

between Commerce officials and interested parties (including the domestic sugar industry and representatives of Mexico) as required by section 777(a)(3) of the Tariff Act of 1930, as amended (the Act).<sup>4</sup>

The CIT agreed with CSC Sugar and ordered Commerce to supplement the administrative record with any *ex parte* communications regarding the *AD Amendment*.<sup>5</sup> CSC Sugar subsequently filed a motion for judgment on the agency record arguing that Commerce's failure, during the consultations period, to maintain contemporaneous *ex parte* communication memoranda, in accordance with section 777(a)(3) of the Act, could not be adequately remedied by Commerce's delayed and incomplete supplementation of the record.<sup>6</sup>

The CIT found that Commerce's failure to follow the recordkeeping requirements of Section 777 of the Act cannot be described as "harmless."<sup>7</sup> The CIT found that this recordkeeping failure substantially prejudiced CSC Sugar.<sup>8</sup> On that basis, the CIT stated that the *AD Amendment* must be vacated.<sup>9</sup>

The *AD Amendment* remains in force until Commerce takes action to implement the CIT's ruling. The CIT's rules establish an automatic 30-day stay of proceedings to enforce a judgment.<sup>10</sup> Accordingly, Commerce intends to implement the CIT's ruling by November 18, 2019.<sup>11</sup>

Dated: October 25, 2019.

**Jeffrey I. Kessler,**

*Assistant Secretary for Enforcement and Compliance.*

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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: Preliminary Affirmative Determination of Circumvention**

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

**SUMMARY:** The Department of Commerce (Commerce) preliminarily determines that Protech Diamond Tools Inc. (Protech) is circumventing the antidumping duty order on diamond sawblades and parts thereof (diamond sawblades) from the People's Republic of China (China).

**DATES:** Applicable October 30, 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.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On May 3, 2019, in response to a request from the Diamond Sawblades Manufacturers' Coalition (the petitioner), Commerce published the initiation of the anti-circumvention inquiry to determine whether certain imports of diamond sawblades comprised of cores and segments produced in China and joined into diamond sawblades in, and exported from, Canada by Protech are circumventing the antidumping duty order on diamond sawblades from China.<sup>1</sup>

##### **Scope of the Order**

The products subject to the order are diamond sawblades. The diamond sawblades subject to the order are currently classifiable under subheadings 8202 to 8206 of the Harmonized Tariff Schedule of the United States (HTSUS), and may also enter under subheading 6804.21.00. The HTSUS subheadings are provided for convenience and customs purposes. A full description of the scope of the order is contained in the Preliminary Decision Memorandum.<sup>2</sup> The written description is dispositive.

<sup>1</sup> See *Diamond Sawblades and Parts Thereof from the People's Republic of China: Initiation of Anti-Circumvention Inquiry*, 84 FR 19043 (May 3, 2019) (*Initiation Notice*).

<sup>2</sup> See Memorandum, "Diamond Sawblades and Parts Thereof from the People's Republic of China:

##### **Scope of the Anti-Circumvention Inquiry**

We initiated this anti-circumvention inquiry to cover diamond sawblades produced in Canada by Protech with cores and segments produced in China and subsequently exported from Canada by Protech to the United States.<sup>3</sup>

##### **Methodology**

Commerce is conducting this anti-circumvention inquiry in accordance with section 781(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.225(h). Because Protech did not respond to our request for information, we made the affirmative preliminary determination based on adverse facts available in accordance with section 776(a)-(b) of the Act. For a full description of the methodology underlying our conclusions, see the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov> and to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>. The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

##### **Preliminary Determination**

As detailed in the Preliminary Decision Memorandum, Commerce preliminarily determines that diamond sawblades produced by Protech in Canada using cores and segments from China and exported from Canada by Protech to the United States are circumventing the antidumping duty order on diamond sawblades from China. We therefore preliminarily determine that it is appropriate to include this merchandise within the antidumping duty order on diamond sawblades from China and to instruct U.S. Customs and Border Protection (CBP) to suspend entries of merchandise produced using Chinese cores and Chinese segments by Protech in Canada

Decision Memorandum for Preliminary Affirmative Determination of Circumvention," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum) at 2-3.

<sup>3</sup> See *Initiation Notice*, 84 FR at 19043 ("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.").

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* (citing *CSC Sugar LLC v. United States*, 317 F. Supp. 3d 1322, 1326 (CIT 2018)).

<sup>6</sup> See *CSC Sugar II* at 4.

<sup>7</sup> *Id.* at 11-12.

<sup>8</sup> *Id.* at 12.

<sup>9</sup> *Id.*

<sup>10</sup> See CIT Rule 62(a) ("Except as stated in this rule or as otherwise ordered by the court, no execution may issue on a judgment, nor may proceedings be taken to enforce it, until 30 days have passed after its entry.").

<sup>11</sup> See CIT Rule 6(a)(1). In this case, the 30th day after October 18 is Sunday, November 17.

and exported by Protech to the United States.

### Suspension of Liquidation

As stated above, Commerce has made a preliminary affirmative finding of circumvention of the antidumping duty order on diamond sawblades from China for diamond sawblades assembled or completed using Chinese cores and Chinese segments as inputs by Protech in Canada and exported from Canada by Protech to the United States. This preliminary determination of circumvention applies to diamond sawblades assembled or completed using Chinese cores and Chinese segments as inputs by Protech in Canada. In accordance with section 19 CFR 351.225(l)(2), Commerce will direct CBP to suspend liquidation and to require a cash deposit of estimated duties on unliquidated entries of diamond sawblades produced (*i.e.*, assembled or completed) using Chinese cores and Chinese segments by Protech in Canada that were entered, or withdrawn from warehouse, for consumption on or after April 29, 2019, the date of initiation of this anti-circumvention inquiry. The suspension of liquidation instructions will remain in effect until further notice. Commerce will instruct CBP to require antidumping duty cash deposits equal to the rate established for the China-wide entity, *i.e.*, 82.05 percent,<sup>4</sup> for entries of such merchandise produced and exported by Protech, given that there is no information on the record regarding the sources of its Chinese-origin cores and segments.

Diamond sawblades assembled or completed in Canada using non-Chinese origin cores and/or non-Chinese origin segments are not subject to this anti-circumvention inquiry. However, because Protech failed to cooperate with Commerce's request for information, Commerce finds that Protech is not currently able to identify diamond sawblades produced with non-Chinese origin cores and/or non-Chinese origin segments. Therefore, Commerce will not implement a certification process at this preliminary stage, and Commerce will require cash deposits on all entries of diamond sawblades produced and exported by Protech in Canada. Commerce will reconsider Protech's eligibility to participate in the certification process if Protech demonstrates in a future segment of the proceeding (*i.e.*, a changed

circumstances review) that diamond sawblades being entered into the United States that it produces are no longer sourced from Chinese cores and/or Chinese segments.<sup>5</sup> We invite parties to comment on this issue in their case briefs.

### Public Comment

Interested parties are invited to comment on the preliminary determination of this anti-circumvention inquiry. Pursuant to 19 CFR 351.309(b)(2), interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the time limit for filing case briefs.<sup>6</sup> Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case or rebuttal briefs in this anti-circumvention inquiry are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Any interested party who wishes to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance within 30 days after the day of publication of this notice pursuant to 19 CFR 351.310(c). A request should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) whether any participant is a foreign national; and (4) a list of issues to be discussed. If a request for a hearing is made, then Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date. Issues raised in the hearing will be limited to those raised in case and rebuttal briefs.

### International Trade Commission Notification

Consistent with section 781(e) of the Act, Commerce will notify the International Trade Commission (ITC) of this preliminary determination to include the merchandise subject to this anti-circumvention inquiry within the

antidumping duty order on diamond sawblades from China. Pursuant to section 781(e) of the Act, the ITC may request consultations concerning Commerce's proposed inclusion of the subject merchandise. If, after consultations, the ITC believes that a significant injury issue is presented by the proposed inclusion, it will have 60 days from the date of notification by Commerce to provide written advice.

### Final Determination

According to section 781(f) of the Act, Commerce shall, to the maximum extent practicable, make its anti-circumvention determination within 300 days from the date of the initiation of the inquiry.<sup>7</sup> Therefore, Commerce intends to issue the final determination in this anti-circumvention inquiry by February 24, 2020.<sup>8</sup>

This preliminary affirmative circumvention determination is published in accordance with section 781(b) of the Act and 19 CFR 351.225(f).

Dated: October 23, 2019.

**Jeffrey I. Kessler,**

*Assistant Secretary for Enforcement and Compliance.*

### Appendix

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

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Scope of the Anti-Circumvention Inquiry
- V. The Period of Inquiry
- VI. Statutory Framework
- VII. Use of Adverse Facts Available
- VIII. Statutory Analysis
- IX. Other Statutory Criteria
- X. Summary of Statutory Analysis
- XI. Recommendation

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<sup>4</sup> See, e.g., *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 2015-2016, 83 FR 17527, 17528 (April 20, 2018).

<sup>5</sup> See *Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China: Preliminary Affirmative Determination of Circumvention of the Antidumping Duty Order*, 83 FR 35205 (July 25, 2018), and accompanying Preliminary Decision Memorandum at 15, unchanged in *Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China: Final Affirmative Determination of Circumvention of the Antidumping Duty Order*, 84 FR 29164 (June 21, 2019).

<sup>6</sup> See 19 CFR 351.309(d)(1)-(2).

<sup>7</sup> See 19 CFR 351.225(f)(iii)(5) (explaining that Commerce will issue a final anticircumvention ruling "normally within 300 days from the date of the initiation of the . . . inquiry").

<sup>8</sup> The statutory due date of the final determination is Sunday, February 23, 2020. The next business day is Monday, February 24, 2020. See *Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).