



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

A-570-909

Certain Steel Nails from the People's Republic of China: Notice of Court Decision Not in Harmony with the Final Results of Administrative Review and Notice of Amended Final Results of Antidumping Duty Administrative Review

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

SUMMARY: On June 19, 2018, the United States Court of International Trade (Court) issued its final judgment in *Xi'an Metals & Minerals Import & Export Co., Ltd. v. United States*, Consol. Court No. 15-00109, sustaining, in part, and vacating, in part, the U.S. Department of Commerce's (Commerce) final remand results in the fifth administrative review of certain steel nails from the People's Republic of China (China). Commerce is notifying the public that the final judgment in this case is not in harmony with Commerce's final results of the administrative review, covering the period of review (POR) August 1, 2012, through July 31, 2013, and that Commerce is amending the final results with respect to the dumping margin assigned to The Stanley Works (Langfang) Fastening Systems Co., Ltd. (Stanley). The margin for Xi'an Metals & Minerals Import & Export Co., Ltd. (Xi'an Metals) remains unchanged as a result of the Court's final judgment.

DATES: Applicable June 19, 2018.

FOR FURTHER INFORMATION CONTACT: Matthew Renkey, AD/CVD Operations Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of

Commerce, 1401 Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-2312.

SUPPLEMENTARY INFORMATION:

Background

On April 8, 2015, Commerce issued the *Final Results*, in which it determined weighted-average dumping margins of 13.19 percent for Stanley and 72.52 percent Xi'an Metals.¹ On September 6, 2017, the Court remanded to Commerce certain aspects of the *Final Results*, ordering Commerce to reconsider, in relevant part: (1) the potential double counting of certain labor costs by including line items such as "Salary & Bonus," "Welfare," and "Social Security and Compensation" as selling, general, and administrative (SG&A) expenses in the surrogate financial ratios;² and (2) the presence of a transcription error in Stanley's post-verification factors of production (FOP) database.³

On December 21, 2017, Commerce filed the AR5 Remand Redetermination with the Court.⁴ Under respectful protest, Commerce recalculated the surrogate financial ratios by reclassifying certain labor-related line items from the selling, general, and administrative expenses numerator, to the materials, labor, and energy denominator of the financial ratios.⁵ Additionally, under respectful protest, Commerce corrected the transcription error present in Stanley's post-verification FOP database.⁶ As a result of these modifications, there were

¹ See *Certain Steel Nails from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 2012-2013*, 80 FR 18816 (April 8, 2015) and accompanying Issues and Decision Memorandum (*Final Results*).

² See *Xi'an Metals & Minerals Import & Export Co., Ltd. v. United States*, 256 F.Supp. 3d 1346, 1356 (CIT September 6, 2017) (*Remand Order*).

³ *Id.*, at 1359.

⁴ See *Final Results of Redetermination Pursuant to Court Remand*, Consol. Court No. 15-00109, Slip Op. 17-120 (CIT 2017), dated December 21, 2017 (AR5 Remand Redetermination), available at <http://enforcement.trade.gov/remands/17-120.pdf>.

⁵ *Id.*, at 7-14.

⁶ *Id.*, at 15-16.

changes to the dumping margins assigned to both Xi'an Metals and Stanley. The resulting antidumping margins for Xi'an Metals and Stanley were 64.27 percent and 8.04 percent, respectively.⁷

On June 19, 2018, the Court sustained the AR5 Remand Redetermination with respect to the correction of the transcription error in Stanley's FOP database.⁸ In addition, the Court vacated the remand order with respect to the issue of the calculation of the surrogate financial ratios, and reinstated this aspect of Commerce's *Final Results*.⁹ In light of the Court's *Final Judgment*, the dumping margin for Xi'an Metals is unchanged from its dumping margin assigned in the *Final Results*. Additionally, because the Court reinstated the *Final Results* with respect to the calculation of the surrogate financial ratios, for these amended final results, we recalculated Stanley's dumping margin to reflect only the correction of the transcription error in Stanley's FOP database.¹⁰

Timken Notice

In its decision in *Timken*, 893 F.2d at 341,¹¹ as clarified by *Diamond Sawblades*,¹² the Court of Appeals for the Federal Circuit (CAFC) held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (Act), Commerce must publish a notice of a court decision that is not "in harmony" with a Commerce determination and must suspend liquidation of entries pending a "conclusive" court decision. The Court's June 19, 2018, *Final Judgment* constitutes a final decision of the Court that is not in harmony with Commerce's *Final Results*. This notice is published in fulfillment of the publication requirement of *Timken*.

⁷ *Id.*, at 19.

⁸ See *Xi'an Metals & Minerals Import & Export Co., Ltd. v. United States*, Consol. Court No. 15-00109, Slip Op. 18-70 (CIT June 19, 2018) (*Final Judgment*) at 3.

⁹ *Id.*, at 2-3.

¹⁰ See "Amended Final Results for the Fifth Administrative Review of Certain Steel Nails from the People's Republic of China: Analysis Memorandum for Stanley," dated concurrently with this notice.

¹¹ See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

¹² See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

Amended Final Results

Because there is now a final court decision, Commerce is amending the *Final Results* with respect to Stanley. The revised weighted-average dumping margin for Stanley for the period August 1, 2012, through July 31, 2013, is as follows:

Exporter	Weighted-Average Margin (Percent)
Stanley	10.16

Commerce will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision. In the event the Court's ruling is not appealed or, if appealed, upheld by the CAFC, Commerce will instruct U.S. Customs and Border Protection to assess antidumping duties on unliquidated entries of subject merchandise exported by Xi'an Metals and Stanley using the appropriate assessment rates.

Cash Deposit Requirements

As stated in the AR5 Remand Redetermination, the cash deposit rate for Stanley has been superseded by cash deposit rates calculated in intervening administrative reviews of the antidumping duty order on certain steel nails from China.¹³ Thus, we will not alter Stanley's cash deposit rate.

Notification to Interested Parties

¹³ See *Certain Steel Nails from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013–2014*, 81 FR 14092 (March 16, 2016); *Certain Steel Nails from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments and Final Partial Rescission; 2014–2015*, 82 FR 14344 (March 20, 2017); and *Certain Steel Nails from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015–2016*, 83 FR 11683 (March 16, 2018).

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

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

Dated: July 6, 2018
[FR Doc. 2018-15011 Filed: 7/12/2018 8:45 am; Publication Date: 7/13/2018]