



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-967; C-570-968]

Aluminum Extrusions from the People's Republic of China: Notice of Court Decision Not in Harmony with Final Determination and Notice of Amended Final Determination of Circumvention Pursuant to Court Decision

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

SUMMARY: On December 18, 2019, the United States Court of International Trade (the Court) issued final judgment in *Tai-Ao Aluminum (Taishan) Co., Ltd. et al. v. United States*, Consol. Court No. 17-00216, Slip Op. 19-164 (CIT December 18, 2019), sustaining the Department of Commerce's (Commerce) remand results for the anti-circumvention determination of the antidumping duty (AD) and countervailing duty (CVD) orders on aluminum extrusions from the People's Republic of China (China). Commerce is notifying the public that the Court has made a final judgment that is not in harmony with Commerce's final circumvention determination, and that Commerce is amending the final circumvention determination with respect to certain importers.

DATES: December 28, 2019.

FOR FURTHER INFORMATION CONTACT: Heather Lui or Erin Kearney, 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) 482-0016 or (202) 482-0167, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the *Final Circumvention Determination* on July 26, 2017, finding that certain extruded aluminum products that meet the chemical specifications for 5050-grade aluminum alloy, which are heat-treated, are circumventing the AD and CVD orders¹ on aluminum extrusions from China.² Tai-Ao Aluminum (Taishan) Co., Ltd. and TAAL America Ltd. (collectively, Tai-Ao) and Regal Ideas Inc. (Regal) filed an action before the Court to challenge Commerce’s *Final Circumvention Determination*.

On June 7, 2019, the Court affirmed Commerce’s determination that heat-treated extruded aluminum products from China that meet the chemical specifications for 5050-grade aluminum alloy, regardless of producer, exporter, or importer, are circumventing the *Orders* under section 781(d) of the Tariff Act of 1930, as amended (the Act) as later-developed merchandise.³ However, the Court found that Commerce erred in retroactively applying the determination to the date of the *Initiation Notice*,⁴ rather than the date of the *Preliminary Determination*,⁵ with respect to Tai-Ao and Regal, and remanded the issue to Commerce “to reformulate its liquidation instructions consistent with this opinion {.”⁶

¹ See *Aluminum Extrusions from the People’s Republic of China: Antidumping Duty Order*, 76 FR 30650 (May 26, 2011); and *Aluminum Extrusions from the People’s Republic of China: Countervailing Duty Order*, 76 FR 30653 (May 26, 2011) (collectively, *Orders*).

² See *Aluminum Extrusions from the People’s Republic of China: Affirmative Final Determination of Circumvention of the Antidumping and Countervailing Duty Orders and Rescission of Minor Alterations Anti-Circumvention Inquiry*, 82 FR 34630 (July 26, 2017) (*Final Circumvention Determination*) and accompanying Issues and Decision Memorandum.

³ See *Tai-Ao Aluminum (Taishan) Co., Ltd. et al. v. United States*, Court No. 17-00216, Slip Op. 19-70 (CIT June 7, 2019) (*Remand Order*).

⁴ See *Aluminum Extrusions from the People’s Republic of China: Initiation of Anti-Circumvention Inquiry*, 81 FR 15039 (March 21, 2016) (*Initiation Notice*).

⁵ See *Aluminum Extrusions from the People’s Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping and Countervailing Duty Orders and Intent To Rescind Minor Alterations Anti-Circumvention Inquiry*, 81 FR 79444 (November 14, 2016) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum.

⁶ See *Remand Order*.

Commerce issued its Results of Redetermination on July 22, 2019, in which it stated its intent to instruct U.S. Customs and Border Protection (CBP) that entries of extruded aluminum products that meet the chemical specifications for 5050 grade aluminum alloy and are heat-treated, are outside the scope of the *Orders* if they: (1) were the subject of Commerce’s *Final Circumvention Determination*; (2) were exported from China by Tai-Ao Aluminum (Taishan) Co., Ltd. and/or imported into the United States by TAAL America Ltd.; (3) were entered, or withdrawn from warehouse, for consumption during the period March 21, 2016 through November 13, 2016; and (4) remain unliquidated as of September 15, 2017.⁷ Commerce included draft instructions to CBP related to Tai-Ao in its Results of Redetermination and stated its intent to issue those instructions: (1) should the Court issue a final decision in which it affirms Commerce’s final remand redetermination; and (2) after Commerce has issued its “Notice of Court Decision Not in Harmony With Final Determination of Circumvention and Notice of Amended Final Determination of Circumvention Pursuant to Court Decision.”⁸ With respect to Regal, Commerce stated in its Results of Redetermination that there are no applicable entries which have been imported by Regal during the period March 21, 2016 through November 13, 2016. Accordingly, Commerce did not prepare instructions with respect to Regal.⁹

On December 18, 2019, the Court sustained Commerce’s Results of Redetermination, and entered final judgment.¹⁰

⁷ See Final Results of Redetermination Pursuant to Court Remand, *Tai-Ao Aluminum (Taishan) Co., Ltd. et al. v. United States*, Court No. 17-00216, Slip Op. 19-70 (CIT June 7, 2019), dated July 22, 2019 (Results of Redetermination).

⁸ *Id.*

⁹ *Id.*

¹⁰ See *Tai-Ao Aluminum (Taishan) Co., Ltd. et al. v. United States*, Court No. 17-00216, Slip Op. 19-164 (CIT Dec. 18, 2019).

Timken Notice

In its decision in *Timken*,¹¹ as clarified by *Diamond Sawblades*,¹² the United States Court of Appeals for the Federal Circuit (CAFC) held that, pursuant to section 516A(e) of 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 Court’s December 18, 2019 judgment sustaining Commerce’s Results of Redetermination constitutes a final decision of the Court that is not in harmony with Commerce’s *Final Circumvention Determination*. This notice is published in fulfillment of the publication requirement of *Timken*.

Amended Final Determination of Circumvention

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 CBP that entries of extruded aluminum products that meet the chemical specifications for 5050 grade aluminum alloy and are heat-treated, are outside the scope of the *Orders* if they: (1) were the subject of Commerce’s *Final Circumvention Determination*; (2) were exported from China by Tai-Ao Aluminum (Taishan) Co., Ltd. and/or imported into the United States by TAAL America Ltd.; (3) were entered, or withdrawn from warehouse, for consumption during the period March 21, 2016 through November 13, 2016; and (4) remain unliquidated as of September 15, 2017.

¹¹ See *Timken Co., v. United States*, 893 F.2d 337, 341 (Fed. Cir. 1990) (*Timken*).

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

This notice is issued and published in accordance with sections 516(A)(e), 781(d), and 777(i)(1) of the Act.

Dated: December 27, 2019.

Jeffrey I. Kessler,
Assistant Secretary
for Enforcement and Compliance.
[FR Doc. 2019-28389 Filed: 1/2/2020 8:45 am; Publication Date: 1/3/2020]