

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

[A-533-502]

**Welded Carbon Steel Standard Pipes and Tubes From India: Notice of Court Decision Not in Harmony With the Final Results of Antidumping Administrative Review; Notice of Amended Final Results**

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** On October 24, 2022, the U.S. Court of International Trade (CIT) issued its final judgment in *Garg Tube Export LLP and Garg Tube Limited v. United States*, Court No. 20-00026, sustaining the U.S. Department of Commerce's (Commerce) second results of redetermination pertaining to the administrative review of the antidumping duty (AD) order on welded carbon steel standard pipes and tubes (pipe and tube) from India covering the period May 1, 2017, through April 30, 2018. Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's final results of the administrative review, and that Commerce is amending the final results with respect to the weighted-average dumping margin assigned to Garg Tube Export LLP and Garg Tube Limited (collectively, Garg Tube).

**DATES:** Applicable November 3, 2022.

**FOR FURTHER INFORMATION CONTACT:** Dmitry Vladimirov, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-0665.

**SUPPLEMENTARY INFORMATION:**

**Background**

On January 16, 2020, Commerce published its *Final Results* of the 2017-2018 AD administrative review of welded carbon steel standard pipes and tubes from India.<sup>1</sup> In the *Final Results*, Commerce found that a particular market situation (PMS) existed in India concerning the cost of hot-rolled coil (an input into pipe and tube) and adjusted Garg Tube's reported cost of production (COP) to account for this PMS.<sup>2</sup> Separately, Garg Tube purchased subject

merchandise from several unaffiliated suppliers and Commerce requested COP information from two of Garg Tube's unaffiliated suppliers of pipe and tube, in response to which each supplier refused to provide the requested COP information. In the absence of COP information for the pipe and tube produced by these suppliers, Commerce filled the gap in the record (*i.e.*, the missing COP data of these suppliers) using Garg Tube's reported COP for the supplier-produced pipe and tube (which includes Garg Tube's acquisition costs, further processing, general and administrative expenses, and financial expenses), adjusted based on Garg Tube's sale of the supplier-produced pipe and tube which realized the largest loss.<sup>3</sup>

Garg Tube appealed Commerce's *Final Results*. On July 9, 2021, the CIT remanded the *Final Results* to Commerce for further explanation or reconsideration, holding that: (1) Commerce is not authorized under the statute to make a particular market situation (PMS) adjustment to a respondent's COP for purposes of determining which of its home market sales were made below cost; and (2) it was not reasonably discernable from Commerce's analysis in the *Final Results* how it was applying partial adverse facts available under section 776 of the Tariff Act of 1930, as amended (the Act), concerning missing COP data for a certain unaffiliated and uncooperative supplier.<sup>4</sup>

In its *First Redetermination*, issued in October 2021, Commerce recalculated Garg Tube's weighted-average dumping margin by: (1) reversing a PMS adjustment to Garg Tube's COP for purposes of the sales-below-cost test; and (2) relying on neutral facts available to fill the COP gap caused by a certain supplier's non-cooperation.<sup>5</sup> In its *First Redetermination*, Commerce continued to find that a PMS existed in India during the POR concerning the price of hot-rolled coil and continued to apply a PMS adjustment when calculating the COP where normal value (NV) was based on constructed value (CV).<sup>6</sup>

The CIT remanded for a second time, ordering Commerce to further explain or reconsider how its finding that a PMS existed during the POR was supported

by substantial evidence, and its resultant use of a PMS adjustment to COP when determining NV on the basis of CV.<sup>7</sup> In its *Second Redetermination*, Commerce declined to find that a PMS existed in India during the POR with respect to the price of hot-rolled coil and, as a result, recalculated Garg Tube's weighted-average dumping margin by removing the PMS adjustment when calculating normal value based on constructed value.<sup>8</sup> Because of its negative PMS finding, Commerce deemed moot the remaining remanded issues concerning its calculation of the PMS adjustment.<sup>9</sup> The CIT sustained Commerce's *Second Redetermination*.<sup>10</sup>

**Timken Notice**

In its decision in *Timken*,<sup>11</sup> as clarified by *Diamond Sawblades*,<sup>12</sup> the U.S. Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) and (e) of the Act, Commerce must publish a notice of court decision that is not "in harmony" with a Commerce determination and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's October 24, 2022, judgment constitutes a final decision of the CIT that is not in harmony with Commerce's *Final Results*. Thus, this notice is published in fulfillment of the publication requirements of *Timken*.

**Amended Final Results**

Because there is now a final court judgment, Commerce is amending its *Final Results* with respect to Garg Tube as follows:

Producer or exporter	Weighted-average dumping margin (percent)
Garg Tube Export LLP and Garg Tube Limited .....	0.00

<sup>7</sup> See *Garg Tube Export LLP v. United States*, 569 F. Supp. 3d 1202 (CIT 2022) (*Garg Tube II*).

<sup>8</sup> See *Final Results of Redetermination Pursuant to Remand, Garg Tube Export LLP and Garg Tube Limited v. United States*, Court No. 20-00026, Slip Op. 22-18 (CIT March 11, 2022) (*Second Redetermination*), available at <https://access.trade.gov/Resources/remands/22-18.pdf>.

<sup>9</sup> *Id.*

<sup>10</sup> See *Garg Tube Export LLP and Garg Tube Limited v. United States*, Court No. 20-00026, Slip Op. 22-120 (CIT October 24, 2022).

<sup>11</sup> See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

<sup>12</sup> See *Diamond Sawblades Manufacturers Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

<sup>1</sup> See *Welded Carbon Steel Standard Pipes and Tubes from India: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 2715 (January 16, 2020) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM).

<sup>2</sup> See *Final Results IDM* at Comment 1.

<sup>3</sup> *Id.* at Comment 2.

<sup>4</sup> See *Garg Tube Export LLP v. United States*, 527 F. Supp. 3d 1362 (CIT 2021) (*Garg Tube I*).

<sup>5</sup> See *Final Results of Redetermination Pursuant to Remand, Garg Tube Export LLP and Garg Tube Limited v. United States*, Court No. 20-00026, Slip Op. 21-83 (CIT October 7, 2021) (*First Redetermination*), available at <https://access.trade.gov/Resources/remands/21-83.pdf>.

<sup>6</sup> *Id.*

## Cash Deposit Requirements

Because Garg Tube has a superseding cash deposit rate, *i.e.*, there have been final results published in a subsequent administrative review, we will not issue revised cash deposit instructions to U.S. Customs and Border Protection (CBP). This notice will not affect the current cash deposit rate.

## Liquidation of Suspended Entries

At this time, Commerce remains enjoined by CIT order from liquidating entries that were produced and/or exported by Garg Tube and were entered, or withdrawn from warehouse, for consumption during the period May 1, 2017, through April 30, 2018. These entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

In the event the CIT's ruling is not appealed, or, if appealed, upheld by a final and conclusive court decision, Commerce intends to instruct CBP to assess antidumping duties on unliquidated entries of subject merchandise produced and/or exported by Garg Tube, in accordance with 19 CFR 351.212(b). Because Garg Tube's *ad valorem* assessment rate is zero,<sup>13</sup> we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Unchanged from the *Final Results*, for entries of subject merchandise during the period of review produced by Garg Tube Limited or Garg Tube Export LLP for which neither company knew its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.<sup>14</sup>

## Notification to Interested Parties

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

Dated: October 26, 2022.

**Lisa W. Wang,**

*Assistant Secretary for Enforcement and Compliance.*

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**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review and Join Annual Inquiry Service List

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**FOR FURTHER INFORMATION CONTACT:** Brenda E. Brown, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482-4735.

#### SUPPLEMENTARY INFORMATION:

##### Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with 19 CFR 351.213, that the Department of Commerce (Commerce) conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by Commerce discussed below refer to the number of calendar days from the applicable starting date.

##### Respondent Selection

In the event Commerce limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (APO) to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 35 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. Commerce invites comments regarding the CBP data and respondent selection

within five days of placement of the CBP data on the record of the review.

In the event Commerce decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, Commerce finds that determinations concerning whether particular companies should be "collapsed" (*i.e.*, treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of a review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.*, investigation, administrative review, new shipper review or changed circumstances review). For any company subject to a review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection. Parties are requested to: (a) identify which companies subject to review previously were collapsed; and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete a Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of a proceeding where Commerce considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

##### Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that requests a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do so. Determinations by Commerce to

<sup>13</sup> See 19 CFR 351.106(c)(2).

<sup>14</sup> For a full discussion of this practice, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).