

**Final Results of Redetermination Pursuant to Court Remand
High Pressure Steel Cylinders from the People’s Republic of China
Beijing Tianhai Indus. Co., Ltd. v. United States
Court No. 12-00203, Slip Op. 14-104 (CIT September 9, 2014)**

I. SUMMARY

The U.S. Department of Commerce (Department) prepared these final results of redetermination pursuant to the remand order of the U.S. Court of International Trade (CIT or Court) in *Beijing Tianhai Indus. Co., Ltd. v. United States*, Slip Op. 14-104, 7 F. Supp. 3d 1318 (CIT 2013) (*Beijing Tianhai*). These final remand results concern the Department’s final affirmative antidumping determination regarding high pressure steel cylinders from the People’s Republic of China (PRC) (*Final Determination*).¹ In its opinion, the Court remanded one issue and deferred judgment on three other issues.² Regarding the single issue remanded to the Department at this time, the CIT held that, in applying the alternative average-to-transaction (A-to-T) method for Beijing Tianhai Industry Co., Ltd.’s (BTIC) margin calculation in the *Final Determination* in the context of our targeted dumping analysis, we did not sufficiently explain why the standard average-to-average (A-to-A) or alternative transaction-to-transaction (T-to-T) comparison methods cannot account for the pattern of significant price differences pursuant to section 777A(d)(1)(B)(ii) of the Tariff Act of 1930, as amended (Act).³

On December 18, 2014, the Department issued a draft redetermination in which it further explained therein, why the pattern of significant price differences identified in the U.S. sales database of BTIC cannot be taken into account using the A-to-A or T-to-T comparison methods, as required by section 777A(d)(1)(B)(ii) of the Act, and provided the parties with an opportunity

¹ See *High Pressure Steel Cylinders from the People’s Republic of China: Final Determination of Sales at Less than Fair Value*, 77 FR 26739 (May 7, 2012), and accompanying Issues and Decision Memorandum (*Final Determination*).

² See *Beijing Tianhai*, 7 F. Supp. 3d at 1331-32, 1337.

³ *Id.* at 1331-32.

to comment.⁴ On December 30, 2014, Petitioner⁵ provided comments supporting the Department's draft redetermination stating "the Department had explained that the difference between using the A-to-A method and the A-to-T method was meaningful because it resulted in crossing the *de minimis* threshold," and, similar to the facts in *Apex Frozen Foods*, "{t}he Department has provided a similar explanation with respect to the facts in this investigation in its draft results."⁶ Additionally, on January 2, 2015, the Department rejected BTIC's remand comments as untimely because BTIC's comments were submitted after the "C.O.B. December 30, 2014" deadline and BTIC did not request an extension.⁷ Accordingly, the Department rejected BTIC's comments as untimely, pursuant to 19 CFR 351.302(d), and has not retained BTIC's comments on the record of this remand proceeding.⁸ Because Petitioner's comments support the Department's draft remand redetermination, and absent other comments by parties on the record or reasons to revisit our prior analysis, the Department's final remand redetermination is unchanged from the draft remand redetermination. Therefore, the Department continues to determine that there exists a pattern of prices that differ significantly, and that such differences cannot be taken into account using the A-to-A or T-to-T comparison methods, as required by section 777A(d)(1)(B)(ii) of the Act.

⁴ See Draft Results of Redetermination Pursuant to Court Remand, High Pressure Steel Cylinders from the People's Republic of China, *Beijing Tianhai Indus. Co., Ltd. v. United States* (December 18, 2014).

⁵ Norris Cylinder Company ("Petitioner").

⁶ See Comments of Norris Cylinder Company on the Department's Draft Remand Redetermination: Antidumping Duty Investigation of High Pressure Steel Cylinders from the People's Republic of China (December 30, 2014) at 4-5 (citing *Apex Frozen Foods Private Ltd., et al. v. United States*, Court No. 13-00283, Slip Op. 14-138, at 9-11, 18-19 (CIT December 1, 2014)).

⁷ See Letter to BTIC from Scot Fullerton, Program Manager, Office V, Enforcement and Compliance, Subject: High Pressure Steel Cylinders from the People's Republic of China: Rejection of Untimely Comments and Removal from the Record (January 2, 2015); see also 19 CFR 351.303(b)(1) (requiring documents to be filed electronically with the Department "by 5 p.m. Eastern Time on the due date").

⁸ *Id.*

II. REMANDED ISSUE

1. Explanation Requirement under Section 777A(d)(1)(B)(ii) of the Act

A. Legal Framework

When calculating an estimated weighted-average dumping margin in an investigation, section 777A(d)(1)(B) of the Act permits the Department to employ the alternative A-to-T comparison method if: (1) there is a pattern of export prices (EPs) or constructed export prices (CEPs) for comparable merchandise that differ significantly among purchasers, regions, or periods of time; and (2) such differences cannot be taken into account using the A-to-A or T-to-T comparison methods. In implementing section 777A(d)(1)(B)(i) of the Act in the underlying investigation, the Department applied the *Nails* test, which provides a two-stage analysis to determine whether there is a pattern of prices that differ significantly among purchasers, regions, or periods of time. The CIT has sustained the Department's application of the *Nails* test.⁹ Section 777A(d)(1)(B)(ii) specifically requires the Department to “explain{ } why such differences cannot be taken into account using a method described in paragraph (1)(A)(i) or (ii)” (*i.e.*, the A-to-A or T-to-T methods).

B. Background

In the *Final Determination*, the Department found a “pattern of prices that differ significantly by time period” and, pursuant to section 777A(d)(1)(B) of the Act, found that “the pattern of price differences cannot be taken into account using the standard A-to-A method because the A-to-A method conceals differences in price patterns between the targeted and non-targeted groups by averaging low-priced sales to the targeted group with high-priced sales to the

⁹ See *Final Determination*, and accompanying Issues and Decision Memorandum at Comment IV. (citing *Mid Continent Nail Corp. v. United States*, 712 F. Supp. 2d 1370 (CIT 2010)).

non-targeted group.”¹⁰ The Department added that “application of the standard A-to-A method would result in the masking of dumping that is unmasked by application of the alternative A-to-T method when calculating BTIC’s weighted-average dumping margin.”¹¹

In its opinion, the Court stated that the Department’s explanation “neither makes mention of how the Department reached this conclusion nor references any record evidence supporting the conclusion.”¹² The Court also stated that “if no explanation other than the bare-bones invocation of the differing natures of the A-to-A and A-to-T methodologies would suffice to satisfy {section 777A(d)(1)(B)(ii) of the Act}, . . . that statutory provision would be rendered superfluous.”¹³ Furthermore, the Court noted that the Department’s explanation “ignores the potential use of the T-to-T method entirely.”¹⁴ The Court remanded to the Department to “provide such explanation,” and “do more than simply state that the pattern identified to satisfy {section 777a(d)(1)(B)(ii) of the Act} would be hidden using A-to-A,” but “explain, based on record evidence, why the presence of the pattern renders A-to-A or T-to-T inappropriate methodologies.”¹⁵

Below, we offer further explanation to address the Court’s concerns.

C. Analysis

i. T-to-T Method

Section 777A(d)(1)(A) of the Act contemplates that the T-to-T method is one method for calculating an estimated weighted-average dumping margin in a less-than-fair-value (LTFV) investigation. However, the T-to-T method cannot be used in this situation, which is a non-

¹⁰ See *Final Determination*, and accompanying Issues and Decision Memorandum at Comment IV.

¹¹ *Id.*

¹² *Beijing Tianhai*, 7 F. Supp. 3d at 1331.

¹³ *Id.* at 1332.

¹⁴ *Id.* at 1331.

¹⁵ *Id.* at 1332.

market economy (NME) country LTFV investigation in which the Department used a factors of production method to determine normal value, pursuant to section 773(c) of the Act. We thus based normal value on the valuation of a respondent's factors of production using surrogate values rather than on home market or third country transactions. In other words, there simply is no corresponding home market or third country sales database that would allow us to compare BTIC's individual home market or third country transactions to its individual U.S. sales transactions.

ii. A-to-A Method

To satisfy the second part of the statutory test, *i.e.*, to explain why the differences cannot be taken into account using the A-to-A method, in the underlying investigation, we calculated the estimated weighted-average dumping margins using both the A-to-A method and the A-to-T method.¹⁶ In this specific case, we find that the price differences cannot be taken into account using the A-to-A method, as evidenced by the fact that BTIC's estimated weighted-average dumping margin crossed the *de minimis* threshold specified in section 733(b)(3) of the Act (*i.e.*, two percent *ad valorem*) when we applied the A-to-T method instead of the A-to-A method.¹⁷ In other words, BTIC's estimated weighted-average dumping margin calculated using the A-to-A method was below the *de minimis* threshold,¹⁸ and BTIC's estimated weighted-average dumping margin calculated using the A-to-T method was 6.62 percent. In light of fact that the estimated weighted-average dumping margin crosses the *de minimis* threshold specified in section 773(b)(3) of the Act when the A-to-T, rather than the A-to-A, comparison method is applied, the

¹⁶ See the Final Analysis Memorandum for BTIC, dated April 30, 2012 (Final Analysis Memorandum), at attachments 3 and 4.

¹⁷ See the memorandum "Business Proprietary Information Referenced in the Draft Results of Redetermination," dated December 18, 2014, for a summary of the Department's calculation results for both methods.

¹⁸ See Final Analysis Memorandum at attachment 3 (the weighted-average margin resulting from an application of the A-to-A method is specified therein).

Department finds that the A-to-A method cannot account for the price differences. Indeed, the CIT, in a case involving similar facts, recently sustained the Department's explanation as to why it could not use the A-to-A method to account for a respondent's pattern of prices that differ significantly under section 777A(d)(1)(B)(ii) of the Act.¹⁹ The Department had explained that the difference between using the A-to-A method and the A-to-T method was meaningful because it resulted in crossing the *de minimis* threshold.²⁰

III. CONCLUSION

Pursuant to the Court's order and based on the above analysis, the Department has offered additional explanation as to why the A-to-A method cannot account for the pattern of prices that differ significantly that the A-to-T method unmasks based on record evidence, and why the T-to-T method cannot be used at all in this investigation due to the nature of the calculation of NV in this NME antidumping duty proceeding. For all of the foregoing reasons, we find that application of the alternative A-to-T method to be appropriate in order to calculate BTIC's estimated weighted-average dumping margin. Therefore, BTIC's estimated weighted-average dumping margin remains unchanged from the *Final Determination*.²¹



Paul Piquado
Assistant Secretary
for Enforcement & Compliance

7 January 2015
Date

¹⁹ See *Apex Frozen Foods Private Ltd., et al. v. United States*, Court No. 13-00283, Slip Op. 14-138, at 9-11, 18-19 (CIT December 1, 2014).

²⁰ *Id.*

²¹ See *Final Determination*, 77 FR at 26742.