

INTERNATIONAL TRADE COMMISSION
Washington, DC 20436

Investigation Nos. 731-TA-1092-1093 (Final)

Diamond Sawblades and Parts Thereof from China and Korea

Determination

On the basis of the record¹ developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is threatened with material injury by reason of imports from China and Korea of diamond sawblades and parts thereof, provided for in subheading 9202.39.00 of the Harmonized Tariff Schedule of the United States,² that have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV).³

Background

On May 3, 2005, the Commission instituted these investigations, following receipt of a petition filed with the Commission and Commerce by the Diamond Sawblades Manufacturers Coalition (DSMC) and its individual members, which included Blackhawk Diamond, Inc., Fullerton, CA;⁴ Diamond B, Inc., Santa Fe Springs, CA; Diamond Products, Elyria, OH; Dixie Diamond, Lilburn, GA; Hoffman Diamond, Punxsutawney, PA; Hyde Manufacturing, Southbridge, MA; Sanders Saws, Honey Brook, PA; Terra Diamond, Salt Lake City, UT; and Western Saw, Inc., Oxnard, CA.

On June 20, 2006, the Commission determined, by a vote of 4 to 2, that a U.S. industry was not materially injured or threatened with material injury by reason of imports of diamond

¹The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

²When packaged together as a set for retail sale with an item that is separately classified under heading 8202 to 8205 of the HTS, diamond sawblades or parts thereof may be imported under HTS heading 8206.

³Chairman Okun and Commissioners Lane and Pearson dissent, having determined that an industry in the United States is not materially injured or threatened with material injury by reason of LTFV imports of diamond sawblades and parts thereof from China and Korea..

⁴Blackhawk Diamond ceased operations in January 2006.

sawblades and parts thereof from China and Korea.⁵ Notice of those determinations was published on July 11, 2006. 71 Fed. Reg. 39128. The Commission transmitted its determinations to the Secretary of Commerce on June 30, 2006. The Commission's views were contained in USITC Publication 3862 (July 2006), entitled *Diamond Sawblades and Parts Thereof from China and Korea*, Investigation No. 731-TA-1092-1093 (Final).

Petitioner DSMC appealed the Commission's negative final determinations to the U.S. Court of International Trade ("CIT"). On February 6, 2008, the CIT remanded the determinations to the Commission for further proceedings, having found that certain findings of the Commission were not supported by substantial evidence. *Diamond Sawblades Manufacturers Coalition v. United States*, Slip Op. 08-18 (Ct. Int'l Trade 2007) ("*Sawblades I*"). On remand, the Commission determined, by a vote of 3 to 3, that a U.S. industry was threatened with material injury by reason of imports of subject imports of diamond sawblades and parts thereof from China and Korea.⁶ Pursuant to 19 U.S.C. § 1677(11), the tie vote is considered an affirmative determination of the Commission.

On January 13, 2009, the CIT affirmed the Commission's affirmative determinations on remand. *Diamond Sawblades Manufacturers Coalition v. United States*, Slip Op. 09-05 (Ct. Int'l Trade 2009) ("*Sawblades II*"). On January 22, 2009, the Commission notified Commerce of the Court's decision, stating that it was a decision "not in harmony with" with the Commission's original negative determinations. As required by 19 U.S.C. §1516a(c) and *Timken Company v. United States*, 893 F.2d 337 (Fed. Cir. 1990), Commerce published notice of the CIT's decision and suspended liquidation for entries of the subject merchandise after the effective date of the *Timken* notice until the end of all appellate proceedings. *Notice of Court Decision Not In Harmony*, 74 Fed. Reg. 6570 (Feb. 10, 2009). The Commission did not publish notice of its remand determinations at that time because the remand determinations would, under the statute, only become its final determinations upon conclusion of all appellate proceedings in the action. 19 U.S.C. §1516a(c) & (e); 28 U.S.C. §2643(c); *Co-Steel Raritan, Inc. v. U.S. International Trade Commission*, 357 F.3d 1294, 1302, n.3, & 1304-05 (Fed. Cir. 2004); *Hosiden Corp. v. United States*, 85 F.3d 589, 590-91 (Fed. Cir. 1996); *Timken*, 893 F.2d at 339-340.

On March 13, 2009, respondent parties Saint Gobain Abrasives, Inc. and Ehwa Diamond Industrial Co., Ltd. appealed the decisions in *Sawblades I* and *Sawblades II* to the U.S. Court of Appeals for the Federal Circuit ("Federal Circuit"). On July 6, 2010, the Federal Circuit

⁵Commissioners Aranoff and Hillman dissented, having determined that an industry in the United States was threatened with material injury by reason of LTFV imports of diamond sawblades and parts thereof from China and Korea.

⁶ Chairman Aranoff, who dissented in the original negative determination, and Commissioners Williamson and Pinkert, who had commenced their service as Commissioners in the intervening time, voted in the affirmative. On remand, Vice Chairman Pearson and Commissioners Okun and Lane voted in the negative.

affirmed the CIT's decision in *Sawblades I* and *Sawblades II*. *Diamond Sawblades Manufacturers Coalition v. United States*, 2009-1274, -1275 (Fed. Cir. 2010). No party applied to the U.S. Supreme Court for a *writ of certiorari* for that decision.

Since the deadline for filing a writ of certiorari to the Supreme Court has expired, all appellate proceedings relating to the merits of the Commission's determinations have ended. *Fujitsu General America, Inc. v. United States*, 283 F.3d 1364, 1379 (Fed. Cir. 2002). Accordingly, the Commission publishes notice of its final determinations in the antidumping investigations of diamond sawblades and parts thereof from China and Korea.

By order of the Commission

/s/
Marilyn R. Abbott
Secretary to the Commission

Issued: November 2, 2010