



UNITED STATES DEPARTMENT OF COMMERCE
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Scope: Unger Telescoping Poles

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DATE: February 19, 2015

MEMORANDUM TO: Christian Marsh
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for Antidumping and Countervailing Duty Operations

THROUGH: Melissa G. Skinner *mgsk*
Director, Office III
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FROM: James Terpstra
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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 Unger Enterprises Inc.'s Telescoping Poles

SUMMARY

On May 30, 2014, the Department of Commerce ("Department") received a scope ruling request from Unger Enterprises Inc. ("Unger")¹ to determine whether its Telescoping 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 of the request, we determined that Unger's telescoping poles are excluded from the scope of the AD and CVD orders on aluminum extrusions from the PRC.

¹ See letter from Unger, "Request for a Scope Ruling on Telescoping Aluminum Extension Poles," dated May 30, 2014 ("Scope Request").

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

BACKGROUND

On May 30, 2014, Unger requested that the Department determine whether its telescoping poles are outside the scope of the *Orders*. On November 6, 2014, the Aluminum Extrusions Fair Trade Committee (“Petitioner”) submitted a letter requesting that the Department extend the deadline for issuing the scope ruling so that it could have time to submit comments.³ On November 17, 2014, the Department extended the deadline and invited interested parties to submit comments by November 24, 2014.⁴ On November 24, 2014, Petitioner and Unger submitted Comments.⁵ We extended this proceeding on several occasions, most recently until February 19, 2015.⁶

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-

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

⁴ See Letter to Interested Parties, “Extension of Time for Scope Ruling,” dated November 17, 2014.

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

⁶ See Letter to Interested Parties, “Extension of Time for Scope Ruling,” dated January 16, 2015.

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, swaged, 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 the 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.⁷

⁷ See *Orders*.

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.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 MERCHANDISE SUBJECT TO THIS REQUEST

There are four models of Unger's 9627 series of extension poles. Each model of extension pole is made up of multiple parts. In addition to two or three extruded aluminum tubes, the poles incorporate a polypropylene tube plug, a polypropylene hand grip, one or more polypropylene locking collars that comprise both inner and outer components, a plastic locking button, and a nylon locking cone that is designed to accept a variety of attachments.

The "Optiloc" polypropylene locking collar is a two-part component that connects the larger and smaller diameter tubes, and allows them to telescope into each other while locking them together at the length desired by the end-user. The smaller diameter tube is able to extend or retract within the larger diameter tube when the Optiloc collar is unlocked by rotating it counter-clockwise, and can be locked into place at any length up to its maximum by rotating the Optiloc in a clockwise direction.

The locking cone is a two-part component that enables the consumer to attach Unger brand or other brand accessories to the pole. The locking cone assembly is designed to be compatible with accessories that are not manufactured by Unger in order to better meet consumers' needs and preferences. Specifically, the threads on the headpiece enable any accessory that uses ACME type threads to be attached.

The plastic Optiloc grip is attached to the end of the largest diameter tube in each product. It is ergonomically shaped to provide a better grip for the consumer.

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

⁹ 19 CFR 351.225(k)(1).

¹⁰ 19 CFR 351.225(d).

Unger's 9627 series of poles are shipped to Unger's distribution facility in the United States in cardboard cartons containing either six or ten completely finished and labeled individual extension poles. All parts of the poles are present at the time of importation, and they are fully assembled.

RELEVANT SCOPE DETERMINATIONS¹¹

A. Drapery Rail Kits (Redetermination)¹²

In the original drapery rail kits scope ruling, the Department determined that certain drapery rail kits imported by the Rowley Company ("Rowley") were covered by the scope of the *Orders* because the kits were not imported with drapes. The Department subsequently requested a voluntary remand, and on remand, determined that Rowley's drapery rail kits were excluded from the *Orders* as finished goods kits. In its redetermination, the Department noted that the drapery rail kits were designed to be used with readily interchangeable drapes or curtains that could be changed to fit the end customer's needs. The Department found it unreasonable to require that the drapery rail kits be imported with the customizable drapes or curtains and, in determining that Rowley's drapery rail kits were outside the scope of the *Orders*, determined that they contained all the parts necessary to fully assemble a final, finished product.

B. Geodesic Domes Scope Ruling¹³

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."¹⁴ 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."¹⁵ The Department found that since the products at issue consisted solely of extruded aluminum and fasteners, the exception to the exclusion provision applied. Accordingly,

¹¹ See the Department's memorandum, "Prior Scope Rulings Relevant to this Proceeding," dated concurrently with this memorandum.

¹² See Final Results of Redetermination Pursuant to Court Remand, Aluminum Extrusions from the People's Republic of China, *Rowley Company v. United States*, Court No. 12-0005 (February 27, 2013) ("Drapery Rail Kits (Redetermination)"). See also *Rowley Company v. United States*, Consol. Ct. No. 12-00055 (CIT May 23, 2013) (Court Order affirming Remand Redetermination).

¹³ See Memorandum entitled, "Final Scope Ruling on J.A. Hancock, Inc.'s Geodesic Structures," dated July 17, 2012 ("Geodesic Domes Scope Ruling").

¹⁴ *Id.* at 7.

¹⁵ *Id.*

the Department found that the products at issue did not meet the exclusion criteria for a finished goods kit.¹⁶

C. Solar Panel Scope Ruling¹⁷

At issue in this ruling were solar panel mounting systems comprised of extruded aluminum rails as well as extruded and cast aluminum kedges, galvanized steel posts, and various steel bolts, clamps, and brackets.¹⁸ In the ruling, the Department found that the products at issue contained at the time of importation all of the parts necessary to fully assemble a finished good without further fabrication. The Department further found that, like picture frames, banner stands and backwall kits, the mounting systems were designed to work with removable/replaceable components, and need not include these removable/replaceable components to constitute a finished good. These products could be assembled “as is” into finished products for mounting solar panels. Thus, the Department concluded that the products at issue were analogous to picture frames with glass excluded from the scope and exhibition booths that the Department found were outside the scope of the *Orders*.¹⁹

D. Banner Stands and Back Wall Kits²⁰

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

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

¹⁶ *Id.*

¹⁷ See Memorandum entitled, “Final Scope Ruling on Clenergy (Xiamen) Technology’s Solar Panel Mounting Systems,” dated October 31, 2012 (“Solar Panels Scope Ruling”).

¹⁸ *Id.* at 6-7.

¹⁹ *Id.* at 8-9, citing the Memorandum entitled, “Final Scope Ruling on Banner Stands and Back Wall Kits,” dated October 19, 2011 (“Banner Stands and Back Wall Kits”).

²⁰ See Banner Stands and Back Wall Kits.

ARGUMENTS FROM INTERESTED PARTIES

Petitioner's Comments

Petitioner argues that Unger's telescoping poles are nothing more than extruded aluminum poles and are clearly subject to the scope of the *Orders* of aluminum extrusions from the PRC. Petitioner points out that one of their members, Alexandria Extrusion Company ("Alexandria"), during the original investigation of aluminum extrusions from the PRC, submitted a response to the International Trade Commission's ("ITC") U.S. Producer Questionnaire, and included information on its extruded aluminum pole production.²¹ As such, telescoping poles have always been considered to be included in the scope of the *Orders*.

Unger's telescoping poles consist primarily of fabricated extruded aluminum. The telescoping poles also feature a tube plug, locking collars, locking button, and a locking cone, which, by Unger's own description, function as fasteners, and an incidental plastic hand grip that are insufficient to exclude an otherwise entirely extruded aluminum product from the scope of the *Orders*.

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

This case is in contrast to the Department's ruling on Vico Plastics's Cam-Lock Poles²² where the Department found telescoping support poles designed and shipped as products used to prop up canvas and tarpaulin boat covers to be "final finished merchandise" excluded from the scope of orders. In that case, the poles were comprised of extruded aluminum lengths, but they also included such significant non-extruded aluminum materials as nylon cam levers, rubber crutch tips, die-cast aluminum collars, springs, and plastic swivel bases and balls. Petitioner also argues that other parts of the telescoping pole, such as the plastic handle grip, are incidental to the function of the telescoping pole.

Petitioner also argues that the attachments to Unger's telescoping poles are limited in number, which distinguishes them from other rulings, including Banner Stands and Back Wall Kits and Drapery Rail Kits, where there were arguably an infinite number of customizable products that could accompany these products. Additionally, Petitioner argues that the plastic locking mechanism is similar to the plastic end caps that the Department considered to be fasteners in the Appliance Door Handle²³ and Whirlpool²⁴ rulings that the Department found in scope. Petitioner

²¹ See Certain Aluminum Extrusions from China, Inv. Nos. 701-TA-475 and 731-TA-117 (final), USITC Pub. 4229 (May 2011) at III-2.

²² See entitled, "Final Scope Ruling on Vico Plastic Inc.'s Cam-Lock Support Poles," dated September 12, 2014 ("Vico Plastics Cam-Lock Poles").

²³ See Memorandum entitled, "Final Scope Ruling on Meridian Kitchen Appliance Door Handles," dated June 21,

also argues that the plastic handle is incidental, and thus, similar to Geodesic Domes, Unger's telescoping poles consist merely of aluminum extrusions and fasteners, and thus should be found to be subject to the scope. Finally, Petitioner submitted an analytical matrix that the Department should use to analyze this scope request and use as a basis for finding these products covered by the scope.

Unger's Comments

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

Unger argues that the fact that its products are excluded from the scope was clearly supported by a recent case involving KIK Telescoping Poles²⁵ where the Department found that the poles imported by KIK Custom Products met the criteria for exclusion from the order as "finished goods" because (1) "in addition to extruded aluminum components, the telescoping poles are comprised of non-aluminum extruded components such as a plastic handle, a plastic cap, plastic connector(s), and plastic peg(s) which go beyond mere ... fasteners;" (2) "KIK's telescoping poles are merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry;" and (3) "these products are designed to work with removable/interchangeable attachments."²⁶

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

The only components of Unger's extension poles that are made from of aluminum are the aluminum tubes; each model of extension pole is made up of multiple parts in addition to the extruded aluminum tubes, establishing that Unger's extension poles meet the criteria for exclusion from the *Orders* set forth in the KIK Telescoping Poles ruling. Specifically, the poles incorporate a polypropylene tube plug, a polypropylene hand grip, one or more polypropylene locking collars that comprise both inner and outer components, a plastic locking button, a nylon locking cone that is designed to accept a variety of attachments employing either Unger's

2013 ("Kitchen Appliance Door Handles").

²⁴ See 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 ("Whirlpool").

²⁵ See Memorandum entitled, "Final Scope Ruling on KIK Customs Products' Telescoping Poles," dated November 3, 2014 ("KIK Telescoping Poles").

²⁶ See KIK Telescoping Poles at 9.

attachment system or ACME threads, and a permanently affixed retail sales label printed with the retail vendor's universal product code.

As in the case of KIK's Telescoping Poles, all of Unger's 9627 series of poles are individually packaged for retail sale at the time of importation. All are shipped to Unger's distribution facility in the United States in cardboard cartons containing either six or ten completely finished and labeled individual extension poles. All parts of the poles are present at the time of importation, and they are fully assembled, including the application of a retail sales label that incorporates both a safety/warning label and the retail vendor's Universal Product Code. The poles are not repackaged or repacked before Unger ships them to their customers.

DEPARTMENT'S POSITION

The Department examined the language of the *Orders* and the description of the products contained in this Scope Request, as well as previous rulings made by the Department. We find that the description of the products, the scope language, and prior rulings are, together, are dispositive as to whether the products at issue are subject merchandise, in accordance with 19 CFR 351.225(k)(1). Accordingly, for this determination, the Department finds it unnecessary to consider the additional factors specified in 19 CFR 351.225(k)(2). For the reasons set forth below, we find that Unger's telescoping poles at issue meet the exclusion criteria for "finished goods."

As noted above, the scope of the *Orders* excludes "finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry."²⁷ The list of components in the Scope Request demonstrates 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.²⁸ Therefore, we find that Unger's telescoping poles meet our first test for determining whether a good constitutes a finished good or finished goods kit, as established in the Geodesic Domes Scope Ruling.²⁹ We disagree with Petitioner that the non-extruded aluminum parts are mere fasteners or that they must be ignored because, according to Petitioner, they are merely "incidental" to the function of the product. These items comprise non-extruded aluminum materials that integrate into the product in a variety of ways. For example, the non-extruded components include a polypropylene hand grip, a polyvinyl gasket, a plastic water control valve, a threaded open-ended head piece, one or more plastic nylon locking collars, a plastic locking button, and a nylon locking cone, which are not fasteners.³⁰

Moreover, we disagree with Petitioner that the locking mechanism is a mere fastener and we find that Petitioner's citations to the Kitchen Appliance Door Handles and Whirlpool rulings are inapposite. Specifically, in Kitchen Appliance Door Handles, the only non-extruded aluminum

²⁷ See *Orders*.

²⁸ See Scope Request at 3-4.

²⁹ See Geodesic Domes Scope Ruling at 7, where the Department found that since the products at issue consisted solely of extruded aluminum and fasteners, the exception to the exclusion provision applied. Accordingly, the Department found that the products at issue did not meet the exclusion criteria for a finished goods kit.

³⁰ See Unger's Comments at 4.

parts were plastic caps which “are used to fasten the handle to the door.”³¹ Similarly, in Whirlpool, the non-aluminum components “consist of plastic end caps that are attached by metal screws to the handle and the surface of the kitchen appliance door.”³² In both cases, there were plastic caps attached to a door handle and used in fastening the product at issue to the appliance. By contrast, Unger’s telescoping poles contain non-extruded aluminum components such as a hand grip, locking collars, plugs, buttons and cones, which are used to perform a variety of functions that go beyond mere fastening.

Further, Petitioner contends that the scope language contemplates that non-extruded aluminum parts must be more than “incidental” to the final function of the product in order for the product to qualify for the finished goods or finished goods kits exclusions. As stated above, we find that Unger’s telescoping poles meet our first test for determining whether a good constitutes a finished good or finished goods kit, as established in the Geodesic Domes Scope Ruling, as Unger’s telescoping poles contain more than extruded aluminum and fasteners. We also find that Petitioner fails to point to relevant scope language and to support its contention that these non-extruded aluminum components are merely “incidental” For example, Petitioner observes that plastic handle grips are designed to “prevent slippage,” but offers no theory as to why this function is merely “incidental” to the function of the product.

As noted above, the scope of the *Orders* excludes “finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry.”³³ Information in Unger’s Scope Request (e.g., narrative statements, photographs, and schematics), indicates that its telescoping poles are merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry.³⁴ For example, packing lists and photographs show that Unger’s products are completely assembled when they enter the United States.³⁵

In addition, similar to the products considered in Drapery Rail Kits (Redetermination),³⁶ Banner Stands and Back Wall Kits,³⁷ and Solar Panels,³⁸ Unger’s telescoping poles are designed to work with removable/interchangeable attachments.³⁹ 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.⁴⁰ Further, each end user chooses which product to use as an attachment.⁴¹ Therefore, consistent with Drapery Rail Kits (Redetermination), Banner Stands and Back Wall Kits, and Solar Panels, the Department finds that it would be unreasonable to require the inclusion of interchangeable attachments that can change with users’ needs at the time of importation, for the Department to consider Unger’s telescoping poles to be a finished

³¹ See Kitchen Appliance Door Handles at 2.

³² See Whirlpool at 5.

³³ See *Orders*.

³⁴ See Scope Request at 5, 7-8, 11 and Exhibits 1-6.

³⁵ See Scope Request at 5 and 6, and Exhibits 7-12.

³⁶ See Drapery Rail Kits (Redetermination) at 9.

³⁷ See Banner Stands and Back Wall Kits.

³⁸ See Solar Panels Scope Ruling at 6.

³⁹ See Scope Request at 5-6.

⁴⁰ *Id.* at 11-12.

⁴¹ *Id.*

good for purposes of the scope exclusion. Consequently, as noted above, we determine that Unger's telescoping poles are fully and permanently assembled and completed at the time of entry, and therefore we find Unger's telescoping poles are excluded from the scope as finished goods.

Petitioner argues that Unger's telescoping poles are only parts of a finished product (*i.e.*, a cleaning device) because the telescoping poles are not imported with the cleaning/tool head attachments with which they are designed to work. Thus, Petitioner argues, the telescoping poles are not finished goods, and thus do not qualify for the finished good exclusion. The Department has made a number of rulings involving telescoping poles designed to work with a variety of attachments, such as KIK Telescoping Poles, and Klik-Klik MagPoles, where we found that it would be unreasonable to require the inclusion of interchangeable attachments that can change with users' needs at the time of importation in order for the Department to consider the telescoping poles at issue to constitute "finished merchandise" for purposes of the scope exclusion.⁴²

In addition, Petitioner argues that, contrary to the case here, the pole products assessed in the Department's prior decisions had a potentially infinite number of interchangeable parts. We disagree with Petitioner's insinuation that the number of interchangeable attachments must be unlimited. The Department has made no such distinction in its rulings. In *Drapery Rail Kits (Redetermination)*, the Department found that it was unnecessary to include "readily interchangeable drapes or curtains that could be changed to fit the end customer's needs." Similarly, in *Banner Stands and Back Wall Kits*, the Department found that the products were designed to "incorporate interchangeable graphical materials that can change with end user needs." Thus, there is no explicit definition of the number of different attachments that must work with a product in order to be excluded from the *Orders*. In this case, similar to KIK Telescoping Poles and Klik-Klik MagPoles we find that Unger's telescoping poles are designed to accommodate interchangeable cleaning and or tool attachments according to the needs of the end user.

Further, we disagree with Petitioner's alleged distinction between the products at issue and Vico Plastics's Cam-Lock Poles. Petitioner argues that in Vico Plastic's Cam-Lock Poles, the Department found that the imported aluminum tubes included "significant non-extruded materials such as nylon cam levers, *etc.*" By contrast, Petitioner argues that Unger's imported aluminum tubes contain merely fasteners.⁴³ As discussed above, Unger's Telescoping Poles at issue contain non-extruded materials which go beyond mere fasteners, *e.g.*, hand grips and locking collars.

Finally, we disagree with Petitioner's contention that because one of its members allegedly produces telescoping poles and included information about this production in its ITC questionnaire, the telescoping poles subject to this scope request are subject merchandise. Consistent with 19 CFR 351.225(k)(1), the Department may consider the determinations of the ITC in considering whether a product is included within the scope. Although Alexandria is

⁴² See Memorandum entitled, "Final Scope Ruling on Klik-Klik Systems Inc. ("Klik-Klik") MagPole," dated November 19, 2014 ("Klik-Klik MagPole").

⁴³ See Petitioner's November 25, 2014 comments at 4.

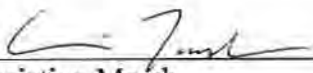
identified as a U.S. producer,⁴⁴ Petitioner points to no specific information about the products they produce.⁴⁵ Moreover, there is no specific information about the products they produce in the *ITC Final Report*, nor is there a discussion in the *ITC Final Report* about telescoping poles.⁴⁶ As a result, it is unclear how the *ITC Final Report* demonstrates, as Petitioner alleges, that “aluminum pole handles have always been considered as and intended to be included in the scope of the *Orders*.”⁴⁷ Thus, we disagree that the Telescoping Poles at issue have always been considered as included in the scope of the *Orders*. As noted above, based on the language of the scope and the Department’s prior scope rulings, we find that Unger’s telescoping poles meet the exclusion criteria for finished goods.

RECOMMENDATION

For the reasons discussed above, and in accordance with 19 CFR 351.225(d) and 19 CFR 351.225(k)(1), we recommend finding that Unger’s Telescoping Poles are finished goods and, thus, not subject to the scope of the *Orders*.

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

☒ Agree ☐ Disagree



Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

2/14/15

Date

⁴⁴ See *Certain Aluminum Extrusions from China*, Inv. Nos. 701-TA-475 and 731-TA-1177 (Final), USITC Pub. 4229 (May 2011) (“*ITC Final Report*”) at III-2.

⁴⁵ See Petitioner’s Comments at 2.

⁴⁶ See *ITC Final Report*.

⁴⁷ *Id.*