



A-570-967 / C-570-968
Scope Proceeding: Towel Racks
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April 27, 2015

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

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

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

FROM: Eve Wang
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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 IKEA's Towel Racks

SUMMARY

On January 16, 2014, IKEA Supply AG (“IKEA”) filed with the Department of Commerce (“Department”) a scope ruling request,¹ in which IKEA requested that the Department confirm that its towel racks are excluded from the scope of the antidumping and countervailing *Orders* on aluminum extrusions from the People's Republic of China (“PRC”).² For the reasons described below, we determine that IKEA's towel racks are covered by the scope of the *Orders*.

¹ See IKEA's letter entitled “Aluminum Extrusions from the People's Republic of China: Scope Review Ruling Request Towel Racks,” dated January 16, 2014 (“IKEA's 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 January 16, 2014, IKEA requested that the Department determine that its towel racks imported from the PRC are outside by the scope of the *Orders*.³ On March 5 and August 8, 2014, the Department issued supplemental questionnaires regarding the request,⁴ to which IKEA responded on April 2, and August 15, 2014, respectively.⁵ On September 12, 2014, the Aluminum Extrusions Fair Trade Committee (“Petitioner”) filed comments on the scope request, to which IKEA filed a rebuttal comment on September 26, 2014.⁶ On October 26, 2014, the Department formally initiated a scope inquiry on IKEA’s towel racks.⁷ Both IKEA and Petitioner filed comments on November 5, 2014 and rebuttal comments on November 17, 2014,⁸ in accordance with the schedule the Department established in the initiation of this inquiry pursuant to 19 CFR 351.225(f)(1)(iii). The Department extended the deadline for ruling on IKEA’s products, on March 26, 2015, until April 29, 2015.⁹

DESCRIPTION OF MERCHANDISE SUBJECT TO THIS SCOPE INQUIRY

The towel racks at issue have two models: (1) Model 14639284 is comprised of a series 6 aluminum extrusion and a plastic gasket; and (2) Model 44640484 is comprised of a series 6 aluminum extrusion with two steel brackets.¹⁰ The towel racks are ready to be affixed to the wall for use.¹¹

SCOPE OF THE *ORDERS*

The merchandise covered by the *Orders* is aluminum extrusions which are shapes and forms, produced by an extrusion process, made from aluminum alloys having metallic elements

³ See IKEA’s Scope Request.

⁴ See the Department’s letter entitled “Aluminum Extrusions from the People’s Republic of China – Scope Ruling Request Supplemental Questionnaire,” dated March 5, 2014; see also the Department’s letter entitled “Aluminum Extrusions from the People’s Republic of China – Second Supplemental Questionnaire Regarding Scope Ruling Request on Towel Racks,” dated August 8, 2014.

⁵ See IKEA’s letter entitled “Supplemental Questionnaire Response: IKEA Supply AG Scope Inquiry: Towel Racks Aluminum Extrusions from China,” dated April 2, 2014 (“IKEA’s First Supplemental Response”); see also IKEA’s letter entitled “Second Supplemental Questionnaire Response: IKEA Supply AG Scope Inquiry: Towel Racks Aluminum Extrusions from China,” dated August 15, 2014 (“IKEA’s Second Supplemental Response”).

⁶ See Petitioner’s letter entitled “Aluminum Extrusions from the People’s Republic of China: Comments on IKEA’s Scope Exclusion Request,” dated September 12, 2014 (“Petitioner’s Scope Comments”).

⁷ See the Department’s letter entitled “Aluminum Extrusions from the People’s Republic of China (“PRC”): Initiation of Scope Inquiry on IKEA’s Towel Racks,” dated October 16, 2014.

⁸ See IKEA’s letter entitled “Aluminum Extrusions from the People’s Republic of China: IKEA’s Response to the Department’s Notice of Initiation,” dated November 5, 2014; Petitioner’s letter entitled “Aluminum Extrusions from the People’s Republic of China: Response to Formal Scope Inquiry-IKEA Towel Racks,” dated November 5, 2014; IKEA’s letter entitled “Comments in Response to Petitioner’s November 5, 2014 Submission: IKEA Supply AG Scope Inquiry: Towel Racks Aluminum Extrusions from China,” dated November 17, 2014 (“IKEA’s November 17, 2014 Rebuttal Comments”); Petitioner’s letter entitled “Aluminum Extrusions from the People’s Republic of China: Rebuttal to IKEA’s Response to Formal Scope Inquiry,” dated November 17, 2014.

⁹ See the Department’s letter entitled “Aluminum Extrusions from the People’s Republic of China Extension of Time for Scope Ruling on IKEA Supply AG’s (“IKEA”) Towel Racks,” dated March 26, 2015.

¹⁰ See IKEA’s Scope Request at Attachment 2; see IKEA’s First Supplemental Response at Attachment 2 (Product Detail Sheets); see also IKEA’s Second Supplemental Response at Attachment 1.

¹¹ See IKEA’s Scope Request at 2.

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

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States (“HTS”): 7610.10.00, 7610.90.00, 7615.10.30, 7615.10.71, 7615.10.91, 7615.19.10, 7615.19.30, 7615.19.50, 7615.19.70, 7615.19.90, 7615.20.00, 7616.99.10, 7616.99.50, 8479.89.98, 8479.90.94, 8513.90.20, 9403.10.00, 9403.20.00, 7604.21.00.00, 7604.29.10.00, 7604.29.30.10, 7604.29.30.50, 7604.29.50.30, 7604.29.50.60, 7608.20.00.30, 7608.20.00.90, 8302.10.30.00, 8302.10.60.30, 8302.10.60.60, 8302.10.60.90, 8302.20.00.00, 8302.30.30.10, 8302.30.30.60, 8302.41.30.00, 8302.41.60.15,

8302.41.60.45, 8302.41.60.50, 8302.41.60.80, 8302.42.30.10, 8302.42.30.15, 8302.42.30.65, 8302.49.60.35, 8302.49.60.45, 8302.49.60.55, 8302.49.60.85, 8302.50.00.00, 8302.60.90.00, 8305.10.00.50, 8306.30.00.00, 8414.59.60.90, 8415.90.80.45, 8418.99.80.05, 8418.99.80.50, 8418.99.80.60, 8419.90.10.00, 8422.90.06.40, 8473.30.20.00, 8473.30.51.00, 8479.90.85.00, 8486.90.00.00, 8487.90.00.80, 8503.00.95.20, 8508.70.00.00, 8516.90.50.00, 8516.90.80.50, 8517.70.00.00, 8529.90.73.00, 8529.90.97.60, 8538.10.00.00, 8543.90.88.80, 8708.29.50.60, 8708.80.65.90, 8803.30.00.60, 9013.90.50.00, 9013.90.90.00, 9401.90.50.81, 9403.90.10.40, 9403.90.10.50, 9403.90.10.85, 9403.90.25.40, 9403.90.25.80, 9403.90.40.05, 9403.90.40.10, 9403.90.40.60, 9403.90.50.05, 9403.90.50.10, 9403.90.50.80, 9403.90.60.05, 9403.90.60.10, 9403.90.60.80, 9403.90.70.05, 9403.90.70.10, 9403.90.70.80, 9403.90.80.10, 9403.90.80.15, 9403.90.80.20, 9403.90.80.41, 9403.90.80.51, 9403.90.80.61, 9506.11.40.80, 9506.51.40.00, 9506.51.60.00, 9506.59.40.40, 9506.70.20.90, 9506.91.00.10, 9506.91.00.20, 9506.91.00.30, 9506.99.05.10, 9506.99.05.20, 9506.99.05.30, 9506.99.15.00, 9506.99.20.00, 9506.99.25.80, 9506.99.28.00, 9506.99.55.00, 9506.99.60.80, 9507.30.20.00, 9507.30.40.00, 9507.30.60.00, 9507.90.60.00, and 9603.90.80.50.

The subject merchandise entered as parts of other aluminum products may be classifiable under the following additional Chapter 76 subheadings: 7610.10, 7610.90, 7615.19, 7615.20, and 7616.99 as well as under other HTS chapters. In addition, fin evaporator coils may be classifiable under HTS numbers: 8418.99.8050 and 8418.99.8060. While HTS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.¹²

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.¹³ 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.¹⁴ 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.¹⁵

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.

¹² See *Orders*.

¹³ See *Walgreen Co. v. United States*, 620 F.3d 1350, 1357 (Fed. Cir. 2010) (“*Walgreen*”).

¹⁴ 19 CFR 351.225(k)(1).

¹⁵ 19 CFR 351.225(d).

RELEVANT SCOPE DETERMINATIONS¹⁶

A. Kitchen Appliance Door Handles I¹⁷

At issue in the ruling were kitchen appliance door handles for ovens, refrigerators or freezers. Meridian's products at issue consisted of three different types of aluminum extrusion handles. The Department examined three types of handles. The Type A handle consisted entirely of aluminum extrusions. Type B handles consisted of extruded aluminum and two plastic injection molded end caps at each end of the handle, which are used to fasten the handle to the door. The Type C handle consisted of aluminum extrusions, an allen wrench, and installation instructions.¹⁸ The Department determined that Meridian's handles consisted solely of aluminum extrusions, with the inclusion of fasteners, and, thus, were covered by the scope of the *Orders*.¹⁹

B. Kitchen Appliance Door Handles II²⁰

At issue in the ruling were appliance door handles with or without plastic end caps. Whirlpool's handles consisted of aluminum extrusions, and some handles were imported with plastic end caps.²¹ Whirlpool argued that the products at issue were finished merchandise because the manufacturing process had been fully completed such that the merchandise was ready for sale and used by the purchaser without having to further process or complete the merchandise.²² The Department determined that the plastic end caps were analogous to a washer (which the Department found to fall within the scope language's reference to fasteners) because they were involved in attaching the handle to a refrigerator door in a manner that allowed the handle to fit tightly to the door and to relieve friction between the door and the handle.²³ Thus, the Department determined that the handles at issue were comprised entirely of extruded aluminum (aside from fasteners) and, thus, were covered by the scope of the *Orders*.²⁴

¹⁶ See the Department's memorandum entitled "AD/CVD Orders on Aluminum Extrusions from the PRC: Transmittal of Past Scope Determinations to the File," dated concurrently with this memorandum and placed on the record of this proceeding. This memorandum contains the scope rulings primarily relied upon in the Department's analysis. Other rulings referenced by interested parties, or by the Department in response to arguments made by interested parties, as well as other scope rulings for aluminum extrusions from the PRC, can be found on the Department's website: <http://enforcement.trade.gov/download/prc-ae/scope/prc-ae-scope-index.html>.

¹⁷ See the Department's memorandum entitled "Final Scope Ruling on Meridian Kitchen Appliance Door Handles," dated June 21, 2013 ("Kitchen Appliance Door Handles I").

¹⁸ *Id.* at 2.

¹⁹ *Id.* at 12.

²⁰ See the Department's memorandum entitled "Final Scope Ruling on Kitchen Appliance Door Handles With Plastic End Caps and Kitchen Appliance Door Handles Without Plastic End Caps," dated August 4, 2014 ("Kitchen Appliance Door Handles II").

²¹ *Id.* at 5-6.

²² *Id.* at 9.

²³ *Id.* at 17.

²⁴ *Id.* at 16-18.

ARGUMENTS FROM INTERESTED PARTIES

IKEA's January 16, 2014 Scope Request

IKEA argues that, at the time of importation, the towel racks are finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed, and thus are excluded from the scope of the *Orders*.

IKEA also argues that the towel racks are a final, finished product ready for use, akin to the products examined in the scope rulings for Drapery Rail Kits,²⁵ Water Heater Anodes,²⁶ Banner Stands,²⁷ and Solar Panel Mounting Systems,²⁸ where we found the products at issue to be excluded from the scope as either finished goods or finished goods kits.

Petitioner's September 12, 2014 Comments

Petitioner argues that IKEA's towel racks are nothing more than fabricated aluminum extrusions (and incidental fastener components), that match the physical description of the subject merchandise, and thus do not meet the final finished goods exclusion described in the scope. According to Petitioner, the only products that are excluded under the finished goods exclusion are those products that are final finished products into which extrusions or subassemblies are incorporated.

Petitioner contends that the plastic gaskets and steel brackets contained in IKEA's towel rack packages are used to affix or fasten a towel rack tightly to a wall, akin to the plastic end caps in Kitchen Appliance Door Handles I and II. Petitioner argues that we should find IKEA's towel racks to be subject merchandise, like the handles examined in those two cases where we determined the handles consisting solely of aluminum extrusions (aside from plastic end caps) to be covered by the scope.

Petitioner contends that in Kitchen Appliance Door Handles II, we determined that the "fastener" language in the scope is not limited to "finished goods kits" and is also applicable to the finished goods exclusion, making goods that are composed entirely of aluminum extrusions and fasteners ineligible for the finished goods exclusion.

Finally, Petitioner contends that we should reach the same conclusion with the matrix it devised to analyze scope requests, finding that IKEA's towel racks are covered by the scope of the

²⁵ See the Department's memorandum entitled "Final Scope Ruling on Drapery Rail Kits," dated February 3, 2012, *Final Results of Redetermination Pursuant to Court Remand Rowley Company v. United States* Ct. No. 12-00055 (CIT 2012), and *Rowley Company v. United States*, Consol. Ct. No. 12-00055 (CIT 2013) (Court Order affirming our remand redetermination), (collectively, "Drapery Rail Kits").

²⁶ See the Department's memorandum entitled "Final Scope Ruling on Aluminum Anodes for Water Heaters," dated October 17, 2012 ("Water Heater Anodes").

²⁷ See the Department's memorandum entitled "Final Scope Ruling on Banner Stands and Back Wall Kits," dated October 19, 2011 ("Banner Stands").

²⁸ See the Department's memorandum entitled "Final Scope Ruling on Clenergy (Xiamen) Technology's Solar Panel Mounting Systems," dated October 31, 2012 ("Solar Panel Mounting Systems").

Orders.²⁹

IKEA's September 26, 2014 Rebuttal Comments

IKEA argues that the plain language of the scope states that the *Orders* only cover aluminum extrusions that are not fully finished goods. According to IKEA, once an extrusion is bent, shaped, molded or assembled into a finished good, it is no longer subject merchandise. IKEA thus argues that its towel racks qualify as finished goods and should therefore be excluded from the scope of the *Orders*.

IKEA argues that Petitioner's assertion that towel racks do not qualify for the finished goods exclusion because they consist entirely of aluminum extrusions and incidental components that function as fasteners is inconsistent with the *Orders* because the finished goods exclusion has no limitations, such as aluminum content.

Quoting *Legacy Class Furniture*³⁰ and *Wheatland Tube*,³¹ IKEA argues that because the finished goods exclusion in the scope contains no aluminum content requirement or limitation that would bar IKEA's towel racks from the finished goods exclusion, our imposing such a limitation would unlawfully expand the scope of the *Orders*.

Citing *Rubbermaid*,³² IKEA argues that we may not impose language that specifically relates to the exclusion for finished goods kits to the exclusion for finished goods because they are two separate and distinct exclusions.

IKEA contends that because during the original investigation, we considered and rejected a minimum aluminum content requirement for finished goods, Petitioner may not now ask to expand the scope of an order. Moreover, IKEA argues that the ruling in *Auto Parts Redetermination*³³ where we excluded auto parts consisting entirely of aluminum extrusions as finished goods under the subassemblies test should apply to IKEA's towel racks.

Finally, IKEA contends that the physical characteristics and uses of the domestic like product of subject aluminum extrusions described in both the *Petition*³⁴ and the International Trade Commission's ("ITC") preliminary report³⁵ confirm that the subject extrusions are all used as inputs (*i.e.*, an intermediate product) in the production of downstream products. IKEA argues

²⁹ See Petitioner's Scope Comments at Exhibit 3.

³⁰ See *Legacy Classic Furniture, Inc. v. United States*, 867 F. Supp. 2d 1321 (CIT 2012) ("*Legacy Classic Furniture*").

³¹ See *Wheatland Tube Co. v. United States*, 161 F.3d 1365, 1371 (Fed. Cir. 1998) ("*Wheatland Tube*").

³² See *Rubbermaid Commercial Products LLC v. United States*, Slip Op. 14-113, Court. No. 11-00463, dated September 23, 2014 ("*Rubbermaid*") at 15-16.

³³ See the Department's memorandum entitled "Final Scope Ruling on Valeo's Automatic Heating and Cooling Systems," dated October 31, 2012, and Final Results of Redetermination Pursuant to Court Remand *Valeo, Inc., Valeo Engine Cooling Inc., and Valeo Climate Control Corp. v. United States* Court No. 12-00381, dated February 13, 2013, (collectively, "Auto Parts Redetermination").

³⁴ See *Petition for the Imposition of Antidumping and Countervailing Duties Against Aluminum Extrusions from the People's Republic of China*, Inv. Nos. A-570-967, C-570-968, 701-TA- and 731-TA (March 31, 2010) ("*Petition*").

³⁵ See USITC Publication 4153 (June 2010), entitled *Certain Aluminum Extrusions from China, Investigation Nos. 701-TA-475 and 731-TA-1177 (Preliminary)* ("*ITC Prelim*").

that its towel racks are finished, completely manufactured products ready for sale to the ultimate customers, not semi-finished intermediate goods that require further processing, and thus satisfy the finished goods exclusion to the *Orders*.

IKEA's November 5, 2014 Comments

IKEA argues that IKEA's towel racks are finished goods, packaged and ready to be installed onto a wall to hold and display towels and that the *Orders* specifically exclude finished goods such as IKEA's towel racks.

IKEA contends that IKEA's towel racks are akin to display products examined in Drapery Rail Kits, Banner Stands, Solar Panel Mounting Systems, EZ Fabric Wall Systems,³⁶ where we found the products at issue are excluded as finished goods from the scope of the *Orders*.

Petitioner's November 5, 2014 Comments

Petitioner contends that the fact that Briteline, a Petitioner and domestic producer of towel racks, provided data to the ITC on its towel rack production confirms that towel racks have always been considered as in-scope merchandise.

Petitioner argues IKEA's towel racks match the physical description of the subject merchandise and do not meet the final finished goods exclusion. Petitioner argues that IKEA's towel racks do not satisfy the exclusion for finished goods kits established in Geodesic Domes, and they are also not eligible for the finished goods exclusion in light of Cutting & Marking Edges because IKEA's products consist solely of aluminum extrusions. Petitioner contends that our determination in Kitchen Appliance Door Handles II established that the "fastener" language described in the exclusion for finished goods kits is also applicable to the exclusion for finished goods, and IKEA's towel racks consisting of aluminum extrusions (with fasteners) do not meet the exclusion for finished goods.

Petitioner contends that the Court of International Trade's ("CIT") decision in *Rubbermaid* is not final. Furthermore, Petitioner contends that the CIT in *Rubbermaid* did not conclude that the Department is prohibited from applying language from the finished goods kits exclusion to finished goods exclusion; rather, the CIT ruled that we must provide a reasoned explanation for applying the language. Petitioner argues that in Kitchen Appliance Door Handles II, the Department reasonably explained the reason for applying the fastener language to the exclusion for finished goods—determining that a product which consists only of aluminum extrusions and fasteners to satisfy the finished goods exclusion would permit this exclusion to the *Orders* to swallow the scope, because any aluminum extrusion product, as long as it can be identified by end use, could be considered a finished product.

Petitioner claims that we accepted its proposed clarification to the scope that finished goods kits composed exclusively of aluminum extrusions and fasteners are covered by the scope of the *Orders*, citing Preliminary Scope Memo issued on October 27, 2010.³⁷ Petitioner contends that

³⁶ See the Department's memorandum entitled "Final Scope Ruling on EZ Fabric Wall Systems," dated November 9, 2011 ("EZ Fabric Wall Systems").

³⁷ See the Department's memorandum entitled "Aluminum Extrusions from the People's Republic of China ("PRC"): Preliminary Determinations Comments on the Scope of the Investigation," dated October 27, 2010

even if we were to accept that the scope does not include an aluminum content limitation, an extruded product containing 100 percent of aluminum extrusions could be within the scope.

Petitioner contends that IKEA's towel racks are "intermediate goods" by definition because they are not "fully assembled finished goods."

IKEA's November 17, 2014 Rebuttal Comments

IKEA argues that its towel racks are finished goods and thus fall outside the plain language of the scope of the *Orders*. IKEA contends that the plastic gaskets and steel brackets that accompany the towel racks in the package are not fasteners used to fasten aluminum extrusions or for purposes of assembling the towel racks; rather, they are used as sturdy plates that are affixed to the wall in order to provide stability for the rack to hold towels.

IKEA rebuts that Petitioner's reliance on our decisions in *Geodesic Domes and Cutting & Marking Edges*³⁸ is improper because the products at issue in those inquiries are finished goods kits, while IKEA's towel racks are finished goods. IKEA also contends that Petitioner's reliance on our findings in *Kitchen Appliance Door Handles I and II* is inappropriate because they were different products.

IKEA points out that Petitioner failed to provide the definition of "intermediate goods" when claiming IKEA's towel racks as "intermediate goods" by definition.

Petitioner's November 17, 2014 Rebuttal Comments

Petitioner argues that IKEA's towel racks comprised of nothing more than fabricated aluminum extrusions with fasteners are clearly within the scope of the *Orders* pursuant to 19 CFR 351.225(k)(1). Petitioner contends that the fact that Briteline, a Petitioner and domestic producer of towel racks, provided data to the ITC on its production confirms that towel racks have always been considered as in-scope merchandise.

DEPARTMENT'S POSITION

Pursuant to 19 CFR 351.225(k)(1), the Department examined the language of the *Orders* and the description of the products contained in this scope request, determinations during the investigations, as well as previous rulings made by the Department. We find that the scope and the descriptions of the merchandise contained in the sources listed in 19 CFR 351.225(k)(1) are dispositive as to whether the towel racks at issue are covered by the scope of the *Orders*. Accordingly, for this determination, the Department finds it unnecessary to consider additional factors specified in 19 CFR 351.225(k)(2). For the reasons set forth below, we find that IKEA's towel racks are covered by the scope.

In order to consider fully the comments received in connection with IKEA's scope request by both IKEA and Petitioner, the Department initiated a formal scope inquiry pursuant to 19 CFR 351.225(e) and solicited additional comments, in accordance with 19 CFR 351.225(f)(1)(iii).

("Preliminary Scope Memo").

³⁸ See the Department's memorandum entitled "Aluminum Extrusions from the People's Republic of China: Final Scope Ruling on Cutting and Marking Edges," dated November 13, 2012 ("Cutting & Marking Edges").

After receiving comments from interested parties on November 5, 2014, and rebuttal comments on November 17, 2014, concerning whether IKEA's products are within the scope of the *Orders*, we determine that the scope of the *Orders* and other sources listed in 19 CFR 351.351.225(k)(1) are dispositive. Thus, it is unnecessary to consider the additional criteria under 19 CFR 351.225(k)(2) for this scope ruling.³⁹

Both models of IKEA's towel racks consist of an aluminum extrusion made of series 6 aluminum alloy. Thus, the physical characteristics of the towel racks at issue match the description of subject merchandise of the *Orders*:

The merchandise covered by the *Orders* is aluminum extrusions which are shapes and forms, produced by an extrusion process, made from aluminum alloys 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).

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 ..." (emphasis added). 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 would be read out of the scope, resulting in the phrase "containing aluminum extrusions that are fully and permanently assembled and completed at the time of entry." Here, based on the information contained in IKEA's request (e.g., narrative statements, photographs, and product specifications),⁴⁰ we find that the Model 14639284 towel rack is comprised entirely of extruded aluminum and does not have other non-extruded aluminum component, aside from fasteners (i.e., a plastic gasket). Webster's dictionary defines a fastener as "a restraint that attaches to something or holds something in place."⁴¹ Also, Webster's dictionary defines a gasket as "a piece of rubber or some other material that is used to make a tight seal between two parts that are joined together."⁴² The plastic gaskets contained in IKEA's towel rack packages are "used as sturdy plates that are affixed to the wall for the towel racks to be attached in order to provide stability for the rack to hold towels."⁴³ On this basis, we find that a plastic gasket is analogous to a washer, which the Department has found to fall within the scope language's reference to fasteners in prior rulings.⁴⁴ Similarly, in Kitchen Appliance Door Handles II, the Department considered plastic end caps to be fasteners, analogizing them to

³⁹ See Memorandum entitled, "Final Scope Ruling on Curtain Wall Units that are Produced and Imported Pursuant to a Contract to Supply a Curtain Wall," dated March 27, 2014 ("Curtain Wall Units"), where the Department similarly initiated a scope inquiry and ultimately determined that the sources listed in 19 CFR 351.225(k)(1) are dispositive, and so did not consider the additional criteria under 19 CFR 351.225(k)(2).

⁴⁰ See IKEA's Scope Request at 2 and Attachment 2; IKEA's Supplemental Questionnaire Response at Exhibit 2 (Product Detail Sheets); IKEA's Scope Request at 2; IKEA's Supplemental Questionnaire Response at 1-3.

⁴¹ See <http://www.webster-dictionary.org/definition/fastener>. A screenshot of this webpage is provided in the Memorandum at Attachment I. See also the Dictionary.com definition: "any of various devices, as a snap or hook and eye, for holding together two objects or parts sometimes required to be separate..." at <http://dictionary.reference.com/browse/fastener?s=t>, and a screenshot of the webpage is also included at Attachment I.

⁴² See <http://www.merriam-webster.com/dictionary/gasket>. A screenshot of this webpage is provided in this memorandum as Attachment II.

⁴³ See IKEA's November 17, 2014 Rebuttal Comments at 3.

⁴⁴ See Kitchen Appliance Door Handles II at 17-18.

washers. Hence, here we find that the Model 14639284 towel rack consists of an aluminum extrusion that matches the description of subject merchandise in the *Orders* and a fastener (*i.e.*, a plastic gasket).

The Model 44640484 towel rack is comprised of an extruded aluminum rack and two steel brackets. The steel brackets constitute fasteners because the brackets act as a restraint (*i.e.*, sturdy plates) upon which a towel rack is attached and held in place on the wall.⁴⁵

In IKEA's November 17, 2014 Rebuttal Comments, IKEA stated that "the plastic gaskets and steel brackets that accompany the towel racks in the package are not fasteners used to fasten aluminum extrusions or for purposes of assembling the towel racks, rather, they are used as sturdy plates that *are affixed to the wall in order to provide stability for the rack to hold towels.*" (Emphasis added).⁴⁶ While attempting to argue that neither gaskets nor brackets are fasteners, IKEA admitted in its submission that those gaskets and steel brackets serve the function of sturdy plates that "attaches to something {*e.g.*, wall} or holding something {*e.g.*, a towel rack} in place." Additionally, the scope of the *Orders* does not limit a fastener's functionality only to fastening aluminum extrusions or for purposes of assembling the subject merchandise. Rather, we interpret the meaning of a fastener in accordance with the dictionary definition (provided above), which is broader than what IKEA proposes. Therefore, IKEA's towel racks do not contain non-extruded aluminum components beyond fasteners.

IKEA contends that the 'fasteners' language established in the scope of the *Orders* only applies in the context of an exclusion for finish goods kits packaged with fasteners, and is, thus, not applicable to finished products or finished product subassemblies in the same manner. We disagree. The scope language states: "{t}he 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.*..."⁴⁷ Thus, we find that the difference between "finished goods" and "finished goods kits," as described in the scope, is that the former is assembled upon entry while the latter is unassembled upon entry. While the scope goes on to say that "{a}n 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", we find unconvincing the notion that an unassembled product in kit-form that consists solely of extruded aluminum, save for fasteners, would fall within the scope of the *Orders* while the identical product, entering the United States as an assembled good, would fall outside the scope of the *Orders*. Accordingly, to read the scope to apply in a consistent manner to a given product – whether the product enters assembled as a finished good or unassembled as a finished good kit, we are applying the fasteners language when considering whether a product constitutes a finished good that is excluded from the order.

⁴⁵ See IKEA's November 17, 2014 Rebuttal Comments at 3 ("The plastic gaskets and steel brackets that accompany the towel racks in their package are used as study plates that are affixed to the wall for the towel racks to be attached in order to provide stability for the rack to hold towels.").

⁴⁶ IKEA's November 17, 2014 Rebuttal Comments at 3.

⁴⁷ See *Aluminum Extrusions from the People's Republic of China: Countervailing Duty Order*, 76 FR 30653, 30654 (May 26, 2011), (emphasis added).

Accordingly, because we find that the Model 14639284 and Model 44640484 towel racks are comprised only of subject aluminum extrusions, and do not contain non-aluminum extrusions beyond fasteners, we find that they do not constitute excluded finished merchandise and, accordingly, are covered by the scope of the *Orders*.

This determination is further supported by the Department's rulings in Kitchen Appliance Handles I and II. In Kitchen Appliance Handles I and II, we determined that the products were merely aluminum extrusions, with fasteners where relevant, that met the physical description of subject merchandise and are comprised of merely aluminum extrusions (save for the fasteners), and thus, did not qualify for the finished goods exclusion.⁴⁸ In both of these scope rulings, we determined that, like door thresholds or carpet trim, both of which are provided as examples of subject merchandise, the kitchen appliance handles were merely aluminum extrusions that met the physical description of subject merchandise, referred to by their end uses: handles for kitchen appliances.⁴⁹ Like the handles in those two cases, both models of IKEA towel racks are merely aluminum extrusions, save for the fasteners, that meet the physical description of subject merchandise, referenced by their end use: racks for hanging towels. Hence, we determine that the Kitchen Appliance Handles I and II scope rulings are instructive and support our determination that IKEA's towel racks are covered by the scope.

We disagree with IKEA's assertion that the towel racks are analogous to the products examined in Water Heater Anodes, Drapery Rail Kits, Banner Stands, Solar Panel Mounting Systems, and EZ Fabric Wall Systems. As an initial matter, the products at issue in each of those proceedings – unlike IKEA's towel racks – contain aluminum extrusions plus other non-extruded aluminum components that are not mere fasteners. In contrast, the IKEA towel racks at issue contain only one piece of extruded aluminum, aside from fasteners (*i.e.*, plastic gaskets or steel brackets).

We also disagree with IKEA's assertion that once an extrusion is bent, shaped, molded or assembled into a purported finished good, it is no longer subject merchandise because that assertion directly contradicts the language of the scope. The scope expressly states that the subject merchandise may be “fabricated, *i.e.*, prepared for assembly. Such operations would include, but are not limited to, extrusions that are cut-to-length... bent...”⁵⁰

Furthermore, we disagree with IKEA's assertion that its towel racks are finished goods and thus are excluded from the scope because the physical characteristics and uses of the domestic like product of subject aluminum extrusions described in both the Petition and the *ITC Prelim* confirm that the subject extrusions are all used as inputs (*i.e.*, an intermediate product) in the production of downstream products. When considering scope requests, the Department relies on the scope language of the *Orders*, the description of the product contained in the scope-ruling request,⁵¹ the description of the merchandise contained in the petition, the records from the investigations, and prior scope determinations.⁵² To determine whether a particular product is

⁴⁸ See Kitchen Appliance Handles I and II.

⁴⁹ See Kitchen Appliance Handles I at 12; *see also* Kitchen Appliance Handles II at 7 and 18.

⁵⁰ See the scope of the *Orders*.

⁵¹ See *Walgreen*.

⁵² See 19 CFR 351.225(k)(1).

included within the scope of an antidumping or countervailing duty order, the Department *first* analyzes the language of the order at issue.⁵³ Here, the scope of the *Orders* does not state that subject aluminum extrusions are “all used as inputs (*i.e.*, an intermediate product) in the production of downstream products.”⁵⁴ Moreover, this quoted language from the *ITC Prelim* (and the *ITC Final*) appears to differ in this respect from the express language of the scope of the *Orders* that lists door thresholds and carpet trim as examples of subject merchandise covered by the scope of the *Orders*. Though neither thresholds nor carpet trim are inputs in the production of downstream products, they are expressly covered by the scope of the *Orders*. Again, we emphasize that the language of the *Orders* is paramount in determining whether a product is subject merchandise; thus quoting these preliminary ITC findings that appear to differ from examples of in-scope merchandise contained in the scope does not necessarily take a product out of the scope of the *Orders*.

Furthermore, finding that the IKEA towel racks, a single piece of extruded aluminum (aside from fasteners), are subject merchandise does not create a requirement for aluminum “content.” Our determination in this case is based on the fact that the IKEA towel racks do not contain items that are not aluminum extrusions *as parts*. The IKEA towel racks are an aluminum extrusion as described by the scope of the *Orders*. As stated in the scope of the *Orders* above, the “merchandise covered by the *Orders* is aluminum extrusions which are shapes and forms, produced by an extrusion process . . .” Additionally, we find that Petitioner’s rejection of a proposal in the underlying investigation to include within the scope all merchandise with at least 70 to 75 percent aluminum extrusion by weight, notwithstanding whether the merchandise otherwise met the finished merchandise or finished good kit exclusion, is not indicative of Petitioner’s intent with respect to products such as IKEA’s towel racks that are 100 percent aluminum extrusions (save for fasteners). The proposal at issue in the investigation concerned whether the scope should cover products comprised *largely*, by weight, of aluminum extrusions. When considered in that light, we do not conclude that Petitioner’s rejection necessarily contemplated merchandise comprised *entirely* of aluminum extrusions.

Additionally, IKEA’s reliance on *Rubbermaid* is misplaced in this scope proceeding. While IKEA argues that we may not impose language that specifically relates to the exclusion for finished goods kits to the exclusion for finished goods because they are two separate and distinct exclusions, in *Rubbermaid* the CIT was not examining the fasteners language. Additionally, as we state above, we find unconvincing the notion that an unassembled product in kit-form that consists solely of extruded aluminum, save for fasteners, would fall within the scope while the identical product, entering the United States as an assembled good, would fall outside the scope of the *Orders*. Moreover, the *Rubbermaid* litigation remains on-going.

Further, IKEA’s arguments regarding the CIT’s decision in *Legacy Classic Furniture Inc.* and the decision of the Court of Appeals for the Federal Circuit in *Wheatland Tube* are inapposite. IKEA contends that the specific language of an exclusion “trumps” more general scope language and that the Department may not impermissibly expand the scope of an order. In this case,

⁵³ See *Duferco Steel, Inc. v. United States*, 296 F.3d 1087, 1097 (Fed. Cir. 2002) (explaining that “a predicate for the interpretive process is language in the order that is subject to interpretation”).

⁵⁴ See USITC Publication 4229 (May 2011), entitled *Certain Aluminum Extrusions from China, Investigation Nos. 701-TA-475 and 731-TA-1177 (Final)* (“*ITC Final*”).

however, the Department finds that IKEA's products do not qualify under the finished merchandise exclusion language, not that more general scope language supersedes this exclusion. Furthermore, as explained above, finding that the towel racks comprised entirely of aluminum extrusion (with the exception of the fasteners) does not satisfy the finished good exclusion is not an expansion of the scope; rather the finding is consistent with the language of the scope.

With respect to the Auto Parts Redetermination, the Department examined two models of automotive heating and cooling components, a T-Series, which was comprised of a shaped and bent extruded aluminum tube that also contained foam material at one end and an M-Series model that was comprised of a shaped extruded aluminum tube. The Department applied the "subassembly finished goods" test to both products. We disagree with the contention that the products at issue in the Auto Parts Redetermination were excluded despite consisting entirely of aluminum extrusions. In the Auto Parts Redetermination, the products at issue included "an additional foam material that adds three millimeters of aluminum to one segment of the tube" and end pieces.⁵⁵ Even if the products at issue in the Auto Parts Redetermination consist entirely of aluminum extrusions, as IKEA suggests, it is clear that the Department did not consider that the M-Series model did not contain non-aluminum materials when it found the products to be excluded as subassemblies in the redetermination.⁵⁶

Finally, we do not find it necessary to consider Petitioner's analytical matrix here because we find that IKEA's products are subject to the *Orders* based on the language of the scope and prior scope rulings.

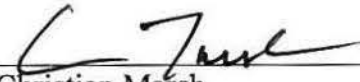
⁵⁵ See Auto Parts Redetermination at 5.

⁵⁶ *Id.* at 5 (describing products at issue).

RECOMMENDATION

For the reasons discussed above, and in accordance with 351.225(k)(1) and 19 CFR 351.225(f)(4), we recommend finding that IKEA's towel racks are 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(f)(4).

Agree Disagree



Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

4/27/15

Date

Attachment I

Word:

Webbing and Key Fob Parts

Lowest Prices, Widest Selection Webbing by the Roll or the Yard

Fastener

Webster's 1913 Dictionary

0 0

Fasten'er

n. 1. One who, or that which, makes fast or firm.

WordNet Dictionary

Noun 1. fastener - a person who fastens or makes fast: "he found the door fastened and wondered who the fastener was"
2. fastener - restraint that attaches to something or holds something in place
Synonyms: fastening, holdfast, fixing

Related Words

adhesive, affixation, anchor, annexation, attachment, band, bandage, bar, barrette, bellyband, belt, bind, binding, binding stone, binding twine, bobby pin, bollard, bolt, bond, border, bondstone, box hook, brace, braces, brad, braid, buckle, button, cable, carpet tack, catch, chain, cinch, cinchure, clamp, clasp, clasping, cleat, click, clinch, clip, clothespin, corking pin, cotter, dowel, fastening, fibula, fillet, fishhook, funiculus, garter, grinding, girdle, girth, grab, grapnel, grappier, grappling iron, guy, hairpin, hank, hasp, hawser, haywire, hitch, hitching post, holdfast, hook, hook and eye, hooking, inkle, interlocker, kevel, kingpin, knot, lace, lacing, larlat, lashing, latch, latchet, leader, ligament, ligation, line, lock, loop, moorings, nail, noose, nut, padlock, paper clip, pawl, peg, pin, pintle, ring, rivet, roller, rope, safety pin, screw, seal, sermit, setscrew, skewer, slide fastener, snap, snubbing post, spike, splice, staple, sticking, strap, string, strop, stub tenon, suspenders, tack, tag, tendon, tenet, thole, tholepin, thong, thumbtack, tie, tie beam, tying, toggle, treenail, tug, twine, vise, whang, wire, zipper, zipping

Index: # A B C D E F G H I J K L M N O P Q R S T U V W X Y Z



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fastener



(<http://blog.dictionary.com/word-trends-clemency-xanthippe-antebellum/>)

fastener (<http://static.sfdict.com/staticrep/dictaudio/F00/F0052300.mp3>)

[**fas-uh-ner**, **fah-suh-**]

Examples Word Origin

noun

1. any of various devices for fastening (<http://dictionary.reference.com/browse/fasten>).
2. any of various devices, as a snap or hook and eye, for holding together two objects or parts sometimes required to be separate, as two edges or flaps of a piece of clothing.
3. a worker who fastens (<http://dictionary.reference.com/browse/fasten>) things together.

Origin of fastener

1620-1630

1620-30; fasten (<http://dictionary.reference.com/browse/fasten>) + -er (<http://dictionary.reference.com/browse/-er>)¹

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Related forms

Attachment II

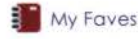
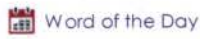


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gasket

noun | gas-ket | \gas-ket\

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: a piece of rubber or some other material that is used to make a tight seal between two parts that are joined together

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Full Definition of GASKET

: a material (as rubber) or a part (as an O-ring) used to make a joint fluid-tight

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Origin of GASKET

perhaps modification of French *garcette*
First Known Use: circa 1889

Rhymes with GASKET


ascot, Ascot, casket

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