



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

[A-533-820]

Certain Hot-Rolled Carbon Steel Flat Products from India: Notice of Court Decision Not in Harmony with Final Results of Antidumping Duty Administrative Review and Notice of Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: On June 28, 2012, the United States Court of International Trade (the Court) sustained the Department of Commerce's (the Department) final results of redetermination pursuant to the Court's second remand order. See United States Steel Corporation v. United States, Court No. 08-00216, Slip Op. 12-91 (U.S. Steel Corp. III); Final Results of Redetermination Pursuant to Second Court Remand, CIT Court No. 08-00216 (May 22, 2012) (Second Remand Results). The Court previously upheld other aspects of the Department's final results of the 2005-2006 administrative review of the antidumping duty on certain hot-rolled carbon steel flat products from India. See U.S. Steel Corp. v. United States, No. 08-00216, 2012 WL 1259085 (Ct. Int'l Trade Apr. 11, 2012) (opinion on first remand results) (U.S. Steel Corp. II); Final Results of Redetermination Pursuant to Court Remand, CIT Court No. 08-00216 (Oct. 3, 2011) (First Remand Results); U.S. Steel Corp. v. United States, No. 08-00216, 2011 WL 2421154 (Ct. Int'l Trade June 14, 2011) (opinion on final results) (U.S. Steel Corp. I); Certain Hot-Rolled Carbon Steel Flat Products from India: Notice of Final Results of Antidumping Duty Administrative Review, 73 FR 31,961 (June 5, 2008) (Final Results).

Consistent with the decision of the United States Court of Appeals for the Federal Circuit (Federal Circuit) in Timken Co., v. United States, 893 F.2d 337 (Fed. Cir. 1990) (Timken), as

clarified by Diamond Sawblades Mfrs. Coalition v. United States, 626 F.3d 1374 (Fed. Cir. 2010) (Diamond Sawblades), the Department is notifying the public that the final judgment in this case is not in harmony with the Department's Final Results and is amending the final results of the administrative review of the antidumping duty order on certain hot-rolled carbon steel flat products from India covering the period December 1, 2005, through November 30, 2006, with respect to the weighted-average dumping margin assigned to Essar Steel Limited (Essar).

EFFECTIVE DATE: July 9, 2012.

FOR FURTHER INFORMATION CONTACT: Victoria Cho or Christopher Hargett, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-5075, and (202) 482-4161, respectively.

#### SUPPLEMENTARY INFORMATION:

##### *Background*

Subsequent to the completion of the administrative review under the antidumping duty order on certain hot-rolled carbon steel flat products from India, U.S. Steel Corporation (U.S. Steel) and Nucor Corporation (Nucor) challenged certain aspects of the Final Results at the Court. On June 14, 2011, the Court remanded the Final Results and instructed the Department (1) to determine whether record evidence proved that Essar's contingent liability for deferred import duties under the duty-drawback program had been removed or permanently excused, and (2) to reevaluate the record evidence and change, or more fully explain, the selection of date of sale. See U.S. Steel Corp. I, 2011 WL 2421154 at \*1, 4.

On remand, the Department recalculated Essar's weighted-average dumping margin using the invoice date as the date of sale, and revised Essar's weighted-average dumping margin

to deny an adjustment for duty drawback for a specific invoice. See, generally, First Remand Results. At that time, the Department declined to make certain changes to Essar's cost of production to account for exempted duties. See id. at 7-8.

On April 11, 2012, the Court sustained in part and remanded in part the Department's First Remand Results. Specifically, the Court remanded the proceeding for a second time and instructed the Department (1) to correct a ministerial error in computer programming and (2) to adjust normal value by adding exempted duties to Essar's cost of production or to explain why the Department must depart from its recently-affirmed practice of allowing for such adjustments to the cost of production. See U.S. Steel Corp. II, 2012 WL 1259085 at \*4.

On remand, the Department corrected the computer programming error. See Second Remand Results at 2-3. Moreover, in accordance with its established practice, the Department adjusted normal value by adding exempted duties to Essar's cost of production. See id. at 3-4. As a result, Essar's weighted-average dumping margin changed from 5.22 percent to 9.01 percent. See id. at 5.

On June 28, 2012, the Court sustained the Department's Second Remand Results and entered judgment accordingly. See U.S. Steel Corp. III, Slip Op. 12-91 at 1-2.

#### *Timken Notice*

In its decision in Timken,<sup>1</sup> as clarified by Diamond Sawblades, the Federal Circuit has held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), the Department must publish a notice of a court decision not "in harmony" with a Department determination and must suspend liquidation of entries pending a "conclusive" court decision. The Court's June 28, 2012, judgment sustaining the Second Remand Results constitutes a final decision of the Court that is not in harmony with the Department's Final Results. This notice is

---

<sup>1</sup> See Timken, 893 F.2d at 341.

published in fulfillment of the publication requirement of Timken. Accordingly, the Department 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. The cash deposit rate will remain the company-specific rate established for Essar for the subsequent and most recent period during which the respondent was reviewed.<sup>2</sup>

*Amended Final Determination*

Because there is now a final court decision, we are amending the Final Results with respect to Essar's weighted-average dumping margin for the period December 1, 2005, through November 30, 2006. The revised weighted-average dumping margin is as follows:

Weighted Average Dumping Margin

Exporter

Essar Steel Limited

9.01%

In the event the Court's ruling is not appealed, or if appealed, upheld by the Federal Circuit, the Department will instruct U.S. Customs and Border Protection to assess antidumping duties on entries of the subject merchandise exported by Essar using the revised assessment rate calculated by the Department in the Second Remand Results.

---

<sup>2</sup> See Certain Hot-Rolled Carbon Steel Flat Products from India: Notice of Final Results of Antidumping Duty Administrative Review and Rescission of Administrative Review in Part, 75 FR 27297, 27298 (May 14, 2010).

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

---

Paul Piquado  
Assistant Secretary  
for Import Administration

\_\_\_\_ July 3, 2012 \_\_\_\_\_  
Date

[FR Doc. 2012-17147 Filed 07/12/2012 at 8:45 am; Publication Date: 07/13/2012]