



DEPARTMENT OF COMMERCE

International Trade Administration

[C-428-848]

Forged Steel Fluid End Blocks from Germany: Notice of Court Decision Not in Harmony with the Final Determination of Countervailing Duty Investigation; Notice of Amended Final Determination and Amended Countervailing Duty Order

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

SUMMARY: On December 26, 2024, the U.S. Court of International Trade (CIT) issued its final judgment in *BGH Edelstahl Siegen GmbH v. United States*, Court No. 21-00080, Slip Op. 24-148 (CIT December 26, 2024), sustaining the U.S. Department of Commerce's (Commerce) fourth remand redetermination pertaining to the countervailing duty (CVD) investigation of Forged Steel Fluid End Blocks (FEBs) from the Germany covering the period of investigation, January 1, 2018, through December 31, 2018. Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's final determination in that investigation, and that Commerce is amending the final determination and resulting CVD order with respect to the countervailable subsidy rates assigned to BGH Edelstahl Siegen GmbH (BGH Siegen), Schmiedewerke Gröditz GmbH (SWG), voestalpine Bohler Group (voestalpine Bohler), and all others.

DATES: Applicable January 3, 2025.

FOR FURTHER INFORMATION CONTACT: Robert Palmer or Shane Subler, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-9068 or (202) 482-6241, respectively.

SUPPLEMENTARY INFORMATION:

[Background](#)

On December 11, 2020, Commerce published its final determination in the CVD investigation of FEBs from Germany.¹ Commerce calculated countervailable subsidy rates of 5.86 percent for BGH Siegen, 6.71 percent for SWG, 14.81 percent for voestalpine Bohler, and 6.29 percent for all other producers/exporters of FEBs in Germany.² Commerce subsequently published the CVD order on FEBs from Germany.³

BGH Siegen appealed Commerce's *Final Determination*. On October 12, 2022, the CIT remanded the *Final Determination* to Commerce, directing Commerce to: (1) consider in the first instance whether to account for the compliance costs in its calculation of the CVD rates for subsidy programs under the Electricity Tax Act and Energy Tax Act; and (2) explain or reconsider its determination that the Konzessionsabgabenverordnung (KAV) Program is a specific subsidy.⁴

In the *First Remand Results*, issued in January 2023, Commerce explained its determination not to account for compliance costs in its calculation of the CVD rates for programs under the Electricity Tax Act and Energy Tax Act.⁵ Commerce also further explained its determination that the KAV Program is specific.⁶ However, Commerce made no changes to the final subsidy rates calculated during the investigation.⁷

In its *Second Remand Order*, the CIT sustained Commerce's *First Remand Results* with respect to the Electricity Tax Act and Energy Tax Act.⁸ However, with respect to the KAV

¹ See *Forged Steel Fluid End Blocks from the Federal Republic of Germany: Final Affirmative Countervailing Duty Determination*, 85 FR 80011 (December 11, 2020) (*Final Determination*), and accompanying Issues and Decision Memorandum (IDM).

² *Id.*, 85 FR at 80012.

³ See *Forged Steel Fluid End Blocks from the People's Republic of China, the Federal Republic of Germany, India, and Italy: Countervailing Duty Orders, and Amended Final Affirmative Countervailing Duty Determination for the People's Republic of China*, 86 FR 7535 (January 29, 2021) (*Order*).

⁴ See *BGH Edelstahl Siegen GMBH v. United States*, 600 F.Supp.3d 1241 (CIT 2022) (*First Remand Order*).

⁵ See *Final Results of Redetermination Pursuant to the First Remand Order, BGH Edelstahl Siegen GmbH v. United States*, Consol. Court No. 21-00080; Slip. Op. 22-117 (CIT October 12, 2022), dated January 9, 2023 (*First Remand Results*) at 18, available at <https://access.trade.gov/public/FinalRemandRedetermination.aspx>.

⁶ *Id.*

⁷ *Id.*

⁸ See *BGH Edelstahl Siegen GmbH v. United States*, 639 F.Supp.3d 1237, 1242 (CIT 2023) (*Second Remand Order*).

Program, the CIT held that Commerce's *First Remand Results* failed to explain: (1) how the amount of electricity consumed or the electricity prices paid by companies are not economic in nature; and (2) how criteria based solely on electricity consumption and pricing are not horizontal in application.⁹ Regarding the latter, the CIT explained that for the KAV Program's criteria to be vertical in application, the criteria would need to expressly limit the program's application to specifically named enterprises or industries or a group of enterprises or industries.¹⁰ The CIT elaborated that the Government of Germany's (GOG) eligibility criteria for the KAV Program did not expressly limit the program's application to specific enterprises or industries or groups of enterprises or industries.¹¹ Accordingly, the CIT, again, remanded for Commerce to further explain or reconsider its determination.¹²

In the *Second Remand Results*, Commerce found that the GOG's eligibility criteria for the KAV Program were not horizontal in application, and thus, not neutral, pursuant to section 771(5A)(D)(ii) of the Act.¹³ Commerce explained that "where an authority, by law, limits eligibility to a group of enterprises or industries (e.g., those that operate specific types of 'stationary equipment'), it *cannot* {emphasis added} do so uniformly."¹⁴ Further, Commerce explained that "by expressly limiting eligibility to certain groups that the authority, itself, defines, the authority has, in effect, established criteria that are vertical in nature."¹⁵ On this basis, Commerce found the eligibility criteria for the KAV Program to be vertical in application.¹⁶

⁹ *Id.*, 639 F.Supp.3d at 1243-44.

¹⁰ *Id.*, 639 F.Supp.3d at 1244 (citing section 771(5A)(D)(i) the Tariff Act of 1930, as amended (the Act)).

¹¹ *Id.*

¹² *Id.*

¹³ See *Final Results of Redetermination Pursuant to the Second Remand Order, BGH Edelstahl Siegen GmbH v. United States*, Consol. Court No. 21-00080; Slip. Op. 23-71 (CIT May 9, 2023), dated August 7, 2023 (*Second Remand Results*) at 11, available at <https://access.trade.gov/public/FinalRemandRedetermination.aspx>.

¹⁴ *Id.* (citing *Certain Softwood Lumber Products from Canada: Final Results and Final Rescission, in Part, of the Countervailing Duty Administrative Review, 2020*, 87 FR 48455 (August 9, 2022), and accompanying IDM at Comment 103).

¹⁵ *Id.*

¹⁶ *Id.*

In its *Third Remand Order*, the CIT held that Commerce’s position that a subsidy is *de jure* specific where “implementing legislation expressly limit{s} access to the ‘group’ that the legislation itself created” was contrary to law.¹⁷ The CIT elaborated that “{t}he statute allows a subsidy to be limited to fewer than all enterprises or industries in an economy, so long as that criteria creating that legislation is objective.”¹⁸ On this basis, the CIT remanded for Commerce to further explain or reconsider its determination that the KAV Program is *de jure* specific.¹⁹

In the *Third Remand Results*, Commerce reconsidered its determination that the KAV Program is *de jure* specific.²⁰ Commerce found, under respectful protest, that the KAV Program is not *de jure* specific pursuant to section 771(5A)(D)(i) of the Act.²¹ Consequently, Commerce determined that the KAV Program did not constitute a countervailable subsidy.²² Commerce removed the KAV Program from the overall subsidy rates for BGH Siegen, SWG, and voestalpine Bohler, and recalculated the all-others rate.²³

In the *Fourth Remand Order*, the CIT remanded for Commerce to further explain or reconsider its determination in the *Third Remand Results*.²⁴ Specifically, the CIT held that Commerce “failed to conduct a *de facto* specificity analysis despite there being reasons to believe the KAV Program is specific as a matter of fact.”²⁵

In the *Fourth Remand Results*, Commerce further explained its determination that the KAV Program does not constitute a countervailable subsidy because it is neither *de jure* nor *de*

¹⁷ See *BGH Edelstahl Siegen GmbH v. United States*, 663 F.Supp.3d 1378, 1384 (CIT 2023) (*Third Remand Order*).

¹⁸ *Id.* (citing Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. 1 (1994), at 4242).

¹⁹ *Id.*

²⁰ See *Final Results of Redetermination Pursuant to the Third Remand Order, BGH Edelstahl Siegen GmbH v. United States*, 663 F. Supp. 3d 1378 (CIT 2023), dated February 12, 2024 (*Third Remand Results*) at 9, available at <https://access.trade.gov/public/FinalRemandRedetermination.aspx>.

²¹ *Id.*; see also *Viraj Grp., Ltd. v. United States*, 343 F.3d 1371, 1376 (Fed. Cir. 2003).

²² See *Third Remand Results* at 9.

²³ *Id.* at 9-10; see also Memorandum, “Calculation of the Non-Selected Rate,” dated January 16, 2024 (All-Others Rate Memorandum).

²⁴ See *BGH Edelstahl Siegen GmbH v. United States*, 704 F.Supp.3d 1372 (CIT 2024) (*Fourth Remand Order*).

²⁵ *Id.*, 704 F. Supp.3d at 1380.

facto specific.²⁶ Commerce continued to find, based on facts otherwise available in accordance with 776(a)(1) of the Act, that the KAV Program does not constitute a countervailable subsidy.²⁷ Commerce made no changes to the final subsidy rates calculated in the *Third Remand Results*.²⁸

On December 26, 2024, the CIT sustained Commerce's *Fourth Remand Results*.²⁹

Timken Notice

In its decision in *Timken*,³⁰ as clarified by *Diamond Sawblades*,³¹ the U.S. Court of Appeals for the Federal Circuit held that, pursuant to sections 516A(c) and (e) of the Act, Commerce must publish a notice of court decision that is not “in harmony” with a Commerce determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT's December 26, 2024, judgment constitutes a final decision of the CIT that is not in harmony with Commerce's *Final Determination*. Thus, this notice is published in fulfillment of the publication requirements of *Timken*.

Amended Final Determination

Because there is now a final court judgment, Commerce is amending its *Final Determination* with respect to BGH Siegen, SWG, and voestalpine Bohler, and all others as follows:

²⁶ See *Final Results of Redetermination Pursuant to the Fourth Remand Order, BGH Edelstahl Siegen GmbH v. United States*, 704 F. Supp. 3d 1372 (CIT 2024), dated September 16, 2024 (*Fourth Remand Results*), available at <https://access.trade.gov/public/FinalRemandRedetermination.aspx>.

²⁷ *Id.* at 13.

²⁸ *Id.* at 19.

²⁹ See *BGH Edelstahl Siegen GmbH v. United States*, Consol. Court No. 21-00080, Slip Op. 24-148 (CIT December 26, 2024).

³⁰ See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

³¹ See *Diamond Sawblades Manufacturers Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

Company	Subsidy Rate (percent <i>ad valorem</i>)
BGH Edelstahl Siegen GmbH	5.81
Schmiedewerke Gröditz GmbH	6.64
voestalpine Bohler Group	14.74
All Others	6.18

Amended CVD Order

Because there is now a final court decision, Commerce is amending its *Final Determination* and *Order*. As a result of this amended final determination, Commerce is hereby revising the subsidy rates for BGH Siegen, SWG, and voestalpine Bohler. Additionally, because the all-others rate was based on BGH Siegen's and SWG's rates, Commerce is also revising the all-others rate.³²

Cash Deposit Requirements

Because BGH Siegen has a superseding cash deposit rate, this notice will not affect the current cash deposit rate for BGH Siegen.³³ For all companies that do not have a superseding cash deposit rate, Commerce will issue revised cash deposit instructions to U.S. Customs and Border Protection.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e) and 777(i)(1) of the Act.

Dated: December 30, 2024.

Abdelali Elouaradia,
Deputy Assistant Secretary
for Enforcement and Compliance.

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³² See All-Others Rate Memorandum.

³³ See *Forged Steel Fluid End Blocks from Germany: Final Results of the Countervailing Duty Administrative Review*; 2022, 89 FR 64875 (August 8, 2024).