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Scope Ruling: Ferguson Bathroom Fixtures
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April 20, 2017

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

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

FROM: Michael J. Heaney
International Trade Compliance Analyst, Office VI
Antidumping and Countervailing Duty Operations

SUBJECT: Antidumping and Countervailing Duty Orders on Aluminum
Extrusions from the People's Republic of China: Final Scope
Ruling on Ferguson Enterprises, Inc.—Towel Bars, Towel Rings
and Toilet Paper Holder Kits

Summary

On September 9, 2015, the Department of Commerce (the Department) received a scope ruling request from Ferguson Enterprises, Inc. (Ferguson),¹ to determine whether its towel bars, towel rings and toilet paper holder kits 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 information received, we determine that Ferguson's towel bars, towel rings, and toilet paper holder kits satisfy the exclusion for finished goods kits and are, thus, excluded from the scope of the *Orders*.

Background

On September 9, 2015, Ferguson submitted its request that the Department issue a scope ruling that Ferguson's towel bars, towel rings, and toilet paper holder kits are outside the scope of the

¹ See Letter from Ferguson to the Secretary of Commerce, "Aluminum Extrusions from the People's Republic of China: Request for Confirmation of Scope Exclusion for Towel Bar, Towel Ring, and Toilet Paper Holder Kits," dated September 9, 2015 (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*).



*Orders.*³ On October 26, 2015, the Department submitted a letter extending the deadline for this scope ruling until December 8, 2015.⁴ Additionally, on December 8, 2015, the Department issued a supplemental questionnaire to Ferguson for clarification of its scope request,⁵ to which Ferguson responded on December 21, 2015.⁶ On January 13, 2016, Ferguson confirmed that it had served a copy of its scope responses upon all parties listed on the Department's comprehensive scope service list.⁷ On January 27, 2016, the Department tolled the deadline in this proceeding as a result of the closure of the Federal Government for Snowstorm "Jonas."⁸ Between February 18, 2016, and April 19, 2017, the Department extended the deadline for issuing this scope determination, pursuant to section 351.302(b) of the Department's regulations.⁹ Thus, this scope determination is now due April 21, 2017. We received no comments from the Aluminum Extrusion Fair Trade Committee, the Petitioner in this proceeding.

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.

³ See Scope Request.

⁴ See Letter to All Interested Parties regarding, "Aluminum Extrusions from the People's Republic of China: Extension of Time for Scope Ruling," dated October 26, 2015.

⁵ See letter from the Department of Commerce (Department) to Ferguson: "Re: Scope Inquiry submitted by Ferguson Enterprises on Certain Bathroom Fixtures" dated December 8, 2015 (Supplemental Questionnaire).

⁶ See Letter from Ferguson, "Aluminum Extrusions from the People's Republic of China: Ferguson's Questionnaire Response for its Scope Inquiry on Certain Bathroom Fixtures," dated December 21, 2015 (Supplemental Response).

⁷ See Letter from Ferguson, "Aluminum Extrusions from the People's Republic of China: Re Filing of Ferguson's Questionnaire Response," dated January 13, 2016.

⁸ See Memorandum from Ron Lorentzen, "Tolling of Administrative Deadlines as a Result of the Government Closure during Snowstorm "Jonas," dated January 27, 2016.

⁹ See Letters from the Department to Ferguson, dated February 18, 2016; May 17, 2016; July 1, 2016; August 19, 2016; October 3, 2016; November 17, 2016; January 3, 2017; February 15, 2017; March 8, 2017; April 12, 2017 and April 19, 2017.

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 brightdip 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 *Orders*

merely by including fasteners such as screws, bolts, *etc.* in the packaging with an aluminum extrusion product.

The scope also excludes aluminum alloy sheet or plates produced by other than the extrusion process, such as aluminum products produced by a method of casting. Cast aluminum products are properly identified by four digits with a decimal point between the third and fourth digit. A letter may also precede the four digits. The following Aluminum Association designations are representative of aluminum alloys for casting: 208.0, 295.0, 308.0, 355.0, C355.0, 356.0, A356.0, A357.0, 360.0, 366.0, 380.0, A380.0, 413.0, 443.0, 514.0, 518.1, and 712.0. The scope also excludes pure, unwrought aluminum in any form.

The scope also excludes collapsible tubular containers composed of metallic elements corresponding to alloy code 1080A as designated by the Aluminum Association where the tubular container (excluding the nozzle) meets each of the following dimensional characteristics: (1) length of 37 millimeters (“mm”) or 62 mm, (2) outer diameter of 11.0 mm or 12.7 mm, and (3) wall thickness not exceeding 0.13 mm.

Also excluded from the scope of these *Orders* are finished heat sinks. Finished heat sinks are fabricated heat sinks made from aluminum extrusions the design and production of which are organized around meeting certain specified thermal performance requirements and which have been fully, albeit not necessarily individually, tested to comply with such requirements.

Imports of the subject merchandise are provided for under the following categories of the

Harmonized Tariff Schedule of the United States (HTSUS): 6603.90.8100, 7616.99.51, 8479.89.94, 8481.90.9060, 8481.90.9085, 9031.90.9195, 8424.90.9080, 9405.99.4020, 9031.90.90.95, 7616.10.90.90, 7609.00.00, 7610.10.00, 7610.90.00, 7615.10.30, 7615.10.71, 7615.10.91, 7615.19.10, 7615.19.30, 7615.19.50, 7615.19.70, 7615.19.90, 7615.20.00, 7616.99.10, 7616.99.50, 8479.89.98, 8479.90.94, 8513.90.20, 9403.10.00, 9403.20.00, 7604.21.00.00, 7604.29.10.00, 7604.29.30.10, 7604.29.30.50, 7604.29.50.30, 7604.29.50.60, 7608.20.00.30, 7608.20.00.90, 8302.10.30.00, 8302.10.60.30, 8302.10.60.60, 8302.10.60.90, 8302.20.00.00, 8302.30.30.10, 8302.30.30.60, 8302.41.30.00, 8302.41.60.15, 8302.41.60.45, 8302.41.60.50, 8302.41.60.80, 8302.42.30.10, 8302.42.30.15, 8302.42.30.65, 8302.49.60.35, 8302.49.60.45, 8302.49.60.55, 8302.49.60.85, 8302.50.00.00, 8302.60.90.00, 8305.10.00.50, 8306.30.00.00, 8414.59.60.90, 8415.90.80.45, 8418.99.80.05, 8418.99.80.50, 8418.99.80.60, 8419.90.10.00, 8422.90.06.40, 8473.30.20.00, 8473.30.51.00, 8479.90.85.00, 8486.90.00.00, 8487.90.00.80, 8503.00.95.20, 8508.70.00.00, 8515.90.20.00, 8516.90.50.00, 8516.90.80.50, 8517.70.00.00, 8529.90.73.00, 8529.90.97.60, 8536.90.80.85, 8538.10.00.00, 8543.90.88.80, 8708.29.50.60, 8708.80.65.90, 8803.30.00.60, 9013.90.50.00, 9013.90.90.00, 9401.90.50.81, 9403.90.10.40, 9403.90.10.50, 9403.90.10.85, 9403.90.25.40, 9403.90.25.80, 9403.90.40.05, 9403.90.40.10, 9403.90.40.60, 9403.90.50.05, 9403.90.50.10, 9403.90.50.80, 9403.90.60.05, 9403.90.60.10, 9403.90.60.80, 9403.90.70.05, 9403.90.70.10, 9403.90.70.80, 9403.90.80.10, 9403.90.80.15, 9403.90.80.20, 9403.90.80.41, 9403.90.80.51, 9403.90.80.61, 9506.11.40.80, 9506.51.40.00, 9506.51.60.00, 9506.59.40.40, 9506.70.20.90, 9506.91.00.10, 9506.91.00.20, 9506.91.00.30, 9506.99.05.10, 9506.99.05.20, 9506.99.05.30, 9506.99.15.00, 9506.99.20.00, 9506.99.25.80, 9506.99.28.00, 9506.99.55.00, 9506.99.60.80, 9507.30.20.00, 9507.30.40.00, 9507.30.60.00, 9507.90.60.00, and 9603.90.80.50.

The subject merchandise entered as parts of other aluminum products may be classifiable under the following additional Chapter 76 subheadings: 7610.10, 7610.90, 7615.19, 7615.20, and 7616.99, as well as under other HTSUS chapters. In addition, fin evaporator coils may be classifiable under HTSUS numbers: 8418.99.80.50 and 8418.99.80.60. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these *Orders* is dispositive.

Legal Framework

When a request for a scope ruling is filed, the Department examines the scope language of the order and the description of the product contained in the scope ruling request.¹⁰ 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.¹¹ 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.¹²

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 351.25(k)(2). These factors are: (i) the physical characteristics of the merchandise; (ii) the expectations of the ultimate purchasers; (iii) the ultimate use of the product; (iv) the channels of trade in which the product is sold; and (v) the manner in which the product is advertised and displayed. The determination as to which analytical framework is most appropriate in any given scope proceeding is made on a case-by-case basis after consideration of all evidence before the Department.

DESCRIPTION OF THE MERCHANDISE SUBJECT TO THIS SCOPE REQUEST

Ferguson describes its towel bar, towel ring, and toilet paper holder kits as follows:

... {C}omplete and finished kits of aluminum towel bars, towel rings, and toilet paper holders with zinc posts manufactured in China... Each kit contains (a) hollow profiles, rings, or holders made of extruded aluminum series 6063 (b) zinc alloy die cast posts (and flanges for the 67 series products); and (c) mounting and assembly hardware (plastic anchors, wedges, screws, rubber inserts, and springs).¹³

Ferguson also explains that it has two series of products at issue: 1) The 28 Series Bath Accessories, which consist of towel bar, towel ring, and toilet paper holder kits, in a variety of finishes, and 2) the 67 Series Bath Accessories, which consist of towel bar and towel ring kits, in a variety of finishes.¹⁴ Additionally, Ferguson notes that its towel bar

¹⁰ See *Walgreen Co. v. United States*, 620 F.3d 1350, 1357 (Fed. Cir. 2010).

¹¹ See 19 CFR 351.225(k)(1).

¹² See 19 CFR 351.225(d).

¹³ See Scope Request, at 2.

¹⁴ See Scope Request, at 2, Exhibits 1 and 2; Supplemental Response at 1-5, Attachments 1 and 2.

and towel ring kits are imported under HTSUS heading 8302.50.000, and its toilet paper holder kits are imported under HTSUS headings 7418.20.1000 and 7907.00.1000.¹⁵

Ferguson provided a listing of each model of towel bar, towel ring, and toilet paper holder kits at Exhibit 1 of its Scope Request,¹⁶ as clarified at Attachment 1 of its Supplemental Response.¹⁷ The product specifications for each of the models subject to Ferguson’s scope request are provided at Exhibit 2 of its Scope Request,¹⁸ as clarified at Attachment 2 of its Supplemental Response.¹⁹

The product number, product description, inclusion of zinc-alloy die cast posts/flanges, and HTSUS heading for each product is listed below.

<u>Product Number</u>	<u>Product Description</u>	<u>Zinc Alloy Die-cast Posts/Flanges</u>	<u>HTSUS</u>
28 Series			
TOWEL BAR KITS			
PF2800BN	18 TWL BAR BN	Post	8302.50.0000
PF2800CP	18 TWL BAR CP	Post	8302.50.0000
PF2800RB	18 TWL BAR ORB	Post	8302.50.0000
PF2890BN	24 TWL BAR BN	Post	8302.50.0000
PF2890CP	24 TWL BAR CP	Post	8302.50.0000
PF2890RB	24 TWL BAR ORB	Post	8302.50.0000
TOWEL RING KITS			
PF2851BN	TWL RNG BN	Post	8302.50.0000
PF2851CP	TWL RNG CP	Post	8302.50.0000
PF2851ORB	TWL RNG ORB	Post	8302.50.0000
TOILET PAPER HOLDER KITS			
PF2831BN	PAPER HLDR BN	Post	8302.50.0000
PF2831CP	PAPER HLDR CP	Post	8302.50.0000
PF2831ORB	PAPER HLDR ORB	Post	8302.50.0000
67 Series			
TOWEL BAR KITS			
PF6700BN	18 TWL BAR BN	Post and Flange	8302.50.0000

¹⁵ See Scope Request, at 2.

¹⁶ *Id.*, at Exhibit 1.

¹⁷ See Supplemental Response, at Attachment 1.

¹⁸ The Product Specifications for each of the towel bar, towel ring, and toilet paper holder kits were provided at Exhibit 1 and Exhibit 2 of the Scope Request. *Id.* The “28 Series Bath Accessories” towel bar kits are sold by Ferguson as models PF2800CP and PF2890CP (polished chrome), PF2800BN and PF2890BN (brushed nickel) and PF2800RB and PF2890RB (oil rubbed bronze). *Id.* The “67 Series Bath Accessories” towel bar kits are sold by Ferguson as models PF6700CP and PF 6770 CP (polished chrome), PF6700BN and PF6770BN (brushed nickel) and PF6700RB and PF66700RB and PF6770RB (oil rubbed bronze). *Id.* Ferguson’s “28 Series Bath Accessories” tissue paper holder kits are sold as model PF2831CP (chrome), PF2831BN (brushed nickel) and PF2831ORB (oil rubbed bronze). *Id.* Ferguson’s “28 Series Bath Accessories” towel ring kits are sold as PF2851CP (polished chrome), PF2851BN (brushed nickel), and PF2851ORB (oil rubbed bronze). *Id.* Ferguson’s “67 Series Bath Accessories” towel ring kits are sold as PF6751CP (polished chrome or oil rubbed bronze), and PF6751BN (brushed nickel). *Id.*

¹⁹ See Supplemental Response, at Attachment 2.

PF6700CP	18 TWL BAR CP	Post and Flange	8302.50.0000
PF6700RB	18 TWL BAR ORBR	Post and Flange	8302.50.0000
PF6770BN	24 TWL BAR BN	Post and Flange	8302.50.0000
PF6770CP	24 TWL BAR CP	Post and Flange	8302.50.0000
PF6770RB	24 TWL BAR ORBR	Post and Flange	8302.50.0000
TOWEL RING KITS			
PF6751BN	TWL RNG BN	Post and Flange	8302.50.0000
PF6751CP	TWL RNG CP	Post and Flange	8302.50.0000
PF6751ORB	TWL RNG ORB	Post and Flange	8302.50.0000

Towel Bar Kits

As described in Ferguson’s Scope Request and as clarified in its Supplemental Response, the towel bar kits in the “28 Series Bath Accessories” contain aluminum extrusion towel bars, zinc alloy die-cast posts, and mounting/holding hardware. The towel bar kits in the “67 Series Bath Accessories” contain aluminum extrusion towel bars, zinc alloy die-cast posts and flanges, and mounting/holding hardware.²⁰

Towel Ring Kits

As described in Ferguson’s Scope Request and as clarified in its Supplemental Response, the towel ring kits in the “28 Series Bath Accessories” contain aluminum extrusion towel rings, zinc alloy die-cast posts, and mounting/holding hardware. The towel ring kits in the “67 Series Bath Accessories” contain aluminum extrusion towel rings, zinc alloy die-cast posts and flanges, and mounting/holding hardware.²¹

Toilet Paper Holder Kits

As described in Ferguson’s Scope Request and as clarified by its Supplemental Response, the toilet paper holder kits appear in the “28 Series Bath Accessories” only and consist of aluminum extrusion toilet paper holders, zinc alloy die-cast posts, and mounting/holding hardware, which include steel springs.²²

For the aluminum towel bars, towel rings, and toilet paper holder kits imported by Ferguson, Ferguson describes the merchandise in question as “packaged combinations of parts that contain, at the time of importation, all of the necessary parts to fully assemble ‘as is’ a final finished good.”²³ Ferguson further notes that this merchandise is imported in an unassembled state.²⁴ In other words, as finished goods kits, the aluminum towel bars, towel rings, and toilet paper holders will not be repackaged prior to shipment to the end user.²⁵

²⁰ See Scope Request, at 2, Exhibits 1 and 2; Supplemental Response, at 1-3, Attachments 1 and 2.

²¹ See Scope Request, at 2, Exhibits 1 and 2; Supplemental Response, at 1-2, 4, Attachments 1 and 2.

²² See Scope Request, at 2, Exhibits 1 and 2; Supplemental Response, at 1-2, 5, Attachments 1 and 2.

²³ See Scope Request, at 6.

²⁴ *Id.*, at 8.

²⁵ *Id.*, at 6.

In its Supplemental Response, Ferguson provided the schematic drawings for its aluminum towel bars, towel rings, and toilet paper holders, and also enumerated the zinc inputs that are incorporated into each of these products.²⁶

Relevant Scope Determinations²⁷

Geodesic Dome Kits Scope Ruling²⁸

J.A. Hancock Co., Inc. (J.A. Hancock), an importer of geodesic structure kits (a set of aluminum poles and assembly hardware that can be assembled into landscaping structures or climbing structures for children), argued that its kits contained all parts necessary to fully assemble a final geodesic structure. J.A. Hancock further noted that the components in its kits required no further fabrication or additional parts. The Department determined that the geodesic structure kits met the initial requirements for exclusion as a “finished goods kit,” as they are a packaged combination of parts containing all necessary components to fully assemble a final finished good.²⁹ 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 extrusions product.”³⁰ As J.A. Hancock’s kits only consist of extruded aluminum poles and fasteners, the Department found that the exception to the “finished goods kit” exclusion applies. Therefore, the Department determined J.A. Hancock’s kits to not be excluded finished goods kits, and hence covered by the scope of the *Orders*.

Liberty Shower Door Kits Scope Ruling³¹

Liberty Hardware Manufacturing Company (Liberty), an importer of shower door kits (a set of glass panels, panel doors, aluminum track side jams, bumpers, and screws that can be assembled into a shower door kit), argued that its kits contained all parts necessary to fully assemble a final shower door kit. In this scope determination, the Department determined that certain non-aluminum components (*i.e.*, the glass shower doors) serve as integral parts of the “kit.” The Department further determined that the parts imported by Liberty contain both extruded and non-extruded aluminum products and that certain non-aluminum components provide functions beyond that of “mere fasteners.” Therefore, the Department determined Liberty’s Shower Door kits to be excluded finished goods kits, and hence outside the scope of the *Orders*.

²⁶ See Supplemental Response, at Attachments 1 and 2.

²⁷ See the Department’s Memorandum, “Prior Scope Rulings Relevant to this Proceeding and Other Relevant 19 CFR 351(k)(1) Sources,” dated concurrently with this memorandum (Prior Scopes Memo).

²⁸ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on J.A. Hancock, Inc.’s Geodesic Structures,” dated July 17, 2012 (Geodesic Dome Kits Scope Ruling).

²⁹ *Id.*, at 7.

³⁰ *Id.*

³¹ See the Department’s memorandum entitled “Antidumping and Countervailing Duty Orders on Aluminum Extrusions from the People’s Republic of China: Final Scope Ruling on Liberty Hardware’ Manufacturing Company’s Shower Door Kits,” dated December 9, 2015 (Liberty Shower Door Kits).

Silver Spring Networks Enclosure Kit Scope Ruling³²

The product at issue was imported by Plexus Corporation, an electronics service provider. Plexus argued that the SSNE it imports are finished kits because no further finishing or fabrication is done following importation of the SSNE. In SSNE, the Department noted that the SSNE kit contained both extruded aluminum components and rolled aluminum. The Department further noted that the SSNE kits are fully fabricated and contain all of the parts necessary to assemble a SSNE. The Department therefore determined that the SSNE were excluded from the *Orders* as finished goods kits.

IKEA Towel Racks Scope Ruling³³

The products at issue were imported by IKEA Supply AG (IKEA), an importer of towel racks. IKEA requested that the Department exclude two models of its towel racks from the *Orders* as finished kits. The first model was comprised of a series 6 aluminum extrusion and a plastic gasket. The second model was comprised of a series 6 aluminum extrusion with two steel brackets. Relying on the Webster dictionary definition of a fastener, “a restraint that attaches to something or holds something into place,” and of a gasket, “a piece of rubber or some other material that is used to make a tight seal between two parts that are joined together,” the Department found that the steel brackets and plastic gasket were fasteners. Thus, the Department determined, that IKEA’s towel racks failed to meet the threshold for exclusion as a finished goods kit because the non-extrusion component of IKEA’s towel racks (plastic gaskets or steel brackets) functioned as fasteners. In two related decisions, the Court of International Trade (CIT) sustained the Department’s determination.³⁴

Meridian Trim Kits Scope Ruling³⁵

Meridian requested that the Department exclude its trim kits which are utilized as an aesthetic frame around the perimeter of home appliances such as refrigerators and freezers. The Department determined that the non-extrusion component of Meridian’s Trim Kits consisted entirely of an assembly tool, fasteners, and an instruction booklet.³⁶ Because the Department found that the trim kits only included aluminum extrusions, “fasteners used in the assembly of the trim kit,” and extraneous materials, the Department determined that the product was covered by the scope of the *Orders* and was not subject to the finished goods kit exclusion based on the scope language that indicated an aluminum extrusion product with mere fasteners would not qualify for the exclusion. In *Meridian Products II*, the Federal Circuit affirmed the Department’s

³² See the Department’s memorandum, “Antidumping and Countervailing Duty Orders on Aluminum Extrusions from the People’s Republic of China: Final Scope Ruling on Plexus Corporation’s Silver Spring Networks Enclosure Kit,” dated January 5, 2016 (SSNE Kit).

³³ See the Department’s memorandum, “Antidumping and Countervailing Duty Orders on Aluminum Extrusions from the People’s Republic of China: Final Scope Ruling on IKEA’s Towel Racks,” dated April 27, 2015 (IKEA Towel Racks)

³⁴ See *IKEA Supply AG v. United States*, 180 F. Supp. 3d 1202 (Ct. Int’l Trade 2016), reconsideration denied by 2017 Ct. Int’l Trade LEXIS 5, Slip. Op. 17-8 (Jan. 31, 2017).

³⁵ See the Department’s memorandum, “Final Scope Ruling on Refrigerator/Freezer Trim Kits” dated December 17, 2012 (Meridian Trim Kits)

³⁶ *Id.*

initial scope ruling, reversing and vacating the prior decisions of the CIT which had remanded the Department's original determination in Meridian Trim Kits.³⁷

Boat and Dock Ladders and Strip Door Mountings Scope Ruling³⁸

The product at issue was imported by Asia Sourcing Corporation, an importer of certain dock ladder models. In this scope determination, the Department determined that certain dock ladder models met the criteria for exclusion from the *Orders* as finished goods kits while other models imported by Asia Sourcing Corporation failed to merit exclusion from the order as a finished goods kit. In its Remand Redetermination, the Department clarified which components of the dock ladder kits constituted fasteners. Included in the ladder kit models were: plastic coated cables, J-hooks, footman's loops, and plastic end caps. The Department determined that the ladder kits contained non-extruded aluminum components that functioned as more than mere fasteners. For example, the plastic coated cables were used to facilitate the retraction of the steps from the water, which we did not consider to be a fastening function. The Department continued to find the J-hooks and footman's loops to be fasteners because they have a fastening function; they are components used to attach or fasten the ladder to the dock. The Department also found that the plastic end caps did not have a fastening function and, thus, were not fasteners. The plastic end caps functioned as more than fasteners, because they prevented water from collecting in the aluminum extrusion parts. In discussing its analysis of a finished goods kit, the Department indicated that fasteners are components of the kit that attach the final "product to something else or attach components of the product to each other."³⁹

Arguments from Interested Parties

Ferguson's Initial Scope Comments and Supplemental Response

Ferguson asserts that the language of the *Orders* establishes that its aluminum towel bars, towel rings, and toilet paper holders are outside of the scope because the merchandise falls under the finished good kit exclusion.⁴⁰ Ferguson further argues that the petition of the *Orders* confirm that the "basic structure of the scope of the order as covering extruded shapes and forms whether coated or fabricated."⁴¹ Ferguson argues that the chart provided at exhibit I-5 of the petition, confirms that petitioners intended to exclude products such as Ferguson's towel bars, towel rings and toilet paper holders from the scope of the *Orders*.⁴² Ferguson further argues that the aluminum towel bars, towel rings, and toilet paper holders each contain "packaged combination

³⁷ See *Meridian Products LLC v. United States*, Ct. No., 13-00018, Slip. Op. 15-67 (June 23, 2015) (*Meridian Products*). We note that in *Meridian Products LLC v. United States* CAFC March 28, 2017 (*Meridian Products II*), the United States Court of Appeals for the Federal Circuit (CAFC) reversed the CIT's decision in *Meridian Products*.)

³⁸ See the Department's memorandum, "Antidumping and Countervailing Duty Orders on Aluminum Extrusions from the People's Republic of China: Final Scope Ruling on Asia Sourcing Corporation's Boat and Dock Ladders and Strip Door Mounting Brackets dated March 30, 2013 (Boat and Dock Ladders and Strip Door Mounting).

³⁹ See Final Results of Redetermination Pursuant to Court Remand, *Asia Sourcing Corp. v. United States*, Ct No. 13-00161 (June 30, 2014), dated August 20, 2015; affirmed by Slip. Op. 15-97 (August 27, 2015) (Asia Sourcing Remand Redetermination) at 2 and 10-11.

⁴⁰ See Scope Request, at 5-6.

⁴¹ *Id.*, at 7, citing the petition at 4-7.

⁴² *Id.*

of parts that contain, at the time of importation, all of the necessary parts to fully assemble ‘as is’ a final finished good...”⁴³ Ferguson further asserts that its aluminum towel bars, towel rings, and toilet paper holders should be excluded from the scope of the *Orders* because, at the time of importation, the user has all the necessary parts to fully assemble the product without further finishing or fabrication.⁴⁴ Ferguson bases its analysis on prior scope rulings, and cites to the determination of the CIT in *Meridian Products*,⁴⁵ wherein the Court determined that the exclusion for “finished goods kits” “unambiguously” establishes that the kit must be:

- (1) an unassembled combination of parts that (2) includes at the time of importation *all* the necessary parts to fully assemble a final finished goods, with no further finishing or fabrication (such as cutting or punching), and (3) be capable of assembly “as is” into a finished product.⁴⁶

Ferguson further argued that *Meridian Products* establishes that the inclusion of “fasteners” or other “extraneous materials” is “not determinative” in situations where the merchandise in question otherwise meets the requirement of a finished goods kit.”⁴⁷ Moreover, Ferguson argues that the zinc alloy componentry which is contained in its towel bars, towel rings and toilet paper holder kits function not as fasteners “but rather as “integral non-aluminum extrusion componentry”⁴⁸ that similarly support each good; the bars, rings, and holders; while “designed to act as focal points” that “have significant aesthetic function, value, and purpose.”⁴⁹ Ferguson continues to argue that for each; the towel bars, towel rings, and toilet paper holders; the zinc alloy die cast posts “have distinct profiles and appearance” that are designed to allow “adequate space” between the merchandise and the wall, additionally allowing the consumer to “easily display or store towels.”⁵⁰

⁴³ *Id.*, at 6.

⁴⁴ *See* Scope Request, at 5-6.

⁴⁵ *See Meridian Products*. We note that in *Meridian Products II*, the United States Court of Appeals for the Federal Circuit (CAFC) reversed the CIT’s decision in *Meridian Products*. The CAFC affirmed the Department’s interpretation of the finished good kits exclusion that a product which does not contain non-aluminum extruded components beyond mere fasteners will not satisfy the exclusion.

⁴⁶ *See* Scope Request, at 5, citing *Meridian Products* at 30651 (Ferguson’s emphasis).

⁴⁷ *Id.*

⁴⁸ *See* Supplemental Response, at 1-2.

⁴⁹ *Id.*, at 5 (describing the toilet paper holders) (Ferguson posits the same argument for the towel bars and towel rings; that the zinc alloy die cast posts “have distinct profiles and appearance”).

⁵⁰ *Id.*, at 3-5.

Department Position

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

General Scope Language Analysis

As an initial matter, we first examined whether the towel bar, towel ring, and toilet paper holder kits fall within the general scope language. As stated above, the scope of the *Orders* includes, in relevant part, "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)." In addition, the scope provides that "{a}luminum 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 "with a variety of finishes...and types of fabrication" are also included.

As provided by Ferguson, each kit at issue contains "hollow profiles, rings, or holders made of extruded aluminum series 6063" which are subject to a variety of finishes.⁵¹ Thus, we find that the aluminum extrusion components of the kits at issue satisfy the general scope language.

Further, we find that the inclusion of additional non-extruded aluminum components, *i.e.*, zinc alloy die-cast posts, flanges, steel springs, and mounting and assembly hardware,⁵² in the kits do not remove the aluminum extrusion components from the general scope language. As noted above, the scope provides that "{s}ubject 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{,}" and that "{s}uch parts that otherwise meet the definition of aluminum extrusions are included in the scope." With respect to Ferguson's towel bar kits, we consider that the "final finished product" at issue is the finished towel bar which has been assembled and mounted on to the bathroom wall. Thus, the aluminum extruded component, *i.e.*, the hollow profile made of extruded aluminum, is a "part for a final finished product" which is assembled with non-aluminum extruded components after importation. Because this part "otherwise meets the definition of aluminum extrusions{,}" the aluminum extrusion component remains within the general scope language, regardless of the inclusion of the non-aluminum extruded components. The same holds true with respect to the aluminum extruded component "parts" in the towel ring and toilet paper holder kits.

⁵¹ See Scope Request, at 2.

⁵² See Scope Request, at 2.

This finding is further supported by the scope language which provides that, for purposes of assessing duties, “[t]he scope does not include the non-aluminum extrusion components of subassemblies or subject kits.” In other words, we view the kit as a whole, which contains an aluminum extrusion component and non-aluminum extrusion components, to be subject to the general scope language; however, only the aluminum extrusion component is considered subject merchandise for purposes of assessment of duties. This is consistent with documents from the investigation in which Petitioner made it clear that it intended CBP only to assess duties on the aluminum extrusion components of such products, as long as “importers of such products” could “separately identify, classify, and value the subject and non-subject components at the time of entry.”⁵³

Finally, we note that Ferguson does not dispute that its kits at issue fall within the general scope language.⁵⁴ Thus, in light of the above, we find that the kits at issue fall within the general scope language, and are subject to the *Orders*, unless an exclusion applies, which we discuss below.

Finished Goods Kit Exclusion Analysis

As noted above, the scope contains a number of exclusions, including the finished goods kit exclusion which excludes “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.” The scope also provides an exception, which states that “[a]n 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.”

In light of this language, the Department’s practice in scope rulings involving the finished goods kits exclusion language is to examine whether, consistent with our test established in the Geodesic Domes Kits Scope Ruling, a product which facially satisfies the finished goods kit exclusion nonetheless contains only aluminum extrusions or a mix of extruded aluminum components and non-extruded aluminum components beyond mere fasteners. Thus, even if a product initially satisfies the finished goods kit exclusion, the exception language provides that the product ultimately will not qualify for the exclusion if the product does not contain additional non-aluminum extrusion components beyond mere fasteners. The Federal Circuit in *Meridian Products II* affirmed this interpretation, finding that such a reading was supported by the plain language of the scope and the Department’s prior scope rulings pursuant to 19 CFR 351.225(k)(1).⁵⁵

Thus, we first considered whether Ferguson’s aluminum towel bars, towel rings, and toilet paper holder kits meet the definition of a “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

⁵³ See “Petitioner’s Response to the Department’s Inquiry Regarding the Subassemblies and Unfinished Kits,” dated March 9, 2011, which is attached to the Prior Scopes Memo of this proceeding.

⁵⁴ See Scope Request, at 5-7.

⁵⁵ See *Meridian Products II*, at 11-15.

good and requires no further finishing or fabrication, such as cutting or punching, and is assembled ‘as is’ into a finished product.” Based on the description of the product in its unassembled “kits” state, coupled with the corresponding diagrams included in Ferguson’s Scope Request⁵⁶ and Ferguson’s Supplemental Response,⁵⁷ we find that the parts contained in the aluminum towel bar, towel ring, and toilet paper holder kits require no further finishing or fabrication and are imported in an unassembled state, ready to be fully assembled into a final finished product in an “as is” state upon importation. Therefore, the kits at issue facially satisfy the finished goods kit exclusion; however, as discussed below, we still need to examine whether the kits contain non-aluminum extrusion components beyond mere fasteners.

Next, we examined whether the non-aluminum extrusion components (*i.e.*, zinc alloy die-cast posts, flanges, steel springs, and mounting and assembly hardware⁵⁸) of the towel bar, towel ring, and toilet paper holder kits go beyond mere fasteners. As discussed in detail below, we determine that these products, which initially satisfy the finished goods kit exclusion, contain both extruded and non-extruded aluminum components, beyond mere fasteners.

A) Towel Bar Kits

Ferguson provided information that its towel bar kits in both the 28 series and 67 series contain zinc alloy die-cast posts.⁵⁹ According to Ferguson, the posts impart a distinct profile and appearance to the finished towel bar and perform a significant aesthetic function.⁶⁰ The posts also ensure that there is adequate spacing between the towel bar and the wall surface for it to function as a towel bar.⁶¹ We find that the posts included in the towel bar kits are non-extruded aluminum components, beyond mere fasteners, because they perform functions other than that of a mere fastener. As a result, we did not need to reach the issue of whether the zinc alloy die-cast flanges (for the 67 series towel bar kits) also constitute non-aluminum extrusion components beyond mere fasteners.

B) Towel Ring Kits

Ferguson provided information that its towel ring kits in both the 28 series and 67 series contain zinc alloy die-cast posts.⁶² According to Ferguson, the posts impart a distinct profile and appearance to the finished towel ring and perform a significant aesthetic function.⁶³ The posts also ensure that there is adequate spacing between the towel ring and the wall surface for it to function as a towel ring.⁶⁴ We find that the posts included in the towel ring kits are non-extruded aluminum components, beyond mere fasteners, because they perform functions other than that of a mere fastener. As a result, we did not need to reach the issue of whether the zinc alloy die-cast

⁵⁶ See Scope Request, at Exhibits 1-4.

⁵⁷ See Supplemental Response, at Attachments 1 and 2.

⁵⁸ See Scope Request, at 2.

⁵⁹ See Ferguson Supplemental Response, at 1-3; *see also* Attachment 1.

⁶⁰ *Id.*

⁶¹ *Id.*, at 3.

⁶² *Id.*, at 4; *see also* Attachment 1.

⁶³ *Id.*

⁶⁴ See Ferguson Supplemental Response, at 4; *see also* Attachment 1.

flanges (for the 67 series towel ring kits) also constitute non-aluminum extrusion components beyond mere fasteners.

C) Toilet Paper Holder Kits

Ferguson provided information that its toilet paper holder kits, which only come in the 28 series, contain zinc alloy die-cast posts and steel springs.⁶⁵ According to Ferguson, the posts impart a distinct profile and appearance to the towel ring and perform a significant aesthetic function.⁶⁶ The posts also ensure that there is adequate spacing between the toilet paper holder and the wall surface for it to function as a toilet paper holder.⁶⁷ In addition, the steel spring is an internal component of the toilet paper holder which allows it to function as a toilet paper holder.⁶⁸ We find that the posts and the steel springs included in the toilet paper holder kits are non-extruded aluminum components, beyond mere fasteners, because they perform functions other than that of a mere fastener.

Based on the forgoing, we determine that, for the towel bar, towel ring, and toilet paper holder kits, the non-aluminum extruded components mentioned above clearly go beyond mere fasteners, a requirement of the “finished goods kits” exclusion language in the scope of the *Orders*.

With respect to each of the products, we determine that, unlike the facts at issue in *Meridian Products II*, the non-aluminum components described above serve beyond the simple function of acting as mere fasteners.⁶⁹ Rather, as noted previously, the posts utilized by Ferguson serve a non-fastening function by allowing sufficient space between the product and the wall surface and add an essential aesthetic function to the product.⁷⁰ Similarly, the steel springs in the toilet paper holder kits allows the toilet paper holder to function as a toilet paper holder.⁷¹

Thus, we find that the posts utilized in Ferguson’s towel bar, towel ring, and toilet paper holder kits (and the steel springs in the toilet paper holder kits) serve functions which differentiate the products at issue here from the products at issue in *IKEA Towel Racks* and *Meridian Trim Kits*. In those cases, we defined a fastener as “a restraint that attaches to something or holds something into place”⁷² and “any of the devices...for holding together two objects or parts sometimes required to be separate, as two edges or flaps of a piece of clothing.”⁷³ As previously noted, in *IKEA Towel Racks*, the Department found that the plastic gaskets or steel brackets functioned as fasteners.⁷⁴ Similarly, in *Meridian Trim Kits*, the Department determined that the non-aluminum extrusion component was confined to fasteners and other extraneous material.⁷⁵

⁶⁵ *Id.*, at 5 and Attachment 1.

⁶⁶ *Id.*

⁶⁷ See Ferguson Supplemental Response, at 5; see also Attachment 1.

⁶⁸ *Id.*, at Attachment 1.

⁶⁹ See *Meridian Products II*, at 13.

⁷⁰ See Supplemental Response, at 1-5.

⁷¹ *Id.*, at Attachment 1.

⁷² See *IKEA Towel Racks*.

⁷³ See *Meridian Trim Kits*.

⁷⁴ *Id.*

⁷⁵ See *Meridian Trim Kits*.

Instead, the posts and steel springs at issue here are akin to the non-aluminum extrusion components in the Asia Sourcing Remand Redetermination. In defining fasteners as components that “attach the product to something else or attach components of the product to each other,”⁷⁶ the Department held that the plastic coated cables and plastic end caps do not have a fastening function, while the J-hooks and footman’s loops did have a fastening function.⁷⁷ Likewise, in the instant case, the posts and steel springs are not merely attaching the products to something else or attaching two components of the product to each other, while the mounting and fastening hardware included in each kit, which we find are fasteners, do serve such a fastening function.⁷⁸

In light of the above, the products at issue here are akin to the products which satisfied the finished goods kit exclusion in Liberty Shower Doors Kits and the Silver Spring Networks Enclosure Scope Rulings, discussed above.

Accordingly, in accordance with the scope language and consistent with the Department’s prior scope rulings, we find that Ferguson’s towel bar, towel ring, and toilet paper holder kits constitute “finished goods kits,” and are, thus, excluded from the scope of the *Orders*.

Recommendation

For the reasons discussed above, and in accordance with 19 CFR 351.225(d) and 19 CFR 351.225(k)(1), we recommend finding that Ferguson’s towel bar, towel ring, and toilet paper holder kits constitute “finished goods kits” and, thus, should be excluded from the scope of the *Orders*.

⁷⁶ See Asia Sourcing Remand Redetermination, at 10-11.

⁷⁷ *Id.*, at 2 and 10-11.

⁷⁸ See Scope Request, at Exhibit 2.

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

4/20/2017

X 

Signed by: GARY TAVERMAN

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