



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-570-967

C-570-968

Scope Ruling: Clam Spreader Poles

Public Document

AD/CVD Operations, OVI: BCD

October 28, 2015

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

THROUGH: Scott Fullerton
Director
Antidumping and Countervailing Duty Operations, Office VI

FROM: Brian C. Davis ^{BCD}
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SUBJECT: Antidumping and Countervailing Duty Orders on Aluminum
Extrusions from the People's Republic of China: Final Scope
Ruling on Clam Corporation's Certain Aluminum Spreader Poles

SUMMARY

Based on a scope ruling request from Clam Corporation (Clam)¹ to determine whether certain aluminum spreader poles are subject to the antidumping duty (AD) and countervailing duty (CVD) orders on aluminum extrusions from the People's Republic of China (PRC),² the Department of Commerce (Department) determines that certain aluminum spreader poles are excluded from the scope of the *Orders*.

¹ See Letter from Clam to the Secretary of Commerce, "Aluminum Extrusions from the People's Republic of China: Request for a Scope Ruling on Certain Aluminum Spreader Poles," dated May 11, 2015 (Scope Ruling Request).

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



BACKGROUND

On May 11, 2015, Clam requested that the Department determine whether certain aluminum spreader poles it produces are outside the scope of the *Orders*. On June 23, 2015, the Department extended the deadline for a ruling by 45 days, until August 10, 2015.³ On July 16, 2015, the Department issued a supplemental questionnaire to Clam for clarification of its scope request,⁴ to which Clam responded on July 30, 2015.⁵ On August 4, 2015, the Department filed a memorandum to the file clarifying that the 45-day deadline starts when the Department receives a properly filed request pursuant to 19 CFR 351.225(c)(1).⁶ The Department determined that Clam's request met the filing requirement of 19 CFR 351.225(c)(1) on July 30, 2015, when it received Clam's supplemental questionnaire response. No party submitted comments regarding Clam's scope ruling request.

SCOPE OF THE ORDERS

The merchandise covered by the order{s} is aluminum extrusions which are shapes and forms, produced by an extrusion process, made from aluminum alloys having metallic elements corresponding to the alloy series designations published by The Aluminum Association commencing with the numbers 1, 3, and 6 (or proprietary equivalents or other certifying body equivalents). Specifically, the subject merchandise made from aluminum alloy with an Aluminum Association series designation commencing with the number 1 contains not less than 99 percent aluminum by weight. The subject merchandise made from aluminum alloy with an Aluminum Association series designation commencing with the number 3 contains manganese as the major alloying element, with manganese accounting for not more than 3.0 percent of total materials by weight. The subject merchandise is made from an aluminum alloy with an Aluminum Association series designation commencing with the number 6 contains magnesium and silicon as the major alloying elements, with magnesium accounting for at least 0.1 percent but not more than 2.0 percent of total materials by weight, and silicon accounting for at least 0.1 percent but not more than 3.0 percent of total materials by weight. The subject aluminum extrusions are properly identified by a four-digit alloy series without either a decimal point or leading letter. Illustrative examples from among the approximately 160 registered alloys that may characterize the subject merchandise are as follows: 1350, 3003, and 6060.

Aluminum extrusions are produced and imported in a wide variety of shapes and forms, including, but not limited to, hollow profiles, other solid profiles, pipes, tubes, bars, and rods. Aluminum extrusions that are drawn subsequent to extrusion (drawn aluminum) are also included in the scope.

Aluminum extrusions are produced and imported with a variety of finishes (both coatings and surface treatments), and types of fabrication. The types of coatings and treatments applied to

³ See Letter from the Department to Clam, "Aluminum Extrusions from the People's Republic of China (PRC): Extension of Deadline for Final Scope Ruling," dated June 23, 2015.

⁴ See Letter from the Department to Clam, "Supplemental Questions," dated July 16, 2015.

⁵ See Letter from Clam to the Department, "Response to Supplemental Questions," dated July 30, 2015. (Clam's Supplemental Response).

⁶ See Memorandum to the File, "Clarification of Deadline," dated August 4, 2015.

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

The scope also excludes aluminum alloy sheet or plates produced by other than the extrusion process, such as aluminum products produced by a method of casting. Cast aluminum products are properly identified by four digits with a decimal point between the third and fourth digit. A letter may also precede the four digits. The following Aluminum Association designations are representative of aluminum alloys for casting: 208.0, 295.0, 308.0, 355.0, C355.0, 356.0,

A356.0, A357.0, 360.0, 366.0, 380.0, A380.0, 413.0, 443.0, 514.0, 518.1, and 712.0. The scope also excludes pure, unwrought aluminum in any form.

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

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

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States (HTSUS): 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, 8302.42.30.1 0, 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 the *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.⁷ 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.⁸ 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.⁹

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

DESCRIPTION OF MERCHANDISE SUBJECT TO THIS SCOPE REQUEST

The goods covered by this scope request are aluminum spreader poles used to support and stabilize the frames of various ice fishing shelters. Some of the spreader poles are of a fixed length and other spreader poles are adjustable in length (20.75" to 67" depending on the particular spreader pole). The fixed spreader poles have an outside diameter of approximately .875". The adjustable spreader poles have an outside diameter of approximately .975" on the outer pole and .75" on the inner pole that slides inside of the wider pole.¹⁰

All of the spreader poles incorporate quick-connect plastic and nylon fittings at each end (either a plastic snap-on C connector or a plastic stud). The plastic snap-on connectors snap directly onto the shelter's frame. The plastic/nylon studs are inserted into a hole in the shelter's frame. These C-connectors and stud tips protect the shelter's fabric from rips and tears.¹¹ Specifically, they prevent the sharp edges of the aluminum tubes from tearing or ripping the fishing shelter's fabric exterior. The adjustable spreader poles also incorporate a plastic collar with a plastic and metal tightening screw enabling the spreader pole to be quickly and easily adjusted and secured at the proper length necessary for the ice shelter frame.¹²

The spreader poles are imported either as separate poles or in groups of poles for a specific model of shelter. According to Clam, if imported separately each pole is packaged in a plastic covering stickered with the spreader pole's part number and if imported as a group then the

⁷ See *Walgreen Co. v. United States*, 620 F.3d 1350, 1357 (Fed. Cir. 2010).

⁸ See 19 CFR 351.225(k)(1).

⁹ See 19 CFR 351.225(d).

¹⁰ See Clam's Scope Ruling Request at pages 2-3.

¹¹ See Clam's Supplemental Response at pages 4-5.

¹² *Id.*

individual poles are still individually packaged and stickered with the part number; however, the group is further bundled with a plastic wrapping and stickered with a part number specific to that group of spreader poles.¹³ Clam also contends that in their condition as imported, each spreader pole is “fully and permanently assembled in a finished condition and is ready to be included and used in an ice shelter assembly kit or sold ‘as is’ to an ultimate user without any further manufacturing or assembly.”¹⁴ Finally, Clam states that the spreader poles are interchangeable and can be used with a variety of shelters.¹⁵

Clam states the imported spreader poles are currently classified under subheading 7608.20.0030 of the HTSUS.¹⁶

RELEVANT SCOPE DETERMINATIONS¹⁷

A. Pool Poles, Skimmers, and Rakes Scope Ruling¹⁸

The Department found that certain telescopic pool poles, detachable skimmer poles and leaf skimmers and rakes were comprised of both extruded aluminum components and non-extruded aluminum materials (*i.e.*, plastic handles, plastic frames, and nylon netting), that these non-extruded aluminum materials go beyond mere fasteners, and, thus, the products at issue met the initial Geodesic Dome Kits test for determining whether a good constitutes a finished good or finished goods kit.¹⁹ Furthermore, because the information on record indicated that the requested products were fully and permanently assembled and completed merchandise at the time of entry, the Department found that certain poles, skimmers, and rakes met the exclusion criteria for finished goods and were, therefore, excluded from the scope of the *Orders*.²⁰

B. KIK Telescoping Poles²¹

KIK Custom Products argued that its telescoping poles were finished goods and were not subject to the orders. The Department found that the telescoping poles contained non-aluminum extruded components such as a plastic handle, a plastic cap, plastic connector(s) and plastic peg(s), which went beyond mere fasteners.²² In addition, the Department found that KIK’s

¹³ *Id.* at 3.

¹⁴ *Id.*

¹⁵ *Id.* at 4.

¹⁶ See Clam’s Scope Ruling Request at page 4.

¹⁷ See the memorandum from Brian Davis 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).

¹⁸ See the memorandum from Eric B. Greynolds to Christian Marsh, “Final Scope Ruling on Pool Poles, Skimmers, and Rakes,” dated November 24, 2014 (Pool Poles Scope Ruling); see also Prior Scopes Memorandum at Attachment A.

¹⁹ See Pool Poles Scope Ruling at 17.

²⁰ *Id.* at 17-19.

²¹ See Memorandum from Paul Stolz to Christian Marsh, “Final Scope Ruling on KIK Custom Products’ Telescoping Poles,” dated November 3, 2014 (KIK Poles Scope Ruling); see also Prior Scopes Memorandum at Attachment B.

²² See KIK Poles Scope Ruling at 5.

telescoping poles are fully and permanently assembled and completed at the time of entry.²³ In addition, similar to the Drapery Rail Kits (Redetermination), Banner Stands and Back Wall Kits, and Solar Panels, these products are designed to work with removable/interchangeable attachments.²⁴ The various accessories that may be attached to KIK's telescoping pole by end users after importation are interchangeable and are available from KIK and a wide variety of other suppliers.²⁵ Further, each end user chooses which product to use as an attachment.²⁶ The Department therefore determined that it would be unreasonable to require that KIK's telescoping poles be imported with these attachments, and found the product to qualify for the finished goods exclusion.

C. Components for Auto Cooling and Heating Systems²⁷ and Valeo Remand Redetermination²⁸

In the Valeo Scope Ruling, the Department determined that Valeo's T-Series and M-Series parts for heating/cooling systems were covered by the scope of the *Orders* because the products were aluminum extrusions that had undergone further fabrication and such products are specifically covered by the *Orders*. Subsequently, Valeo, Inc. filed a complaint with the CIT alleging that the Department did not address or apply the "subassemblies test" that was established in Side Mount Valve Controls to the merchandise at issue in Valeo's initial scope request.²⁹ In response, the Department requested and was granted a voluntary remand to consider whether components for cooling and heating systems are covered by the *Orders* based upon the Department's new subassembly test.³⁰ In the *Valeo Remand Redetermination*, the Department revised its earlier decision and found the parts outside the scope of the *Orders*. In reaching its decision, the Department noted that the subassemblies test is consistent with the scope of the *Orders* because subassemblies that enter the United States as "finished goods" or "finished goods kits" and are later integrated into a larger structure or system are analogous to products that are explicitly excluded from the scope, such as "windows with glass, or doors with glass or vinyl," each of which includes all of the parts necessary to assemble a complete window or door, but is necessarily integrated into a larger structure.³¹

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Final Scope Ruling on Valeo's Automotive Heating and Cooling Systems," dated October 31, 2012 (Valeo Scope Ruling).

²⁸ See *Valeo, Inc. v. United States*, Court No. 12-381, dated February 13, 2013 (*Valeo*) and the 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*, Court No. 12-00381, dated May 13, 2013 (*Valeo Remand Redetermination*). The *Valeo Remand Redetermination* was affirmed by the CIT. See *Valeo, Inc. et al v. United States*, Court No. 12-00381; see also Prior Scopes Memorandum at Attachment C.

²⁹ See *Valeo Remand Redetermination* at 1-2.

³⁰ *Id.* at 2.

³¹ *Id.* at 8-9.

D. Assembled Motor Case Housing Stators³²

At issue in the ruling were certain assembled motor cases and certain assembled motor cases in stators. The assembled motor cases consisted of two extruded aluminum cylinders in which an inner motor case is inserted into an outer motor case. The stator, one of two major components of an electric motor (the other being the rotor), consisted of an extruded aluminum frame around which copper wire is wound using an automatic winding machine. The stator was then pressed into the inner motor case, which was in turn surrounded by the outer motor case.³³ The Department found that the assembled motor cases consisted entirely of extruded aluminum materials, and thus, per the Department's findings in the Geodesic Domes Scope Ruling, found the motor cases to be inside the scope of the Orders.³⁴ Regarding the assembled motor cases in stators, the Department found that "due to the inclusion of the stator (which contains insulated copper wire) the assembled motor cases housing stators do not consist entirely of extruded aluminum."³⁵ As a result, the Department found the assembled motor cases housing stators constituted subassembly finished goods and thus, as in the Side Mount Valve Controls scope ruling, were outside the scope of the Orders.³⁶

E. Side Mount Valve Controls³⁷

At issue in the ruling were certain side-mount valve controls (SMVCs) that are used in pumping apparatuses that attached to fire engines. The requestor argued that an SMVC, 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."³⁸

In the 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 a "finished good" or "finished goods kit." The Department explained that it had 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

³² See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Final Scope Ruling on Motor Cases, Assembled and Housing Stators," dated November 19, 2012 (Housing Stators); see also Prior Scopes Memorandum at Attachment D.

³³ *Id.* at 3.

³⁴ *Id.* at 12.

³⁵ *Id.* at 13-14.

³⁶ *Id.* at 14.

³⁷ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Initiation and Preliminary Scope Ruling on Side Mount Valve Controls," dated September 24, 2012 (Preliminary SMVCs Ruling), unchanged in Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Final Scope Ruling on Side Mount Valve Controls," dated October 26, 2012 (Final SMVCs Ruling) (collectively, Side Mount Valve Controls); see also Prior Scopes Memorandum at Attachment E.

³⁸ *Id.* at 2.

interpretation may expand the scope of the *Orders*, which are intended to cover aluminum extrusions.³⁹

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 at issue constituted a subassembly that enters the United States as a “finished goods kit.” In order for such a kit to be excluded from the scope of the *Orders*, the Department found that the SMVC had to be ready for installation and require no further finishing or fabrication.⁴⁰

The Department concluded that the product at issue contained all of the parts necessary to assemble a complete SMVC and that all the components and hardware of the SMVC were fully fabricated, required no further finishing or fabrication prior to being assembled, and was ready for use upon installation. Based on this information, the Department found that the SMVCs at issue met the exclusion criteria for subassemblies that enter the United States as “finished goods kits.”⁴¹

ARGUMENTS FROM INTERESTED PARTIES

Clam’s Comments

Clam states that in their condition as imported, each spreader pole is fully and permanently assembled in a finished condition and is ready to be included and used in an ice shelter assembly kit or sold “as is” to an ultimate user without any further manufacturing or assembly necessary.⁴² Clam claims its spreader poles constitute finished merchandise and, thus, are excluded from the *Orders*.

Citing to both the *Orders*, and the Final Results of Redetermination Pursuant to Rubbermaid Commercial Products LLC Court Remand, dated February 6, 2015 (Rubbermaid Redetermination), Clam argues its spreader poles meet the finished merchandise exclusion and, thus, fall outside the scope of the *Orders*.⁴³ In the Rubbermaid Redetermination, Clam states, the Department explained that to give effect to the “as parts” language the excluded finished merchandise must contain aluminum extrusions “as parts” plus an additional non-extruded aluminum component.⁴⁴ Clam states that the Department next considered whether a product must be “fully and permanently assembled and completed at the time of entry,” even though the goods might be later incorporated with other components or assembled into a larger downstream product to form a subassembly.⁴⁵ Clam also argues that the Rubbermaid Redetermination addressed the fact that certain aluminum extrusion goods are designed to be used with

³⁹ *Id.* at 7.

⁴⁰ *Id.*

⁴¹ *Id.* at 7-8.

⁴² See Clam’s Scope Ruling Request at page 3.

⁴³ *Id.* at pages 4-6.

⁴⁴ *Id.* at page 5 (citing Rubbermaid Redetermination at page 14).

⁴⁵ *Id.*

interchangeable parts.⁴⁶ Specifically, Clam states that in the underlying court case the Court of International Trade quoted from Rubbermaid’s brief stating that “finished goods which must work in combination with other goods to form a flexible, interchangeable system are not rendered mere in-scope ‘parts’ simply because some of the components of the combination are missing at the time of importation.”⁴⁷ Clam cites to the Department’s determination that under its revised interpretation, the Department found that a product meeting the initial analysis described above (*e.g.*, the two-step test identified above) may meet the exclusion criteria for finished merchandise provided that the good is fully and permanently assembled and completed at the time of entry, “regardless of whether it is later incorporated with other components...”⁴⁸

Clam contends that as indicated above and as confirmed by the samples, each Clam spreader pole incorporates an extruded aluminum tube attached to two plastic/nylon connectors (the C connector or the stud tip) enabling the pole to be connected quickly and easily to the ice shelter frame.⁴⁹ The adjustable poles also include a plastic/nylon collar with a plastic/nylon and nonaluminum tightening screw.⁵⁰ Therefore, according to Clam, there is “no question that the subject goods, which incorporate both aluminum extrusion components and non-aluminum extrusion components, meet the first test in the above two-step analysis.”⁵¹ Additionally, Clam reiterates that its spreader poles are “fully and permanently assembled at the time of entry” and that in their condition as imported, “no further manufacturing or assembly is required for the spreader pole to function properly for its intended purpose.”⁵² Finally, Clam argues that the Department has been clear that goods may qualify as “finished merchandise” “regardless of whether (the imported product) is later incorporated with other components, or assembled into a larger downstream product (*i.e.*, a subassembly)” and that any interpretation to the contrary “may lead to absurd results.”⁵³

We received no additional comments from interested parties.

DEPARTMENT’S POSITION

The Department examined the language of the *Orders* and the description of the product contained in Clam’s Scope Ruling Request, as well as previous rulings made by the Department. We find that the description of the product, the scope language, and prior rulings are, together, dispositive as to whether the product at issue is 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

⁴⁶ *Id.* at page 6.

⁴⁷ *Id.* (citing to *Rubbermaid Commercial Products LLC v. United States*, Slip Op. 14-113 (September 23, 2014) at 27).

⁴⁸ *Id.* at page 6 (citing Rubbermaid Redetermination at 14).

⁴⁹ *Id.* at pages 6-7.

⁵⁰ *Id.* at page 7.

⁵¹ *Id.*

⁵² *Id.* where Clam also states that this statement is supported by a review of the samples submitted with this scope ruling request, which confirm that the spreader poles contain quick-connect attachments on each end enabling the poles to be immediately and easily assembled to the shelter frame with no tools or modifications to the poles themselves (*see* Clam’s Scope Request at exhibits A and B; *see also* Clam’s Supplemental Response at pages 1-4 and 5-6).

⁵³ *Id.* at page 7 (citing to Rubbermaid Redetermination at 14).

below, we find that Clam’s certain aluminum spreader poles as described, meet the exclusion criteria for “finished merchandise.”

As noted above, the scope of the *Orders* excludes “finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry.”⁵⁴ The Department frequently refers to this as the “finished goods” exclusion. This scope language describes excluded finished merchandise as “containing aluminum extrusions as parts” Thus, the excluded “finished merchandise” must contain aluminum extrusions “as parts” plus an additional non-extruded aluminum component. Otherwise, this specific language (*i.e.*, “as parts”) would be read out of the scope, resulting in the different condition “containing aluminum extrusions that are fully and permanently assembled and completed at the time of entry.” Thus, to give effect to this “as parts” language, we find that to qualify for the finished merchandise exclusion the product must contain aluminum extrusions as parts, and must include some non-extruded aluminum component.

The components identified in Clam’s Scope Ruling Request demonstrate that, in addition to extruded aluminum components, the spreader poles in question include non-aluminum components such as plastic and nylon fittings at each end (either a plastic snap-on C connector or a plastic stud).⁵⁵ Clam explained that these components perform functions—namely, “prevent{ing} the sharp edges of the aluminum tubes from tearing or ripping the fishing shelter’s exterior”—other than that of a fastener.⁵⁶ Beyond those components, the adjustable spreader poles include a plastic collar with a plastic and metal tightening screw to secure the pole at the length necessary for the ice shelter frame.⁵⁷ In the instant case, we find that the spreader poles at issue include non-aluminum components, *i.e.*, plastic snap-on C connector(s), plastic stud(s), plastic collar, and plastic and metal tightening screw, that constitute non-aluminum components beyond mere fasteners and, in this respect, are similar to other poles the Department has considered in recent scope rulings.⁵⁸

Next, 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.” Information in Clam’s Scope Ruling Request (*e.g.*, narrative statements) indicates that its spreader poles are merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed.⁵⁹ The spreader poles in question require no further assembly or manufacturing after importation;⁶⁰ they are ready for immediate use as a support pole designed to be used as part of an ice shelter, and which may be used with a variety of accessories.⁶¹ As such, Clam’s spreader poles satisfy the criteria for the finished goods exclusion based on the plain language of the scope (*i.e.*, the scope of the *Orders* excludes “finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled

⁵⁴ See the *Orders*.

⁵⁵ See Scope Ruling Request at page 4, pages 6-7, and Exhibits A-B; see also, Clam’s Supplemental Response at pages 4-5.

⁵⁶ See Clam’s Supplemental Response at pages 4-5.

⁵⁷ *Id.* at pages 2-3.

⁵⁸ See, *e.g.*, KIK Poles Scope Ruling at 5; see also Prior Scopes Memorandum at Attachment B

⁵⁹ See Clam’s Scope Ruling Request at pages 3-4, 4-6, and 7; see also Clam’s Supplemental Response at pages 1-4.

⁶⁰ *Id.*

⁶¹ *Id.* at 3-4.

and completed at the time of entry”), and consistent with recent rulings wherein the Department applied the aforementioned principles in its analysis of whether merchandise constitutes excluded finished goods under the *Orders*.⁶²

In addition, we find that the spreader poles at issue are finished merchandise “subassemblies” of larger systems—*i.e.*, ice fishing shelters. As the spreader poles in question are placed in ice shelters and, thus, are part of a larger whole,⁶³ are fully and permanently assembled and completed, and are ready for installation into the ice shelters, at the time of entry,⁶⁴ these products are fully assembled subassemblies ready for immediate installation and use in a larger system. In the Side Mount Valve Controls ruling the Department concluded that the “subassemblies test” is consistent with the scope of the *Orders* because subassemblies that enter the United States as “finished goods” and are later integrated into a larger structure or system, are analogous to products that are explicitly excluded from the scope, such as “windows with glass” or “doors with glass or vinyl,” which are necessarily integrated into a larger structure.⁶⁵ Thus, analogous to the merchandise considered in the prior Side Mount Valve Controls, *Valeo Remand Redetermination*, and Housing Stators rulings, Clam’s spreader poles are eligible for the finished merchandise exclusion based on the same principles enumerated in these prior rulings. Consequently, we determine that Clam’s spreader poles, as described in the scope request, are fully and permanently assembled and completed at the time of entry, and are excluded from the scope of the *Orders* as finished goods.

⁶² See, *e.g.*, Pool Poles Scope Ruling.

⁶³ See Clam’s Scope Ruling Request at pages 3-4.

⁶⁴ *Id.* at pages 3-4, 4-6, and 7; see also Clam’s Supplemental Response at pages 1-4.

⁶⁵ See Preliminary SMVCs Ruling at 7, unchanged in the Final SMVCs Ruling.

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 certain aluminum spreader poles, are finished goods that fall under the exclusion to the scope of the *Orders* for “finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry.” If the recommendation in this memorandum is accepted, we will serve a copy of this determination to all interested parties on the scope service list *via* first-class mail, as directed by 19 CFR 351.225(d).

Agree Disagree



Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

10/27/15
Date