

**Final Results of Redetermination Pursuant to
Itochu Building Products v. United States
Slip Op. 14-37 (Ct. Int'l Trade 2014)
(April 8, 2014)**

I. SUMMARY

The U.S. Department of Commerce (“Department”) prepared these final results of redetermination pursuant to the remand orders of the U.S. Court of International Trade (“CIT” or “Court”) in *Itochu Building Products v. United States*, Slip Op. 14-37 (CIT 2014) (“*Itochu*”).

On May 29, 2014, the Department issued the draft results of redetermination to Itochu (the only interested party). Itochu did not comment on the draft results.

In accordance with the Court’s instructions in *Itochu*, the Department reconsidered its evaluation of the effective date of the changed circumstances review final results in *Certain Steel Nails From the People’s Republic of China: Final Results of Antidumping Duty Changed Circumstances Review*, 76 FR 30101 (May 24, 2011).¹ Specifically, and upon further review, the Department now finds that instead of August 1, 2009, the effective date of the *CCR Final Results* should be the date of the preliminary determination in the original less-than fair value investigation, *i.e.*, January 23, 2008. This date is the date that Petitioner² requested in its original request and is supported by Itochu.

II. ANALYSIS

Effective Date of Revocation

The CIT remanded the issue of the effective date of the *CCR Final Results*.³ The Department observes that Itochu’s arguments and the Court’s opinion regarding this issue center

¹ See *Certain Steel Nails From the People’s Republic of China: Final Results of Antidumping Duty Changed Circumstances Review*, 76 FR 30101 (May 24, 2011) (“*CCR Final Results*”).

² Mid Continent Nail Corporation (“Petitioner”).

³ See *Itochu*, Slip Op. at 12 (“On remand, Commerce must reconsider its decision as to effective date and provide adequate reasoning, grounded in the facts and circumstances of this case”).

on the effective date of the partial revocation. Furthermore, for purposes of this remand, given the arguments espoused by Itochu in the litigation and the issues highlighted in the Court's opinion, the Department continues to find that the Order should be partially revoked with regard to the four nails at issue in the original *CCR Final Results*.⁴ Thus, this partial revocation is not in dispute. Below, the Department elaborates on the issue at hand, the proper application of the effective date of this partial revocation.

With regard to the Department's practice in changed circumstances review ("CCR") partial revocations, the Department's general practice is making the effective date the day after the most recently completed administrative review or period where automatic liquidation instructions were issued.⁵ However, the Department notes that the particular facts of a case may have implications for the effective date the Department selects.

For example, in other cases, the Department took into consideration factors such as the effective date requested by Petitioner (and/or the date agreed to by all parties),⁶ the existence of unliquidated entries dating back to the requested effective date,⁷ whether an interested party

⁴ See *CCR Final Results*, 76 FR at 30101.

⁵ See, e.g., *Stainless Steel Bar From the United Kingdom: Notice of Final Results of Changed Circumstances Review and Revocation of Order, in Part*, 72 FR 65706 (November 23, 2007); *Notice of Final Results of Antidumping Duty Changed Circumstances Review and Revocation of Order In Part: Certain Corrosion-Resistant Carbon Steel Flat Products from Germany*, 71 FR 66163 (November 13, 2006); *Notice of Final Results of Antidumping Duty Changed Circumstances Reviews and Revocation of Orders In Part: Certain Corrosion-Resistant Carbon Steel Flat Products From Canada and Germany*, 71 FR 14498 (March 22, 2006); *Notice of Final Results of Antidumping Duty Changed Circumstances Review, and Determination to Revoke Order in Part: Certain Cased Pencils from the People's Republic of China*, 68 FR 62428 (November 4, 2003); etc.

⁶ See, e.g., *Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Final Results of Changed Circumstances Review*, 68 FR 64079 (November 12, 2003); *Stainless Steel Hollow Products From Sweden; Termination of Antidumping Duty Administrative Reviews, Final Results of Changed Circumstances Antidumping Duty Administrative Review, and Revocation In Part of Antidumping Duty Order*, 60 FR 45529; etc.

⁷ See *Steel Wire Garment Hangers From the People's Republic of China: Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order*, 74 FR 50956 (October 2, 2009) ("*Hangers CCR*"); *Notice of Final Results of Antidumping Duty Changed Circumstances Review, and Determination To Revoke Order in Part: Certain Cased Pencils From the People's Republic of China*, 71 FR 13352 (March 15, 2006) ("*Pencils CCR*"); *Stainless Steel Sheet and Strip in Coils From Japan: Final Results of Changed Circumstance Antidumping Duty Review, and Determination To Revoke Order in Part*, 65 FR 77578 (December 12, 2000) ("*SSSS CCR*").

requested the date of the order,⁸ and other case-specific factors. Thus, based on the particular facts of a case, the Department may determine to use an effective date for the revocation other than that the day after the most recently completed administrative review or period where it issued automatic liquidation instructions.⁹

Further, where the effective date requested by the party (or parties) for a CCR revocation creates potential administrability issues (*e.g.*, the products covered by the partial revocation are in the sales database used in the calculations of a margin for a completed administrative review with a period of review (“POR”) that overlaps with the date requested), our practice is to select the date immediately after the end of the last completed POR.

In this redetermination, case-specific circumstances exist which we have taken into account. First, Petitioner requested that the effective date should extend back to the first administrative review (“ARI”) and all interested parties agreed.¹⁰ Moreover, prompted by this remand and the facts underlying it, the Department reexamined the record and found that the only mandatory respondent, Stanley,¹¹ did not sell the type of nails at issue during the underlying period prior to the effective date originally selected by the Department, AR1.¹² Moreover, the Department identified no other administrability issues presented by using the date suggested by the interested parties. Therefore, changing the effective date to be consistent with the effective date requested by Petitioner and supported by parties would not generate any administrability

⁸ See *Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan: Final Results of Changed Circumstances Antidumping Duty Administrative Review and Intent To Revoke Antidumping Duty Order, In Part*, 64 FR 72315 (December 27, 1999).

⁹ See section 751(d)(3) of the Tariff Act of 1930, as amended (“the Act”); see also *Itochu*, Slip Op. at 12 (“The statutory provision, as discussed above, provides Commerce with discretion in the selection of the effective date for a partial revocation following a changed circumstances review, but that discretion may not be exercised arbitrarily so as to decide the question presented without considering the relevant and competing considerations.”).

¹⁰ See *CCR Final Results*, 76 FR at 30101.

¹¹ The Stanley Works (Langfang) Fastening Systems Co., Ltd. and The Stanley Works/St Stanley Fastening Systems, LP (collectively “Stanley”).

¹² See Memorandum to the File, Analysis of Stanley’s U.S. Sales Database for the *Itochu* CCR Redetermination, dated May 29, 2014.

issues in this instance. Furthermore, the Department, in prior CCR partial revocations, invoking its discretion, selected as an effective date, a date earlier than the day after the most recently completed review.¹³ Accordingly, the Department appropriately is using its discretion to make the CCR effective at the earlier date given the facts and circumstances of this case.

III. FINAL RESULTS OF REDETERMINATION

Pursuant to the Court's order and based on the analysis of the information available on the record, the Department finds that changing the effective date based on the specific facts of this CCR indicates no administrability issues with an earlier effective date. Additionally, all parties agreed with this effective date. Thus, the Department will use the earlier effective date as requested and agreed to by all parties in the underlying CCR (*i.e.*, the date of the preliminary determination in the original investigation, and also the first day of the POR for AR1 - January 23, 2008).¹⁴

The merchandise now excluded from the Order, effective January 23, 2008, is as follows:

(1) Non-collated (*i.e.*, hand-driven or bulk), two-piece steel nails having plastic or steel washers (caps) already assembled to the nail, having a bright or galvanized finish, a ring, fluted or spiral shank, an actual length of 0.500" to 8", inclusive; and an actual shank diameter of 0.1015" to 0.166", inclusive; and an actual washer or cap diameter of 0.900" to 1.10", inclusive.

(2) Non-collated (*i.e.*, hand-driven or bulk), steel nails having a bright or galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500" to 4",

¹³ See, *e.g.*, *Hangers CCR*, *Pencils CCR*, and *SSSS CCR*.

¹⁴ See *CCR Final Results*, 76 FR at 30101.

inclusive; an actual shank diameter of 0.1015" to 0.166", inclusive; and an actual head diameter of 0.3375" to 0.500", inclusive.

(3) Wire-collated steel nails, in coils, having a galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500" to 1.75", inclusive; an actual shank diameter of 0.116" to 0.166", inclusive; and an actual head diameter of 0.3375" to 0.500", inclusive.

(4) Non-collated (*i.e.*, hand-driven or bulk), steel nails having a convex head (commonly known as an umbrella head), a smooth or spiral shank, a galvanized finish, an actual length of 1.75" to 3", inclusive; an actual shank diameter of 0.131" to 0.152", inclusive; and an actual head diameter of 0.450" to 0.813", inclusive.¹⁵

The Department will instruct U.S. Customs and Border Protection ("CBP") to liquidate, without regard to applicable antidumping duties, all unliquidated entries of nails that meet the noted specifications in the CCR, and to refund any estimated antidumping duties collected on such merchandise entered, or withdrawn from warehouse, for consumption on or after January 23, 2008.¹⁶ The assessment of antidumping duties by CBP on shipments or entries of this merchandise is subject to the provisions of section 778 of the Act. Section 778 of the Act requires that CBP pay interest on overpayments or assess interest on underpayments of the required amounts deposited as estimated antidumping duties. The interest provisions are not applicable to

¹⁵ See *CCR Final Results*, 76 FR at 30101.

¹⁶ Liquidation of entries from AR1 is currently enjoined pursuant to statutory injunctions issued in *The Stanley Works (Langfang) Fastening Systems Co. v. United States*, CIT case no. 11-102, and *Mid Continent Nail Corp. v. United States*, CIT case no. 11-119. The Department will issue liquidation instructions for these entries after the applicable injunctions are lifted.

cash or bonds posted as estimated antidumping duties before the date of publication of the antidumping duty order.



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

6 JUNE 2014
Date