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September 24, 2007

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Results of the 19th Administrative Review of the Antidumping Duty Order on Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China

SUMMARY

We have analyzed the comments of the interested parties in the antidumping duty administrative review on tapered roller bearings and parts thereof, finished and unfinished ("TRBs"), from the People's Republic of China ("PRC"). As a result of our analysis of these comments, we made the changes to our margin calculations addressed in the "Changes Since the Preliminary Results" section of the accompanying Federal Register notice. We recommend that you approve the positions we describe in the "Discussion of the Issues" section of this memorandum. The Timken Company Limited ("Timken" or "Petitioner") and Peer Bearing Company-Changshan ("CPZ") were the only interested parties to comment on the preliminary results of review. Below is the complete list of the issues that were raised in these briefs:

Comment 1: Outdated TRBs Tariff Classification
Comment 2: CPZ's Separate Rate Status
Comment 3: The Country-wide Rate

BACKGROUND

On July 27, 2006, the Department of Commerce ("the Department") published in the Federal Register a notice of the initiation of the antidumping duty administrative review of TRBs from the PRC for the period June 1, 2005, through May 31, 2006, for Chin Jun Industrial Ltd. ("Chin Jun"), CPZ, Hebei Longsheng Metals & Minerals Trade Co., Ltd. ("Hebei"), and the Yantai Timken Company Limited ("Yantai"). See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 71 FR 42626 (July 27, 2006) ("Initiation Notice").

On March 26, 2007, the Department published its preliminary results of review. See Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Notice of Rescission in Part and Intent to Rescind in Part, 72 FR 14078 (March 26, 2007) ("Preliminary Results"). On March 30, 2007, Petitioner submitted a case brief. On April 25, 2007, CPZ submitted a case brief. On April 30, 2007, Petitioner and CPZ each submitted a rebuttal brief.

DISCUSSION OF THE ISSUES

Comment 1: Outdated TRBs Tariff Classification

Petitioner argues that the Harmonized Tariff Schedule of the United States ("HTSUS") number 8482.99.30, listed in the scope description in the Preliminary Results, was replaced by HTSUS numbers 8482.99.15 and 8482.99.45 in the 1995 edition of the HTSUS and that these HTSUS numbers are currently in effect. Petitioner claims that the Department revised the scope description in the final results of the period of review ("POR") immediately preceding the instant POR to reflect the current HTSUS numbers, 8482.99.15 and 8482.99.45. Petitioner argues that the Department should revise the scope description in the final results of the instant review to reflect HTSUS numbers 8482.99.15 and 8482.99.45 as well.

CPZ argues that such a revision is not required and is unnecessary because the written description of the subject merchandise included in the scope description is dispositive, regardless of the HTSUS numbers included in the scope description, which are provided for "convenience." Furthermore, CPZ claims that the Department does not consider HTSUS numbers when making scope determinations.[1] CPZ argues that in accordance with 19 CFR 351.225(k), the Department makes scope determinations based on the description of the merchandise contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the International Trade Commission, or when these descriptions are not dispositive, the Department will consider 1) the physical characteristics of the product, 2) the expectations of the ultimate purchasers, 3) the ultimate use of the product, 4) the channels of trade in which the product is sold, and 5) the manner in which the product is advertised and displayed. CPZ claims that in this context tariff classifications are of limited use. Furthermore, CPZ argues that revisions are made to the HTSUS each year and it would be time-consuming to review all HTSUS numbers included in the scope of the order. CPZ argues that if the Department revises HTSUS 8482.99.30 as requested by Petitioner, the Department should review all HTSUS numbers in the scope description and update all HTSUS numbers as appropriate.

Department's Position:

[1]CPZ cites Eckstrom Industris, Inc. v. United States, 254 F.3d 1068, 1071-72 (Fed. Cir. 2001) (citing Smith Corona Corp. v. United States, 915 F.2d 683, 685 (Fed. Cir 1990)).

We agree with Timken that the Department's scope of the order includes an HTSUS number from 1994 and that this HTS number was split into two HTSUS subheadings which should be used for purposes of the final results. We made this revision for the final results in the preceding segment of this proceeding but inadvertently failed to reflect it in the scope description of the Preliminary Results of the instant POR. Therefore, for the final results, the Department will include in the scope HTSUS 8482.99.15 for cups and other rings (cones) and HTSUS 8482.99.45 for other parts of TRBs. Further, the Department updates HTSUS numbers on a regular basis in response to requests from U.S. Customs and Border Protection.

Comment 2: CPZ's Separate Rate Status

CPZ argues that, although it failed to respond to the Department's questionnaire, the Department's determination in the Preliminary Results to terminate its eligibility for a separate rate has no basis in the statute or the Department's regulations. CPZ states that it does not contest the fact that it should receive a rate based on facts available, but argues that it should not lose its separate rate eligibility. CPZ argues that the Department acted contrary to law by imposing a rate that presumes government control because CPZ "successfully rebutted such a presumption" in a prior segment of this proceeding.

CPZ argues that the statute is silent with respect to separate rate eligibility. Furthermore, CPZ argues that the statute requires the Department to calculate dumping margins based on the amount by which normal value exceeds export price or constructed export price. Moreover, CPZ argues that Section 751(a)(2) of the Tariff Act of 1930, as amended, ("the Act") instructs the Department to determine "the normal value and export price (or constructed export price) of each entry of subject merchandise, and the dumping margin for each such entry." CPZ argues that applying the PRC-wide rate as facts available is inconsistent with the language of the statute which requires that margins should be calculated for each entry.

Citing Transcom, Inc. v. United States, 294 F.3d 1371, 1373 (Fed. Cir. 2002), in which the court states "{U}nder the NME presumption, a company that fails to demonstrate independence from the NME entity is subject to the countrywide rate, while a company that demonstrates its independence is entitled to an individual rate as in a market economy," CPZ contends that although the courts have upheld the Department's separate rate methodology, it "has not been upheld to the extent to which it was applied in the Preliminary Results." CPZ argues that it has rebutted the presumption of government control "in a recent review" and that judicial acceptance of the separate rate methodology "does not go as far as to say that a company which has previously qualified for a separate rate loses such status in one year or upon the initiation of each administrative review." Moreover, CPZ argues that the Department's policy has "not always been consistent on this matter." CPZ cites Cast Iron Construction Castings from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 57 FR 24245, 24246 (June 8, 1992) ("ICC"), in which the Department stated that " . . . once a Chinese company has demonstrated that it is entitled to a separate rate, unless there is indication that its status may have changed, it is not necessary for that company to resubmit data supporting a separate rate in subsequent reviews." CPZ contends that the Department's policy with respect to

separate rates "has been confusing at times" and that the application of the nonmarket economy ("NME") presumption to CPZ appears to be arbitrary. Citing Tung Mung Dev. Co. v. United States, 354 F.3d 1371, 1378 (Fed. Cir. 2004), CPZ argues that the Department may not apply the NME presumption in an arbitrary or capricious manner.[2]

Petitioners argue that although CPZ overcame the presumption that it was part of the Chinese entity in a prior review, the Department requires every respondent in every sequential NME review to provide evidence establishing independence from one review period to the next because 1) every review stands on its own,[3] 2) a final determination must be based on evidence of record duly submitted for the Department's consideration,[4] and 3) the status of a company's independence can change from one review period to the next due to the "practical reality that governments in NME countries can alter their fundamental policies *vis-a-vis* particular companies, or even the country as a whole, from one review period to the next."

Additionally, Petitioner argues that the record for this POR is devoid of any factual evidence with respect to CPZ's separate rate eligibility. Petitioner contends that CPZ did not respond to the Department's questionnaire and did not allude to its separate rate status in prior PORs in its letter to the Department stating that it would not provide the information requested by the Department. Further, Petitioner argues that CPZ could have updated separate rate data from prior reviews and submitted that data for the record of this review, but did not, and waited until the briefing stage of the instant review to make arguments on the issue without any facts. Petitioner claims that this approach is procedurally inappropriate and casts suspicion on the merits of CPZ's claim that it remains independent of Chinese government control. Petitioner argues that CPZ chose not to cooperate in this segment of the proceeding by not responding to the Department's questionnaire and the application of adverse facts available ("AFA") to CPZ is appropriate in accordance with sections 776(a) and (b) of the Act and the Department may apply as AFA a rate determined in a prior POR.

Department Position

We agree with Petitioner. The Department's longstanding practice with respect to establishing whether a company operating in an NME is sufficiently independent of government control to be entitled to a separate rate is to analyze each exporting entity under the test established in the Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of

[2]CPZ also cites Bennett v. Spear, 520 U.S. 154, 174, 117 S.Ct. 1154, 137 L.Ed.2d 281 (1997) and Decca Hospitality Furnishings LLC v. United States, 391 F. Supp. 2d 1298 (Ct. Int'l Trade 2005).

[3]Petitioners cite Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod From Mexico, 71 FR 27989 (May 15, 2006), and Timken Company v. United States, 930 F. Supp. 621 (CIT 1996).

[4]Petitioners cite Shandong Huarong Machinery Company v. United States, 29 CIT, 2005 Ct. Intl. Trade LEXIS 57, slip op. 05-54 (May 2, 2005).

China, 56 FR 20588 (May 6, 1991), as amplified by the Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China, 59 FR 22585 (May 2, 1994) ("Sparklers and Silicon"). Under the separate-rates criteria, the Department assigns separate rates in NME cases only if the respondent can demonstrate the absence of both de jure and de facto governmental control over export activities. See Sparklers and Silicon. Furthermore, the Department has stated that it is not practical to codify its NME presumption and separate rates methodology in its regulations due to changing conditions in NMEs.[5]

Although the Department has previously stated, in 1992, that it is not necessary for a company to resubmit data supporting a separate rate in subsequent reviews after it has been found eligible for a separate rate, the Department has modified its methodology with respect to this issue. See ICC, 57 FR at 24246. In 1996, the Department stated that a flexible policy was necessary with respect to the separate rate methodology due to changing conditions in NMEs. See Rulemaking, 61 FR at 3711. Since 1998, the Department has stated consistently that it is the Department's policy to evaluate requests for a separate rate individually, each time a separate rate claim is made, regardless of whether the respondent received a separate rate in the past.[6] Additionally, the Department has simplified the procedure for respondents to obtain separate rates by allowing new respondents to submit separate rate applications and respondents that already have received a separate rate in prior segments to submit certifications that they continue to meet the criteria for obtaining a separate rate. See Antidumping Methodologies in Proceedings Involving Non-Market Economy Countries: Surrogate Country Selection and Separate Rates, 72 FR 13246, 13248 (March 21, 2007).

The Court of International Trade ("CIT") has consistently upheld the Department's separate rate methodology for determining government control, de jure and de facto, including a presumption

[5]The Department has stated "[w]e have decided not to codify the current presumption in favor of a single rate or the so-called "separate rates test," which outlines the type of information that an exporter or producer must present to obtain a separate rate. Because of the changing conditions in those NME countries most frequently subject to antidumping proceedings, this test (and the assumptions underlying the test) must be allowed to adjust to such changes on a case-by-case basis." See Antidumping Duties; Countervailing Duties; Proposed Rule 61 FR 7308, 7311 (February 27, 1996) ("Rulemaking").

[6]See Manganese Metal From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 63 FR 12440, 12441 (March 13, 1998); Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China; Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Reviews, Notice of Intent Not To Revoke in Part and Extension of Final Results of Reviews, 67 FR 10123, 10125 (March 6, 2002), as affirmed in Heavy Forged Hand Tools From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Determination Not To Revoke in Part, 67 FR 57789, 57792 (September 12, 2002); Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty Administrative Review, 71 FR 53387, 53393 (September 11, 2006), as affirmed in Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Second Administrative Review, 72 FR 13242 (March 21, 2007), Glycine from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Rescission, in Part, 72 FR 18457, 18458 (April 12, 2007).

of state control, as a proper administration of the antidumping statute.[7] Moreover, the CIT has affirmed the Department's application of the separate rates test to the specific facts and record evidence present in each underlying review. Shandong Huanri (Group) General Co. v. U.S., 493 F. Supp. 2d 1353, 1360 (CIT 2007).

CPZ asserts that the Department is required to calculate dumping margins based on each entry of subject merchandise during the POR. However, because CPZ failed to respond to any part of the Department's questionnaire, there is no information on the record of this review. Thus, it is not possible for the Department to calculate a dumping margin on any of CPZ's entries of subject merchandise during the POR. Moreover, because CPZ did not respond to the Department's questionnaire, which requests information used by the Department to determine separate rates eligibility, or place any other information on the record of this review with respect to its separate rate eligibility, the Department is unable to conduct a separate rate analysis. Therefore, we are denying CPZ a separate rate because of its failure to establish its eligibility and its failure to respond to any questionnaires, and we have included CPZ in the PRC-wide entity subject to the PRC-wide rate.[8]

Comment 3: The Country-wide Rate

CPZ argues that the Department should apply a separate rate of 33.18 percent to CPZ, or in the alternative, should find that the country-wide entity rate should be 33.18 percent. CPZ states that in applying facts available, section 776(b) of the Act provides that the Department may use an inference that is adverse to the interests of a respondent, but argues that section 776(c) of the Act requires the Department to corroborate the information selected as facts available by reviewing independent sources. CPZ cites the Court of Appeals for the Federal Circuit ("CAFC") which stated " . . . the purpose of section 1677e(b) is to provide respondents with an incentive to cooperate, not to impose punitive, aberrational, or uncorroborated margins . . . It is clear from Congress's imposition of the corroboration requirement in 19 U.S.C. 1677e(c) that it intended for an adverse facts available rate to be a reasonably accurate estimate of the respondent's actual rate, albeit with some built-in increase intended as a deterrent to non-

[7]See Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers v. United States, 23 CIT. 88, 102-103 (Ct. Int'l Trade 1999), citing Writing Instrument Manufacturers Association, Pencil Section v. United States, 984 F. Supp. 629, 642 n.3 (CIT 1997).

[8]See Petroleum Wax Candles From the People's Republic of China: Final Results of the 2004-2005 Antidumping Duty Administrative Review, 71 FR 62417 (October 25, 2006). See also Hand Trucks and Certain Parts Thereof From the People's Republic of China: Final Results of Administrative Review and Final Results of New Shipper Review, 72 FR 27287 (May 15, 2007), and accompanying Issues and Decision memorandum at Comment 24.

compliance."[9] CPZ argues that an AFA rate must therefore be reasonable and generally consistent with the respondent's dumping history.

CPZ argues that the country-wide rate of 60.95 percent is uncorroborated, punitive, and outdated. CPZ states that in the Preliminary Results, the Department determined that the 60.95 percent country-wide rate was corroborated because there is no information on the record that calls into question the reliability or relevance of this rate. CPZ argues that this reasoning is insufficient. CPZ argues that the CIT has held that "Commerce must do more than assume any prior calculated margin for the industry is reliable and relevant."[10] CPZ claims that the Department did not corroborate the 60.95 percent rate to insure that it is relevant to CPZ as required by section 776(c) of the Act. CPZ cites Ferro Union in which the Court required the Department to corroborate a total AFA margin calculated for a different company eight years earlier as secondary information assuring itself of the rate's reliability and relevancy. See Ferro Union, 44 F. Supp. 2d at 1335. CPZ argues that the Department failed to corroborate the 60.95 percent rate in the instant review for three reasons: 1) the Department did not establish the reliability of the 60.95 percent rate "when such rate" is 12 years old; 2) the Department failed to explain how a 60.95 percent rate applied to an unrelated company in a prior review "more than seven years" before CPZ began exporting subject merchandise is relevant to CPZ; and 3) the Department failed to explain how a 60.95 percent rate is still relevant to the PRC-wide entity in the absence of any independent corroborating data. Furthermore, CPZ argues that the CAFC determined in another case that an assigned rate must relate to the company to which it is assigned: "Because Commerce selected a dumping margin within the range of Ta Chen's actual sales data, we cannot conclude that Commerce overreached reality."[11] In addition, CPZ cites a case in which the CIT held that an AFA rate of 93.20 percent for a respondent company was outdated and punitive.[12] In Am. Silicon, the CIT found it significant that the POR began six years after the less-than-fair- value investigation and that the AFA margin of 93.20 percent in question was 25.27 percent higher than the highest margin calculated based on actual data in the intervening review periods. See Am. Silicon, 240 F. Supp. 2d at 1306. CPZ contends that the CAFC held that the 93.20 percent rate was inconsistent with commercial practice at the time of the POR in question and that it was punitive in nature.

CPZ states that the CIT held in Usinas Siderurgicas de Minas Gerais, S.A. v. United States, 22 CIT 743, 765 n. 41 (Ct. Int'l Trade 1998) ("Usinas"), that "punitive rates are the result of rejection of low-margin information in favor of high-margin information that is demonstrably less probative of current conditions." CPZ argues that consistent with Am. Silicon and Ferro

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[9]See F.LLI De Cecco Di Filippo Fara S. Martino S.p.A. v. United States, 216 F.3d 1027, 1032 (Fed. Cir. 2000).

[10]See Ferro Union, Inc. v. United States, 23 CIT 178, 204, 44 F. Supp. 2d 1310, 1334 (Ct. Int'l Trade 1999) ("Ferro Union").

[11]See Ta Chen Stainless Steel Pipe, Inc. v. United States, 298 F.3d 1330, 1340 (Fed. Cir. 2002).

[12]See Am. Silicon Techs. v. United States, 240 F. Supp. 2d 1306 (Ct. Int'l Trade 2002) ("Am. Silicon").

Union, a rate in excess of the 33.18 percent AFA rate used in the 2000 - 2001 POR would be excessively punitive. CPZ contends that, as facts available, the Department should apply the 33.18 percent rate calculated in the 1999 - 2000 segment of this proceeding for CPZ. CPZ asserts that this rate is sufficiently adverse because the Department used this rate as AFA in the 2000 - 2001 and 2001 - 2002 segments of this proceeding. Moreover, CPZ contends that the 33.18 rate is sufficiently adverse because it is more than three times higher than the highest rate assigned to CPZ in any segment of this proceeding and the 33.18 percent rate is more current than the 60.95 percent rate. Additionally, CPZ states that the 33.18 percent rate was used as the PRC-wide entity rate in the 2001 - 2002 POR, which is only three years prior to the beginning of the instant POR. Finally, CPZ contends that the 33.18 percent rate is reflective of its commercial experience because CPZ became a new shipper during the "2001 - 2002 time period."

Petitioner argues that the Department correctly applied 60.95 percent as the PRC-wide rate. Petitioner contends that the 33.18 percent rate CPZ proposes using as the PRC-wide rate was not calculated in the 1999 - 2000 POR as claimed by CPZ, but was calculated in the 1996 - 1997 review and was used in the 1999 - 2000 review because, at the time, it represented the highest margin used in any segment of the proceeding.[13] Petitioner argues that the 60.95 percent rate is less outdated than the 33.18 percent rate because the Department calculated the 60.95 percent pursuant to a CIT remand proceeding involving the 1993-1994 review. The final results of this remand were affirmed in 2002.[14] Petitioner contends that the Department used the 60.95 percent rate in the Remand Final Results published in the Federal Register on December 31, 2002, and in subsequent reviews, except for one review in which the Department mistakenly omitted the 60.95 percent rate, but corrected it in Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; Amended Final Results of Antidumping Duty Administrative Review, 69 FR 10423 (March 5, 2004) ("TRBs Amended Final 2"). Thus, Petitioner argues, except for the mistaken year, the Department has used the higher rate as the most recently calculated rate since the publication of the 1993 - 1994 remand redetermination results in 2002. Petitioner asserts that CPZ offers no reason why the 33.18 percent rate could be considered more reliable and realistic than the 60.95 percent rate. Additionally, Petitioner argues that both rates were calculated in prior reviews and that the 60.95 percent rate was calculated more recently than the 33.18 percent rate. Petitioner contends that a respondent previously attempted to argue that the 60.95 percent rate was punitive, and cited to the Remand Final Results at page 4 in which the Department stated:

[13]Petitioner cites Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results of 1999-2000 Administrative Review, Partial Rescission of Review, and Notice of Intent Not To Revoke Order in Part, 66 FR 35937 (July 10, 2001).

[14]See Final Results of Redetermination Pursuant to Court Remand (signed March 12, 2002, filed with the Court March 26, 2002), in Peer Bearing Company v. United States, Slip Op. 01-125, (CIT October 25, 2001) ("Remand Final Results"). The Remand Final Results were approved by the Court in Peer Bearing Company v. United States, Slip Op. 02-53 (CIT June 5, 2002).

> In fact, the calculation of {best information available}[15] is not an issue before the Department in this remand. The methodology we used in the draft remand calculations is the same methodology we used in TRBs 7 in which we used the highest calculated rate for any respondent (i.e., the rate we calculated for Jilin Province Machinery Import and Export Corporation (Jilin). Therefore, we have not changed the draft results of redetermination with respect to the calculation of the BIA rate.

Furthermore, Petitioner argues that the Department normally selects the highest rate determined for any respondent in any segment of the proceeding as AFA.[16] Petitioner argues that CPZ was wholly non-cooperative in this review and that the Department should continue to apply the PRC-wide rate of 60.95 to CPZ as AFA in the final results.

Department's Position:

We continue to find that the 60.95 percent rate may be reasonably applied to the PRC-wide entity as AFA because it has been corroborated, to the extent practicable, in accordance with section 776(c) of the Act, and has probative value.

In the Preliminary Results, we selected the rate of 60.95 percent for the PRC-wide entity as the AFA rate because, consistent with the Department's practice and purposes of section 776(b) of the Act, it is the highest rate calculated in any segment of the proceeding. Preliminary Results, 72 FR at 14080. This rate was calculated for Premier Bearing and Equipment Ltd. ("Premier") in the final results of redetermination on remand from the CIT for the seventh administrative review of TRBs covering the POR of June 1, 1993, to May 31, 1994. Peer Bearing Co. v. United States, Slip Op. 02-53 (CIT 2002) ("Peer 02-53"), as upheld by the CAFC in 78 Fed. Appx. 718 (Fed. Cir. 2003). See also Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from the People's Republic of China; Amended Final Results of Antidumping Duty Administrative Review, 67 FR 79902 (December 31, 2002) ("TRBs Amended Final"), and TRBs Amended Final 2.

Section 776(c) of the Act requires that the Department corroborate, to the extent practicable, secondary information used as facts available. Secondary information consists of "independent sources that are reasonably at the Secretary's disposal." 19 CFR 351.308(d). This can include margins determined by the Department in prior segments of this proceeding. See Statement of Administrative Action ("SAA"), accompanying the Uruguay Round Agreements Act, H.R. Rep. No 103-316, Vol. 1 at 870 (1994). The term "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. See 19 CFR 351.308(d); See also SAA at 870. Thus, to corroborate secondary information, the Department

[15]Best information available is the predecessor to facts available.

[16]Preliminary Results, 72 FR at 14079.

will, to the extent practicable, examine the reliability and relevance of the information used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only sources for calculated margins are administrative determinations. These rates are applied to the PRC-wide entity, i.e., only to companies not eligible for a separate rate with regard to the individual class or kind of merchandise. In the Preliminary Results, we found the 60.95 percent rate to be reliable because it was determined from the calculation of the margin for Premier, pursuant to the final results of redetermination on remand from the CIT, for the seventh administrative review of TRBs (covering the period June 1, 1993, to May 31, 1994). See TRBs Amended Final and TRBs Amended Final 2. We disagree with CPZ's claim that the Department has failed to establish the reliability of the 60.95 percent rate. The 60.95 percent rate was previously applied as AFA and corroborated in Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part, 70 FR 39744 (July 11, 2005), as affirmed in Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2003-2004 Administrative Review and Partial Rescission of Review, 71 FR 2517 (January 17, 2006) ("2003 - 2004 TRBs Review"). In addition, the 60.95 percent rate was affirmed by the CIT in Peer Bearing Company v. United States, 26 C.I.T. 590 (Ct. Int'l Trade 2002). No information has been presented since the Preliminary Results that calls into question the reliability of this information. Therefore, consistent with its practice, the Department finds that the information contained in the 1993-1994 review is reliable. See, e.g., Certain Cased Pencils from the People's Republic of China; Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review, 69 FR 1965, 1969 (January 13, 2004).

With respect to the relevance aspect of the 60.95 rate, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. See Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review, 61 FR 6812 (February 22, 1996)(where the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin). Similarly, the Department does not apply a margin that has been discredited. See D&L Supply Co. v. United States, 113 F.3d 1220, 1221 (Fed. Cir. 1997). In the Preliminary Results, the Department found the 60.95 percent rate to be relevant because there was no record evidence to call into question Premier's margins. CPZ argues that the relevancy of the 60.95 percent rate has not been established because of the absence of any independent corroborating data. However, CPZ fails to recognize that the Department is unable to corroborate the 60.95 percent rate with data obtained in this review because no named respondent, including CPZ, submitted questionnaire responses or other data that could be used for this purpose. The 60.95 percent rate was most recently corroborated in the 2003 - 2004 TRBs Review. In that review, the reliability of the AFA rate was determined by the calculation of the margin for Premier as described above. See 70 FR at 39752. With respect to relevancy, the Department found that the margin of 60.95 percent was within the range of the highest margins calculated on the record of that

administrative review. See 70 FR at 39752. Nothing in the record of this review calls into question the relevancy of the 60.95 percent rate as the AFA rate for the PRC-wide entity.

CPZ also argues that it should be assigned a separate AFA rate of 33.18 percent. However, CPZ did not respond to the Department's questionnaires and did not establish its eligibility for a separate rate. The Department's practice is to assign the country-wide rate to such companies. See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam, 69 FR 71005 (December 8, 2004), and accompanying Issues and Decision Memorandum at Comment 10, and Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 68 FR 37116 (June 23, 2003), and accompanying Issues and Decision Memorandum at Comment 9.

CPZ argues that in the alternative the Department should instead select 33.18 percent as the AFA rate for the country-wide entity because it was used in prior administrative reviews of the TRBs Order. CPZ claims that the 60.95 percent rate used as AFA in this review is outdated because it is "12 years old." CPZ claims that the CIT rejected outdated rates in Ferro Union and Am. Silicon , where the facts available rates were eight and six years old, respectively. However, the 60.95 percent rate is not outdated because it was recently corroborated in the 2003 - 2004 TRBs Review, only two segments prior to the instant review. Moreover, the 60.95 percent rate was affirmed by the CIT in 2002 in Peer Bearing Co., 26 C.I.T 590 (Ct. Int'l Trade 2002). The 33.18 rate was last corroborated in the preliminary results of the 2000 - 2001 POR.[17]

CPZ cites Usinas, in which the CIT stated "punitive rates are the result of rejection of low-margin information in favor of high-margin information that is demonstrably less probative of current conditions." However, in this case, the 60.95 percent rate is more probative of current conditions because it was corroborated more recently than the 33.18 percent rate in the 2003 - 2004 review, the most recent review in which AFA was applied. In particular, the Department found that the 60.95 percent margin was within the range of the highest margins calculated in the 2003 - 2004 TRBs Review. See 70 FR at 39752.

Finally, CPZ argues that the AFA rate must relate to the company to which it was assigned, and that the 60.95 percent rate is unduly punitive to CPZ. However, the AFA rate that we have selected is for the PRC-wide entity, not CPZ. Because CPZ did not respond to any questionnaires and did not establish its eligibility for a separate rate, CPZ did not receive a company-specific separate rate.

RECOMMENDATION

[17] See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results of 2000-2001 Administrative Review, Partial Rescission of Review, and Notice of Intent to Revoke Order in Part, 67 FR 45451 (July 9, 2002).

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of this review in the Federal Register.

Agree_____ Disagree_____

_____

David M. Spooner
Assistant Secretary
for Import Administration

_____

(Date)