

# Commerce Must Rethink Harsh Rod Levies, Trade Court Says

By **Nicole Rosenthal**

Law360 (May 31, 2022, 8:00 PM EDT) -- The U.S. Court of International Trade ordered the federal government to rethink countervailing duties placed on Chinese threaded rod, ruling that there isn't enough evidence to prove that two Chinese producers used a state-subsidized loan program to gain an unfair advantage over U.S. competitors.

In an opinion dated May 19 and made public Friday, CIT Judge Richard K. Eaton remanded the case to the U.S. Department of Commerce, noting that Commerce did not only have gaps in information regarding the subsidies, but that its decision to triple the subsidy rate for Chinese companies Zhejiang Junyue Standard Part Co. Ltd. and Ningbo Zhongjiang High Strength Bolts Co. Ltd. to account for any subsidies was not explained sufficiently.

Commerce must now either gather more information to support its decision or recalculate the countervailing duties for the companies and exclude the subsidy rate for the Export Buyer's Credit Program, Judge Eaton ruled.

"On remand, should Commerce continue to attempt to justify its benefit determination as supported by substantial evidence and otherwise in accordance with law, it shall explain the tripling effect with specific citation to applicable statutes and substantial record evidence," he said.

Junyue, a manufacturer of the imports used as studed bolts, and investor Zhongjiang Bolts challenged Commerce's use of adverse facts available to find that they received benefits under the Export Buyer's Credit Program, a state-owned loan program under China's Export Import Bank, according to the opinion.

Commerce sent questionnaires to China asking for information on the scope of the subsidy program, and China provided "some, but not all" information Commerce requested. The missing information included revisions to the subsidy program from 2013, a list of all third-party banks involved in the credit process and a list of all partner and correspondent banks involved in fund disbursement, the opinion said.

Despite both companies claiming they never benefited from the subsidies, Commerce tripled a 10.54% subsidy rate to calculate final duties, resulting in a 66.81% rate for Junyue and a 31.02% rate for Zhongjiang Bolts.

Judge Eaton concluded that Commerce failed to verify the incomplete information as well as Junyue's and Zhongjiang Bolts' claims that their U.S. customers did not benefit from the program.

"The court cannot say that substantial evidence supports Commerce's determination that a gap in the factual record existed as to whether plaintiffs' U.S. customers used the Export Buyer's Credit Program to purchase subject merchandise exported by plaintiffs," Judge Eaton wrote.

Judge Eaton gave Commerce 90 days to either explain or recalculate the duties.

Zhejiang Junyue Standard Part Co. Ltd. is represented by Gregory Stephen Menegaz, Alexandra H. Salzman and James Kevin Horgan of deKieffer & Horgan PLLC.

Ningbo Zhongjiang High Strength Bolts Co. Ltd. is represented by Andrew Thomas Schutz, Jordan

Charles Kahn and Kavita Mohan of Grunfeld Desiderio Lebowitz Silverman & Klestadt LLP.

The government is represented by Ashley Akers, Elio Gonzalez, Elizabeth Anne Speck and Jesus Nieves Saenz.

Vulcan Threaded Products Inc. is represented by Roger Brian Schagrin, Benjamin Jacob Bay, Christopher Todd Cloutier, Elizabeth Jackson Drake, Jeffrey David Gerrish, Kelsey Marie Rule, Luke Anthony Meisner, Michelle Rose Avrutin, Nicholas Joel Birch and William A. Fennell of Schagrin Associates.

The case is Zhejiang Junyue Standard Part Co. Ltd. v. United States, case number 1:20-cv-00102, in the U.S. Court of International Trade.

--Editing by Stephen Berg.