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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-018]

Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China:
Notice of Court Decision Not in Harmony with Final Determination and Notice of Amended
Final Determination

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

SUMMARY: On June 22, 2016, the United States Court of International Trade (“CIT”) sustained the Department of Commerce’s (“the Department”) final results of redetermination pursuant to remand of the final determination in the antidumping duty investigation of boltless steel shelving units from the PRC.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 (CAFC 2010) (“Diamond Sawblades”), the Department is notifying the public that the final judgment in this case is not in harmony with the Department’s Final Determination and is amending the Final Determination of the antidumping duty investigation of boltless steel shelving units from the People’s Republic of China (“PRC”) with respect to the countervailing duty export subsidy adjustments applied to the cash deposit rates calculated for the Final Determination.²

DATES: Effective Date: July 5, 2016.

¹ See Final Results of Redetermination Pursuant To Court Remand issued by the Department of Commerce (May 27, 2016), available at <http://enforcement.trade.gov/remands/15-00298.pdf> (“Final Remand Results”).

² See Boltless Steel Shelving Units Prepackaged for Sale from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 80 FR 51779 (August 26, 2015) (“Final Determination”).

FOR FURTHER INFORMATION CONTACT: Irene Gorelik, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-6905.

SUPPLEMENTARY INFORMATION: On April 19, 2016, the CIT remanded this case to the Department, based on a request for voluntary remand, to reconsider the amount of the export subsidy adjustments used to calculate cash deposit rates for respondents.³ Pursuant to the Final Remand Results, we reconsidered our export subsidy adjustments, as applied in the Final Determination, and revised our Final Determination cash deposit calculations, adjusted for export subsidies, in accordance with the established policy and practice articulated in Drawn Stainless Steel Sinks from the People's Republic of China: Antidumping Duty Investigation, 77 FR 60673 (October 4, 2012) ("PRC Sinks"). The CIT sustained the Department's Final Remand Results on June 22, 2016, making the effective date of this notice July 5, 2016.

Timken Notice

In its decision in Timken, 893 F.2d at 341, as clarified by Diamond Sawblades, the CAFC held that, pursuant to section 516A(e) 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 June 22, 2016, judgment sustaining the Department's Final Remand Results 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

³ See Edsal Manufacturing Co., Inc., v. United States, Court No. 15-00298 (April 18, 2016) ("Remand Opinion and Order").

merchandise pending the expiration of the period of appeal, or if appealed, pending a final and conclusive court decision.

Amended Final Determination

Because there is now a final court decision, we are amending the Final Determination with respect to the amount of the export subsidy adjustments applied to the calculated cash deposit rates, in accordance with the Final Remand Results. Based on our applied practice in PRC Sinks, the proper adjustments to the AD cash deposits in the Final Determination of this investigation, as noted in the Final Remand Results, are as follows:

- (1) For Zhongda United Holding Group Co., Ltd. (“Zhongda”), we reduced the AD cash deposit rate by the simple average of the export subsidy rates determined for the mandatory respondents in the companion CVD investigation. This adjustment is: 17.55 percent minus 0.02 percent,⁴ resulting in an adjusted AD cash deposit rate of 17.53 percent;
- (2) For the other producer/exporter combinations receiving a separate rate we also reduced the AD cash deposit rate, which is based on the 17.55 percent calculated rate for Zhongda, by the simple average of the export subsidy rates determined for the mandatory respondents in the companion CVD investigation. This adjustment is: 17.55 percent minus 0.02 percent,⁵ percent resulting in an adjusted AD cash deposit rate of 17.53 percent; and
- (3) For the PRC-wide entity (including Nanjing Topsun Racking Manufacturing Co., Ltd.),

⁴ In the companion countervailing duty (“CVD”) investigation, Zhongda was not a mandatory respondent and received the calculated “all-others” export subsidy rate of 0.02 percent, which should be used to adjust Zhongda’s calculated AD cash deposit rate. See Boltless Steel Shelving Units Prepackaged for Sale from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, 80 FR 51775 (August 26, 2015) (“CVD Final”) and accompanying Issues and Decision Memorandum at 18-22. In the CVD Final, the export subsidy rates determined for the mandatory respondents was 0.00 percent and 0.04 percent, the simple average of which is 0.02 percent.

⁵ Id.

which received an adverse facts available rate based on information contained in the Petition, as an extension of the adverse inference found necessary pursuant to section 776(b) of the Act, the Department has adjusted the PRC-wide entity's AD cash deposit rate by the lowest export subsidy rate determined for any party in the companion CVD proceeding, which was 0.00 percent. Accordingly, the AD cash deposit rate of 112.68 percent is not adjusted, as an extension of the adverse inference found necessary under section 776(b) of the Act.

In the event the CIT's ruling is not appealed, the Department will instruct CBP to require cash deposits equal to the estimated amount by which the normal value exceeds the U.S. price as indicated in the Final Determination, adjusted where appropriate for the export subsidies noted above.⁶ These instructions suspending liquidation will remain in effect until further notice.

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Dated: July 6, 2016.

Ralph K. Lorentzen,
Acting Assistant Secretary
for Enforcement and Compliance.

⁶ See also Final Remand Results (describing the adjustments to the AD duty margins in more detail); see also sections 772(c)(1)(C) and 777A(f) of the Act, respectively. Unlike in administrative reviews, the Department calculates the adjustment for export subsidies in investigations not in the margin calculation program, but in the cash deposit instructions issued to CBP. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India, 71 FR 45012 (August 8, 2006), and accompanying Issues and Decision Memorandum at Comment 1.

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