

**Final Results of Redetermination Pursuant to Court Remand
High Pressure Steel Cylinders from the People’s Republic of China
Beijing Tianhai Industry Co., Ltd. v. United States
Court No. 12-00203, Slip Op. 17-79 (CIT July 5, 2017)**

I. SUMMARY AND BACKGROUND

The U.S. Department of Commerce (Department) has prepared these final results of redetermination pursuant to the remand order of the U.S. Court of International Trade (CIT or Court) in *Beijing Tianhai Industry Co., Ltd. v. United States*, Court No. 12-00203, Slip Op. 17-79 (CIT July 5, 2017) (*Beijing Tianhai III*). These final remand results concern the Department’s final affirmative less-than-fair-value determination regarding high pressure steel cylinders from the People’s Republic of China (PRC) (*Final Determination*),¹ as well as the First Remand Redetermination and Second Remand Redetermination² submitted pursuant to the Court’s previous remand orders.³

In the underlying investigation, the Department found that, pursuant to section 777A(d)(1)(B) of the Tariff Act of 1930, as amended (Act), “there was a pattern of prices that differ significantly by time period” for respondent Beijing Tianhai Industry Co., Ltd. (BTIC),

¹ See *High Pressure Steel Cylinders from the People’s Republic of China: Final Determination of Sales at Less than Fair Value*, 77 FR 26739 (May 7, 2012), and accompanying Issues and Decision Memorandum (*Final Determination*); see also *High Pressure Steel Cylinders from the People’s Republic of China: Antidumping Duty Order*, 77 FR 37377 (June 21, 2012) (*Order*).

² See Final Results of Redetermination Pursuant to Court Remand, High Pressure Steel Cylinders from the People’s Republic of China, *Beijing Tianhai Indus. Co., Ltd. v. United States*, Court No. 12-00203, Slip Op. 14-104 (CIT September 9, 2014), dated January 7, 2015 (First Remand Redetermination), and Final Results of Redetermination Pursuant to Court Remand, High Pressure Steel Cylinders from the People’s Republic of China, *Beijing Tianhai Indus. Co., Ltd. v. United States*, Court No. 12-00203, Slip Op. 15-114 (CIT October 14, 2015), dated February 8, 2016 (Second Remand Redetermination).

³ See *Beijing Tianhai Indus. Co., Ltd. v. United States*, 7 F. Supp. 3d 1318 (CIT 2014) (*Beijing Tianhai I*), and *Beijing Tianhai Indus. Co. v. United States*, 106 F. Supp. 3d 1342 (CIT 2015) (*Beijing Tianhai II*).

and that “application of the standard A-to-A {(average-to-average)} methodology would result in the masking of dumping that is unmasked by application of the alternative A-to-T {(average-to-transaction)} methodology when calculating BTIC’s weighted-average dumping margin.”⁴ In the *Final Determination*, the Department calculated BTIC’s weighted-average dumping margin using the A-to-T comparison method, applied to all of BTIC’s export sales.⁵ In *Beijing Tianhai I*, the CIT held that the Department’s explanation of its “meaningful difference” analysis in the *Final Determination* was insufficient to satisfy the explanation requirement under section 777A(d)(1)(B)(ii) of the Act, and also found that “the explanation ignores the potential use of the {transaction-to-transaction} methodology entirely.”⁶ The CIT also held that “even if the Department’s withdrawal of 19 C.F.R. § 351.414(f) (2007) was in violation of the APA’s {(Administrative Procedure Act)} notice and comment requirement, that error was harmless as it relates to the plaintiff in this case,” and also that “the Department need not adhere to the requirements of 19 C.F.R. § 351.414(f) (2007).”⁷ The Court deferred resolution of several other issues pertaining to the Department’s targeted dumping analysis and application of the A-to-T comparison method to BTIC in *Beijing Tianhai I*.⁸

Following the Department’s First Remand Redetermination, the CIT in *Beijing Tianhai II* sustained the Department’s *Final Determination* as to the other issues that BTIC challenged, for which the Court deferred consideration in *Beijing Tianhai I*.⁹ However, with regard to the Department’s “meaningful difference” analysis and the further analysis provided in the First Remand Redetermination on that issue, the Court held that “the Department has chosen a

⁴ See *Final Determination*, and accompanying Issues and Decision Memorandum at 23-24.

⁵ *Id.* at 24-26.

⁶ See *Beijing Tianhai I*, 7 F. Supp. 3d at 1331-32.

⁷ *Id.* at 1332-37.

⁸ *Id.* at 1337.

⁹ See *Beijing Tianhai II*, 106 F. Supp. 3d at 1352-56.

narrative rather than an explanation,” and “failed to satisfy the requirements of the statute.”¹⁰
The Court again remanded that issue to the Department.¹¹

The Department filed its Second Remand Redetermination with the Court on February 8, 2016, in which the Department provided further explanation as to its “meaningful difference” analysis under section 777A(d)(1)(B)(ii) of the Act. However, while the Department’s Second Remand Redetermination was pending before the CIT, the Court of Appeals for the Federal Circuit (CAFC) held that the Department’s 2008 withdrawal of its prior targeted dumping regulation did not comply with the notice-and-comment provision of the Administrative Procedure Act, and that not following this provision could not be excused as harmless error.¹² BTIC subsequently filed a motion requesting that the CIT reconsider its prior holding in *Beijing Tianhai I* on the status of the withdrawn regulation in this case. The Court rejected the Government’s argument that BTIC procedurally waived its ability to contest the withdrawal for failure to adequately raise the Administrative Procedure Act claim in its opening CIT brief.¹³ Based on *Mid Continent Nail*, the CIT found that the Limiting Regulation (*i.e.*, 19 CFR 351.414(f)(2) (2007)) was in effect at the time the Department issued the final determination in the original investigation.¹⁴ The Limiting Regulation provided, in pertinent part: “Where the criteria for identifying targeted dumping . . . are satisfied, the {Department} normally will limit the application of the average-to-transaction {(A-to-T)} method to those sales that constitute targeted dumping under {19 CFR 351.414(f)(1)(i)}.”¹⁵ In sum, the court ordered the Department on remand to “reconsider: (1) its determination that {section 777A(d)(1)(B)(ii) of the Act} may

¹⁰ *Id.* at 1351.

¹¹ *Id.*

¹² See *Mid Continent Nail Corp. v. United States*, 846 F.3d 1364 (Fed. Cir. 2017) (*Mid Continent Nail*).

¹³ See *Beijing Tianhai III* at 16-17.

¹⁴ *Id.* at 17.

¹⁵ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27416 (1997).

be satisfied by applying a ‘meaningful difference’ analysis that relies on 100 percent of BTIC’s U.S. sales; and (2) should it continue to determine that using the {A-to-T} method is appropriate, the scope of BTIC’s U.S. sales to which the {A-to-T} method applies, and revise its dumping margin calculations as may be appropriate.”¹⁶

On July 26, 2017, in accordance with the Court’s instructions in *Beijing Tianhai III* and in light of the Court’s holding that the Limiting Regulation applied in this investigation,¹⁷ the Department issued a draft redetermination in which we reconsidered our meaningful difference analysis under section 777A(d)(1)(B)(ii) of the Act, as that analysis was explained in the Second Remand Redetermination.¹⁸ Based on our reconsideration, we recalculated BTIC’s weighted-average dumping margin based on the A-to-A comparison method, and BTIC’s dumping margin was zero. We made no other changes to the *Final Determination*.

On July 31, 2017, BTIC provided comments in which it provided a brief overview of the litigation history¹⁹ and stated that it supported the Department’s Draft Redetermination.²⁰ BTIC concluded by requesting that the Department adopt the Draft Redetermination when filing its final redetermination with the CIT.²¹ No other party commented on the Draft Redetermination.

Because BTIC’s comments support the Department’s Draft Redetermination, and absent other comments by parties on the record or reasons to revisit our prior analysis, the Department’s final remand redetermination is consistent with the Draft Redetermination. Should the Court sustain this final remand redetermination, the Department intends to exclude BTIC from the

¹⁶ See *Beijing Tianhai III* at 17-18.

¹⁷ The Department is conducting this remand under respectful protest with regard to the CIT’s finding on the procedural waiver issue. See *Viraj Group, Ltd. v. United States*, 343 F.3d 1371 (Fed. Cir. 2003).

¹⁸ See Draft Results of Redetermination Pursuant to Court Remand, High Pressure Steel Cylinders from the People’s Republic of China, *Beijing Tianhai Industry Co., Ltd. v. United States* (July 26, 2017) (Draft Redetermination).

¹⁹ See BTIC’s Comments on the Department’s Draft Remand Redetermination, dated July 31, 2017, at 1-4.

²⁰ *Id.* at 4.

²¹ *Id.* at 5.

Order.²² The exclusion for BTIC would apply only to the three specific producer/exporter combinations identified in the *Final Determination*.

II. REMANDED ISSUE

1. Reconsideration of BTIC's Margin Calculations Consistent with the Limiting Regulation

A. Legal Framework

Section 777A(d)(1)(B)(i) of the Act, the “pattern” requirement, requires that the Department examine whether there exists a pattern of prices that differ significantly among purchasers, regions or time periods. The Department considers whether the respondent’s pricing behavior has created conditions in the U.S. market in which dumping may be “targeted” or “masked.” As the Court properly explained previously, “{t}he *Nails* test does not demonstrate that targeted dumping has taken place. Rather the test merely identifies ‘a pattern of {sales} prices that differ significantly among . . . time periods, *i.e.*, where targeted dumping may be occurring.’”²³ Once a pattern of prices that differ significantly is identified under section 777A(d)(1)(B)(i) of the Act and before the A-to-T method may be applied to calculate the respondent’s weighted-average dumping margin, section 777A(d)(1)(B)(ii) of the Act, the “explanation” requirement, requires that the Department “must establish and provide an explanation why it cannot account for such differences” through one of either the A-to-A method or the transaction-to-transaction method.²⁴

²² See *Order*, 77 FR at 37377; see also section 735(a)(4) of the Act (explaining that the Department “shall disregard any weighted average dumping margin that is *de minimis* as defined in section 733(b)(3)” of the Act); section 733(b)(3) of the Act (defining *de minimis* dumping margin as “less than 2 percent ad valorem or the equivalent specific rate for the subject merchandise”).

²³ *Beijing Tianhai II*, 106 F. Supp. 3d at 1350 (quoting Statement of Administrative Action Accompanying the Uruguay Round Agreements Act (SAA), H.R. Rep. No. 103-316, at 843 (1994), *reprinted in* 1994 U.S.C.C.A.N. 4040, 4178).

²⁴ See section 777A(d)(1)(B)(ii) of the Act; SAA at 843.

To consider the extent of the masking under the A-to-A method as opposed to the alternative A-to-T method, the Department uses a “meaningful difference” test where it compares the weighted-average dumping margin calculated using the A-to-A method and the weighted-average dumping margin calculated using the A-to-T method.²⁵ If the Department explains why the A-to-A method cannot account for such differences, then the A-to-T method may be applied to calculate the weighted-average dumping margin. As noted above, the CIT held that the Limiting Regulation (*i.e.*, 19 CFR 351.414(f)(2) (2007)) was in effect at the time the Department issued the *Final Determination*. Further, the Court held that, because the Limiting Regulation was in effect, the Department must apply that regulation.²⁶ As discussed below, the Department is applying the Limiting Regulation to reconsider whether the A-to-T method continues to be appropriate for measuring BTIC’s dumping.

B. Analysis

As an initial matter, the Department continues to find that the *Nails* test was satisfied in this investigation and, therefore, the “pattern” requirement of section 777A(d)(1)(B)(i) of the Act is satisfied.²⁷ With regard to the “explanation” requirement of section 777A(d)(1)(B)(ii) of the Act, we have continued to apply the “meaningful difference” analysis, in which we compared BTIC’s weighted-average dumping margin using the A-to-T method to its margin calculated using the A-to-A method.²⁸ As a result of the CIT’s holdings, and based on the Court’s findings

²⁵ See Second Remand Redetermination at 4.

²⁶ See *Beijing Tianhai III* at 17.

²⁷ See *Final Determination* and accompanying Issues and Decision Memorandum at 22-24; see also Second Remand Redetermination at 5.

²⁸ The Department has continued to apply the same meaningful difference analysis that was explained in the Second Remand Redetermination. In *Beijing Tianhai III*, the Court did not explicitly sustain the reasonableness of the Department’s explanation of its meaningful difference analysis in the Second Remand Redetermination. Nonetheless, the Federal Circuit recently explained that “the statute is silent on how {the Department} is to perform this analysis or even what it means for the {A-to-A} methodology to take ‘account’ of price differences,” and held that “{w}e find {the Department’s} provided rationales in support of its meaningful difference analysis to be reasonable.” *Apex Frozen Foods Private Ltd. v. United States*, CAFC Court No. 2016-1789, at 15 (Fed. Cir. July

that the Limiting Regulation was in effect during the underlying investigation, we have conducted the “meaningful difference” analysis pursuant to section 777A(d)(1)(B)(ii) of the Act by comparing the margin calculated by applying the A-to-T comparison method only to targeted sales with the margin calculated using the A-to-A method.²⁹

Specifically, as the first step to comply with the Court’s remand order, we recalculated BTIC’s antidumping duty margin by applying the A-to-T method only to those sales found to be targeted (and applying the A-to-A method to all other transactions). This resulted in a calculated margin of zero.³⁰ Second, as we had previously observed,³¹ and as we continue to determine here,³² BTIC’s calculated margin using the A-to-A method for all transactions is also zero. Thus, in comparing these two results, there is no meaningful difference in BTIC’s antidumping duty margins using the two aforementioned methods. Consequently, we find that the A-to-A method can account for BTIC’s prices which differ significantly. Lastly, as no other aspect of our *Final Determination* is being challenged, we have not made changes to the margins for any other entity.

III. CONCLUSION

Pursuant to the Court’s order and based on the above analysis, the Department applied its targeted dumping and A-to-T methodologies in a manner consistent with the Limiting Regulation and has recalculated BTIC’s dumping margin. Therefore, for these final results of

12, 2017); *see also Apex Frozen Foods Private Ltd. v. United States*, CAFC Court No. 2015-2085 (Fed. Cir. July 12, 2017).

²⁹ This approach is consistent with other situations where the Department has performed the “meaningful difference” analysis consistent with the Limiting Regulation. *See, e.g., Chang Chun Petrochemical Co. v. United States*, 953 F. Supp. 2d 1300, 1305-07 (CIT 2013) (*Chang Chun*); *Mid Continent Nail Corp. v. United States*, 113 F. Supp. 3d 1318, 1324-25 (CIT 2015).

³⁰ *See* “High Pressure Steel Cylinders from the People’s Republic of China: Beijing Tianhai Industry Co., Ltd. Analysis Memorandum for the Draft Third Remand Redetermination,” dated July 26, 2017 (BTIC Draft Third Remand Redetermination Analysis Memo), and hereby adopted for this final remand redetermination.

³¹ *See* Second Remand Redetermination at 9.

³² *See* BTIC Draft Third Remand Redetermination Analysis Memo at Attachment 3.

redetermination, the Department has determined that BTIC's weighted-average dumping margin is now zero. Should the Court sustain this final remand redetermination, the Department intends to exclude BTIC from the *Order*.³³ As previously stated, the exclusion for BTIC would apply only to the three specific producer/exporter combinations identified in the *Final Determination*.

8/3/2017

X 

Signed by: CAROLE SHOWERS

Carole Showers
Executive Director, Office of Policy
performing the duties of Deputy Assistant Secretary
for Enforcement and Compliance

³³ See *Order*, 77 FR at 37377; see also section 735(a)(4) of the Act (explaining that the Department “shall disregard any weighted average dumping margin that is de minimis as defined in section 733(b)(3)” of the Act); section 733(b)(3) of the Act (defining *de minimis* dumping margin as “less than 2 percent ad valorem or the equivalent specific rate for the subject merchandise”).