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Scope
3 Cam-lock Telepoles
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March 2, 2015

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

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

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

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

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

SUBJECT: Final Scope Ruling on Aqua EZ's Side Cam-Lock Telepole and
Ribbed Telescopic Pole

SUMMARY

On November 7, 2013, the Department of Commerce ("Department") received a scope ruling request from Aqua EZ, Inc.¹ to determine whether its Side Cam-Lock Telepoles, Ribbed Telescopic Poles, and Side Cam-Lock Telepoles with Corner Brush Attachment are subject to the antidumping ("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 Scope Request, we determined that Aqua EZ's Side Cam-Lock Telepoles and Ribbed Telescopic Poles are outside the scope of the *Orders*. As explained below, because we found Aqua EZ's Side Cam-Lock Telepoles and Ribbed Telescopic Poles outside the scope of the *Orders*, we find it unnecessary to

¹ See Aqua EZ's November 7, 2013, submission ("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*").



address Aqua EZ's conditional request with respect to Aqua EZ's Side Cam-Lock Telepoles with Corner Brush Attachment.

BACKGROUND

On November 7, 2013, Aqua EZ, an importer of pool equipment and supplies, filed the Scope Request. On February 28, 2014, the Department issued a deficiency letter to Aqua EZ, to which it adequately responded on March 18, 2014.³ On March 21, 2014, Aqua EZ submitted a letter disputing a proposed test the petitioners had submitted in another proceeding involving Signature Partners Automotive trim kits.⁴ On September 12, 2014, Mr. Long Arm, a U.S. manufacturer of extension poles, (represented by Barnes & Thornburg LLP) submitted comments in opposition to the request.⁵ On October 22, 2014, the Aluminum Extrusions Fair Trade Committee ("Petitioner") submitted comments in opposition to the scope request, including a proposed analytical framework. On November 21, 2014, Aqua EZ submitted rebuttal comments to those submitted by Petitioner and Mr. Long Arm. The Department extended the deadline for issuing a final scope ruling or initiating a scope inquiry on several occasions; the current deadline is March 2, 2015.⁶

SCOPE OF THE ORDERS

The merchandise covered by the *Orders* is aluminum extrusions which are shapes and forms, produced by an extrusion process, made from aluminum alloys having metallic elements 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 Aqua EZ's March 18, 2014, submission ("Supplemental Response").

⁴ See Aqua EZ's March 21, 2014, submission ("AutoTrim Kit/S4 Scope Proceeding").

⁵ See letter from Barnes & Thornburg LLP: Comments in Opposition to Aqua EZ 3 Camlock Telepole Scope Request (September 12, 2014) ("Mr. Long Arm Comments").

⁶ See letter to Interested Parties: Extension of Time for Scope Ruling (February 18, 2015).

Aluminum extrusions that are drawn subsequent to extrusion (drawn aluminum) are also included in the scope.

Aluminum extrusions are produced and imported with a variety of finishes (both coatings and surface treatments), and types of fabrication. The types of coatings and treatments applied to subject aluminum extrusions include, but are not limited to, extrusions that are mill finished (*i.e.*, without any coating or further finishing), brushed, buffed, polished, anodized (including bright-dip anodized), liquid painted, or powder coated. Aluminum extrusions may also be fabricated, *i.e.*, prepared for assembly. Such operations would include, but are not limited to, extrusions that are cut-to-length, machined, drilled, punched, notched, bent, stretched, knurled, 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 these *Orders* are finished heat sinks. Finished heat sinks are fabricated heat sinks made from aluminum extrusions the design and production of which are organized around meeting certain specified thermal performance requirements and which have been fully, albeit not necessarily individually, tested to comply with such requirements.

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States (HTS): 7610.10.00, 7610.90.00, 7615.10.30, 7615.10.71, 7615.10.91, 7615.19.10, 7615.19.30, 7615.19.50, 7615.19.70, 7615.19.90, 7615.20.00, 7616.99.10, 7616.99.50, 8479.89.98, 8479.90.94, 8513.90.20, 9403.10.00, 9403.20.00, 7604.21.00.00, 7604.29.10.00, 7604.29.30.10, 7604.29.30.50, 7604.29.50.30, 7604.29.50.60, 7608.20.00.30, 7608.20.00.90, 8302.10.30.00, 8302.10.60.30, 8302.10.60.60, 8302.10.60.90, 8302.20.00.00, 8302.30.30.10, 8302.30.30.60, 8302.41.30.00, 8302.41.60.15, 8302.41.60.45, 8302.41.60.50, 8302.41.60.80, 8302.42.30.10, 8302.42.30.15, 8302.42.30.65, 8302.49.60.35, 8302.49.60.45, 8302.49.60.55, 8302.49.60.85, 8302.50.00.00, 8302.60.90.00, 8305.10.00.50, 8306.30.00.00, 8418.99.80.05, 8418.99.80.50, 8418.99.80.60, 8419.90.10.00, 8422.90.06.40, 8479.90.85.00, 8486.90.00.00, 8487.90.00.80, 8503.00.95.20, 8516.90.50.00, 8516.90.80.50, 8708.80.65.90, 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, 9403.90.80.30, 9403.90.80.41, 9403.90.80.51, 9403.90.80.61, 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 of these *Orders* 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.

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 SCOPE REQUEST

- 1) **Side Cam-Lock Telepole:** A collapsible utility pole used in cleaning and maintaining swimming pools. It consists of two separate pieces of hollow extruded aluminum connected by a white plastic locking mechanism, which is attached at the base of a blue outer pole, allowing the user to release and then re-secure a latch that extends a separate enclosed silver inner pole. Attached to the silver inner pole is a white plastic handle gripped by the user. The pole is used with a wide variety of different attachments available from multiple suppliers.
- 2) **Ribbed Telescopic Pole:** A collapsible utility pole used in cleaning and maintaining swimming pools. It has three separate pieces of extruded aluminum, which are shorter than those of the Side Cam-Lock Telepole. These pieces are connected by two white plastic locking mechanisms, which are attached at the base of the blue outer poles, and are twisted to lock the two respective pieces upon extension. Attached to the blue inner pole is a white plastic handle gripped by the user. The pole is used with a wide variety of different attachments available from multiple suppliers.
- 3) **Side Cam-Lock Telepole with Corner Brush Attachment:** is a Side Cam-Lock Telepole (described above) with a plastic and nylon rounded brush head mechanism with 1.25 inch nylon bristles. The end of the attachment has a white plastic tubular insert that attaches to the end of the Side Cam-Lock Telepole and is held in place by two plastic orange buttons which attach to pre-punched hole in the Side Cam-Lock Telepole.

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

⁹ See 19 CFR 351.225(k)(1).

PRIOR SCOPE RULINGS RELEVANT TO THIS PROCEEDING¹⁰

A. Drapery Rail Kits (Redetermination)¹¹

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 Ruling¹²

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.”¹³ 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.”¹⁴ 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.¹⁵

¹⁰ See the Department’s Memorandum entitled, “Prior Scope Rulings Relevant to this Proceeding”, dated concurrently with this memorandum (“Past Scopes Memo”).

¹¹ 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 Past Scopes Memo at Attachment 1; see also *Rowley Company v. United States*, Consol. Ct. No. 12-00055 (CIT May 23, 2013) (Court Order affirming Remand Redetermination).

¹² See Memorandum entitled, “Final Scope Ruling on J.A. Hancock, Inc.’s Geodesic Structures,” dated July 17, 2012 (“Geodesic Domes Scope Ruling”).

¹³ *Id.* at 7.

¹⁴ *Id.*

¹⁵ *Id.*

C. Anodes Scope Ruling¹⁶

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.¹⁷

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 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.¹⁸

D. Solar Panel Scope Ruling¹⁹

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.²⁰ 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 removeable/replaceable components, and need not include these removeable/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*.²¹

E. Banner Stands and Back Wall Kits²²

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

¹⁶ See Memorandum entitled, “Final Scope Ruling on Aluminum Anodes for Water Heaters,” dated October 17, 2012 (“Anodes Scope Ruling”).

¹⁷ *Id.* at 1.

¹⁸ *Id.*, at 5-7.

¹⁹ See Memorandum entitled, “Final Scope Ruling on Clenergy (Xiamen) Technology’s Solar Panel Mounting Systems,” dated October 31, 2012 (“Solar Panels Scope Ruling”).

²⁰ *Id.* at 6-7.

²¹ *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”).

²² See Banner Stands and Back Wall Kits.

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.

ARGUMENTS FROM INTERESTED PARTIES

Mr. Long Arm's Comments:

Mr. Long Arm argues that the plain language of the scope includes the Cam-Lock Poles subject to this request. Mr. Long Arm cites the scope language below (emphasis added):

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.

Thus, Mr. Long Arm argues, the Cam-Lock poles subject to this scope request are clearly "hollow profiles" or "tubes" and thus are clearly covered.

Mr. Long Arm also argues that the Cam-Lock Poles subject to this request are not finished merchandise because they do not include the attachment the product is used with. Mr. Long Arm provides a variety of advertising materials that show that these poles are customarily sold with attachments, which shows that Aqua EZ's contention that these products are used without attachments is without merit. Mr. Long Arm continues that these poles are merely components of a cleaning/maintenance system. Prior scope ruling clearly show that such products are within the scope. In the Rubbermaid ruling, the Department found that "the products at issue are designed to function collaboratively in order to form a completed cleaning device (e.g., a pole connected to a frame head, which in turn is connected to a mop head or cloth) but the components to make a cleaning device are not part of a packaged combination at the time of importation."²³

Mr. Long Arm argues that the Cam-lock Poles subject to this request are unlike products the Department has found to be finished merchandise. For example, unlike an anode, Aqua EZ's products cannot function on their own without accessory products.²⁴ Similarly, in the Awnings

²³ See Memorandum entitled, "Final Scope Ruling on Certain Cleaning System Components," dated October 25, 2011 ("Rubbermaid") at 9.

²⁴ See Anodes Scope Ruling.

Scope Ruling, the Department found the retractable awning mechanisms at issue lacked an integral component, the awning, and that therefore the products at issue did not meet the exclusion criteria for a finished good.²⁵

Mr. Long Arm included an analysis pursuant to Diversified Products to support its arguments.

Petitioner's Comments

Petitioner argues that Aqua EZ's Side Cam Lock Telepole and Ribbed Telescopic poles are nothing more than fabricated aluminum extrusion that match the physical description of the merchandise covered by the scope. These products are identified by the scope language as "parts for final finished goods that are assembled after importation." In addition, other than the aluminum extrusions, the other parts identified by Aqua EZ are merely fasteners.

Petitioner pointed out that in Kitchen Appliance Door Handles and Whirlpool, the Department treated plastic end caps as fasteners.²⁶ Aqua EZ's plastic locking mechanism, like end caps, are various mechanisms to link and fasten together the multiple lengths of extruded aluminum, facilitating transport and storage of the poles. Similarly, the plastic handle has a similarly incidental function which is to "combat the inherent slippage problems associated with a tool designed for use in water."²⁷ The plastic handle merges with the plastic locking mechanism and functions as a fastener.

In addition, Petitioner argues that Aqua EZ has failed to show that these products are finished goods. These products are designed as components of tools for pool maintenance; as such, they are incomplete at the time of importation when they are shipped separately from the tools to which they are intended to be attached.

This case is in contrast to the Department's ruling on Vico Plastics's Cam-Lock Poles²⁸ 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 because they could be used to prop up canvas and tarpaulin boat covers. By contrast, Aqua EZ's products are designed to support and facilitate the use of pool maintenance; however, because they are not imported with these products, they are not complete finished goods at the time of importation.

Petitioner also submitted its Analytical Matrix and urged the Department to use this and find that these products were within the scope.

²⁵ See Memorandum entitled, "Final Scope Ruling on Certain Retractable Awnings," dated October 14, 2011 ("Awnings").

²⁶ See Memorandum entitled, "Final Scope Ruling on Meridian Kitchen Appliance Door Handles," dated June 21, 2013 ("Kitchen Appliance Door Handles"), and 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").

²⁷ See Petitioner's October 22, 2013 Comments at 13.

²⁸ See Memorandum entitled, "Final Scope Ruling on Vico Plastic Inc.'s Cam-Lock Support Poles," dated September 12, 2014 ("Vico Plastics Cam-Lock Poles")

Aqua EZ's Comments:

Aqua EZ argues that its Side Cam-Lock Telepole and Ribbed Telescopic Pole are fully assembled at the time of importation and are comprised of aluminum extrusions and plastic parts and are “finished merchandise” that are outside the scope of the order. Alternatively, each item qualifies for exclusion as a “finished goods kit” because within the package in which each product is shipped there are all the necessary parts to fully assemble a final finished good with no further finishing or fabrication required.

In the event that the Department determines that its Side Cam-Lock Telepole and Ribbed Telescopic Pole are within the scope of the *Orders*, Aqua EZ states that it may be forced to import and sell its poles with some form of attachment, despite the long-standing manifest wishes of the end-users who traditionally purchased the poles without an attachment. Should the Department make that determination, Aqua EZ requests that the Department rule whether its Side Cam-Lock Telepole with Corner Brush Attachment is subject to the scope of the *Orders*.

The Department's recent KIK Telescoping Poles ruling demonstrates that Aqua EZ's products are clearly excluded from the scope because the products in the KIK Telescoping Poles ruling are practically identical to Aqua EZs products.²⁹ Aqua EZ rebuts Mr. Long Arm and Petitioner's arguments that Aqua EZ's products are not finished goods. Their arguments are based on the fact that consumers attach tools to the pool poles after their purchases. Aqua EZ cited Merriam-Webster's Dictionary that defines “finished” as “not requiring more work” and “entirely done and completed” which it argues is consistent with the scope language regarding finished goods. Citing the scope language that describes finished as “fully and permanently assembled and completed at the time of entry” Aqua EZ argues that its products clearly meet these definitions.

Aqua EZ also argues that the plain language of the orders includes finished merchandise which will have post-import attachments added by purchasers according to their needs. As example, it cited “finished windows with glass, doors with glass and vinyl, picture frames with glass and backing material, and solar panels.”³⁰ No one purchases a door without also purchasing a handle and lock; no one buys a picture frame without intending to insert a picture, and no one purchases a solar panel without the necessary attached wiring and power converter. Because the language of the *Orders* clearly describes finished goods as products that will have attachments added to them after importation based on various end-uses, Aqua EZ's products clearly fit within the description of finished goods in the scope.

Aqua EZ also cites a recent case involving Rubbermaid, where Rubbermaid cited the original petition as standing for the proposition that the domestic like product “generally serving as intermediate parts in a wide range of downstream products.” In its post-Rubbermaid scope rulings,³¹ Aqua EZ argues that the Department has implicitly differentiated between mixed-content (extruded aluminum and non-extruded aluminum) finished products designed to function in conjunction with other easily interchangeable merchandise *and* intermediate products

²⁹ See Memorandum entitled, “Final Scope Ruling on KIK Custom Products Telescoping Poles,” dated November 3, 2014 (“KIK Telescoping Poles”).

³⁰ See Aqua EZ's November 21, 2014 comments at page 3 – 6.

³¹ See Solar Panels Scope Ruling at 88

imported for additional finishing and/or permanent attachment to other products. Aqua EZ's products clearly fall into this first category of finished goods which are excluded from the *Orders*.

Aqua EZ also rebuts Petitioner's argument that the Department's findings in Vico Plastics where the products were finished goods because they were used to prop up canvas and boat covers means that Aqua EZ's product were not finished goods because they could not be used as imported. According to Aqua EZ, Vico's products work with canvas boat covers after importation, just as Aqua EZ's products do.

Aqua EZ also argues that the Department should not use Petitioner's proposed analytical matrix because it would impose a test not contained within the *Orders*.

DEPARTMENT'S POSITION

The Department examined the language of the *Orders* and the description of the products contained in this Scope Request, as well as previous rulings made by the Department. We find that the description of the products, the scope language, and prior rulings are, together, dispositive as to whether the products at issue are subject merchandise, in accordance with 19 CFR 351.225(k)(1). Accordingly, for this determination, the Department finds it unnecessary to consider the additional factors specified in 19 CFR 351.225(k)(2). For the reasons set forth below, we find that the Side Cam-Lock Telepole and Ribbed Telescopic Pole 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."³² The list of components in the Scope Request demonstrates that in addition to extruded aluminum components, the Side Cam-Lock Telepole and Ribbed Telescopic Pole include non-extruded aluminum materials such as plastic handles and plastic locking mechanisms, which go beyond mere fasteners. Therefore we find that the Side Cam-Lock Telepole and the Ribbed Telescopic Pole 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.³³

Additionally, information in Aqua EZ's Scope Request (*e.g.*, narrative statements, photographs, and schematics), indicates that that the Side Cam-Lock Telepole and the Ribbed Telescopic Pole are merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry. For example, invoices, packing lists, and photographs show that Aqua EZ's pole products are completely assembled when they enter the United States.³⁴

³² See *Orders*.

³³ 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.

³⁴ See Supplemental Response Ex. 28 – 30.

In addition, similar to the Drapery Rail Kits (Redetermination),³⁵ Banner Stands and Back Wall Kits,³⁶ and Solar Panels,³⁷ the various products that may be attached to the Side Cam-Lock Telepole and Ribbed Telescopic Pole by end users after importation are interchangeable and are available from Aqua EZ and a wide variety of other suppliers.³⁸ Further, each end user chooses which product to use as an attachment.³⁹ 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 the Side-Cam-Lock Telepole and Ribbed Telescopic Pole to be finished goods for purposes of the scope exclusion. Consequently, we disagree with the contention of Mr. Long Arm and Petitioner that the products at issue are incomplete if they do not include the interchangeable attachments. As noted above, we determine that Aqua EZ's Side Cam-Lock Telepole and Ribbed Telescopic Poles are fully and permanently assembled and completed at the time of entry, and therefore we find Aqua EZ's Side Cam-Lock Telepole and Ribbed Telescopic Pole are excluded from the scope as finished goods. Moreover, because we find that an interchangeable attachment is not required at importation in order for the Side Cam-Lock Telepole and Ribbed Telescoping Pole to constitute a finished good which is excluded from the order, we have not made a ruling on Aqua EZ's conditional request concerning its Side Cam-Lock Telepole with Corner Brush Attachment.

While Mr. Long Arm relies on the Rubbermaid decision, the Department has made a number of rulings finding certain telescoping poles to constitute finished goods excluded from the *Orders* where these telescoping poles were, among other factors, designed to work with a variety of attachments yet were not assembled with such an attachment at the time of entry; such as KIK Telescoping Poles,⁴⁰ and Klik-Klik MagPoles.⁴¹ Thus, in this respect, our decision in this scope ruling is consistent with the Department's rulings in KIK Telescoping Poles, and Klik-Klik MagPoles.⁴²

We also disagree with Mr. Long Arm that the Department's finding in Anodes results in Aqua EZ's products not being finished goods, because in Anodes the product functioned separately from a water heater. As discussed above we found several products to be outside the scope of the *Orders* that were designed to work with removable/interchangeable attachments.⁴³ Moreover, we disagree with Mr. Long Arm and Petitioner that the Side Cam-Lock Telepole and Ribbed Telescopic Pole are covered by the scope because they are merely hollow extruded aluminum. Aqua EZ's Side Cam-Lock Telepole and Ribbed Telescopic Pole contain extruded aluminum; however, as noted above, because the products include non-extruded aluminum

³⁵ See Drapery Rail Kits (Redetermination).

³⁶ See Banner Stands and Back Wall Kits.

³⁷ See Solar Panels Scope Ruling.

³⁸ See Scope Request at 8-12.

³⁹ *Id.*

⁴⁰ See KIK Telescoping Poles.

⁴¹ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Final Scope Ruling on Klik-Klik Systems Inc. ("Klik-Klik") MagPole" (November 19, 2014) ("Klik-Klik MagPole").

⁴² Additionally, we would note that the Department's decision in the Rubbermaid ruling is currently the subject of on-going litigation. See *Rubbermaid Commercial Products LLC v. United States*, Court No. 11-00463, Slip Op. 14-113 (September 23, 2014).

⁴³ See Drapery Rail Kits (Redetermination); Banner Stands and Back Wall Kits, and Solar Panels Scope Ruling.

materials such as plastic handles and plastic locking mechanisms, which go beyond mere fasteners.

We disagree with Petitioner that the non-extruded aluminum parts are mere fasteners 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 parts were plastic caps which "are used to fasten the handle to the door."⁴⁴ 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."⁴⁵ 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, Aqua EZ's products contain a white plastic locking mechanism, and a white plastic hand grip which are used to perform a variety of functions that go beyond mere fastening.⁴⁶ The white plastic locking mechanism connects two poles, and can be open and closed, which allows the various poles to be extended to different lengths, and then be locked into place.⁴⁷ In addition, the white plastic hand grips are not fasteners, as they do not "fasten" anything, but rather they prevent the product from slipping from the user's hand while the product is being used.⁴⁸

Further, we disagree with Petitioner that Aqua EZ's Side Cam-Lock Telepole and Ribbed Telescopic Pole are not finished goods based on the Department's ruling on Vico's cam-lock telescoping poles. In that ruling, we found that Vico's cam-lock telescoping poles met the exclusion criteria for finished goods because they contained non-extruded aluminum parts which went beyond mere fasteners and meet the other criteria for constituting a finished good excluded from the *Orders*.⁴⁹ While Petitioner argues that the Department found Vico's products to be finished merchandise because they were complete and finished for the purpose of supporting boat covers, we do not find that the Department's ruling on Vico's cam-lock poles preclude the Department from finding Aqua EZ's products not subject to the scope of the *Orders*. As we state above, the Department has made a number of rulings involving telescoping poles where these products are designed to work with a variety of attachments; such as KIK Telescoping Poles,⁵⁰ and Klik-Klik MagPoles, and were found to be finished goods.⁵¹ As Aqua EZ's products are similar to the products the Department found to be finished merchandise previously, we find that Aqua EZ's Side Cam-Lock Telepole and Ribbed Telescopic Pole are "finished goods" which are excluded from the scope of the *Orders*.

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

⁴⁴ See Kitchen Appliance Door Handles at 2.

⁴⁵ See Whirlpool at 5.

⁴⁶ See Supplemental Response at 2 and 3 and November 21, 2014 Comments at 3 – 12.

⁴⁷ See Aqua EZ's request at 5

⁴⁸ *Id.*

⁴⁹ See Vico Plastics Cam-Lock Poles at 8.

⁵⁰ See KIK Telescoping Poles.

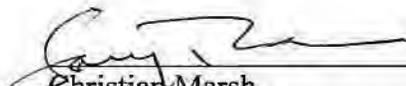
⁵¹ See Klik-Klik MagPole.

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 Aqua EZ's Side Cam-Lock Telepole and Ribbed Telescopic Pole 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


for Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

3/2/15
Date