

DEPARTMENT OF COMMERCE

International Trade Administration

[A-552-818, C-552-819]

Certain Steel Nails From the Socialist Republic of Vietnam: 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, therefore, is amending its final scope ruling and now finds that certain zinc and nylon anchors imported by Midwest Fastener Corp. (Midwest Fastener) are not within the scope of the antidumping and countervailing duty orders on certain steel nails from the Socialist Republic of Vietnam (Vietnam).

DATES: Applicable June 13, 2019.

FOR FURTHER INFORMATION CONTACT: Yasmin Bordas at (202) 482-3813, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:**Background**

On November 9, 2016, Midwest Fastener, an importer of zinc and nylon anchors, filed a request with Commerce for a scope ruling that its zinc and nylon anchors should be excluded from the scope of the antidumping and countervailing duty *Orders*¹ on certain steel nails from Vietnam.² Midwest Fastener described the zinc and nylon anchors as a unitary article of commerce consisting of two parts: (1) A zinc alloy or nylon body; and (2) a zinc plated steel pin.³

On May 17, 2017, Commerce issued its Final Scope Ruling, in which it determined that Midwest Fastener's zinc and nylon anchors are

unambiguously within the scope of the *Orders* based upon the plain meaning of the *Orders* and the description of the zinc and nylon anchors contained in Midwest Fastener's scope ruling request and supplemental questionnaire responses.⁴ Commerce also found that several factors under 19 CFR 351.225(k)(1)—particularly the petition, the final determination of the International Trade Commission (ITC) issued in connection with the underlying investigation, and prior scope rulings—further supported Commerce's determination that Midwest Fastener's zinc and nylon anchors fall within the scope of the *Orders*.⁵ As a result of the Final Scope Ruling, Commerce instructed U.S. Customs and Border Protection (CBP) to continue suspension of liquidation of entries of Midwest Fastener's zinc and nylon anchors.⁶

Midwest Fastener challenged the Final Scope Ruling before the CIT, and on October 1, 2018, the CIT remanded Commerce's scope ruling.⁷ In its *Remand Order*, the CIT held that Midwest Fastener's zinc and nylon anchors, as unitary articles of commerce, are not a "nail" within the plain meaning of the word and are, therefore, outside the scope of the *Orders*.⁸ The CIT relied on dictionary definitions to determine the definition of "nail" and concluded that, because Midwest Fastener's zinc and nylon anchors are a unitary article of commerce, the entire product, not just a component part, must fit the definition of a nail to fall within the scope of the *Orders*.⁹ The CIT held that the entire zinc or nylon anchor is not a nail "constructed of two or more pieces" pursuant to the *Orders*.¹⁰ Additionally, the CIT held that, because the relevant industry classifies anchors with a steel pin as anchors, not nails, trade usage further supports the conclusion that Midwest Fastener's zinc and nylon anchors are not nails.¹¹ In support of its conclusion, the CIT cited its decision in *OMG, Inc. v. United States*, in which it found a product with a zinc anchor

body and a steel pin outside the scope of the *Orders*.¹²

The CIT remanded the Final Scope Ruling to Commerce for further consideration consistent with the CIT's opinion.¹³ The CIT also directed Commerce to issue appropriate instructions to CBP regarding the suspension of liquidation of Midwest Fastener's zinc and nylon anchors.¹⁴

Pursuant to the CIT's instructions, on remand, under protest, Commerce found that Midwest Fastener's zinc and nylon anchors do not fall within the scope of the *Orders*.¹⁵ On June 3, 2019, the CIT sustained Commerce's Final Remand Results.¹⁶

Timken Notice

In its decision in *Timken*,¹⁷ as clarified by *Diamond Sawblades*,¹⁸ the Court of Appeals for the Federal Circuit (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 Commerce's determination and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's June 3, 2019 judgment in this case, sustaining Commerce's decision in the Final Remand Results that Midwest Fastener's zinc and nylon anchors fall outside the scope of the *Orders*, constitutes a final decision of that court that is not in harmony with the Final Scope Ruling. This notice is published in fulfillment of the publication requirements of *Timken*. Accordingly, Commerce will continue the suspension of liquidation of Midwest Fastener's zinc and nylon anchors pending expiration of the period of appeal or, if appealed, pending a final and conclusive court decision.

Amended Final Scope Ruling

Because there is now a final court decision with respect to this case, Commerce is amending its Final Scope Ruling and finds that the scope of the *Orders* does not cover the zinc and nylon anchors specified in Midwest

¹ See *Certain Steel Nails from the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, and the Socialist Republic of Vietnam: Antidumping Duty Orders*, 80 FR 39994 (July 13, 2015); *Certain Steel Nails from the Socialist Republic of Vietnam: Countervailing Duty Order*, 80 FR 41006 (July 14, 2015) (collectively, the *Orders*).

² See Midwest Fastener's Letter, "Certain Steel Nails from the Socialist Republic of Vietnam: Midwest Fastener Scope Request," dated November 9, 2016.

³ *Id.* at 2, 3.

⁴ See Antidumping and Countervailing Duty Orders on Certain Steel Nails from the Socialist Republic of Vietnam: Final Scope Ruling on Midwest Fastener Corp.'s Zinc and Nylon Anchors (Final Scope Ruling), dated May 17, 2017 at 11–13.

⁵ *Id.* at 13.

⁶ See Message Number 7153303, dated June 2, 2017; Message Number 7153302, dated June 2, 2017.

⁷ See *Midwest Fastener Corp. v. United States*, Court No. 17–00131, Slip Op. 18–132 (CIT 2018) (*Remand Order*).

⁸ See *Remand Order*, Slip Op. 18–132 at 14.

⁹ *Id.* at 11.

¹⁰ *Id.*

¹¹ *Id.* at 12–13.

¹² *Id.* at 13, citing *OMG, Inc. v. United States*, Court No. 17–00036, Slip Op. 18–63 (CIT 2018) at 10–11.

¹³ See *Remand Order*, Slip Op. 18–132 at 14.

¹⁴ *Id.*

¹⁵ See Final Results of Redetermination Pursuant to Court Remand, *Midwest Fastener Corp. v. United States*, Court No. 17–00131, Slip Op. 18–132 (CIT October 1, 2018), dated December 21, 2018 (Final Remand Results).

¹⁶ See *Midwest Fastener Corp. v. United States*, Court No. 17–00131, Slip Op. 19–66 (CIT 2019).

¹⁷ See *Timken Co. v. United States*, 893 F.2d 337, 341 (Fed. Cir. 1990) (*Timken*).

¹⁸ See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

Fastener's Scope Ruling Request. Commerce will instruct CBP that the cash deposit rate will be zero percent for the zinc and nylon anchors subject to Midwest Fastener's scope ruling request. In the event that the CIT's ruling is not appealed, or if appealed, upheld by the CAFC, Commerce will instruct CBP to liquidate entries of Midwest Fastener's zinc and nylon anchors without regard to antidumping and/or countervailing duties, and to lift suspension of liquidation of such entries.

Notification to Interested Parties

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

Dated: June 10, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

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DEPARTMENT OF COMMERCE

International Trade Administration

[C-580-884]

Certain Hot-Rolled Steel Flat Products From the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 2016

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

SUMMARY: The Department of Commerce (Commerce) determines that Hyundai Steel Co., Ltd. (Hyundai Steel) and POSCO, producers and/or exporters of certain hot-rolled steel flat products (hot-rolled steel) from the Republic of Korea (Korea), received countervailable subsidies during the period of review (POR), August 12, 2016 through December 31, 2016.

DATES: Applicable June 19, 2019.

FOR FURTHER INFORMATION CONTACT: Kabir Archuleta, 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) 482-2593.

SUPPLEMENTARY INFORMATION:

Background

On November 6, 2018, Commerce published the *Preliminary Results* of this administrative review.¹ On

December 18, 2018, Commerce postponed the final results of review by 58 days until May 3, 2019.² Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018 through the resumption of operations on January 29, 2019.³ Accordingly, the revised deadline for these final results is June 12, 2019.

On March 4, 2019, Nucor Corporation (Nucor) submitted pre-verification comments on the record of this administrative review.⁴ Between March 7, 2019 and March 12, 2019, we conducted verifications of the questionnaire responses submitted by Hyundai Steel Co., Ltd. (Hyundai Steel) and POSCO. We released verification reports on April 9, 2019.⁵

On April 19, 2019, Nucor, POSCO, and Hyundai Steel submitted timely case briefs.⁶ Each also submitted timely rebuttal briefs on April 24, 2019.⁷

Commerce conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise covered by the order is certain hot-rolled steel flat products. For a complete description of the scope of the order, see attachment to the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in interested parties' case briefs are addressed in the Issues and Decision Memorandum. The issues are identified in the Appendix to this notice. The Issues and Decision

83 FR 55517 (November 6, 2018) (*Preliminary Results*), and accompanying Decision Memorandum (*Preliminary Decision Memorandum*).

² See Memorandum, "Extension of Deadline for Final Results of Countervailing Duty Administrative Review," dated December 18, 2018.

³ See Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive duties of the Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

⁴ See Nucor's Letter, "Pre-Verification Comments," dated March 4, 2019.

⁵ See Memoranda, "Verification of the Questionnaire Responses of Hyundai Steel Company" (April 9, 2019) (Hyundai Steel VR); "Verification of Questionnaire Responses of POSCO, POSCO Daewoo Corporation, POSCO Chemtech, and POSCO M-Tech" (April 9, 2019).

⁶ See Nucor's Case Brief, "Case Brief," dated April 19, 2019; see also POSCO's Case Brief, "POSCO's Letter," dated April 19, 2019; Hyundai Steel's Case Brief, "Hyundai Steel Case Brief," dated April 19, 2019.

⁷ See Nucor's Rebuttal Brief, "Rebuttal Brief," dated April 24, 2019; POSCO's Rebuttal Brief, "POSCO's Letter," dated April 24, 2019; Hyundai Steel's Rebuttal Brief, "Hyundai Steel Rebuttal Brief," dated April 24, 2019.

Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov> and is available to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at <http://enforcement.trade.gov/frn/index.html>. The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on the comments received from the interested parties and information received from Hyundai Steel after the *Preliminary Results*, we made changes to the net subsidy rates calculated for the mandatory respondents. For a discussion of these issues, see the Issues and Decision Memorandum.

Companies Not Selected for Individual Review

For the companies not selected for individual review, because the rates calculated for Hyundai Steel and POSCO were above *de minimis* and not based entirely on facts available, we applied a subsidy rate based on a weighted-average of the subsidy rates calculated for Hyundai Steel and POSCO using publicly ranged sales data submitted by the respondents. This is consistent with the methodology that we would use in an investigation to establish the all-others rate, pursuant to section 705(c)(5)(A) of the Act.

Final Results of Administrative Review

We determine that, for the period of August 12, 2016 through December 31, 2016, the following total estimated net countervailable subsidy rates exist:

Company	Subsidy rate (percent ad valorem)
POSCO	0.55
Hyundai Steel Co., Ltd	0.58
DCE Inc	0.56
Dong Chuel America Inc	0.56
Dongbu Steel Co., Ltd	0.56
Dongkuk Industries Co., Ltd	0.56
Hyewon Sni Corporation (H.S.I.)	0.56
Soon Hong Trading Co., Ltd	0.56
Sung-A Steel Co., Ltd	0.56

Disclosure

Commerce intends to disclose the calculations performed for these final results of review within five days of the

¹ See *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review*, 2016,