

FINAL RESULTS OF REDETERMINATION PURSUANT TO  
*Diamond Sawblades Manufacturers' Coalition v. United States* Consol. Court No. 13-00618,  
Slip op. 15-92 (August 20, 2015)

**Summary**

The Department of Commerce (“Department”) has prepared these final results of redetermination pursuant to the U.S. Court of International Trade’s (“Court”) grant of a motion for voluntary remand in *Diamond Sawblades Manufacturers' Coalition v. United States*, Consol. Court No. 13-00618, Slip op. 15-92 (August 20, 2015). These final results address the Department’s partial revocation of the antidumping duty order on diamond sawblades and parts thereof (“diamond sawblades”) from the People’s Republic of China (“PRC”),<sup>1</sup> with regard to the Advanced Technology & Materials Co., Ltd.<sup>2</sup> (“AT&M”). The Department issued the partial revocation in connection with its determination in a proceeding conducted under section 129 of the Uruguay Round Agreements Act (“URAA”) with respect to the less-than-fair-value investigation (“LTFV investigation”) on diamond sawblades from the PRC. The Department finds that reinstatement of the order with regard to AT&M is appropriate in light of its redetermination in litigation concerning the LTFV investigation that AT&M was not eligible for separate rate status.

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<sup>1</sup> See *Certain Frozen Warmwater Shrimp from the People’s Republic of China and Diamond Sawblades and Parts Thereof from the People’s Republic of China: Notice of Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Orders*, 78 FR 18958 (March 28, 2013) (“Implemented PRC Section 129 Determination”); *Diamond Sawblades and Parts Thereof from the People’s Republic of China and the Republic of Korea: Antidumping Duty Orders*, 74 FR 57145 (Nov. 4, 2009) (“the Order”).

<sup>2</sup> Collectively with Beijing Gang Yan Diamond Product Company and Yichang HXF Circular Saw Industrial Co., Ltd., a single entity. See *Implemented PRC Section 129 Determination*, 78 FR at n.10.

## I. Reinstatement of the Order with Respect to AT&M

### a. Background

In the LTFV investigation, the Department determined that mandatory respondent AT&M was eligible for a separate rate, and calculated a separate antidumping duty margin for it. The Diamond Sawblades Manufacturers' Coalition ("DSMC") challenged the Department's separate-rate determination in court.<sup>3</sup> Concurrently, the PRC challenged the Department's use of its "zeroing" methodology in calculating dumping margins in certain LTFV investigations before the World Trade Organization's ("WTO") Dispute Settlement Body.<sup>4</sup> Effective March 22, 2013, in response to the dispute settlement panel's findings and instructions by the United States Trade Representative ("USTR") to implement the Department's determination under Section 129 of the URAA, the Department recalculated AT&M's weighted-average dumping margin from the LTFV investigation without the use of zeroing.<sup>5</sup> Removing the "zeroing" methodology resulted in AT&M receiving a calculated dumping margin of zero.<sup>6</sup> Consequently, the Department partially revoked the *Order* with respect to AT&M. However, in the ongoing litigation relating to the Department's separate-rate determination in the LTFV investigation, the Department reconsidered AT&M's separate rate eligibility and determined that AT&M had not rebutted the presumption of state control, and thus, was not eligible for a separate rate.<sup>7</sup> The rate applicable to the PRC-wide entity in the LTFV investigation was based on information in the petition and

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<sup>3</sup> See *Advanced Technology & Materials Co. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013).

<sup>4</sup> See WTO Panel Report, *United States – Anti-Dumping Measures on Certain Shrimp and Diamond Sawblades from China*, WT/DS422/R (June 8, 2012).

<sup>5</sup> See Implemented PRC Section 129 Determination, 78 FR at 18960.

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

<sup>7</sup> See *Final Results of Redetermination Pursuant to Remand Order Diamond Sawblades and Parts Thereof from the People's Republic of China, Advanced Tech. & Material Co. v. United States*, CIT Ct. No. 09-511 (May 6, 2013) ("Advanced Tech. Remand") available at <http://enforcement.trade.gov/remands/12-147.pdf>.

did not involve zeroing.<sup>8</sup> On October 11, 2013, the Court sustained the Department's redetermination that AT&M failed to rebut the presumption of state control, and therefore, was not eligible for a separate rate.<sup>9</sup> On October 24, 2014, the Court of Appeals for the Federal Circuit ("CAFC") affirmed the Court's decision.<sup>10</sup>

In light of AT&M's ineligibility for a separate rate in the LTFV investigation, and the inapplicability of the separate-rate applied to AT&M in the LTFV investigation which served as the basis of the Department's Section 129 determination, the Department moved for a voluntary remand to reconsider its partial revocation of the dumping order. The Court granted the Department's motion.<sup>11</sup> The Department now considers whether partial revocation of the order with regard to AT&M was appropriate given AT&M's inclusion in the PRC-wide entity and the rate applicable to AT&M in the LTFV investigation redetermination.

#### **b. Analysis**

In light of the LTFV investigation redetermination, and the CAFC's affirmance of the redetermination, revocation of the antidumping order with respect to AT&M is inappropriate. It is now established that during the period of investigation, AT&M was part of the PRC-wide entity, which was assigned an above *de minimis* margin not based on zeroing.<sup>12</sup> Thus, the basis for the partial revocation of the order with regard to AT&M (*i.e.*, that AT&M was entitled to a separate rate margin of zero) is no longer valid. The Department, in this final remand, is taking

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<sup>8</sup> See *Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Preliminary Partial Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 70 FR 77121, 77129 (December 29, 2005) unchanged in *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303 (May 22, 2006).

<sup>9</sup> See *Advanced Technology & Materials Co. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013).

<sup>10</sup> See *Advanced Technology & Materials Co. v. United States*, 581 Fed. Appx. 900 (CAFC 2014) (Rule 36).

<sup>11</sup> See *Diamond Sawblades Manufacturers Coalition v. United States*, Consol. Court No. 13-00618, Slip op. 15-92 (August 20, 2015).

<sup>12</sup> See *Advanced Tech Remand* at 2-22.

into account the CAFC's affirmance of AT&M's PRC-wide entity status for the LTFV investigation and the rate determined for the PRC-wide entity, which included AT&M, in the LTFV investigation (*i.e.*, the PRC-wide entity rate which is not based on zeroing). Therefore, because AT&M is a part of the PRC-wide entity in the LTFV investigation and the PRC-wide entity rate in the LTFV investigation is above *de minimis*, the Department reinstates the order as it applies to AT&M.

## II. Interested Party Comments

The petitioner supports the Department's reinstatement of the order with regard to AT&M because AT&M failed to rebut the presumption of state control in the underlying investigation and thus was not eligible for a separate rate.<sup>13</sup> The petitioner also argues that the Department should retroactively collect cash deposits on entries of AT&M's subject merchandise entered after March 22, 2013, the effective date of the reinstatement of the order.<sup>14</sup> Moreover, the petitioner requests that at the time the Department makes its final remand redetermination, it immediately issue instructions for cash deposits at the PRC-wide entity rate for all entries going forward.<sup>15</sup>

AT&M noted that its position regarding the legality of the approach taken by the Department was fully briefed at the Court of International Trade in the appeal.<sup>16</sup> AT&M adopted those comments by reference and stated that it had nothing more to add.<sup>17</sup>

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<sup>13</sup> The petitioner is the Diamond Sawblades Manufacturers' Coalition. *See* the Petitioner's November 3, 2015 Comments on Draft Results of Section 129 Remand Redetermination, at 2.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*, at 2-3.

<sup>16</sup> *See* AT&M's Comments on Draft Section 129 Remand Determination, at 1.

<sup>17</sup> *Id.*

### III. Department's Position

AT&M incorporated its arguments before the Court by reference and did not have any additional comments on the draft remand redetermination. Because the Court has considered and addressed AT&M's arguments in this litigation, *see Diamond Sawblades Manufacturers' Coalition v. United States*, Consol. Court No. 13-00618, Slip op. 15-92 (August 20, 2015), the Department is not addressing AT&M's arguments in the final remand redetermination.

We disagree with the petitioner on the issue of the retroactive collection of cash deposits. Because cash deposit rates are only estimates of the amount of antidumping duties that will be due, changes in cash deposit rates are not made retroactively when a final remand redetermination is issued.<sup>18</sup> Moreover, the Court still has to review this final remand redetermination and decide whether to affirm it or not. This final remand redetermination alone does not replace the Implemented PRC Section 129 Determination.

Contrary to the petitioner's assertion, the Court's decision in *Diamond Sawblades Mfrs. Coalition* does not dictate the issuance of cash deposit instructions immediately after a final remand redetermination. Rather, in that case the Court examined a situation where the Court had already affirmed the relevant remand redetermination, and the issue was whether the Department should issue antidumping duty orders and begin collecting cash deposits before the courts had reached a conclusive decision.<sup>19</sup> Here, the Court has not affirmed the Department's remand redetermination and, therefore, the facts here are distinguishable. Moreover, *Decca Hospitality Furnishings* is distinguishable because that case involved a mandamus action, examined whether

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<sup>18</sup> *See, e.g., Certain Lined Paper Products from India: Preliminary Results of Changed Circumstances Review*, 79 FR 21897, 21898 (April 18, 2014), unchanged in *Certain Lined Paper Products from India: Final Results of Changed Circumstances Review*, 79 FR 35726 (June 24, 2014).

<sup>19</sup> *Diamond Sawblades Mfrs. Coalition v. United States*, 650 F. Supp. 2d 1331, 1334 (Ct. Int'l Trade 2009) (explaining that the question before the Court concerned, in part, whether the Department was "legally obligated to effectuate the decisions of {the} Court if the case has been appealed.").

the Department should modify a company's cash deposit rate following the court's affirmance of a remand redetermination, and was decided on facts that are specific to that case which are not applicable here.<sup>20</sup> However, if this remand redetermination is upheld by the Court, the Department intends to issue cash deposit instructions informing U.S. Customs and Border Protection to resume the collection of cash deposits going forward on entries of merchandise from AT&M at the rate applicable to AT&M.

#### IV. Final Results of Redetermination

Pursuant to the voluntary remand order, the Department reconsidered our determination as described above. Based on the above analysis, the Department determines that reinstatement of the order with regard to AT&M is appropriate. If this remand is sustained, the Department intends that reinstatement of the order would be effective as of March 22, 2013, the effective date of the partial revocation of the *Order*.

  
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Christian Marsh  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

12/1/15  
\_\_\_\_\_  
Date

<sup>20</sup> See, e.g., *Decca Hospitality Furnishings, LLC v. United States*, 427 F. Supp. 2d 1249, 1254-55 and 1257 (Ct. Int'l Trade 2006) (noting Decca's claims that it was unable to obtain credit with which to post cash deposit and that its merchandise effectively was excluded from the market where the Department continued to apply a 198.08% cash deposit after the Court affirmed the Department's determination that respondent was entitled to 6.65% cash deposit rate).