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Scope Ruling Request: Pentair Telescoping Pool Poles

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

THROUGH: Scot Fullerton *BS*
Director, Office VI
Antidumping and Countervailing Duty Operations

FROM: Deborah Scott *DS*
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SUBJECT: Antidumping and Countervailing Duty Orders on Aluminum Extrusions from the People's Republic of China: Final Scope Ruling on Pentair Water Pool and Spa, Inc.'s Telescopic Aluminum Pool Poles and Detachable Skimmers and Rakes

SUMMARY

On August 24, 2015, the Department of Commerce (the Department) received a scope ruling request from Pentair Water Pool and Spa, Inc. (Pentair)¹ to determine whether certain of its telescopic aluminum pool poles and detachable skimmers and rakes are subject to the antidumping duty (AD) and countervailing duty (CVD) orders on aluminum extrusions from the People's Republic of China (PRC).² Based on our analysis of Pentair's scope request, the Department determines that the products at issue are excluded from the scope of the *Orders*.

¹ See Letter from Pentair to the Department, "Aluminum Extrusions from the People's Republic of China – Request for Scope Ruling," dated August 24, 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 August 24, 2015, Pentair requested that the Department determine whether certain of its telescopic aluminum pool poles and detachable skimmers and rakes are outside the scope of the *Orders*. On September 9, 2015, Pentair filed a supplement to its scope ruling request.³ On January 5, 2016, the Department issued a supplemental questionnaire to Pentair to obtain clarification and additional information about the products at issue in its Scope Ruling Request.⁴ On January 29, 2016, counsel for Pentair met with Department officials to discuss Pentair's pending supplemental questionnaire response.⁵ On February 1, 2016, Pentair submitted a response to the Department's supplemental questionnaire.⁶

SCOPE OF THE ORDERS

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

Aluminum extrusions are produced and imported in a wide variety of shapes and forms, including, but not limited to, hollow profiles, other solid profiles, pipes, tubes, bars, and rods. 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.*,

³ See Letter from Pentair to the Department, "Aluminum Extrusions from the People's Republic of China – Supplement to Request for Scope Ruling," dated September 9, 2015 (Supplement to Scope Ruling Request).

⁴ See Letter from the Department to Pentair dated January 5, 2016.

⁵ See Memorandum from Deborah Scott to the File, "Antidumping Duty Order on Aluminum Extrusions from the People's Republic of China; Scope Ruling Request – Pentair Water Pool and Spa, Inc. (Pentair)," dated January 29, 2016.

⁶ See Letter from Pentair to the Department, "Aluminum Extrusions from the People's Republic of China – Scope Inquiry," dated February 1, 2016 (Supplemental Questionnaire Response).

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): 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.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

A. Aluminum Pool Poles

Pentair states that it imports telescoping pool poles of varying size and configuration that are designed to accommodate a number of final applications, according to consumer preference.¹⁰ The pool poles subject to Pentair's scope ruling request are poles imported with a permanently-fused skimmer (pole-skimmer combo), single-tube fixed length poles, and multi-tube adjustable length poles.¹¹ Pentair states the single-tube and multi-tube poles include holes that serve as attachment points which allow the end user to attach various appliances depending on the specific job the end user is attempting to accomplish.¹²

Pentair states that the aluminum tubes making up its pool poles are hollow and have a diameter of 1.125 or 1.25 inches.¹³ Pentair explains that the poles consist of one or two individual hollow nesting tubes; the latter variation has two telescoping tubes where one pole slides inside the other, allowing the end user to choose the desired pole length.¹⁴ Pentair states that the poles have a clear or blue anodized coating and some models have a grip-improving ribbed outer texture.¹⁵

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 Scope Ruling Request at 3.

¹¹ See Scope Ruling Request at 3 and Tab 1, photos 1, 2a-2b, and 3a-3b and Supplemental Questionnaire Response at 1.

¹² See Scope Ruling Request at 3.

¹³ *Id.*, at 3 and Tab 1, photos 5a-5c.

¹⁴ *Id.*, at 3 and Tab 1, photo 6.

¹⁵ *Id.*, at 3 and Tab 1, photos 7a-7b.

Pentair states that at the time of importation, the poles have ABS plastic handle grips, length-adjustment locking mechanisms, and attachment mechanisms. Pentair maintains these additional component parts are vital to the poles' function as a maintenance tool, because the handle enables the user to grip the pole, the locking mechanism permits non-slip adjustment to the desired length, and the attachment mechanism allows different appliances to be used interchangeably.¹⁶ Pentair describes three types of length-locking mechanisms, the "EZ Lock Cam," the "Metal Cam," and the "Sur-Lock," and states that these are made of die-cast aluminum.¹⁷ Pentair clarified that all poles/aluminum tubes are made of extruded aluminum.¹⁸ Pentair indicates that in the case of the pole-skimmer combos, the skimmers' frames are composed of ABS plastic, the nets are made of nylon, and the "handle" portion of the skimmers (*i.e.*, the part of the skimmer that is permanently attached to the pole) is either made of plastic or extruded aluminum.¹⁹

Pentair states that all of its pool poles can be used interchangeably with attachments of matching diameters from various manufacturers, except for the pole-skimmer combos, which consist of skimmers that are permanently fused to the poles.²⁰ Pentair notes that the pool poles subject to its scope ruling request are classifiable under HTSUS 7616.99.5090.²¹

B. Aluminum Skimmers and Aluminum Rakes

Pentair states that it also imports interchangeable skimmer and rake attachments that are designed to work with the pool poles.²² Pentair explains that the primary difference between skimmers and rakes is in the size and depth of the netting: rakes have a deeper net that is designed to catch larger debris typically found on the bottom of the pool, while skimmers have a more tightly-fitted net designed to catch smaller debris on the water's surface.²³

Pentair indicates that the frame of the skimmers and rakes consists of one of the following: ABS plastic and extruded aluminum (for reinforcement); ABS plastic and solid extruded aluminum; ABS plastic only; or solid extruded aluminum only.²⁴ The net of the skimmers and rakes is composed of nylon, fiberglass, or polyester.²⁵ Pentair states that the frame is attached to a short extruded aluminum pole with an average length of 5¼ inches that enables the skimmers and rakes to be locked onto the pool poles as an attachment.²⁶ The short poles have a blue anodized

¹⁶ *Id.*, at 3-4 and Tab 1, photo 8.

¹⁷ *See* Scope Ruling Request at 4 and Tab 1, photos 9, 10, and 11 and Supplemental Questionnaire Response at 2.

¹⁸ *See* Supplemental Questionnaire Response at 2.

¹⁹ *Id.*, at 2-3, 7-8, and Table 2.

²⁰ *Id.*, at 4 and 8.

²¹ *See* Supplement to Scope Ruling Request at 1.

²² *See* Scope Ruling Request at 4.

²³ *Id.*, at 5 and Tab 1, photos 15-16.

²⁴ *See* Scope Ruling Request at 4 and Tab 1, photo 12 and Supplemental Questionnaire Response at 5, 7, and Table 2.

²⁵ *Id.*, at 4 and Tab 1, photo 13.

²⁶ *See* Scope Ruling Request at 4-5 and Tab 1, photo 14 and Supplemental Questionnaire Response at 5-6.

coating.²⁷ Pentair notes that the locking mechanisms which secure the skimmers and rakes to the poles are made of ABS plastic.²⁸

Pentair states that its skimmers and rakes can be used interchangeably with poles of matching diameters from various suppliers.²⁹ Pentair notes that the skimmers and rakes subject to its scope ruling request are classifiable under HTSUS 9506.99.5500.³⁰

C. Manner of Importation of the Poles, Skimmers, and Rakes

Pentair states that it sources its pool poles, skimmers, and rakes directly from suppliers located in the PRC, and that it is the importer of record and/or the consignee.³¹ Pentair explains that at the time of importation, the poles are packaged in bulk containers of twelve individual poles per package, and the skimmers and rakes come in packages of six to twelve.³² At the time of importation, the packaging for all poles, skimmers, and rakes is marked with branding, model number, and the required safety labeling.³³

Pentair states that no attachments are included with the poles; instead, these products are sold and packaged separately.³⁴ Most skimmers and rakes are sold in the condition in which they are imported, although some are repackaged with other products as part of a pool maintenance kit.³⁵ Pentair states that upon delivery to its facility in Chino, California, some packages are broken down and the poles are sold in smaller quantities, but the majority of poles, skimmers, and rakes are not repackaged.³⁶ Pentair clarified that no alteration or further assembly occurs after importation with respect to the poles, skimmers, and rakes; all are finished goods when they enter U.S. Customs territory.³⁷

Pentair states that its products are marketed toward pool builders and pool maintenance service companies. Its pool poles, skimmers, and rakes are sold to distributors, which then sell to pool builders. In some cases, the distributors also have retail stores, which sell the products directly to homeowners. Pentair states that most of the poles, skimmers, and rakes are sold under the “Pentair” or “Rainbow” brand.³⁸ Pentair provided a copy of its most recent pool maintenance tool sales brochure as of the time of its scope ruling request.³⁹

²⁷ See Supplemental Questionnaire Response at 6 and Table 2.

²⁸ *Id.*, at 2.

²⁹ *Id.*, at 4 and 8.

³⁰ See Supplement to Scope Ruling Request at 1.

³¹ See Scope Ruling Request at 6.

³² *Id.*

³³ *Id.*, at 6 and Tab 1, photos 17a-17b.

³⁴ *Id.*, at 6.

³⁵ *Id.*, at 6 and Tab 1, photos 18a-18b.

³⁶ See Scope Ruling Request at 6-7 and Supplemental Questionnaire Response at 9.

³⁷ *Id.*

³⁸ See Scope Ruling Request at 7.

³⁹ *Id.* at Tab 3.

RELEVANT SCOPE DETERMINATIONS⁴⁰

A. Unger Pole Handles Scope Ruling⁴¹

In the Unger Pole Handles Scope Ruling, the products at issue were several pole handles designed to work with a variety of cleaning/tool heads that are attached to the poles. In addition to aluminum tubes of various lengths and diameters, each pole handle incorporates a polypropylene hand grip, a polypropylene tool and one of several accessory attachment heads that accept a variety of tools and attachments.⁴² The Department found that the products at issue met the exclusion criteria for “finished goods.” The Department noted that the “finished merchandise” exclusion specifies that excluded merchandise contain aluminum extrusions “as parts.” Thus, to give effect to this “as parts” language, the Department found that to qualify for the finished merchandise exclusion the product must contain both aluminum extrusions and some non-extruded aluminum component. Accordingly, noting that the products at issue contained non-extruded aluminum parts (which are more than mere fasteners), in addition to extruded aluminum components, the Department found that Unger's pole handles were merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry, and thus, excluded by the finished merchandise exclusion.⁴³

B. Klik-Klik MagPole Scope Ruling⁴⁴

Klik-Klik Systems Inc. (Klik-Klik) argued that its MagPole pole product is a finished good and not subject to the *Orders*. The Department found that, in addition to extruded aluminum components, the MagPole included non-extruded aluminum materials such as fiberglass tubes, plastic handles, plastic buttons, rubber bumpers and steel rolling pins which go beyond mere fasteners.⁴⁵ In addition, the Department found that the MagPole is fully and permanently assembled and completed at the time of entry.⁴⁶ Although the MagPole may be used with separate tools, those attachments are removable/interchangeable, available from a wide variety of suppliers, and selected based on the preference of the end user.⁴⁷ The Department therefore determined that Klik-Klik's MagPoles are excluded from the scope of the orders as finished goods.⁴⁸

⁴⁰ See Memorandum from Deborah Scott 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).

⁴¹ See Memorandum from James Terpstra to Christian Marsh, “Final Scope Ruling on Unger Enterprises Inc.’s Pole Handles,” dated April 22, 2015 (Unger Pole Handles Scope Ruling); *see also* Prior Scopes Memorandum at Attachment 1.

⁴² See Unger Pole Handles Scope Ruling at 5-6.

⁴³ *Id.* at 12-13.

⁴⁴ See Memorandum from James Terpstra to Christian Marsh, “Final Scope Ruling on Klik-Klik Systems Inc. (“Klik-Klik”) Magpole,” dated November 19, 2014 (Klik-Klik MagPole Scope Ruling); *see also* Prior Scopes Memorandum at Attachment 2.

⁴⁵ See Klik-Klik MagPole Scope Ruling at 8.

⁴⁶ *Id.* at 9.

⁴⁷ *Id.*

⁴⁸ *Id.*

C. Unger Telescoping Poles Scope Ruling⁴⁹

Unger Enterprises Inc. (Unger) argued that its telescoping poles are finished goods and therefore excluded from the scope of the orders. The Department found that, in addition to extruded aluminum components, Unger's telescoping poles include non-extruded aluminum materials such as plastic tube plugs, hand grips, locking collars, locking buttons and cones which go beyond mere fasteners.⁵⁰ In response to arguments by Petitioner that the non-extruded aluminum parts are mere fasteners or that they are merely “incidental” to the function of the product, the Department observed that the *Orders* contain no requirement regarding “incidental” function, and found that the non-extruded aluminum components integrate into the product in a variety of ways beyond that of a mere fastener.⁵¹ The Department additionally found that the telescoping poles were fully and permanently assembled and completed at the time of entry.⁵² In addition, Unger’s telescoping poles are designed to work with removable/interchangeable attachments.⁵³ The various products that may be attached to Unger's telescoping poles by end users after importation are interchangeable and are available from Unger and a variety of other suppliers. As a result, the Department determined that the products in question were excluded from the scope of the orders under the finished goods exclusion.⁵⁴

D. Ace Telescoping Extension Poles Scope Ruling⁵⁵

Ace Hardware Corporation (Ace) argued that its Telescoping Extension Poles are excluded from the scope of the *Orders* as finished merchandise. The Department found that the pole products at issue contain extruded aluminum “as parts” in addition to non-extruded aluminum components that go beyond mere fasteners (*e.g.*, plastic locking collar and handle, zinc alloy universally threaded tip, a fiberglass tube, *etc.*).⁵⁶ In addition, the Department found that the pole products at issue are imported as finished products that are fully and permanently assembled at the time of importation.⁵⁷ Similar to products in other prior scope rulings, the Department determined that Ace’s poles need not include removable/interchangeable attachments at the time of importation in order to qualify for the finished merchandise exclusion.⁵⁸ Therefore, the Department determined that Ace’s Telescoping Extension Poles are excluded from the scope of the *Orders* under the finished merchandise exclusion.⁵⁹

⁴⁹ See Memorandum from James Terpstra to Christian Marsh, “Final Scope Ruling on Unger Enterprises Inc.’s Telescoping Poles,” dated February 19, 2015 (Unger Telescoping Poles Scope Ruling); *see also* Prior Scopes Memorandum at Attachment 3.

⁵⁰ See Unger Telescoping Poles Scope Ruling at 10-11.

⁵¹ *Id.* at 11.

⁵² *Id.*

⁵³ *Id.* at 11-12.

⁵⁴ *Id.* at 13.

⁵⁵ See Memorandum from Davina Friedmann to Gary Taverman, “Antidumping and Countervailing Duty Orders on Aluminum Extrusions from the People’s Republic of China: Final Scope Ruling on Ace Hardware Corporation’s Telescoping Extension Poles,” dated August 28, 2015 (Ace Telescoping Extension Poles Scope Ruling); *see also* Prior Scopes Memorandum at Attachment 4.

⁵⁶ See Ace Telescoping Extension Poles Scope Ruling at 8.

⁵⁷ *Id.*, at 8-9.

⁵⁸ *Id.*, at 9.

⁵⁹ *Id.*

ARGUMENTS FROM INTERESTED PARTIES

Pentair claims that its pool poles, skimmers, and rakes are excluded from the scope of the *Orders* under the finished merchandise exclusion because these products are imported as finished products that are ready for use as imported.⁶⁰ Pentair asserts the Department need not consider the factors set forth at 19 CFR 351.225(k)(2), but should issue a ruling that the products at issue are out-of-scope based on 19 CFR 351.225(k)(1).⁶¹ Pentair contends that upon importation, its poles are ready to be used directly out of the box, as the poles are complete with the handles, locks, and attachment hardware that can accommodate whatever attachment the end user requires.⁶² Likewise, Pentair maintains, its skimmers and rakes are finished goods that are ready for use by the end user straight from their import packaging. Pentair argues the imported skimmers and rakes are fully assembled goods that have been fitted with the appropriate plastic and nylon, fiberglass, or polyester hardware that imparts their essential characteristic as a pool cleaning tool. In fact, Pentair claims, the skimmers and rakes could be utilized by hand without being attached to a pool pole, although it would be impractical to do so.⁶³ Pentair notes its poles can be used interchangeably with skimmers, rakes, or brushes,⁶⁴ just like its skimmers and rakes can be used interchangeably with different length poles. Pentair states that the choice of which pole to attach to a skimmer or rake and the choice of which skimmer or rake to attach to a pole is dependent upon the end user's needs.⁶⁵ Pentair argues the interchangeability of these products is a desired and essential feature of the products and is analogous to the use of different drapes with drapery rail kits.⁶⁶

Pentair avers that while the Department should find Pentair's poles, skimmers and rakes outside the scope of the *Orders* based on 19 CFR 351.225(k)(1), an analysis of the factors at 19 CFR 351.225(k)(2) yields the same conclusion.⁶⁷

No other party submitted comments regarding Pentair's Scope Ruling Request.

DEPARTMENT'S POSITION

The Department examined the language of the *Orders* and the description of the products contained in Pentair's Scope Ruling Request, Supplement to Scope Ruling Request, and Supplemental Questionnaire Response, 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

⁶⁰ See Scope Ruling Request at 11-12.

⁶¹ *Id.* at 13.

⁶² *Id.*

⁶³ *Id.* at 14.

⁶⁴ Pentair notes that a subset of its poles is imported with a skimmer appliance permanently attached. *Id.* at 13.

⁶⁵ *Id.* at 12.

⁶⁶ *Id.*

⁶⁷ *Id.* at 14-15.

below, we find that Pentair’s telescopic aluminum pool poles and detachable skimmers and rakes meet the exclusion criteria for “finished merchandise.”

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...” (emphasis added). Thus, the scope language describes excluded finished merchandise as “containing aluminum extrusions *as parts*...” As previously explained in the Unger Pole Handles Scope Ruling, we take this language to mean that the excluded “finished merchandise” must contain aluminum extrusions “as parts” plus an additional non-extruded aluminum component.⁶⁸ 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 therefore must include some non-extruded aluminum component.

Pentair’s Scope Ruling Request and subsequently-submitted documents demonstrate that the aluminum pool poles, aluminum skimmers, and aluminum rakes all contain aluminum extrusions “as parts” plus additional non-extruded aluminum components that go beyond mere fasteners. All of the aluminum pool poles at issue are made of extruded aluminum, while the handle grips and locking mechanisms are composed of ABS plastic and die-cast aluminum, respectively.⁶⁹ In the case of the pole-skimmer combos (*i.e.*, poles imported with a permanently-fused skimmer), the skimmers’ frames are made of ABS plastic, the nets are made of nylon, and the “handle” portion of the skimmers (*i.e.*, the portion that is permanently attached to the pole) is either made of plastic or extruded aluminum.⁷⁰ As for the aluminum skimmers and aluminum rakes at issue, the frames of these appliances are composed of either: ABS plastic and extruded aluminum (for reinforcement); ABS plastic and solid extruded aluminum; ABS plastic only; or solid extruded aluminum only.⁷¹ The frames of the skimmers and rakes are attached to a short extruded aluminum pole that allows these appliances to be locked onto the pool poles.⁷² The nets of the skimmers and rakes are made of nylon, fiberglass, or polyester, and the locking mechanisms that secure the skimmers and rakes to the poles are made of ABS plastic.⁷³ Therefore, we find that Pentair’s aluminum pool poles, aluminum skimmers, and aluminum rakes meet the “as parts” requirement of the finished merchandise exclusion because each of the products at issue contains non-extruded aluminum components that go beyond mere fasteners.

The finished merchandise exclusion also requires that the product at issue be “fully and permanently assembled and completed at the time of entry.” Information on the record of this scope ruling request shows that Pentair’s aluminum pool poles, aluminum skimmers, and aluminum rakes are merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry. For example, photographs show that these products are completely assembled when they enter the United States.⁷⁴ Therefore, we find

⁶⁸ See Unger Pole Handles Scope Ruling at 12-13.

⁶⁹ See Scope Ruling Request at 3-4 and Supplemental Questionnaire Response at 2.

⁷⁰ See Supplemental Questionnaire Response at 2-3, 7-8, and Table 2.

⁷¹ See Scope Ruling Request at 4 and Supplemental Questionnaire Response at 5, 7, and Table 2.

⁷² See Scope Ruling Request at 4-5 and Supplemental Questionnaire Response at 5-7.

⁷³ See Scope Ruling Request at 4 and Supplemental Questionnaire Response at 2.

⁷⁴ See Scope Ruling Request at Tab 1, photos 1, 2a-2b, 3a-3b, 12, 13, 14, 15, and 16.

that Pentair's aluminum pool poles, aluminum skimmers, and aluminum rakes satisfy the requirement in the scope definition that they enter into the United States as fully and permanently assembled and completed products.

Additionally, similar to the products considered in the Clik-Clik Magpole Scope Ruling, Unger Telescoping Poles Scope Ruling, Unger Pole Handles Scope Ruling, and Ace Telescoping Extension Poles Scope Ruling,⁷⁵ Pentair's aluminum pool poles, aluminum skimmers, and aluminum rakes are designed to work with removable/interchangeable attachments. Specifically, with the exception of the pole-skimmer combos (which consist of skimmers that are permanently fused to poles), Pentair's aluminum pool poles can be used interchangeably with attachments of matching diameters from various manufacturers.⁷⁶ Similarly, Pentair's aluminum skimmers and aluminum rakes can be used interchangeably with poles of matching diameters from various suppliers.⁷⁷ The choice of pole or attachment is dependent upon the needs of the end user.⁷⁸ Consistent with the aforementioned Scope Rulings, the Department finds that it would be unreasonable to require Pentair's aluminum pool poles, aluminum skimmers, and aluminum rakes to be imported with interchangeable attachments that can change with users' needs in order for the Department to consider these products to constitute "finished merchandise" for purposes of the scope exclusion.

In conclusion, as explained above, we determine that Pentair's aluminum pool poles, aluminum skimmers, and aluminum rakes are fully and permanently assembled and completed at the time of entry and contain non-extruded aluminum components beyond mere fasteners, and as such, we find these products to be excluded from the scope of the *Orders* as "finished merchandise."

⁷⁵ See Unger Pole Handles Scope Ruling at 15, Clik-Clik Magpole Scope Ruling at 9, Unger Telescoping Poles Scope Ruling at 11-12, and Ace Telescoping Extension Poles Scope Ruling at 9.

⁷⁶ See Supplemental Questionnaire Response at 4 and 8.

⁷⁷ *Id.*

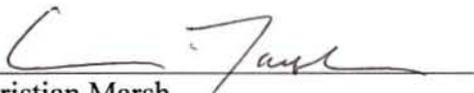
⁷⁸ See Scope Ruling Request at 12-13.

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 the aluminum pool poles, aluminum skimmers, and aluminum rakes at issue are finished merchandise and, thus, not subject to the scope of the *Orders*.

If the recommendation in this memorandum is accepted, we will serve a copy of this determination to all interested parties on the scope service list via first-class mail, as directed by 19 CFR 351.225(d).

Agree Disagree



Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

3/11/16

Date