

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-093]

Refillable Stainless Steel Kegs From the People's Republic of China: Notice of Court Decision Not in Harmony With the Final Determination of Antidumping Investigation; Notice of Amended Final Determination; and Notice of Amended Antidumping Duty Order

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

SUMMARY: On November 25, 2024, the U.S. Court of International Trade (CIT) issued its final judgment in *New American Keg v. United States*, Court No. 20-00008, sustaining the U.S. Department of Commerce's (Commerce) third remand redetermination pertaining to the less-than-fair-value (LTFV) investigation of refillable stainless steel kegs (kegs) from the People's Republic of China (China) covering the period of investigation (POI) January 1, 2018, through June 30, 2018. Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's final determination in that investigation, and that Commerce is amending the final determination and the resulting antidumping duty (AD) order with respect to the dumping margin for certain respondents eligible for a separate rate, *i.e.*, Ningbo Master International Trade Co., Ltd. (Ningbo Master), Guangzhou Jingye Machinery Co., Ltd. (Guangzhou Jingye), and Guangzhou Ulix Industrial & Trading Co., Ltd. (Guangzhou Ulix). The merchandise exported by these three exporters is included in the amended AD order.

DATES: Applicable December 5, 2024.

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 October 24, 2019, Commerce published its *Final Determination* in the LTFV investigation of kegs from China.¹

¹ See *Refillable Stainless Steel Kegs from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, in Part, 84 FR 57010 (October 24, 2019) (*Final Determination*).

On December 16, 2019, Commerce subsequently published the AD order on kegs from China.² New American Keg, d/b/a American Keg Company appealed Commerce's *Final Determination*.

On March 23, 2021, the CIT remanded the *Final Determination* to Commerce, ordering Commerce to reconsider or further explain: (1) its selection of the Malaysian surrogate labor data over the Brazilian surrogate labor data to value factors of production (FOPs) for labor; and (2) whether Guangzhou Ulix is eligible for a separate rate.³ In the *First Redetermination*, Commerce determined that "Malaysian data does not constitute the best available information for valuing Ningbo Master's labor FOPs because it is linked to forced labor."⁴ Commerce further determined that "based on the information on the record, {it} selected the Mexican labor {surrogate value (SV)} from {Conference Board's International Labor Comparisons (ILC)} as the best information available to value Ningbo Master's labor FOPs" and "inflated the Mexican labor SV from ILC to the {POI using Brazilian inflator} and recalculated Ningbo Master's margin."⁵ In the *First Redetermination*, Commerce also examined certain evidence requested by the CIT and determined that Guangzhou Ulix remained eligible for a separate rate.⁶

On September 13, 2022, the CIT remanded the *First Redetermination* and ordered Commerce to reconsider or further explain: (1) the use of the Mexican surrogate labor data inflated with Brazilian consumer price index (CPI) when the Brazilian surrogate labor data are available on the record; and (2) the evidence in the administrative record that supports granting Guangzhou Ulix a separate rate.⁷ In the *Second Redetermination*, after filing the *First Redetermination* and requesting a voluntary remand, Commerce acknowledge that it was improper to inflate the Mexican labor wage rate from the ILC using Brazilian CPI.⁸

² See *Refillable Stainless Steel Kegs from the Federal Republic of Germany and the People's Republic of China: Antidumping Duty Orders*, 84 FR 68405 (December 16, 2019) (*Order*).

³ See *New American Keg v. United States*, Court No. 20-00008, Slip Op. 21-30 (CIT March 23, 2021).

⁴ See *Final Results of Redetermination Pursuant to Court Remand, New American Keg v. United States*, Court No. 20-00008, Slip Op. 21-30 (CIT March 23, 2021), dated July 7, 2021 (*First Redetermination*).

⁵ *Id.*

⁶ *Id.*

⁷ See *New American Keg v. United States*, Court No. 20-00008, Slip Op. 22-106 (CIT September 13, 2022).

⁸ See *Final Results of Redetermination Pursuant to Court Remand, New American Keg v. United*

Notwithstanding, Commerce continued to determine that the Mexican labor wage data are superior to the Brazilian labor wage data and, in order to achieve an accurate calculation, Commerce reopened the record and placed on the record data from the International Labour Organization (ILO).⁹ Consequently, in the *Second Redetermination*, Commerce used the Mexican wage rate from the ILO data for 2018 (contemporaneous with the POI) and recalculated Ningbo Master's margin accordingly.¹⁰ In the *Second Redetermination*, Commerce also determined that Guangzhou Ulix has met its burden for a separate rate status.¹¹

On January 31, 2024, the CIT remanded the *Second Redetermination*, holding that Commerce abused its discretion in reopening the record to use Mexican ILO wage data, because Commerce made no showing that the Brazilian wage information on the record was inaccurate or otherwise unsuitable for the calculation of Ningbo Master's margin.¹² In its third final remand redetermination, Commerce used the Brazilian labor SV from 2016, inflated to the POI, and recalculated Ningbo Master's margin.¹³ On November 25, 2024, the CIT sustained Commerce's third final remand redetermination.¹⁴

Timken Notice

In its decision in *Timken*,¹⁵ as clarified by *Diamond Sawblades*,¹⁶ the U.S. Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) and (e) of the Tariff Act of 1930, as amended (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 November 25, 2024, judgment constitutes a final decision of the CIT

States, Court No. 20-00008, Slip Op. 22-106 (CIT September 13, 2022), dated November 10, 2022 (*Second Redetermination*).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² See *New American Keg v. United States*, Court No. 20-00008, Slip Op. 24-11 (CIT January 31, 2024).

¹³ See *Final Results of Redetermination Pursuant to Court Remand, New American Keg v. United States*, Court No. 20-00008, Slip Op. 24-11 (CIT January 31, 2024), dated March 25, 2024.

¹⁴ See *New American Keg v. United States*, Court No. 20-00008, Slip Op. 24-129 (CIT November 25, 2024).

¹⁵ See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

¹⁶ See *Diamond Sawblades Manufacturers Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

that is not in harmony with Commerce’s *Final Determination*. Thus, this notice is published in fulfillment of the publication requirements of *Timken*.

Amended Final Determination

Because there is now a final court judgment, Commerce is amending its

Final Determination with respect to the following exporter-producer combinations:

| Exporter | Producer | Weighted average dumping margin (percent <i>ad valorem</i>) | Cash deposit rate (adjusted for subsidy offsets) (percent <i>ad valorem</i>) |
|--|--|--|---|
| Ningbo Master International Trade Co., Ltd | Ningbo Major Draft Beer Equipment Co., Ltd | 4.23 | ¹⁷ 3.96 |
| Guangzhou Jingye Machinery Co., Ltd | Guangzhou Jingye Machinery Co., Ltd | 4.23 | 3.96 |
| Guangzhou Ulix Industrial & Trading Co., Ltd | Guangzhou Jingye Machinery Co., Ltd | 4.23 | 3.96 |

Amended Antidumping Duty Order

Pursuant to section 735(a)(4) of the Act, Commerce “shall disregard any weighted average dumping margin that is *de minimis* as defined in section 733(b)(3) of the Act”¹⁸ and pursuant to section 735(c)(2) of the Act, Commerce shall “issue an antidumping duty order under section 736” of the Act when the final determination is affirmative. In the *Final Determination*, the exporter-producer combination identified above for respondent Ningbo Master received a zero percent margin. As a result of this amended final determination, in which Commerce calculated an estimated weighted-average dumping margin above *de minimis* for the exporter-producer combination identified above for Ningbo Master, Commerce is hereby including entries of subject merchandise that were produced by Ningbo Major Draft Beer Equipment Co., Ltd., and exported by Ningbo Master International Trade Co., Ltd., within the *Order*. However, Commerce recently revoked the *Order* effective December 16, 2024.¹⁹

Cash Deposit Requirements

Commerce will issue revised cash deposit instructions to U.S. Customs and Border Protection (CBP) for Ningbo Master.

Because Guangzhou Jingye and Guangzhou Ulix have a superseding cash deposit rate, *i.e.*, there have been final results published in a subsequent

¹⁷ See *Refillable Stainless Steel Kegs from the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances, in Part*, 84 FR 57005 (October 24, 2019), and accompanying Issues and Decision Memorandum at 5 for the export subsidy rate.

¹⁸ Section 733(b)(3) of the Act defines a *de minimis* dumping margin as “less than 2 percent *ad valorem* or the equivalent specific rate for the subject merchandise.”

¹⁹ See *Refillable Stainless-Steel Kegs from Mexico and the People’s Republic of China: Final Results of Sunset Reviews and Revocation of Orders*, 89 FR 92095, 92096 (November 21, 2024) (*Order Revocation*).

administrative review,²⁰ Commerce will not issue revised cash deposit instructions for those companies. This notice will not affect the current cash deposit rate for these companies. However, as stated in the *Order Revocation*, in accordance with section 751(c)(3)(A) of the Act and 19 CFR 351.222(i)(2)(i), Commerce intends to instruct CBP to terminate the suspension of liquidation of the merchandise subject to the *Order* entered, or withdrawn from the warehouse, on or after December 16, 2024.²¹

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: December 4, 2024.

Abdelali Elouaradia,
Deputy Assistant Secretary for Enforcement and Compliance.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE475]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys Off Rhode Island and Massachusetts

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

²⁰ See *Refillable Stainless Steel Kegs from the People’s Republic of China: Final Results of the Antidumping Duty Administrative Review; 2021–2022*, 89 FR 25564 (April 11, 2024) (Commerce denied separate rate eligibility for Guangzhou Jingye and Guangzhou Ulix and treated them as part of the China-wide entity.).

²¹ See *Order Revocation*, 89 FR 92095–96.

ACTION: Notice; proposed modification of an incidental harassment authorization; request for comments.

SUMMARY: NMFS is proposing to modify an existing incidental harassment authorization (IHA) issued to Bay State Wind, LLC (Bay State Wind) on October 3, 2024, authorizing take of marine mammals incidental to marine site characterization surveys conducted off the coasts of Rhode Island and Massachusetts in the Bureau of Ocean Energy Management (BOEM) Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS) Lease Area OCS–A 0500 and the associated export cable route (ECR) area. While conducting said marine site characterization surveys, Bay State Wind has encountered common dolphins (*Delphinus delphis*) at a rate greater than anticipated under the analysis for that IHA and, therefore, requests that NMFS modify the IHA to increase the number of authorized take by Level B harassment for that species only. No other changes to the IHA were requested or are proposed herein, and the expiration date remains unchanged. NMFS will consider public comments on the requested modification prior to making any final decision and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than December 26, 2024.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Written comments should be submitted via email to ITP.hilt@noaa.gov.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments