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January 17, 2013

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Issues and Decision Memorandum for the Final Results of the 2010-2011 Antidumping Duty Administrative Review

SUMMARY

We have analyzed the case and rebuttal briefs submitted by New King Shan (Zhu Hai) Co., Ltd. ("NKS") and Petitioners¹ in the 2010-2011 administrative review of certain kitchen appliance shelving and racks from the People's Republic of China ("PRC"). The Department of Commerce ("Department") published the Preliminary Results of review on October 9, 2012.² As a result of our analysis, we have not made any changes from the Preliminary Results. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

BACKGROUND

The period of review ("POR") is September 1, 2010, through August 31, 2011. In accordance with 19 CFR 351.309(c)(ii), we invited parties to comment on our Preliminary Results. On October 31, 2012, we received surrogate value ("SV") comments from NKS. On November 28, 2012, NKS filed a case brief. On December 3, 2012, Petitioners filed a rebuttal brief. The Department did not hold a hearing as no interested party made such a request pursuant to 19 CFR 351.310(c).

¹ Nashville Wire Products Inc. and SSW Holding Company, Inc. (collectively, "Petitioners").

² See Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Antidumping Duty Administrative Review, 2010–2011, 77 FR 61385 (October 9, 2012) ("Preliminary Results") and accompanying Preliminary Decision Memorandum ("Prelim Decision Memo").



As explained in the memorandum from the Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 29, through October 30, 2012.³ Thus, all deadlines in this segment of the proceeding have been extended by two days. The revised deadline for the final results of this review is now February 8, 2013.

SCOPE OF THE ORDER

The scope of this order consists of shelving and racks for refrigerators, freezers, combined refrigerator-freezers, other refrigerating or freezing equipment, cooking stoves, ranges, and ovens (“certain kitchen appliance shelving and racks” or “the merchandise under order”). Certain kitchen appliance shelving and racks are defined as shelving, baskets, racks (with or without extension slides, which are carbon or stainless steel hardware devices that are connected to shelving, baskets, or racks to enable sliding), side racks (which are welded wire support structures for oven racks that attach to the interior walls of an oven cavity that does not include support ribs as a design feature), and subframes (which are welded wire support structures that interface with formed support ribs inside an oven cavity to support oven rack assemblies utilizing extension slides) with the following dimensions:

- shelving and racks with dimensions ranging from 3 inches by 5 inches by 0.10 inch to 28 inches by 34 inches by 6 inches; or
- baskets with dimensions ranging from 2 inches by 4 inches by 3 inches to 28 inches by 34 inches by 16 inches; or
- side racks from 6 inches by 8 inches by 0.1 inch to 16 inches by 30 inches by 4 inches; or
- subframes from 6 inches by 10 inches by 0.1 inch to 28 inches by 34 inches by 6 inches.

The merchandise under this order is comprised of carbon or stainless steel wire ranging in thickness from 0.050 inch to 0.500 inch and may include sheet metal of either carbon or stainless steel ranging in thickness from 0.020 inch to 0.2 inch. The merchandise under this order may be coated or uncoated and may be formed and/or welded. Excluded from the scope of this order is shelving in which the support surface is glass.

The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (“HTSUS”) statistical reporting numbers 8418.99.8050, 8418.99.8060, 7321.90.5000, 7321.90.6090, 8516.90.8000, 8516.90.8010, 7321.90.6040, and 8419.90.9520. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

³ See Memorandum to the Record from Paul Piquado, AS for Import Administration, regarding “Tolling of Administrative Deadlines As a Result of the Government Closure during the Recent Hurricane,” dated October 31, 2012.

DISCUSSION OF THE ISSUES

COMMENT I: SELECTION OF FINANCIAL RATIOS

NKS's Comments:

- The financial statements of TS Steel Industries (“TSSI”) used by the Department in the Preliminary Results are unreliable because: 1) there is no evidence that TSSI uses steel wire rod as a raw material, 2) TSSI was not profitable in 2009, and 3) the 2010 statement only covers three months of the POR.
- The line item in the financial statement for “Painting and Steel Cutting” indicates that TSSI purchases steel wire.
- For the final results, the Department should use the financial statements of L.S. Industries (“LSI”) and Bangkok Fastening Co., Ltd. (“BFCL”) because these companies: 1) use the same primary raw material (steel wire rod) and similar production processes as NKS, 2) generated profits for consecutive fiscal years, and 3) cover the entire POR.
- If TSSI’s financial statements are used in the final results, then the Department should use a simple average of the three financial statements – TSSI, LSI, and BFCL – to calculate the financial ratios.

Petitioners' Comments:

- Only TSSI’s financial statements should be used in the final results because TSSI is a producer of identical subject merchandise, is profitable, and the statements are contemporaneous with the POR.
- The products manufactured by TSSI indicate that TSSI consumes steel wire rod as well as wire drawn from wire rod.
- The line items in the financial statements for “Direct Labor” and “Machinery Depreciation” account for processing of steel wire rod into wire and other final products.
- There is no prior precedent that the Department must further examine profit margins over several fiscal years to determine whether a company is consistently profitable.
- LSI and BFCL produce nails, screws, fasteners, nuts, etc., which are not identical or comparable to the subject merchandise.

Department’s Position:

We disagree with NKS and for the final results we will continue to use only the financial statements of TSSI to calculate the financial ratios.

Section 773(c)(1) of the Tariff Act of 1930, as amended (the “Act”) states that when the Department cannot calculate the normal value (“NV”) of subject merchandise from a non-market economy (“NME”) using the method described in section 773(a) of the Act, then the Department shall determine the NV “on the basis of the value of the factors of production utilized in producing the merchandise”⁴ The statute directs the Department to base the valuation of the

⁴ Section 773(c)(1) of the Act also explains that the Department will add to this amount general expenses, profit, and the cost of containers, coverings, and other expenses. In calculating these amounts, our practice is to use non-

factors of production on “the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate. . . .”⁵

The Department’s criteria for choosing surrogate companies to calculate surrogate financial ratios are the availability of contemporaneous financial statements, comparability to the respondent’s experience, and publicly available information.⁶ In evaluating financial statements for use in calculating the surrogate financial ratios, it is the Department’s preference to match the surrogate companies’ production experience with respondents’ production experience, and whenever possible, surrogate country producers of identical merchandise provided that the SV data is not distorted or otherwise unreliable.⁷

In the Preliminary Results, the Department determined that the 2010 financial statements from TSSI were the best available information on the record to value factory overhead, selling, general, and administrative (“SG&A”) expenses, and profit.⁸ After the Preliminary Results, NKS placed the statements of LSI and BFCL on the record. Petitioners did not submit additional financial statements.

Although the 2010-2011 Thai financial statements of LSI and BFCL are contemporaneous with the POR, we have determined that these statements are not suitable for use in deriving the surrogate financial ratios because each company’s financial statement indicates that it is not a producer of identical or comparable merchandise. While NKS argues that LSI and BFCL are producers of comparable merchandise, we disagree. In Hangers from Vietnam and AR1 Hangers from the PRC, the Department determined that upstream production of cutting and shaping wire (*i.e.*, nails, fasteners, etc.) are neither comparable nor identical to downstream products that require more sophisticated fabrication processes (*i.e.*, racks, shelves, etc.).⁹ Specifically, there is no evidence on the record to show that nails and fasteners producers’ costs, (*i.e.*, drawing, forming the wire and coating) are as significant as kitchen racks producers, (*i.e.*, drawing, straightening, cutting, welding, plating/powder-coating, which involves numerous chemicals, and packing). As both LSI and BFCL are producers of basic wire rod products (*i.e.*, nails,

proprietary financial statements of companies producing identical or comparable merchandise from the primary surrogate country. See also 19 CFR 351.408(c)(4).

⁵ See section 773(c)(1) of the Act.

⁶ See, e.g., Certain Steel Threaded Rod From the People’s Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review; 2010-2011, 77 FR 67332 (November 9, 2012), and accompanying Issues and Decision Memorandum at Comment 1.B.(3).

⁷ See, e.g., Certain Kitchen Appliance Shelving and Racks From the People’s Republic of China: Final Results and Partial Rescission of First Antidumping Duty Administrative Review, 77 FR 21734 (April 11, 2012) (“AR1 Racks”), and accompanying Issues and Decision Memorandum at Comment 2.A.

⁸ See Preliminary Results and accompanying Prelim Decision Memo at 13.

⁹ See Steel Wire Garment Hangers From the Socialist Republic of Vietnam: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 77 FR 46044, 46047 n.37 (August 2, 2012) (“Hangers from Vietnam”), unchanged in Steel Wire Garment Hangers From the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, 77 FR 75980 (December 26, 2012); First Administrative Review of Steel Wire Garment Hangers From the People’s Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 76 FR 27994 (May 13, 2011) (“AR1 Hangers from the PRC”), and accompanying Issues and Decision Memorandum at Comment 2.

fasteners, etc.), we do not find them to be producers of comparable merchandise for these final results.¹⁰

With regard to NKS's argument that TSSI's financial statements are not comparable, we note that TSSI makes merchandise that is comparable to NKS, including wire racks and shelving.¹¹ We further note that TSSI's production process of wire racks and shelving is comparable to the production process of NKS. In addition, evidence placed on the record indicates that the products manufactured by TSSI, similar to NKS, consume steel wire rod as well as wire drawn from wire rod.¹² With regard to NKS's arguments that TSSI was not profitable in 2009, we note that the 2010 financial statement, which we are using to calculate the surrogate financial ratios, indicates TSSI was profitable. While it is the Department's practice to only consider companies that are profitable for calculation of surrogate financial ratios, the Department does not consider several years of profitability in determining whether a company's financial statements should be considered for surrogate financial ratios. Furthermore, NKS has not cited an instance where the Department has examined a company's profitability over several fiscal years when choosing financial statements. Finally, while the 2010 TSSI financial statements do not cover the entirety of the POR, the Department finds that a three-month difference is not a basis upon which to exclude these financial statements as a SV source.¹³

As noted above, the Department's criteria for choosing surrogate companies are the availability of contemporaneous financial statements, comparability to the respondent's experience, and publicly available information. Therefore, for the final results, we have continued to use the 2010 financial statements from TSSI, a producer of comparable merchandise, which are mostly contemporaneous with the POR, are publicly available and satisfy the Department's criteria for selecting surrogate companies. In addition, while the Department has, in past cases, used multiple financial statements from companies at various levels of integration to approximate the experience of respondents, in this review, NKS's production experience is closely matched by TSSI alone. Thus, the Department has concluded that it is appropriate to not use both LSI's and BFCL's financial statements in calculating surrogate financial ratios because both of these company's upstream production of cutting and shaping wire is not representative to NKS's production experience and, therefore, not representative of its corresponding financial ratio information.

COMMENT II: LIQUIDATION INSTRUCTIONS

NKS's Comments:

- In AR1 Racks, liquidation instructions included both NKS and its non-PRC affiliates.
- For the final results, liquidation instructions should continue to include both NKS and its non-PRC affiliates.

¹⁰ See NKS's October 31, 2012, Surrogate Value Comments at Exhibits 1 and 2.

¹¹ See Petitioners' April 2, 2012, Surrogate Value Submission at Exhibit 50D.

¹² See *id.*

¹³ See Zhejiang Native Produce & Animal By-Products Imp. & Exp. Group Corp. v. United States, 32 CIT 673, 696 (2008) (finding a difference of few months in contemporaneity not to be material).

Petitioners' Comments:

- Agrees with NKS, as long as liquidation instructions only include subject merchandise manufactured and exported from the PRC by NKS; not subject merchandise from other manufacturers/exporters or produced by NKS in countries other than the PRC.

Department's Position:

We agree with Petitioner. Accordingly, for the final results, we will issue liquidation and cash deposit instructions reflecting the names of NKS and its affiliated entities only for entries manufactured and exported from the PRC by NKS.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If accepted, we will publish the final results of review and the final dumping margins in the Federal Register.

AGREE _____ DISAGREE _____

Paul Piquado
Assistant Secretary
for Import Administration

Date