BUSINESS PROPRIETARY

CHINA NATIONAL MACHINERY IMPORT & EXPORT CORPORATION v. UNITED STATES
Court No.01-01114
Slip Op. 03-16 (February 13, 2003)

FINAL RESULTS OF REDETERMINATION PURSUANT TO REMAND

SUMMARY

The Department of Commerce ("the Department") has prepared these final results pursuant to the remand order from the United States Court of International Trade ("CIT") in China National Machinery Import & Export Corporation v. United States, Slip Op. 03-16 (CIT February 13, 2003) ("CMC Bearing"). The CIT remanded the case to the Department to review and augment the record, and to adequately explain its decision to use a surrogate value instead of the price China National Machinery Import & Export Corporation ("CMC") paid to a market economy supplier for steel inputs used in the manufacture of tapered roller bearings ("TRBs") cups and cones.

We have concluded that the record supports the Department's position that there is a reasonable basis to believe or suspect that the price CMC paid to its market-economy supplier may have been subsidized, and therefore, the Department's decision to use a surrogate value calculated from Japanese exports to India to value the steel input in question is justified.

BACKGROUND

The administrative review under remand is Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; Final Results of 1999-2000 Administrative Review, Partial Rescission of Review, and Determination Not to Revoke Order in Part, 66 FR 57,420 (November 15, 2001) ("TRBs XIII"). The antidumping duty order concerning this review was issued on May 27, 1987. See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; Final Determination of Sales at Less Than Fair Value, 52 FR 19,748 (May 27, 1987). In this judicial proceeding, the plaintiff is CMC. The Timken Company ("Timken") (the petitioner in the administrative review) is the defendant-intervenor.

In TRBs XIII, we used data on Japanese exports to India from the Japanese Harmonized Schedule category 7228.30.900 to value the hot-rolled alloy steel bar used by CMC to manufacture TRB cups and cones. In its remand order, the CIT directed the Department to explain sufficiently its decision to reject the actual market prices CMC paid to its market supplier for the steel input in question so that the CIT can "reasonably discern the path of {the Department's} reasoning as to why CMC's supplier must have benefitted from subsidies discovered elsewhere in the production of hot-rolled steel bar sold to the {People's Republic of China}." See CMC Bearing at page 24. In the remand to the Department, the CIT affirmed that the Department was within its discretion to use Japanese exports to India, as opposed to any Indonesian values, to value the steel inputs used in the normal value (ANV@) calculation stating that the plaintiff failed to "fully articulate to this court why

Indonesia would have been a better choice as a surrogate than India." See CMC Bearing at pages 16-17, footnote 14. The CIT also deferred a decision on the Department's freight and insurance cost adjustment methodology, but stated that the "plaintiff has not shown to this court why Commerce's adjustment methodology is unreasonable." See CMC Bearing at pages 16-17, footnote 14.

For the reasons explained below, we have not changed our valuations of the steel used by CMC to manufacture the TRBs cups and cones.

The Department released its draft final results of redetermination pursuant to the CIT's remand order ("Draft Results") to Timken, the petitioner in this proceeding, and CMC. On April 30, 2003, the Department received comments on the Draft Results from Timken; CMC did not file comments or rebuttal comments.[1] The Department has addressed Timken's comments below.

If the CIT approves these remand results, the antidumping duty rate for CMC will remain the same, 4.64 percent. The PRC-wide rate, 33.18, will be unchanged from TRBs XIII.

DISCUSSION

In CMC Bearing, CMC objected to the Department's use of data for Japanese exports to India to value the steel used to manufacture cups and cones, and argued that the Department should have used the "actual market prices" that CMC paid to a market economy supplier for the hot-rolled alloy steel input. CMC challenged the Department's determination that the market price CMC paid for

[1]Crowell & Moring, counsel to CMC, stated by telephone that they were not able to contact their clients in PRC and, therefore, would refrain from commenting on the remand within the time period allotted by the Department.

the steel input was distorted due to the existence of general, i.e., non-company specific, subsidies in the exporting country, [ ]. CMC argued that there are no current or prior countervailing duty ("CVD") orders in the United States or in the People's Republic of China on hot-rolled alloy steel manufactured in [ ]. In addition, CMC stated that neither the steel input nor CMC's market economy supplier has ever been "investigated in any recent countervailing or antidumping duty investigations." See CMC Bearing at page 20. Moreover, CMC stated that a past negative CVD determination by the Department concerning [ ] from [ ] undermines the Department's conclusion in this case that there are industry-wide subsidies conferring benefits on manufacturers of steel products that distort the "actual market prices" CMC paid for the inputs. See CMC Bearing at page 20.

The Department stated that 19 CFR 351.408(c)(1) provides that, when a factor is purchased from a market economy supplier and paid for in a market economy currency, it is normally the Department's preference to use the price paid to the market economy supplier. However, this stated preference does not require the Department to use these values in all circumstances. In valuing a nonmarket economy producer's factors of production for the Department's calculation of normal value, the statute states that "the valuation of the factors of production shall be based on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by the administering authority." See section 773(c)(1)(B) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act ("URAA") effective January 1, 1995 ("the Act").

The Department explained that it has "broad discretion to determine the 'best available information' in a reasonable manner upon a case-by-case basis." See CMC Bearing at page 11-12. This discretion includes avoiding the use of any prices that the Department has reason to believe or suspect may be dumped or subsidized, when there is substantial evidence on the record supporting this assertion. The Department determined that the discovery of non-company specific subsidies in investigations of other steel products in the exporting country provided a reasonable basis to believe or suspect that CMC's supplier, along with other steel producers in the exporting country, may have benefitted from these general subsidies. Therefore, the Department concluded that "{h}ere, the use of market prices {was} not appropriate because those prices {were} distorted." See CMC Bearing at page 12.

In CMC Bearing, the CIT observed that the applicable statute[2] and regulations[3] do not require the Department to choose actual supplier prices over surrogate values. The CIT stated that if the Department has "reason to believe or suspect" that actual supplier prices were subsidized, the Department may utilize surrogate values that the Department determines to be the best information under the statute. See CMC Bearing at page 16. The CIT stated that it will affirm the Department's position "if, given the entire record as a whole, there is substantial, specific, and objective evidence

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[2]AThe CIT agrees with Commerce that nothing in the antidumping duty statute directs Commerce to employ actual prices paid to a market economy supplier by a {non-market economy (ANME@)} producer in NV calculations.@ CMC Bearing at page 13.

[3]The CIT agrees that 19 CFR 351.408(c)(1) merely indicates a preference for market prices. See CMC Bearing at page 15.

which could reasonably be interpreted to support a suspicion that the prices CMC paid to its market economy supplier were distorted." See CMC Bearing at page 19. The CIT further noted that the level of subsidization found in the CVD cases the Department relied upon to make its determination appeared to be "very low." See CMC Bearing at page 21. The CIT opined that "if this program had no significant effect on the prices CMC paid to its supplier, then there may be no distortion and, therefore, no justification to deviate from the actual input prices." See CMC Bearing at page 22.

The CIT remanded this issue to the Department "to review and augment the administrative record and to adequately explain, consistent with the opinion issued in this case, how general subsidies allegedly found in other investigations would have given {the Department} 'reason to believe or suspect' that {CMC}'s market economy supplier may have benefitted from these subsidies enough to warrant imposition of duties on {CMC}." See CMC Bearing, Remand Order at page 2.

ANALYSIS

In TRBs XIII, citing to Al Tech Specialty Steel Corp. v. United States, 575 F. Supp. 1277 (CIT 1983) ("Al Tech"), we stated that the Department has "reason to believe or suspect that input prices may be dumped or subsidized when there exists, based on all the circumstances, particular and objective record evidence that supports such a belief or suspicion." See TRBs XIII and accompanying Decision Memorandum at Comment 1. A reason to believe or suspect requires less evidence than an actual finding of subsidies in fact. In this case, the Department relied upon substantial evidence, its own CVD findings, to assess whether there was specific and objective evidence to support a reason to believe or suspect that the price CMC paid to its market economy supplier may be distorted by the

generally available, non-company specific subsidies maintained by the [ ]. Based on this assessment, we determined that there is reasonable evidence on the record to infer that the price CMC paid to its market supplier may be subsidized.

The legislative history of the Omnibus Trade and Competitiveness Act of 1988 ("1988 Act") states that, "in valuing such {nonmarket economy} factors, {the Department} shall avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices."[4] See TRBs XIII and its accompanying Decision Memorandum at page 6. In CMC Bearing, the CIT affirmed the Department's interpretation of the legislative history stating that ". . . if {the Department} had 'reason to believe or suspect' that steel used by CMC in production of the TRBs sold in the United States were subsidized, {the Department} may employ surrogate values where it determines that they are the best information under the statute." See CMC Bearing at page 16. The CIT further stated that it would support the Department's actions if ". . . there is substantial, specific, and objective evidence which could reasonably be interpreted to support a suspicion that the prices CMC paid to its market economy supplier were distorted." See CMC Bearing at page 19. The substantial evidence upon which the Department relied in this case to reasonably believe or suspect that the price CMC paid to its market economy supplier may have been distorted is found in its 1999-2000 CVD determinations: [

[4]See H.R. Rep. No. 576 100th Cong., 2. Sess. 590-91 (1988). Although this section of the Act has been revised since this 1988 legislative history was written, there were no changes made to section 773(c) of the Act in the URAA. See, e.g., S. Rep. 103-412, 2d. Sess. At 73 (1994).

]5, [ ], and the [ ] where we found that the [ ] maintains industry specific subsidies and non-industry specific export subsidies.

The statutory history does not provide any particular criteria for the Department to consider in making a determination to avoid subsidized prices. As noted by Congress in the 1988 Act, the Department is not required to conduct a formal investigation to support a finding of "reason to believe or suspect," but should instead base its decision on information that is generally available to it at the time it is making its determination.[6] Absent an investigation, it is not possible for the Department to get company-specific information. Instead, the Department has to rely on generally available information regarding the industry in question and/or the availability of export subsidies.

Consistent with Congress' instructions, and absent a formal investigation of CMC's market economy supplier, the Department relied on its own CVD proceedings in rejecting the actual market

[5]This determination was amended. See [,]

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

price CMC paid for a certain steel input. Through these proceedings, the Department established the existence of broadly-available export subsidies and industry-specific subsidies from which CMC's supplier, an exporter and member of a subsidized industry, could have benefitted. Thus, the Department found reason to believe or suspect that the market economy price in question may have been subsidized. The CVD investigations on which the Department relied were conducted in accordance with United States trade law and provide "substantial, specific and objective evidence which could reasonably be interpreted to support a suspicion that the prices CMC paid to its market economy supplier were distorted." See CMC Bearing at page 19. Therefore, the Department acted within its discretion to determine that evidence supports its finding to have a reason to believe or suspect in this context.[7]

In selecting factor values, the Department avoids using potentially subsidized values, as discussed above. This is in accordance with the Department's discretion to determine what constitutes the best available information on the record in selecting values consistent with 19 U.S.C. § 1677b(c)(1), taking into account the intent of Congress as expressed in the legislative history. After reviewing the record, we note that the evidence demonstrates that CMC's supplier had various subsidies available to it and there was a reasonable basis to infer that a market company operating under normal market principles would take advantage of those benefits.

[7]This is consistent with the long-established principle of U.S. law that administrative agencies have the discretion to promulgate formal procedures or to proceed on a case-by-case basis. See Securities & Exchange Commission v. Chenery Corporation, 332 U.S. 194, 202-203 (1947).

The Department consistently has recognized the legislative history language to avoid using any prices that it has reason to believe or suspect may be dumped or subsidized. See, e.g., Certain Helical Spring Lock Washers from the People's Republic of China; Final Results of Administrative Review, 61 FR 66255 (December 17, 1996);[8] Kerr-McGee Chemical Corp. v. United States, 985 F. Supp. 1166 (CIT 1997) ("Kerr-McGee");[9] and Tehnoimportexport v. United Sates, 783 F. Supp. 1401 (CIT 1992) ("Tehnoimportexport") (finding the existence of product-specific antidumping duty orders and non-product specific subsidies as determined by CVD orders provides a reasonable basis to believe or suspect surrogate export prices were dumped or subsidized). The Department has continued to pursue this policy since TRBs XIII.[10] Furthermore, the Department's determinations to reject certain market economy purchases by PRC producers due to the availability of broadly available, non-industry specific export subsidies has not been limited to [ ]. In Auto Replacement Glass the Department

[8]This case indicates that CVD findings can provide information beyond the specific conclusion that a particular product shipped to a particular market is subsidized.

[9]In Kerr-McGee the CIT stated {t}this court finds {the Department's} policy not to use Indian export prices is supported by substantial evidence on the record and is otherwise in accordance with law. The {CIT} notes in the legislative history to 19 U.S.C. § 1677b(c), Congress advised {the Department}, in valuing the factors of production, to 'avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices' (H.R. Rep. 100-576 at 590 (1988))." See Kerr-McGee, 985 F. Supp. At 1177.

[10]See Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields from the Peoples Republic of China, 67 FR 6482 (February 12, 2002) ("Auto Replacement Glass") and accompanying Issues and Decision Memorandum and Notice of Final Determination of Sales at Less Than Fair Value: Folding Metal Tables and Chairs from the People's Republic of China, 67 FR 20090 (April 24, 2002) and accompanying Issues and Decision Memorandum.

determined, based on record evidence, not to use export prices from [

], either as market economy purchases or import statistics into India, the surrogate country for that case, because each of those countries maintains generally available subsidies. See Auto Replacement Glass accompanying Issues and Decision Memorandum, at Comment 1.

In February 2002, the Department articulated this policy in an Office of Policy Memorandum. This memorandum advised that for all non-market economy investigations, factor input prices from Korea, Thailand, and Indonesia should be disregarded, whether they are market economy purchases or import statistics into the surrogate country, due to the fact that these countries maintain broadly available, non-industry specific export subsidies. See Memorandum from Office of Policy to DAS and Office Directors: "NME investigations: procedures for disregarding subsidized factor input prices" (February 2002), which is attached to this document as an Appendix.

In TRBs XIII, we rejected CMC's market economy purchases based on the subsidies found in three CVD investigations: [ ]. These investigations established that throughout the [

] maintained countervailable subsidies that benefitted individual steel producers and the [

] steel industry. The Department further found export subsidies[11] that were used by the investigated steel producers and were available to all exporters in that country.

[11]Government payments, economic inducements or other financially quantifiable benefits provided to domestic producers or exporters contingent on the export of their goods. See "Export Subsidy," Dictionary of International Trade: Handbook of the Global Trade Community, 3rd Edition, 1999.

As noted in the Market Economy Steel Memo,[12] the subsidies found in the three investigations referenced by the Department could be divided into two groups: "general subsidies that appear to be available to and used by more than one steel producer and company-specific subsidies." See Market Economy Steel Memo at page 3. Of these two groups, the company-specific programs, which included [ ] and regional subsidies, were not included in our analysis. Rather, the particular subsidy programs relied upon by the Department in its analysis were available to all steel companies and were specifically found to be used by several steel producers in that country.

In particular, we determined in [_____, _____ __, and _____] that during the 1990's the [ ]. Moreover, the Department determined that the [ ]. We also determined that the [ ] maintained various export subsidy programs that were broadly available and not industry specific, such as, [ ]. See [_____ _____, _____, and _____]. This demonstrates the

[12]Memorandum to the File, AMarket Economy Steel Memo,@ dated November 7, 2001 (incorporating from TRBs XII the proprietary Memorandum to Richard W. Moreland regarding Allegation of Unfair Steel Prices, dated January 3, 2001) (AMarket Economy Steel Memo@).

general availability of these programs and that they were not limited to certain steel companies or specific products.[13]

On this basis, we have reason to believe that CMC's supplier had available to it a [ ]. See, e.g., [ ]. We also have reason to believe that CMC's supplier had available to it broadly available non-industry specific export subsidies maintained by the [ ] during the 1990's. See [, , and]. Moreover, given the competitive environment in which CMC's supplier operates, it is reasonable to infer that it would have taken advantage of these programs.

As noted above, we did not include [ ] and regional specific subsidies in our analysis.[14] Instead, we made our decision based on the availability of subsidies to the steel industry, including [ ]) and broadly available non-industry specific export subsidies maintained in the market country in question. It is important to note

[13]Therefore, we do not agree that it is "material and relevant" in this case that the subject merchandise investigated in the 1999-2000 CVD proceedings differs from the steel input purchased by CMC. See CMC Bearing at page 24. Moreover, as noted in Tehnoimportexport, the findings in CVD orders of non-product specific subsidies supports a finding that there is reason to believe or suspect that export prices were subsidized. See pages 9-10 above.

[14]In regard to the industry specific subsidy program referenced by the Department, the CIT questions A. . . whether this program is offered across the board to all steel producers in the country, to those of a certain size, to those which manufacture a certain product or set of products, to those in a specific geographical area or so on.@ See CMC Bearing at page 21.

that these export subsidy programs were offered to domestic companies engaged in foreign trade. Enrollment in these export subsidy programs was not based on the merchandise produced or a particular industry but was contingent on a company's export performance.[15]

There is no evidence on the record to lead the Department to infer that CMC's supplier was not eligible to participate in any of these subsidy programs. Instead, there is substantial, specific, and objective evidence on the record to support a reason to believe or suspect that CMC's inputs may have been subsidized. Moreover, our reliance on CVD orders of non-product specific subsidies to establish our finding that there is a reason to believe or suspect the export prices CMC paid to the market economy company in question were subsidized prices is supported by Tehnoimportexport (see pages 9-10 above). Therefore, we find that the information on the record supports the Department's decision to value CMC's steel input using a surrogate value rather than the market price paid by CMC to a market economy supplier.

We do not agree that the Department's own negative finding for one steel producer, [

], from the market country at issue directly undermines the Department's justification for

[15]For example, under [

]. This [ ] amounts to an interest-free loan, which we determined in the 1999-2000 CVD proceedings to be an export subsidy under section 771(5A)(B) of the Act because use of the program was contingent upon export performance.

disregarding the market price as distorted.[16] That finding does not suggest that subsidies are not available to the supplier at issue here, nor is that finding the only evidence the Department has considered.

Importantly, the Department must consider the two affirmative determinations (i.e., [_____ _____ and _____]). These orders demonstrate that other smaller [ ] steel companies had above *de minimis* subsidy levels. We find the rates for the smaller steel companies to be more predictive here for the following reasons. First, [ ] is the largest [ ] steel producer. Second, [ ] is controlled by the [ ], and has been found to provide subsidies to other [ ] steel producers, i.e., [ ] system. In light of these affirmative determinations for other [ ] steel producers, the Department's negative finding for [ ] merely stands for the proposition that one [ ] steel producer received *de minimis* subsidies. Therefore, this negative finding should not prevent the Department from inferring that steel products exported from [ ] may have benefitted from industry-specific subsidies and broadly available export subsidies.

Unless a particular market supplier has been found to have *de minimis* subsidy benefits, as was the situation with [ ], the specific level of subsidization is not a relevant consideration in the Department's analysis of whether there is reason to believe or suspect that prices may be subsidized. This is in accordance with the legislative history, which established that the Department base its decision

[16]The CIT noted that this one case may be an anomaly and, if so, the Department should explain the parameters of this determination further. See CMC Bearing at page 20.

on information generally available to it at the time of its determination.[17] As noted previously, the legislative history makes clear its intention is not to mandate the conduct of a formal investigation by the Department in examining the existence of subsidies, which would be the only way to establish a particular company's rate.

After considering the evidence of industry-specific subsidies and broadly available export subsidies in [ ], the Department finds that there is reason to believe or suspect that CMC's supplier may have benefitted from these subsidies. Consequently, in accordance with Congressional intent and Departmental practice, we have not used the price paid by CMC to its market supplier to value CMC's cups and cones steel. Therefore, we find that the market price in question is not the best available information for valuing the steel used by CMC to manufacture its TRB cups and cones.

INTERESTED PARTY COMMENTS

Timken's Argument:

Timken supports the Department's remand analysis. However, Timken also asserts that there are several issues on which it would be profitable for the Department to make additional comment.

First, Timken asserts that the CIT applied an evidentiary standard for finding a "reason to believe or suspect" that was "too stringent." Citing Universal Camera Corporation v. National Labor Relations Board, 340 U.S. 474, 95 L. ed. 456, 462 (1951), Timken argues that the Department needs only enough facts to support the suspicion that the steel supplier in this case benefitted from subsidies on

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

the steel it exported to CMC, not enough facts to justify a conclusion. See Timken's submission at page 3.

Timken further points to Connors Steel Company v. United States, 527 F. Supp. 350 (CIT 1981) ("Connors Steel"), where the CIT ruled on what constitutes "reason to believe or suspect" the occurrence of home-market sales below cost. In that decision, the Court stated that the reason to believe or suspect standard "is one which is distinctly conducive to proceeding on the basis of conjecture." See Timken's April 30, 2003 submission at pages 3-4. Timken claims that the CMC Bearing decision does not address Connors Steel.

Timken contends that Al Tech, in turn, relied upon a criminal case, Terry v.Ohio, 392 U.S. 1, 20 L.Ed.2d 889 (1968) ("Terry"), to assign meaning to the expression "reasonable grounds to believe or suspect." Timken claims that criminal standards should not apply here and that there is "no comparability whatsoever" to the Department's administration of the antidumping law where "completely different considerations apply." See Timken's April 30, 2003 submission at page 5.

Timken asks the Department to call these errors to the court's attention. According to Timken, none of the parties "exhaustively" discussed the concept of "substantial evidence" and what that standard requires in their respective case briefs. As a result, Timken claims the CIT reached its present decision in "large measure on legal assumptions never thoroughly briefed by parties." See Timken's April 30, 2003 submission at page 6.

Second, Timken argues that the CIT is "second-guessing" the Department's interpretation of the relevant legislative history that allows for avoiding "any" prices that "may be" dumped or subsidized, and, consequently, that the CIT is "overstepping its role and inappropriately substituting judgement." See Timken's April 30, 2003 submission at page 6. Timken claims that "the court's role in a *Chevron Two* review is only to judge for reasonableness." See Koyo Seiko Co., Ltd. v. United States, 36 F.3d., 1565, 1573 (Fed. Cir. 1994) ("Koyo Seiko") ("*Chevron* requires us to defer to the agency's interpretation of its own statute as long as that interpretation is reasonable."). Because the practice of using actual market prices, as affirmed by the courts in Lasko, was a "very aggressive construction of the statute in light of the statutory scheme," according to Timken, the Department is justified in limiting the practice as it did in TRBs XII. See Timken's April 30, 2003 submission at page 7.

Timken points to what in its view is another example of the court substituting its judgement for that of the Department. Regarding the court's concern about the low level of subsidies found, Timken notes that the Department is not required to show a "level of distortion" prior to rejecting actual market prices.

Lastly, Timken asserts that the court's opinion has adverse effects that the CIT may not have considered or intended. Timken argues that, if the CIT's opinion becomes final, it would undermine the Department's practice of excluding countries with export subsidy programs from the calculation of surrogate values for normal value. Similarly, Timken argues that the CIT's opinion would call into question on "substantial evidence grounds" the Department's practice of assigning "all others" rates to foreign producers that were never investigated in the original investigation, but are nevertheless subject

to CVD or AD assessment. See Timken's April 30, 2003 submission at page 8. In other words, Timken claims, the opinion may result in the creation of a standard for justifying suspicion or belief that would be more demanding than the standard for justifying application of a CVD or AD order to particular producers. See Timken's April 30, 2003 submission at page 8.

Department's Position:

In TRBs XIII, we stated that the Department has "reason to believe or suspect that input prices may be dumped or subsidized when there exists, based on all the circumstances, particular and objective record evidence that supports such a belief or suspicion." See TRBs XIII and accompanying Decision Memorandum at Comment 1. In support of this position we cited to Al Tech as establishing the standard for finding a "reasonable grounds to believe or suspect." As explained above, we continue in this redetermination to find that there is "particular and objective" evidence on the record as a whole to support the Department's rejection of CMC's steel input purchases from a market economy supplier due to the availability of industry-specific subsidies (i.e., subsidies specific to the steel industry, including [ ]) and broadly available non-industry specific export subsidies maintained in the supplier's country. Therefore, we do not agree with Timken that the CIT needs to look beyond Al Tech to define "reason to believe or suspect."

According to Al Tech, "in order for reasonable suspicion to exist there must be 'a particularized and objective basis for suspecting' the existence of certain proscribed behavior, taking into account the totality of circumstances - the whole picture." See Al Tech, 575 F. Supp. at page

1280. The Al Tech court further interpreted "a particularized and objective basis" to mean a "demand for specificity."[18]

Based on our review of CMC Bearing, we believe the CIT has combined the standard of review applicable to the Department's antidumping determinations[19] with the standard set forth in Al Tech. Specifically, the CIT stated that:

> Merging the two standards and under the facts of this case, the court will accordingly affirm Commerce's actions if, given the entire record as a whole, there is substantial, specific, and objective evidence which could reasonably be interpreted to *support a suspicion* that the prices CMC paid to its market economy supplier were distorted.

CMC Bearing at page 19. (emphasis added).

As discussed in the **Analysis** section above, we provide particular, specific, and objective evidence and further explanation in support of our position taken in TRBs XIII. We also believe that this evidence supporting our suspicion that the price paid by CMC to its market economy supplier was subsidized is substantial..

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[18] Al Tech, 575 F. Supp. 1277, 1280 (CIT 1983) (quoting United States v. Cortez, 449 U.S. 411, 418 (1981) (citation omitted)).

[19] In reviewing Commerce's antidumping duty determinations, "the Court of International Trade must sustain 'any determination, finding or conclusion found' by Commerce unless it is 'unsupported by substantial evidence on the record, or otherwise not in accordance with law.'" Fujitsu General Ltd. v. United States, 88 F.3d 1034, 1038 (Fed. Cir. 1996) (quoting 19 U.S.C. §' 1516a(b)(1)(B)).

"Substantial evidence" means "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Consolidated Edison v. NLRB, 305 U.S. 197, 229 (1938); accord Matsushita Elec. Indus. Co. v. United States, 750 F.2d 927, 933 (Fed. Cir. 1984).

We believe that our determination is consistent with legislative history. As stated above, the legislative history does not require the Department to investigate the companies and countries in question in order to have a reason to believe or suspect that prices may be dumped or subsidized. Instead, it is Congress' intent that the Department use the available information on the record to determine whether there is a reason to believe or suspect that prices are distorted due to dumping or subsidization. Without an investigation, the Department will rarely have evidence so substantial as to establish a conclusion. However, as demonstrated in this case, it is possible for the Department to draw from "substantial, specific, and objective" evidence on the record a suspicion that is in accordance with law. Therefore, pursuant to the meaning assigned to "reason to believe or suspect" by the CIT in CMC Bearing, we find (as explained in the **Analysis** section above) that there is substantial, specific, and objective evidence to support our decision to use Japanese exports to India to value the steel input CMC used in its manufacture of TRBs cups and cones rather than the actual price CMC paid to a market supplier.

Regarding Timken's argument that the CIT is "second-guessing" the Department's interpretation of the legislative history and ". . . overstepping its role and inappropriately substituting judgment," Timken's arguments appear to be addressed to the CIT, rather than to the Department's remand position. In CMC Bearing the CIT did not make a final ruling or judgment on whether the Department's use of certain surrogate values over market prices in TRBs XIII was supported by substantial evidence. Instead, the CIT ordered that the case be "remanded to {the Department} to review and augment the administrative record and to adequately explain, consistent with the opinion

issued in this case, how general subsidies allegedly found in other investigations would have given {the Department} 'reason to believe or suspect' that {CMC's} market economy supplier may have benefitted from these subsidies enough to warrant imposition of duties on {CMC}." Indeed, the CIT remanded this issue to the Department to allow opportunity for further explanation. Accordingly, we have limited our comments in this redetermination to further explanation about our position.

FINAL RESULTS OF REDETERMINATION PURSUANT TO REMAND

As a result of this remand, we have not recalculated the company-specific margins for the 1999-2000 administrative review. The "PRC-Wide" rate for this review, 33.18 percent, is not affected by these remand results.

These final results pursuant to remand are being issued in accordance with the order of the CIT in China National Machinery Import & Export Corporation v. United States, Slip Op. 03-16 (CIT February 13, 2003).

Jeffrey A. May
Acting Assistant Secretary
for Import Administration

Date

APPENDIX