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DEPARTMENT OF COMMERCE

International Trade Administration

A-570-933

Frontseating Service Valves from the People's Republic of China: Notice of Court Decision Not in Harmony With Final Determination and Notice of Amended Final Determination and Antidumping Duty Order Pursuant to Court Decision

SUMMARY: On January 27, 2012, the United States Court of International Trade ("CIT") sustained the Department of Commerce's ("the Department") final results of redetermination pursuant to the CIT's remand order in *Zhejiang DunAn Hetian Metal Co., Ltd. v. United States*, Court No. 09-00217, Slip Op. 11-120 (CIT Sept. 28, 2011) ("*Remand*").¹

Consistent with the decision of the United States Court of Appeals for the Federal Circuit ("CAFC") in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) ("*Timken*"), as clarified by *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) ("*Diamond Sawblades*"), the Department is notifying the public that the final judgment in this case is not in harmony with the Department's final determination and is amending the final determination of the less-than-fair-value investigation of frontseating service valves ("FSVs") from the People's Republic of China ("PRC") with respect to the margin assigned to Zhejiang DunAn Hetian Metal Co., Ltd. ("DunAn") covering the period of investigation ("POI") July 1, 2007, through December 31, 2007, and the antidumping order.²

¹ See Final Results Of Redetermination Pursuant To Court Remand, Court No. 09-00217, dated January 4, 2012, available at: <http://www.ia.ita.doc.gov/remands/index.html> ("FSV Redetermination").

² *Frontseating Service Valves from the People's Republic of China: Final Determination of Sales at Less than Fair Value and Final Negative Determination of Critical Circumstances*, 74 FR 10886 (March 13, 2009) and

EFFECTIVE DATE: February 6, 2012.

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SUPPLEMENTARY INFORMATION: In the *Final Determination*, the Department applied partial adverse facts available (“AFA”) to DunAn because we found at verification that DunAn misrepresented the sales quantities of certain models of the merchandise under investigation sold in December 2007. As partial AFA, the Department applied the petition rate of 55.62 percent to all of the reported December 2007 sales of these certain models. On September 28, 2011, the Court of International Trade remanded the *Final Determination* to the Department, following a prior proceeding in which the Court of Appeals for the Federal Circuit (“CAFC”) held that the Department is only permitted to apply partial AFA to information which was missing from the record, namely, the quantity of certain models of FSVs sold in December 2007.³

The Court also granted the Department’s request for a voluntary remand to recalculate the surrogate labor rate for DunAn in accordance with the CAFC’s holding in *Dorbest Ltd. v. United States*, 604 F.3d 1363 (Fed. Cir. 2010) (“*Dorbest*”).⁴ In *Dorbest*, the CAFC held that the Department’s “regression-based method for calculating wage rates as stipulated by 19 CFR 351.408(c)(3) uses data not permitted by the statutory requirements laid out in section 773 of the

accompanying Issues and Decision Memorandum (“*Final Determination*”) and *Antidumping Duty Order: Frontseating Service Valves from the People’s Republic of China*, 74 FR 19196 (April 28, 2009), as corrected, *Notice of Correction to Antidumping Duty Order: Frontseating Service Valves From the People’s Republic of China*, 74 FR 26204 (June 1, 2009) (“*Order*”).

³ See *Zhejiang Dunan Hetian Metal Co., Ltd. v. United States*, 652 F.3d 1333, 1348 (Fed. Cir. 2010).

⁴ See *id.* at 1349.

Tariff Act of 1930, as amended (the “Act”).”⁵ Specifically, the CAFC interpreted section 773(c) of the Act to require the use of data from market economy countries that are both economically comparable to the non-market economy (“NME”) country at issue and significant producers of the subject merchandise, unless such data are unavailable. Because the Department’s regulation requires the Department to use data from economically dissimilar countries and from countries that do not produce comparable merchandise, the CAFC invalidated the Department’s labor regulation (*19 CFR 351.408(c)(3)*). On June 21, 2011, the Department revised its labor calculation methodology for valuing an NME respondent’s cost of labor in NME antidumping proceedings.⁶ In *Labor Methodologies*, the Department found that the best methodology for valuing the NME respondent’s cost of labor is to use the industry-specific labor rate from the surrogate country. Additionally, the Department found that the best data source for calculating the industry-specific labor rate for the surrogate country is the data reported under “Chapter 6A: Labor Cost in Manufacturing” from the ILO Yearbook of Labor Statistics.⁷

On January 5, 2012, the Department issued the FSV Redetermination. Pursuant to *Remand*, we applied partial AFA to DunAn’s misreported sales quantity using adverse inferences solely with respect to quantity. Specifically, we assigned to the total quantity of misreported sales to the higher CONNUM-specific margin of the two CONNUMs in question. Additionally, pursuant to *Dorbest* and *Labor Methodologies*, we revised the wage rate calculation methodology to comply with the CAFC’s interpretation of section 773 of the Act. The Department’s redetermination resulted in changing DunAn’s margin from 12.95 percent to 11.83

⁵ See *Dorbest*, 604 F.3d at 1372.

⁶ See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (“*Labor Methodologies*”).

⁷ See *id.*, at 39063.

percent. On January 27, 2012, the Court of International Trade affirmed the FSV Redetermination.⁸

Timken Notice

In its decision in *Timken*, 893 F.2d at 341, as clarified by *Diamond Sawblades*, the CAFC has held that, pursuant to section 516A(c) of the Act, the Department must publish a notice of a court decision that is not “in harmony” with a Department determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT’s January 27, 2012 judgment sustaining the Department’s remand redetermination with respect to DunAn constitutes a final decision of that court that is not in harmony with the Department’s *Final Determination*. This notice is published in fulfillment of the publication requirements of *Timken*.

Amended Final Determination and Order

Because there is now a final court decision, we are amending the *Final Determination* and *Order* to reflect the results of the litigation. The revised weighted-average dumping margin is as follows:

Exporter/Producer Combination	Percent Margin
Exporter: Zhejiang DunAn Hetian Metal Co., Ltd. Producer: Zhejiang DunAn Hetian Metal Co., Ltd.	11.83

DunAn participated in the first administrative review of the antidumping duty order on FSV’s, and received a cash deposit rate, so the rate listed above will not be applied as a cash

⁸ *Zhejiang DunAn Hetian Metal Co., Ltd. v. United States*, Ct. No. 09-00217, Slip Op. 12-13 (Jan. 27. 2012).

deposit rate for DunAn.⁹ This notice is issued and published in accordance with sections 516A(c)(1), 735(d) and 777(i)(1) of the Act.

Paul Piquado
Assistant Secretary
for Import Administration

February 1, 2012_____
(date)

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⁹See *Frontseating Service Valves from the People's Republic of China: Final Results of the 2008-2010 Antidumping Duty Administrative Review of the Antidumping Duty Order*, 76 FR 70706 (November 15, 2012).