

C-570-054
Remand (Slip Op. 19-122)
POI: 01/01/2016 – 12/31/2016
Public Document
E&C/OVI: YB

Jiangsu Zhongji Lamination Materials Co., Ltd., Shantou Wanshun Package Material Stock Co., Ltd., Jiangsu Huafeng Aluminum Industry Co., Ltd., and Jiangsu Zhongji Lamination Materials Co., (HK) Ltd. v. United States
Consol. Court No. 18-00089, Slip Op. 19-122 (CIT September 18, 2019)

FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT ORDER

SUMMARY

The Department of Commerce (Commerce) prepared these final results of redetermination in accordance with the opinion and remand order of the U.S. Court of International Trade (the Court), issued in *Jiangsu Zhongji Lamination Materials Co., Ltd., Shantou Wanshun Package Material Stock Co., Ltd., Jiangsu Huafeng Aluminum Industry Co., Ltd., and Jiangsu Zhongji Lamination Materials Co., (HK) Ltd. v. United States*.¹ These final remand results concern the final determination in the countervailing duty (CVD) investigation of certain aluminum foil (aluminum foil) from the People’s Republic of China (China). The period of investigation (POI) is January 1, 2016 through December 31, 2016.²

In accordance with the *Remand Order*, Commerce has further explained why information uncovered at verification supports its finding that Jiangsu Zhongji Lamination Materials Co., Ltd.’s (Zhongji) request for an Entered Value Adjustment (EVA) is unsupported; however, it has

¹ See *Jiangsu Zhongji Lamination Materials Co., Ltd., Shantou Wanshun Package Material Stock Co., Ltd., Jiangsu Huafeng Aluminum Industry Co., Ltd., And Jiangsu Zhongji Lamination Materials Co., (HK) Ltd. v. United States Consol. Court No. 18-00089, Slip Op. 19-122 (CIT 2019) (Remand Order)*.

² See *Countervailing Duty Investigation of Certain Aluminum Foil from the People’s Republic of China: Final Affirmative Determination*, 83 FR 9274 (March 5, 2018) (*Final Determination*), and accompanying Issues and Decision Memorandum (IDM), amended by *Certain Aluminum Foil from the People’s Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 83 FR 17360 (April 19, 2018) (*Amended Final Determination*); see also Memorandum, “Countervailing Duty Investigation: Certain Aluminum Foil from the People’s Republic of China: Final Determination Calculation Memorandum for Zhongji Lamination Materials Co., Ltd.” dated February 26, 2018 (Zhongji Final Analysis Memorandum).

granted Zhongji's request for an EVA. Commerce has also solicited comments from parties and considered what information could be verified that would show non-use of the Export Buyer's Credit Program (EBCP). Upon review of these comments, we continue to find verification of the EBCP impracticable given the current record; however, we are accepting Zhongji's and its customers claims of non-use of the EBCP, under respectful protest.

BACKGROUND

On March 9, 2017, the Aluminum Association Trade Enforcement Working Group (the petitioners) filed CVD and antidumping petitions concerning imports of aluminum foil from China with Commerce.³ On April 28, 2017, following initiation,⁴ Commerce determined to individually examine Loften Aluminum (Hong Kong) Limited (Loften HK) and Jiangsu Zhongji Lamination Materials Co., Ltd. (Zhongji) as mandatory respondents.⁵

On August 14, 2017, we published the *Preliminary Determination*.⁶ In the *Preliminary Determination*, Commerce concluded that the Government of China (GOC) withheld information that was requested of it and failed to cooperate to the best of its ability with respect to certain information regarding the EBCP.⁷ Accordingly, Commerce relied on facts otherwise available and drew adverse inferences to find the EBCP program countervailable.

Also at the *Preliminary Determination*, Commerce granted Zhongji an EVA.⁸ We stated that, based on the information submitted in its questionnaire responses, Zhongji met the requisite

³ See "Petition for the Imposition of Countervailing Duties on Imports of Certain Aluminum Foil from the People's Republic of China," dated March 9, 2017 (Petition).

⁴ See *Certain Aluminum Foil from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 82 FR 15688 (March 30, 2017).

⁵ See Memorandum, "Countervailing Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Respondent Selection," dated April 28, 2017.

⁶ See *Certain Aluminum Foil from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 82 FR 37844 (August 14, 2017) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

⁷ See PDM at 26-29.

⁸ See PDM at 10-11.

six criteria for an export value adjustment: (1) U.S. invoices via Zhongji HK include a mark-up from the invoice issued from Zhongji to Zhongji HK; (2) Zhongji and Zhongji HK are affiliated; (3) the U.S. invoice issued by Zhongji HK establishes the customs value to which CVD duties would be applied; (4) there is a one-to-one correlation between the Zhongji HK and Zhongji invoices, *e.g.*, between sales reference numbers and quantities; (5) Zhongji HK ships the subject merchandise directly to the United States; and (6) the invoices can be tracked as back-to-back invoices that are identical, with the exception of price.⁹

We conducted verifications of the questionnaire responses submitted by Zhongji between October 16 and 20, 2017.¹⁰ As noted in Zhongji's verification report, Zhongji's export sales ledger contained all exports and was not sub-divided by country or region.¹¹ Thus, Zhongji relied on its U.S. customer codes to identify which of its sales entered the United States.¹² However, during the course of the verification, it became apparent that sales identified by Zhongji as U.S. sales did not enter the United States.¹³

On February 26, 2017, Commerce issued its *Final Determination*.¹⁴ Because the reliability of Zhongji's identification of U.S. sales could not be verified, Commerce concluded that Zhongji failed to demonstrate that its sales meet the requisite criteria, and, as such, Commerce did not make an adjustment to Zhongji's sales value for sales through Zhongji HK for the *Final Determination*.¹⁵

⁹ *Id.*

¹⁰ See Memoranda, "Verification of the Questionnaire Responses of Dingsheng Aluminum Industries (Hong Kong) Trading Co., Ltd.: Countervailing Duty Investigation of Certain Aluminum Foil from the People's Republic of China," (Dingsheng Verification Report) and "Verification of the Questionnaire Responses of Jiangsu Zhongji Lamination Materials Co., Ltd.: Countervailing Duty Investigation of Certain Aluminum Foil from the People's Republic of China," (Zhongji Verification Report), both dated November 25, 2017.

¹¹ See Zhongji Verification Report at 10-11.

¹² *Id.*

¹³ *Id.*

¹⁴ See *Final Determination*, 83 FR at 9274.

¹⁵ See *Final Determination*, and accompanying IDM at 44-45.

Commerce continued to use an adverse inference in selecting facts otherwise available to find that the respondents benefitted from the EBCP program.¹⁶

In its *Remand Order*, the Court held that Commerce must explain why the information uncovered at verification caused it to find the EVA request unsupported.¹⁷ The Court also held that Commerce must consider what information could be verified that would show non-use of the EBCP and contemplate a solution to the impasse.¹⁸

On December 26, 2019, Commerce released its draft results of redetermination in accordance with the *Remand Order*.¹⁹ On January 6, 2020, Zhongji submitted comments on Commerce's draft results.²⁰

ANALYSIS

Consistent with the *Remand Order*, we explained why the information discovered at verification led Commerce to determine that Zhongji's EVA request is unsupported. However, as explained in the "Comments on the Draft Results of Redetermination" section, below, we are granting Zhongji's EVA request in this final redetermination. We also addressed the Court's direction concerning a non-use finding for the EBCP.

Zhongji's EVA Request

The Court held that, given the calculation methodology employed in this case, Commerce did not adequately explain why the identification of U.S. sales or U.S. customers is relevant to the EVA determination, or, specifically, to the criterion that merchandise be shipped directly to the

¹⁶ See *Final Determination*, and accompanying IDM at 23-35.

¹⁷ See *Remand Order* at 15.

¹⁸ *Id.* at 21-22.

¹⁹ See "*Jiangsu Zhongji Lamination Materials Co., Ltd., et al. v. United States*, Consol. Court No. 18-00089, Slip Op. 19-122 (CIT September 18, 2019): Draft Results of Redetermination Pursuant to Court Order," released to parties on December 26, 2019 (Draft Redetermination).

²⁰ See Zhongji's Letter, "Certain Aluminum Foil from the People's Republic of China: Comments of Jiangsu Zhongji Lamination Materials Co., Ltd. et al. on Draft Results of Redetermination Pursuant to Court Order (Ct. No. 18-00089)," dated January 6, 2020 (Zhongji's January 6, 2020 Comments).

United States. The Court also held that Commerce did not adequately explain how the six criteria are all relevant to the facts of this case and how those that are relevant are not satisfied. Further, the Court held Commerce did not explain why the adjustment of the sales value in the subsidy calculation must be limited to sales that ultimately reach U.S. customers when the subsidy benefits are allocated across all sales.²¹

At the outset, Commerce notes that the EVA is not required under U.S. law or regulation. Rather, Commerce's regulations provide that Commerce normally calculates the subsidy rate by dividing the total benefit by the respondent's total sales value on an FOB basis (FOB (port) for exports and FOB (factory) for domestic sales).²² As the Court noted, starting in *Ball Bearings from Thailand*,²³ Commerce adjusted a respondent's subsidy rate to account for a mark-up on merchandise sold by the respondent's affiliate. Commerce stated in *Ball Bearings from Thailand* that, because the methodology was based on a one-to-one invoice tracking system for U.S. shipments, the petitioners' concerns that the adjustment would skew the allocation of subsidies to different countries were misplaced.²⁴ Commerce also explained that the respondent's accounting system was set up to track the markup for each individual shipment of subject merchandise.²⁵ To calculate the adjustment, Commerce multiplied the subsidy rate by a ratio of the export value of subject merchandise before the inter-company transaction (before mark-up) to the export value of subject merchandise as it entered the United States (after the markup).²⁶

²¹ See *Remand Order* at 13-15.

²² 19 C.F.R. 351.525.

²³ See *Ball Bearings and Parts Thereof from Thailand; Final Results of Countervailing Duty Administrative Review*, 57 FR 26646 (June 15, 1992) (*Ball Bearings from Thailand*).

²⁴ *Id.* at 26647.

²⁵ *Id.*

²⁶ *Id.*

Since then, the adjustment has been granted in a limited number of cases. Companies could qualify for the adjustment if they met all six criteria described in the background section, above. Over time, the calculation methodology for the EVA was altered in certain cases.²⁷ In the *Preliminary Determination* of the instant proceeding, rather than multiplying the subsidy rate by the mark-up ratio on U.S. sales, an adjustment was made to the denominator of the subsidy rate calculation by subtracting the sales value of intercompany sales destined for export (before mark-up) and then adding back in the sales value of exports (after mark-up).

In its *Remand Order*, the Court noted that Commerce did not adequately explain how the six criteria are all relevant to the facts of this case and how those that are relevant are not satisfied.²⁸ Moreover, Commerce did not explain why the adjustment of the sales value in the subsidy calculation must be limited to sales that ultimately reach U.S. customers when the subsidy benefits are allocated over all sales.²⁹

Commerce agrees with the Court that, since we made an adjustment to all of Zhongji's export sales in the *Preliminary Determination*, it is not clear why Zhongji's failure to identify its U.S. sales is grounds for denying the adjustment.

The EVA was intended to address a very narrow and relatively straightforward U.S. Customs collection problem. It was not intended to change our subsidy valuation and attribution, the methodology for which is well established by our regulations and practice. As the Court noted, the methodology that we employed to calculate the value of the adjustment in the *Preliminary Determination* affected the subsidy rate. Because the EVA intends to address a U.S.

²⁷ See, e.g., *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 59212 (September 27, 2010), and accompanying Issues and Decision Memorandum at Comment 32; *Multilayered Wood Flooring from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 64313 (October 18, 2011), and accompanying Issues and Decision Memorandum at 8.

²⁸ See *Remand Order* at 14.

²⁹ *Id.*

Customs collection problem, any adjustment to the cash deposit or assessment rate should be limited to the mark-up that is experienced on sales that enter the United States. Thus, the way that we made the adjustment in the *Preliminary Determination* was incorrect, as any adjustment should have properly been focused on Zhongji's mark-up to its U.S. sales.

The six criteria were developed to ensure all U.S. sales were marked-up because, as a U.S. Customs collection issue, the actual entry-value of the sales establishes the adjustment. The mark-up that may or may not occur on third-country sales is not relevant to the adjustment because, as the Court recognizes, “{w}hat matters . . . is the point at which Customs assesses a countervailing duty and the accuracy of the sales value, reflected on the relevant entry forms, on which Customs computes that duty.”³⁰ CBP does not assess CVDs on third-country sales, nor does CBP have entry forms for such sales. An EVA is unnecessary for those sales because CBP is not collecting CVDs, and therefore cannot “over collect” CVDs on those sales. Thus, the proper identification of U.S. sales is important so that the EVA can be focused on the issue it is intended to address, *i.e.*, the collection of duties on entered values of entries into the United States. If Commerce is unable to verify that the respondent correctly reported its U.S. sales values before and after the mark-up, then it cannot be certain that the EVA is limited to the markup experienced on U.S. entries.

Regarding the Court's statement that Commerce did not “explain why the adjustment of the sales value in the subsidy calculation must be limited to sales that ultimately reach U.S. customers when the subsidy benefits are allocated over all sales,”³¹ we emphasize that Commerce normally calculates the subsidy rate by dividing the total benefit by the respondent's total sales value on an FOB basis.³² Therefore, Commerce does not adjust for every mark-up or mark-down that occurs

³⁰ *Remand Order* at 13.

³¹ *Remand Order* at 14.

³² 19 C.F.R. 351.525.

on merchandise before it reaches its end-user. Rather, Commerce only makes an EVA to address a specific overcollection concern, and that concern only exists for merchandise on which CBP assesses CVDs (*i.e.*, merchandise that enters the United States).

At verification, Zhongji was asked to compile a list of U.S. sales for Commerce to verify the value of the mark-up and to verify that every U.S. sale was marked-up. However, as explained above, Zhongji failed to correctly identify its U.S. sales. It was this failure that was the basis for Commerce's denial of the EVA in the Draft Redetermination. Because Zhongji was unable to reliably identify its U.S. sales, it could not correctly report the sales value of subject merchandise that entered the United States.

As addressed below, Zhongji submitted comments asserting that: (1) Commerce misunderstood the information being presented at verification; and (2) Zhongji was not afforded an opportunity to address its failures because it was not provided notice that Commerce intended to reconsider its EVA methodology for the *Final Determination*. We disagree with Zhongji's characterization of the verification findings; however, it may be that Zhongji misunderstood Commerce's requests for information made at verification because Commerce had not stated an intent to reconsider the EVA methodology. Given these circumstances, we have concluded that it is appropriate to grant Zhongji's requested EVA in this final redetermination.

EBCP Program

The Court directed Commerce to contemplate a solution to the impasse for finding non-use of the EBCP and to confer with parties.³³ Based on the Court's directive, on November 7, 2019, Commerce issued a letter to Zhongji and the petitioner seeking input from the parties in contemplation of a solution to the impasse identified by the Court.³⁴ In the letter, Commerce

³³ *Remand Order* at 21-22.

³⁴ See Commerce's Letter, "Countervailing Duty Investigation of Certain Aluminum Foil from the Republic of China: Request for Comment," dated November 7, 2019.

identified obstacles to conducting a meaningful verification of the non-use certificates, including: (1) no complete list of partner or correspondent banks of the China Ex-Im Bank or alternative information to demonstrate why such a list is unnecessary; (2) no sample paper trail indicating the flow of paperwork from the China Ex-Im Bank to a U.S. customer through an intermediate bank to illustrate the indicia that Commerce should look for in attempting to determine whether a loan is traceable to the China Ex-Im Bank; and (3) the lack of other available information that would allow Commerce to isolate the loans that might be tied to China Ex-Im Bank financing. On November 25, 2019, Zhongji submitted its comments to Commerce.³⁵

In its comments, Zhongji argued that because Commerce has previously relied on non-use certifications, it must do so here.³⁶ Zhongji also asserted that Commerce's insistence that it must understand the program's operation in order to verify is incorrect, and Commerce's application of adverse facts available (AFA) to Zhongji imposes collateral consequence on a cooperating party.³⁷ Additionally, Zhongji proposed three questions that Commerce could ask the GOC to find a path forward to verification: (1) is the exporter required to open a bank account with the China Ex-Im Bank to receive payment after the bank confirms shipment of the exporter's goods; (2) does the China Ex-Im Bank require intermediary banks to be located in China; and (3) has the China Ex-Im Bank ever issued a credit to a U.S. customer? Zhongji also suggested the following five questions that Commerce should issue to Zhongji's customers relating to the customer's loans and lenders, the answers to which Zhongji proposed Commerce should verify:³⁸

1. If you applied for a credit or loan, would you retain relevant application documents that would indicate the lender(s), bank(s) and any other parties to the agreement?

³⁵ See Zhongji's Letter, "Countervailing Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Response to Request for Comment on Remand," dated November 25, 2019 (Zhongji's EBCP Comments).

³⁶ See Zhongji's EBCP Comments at 2-4.

³⁷ *Id.* at 4-9.

³⁸ *Id.* at 9-14.

2. Does your accounting system have an account where credits and loans would be booked, separate from payments from your customers?
3. If your answer to question 1 and/or 2 is “yes,” did you review your information to determine whether your company received credits or loans originating with the EBCP program during the covered period?
4. If your answer to question 1 and/or 2 is “yes,” please provide us a list of the lenders who provided your company with loans or credits during the covered period?
5. Please describe in detail the methods your company took to verify that it did not receive credits or loans originating with the EBCP program during the covered period.

Lastly, Zhongji argued that, if Commerce declines to verify, it must rely on information on the record establishing non-use of the EBCP.³⁹

Commerce has considered Zhongji’s comments but finds that Zhongji’s proposed questions do not remedy Commerce’s concerns regarding its inability to verify statements of non-use by Zhongji and its customers. As an initial matter, Zhongji suggests asking the GOC a series of additional questions. However, the GOC has already demonstrated that it is non-cooperative in this investigation by selectively refusing to provide responses and documentation requested by Commerce concerning the EBCP. Commerce explained the GOC’s failure to provide requested information,⁴⁰ and that the GOC failed to cooperate in that regard is not in dispute. Giving non-cooperative parties additional opportunities to supply information they have previously refused to provide, beyond the requirements of section 782(d) of the Tariff Act of 1930, as amended (the Act), would undermine our ability to induce timely cooperation and to obtain timely responses to our questionnaires. Therefore, additional follow-up questions to the GOC would be

³⁹ *Id* at 14-17.

⁴⁰ *See* IDM at 31-32.

inappropriate.

In any event, with respect to the first of Zhongji's proposed questions to the GOC, whether the exporter is required to open a bank account in the China Ex-Im Bank, this information is already on the record of the investigation. The GOC's June 12, 2017 Initial Questionnaire Response (June 2017 IQR) states: "According to the Ex-Im Bank, in order to make a disbursement, the Ex-Im Bank lending contract requires the buyer (importer) and seller (exporter) to open accounts with either the Ex-Im Bank or one of its partner banks. While these accounts are typically opened at the Ex-Im Bank, sometimes a customer prefers another bank (*e.g.*, the Bank of China) which is more accessible than an account with the Ex-Im Bank."⁴¹ Therefore, we already have record evidence that the exporter could have an open account with either the China Ex-Im Bank or some unknown partner bank to participate in this program. Although this provides some evidence regarding the operation of the program, Commerce sought additional information from the GOC which would allow Commerce to limit or identify the universe of third-party banks that may be involved in the program, and the GOC refused to respond.⁴² Without this additional information, Commerce is unable to craft a reliable plan to verify statements of non-use.

With regard to Zhongji's second question, whether partner banks are required to be located in China, the GOC's June 2017 IQR provides an answer: *The Detailed Implementation Rules Governing Export Buyers' Credit of the Export-Import Bank of China* state that the export buyers' credit can be undertaken under an "export buyers' credit master protocol" signed by the China Ex-

⁴¹ See June 2017 IQR at Exhibit A3-3, numbered page 4.

⁴² *Id.* at 18. The GOC responded to our request for partner banks in its June 2017 IQR that the request was "not applicable, none of the U.S. customers of Zhongji or its reported affiliated companies used the alleged program during the POI." In a supplemental questionnaire, we asked that the GOC provide complete questionnaire responses for all programs under investigation, regardless of whether respondent companies state that they did not utilize certain programs through the average useful life period and the period of investigation. In response, the GOC stated that Commerce's request for information was unjustifiable broad and that it had already provided a full response to the extent it was necessary to all the alleged programs in this investigation. See GOC's Letter, "Certain Aluminum Foil from China; CVD Investigation; GOC First Supplemental Response," dated July 5, 2017, at 1-4.

Im Bank and a **bank of the importing country**, and payments can be made by dispatching documents to the **foreign** issuing bank.⁴³ Thus, we already have record evidence indicating that partner banks could be foreign banks. Again, as noted above, although this provides some evidence regarding the operation of the program, because of the GOC's non-cooperation and without additional information to limit the universe of potential third-party banks, Commerce is unable to verify the statements of non-use.

Finally, regarding Zhongji's last proposed question to the GOC, as to whether the China Ex-Im Bank has ever issued a credit to a U.S. customer, any answer to this question would not resolve the issues related to Commerce's ability to verify program use. Furthermore, as noted above, given the GOC's demonstrated non-cooperation, we do not believe asking additional questions of the GOC would be appropriate. Therefore, Commerce does not find that Zhongji's proposed questions to the GOC provide a solution to the current impasse.

Zhongji also suggested that Commerce issue a questionnaire to Zhongji's customers to solicit information about its customers' loans, and then verify the program by reconciling each customer's loans to its financial statements and spot-checking loans. Although the list of questions Zhongji proposes appear relevant to any attempt to verify the EBCP, without additional information regarding the operation of the program from the GOC, verification of the customers' responses would be incomplete. For example, simply having a list of the banks/lenders providing loans to the customers during the POI would not tell us anything about whether those banks/lenders or corresponding loans were related to or involved in the ECBP. As discussed above, based on the available record information, the China Ex-Im Bank operates the program through partner banks, which could be any third-party foreign banks. Without any information

⁴³ See June 2017 IQR at Exhibit A3-4, numbered page 2.

from the GOC which would allow Commerce to limit the universe of banks, or which could help Commerce isolate loans that might be tied to China Ex-Im Bank financing, Commerce is unable to determine how it should focus its attention at verification. For example, without information on the universe of banks, Commerce could not rely on the typical verification step of examining the company's subledgers for references to the party making the financial contribution, nor could Commerce narrow its focus to sub-sets of loans based on correspondent banks. Moreover, as noted above, the EBCP could also operate through an umbrella agreement (master protocol), that is implemented by the China Ex-Im Bank and a bank in the importing country. Without a sample paper trail indicating the flow of paperwork from the China Ex-Im Bank to a U.S. customer through an intermediate bank, it is unclear to Commerce what it should look for in attempting to determine whether a loan is traceable to the China Ex-Im Bank. In short, without additional information about the operation of the program, the entities that participate in the program, and the kind of paper trail that is generated by the program, Commerce's verification of a U.S. customer would be futile.

Finally, Zhongji's suggestion that Commerce should verify its customer declarations ignores the fact that its declarations do not cover all of its U.S. sales.⁴⁴ Completeness is fundamental to our verification of program use. Therefore, even verifying the existing customer declarations would be insufficient to establish non-use for all customers. Because the information is incomplete, Zhongji's claimed non-use of the EBCP is unverifiable.

For reasons already explained at length to the Court, Commerce does not believe that verification under the circumstances would be productive. It is Commerce's position that we could only accurately verify the program with the cooperation of the GOC. However, given the

⁴⁴ See Zhongji's EBCP Comments at 17.

instant and prior court-ordered remands of this issue, we are accepting Zhongji's and its customers claims of non-use of the EBCP, under respectful protest.⁴⁵ We will lower the CVD cash deposit rate for Zhongji by 10.54 percentage points, which is the program rate that was applied in the *Final Determination*.

COMMENTS ON THE DRAFT RESULTS OF REDETERMINATION

Comment 1: Zhongji's EVA Request

*Zhongji's January 6, 2020 Comments*⁴⁶

- Commerce fails to address the potential for overcollection of duties that the Court recognized is present when a “mark-up creates a mismatch between the previously calculated subsidy rate and the final invoiced price to which the subsidy rate is applied” and “thus skews the subsidies attributed to the merchandise by an amount equal to the percentage of the mark-up.”⁴⁷
- Commerce unreasonably denies Zhongji's EVA on the basis of unsubstantiated errors in Zhongji's reported U.S. sales value.⁴⁸
- Commerce may grant an EVA where a respondent sells to multiple export destinations.⁴⁹
- Commerce's Draft Results introduce a new EVA methodology that requires re-opening the record.⁵⁰
- Commerce was wrong to verify U.S. sales based on U.S. customer name.⁵¹

Commerce's Position:

With respect to Zhongji's comment, we have fully complied with the Court's *Remand Order* to address why information uncovered at verification supports its finding that Zhongji's request for an EVA is unsupported.

We disagree with Zhongji's characterization of errors attributable to faulty assumptions made by Commerce verifiers. However, we concede that Zhongji was not provided notice that Commerce intended to reconsider its EVA methodology for the *Final Determination*. Because it

⁴⁵ See *Viraj*, 343 F.3d 1371.

⁴⁶ Zhongji's January 6, 2020 Comments at 1.

⁴⁷ *Id.* at 1-3.

⁴⁸ *Id.* at 2-5.

⁴⁹ *Id.* at 5-8.

⁵⁰ *Id.* at 8-11.

⁵¹ *Id.* at 11-13.

was not afforded this opportunity, it may be that Zhongji misunderstood Commerce's requests for information made at verification. Given these circumstances, we have concluded that it is appropriate to grant Zhongji's requested EVA. With this final redetermination, we provide parties to this proceeding notice that Commerce intends to re-evaluate its EVA methodology, as well as the circumstances under which an EVA may be granted, in a future segment of this aluminum foil proceeding.

Comment 2: Commerce's Removal of the EBCP CVD Rate

*Zhongji's January 6, 2020 Comments*⁵²

- Although it disagrees with Commerce's position concerning the EBCP, Zhongji agrees to Commerce's removal of the EBCP rate from the subsidy calculation.

Commerce's Position:

As explained above, although we disagree with the Court's understanding of this issue, we are accepting Zhongji's claim of non-use of the EBCP, under respectful protest.

Final Results of Redetermination

For the foregoing reasons, in accordance with the *Remand Order*, Commerce has granted Zhongji's requested EVA. Further, we have removed the 10.54 percent EBCP rate from Zhongji's total subsidy rate. The revised net subsidy rate for Zhongji is 6.46 percent.

1/27/2020

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Signed by: JEFFREY KESSLER
Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

⁵² Zhongji's January 6, 2020 Comments at 13.