

U.S. Court of International Trade

Slip Op. 17–158

INMAX SDN. BHD. and INMAX INDUSTRIES SDN. BHD., Plaintiffs, v. UNITED STATES, Defendant.

Before: Leo M. Gordon, Judge
Court No. 17–00205

[Changed Circumstances Review Remanded.]

Dated: December 4, 2017

Gregory S. Menegaz, J. Kevin Horgan, Alexandra H. Salzman, and Judith L. Holdsworth, deKieffer & Horgan, PLLC of Washington, DC for Plaintiffs Inmax Sdn. Bhd. and Inmax Industries Sdn. Bhd.

Stephen C. Tosini, Trial Attorney, Commercial Litigation Branch, Civil Division, U.S. Department of Justice of Washington, DC, for Defendant United States. With him on the brief were *Chad A. Readler*, Acting Assistant Attorney General, *Jeanne E. Davidson*, Director, *Patricia M. McCarthy*, Assistant Director, and *Eric J. Singley*, Trial Attorney. Of counsel on the brief was *David W. Richardson*, Senior Counsel, U.S. Department of Commerce, Office of the Chief Counsel for Trade and Enforcement and Compliance of Washington, D.C.

Adam H. Gordon and *Ping Gong*, The Bristol Group PLLC, of Washington, DC for Defendant-Intervenor Mid Continent Steel & Wire, Inc.

OPINION AND ORDER

Gordon, Judge:

Plaintiffs challenge the initiation of a changed circumstances review by the U.S. Department of Commerce (“Commerce”) less than 24 months after publication of the notice of the underlying final less than fair value determination. *See Certain Steel Nails from Malaysia*, 82 Fed. Reg. 34,476 (Dep’t of Commerce July 25, 2017) (“*Final Results*”), and accompanying Issues and Decision Memorandum for the Final Results of the Antidumping Duty Changed Circumstances Review of Certain Steel Nails from Malaysia (Dep’t of Commerce July 14, 2017), available at <http://enforcement.trade.gov/frn/summary/malaysia/2017–15518–1.pdf> (last visited this date) (“*Decision Memorandum*”); Plaintiffs’ Rule 56.2 Mem. Supp. Mot. for J. upon the Agency R., ECF No. 36 (“Pls.’ Br.”); Def.’s Resp. to Pls.’ Rule 56.2 Mot. for J. on the Agency R., ECF No. 37 (“Def.’s Resp.”); Pls.’ Reply Br., ECF No. 39.

The court has jurisdiction pursuant to Section 516A(a)(2)(B)(iii) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1516(a)(2)(B)(iii) (2012),¹ and 28 U.S.C. § 1581(c) (2012).

I. Background

Plaintiff Inmax Sdn. Bhd. (“Inmax”) was a mandatory respondent in the less-than-fair-value investigation of certain steel nails from Malaysia (“subject merchandise”) and was assigned a total adverse facts available (“AFA”) rate of 39.35%. *Certain Steel Nails from Malaysia*, 80 Fed. Reg. 28,969 (Dep’t of Commerce May 20, 2015) (“*Final LTFV Determination*”). Prior to the preliminary determination, Inmax requested that it be collapsed with its affiliated company Inmax Industries Sdn. Bhd. (“Inmax Industries”). Both companies shared the same parent, Inmax Holding Co. Ltd. (“Inmax Holding”). Commerce in its preliminary determination did not collapse Inmax and Inmax Industries. No party challenged that decision, and Commerce did not collapse the companies in the final determination. This proved fortunate for Inmax Industries (and its parent Inmax Holding) because Inmax was assigned a total adverse facts available rate of 39.35%, whereas Inmax Industries was assigned the all others rate of 2.66%.

After release of the *Final LTFV Determination*, Inmax Holding filed a letter with the Taiwan Stock Exchange in which it explained, in pertinent part:

The [United States] initiated antidumping and countervailing duty investigations on Certain Steel Nails from Malaysia We have been notified that the U.S. Department of Commerce (DOC) made an affirmative final determination that assigned a final antidumping duty rate of 39.95% to [Inmax]. We are very concerned about DOC’s determination, and have asked our counsel to find out the details.

Our subsidiary, [Inmax Industries] have not been investigated by the DOC in the antidumping and countervailing duty investigations. According to the U.S. official information, our subsidiary [Inmax Industries] final duty rate is 2.61%. Because of the tax variation factor, our subsidiary [Inmax] will make sales to the U.S. market through new factory Inmax Indust[ries]’ production line and will have some temporary changes because of

¹ Further citations to the Tariff Act of 1930, as amended, are to the relevant provisions of Title 19 of the U.S. Code, 2012 edition.

the business adjustment in the near future. After the temporary adjustment, we expect that it will stabilize its production line and its U.S. market.

Joint Appendix 5.

Four months after the *Final LTFV Determination* (in September 2015), Mid Continent Steel & Wire, Inc. (“Petitioner”) requested that Commerce initiate a changed circumstances review, alleging that U.S. import data demonstrated a sharp decline in imports of subject merchandise for Inmax and a corresponding increase in imports of subject merchandise for Inmax Industries. Petitioner alleged that Inmax was potentially evading the antidumping duty order by shipping production through Inmax Industries and its lower “all others” rate. Petitioner highlighted the quoted language above from Inmax Holding’s Taiwan Stock Exchange notice. Commerce, in turn, determined that the requisite statutory “good cause” existed to conduct a changed circumstances review within 24 months of the investigation, 19 U.S.C. § 1675(b)(4), emphasizing “new trading patterns” among the Inmax companies and “possible evasion of the Order.” *Certain Steel Nails from Malaysia*, 80 Fed. Reg. 71,772 (Nov. 17, 2015) (notice of initiation). Commerce ultimately collapsed Inmax and Inmax Industries, a decision no party disputes. *Decision Memorandum* at 4. Plaintiffs instead focus on the changed circumstances review itself, arguing that Commerce lacked the requisite good cause. *Id.* at 4–14. During the course of the changed circumstances review, Plaintiffs and Petitioner requested a periodic review, and Commerce initiated the first administrative review (“AR”) in September 2016. Pls.’ Br. at 12. The cash deposit rates assigned in the investigation to the Inmax companies will therefore not ripen into assessed antidumping duties, but instead be superseded by actual calculated rates for the covered entries, with any difference between the cash deposits and actual assessment trued up at liquidation (any underpayment payable plus interest, any overpayment refunded plus interest). *See* 19 C.F.R. § 351.212.

II. Standard of Review

The court sustains Commerce’s “determinations, findings, or conclusions” unless they are “unsupported by substantial evidence on the record, or otherwise not in accordance with law.” 19 U.S.C. § 1516a(b)(1)(B)(i). More specifically, when reviewing agency determinations, findings, or conclusions for substantial evidence, the court assesses whether the agency action is reasonable given the record as

a whole. *Nippon Steel Corp. v. United States*, 458 F.3d 1345, 1350–51 (Fed. Cir. 2006). Substantial evidence has been described as “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *DuPont Teijin Films USA v. United States*, 407 F.3d 1211, 1215 (Fed. Cir. 2005) (quoting *Consol. Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)). Substantial evidence has also been described as “something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency’s finding from being supported by substantial evidence.” *Consolo v. Fed. Mar. Comm’n*, 383 U.S. 607, 620 (1966). Fundamentally, though, “substantial evidence” is best understood as a word formula connoting reasonableness review. 3 Charles H. Koch, Jr. *Administrative Law and Practice* § 9.24[1] (3d ed. 2017). Therefore, when addressing a substantial evidence issue raised by a party, the court analyzes whether the challenged agency action “was reasonable given the circumstances presented by the whole record.” 8A *West’s Fed. Forms*, National Courts § 3.6 (5th ed. 2017).

Separately, the two-step framework provided in *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842–45 (1984), governs judicial review of Commerce’s interpretation of the anti-dumping statute. See *United States v. Eurodif S.A.*, 555 U.S. 305, 316 (2009) (Commerce’s “interpretation governs in the absence of unambiguous statutory language to the contrary or unreasonable resolution of language that is ambiguous.”).

III. Discussion

The antidumping statute requires “good cause” for Commerce to conduct a changed circumstances review within 24 months after an investigation. 19 U.S.C. § 1675(b)(4).² “Good cause” is a term of art (most common in the labor and employment law context) that translates simply to a “legally sufficient reason.” CAUSE, *Black’s Law Dictionary* (10th ed. 2014). The “good cause” standard is “higher than the regular standard” for initiating a changed circumstances review. *Decision Memorandum* at 11. If a typical changed circumstances review requires changed circumstances, then logic dictates that

² There is also a “parroting regulation,” 19 C.F.R. § 351.216(c), that “does little more than restate the terms of the statute itself.” *Gonzales v. Oregon*, 546 U.S. 243, 257 (2006), which means the issue here does not involve Commerce’s interpretation of its regulation, but Commerce’s application and interpretation of the statutory provisions themselves. See *id.* (“the existence of a parroting regulation does not change the fact that the question ... is not the meaning of the regulation but the meaning of the statute.”).

Commerce's "higher" standard requires something more than just changed circumstances, or more simply, changed circumstances "plus."

As noted above, Petitioner identified evidence of *potential* evasion by Inmax, and Commerce reasoned, "if preventing evasion of an order is not 'good cause,' then it is difficult to imagine what would be 'good cause.' . . . it is difficult to imagine a better cause for initiating a [changed circumstances review] than preventing evasion of an order by one company through the use of an affiliated company." *Id.* This strikes the court as a reasonable response to the facts before Commerce at the time of initiation of the review. Inmax, a mandatory respondent that participated in the investigation received a total AFA rate of 39.35%. Its affiliate Inmax Industries, also an interested party that participated in the investigation, received the all others rate of 2.66%. Shortly after the investigation, Inmax dramatically reduced its exportation of subject merchandise, while affiliate Inmax Industries increased its exportation of subject merchandise. Those changed circumstances *plus* the public statement from Inmax Holdings that Inmax would "make sales to the U.S. market through new factory Inmax Indust[ries]' production line" was sufficient to warrant a closer look from Commerce. There were changed circumstances—the change in trading patterns—plus the *potential* evasion by Inmax shipping its subject merchandise through Inmax Industries.

Interestingly, though, when Commerce took that closer look in the changed circumstances review, it found that Inmax was *not* shipping any of its merchandise *through* Inmax Industries. According to Commerce, "the evidence does not show that [Inmax] is producing merchandise at its facility and then exporting that merchandise through Inmax Industries." *Id.* at n.26. Instead, Inmax apparently ceased production of subject merchandise in response to the 39.35% rate. Inmax Industries, on the other hand, developed its own production lines and has been exporting its own subject merchandise pursuant to its duly assigned all-others rate. It is important, therefore, to note that there was no *actual* "evasion" of the antidumping order, at least as the court understands that term. Evasion connotes illegality in the entry of subject merchandise. *See* 19 U.S.C. § 1517(a)(5) (defining "evasion"). Had Inmax shipped its merchandise (subject to a 39.35% rate) through Inmax Industries (and its 2.66% rate), *that* would have been an illegal evasion of the order, *id.*, and may have engendered a referral from Commerce to U.S. Customs and Border Protection pursuant to 19 U.S.C. § 1517(b)(3) for further investigation under 19 U.S.C. § 1517 ("Procedures for investigating claims of evasion of antidumping and countervailing duty orders"). But that's not what

happened. Parent Inmax Holding's letter to the Taiwan Stock Exchange was not a pronouncement of an impending fraudulent export scheme among its subsidiary companies, but a simple misstatement of otherwise lawful activity under an antidumping duty order. To recap, Commerce *did not* collapse the Inmax companies, assigning each company its *own* rate (both of which were derivative, with one based on the petition rate, and the other based on the all others rate). Inmax Industries therefore received its own rate, and lawfully produced subject merchandise for exportation at that rate (rather than unlawfully export subject merchandise produced by its affiliate Inmax).

Although the court believes Commerce had good cause to initiate the changed circumstances review—there were changed circumstances *plus* the possibility of evasion—the subsequent finding by Commerce that Inmax was *not* shipping its merchandise through Inmax Industries, does alter the dynamics of the proceeding and challenges the reasonableness of several aspects of Commerce's subsequent decision. The court therefore must remand this matter to Commerce for further explanation.

As noted, Commerce found that the Inmax companies did *not* illegally co-mingle subject merchandise in their exports, and that their parent publicly, and transparently, communicated a change in their export behavior due to the differing assigned rates. Commerce does acknowledge that “this avoidance could be seen by some as a reasonable corporate resources decision. . . .” *Decision Memorandum* at 5. The court would go one step further and add that not just “some” but *all* would view such a production change as a reasonable corporate resource decision. What were Inmax Holding's other options? Continue to export through Inmax at 39.95%? Commerce concludes that the otherwise reasonable corporate resource decision “is a form of deliberate manipulation, *via* cash deposit avoidance, to undermine or evade the full effect of the *Order*.” *Id.* For Commerce, “this activity purposefully undermines the *Order* by seeking to avoid the application of [Inmax]'s AD cash deposit rate determined in the investigation.” This conclusion implies that there is only one true cash deposit rate for the Inmax companies, the total AFA petition rate assigned to Inmax, rather than the two rates that Commerce actually assigned.

The court is surprised at Commerce's sudden epiphany that Inmax and Inmax Industries could shift production between them. Inmax and Inmax Industries actively sought to be collapsed in the investigation, meaning that they implicitly conceded the basis for collapsing—a potential for manipulation of price or production, 19

C.F.R. § 351.401(f). Commerce *chose* not to collapse them, *and* assigned a separate rate to each company. The court therefore does not understand how production and exportation by Inmax Industries under its validly assigned rate avoids “paying the investigation rate.” Commerce found there was no co-mingling of subject merchandise between the Inmax companies, which should have clarified for Commerce that the public disclosure of parent Inmax Holding was not some bold pronouncement of fraudulent intent to “evade” the order, but instead, a transparent explanation of production adjustments because of the magnitude of the total AFA rate compared to the all-others rate.

Despite having assigned the all-others rate to Inmax Industries, Commerce suggests that Inmax Industries should have exported under Inmax’s total AFA rate:

Inmax Industries began selling the subject merchandise to the United States and entering it under the all-others rate, rather than [Inmax’s] rate, just as the companies announced they would do. . . . The issue here is whether the proper AD cash deposit rate is being applied to entries.

Decision Memorandum at 11. Commerce again intimates there is one *proper* cash deposit rate—the higher one. For Commerce, the cessation of exports from Inmax and increase in imports from Inmax Industries “would and could” undermine “the efficacy and integrity of the *Order* (and ultimately the integrity of the trade remedy laws) and unnecessarily delay the application of the statutory remedy for a significantly long time (*i.e.*, nearly two years, or more) before the completion of the first [administrative review].” *Id.* at 10.

This is quite a flourish, but is too vague to have much meaning. The court is unsure what “statutory remedy” Commerce is referencing. Is Commerce referring to collapsing two affiliated companies via a changed circumstances review prior to the first administrative review? If so, the court notes that the statute contemplates a two-year (24 month) limitation on such a remedy, 19 U.S.C. § 1675(b)(4). Or is Commerce referencing some other “statutory remedy”?

The court is also having trouble with the conclusion that Inmax Holding, Inmax, and Inmax Industries have undermined the integrity of the order. Both Inmax and Inmax Industries are being reviewed in the first administrative review in which they have been collapsed. The final rate assigned in that proceeding will be the liquidation rate for the entries subject to cash deposits set in the investigation. Any cross-border price discrimination is therefore being mitigated at specific rates calculated in the first administrative

review (as opposed to less precise, derivative cash deposit rates set in the investigation) and payment to the United States is secured by the cash deposits for any resulting duties owed. And here, rather than illegally ship Inmax's merchandise "through" Inmax Industries, Inmax Holding honored the dictates of the order by taking the time and incurring the expense to retool Inmax Industries, observe corporate formalities, and export Inmax Industries' subject merchandise under the all-others rate. Rather than undermine the integrity of the order, the Inmax companies appear to have upheld it. If the goal of the antidumping statute and antidumping duty orders is to level the playing field and mitigate cross-border price discrimination, see *RZBC Grp. Shareholding Co. v. United States*, No. 15-00022, 40 CIT ___, ___, 2016 WL 3880773, at *1 (June 30, 2016) (explaining that the purpose of antidumping duties is to level the playing field and fight price discrimination), it is hard to conclude that those objectives are being undermined here. If, however, the antidumping statute is being used for some *other* purpose, for example, to effectively lock out or embargo subject merchandise through aggressive assignment of high, petition-based, total AFA rates, then that objective was, indeed, undermined by the Inmax companies.

The court agrees that upon initiation, the record suggested that Inmax may have been evading the order by shipping its merchandise "through" Inmax Industries. During the review, however, Commerce determined this was not happening. Commerce maintains that the "good cause" standard is "higher" than a typical changed circumstances review. This means there needs to be something more than mere changed circumstances. With the absence of the original contemplated evasion (Inmax shipping its merchandise through Inmax Industries), it appears we are dealing with an ordinary changed circumstances review. And it is neither remarkable nor noteworthy that Inmax and Inmax Industries should be collapsed—they sought that treatment all along. The more interesting question is what Commerce should have done when it discovered that there was no actual evasion of the order by the Inmax companies. Did the good cause justifying the review suddenly evaporate with the finding of no evasion? Posed another way, having invested time and resources in the review, should Commerce have completed it and collapsed the Inmax companies as it did, or should Commerce have terminated the review once it discovered that Inmax was not exporting "through" Inmax Industries?

The court will remand this matter to Commerce to address that question as well as the following questions:

1. What specific “statutory remedy” is Commerce referencing on page 10 of the *Decision Memorandum*?

2. How is the integrity of the order undermined if Inmax did not illegally ship its merchandise through Inmax Industries, but rather, ceased production and Inmax Industries exported its own subject merchandise? It seems the opposite conclusion applies, that Inmax and Inmax Industries were upholding the integrity of the order and observing the legal formalities required for their exports. Also, given that Inmax and Inmax Industries have been collapsed in the first administrative review, and therefore actual, specific, calculated rates will supersede the cash deposit rates assigned during the investigation, won’t any cross-border price discrimination for the effected entries be remedied as intended by the statute?

3. Given the wide disparity in the assigned rates to the Inmax companies, and given that both companies were fully cooperating in the contemporaneous first administrative review in which the companies were collapsed, what specific statutory purpose did Commerce achieve in consolidating the investigation rates at the higher total AFA rate, rather than simply wait for completion of the first administrative review to both set the liquidation rate for the first AR entries as well as the new cash deposit rate for the Inmax companies?

Accordingly, it is hereby

ORDERED that the *Final Results* are remanded to Commerce for action in accordance with this opinion.

Dated: December 4, 2017

New York, New York

/s/ Leo M. Gordon
JUDGE LEO M. GORDON



Slip Op. 17–161

ADAMS THERMAL SYSTEMS, INC. Plaintiff, v. UNITED STATES, Defendant,
and ALUMINUM EXTRUSIONS FAIR TRADE COMMITTEE, Defendant-
Intervenor.

Before: Timothy C. Stanceu, Chief Judge
Court No. 16–00128

[Sustaining a scope ruling of the International Trade Administration, U.S. Department of Commerce, interpreting the scope of antidumping and countervailing duty orders on certain aluminum extrusions from the People’s Republic of China]

Dated: December 6, 2017

Richard P. Ferrin, Drinker Biddle & Reath LLP, of Washington, D.C., argued for plaintiff. With him on the brief were *Douglas J. Heffner* and *William R. Rucker*.

Aimee Lee, Senior Trial Counsel, Civil Division, U.S. Department of Justice, of New York, NY, argued for defendant. With her on the brief were *Chad A. Readler*, Acting Assistant Attorney General, *Jeanne E. Davidson*, Director, and *Reginald T. Blades, Jr.*, Assistant Director. Of counsel on the brief was *Zachary S. Simmons*, Office of the Chief Counsel for Trade Enforcement & Compliance, U.S. Department of Commerce, of Washington, D.C.

Alan H. Price, *Robert E. DeFrancesco, III*, and *Derick G. Holt*, Wiley Rein LLP, of Washington, D.C., for defendant-intervenor.

OPINION

Stanceu, Chief Judge:

Plaintiff Adams Thermal Systems (“ATS”) contests a 2016 “Final Scope Ruling” in which the International Trade Administration, U.S. Department of Commerce (“Commerce” or the “Department”) construed the scope of antidumping and countervailing duty orders (the “Orders”) on aluminum extrusions from the People’s Republic of China to include certain aluminum products imported by ATS. The court sustains the Final Scope Ruling.

I. Background

A. The Contested Determination

The determination contested in this action is *Antidumping and Countervailing Duty Orders on Aluminum Extrusions from the People’s Republic of China: Final Scope Ruling on Adams Thermal Systems’ Certain Fittings and Related Products for Engine Cooling Systems* (July 11, 2016) (P.R. Doc. 26), available at <https://enforcement.trade.gov/download/prc-ae/scope/96-fitting-engine-cooling-systems-12jul16.pdf> (last visited Dec. 1, 2017) (“*Final Scope Ruling*”).¹

B. The Antidumping and Countervailing Duty Orders

Commerce issued antidumping and countervailing duty orders on aluminum extrusions from China in May 2011. *Aluminum Extrusions from the People’s Republic of China: Antidumping 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*”) (collectively, the “Orders”).

¹ All citations to documents from the administrative record are to public documents or to the public version of confidential documents. These documents are cited as “P.R. Doc. ___”.

C. *The Scope Ruling Application and the Merchandise at Issue*

ATS filed with Commerce an application for a scope ruling (“Scope Ruling Application”) on October 20, 2015, in which it sought a ruling excluding from the scope of the Orders various aluminum products produced in China, to which ATS referred as “fittings” for automotive uses. *Aluminum Extrusions from the People’s Republic of China: Request for Scope Ruling for Certain Fittings and Related Products for Engine Cooling Systems* (Oct. 20, 2015) (P.R. Docs. 2–4) (“*Scope Ruling Application*”). In the Scope Ruling Application, ATS argued that each fitting, which was produced from a single piece (“blank”) of extruded aluminum alloy, was subjected to further processing following extrusion that, according to ATS, placed it outside the scope of the Orders. *See id.* at 2–6. After conducting an administrative proceeding, Commerce issued the Final Scope Ruling, in which it ruled that the fittings are within the scope of the Orders.

D. *Proceedings before the Court*

ATS commenced this action on July 19, 2016. Summons (July 15, 2016), ECF No. 1; Compl. (July 19, 2016), ECF No. 6. Now before the court is ATS’s motion for judgment on the agency record, which is opposed by defendant United States and defendant-intervenor the Aluminum Extrusions Fair Trade Committee. Mot. of Pl. Adams Thermal Systems, Inc. for J. on the Agency R. under Rule 56.2 (Feb. 17, 2017), ECF No. 25; Mem. of Points and Authorities of Pl. Adams Thermal Systems, Inc. in Support of its Mot. for J. on the Agency R. (Feb. 17, 2017), ECF No. 28 (“Pl.’s Mem.”).² The court held oral argument on October 26, 2017.

II. *Discussion*

A. *Jurisdiction and Standard of Review*

The court exercises subject matter jurisdiction according to 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, 19 U.S.C. § 1516a.³ Among the decisions that may be contested under Section 516A is a determination of “whether

² Originally, plaintiff filed both public and confidential versions of its memorandum in support of its motion for judgment on the agency record and its reply. At oral argument, the court questioned whether photographs in these submissions, which depicted what plaintiff described as representative part numbers for the merchandise at issue, qualified for confidential treatment. In response, plaintiff refiled the memorandum and the reply, disclosing to the public the photographs for which plaintiff previously had claimed confidential treatment.

³ All statutory citations herein are to the 2012 edition of the United States Code and all regulatory citations herein are to the 2016 edition of the Code of Federal Regulations.

a particular type of merchandise is within the class or kind of merchandise described in an . . . antidumping or countervailing duty order.” 19 U.S.C. § 1516a(a)(2)(B)(vi). In reviewing a 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. The Scope Language of the Orders, as Is Relevant to This Dispute

The scope language is set forth in the antidumping duty order and in the countervailing duty order; each version is essentially identical. 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.

Each Order also provides that “[a]luminum extrusions are produced and imported in a wide variety of shapes and forms, including, but not limited to, hollow profiles, other solid profiles, pipes, tubes, bars, and rods” and that “[a]luminum extrusions that are drawn subsequent to extrusion (‘drawn aluminum’) are also included in the scope.” *AD Order*, 76 Fed. Reg. at 30,650; *CVD Order*, 76 Fed. Reg. at 30,654.

The scope language further provides that “[a]luminum extrusions are produced and imported with a variety of finishes (both coatings and surface treatments), and types of fabrication.” *AD Order*, 76 Fed. Reg. at 30,650; *CVD Order*, 76 Fed. Reg. at 30,654. As to fabrication, the scope language also states that “[a]luminum extrusions may also be fabricated, *i.e.*, prepared for assembly. Such operations would include, but are not limited to, extrusions that are cut-to-length, machined, drilled, punched, notched, bent, stretched, knurled, swedged, mitered, chamfered, threaded, and spun.” *AD Order*, 76 Fed. Reg. at 30,650; *CVD Order*, 76 Fed. Reg. at 30,654.

The scope language goes on to state that “[s]ubject 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.” *AD Order*, 76 Fed. Reg. at 30,650–51; *CVD Order*, 76 Fed. Reg. at 30,654. “Such parts that otherwise meet the definition of aluminum extrusions are included in the scope.” *AD Order*, 76 Fed. Reg. at 30,651; *CVD Order*, 76 Fed. Reg. at 30,654.

The scope language also provides that “[s]ubject 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).” *AD Order*, 76 Fed. Reg. at 30,651; *CVD Order*, 76 Fed. Reg. at 30,654. “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.” *AD Order*, 76 Fed. Reg. at 30,651; *CVD Order*, 76 Fed. Reg. at 30,654.

C. *The Merchandise at Issue in this Case*

ATS states in the Scope Ruling Request that “[t]he fittings in question are all machined from an extruded aluminum blank.” *Scope Ruling Application* at 2. “In general, the production process starts with a rough blank made of 6 series aluminum that is formed through an extrusion press (feedstock).” *Id.* at 8. Each individual blank is cut from an extrusion that has a cross section, typically in the approximate form of an “L” or in the form of a hexagon, depending on the intended shape of the finished product. *See id.* at 7–16. Each fitting is the result of multiple fabrication processes, including machining, *see id.*; ATS characterizes these processes as creating “the shape and form of the fittings.” *Id.* at 4. Some of the machining is performed by automated “CNC” (computer numeric control) equipment. *See id.* at 8–9, 11, 12, 13, 14. ATS further describes each of the fittings as “designed in conjunction with vehicle manufacturers’ system integration teams, in order to achieve leak-free sealing points between the heat exchanger and the vehicle subsystem within the space allotted.” *Aluminum Extrusions from the People’s Republic of China: Response to the Department’s April 28, 2016 Second Supplemental Questionnaire on ATS Fittings for Engine Cooling Systems* at 3 (May 13, 2016) (P.R. Doc. 21). “The design process must balance the typical tight space claims demanded in today’s vehicles, with the need for minimal resistance to fluid flow.” *Id.* All products are imported as finished merchandise, with no further processing needed prior to use. *Id.* at 4–5.

Citing a submission by ATS, Commerce described each of the fittings at issue in the Final Scope Ruling. *Final Scope Ruling* at 6–12 (citing *Aluminum Extrusions from the People’s Republic of China: Submission of Production Descriptions: Fittings for Engine Cooling Systems* (May 25, 2016) (P.R. Doc. 25)). The product descriptions, as set forth in the Final Scope Ruling, refer to 43 products, identified by individual part numbers, each of which ATS described as “leak free and structurally robust.” *Id.*

Of the 43 products, 37 are designed and manufactured for use in connection with automotive oil coolers or, in several applications, fuel coolers. The descriptions for 33 of these fittings refer to oil or fuel “flow path[s]” between an oil or fuel cooler (*i.e.*, the heat exchanger) and any of various other systems on a vehicle. *Final Scope Ruling* at 6–11.⁴ These particular fittings are designed to direct fluid into and out of the heat exchanger without imparting excessive flow resistance to the respective system. *Id.* An illustration of one of the 33 products, Part No. 824884, described by plaintiff as representative of the group, shows a fitting machined from an L-shaped blank with square corners. *See* Pl.’s Mem. 7. Plaintiff describes the fabrication process as involving grinding, milling for smoothness, CNC machining, drilling to create the passageway for fluid, threading to allow connection to other parts, polishing, and cleaning with ultrasonic equipment. *Id.* at 6. In the illustration, the finished fitting appears to have a rectangular-shaped base with a cylindrical threaded coupling protruding from one side of the rectangular base and a shorter, cylindrical non-threaded coupling protruding from an adjacent side. *See id.* at 7. The two couplings are at right angles to each other. *See id.* It appears from the illustration that the drilling is at right angles to create the flow path. *See id.*

Another part for use in connection with an oil cooler is a “mounting pin,” Part No. 828105. *Final Scope Ruling* at 11; Pl.’s Mem. 10. This part is machined, using a CNC lathe, from an extruded aluminum blank of hexagonal cross section, then polished and cleaned using ultrasonic equipment. Pl.’s Mem. 10. The center area of the pin retains a hexagonal shape, but both ends have been machined to cylindrical shapes, one threaded and the other non-threaded and beveled at the edge. *See id.*

Also for use in connection with an oil cooler is a “plug,” Part No. 826142. *Final Scope Ruling* at 11; Pl.’s Mem. 9–10. This small part is fabricated from an extruded aluminum blank of hexagonal cross section by means of a grinding machine and a CNC lathe, polished, and cleaned using ultrasonic equipment. Pl.’s Mem. 9. One end retains a hexagonal shape; the other is cylindrical and threaded. *See id.*

⁴ This description applies to Part Nos. 709151, 807603, 808963, 812129, 812246, 812247, 812929, 813138, 823108, 823377, 824026, 824741, 824884, 824885, 824886, 824970, 824971, 825710, 825741, 826146, 826152, 826153, 826184, 826431, 827240, 827782, 828391, 828434, 828694, 829217, 831197, 831198, and 832119. *Antidumping and Countervailing Duty Orders on Aluminum Extrusions from the People’s Republic of China: Final Scope Ruling on Adams Thermal Systems’ Certain Fittings and Related Products for Engine Cooling Systems* at 6–11 (July 11, 2016) (P.R. Doc. 26), available at <https://enforcement.trade.gov/download/prcae/scope/96-fitting-engine-cooling-systems-12jul16.pdf> (last visited Dec. 1, 2017) (“*Final Scope Ruling*”).

at 10. A similar fitting, Part No. 824682, is described in the Scope Ruling as a “cap for oil cooler.” *Final Scope Ruling* at 8.

The remaining article for an oil cooler installation, Part No. 824879, is described as a “threaded fastener.” *Final Scope Ruling* at 11–12; Pl.’s Mem. 11. The fastener is fabricated from an extruded aluminum blank of hexagonal cross section by means of a cutting machine, CNC lathe, polishing wheel, and ultrasonic cleaning equipment. Pl.’s Mem. 11. Most of the length of the finished fastener is comprised of a threaded shank; the head of the fastener retains a hexagonal shape. *See id.* The fastener is drilled throughout. *See id.*

A second group consists of four products (Part Nos. 823375, 826926, 830456, and 830463) used in automotive air conditioning systems. *Final Scope Ruling* at 11; Pl.’s Mem. 7–8. Each of these fittings is described as a “flow path between the air conditioning system and the condenser (heat exchanger).” *Final Scope Ruling* at 11. Each is produced from an extruded aluminum blank of hexagonal cross section. Pl.’s Mem. 7–8. The fabricating is performed by a CNC lathe or milling machine. *Id.* Plaintiff’s representative illustration (for Part No. 823375) shows that one end of the fitting retains a hexagonal shape, but that end is machined to a form resembling a beveled nut and, at the very end, another hexagonal shape. *See id.* at 8. The other end is cylindrical and threaded. *See id.* According to plaintiff’s description, “the drilling and boring processes produce a hollow area inside the fitting that allows fluid to flow through the fitting from the condenser to the engine.”⁵ *Id.* at 7.

The third and final group consists of two products (Part Nos. 826493 and 829507) used with automotive radiators. *Final Scope Ruling* at 11; Pl.’s Mem. 8–9. Each is described as a “coolant flow path between the engine cooling system and the radiator; designed to direct coolant into and out of the radiator without imparting excessive flow resistance to the cooling system.” *Final Scope Ruling* at 11. An extruded aluminum blank is machined in a CNC lathe, ground in a grinding machine, drilled in a CNC drilling machine, polished, and cleaned using ultrasonic equipment. Pl.’s Mem. 8. An illustration for Part No. 826493, which plaintiff describes as representative of the group, shows a blank in a modified L shape and a finished fitting with a rectangular-shaped base, a cylindrical threaded coupling protruding from one side of the rectangular base, and a longer, cylindrical non-threaded coupling protruding from an adjacent side that is

⁵ This description appears to refer erroneously to the engine. Because it is described as a part for air conditioning systems that carries refrigerant, it would appear that the fitting would carry refrigerant from the condenser to other parts of the air conditioning system.

specially shaped at the tip. *See id.* at 9. The two couplings are at right angles to each other. *See id.*

D. The Scope Ruling Is Not Based on an Invalid Finding and Is Not Otherwise Contrary to Law

It is undisputed that each of the fittings at issue in this case was produced from a single aluminum extrusion and that the extrusion was of a 6 series aluminum alloy, which is one of the alloys specified in the scope language as covered by the Orders. Plaintiff does not contest any other specific factual finding Commerce reached in support of its ultimate determination. Instead, in claiming that the Final Scope Ruling is unsupported by substantial evidence and otherwise contrary to law, ATS argues that Commerce applied an impermissible interpretation of the scope language.

1. The Terms of the Scope Language Are Reasonably Interpreted to Include ATS's Fittings

The Department's regulations, in 19 C.F.R. § 351.225(d), provide for issuance of a final scope ruling "based upon the application" for a scope ruling. The regulations further provide, in § 351.225(e), that "where further inquiry is warranted," Commerce will issue a final scope ruling upon the conducting of a "scope inquiry." In this case, Commerce issued the Final Scope Ruling according to § 351.225(d), *i.e.*, based on the application rather than on a scope inquiry. The regulations provide that Commerce will do so "[i]f the Secretary can determine, based solely upon the application [for a scope ruling] and the descriptions of the merchandise referred to in paragraph (k)(1) of this section, whether a product is included within the scope of an order." 19 C.F.R. § 351.225(d). With respect to the "descriptions of the merchandise referred to in paragraph (k)(1) of this section," the regulations provide that "the Secretary will take into account . . . [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 [International Trade] Commission." *Id.* at § 351.225(k)(1).

In *Duferco Steel, Inc. v. United States*, 296 F.3d 1087, 1097 (Fed. Cir. 2002), the Court of Appeals for the Federal Circuit ("Court of Appeals") expressed the fundamental tenet that "review of the petition and the investigation may provide valuable guidance as to the interpretation of the final order" but "they cannot substitute for language in the order itself," which is "a predicate for the interpretive process." Plaintiff relies in part on *Duferco* in arguing that Commerce misconstrued the scope language to include its fittings. Pl.'s Mem. 21, 40

(“Commerce’s *Final Scope Ruling* is not in accordance with law because it interprets the *Orders* in a manner contrary to its terms.”). As plaintiff correctly notes, *Duferco* holds that scope “orders may be interpreted as including subject merchandise only if they contain language that specifically includes the subject merchandise or may be reasonably interpreted to include it.” *Id.* at 40 (quoting *Duferco*, 296 F.3d at 1089). ATS argues that the scope language of the *Orders* is not reasonably interpreted to include its fittings. The court disagrees.

Plaintiff argues, first, that the scope language must be construed to confine the *Orders* to products that retain the general shape and form imparted by the extrusion process. According to this argument, post-extrusion fabrication that significantly alters the basic cross-section profile of the extrusion, such as that performed to produce ATS’s fittings, necessarily results in a product outside the scope. Pl.’s Mem. 15–19. Plaintiff’s argument begins with the first sentence of the scope language, which reads as follows:

The merchandise covered by the order is aluminum extrusions which are shapes and forms, produced by an extrusion process, made from aluminum alloys having metallic elements corresponding to the alloy series designations published by The Aluminum Association commencing with the numbers 1, 3, and 6 (or proprietary equivalents or other certifying body equivalents).

AD Order, 76 Fed. Reg. at 30,650; see also *CVD Order*, 76 Fed. Reg. at 30,654. ATS reads the words “produced by an extrusion process” as a limitation on the meaning of the words “shapes and forms” that confines the scope to articles retaining the basic shape obtained upon extrusion. This, however, is not the only plausible interpretation. The first sentence of the scope language also might be read in the context of the remaining scope language as signifying that the articles subject to the *Orders* are those that meet three *separate* conditions: they must be “shapes or forms” in the sense of goods that have been “shaped” or “formed” (not only by extrusion but also by post-extrusion processing), they must be produced by an extrusion process (even if also produced by drawing, finishing, or fabricating), and they must be made from a specified aluminum alloy.

In support of its interpretation, ATS points to scope language giving examples of shapes and forms in which extrusions are produced: “Aluminum extrusions are produced and imported in a wide variety of shapes and forms, including, but not limited to, hollow profiles, other solid profiles, pipes, tubes, bars, and rods.” Pl.’s Mem. 16–17 (quoting

AD Order, 76 Fed. Reg. at 30,650). Plaintiff argues that these processes, and other extrusion processes not mentioned, result in an article “that has the same cross-sectional shape as the die used to create it.” *Id.* at 19 (also describing “fittings” as “downstream products not identified as aluminum extrusions” that “may use an extrusion-type shape or form as an input” but that are “subsequently reshaped through a series of complex downstream fabrication processes into an *entirely different shape*”).

Even if the court were to presume, *arguendo*, that ATS’s interpretation of the scope language is a reasonable one, it could not conclude that the Department’s contrary interpretation, under which ATS’s fittings are within the scope despite having undergone post-extrusion fabrication processes that alter the cross-sectional shape, was *not* reasonable. In specifying that goods subject to the Orders may have been subjected to drawing, finishing, and fabricating operations, the scope language plainly does not exclude those articles that are not “produced” entirely “by an extrusion process.” In addressing the non-extrusion processes that may have occurred, the scope language does not expressly impose the limitation on basic shape or form that ATS espouses: it does not state that the mentioned fabricating operations, and others not mentioned, are limited to those conducted only to an extent that does not alter, or alter significantly, the cross section resulting from the extrusion process. Moreover, the scope language lists, as non-exclusive examples of fabricating, extrusions that are “machined, drilled, punched, notched, bent, stretched, knurled, swedged, mitered, chamfered, threaded, and spun.” *See AD Order*, 76 Fed. Reg. at 30,650; *CVD Order*, 76 Fed. Reg. at 30,654. Indeed, the unqualified mention of some of the processes, including, for example, bending and stretching, implies more than a minor or incidental change in the cross-sectional shape obtained by extrusion alone.

ATS next argues that the fabrication processes contemplated by the scope language are only those that “prepare” the extrusion for “assembly.” Pl.’s Mem. 23–29. Plaintiff bases this argument on the following scope language: “Aluminum extrusions may also be fabricated, *i.e.*, prepared for assembly.” *See AD Order*, 76 Fed. Reg. at 30,650; *CVD Order*, 76 Fed. Reg. at 30,654. ATS reads the words “prepared for assembly” to refer only to fabrication “processes that assist in the fitting together of the extrusions into a complete machine, structure, or unit of a machine.” Pl.’s Mem. 24–25. According to plaintiff, the Department’s interpretation of the scope language renders the scope term “prepared for assembly” as “mere surplusage.” *Id.* at 30–31.

Here again, the court cannot conclude that plaintiff's narrow interpretation is the only reasonable one. The words "fabricated, *i.e.*, prepared for assembly" as used in the scope language also reasonably could be interpreted to refer to any post-extrusion, pre-assembly fabrication, on the premise that assembly, or a similar end use of an article of subject merchandise, ordinarily would occur only after the part has been "prepared" by being fabricated into its final form. In addition, the reference in the scope language to which ATS directs the court's attention, which begins with the words "[a]luminum extrusions *may also* be fabricated . . .," follows a broader reference to finishing and fabrication, as follows: "Aluminum extrusions are produced and imported with a *variety* of finishes (both coatings and surface treatments), and *types of fabrication*." *AD Order*, 76 Fed. Reg. at 30,650; *CVD Order*, 76 Fed. Reg. at 30,654 (emphasis added). When read in the entirety, the plain meaning and context of the references to fabrication in the scope language do not compel the narrow interpretation of the words "fabricated, *i.e.*, prepared for assembly" that ATS advocates.

ATS argues, further, that the scope language recognizes that "[a]t some point, the further fabrication of an extruded aluminum product *must* result in a substantial transformation" and that "otherwise, the scope language would be more definitive and could have stated that it 'includes all products made from or out of aluminum extrusions.'" Pl.'s Mem. 34. Plaintiff submits that its fittings, when compared to the aluminum extrusions from which they were fabricated, have undergone a substantial transformation because they have a "new name, character, and {or}use." *Id.* (quoting *United States v. Gibson-Thomsen Co.*, 27 C.C.P.A. 267, 273 (1940)). Because of the way in which the scope language is written, the court need not reach the issue of whether ATS's fittings underwent a "substantial transformation" following extrusion. Although the scope language throughout refers to subject merchandise as "extrusions," it does not expressly confine the scope of the Orders to goods that have not been processed so as to have a name, character, or use different than that of an aluminum extrusion that has not undergone significant post-extrusion processing. As to name and use, the scope language specifically includes articles "described at the time of importation as parts for final finished products that are assembled after importation," albeit only if they "otherwise meet the definition of aluminum extrusions," which definition refers to "shapes and forms, produced by an extrusion process." *AD Order*, 76 Fed. Reg. at 30,650–51; *CVD Order*, 76 Fed. Reg. at 30,653–54. The scope language also places within the

scope articles “identified with reference to their end use” (again, only if they otherwise meet the “scope definition,” which apparently is a reference to the definition of aluminum extrusions also). *AD Order*, 76 Fed. Reg. at 30,651; *CVD Order*, 76 Fed. Reg. at 30,654. Given the explicit references to how in-scope articles may be “described” or “identified,” and to products that have been fabricated after extrusion to make them suitable for particular end uses, the court cannot agree plaintiff’s argument that the concept of substantial transformation, as explicated in *Gibson-Thomsen* and subsequent decisions, required Commerce to exclude its fittings from the scope of the Orders.

In addition to *Gibson-Thomsen*, plaintiff relies on *Crawfish Processors All. v. United States*, 483 F.3d 1358 (Fed. Cir. 2007), arguing that “[t]he Federal Circuit has held that the substantial transformation concept can be used to determine whether an imported product has been so fundamentally changed as to be outside the scope of an antidumping duty order.” Pl.’s Mem. 34 (citing *Crawfish Processors All.*, 483 F.3d at 1363–64). This case is inapposite. In *Crawfish Processors Alliance*, the issue was whether an order that applied to “crawfish tail meat,” regardless of how “preserved or prepared,” included a cooked product that included crawfish tail meat as one of a significant number of combined ingredients. The case before the court does not involve a mixture or combination including the good named in the scope language.

In summary, plaintiff has not made the case that Commerce unreasonably construed the scope language of the Orders so as to include articles having undergone fabrication that significantly altered their cross-sectional shape, that did more than “prepare” an extrusion “for assembly” (in plaintiff’s conception of the term), or that resulted in a “substantial transformation” in the *Gibson-Thomsen* sense.

2. *The Department’s Application of the § 351.225(k)(1) Factors*

In the Final Scope Ruling, Commerce rejected ATS’s argument that the scope language limited the scope of the Orders based upon the degree or type of fabrication performed on an extrusion. *See Final Scope Ruling* at 23–26. Commerce specifically rejected ATS’s contention that the “prepared for assembly” language, which ATS highlights before the court, accomplishes such a limitation, as well as the argument that the final shape of subject merchandise must be imparted by the extrusion process. *Id.* at 23–24. In doing so, Commerce relied on two of its prior scope rulings, the “Machine Parts Scope Ruling” and the “Motor Cases Scope Ruling,” both of which it issued in 2012. *Id.* at

24 (citing *Antidumping Duty (AD) and Countervailing Duty (CVD) Orders: Aluminum Extrusions from the People's Republic of China (PRC): Final Scope Ruling on Precision Machine Parts* (Mar. 28, 2012), available at <https://enforcement.trade.gov/download/prc-ae/scope/13-IDEX-Precision-Machine-Parts20120328.pdf> (last visited Dec. 1, 2017) (“*Machine Parts Scope Ruling*”) and *Antidumping Duty (AD) and Countervailing Duty (CVD) Orders: Aluminum Extrusions from the People's Republic of China (PRC): Final Scope Ruling on Motor Cases* (July 6, 2012), available at <https://enforcement.trade.gov/download/prc-ae/scope/14-UQM-Motor-Cases-20120706.pdf> (last visited Dec. 1, 2017) (“*Motor Cases Scope Ruling*”)).

Commerce stated in the Final Scope Ruling that in the Machine Parts Scope Ruling “the Department explained that ‘We find that the investigation *contemplated* that subject merchandise would undergo specialized machining processes, and did not include a limit on the amount or specialty of the fabrication (emphasis added).’” *Id.* (citing *Machine Parts Scope Ruling* at 15). Commerce also stated in the Final Scope Ruling that it had found in the Motor Cases Scope Ruling “that [the] CNC production process used to produce motor cases is a fabrication process that does *not* result in a product being distinct from subject merchandise included [in] the scope of the Orders.” *Id.* at 25 (citing *Motor Cases Scope Ruling* at 14–15).⁶

Responding to defendant’s position that Commerce reached a decision supported by the factors in 19 C.F.R. § 351.225(k)(1), plaintiff argues in its reply brief that these factors do not support the “overbroad” interpretation of the scope advocated by defendant. Reply Br. of Pl. Adams Thermal Systems, Inc. in Supp. of its Mot. for J. on the Agency R. 6 (June 19, 2017), ECF No. 34 (“Pl.’s Reply”). The court is not persuaded by this argument.

ATS looks for support for its argument in the preliminary and final determinations of the U.S. International Trade Commission (“ITC”) in the investigation, citing passages in which the ITC states that aluminum extrusions are produced by forcing heated aluminum billets in a “hydraulic extrusion process” that uses a metal die, that almost any shape can be produced “based on the ‘design of the die,’” and that “[p]roduction can be shifted between different shapes merely by changing the die[.]” *Id.* (citing *Certain Aluminum Extrusions from China*, USITC Pub. 4153, Inv. Nos. 701-TA-475 and 731-TA-1177

⁶ In the Final Scope Ruling, Commerce also addressed and rejected the arguments ATS made before it concerning substantial transformation, *Final Scope Ruling* at 25, and due process, *id.* at 26, both of which arguments ATS raises before the court.

(June 2010), available at https://www.usitc.gov/sites/default/files/publications/701_731/pub4153.pdf (last visited Dec. 1, 2017) (Preliminary Determination); *Certain Aluminum Extrusions from China*, US-ITC Pub. 4229, Inv. Nos. 701-TA-475 and 731-TA-1177 (May 2011), available at https://www.usitc.gov/sites/default/files/publications/701_731/pub4229.pdf (last visited Dec. 1, 2017) (Final Determination)). In these quoted statements, the ITC described the extrusion process, not post-extrusion machining processes, and therefore did not address the specific issue raised by this case. ATS also quotes language from the petition to the effect that the extrusion process enables the formation of a wide variety of shapes and forms, *id.* at 7, but this quotation also fails to address the question of whether ATS's merchandise must be considered to be outside the scope because of the nature and extent of post-extrusion fabrication. While ATS argues that "the ITC report and the Petition do not support the Department's interpretation, because those sources all emphasize that the shape and form is produced by the extrusion process, as opposed to some post-extrusion manufacturing step," *id.* at 7, these sources do not support a conclusion that the *final* shape and form of a subject article must be that created by the extrusion process.

Plaintiff also argues that the Machine Parts Scope Ruling is "neither binding nor persuasive." *Id.* at 15–16. As to the former, ATS argues that "neither the Federal Circuit nor this Court has ever reviewed the Machine Parts Scope Ruling." *Id.* at 15. As to persuasiveness, ATS argues that this ruling, like the one it is challenging here, "was based on an unreasonable interpretation of the scope language." *Id.* These arguments miss the point. The Department's consideration of the Machine Parts Scope Ruling (and the Motor Cases Scope Ruling) was in the context of the application of one of the criteria of 19 C.F.R. § 351.225(k)(1) ("The descriptions of the merchandise contained in . . . the determinations of the Secretary (including prior scope determinations)"). The Machine Parts Scope Ruling involved an aluminum housing for a vacuum pump assembly and aluminum bodies for certain high pressure valves. *Machine Parts Scope Ruling* at 2. The "products at issue start with an extruded block of aluminum upon which various cutting, edging, and drilling operations are performed by means of a computer numerical control (CNC) precision machine process." *Id.* at 3. ATS's disagreement with it notwithstanding, the ruling is directly relevant to the issue Commerce confronted when considering ATS's Scope Ruling Application. Similarly, the subject of the Motor Cases Scope Ruling was "inner and outer motor cases . . . for use in connection with high-efficiency, water-cooled electric motors," the "feedstock" for which "consist[ed] of

extruded aluminum alloy tubing that is subsequently cut into motor casings by means of a computer numerical controlled (CNC) precision machine process.” *Motor Cases Scope Ruling* at 2. The applicant described the necessary machining as “complex and expensive.” *Id.* at 7. Because these rulings are on point, and because the scope language is reasonably interpreted to include ATS’s fittings, it was permissible under § 351.225(k)(1) for Commerce, on this record, to rely on them in support of its conclusion that the post-extrusion processing performed on ATS’s fittings did not result in articles that are outside the scope of the Orders.

With respect to the petition, plaintiff makes the additional point that the final scope language differed from that originally proposed by the petitioner, which did not contain the “prepared for assembly” language. Pl.’s Mem. 28–29; Pl.’s Reply 11. ATS argues that the change, proposed by the petitioner during the investigation in response to a request by Commerce for clarification of the proposed scope of the investigation, demonstrates the petitioners’ intent that the scope of the Orders would be limited in the way ATS advocates. Pl.’s Mem. 28–29; Pl.’s Reply 11. The difficulty with this argument is plaintiff’s reading too much into the petition amendment. As plaintiff stated in its brief, “[i]n its April 9, 2010 scope amendment letter, petitioners stated that ‘{w}e have changed the scope language [in] relation to fabrication to clarify that such processing prepares the extrusion for assembly and does not include final finished goods containing subject aluminum extrusions.’” Pl.’s Mem. 29 (citation omitted). Responding to defendant’s emphasizing the words “does not include final finished goods containing subject aluminum extrusions,” plaintiff argues that “the petition amendment had *two* purposes: (1) clarification that the in-scope ‘fabrication’ processing contemplated only prepares the aluminum extrusion for assembly; *and* (2) clarification that the in-scope processing language is not intended to include final finished goods within the scope.” Pl.’s Reply 11–12. The court is unconvinced by this argument because the change made by the petition amendment does not establish that petitioners intended the term “prepared for assembly” to have the narrow meaning plaintiffs would now attribute to it. As the court discussed earlier in this Opinion, the term “prepared for assembly” might refer to any post-extrusion fabrication that results in a good ready for assembly. The petitioners’ intent regarding the specific issue this case presents is made even less clear by the reference to “final finished goods,” which is a reference to goods “containing subject aluminum extrusions,” *i.e.*, assemblies.

In summary, plaintiff has not shown that Commerce misapplied the factors in 19 C.F.R. § 351.225(k)(1) in support of an “overbroad” interpretation of the scope language. As a related, and alternative, argument, ATS submits that “[g]iven the fact that Commerce has never interpreted the phrase ‘prepared for assembly,’ at a minimum, Commerce should not have resolved this scope question on the basis of the (k)(1) factors” and should have applied the factors of 19 C.F.R. § 351.225(k)(2). Pl.’s Mem. 45. This argument presumes that Commerce misapplied the (k)(1) criteria in concluding that ATS’s fittings are subject to the Orders. Rather than misapply the (k)(1) criteria, Commerce reached the sound conclusion that ATS’s fittings are within the scope of the Orders. Under its regulations, Commerce is to resort to the (k)(2) criteria “[w]hen the above [*i.e.*, (k)(1)] criteria are not dispositive.” 19 C.F.R. § 351.225(k)(2). As the court has discussed, Commerce reasonably relied upon the Machine Parts Scope Ruling and the Motor Cases Scope Ruling, both of which presented the same basic question as that raised by ATS’s Scope Ruling Application and resolved it in a way that supports the decision in the Final Scope Ruling and refutes the construction of the scope language plaintiff advocates. Plaintiff’s reliance on certain language in the petition, the petition amendment, and the ITC determinations is misplaced because these sources do not support the arguments it makes in favor of limits on the degree of fabrication that subject merchandise may undergo.

3. *The Final Scope Ruling Is Not Unlawful for Vagueness or for Lack of Notice or Due Process*

Plaintiff’s final argument is that the court should reject the Department’s “overbroad” interpretation of the scope language because it results in a “single vague order” that does not give importers adequate notice of what is subject to antidumping or countervailing duties. Pl.’s Mem. 39–44. ATS argues that the “extreme interpretation” underlying the Department’s position on the scope of the Orders, which, in its view, would place within the scope all shapes and forms of covered aluminum alloys that went through an extrusion machine at any point in the production process, “would lead to results that are not only absurd, but also violate any reasonable norms of notice and due process.” *Id.* at 44. Plaintiff adds that “[f]or example, with the aluminum extrusion blanks that ATS uses as feedstock to reduce to finished fittings, not only would the fittings be deemed to be subject merchandise under Commerce’s overbroad definition, but also the *scrap shavings* from the lathe and machining process would be considered to be subject merchandise, if those shavings were imported

into the United States.” *Id.* According to plaintiff, “scrap shavings are ‘shapes and forms’ read in the same overbroad sense that Commerce applied to the Orders” and “[t]he scrap shavings of the aluminum went through the extruding machine, just like the finished fittings.” *Id.* Responding to defendant’s argument that Commerce reasonably construed the scope language, ATS argues that Commerce interprets the scope language of the Orders “in the broadest possible manner, which is unreasonable because it does not give importers fair notice of what is and is not covered.” Pl.’s Reply 22. ATS argues, further, that “[t]he Court should remand with instructions to Commerce to interpret the scope language in a manner that provides a reasonable limit on the types of further manufacturing that extruded aluminum may undergo and still remain subject merchandise.” Pl.’s Mem. 44. For several reasons, plaintiff’s arguments do not convince the court that the interests of notice and due process compel the court to remand the Final Scope Ruling to Commerce.

In the administrative proceeding giving rise to this case, the Department’s responsibility was to decide whether the fittings described in the Scope Ruling Application were within the scope of the Orders. Commerce was not required to announce an interpretation resolving future questions as to that scope, and the Final Scope Ruling did not do so. Nor does the court agree that Commerce, in this case, unreasonably has interpreted the scope language “in the broadest manner possible.” *Id.* at 40. The “scrap shavings” example ATS offers to illustrate its argument is misguided in assuming that such a product necessarily would be found to be within the scope of the Orders according to the Department’s interpretation. The reasoning of the Final Scope Ruling does not compel the conclusion that the scrap shavings ATS describes, which are not produced so as to achieve a specific shape or form, would be “aluminum extrusions” as defined by the scope language.

Where scope language in an order is ambiguous as to whether a particular good is covered, the importer may resort to the Department’s procedures for obtaining a scope ruling. *See* 19 C.F.R. § 351.225(a) (Introducing scope ruling procedures and informing parties that issues can arise as to whether a particular product is included within the scope of an antidumping or countervailing duty order “because the descriptions of subject merchandise contained in the Department’s determinations must be written in general terms.”). ATS has sought and obtained such a scope ruling here. Dissatisfied with that ruling, plaintiff would have the court require Commerce to formulate a narrower scope that defines a “reasonable limit on the types of further manufacturing” a subject good may undergo, but

regarding a “reasonable limit,” plaintiff’s proffered interpretation of the scope language would require Commerce to decide in each case whether a given degree of post-extrusion fabricating impermissibly altered the basic cross-sectional shape, exceeded that which “prepared” the article “for assembly,” or resulted in a “substantial transformation.” See Pl.’s Mem 44. Such an approach would introduce considerable vagueness and unpredictability, particularly as compared to the interpretation Commerce adopted in the Final Scope Ruling. A narrower scope is not necessarily a better defined one.

ATS cites various judicial decisions in support of its notice and due process argument, but these decisions do not establish a principle upon which the court must hold the Final Scope Ruling unlawful. Plaintiff relies, for example, upon *Mid Continent Nail Corp. v. United States*, 725 F.3d 1295, 1300–01 (Fed. Cir. 2013) for its explanation that the *Duferco* principle, which ensures that antidumping duties are imposed on merchandise only by an order that reasonably may be interpreted to include such merchandise, is grounded in the due process requirement of fair warning to regulated parties. Pl.’s Mem. 40. Also, plaintiff quotes a sentence from the opinion in *ArcelorMittal Stainless Belgium N.V. v. United States*, 694 F.3d. 82, 90 (Fed. Cir. 2012), “Commerce’s discretion to define and clarify the scope of an investigation is limited by concerns for transparency of administrative actions.” *Id.* at 41. ATS opines, additionally, that because the scope language relied upon by Commerce in the Final Scope Ruling is “convoluted and vague,” the court “should insist on construing the scope narrowly, so as to avoid lack of notice to importers, just as courts generally construe ambiguities in insurance contracts against the insurer.” Pl.’s Reply 22 (citations omitted).

Plaintiff’s reliance on *Mid Continent Nail Corp.* and *Duferco* is unavailing because Commerce did not base the Final Scope Ruling on an unreasonable or impermissibly broad interpretation of the scope language. The sentence from *ArcelorMittal* upon which ATS relies, when read in context, is seen to be not on point. The Court of Appeals was addressing an antidumping duty order on stainless steel plate “4.75 mm or more in thickness.” *ArcelorMittal*, 694 F.3d. at 83. Commerce previously had interpreted the dimension as a measurement that excluded merchandise with an actual thickness of less than 4.75 mm. *Id.* at 88–89. The case arose because Commerce, changing its position, began to interpret the scope language to include stainless steel plate of a nominal thickness of 4.75 mm, regardless of the actual thickness. Concluding that Commerce “was not justified in finding the order ambiguous,” the Court of Appeals reasoned that “Commerce

is not at liberty to ignore the plain terms of an order in what appears to be, in retrospect, an effort to better reflect the intent of the petitioners.” *Id.* at 90.⁷ Finally, plaintiff’s argument that scope language should be construed narrowly, and against Commerce as the drafter, misstates the law as to interpretation of scope language, which is governed by the principles set forth in *Duferco* and subsequent, related decisions of the Court of Appeals, and in the Department’s regulations.

III. Conclusion

The court concludes that the Final Scope Ruling is based on a reasonable interpretation of the scope language and that Commerce permissibly applied the criteria of 19 C.F.R. § 351.225(k)(1) in determining that ATS’s fittings are within the scope of the Orders. Therefore, the court will deny plaintiff’s motion for judgment on the agency record and enter judgment sustaining the Final Scope Ruling.

Dated: December 6, 2017

New York, NY

/s/ Timothy C. Stanceu

TIMOTHY C. STANCEU, CHIEF JUDGE

⁷ ATS also cites certain opinions of the Court of International Trade, none of which is on point.

