

# U.S. Court of International Trade

Slip Op. 16–80

GOLDEN DRAGON PRECISE COPPER TUBE GROUP, INC., HONG KONG GD TRADING CO., LTD., GOLDEN DRAGON HOLDING (HONG KONG) INTERNATIONAL, LTD., and GD COPPER (U.S.A.) INC., Plaintiffs, v. UNITED STATES, Defendant, and CERRO FLOW PRODS., LLC, WIELAND COPPER PRODUCTS, LLC, MUELLER COPPER TUBE PRODUCTS, INC, and MUELLER COPPER TUBE CO., INC., Defendant-Intervenors.

Before: R. Kenton Musgrave, Senior Judge  
Consol. Court No. 14–00116

[Sustaining remand results of second administrative review of antidumping duty order on copper pipe and tube from the People’s Republic of China.]

Dated: Decided: August 23, 2016

*Kevin M. O’Brien, Christine M. Streatfeild, and Yi Fang*, Baker & McKenzie, LLP, of Washington DC, for the plaintiffs.

*Michael D. Snyder*, Trial Attorney, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, D.C., for the defendant. With him on the brief were *Benjamin C. Mizer*, Principal Deputy Assistant Attorney General, *Jeanne E. Davidson*, Director, and *Claudia Burke*, Assistant Director. Of Counsel on the brief was *David P. Lyons*, Attorney, Office of the Chief Counsel for Trade Enforcement and Compliance, U.S. Department of Commerce, of Washington, D.C.

*Thomas M. Beline, Jack A. Levy, Jonathan M. Zielinski, Nathaniel J. Halvorson*, Cassidy Levy Kent (USA) LLP, of Washington DC, for the defendant-intervenors.

## OPINION

### **Musgrave, Senior Judge:**

Before the court are the *Final Results of Redetermination Pursuant to Court Order, Golden Dragon Precise Copper Tube Group, Inc., et al. v. United States*, Court No. 14–00116, ECF No. 89 (Mar. 23, 2016) (“Remand Results”) filed by defendant’s Department of Commerce, International Trade Administration (“Commerce”). Commerce filed these Remand Results pursuant to *Golden Dragon Precise Copper Tube Group, Inc. v. United States*, Court No. 14–00116, Slip Op. 16–17 (Feb. 22, 2016) (“*Golden Dragon III*”), which granted a voluntary remand of the final results of the second administrative review of *Seamless Refined Copper Pipe and Tube From the People’s Republic of China*, 79 Fed. Reg. 23324 (Apr. 28, 2014), subsequently amended, 79

Fed. Reg. 47091 (Aug. 12, 2014) (“Final Results”) to facilitate Commerce’s solicitation and response to comments to the Remand Results prior to publication in the Federal Register. As discussed herein, the Remand Results are supported by substantial evidence. Accordingly, the Remand Results will be sustained.

### I. *Background*

The court presumes familiarity with the case<sup>1</sup> but facts relevant to the instant issues are briefly summarized here. Following publication of Commerce’s amended Final Results in August 2014, Plaintiffs Golden Dragon Precise Copper Tube Group, Inc., Hong Kong GD Trading Co., Ltd., Golden Dragon Holding (Hong Kong) International, Ltd., and GD Copper (U.S.A.) Inc. (collectively “Golden Dragon”) and Defendant-Intervenors Cerro Flow Products, LLC, Wieland Copper Products, LLC, Mueller Copper Tube Products, Inc., and Mueller Copper Tube Company, Inc. (collectively “Mueller”) challenged aspects of the Final Results. Following the first voluntary remand to address ministerial errors, the court remanded the Final Results for further explanation or reconsideration of its selection of Thailand as the primary surrogate value country and its selection of the Thai producer’s financial statement to calculate the surrogate financial ratios. *See Golden Dragon I & Golden Dragon II*. Commerce filed remand results, leaving the surrogate value country selection unchanged and continuing to select the Thai producer’s financial statements, *see* ECF No. 82 (Nov. 18, 2015), but ultimately requested a second voluntary remand to solicit comments on the draft remand results following a procedural oversight on its part. *See, generally, Golden Dragon I, Golden Dragon II, and Golden Dragon III*. Following the second voluntary remand, Commerce solicited, received, and responded to comments to its draft remand results prior to publishing the Remand Results and filing them with this court. Remand Results at 1–2; *see also* Pl’s Comments on Remand Redetermination (“Pl’s Br.”).

In the Remand Results now before the court, Commerce continued to select Thailand as the primary surrogate value country and continued to use a set of financial statements from the Thai producer, Furukawa Metal (Thailand) Public Company Limited (“Furukawa”), to calculate Golden Dragon’s surrogate financial ratios as part of the larger factors of production (“FOP”) calculations. Remand Results at

<sup>1</sup> *See Golden Dragon Precise Copper Tube Group, Inc. v. United States*, Court No. 1400116, Slip Op. 14–85 (July 18, 2014) (“*Golden Dragon I*”) (remanding to consider ministerial error allegations); *Golden Dragon Precise Copper Tube Group, Inc. v. United States*, Court No. 1400116, Slip Op. 15–89 (Aug. 19, 2015) (“*Golden Dragon II*”) (remanding to further explain Commerce’s selection of Thailand as surrogate value country); and *Golden Dragon III*.

32–33; Def’s Br. at 4. Relevant here, Commerce reasoned that the Furukawa financial statement constituted the best available information in several respects: (1) there was no direct record evidence of actual receipt of a countervailable subsidy by Furukawa; (2) Furukawa produces merchandise identical to that of Golden Dragon, whereas the Ukrainian producer (whose financial statement is preferred by Golden Dragon, Joint Stock Company Artemivskyy Plant Treated Colored Metals (“Artemivskyy”)) produces merely comparable merchandise; (3) the Artemivskyy statement were supported by a qualified auditors’ opinion which “identified uncertainties with respect to aspects of the data”; and (4) the Furukawa statement contained contemporaneous surrogate data for copper slag and ash, whereas the Artemivskyy statement did not. *See* Remand Results; Def’s Br. at 3–4.

Golden Dragon was the sole party to comment on Commerce’s draft remand results, and Commerce made no changes to the Remand Results following consideration to those comments. Remand Results at 2. Golden Dragon continues to dispute the selection of Thailand as the primary surrogate value country and the use of the Thai financial statement in calculating the surrogate financial ratios. Pl’s Br. at 1. Specifically, it argues that (1) the Furukawa statement contain evidence of subsidization and the Ukrainian statement is preferable because it does not contain any such evidence; (2) Commerce did not adequately characterize the goods produced by Artemivskyy; (3) the Ukrainian auditors’ position should not render the Artemivskyy statement less reliable than the Furukawa statement; and (4) the Furukawa statement is less contemporaneous than the Artemivskyy statement. Golden Dragon asserts that in light of these flawed determinations, Commerce must reconsider the evidence before it and determine either to select Ukraine as the primary surrogate country or, in the alternative, to utilize the Artemivskyy statement in calculating the surrogate financial ratios. Pl’s Br. at 3–4.

## II. Discussion

When calculating a dumping margin for products from a non-market economy (“NME”) country, such as the People’s Republic of China, Commerce typically compares the product’s normal value, derived from FOPs as valued in a surrogate market economy country, to the product’s export price.<sup>2</sup> Commerce must use the “best available information” in selecting surrogate data. 19 U.S.C. §1677b(c)(1)(B).

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<sup>2</sup> “Normal value” is the price at which the product is sold or offered for sale in the exporting country. *See* 19 U.S.C. §1677b(a)(1)(B). “Export price” or “constructed export price” is the price as which the product is first sold to an unaffiliated purchaser in the United States. *See* 19 U.S.C. §1677a(a).

The surrogate data must, “to the extent possible”, be selected from a market economy country that is “at a level of economic development comparable to that of the [NME]” and is a “significant producer of comparable merchandise.” *Id.* at §1677b(c)(4). For each administrative review, Commerce usually selects a primary surrogate country from a list of countries that it considers to be at a level of economic development comparable to that of the NME country, based upon per capita gross national income (“GNI”). *See* Policy Bulletin 04.1, Non-Market Economy Surrogate Country Selection Process (Mar. 1. 2004); *see also* 19 C.F.R. §351.408(c)(4). Commerce has stated a regulatory preference to “normally . . . value all [FOPs] in a single surrogate country.” 19 C.F.R. §351.408(c)(2).

To establish surrogate financial ratios, Commerce calculates such ratios based on publicly available financial statements from producers of identical or comparable merchandise in the surrogate country. 19 C.F.R. §351.408(c)(4). In selecting from competing surrogate value sources, Commerce evaluates potential data for reliability, availability, quality, specificity and contemporaneity. Remand Results at 5; *see, e.g., Certain Kitchen Appliance Shelving and Racks from the PRC*, 74 Fed. Reg. 36656 (July 24, 2009) and accompanying IDM at Comment 10. In calculating surrogate financial ratios, Commerce determines which set of statements best satisfies these factors to comport with its statutory duty of using the “best available information”.

In determining whether substantial evidence supports Commerce’s determination, the court must consider “the record as a whole, including evidence that supports as well as evidence that ‘fairly detracts from the substantiality of the evidence.’” *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1379 (Fed. Cir. 2003) (quoting *Atlantic Sugar, Ltd. v. United States*, 744 F.2d 1556, 1562 (Fed. Cir. 1984)). However, the court “may not reweigh the evidence or substitute its own judgment for that of the agency.” *Usinor v. United States*, 28 CIT 1107, 1111, 342 F. Supp. 2d 1267, 1272 (2004) (citation omitted.).

Here, Golden Dragon essentially asks the court to reweigh the evidence on the record and displace the agency’s interpretation with one it favors. The court is not permitted to do so, *see Usinor*, 28 CIT at 1111, 342 F. Supp. 2d at 1272, and as has been noted by this court previously, “the critical question when valuing the [FOPs] is ‘whether the methodology used by Commerce is based on the best available information and established antidumping margins as accurately as possible.’” *Hangzhou Spring Washer Co. v. United States*, 29 CIT 657, 666, 387 F. Supp. 2d 1236, 1245 (2005), citing *Shakeproof Assembly Components, Div. of Ill. Tool Works, Inc. v. United States*, 268 F.3d 1376, 1382 (Fed. Cir. 2001). Golden Dragon does not persuade that

the Furukawa statement is not the best available information to use in calculating the surrogate financial ratios, nor that Commerce's selection of Thailand as the primary surrogate country is unreasonable or unsupported by substantial evidence. Accordingly, Commerce's Remand Results will be sustained.

A.

Golden Dragon continues to argue that Commerce should reject the Furukawa statement because it contains evidence of subsidization. The court in *Golden Dragon II* remanded to Commerce for further explanation, observing that the Furukawa statement did appear to contain evidence of subsidization. *Golden Dragon II*, 39 CIT at \_\_\_ (finding a note to the Furukawa statement "plain enough" in referencing a potentially countervailable subsidy and remanding for further explanation or reconsideration as appropriate). However, Commerce has provided adequate explanation as to why that evidence does not form a sufficient basis to reject the Thai statement.

In making its determination on this point, Commerce applied its typical practice of determining whether an actual benefit was received by the company by determining first, whether the reference program was countervailable, and second, whether there was direct evidence such as a line item in the statement confirming receipt of such a benefit. Remand Results at 7–12; see *DuPont Teijin Films v. United States*, 37 CIT \_\_\_, \_\_\_, 896 F. Supp. 2d 1302, 1310–1013 (2013) ("[i]t is reasonable for Commerce not to reject financial statements that include a policy for accounting for subsidies because the receipt of a subsidy, and not the policy itself, causes the distortion in the financial statement that impacts the calculation of surrogate financial ratios"). Finding no direct evidence of receipt of a subsidy, Commerce affirmatively determined that Furukawa had not received such a benefit during the POR, and therefore reasonably did not reject the Furukawa statement. *Id.* at 8–11. Golden Dragon points to no other evidence within the record to suggest a reason for Commerce to reject the Furukawa statement. Commerce's decision to prefer the Furukawa statement after determining there was no actual benefit received is supported by substantial evidence.

B.

Golden Dragon next argues that Artemivskyy produces identical merchandise, and even that if Commerce determines it produces comparable merchandise that the statement would still satisfy the relevant statute which requires only "comparable merchandise". Pl's

Br. at 3; *see* 19 U.S.C. §1677b(c)(4). However, Commerce's preference for the Furukawa statement in this instance is not impugned by Golden Dragon's characterization of Artemivskyy's products.

As stated in the Remand Results, in choosing financial statements for calculating surrogate financial ratios, Commerce strives to identify companies whose operations most closely resemble the respondent's experience. Remand Results at 13; *see also Hand Trucks and Certain Parts Thereof From the PRC*, 78 Fed. Reg. 28801 (May 16, 2013) and accompanying IDM at comment 2. Commerce determined that Furukawa's financial statement unambiguously "made clear" that Furukawa produces products identical to Golden Dragon's products, whereas Artemivskyy's financial statement was less clear in its description of the goods produced. Remand Results at 14, citing Letter from Golden Dragon, "Refiling of Golden Dragon's Surrogate Value Rebuttal Comments" (May 29, 2013), PDoc 42, Ex. 13, note 1 ("[t]he principal business of [Furukawa] is manufacturing and distributing of seamless copper tube"); *cf.* Letter from Golden Dragon, "Re: Publicly Available Surrogate Value Information" (Dec. 11, 2013), PDoc 141, Ex. 1, at Notes (English Translation) (Artemivskyy produces "finished products in ingots, round and flat rolled products, sanitary fittings and other"). Commerce reasonably determined that an unambiguous declaration of production of goods identical to those produced by the respondent was preferable to a less clear declaration of goods produced, and Golden Dragon does not present evidence that persuades otherwise. Further, "the preference for use of data from a single surrogate country could support a choice of data as the best available information where the other available data, upon a fair comparison, are otherwise seen to be fairly equal." *Peer Bearing Co.-Changshan v. United States*, 35 CIT \_\_\_, \_\_\_, 804 F. Supp. 2d 1337, 1353 (2011) (citation and internal quotation omitted). Commerce's preference for using a financial statement that unambiguously states it produces identical merchandise is reasonable and supported by substantial evidence.

C.

Commerce also determined that the Furukawa statement was preferable to that of Artemivskyy because the Artemivskyy statement was supported by a qualified auditor's opinion, stating that the auditor "was not able to observe the inventory of existing fixed assets, reserves, other non-current assets and liabilities since the inventory took place before the appointment of our auditors . . . [w]e believe that certain minor deviations may exist in quantities of fixed assets. Due to the nature of the accounting records, we were unable to confirm the

number of records using other audit procedures.” PDocs 142–44 at Ex. 1. Golden Dragon argues that Commerce has never required “unqualified” auditors opinions in the past and that the Artemivskyy statement should not be set aside because of the qualified opinion. Pl’s Br. at 11–12, citing *Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation*, 64 Fed. Reg. 38626 (Jul. 19, 1999) (Commerce stated that “it is not required that the financial statements be audited”).

Golden Dragon’s argument does not persuade. Commerce reasoned that the “qualified nature of the auditor opinion raises questions with respect to the [Artemivskyy] statements’ suitability.” Remand Results at 18. There have been no such “questions raised” with regard to the Furukawa statement. Congress has vested Commerce with considerable discretion in selecting the best available information to value FOPs. See *Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1999); see also *Allied Pacific Food (Dalian) Co. v. United States*, 32 CIT 1328, 1342, 587 F. Supp. 2d 1330, 1344 (2008). It is within Commerce’s discretion to prefer a financial statement that has not been the subject of an auditor’s qualified opinion to one that has had questions raised about its suitability. Golden Dragon does not persuade that Commerce’s preference for the Furukawa statement with respect to this issue is unreasonable.

D.

Finally, Golden Dragon argues that the Artemivskyy statement is more contemporaneous than the Furukawa statement, as the Artemivskyy statement covers 10 months of the POR compared to Furukawa’s 2 months. Pl’s Br. at 10. Commerce does not dispute this fact. Remand Results at 15–16 (“the Artemivskyy statement is more contemporaneous with the POR”). While the Artemivskyy statement may be more contemporaneous than the Furukawa statement, the selection of a financial statement requires balancing of several factors, of which more overlap with the POR is one. It is “well-established” that Commerce considers data that overlap any portion of the POR to be contemporaneous. *Id.* at 16; see, e.g., *Utility Scale Wind Towers From the Socialist Republic of Vietnam*, 80 Fed. Reg. 55333 (Sept. 15, 2015), at Comment 4.B. The Thai financial statement is therefore a viable option for Commerce to select. Further, “[n]o one factor is dispositive when conducting this analysis.” Remand Results at 16; see also *Hangzhou Spring Washer Co.*, 29 CIT at 672, 387 F. Supp. 2d at 1250 (“Commerce has the statutory discretion to give greater weight to one [factor] over the other, provided it offers a

reasoned explanation when such a decision deviates from past practice”). Commerce further explains that the Artemivskyy statement did not contain contemporaneous values for slag and copper ash inputs, whereas the Furukawa statement contained contemporaneous data for all relevant inputs. *See* Remand Results at 16. Golden Dragon does not persuade that the Furukawa statement is not the best available information merely because the Artemivskyy statement is more contemporaneous than the Furukawa statement.

### III. Conclusion

Commerce’s Remand Results appearing in compliance with the orders of remand, supported by substantial evidence, and in accordance with law; and there appearing to be no reason otherwise for requiring further remand, the Remand Results will be sustained.

Dated: August 23, 2016

New York, New York

*/s/ R. Kenton Musgrave*  
R. KENTON MUSGRAVE, SENIOR JUDGE



Slip Op. 16–81

WHIRLPOOL CORPORATION, Plaintiff, v. UNITED STATES, DEFENDANT, AND  
ALUMINUM EXTRUSIONS FAIR TRADE COMMITTEE, DEFENDANT-INTERVENOR.

Before: Timothy C. Stanceu, Chief Judge  
Court No. 14–00199

[Affirming a decision made in response to court order in an action contesting a ruling on the scope of antidumping and countervailing duty orders on aluminum extrusions from China]

Dated: August 26, 2016

*Donald Harrison*, Gibson, Dunn & Crutcher, LLP, of Washington, DC, for plaintiff.  
*Aimee Lee*, Senior Trial Counsel, Civil Division, U.S. Department of Justice, of New York, NY, for defendant. With her on the brief were *Benjamin C. Mizer*, Principal Deputy Assistant Attorney General, *Jeanne E. Davidson*, Director, and *Reginald T. Blades, Jr.*, Assistant Director. Of counsel on the brief was *David P. Lyons*, Office of the Chief Counsel for Trade Enforcement & Compliance, U.S. Department of Commerce, of Washington, DC.

*Alan H. Price* and *Robert E. DeFrancesco, III*, Wiley Rein LLP, of Washington, DC, for defendant-intervenor.

## OPINION

### Stanceu, Chief Judge:

Plaintiff Whirlpool Corporation (“Whirlpool”) challenged a 2014 decision of the International Trade Administration, United States Department of Commerce (“Commerce” or the “Department”) interpreting the scope of antidumping and countervailing duty orders on aluminum extrusions from China to include two types of kitchen appliance door handles imported by Whirlpool. In an opinion and order, the Court denied plaintiff’s motion as to one type of appliance door handles, each of which consisted of a single piece that was fabricated from an aluminum extrusion, and granted it as to a second type of handles, which were assemblies. In response, Commerce has decided, under protest, that the assembled handles are outside the scope of the antidumping and countervailing duty orders on aluminum extrusions from China (the “Orders”). Whirlpool supports this decision. Opposing the determination Commerce reached on remand is the Aluminum Extrusions Fair Trade Committee (“AEFTC”), an association of domestic aluminum extrusion producers that was a petitioner in the underlying antidumping and countervailing duty investigations and is a defendant-intervenor in this proceeding. The court affirms the Department’s decision in the Remand Redetermination that the assembled handles are outside the scope of the Orders.

### I. BACKGROUND

Presented below is background to supplement the background provided in the court’s earlier opinion and order, *Whirlpool Corp. v. United States*, 40 CIT \_\_, 144 F. Supp. 3d 1296, 1298–99 (2016) (“*Whirlpool I*”).

#### A. Decisions Reviewed by the Court in this Litigation

Commerce issued the decision originally contested in this litigation (the “Final Scope Ruling”) on August 4, 2014. *Final Scope Ruling on Kitchen Appliance Door Handles*, A-570–967, C-570–968 (Aug. 4, 2014) (First Admin.R.Doc. No. 11), available at <http://enforcement.trade.gov/download/prc-ae/scope/46-kitchen-door-handles-4aug14.pdf> (last visited Aug. 19, 2016) (“*Final Scope Ruling*”).<sup>1</sup>

<sup>1</sup> Citations to “First Admin.R.Doc.” refer to documents placed on the record by Commerce in Parts A.1 and A.3 of the administrative record, which refer to the assembled handles. Citations to “Second Admin.R.Doc.” refer to documents placed on the record by Commerce in Parts B.1 and B.3 of the administrative record, which pertain to the one-piece handles. Citations to “Remand Admin.R.Doc.” refer to documents placed on the record of this remand proceeding.

The contested determination now before the court (the “Remand Redetermination”) is the decision Commerce issued in response to the court’s order in *Whirlpool I. Results of Redetermination Pursuant To Court Remand* (Apr. 15, 2016) (Remand Admin.R.Doc. No. 3) (“*Remand Redetermination*”).

#### B. *Administrative Proceedings Conducted by Commerce*

Commerce issued the antidumping and countervailing duty orders on aluminum extrusions from China (the “Orders”) on May 26, 2011. *Aluminum Extrusions from the People’s Republic of China: Anti-dumping Duty Order*, 76 Fed. Reg. 30,650 (Int’l Trade Admin. May 26, 2011) (“*AD Order*”); *Aluminum Extrusions from the People’s Republic of China: Countervailing Duty Order*, 76 Fed. Reg. 30,653 (Int’l Trade Admin. May 26, 2011) (“*CVD Order*”).

On December 20, 2013, Whirlpool filed a request for a scope ruling on the appliance door handles that remain at issue in this case, i.e., the assembled handles. *Letter Requesting a Scope Inquiry Regarding Kitchen Appliance Door Handles With End Caps* 7 (First Admin.R.Doc. No. 1) (“*First Scope Ruling Request*”). On March 19, 2014, Whirlpool responded to a Department questionnaire regarding its submission. *Resp. of Whirlpool Corp. to the Dep’t’s Supp. Questionnaire on Scope Inquiry Regarding Kitchen Appliance Door Handles With End Caps* (First Admin.R.Doc. No. 7) (“*Supp. Questionnaire Resp.*”).

Whirlpool filed a second scope ruling request, on January 8, 2014, for one-piece appliance door handles, each of which was fabricated from an aluminum extrusion. *Letter Requesting a Scope Inquiry Regarding Kitchen Appliance Door Handles Without End Caps* 4 (Second Admin.R.Doc. No. 1). On March 19, 2014, Whirlpool filed a response to the Department’s questionnaire on this type of handles. *Resp. of Whirlpool Corp. to the Dep’t’s Supp. Questionnaire on Scope Inquiry Regarding Kitchen Appliance Door Handles Without End Caps* (Second Admin.R.Doc. No. 7).

On August 4, 2014, Commerce issued the Final Scope Ruling, in which it determined that both types of Whirlpool’s appliance door handles are within the scope of the Orders. *Final Scope Ruling*.

#### C. *Proceedings before the Court of International Trade*

Whirlpool commenced this action on August 26, 2014. Summons, ECF No. 1; Compl., ECF No. 6. On February 23, 2015, Whirlpool filed a motion for judgment on the agency record, arguing that Commerce impermissibly placed both handle types within the scope of the Orders. Pl.’s Mot. J. Agency R., ECF No. 26 (“Pl.’s Br.”). Defendant and

defendant-intervenor responded on June 2, 2015. Def.'s Opp'n to Pl.'s Mot. J. Agency R., ECF No. 36 ("Def.'s Opp'n"); Def.-Int.'s Resp. Pl.'s Mot. J. Agency R., ECF No. 35 ("Def.-Int.'s Opp'n"). On July 13, 2015, Whirlpool filed a reply. Pl.'s Reply Br. to Def.'s Opp'n to Pl.'s Mot. J. Agency R., ECF No. 42. The court held an oral argument on October 8, 2015. ECF No. 47.

On February 1, 2016, the court issued *Whirlpool I*, affirming the Department's determination that the one-piece handles were within the scope of the Orders but remanding the Final Scope Ruling to Commerce for reconsideration of the decision that the assembled handles were within the scope. *Whirlpool I*, 40 CIT at \_\_\_, 144 F. Supp. 3d at 1307.

Following the court's ruling in *Whirlpool I*, Commerce issued a draft redetermination ("Draft Remand Redetermination") on March 18, 2016 and invited the parties to comment. *Draft Results Of Redetermination Pursuant To Court Remand* (Mar. 18, 2016) (Remand Admin.R.Doc. No. 1). Defendant-intervenor filed comments on the Draft Remand Redetermination on March 24, 2016. *Petitioner's Comments on Department's Draft Remand Results* (Remand Admin.R.Doc. No. 2).

Commerce issued the Remand Redetermination on April 15, 2016, on which Whirlpool submitted comments on May 13, 2016, Pl. Whirlpool Corp.'s Comments on Final Results of Redetermination Pursuant to Court Remand, ECF No. 53, and on which AEFTC submitted comments on May 16, 2016, Def.-Int. Aluminum Extrusions Fair Trade Committee's Comments on Final Results of Redetermination Pursuant to Court Remand, ECF No. 55 ("Def.-Int's Comments"). Defendant responded to these comments on June 3, 2016. Def.'s Resp. to Remand Comments, ECF No. 59.

## II. DISCUSSION

### A. *Jurisdiction and Standard of Review*

The court exercises subject matter jurisdiction under section 201 of the Customs Courts Act of 1980, 28 U.S.C. § 1581(c), which grants jurisdiction over civil actions brought under section 516A of the Tariff Act of 1930 ("Tariff Act"), 19 U.S.C. § 1516a.<sup>2</sup> Among the decisions that may be contested in this Court under Section 516A is a determination of "whether a particular type of merchandise is within the class or kind of merchandise described in an . . . antidumping or

<sup>2</sup> All citations to the United States Code are to the 2012 edition.

countervailing duty order.” *Id.* at § 1516a(a)(2)(B)(vi). In reviewing the contested scope ruling, the court must set aside “any determination, finding, or conclusion found . . . to be unsupported by substantial evidence on the record, or otherwise not in accordance with law.” *Id.* § 1516a(b)(1)(B)(i).

*B. Description of the Merchandise in Whirlpool’s First Scope Ruling Request*

The merchandise remaining at issue, which was the subject of Whirlpool’s first scope ruling request, consisted of 38 models of handles for a variety of kitchen appliances. *Whirlpool I*, 40 CIT at \_\_\_, 144 F. Supp. 3d at 1299 (citing *First Scope Ruling Request* Attach. 1). Thirty-two of these handles were made for specific models of refrigerators, four were made for specific models of ranges, one was made for a single dishwasher model, and one was made for a single electric oven model. *Id.* (citing *First Scope Ruling Request* Attach. 1). As the court stated in *Whirlpool I*, “[t]he record indicates some variation in the assemblies, but a fact common to all models is that each handle has within the assembly a single component that is fabricated from an aluminum extrusion and then surface coated (by, for example, brushing, anodizing, or painting).” *Id.* “Also common to each handle in Whirlpool’s first scope ruling request is the presence of plastic end caps that are attached to the aluminum component by screws.” *Id.* (citing *First Scope Ruling Request* 7, 16–17). The court added that “[a]s imported into the United States, all assembled handles covered by this request ‘are fully manufactured, assembled and completed, with no further processing of the handle required.’” *Id.*, 40 CIT at \_\_\_, 144 F. Supp. 3d at 1300 (quoting *First Scope Ruling Request* 7).

*C. The Scope Language in the Orders*

The scope language of the antidumping duty order and the scope language of the countervailing duty order are essentially equivalent. The orders apply to “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).” *AD Order*, 76 Fed. Reg. at 30,650; *CVD Order*, 76 Fed. Reg. at 30,653. Such extrusions may be “produced and imported in a wide variety of shapes and forms,” and, after extrusion, may be subjected to drawing and to further fabrication and finishing. *AD Order*, 76 Fed. Reg. at 30,650; *CVD Order*, 76 Fed. Reg. at 30,654.

The scope of the Orders includes aluminum extrusions that are “described at the time of importation as parts for final finished products that are assembled after importation” or “identified with reference to their end use.” *AD Order*, 76 Fed. Reg. at 30,650–51; *CVD Order*, 76 Fed. Reg. at 30,654. To be subject to the Orders, however, such merchandise must “otherwise meet the definition of aluminum extrusions.” *AD Order*, 76 Fed. Reg. at 30,651; *CVD Order*, 76 Fed. Reg. at 30,654.

The Orders exclude from the scope certain 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.” *AD Order*, 76 Fed. Reg. at 30,651; *CVD Order*, 76 Fed. Reg. at 30,654.

#### *D. The Court Affirms the Department’s Decision that the Assembled Handles Are Outside the Scope of the Orders*

##### *1. The Court’s Decision in Whirlpool I*

In *Whirlpool I*, the court began its analysis with the general scope language, i.e., the language of the Orders absent specific exclusions. Under the general scope language, the court reasoned, “aluminum extrusions” subject to the Orders are “shapes and forms, produced by an extrusion process . . .” from specified aluminum alloys. *Whirlpool I*, 40 CIT at \_\_, 144 F. Supp. 3d at 1300 (quoting *AD Order*, 76 Fed. Reg. at 30,650; *CVD Order*, 76 Fed. Reg. at 30,653). The court stated, further, that “[t]he scope of the Orders includes goods made of the specified aluminum alloys that resulted from an extrusion process but also were subjected to certain specified types of industrial processes after extrusion.” *Id.* The court added that “[t]hese post-extrusion processes are drawing, fabricating, and finishing; the scope language provides non-exhaustive lists of types of fabricating and finishing operations.” *Id.* Observing that “[n]otably absent from the identified post-extrusion processes are assembly processes,” the court reasoned 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.” *Id.*, 40 CIT at \_\_, 144 F. Supp. 3d at 1302. Addressing scope language providing that subject aluminum extrusions may be “described at the time of importation as parts for final finished products that are assembled after importation” or “identified with reference to their end use,” the court, citing the express language of the scope, concluded that this language is limited by the qualification that goods so

described or identified are within the scope only if they “otherwise meet the definition of aluminum extrusions.” *Id.* (quoting *AD Order*, 76 Fed. Reg. at 30,650–51; *CVD Order*, 76 Fed. Reg. at 30,654 (emphasis added)).

The court next addressed the “subassemblies provision,” *id.*, which places within the scope of the Orders “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.” *AD Order*, 76 Fed. Reg. at 30,651; *CVD Order*, 76 Fed. Reg. at 30,654.<sup>3</sup> The court concluded that “[t]his is the only general scope language that reasonably can be interpreted to expand the scope beyond goods consisting solely of a single extrusion, but this sentence, notably, refers to ‘partially assembled merchandise.’” *Whirlpool I*, 40 CIT at \_\_\_, 144 F. Supp. 3d at 1302. The court noted that Commerce, in the Final Scope Ruling, had not relied upon the subassemblies provision in placing Whirlpool’s assembled handles within the scope of the Orders; this was “understandable,” according to the court, because the subassemblies provision applies only to partially assembled merchandise whereas the handles were “imported in a form in which they require no further assembly or processing prior to the intended use.” *Id.*, 40 CIT at \_\_\_, 144 F. Supp. 3d at 1303 (citing *Final Scope Ruling* 5).

The court reasoned that the Final Scope Ruling was flawed because it failed “to address in any meaningful way the question of whether the general scope language describes the assembled handles” and because, after mentioning the definition of “extrusion” in the general scope language, it proceeded “directly to a discussion of whether these goods satisfy either the finished merchandise exclusion or the finished goods kit exclusion.” *Id.*, 40 CIT at \_\_\_, 144 F. Supp. 3d at 1302–03 (citing *Final Scope Ruling* 17). The court opined in *Whirlpool I* that “[a]fter a discussion of the two exclusions, the Final Scope Ruling states, in conclusory fashion, that ‘we find that the handles at

<sup>3</sup> The referenced “finished goods ‘kit’” definition is part of the “finished goods kit exclusion,” in defining which the Orders state as follows:

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.

*Aluminum Extrusions from the People’s Republic of China: Antidumping Duty Order*, 76 Fed. Reg. 30,650, 30,651 (Int’l Trade Admin. May 26, 2011); *Aluminum Extrusions from the People’s Republic of China: Countervailing Duty Order*, 76 Fed. Reg. 30,653, 30,654 (Int’l Trade Admin. May 26, 2011).

issue fall inside the language of the scope that includes “aluminum extrusions which are shapes and forms, produced by an extrusion process.”” *Id.* (quoting *Final Scope Ruling* 18). The court did not consider the assembled handles to conform to this definition and pointed out the distinction between “extrusions” as defined in the scope language and “assemblies, each of which contains an extrusion, machined and surface-treated, as the principal component.” *Id.*, 40 CIT at \_\_, 144 F. Supp. 3d at 1302. Viewing as unreasonable an interpretation of the general scope language to include the assembled handles, the court held that the *Final Scope Ruling* was “contrary to law and must be set aside.” *Id.*, 40 CIT at \_\_, 144 F. Supp. 3d at 1303.

The court also analyzed the applicability of the finished merchandise exclusion to the assembled handles, even though this analysis was unnecessary to the decision to order a remand of the *Final Scope Ruling*. *Id.*, 40 CIT at \_\_, 144 F. Supp. 3d at 1303–04. The court stated that Commerce had failed to demonstrate that the assembled handles, if presumed to fall within the general scope language, would not qualify under the plain language of that exclusion. *Id.* (“Commerce presents no convincing reason why the plain language of this exclusion, which appears to describe the assembled handles, would not be dispositive were the general scope language presumed to describe these goods.”). *Id.*, 40 CIT at \_\_, 144 F. Supp. 3d at 1304. The court considered Commerce to have decided that the presence of what Commerce considered “fasteners” within an assembly is to be disregarded when the finished merchandise exclusion is applied and, in so doing, to have relied unjustifiably on a reference to “fasteners” in a different exclusion, the finished goods kit exclusion. *Id.* The court further concluded that “Commerce also employed flawed logic and ignored record evidence in concluding that the plastic end caps in the assembled handles are ‘fasteners.’” *Id.*, 40 CIT at \_\_, 144 F. Supp. 3d at 1304–05. As the court stated, “[r]elying on a dictionary definition of ‘washer’ as a ‘flat thin ring or a perforated plate used in joints or assemblies to ensure tightness, prevent leakage, or relieve friction,’ . . . Commerce found that the plastic end caps ‘are analogous to a washer’ because they ‘allow[ ] the handle to fit tightly to the refrigerator door’; Commerce further found, without evidentiary support in the record, that the plastic end caps ‘relieve[ ] friction between the door and the handle.’” *Id.*, 40 CIT at \_\_, 144 F. Supp. 3d at 1305 (citing *Final Scope Ruling* 17) (internal citation omitted). As to the lack of substantial evidence to support the Department’s finding, the court stated that “[t]he record evidence is that the end caps are made of plastic, are designed for their specific application, and are attached to

the aluminum extrusion component ‘by means of screws.’” *Id.* (citing *First Scope Ruling Request* 7, 16–17).

*Whirlpool I* directed Commerce to reconsider its decision placing the assembled handles within the scope of the Orders and to “reach a new determination as to whether the assembled handles are covered by the scope, bearing in mind that it must interpret reasonably the scope language it chose upon promulgating the Orders.” *Id.* (citing *Duferco Steel, Inc. v. United States*, 296 F.3d 1087, 1097–98 (Fed. Cir. 2002)).

## 2. *The Department’s Remand Redetermination*

In the Remand Redetermination, Commerce decided “under respectful protest[ ] that handles with end caps are outside the scope of the *Orders* because, consistent with the Court’s interpretation of the scope language, there is no general scope language which covers such products.” *Remand Redetermination* 8 (footnote omitted). Commerce further decided that, as a result, it was unnecessary to address whether the assembled handles meet the conditions for the exclusions to the Orders. *See id.* at 8, 14.

The court affirms the Department’s decision that the assembled handles are not within the scope of the Orders. However, the court does not affirm all of the statements Commerce included in the Remand Redetermination. Most notably, when responding to defendant-intervenor’s comments in the Remand Redetermination, Commerce included statements that appear to misinterpret certain aspects of the court’s opinion and order in *Whirlpool I*, as discussed below. Nevertheless, the Remand Redetermination is sufficient to allow the court to affirm, on the reasoning the Department presents, the decision that the assembled handles are outside the scope of the Orders. The Remand Redetermination adopts, albeit under protest, the same analysis that the court applied in *Whirlpool I* to conclude that the general scope language does not include the assembled handles.

In addressing AEFTC’s position that the assembled handles are covered by the Orders on the premise that the plastic end caps are “fasteners,” Commerce stated that it agrees with defendant-intervenor that “both the scope language and the record evidence support a finding that the plastic end caps in question should be treated as fasteners, and, therefore, Whirlpool’s handles with end caps consist solely of aluminum extrusions and fasteners.” *Id.* at 10. Commerce added that it could not rule in this way consistent with the court’s opinion and order in *Whirlpool I* because “the Court has made a specific finding that, based on the scope language and this same

record evidence, the plastic end caps are not fasteners.” *Id.* (footnote omitted). However, the court did not make a “finding” that the plastic end caps are not fasteners. It is not the court’s role to make findings but instead to determine whether the Department’s findings are supported by substantial evidence on the record and whether the Department’s conclusions are otherwise in accordance with law. As discussed previously in this Opinion, the finding that the end caps are “fasteners” was flawed based on the record evidence, and it was inconsistent with the definition of the term “washer” upon which Commerce itself relied. The conclusion that treating the end caps as fasteners results in the inclusion of the assembled handles within the scope of the Orders was also flawed, as it was based on a misinterpretation of the scope language.

The Remand Redetermination also appears to misinterpret the court’s discussion in *Whirlpool I* of the subassemblies and parts provisions in the scope language. In addressing AEFTC’s opposition to the Department’s position that it need not analyze the applicability of the scope exclusions to Whirlpool’s assembled handles because they are not within the ambit of the general scope language, Commerce stated that “although the Court identified additional general scope provisions, i.e., the ‘parts’ language and ‘subassemblies’ language, which also could be considered relevant, *the Court ultimately found that, based on the record evidence, these provisions would not support a finding that Whirlpool’s handles with ends caps are covered by the Orders.*” *Remand Redetermination* 12–13 (emphasis added). However, the court never held that the subassemblies language would not support a finding that the assembled handles were within the scope. Because Commerce itself based the reasoning of the Final Scope Ruling on scope language *other* than the subassemblies provision, the court was not in a position to reach a holding on whether the subassemblies provision could support a finding that the assembled handles are subject merchandise.<sup>4</sup> Instead, the court, as it was required to do, reached its holding in *Whirlpool I* based on the reasoning Commerce put forth, and the court’s observations as to the subassemblies provision are, therefore, *dicta*. As to the “parts” provision

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<sup>4</sup> In the Remand Redetermination, Commerce again refrained from applying the subassemblies provision. Even had it applied the subassemblies provision, and even had it somehow concluded that the assembled handles are only “partially assembled,” it could not plausibly have decided, as it did in the Final Scope Ruling, that the assembled handles are within the scope. By its express terms, the subassemblies provision is limited to “the aluminum extrusion components” and “does not include the non-aluminum extrusion components of subassemblies.” *AD Order*, 76 Fed. Reg. at 30,651; *CVD Order*, 76 Fed. Reg. at 30,654. As it did in the Final Scope Ruling, Commerce based its decision in the Remand Redetermination on each assembled handle, considered as an entirety.

in the scope language, the question in *Whirlpool I* was not whether the assembled handles are “described at the time of importation as parts for final finished products that are assembled after importation” within the meaning of the scope language, *AD Order*, 76 Fed. Reg. at 30,650, *CVD Order*, 76 Fed. Reg. at 30,654. The point the court made in *Whirlpool I* was that goods that are within the meaning of this language do not necessarily fall within the scope. *See Whirlpool I*, 40 CIT at \_\_\_, 144 F. Supp. 3d at 1302. Instead, by the express limitation in the scope language, such goods are within the scope only if they “otherwise meet the definition of aluminum extrusions,” *AD Order*, 76 Fed. Reg. at 30,651, *CVD Order*, 76 Fed. Reg. at 30,654.

### 3. *Defendant-Intervenor’s Comments on the Remand Redetermination*

In opposing the Remand Redetermination, defendant-intervenor AEFTC puts forth several arguments that the court rejects for the reasons discussed below.

AEFTC argues that the Department’s finding in the Remand Redetermination that the general scope language does not apply to the assembled handles is unreasonable and “inconsistent with evidence on the record that shows that the handles match the physical description of subject merchandise and are comprised entirely of extruded aluminum and fasteners.” Def.-Int’s Remand Comments 2. According to AEFTC, “the ‘fasteners’ term is properly understood as covering a much broader category of components than described by the Court in its decision,” *id.* at 5 (citation omitted), and should be construed to cover the plastic end caps because these components serve an attachment function, *id.* at 5–6. This argument is unavailing. The court’s discussion of the “fasteners” question occurred in the hypothetical context of the court’s presuming, *arguendo*, that the scope language could be construed, as a general matter, to encompass assembled goods such that the finished merchandise exclusion would need to be considered. *See Whirlpool I*, 40 CIT at \_\_\_, 144 F. Supp. 3d at 1303–04. Even if the plastic end caps plausibly could be described as “fasteners,” so describing them would not have cured the fundamental flaw in the Final Scope Ruling. While the subassemblies provision (which Commerce did *not* invoke) can be interpreted as enlarging the scope to encompass an “extrusion” (as defined in the scope language) that is imported as a component of a partially assembled good, the general scope language, apart from the subassemblies provision, does not include assembled goods. Rather, the general scope language defines extrusions as “shapes and forms, produced by an extrusion process.”

*AD Order*, 76 Fed. Reg. at 30,650; *CVD Order*, 76 Fed. Reg. at 30,653. The post-extrusion processes that do not remove an extrusion from the scope are specified in the scope language as drawing, fabricating and finishing. *AD Order*, 76 Fed. Reg. at 30,650; *CVD Order*, 76 Fed. Reg. at 30,654. An assembly process using an extrusion as a component in the production of another good is not included among those post-extrusion processes, and only the subassemblies provision refers to assembled goods. The assembled handles, considered as a whole (which is how Commerce analyzed them in the Final Scope Ruling and the Remand Redetermination) cannot truthfully be described as shapes or forms produced by an extrusion process. The uncontradicted record evidence is that they are, instead, the products of an assembly process.

AEFTC also argues that “the Court specifically recognized that aluminum extrusions containing non-extruded parts are covered under the scope, albeit under the description of partially-assembled merchandise.” Def.-Int.’s Remand Comments 6 (citation omitted). This argument misunderstands *Whirlpool I* and misinterprets the scope language. “Aluminum extrusions containing non-extruded parts” are *not* included in the scope, and the court did not decide that they were. Under the terminology employed by the scope language, there can be no such thing as an aluminum extrusion that contains non-extruded parts. If a single good contains non-extruded parts, it is necessarily an assembly of parts and cannot fall within the definition of an “extrusion” that the scope language contains. The subassemblies provision (which is not at issue in this case), by its own terms, can apply only to the aluminum extrusion components of a subassembly considered to be “partially assembled merchandise,” not to the entire subassembly.

Finally, defendant-intervenor contends that Commerce was incorrect in refusing to engage in an analysis of Whirlpool’s assembled handles under the exclusions to the general scope language, having already found that these handles are not within the general scope of the Orders. *Id.* at 7–9. According to AEFTC, because Commerce properly found Whirlpool’s assembled handle to be within the general scope of the Orders in the Final Scope Ruling, an “assessment of whether Whirlpool’s handles with end caps are eligible for exclusion as ‘finished merchandise,’ then, is appropriate and should render a finding that Whirlpool’s handles with end caps remain ineligible for exclusion from the scope of the Orders, even as ‘finished merchandise.’” *Id.* at 7–8. For the reasons provided in *Whirlpool I* and discussed above, the court views as correct the Department’s decision, albeit made under protest, that the assembled handles are not cov-

ered by the general scope language to the Orders. Therefore, the court will not disturb the Department's decision in the Remand Redetermination to refrain from engaging in an analysis of the exclusions to the scope.

### **III. CONCLUSION**

The court rules that Commerce was correct in deciding that Whirlpool's assembled handles are not within the scope of the Orders. The court affirms this decision on the reasoning, adopted by Commerce (albeit under protest), that the assembled handles are not described by the general scope language of the Orders. Judgment will enter accordingly.

Dated: August 26, 2016  
New York, New York

*/s/ Timothy C. Stanceu*  
TIMOTHY C. STANCEU  
CHIEF JUDGE