles”), at 12.

in place;⁶² in Kitchen Appliance Door Handles, the only non-extruded aluminum parts were plastic caps which “are used to fasten the handle to the door.”⁶³ Similarly, in Whirlpool, the non-aluminum components “consist of plastic end caps that are attached by metal screws to the handle and the surface of the kitchen appliance door.”⁶⁴ In these cases, there were plastic caps attached to a product and used in fastening the product at issue to something else. By contrast, Unger’s pole handles contain components that, as explained above, constitute non-extruded aluminum components beyond mere fasteners—*e.g.*, a polypropylene hand grip, a polypropylene tool and accessory attachment head, and plastic locking collars.

Further, we disagree with Petitioner’s alleged distinction between the products at issue and Vico Plastics’s Cam-Lock Poles. Petitioner argues that in Vico Plastic’s Cam-Lock Poles, the Department found that the imported aluminum tubes included “significant non-extruded materials such as nylon cam levers etc.” By contrast, Petitioner argues that Unger’s imported aluminum tubes contain merely fasteners.⁶⁵ As discussed above, Unger’s pole handles at issue contain significant non-extruded materials as parts, including, but not limited to, polypropylene hand grips, a polypropylene tool and an accessory attachment head, and those non-extruded materials go beyond mere fasteners, *e.g.*, hand grips and locking collars.

We also disagree with Petitioner that the non-extruded aluminum parts must be ignored because they are merely “incidental” to the function of the product. These items comprise non-extruded aluminum materials that integrate into the product in a variety of ways. For example, the polypropylene tool and accessory attachment head works with squeegees and light bulb changers; in addition, the plastic hand grip can be adjusted for use in a variety of positions.⁶⁶ The plastic hand grip also incorporates threaded coupling and a valve that allows users to use tools in different ways.⁶⁷

Further, Petitioner contends that the scope language contemplates that non-extruded aluminum parts must be more than “incidental” to the final function of the product in order for the product to qualify for the finished goods or finished goods kits exclusions. Specifically, Unger’s pole handles contain more than just extruded aluminum and fasteners. Petitioner neither points to language in the scope that would create the “incidental to final function” condition that it proposes nor, in any event, supports its contention that all of these non-extruded aluminum components are merely “incidental.” For example, Petitioner observes that plastic handle grips are designed to “prevent slippage,” but offers no theory as to why this function is merely “incidental” to the function of the product.

Moreover, the Federal Circuit’s decision in *Shenyang Yuanda* does not support Petitioner’s argument that because the non-aluminum extruded components of Unger’s handles are “incidental” or “do not give the pole handles their function,” the products cannot qualify for the finished goods exclusion. *Shenyang Yuanda* simply does not address whether non-extruded

⁶² See 5 Diamond Flag Pole Kits at 9

⁶³ See Kitchen Appliance Door Handles at 2.

⁶⁴ See Whirlpool at 5.

⁶⁵ See Petitioner’s November 24, 2014 comments at 4.

⁶⁶ See Scope Request at 6-12.

⁶⁷ *Id.*

aluminum parts must be more than “incidental” to the final function of the product in order for that product to qualify for the finished goods or finished goods kits exclusions.⁶⁸ As explained above, Petitioner supplies no basis to read into the scope language a requirement that non-aluminum components must serve more than an “incidental function.” Further, Petitioner does not explain how components such as handle grips that prevent users’ hands from slipping are only “incidental.”

In addition, similar to the products considered in Drapery Rail Kits (Redetermination),⁶⁹ Banner Stands and Back Wall Kits,⁷⁰ and Solar Panels,⁷¹ Unger’s pole handles are designed to work with removable/interchangeable attachments.⁷² The various products that may be attached to Unger’s pole handles by end users after importation are interchangeable and are available from Unger and a variety of other suppliers.⁷³ Further, each end user chooses which product to use as an attachment.⁷⁴ Therefore, consistent with Drapery Rail Kits (Redetermination), Banner Stands and Back Wall Kits, and Solar Panels, 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, for the Department to consider Unger’s pole handles to be a finished good for purposes of the scope exclusion. Consequently, as noted above, we determine that Unger’s pole handles are fully and permanently assembled and completed at the time of entry, and therefore we find Unger’s pole handles are excluded from the scope as finished goods.

Petitioner argues that Unger’s pole handles are only parts of a finished product (*i.e.*, a cleaning device) because the pole handles are not imported with the cleaning/tool head attachments with which they are designed to work. Thus, Petitioner argues, the pole handles are not finished goods, and thus do not qualify for the finished good exclusion. The Department has made a number of rulings involving pole products designed to work with a variety of attachments, such as KIK Telescoping Poles and Klik-Klik MagPole, where we found 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 telescoping poles at issue to constitute “finished merchandise” for purposes of the scope exclusion.⁷⁵

In addition, Petitioner argues that, contrary to the case here, the pole products assessed in the Department’s prior decisions had a potentially infinite number of interchangeable parts. We disagree with Petitioner’s contention that the number of interchangeable attachments must be unlimited. The Department has made no such distinction in its rulings. In Drapery Rail Kits (Redetermination), the Department found that it was unnecessary to include “readily interchangeable drapes or curtains that could be changed to fit the end customer’s needs.”⁷⁶ Similarly, in Banner Stands and Back Wall Kits, the Department found that the products were designed to “incorporate interchangeable graphical materials that can change with end user

⁶⁸ See *Shenyang Yuanda*.

⁶⁹ See Drapery Rail Kits (Redetermination).

⁷⁰ See Banner Stands and Back Wall Kits.

⁷¹ See Solar Panels Scope Ruling.

⁷² See Scope Request at 4-6 and Exhibits 1, 2, 5, and 13.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ See KIK Telescoping Poles at 9; Klik-Klik MagPole at 8-9.

⁷⁶ See Drapery Rail Kits (Redetermination) at 9.

needs.”⁷⁷ Thus, there is no explicit definition of the number of different attachments that must work with a product in order to be excluded from the *Orders*. In this case, similar to KIK Telescoping Poles and Clik-Clik Magpoles, we find that Unger’s pole handles are designed to accommodate interchangeable cleaning and/or tool attachments according to the needs of the end user.

We disagree with Petitioner’s contention that because one of its members produces pole handles and included information about this production in its ITC questionnaire, the pole handles subject to this scope request are subject merchandise. Consistent with 19 CFR 351.225(k)(1), the Department may consider the determinations of the ITC in considering whether a product is included within the scope. Although Alexandria is identified as a U.S. producer, there is no specific information about the products they produce in the ITC’s Final Report, nor is there a discussion in the ITC Final Report about pole handles.⁷⁸ As noted above, based on the language of the scope and the Department’s prior scope rulings, we find that Unger’s pole handles meet the exclusion criteria for finished goods. Thus, we disagree that pole handles have always been considered as included in the scope of the *Orders*.

Regarding parties’ arguments concerning *Rubbermaid* and *Plasticoid*, we note that to date, the litigation in *Rubbermaid* is still on-going, and the *Plasticoid* litigation was ultimately dismissed with prejudice.⁷⁹ The Department has made a number of rulings finding certain pole products to constitute finished goods excluded from the *Orders* where these products were, among other factors, designed to work with a variety of attachments yet were not assembled with such an attachment at the time of entry, such as KIK Telescoping Poles and Clik-Clik MagPoles.⁸⁰ Thus, in this respect, our decision in this scope ruling is consistent with the Department’s rulings in KIK Telescoping Poles and Clik-Clik MagPole.

Finally, the Department has not relied upon Petitioner’s Analytical Matrix here because we conclude that Unger’s products are not subject to the *Orders* based on the language of the scope and prior scope rulings.

⁷⁷ See *Banner Stands and Back Wall Kits* at 7.

⁷⁸ See *Certain Aluminum Extrusions from China*, Inv. Nos. 701-TA-475 and 731-TA-1177 (Final), USITC Pub. 4229 (May 2011) (“*ITC Final Report*”) at III-2.

⁷⁹ See *Plasticoid Manufacturing Inc. v. United States*, No. 12-00407, Slip. Op. 15-30 (CIT April 3, 2015) (“*Plasticoid*”).


⁸⁰ See KIK Telescoping Poles at 5; Clik-Clik MagPole at 5-6.

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 Unger's pole handles are finished goods and, thus, not subject to the scope of the *Orders*.

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

Agree Disagree



Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

4/21/15

Date