

method, texturing method, or packing method (such as spindles, tubes, or beams).

Excluded from the scope of the investigation is bulk continuous filament yarn that: (a) Is polyester synthetic multifilament yarn; (b) has denier size ranges of 900 and above; (c) has turns per meter of 40 and above; and (d) has a maximum shrinkage of 2.5 percent.

The merchandise subject to this investigation is properly classified under subheadings 5402.33.3000 and 5402.33.6000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

## Appendix II

### List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Preliminary Determination of Critical Circumstances
- IV. Injury Test
- V. Application of the CVD Law to Imports From China
- VI. Diversification of China's Economy
- VII. Use of Facts Otherwise Available and Adverse Inferences
- VIII. Subsidies Valuation
- IX. Benchmarks and Interest Rates
- X. Analysis of Programs
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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: Initiation of Anti-Circumvention Inquiry

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

**SUMMARY:** In response to a request from Diamond Sawblades Manufacturers' Coalition (the petitioner), the Department of Commerce (Commerce) is initiating an anti-circumvention inquiry to determine whether certain imports of diamond sawblades and parts thereof (diamond sawblades) comprised of cores and segments produced in the People's Republic of China (China) and joined into finished diamond sawblades in, and exported from, Canada are circumventing the antidumping duty order on diamond sawblades from China.

**DATES:** Effective May 3, 2019.

**FOR FURTHER INFORMATION CONTACT:** Yang Jin Chun, AD/CVD Operations Office I, Enforcement and Compliance, International Trade Administration,

U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-5760.

#### SUPPLEMENTAL INFORMATION:

##### Background

On November 4, 2009, Commerce published the antidumping duty order on diamond sawblades from China.<sup>1</sup> On December 20, 2018, the petitioner filed a request for a circumvention ruling, requesting that Commerce issue a determination of circumvention and suspend liquidation of certain diamond sawblades exported from third countries.<sup>2</sup> Specifically, the petitioner claims that a Canadian company, Protech Diamond Tools Inc. (Protech), is circumventing the antidumping duty order.

##### Scope of the Order

The products covered by the order are all finished circular sawblades, whether slotted or not, with a working part that is comprised of a diamond segment or segments, and parts thereof, regardless of specification or size, except as specifically excluded below. Within the scope of the order are semi-finished diamond sawblades, including diamond sawblade cores and diamond sawblade segments. Diamond sawblade cores are circular steel plates, whether or not attached to non-steel plates, with slots. Diamond sawblade cores are manufactured principally, but not exclusively, from alloy steel. A diamond sawblade segment consists of a mixture of diamonds (whether natural or synthetic, and regardless of the quantity of diamonds) and metal powders (including, but not limited to, iron, cobalt, nickel, tungsten carbide) that are formed together into a solid shape (from generally, but not limited to, a heating and pressing process).

Sawblades with diamonds directly attached to the core with a resin or electroplated bond, which thereby do not contain a diamond segment, are not included within the scope of the order. Diamond sawblades and/or sawblade cores with a thickness of less than 0.025 inches, or with a thickness greater than 1.1 inches, are excluded from the scope of the order. Circular steel plates that have a cutting edge of non-diamond material, such as external teeth that protrude from the outer diameter of the plate, whether or not finished, are

<sup>1</sup> See *Diamond Sawblades and Parts Thereof from the People's Republic of China and the Republic of Korea: Antidumping Duty Orders*, 74 FR 57145 (November 4, 2009). The effective date of this antidumping duty order was January 23, 2009.

<sup>2</sup> See the petitioner's circumvention ruling request dated December 20, 2018 (the petitioner's circumvention ruling request).

excluded from the scope of the order. Diamond sawblade cores with a Rockwell C hardness of less than 25 are excluded from the scope of the order. Diamond sawblades and/or diamond segment(s) with diamonds that predominantly have a mesh size number greater than 240 (such as 250 or 260) are excluded from the scope of the order.

Merchandise subject to the order is typically imported under heading 8202.39.00.00 of the Harmonized Tariff Schedule of the United States (HTSUS). When packaged together as a set for retail sale with an item that is separately classified under headings 8202 to 8205 of the HTSUS, diamond sawblades or parts thereof may be imported under heading 8206.00.00.00 of the HTSUS. On October 11, 2011, Commerce included the 6804.21.00.00 HTSUS classification number to the customs case reference file, pursuant to a request by U.S. Customs and Border Protection.<sup>3</sup> Pursuant to requests by CBP, Commerce included to the customs case reference file the following HTSUS classification numbers: 8202.39.0040 and 8202.39.0070 on January 22, 2015, and 6804.21.0010 and 6804.21.0080 on January 26, 2015.<sup>4</sup>

The tariff classification is provided for convenience and customs purposes; however, the written description of the scope of the order is dispositive.

#### Merchandise Subject to the Anti-Circumvention Inquiry

This anti-circumvention inquiry covers diamond sawblades produced in Canada using cores and segments of Chinese origin and exported from Canada to the United States by Protech. If we receive additional evidence regarding potential circumvention of the order on diamond sawblades from China by other companies in Canada, we will consider expanding the scope of this inquiry at that time.

#### Initiation of Anti-Circumvention Inquiry

Section 781(b)(1) of the Tariff Act of 1930, as amended (the Act), provides that Commerce may find circumvention of an antidumping or countervailing duty order if: (A) Merchandise imported into the United States is of the same class or kind as any merchandise produced in a foreign country that is the

<sup>3</sup> See *Diamond Sawblades and Parts Thereof from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review*, 76 FR 76128 (December 6, 2011).

<sup>4</sup> See *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 64331 (December 14, 2018) and accompanying Issues and Decision Memorandum (IDM) at 3.

subject of an antidumping or countervailing duty order or finding; (B) before importation into the United States, such imported merchandise is completed or assembled in another foreign country from merchandise which is subject to the order or merchandise which is produced in the foreign country that is subject to the order; (C) the process of assembly or completion in the foreign country referred to in section (B) is minor or insignificant; (D) the value of the merchandise produced in the foreign country to which the AD or CVD order applies is a significant portion of the total value of the merchandise exported to the United States; and (E) the administering authority determines that action is appropriate to prevent evasion of such order or finding. As discussed below, the petitioner provided information available to them with respect to these criteria.<sup>5</sup>

#### A. Merchandise of the Same Class or Kind

The petitioner claims that, in accordance with section 781(b)(1)(A)(i) of the Act, diamond sawblades exported from Canada to the United States are identical to diamond sawblades exported from China to the United States subject to the antidumping duty order. The petitioner contends that, because cores, segments, and diamond sawblades are all one class or kind of subject merchandise, a process that simply transforms one of these items to another should not serve as an avenue for Chinese producers to evade the antidumping duty order.<sup>6</sup>

#### B. Completion of Merchandise in a Third Country Before Importation Into the United States

The petitioner contends that, in Canada, cores made in China are being joined to segments made in China and undergo a minor welding operation and minor processing before they are imported into the United States.<sup>7</sup>

#### C. Minor or Insignificant Process

The petitioner explains that, in accordance with section 781(b)(1)(C) of the Act, Commerce considers whether the assembly or completion that occurs in the other foreign country is minor or insignificant. The petitioner states that, under sections 781(b)(2)(A)–(E) of the Act, Commerce considers five factors to determine whether the process of assembly or completion is minor or

insignificant. The petitioner alleges that, based on these factors, the completion of the merchandise in Canada is minor and insignificant.<sup>8</sup>

#### 1. Level of Investment in Canada

The petitioner argues that there is little evidence of any significant level of investment in Canada for production activities beyond joining cores and segments and laser welding.<sup>9</sup> In other words, according to the petitioner, diamond sawblades production facilities in Canada are not sophisticated enough to produce segments. The petitioner explains that the production of segments is a complex process that requires detailed expertise in metallurgy and technical experience in the bonding of diamond powders and metal powders in the production process and the performance of diamond sawblades for particular applications. The petitioner claims that only highly skilled technicians can perform such production processes, while laser-welding is a highly-automated process that essentially only requires a person who can operate a keyboard.<sup>10</sup> The petitioner claims further that other methods of joining cores and segments, *e.g.*, silver soldering or sintering, are even less sophisticated than laser-welding.<sup>11</sup>

The petitioner distinguishes the level of capital investment between segment production and laser-welding. The petitioner explains that segment production requires significant capital investment for equipment such as weighing scales, mixing equipment, granulating equipment, cold pressing equipment, sintering presses, inspecting equipment, and radius grinding equipment. The petitioner claims that, in particular, the induction and resistance presses used in segment production represent a substantial capital investment. The petitioner contends that the capital investment required for joining cores and segments is essentially limited to a piece of laser-welding equipment.<sup>12</sup>

The petitioner distinguishes the level of costs between segment production and joining cores and segments. According to the petitioner, the production cost for finished diamond sawblades segments may represent a

certain percentage of the cost of producing a finished diamond sawblade, whereas joining cores and segments typically accounts for a much smaller percentage of the cost of production.<sup>13</sup> The petitioner also asserts that the capital investment required for joining is essentially limited to a piece of laser-welding equipment.<sup>14</sup> The petitioner argues that, for these reasons, the joining operations require very minimal investment.<sup>15</sup>

#### 2. Level of Research and Development

The petitioner argues that, because laser-welding is a highly-automated process and other methods of joining cores and segments are less sophisticated than laser-welding, entities joining China cores and segments in Canada do not, and do not need to, invest in research and development in Canada.<sup>16</sup>

#### 3. Nature of Production Process

The petitioner states that there is very minimal additional processing done to diamond sawblades exported from China to Canada that are re-exported to the United States. The petitioner reiterates that joining cores and segments is a highly automated process and, compared to segment production, welding of cores and segments is a minimal step in the overall production process.<sup>17</sup>

#### 4. Extent of Production Facilities in Canada

The petitioner identifies three Canadian production facilities, of which the petitioner claims two production facilities appear to have only laser-welding operations.<sup>18</sup> The petitioner claims that Protech's Canadian facilities were established to re-export Chinese diamond sawblades to the United States and that the investment to Protech's Canadian facilities is very limited for production of cores and segments. Similarly, according to the petitioner, Diamond Tools Technology Canada, Inc. appears to have insignificant production facilities in Canada and appears to be established to evade the antidumping

<sup>13</sup> *Id.* Commerce considers that this portion of the petitioner's circumvention ruling request is relevant to the consideration contained in section 781(b)(1)(D) of the Act ("the value of the merchandise produced in the foreign country to which the antidumping order applies is a significant portion of the total value of the merchandise exported to the United States").

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 20 and Exhibit 10.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 20–21.

<sup>8</sup> *Id.* at 17–18.

<sup>9</sup> *Id.* at 18–19 and Exhibits 8–10, and 13.

<sup>10</sup> *Id.* at 16–17.

<sup>11</sup> Commerce considers that this portion of the petitioner's circumvention ruling request is relevant to the consideration contained in section 781(b)(2)(C) of the Act ("the nature of the production process in the foreign country").

<sup>12</sup> See the petitioner's circumvention ruling request at 19.

<sup>5</sup> See section 781(b)(1) of the Act.

<sup>6</sup> See the petitioner's circumvention ruling request at 13–14 and Exhibit 6.

<sup>7</sup> *Id.* at 14–17 and Exhibits 5, 7–15.

duty order on diamond sawblades from China.<sup>19</sup>

#### 5. Value of Processing in Canada

The petitioner cites the *Thailand Preliminary Determination* to support its claim that the joining of cores and segments constitutes a minor portion of the cost and represents the smallest portion of the production costs of diamond sawblades imported into the United States.<sup>20</sup> The petitioner argues that, consistent with the *Thailand Preliminary Determination*, the value of processing in Canada represents a minor portion of the imported diamond sawblade's value.<sup>21</sup>

#### D. Value of Merchandise Produced in China Is a Significant Portion of the Total Value of the Merchandise Exported to the United States

The petitioner cites the *Thailand Preliminary Determination* to emphasize that the values of the segments and cores produced in China represent the vast majority of the value of the products exported to the United States.<sup>22</sup> The petitioner quotes the *Thailand Preliminary Determination* to argue that the value of the Chinese cores and Chinese segments, either combined or individually, represent "a significant portion of the total value of the merchandise exported to the United States."<sup>23</sup>

#### E. Additional Factors To Consider in Determining Whether Action Is Necessary

Section 781(b)(3) of the Act directs Commerce to consider additional factors in determining whether to include merchandise assembled or completed in a foreign country within the scope of the order, such as: "(A) the pattern of trade, including sourcing patterns, (B) whether the manufacturer or exporter of the merchandise . . . is affiliated with the person who uses the merchandise . . . to assemble or complete in the foreign country the merchandise that is subsequently imported into the United States, and (C) whether imports into the foreign country of the merchandise . . . have increased after the initiation of the investigation which resulted in the issuance of such order or finding." The petitioner claims an increase of the

imports of diamond sawblades from Canada from \$246,758 for January through October 2017 to \$776,328 for January through October 2018 represents a noticeable shift in patterns of trade.<sup>24</sup> The petitioner asserts that Protech has been, and may be currently, transshipping Chinese diamond sawblades into the United States.<sup>25</sup> The petitioner believes that Protech is likely to have evaded antidumping duties on Chinese diamond sawblades for several years.<sup>26</sup>

The petitioner argues that there is evidence of affiliation between Chinese producers and their Canadian counterparts that are engaged in circumvention of the antidumping duty order. For example, the petitioner claims that Protech appears to be affiliated with two Chinese producers: Guangzhou Pro Tech Diamond Tools Inc. and Protec Tools Co., Ltd. The petitioner argues that Protech has entered into exclusive agreements with Chinese producers and factories to sell diamond sawblades to Canada and the United States. The petitioner also argues that Diamond Tools Technology Canada, Inc. appears to be affiliated with a Chinese producer that Commerce determined in the *Thailand Preliminary Determination* to have circumvented the antidumping duty order by using minor assembly processes in Thailand.<sup>27</sup>

The petitioner explains that Chinese cores and Chinese segments are in-scope merchandise and the mere joining of these two parts, which represent the smallest cost in the production of diamond sawblades, should not be permitted as an avenue to circumvent the antidumping duty order on diamond sawblades from China.

#### Analysis of the Allegation

Based on our analysis of the petitioner's anti-circumvention allegation and the information provided therein, we find that an anti-circumvention inquiry of the antidumping duty order on diamond sawblades from China is warranted with respect to diamond sawblades made in Canada with Chinese cores and Chinese segments and exported to the United States.

With regard to whether the merchandise from Canada is of the same class or kind as the merchandise produced in China, the petitioner presented information to Commerce indicating that, in accordance with

section 781(b)(1)(A) of the Act, the merchandise being produced in and/or exported from Canada is of the same class or kind as diamond sawblades produced in China, which is subject to the antidumping duty order.<sup>28</sup> Consequently, we find that the petitioner provided sufficient information in its request regarding the class or kind of merchandise to support the initiation of this anti-circumvention inquiry.

With regard to completion or assembly of merchandise in a foreign country, in accordance with section 781(b)(1)(B) of the Act, the petitioner also presented to us four affidavits indicating that diamond sawblades exported from Canada to the United States by Protech are produced in Canada using cores and segments produced and exported from China.<sup>29</sup> We find that the information presented by the petitioner regarding this criterion supports its request to initiate this anti-circumvention inquiry at this time with respect to diamond sawblades made in Canada with Chinese cores and Chinese segments and exported to the United States.

Commerce finds that the petitioner sufficiently addressed the factors described in section 781(b)(1)(C) and (2) of the Act regarding whether the process of assembly or completion of finished diamond sawblades in Canada is minor or insignificant with respect to Protech. In particular, the petitioner provided information indicating that: (1) The level of investment in the production facilities is minimal, when compared with the level of investment for the facilities used in the production of segments;<sup>30</sup> (2) there is little or no research and development taking place in Canada;<sup>31</sup> (3) the joining process involves the highly automated laser-welding, or other simpler joining methods, of cores and segments produced in China and subject to the antidumping duty order;<sup>32</sup> (4) the production facilities in Canada are more limited than facilities in China;<sup>33</sup> and (5) the value of the processing performed in Canada is a small proportion of the value of the diamond sawblades imported into the United States.<sup>34</sup>

With respect to the value of the merchandise produced in China, pursuant to section 781(b)(1)(D) of the

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 21–22, citing *Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Affirmative Determination of Circumvention*, 83 FR 57425 (November 15, 2018) (*Thailand Preliminary Determination*).

<sup>21</sup> *Id.* at 21–22.

<sup>22</sup> *Id.* at 22–23.

<sup>23</sup> *Id.* at 23, quoting *Thailand Preliminary Determination* and accompanying Preliminary Determination Memorandum at 13.

<sup>24</sup> *Id.* at 23 and Exhibit 6. The petitioner also claims that the imports of diamond sawblades from Canada was \$293,369 for the entire 2017. *Id.*

<sup>25</sup> *Id.* at 24 and Exhibit 12.

<sup>26</sup> *Id.* at 24.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 13–14 and Exhibit 6.

<sup>29</sup> *Id.* at 18–19 and Exhibits 8–10, and 13.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 20 and Exhibit 10.

<sup>32</sup> *Id.* at 18, 20.

<sup>33</sup> *Id.* at 21 and Exhibits 8 and 12.

<sup>34</sup> *Id.* at 21–22.

Act, the petitioner provided information indicating that the value of cores and segments produced in China represents the vast majority of the value of the products exported to the United States.<sup>35</sup> We find that the evidence presented by the petitioner address the requirements of this factor, as discussed above, for the purposes of initiating this anti-circumvention inquiry.

In the final determinations of the antidumping duty investigations of diamond sawblades from China and the Republic of Korea (Korea), we determined that the country in which cores and segments are joined is the country of origin of the finished diamond sawblades based on our factual findings that “the attachment process imparts the essential quality of the diamond sawblade, coupled with the substantial capital investment and technical expertise that is required for the attachment process.”<sup>36</sup> In making these factual findings, we relied on specific information provided by respondents in the investigations.<sup>37</sup> The CIT upheld our decisions with respect to the country of origin.<sup>38</sup> However, we do not have sufficient information on the record indicating whether substantial investments have been made to the Canadian companies in question for the joining process in Canada. Also, we do not have sufficient information on the record about the technical expertise required for the joining process in Canada.<sup>39</sup> Moreover, our findings in the *Final Determinations* were made in the context of a country-of-origin determination, whereas we are

considering the petitioner’s request under the anti-circumvention provisions of the statute contained in section 781(b) of the Act. Therefore, we do not find the *Final Determinations* foreclose initiation of an anti-circumvention inquiry in this instance.

Finally, with respect to the additional factors listed under section 781(b)(3) of the Act, we find that the petitioner presented evidence indicating that shipments of finished diamond sawblades from Canada to the United States increased since the imposition of the antidumping duty order, further supporting initiation of this anti-circumvention inquiry.<sup>40</sup> Therefore, in accordance with section 781(b) of the Act, we are initiating a formal anti-circumvention inquiry concerning the antidumping duty order on diamond sawblades from China with respect to diamond sawblades made in Canada with Chinese cores and Chinese segments and exported to the United States.

In connection with this anti-circumvention inquiry, in order to determine, among other things: (1) The extent to which China-sourced cores and segments are further processed into finished diamond sawblades in Canada by Protech before the finished diamond sawblades are exported to the United States; and (2) whether the process of turning China-sourced cores and segments into finished diamond sawblades is minor or insignificant, Commerce intends to issue questionnaires to solicit information from Protech related to these factors. Commerce also intends to issue questionnaires to solicit information from Protech concerning its shipments of finished diamond sawblades to the United States and the origin of the imported cores and segments being joined into finished diamond sawblades. Failure to respond completely to Commerce’s requests for information may result in the application of partial or total facts available pursuant to section 776(a) of the Act, which may include adverse inferences pursuant to section 776(b) of the Act.

Based on these allegations, we are initiating an anti-circumvention inquiry concerning the antidumping duty order on diamond sawblades from China, pursuant to section 781(b) of the Act and 19 CFR 351.225(h), with respect to such merchandise from Canada as described above. Because we are initiating this anti-circumvention

inquiry, we are not initiating a changed-circumstances review at this time.

An anti-circumvention inquiry is typically complicated by its nature and can require information regarding production in both the country subject to the order and the third country in which the production of finished merchandise is completed. As we explained above, Commerce intends to request additional information regarding the statutory criteria to determine whether shipments of finished diamond sawblades from Canada are circumventing the antidumping duty order on diamond sawblades from China. Thus, with further development of the record required before a preliminary ruling can be issued, Commerce does not find it appropriate to issue a preliminary ruling at this time. If Commerce issues a preliminary affirmative determination under section 781(b) of the Act, we intend to notify the International Trade Commission in accordance with section 781(e)(1)(B) of the Act and 19 CFR 351.225(f)(7)(i)(B).

In accordance with 19 CFR 351.225(l)(2), if Commerce issues a preliminary affirmative determination, we will then instruct CBP to suspend liquidation and require a cash deposit of estimated antidumping duties at the applicable rate for each unliquidated entry of the merchandise at issue, entered or withdrawn from warehouse for consumption on or after the date of initiation of the inquiry.

This notice serves as an invitation to interested parties to participate in this anti-circumvention inquiry. Commerce will establish a schedule for questionnaires and comments on the issues. In accordance with section 781(f) of the Act and 19 CFR 351.225(f)(5), Commerce intends to issue its final determination within 300 days of the date of publication of this initiation.

This notice is published in accordance with section 781(b) of the Act and 19 CFR 351.225(h).

Dated: April 29, 2019.

**Jeffrey I. Kessler,**

*Assistant Secretary for Enforcement and Compliance.*

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<sup>35</sup> *Id.* at 22–23.

<sup>36</sup> See *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) (*Final Determinations—China*) and accompanying IDM at Comment 4; see also *Notice of Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the Republic of Korea*, 71 FR 29310 (May 22, 2006) (*Final Determination—Korea*) and accompanying IDM at Comment 3 (collectively, *Final Determinations*).

<sup>37</sup> *Id.*

<sup>38</sup> See *Advanced Tech. & Materials Co. v. United States*, Court No. 09–00511, slip op. 11–122, at 7–10 (Ct. Int’l Trade Oct. 12, 2011) (upholding *Final Determinations—China*); see also *Diamond Sawblades Manufacturers Coalition v. United States*, 06–00248, slip op. 13–130, at 23–25 (Ct. Int’l Trade Oct. 24, 2013) (upholding *Final Determinations—Korea*).

<sup>39</sup> See *Clearon Corp. v. United States*, No. 13–00073, slip op. 14–88, at 33 (Ct. Int’l Trade July 24, 2014) (“Although Commerce can and does take into consideration its policies and methodologies as expressed in different administrative case precedent when making its determination, it cannot take the factual information underlying those decisions into consideration unless those facts are properly on the record of the proceeding before it.”).

<sup>40</sup> See the petitioner’s circumvention ruling request at Exhibit 6.