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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-053]

Certain Aluminum Foil from the People's Republic of China: Notice of Court Decision Not in Harmony with Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order

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

SUMMARY: On March 9, 2020, the United States Court of International Trade (the Court) issued final judgment in *Jiangsu Zhongji Lamination Materials Co., (HK) Ltd., Jiangsu Zhongji Lamination Materials Stock Co., Ltd., Jiangsu Zhongji Lamination Materials Stock Co., Ltd., and Jiangsu Huafeng Aluminum Industry Co., Ltd. v. United States*, Court No. 18-00091, 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*, (Fed. Cir. 1990) (*Timken*), as clarified by *Diamond Sawblades Mfrs. Coalition v. United States*, (Fed. Cir. 2010) (*Diamond Sawblades*), Commerce is notifying the public that the final judgment in this case is not in harmony with Commerce's decision in *Certain Aluminum Foil from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, (April 19, 2018)(*Amended Final Determination*).

Commerce is amending the amended final results with respect to the weighted-average dumping margin assigned to Jiangsu Zhongji Lamination Materials Co., (HK) Ltd., Jiangsu Zhongji Lamination Materials Stock Co., Ltd., Jiangsu Zhongji Lamination Materials Stock Co., Ltd., and Jiangsu Huafeng Aluminum Industry Co., Ltd. (collectively Zhongji).

DATES: Applicable March 19, 2020.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or Chelsey Simonovich, 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) 482-1979, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 15, 2019, the Court sustained Commerce on the following issues: (1) the selection of South Africa, rather than Bulgaria, as the source of surrogate values;<sup>1</sup> (2) the selection of international freight values used by Commerce in the *Final Determination*;<sup>2</sup> (3) Commerce's valuation of Zhongji's scrap;<sup>3</sup> and (4) Commerce's decision to defer issuance of its *Preliminary Determination*.<sup>4</sup> Furthermore, the Court found that Zhongji's arguments about the broader legitimacy of the irrevocable value-added tax (VAT) adjustment were not properly raised during the administrative proceeding.<sup>5</sup> In the *Final Determination* and *Amended Final Determination*,<sup>6</sup> Commerce based its calculation of Zhongji's VAT adjustment on the U.S. price

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<sup>1</sup> See *Jiangsu Zhongji Lamination Materials Co. (HK), Ltd., Jiangsu Zhongji Lamination Materials, Co., Ltd., Jiangsu Zhongji Lamination Materials Stock Co., Ltd., and Jiangsu Huafeng Aluminum Industry Co., Ltd. v. United States*, Court No. 18-00091, Slip Op. 19-111 (CIT August 15, 2019) (*Remand Order*) at 14-22.

<sup>2</sup> *Id.* at 24-26.

<sup>3</sup> See *Remand Order* at 22-23.

<sup>4</sup> *Id.* at 28-30. Commerce published the *Preliminary Determination* on November 2, 2017. See *Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination* 82 FR 50858 (November 2, 2017 (*Preliminary Determination*)) and accompanying Preliminary Decision Memorandum (PDM). Commerce issued a deferral notice on October 12, 2017. See also *Certain Aluminum Foil from the People's Republic of China: Deferral of Preliminary Determination of the Less Than Fair Value Investigation*, 82 FR 47481 (October 12, 2017); see also *Certain Aluminum Foil from the People's Republic of China: Deferral of Preliminary Determination of the Less Than Fair Value Investigation – Correction Notice*, 82 FR 48485 (October 18, 2017).

<sup>5</sup> See *Remand Order* at n.7.

<sup>6</sup> See *Certain Aluminum Foil from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 9282 (March 5, 2018) (*Final Determination*), and accompanying Issues and Decision Memorandum (IDM); see also *Amended Final Determination*.

of Zhongji's merchandise on resale by Jiangsu Zhongji Lamination Materials Co. (HK) (Zhongji HK), instead of the price at which Jiangsu Zhongji Lamination Materials, Co., Ltd., Jiangsu Zhongji Lamination Materials Stock Co., Ltd., and Jiangsu Huafeng Aluminum Industry Co., Ltd. (collectively, Jiangsu Zhongji) sold the merchandise to Zhongji HK.<sup>7</sup>

In *Fine Furniture I*, litigation arising from the first antidumping duty administrative review of multilayered hardwood flooring, the Court found that Commerce failed to reconcile the deduction for irrecoverable VAT that Commerce calculated with the amounts of irrecoverable VAT that were actually incurred upon exportation, and that Commerce's calculation was not supported by substantial evidence on the record, remanding the case for reconsideration.<sup>8</sup> On remand, Commerce modified its VAT calculations and found that the transfer price to respondent's affiliate was the actual base value from which irrecoverable VAT was calculated, because it was more appropriate to focus on achieving tax neutrality generally, rather than determining what taxes the GOC should have imposed.<sup>9</sup> Commerce's new VAT adjustment methodology was subsequently affirmed by this Court in *Fine Furniture II*.<sup>10</sup> The fact pattern in *Fine Furniture I* was similar to that in this case, as the respondent had a similar selling structure and certified that China used its transfer price to its affiliated, offshore reseller as the basis to collect VAT.<sup>11</sup> In accordance with Commerce's revised VAT adjustment calculation methodology, on February 25, 2019, the United States requested a voluntary remand concerning its calculation of the VAT adjustment.<sup>12</sup>

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<sup>7</sup> See *Final Determination* and IDM at Comment 4.

<sup>8</sup> See *Fine Furniture (Shanghai) Limited, et al. v. United States*, 182 F. Supp.3d 1350, 1358-59 (CIT 2016) (*Fine Furniture I*).

<sup>9</sup> See *Fine Furniture (Shanghai) Limited, et al. v. United States*, 321 F. Supp. 3d 1282, 1288 (CIT 2018) (*Fine Furniture II*) (citing to Final Remand Redetermination pursuant to *Fine Furniture I*).

<sup>10</sup> *Id.*

<sup>11</sup> See *Remand Order* at 27.

<sup>12</sup> See *Remand Order* at 27 (citing Commerce's February 25, 2019 56.2 Opposition Brief at 39-40).

On November 12, 2019, we filed our *Redetermination*.<sup>13</sup> In our *Redetermination*, we based our calculation of the VAT adjustment on the sale of Jiangsu Zhongji to their affiliated reseller, Zhongji HK.

On March 9, 2020, the Court sustained Commerce's *Redetermination*, and entered its final judgment.<sup>14</sup>

### Timken Notice

In its decision in *Timken*, 893 F.2d at 341, as clarified by *Diamond Sawblades*, the Federal Circuit held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (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 March 9, 2020 judgment sustaining the *Redetermination* constitutes a final decision of the Court that is not in harmony with Commerce's *Amended Final Determination* and Order. This notice is published in 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 Determination

Because there is now a final court decision, Commerce amends the *Amended Final Determination* with respect to Zhongji. The revised cash deposit rates for the LTFV investigation, is as follows:

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<sup>13</sup> See Final Remand Redetermination pursuant to *Jiangsu Zhongji Lamination Materials Co. (HK), Ltd., Jiangsu Zhongji Lamination Materials, Co., Ltd., Jiangsu Zhongji Lamination Materials Stock Co., Ltd., and Jiangsu Huafeng Aluminum Industry Co., Ltd. v. United States*, Court No. 18-00091, Slip Op. 19-111 (CIT August 15, 2019) (*Redetermination*).

<sup>14</sup> See *Jiangsu Zhongji Lamination Materials Co. (HK), Ltd., Jiangsu Zhongji Lamination Materials, Co., Ltd., Jiangsu Zhongji Lamination Materials Stock Co., Ltd., and Jiangsu Huafeng Aluminum Industry Co., Ltd. v. United States*, Court No. 18-00091, Slip Op. 20-30 (CIT March 9, 2020).

Producer	Exporter	Weighted Average Dumping Margin (Percent)
Jiangsu Zhongji Lamination Materials Stock Co., Ltd./ Jiangsu Zhongji Lamination Materials Co., Ltd./ Jiangsu Huafeng Aluminum Industry Co., Ltd.	Jiangsu Zhongji Lamination Materials Co., (HK) Ltd.	48.30

Cash Deposit Requirements

In accordance with section 735(c)(1)(B) of the Act, Commerce will instruct CBP to collect a cash deposit of 48.30 percent for entries of subject merchandise exported by Zhongji, effective March 19, 2020, 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: March 19, 2020.

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

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