



A-570-967

C-570-968

Scope Ruling: Whirlpool Refrigerator Shelves  
Public Version  
E&C, Office VI: VC

July 19, 2017

MEMORANDUM TO: James Maeder  
Senior Director  
performing the duties of Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

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

FROM: Victoria Cho  
International Trade Compliance Analyst  
Antidumping and Countervailing Duty Operations, Office VI

SUBJECT: Antidumping and Countervailing Duty Orders on Aluminum  
Extrusions from the People's Republic of China: Final Scope  
Ruling on Whirlpool Refrigerator Shelves

### Summary

On December 16, 2016, the Department of Commerce (the Department) received a scope ruling request from Whirlpool Corporation (Whirlpool),<sup>1</sup> asking that the Department determine that its refrigerator shelves are not subject to the antidumping (AD) and countervailing duty (CVD) orders on aluminum extrusions from the People's Republic of China (PRC).<sup>2</sup> Based on our analysis, we determine that Whirlpool's refrigerator shelves are excluded from the scope of the AD and CVD orders on aluminum extrusions from the PRC.

### Background

On December 16, 2016, Whirlpool submitted its request that the Department issue a scope ruling that Whirlpool's refrigerator shelves are outside the scope of the *Orders*.<sup>3</sup> On January 18, 2017, the Department issued a supplemental questionnaire to Whirlpool for the purpose of clarifying its

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<sup>1</sup> See Letter from Whirlpool, "Re: Aluminum Extrusions from the People's Republic of China: Scope Ruling Request covering Whirlpool's Imports of Refrigerator Glass Shelving," dated December 16, 2016 (Scope Request).

<sup>2</sup> 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*).

<sup>3</sup> See Scope Request.

scope request.<sup>4</sup> On March 31, 2017, Whirlpool submitted its supplemental questionnaire response.<sup>5</sup> On May 10, 2017, the Department issued an additional supplemental questionnaire to Whirlpool for further clarification of its scope request.<sup>6</sup> On June 5, 2017, Whirlpool submitted its supplemental questionnaire response. Based on Whirlpool's last supplemental response, the current deadline for issuing this scope ruling is July 20, 2017.<sup>7</sup> We have received no comments from the Aluminum Extrusion Fair Trade Committee, the petitioner in this proceeding, or any other interested party.

### **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. 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,

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<sup>4</sup> See Letter from the Department to Whirlpool, dated January 18, 2017.

<sup>5</sup> See Letter from Whirlpool entitled, "Re: Aluminum Extrusions from the People's Republic of China: Responses to Department's Supplemental Questionnaire," dated March 31, 2017 (Whirlpool's Supplemental Questionnaire Response).

<sup>6</sup> See Letter from the Department to Whirlpool, date May 10, 2017.

<sup>7</sup> See Letter from Whirlpool entitled, "Re: Aluminum Extrusions from the People's Republic of China: Response to the Department's Second Supplemental Questionnaire," dated June 5, 2017 (Whirlpool's Second Supplemental Questionnaire Response).

extrusions that are cut-to-length, machined, drilled, punched, notched, bent, stretched, knurled, swedged, 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 the *Orders* are finished heat sinks. Finished heat sinks are fabricated heat sinks made from aluminum extrusions the design and production of which are organized around meeting certain specified thermal performance requirements and which have been fully, albeit not necessarily individually, tested to comply with such requirements.

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States (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 at issue and the description of the product contained in the scope ruling request.<sup>8</sup> 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 investigation, and prior scope determinations made for the same product.<sup>9</sup> 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.<sup>10</sup>

Conversely, where the descriptions of the merchandise in the sources described in 19 CFR 351.225(k)(1) are not dispositive, the Department will consider the five additional factors set forth at 19 CFR 351.225(k)(2). These factors are: (i) the physical characteristics of the merchandise; (ii) the expectations of the ultimate purchasers; (iii) the ultimate use of the product; (iv) the channels of trade in which the product is sold; and (v) the manner in which the product is advertised and displayed. The determination as to which analytical framework is most appropriate in any given scope proceeding is made on a case-by-case basis after consideration of all evidence before the Department.

### **DESCRIPTION OF THE MERCHANDISE SUBJECT TO THIS SCOPE REQUEST**

Whirlpool asserts that its refrigerator shelves consist almost entirely of a combination of glass, steel, and plastic components and minor aluminum components that serve only a decorative purpose.<sup>11</sup> The glass, steel, and plastic components comprise a substantial majority of the product by weight and by contribution to total cost.<sup>12</sup> Whirlpool contends that its refrigerator shelves constitute finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry.<sup>13</sup> According to Whirlpool:

“The glass shelves are produced in China by [ ] to Whirlpool's exacting specifications using materials that satisfy Whirlpool's standards for safety, quality and appearance. The products are produced from steel, flat glass sheet, and plastic materials. Each shelf also contains either one or four decorative aluminum trim pieces. As discussed below, the aluminum components are a minor part of the total refrigerator shelf assembly either by weight or by contribution to total cost. When entered into the United States, each glass shelf is fully assembled, complete, and ready for insertion into a refrigerator.”<sup>14</sup>

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

<sup>9</sup> See 19 CFR 351.225(k)(1).

<sup>10</sup> See 19 CFR 351.225(d).

<sup>11</sup> See Scope Ruling Request, at 4.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

### Glass Shelf “A”

Glass shelf “A” (Shelf A) is identified by Whirlpool part number [ ],<sup>15</sup> with dimensions of 31.8 inches in length, 13.8 inches in width, and 1.25 inches in height.<sup>16</sup> Whirlpool explains that Shelf A is composed of [ ] and that only four of these components are made of extruded aluminum.<sup>17</sup> Shelf A’s components include [

[ ].<sup>18</sup> Whirlpool asserts that the steel, glass, and plastic components, along with the rivets and screws that hold the glass refrigerator shelf together, account for most of the weight, cost of materials, and the product’s total cost. The packaging configuration for Shelf A involves [

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### Glass Shelf “B”

Glass shelf “B” (Shelf B) is identified by Whirlpool part number [ ],<sup>20</sup> with dimensions of 29 inches in length, 12.5 inches in width, and 2.5 inches in height.<sup>21</sup> Whirlpool explains that Shelf B is composed of [ ] only one of which is made of extruded aluminum.<sup>22</sup> Shelf B’s components include [

[ ].<sup>23</sup> Whirlpool asserts that the steel, glass, and plastic components, along with the screws that hold the glass refrigerator shelf together, account for most of the weight, cost of materials, and the product’s total cost. The packaging configuration for Shelf B involves [

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### Glass Shelf “C”

Glass shelf “C” (Shelf C) is identified by Whirlpool part number [ ],<sup>25</sup> with dimensions of 31 inches in length, 18.8 inches in width, and 1.5 inches in height.<sup>26</sup> Whirlpool explains that Shelf C is composed of [ ] only one of

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<sup>15</sup> *Id.*, at 4-5 and exhibit 1; *see also* Whirlpool’s Supplemental Questionnaire Response.

<sup>16</sup> *Id.*

<sup>17</sup> *See* Scope Ruling Request, at 4-5 (“{T}he four components made of extruded aluminum are part numbers [ ]); *id.* at exhibits 1 and 4; *see also id.*, at 5, n. 5.

<sup>18</sup> *Id.*, at exhibit 4.

<sup>19</sup> *Id.*, at 6.

<sup>20</sup> *See* Scope Ruling Request at 6 and exhibit 5; *see also* Whirlpool’s Supplemental Questionnaire Response.

<sup>21</sup> *Id.*

<sup>22</sup> *See* Scope Ruling Request at 6-7 and exhibits 5 and 6; *id.* at 6 (showing that the one component made of extruded aluminum is part number [ ]). *See also id.*, at 6, n. 8.

<sup>23</sup> *Id.*, at exhibit 6.

<sup>24</sup> *Id.*, at 6.

<sup>25</sup> *See* Scope Ruling Request at 7 and exhibit 7; *see also* Whirlpool’s Supplemental Questionnaire Response.

<sup>26</sup> *Id.*



which is made of extruded aluminum.<sup>27</sup> Shelf C’s components include [

].<sup>28</sup> Whirlpool asserts that the steel, glass, and plastic components, along with the screws that hold the glass refrigerator shelf together, account for most of the weight, cost of materials, and the product’s total cost. The packaging configuration for Shelf C involves [

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Whirlpool explains that each type of completed refrigerator shelf (*i.e.*, Shelf A, Shelf B, and Shelf C) has its own Whirlpool part number.<sup>30</sup> Each box shipped from the PRC contains only one type of completed refrigerator shelf (*i.e.*, one Whirlpool part number).<sup>31</sup> The Whirlpool part number of the type of completed refrigerator shelf is referenced on the barcode of the box shipped from the PRC and also is reflected on Whirlpool’s 7501 Customs Entry Form.<sup>32</sup>

Whirlpool contends that each of its glass refrigerator shelves is classified under subheading 8418.99.80 of the Harmonized Tariff Schedule of the United States, which covers “Refrigerators, freezers, and other refrigerating or freezing equipment, electric or other. . .; parts thereof: Parts: Other: Other.”<sup>33</sup>

## RELEVANT SCOPE DETERMINATIONS<sup>34</sup>

### Geodesic Domes Kits<sup>35</sup>

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.”<sup>36</sup> However, the Department noted that the scope

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<sup>27</sup> See Scope Ruling Request at 7 and exhibits 7 and 8; *id.* at 7 (showing that the one component made of extruded aluminum is part number [ ]). See also *id.*, at 7, n. 10.

<sup>28</sup> *Id.*, at exhibit 8.

<sup>29</sup> *Id.*, at 8.

<sup>30</sup> See Whirlpool’s Second Supplemental Questionnaire Response.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> See Scope Ruling Request, at 8.

<sup>34</sup> See Memorandum from Victoria Cho to The File, “Antidumping and Countervailing Duty Orders on Aluminum Extrusions from the People’s Republic of China: Prior Scope Rulings Relevant to this Proceeding,” dated concurrently with this memorandum (Prior Scopes Memorandum).

<sup>35</sup> See Memorandum from Brooke Kennedy to Christian Marsh regarding, “Final Scope Ruling on J.A. Hancock, Inc.’s Geodesic Structures,” dated July 17, 2012 (Geodesic Domes Kits Scope Ruling); see also Prior Scopes Memorandum.

<sup>36</sup> See Geodesic Domes Kits Scope Ruling, at 7.

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.”<sup>37</sup> 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.<sup>38</sup>

#### Agilent Technologies, Inc.’s Foreline Hose Assembly<sup>39</sup>

At issue in the ruling was the Foreline Hose Assembly, which could be imported either fully assembled or in a kit form. The Department found that, when imported fully assembled, the Foreline Hose Assembly included finished parts, including those comprised of extruded and non-extruded aluminum components, beyond mere fasteners, that are fully and permanently assembled at the time of importation. The Department also found that, when imported in kit form, the Foreline Hose Assembly included extruded aluminum parts and a non-extruded aluminum component (beyond mere fasteners), which were ready to be fully assembled into a final finished product in an “as is” state upon importation.

The Department ultimately determined that: (1) the fully assembled Foreline Hose Assembly met the scope criteria for finished merchandise because it contains both extruded and non-extruded aluminum parts (beyond mere fasteners) and enters into the United States as an assembled product that requires no further finishing or fabrication; and (2) the Foreline Hose Assembly kit met the scope criteria for finished goods kits because it contains both extruded and non-extruded aluminum parts (beyond mere fasteners) and contains, at the time of importation, all of the necessary parts to fully assemble a final finished good, without further finishing or fabrication.<sup>40</sup>

#### Side Mount Valve Control Kits Scope Rulings<sup>41</sup>

At issue in the scope ruling were certain side-mount valve controls (SMVC) kits that are used in pumping apparatuses that attach to fire engines. The requestor argued that an SMVC kit, as imported, contains all the components necessary to complete the product and that all SMVC components and hardware are fully fabricated and require no further finishing or fabrication prior to being assembled. On this basis, the requestor argued that the product in question met the exclusion criteria for “finished goods kits.”<sup>42</sup>

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<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> See Memorandum from Davina Friedmann to Gary Taverman regarding, “Antidumping and Countervailing Duty Orders on Aluminum Extrusions from the People’s Republic of China: Final Scope Ruling on Agilent Technologies, Inc.’s Foreline Hose Assembly,” dated August 27, 2015 (Agilent Technologies Inc.’s Foreline Hose Assembly Scope Ruling); see also Prior Scopes Memorandum.

<sup>40</sup> *Id.*, at 12.

<sup>41</sup> See Memorandum from John Conniff and Eric B. Greynolds to Christian Marsh entitled, “Initiation and Preliminary Scope Ruling on Side Mount Valve Controls,” dated September 24, 2012 (Preliminary SMVC Kits Scope Ruling), unchanged in the memorandum from John Conniff and Eric B. Greynolds to Christian Marsh entitled, “Final Scope Ruling on Side Mount Valve Control Kits,” dated October 26, 2012 (Final SMVC Scope Ruling) (together, SMVC Kits Scope Rulings); see also Prior Scopes Memorandum.

<sup>42</sup> See Preliminary SMVC Kits Scope Ruling, at 2.



In the scope ruling, the Department explained that, upon further reflection of the language in the scope of the *Orders*, it was revising the manner in which it determines whether a given product is “finished merchandise” or a “finished goods kit.” The Department explained that it identified a concern with its prior analysis, namely that it may lead to unreasonable results. The Department explained that an interpretation of “finished goods kit” which requires all parts to assemble the ultimate downstream product may lead to absurd results, particularly where the ultimate downstream product is, for example, a fire truck. The Department explained that such an interpretation may expand the scope of the *Orders*, which are intended to cover aluminum extrusions.<sup>43</sup>

The Department determined that the scope, taken as a whole, indicates that “subassemblies” (*i.e.*, “partially assembled merchandise”) may be excluded from the scope provided that they enter the United States as “finished goods” or “finished goods kits” and that the “subassemblies” require no further “finishing” or “fabrication.” Therefore, the Department analyzed whether the SMVC kits at issue constituted a subassembly that enters the United States as a “finished goods kit.” The Department found that, for the SMVC kit to be excluded from the scope of the *Orders* as a finished goods kit: (1) the SMVC kit must contain all of the parts necessary to assemble a complete SMVC; (2) all of the components and hardware of the SMVC kit must be fully fabricated and require no further finishing or fabrication prior to being assembled; and (3) once assembled, the SMVC must be ready for use in conjunction with the downstream product upon installation.<sup>44</sup> Based on this analysis, the Department determined that the SMVC kit met the exclusion criteria for subassemblies that enter the United States as “finished goods kits.”<sup>45</sup>

#### Valeo Final Remand Redetermination<sup>46</sup>

This remand redetermination pertained to certain automotive heating and cooling system components which the Department originally determined were covered by the scope of the *Orders*. The products at issue were two distinct types of automotive heating and cooling parts/components, T-Series and M-Series.<sup>47</sup> In the final remand redetermination, the Department, applying the subassemblies test from the SMVC Scope Ruling, concluded that “at the time of importation, the products at issue contain all of the necessary components required for integration into a larger system,” and, thus, there was no meaningful distinction between the products at issue and those examined in the SMVC Scope Ruling. As a result, the Department

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<sup>43</sup> *Id.*, at 7.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*,

<sup>46</sup> See Final Results of Redetermination Pursuant to Court Remand Aluminum Extrusions from the People’s Republic of China, *Valeo Inc., Valeo Engine Cooling Inc., and Valeo Climate Control Corp. v. United States*, No. 12-00381 (May 14, 2013) (Valeo Final Remand Redetermination), addressing the Department’s findings in the Memorandum regarding: Antidumping and Countervailing Duty Orders on Aluminum Extrusions from the People’s Republic of China – Final Scope Ruling on Valeo’s Automotive Heating and Cooling Systems, dated October 31, 2012 (“Auto Heating/Cooling Systems Scope Ruling”). The Valeo Final Remand Redetermination was affirmed by the Court of International Trade on June 20, 2013. See *Valeo Inc. v. United States*, Ct. No. 12-00381, dkt. #23, dated June 20, 2013 (Court Order affirming Remand Redetermination).

<sup>47</sup> See Valeo Remand Redetermination at 5.

determined that the products at issue were subassemblies that constituted excluded finished merchandise as described in the *Orders*, and were not covered by the scope.

#### TSS Wind Sign Frames Scope Ruling<sup>48</sup>

At issue in this ruling were certain Wind Sign Frames that were designed to display or incorporate customizable materials such as graphics or retail advertisements.<sup>49</sup> The Wind Sign Frames consisted of extruded aluminum parts assembled with other non-extruded aluminum components, such as a plastic insert, galvanized steel corner supports, and flexible, heavy steel springs.<sup>50</sup> In this ruling, the Department determined that these non-extruded aluminum components go beyond mere fasteners.<sup>51</sup> Also, the Department found that the product at issue was fully and permanently assembled and completed at the time of entry. Lastly, the Department found that, similar to prior scope rulings, the Wing Sign Frames can be used after importation with interchangeable bases made of plastic or steel, chosen by the end user. For this reason, the Department found that it was unreasonable to require the TSS Wind Sign Frames to be imported with interchangeable bases in order to meet the provisions of the finished goods exclusion set forth in the scope description.<sup>52</sup> The Department concluded that TSS, Inc.'s Wind Sign Frames were "finished merchandise" and thus, excluded from the scope of the *Orders*.<sup>53</sup>

#### Assembled Motor Cases Scope Ruling<sup>54</sup>

At issue in this ruling were UQM Technologies, Inc.'s (UQM's) certain assembled motor cases and certain assembled motor cases in stators.<sup>55</sup> Due to the inclusion of the stator (which contained insulated copper wire), we determined that the assembled motor cases housing stators at issue did not consist entirely of extruded aluminum and that the assembled motor cases housing stators at issue were analogous to a product that consisted on extruded aluminum and non-aluminum products.<sup>56</sup> The Department also found that "subassemblies" (*i.e.*, "partially assembled merchandise") were excluded from the scope provided that they enter the United States as "finished goods" or "finished goods kits" and that the "subassemblies" require no further "finishing" or "fabrication."<sup>57</sup> Thus, the Department determined that the assembled motor cases housing stators at issue constitute "finished goods" that are excluded from the scope of the *Orders* pursuant to 19 CFR 351.225(k)(1).<sup>58</sup>

### **ARGUMENTS FROM INTERESTED PARTIES**

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<sup>48</sup> See Memorandum entitled, "Final Scope Ruling on TSS, Inc.'s Wind Sign Frames," dated June 15, 2015. (Wind Sign Frames Scope Ruling).

<sup>49</sup> *Id.*, at 5.

<sup>50</sup> *Id.*, at 12.

<sup>51</sup> *Id.*, at 12-13.

<sup>52</sup> *Id.*, at 13.

<sup>53</sup> *Id.*

<sup>54</sup> See Memorandum entitled, "Final Scope Ruling on Motor Cases, Assembled and Housing Stators Summary," dated November 19, 2012 (Assembled Motor Cases Scope Ruling).

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*, at 13-14

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*, at 16.

Whirlpool argues that its refrigerator shelves, which contain a combination of glass, steel, and plastic components, as well as minor aluminum components that serve only a decorative purpose, are excluded from the scope of the *Orders* as finished goods for the following reasons.<sup>59</sup> Whirlpool contends that, even if the presence of a decorative aluminum trim piece somehow transforms the glass shelves into “aluminum extrusions,” the glass shelves are nevertheless expressly excluded from the *Orders* because they are “finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry.”<sup>60</sup>

Whirlpool further asserts that determinations of the U.S. International Trade Commission and prior interpretations of the *Orders*’ scope language by the Department support a finding that the shelves are not subject to the *Orders*.

No other party submitted comments regarding Whirlpool’s Scope Ruling Request.

## DEPARTMENT’S POSITION

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

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.” Accordingly, to qualify as “finished merchandise,” the product in question must contain aluminum extrusions “as parts,” plus an additional non-extruded aluminum component (beyond fasteners). This is because, otherwise, the specific language related to the composition of finished merchandise (*i.e.*, “as parts”) would be read out of the scope.<sup>61</sup> Additionally, “finished merchandise” must be fully and permanently assembled at the time of importation.

In prior scope rulings, the Department revised its analysis of exclusions to include subassemblies of ultimate downstream products or systems provided that they enter the United States, as relevant in this case, fully and permanently assembled and completed at the time of entry and ready for installation in the downstream product with no further finishing or fabrication.<sup>62</sup>

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<sup>59</sup> See Scope Ruling Request, at 2.

<sup>60</sup> *Id.*; see also Whirlpool’s Second Supplemental Questionnaire Response.

<sup>61</sup> See, e.g., TSS Wind Sign Frames Scope Ruling.

<sup>62</sup> See Preliminary SMVCs Ruling, at 6-8 and unchanged in the Final SMVC Scope Ruling; Valeo Remand Redetermination, at 9-10; and Assembled Motor Cases Scope Ruling, at 13-14.

We find that Whirlpool’s refrigerator shelves are “finished merchandise” and, thus, excluded from the scope of the *Orders*.<sup>63</sup> First, Whirlpool’s refrigerator shelves contain aluminum extrusions “as parts,” plus additional non-extruded aluminum components (beyond fasteners). Specifically, the refrigerator shelves “consist almost entirely of a combination of glass, steel and plastic components and minor aluminum components that serve only a decorative purpose.”<sup>64</sup> Second, Whirlpool’s refrigerator shelves are fully and permanently assembled at the time of importation. As Whirlpool stated:

{e}ach glass refrigerator shelf will be fully and permanently assembled at the time of importation. After importation, the assemblies will be shipped to Whirlpool’s refrigerator manufacturing facility... . ‘Installing’ each shelf assembly into a refrigerator requires only that it be unpacked and placed in a refrigerator by sliding the shelf into grooves which are built into the interior liner of the refrigerator for the purpose of holding the shelf. No further work is performed on the glass refrigerator shelf assembly after it leaves the factory in China.<sup>65</sup>

Furthermore, Whirlpool’s refrigerator shelves are ready to be installed into a downstream product, *i.e.*, a refrigerator, with no further finishing or fabrication subsequent to importation. Specifically, each type of refrigerator shelf referenced in the scope ruling request is finished at the time of importation into the United States; no further manufacturing, processing, or other operations are required.<sup>66</sup> Subsequent to importation, each shelf is merely slid, “as is,” into a refrigerator.<sup>67</sup>

Accordingly, in light of the above, we determine that Whirlpool’s refrigerator Glass Shelves A, B, and C are fully assembled subassemblies ready for installation and use in a larger system without further fabrication or finishing. We find that these products are analogous to the merchandise considered in the Housing Stators Scope ruling and Valeo Remand Redetermination in that they meet the exclusion criteria for subassemblies that enter the United States as finished merchandise.

## RECOMMENDATION

For the reasons discussed above, and in accordance with 19 CFR 351.225(d) and 19 CFR 351.225(k)(1), we recommend finding that Whirlpool’s refrigerator shelves meet the criteria for “finished merchandise,” as subassemblies, and, therefore, are not subject to the scope of the *Orders*.

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<sup>63</sup> See Scope Ruling Request, at 2.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*, at 8-9; 13-14.

<sup>66</sup> *Id.*, at 17. See also Whirlpool’s Second Supplemental Response.

<sup>67</sup> *Id.*

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

7/19/2017

*James Maeder*

Signed by: JAMES MAEDER