

Public Version

**ZHEJIANG MACHINERY IMPORT & EXPORT
CORPORATION v. UNITED STATES**

Court No.02-00792

(June 5, 2003)

**FINAL RESULTS OF REDETERMINATION
PURSUANT TO REMAND**

INTRODUCTION

The Department of Commerce (“Department”) has prepared these final results pursuant to the order granting remand from the United States Court of International Trade (“CIT”) in Zhejiang Machinery Import & Export Corporation v. United States, Court No. 02-00792 (CIT June 5, 2003) (“Zhejiang Bearing”). This order was issued by the CIT in response to the Department’s request.¹ The Department made its request because of the similarities between this case and China National Machinery Import & Export v. United States, Court No. 01-01114, Slip Op. 03-16 (February 13, 2003) (“China National”). The Department filed its redetermination on remand in the latter case on May 13, 2003.

We have concluded that the record in this case supports the Department’s position that there is a reasonable basis to believe or suspect that the price Zhejiang Machinery Import & Export

¹Zhejiang Machinery Import & Export Corp. v. United States, “Defendant’s Motions to Remand and Suspend Briefing Schedule,” May 22, 2003.

Corporation (“ZMC”) paid to its market-economy supplier may have been subsidized, and therefore, the Department’s decision to use a surrogate value calculated from Japanese exports to India to value the steel input in question is justified.

BACKGROUND

The administrative review under remand is Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People’s Republic of China; Final Results of 2000-2001 Administrative Review, Partial Rescission of Review, and Determination Not to Revoke Order in Part, 67 FR 68990 (November 14, 2002) (“TRBs XIV”). The antidumping duty order subject to this review was issued on May 27, 1987. See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People’s Republic of China; Final Determination of Sales at Less Than Fair Value, 52 FR 19748 (May 27, 1987). In this judicial proceeding the plaintiff is ZMC and the Timken Company (the petitioner in the administrative review) is a defendant-intervenor.

In TRBs XIV, we used data on Japanese exports to India from the Japanese Harmonized Schedule category 7228.30.900 to value the hot-rolled alloy steel bar used by ZMC to manufacture tapered roller bearing (“TRB”) cups and cones. The Department requested remand on this issue in view of the CIT’s determination in China National. In China National, which concerned the 13th administrative review of this antidumping duty order,² the CIT remanded the case to the Department to review and augment the administrative record in order to demonstrate particular, specific, and objective

²Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People’s Republic of China; Final Results of 1999-2000 Administrative Review, Partial Rescission of Review, and Determination Not to Revoke Order in Part, 66 FR 57,420 (November 15, 2001) (“TRBs XIII”).

evidence that the prices the PRC manufacturer paid the market supplier were subsidized. In TRBs XIV, the case at issue here, the Department relied on the same rationale as in TRBs XIII. Accordingly, in the interest of judicial economy, we requested remand in order to more thoroughly explain our determination to use a surrogate value instead of the price ZMC paid to a market economy supplier for the steel input used in the manufacture of TRB cups and cones.

For the reasons explained below, we have not changed our valuations of the steel used by ZMC to manufacture the TRBs cups and cones.

DISCUSSION

In China National, the CIT observed that the applicable statute³ and regulations⁴ do not require the Department to choose actual supplier prices over surrogate values. The CIT stated that if the Department has “reason to believe or suspect” that actual supplier prices were subsidized, the Department may utilize surrogate values that the Department determines to be the best information under the statute. See China National at page 16. The CIT stated that it will affirm the Department’s position “if, given the entire record as a whole, there is substantial, specific, and objective evidence which could reasonably be interpreted to support a suspicion that the prices China National Machinery Import & Export Corporation (“CMC”) paid to its market economy supplier were distorted.” See

³The CIT agrees with Commerce that nothing in the antidumping duty statute directs Commerce to employ actual prices paid to a market economy supplier by a {non-market economy (ANME@)} producer in NV calculations. See China National at page 13.

⁴The CIT agrees that 19 CFR 351.408(c)(1) merely indicates a preference for market prices. See China National at page 15.

China National at page 19. The CIT further noted that the level of subsidization found in the countervailing duty (“CVD”) cases the Department relied upon to make its determination appeared to be “very low.” See China National at page 21. The CIT opined that “if this program had no significant effect on the prices CMC paid to its supplier, then there may be no distortion and, therefore, no justification to deviate from the actual input prices.” See China National at page 22.

In China National, the CIT remanded this issue to the Department “to review and augment the administrative record and to adequately explain, consistent with the opinion issued in th{at} case, how general subsidies allegedly found in other investigations would have given {the Department} ‘reason to believe or suspect’ that {CMC}’s market economy supplier may have benefitted from these subsidies enough to warrant imposition of duties on {CMC}.” See China National, Remand Order at page 2.

ANALYSIS

The Department has reason to believe or suspect that input prices may be dumped or subsidized when there exists, based on all the circumstances, particular and objective record evidence that supports such a belief or suspicion. See China National at page 18 (quoting Al Tech Specialty Steel Corp. v. United States, 575 F. Supp. 1277 (CIT 1983) (“Al Tech”). A reason to believe or suspect requires less evidence than an actual finding of subsidies in fact. In this case, the Department relied upon substantial evidence, its own CVD findings, to assess whether there was specific and objective evidence to support a reason to believe or suspect that the price ZMC paid to its market economy supplier may be distorted by broadly available, non-company specific, and industry specific subsidies maintained by the government in question (the name of the market supplier country is business proprietary information). Based on this assessment, we

determined that there is reasonable evidence on the record to infer that the price ZMC paid to its market supplier may be subsidized.

The legislative history of the Omnibus Trade and Competitiveness Act of 1988 (“1988 Act”) states that, “in valuing such {nonmarket economy} factors, {the Department} shall avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices.”⁵ The Department interprets this to mean that if there is a reason to believe or suspect that steel used by ZMC in production of the TRBs sold in the United States was subsidized, the Department would employ surrogate values where it determines that they are the best information under the statute. China National upheld this interpretation. See China National at page 16. The CIT also stated that it would support the Department’s actions if “. . . there is substantial, specific, and objective evidence which could reasonably be interpreted to support a suspicion that the prices {a manufacturer} paid to its market economy supplier were distorted.” See China National at page 19. The substantial evidence upon which the Department relied in this case to reasonably believe or suspect that the price ZMC paid to its market economy supplier may have been distorted is found in its 1999-2002 CVD cases: [

⁵See H.R. Rep. No. 576 100th Cong., 2. Sess. 590-91 (1988). Although this section of the Act has been revised since this 1988 legislative history was written, there were no changes made to section 773(c) of the Act in the URAA. See, e.g., S. Rep. 103-412, 2d. Sess. At 73 (1994).

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]; and [

]7 (collectively, “1999-2002 CVD Cases”).

From these cases we determined that the government in question maintains industry specific subsidies and non-industry specific export subsidies. See Appendix II for a list of these subsidy programs.

The statutory history does not provide any particular criteria for the Department to consider in making a determination to avoid subsidized prices. As noted by Congress in the legislative history of the 1988 Act, the Department is not required to conduct a formal investigation to support a finding of

⁶This determination was amended. See

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“reason to believe or suspect,” but should instead base its decision on information that is generally available to it at the time it is making its determination.⁸ Absent an investigation, it is not possible for the Department to get company-specific information. Instead, the Department has to rely on generally available information regarding the industry in question and/or the availability of export subsidies.

Consistent with Congress’ instructions, and absent a formal investigation of ZMC’s market economy supplier, the Department relied on its own CVD proceedings in rejecting the actual market price ZMC paid for this steel input. Through these CVD proceedings, the Department established the existence of broadly-available export subsidies and industry-specific subsidies from which ZMC’s supplier, an exporter and member of a subsidized industry, could have benefitted. Thus, the Department found reason to believe or suspect that the market economy price in question may have been subsidized. The CVD cases on which the Department relied were conducted in accordance with United States trade law and provide substantial, specific and objective evidence which could reasonably be interpreted to support a suspicion that the prices ZMC paid to its market economy supplier were distorted. Therefore, the Department acted within its discretion to determine that evidence supports its finding to have a reason to believe or suspect in this context.⁹

⁸See H.R. Rep. No. 576 100th Cong., 2. Sess. 590-91 (1988).

⁹This is consistent with the long-established principle of U.S. law that administrative agencies have the discretion to promulgate formal procedures or to proceed on a case-by-case basis. See Securities & Exchange Commission v. Chenery Corporation, 332 U.S. 194, 202-203 (1947).

In selecting factor values, the Department avoids using potentially subsidized values, as discussed above. This is in accordance with the Department's discretion to determine what constitutes the best available information on the record in selecting values consistent with 19 U.S.C. § 1677b(c)(1), taking into account the intent of Congress as expressed in the legislative history. After reviewing the record, we note that the evidence demonstrates that ZMC's supplier had various subsidies available to it and there is a reasonable basis to infer that a market company operating under normal market principles would take advantage of those benefits.

The Department consistently has followed the legislative history's direction to avoid using any prices that it has reason to believe or suspect may be dumped or subsidized. See, e.g., Certain Helical Spring Lock Washers from the People's Republic of China; Final Results of Administrative Review, 61 FR 66255 (December 17, 1996);¹⁰ Kerr-McGee Chemical Corp. v. United States, 985 F. Supp. 1166 (CIT 1997) ("Kerr-McGee");¹¹ and Tehnoimportexport v. United States, 783 F. Supp. 1401 (CIT 1992) ("Tehnoimportexport") (finding the existence of product-specific antidumping duty orders and non-product specific subsidies as determined by CVD orders provides a reasonable basis to believe or suspect surrogate export prices were dumped or subsidized). The Department has

¹⁰This case indicates that CVD findings can provide information beyond the specific conclusion that a particular product shipped to a particular market is subsidized.

¹¹In Kerr-McGee the CIT stated "{t}his court finds {the Department's} policy not to use Indian export prices is supported by substantial evidence on the record and is otherwise in accordance with law. The {CIT} notes in the legislative history to 19 U.S.C. § 1677b(c), Congress advised {the Department}, in valuing the factors of production, to 'avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices' (H.R. Rep. 100-576 at 590 (1988))." See Kerr-McGee, 985 F. Supp. at 1177.

continued to pursue this policy since Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1998-1999 Administrative Review, Partial Rescission of Review, and Determination Not to Revoke Order in Part, 66 FR 1953 (January 10, 2001) and Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Amended Final Results of 1998-1999 Administrative Review and Determination to Revoke Order in Part, 66 FR 11562 (February 26, 2001) (collectively, "TRBs XII").¹² Furthermore, the Department's determinations to reject certain market economy purchases by PRC producers due to the availability of broadly available, non-industry specific export subsidies has not been limited to the country in question. In Auto Replacement Glass the Department determined, based on record evidence, not to use export prices from Korea, Indonesia, and Thailand, either as market economy purchases or import statistics into India, the surrogate country for that case, because each of those countries maintains broadly available, non-company specific export subsidies. See Auto Replacement Glass accompanying Issues and Decision Memorandum, at Comment 1.

In February 2002, the Department articulated this policy in an Office of Policy Memorandum. This memorandum advised that for all non-market economy investigations, factor input prices from Korea, Thailand, and Indonesia should be disregarded, whether they are market economy purchases or import statistics into the surrogate country, due to the fact that these countries maintain broadly

¹²See Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields from the Peoples Republic of China, 67 FR 6482 (February 12, 2002) ("Auto Replacement Glass") and accompanying Issues and Decision Memorandum and Notice of Final Determination of Sales at Less Than Fair Value: Folding Metal Tables and Chairs from the People's Republic of China, 67 FR 20090 (April 24, 2002) and accompanying Issues and Decision Memorandum.

available, non-industry specific export subsidies. See Memorandum from Office of Policy to DAS and Office Directors: “NME investigations: procedures for disregarding subsidized factor input prices” (February 2002), which is attached to this document as Appendix I.

In TRBs XIV, we rejected ZMC’s market economy purchases based on the subsidies found in the 1999-2002 CVD Cases. These cases established that throughout the 1990’s and in 2000 the government in question maintained countervailable subsidies that benefitted the steel industry and individual steel producers. The Department further found export subsidies¹³ that were used by the investigated steel producers and were available to all exporters in that country.

As noted in the Market Economy Steel Memo,¹⁴ the subsidies found in the three investigations referenced by the Department could be divided into two groups: “general subsidies that appear to be available to and used by more than one steel producer and company-specific subsidies.” See Market Economy Steel Memo at page 3. This is also true for the two CVD cases published since the writing of the Market Economy Steel Memo, which were included in our analysis conducted in TRBs XIV (see the 1999-2002 CVD Cases listed above). See Appendix II. Of these two groups, the company-

¹³“The Secretary will consider a subsidy to be an export subsidy if the Secretary determines that eligibility for, approval of, or the amount of, a subsidy is contingent upon export performance.” See 19 CFR § 351.514. See also, “Export Subsidy,” Dictionary of International Trade: Handbook of the Global Trade Community, 3rd Edition, 1999 (Government payments, economic inducements or other financially quantifiable benefits provided to domestic producers or exporters contingent on the export of their goods).

¹⁴Memorandum to the File, Market Economy Steel Memo, dated November 7, 2001 (incorporating from TRBs XII the proprietary Memorandum to Richard W. Moreland regarding Allegation of Unfair Steel Prices, dated January 3, 2001) (Market Economy Steel Memo).

specific programs, which included [] and regional subsidies, were not included in our analysis. Rather, the particular subsidy programs relied upon by the Department in its analysis were available to all steel companies and were specifically found to be used by several steel producers in that country.

In particular, we determined in the 1999-2002 CVD Cases that during the 1990's and in 2000 the []. Moreover, the Department determined that the [

]. We also determined that the [] maintained various export subsidy programs that were broadly available and not industry specific, such as, []. See 1999-2002 CVD Cases.

This demonstrates the general availability of these programs and that they were not limited to certain steel companies or specific products.¹⁵

It is important to emphasize that the type of subsidies maintained by the government of the country in question, and relied on in making our determination to reject the PRC trading company

¹⁵Therefore, we do not agree that it is “material and relevant” in this case that the subject merchandise investigated in the 1999-2002 CVD proceedings differs from the steel input purchased by ZMC. See China National at page 24. Moreover, as noted in Tehnoimportexport, the findings in CVD orders of non-product specific subsidies supports a finding that there is reason to believe or suspect that export prices were subsidized. See page 8 above.

prices, are not specific to any particular product or type of steel. This is demonstrated by the CVD investigations relied on by the Department which show that the same subsidy programs exist regardless of the type of steel products being produced and exported. Furthermore, the export subsidy programs maintained by the government in question were offered to domestic companies engaged in foreign trade. Enrollment in these export subsidy programs was not based on the merchandise produced or a particular industry but was only contingent on a company's export performance.

On this basis, we have reason to believe that ZMC's supplier had available to it a

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]. See, e.g., []. We also have reason to believe that ZMC's supplier had available to it broadly available non-industry specific export subsidies maintained by the [] during the 1990's and in 2000. See 1999-2002 CVD Cases. Moreover, given the competitive environment in which ZMC's supplier operates, it is reasonable to infer that it would have taken advantage of these programs.

As noted above, we did not include [] and regional subsidies in our analysis.¹⁶ Instead, we made our decision based on the availability of subsidies to the steel industry and broadly available non-industry specific export subsidies maintained in the market country in question. It is important to note that these export subsidy programs were offered to domestic companies engaged in

¹⁶In regard to the industry specific subsidy program referenced by the Department, the CIT questions A. . . whether this program is offered across the board to all steel producers in the country, to those of a certain size, to those which manufacture a certain product or set of products, to those in a specific geographical area or so on.@ See China National at page 21.

foreign trade. Enrollment in these export subsidy programs was

not based on the merchandise produced or a particular industry but was contingent on a company's export performance.¹⁷

There is no evidence on the record to lead the Department to infer that ZMC's supplier was not eligible to participate in any of these subsidy programs. Instead, there is substantial, specific, and objective evidence on the record to support a reason to believe or suspect that ZMC's inputs may have been subsidized. Moreover, our reliance on CVD orders of non-product specific subsidies to establish our finding that there is a reason to believe or suspect the export prices ZMC paid to the market economy company in question were subsidized prices is supported by Tehnoimportexport. Therefore, we find that the information on the record supports the Department's decision to value ZMC's steel input using a surrogate value rather than the market price paid by ZMC to a market economy supplier.

We do not find that the Department's own negative finding for one steel producer, [], from the market country at issue directly undermines the Department's justification for disregarding the

¹⁷For example, under [

]. This [] amounts to an interest-free loan, which we determined in the 1999-2002 CVD proceedings to be an export subsidy under section 771(5A)(B) of the Act because use of the program was contingent upon export performance.

market price as distorted.¹⁸ That finding does not suggest that subsidies are not available to the supplier at issue here, nor is that finding the only evidence the Department has considered.

Instead, the Department continues to place primary importance on the affirmative cases included in the 1999-2002 CVD Cases. These cases demonstrate that other smaller [] steel companies had above *de minimis* subsidy levels. We find the rates for the smaller steel companies to be more predictive here for the following reasons. First, [] is the largest [] steel producer. Second, [] is controlled by the [], and has been found to provide subsidies to other [] steel producers, *i.e.*, [] system. In light of these affirmative determinations for other [] steel producers, the Department's negative finding for [] merely stands for the proposition that one [] steel producer received *de minimis* subsidies. Therefore, this negative finding should not prevent the Department from inferring that steel products exported from [] may have benefitted from industry-specific subsidies and broadly available export subsidies.

Unless a particular market supplier has been found to have *de minimis* subsidy benefits, as was the situation with [] in TRBs XII, the specific level of subsidization is not a relevant consideration in the Department's analysis of whether there is reason to believe or suspect that prices may be subsidized.¹⁹ What is relevant, as stated in Automotive Replacement Glass, is the fact that the country

¹⁸The CIT noted that this one case may be an anomaly and, if so, the Department should explain the parameters of this determination further. See China National at page 20.

¹⁹As noted in Automotive Replacement Glass, "the level of subsidization in a CVD finding on a certain product and certain exporters, whether *de minimis* or not, is irrelevant." See Automotive Replacement Glass and accompanying Issues and Decision Memorandum at pages 10-11.

in question maintains broadly available, non-industry specific export subsidies that may benefit all exporters to all markets. This is in accordance with the legislative history, which established that the Department base its decision on information generally available to it at the time of its determination and does not require the Department to examine the actual level of subsidization.²⁰ As noted previously, the legislative history makes clear its intention is not to mandate the conduct of a formal investigation by the Department in examining the existence of subsidies, which would be the only way to establish a particular company's rate.

After considering the evidence of industry-specific subsidies and broadly available export subsidies in the country in question, the Department finds that there is reason to believe or suspect that ZMC's supplier may have benefitted from these subsidies. Consequently, in accordance with Congressional intent and Departmental practice, we have not used the price paid by ZMC to its market supplier to value ZMC's cups and cones steel. Therefore, we find that the market price in question is not the best available information for valuing the steel used by ZMC to manufacture its TRB cups and cones.

INTERESTED PARTY COMMENTS

Timken's Comments:

The Timken Company ("Timken") states that it basically agrees with the Department, and, offered suggestions that Timken believed would strengthen the Department's position.

The legislative history states that the Department "shall avoid using any prices which it has

²⁰See H.R. Rep. No. 576 100th Cong., 2. Sess. 590-91 (1988).

reason to believe or suspect may be dumped or subsidized.” See Timken’s August 21, 2003 submission at page 2. According to Timken “may be . . . subsidized” is a very low threshold, citing United States v. Arthur Young, 465 U.S. 805, 79 L.Ed.2d 826, 834 (1984) to support this position:

The language ‘may be’ reflects Congress’ express intention to allow the IRS to obtain items of even potential relevance to an ongoing investigation, without reference to its admissibility.

465 U.S. at 814. Timken suggests that the Department rely on Arthur Young to strengthen its redetermination.

Timken suggests that the Department reference Automotive Replacement Glass to further support the Department’s assertion that the level of subsidization is not a relevant consideration in the Department’s analysis. Timken also recommends that the Department clarify that “the standard ‘*de minimis*’ only has meaning vis-a-vis a particular company.” See Timken’s August 21, 2003 submission at page 3.

Timken proposes that the Department emphasize that it is immaterial that the CVD determinations cited by the Department do not specifically cover the steel involved in producing the TRBs. According to Timken, the “natures” of the programs could lead a reasonable mind to suspect that other steel products in the country in question may also have benefitted from these subsidy programs.

Timken also made some “minor corrections or clarifications” suggestions in regard to the draft redetermination.

Department’s Position:

The nature of Timken’s comments were not argumentative but proposals for enhancing the

Department's position. Accordingly, we did not separately address Timken's comments here. Rather, where we found improvement to be warranted pursuant to Timken's comments, we made the appropriate revisions to these final results.

ZMC's Comments:

ZMC proposed a number of questions to the Department, which ZMC contends will allow the Department to "substantially clarify its policy." See ZMC's August 21, 2003 submission at page 2. According to ZMC, this clarification will show that there is no specific evidence to support a "reason to believe or suspect" conclusion. In the Department's position, which follows, we included each of ZMC's questions.

Department's Position:

The questions ZMC posed (See ZMC's August 21, 2003 submission at pages 2 - 5) are below in italics and the Department's response follows each question:

- 1) *Based on a review of the Draft Final Results, it is unclear which programs that the Department relied on to conclude ZMC's steel supplier received subsidies. Instead of general statements about which programs the Department included, the Department should specify those programs from those CVD investigations which provide the basis for its "suspicion" in the case of ZMC's supplier.*

The chart listing the subsidy programs found to be countervailable in the 1999-2002 CVD Cases and relied on by the Department in making its determination to reject the price ZMC paid to its market supplier due to subsidization is provided in Appendix II.

- 2) *Plaintiff's Memorandum of Points and Authorities filed with the Court on April 8, 2003, at 17, noted "the supplier did not*

[

]. Did the Department consider this fact? If not, why not.

The Department did not consider this fact because this information was not on the record in TRBs XIV.

- 3) *Confirm whether the Department has ever investigated ZMC's steel supplier in a CVD investigation, and whether the steel the supplier sold to ZMC was ever included in a U.S. CVD investigation.*

The Department never investigated ZMC's market supplier nor the specific steel sold to ZMC by its market supplier.

- 4) *The Department notes that it "consistently has followed the legislative history's direction to avoid using any prices that it has reason to believe or suspect may be dumped or subsidized." Exhibit 4 is a copy of the price chart the Department used to determine scrap surrogate values in TRBs XIV using Indian import statistics.*

- a) *Which of the countries supplying scrap steel to India is/are not subject to U.S. countervailing duty orders?*

The following countries were not subject to U.S. CVD orders: Bahrain, Japan, Kuwait, and United Arab Emirates.

- b) *Which of the countries are not subject to one or more U.S. antidumping duty orders on steel.*

The following countries were not subject to U.S. antidumping duty orders on steel: Bahrain, Kuwait, Singapore, and United Arab Emirates.

- c) *Since the Department has consistently followed the legislative history, for those countries with generally available subsidies and subject to CVD orders, why did the Department include those prices.*

None of the parties participating in TRBs XIV questioned the integrity of the statistics the Department used to calculate the surrogate values relied on to determine the company specific dumping margins.

As none of the parties questioned the statistics used, the Department did not analyze the values further in accordance with Departmental policy. Furthermore, to establish a reason to believe or suspect that prices are subsidized, the Department relies on whether the country in question maintains industry specific subsidies and/or broadly available, non-industry specific export subsidies that may benefit all exporters to all markets.

- 5) *The United States has been called to account before the World Trade Organization (“WTO”) for its subsidizing exports through the use of special tax treatment for “Foreign Sales Corporations.” The WTO has authorized the European Union to impose sanctions in excess of \$4 billion for the United States’ failure to comply with the Panel and Appellate Body decisions. Does the Department consider that the WTO finding would exclude some or all U.S. exports from being used for surrogate values or market economy import prices? If not, why not?*

The Department has not yet had an opportunity to address this issue and in the context of this case, need not, since the use of U.S. exports is not at issue here.

- 6) *The Department notes, but does not discuss in detail, the legislative history to the 1988 amendments to the Tariff Act of 1930, as amended, which provides that “the conferees do not intend for Commerce to conduct a formal investigation to ensure that such prices are not dumped or subsidized, but rather intended that Commerce base its decision on information generally available to it at that time.”*
- a) *Does the Department attribute any significance to the double negative?*

- b) *Does the Department attribute any significance to the term “formal investigation”?*

We interpret the language from legislative history of the 1988 Act to mean that the Department may rely on less specific information (i.e., generally available information) than could be gathered if the Department were to initiate and investigate individual companies from the market country in question when determining whether a price is influenced by subsidies.

- 7) *Does the Department provide any procedure to an interested party to establish that a market economy price is not dumped or subsidized? If so, how could an interested party such as ZMC establish to the satisfaction of the Department that its market economy supplier did not receive countervailable subsidies.*

The Department’s presumption that particular prices are dumped or subsidized can be rebutted when a party can show that the facts underlying the presumption differ for the supplier in question. As discussed above, if a market supplier is a company that was previously investigated by the Department and found not to be dumping²¹ or receiving subsidies above a *de minimis* level, the presumption would be rebutted and we would accept market prices offered by that company. See, e.g., TRBs XII and Notice of Final Determination of Sales at Less Than Fair Value: Folding Metal Tables and Chairs from the People’s Republic of China, 67 FR 20090 (April 24, 2002) and accompanying Issues and Decision Memorandum at Comment 1. Given the fact-based nature of countervailing duty findings there may be additional means of rebutting the presumption, and where there is evidence which counters the Department’s presumption parties may bring it to the Department’s attention.

²¹Findings of dumping are market specific, thus, we do not consider U.S. (or other third country) antidumping findings to provide a basis to believe or suspect that import prices into the surrogate country are dumped.

- 8) *Does the Department apply a de minimis standard to its reason to believe or suspect policy? For example, the Act and the Department's regulations provide that the Department must exclude a company from a CVD order if the benefits received are de minimis. Does the subsidy suspicion policy have the same de minimis standard? If not, is there a de minimis standard? If so, explain.*

If a particular market supplier has been found by the Department in a CVD investigation or administrative review to have received subsidy benefits at a *de minimis* level, we will accept the prices paid by a PRC company to that particular market supplier. Otherwise, we do not consider the level of subsidization calculated in the Department's CVD findings to be a relevant factor for making a reasonable inference concerning the subsidization of export prices. What we do consider relevant is whether the country in question maintains broadly available, non-industry specific export subsidies that may benefit all exporters to all markets.

- 9) *Is the subsidy suspicion policy reflected in the Department's regulations? If not, why not. For example, no reference to the subsidy suspicion policy appears in the Department's 1997 regulations, yet the Department relies on decisions to support its determination in TRBs XIV that pre-date the issuance of those regulations.*

The legislative history of the 1988 Act provides guidance to the Department in interpreting Congressional intent. The Department's regulations seek to, where appropriate and feasible, translate the principles of the implementing legislation into specific and predictable rules, thereby simplifying and streamlining the Department's administration of antidumping and countervailing duty proceedings in a manner consistent with the purpose of the statute and the President's regulatory principles. When the 1997 regulations were drafted the Department did not find further explanation warranted in regard to the "subsidy suspicion policy."

In conclusion, the Department believes that it has fulfilled its obligation under the remand order

from the court, which was to further clarify the Department's determination to use a surrogate value instead of the price ZMC paid to a market economy supplier for the steel input used in the manufacture of TRB cups and cones.

FINAL RESULTS OF REDETERMINATION PURSUANT TO REMAND

As a result of this remand, we have not recalculated the company-specific margins for the 2000-2001 administrative review. The "PRC-Wide" rate for this review, 33.18 percent, is not affected by these remand results.

These final results pursuant to remand are being issued in accordance with the order of the CIT in Zhejiang Machinery Import & Export Corporation v. United States, Court No. 02-00792 (CIT June 5, 2003).

James J. Jochum
Assistant Secretary
for Import Administration

Date

APPENDIX I

APPENDIX II

Not Capable of Public Summary