



DEPARTMENT OF COMMERCE

International Trade Administration

[A-428-844]

Certain Carbon and Alloy Steel Cut-to-Length Plate from the Federal Republic of Germany: Notice of Court Decision Not in Harmony with the Amended Final Determination of Antidumping Investigation; Notice of Second Amended Final Determination

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

SUMMARY: On December 21, 2023, the U.S. Court of International Trade (CIT) issued its final judgment in *AG der Dillinger Hüttenwerke v. United States*, Court No. 17-00158, sustaining the U.S. Department of Commerce's (Commerce) fourth final results of redetermination pertaining to the antidumping duty (AD) investigation of certain carbon and alloy steel cut-to-length plate (CTL plate) from the Federal Republic of Germany (Germany) covering the period April 1, 2015, through March 31, 2016. Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's amended final determination and Commerce is amending the amended final determination with respect to the dumping margins assigned to AG Der Dillinger Hüttenwerke (Dillinger) and all other producers and exporters of subject merchandise.

DATES: Applicable December 31, 2023.

FOR FURTHER INFORMATION CONTACT: Adam Simons, AD/CVD Operations, Office IX, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-6172.

SUPPLEMENTARY INFORMATION:

Background

On April 4, 2017, Commerce published its final determination in the AD investigation of CTL plate from Germany.¹ After correcting ministerial errors in the *Final Determination*, on May 25, 2017, Commerce published the *Amended Final Determination*, calculating estimated weighted-average dumping margins of: 5.52 percent for Dillinger; 22.90 percent for Ilsenburger Grobblech GmbH, Salzgitter Mannesmann Grobblech GmbH, Salzgitter Flachstahl GmbH, and Salzgitter Mannesmann International GmbH (collectively, Salzgitter); and 21.04 percent for all other producers and exporters.² In this same notice, Commerce published its AD order on CTL plate from Germany.

Dillinger and Salzgitter appealed Commerce's *Amended Final Determination*. On July 16, 2019, the CIT remanded to Commerce to reconsider its application of partial adverse facts available (AFA) to certain downstream home market sales reported by Dillinger.³ Pursuant to *Dillinger Germany I*, Commerce reconsidered how it applied partial AFA to these sales.⁴

On August 18, 2021, in *Dillinger Germany II*, the CIT remanded to Commerce to consider its reallocation of costs between prime and non-prime steel plate for Dillinger, among other Dillinger cost issues, as well as the application of a partial AFA methodology to certain downstream home market sales reported by Salzgitter.⁵ In parallel with *Dillinger Germany II*, the CIT issued a separate memorandum and order sustaining Commerce's rejection of Dillinger's proposed quality code for sour service pressure vessel plate and staying Dillinger's challenge to

¹ See *Certain Carbon and Alloy Steel Cut-to-Length Plate from the Federal Republic of Germany: Final Determination of Sales at Less Than Fair Value*, 82 FR 16360 (April 4, 2017) (*Final Determination*).

² See *Certain Carbon and Alloy Steel Cut-to-Length Plate from Austria, Belgium, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, and Taiwan: Amended Final Affirmative Antidumping Determinations for France, the Federal Republic of Germany, the Republic of Korea and Taiwan, and Antidumping Duty Orders*, 82 FR 24096 (May 25, 2017) (*Amended Final Determination*).

³ See *AG der Dillinger Hüttenwerke v. United States*, 399 F. Supp. 3d 1247 (CIT 2019) (*Dillinger Germany I*).

⁴ See *Final Results of Redetermination Pursuant to Court Remand, Certain Carbon and Alloy Steel Cut-to-Length Plate from Germany*, Court No. 17-00158, Slip Op. 19-87 (CIT July 16, 2019), dated October 8, 2019, available at <https://access.trade.gov/resources/remands/index.html>.

⁵ See *AG der Dillinger Hüttenwerke v. United States*, 534 F. Supp. 3d 1403 (CIT 2021) (*Dillinger Germany II*).

Commerce's rejection of the proposed quality code for sour service petroleum transport plate pending the outcome of the cost issues on remand.⁶

On September 23, 2022, in *Dillinger Germany III*, the CIT remanded to Commerce to again reconsider its selection of the facts otherwise available for determining the cost of production of Dillinger's non-prime products.⁷ On June 23, 2023, in *Dillinger Germany IV*, the CIT sustained Commerce's determination to assign the "likely selling price" recorded Dillinger's books and records as the cost of production for non-prime plate and the application of partial AFA to Salzgitte.⁸ However, the CIT remanded Commerce's model-match methodology, related specifically to Commerce's rejection of Dillinger's proposed quality code for sour service petroleum transport plate, for further explanation or, if appropriate, reconsideration in light of Commerce's approach in *Bohler*.⁹

In its final results of redetermination, issued on September 6, 2023, Commerce reconsidered its rejection of Dillinger's proposed quality code for sour service petroleum transport plate and included this quality code in the control numbers used in Dillinger's margin calculations.¹⁰ As a result of this change, Dillinger's final estimated weighted-average dumping margin became 4.99 percent. The CIT sustained Commerce's final results of redetermination.¹¹ While this revision to Dillinger's margin did not affect the calculation of the all-others rate,

⁶ See *Memorandum and Order*, ECF No. 121 (August 18, 2021).

⁷ See *AG der Dillinger Hüttenwerke v. United States*, 592 F. Supp. 3d 1344 (CIT 2022) (*Dillinger Germany III*).

⁸ See *AG der Dillinger Hüttenwerke v. United States*, Court No. 17-00158, Slip Op. 23-94 (CIT 2023) (*Dillinger Germany IV*).

⁹ See *Dillinger Germany IV*, Court No. 17-00158, Slip Op. 23-94 at 4 and 25; see also *Bohler Bleche GMBH & Co. KG v. United States*, 324 F. Supp. 3d 1344 (CIT 2018) (*Bohler*).

¹⁰ See *Final Results of Redetermination Pursuant to Court Remand: Certain Carbon and Alloy Steel Cut-to-Length Plate from Germany*, Court No. 17-00158, Slip Op. 23-94 (CIT June 23, 2023), dated September 6, 2023, available at <https://access.trade.gov/resources/remands/index.html>.

¹¹ See *AG Der Dillinger Hüttenwerke, v. United States*, Court No. 17-00158, Slip Op. 23-187 (CIT 2023).

Commerce revised the all-others rate to be 20.99 percent in the *Second Remand Redetermination*.¹² The CIT sustained this aspect of Commerce’s redetermination.¹³

Timken Notice

In its decision in *Timken*,¹⁴ as clarified by *Diamond Sawblades*,¹⁵ the U.S. Court of Appeals for the Federal Circuit held that, pursuant to section 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 December 21, 2023, judgment constitutes a final decision of the CIT that is not in harmony with Commerce’s *Amended Final Determination*. Thus, this notice is published in fulfillment of the publication requirements of *Timken*.

Amended Final Determination

Because there is now a final court judgment, Commerce is amending its *Amended Final Determination* with respect to Dillinger and all other producers and/or exporters as follows:

Producer/Exporter	Weighted-Average Dumping Margin (percent)
AG Der Dillinger Hüttenwerke	4.99
All Others	20.99

Cash Deposit Requirements

Because Dillinger has a superseding cash deposit rate, *i.e.*, there have been final results published in a subsequent administrative review, we will not issue revised cash deposit instructions to U.S. Customs and Border Protection (CBP). This notice will not affect the current cash deposit rate. For all other producers and exporters, Commerce will issue revised cash deposit instructions to CBP.

¹² See *Final Results of Redetermination Pursuant to Court Remand; Certain Carbon and Alloy Steel Cut-to-Length Plate from Germany*, Court No. 17-00158, Slip. Op. 21-101 (CIT August 18, 2021), dated January 19, 2022 (*Second Remand Redetermination*), available at <https://access.trade.gov/resources/remands/index.html>. As a result of this redetermination, Commerce reinstated the dumping margin for Salzgitter of 22.90 percent calculated in the *Amended Final Determination*.

¹³ See *Dillinger Germany III*.

¹⁴ See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

¹⁵ See *Diamond Sawblades Manufacturers Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

Notification to Interested Parties

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

Dated: January 5, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2024-00398 Filed: 1/10/2024 8:45 am; Publication Date: 1/11/2024]