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FINAL REMAND REDETERMINATION
Diamond Sawblades Manufacturers Coalition v. United States
Federal Circuit Court Nos. 2016-1254, 2016-1255
Court of International Trade Court No. 13-00241

Summary

The Department of Commerce (Commerce) has prepared these final results of remand redetermination in accordance with the remand order of the U.S. Court of International Trade (the CIT) issued on October 3, 2017,[1] following the opinion issued by the U.S. Court of Appeals for the Federal Circuit (CAFC) in *Diamond Sawblades Manufacturers Coalition v. United States*, Court Nos. 2016-1254, 2016-1255 (Fed. Cir. Aug. 7, 2017) (*DSMC CAFC*). The litigation involves challenges to Commerce's determination in the administrative review of the antidumping duty order on diamond sawblades and parts thereof from the People's Republic of China (China) for the period November 1, 2010, through October 31, 2011.[2]

The CAFC vacated the CIT's decision affirming Commerce's decision to decline to consider the Diamond Sawblades Manufacturers Coalition's (DSMC) targeted dumping allegations, and remanded for further consideration.[3] In its subsequent order remanding the case to Commerce, the CIT instructed Commerce "to accept DSMC's targeted dumping allegation as

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[1] *See Diamond Sawblades Manufacturers Coalition v. United States*, Ct. No. 13-00241, Doc. No. 128 (Ct. Int'l Trade Oct. 3, 2017) (*Remand Order*) (order remanding to Commerce).
[2] *See Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 36166 (June 17, 2013) (*Final Results*), as amended in *Diamond Sawblades and Parts Thereof from the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 42930 (July 18, 2013) (*Amended Final Results*).
[3] *See DSMC CAFC*.

timely filed and to perform such analyses as are necessary to conform with the appellate opinion."[4]

As explained below, pursuant to the CAFC's decision in *DSMC CAFC* and the *Remand Order*, Commerce has accepted DSMC's targeted dumping allegation as timely and has conducted the consequent analysis. As a result, we have applied the targeted dumping analysis to the calculation of the dumping margin for Weihai Xiangguang Mechanical Industrial Co., Ltd. (Weihai). Because our targeted dumping analysis does not result in a change to the margin for Weihai, we did not amend the margin for Weihai or for the non-selected separate rate respondents to which we assigned the margin calculated for Weihai.

We issued the draft remand redetermination on December 20, 2017, and provided interested parties seven days to provide comments.[5] In response to DSMC's request,[6] we extended in part the deadline for interested parties to comment on the draft remand redetermination to January 2, 2018, at 10:00 a.m. Eastern Time.[7] In light of the fact that the CIT granted the consent motion for the extension of the due date for the filing of the final remand redetermination, we further extended the deadline for interested parties to submit comments to January 5, 2018, at 5:00 p.m. Eastern Time.[8] No interested parties filed comments in response to the draft remand redetermination. Therefore, we made no changes to the draft remand redetermination for this final remand redetermination.

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[4] *See Remand Order*.
[5] *See* Commerce's Letter, "Diamond Sawblades and Parts Thereof from the People's Republic of China: Draft Remand for the Second Administrative Review," dated December 20, 2017.
[6] *See* DSMC's Letter, "Diamond Sawblades and Parts Thereof from the People's Republic of China: Request for Extension of Time to File Comment on Draft Remand," dated December 22, 2017.
[7] *See* Commerce's Letter to Interested Parties dated December 26, 2017.
[8] *See* Commerce's Letter to Interested Parties dated January 3, 2018.

Background

In the *Final Results*, Commerce individually examined two respondents, the ATM Single Entity and Weihai, determined that they were eligible for separate rates, and calculated dumping margins for each of these two respondents. DSMC had alleged targeted dumping by Weihai for the first time in DSMC's administrative case brief. In the *Final Results,* we found DSMC's targeted dumping allegation untimely and therefore did not further examine the allegation.[9] In the *Final Results*, the calculated margins for the ATM Single Entity and Weihai were zero percent and 8.10 percent, respectively.[10] In the *Amended Final Results*, we calculated a zero percent dumping margin for Weihai using the average-to-average (A-A) comparison method and, because the calculated margin was zero percent for both individually examined respondents, we assigned the zero percent margin to non-selected separate rate respondents.[11]

DSMC subsequently challenged Commerce's *Final Results*, as amended, at the CIT, asserting that Commerce did not adequately explain its refusal to consider DSMC's targeted dumping allegation. On September 23, 2014, the CIT issued its first remand order instructing Commerce to, *inter alia*, explain where it finds the non-ministerial discretion not to determine if there is a pattern of differing prices in administrative reviews regardless of whether an allegation is raised to that effect.[12] On remand, Commerce further explained its practice of initiating a targeted dumping analysis and possibly considering an alternative comparison method upon receipt of an allegation at a reasonable time before the preliminary results.[13] In the same remand

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[9] *See Final Results* and accompanying Issues and Decision Memorandum at Comment 4.
[10] *See Final Results*, 78 FR at 36167.
[11] *See Amended Final Results*, 78 FR at 42931.
[12] *See Diamond Sawblades Manufacturers Coalition v. United States*, No. 13-00241, Slip Op. 14-112 at 7-8 (Ct. Int'l Trade Sept. 23, 2014).
[13] *See* Final Remand Redetermination pursuant to *Diamond Sawblades Manufacturers Coalition v. United States*, Court No. 13-00241, slip op. 14-112 (Ct. Int'l Trade Sept. 23, 2014), dated May 18, 2015, available at http://enforcement.trade.gov/remands/14-112.pdf (*First Remand Redetermination*), at 10-11, 28-32.

redetermination, Commerce denied the separate rate eligibility for the ATM Single Entity and treated it as part of the China-wide entity.[14] Because, as a result, Weihai became the only remaining individually examined respondent eligible for a separate rate and because the *First Remand Redetermination* did not change the margin for Weihai, Commerce continued to assign the zero percent margin to non-selected separate rate respondents.[15] The CIT sustained the *First Remand Redetermination*.[16]

The Courts Decisions

The CAFC vacated and remanded the CIT's ruling on the *First Remand Redetermination* with respect to targeted dumping and the rate applied to non-selected separate rate respondents.[17] The CAFC specifically considered, *inter alia*, the absence of statutory or regulatory deadlines for alleging targeted dumping in an administrative review. The CAFC also noted that, as a result of the remand redetermination with respect to targeted dumping, the rates assigned to the non-selected separate rate respondents may change.[18] Following the CAFC's decision, the CIT ordered Commerce to "accept DSMC's targeted dumping allegation as timely filed and to perform such analyses as are necessary to conform with the appellate opinion."[19]

Discussion

In accordance with the *Remand Order*, we have accepted DSMC's targeted dumping allegation as timely and applied the targeted dumping analysis for this final remand redetermination.

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[14] *Id.* at 5-10, 16-28.
[15] *Id.* at 9-10.
[16] *See Diamond Sawblades Manufacturers' Coalition v. United States*, Court No. 13-00241, slip op. 15-116 (Ct. Int'l Trade Oct. 21, 2015).
[17] *See DSMC CAFC*.
[18] *Id.* at 14-21.
[19] *See Remand Order*.

Targeted Dumping Allegation

DSMC alleged targeted dumping by Weihai based on specific customers, regions, and time periods.[20] Pursuant to 19 CFR 351.414(c)(1), Commerce may determine that in particular circumstances it may be appropriate to calculate individual dumping margins using a method other than comparing normal values to weighted-average export prices or constructed export prices (A-A method).[21] DSMC's request that Commerce apply the average-to-transaction (A-T) method for Weihai in the underlying administrative review was based on DSMC's allegation of targeted dumping by Weihai.

Application of the Average-to-Transaction Methodology

Commerce is examining whether to use the A-T method by using a targeted dumping analysis consistent with section 777A(d)(1)(B) of the Tariff Act of 1930, as amended (the Act). Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce's examination of this question in the context of administrative reviews, Commerce nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is analogous to the issue in antidumping investigations. Accordingly, Commerce finds the targeted dumping analysis that was used in antidumping investigations may be instructive for purposes of examining whether to apply the A-T method in the underlying administrative review of this final remand redetermination.[22]

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[20] *See* DSMC's administrative case brief dated February 19, 2013, at 6. *See also* Weihai's administrative rebuttal brief dated February 25, 2013, at 2, 9-10.

[21] *See also Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101, 8114 (February 14, 2012).

[22] *See*, *e.g.*, *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2010-2011*, 77 FR 73015 (December 7, 2012), and accompanying Preliminary Decision Memorandum at 4, unchanged in *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 35248 (June 12, 2013), and accompanying Issues and decision Memorandum at Comment 1.

In prior antidumping investigations and administrative reviews where Commerce has addressed targeted dumping allegations, Commerce has employed the *Nails* test[23] for each respondent subject to an allegation.[24] Commerce has applied the *Nails* test, a two-step process as described below, in order to consider whether to use the A-T method.

In the first stage of the test, the "standard deviation test," Commerce determined the share of the alleged targeted group's sales of subject merchandise (by sales volume) that are at prices more than one standard deviation below the weighted-average price of all sales under review, targeted and non-targeted. Commerce calculated the standard deviation on a product-specific basis (*i.e*., by control number (CONNUM)) using the weighted-average prices for the alleged targeted groups and the groups not alleged to have been targeted. If that share did not exceed 33 percent, then Commerce did not conduct the second stage of the *Nails* test. If that share exceeded 33 percent, on the other hand, then we proceeded to the second stage of the *Nails* test.

In the second stage, the "gap test," Commerce examined all sales of identical merchandise (*i.e.*, by CONNUM) sold to the alleged targeted group which passed the standard deviation test. From those sales, Commerce determined the total volume of sales for which the difference between the weighted-average price of sales to the alleged targeted group and the next higher weighted-average price of sales to a non-targeted group exceeds the average price gap

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[23] *See Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 33977 (June 16, 2008) and *Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value*, 73 FR 33985 (June 16, 2008) (collectively, *Nails*), as modified in subsequent investigations before the implementation of the differential pricing methodology in 2013, *e.g.*, *Multilayered Wood Flooring from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011). *See also Mid Continent Nail Corp. v. United States*, 34 CIT 498 (May 4, 2010) and *Mid Continent Nail Corp. v. United States*, 34 CIT 512 (May 4, 2010).

[24] *See, e.g.*, *Polyethylene Retail Carrier Bags from Taiwan: Final Determination of Sales at Less Than Fair Value*, 75 FR 14569 (March 26, 2010); *Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010); *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 59217 (September 27, 2010).

(weighted by sales volume) between the non-targeted groups. Commerce weighted each of the price gaps between the non-targeted groups by the combined sales volume associated with the pair of prices for the non-targeted groups that defined the price gap. If the share of the sales that met this test met or exceeded five percent of the total sales volume of subject merchandise to the alleged targeted group, then Commerce considered these sales to have been targeted.

If Commerce's two-step analysis confirmed the allegation of targeting and sufficient sales were found to have been targeted (*i.e.*, to have passed the two-step *Nails* test), then Commerce considered whether the A-A method could account for the observed price differences. To do this, Commerce evaluated the difference between the weighted-average dumping margin calculated using the A-A method and the weighted-average dumping margin calculated using the A-T method. Where there was a meaningful difference between the results of the A-A method and the A-T method, Commerce considered that the A-A method could not take the identified price differences into account, and the A-T method was used to calculate the weighted-average margin of dumping for the respondent in question.

<u>Results of the Targeted Dumping Analysis</u>

For this final remand redetermination, Commerce has accepted DSMC's targeted dumping allegation and applied the targeted dumping methodology described above to Weihai's sales. The targeted dumping analysis showed that less than five percent of Weihai's U.S. sales in volume were targeted. Based on this analysis, Commerce finds that there is no pattern of export prices and constructed export prices for comparable merchandise that differ significantly among purchasers, regions, or time periods for Weihai. Therefore, because application of the *Nails* test to Weihai's sales does not confirm the allegation of targeted dumping or show that a sufficient number of sales were targeted, Commerce has not considered whether the A-A method can account for observed price differences.[25] Accordingly, Commerce continues to calculate the weighted-average dumping margin for Weihai using the A-A method and continues to use Weihai's weighted-average dumping margin as the weighted-average dumping margin for non-selected separate rate respondents.[26]

Final Results of Redetermination

Pursuant to the *Remand Order*, we have applied the targeted dumping analysis as described above for Weihai. For this final remand redetermination, Weihai's margin continues to be zero percent and we continue to assign a zero percent margin to the non-selected separate rate respondents.

1/19/2018

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Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of
the Assistant Secretary for Enforcement and Compliance

[25] *See* the Memorandum, "Diamond Sawblades and Parts Thereof from the People's Republic of China: Draft Remand Analysis Memorandum for Weihai Xiangguang Mechanical Industrial Co., Ltd.," dated December 20, 2017.
[26] *See First Remand Redetermination* at 9-10.