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DEPARTMENT OF COMMERCE

International Trade Administration

[A-583-854]

Certain Steel Nails from Taiwan: Notice of Court Decision Not in Harmony with Final Determination in Less Than Fair Value Investigation and Notice of Amended Final Determination

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

SUMMARY: On October 4, 2017, the United States Court of International Trade (CIT) issued final judgment in *Mid Continent Steel & Wire, Inc. v. United States, et al.*, consolidated Court No. 15-00213, sustaining the Department of Commerce's (the Department's) final results of redetermination pursuant to remand. The Department is notifying the public that the final judgment in this case is not in harmony with the Department's final determination in the less than fair value investigation of certain steel nails from Taiwan, and is amending the final determination with respect to the weighted-average dumping margins assigned to mandatory respondent PT Enterprise Inc. and all other producers and exporters.

APPLICABLE : October 14, 2017.

FOR FURTHER INFORMATION CONTACT: Scott Hoefke or Victoria Cho, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482-4947 or (202) 482-5075, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 20, 2015, the Department published its affirmative final determination of sales at less than fair value, in which it determined a weighted-average dumping margin of 2.24 percent for exporter PT Enterprise Inc. and its affiliated producer, Pro-Team Coil Nail Enterprise Inc. (Pro-Team) (collectively, PT).¹ The antidumping duty order was published on July 13, 2015.² Mid Continent Steel & Wire, Inc. (the petitioner); PT; and Unicatch Industrial Co., Ltd., WTA International Co., Ltd., Zon Mon Co., Ltd., Hor Liang Industrial Corporation, President Industrial Inc., and Liang Chyuan Industrial Co., Ltd. (collectively, Taiwan Plaintiffs) appealed certain aspects of the *Final Determination* to the CIT. On March 23, 2017, the CIT sustained in part, and remanded in part, the Department's *Final Determination*.³ In particular, the CIT remanded for further explanation or redetermination the issue of PT's general and administrative (G&A) expense ratio calculation.

On June 21, 2017, the Department issued its final results of redetermination pursuant to remand.⁴ The Department provided additional explanation and made certain revisions with respect to PT's G&A expense ratio calculation.⁵ Specifically, the Department explained that it calculates the G&A expense ratio based on the company-wide G&A expenses of the company (*i.e.*, the operating expenses, per the audited financial statements, which are those costs that do not relate directly to the manufacture of products during the period of investigation or review,

¹ See *Certain Steel Nails from Taiwan: Final Determination of Sales at Less Than Fair Value*, 80 FR 28959, 28961 (May 20, 2015) (*Final Determination*) and accompanying Issues and Decision Memorandum (IDM).

² See *Certain Steel Nails from the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, and the Socialist Republic of Vietnam: Antidumping Duty Orders*, 80 FR 39994 (July 13, 2015) (*Order*).

³ *Mid Continent Steel & Wire, Inc. et al. v. United States*, 219 F. Supp. 3d 1326 (CIT March 23, 2017).

⁴ See Final Results of Redetermination Pursuant to Court Remand, *Certain Steel Nails from Taiwan, Mid Continent Steel & Wire, Inc. v. United States, et al.*, Court No. 15-00213, Slip Op. 17-31 (CIT March 23, 2017), dated June 21, 2017 (*Remand Results*), available at <http://enforcement.trade.gov/remands/index.html>.

⁵ See generally *Remand Results*.

but, instead, relate to the general operations of the company during this period) allocated over the company's company-wide cost of sales, or cost of goods sold (COGS) (*i.e.*, the operating costs, per the audited financial statements, which directly relate to the manufacture of specific products). With respect to the specific costs and expenses at issue, the Department further explained that it allocated the costs and expenses by looking at how Pro-Team allocated such costs in its audited financial statements. Concerning a subsidy received by Pro-Team to support its steam production products business, the Department reconsidered its prior determination and included the subsidy as part of Pro-Team's G&A expenses, as opposed to its COGS. The Department explained that it revised its treatment of the subsidy because, as supported by Pro-Team's own books and records, the subsidy related to general, not operating expenses. As a result of these changes, the Department determined a weighted-average dumping margin of 2.16 percent for PT, which also resulted in a revised rate of 2.16 percent for all other producers and exporters.⁶

On October 4, 2017, the CIT entered judgment sustaining the Department's *Remand Results*.⁷

Timken Notice

In its decision in *Timken Co. v. United States*,⁸ as clarified by *Diamond Sawblades Mfrs. Coalition v. United States*,⁹ the Federal Circuit held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), the Department must publish a notice of a court decision not "in harmony" with a Department determination, and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's October 4, 2017 judgment sustaining the *Remand Results* constitutes a final decision of the Court that is not in harmony with the

⁶ See *Remand Results* at 23-24.

⁷ See *Mid Continent Steel & Wire, Inc. v. United States, et al.*, Court No. 15-00213, Slip Op. 17-135 (CIT October 4, 2017).

⁸ *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

⁹ *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010).

Department's *Final Determination*. This notice is published in fulfillment of the publication requirement of *Timken*.

Amended Final Results

Because there is now a final court decision, the Department amends the *Final Determination* with respect to the margin assigned to PT and for all other producers and exporters.¹⁰

Producer/Exporter¹¹	Weighted-average dumping margin (percent)
Producer: Pro-Team Coil Nail Enterprise, Inc. Exporter: Pro-Team Coil Nail Enterprise, Inc. or PT Enterprise Inc. ¹²	2.16
All-Others	2.16

Cash Deposit Requirements

Since the *Final Determination*, the Department has not established a new cash deposit rate for PT or all other producers and exporters. As a result, in accordance with section 735(c)(1)(B) of the Act, the Department will instruct U.S. Customs and Border Protection to collect cash deposits at the rates for entries of subject merchandise in accordance with the rates for exporters and producers listed above in this notice, effective October 14, 2017.

¹⁰ See *Final Determination*, 80 FR at 28961; see also *Remand Results* at 23-24. Note that entries of merchandise produced by Ko Nails, Inc. and exported by Quick Advance Inc. are excluded from the order. See *Order* at 39997.

¹¹ In the *Final Determination* and the *Order*, the Department only listed PT Enterprise Inc., an exporter, and did not include its affiliated producer, Pro-Team Coil Nail Enterprise, Inc., in the chart reflecting final weighted-average dumping margins. For clarity and for purposes of issuing our cash deposit instructions to CBP, we now include reference to Pro-Team Coil Nail Enterprise, Inc. in this amended final determination.

¹² We incorrectly referred to PT Enterprise Inc. as PT Enterprises in the *Final Determination* and the *Order*. See *Final Determination*, at 28961; see also *Order*, at 39996.

Notification to Interested Parties

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

Dated: November 13, 2017.

Gary Taverman,
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance.

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