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DEPARTMENT OF COMMERCE

International Trade Administration

A-570-967; C-570-968

Aluminum Extrusions 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 August 27, 2015, the United States Court of International Trade (“CIT” or “Court”) sustained the Department of Commerce’s (the “Department”) final results of redetermination,¹ in which the Department determined that three dock ladder kit models imported by Asia Sourcing Corporation (“ASC”) meet the description of excluded finished goods kits, and are therefore not covered by the scope of the *Orders*,² pursuant to the CIT’s remand order in *Asia Sourcing Corp v. United States*, No. 13-00161 (CIT June 30, 2015) (“Remand Order”).

Consistent with the decision of the United States Court of Appeals for the Federal Circuit (“CAFC”) in *Timken*,³ as clarified by *Diamond Sawblades*,⁴ the Department is notifying the

¹ See *Asia Sourcing Corp v. United States*, Court No. 13-00161, Slip Op. 15-97 (CIT August 27, 2015) (“*Asia Sourcing*”), which sustained the Final Results of Redetermination Pursuant to Court Remand, *Asia Sourcing Corp v. United States*, Court No. 13-00161 (August 20, 2015) (“Remand Redetermination”).

² See *Aluminum Extrusions from the People’s Republic of China: Antidumping Duty Order*, 76 FR 30650 (May 26, 2011) and *Aluminum Extrusions from the People’s Republic of China: Countervailing Duty Order*, 76 FR 30653 (May 26, 2011) (“*Orders*”).

³ See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (“*Timken*”).

⁴ See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (“*Diamond Sawblades*”).

public that the final judgment in this case is not in harmony with the Department's Final Scope Ruling⁵ and is therefore amending this scope ruling.

DATES: Effective date: September 8, 2015

FOR FURTHER INFORMATION CONTACT: Brendan Quinn, AD/CVD Operations, Office III, Enforcement and Compliance, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: 202-482-5848.

SUPPLEMENTARY INFORMATION: On August 31, 2012, the Department received a scope ruling request from ASC to determine whether its aluminum boat and dock ladders and strip door mounting brackets are subject to the *Orders*.⁶ In its March 20, 2013, Final Scope Ruling, the Department found that dock ladder kit models ASE, ASH, and DJX3-W did not qualify for the finished goods kit exclusion,⁷ and thus were covered by the scope of the *Orders*, because they did not contain any non-aluminum extrusion components beyond fasteners.⁸

In its Remand Order, the Court remanded the underlying scope ruling and directed the Department to "clarify or reconsider, as appropriate, its inclusion of the ASE, ASH, and DJX3-W dock ladder kit models within the scope of the *Orders*..."⁹ The Court also requested that the

⁵ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Final Scope Ruling on Asia Sourcing Corporation's Boat and Dock Ladders and Strip Door Mounting Brackets," dated March 20, 2013 ("Final Scope Ruling").

⁶ See letter from ASC, "Aluminum Extrusions from the People's Republic of China: Request for Scope Ruling," dated August 31, 2012.

⁷ The "finished goods kit" exclusion in the scope of the *Orders* provides:

The scope also excludes finished goods containing aluminum extrusions that are entered unassembled in a "finished goods kit." A finished goods kit is understood to mean a packaged combination of parts that contains, at the time of importation, all of the necessary parts to fully assemble a final finished good and requires no further finishing or fabrication, such as cutting or punching, and is assembled "as is" into a finished product.

See, e.g., *Antidumping Duty Order*, 76 FR at 30651.

⁸ See Final Scope Ruling at 8.

⁹ See Remand Order at 5.

Department consider whether the exception to the “finished goods kit” exclusion in the scope is inapplicable because the non-aluminum components of the kits at issue are not fasteners.¹⁰

In the Remand Redetermination, the Department reconsidered the record evidence provided by ASC and found that certain components in the three dock ladder kits at issue (*i.e.*, plastic coated cables included on one model and plastic end caps included in all three models) were not fasteners.¹¹ Because all three of the ladder kit models under consideration include non-aluminum extrusions components other than fasteners (*i.e.*, plastic coated cables and/or plastic end caps), and the Department had determined in the Final Scope Ruling that these three kits contained all the parts needed to fully assemble a finished good with no further fabrication,¹² we concluded in the Remand Redetermination that the three dock ladder kits at issue each qualify for the finished goods kits exclusion provided by the scope and are not subject to the scope of the *Orders*.¹³

Timken Notice

In its decision in *Timken*¹⁴ as clarified by *Diamond Sawblades*, the CAFC has held that, pursuant to sections 516A(c) and (e) of the Tariff Act of 1930, as amended (the “Act”), the Department must publish a notice of a court decision that is not “in harmony” with a Department determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT’s August 27, 2015, judgment in *Asia Sourcing* sustaining the Department’s decision in the Remand Redetermination finding that ASC’s dock ladder kit models ASE, ASH, and DJX3-W are excluded from the scope of the *Orders*, constitutes a final decision of that court that is not in harmony with the Department’s Final Scope Ruling. This notice is published in fulfillment of

¹⁰ *Id.*

¹¹ See Remand Redetermination at 7-11.

¹² See Final Scope Ruling at 8.

¹³ See Remand Redetermination at 11-12.

¹⁴ See *Timken*, 893 F.2d at 341.

the publication requirements of *Timken*. Accordingly, the Department will continue the suspension of liquidation of the ASE, ASH, and DJX3-W dock ladder kits at issue pending expiration of the period of appeal or, if appealed, pending a final and conclusive court decision.

Amended Final Determination

Because there is now a final court decision with respect to the dock ladder kits at issue, the Department amends its Final Scope Ruling. The Department finds that the scope of the *Orders* does not cover the ASE, ASH, and DJX3-W dock ladder kits addressed in the underlying scope request filed by ASC. The Department will instruct U.S. Customs and Border Protection (“CBP”) that the cash deposit rate will be zero percent for Asia Sourcing’s ASE, ASH, and DJX3-W dock ladder kits. In the event that the CIT’s ruling is not appealed, or if appealed, upheld by the CAFC, the Department will instruct CBP to liquidate any unliquidated entries of ASC’s ASE, ASH, and DJX3-W dock ladder kits without regard to antidumping and/or countervailing duties, and to lift suspension of liquidation of such entries.

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

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

September 8, 2015

Date

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