

FINAL SECOND REMAND REDETERMINATION
Diamond Sawblades Manufacturers' Coalition v. United States
Court No. 16-00124, Slip Op. 19-17

Summary

The Department of Commerce (Commerce) has prepared these final results of remand redetermination in accordance with the second remand order of the United States Court of International Trade (CIT or Court) in *Diamond Sawblades Mfrs. ' Coal. v. United States*, Court No. 16-00124, slip op. 19-17 (Ct. Int'l Trade Feb. 1, 2019) (*Second Remand Order*). The litigation involves challenges to our *Final Results*¹ in the administrative review of the antidumping duty order on diamond sawblades and parts thereof (diamond sawblades) from the People's Republic of China (China) covering the period of review November 1, 2013, through October 31, 2014.

In its *Second Remand Order*, the CIT remanded the *Final Results* to Commerce to reconsider Commerce's methodology in determining the separate rate for the non-selected respondents in this litigation. In addition, the CIT ordered that, if Commerce decides on remand to reinstate Weihai Xiangguang Mechanical Industrial Co., Ltd. (Weihai) in the underlying administrative review, Commerce must make appropriate adjustments in line with the CIT's previous remand order regarding the cores valuation and the revision to the surrogate truck freight distance with respect to Weihai.

¹ See *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 38673 (June 14, 2016) (*Final Results*), and accompanying Issues and Decision Memorandum (I&D Memo).

Background

On August 6, 2018, Commerce issued its Final First Remand Redetermination pursuant to *Diamond Sawblades Mfrs. v. United States*, 301 F. Supp. 3d 1326 (CIT 2018) (*First Remand Order*).² In the Final First Remand Redetermination, in accordance with 19 CFR 351.213(d) and in light of *Glycine & More, Inc. v. United States*, 880 F.3d 1335 (Fed. Cir. 2018) (*Glycine & More*), Commerce stated its intent to accept Robert Bosch Tools Corporation's (Bosch) withdrawal of review request for Weihai and rescind the underlying administrative review, in part, with respect to Weihai. Because Weihai was an individually examined respondent, Commerce's intended rescission of review, in part, for Weihai left the Jiangsu Fengtai Single Entity³ as the sole remaining individually examined respondent whose calculated margin was assigned as the separate rate for the non-selected respondents. After the revision to the surrogate truck freight distance pursuant to the *First Remand Order*, the margin for the Jiangsu Fengtai Single Entity was 56.67 percent. We assigned 56.67 percent to the non-selected respondents as the separate rate in the Final First Remand Redetermination. In the Final First Remand Redetermination, we determined that the issues concerning the cores valuation and the surrogate truck freight distance were moot for Weihai, because of our intended rescission of the underlying administrative review, in part, for Weihai.

² See Final First Remand Redetermination pursuant to *First Remand Order*, dated August 6, 2018, and available at <https://enforcement.trade.gov/remands/18-28.pdf> (Final First Remand Redetermination).

³ The Jiangsu Fengtai Single Entity is comprised of Jiangsu Fengtai Diamond Tool Manufacture Co., Ltd., Jiangsu Fengtai Tools Co., Ltd., and Jiangsu Fengtai Sawing Industry Co., Ltd. See the Memorandum, "Diamond Sawblades and Parts Thereof from the People's Republic of China – Collapsing of Jiangsu Fengtai Diamond Tool Manufacture Co., Ltd. and Affiliated Producers," dated November 30, 2015.

CIT's Decision

The CIT sustained our application of the reasonableness test under 19 CFR 351.213(d) to the question of whether to allow Bosch's withdrawal of review request for Weihai,⁴ but the CIT found that "exceptional circumstances make Commerce's decision to rescind Weihai's review, without taking any other action, not reasonable."⁵ The CIT explained that this case is *sui generis* for several reasons, including the fact that, in the Final First Remand Redetermination, "Commerce was in the unique position of deciding whether or not to rescind the administrative review of Weihai after it had already completed a full individual examination of Weihai."⁶ The CIT noted that this is significant, in part, because the resulting rate for Weihai was drastically different from that of the Jiangsu Fengtai Single Entity – originally 21.67 percent and 61.48 percent, respectively – in the final results of the underlying administrative review.⁷ The CIT found that this difference should have alerted Commerce that using only the Jiangsu Fengtai Single Entity's margin was not likely representative of an appropriate "all-others rate" for the non-selected respondents.⁸ For this reason, the CIT held that "it was not reasonable for Commerce to rescind the review of Weihai without some other action, such as selecting another mandatory respondent to take its place."⁹ In the *Second Remand Order*, the CIT ordered Commerce to do one of the following: (1) "withdraw the rescission of review as to Weihai;" (2) "choose a suitable substitute mandatory respondent;" or (3) "use any other record evidence to

⁴ See *Second Remand Order*, slip op. 19-17, at 9-10.

⁵ *Id.* at 11.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 11-12. Although the CIT referred to this as an "all-others rate" in the *Second Remand Order*, we note that in non-market economy (NME) proceedings, companies not selected for individual examination but that otherwise satisfy the criteria for separate rate status receive a "separate rate." See, e.g., *Final Results*, 81 FR at 38674 (briefly discussing separate rate requirements).

⁹ See *Second Remand Order*, slip op. 19-17, at 11-12.

devise a fair, equitable, an reasonably accurate all-others rate for the non-selected respondents.”¹⁰ The CIT also held that it “sees nothing in the record to support the choice of Jiangsu’s rate as an appropriate all-others rate but does not preclude Commerce from choosing it if it has such evidence.”¹¹ In addition, the CIT ordered that, if Commerce decides to withdraw its rescission of the review as to Weihai, it would be required to make appropriate adjustments in line with the *First Remand Order* regarding the cores valuation and the surrogate truck freight distance with respect to Weihai.¹²

The CIT emphasized that the concern here is inaccuracy and, therefore, the unfairness of the separate rate assigned to the non-selected respondents.¹³ The CIT noted a possibility of calculating a separate rate to be used based on Weihai’s data but continuing with the rescission of the underlying administrative review in part as to Weihai, which Commerce had not considered earlier.¹⁴

Discussion

Intended Rescission in Part for Weihai

In the past administrative reviews of the antidumping duty order on diamond sawblades from China, we rescinded the administrative review, in part, with respect to separate rate respondents for which we accepted the withdrawals of review requests as properly filed.¹⁵ Also, in the underlying administrative review that is subject to this remand redetermination, we

¹⁰ *Id.* at 14.

¹¹ *Id.*

¹² *Id.* at 14, n.12.

¹³ *Id.* at 14, n.13.

¹⁴ *Id.* at 14, n.13.

¹⁵ See, e.g., *Diamond Sawblades and Parts Thereof from the People’s Republic of China: Rescission of Antidumping Duty Administrative Review in Part*, 77 FR 47362 (August 8, 2012), and *Diamond Sawblades and Parts Thereof from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 71980 (December 4, 2014), and accompanying Preliminary Decision Memorandum at 4-5.

rescinded the administrative review, in part, with respect to Husqvarna (Hebei) Co., Ltd., based on the timely withdrawals of review requests that we accepted.¹⁶ In the *Second Remand Order*, the CIT sustained our application of the reasonableness test under 19 CFR 351.213(d) for whether to accept Bosch's withdrawal of review request, but ruled that it is not reasonable to rescind the underlying administrative review, in part, with respect to Weihai without a recalculation of a more accurate and fair separate rate that represents the non-selected respondents better.¹⁷

We have reconsidered whether it was reasonable to accept Bosch's withdrawal of review request in light of the CIT's opinion. We find that nothing from the *Second Remand Order* impacts our analysis of the circumstances surrounding Bosch's withdrawal of the review request. Rather, the Court's opinion emphasizes that its concern is "inaccuracy and therefore unfairness to the non-examined parties."¹⁸ It is not our practice, nor does the statute require us, to consider the impact on the separate rate respondents when considering whether to accept the withdrawal of a review request regarding a mandatory respondent. In particular, section 735(c)(5)(A) of the Act, which we look to for guidance in calculating the separate rate in NME antidumping duty proceedings, states that "the estimated all others rate shall be an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated . . ." Therefore, we find the continuation of the intended rescission for Weihai is consistent with our past practice of rescinding administrative reviews, in

¹⁶ See *Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 75854 (December 4, 2015) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum at 2-3. This partial rescission became final in the *Preliminary Results*. See *Final Results* and accompanying I&D Memo at Comment 23 ("Accordingly, this issue was rendered moot by our instruction to CBP that it liquidate the suspended entries of subject merchandise exported by Husqvarna during the POR.").

¹⁷ See *Second Remand Order*, slip op. 19-17, at 7-12.

¹⁸ *Id.* at 14, n.13.

part, for separate rate companies for which we accepted all withdrawals of review requests. There is no requirement in the statute to reinstate Weihai into the underlying administrative review for the sole purpose of calculating the separate rate for the non-selected respondents.

However, to comply with the Court's order to "devise a fair, equitable, and reasonably accurate all-others rate," the Court held that one possible method is the recalculation of the separate rate for the non-selected respondents based on Weihai's data, even as we continue with the intended rescission of the underlying administrative review, in part, with respect to Weihai.¹⁹ As discussed in further detail below, given the unique factual circumstances of this particular case, as the CIT noted in the *Second Remand Order*,²⁰ we find that this approach is reasonable in this particular case given these peculiar factual circumstances. We note that we calculated a margin for Weihai in the administrative review, which took place before we stated our intent to rescind, in part, for Weihai, pursuant to the *First Remand Order*. Despite our stated intent to rescind this review as to Weihai, Weihai was also determined to be a respondent eligible for a separate rate based on the record developed during the course of the underlying administrative review.²¹ Furthermore, we have all the data necessary on the record to calculate a separate rate based on information submitted by Weihai, even though it is no longer subject to the review as a mandatory respondent. Because we can calculate the separate rate for the non-selected separate rate respondents using Weihai's data, while continuing with the intended rescission of the underlying administrative review, in part, as to Weihai, we do not find it necessary or reasonable to depart from our practice and reinstate Weihai in the underlying administrative review.

¹⁹ *Id.* at 14, n.13 ("{t} here is the possibility of calculating a rate to be used based on Weihai's data but still permitting it to withdraw from the review").

²⁰ *Id.* at 11 ("{t} his case is *sui generis* for several reasons").

²¹ See *Preliminary Results* and accompanying Preliminary Decision Memorandum at 8, unchanged in *Final Results*.

Recalculation of the Separate Rate for Non-Selected Respondents

When there is only one calculated margin available to be assigned to non-selected separate rate respondents, it has been our practice to assign that calculated margin to all non-selected separate rate respondents.²² Our First Final Remand Redetermination is, therefore, consistent with our practice and also consistent with the guidance in section 735(c)(5)(A) of the Act. Therefore, we are complying with the *Second Remand Order* under respectful protest²³ and recalculating the separate rate for the non-selected respondents.

As explained above, given the highly unique facts of the underlying administrative review, we find it most reasonable to continue with the intended rescission of the underlying administrative review as to Weihai while recalculating the weighted-average separate rate for the non-selected respondents using the margin calculated based on Weihai's data and the margin for the Jiangsu Fengtai Single Entity. We find that this addresses the *Second Remand Order* that we determine "a fair, equitable, and reasonably accurate"²⁴ rate that can be assigned to the non-selected separate rate respondents. Also, as explained above, we do not find it reasonable to reinstate Weihai for the sole purpose of recalculating the separate rate for the non-selected respondents. Again, Weihai had separate rate status based on the administrative record developed during the course of the underlying administrative review, and we have sufficient information to calculate a rate from Weihai's data submitted during the course of the review.

²² See, e.g., *Truck and Bus Tires from the People's Republic of China: Final Affirmative Determinations of Sales at Less Than Fair Value and Critical Circumstances*, 82 FR 8599 (January 27, 2017), and *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 26912 (June 12, 2017), remanded on other grounds in *Diamond Sawblades Mfrs.' Coal. v. United States*, Court No. 17-00167, slip op. 18-146 (Ct. Int'l Trade Oct. 23, 2018).

²³ See *Viraj Grp., Ltd. v. United States*, 343 F.3d 1371, 1376 (Fed. Cir. 2003).

²⁴ See *Second Remand Order*, slip op. 19-17, at 14.

In the Final First Remand Redetermination, we stated that the issues concerning the valuation of cores and the revision of the surrogate truck freight distance are moot with respect to Weihai.²⁵ In the *Second Remand Order*, the CIT ordered that, if Commerce decides to reinstate Weihai into the administrative review through this remand redetermination, it must revise the cores valuation and surrogate truck freight distance for Weihai. The CIT did not specifically order Commerce to revise the cores valuation and surrogate truck freight distance for Weihai in case we were to use Weihai's data for the recalculation of the separate rate for the non-selected respondents while we continue with the intended rescission, in part, for Weihai.²⁶ However, because the CIT expressed its concern with the accuracy and fairness of the separate rate for the non-selected respondents,²⁷ and because we are using Weihai's data to recalculate a separate rate for the non-selected respondents, we have revalued cores and revised the surrogate truck freight distance in our recalculation of the separate rate that is based in part on Weihai's data.

Valuation of Cores

In its *First Remand Order*, the CIT granted Commerce's motion for a voluntary remand on the issue concerning the valuation of Weihai's purchased cores in light of the intervening remand order issued in *Diamond Sawblades Mfrs.' Coal. v. United States*, 219 F. Supp. 3d. 1368 (CIT 2017).²⁸ Because of our intended rescission for Weihai, we did not address this issue in the Final First Remand Redetermination. In this final second remand redetermination, we now find that we made an inadvertent error with the control numbers for which Weihai reported input quantities for both self-produced cores and purchased cores. Due to this computer program

²⁵ See Final First Remand Redetermination at 8.

²⁶ See *Second Remand Order*, slip op. 19-17, at 14, n.12 (“If Commerce *withdraws its rescission of the review as to Weihai*, it would be required to make appropriate adjustments in line with the court's previous remand order regarding the valuation of Weihai's self-produced steel cores and the calculation of surrogate truck freight.”) (Emphasis added. Internal citation omitted.)

²⁷ *Id.* at 14, n.13. (“The concern here is inaccuracy and therefore unfairness to the non-examined parties.”)

²⁸ See *First Remand Order*, 301 F. Supp. 3d. at 1331.

error, we inadvertently omitted the valuation of purchased cores for those control numbers for which Weihai reported input quantities for both self-produced cores and purchased cores. This error also caused an undervaluation of certain cores. This is an issue that the petitioner raised for the *Final Results*.²⁹ We are correcting the error by fixing the programming code.³⁰

Commerce's final remand redetermination pursuant to *Diamond Sawblades Mfrs. ' Coal. v. United States*, 219 F. Supp. 3d. 1368 (CIT 2017),³¹ was further remanded in *Diamond Sawblades Mfrs. ' Coal. v. United States*, 299 F. Supp. 3d 1374 (CIT 2018), which ordered Commerce to further reconsider the valuation of Weihai's cores. Pursuant to this remand order, Commerce made additional corrections to the valuation of Weihai's cores, which the CIT sustained and became final and conclusive.³² In this final second remand redetermination, because the CIT granted our request for voluntary remand in light of *Diamond Sawblades Mfrs. ' Coal. v. United States*, 219 F. Supp. 3d. 1368 (CIT 2017), we made the same corrections that we made in the final second remand redetermination pursuant to *Diamond Sawblades Mfrs. ' Coal. v. United States*, 299 F. Supp. 3d 1374 (CIT 2018), which became final and conclusive in *Diamond Sawblades Mfrs. ' Coal. v. United States*, 334 F. Supp. 3d 1353 (CIT 2018).

Specifically, we have reexamined our methodology for valuing self-produced cores and compared that to the build-up methodology used to value purchased cores.³³ As an initial matter, cores (whether self-produced or purchased) are subject merchandise. Therefore, we find it appropriate to compare the methods used to determine surrogate values and normal values for the

²⁹ See *Final Results* and accompanying I&D Memo at Comment 13.

³⁰ See the Weihai draft second remand analysis memorandum dated March 7, 2019.

³¹ See Final Remand Redetermination pursuant to *Diamond Sawblades Mfrs. ' Coal. v. United States*, 219 F. Supp. 3d. 1368 (CIT 2017), dated September 21, 2017, and available at <https://enforcement.trade.gov/remands/17-36.pdf>.

³² See Final Second Remand Redetermination pursuant to *Diamond Sawblades Mfrs. ' Coal. v. United States*, 299 F. Supp. 3d 1374 (CIT 2018), dated July 20, 2018 (Final Second Remand Redetermination 2018), and available at <https://enforcement.trade.gov/remands/18-26.pdf>, *aff'd Diamond Sawblades Mfrs. ' Coal. v. United States*, 334 F. Supp. 3d 1353 (CIT 2018).

³³ See Final Second Remand Redetermination 2018 at 4-5.

cores, as relevant. In building up the surrogate value for Weihai's purchased cores, we relied on the weight of the steel in the purchased cores. We did not rely on the weight of the steel used to produce the purchased cores as we did in calculating the normal value for Weihai's self-produced cores. Therein lies the difference. Thus, for this final second remand redetermination, Commerce has adjusted its build-up methodology for determining the surrogate value for purchased cores such that it is consistent with the methodology applied to determine the normal value of self-produced cores.

However, in the underlying administrative review, we did not solicit the weight of the steel used to produce Weihai's purchased cores; that information is not on the record. Accordingly, we must use the facts otherwise available, pursuant to section 776(a) of the Act. As facts otherwise available, we have used Weihai's reported experience in self-producing cores. Specifically, Weihai reported the variance between Weihai's actual weight of steel consumed in the production of cores and the standard weight of steel for the self-produced cores.³⁴ We multiplied that variance by the standard weight of Weihai's purchased cores and added the product of this multiplication to the standard weight of Weihai's purchased cores. Then, using this adjusted value as the weight of steel used to produce the purchased cores, we determined the surrogate value for Weihai's purchased cores using the same methodology as in the *Final Results*,³⁵ with corrections in this final second remand redetermination as explained above. Then, because Weihai's reported production experience includes an offset for scrap, we applied a scrap offset to the normal value, which includes the value for Weihai's purchased cores, using the scrap rate reported by Weihai.³⁶

³⁴ See Weihai's section D response dated June 25, 2015, at Exhibit D-8.2.

³⁵ See *Final Results* and accompanying I&D Memo at Comment 11.

³⁶ See Weihai's supplemental response September 11, 2015, at Exhibit SD-30.

Surrogate Truck Freight Distance

For the margin calculated based on Weihai's data, we applied the same surrogate truck freight distance that we applied to the Jiangsu Fengtai Single Entity in the Final First Remand Redetermination, which no interested parties challenged.³⁷ This revision results in a change to the surrogate truck freight value for all inputs for which Weihai reported truck freight distances, including Weihai's cores.

Interested Parties' Comments

Diamond Sawblades Manufacturers' Coalition (DSMC) and Weihai agree with the draft second remand redetermination.³⁸ No other interested parties submitted comments.

Final Results of Redetermination

Pursuant to the *Remand Order*, we have reconsidered our determination as described above. We continue to accept Bosch's withdrawal of its review request of Weihai and rescind the underlying administrative review, in part, with respect to Weihai. However, based on Weihai's data, and under respectful protest,³⁹ we recalculated the margin that would have been applicable to Weihai had we continued with the individual examination of Weihai. We used this margin and the margin for the Jiangsu Fengtai Single Entity to calculate the weighted-average separate rate for the non-selected respondents. The methodology we used for this calculation is consistent with the *Final Results*.⁴⁰ The rates determined in this final second remand redetermination are as follows:

³⁷ See Final First Remand Redetermination at 6-8.

³⁸ See the draft remand redetermination comments from DSMC and Weihai dated March 18, 2019.

³⁹ See *Viraj*, 343 F.3d at 1376.

⁴⁰ See *Final Results* and accompanying I&D Memo at 5-6.

Company	Final Results Margin (Percent)	Second Remand Margin (Percent)
Bosun Tools Co., Ltd.	29.76	39.66
Chengdu Huifeng Diamond Tools Co., Ltd.	29.76	39.66
Danyang Huachang Diamond Tools Manufacturing Co., Ltd.	29.76	39.66
Danyang NYCL Tools Manufacturing Co., Ltd.	29.76	39.66
Danyang Weiwang Tools Manufacturing Co., Ltd.	29.76	39.66
Guilin Tebon Superhard Material Co., Ltd.	29.76	39.66
Hangzhou Deer King Industrial and Trading Co., Ltd.	29.76	39.66
Hong Kong Hao Xin International Group Limited	29.76	39.66
Huzhou Gu's Import & Export Co., Ltd.	29.76	39.66
Jiangsu Fengtai Single Entity	61.48	56.67
Jiangsu Huachang Tools Manufacturing Co., Ltd.	29.76	39.66
Jiangsu Inter-China Group Corporation	29.76	39.66
Jiangsu Youhe Tool Manufacturer Co., Ltd.	29.76	39.66
Orient Gain International Limited	29.76	39.66
Pantos Logistics (HK) Company Limited	29.76	39.66
Qingyuan Shangtai Diamond Tools Co., Ltd.	29.76	39.66
Quanzhou Zhongzhi Diamond Tool Co., Ltd.	29.76	39.66
Rizhao Hein Saw Co., Ltd.	29.76	39.66
Saint-Gobain Abrasives (Shanghai) Co., Ltd.	29.76	39.66

Shanghai Jingquan Industrial Trade Co., Ltd.	29.76	39.66
Wuhan Wanbang Laser Diamond Tools Co.	29.76	39.66
Xiamen ZL Diamond Technology Co., Ltd.	29.76	39.66
Zhejiang Wanli Tools Group Co., Ltd.	29.76	39.66

3/29/2019

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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