

MacLean-Fogg Co., et. al. v. United States,
Consol. Court No. 11-00209; Slip Op. 15-85 (CIT 2015)

**FINAL SECOND RESULTS OF REDETERMINATION
PURSUANT TO COURT REMAND**

A. SUMMARY

The Department of Commerce (the Department) prepared these final remand results of redetermination pursuant to the opinion and remand order of the U.S. Court of International Trade (CIT), issued on August 11, 2015, in the *MacLean-Fogg Co. v. United States*, Consol. Court No. 11-00209, Slip Op. 15-85 (CIT August 11, 2015) (*MacLean-Fogg Remand Order*). These final remand results concern the Department's calculation of the all-others rate in the countervailing duty investigation of aluminum extrusions from the People's Republic of China (the PRC).¹ In accordance with the *MacLean-Fogg Remand Order*, the Department has reconsidered its decision to rely solely on a simple average of the subsidy rates determined for the voluntary respondents when determining the all-others rate pursuant to section 705(c)(5)(A)(i) of the Tariff Act of 1930, as amended (the Act) and recalculated the all-others rate using publicly ranged sales data provided by the voluntary respondents involved in the investigation. The revised all-others rate is 7.37 percent.²

B. BACKGROUND

On June 3, 2014, the United States Court of Appeals for the Federal Circuit (Federal Circuit) in *MacLean-Fogg Co. v. United States*, 753 F.3d 1237 (Fed. Cir. 2014), held that section 351.204(d)(3) of the Department's regulations, which directs the Department to exclude voluntary respondents' rates from its calculation of the all-others rate, is inconsistent with the

¹ See *Aluminum Extrusions from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 18521 (April 4, 2011) (*Final Determination*).

² See Attachment.

statute. The Federal Circuit also held that the Department must include rates calculated for voluntary respondents in determining an all-others rate pursuant to section 705(c)(5)(A) of the Act. As the Department had not used the rates calculated for the voluntary respondents in the underlying investigation to determine the all-others rate, the Federal Circuit therefore held that the Department was required to recalculate the all-others rate using the voluntary respondents' rates.³ The CIT subsequently remanded the issue to the Department for reconsideration in accordance with the holding of the Federal Circuit.⁴

On remand, the Department recalculated the all-others rate using a simple average of the voluntary respondents' rates.⁵ Section 705(c)(5)(A)(i) of the Act provides that, in general, the all-others rate "shall be an amount equal to the weighted average countervailable subsidy rates established for exporters and producers individually investigated..." However, the Department explained in the *Remand Results* that the use of a weighted average would have revealed the proprietary information of the voluntary respondents to each other.⁶

Petitioners⁷ argued that 19 CFR 351.304(c)(1) specifically requires respondents to provide publicly ranged versions of proprietary data on the record, and because the voluntary respondents did not provide this information in the investigation, it was the Department's obligation to gather that information. The Department disagreed on remand, explaining that its practice has been to use a simple average, instead of a weighted average, of investigated companies to calculate the all-others rate when the necessary publicly available information is not on the record.⁸ Accordingly, consistent with its practice, the Department calculated the all-

³ *MacLean-Fogg v. United States*, 753 F. 3d at 1246.

⁴ *MacLean-Fogg Co. v. United States*, 32 F. Supp. 3d 1358 (CIT 2014).

⁵ See *Final Results of Redetermination Pursuant to Court Remand*, March 17, 2015 (*Remand Results*) at 6.

⁶ *Id.*

⁷ Petitioners are the Aluminum Extrusions Fair Trade Committee.

⁸ *Remand Results* at 4-7, n. 24 and 26.

others rate using a simple average of the rates of the two voluntary respondents.⁹

C. THE COURT’S HOLDING

After considering the *Remand Results*, the CIT remanded to the Department the all-others rate calculation. The CIT explained that the “statute unequivocally and without exception requires that the Department base the all-others rate on the weighted average of individually-investigated non-zero, non-*de minimis*, non-AFA rates.”¹⁰ Furthermore, the CIT emphasized that 19 CFR 351.304(c)(1) requires all proprietary information “to be accompanied by public versions ‘in sufficient detail to permit a reasonable understanding of the substance of the information,’” and that “numerical data will be considered adequately summarized if grouped or presented in terms of indices or figures within 10 percent of the actual figure.”¹¹ The Court therefore held that the Department abused its discretion in not requesting the publicly ranged data from the voluntary respondents on remand.¹²

The CIT thus directed the Department on remand to either request the publicly ranged data from the voluntary respondents, or publicly range the companies’ information itself, and reconsider its determination to use a simple average of their subsidy rates.¹³

D. DRAFT SECOND RESULTS OF REDETERMINATION

On September 18, 2015, the Department issued the *Draft Second Results of Redetermination Pursuant to Court Remand* (Draft Remand) and provided parties until September 25, 2015, to comment. No interested party submitted comments.

⁹ *Id.* at 6-7 and 10.

¹⁰ See *MacLean-Fogg Remand Order* at 21.

¹¹ *Id.* at 30.

¹² *Id.* at 30-31.

¹³ *Id.* at 31.

E. ANALYSIS

For this remand, the Department requested and received from the voluntary respondents (*i.e.*, Guang Ya Companies and Zhongya Companies) their publicly ranged sales value and volume data for exports of subject merchandise to the United States for the 2009 investigation period. The Department calculated a weighted-average subsidy rate using the voluntary respondents' publicly-ranged sales value for exports of subject merchandise to the United States during the period of the investigation, which resulted in a weighted-average subsidy rate of 7.37 percent. In accordance with the *MacLean-Fogg Remand Order*,¹⁴ the Department has reconsidered its decision to rely on the simple average of the voluntary respondents' rates in determining the all-others rate. Specifically, because the subsidy rate determined based on the publicly ranged data is closer to the subsidy rate that would result from weighting the voluntary respondents' rates based on BPI sales value than is the subsidy rate determined based on a simple average, for purposes of this final remand we have determined a revised all-others rate of 7.37 percent.¹⁵


F. CONCLUSION

We have complied with the CIT's order to reconsider the all-others rate in this case in a manner consistent with the CIT's opinion and recalculated the all-others rate using the voluntary respondents' publicly ranged sales values for exports of subject merchandise to the United States

¹⁴ As the CIT recognized, it is the Department's normal practice to employ a three-step calculation to determine the all-others rate when calculating that rate based on the rates of two respondents so that business proprietary information is not revealed. First, we calculate a weighted-average subsidy rate using the publicly available, ranged sales values reported by each respondent for exports of subject merchandise to the United States for the investigation period. Second, we calculate a simple average rate using the respondents' final subsidy rates for the investigation period. Third, we compare those rates to the actual weighted-average rate calculated using the proprietary export values to determine whether the rate computed using the publicly ranged sales values or the rate based on a simple average of the subsidy rates, is closer to the actual weighted-average subsidy rate (based on proprietary export values) and, the better proxy to be used as the all-others rate. *See MacLean-Fogg Remand Order* at 24-25; *see also Ball Bearings and Parts Thereof from France, et al.: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part*, 75 FR 53661, 53662 (September 1, 2010), and the accompanying Issues and Decision Memorandum at Comment 1.

¹⁵ *See* Attachment.

during the investigation period. This change results in a revised all-other rate of 7.37 percent, down from 7.42 percent calculated in the first *Remand Results*.



Paul Piquado
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for Enforcement and Compliance

15 OCTOBER 2015
(Date)

ATTACHMENT

Aluminum Extrusions from China (C-570-968)

All Others Rate

	U.S. Exports of Subject Merchandise (US\$)	Subsidy Rate
Guang Ya Companies		9.94%
Zhongya Comapanies	\$22,251,050	4.89%
Total Value		
Weighted-Average Rate using BPI sales value:		

	U.S. Exports of Subject Merchandise (US\$)	Subsidy Rate
Guang Ya Companies	\$21,500,000	9.94%
Zhongya Comapanies	\$22,251,050	4.89%
Total Value	\$43,751,050	
Weighted-Average Rate using publicly-ranged sales value:		7.37%

	Subsidy Rate
Guang Ya Companies	9.94%
Zhongya Comapanies	4.89%
Simple Average:	
7.42%	

Sources:

For Guang Ya Companies' subsidy rate, see *Aluminum Extrusions from the People's Republic of China: Countervailing Duty Order*, 76 FR 30653 (May 26, 2011).

For Guang Ya Companies' data, see Letter from Guang Ya Companies "Response to Request for Q&V Data" (August 31, 2015), and Memorandum to the File regarding "Clarification of Sales Data" (September 18, 2015).

For Zhongya Companies' subsidy rate, see *Aluminum Extrusions from the People's Republic of China: Notice of Court Decision Not in Harmony With Final Affirmative Countervailing Duty Determination and Notice of Amended Final Affirmative Countervailing Duty Determination*, 79 FR 13039 (March 7, 2014).

For Zhongya Companies' data, see Letter from Zhongya Companies "Aluminum Extrusions from China" (August 28, 2015).