

**United States Court of Appeals  
for the Federal Circuit**

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**WHIRLPOOL CORPORATION,**  
*Plaintiff-Appellee*

v.

**UNITED STATES,**  
*Defendant*

**ALUMINUM EXTRUSIONS FAIR TRADE  
COMMITTEE,**  
*Defendant-Appellant*

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2017-1117

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

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Decided: May 23, 2018

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

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

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

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

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

PROST, *Chief Judge*.

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

#### BACKGROUND

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

#### I

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

at 30,650.<sup>1</sup> The subject extrusions “may be described at the time of importation as parts for final finished products that are assembled after importation.” *Id.* The scope also “includes the aluminum extrusion components that are attached (e.g., by welding or fasteners) to form subassemblies, i.e., partially assembled merchandise.” *Id.*

The Orders’ scope contains several exclusions. *Meridian*, 851 F.3d at 1379. For example, the scope has a finished merchandise exclusion, which “excludes finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry, such as finished windows with glass, doors with glass or vinyl, picture frames with glass pane and backing material, and solar panels.” *Antidumping Duty Order*, 76 Fed. Reg. at 30,651. The scope also has a finished goods kit exclusion, which

excludes finished goods containing aluminum extrusions that are entered unassembled in a “finished goods kit.” A finished goods kit is understood to mean a packaged combination of parts that contains, at the time of importation, all of the necessary parts to fully assemble a final finished good and requires no further finishing or fabrication, such as cutting or punching, and is assembled “as is” into a finished product.

*Id.* The next sentence of the Orders includes, however, an exception to the finished goods kit exclusion. *See Meridian*, 851 F.3d at 1385. The exception states that “[a]n

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

imported product will not be considered a ‘finished goods kit’ and therefore excluded from the scope of the investigation merely by including fasteners such as screws, bolts, etc. in the packaging with an aluminum extrusion product.” *Id.*

## II

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

On August 4, 2014, Commerce issued its Scope Ruling for Whirlpool’s assembled handles.<sup>2</sup> Commerce found that “the handles at issue do not meet the exclusion criteria for ‘finished merchandise’ and, therefore, are inside the scope of the Orders.” J.A. 340. As a threshold issue, Commerce rejected Whirlpool’s argument that the fasteners exception language in the scope only applies in the context of the finished goods kit exclusion and that it should not apply in the finished merchandise exclusion. J.A. 342. Commerce found “unconvincing the notion that an unassembled product in kit-form that consists solely of extruded aluminum, save for fasteners, would . . . fall inside the scope while the identical product, entering the

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<sup>2</sup> This August 2014 Scope Ruling also addressed a January 2014 Scope Request from Whirlpool. That request dealt with aluminum extruded appliance handles that consisted of a single aluminum extrusion *without* end caps or other components. The January 2014 Scope Request is not relevant to the instant appeal, as Whirlpool did not appeal the CIT decision that these handles were covered by the Orders.

United States as an assembled good, would fall outside the scope of the Orders.” J.A. 43.

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

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

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