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## DEPARTMENT OF COMMERCE

### International Trade Administration

A-570-900

Diamond Sawblades And Parts Thereof from the People's Republic of China: Notice of Court Decision Not in Harmony With Final Determination Under Section 129 of the Uruguay Round Agreements Act and Reinstatement of Order, In Part

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: On May 11, 2016, the United States Court of International Trade (“the Court”) issued final judgment in Diamond Sawblades Manufacturers’ Coalition v. United States, Court No. 13-00168,<sup>1</sup> sustaining the Department of Commerce’s (“the Department”) voluntary final remand results concerning the Implemented PRC Section 129 Determination.<sup>2</sup> In the Final Section 129 Remand, the Department determined that it was appropriate to reinstate the partially revoked antidumping duty order (“the order”) on diamond sawblades and parts thereof (“diamond sawblades”) from the People’s Republic of China (“PRC”) with respect to Advanced Technology & Materials Co., Ltd. (“AT&M”)<sup>3</sup> where the basis for the Implemented PRC Section 129 Determination was no longer valid.<sup>4</sup>

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<sup>1</sup> See Diamond Sawblades Manufacturer’s Coalition v. United States, Consol. Court No. 13-00168, Slip Op. 16-48 (CIT May 11, 2016) (“DSMC”).

<sup>2</sup> See Final Results Of Redetermination Pursuant To Diamond Sawblades Manufacturers’ Coalition v. United States, Consol. Court No. 13-00168, Slip Op. 15-92 (CIT August 20, 2015), dated December 1, 2015, (“Final Section 129 Remand”) available at <http://enforcement.trade.gov/remands/>; 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”).

<sup>3</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 18958, 18959 at n. 10.

<sup>4</sup> See Final Section 129 Remand.

Consistent with the decision of the United States Court of Appeals for the Federal Circuit (“CAFC”) in Timken Co. v. United States, 893 F.2d 337 (Fed. Cir. 1990) (“Timken”), as clarified by Diamond Sawblades Mfrs. Coalition v. United States, 626 F.3d 1374 (Fed. Cir. 2010) (“Diamond Sawblades”), the Department is notifying the public that the final judgment in this case is not in harmony with the Department’s implemented final determination in a proceeding conducted under section 129 of the Uruguay Round Agreements Act (Section 129). Furthermore, the Department is reinstating the order with respect to AT&M.<sup>5</sup>

EFFECTIVE DATE: May 21, 2016

FOR FURTHER INFORMATION CONTACT: Andrew Devine, AD/CVD Operations Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482-0238.

SUPPLEMENTARY INFORMATION:

#### Background

In the less-than-fair-value (“LTFV”) investigation, the Department determined that mandatory respondent AT&M was eligible for a separate rate, and calculated a separate estimated weighted-average dumping margin for it.<sup>6</sup> Petitioner, the Diamond Sawblades Manufacturers’ Coalition (“DSMC”), challenged the Department’s separate-rate determination in court.<sup>7</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

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<sup>5</sup> Who, was stated in the Implemented PRC Section 129 Determination was, collectively with Beijing Gang Yan Diamond Product Company and Yichang HXF Circular Saw Industrial Co., Ltd., a single entity.

<sup>6</sup> See Implemented PRC Section 129 Determination at 29306.

<sup>7</sup> See Advanced Technology & Materials Co. v. United States, 938 F. Supp. 2d 1342 (CIT 2013).

Organization's ("WTO") Dispute Settlement Body.<sup>8</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>9</sup> Removing the zeroing methodology resulted in AT&M receiving a calculated dumping margin of zero.<sup>10</sup> Consequently, the Department partially revoked the order with respect to AT&M. The DSMC challenged this determination before the Court. Additionally, 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>11</sup> The rate applicable to the PRC-wide entity in the LTFV investigation was based on information in the petition and did not involve zeroing.<sup>12</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>13</sup> On October 24, 2014, the Court of Appeals for the Federal Circuit ("CAFC") affirmed the Court's

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<sup>8</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>9</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, 18960 (March 28, 2013).

<sup>10</sup> Id.

<sup>11</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>.

<sup>12</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>13</sup> See Advanced Technology & Materials Co. v. United States, 938 F. Supp. 2d 1342 (CIT 2013).

decision.<sup>14</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 Implemented PRC Section 129 determination, in the litigation concerning the Implemented PRC Section 129 determination, the United States moved for a voluntary remand to reconsider its partial revocation of the dumping order. The Court granted the United States' motion.<sup>15</sup>

On December 1, 2015, the Department issued the final results of redetermination in this section 129 remand and filed this remand with the Court.<sup>16</sup> On May 11, 2016, the Court entered judgment sustaining the remand results.<sup>17</sup>

#### Timken Notice

In its decision in Timken, 893 F.2d at 341, as clarified by Diamond Sawblades, the CAFC held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended ("the Act"), the Department must publish a notice of a court decision that is not "in harmony" with a Department determination and must suspend liquidation of entries pending a "conclusive" court decision. The Court's May 11, 2016, judgment sustaining the Final Section 129 Remand constitutes a final decision of the Court that is not in harmony with the Department's Implemented PRC Section 129 Determination.<sup>18</sup> This notice is published in fulfillment of the publication requirement of Timken.

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<sup>14</sup> See Advanced Technology & Materials Co. v. United States, 581 Fed. Appx. 900 (CAFC 2014) (Rule 36).

<sup>15</sup> See Diamond Sawblades Manufacturers Coalition v. United States, Court No. 13-00168, Slip op. 15-92 (August 20, 2015).

<sup>16</sup> See Final Section 129 Remand.

<sup>17</sup> See Final Sustained Remand.

<sup>18</sup> See DSMC.

### Reinstatement of the Order

In the Final Section 129 Remand, sustained by the Court,<sup>19</sup> the Department determined that reinstatement of the order with regard to AT&M was appropriate.<sup>20</sup> Accordingly, consistent with the Final Section 129 Remand and the decision by the Court sustaining that redetermination, the Department hereby reinstates the order as it applies to AT&M. Consistent with the Department's stated intention in the Final Section 129 Remand, this reinstatement of the order with regard to AT&M is effective as of March 22, 2013, which was the effective date of the partial revocation.<sup>21</sup>

### Cash Deposit Requirements

The Department will instruct U. S. Customs and Border Protection to require cash deposits at 82.05 percent, the current rate established for the PRC-wide entity.<sup>22</sup> Pursuant to the Court's finding that the Department should have issued those instructions upon filing the redetermination with the Court, those instructions will be effective as of December 1, 2015, the date the remand redetermination was filed with the Court.

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<sup>19</sup> See DSMC at 5-6.

<sup>20</sup> See Final Section 129 Remand; see also DSMC.

<sup>21</sup> See Final Section 129 Remand, at 6.

<sup>22</sup> See Diamond Sawblades and Parts Thereof from the People's Republic of China; Final Results of Antidumping Duty Administrative Review; 2012-2013, 80 FR 32344, 32345 (June 8, 2015).

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e) and 777(i)(1) of the Act and section 129(c)(2)(A) of the Uruguay Round Agreements Act.

Dated: June 1, 2016.

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Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

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