

October 25, 2011

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

THROUGH: Melissa G. Skinner
Director
Office 3, Operations

FROM: John Conniff
Senior Trade Analyst

Eric B. Greynolds
Program Manager

RE: Antidumping (AD) and Countervailing Duty (CVD) Orders on
Aluminum Extrusions from the People's Republic of China (PRC)

SUBJECT: Final Scope Ruling on Certain Cleaning System Components

Summary

On July 7, 2011, Rubbermaid Commercial Products LLC (Rubbermaid) filed a scope inquiry in which it requested that the Department determine whether certain cleaning system components are encompassed within the scope of the AD and CVD orders on aluminum extrusions from the PRC.¹ Based on our analysis of the comments received, we have determined that the cleaning system components at issue are within the scope of the AD and CVD Orders on aluminum extrusions from the PRC.

Background

On July 7, 2011, Rubbermaid, an importer of the cleaning system components at issue, submitted a scope inquiry request.² On July 26, 2011, Petitioners submitted comments responding to the scope inquiry request filed by Rubbermaid.³ At the request of the Department, on September 12,

¹ See Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order, 76 FR 30,650 (May 26, 2011) and Aluminum Extrusions From the People's Republic of China: Countervailing Duty Order, 76 FR 30,653 (May 26, 2011) (the Orders).

² See Rubbermaid's July 7, 2011, submission.

³ Petitioners are the Aluminum Extrusions Fair Trade Committee.

2011, Rubbermaid re-filed its initial scope inquiry request with additional descriptions of the products at issue as well as the Harmonized Tariff Schedule (HTSUS) category under which it imported the products. Rubbermaid's September 12, 2011, submission reset the due date of the scope inquiry to October 31, 2011. See 19 CFR 351.225(c)(2).

Scope of the Orders:

The merchandise covered by these 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. 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 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 HTSUS: 7604.21.0000, 7604.29.1000, 7604.29.3010, 7604.29.3050, 7604.29.5030, 7604.29.5060, 7608.20.0030, and 7608.20.0090. 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: 8418.99.80.50 and 8418.99.80.60. While HTS subheadings are provided for convenience and customs purposes, the written description of the scope of these Orders is dispositive.

Legal Framework

The Department examines scope ruling requests in accordance with its scope regulations. See 19 CFR 351.225. On matters concerning the scope of an order, the Department first examines the language of the order at issue and the description of the product contained in the scope request. If the language in the order is not dispositive, the Department will then examine the description of the merchandise contained in the petition, the initial investigation, the determinations of the Secretary (including prior scope determinations) and the International Trade Commission (ITC). See 19 CFR 351.225(k)(1). This determination may take place with or without a formal inquiry. See 19 CFR 351.225(d) and (e). If the Department determines that these descriptions are dispositive of the matter, the Department will issue a final scope ruling as to whether or not the subject merchandise is covered by the order. See 19 CFR 351.225(d).

Conversely, where the descriptions of the merchandise are not dispositive, the Department will initiate a scope inquiry under 19 CFR 351.225(e) and analyze the 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 inquiry is made on a case-by-case basis after consideration of all evidence before the Department.

Relevant Scope Determinations

A. Baluster Kits⁴

During the underlying investigation the Department considered comments and made a determination regarding baluster units. Maine Ornamental explained that it imported baluster kits, which contained aluminum extrusions in a variety of powdered coated finishes to match wood and composite wood decking and railings. It contended that the kits contained all the necessary components to assemble a final finished good, and as such, represented unassembled finished goods.

⁴ See Aluminum Extrusions From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 76 FR 18524, (April 4, 2011) (AD Final Determination), and the accompanying Issues and Decisions Memorandum (AD Decision Memorandum) at Comment 3H.

Maine Ornamental argued that its baluster kits were more similar to shower doors with glass, or exhibition kits, containing all of the necessary parts required for assembly, which the Department excluded from the scope of the investigations, rather than a package of plastic and screws combined with aluminum powder coated extrusions. Petitioners countered that the Department should reject Maine Ornamental's request to exclude baluster kits from the scope of the investigations because the kits represented a packaged collection of individual balusters, which comprised a single element of a railing or deck system, and, therefore, do not represent a finished product.

In Comment 3H of the AD Final Determination, the Department agreed with Petitioners that baluster kits were not excluded "kits" as defined by the scope of the investigations and therefore constitute subject merchandise. The Department explained that Maine Ornamental's own description of the product indicated that such balusters were designed to work with other parts to form a larger structure. The Department further explained that although Maine Ornamental contended that its baluster kits contained all the necessary components to assemble a final finished good, it also stated that the balusters, if used as directed, represented parts of structures to form a balustrade or deck rail. Thus, the Department agreed with Petitioners that a baluster kit represented a packaged collection of individual parts, which comprised a single element of a railing or deck system, and, therefore, did not represent a finished product.⁵

Finally, the Department disagreed with Maine Ornamental's contention that its balusters are excluded from the scope of the investigations because the ITC Aluminum Extrusions Report stated that the scope excludes unassembled final finished goods containing aluminum extrusions, and described the merchandise subject to the investigations as inputs for the production of downstream products.⁶ The Department found that although Maine Ornamental argued that its baluster kits are final finished goods, its own description of baluster kits indicates that the balusters function as an input for the production of a downstream product, such as a balustrade or a deck rail. As a result, the Department determined that Maine Ornamental's citation to the ITC Aluminum Extrusions Report did not support its contention that the baluster kits should be excluded from the scope of the Orders.

B. Exhibition Kits

During the investigation, an importer, Nexxt Show, argued that its exhibition frames and unassembled pavilion kits consist of all the components to assemble a finished goods kit and so should be excluded from the Orders. The importer provided assembly illustrations to demonstrate that all necessary components are included in each kit.

The Department found that it was unable to determine whether Nexxt Show's kits included all the necessary materials to assemble a finished product. The Department stated that "if at the time of importation, however, the kits do contain all of the necessary parts to fully assemble a final finished good then they would be excluded from the scope of these proceedings."⁷

⁵ See AD Decision Memorandum at Comment 3H.

⁶ Certain Aluminum Extrusions From China, Investigation Nos. 701-TA-475 and 731-TA-1177 (Preliminary), Publication 4153 June 2010, U.S. International Trade Commission (ITC Aluminum Extrusions Report).

⁷ See Preliminary Determinations: Comments on the Scope of the Investigations, October 27, 2010 (Preliminary

C. Retractable Awning Mechanisms⁸

Tri Vantage, the requesting party, argued that it imported the retractable awning mechanisms at issue ready for use and that they constituted a final finished good. Thus, Tri Vantage argued that the products at issue met the exclusion criteria concerning “finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled at the time of entry.”

In their October 3, 2011, submission, Petitioners argued that Tri Vantage acknowledged in its scope inquiry request that the textile awnings, which were purchased separately, were assembled and attached onto the products at issue after importation. Petitioners further argued that a retractable awning mechanism without the textile awning served no function as an awning and, thus, could not be considered a “final finished good.” Petitioners argued that the Department should consider the products at issue as “subassemblies, i.e., partially assembled merchandise,” which were explicitly covered by the scope.

In response to comments from interested parties, the Department noted that the scope of the Orders defined an excluded “finished goods kit” as 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 such a finished product.” The Department further explained that Tri Vantage itself acknowledged that the textile covers designed for attachment to the retractable awning mechanisms at issue, and necessary to assemble a fully functioning awning, were purchased separately and were not included with such awning mechanisms at the time of importation. Thus, the Department concluded that a finished retractable awning mechanism or complete retractable awning mechanism kit would require inclusion of a textile cover at the time of importation to meet the exclusionary language that defined a finished goods kit or finished product.

The Department determined that because the retractable awning mechanisms at issue lacked the integral components necessary to assemble a full and complete finished goods kit, they did not constitute 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 such a finished product.” Therefore, the Department determined that the products at issue did not meet the exclusion criteria of the scope.

Description of the Merchandise Subject to this Inquiry

Rubbermaid explains that its request falls into three basic groups: Quick-Connect frames, Quick-Connect handles, and Quick-Connect mop handles.⁹ Specifically, its request covers a

Scope Comments) at Comment 8.

⁸ See the Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on Certain Retractable Awning Mechanisms” (October 14, 2011) (Awnings Scope Ruling).

⁹ Rubbermaid also refers to Quick-Connect mop handles as mopping kits.

total of 13 products, each of which are imported separately. Rubbermaid states that all 13 products contain aluminum extrusions as well as other components at the time of importation. These products and their corresponding SKUs and harmonized tariff schedule (HTS) headings are listed below:

Product SKU	Description	HTSUS
FCQ55000YL00	Q550 Rubbermaid HYGEN 11" Quick-Connect Wall/Stair Frame	7616.99.5090
FGQ56000YL00	Q560 Rubbermaid HYGEN 18" Quick-Connect Wet/Dry Frame	7616.99.5090
FCQ57000YL00	Q570 Rubbermaid HYGEN 24" Quick-Connect Squeegee Frame	9603.90.8050
FCQ57100GY00	Q571 Rubbermaid HYGEN 24" Squeegee Blade Replacement for Q570	9603.90.8050
FCQ58000YL00	Q580 Rubbermaid HYGEN 36" Quick-Connect Hall Dusting Frame	7616.99.5090
FCQ59000YL00	Q590 Rubbermaid HYGEN 48" Quick-Connect Hall Dusting Frame	7616.99.5090
FCQ59500YL00	Q595 Rubbermaid HYGEN 60" Quick-Connect Hall Dusting Frame	7616.99.5090
FCQ74500YL00	Q745 Rubbermaid HYGEN 20" – 40" Quick-Connect Short-Extension Handle	7616.99.5090
FCQ75000YL00	Q750 Rubbermaid HYGEN 58" Quick-Connect Handle	7616.99.5090
FCQ75500YL00	Q755 Rubbermaid HYGEN 48" – 72" Quick-Connect Straight Extension Handle	7616.99.5090
FCQ96900YL00	Q969 Rubbermaid Pulse Mopping Kit	9603.90.8050
FCQ97900YL00	Q979 Flow Finish Flow Kit Flat	9603.90.8050
FCQ98900YL00	Q989 Flow Finish Kit String	9603.90.8050

See Rubbermaid's July 7, 2011, submission at 2.

Rubbermaid explains that the Quick-Connect frames consist of a flat aluminum extrusion with rounded caps that are attached to each end. It further explains that a swiveling, Quick-Connect mount is attached to the center of the frames that allows the user to connect it to any Quick-Connect handle. Rubbermaid adds that a variety of damp or dry mops and cleaning cloths can be connected to the various frames.

Rubbermaid explains that the Quick-Connect handles consist of extruded aluminum tubes. Longer handles consist of two tubes, one of which is smaller in diameter than the other so that it will telescope inside the other. Rubbermaid explains that the Quick-Connect handles have a grip on one end and a Quick-Connect mechanism at the end on which the Quick-Connect frame is mounted.

Rubbermaid explains that its mopping handles (or mopping kits) consist of an extruded aluminum tube, a trigger handle, a 21-ounce refillable reservoir, and an 18" Q560 wet/dry frame. Rubbermaid states that the reservoir is designed to hold a cleaning solution which the user can apply to the floor using the trigger handle.¹⁰

Arguments from Interested Parties:

Rubbermaid

Rubbermaid argues that 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, such as finished windows with glass, doors, picture frames, and solar panels." Rubbermaid argues that the frames, handles, and mopping kits at issue are fully and permanently assembled with other components at the time of entry and are ready for sale and, thus, fall squarely under the exclusion language of the scope.

Petitioners

In their July 26, 2011, submission, Petitioners argue that individual quick connect frames and quick connect handles for mops, even if they are fully assembled at the time of entry, are merely subassemblies (*i.e.*, components for mops). Petitioners contend these components, by themselves, do not comprise "finished merchandise" because the frames and handles must be attached together, with other parts to form a finished cleaning system. Thus, argue Petitioners, the frames and handles at issue are within the scope of the Orders.

According to Petitioners, the Department has already determined that whether a product is ready for sale to end-users at the importation is irrelevant for purposes of scope inquiries filed in this proceeding. Petitioners cite to the AD Decision Memorandum at Comment 3D, in which the Department found that even though shower door "Knock Down Kits" are typically sold with all parts except the glass panels, the products were, nonetheless, within the scope because they do not contain all the necessary components at the time of entry to create a final finished product. Petitioners assert that the Department should also reject Rubbermaid's similar claims concerning the products at issue. On this point, Petitioners argue that the scope states that aluminum extrusions "identified with reference to their end-use . . . are subject merchandise if they otherwise meet the scope definition, regardless of whether they are ready for use at the time of importation."

¹⁰ See Rubbermaid's July 7, 2011, submission at Exhibit A for photos and descriptions of the Quick-Connect Frames, Quick-Connect handles, and mopping handles.

Department’s Position: In the Awnings Scope Ruling, the Department found that the products at issue were within the scope of the Orders because they lacked the integral components necessary to assemble full and complete finished goods kits, and, thus:

. . . did not constitute 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 such a finished product.

See Awnings Scope Ruling at 9 – 10. Similarly, in the AD Final Determination the Department determined that baluster kits were within the scope of the Order because they represented a “packaged collection of individual parts, which comprised a single element of a railing or deck system, and, therefore, did not represent a finished product.” See AD Decision Memorandum at Comment 3H.

We find that the products subject to the instant scope ruling request are no different from those addressed in the AD Final Determination and the Awnings Scope Ruling. Individually, the cleaning system components at issue do not constitute a final, finished good. Rather, 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 final cleaning device are not part of a packaged combination at the time of importation. As a result, we find that the Quick-Connect frames and Quick-Connect handles do not meet the exclusion for “finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry....”

Regarding the mopping kits at issue, in its July 7, 2011, submission Rubbermaid states that the mopping kits include a tube, a trigger handle, a soap reservoir, and a wet/dry frame on which disposable mops are attached.¹¹ Rubbermaid further states that the mopping kits at issue do not contain the disposable mop-end. A complete mopping kit would require inclusion of a mop end to meet the exclusionary language that defines a finished goods kit. Because the mopping kits lack the disposable mop ends at the time of importation, we find that they do not constitute a “finished goods kit,” and, thus, fall within the scope of the Orders.

On this basis, we find that the Quick-Connect frames, Quick-Connect handles, and mopping kits included in Rubbermaid’s request are covered by the scope of the Orders, as provided under 19 CFR 351.225(k)(1).

Recommendation

For the reasons discussed above and pursuant to 19 CFR 351.225(d) and 351.225(k)(1), we recommend finding that the certain cleaning system components addressed by the instant scope request are subject to the scope of the Orders because they do not meet the exclusion criteria for 1) finished merchandise containing aluminum extrusions as parts that are fully and permanently

¹¹ Specifically, we refer to the Q969 Rubbermaid Pulse Mopping Kit (SKU FCQ96900YL00), Q979 Flow Finish Flow Kit Flat (FCQ97900YL00), and Q989 Flow Finish Kit String (SKU FCQ98900YL00).

assembled and completed at the time of entry; or 2) finished goods kits containing, at the time of importation, all of the necessary parts to fully assemble a final finished good.

If the recommendation in this memorandum is accepted, we will serve a copy of this memorandum to all interested parties on the scope service list via first class mail as directed by 19 CFR 351.303(d).

Agree

Disagree

Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

Date