

FINAL RESULTS OF REDETERMINATION
PURSUANT TO COURT REMAND

SKF USA Inc., SKF France S.A., SKF Aerospace France S.A.S., SKF GmbH, and SKF Industrie S.p.A. v. United States, Court No. 07-00393 Slip Op. 11-126 (Ct. Int'l Trade Oct. 14, 2011)

I. SUMMARY

The Department of Commerce (the Department) has prepared these final results of redetermination pursuant to the remand order from the U.S. Court of International Trade (the Court) in *SKF USA Inc. v. United States*, Slip Op. 11-126 (Ct. Int'l Trade Oct. 14, 2011)(*Remand Order*). In accordance with the Court's instructions, we have reconsidered our decision in *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Review in Part*, 72 Fed. Reg. 58,053 (October 12, 2007) (*AFBs 17*) to construct the normal value of subject merchandise produced by an unaffiliated supplier using the unaffiliated supplier's cost of production (COP) information rather than the exporter's acquisition costs. In addition, we have addressed the two specific concerns that were raised by the respondent in this case and that were identified by the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) in *SKF USA Inc. v. United States*, 630 F.3d 1365 (Fed. Cir. 2011).

II. BACKGROUND

On October 14, 2011, pursuant to an order from the Federal Circuit, the Court remanded to the Department the final results in *AFBs 17*. *See Remand Order*. The Court remanded to the Department to reconsider its decision in *AFBs 17* to construct the normal value of subject merchandise produced by an unaffiliated supplier using the unaffiliated supplier's COP rather than the exporter's acquisition costs. In addition, the Court remanded to the Department for further explanation two concerns raised by SKF USA Inc., SKF France S.A., SKF Aerospace

France S.A.S., SKF GmbH, and SKF Industrie S.p.A. (collectively, SKF Germany).

Specifically, the Court instructed the Department to address SKF Germany's concern that it cannot control its pricing to avoid dumping under the Department's new methodology and that the Department potentially would apply an adverse inference if the unaffiliated supplier did not provide the requested COP data. *Id.*

III. ANALYSIS

Pursuant to the Court's *Remand Order*, the Department has reconsidered its decision in *AFBs 17* to use COP data from unaffiliated suppliers to construct the normal value of subject merchandise with respect to SKF Germany. Upon review, the Department continues to find that its reliance upon the data of a producer of subject merchandise to calculate the costs of producing that subject merchandise is appropriate. As the Federal Circuit held, the statute "unambiguously allows Commerce to prefer the actual production costs of unaffiliated suppliers of finished subject merchandise over acquisition costs." *See SKF USA Inc. v. United States*, 630 F.3d at 1371. This is because the statute directs the Department to use the actual cost of producing the subject merchandise based upon the data of the "exporter or producer" when calculating the constructed value (CV) and the COP, and the statute defines "exporter or producer" to include "the exporter of the subject merchandise, the producer of the subject merchandise, or both where appropriate." *See* section 773(f)(1) of the Tariff Act of 1930, as amended (the Act). The Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA) confirms the statutory directive, explaining that "the purpose of section 771(28)... is to clarify that where different firms perform the production and selling functions, the Department may include the costs, expenses, and profits of each firm in calculating cost of production and constructed value." SAA, H.R. Doc. No. 103-316, vol. 1 (1994) at 835.

Accordingly, as explained in *AFBs 17*, given the statutory emphasis on the use of actual costs, and because a substantial proportion of SKF Germany's sales to the United States and some of its home market sales were sales of merchandise produced by unaffiliated producers, it is appropriate to rely upon the actual costs of production, rather than acquisition costs. *See AFBs 17* and accompanying Issues and Decision Memorandum at Comment 17. As also explained in *AFBs 17*, acquisition costs may not capture the actual production data, which would distort an exporter's margin because of missing cost elements. Data from the actual producer, however, likely captures all of the actual COPs of that merchandise. *Id.* In other words, there can be no more accurate data to use in calculating the COP of subject merchandise than the actual cost of producing that merchandise.

As the Federal Circuit stated, the Department's determination to rely upon the unaffiliated supplier's production costs is also consistent with its longstanding practice of using the actual production costs of unaffiliated suppliers in lieu of the exporter's acquisition costs to calculate COP and CV. *Id.*; *See also, e.g., Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Individual Quick Frozen Red Raspberries From Chile*, 69 Fed. Reg. 47,869, 47,872 (August 6, 2004) (“[w]here the sale to an exporter or reseller is finished subject merchandise, the Department's practice is to rely on the [costs of production] of the producer”), unchanged in *Notice of Final Results of Antidumping Duty Administrative Review: Individual Quick Frozen Red Raspberries From Chile*, 70 Fed. Reg. 6,618 (February 8, 2005); *Certain Forged Stainless Steel Flanges From India: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 68 Fed. Reg. 42,005 (July 16, 2003) and accompanying Issues and Decision Memorandum at Comment 8; *Notice of Final Determination of Sales at Less Than Fair Value: Honey From Argentina*, 66 Fed. Reg. 50,611 (October 4,

2001) and accompanying Issues and Decision Memorandum at Comment 2; *Notice of Final Determination of Sales at Less Than Fair Value: Live Cattle From Canada*, 64 Fed. Reg. 56,739, 56,752 (October 21, 1999) (“ . . . to obtain the actual cost of producing these cattle, it was necessary to obtain the supplier’s actual production costs.”); *Elemental Sulphur From Canada: Final Results of Antidumping Finding Administrative Review*, 61 Fed. Reg. 8,239, 8,251 (March 4, 1996) (*Elemental Sulphur from Canada*) (“consistent with the Department’s policy. . . with regard to resellers, the Department has interpreted ‘cost of producing the merchandise’ to mean the production costs of the producer, plus the producer’s SG&A, plus the SG&A of the reseller”) (citations omitted)¹; *Final Determination of Sales at Less Than Fair Value: Fresh and Chilled Atlantic Salmon from Norway*, 56 Fed. Reg. 7,661 (February 25, 1991) at I, Comment 4 and III. Comment 1. Therefore, given the language in the statute and the SAA and consistent with the Department’s practice, we continue to find that reliance upon SKF Germany’s unaffiliated supplier data is appropriate.

SKF Germany’s concern that it cannot change its pricing to avoid dumping under the Department’s methodology of acquiring actual cost from unaffiliated suppliers, because it has no knowledge of its unaffiliated suppliers’ actual production costs, does not outweigh the goals of calculating dumping margins as accurately as possible and maintaining consistency with past practice. As explained above, the statute and the SAA direct the Department to use the producer’s actual COP, and contemplate that the producer may be different from the exporter. The statute does not, on the other hand, require the Department to rely solely upon data over

¹ In *Elemental Sulphur from Canada*, the Department explained that the use of unaffiliated supplier cost data closed a loophole that would otherwise open domestic producers to competition with below cost exports without remedy because the producer could continue to sell his production below cost and, as long as he does not know the destination, the intermediate prices would be taken as COP for resellers, regardless of the actual costs incurred. *Elemental Sulphur from Canada*, 61 Fed. Reg. at 8,251.

which a respondent has control. On the contrary, there are situations, created by statute, in which a respondent does not have control over the information used to calculate a dumping margin and, thus, would not be able to adjust its pricing to avoid dumping. For example, in non-market economy cases (*e.g.*, the People's Republic of China and the Socialist Republic of Vietnam), the statute directs the Department to use surrogate information to calculate normal values. *See Freshwater Crawfish Tail Meat From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative and New-Shipper Reviews*, 75 Fed. Reg. 34,100 (June 16, 2010), unchanged in *Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results of Antidumping Duty Administrative and New-Shipper Reviews*, 75 Fed. Reg. 79,337 (December 20, 2010); *See also* section 773(c) of the Act. In such cases, the respondents do not have control over the surrogate values used to determine normal value and, thus, do not have control over the final margin of dumping. Dumping determinations, therefore, do not depend upon whether one entity, such as the exporter or producer, controls all aspects of the elements used to calculate a dumping margin.

Similarly, as another example, when calculating certain credit expenses where the date of payment is used in the formula to calculate credit expenses, the respondent may have little or no control over when its customers actually pay for the merchandise. Higher credit expenses in one market over the other may increase or decrease the margin of dumping. *See* the Department's Ball Bearings and Parts Thereof from France, Germany, Italy and the United Kingdom – Antidumping Duty Questionnaire at appendices I-IV. The purpose of the dumping law, however, is to remedy the dumping by calculating the most accurate dumping margin possible,²

² *See Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1191 (Fed. Cir. 1990).

notwithstanding whether the exporter is able to control all aspects of the elements that make up the dumping margin calculation.³

The Federal Circuit cited the Department's regulations at 19 CFR § 351.222 as an example of why it might be important for SKF Germany to be able to adjust its prices to avoid dumping. *See SKF USA Inc. v. United States*, 630 F.3d at 1374. Specifically, the Court stated that "[i]f SKF cannot adjust its pricing to avoid dumping, it becomes more difficult to gain eligibility for revocation," and that "such a result would undermine the remedial purpose of the antidumping laws." *Id.* 19 CFR § 351.222 permits a party to request revocation of an antidumping duty order if it, *inter alia*, demonstrates an absence of dumping for three consecutive years. The Department points out that SKF Germany has never achieved a zero margin in the history of this proceeding, even when the Department relied upon SKF Germany's acquisition costs in its normal value calculation. Thus, the issue is not relevant in this case because SKF Germany has never been eligible for revocation under 19 CFR § 351.222(b). Regardless, the Department reiterates that the plain language of the statute provides that the Department should use the actual costs incurred by the producer in order to calculate accurate dumping margins. The fact that the Department has developed a regulation that permits a partial revocation of an antidumping duty order with respect to an interested party under certain circumstances cannot nullify the intent of the statute.

Moreover, the perceived difficulty in gaining eligibility for revocation under 19 CFR § 351.222 is based upon the assumption that SKF Germany cannot obtain knowledge of the cost

³ We point out that in *Melamine Chemicals, Inc. v. United States*, 732 F.2d 924 (Fed. Cir. 1984), the Court stated, in dicta, that the purpose of the antidumping duty law "is to discourage the practice of selling in the United States at [less than fair value]," and that "a finding of [less than fair value] sales based on a margin resulting *solely* from a factor beyond the control of the exporter would be unreal, unreasonable, and unfair." This case is distinguishable in many ways, however, *e.g.*, it involves a regulation that is specific to investigations, it describes a situation whether a margin is created solely because of currency fluctuations, and no party disputed that the respondent in that case was not dumping.

information of its unaffiliated suppliers. However, as the Court’s dissenting opinion notes, SKF Germany has not explained “why it could not simply require the actual cost of production data from an unaffiliated supplier as a condition for purchase.” *SKF USA Inc. v. United States*, 630 F.3d at 1376 (dissenting opinion). Thus, while additional steps by SKF Germany may be required for it to obtain revocation, these steps are consistent with the Department’s intent behind the revocation regulation that parties be able to certify that they will not dump the merchandise after the Department partially revokes the order, and is consistent with the purpose of the law to provide injured domestic industries protection from unfairly traded imports. In this case, the Department notified the parties during the fifteenth administrative review that in future reviews, when appropriate, it would request unaffiliated supplier data, and there is no evidence that SKF Germany attempted to obtain such data prior to purchasing bearings from its suppliers. SKF Germany’s concerns, therefore, are speculative.

With regard to SKF Germany’s concern that it could, someday, be subject to the application of an adverse inference, the Department in *AFBs 17* did not apply an adverse inference to SKF Germany and, therefore, any discussion in such context would be hypothetical. The application of adverse facts available is a respondent-specific, fact-driven determination that is based upon a respondent’s level of cooperation in responding to the Department’s requests for information. Speculation about possible fact patterns that would permit the Department to rely upon adverse facts available when a respondent fails to provide unaffiliated supplier data cannot outweigh the statutorily based reasoning, explained above, for the Department’s determination.

Although the Department recognizes that it resorted to adverse facts available in the subsequent review period, that determination was overturned by the Court and, upon remand, the Department did not rely upon adverse facts available. *See SKF USA, Inc. v. United States*, Slip

Op. 2010-76 (Ct. Int'l Trade July 7, 2010). Thus, that determination is not valid and has no relevance.

In accordance with the *Remand Order*, we have reconsidered our decision in *AFBs 17* to use COP data from unaffiliated suppliers to construct the normal value of subject merchandise with respect to SKF Germany and, based on that reconsideration, we continue to find that our reliance upon the data of a producer of subject merchandise to calculate the costs of producing that subject merchandise is appropriate in this case. In addition, pursuant to the *Remand Order* we have addressed the two specific concerns raised by the respondent in this case. These draft results of redetermination are pursuant to the order in *SKF USA Inc. v. United States*, Slip Op. 11-126 (Ct. Int'l Trade Oct. 14, 2011).

IV. COMMENTS FROM INTERESTED PARTIES

On November 28, 2011, the Department invited interested parties to comment on the Draft Results of Redetermination Pursuant to Remand (Draft Remand). SKF Germany filed comments on December 2, 2011. SKF Germany disputes the Department's analysis and offers several criticisms of the Draft Remand that question whether the Department complied with the Court's *Remand Order*. The petitioner, The Timken Company (Timken), which filed comments on the same date, endorses in all respects the Department's reasoning in the Draft Remand. The Department addresses interested parties' comments as follows:

Comment 1: The Department's new policy adversely affects SKF Germany's ability to decrease its dumping liability by limiting SKF Germany's access to pertinent information

SKF Germany takes issue with the Department's analysis with respect to its first concern that it cannot control its pricing to avoid dumping under the Department's new methodology. Specifically, SKF Germany argues that the examples cited by the Department are not analogous to the situation at issue. SKF Germany contends that in non-market economy situations, the

surrogate country chosen by the Department is a neutral entity and the data is publicly available and, if there are certain data that is not publicly available, the respondents nevertheless have access to it. SKF Germany argues further that the respondents in such cases have the opportunity to dispute the non-market economy data chosen by the Department.

With regard to the Department's credit expense example, SKF Germany argues that a respondent's customers pay the respondent in the ordinary course of business and, therefore, a respondent does have some control over when a customer makes a payment, although the issue is not so much whether a respondent has control over when a customer makes a payment but rather whether the respondent has access to that information. SKF Germany argues that a respondent does have access to the dates on which customers make their payments, as this information is available on the respondent company's own books and records.

SKF Germany argues that, in contrast, its largest supplier is not a neutral entity; it is SKF Germany's business competitor. Thus, according to SKF Germany, its unaffiliated supplier is not going to automatically cooperate with SKF Germany or necessarily even with the Department. SKF Germany contends that the information the Department seeks from SKF Germany's unaffiliated supplier is not publicly available and is not available through SKF Germany's own company records in its ordinary course of business. SKF Germany asserts that, unlike viewing a non-market economy country's surrogate data or accessing dates of payment for its own customers, it cannot compel an unaffiliated company to cooperate with the Department's request for that company's business proprietary information.

SKF Germany states that its counsel cannot meaningfully review or certify for accuracy an unaffiliated supplier's cost data with which SKF Germany's counsel has no familiarity and are barred from discussing with SKF Germany's management. In other words, SKF Germany

argues that it cannot meaningfully dispute its competitor's data. Thus, according to SKF Germany, the examples the Department provided have failed to adequately explain why SKF Germany's concern is outweighed by the Department's desire to change its long-standing policy.

Citing *SKF USA Inc. v. United States*, 630 F. 3d at 1371, SKF Germany argues that although the antidumping statute allows the Department to prefer the actual production costs of unaffiliated suppliers of finished subject merchandise over acquisition costs, the statute does not mandate that the Department must use actual cost data.

SKF Germany asserts that pursuant to the Department's own regulations at 19 CFR § 351.222, it has a right to revocation of the antidumping duty order if it demonstrates an absence of dumping for three consecutive years. SKF Germany argues that because the statute does not mandate that the Department must use actual cost data, because it has a right to revocation of the antidumping duty order under the Department's own regulations, and because the Department's preference for actual production cost over acquisition costs impairs SKF Germany's right by preventing SKF Germany from accessing the information on which its margins are calculated in order to adjust its prices, SKF Germany's right under 19 CFR § 351.222 should trump the Department's preference.

SKF Germany takes issue with the Department's assertion that this issue is not relevant because SKF Germany has never before received a zero margin. SKF Germany argues that the Department has formally promulgated a regulation that gives all respondents the right to have an order revoked if a respondent can obtain zero margins for three consecutive years. SKF Germany asserts that whether a respondent can obtain zero margins is a factual issue. SKF Germany argues that the fact that it has not been able to obtain a zero margin does not mean that it will not continue to try to do so. Thus, SKF Germany argues, its regulatory right to seek zero

margins cannot be trumped by the Department's policy requiring SKF Germany to obtain data from an unaffiliated competitor. According to SKF Germany, this unpromulgated Departmental policy almost *per se* negates SKF Germany's right under 19 CFR § 351.222. SKF Germany argues that the Department has provided no explanation as to why it has the authority to implement a policy that negates a regulatory right.

SKF Germany also takes issue with the Department's quotation of the Federal Circuit's dissenting opinion in *SKF USA Inc. v. United States*, 630 F. 3d at 1371, stating that SKF Germany did not explain "why it could not simply require the actual cost of production data from an unaffiliated supplier as a condition for purchase." SKF Germany states that actual business decisions are not as simple as is implied in the quotation. SKF Germany argues that, its unaffiliated supplier in this case was not merely a supplier, but a competing manufacturer. According to SKF Germany, manufacturing competitors do not volunteer cost data as part of the sale of a bearing. SKF Germany argues that the antidumping statute would be punitive, not remedial, if it negatively and unnecessarily interfered with companies' legal and legitimate business relationships and contract with suppliers.

SKF Germany contends that forcing an unaffiliated, competitive supplier to provide its cost data as a condition for purchase would necessarily compromise, and likely terminate, the purchase.

Timken contends that in the *Draft Remand* the Department provided the required analysis and endorses in all respects the analysis offered by the Department in the *Draft Remand*.

Department's Position: After reviewing comments received from interested parties, the Department continues to find that it has provided sufficient explanation and justification for using actual COP data instead of acquisition cost. SKF Germany misses the point in its

argument for why the examples cited by the Department as situations where the respondents do not have control over data that is used to calculate a dumping margin are not analogous to when the Department relies upon unaffiliated supplier data. SKF Germany argues that, in the examples provided by the Department, the data is available to the respondent company officials during the administrative review proceeding, whereas unaffiliated supplier data is available only to counsel, which prevents a meaningful review of that data. However, the issue upon remand is with respect to SKF Germany's concern that its lack of knowledge of its unaffiliated supplier's cost data precluded it from altering its pricing to avoid dumping. *See SKF USA Inc. v. United States*, 630 F.3d at 1369 (noting that Commerce did not address SKF Germany's concern that it "could not change its pricing to avoid dumping because it would have no knowledge of its unaffiliated supplier's actual production costs"). This issue relates to SKF Germany's knowledge of its supplier's data *during a particular period of review*, not its access to that data during the corresponding administrative review. SKF Germany does not dispute that the examples cited by the Department are situations where the respondents do not have knowledge during the relevant period of review of data that will be used to calculate their dumping margins.

Indeed, another example of a situation where a respondent company has no control over aspects of the dumping margin determined for it is when the Department limits its examination under section 777A(c)(2) of the Act and that respondent is not selected for individual examination. In that situation, the respondent will likely receive a dumping margin based upon the rates calculated for the individually investigated companies. In other words, that respondent will receive a rate based entirely upon data over which it had no control. These examples demonstrate that the statute does not require that a party have control over or even knowledge of all aspects of the elements that make up the dumping margin calculation. Instead, the statute

directs the Department to use the producer's actual COP, and contemplates that the producer may be different from the exporter.

With respect to SKF Germany's concern that its counsel cannot meaningfully review or certify the accuracy of an unaffiliated supplier's cost data, the CIT and the Federal Circuit rejected this same argument in the prior stages of this case in the context of SKF Germany's claim of a due process violation. *See SKF USA Inc. v. United States*, 659 F. Supp. 2d 1338 (Ct. Int'l Trade 2009); *SKF USA Inc. v. United States*, 630 F.3d 1365. Moreover, it is unclear what type of "meaningful review" SKF Germany believes its counsel is incapable of performing.

With respect to SKF Germany's concern regarding the accuracy of its supplier's information, the information is subject to verification by the Department, and the Department will not use that information unless it is satisfied that it is accurate.

SKF Germany argues that the Department's use of unaffiliated supplier data impairs its right to revocation pursuant to 19 CFR § 351.222. First, that regulation does not provide a "right to revocation." Rather, the regulation permits a company to request revocation under certain circumstances. The Department will then consider, *inter alia*, whether a company can demonstrate an absence of dumping for three years in making its revocation determination. Because the Department has developed a regulation that permits it to consider revocation in certain circumstances does not outweigh the statutory intent of having the Department calculate COP as accurately as possible. The Department is not required to select its calculation methodologies based upon which methodology is most beneficial to a respondent. Rather, it must select the methodologies which will yield the most accurate dumping margin.

Regardless, SKF Germany's ability to request revocation under the regulation is the same regardless of what methodology the Department uses to calculate its COP, *i.e.*, it is entitled to

request a revocation review under that provision. Moreover, as explained above, SKF Germany's concern is based upon an unsupported assumption that it will never have access to its supplier's data. Although SKF Germany states that it would be difficult to obtain COP data from its supplier because it is a competitor, there is no evidence that SKF Germany even attempted to have access to that data during the period of review. While we recognize that SKF Germany may face some difficulty in obtaining the data, or in having its supplier provide the information directly to the Department, we also recognize that SKF Germany, as with other respondents, has a choice to make with respect to its participation in the U.S. market. It can take steps to ensure its merchandise is fairly traded by either requiring its supplier to participate fully in any review where the supplier can provide the cost information directly to the Department, or SKF Germany may choose another supplier who is willing to participate. SKF Germany's business choice, however, does not outweigh the Department's interest in calculating the most accurate dumping margin by relying upon the actual COP, as directed by the statute.

Finally, SKF Germany argues that the statute would be punitive instead of remedial if it negatively interfered with companies' business relationships. Again, we emphasize that the purpose of the antidumping law is to remedy injurious dumping by calculating the most accurate dumping margin possible. The dumping law does not require companies to change their business relationships in any way. Consequently, the statute does not require the Department to select the calculation methodologies that are the most beneficial to a respondent just in case that respondent chooses to change its business relationships with the intent of avoiding dumping. Indeed, because certain methodologies may be more beneficial to some companies than others, it would be impractical to require the Department to select its calculation methodologies in this manner. Instead, as we explained, the statute requires only that the Department calculate the

most accurate dumping margin possible, and this dictate outweighs the speculative burden suggested by SKF Germany.

Comment 2: The Department's new policy can result in an unfair application of adverse facts available to SKF Germany

SKF Germany argues that the Department has also not adequately explained why its desire to change its policy outweighs SKF Germany's concern that it can suffer a determination of adverse facts available as a consequence of an unaffiliated competitor's failure to comply with a request over which SKF Germany has no control and with which noncompliance could work strategically to the competitor's advantage. SKF Germany takes issue with the Department's assertion that the issue is hypothetical because it did not apply an adverse inference in this review. SKF Germany argues that the issue is not hypothetical as the Department suggests because the Department did apply an adverse inference to SKF Germany in the subsequent administrative review. SKF Germany contends that although the CIT reversed that decision, the fact that the Department applied an adverse inference underscores the relevancy of SKF Germany's concern. SKF Germany argues that applying an adverse inference to a respondent based on the respondent's supplier's noncompliance is a punitive application of the antidumping statute. SKF Germany argues that the Department has not adequately addressed its concern with regard to this issue.

Timken contends that in the *Draft Remand* the Department provided the required analysis and endorses in all respects the analysis offered by the Department in the *Draft Remand*.

Department's Position: We continue to find that any discussion regarding what might happen if the Department is unable to obtain unaffiliated supplier data is hypothetical. The Department did not apply adverse facts available in the instant case. Also, because a determination regarding adverse facts available is based upon the unique factual circumstances

of each case, *e.g.*, the level of a party's cooperation, it is not possible to discuss how the Department will react in each situation. For example, in the investigation of narrow woven ribbons from Taiwan, although the Department was unable to obtain a respondent's unaffiliated supplier data, it did not apply adverse facts available because "the record evidence demonstrates that both Shienq Huong and its suppliers acted to the best of their abilities in responding to the Department's requests for the greige ribbon suppliers' costs." *See Notice of Final Determination of Sales at Less Than Fair Value: Narrow Woven Ribbons with Woven Selvedge from Taiwan*, 75 FR 41804 (July 19, 2010), and accompanying Issues and Decision Memorandum at Comment 20. That the Department applied an adverse inference in one case that involved one particular set of circumstances does not make the many other possible factual circumstances less hypothetical. As we explain above, speculation about possible fact patterns that might lead the Department to consider applying facts available cannot outweigh the statutorily based reasoning for the Department's determination.

V. RESULTS OF REDETERMINATION

In accordance with the *Court's Remand Order*, we have reconsidered our decision in *AFBs 17* to construct the normal value of subject merchandise produced by an unaffiliated supplier using the unaffiliated supplier's COP information rather than the exporter's acquisition costs and consistent with the Department's practice as described above, the Department on remand continues to find that its reliance upon the data of a producer of subject merchandise to calculate the costs of producing that subject merchandise is appropriate. In addition, we have addressed the two specific concerns that were raised by SKF Germany in this case and that were identified by the U.S. Court of Appeals for the Federal Circuit in *SKF USA Inc. v. United States*, 630 F.3d 1365.

The Department issues these results of redetermination pursuant to the *Remand Order* of the Court in *SKF USA Inc. v. United States*, Slip Op. 11-126 (Ct. Int'l Trade Oct. 14, 2011).

Christian Marsh
Acting Assistant Secretary
For Import Administration

Date