




A-570-967


C-570-968


Scope Ruling: Foreline Hose Assembly
Public Document
E&C VI: DF

August 27, 2015

MEMORANDUM TO: Gary Taverman
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

THROUGH: Scot Fullerton 
Director
AD/CVD Operations, Office VI

Robert James 
Program Manager, Office VI
Antidumping and Countervailing Duty Operations

FROM: Davina Friedmann 
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Antidumping and Countervailing Duty Operations

SUBJECT: Antidumping and Countervailing Duty Orders on Aluminum
Extrusions from the People's Republic of China: Final Scope
Ruling on Agilent Technologies, Inc.'s Foreline Hose Assembly

Summary

On December 30, 2014, the Department of Commerce (the Department) received a scope ruling request from Agilent Technologies, Inc.¹ (Agilent), to determine whether its Foreline Hose Assembly is 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 comments received, we determine that the Foreline Hose Assembly is excluded from the scope of the AD and CVD orders on aluminum extrusions from the PRC.

¹ See letter from Agilent to the Secretary of Commerce entitled, "Scope Request on Certain Finished Aluminum Components Imported from the People's Republic of China (Case Nos. A-570-967 and C-570-968): Foreline Hose Assembly," dated December 30, 2014 (Agilent'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 December 30, 2014, Agilent submitted its scope request in which it requested that the Department issue a scope ruling that Agilent's Foreline Hose Assembly is outside the scope of the Orders.³ On March 9, 2015, the Department issued a supplemental questionnaire to Agilent for clarification of its scope request⁴ to which Agilent responded on March 31, 2015.⁵ On April 13, 2015, Petitioner submitted comments concerning Agilent's supplemental questionnaire response.⁶ On May 5, 2015, Agilent responded to Petitioner's April 13, 2015 comments.⁷ Other than those referenced herein, no other comments on Agilent's Scope Request were received from any other party.

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 Scope Request. The Department extended the deadline for this scope ruling between February 2015 and June 2015.³ The deadline was most recently extended on August 11, 2015, until September 28, 2015.

⁴ See letter from Department to Agilent entitled, Aluminum Extrusions from the People's Republic of China: Foreline Hose Assembly," dated March 9, 2015 (supplemental questionnaire).

⁵ See letter from Agilent to the Secretary of Commerce entitled, "Agilent Technologies: Scope Request on Foreline Hose Assembly: Response to Questionnaire," dated March 31, 2015 (Agilent's supplemental questionnaire response).

⁶ See letter from Petitioner, "Aluminum Extrusions from the People's Republic of China: Comments on Agilent Technologies Scope Request and Questionnaire Response," dated April 13, 2015 (Petitioner's comments). Petitioner is the Aluminum Extrusions Fair Trade Committee.

⁷ See letter from Agilent, "Response to Comments by the Aluminum Extrusions Fair Trade Committee on Agilent Technologies' Request for a Scope Ruling on Whether Its Foreline Hose Assembly Is Excluded from the Antidumping and Countervailing Duty Orders on Aluminum Extrusions from the People's Republic of China," dated May 5, 2015 (Agilent's Response Letter).

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 (HTSUS): 7609.00.00, 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, 8515.90.20.00, 8516.90.50.00, 8516.90.80.50, 8517.70.00.00, 8529.90.73.00, 8529.90.97.60, 8536.90.80.85, 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 HTSUS chapters. In addition, fin evaporator coils may be

classifiable under HTSUS numbers: 8418.99.80.50 and 8418.99.80.60. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these orders is dispositive.

LEGAL FRAMEWORK

When a request for a scope ruling is filed, the Department examines the scope language of the order and the description of the product contained in the scope-ruling request.⁸ 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.⁹ 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.¹⁰

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 THE MERCHANDISE SUBJECT TO THIS SCOPE REQUEST

Agilent described the Foreline Hose Assembly as follows:

The Foreline Hose Assembly is used with Agilent's Gas Chromatography Mass Spectrometer. It connects the roughing pump to the high vacuum turbo pump. A rough vacuum of the Mass Spectrometer is required in order for the high vacuum turbo pump to operate.

The Foreline Hose Assembly consists of the following components fully assembled at the time of importation:

⁸ See *Walgreen Co. v. United States*, 620 F.3d 1350, 1357 (Fed. Cir. 2010).

⁹ See 19 CFR 351.225(k)(1).

¹⁰ See 19 CFR 351.225(d).

KF16 Elbow - 45°	1 EA	Al6061-T6 extruded aluminum bar stock
KF16 Hose Adapter	1 EA	Al6061-T6 extruded aluminum bar stock
Foreline Hose	1 EA	Flexible PVC tubing with a 302 SST compression spring insert
Clamp-Hose SST	2 EA	Plated steel

A KF16 Hose Adapter is press fit to the stainless steel spring reinforced PVC hose. The two parts are secured with a stainless steel clamp and tightened with a clamp screw. A second Hose Adapter (KF16 Elbow – 45°) and clamp are added to the opposite end, and the Foreline Hose Assembly is ready for use.

...
 At the time of importation, the Foreline Hose Assembly would be classified under subheading 3917.39.0010 of the Harmonized Tariff Schedules of the United States (“HTSUS”), which provides for “tubes, pipes and hoses and fittings therefor (for example, joints, elbows, flanges), of plastics: other tubes, pipes and hoses: other reinforced with metal.”¹¹

In its May 2015, submission, Agilent confirmed that its Foreline Hose Assembly is not currently being imported, but is currently being produced¹² and has the potential to be imported as an assembled article, or as a complete, unassembled kit.¹³ Agilent points out that its Foreline Hose Assembly contains all of the necessary components such that once assembled, the product is ready for installation and use with the Gas Chromatography Mass Spectrometer (Mass Spectrometer). Also, Agilent maintains that no further processing or fabrication is performed after importation.¹⁴

RELEVANT SCOPE DETERMINATIONS¹⁵

Side Mount Valve Control Kits Scope Rulings¹⁶

At issue in the scope ruling were certain side-mount valve controls (SMVC) kits that are used in pumping apparatuses that are attached to fire engines. The requestor argued that an SMVC kit, as imported, contains all the components necessary to complete the product and that all SMVC components and hardware are fully fabricated and require no further finishing or fabrication

¹¹ See Scope Request at 2-3.

¹² See Agilent’s Response Letter, at 2.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See the Department’s memorandum that accompanies this scope ruling entitled, “Transmittal of Scope Rulings Relevant to the FHA Scope Ruling Memorandum.”

¹⁶ See Memorandum from John Conniff and Eric B. Greynolds to Christian Marsh entitled, “Initiation and Preliminary Scope Ruling on Side Mount Valve Controls,” dated September 24, 2012 (Preliminary SMVC Kits Scope Ruling), unchanged in the memorandum from John Conniff and Eric B. Greynolds to Christian Marsh entitled, “Final Scope Ruling on Side Mount Valve Control Kits,” dated October 26, 2012 (Final SMVC Scope Ruling) (together, SMVC Kits Scope Rulings); see also Transmittal of Scope Rulings Relevant to the FHA Scope Ruling Memorandum.

prior to being assembled. On this basis, the requestor argued that the product in question met the exclusion criteria for “finished goods.”¹⁷

In the scope ruling, the Department explained that, upon further reflection of the language in the scope of the *Orders*, it was revising the manner in which it determines whether a given product is a “finished good” or “finished goods kit.” The Department explained that it identified a concern with its prior analysis, namely that it may lead to unreasonable results. The Department explained that an interpretation of “finished goods kit” which requires all parts to assemble the ultimate downstream product may lead to absurd results, particularly where the ultimate downstream product is, for example, a fire truck. The Department explained that such an interpretation may expand the scope of the *Orders*, which are intended to cover aluminum extrusions.¹⁸

The Department determined that the scope, taken as a whole, indicates that “subassemblies” (*i.e.*, “partially assembled merchandise”) may be excluded from the scope provided that they enter the United States as “finished goods” or “finished goods kits” and that the “subassemblies” require no further “finishing” or “fabrication.” Therefore, the Department analyzed whether the SMVC kits at issue constituted a subassembly that enters the United States as a “finished goods kit.” In order for the SMVC kit to be excluded from the scope of the *Orders*, the Department found that: (1) the SMVC kit must contain all of the parts necessary to assemble a complete SMVC; (2) all of the components and hardware of the SMVC kit must be fully fabricated and required no further finishing or fabrication prior to being assembled; and (3) once assembled, the SMVC must be ready for use in conjunction with the downstream product upon installation.¹⁹ Based on this analysis, the Department found that the SMVC kits at issue met the exclusion criteria for subassemblies that enter the United States as “finished goods kits.”²⁰

Valeo Final Remand Redetermination²¹

This remand redetermination pertained to certain automotive heating and cooling system components which the Department originally determined were encompassed within the scope of the *Orders*. The products at issue were two distinct types of automotive heating and cooling parts/components, T-Series and M-Series.²² In the final remand redetermination, the Department, applying the subassemblies test from the SMVC Scope Ruling, concluded that “at the time of importation, the products at issue contain all of the necessary components required

¹⁷ See Preliminary SMVC Kits Scope Ruling at 2.

¹⁸ *Id.*, at 7.

¹⁹ *Id.*

²⁰ *Id.*, at 7-8.

²¹ See Final Results of Redetermination Pursuant to Court Remand Aluminum Extrusions from the People’s Republic of China, *Valeo Inc., Valeo Engine Cooling Inc., and Valeo Climate Control Corp. v. United States*, No. 12-00381 (May 14, 2013) (Valeo Final Remand Redetermination), addressing the Department’s findings in the Memorandum regarding: Antidumping and Countervailing Duty Orders on Aluminum Extrusions from the People’s Republic of China – Final Scope Ruling on Valeo’s Automotive Heating and Cooling Systems, dated October 31, 2012 (“Auto Heating/Cooling Systems Scope Ruling”). The Valeo Final Remand Redetermination was affirmed by the Court of International Trade on June 20, 2013. See *Valeo Inc. v. United States*, Ct. No. 12-00381, dkt. #23, dated June 20, 2013 (Court Order affirming Remand Redetermination); see also Transmittal of Scope Rulings Relevant to the FHA Scope Ruling Memorandum.

²² See Valeo Final Remand Redetermination at 5.

for integration into a larger system,” and thus, there was no meaningful distinction between the products at issue and those examined in the SMVC Scope Ruling. As a result, the Department determined that the products at issue were subassemblies that constituted excluded “finished goods,” as described in the *Orders*, and were not covered by the scope.

Geodesic Domes Kits²³

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

In the ruling, the Department explained that the product at issue met the “initial requirements for inclusion into the finished goods kit exclusion.”²⁴ However, the Department noted that the scope of the *Orders* states that an “imported product will not be considered a ‘finished goods kit’ . . . merely by including fasteners such as screws, bolts, *etc.* in the packaging with an aluminum extrusion product.”²⁵ The Department found that since the products at issue consisted solely of extruded aluminum and fasteners, the exception to the exclusion provision applied. Accordingly, the Department found that the products at issue did not meet the exclusion criteria for a finished goods kit.²⁶

Anodes Scope Ruling²⁷

At issue in the ruling were aluminum anodes for water heaters. The water heater anodes at issue consisted of a rod made of aluminum alloy formed around a stainless steel or carbon steel core with a carbon steel cap. The requestor argued that a water heater anode is a finished downstream product that functions separately from a water heater and, thus, the product satisfied the exclusion criteria for finished merchandise.²⁸

In the ruling, the Department found that the water heater anodes at issue were finished merchandise and thus excluded from the scope of the *Orders*. In reaching its decision, the Department concluded that the water heater anodes are finished products because they contain all the components of a water heater anode (*i.e.*, the aluminum, the steel/carbon steel rod, and the

²³ See Memorandum from Brooke Kennedy to Christian Marsh entitled, “Final Scope Ruling on J.A. Hancock, Inc.’s Geodesic Structures,” dated July 17, 2012 (Geodesic Domes Kits Scope Ruling); *see also* Transmittal of Scope Rulings Relevant to the FHA Scope Ruling Memorandum.

²⁴ See Geodesic Domes Kits Scope Ruling at 7.

²⁵ *Id.*

²⁶ *Id.*

²⁷ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on Aluminum Anodes for Water Heaters,” dated October 17, 2012 (Anodes Scope Ruling); *see also* Transmittal of Scope Rulings Relevant to the FHA Scope Ruling Memorandum.

²⁸ *Id.* at 1.

carbon steel cap) which are permanently assembled, completed and ready to use as an aluminum anode which works to prevent corrosion in a water heater.²⁹

INTERESTED PARTY COMMENTS

Agilent's Scope Request and March 31, 2015 Comments

Agilent maintains that the Foreline Hose Assembly should be excluded from the scope of the *Orders* since, at the time of entry, the product at issue constitutes finished merchandise, which may be imported as a fully assembled article, or as a complete, unassembled kit.³⁰ Further, Agilent notes that its Foreline Hose Assembly contains all the necessary components such that once assembled, it is ready for installation and use with the Mass Spectrometer,³¹ citing SMVC Kits Scope Ruling and the Valeo Final Remand Redetermination. Agilent also maintains that no further processing or fabrication is performed after importation,³² and cites to the Anodes Scope Ruling, as well as to the Department's scope rulings on Shower Door Kits³³ and Ladders and Brackets³⁴ in support of this argument.

In its supplemental questionnaire response, Agilent cites the "exclusion criteria" discussed in *Rubbermaid Commercial Products LLC v. United States*³⁵ in which the definition of finished merchandise references "aluminum extrusions 'as parts plus an additional non-extruded aluminum component' that is fully and permanently assembled and completed at the time of entry."³⁶ In this regard, Agilent points out that the Foreline Hose Assembly contains an additional non-extruded component – Flexible PVC tubing with 302 SST (Foreline compression spring insert, along with the stainless steel hose clamp). Also in its supplemental questionnaire response, Agilent distinguishes its Clamp-Hose SST from a fastener, arguing that because the hose clamp is not a "threaded fastener" of the type described in the scope description the hose clamp itself is not a fastener by the Department's definition.³⁷

Agilent claims that in addition to meeting the "finished merchandise" criteria, its product also meets the definition of a finished goods kit, as discussed in *Rubbermaid*.³⁸ In particular, Agilent claims that as a kit, the Foreline Hose Assembly contains all of the parts necessary to fully assemble the parts into a finished good, with no further finishing or fabrication required. Agilent argues that whether the Foreline Hose Assembly is imported as a finished and fully assembled

²⁹ *Id.* at 5-7.

³⁰ See Agilent's supplemental questionnaire response, at 3.

³¹ See Scope Request at 2.

³² *Id.*, at 4.

³³ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Final Scope Ruling: Shower Door Kits," dated November 2011.

³⁴ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Final Scope Ruling on Asia Sourcing Corporation's Boat and Dock Ladders and Strip Door Mounting Brackets," dated March 20, 2013.

³⁵ See *Rubbermaid Commercial Products LLC v. United States*, Court No. 11-00463, Slip Op. 14-113 (CIT September 23, 2014) (*Rubbermaid*).

³⁶ See Agilent's supplemental questionnaire response, at 2.

³⁷ *Id.*, at 4.

³⁸ *Id.*, at 2.

article, or as a complete, but unassembled “kit,” the product at issue meets the exclusion requirements in the scope description and should therefore be excluded from the *Orders*.³⁹

Petitioner’s April 13, 2015 Comments

In its comments, Petitioner argues first that the Department should find that Agilent’s Scope Request serves as only an ‘advisory opinion’ and should be rejected outright.⁴⁰ Petitioner argues next that Agilent’s request for a scope ruling is premature because Agilent itself acknowledges that the company serves only as a prospective importer of the Foreline Hose Assembly. Thus, Petitioner contends that regardless of how the merchandise is imported, *i.e.*, whether as a finished and fully assembled article, or as an unassembled kit, the Department should decline to consider Agilent’s scope ruling request.⁴¹ According to Petitioner, should the Department still consider Agilent’s Scope Request valid, Petitioner argues that the Department should find that Agilent’s hose clamp functions as, and meets the dictionary definition of, a fastener. Petitioner maintains moreover, that the scope description, along with previous scope rulings on *Kitchen Appliance Door Handles*⁴² and *Whirlpool*,⁴³ provides express language as to what constitutes a fastener. According to Petitioner, in addition to the KF16 Elbow and KF16 Hose articles, which Agilent admits are made of extruded aluminum, Agilent also concedes that its hose clamp is made of extruded aluminum and is not bound by limitations on the scope language. Petitioner asserts therefore that the Foreline Hose Assembly consists solely of extruded aluminum articles with a component that functions as a fastener and as such, the Department should find that the Foreline Hose Assembly falls within the scope of the *Orders*.⁴⁴

Agilent’s May 5, 2015 Rebuttal Comments

Agilent contests Petitioner’s argument that its scope request serves merely as an “advisory opinion,” particularly in light of the fact that the Foreline Hose Assembly is actually in production. Agilent relies upon the Department’s *Final Rule*,⁴⁵ to lend support to the fact that the Department makes allowances for a scope ruling of a product in production where evidence of such can be provided.⁴⁶

³⁹ *Id.*, at 3.

⁴⁰ See Petitioner’s Comments at 2.

⁴¹ *Id.*, at 2.

⁴² See Memorandum from James Terpstra, Senior International Trade Analyst, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, re: *Aluminum Extrusions from the People’s Republic of China: Final Scope Ruling on Meridian Kitchen Appliance Door Handles*, dated June 21, 2013 (*Kitchen Appliance Door Handles*), at 12-14.

⁴³ See Memorandum from Eric Greynolds, Program Manager, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, re: *Antidumping and Countervailing Duty Orders on Aluminum Extrusions from the People’s Republic of China: 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 (*Whirlpool*), at 18.

⁴⁴ See Petitioner’s Comments at 3-4.

⁴⁵ See *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures: Final Rule*, 73 FR 3634, 3639 (January 22, 2008) (*Final Rule*).

⁴⁶ See Agilent’s Response Letter, at 2.

In response to Petitioner’s argument that the Foreline Hose Assembly consists of only extruded aluminum components, Agilent maintains that the Foreline Hose itself consists of PVC tubing with a compression spring – a component that is not an aluminum extrusion. According to Agilent, while not a factor for evaluation of a scope request, the Foreline Hose serves as an essential and critical component of the Foreline Hose Assembly by connecting the vacuum pump to the mass spectrometer.⁴⁷ Agilent continues to posit that the Foreline Hose Assembly meets the Department’s scope language for both finished goods, and finished goods kits, and should therefore be excluded from the scope of the *Orders*.

DEPARTMENT POSITION

The Department examined the language of the *Orders* and the description of the products contained in Agilent’s 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 the merchandise at issue, the Foreline Hose Assembly, which may be imported fully assembled or in a kit form, meets the exclusion criteria for “finished merchandise” and “finished goods kits,” respectively.

As an initial matter, we disagree with Petitioner’s argument that Agilent’s Scope Request is premature given that the Foreline Hose Assembly has not yet been imported. We agree with Agilent that, given that Agilent has provided sufficient evidence that its product is “in production,” its scope request is not premature. In particular, we agree with Agilent that the *Final Rule* does not exclude a party from seeking a scope ruling on a product merely because that product is in the production phase of development. To the contrary, the *Final Rule* points out that as long as the party seeking a scope ruling can demonstrate that the product at issue is in production, that party may seek a scope ruling by the Department.⁴⁸ Agilent itself attests to the fact and provides evidence in the form of photographs that the product is not “hypothetical,” but rather, is in production both in their assembled and unassembled form.⁴⁹ There is nothing on the record that suggests the product at issue is “hypothetical,” nor does Petitioner point to any such evidence. Therefore, absent such information, the record supports the Department’s consideration of Agilent’s Scope Request.

Further, we disagree with Petitioner’s notion that Agilent’s Scope Request serves only as an “advisory opinion.” Indeed, in Agilent’s supplemental questionnaire response, Agilent states that it is “requesting advice...on the applicability of the exclusion criteria for ‘finished merchandise’ and ‘finished goods kits,’” as it pertains to the Foreline Hose Assembly.⁵⁰ However, this statement was submitted in response to the Department’s two requests for

⁴⁷ See Agilent’s Response Letter, at 3. Agilent relies upon the Department’s “Final Scope Ruling on Meridian Kitchen Appliance Door Handles,” dated June 21, 2013, at 11, wherein the Department clarified that the determination of whether is a finished good or finished kit does not rest upon whether the product, or a component thereof, serves an essential function.

⁴⁸ See *Final Rule*, 73 FR at 3639.

⁴⁹ See Scope Request at Attachment A.

⁵⁰ See Agilent’s Response Letter at 2.

additional information to which Agilent responded fully. Given the supplemental information submitted by Agilent, these two submissions (*i.e.*, Agilent’s December 30, 2014, and its May 5, 2015, submissions) taken together, serve as a complete “application” upon which the Department may proceed with a determination as to whether the product at issue is within the scope of these *Orders*, in accordance with 19 CFR 351.225(k)(1).

In its supplemental questionnaire response, Agilent states that the Foreline Hose Assembly may be imported as an unassembled kit or as a fully assembled product.⁵¹ In addition to the description of the merchandise at issue, Agilent provided photographs of the merchandise in both an unassembled and assembled state.⁵² We first address the Foreline Hose Assembly, which Agilent states is assembled prior to importation.

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). Thus, the scope language describes excluded finished merchandise as “containing aluminum extrusions *as parts*...” Thus, 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 must include some non-extruded aluminum component.

This interpretation 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.”⁵³ Rather, the in-scope window frames and door frames are 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 the examples of excluded finished merchandise, all of which contain at least an aluminum extrusion component and non-extruded aluminum component.

Agilent argues that the Foreline Hose Assembly qualifies as finished merchandise under the scope description of the *Orders*.⁵⁴ Upon examination of information submitted on this segment of the proceeding, including Agilent’s Scope Request and supplemental information provided in

⁵¹ See Agilent’s supplemental questionnaire response, at 3.

⁵² Attachment I of this memorandum contains relevant pictures of the product in an unassembled (Figure 1) and assembled (Figure 2) state, as provided in the Scope Request at 7.

⁵³ See the *Orders*.

⁵⁴ See Agilent’s Response Letter at 3.

Agilent's Response Letter, we find that, similar to the Anodes Scope Ruling, the Foreline Hose Assembly may be imported as a finished product, one that contains finished parts, including those comprised of extruded and non-extruded aluminum components, beyond mere fasteners, that are fully and permanently assembled at the time of importation.⁵⁵ In this state, the Foreline Hose Assembly meets the scope definition of "finished merchandise" because it enters into the United States as an assembled product that requires no further finishing or fabrication. In its finished merchandise form, the product at issue contains aluminum extrusions "as parts" (*i.e.*, the KF16 Elbow and the KF16 Hose Adapter) plus an additional non-extruded aluminum component (*i.e.*, PVC tubing), which attaches to the KF16 Elbow and to the KF16 Hose Adapter. For these reasons, the merchandise at issue meets the exclusion requirement of finished merchandise.

With regard to the Foreline Hose Assembly that Agilent states is imported in the form of a kit, we first examine whether, consistent with our test established in *Geodesic Domes*, the product consists of aluminum extrusions beyond mere fasteners. As mentioned above, this product contains both extruded and non-extruded aluminum components. In particular, as a finished goods kit, the Foreline Hose Assembly would include extruded aluminum parts, *i.e.*, the KF16 Elbow, the KF16 Hose Adapter and a non-extruded aluminum component, *i.e.*, the Foreline Hose, which consists of flexible PVC tubing with a compression spring insert. As a non-extruded aluminum component, the Foreline Hose clearly goes beyond a mere fastener, a requirement of the exclusion language in the scope description of the *Orders* and set forth in the *Geodesic Domes Kits Scope Ruling*. Given that the Foreline Hose goes beyond a mere fastener, it is not necessary to address Petitioner's argument as to whether the "Clamp Hose" constitutes a fastener since it is not germane to the main issues being weighed here to ascertain whether the Foreline Hose Assembly falls outside the scope of the *Orders*.

Next, we consider whether the unassembled Foreline Hose Assembly meets the definition of a "finished goods kit" as a packaged combination of parts that contain, 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. Based on the description of the product in this unassembled state, coupled with the corresponding photographs in Agilent's Scope Request, we find that the parts contained in the Foreline Hose Assembly package are ready to be fully assembled into a final finished product in an "as is" state upon importation, thereby meeting the definition for a finished goods kit.

Further, regardless of whether the product at issue is fully assembled prior to importation, or is imported in the form of a finished goods kit, consistent with the *Side Mount Valve Control Kits Scope Ruling*, the Foreline Hose Assembly, which was specifically designed for use with Agilent's downstream product – Agilent's Mass Spectrometer – is ready for installation into the downstream product at the time of entry into the United States. This is further supported by the *Valeo Final Remand Redetermination* in which Valeo subassemblies entered the United States as finished goods and subsequently were integrated into a larger system. As such, we also note that the merchandise at issue, whether assembled or unassembled, requires no further finishing or fabrication other than connecting assembled merchandise to the roughing and high vacuum turbo pumps for the downstream product to operate.⁵⁶ The "subassemblies test" is consistent with the

⁵⁵ *Id.* at 7.

⁵⁶ *See* Scope Request at 2.

scope exclusion language because subassemblies themselves enter into the United States as either “finished goods” or “finished goods kits” and are later integrated into a larger system, or a downstream product.

Notwithstanding whether the Foreline Hose Assembly becomes part of a system or product after importation, the merchandise at issue already meets the exclusionary requirements of a “finished good” and/or “finished goods kit” at the time of importation. For these reasons, we determine that Agilent’s Foreline Hose Assembly, which may be assembled at importation or imported in kit form, meets the exclusion provisions of the scope of the *Orders*.

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 1) the Foreline Hose Assembly which is fully assembled at importation meets the criteria for finished merchandise, which the language of the *Orders* expressly excludes (*i.e.*, the merchandise at issue constitutes “finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry.”), and 2) the Foreline Hose Assembly which is imported unassembled in a kit form meets the criteria for a finished goods kit, which the language of the *Orders* expressly excludes (*i.e.*, “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...and is assembled ‘as is’ into a finished product”).

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).

FT Agree _____ Disagree

Gary Taverman
Gary Taverman
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

6/27/15
Date

ATTACHMENT A

Figure 1: Pre- Importation Assembly Components



Figure 2: Finished Pre- Importation Assembly

