

FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND
Edsal Manufacturing Co., Inc. v. United States
Court No. 15-00298, (CIT April 18, 2016)

I. SUMMARY

The Department of Commerce (the “Department”) has prepared these draft results of redetermination pursuant to the voluntary remand order of the Court of International Trade (“CIT” or “Court”) in Edsal Manufacturing Co., Inc., v. United States, Court No. 15-00298 (April 18, 2016) (“Remand Opinion and Order”). These draft remand results concern Boltless Steel Shelving Units Prepackaged for Sale from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 80 FR 51779 (August 26, 2015) (“Final Determination”). On voluntary remand, the CIT ordered the Department to further consider the amount of the export subsidy adjustments used to calculate cash deposit rates for respondents.¹

As explained below, pursuant to the CIT’s Remand Opinion and Order, we have reviewed our calculation of the cash deposit rates applied in the Final Determination and have reconsidered the calculation in accordance with our policy and practice.

II. BACKGROUND

On August 26, 2014, the Department received an antidumping duty (“AD”) petition concerning imports of Boltless Steel Shelving Units Prepackaged for Sale (“boltless steel shelving”) from the People’s Republic of China (“PRC”) filed in proper form by Edsal Manufacturing Company, Inc. (“Petitioner”).² The Department published the initiation of this

¹ See Remand Opinion and Order at 1.

² See Letter to the Secretary of Commerce from Petitioner, “Antidumping and Countervailing Duty Petition” (August 26, 2014) (“Petition”).

investigation and the companion countervailing duty (“CVD”) investigation on September 22, 2014.³ On October 29, 2014, the Department selected as mandatory respondents the two exporters accounting for the largest volume of boltless steel shelving exported from the PRC to the United States during the POI (i.e., Nanjing Topsun Racking Manufacturing Co., Ltd. (“Topsun”) and Zhongda United Holding Group Co., Ltd. (“Zhongda United”)).⁴

On April 1, 2015, the Department published the Preliminary Determination, and on April 17, 2015, the Department published an Amended Preliminary Determination and postponement of the final determination.⁵ On August 26, 2015, the Department published its Final Determination. In accordance with 19 CFR 351.224(b), the Department disclosed the details of its calculation of the final dumping margins to all parties in this investigation on August 18, 2015.⁶ On August 24, 2015, Petitioner submitted a timely ministerial error allegation with respect to the Department’s Final Determination.⁷ On September 15, 2015, the Department issued a memorandum addressing Petitioner’s ministerial error allegation.⁸

³ See Boltless Steel Shelving Units Prepackaged for Sale from the People’s Republic of China: Initiation of Antidumping Duty Investigation, 79 FR 56562 (September 22, 2014) (“Initiation Notice”); see also Boltless Steel Shelving Units Prepackaged for Sale from the People’s Republic of China: Initiation of Countervailing Duty Investigation, 79 FR 56567 (September 22, 2014).

⁴ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, through James C. Doyle, Director, Office V, from Kabir Archuletta, Senior International Trade Analyst, Office V, “Antidumping Duty Investigation of Boltless Steel Shelving Units Prepackaged for Sale from the People’s Republic of China: Respondent Selection” (October 29, 2014).

⁵ See Boltless Steel Shelving Units Prepackaged for Sale from the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value, 80 FR 17409 (April 1, 2015) (“Preliminary Determination”) and accompanying Decision Memorandum (“Preliminary Decision Memo”); see also Boltless Steel Shelving Units Prepackaged for Sale from the People’s Republic of China: Amended Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 80 FR 21207 (April 17, 2015) (“Amended Preliminary Determination”).

⁶ See Memorandum to the File from Kabir Archuletta, Senior International Trade Analyst, Office V, “Deadline for Ministerial Error Comments for the Final Determination” (August 18, 2015).

⁷ See Submission from Petitioner, re: “Ministerial Error Comments,” dated August 24, 2015.

⁸ See Memorandum to the File from Irene Gorelik, Senior International Trade Analyst, Office V, “Antidumping Duty Investigation of Boltless Steel Shelving Units Prepackaged for Sale from the People’s Republic of China: Analysis of Ministerial Error Allegation” (September 15, 2015).

III. REMAND OPINION AND ORDER

In its Remand Opinion and Order, the Court remanded to the Department our calculation of the final AD cash deposit rates as reduced by the export subsidy rates calculated in the companion CVD investigation pursuant to section 777A(f) of the Tariff Act of 1930, as amended (“Act”).

IV. ANALYSIS

In the Preliminary Determination, we determined that, consistent with our practice, where the product under investigation is also subject to a concurrent CVD investigation, we instruct CBP to require a cash deposit equal to the amount by which the normal value exceeds the export price or constructed export price, less the amount of the countervailing duty determined to constitute an export subsidy.⁹ Specifically, we stated that:

in this LTFV investigation, export subsidies constitute 3.03 percent of the preliminarily calculated countervailing duty rate in the concurrent countervailing duty investigation, and, thus, we will offset the calculated rates for the mandatory respondents and the PRC-wide rate of 112.68 percent by the countervailing duty rate attributable to export subsidies (i.e., 3.03 percent) to calculate the cash deposit rate for this LTFV investigation.¹⁰

No interested parties filed ministerial error allegations or submitted comments with respect to our preliminary cash deposit calculations. Subsequently, in the Final Determination, we stated that:

export subsidies constitute 16.06 percent of the final calculated countervailing duty rate in the concurrent countervailing duty investigation, and, thus, we will offset the calculated rates for Zhongda, the companies receiving a separate rate, and the PRC-wide rate of 112.68 percent by the countervailing duty rate attributable to export subsidies (i.e., 16.06 percent) to calculate the cash deposit rate for this LTFV investigation.¹¹

However, based on our review of the AD and CVD records of these investigations, we

⁹ See Preliminary Determination, 80 FR at 17411.

¹⁰ Id.

¹¹ See Final Determination, 80 FR at 51781.

determine that our cash deposit calculations in the Final Determination were not in accordance with our policy and practice.

We have revised our Final Determination cash deposit calculations in accordance with the established policy and practice, which we articulated in Drawn Stainless Steel Sinks from the People’s Republic of China: Antidumping Duty Investigation, 77 FR 60673 (October 4, 2012) (“PRC Sinks”). In PRC Sinks, the Department demonstrated the manner in which it adjusts AD cash deposit duties for CVD export subsidies.

Specifically, we stated that:

- (1) For {mandatory respondents} “each receiving their own calculated AD margin, we reduced their respective cash deposit rates by the respective export subsidies and estimated domestic subsidy pass-through determined for each of these respondents...” in the companion CVD proceeding;¹²
- (2) “For exporter/producer combinations receiving a separate AD margin based on the rates calculated for the mandatory respondents in the AD determination, we reduced the AD cash deposit rate by the lesser of: a) the export subsidy rate applicable to each exporter or b) the average of the export subsidy rates applicable to the mandatory respondents on which the separate rate in the AD determination is based...”;¹³ and, finally,
- (3) “For the PRC-wide entity, which received an adverse facts available rate based on information contained in the Petition, as an extension of the adverse inference found necessary pursuant to section 776(b) of the Act, the Department has adjusted the PRC-wide entity’s AD cash deposit rate by the lowest export subsidy rate...determined for any

¹² See PRC Sinks, 77 FR at 60675, unchanged in Drawn Stainless Steel Sinks from the People’s Republic of China: Investigation, Final Determination, 78 FR 13019 (February 26, 2013).

¹³ Id., citing to Certain Steel Wheels from the People’s Republic of China: Notice of Final Determination of Sales at Less Than Fair Value and Partial Affirmative Final Determination of Critical Circumstances, 77 FR 17021, 17026 (March 23, 2012).

party in the companion CVD proceeding.”¹⁴

Based on our applied practice in PRC Sinks, the proper adjustments to the AD cash deposits in the Final Determination of this investigation, as noted in Petitioner’s Ministerial Error Comments,¹⁵ and corrected following Petitioner’s comments on the draft remand results, noted below, are as follows:

- (1) For Zhongda, we reduced its AD cash deposit rate by its respective calculated export subsidy in the companion CVD investigation. This adjustment will appear as: 17.55 percent minus 0.02 percent,¹⁶ resulting in an adjusted AD cash deposit rate of 17.53 percent;
- (2) For the other producer/exporter combinations receiving a separate rate, which is based on the calculated rate for Zhongda, we reduced the AD cash deposit rate by the simple average of the export subsidy rates determined for the mandatory respondents in the companion CVD investigation. This adjustment will appear as: 17.55 percent minus 0.02 percent,¹⁷ percent resulting in an adjusted AD cash deposit rate of 17.53 percent; and
- (3) For the PRC-wide entity (including Topsun), which received an adverse facts available rate based on information contained in the Petition, as an extension of the adverse inference found necessary pursuant to section 776(b) of the Act, the Department has adjusted the PRC-wide entity’s AD cash deposit rate by the lowest export subsidy rate determined for any party in the companion CVD proceeding, which was 0.00 percent.

¹⁴ See PRC Sinks, 77 FR at 60675.

¹⁵ See Petitioner’s Ministerial Error Comments, dated August 24, 2015, at page 4 and Attachment I.

¹⁶ In the companion CVD investigation, Zhongda was not a mandatory respondent and received the calculated “all-others” export subsidy rate of 0.02 percent, which should be used to adjust Zhongda’s calculated AD cash deposit rate. See Boltless Steel Shelving Units Prepackaged for Sale from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, 80 FR 51775 (August 26, 2015) (“CVD Final”) and accompanying Issues and Decision Memorandum at 18-22. In the CVD Final, the export subsidy rates determined for the mandatory respondents was 0.00 percent and 0.04 percent, the simple average of which is 0.02 percent.

¹⁷ See CVD Final and accompanying Issues and Decision Memorandum at 18-22.

Accordingly, the AD cash deposit rate of 112.68 percent is not adjusted, as an extension of the adverse inference found necessary under section 776(b) of the Act.

V. INTERESTED PARTY COMMENTS ON DRAFT REMAND RESULTS

On May 5, 2016, the Department released the draft remand results of redetermination and accompanying documents to all interested parties.¹⁸ We invited interested parties to comment on the draft remand results by May 12, 2016. On May 5, 2016, Petitioner filed timely comments.¹⁹

Issue 1: Adjusted Cash Deposit Rates

Petitioner's Comments:

- Edsal agrees with the Department's proposed adjustments as a proper application of its practice. However, the Department made a mathematical error in the adjustment for Zhongda and for the other exporter/producer combinations receiving a separate rate by subtracting 0.20 percent from the AD cash deposit rates instead of subtracting 0.02 percent. The correct adjusted AD cash deposit rate should be 17.53 percent, rather than the 17.35 percent stated in the draft remand results.

Department's Position:

The Department agrees with Petitioner that we made a ministerial error in the draft remand results. We have corrected the error and applied the adjusted AD cash deposit rate of 17.53 percent to the draft correction cash deposit and order instructions, as discussed above.²⁰

¹⁸ See Letter to All Interested Parties, re; "Antidumping Duty Investigation of Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Remand Redetermination, dated May 5, 2016. See also Memorandum to the File, from Irene Gorelik, Analyst, re; "Correction of Final Determination Draft U.S. Customs and Border Protection ("CBP") Instructions Pursuant to Remand," dated May 5, 2016.

¹⁹ See Letter from Petitioner, re; "Antidumping Duty Investigation of Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Petitioner's Comments on Draft Results of Redetermination on Remand," dated May 5, 2016.

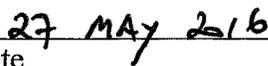
²⁰ See Memorandum to the File, from Irene Gorelik, Analyst, re; "Correction of Final Determination Draft U.S. Customs and Border Protection ("CBP") Instructions Pursuant to Final Remand," dated concurrently with these final remand results of redetermination.

VI. FINAL RESULTS OF REDETERMINATION

We have implemented the changes discussed above with respect to the correction of the cash deposit rates adjusted for the export subsidy rates calculated in the companion CVD investigation.



Paul Piquado
Assistant Secretary
for Enforcement and Compliance



Date