REDETERMINATION ON REMAND PURSUANT TO
HANGZHOU SPRING WASHER CO., LTD., v. UNITED STATES,
COURT NO. 04-00133

SUMMARY

In accordance with the U.S. Court of International Trade's ("CIT" or "Court") opinion in Hangzhou Spring Washer Co., Ltd., v. United States, Slip. Op. 05-80 (July 6, 2005) ("Court's Opinion"), the Department of Commerce ("Department") has prepared these results of redetermination on remand with respect to the final results of the 2001-2002 antidumping duty administrative review: Certain Helical Spring Lock Washers From the People's Republic of China; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Duty Order, in Part, 69 FR 12119 (March 15, 2004) ("9th Review Final Results"). The Department issued a draft remand to the Petitioner and Hangzhou Spring Washer Co., Ltd. on September 14, 2005, and received comments only from Hangzhou Spring Washer Co., Ltd. on September 20, 2005 ("Hangzhou's Draft Remand Comments"). Pursuant to the Court's remand instructions, the Department has reviewed its decision regarding the use of surrogate prices to value steel wire rod. For the reasons set forth below, the Department finds that its decision in the 9th Review Final Results to use surrogate values was correct. As such, the Department determines that no modifications need to be made in valuing this factor of production. Therefore, the dumping margin for Hangzhou Spring Washer Co., Ltd. ("Hangzhou") continues to be above *de minimis*, and revocation is not warranted.

ANALYSIS AND REDETERMINATION

In the 9th Review Final Results, the Department used surrogate values, rather than the market economy import price, to value steel wire rod. However, by the time the issue was brought before the CIT, the Department had made a finding in Certain Color Television

Receivers from the People's Republic of China, 69 FR 20594 (April 16, 2004) ("Color Televisions") that was not consistent with the 9th Review Final Results in relation to the question of subsidized inputs purchased via a third-country trading company. Therefore, the Department requested a voluntary remand in order to revisit its decision in the 9th Review Final Results, with a limit on its review on remand to whether any benefit was transferred to Hangzhou from its third country trading company.

After the Court granted the Department a voluntary remand in the instant case, the Department had already revisited this issue in Certain Helical Spring Lock Washers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 70 FR 28274 (March 17, 2005) ("10th Review Final Results"). The Department adopts the reasoning of the 10th Review Final Results, as noted herein, rather than the decision in Color Televisions.

The Department's regulations state that "where a factor is purchased from a market economy supplier and paid for in a market economy currency, the Secretary normally will use the price paid to the market economy supplier" to value that factor of production. See 19 CFR 351.408(c)(1). This directive is constrained, however, by the legislative history of the Omnibus Trade and Competitiveness Act of 1988, which amended the Tariff Act of 1930. The Conference Report to Accompany the Omnibus Trade and Competitiveness Act of 1988 states that "{i}n valuing such factors {of production}, Commerce shall avoid using prices which it has reason to believe or suspect may be dumped or subsidized prices." See Omnibus Trade and Competitiveness Act of 1988 (OCTA), Conference Report to Accompany H.R. 3, Report No. 100-576 at 590-91 (1988) ("House Conference Report"). Moreover, the House Conference Report notes that "the conferees do not intend for Commerce to conduct a formal investigation to ensure that such prices are not dumped or subsidized, but rather intend that Commerce base its decision on information generally available to it at that time."

The Department's position that there is "reason to believe or suspect" dumped or subsidized prices. Moreover, the Department's rejection of dumped or subsidized market economy prices for the valuation of a given factor has been upheld by the CIT which noted that "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 the circumstances, the whole picture." See China Nat'l, 264 F. Supp. 2d at 1239, quoting Al Tech Specialty Steel Corp. v. United States of America, 575 F. Supp. 1277, 1280 (1983)); see also Peer Bearing, 298 F. Supp. 2d at 1336,.

This was amplified by the CIT shortly thereafter, where it held that "{t}he level of subsidization does not prevent Commerce from determining that it has 'reason to believe or suspect' that prices paid are subsidized. Any level of subsidization found in the exporting country is enough evidence to support a determination that Commerce has 'reason to believe or suspect' that prices are distorted." See Peer Bearing Company – Changshan v. United States, 298 F. Supp. 2d 1328 (CIT 2003).

In the instant case, the Department finds that the decisions in Final Affirmative Countervailing Duty Determination: Certain Steel Products from the United Kingdom, 58 FR 37393 (July 9, 1993) ("1993 CVD Determination") and Cut-to-Length Carbon Steel Plate from the United Kingdom; Final Results of Expedited Sunset Review of Countervailing Duty Order, 65 FR 18309 (April 7, 2000) ("2000 Sunset Review") represent substantial, specific and objective evidence which is reasonably interpreted to support the Department's suspicion that prices of wire rod purchased by Hangzhou may be subsidized. Specifically, in the 1993 CVD Determination and the 2000 Sunset Review, the Department found evidence of subsidies that were generally used by the U.K. steel industry (e.g., Canceled National Loan Funds Debt and Regional Development Grants). In addition, we note that none of the subsidies investigated in

the 1993 CVD Determination or the 2000 Sunset Review were tied to a particular steel product, meaning they may have benefited any steel product made in the United Kingdom. Therefore, the 1993 CVD Determination and the 2000 Sunset Review provide specific evidence of countervailable subsidies that pertained to Hangzhou's market economy supplier of wire rod.

Accordingly, we find that the subsidies investigated in the 1993 CVD Determination and 2000 Sunset Review provide a basis to believe or suspect that wire rod prices from the United Kingdom may be subsidized. In addition, in the 2000 Sunset Review, the Department found that "revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a subsidy" at a countervailable rate of 12 percent for all but one U.K. steel producer. The Department also found that because "no evidence has been submitted to the Department demonstrating the termination of the countervailable programs, it is reasonable to assume that these programs continue to exist and are utilized." See 2000 Sunset Review at Comment 1. Most recently, in October 2003, the Department reaffirmed its 2000 Sunset Review findings in the Section 129 Determination: Final Results of Expedited Sunset Review of Cut-to-Length Carbon Steel Plate from the United Kingdom, 68 FR 64858 (October 24, 2003) ("Section 129 Determination"), stating that "we continue to find likelihood of continuation or recurrence of a countervailable subsidy with respect to the order on CTL Plate from the United Kingdom." See Section 129 Determination at 9.

The Department has determined in the past that price distortions continue to be reflected in successive transactions through third countries. For example, in the Notice of Final Determination of Sales at Less Than Fair Value: Certain Circular Welded Carbon-Quality Steel Pipe from the People's Republic of China, 67 FR 36570 (May 24, 2002) and accompanying Issues and Decision Memorandum at Comment 1 ("Steel Pipe"), the respondent argued that the Department should use the actual prices of its input purchased through third-country market-

economy trading companies, and contended that there was no proof that the effects of subsidization in the country of origin would have benefited the market-economy trading companies. In keeping with its past practice, the Department determined that there was reason to believe or suspect the prices may be subsidized, notwithstanding the input being sold through a trading company in another country. The Department found that subsidies from the country of origin are not removed merely by going through another country and, therefore, did not accept the prices based on the grounds that there was reason to believe or suspect they may have been subsidized. See Steel Pipe at Comment 1.

Similarly, the Department has found that other price distortions, such as those due to non-market economy ("NME") origin, continue to be reflected in successive transactions through third countries. Specifically, the Department found in Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags From the People's Republic of China, 69 FR 34125 (June 18, 2004) that the concerns about price distortions exist when inputs (factors of production) are produced in an NME country, but purchased by the NME producer through a third-country, market economy trading company. The Department found that a trading company's costs and prices are influenced by its NME suppliers' prices and costs, which are distorted in an NME.

The situation in the instant review is similar to the situation in Steel Pipe. The input here, wire rod, was known to have benefited from industry-specific subsidies and was purchased by a PRC producer through a third-country trading company. Accordingly, consistent with Steel Pipe, we find that the evidence of subsidization in this case is a sufficient basis to believe or suspect that prices of this input may be subsidized, notwithstanding being sold through a Hong Kong trading company.

While the Department determined in Color Televisions to use prices of an input purchased through a Hong Kong trading company despite evidence that the input may have been subsidized by the country of origin, the decision in that case was a departure from our practice and should not be followed because it did not take proper account of the directive in the legislative history for the Department to avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices. Additionally, Color Televisions departed from the Department's practice of rejecting the prices paid for goods whose production may have been subsidized. The standard articulated by Congress for rejecting prices of potentially dumped inputs, *inter alia*, enabled the Department to avoid having to conduct "a formal investigation to ensure that such prices are not dumped or subsidized," and instead to base the decision on "information generally available to {the Department} at that time." House Conference Report at 590-91.

It is the Department's long-standing practice, as discussed above, to find that price distortions continue to be reflected in successive transactions from the original distortive source, through third countries, and ultimately to the final customer. In light of this express standard and Departmental practice, where we have a reasonable basis to believe or suspect that the price of the input may be subsidized, that determination is unaltered by purchasing the input through a third-country trading company. Therefore, we are making the determination in this case consistent with the practice in Steel Pipe, our practice more generally, and with the legislative history discussed above.

Accordingly, we find that the evidence provides a basis to believe or suspect that the prices of the wire rod input may be subsidized and that the reason to believe or suspect the prices may be subsidized is not mitigated by simply purchasing the input through a third-country, market-economy trading company. Therefore, we did not use the market-economy prices for

this input originating in the U.K. that were paid to the Hong Kong trading company affiliated with the U.K. supplier.

COMMENTS

Comment 1: The Department Must Review Countering Evidence on the Record and Information Generally Available to it in its Final Redetermination on Remand.

Hangzhou's Argument: Hangzhou argues that the Department's decision to disregard the market purchases from Hangzhou's actual U.K. supplier, without further review of record evidence of producer-specific information and information generally available to the Department, ignores the Court's directive for the Department on remand to consider whether Hangzhou's actual market supplier did not benefit from subsidies. Hangzhou contends that the Department's reliance on the mere existence of the CTL Plate order on a country-wide basis, that is more than twelve years old, cannot constitute particular, specific, and objective evidence of producer-specific subsidies. Hangzhou asserts that the Department must review the rebuttal evidence on the record and information generally available to the Department when reviewing the suspicion of subsidy, as ordered by the Court.

Petitioner's Argument: The petitioner did not comment on this issue.

Department's Position: Hangzhou misunderstands the purpose of the remand and the Court's instructions. We requested a remand to consider the implications of Color Televisions upon the decision being challenged. Accordingly, the Court did not "direct" us to revisit our decision; instead, it granted our request. Indeed, the Court specifically noted that it was not deciding whether Hangzhou had met its burden. See the Court's Opinion at 21. Consistent with the Court's order of remand, per our request, we have considered our decision in light of Color Televisions. In this redetermination on remand the Department has thoroughly explained its reasoning for its decision to follow the 10th Review Final Results rather than Color Televisions.

Comment 2: Information Generally Available to the Department Directly Rebuts the Department's Subsidy Suspicion of Hangzhou's Supplier of U.K. Origin Steel Wire Rod.

Hangzhou's Argument: Hangzhou argues that the Department has stated that the privatization of the steel wire rod supplier to Hangzhou has extinguished all allocable pre-privatization subsidies. (*United States – Countervailing Measures Concerning Certain Products from the European Communities, First Submission of the United States*, WT/DS212, December 8, 2004, para. 48, and *United States - Countervailing Measures Concerning Certain Products from the European Communities, Recourse to Article 21.5 of the DSU by the European Communities, Final report of the Panel*, WT/DS212/RW (August 17, 2005), para. 7.207.) Therefore, Hangzhou argues that the Section 129 Determination is relevant to the issues before this Court.

Hangzhou argues that the Department cannot acknowledge in one proceeding that subsidies are extinguished, and then still claim in this proceeding that there is no evidence demonstrating the termination of the countervailable programs with respect to the U.K. supplier. Hangzhou maintains that the continuation of the order after the 2000 Sunset Review is invalid concerning its particular supplier because of the Department's statements in other forums. Hangzhou also argues that the Department's non-inclusion of the U.K. supplier in the Section 129 Determination means that the Department implicitly, if not explicitly, no longer considers the U.K. supplier covered by the order.

Petitioner's Argument: The petitioner did not comment in this issue.

Department's Position: Hangzhou cites part of *United States – Countervailing Measures Concerning Certain Products from the European Communities, First Submission of the United States*, WT/DS212, December 8, 2004, para. 48 in support of its position. However, when read in its entirety, it is clear the statements are not inconsistent. The next sentence of the quotation relied upon by Hangzhou states:

> In the revised sunset review determinations on cut-to-length carbon steel plate from the United Kingdom and Spain, Commerce assumed for the purposes of its analysis that the pertinent privatizations had extinguished all allocable pre-privatization subsidies. Commerce nevertheless concluded that, in both of those cases, there remained an affirmative likelihood of continuation or recurrence of a countervailable subsidy.

Emphasis added. As is clear from the use of the word "assumed," the Department did not find that the pertinent privatization had extinguished all allocable pre-privatization subsidies, and it could not have made such a finding without conducting a full analysis of the privatization transaction. To the contrary, as is evident from the subsequent sentence, the Department found there remained an affirmative likelihood of continuation or recurrence of countervailable subsidies. The Department's CVD and sunset determinations, therefore, provide ample reason to believe or suspect Hangzhou's supplier's prices may be subsidized.

Comment 3: The Department does not Provide a Reasonable Explanation for Presuming Any Benefit Transferred to Hangzhou from the Third-Country Trading Company.

Hangzhou's Argument: Hangzhou notes that the Department requested this voluntary remand because of its decision in Color Televisions that a subsidy is extinguished when the product is sold through a third-country trading company. However, the Department did not follow the Color Televisions practice in this redetermination on remand.

Hangzhou argues that the Department's decisions on remand are flawed because: 1) the Department improperly presumed that subsidization exists with respect to Hangzhou's particular supplier of U.K. origin wire rod as discussed in Comment 2 above and 2) the Department stops its review of the suspicion of subsidy of a good purchased through a trading company on the basis of its finding in number 1. Hangzhou alleges that this creates a *per se* rule with respect to inputs purchased through third-country trading companies, but provides no rational explanation for the Department's finding that the benefit from the subsidy continues necessarily to pass

through to the final customer. Hangzhou cites Color Televisions in the accompanying Issues and Decision Memorandum at Comment 8; Notice of Final Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act, 68 FR 37125, 37712 (June 23, 2002); Allegheny Ludlum Corp. v. United States, 367 F. 3d 1339 (Fed. Cir. 2004); and Delverde Srl v. United States, 202 F. 3rd 1360 (Fed. Cir. 2000).

Hangzhou argues that in Color Televisions the Department found that section 351.525(c) of the Department's regulations supported the rationale that a trading company in a third-country that is not subject to the countervailing duty investigation, cannot be presumed to have benefited from any subsidies received by the producer or exporter of the merchandise. In light of this, Hangzhou maintains that the Department must provide an explanation for why market purchases through a third-country trading company include any benefit from any subsidy provided to the supplier.

Petitioner's Argument: The petitioner did not comment in this issue.

Department's Position: As we have already stated, Color Televisions is a departure from the Department's normal practice, which we did not follow in the 10th Review Final Results and, therefore, do not follow here. See Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture from the People's Republic of China, 69 FR 67313 (November 11, 2004) at Comment 46, and Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags from the People's Republic of China, 69 FR 34125 (June 18, 2004) at Comment 4.

The Department does not agree with Hangzhou that a *per se* rule has been created. The Department has a reason to believe or suspect that prices in the exporting country may be subsidized. The Department bases this conclusion on its decisions in the investigation and sunset review, resulting in and continuing the countervailing duty order on steel from the U.K.

Both the CIT and the Federal Circuit have found that the Department's CVD orders provide a reason to believe or suspect that prices may be subsidized. China National Machinery Import & Export Corporation v. United States, 293 F.Supp. 2d 1334 (CIT 2003), aff'd, 2004 U.S. App. Lexis 14566 (Fed. Cir. 2004); Louyang Bearing Factory v. United States, 288 F.Supp. 2d 1369 (CIT 2003).

Parties may present evidence to rebut the presumption of subsidization; thus, the Department does not have a *per se* rule. There exists no evidence on the record that the subsidy is eliminated by means of the transaction with the third-country trading company. Hangzhou failed to provide evidence that these purchases through a third-country trading company did not benefit from any subsidy.

The Department's September 14, 2005, Draft Redetermination also does not conflict with other countervailable subsidy issues reviewed by the Department, as claimed by Hangzhou. Although the Department can under certain circumstances find that subsidization does not continue when a state-owned enterprise is privatized, this transaction cannot be compared to the sale of goods through third-country trading companies.

The Department also did not determine in Color Televisions, as Hangzhou claims, that merchandise sold through a third-country trading company washed out any prior benefit from subsidization. See page 9 of Hangzhou's Draft Remand Comments. The Department merely noted that its regulations require it to cumulate any countervailable subsidies received by the producers and the trading company located in the exporting country. The issue here, however, is not concerned with cumulating countervailable subsidies. Rather, it is whether the reason to believe or suspect that goods may be subsidized is altered when those goods are traded through a third-country trading company.

As we have explained, the Department's finding in Color Televisions does not reflect our normal practice to consider that goods found to be dumped or subsidized remain so whether or not they are sold through third-country trading companies. Hangzhou has not cited any prior Department findings that contradict this practice, except for Color Televisions. See Bethlehem Steel Corp., v. United States, 159 F.Supp. 2d 730, 749 n. 37 (CIT 2001) (noting Commerce is "required to follow prior 'precedent' only if it represents a settled rule applied consistently over time"), and Allegheny Ludlum Corp., AK, v. United States, 2003 WL 22240347 (CIT 2003) (sustaining Commerce's decision not to follow isolated departure from normal practice.) The fact remains that Hangzhou has simply not met the Court's standard for rebutting the Department's original finding that Hangzhou's steel input purchases may be subsidized.

Comment 4: The Department Must Reconsider Revocation of the Order in its Final Redetermination on Remand.

Hangzhou's Argument: Hangzhou argues that the Department must now find, in light of the arguments above, that the market economy purchases of steel wire rod are unsubsidized and that these purchases provide appropriate values to be used in the margin calculation. Therefore, Hangzhou should receive a *de minimis* margin and be eligible for revocation of the antidumping duty order.

Petitioner's Argument: The petitioner did not comment in this issue.

Department's Position: The CIT found the Department's decision, denying revocation, was supported by substantial evidence. See the Court's Opinion at 25. The Department continues to find that its use of surrogate prices to value steel wire rod in the 9th Review Final Results was appropriate. As such, revocation continues to be unwarranted.

REDETERMINATION ON REMAND

Based on the above analysis, the Department has determined not to change its decision regarding the use of surrogate values for steel wire rod in the 9th Review Final Results. As such, the Department finds no basis to use market-economy prices for steel wire rod. Therefore, Hangzhou's dumping margin continues to be above *de minimis*, and revocation is not warranted.

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Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

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Date