

U.S. Court of Appeals for the Federal Circuit

MERIDIAN PRODUCTS, LLC, Plaintiff-Appellee WHIRLPOOL CORPORATION,
Plaintiff v. UNITED STATES, Defendant ALUMINUM EXTRUSIONS FAIR
TRADE COMMITTEE, Defendant-Appellant

Appeal No. 2016–2657

Appeal from the United States Court of International Trade in No. 1:13-cv-00246-TCS, Chief Judge Timothy C. Stanceu.

Decided: May 22, 2018

FRANCES PIERSON HADFIELD, Crowell & Moring, LLP, New York, NY, argued for plaintiff-appellee. Also represented by ALEXANDER SCHAEFER, Washington, DC.

ROBERT E. DEFRANCESCO, III, Wiley Rein, LLP, Washington, DC, argued for defendant-appellant. Also represented by ALAN H. PRICE, TESSA V. CAPELITO, DERICK HOLT.

Before NEWMAN, O'MALLEY, and REYNA, *Circuit Judges*.

REYNA, *Circuit Judge*.

Aluminum Extrusions Fair Trade Committee appeals the decision of the United States Court of International Trade affirming a remand determination of the United States Department of Commerce. Commerce originally determined that imports of certain extruded aluminum door handles for kitchen appliances that are packaged for importation with two plastic end caps and two screws are within the scope of relevant antidumping and countervailing duty orders. On appeal, the Court of International Trade concluded that Commerce's original scope ruling was unreasonable and unsupported by substantial evidence and remanded to Commerce for reconsideration. On remand, Commerce determined, under protest, that the subject products are not included in the scope of the relevant orders. The Court of International Trade affirmed Commerce's redetermination. We *reverse* and *remand*.

BACKGROUND

I. Antidumping and Countervailing Duty Orders

On March 31, 2010, the Aluminum Extrusions Fair Trade Committee ("AEFTC") and the United Steel, Paper, and Forestry, Rubber, Manufacturing, Energy Allied Industrial and Service Workers International Union filed petitions with Commerce requesting initiation of antidumping and countervailing duty investigations on imports of

certain aluminum extrusions from the People's Republic of China. On April 27, 2010, Commerce initiated antidumping and countervailing duty investigations based on those petitions. On May 26, 2011, Commerce issued antidumping and countervailing duty orders on aluminum extrusions from China. See *Aluminum Extrusions from the People's Republic of China* ("Antidumping Duty Order"), 76 Fed. Reg. 30,650 (Dep't of Commerce May 26, 2011); *Aluminum Extrusions from the People's Republic of China* ("Countervailing Duty Order"), 76 Fed. Reg. 30,653 (Dep't of Commerce May 26, 2011).¹ The antidumping duty order describes the scope of the duty order as covering imports from China of aluminum extrusions that are shapes and forms, produced by an extrusion process, made from specified aluminum alloys. *Antidumping Duty Order*, 76 Fed. Reg. at 30,650. The extrusions possess "a wide variety of shapes and forms" in "a variety of finishes." *Id.* The following is a relevant excerpt of the scope language:

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.

Id. at 30,650–51. The scope also contains several exclusions:

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 re-

¹ The antidumping and countervailing duty orders recite the same scope. Compare *Antidumping Duty Order*, 76 Fed. Reg. at 30,650–51, with *Countervailing Duty Order*, 76 Fed. Reg. at 30,653–54. For ease of reference, only the scope of the *Antidumping Duty Order* is cited.

quires 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.

Id. at 30,651.

II. Scope Ruling Request

The scope of an antidumping duty order may be challenged upon a request for a ruling on the scope of the order, i.e., whether particular merchandise is covered by the scope of the order. 19 C.F.R. § 351.225(c)(1). On January 11, 2013, Meridian requested that Commerce review the scope of the antidumping duty order to confirm whether three types of imported aluminum extruded kitchen appliance door handles are within the scope of the antidumping duty order. Meridian described the three types of door handles as follows:

(1) Type A handles are for attachment to oven doors. They are made of aluminum extrusions, which are brushed and anodized. Holes are drilled in the handles.

(2) Type B handles are for attachment to oven doors. The handles are made of aluminum extrusions, plus two plastic injection molded end caps at each end. The end caps are used to fasten the handle to the door. Holes are drilled in the handles.²

(3) Type C handles are for attachment to freezer doors. They are made of aluminum extrusions and include an allen wrench and installation instructions. Holes are drilled in the handles.

J.A. 540.

Meridian argued that the door handles meet the “finished goods kit” exclusion and are therefore not within the scope of the order. J.A. 112, 131. Commerce initiated a formal scope inquiry on February 25, 2013, and solicited additional information from interested parties.

III. Procedural History

On June 21, 2013, Commerce issued its final scope ruling based on its consideration of submissions by the parties, the “description of the products in the Scope Request, the scope language, and the Department’s previous scope rulings concerning the Orders.” J.A. 550.

² In addition to the end caps that “are used to fasten the handle to the door,” imports of the Type B handles included two screws. The same is true with respect to the Type A and C handles.

Commerce found that all of Meridian's handles are covered by the scope of the antidumping duty order. J.A. 550–53.

With respect to the Type B handles, the only handle subject to this appeal, Commerce determined that Meridian's products, with the exception of the fasteners, consist entirely of aluminum extrusions covered by the scope of the antidumping duty order. Commerce found that the Type B handles were not "finished goods kits" because the "scope of the Orders indicates that the inclusion of fasteners in the packaging will not transform an aluminum extrusion product into a finished goods kit." J.A. 550. In addition, Commerce found that the "scope expressly includes aluminum extrusions which are identified by reference to their end use." *Id.* Commerce concluded that Meridian's Type B handles were identified by their end use (handles for kitchen oven doors), and that they otherwise met the general scope definitions. Based on these findings, Commerce determined that the Type B handles were within the scope of the Orders. Commerce concluded that the 19 C.F.R. § 351.225(k)(1) factors, specifically the "scope of the Orders and prior scope rulings" were dispositive, and that it was unnecessary to consider the 19 C.F.R. § 351.225(k)(2) factors. J.A. 550.

A. *Meridian I*

Meridian appealed Commerce's final scope ruling to the United States Court of International Trade ("CIT"). The CIT affirmed Commerce's scope ruling that Type A and Type C door handles consisting of a single extruded handle (and fasteners etc.) are within the scope of the orders. *Meridian Prods., LLC v. United States*, 125 F. Supp. 3d 1306, 1310–12 (Ct. Int'l Trade 2015) ("*Meridian I*"). Meridian does not challenge or appeal before the court the Type A and Type C rulings.

The CIT, however, determined the Type B handles are "assemblies" not within the scope because the extruded aluminum handles are packaged with two plastic injection molded end caps, and two screws. The CIT explained that the plastic end caps are not fasteners but "specialized parts, molded to a shape necessary to their function as components of a complete handle assembly, in which they are fitted to the ends of the extruded aluminum component." *Id.* at 1314. Based on these conclusions, the CIT held that the Type B handles are not within the general scope of the antidumping duty order.

The CIT further concluded that even if the Type B handles are within the scope, they would be excluded under the "finished merchandise" exclusion because the Type B handles are ready for use "as is" at the time of importation. *Id.* at 1315–16. Because the CIT identified record evidence that the Type B handles were assembled at the time of entry, it faulted Commerce for "not analyz[ing] the Type B

handles separately with respect to the finished merchandise exclusion,” but rather “address[ing] all three handle types simultaneously.” *Id.*

The CIT remanded to Commerce instructing Commerce to provide clarification on its scope ruling in view of the CIT’s decision that “Type B handles are not included within the general scope of the antidumping duty order.” *Id.* at 1312–16.

B. *Meridian II*

On remand, Commerce affirmed that its original scope ruling was correct. In its Final Result of Redetermination, Commerce determined that “the Type B door handles are covered by the general scope language and are not excluded under either the ‘finished merchandise’ or ‘finished goods kit’ exclusions.” J.A. 34 (Commerce’s Remand Redetermination dated March 23, 2016). Commerce specifically found that both the scope language and record evidence supported its finding that the plastic end caps of the Type B handles should be treated as fasteners. J.A. 31. But, given the CIT’s remand order, Commerce determined, under protest, that the Type B door handles are not included in the scope of the order. J.A. 29–30, 36.³

The CIT affirmed Commerce’s remand determination, finding that substantial record evidence supports Commerce’s finding that the Type B handles are not covered by the scope of the order. *Meridian Prods., LLC v. United States*, 180 F. Supp. 3d 1283, 1292 (Ct. Int’l Trade 2016) (“*Meridian II*”). The AEFTC timely appealed. We have jurisdiction pursuant to 28 U.S.C. § 1295(a)(5).

STANDARD OF REVIEW

This court reviews *de novo* CIT decisions concerning antidumping and countervailing duties. *Atlantic Sugar, Ltd. v. United States*, 744 F.2d 1556, 1559 n.10 (Fed. Cir. 1984). When reviewing antidumping duty scope rulings, we apply the same substantial evidence standard of review as does the CIT. See *Shenyang Yuanda Aluminum Indus. Eng’g Co. v. United States*, 776 F.3d 1351, 1354 (Fed. Cir. 2015). Accordingly, we will uphold a scope determination if it is supported by substantial evidence and is otherwise in accordance with law. 19 U.S.C. § 1516a(b)(1)(B)(i). Substantial evidence is relevant evidence that a reasonable mind may accept as adequate to support a conclu-

³ In general, Commerce will reach a remand determination under protest under circumstances where the CIT remands with instructions that dictate a certain outcome that is contrary to how Commerce would otherwise find. See *Viraj Grp., Ltd. v. United States*, 343 F.3d 1371, 1376 (Fed. Cir. 2003) (holding that Commerce preserves its right to appeal in instances where Commerce makes a determination under protest and the CIT sustains its decision after remand).

sion. *Eckstrom Indus., Inc. v. United States*, 254 F.3d 1068, 1071 (Fed. Cir. 2001).

We afford significant deference to Commerce's own interpretation of its orders, mindful that scope determinations are "highly fact-intensive and case-specific." *King Supply Co. v. United States*, 674 F.3d 1343, 1345, 1348 (Fed. Cir. 2012); see also *Meridian Prods. LLC v. United States*, 851 F.3d 1375, 1381–82 (Fed. Cir. 2017).

DISCUSSION

I

Under United States trade law, Commerce is authorized to impose antidumping duties on imports that have been deemed as sold in the United States at less than fair value, and countervailing duties on imports that benefit from certain government subsidies in their country of manufacture. See 19 U.S.C. §§ 1673, 1671. At the conclusion of an antidumping or countervailing duty investigation, assuming the requisite affirmative findings are made, Commerce issues orders imposing antidumping or countervailing duties on imports of the goods that were investigated in the respective underlying investigations. A description of the goods that are subject to antidumping or countervailing duties is provided in the duty order. When questions arise as to whether a particular product is included within the scope of an antidumping or countervailing duty order, an interested party may request that Commerce issue a "scope ruling" to clarify the scope with respect to the particular product. See 19 C.F.R. § 351.255(a); see *Shenyang*, 776 F.3d at 1354 ("There is no specific statutory provision governing the interpretation of the scope of antidumping or countervailing [duty] orders."). This case involves such a scope ruling request made by Meridian.

This Court recently clarified the legal framework required of Commerce in making scope ruling determinations. See *Meridian*, 851 F.3d at 1381–82. First, the plain language of an antidumping order is "paramount" in determining whether particular products are included within its scope. *King Supply*, 674 F.3d at 1345. "If the scope is unambiguous, it governs." *Meridian*, 851 F.3d at 1381. In reviewing the plain language of a duty order, Commerce must consider "[t]he descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the Commission." 19 C.F.R. § 351.225(k)(1).

Second, if the above sources do not dispositively answer the question, Commerce may consider the following so-called (k)(2) factors:

- (i) The physical characteristics of the product;
- (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.

19 C.F.R. § 351.225(k)(2). As the question in this appeal is dispositively resolved under the criteria in 19 C.F.R. § 351.225(k)(1), we do not reach the (k)(2) factors.

II

AEFTC argues that Commerce’s original scope ruling is supported by substantial evidence, and that the CIT failed to give deference to Commerce’s interpretation and fact finding. AEFTC contends that the CIT impermissibly substituted its judgment for that of Commerce to conclude that the plastic end caps render the handles “assemblies” and thereby exclude the Type B handles from the general scope language. We agree.

There is no dispute that the Type B handles alone consist of extruded aluminum products that meet the physical descriptions of merchandise subject to the order. In addition, the parties do not dispute Commerce’s ruling that the Type A and C handles are within the scope, despite that imports of those handles also include screws. The relevant difference between the three types of handles is that Type B handles include two plastic end caps while the other handles do not. Stated differently, but for the end caps, the Type B handle would also be covered by the scope of the order. This appeal, therefore, turns on whether the plastic end caps remove the Type B handles from the general scope and, if not, whether the Type B handles fall within one or more of the scope exclusions.

A. Commerce’s Original Scope Ruling

Applying our legal framework, we first turn to the plain language of the antidumping duty order. *Meridian*, 851 F.3d at 1383. The general scope language describes the subject merchandise covered by the order as “aluminum extrusions which are shapes and forms, produced by an extrusion process, made from aluminum alloys.” *Antidumping Duty Order*, 76 Fed. Reg. at 30,650. The scope also states in relevant part:

Subject aluminum extrusions may be described at the time of importation as parts for final finished products that are assembled after importation . . . 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’ . . . Subject extrusions maybe identified with reference to their end use . . . Such goods are subject merchandise if they otherwise meet the scope definition . . .

Id. at 30,650–51.

Commerce concluded that the Type B handles are within the scope of the plain language of the duty order because they are aluminum extrusions made of 6000 series aluminum alloy, which match the physical description of the subject merchandise. J.A. 550. That is, the handles are “aluminum extrusions which are shapes and forms,” made of an aluminum alloy that is covered by the general scope of the antidumping duty order.

Commerce further found that the plastic end caps on the Type B handle did not change this characterization, because the end caps are fasteners. Although a description of fasteners only appears in the “finished goods kit” scope exclusion, the “finished goods kit” language informs what may constitute a fastener in the context of the scope of the antidumping duty order as a whole. The “finished goods kit” language states that “[a]n imported product will not be considered a ‘finished goods kit’ and therefore, excluded from the scope of the investigation merely by including fasteners *such as* screws, bolts, *etc.* in the packaging with an aluminum extrusion product.” *Antidumping Duty Order*, 76 Fed. Reg. at 30,651 (emphasis added).

Commerce determined that both the scope language and the record evidence support a finding that the plastic end caps in question are fasteners. Commerce, therefore, concluded that “Meridian’s products consist entirely of aluminum extrusions, with the exception of fasteners, which, by the language of the scope, do not remove the aluminum extrusion product from the scope.” J.A. 551.

Meridian does not fully dispute that the end caps are fasteners. Meridian also describes the plastic end caps as fasteners in its scope request: “the end caps are attached at each end of the handle to serve as . . . the mechanism for attaching to the oven door.” J.A. 111. Commerce found from Meridian’s description for the Type B handles that “[t]he end caps are used to *fasten* the handle to the door.” J.A. 540 (emphasis added). Hence, Meridian’s own descriptions support Commerce’s interpretation that the end caps are fasteners.

Upon finding that the Type B handles are covered by the general scope of the antidumping duty order, Commerce next considered whether the Type B handles meet one or more of the scope exclusions. The two scope exclusion provisions are the “finished goods kit” exclusion and the “finished merchandise” exclusion.

Commerce found that the Type B handles do not meet the “finished goods kit” because the order provides that “the inclusion of fasteners in the packaging will not transform an aluminum extrusion product into a ‘finished goods kit.’” J.A. 550. Given Commerce’s finding that the end caps are fasteners, the Type B handles are not excluded under the “finished goods kit” provision.

Commerce next considered whether the “finished merchandise” exclusion applied, and decided it did not.⁴ Commerce concluded that the issue was not whether Meridian’s products were finished merchandise, “because the record is undisputed that the aluminum extrusion parts are not fully and permanently assembled with non-aluminum extrusion parts at the time of entry.” J.A. 551; *but see infra* note 8. Rather, Commerce concluded, the issue is whether Meridian’s products are finished goods kits, as discussed above.

In addition, Commerce noted that Meridian’s products are identified by reference to their end use: door handles for kitchen appliances. J.A. 550. The scope language recites:

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.

Antidumping Duty Order, 76 Fed. Reg. at 30,651.

Commerce explained that because the Type B handles are aluminum extrusions that are identified by reference to their end use, and the handles otherwise meet the scope definition, the handles are included with the scope regardless of whether or not they are ready for use “as is” before importation. J.A. 551. Commerce analogized the Type B handles to door thresholds and carpet trim, which are both examples of subject extrusions that are referred to by their end use. J.A. 550. Conversely, Commerce distinguished Meridian’s handles from windows with glass, or picture frames with glass and backing material, which are expressly excluded as “finished merchandise.” J.A. 552.

Commerce also examined prior scope rulings interpreting the same antidumping duty order and found them consistent with its interpretation in this case. Commerce looked to prior rulings that considered whether products that consist solely of aluminum extrusions and fasteners meet the exclusion for “finished merchandise” or “finished

⁴ Finished merchandise is defined as containing aluminum extrusions as parts that are fully and permanently completed at the time of entry, such as finished windows. *Antidumping Duty Order*, 76 Fed. Reg. at 30,651.

goods kit.” J.A. 551–52. For example, in both the Geodesic Domes Scope Ruling⁵ and Refrigerator/Freezer Trim Kits Scope Ruling,⁶ Commerce found that the kits that consist only of subject aluminum extrusions, *fasteners*, and *installation accessories*, did not meet the exclusion for “finished goods kits.” *Id.* In the Cutting & Marking Edges Scope Ruling,⁷ Commerce found the products at issue are aluminum extrusions matching the physical description of subject merchandise, and did not constitute “finished merchandise.” *Id.* Commerce noted that the “kitchen appliance door handles at issue, with the exception of fasteners, consist entirely of aluminum extrusions and, thus, are similar to the products examined in the Geodesic Dome Scope Ruling, Cutting & Edging Scope Ruling and Refrigerator/Freezer Trim Kits Scope Ruling.” J.A. 553.

We conclude that the scope of the antidumping duty order as a whole supports Commerce’s treatment of the end caps as fasteners. The scope language does not limit fasteners to non-plastic components, but rather provides examples of common fasteners. We see no requirement that fasteners are limited to metal screws or bolts. And the record evidence supports the conclusion that the plastic end caps serve to fasten, or attach, the handles to the appliance doors.

B. The CIT’s Interpretation

The CIT improperly narrowed the scope of the antidumping duty order by finding that the Type B handles are “assemblies” that are not covered by the general scope description. The CIT’s interpretation rests on its view that the plastic end caps are not fasteners, specifically “plastic end caps do not resemble a product described by the term ‘fastener’ as that term is commonly and commercially used.” *Meridian I*, 125 F. Supp. 3d at 1316. The CIT devotes significant discussion—that it later describes as dictum—about the applicability of the scope’s subassembly provision to the Type B handles. *Id.* at 1313, 1317. In the end, instead of a subassembly, the CIT found the Type B handle was excluded under the “finished merchandise” scope exclusion provision. *Id.* at 1314–16.

⁵ Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on J.A. Hancock, Inc.’s Geodesic Structures” (July 17, 2012).

⁶ Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on Refrigerator/Freezer Trim Kits” (Dec. 18, 2012).

⁷ Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on Cutting and Marking Straight Edges” (Nov. 13, 2012).

As explained above, Commerce relied upon the “description of the products in the Scope Request, the scope language, and the Department’s previous scope rulings concerning the Orders” to determine that the Type B handles are within the scope. J.A. 550. That the CIT arrived at conclusions different from Commerce’s factual findings is immaterial to the extent that Commerce’s original scope ruling is reasonable and supported by substantial evidence. See *Nippon Steel Corp. v. United States*, 458 F.3d 1345, 1359 (Fed. Cir. 2006) (“So long as there is adequate basis in support of the Commission’s choice of evidentiary weight, the Court of International Trade, and this court, reviewing under the substantial evidence standard, must defer to the Commission.”). Here, the CIT gave insufficient deference to Commerce’s interpretation of the scope of the antidumping and countervailing duty orders. “Commerce is entitled to substantial deference with regard to its interpretations of its own antidumping duty orders. This deference is appropriate because the meaning and scope of antidumping orders are issues particularly within the expertise and special competence of Commerce.” *King Supply*, 674 F.3d at 1348 (internal citations and quotations omitted); see *Meridian*, 851 F.3d at 1382–83.

Based on the foregoing, we hold that Commerce’s original scope ruling determination that the Type B handles are included within the general scope of the antidumping and countervailing duty orders on aluminum extrusions from China is reasonable and supported by substantial evidence. We also conclude that Commerce’s original scope ruling that the Type B handles are not excluded from the scope of the order under the “finished goods kit” exclusion provision is reasonable and supported by substantial evidence. Because it is unclear from the record before Commerce and the statements made by Meridian’s counsel in its reply brief and at oral argument before this court whether the Type B handles are fully and permanently assembled at the time of entry,⁸ we remand for Commerce to clarify this point. If Commerce determines that the Type B handles are imported

⁸ See, e.g., J.A. 130 (Meridian describes the Type B handles as “an assembly of the middle handle bar extrusion piece plus two plastic injection molded end caps at each end”); J.A. 131 (Meridian states that “the appliance door handles are a packaged combination of parts that contains, at time of importation, all the necessary components to assemble a complete handle. . . . The package contains the components such as bottom mount fasteners and allen wrench necessary for installation by the customer.” (emphasis added)); J.A. 181 (“Meridian’s Type A Handles and Type B Handles are fully and permanently assembled and completed at the time of entry like finished windows with glass or solar panels.”); Appellee Br. 4 (“The Type B oven handle packages are imported assembled in a form ready to be sold to and directly used by the consumer/end user. They are not an unassembled kit.” (citations omitted)); Oral Arg. at 7:50–8:18, available at <http://www.cafc.uscourts.gov/oral-argument-recordings/2016-2657/all> (Q: “Did Commerce ever say that these are assembled merchandise?” Appellant: “It didn’t say whether it was assembled or not. It does in fact say . . . in the petition—the request itself—from the respondents they call it assembled

unassembled, then its original scope ruling controls and the inquiry ends. If Commerce determines the Type B handles are imported fully and permanently assembled, then we direct Commerce to address the question of whether the Type B handles are excluded from the scope of the antidumping and countervailing duty order as “finished merchandise.”

CONCLUSION

For the reasons stated above, we (1) reverse the CIT’s decision in *Meridian II* affirming Commerce’s remand determination; (2) reverse the CIT’s decision in *Meridian I* with respect to the Type B handles; (3) instruct the CIT to vacate Commerce’s remand determination; and (4) order the CIT to reinstate Commerce’s original scope ruling and remand for further proceedings consistent with this opinion. Accordingly, the decision of the United States Court of International Trade is

REVERSED AND REMANDED

Costs

Each party shall bear its own costs.

merchandise. It appears to be assembled from the schematic.”); *id.* at 12:01–12:03 (Meridian: “It is an assembly”); *id.* at 15:29–15:34 (Meridian referring to the Type B product: “Yes, that is a finished assembly. It’s a finished product.”); *id.* at 18:50–19:10 (Meridian: “To the extent that the Appellant is claiming that somehow the assembly fails to satisfy the finished merchandise exception, five pieces attached together included in a package with screws and instructions for a product to attach to an oven well that would be a final product and nothing needs to be done other than attach it.”); *id.* at 20:49–20:55 (Meridian: “We’re dealing with a finished good. But if it was unassembled then we have the finished goods kit exclusion.”); *id.* at 21:53–22:00 (Meridian: “We have an assembly that’s finished—that’s imported as a finished assembly—it meets the scope of the exclusion.”).

WHIRLPOOL CORPORATION, Plaintiff-Appellee v. UNITED STATES,
Defendant ALUMINUM EXTRUSIONS FAIR TRADE COMMITTEE,
Defendant-Appellant

Appeal No. 2017–1117

Appeal from the United States Court of International Trade in No. 1:14-cv-00199-TCS, Chief Judge Timothy C. Stanceu.

Decided: May 23, 2018

DONALD HARRISON, Gibson, Dunn & Crutcher LLP, Washington, DC, argued for plaintiff-appellee.

ROBERT E. DEFRANCESCO, III, Wiley Rein, LLP, Washington, DC, argued for defendant-appellant. Also represented by ALAN H. PRICE, TESSA V. CAPELOTO, DERICK HOLT.

Before PROST, *Chief Judge*, MOORE and REYNA, *Circuit Judges*.

Opinion for the court filed by *Chief Judge* PROST.

Opinion concurring-in-part, dissenting-in-part filed by *Circuit Judge* REYNA.

PROST, *Chief Judge*.

Aluminum Extrusions Fair Trade Committee (“AEFTC”) appeals a decision from the U.S. Court of International Trade (“the CIT”) affirming a scope ruling of the U.S. Department of Commerce. The scope ruling held that Whirlpool Corporation’s kitchen appliance door handles with end caps (“assembled handles”) do not fall within the scope of the antidumping and countervailing duty orders on aluminum extrusions from the People’s Republic of China (“the Orders”). For the reasons stated below, we affirm-in-part, reverse-in-part, vacate-in-part, and remand.

BACKGROUND

The instant appeal addresses whether particular products fall within the scope of existing antidumping and countervailing duty orders. We examine the Orders’ scope and the procedural history before turning to the merits.

I

Commerce published the Orders in 2011. *See Aluminum Extrusions from the People’s Republic of China: Antidumping Duty Order*, 76 Fed. Reg. 30,650 (Dep’t of Commerce May 26, 2011); *Aluminum Extrusions from the People’s Republic of China: Countervailing Duty Order*, 76 Fed. Reg. 30,653 (Dep’t of Commerce May 26, 2011). The scope of the Orders describes the subject merchandise as “aluminum extrusions” that “are shapes and forms, produced by an extrusion process, made from” specified aluminum alloys. *Antidumping Duty*

Order, 76 Fed. Reg. at 30,650.¹ The subject extrusions “may be described at the time of importation as parts for final finished products that are assembled after importation.” *Id.* The scope also “includes the aluminum extrusion components that are attached (e.g., by welding or fasteners) to form subassemblies, i.e., partially assembled merchandise.” *Id.*

The Orders’ scope contains several exclusions. *Meridian*, 851 F.3d at 1379. For example, the scope has a finished merchandise exclusion, which “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.” *Antidumping Duty Order*, 76 Fed. Reg. at 30,651. The scope also has a finished goods kit exclusion, which

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.

Id. The next sentence of the Orders includes, however, an exception to the finished goods kit exclusion. *See Meridian*, 851 F.3d at 1385. The exception states that “[a]n imported product will not be considered a ‘finished goods kit’ and therefore excluded from the scope of the investigation merely by including fasteners such as screws, bolts, etc. in the packaging with an aluminum extrusion product.” *Id.*

II

On December 20, 2013, Whirlpool submitted a request for a scope ruling that its kitchen appliance door handles with end caps were not covered by the scope of the Orders. Whirlpool’s December 2013 Scope Request was expressly based on a claim that its assembled handles were subject to the finished merchandise exclusion.

On August 4, 2014, Commerce issued its Scope Ruling for Whirlpool’s assembled handles.² Commerce found that “the handles at issue do not meet the exclusion criteria for ‘finished merchandise’ and, therefore, are inside the scope of the Orders.” J.A. 340. As a

¹ The Orders recite the same scope. *See Meridian Prod., LLC v. United States*, 851 F.3d 1375, 1379 n.4 (Fed. Cir. 2017). *Compare Antidumping Duty Order*, 76 Fed. Reg. at 30,650–51, with *Countervailing Duty Order*, 76 Fed. Reg. at 30,653–54. We refer only to the scope in the Antidumping Duty Order for ease of reference.

² This August 2014 Scope Ruling also addressed a January 2014 Scope Request from Whirlpool. That request dealt with aluminum extruded appliance handles that consisted of

threshold issue, Commerce rejected Whirlpool's argument that the fasteners exception language in the scope only applies in the context of the finished goods kit exclusion and that it should not apply in the finished merchandise exclusion. J.A. 342. Commerce found "unconvincing the notion that an unassembled product in kit-form that consists solely of extruded aluminum, save for fasteners, would . . . fall inside the scope while the identical product, entering the United States as an assembled good, would fall outside the scope of the Orders." J.A. 43.

Because Commerce determined that the fasteners exception also applies to the finished merchandise exclusion, it concluded that "the mere inclusion of fasteners, in this case the plastic end caps, does not result in the extruded aluminum handles falling outside the scope of the Orders as extruded finished merchandise." J.A. 341. Citing the dictionary definition of a washer, Commerce found that "the end caps . . . are involved in attaching the handle to the refrigerator door in a manner that allows the handle to fit tightly to the refrigerator door and relieves friction between the door and the handle," and on that basis found "that the plastic end caps are analogous to a washer." J.A. 340. Commerce, in a prior scope ruling, had considered washers to fall within the scope's reference to fasteners. Accordingly, Commerce found "that the handles a tissue are comprised entirely of extruded aluminum and fasteners (i.e., plastic end caps)." J.A. 340.

Whirlpool appealed Commerce's August 2014 Scope Ruling to the CIT. After briefing and oral argument, the CIT issued its February 2016 Remand Order (*Whirlpool I*). The CIT remanded to Commerce for two reasons. First, the CIT determined that the general scope language of the Orders could not be reasonably interpreted to include Whirlpool's assembled handles at all. The CIT noted that "Commerce did not rely on the 'subassemblies' provision in the general scope language," which was "understandable" based on evidence that "the assembled handles are imported in a form in which they require no further assembly or processing prior to the intended use." J.A. 45. Second, the CIT determined that, even if the assembled handles were described by the general scope language, Commerce erroneously determined that the assembled handles do not qualify for the finished merchandise exception because the fasteners exception does not apply to the finished merchandise exclusion. The CIT also determined that Commerce employed flawed logic and ignored record evidence in concluding that the plastic end caps in the assembled handles are "washers" and therefore "fasteners."

a single aluminum extrusion *without* end caps or other components. The January 2014 Scope Request is not relevant to the instant appeal, as Whirlpool did not appeal the CIT decision that these handles were covered by the Orders.

With respect to the CIT's second basis for its remand order, it stated that Commerce's "presum[ption] that the exception for fasteners in the finished goods kit exclusion applies to the finished merchandise exclusion as well . . . is at odds with established principles of construction." J.A. 47–48. According to the CIT, if "Commerce . . . had intended to sweep into the scope any assembled good consisting solely of aluminum extrusion components and fasteners, [it would have] so provide[d] in the scope language. Instead, Commerce expressly confined its 'fasteners' exception to the finished goods kit exclusion." J.A. 48.

On remand, Commerce determined, "under respectful protest," that the assembled handles were "outside the scope of the Orders because, consistent with the [CIT]'s interpretation of the scope language, there is no general scope language which covers such products." J.A. 29. Commerce declined to provide any further analysis with respect to the finished merchandise exclusion, explaining that "the issue of whether Whirlpool's handles with end caps are subject to the exclusion for finished merchandise is rendered moot by the [CIT]'s findings and our resulting determination, under protest, that there is no general scope language which covers these products." J.A. 35.

In its August 2016 Opinion (*Whirlpool II*), the CIT affirmed Commerce's April 2016 Redetermination Decision. This appeal followed. We have subject matter jurisdiction pursuant to 28 U.S.C. § 1295(a)(5).

DISCUSSION

I

"We apply the same standard of review as the CIT when reviewing a Commerce scope ruling, though we give due respect to the CIT's informed opinion." *Meridian*, 851 F.3d at 1380 (internal quotation marks and citations omitted). "Under that standard, we uphold a Commerce scope ruling that is supported 'by substantial evidence on the record' and otherwise 'in accordance with law.'" *Id.* (quoting 19 U.S.C. § 1516a(b)(1)(B)(i)). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Eckstrom Indus., Inc. v. United States*, 254 F.3d 1068, 1071 (Fed. Cir. 2001) (internal quotation marks and citation omitted).

There is no specific statutory provision governing the interpretation of the scope of the Orders. *Shenyang Yuanda Aluminum Indus. Eng'g Co. v. United States*, 776 F.3d 1351, 1354 (Fed. Cir. 2015). But Commerce has filled this statutory gap with a regulation, 19 C.F.R. § 351.225(k), requiring Commerce to engage in a two-step process when

determining the scope of an order. *Id.*; *Meridian*, 851 F.3d at 1381. First, under § 351.225(k)(1), Commerce must consider the scope language contained in the order, the descriptions contained in the petition, and how the scope was defined in the investigation and in the determinations issued by Commerce and the ITC. *Yuanda*, 776 F.3d at 1354. If Commerce concludes the product is, or is not, included within the scope of the order, Commerce issues a final scope ruling. *Id.* If a § 351.225(k)(1) analysis is not dispositive, however, then Commerce proceeds to an analysis of the Diversified Products criteria under subsection (k)(2) of its regulation.³ *Id.*

Commerce's inquiry begins with the Orders' scope to determine whether it contains an ambiguity and, thus, is susceptible to interpretation. *Meridian*, 851 F.3d at 1381. The question of whether the unambiguous terms of a scope control the inquiry, or whether some ambiguity exists, is a question of law that we review de novo. *Id.* at 1382. If the scope is unambiguous, the plain meaning of the Orders' language governs. *Id.* at 1381. The question of whether a product meets the unambiguous scope terms then presents a question of fact reviewed for substantial evidence. *Id.* at 1382.

Because the meaning and scope of the Orders are issues particularly within Commerce's expertise and special competence, we grant Commerce substantial deference with regard to its interpretation of its own Orders. *Id.* at 1381–82. While Commerce “enjoys substantial freedom to interpret and clarify its antidumping duty orders . . . , it may not change them.” *Ericsson GE Mobile Commc'ns, Inc. v. United States*, 60 F.3d 778, 782 (Fed. Cir. 1995), *as corrected on reh'g* (Sept. 1, 1995). Accordingly, a final order may not be interpreted “in a way contrary to its terms,” *Smith Corona Corp. v. United States*, 915 F.2d 683, 686 (Fed. Cir. 1990), nor in a way “so as to change the scope of that order,” *Eckstrom Indus.*, 254 F.3d at 1072.

II

This appeal hinges on the interpretation of the Orders. Accordingly, we must determine whether Commerce properly interpreted the relevant portions of the Orders and, if so, whether Commerce's findings as to whether the product meets the scope terms are supported by substantial evidence. We begin our discussion with the Orders' general scope language followed by the express exclusions from that general scope.

³ Here, Commerce found that its § 351.225(k)(1) analysis was dispositive and that it was unnecessary to consider the additional factors specified in § 351.225(k)(2). J.A. 339.

A

According to AEFTC, the CIT erred in its interpretation of the Orders' general scope language because it "ignores that the scope of the order was intended to cover all aluminum extrusions produced with aluminum alloys commencing with 1, 3, and 6 unless expressly excluded." Appellant Br. 27. AEFTC maintains that "the scope expressly includes aluminum extrusions, whether further fabricated or not, and even if incorporated into a subassembly, as well as aluminum extrusions which are identified by reference to their end use (such as kitchen appliance handles), as Commerce acknowledged in its scope ruling." *Id.* We agree.

In *Whirlpool I*, the CIT examined "whether the general scope language reasonably may be interpreted to include these handles even though the handles are assemblies containing an extrusion and various other parts and even though they are imported in a fully-assembled form, ready for use." J.A. 43. The CIT determined that "the term 'extrusion' is not defined in the general scope language so as to include a good simply because an extruded aluminum component is present within a good consisting of an assembly." J.A. 44. Accordingly, the CIT concluded that the general scope language is not reasonably interpreted to include the assembled handles because "[t]he handles at issue are not themselves 'extrusions' but rather are assemblies, each of which contains an extrusion, machined and surface-treated, as the principal component." J.A. 43. This conclusion is incorrect.

Although the CIT properly recognized that "the general scope language provides that [an aluminum extrusion] remains in the scope even though it has been subjected to one of three specified types of post-extrusion processes," the CIT erred when it stated that assembly processes were absent from the specified post-extrusion processes. J.A. 44. The general scope language unambiguously includes aluminum extrusions that are part of an assembly. The Orders explicitly include aluminum extrusions "that are assembled after importation" in addition to "aluminum extrusion components that are attached (e.g., by welding or fasteners) to form subassemblies." *Antidumping Duty Order*, 76 Fed. Reg. at 30,650. Therefore, the interpretation relied on by the CIT in *Whirlpool I* was improper, and substantial evidence supports Commerce's finding in its August 2014 Scope Ruling that the general scope language includes Whirlpool's assembled handles.

B

We must next determine whether Commerce, in its August 2014 Scope Ruling, applied the proper interpretation of the exclusions to

the Orders and, if so, whether substantial evidence supports its finding that the exclusions do not apply.

First, with respect to the finished goods kit exclusion we agree with the CIT that “[b]ecause Whirlpool’s assembled door handles are not imported in disassembled form, the finished goods kit exclusion is inapplicable.” J.A. 47. This exclusion is unambiguous and so the plain meaning of the language of the Orders governs. *Meridian*, 851 F.3d at 1381. The language of the Orders states that “[t]he scope also excludes finished goods containing aluminum extrusions *that are entered unassembled* in a ‘finished goods kit.’” *Antidumping Duty Order*, 76 Fed. Reg. at 30,651 (emphasis added). “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.” *Id.* (emphasis added). Whirlpool’s handles and end caps do not enter unassembled as a packaged combination of parts. They enter assembled. Accordingly, Whirlpool’s assembled handles do not meet the unambiguous terms of the finished goods kit exclusion.

Second, with respect to the finished merchandise exclusion we also agree with the CIT. The Orders define finished merchandise as “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.” *Antidumping Duty Order*, 76 Fed. Reg. at 30,651. The next two sentences describe a different exclusion to the Orders, which excludes finished goods kits, as described above. *Id.* Following those sentences, the Orders state “[a]n imported product will not be considered a ‘finished goods kit’ and therefore excluded from the scope of the investigation merely by including fasteners such as screws, bolts, etc. in the packaging with an aluminum extrusion product.” *Id.*

Commerce, in its August 2014 Scope Ruling, rejected Whirlpool’s argument that this fasteners language only applies in the context of the finished goods kit exclusion and that it did not apply in the separate finished merchandise exclusion. J.A. 342–43. Commerce concluded, therefore, that “the mere inclusion of fasteners, in this case the plastic end caps, does not result in the extruded aluminum handles falling outside the scope of the Orders as extruded finished merchandise.” J.A. 341.

According to the CIT in *Whirlpool I*, Commerce erred in its August 2014 Scope Ruling interpretation of the Orders’ scope because Commerce’s “presum[ption] that the exception for fasteners in the finished

goods kit exclusion applies to the finished merchandise exclusion as well. . . is at odds with established principles of construction.” J.A. 47–48. We agree with the CIT.

As noted above, although Commerce “enjoys substantial freedom to interpret and clarify its antidumping duty orders . . . , it may not change them.” *Ericsson*, 60 F.3d at 782. Commerce’s interpretation of the fasteners exception and whether it applies to the finished merchandise exclusion is contrary to the terms of the Orders, and is therefore incorrect. *Smith*, 915 F.2d at 686.

We first assess whether the plain language of the exception for fasteners is unambiguous. *Meridian*, 851 F.3d at 1383. As we have noted, the question of whether some ambiguity exists, is a question of law that we review de novo. *Id.* at 1382. We conclude that the exception for fasteners unambiguously applies only to the finished goods kit exclusion and not to the finished merchandise exclusion for at least three reasons.

First, the single sentence that describes the fasteners exception specifically refers only to a finished goods kit and does not mention finished merchandise. *See Antidumping Duty Order*, 76 Fed. Reg. at 30,651. Second, this sentence describes how a product will not be considered a finished good kit “merely by including fasteners . . . *in the packaging.*” *Id.* (emphasis added). This reference to “the packaging” refers back to the finished good kit exclusion where “[a] finished good kit is understood to mean a *packaged* combination of parts.” *Id.* (emphasis added). There is no reference to packaging in the finished merchandise exclusion. Finally, finished merchandise is “fully and permanently assembled and completed at the time of entry,” whereas finished goods kits enter unassembled as “a packaged combination of parts.” *Id.* We find it reasonable that Commerce, in drafting the Orders, would have elected to treat assembled merchandise differently from goods entering unassembled in kit form. We therefore agree with the CIT that if Commerce had actually intended to sweep into the scope all finished merchandise consisting solely of aluminum extrusion components and fasteners, it would have done so in the scope language rather than expressly confining its fasteners exception to the finished goods kit exclusion.

Because we conclude that the exception for fasteners is unambiguous, the plain meaning of its language governs. *Meridian*, 851 F.3d at 1381. Therefore, the fasteners exception only applies to the finished goods kit exclusion and it does not apply to the finished merchandise exclusion.

Having concluded that Commerce applied an incorrect interpretation of the fasteners exception language of the Orders, we need not

determine whether substantial evidence supports its August 2014 Scope Ruling finding that Whirlpool's assembled handles do not meet the exclusion criteria for finished merchandise.⁴

Because, in Commerce's view, the fasteners exception applied to the finished merchandise exclusion, it did not reach a determination in its Scope Ruling as to whether Whirlpool's assembled handles actually meet the requirements for the finished merchandise exclusion in the first place. In its April 2016 Redetermination Decision, Commerce also declined to address AEFTC's argument that Whirlpool's assembled handles should not fall under the finished merchandise exclusion because they are merely parts of a larger, final finished product (e.g., a refrigerator), and that it is only the larger, final finished product itself that is included under the finished merchandise exclusion. Commerce stated that the question of whether the assembled handles meet the requirements for the finished merchandise exclusion was rendered moot by the CIT's determination that there is no general scope language which covers these products.

Because Commerce did not reach this determination, the CIT also declined to engage in an analysis of the finished merchandise exclusion in *Whirlpool II*. Accordingly, we do not now, for the first time on appeal, determine whether Whirlpool's assembled handles meet the requirements for the finished merchandise exclusion, namely whether the assembled handles are "merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry." *Antidumping Duty Order*, 76 Fed. Reg. at 30,651. On remand, Commerce will be given an opportunity to arrive at a legally permissible interpretation of the finished merchandise exclusion and Whirlpool's assembled handles should be reassessed in light of that interpretation. See *Ericsson*, 60 F.3d at 783.

CONCLUSION

We conclude that substantial evidence supports Commerce's August 2014 Scope Ruling that the general scope language of the Orders describes Whirlpool's assembled handles. Accordingly, we reverse *Whirlpool II* affirming Commerce's April 2016 Redetermination Decision and instruct the CIT to vacate Commerce's April 2016 Redetermination Decision and reinstate the portion of Commerce's

⁴ On appeal, the parties also dispute whether substantial evidence supports Commerce's determination in its August 2014 Scope Ruling that the plastic end caps contained in Whirlpool's door handles are fasteners. Because we conclude today that the fasteners exception does not apply to the finished merchandise exclusion, however, the question of whether these end caps fall within the scope language's reference to "fasteners" is not relevant to determining whether Whirlpool's assembled handles qualify for the finished merchandise exclusion.

August 2014 Scope Ruling finding that the assembled handles fall within the general scope language. We also vacate those portions of the CIT's *Whirlpool I* holding that the general scope language of the Orders did not describe Whirlpool's assembled handles.

With respect to the exclusions from the Order's scope, we conclude that the exception for fasteners unambiguously applies only to the finished goods kit exclusion and not to the finished merchandise exclusion. Further, because the finished goods kit exclusion is inapplicable to Whirlpool's assembled handles, so too is the fasteners exception to the finished goods kit exclusion. Accordingly, we affirm those portions of *Whirlpool I* that are consistent with these conclusions and instruct the CIT to vacate the remainder of Commerce's August 2014 Scope Ruling.⁵

Finally, the case is remanded to the CIT for further proceedings, in keeping with this opinion, to determine whether Whirlpool's assembled handles meet the requirements for the finished merchandise exclusion.

**AFFIRMED-IN-PART, REVERSED-IN-PART
VACATED-IN-PART, AND REMANDED**

COSTS

The parties shall bear their own costs.

⁵ These decisions are only reversed or vacated as to those portions addressing Whirlpool's December 2013 Scope Request pertaining to the assembled handles with end caps. The January 2014 Scope Request, which dealt with aluminum extruded appliance handles that consisted of a single aluminum extrusion without end caps or other components, is not addressed by the instant appeal, as Whirlpool did not appeal the CIT decision that these handles were covered by the Orders.

WHIRLPOOL CORPORATION, Plaintiff-Appellee v. UNITED STATES,
Defendant ALUMINUM EXTRUSIONS FAIR TRADE COMMITTEE,
Defendant-Appellant

Appeal No. 2017–1117

Appeal from the United States Court of International Trade in No. 1:14-cv-00199-TCS, Chief Judge Timothy C. Stanceu.

REYNA, *Circuit Judge*, concurring-in-part, dissenting-in-part.

I concur with the majority that “the interpretation relied on by the CIT in *Whirlpool I* was improper, and substantial evidence supports Commerce’s finding in its August 2014 Scope Ruling that the general scope language includes Whirlpool’s assembled handles.” Maj. Op. at 10.

The majority highlights a fundamental error in the CIT’s holding that the “general scope language is not reasonably interpreted to include the assembled handles because ‘[t]he handles at issue are not themselves “extrusions” but rather are assemblies, each of which contains an extrusion, machined and surface-treated, as the principal component.’” *Id.* at 9. I agree with the majority that “[t]his conclusion is incorrect.” *Id.*

The court’s holding that the general scope language is reasonably interpreted to include the Whirlpool handles drives the remainder of the scope review because a scope inquiry first begins by asking whether the good in questions is covered under the general scope language of the duty order. The answer here is yes. The next question is whether a good covered by the general scope language is excluded under an exclusion provision. Here, it is undisputed that the handles are not excluded under the finished goods kit exclusion. The majority concludes that Commerce left unanswered the question whether the finished merchandise exclusion applies, and, on this basis, remands so that Commerce may address the applicability of the finished merchandise exclusion.

The record is clear, however, that Commerce has addressed the question of whether Whirlpool’s handles are excluded under the finished merchandise exclusion.¹ In its initial scope determination,

¹ This appeal involves the CIT’s judgment on Commerce’s initial scope ruling determination and Commerce’s remand scope ruling determination. We review the CIT’s decisions *de novo* applying to Commerce’s determination the same standard of substantial evidence review as used by the CIT in review of Commerce’s scope ruling determination. See *King Supply Co., LLC v. United States*, 674 F.3d 1343, 1348 (Fed. Cir. 2012) (“In reviewing the Trade Court’s decision on the Scope Ruling, ‘we step into the shoes of the [Trade Court] and apply the same deferential “substantial evidence” standard of review that it applied to its review of Commerce’s determination.’ We must therefore uphold Commerce’s determination unless the Scope Ruling is unsupported by substantial evidence on the record, or otherwise not in accordance with law.” (quoting *Walgreen Co. v. United States*, 620 F.3d 1350, 1354 (Fed. Cir. 2010)) (internal citations omitted)).

Commerce determined that the good in question is a covered good; there are no components or parts included, whether loose or attached.² Accordingly, it does not fall under either the finished merchandise exclusion or the finished goods kits exclusion. See J.A. 340 (“Based on the information provided by Whirlpool . . . we find that the handles at issue are comprised entirely of extruded aluminum and fasteners (*i.e.* plastic end caps). Therefore, we find the handles do not meet the Department’s first test for determining whether a good constitutes a finished good or finished goods kit, as established in the Geodesic Domes Scope Ruling.”).

Commerce explained in its initial scope ruling that the difference between “finished goods” and “finished goods kits” is that the former is assembled upon entry while the latter is unassembled upon entry. J.A. 342–43. Commerce found unconvincing the “notion that an unassembled product in kit-form that consists solely of extruded aluminum, save for fasteners, would, per the analysis from the Geodesic Domes Scope Ruling, fall inside the scope while the identical product entering the United States as an assembled good, would fall outside the scope of the *Orders*.” J.A. 343. Commerce determined that if a product that only consists of aluminum extrusions and fasteners, as in this case, satisfies the finished merchandise exclusion, the exclusion would swallow the scope “because any aluminum extrusion products, as long as it can be identified by end use, could be considered a finished product.” *Id.* Commerce reasoned that this cannot be the correct interpretation because it is contrary to the scope itself, which covers aluminum extrusions. *Id.* Commerce preserved these factual conclusions when it filed under protest its remand determination pursuant to the CIT’s remand. See J.A. 22.

I defer to Commerce on interpreting its own antidumping duty orders and would affirm Commerce’s August 2014 Scope Ruling on the basis that it is not unreasonable and is otherwise supported by substantial evidence. See *King Supply*, 674 F.3d at 1348 (“Commerce is entitled to substantial deference with regard to its interpretations of its own antidumping duty orders. This deference is appropriate because the meaning and scope of antidumping orders are issues particularly within the expertise and special competence of Commerce.” (internal citations and quotations omitted)). Therefore, I respectfully concur-in-part and dissent-in-part from the majority opinion.

² The Orders define “finished merchandise” as 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 or vinyl, picture frames with glass pane and backing material, and solar panels. *Antidumping Duty Order*, 76 Fed. Reg. at 30,651.