



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-881]

Certain Cold Rolled Steel Flat Products from the Republic of Korea: Notice of Court Decision Not in Harmony with Final Results and Notice of Amended Final Results of the Antidumping Duty Investigation

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

SUMMARY: On February 26, 2019, the United States Court of International Trade (the Court) issued final judgment in *Hyundai Steel Company, v. United States*, Court No. 16-00228, sustaining the Department of Commerce's (Commerce) final results of the redetermination pursuant to remand. Consistent with the decision of the United States Court of Appeals for the Federal Circuit (Federal Circuit) in *Timken Co., v United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), as clarified by *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*), Commerce is notifying the public that the final judgment in this case is not in harmony with Commerce's Amended Final Results and Antidumping Duty Order published on September 20, 2016 (*Order*). Commerce is amending the final results with respect to the weighted-average dumping margin assigned to Hyundai Steel Company (Hyundai Steel).

DATES: Applicable March 8, 2019.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or Daniel Deku, 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) 482-4475 or (202) 482-5075, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the *Final Determination* on July 29, 2016,¹ and issued the antidumping duty order on September 20, 2016.² Hyundai Steel filed an action before the CIT to challenge several aspects of Commerce's *Final Determination*.

After review, the Court sustained Commerce's determination that Hyundai Steel failed to demonstrate that the affiliated parties who supplied Hyundai Steel with home market movement, home market warehousing, U.S. international freight, and U.S. inland freight expenses did so on an arm's-length basis.³ The Court further sustained Commerce's application of adverse facts available (AFA), pursuant to sections 776(a) and (b) of the Tariff Act of 1930 (the Act), as amended, to the affiliated parties who provided Hyundai Steel with home market movement, home market warehousing, U.S. international freight, and U.S. inland freight.⁴ Additionally, the Court sustained Commerce's application of AFA to three product specifications reported by Hyundai Steel.⁵

However, the Court remanded to Commerce for further explanation or reconsideration whether it intended to apply AFA to those U.S. sales where: (1) Hyundai Steel used an unaffiliated freight provider to supply domestic inland freight; or (2) Hyundai Steel incurred no domestic inland freight charges in the U.S.⁶ While the Court found that Commerce appropriately

¹ See *Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 81 FR 49953 (July 29, 2016) (*Final Determination*).

² See *Certain Cold Rolled Steel Flat Products from Brazil, India, the Republic of Korea, and the United Kingdom: Amended Final Affirmative Antidumping Determinations for Brazil and the United Kingdom and Antidumping Duty Orders*, 81 FR 64432 (September 20, 2016) (*Order*).

³ See *Hyundai Steel Company v. United States*, Slip Op. 18-80 Court No., 16-00228 dated June 28, 2018 (*Remand Order*) at 20-22.

⁴ *Id.* at 22-31.

⁵ *Id.* at 38-43.

⁶ *Id.* at 34.

assigned an AFA freight amount to U.S. sales for which Hyundai Steel secured freight services from affiliated parties,⁷ the Court found Commerce offered no justification as to why Commerce applied AFA freight amounts to U.S. sales for which Hyundai Steel either: (1) incurred no domestic inland freight or warehousing expense; or (2) the domestic inland freight or warehousing was provided by unaffiliated parties.⁸

Additionally, the Court determined that the AFA adjustment applied to Hyundai Steel's U.S. "Spec C" sales was not supported by substantial evidence.⁹ In the *Final Determination*, as AFA, Commerce selected the highest calculated rate for any other reported sale by Hyundai Steel.¹⁰ The Court sustained the application of an AFA rate on Hyundai Steel's Spec C sales.¹¹ However, the Court found the U.S. sale associated with the highest calculated rate for Hyundai Steel in the *Final Determination* to be aberrational.¹² The Court noted that the U.S. sale selected as AFA was invoiced in a different manner than other Hyundai Steel sales because of the nature of the product.¹³ Based on the foregoing, the Court remanded this matter to Commerce, and directed Commerce to select a AFA margin which was not based on an aberrational sale.¹⁴

The Court also directed Commerce to reconsider its denial of a CEP offset concerning Hyundai Steel's constructed export price (CEP) sales.¹⁵ The Court noted that Commerce determined that one level of trade (LOT) existed in the home market.¹⁶ The Court also noted that

⁷ *Id.* at 22-31.

⁸ *Id.* at 34.

⁹ *Id.* at 43-46. "Spec C" sales are sales that Hyundai Steel reported as commercial quality, which we determined to be to be of either drawing or deep drawing quality. See *Final Determination* and accompanying Issues and Decision Memorandum (IDM) at Comment 12.

¹⁰ See *Final Determination* and accompanying IDM at Comment 12.

¹¹ See *Remand Order* at 39-41.

¹² *Id.* at 43-46.

¹³ *Id.* at 45.

¹⁴ *Id.* at 46.

¹⁵ *Id.* at 47-49.

¹⁶ *Id.* at 47-48 (citing *Final Determination* and accompanying IDM at Comment 18).

Commerce found Hyundai Steel to have three channels of distribution in the U.S. market: Channel 1 sales (export price (EP) sales through unaffiliated Korean distributors); Channel 2 sales (CEP sales through Hyundai Steel's U.S. affiliates to unaffiliated processors); and Channel 3 sales (CEP sales through Hyundai Steel's U.S. affiliate to unaffiliated and affiliated U.S. processors). Finally, the Court noted that, regarding the LOT in the U.S. market, Commerce found: (1) that Hyundai Steel's Channel 1 and Channel 3 sales were at a more advanced LOT than Channel 2 sales; and (2) that Hyundai Steel's Channel 1 and Channel 3 sales were at the same LOT as its home market sales.¹⁷ The Court determined that Commerce's decision that Hyundai Steel's U.S. CEP sales were at the same LOT as Hyundai's home market sales "cannot be reconciled" with Commerce's determination that Hyundai Steel's Channel 2 U.S. sales are at a less advanced LOT than Hyundai Steel's Channel 1 and Channel 3 U.S. sales. Thus, the Court directed Commerce to reconsider this analysis and determination.¹⁸

Finally, the Court directed Commerce to reconsider whether to correct ministerial errors which Commerce had previously found to have no effect on the margin calculation and, thus, declined to correct in the LTFV investigation.¹⁹ The errors involved: (1) the magnitude by which the AFA rate selected on Hyundai Steel's Spec C sales exceeded the calculated rate set forth in Hyundai Steel's margin calculation;²⁰ and (2) the application of AFA for certain Hyundai Steel product matching control numbers (CONNUMs).²¹

¹⁷ *Id.* at 48 (citing *Final Determination* and accompanying IDM at Comment 18).

¹⁸ *Id.* at 49 (citing *Final Determination* and accompanying IDM at Comment 18).

¹⁹ *Id.* at 50.

²⁰ See Memorandum, "Re: Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Allegation of Ministerial Errors in the Final Determination," dated August 31, 2016 (Ministerial Error Memorandum) at 2-3.

²¹ *Id.* at 6-8.

On October 16, 2018, we filed our *Redetermination*.²² In our *Redetermination*, we removed our application of AFA for domestic movement expenses for transactions for which either Hyundai Steel did not incur domestic movement expenses or the movement expenses were provided by unrelated parties.²³ We also reanalyzed our application of AFA to Hyundai Steel's "Spec C" sales, and assigned a revised FA rate to Hyundai Steel's "Spec C" sales based on the instructions of the Court.²⁴ Additionally we reconsidered Hyundai Steel's claim for a CEP offset based on the instructions of the Court, and continued to determine that no constructed export price (CEP) offset is warranted on Hyundai Steel's U.S. sales.²⁵ Finally, we have determined that correction of the ministerial errors identified by the Court have no effect on Hyundai Steel's margin calculation.²⁶

On February 26, 2019, the Court sustained Commerce's *Redetermination*, and entered final judgment.²⁷

Timken Notice

In its decision in *Timken*, 893 F.2d at 341, as clarified by *Diamond Sawblades*, the Federal Circuit has held that, pursuant to section 516A(e) of the Act, Commerce must publish a notice of a court decision not "in harmony" with a Commerce determination and must suspend liquidation of entries pending a "conclusive" court decision. The Court's February 26, 2019, judgment sustaining the *Redetermination* constitutes a final decision of the Court that is not in harmony with the Department's *Amended Final Results and Order*. This notice is published in

²² See Final Results of Redetermination Pursuant to Court Remand, Certain Cold-Rolled Steel Flat Products from the Republic of Korea, *Hyundai Steel Company v. United States*, Court No. 16-00228, Slip Op. 18-80 (CIT June 28, 2018), dated October 16, 2018 (*Redetermination*), available at <http://enforcement.trade.gov/remands/index.htm>.

²³ *Id.* at 6-8.

²⁴ *Id.* at 8-9.

²⁵ *Id.* at 9-11.

²⁶ *Id.* at 12.

²⁷ See *Hyundai Steel Company v. United States*, Slip Op. 19-24 Court No., 16-00228 dated February 26, 2019 (*Final Judgement*).

fulfillment of the publication requirement of *Timken*. Accordingly, 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.

Amended Final Results

Because there is now a final court decision, Commerce amends the *Amended Final Results* of the Order with respect to the dumping margin of Hyundai Steel. The revised cash deposit rates for the LTFV investigation, is as follows:

Exporter	Weighted Average Dumping Margin (Percent)
Hyundai Steel Company	28.42

Cash Deposit Requirements

In accordance with section 735(c)(1)(B) of the Act, Commerce will instruct CBP to collect a cash deposit of 28.42 percent for entries of subject merchandise exported by Hyundai Steel, effective March 8, 2019, in accordance with the *Timken Notice*.

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

Dated: May 29, 2019.

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

[FR Doc. 2019-11578 Filed: 6/3/2019 8:45 am; Publication Date: 6/4/2019]