

*SKF USA Inc., SKF France S.A., SKF Aerospace France S.A.S.,
SKF GmbH, and SKF Industrie S.p.A. v. United States,*
Slip Op. 09-148, December 21, 2009

RESULTS OF REDETERMINATION
PURSUANT TO COURT REMAND

SUMMARY

The Department of Commerce has prepared these results of redetermination pursuant to the remand order from the U.S. Court of International Trade in *SKF USA Inc., SKF France S.A., SKF Aerospace France S.A.S., SKF GmbH, and SKF Industrie S.p.A. v. United States*, Slip Op. 09-148. While we respectfully disagree with the U.S. Court of International Trade's decision, we have recalculated SKF Germany's margin using information on the record that is not adverse to SKF Germany in accordance with the U.S. Court of International Trade's remand instructions. Specifically, we used SKF Germany's acquisition costs for the period May 1, 2006, through April 30, 2007, to calculate the dumping margin for SKF Germany for sales it made to the United States of merchandise produced by an unaffiliated supplier.

We released draft results of redetermination to interested parties on February 16, 2010, and requested the submission of comments no later than February 22, 2010. No interested party commented on our draft results of redetermination. Accordingly, we have made no changes to our draft results of redetermination and the discussion which follows addresses our redetermination.

BACKGROUND AND RESULTS

On December 21, 2009, the U.S. Court of International Trade (the Court) issued its ruling in *SKF USA Inc., SKF France S.A., SKF Aerospace France S.A.S., SKF GmbH, and SKF Industrie S.p.A. v. United States*, Slip Op. 09-148 (CIT December 21, 2009) (*SKF Germany*), remanding to the Department of Commerce (the Department) the final results in *Ball Bearings*

and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part, 73 FR 52823 (September 11, 2008).

In its opinion, the Court concluded that the Department acted within its authority and according to law in requesting cost-of-production data (COP) from unaffiliated suppliers. The Court also upheld the Department's decision to reject the COP information submitted by SKF Germany's unaffiliated supplier as untimely and to resort to facts otherwise available. Specifically, the Court stated that "the Department has broad authority to set, and extend, its deadlines for submission of requested information, but on the uncontested facts of this case it acted within its authority in deeming the COP data an untimely submission." See *SKF Germany* at p. 14. The Court held, however, that "the Department acted contrary to law in drawing an inference adverse for SKF Germany upon the failure of the unaffiliated supplier to make a timely submission of the requested COP data" without a finding that SKF Germany had failed to act to the best of its ability.

In its remand order, the Court directed the Department to "recalculate SKF Germany's margin after redetermining the constructed value of the subject merchandise SKF Germany obtained from the unaffiliated supplier" using information that is not adverse to SKF Germany. See *SKF Germany* at pp. 21-22. Because SKF Germany's acquisition cost is the only cost information on the record, pursuant to the Court's instructions we have recalculated the dumping margin for SKF Germany using the acquisition costs it reported for the period of review.

The Court directed the Department to "redetermine the constructed value" of the subject merchandise SKF Germany obtained from the unaffiliated supplier in recalculating the margin for SKF Germany. We have done so where the comparison-market sales were determined to be

outside the ordinary course of trade following our application of the COP test, as directed by sections 773(a)(1)(B) and 773(a)(4) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.405(a). These provisions direct the Department to use constructed value only in specific situations (*i.e.*, where the Department has disregarded comparison-market sales that were made at prices below the COP, when comparison-market sales are outside the ordinary course of trade, *etc.*). Accordingly, for those U.S. transactions for which no home-market sales are available to form the basis of normal value after the application of the cost test, we have used constructed value as the basis of normal value in accordance with section 773(a)(4) of the Act and 19 CFR 351.405(a). For all other U.S. transactions, we have calculated normal value using home-market sales in accordance with section 773(a)(1)(B)(i) of the Act.

As a result of this change to our calculations, the weighted-average margin for SKF Germany for the period May 1, 2006, through April 30, 2007, changed from 4.15 percent to 1.97 percent. Upon a final and conclusive court decision, we will publish an amended final results of review to that effect.

/Ronald K. Lorentzen/

Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

/March 11, 2010/

(Date)