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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 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 zinc and nylon anchors imported by Simpson Strong-Tie Company (Simpson), are not within the scope of the antidumping duty order on certain steel nails (nails) from the People's Republic of China (China).

DATES: Applicable August 4, 2019.

FOR FURTHER INFORMATION CONTACT: Annathea Cook, Office V, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0250.

SUPPLEMENTARY INFORMATION:

Background

On March 10, 2016, Simpson submitted a scope request asking Commerce to confirm its claim that "Zinc NailonTM" anchors and "Nylon NailonTM" anchors¹ are outside the scope of the

¹ See Simpson's Letter, "Certain Steel Nails from the People's Republic of China (A-570-909) for Simpson Strong-Tie and Certain "Zinc and "Nylon NailonTM" Pin Drive Anchors," dated July 21, 2016 (Scope Request).

antidumping duty order on nails from China.² Simpson described the zinc and nylon anchors as consisting of two parts: (1) a zinc alloy or nylon body; and (2) a carbon and stainless steel pin.³

Commerce issued its Final Scope Ruling on March 20, 2017, finding that Simpson’s zinc and nylon anchors were subject to the scope of the *Order* based upon the plain meaning of the *Order* and the description of the zinc and nylon anchors contained in Simpson’s scope ruling request.⁴ Commerce also found that several sources under 19 CFR 351.225(k)(1) – particularly the petition, the final determination of the International Trade Commission (ITC) issued in connection with the underlying investigation, and prior scope rulings – further supported Commerce’s determination that Simpson’s zinc and nylon anchors fall within the scope of the *Order*.⁵ 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 Simpson’s zinc and nylon anchors.⁶

Simpson challenged Commerce’s Final Scope Ruling before the CIT. On September 21, 2018, the CIT remanded the Final Scope Ruling, holding that Simpson’s zinc and nylon anchors are not a “nail” within the plain meaning of the word and are, therefore, outside the scope of the *Order*.⁷ The CIT relied on dictionary definitions to determine the definition of “nail” and concluded that, because Simpson’s zinc and nylon anchors are a unitary article of commerce, the entire product, not just a component part, must fit the definition of a nail to fall within the scope

² See *Antidumping Duty Order: Certain Steel Nails from the People’s Republic of China*, 73 FR 44961 (August 1, 2008) (*Order*).

³ See Scope Request at 3-4, and 18.

⁴ See Memorandum, “Antidumping and Countervailing Duty Orders on Certain Steel Nails from the People’s Republic of China: Final Scope Ruling on Simpson Strong-Tie Company’s Anchors,” dated March 20, 2017 (Final Scope Ruling).

⁵ *Id.* at 12-13.

⁶ See Message Number 7125304, dated May 5, 2017.

⁷ See *Simpson Strong-Tie Company, v. United States*, Court No. 17-00057, Slip Op. 18-123 (CIT 2018) (*Remand Order*).

of the *Order*.⁸ Therefore, the CIT held that the entire zinc or nylon anchor is not a nail “constructed of two or more pieces” pursuant to the *Order*.⁹ Additionally, the CIT held that, because the relevant industry classifies anchors with a steel pin as anchors, not nails, trade usage further supports the conclusion that Simpson’s zinc and nylon anchors are not nails.¹⁰ In support of its conclusion, the CIT cited its decision in *OMG, Inc. v. United States*, in which it found a product with a zinc anchor body and a steel pin outside the scope of the antidumping duty order on certain steel nails from the Socialist Republic of Vietnam.¹¹

The CIT remanded the Final Scope Ruling to Commerce for further consideration consistent with the CIT’s opinion.¹² The CIT also directed Commerce to issue appropriate instructions to CBP regarding the suspension of liquidation of Simpson’s zinc and nylon anchors.¹³

Pursuant to the CIT’s instructions, on remand, under respectful protest, Commerce found that Simpson’s zinc and nylon anchors do not fall within the scope of the *Order*.¹⁴ On July 25, 2019, the CIT sustained Commerce's Final Remand Results.¹⁵

Timken Notice

In its decision in *Timken*,¹⁶ as clarified by *Diamond Sawblades*,¹⁷ the Court of Appeals for the Federal Circuit (CAFC) held that, pursuant to sections 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

⁸ See *Remand Order*, Slip Op. 18-123 at 10-11.

⁹ *Id.* at 11.

¹⁰ *Id.* at 11-12.

¹¹ *Id.* at 12-13 (citing *OMG, Inc. v. United States*, Court No. 17-00036, Slip. Op. 18-63 (CIT 2018)).

¹² *Id.* at 15.

¹³ *Id.*

¹⁴ See Final Results of Redetermination Pursuant to Court Remand, *Simpson Strong-Tie Company, v. United States*, Court No. 17-00057, Slip Op. 18-123 (CIT September 21, 2018), dated December 20, 2018 (Final Remand Results).

¹⁵ See *Simpson Strong-Tie Company, v. United States*, Court No. 17-00057, Slip Op. 19-93 (CIT 2019).

¹⁶ See *Timken Co. v. United States*, 893 F. 2d 337, 341 (Fed. Cir. 1990) (*Timken*).

¹⁷ See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F. 3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

“in harmony” with a Commerce determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT’s July 25, 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 components for nails 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 *Order* does not cover the zinc and nylon anchors specified in Simpson’s Scope Request. Commerce will instruct CBP that the cash deposit rate will be zero percent for zinc and nylon articles subject to Simpson’s Scope Request. 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 Simpson’s zinc and nylon anchors 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 section 516A(e)(1) of the Act.

Dated: September 12, 2019.

James Maeder,
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations.

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