

and *Sigma Corporation v. United States et al.*, Slip Op. 94-178, Ct. No. 93-09-00655 (CIT September, 1993). The remand resulted in a finding of a de minimis margin for China National Metals Import and Export Corporation (CMP) and, consequently, a negative determination of sales at less than fair value for the investigation of CMP. Therefore, CMP, as an exporter of subject merchandise produced by Bin He Foundry and Song Zhuang Foundry, is excluded from the application of the antidumping duty order on compact ductile iron waterworks products from the People's Republic of China. Because CMP is excluded from the application of the antidumping duty order with respect to its sales of subject merchandise produced by Bin He Foundry and Song Zhuang Foundry, we are also terminating the on-going administrative review with respect to CMP as an exporter of subject merchandise produced by these two foundries. Because no parties to the Court proceeding contested the Department's Final Redetermination, we are not publishing a Timken notice, pursuant to *Timken v. United States*, 893 F.2d 337 CAFC (1990).

EFFECTIVE DATE: January 6, 1995.

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SUPPLEMENTARY INFORMATION:

Background

On February 18, 1993, the Department published its Preliminary Determination of Sales at Less Than Fair Value: Certain Compact Ductile Iron Waterworks Fittings and Glands From the People's Republic of China (58 FR 8930) (CDIW). In that determination, the Department found CMP's weighted-average dumping margin to be 127.38 percent. Consequently, we instructed the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise exported by CMP entered into U.S. Customs territory on or after February 18, 1993, the date of publication of the preliminary determination in the **Federal Register**. In the final determination, the Department found CMP's weighted-average dumping margin to be 127.38 percent. See Final Determination of Sales at Less Than Fair Value: Compact Ductile Iron Waterworks Fittings and Glands from the People's Republic of China, 58 FR 37908 (July 14, 1993). In CDIW the

Department determined that, in a nonmarket economy, ownership of an enterprise by the government provides the opportunity for the government to control the export activities of the enterprise. Given this potential to manipulate export pricing decisions, the Department determined that enterprises which were state-owned, *i.e.*, "owned by all the people," such as CMP, were ineligible for separate rates (58 FR at 37909). On September 7, 1993, the Department published an antidumping duty order in this proceeding. See Antidumping Duty Order: Certain Compact Ductile Iron Waterworks Fittings and Glands From the People's Republic of China, 58 FR 47117 (September 7, 1993).

On September 30, 1993, CMP and importer Sigma Corporation instituted an action at the CIT challenging, along with other findings, the Department's denial of a separate rate for CMP in the final less-than-fair-value determination. On May 27, 1994, all parties joined in a consent motion to the Court to remand the case to the Department, and on June 2, 1994, the Court issued its remand order. Pursuant to the Court's remand order, on September 30, 1994, the Department presented to the Court the Final Redetermination of Voluntary Remand in Compact Ductile Iron Waterworks Fittings and Glands from the People's Republic of China.

In the final redetermination, the Department reconsidered the issue of whether or not CMP, as an exporter of subject merchandise produced by Bin He Foundry and Song Zhuang Foundry, was entitled to a separate dumping margin in light of the Department's recent decision in the Final Determination of Sales at Less than Fair Value: Silicon Carbide from the People's Republic of China, (59 FR 22585, May 2, 1994) (Silicon Carbide). In Silicon Carbide, the Department modified the separate rates policy enunciated in CDIW, and evaluated whether enterprises "owned by all the people" could receive separate rates based upon evidence submitted demonstrating that reforms by the central government had devolved control over enterprises owned by all the people. Based on that evidence and analysis, the Department determined that "ownership by all the people" does not necessarily mean that an enterprise is controlled by the government, and therefore, such an enterprise may qualify for a separate rate.

In the final redetermination of CDIW to determine whether CMP, an enterprise "owned by all the people," was entitled to receive a separate rate, the Department used the criteria

developed in the Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China (56 FR 20588, May 6, 1991) (Sparklers) as amplified in Silicon Carbide. Under the separate rates criteria, the Department assigns a separate rate only when an exporter can demonstrate the absence of both *de jure*¹ and *de facto*² governmental control over export activities.

Evaluating the facts for the final redetermination in CDIW in light of the separate rates policy articulated in Silicon Carbide, the Department determined that respondent CMP, as an exporter of subject merchandise produced by Bin He Foundry and Song Zhuang Foundry, was entitled to a separate rate.

As a result of calculating a separate rate for CMP, the final weighted-average dumping margin for CMP is 0.44 percent, and is, therefore, *de minimis*, pursuant to 19 CFR 353.6(a) of the Department's regulations. Consequently, our final less-than-fair-value determination for CMP, with respect to its exports of subject merchandise produced by Bin He Foundry and Song Zhuang Foundry, is negative.

Exclusion From the Application of the Antidumping Duty Order, in Part

Pursuant to section 735(c)(2) of the Act and 19 CFR 353.21(c), and consistent with the Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils From the People's Republic of China, 59 FR 55625, 31 (November 8, 1994), we are excluding from the application of the order imports of subject merchandise that are sold by CMP and manufactured by the producers whose factors formed the basis for the *de minimis* margin. Under the NME methodology, the *de minimis* margin for each exporter is based on a comparison of the exporter's U.S. price and FMV based on the factors of production of a specific producer (which may be a different party). The

¹ Evidence supporting, though not requiring, a finding of *de jure* absence of central control includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; or (3) any other formal measures by the government decentralizing control of companies.

² The factors considered include: (1) Whether the export prices are set by or subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses (see *Silicon Carbide*).