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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-943; C-570-944]

Certain Oil Country Tubular Goods from the People's Republic of China: Notice of Court Decision Not in Harmony with Final Scope Ruling and Notice of Amended Final Scope Ruling Pursuant to Court Decision

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

SUMMARY: The Department of Commerce (the Department) is notifying the public that the Court of International Trade's (CIT's or the Court's) final judgment in this case is not in harmony with the Department's final scope ruling. Therefore, the Department finds that neither the plain language of the scope nor an analysis of the scope language using the criteria outlined in the Department's regulations support a finding that seamless unfinished oil country tubular goods (OCTG) (*i.e.*, green tubes) manufactured in the People's Republic of China (the PRC), and subsequently finished in a third country, are covered by the scope of the antidumping and countervailing duty orders.

DATES: Effective December 3, 2016.

FOR FURTHER INFORMATION CONTACT: John Drury, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0195.

SUPPLEMENTARY INFORMATION:

Background

On February 7, 2014, the Department issued the *Bell Supply Scope Ruling*,¹ in which it determined that green tubes that are finished in third countries are covered under the scope of the *Orders* based on an analysis of the factors under 19 CFR 351.225(k)(1).² Bell Supply Company, LLC (Bell Supply) challenged the Department's final ruling before the CIT. On July 9, 2015, the Court issued its opinion on the *Bell Supply Scope Ruling*, remanding the Department's determination back to the agency for further analysis,³ as discussed in further detail in the *Final Remand Results*.⁴ The Department issued a redetermination on remand, under protest, which continued to find that the merchandise in question was within the scope of the *Orders*.⁵ On April 27, 2016, the Court issued its opinion on the *First Remand Results*, again remanding the Department's determination for further analysis.⁶ Specifically, the Court found that the language of the *Orders* does not necessarily include OCTG finished in third countries, even if processed using green tubes sourced from the PRC.⁷ The Court stated that the evidence on which the Department relied to make its determination (*i.e.*, the petition and the injury analysis by the International Trade Commission) “{d}oes not support” the Department's conclusion that the

¹ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Final Scope Ruling on Green Tubes Manufactured in the People's Republic of China and Finished in Countries Other than the United States and the People's Republic of China” (February 7, 2014) (*Bell Supply Scope Ruling*).

² See *Certain Oil Country Tubular Goods from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 75 FR 3203 (January 20, 2010) and *Certain Oil Country Tubular Goods from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 75 FR 28551 (May 21, 2010) (together, *Orders*).

³ See *Bell Supply Co. v. United States*, Court No. 14-00066, Slip Op. 15-73 (CIT 2015) (*Bell Supply I*).

⁴ See *Final Results of Second Redetermination Pursuant to Remand*, dated August 11, 2016 (*Final Remand Results*) at 2-5.

⁵ See *Final Results of Redetermination Pursuant to Remand*, dated November 9, 2015 (*First Remand Results*).

⁶ See *Bell Supply Co. v. United States*, Court No. 14-00066, Slip Op. 16-41 (CIT 2016) (*Bell Supply II*).

⁷ *Id.* at 13.

merchandise in question is within the scope.⁸ The Court further stated that “{a}bsent additional evidence from the descriptions of the merchandise found in the (k)(1) sources, Commerce was required to proceed to the next step of its interpretive analysis and evaluate the factors under 19 C.F.R. § 351.225(k)(2).”⁹ The Court also stated that, in the event that the Department was unable to find that the scope of the *Orders* covers the merchandise at issue under 19 CFR 351.225(k)(2), the Department was free to employ a circumvention analysis pursuant to 19 CFR 351.225(h) and section 781(b) of the Tariff Act of 1930, as amended (the Act).¹⁰

Accordingly, the Department issued the *Final Remand Results*. Consistent with the Court’s instructions in *Bell Supply II*, the Department determined that neither the plain language of the scope nor an analysis of the scope language using the criteria outlined in 19 CFR 351.225(k)(1) supported a finding that green tubes manufactured in the PRC, and subsequently finished in a third country, are covered by the scope of the *Orders*.¹¹ Additionally, the Department determined that, because the factors under 19 CFR 351.225(k)(2) did not indicate whether OCTG finished in third countries fell within the *Orders*, green tubes from the PRC that are subsequently heat-treated in third countries are not within the scope of the *Orders*.¹² Finally, the Department also determined information on the record did not support a finding that merchandise produced by Citra Tubindo, a producer of finished OCTG in Indonesia who used unfinished green tubes produced in the PRC, circumvented the *Orders*.¹³

In *Bell Supply III*, the Court sustained the Department’s *Final Remand Results* in its entirety.¹⁴

⁸ *Id.* at 28.

⁹ *Id.* at 33.

¹⁰ *Id.* at 38- 39.

¹¹ See *Final Remand Results* at 14-15.

¹² *Id.* at 15-19.

¹³ *Id.* at 33-34.

¹⁴ See *Bell Supply Co. v. United States*, Court No. 14-00066, Slip Op. 16-109 (CIT 2016) (*Bell Supply III*) at 16.

Timken Notice

In its decision in *Timken*,¹⁵ as clarified by *Diamond Sawblades*¹⁶, the United States Court of Appeals for the Federal Circuit (CAFC) held that, pursuant to sections 516A(c) and (e) 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 November 23, 2016, judgment in *Bell Supply III*, sustaining the Department’s decision in the *Final Remand Results* that unfinished green tubes further processed in third countries into finished OCTG are not covered by the scope of the *Orders* and that merchandise processed in Indonesia into finished OCTG by Citra Tubindo, using unfinished green tubes produced in the PRC, does not constitute circumvention of the *Orders*, constitutes a final decision of the court that is not in harmony with the *Bell Supply Scope Ruling*. This notice is published in fulfillment of the publication requirements of *Timken*. Accordingly, the Department will continue the suspension of liquidation of the oil country tubular goods at issue pending expiration of the period to appeal or, if appealed, pending a final and conclusive court decision.

Amended Final Scope Ruling

Because there is now a final court decision with respect to the *Bell Supply Scope Ruling*, the Department is amending its final scope ruling. The Department finds that the scope of the *Orders* does not cover the products addressed in the *Bell Supply Scope Ruling*. The Department will instruct U.S. Customs and Border Protection (CBP) that the cash deposit rate will be zero percent for the OCTG finished in Indonesia using unfinished green tubes manufactured in the PRC. In the event that the CIT’s ruling is not appealed, or if appealed, upheld by the CAFC, the

¹⁵ See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), at 341.

¹⁶ See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 20 10) (*Diamond Sawblades*).

Department will instruct CBP to liquidate entries of the OCTG at issue without regard to antidumping and/or countervailing duties, and to lift suspension of liquidation of such entries.

Notification to Interested Parties

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

Dated: January 11, 2017

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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