



## 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:** On July 12, 2021, the U.S. Court of International Trade (CIT) issued its final judgment in *Midwest Fastener Corp. v. United States*, Court No. 17-00231, sustaining the Department of Commerce's (Commerce's) remand redetermination pertaining to a scope ruling in which Commerce found Midwest Fastener Corp. (Midwest)'s strike pin anchors to be outside the scope of the antidumping duty (AD) order on certain steel nails from the People's Republic of China. Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's scope ruling, and that Commerce is amending the scope ruling to find that Midwest's strike pin anchors are not covered by the order.

**DATES:** Applicable July 22, 2021.

**FOR FURTHER INFORMATION CONTACT:** Kelsie Hohenberger, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-2517.

## SUPPLEMENTARY INFORMATION:

### Background

On August 2, 2017, Commerce found Midwest’s strike pin anchors, which consist of four components—a steel pin, a threaded body, a nut, and a flat washer—to be within the scope of the AD order on certain steel nails from the People’s Republic of China.<sup>1</sup>

Midwest appealed Commerce’s *Final Scope Ruling*. On October 19, 2018, the CIT remanded Commerce’s scope ruling to Commerce for further consideration.<sup>2</sup> On April 25, 2019, Commerce issued its First Remand Redetermination, determining that the “pin” portion “of the product is subject to the {*Order*}, while the additional pieces, *i.e.*, the outer-body anchor, hex nut, and washer anchor, would not be subject.”<sup>3</sup>

On March 4, 2020, the CIT again remanded Commerce’s scope determination.<sup>4</sup> Pursuant to the *Second Remand Order*, on June 17, 2020, Commerce issued its Second Remand Redetermination, finding that Midwest’s strike pin anchors, in their entirety, are covered by the scope of the *Order*.<sup>5</sup>

On August 28, 2020, the U.S. Court of Appeals for the Federal Circuit (CAFC) issued its final decision in *OMG*.<sup>6</sup> In light of the CAFC’s decision, on January 21, 2021, the CIT remanded the *Final Scope Ruling* to Commerce.<sup>7</sup>

---

<sup>1</sup> See Memorandum, “Antidumping and Countervailing Duty Orders on Certain Steel Nails from the People’s Republic of China: Final Scope Ruling on Midwest Fastener Strike Pin Anchors,” dated August 2, 2017 (*Final Scope Ruling*); see also *Notice of Antidumping Duty Order: Certain Steel Nails from the People’s Republic of China*, 73 FR 44961 (August 1, 2008) (*Order*).

<sup>2</sup> See *Midwest Fastener Corp., v. United States*, 348 F. Supp. 3d 1297 (CIT October 19, 2018).

<sup>3</sup> See Final Results of Redetermination Pursuant to Court Remand (First Remand Redetermination), *Midwest Fastener Corp., v. United States Court*, No. 17-00231, Slip Op. 18-142 (CIT October 19, 2018) (First Remand Redetermination).

<sup>4</sup> See *Midwest Fastener Corp., v. United States*, 435 F. Supp. 3d 1262 (CIT March 4, 2020) (*Second Remand Order*).

<sup>5</sup> See Final Results of Redetermination Pursuant to Court Remand, *Midwest Fastener Corp., v. United States*, Court No. 17-00231, Slip Op. 20-28 (CIT March 4, 2020) (Second Remand Redetermination).

<sup>6</sup> See *OMG, Inc. v. United States*, 972 F.3d 1358 (Fed. Cir. 2020) (*OMG*).

<sup>7</sup> See *Midwest Fastener Corp., v. United States*, 494 F. Supp. 3d 1335 (CIT January 21, 2021).

In its final remand redetermination, issued in March 2021, Commerce found Midwest's strike pin anchors to be outside the scope of the *Order*.<sup>8</sup> The CIT sustained Commerce's final redetermination.<sup>9</sup>

### Timken Notice

In its decision in *Timken*,<sup>10</sup> as clarified by *Diamond Sawblades*,<sup>11</sup> the 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 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 July 12, 2021, judgment constitutes a final decision of the CIT that is not in harmony with Commerce's *Final Scope Ruling*. Thus, this notice is published in fulfillment of the publication requirements of *Timken*.

### Amended Final Scope Ruling

In accordance with the CIT's July 12, 2021, final judgment, Commerce is amending its *Final Scope Ruling* and finds that the scope of the order does not cover the products addressed in the *Final Scope Ruling*.

### Liquidation of Suspended Entries

Commerce will instruct U.S. Customs and Border Protection (CBP) that, pending any appeals, Midwest's strike pin anchors will not be subject to a cash deposit requirement.

In the event that the CIT's final judgment is not appealed or is upheld on appeal, Commerce will instruct CBP to liquidate entries of Midwest's strike pin anchors without regard to antidumping duties and to lift suspension of liquidation of such entries.

---

<sup>8</sup> See Final Results of Redetermination Pursuant to *Midwest Fastener Corp., v. United States*, Court No. 17-00231, Slip Op. 21-07 (CIT January 21, 2021), dated March 23, 2021.

<sup>9</sup> See *Midwest Fastener Corp., v. United States*, Slip Op. 21-86, Court No. 17-00231 (CIT July 12, 2021).

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

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

At this time, Commerce remains enjoined by CIT from liquidating entries included in the scope of the *Order* by the *Final Scope Ruling*. These entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

Notification to Interested Parties

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

Dated: July 19, 2021.

**Christian Marsh,**

*Acting Assistant Secretary*

*for Enforcement and Compliance.*

[FR Doc. 2021-15741 Filed: 7/22/2021 8:45 am; Publication Date: 7/23/2021]