

UNITED STATES COURT OF INTERNATIONAL TRADE

**DIAMOND SAWBLADES
MANUFACTURERS' COALITION,**

Plaintiff,

v.

UNITED STATES,

Defendant.

Before: Richard Goldberg

Court No. 18-00134

OPINION

[Sustaining the U.S. Department of Commerce's scope determination in the antidumping duty order covering diamond sawblades and parts thereof from the People's Republic of China]

Dated: October 7, 2021

Daniel B. Pickard Wiley Rein LLP, of Washington D.C., for plaintiff. With him on brief were *Maureen E. Thorson* and *Stephanie M. Bell*.

John J. Tudor, Senior Trial Counsel, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington D.C., for defendant. With him on the brief were *Jeanne E. Davidson*, Director and *Franklin E. White, Jr.*, Assistant Director. Of Counsel on the brief was *Paul K. Keith*, Office of the Chief Counsel for Trade Enforcement and Compliance, U.S. Department of Commerce, of Washington D.C.

Goldberg, Senior Judge: Before the court is the scope redetermination ("Remand Redetermination") of the U.S. Department of Commerce ("Commerce," or the "Department") filed pursuant to the court's opinion and order in *Diamond Sawblades Mfrs. Coalition v. United States*, 43 CIT __, 405 F. Supp. 3d 1345 (2019) ("*Diamond*

Sawblades I"). Final Results of Remand Redetermination (Feb. 3, 2020), Rem. P.R. Doc. 15,¹ ECF No. 30 ("*Remand Redetermination*"). This litigation involves a challenge to the final scope ruling of Commerce which excludes Lyke Industrial Tools LLC ("Lyke") cupwheels from an antidumping duty order (the "Order") on diamond sawblades from the People's Republic of China ("China" or "PRC"). *Diamond Sawblades and Parts Thereof From the People's Republic of China and the Republic of Korea: Antidumping Duty Orders*, 74 Fed. Reg. 57,145 (Int'l Trade Admin. Nov. 4, 2009) ("Order").

Plaintiff Diamond Sawblades Manufacturers' Coalition ("DSMC"), an *ad hoc* coalition of producers of diamond sawblades domestic like products in the United States, once again challenges the Department's determination that the scope of the Order excludes certain cupwheels that Lyke imports into the United States. For the reasons stated herein, the court holds that the Departments' scope determination adheres to the applicable regulatory framework of 19 C.F.R. § 351.225² and that there is substantial evidence supporting Commerce's conclusion that Lyke's cupwheels are not

¹ All citations to documents from the administrative record are to public documents. References cited as "P.R. Doc. ___" are to documents on the original agency record; references cited as "Rem. P.R. Doc. ___" are to documents placed on the record during the Department's redetermination proceeding.

² All citations to the United States Code herein are to the 2012 edition, except where otherwise indicated. Citations to the Code of Federal Regulations are to the 2020 edition unless otherwise noted.

within the scope of the Order. Therefore, Commerce's Remand Redetermination is affirmed.

I. Background

The court assumes familiarity with the facts as discussed in the prior opinion. *Diamond Sawblades I*, 43 CIT at ___, 405 F. Supp. 3d at 1349–51. Commerce issued the antidumping duty order relevant to this litigation in November 2009, pursuant to a petition filed by DSMC. *Order*, 74 Fed. Reg. at 57,145; *see also* Compl. ¶ 5 (July 10, 2018), ECF No. 9 (“Compl.”). Lyke submitted a scope ruling request to Commerce on February 23, 2018, requesting that Commerce determine whether two of its products, diamond sawblades and cupwheels, fell within the scope of the order. *Letter from Pennington, P.A. to Sec’y of Commerce, re: Lyke Industrial Tools, LLC Scope Request: Diamond Sawblades Whose Cores Have Rockwell C Hardness Less Than 25 Prior to the Incorporation of Diamond Segments and Diamond Cupwheels - Diamond Sawblades and Parts Thereof from the People’s Republic of China (A-570-900) 2* (Feb. 23, 2018), P.R. Doc. 1 (“Lyke Scope Request”). Commerce determined that Lyke’s diamond sawblades are within the scope of the Order and that its cupwheels are not. *Final Scope Determination for Scope Request from Lyke Industrial Tool, LLC 8–10* (May 17, 2018), P.R. Doc. 23 (“Final Scope Ruling”).

On June 11, 2018, DSMC initiated litigation contesting the Department’s determination that Lyke’s cupwheels are outside the scope of the Order. Summons

(June 11, 2018), ECF No. 1; Compl. 1. On November 28, 2018, DSMC moved for judgment on the agency record. Pl.'s Rule 56.2 Mot. for J. on the Agency R. (Nov. 28, 2018), ECF No. 16. In *Diamond Sawblades I*, the court remanded the Department's Final Scope Ruling. First, the court found that the text of the scope of the Order did not resolve the scope dispute in and of itself because the term "sawblade" was not clearly defined. *Diamond Sawblades I*, 43 CIT at ___, 405 F. Supp. 3d at 1352. Second, the court stated that as the scope was susceptible to interpretation, Commerce needed to turn to sources listed in 19 C.F.R. § 351.225(k)(1), which Commerce failed to do in a way that was supported by substantial evidence because the Department's (k)(1) analysis improperly considered criteria found under 19 C.F.R. § 351.225(k)(2). *Id.* at ___, 405 F. Supp. 3d at 1353–54. Third, the court held that "[t]he sources used by Commerce in its (k)(1) analysis do not 'definitively answer' the question of whether Lyke's cupwheels are excluded from the scope of the Order." *Id.* at ___, 405 F. Supp. 3d at 1358. The court ordered Commerce to conduct an analysis under 19 C.F.R. § 351.225(k)(2) to determine whether Lyke's cupwheels are included in the scope of the Order. *Id.* at ___, 405 F. Supp. 3d at 1358.

On October 15, 2019, Commerce invited both DSMC and Lyke to provide further information related to the factors listed in 19 C.F.R. § 351.225(k)(2) and parties commented and submitted rebuttal comments on October 24, 2019 and October 31, 2019. *Mem. from Minoo Hatten, Program Manager, AD/CVD Operations, Off. I to Diamond*

Sawblades Mfrs. Coal. and Lyke Indus. Tools, LLC (Oct. 15, 2019), Rem. P.R. Doc. 1; *Letter from Pennington P.A. to Sec’y Commerce, re: Diamond Sawblades and Parts Thereof from the People’s Republic of China (A-570-900): Lyke’s Comments on Remand* (Oct. 24, 2019), Rem. P.R. Docs. 4–5 (“Lyke’s Comments”); *Letter from Wiley Rein LLP to Sec’y Commerce, re: Diamond Sawblades and Parts Thereof from the People’s Republic of China: Comments on (k)(2) Factors* (Oct. 24, 2019), Rem. P.R. Doc. 7 (“DSMC’s Comments”); *Letter from Pennington P.A. to Sec’y Commerce, re: Diamond Sawblades and Parts Thereof from the People’s Republic of China (A-570-900): Lyke’s Rebuttal to Pet’rs’ Remand Comments* (Oct. 31, 2019), Rem. P.R. Doc. 8 (“Lyke’s Rebuttal Comments”); *Letter from Wiley Rein LLP to Sec’y Commerce, re: Diamond Sawblades and Parts Thereof from the People’s Republic of China: Rebuttal Comments on (k)(2) Factors* (Oct. 31, 2019), Rem. P.R. Doc. 9 (“DSMC’s Rebuttal Comments”).

On February 3, 2020, Commerce issued its Remand Redetermination, addressing the issue of whether Lyke’s cupwheels are within the scope of the Order by conducting a 19 C.F.R. § 351.225(k)(2) analysis. After considering the five additional factors set forth in 19 C.F.R. § 351.225(k)(2), Commerce determined, once again, that Lyke’s cupwheels are not within the scope of the Order. *Remand Redetermination* 59. On March 18, 2020, DSMC filed its public comments, maintaining that it was unnecessary for Commerce to proceed to an analysis under 19 C.F.R. § 351.225(k)(2) as “the scope language unambiguously covers cupwheels,” and that if the language is ambiguous, then the 19 C.F.R. § 351.225(k)(1) factors are dispositive. *Pl. Diamond Sawblades Mfrs.’*

Coal.'s Comments on Final Results of Redetermination Pursuant to Remand 4 (Mar. 18, 2020), ECF No. 35 ("DSMC's Remand Comments"). DSMC also states that Commerce's determination on remand in regards to the (k)(2) factors is flawed and "inadequately explained, unsupported by substantial evidence, are inappropriately divorced from the scope language itself, and rest on an overly narrow interpretation of certain (k)(2) factors." *Id.* On May 8, 2020, Commerce responded to DSMC's Remand Comments and requested that the court sustain its Remand Redetermination. Def.'s Resp. to Comments on Remand Results 18 (May 8, 2020), ECF No. 38 ("Def.'s Reply").

The court now considers the Remand Redetermination.

II. Jurisdiction and Standard of Review

As in the prior opinion and order, the court exercises jurisdiction according to section 201 of the Customs Courts Act of 1980, 28 U.S.C. § 1581(c), under which the court reviews actions commenced under section 516A of the Tariff Act of 1930, as amended, 19 U.S.C. § 1516a.

The court sustains Commerce's determinations unless they are "unsupported by substantial evidence on the record, or otherwise not in accordance with law." 19 U.S.C. § 1516a(b)(1)(B)(i). Substantial evidence refers to "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion," *SKF USA, Inc. v. United States*, 537 F.3d 1373, 1378 (Fed. Cir. 2008) (quoting *Consol. Edison Co. v. Nat'l Labor Relations Bd.*, 305 U.S. 197, 229 (1938)), and under this standard, the court will

uphold a determination by Commerce provided that Commerce chooses from among the range of possible and reasonable conclusions based on the record. However, although “Commerce is entitled to substantial deference with regard to its interpretations of its own antidumping duty order,” *King Supply Co., LLC v. United States*, 674 F.3d 1343, 1348 (Fed. Cir. 2012) (citation omitted) “[t]his broad deference is not unlimited . . . ‘Commerce cannot interpret an antidumping order so as to change the scope of that order, nor can Commerce interpret an order in a manner contrary to its terms.’” *Id.* (quoting *Walgreen Co. v. United States*, 620 F.3d 1350, 1354 (Fed. Cir. 2010)).

III. Discussion

The court sustains the Department’s scope ruling. Commerce has made the determination that Lyke’s cupwheels do not fall within the scope of the Order, and this determination is supported by substantial evidence on the record. The Department correctly applied the regulatory framework of 19 C.F.R. § 351.225(k)(2) in conducting its analysis and has complied with the court’s directives in *Diamond Sawblades I*.

To determine whether a certain product is within the scope of an order, Commerce first must consider the language of the order itself. See *Arcelormittal Stainless Belgium N.V. v. United States*, 694 F.3d 82, 87 (Fed. Cir. 2012). If the scope language of the order does not unambiguously cover or not cover the product in question, Commerce then will take into account the descriptions of the merchandise contained in sources identified in 19 C.F.R. § 351.225(k)(1) (commonly referred to as the (k)(1)

sources). See *Tak Fat Trading Co. v. United States*, 396 F.3d 1378, 1382–83 (Fed. Cir. 2005).

If the descriptions of the merchandise in the (k)(1) sources are not dispositive,

Commerce is required to consider five additional factors, enumerated in 19 C.F.R.

§ 351.225(k)(2). These “(k)(2)” factors are: (i) the physical characteristics of the merchandise; (ii) the expectations of the ultimate purchasers; (iii) the ultimate use of the product; (iv) the channels of trade in which the product is sold; and (v) the manner in which the product is advertised and displayed. 19 C.F.R. § 351.225(k)(2). In

considering these five factors, “it is well settled” that Commerce has discretion in how to weigh and balance these factors. *Meridian Prods., LLC v. United States*, 851 F.3d 1375, 1382 (Fed. Cir. 2017) (citing to *Novosteel SA v. United States*, 25 CIT 2, 15, 128 F. Supp. 2d 720, 732 (2001)) (internal quotation marks omitted). However, when Commerce conducts this inquiry and analysis according to the strictures of 19 C.F.R.

§ 351.225(k)(1)&(2), the Department’s inquiry still must center on the scope language of the antidumping duty order, for the Department’s role in issuing a scope ruling is to interpret, not modify, the scope language. *Duferco Steel, Inc. v. United States*, 296 F.3d 1087, 1095 (Fed. Cir. 2002). As a practical matter, this must include consideration of the record information contained in the scope ruling request, which ordinarily will include, *inter alia*, “[a] detailed description of the product, including its technical characteristics and uses.” 19 C.F.R. § 351.225(c)(1)(i).

In *Diamond Sawblades I*, the court held that the text of the scope of the Order did not resolve the scope dispute in and of itself because the term “sawblade” was not clearly defined and the scope was susceptible to interpretation.³ *Diamond Sawblades I*, 43

³ The Order includes within its Scope:

[A]ll 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 these orders are semifinished 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).

Diamond Sawblades and Parts Thereof From the People’s Republic of China and the Republic of Korea, 74 Fed. Reg. 57,145, 57,145 (Int’l Trade Admin. Nov. 4, 2009) (“Order”). The Order also contains several exclusions to this scope language:

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 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.

(continued . . .)

CIT at __, 405 F. Supp. 3d at 1352. Thus, Commerce needed to take the “descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the [International Trade] Commission” into account. 19 C.F.R. § 351.225(k)(1). As the court determined the (k)(1) sources were not dispositive in *Diamond Sawblades I*, 43 CIT at __, 405 F. Supp. 3d at 1358, Commerce was required to turn to the (k)(2) factors as well in making its determination.

Upon analyzing the (k)(2) factors, Commerce determined that four of the five factors supported the determination that Lyke’s cupwheels are not covered by the scope of the Order on diamond sawblades from China, and that the last factor, the channels of trade in which the product is sold, is not dispositive to the analysis. *Remand Redetermination* 59. In response, DSMC asserts that Commerce erred in its analysis and its decision must be overturned. DSMC’s Remand Comments 4. Therefore, the court now addresses Commerce’s analysis of each of these factors in its Remand Redetermination to determine whether the Department’s conclusions are reasonable and supported by substantial evidence on the record.

Id. The Order does not define the term “sawblade.”

(. . . continued)

A. Physical Characteristics of the Product

The first of the (k)(2) factors instructs Commerce to review the physical characteristics of the product to determine whether the product, in this case cupwheels, have the same physical characteristics as the product subject to the Order. 19 C.F.R. § 351.225(k)(2)(i). After looking at the physical characteristics of the cupwheels, Commerce determined that “cupwheels are physically distinguishable from diamond sawblades.” *Remand Redetermination* 18. In concluding this, Commerce relied on the finding that a diamond sawblade must have an “attacking” or “cutting” edge to be considered subject to the Order. *Id.* at 19. “[D]iamond segments must be attached to the outer periphery of the core (creating an ‘attacking edge,’ or ‘cutting edge’) to be within the scope of the [] Order.” *Id.* These “attacking” or “cutting” edges can be one of several types, as detailed in Commerce’s questionnaires: (“Standard segment with undercut,’ ‘Standard segment without undercut,’ ‘Turbo,’ ‘Continuous,’ ‘Other (please describe),’ or ‘Not applicable (cores)’).”⁴ *Id.* at 20. Commerce found that while diamond sawblades have a “cutting” edge or an “attacking” edge of one of the varieties listed in the questionnaire, cupwheels, due to the fact the diamonds are attached to the

⁴ Commerce also clarified that the “Not applicable (cores)” designation identified in Commerce’s antidumping duty questionnaire corresponds to the “Parts Thereof” of the scope of the *Diamond Sawblades Order*, and therefore refers to an unfinished diamond sawblade. Final Results of Remand Redetermination (Feb. 3, 2020), Rem. P.R. Doc. 15, ECF No. 30 (“*Remand Redetermination*”). Neither DSMC nor Lyke argue that Lyke’s cupwheels are unfinished products.

bottom of the cup, do not. *Id.* at 18–19. Commerce also found that in regards to the “Other (please describe)” category, “there is no evidence that this option was intended to encompass cupwheels, which are designed to grind flat surfaces and therefore do not have a ‘cutting edge’ to identify.” *Id.* at 38.

The Department’s finding that Lyke’s cupwheels have diamonds attached to the bottom of the cup and therefore do not have an “cutting” edge is supported by the record evidence. Lyke described its cupwheels, in its scope ruling request, as consisting of a “steel plate that takes the shape of a cup or a hat – the center of the plate is concave and the outside is flat. Diamond segments are installed on the flat surface of the plate.” Lyke’s Scope Request 3; *Remand Redetermination* 5.

DSMC does not disagree that Lyke’s cupwheels have diamonds attached to the bottom of the cup as opposed to an edge but questions the relevance of this physical difference. DSMC’s Rebuttal Comments 11–12. Although Commerce determined that “diamond segments must be attached to the outer periphery of the core (creating an “attacking edge,” or “cutting edge”) to be within the scope of the [] Order,” *Remand Redetermination* 19, DSMC argues that this insistence on a diamond sawblade having an “attacking” edge to be within scope of the Order is a requirement engendered by Commerce, and not found in the language of the Order itself, DSMC’s Rebuttal Comments 9–12. DSMC therefore disagrees with Commerce’s assertion that for a product to be a diamond sawblade, it needs to have a “cutting” or “attacking” edge.

“In finding that cupwheels are so physically different from subject goods as to constitute non-subject merchandise, Commerce begins from an unsound premise: that subject goods are distinguished by having a ‘cutting’ or ‘attacking’ edge that results from the placement of diamond segments on the outer periphery of the products.”

Id. at 9.

Commerce directly addresses DSMC’s argument: “Addressing DSMC’s argument that the scope of the *Order* is indifferent to the location of segment placement, Commerce explained that statements from DSMC and the ITC throughout the investigation indicate that a product that does not have an attacking edge that penetrates the material is not subject merchandise.” Def.’s Reply 9–10; *see also Remand Redetermination* 39 (citing *Order*, 74 Fed. Reg. at 57,146 n.9; *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 Fed. Reg. 29,303, 29,305 (Dep’t of Commerce May 22, 2006) (final determ.); *Diamond Products and Parts Thereof from China and Korea: Investigation Nos. 731-TA-1092 and 1093 (Final)* 3, USITC Publication 3862 (July 2006) (“ITC Report”). As further support for this conclusion, Commerce cites language from the *Order* itself, examining the *Order*’s exclusions, which include “[c]ircular 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.” *Order*, 74 Fed. Reg. at 57,145; Def.’s Reply 10; *Remand*

Redetermination 39. As Commerce notes, this scope exclusion language lends support to Commerce's reading in two ways:

First, it supports Commerce's reading that the product must have a "cutting edge" to be considered a sawblade. If the scope was intended to cover merchandise without a cutting edge, the exclusionary language might have instead addressed circular steel plates with a "cutting element" or "working part" of non-diamond material. Second, it supports Commerce's interpretation that a cutting edge is formed by a cutting element on the outer diameter of the core, rather than on the flat surface. Therefore, this language supports Commerce's conclusion that, because Lyke's cupwheels do not have diamond segments attached to the outer diameter of the cores, they do not have a cutting edge and are physically distinguishable from diamond sawblades.

Def.'s Reply 10. Besides relying on the scope language itself, Commerce explains that the initial questionnaires it sent respondents also support the finding that a product must have a "cutting" edge to be within the scope of the Order. Commerce had requested that respondents identify the type of "cutting edge" their merchandise had "for model matching purposes" and "Lyke's cupwheels do not have a cutting edge at all because the diamond segments in cupwheels are attached to the bottom of the cup, not the rim." *Id.* at 9; *see also Remand Redetermination 19.*

Commerce also concluded that there were other physical differences between cupwheels and diamond sawblades. *Remand Redetermination 20.* "For example, we find that with respect to physical form, Commerce's questionnaire provides participating respondents three options to identify the type of physical form of their merchandise,

‘finished diamond sawblades,’ ‘cores,’ or ‘segment.’ Lyke’s cupwheels do not have any of the physical forms listed in Commerce’s questionnaire.” *Id.* at 20.

DSMC disagrees with Commerce’s determination that cupwheels are physically distinguishable from diamond sawblades. DSMC’s Remand Comments 8–12. DSMC highlights that diamond sawblades are “physically distinguished from all other types of sawblades by the presence of diamonds in the working part of the blade,” which work, not by cutting materials, but by “milling” or “grinding” them. DSMC’s Rebuttal Comments 5. According to DSMC, as cupwheels have diamonds on the working part of the blade and they also “cut” through materials by grinding them, they meet the description provided in the Petition of subject merchandise. *Id.*; *see also Remand Redetermination 6*. Furthermore, DSMC argues that there are additional physical similarities, such as “[b]oth diamond sawblades and cupwheels consist of a circular steel core and diamond segments that are attached to the core” and “[b]oth diamond sawblades and cup wheels also have a hole in the center of the core to allow them to be attached to a grinding tool.” DSMC Rebuttal Comments 4–5. DSMC asserts further that, similarly, the cores for cupwheels are typically convex or concave, and therefore there are no differences in the diamond segments used for diamond sawblades and cupwheels. *Id.* at 5; *Remand Redetermination 7*.

Commerce acknowledges these arguments from DSMC but indicates that it does not find them persuasive as these comparisons between cupwheels and diamond

sawblades are “overly generalized.” *Remand Redetermination* 20. For instance, under DSMC’s analysis of physical characteristic similarities, a diamond core drill also would be covered by the Order because it consists of a core and diamond segments and has a hole in the center of the core for attaching the core drill bit to a grinding tool, despite the fact that Commerce and the ITC already determined that diamond core drill bits were non-subject merchandise. *Id.* at 21.

Taken altogether, Commerce emphasizes that the location of the diamonds on the product is strongly determinative of whether that product is within the scope of the Order, and that cupwheels and diamond sawblades were physically distinguishable largely based on this difference. *Id.* at 21. Commerce’s decision to rely on the location of the diamonds within the product, and the Department’s finding that to constitute a diamond sawblade within the scope of the Order the product must have an “attacking” or “cutting” edge is not unreasonable, despite plaintiff’s protestations to the contrary. This finding is supported by the record read as a whole, including Commerce’s questionnaires, the language in the Petition, the investigation, the ITC report, and the scope language of the Order. *Id.* at 35–40.

Contrary to what DSMC argues (“[i]ndeed, the Court already found, in the decision remanding this action, that the (k)(1) materials do not support Commerce’s conclusion that cupwheels are out-of-scope products by reason of edge type or segment placement”), DSMC’s Remand Comments 12, the court did not instruct Commerce that

the (k)(1) materials did not support Commerce's conclusions regarding what constitutes a diamond sawblade. Instead, the court found that the (k)(1) analysis, without additional evidence coming from the (k)(2) factors, was not sufficient to uphold the Department's determination. "Commerce has failed to demonstrate that Lyke's cupwheels are not within the scope of the order based *solely* on the three sources available under 19 C.F.R. § 351.225(k)(1)." *Diamond Sawblades I*, 43 CIT at __, 405 F. Supp. 3d at 1353. The court did not instruct Commerce to ignore the record as a whole or discount evidence in the language of the Order itself or from (k)(1) sources when doing its (k)(2) analysis.

B. Expectations of the Ultimate Purchaser and the Manner in Which the Product is Advertised and Displayed

Commerce analyzes the second and fifth (k)(2) factors, the "expectations of the ultimate purchasers" and "the manner in which the product is advertised and displayed" in tandem. *See* 19 C.F.R. § 351.225(k)(2)(ii), (v). Commerce determined that the record regarding these factors supports a finding that cupwheels and diamond sawblades are advertised and displayed differently, and that the expectations of the ultimate purchaser differ with each product. *Remand Redetermination* 21–25, 46–54.

Commerce reviewed evidence put on the record both by Lyke and by DSMC regarding the expectations of the ultimate purchaser. Commerce analyzed consumer reviews posted to websites, website advertisements and product descriptions, and an affidavit provided by DSMC. *Id.* at 48–53. Commerce compared the reviews posted by

consumers who purchased diamond sawblades with reviews posted by consumers who purchased grinding cupwheels and concluded that the consumers have different expectations of each product. *Id.* at 49–50. For instance, Commerce found that the websites and advertisements showed that diamond sawblades are advertised as cutting through hard material and that cupwheels are advertised as tools designed to grind, level or smooth surfaces of hard material. The expectations of the ultimate purchaser similarly differ. “Commerce also observed that the ‘related searches,’ ‘customers also viewed,’ and ‘related items’ features of these websites supported finding that diamond sawblades and cupwheels are distinct products.” Def.’s Reply 14; *Remand Redetermination* 10. In fact, “[n]one of the advertisements placed on the record by parties identify ‘grinding cupwheels’ as a diamond sawblade.” *Remand Redetermination* 50–51. Based on evidence such as this, Commerce permissibly found that the expectation of the end purchaser was different for each product. *Id.* at 23–24.

DSMC’s central argument is that, “in reaching this determination, Commerce has gone beyond its proper role of interpreting the current scope language, and has strayed into the realm of amendment.” DSMC’s Remand Comments 12. DSMC argues that Commerce is making an irrelevant distinction between grinding or polishing material as opposed to cutting it, as the scope language of the Order “does not define subject goods based on spin direction and location of segment placement (or whether these result in a ‘cutting’ or ‘grinding’ action).” *Id.* at 14–15. Additionally, DSMC argues that

diamond sawblades and cupwheels are both advertised as being used for cutting, creating that consumer expectation. DSMC's Comments 5–7, DSMC's Rebuttal Comments 6–7; DSMC's Remand Comments 12–13. According to DSMC, both diamond sawblades and cupwheels are expected to grind or abrade material by way of contact between the diamond segments and the material at issue, and that purchasers expect that the diamond sawblades and cupwheels both will be able to maintain its strength during the grinding and abrading process. DSMC's Rebuttal Comments 5.

Commerce addresses DSMC's evidence, noting that DSMC put on the record a printout of a website (U.S. Diamond) where it describes diamond sawblades and its uses. *Remand Redetermination* 22–23; DSMC's Comments Ex. 2. The website excerpt reads: "Are you looking to *cut* block? If so, you'll want a diamond blade. . . Diamond saw blades have diamonds *fixed on their edges* which allow for *cutting* hard or abrasive materials. There are many types of diamond blades, and they have many uses, including cutting stone, concrete, asphalt, bricks and many others." DSMC's Comments Ex. 2 (emphasis added). The same website states that cup grinding wheels are used for "*grinding and polishing.*" *Id.* (emphasis added). Lastly, the website also lists diamond sawblades and cupwheels separately in its search function, which Commerce took as support for the finding that they are considered distinct, non-fungible products. *Remand Redetermination* 23.

DSMC argues that the Home Depot website describes cupwheels as being used for “cutting,” an argument that Commerce found took the word “cutting” out of context. For instance, Home Depot’s website stated that “the 4-inch Double Row Diamond Cup Wheel” is engineered “for maximum cutting performance,” which DSMC argues supports the determination that the ultimate purchaser’s expectation of cupwheels is to cut into materials. DSMC’s Rebuttal Comments 6, Ex. 2; *Remand Redetermination* 11. However, Commerce, in reviewing the full description of the product in the Home Depot website, noted that the description of the cupwheel includes additional language, such as the cupwheels are “engineered with top-grade industrial diamond for maximum cutting performance and superior grinding life” and that the cupwheels could be used for a range of projects including “shaping and polishing [] concrete surfaces and floors, to fast aggressive concrete grinding or leveling and coating removal.” *Remand Redetermination* 23. The description also noted that the cupwheels have “faster grinding and longer life than standard abrasive grinding wheels,” indicating that this particular cupwheel was being advertised as superior to other “abrasive grinding wheels,” and not being advertised in relation to its ability to function as a diamond sawblade. *Id.* at 24. Taken all together, Commerce made the reasonable finding that the word “cutting” in the context of the advertisement meant that the cupwheels were being advertised as designed to cut materials in a parallel fashion, grinding or polishing the surface of a material, rather than cutting into a

material in a perpendicular fashion as one would expect from a diamond sawblade.

Remand Redetermination 24.

Lastly, Commerce considers the affidavit submitted by DSMC from an official at a company that manufactures and sells diamond sawblades and cupwheels which claims that “all diamond sawblades and cup wheels are expected to grind or abrade materials by pressing the diamond segments against said materials.” DSMC’s Comments Ex. 1. Commerce discounts this affidavit in light of the other evidence on the record, *Remand Redetermination 22–23*, stating that Commerce “considered this second-hand explanation of the expectations of customers to be less compelling evidence of consumer expectations than the direct reviews posted from consumers themselves,” Def.’s Reply 14.

Commerce ultimately found that the consumer reviews from websites like Home Depot and Lowes, as well as the advertisement printouts from the same, supported Commerce’s finding that the expectations of the ultimate purchasers are different for cupwheels and diamond sawblades, and that the manner in which these products are advertised and displayed also differ by the type of product. *Remand Redetermination 24–25*. “That is, based on the consumer reviews and the advertisements of both diamond sawblades and cupwheels, we find that consumers would, for example, purchase a diamond sawblade if they expected to use the tool to cut a block of concrete from a driveway (diamond sawblades ‘allow for cutting hard or abrasive materials’), and they

would purchase a cupwheel if they expected to “grind and polish hard or abrasive materials.” *Id.* at 25.

Because Commerce reviewed the record evidence, acknowledged and addressed both DSMC’s and Lyke’s comments, and came to a conclusion supported by the record, it was not unreasonable for Commerce to conclude that diamond sawblades and cupwheels are advertised differently and that ultimate purchasers have different expectations for each product.

C. Ultimate Use of the Product

With respect to the ultimate use of the product, 19 C.F.R. § 351.225(k)(2)(iii), Commerce found that diamond sawblades were used for cutting hard materials while cupwheels were used for grinding, leveling, or polishing hard materials. *Remand Redetermination* 25. In coming to the conclusion that the products were ultimately used differently, Commerce partly relied on the U.S. Diamond website placed onto the record by DSMC, which indicated that diamond sawblades were used to cut block, while another source provided by DSMC, a printout from Wikipedia describing cupwheels, noted that they were used for grinding concrete and stone or could be used to remove paints or other surface coatings. *Id.* at 26. Commerce also reviewed the end use description used by the ITC stating that diamond sawblades end use was to cut concrete, stone, and other hard materials. *Diamond Sawblades and Parts Thereof from China and Korea, Prehearing Report to the Commission on Investigation Nos. 731-TA-1092-*

1093 (*Final*) (May 2, 2006). Therefore Commerce found that “based on the information on the scope record, the ITC’s description of the end use of the products, and Commerce’s experience in conducting numerous administrative reviews in this proceeding, we find that the ultimate use of Lyke’s cupwheel is not the same as the ultimate use of diamond sawblades.” *Remand Redetermination* 27.

DSMC argues that diamond sawblades “do not actually cut materials, rather, diamond sawblades mill (i.e., grind) them.” DSMC’s Rebuttal Comments 5; *see also* DSMC’s Remand Comments 19–22. According to DSMC, this is also how cupwheels are used, and that to the extent diamond sawblades are used for cutting, so too are cupwheels. DSMC’s Rebuttal Comments 8. “[B]oth diamond sawblades and cupwheels are generally used to grind or abrade materials (*i.e.*, cut) through contacting the diamond segments with the material at issue. Thus, according to DSMC, the ultimate use of diamond sawblades and cupwheels is the same.” *Remand Redetermination* 14 (footnote omitted). Commerce agrees with DSMC that both diamond sawblades and cupwheels, by virtue of their diamonds, do not, in a technical sense, cut materials but instead grind them, but that “the manner in which diamond sawblades cut hard or abrasive materials is by grinding the material in a perpendicular manner at one specific point of the hard or abrasive material, such as how you would use a general purpose saw blade or typical saw. However, based on the information provided on the record, the ultimate use of a grinding cupwheel is to grind the material in a parallel

manner similar to what one would expect from a sandpaper power tool.” *Remand Redetermination* 25. Thus, despite both tools working by “grinding” the hard material, one “cuts” into the material perpendicularly, and the other “polishes” the hard material in parallel. This interpretation is supported by the U.S. Diamond website and the Wikipedia pages put on the record by DSMC. As Commerce’s conclusion is supported by the evidence on the record and it is reasonable to determine that cupwheels are used to polish material while diamond sawblades are used to cut into material, the court finds that Commerce appropriately analyzed this factor to find that cupwheels were ultimately used differently than cupwheels.

D. Channels of Trade in Which the Product is Sold

Commerce agrees with DSMC that both diamond sawblades and cupwheels are sold within similar channels of trade. *See* 19 C.F.R. § 351.225(k)(2)(iv); *Remand Redetermination* 27, 59. Commerce notes that the record evidence shows that both products are sold to distributors (retail outlets such as Home Depot and Lowes) and to end-users. Thus, this (k)(2) factor, unlike the other four, supports a finding that diamond sawblades and cupwheels should both be products within the scope of the Order. However, Commerce permissibly found that the other four factors weighed in favor of finding that Lyke’s cupwheels are not covered by the scope of the Order. Commerce concluded that “[a]lthough we find that the channels of trade are relatively the same for both products, we find that it is not indicative or dispositive that they are

subject to the [] *Order* for the reasons outlined above.” *Remand Redetermination* 28. This was appropriate, as it is well settled that Commerce has discretion in how to weigh and balance (k)(2) factors, *Meridian*, 851 F.3d at 1382, and the court finds that it is not unreasonable of Commerce in this case to allocate more weight to four (k)(2) factors than to the one.

IV. Conclusion

As directed to in *Diamond Sawblades I*, Commerce undertook further evaluation of whether cupwheels are within the scope of the antidumping duty order on diamond sawblades from China, pursuant to the factors set forth in 19 C.F.R. § 351.225(k)(2). The Department’s decision that Lyke’s cupwheels are not within the scope of the Order is supported by substantial evidence, is a reasonable interpretation based on the evidence entered in this record, and was determined in accordance with law. In reviewing Commerce’s analysis under 19 C.F.R. § 351.225(k)(2), the court will not “substitute [its] judgment for that of Commerce,” *see Inland Steel Indus., Inc. v. United States*, 188 F.3d 1349, 1359 (Fed. Cir. 1999), but instead will uphold Commerce’s determination provided it chooses from among the range of possible reasonable conclusions based on the record. *See SKF*, 537 F.3d at 1378. Here, Commerce has done so. Accordingly, the court sustains the Department’s determinations in full.

Judgment will enter accordingly.

/s/ Richard W. Goldberg

Richard W. Goldberg

Senior Judge

Dated: October 7, 2021
New York, New York