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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-977]

High Pressure Steel Cylinders from the People's Republic of China: Notice of Court Decision Not in Harmony with Final Determination in Less than Fair Value Investigation, Notice of Amended Final Determination Pursuant to Court Decision, Notice of Revocation of Antidumping Duty Order in Part, and Discontinuation of Fifth Antidumping Duty Administrative Review

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

SUMMARY: On August 17, 2017, the Court of International Trade (CIT or Court) sustained the Department of Commerce's (Department) remand redetermination pertaining to the final determination in the less than fair value (LTFV) investigation of high pressure steel cylinders from the People's Republic of China (PRC). Because of the CIT's final decision, we are notifying the public that this court decision is not in harmony with the Department's final determination in the LTFV investigation, and we are also amending our final determination, revoking this antidumping duty order, in part, and discontinuing the fifth administrative review.

DATES: Applicable August 27, 2017.

FOR FURTHER INFORMATION CONTACT: Annathea Cook, AD/CVD Operations Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482-0250.

SUPPLEMENTARY INFORMATION:

Background

As noted above, on August 17, 2017, the CIT sustained the Department's Third Remand Redetermination pertaining to the final determination in the less than fair value (LTFV) investigation of high pressure steel cylinders from the People's Republic of China (PRC).¹ In the underlying LTFV investigation, the Department found that, pursuant to section 777A(d)(1)(B) of the Tariff Act of 1930, as amended (Act), "there was a pattern of prices that differ significantly by time period" for respondent Beijing Tianhai Industry Co., Ltd. (BTIC), and that "application of the standard A-to-A {(average-to-average)} methodology would result in the masking of dumping that is unmasked by application of the alternative A-to-T {(average-to-transaction)} methodology when calculating BTIC's weighted-average dumping margin."² In the *Final Determination*, the Department calculated BTIC's estimated weighted-average dumping margin using the A-to-T comparison method, applied to all of BTIC's export sales.³ In *Beijing Tianhai I*,⁴ the CIT held that the Department's explanation of its "meaningful difference" analysis in the *Final Determination* was insufficient to satisfy the explanation requirement under section 777A(d)(1)(B)(ii) of the Act, and also found that "the explanation ignores the potential use of the {transaction-to-transaction} methodology entirely."⁵ With respect to BTIC's challenge to the Department's application of the A-to-T methodology to all of BTIC's export sales as being

¹ See *Beijing Tianhai Indus. Co. v. United States*, Slip Op. 17-105 (CIT August 17, 2017) (*Beijing Tianhai IV*); see also Final Results of Redetermination Pursuant to Court Remand, High Pressure Steel Cylinders from the People's Republic of China, *Beijing Tianhai Indus. Co., Ltd. v. United States*, Court No. 12-00203, Slip Op. 17-79 (CIT July 5, 2017), dated August 3, 2017 (Third Remand Redetermination); *High Pressure Steel Cylinders from the People's Republic of China: Final Determination of Sales at Less than Fair Value*, 77 FR 26739 (May 7, 2012) (*Final Determination*), and accompanying Issues and Decision Memorandum; and *High Pressure Steel Cylinders from the People's Republic of China: Antidumping Duty Order*, 77 FR 37377 (June 21, 2012) (*Order*).

² See *Final Determination*, and accompanying Issues and Decision Memorandum at 23-24.

³ *Id.* at 24-26.

⁴ See *Beijing Tianhai Indus. Co. v. United States*, 7 F. Supp. 3d 1318 (CIT 2014) (*Beijing Tianhai I*).

⁵ See *Beijing Tianhai I*, 7 F. Supp. 3d at 1331-32.

inconsistent with 19 CFR 351.414(f), a regulation BTIC alleged had been inappropriately withdrawn, the CIT also held that “even if the Department’s withdrawal of 19 C.F.R. § 351.414(f) (2007) was in violation of the APA’s {(Administrative Procedure Act)} notice and comment requirement, that error was harmless as it relates to the plaintiff in this case,” and also that “the Department need not adhere to the requirements of 19 C.F.R. § 351.414(f) (2007).”⁶ The Court deferred resolution of several other issues pertaining to the Department’s targeted dumping analysis and application of the A-to-T comparison method when determining BTIC’s estimated weighted-average dumping margin in *Beijing Tianhai I*.⁷

Following the Department’s First Remand Redetermination,⁸ the CIT in *Beijing Tianhai II* sustained the Department’s *Final Determination* as to the other issues that BTIC challenged, for which the CIT had deferred consideration in *Beijing Tianhai I*.⁹ However, with regard to the Department’s “meaningful difference” analysis and the further analysis the Department provided in the First Remand Redetermination on that issue, the CIT held that “the Department has chosen a narrative rather than an explanation,” and “failed to satisfy the requirements of the statute.”¹⁰ The Court again remanded that issue to the Department.¹¹

The Department filed its Second Remand Redetermination with the Court on February 8, 2016,¹² in which the Department provided further explanation as to its “meaningful difference” analysis under section 777A(d)(1)(B)(ii) of the Act. However, while the Department’s Second

⁶ *Id.* at 1332-37.

⁷ *Id.* at 1337.

⁸ See Final Results of Redetermination Pursuant to Court Remand, High Pressure Steel Cylinders from the People’s Republic of China, *Beijing Tianhai Indus. Co., Ltd. v. United States*, Court No. 12-00203, Slip Op. 14-104 (CIT September 9, 2014), dated January 7, 2015 (First Remand Redetermination).

⁹ See *Beijing Tianhai Indus. Co. v. United States*, 106 F. Supp. 3d 1342, 1352-56 (CIT 2015) (*Beijing Tianhai II*)

¹⁰ *Id.* at 1351.

¹¹ *Id.*

¹² Final Results of Redetermination Pursuant to Court Remand, High Pressure Steel Cylinders from the People’s Republic of China, *Beijing Tianhai Indus. Co., Ltd. v. United States*, Court No. 12-00203, Slip Op. 15-114 (CIT October 14, 2015), dated February 8, 2016 (Second Remand Redetermination).

Remand Redetermination was pending before the CIT, the Court of Appeals for the Federal Circuit (Federal Circuit) held that the Department's 2008 withdrawal of the Limiting Regulation did not comply with the notice-and-comment provision of the Administrative Procedure Act, and that not following this provision could not be excused as harmless error.¹³ BTIC subsequently moved in the *Beijing Tianhai* CIT proceeding for the CIT to reconsider its prior holding in *Beijing Tianhai I* on the status of the withdrawn regulation in this case. In *Beijing Tianhai III*, based on *Mid Continent Nail*, the CIT held that the Limiting Regulation (*i.e.*, 19 CFR 351.414(f)(2) (2007)) was in effect at the time the Department issued the final determination in the original investigation.¹⁴ The Limiting Regulation provided, in pertinent part: "Where the criteria for identifying targeted dumping . . . are satisfied, the {Department} normally will limit the application of the average-to-transaction {(A-to-T)} method to those sales that constitute targeted dumping under {19 CFR 351.414(f)(1)(i)}."¹⁵ On remand, the Department was ordered by the CIT to "reconsider: (1) its determination that {section 777A(d)(1)(B)(ii) of the Act} may be satisfied by applying a 'meaningful difference' analysis that relies on 100 percent of BTIC's U.S. sales; and (2) should it continue to determine that using the {A-to-T} method is appropriate, the scope of BTIC's U.S. sales to which the {A-to-T} method applies, and revise its dumping margin calculations as may be appropriate."¹⁶

In accordance with the Court's instructions in *Beijing Tianhai III* and in light of the CIT's holding that the Limiting Regulation applied in this investigation, the Department issued the Third Remand Redetermination, which it filed with the CIT on August 4, 2017. In the Third Remand Redetermination, we reconsidered our meaningful difference analysis under section

¹³ See *Mid Continent Nail Corp. v. United States*, 846 F.3d 1364 (Fed. Cir. 2017) (*Mid Continent Nail*).

¹⁴ See *Beijing Tianhai III* at 17-18.

¹⁵ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27416 (1997).

¹⁶ See *Beijing Tianhai III* at 17-18.

777A(d)(1)(B)(ii) of the Act, as that analysis was explained in the Second Remand Redetermination.¹⁷ As part of reconsidering our meaningful difference analysis, we recalculated BTIC's A-to-T margin in a manner consistent with the Limiting Regulation by applying the A-to-T comparison methodology only to BTIC's targeted sales (and applying the A-to-A methodology to all other transactions), which resulted in a calculated margin of zero.¹⁸ BTIC's calculated margin using the A-to-A methodology for all transactions was also zero.¹⁹ In applying section 777A(d)(1)(B)(ii) of the Act, we found that there was no meaningful difference in BTIC's antidumping margins using the two aforementioned comparison methodologies.²⁰ Consequently, in the Third Remand Redetermination, we explained that "the A-to-A method can account for BTIC's prices which differ significantly" and "determined that BTIC's weighted-average dumping margin is now zero."²¹ The Department also explained that "as no other aspect of our *Final Determination* is being challenged, we have not made changes to the margins for any other entity."²² The CIT sustained the Third Remand Redetermination in *Beijing Tianhai IV* on August 17, 2017.²³

Timken Notice

In its decision in *Timken*,²⁴ as clarified in *Diamond Sawblades*,²⁵ the Federal Circuit held that, pursuant to section 516A(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 August 17, 2017, final judgment

¹⁷ See Third Remand Redetermination at 6 & n.28.

¹⁸ *Id.* at 6-8.

¹⁹ *Id.* at 7.

²⁰ *Id.*

²¹ *Id.* at 7-8.

²² *Id.* at 7.

²³ See *Beijing Tianhai IV* at 2.

²⁴ See *Timken Co. v. United States*, 893 F.2d 337, 341 (Fed. Cir. 1990) (*Timken*).

²⁵ See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

sustaining the Third Remand Redetermination constitutes a final decision of the CIT that is not in harmony with the Department’s *Final Determination*. This notice is published in fulfillment of the publication requirements in *Timken*.

Amended Final Determination

Because there is now a final court decision, the Department is amending the *Final Determination* with respect to BTIC:

Exporter	Producer	Estimated Weighted-Average Dumping Margin (percent)
Beijing Tianhai Industry Co., Ltd.	Beijing Tianhai Industry Co., Ltd.	0.00
Beijing Tianhai Industry Co., Ltd.	Tianjin Tianhai High Pressure Container Co., Ltd.	0.00
Beijing Tianhai Industry Co., Ltd.	Langfang Tianhai High Pressure Container Co., Ltd.	0.00

Partial Exclusion from Antidumping Duty Order and Discontinuation of Fifth Antidumping Duty Administrative Review

Pursuant to section 735(a)(4) of the Act, the Department “shall disregard any weighted average dumping margin that is *de minimis* as defined in section 733(b)(3) of the Act.”²⁶ Furthermore, and pursuant to section 735(c)(2) of the Act, “the investigation shall be terminated upon publication of that negative determination” and the Department shall “terminate the suspension of liquidation” and “release any bond or other security, and refund any cash deposit.”²⁷ As a result of this amended final determination, in which the Department has calculated an estimated weighted-average dumping margin of 0.00 percent for BTIC, the Department is hereby excluding merchandise from the above three producer/exporter chains

²⁶ Section 733(b)(3) of the Act defines *de minimis* dumping margin as “less than 2 percent ad valorem or the equivalent specific rate for the subject merchandise.”

²⁷ See sections 735(c)(2)(A) and (B) of the Act.

from the antidumping duty *Order*.²⁸ Accordingly, the Department will direct U.S. Customs and Border Protection (CBP) to release any bonds or other security and refund cash deposits pertaining to any suspended entries from the three aforementioned producer-exporter combinations. This exclusion does not apply beyond the three producer-exporter combinations referenced above.

We note, however, that pursuant to *Timken* the suspension of liquidation must continue during the pendency of the appeals process. Thus, we will instruct CBP to suspend liquidation of all unliquidated entries from the three aforementioned producer-exporter combinations at a cash deposit rate of 0.00 percent which are entered, or withdrawn from warehouse, for consumption after August 27, 2017, which is ten days after the CIT's final decision, in accordance with section 516A of the Act.²⁹ If the CIT's ruling is not appealed, or if appealed and upheld, the Department will instruct CBP to terminate the suspension of liquidation and to liquidate entries subject to the three producer-exporter combination rates stated above without regard to antidumping duties. As a result of the exclusion, the Department is discontinuing the ongoing fifth administrative review covering the period June 1, 2016, through May 31, 2017, which only pertains to BTIC's entries during that period of review,³⁰ and the Department will not initiate any new administrative reviews of BTIC's entries pursuant to the antidumping *Order*.³¹

²⁸ See Third Remand Redetermination at 8. There continues to be a countervailing duty order covering BTIC's entries. This countervailing duty order is unaffected by this *Timken* notice and notice of amended final determination. See *High Pressure Cylinders from the People's Republic of China: Countervailing Duty Order*, 77 FR 37384 (June 21, 2012).

²⁹ See *Drill Pipe from the People's Republic of China: Notice of Court Decision Not in Harmony with International Trade Commission's Injury Determination, Revocation of Antidumping and Countervailing Duty Orders Pursuant to Court Decision, and Discontinuation of Countervailing Duty Administrative Review*, 79 FR 78037, 78038 (December 29, 2014) (*Drill Pipe*).

³⁰ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 FR 35749 (August 1, 2017).

³¹ See *Drill Pipe*, 79 FR at 78038; see also *Certain Steel Nails from the United Arab Emirates: Notice of Court Decision Not in Harmony with the Final Determination and Amended Final Determination of the Less Than Fair Value Investigation*, 80 FR 77316 (December 14, 2015).

Lastly, we note that, at this time, the Department remains enjoined by Court order from liquidating entries that were exported by BTIC, and were entered, or withdrawn from warehouse, for consumption during the period December 16, 2011, through May 31, 2016. These entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

This notice is issued and published in accordance with sections 516A(c)(1) and (e) of the Act.

Dated: September 29, 2017.

Carole Showers,
Executive Director, Office of Policy
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance.

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