

Appeals Court Leaves Injunction Regarding Chinese Diamond Sawblade Imports in Place

November 13, 2013

The U.S. Court of Appeals for the Federal Circuit issued a judgment today that continues an injunction prohibiting U.S. Customs and Border Protection (CBP) from “liquidating”—*i.e.*, finalizing duty assessment—on imports of diamond sawblades exported by Beijing Gang Yan Diamond Products Company (Gang Yan) and certain of its affiliates. The continuation of the injunction will preserve these imports for eventual duty assessment in accordance with the final outcome of appeals relating to the antidumping duty investigation against diamond sawblades from China.

In the antidumping duty investigation into Chinese diamond sawblades, the United States Department of Commerce calculated a dumping rate for Gang Yan and its affiliates of 2.82%. The Diamond Sawblades Manufacturers’ Coalition (DSMC), a group of U.S. producers of sawblades, challenged the 2.82% duty rate before the United States Court of International Trade (CIT), arguing that the original calculations did not take into account evidence showing that Gang Yan was subject to government control. Commerce reconsidered its findings, and determined earlier this year that Gang Yan’s dumping rate, as a government-controlled company, was 164.09%.

While this litigation was ongoing, the government of China challenged an unrelated aspect of the calculation for Gang Yan before the World Trade Organization (WTO). Pursuant to the WTO’s determination, but prior to issuing its determination that Gang Yan’s investigation rate was actually 164.09%, the Commerce Department conducted a proceeding in which it recalculated Gang Yan’s dumping rate at zero. The agency then indicated its intention to revoke the antidumping duty order as to Gang Yan and its affiliates

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on a going-forward basis, such that incoming imports would not be subject to duties.

The DSMC moved the CIT to enjoin CBP from liquidating incoming imports, in order to preserve them for treatment in accordance with the final determination in the appeal at the CIT. The CIT issued the injunction, and Gang Yan appealed. Gang Yan's appeal has now been denied.

"We are very pleased by the court's decision, which preserves the DSMC's litigation rights, and ensures that any incoming imports of Gang Yan's merchandise are assessed duties at the appropriate rate," said Daniel B. Pickard, a partner in Wiley Rein's International Trade Practice and counsel to the domestic industry.