

DEPARTMENT OF COMMERCE**International Trade Administration**

[A-201-817]

Oil Country Tubular Goods from Mexico: Notice of NAFTA Panel Decision Not In Harmony With Final Results of Administrative Review

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

SUMMARY: On January 16, 2007, a Bi-National Panel ("Panel") constituted under the North American Free Trade Agreement ("NAFTA") affirmed the U.S. Department of Commerce's ("the Department's") redetermination on remand of the final results of the fourth antidumping duty administrative review on oil country tubular goods from Mexico. *See In the Matter of: Oil Country Tubular Goods from Mexico; Final Results of Antidumping Duty Review and Determination Not to Revoke*, USA-MEX-2001-1904-05 (January 16, 2007) ("NAFTA Final Decision"). This case arises out of the Department's determination in the final results of administrative review covering the period August 1, 1998, to July 31, 1999. *See Oil Country Tubular Goods from Mexico: Final Results of Antidumping Review and Determination Not To Revoke in Part*, 66 FR 15832 and accompanying Issues and Decision Memorandum ("Final Results"). Consistent with the decision of the *United States Court of Appeals for the Federal Circuit in Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) ("Timken"), the Department is notifying the public that the NAFTA Final Decision and the Notice of Final Panel Action are not in harmony with the Department's Final Results.

EFFECTIVE DATE: March 19, 2007

FOR FURTHER INFORMATION CONTACT: John Drury or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0195 or (202) 482-3019, respectively.

SUPPLEMENTARY INFORMATION: For the Final Results, the Department reviewed sales to the United States by Hylsa S.A. de C.V. ("Hylsa") and Tubos de Aceros de Mexico, S.A. ("TAMSA"), both Mexican producers of OCTG. Both TAMSA and Hylsa requested revocation from the Order in accordance with 19 CFR § 351.222(e)(1). The Department declined to revoke the order in part with

respect to TAMSA, as it determined that TAMSA "did not sell the subject merchandise in the United States in commercial quantities in each of the three years cited by TAMSA to support its request for revocation." *See Final Results*, Issues and Decision Memorandum at page 10. The Department declined to revoke the order in part with respect to Hylsa due to the finding of a dumping margin in the review. *Id.* at 23.

Subsequent to the completion of the fourth administrative review, both Hylsa and TAMSA challenged the Department's findings and requested that a Bi-National Panel review the final determination. The Panel issued a decision on January 27, 2006, upholding the Department's determinations with respect to TAMSA, but remanding the review to the Department with respect to Hylsa (to recalculate Hylsa's packing cost and cost of production on a product-specific basis). *See In the Matter of: Oil Country Tubular Goods from Mexico; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke*, USA-MEX-01-1904-05 (January 27, 2006) ("NAFTA First Decision").

In accordance with the NAFTA First Decision, the Department filed its remand results on April 27, 2006. Based on the instructions of the Panel, the Department recalculated Hylsa's packing and cost of production by product costs and calculated a new antidumping duty margin for Hylsa, resulting in a margin of zero. The Department proceeded to conduct a revocation analysis, but found that Hylsa did not ship in commercial quantities to the U.S. market during the time period under consideration and found that the finding of dumping by Hylsa in the ninth administrative review was relevant to the determination whether the antidumping duty order was otherwise necessary to offset dumping. Based on these factors, the Department declined to revoke the order. *See Redetermination on Remand*, Oil Country Tubular Goods from Mexico: Fourth Administrative Review, April 27, 2006.

On August 11, 2006, the Panel again remanded the decision to the Department for further consideration. *See In the Matter of: Oil Country Tubular Goods from Mexico; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke*, USA-MEX-01-1904-05 (August 11, 2006) ("NAFTA Second Decision"). The Panel

rejected the Department's reliance on the results of the ninth administrative review and also directed the Department to reexamine its revocation analysis "in light of the issues raised by the Panel." *Id.* at 21. In accordance with the Second Decision, the Department reexamined Hylsa's request for revocation under 19 CFR § 351.222(e)(1) and determined that Hylsa had not made sales in commercial quantities for the three review periods under analysis. *See Redetermination on Remand*, Oil Country Tubular Goods from Mexico: Fourth Administrative Review, October 5, 2006, at 13-16.

On January 16, 2007, the Panel affirmed the Department's second remand redetermination. *See NAFTA Final Decision*. The Panel issued its Notice of Final Panel Action on February 2, 2007.

In *Timken*, the Federal Circuit 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 that is not "in harmony" with a Department determination, and must suspend liquidation of entries pending a "conclusive" court decision. *Timken*, 393 F.2d at 341. Because NAFTA panels step into the shoes of the courts they are replacing, they must apply the law of the national court that would otherwise review the administrative determination. Therefore, we are publishing notice that the Panel's February 2, 2007, Notice of Final Panel Action and its January 16, 2007, NAFTA Final Decision are not in harmony with the Department's Final Results. This notice is published in fulfillment of the publication requirements 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. In the event the Panel's ruling is not appealed, the Department will instruct U.S. Customs and Border Protection to revise the liquidation rates covering the subject merchandise.

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

Dated: March 8, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

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