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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-967; C-570-968]

Aluminum Extrusions from the People's Republic of China: Notice of Second Amended Final Scope Ruling Pursuant to Court Decision

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On May 23, 2018, the Court of Appeals for the Federal Circuit (the CAFC) reversed and vacated, in part, the Court of International Trade's (the CIT) earlier decisions, vacated Commerce's remand determination, and reinstated Commerce's original scope ruling, in part. In Commerce's original scope ruling, Commerce found that Whirlpool Corporation's (Whirlpool) kitchen appliance door handles with plastic end caps were covered by the general scope language of the antidumping duty (AD) and countervailing duty (CVD) orders on aluminum extrusions from the People's Republic of China (China). On May 1, 2019, the CIT granted Whirlpool's request to dismiss the litigation concerning its handles. Accordingly, Commerce is issuing a second amended final scope ruling.

DATES: Applicable [DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Eric Greynolds, AD/CVD Operations, Office III, Enforcement and Compliance, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: 202-482-6071.

SUPPLEMENTARY INFORMATION:

Background

On August 4, 2014, Commerce found that kitchen appliance door handles with plastic end caps imported by Whirlpool were subject to the *Orders*.¹ Specifically, Commerce found that the handles did not fall under the finished merchandise or finished goods kit exclusions, based on its interpretation of these exclusions, as adopted in prior scope rulings.²

Whirlpool filed suit challenging the Final Scope Ruling. In *Whirlpool I*, the CIT held that “the general scope language is not reasonably interpreted to include the kitchen appliance door handles described in Whirlpool’s first scope ruling request{,}” (*i.e.*, the kitchen appliance door handles with plastic end caps).³ The CIT further held that, even if the general scope language could be reasonably interpreted to include the handles, Commerce’s determination that the handles did not satisfy the finished merchandise exclusion based on Commerce’s interpretation of the exclusion was in error.⁴ Therefore, the CIT remanded the Final Scope Ruling to Commerce for reconsideration in light of *Whirlpool I*.⁵

In its Remand Redetermination, under protest, Commerce complied with *Whirlpool I* and found the handles were not covered by the general scope language of the *Orders*.⁶ Commerce did not further address the finished merchandise exclusion. The CIT affirmed the Remand

¹ See Memorandum, “Final Scope Ruling on Kitchen Appliance Door Handles with Plastic End Caps and Kitchen Appliance Door Handles without Plastic End Caps,” dated August 4, 2014 (Final Scope Ruling).

² *Id.* at 16-21, citing, *e.g.*, Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on Meridian Kitchen Appliance Door Handles,” dated June 21, 2013, (Kitchen Appliance Door Handles I Scope Ruling) and Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on J.A. Hancock, Inc.’s Geodesic Structures,” (July 17, 2012) (Geodesic Domes Scope Ruling).

³ See *Whirlpool Corporation v United States*, 144 F. Supp. 3d 1296, 1303 (CIT 2016) (*Whirlpool I*). The Court affirmed Commerce’s determination that the kitchen appliance door handles without end caps are within the scope of the *Orders*. *Id.* at 1306.

⁴ *Id.* at 1304.

⁵ *Id.* at 1305-07.

⁶ See Final Results of Redetermination Pursuant to Court Remand, *Whirlpool Corp. v. United States*, Court No. 14-00199, Slip Op. 16-08 (CIT February 1, 2016), dated April 15, 2016 (Remand Redetermination).

Redetermination in *Whirlpool II*.⁷ Pursuant to *Whirlpool II*, on September 27, 2016, Commerce published its *First Amended Final Scope Ruling*, finding that the handles were not covered by the scope of the *Orders*.⁸

The Aluminum Extrusion Fair Trade Committee (AEFTC), the petitioner in the underlying investigations, appealed. In *Whirlpool III*, the CAFC held that:

{T}he CIT erred when it stated that assembly processes were absent from the specified post-extrusion processes. The general scope language unambiguously includes aluminum extrusions that are part of an assembly. The Orders explicitly include aluminum extrusions “that are assembled after importation” in addition to “aluminum extrusion components that are attached (*e.g.*, by welding or fasteners) to form subassemblies.”⁹

Thus, the CAFC held that Commerce’s determination in the Final Scope Ruling “that the general scope language includes Whirlpool’s assembled handles was supported by substantial evidence.”¹⁰ The CAFC further held that Commerce’s determination that the handles did not satisfy the finished merchandise exclusion was based on an incorrect interpretation of the exclusion.¹¹ Therefore, the CAFC reversed *Whirlpool II*, which affirmed the Remand Redetermination, and instructed the CIT to vacate the Remand Redetermination and reinstate the Final Scope Ruling, in part, with respect to Commerce’s determination that the general scope language included the handles.¹² The CAFC further vacated those portions of *Whirlpool I* that held that the general scope language did not cover the handles.¹³ In addition, the CAFC affirmed, in part, those portions of *Whirlpool I* which rejected Commerce’s interpretation of the

⁷ See *Whirlpool Corporation v United States*, 182 F. Supp. 3d 1307 (CIT 2016) (*Whirlpool II*).

⁸ See *Aluminum Extrusions from the People’s Republic of China: Notice of Court Decision Not in Harmony with Final Scope Ruling and Notice of Amended Final Scope Ruling Pursuant to Court Decision*, 81 FR 66259 (September 27, 2016) (*First Amended Final Scope Ruling*).

⁹ See *Whirlpool Corporation v. United States*, 890 F.3d 1302, 1309 (Fed. Cir. 2018) (*Whirlpool III*).

¹⁰ *Id.*

¹¹ *Id.* at 1309-11.

¹² *Id.* at 1311.

¹³ *Id.*

finished merchandise exclusion and instructed the CIT to vacate the remainder of the Final Scope Ruling.¹⁴ Finally, the CAFC remanded to the CIT for Commerce to reconsider its interpretation of the finished merchandise exclusion as it pertains to Whirlpool's handles.¹⁵

On January 14, 2019, in *Whirlpool IV*, in accordance with *Whirlpool III*, the CIT vacated the Remand Redetermination, reinstated those portions of the Final Scope Ruling concluding that Whirlpool's handles are within the general scope language of the *Orders*, vacated the remaining portions of the Final Scope Ruling, and remanded for Commerce to reconsider whether Whirlpool's handles satisfied the finished merchandise exclusion.¹⁶ The CIT further ordered that “{s}hould Commerce determine that the assembled handles are within the scope of the *Orders* despite the finished merchandise exclusion, it must explain its reasoning and also must clarify whether it is concluding that the handles in their entirety, or only the extruded aluminum components therein, are within the scope of the *Orders*.”¹⁷

On April 1, 2019, Commerce issued the Draft Second Remand Determination in which it found the extruded aluminum components of Whirlpool's handles to be within the scope of the *Orders* and the non-extruded aluminum components to be outside the scope of the *Orders*.¹⁸ Before Commerce issued the final remand redetermination and filed it with the CIT, Whirlpool requested that the CIT voluntarily dismiss the action.¹⁹ On May 1, 2019, the CIT granted Whirlpool's request to voluntarily dismiss the case.²⁰

¹⁴ *Id.* at 1311-12.

¹⁵ *Id.* at 1312.

¹⁶ See *Whirlpool Corporation v. United States*, 357 F. Supp. 3d 1328, 1363-64 (CIT 2019) (*Whirlpool IV*).

¹⁷ *Id.* at 1363.

¹⁸ See Draft Results of Second Redetermination Pursuant to Court Remand, *Whirlpool Corp. v. United States*, Ct. No. 14-00199, Slip Op. 19-6, dated April 1, 2019 (Draft Second Remand Determination).

¹⁹ See Ct. No. 14-199, ECF Docket No. 75.

²⁰ See Ct. No. 14-199, ECF Docket No. 76.

Second Amended Final Scope Ruling

As noted above, there is now a final and conclusive court decision which reinstates those portions of the Final Scope Ruling in which Commerce determined that Whirlpool's handles are within the general scope language of the *Orders*. As a result of the dismissal of Whirlpool's action, no further action is required. Therefore, we are issuing a second amended final scope ruling and find that Whirlpool's handles are within the scope of the *Orders*.

Accordingly, Commerce will instruct U.S. Customs and Border Protection to continue to suspend liquidation of Whirlpool's handles until appropriate liquidation instructions are sent. As of the date of publication of this notice in the *Federal Register*, the cash deposit rate for entries of Whirlpool's handles will be the applicable cash deposit rate of the exporters of the merchandise from China to the United States.

Notification to Interested Parties

This notice is issued and published in accordance with section 516A(c)(1) and (e)(1) of the Tariff Act of 1930, as amended.

Dated: June 18, 2019.

Jeffrey I. Kessler,
Assistant Secretary
for Enforcement and Compliance.

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