Peer Bearing Company - Changshan
v. United States
Court No. 09-00052; Slip Op. 12-102 (CIT 2012)

FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND

A. SUMMARY

The Department of Commerce ("Department") has prepared these final results of redetermination pursuant to the remand order of the U.S. Court of International Trade ("CIT" or the "Court"), issued on August 2, 2012, in *Peer Bearing Company – Changshan v. United States*, Court No. 09-00052, Slip Op. 12-102 (CIT 2012) ("*CPZ II*"). These final remand results concern *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 3987 (January 22, 2009) ("*Final Results*") and accompanying Issues and Decision Memorandum ("IDM").

The Court's order in *CPZ II* follows the Court's remand order, issued on January 28, 2011, in *Peer Bearing Company – Changshan v. United States*, 752 F. Supp. 2d 1353 (CIT 2011) ("*CPZ I*"), in which the Court ordered that the Department: a) re-determine Peer Bearing Company – Changshan's ("CPZ") margin using U.S. prices calculated in a manner that complies with the law, either by employing the constructed export price ("CEP") methodology using price and transaction data available on the administrative record or re-opening the record to obtain export price information ("EP"); and b) review, reconsider, and redetermine certain surrogate values ("SVs") used to calculate CPZ's factors of production ("FOPs").

In response to the Court's *CPZ I* remand order, the Department issued the *Final Results of Redetermination Pursuant to Remand*, Court No. 09-00052, Slip Op. 11-11 (CIT 2011) on

July 1, 2011 ("*CPZ I Remand Redetermination*"). In the *CPZ I Remand Redetermination*, the Department determined: 1) that CPZ's dumping margin should be calculated on an EP basis; 2) that CPZ was unresponsive to the Department's requests for EP information; and 3) to apply total adverse facts available ("AFA") to CPZ. As a result of the determination to apply total AFA to CPZ, the Department did not reach any determination regarding SV issues remanded by the Court in *CPZ I*.[1]

In *CPZ II*, the Court held that the Department acted unlawfully by using an adverse inference in re-determining CPZ's dumping margin, and acted unlawfully by failing to recalculate the SVs. The Court ordered the Department to: 1) determine the U.S. price for CPZ's sales of subject merchandise according to a lawful method; and 2) review, reconsider, and re-determine the SVs for alloy steel wire rod, alloy steel bar, and scrap from the production of cages.[2]

As set forth in detail below, in these final results, pursuant to the Court's order in *CPZ II*, we have: 1) applied non-adverse facts available by calculating CPZ's margin utilizing the CEP U.S. price methodology based on sales information available on the record of the underlying review; and 2) re-determined the SVs used to value certain FOPs based on alternative SV information on the record.

On September 10, 2012, the Department issued the Draft Results of Redetermination Pursuant to Court Remand ("Draft Redetermination") and provided parties until September 12, 2012, to comment. On September 12, 2012, the Department received comments from the

[1] *See CPZ I Remand Redetermination* at 1.
[2] *See CPZ II* at 22-23.

Timken Company ("Timken").[3] These comments are discussed in section D, below. CPZ did not comment on the Draft Redetermination.

B. BACKGROUND

U.S. Prices

In the *Final Results*, we found that the relevant U.S. sales prices for purposes of calculating the dumping margin for CPZ were those between CPZ and its unaffiliated importer, rather than those between Peer Bearing Co. ("Peer"), CPZ's U.S. affiliate, and its unaffiliated customers.[4] Because the Department found that the first sale took place outside of the United States before the date of importation to an unaffiliated purchaser in the United States, the Department determined that the starting point of the calculation should be EP, instead of CEP. EP is defined by the Tariff Act of 1930, as amended ("the Act") as "the price at which the subject merchandise is first sold…before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c) of this section."[5] CEP is defined as "the price at which the subject merchandise is first sold… in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d) of this section."[6]

[3] *See* Letter from Timken to the Department entitled, "Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from The People's Republic of China (2006-2007): The Timken Company's Comments on the Commerce Department's Draft Remand Results, 2nd Remand," dated September 12, 2012 ("Timken's Comments").

[4] *See Final Results*, and accompanying IDM at Comment 1.

[5] *See* Section 772(a) of the Act.

[6] *See* Section 772(b) of the Act.

In the *Final Results*, the Department determined that its dumping calculation should be based on EP because "based on the facts on the record, the subject merchandise is first sold before the date of importation by CPZ to an unaffiliated purchaser… in the United States."[7] However, CPZ reported only the transactions between its U.S. affiliate (Peer) and Peer's unaffiliated downstream customer and the Department determined, in the *Preliminary Results*,[8] to base its dumping calculation on CEP relying on these reported transactions. Thus, CPZ did not report and the Department did not solicit the sale prices between CPZ and its unaffiliated purchaser at that time, thus these data were almost entirely absent from the record of the proceeding. Therefore, as neutral facts available, the Department adjusted the reported CEP information using a ratio derived from the limited number of potential EPs on the record at that time.[9]

CPZ appealed the Department's determination, and the Court issued its decision on January 28, 2011.[10] The Court held that the methodology employed by the Department to calculate CPZ's U.S. prices was contrary to law, because, under the Department's method, it began with CEP information that it did not adjust as required by the Act.[11] The Court held that, "{b}ecause Commerce based its determinations of U.S. price on the CEP starting price and not the EP starting price, it was erroneous for Commerce to characterize its basis for determining the U.S. prices, and CPZ's margin, as an 'export price' basis."[12] The Court also held that the

[7] *See* Memorandum from the Department entitled, "Peer Bearing Company – Changshan, CPZ Final Results of Administrative Review: Program Analysis Memorandum, Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from the People's Republic of China" dated January 13, 2009 ("Final Results Analysis Memo") at 3.

[8] See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 73 FR 41033, 41037 (July 17, 2008) ("*Preliminary Results*").

[9] *See* Final Results Analysis Memo at 5.

[10] *See CPZ I* (CIT 2011).

[11] *Id.*, 752 F. Supp. 2d at 1360-1369.

[12] *Id.*, 752 F. Supp. 2d at 1362.

Department's choice of facts available - CEP information adjusted using a ratio derived from a limited number of EP information - was impermissible because the Act requires that the CEPs be adjusted by the method prescribed by the Act.[13]

The Court disagreed with CPZ's argument that the case should be remanded for the Department to determine U.S. prices on a CEP basis.[14] Instead, the Court held that the Department "should not be precluded from reopening the record to obtain information that might allow it to determine the U.S. prices on an EP basis."[15] The Court also disagreed with CPZ that the record compelled the Department to make a finding that the calculation should be based on CEP because "the current record evidence is not such that Commerce would be compelled to reach findings of fact in agreement with that characterization. The record also contains evidence that CPZ actually did sell the subject merchandise to the unaffiliated importer."[16]

However, the Court held that the record of the underlying proceeding presents no alternative to determining U.S. prices on a CEP basis because the record does not contain the EP transactions. Therefore, the Court ordered the Department on remand to "determine the U.S. prices on a CEP basis unless it decides to reopen the record to obtain additional information, including, specifically, prices that qualify as the starting prices for an EP determination."[17]

In *CPZ I Remand Redetermination*, the Department reopened the record and requested additional information from CPZ, including sales process documentation, ownership documentation regarding the importer, and the full universe of prices between CPZ and the importer during the period of review ("POR").[18] However, as detailed in the *CPZ I Remand*

[13] *Id.*, 752 F. Supp. 2d at 1363-1364.
[14] *Id.*, 752 F. Supp. 2d at 1364-1365.
[15] *Id.*, 752 F. Supp. 2d at 1365.
[16] *Id.*, 752 F. Supp. 2d at 1365-1366.
[17] *Id.*, 752 F. Supp. 2d at 1369.
[18] See *CPZ I Remand Redetermination* at 7.

Redetermination, CPZ responded that it did not have access to the importer's ownership documents and so was unable to provide information concerning the unaffiliated importer's ownership, business scope, or history and was unable to provide payment documents to show payment between CPZ and the importer. CPZ was also unable to provide the prices between CPZ and the unaffiliated importer.[19]

The Department determined that the information available on the record indicates that the sale by CPZ to the first identified unaffiliated party in the United States meets the definition of EP.[20] However, because CPZ did not provide the requested transaction and price data and other requested information, the Department determined that necessary information was not on the record, that CPZ withheld requested information, and that CPZ failed to cooperate by not acting to the best of its ability.[21] Pursuant to section 776(a) and (b) of the Act, the Department determined to apply total AFA to CPZ.[22] As AFA, we assigned to CPZ the highest rate on the record of any segment of this proceeding *i.e.*, 60.95 percent.[23]

The Court's Decision in *CPZ II*

The Court issued its decision concerning the *CPZ I Remand Redetermination* on August 2, 2012.[24] In *CPZ II*, the Court held that CPZ's failure to provide transaction and pricing data for sales between CPZ and its unaffiliated importer did not constitute a failure to cooperate.[25] The Court held that the record does not support the inference that CPZ lacked willingness to cooperate and that it was not reasonable for the Department to expect CPZ to have preserved

[19] *Id.* at 6-10.
[20] *Id.* at 10-15.
[21] *Id.* at 16-21.
[22] *Id.* at 20.
[23] *Id.* at 22.
[24] *See CPZ II* (CIT 2012).
[25] *Id.* at 9-14.

sales pricing data for such a long period of time.[26] Further, the Court held that the Department's use of the adverse inference was not in accordance with the purpose of Section 776(b) of the Act, which is to encourage parties to cooperate with a request for information and "not to authorize punitive action."[27]

The Court also held that CPZ's failure to provide documentation evidencing negotiations between CPZ and the unaffiliated importer did not constitute a failure to cooperate.[28] The Court held that the narrow scope of the Department's request for information allowed for limited information to be provided in response, and that the Department's inability to ask additional clarifying questions and the Department's dissatisfaction with the answers provided did not represent unresponsiveness on behalf of CPZ.[29] Furthermore, the Court held that because the Department determined that the sales should be classified as EP even without documentation evidencing negotiations, the missing negotiation information would only bolster a conclusion which the Department had found was already supported by record evidence.[30]

Therefore, the Court concluded that the Department acted contrary to law in using an adverse inference in re-determining CPZ's dumping margin.[31] On remand, the Court ordered the Department to determine the U.S. prices of subject merchandise according to a lawful method.[32]

Surrogate Values

1. Steel Wire Rod

In the *Final Results*, the Department valued CPZ's steel wire rod consumption using Indian import data for Harmonized Tariff Schedule ("HTS") 7228.50.90,[33] which yielded an

[26] *Id* at 13-16.
[27] *Id* at 17.
[28] *Id.* at 17-22.
[29] *Id* at 20.
[30] *Id.* at 21-22.
[31] *Id.* at 23.
[32] *Id*.

average price of $3,877 U.S. Dollars ("USD") per metric ton ("MT").[34] In *CPZ I*, the Court held that it is unable to conclude that Commerce's selection of this SV was based on substantial evidence because "the enormous disparity between the value for alloy steel wire rod shown in the Indian import data and the values shown in all the other information on the record calls into serious question a finding that the Indian data were the best available information with which to value the factor of production."[35] The Court ordered the Department to review, reconsider, and re-determine the SV for steel wire rod.[36]

2. Alloy Steel Bar

To value CPZ's alloy steel bar consumption in the *Final Results*, the Department selected Indian import data from HTS category 7228.30.29,[37] which yielded an average price of $1,607 USD per MT.[38] In *CPZ I*, the Court remanded this SV selection, stating that the Department failed to conduct a comparison of the Indian import data with other import data on the record, particularly from Indonesia and the Philippines, as well as import data from the United States for a bearing-quality steel specific HTS category.[39] The Court ordered the Department to review and reconsider its choice of Indian data to value steel bar, and to support our determination with substantial evidence and an adequate explanation.[40]

3. Scrap from the Production of Cages

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[33] Other Bars And Rods Of Other Alloy Steel (Not Elsewhere Specified or Indicated); Angles, Shapes And Sections Of Other Alloy Steel; Hollow Drill Bars And Rods Of Alloy Or Nonalloy Steel {7228}; Other bars and rods, not further worked than cold-formed or cold-finished {.50}; Other {.90}.

[34] *See Final Results*, and accompanying IDM at Comment 6.

[35] *See CPZ I*, 752 F. Supp. 2d at 1372.

[36] *Id.*, 752 F. Supp. 2d at 1377.

[37] Other Bars And Rods Of Other Alloy Steel (Not Elsewhere Specified or Indicated); Angles, Shapes And Sections Of Other Alloy Steel; Hollow Drill Bars And Rods Of Alloy Or Nonalloy Steel {7228}; Other bars and rods, not further worked than hot-rolled, hot-drawn or extruded; Bright bars {.30}; Other {.29}.

[38] *See Final Results*, and accompanying IDM at Comment 7.

[39] *See CPZ I*, 752 F. Supp. 2d at 1374.

[40] *Id.*

In the *Preliminary Results*, the Department selected Indian import data from HTS category 7204.41,[41] yielding an average price of $773.45 USD per MT, to value the scrap claimed as a byproduct offset resulting from CPZ's production of cages. The Department valued the steel used to produce the cages using Indian import data for HTS category 7209.16,[42] at an average unit value ("AUV") of $676.39 USD per MT.

In the *Final Results*, the Department selected Indian import data from HTS category 7204.49,[43] valued at $273.96 USD/MT. The Department determined to use this value because "the surrogate value for cage steel scrap {used in the *Preliminary Results*} exceeds the surrogate value for the direct material input."[44]

In *CPZ I*, the Court held that the Department's SV selection for scrap lacks essential findings of fact concerning whether the SV is the best available information on the record, including whether CPZ's scrap would have been classified under this HTS category.[45] The Court ordered the Department to review and reconsider its choice based on appropriate findings of fact with respect to the physical nature of the scrap in question.[46]

The Court's Decision in *CPZ II*

In *CPZ II*, the Court held that its order in *CPZ I* required the Department to re-determine the SVs for steel wire rod, steel bar, and scrap from the production of cages.[47] The Court

[41] Ferrous waste and scrap; remelting scrap ingots of iron or steel {7204}; Other waste and scrap: turnings, shavings, chips, milling waste, sawdust, filings, trimmings and stampings, whether or not in bundles {.41}.

[42] Flat-rolled products of iron or nonalloy steel, of a width of 600 mm or more, cold-rolled (cold-reduced), not clad, plated or coated {7209}; In coils, not further worked than cold-rolled (coldreduced): Of a thickness exceeding 1 mm but less than 3 mm {.16}.

[43] Ferrous waste and scrap; remelting scrap ingots of iron or steel {7204}; Other waste and scrap: Other {.49}.

[44] *See Final Results*, and accompanying IDM at Comment 5.

[45] *See CPZ I*, 752 F. Supp. 2d at 1375-76.

[46] Id.

[47] *See CPZ II* at 7-8.

ordered the Department to review, reconsider, and re-determine these SVs in accordance with its orders in *CPZ I* and *CPZ II*.[48]

C. ANALYSIS OF REMANDED ISSUES

U.S. Prices

In the instant remand, the Court has directed the Department to calculate a margin for CPZ using a lawful method.[49] For the reasons discussed in the *CPZ I Remand Redetermination*, the Department continues to find that EP is the appropriate basis to determine CPZ's U.S. price.[50] In *CPZ II*, the Court rejected the Department's determination to apply total AFA to CPZ; however, the Court found that the Department determined that EP was warranted based on the record, and did not remand this underlying finding of fact.[51] Nevertheless, the record lacks the price data necessary to calculate CPZ's U.S. price on an EP basis and, thus, we are unable to calculate CPZ's EP margin in accordance with section 772(a) of the Act. However, the record contains all transaction and expense information necessary to calculate CPZ's U.S. price on a CEP basis. These are the only data on the record sufficient for calculating U.S. price in accordance with the Act and the Court's orders in *CPZ I* and *CPZ II*.[52] Thus, because necessary information is not on the record, as non-adverse facts available,[53] we have recalculated CPZ's dumping margin using a U.S. price based on the CEP information.[54]

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[48] *Id.* at 23.

[49] *See CPZ II* at 23; *see also CPZ I*, 752 F. Supp. 2d at 1363-64.

[50] See *CPZ I Remand Redetermination* at 10-15; *see also Final Results* and accompanying IDM at Comment 1.

[51] *See CPZ II* at 22-3.

[52] *See CPZ I*, 752 F. Supp. 2d at 1363 (holding "the only statutorily permissible 'facts otherwise available' on the record that may be used to determine U.S. prices are the CEP starting prices, adjusted by the method the statute requires").

[53] *See* section 776(a) of the Act.

[54] For discussion and analysis of the actual CEP margin calculation, *see* the Department's Memorandum to the File entitled, "Analysis Memorandum for the Draft Results of Redetermination Pursuant to Court Remand in the 2006-2007 Antidumping Duty Administrative of Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Analysis Memorandum for Changshan Peer Bearing Company, Ltd." dated concurrently with this notice ("Draft Redetermination Analysis Memorandum").

We are making this remand determination respectfully under protest.[55]

Surrogate Values

In accordance with the Court's order in *CPZ I*, we have examined the potential SV data from India, Indonesia and the Philippines for the steel and wire rod inputs against contemporaneous U.S. import values for bearing quality steel wire rod (Harmonized Tariff Schedule of the United States ("HTSUS") 7228.50.10.10, valued at $1,391 USD/MT) and steel bar (HTSUS 7228.30.20, valued at $1,040 USD/MT during the POR). Specifically, aside from the Indian data we relied on in the underlying administrative review, the record also contains SV data for each of the inputs in question from both the Philippines (HTS 7228.50 for wire rod, valued at $1291.30 USD/MT, and HTS 7228.30 for steel bar, valued at $1,070.43 USD/MT) and Indonesia (HTS 7228.50 for wire rod, valued at $1,212.07 USD/MT, and HTS 7228.30 for steel bar, valued at $970.04 USD/MT). We find that the AUVs for each respective input from Indonesia and the Philippines corroborate one another, and both sets are considerably closer in value to the U.S. benchmark values than the Indian import data for either steel bar or wire rod.

Because both countries were determined to be significant producers of comparable merchandise and economically comparable to the PRC, we find that both countries would serve as appropriate sources for SV data. When selecting SVs with which to value the FOPs used to produce subject merchandise, the Department is directed to use the "best available information" on the record.[56] The Department's preference is to use, where possible, a range of publicly available, non-export, tax-exclusive, and product-specific prices for the POR, with each of these factors applied non-hierarchically to the particular case-specific facts and with a preference for

[55] *See Viraj Group, Ltd. v. United States*, 343 F.3d 1371 (Fed. Cir. 2003).
[56] *See* Section 773(c)(1) of the Act.

data from a single surrogate country.[57] We find that the Indonesian and Philippine import data under consideration are publicly available, contemporaneous with the POR, tax-exclusive, and representative of significant quantities of imports, thus satisfying critical elements of the Department's SV test. However, the record information shows that the Indonesian SV data for both HTS 7228.50 and HTS 7228.30 represent a more robust dataset when compared to the Philippine data for identical HTS categories. Specifically, Indonesian imports of HTS 7228.50 during the POR represented a total value of $8,904,014 and a total quantity of 7,346,121 kilograms ("Kg") from nine exporting countries, compared with a total value of $140,843 and total quantity of 109,071 Kg from five exporting countries for the Philippines. Indonesian imports of HTS 7228.30 during the POR represented a total value of $57,087,014 and a total quantity of 58,850,063 Kg from 14 exporting countries, compared with a total value of $2,661,773 and total quantity of 2,486,650 Kg from nine exporting countries for the Philippines.

Because we find that Indonesian import data for steel bar and steel wire rod to be more robust and representative of broader market averages when compared to the Philippine data, we determine the Indonesian data to be the best available information to value these factors pursuant to Section 773(c)(1) of the Act. Thus, we have recalculated these SVs using Indonesian data.[58]

With regard to the selection of an SV for scrap from the production of cages, the record contains the Indian scrap SV (*i.e.*, HTS 7204.41) used in the *Preliminary Results*. In accordance with the Court's directive, we have re-evaluated the record information and find that the narrative description of this HTS category is more specific to the by-product in question than the HTS category used for the *Final Results* (*i.e.*, HTS 7204.49). These data are also

[57] *See, e.g., Cut-to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 12651 (March 15, 2005), and accompanying IDM at Comment 3.

[58] *See* Draft Redetermination Analysis Memorandum.

contemporaneous with the POR, broad market averages, representative of significant quantities of imports, and are publicly available. As such, we determine the Indian import data for HTS 7204.41 to be the best available information pursuant to Section 773(c)(1) of the Act and have re-determined CPZ's margin by utilizing Indian import data for HTS 7204.41 to value CPZ's cage scrap byproduct.[59]

As discussed above, we have re-evaluated and re-determined the SVs for steel bar, steel wire rod, and cage steel scrap in accordance with the Court's order. However, the Department is making this remand determination on these SV issues respectfully under protest.[60]

D. DISCUSSION OF INTERESTED PARTIES' COMMENTS SUBSEQUENT TO DRAFT REDETERMINATION

Comment 1: U.S. Price Methodology

Timken argues that in the prior remand proceeding, CPZ stated that the unaffiliated importer "included an agreed upon mark-up to the price of the subject merchandise and issued an invoice to Peer."[61] According to Timken, CPZ acknowledges that there was an agreement between the unaffiliated importer and CPZ as to the pricing for the tapered roller bearings purchased, yet CPZ failed to cooperate with the Department's request for any information about this agreement in the prior remand. As a result, Timken requests that the Department modify the final redetermination and again determine CPZ's margin based on an adverse inference.[62]

Timken points out that, in the Draft Redetermination, the Department continued to find that the proper sales for the dumping calculation were EP sales between CPZ and the unaffiliated importer but that, because the record did not contain the necessary information from which to determine CPZ's margin on an EP basis, CEP information was used as facts available. Timken

[59] *See* Draft Redetermination Analysis Memorandum.

[60] *See Viraj Group, Ltd. v. United States*, 343 F.3d 1371 (Fed. Cir. 2003).

[61] *See* Timken's Comments at 2, citing to CPZ's March 2, 2011, Supplemental Questionnaire Response at 3.

[62] *See* Timken's Comments at 2.

asserts that, should the Department continue to employ non-adverse facts to determine EPs, the use of CPZ's entered values, as reported in the U.S. sales database, is preferable to CEPs.[63] Timken argues that this approach, which would adjust the reported gross price by the percentage difference between entered value and reported gross price less ocean freight, represents the best available information for use as facts available because: a) CPZ initially suggested this method for use in the alternative should the Department not employ the CEP methodology in the prior remand; b) the percentage is corroborated by the Department's prior calculation from the *Final Results* (which was rejected by the Court as a methodology to calculate U.S. price but remains the only information on record as to the relative ratio of the price from CPZ to the importer and the price from Peer to its downstream customers); and c) sale-specific information from the subsequent 2007-2008 administrative review which was submitted to the record of the prior remand proceeding further demonstrates the correlation between entered value and the EP paid by the unaffiliated importer.[64]

Finally, Timken argues that, even if the Department continues to use adjusted CEP prices to determine the extent of dumping, the Department must further adjust these prices to account for the services provided by the importer.[65]

CPZ did not comment on the Draft Redetermination.

Department's Position: In *CPZ II*, the Court held that the Department's selection of a margin for CPZ based on an adverse inference was unlawful.[66] Based on this holding, we do not agree with Timken that the Department should apply facts available with an adverse inference in

[63] *Id.* at 3
[64] *Id.* at 5.
[65] *Id.* at 3-5.
[66] *See CPZ II* at 13-14.

the final redetermination. Thus, we have continued to calculate CPZ's margin using neutral facts available.

Furthermore, the Court held that the Department must recalculate U.S. price in a lawful manner, in accordance with the statute.[67] The Department does not have adequate information to calculate U.S. prices using the EP methodology. However, we have found that the record only contains data sufficient for calculating U.S. price on a CEP basis in accordance with the Act and the Court's holdings in *CPZ I* and *CPZ II*. As a result, we do not agree that the Court's prior holdings in this case permit the use of an alternative method, such as the use of entered values, which is not specified by statute, and may not reflect the actual export price charged by the exporter.[68]

Finally, concerning Timken's argument that, if the Department continues to use CEP as facts available, then the Department should adjust those prices to account for services provided by the importer, we note that the Department's CEP calculation includes U.S. transportation expenses (USOTHTRU) which are representative of "brokerage and other charges in the United States {that} were incurred by the importer."[69] The record lacks evidence of any other services provided by the importer and, as a result, we find no evidentiary basis for which to adjust further the CEP. Therefore, for the final redetermination on remand, we have continued to calculate CPZ's dumping margin based on the available CEP information in the manner specified in the Draft Redetermination.[70]

[67] *See CPZ I*, 752 F. Supp. 2d at 1362-63.

[68] *See id*., 752 F. Supp. 2d at 1363 (holding, "in this case, the only statutorily permissible 'facts otherwise available' on the record that may be used to determine U.S. prices are the CEP starting prices, adjusted by the method the statute requires").

[69] *See* Final Results Analysis Memo at 8, citing to CPZ's Section C Response at C-23.

[70] *See* Draft Redetermination Analysis Memorandum.

Comment 2: Surrogate Values

With respect to the selection of Indonesian SVs selected to value wire rod and steel bar inputs in the Draft Redetermination, Timken supports the Department making this change under protest.[71] We have continued to use these categories to value the wire rod and steel bar inputs.

Concerning the SV for scrap from the production of cages, Timken argues that careful review of the HTS 7204.41 and 7204.49 category descriptions at issue for the valuation of cage scrap supports a finding that the Department's selection of HTS 7204.49 in the *Final Results* was correct.[72] Timken argues that HTS Explanatory Notes show that sub-categories 7204.41 and 7204.49 are both basket categories for "other waste and scrap" not covered under the preceding six-digit categories of 7204, with 7204.41 applicable to scrap in the form of "turnings, shavings, chips, milling waste, sawdust, flings, trimmings, and stampings" and 7204.49 applicable to all other such scrap not specified in the description of .41.[73] Therefore, the two categories are distinguished only by form.[74] According to Timken, although the Court points to the fact that the scrap in question results from of the machining of raw materials to suggest that 7204.41 may be the more specific subcategory, the record does not contain conclusive evidence as to the actual form of CPZ's scrap.[75] Therefore, Timken concludes, because neither basket category can be said to definitively contain the scrap in question, the fact that the price of Indian imports of HTS 7204.41 are higher in price than that of the corresponding input represents more than sufficient evidence to support the use of HTS 7204.41.[76]

CPZ did not comment on the Draft Redetermination.

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[71] *See* Timken's Comments at 5.
[72] *Id*.
[73] *Id*. at 5-6.
[74] *Id*. at 5-6.
[75] *Id*. at 6.
[76] *Id*.

Department's Position: Although Timken is correct that the record does not contain an exact description of the form of CPZ's scrap, we also note that Timken does not argue that HTS 7204.49 is more specific to the scrap in question, only that it is unclear if HTS 7204.41 is more specific to the input in question than HTS 7204.49. We continue to find that the narrative description of HTS 7204.41 (specifying turnings, shavings, *etc.*) remains the most specific on record from which to value the by-product of manufacturing tapered roller bearing cages from flat rolled coils. In contrast, HTS 7204.49 is only described as "other." Therefore, we continue to find that Indian import data for HTS 7204.41 are the best available information to value scrap from the production of cages, pursuant to Section 773(c)(1) of the Act, and so we have continued to utilize the Indian HTS 7204.41 category from the *Preliminary Results* and Draft Redetermination to value cage scrap.[77]

E. FINAL RESULTS OF REDETERMINATION

Pursuant to *CPZ II*, we have revised the appropriate SVs and U.S. price methodology in accordance with the findings discussed above. As a result, CPZ's final margin has been revised to 6.52 percent.[78]

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Paul Piquado
Assistant Secretary
for Import Administration

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Date

[77] *See* Draft Redetermination Analysis Memorandum.
[78] *Id.*