

**FINAL RESULTS OF REDETERMINATION
PURSUANT TO COURT REMAND
ROWLEY COMPANY V. UNITED STATES
Court No. 12-00055 (Order)**

Summary

The U.S. Department of Commerce (Department) has prepared these final results of redetermination pursuant to the remand order of the U.S. Court of International Trade (the Court) in Rowley Company v. United States, Court No. 12-00055 (Ct. Int'l Trade November 30, 2012) (Remand Order). This final remand redetermination addresses the issue of whether certain drapery rail kits are encompassed within the scope of the Orders.¹

In the Drapery Kits Scope Ruling, the Department determined that certain drapery rail kits contained in the Scope Request² of the Rowley Company (Rowley) were within the scope of the Orders.³ In response to the Department's request for a voluntary remand, the Court issued the Remand Order in which it granted the Department the opportunity to reconsider its determination in the Drapery Kits Scope Ruling to address the Department's concerns with respect to the determination, the reasoning on which the determination was based, and to fully address and account for Rowley's arguments. In accordance with the Remand Order, the Department issued the Draft Remand Results in which it re-examined its initial determination and determined that the products at issue in the Drapery Kits Scope Ruling are outside the scope of the Orders.⁴ On February 8, 2013, Rowley and Petitioners submitted comments to the Draft

¹ 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) (the Orders).

² See Rowley's November 16, 2011, submission (Scope Request).

³ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Final Scope Ruling on Drapery Rail Kits," (February 3, 2012) (Drapery Kits Scope Ruling).

⁴ See Draft Results of Redetermination Pursuant To Court Remand Rowley Company v. United States Court No. 12-00055 (January 29, 2013) (Draft Remand Results).

Remand Results.⁵ For the reasons discussed below, the Department continues to find that the products at issue in the Drapery Kits Scope Ruling are outside the scope of the Orders.

Background

On May 26, 2011, the Department published the Orders in the Federal Register. The scope of the Orders reads as follows:

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

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

Aluminum extrusions are produced and imported with a variety of finishes (both coatings and surface treatments), and types of fabrication. The types of coatings and treatments applied to subject aluminum extrusions include, but are not limited to, extrusions that are mill finished (*i.e.*, without any coating or further finishing), brushed, buffed, polished, anodized (including bright-dip anodized), liquid painted, or powder coated. Aluminum extrusions may also be fabricated, *i.e.*, prepared for assembly. Such operations would include, but are not limited to, extrusions that are cut-to-length, machined, drilled, punched, notched, bent, stretched, knurled, swaged, mitered, chamfered, threaded, and spun. The subject merchandise includes aluminum extrusions that are finished (coated, painted, *etc.*), fabricated, or any combination thereof.

⁵ Petitioners are the Aluminum Extrusion Fair Trade Committee.

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 (HTS): 7604.21.0000, 7604.29.1000, 7604.29.3010, 7604.29.3050, 7604.29.5030, 7604.29.5060, 7608.20.0030, and 7608.20.0090. The subject merchandise entered as parts of other aluminum products may be classifiable under the following additional Chapter 76 subheadings: 7610.10, 7610.90, 7615.19, 7615.20, and 7616.99 as well as under other HTS chapters. In addition, fin evaporator coils may be classifiable under HTS numbers: 8418.99.80.50 and 8418.99.80.60. While HTS subheadings are provided for convenience and customs purposes, the written description of the scope of {these Orders} is dispositive.

Rowley filed its Scope Request on November 16, 2011, to which Petitioners did not submit comments. The products subject to the Scope Request are drapery rail kits consisting of a rail that is made of extruded aluminum with an approximately 1.1 inch outer diameter. The cross section of the rail is designed so that it has a slot to accept the decorative brackets with a locking piece specifically designed to lock onto the slot. The decorative bracket consists of several parts assembled together. A base and a shaft are designed to support the rail while taking aesthetics into consideration. At one end of the shaft, there is a locking piece to engage and lock with the rail. A threaded round bracket piece for installing on a wall is threaded into the base of the decorative bracket. Decorative finials fit on two ends of the rail and have set screws. Both finials and brackets are made of steel. Rails, decorative brackets and decorative finials are matching, finished by plating or painting or powder coating. In the Scope Request, Rowley explains that the products at issue would be classifiable under HTS heading 8302.41.6050, which

includes “base metal mountings . . . suitable for buildings . . . for curtains, draperies and Window Shades.”⁷

Referencing the exclusion language for “finished goods kits,” Rowley asserted in the Scope Request that the products at issue provide all of the pieces that a consumer needs to install and use for drapery purposes.⁸ Rowley argued that the brackets and finials included as part of the drapery kits at issue are integral parts of the kits in that they complete the kit for both functional and aesthetic purposes.⁹ Though the products at issue include fasteners used to install the brackets, Rowley contended that the general public and the drapery and window treatment industry will not regard either the brackets or the finials as fasteners.¹⁰ Referencing various retail websites, pages of which were included in its Scope Request, Rowley further argued that it is industry practice to treat the products at issue as “sets” or “kits.”¹¹ On this basis, Rowley argued that the Department should treat the products at issue as “finished goods kits” that are excluded from the scope of the Orders.

In reaching its determination in the Drapery Kits Scope Ruling, the Department explained that the scope of the Orders excludes finished goods kits, which are described as a “packaged combination of parts that contains, at the time of importation, all of the necessary parts to fully assemble a final finished good and requires no further finishing or fabrication, such as cutting or punching, and is assembled ‘as is’ into such a finished product.”¹² The Department further

⁷ See Scope Request, at 3.

⁸ See *id.*, at 2-3.

⁹ *Id.*, at 2.

¹⁰ *Id.*

¹¹ *Id.*, at 3.

¹² See Drapery Kits Scope Ruling, at 8-9.

explained that prior scope determinations had considered the finished goods kit exclusion, and that it found that these prior determinations were instructive.¹³

In the Drapery Kits Scope Ruling, the Department explained that the wall units previously examined in the Banner Stands and EZ Wall System Scope Rulings constituted finished goods kits in and of themselves.¹⁴ Thus, in those scope rulings, the Department found that it was unnecessary for the wall display units to be accompanied by graphical materials in order for the products to meet the exclusion criteria for finished goods kits. However, in the Drapery Kits Scope Ruling, the Department explained that the products at issue were designed with the intention of attaching curtains or drapes. Furthermore, the Department found that products at issue were not analogous to those examined in the Banner Stands and EZ Wall System Scope Rulings.

Instead, the Department found that the products at issue in the Drapery Kits Scope Ruling were analogous to the product examined in the Awnings Scope Ruling in which the Department determined that the requested product did not constitute a “packaged combination of parts that contains, at the time of importation, all of the necessary parts to fully assemble a final finished good and requires no further finishing or fabrication, such as cutting or punching, and is assembled ‘as is’ into such a finished product.”¹⁵ In the Drapery Kits Scope Ruling, the Department concluded that, just as a complete retractable awning mechanism kit would require inclusion of a textile cover at the time of importation to meet the exclusionary language that

¹³ *Id.* Specifically, the Department referenced the following scope determinations: the Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on Certain Retractable Awning Mechanisms” (October 14, 2011) (Awnings Scope Ruling), the Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on Banner Stands and Back Wall Kits,” (October 19, 2011) (Banner Stands Scope Ruling), and the Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on EZ Fabric Wall Systems” (November 9, 2011) (EZ Wall Systems Scope Ruling).

¹⁴ See Banner Stands Scope Ruling, at 10.

¹⁵ See Awnings Scope Ruling, at 9-10.

defines a finished goods kit or finished product, the curtains or drapes were integral components necessary to assemble a complete finished goods kit for drapery rails. Thus, because the products at issue in the Scope Request lacked curtains or drapes at the time of importation, the Department found in the Drapery Kits Scope Ruling that the products did not meet the exclusion criteria for “finished goods kits.” On this basis, the Department found in the Drapery Kits Scope Ruling that the products at issue were within the scope of the Orders.

On August 10, 2012, Rowley filed its brief with the Court. On October 19, 2012, the Department asked the Court to grant it a voluntary remand that would allow the Department to re-examine the determination it reached in the Drapery Kits Scope Ruling. On November 30, 2012, the Court granted the Department’s request for a voluntary remand.

Analysis

Upon review of the underlying record and in light of the comments submitted by Rowley in its Scope Request, the Department has revised its determination reached in the Drapery Kits Scope Ruling. As indicated 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, such as finished windows with glass, doors with glass or vinyl, picture frames with glass pane and backing material, and solar panels.

In the Banner Stands and EZ Wall Systems Scope Rulings, the Department examined display units constructed from aluminum extrusions that were designed to exhibit interchangeable and customizable graphical materials.¹⁶ In the Banner Stands and EZ Wall Systems Scope Rulings, the Department found that the products at issue were analogous to completed picture frames, which are explicitly excluded from the scope of the Orders.¹⁷ The Department further disagreed with the notion that the display units examined in the Banner

¹⁶ See Banner Stands Scope Ruling, at 9 -10; EZ Wall Systems Scope Ruling, at 9-10.

¹⁷ See Banner Stands Scope Ruling, at 10.

Stands and EZ Wall Systems Scope Rulings were covered by the scope of the Orders because they lacked any accompanying printed graphical materials at the time of importation.¹⁸ The Department concluded that, with regard the products at issue in the Banner Stands and EZ Wall Systems Scope Rulings, it would be unreasonable to require that the products at issue be accompanied at the time of importation with affixed graphical material that cannot be removed or altered at a later date.¹⁹ For instance, concerning the products at issue in the Banner Stands Scope Ruling, the Department stated, “it is evident that the banner stands and back wall kits at issue are designed to incorporate interchangeable graphical materials that can change with users’ needs,” in contrast to an element which is necessary to assemble a complete product, as in the Awnings Scope Ruling.²⁰

Upon re-examination of the record of the underlying scope inquiry, the Department found in the Draft Remand Results that the drapery rail kits at issue in the Scope Request are, in fact, analogous to picture frames with glass and backing material as well as the display units examined by the Department in the Banner Stands and EZ Wall Systems Scope Rulings.²¹ As with a picture frame with glass and backing or a banner stand display unit, the Department found that the drapery rail kits at issue contain all of the parts necessary to assemble a drapery rail system, save for the decorative drapes or curtains that may be affixed at a later date, and are designed to meet the specifications of the end customer.²² And, just as with a photograph inserted into a completed picture frame (i.e., a frame containing glass and backing) or material containing a graphical image that is affixed to a display unit, the Department found that the

¹⁸ Id.; EZ Wall Systems Scope Ruling, at 10.

¹⁹ Id.

²⁰ See Banner Stands Scope Ruling, at 10.

²¹ See Draft Remand Results at 6.

²² Id., citing to Scope Request, including excerpts from websites selling the products at issue without drapes or curtains included.

drapes that are attached to the assembled drapery railing kits at issue constitute readily interchangeable materials that can change with users' needs.²³ Thus, for the same rationale discussed in the Banner Stands and EZ Wall Systems Scope Rulings, the Department similarly determined in the Draft Remand Results that it would unreasonable to require that the drapery rail kits at issue be accompanied at the time of importation with decorative drapes that are intended to be customizable.²⁴

Therefore, in the Draft Remand Results, we found that the drapery rail kits described in the Scope Request constitute "finished goods kits" as described in the scope of the Orders, and, thus, fall outside the scope.²⁵ We further found that regardless of whether these drapery rail kits are accompanied by drapes or curtains, these products are designed to incorporate readily interchangeable drapes or curtains that can change with users' needs and are intended to be customizable.²⁶ Concerning the claim that Rowley's products are imported under an HTS subheading which is not listed in the scope of the Orders, we noted that the HTS subheadings included therein are not dispositive.²⁷ Thus, in the Draft Remand Results, we determined that the drapery rail kits are excluded from the scope of the Orders as a "finished goods kit," rather than on the basis of the HTS subheading.²⁸

Rowley's Comments²⁹

Rowley states that it agrees with the analysis and conclusion of the Department's Draft Remand Results.³⁰

²³ Id.

²⁴ Id.

²⁵ Id.

²⁶ Id.

²⁷ Id.

²⁸ Id.

²⁹ See Rowley's February 8, 2013, comments, at 1.

³⁰ Id.

Petitioners' Comments³¹

Petitioners first state that they take “no position regarding whether the drapery kits at issue in this case are excluded from the scope” of the Orders.³² Nonetheless, Petitioners argue that, to the extent the Department made its redetermination on the basis that interchangeable graphic material does not need to be packaged or otherwise included with an aluminum extrusion at the time of importation, such interpretation is inappropriate. Petitioners argue that nowhere in the language of the scope is there any reference to “graphic material.” They contend that the scope does state that for a “final finished good” kit to be complete it must contain “all” of the necessary parts. They argue that a drapery kit is effectively nothing more than an aluminum extrusion without the drape to accompany it.

Citing to the Awnings Scope Ruling, Petitioners argue that when an element is necessary to assemble a complete product, that element must accompany the product at the time of importation.³³ In that sense, elements that make up the essential character of the product should be required to be imported with the aluminum extrusion.

Petitioners further argue that in the Draft Remand Results, the Department analogizes drapery kits to picture frames which are explicitly excluded from the scope. However, Petitioners argue that the graphic material is not essential for the picture frame to function as a picture frame.³⁴ Petitioners maintain that the essential function of a fully functioning drapery system, however, is to cover a surface by attaching curtains, drapes, or other cloths. Thus, they argue that the drape is essential to completing a final fully functioning product; without the drapes the drapery kit is nothing more than a series of aluminum extrusions and mounting

³¹ See Petitioners' February 8, 2013, comments (Petitioners' Comments).

³² Id. at 1-2.

³³ See Petitioners' Comments at 2, citing to the Awnings Scope Ruling, at 9.

³⁴ See Draft Remand Results, at 6.

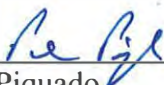
hardware.³⁵ Consequently, to the extent that the graphic material is essential to completing a fully functional product, Petitioners request the Department interpret the scope to include those aluminum extrusions that require the graphic material for final completion.

Department’s Position

At the outset of Petitioners’ Comments, they state that they “take no position regarding whether the drapery kits at issue in this case are excluded from the scope” of the Orders. Because Petitioners have taken no position as to the subject of this remand redetermination, Petitioners’ comments concerning the Department’s reasoning as an abstract matter are irrelevant.

Conclusion

In light of the parties’ comments, in which they either expressed support or took no position on the Department’s determination in the Draft Remand Results, and for the reasons discussed above, the Department continues to find that the products at issue are outside the scope of the Orders.



Paul Piquado
Assistant Secretary
for Import Administration



Date

³⁵ See Petitioners’ Comments, at 3.