

DEC 4 2009

REDETERMINATION PURSUANT TO REMAND
JTEKT Corporation, et al. v. United States
Consol. Court No. 07-00377 (CIT Sep. 2, 2009).

Summary

This remand redetermination, submitted in accordance with the order of the U.S. Court of International Trade (the Court) of September 2, 2009, in *JTEKT Corp. et al. v. United States*, Consol. Court No 07-377, involves challenges to the determinations of the U.S. Department of Commerce (the Department) in the administrative review of the antidumping duty order on ball bearings and parts thereof from Japan (*Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Review in Part*, 72 FR 58053 (October 12, 2007) (*AFBs 17*)). The period of review is May 1, 2005, through April 30, 2006. In accordance with the Court's order, the Department has examined its calculation of constructed export price (CEP) for certain U.S. sales made by Aisin Seiki Co., Ltd. (Aisin), and, as a result, recalculated the dumping margin for Aisin. The changes to our calculations with respect to Aisin resulted in a change in the weighted-average margin for ball bearings and parts thereof from Japan during the period of review. In *AFBs 17*, we determined a margin of 6.15 percent for Aisin. For this redetermination we have calculated a margin of 1.13 percent for Aisin.

We released draft results of redetermination to interested parties on October 21, 2009, and requested comments be submitted no later than October 28, 2009. Pursuant to Aisin's request for an extension of time to comment, we extended the deadline for comment to November 4, 2009. No interested party commented on our draft results of redetermination. Accordingly, we have made no changes to our draft results of redetermination and the discussion which follows addresses our redetermination.

Discussion

On August 28, 2009, and September 2, 2009, the United States moved for a voluntary remand for the Department to examine the methodology it used to calculate CEP for Aisin pursuant to section 772(e) of the Tariff Act of 1930, as amended (the Act), in *AFBs 17*. The Court granted the Government's motion and remanded *AFBs 17* to the Department to examine the methodology it used to calculate CEP pursuant to section 772(e) of the Act for Aisin's sales of certain automotive service parts manufactured in the United States, incorporating ball bearings produced in Japan, and sold below the production cost of the automotive service part and, if appropriate, to recalculate Aisin's margin. Remand Order dated September 2, 2009, at 2-3 (Remand Order).¹

As described in *AFBs 17* and accompanying Issues and Decision Memorandum (I&D Memo) at Comment 24, the Department calculated CEP for Aisin's further-manufactured sales pursuant to section 772(e) of the Act. The Department decided that it would be inappropriate to use the price of identical or other subject merchandise exported by Aisin, as provided for in sections 772(e)(1) and (2) of the Act, because "there was not a sufficient quantity of sales to provide a reasonable basis for comparison." *Id.* In other words, there was an insufficient quantity of non-further-manufactured sales on which we could base the margin for further-manufactured

¹ When conducting the review, we did not see and had not contemplated margins in excess of 50,000 percent of the normal value as Aisin discussed in its brief to the Court. Aisin calculated this margin by comparing the transaction-specific dollar margin (*i.e.*, normal value minus CEP, in this case) to the normal value. Aisin Br. at 10. In our normal dumping calculations, however, we do not make such a comparison. We compare the transaction-specific dollar margin to the transaction-specific CEP or export price (EP) in order to derive the transaction-specific percentage margin (*i.e.*, the transaction-specific dollar margin divided by CEP, in this case). See, *e.g.*, Confidential record document # 211, at frame 53. Furthermore, the Department's computer printout for Aisin did not contain the alleged 50,000 percent margin because, in antidumping cases where the CEP or EP is below zero, the Department does not attempt to calculate a transaction-specific percentage margin. See, *e.g.*, page 23 of the computer printout accompanying Aisin's final results, Confidential record document # 210 at frame 23 (showing a period, which denotes a "missing value" in SAS programming language, under the PCTMARG column for sales with negative values for United States price).

sales. As a result, we were unable to determine the margin for Aisin's further-manufactured sales using our normal methodology when applying the special rule for further-manufactured merchandise (*i.e.*, applying the weighted-average margin we calculate for non-further-manufactured merchandise to sales of further-manufactured merchandise). See, *e.g.*, *AFBs 17* and *I&D Memo* at Comment 24.

Furthermore, for the reasons stated in response to Comment 24 of the *I&D Memo*, we continue to find Aisin's proposal that we limit the calculated per-unit antidumping duty to the cost of producing the bearing in the small number of instances where the further-manufacturing costs exceed the price of the further-manufactured product to be inappropriate.

We requested a remand to examine "Aisin's sales of certain automotive service parts manufactured in the United States, incorporating bearings produced in Japan, and sold below the production cost of the automotive service part," which is reflected by the Court's Remand Order. Remand Order at 2-3. We interpret the phrase "certain automotive service parts" to mean only those sales that would have been affected by Aisin's proposed remedy (*i.e.*, those sales for which we calculated per-unit margins greater than the cost of producing the subject merchandise).

Section 772(e) of the Act provides that the Department may use an alternative methodology for calculating CEP for sales of merchandise which has been further manufactured in the United States by an affiliate of the exporter where "the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise." Section 772(e) of the Act provides further that, "{i}f there is not a sufficient quantity of sales to provide a reasonable basis for comparison under paragraph (1) or (2), or the administering authority determines that neither of the prices described in such paragraphs is appropriate, then the constructed export price may be determined on any other reasonable basis."

Generally speaking, with respect to merchandise that has been further manufactured in the United States by an affiliate of the exporter, in situations where the value added in the United States by the affiliated person exceeds substantially the value of the subject merchandise, the possibility that the margin may be distorted increases as the proportion of the value added in the United States becomes extremely large relative to the value of the subject merchandise.

Accordingly, we have taken into account this possibility in reexamining the methodology to use in this instance.

Therefore, we have calculated the margin for all U.S. sales using our normal methodology except those where the margin we calculated in *AFBs 17* was greater than the production cost of the imported bearing and, consistent with the Court's Remand Order, the finished product was sold at prices below the production cost of the automotive service part.² In order to implement this analysis, we have removed the sales described above from our antidumping calculations and applied the weighted-average margin we calculated on the remaining sales to these sales.

We determine that this is appropriate in this case because the value added in the United States by the affiliated person is extremely large relative to the value of the subject merchandise with respect to these sales and there is a sufficient volume of other sales to use in calculating dumping margins. In fact, the lowest amount of value which was added in the United States after importation for any of these sales, expressed as a percentage of the total value of the finished product, was [] percent. See the output of the margin-calculation program for the draft results of redetermination pursuant to remand attached to the calculation memorandum for the draft results dated October 19, 2009, at 9. Furthermore, there is a sufficient quantity of remaining sales

² All of the sales for which we had calculated margins in *AFBs 17* greater than the production cost of the subject merchandise were also sold at prices below the production cost of the automotive service part. Thus, as a practical matter, the second condition did not serve to narrow the scope of the sales we examined.

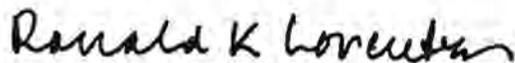
to provide a reasonable basis for comparison; after we removed the sales described above from our calculations, [] percent, by quantity, of all of Aisin's sales remained in our analysis. See the output of the margin-calculation program for the draft results of redetermination pursuant to remand attached to the calculation memorandum for the draft results dated October 19, 2009, at 11. Moreover, removing certain sales as described above from our analysis and applying the weighted-average margin we calculate on the remaining sales to the removed sales is reasonable because it is consistent with the methodology we use when applying section 772(e) of the Act to other companies. See, e.g., *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Preliminary Results of Antidumping Duty Administrative Reviews*, 71 FR 12170, 12173 (March 9, 2006) (unchanged in final; 71 FR 40064 (July 14, 2006)) (*AFBs 16*), where, "for purposes of determining dumping margins for the sales subject to the special rule, we have used the weighted-average dumping margins calculated on sales of identical or other subject merchandise sold to unaffiliated persons." The only difference in this case is that we are establishing the margin for the removed sales based on the margins we have calculated for other further-manufactured and non-further-manufactured sales instead of, as in *AFBS 16*, only non-further-manufactured sales.

Accordingly, we find it appropriate to apply this revised methodology with respect to certain further-manufactured sales where, as here, the value added in the United States exceeds, by an extreme degree, the value of the subject merchandise and there is a sufficient quantity of remaining sales to provide a reasonable basis for comparison. We have applied this analysis to the facts concerning Aisin and, as a result, we have recalculated Aisin's margin accordingly.

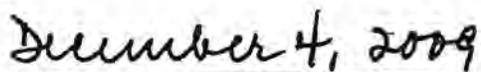
Redetermination

In accordance with the Remand Order, we have reexamined our calculation methodology and, based on that examination, we have recalculated the weighted-average dumping margin for Aisin. The recalculated weighted-average dumping margin for the period May 1, 2005, through April 30, 2006, for ball bearings and parts thereof from Japan is 1.13 percent for Aisin.

This redetermination is pursuant to the remand order of the CIT in *JTEKT Corporation, et al. v. United States*, Consol. Court No. 07-00377 (September 2, 2009).



Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration



(Date)