

PT Zinus Global Indonesia and Brooklyn Bedding, LLC, Corsicana Mattress Company, Elite Comfort Solutions, FXI, Inc., Innocor, Inc., Kolcraft Enterprises Inc., Leggett & Platt, Incorporated, International Brotherhood of Teamsters, and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO v. United States
Consol. Court No. 21-00277, Slip Op. 23-39 (CIT March 20, 2023)
Mattresses from Indonesia

**FINAL RESULTS OF REDETERMINATION
PURSUANT TO COURT REMAND**

I. SUMMARY

The U.S. Department of Commerce (Commerce) prepared these final results of redetermination pursuant to the remand order of the U.S. Court of International Trade (the Court) in *PT Zinus Global Indonesia and Brooklyn Bedding, LLC, Corsicana Mattress Company, Elite Comfort Solutions, FXI, Inc., Innocor, Inc., Kolcraft Enterprises Inc., Leggett & Platt, Incorporated, International Brotherhood of Teamsters, and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO v. United States*, Consol. Court No. 21-00277, Slip Op. 23-39 (CIT March 20, 2023) (*Remand Order*). These final results of redetermination concern the final determination in the less-than-fair-value investigation of mattresses from Indonesia.¹

In the *Remand Order*, the Court remanded, in part, Commerce's *Final Determination* to reconsider or further address the following issues:

¹ See *Mattresses from Indonesia: Final Affirmative Determination of Sales at Less Than Fair Value*, 86 FR 15899 (March 25, 2021) (*Final Determination*), and accompanying Issues and Decision Memorandum (IDM).

- (1) Commerce failed to provide sufficient explanation or citations to record evidence to support its inclusion of mattresses in transit in the calculation of constructed export price (CEP).²
- (2) Commerce did not provide an explanation or cite to record evidence to support its determination that Zinus Korea had a limited role as an invoicing party in Zinus U.S.'s sales process. In addition, Commerce did not address the petitioners'³ arguments on the application of the Korean version International Financial Reporting Standards (K-IFRS) to Zinus Korea's selling expenses and it is unclear how Commerce accounted for costs considered to be commissions and fees in Zinus Korea's reporting.⁴
- (3) Commerce needs to provide further explanation or reconsider whether its selection of Indonesian data constituted a reasonable method to confirm that the affiliated input prices reflect arm's-length transactions under section 773(f)(2) of the Tariff Act of 1930, as amended (the Act).⁵

On April 28, 2023, we released the Draft Remand Results to interested parties for comment.⁶ On May 9, 2023, we received comments from the petitioners and PT Zinus Global Indonesia (Zinus).⁷

² See *Remand Order* at 23.

³ Brooklyn Bedding, LLC, Corsicana Mattress Company, Elite Comfort Solutions, FXI, Inc., Innocor, Inc., Kolcraft Enterprises Inc., Leggett & Platt, Incorporated, International Brotherhood of Teamsters, and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO (collectively, the petitioners).

⁴ See *Remand Order* at 63.

⁵ *Id.* at 69-71.

⁶ See Draft Results of Remand Redetermination, *Ellwood City Forge Co., Ellwood National Steel Co., Ellwood Quality Steels Co., and A. Finkl & Sons v. United States*, Consolidated Court No. 21-00077 (CIT November 8, 2022), dated January 31, 2023 (Draft Remand Results).

⁷ See Petitioners' Letter, "Mattress Petitioners' Comments on Commerce's Draft Results of Redetermination Pursuant to Court Remand," dated May 9, 2023 (Petitioners' Comments); and Zinus' Letter, "Zinus' Comments on the Department's Draft Remand Results," dated May 9, 2023 (Zinus' Comments).

Issue 1: Mattresses In Transit

Background

Commerce included in its analysis Zinus mattresses of Indonesian origin that were purchased by Zinus U.S. during the period of investigation (POI) January 1, 2019, through December 31, 2019, but had not been imported, because the record showed that Zinus U.S. made more CEP sales of subject mattresses “out of inventory” during the POI than were actually contained in the warehouse, indicating that some mattresses in transit to the United States were sold during the POI.

Analysis

The Court remanded to Commerce for further consideration and explanation of its determination to include mattresses in transit in the calculation of CEP. Although PT Zinus Global Indonesia (Zinus Indonesia) argues that Commerce should exclude mattresses that it purchased because they had not yet been imported into the United States and were not yet physically in inventory, there is no requirement that a product be imported and actually physically in inventory in the warehouse before it is considered to be “in inventory” to be sold and included in a CEP sales database. Section 772(b) of the Act defines a CEP sale as a sale to an unaffiliated party, “*before or after importation*” (emphasis added). The record facts demonstrate that Zinus U.S. actually sold more mattresses of the type that are subject merchandise than they had in inventory during the POI.⁸ This means that Zinus U.S. must have been treating the in-transit mattresses at issue as “in inventory,” and available for sale. Indeed, Zinus U.S. actually sold some of the in-transit mattresses because Zinus U.S. had more sales of

⁸ See Zinus Indonesia’s Letters, “Zinus’ Section C Questionnaire Response, dated July 14, 2020 (CQR), at Exhibit C-2b (C.R. 97); and “Zinus’ Section A Supplemental Questionnaire Response, dated August 20, 2020 (SAQR), at Exhibit SA-5 (C.R. 154).

the relevant mattress than were in physical inventory during the POI. Zinus U.S. treated them as “subject merchandise in inventory for sale” even though they had not yet been imported. As a result, including the sales of in-transit mattresses in the calculation of CEP as if they were in inventory is reasonable and consistent with Zinus U.S.’s actual treatment of the sales and the statutory definition of a CEP sale.

Moreover, Zinus U.S. made other types of CEP sales other than those “from inventory” that were shipped directly from Zinus Indonesia to the customer, and never entered a warehouse.⁹ These sales were included in Commerce’s calculations as CEP sales even though the mattresses were imported after sale to the unaffiliated customer. It would be internally inconsistent for Commerce to treat the in-transit, “in inventory” mattresses different from the in-transit, “direct shipment to the customer” mattresses. As a result, Commerce has continued to include in the calculation of CEP, the mattresses in transit that Zinus Indonesia owned but had not yet imported into the United States nor entered into its warehouse.

*Zinus’ Comments:*¹⁰

- Commerce’s explanation in the Draft Remand Results continues to fail to address the actual issue Zinus raised on appeal, the court’s *Remand Order*, or the substantial record evidence that belies Commerce’s explanation.
- The question before the Court is whether Commerce’s decision to include certain mattresses in transit in its quarterly ratio calculation was reasonable and supported by substantial evidence.
- While Commerce declined to use Zinus’ first in first out (FIFO) methodology, the issue remained that Commerce needed to apportion some of the sales from U.S. inventory to Indonesia, while excluding others as non-subject.
- By definition, the relevant universe of sales at issue were those physically held in U.S. inventory and available for sale out of inventory to unaffiliated U.S. customers; merchandise in transit was not even available for sale, much less sold, to unaffiliated customers during the POI.
- Moreover, there is no question as to the country of origin of products in transit from Indonesia directly to the United States, and therefore the quantity of merchandise in

⁹ See CQR at Exhibit C-2B.

¹⁰ See Zinus’ Comments at 3-16.

transit from Indonesia should never be included in the quarterly ratio calculation, given its indisputable country of origin.

- Commerce speculates, without evidence, that Zinus U.S. sold some of the in-transit mattresses, appearing to suggest that some of the merchandise that was still enroute to the United States was actually sold out of inventory before it arrived in the United States, let alone before it arrived in inventory.
- The underlying logic for Commerce’s speculation is that some of the mattresses that were being shipped to Zinus U.S., and had not yet entered the United States, could somehow have been among the sales reported in the U.S. sales databases.
- However, with respect to CEP inventory sales, Zinus included in the U.S. sales databases only those sales that were invoiced or shipped from the U.S. warehouse during the POI, in accordance with Commerce’s standard reporting requirements.
- Commerce need not speculate whether mattresses that were still on the water at the end of 2019 may have already been invoiced; they could not have been, as demonstrated by (1) the sales reconciliation materials that show all POI invoices were captured in the reporting; and (2) the sales databases that show that all pertinent sales were shipped out of the U.S. warehouse prior to that date.
- The only exhibits that Commerce cites to do not support its provided justification for concluding that that there must have been some sales of mattresses from inventory that were in transit. Neither of these exhibits includes the total number of mattresses held in Zinus’ U.S. warehouse.
- Furthermore, neither of these exhibits address inventory already held at the beginning of the POI, which must be considered prior to drawing any conclusion regarding the accuracy of the sales quantities sold and reported by Zinus.
- Commerce speculates, without evidence, that Zinus U.S. must have been treating the in-transit merchandise as inventory, because it reported more sales during the POI than existed in inventory. However, Commerce is conflating the different reporting requirements for the different sales channels.
- Because all of the reportable U.S. inventory sales were shipped out of U.S. inventory within the POI, the merchandise in transit necessarily had not been invoiced, could not have dates of sale in the POI, and were simply non-reportable products that had not been sold to an unaffiliated U.S. customer.
- Commerce’s explanation also ignores the accounting treatment of Zinus’ CEP inventory sales and shipments. If Zinus U.S. had sold the product, it would no longer be classified as either merchandise in transit or finished goods inventory – it would be sold merchandise and classified as such.
- Commerce should use quarterly ratios exclusive of merchandise that had not yet entered the United States, or simply use the FIFO reporting that Zinus originally reported.

*Petitioners’ Comments:*¹¹

- The petitioners agree with Commerce’s explanation of its decision to continue relying on sales of in-transit mattresses as subject merchandise available for sale for the purposes of

¹¹ See Petitioners’ Comments at 2.

its quarterly ratios methodology.

Commerce's Position:

The data included in the AQR and the CQR responses clearly indicate that certain models of subject mattresses in transit should be included in the quarterly ratio calculation given that the quantity of mattresses with subject merchandise model numbers that Zinus purchased for inventory during the POI (*i.e.*, [***]) is less than the quantity of subject merchandise mattresses Zinus sold from inventory during the POI (*i.e.*, [***]).¹² To calculate the [***] figure, we relied on Zinus' own data presented in Exhibit SA-5.¹³ We included in our calculation only the purchased quantities for specific mattress model numbers that Zinus reported could have been purchased from either Indonesia, China, [***], as reflected in Exhibit SA-5. *See* Remand Attachment 1, which demonstrates how we derived the quantity of [***] mattresses purchased for inventory during the POI. In comparing this quantity to the quantity of mattresses Zinus sold out of inventory during the POI (*i.e.*, [***]) as reflected in Exhibit C-2b, we observed that, according to Zinus' own reported data, the purchased quantity in inventory was less than the quantity Zinus reported that it sold out of inventory during the POI.¹⁴ Therefore, we reasonably concluded that the difference could only be accounted for by the mattresses in transit. According to Zinus' own reporting, these mattresses were sold during the POI. Therefore, they should be included in the quarterly ratio calculation.

Zinus argues that Commerce is speculating in making this decision, but that is not true - Commerce is not speculating. Zinus' own data demonstrate that it sold more of the relevant mattresses from its warehouse than were contained in its warehouse during the POI.

¹² *See* SAQR at Exhibit SA-5; and CQR at Exhibit C-2b.

¹³ *See* SAQR at Exhibit SA-5.

¹⁴ *See* CQR at Exhibit C-2b.

Zinus argues that mattresses in transit were not available for sale. However, they must have been available for sale because Zinus sold more of the relevant mattresses than it had in its warehouse during the POI.

Zinus argues that the record shows that the in-transit mattresses' country of origin was known, and because those mattresses were not invoiced, Commerce should not have included those mattresses in its quarterly ratio calculation. Zinus claims that it reported all sales that were invoiced and shipped from the warehouse during the POI, and those sales did not include the in-transit mattresses.

Commerce does not find Zinus' argument in this regard to support its contentions. Whether the in-transit mattresses originated in Indonesia is irrelevant because the record shows that Zinus sold more of the relevant types of mattresses during the POI than it had in its warehouse during the POI. Zinus has provided no evidence that it had sufficient mattresses in inventory to satisfy the number of the relevant types of mattresses sold during the POI. Accordingly, we conclude that it is reasonable to presume that some of the mattresses that were invoiced during the POI must have been shipped and were destined for the U.S. warehouse during the POI because, again, Zinus' reported data show more sales than the number of the relevant mattresses in inventory during the POI.

Zinus argues that the sales reconciliation and all pertinent sales were shipped prior to the end of the POI, demonstrating that the in-transit mattresses could not have been "invoiced." That argument is not correct. Zinus' own data established that it sold more of the relevant mattresses during the POI than it had in inventory. Therefore, whether or not invoiced, Zinus made such U.S. sales during the POI that must be included in the calculations.

Zinus argues that Commerce's calculations are wrong because they do not include the

total mattresses in inventory. First, we are concerned here only with the mattresses that meet the definition of the scope of the investigation, regardless of country of origin, not the mattresses that do not meet the scope definition. Because Zinus' total quantity of mattresses in Exhibit SA-5 includes mattresses that do not meet the scope definition, those out-of-scope mattresses would not be considered in our analysis.¹⁵ Second, Zinus has cited no record data to show that there was inventory of relevant mattresses that were not accounted for by Commerce's calculation. Therefore, the record does not support a finding that the difference at issue is accounted for by mattresses allegedly already in inventory at the beginning of the POI.

Zinus argues that Commerce is improperly combining sales across sales channels. Zinus is incorrect. Commerce only included in its CEP inventory analysis the mattresses in the warehouse and in transit to the warehouse. Commerce did not include in its CEP inventory analysis any mattresses for direct sales or back-to-back CEP sales, as reflected in Zinus' own data to which Commerce cites as the basis for its CEP inventory sales analysis. Specifically, the [***] figure from Section 4.1 (CEP Inventory Sales) in Exhibit C-2b is identified by Zinus as the number of relevant in-scope mattresses sold from inventory.¹⁶ As mentioned above, the [***] figure is calculated from Zinus' own data reported in Exhibit SA-5 and identified as the "mattresses Zinus US purchased for its inventory during the POI" on page 8 of the August 20, 2020, Section A Supplemental Questionnaire Response.¹⁷ Furthermore, we note that there was no inventory of Indonesian-origin mattresses at the beginning of the POI because the record

¹⁵ See SAQR at Exhibit SA-5.

¹⁶ See CQR at Exhibit C-2b.

¹⁷ See Zinus' Letter, "Zinus' Section A Questionnaire Response," dated June 19, 2020, (AQR) at 8.

shows that Zinus Indonesia did not start producing mattresses for commercial sale until after the beginning of the POI.¹⁸

Issue 2: Zinus Korea's Selling Expenses

Background

In the *Final Determination*, consistent with long-standing practice, Commerce included in the margin calculation the expenses Zinus Korea actually incurred to sell the subject merchandise as an affiliated selling agent of Zinus Indonesia.¹⁹ Commerce found that the record evidence demonstrated that Zinus Indonesia's reporting of Zinus Korea's selling expenses was consistent with Zinus Korea's limited role in selling the Indonesian mattresses to the United States.²⁰

Analysis

The Court remanded this issue to Commerce for further consideration of record evidence or explanation regarding the extent of Zinus Korea's involvement in the sale of subject mattresses and to address the petitioners' arguments in the *Final Determination* regarding the treatment of such selling expenses under K-IFRS, as well as how Commerce accounted for costs considered commissions and fees in Zinus Korea's reporting.

Zinus Indonesia reported that, during the POI, Zinus Korea's involvement in the sale of subject merchandise was limited to document and invoice management, *i.e.*, receiving invoices from Zinus Indonesia and forwarding them to affiliated and unaffiliated U.S. customers, as even Zinus Korea's invoices were generated by Zinus Indonesia as part of Zinus Indonesia's

¹⁸ See SAQR at 3.

¹⁹ See *Final Determination* IDM at 32-33. These expenses consisted of advertising expenses, rebates, and bank charges.

²⁰ *Id.* at 32.

operations and sales process.²¹ Further, the respondent reported that, although Zinus Korea's name appears on some of the sample sales documents provided in the questionnaire response, *i.e.*, the purchase order from the customer to Zinus Inc. (Korea) and the invoice and packing list from Zinus Inc. (Korea) to the customer, Zinus Korea's invoices were prepared and generated by Zinus Indonesia and simply issued under the name of Zinus Korea.²² Sample email correspondence between Zinus Indonesia and Zinus Korea shows that Zinus Indonesia provided Zinus Indonesia's invoice to Zinus Korea and Zinus Korea's invoice to its U.S. customer at the same time, demonstrating that Zinus Indonesia was the entity performing order input/processing.²³

That Zinus Korea's role in the sales process is minimal is further supported by information presented in section A of the questionnaire response regarding level of trade, *i.e.*, the selling functions chart and supporting documentation.²⁴ Zinus Indonesia reported that for two out of the three U.S. sales channels through which it sold subject merchandise during the POI, *i.e.*, CEP sales from inventory and back-to-back CEP sales, Zinus Korea was involved in only one selling activity (*i.e.*, order input/processing), which it performed to a minor degree.²⁵ With respect to export price sales, Zinus Korea was involved in three selling activities (*i.e.*, sales promotion, order input/processing, and warranty servicing) at similarly low levels of intensity.²⁶

Furthermore, Zinus Indonesia provided documentation to demonstrate that it, rather than Zinus Korea, was responsible for other selling activities listed in the selling functions chart. For the provision of logistical and training services, Zinus Indonesia provided support for its

²¹ See AQR, at A-15.

²² See SAQR at 9-10.

²³ *Id.* at 9.

²⁴ See AQR at Exhibit A-7a.

²⁵ *Id.*

²⁶ *Id.*

assertion that it alone was responsible for these functions. Specifically, for both Inbound and Outbound Logistics Management, Zinus Indonesia provided source documentation indicating that it is the party responsible for making these freight arrangements, including payment for these services.²⁷ Likewise, Zinus Indonesia provided support documentation for an example of the type of personnel training in which Zinus Indonesia participated with respect to one of its major customers.²⁸ Regarding sales support, Zinus Indonesia provided an example of a weekly forecast report prepared by the sales and demand planning teams.²⁹ For sales-related administrative activities, Zinus Indonesia submitted a purchase order received from its customer.³⁰ For technical support, Zinus Indonesia provided an email exchange with one of its customers regarding the transmission of a purchase order between Zinus U.S.'s Enterprise Resource Planning (*i.e.*, ERP) system and the customer's system.³¹ Thus, Zinus Indonesia confirmed that Zinus Korea had no involvement in these selling activities.

Regarding the petitioners' arguments concerning potentially contrary evidence on the record showing that Zinus Korea engaged in more significant selling activities than the preparation of invoices, the petitioners do not explain the relevance of its observation that Zinus Indonesia and Zinus Korea share a common senior official. Similarly, the facts that Zinus Korea lists its activities as "Sale *{sic}* and Marketing"³² and the parent company and its wholly/majority owned subsidiaries coordinated with one another to manage global manufacturing, operational, and sales activities are not at all specific to sales of mattresses to the United States or indicative of Zinus Korea's role in such sales. Zinus Korea reported all sales

²⁷ See SAQR at 10; *see also* CQR at Exhibits C-16 and C-17.

²⁸ See SAQR at Exhibit SA-6b.

²⁹ See AQR at Exhibit A-7b.

³⁰ *Id.*

³¹ *Id.*

³² See AQR at Exhibit A-4.

expenses associated with U.S. sales and all relevant general and administrative (G&A) expenses (e.g., salary expenses) as requested by Commerce.

With respect to the petitioners' argument that it is unclear how Commerce accounted for costs considered to be "commissions and fees" according to K-IFRS, Commerce does not treat such payments as selling expenses in the margin calculation when they occur between affiliated parties, which is the case here. Payments between related parties are inherently subject to manipulation by a respondent and could distort the selling expenses and, thus, the dumping calculations.³³ That is the reason why Commerce's antidumping questionnaire requests that respondents report the actual expenses of any affiliated selling agents, e.g., salaries, electricity, rent, travel for sales purposes, *etc.*, rather than any commissions paid to those agents.³⁴ Commerce only uses actual expenses in such situations and does not include the affiliated party transfers of commissions and fees in its calculations even if the accounting rules on which the respondent relies do include them. Therefore, the fact that the K-IFRS includes such items as selling expenses does not require Commerce to treat them the same. If Commerce were to treat affiliated transfers in that manner, it would provide respondents with the ability to distort Commerce's dumping calculations.

*Petitioners' Comments:*³⁵

- Commerce's Draft Remand Results fail to cite to record evidence supporting its conclusion that all of Zinus Korea's actual expenses, and in particular its indirect selling expenses, were accurately reported and accounted for in the margin calculation.
- Similarly, Commerce fails to cite record evidence demonstrating that Zinus Indonesia, rather than Zinus Korea, was responsible for various sales activities. In

³³ See *Certain Hot-Rolled Steel Flat Products from Brazil: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 81 FR 53424 (August 12, 2016) (*Hot-Rolled Steel from Brazil*) and accompanying IDM at Comment 7.

³⁴ See *Final Determination* IDM at 32 (citing Commerce's Letter, "AD Questionnaire Issued to Zinus," dated May 14, 2020, at C-21).

³⁵ See *Petitioners' Comments* at 3-9.

- fact, many of the documents cited by Commerce compel the opposite conclusion.
- The email correspondence cited by Commerce in Exhibit SA-6a does not demonstrate that Zinus Indonesia was the sole entity involved in performing order/input processing or that all of Zinus Korea's actual expenses have been accounted for. In addition, Commerce failed to identify where on the record these expenses are reported.
 - Documentation cited by Commerce in Exhibits SA-6b and Exhibit A-7b does not prove that Zinus Indonesia staff participated in certain activities, nor does it demonstrate that Zinus Korea did not participate in certain activities.
 - It defies logic that Zinus could have an entire class of sales that it describes as Zinus Korea's sales to unaffiliated U.S. customers for which Zinus Korea staff performed no sales activities. Record evidence demonstrates that Zinus Korea staff were unambiguously involved in selling activities for such sales.
 - With respect to commissions and fees earned by Zinus Korea, Commerce has previously explained that it does not deduct commissions paid by exporters to affiliates from CEP because this would lead to double counting, as such expenses have already been captured as indirect selling expenses of the affiliate and deducted from CEP.
 - In this case, the actual indirect selling expenses incurred by the affiliated selling agent, Zinus Korea, have neither been reported nor deducted from U.S. price so there is no risk of double counting and therefore no reason to ignore affiliated commission payments.
 - Ignoring such payments between related parties puts respondents in a position to distort the dumping calculations because it allows respondents to ensure that various selling expenses incurred by a third country selling agent are not included in the margin calculation.

*Zinus' Comments:*³⁶

- Zinus Indonesia provided documentation demonstrating that during the POI Zinus Korea's role in the sales process was limited to document and invoice management.
- Zinus Korea reported all sales expenses associated with U.S. sales and all relevant G&A expenses as requested by Commerce.
- Furthermore, regardless of how the K-IFRS treats commissions and fees, Commerce does not treat such payments as selling expenses in the margin calculation when they occur between affiliated parties, as is the case here.
- Commerce only uses actual expenses in such situations and does not include the affiliated party transfers of commissions and fees, or price mark-ups, in its calculations even if the accounting rules the respondent relies on include them.
- Zinus Korea's recognition of revenue for its resales of products purchased from Zinus Indonesia and sold to the United States, either to Zinus U.S. or to an unaffiliated U.S. customer, does not make it a commissioned agent. It means that Zinus Korea earned a profit by purchasing and reselling Zinus Indonesia's product.
- The financial statements and account details provided during the investigation

³⁶ See Zinus' Comments at 16-19.

- confirm that Zinus Indonesia did not pay sales commissions.
- Commerce has consistently determined that price mark-ups between affiliates do not qualify as commissions.
 - The fact that Zinus Korea recognizes the revenue from its intra-company sales in accordance with K-IFRS does not turn its revenues into commissions nor does it turn Zinus Korea into a commissioned sales agent.
 - The text of the K-IFRS simply indicates that for purposes of financial statement presentation, when a company has back-to-back sales it should only report the profit (*i.e.*, markup) as revenue. Specifically, the company simply eliminates the purchase price from the cost of goods sold and likewise reduces the revenue by the same amount.
 - This standard accounting rule does not change Zinus Korea's sales and accounting ledgers that show that it made sales at the full invoice price.

Commerce's Position:

The petitioners argue that Commerce failed to cite record evidence demonstrating that Zinus Indonesia, rather than Zinus Korea, was responsible for various sales activities. Specifically, the petitioners maintain that certain documents cited by Commerce support the petitioners' conclusion that Zinus Korea was responsible for various sales activities. We disagree. First, the petitioners cite to Exhibit SA-6a and claim that this exhibit does not demonstrate that Zinus Indonesia was the only entity involved in performing order input/processing or that all of Zinus Korea's actual expenses have been accounted for. The petitioners' statement is pure speculation and not supported by evidence on the record. The petitioners have not identified a single record document that impugns the validity of the submitted statement. There is no record evidence indicating that the documents in this exhibit are not an accurate portrayal of the sales process. Exhibit SA-6a contains the invoices from Zinus Indonesia to Zinus Korea and from Zinus Korea to Zinus U.S., as well as an email from Zinus Indonesia to Zinus Korea forwarding the invoices.³⁷ As explained in the AQR, for all U.S. sales transactions, Zinus Korea's role is limited to document and invoice management (receiving

³⁷ See SAQR at Exhibit SA-6a.

invoices from Zinus Indonesia and forwarding invoices to affiliated/unaffiliated U.S. customers, as even Zinus Korea's invoices are generated by Zinus Indonesia as part of Zinus Indonesia's operations and sales process).³⁸

The petitioners further argue that documentation cited by Commerce in Exhibits SA-6b and Exhibit A-7b does not prove that Zinus Indonesia staff participated in certain activities, nor does it demonstrate that Zinus Korea did not. However, these exhibits pertain to training, sales and demand planning, and management of U.S. warehouse space.³⁹ According to the selling functions chart, none of these activities are performed by Zinus Korea.⁴⁰ Therefore, the selling functions chart is record evidence that Zinus Indonesia performed these activities. Zinus Korea was only involved in order input/processing during the POR, as discussed in the "Analysis" section, above. The petitioners' unsupported arguments do not overcome this record evidence.

Furthermore, the petitioners argue that it defies logic that Zinus Indonesia could have an entire class of sales, *i.e.*, export price sales, for which Zinus Korea staff performed no sales activities. This statement is contradicted by the selling functions chart which shows that Zinus Korea was involved in sales to each sales channel, *i.e.*, export price sales, back-to-back CEP sales, and CEP inventory sales – albeit very minimally – as discussed above.⁴¹ Zinus Indonesia reported, where applicable, Zinus Korea's actual expenses incurred on behalf of U.S. sales (*i.e.*, advertising, rebates, and bank charges) in its U.S. sales database.⁴² In addition, Zinus Indonesia added an allocated portion of Zinus Korea's G&A expenses (*i.e.*, salaries of key management personnel) as part of Zinus Indonesia's G&A expenses, as requested by Commerce in a

³⁸ See AQR at A-15.

³⁹ See AQR at A-7b and SAQR at Exhibit SA-6b.

⁴⁰ See AQR at Exhibit A-7a.

⁴¹ *Id.*

⁴² See Zinus' Letter, "Zinus' Section C Supplemental Questionnaire Response (part 2)," dated September 28, 2020.

supplemental questionnaire.⁴³ The petitioners have not identified any record evidence to impugn the reported expenses.

With respect to costs considered to be “commissions and fees,” the petitioners argue that ignoring such payments between related parties puts respondents in a position to distort the dumping calculations because it allows respondents to ensure that various selling expenses incurred by a third country selling agent are not included in the margin calculation. However, as explained in the Draft Remand Results, Commerce does not treat such payments between affiliated parties as selling expenses in the margin calculation because such intra-company payments are subject to manipulation by a respondent and could distort the reported selling expenses and the dumping calculations. Commerce only includes actual expenses, not amounts transferred between affiliated parties, as this ensures that we only include actual expenses and not transfers of funds above the actual expense amount between affiliates which can be manipulated depending on the intended outcome.⁴⁴ Therefore, we maintain that it was appropriate to exclude affiliated party transfer payments from the margin calculation, regardless of how such payments may be treated according to international accounting standards such as K-IFRS.

Issue 3: Transactions Disregarded Rule

Background

As discussed in the *Final Determination*,⁴⁵ Zinus Indonesia reported it obtained 10 types of material inputs from two affiliated suppliers located in China during the POI. Because the inputs were produced by, and purchased from, affiliated suppliers in a non-market economy

⁴³ See Zinus’ Letter, “Zinus’ Section D Supplemental Questionnaire Response,” dated September 23, 2020 (SDQR) at Exhibit SD-25.

⁴⁴ See *Hot-Rolled Steel from Brazil* IDM at Comment 7

⁴⁵ See *Final Determination* IDM at 16-18.

(NME) country, China, we could not use the affiliated Chinese suppliers' prices or costs in our calculations.⁴⁶ The respondent also did not purchase the inputs from unaffiliated market economy suppliers.⁴⁷ The only information available on the record that could reasonably be used to test the arm's-length nature of the transfer prices from affiliates was the publicly available Global Trade Atlas (GTA) data.⁴⁸ Accordingly, we considered it reasonable in this case to rely on the GTA data on the record to fill the gaps where market prices were not available. We obtained GTA data for various materials from the following countries: Indonesia, Romania, Russia, Malaysia, Turkey, Mexico, and Brazil.⁴⁹ For the *Final Determination*, Commerce selected the data from Indonesia stating, pursuant to the statutory language "market under consideration," the market under consideration was the Indonesian market.⁵⁰

In its March 20, 2023 opinion, the Court found that the "market under consideration" did not mean just the market under review. The Court remanded this issue for Commerce to further explain its reasoning or reconsider whether its selection of Indonesian data constituted a reasonable method to confirm that the affiliated prices reflect arm's-length transactions under section 773(f)(2) of the Act.⁵¹

Analysis

As summarized above, the Court remanded Commerce's *Final Determination* to provide further explanation that Commerce is not limited by law in using only the market under investigation or review as the "market under consideration" and, thus, held on that basis that it

⁴⁶ *Id.* at 17.

⁴⁷ *Id.* at 17-18; *see also* Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – PT Zinus Global Indonesia," dated October 27, 2020, at 2.

⁴⁸ *See* SDQR at D-6 to D-13 and Exhibits SD-8 and SD-9.

⁴⁹ *See Final Determination* IDM at 16-18.

⁵⁰ *Id.* at 18.

⁵¹ *See Remand Order* at 69-71.

could not sustain Commerce’s use of only the country under investigation in this context.⁵² In its opinion, the Court cited *Best Mattresses* by way of further explanation:

To be clear, today’s holding does not prevent Commerce from selecting Cambodia as the “market under consideration” for purposes of the Transactions Disregarded Rule on remand. Where Commerce erred is that it hinged its reasoning on a faulty reading of the statute that presumed that “market under consideration” referred to the country subject to investigation ...⁵³

The purpose of the transactions disregarded exercise is to ensure that the respondent’s costs reflect a market value to the extent it is available on the record.⁵⁴ Use of affiliated transaction prices that are not at arm’s length would distort the dumping calculation results. Commerce’s preference is to determine a market value based on the respondent’s own purchases of the input from unaffiliated suppliers. When market prices are not available to test affiliated party transactions, Commerce looks to the affiliated supplier’s sales of the input to unaffiliated parties, and, lacking that, to the cost of production (COP) of the affiliated supplier. In the instant case, because these transactions were between Zinus Indonesia and NME-based affiliated suppliers, Commerce was unable to use the NME-based affiliated suppliers’ sales or COP as a substitute for market price.⁵⁵ Therefore, Commerce sought to obtain market-based surrogate price information that would allow us to fulfill the requirements of the statute under section 773(f)(2) of the Act based on the record. Indeed, there is a preference for the respondent’s actual purchases from unaffiliated companies, but as the above test implied and this case demonstrates, in the absence of respondent’s actual purchases from unaffiliated companies, Commerce may use other sources, including data from other countries, to fill in any gaps.⁵⁶

⁵² *Id.*

⁵³ *Id.* at 71 (citing *Best Mattresses Int’l. Co. v. United States*, Consol. Court 21-00281, Slip Op. 23-19 (CIT February 17, 2023) (*Best Mattresses*), at 52)).

⁵⁴ See Def.’s Resp. to Pls.’ Mots. For J. on the Agency Record at 58, ECF No. 34; see also *Final Determination IDM* at 16-19.

⁵⁵ See *Final Determination IDM* at 16-19.

⁵⁶ *Id.*; see also section 773(f)(2) of the Act.

Similar to *Best Mattresses*, this Court limited its holding in that Commerce cannot “presume{} that the phrase ‘market under consideration’ means the country under investigation or review”⁵⁷ when clearly there are circumstances under which the appropriate market value may be different from the market where the subject merchandise is produced.

We do not disagree. Commerce acknowledges that, while there is a preference to use the data available to the respondent in the country in which its production is located, there are sometimes circumstances under which such data may not be available, may be flawed and cannot be used, or where the best available information is in fact from a market *other* than the market where the subject merchandise is produced.⁵⁸ As a result, other data, including data from other countries, may be used for this purpose under the statute. Such findings are necessarily heavily dependent on what data are available on the record of each individual segment of the proceeding.⁵⁹

With the foregoing in mind, in this case, the goal of the transactions disregarded analysis is to arrive at a market price for the inputs which would be available to the respondent to the extent the record contains such information. It is clearly less reflective of the respondent’s experience to use prices and/or costs in other countries which are not necessarily available to the respondent. However, record data limitations may require the use of such data.

In this case, we have on the record Indonesian GTA data that reflect market economy imports of the relevant inputs into Indonesia which could reasonably be expected to be available

⁵⁷ See *Remand Order* at 71 (citing *Best Mattresses*, Slip Op. 23-19 at 52).

⁵⁸ See *Zhejiang DunAn Hetian Metal Co., Ltd. v. United States*, 652 F.3d 1333, 1341 (Fed. Cir. 2011) (explaining a reviewing court determines not whether “the information Commerce used was the best available, but rather whether a reasonable mind could conclude that Commerce chose the best available information.”); see also *Final Determination IDM* at 16-19; section 773(f)(2) of the Act.

⁵⁹ *Id.*

to the respondent.⁶⁰ Import prices into other countries would not necessarily be available to our Indonesian respondent. Therefore, because actual market import prices into Indonesia are more likely to be available to our Indonesian respondent than market import prices into other countries, we continue to find it appropriate to use the market import data for the relevant inputs into Indonesia, rather than an average of Indonesia's import data with that of other countries.

*Zinus' Comments:*⁶¹

- The Court remanded Commerce's *Final Determination* with respect to this issue to provide further explanation for its reliance on Indonesian GTA import data in its transactions disregarded analysis that is not contingent on a supposedly limited reading of the statute.
- The Court found that Commerce's interpretation of "market under consideration," as used in section 773(f)(2) of the Act, as only the market under investigation was unreasonably narrow.
- As Commerce states, the goal of the transactions disregarded analysis is to arrive at a market price for the inputs purchased from affiliated suppliers that would be available to the respondent to the extent such information is available. The statute does not prescribe a specific methodology by which Commerce is to select the information available to use.
- Commerce's explanation is reasonable because actual market import prices into Indonesia are more likely to be available to the Indonesian respondent than market import prices into other countries.
- It is impractical and unreasonable to assume that imported products into other countries would be just as available to Zinus as those being imported into Indonesia.
- Even though the materials at issue were sourced from an NME, Commerce's decision to utilize exclusively Indonesian import data implicitly recognizes the fundamental differences between a market-economy country and an NME country such as the People's Republic of China.
- Commerce recognizes that although it has a preference to use the data available to the respondent in the country in which its production is located, there are circumstances under which such data may not be available or may be flawed and cannot be used.
- That is, Commerce recognizes the flexibility permitted by the statute. However, in this case, given the available information and the absence of any flaws or distortions in the Indonesian GTA data, Commerce correctly chose to rely on the import prices that are more likely to be available to the respondent in the country in which its production is located rather than prices available in other, unrelated countries (or an

⁶⁰ See Draft Remand Results at 11; see also Zinus DSQR at D-6 to D-13 and Exhibits SD-8 and SD-9 and *Final Determination Zinus at 17*.

⁶¹ See Zinus' Comments at 19-23.

average of all available prices).

*Petitioners' Comments:*⁶²

- Commerce's practice for establishing a fair market price is to first look to the respondent's purchases of the same input from unaffiliated suppliers and, where the record contains no such transactions, to then turn to sales of the input by the affiliated supplier to other unaffiliated parties. In the absence of either, Commerce looks to the affiliated supplier's COP.
- While each of these methodologies is distinct, they all share Commerce's longstanding focus on choosing a market benchmark based on the respondent's unique purchasing experiences. Yet in its Draft Remand Results, Commerce jettisoned this prior reasoning, concluding where transactions occur between a respondent and an NME-based affiliated supplier, Commerce should not focus on the respondent's own experience in acquiring inputs, but rather on what prices could reasonably be expected to be available to the respondent had the respondent sought to source the inputs in Indonesia.
- Commerce failed to explain why it departed from its past policy of basing the market value benchmark on the respondents' unique purchasing experiences.⁶³
- Commerce failed to explain why relying on a proxy for Indonesian market prices is reasonable when Zinus purchased the inputs in question from Chinese affiliates.
- To be consistent with its prior practice of using the affiliates' COP (regardless of the country in which they are located), Commerce should not rely on GTA data for imports into Indonesia to establish a market benchmark, but rather utilize the six-country average of GTA import data from Romania, Russia, Malaysia, Turkey, Mexico, and Brazil.
- In *Best Mattresses*,⁶⁴ Commerce's interpretation of the major inputs rule⁶⁵ to allow use of third country surrogate data as "information available" for determining the COP of a major input purchased from an affiliated NME-based supplier was reasonable and warrants deference.
- Commerce failed to explain why use of an identical methodology to determine the COP of a minor input purchased from an NME-based supplier was not similarly reasonable information available for the purposes of applying the transactions disregarded rule.
- Commerce appears to eschew this approach because import prices into the other countries would not necessarily be available to the Indonesian respondent. But the six-country average of GTA data are not intended to reflect import prices into other countries. Instead, it is intended as a surrogate for the COP of Zinus' Chinese affiliate.

⁶² See Petitioners' Comments at 9-13.

⁶³ *Id.* at 11; see also *Nippon Steel Corp. v. U.S. Int'l Trade Comm'n*, 494 F.3d 1371, 1377 n.5 (Fed. Cir. 2007) (*Nippon*); see also *Motor Vehicle Mfrs. Ass'n of the United States, Inc. v. State Farm Mut. Ins. Co.*, 463 U.S. 29, 57 (1983) (*Motor Vehicle Mfrs*) ("{A}n agency changing its course must supply a reasoned analysis.") (Internal quotation and citation omitted).

⁶⁴ See *Best Mattresses*.

⁶⁵ See section 773(f)(3) of the Act.

Commerce's Position:

In the Draft Remand Results, Commerce explained that “market under consideration,” under section 773(f)(2) of the Act, does not limit Commerce by law to use only the market under investigation or review as the “market under consideration.” In any event, given that the goal of the transactions disregarded analysis is to arrive at a market price for the inputs which would be available to the respondent to the extent the record contains such information, because actual market import prices into Indonesia are more likely to be available to the Indonesian respondent than market import prices into other countries, we continue to find it appropriate to use the market import data for the relevant inputs into Indonesia.⁶⁶

Moreover, we disagree with the petitioners that we jettisoned our prior reasoning and practice with respect to choosing a market value benchmark based on the respondents' unique purchasing experiences.⁶⁷ In fact, in selecting GTA data from Indonesia as the market value benchmark, we accounted for both the respondent's potential purchasing experience, where the respondent in this case purchased a hundred percent of certain minor inputs from an affiliated NME-based supplier, and our practice. In the instant case, import prices into Indonesia are more likely to be available to the Indonesian respondent and represent inputs relevant to the respondent's purchasing experience.⁶⁸ Further, in considering the limited gap filling information on the record of this case, Commerce reasonably determined that the use of market price GTA data from Indonesia is appropriate, as this source closely mirrors Commerce's preference of

⁶⁶ See Draft Remand Results at 8-11.

⁶⁷ See Petitioners' Comments at 11-13; see also *Nippon*, 494 F.3d 1371 at 1377 n.5; *Motor Vehicle Mfrs.*, 463 U.S. 29 at 57 (“{A}n agency changing its course must supply a reasoned analysis.”) (internal quotation and citation omitted).

⁶⁸ See Draft Remand Results at 8-11.

using respondents' purchases of inputs from unaffiliated parties and is more likely to be available to the Indonesian respondent.⁶⁹

Further, the petitioner claims that Commerce failed to explain why the use of third country surrogate data to determine the COP in applying the major input rule for purchases from an NME-based supplier was not similarly reasonable information available for the purposes of applying the transactions disregarded rule.⁷⁰ As noted above, the goal of the transactions disregarded analysis is to arrive at a market price for the inputs which would be available to the respondent. Commerce acknowledges that there are circumstances under which it may be appropriate to use data from a different market from the market where the subject merchandise is produced, or where it is preferable to calculate an average price from several countries as the petitioners suggest. However, considering the record data sources and that Commerce's preference is to first determine a market value, under section 773(f)(2) of the Act, based on data available to the respondent in the country in which its production is located, we consider it reasonable to rely on the GTA data from Indonesia to fill the gaps where market prices were not available.⁷¹ Further, the Indonesian GTA import data provided by Zinus excluded imports from China based on Commerce's instructions.⁷²

III. FINAL RESULTS OF REDETERMINATION

In accordance with the Court's *Remand Order*, Commerce has further explained its inclusion of mattresses in transit in the calculation of CEP, Zinus Korea's limited role in the U.S. sales process and its treatment of Zinus Korea's selling expenses associated with this role, and its selection of Indonesian GTA data in its application of the transactions disregarded rule. Based

⁶⁹ *Id.*

⁷⁰ See Petitioners' Comments at 11-13.

⁷¹ See *Final Determination* IDM at 18.

⁷² *Id.* at 18-19.

on the foregoing explanations, we have made no changes to the margin calculations for the mandatory respondent, Zinus.

6/9/2023

X

A rectangular box containing a handwritten signature in blue ink that reads "Lisa W. Wang".

Signed by: LISA WANG
Lisa W. Wang
Assistant Secretary
for Enforcement and Compliance

REMAND ATTACHMENT 1

*(Business Proprietary Data Not Capable of
Public Summary)*