

(UK) Ltd., and/or Equipco (UK) Ltd. may, at any time, appeal their inclusion as a related person by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202-4022.

In accordance with the provisions of Section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. A renewal request may be opposed by Mahan Airways and/or Zarand Aviation as provided in Section 766.24(d), by filing a written submission with the Assistant Secretary of Commerce for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be provided to Mahan Airways, Zarand Aviation and each related person and shall be published in the **Federal Register**. This Order is effective immediately and shall remain in effect for 180 days.

Dated: August 9, 2012.

David W. Mills,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2012-20007 Filed 8-14-12; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-475-818]

Certain Pasta From Italy: Notice of Court Decision Not in Harmony With Final Results of Administrative Review and Notice of Amended Final Results of Administrative Review Pursuant to Court Decision

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

SUMMARY: On July 31, 2012, the United States Court of International Trade (CIT) affirmed the Department of Commerce's (the Department's) results of third redetermination pursuant to the CIT's remand in *Atar, S.r.l. v. United States*, 791 F. Supp. 2d 1368 (CIT 2011) (*Atar III*).¹

¹ See *Atar S.r.l. v. United States*, Court No. 07-86, Slip Op. 12-101 (CIT July 31, 2012) (*Atar IV*); Final Results of Third Redetermination Pursuant to Court Remand, dated December 5, 2011 (Third Remand Redetermination) (found at <http://ia.ita.doc.gov/remands>). The CIT's prior decisions in this case can be found at *Atar S.r.l. v. United States*, 637 F. Supp. 2d 1068 (CIT 2009) (*Atar I*) and *Atar, S.r.l. v. United States*, 703 F. Supp. 2d 1359 (CIT 2010) (*Atar II*).

Consistent with the decision of the United States Court of Appeals for the Federal Circuit (CAFC) in *Timken Co. v. United States*, 893 F.2d 337 (CAFC 1990) (*Timken*) as clarified by *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (CAFC 2010) (*Diamond Sawblades*), the Department is notifying the public that the final CIT judgment in this case is not in harmony with the Department's final determination and is amending the final results of the ninth administrative review of the antidumping duty order on certain pasta from Italy with respect to the margin assigned to Atar S.r.l. (Atar) covering the period of review July 1, 2004, through June 30, 2005.²

DATES: *Effective Date:* August 10, 2012.

FOR FURTHER INFORMATION CONTACT: Dennis McClure, 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) 482-5973.

SUPPLEMENTARY INFORMATION:

Background

On February 14, 2007, the Department published its final results of the ninth administrative review of the antidumping duty order on certain pasta from Italy.³ The period covered by the review was July 1, 2004, through June 30, 2005.

Atar challenged the Department's *Final Results*. After a full briefing of all the issues, on June 5, 2009, the Court upheld the Department's *Final Results*, except with respect to its calculation of Atar's constructed value (CV) indirect selling expense (ISE) and profit rates.⁴ The Department had calculated Atar's CV ISE and profit rates using the weighted-average profit and indirect selling expense rates from sales of foreign like product sold in the home market in the ordinary course of trade (e.g., above-cost sales) by the six respondents from the prior administrative review (the eighth administrative review).⁵ The Court remanded the *Final Results*, directing

² See *Notice of Final Results of the Ninth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy*, 72 FR 7011 (February 14, 2007) (*Final Results*), and accompanying Issues and Decision Memorandum (Decision Memorandum).

³ See *Final Results*.

⁴ See *Atar I*, 637 F. Supp. 2d 1092-1093.

⁵ See Decision Memorandum at Comment 2; see also *Notice of Final Results of Eighth Administrative Review of the Antidumping Duty Order on Certain Pasta From Italy and Determination to Revoke in Part*, 70 FR 71464 (November 29, 2005) (*Eighth Administrative Review*).

the Department to reconsider and redetermine, as necessary, its calculations for Atar's CV ISE and profit rate and its exclusion from those calculations of the data from home market sales of the six respondents in the *Eighth Administrative Review* that occurred outside the ordinary course of trade, and explain why the remand redetermination satisfied the reasonable method requirement of section 773(e)(2)(B)(iii) of the Tariff Act of 1930, as amended (the Act).⁶

On September 3, 2009, the Department filed its first remand redetermination with the CIT, recalculating CV profit and ISE using a weighted average of the sales data from two of the six respondents in the prior review because only those two respondents had earned a profit when the Department included sales made outside the ordinary course of trade in the profit calculation.⁷ On April 20, 2010, the Court again remanded the case to the Department, holding that the Department had not complied with the profit cap requirement contained in section 773(e)(2)(B)(iii) of the Act.⁸ The Court directed the Department to reconsider and redetermine CV profit for Atar in a way that satisfies both the profit cap and reasonable method requirements of section 773(e)(2)(B)(iii) of the Act.⁹

On July 19, 2010, the Department filed its second remand redetermination with the CIT.¹⁰ In that remand, under respectful protest, the Department recalculated the profit cap using data from the home market sales made both within and outside the ordinary course of trade by the only two profitable respondents in the *Eighth Administrative Review*.¹¹ The profit rate calculated in the First Remand Redetermination did not exceed the profit cap calculated in the Second Remand Redetermination. Therefore, where the profit rate did not exceed the profit cap and the profit rate satisfied the reasonableness requirement of section 773(e)(2)(B)(iii) of the Act, the Department continued to apply the profit rate it had calculated in the First Remand Redetermination.¹² Also, the CV ISE rate remained the same, as

⁶ See *Atar I*, 637 F. Supp. 2d 1092-1093.

⁷ See Results of Redetermination Pursuant To Court Remand (September 3, 2009) (First Remand Redetermination).

⁸ See *Atar II*, 703 F. Supp. 2d at 1370.

⁹ *Id.*

¹⁰ See Final Results of Redetermination Pursuant To Court Remand (July 15, 2010) (Second Remand Redetermination).

¹¹ See Second Remand Redetermination at 6.

¹² See Second Remand Redetermination at 7.

recalculated in the First Remand Redetermination.

The CAFC subsequently issued a decision in *Thai I-Mei Frozen Foods Co., Ltd. v. United States*, 616 F.3d 1300 (CAFC 2010), upholding the Department's exclusion of sales made outside the ordinary course of trade in determining CV profit pursuant to the third alternative. On September 7, 2011, the Court again remanded this case to the Department.¹³ The Court held that the Second Remand Redetermination did not satisfy the profit cap requirement contained in section 773(e)(2)(B)(iii) of the Act.¹⁴ The Court found the Department's construction of the statute to be unreasonable because, according to the Court, only a "strained reading" of the statute could restrict the profit cap calculation to data from respondents that experienced a profit over a significant period of time.¹⁵ Additionally, the Court held that the profit cap calculation was not supported by the record because the Department's calculation ignored data from home market sales "that were material and probative of the general conditions in the home market of Italy affecting the profitability of domestic pasta producers operating there."¹⁶ The Court therefore directed the Department to submit a redetermination that complies with section 773(e)(2)(B)(iii) of the Act and specifically incorporates a lawfully-determined profit cap that is in accordance with all directives and conclusions set forth in its opinion.

Pursuant to the Court's remand order in *Atar III*, the Department revised the calculation of Atar's CV profit rate, the profit cap, and Atar's CV ISE. Specifically, the Department: (1) Calculated Atar's CV ISE rate by weight-averaging the ISE rates of all six of the eighth-review respondents; (2) calculated the CV profit rate by weight-averaging data from all six of the eighth-review respondents' home market sales that were made within the ordinary course of trade; and (3) only for purposes of the Third Remand Redetermination and under protest calculated the CV profit cap using the weighted-average data from all six of the eighth-review respondents' home market sales that were made both within and outside the ordinary course of trade.¹⁷ In the Third Remand Redetermination, the Department calculated a revised dumping margin for

Atar of 11.76 percent.¹⁸ The CIT affirmed the Department's Third Remand Redetermination on July 31, 2012.¹⁹

Timken Notice

In its decision in *Timken*, 893 F.2d at 341, as clarified by *Diamond Sawblades*, the CAFC held that, pursuant to section 516A(c) of 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 judgment in *Atar IV* on July 31, 2012, affirming the Department's decision in the Third Remand Redetermination constitutes a final decision of that court that is 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.

Amended Final Results

Because there is now a final court decision, the weighted-average dumping margin for Atar for the period July 1, 2004, through June 30, 2005, is 11.76 percent. However, in accordance with the Section 129 Determination, Atar's cash deposit rate is 0.00 percent.²⁰ The Department will instruct U.S. Customs and Border Protection (CBP) to collect cash deposits for Atar at the rate indicated.

In the event the CIT's ruling is not appealed or, if appealed, upheld by the CAFC, the Department will instruct CBP to assess antidumping duties on entries of the subject merchandise during the POR from Atar based on the revised assessment rates calculated by the Department.

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

¹⁸ See Third Remand Redetermination at 21.

¹⁹ See *Atar IV*.

²⁰ See *Notice of Implementation of Determination Under Section 129 of the Uruguay Round Agreements Act: Stainless Steel Plate in Coils From Belgium, Steel Concrete Reinforcing Bars From Latvia, Purified Carboxymethylcellulose From Finland, Certain Pasta From Italy, Purified Carboxymethylcellulose From the Netherlands, Stainless Steel Wire Rod From Spain, Granular Polytetrafluoroethylene Resin From Italy, Stainless Steel Sheet and Strip in Coils From Japan*, 77 FR 36257, 36258 (June 18, 2012) (Section 129 Determination).

Dated: August 8, 2012.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. 2012-19954 Filed 8-14-12; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-814]

Certain Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China: Notice of Court Decision Not in Harmony With Amended Final Scope Ruling and Notice of Amended Final Scope Ruling in Accordance With Court Decision

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

SUMMARY: On March 27, 2012, in *King Supply Co. LLC v. United States*, 674 F.3d 1343 (Fed. Cir. Mar 27, 2012) ("*King Supply III*"), the U.S. Court of Appeals for the Federal Circuit ("CAFC") reversed the decision of the U.S. Court of International Trade ("CIT") in *King Supply Co. LLC v. United States*, Slip Op. 11-2, Court No. 09-477 (January 06, 2011) ("*King Supply II*"). In *King Supply II*, pursuant to the CIT's remand order, the Department of Commerce's ("Department") results of redetermination construed the scope of the *Order*¹ as excluding carbon steel butt-weld pipe fittings from the People's Republic of China ("PRC") used in structural applications. In *King Supply III*, the CAFC, reversing the CIT, held that: (1) The Department in its original scope ruling reasonably determined that the scope of the *Order* did not give rise to an end use restriction, (2) the Department's original scope ruling was supported by substantial evidence, and (3) the CIT gave insufficient deference to the Department in interpreting the *Order*. 674 F.3d at 1345, 1349, 1350-51. As there is now a final and conclusive court decision with respect to the litigation pertaining to this proceeding, we are hereby publishing the final scope ruling that pipe fittings imported by King Supply are within the scope of the order and amending our January 26,

¹ See *Antidumping Duty Order and Amendment to the Final Determination of Sales at Less Than Fair Value; Certain Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China*, 57 FR 29702 (July 6, 1992) ("*Order*").

¹³ *Atar III*.

¹⁴ *Atar III*, 791 F. Supp. 2d at 1380.

¹⁵ *Atar III*, 791 F. Supp. 2d at 1376.

¹⁶ *Atar III*, 791 F. Supp. 2d at 1377.

¹⁷ See *Third Remand Redetermination* at 20-21.