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DEPARTMENT OF COMMERCE

International Trade Administration

C-570-968

Aluminum Extrusions from the People's Republic of China: Notice of Court Decision Not in Harmony With Final Affirmative Countervailing Duty Determination and Notice of Amended Final Affirmative Countervailing Duty Determination

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

**SUMMARY:** On February 19, 2014, the United States Court of International Trade (CIT) sustained the Department of Commerce's (Department's) results of redetermination, which recalculated the countervailable subsidy rate for the Zhongya Companies<sup>1</sup> in the countervailing duty (CVD) investigation of aluminum extrusions from the People's Republic of China (PRC)<sup>2</sup> pursuant to the CIT's remand order in *Zhaoqing*.<sup>3</sup> Consistent with the decision of the United States Court of Appeals for the Federal Circuit (CAFC) in *Timken*,<sup>4</sup> as clarified by *Diamond Sawblades*,<sup>5</sup> the Department is notifying the public that the final CIT judgment in this case is not in harmony with the Department's *Final Determination* and is therefore amending its *Final Determination*.

**DATES:** Effective March 3, 2014.<sup>6</sup>

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<sup>1</sup> The Zhongya Companies are Zhaoqing New Zhongya Aluminum Co., Ltd, Zhongya Shaped Aluminum HK Holding Ltd., and Karlton Aluminum Company Ltd.

<sup>2</sup> See *Aluminum Extrusions From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) (*Final Determination*).

<sup>3</sup> See *Zhaoqing New Zhongya Aluminum Co., Ltd. v. United States*, 929 F. Supp. 2d 1324 (CIT 2013) (July 17, 2013) (*Zhaoqing*); see also *Zhaoqing New Zhongya Aluminum Co., Ltd. v. United States*, Court No. 11-00181 (CIT 2014) (Order) (*Zhaoqing II*).

<sup>4</sup> See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

<sup>5</sup> See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

<sup>6</sup> March 1, 2014, 10 days after the Court's decision was issued, falls on a Saturday. Therefore, the effective date is Monday, March 3, 2014. See *Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

**FOR FURTHER INFORMATION CONTACT:** Robert Copyak, Office III, AD/CVD Operations, Enforcement and Compliance, U.S. Department of Commerce, C129, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: 202-482-2209.

**SUPPLEMENTARY INFORMATION:** On April 4, 2011, the Department published the *Final Determination*. In the *Final Determination*, the Department determined that the Zhongya Companies received a countervailable subsidy with regard to the Government of China's provision of land-use rights located in the Zhaoqing High-Tech Industry Development Zone (ZHTIDZ) for less than adequate remuneration (LTAR) in 2006. Because the Department determined that it could not use Chinese or world market prices as a benchmark, it compared the price that the Zhongya Companies paid for its land-use rights with comparable market-based prices for land purchases; specifically, we used the "indicative land values" for land in Thai industrial estates, parks, and zones, which are published in the "Asian Industrial Property Market Flash" by Coldwell Banker Richard Ellis (CBRE), for benchmark purposes.<sup>7</sup>

In *Zhaoqing*, the CIT held that it "cannot conclude that a reasonable reading of the record as a whole supports Commerce's rebuttal of Plaintiffs' claim that the land they leased was undeveloped in 2006 and therefore not comparable to a fully developed industrial park"<sup>8</sup> and remanded the Department's selection of Thai industrial land values as benchmarks for comparison with the land-use rights acquired by the Zhongya Companies for reconsideration or further explanation.<sup>9</sup>

In its final results of redetermination pursuant to *Zhaoqing*, the Department reconsidered, and revised, the land benchmark used to determine the benefit received by the Zhongya

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<sup>7</sup> See *Final Determination*, and accompanying Issues and Decision Memorandum at "Provision of Land-Use Rights and Fee Exemptions To Enterprises Located in the ZHITDZ for LTAR" and Comment 24.

<sup>8</sup> See *Zhaoqing*, 929 F. Supp. 2d at 1329.

<sup>9</sup> *Id.*

Companies in 2006. Specifically, we recalculated the countervailable subsidy provided to the Zhongya Companies using, instead of Thai industrial land prices, a benchmark based on the “non-infrastructure” land price listed for Subic Bay Freeport in the Philippines. As a result of this revision, the total net subsidy rate calculated for the Zhongya Companies changed from 8.02 percent *ad valorem* to 4.89 percent *ad valorem*.<sup>10</sup>

On February 19, 2014, the CIT affirmed the Department’s final results of redetermination pursuant to remand.<sup>11</sup>

### **Timken Notice**

In its decision in *Timken*<sup>12</sup> 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 CIT’s February 19, 2014, judgment in *Zhaoqing II* affirming the Department’s redetermination on remand to rely on a benchmark from the Philippines, and which results in a revised rate for the Zhongya Companies (4.89 percent *ad valorem*), 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*. Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending expiration of the period of appeal or, if appealed, pending a final and conclusive court decision.

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<sup>10</sup> See “*Zhaoqing New Zhongya Aluminum Co., Ltd. and Zhongya Shaped Aluminum (HK) Holding Ltd. v. United States*, Court No. 11-00181; Slip Op. 13-83 (CIT 2013), Final Results of Redetermination Pursuant to Court Remand,” dated August 20, 2013 at 8.

<sup>11</sup> See *Zhaoqing II* at 2.

<sup>12</sup> See *Timken*, 893 F.2d at 341.

## Amended Final Determination

Because there is now a final CIT decision with respect to the *Final Determination*, the Department amends its *Final Determination* for the Zhongya Companies.<sup>13</sup> The Department finds the following revised net subsidy rate exists:

Company	<i>Ad Valorem</i> Net Subsidy Rate
Zhaoqing New Zhongya Aluminum Co., Ltd., Zhongya Shaped Aluminum HK Holding Ltd., and Karlton Aluminum Company Ltd. (collectively, the Zhongya Companies)	4.89 percent <i>ad valorem</i>

The cash deposit rate for the Zhongya Companies will be the rate listed above, effective March 3, 2014, and the Department will instruct U.S. Customs and Border Protection accordingly. This notice is issued and published in accordance with sections 516A(c)(1), 751(a)(1), and 777(i)(1) of the Act.

Dated: February 28, 2014.

Paul Piquado,  
Assistant Secretary,  
for Enforcement and Compliance.

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<sup>13</sup> As a result of the CIT's severance and consolidation of parties' challenges to the *Final Determination*, the *Final Determination* was previously amended, in *Aluminum Extrusions From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Affirmative Countervailing Duty Determination and Notice of Amended Final Affirmative Countervailing Duty Determination*, 77 FR 74466 (December 14, 2012) (*Amended Final Determination*). The *Amended Final Determination* amended the "all others" rate but did not amend the Zhongya Companies' net subsidy rate.