

Dated: September 20, 2016.

**Andrew McGilvray,**

*Executive Secretary.*

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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 Court Decision Not in Harmony With Final Scope Ruling and Notice of Amended Final Scope Ruling Pursuant to Court Decision

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

**SUMMARY:** On August 26, 2016, the United States Court of International Trade (CIT or Court) sustained the Department of Commerce's (Department) final results of redetermination in which the Department determined, under protest, that Whirlpool Corporation's (Whirlpool) kitchen appliance door handles with plastic end caps (handles with end caps) are not covered by the scope of the antidumping (AD) and countervailing duty (CVD) orders on aluminum extrusions from the People's Republic of China.

**DATES:** *Effective:* September 5, 2016.

**FOR FURTHER INFORMATION CONTACT:** James Terpstra, AD/CVD Operations, Office III, Enforcement and Compliance, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: 202–482–3965.

#### SUPPLEMENTARY INFORMATION:

##### Background

On August 4, 2014, the Department issued a final scope ruling in which it determined that two types of kitchen appliance door handles imported by Whirlpool are within the scope of the *Orders*<sup>1</sup> and did not meet the scope exclusion for “finished merchandise” or “finished goods kits.”<sup>2</sup> Whirlpool challenged the Department's final scope ruling at the CIT.

<sup>1</sup> See *Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order*, 76 FR 30650 (May 26, 2011) and *Aluminum Extrusions from the People's Republic of China: Countervailing Duty Order*, 76 FR 30653 (May 26, 2011) (the *Orders*).

<sup>2</sup> See “Final Scope Ruling on Whirlpool Kitchen Appliance Door Handles,” dated August 4, 2014 (Whirlpool Kitchen Appliance Door Handles Scope Ruling).

On February 1, 2016, in *Whirlpool I* the Court issued an opinion and order sustaining the Department's findings in the original scope ruling that Whirlpool's kitchen appliance door handles consisting of a single piece of extruded aluminum are within the scope of the *Orders* based on a plain reading of the scope language.<sup>3</sup> However, the Court remanded the Department's determination that the scope of the *Orders* covers handles consisting of a single piece of aluminum extrusion with plastic end caps fastened on with screws. The Court found that the general language of the scope did not support the Department's determination.<sup>4</sup> The Court further found that, assuming *arguendo* that Whirlpool's handles with end caps were covered by the general scope language, the Department erred in finding that the products did not satisfy the “finished merchandise” exclusion.<sup>5</sup>

On April 18, 2016, the Department issued its Final Results of Redetermination, in which it found that although it respectfully disagreed with the Court that Whirlpool's handles with end caps were not covered by the general scope language, it found under protest that Whirlpool's handles with end caps were outside the scope of the *Orders*.<sup>6</sup> As a result, the Department did not consider whether Whirlpool's handles with end caps were subject to the exclusion for “finished merchandise.”<sup>7</sup>

On August 26, 2016, in *Whirlpool II* the Court sustained the Department's finding in the Final Results of Redetermination that Whirlpool's handles with plastic end caps are not covered by the scope of the *Orders*.<sup>8</sup> Consistent with the decision of the United States Court of Appeals for the Federal Circuit (Federal Circuit) in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), as clarified by *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (CAFC 2010) (*Diamond Sawblades*), the Department is notifying the public that the final judgment in this case is not in harmony with the Department's final scope ruling and is amending the final scope ruling to find

<sup>3</sup> See *Whirlpool Corporation v. United States*, Court No. 14–00199, Slip Op. 16–8 (*Whirlpool I*), at 16–17.

<sup>4</sup> *Id.*, at 8–11.

<sup>5</sup> *Id.*, at 11–14.

<sup>6</sup> See Results Of Redetermination Pursuant To Court Remand, *Whirlpool Corp. v. United States*, Court No. 14–000199, Slip Op. 16–08 (CIT February 1, 2016) (Final Results of Redetermination).

<sup>7</sup> *Id.*

<sup>8</sup> See *Whirlpool Corporation v. United States*, Court No. 14–00199, Slip Op. 16–81 (*Whirlpool II*).

that the handles with end caps imported by Whirlpool are not covered by the scope of the *Orders*.

#### Timken Notice

In its decision in *Timken*, 893 F.2d at 341, as clarified by *Diamond Sawblades*, the Federal Circuit held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), the Department must publish a notice of a court decision that is not “in harmony” with a Department determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT's August 26, 2016, judgment in *Whirlpool II* sustaining the Department's finding in the Final Results of Redetermination that Whirlpool's handles with end caps are not covered by the scope of the *Orders* constitutes a final decision of the Court that is not in harmony with the Whirlpool Kitchen Appliance Door Handles Scope Ruling. This notice is published in fulfillment of the publication requirements of *Timken*. Accordingly, the Department will continue the suspension of liquidation of Whirlpool's handles with end caps at issue pending expiration of the period for appeal or, if appealed, pending a final and conclusive court decision.

#### Amended Final Scope Ruling

Because there is now a final court decision with respect to the Whirlpool Kitchen Appliance Door Handles Scope Ruling, the Department amends its final scope ruling and finds that the scope of the *Orders* does not cover Whirlpool's handles with end caps. The Department will instruct U.S. Customs and Border Protection (CBP) that the cash deposit rate will be zero percent for Whirlpool's handles with end caps. In the event the CIT's ruling is not appealed, or if appealed, upheld by the Federal Circuit, the Department will instruct CBP to liquidate entries of Whirlpool's handles with end caps without regard to antidumping and/or countervailing duties, and to lift suspension of liquidation of such entries.

This notice is issued and published in accordance with section 516A(c)(1) of the Act.

Dated: September 15, 2016.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

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