LUOYANG BEARING FACTORY v. UNITED STATES
Consol. Court No. 99-12-00743
Slip Op. 03-41 (April 14, 2003)

FINAL RESULTS OF REDETERMINATION PURSUANT TO REMAND

SUMMARY

The Department of Commerce ("Department") has prepared these final results pursuant to the remand order from the United States Court of International Trade ("CIT") in Luoyang Bearing Factory v. United States, Slip Op. 03-41 (CIT April 14, 2003) ("Luoyang Bearing II").

The Department released its draft final results of redetermination pursuant to the CIT's remand order ("Draft Results") to The Timken Company, the petitioner in this proceeding, and Luoyang Bearing Factory ("Luoyang"). On July 7, 2003, the Department received comments on the Draft Results from Timken and Luoyang. The Department addresses these comments below.

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

BACKGROUND

1) Use of Trading Company Prices to Value Steel Used in the Manufacture of Cups and Cones

In Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's

Republic of China; Final Results of 1997-1998 Antidumping Duty Administrative Review and Final Results of New Shipper Review, 64 FR 61837 (November 15, 1999) ("TRBs XI"), we used data on Japanese exports to India from the Japanese Harmonized Schedule ("HS") category 7228.30.900 to value the hot-rolled alloy steel bar used by Luoyang to manufacture TRB cups and cones, instead of the PRC trading company import price submitted by Luoyang. In Luoyang Bearing Factory v. United States, Slip Op. 02-118 (CIT October 1, 2002) ("Luoyang Bearing"), the CIT remanded this issue to the Department to examine whether Luoyang's PRC trading company import price constituted the best available information to value either all or a portion of the cup and cone steel purchased by Luoyang through the trading company and used by Luoyang in the manufacture of the subject merchandise. In the Department's Final Results Pursuant to Remand (December 30, 2002) ("Luoyang Bearing Remand Results"), prepared in response to Luoyang Bearing, the Department found that the PRC trading company import price was not the "best available information" for valuing the subject merchandise at issue. The Department based its decision on generally available information that supported a reason to believe or suspect that the steel prices offered by the market economy supplier in question may have benefitted from subsidies.

In Luoyang Bearing II, the CIT rejected, as a preliminary matter, Luoyang's contention that the Department's decision to reject the PRC trading company import price based on the Department's "subsidy suspicion" policy amounted to a post hoc rationalization. See Luoyang Bearing II at page 5. However, the CIT was not satisfied with the Department's position that various countervailing duty ("CVD") determinations on products that did not include hot-rolled alloy steel, the steel input in question, could support a reason to believe or suspect that the steel purchased by the PRC trading

company supplier to Luoyang had been subsidized. Although the CIT acknowledged the legislative history stating that the Department should avoid using any prices that the Department has reason to believe or suspect may be subsidized, the CIT remanded this case to the Department to "point to specific evidence demonstrating that the type of steel at issue (i.e., hot-rolled bearing quality steel bar) purchased by the PRC trading company was subsidized." See Luoyang Bearing II at page 17.

2) Surrogate Value for Steel Used in the Manufacture of Cups and Cones

In the TRBs XI, we used data on Japanese exports to India from the Japanese HS category 7228.30.900 rather than data on Japanese exports to Indonesia from the same HS category to value the hot-rolled alloy steel bar used by Luoyang to manufacture TRBs cups and cones. In Luoyang Bearing, the CIT remanded this issue to the Department to examine, in the event that the PRC trading company import prices do not constitute the "best available information," what data on the record of the proceeding, constitutes the "best available information" to value the bearing quality steel bar used by Luoyang in the production of TRB cups and cones. See Luoyang Bearing II at page 20. The data to be examined includes: Indonesian import statistics, export data from Japan to Indonesia, and export data from Japan to India.

In Luoyang Bearing Remand Results, we stated that it is the Department's preference to value NME producers' factors of production in a single surrogate country whenever possible, and when we have a reliable surrogate value from our primary surrogate country (India), we need not examine data from a secondary surrogate country, which, in this case, is Indonesia. In Luoyang Bearing II, the CIT found that the Department's reasoning for treating export data from Japan to India as "refined" Indian data, and subsequently using this data rather than reviewing similarly structured data on Indonesian

imports or Japanese exports to Indonesia, was illogical and unreasonable. See Luoyang Bearing II at page 19. As a result, the CIT again remanded the issue to the Department to examine whether Indonesian data (that is, Indonesian import statistics and export data from Japan to Indonesia) constitutes the "best available information" for valuing bearing quality steel bar used in the production of TRB cups and cones.[1] See Luoyang Bearing II at page 20.

ANALYSIS

1) Use of Trading Company Prices to Value Steel Used in the Manufacture of Cups and Cones

The CIT was not satisfied with the Department's "reliance on various {CVD} determinations to support {the Department's} reason to believe or suspect that the steel purchased by the PRC trading company at issue could have been subsidized because the various {CVD} determinations relied upon by {the Department} did not include hot-rolled bearing quality steel bar, the steel product at issue in this case." See Luoyang Bearing II at page 16. The CIT noted that while it is ". . . aware of the Omnibus Trade and Competitiveness Act of 1988's language stating that {the Department} shall avoid using any prices which it has reason to believe or suspect may be subsidized and that {the Department} is not required to conduct a formal investigation . . . ," it was remanding this case to the Department to "point to specific evidence demonstrating that the type of steel at issue . . . was subsidized." See Luoyang Bearing II at page 17.

[1] The Department was instructed to address the Indonesian data if, and only if, the Department concluded that the PRC trading company import price does not constitute the "best available information."

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 CMC Bearing[2] at page 18. In Luoyang Bearing II, the CIT interprets CMC Bearing to require the Department to provide "specific evidence demonstrating that the type of steel at issue," in this case hot-rolled bearing quality steel, was subsidized. See Luoyang Bearing II at page 17. We find that a reason to believe or suspect requires less evidence than an actual finding of subsidies in fact. In this case, in accordance with CMC Bearing, the Department relied upon its own CVD findings to "determine {that there was} particular, specific, and objective evidence to uphold its reason to believe or suspect" that the price at issue was subsidized. See CMC Bearing at page 26 and Luoyang Bearing II at page 17.

In Luoyang Bearing Remand Results we relied on the results of two subsidy investigations as evidence that the country in question maintained generally available subsidies that were not product specific. The subsidies found in these CVD investigations can be divided into two groups: general subsidies, that were available to and used by more than one steel producer, and company-specific subsidies. Of these two groups, the company-specific programs, which included regional subsidies, were not included in our analysis prepared in response to Luoyang Bearing. Rather, the general subsidy programs relied upon by the Department in its

[2] China National Machinery Import & Export Corporation v. United States, Slip Op. 03-16 (CIT February 13, 2003) ("CMC Bearing"), quoting Al Tech Specialty Steel Corp. v. United States, 575 F. Supp. 1277 (CIT 1983) ("Al Tech").

analysis were: 1) subsidies specific to the steel industry, and 2) subsidies that were found to be broadly available export subsidies.[3]

It is important to emphasize that the type of subsidies maintained by the government of the country in question, and relied on in making our determination to reject the PRC trading company prices, are not specific to any particular product or type of steel. This is demonstrated by the CVD investigations relied on by the Department which show that the same subsidy programs exist regardless of the type of steel products being produced and exported. Furthermore, the export subsidy programs maintained by the government in question 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 only contingent on a company's export performance.

The statutory history does not provide any particular criteria for the Department to consider in making a determination to avoid subsidized prices. Also, as noted by the CIT in Luoyang Bearing II, the legislative history does not require the Department to conduct a formal investigation to support a finding of "reason to believe or suspect," but instead states that the Department should base its decision on information that is generally available to it at the time it is making its determination.[4] Absent an investigation, it is not always possible for the Department to obtain product- or company-specific information. Instead, the Department has to rely on generally available information regarding the

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[3] 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.

[4] See Luoyang Bearing II at pages 16-17.

industry in question and/or the availability of export subsidies.

Consistent with Congress' instructions, and absent a formal investigation of the PRC trading company's market economy supplier, the Department relied on its own CVD proceedings of the market economy country in question in rejecting the actual market price the PRC trading company paid for the steel input in question. Through these proceedings, the Department established the existence of broadly-available export subsidies and industry-specific subsidies from which the PRC trading company'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 that could reasonably be interpreted to support a suspicion that the prices Luoyang's PRC trading company supplier paid to its market economy supplier were distorted. Therefore, the Department acted within its discretion to determine that in this context the evidence supports its finding to have a reason to believe or suspect.[5]

Ultimately, in accordance with Congressional intent as expressed in the legislative history and with the statute, it is within the Department's discretion to decide whether to utilize a particular surrogate value by examining whether or not it constitutes the best available information. The Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 ("the Act")

[5] 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).

requires the Department to base the valuation of the factors of production 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 19 U.S.C. § 1677b(c)(1). Based upon our examination of information available at the time of the TRBs XI, we found that the available evidence demonstrated that the PRC trading company's supplier had 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. Since these generally available subsidies had been found by the Department to be utilized by the steel industry and were countervailable, we found there was sufficient evidence to believe or suspect that the steel purchased by the PRC trading company was subsidized.

Given these facts, we find that the trading company price in question is not the best available information for valuing the steel used by Luoyang to manufacture its TRB cups and cones. This decision is consistent with Congressional intent and Department practice.

2) Surrogate Value for Steel Used in the Manufacture of Cups and Cones

In Luoyang Bearing II, the CIT directed that if Commerce finds that the PRC trading company import prices do not constitute the 'best available information,' then Commerce must consider whether Indonesian prices (that is, Indonesian import statistics or export data from Japan to Indonesia) constitute the 'best available information' to value the bearing quality steel bar used in the production of TRB cups and cones. See Luoyang Bearing II at page 20.

The Act requires the Department, when dealing with an NME country, to base the valuation of the factors of production 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."[6] As the CIT has noted on several occasions, the statute does not define what constitutes "best available information." (See, e.g., Baoding Yude Chem. Indus. Co., Ltd., 170 F. Supp. 2d 1335 (CIT 2001); Shandong Huarong Gen. Corp. v. United States, 159 F.Supp.2d 714 (CIT 2001). Instead, the court has recognized that the statute grants the Department broad discretion to determine what the best available information is, on a case-by-case basis, so long as the Department does so in a reasonable manner. Rhodia, Inc. v. United States, 185 F.Supp.2d 1343 (CIT 2001) citing Timken Co. v. United States, 166 F.Supp.2d 608 (CIT 2001).

While the statute does not define what constitutes best available information, the Department has promulgated regulations and established practices that enable the Department to select among different surrogate values, so that the normal value of the NME-produced merchandise is based on the best available information. These regulations and practices reflect the Department's desire to promote accuracy, fairness and predictability in our calculations (see Oscillating Fans and Ceiling Fans from the People's Republic of China, 56 FR 55271, 55275 (October 25, 1991)).[7]

For example, 19 CFR 351.408(c)(1) of our regulations states that the Department will normally value overhead, general expenses, and profit using data from producers of identical or comparable merchandise in the surrogate country. As explained in the preamble to the Department's proposed regulations, we believe that by focusing narrowly on the producers in the industry in question, our

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[6] See Section 773(c)(1) of the Act

[7] The Department's approach was cited with approval by the CAFC in Lasko Metal Products, Inc. v. The United States, 43 F.3d. 1446 (Fed.Cir.1994) ("Lasko").

calculations will be more accurate. See Notice of Proposed Rulemaking and Request for Public Comments, 61 FR 7345 (February 27, 1996) ("Proposed Rules"). Similarly, as a matter of practice, the Department normally seeks to use factor values that are contemporaneous with the Period of Review ("POR"). Again, this is done to promote accuracy in our calculation of the normal value of the merchandise being sent to the United States. In selecting accurate information, the Department is also selecting the best available information. Moreover, because these decision rules have been promulgated as regulations or established as a matter of practice, our proceedings are more predictable (parties know the types of data we are seeking to use) and fairer (the parties are in a better position to submit data that will eventually be used).

As with these examples, the Department's regulation stating a preference for valuing all the factors of production in a single country is also aimed at promoting accuracy, fairness, and predictability. See 19 CFR 351.408(c)(2). Regarding accuracy, we believe a more accurate result is obtained by relying on factor values from a single country. In this way, we are measuring normal value as if the NME producer's factory were picked up and moved to that country, a market economy country that is economically comparable to the NME and also where the input prices (measured both in absolute and relative terms) permit significant production of a comparable product. Otherwise, the prices of inputs may vary widely from one possible surrogate country to another. If the Department were to value some inputs in one country, other inputs in a second country, and still other inputs in a third country, the resulting normal value would be a complete patchwork, having nothing to do with the cost of producing the product under investigation in any country.

The importance of using a single surrogate country is best demonstrated in the calculation of

factory overhead. Under our methodology, we compute a ratio for factory overhead, dividing the absolute amount of factory overhead incurred by producers of identical or comparable merchandise in the surrogate country by the absolute cost of the materials they use. It is reasonable to assume that the overhead amount will normally be dependent upon the relative costs of the inputs. For example, producers in the surrogate country may have a choice of using more of input one and less of input two, but doing so will require a more expensive, larger piece of capital equipment (overhead). The producers will make the decision of how much of the various inputs to use based on the relative prices of the inputs, including the relative price of the capital equipment. Whatever decision the producers make will be reflected in the absolute cost of materials and the absolute cost of capital equipment. In turn, those costs will be reflected in the factory overhead ratio that becomes part of our NME calculation.

Thus, the calculation of the overhead ratio is dependent on the costs in the surrogate country. Given this, when the necessary data is available, it does not make sense to move from one country to another in selecting surrogate input values unless there is a good reason to do so. Instead, valuing all the NME producers' factors of production in a single country yields the best available measure of normal value.

This is not to say that the Department is locked into one country's prices when it selects that country as the primary surrogate. For example, if we determine that the price for a particular input in the surrogate country is aberrational, we will seek a value for that input in another surrogate country. See Antidumping Duties; Countervailing Duties; Final Rule ("Preamble"), 62 FR 27296, 27366 (May 19, 1997). If the value of the input in the primary surrogate is too high or too low, using that value for

the sake of staying in a single country would undermine the accuracy of the resulting normal value. Alternatively, if the factor value in the preferred surrogate was several years old and data from another country was contemporaneous with the POR, we might use the data from the secondary surrogate. Again, the accuracy of the result would be enhanced by rejecting the stale data and using the current value. The decision of which data to use would have to be made after weighing the competing concerns of wanting to stay in one country against the possible inaccuracy that could result from using flawed data from that country.

The Department's preference for using surrogate data from a single country also contributes to the goals of fairness and predictability.[8] As explained in the Proposed Rules, our preference for a single surrogate country is motivated in part by our desire to avoid "margin shopping." The Department routinely relies on the parties to submit surrogate values. One would expect petitioning parties to submit higher input values, while responding parties would submit lower values. By adhering to our preference for valuing inputs in the primary surrogate country, we are able to reject data that might otherwise be acceptable, but because it is higher or lower than the value in the primary surrogate, could have a significant impact on the outcome of the case. Contrary to the direction given by the CIT in this remand proceeding, we would not even need to consider the factor values from other potential surrogate countries because our regulation stating a preference for valuing factors in a single country

[8] "The establishment of a clear surrogate value hierarchy, with a preference first, for single country data, and then, for public statistical information readily available early in investigations {or administrative reviews}, should work to increase the certainty and predictability of the outcome of the Department's factor valuations." See Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China, 57 FR 21058 (May 18, 1992).

means that once we have found an acceptable value in the primary surrogate country, we need not look further.

In summary, the Department contends that 19 CFR 351.408(c)(2), along with other regulations and the Department's practices, promote accuracy, fairness and predictability in our calculation of normal value for NME producers. Consequently, 19 CFR 351.408(c)(2) helps the Department to find the best available information for valuing an NME producer's factors of production.

The Department continues to take the position that the data on Japanese exports to India represents the price of bearing quality steel in our primary surrogate country, India, and that because we have acceptable data for valuing this factor in our primary surrogate, we need not consider Indonesian values. We regret that we did not better explain this position in our earlier remand and respectfully request that the CIT consider this expanded explanation in any additional findings on this issue. At the same time, we have examined the Indonesian data as directed by the CIT and have determined that it does not constitute the best available information for valuing bearing quality steel. Our analysis follows.

In TRB proceedings, it is the Department's practice to compare potential surrogate values to a benchmark range consisting of U.S. import prices. As we noted in the TRBs X Remand Redetermination,[9] as well as in past TRBs reviews (see, e.g., TRBs X[10]), the purpose of a benchmark

[9] Final Results of Redetermination Pursuant to Court Remand in Timken Company v. United States, Slip Op. 02-38 (CIT 2002) ("TRBs X Remand Redetermination"), which was upheld by the CIT on September 3, 2002. See Timken Company v. United States, Slip Op. 02-104 (September 3, 2002).

[10] Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1996-1997 Antidumping Duty Administrative Review and New

is to test the reliability of values under consideration as surrogate values. We have repeatedly used U.S. prices as a benchmark because the Harmonized Tariff Schedule of the United States ("HTSUS") category is the only world market harmonized tariff schedule category of which we are aware that explicitly contains the type of bearing quality steel used to manufacture TRB cups and cones. Thus, by using values from this HTSUS category, we are able to test whether the broader HS categories employed by our potential surrogate countries likely reflect imports of bearing quality steel. The use of the U.S. data for this purpose has been upheld by the CIT. See, e.g., Timken Company v. United States, 59 F. Supp. 2d 1371 (CIT 1999), Timken Company v. United States, 166 F. Supp. 2d 608 (CIT 2001), and Timken Company v. United States, 201 F. Supp. 2d 1316 (CIT 2002).

As explained in the Luoyang Bearing Remand Results, we followed this methodology and found the Japanese exports to India data to provide a reliable value for bearing quality steel.

Consistent with the CIT's instructions in Luoyang Bearing II, we have now analyzed the Indonesian import data from HS category 7228.30 and Japanese exports to Indonesia data from HS category 7228.30.900. Based on this examination, we find the Indonesian HS number, as with the Indian import HS number, to be a basket category that encompasses a broad range of hot-rolled bars and rods of alloy steel, in addition to the bearing quality steel bars and rods used in TRB cup and cone production. See TRBs X Remand Redetermination. As for the Japanese export statistics, we find that they provide a break down of the broad six-digit HS category 7228.30 into several narrowly defined

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Shipper Review and Determination Not to Revoke Order in Part, 63 FR 63842 (November 17, 1998), as amended in Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Amended Final Results of 1996-1997 Antidumping Duty Administrative Review, 63 FR 71447 (December 28, 1998) (collectively, "TRBs X").

sub-categories. Although the Japanese HS category 7228.30.900 (Bars and Rods, of Other Alloy Steel) does not specifically isolate bearing quality steel as does the U.S. HTS category 7228.30.20, this Japanese category would include the type of bearing quality steel bar that is used to manufacture the TRB cup and cone. Therefore, we find the Indonesian import data, as a basket HS category, to be less reliable in comparison to the more narrowly defined Japanese export data (HS number 7228.30.900). See TRBs XI 64 FR 61839, 61840.

In comparing the Japanese exports to Indonesia data to the U.S. benchmark range ($642/MT to $834/MT), we find that the average Japanese exports to Indonesia value, $702/MT, provides a reasonable measure for this input. Because the Japanese tariff category is the narrowest category which could contain bearing quality steel, and because it is consistent with values contained in our U.S. benchmark category, we believe that these data are reliable for valuing steel used in the production of cups and cones.

Therefore, the record of the underlying proceeding contains two acceptable values for bearing quality steel, Japanese export prices to India and Japanese export prices to Indonesia. Moreover, the two values are equally good in terms of their contemporaneity with the POR, the fact that they are both based on public information, and they are exclusive of duties and taxes. See Taiyuan Heavy Machinery Import & Export Corp. v. United States, 23 Ct. Int'l Trade 701, 710 (1999); Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China, 57 FR 21058, 21062 (May 18, 1992); Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of Antidumping Administrative Review, 62 FR 61276, 61283 (November 17, 1997) and Notice of Final Determination

of Sales at Less Than Fair Value; Polyvinyl Alcohol From the People's Republic of China, 61 FR 14057, 14059 (March 29, 1996). Therefore, relying upon our preference for valuing factors in a single country (19 CFR 351.408(c)(2)), we determine that the best information available for valuing bearing quality steel is the price of Japanese exports to India.

INTERESTED PARTY COMMENTS

1) Use of Trading Company Prices to Value Steel Used in the Manufacture of Cups and Cones

Luoyang's Argument:

Luoyang argues that in the Draft Results the Department did not provide specific or new evidence that the steel at issue was subsidized as instructed by the CIT. Luoyang contends that the Department should answer the following questions in order to clarify the Department's position and avoid delays and possible errors:

1) "Why did the Department examine only affirmative countervailing duty determinations to support its subsidy suspicion policy for the TRBs XI review while disregarding negative (including *de minimis*) countervailing duty determinations?

2) The Department notes, but does not discuss in much detail, the legislative history to the 1988 amendments to the Act which provides 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 intended that Commerce base its decision on information generally available to it at that time.'

A) Does the Department attribute any significance to the double negative?

B) Does the Department attribute any significance to the term "formal investigation?

3) Does the Department provide any method to an interested party to establish that a market economy price is not dumped or subsidized?"

See Luoyang's July 7, 2003 submission at page 3.

Timken's Argument:

Timken endorses the Department's Draft Results *in toto.* Furthermore, Timken recommends that the Department cite and incorporate its Final Results of Redetermination (May 13, 2003) ("CMC Bearing Remand Results"), prepared in response to CMC Bearing. Timken notes that in CMC Bearing Remand Results the Department was very thorough and specific in its descriptions of the subsidies that gave rise to beliefs or suspicions. According to Timken, those positions support the Department's theoretical reasons for concluding that the subsidy programs in question may have benefitted many steel products. Therefore, by citing and incorporating CMC Bearing Remand Results, Timken believes the Department could further strengthen its position.

Department's Position:

The CIT remanded this case to the Department to "point to specific evidence demonstrating that the type of steel at issue (i.e., hot-rolled bearing quality steel bar) purchased by the PRC trading company was subsidized." We believe that we have addressed the CIT's concerns in this redetermination. Nevertheless, we respond to the questions posed by Luoyang below.

In regard to Luoyang's first question, the Department relied upon two affirmative CVD determinations on steel products from the supplier country at issue in concluding that the steel purchased by Luoyang was subsidized. As explained in CMC Bearing Remand Results, we do not consider the Department's negative finding for one steel producer from that supplier country to undermine the Department's justification for disregarding the market price paid by Luoyang as distorted.[11] That negative finding does not suggest that subsidies are not available to the supplier at issue here.

Instead, the Department continues to place primary importance on the two affirmative determinations discussed in Luoyang Bearing Remand Results at pages 8 - 9. The negative determination referenced involved only one large steel producer, while the two affirmative orders demonstrate that other smaller steel companies from the country in question had above *de minimis* subsidy levels. We find the rates for the smaller steel companies to be more predictive and representative of the steel producers in the country in question. In light of these affirmative determinations for other steel producers, the Department's negative finding for the one large company 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 the country in question may have benefitted from industry-specific subsidies and broadly available

[11]As Timken points out, the Department discussed this issue at length in CMC Bearing Remand Results. 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.

export subsidies.[12]

Unless a particular market supplier has been found to have *de minimis* subsidy benefits, as was the situation with the company involved in the negative finding, 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 should base its decision on information generally available to it at the time of its determination.[13] As noted previously, the legislative history makes clear that Congress did not intend for the Department to conduct a formal investigation to determine the existence of subsidies, which would be the only way to establish a particular company's rate. Therefore, and in response to Luoyang's second question, we interpret

this language from the Omnibus Trade and Competitiveness Act of 1988 to mean that the Department may rely on less specific information (i.e., generally available information) than could be gathered if the Department were to initiate and investigate individual companies from the market country in question.

In regard to the final question posed by Luoyang, the presumption that particular prices are dumped or subsidized can be rebutted when a party can show that the facts underlying the presumption differ for the supplier in question. As discussed above, if a market supplier is a company that was previously investigated by the Department and found not to be dumping or receiving subsidies above a

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[12]The Department notes that the negative CVD determination is informative to the extent that it provides evidence that specific subsidies exist.

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

de minimis level, the presumption would be rebutted and we would accept market prices offered by that company. See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1998-1999 Administrative Review, Partial Rescission of Review, and Determination Not to Revoke Order in Part, 66 FR 1953 (January 10, 2001) and Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Amended Final Results of 1998-1999 Administrative Review and Determination to Revoke Order in Part, 66 FR 11562 (February 26, 2001) (collectively, "TRBs XII")).[14] Given the fact-based nature of countervailing duty findings there may be additional means of rebutting the presumption, and where there is evidence which counters the Department's presumption parties may bring it to the Department's attention.

2) Surrogate Value for Steel Used in the Manufacture of Cups and Cones

Luoyang's Argument:

Luoyang argues that the Department did not provide new information regarding this issue in its response to Luoyang Bearing II. According to Luoyang, the Department should incorporate in its final results answers to the following questions:

1) "Why did the Department not apply its subsidy suspicion policy to the benchmark prices? If those prices are dumped or subsidized, why are those prices included in the benchmark? For example, countervailing duty orders were in place on steel products

[14]See also, 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 at Comment 1.

from many of the countries whose shipments the Department used for the benchmark. In particular, countervailable subsidies were provided to certain carbon steel products from Sweden at the time of the TRBs XI {sic} review.

2) Since the Department takes the position that the data on Japan/India exports represents the price of bearing quality steel in its primary surrogate country, i.e., the data constitute "refined" Indian data, do the Japan/India data include ocean freight and marine insurance from Japan to India?

3) As part of the "preference" argument the Department cited the benefit from using one country data in the financial rations. Did the Department consider whether the Indian financial ratios were affected by Indian subsidy programs which clearly affect the prices of Indian imports and exports."

See Luoyang's July 7, 2003 submission at page 4.

Timken's Argument:

Timken stated that is endorses the Department's Draft Results *in toto*.

Department's Position:

With regard to the first question posed to the Department by Luoyang in its comments on the Draft Results, we believe that rejecting subsidized prices used to benchmark surrogate values goes far beyond the concerns of the Congress as articulated in the Omnibus Trade and Competitiveness Act of 1988. The legislative history states that "in valuing such (nonmarket economy) factors, Commerce shall avoid using any prices which it has reason to believe or suspect may be dumped or subsidized." See H.R. Rep. 100-576 at 590-591. However, benchmark prices are not used to value factors. Instead,

benchmarks may be used to test whether potential surrogate values are aberrational or to ascertain whether broadly defined import categories are more likely to reflect the price of a particular product in the category. For example, in the TRB proceedings, we have repeatedly used U.S. prices as a benchmark because the Harmonized Tariff Schedule of the United States ("HTSUS") category is the only harmonized tariff schedule category of which we are aware that explicitly contains the type of bearing quality steel used to manufacture TRB cups and cones. Thus, by using values from this HTSUS category, we are able to test whether the broader HS categories employed by our potential surrogate countries likely reflect imports of bearing quality steel. The use of the U.S. data for this purpose has been upheld by the CIT. See, e.g., Timken Company v. United States, 59 F. Supp. 2d 1371 (CIT 1999), Timken Company v. United States, 166 F. Supp. 2d 608 (CIT 2001), and Timken Company v. United States, 201 F. Supp. 2d 1316 (CIT 2002).

With regard to the second question posed to the Department by Luoyang, we have found that the Japanese export price to India is representative of the price of bearing quality steel in our surrogate country of India. This price does not include adjustments for ocean freight and marine insurance.

Regarding the final question posed by Luoyang in its comments on the Draft Results, we note that the legislative history directs the Department not to use subsidized or dumped prices to value factors.[15] As the language of the legislative history refers specifically to "prices," we do not believe that Congress intended the Department to question the secondary effects on overhead, selling, general and

[15]See H.R. Rep. 100-576 at 590-591 (". . . in valuing such (nonmarket economy) factors, Commerce shall avoid using any prices which it has reason to believe or suspect may be dumped or subsidized.").

administrative, and profit ratios of producers in countries found to have distortive subsidies available. Therefore, whether the Indian companies used to calculate our financial ratios were influenced by generally available subsidies in India is outside the scope of Congressional intent. Accordingly, we believe that our draft results adequately addressed the issue remanded by the CIT.

FINAL RESULTS OF REDETERMINATION PURSUANT TO REMAND

As a result of this remand, we have not recalculated the company-specific margins for the 1997-1998 administrative review. The "PRC-Wide" rate for this review, 33.18 percent, is not affected by these results. The company-specific margins are as calculated in Luoyang Bearing Remand Results. These company-specific weighted-average margin percentages are as follows:

Exporter/manufacturer	**Final Weighted-average margin percentage**	**Remand Weighted-average margin percentage**
Luoyang Bearing Factory	3.68	5.15
Premier Bearing and Equipment, Limited	24.52	24.55
PRC-wide rate	33.18	33.18

These final results pursuant to remand are being issued in accordance with the order of the CIT in Luoyang Bearing Factory v. United States, Slip Op. 03-41 (CIT April 14, 2003).

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Jeffrey May

Acting Assistant Secretary
for Grant Aldonas, Under Secretary

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(Date)