PUBLIC VERSION

A-428-801
AR: 1998-99
Public Version
G1O3: KC

FINAL RESULTS OF REDETERMINATION
PURSUANT TO COURT REMAND
Timken US Corporation and Timken Nadellager, GmbH v. United States
Court No. 00-09-00454, Slip Op. 04-21 (March 5, 2004)

SUMMARY

The Department of Commerce has prepared these final results of redetermination pursuant to a remand order from the U.S. Court of International Trade in Timken US Corporation and Timken Nadellager, GmbH v. United States, Court No. 00-09-00454, Slip Op. 04-21 (March 5, 2004). In accordance with the Court's instructions, we have re-examined the remanded issues. Specifically, we have 1) investigated the claims raised during the administrative proceeding with regard to the alleged error committed by Timken Nadellager, GmbH,[1] in reporting home-market sales according to channels of distribution and 2) evaluated whether any corrections are necessary to attain the most accurate antidumping margin. After re-consideration of Timken Nadellager's claims and a re-examination of the evidence on the record, we have determined not to correct the alleged error because doing so would not guarantee the most accurate dumping margin.

[1] This action was brought originally by The Torrington Company and Torrington Nadellager GmbH in September 2000. The Torrington Company was acquired by the Timken Company on February 18, 2003, and is now known as Timken US Corporation. Timken's German affiliate is now known as Timken Nadellager, GmbH.

PUBLIC VERSION

BACKGROUND

On March 5, 2004, the U.S. Court of International Trade (the Court) issued an order in Timken US Corporation and Timken Nadellager, GmbH v. United States, Court No. 00-09-00454, Slip Op. 04-21 (March 5, 2004) (Timken US), remanding to the Department of Commerce (the Department) its final determination in Final Results of Antidumping Duty Administrative Reviews and Revocation of Orders in Part on Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom, 65 FR 49219 (August 11, 2000) (Final Results). In its Final Results and pursuant to the test established in the Colombian Flowers case discussed below, the Department rejected Timken Nadellager's claim that certain errors should be corrected on the grounds that the respondent did not show that these errors were clerical in nature. In Timken US, the Court stated that the facts reveal "a situation where rigid compliance with the Columbian Flowers Test would render a grossly erroneous dumping margin." Timken US at 16. The Court commented that, although it agreed with the Department that the error at issue was not clerical, the Department must also consider its obligation to determine dumping margins as accurately as possible.

The Court remanded the case to the Department to investigate further the claims raised during the administrative proceeding with regard to the error Timken Nadellager made in reporting its home-market sales according to channels of distribution and to make any corrections necessary to attain the most accurate antidumping margin.

DISCUSSION

In NTN Bearing Corp. v. United States, 74 F.3d 1204, 1206-09 (CAFC 1995) (NTN), the Court of Appeals affirmed the doctrine that the Department should correct inadvertent "clerical" errors made by respondents to avoid manifestly unjust results, even if the errors are discovered subsequent to the deadline for submitting information and even if the error is not obvious from the record at that time. In response to this case, the Department established a policy for correcting clerical errors of respondents and developed the six-part Colombian Flowers Test. See Certain Fresh Cut Flowers from Colombia; Final Results of Antidumping Duty Administrative Reviews, 61 FR 42833, 42834 (Aug. 19, 1996) (Colombian Flowers).

The first and most significant part of this test is the determination that the error is in fact clerical. In its Final Results, the Department determined that the alleged error claimed by Timken Nadellager was not clerical but was a substantive error which the Department could not correct without undermining its own regulatory deadlines for submitting information. The Court agreed with the Department's conclusion that Timken Nadellager's alleged error was not clerical. See Timken US at 15. Thus, according to established precedent such as NTN and Colombian Flowers, we believe the Court should have affirmed our determination not to correct Timken Nadellager's alleged error. In a departure from said precedent, however, the Court held that "rigid compliance with the Columbian Flowers Test would render a grossly erroneous dumping margin" and thus the Department should attempt to correct the error. Id. at 16. Accordingly, the Court ordered the Department to make any corrections necessary to attain the most accurate antidumping margin.

PUBLIC VERSION

We disagree respectfully with the Court's departure from the established doctrine for correcting clerical errors of respondents. As the Court states correctly in its decision, it is the duty of the Department to determine dumping margins as "accurately as possible." Timken US at 9 citing Rhone Poulenc, Inc. v. United States, 899 F.2d 1185, 1191 (CAFC 1990). This principle should not contradict, however, the Department's regulatory obligation to adhere to its deadlines for the submission of factual information. Accordingly, as a result of the Court's determination regarding the alleged error in this proceeding, the Department is in the difficult position of accepting new substantive factual information well beyond the regulatory deadline to evaluate an action that, if indeed an error, is a substantive one.

The Department's establishment of a procedure to redress clerical errors is not intended as a means for parties to avoid compliance with the Department's administrative procedures governing administrative reviews. Courts have recognized the Department's ability to establish strict time limits for the submission of factual information. See Coalition for the Pres. of Am. Brake Drum and Rotor Aftermarket Mfrs. v. United States, 23 CIT 88, 44 F. Supp. 2d 229, 237 (CIT 1999) (American Brake) (stating that "{w}ell-settled principles of administrative law afford an agency broad discretion to fashion its own rules of administrative procedure, including the authority to establish and enforce time limits concerning the submission of written information and data"). See also Maui Pineapple Co., Ltd. v. United States, 264 F. Supp. 1244, 1257 (2003), citing American Brake, 44 F. Supp. 2d at 237. The Department's regulations provide that, for the final results of an administrative review, a submission of factual information is due no later than "140 days after the last day of the anniversary month, except

that factual information requested by the verifying officials from a person normally will be due no later than seven days after the date on which the verification of that person is completed." 19 CFR 351.301(b)(2). Courts have recognized that the Department's procedural time limits serve to ensure the completion of antidumping investigations and administrative reviews because the Department "clearly cannot complete its work unless it is able at some point to 'freeze' the record and make calculations and findings based on that fixed and certain body of information." See American Brake, 44 F. Supp. 2d at 239, citing Gulf States Tube Division of Quanex Corp. v. United States, 981 F. Supp. 630, 653 (CIT 1997). Additionally, because "consistency provides parties certainty in their expectations, obligations, and potential liabilities," Allied Tube and Conduit Corp. v. United States, 127 F. Supp. 2d 207, 218 (CIT 2000), courts have recognized that "{f}air and equitable margins are calculated when the administering authorities are consistent in their procedural application of the law." Id.

The first requirement of the Colombian Flowers Test, that the error be a clerical error, is essential for allowing the Department to calculate accurate dumping margins within statutorily prescribed time limits while fulfilling the statutory obligation to provide for the correction of clerical errors. The exclusion of methodological errors, judgment errors, and substantive errors, combined with the procedural deadlines for the submission of new factual information, further this goal and recognize that the Department's procedural time limits for the submission of factual information are necessary to "freeze" the record and complete its work within the statutorily prescribed time limits. Additionally, courts have recognized that certain factual situations could lead to the potential danger of "granting

parties the power to manipulate administrative determinations by selectively withholding and updating data." Shandong Huarong Gen. Corp. v. United States, 159 F. Supp. 2d 714, 727 (CIT 2001), aff'd, 2003 U.S. App. LEXIS 466 (CAFC January 10, 2003), reh'g denied en banc, 2003 U.S. App. LEXIS 6759, *1 (CAFC March 18, 2003).

Here, this Court agreed that Timken Nadellager's error was not clerical. If it is indeed an error, it is a substantive one. To substantiate its arguments for reclassifying certain transactions to a different level of trade following the preliminary results of review, Timken Nadellager submitted new factual information (i.e., invoices) but its submission was untimely. Although Timken Nadellager had the disputed invoices in its possession during verification (which occurred prior to the issuance of the preliminary results of review), it did not submit the invoices until May 8, 2000. The regulatory deadline for the submission of factual information was October 18, 1999.

Nevertheless, in spite of concerns regarding the manner in which the Court's order undermines the regulatory regime, we have re-examined the claims made by Timken Nadellager in order to comply with the Court's decision and in light of the goal of calculating the most accurate dumping margin.

Initially, we take this opportunity to clarify an apparent misunderstanding regarding the level-of-trade classifications in this case, which is central to the issue of whether such sales were "misclassified." At page 20 of its decision, the Court provides the basis for its assessment that Timken misclassified certain sales: "had Timken properly classified the transactions at issue in its response to Commerce's questionnaire, it would have categorized the sales as distribution channel 2 or 3 because the customers did not buy the units for use in producing large original equipment." Timken US at 20. It is important

to recognize that the term "large original-equipment manufacturer," which connotes the level of trade in which such sales were grouped in the final results of review, does not refer to producers of "large original equipment." Rather, it refers to *large producers* of original equipment. That is, the term "large" modifies the type of manufacturer, not the type of product. As we understand the Court's reasoning, because the sales at issue were not used to produce "large original equipment," they could not have been classified within this level of trade appropriately. With the proper understanding of the term "large original-equipment manufacturer" in mind, however, it is clear that not only *could* such sales be classified as belonging to this level of trade but, under these facts, it was entirely appropriate to do so.

As explained in detail below, the identification of levels of trade is based on differences in the stage of marketing directed at certain *customer groups* (e.g., large original-equipment manufacturers), not particular *product groups* (large original equipment). To determine whether home-market sales are at a different level of trade than U.S. sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. See, e.g., Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom; Preliminary Results of Antidumping Duty Administrative Reviews, Partial Rescission of Administrative Reviews, and Notice of Intent to Revoke Orders in Part, 65 FR 18033, 18039 (April 6, 2000).

With this in mind, we turn to the facts of this case. After further investigation, we have concluded that the information Timken Nadellager submitted does not substantiate the existence of the

alleged error and, thus, reclassifying Timken Nadellager's sales in a different level of trade would not result in a more accurate dumping margin. Because Timken Nadellager did not establish that such sales were made at a different stage of marketing than other sales made to large original-equipment manufacturers, we find that the record of this review does not support a reclassification. Rather, as discussed below, the record supports the original classification Timken Nadellager made in its questionnaire response, which the Department verified. Thus, we find that no corrections are necessary to attain a more accurate dumping margin.

The Department has an established process for fulfilling its statutory obligation to determine the proper level-of-trade classification and adjustments. The Department's regulations recognize this statutory obligation. Specifically, the regulations at 19 CFR 351.412(a) provide that, "{i}n comparing United States sales with foreign market sales, the Secretary may determine that sales in the two markets were not made at the same level of trade, and that the difference has an effect on the comparability of the prices. The Secretary is authorized to adjust normal value to account for such a difference." The regulations specify that the determining factor in a level-of-trade classification is the marketing stage. Specifically, section 351.412(c)(2) provides that the "Secretary will determine that sales are made at different levels of trade if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing. Some overlap in selling activities will not preclude a determination that two sales are at different stages of marketing." The Department informs respondents of the need to report channels of distribution and the associated selling activities accurately. For example, the

Department's questionnaire in this review stated the following:

> The description you provide of your channels of distribution and sales process (question 4 below) is intended to provide the Department with the information necessary to make appropriate comparisons of sales at the same level of trade or to adjust normal value, if appropriate, when sales are compared at different levels of trade. Your response to this section may be of critical importance to this review. Accordingly, your response should include all the information requested and all the information you believe the Department should consider in making a comparison.

In complying with this Court's order to investigate Timken Nadellager's claims further, the Department has been mindful to comply with its statutory obligation to focus on marketing stages for its level-of-trade analysis and its obligation to calculate the most accurate dumping margins possible.

Timken Nadellager reported sales in five channels of distribution in its home-market sales listing. For these channels of distribution, we examined the selling activities, the point in the channel of distribution at which the selling activities occurred, and the types of customers that purchased the foreign like product. Three of the channels of distribution were for sales produced by Timken Nadellager and sold by Timken Nadellager from its factory. The other two channels of distribution were for resales made by Timken Nadellager's affiliated marketing entity. The channels of distribution Timken Nadellager reported corresponded to customer categories, i.e., large OEMs (channel 1), other OEMs (channel 2), and distributors (channel 3). The affiliated marketing entity's channels of distribution also corresponded to customer categories, i.e., OEMs (channel 4) and distributors (channel 5). We examined the differences in selling activities among Timken Nadellager's channels of distribution. For channels 2 and 3, there were relatively minor differences in selling activities. Further,

the point in the channel of distribution where these activities occurred was the same. Thus, we grouped channels 2 and 3 together for the level-of-trade analysis and called it LOT 3. The same was true for the affiliated marketing entity's channels of distribution 4 and 5, so we grouped them together as LOT 2. We designated the remaining channel of distribution, i.e., channel 1, as LOT 1.

After collapsing the five home-market channels of distribution into three channels of distribution, we analyzed the selling activities associated with each of the channels, as well as the point in the chain of distribution at which the selling activities occurred. For LOT 1, the customer type and differences in selling activities (i.e., delivery-schedule handling, engineering services, packing, inventory maintenance, direct sales activity, and sales and customer service) led us to conclude that it constitutes a level of trade separate from the other channels. Next, we analyzed the differences between LOT 2 and LOT 3. We found significant differences in selling activities like packing, repacking, and presale warehousing and, to a lesser degree, selling activities like rebate programs, delivery-schedule handling, engineering services, advertising, inventory maintenance, order-input processing, and sales customer service. Furthermore, we determined there was a difference in the point in the channel of distribution where these selling activities occurred. Based on our overall analysis, we decided to treat LOT 2 and LOT 3 as separate levels of trade. In the margin calculations, we used the channel-of-distribution variable for assigning the three home-market levels of trade. See Memorandum from Mark Ross to the File entitled "Torrington Nadellager GmbH Analysis Memorandum for the Preliminary Results of the Tenth Administrative Review of the Antidumping Duty Orders on Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from Germany," dated May 13, 2000 at page 11.

PUBLIC VERSION

One type of "misclassification" error that Timken Nadellager alleges involves sales of sample units to a large original-equipment manufacturer (OEM) which it claims were delivered to a large OEM's prototype center. Timken Nadellager argues that, although it reported these sales as being in channel 1, it should have reported them as in either channel 2 or channel 3 because the customer did not purchase the units to produce original equipment. (See Timken Nadellager's May 8, 2000, case brief.) To support its argument, Timken Nadellager submitted [ ]invoices. Timken Nadellager asserts that, because the invoices involve samples, they demonstrate conclusively that the sales should have been classified in either channel 2 or 3. Timken Nadellager attached a note to the exhibits directing the Department's attention to the "last two Torrington invoices . . . indicating the sale of MUSTER.HK1612B." Timken Nadellager indicates that "Muster" is German for sample.

After investigating Timken Nadellager's claim and its supporting documentation further, we have concluded that the invoices do not support a reclassification. First, Timken Nadellager's argument contradicts information on the record. In its verified questionnaire response, Timken Nadellager described the selling functions of channel 1 (large OEMs) as follows:

> If the customer agrees to do business, and if it is necessary to develop a new bearing, the following steps normally will follow. Torrington will develop and supply prototypes ("Muster") which are specially produced for the customer to test, and if the customer approves these units, the parties estimate the quantities to be bought and negotiate a fixed selling price. Thereafter, Torrington provides further sample units (designated by the suffix "M41"), which are produced under normal production conditions, and if the customer approves these samples, Torrington is fully approved to supply. Of course, if a "commodity-type" bearing will suffice, no "Muster" must be supplied.

Emphasis added; see Response of Torrington Nadellager, GmbH, and Affiliated Companies to the

Department of Commerce Antidumping Questionnaire in the Tenth Administrative Review, dated September 3, 1999, at A-22 (Section A Response). Timken Nadellager's explanation of the selling functions associated with channels 2[2] and 3[3] contain no discussion of samples and prototypes. Timken

---

[2] Torrington described the selling functions associated with sales in channel 2 as follows:

A Torrington salesman may visit the customer seeking to learn the customer's needs. Alternatively, the customer may initiate the contact, inquiring into Torrington's ability to supply. If necessary, a Torrington application engineer will review the customer's need, analyze the intended application, and recommend an appropriate bearing. Thereafter, marketing personnel will recommend a price which the salesman then quotes to the potential customer, thereby commencing actual negotiations. If the customer chooses to buy, it then places an order for the goods, which Torrington then considers for approval, and if the order is approved, Torrington enters the order into its system and normally provides an order confirmation. Thereafter, Torrington must analyze its inventory status, prepare its so-called "pick and pack" list, and take the appropriate steps to ship.

Generally, in cases involving "commodity" type bearings, less technical activities are involved. However, there are still normal price negotiations, order confirmations, and inventory functions. If inventory does not exist, plans to produce must be made.

See Section A Response, at A-23.

[3] Torrington described the selling functions associated with sales in channel 3 as follows:

In most cases, the customer initiates the contact, inquiring into a possible purchase. Once the products are determined, the salesman quotes a price which accords with instructions from marketing personnel. Thereafter, the salesman actively pursues the transaction, employing usual selling techniques, and if those efforts are successful the customer finally places an order. Once the order is received, Torrington enters it into its system, normally sends an order confirmation, prepares the so-called "pick and pack" list in preparation for actual shipment, and ships.

In addition to typical distributors, Channel 3 also includes competing producers of antifriction bearings who purchase and, in effect, distribute Torrington's production. For one of these customers, Torrington physically marks the product and packages it with the customer's brand name. Prices and other terms of sale are set through periodic negotiations comparable to those with other distributors.

See Section A Response, at A-23.

Nadellager confirmed the channel descriptions and related selling activities during verification.[4] [ ] of the [ ] disputed invoices are marked MUSTER and, therefore, are the type of transactions that Timken Nadellager said in its verified questionnaire response should be categorized as channel 1. In addition to the fact that Timken Nadellager's argument contradicts its verified questionnaire response, it has provided no explanation or evidence to substantiate that the selling functions associated with these particular sales make the transaction more appropriately classifiable as channel 2 or channel 3 transactions.

Moreover, with respect to the [ ] invoices in its May 8, 2000, case brief, Timken Nadellager states that the customer "is a large [ ] OEM." This fact alone supports the original channel 1 classification. Further, Timken Nadellager asserts that the [ ] sales in question cover units sold as samples and that they were delivered to a large OEM's prototype center, putting them in channel 2 or 3. The record supports that at least [ ] of the [ ] invoices were not even sample sales, however, but rather they were regular sales to a large OEM. Specifically, [ ] of the sales at issue are not identified as samples or prototypes in Timken Nadellager's home-market sales list

[4] During the on-site verification conducted by Department personnel, the Department discussed the channels of distribution and claimed levels of trade of Torrington's home-market and export-price sales. The Department discussed the selling activities Torrington performs for customers at each level of trade and examined documentation supporting the selling-functions chart it submitted in exhibit 5 of its response. The Department also discussed the method Torrington used to identify the level of trade of each customer when it compiled its sales databases. The Department found that Torrington's representations were consistent with its response and that Torrington reported the customer category and channel of distribution fields accurately in its sales databases. See Memorandum from Edythe Artman to the File, dated March 29, 2000, at page 7, concerning the verification of Torrington's home-market and export-price sales (Verification Report).

or on the invoices themselves.

Finally, although Timken Nadellager asserts in its May 8, 2000, submission that the customer did not buy the units for use in producing original equipment, there is no evidence that substantiates this assertion. If the bearings were samples and were tested or destroyed during a trial application rather than being used in production, Timken Nadellager could have provided evidence to that effect. The invoices Timken Nadellager submitted to support a reclassification do not substantiate that the bearings at issue were not for use by the large OEM in its normal production activities.

Given the contradictory record evidence and/or lack of narrative explanation and support documentation, the record does not support Timken Nadellager's requested reclassification.

The second alleged category of "misclassification" errors also involves sales to a large OEM. Timken Nadellager argues that it should have classified these transactions as sales to a small OEM (channel 2). Specifically, Timken Nadellager argues that, while most sales to the specific customer are classified correctly as channel 1 (sales from the factory to large OEMs), the disputed sales were shipped to a factory division of a large OEM that is involved in activities Timken Nadellager associates with small OEMs. In its May 8, 2000, submission, Timken Nadellager submitted invoices and the corresponding purchase orders to support its argument.

The Department has re-examined Timken Nadellager's supporting documentation for this alleged error. Our first concern is that Timken Nadellager did not provide any factual information to substantiate that the party identified on the invoice should be considered a small OEM as opposed to a large OEM. Moreover, Timken Nadellager's arguments rest exclusively on a division of a large

OEM's end product (electric tools) and ignores the fact that the Department's level-of-trade analysis focuses on the marketing stages and the selling functions associated with the different channels of distribution.

Timken Nadellager did not substantiate the selling functions associated with these particular sales and/or customer. While the Department recognizes that sales to a single customer can be classified into different channels of distribution, Timken Nadellager has the responsibility to demonstrate that the facts of these sales merit such bifurcation, particularly when it is making a change in its original classification. See Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Review, 57 FR 4975, 4981 (February 11, 1992). Accordingly, a reclassification of the disputed transactions is not warranted.

The third category of "misclassification" errors involves sales to several large OEMs which Timken Nadellager argues are properly classifiable as channel 3 sales. Timken Nadellager argues that these sales merit a reclassification because the merchandise was purchased for use as replacement parts rather than for the production of original equipment. To support its claim, Timken Nadellager submitted invoices with explanatory material. In support of its argument that one customer only purchased replacement parts at the specific location identified on the invoice, Timken Nadellager obtained an oral confirmation from the customer and memorialized the confirmation with a handwritten notation on the invoice. Concerning sales to another customer, Timken Nadellager explained that the shipping-point code indicated that the bearings were destined for a site responsible for taking delivery of replacement

parts for subsequent distribution to the customer's dealers (see note in exhibit 5 of Timken Nadellager's May 8, 2000, case brief). Finally, for the remaining customer, Timken Nadellager explained that the remaining invoices indicate that the merchandise was to be used as "spare parts" (see Timken Nadellager's May 8, 2000, case brief).

The Department has re-examined these claims by reviewing the "corrective" documentation and information in Timken Nadellager's questionnaire response. In its Section A Response at 13, Timken Nadellager explained that, in channel 3, "{n}ormally, the products sold are commodity-type bearings listed in Torrington Nadellager's standard catalog, though sometimes they include non-standardized models" (emphasis added). In its description of the associated selling activities, Timken Nadellager reported that, "{i}n addition to typical distributors, Channel 3 also includes competing producers of antifriction bearings who purchase and, in effect, distribute Torrington's production." (See Section A response at A-24.) Timken Nadellager confirmed the channels-of-distribution descriptions during the Department's verification. (See Verification Report at 7.)

As discussed above, Timken Nadellager has not explained the selling functions associated with the disputed transactions. Further, we have concluded that, viewed in conjunction with Timken Nadellager's questionnaire response, the invoices do not support a reclassification. For example, Timken Nadellager has not provided a sufficient explanation of why replacement parts for merchandise sold originally through channel 1, presumably after the requisite plant certification, would be properly classifiable as channel 3 sales. Additionally, the specific customers appear to be large OEMs, not distributors or competing producers. Finally, the information provided by the plaintiff to correct the

alleged error does not substantiate that the products were used as replacement parts. The merchandise very well may have been used for the normal production activities of the large OEMs. For these reasons, the Department has concluded that the record evidence does not support a level-of-trade reclassification of any of the transactions.

In sum, the record evidence submitted by Timken Nadellager does not support the existence of an error in the classification of its sales. Rather, the record supports the original classification Timken Nadellager made which in turn reflects the most accurate dumping margin. Therefore, the Department determines on remand that no corrections are necessary to attain a more accurate dumping margin.

COMMENTS

Comment 1: In comments received in response to the Department's Draft Results of Redetermination Pursuant to Court Remand, Timken Nadellager argues that the Department's redetermination is contrary to the Court's order. Timken Nadellager argues that the Court held that the prior margin was erroneous and that the error resulted from the mis-classifications. Timken Nadellager argues further that, rather than executing the Court's instructions, the Department simply stated its disagreement with the Court's finding and reiterated its original determination that Timken Nadellager's claims were not supported. Accordingly, Timken Nadellager argues that the Court's decision to remand the case "for further investigation and to make any corrections necessary to attain the most accurate dumping margin" includes neither the latitude to disagree with the Court's decision that the margin was erroneous nor the right to not make any corrections based on the Department's disagreement with the Court's decision. Citing Timken US at 21, Timken Nadellager argues that the

Court determined that "an erroneous dumping margin was calculated as a result of a few misclassified transactions reported by Timken." Cylindrical Roller Bearings from Germany - Draft Remand Results - Comments of Timken Nadellager GmbH, at 2, dated May 26, 2004.

Department's Position: The Department has complied with the Court's order to investigate Timken Nadellager's claims further and make any corrections necessary to attain the most accurate dumping margin. Contrary to Timken Nadellager's assertions, the Department has not simply restated its original finding that Timken Nadellager's claim is not supported by record evidence. Rather, the Department has conducted a full analysis of the evidence on the record with the goal of calculating the most accurate dumping margin. This analysis entailed a thorough review of Timken Nadellager's original questionnaire response and electronic database, Timken Nadellager's May 8, 2000, submission, and the Department's verification report. The analysis in this redetermination (which is discussed on pages 6 through 17 above) far exceeds the Department's original analysis conducted in the Final Results.

As discussed on pages 6 and 7 above, the Department believes that the Court's statement is premised on an apparent misunderstanding regarding the level-of-trade classifications in this case, which is central to the issue of whether such sales were "misclassified." At page 20 of its decision, the Court provides the basis for its assessment that Timken misclassified certain sales: "had Timken properly classified the transactions at issue in its response to Commerce's questionnaire, it would have categorized the sales as distribution channel 2 or 3 because the customers did not buy the units for use in producing large original equipment." Timken US at 20. The Department has clarified that the term

"large original-equipment manufacturer" refers to large producers of original equipment rather than referring to producers of "large original equipment." Such clarification is necessary because the Department's level-of-trade analysis focuses on the differences in marketing stages related to customer groups, not product groups. That is, the term "large" modifies the type of manufacturer, not the type of product. Thus, in determining whether such sales were "misclassified," we considered whether Timken Nadellager provided an adequate explanation and supporting documentation establishing that the marketing strategies for the disputed sales support such a reclassification. As discussed above, we find that it did not do so.

Comment 2: Timken Nadellager also argues that the remand results are contrary to the Department's long-standing practice because the Department has never required a respondent to provide transaction-specific evidence of the classification of reported sales. Additionally, citing World Finer Foods, Inc. v. U.S., 24 CIT 541, 550, Slip Op. 00-72 (June 26, 2000) (World Finer Foods), Timken Nadellager argues that the Department may not preempt correction by imposing evidentiary standards on the corrected submission which exceed those required for the original submission. Specifically, Timken Nadellager argues that it has provided proof of the actual nature of the disputed transactions and that this documentation exceeds what is ordinarily required. Finally, Timken Nadellager argues that there is no contradictory evidence.

Department's Position: We have not imposed a higher evidentiary burden on Timken Nadellager. Rather, we have conducted an analysis to determine whether record evidence supports Timken Nadellager's claim that the disputed transactions should be reclassified into a different level of

trade. In accordance with our statutory obligation, we have focused our analysis on the associated marketing stages and selling functions. As a result of this analysis, we have determined that, given the contradictory record evidence and/or lack of narrative explanation and support documentation, the record does not support Timken Nadellager's requested reclassification. For example, concerning the [ ] sample sales that Timken Nadellager claims are properly classified in either channels 2 or 3, the Department has determined that, not only does Timken Nadellager's argument conflict with record evidence concerning these sales to large OEMs, but [ ] of the sales were not identified as samples in either the home-market sales listing or on the invoices themselves. Regarding the [ ] sales to a large OEM that Timken Nadellager claims are appropriately classifiable as sales to small OEMs, the Department has determined that Timken Nadellager has based its argument on the customer's end product and has not provided any evidence of the associated marketing stage and selling functions. Concerning the [ ] sales to large OEMs that Timken Nadellager argues should be classified as sales to distributors, the Department has determined that Timken Nadellager has neither explained the associated marketing stages nor provided an explanation of why sales of replacement parts for merchandise sold originally through channel 1, presumably after the requisite plant certification, should be classified as sales through channel 3. Further, the information provided by the plaintiff to correct the alleged error does not substantiate that the products were used as replacement parts. The merchandise may have been used for the normal production activities of the large OEMs. For these reasons, the Department has concluded that the record evidence does not support a level-of-trade reclassification of any of the transactions. Finally, Timken Nadellager's argument regarding World Finer Foods

lacks merit because the Department verified Timken Nadellager's questionnaire response, including its description of the marketing stages and selling functions associated with each level of trade. In World Finer Foods, the Court focused on the differences between verified and unverified information and recognized implicitly that verification serves to ensure the reliability of questionnaire responses. Specifically, the Court stated that "{o}rdinarily there is no verification of submissions in an administrative review. Therefore, there is no reason for Commerce to infer greater reliability in the information initially submitted as opposed to the information submitted for corrective purposes." Id. at 27. In conducting its analysis of record evidence, we relied properly on the verification report, which stated that Timken Nadellager had characterized its level-of-trade classifications correctly. Courts have recognized the finality of verification findings because "{t}o conclude otherwise would leave every verification effort vulnerable to successive subsequent attacks, no matter how credible the evidence and no matter how burdensome on the agency further inquiry would be." FAG Kugelfischer Georg Schafer AG v. United States, 131 F. Supp. 2d 104, 133 (CIT 2001). Accordingly, the Department has relied justifiably on the verification report in its determination that the record evidence does not support a conclusion that the disputed transactions had been misclassified. Accordingly, the record evidence does not support correction of the claimed errors to attain the most accurate dumping margin.

FINAL RESULTS OF REDETERMINATION

These final results of redetermination are pursuant to the remand order of the Court of International Trade in Timken US Corporation and Timken Nadellager, GmbH v. United States, Court No. 00-09-00454, Slip Op. 04-21 (March 5, 2004).

PUBLIC VERSION

_____

James J. Jochum
Assistant Secretary
for Import Administration

_____

Date