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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-914, C-570-915]

Antidumping and Countervailing Duty Orders on Light-Walled Rectangular Pipe and Tube from the People's Republic of China: Notice of Court Decision Not in Harmony with Final Scope Ruling and Notice of Amended Final Scope Ruling Pursuant to Court Decision

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

SUMMARY: The Department of Commerce (Commerce) is notifying the public that the Court of International Trade's (CIT) final judgment in this case is not in harmony with Commerce's final scope ruling and is, therefore, finding that certain finished components of refrigerated merchandising and display structures imported by Stein Industries Inc., d/b/a Carlson AirFlo Merchandising Systems (Carlson) are not within the scope of the antidumping (AD) and countervailing duty (CVD) orders on light-walled rectangular pipe and tube (LWRPT) from the People's Republic of China (China).

DATES: Applicable June 28, 2019.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3477.

SUPPLEMENTARY INFORMATION:

Background

Commerce issued the AD and CVD orders on LWRPT from China on August 5, 2008.¹ On May 29, 2018, in response to a scope ruling request filed by Carlson, Commerce issued its Final Scope Ruling, finding that certain finished components of refrigerated merchandising and display structures (part numbers R10447 and P0228321 and kit numbers 250172 and 250355) imported by Carlson are covered by the scope of the *Orders*.² Specifically, Commerce indicated that, “[a]ll four parts in their original form, that pertain to this scope inquiry, possess the physical characteristics of subject merchandise that are described in the scope.”³ As a result of the Final Scope Ruling, Commerce instructed U.S. Customs and Border Protection (CBP) to continue suspension of liquidation of entries of Carlson’s certain finished components of refrigerated merchandising and display structures.⁴

Carlson challenged Commerce’s Final Scope Ruling with respect to merchandising bar part number R10447 and welded mounted bar kit number 250355 before the CIT. On March 5, 2019, the CIT remanded the Final Scope Ruling, holding that Commerce did not address certain arguments raised by Carlson based on the plain scope language and the sources identified under

¹ See *Light-Walled Rectangular Pipe and Tube from Mexico, the People’s Republic of China, and the Republic of Korea: Antidumping Duty Orders; Light-Walled Rectangular Pipe and Tube from the Republic of Korea: Notice of Amended Final Determination of Sales at Less Than Fair Value*, 73 FR 45400 (August 5, 2008) and *Light-Walled Rectangular Pipe and Tube from the People’s Republic of China: Notice of Countervailing Duty Order*, 73 FR 45405 (August 5, 2008) (*Orders*).

² See Memorandum, “Final Scope Ruling on the Antidumping and Countervailing Duty Order on Light-Walled Rectangular Pipe and Tube from the People’s Republic of China: Carlson AirFlo Merchandising Systems Scope Ruling Request,” dated May 29, 2018 (Final Scope Ruling).

³ *Id.* at 7.

⁴ See Message Numbers 8150312 and 8150311 dated May 30, 2018.

19 CFR 351.225(k)(1).⁵ The CIT remanded the Final Scope Ruling to Commerce for reconsideration.⁶

Pursuant to the CIT's *Remand Order*, on remand, Commerce reconsidered its Final Scope Ruling and determined that Carlson's certain finished components of refrigerated merchandising and display structures (merchandising bar part number R10447 and welded mounted bar kit number 250355) do not fall within the scope of the *Orders*.⁷ Specifically, Commerce determined that the products do not exhibit a rectangular cross-section at the time of importation into the United States, as required by the scope of the *Orders*.⁸ On June 18, 2019, the CIT sustained Commerce's Final Remand Results.⁹

Timken Notice

In its decision in *Timken*,¹⁰ as clarified by *Diamond Sawblades*,¹¹ the Court of Appeals for the Federal Circuit (CAFC) held that, pursuant to section 516A(c) and (e) of the Tariff Act of 1930, as amended (the 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 CIT's June 18, 2019, judgment in this case constitutes a final decision of the court that is not in harmony with Commerce's Final Scope Ruling. This notice is published in fulfillment of the publication requirements of *Timken*. Accordingly, Commerce will continue the suspension of liquidation of certain finished components of refrigerated

⁵ See *Stein Industries Inc., D/B/A/ Carlson AirFlo Merchandising Systems v. United States*, Court No. 18-00150, Slip Op. 19-29 (CIT March 5, 2019) (*Remand Order*).

⁶ *Id.* at 14-17.

⁷ See Final Results of Redetermination Pursuant to Court Remand, *Stein Industries Inc., D/B/A/ Carlson AirFlo Merchandising Systems v. United States*, Court No. 18-00150, Slip Op. 19-29 (CIT March 5, 2019), dated May 30, 2019 (Final Remand Results).

⁸ *Id.* at 5-6.

⁹ See *Stein Industries Inc., D/B/A/ Carlson AirFlo Merchandising Systems v. United States*, Court No. 18-00150, Slip Op. 19-75 (CIT June 18, 2019).

¹⁰ See *Timken Co. v. United States*, 893 F. 2d 337, 341 (Fed. Cir. 1990) (*Timken*).

¹¹ See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F. 3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

merchandising and display structures (merchandising bar part number R10447 and welded mounted bar kit number 250355) imported by Carlson pending expiration of the period of appeal or, if appealed, pending a final and conclusive court decision.

Amended Final Scope Ruling

Because there is now a final court decision with respect to this case, Commerce is amending its final scope ruling and finds that the scope of the *Orders* do not cover certain finished components of refrigerated merchandising and display structures (merchandising bar part number R10447 and welded mounted bar kit number 250355) imported by Carlson. Commerce will instruct CBP that the cash deposit rate will be zero percent for certain finished components of refrigerated merchandising and display structures (merchandising bar part number R10447 and welded mounted bar kit number 250355) imported by Carlson. In the event that the CIT's ruling is not appealed, or if appealed, upheld by the CAFC, Commerce will instruct CBP to liquidate entries of certain finished components of refrigerated merchandising and display structures (merchandising bar part number R10447 and welded mounted bar kit number 250355) imported by Carlson without regard to antidumping duties, and to lift suspension of liquidation of such entries.

Notification to Interested Parties

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

Dated: September 11, 2019

Jeffrey I. Kessler,
Assistant Secretary

for Enforcement and Compliance.

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