

Slip Op. 11–27

GIORGIO FOODS, INC., Plaintiff, v. UNITED STATES, Defendant, and L.K. BOWMAN COMPANY, MONTEREY MUSHROOMS, INC., AND MUSHROOM CANNING COMPANY, Defendant-Intervenors.

Before: WALLACH, Judge
Court No.: 03–00286

[Plaintiff’s Motion to Complete the ITC Record is GRANTED.]

Dated: March 08, 2011

Arnold & Porter, LLP (Michael T. Shor and Sarah Brackney Arni) for Plaintiff Giorgio Foods, Inc.

Tony West, Assistant Attorney General; *Jeanne E. Davidson*, Director, *Franklin E. White, Jr.*, Assistant Director, Commercial Litigation Branch, Civil Division, U.S. Department of Justice (*David S. Silverbrand* and *Melissa M. Devine*) and *James M. Lyons*, General Counsel, *Neal J. Reynolds*, Assistant General Counsel, U.S. International Trade Commission (*Patrick V. Gallagher, Jr.*) for Defendant United States.

Akin, Gump, Strauss, Hauer & Feld, LLP (Valerie A. Slater) for Defendant-Intervenors L.K. Bowman Company and Mushroom Canning Company.

Kelley Drye & Warren LLP (Michael J. Coursey and R. Alan Luberd) for Defendant-Intervenor Monterey Mushrooms, Inc.

OPINION

Wallach, Judge:

**I.
INTRODUCTION**

In its Motion to Complete the ITC Record, Plaintiff Giorgio Foods, Inc. (“Giorgio” or “Plaintiff”) seeks to compel Defendant United States to file with the court and to provide to the parties as part of the administrative record various documents from the United States International Trade Commission’s (“ITC” or “Commission”) 1998–99 preliminary and final antidumping injury investigations regarding Certain Preserved Mushrooms from Chile, China, India, and Indonesia, Invs. 731–TA–776–779. Plaintiff’s Motion to Complete the ITC

Record (“Plaintiff’s Motion”).¹ The court has jurisdiction over this matter pursuant to 28 U.S.C. § 1581(i).

For the reasons stated below, Plaintiff’s Motion is GRANTED.

II BACKGROUND

In order to qualify for distributions under the Continued Dumping and Subsidy Offset Act (“Byrd Amendment” or “CDSOA”),² an entity must qualify as an “affected domestic producer.” 19 U.S.C. § 1675c(a); *see also SKF USA, Inc. v. U.S. Customs and Border Prot.*, 556 F.3d 1337 (Fed. Cir. 2009), *cert. denied*, 2010 U.S. LEXIS 3940 (2010); *Cathedral Candle Co. v. U.S. Int’l Trade Comm’n*, 400 F.3d 1352 (Fed. Cir. 2005).³ An “affected domestic producer” is defined as either a “petitioner” or an “interested party in support of the petition with respect to which an antidumping duty order . . . has been entered,” the later indicating its support “by letter or through questionnaire response.” 19 U.S.C. § 1675c(b)(1)(A), (d)(1).

Prior to the enactment of the CDSOA, from 1998–99, the Commission conducted antidumping duty injury investigations concerning certain preserved mushrooms from Chile, China, India, and Indonesia. *See* Plaintiff’s First Amended Complaint (“Plaintiff’s Complaint”) at 6.⁴ In response to the ITC’s questionnaires in these investigations, Plaintiff “indicated that it (1) took no position with respect to the petition filed against preserved mushrooms from Chile, China, and Indonesia, and (2) opposed the petition with respect to India.” *Id.* at 8. However, Giorgio alleges it “took numerous actions to support the petition [[confidential information]].” *Id.* at 6.

¹ Plaintiff also requests “confidential versions of documents on the records originally filed by the Commission and U.S. Customs and Border Protection [‘Customs’].” Plaintiff’s Motion at 2. Defendant Customs indicated it will comply with this request. Defendant’s Response to Plaintiff’s Motion to Compel the United States International Trade Commission to Supplement Administrative Record at 3 n.1. Defendant ITC is ORDERED to also provide confidential versions of record documents that the ITC filed or will file.

² 19 U.S.C. § 1675c (2000), Pub. L. No. 106–387, Title X, §§ 1001–03, 114 Stat. 1549, 1549A73 A75 (2000), *repealed by* Pub. L. No. 109–171, Title VII, Subtitle F, § 7601(a), 120 Stat. 4, 154 (2006).

³ For a more thorough discussion of the Byrd Amendment, *see Bergeron’s Seafood v. U.S. Int’l Trade Comm’n*, 28 CIT 148, 149, 306 F. Supp. 2d 1353 (2004) (Part IIA).

⁴ The investigations resulted in the following: Notice of Antidumping Duty Order: Certain Preserved Mushrooms from Chile, 63 Fed. Reg. 66,529 (December 2, 1998); Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Preserved Mushrooms from the People’s Republic of China, 64 Fed. Reg. 8,308 (February 19, 1999); Notice of Antidumping Duty Order: Certain Preserved Mushrooms from Indonesia, 64 Fed. Reg. 8,310 (February 19, 1999); Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Preserved Mushrooms from India, 64 Fed. Reg. 8,311 (February 19, 1999).

The ITC “determined that Giorgio was not eligible to be placed on its petition support list for these orders,” finding that the documents reviewed “showed that Giorgio was not a petitioner in the investigations and did not express support for the petition in its questionnaire response.” Opposition of Defendant United States International Trade Commission to Plaintiff’s Motion to Complete the Agency Record (“ITC’s Opposition”) at 6. In May 2003, Giorgio commenced this action to challenge its exclusion from the list of affected domestic producers compiled by the ITC and from the resulting distributions by U.S. Customs and Border Protection of funds under the CDSOA. Plaintiff’s Complaint at 5.

Giorgio is currently seeking to include in the administrative record documents from the preliminary and final antidumping injury investigations regarding Certain Preserved Mushrooms from Chile, China, India, and Indonesia, Invs. 731–TA–776–779. Plaintiff’s Motion at 1. Giorgio alleges the additional documents requested are necessary to prove that Giorgio “took no actions to oppose any of the four petitions” and “took numerous significant actions to support the petitioners” and that Giorgio was therefore “unconstitutionally denied CDSOA benefits *solely* as a result of viewpoint-based speech, *i.e.* not checking off a questionnaire box indicating that it supported the petitions.” *Id.* at 10.⁵

III STANDARD OF REVIEW

The court has jurisdiction over this matter pursuant to 28 U.S.C. § 1581(i). In residual jurisdiction cases, this court reviews the matter as provided in the Administrative Procedure Act, which directs the court to “review the *whole record* or those parts of it cited by a party.” 28 U.S.C. § 2640(e); 5 U.S.C. § 706 (emphasis added). The United States Supreme Court has defined “whole record” within 5 U.S.C. § 706 as “the full administrative record that was before the Secretary at the time he made his decision.” *Defenders of Wildlife v. Dalton*, 24 CIT 1116, 1118 (2000) (quoting *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 420, 91 S. Ct. 814, 28 L. Ed. 2d 136 (1971)).⁶

In an administrative review case, it is rare that a federal court will

⁵ Plaintiff asserts that the relief it seeks in the underlying litigation is not precluded by the Federal Circuit’s decision in *SKF*, 556 F.3d 1337. See Plaintiff’s Motion at 9–10 (“It is Giorgio’s position that the First Amendment, and the Federal Circuit’s decision in *SKF*, require that CDSOA eligibility determinations be predicated on these kind of *actions* taken by domestic producers to support petitions, and not based on viewpoint-based speech.”).

⁶ In all cases where jurisdiction is based on 28 U.S.C. § 1581(i), the record is also defined pursuant to USCIT R. 73.3, which requires agencies to file the following documents in certain actions where judicial review is “upon the basis of the record made before an agency”:

consider information outside of the record submitted. See *Advanced Tech. & Materials Co. v. United States*, Slip Op. 2010–59, 2010 Ct. Intl. Trade LEXIS 60 at *12 (May 18, 2010) (“It is black letter law that review in federal court must be confined to the agency’s record; consideration of information outside of the record is deemed appropriate only in the rare case.”) (quotations omitted); see also *Murakami v. United States*, 46 Fed. Cl. 731, 735 (2000), *aff’d*, 398 F. 3d. 1342 (Fed. Cir. 2005) (recognizing the tension between “extra-record” evidence and a record-based standard of review).⁷

Supplementing the administrative record with outside information is somewhat distinct from supplementing the record “upon a showing that the administrative record is not complete.” *Advanced Tech.*, 2010 Ct. Intl. Trade LEXIS at *13. “Although record supplementation on these grounds is often viewed as one of the ‘exceptions’ to the record rule . . . it is described more accurately as ‘completing’ the record because the material sought to be included is only that which (allegedly) should have been a part of the record to begin with.” *Id.* at *13–14.

“Where an agency presents a certified copy of the complete administrative record, as was done in this case, ‘the court assumes the agency properly designated the Administrative Record absent clear evidence to the contrary.’” *Defenders of Wildlife*, 24 CIT at 1119 (quoting *Ammex, Inc. v. United States*, 23 CIT 549, 549, 62 F. Supp. 2d 1148 (1999)); see ITC’s Certificate appended to the Administrative Record, Doc. No. 11, at 1. “In a motion to complete the administrative record, a party must do more than simply allege that the record is incomplete. Rather, a party must provide the Court with reasonable, non-speculative grounds to believe that materials considered in the decision-making process are not included in the record. The burden therefore rests on Plaintiffs to provide evidence that the appropriate decisionmakers either directly or indirectly considered the missing

(1) A copy of the contested determination and the findings or report on which such determination was based.

(2) A copy of any reported hearings or conferences conducted by the agency.

(3) Any documents, comments, or other papers filed by the public, interested parties, or governments with respect to the agency’s action. The agency shall identify and file under seal any document, comment, or other information obtained on a confidential basis, including a non-confidential description of the nature of such confidential document, comment or information.

(4) A certified list of all items specified in paragraphs (1), (2) and (3)

USCIT R. 73.3(a).

⁷ Plaintiff is correct that its argument that “this case should not be limited to any agency record” is “not necessary to the disposition of this motion.” Plaintiff’s Motion at 11. Therefore it is unnecessary for the court to address this argument.

documents while making their decision.” *Defenders of Wildlife*, 24 CIT at 1119 (citations and quotations omitted). Nonetheless, “a document need not literally pass before the eyes of the final agency decision maker to be considered part of the administrative record.” *Miami Nation of Ind., Inc. v. Babbitt*, 979 F. Supp. 771, 777 (N.D. Ind. 1996) (quoting *Clairton Sportsmen’s Club v. Pa. Turnpike Comm’n*, 882 F. Supp. 455, 464 (W.D. Pa. 1995)).

IV DISCUSSION

Plaintiff alleges that the administrative record is incomplete because the requested documents were all “before the Commission at the time it made its several determinations that Giorgio was not eligible for distributions” under the CDSOA and because the documents are all “relevant to Giorgio’s claims that it was denied CDSOA distributions based solely on viewpoint-based speech, in violation of the First Amendment and Equal Protection Clause.” Plaintiff’s Motion at 2–3. Plaintiff notes it is “not in this Motion seeking to supplement the record with additional documents that were not previously before the Commission.” *Id.* at 10.

Defendant responds that its inquiry for this particular case, to determine Giorgio’s eligibility for distributions under the CDSOA, was extremely limited, necessitating consultation of “only a small number of documents, which included the public staff reports from the Commission’s original investigations, the pages of Giorgio’s questionnaire in the investigations reporting Giorgio’s position on the petitions for Chile, China, and Indonesia, and the letters filed by Giorgio with the Commission during the distribution process for the Byrd Amendment,” and that “the court’s review should be based on the record that the Commission relied upon in making its Byrd Amendment determination.” ITC’s Opposition at 11 (capitalization modified), 14.

The administrative record provided by the ITC is incomplete because not all of the documents considered directly or indirectly by the ITC were included. In order for a motion to complete the administrative record to be granted, the movant must show that the documents requested were “considered, even indirectly” by the agency. *Ammex*, 23 CIT at 555. In order to determine what the agency considered, even indirectly, it is necessary to review what decision is being challenged. As pointed out by Plaintiff, under the CDSOA and in light of the Federal Circuit’s decision in *SKF*, 556 F.3d 1337, Defendant draws too narrowly what decision was being made and what records should have been consulted. Plaintiff’s Motion at 9 (“Remarkably, the Commission has not provided as part of this limited ‘administrative

record' some of the most basic documents that it necessarily would have had to review" under the CDSOA.).

The CDSOA requires an inquiry that necessitates reviewing the original investigations: "The Commission shall forward to the Commissioner . . . a list of petitioners and persons with respect to each order and finding and a list of persons that indicate support of the petition *by letter or through questionnaire response.*" 19 U.S.C. § 1675c(d)(1) (emphasis added).⁸ Therefore, in order to complete the statutorily mandated task in compiling these lists, the ITC must, at the least, turn to the original investigations to find those parties that indicated support by letter or through questionnaire response.

Indeed, the ITC informed Plaintiff during an exchange of letters that "*the record of the original investigation* raises troubling issues concerning whether or not Giorgio Foods supported the petition," conceding that the decision was not as clear as it now asserts and indicating its consultation may have gone beyond the record currently submitted to that of the original investigations. Letter from Stephen Koplan, Chairman, ITC to Michael Shor, Arnold & Porter (October 11, 2001) Public Record List 1, Doc. 6 at 1 (emphasis added). Even assuming that the ITC "when making its determination for Giorgio . . . only considered the specific documents that are included in the certified listing it submitted to the Court in this action" and did not "scour the record of its original investigations, or review any other documents" to make its determination, ITC's Opposition at 17–18, what the ITC *directly* consulted does not necessarily determine the administrative record. The records of the underlying investigations necessarily created the environment in which the decision was made by the ITC and were hence indirectly consulted.

In addition, the Federal Circuit has construed the Byrd Amendment "to only permit distributions to those who actively supported the petition (i.e., a party that did no more than submit a bare statement that it was a supporter without answering questionnaires *or otherwise actively participating* would not receive distributions)."

⁸ Defendant incorrectly characterizes this inquiry when stating that "[u]nder the Byrd Amendment, the Commission is required to make one specific determination: . . . whether Giorgio was either a petitioner, or expressed actual support for the petition by letter or questionnaire response." ITC's Opposition at 14.

SKF, 556 F.3d at 1354 n.26 (emphasis added).⁹ In order to determine those parties that answered questionnaires or otherwise actively participated, the ITC would necessarily have to consult the underlying investigations. See Plaintiff's Motion at 16.

Of the specific documents requested by Plaintiff, the following would be included in the record for the original investigations and therefore would have been consulted by the ITC in making its determination, at least indirectly:

1. the original antidumping petitions;
2. all reports, memoranda, or communications reporting on, mentioning or describing a site visit by ITC personnel to Giorgio's facilities;
3. transcripts of the Commission staff conference and hearing;
4. all communications between Giorgio and/or its counsel and the ITC Staff or Commission, including but not limit[ed] to full questionnaire responses, letters, e-mails, briefs, formal comments, and records of telephone communications;
5. all communications between Petitioners and/or their counsel and the ITC Staff or Commission, including but not limited to letters, comments, questionnaire responses, records of telephone communications, e-mails, and formal communications including the proprietary version of [P]etitioners' post-conference, pre-hearing, and post-hearing briefs, final comments, and all other written submissions;
6. all final staff reports.

Plaintiff's Motion at 1–2. Because each of the above documents was consulted, even if indirectly, by the ITC, they are all part of the administrative record that must be submitted.

V CONCLUSION

For the reasons above, Plaintiff's Motion to Complete the ITC Record is GRANTED.

Dated: March 08, 2011

New York, New York

/s/ Evan J. Wallach
EVAN J. WALLACH, JUDGE

⁹ *SKF*, 556 F.3d 1337, and the standards set forth by the Federal Circuit in that case were promulgated after the ITC had made its determination in this case. However, the general disfavor toward the retroactive application of laws does not often apply to judicial opinions; "judicial interpretations of existing statutes and regulations are routinely given retroactive application on the theory that courts do not make new law but simply state what the statutes and regulations meant before as well as after the court's decision." *SKF USA, Inc. v. United States*, 512 F. 3d 1326, 1330 (Fed. Cir. 2007).

Slip Op. 11–36

JINAN YIPIN CORPORATION, LTD. and SHANDONG HEZE INTERNATIONAL TRADE AND DEVELOPING COMPANY, Plaintiffs, v. UNITED STATES, Defendant.

Before: Timothy C. Stanceu, Judge
Consol. Court No. 04–00240

[Affirming certain decisions in the second remand redetermination issued by the United States Department of Commerce in a review of an antidumping duty order on fresh garlic from the People’s Republic of China and granting request for a voluntary remand]

Dated: April 12, 2011

Grunfeld, Desiderio, Lebowitz, Silverman & Klestadt LLP (Bruce M. Mitchell and Mark E. Pardo) for plaintiff Jinan Yipin Corporation, Ltd.

Lee & Xiao (Yingchao Xiao) for plaintiff Shandong Heze International Trade and Developing Company.

Tony West, Assistant Attorney General, *Jeanne E. Davidson*, Director, *Patricia M. McCarthy*, Assistant Director, Commercial Litigation Branch, Civil Division, United States Department of Justice (*Richard P. Schroeder* and *Mark T. Pittman*); *Reid Swayze*, Office of Chief Counsel for Import Administration, United States Department of Commerce, of counsel, for defendant.

OPINION AND ORDER

Stanceu, Judge:

I. INTRODUCTION

Before the court is the redetermination (“Second Remand Redetermination”) issued by the International Trade Administration, United States Department of Commerce (“Commerce” or the “Department”) in response to the court’s remand order in *Jinan Yipin Corp. v. United States*, 33 CIT __, 637 F. Supp. 2d 1183 (2009) (“*Jinan Yipin II*”). *Final Results of Redetermination Pursuant to Ct. Remand Order* (Feb. 25, 2010) (“*Second Remand Redetermination*”). In *Jinan Yipin II*, the court held that the first redetermination (“First Remand Redetermination”) Commerce issued in this litigation did not comply fully with the court’s remand order in *Jinan Yipin Corp. v. United States*, 31 CIT 1901, 526 F. Supp. 2d 1347 (2007) (“*Jinan Yipin I*”) and issued a second remand order. *See Final Results of Redetermination Pursuant to Ct. Remand Order* (Mar. 14, 2008) (“*First Remand Redetermination*”). In response to defendant’s request, the court orders a third remand allowing Commerce to redetermine the surrogate value for the labor costs of plaintiff Jinan Yipin Corporation, Ltd. (“Jinan

Yipin”). The court sustains the Department’s other contested determinations in the Second Remand Redetermination.

II. BACKGROUND

The background of this litigation is discussed in the court’s opinions in *Jinan Yipin I* and *Jinan Yipin II*. See 31 CIT at 1903–04, 526 F. Supp. 2d at 1349–51; 33 CIT at ___, 637 F. Supp. 2d at 1184–85. Additional background is presented below as a summary and to address events that have occurred since *Jinan Yipin II* was decided.

Jinan Yipin brought this case to contest the final results that Commerce issued in the eighth administrative review (“Final Results”) of the antidumping duty order on fresh garlic (the “subject merchandise”) imported from the People’s Republic of China (“China” or the “PRC”) during the period November 1, 2001 to October 31, 2002 (“period of review” or “POR”). *Fresh Garlic From the People’s Republic of China: Final Results of Antidumping Duty Admin. Review & New Shipper Reviews*, 69 Fed. Reg. 33,626 (June 16, 2004) (“*Final Results*”). In the First Remand Redetermination, Commerce assigned plaintiff Jinan Yipin, a Chinese producer and exporter of the subject merchandise, a weighted average antidumping duty margin of 9.70%. *First Remand Redetermination* 26. Commerce assigned plaintiff Shandong Heze International Trade and Developing Company (“Shandong”), a Chinese exporter of the subject merchandise, a margin of 43.30%, which was the same margin it assigned to Shandong in the Final Results. *Id.* at 27; *Final Results*, 69 Fed. Reg. at 33,629.

Jinan Yipin II ordered Commerce to reconsider its choice of surrogate values for garlic seed and water use with respect to both plaintiffs, to reconsider its choice of surrogate value for cardboard cartons with respect to Jinan Yipin, to address possible ministerial errors, and to recalculate the plaintiffs’ dumping margins as necessary. *Jinan Yipin II*, 33 CIT at ___, 637 F. Supp. 2d at 1198. The Second Remand Redetermination, filed on February 25, 2010, assigns a 6.58% margin to Jinan Yipin and a 40.66% margin to Shandong. *Second Remand Redetermination* 49.

Jinan Yipin filed with the court comments on the Second Remand Redetermination on April 23, 2010, to which comments defendant filed a reply on August 6, 2010. Jinan Yipin’s Comments Regarding the Department’s Second Remand Redetermination (“Jinan Yipin Comments”); Def.’s Resp. to Jinan Yipin’s Remand Comments (“Def.’s Resp.”). Shandong filed no comments on the Second Remand Redetermination.

On July 20, 2010, the court granted Jinan Yipin’s consent motion to amend its complaint to include a new count claiming that Commerce’s

surrogate value for labor costs in the Final Results was unlawful. Order (July 20, 2010), ECF No. 115; Jinan Yipin's Partial Consent Mot. for Leave to File an Amended Compl. Finding "any reevaluation of its wage rate methodology to be outside the scope of this remand proceeding," the Department did not address the labor costs issue in the Second Remand Redetermination, which was filed prior to the amendment of Jinan Yipin's complaint. *Second Remand Redetermination* 45–46. In responding to Jinan Yipin's comments on the Second Remand Redetermination, defendant has requested a voluntary remand that would allow Commerce to redetermine Jinan Yipin's labor cost surrogate value. Def.'s Resp. 16–17.

III. DISCUSSION

The court will sustain the Department's determination upon remand if it complies with the court's remand order, is supported by substantial evidence on the record, and is otherwise in accordance with law. See Tariff Act of 1930 ("Tariff Act" or the "Act"), § 516A(b)(1)(B)(i), 19 U.S.C. § 1516a(b)(1)(B)(i) (2000). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Consol. Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938).

Because Shandong did not file comments on the Second Remand Redetermination, the court will affirm the findings and determinations in the Second Remand Redetermination as to Shandong. The court will affirm the Department's redetermined surrogate value for Jinan Yipin's water use, which Jinan Yipin does not contest.

Remaining at issue in this action are surrogate values for Jinan Yipin's garlic seed and cardboard cartons, Jinan Yipin's allegation that the Second Remand Redetermination contains ministerial errors in the recalculation of Jinan Yipin's margin, and a surrogate value for Jinan Yipin's labor expenses. Jinan Yipin Comments 1–20. The court concludes that the redetermined surrogate values for garlic seed and cardboard cartons should be sustained on remand, rejecting Jinan Yipin's various comments that these values are contrary to law. The court also concludes that Jinan Yipin, by failing to exhaust its administrative remedies, may not obtain relief on its claim that the Second Remand Redetermination contains ministerial errors. Finally, the court concludes that defendant should be granted a voluntary remand allowing Commerce to redetermine the surrogate value for Jinan Yipin's labor cost.

A. The Court Sustains Commerce's Determination to Value Jinan Yipin's Garlic Seed According to the National Horticultural Research and Development Foundation Price Lists

Section 773(b)(c) of the Tariff Act, 19 U.S.C. § 1677b(c), requires Commerce to value factors of production “based on the best available information regarding the values of such factors in a market economy country” when determining the normal value of subject merchandise from a non-market economy country. The “best information,” according to the Department’s practice, consists of “review period-wide price averages, prices specific to the input in question, prices that are net of taxes and import duties, prices that are contemporaneous with the period of investigation or review, and publicly available data.” *Second Remand Redetermination 5* (internal quotation omitted).

In the Second Remand Redetermination, Commerce made no change in the surrogate value of garlic seed that it determined in the Final Results and again in the First Remand Redetermination. *Second Remand Redetermination 3–5*. Commerce once again valued garlic seed at 50 Rs. per kilogram, which was the value reflected in “News Letters” published by the National Horticultural Research and Development Foundation (“NHRDF”) for two Indian garlic seed varieties, Agrifound Parvati and Yamuna Safed-3 (“NHRDF garlic”).¹ *Id.* As it did in the First Remand Redetermination, Commerce chose the NHRDF data over two other data sets. One data set consisted of import statistics for subheading 0703.20.00 (“Garlic Fresh or Chilled”) of the Harmonized Tariff Schedule of the Republic of India, as shown in the *Monthly Statistics of the Foreign Trade of India* published by the World Trade Atlas (“MSFTI data”). *Letter from Jinan Yipin to the Sec’y of Commerce* exhibit 3 (June 30, 2003) (Admin. R. Doc. No. 1553) (“*Jinan Yipin’s Surrogate Value Submission*”). The other data source, a “Market Research Report” that petitioners submitted during the review, contained price data for domestic, exported, and imported fresh, whole garlic in the Republic of India (“India”). *Letter from Petitioners to the Sec’y of Commerce* exhibit 7 (June 30, 2003) (Admin. R. Doc. No. 1550) (“*Market Research Report*”).

In *Jinan Yipin II*, the court concluded that “the Department’s rejections of the two alternate data sources rely on overly broad practices, lack key findings and sound reasoning, and rely on certain findings that are unsupported by substantial record evidence” and that “[o]n remand, Commerce must reconsider its decision to use the NHRDF data and base a new determination on a fair comparison of

¹ The National Horticultural Research and Development Foundation (“NHRDF”) price lists consist of two pages from each of three NHRDF newsletters covering the periods of July 2001 through March 2002, July 2002 through September 2002, and October 2002 through December 2002, respectively. *Letter from Petitioners to the Sec’y of Commerce* exhibit 2 (June 30, 2003) (Admin. R. Doc. No. 1550).

the three data sets.” *Jinan Yipin II*, 33 CIT at ___, 637 F. Supp. 2d at 1192. The court added, however, that “the court does not hold that a decision by Commerce on remand to use the NHRDF data in a determination of the surrogate value for garlic seed necessarily would be rejected as contrary to law.” *Id.*

The court concluded in *Jinan Yipin II* that Commerce acted unlawfully in basing its rejection of the MSFTI data solely on the reason that 94% of the garlic imports reflected in those data were from China, a non-market economy (“NME”) country. *Id.* at ___, 637 F. Supp. 2d at 1188–89. Although acknowledging that “Commerce reasonably may infer, based on its findings regarding the presence of government control on various aspects of NMEs, that import data on goods from an NME country are inferior to import data for goods from a market economy country,” the court reasoned that “a blanket policy of refusing to use import data pertaining to products exported from an NME country is inconsistent with the statutory obligation to value factors of production according to the best available information on the individual record in the specific investigation or review.” *Id.* at ___, 637 F. Supp. 2d at 1189 (citing 19 U.S.C. § 1677b(c)(1)). Applying this blanket policy, Commerce failed “to make a qualitative comparison between the NHRDF data and the MSFTI import data for China, in addition to the other competing data on the record.” *Id.* at ___, 637 F. Supp. 2d at 1189. Commerce has made a qualitative comparison on remand. For the reasons discussed below, the court concludes that substantial evidence supports the Department’s determination that the NHRDF data are superior to the other data sets on the record.

As it did in the First Remand Redetermination, Commerce concluded, and the record evidence supports, that the NHRDF data are more specific to Jinan Yipin’s garlic seed than are the domestic garlic data in the Market Research Report, which pertain to garlic with a diameter greater than 40 millimeters. *See Second Remand Redetermination* 11; *Market Research Report* 22. Both the NHRDF garlic seed varieties and the garlic seed used by Jinan Yipin are high-yield garlic seeds and produce garlic bulbs of large diameters, which range from 50–65 millimeters. *Second Remand Redetermination* 5–6; *Letter from Petitioners to the Sec’y of Commerce* exhibit 1, appendix 2 (Aug. 8, 2003) (Admin. R. Doc. No. 2486). In the First Remand Redetermination, noting that the domestic garlic “are inclusive of garlic that is 10 mm smaller in diameter than the Chinese garlic,” Commerce found that the NHRDF garlic were more specific to Jinan Yipin’s input, which finding the court upheld in *Jinan Yipin II*. *First Remand Redetermination* 12–13; *Jinan Yipin II*, 33 CIT at ___, 637 F. Supp. 2d at 1191–92. Due to the significant differences in the type of garlic

seed, it was permissible for Commerce to continue to give substantial weight to the specificity factor and to reject the domestic price data in the Market Research Report.

Commerce chose the NHRDF data over the data on garlic export prices in the Market Research Report because it found reason to believe or suspect that these export prices were affected by generally available export subsidies in India during the POR. *Second Remand Redetermination* 18–25. Commerce pointed to its policy of avoiding subsidized prices when choosing the best available information for valuing a factor of production. *Id.* at 19. In support of this policy, Commerce cited legislative history in the form of the conference report associated with the Omnibus Trade and Competitiveness Act of 1988, which enacted section 773(c) of the Tariff Act in its current form. *Id.* (citing Omnibus Trade and Competitiveness Act of 1988, H.R. Conf. Rep. No. 100–576, at 590–91 (1988) (“*Conf. Rep.*”) (“Commerce shall avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices.”)). Commerce relied on its prior published countervailing duty (“CVD”) determinations involving India for its finding of a reason to believe or suspect subsidization. *Second Remand Redetermination* 22–25. Because Jinan Yipin’s comments to the court on the Second Remand Redetermination do not contain an argument contesting this finding, the court concludes that any challenge to this finding has been waived.

Commerce considered the NHRDF data to be superior to both sets of record data on Indian garlic imports, *i.e.*, the MSFTI data and the import data in the Market Research Report, relying principally on the record fact, uncontested by Jinan Yipin, that at least 94% of Indian garlic imports during the POR were imports from China, an NME country. *Second Remand Redetermination* 15; *see Jinan Yipin’s Surrogate Value Submission* exhibit 3. Commerce again cited its “established practice to exclude imports of that [factor of production] from NMEs to the surrogate market economy country.” *Second Remand Redetermination* 13. The Department also stated that, for purposes of the remand, it reconsidered whether the Indian imports, including the imports from China, are the best available information for valuing garlic seed. *Id.* at 15. Based on its finding that the vast majority of the import statistics pertained to China, an NME country, the Department concluded that the import prices in those statistics are not based on market principles of cost and price structures. *Id.* at 15–17. The Department relied in part on congressional intent in

deciding to reject the import statistics. *Id.* at 14 (citing *Conf. Rep.* at 590–91 (“In valuing such factors, Commerce shall avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices.”)).

In supporting its choice of the NHRDF data over the import data, Commerce also set forth a finding that the import data are not as specific to the input as the NHRDF data. *Id.* at 15. With respect to the market economy data in those statistics, Commerce’s finding is supported by substantial record evidence. As the court previously concluded, Commerce “was justified in determining that the record lacked sufficient information on the physical characteristics of the garlic represented by the MSFTI import data pertaining to countries other than China.” *Jinan Yipin II*, 33 CIT at ___, 637 F. Supp. 2d at 1189–90. Substantial evidence supported Commerce’s finding that, if the Chinese imports are removed from the import data sets, the remaining price data would still be inferior to the NHRDF price lists because the record contains insufficient evidence on the physical characteristics of garlic imports from countries other than China. Although the Market Research Report speculates that certain market economy countries were exporting Chinese-origin garlic to India, Commerce permissibly declined to rely on such speculation. *Second Remand Redetermination* 15–16.

The record does not support, however, the Department’s finding that the data on imports from China are less specific to the input than are the NHRDF data. *See id.* at 14–16. As the court concluded in *Jinan Yipin I* and *Jinan Yipin II*, the Market Research Report contains information indicating that the Chinese imports of garlic are imported in the form of whole bulbs and are comparable to the subject merchandise with respect to bulb diameter and number of cloves per bulb. *Jinan Yipin II*, 33 CIT at ___, 637 F. Supp. 2d at 1187 (citing *Jinan Yipin I*, 31 CIT at 1903–04, 526 F. Supp. 2d. at 1370); *see Market Research Report* 29. In the Second Remand Redetermination, Commerce refused to consider that information, concluding that the information “does not meet the Department’s standards for public availability.” *Second Remand Redetermination* 16. The court finds that Commerce erred in refusing to consider this information. Whether or not the information is publicly available may be a factor in determining the reliability of record evidence, but in this case the information is probative on the issue of specificity. The lack of public availability is not a reason to ignore evidence from which it may be concluded that the Chinese import data are at least comparable to the NHRDF data in terms of specificity to the input. The court does not find on the record other evidence that refutes the evidence on the

physical characteristics of the imports from China that Commerce rejected because it was not shown to be publicly available. Moreover, the record contains certain evidence indicating that the NHRDF price data are, in one respect, *less* specific than the import data pertaining to Chinese garlic. The former pertain to “clonal” seed varieties, and there is no evidence of record to indicate that the subject merchandise was grown from seeds that were developed clonally. *See* Jinan Yipin Comments 4. In summary, the court must conclude that the record, considered as a whole, does not contain substantial evidence to support Commerce’s finding that the data on imports from China are less specific to the input than are the data in the NHRDF price lists.

Although Commerce erred in finding that the Chinese import data are less specific than the NHRDF data for valuing the garlic seed input, the court concludes that this error was inconsequential. The court finds within the Second Remand Redetermination sufficient findings, evidentiary support, and explanation to affirm the Department’s ultimate determination that the NHRDF data are superior to the import data. The Department chose the NHRDF data over the import data for two principal reasons: its finding, supported by substantial evidence, that there is insufficient record information to establish what type of garlic was being imported from countries other than China and its conclusion that the prices in the garlic imports from China are not based on market principles and therefore are less reliable than are prices of imports from market economy countries. With respect to its specific decision to choose the NHRDF data over the data on imports from China, Commerce placed substantial, if not controlling, weight on the latter reason, based on the legislative history. *Second Remand Redetermination* 17. When the court views these two reasons together with the record evidence establishing that the NHRDF data are roughly comparable to the Chinese import data with respect to specificity to the input, the court finds in the record a sufficient basis to uphold the Department’s choice. Commerce has considerable discretion in determining the best available information with which to value factors of production. *Nation Ford Chemical Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1999). On this record, the court will not overturn the Department’s exercise of that discretion.

Among Jinan Yipin’s arguments opposing the Department’s choice of the NHRDF prices is that the NHRDF garlic seeds, being clonal varieties, were specially designed to produce larger bulbs and therefore were more expensive than the garlic seeds being valued. Jinan Yipin Comments 2–9. Jinan Yipin points out that it did not have to buy specially designed seed because the native garlic seed in China

could produce large bulbs. *Id.* at 4. The record evidence establishing that the NHRDF seeds were specially designed and clonal detracts from the Department's finding on relative specificity to the input, but, for the reasons discussed above, the court finds in the record, considered on the whole, sufficient other evidence to support the Department's decision to choose the NHRDF data over the import data. Jinan Yipin also makes the related argument that the size of a garlic bulb does not depend on the seed from which it grew but only on the growing conditions, including the cooler climate in the higher elevations of hilly terrain and a relatively greater amount of sunlight in "long-day" latitudes. *Id.* at 2–3. The court rejects this related argument as unsupported by any record evidence. What evidence exists on the record indicates instead that the type of seed used partly determines the size of the resulting bulb. *See Market Research Report 5.*

Pointing out that the record lacks evidence of any individual sales of the NHRDF garlic seeds, Jinan Yipin further argues that substantial evidence did not support Commerce's finding that the NHRDF price lists refer to actual sale prices. Jinan Yipin Comments 6–7. The court rejects this argument because the documentary evidence consisting of the NHRDF price lists displays sufficient indicia of offers for sale to support Commerce's finding that NHRDF price lists were "intended for market transactions." *Second Remand Redetermination 40.* Each of the lists contains a table entitled "Sale Rates of NHRDF Vegetable Seeds." *Letter from Petitioners to the Sec'y of Commerce exhibit 2 (June 30, 2003) (Admin. R. Doc. No. 1550).* Each table includes a column for "Sale price," as well as a column for "Available packing & Size." *Id.* Beneath the table is a disclaimer that rates were subject to change. *Id.*

Jinan Yipin also argues that the discrepancy between the price reflected by the domestic price data in the Market Research Report, 31.93 Rs. per kilogram, and the price reflected by the NHRDF price lists, 50 Rs. per kilogram, undermines the accuracy of the NHRDF price lists. Jinan Yipin Comments 7. This argument is not convincing to the court because the NHRDF garlic seeds produce garlic bulbs with physical characteristics closely matching the subject merchandise. The same cannot be said of the Indian garlic to which the domestic price data refer. *See Jinan Yipin II*, 33 CIT at __, 637 F. Supp. 2d at 1191–92; *see also Market Research Report 22* (indicating that garlic prices relate to the garlic bulb's diameter).

Finally, Jinan Yipin argues that the NHRDF data were flawed in that they reflect the experience of only one seller, *i.e.*, NHRDF, which operated only in a narrow part of India, while the domestic and import data reflect the experience of many sellers and are country-

wide. Jinan Yipin Comments 9–10. This argument also fails to convince the court that the Department’s ultimate determination that the NHRDF data were the best available information for valuing the garlic seed input, as explained in the Second Remand Redetermination, must be overturned upon judicial review. Although the record evidence shows that the Agrifound Parvati and Yamuna Safed-3 seed varieties were gaining in popularity in the northern neck of India, where the growing conditions are suitable for producing high-yield, large-bulb garlic highly similar to the subject merchandise, *Market Research Report* 3–4, the evidence does not support a finding or inference that the availability of the NHRDF seed is limited to a small area of India. Moreover, the record establishes the fact that the NHRDF price data are the only data of record pertaining to sales of domestic-origin Indian garlic seeds that are physically comparable to the subject merchandise. The Department reasonably gave significant weight to this fact. The fact that this seed is not widely used throughout the country of India is not enough, standing alone, to convince the court that Commerce acted contrary to record evidence on the whole in selecting the NHRDF price data.

Having considered all of Jinan Yipin’s arguments and having found them unconvincing, the court will sustain the Department’s choice of surrogate value for the valuation of Jinan Yipin’s garlic seed as a determination that is supported by substantial evidence on the record.

B. No Relief is Available on Jinan Yipin’s Claim Challenging the Surrogate Value of Cardboard Cartons

As it did in the Final Results and First Remand Redetermination, Commerce valued Jinan Yipin’s cardboard cartons using Indian import data that excluded exports from Thailand, South Korea, and Indonesia. *Second Remand Redetermination* 30–31. Once again citing its practice as supported by legislative history, Commerce excluded export data from these three countries because it found that “there is ‘reason to believe or suspect’” that the export prices pertaining to these countries were affected by generally available export subsidies. *Id.* In *Jinan Yipin II*, the court concluded that Commerce’s exclusion of export data from these three countries in the First Remand Redetermination was unsupported because it was based on nothing more than a “general policy or practice.” *Jinan Yipin II*, 33 CIT at ___, 637 F. Supp. 2d at 1196. The court concluded that Commerce had “failed to make a finding, supported by substantial evidence on the record of this administrative review, that export subsidy programs exist in these three countries that affected or likely affected exports of” card-

board cartons.² *Id.* at ___, 637 F. Supp. 2d at 1196.

In the Second Remand Redetermination, Commerce supports with its prior published CVD determinations its finding that there is reason to believe or suspect that export subsidies affected exports from Thailand, South Korea, and Indonesia.³ *Second Remand Redetermination* 32–35. Jinan Yipin does not dispute the sufficiency of this evidence, arguing instead that Commerce acted arbitrarily and capriciously in excluding export data from Thailand, South Korea and Indonesia but not Singapore, even though Commerce’s prior CVD determinations implied that export subsidies existed in all four countries. Jinan Yipin Comments 11–12. The court rejects this argument on the merits and will uphold Commerce’s determination.⁴

Jinan Yipin’s “arbitrary and capricious” argument fails because Commerce had a valid reason to treat the Singaporean data differently. Prior CVD determinations pertaining to Thailand, Indonesia, and South Korea contain explicit findings that export subsidies existed during the time period corresponding to the POR, but Jinan Yipin can point to no similar finding with respect to Singapore.⁵

² The court’s opinion erroneously referred to exports of “garlic” instead of cardboard cartons for the garlic. *Jinan Yipin Corp. v. United States*, 33 CIT ___, 637 F. Supp. 2d 1183, 1196 (2009) (“*Jinan Yipin II*”).

³ The court may take judicial notice of the published determinations of the International Trade Administration, United States Department of Commerce (“Commerce” or the “Department”), see Fed. R. Evid. 201, whether or not prior countervailing duty (“CVD”) determinations are record evidence as defined by 19 U.S.C. § 1516a(b)(2) (2000) or 19 C.F.R. § 351.104(a) (2003). See *Remand Record*, Consol. Court. No. 04–00240 (Mar. 9, 2010), ECF No. 104 (not listing CVD determinations on the administrative record for the *Final Results of Redetermination Pursuant to Ct. Remand Order* (Feb. 25, 2010) (“*Second Remand Redetermination*”).

⁴ In reaching the merits of plaintiff’s argument, the court rejects defendant’s argument that Jinan Yipin Corporation, Ltd. (“Jinan Yipin”) failed to exhaust its administrative remedies by not previously challenging Commerce’s use of Singaporean export data. Def.’s Resp. to Jinan Yipin’s Remand Comments 12–13 (quoting the Customs Courts Act of 1980, § 301, 28 U.S.C. § 2637(d) (2000) (the court “shall, where appropriate, require exhaustion of administrative remedies.”)). Jinan Yipin could not have raised this argument earlier because this argument responds to the Department’s justification for its determination in the Second Remand Redetermination. Jinan Yipin alleged an inconsistency in Commerce’s reliance upon its prior CVD determinations for factual support at the first opportunity.

The court also rejects defendant’s argument that addressing Jinan Yipin’s argument would have exceeded the scope of the court’s remand order. See *Second Remand Redetermination* 45. The court ordered that “Commerce shall redetermine the surrogate values of Jinan Yipin’s . . . cardboard cartons,” *Jinan Yipin II*, 33 CIT at ___, 637 F. Supp. 2d at 1198, which required Commerce to decide whether excluding the Singaporean data would yield the best available information. See 19 U.S.C. § 1677b(c) (2000).

⁵ Compare *Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review*, 70 Fed. Reg. 45,692 (Aug. 8, 2005) & Issues & Decisions Mem., C-560–806, at 1 (Aug. 1, 2005), available at

C. Commerce Was Not Required to Consider Jinan Yipin's New Allegations of Ministerial Error

Commerce refused to investigate two alleged ministerial errors that, according to Jinan Yipin, affected the redetermined margins in the Second Remand Redetermination.⁶ *Second Remand Redetermination* 47–49; Jinan Yipin Comments 17–20. Jinan Yipin argues that this refusal was an abuse of discretion because it was contrary to the statutory mandate to determine dumping margins as accurately as possible. Jinan Yipin Comments 17–20. The court holds that Commerce was not required to investigate these ministerial error allegations on remand.

Commerce has discretion to choose not to respond to allegations of ministerial error that were not timely made. *Dorbest Ltd. v. United States*, 604 F.3d 1363, 1376–77 (Fed. Cir. 2010). Jinan Yipin directs its allegations to calculations in which the errors, if they existed, have been apparent since December 2003. *Second Remand Redetermination* 47. These ministerial error allegations were not made within the five-day time period following release of the calculations to Jinan Yipin, as required by the Department's regulations. See 19 C.F.R. § 351.224(c)(2) (2003) (setting the five-day deadline); *Second Remand Redetermination* 48 (stating that the alleged errors were discoverable in the preliminary results). Although Commerce is required to determine dumping margins accurately, the Department's interests in finality and efficiency suffice to allow the Department to refuse to address ministerial error allegations that are as untimely as these. See *Second Remand Redetermination* 48–49 (stating that the Department “does not have the administrative resources to continually re-examine the record of the review to test the authenticity and legiti-

<http://ia.ita.doc.gov/frn/summary/indonesia/E5-4258-1.pdf>; *Final Results of Countervailing Duty Admin. Review: Stainless Steel Sheet & Strip in Coils from the Republic of Korea*, 69 Fed. Reg. 2,113 (Jan. 14, 2004) & Issues & Decisions Mem., C-580–835, at 7–9 (Jan. 14, 2004), available at <http://ia.ita.doc.gov/frn/summary/korea-south/04-832-1.pdf>; *Hot-Rolled Carbon Steel Flat Products from Argentina, India, Indonesia, South Africa, & Thailand: Final Results of Expedited Five-Year (Sunset) Reviews of the Countervailing Duty Orders*, 71 Fed. Reg. 70,960 (Dec. 7, 2006) & Issues & Decisions Mem., C-357–815, C-533–821, C-560–813, C-791–810, C-549–818, at 15–16 (Dec. 7, 2006), available at <http://ia.ita.doc.gov/frn/summary/MULTIPLE/E6-20699-1.pdf> with *Final Affirmative Countervailing Duty Determinations & Countervailing Duty Orders: Antifriction Bearings (Other Than Tapered Roller Bearings) & Parts Thereof From Singapore*, 54 Fed. Reg. 19,125 (May 3, 1989) & *Preliminary Affirmative Countervailing Duty Determinations: Certain Refrigeration Compressors From the Republic of Singapore*, 48 Fed. Reg. 39,109 (Aug. 29, 1983).

⁶ The regulations define a “ministerial error” as “an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial.” 19 C.F.R. § 351.224(f).

macy of new ministerial error allegations that are untimely filed”). In the circumstances of this case, in which Jinan Yipin alleged the errors more than six years after possible errors could have been discovered and after the court already has remanded once for consideration of new ministerial error allegations, Commerce did not abuse its discretion in refusing to address Jinan Yipin’s latest allegations.

D. The Court Will Grant Commerce’s Request for a Voluntary Remand to Redetermine Jinan Yipin’s Labor Expenses Pursuant to a Lawful Methodology

Defendant requests that the court order a remand allowing Commerce to redetermine the surrogate value of Jinan Yipin’s labor expenses. Def.’s Resp. 16–17. The court determines that such a remand is appropriate.

Remand is generally appropriate when an intervening legal decision renders an agency’s actions unlawful. *SKF USA Inc. v. United States*, 254 F.3d 1022, 1028–29 (Fed. Cir. 2001). Here, an intervening legal decision invalidated the regulation pursuant to which Commerce calculated the labor expenses. *See Dorbest*, 604 F.3d at 1371–73 (holding unlawful 19 C.F.R. § 408(c)(3) (2000)). Therefore, the court will order Commerce to redetermine Jinan Yipin’s labor rate on remand according to a lawful methodology.

IV. CONCLUSION

For the reasons stated above, the court rejects Jinan Yipin’s challenges to Commerce’s redeterminations of the surrogate values for garlic seed and for cardboard cartons and affirms Commerce’s uncontested redetermination of the surrogate value of Jinan Yipin’s use of water. The court concludes that Commerce lawfully refused to consider allegations of ministerial error submitted well past the time when such allegations are required by regulation to be submitted. The court will grant defendant’s request for a voluntary remand so that Commerce may redetermine its valuation of labor costs in accordance with law and the holding in *Dorbest*, 604 F.3d at 1371–73.

ORDER

Based on the court’s conclusions and the foregoing discussion, it is hereby

ORDERED that the *Final Results of Redetermination Pursuant to Ct. Remand Order* (Feb. 25, 2010) (“Second Remand Redetermination”) are **AFFIRMED IN PART** and **REMANDED IN PART**; it is further

ORDERED that the Second Remand Redetermination is affirmed in all respects as to Shandong Heze International Trade and Developing Company; it is further

ORDERED that the Second Remand Redetermination is affirmed with respect to the Department's redetermination of the surrogate values for the consumption of garlic seed, cardboard cartons, and water by Jinan Yipin Corporation, Ltd. ("Jinan Yipin"); it is further

ORDERED that Commerce shall submit to the court a redetermination upon remand ("Third Remand Redetermination") in which it redetermines the surrogate value of labor costs for Jinan Yipin using a method that complies with applicable law, including the holding of the United States Court of Appeals for the Federal Circuit in *Dorbest Ltd. v. United States*, 604 F.3d 1363 (Fed. Cir. 2010); it is further

ORDERED that Commerce shall redetermine as necessary the weighted average antidumping duty margin that it applied in *Fresh Garlic From the People's Republic of China: Final Results of Anti-dumping Duty Admin. Review & New Shipper Reviews*, 69 Fed. Reg. 33,626 (June 16, 2004) to the subject merchandise of Jinan Yipin for the period of review; it is further

ORDERED that Commerce shall ensure that its redetermination is supported by substantial evidence, otherwise in accordance with law, and supported by adequate reasoning; and it is further

ORDERED that Commerce shall have sixty (60) days from the date of this Order to complete and file its remand determination; Jinan Yipin shall have thirty (30) days from that filing to file comments; and defendant shall have fifteen (15) days after Jinan Yipin's comments are filed to file any reply.

Dated: April 12, 2011

New York, New York

/s/ Timothy C. Stanceu

TIMOTHY C. STANCEU

Judge

Slip Op. 11-37

BOND STREET, LTD., Plaintiff v. UNITED STATES, Defendant, and
GLEASON INDUSTRIAL PRODUCTS, INC. and PRECISION PRODUCTS, INC.,
Defendant-Intervenors.

Court No. 08-00049

[Sustaining U.S. Department of Commerce's remand determination reaffirming agency ruling that subject hand cart is within scope of antidumping duty order on hand trucks from the People's Republic of China]

Dated: April 12, 2011

James Caffentzis (James Caffentzis), for Plaintiff.

Tony West, Assistant Attorney General; *Jeanne E. Davidson*, Director, and *Patricia M. McCarthy*, Assistant Director, Commercial Litigation Branch, Civil Division, U.S. Department of Justice (*Stephen C. Tosini* and *Joshua E. Kurland*); *Thomas M. Beline*, Office of the Chief Counsel for Import Administration, U.S. Department of Commerce, Of Counsel; for Defendant.

Crowell & Moring, LLP (Matthew P. Jaffe), for Defendant-Intervenors.

OPINION

RIDGWAY, Judge:

I. Introduction

Pending before the Court are the Final Results of Redetermination Pursuant to Court Remand, filed by the U.S. Department of Commerce pursuant to the decision in *Bond Street I*. See generally Final Results of Redetermination Pursuant to Court Remand: Hand Trucks and Certain Parts Thereof from the People’s Republic of China (“Remand Results”); *Bond Street, Ltd. v. United States*, 33 CIT ____, 637 F. Supp. 2d 1343 (2009) (“*Bond Street I*”).

Bond Street I remanded to Commerce the agency’s determination that the Stebcos Portable Slide-Flat Cart (style no. 390009 CHR) – imported by Plaintiff Bond Street, Ltd., a New York importer of business and travel products – falls within the scope of the antidumping duty order on hand trucks from the People’s Republic of China. See *Bond Street I*, 33 CIT at ____, 637 F. Supp. 2d at 1351–52; Hand Trucks and Certain Parts Thereof from the People’s Republic of China: Scope Ruling on Stebcos Portable Slide-Flat Cart Inv. No. A-570–891 (May 30, 2007) (Administrative Record (“A.R.”) Doc. No. 12) (“Scope Ruling”);¹ Notice of Antidumping Duty Order: Hand Trucks and Certain Parts Thereof From the People’s Republic of China, 69 Fed. Reg. 70,122 (Dec. 2, 2004) (“Antidumping Order”). In particular, *Bond Street I* ruled that Commerce’s Scope Ruling could not be sustained because the agency had “failed to . . . make a determination as to whether the toe plate of the Stebcos cart can ‘slide[] under a load for purposes of lifting and/or moving the load,’” an operational/functional requirement set forth in the Antidumping Order, and the central focus of this litigation. See *Bond Street I*, 33 CIT at ____, 637 F. Supp. 2d at 1350 (quoting, *inter alia*, Antidumping Order, 69 Fed. Reg. 70,122).

¹ The complete administrative record in this action includes the record compiled by Commerce during the initial scope proceeding, as well as the record that the agency compiled in the course of the remand proceeding. Citations to documents in the administrative record of the initial scope proceeding are noted as “A.R. Doc. No. ____,” while citations to documents in the record of the remand proceeding – the supplemental administrative record – are noted as “S.A.R. Doc. No. ____.”

On remand, Commerce “found through testing [of] Bond Street’s Stebco Cart that [the cart] is adept at sliding under a load for the purposes of lifting/moving that load. Additionally, once the projecting edge/toe plate is slid under a load, the projecting edge/toe plate remain[s] stable and there [is] no difficulty in lifting and moving the load.” See Remand Results at 4; see also *id.* at 1, 3–4, 9–10, 12. Commerce thus concluded that – in addition to possessing the four specific physical characteristics required by the Antidumping Order – the Stebco cart also has “the operational and functional ability to slide under a load for the purposes of lifting and/or moving that load.” See *id.* at 4; see also *id.* at 1–2, 10, 12. Commerce’s Remand Results therefore reaffirmed the agency’s earlier determination that the Stebco cart falls within the scope of the Antidumping Order. See Remand Results at 1–2, 9, 12.

Bond Street contends that “the tests conducted by [Commerce] do not provide a basis for . . . find[ing] that the Stebco [cart] . . . slide[s] under a load” within the meaning of the Antidumping Order, and that the agency failed to properly consider certain tests conducted by Bond Street and the agency itself. See Plaintiff’s Comments on Final Results of Redetermination Pursuant to Court Remand (“Pl.’s Brief”) at 2, 3. In addition, Bond Street critiques the adequacy of Commerce’s explanation of its remand determination, and raises various other procedural objections. See, e.g., *id.* at 3–4. Bond Street concludes that the Remand Results are not supported by substantial evidence in the record, and are otherwise not in accordance with law. See generally *id.*; Plaintiff’s Reply to Defendant’s Response to Bond Street’s Comments Upon Commerce’s Remand Results (“Pl.’s Reply Brief”). Bond Street argues that the Court therefore should “reject Commerce’s remand results and either remand the matter once again . . . , or alternatively enter judgment for Bond Street based upon the facts of record.” See Pl.’s Reply Brief at 6.

In contrast, the Government and the Defendant-Intervenors – Gleason Industrial Products, Inc. and Precision Products, Inc. (collectively, “Domestic Manufacturers”) – contend that the Remand Results comply fully with the instructions in *Bond Street I*, and are both supported by substantial evidence and otherwise in accordance with law. The Government and the Domestic Manufacturers therefore argue that Commerce’s remand determination should be sustained in all respects. See generally Comments on Final Results of Redetermination Pursuant to Court Remand (“Def.-Ints.’ Brief”); Defendant’s Response to Bond Street’s Comments Upon Commerce’s Remand Results (“Def.’s Brief”).

Jurisdiction lies under 28 U.S.C. § 1581(c) (2000). For the reasons set forth below, the Remand Results, including Commerce's remand determination concluding that the Stebcocart is within the scope of the Antidumping Order, must be sustained.

II. Background

In December 2004, the Department of Commerce published an antidumping duty order covering hand trucks and certain parts thereof from the People's Republic of China. See Notice of Antidumping Duty Order: Hand Trucks and Certain Parts Thereof From the People's Republic of China, 69 Fed. Reg. 70,122 (Dec. 2, 2004) ("Antidumping Order"). The first section of the Antidumping Order (captioned "Scope of Order") expressly defines the covered merchandise, identifying four specific required physical characteristics, in addition to the operational/functional requirement that is at issue in this action:

A complete or fully assembled hand truck is a hand-propelled barrow consisting of [1] a vertically disposed frame having [2] a handle or more than one handle at or near the upper section of the vertical frame; [3] at least two wheels at or near the lower section of the vertical frame; and [4] a horizontal projecting edge or edges, or toe plate, perpendicular or angled to the vertical frame, at or near the lower section of the vertical frame. *The projecting edge or edges, or toe plate, slides under a load for purposes of lifting and/or moving the load.*

. . . That the vertical frame, handling area, wheels, projecting edges or other parts of the hand truck can be collapsed or folded is not a basis for exclusion of the hand truck from the scope of the [Antidumping Order]. . . Finally, that the hand truck may exhibit physical characteristics in addition to the vertical frame, the handling area, the projecting edges or toe plate, and the two wheels at or near the lower section of the vertical frame, is not a basis for exclusion of the hand truck from the scope of the [Antidumping Order].

Examples of names commonly used to reference hand trucks are hand truck, convertible hand truck, appliance hand truck, cylinder hand truck, bag truck, dolly, or hand trolley. . . .

Excluded from the scope [of the Antidumping Order] are small two-wheel or four-wheel utility carts specifically designed for carrying loads like personal bags or luggage in which the frame is made from telescoping tubular material measuring less than $\frac{5}{8}$ inch in diameter[.]

Antidumping Order, 69 Fed. Reg. at 70,122 (“Scope of Order” section) (emphasis added).

A. Commerce’s Scope Ruling on the Stebco Cart

After the Antidumping Order issued, Bond Street sought a ruling from Commerce that the Stebco cart is beyond the scope of the Order, and is therefore not subject to antidumping duties under that Order. See Bond Street Request for Scope Ruling (A.R. Doc. No. 1). Bond Street argued that the Stebco cart is not a “hand truck” within the meaning of the Antidumping Order, but – rather – a collapsible “portable luggage cart,” designed for “personal uses such as carrying luggage, carrying personal bags, or a salesman storing the cart in his car to carry in many samples[] or sample cases together at one time to avoid multiple trips.” See *id.* at 2, 4; see also *id.* at 3; A.R. Doc. No. 4 at 3. According to Bond Street, several physical features of the Stebco cart – *i.e.*, its collapsible toe plate, the placement of a bungee cord hook, and the absence of a kick plate – make it impossible for the cart to “slide[] under” a load for purposes of lifting and/or moving the load, as required by the express terms of the Antidumping Order. See A.R. Doc. No. 1 at 3. Bond Street asserted that those particular features of the Stebco cart mean that – as a practical matter – “items must be *lifted onto* the [toe] plate for purposes of lifting and/or moving [them].” *Id.* at 2 (emphasis added); see also *id.* at 4; A.R. Doc. No. 4 at 4; A.R. Doc. No. 11 at 2–3.

Commerce analyzed Bond Street’s Request for Scope Ruling under the framework of 19 C.F.R. § 351.225(k)(1) (2006), finding “the descriptions of the merchandise” to be dispositive. See *Hand Trucks and Certain Parts Thereof from the People’s Republic of China: Scope Ruling on Stebco Portable Slide-Flat Cart Inv. No. A-570–891* (May 30, 2007) (A.R. Doc. No. 12) at 8 (“Scope Ruling”).² In its Scope Ruling,

² In determining whether merchandise falls within the scope of an antidumping order, Commerce first determines, pursuant to 19 C.F.R. §§ 351.225(d), whether it can make a determination based upon the request for a scope ruling and the factors listed in § 351.225(k)(1) – specifically, “[t]he descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of [Commerce] (including prior scope determinations) and the [International Trade] Commission.” See 19 C.F.R. §§ 351.225(d), 351.225(k)(1) (2006); *Walgreen Co. v. United States*, 620 F.3d 1350, 1352 (Fed. Cir. 2010).

However, “[the] predicate for the interpretive process is language in the order that is subject to interpretation.” *Tak Fat Trading Co. v. United States*, 396 F.3d 1378, 1383 (Fed. Cir. 2005). Absent “language . . . that is subject to interpretation,” there is no cause to look beyond the order. Further, “Commerce cannot ‘interpret’ an antidumping order so as to change the scope of that order, nor can Commerce interpret an order in a manner contrary to its terms.” *Duferco Steel Inc. v. United States*, 296 F.3d 1087, 1095 (Fed. Cir. 2002) (internal citations omitted) (*quoted with approval in Walgreen Co.*, 620 F.3d at 1354). Accordingly, in Commerce’s analysis, “[t]he primary source” is the antidumping order itself, which is the “cornerstone” of any scope determination. See *Walgreen Co.*, 620 F.3d at

Commerce determined that the Stebco cart incorporates all four of the requisite physical characteristics of a hand truck specified in the scope language of the Antidumping Order – (1) a vertical frame, (2) at least one handle, (3) two or more wheels, and (4) a projecting edge or toe plate. *Id.* at 8. Commerce also reviewed each of the three physical features of the Stebco cart that Bond Street highlighted – *i.e.*, the collapsible toe plate, the bungee cord hook, and the lack of a kick plate, and determined that none of them placed the Stebco cart beyond the scope of the Antidumping Order. *See id.* at 3, 8. In addition, Commerce found that – because the cart’s frame includes telescoping tubing with a diameter of greater than $\frac{5}{8}$ inch – the Stebco cart does not fall within the Antidumping Order’s express exclusion of “small . . . utility carts specifically designed for carrying loads like personal bags or luggage in which the frame is made from telescoping tubular material measuring less than $\frac{5}{8}$ inch in diameter.” *See id.* at 8–9; Antidumping Order, 69 Fed. Reg. at 70,122 (express exclusion in “Scope of Order” section).

In light of the findings summarized above, Commerce’s Scope Ruling concluded that the Stebco cart falls within the scope of the Antidumping Order. *See* A.R. Doc. No. 12 at 8–9. However, Commerce failed to test the Stebco cart. Nor did Commerce’s Scope Ruling make any finding on the ability of the cart’s toe plate to “slide[] under a load for purposes of lifting and/or moving the load.” *See generally id.*, *passim*.

B. *The Ruling in Bond Street I*

Bond Street commenced the instant action challenging Commerce’s Scope Ruling. As detailed in *Bond Street I*, Bond Street’s Motion for Judgment on the Agency Record emphasized that the Antidumping Order requires that the projecting edge or toe plate of subject merchandise “slide[] under a load for purposes of lifting and/or moving the load.” *See* Antidumping Order, 69 Fed. Reg. at 70,122 (“Scope of Order” section). Bond Street argued that the Stebco cart is not capable of sliding under a load in such a manner, and that Commerce therefore should have reached a negative scope determination. *See generally Bond Street I*, 33 CIT at ____, 637 F. Supp. 2d at 1344.

The Government and the Domestic Manufacturers maintained that the Scope Ruling should be sustained, because the Scope Ruling 1356–57 (quoting *Duferco Steel*, 296 F.3d at 1097). Thus, it is “[t]he language of the [antidumping] order, not the petition” (or any other collateral source) which controls. *See Tak Fat Trading Co.*, 396 F.3d at 1386.

If Commerce’s analysis under 19 C.F.R. §§ 351.225(d) is not dispositive, the review proceeds to § 351.225(e), and Commerce applies the five *Diversified Products* criteria codified in the agency’s regulations. *See* 19 C.F.R. §§ 351.225(e), 351.225(k)(2) (2006); *Diversified Products Corp. v. United States*, 6 CIT 155, 572 F. Supp. 883 (1983).

expressly addressed each of the physical features of the StebcO cart that Bond Street cited in arguing that the cart's toe plate cannot "slide[] under a load." See generally *Bond Street I*, 33 CIT at ____, 637 F. Supp. 2d at 1350 (discussing Scope Ruling's analysis of StebcO cart's collapsible toe plate and cart's bungee cord hook, as well as cart's lack of kick plate).

As *Bond Street I* explained, however, Commerce's Scope Ruling simply missed the point:

Contrary to the claims of the Government and the Domestic Manufacturers, . . . it is not enough that Commerce analyzed each of the referenced physical characteristics [– i.e., the StebcO cart's collapsible toe plate, its bungee cord hook, and its lack of a kick plate –] in isolation. Bond Street has never claimed that the existence of those physical characteristics, in and of themselves, places the StebcO cart beyond the scope of the Antidumping Order. To the contrary, the gravamen of Bond Street's argument is that those *physical* characteristics prevent the StebcO cart from having the *functional* or *operational* characteristic set forth in the Antidumping Order – that is, that "[t]he projecting edge or edges, or toe plate, slide[] under a load."

Bond Street I, 33 CIT at ____, 637 F. Supp. 2d at 1350–51 (quoting Antidumping Order, 69 Fed. Reg. at 70,122). *Bond Street I* underscored that:

[N]owhere in its Scope Ruling . . . did Commerce make a determination as to whether the toe plate of the StebcO cart can 'slide[] under a load for purposes of lifting and/or moving' that load. Nowhere in the Scope Ruling did Commerce address Bond Street's claim that the collapsible toe plate, the location of the bungee cord hook, and the absence of a kick plate prevent the toe plate of the StebcO cart from 'slid[ing] under' a load.

Bond Street I, 33 CIT at ____, 637 F. Supp. 2d at 1351. This matter was therefore remanded to Commerce for further action, to permit the agency "to make a finding as to whether the StebcO cart's toe plate 'slides under a load for purposes of lifting and/or moving the load,'" as required by the scope language in the Antidumping Order. See *id.*, 33 CIT at ____, 637 F. Supp. 2d at 1351–52 (quoting Antidumping Order, 69 Fed. Reg. at 70,122 ("Scope of Order" section)).

C. Commerce's Determination on Remand

In the course of the remand proceeding before the agency, Commerce officials conducted a series of three tests using loads of varying

weights and dimensions to evaluate the ability of the Stebcos cart to “slide[] under” a load – the operational/functional requirement set forth in the language of the Antidumping Order defining the scope of the Order’s coverage. *See generally* Final Results of Redetermination Pursuant to Court Remand Hand Trucks and Certain Parts Thereof from the People’s Republic of China at 1, 3–7, 12 (“Remand Results”).³ First, Commerce tested the Stebcos cart’s ability to slide under a box of files measuring 10 x 16 x 13 inches and weighing 15 pounds. *See id.* at 3–4. In addition, Commerce tested the cart’s ability to slide under a box of files measuring 9 x 18 x 11.5 inches and weighing 30 pounds. *See id.* And, finally, Commerce tested the cart’s ability to slide under an empty two-drawer metal file cabinet measuring 25 x 19.5 x 14.5 inches and weighing 50 pounds. *See id.* at 4. In conducting its tests, the agency specifically addressed Bond Street’s assertions that the Stebcos cart’s collapsible toe plate, its bungee cord hook, and its lack of a kick plate prevent the cart from “slid[ing] under” a load. *See id.* at 2, 3; *see also id.* at 4–7.

The Remand Results explain that, in each of Commerce’s three tests, the Stebcos cart was able to “slide[] under” the load:

For the lighter [15-pound] box, [Commerce] officials merely rolled the Stebcos Cart up to the box and the toe plate slid under the box. With the heavier [30-pound] box, [Commerce] officials leveraged the Stebcos Cart with their feet. For the two-drawer metal filing cabinet, [Commerce] officials were able to slide the Stebcos Cart’s projecting edge/toe plate under the filing cabinet by slightly tilting the cabinet.

Remand Results at 4; *see also id.* at 11. Based on its testing, Commerce concluded that the Stebcos cart “is adept at sliding under a load for the purposes of lifting/moving that load.” *Id.* at 4. The testing further demonstrated that “once the [Stebcos cart’s] projecting edge/toe plate is slid under a load, the projecting edge/toe plate remained stable and there was no difficulty in lifting and moving the load.” *Id.* And Commerce specifically determined, through testing, that – contrary to Bond Street’s claims – none of the three physical features highlighted by Bond Street prevents the Stebcos cart from “slid[ing] under” a load, as specified in the scope language of the Antidumping Order. *See id.* at 4–5 (addressing the collapsible toe

³ A sample of the Stebcos cart is included in the administrative record. *See Bond Street I*, 33 CIT at ____ n.5, 637 F. Supp. 2d at 1347 n.5 (citations omitted); *see also* Audio Recording of Oral Argument on Remand Results (“Audio Recording”) at 10:04–10:15. Photos of the Stebcos cart are also available in the record. *See, e.g.*, A.R. Doc. No. 1 at Attachment (item C on “proof page” from 2006 S.P. Richards Co. General Line Catalog, marked as 380A); S.A.R. Doc. No. 2 at Attachments 1, 1A, & 1B.

plate); *id.* at 5–6 (addressing lack of kick plate); *id.* at 6–7 (addressing location of bungee cord hook); *see generally id.* at 3, 7.

In several rounds of comments on Commerce’s draft Remand Results, Bond Street attacked both the methodology and the results of Commerce’s testing. Bond Street argued, among other things, that Commerce’s “leveraging” of the Stebcos cart in the test involving the 30-pound box was not consistent with the manner of the cart’s intended use, and that the Antidumping Order did not permit Commerce to “tip” or “tilt” the 50-pound file cabinet in order to slide the Stebcos cart under it. *See generally* Remand Results at 4, 6, 8, 9.

Apart from attacking two of Commerce’s three tests on the Stebcos cart, Bond Street also criticized the agency for not conducting two additional tests. Specifically, Bond Street argued that Commerce should have tested the cart’s ability to “slide[] under” three stacked boxes, weighing 20 pounds each. *See* Remand Results at 7, 10. Bond Street further urged Commerce to replicate a test that Bond Street itself had conducted. As the Remand Results explained:

Bond Street . . . argues that it . . . attempted, to no avail, to slide the Stebcos Cart under a box measuring 18 x 12 x 10 inches and weighing 50 pounds. Bond Street attached three color photographs [to its comments on the draft Remand Results] purporting to depict the Stebcos Cart’s wheels lifting off the ground as the cart’s [toe] plate makes contact with the box and the cart beginning to collapse on a second attempt.

Id. at 7. Bond Street emphasized the design of the Stebcos cart’s toe plate, contrasting it with that of a so-called “typical hand truck” and arguing that the thickness of the Stebcos cart’s toe plate “makes sliding [it] under [the] loads of many boxes extremely difficult, if not impossible.” *See id.* at 8 (*quoting* Bond Street comments on draft Remand Results (S.A.R. Doc. No. 2) at 3); *see also id.* at 7. Similarly, Bond Street emphasized that the Stebcos cart has a relatively low load capacity, which Bond Street sought to contrast with the load capacities of “typical” hand trucks contemplated by the Antidumping Order. *See id.* at 10; *see also Bond Street I*, 33 CIT at ____ n.5, 637 F. Supp. 2d at 1347 n.5 (noting that maximum load capacity of Stebcos cart is 275 pounds).

Apparently rejecting Commerce’s test using the 30-pound box (due to “leveraging”) as well as the agency’s test using the 50-pound file cabinet (due to “tilting”), Bond Street insisted that Commerce’s “success at sliding the Stebcos Cart under one load” – *i.e.*, the 15-pound box – could not justify Commerce’s determination that the Stebcos cart falls within the scope of the Antidumping Order. *See* Remand Results

at 8; *see also id.* at 9 (noting Bond Street’s argument that Commerce’s “limited testing . . . cannot support its proposed finding that the subject cart is designed to slide under a load”).

In its final Remand Results, Commerce individually addressed each of Bond Street’s objections. Commerce explained that – contrary to Bond Street’s assumption – the agency’s use of “leveraging” in its test using the 30-pound box did not involve “lifting [the Stebcos] wheels off the ground [in order] to slide [the] load onto the toe plate.” *See* Remand Results at 8, 10–11. Instead, “[Commerce] officials press[ed] against a portion of the Stebcos Cart with their feet to give support to the cart.” *Id.* at 10. The Remand Results further noted that “[t]he Order’s scope language is silent with respect to the operation of [a] hand truck,” except to require that “the projecting edge/toe plate . . . slide under a load for purposes of lifting and/or moving the load.” *Id.* at 10–11.

As to Bond Street’s objection to Commerce’s file cabinet test, Commerce rejected Bond Street’s argument that “the Order’s language is not inclusive of carts with projecting edges or toe plates capable of sliding under a load only when the load is tilted.” *See* Remand Results at 11. Commerce noted that “the Order is silent with respect to the tilting of the items that are to be moved and/or lifted by the hand truck,” and stated that the agency has consistently ruled in the past that hand carts are not excluded from the scope of the Antidumping Order merely because they are capable of “slid[ing] under” a load only if that load is tipped or tilted. *Id.*

Commerce also addressed Bond Street’s efforts to contrast the design of the Stebcos cart with that of so-called “typical hand trucks.” In particular, Commerce pointed out that the Antidumping Order is silent on the issue of load capacity. *See* Remand Results at 10 (noting that “the language of the Order does not require an analysis of weight limitations”). In addition, Commerce characterized as “misplaced” Bond Street’s emphasis on “the 2.41 mm width difference between the Stebcos Cart’s projecting edge or . . . toe plate” and that of a hypothetical “typical hand truck[.]” *Id.* As the Remand Results explained, the Antidumping Order requires only that a hand cart be able to “slide[] under” a load; the relative “efficiency and ease of . . . use” in sliding any particular hand cart under a load “speaks to end-user satisfaction rather than scope inclusion/exclusion.” *Id.* (footnote omitted); *see also id.* at 5.

Finally, the Remand Results rejected Bond Street’s contention that “sliding the Stebcos Cart under one load does not warrant finding the cart to be within the scope of the Order.” *See* Remand Results at 8; *see also id.* at 9. Commerce disputed Bond Street’s math, and, more

fundamentally, dismissed Bond Street's claim that – to fall within the scope of the Antidumping Order – a hand cart must be able to perform “hand truck tasks” on all items (or at least “all items it was designed or intended to move”). *See id.* at 8, 9, 11. The Remand Results stated:

[C]ontrary to Bond Street's assertion, it is not the case that [Commerce] was successful at sliding the Stebcos Cart under only a single load. . . . [W]e tested [the] Stebcos Cart on two boxes of different weights, and on a two-drawer filing cabinet demonstrating the Stebcos Cart's ability to slide under and move different loads of different sizes. We further disagree with Bond Street in its contention that the Order requires that the hand truck in question must perform “the tasks of a hand truck on all of the items it was designed or intended to move.” . . . [T]he Order does not exclude hand trucks designed with a primary use. We find neither a literal requirement in the Order's scope language nor a suggestion to this effect. The Order's scope language is additionally silent on the hand truck's item-specific limitations.

Id. at 11; *see also id.* at 9 (acknowledging the Domestic Manufacturers' point that – even if a hand cart cannot slide under some loads, the cart nevertheless falls within the scope of the Order if the cart can slide under other loads). Because there is no requirement that a hand cart be able to perform “hand truck tasks” on “all items it was designed or intended to move,” and the Antidumping Order requires only that a hand cart within the scope of the Order be capable of “slid[ing] under” an unspecified load, Commerce concluded that – in light of the results of the agency's three tests – the additional tests advocated by Bond Street were not necessary. *See id.* at 10 (explaining that Bond Street's proposed test involving stack of three boxes weighing 20 pounds each was not necessary, because Commerce's testing was sufficient to “confirm[] that the Stebcos Cart possesses the fundamental functional and operative capability to slide under a load”); *see also id.* at 9, 11.

The Remand Results concluded that, “notwithstanding the collapsible and angled design of the toe plate, the location of the bungee cord hook, and the absence of a kick plate,” Bond Street's Stebcos cart “is adept at sliding under a load for the purposes of lifting/moving that load”; that “once the projecting edge/toe plate is slid under a load, the projecting edge/toe plate remained stable and there was no difficulty in lifting and moving the load”; and that the Stebcos cart thus “has the operational and functional ability to slide under a load for the purposes of lifting and/or moving that load,” and therefore falls “within

the scope of the Order.” See Remand Results at 3–4, 12; see also *id.* at 1–2, 5, 6–7, 9–11. Commerce therefore reaffirmed the determination in its Scope Ruling. See *id.* at 1–2, 3, 9 & n.2, 12.

III. Standard of Review

In reviewing a challenge to a ruling by Commerce on the scope of an antidumping order (*i.e.*, a determination as to “whether a particular type of merchandise is within the class or kind of merchandise described in an existing . . . antidumping . . . duty order”), the agency’s determination must be upheld unless it is found to be “unsupported by substantial evidence on the record, or otherwise not in accordance with law.” 19 U.S.C. §§ 1516a(a)(2)(B)(vi), 1516a(b)(1)(B)(i) (2000); see *Walgreen Co. v. United States*, 620 F.3d 1350, 1354 (Fed. Cir. 2010); see also *Diamond Sawblades Mfrs. Coalition v. United States*, 33 CIT ____, ____, 650 F. Supp. 2d 1331, 1352 (2009), *aff’d*, 626 F.3d 1374 (Fed. Cir. 2010) (explaining that “[judicial] review of agency determinations issued pursuant to a court-ordered remand is governed by the same standard of review used in reviewing the [agency’s] original determination”).

“[S]ubstantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 477 (1951) (quoting *Consol. Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)). Moreover, any determination as to the substantiality of evidence “must take into account whatever in the record fairly detracts from its weight,” including “contradictory evidence or evidence from which conflicting inferences could be drawn.” *Suramerica de Aleaciones Laminadas, C.A. v. United States*, 44 F.3d 978, 985 (Fed. Cir. 1994) (quoting *Universal Camera*, 340 U.S. at 487–88). On the other hand, the mere fact that “it [may be] possible to draw two inconsistent conclusions from evidence in the record . . . does not prevent Commerce’s determination from being supported by substantial evidence.” *Am. Silicon Techs. v. United States*, 261 F.3d 1371, 1376 (Fed. Cir. 2001); see also *Consolo v. Federal Maritime Commission*, 383 U.S. 607, 620 (1966) (same). Finally, while Commerce must explain the bases for its decisions, “its explanations do not have to be perfect.” *NMB Singapore Ltd. v. United States*, 557 F.3d 1316, 1319 (Fed. Cir. 2009). However, “the path of Commerce’s decision must be reasonably discernable,” to support judicial review. *Id.*

In the case at bar, Bond Street maintains that Commerce’s remand determination is not supported by “substantial evidence on the record,” and that it is also “otherwise not in accordance with law.”

IV. Analysis

Bond Street challenges the Remand Results on both substantive and procedural grounds.

On the merits, Bond Street contests the validity of the tests on which Commerce relies to establish that – in the words of the Anti-dumping Order – the Stebcocart will “slide[] under a load for purposes of lifting and/or moving the load.” See generally sections III.A-III.C, *infra*; see also Antidumping Order, 69 Fed. Reg. at 70,122 (“Scope of Order” section).

As a matter of procedure, Bond Street argues that Commerce should have consulted with the parties in determining the agency’s test methodology. See section III.D.1, *infra*. In addition, Bond Street disputes the adequacy of the rationale provided in the Remand Results on issues including Commerce’s choice of test procedures, Commerce’s treatment of various tests, and Commerce’s decision not to conduct some additional testing that Bond Street proposed. See sections III.D.2–III.D.3, *infra*. Bond Street further contends that Commerce failed to properly address certain specific physical features of the Stebcocart. See section III.D.4, *infra*. Ultimately, Bond Street concludes that the Remand Results are not supported by substantial evidence in the record. See section III.E, *infra*.⁴

⁴ In Commerce’s initial scope proceeding, and in the remand proceeding before the agency, Bond Street raised a number of claims, arguments, and objections that Bond Street did not include in either of its post-remand briefs filed with the Court.

For example, in the initial scope proceeding and in the remand proceeding, Bond Street argued that “the angled design of [the] toe plate” makes it “virtually impossible” to slide the Stebcocart under a load. See *Bond Street I*, 33 CIT at ____, 637 F. Supp. 2d at 1346 (citation omitted); Remand Results at 4–5, 7. Similarly, Bond Street claimed in both fora that “tipping” or “tilting” a load in order to slide a cart under it “would necessarily result in damage” to the load, and “over time, would also damage the frame of the cart itself.” See *Bond Street I*, 33 CIT at ____, 637 F. Supp. 2d at 1348–49 (citation omitted); Remand Results at 5. In the initial scope proceeding, Bond Street argued that the “size and composition” of the Stebcocart’s wheels limit the cart’s load capacity, and that the cart “would be damaged if pushed from the rear.” See *Bond Street I*, 33 CIT at ____ & n.5, 637 F. Supp. 2d at 1347 & n.5 (citation omitted). And, in the remand proceeding before the agency, Bond Street argued that the Stebcocart’s toe plate is thicker than that of the “typical hand truck,” making it “extremely difficult, if not impossible” to slide the cart “under [the] load of many boxes.” See Remand Results at 8, 10. Bond Street similarly objected to Commerce’s use of “leveraging” to slide the Stebcocart under the file cabinet. See *id.* at 8, 10–11; see also n.13, *infra* (discussing Bond Street’s objection to “leveraging”). Of course, all claims, arguments, and objections that Bond Street elected not to address in its post-remand briefs must be deemed waived.

As discussed in greater detail below, however, Bond Street's arguments are far wide of the mark.⁵ Bond Street's challenge to the Remand Results must therefore fail, and Commerce's remand determination that the Stebco cart will "slide[] under a load for purposes of lifting and/or moving the load" – and thus falls within the scope of the Antidumping Order – must be sustained. *See* Remand Results at 1–2, 3–4, 9–10, 12; Antidumping Order, 69 Fed. Reg. at 70,122.

A. *Bond Street's Challenge to Commerce's File Cabinet Test*

Bond Street's principal challenge to Commerce's remand determination is Bond Street's claim that the agency's "testing methodology" contravened "the plain meaning of the language" of the Antidumping Order. Pl.'s Reply Brief at 4; *see also* Pl.'s Brief at 8. Focusing on the phrase "slide[] under" as that phrase is used in the Order, Bond Street argues that Commerce erred by "tipping" or "tilting" the load in the course of testing whether the Stebco cart could "slide[] under" a two-drawer metal filing cabinet. In particular, Bond Street contends that the dictionary definition of "slide [under]" does not permit "tipping" or "tilting" a load, and that Commerce has "impermissibly change[d] the scope" of the Antidumping Order. *See generally* Pl.'s Brief at 4, 7–9; Pl.'s Reply Brief at 4, 5 n.7; Audio Recording of Oral Argument on Remand Results ("Audio Recording") at 19:40–20:33, 27:06–28:53, 29:13–30:29, 31:13–32:14, 32:56–33:09, 42:11–43:16, 45:25–46:04, 1:02:41–1:04:03, 1:05:47–1:06:10.

Bond Street's argument is predicated on a fundamental misreading and misapplication of the phrase "slide[] under." Bond Street points to nothing in the dictionary definition of "slide [under]" which (either explicitly or implicitly) precludes the "tipping" or "tilting" at issue here.⁶ Nor can Bond Street do so. It is not the Stebco cart that was

⁵ As a threshold matter, the Government correctly notes that Bond Street's claims generally misapply the proper standard of review. *See generally* Def.'s Brief at 3, 8. In particular, Bond Street fails to demonstrate that the tests conducted by Commerce are unreasonable. Absent such a showing, "even if Bond Street . . . proposed a different test that happened to be reasonable, Commerce's determination would still govern." *See id.* at 8 (*citing United States v. Eurodif S.A.*, 555 U.S. ___, ___, 129 S. Ct. 878, 886 (2009) (explaining that the issue is not whether plaintiff presents "the better view," but whether agency's determination is reasonable)); *see also id.* at 3 (noting that "even if Bond Street's proposed testing methodology . . . were reasonable, . . . so long as Commerce's methodology is reasonable, then the agency's determination should be sustained").

⁶ According to Bond Street, "[t]he term 'slide under'" is defined as "to move or pass smoothly or easily." *See* Pl.'s Reply Brief at 4 (*quoting* "Merriam-Webster dictionary" definition 4a for the word "slide"), 5 n.7 (referring to "go[ing]with a smooth continuous motion under a load"); *see also* Audio Recording at 27:12–27:30 (stating that "slide under" means to "go under with a smooth motion"); *id.* at 1:02:41–1:03:05; *id.* at 34:06–34:30 (referring to "continuous, smooth motion").

“tipped” or “tilted” in this case, it was the load;⁷ and it is the cart that must “slide[] under.” As a matter of pure logic, the “tipping” or “tilting” of a *load* says nothing about the motion or movement of a *hand cart*, which – to fall within the scope of the Antidumping Order – must “slide[] under” the load (whether the load is first “tipped”/“tilted,” or not). See *generally, e.g.*, Audio Recording at 1:43:53–1:45:10 (counsel for the Government explains that the Stebcocart “slid under the load in a smooth motion” when the file cabinet was tipped or tilted “in a common sense way”); *id.* at 1:59:51–1:59:56, 2:00:11–2:00:29 (same).⁸ Here, there is no dispute that the Stebcocart “move[d] or pass[ed] smoothly or easily” under the file cabinet, with the cabinet “slightly tilt[ed].” See Remand Results at 4; see also *id.* at 11; Def.-Ints.’ Brief at 2, 4; Def.’s Brief at 2–4, 9; Audio Recording at 1:43:53–1:44:33, 2:00:11–2:00:29. Compare, *e.g.*, Final Scope Ruling: Expeditors Tradewin, LLC, on behalf of Ameristep Corporation Inc. at

But, as explained herein, nothing in the dictionary definition of “slide” is in any way inconsistent with “tipping” or “tilting” a load under the circumstances here. Or, to put it differently, “tipping” or “tilting” a load before sliding a cart under it is entirely consonant with the dictionary definition of “slide [under].” Contrary to Bond Street’s claim, “tipping” or “tilting” a load is not at odds with either “the plain meaning of the language of the order” or the “common meaning and understanding” of the phrase “slides under.” See Pl.’s Reply Brief at 4; Pl.’s Brief at 8.

Further, there can be no claim that allowing “tipping” or “tilting” of a load renders the “slide[] under” language in the Antidumping Order a nullity. For example, the “stabilizing plate” on the garden cart at issue in *Vertex* lacked a beveled edge, and instead featured “a round steel wire . . . not conducive to sliding under a load,” whether the load was tipped or not. The garden cart was therefore ruled to be beyond the scope of the Antidumping Order. See *Vertex Int’l, Inc. v. United States*, 30 CIT 73, 80 (2006); see also Audio Recording at 1:45:45–1:46:58, 1:58:33–2:00:28 (*inter alia*, contrasting *Vertex* and case at bar); *id.* at 2:00:37–2:00:59 (suggesting that, if it is necessary to manually lift and place a load onto a hand cart, it cannot be said that the cart will “slide[] under” the load).

⁷ In the course of oral argument, counsel for Bond Street repeatedly referred interchangeably to the “tipping”/“tilting” of the file cabinet and “slid[ing] the load [*i.e.*, the file cabinet] onto” the Stebcocart. See, *e.g.*, Audio Recording at 20:01–20:31. However, “tipping”/“tilting” is quite different from “sliding.” When an object is “tipped” or “tilted,” part of the object is lifted, but the object otherwise maintains the same “footprint” on the surface on which it is located; the object does not move forward or backward. In contrast, when an object is “slid,” the object’s “footprint” changes; the object moves forward or backward on the surface on which it is located. In the instant case, contrary to the assertions of Bond Street’s counsel, there is no evidence that Commerce did anything other than “tip” or “tilt” the file cabinet in testing the Stebcocart.

⁸ In briefing, Bond Street argued categorically that the need to “tip” or “tilt” a load would place a hand cart squarely beyond the scope of the Antidumping Order. See Pl.’s Brief at 4, 7–9; Pl.’s Reply Brief at 3–4, 5 n.7. However, in the course of oral argument, Bond Street moderated its position. At oral argument, counsel for Bond Street candidly (albeit begrudgingly) acknowledged that – even as to some hand carts which are indisputably hand trucks within the scope of the Antidumping Order – “tipping” or “tilting” of the load might be required, at least as to some loads, on some surfaces. See, *e.g.*, Audio Recording at 40:16–40:29, 41:44–42:05, 51:49–52:01, 1:07:001:07:10, 1:09:26–1:09:37, 1:25:07–1:25:34, 1:26:19–1:26:57.

7 (May 18, 2007) (ruling that carts are beyond scope of Order, because they cannot “slide[] under” load, even “by tipping the load slightly”).⁹

Further, as the Government notes, the Remand Results explained that the Antidumping Order is silent on the “tipping”/“tilting” of loads, and, moreover, that Commerce’s determination in this case is consonant with a line of other cases that have ruled that various hand carts are within the scope of the Antidumping Order even though they “slide[] under” a load only if the load is “tipped” or “tilted” first. See Def.’s Brief at 9–10; see also Remand Results at 11 & n.6.

In *Gleason Products*, for example, the court ruled that the Antidumping Order covers a “welding cart” (model 93851), because that cart is “capable of sliding under a load *if the load is slightly tipped.*” *Gleason Indus. Prods., Inc. v. United States*, 32 CIT ____, ____, 556 F. Supp. 2d 1344, 1348–49 (2008) (emphasis added).¹⁰ Indeed, there are certain types of hand trucks that are indisputably within the scope of the Antidumping Order even though it is necessary to “tip” or “tilt” the very loads that the hand trucks are specifically designed to carry. See, e.g., Audio Recording at 25:59–26:27, 2:08:42–2:09:28 (discussing “cylinder hand truck” at issue in *Gleason*); see also Antidumping Order, 69 Fed. Reg. at 70,122 (listing “cylinder hand truck” among the “names commonly used to reference hand trucks”).

In short, contrary to Bond Street’s assertions, there is nothing “unauthorized” about “tipping”/“tilting” a load in order to slide a cart

⁹ Copies of Commerce’s ruling in *Expeditors Tradewin* and other relevant scope rulings are included in an addendum to the Government’s brief. See Def.’s Brief at Appendix, A20–A28 (*Expeditors Tradewin*, *supra*); *id.* at A43–A49 (*Conair*, n.10, *infra*); *id.* at A50–A58 (*E&B Giftware*, n.10, *infra*).

¹⁰ See also, e.g., Final Scope Ruling: *Expeditors Tradewin* at 7 (ruling that carts are beyond scope of Order, because “an individual cannot easily position the horizontal frame of the Non-Typical Cart and Grizzly Cart beneath a load by *tipping the load slightly* due to the size of the Non-Typical Cart’s and Grizzly Cart’s wheel” (emphasis added)); Scope Ruling on *Conair Corporation’s “LadderKart”* at 6 (Oct. 20, 2008) (ruling that *LadderKart* is within scope of Order, because, *inter alia*, “the *LadderKart’s* projecting edge or toe plate in fact can slide under a load *if that load is slightly tipped*” (emphasis added)); Scope Ruling on *E&B Giftware, LLC’s ML6275C Personal Luggage Cart* at 7 (Feb. 3, 2010) (ruling that luggage cart is within scope of Order, even though “*minimal tilting of the load*” is required (emphasis added)).

under it. *See* Pl.'s Brief at 4.¹¹ Bond Street's reliance on the dictionary definition of "slide [under]" is misplaced. And, as Commerce noted in the Remand Results, the Antidumping Order itself "is silent with respect to the tilting of the items that are to be moved and/or lifted." *See* Remand Results at 11; *see also* Def.'s Brief at 9. Moreover, Commerce's consistent and longstanding practice has been to include within the scope of the Antidumping Order hand carts that are capable of "slid[ing] under" a load, even if only when the loads are "tipped"/"tilted." *See* Remand Results at 11; Def.'s Brief at 9 (and rulings cited there). Indeed, the "tipping"/"tilting" of loads has received the judicial imprimatur. *See* Def.'s Brief at 9 (*citing Gleason Prods.*, 32 CIT at ____, 556 F. Supp. 2d at 1348–49). Bond Street has pointed to nothing to distinguish this case from the numerous other cases where Commerce and the courts have permitted "tipping"/"tilting." Bond Street's objections to Commerce's "tipping"/"tilting" of the load – and, in particular, Bond Street's objections to the agency's file cabinet test – must therefore be rejected.

B. Bond Street's Challenge to Commerce's 15-Pound and 30-Pound Box Tests

Although Bond Street cannot claim that Commerce's tests using 15- and 30-pound boxes involved "tipping" or "tilting" of those loads,¹² Bond Street nevertheless contests their validity based on what Bond

¹¹ As a procedural matter, Bond Street contends that Commerce's file cabinet test should be disregarded because – according to Bond Street – the agency's initial Scope Ruling in this matter "did not consider the question of whether 'tilting' or 'tipping' a load [is] within the meaning of the scope language" of the Antidumping Order. *See* Pl.'s Brief at 7. According to Bond Street, the "tipping"/"tilting" of the file cabinet thus "raises new matter and is beyond the administrative record" compiled by the agency in the initial scope proceeding. *See id.* Pointing to a footnote in *Bond Street I* referring to the "tipping" or "tilting" of a load, Bond Street further argues that Commerce's reliance on the file cabinet test also "[goes] beyond the Court's [decision in *Bond Street I*] by interjecting a new issue regarding the interpretation of the Order into this case." *See id.* at 7–8 (referring to *Bond Street I*, 33 CIT at ____ n.13, 637 F. Supp. 2d at 1352 n.13). But Bond Street's objections are not well taken.

Bond Street either misreads or misrepresents the footnote that it cites from *Bond Street I*. Bond Street's intimations notwithstanding, *Bond Street I* ruled only that it was at that time premature for the Court to "address the merits of the . . . claim that a cart falls within the scope of the Antidumping Order even if the cart's toe plate slides under a load only if that load has been 'tilted' or 'tipped.'" *See Bond Street I*, 33 CIT at ____ n.13, 637 F. Supp. 2d at 1352 n.13. Nothing in *Bond Street I* precluded Commerce from "tipping"/"tilting" a load in testing the Stebcocart; *Bond Street I* merely reserved the legal issue of the permissibility of "tipping"/"tilting" until now, when the issue is ripe. More generally, Bond Street has waived any procedural objections to consideration of that legal issue by failing to raise them in a timely fashion, at the administrative level.

¹² As discussed immediately above, if a hand cart has the four requisite physical characteristics, and if the hand cart is not expressly excluded from the Antidumping Order's coverage, the hand cart falls within the scope of the Order, provided that "[t]he projecting edge or edges, or toe plate, slides under a load for purposes of lifting and/or moving the

Street dismisses as the “extremely light loads.” *See* Pl.’s Brief at 3; *see also id.* at 5 (referring to Commerce’s “choice of very light loads”). Arguing that “the two boxes of files weigh[ed] a mere 15 and 30 pounds, respectively,” Bond Street asserts that “hand trucks covered by the Order generally have a carrying capacity within the 200 to 1,000 pound range.” *See id.* at 4; Pl.’s Reply Brief at 5; Audio Recording at 51:32–51:42; *see generally* Pl.’s Brief at 4–5, 7; Pl.’s Reply Brief at 5–6.

Bond Street’s attempt to read the Antidumping Order to include a minimum load capacity rests on a false premise, however, and its arguments as a whole are not persuasive. *See generally* Remand Results at 8, 10; Def.’s Brief at 4, 5–8; Audio Recording at 1:36:14–1:36:25, 1:37:301:37:49, 1:52:32–1:53:10.¹³

load,” *whether the load is first tipped or tilted, or not.* *See* section III.A, *supra*; Antidumping Order, 69 Fed. Reg. at 70,122. As the Government points out, however, Commerce’s determination in this matter could be sustained even without reaching the “tipping”/“tilting” issue. *See generally* Audio Recording at 1:42:58–1:43:29, 2:01:31–2:01:36.

Commerce “slightly tilted” the load only in its file cabinet test. *See* Remand Results at 4, 11; *see also* Def.-Ints.’ Brief at 4; Def.’s Brief at 4, 9; Audio Recording at 1:31:22–1:31:58, 1:42:58–1:43:29. There was no need to “tip” or “tilt” the load in two of the three tests that the agency conducted on remand; the Stebco card was able to “slide[] under” the 15-pound box of files and the 30-pound box of files, without “tipping” or “tilting” either load. *See* Remand Results at 4, 11; *see also* Def.-Ints.’ Brief at 4; Def.’s Brief at 4; Audio Recording at 1:11:25–1:11:34, 1:31:22–1:31:58, 1:42:58–1:43:29. Accordingly, Commerce’s remand determination in this matter could be sustained on the strength of those two tests, without regard to the file cabinet test (and, thus, even if the Antidumping Order precluded the “tipping”/“tilting” of a load).

¹³ In addition to criticizing the weight of the load, Bond Street’s comments on the draft Remand Results also took issue with one other aspect of the methodology that Commerce used in the test involving the 30-pound box of files. Specifically, Bond Street’s comments on the draft Remand Results asserted that – in order to slide the Stebco cart under the 30-pound box – Commerce had “leveraged” the cart such that the cart’s wheels were lifted off the ground. According to Bond Street, any such “manipulation” of the cart would be inconsistent with its intended use. *See* Remand Results at 8; *see also id.* at 4, 6.

However, in the final Remand Results, Commerce explained that Bond Street’s argument was based on a simple but fundamental mistake concerning the agency’s use of the term “leveraged”:

Bond Street misunderstands the term “leveraging” as used in the draft remand re-determination. Our description of “leveraging” the Stebco Cart . . . refers to Department officials pressing against a portion of the Stebco Cart with their feet to give support to the cart rather than lifting the Stebco Cart’s wheels off the ground.

Remand Results at 10–11; *see also id.* at 6; Def.-Ints.’ Brief at 3.

Neither of Bond Street’s post-remand briefs makes mention of any concern about Commerce’s “leveraging” of the Stebco cart in testing the cart’s ability to “slide[] under” the 30-pound box. Nevertheless, Bond Street made a number of allusions to the issue during the course of oral argument. *See, e.g.,* Audio Recording at 56:22–56:30, 56:52–57:05, 57:39–57:44, 58:08–58:38, 1:00:32–1:00:59, 1:16:50–1:17:17, 1:18:41–1:19:29. As a threshold matter, Bond Street waived its right to further pursue any such objections by failing even to mention them in its briefs. *See, e.g., Novosteel SA v. United States*, 284 F.3d 1261, 1273–74 (Fed. Cir. 2002) (holding that party waived argument which was not presented to

As an aside, while Bond Street represents that “hand trucks covered by the Order generally have a carrying capacity within the 200 to 1,000 pound range” (see Pl.’s Reply Brief at 5 (emphasis added)), the administrative record is devoid of evidence to support that assertion. It is true that the original 2003 petition initiating the antidumping duty proceeding that ultimately resulted in the Antidumping Order at issue here generally described hand trucks in terms of, *inter alia*, the specified load capacity. See *Vertex Int’l, Inc. v. United States*, 30 CIT 73, 81 n.11 (2006) (referring to language in 2003 petition generally describing load capacity of hand trucks). Significantly, however, the load capacity language in the 2003 petition specifically was not carried over into the Antidumping Order itself. See Antidumping Order, 69 Fed. Reg. 70,122 *et seq.* (expressly defining “Scope of Order” in detail, with no mention whatsoever of any sort of minimum (or maximum) load capacity); see also Remand Results at 10 (explaining that “the language of the Order does not require an analysis of weight limitations”); Def.’s Brief at 5; Audio Recording at 1:36:14–1:36:25, 1:52:32–1:53:10. Because the scope of the Antidumping Order is not defined in terms of load capacity, it simply cannot be said – as a factual matter – that “hand trucks covered by the Order generally have a carrying capacity” of any particular weight (much less “the 200 to 1,000 pound range” that Bond Street alleges).

Even more to the point, as a matter of law, the language concerning load capacity that appeared in the 2003 antidumping petition cannot override the Antidumping Order, and accordingly is of little relevance at best. The Court of Appeals has emphasized that it is “[t]he language of the order, not the petition” which controls. See *Tak Fat Trading Co. v. United States*, 396 F.3d 1378, 1386 (Fed. Cir. 2005). “The scope of [an] order can be clarified but it cannot be changed by the interpretive process.” *Id.*, 396 F.3d at 1383. Thus, although “the petition and the investigation may provide valuable guidance as to the interpretation of [a] final order,” they “cannot substitute for language in the order itself.” *Duferco Steel, Inc. v. United States*, 296 F.3d

Court of International Trade “until after [the party] had filed its principal summary judgment brief,” reasoning that “parties must give a trial court a fair opportunity to rule on an issue other than by raising that issue for the first time in a reply brief”).

On the scant existing record (particularly given the absence of any briefing), it is impossible to discern the exact nature of Bond Street’s concerns. But, even if Bond Street had briefed (and thus properly preserved) its arguments, Bond Street still could not prevail. As the Remand Results aptly note, “[t]he Order’s scope is silent with respect to the operation of [a] hand truck.” See Remand Results at 10; see also Audio Recording at 2:04:29–2:05:10 (Domestic Manufacturers noting that “leveraging” is routine in use of hand trucks, referring to S.A.R. Doc. No. 2 at Attachment 2 (photo submitted by Bond Street), showing foot being used to “leverage” so-called “typical” hand truck, just as Commerce official used foot to “leverage” Stebco cart in file cabinet test); *id.* at 2:11:48–2:12:00 (Government echoing Domestic Manufacturers’ observations).

1087, 1097 (Fed. Cir. 2002); *see also Walgreen Co.*, 620 F.3d at 1357 (same); Def.'s Brief at 6. Moreover, "a predicate for the interpretive process is language in the order that is subject to interpretation." *Tak Fat Trading Co.*, 396 F.3d at 1383.

Here, Bond Street has identified no language dealing with load capacity in the Antidumping Order – much less language that requires "clarification" or "interpretation." Instead, Bond Street seeks a wholesale re-write of the Order, to include a load capacity limitation that the drafters of the Order specifically elected not to include. This Bond Street may not do.¹⁴

In light of this focus on the language of the Antidumping Order itself as the "cornerstone" of any analysis (*see Walgreen Co.*, 620 F.3d at 1357 (citation omitted)), Commerce's longstanding and consistent practice in the application and administration of the Antidumping Order – from the initial drafting of the Order, up to the present day – has excluded any and all consideration of load capacity. *See generally* Def.'s Brief at 6–7; Audio Recording at 1:37:30–1:37:49. For example, in drafting the language defining the scope of the Antidumping Order during the original antidumping duty investigation, Commerce evaluated various scope exclusion requests.¹⁵ In addressing one such request (which sought the exclusion of a certain portable, collapsible "luggage cart"), Commerce explained that the lan-

¹⁴ In any event, as the discussion above makes clear, even if the analysis were to go beyond the four corners of the Antidumping Order, the more salient fact would be not that the 2003 antidumping duty petition included a load capacity range in its general description of hand trucks, but – rather – that the drafters of the Order declined to include a load capacity limitation in the language of the final Order.

Bond Street points to certain language in *Vertex* discussing the 2003 antidumping petition's reference to load capacity. *See* Pl.'s Brief at 5 (discussing *Vertex*, 30 CIT at 81 & n.11). However, as the Government correctly observes, the language on which Bond Street relies was not central to the outcome in that case. *See* Def.'s Brief at 6; *Vertex*, 30 CIT at 80 (holding that – due to, *inter alia*, the fact that, instead of "the projecting edge of a hand truck," the garden cart there at issue has "a round steel wire that is not conducive to sliding under a load" – that cart "cannot . . . slide under a load" and therefore is not within the scope of the Antidumping Order). And, more importantly, as discussed above, the load capacity language in the 2003 petition was not included in the language of the final Antidumping Order itself, which is binding and definitive. *See* Antidumping Order, 69 Fed. Reg. 70,122 *et seq.*; *see also* Remand Results at 10; Def.'s Brief at 6; *see generally* Audio Recording at 1:52:32–1:53:10.

¹⁵ Scope exclusion requests are similar to scope determinations (such as the determination that Bond Street challenges here). In the course of drafting the Antidumping Order, Commerce considered various scope exclusion requests urging the agency to incorporate specific language into the Antidumping Order which would exclude from the scope of the Order some types of hand trucks that did not meet certain specifications. *See, e.g.*, Antidumping Order, 69 Fed. Reg. at 70,122 (stating that "Excluded from the scope [of the Order] are small two-wheel or four-wheel utility carts specifically designed for carrying loads like personal bags or luggage in which the frame is made from telescoping tubular material measuring less than $\frac{5}{8}$ inch in diameter."); *see also* Def.'s Brief at 6.

guage concerning load capacity which appeared in the 2003 antidumping petition did not constitute a request for an exclusion from the scope of the Antidumping Order, underscoring that:

[L]oad capacity is not a factor in the scope of the investigation. The reference to load capacity (*i.e.*, “loads generally not exceeding 1000 pounds”) in the petition appears in a general description of the subject merchandise, not in the petitioners’ recommended scope language, or elsewhere in the current scope of this investigation.

Scope Exclusion/Clarification Requests: Alton Industries, Inc.; Safco Products Company; A.J. Wholesale Distributors, Inc.; and Wilmar Corporation at 5 (Oct. 6, 2004); *see also id.* at 3 *et seq.* (rejecting, *inter alia*, argument that “although the scope of the investigation makes no reference to load capacity, the petitioners were only concerned about heavy-duty hand trucks with 600 lbs. or larger load capacities”); Def.’s Brief at 6–7; Audio Recording at 1:37:30–1:37:49.

And, over the years, Commerce has steadfastly maintained its position on the irrelevance of load capacity in its scope rulings (such as that in the case at bar), throughout the agency’s administration of the Antidumping Order. For example, in one such scope ruling, Commerce rejected arguments that a particular “trolley” was not within the scope of the Order because the trolley “can be used to move luggage” and has a “vertical weight capacity of . . . only 150 lbs.” *See* Final Scope Ruling: Total Trolley, LLC at 4, 8–9 (Jan. 10, 2005). Commerce there stated:

[H]and truck load capacity was not a factor in the scope of the [original antidumping duty] investigation. The reference to load capacity (*i.e.*, “loads generally not exceeding 1000 pounds”) in the [2003 antidumping] petition appears in a general description of the subject merchandise, not in the petitioners’ recommended scope language, or elsewhere in the current scope of the Order.

Id. at 8–9; *see also* Audio Recording at 1:37:30–1:37:49. Commerce determined that the merchandise at issue in Total Trolley was within the scope of the Antidumping Order. *See* Total Trolley at 1, 10; *see also* Def.’s Brief at 7.¹⁶

¹⁶ As note 9 above explains, various relevant rulings by Commerce – including the rulings in Alton Industries and Total Trolley – are included in an addendum to the Government’s brief. *See* Def.’s Brief at Appendix, A29–42 (Alton Industries, *supra*); A59–A68 (Total Trolley, *supra*).

As the Government properly concludes, for the reasons outlined above, “Commerce’s selection of items to test on the Stebco Cart was not limited by considerations of weight, but rather, was simply designed to determine whether the Stebco Cart could ‘slide[] under a load for the purposes of lifting and/or moving the load.’” Def.’s Brief at 7 (*quoting* Antidumping Order, 69 Fed. Reg. at 70,122). It is nevertheless worth noting that, while Bond Street essentially contends that – to fall within the scope of the Antidumping Order – hand trucks should have a load capacity “within the 200 to 1,000 pound range” (*see* Pl.’s Reply Brief at 5; *see also* Audio Recording at 51:32–51:42) – Bond Street has conceded that the Stebco cart itself is actually “designed to carry/move load(s) up to a maximum weight of 275 pounds” (with an “ideal” load of 150 pounds). *See* Pl.’s Reply Brief at 5; *see also* Def.’s Brief at 6 (*citing* A.R. Doc. No. 4); Audio Recording at 1:38:18–1:38:28; *Bond Street I*, 33 CIT at ___ n.5, 637 F. Supp. 2d at 1347 n.5 (citation omitted). In other words, even if the scope of the Antidumping Order were limited to hand trucks with a load capacity “within the 200 to 1,000 pound range” (which it clearly is not), such a criterion would not serve to exclude the Stebco cart from the scope of the Order.

The loads used by Commerce in the two tests at issue – a 15-pound box and a 30-pound box, of different dimensions – were selected not because they were particularly light, but rather because they were representative of the types of loads that Bond Street has stated the Stebco cart is generally intended to carry. *See* Audio Recording at 1:31:59–1:33:41 (discussing A.R. Doc. No. 4); *id.* at 1:35:16–1:35:47 (discussing A.R. Doc. No. 1); *id.* at 1:55:37–1:56:00; *see also* Def.’s Brief at 7.¹⁷ Because load capacity is not “germane” to determining

¹⁷ In the course of oral argument, counsel for Bond Street posed a rhetorical question as to why anyone would bother to use a hand cart to move boxes such as those that Commerce used to test the Stebco cart. *See* Audio Recording at 51:00–51:08. As counsel for the Government pointed out, however, documents submitted in the instant proceeding by Bond Street itself establish that the Stebco cart is for use in transporting boxes, among other things. *See* Audio Recording at 1:32:15:33:41, 1:35:16–1:35:47. It is thus difficult to know what to make of Bond Street’s claim that Commerce’s tests were not representative of the types of loads that the Stebco cart is used to carry. *See* Audio Recording at 15:55–16:15.

During the initial scope proceeding, for example, Bond Street advised Commerce that, “in addition to its primary purpose of a luggage carrier, [the Stebco cart] can also be used to move *boxes* or other items of a personal nature. It would not be unusual to use the subject cart for moving *boxes of family photos, old dishes, clothes, etc.*” *See* A.R. Doc. No. 4 at 3 (emphases added); Audio Recording at 1:31:59–1:33:41. Further, together with its Request for Scope Ruling, Bond Street submitted a page from a catalog featuring the Stebco cart, among other items. That advertisement touts the Stebco cart as “ideal for transporting suitcases, *boxes*, equipment and presentation materials.” *See* A.R. Doc. No. 1 at Attachment (item C on “proof page” from 2006 S.P. Richards Co. General Line Catalog, marked as 380A (emphasis added)); Audio Recording at 1:35:16–1:35:47.

It is also worth noting that the testing that Bond Street itself conducted, and other testing that Bond Street proposed, involved loads weighing 50 to 60 pounds. Bond Street

whether a particular hand cart is within the scope of the Antidumping Order (*see* Def.'s Brief at 7), Commerce reasonably conducted its tests using loads such as those that the Stebco cart is used to carry. The purpose of the agency's tests was to determine whether the Stebco cart would "slide[] under" such loads – and it did. *See* Remand Results at 1, 3–7, 9–12; Pl.'s Brief at 4 (conceding that Commerce "was able to slide the cart under two boxes of files"); Def.-Ints.' Brief at 1–2; Def.'s Brief at 2–5, 7–8; Audio Recording at 50:5351:25, 1:17:48–1:17:57, 1:27:19–1:27:41, 1:31:15–1:31:58. Boxes filled with files weighing 15 pounds and 30 pounds may be relatively light loads, but they are loads nonetheless. *See* Audio Recording at 1:31:15–1:31:22, 1:34:46–1:35:10. Moreover, a cart may be needed to carry a load that is cumbersome due to its dimensions, even if the load is relatively light.

Simply stated, Bond Street's attempt to read into the Antidumping Order a load capacity limitation must fail. Bond Street's broad assertions that the hypothetical "typical" hand truck has a load capacity "within the 200 to 1,000 pound range" lacks any evidentiary basis in the record. More importantly, the drafters of the Antidumping Order expressly declined to include in the Order the load capacity language that appeared in the 2003 antidumping duty petition, on which Bond Street relies; and it is the language of the Order itself that controls. Moreover, in its administration of the Antidumping Order over the years, Commerce has consistently declined to consider load capacity in determining whether any particular hand cart falls within the scope of the Order. Like Bond Street's objections to Commerce's "tipping"/"tilting" of a load in testing the Stebco cart (discussed in section III.A, above), Bond Street's claims challenging the weight of the loads used in Commerce's tests must also be rejected.¹⁸

neither conducted nor proposed tests using heavier loads. *See generally* section III.D.3, *infra* (discussing test conducted by Bond Street, as well as additional testing that Bond Street proposed).

¹⁸ Commerce correctly rejected Bond Street's claim that the Antidumping Order requires that a hand truck within the scope of the Order be able to "perform 'hand truck tasks' on all items" (or even "on all items it was designed or intended to move"). *See* Remand Results at 9, 11; *see also* Pl.'s Brief at 6.

By its terms, the Antidumping Order requires that – to fall within its scope – a hand cart that features the four requisite physical characteristics (and that does not fall within the Order's express exclusion) must be capable of "slid[ing] under" a load – but, contrary to Bond Street's implication, the Order conspicuously does not specify any particular load. *See* Antidumping Order, 69 Fed. Reg. at 70,122 ("Scope of Order" section) (requiring only that hand cart within scope of Order be capable of "slid[ing] under a load for purposes of lifting and/or moving the load" (emphasis added)); *see also id.* (specifying that hand carts covered by Order may be "suitable for any use"); Remand Results at 11; Def.'s Brief at 7.

The results of any one of Commerce's three tests would have sufficed to prove that the Stebco cart is capable of "slid[ing] under a load." As discussed above, however, the Stebco

C. Bond Street's Reliance on the Design of the Stebco Cart

Distilled to its essence, Bond Street's challenge to the weight of the two boxes that Commerce used to test the Stebco cart is little more than the "flip side" of Bond Street's objection to the "tipping"/"tilting" of the file cabinet in Commerce's third test. Bond Street objects to the 15-pound and 30-pound boxes (which did not require "tipping" or "tilting") as too light, while – at the same time – Bond Street objects to the file cabinet test because the heavier weight of the file cabinet required Commerce to "tip" or "tilt" that load in order to slide the Stebco cart under it.

Specifically, Bond Street contrasts the file cabinet test with the tests using the 15-pound and 30-pound boxes of files, arguing that the Stebco cart was able to "slide[] under" the boxes due to "the light weight of the load," and not "the design of the toe plate." See Pl.'s Reply Brief at 5; see also Pl.'s Brief at 3, 4, 5; Audio Recording at 48:24–48:32, 50:53–51:25, 1:17:44–1:18:00. According to Bond Street, Commerce needed to "tip"/"tilt" the Stebco cart in the file cabinet test because, otherwise, "the toe plate collapses when [a] user pushes the card towards a [heavier] load." See Pl.'s Reply Brief at 2–4; see also Pl.'s Brief at 7–8 (asserting that, without "tipping"/"tilting" the file cabinet, "the Stebco cart was unable to slide under the load because the toe plate began to collapse when pushed against the [file] cabinet," and that – when Bond Street tested Stebco cart using a 50-pound box of copy paper, without "tipping"/"tilting" the load – "Bond Street's test . . . showed the collapse of the toe plate"); *id.* at 4, 5–6; Pl.'s Reply Brief at 2, 3–4, 5 & n.7; Audio Recording at 19:50–20:33, 1:21:13–1:21:30.¹⁹

cart was able to "slide[] under" the load in all three of the tests that Commerce conducted. See generally section III.A, *supra* (discussing Commerce's test using a two-drawer file cabinet weighing 50 pounds, and rejecting Bond Street's challenge thereto); section III.B, *supra* (discussing Commerce's tests using 15-pound and 30-pound boxes of files, and rejecting Bond Street's challenge thereto).

¹⁹ Bond Street's post-remand briefs filed with the Court refer only to the collapsible design of the Stebco cart's toe plate, and make no mention of the thickness of the toe plate's edge. See Pl.'s Brief at 4, 5–6, 7–8, 9; Pl.'s Reply Brief at 2, 3–4, 5. However, Bond Street apparently focused on that issue before Commerce on remand. The Remand Results thus note:

Bond Street highlights the "typical hand truck's" thinner projecting edge/toe plate of 1.55 mm versus the Stebco Cart's 3.96 mm. Bond Street asserts that the Stebco Cart's projecting edge/toe plate width, in comparison, "makes sliding under . . . many boxes extremely difficult, if not impossible."

Remand Results at 8; see also *id.* at 8, 9.

As discussed above (see n.4, *supra*), Bond Street's failure to raise the thickness of the toe plate in either of its post-remand briefs filed with the Court bars Bond Street, as a matter of both fundamental fairness and law, from continuing to press that point in oral

Bond Street thus seeks to make much of the design of the StebcO cart, and attempts to distinguish that design from the design of hand trucks within the scope of the Antidumping Order (in terms of intended use, weight/load-bearing capacity, and such). *See, e.g.*, Pl.'s Brief at 4, 5, 6, 7 n.7, 9; Pl.'s Reply Brief at 2, 5.²⁰ However, aside from the physical and functional characteristics specifically set forth in the Antidumping Order, the design of any particular hand cart has no bearing on whether or not the hand cart falls within the scope of the Order.

If a hand cart has the requisite four physical characteristics (including a "projecting edge or edges, or toe plate"), and if the hand cart is not expressly excluded from the Antidumping Order's coverage, the hand cart falls within the scope of the Order, whatever its design, provided that "[t]he projecting edge or edges, or toe plate, *slides under a load* for purposes of lifting and/or moving the load." Antidumping Order, 69 Fed. Reg. at 70,122 (emphasis added); *see also* Remand Results at 11–12; Def.'s Brief at 7–8; Audio Recording at 1:34:31–1:34:44, 1:35:57–1:36:14, 1:47:48–1:48:12, 1:51:42–1:52:12.

Thus, the fact that the StebcO cart may be "*designed to move relatively light items such as luggage and sample cases*" is of no argument. *But see, e.g.*, Audio Recording at 23:31–23:45, 32:15–32:27, 53:19–54:05 (Bond Street argues thickness of StebcO cart's toe plate relative to toe plate of hypothetical "typical" hand truck). However, even had Bond Street properly raised and preserved the point, Bond Street's argument would have found no favor.

The Remand Results correctly rejected as "misplaced" Bond Street's emphasis on "the 2.41 mm width difference between the StebcO Cart's projecting edge or toe plate and a 'typical hand truck's' projecting edge/toe plate." *See* Remand Results at 10. As the Remand Results suggest, Bond Street's claim that the thickness of the toe plate makes sliding the StebcO cart under a load "extremely difficult" is not material. "[R]eference to the efficiency and ease of the [cart's] use . . . as a hand truck . . . speaks to end-user satisfaction rather than scope inclusion/exclusion." *See id.*

Accordingly, for purposes of determining whether a hand cart falls within the scope of the Antidumping Order, either a toe plate "slides under" a load, or it does not. In the instant case, Commerce's testing plainly demonstrates that – without regard to the thickness of the StebcO cart's toe plate – the StebcO cart "can in fact slide under a load." *See* Remand Results at 10; *see also id.* at 9 (noting the Domestic Manufacturers' observation that "even if the StebcO Cart's projecting edge/toe plate cannot be slid under certain items" without "tipping"/"tilting" the loads, "the StebcO Cart is able to slide under other loads and is thus within the scope of the Order"). In any event, however, it is worth noting that the projecting edge of a welding cart that *Gleason Products* determined to be within the scope of the Antidumping Order has a projecting edge that is approximately *eight times thicker* than the toe plate of the StebcO cart. *See* Audio Recording at 2:05:20–2:06:54; *Gleason Prods.*, 32 CIT at ___, 556 F. Supp. 2d at 1349 (holding that Antidumping Order covers welding cart with projecting edge that is 1 1/4 inches (*i.e.*, 31.75 mm) thick).

²⁰ *See also, e.g.*, Audio Recording at 15:55–16:15, 18:14–18:29, 28:06–28:32, 37:27–37:48, 40:16–40:29, 43:23–43:36, 46:47–47:06, 51:32–51:41, 52:44–53:49, 57:03–57:05, 1:03:12–1:03:19, 1:04:09–1:04:11, 1:04:59–1:05:05, 1:06:50–1:07:18, 1:08:25–1:08:33, 1:18:57–1:19:05, 1:23:011:23:06, 1:24:10–1:24:42, 1:26:19–1:26:57.

moment. See Pl.'s Brief at 4 (emphasis added); see also, e.g., Pl.'s Reply Brief at 5. The Antidumping Order expressly states that merchandise within the scope of the Order may be "suitable for any use." Antidumping Order, 69 Fed. Reg. at 70,122; see also Remand Results at 9, 11 (explaining that "the Order does not exclude hand trucks designed with a primary use"); Def.'s Brief at 7–8; Audio Recording at 1:34:31–1:34:44 (stating that Order covers both "heavy-duty hand trucks and light-weight hand trucks"); *id.* at 1:35:57–1:36:26; *id.* at 1:47:48–1:48:12 (explaining that design and intended use of cart are not determinative of inclusion in or exclusion from scope of Order; salient issue is whether cart is capable of "slid[ing] under" a load); *id.* at 1:51:42–1:52:12. The load-bearing capacity of the Stebcos cart is likewise irrelevant. See section III.B, *supra*.

Similarly, contrary to Bond Street's assertions, the Antidumping Order includes no requirement – much less a "clear requirement" – restricting the Order's coverage to only those hand carts that feature toe plates specifically "*designed to slide under a load.*" Compare Pl.'s Brief at 8–9 (emphasis added) with Antidumping Order, 69 Fed. Reg. at 70,122 (expressly defining "Scope of Order"). Indeed, the word "design" does not appear anywhere in the text of the Antidumping Order, except in the language of the express exclusion (which all agree has no application here). See Antidumping Order, 69 Fed. Reg. 70,122.²¹ Moreover, Bond Street conspicuously cites no authority for the proposition that a hand cart's inclusion within the scope of the Antidumping Order is dependent upon whether the toe plate is "designed" to "slide[] under" a load.

To fall within the scope of the Antidumping Order, it is necessary only that the toe plate of a hand cart be *capable of* "slid[ing] under a load," as is the toe plate of the Stebcos cart here. See 69 Fed. Reg. at 70,122; see also, e.g., *Bond Street I*, 33 CIT at ____, 637 F. Supp. 2d at 1350 (declining to sustain Commerce's initial scope ruling because agency "failed to make a determination as to whether the toe plate of

²¹ The Antidumping Order's express exclusion states:

Excluded from the scope [of the Antidumping Order] are small two-wheel or four-wheel utility carts specifically *designed* for carrying loads like personal bags or luggage in which the frame is made from telescoping tubular material measuring less than 5/8 inch in diameter; hand trucks that use motorized operations either to move the hand truck from one location to the next or to assist in the lifting of items placed on the hand truck; vertical carriers *designed* specifically to transport golf bags; and wheels and tires used in the manufacture of hand trucks.

Antidumping Order, 69 Fed. Reg. at 70,122 ("Scope of Order" section) (emphasis added). As explained in section I.A above, the Stebcos cart is not expressly excluded from the scope of the Antidumping Order, because some of the "telescoping tubular material" in the cart's frame has a diameter of greater than $\frac{5}{8}$ inch. See, e.g., Pl.'s Brief at 4 (acknowledging that Stebcos cart does not fall within Order's express exclusion).

the Stebcos cart *can* ‘slide[] under a load’” (emphasis added)); *Gleason Indus. Prods., Inc. v. United States*, 31 CIT 393, 398 (2007) (explaining that, to fall within scope of Order, “a hand truck must *be able to slide under a load*” (emphasis added)); *Gleason Prods.*, 32 CIT at ____, ____, 556 F. Supp. 2d at 1347, 1349 (explaining that coverage under Order “hinges on whether . . . [the subject] carts possess projecting edges *capable of sliding under a load*,” and remanding as to one model for agency determination whether that model “is *capable of sliding under a load*” (emphases added)); *Gleason Indus. Prods., Inc. v. United States*, 32 CIT ____, ____, 2008 WL 4649652 * 3 (2008), *aff’d*, 335 Fed. Appx. 49 (Fed. Cir. 2009) (holding that scope language of Order requires “that the hand cart’s projecting edge must *be capable of sliding under a load*” (emphasis added)); *Vertex Int’l, Inc. v. United States*, 30 CIT 73, 81 (2006) (reversing Commerce’s determination that garden cart was within scope of Order, explaining that agency determination was contrary to the sole record evidence “regarding the garden cart’s *ability to slide under a load to lift or carry it*” (emphasis added)).

In sum, Bond Street’s emphasis on the specific design of the Stebcos cart lies at the very heart of its challenge to Commerce’s Remand Results. But Bond Street’s focus on design is misplaced. Aside from the physical and functional characteristics specifically set forth in the Antidumping Order (and assuming that the express exclusion set forth in the Order does not apply), the design of any particular hand cart has no bearing whatsoever on whether or not the hand cart falls within the scope of the Antidumping Order. Bond Street’s contentions to the contrary have no merit.

D. Bond Street’s Procedural Objections

Apart from its substantive challenges to the tests that Commerce conducted, Bond Street also raises a laundry list of procedural objections. As discussed below, however, Bond Street’s procedural arguments – like its substantive arguments – cannot carry the day.

1. Whether Commerce Was Obligated to Seek Comments on Test Methodology

Bond Street argues that, as a general principle, it “would not have been unreasonable to expect [Commerce] to have requested comments from all interested parties on how to test the Stebcos cart.” See Pl.’s Brief at 3. But it is telling that Bond Street cites no authority for its implication that Commerce was required to “seek . . . input from the parties.” See *id.* at 3; see also Def.’s Brief at 5.

The bottom line is that, whether or not it would have been “reasonable” for Commerce to solicit the parties’ views on potential testing

methodologies, the agency here was under no obligation to do so. Bond Street's suggestion to the contrary lacks any foundation in the law.²²

2. *The Adequacy of Commerce's Rationale for Selection of Test Procedures*

Bond Street further faults Commerce for assertedly "offer[ing] no explanation or reason" as to how the agency decided to test the Stebcocart. See Pl.'s Brief at 3. Bond Street specifically targets Commerce's tests using the 15-pound and 30-pound boxes of files, arguing that the agency "should [have] offer[ed] a plausible explanation or reason" for what Bond Street characterizes as the "extremely light loads employed" in those tests. See *id.*; see also Pl.'s Reply Brief at 5–6. Bond Street contends that greater explanation is particularly warranted in the case at bar, because Commerce conducted tests using a standard 10-ream box of copy paper weighing 50 pounds in E&B Giftware, a similar case which involved a "personal luggage cart." See Pl.'s Reply Brief at 3 n.3 (referring to Scope Ruling on E&B Giftware, LLC's ML6275C Personal Luggage Cart at 7); see also *id.* at 5; Audio Recording at 55:29–56:03 (noting that load used in Commerce's test in E&B Giftware case was same as load used by Bond Street in the instant case); Remand Results at 7 (noting that Bond Street's test in the instant case involved box weighing 50 pounds).²³

Bond Street's assertions notwithstanding, the Remand Results spoke directly to the notion that the loads used in Commerce's tests were "extremely light." In particular, the Remand Results rebutted the unspoken premise of Bond Street's argument, explaining – as detailed in section III.B, above – that the scope of the Antidumping Order is not defined in terms of any minimum load capacity. See Remand Results at 10 (explaining that "the language of the Order does not require an analysis of [the] weight limitations" of a hand cart in determining whether or not the cart is within the scope of the Order); see also Antidumping Order, 69 Fed. Reg. at 70,122 (defining "Scope of Order" with no reference to a hand cart's load capacity); Def.'s Brief at 5–7; section III.B & n.17, *supra* (explaining that loads used in testing Stebcocart were selected to be representative of types of loads that Stebcocart is generally intended to carry).

²² The Government identifies and succinctly summarizes a key conceptual flaw that permeates and taints much of Bond Street's case. The Government notes: "Bond Street's logic . . . presupposes that the ability to construct a test that hand truck 'A' passes and hand truck 'B' fails would exclude hand truck 'B'" from the scope of the Antidumping Order. See Def.'s Brief at 5. As the Government emphasizes, however, "[t]hat simply is not the case." *Id.*

²³ As explained in note 9 above, a copy of Commerce's ruling in the E&B Giftware case is included in an addendum to the Government's brief. See Def.'s Brief at Appendix, A50-A58.

To the extent that Bond Street faults the Remand Results for not directly addressing the test that Commerce conducted in the E&B Giftware case, it is enough to note that Bond Street failed to raise that argument in the course of the remand proceeding before Commerce. Commerce can hardly be faulted for not anticipating in its Remand Results an argument that Bond Street did not make until some three months after the Remand Results issued, when Bond Street filed its Reply Brief with the Court. *See* Pl.'s Reply Brief at 3 n.3.

In any event, as discussed in section III.D.3.a (immediately below), the Remand Results expressly addressed the test that Bond Street itself conducted using a 50-pound box of copy paper – the *exact same load* that Commerce used in testing the hand cart that was at issue in the E&B Giftware case. *See* Remand Results at 7; Audio Recording at 55:29–56:03. In addition, the Remand Results further explained that Commerce tested the Stebco cart using an empty two-drawer file cabinet weighing 50 pounds – again, the *exact same weight* as the 10-ream box of copy paper that Commerce used to test the hand cart at issue in E&B Giftware. *See* Remand Results at 4 (stating that file cabinet weighed 50 pounds); *see also id.* at 7 (stating that box used in Bond Street's test weighed 50 pounds); Audio Recording at 55:29–56:03.

In short, it is entirely unclear what more Commerce could reasonably be expected to have said. Under the circumstances presented here, Commerce's justification of its test procedures in the Remand Results was more than adequate, not only explaining that the scope of the Antidumping Order is not defined in terms of load capacity, but – in addition – also addressing the test that Bond Street conducted on the Stebco cart, which involved the same 50-pound load used in the E&B Giftware case (as well as a second test involving another 50-pound load).

3. *The Adequacy of Commerce's Treatment of Certain Tests*

Bond Street similarly contends that the Remand Results failed to adequately address both the results of the test conducted by Bond Street and the results of Commerce's own test on the 50-pound file cabinet, and, further, that Commerce should have "offer[ed] a reasonable explanation or justification for ignoring or rejecting the tests proposed by Bond Street." *See* Pl.'s Brief at 3; *see also id.* at 4, 6; Pl.'s Reply Brief at 2 & n.2, 3–4, 5–6. None of these claims are persuasive.

a. *The Test Conducted by Bond Street*

In the course of the remand proceeding, Bond Street submitted to Commerce evidence concerning a test conducted by Bond Street, in

which Bond Street asserts that it attempted unsuccessfully to slide the Stebcos cart under an unopened box – measuring 18 x 12 x 10 inches, weighing 50 pounds, and containing ten reams of copy paper – without “tipping”/“tilting” the load. *See* Remand Results at 7; *see generally* Pl.’s Brief at 2, 5 & n.5, 6, 8; Pl.’s Reply Brief at 2 & n.2, 5 & n.7. To document that test, Bond Street provided Commerce with “three color photographs purporting to depict the Stebcos [c]art’s wheels lifting off the ground as the cart’s [toe] plate makes contact with the box[,] and the cart beginning to collapse on a second attempt.” *See* Remand Results at 7; *see also* Pl.’s Reply Brief at 2; S.A.R. Doc. No. 2 at Attachments 1, 1A, & 1B (photos of Bond Street’s test); *id.* at 2–3 (describing Bond Street’s test and photos thereof).

Rather incredibly, Bond Street states that the Remand Results “make[] no mention of Bond Street’s test.” *See* Pl.’s Reply Brief at 2; *see also* Pl.’s Brief at 3 (charging Commerce with “ignoring or rejecting” Bond Street’s test); *id.* at 6 (asserting that the Remand Results do not “discuss or comment on Bond Street’s new test”). Quite to the contrary, the Remand Results include a more detailed explanation of Bond Street’s test than do Bond Street’s own briefs filed with the Court. *Compare* Remand Results at 7 (describing methodology and results of Bond Street’s test, with specificity) *with* Pl.’s Brief at 3 (referring generally to a test “conducted on the Stebcos cart by . . . Bond Street”); *id.* at 4 (referring to “Bond Street’s testing of the cart”); *id.* at 5 (asserting that Stebcos cart “was not able to slide under . . . a 50-pound box of copy paper”); *id.* at 5 n.5 (alluding to “Bond Street’s test”); *id.* at 6 (referring broadly to “Bond Street’s new test”); *id.* at 8 (stating that “Bond Street’s test” demonstrated “the collapse of the toe plate when pushed against the box of copy paper”); *and* Pl.’s Reply Brief at 2 (stating only that Bond Street submitted to Commerce “a series of photographs depicting the unintended collapse of the [Stebcos cart’s] vertical frame when the user attempted to slide the toe plate under an unopened box of copy paper containing ten reams of paper”); *id.* at 5 & n.7 (referring to test “made by Bond Street utilizing the Stebcos cart”).

In sum, there is simply no truth to Bond Street’s claim that Commerce “ignored” or “rejected” the test that Bond Street conducted. *See* Pl.’s Brief at 3. The Remand Results themselves demonstrate that Commerce was plainly cognizant of the details of Bond Street’s test, including the test methodology and the test results. *See* Remand Results at 7. Moreover, the Remand Results clearly explain why there was no need for Commerce to replicate Bond Street’s test and why the results of that test do not justify excluding the Stebcos cart from the scope of the Antidumping Order.

The Remand Results explained, for example, that the Antidumping Order includes no specification as to the load that a hand truck must bear to fall within the scope of the Order. *See* Remand Results at 10; *see also* Def.'s Brief at 5–7. Thus, the fact that a hand cart can “slide [] under” some loads but not others is no basis for excluding that cart from the reach of the Order. *See* Remand Results at 9; Def.'s Brief at 8 (noting that “even if a hand truck were unable to move certain loads, this would not be reason for exclusion [from the scope of the Order] if it could meet functional and operational requirements with regard to other loads”). The Remand Results further explained that – contrary to Bond Street's contention – the Antidumping Order does not require “that the hand truck in question must perform ‘the tasks of a hand truck on *all* of the items it was designed or intended to move.’” *See* Remand Results at 11 (emphasis added); *see also id.* at 8, 9; Def.'s Brief at 7. In addition, the Remand Results noted that “the Order does not exclude hand trucks designed with a primary use,” as evidenced by the scope language of the Antidumping Order (which includes neither a “literal requirement” nor even a “suggestion” on point). *See* Remand Results at 11; *see also id.* at 9; Def.'s Brief at 7. And, as the Remand Results explained, the Antidumping Order is also “silent” as to a “hand truck's item-specific limitations.” *See* Remand Results at 11; *see also* Def.'s Brief at 7.

Bond Street's assertion that the Remand Results “ignor[ed] or reject[ed]” the results of Bond Street's test is patently at odds with the facts, and cannot be credited.

b. *Commerce's File Cabinet Test*

Commerce's explanations in the Remand Results summarized immediately above largely dispose of Bond Street's related claim that Commerce ignored or rejected the test that the agency itself conducted using an empty two-drawer file cabinet weighing 50 pounds. *See* Pl.'s Brief at 3, 5; Pl.'s Reply Brief at 5; *see generally* Remand Results at 4 (describing Commerce's file cabinet test). As the Remand Results note, Commerce succeeded in sliding the Stebco cart under the file cabinet, after first “tipping”/“tilting” the load. *See* Remand Results at 4.

The gravamen of Bond Street's argument seems to be that – had Commerce properly considered the results of its file cabinet test – Commerce would have concluded that the Stebco cart was beyond the scope of the Antidumping Order, because the agency found it necessary to “tip”/“tilt” the load. *See* Remand Results at 9 (noting Bond Street's argument that “carts whose projecting edge/toe plate slides under a load only when the load is tilted” are not within the scope of

the Order). But the Remand Results explicitly address this notion as well. In particular, the Remand Results explain that the Antidumping Order does not preclude “tipping”/“tilting” a load,²⁴ and, moreover, that Commerce’s “longstanding, consistent, and Court-approved” administration of the Antidumping Order has included within the scope of the Order hand carts that can “slide[] under” a load only if that load is tilted. *See* Def.’s Brief at 9–10; Remand Results at 11.

Given these facts, it simply cannot be said that the Remand Results “ignor[ed] or reject[ed]” the results of Commerce’s file cabinet test. Bond Street’s claims to the contrary must be dismissed.

c. Additional Testing Proposed by Bond Street

Equally unavailing is Bond Street’s assertion that Commerce failed to “offer a reasonable explanation or justification for ignoring or rejecting the tests proposed by Bond Street.” *See* Pl.’s Brief at 3; *see also id.* at 4, 6; Pl.’s Reply Brief at 2 n.2, 2–4, 5–6. As an initial matter, the reference to “tests proposed by Bond Street” is opaque, to say the least. Bond Street is apparently referring to its suggestion (advanced in the initial scope proceeding) that Commerce test the Stebcocart’s ability to “slide[] under” a stack of three boxes, each weighing 20 pounds. *See* Pl.’s Brief at 6; Pl.’s Reply Brief at 2 n.2; Remand Results at 10; A.R. Doc. No. 4 at 2–3. It is possible that Bond Street may also be referring to the test that Commerce conducted in the E&B Giftware case (discussed in section III.D.2, above), using a 50-pound box containing 10 reams of copy paper. *See* Pl.’s Reply Brief at 2–3 & n.3, 5; Audio Recording at 55:29–56:03 (noting that load used in Commerce’s test in E&B Giftware case was same as load used by Bond Street in its test in case at bar); Remand Results at 7 (noting that Bond Street’s test in instant case involved box weighing 50 pounds).

Again, with respect to the test that Commerce conducted in the E&B Giftware case, Bond Street cannot be heard to complain that the Remand Results failed to adequately explain why the agency did not

²⁴ Bond Street criticizes “[Commerce’s] position that ‘tilting’ is permissible because the Order is silent” on the issue, arguing that, in effect, Commerce “substitutes a user’s ability to maneuver a load [o]nto the toe plate [of a cart] for the clear requirement in the Order that the toe plate be *designed* to slide under a load.” *See* Pl.’s Brief at 8–9 (emphasis added). As explained above, however, the Antidumping Order includes no requirement – “clear” or otherwise – limiting the Order’s scope of coverage to hand carts specifically “*designed* to slide under a load.” *See* section III.C, *supra*. Assuming that a hand cart features the four requisite physical characteristics, and assuming that the cart is not expressly excluded from the scope of the Order, the cart is within the scope of the Order if it is capable of “slid[ing] under” a load, even if it is not specifically “*designed*” to do so. *See id.*; Antidumping Order, 69 Fed. Reg. at 70,122 (“Scope of Order” section).

conduct such a test in this case.²⁵ As discussed above, it would be unfair to expect Commerce to have addressed E&B Giftware in the Remand Results, since Bond Street raised the E&B case for the first time some three months after the Remand Results issued. *See* Pl.’s Reply Brief at 3 n.3.

Similarly unfounded is Bond Street’s claim that the Remand Results simply ignored the test that Bond Street suggested in the initial scope proceeding. As the Remand Results themselves indicate, that proposed test was squarely on Commerce’s radar screen. Indeed, the Remand Results referred specifically to “Bond Street’s suggested test consisting of sliding the Stebco Cart under three boxes, each weighing 20 pounds.” *See* Remand Results at 10 (footnote omitted). Moreover, the Remand Results explained why there was no need for Commerce to conduct such a test. As the Remand Results noted, the three tests that the agency conducted were more than sufficient to “confirm[] that the Stebco Cart possesses the fundamental functional and operative capability to slide under a load.” *Id.*; *see also id.* at 1–2, 3–4, 9–11, 12.

In any event, as the Remand Results note (and as discussed elsewhere herein), the fact that a hand cart can “slide[] under” some loads but not others is not sufficient to exclude that cart from the reach of the Antidumping Order. *See* Remand Results at 9; *see also id.* at 11 (explaining, *inter alia*, that a hand truck falls within the scope of the Order even if it does not perform “the tasks of a hand truck on all . . . items”); Def.’s Brief at 8. Thus, even if Commerce had performed Bond Street’s proposed tests, and even if the Stebco cart were capable of “slid[ing] under” the loads proposed by Bond Street only if those loads were tipped (or even if the Stebco cart was not able to “slide[] under” the loads at all), Commerce’s remand determination would have been unchanged.

As such, the Remand Results clearly illuminate the bases for Commerce’s decision not to pursue the additional testing that Bond Street proposed. The law entitles Bond Street to no more.

4. *Commerce’s Consideration of Specific Physical Features of the Stebco Cart*

Bond Street inexplicably asserts that the Remand Results do not address “Bond Street’s claim that [1] the collapsible toe plate, [2] the location of the bungee cord hook, and [3] the absence of a kick plate”

²⁵ Given that Commerce tested the Stebco cart using a two-drawer file cabinet weighing 50 pounds, it is not clear – as a practical matter – why Bond Street feels that it was necessary for Commerce to test the Stebco cart using a box of the same weight. *See* Remand Results at 4 (noting weight of file cabinet used in Commerce’s test). Certainly Bond Street has never shed any light on the matter.

prevent the Stebcocart from “slid[ing] under” a load. *See* Pl.’s Brief at 4. Contrary to Bond Street’s claims, however, the Remand Results in fact do focus – quite specifically, and at some length – on each of the three features of the Stebcocart that Bond Street highlights. *See* Remand Results at 2–7; *see also* Def.’s Brief at 2–4; Def.-Ints.’ Brief at 2–3.

For example, Commerce stated in the Remand Results that it “continues to determine that Bond Street’s Stebcocart is capable of sliding under a load for the purpose of lifting and/or moving the load *notwithstanding* [1] *the collapsible and angled design of the toe plate*, [2] *the location of the bungee cord hook*, and [3] *the absence of a kick plate*.” *See* Remand Results at 3 (emphasis added); *see also id.* at 7. In addition, the Remand Results separately and individually discuss each of the three physical features – *i.e.*, the collapsible toe plate, the location of the bungee cord hook, and the absence of a kick plate. *See id.* at 4–5 (explaining, *inter alia*, that collapsibility of toe plate does not prevent cart from “sliding under” a load); *id.* at 5–6 (explaining that absence of kick plate does not prevent cart from “sliding under” a load); *id.* at 6–7 (explaining that location of bungee cord hook does not prevent cart from “sliding under” a load).

In short, there is no truth to the allegation that the Remand Results fail to address Bond Street’s claim that “the collapsible toe plate, the location of the bungee cord hook, and the absence of a kick plate” prevent the Stebcocart from “slid[ing] under” a load. No truth whatsoever.

E. Bond Street’s Challenge to the Substantiality of the Evidence

Bond Street’s case culminates in its claim that Commerce’s remand determination is not supported by substantial evidence in the record. *See generally* Pl.’s Brief at 2, 3–7, 9; Pl.’s Reply Brief at 5–6. According to Bond Street, Commerce “fail[ed] to look at and consider the whole record, including evidence to the contrary, when making its determination.” Pl.’s Brief at 6–7; *see also id.* at 4–5, 6, 7, 9; Pl.’s Reply Brief at 6.

Referring to the agency’s tests using 15-pound and 30-pound boxes, Bond Street maintains that Commerce’s remand determination is “based upon two tests, to the exclusion of all others.” *See* Pl.’s Brief at 6. Bond Street contends that Commerce failed to adequately consider the results of both the agency’s own test using a 50-pound file cabinet and the test conducted by Bond Street using a 50-pound box of copy paper. *See* Pl.’s Brief at 5; *see also id.* at 3, 7; Pl.’s Reply Brief at 2, 5. Bond Street points to those tests as “credible evidence” that “should have been considered as persuasive evidence, to be weighed against

[Commerce's] other tests" (*i.e.*, the tests using 15-pound and 30-pound boxes) in reaching the agency's remand determination. *See* Pl.'s Brief at 5; *see also id.* at 3, 7–8; Pl.'s Reply Brief at 5.

As Bond Street correctly observes, the "substantial evidence" test requires Commerce to consider not only that evidence which supports its determination, but also "whatever in the record fairly detracts from its weight," including "contradictory evidence or evidence from which conflicting inferences could be drawn." *Suramerica*, 44 F.3d at 985 (citation omitted); *see* Pl.'s Reply Brief at 6 (*quoting Huaiyin Foreign Trade Corp. v. United States*, 322 F.3d 1369, 1374 (Fed. Cir. 2003)); Pl.'s Brief at 3, 7. Applying that standard to the administrative record in this action (including, in particular, the Supplemental Administrative Record compiled on remand), it is clear beyond cavil that, contrary to Bond Street's assertions, Commerce's remand determination is supported by substantial evidence.

As discussed at some length above, Commerce in fact did not ignore or reject the results of the test that the agency conducted to determine whether the Stebcos cart will "slide [] under" a two-drawer file cabinet. *See* Remand Results at 4 (describing agency's file cabinet test); *see also id.* at 11. To the contrary, Commerce concluded that the Stebcos cart will "slide [] under" such a load, with the load "tipped"/"tilted" (*see id.* at 4); and Commerce relied upon that finding, in part, in reaching its remand determination. *See id.*; *see generally* section III.A, *supra* (discussing Commerce's file cabinet test).²⁶

Commerce likewise did not ignore or reject the test that Bond Street conducted using a 50-pound box of copy paper. *See* Remand Results at 7 (describing Bond Street's test). As section III.D.3.a (above) explains, the Remand Results themselves discuss Bond Street's test, making it clear that Commerce was fully aware of all details of that test, including the test results. *See* Remand Results at 7; *see also* section III.D.3.a (discussing Bond Street's test). Bond Street's implicit argument seems to break down into two parts – first, a claim that the Stebcos cart "failed" Bond Street's test, and, second, a

²⁶ Bond Street's real quarrel is with Commerce's finding that the Stebcos cart "slid [] under" the file cabinet. In essence, Bond Street contends that – if the load must be "tipped"/"tilted" – the cart should not be considered to have "slid [] under" the load. *See, e.g.*, Pl.'s Brief at 4, 7–9; Pl.'s Reply Brief at 3–4, 5 n.7. As the Remand Results explain, however, nothing in the Antidumping Order precludes "tipping"/"tilting" a load before slid[ing] a cart under it. *See* Remand Results at 11; *see generally* section III.A, *supra*. Moreover, as discussed elsewhere herein, there is no requirement that, to fall within the scope of the Antidumping Order, a hand cart must "slide [] under" every load. *See* Remand Results at 9, 11; *see also* n.18, *supra*. Thus, even if the Antidumping Order did not permit the "tipping"/"tilting" of a load (and, thus, the Stebcos cart did not "slide [] under" the file cabinet in Commerce's test), Commerce's remand determination would not be undermined and still could be sustained based on the other two tests that Commerce conducted. *See* n.12, *supra*.

claim that such a “failed” test precludes the Stebco cart from falling within the scope of the Antidumping Order. Both claims are fatally flawed.

First, although Bond Street apparently contends that the Stebco cart “failed” Bond Street’s test (*i.e.*, the cart did not “slide[] under” the 50-pound box of copy paper), the record is clear that – in conducting its test – Bond Street did not “tip”/“tilt” the load. *See* Pl.’s Reply Brief at 5 & n.7. Moreover, there is nothing in the record to suggest that the Stebco cart would not have “slid[] under” that box if Bond Street had “tipped”/“tilted” the load.²⁷ And, contrary to Bond Street’s repeated assertions, the “tipping”/“tilting” of a load is not precluded by the Antidumping Order. *See, e.g.*, Remand Results at 11. But, second, and even more importantly, there is no requirement that, to fall within the scope of the Antidumping Order, a hand cart must be able to “slide[] under” *any and all* loads (or even all loads for which the cart was designed). *See* Remand Results at 9, 11.

In short, because there is no requirement that a hand cart covered by the Antidumping Order be capable of “slid[ing] under” all loads, neither the results of Commerce’s file cabinet test nor the results of Bond Street’s test “fairly detracts from [the] weight” of other record evidence, including the results of Commerce’s tests using 15-pound and 30-pound boxes. *See Suramerica*, 44 F.3d at 985. But even if Commerce’s file cabinet test and/or Bond Street’s test could be characterized as detracting from other record evidence, the record as a whole demonstrates that both tests were properly considered by Commerce in reaching its remand determination.

In sum, the administrative record reflects that Commerce carefully considered all tests before it – including Bond Street’s test, as well as the three tests that Commerce conducted – and determined on remand, based on the entirety of the record, that, “notwithstanding the collapsible . . . design of the toe plate, the location of the bungee cord hook, and the absence of a kick plate,” Bond Street’s Stebco cart “is adept at sliding under a load for the purposes of lifting/moving that load”; that “once the projecting edge/toe plate is slid under a load, the projecting edge/toe plate remained stable and there [is] no difficulty in lifting and moving the load”; and that the Stebco cart thus “has the operational and functional ability to slide under a load for the purposes of lifting and/or moving that load” and therefore falls “within

²⁷ Indeed, there is record evidence that affirmatively supports the notion that the Stebco cart would have “slid[] under” the 50-pound box of copy paper in Bond Street’s test, if Bond Street had “tipped”/“tilted” the load. Specifically, in Commerce’s testing, the Stebco cart “slid[] under” a 50-pound file cabinet with that load “tipped”/“tilted.” *See* Remand Results at 4.

the scope of the Order.” See Remand Results at 3–4, 12; see also *id.* at 1–2, 5, 6–7, 9–11.

As such, Commerce’s remand determination is supported by substantial evidence in the record. Bond Street’s assertions to the contrary must be rejected.

V. Conclusion

For all the reasons set forth above, Commerce’s Final Results of Redetermination Pursuant to Court Remand: Hand Trucks and Certain Parts Thereof from the People’s Republic of China must be sustained.

Judgment will enter accordingly.

Dated: April 12, 2011

New York, New York

/s/ Delissa A. Ridgway

DELISSA A. RIDGWAY

JUDGE

