

July 15, 2016

RESULTS OF REMAND REDETERMINATION
Tension Steel Industries Co., Ltd., v. United States
Court No. 14-00218, Slip Op. 16-51 (CIT May 16, 2016)

Summary

These results of remand redetermination are prepared in accordance with the order of the U.S. Court of International Trade (the Court or CIT) in *Tension Steel Industries Co., Ltd., v. United States*, Consol. Court No. 14-00218, Slip Op. 16-51 (CIT May 16, 2016) (*Remand Order*). The litigation involves challenges to the final determination of the U.S. Department of Commerce (the Department) in the antidumping duty investigation on certain oil country tubular goods from Taiwan.¹ This remand redetermination addresses the issue of whether to grant rebate adjustments claimed by Tension Steel Industries Co., Ltd. (Tension) where the customers in question were not aware at the time of sale of the terms and conditions of the rebate.

On June 21, 2016, the Department issued draft results of redetermination in which, pursuant to the Court's remand order, we reconsidered our finding in the underlying final determination.² As discussed below, to comply with the Court's remand order, the Department has, under respectful protest, granted all rebates reported by Tension and recalculated the weighted-average dumping margin for Tension.

¹ See *Certain Oil Country Tubular Goods From Taiwan: Final Determination of Sales at Less Than Fair Value*, 79 FR 41979 (July 18, 2014) (*LTFV Final*); amended in *Certain Oil Country Tubular Goods From Taiwan: Amended Final Determination of Sales at Less Than Fair Value*, 79 FR 46403 (August 8, 2014).

² See Draft Results of Redetermination Pursuant to Court Remand, *Tension Steel Industries Co., Ltd. v. United States*, Court No. 14-00218, Slip Op. 16-51, (CIT June 21, 2016) (Draft Remand).

Background

In the *LTFV Final*, we determined to reject certain, though not all, rebates reported by Tension.³ Specifically, the Department accepted “only those rebates which Tension granted for sales made pursuant to sales contracts that specifically included a rebate clause,” because those constitute the only rebates “the terms and conditions {of which} are known to the customer prior to the sale.”⁴ The Department explained that, within the meaning of its regulations, only those transactions are “legitimate rebates (*i.e.*, price adjustments).”⁵

Court’s Remand

Consistent with the Court’s decision in *Papierfabrik August Koehler AG v. United States*, 971 F. Supp. 2d 1246 (2014) (*Papierfabrik*), the Court held that the Department’s regulations require that the starting price used for normal value reflect any post-sale price adjustments (*e.g.*, rebates) that are included in the purchaser’s net outlays.⁶ The Court also observed that, rather than appeal *Papierfabrik*, “Commerce chose to amend the regulation instead.”⁷ Consequently, the Court agreed with Tension and remanded the *LTFV Final* with the direction that the Department grant all of Tension’s claimed rebates.⁸

Draft Redetermination

We issued draft results of redetermination on June 21, 2016, in which, pursuant to the *Remand Order*, the Department granted all rebates claimed by Tension.⁹ Interested parties were

³ See *LTFV Final* and accompanying Issues and Decision Memorandum at Comment 3.

⁴ *Id.*

⁵ *Id.*

⁶ See *Remand Order* at 6-7.

⁷ *Id.* at 7 (citing *Modification of Regulations Regarding Price Adjustments in Antidumping Duty Proceedings*, 79 FR. 78742 (Dep’t of Commerce Dec. 31, 2014) (proposed rule and request for comment)). The Department promulgated a final rule on March 24, 2016, which, pursuant to the terms of the *Remand Order*, is not applicable to this remand proceeding. See *Modification of Regulations Regarding Price Adjustments in Antidumping Duty Proceedings*, 81 FR. 15641 (Dep’t of Commerce Mar. 24, 2016) (final rule).

⁸ See *Remand Order* at 7.

⁹ See *Draft Remand* at 2.

invited to comment on the draft results of redetermination.¹⁰ Maverick Tube Corporation and United States Steel Corporation (collectively, the petitioners) submitted comments on the draft results of redetermination.¹¹

Discussion

In accordance with the *Remand Order*, and under respectful protest,¹² we have granted all of Tension's reported rebates and recalculated the margin for Tension accordingly. As a result of this change, the weighted-average margin for Tension is zero percent.

Comment

Comment 1: The petitioners argue that the Department's denial of certain rebates in the final determination was appropriate.

- Although the Court ordered the Department to take this course of action on remand, the Department should note its objection to the Court's order and proceed accordingly.
- *Papierfabrik* reflects an unreasonable standard that is contrary not only to well-established Department practice but also the very spirit of the antidumping duty laws.
- *Papierfabrik* is an outlier and contradicts other decisions of the Court.
- The Department's rejection of certain of Tension's claimed rebates was reasonable and consistent with Department practice.
- The Department should continue to reject certain of Tension's claimed rebate adjustments.

¹⁰ *Id.*, at 3.

¹¹ See letter from the petitioners, "Certain Oil Country Tubular Goods from Taiwan: Comments on the Department's Draft Remand Results" (June 28, 2016) (Draft Comments).

¹² See *Viraj Group, Ltd. v. United States*, 343 F.3d 1371 (Fed. Cir. 2003).

Department's Position: We do not disagree with the petitioners' argument that the Department's regulations at the time of the *LTFV Final* permit it to deny claimed adjustments for rebates which were not contemplated at the time of sale. However, as the petitioners acknowledge,¹³ the Court has specifically directed that the Department grant all of Tension's claimed rebate adjustments, including where the conditions of the rebate were unknown to the customer at the time of sale.¹⁴ Accordingly, consistent with the Court's opinion and order, we have continued to grant all of Tension's claimed rebate adjustments and have made no changes to our draft remand calculations.

Results of Redetermination

The Department recalculated the weighted-average dumping margin for Tension. Tension's recalculated margin is zero percent.¹⁵ The other mandatory respondent in the underlying investigation, Chung Hung Steel Corp., also had a zero percent margin.¹⁶ If these results are finalized and affirmed by the Court, then the end result will be a negative amended final determination.¹⁷



Paul Piquado
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for Enforcement and Compliance

15 July 2016

Date

¹³ See Draft Comments at 2.

¹⁴ See Remand Order at 6-7.

¹⁵ See memorandum to file, "Less-Than-Fair-Value Investigation of Certain Oil Country Tubular Goods from Taiwan: Draft Remand Determination Analysis Memorandum for Tension Steel Industries Co., Ltd." dated June 21, 2016.

¹⁶ See *LTFV Final*.

¹⁷ The "all others" rate will also be zero percent.