



C-570-942
Administrative Review
POR: 1/1/2011 – 12/31/2011
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March 10, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

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

I. Summary

On September 14, 2009, the Department of Commerce (“Department”) published a countervailing duty (“CVD”) order on certain kitchen appliance shelving and racks (“kitchen racks” or “subject merchandise”) from the People’s Republic of China (“PRC”).¹ The Department published the *Preliminary Results* of this administrative review on October 23, 2013, covering a single respondent, New King Shan (Zhu Hai) Co., Ltd. (“NKS”).²

Following the *Preliminary Results*, the Department sent a supplemental questionnaire to NKS. NKS submitted its timely response on November 6, 2013.³ The Department released a “Post-Preliminary Analysis Memorandum” on December 17, 2013.⁴

¹ See *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Countervailing Duty Order*, 74 FR 46973 (September 14, 2009).

² See *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Countervailing Duty Administrative Review; 2011*, 78 FR 63166 (October 23, 2013) (“*Preliminary Results*”).

³ See NKS’ Letter to Department, “Countervailing Duty Post Preliminary Results Questionnaire Response of New King Shan (Zhu Hai) Co., Ltd.,” (November 6, 2013).

⁴ See Memorandum to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, through Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, through Thomas Gilgunn, Acting Office Director, Office I Antidumping and Countervailing Duty Operations, from Jennifer Meek, Office I, Antidumping and Countervailing Duty Operations, regarding, “Countervailing Duty Administrative Review: Certain Kitchen Appliance Shelving and Oven Racks from the People’s Republic of China: Post-Preliminary Analysis Memorandum,” (December 17, 2013) (“Post-Preliminary Memo”).

NKS filed a timely case brief.⁵ SSW Holding Company, Inc. and Nashville Wire Products, Inc. (collectively, “Petitioners”) filed a timely rebuttal brief.⁶

On January 29, 2014, the Department placed on the record the “Regulations of the People’s Republic of China on Import and Export Duties” obtained from the website of the Ministry of Commerce of the PRC.⁷ No party in this proceeding commented on this information.

As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013. Therefore, all deadlines in this segment of the proceeding have been extended by 16 days. Since the new deadline fell on a non-business day, in accordance with the Department’s practice, the revised deadline for the final results of this review was modified to March 10, 2014.

We analyzed the comments submitted by the interested parties in their case and rebuttal briefs in the “Analysis of Comments” section below, which also contains the Department’s responses to the issues raised in the briefs. We recommend that you approve the positions in this memorandum. Below is a complete list of the issues in this administrative review for which we received comments and rebuttal comments from interested parties.

List of Comments

Comment 1: Benchmark Calculation for the Wire Rod for Less Than Adequate Remuneration (“LTAR”) Program

Comment 2: Inclusion of Value-Added Tax (“VAT”) in the Wire Rod LTAR Benchmark Calculation

II. Period of Review

The period for which we are measuring subsidies, *i.e.*, the period of review (“POR”), is January 1, 2011, through December 31, 2011.

III. Scope of the Order

The scope of the 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 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

⁵ See NKS’ submission regarding, “Case Brief.”(December 27, 2013).

⁶ See Petitioners’ submission regarding, “Petitioners’ Rebuttal Brief in Response to New King Shan (Zhu Hai) Co., Ltd.,” (January 3, 2014).

⁷ See Memorandum to the File from Jennifer Meek regarding, “Countervailing Duty Administrative Review: Certain Kitchen Appliance Shelving and Oven Racks from the People’s Republic of China: Chinese Customs Regulations for Imports,” (January 29, 2014) (“Chinese Customs Memo”).

include support ribs as a design feature), and sub-frames (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 0.10 inch to 16 inches by 30 inches by 4 inches; or
- Sub-frames from 6 inches by 10 inches by 0.10 inch to 28 inches by 34 inches by 6 inches.

The subject merchandise 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 0.20 inch. The subject merchandise may be coated or uncoated and may be formed and/or welded. Excluded from the scope of the order is shelving in which the support surface is glass.

The merchandise subject to the order is currently classifiable in the Harmonized Tariff Schedule of the United States (“HTSUS”) statistical reporting numbers 8418.99.80.50, 7321.90.50.00, 7321.90.60.40, 7321.90.60.90, 8418.99.80.60, 8419.90.95.20, 8516.90.80.00, and 8516.90.80.10. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

IV. Attribution of Subsidies

The Department made no changes to the methodologies used in the *Preliminary Results* for attributing subsidies, and no issues were raised by interested parties in case or rebuttal briefs regarding the attribution of subsidies. For descriptions of the subsidy programs and the methodologies used for these final results, see the *Preliminary Results* and accompanying Decision Memorandum at 6.

V. Allocation of Subsidies

The Department made no changes to the allocation period and the allocation methodology used in the *Preliminary Results*, and no issues were raised by interested parties in case or rebuttal briefs regarding the allocation period or the allocation methodology. For a description of the allocation period and the methodology used for these final results, see the *Preliminary Results* and accompanying Decision Memorandum at 6.

VI. Subsidies Valuation Information – Benchmarks

The Department made no changes to benchmarks used in the *Preliminary Results*. As explained below in Comments 1 and 2, NKS argued that we should adjust the benchmark calculation methodology used in the Provision of Wire Rod for Less Than Adequate Remuneration (“LTAR”) program calculation in the *Preliminary Results*. We declined to make any changes to the benchmark calculation methodology for this program. For a description of the benchmarks used for these final results, see the *Preliminary Results* and accompanying Decision Memorandum.⁸

VII. Use of Facts Otherwise Available and Adverse Inferences

The Department made no changes with respect to the use of “facts otherwise available” pursuant to sections 776(a)(1) and (2) of the Tariff Act of 1930, as amended (“the Act”), used in the *Preliminary Results* with respect to aspects of certain programs for which the Government of the People’s Republic of China (“GOC”) failed to provide information necessary to the Department’s analyses. Moreover, the Department made no changes to its reliance on adverse inferences (“AFA”) pursuant to section 776(b) of the Act in applying the facts otherwise available when a party failed to cooperate by not acting to the best of its ability to comply with a request for information. Specifically, we applied AFA to certain aspects of the Provisions of Steel Strip and Wire Rod for LTAR programs and the Gaoxin District Energy Efficient Company Award program. For a full description of our AFA findings on these programs, see the *Preliminary Results* and accompanying Decision Memorandum at 3-6.

VIII. Developments Since the Preliminary Results

In the Post-Preliminary Memo, the Department determined NKS received no benefit from the Exemption from City Maintenance and Construction Taxes and Education Fee Surcharges for Foreign Invested Enterprises (“FIEs”) in Guangdong Province program.⁹ See “Programs Found to Be Not Used or that Provided No Benefit During the POR” section below.

IX. Analysis of Programs

A. Programs Determined To Be Countervailable

The Department made no changes to its determinations in the *Preliminary Results* with regard to the following programs. For the descriptions, analyses, and calculation methodologies of these programs, see the *Preliminary Results* and accompanying Decision Memorandum. No issues were raised by interested parties in case or rebuttal briefs regarding these programs, except with respect to the Provision of Wire Rod for LTAR program. The final company-specific program

⁸ See also Memorandum to the File from Jennifer Meek, International Trade Compliance Analyst, AD/CVD Operations, Office 1, regarding “Preliminary Results of Countervailing Duty Administrative Review: Kitchen Appliance Shelving and Racks (“KASR”) from the People’s Republic of China (“PRC”), Benchmark Memorandum. (September 30, 2013).

⁹ In the *Preliminary Results*, the title of the program was stated as “Late Payment of the City Maintenance and Construction Taxes and Education Surcharge Fees;” however, the name of the program is “Exemption from City Maintenance and Construction Taxes and Education Fee Surcharges for FIEs in Guangdong Province.”

rates for each of the following programs are unchanged from *Preliminary Results* and are as follows:

1. Income Tax Reduction for FIEs Based on Geographic Location

NKS: 0.02 percent *ad valorem*

2. Provision of Wire Rod for LTAR

NKS: 7.86 percent *ad valorem*

3. Provision of Steel Strip for LTAR

NKS: 0.09 percent *ad valorem*

4. Provision of Electricity for LTAR

NKS: 0.53 percent *ad valorem*

5. Gaoxin District Energy Efficient Company Award

NKS: 0.02 percent *ad valorem*

B. Programs Determined Not to Confer a Measurable Benefit During the POR

1. Safe Manufacturer Award

A. Programs Found to Be Not Used or that Provided No Benefit During the POR

1. Exemption from City Maintenance and Construction Taxes and Education Fee Surcharges for Foreign Invested Enterprises (“FIEs”) in Guangdong Province
2. Income Tax Refund for Reinvestment of Profits in Export-Oriented Enterprises
3. Income Tax Reduction for Export-Oriented FIEs
4. Local Income Tax Exemption or Reduction Program for “Productive” FIEs
5. Preferential Tax Subsidies for Research and Development by FIEs
6. Income Tax Credits on Purchases of Domestically-Produced Equipment by FIEs
7. Income Tax Credits for Purchases of Domestically-Produced Equipment by Domestically-Owned Companies
8. Reduction in or Exemption from Fixed Assets Investment Orientation Regulatory Tax
9. VAT Rebates for FIEs Purchasing Domestically-Produced Equipment
10. Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries
11. Import Tariff Exemptions for the “Encouragement of Investment by Taiwanese Compatriots”
12. Government Provision of Water at LTAR to Companies Located in Development Zones in Guangdong Province

13. Exemption from Land Development Fees for Enterprises Located in Industrial Cluster Zones
14. Reduction in Farmland Development Fees for Enterprises Located in Industrial Zones
15. Special Subsidy from the Technology Development Fund to Encourage Technology Development
16. Exemption from District and Township Level Highway Construction Fees for Enterprises Located in Industrial Cluster Zones
17. Exemptions from or Reductions in Educational Supplementary Fees and Embankment Defense Fees for Enterprises Located in Industrial Cluster Zones
18. Exemption from Real Estate Tax and Dyke Maintaining Fee for FIEs in Guangdong Province
19. Import Tariff Refunds and Exemptions for FIEs in Guangdong Province
20. Preferential Loans and Interest Rate Subsidies in Guangdong Province
21. Direct Grants in Guangdong Province
22. Funds for "Outward Expansion" of Industries in Guangdong Province
23. Land-related Subsidies to Companies Located in Specific Regions of Guangdong Province
24. Import Tariff and VAT Refunds and Exemptions for FIEs in Zhejiang
25. Grants to Promote Exports from Zhejiang Province
26. Land-related Subsidies to Companies Located in Specific Regions of Zhejiang
27. Special Subsidy from the Technology Development Fund to Encourage Technology Innovation
28. Subsidies to Encourage Enterprises in Industrial Cluster Zones to Hire Post-Doctoral Workers
29. Land Purchase Grant Subsidy to Enterprises Located in Industrial Cluster Zones and Encouraged Enterprises
30. Exemption from Accommodating Facilities Fees for High-Tech and Large-Scale FIEs
31. Income Tax Deduction for Technology Development Expenses of FIEs
32. Preferential Land-Use Charges for Newly-Established, Industrial Projects in Zhongshan's Industrial Zones
33. Reduction of Land Price at the Township Level for Newly-Established, Industrial Projects in Zhongshan's Industrial Zones
34. Reduction in Urban Infrastructure Fee for Industrial Enterprises in Industrial Zones
35. Income Tax Rebate for "Superior Industrial Enterprises" in Zhongshan
36. Accelerated Depreciation for New Technological Transformation Projects "Superior Industrial Enterprises" in Zhongshan
37. Exemption from the Tax on Investments in Fixed Assets for "Superior Industrial Enterprises" in Zhongshan
38. Shunde Famous Brands Program
39. International Market Exploration Fund Program also known as: "International Market Development Fund Grants for Small and Medium Sized Enterprises" program, "SME Fund," "Medium & Small Size Enterprise International Market Expansion Assistance" program or "International Exhibition Show Assistance" program
40. Nickel for LTAR
41. Foshan Shunde Export Rebate
42. Zhuhai Farmer Training Subsidy

43. Guangdong Supporting Fund
44. Zhuhai Export Trade Grant
45. Tax Rebates for Electromechanical High-Tech Products
46. Clean Production Promotion Program
47. Jinding Industrial Zone Exemption of Electricity Tariff
48. Jinding Industrial Zone Preferential Water
49. Jinding Industrial Zone Exemption from “Administrative Undertaking” Charges
50. Jinding Industrial Zone Income Tax Benefits

X. Analysis of Comments

Comment 1: Benchmark Calculation for the Wire Rod for LTAR Program

NKS argues the Department should not include ocean freight in the “dutiable value” when calculating the import duties to be incorporated into the wire rod benchmarks. In support, NKS cites to U.S. Customs and Border Protection (“CBP”) regulations which define dutiable value as exclusive of transportation charges.¹⁰ NKS claims the inclusion of ocean freight overstates the benchmark value. Instead, NKS states that ocean freight should be added after the import duties and VAT, if applicable, have been calculated.

Petitioners point out that CBP law is not relevant here. Petitioners note that section 771(5)(E) of the Act explains that adequacy shall be determined in relation to market conditions in the country which is subject to review, and thus only the PRC’s treatment of “dutiable value” is relevant. Petitioners refer to the second administrative review, in which the Department noted that “dutiable value” includes ocean freight according to Chinese customs law.¹¹ Petitioners assert that because the GOC refused to participate, there is no evidence indicating a change in Chinese customs law during the POR.

Department’s Position

In accordance with 19 CFR 351.511(a)(2)(iv) and prior cases,¹² when measuring the adequacy of remuneration under “tier one” or “tier two” benchmarks,¹³ the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Thus, the PRC’s practices, and not those of the United States, are relevant to the calculation of wire rod benchmark prices in this administrative review. As noted above under “Summary,” the Department placed information

¹⁰ NKS cites 19 U.S.C. 1401a(b)(4). See NKS’ case brief at 2-3.

¹¹ See *Kitchen Racks from the PRC 2010*, and accompanying Issues and Decision Memorandum at Comment 3.

¹² See *Circular Welded Carbon Quality Steel Lined Pipe From the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 70961 (November 24, 2008) (“*Line Pipe from the PRC*”), and accompanying Issues and Decision Memorandum at 19-20 and Comment 8; see also *Utility Scale Wind Towers From the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 75978 (December 26, 2012), and accompanying Issues and Decision Memorandum at Comment 19; see also *Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Countervailing Duty Administrative Review*, 73 FR 40295 (July 14, 2008), and accompanying Issues and Decision Memorandum at Comments 4 and 5.

¹³ See 19 CFR 351.511(a)(2)(i) and (ii), respectively.

regarding Chinese customs practices on the record,¹⁴ which demonstrates that in the PRC, “dutyable value” includes ocean freight. Also, as Petitioners note, the Department specifically found that in the PRC, the VAT is applied to the import price inclusive of, *inter alia*, delivery charges.¹⁵ Furthermore, this same issue was raised by NKS in the most recently completed administrative review of this order, and the Department concluded that “dutyable value” in the PRC includes ocean freight.¹⁶ Because NKS provided no compelling evidence or argumentation to the contrary, we are continuing to include ocean freight in the calculation of dutyable value in these final results.

Comment 2: Inclusion of VAT in the Wire Rod for LTAR Benchmark Calculation

NKS argues the Department should not include the full amount of VAT in the purchase price of the wire rod benchmark because the VAT amount would ultimately be credited back to the company. NKS states VAT paid on inputs used in the production of exported goods are subject to a VAT credit, as exported goods and the inputs used are not subject to VAT. NKS refers to its June 4, 2013, questionnaire response where it stated it received VAT credits from inputs for exported goods. NKS also asserts that the Department reduces U.S. prices under certain circumstances to adjust for VAT in antidumping duty calculations.

Petitioners argue the Department should include the full VAT paid for inputs in the benchmark price calculation for the final results, noting that NKS failed to provide legal support or case precedent from a prior CVD proceeding for the requested VAT adjustment.

Petitioners state the full inclusion of VAT in the wire rod benchmark price calculation is consistent with the Department’s statute and regulations. Citing section 771(5)(E) of the Act, Petitioners highlight that “conditions of purchase or sale” are included in the “prevailing market conditions” used to assess the adequacy of remuneration.

Petitioners hypothesize that subsequent to the purchase, a Chinese producer may receive a partial refund for the VAT paid at the time of importation, causing a wide variation in the “world market price” based on the production and sales behaviors of individual firms. Petitioners also argue that any adjustment regarding a subsequent VAT credit would conflict with 19 CFR 351.511(b) which states the countervailable benefit for goods provided for less than adequate remuneration is received at the time of purchase. Petitioners note NKS did not state it did not pay VAT at the time of purchase and that the Department utilizes delivered prices for the product “to reflect the price that a firm actually paid or would pay” for the purchase, citing 19 CFR 351.511(a)(2)(iv).

Department’s Position

As stated above, when measuring the adequacy of remuneration under “tier one” or “tier two” benchmarks, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import

¹⁴ See Chinese Customs Memo at Attachment 1.

¹⁵ See *Line Pipe from the PRC*, and accompanying Issues and Decision Memorandum at Comments 7 and 8.

¹⁶ See *Kitchen Racks from the PRC 2010*, and accompanying Issues and Decision Memorandum at Comment 3.

duties.¹⁷ Under the Department's regulations, in contrast to an antidumping duty proceeding where we may make a VAT adjustment, we make no adjustments for VAT in CVD proceedings. The only support NKS provides for its argument that VAT should not be included in the wire rod benchmark price calculation is an unsupported statement in its questionnaire response where it said it received a VAT credit for VAT paid on inputs used in the production of exported goods. NKS did not reference evidence on the record to show that it did not pay VAT on imported goods at the time of purchase nor did it provide any supporting evidence that the VAT paid on imported inputs used to produce exported goods is refunded. "The burden of creating an adequate record lies with {interested parties} and not with {the Department of} Commerce."¹⁸ Absent such record evidence, it is not the Department's role to speculate as to whether NKS did not pay VAT on imported goods at the time of purchase, or that any VAT it did pay was ultimately refunded.¹⁹

Although NKS referenced price adjustments for VAT made in antidumping duty calculations under certain circumstances, NKS provides no explanation, legal support, or CVD case precedent to further support this argument. In particular, NKS has not explained how a VAT adjustment that may be done in an antidumping case has a methodological implication for, and thus warrants excluding VAT in, CVD benchmarking. Therefore, we are continuing to include VAT in the calculation of dutiable value for the purposes of determining a benchmark in these final results.

¹⁷ See 19 CFR 351.511(a)(2)(iv).

¹⁸ *QVD Food Co., Ltd. v. United States*, 658 F.3d 1318, 1324 (Fed. Cir. 2011) (quoting *Tianjin Mach. Imp & Exp. Corp. v. United States*, 806 F. Supp 1008, 1015 (Ct. Int'l Trade 1992)); see also *NTN Bearing Corp. of Am. v. United States*, 997 F.2d 1453, 1458-59 (Fed. Cir. 1993) ("The burden of production {belongs} to the party in possession of the necessary information") (quoting *Zenith Elecs. Corp. v. United States*, 988 F.2d 1573, 1583 (Fed. Cir. 1993)).

¹⁹ See *Mid Continent Nail Corp. v. United States*, 949 F. Supp. 2d 1247, 1281 (Ct. Int'l Trade 2013) (finding plaintiff's allegations of deliberate misuse of a cash deposit rate by a respondent had no support in the administrative record, and that "{s}peculation and surmise are no substitute for affirmative evidence").

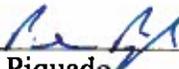
Recommendation

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 in the *Federal Register*.



Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

10 MARCH 2014
(Date)