



A-570-967

C-570-968

Scope Ruling: Ace Telescoping Extension
Poles

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August 28, 2015

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

THROUGH: Scot Fullerton
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Antidumping and Countervailing Duty Operations

Robert James
Program Manager, Office VI
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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 Ace Hardware Corporation's Telescoping Extension
Poles.

Summary

On June 10, 2015, the Department of Commerce (the Department) received a scope ruling request from Ace Hardware Corporation¹ (Ace), to determine whether its Telescoping Extension Poles are subject to the antidumping duty (AD) and countervailing duty (CVD) orders on aluminum extrusions from the People's Republic of China (PRC).² On the basis of our analysis

¹ See letter from Cerny Associates, P.C., to the Secretary of Commerce entitled, "Aluminum Extrusions from the People's Republic of China, (Case Nos. A-570-967 and C-570-968), Ace Hardware Corp., Scope Ruling Request on Extension Poles," dated June 10, 2015 (Ace'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*).



of the comments received, we determine that the Telescoping Extension Poles are excluded from the scope of the AD and CVD orders on aluminum extrusions from the PRC.

Background

On June 10, 2015, Ace submitted its scope request in which it requested the Department to make a scope ruling that Ace's Telescoping Extension Poles are outside the scope of the Orders.³ On July 20, 2015, the Department issued a letter extending the deadline for this scope ruling from July 27, 2015, to September 10, 2015.⁴ No other parties submitted comments on Ace's Scope Request.

SCOPE OF THE ORDERS

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

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

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

³ See Scope Request.

⁴ See "RE: Aluminum Extrusions from the People's Republic of China: Extension of Time for Scope Ruling" (July 20, 2015).

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.⁵

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.⁶ Pursuant to the

⁵ See the *Orders*.

Department's regulations, the Department may also examine other information, including the description of the merchandise contained in the petition, the records from the investigations, and prior scope determinations made for the same product.⁷ If the Department determines that these sources are sufficient to decide the matter, it will issue a final scope ruling as to whether the merchandise is covered by an order.⁸

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

Ace describes in its request that the Telescoping Extension Poles consist of nine different models that vary in tube length, number of parts, and part composition, but share the same essential characteristics.⁹ These models can be grouped into two families. The two families that Ace describes with their respective models are as follows:

1. The first family includes one inch diameter Telescoping Extension Poles composed of both inner and outer tubes of extruded aluminum.¹⁰ The Telescoping Extension Poles also include a polypropylene (PP) locking collar, a PP handle, and a zinc alloy universally threaded tip. The model numbers associated with the Telescoping Extension Poles in different lengths within this family are as follows:
 - 1312024: Two feet extending to four feet
 - 1312198: Three feet extending to six feet
 - 1312651: Four feet extending to eight feet
 - 1312743: Six feet extending to twelve feet

2. The second family includes one and a quarter inch diameter Telescoping Extension Poles that are composed of an inner tube of extruded aluminum and an outer tube of fiberglass.¹¹ According to Ace, only one model within this family, model 1312396, is composed of 2 inner tubes of extruded aluminum, along with the outer tube of fiberglass. In addition to the inner tubes and outer tubes, each model includes an Acrylonitrile Butadiene Styrene (ABS) or PP plastic locking collar, a Thermoplastic Rubber (TPR)

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

⁷ See 19 CFR 351.225(k)(1).

⁸ See 19 CFR 351.225(d).

⁹ See Scope Request, at 3.

¹⁰ *Id.*, at 4.

¹¹ *Id.*, at 4-5.

handle, and a zinc alloy universally threaded tip. The model numbers associated with the Telescoping Extension Poles of different lengths within this family are as follows:

- 1560630: Three feet extending to six feet
- 1312461: Four feet extending to eight feet
- 1312438: Six feet extending to twelve feet
- 1312404: Eight feet extending to sixteen feet
- 1312396: Eight feet extending to twenty-four feet

Because every Telescoping Extension Pole has the universally threaded zinc alloy tip, Ace explains the poles in question can be used with any tool head or threaded accessory that is capable of being attached, such as paint brushes and rollers, squeegees, dusters, and bulb changers, regardless of whether they are sold by Ace.¹²

Ace maintains that its Telescoping Extension Poles are fully assembled at the time of entry into the United States, with all their retail labels and bar codes in place. According to Ace, at the time of entry, the poles are ready to be sold to the customer without any additional assembly or other finishing operations or attachments. Ace describes the process after importation as follows: the poles are delivered to regional distribution centers and, afterwards, they are delivered to Ace retail stores in their import cartons or wrapped in bubble wrap. Other than unpacking the poles, the product is ready for sale to the end user.¹³

RELEVANT SCOPE DETERMINATIONS¹⁴

Unger Telescoping Poles¹⁵

Unger Enterprises, Inc. (Unger) argued that its telescoping poles are finished goods and therefore not subject to the orders. The Department found that, in addition to extruded aluminum components, Unger's telescoping poles include non-extruded aluminum materials such as plastic tube plugs, hand grips, locking collars, locking buttons and cones which go beyond mere fasteners.¹⁶ In response to arguments by Petitioner that the non-extruded aluminum parts are mere fasteners or that they are merely "incidental" to the function of the product, the Department observed that the *Orders* contain no requirement regarding "incidental" function, and found that the non-extruded aluminum components integrate into the product in a variety of ways beyond that of a mere fastener.¹⁷ The Department additionally found that the telescoping poles were fully and permanently assembled and completed at the time of entry.¹⁸

¹² See Scope Request, at 5.

¹³ *Id.*, at 6.

¹⁴ See the Department's Memorandum "Prior Scope Rulings Relevant to this Proceeding," dated concurrently with this memorandum.

¹⁵ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Final Scope Ruling on Unger Enterprises Inc.'s Telescoping Poles" (February 19, 2015) (Unger Telescoping Poles, at 10.

¹⁶ *Id.* at 10-11.

¹⁷ *Id.* at 11.

¹⁸ *Id.*

In addition, similar to the products considered in Drapery Rail Kits (Redetermination),¹⁹ Banner Stands,²⁰ and Solar Panels,²¹ Unger's telescoping poles are designed to work with removable/interchangeable attachments.²² The various products that may be attached to Unger's telescoping poles by end users after importation are interchangeable and are available from Unger and a variety of other suppliers. As a result, the Department determined that the product in question is excluded from the scope of the orders under the finished goods exclusion.²³

Clik-Clik MagPole²⁴

Clik-Clik Systems, Inc. (Clik-Clik) argued that its MagPole pole product is a finished good and not subject to the orders. The Department found that, in addition to extruded aluminum components, the MagPole included non-extruded aluminum materials such as fiberglass tubes, plastic handles, plastic buttons, rubber bumpers and steel rolling pins which go beyond mere fasteners.²⁵ In addition, the Department found that the MagPole is fully and permanently assembled and completed at the time of entry.²⁶ Although the MagPole may be used with separate tools, those attachments are removable/interchangeable, available from a wide variety of suppliers, and selected based on the preference of the end user.²⁷ The Department therefore determined that Clik-Clik's MagPoles are excluded from the scope of the orders as finished goods.²⁸

ARGUMENTS FROM INTERESTED PARTIES

Ace's Comments

Ace argues that its Telescoping Extension Poles constitute finished merchandise at the time of entry into the United States and, therefore, are outside the scope of the order. Ace further argues that all the components of the Telescoping Extension Poles are permanently assembled and ready to use at the time of importation. According to Ace, the Telescoping Extension Poles are designed to accommodate attachments that are interchangeable according to the needs of the end-user after importation.

¹⁹ 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"). See also Prior Scopes Memorandum at Attachment 3.

²⁰ See the memorandum from John Conniff and Eric B. Greynolds to Christian Marsh entitled, "Final Scope Ruling on Harmer Stands and Back Wall Kits," dated October 19, 2011 (Harmer Stands Kits Scope Ruling); see also Prior Scopes Memorandum at Attachment I.

²¹ See memorandum from Brooke Kennedy to Christian Marsh, "Final Scope Ruling on Clenergy (Xiamen) Technology's Solar Panel Mounting Systems," dated October 31, 2012 (Solar Panels Scope Ruling); see also Prior Scopes Memorandum at Attachment 5.

²² *Id.* at 11-12.

²³ *Id.* at 13.

²⁴ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Final Scope Ruling on Clik-Clik Systems Inc. Magpole" (November 19, 2014) (Clik-Clik Magpole).

²⁵ *Id.* at 8.

²⁶ *Id.*

²⁷ *Id.* at 9.

²⁸ *Id.*

Petitioner did not comment.²⁹

DEPARTMENT POSITION

The Department examined the language of the *Orders* and the description of the products contained in Ace'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, Ace's Telescoping Extension Poles, meet the exclusion criteria for "finished merchandise."

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.

The Scope Request and accompanying exhibits demonstrate that both families of Telescoping Extension Poles contain aluminum extrusions "as parts" (*i.e.*, the extruded aluminum extension poles of series 6063 aluminum) plus additional non-extruded aluminum components that go beyond mere fasteners.³⁰ For the first family of Telescoping Extension Poles, these non-extruded aluminum components consist of a PP locking collar, a PP handle, and a zinc alloy universally threaded tip.³¹ For the second family of Telescoping Extension Poles, the non-extruded aluminum components consist of an ABS/PP locking collar, a TPR handle, a zinc alloy universally threaded tip, and a tube made of fiberglass.³² In prior scope rulings, the Department has found that such components go beyond mere fasteners.³³ Thus, we find that both families of Ace's Telescoping Extension Poles meet this requirement of the finished merchandise exclusion because both contain non-extruded aluminum components that go beyond mere fasteners.

The finished merchandise exclusion also requires that the product at issue be "fully and permanently assembled and completed at the time of entry." Upon examination of information submitted on this segment of the proceeding, namely Ace's Scope Request and its Exhibits, we find that, similar to the Unger Telescoping Poles Scope Ruling, both families of the Telescoping

²⁹ Petitioner is the Aluminum Extrusions Fair Trade Committee.

³⁰ See Scope Request at 3-6.

³¹ *Id.* at 3-4.

³² *Id.*

³³ See, e.g., Unger Telescoping Poles Scope Ruling at 10-11.

Extension Poles are imported as finished products that contain aluminum extrusions as parts that are fully and permanently assembled at the time of importation. For example, photographs show that the products are completely assembled when they enter the United States.³⁴ Therefore, we find that the Telescoping Extension Poles meet the requirement in the scope definition that they enter into the United States as fully and permanently assembled and completed products.

Additionally, similar to the products considered in Clik-Clik Magpole,³⁵ and Unger Telescoping Poles,³⁶ both families of Ace's Telescoping Extension Poles are designed to work with removable/interchangeable attachments, made possible by each poles' universally threaded zinc alloy tip. The various products that may be attached to Ace's Telescoping Extension Poles by end users after importation are interchangeable and are available from Ace and other suppliers. Further, each end user chooses which product to use as an attachment.³⁷ Consistent with the aforementioned Scope Rulings, the Department finds that it would be unreasonable to require the inclusion of an interchangeable attachment that can change with users' needs at the time of importation, for the Department to consider Ace's Telescoping Extension Poles to be finished merchandise for the purposes of scope exclusion. Consequently, as noted above, we determine that Ace's Telescoping Extension Poles are fully assembled and completed at the time of entry and contain non-extruded aluminum components, and as such, we find the models in both families (identified above) of Ace's Telescoping Extension Poles to be excluded from the scope of the *Orders* as "finished merchandise."

RECOMMENDATION

For the reasons discussed above, and in accordance with 19 CFR 351.225(d) and 19 CFR 351.225(k)(1), we recommend finding that the models within both families of Ace's Telescoping Extension Poles are finished merchandise and, thus, not subject to the scope of the *Orders*.

³⁴ See Scope Request at Exhibits 1, 2, and 4.

³⁵ See Clik-Clik Magpole Scope Ruling at 9.

³⁶ See Unger Telescoping Poles Scope Ruling at 11-12.

³⁷ See Scope Request at 5 and at Exhibit 3.

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).

St Agree _____ Disagree

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

9/3/15
Date