

A-570-967; C-570-968
Remand
Court No. 17-00216, Slip Op. 19-70
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FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND
Tai-Ao Aluminum (Taishan) Co., Ltd. et al v. United States
Court No. 17-00216, Slip Op. 19-70 (CIT June 7, 2019)

A. SUMMARY

The U.S. Department of Commerce (Commerce) has prepared these results of redetermination pursuant to the remand opinion and order of the U.S. Court of International Trade the Court) in *Tai-Ao Aluminum (Taishan) Co., Ltd. et al. v. United States*, Court No. 17-00216, Slip Op. 19-70 (CIT June 7, 2019) (Remand Order). This remand redetermination addresses the Remand Order with respect to Tai-Ao Aluminum (Taishan) Co., Ltd. and TAAL America Ltd. (collectively Tai-Ao) and Regal Ideas Inc. (Regal), as it relates to the final determination of circumvention¹ of the antidumping and countervailing duty orders on aluminum extrusions from the People's Republic of China (China).² As discussed below, to comply with the Court's remand order, under respectful protest,³ we intend to issue appropriate instructions to U.S. Customs and Border Protection (CBP) regarding entries for Tai-Ao for the period March 21, 2016 through November 13, 2016.

¹ See *Aluminum Extrusions from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping and Countervailing Duty Orders and Rescission of Minor Alterations Anti-Circumvention Inquiry*, 82 Fed. Reg. 34,630 (July 26, 2017) (*Final Circumvention Determination*) and accompanying Issues and Decision Memorandum (IDM).

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) (collectively, *Orders*).

³ See *Viraj Group v. United States*, 343 F. 3d 1371 (Fed. Cir. 2003) (*Viraj*).

B. SCOPE OF THE *ORDERS*

The merchandise covered by the orders is aluminum extrusions which are shapes and forms, produced by an extrusion process, made from aluminum alloys having metallic elements corresponding to the alloy series designations published by The Aluminum Association commencing with the numbers 1, 3, and 6 (or proprietary equivalents or other certifying body equivalents). Specifically, the subject merchandise made from aluminum alloy with an Aluminum Association series designation commencing with the number 1 contains not less than 99 percent aluminum by weight. The subject merchandise made from aluminum alloy with an Aluminum Association series designation commencing with the number 3 contains manganese as the major alloying element, with manganese accounting for not more than 3.0 percent of total materials by weight. The subject merchandise is made from an aluminum alloy with an Aluminum Association series designation commencing with the number 6 contains magnesium and silicon as the major alloying elements, with magnesium accounting for at least 0.1 percent but not more than 2.0 percent of total materials by weight, and silicon accounting for at least 0.1 percent but not more than 3.0 percent of total materials by weight. The subject aluminum extrusions are properly identified by a four-digit alloy series without either a decimal point or leading letter. Illustrative examples from among the approximately 160 registered alloys that may characterize the subject merchandise are as follows: 1350, 3003, and 6060.

Aluminum extrusions are produced and imported in a wide variety of shapes and forms, including, but not limited to, hollow profiles, other solid profiles, pipes, tubes, bars, and rods. Aluminum extrusions that are drawn subsequent to extrusion (drawn aluminum) are also included in the scope.

Aluminum extrusions are produced and imported with a variety of finishes (both coatings and surface treatments), and types of fabrication. The types of coatings and treatments applied to subject aluminum extrusions include, but are not limited to, extrusions that are mill finished (*i.e.*, without any coating or further finishing), brushed, buffed, polished, anodized (including brightdip anodized), liquid painted, or powder coated. Aluminum extrusions may also be fabricated, *i.e.*, prepared for assembly. Such operations would include, but are not limited to, extrusions that are cut-to-length, machined, drilled, punched, notched, bent, stretched, knurled, swedged, mitered, chamfered, threaded, and spun. The subject merchandise includes aluminum extrusions that are finished (coated, painted, *etc.*), fabricated, or any combination thereof.

Subject aluminum extrusions may be described at the time of importation as parts for final finished products that are assembled after importation, including, but not limited to, window frames, door frames, solar panels, curtain walls, or furniture. Such parts that otherwise meet the definition of aluminum extrusions are included in the scope. The scope includes the aluminum extrusion components that are attached (*e.g.*, by welding or fasteners) to form subassemblies, *i.e.*, partially assembled merchandise unless imported as part of the finished goods “kit” defined further below. The scope does not include the non-aluminum extrusion components of subassemblies or subject kits.

Subject extrusions may be identified with reference to their end use, such as fence posts, electrical conduits, door thresholds, carpet trim, or heat sinks (that do not meet the finished heat sink exclusionary language below). Such goods are subject merchandise if they otherwise meet the scope definition, regardless of whether they are ready for use at the time of importation. The following aluminum extrusion products are excluded: aluminum extrusions made from aluminum alloy with an Aluminum Association series designations commencing with the

number 2 and containing in excess of 1.5 percent copper by weight; aluminum extrusions made from aluminum alloy with an Aluminum Association series designation commencing with the number 5 and containing in excess of 1.0 percent magnesium by weight; and aluminum extrusions made from aluminum alloy with an Aluminum Association series designation commencing with the number 7 and containing in excess of 2.0 percent zinc by weight.

The scope also excludes finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry, such as finished windows with glass, doors with glass or vinyl, picture frames with glass pane and backing material, and solar panels. 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. An imported product will not be considered a “finished goods kit” and therefore excluded from the scope of the investigation merely by including fasteners such as screws, bolts, *etc.* in the packaging with an aluminum extrusion product.

The scope also excludes aluminum alloy sheet or plates produced by other than the extrusion process, such as aluminum products produced by a method of casting. Cast aluminum products are properly identified by four digits with a decimal point between the third and fourth digit. A letter may also precede the four digits. The following Aluminum Association designations are representative of aluminum alloys for casting: 208.0, 295.0, 308.0, 355.0, C355.0, 356.0, A356.0, A357.0, 360.0, 366.0, 380.0, A380.0, 413.0, 443.0, 514.0, 518.1, and 712.0. The scope also excludes pure, unwrought aluminum in any form.

The scope also excludes collapsible tubular containers composed of metallic elements corresponding to alloy code 1080A as designated by the Aluminum Association where the tubular container (excluding the nozzle) meets each of the following dimensional characteristics: (1) length of 37 millimeters (“mm”) or 62 mm, (2) outer diameter of 11.0 mm or 12.7 mm, and (3) wall thickness not exceeding 0.13 mm.

Also excluded from the scope of these orders are finished heat sinks. Finished heat sinks are fabricated heat sinks made from aluminum extrusions the design and production of which are organized around meeting certain specified thermal performance requirements and which have been fully, albeit not necessarily individually, tested to comply with such requirements.

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States (HTSUS): 9031.90.90.95, 7616.10.90.90, 7609.00.00, 7610.10.00, 7610.90.00, 7615.10.30, 7615.10.71, 7615.10.91, 7615.19.10, 7615.19.30, 7615.19.50, 7615.19.70, 7615.19.90, 7615.20.00, 7616.99.10, 7616.99.50, 8479.89.98, 8479.90.94, 8513.90.20, 9403.10.00, 9403.20.00, 7604.21.00.00, 7604.29.10.00, 7604.29.30.10, 7604.29.30.50, 7604.29.50.30, 7604.29.50.60, 7608.20.00.30, 7608.20.00.90, 8302.10.30.00, 8302.10.60.30, 8302.10.60.60, 8302.10.60.90, 8302.20.00.00, 8302.30.30.10, 8302.30.30.60, 8302.41.30.00, 8302.41.60.15, 8302.41.60.45, 8302.41.60.50, 8302.41.60.80, 8302.42.30.10, 8302.42.30.15, 8302.42.30.65, 8302.49.60.35, 8302.49.60.45, 8302.49.60.55, 8302.49.60.85, 8302.50.00.00, 8302.60.90.00, 8305.10.00.50, 8306.30.00.00, 8414.59.60.90, 8415.90.80.45, 8418.99.80.05, 8418.99.80.50, 8418.99.80.60, 8419.90.10.00, 8422.90.06.40, 8473.30.20.00, 8473.30.51.00, 8479.90.85.00, 8486.90.00.00, 8487.90.00.80, 8503.00.95.20, 8508.70.00.00, 8515.90.20.00, 8516.90.50.00, 8516.90.80.50, 8517.70.00.00, 8529.90.73.00, 8529.90.97.60, 8536.90.80.85, 8538.10.00.00, 8543.90.88.80, 8708.29.50.60, 8708.80.65.90,

8803.30.00.60, 9013.90.50.00, 9013.90.90.00, 9401.90.50.81, 9403.90.10.40, 9403.90.10.50, 9403.90.10.85, 9403.90.25.40, 9403.90.25.80, 9403.90.40.05, 9403.90.40.10, 9403.90.40.60, 9403.90.50.05, 9403.90.50.10, 9403.90.50.80, 9403.90.60.05, 9403.90.60.10, 9403.90.60.80, 9403.90.70.05, 9403.90.70.10, 9403.90.70.80, 9403.90.80.10, 9403.90.80.15, 9403.90.80.20, 9403.90.80.41, 9403.90.80.51, 9403.90.80.61, 9506.11.40.80, 9506.51.40.00, 9506.51.60.00, 9506.59.40.40, 9506.70.20.90, 9506.91.00.10, 9506.91.00.20, 9506.91.00.30, 9506.99.05.10, 9506.99.05.20, 9506.99.05.30, 9506.99.15.00, 9506.99.20.00, 9506.99.25.80, 9506.99.28.00, 9506.99.55.00, 9506.99.60.80, 9507.30.20.00, 9507.30.40.00, 9507.30.60.00, 9507.90.60.00, and 9603.90.80.50.

The subject merchandise entered as parts of other aluminum products may be classifiable under the following additional Chapter 76 subheadings: 7610.10, 7610.90, 7615.19, 7615.20, and 7616.99, as well as under other HTSUS chapters. In addition, fin evaporator coils may be classifiable under HTSUS numbers: 8418.99.80.50 and 8418.99.80.60. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these *Orders* is dispositive.

C. BACKGROUND

On March 21, 2016, Commerce initiated an anti-circumvention inquiry in response to a request filed by the Aluminum Extrusions Fair Trade Committee (AEFTC) (the petitioner) to determine whether certain extruded aluminum products that meet the chemical specifications for 5050-grade aluminum alloy, which are heat-treated, are circumventing the *Orders*.⁴ In the *Initiation Notice*, Commerce described the merchandise subject to the inquiry as follows:

⁴ See *Aluminum Extrusions from the People's Republic of China: Initiation of Anti-Circumvention Inquiry*, 81 FR 15039 (March 21, 2016) (*Initiation Notice*).

This anti-circumvention inquiry covers extruded aluminum products that meet the chemical specifications for 5050-grade aluminum alloy, which are heat-treated, and exported by {China Zhongwang Holdings Ltd. and its affiliates (collectively, Zhongwang)}. The Department intends to consider whether the inquiry should apply to all imports of extruded aluminum products that meet the chemical specifications for 5050-grade aluminum alloy and are heat-treated, regardless of producer, exporter, or importer, from the PRC.⁵

Subsequently, on November 14, 2016, Commerce published the preliminary determination, finding that heat-treated extruded aluminum products from China that meet the chemical specifications for 5050-grade aluminum alloy, regardless of producer, exporter, or importer, are circumventing the *Orders* under section 781(d) of the Tariff Act of 1930, as amended (the Act), as later-developed merchandise.⁶ Pursuant to 19 CFR 351.225(l)(2), Commerce stated in the *Preliminary Determination* that it would instruct CBP to suspend liquidation of all entries subject to the inquiry from the date of the *Initiation Notice*, March 21, 2016.⁷

On July 26, 2017, Commerce published the *Final Determination*, continuing to find that heat-treated extruded aluminum products from China that meet the chemical specifications for 5050-grade aluminum alloy, regardless of producer, exporter, or importer, are circumventing the *Orders*.⁸ Additionally, Commerce continued to apply the results of the anti-circumvention determination to all producers, exporters, and importers from the date of the *Initiation Notice*, March 21, 2016.⁹ Specifically, Commerce instructed:

In accordance with 19 CFR 351.225(l)(2), the Department will direct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of inquiry merchandise from the PRC (regardless of producer, exporter, or importer),

⁵ *Id.*, 81 FR at 15042.

⁶ See *Aluminum Extrusions from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping and Countervailing Duty Orders and Intent To Rescind Minor Alterations Anti-Circumvention Inquiry*, 81 FR 79444 (November 14, 2016) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum (PDM).

⁷ See *Preliminary Determination*, 81 FR at 79446.

⁸ See *Final Determination*, 82 FR at 34631.

⁹ *Id.*

entered, or withdrawn from warehouse, for consumption, on or after March 21, 2016, the date of publication of the initiation of this inquiry, until appropriate liquidation instructions are issued. The Department will also instruct CBP to continue to require a cash deposit of estimated duties at the rate applicable to the exporter on all unliquidated entries of inquiry merchandise entered, or withdrawn from warehouse, for consumption on or after March 21, 2016.

Tai-Ao and Regal challenged the *Final Determination* at the Court.

D. REMAND ORDER

In the Remand Order, the Court affirmed Commerce’s determination that heat-treated extruded aluminum products from China that meet the chemical specifications for 5050-grade aluminum alloy, regardless of producer, exporter, or importer, are circumventing the *Orders* under section 781(d) of the Act as later-developed merchandise.¹⁰ However, the Court held that Commerce erred in retroactively applying the determination to the date of the *Initiation Notice*, rather than the date of the *Preliminary Determination*, with respect to Tai-Ao and Regal.¹¹ According to the Court, the *Preliminary Determination* was the date when Tai-Ao and Regal first received notice that their products were subject to the inquiry.¹² The Court, therefore, remanded the issue to Commerce “to reformulate its liquidation instructions consistent with this opinion{.}”¹³

Commerce issued its draft remand redetermination, including draft instructions to CBP, on July 2, 2019, and provided an opportunity for interested parties to comment on the draft redetermination and accompanying draft instructions.¹⁴ On July 10, 2019, the petitioner, Tai-Ao, and Regal timely submitted comments.¹⁵

¹⁰ See Remand Order at 11-15.

¹¹ *Id.* at 16-20.

¹² *Id.*

¹³ *Id.* at 20.

¹⁴ See Draft Results of Redetermination Pursuant to Court Remand, *Tai-Ao Aluminum (Taishan) Co., Ltd. et al v. United States*, Court No. 17-00216, Slip Op. 19-70 (CIT June 7, 2019), dated July 2, 2019 (Draft Redetermination).

¹⁵ See Petitioner’s Letter, “Aluminum Extrusions from the People’s Republic of China: Comments on Draft Results of Redetermination,” dated July 10, 2019 (Petitioner Comments); see also Tai-Ao’s Letter, “Tai-Ao/TAAL

E. ANALYSIS

We respectfully disagree with the Court that Tai-Ao and Regal did not have sufficient notice that their products were subject to the inquiry as of the date of the *Initiation Notice*, and under protest have prepared draft instructions to CBP to conform with the Remand Order. As an initial matter, the Court has directed Commerce to “reformulate its liquidation instructions,” and we have done so, but we will not be issuing these liquidation instructions at this juncture. The Court of Appeals for the Federal Circuit’s (the Federal Circuit) decisions in *Timken Co. v. United States (Timken)*¹⁶ and *Diamond Sawblades Mfrs. Coalition v. United States (Diamond Sawblades)*¹⁷ held that, pursuant to sections 516A(c) and (e) of the Act, Commerce must publish a notice of final court decision that is not “in harmony” with Commerce’s determination (often referred to as a “*Timken* notice”) and must suspend liquidation of entries pending a “conclusive” court decision. The Federal Circuit has further recognized that “{t}he statute provides that, ‘{u}nless such liquidation is enjoined by the court,’ ‘entries... shall be liquidated in accordance with the determination of the Secretary’ if entered ‘on or before the {effective} date of the *Timken* notice.’”¹⁸

Therefore, Commerce has prepared draft instructions to CBP which it intends to issue: 1) should the Court issue a final decision in which it affirms Commerce’s final remand redetermination; and 2) after Commerce has issued its “Notice of Court Decision Not in

Comments on Draft Remand Redetermination Pursuant to Court Order for Anti-Circumvention Inquiry in the Antidumping and Countervailing Duty Orders on Aluminum Extrusions from the People’s Republic of China,” dated July 10, 2019 (Tai-Ao Comments); and Regal’s Letter, “Regal Ideas Inc.’s Comments on Draft Remand Determination in CIT 17-00216; Aluminum Extrusions from the People’s Republic of China,” dated July 10, 2019 (Regal Comments).

¹⁶ See 893 F.2d 337, 341 (Fed. Cir. 1990).

¹⁷ See 626 F.3d 1374 (Fed. Cir. 2010).

¹⁸ See *Capella Sales & Services Ltd. v. United States*, 878 F.3d 1329, 1333-34 (Fed. Cir. 2018) (citing section 516A(c)(1) (“{W}e conclude that Capella’s pre-*Timken* notice entries not enjoined by court order under § 1516a(c)(2) may properly be ‘liquidated as entered’ in accordance with the Secretary’s final determination.”).

Harmony With Final Determination of Circumvention and Notice of Amended Final Determination of Circumvention Pursuant to Court Decision” (*i.e.*, *Timken* notice), accordingly. These draft instructions direct CBP to continue to suspend certain unliquidated entries, as discussed below, but give effect to the Remand Order by allowing for the importer to seek refunds pursuant to 19 U.S.C. 1520(a)(4). Accordingly, Commerce will continue the suspension of liquidation of the entries at issue pending expiration of the period of appeal or, if appealed, pending a final and conclusive court decision.

With respect to Tai-Ao, the draft instructions at Attachments A (pertaining to the AD order) and B (pertaining to the CVD order) give effect to both the Remand Order, as well as Tai-Ao’s preliminary injunction, which was issued in Court No. 17-00216. As described in further detail in the draft instructions, Commerce intends to instruct CBP that all relevant entries which were entered or withdrawn from warehouse, for consumption during the period March 21, 2016 (the date of the *Initiation Notice*) through November 13, 2016 (the day before the *Preliminary Determination*), and which remained unliquidated as of the date of Tai-Ao’s preliminary injunction, September 15, 2017, will remain suspended pending a final and conclusive court decision. These instructions further allow for CBP to grant a refund of the cash deposits paid on such entries at the request of the importer prior to liquidation.

With respect to Regal, in the process of reformulating our instructions, we conducted a search of CBP data and have determined that there are no applicable entries which have been imported by Regal during the period March 21, 2016 through November 13, 2016. Therefore, we have not prepared any instructions with respect to Regal.

F. SUMMARY AND ANALYSIS OF COMMENTS ON THE DRAFT REMAND REDETERMINATION

Commerce issued its Draft Redetermination, including draft instructions to CBP, on July 2, 2019 and provided an opportunity for interested parties to comment on the draft redetermination and accompanying draft instructions.¹⁹ On July 10, 2019, the petitioner, Tai-Ao, and Regal timely submitted comments.²⁰ We address each party's comments and provide our analysis below.

As addressed below, we made one change to correct the relevant dates of liquidation that were listed in the Draft Redetermination. We also made minor revisions to the draft CBP instructions accompanying the Draft Redetermination for clarity.²¹

Issue 1: Notice of Products Being Subject to the Anti-Circumvention Inquiries

*Petitioner's Comments*²²

- The petitioner concurs with Commerce's reasoning in the Draft Redetermination and respectfully disagrees with the Court that Tai-Ao and Regal did not have sufficient notice that their products were subject to the anti-circumvention inquiries as of the date of the *Initiation Notice*.
- The language of the *Initiation Notice* put Tai-Ao, Regal, and all other producers, exporters, and importers on notice that Commerce's determination in the anti-circumvention inquiries could be applied on a country-wide basis, and that, upon an affirmative finding of circumvention, Commerce would assess duties as of the date of the initiation of the inquiries.

¹⁹ See Draft Redetermination.

²⁰ See Petitioner Comments; Tai-Ao Comments; and Regal Comments.

²¹ See Attachments A and B.

²² See Petitioner Comments at 2-4.

- Commerce’s regulations expressly permit suspension of liquidation and collection of cash deposits on entries dating back to the date of initiation of anti-circumvention inquiries, and Commerce should maintain its original determination with respect to the date of assessment of antidumping and countervailing duties.
- Commerce’s proposed draft CBP instructions were correctly limited to Tai-Ao, as Regal had no applicable entries during the relevant period. Any reformulated liquidation instructions should be limited to entries for which liquidation was enjoined by court order.

*Tai-Ao’s Comments*²³

- Commerce’s Draft Redetermination and accompanying draft CBP instructions are consistent with the Court’s remand order, and should be finalized by Commerce in its final results of redetermination.

*Regal’s Comments*²⁴

- Commerce’s determination to comply with the Court’s remand order was correct, but its rationale for doing so “under protest” was not. Tai-Ao and Regal did not have sufficient notice that their products were subject to the anti-circumvention inquiries as of the date of the *Initiation Notice*.
- Commerce should modify the draft CBP instructions to clarify for CBP that duty liability for all interested parties, including Regal, starts on the date of the *Preliminary Determination*, November 14, 2016. Should Commerce feel the need to clarify Regal’s

²³ See Tai-Ao Comments at 1-2.

²⁴ See Regal Comments at 1-3.

entries, it can note that Regal had no shipments during this period, which is Commerce's practice when issuing liquidation instructions.

Commerce's Position: As explained above, we continue to disagree respectfully with the Court that Tai-Ao and Regal did not have sufficient notice that their products were subject to the inquiry as of the date of the *Initiation Notice*, but have complied with the Court's remand order, under respectful protest,²⁵ with our intent to instruct CBP that the unliquidated entries for Tai-Ao are excluded from the scope of the *Orders* during the period March 21, 2016 through November 13, 2016.

We disagree with Regal that our instructions must be expanded to cover all interested parties. The Court's Remand Order specifically instructs that "Commerce erred in retroactively applying the duty to the date of initiation rather than the date of the *Preliminary Determination with respect to Regal and Tai-Ao*."²⁶ Regal and Tai-Ao are the only plaintiffs to the litigation, and the Court's Remand Order only covers entries by these parties, no one else. Regal provides no support for its argument that Commerce must expand its instructions to cover additional parties.

Further, we disagree that our instructions must clarify that duty liability begins on the date of the *Preliminary Determination*, November 14, 2016. At the time of the *Preliminary Determination*, Commerce instructed CBP to suspend liquidation and collect cash deposits for entries subject to the anti-circumvention inquiry, *i.e.*, entries of extruded aluminum products that meet the chemical specifications for 5050 grade aluminum alloy and are heat-treated, regardless of producer, exporter, or importer, back to the publication date of the *Initiation Notice*, March

²⁵ See *Viraj*, 343 F.3d 1371.

²⁶ See Remand Order at 16 (emphasis added); *id.* at 20 ("Therefore, liquidation should have been suspended from the date of the *Preliminary Determination when Plaintiffs first received notice that their products* were subject to the anticircumvention inquiry.") (emphasis added).

21, 2016.²⁷ Commerce continued these instructions in the *Final Determination*.²⁸ As discussed above, Commerce has complied with the Court's Remand Order by re-formulating its instructions with respect to Tai-Ao's entries for the period March 21, 2016 through November 13, 2016. With respect to Regal, Regal agrees with Commerce that it had no entries for the period March 21, 2016 through November 13, 2016. Under these facts, we disagree that we need to provide any further instructions to CBP for Regal's entries during this period. Further, Regal does not contend that it had imports of such entries prior to March 21, 2016, that are subject to suspension of liquidation and collection of cash deposits pursuant to Commerce's *Final Determination*. Accordingly, we do not agree with Regal that our instructions to CBP should be further altered in any way to address entries which pre-date November 14, 2016.

Issue 2: Entry Dates in Commerce's Draft CBP Instructions

*Petitioner's Comments*²⁹

- Commerce's Draft Redetermination contained an inadvertent error regarding the applicable dates for the reformulated liquidation instructions, which should refer to relevant entries which were entered or withdrawn from warehouse, for consumption on or after March 21, 2016 up to and including November 13, 2016, not November 15, 2016 as stated in the Draft Redetermination.

Commerce's Position: We agree with the petitioner that our Draft Redetermination contained an inadvertent error with respect to the dates in the draft liquidation instructions. We intended to refer to entries which were entered or withdrawn from warehouse, for consumption during the

²⁷ See *Preliminary Determination*, 81 FR at 79446.

²⁸ See *Final Determination*, 82 FR at 34631.

²⁹ See Petitioner Comments at 2-4.

period March 21, 2016 through November 13, 2016. We have corrected the draft CBP instructions accordingly.³⁰

G. FINAL RESULTS OF REMAND REDETERMINATION

Pursuant to the Remand Order, under respectful protest, we have prepared the draft instructions to CBP included as Attachments A and B, which we intend to issue: 1) should the Court issue a final decision in which it affirms Commerce’s final remand redetermination; and 2) after Commerce has issued its “Notice of Court Decision Not in Harmony With Final Determination of Circumvention and Notice of Amended Final Determination of Circumvention Pursuant to Court Decision” (*i.e.*, *Timken* notice), accordingly. Commerce will continue the suspension of liquidation of the entries at issue pending expiration of the period of appeal or, if appealed, pending a final and conclusive court decision.

7/22/2019

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

³⁰ See Attachments A and B.

ATTACHMENT A

Re: Notice of an amended final determination of circumvention of the antidumping duty order on aluminum extrusions from China: Tai-Ao Aluminum (Taishan) Co., Ltd. and TAAL America Ltd. (A-570-967)

1. On xx/xx/2019, the U.S. Court of International Trade (CIT) sustained the Final Redetermination issued by Commerce pursuant to Tai-Ao Aluminum (Taishan) Co., Ltd. et al v. United States (CIT No. 17-00216). As a result, Commerce published in the Federal Register (xx FR xxxx) on xx/xx/xxxx, with an effective date of xx/xx/xxxx, the Notice of Court Decision Not in Harmony With Final Determination of Circumvention and Notice of Amended Final Determination of Circumvention Pursuant to Court Decision.
2. As a result of the CIT's final decision, entries of extruded aluminum products that meet the chemical specifications for 5050 grade aluminum alloy and are heat-treated, which: a) were the subject of the U.S. Department of Commerce's final determination in Aluminum Extrusions from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping and Countervailing Duty Orders and Rescission of Minor Alterations Anti-Circumvention Inquiry, 82 Fed. Reg. 34,630 (7/26/2017); b) were exported from the People's Republic of China by Tai-Ao Aluminum (Taishan) Co., Ltd. and/or imported into the United States by TAAL America Ltd.; c) were entered, or withdrawn from warehouse, for consumption during the period 03/21/2016 through 11/13/2016; and d) remain unliquidated as of 09/15/2017, are outside of the scope of the antidumping duty order on aluminum extrusions from China.
3. Notwithstanding the exclusion, in accordance with the decision of the United States Court of Appeals for the Federal Circuit in *Timken Co. v. United States*, 893 F.2d 337, 341 (Fed. Cir. 1990), CBP is directed to suspend or continue to suspend liquidation of such entries described in paragraph 2 at a zero percent cash deposit rate during the pendency of the appeals process.
4. Title 19 U.S.C. 1520(a)(4) authorizes refunds prior to liquidation whenever an importer of record declares or it is ascertained that excess duties, fees, charges, or exactions have been deposited or paid. In accordance with 19 U.S.C. 1520(a)(4), CBP is authorized to grant a refund, if requested by the importer, of cash deposits for entries described in paragraph 2.
5. The injunction with court number 17-00216, discussed in message 7263301, dated 09/20/2017, with respect to entries described in paragraph 2 remains in effect.
6. If there are any questions by the importing public regarding this message, please contact the Call Center for the Office of AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce at (202) 482-0984. CBP ports should submit their inquiries through authorized CBP channels only. (This message was generated by xxxx.)
7. There are no restrictions on the release of this information.

Alexander Amdur

ATTACHMENT B

Re: Notice of an amended final determination of circumvention of the countervailing duty order on aluminum extrusions from China: Tai-Ao Aluminum (Taishan) Co., Ltd. and TAAL America Ltd. (C-570-968)

1. On xx/xx/2019, the U.S. Court of International Trade (CIT) sustained the Final Redetermination issued by Commerce pursuant to Tai-Ao Aluminum (Taishan) Co., Ltd. et al v. United States (CIT No. 17-00216). As a result, Commerce published in the Federal Register (xx FR xxxx) on xx/xx/xxxx, with an effective date of xx/xx/xxxx, the Notice of Court Decision Not in Harmony With Final Determination of Circumvention and Notice of Amended Final Determination of Circumvention Pursuant to Court Decision.
2. As a result of the CIT's final decision, entries of extruded aluminum products that meet the chemical specifications for 5050 grade aluminum alloy and are heat-treated, which: a) were the subject of the U.S. Department of Commerce's final determination in Aluminum Extrusions from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping and Countervailing Duty Orders and Rescission of Minor Alterations Anti-Circumvention Inquiry, 82 Fed. Reg. 34,630 (7/26/2017); b) were exported from the People's Republic of China by Tai-Ao Aluminum (Taishan) Co., Ltd. and/or imported into the United States by TAAL America Ltd.; c) were entered, or withdrawn from warehouse, for consumption during the period 03/21/2016 through 11/13/2016; and d) remain unliquidated as of 09/15/2017, are outside of the scope of the countervailing duty order on aluminum extrusions from China.
3. Notwithstanding the exclusion, in accordance with the decision of the United States Court of Appeals for the Federal Circuit in *Timken Co. v. United States*, 893 F.2d 337, 341 (Fed. Cir. 1990), CBP is directed to suspend or continue to suspend liquidation of such entries described in paragraph 2 at a zero percent cash deposit rate during the pendency of the appeals process.
4. Title 19 U.S.C. 1520(a)(4) authorizes refunds prior to liquidation whenever an importer of record declares or it is ascertained that excess duties, fees, charges, or exactions have been deposited or paid. In accordance with 19 U.S.C. 1520(a)(4), CBP is authorized to grant a refund, if requested by the importer, of cash deposits for entries described in paragraph 2.
5. The injunction with court number 17-00216, discussed in message 7263301, dated 09/20/2017, with respect to entries described in paragraph 2 remains in effect.
6. If there are any questions by the importing public regarding this message, please contact the Call Center for the Office of AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce at (202) 482-0984. CBP ports should submit their inquiries through authorized CBP channels only. (This message was generated by xxxx.)
7. There are no restrictions on the release of this information.

Alexander Amdur