



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-580-884]

Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Notice of Court Decision Not in Harmony with Amended Final Determination of the Countervailing Duty Investigation

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

SUMMARY: On May 1, 2019, the United States Court of International Trade (CIT) sustained the final remand results pertaining to the countervailing duty (CVD) investigation on certain hot-rolled steel flat products from the Republic of Korea covering the period January 1, 2014, through December 31, 2014. The Department of Commerce (Commerce) is notifying the public that the final judgment in this case is not in harmony with the *Amended Final Determination* of the CVD investigation and that Commerce is amending the *Amended Final Determination* with respect to the CVD rate assigned to POSCO.

DATES: Applicable May 11, 2019.

FOR FURTHER INFORMATION CONTACT: Carrie Bethea, 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) 482-1491.

## SUPPLEMENTARY INFORMATION:

### Background

On August 12, 2016, Commerce published its *Final Determination*.<sup>1</sup> Upon consideration of ministerial error allegations, Commerce issued an *Amended Final Determination* and calculated a subsidy rate of 56.68 percent for POSCO.<sup>2</sup>

On September 11, 2018, the CIT remanded various aspects of the *Amended Final Determination* to Commerce.<sup>3</sup> In its *Remand Order*, the CIT held that substantial evidence supports Commerce's decision to apply adverse facts available (AFA).<sup>4</sup> The CIT held that the record demonstrated that POSCO failed to provide requested information in a timely manner, reflecting a failure to act to the best of its ability.<sup>5</sup>

However, the CIT also held that Commerce had not conducted a "fact-specific inquiry," under the relatively new statutory language of section 776(d)(2) of the Tariff Act of 1930, as amended (the Act) and had not "provide{d} its reasons for selecting the highest rate out of all potential countervailable subsidy rates."<sup>6</sup> The CIT, therefore, instructed Commerce to conduct this fact-specific inquiry.<sup>7</sup> In addition, because the CIT remanded Commerce's *Amended Final Determination* on this basis, the CIT reserved consideration of whether Commerce failed to corroborate the two selected rates in calculating POSCO's total AFA margin.<sup>8</sup> Pursuant to the *Remand Order*, Commerce issued its Final Redetermination, which addressed the CIT's holdings

---

<sup>1</sup> See *Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 53439 (August 12, 2016) (*Final Determination*) and accompanying Issues and Decision Memorandum.

<sup>2</sup> See *Certain Hot-Rolled Steel Flat Products from Brazil and the Republic of Korea: Amended Final Affirmative Countervailing Duty Determinations and Countervailing Duty Order*, 81 FR 67960 (October 3, 2016) (*Amended Final Determination*).

<sup>3</sup> See *POSCO v. United States*, Consol. Court No. 16-00227, Slip Op. 18-117 (CIT 2018) (*Remand Order*).

<sup>4</sup> See *Remand Order* at 15.

<sup>5</sup> *Id.* at 13-14, 17.

<sup>6</sup> *Id.* at 19.

<sup>7</sup> *Id.* at 15.

<sup>8</sup> *Id.*

and revised the CVD rate for POSCO to 41.57 percent.<sup>9</sup> Specifically, we continued to find it appropriate to select the highest rate as an AFA rate, but selected the 1.05 percent rate from *Washers from Korea* to address concerns regarding the corroboration of the 1.64 percent rate used in the *Amended Final Determination*.<sup>10</sup> On May 1, 2019, the CIT sustained in whole Commerce’s Final Redetermination.<sup>11</sup>

#### Timken Notice

In its decision in *Timken*,<sup>12</sup> as clarified by *Diamond Sawblades*,<sup>13</sup> the Court of Appeals for the Federal Circuit held that, pursuant to section 516A(e) of the Act, Commerce must publish a notice of court decision that is not “in harmony” with Commerce’s determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT’s May 1, 2019 final judgment, sustaining Commerce’s selection of the 1.05 percent rate from *Washers from Korea* as the subsidy rate for programs that were calculated on the basis of adverse facts available and the resulting 41.57 percent CVD rate for POSCO, constitutes a final decision of that court that is not in harmony with the *Final Amended Determination*. This notice is published in fulfillment of the publication requirements of *Timken*.

This notice is issued and published in accordance with sections 516A(e)(1), 705(c)(1)(B), and 777(i)(1) of the Act.

---

<sup>9</sup> See *POSCO v. United States*, Consol. Court No. 16-00227, Slip Op. 18-117 (CIT 2018) Final Results of Redetermination Pursuant to Court Remand, dated November 13, 2018, at 24.

<sup>10</sup> *Id.* at 17-19.

<sup>11</sup> See *POSCO v. United States*, Consol. Court No. 16-00227, Slip Op. 19-52 (CIT May 1, 2019).

<sup>12</sup> See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

<sup>13</sup> See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

Dated: May 15, 2019.

Jeffrey I. Kessler,  
Assistant Secretary  
for Enforcement and Compliance.

[FR Doc. 2019-10544 Filed: 5/20/2019 8:45 am; Publication Date: 5/21/2019]