

PUBLIC VERSION

LUOYANG BEARING FACTORY v. UNITED STATES

Consol. Court No. 99-12-00743
Slip Op. 02-118 (October 1, 2002)

**FINAL RESULTS
PURSUANT TO REMAND**

SUMMARY AND BACKGROUND

The Department of Commerce (“Department”) has prepared these final results pursuant to the remand order from the United States Court of International Trade (“CIT”) in Luoyang Bearing Factory v. United States, Slip Op. 02-118 (CIT October 1, 2002) (“Luoyang Bearing”).

First, in accordance with the CIT’s instructions, we have recalculated the final results margins for the respondents in the 1997-1998 administrative review of tapered roller bearings and parts thereof, finished and unfinished (“TRBs” or “subject merchandise”), from the People’s Republic of China (“PRC”)¹ by excluding the category “consumption of traded goods” from the direct input costs used in the calculation of the surrogate overhead, profit, and selling, general, and administrative expense (“SG&A”) ratios. Based on these new overhead, profit, and SG&A surrogate values, we recalculated the final dumping margins for Luoyang Bearing Factory (“Luoyang”) and Premier Bearing and Equipment, Ltd. (“Premier”), the two companies involved in the aforementioned administrative review.

¹ See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People’s Republic of China; Final Results of 1997-1998 Antidumping Duty Administrative Review and Final Results of New Shipper Review, 64 FR 61837 (November 15, 1999) (“TRBs XI Final Results”).

Second, the CIT instructed the Department to examine whether Luoyang's PRC trading company import price constitutes the "best available information" to value either all or a portion of the steel used by Luoyang to manufacture cups and cones. Additionally, if and only if the Department determines that Luoyang's PRC trading company import price is not the "best available information" for use in valuing steel used to manufacture cups and cones for Luoyang, the CIT instructed the Department 1) to explain how the entire export data from Japan to India falls within the range of values in the U.S. benchmark range, and 2) to examine whether or not Indonesian import data or Japanese exports to Indonesia data constitute the "best available information" over Japanese exports to India for use in valuing steel used to manufacture cups and cones.

Third, the CIT instructed the Department to explain 1) whether Luoyang's market economy steel imports of cage steel that were used by the Department in the TRBs XI Final Results to value all of Luoyang's cage steel were "meaningful," and 2) why the PRC trading company data reported by Luoyang with respect to cage steel is not the best available information for the purpose of valuing either all of Luoyang's cage steel (including both market economy-purchased steel and domestically-purchased cage steel) or only Luoyang's domestically-purchased cage steel.

For the reasons explained below, we have not changed our valuations of the steel used to manufacture either cups and cones or cages.

On December 3, 2002, the Department released its draft final results pursuant to the CIT's remand order ("Draft Results") to Luoyang, Premier, and The Timken Company ("Timken"), the petitioner in this proceeding. On December 9, 2002, the Department received

comments on the Draft Results from Luoyang; neither Premier nor the petitioner filed comments or rebuttal comments. The Department has addressed Luoyang's comments below.

If the CIT approves these remand results, the antidumping duty rate for Luoyang will be 5.15 percent, and the antidumping duty rate for Premier will be 24.55 percent. The PRC-wide rate, 33.18, will be unchanged from the TRBs XI Final Results.

DISCUSSION

Exclusion of “Consumption of Traded Goods” from Direct Input Costs

In the TRBs XI Final Results, we included the line item “consumption of traded goods” as a direct material cost in both the direct inputs cost (exclusive of labor) and total cost of production (“COP”) of goods sold (inclusive of labor) calculations. The direct inputs cost is the denominator used to calculate the SG&A and overhead surrogate ratios; the total COP is the denominator in the surrogate profit ratio calculation. In doing so, we noted that, although we excluded the purchase of traded goods from the overhead, SG&A, and profit calculations in the Final Results of Redetermination Pursuant to Court Remand in Timken Company v. United States, 59 F. Supp. 2d 1371 (CIT 1999) (“TRBs VIII Remand Redetermination”), we declined to do so in the TRBs XI Final Results due to the fact that the ruling in the TRBs VIII Remand Redetermination had not yet been finalized.

In Luoyang Bearing, the CIT ruled that “consumption of traded goods” should not be included in the direct inputs cost and COP calculations. Accordingly, we have revised our calculations of these two items to exclude the category “consumption of traded goods.” The new total COP of goods sold (inclusive of labor) is 79,063.84 Rupees in lacs; the new direct inputs cost is 32,568.26 Rupees in lacs. Based on these revisions, the revised surrogate profit ratio is

6.79 percent, the revised surrogate overhead ratio is 59.88 percent, and the revised surrogate SG&A ratio is 42.33 percent. Our revised overhead, SG&A, and profit calculations are included in a December 30, 2002 memorandum to the file, entitled “Final Results Recalculation of Overhead, {SG&A}, and Profit Surrogate Values,” which is on file in the Department’s Central Records Unit in Room B-099 of the main Department building.

Use of Trading Company Prices to Value Cups and Cones Steel

In the TRBs XI Final Results, we used data on Japanese exports to India from the Japanese Harmonized Schedule (“HS”) category 7228.30.900 to value the hot-rolled alloy steel bar used by the PRC producers to manufacture TRBs cups and cones.

In Luoyang Bearing, Luoyang objected to the use of this data and argued that, to value the steel used to manufacture its TRBs cups and cones, the Department should have used Luoyang’s PRC trading company import price as its best available information. According to Luoyang, the Department’s failure to at least review Luoyang’s PRC trading company import price in order to determine whether that data was the best available information was contrary to the Olympia II Remand Redetermination,² Olympia III,³ and TRBs X.⁴ Timken disagreed with Luoyang, arguing that these court decisions did not require the Department to test the reliability of Luoyang’s trading company price, and that neither the statute nor the regulations required the Department to

²Final Results of Redetermination Pursuant to Court Remand in Olympia Industrial, Inc. v. United States, 7 F. Supp. 2d 997 (CIT 1998) (“Olympia II Remand Redetermination”).

³Olympia Industrial, Inc. v. United States, 36 F. Supp. 2d 414 (CIT 1999) (“Olympia III”).

⁴Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People’s Republic of China; Final Results of 1996-1997 Antidumping Duty Administrative Review and New Shipper Review and Determination Not To Revoke in Part, 63 FR 63842 (November 17, 1998) (“TRBs X”).

apply the three-pronged test approved in Olympia III. Timken also argued that the use of the data on Japanese exports to India, unlike Luoyang's PRC trading company import price, was consistent with section 773(c)(4) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act ("URAA") effective January 1, 1995 ("the Act").

The Department also disagreed with Luoyang. The Department maintained that 19 CFR 351.408(c)(1) makes clear that the Department is to use a market economy price to value a factor of production ("FOP") only when the PRC producer itself made the market economy purchase. Therefore, the Department argued that it was appropriate to reject Luoyang's PRC trading company import price for cups and cones steel because the price paid by the trading company to the market economy supplier was not a price paid by Luoyang.

In Luoyang Bearing, the CIT found the Department's refusal to review and assess the reliability of Luoyang's PRC trading company import price as a potential value for Luoyang's cups and cones steel to be unreasonable. The CIT observed that the statute does not require the Department to follow any single approach in evaluating data in determining the best available information. See Luoyang Bearing, Slip. Op. 02.118 at 11. See, also, Timken 1999,⁵ Olympia II Remand Redetermination, Olympia I,⁶ Lasko,⁷ and Shakeproof.⁸ Although the CIT acknowledged that the Department is not required to use the three-pronged test approved in

⁵Timken Co. v. United States, 59 F. Supp. 2d 1371 (CIT 1999) ("Timken 1999").

⁶Olympia Indus., Inc. v. United States, 21 CIT 364 (CIT 1997) ("Olympia I").

⁷Lasko Metal Prods., Inc. v. United States, 43 F.3d 1442 (Court of Appeals for the Federal Circuit ("CAFC") 1994) ("Lasko").

⁸Shakeproof Assembly Components, Div. of Illinois Tool Works, Inc. v. United States, 59 F. Supp. 2d 1354 (CIT 1999) ("Shakeproof").

Olympia III to review and assess the reliability of Luoyang’s PRC trading company import price, the CIT remanded this issue to the Department to examine whether or not Luoyang’s PRC trading company import price constitutes the best available information to value either all or a portion of the cups and cones steel purchased by Luoyang through the trading company and used by Luoyang in the manufacture of the subject merchandise.

Based on the CIT’s directive, we examined the PRC trading company import price to determine whether, in comparison to the other data on the record, it comprises the best available information for purposes of valuing the steel used in the manufacture of Luoyang’s cups and cones. We note that, in the TRBs XI Final Results, we relied solely on our policy of not using import prices paid by PRC trading companies as the basis for rejecting Luoyang’s trading company import price. However, in re-examining the record information pursuant to the CIT’s directive, we note that the steel purchased by Luoyang from the PRC trading company was manufactured in []. At the time of the TRBs XI Final Results, there was reason to believe or suspect that [] steel was subsidized, as explained below. Therefore, we have determined that Luoyang’s PRC trading company import price is not the best available information for valuing Luoyang’s TRBs cups and cones steel.

The legislative history of the Omnibus Trade and Competitiveness Act of 1988 (“1988 Act”) states that, “in valuing such {nonmarket economy (“NME”)} factors, {the Department} shall avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices.”⁹ Congress noted in the legislative history of the 1988 Act that the

⁹See 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)

Department is not required to conduct a formal investigation to support a finding of “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.¹⁰

The Department has consistently recognized the directive 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) (“Lockwashers II”) and Kerr-McGee Chemical Corp. v. United States, 985 F. Supp. 1166, 1177 (CIT 1997) (“Kerr-McGee”).¹¹ In Lockwashers II, the Department declined to reject Indian import statistics for valuing the wire rod input, stating that

The facts do not establish a reasonable basis to “believe or suspect” the imports of wire rod (the input in question) into India are dumped or subsidized. The Indian government has not determined that steel imports into India are dumped or subsidized. As stated in the (prior) Lock Washers Review, the fact that the Department has made determinations of sales at less than fair value into the United States is not sufficient basis for a belief or suspicion that those countries also dumped imports into India. Further, there is not evidence that any general subsidies applied to production and export of carbon steel wire rod to India.

See 61 FR at 66257. As Lockwashers II indicates, the believe or suspect standard is met when the importing surrogate country has a dumping or subsidy finding on the input in question.

(stating in the Senate Joint Committee Report accompanying the URAA that “the Committee . . . intends no substantive changes” to section 773(c) of the Act).

¹⁰See H.R. Rep. No. 576 100th Cong., 2. Sess. 590-91 (1988).

¹¹In Kerr-McGee, the CIT stated that “{t}his Court finds Commerce’s policy not to use Indian export prices is supported by substantial evidence on the record and is otherwise in accordance with law. The Court notes in the legislative history to 19 U.S.C. § 1677b(c), Congress advised Commerce, 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)).”

However, while antidumping findings by their nature are narrowly focused, countervailing duty findings can provide information beyond the specific conclusion that a particular product shipped to a particular market is subsidized. The Department recognized this in Lockwashers II when we referred to “general subsidies.” See 61 FR at 66257. This means that even if the importing surrogate country or NME does not have a subsidies finding, it may be possible to infer that prices of the input in question are subsidized. Therefore, in cases where the facts developed in U.S. or third country countervailing duty findings are sufficient to allow the Department to infer that there are broadly available subsidies, the Department will consider that it has reason to believe or suspect that prices of the input from that country are subsidized.

As noted above, record evidence in this proceeding indicates that the PRC trading company steel in question was manufactured in the []. Based upon our examination of information available at the time of the TRBs XI Final Results, we find that there is sufficient evidence to believe or suspect that the steel purchased by the PRC trading company could have been subsidized. Specifically, we found in the [

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] maintains generally available subsidies that were

¹²See [

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¹³See [

greater than de minimis. Therefore, based on the existence of generally available subsidies, there is sufficient evidence to believe or suspect that the steel purchased by the PRC trading company could have been subsidized.

In accordance with Congressional intent and Department practice, we would not use the price paid by Luoyang's PRC trading company to value Luoyang's cups and cones steel.

Therefore, we find that the trading company price in question is not the best available information for valuing the steel used by Luoyang to manufacture its TRBs cups and cones.

Surrogate Value for Steel Used in the Manufacture of Cups and Cones

In Luoyang Bearing, Luoyang argued that, if the Department does not accept Luoyang's PRC trading company import price, the Department should use Japanese exports to Indonesia data instead of Japanese exports to India data to value the steel used in the manufacture of TRBs cups and cones. Specifically, Luoyang argued that, contrary to the Department's contention in the TRBs XI Final Results that the Japanese exports to India data fell "within the range of the values" in the U.S. benchmark category, the Japanese exports to India data actually fell outside of the U.S. benchmark range. Moreover, Luoyang argued that there are no restrictions prescribed in the Department's regulations giving preference to the use of a single surrogate country to value all surrogate values.

Timken disagreed with Luoyang and argued that the Japanese exports to India data was the best available information because Indonesia only has two producers of bearings, none of which produce TRBs, whereas India has 17 producers of bearings, seven of which produce TRBs. The Department also disagreed with Luoyang, arguing that the Japanese exports to India

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data is the “best available” surrogate value because it is the most narrow HS category that would include the type of bearing-quality steel used in the production of cups and cones and because the Japanese export prices to India fall within the range of values in the U.S. benchmark.

In Luoyang Bearing, the CIT found that the Department’s reasoning for refusing to review Japanese exports to Indonesia data was not sufficiently explained, and that it was illogical for the Department to examine data on Japanese exports to India but not to review similarly structured data on Japanese exports to Indonesia. Additionally, the CIT agreed with Luoyang that the average Japanese exports to India value of \$871/MT did not fall within the range of values in the U.S. benchmark category of \$642/MT to \$834/MT. Therefore, if and only if the Department determined that Luoyang’s PRC trading company import price was not the “best available information” for use in valuing steel used to manufacture cups and cones for Luoyang, the CIT remanded these issues to the Department to 1) explain how the entire export data from Japan to India falls within the range of values in the U.S. benchmark range, and 2) to examine whether Indonesian import data or Japanese exports to Indonesia data constitute the “best available information” over Japanese exports to India for valuing steel used to manufacture cups and cones.

Because we are not using Luoyang’s PRC trading company import price for the reasons discussed above, we now address the CIT’s concerns relating to the use of Japanese exports to India or Indonesia data for valuing steel used in the manufacture of cups and cones.

We first note that we agree with both the CIT and Luoyang that the Japanese exports to India value of \$871/MT does not fall “within the range of the values” in the U.S. benchmark category of \$642/MT to \$834/MT. In the TRBs XI Final Results, we erroneously stated that our

examination was focused on whether the potential surrogate values fell “within the range of the values” (emphasis added by the Department) in the U.S. benchmark category. Instead, our intent was to indicate that the Japanese exports to India value fell “within range” of the values in the benchmark range, i.e., that the Japanese exports to India value was reasonable when compared to the values within the benchmark range.

In erroneously stating that we were examining whether the potential surrogate value fell “within the range of the values” (emphasis added) in the U.S. benchmark category, we inadvertently provided an indication that it was the Department’s position that any value that differed from the benchmark or the benchmark range was aberrational. That is not the Department’s policy.

As we noted in the TRBs X Remand Redetermination,¹⁴ as well as in past TRBs reviews (see, e.g., TRBs X), the purpose of a benchmark is to test the reliability of certain values under consideration as surrogate values. For cups and cones, we have repeatedly used U.S. prices as a benchmark because the Harmonized Tariff Schedule of the United States (“HTSUS”) category is the only world market HS category of which we are aware that explicitly contains only bearing quality steel, the type of steel used to manufacture TRBs cups and cones. By using values from this HTSUS category, we are able to test whether the broader surrogate country HS categories likely reflect imports of bearing quality steel or whether they likely reflect imports of other types of steel. The use of the U.S. data for this purpose has been upheld by the CIT. See, e.g., Timken Company v. United States, 59 F. Supp. 2d 1371, 1376 (CIT 1999), Timken Company v. United

¹⁴Final Results of Redetermination Pursuant to Court Remand in Timken Company v. United States, Slip Op. 02-38 (CIT 2002) (“TRBs X Remand Redetermination”).

States, 166 F. Supp. 2d 608 (CIT 2001) (“Timken 2001”), and Timken Company v. United States, 201 F. Supp. 2d 1316 (CIT 2002).

In the TRBs XI Final Results, as in all of the TRBs proceedings, our purpose in utilizing a benchmark is to test the reliability of potential surrogate values based on broader HS categories against more narrow categories that more accurately reflect world market prices for the steel in question. As long as a surrogate value is reasonably close to the benchmark value or range of benchmark values, we will not treat that surrogate value as being aberrational.

If we were to reject certain values simply because they are above or below the benchmark or benchmark range, we would, in essence, be saying that any data that is not exactly the same as the benchmark data must be unreliable and aberrational. In this instance, because the data being utilized as benchmark data is U.S. data, by adopting a policy that all surrogate values outside of the benchmark range are unreliable, we would essentially be adopting the United States as a surrogate country. This would be contrary to the statute because the United States is not comparable to the PRC in terms of economic development. See section 773(c)(4) of the Act (which stipulates that the Department should value such factors, to the extent possible, using prices or costs of production in one or more market economy countries that are “at a level of economic development comparable to that of the nonmarket economy country” and are “significant producers of comparable merchandise”). As noted above, it is not our intention to use the U.S. benchmark data as a surrogate, but to use the data to test the reliability of potential surrogate values based on broader HS categories against more narrow categories that more accurately reflect world market prices for the steel in question.

In comparing the Japanese exports to India data to the data within the U.S. benchmark range, we find that the average Japanese exports to India value of \$871/MT is reasonable when compared to the range of values in the U.S. benchmark category of \$642/MT to \$834/MT. As discussed in the TRBs XI Final Results, because the Japanese tariff category is the narrowest category that could contain bearing quality steel and because it is consistent with our benchmark, we believe that the Japanese exports to India data is the best available information for valuing steel used in the production of cups and cones. We further believe that the Japanese exports to India data constitutes the best available information because, as discussed in the TRBs XI Final Results, we chose India as our primary surrogate country and we consider the Japanese exports to India data to be refined Indian data.

In the TRBs XI Final Results, we explained that, because we had reliable data from our primary surrogate country,¹⁵ we did not need to examine data from a secondary surrogate country, Indonesia. In doing so, we cited to 19 CFR 351.408(c)(2), which states that, with the exception of labor, the Department will “normally value all factors in a single surrogate country.”

Section 773(c)(4) of the Act states that, in valuing FOP, the Department will “utilize, to the extent possible, the prices or costs of factors of production in one or more market economy countries.” Although we have used surrogate prices for certain factors from countries other than

¹⁵For an explanation of why we selected India as our primary surrogate country, see Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People’s Republic of China; Preliminary Results of 1997-1998 Antidumping Duty Administrative Review and Partial Recision of Antidumping Duty Administrative Review, 64 FR 36853, 36856 (“TRBs XI Preliminary Results”); Memorandum to Susan Kuhbach from Jeff May: “Tapered Roller Bearings from the People’s Republic of China: Nonmarket Economy Status and Surrogate Country Selection,” dated January 8, 1999; and Memorandum to Susan Kuhbach: “Selection of a Surrogate Country and Steel Value Sources,” dated June 30, 1999 (“Surrogate Selection and Steel Values Memo”).

the selected primary surrogate in several previous cases, 19 CFR 351.408(c)(2) states that it is the Department's preference to value surrogate values using a single surrogate country whenever possible. See, also, Notice of Final Determination of Sales at Less Than Fair Value; Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation, 65 FR 42669, 42671 (July 11, 2000) ("Ammonium Nitrate from Russia"); Industrial Nitrocellulose from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 62 FR 65668 (December 15, 1997) ("Nitrocellulose from the PRC"); Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils from the People's Republic of China, 59 FR 55625, 55633 (November 8, 1994) ("Pencils from the PRC"); and Final Determination of Sales at Less Than Fair Value: Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China, 57 FR 21058 (May 18, 1992) ("Pipe Fittings from the PRC").

In this instance, as discussed above, we have a reliable surrogate value for steel used in the manufacture of cups and cones from our primary surrogate country, India. Because we have a reliable surrogate value from our primary surrogate country, India, and it is our preference to value surrogate values using a single surrogate country whenever possible, we need not further examine data from a secondary surrogate country, specifically cups and cones data on Japanese exports to Indonesia.

Surrogate Value for Steel Used in the Manufacture of Cages

In the TRBs XI Final Results, we used Luoyang's reported market economy purchase of cold-rolled steel sheet to value all of Luoyang's cage steel used to make TRBs cages. Timken contested the Department's decision, arguing that the Department failed to explain why using Luoyang's market economy cage steel data to value all of Luoyang's cage steel was more

“accurate (or ‘meaningful’) than surrogate-country values” (i.e., more accurate or meaningful than utilizing Luoyang’s PRC trading company price according to the CIT’s interpretation of Timken’s argument).

The Department disagreed with Timken, asserting that its decision to value all of Luoyang’s cage steel (including both Luoyang’s market-economy purchased steel and its PRC trading company-purchased steel) using Luoyang’s market economy steel was consistent with 19 CFR 351.408(c)(1). The Department further maintained that 19 CFR 351.408(c)(1) is a reasonable interpretation of section 773(c)(1) because, consistent with Lasko, “Commerce’s use of imported prices to value all purchases of the same factor of production results in more accurate dumping margin because these imported prices reflect. . . a market-driven decision by the company in question.”

In Luoyang Bearing, the CIT noted that, in using Luoyang’s market-economy cage steel value to value all of Luoyang’s cage steel, the Department failed to explain why the market-economy imports of cage steel were meaningful. Accordingly, the CIT instructed the Department to explain whether or not the market economy cage steel data is “meaningful.” Additionally, the CIT directed the Department to explain why the PRC trading company data is not the best available information for the purposes of valuing either all of Luoyang’s cage steel or Luoyang’s cage steel purchased from a PRC trading company.

In accordance with the CIT’s directive, we first examined Luoyang’s reported market economy cage steel imports in order to determine whether they constituted a “meaningful” quantity. Pursuant to 19 CFR 351.408(c)(1), “where a factor is purchased from a market economy supplier and paid for in a market economy currency, the {Department} normally will

use the price paid to the market economy supplier. In those instances where a portion of the factor is purchased from a market economy supplier and the remainder from an {NME} supplier, the {Department} normally will value the factor using the price paid to the market economy supplier.” However, the Preamble to the Department’s regulations (see 62 FR at 27366) notes that the Department will not rely on a price paid by an NME producer if the quantity of the input purchased is “insignificant.” See Shakeproof Assembly Components, Division of Illinois Tool Works, Inc., v. United States, 102 F. Supp. 2d 486, 492 (CIT 2000) (“Shakeproof II”); see, also, Certain Automotive Replacement Glass Windshields from the PRC, 67 FR 6482 (February 12, 2002) and Certain Cased Pencils from the PRC, 67 FR 48612 (July 25, 2002).

According to record information, [] percent of the cold-rolled steel sheet used by Luoyang to manufacture its TRBs cages during the period of review (“POR”)¹⁶ was directly imported by Luoyang from [], a market-economy country; the remaining [] percent of the cage steel was procured from a PRC trading company. In Shakeproof III,¹⁷ the court found market economy steel imports of 34.7 to be meaningful. In this case, Luoyang’s market economy steel imports exceed that percentage. Therefore, we find that the steel imported by Luoyang from [] constitutes a significant, meaningful market-economy input because the quantity Luoyang procured was not small in relation to Luoyang’s requirements for production of the subject merchandise during the POR.

¹⁶The POR covered the period June 1, 1997 through May 31, 1998.

¹⁷Shakeproof Assembly Components, Division of Illinois Tool Works, Inc., v. United States, 268 F.3d 1376 (CAFC 2001) (“Shakeproof III”).

Pursuant to the CIT's directive, we next examined whether the PRC trading company value represents the best available information for use in valuing some or all of the steel used in the production of Luoyang's TRBs cages. Section 773(c)(1) of the Act states that, in the case of an NME country, FOP are valued "based on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by {the Department}." Section 773(c)(4) of the Act further provides that the Department, in valuing FOP, "shall utilize, to the extent possible, the prices or costs of {FOP} in one or more market economy countries that are (A) at a level of economic development comparable to that of the nonmarket economy country, and (B) significant producers of comparable merchandise."

Section 351.408(c)(1) of the Department's regulations notes a narrow exception to this statutory preference for selecting surrogate country data. Specifically, 19 CFR 351.408(c)(1) stipulates that, where an NME producer purchases an input from a market-economy source and pays in a market economy country currency, the Department will normally use the price paid to the market economy supplier. This interpretation of the statute was upheld in Lasko. Section 351.408(c)(1) of the Department's regulations further stipulates that it is the Department's preference, in those instances where a portion of a factor is purchased from a market economy supplier and the remainder from an NME supplier, to utilize the market economy purchase to value the entire factor of production as long as that input is meaningful.

In this instance, as noted above, Luoyang purchased steel used in the manufacture of its TRBs cages from both a market economy country and from a PRC trading company. In Olympia II¹⁸ and TRBs X, the Department found, and the court upheld, that import prices that pass

¹⁸Olympia Industrial, Inc. v. United States, 7 F.Supp. 2d 997 (CIT 1998) ("Olympia II").

through a trading company do not reflect actual costs to the producer; such prices constitute only a potential surrogate value. See TRBs X, 63 FR at 63854 and Olympia II, 7 F. Supp. 2d 997 at 12. Therefore, the comparison in this instance is between a market economy value in the form of the [] cage steel value and a potential surrogate value in the form of the PRC trading company price. As noted above, according to 19 CFR 351.408(c)(1), it is the Department's preference when a portion of a factor is purchased from a market economy supplier and the remainder from an NME supplier to utilize the market economy purchase to value the entire FOP as long as that input is meaningful. As discussed above, we find that Luoyang's cage steel market economy imports are meaningful. Moreover, we have no reason to believe or suspect, based on an examination of evidence and information available at the time of the TRBs XI Final Results, that this market economy value is somehow unreliable.

Therefore, based on the Department's practice and preference, because the market economy value is meaningful and reliable, as discussed above, that market economy value, and not a surrogate value, such as the PRC trading company price, is the best available information for use in valuing all of Luoyang's cage steel.

INTERESTED PARTY COMMENTS

Comment 1: Use of Trading Company Prices to Value Cups and Cones Steel

Luoyang's Argument:

Luoyang argues that the Department failed to conduct a "meaningful review" of the PRC trading company import prices in its Draft Results as instructed by the CIT. According to Luoyang, the Department's position that there is sufficient evidence to believe or suspect that the steel purchased by the PRC trading company could have been subsidized presents a new basis for

rejecting the PRC trading company import prices. Luoyang contends that this rationale for not evaluating the PRC trading company import prices was not previously on the record, and that it is contrary to law to reconstruct the record.

Luoyang states that it challenged the Department's decision in the TRBs XI Final Results based on the record. Additionally, Luoyang argues that, in support of the Department's "revisionist argument," the Department cited Lockwashers II and Kerr-McGee. However, according to Luoyang, the Department failed to address why this position was not taken in the TRBs XI Final Results if there was this prior support. Luoyang further contends that, if this was the Department's policy at the time of the TRBs XI Final Results, why did the Department not identify this position until TRBs XII.¹⁹

Therefore, Luoyang argues that the Department should evaluate the PRC trading company import prices and examine whether those prices are the best information available.

Department's Position:

We disagree with Luoyang. Luoyang has provided no references to the statute nor cited case precedent in support of its opposition to the Department's finding. The basis of Luoyang's argument for rejecting the Department's position is that the Department's reasoning for rejecting the PRC trading company import prices was not previously on the record. Contrary to this

¹⁹Tapered 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").

argument, we examined the import prices on the basis of the statute and publicly available information that was contemporaneous to the TRBs XI Final Results.

As noted above, the legislative history of the 1988 Act established that the Department, “in valuing such {NME} factors, shall avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices.” See H.R. Rep. No. 576 100th Cong., 2. Sess. 590-91 (1988). Although the Department first rejected import prices in a TRBs proceeding in accordance with this directive in TRBs XII, this does not mean that it only became the Department’s practice at that time. The Department has consistently examined market economy import prices pursuant to the directive in the legislative history of the 1988 Act to avoid using any prices that it has reason to believe or suspect may be dumped or subsidized as demonstrated by Lockwashers II and Kerr-McGee.²⁰ As Lockwashers II and Kerr-McGee were conducted prior to the TRBs XI Final Results, the Department is not applying a post hoc rationalization as suggested by Luoyang.²¹

²⁰Furthermore, the CIT has upheld the Department’s rejection of subsidized and dumped prices in selecting surrogate prices in China Nat’l Arts and Crafts Import and Export Corp., Tianjin Branch v. United States, 771 F. Supp. 407 (CIT 1991) (“CNART”) and Technoimportexport, UCF America, Inc. v. United States, 783 F. Supp. 1401, 1405 (CIT 1992) (“Technoimportexport”). Although CNART and Technoimportexport were both decisions that involved administrative reviews initiated prior to the effective date of the 1988 Act, these decisions demonstrate, and support, the Department’s line of thinking on this issue over an extended period of time preceding the TRBs XI Final Results.

²¹We also disagree with Luoyang’s reference to Hoogovens Staal BV v. United States, 4 F. Supp. 2d 1213, 1218 (CIT 1998), appeal docketed, No. 00-1433 (CAFC 2000), as that case pertains to the use of information gathered in a subsequent review for rendering a decision in a previous review, which is not the situation in this redetermination as we are not using new information from TRBs XII to establish our position in the TRBs XI Final Results.

As we noted in the Draft Results, and above, in the TRBs XI Final Results “we relied solely on our policy of not using import prices paid by PRC trading companies as the basis for rejecting Luoyang’s trading company import prices.” Thus, for the TRBs XI Final Results we did not find it necessary to further examine the data to determine whether the PRC trading company import prices were the best information available. Subsequently, in accordance with the CIT’s directive for this redetermination, we have further examined the record information and found that the steel purchased by Luoyang from the PRC trading company was manufactured in []. As noted above, we found that in the [

] maintains generally available subsidies. Therefore, based on the existence of generally available subsidies, there is sufficient evidence to believe or suspect that the steel purchased by the PRC trading company could have been subsidized. Consequently, in accordance with Departmental practice and Congressional intent, we continue to find that the trading company price in question is not the best available information for valuing the steel used by Luoyang to manufacture its TRBs cups and cones.

Comment 2: Use of Indonesian Data to Value Cups and Cones Steel

Luoyang’s Argument:

Luoyang contends that the Department’s finding in the Draft Results, that data on Japanese exports to India is the best available information because India is the primary surrogate country, “evades answering the question and avoids addressing the facts,” and that the Department did not evaluate the record Indonesian values to determine whether they constitute the best available information for valuing cups and cones steel.

Luoyang argues that, despite the fact that the Department selected India as its primary surrogate country and had reliable Indian data (i.e., data on Japanese exports to India) to value the steel used in the manufacture of cups and cones, the Department did not rely exclusively on Indian data to value all steel utilized in the manufacture of TRBs. Luoyang points to roller steel as an example, for which the Department utilized an Indonesian value in the TRBs XI Final Results.²² Luoyang argues that, because the Department utilized Indonesian data to value some TRBs steel, the Department contradicted its own argument that it prefers to utilize data from its primary surrogate country.

According to Luoyang, although the Department noted in the Draft Results that its regulations give preference to the use of one surrogate country, the CIT already stated in Luoyang Bearing that “{t}he Court shall not entertain Commerce’s statement {that Commerce’s regulations give preference to the use of one surrogate country to value all factors of production} since the Court is not aware of any particular preference which trumps the general requirement for precision that underlies the antidumping law.” See Luoyang Bearing, Slip. Op. 02.118 at 21.

Department’s Position:

We disagree with Luoyang. As noted by the CIT in Luoyang Bearing, section 773(c)(1) of the Act states that “the valuation of the factors of production shall be based on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by {the Department}.” However, as detailed above, 19

²²Luoyang also points to the Department’s use of data on Japanese exports to Indonesia for valuing cups and cones steel in TRBs XI Preliminary Results. However, as the Department utilized data on Japanese exports to India, and not Japanese exports to Indonesia, to value cups and cones in the TRBs XI Final Results, that cite is irrelevant in this instance as that finding related to a preliminary, and not a final, decision.

CFR 351.408(c)(2) states that it is the Department's preference to value surrogate values using a single surrogate country whenever possible. The Department has consistently applied this methodology in past cases. See, e.g., Ammonium Nitrate from Russia, Nitrocellulose from the PRC, Pencils from the PRC, and Pipe Fittings from the PRC.

As noted by the CIT in Timken 2001,²³ the Department also discussed this matter in its Antidumping Manual. Specifically, the Antidumping Manual states that "in developing factor value information, {the Department tries} to remain within one surrogate country to the extent possible. If there is no reliable information from the first choice surrogate country for a particular factor, {the Department} will attempt to use public data from another surrogate." See Antidumping Manual, Department of Commerce (January 1998), Chapter 8 at page 86. In Timken 2001 the CIT stated that "this language parallels that of the statute, which provides that {the Department} 'shall utilize, to the extent possible, the prices or {FOP} in one or more market economy countries. . .'" The CIT further stated that "because the statute and the manual both suggest that {the Department} should rely on data from 'the first choice surrogate country' only to the extent possible, it is logical to conclude that, where it is not possible, {the Department} is entitled to rely on data from other surrogate countries" (emphasis added by the Department). See Timken 2001, 166 F. Supp. 2d at 621. Thus, the courts have upheld this interpretation of the statute in the Department's regulations in past proceedings.

Luoyang has argued that the Department contradicted its preference to utilize data from a primary surrogate country by utilizing Indonesian data to value certain factors, e.g., rollers. As noted above, the Department is tasked with determining the best available information for

²³166 F. Supp. 2d at 621-622

valuing each of the factors of production. In making this determination, the Department must make this decision on a case-by-case basis, as the courts have determined that “the statute does not require {the Department} to follow any single approach in evaluating data.” See, e.g., Olympia I, 21 CIT at 368 and Lasko, 43 F.3d at 1446. In the case of rollers (which are not being contested in this proceeding), the Department explained in the TRBs XI Final Results (see 64 FR at 61841) that the Department was using Indonesian data because the data from the primary surrogate country, India, was unreliable, which is consistent with the above methodology. This is an unrelated matter to the valuation of steel for cups and cones, however.

Finally, as noted above, we have a reliable surrogate value from our primary surrogate country, India, and it is our preference to value surrogate values using a single surrogate country whenever possible. Although we utilized the Japanese exports to Indonesia value to value cups and cones steel in the TRBs XI Preliminary Results, we did so for the TRBs XI Preliminary Results, as noted in the Surrogate Selection and Steel Values Memo, because it was the most reliable record information in comparison to a single average world market benchmark price. However, as discussed in detail in the TRBs XI Final Results at Comment 2, we revised the analysis used in the TRBs XI Preliminary Results by using as a benchmark not a single average price but a range of benchmark prices. In revising our analysis for the TRBs XI Final Results, we found that the Japanese exports to India value was reliable in comparison to the broader range of benchmark prices.

Thus, although the secondary surrogate data on Japanese exports to Indonesia was considered to be reliable in comparison to the more narrow single benchmark utilized in the TRBs XI Preliminary Results, in expanding the benchmark to a range of prices for the TRBs XI

Final Results, we found that data from the primary surrogate, India, was also reliable. Therefore, because the Department found the data on Japanese exports to India to be reliable, and because it is data from our primary surrogate, pursuant to 19 CFR 351.408(c)(2) and Timken 2001, as noted above, we continue to find that the data on Japanese exports to India is the best available information for valuing cups and cones steel.

Comment 3: Japanese Exports to India Data

Luoyang's Argument:

Luoyang argues that, although the Department found in the TRBs XI Preliminary Results that the Japanese exports to India data was unreliable, the Department changed its mind for the TRBs XI Final Results and found this same, unaltered data to be reliable. According to Luoyang, rejecting the data on Japanese exports to India in the TRBs XI Preliminary Results but then accepting this same value in the TRBs XI Final Results and in the Draft Remand is contradictory.

Luoyang continues to argue, as it did in Luoyang Bearing, that, should the Department continue to utilize the Japanese exports to India value for cups and cones steel, the Department should evaluate the monthly data from January and March 1998 to determine whether these months are aberrational. Luoyang also argues that the Department should explain, as it purportedly failed to do in the Draft Results, how to treat data that falls outside of the “benchmark range.”

Department's Position:

We disagree with Luoyang and are not adjusting the Japanese exports to India data. First, we note that the CIT has already ruled on the matter of excluding certain data from the Japanese exports to India value. See Luoyang Bearing, Slip. Op. 02-118 at 38. As the CIT did not remand

that issue to the Department for its reconsideration, we need not address that argument at this time as it is outside of the scope of this remand redetermination.

Second, as noted above, it is not our policy to reject or alter values purely because they are above or below the benchmark or benchmark range, as we would, in essence, be saying that any data that is not exactly the same as the benchmark data must be unreliable and aberrational. As explained above, our purpose in utilizing a benchmark is to test the reliability of potential surrogate values based on broader HS categories against more narrow categories that more accurately reflect world market prices for the steel in question. As long as a surrogate value is reasonably close to the benchmark value or range of benchmark values, we will not treat that surrogate value as being aberrational. Thus, there is no reason to come up with a methodology for deciding how to treat data that falls outside of the “benchmark range.”

Finally, as noted above and discussed in the TRBs XI Final Results, we re-evaluated the record data for cups and cones for the TRBs XI Final Results because we changed the benchmark from a single average value to a benchmark range of values. (For more discussion see TRBs XI Final Results, Comment 2, at 64 FR at 61839 through 61840.) This change in methodology resulted in our determining that the Japanese exports to India data was the most reliable data for valuing cups and cones steel. This is contrary to Luoyang’s contention that the Department arbitrarily “changed its mind” in the TRBs XI Final Results in changing from the use of the Japanese exports to Indonesia value to the use of the Japanese exports to India value.

FINAL RESULTS OF REMAND

As a result of this remand, we have recalculated the company-specific margins for the 1997-1998 administrative review. The “PRC-Wide” rate for this review, 33.18, is not affected

by these remand results. The recalculated company-specific weighted-average margin percentages are as follows:

Exporter/manufacturer	Final Weighted-average margin percentage	Remand Weighted-average margin percentage
Luoyang Bearing Factory	3.68	5.15
Premier Bearing and Equipment, Limited	24.52	24.55
PRC-wide rate	33.18	33.18

These final results pursuant to remand are being issued in accordance with the order of the CIT in Luoyang Bearing Factory v. United States, Slip Op. 02-118 (CIT October 1, 2002).

Susan H. Kuhbach
Acting Assistant Secretary
for Import Administration

Date