

National Nail Corp. et al. v. United States

Consol. Court No. 16-00052, Slip Op. 19-71 (CIT June 12, 2019)

I. Summary

The Department of Commerce (Commerce) has prepared these final results of redetermination pursuant to the U.S. Court of International Trade’s (CIT) remand order in *National Nail Corp. et al. v. United States*, Slip Op. 19-71 (June 12, 2019), CIT Court No. 16-00052 (*Second Remand Order*) concerning the *Final Results* of certain steel nails from the People’s Republic of China (China).¹ The CIT remanded the following and ordered that: (1) Commerce calculate a rate for Shandong Oriental Cherry Hardware Group Co., Ltd. (Oriental Cherry) using the factors of production (FOP) and U.S. sales information submitted by Oriental Cherry in the underlying review; and (2) with respect to shooting nails supplied by Jining Dragon Fasteners Ltd. (Jining Dragon), an affiliate of Oriental Cherry, Commerce use facts available in filling in the missing, necessary information, and that Commerce may draw an adverse inference with respect to information regarding the sales of shooting nails during the period of review. As set forth in further detail below in these final results, pursuant to the *Second Remand Order*, we have reconsidered the *Final Results* and the related record evidence as ordered by the CIT.

¹ See *Certain Steel Nails from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 14092 (March 16, 2016) (*Final Results*), amended by *Certain Steel Nails from the People’s Republic of China*, 81 FR 19136 (April 4, 2016), and accompanying Issues and Decision Memorandum (IDM).

II. Background

In the *Preliminary Results*, which remained unchanged in the *Final Results*, Commerce determined that Oriental Cherry's responses were deficient, and that the use of facts otherwise available, pursuant to section 776(a) of the Tariff Act of 1930, as amended (the Act), was necessary.² As a result, Commerce determined that the Oriental Cherry was not eligible for separate rate status and treated it as part of the China-wide entity, subject to a dumping margin of 118.04 percent.

On January 2, 2018, the CIT remanded the *Final Results* with respect to our decision to deny Oriental Cherry a separate rate.³ The CIT remanded the *Final Results* to Commerce to evaluate the evidence on the record regarding the eligibility of Oriental Cherry for a separate rate; and, if Commerce determined that the Oriental Cherry was eligible for a separate rate, determine a separate rate.

On April 20, 2018, Commerce issued the *First Remand Results*.⁴ On remand, Commerce determined that Oriental Cherry was eligible for a separate rate, because the record supported the finding that Oriental Cherry demonstrated an absence of *de jure* and *de facto* government control.⁵ Commerce did not, however, determine a rate using any of the production and sales information that Oriental Cherry had placed on the record in response to its questionnaires.

Rather, Commerce further explained its findings from the *Final Results*, continuing to find that

² See *Certain Steel Nails from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2013–2014*, 80 FR 53490 (September 4, 2015) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum at 12; see also *Final Results IDM* at 60–63.

³ See *National Nail Corp. et al. v. United States*, 279 F. Supp. 3d 1372 (January 2, 2018), Slip Op. 18-1, CIT Court No. 16-00052.

⁴ See *Final Results of Redetermination Pursuant to Remand Order in National Nail Corp. v. United States*, Consol. Ct. No. 16-00052 (April 20, 2018) (*First Remand Results*).

⁵ *Id.* at 8-12.

such information was missing from the record and that Oriental Cherry did not cooperate to the best of its ability to provide such information, and, thus, assigned Oriental Cherry the rate of 118.04 percent as the total adverse facts available (AFA) rate pursuant to section 776(b) of the Act, *i.e.*, the highest rate on the record of this proceeding.⁶

On June 12, 2019, the CIT remanded the *First Remand Results*. The CIT held that Commerce's application of total AFA in the *First Remand Results* was neither supported by substantial evidence, nor in accordance with law.⁷ Specifically, the CIT held that "neither the law nor the facts support the Department's findings: (1) that none of Oriental Cherry's factors of production or its U.S. sales information was usable; (2) that Oriental Cherry failed to comply with Commerce's requests for production and sales information to the best of its ability; and (3) that a rate of 118.04 percent was legally and factually justified."⁸ As such, the CIT ordered that: (1) Commerce calculate a rate for Oriental Cherry using the FOP and U.S. sales information submitted by Oriental Cherry in the underlying review;⁹ and (2) with respect to shooting nails supplied by Jining Dragon, Commerce use facts available in filling in missing necessary information, and that Commerce may draw an adverse inference with respect to information regarding the sales of shooting nails during the period of review.¹⁰ On August 14, 2019, Commerce issued its Draft Results, and invited parties to provide comments.¹¹ On August 21,

⁶ *Id.* at 12 and 15-18.

⁷ See *Second Remand Order* at 32-42 and 47.

⁸ *Id.* at 6 and 47.

⁹ *Id.* at 47-48.

¹⁰ *Id.* at 48.

¹¹ See Memorandum, "Draft Second Remand Determination for the 6th Administrative Review of Certain Steel Nails from the People's Republic of China," dated August 14, 2019 (Draft Results).

2019, National Nail Corp. filed comments stating it had no issues with Commerce’s Draft Results.¹² No other party commented on the Draft Results.

III. Analysis

In accordance with the *Second Remand Order*, and under respectful protest,¹³ for these final results of redetermination, Commerce calculated a rate for Oriental Cherry using the FOP and U.S. sales information it submitted in the underlying review.¹⁴ Commerce also valued Oriental Cherry’s FOPs, movement expenses, and financial ratios using surrogate values from the record information in the underlying review.¹⁵ In addition, and consistent with the *Second Remand Order*, Commerce applied partial AFA to the U.S. sales of shooting nails supplied by Jining Dragon.¹⁶ As partial AFA, Commerce applied the highest transaction-specific assessment rate calculated for Oriental Cherry to the entries associated with these shooting nails.¹⁷

IV. Comments from Interested Parties

*National Nail Corp.*¹⁸

- Commerce’s Draft Results complies with the remand order issued by the CIT.
- Commerce calculated a rate for Oriental Cherry and applied, as partial AFA, the highest transaction-specific assessment rate to the entries associated with Jining Dragon’s shooting nails.
- It has no issues with Commerce’s Draft Results.

¹² See National Nail’s Letter, “Certain Steel Nails from the People’s Republic of China: Comments on Draft Redetermination,” dated August 21, 2019 (National Nail Comments).

¹³ See *First Remand Results* at 8-10 (explaining Commerce’s respectful disagreement with the CIT regarding the evidence weighing against granting Oriental Cherry a separate rate and using certain information on the record); see also *Viraj Group, Ltd. v. United States*, 343 F. 3d 1371 (Fed Cir. 2003).

¹⁴ See Memorandum, “Analysis of Shandong Oriental Cherry Hardware Group Co., Ltd. for the Draft Results of Second Redetermination,” dated concurrently with these draft results (Analysis Memorandum).

¹⁵ See Memorandum, “Surrogate Values for the Draft Results of Second Redetermination,” dated concurrently with these draft results.

¹⁶ See *Second Remand Order* at 45.

¹⁷ See Analysis Memorandum at 9.

¹⁸ See National Nail Comments at 1-2.

No other party filed comments.

V. Conclusion

Pursuant to the CIT's order, we calculated a weighted-average margin for Oriental Cherry using its submitted data for purposes of these final results of redetermination, and applying partial AFA to entries associated with the shooting nails supplied by Jining Dragon.¹⁹ Based on this approach, unchanged from the Draft Results, we calculated an antidumping duty margin of 61.05 percent for Oriental Cherry. As such, we intend to issue a *Federal Register* notice of court decision not in harmony with the final results in the sixth administrative review, and liquidation instructions directing U.S. Customs and Border Protection to assess any entries by Oriental Cherry at the calculated importer-specific rates.

9/5/2019

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
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for Enforcement and Compliance

¹⁹ See Analysis Memorandum at 9.