



(BILLING CODE 3510-P)

DEPARTMENT OF COMMERCE

International Trade Administration

A-570-891

Hand Trucks from the People's Republic of China: Notice of Court Decision Not in Harmony With Final Results and Notice of Amended Final Results

SUMMARY: On June 4, 2012, the United States Court of Appeals for the Federal Circuit (“CAFC”) issued its mandate in *Qingdao Taifa Group Co. v. United States*, 780 F. Supp. 2d 1342 (Fed. Cir. 2012), affirming the Court of International Trade’s (“CIT”) or (“Court”) decision in *Qingdao Taifa Group Co., Ltd. v. United States*, Court No. 08-00245, Slip Op. 11-83 (CIT 2011) sustaining the Department of Commerce’s (“the Department”) final results of its third redetermination pursuant to the CIT’s remand order in *Qingdao Taifa Group Co. Ltd. v. United States*, Court No. 08-00245, Slip Op. 10-126 (CIT 2010) (“*Remand III*”).<sup>1</sup>

Consistent with the decision of the 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 results and is amending the final results of the 2005-2006 administrative review of hand trucks from the People's Republic of China (“PRC”) with respect to the margin assigned to Qingdao Taifa Group Co. Ltd. (“Taifa”) covering the period of review (“POR”) December 1, 2005, through November 30, 2006.

EFFECTIVE DATE: June 14, 2012.

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<sup>1</sup> See Final Results of Redetermination Pursuant To Court Remand, Court No. 08-00245, dated March 17, 2011, available at: <http://www.ia.ita.doc.gov/remands/index.html> (“Redetermination III”).

FOR FURTHER INFORMATION CONTACT: Brooke Kennedy, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-3818.

SUPPLEMENTARY INFORMATION: In the *Final Results*<sup>2</sup>, the Department applied total adverse facts available (“AFA”) to Taifa because we found that Taifa withheld information that had been requested, significantly impeded the proceeding and provided information that could not be verified. Additionally, the Department found evidence at verification which indicated local government ownership over Taifa, and contradicted Taifa’s submitted questionnaire responses. As such, the Department determined that Taifa failed to fully explain the ownership interests in the company and because of this, Taifa failed to demonstrate entitlement to a separate rate. Accordingly, the Department applied the PRC-wide rate of 383.60 percent to Taifa for the POR. On August 11, 2009, the CIT remanded the *Final Results* to the Department in *Remand I*.<sup>3</sup> The Court sustained the Department’s decision to apply AFA to Taifa, however, the Court remanded the matter to the Department to determine whether the local government ownership resulted in *de facto* control such that the Department could treat Taifa as part of the PRC-wide entity. Further, the Court held that because the PRC-wide entity rate presumes government control, the Department is not permitted to select the PRC-wide rate as the AFA rate without first making a determination about the presence or absence of *de facto* government control over Taifa.<sup>4</sup>

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<sup>2</sup> See *Hand Trucks and Certain Parts Thereof from the People’s Republic of China: Final Results of 2005-2006 Administrative Review*, 73 FR 43684 (July 28, 2008) (“*Final Results*”).

<sup>3</sup> See *Qingdao Taifa Group Co., Ltd. v. United States*, 637 F. Supp. 2d 1231, 1244 (CIT 2009) (“*Remand I*”).

<sup>4</sup> See *id.*

On January 22, 2010, the Department issued a hand trucks redetermination, Redetermination I.<sup>5</sup> Pursuant to *Remand I*, we determined that the record did not contain affirmative evidence that a government entity exercised *de facto* control over Taifa, so we granted Taifa a separate rate and assigned an AFA margin based on a control number-specific margin from the most recently completed segment of the proceeding in which Taifa participated as a mandatory respondent. Specifically, the margin was calculated from Taifa's own reported information and data from the investigation. The Department's redetermination resulted in changing Taifa's margin from 383.60 percent to 227.73 percent.

On May 12, 2010, the CIT remanded the matter a second time in *Remand II*, finding that the Department had failed to meaningfully investigate the question of government control.<sup>6</sup> The CIT declined to decide whether the 227.73 percent rate provided by the Department was supported, but required the Department to make a decision supported by substantial evidence about Taifa's independence from or control by the Chinese government.<sup>7</sup>

On July 27, 2010, the Department issued its second redetermination, Redetermination II,<sup>8</sup> in which we found that because the information provided by Taifa regarding its ownership was unreliable, the Department was unable to conclude based on substantial evidence that Taifa was *de facto* free of government control and thus entitled to a separate rate. Therefore the Department assigned Taifa the PRC-entity rate of 383.60 percent.

The CIT ruled on Redetermination II on November 12, 2010, and once again remanded back to the Department *Remand III* ordering that we either explain why substantial record evidence supports a finding of central government control thereby justifying imposition of the

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<sup>5</sup> See Final Results of Redetermination Pursuant To Court Remand, Court No. 08-00245, dated January 22, 2010, ("Redetermination I") available at: <http://www.ia.ita.doc.gov/remands/index.html>.

<sup>6</sup> *Qingdao Taifa Group Co., Ltd. v. United States*, 710 F. Supp. 2d 1352, 1357 (CIT 2012) ("*Remand II*").

<sup>7</sup> See *id.* at 1358.

<sup>8</sup> See Final Results of Redetermination Pursuant To Court Remand, Court No. 08-00245, dated July 27, 2010, ("Redetermination II") available at: <http://www.ia.ita.doc.gov/remands/index.html>.

PRC-wide entity rate, or that we grant Taifa a separate rate “grounded in the realities of the industry.”<sup>9</sup>

Pursuant to *Remand III*, on March 27, 2011, the Department issued its third redetermination, Redetermination III, this time granting Taifa a separate rate, concluding after re-weighing the evidence that there was not substantial record evidence that the central government controlled Taifa’s business decisions.<sup>10</sup> The Department assigned a rate of 145.90 percent based on 36 percent of Taifa’s total sales by quantity from the prior segment of the proceeding when Taifa was a cooperative respondent. The CIT sustained Redetermination III on July 12, 2011, holding that the Department corroborated the rate to the extent practicable, the rate was not punitive nor so out of touch with Taifa’s practice as to be aberrational, and the Department used a reasonable methodology to calculate the rate.<sup>11</sup> After hearing the issue on appeal, on June 4, 2012, the CAFC affirmed the CIT’s July 12, 2011 opinion, sustaining Redetermination III.<sup>12</sup>

#### Timken Notice

In its decision in *Timken*, as clarified by *Diamond Sawblades*, the CAFC has held that, pursuant to section 516A(c) of the Tariff Act of 1930, as amended (“the Act”), the Department must publish a notice of a court decision that is not “in harmony” with a Department determination and must suspend liquidation of entries pending a “conclusive” court decision. The CAFC’s decision sustaining the Department’s remand redetermination with respect to Taifa constitutes a final decision of that court that is not in harmony with the Department’s *Final Results*. This notice is published in fulfillment of the publication requirements of *Timken*.

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<sup>9</sup> See *id.*, at 1385, 1386.

<sup>10</sup> See Final Results of Redetermination Pursuant To Court Remand, Court No. 08-00245, dated March 27, 2011, available at: <http://www.ia.ita.doc.gov/remands/index.html> (“Redetermination III”).

<sup>11</sup> *Qingdao Taifa Group Co., Ltd. v. United States*, Court No. 08-00245, Slip Op. 11-83 (CIT Jul. 12, 2011).

<sup>12</sup> *Qingdao Taifa Group Co. v. United States*, 2012 U.S. App. LEXIS 7281 (Fed. Cir. Apr. 11, 2012).

Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the time for application for a *writ of certiorari*, or if a *writ of certiorari* is granted, pending a final and conclusive court decision.

Amended Final Results

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

Exporter	Percent Margin
Qingdao Taifa Group Co., Ltd.	145.90

Accordingly, if there is no *writ of certiorari* granted in this case, the Department will instruct U.S. Customs and Border Protection to assess antidumping duties on entries of the subject merchandise exported by Taifa during the POR at 145.90 percent. Additionally, because Taifa has not participated in any administrative reviews since the December 1, 2005, through November 30, 2006 administrative review, Taifa's cash deposit rate will be 145.90 percent, effective June 14, 2012 (*i.e.*, 10 days after the issuance of the CAFC mandate).

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

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Paul Piquado  
Assistant Secretary  
for Import Administration

\_\_\_\_ June 13, 2012 \_\_\_\_\_  
(date)