



## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-475-832; C-475-833; A-570-026; C-570-027]

#### Corrosion-Resistant Steel Products from Italy and 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. Commerce is therefore amending its scope ruling to find that certain corrosion-resistant steel (CORE) products exported by Trendium Pools, Inc. (Trendium) are not within the scope of the antidumping (AD) and countervailing duty (CVD) orders on CORE products from Italy and the People's Republic of China (China).

DATES: Applicable March 29, 2020

FOR FURTHER INFORMATION CONTACT: Lauren Caserta, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4737.

#### SUPPLEMENTARY INFORMATION:

##### **Background**

On February 9, 2018, Trendium submitted a complete scope ruling request,<sup>1</sup> asking

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<sup>1</sup> See Trendium's Letter, "Certain Corrosion-Resistant Steel Products from India, Italy, the People's Republic of

Commerce to confirm its claim that pool kits and individual pool walls containing components manufactured from CORE of Chinese and Italian origin are outside the scope of the AD and CVD *Orders* on CORE from Italy and China.<sup>2</sup>

Commerce issued its Final Scope Ruling on May 10, 2018. In evaluating the merchandise at issue, which included potentially subject merchandise as components, Commerce looked to the Court of Appeals for the Federal Circuit's (Federal Circuit) reasoning in *Mid Continent Corporation v. United States*<sup>3</sup> for guidance. As a result of this analysis, Commerce determined that the components of Trendium's pool kits and pool walls manufactured from Italian- and Chinese-origin CORE that otherwise satisfy the size and composition requirements of the *Orders* are covered by the scope of the *Orders*. As a result of the Final Scope Ruling, Commerce instructed U.S. Customs and Border Protection (CBP) to continue the suspension of liquidation of entries of certain CORE products from Italy and China by Trendium, including components of pool kits and pool walls that have been fabricated by Trendium from CORE manufactured in Italy or China.<sup>4</sup>

Trendium challenged Commerce's Final Scope Ruling before the CIT. On August 20, 2019, the CIT issued its decision, holding that Commerce had erred in relying on *Mid Continent* and conducting the two-step analysis explained therein because, in the Court's opinion, the

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China, Korea and Taiwan, Scope Ruling Request for Finished Pool Kits and Pool Walls," dated November 28, 2017; see also Trendium's Letter, "Certain Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, Korea and Taiwan, Supplemental Questionnaire Response Regarding Scope Ruling Request for Finished Pool Kits and Pool Walls," dated February 9, 2018.

<sup>2</sup> See *Certain Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea and Taiwan: Amended Final Affirmative Antidumping Determination for India and Taiwan, and Antidumping Duty Orders*, 81 FR 48390 (July 25, 2016), and *Certain Corrosion-Resistant Steel Products from India, Italy, Republic of Korea and the People's Republic of China: Countervailing Duty Order*, 81 FR 48387 (July 25, 2016) (collectively, the *Orders*).

<sup>3</sup> See *Mid Continent Nail Corporation v. United States*, 725 F.3d 1295 (Fed. Cir. 2013) (*Mid Continent*).

<sup>4</sup> See Message Numbers 8141305, 8141304, 8040303, and 8141312, dated May 21, 2018.

record evidence showed that Trendium’s pool products were finished goods.<sup>5</sup> The CIT also concluded that Trendium’s pool products were not covered by scope of the *Orders* because, in its view, the plain language of the *Orders* excluded downstream products and the information relied upon by Commerce did not support finding otherwise.<sup>6</sup> The CIT remanded the Final Scope Ruling to Commerce for further consideration, consistent with the CIT’s opinion.<sup>7</sup>

Pursuant to the CIT’s instructions, on remand, and under respectful protest, Commerce found that the CORE components of Trendium’s pool kits and pool walls manufactured from Chinese- and Italian-origin CORE did not fall within the scope of the *Orders*.<sup>8</sup> On March 19, 2020, the CIT sustained Commerce’s Final Remand Results.<sup>9</sup>

### **Timken Notice**

In its decision in *Timken*,<sup>10</sup> as clarified by *Diamond Sawblades*,<sup>11</sup> the Federal Circuit 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 “in harmony” with a Commerce determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT’s March 19, 2020 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*.

### **Amended Final Scope Ruling**

There is now a final court decision with respect to the Trendium Final Scope Ruling.

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<sup>5</sup> See *Trendium Pool Products, Inc. v. United States*, Court No. 18-00132, Slip Op. 19-113 (CIT August 20, 2019) at 11 n.3.

<sup>6</sup> *Id.* at 10, 14, 16.

<sup>7</sup> *Id.* at 17-18.

<sup>8</sup> See Final Results of Redetermination Pursuant to Court Remand, *Trendium Pool Products, Inc. v. United States*, Court No. 18-00132, Slip Op. 19-113 (CIT August 20, 2019), dated November 17, 2019 (Final Remand Results).

<sup>9</sup> See *Trendium Pool Products, Inc. v. United States*, Court No. 18-00132, Slip Op. 20-36 (CIT March 19, 2020) at 1.

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

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

Therefore, Commerce is amending its scope ruling and finds that the scope of the *Orders* does not cover the products addressed in the Final Scope Ruling and the Final Remand Results. The period to appeal the CIT's ruling expired on May 18, 2020. Because no parties appealed the CIT's ruling, Commerce will instruct CBP to lift suspension of liquidation of the CORE components subject to Trendium's Scope Request and to liquidate such entries without regard to antidumping or countervailing duties. In addition, Commerce will instruct CBP to release any cash deposits collected pursuant to the *Orders* on such entries currently awaiting liquidation.

**Notification to Interested Parties**

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

Dated: June 16, 2020.

Jeffrey I. Kessler,  
Assistant Secretary

for Enforcement and Compliance.

[FR Doc. 2020-13642 Filed: 6/23/2020 8:45 am; Publication Date: 6/24/2020]