

UNITED STATES COURT OF INTERNATIONAL TRADE

MCC EUROCHEM,

Plaintiff,

v.

UNITED STATES,

Defendant.

Before: Leo M. Gordon, Judge

Court No. 10-00260

MEMORANDUM and ORDER

[Vacating opinion and order that dismissed “zeroing” claim of Plaintiff’s complaint, and reinstating claim.]

Dated: July 8, 2011

Squire Sanders & Dempsey, LLP (Peter J. Koenig and Christine J. Sohar Henter)
for Plaintiff MCC Eurochem.

Tony West, Assistant Attorney General, Jeanne E. Davidson, Director, Patricia M. McCarthy, Assistant Director, Commercial Litigation Branch, Civil Division, U.S. Department of Justice (David D’Alessandris); and Office of Chief Counsel, Department of Commerce (Shana Hofstetter), of counsel, for Defendant United States.

Akin, Gump, Strauss, Hauer & Feld, LLP (Valerie A. Slater, Margaret C. Marsh)
for Defendant-Intervenor Ad Hoc Committee of Domestic Nitrogen Producers.

Gordon, Judge: The court previously granted Defendant’s motion to dismiss Count 2 of Plaintiff’s complaint (Compl. ¶ 11), which challenged the U.S. Department of Commerce’s “zeroing” methodology. MCC Eurochem v. United States, 35 CIT ___, 753 F. Supp. 2d 1369 (2011) (“Opinion and Order”). The U.S. Court of Appeals for the Federal Circuit has subsequently issued two decisions, Dongbu Steel Co. v. United States, 635 F.3d 1363 (Fed. Cir. 2011) and JTEKT Corp. v. United States, ___ F.3d ___, 2011 WL 2557640 (Fed. Cir. June 29, 2011), which indicate that Plaintiff’s zeroing

claim has merit. The court is therefore sua sponte vacating its prior Opinion and Order, and reinstating Count 2 of Plaintiff's complaint.

Accordingly, it is hereby

ORDERED that this Court's Opinion and Order dismissing Count 2 of Plaintiff's complaint, MCC Eurochem v. United States, 35 CIT ___, 753 F. Supp. 2d 1369 (2011), is vacated; and it is further

ORDERED that Count 2 (¶ 11) of Eurochem's complaint is reinstated.

/s/ Judge Leo M. Gordon
Judge Leo M. Gordon

Dated: July 8, 2011
New York, New York