

MEMORANDUM

TO: Faryar Shirzad,  
Assistant Secretary  
for Import Administration

FROM: Joseph A. Spetrini  
Deputy Assistant Secretary  
for Import Administration, Group III

SUBJECT: Issues and Decision Memorandum for the Final Results in the  
Antidumping Duty Administrative Reviews of Certain Forged Stainless  
Steel Flanges from India

Summary

Having analyzed the comments and rebuttals of interested parties in the above review, we have made changes in some of the margin calculations, and we recommend that you approve the positions we present in the Issues section below.

Background

We published in the Federal Register the preliminary results of review on March 7, 2002 (66 FR 14127). The review covers flanges manufactured by Isibars Ltd. (Isibars), Panchmahal Steel Ltd. (Panchmahal), Patheja Forgings and Auto Parts Ltd. (Patheja), and Viraj Forgings Ltd. (Viraj). Concurrent with the preliminary results we rescinded the review with respect to Echjay Forgings Ltd. because it had no shipments of subject merchandise during the period of review.

The period of review (POR) is February 1, 2000, through January 31, 2001. We received briefs from petitioners, the Coalition Against Indian Flanges, and from Viraj Forgings Ltd. on

April 22, 2002, and rebuttal briefs from both these parties on May 6, 2002. We received no comments from Isibars, Panchmahal, or Patheja. Isibars had a zero margin in the preliminary results. Panchmahal is not cooperating in the review. Patheja is presumed to be inactive; its CEO and majority owner is reportedly incarcerated in India, and the company has made no appearance in this review or the previous review.

### Margin Calculations

Based upon our analysis of the comments received from interested parties, we recommend:

1. No changes from the preliminary results for Isibars, Panchmahal, or Patheja;
2. Revisions to Viraj's results as described below.

### Issues

#### 1. KOP Affiliation

Petitioners argue that the record indicates that Viraj and Kurt Orban Partners (KOP) are affiliated, that KOP's response suggests that at the time of shipment Viraj may have shipped directly to KOP's customer, and thus knew the identity of the customer, that it appears that KOP engaged in back-to-back invoicing of Viraj-produced flanges, that the prices between Viraj and KOP suggest that KOP charged less to its customers than Viraj charged KOP, that there are apparent discrepancies with respect to quantities shipped to and by KOP, and that Viraj's pricing to KOP was not at arm's length.

Petitioners also note that Viraj and KOP had an officer in common, in the person of Mr.

Matt Orban, a permanent officer of KOP who also served as Vice President of Viraj USA during part of the POR. Petitioners note that in a recent preliminary determination which also involved Viraj and KOP and the affiliation question, the Department determined there was no affiliation, because Mr. Orban's role in that case was merely clerical. See *Stainless Steel Wire Rod From India, Preliminary Results of Antidumping Review*, 67 FR 865, January 8, 2002 ("Wire Rod") . Petitioners take issue with that determination and argue that Mr. Orban's role in fact amounted to running the day-to-day operations of Viraj USA. Petitioners argue that it is contradictory for Viraj to report on the one hand that Mr. Orban's role was merely clerical, and that, on the other hand, he trained his successor with sufficient knowledge to actually manage Viraj USA.

Petitioners cite the Department's antidumping questionnaire as to possible indications of affiliation and argue that Mr. Orban fulfilled all the criteria listed in the questionnaire concerning possible affiliation.

In rebuttal, Viraj argues that Viraj and KOP hold no shares in each other, that neither entity controls the other, and that the Department has already found the two companies to be unaffiliated in two other recent reviews (cited below). Viraj further argues that it sold its goods to KOP by issuing invoices to KOP and that KOP in turn sold the goods on the basis of the invoice issued by Viraj. Viraj notes that if KOP does not stock inventory, then it is normal that the invoices to KOP from Viraj and from KOP to KOP's customer will match up. Viraj also disputes petitioners' arguments with respect to KOP charging lower prices than it paid to Viraj, pointing out that petitioners erroneously used the weights of total numbers of pieces of particular models as the number of pieces.

Department's Position: We agree with Viraj. There is insufficient evidence to determine

that there was control of either company by the other or that the criteria for affiliation in the Tariff Act and the regulations were otherwise sufficiently met.

The Tariff Act, at 771(33) describes affiliation as follows:

(A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

(B) Any officer or director of an organization and such organization.

(C) Partners.

(D) Employer and employee.

(E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.

(F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

(G) Any person who controls any other person and such other person.

For purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.

Of the criteria above, the only conditions which petitioners allege to have existed in the the arrangements between KOP and Viraj is employment. However, Mr. Orban's status as an officer of Viraj for the execution of import-related papers does not establish that he controlled the day-to-day operation of Viraj in the United States. See Viraj's May 6, 2002 rebuttal brief at 5. In fact, Mr. Orban's role was specifically limited in its authority and duration, covering only the first seven weeks of the POR. See Viraj August 28, 2001 supplemental response at 2.

Further guidance can be found at section 351.102(b) of the Department's regulations, which discusses the issue of control in the context of affiliation:

*Affiliated persons; affiliated parties.* "Affiliated persons" and "affiliated parties" have the same meaning as in section 771(33) of the Act. In determining whether "control" over another person exists, within the meaning of section 771(33) of the Act, the Secretary will consider the following factors, among others:

- (1) corporate or family groupings;
- (2) franchise or joint venture agreements;
- (3) debt financing; and
- (4) close supplier relationships.

*The Secretary will not find that control exists on the basis of these factors unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product. The Secretary will consider the temporal aspect of a relationship in determining whether control exists; normally, temporary circumstances will not suffice as evidence of control. (Emphasis added.)*

The above criteria for affiliation were not fulfilled by the relationship between Viraj and KOP. Although Viraj was a supplier to KOP, the record does not show that there was a close supplier relationship as the Department has interpreted this term in past proceedings. For example, KOP was not dependent upon Viraj as the only available source of subject merchandise. There is also no evidence that KOP could not freely negotiate its prices with Viraj. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Melamine Institutional Dinnerware Products From Indonesia, 62 FR 1719, 1725 (January 13, 1997).

With respect to the functions fulfilled by the officer shared by the two companies, Viraj has reported that Mr. Orban's authority and control were quite limited in scope and duration. That he was later engaged to train Viraj USA's new officer does not signify a deeper extent of control of Viraj by KOP or vice-versa. The record shows that critical management decisions and functions, such as pricing and operational funding, continued to be handled by Viraj, at its Indian headquarters, and later, at its new U.S. office. See, e.g., Viraj August 28, 2001 supplemental response at 2. Viraj's employment of Mr. Orban ended with the opening of Viraj's new office, in

March 2001, the second month of the POR. Ibid.

The invoicing and shipping arrangements which petitioners cite as indications of affiliation are consistent with a possible affiliation, but do not suffice to prove one. Moreover, the allegation of suspicious pricing is not supported by the record and is based on incorrect calculations. See Viraj's May 6, 2002 rebuttal brief at 4.

Concerning petitioners' argument that the Department should reconsider the position it took with regards to the same question in the Wire Rod preliminary results cited above, the submissions and briefs in that review are not part of the record of this review, and petitioners have not established how the facts in the wire rod review they cite relate to those in this review. We have only considered the facts on the record of this review in determining whether the two firms were affiliates.

However, we note that in the case which petitioners mention the Department did not reverse its finding of no affiliation in the final results. See Stainless Steel Wire Rod From India; Final Results of Antidumping Duty Administrative Review, 67 FR 37391 (May 29, 2002) and accompanying Issues and Decision Memorandum.

Thus, the absence of evidence of control of either company by the other, the limited nature of the functions of the executive involved, and the temporary nature of the arrangements together support a determination that the two companies were not affiliated. Accordingly, in these final results, we have continued to treat Viraj and KOP as unaffiliated.

## 2. KOP Sales Reporting

Petitioners argue that the sales and expense information reported by Viraj and KOP in respect of the latter's selling activities in the United States is incomplete and unusable, that KOP's audited financial statement for 2001 was not provided, that details and supporting documentation for KOP selling expenses in the United States were not given, and that KOP's inventory carrying costs were not reported. Petitioners further note that the supplemental response containing KOP's sales and expense information is contradictory, because it states both that "no sales were made from inventory" and that "inventory sales are sales from warehouse stock." Viraj argues, in rebuttal, that KOP's response contained errors which Viraj was unable to prevent, and that KOP did not have a chance to rectify its errors through the means of responding to a supplemental questionnaire.

Department's Position: Since we have determined that KOP and Viraj were not affiliated (see Comment 1 above), we did not use KOP's sales data and have not addressed these issues.

## 3. Selling Expenses

Petitioners argue that as part of treating KOP as an affiliate the Department should deduct from the U.S. starting price, expenses incurred by KOP in its U.S. operations. Petitioners suggest the Department should require supplemental details and support for the expenses reported by KOP, should allow parties a reasonable opportunity to comment on such data, and all such information should be subject to verification along with sales data.

Viraj, in rebuttal, maintains that KOP was an unaffiliated customer and therefore, its expenses should not be deducted from Viraj's U.S. price.

Department's Position: Since we have determined that KOP and Viraj were not affiliated (see comment #1 above), we did not use KOP's sales data and have not addressed these issues.

#### 4. Equity Infusion

Petitioners argue that Viraj's investment in Viraj USA should be considered a selling expense for the POR and allocated over POR sales in the United States. Viraj, in rebuttal, asserts that its capital investment in Viraj USA must be treated as such and not re-cast as an expense of the latter.

Department's Position: We agree with Viraj: its treatment of the equity infusion in its questionnaire responses is consistent with its financial statements and with generally accepted accounting principles. There is no evidence that these funds were used as one-time payment for selling expenses inconsistent with the normal use of a capital investment. For these final results, we have continued to treat Viraj's equity investment in the start-up of the U.S. affiliate as an investment, not an expense.

#### 5. Duty Drawback

Petitioners argue that the Department should not increase U.S. price by Viraj's claimed duty drawback amounts. Petitioners note that Viraj's duty drawback claims have been rejected in earlier segments of this same proceeding as well as in other proceedings, and should continue to be rejected here. Petitioners further note that the rejection of Viraj's claims for drawback adjustment has also been upheld by the Court of International Trade, in Viraj Group Ltd. vs United States, 162 F. Supp. 2d 656, 667-68. There, petitioners note, the Court stated that

“Commerce’s decision to deny an adjustment to cost of production or constructed value is supported by substantial evidence and otherwise in accordance with law, “ and further stated that “[s]ubstantial evidence supports Commerce’s conclusion that Viraj failed to satisfy the first prong of the two-part test. Reliance upon the Indian government’s pre-determined import content for exported merchandise fails to link the rebate to duties actually paid on raw materials imported.” Accordingly, petitioners argue, the Department should deny this U.S. price adjustment, or, failing that step, should apply the drawback adjustment equally to Viraj’s reported costs.

Viraj, in rebuttal, argues that in this review it has provided new evidence that would make a case for a change in the Department’s position. Viraj notes that in its questionnaire responses it has only adjusted raw material costs to remove the amount of actual duties booked in an accounting sense but not actually paid on imported raw materials used to produce the subject merchandise. Specifically, Viraj argues that, unlike in prior cases, it tracked the total quantities of raw materials which it imported and used in the production of subject merchandise, and accounted for all customs duty amounts “not paid but debited against DEPB Duty Entitlement Certificate such that no Custom duty was actually paid by Viraj.” Viraj further argues that it calculated the custom duty amount per ton for each item or raw material it imported, and then, depending upon the quantities it consumed of raw material for production of subject merchandise, it calculated how much custom duty to exclude from adjusted material costs.

Department’s Position: We agree with Viraj. Section 772 (c)(1)(B) of the Tariff Act states that “[T]he price used to establish export price and constructed export price shall be...increased by ...the amount of any import duties imposed by the country of exportation which

have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States.” The Department’s practice is to evaluate duty drawback adjustment claims with a “two-part test” to determine (1) whether the import duty and rebate are directly linked to, and dependent upon, one another, and (2) whether the company claiming the adjustment can show that there were sufficient imports of the raw materials to account for the drawback received on the exported product. See for example, Rajinder Pipes Ltd., v United States, Slip Op. 99-97 (CIT September 17, 1999) at 6.

In prior reviews of Viraj under this order and in the companion cases mentioned by petitioners, Viraj was unable to provide sufficient proof to satisfy both of the above requirements. See for example Stainless Steel Wire Rod From India: Final Results of Antidumping Duty Administrative Review, 67 FR 37391 (May 29, 2002), and the accompanying Issues and Decisions Memorandum at “Comment 3”. In the present review, however, Viraj did not, as in prior cases, merely rely upon the Indian government’s pre-determined import content for exported merchandise, a practice which both the Department and the CIT, in the case petitioners cite, found to be an inadequate means of calculating and reporting duty drawback in other reviews. Instead, Viraj provided all the documentation which we requested to show the links between its claimed duty drawback adjustments, its purchases of raw materials used in the production of subject merchandise in the POR, its reported sales, and its financial statements. See Viraj cost questionnaire response of August 7, 2001 at annexure D-11; supplemental responses of August 28, 2002 at 9-10, October 22, 2001 at 4-5, and January 28, 2002 at 2 and Exhibit Supp. 5, where Viraj traces waived duties corresponding to imported raw material purchases through the complete financial accounting and reporting cycle. These submissions

substantiate Viraj’s claim and thus satisfy the two-part test described above. Accordingly, for these final results, we accept Viraj’s duty drawback claims, as we did in the preliminary results.

However, we adjusted Viraj’s costs to include import duties associated with inputs used in producing subject merchandise. Duties are a cost of production and accordingly, should be included in COP. The duty drawback has been accounted for as an upward adjustment to the U.S. price in accordance with section 772(c)(1)(B) of the Tariff Act.

## 6. Billet Costs

Petitioners argue that Viraj failed to report costs, transfer prices and market prices for affiliate-supplied steel billets, and that the billets were major inputs and therefore their cost must be reported per 19 CFR 351.407(b). Petitioners urge the Department to make an adverse inference and apply the highest reported material cost for any single control number, or else require a detailed reporting of billet costs incurred by Viraj’s affiliate in order to permit the required analysis.

Viraj, in rebuttal, states that it “reported the cost of billets as the weighted average transfer prices, which exceed actual [overall average] costs, and the same have been booked in Viraj’s financials.”

Department’s Position: We disagree with petitioners. Our questionnaire, in Section D, instructed Viraj as follows:

6. Identify those inputs, and other items (*e.g.*, fixed assets, services, *etc.*), that your company receives from affiliated parties. For each item received from an affiliated party, provide the name of the affiliated party and state the nature of the affiliation. Finally, state whether the transfer price of the good or service reflects the market price of the item, in the market under consideration [footnote omitted here.]

7. List the **major** inputs purchased from affiliated parties that are used to produce the merchandise under consideration during the cost calculation period. A major input is an essential component of the finished merchandise which accounts for a significant percentage of the total cost of manufacturing incurred to produce one unit of the merchandise under consideration. For each major input identified, complete the following chart (*i.e.*, complete a separate chart for each major input):

Annexure D-2 of Viraj's August 7, 2001 cost response provides the costs for purchases from both affiliated and unaffiliated suppliers of the two grades of steel used in its flanges in the POR. The Department's practice for treating the costs of major inputs of raw materials purchased from affiliates, as petitioners argue, per section 351.407(b), is to take the higher of:

- (1) the price paid by the exporter or producer to the affiliated person for the major input;
- (2) the amount usually reflected in sales of the major input in the market under consideration; or
- (3) the cost to the affiliated person of producing the major input.

Viraj's responses demonstrate that the average costs which Viraj reported for purchases of raw materials from affiliates were greater than the overall average cost for purchases of the two steel grades from all sources. Viraj's cost response allowed us to determine that the objective of the requirements in section 351.407(b) was fulfilled. Viraj's response indicated that the transfer price was higher than the affiliated unit's cost of production and the price from unaffiliated parties. Moreover, we noted no anomalies or compliance failures such as would warrant the application of facts available using an adverse inference, as the petitioners urge. Accordingly, for these final results, we have continued to use the raw material costs which Viraj reported for inputs purchased from affiliates.

## 7. Duties and Taxes in Costs

Petitioners argue that Viraj's reported material costs fail to include import duties, and that the reported material costs in Viraj's response do not reconcile to Viraj's financial statements. Petitioners suggest that the Department should increase material costs by adding the percentage of raw materials costs associated with duties. Alternatively, petitioners argue, at a minimum the Department should recalculate the reported interest and general and administrative expense (G&A) ratios to comport with a cost of materials exclusive of the "phantom" duties cost.

Viraj, in rebuttal, argues that it already reported the material cost "which includes the import duty factor." Viraj asserts that the correct adjustment to make would be to remove the duties from raw material costs. Viraj also argues that it calculated its interest and G&A expense ratios without adding duty drawback, and provides an example in evidence thereof. See Viraj May 6, 2002 rebuttal brief at 7.

Department's Position: We agree with petitioners. Viraj's rebuttal of this point is unclear, but we take it to mean simply that it has already adjusted materials costs downward to exclude import duties, as shown in its August 7, 2001 cost response at 13 and 14. Accordingly, for these final results, we added the import duties to material costs.

Regarding the suggestion by petitioners to recalculate Viraj's interest and G&A expense ratios exclusive of duties in material costs, since we have agreed with petitioners to increase Viraj's material costs, we have recalculated these expense rates and applied them to the adjusted costs.

## 8. Labor and Variable Overhead

Petitioners argue that instead of reporting actual labor and overhead costs on a product-specific basis Viraj stated that it “allocated the costs between rough, proof-machined and finished flanges on best management basis.” Petitioners note that Viraj based its cost standard on proof-machined flanges, then allocated 25% less labor and overhead to rough flanges, and 25% more to fully finished models. Petitioners argue that the Department afforded Viraj at least two opportunities to correctly report these costs, that Viraj never provided information on its actual recorded product-specific labor and overhead costs, and that, even if Viraj does not maintain product-specific costs, its methodology is entirely unacceptable.

Petitioners further assert that this imprecise reporting methodology must be considered a failure to cooperate to the best of Viraj’s ability in reporting costs, and petitioners request that the Department apply an adverse inference with respect to these costs, either “total facts available,” or, at a minimum, an adverse inference with respect to reported direct labor and variable overhead. Petitioners suggest that the Department select the highest reported labor and overhead costs, as a percentage of total cost of manufacture, of any model reported, and apply those highest rates to all models.

Viraj argues, in rebuttal, that it calculated direct labor and overhead correctly using its experience in making such allocations of costs in its accounting system, and notes that since all three types of models are produced in a single station, the allocation method to which petitioners object “is the only way [Viraj] could allocate cost.” Viraj argues that it noted in its submissions that the differences in labor and materials which are reflected in its cost allocation method correspond to the differences it experiences in machining time and material usage.

Department’s Position: We disagree with petitioners. We have reviewed the detailed

calculations provided in Viraj's October 22, 2001 response at pages 5-8, and found them to be sound. Viraj has explained the rationales for its methodology, has provided the underlying calculations of machine-time, labor usage and material usage, and has supplied in-depth examples of the derivation of its ratios. We note that in similar circumstances in the prior review we accepted this costing methodology. See for example *Certain Stainless Steel Flanges From India: Final Results of Antidumping Duty Administrative Review*, 66 FR 48244, September 19, 2001. The costing method chosen by Viraj is supported by reasonable methodology and documentation. Accordingly, we have no basis on which to reject Viraj's data in favor of facts available based on an adverse inference, as petitioners suggest. We have therefore continued to use Viraj's reported labor and overhead costs for these final results.

#### 9. G & A Expense Ratio

Petitioners argue that Viraj reported a G&A expense ratio that failed to reflect the "other" expenses listed in its 2000-2001 financial statement, and request that the Department modify cost of production (COP) and constructed value (CV) to reflect a corrected ratio. Viraj argues in rebuttal that it reported only "administrative expenses" in G&A because it reported all other expenses elsewhere on a sale-specific basis, in indirect selling expenses or fixed overhead.

Department's Position: We disagree with petitioners. There is no record evidence to suggest that Viraj's allocation of expenses omits the sum petitioners allege was omitted. Accordingly, for these final results, we have continued to use the G&A expense ratio reported by Viraj.

#### 10. Interest Expense Ratio

Petitioners argue that Viraj reported an interest expense ratio too low to reflect the interest expenses shown in Viraj's 2000-2001 financial statements, and suggest that the Department use a corrected interest ratio to recalculate COP and CV. Viraj in rebuttal argues that to avoid double-counting of interest expense associated with U.S. and third country sales, it removed the associated credit expenses from its total interest costs for COP and CV purposes. Viraj states that this method of calculating interest expense was accepted by the Department in prior cases.

Department's Position: We agree with petitioners. In a supplemental questionnaire, we instructed Viraj as follows:

Net interest expense should not be reduced by any imputed credit expense amounts, and should reflect the net interest expense of the Viraj Group as a whole. Revise your calculations accordingly and provide full worksheets.

In its October 22, 2001 supplemental response (at 9), Viraj responded, showing its interest expense ratio calculation line-by-line, and explaining that to avoid double-counting, it deducted credit expenses from interest expenses. However, we instructed Viraj, as above, not to deduct these imputed expenses. Adjustments for credit expenses are made as circumstance of sale adjustments. Accordingly, for these final results, we have adjusted the interest expense rate to exclude imputed credit expenses. However, we have continued to exclude bank charges reported as direct selling charges because these expenses are accounted for separately in EP, CEP and CV.

#### 11. Direct U.S. Selling Expenses

Petitioners state that Viraj apparently reported two different expenses in its U.S. sales

listing under the same variable name, DIRSELU. Petitioners argue that the Department should ensure that both amounts are deducted from export price (EP) and constructed export price (CEP). Petitioners also urge the Department to ensure that the proper weight and currency conversions are applied to the two reported DIRSELU values, as one appears to have been reported in rupees, the other, in dollars. Viraj makes no rebuttal.

Department's Position: Both direct selling expenses for Viraj's U.S. sales were already properly converted to the correct currency and added to price adjustments. See the preliminary results program log at lines 179, 180, 1681, 1688, 1712, 1778, 1780, 2136, 2139.

## 12. CEP Prices

Viraj argues that the Department miscalculated U.S. price for constructed export price (CEP) transactions by failing to first multiply per-piece costs by the number of pieces to arrive at the total cost, and second, divide by total weight reported per model, to arrive at per-kilogram cost. Viraj argues that as a result of this error, net U.S. price and total home market profit are calculated incorrectly. Viraj points to an instance of an exceptionally high indicated CEP ratio as an "impossible" result and therefore, an indication of an underlying miscalculation. Petitioners, in rebuttal, argue that the Department must ignore Viraj's representations that a particular result is "impossible" and should instead simply ensure that the calculations are accurate.

Department's Position: We agree with Viraj that per-piece profit was miscalculated, and we also agree with petitioners on the need to ensure that the calculations are correct. Accordingly, for these final results we have added the necessary corrections to the program, i.e., we multiplied per-piece costs by the number of pieces, then divided the result by total weight per

model.

### 13. Production Quantities

Viraj argues that in calculating costs and constructed values (CVs) per kilogram the Department erroneously multiplied the number of pieces by the total weight produced for each model rather than by the weight of individual models, at line 217 of the program. Viraj also argues that a similar error affected the calculation of direct material, labor, variable overhead, fixed overhead, total cost of manufacturing, general and administrative expenses, interest expense, CV, total cost of production (TOTCOP), revised cost of production (RCOP), total cost of goods sold (COGSH) and the profit factor. Petitioners make no rebuttal.

Department's Position: We agree with Viraj and for these final results we have corrected the errors Viraj describes, replacing the total weight produced with the weight of individual models in the calculations in question.

### 14. Weight-averaged Prices

Viraj argues that since the Department weight-averages home market prices to calculate foreign unit price in dollars (FUPDOL), it should similarly weight-average U.S. prices, that “[c]omparing individual U.S. prices to POR average cost/Home Market sales...artificially creates a dumping margin that did not exist. Petitioners, in rebuttal, argue that Viraj’s suggestion constitutes a challenge to the Department’s longstanding and well-established practices in accordance with its regulations and the statute.

Department's Position: We agree with petitioners. Section 351.414(c)(2) of the

Department's regulations directs that in reviews, prices be calculated using the "average-to-transaction method." This method is defined at section 351.414(b)(3) as "a comparison of the weighted average of the normal values to the export prices (or constructed export prices) of individual transactions for comparable merchandise," and is specifically contrasted against the use of average-to-average comparisons applicable in other circumstances. Therefore, for these final results, we have continued to apply the average-to-transaction method.

#### 15. Margin Calculations

Viraj argues that in calculating the dumping margin, the Department ignored U.S. sales with no dumping margins, by assigning these transactions a zero value, and that this distorted the average margin. Viraj argues that "the WTO Anti-Dumping Code requires fair comparison ...done on the basis of positive and negative margins during the POR without considering more heavily, in a biased and one-sided way, the positive dumping margins." Viraj cites in support of this argument the WTO panel decision in Indian Bed Linen, which decision, Viraj argues, found that such practice is contrary to the WTO. Petitioners, in rebuttal, argue that Viraj's suggestion constitutes a challenge to the Department's longstanding and well-established practices in accordance with its regulations and the statute.

Department's Position: We disagree with Viraj. Our margin calculation methodology was not changed for this review from prevailing and long-established practice. See the following recent examples of determinations upholding and explaining this practice: Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From France, 67 FR 6493 (February 12, 2002) and accompanying Decision Memorandum at

Comment 3; Stainless Steel Wire Rod From India; Final Results of Antidumping Duty Administrative Review, 67 FR 37391 (May 29, 2002) and accompanying Decision Memorandum at Comment 5; Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Spain, 67 FR 35482 (May 20, 2002) and accompanying Issues and Decisions Memorandum at Comment 15; Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From The Netherlands, 66 FR 50408 (Oct. 3, 2001) and accompanying decision memorandum at Comment 1; Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products from Canada, 67 FR 15539 (Apr. 2, 2002) and accompanying decision memorandum at Comment 12; Final Determination of Sales at Less Than Fair Value: Automotive Replacement Glass Windshields From The People's Republic of China, 67 FR 6482 (Feb. 12, 2002) and accompanying decision memorandum at Comment 34. Contrary to Viraj's claim, we have not ignored U.S. sales with no dumping margin. These sales were in fact included in our weighted-average margin calculations.

U.S. law, as implemented through the URAA, is fully consistent with its WTO obligations. See SAA at 669. Accordingly, for these final results, we have continued to calculate Viraj's dumping margin in accordance with law.

#### 16. Foreign Unit Price

Viraj argues that in calculating FUPDOL the Department mistakenly added direct selling expenses for U.S. sales, though these expenses had already been deducted from gross unit price in calculating net U.S. price. Petitioners make no rebuttal.

Department's Position: We disagree with Viraj. The preliminary results program defined net U.S. price at line 1774 without deducting direct selling expenses. For CEP sales, at line 1780, the program did deduct them. Then, for normal value, the program added U.S. direct selling expenses to FUPDOL for EP sales comparisons, at line 2136, and omitted doing so for CEP sales comparisons, at line 2145. This program conforms to standard practice. See, e.g., the Department's Antidumping Manual, chapters 7 and 8 (<http://ia.ita.doc.gov/admanual/>). Accordingly, for these final results, we have not changed the treatment of U.S. direct expenses.

#### 17. Aberrant Margin

Viraj notes that one transaction is calculated as bearing an aberrational margin, suggesting an underlying error.

Department's Position: We agree with Viraj; however, the aberrant margin in question no longer appears, owing to the correction of clerical errors addressed elsewhere herein. See Comment 11, above.

#### 18. Prices Per Piece vs. Per Kilogram

Viraj argues that the dumping analysis should be done per piece rather than per unit of weight, that its sales are made per piece world-wide, that no reason exists to convert prices to per kilogram, that this conversion distorts the comparisons, especially when costs are converted to per kilogram and flanges with more than a 20% DIFMER are compared in the dumping margin calculation. In rebuttal, petitioners cite our statement in the prior review of the need to convert prices and costs to a common denominator, i.e., to per-kilogram values, in order to be able to

compare models and apply costs on a uniform basis. Petitioners argue that the sound reasons for using per-kilogram prices and costs have not changed in this proceeding.

Department's Position: As in the previous review, we disagree with Viraj and agree with petitioners, having determined that the use of per-kilogram price and cost comparisons, and cost and expense allocations, assists in making accurate dumping margin calculations. See Final Results in the Antidumping Duty Administrative Review of Certain Forged Stainless Steel Flanges from India (Flanges) from India, 66 FR 48244 (September 19, 2001) and accompanying Issues and Decision Memorandum, Comment 13.

No factors have changed in this review to affect our reasoning on this question. Viraj again failed to state what price comparisons were allowed based on merchandise which failed the 20% difference-in-merchandise limit. We find no evidence of any such comparisons occurring in the program, and they are specifically disallowed at lines 1401-1402 by the phrase "IF (DIFPCT <= .20) THEN DO," which restricts comparisons to merchandise with no more than a 20% difference in cost.

As in prior reviews under this order, the Department still must be able to compare U.S. prices to comparison market merchandise which is not identical and has varying weights. The common denominator is also still required to allocate expenses and costs across models. We note that Viraj itself uses per-kilogram methods to allocate its reported costs and expenses, undoubtedly because there is no other practical and accurate way to do so. See for example Viraj's August 7, 2001 cost response at annexure D-4. Finally, it is still unclear how Viraj would have us conduct systematic price comparisons of merchandise sets containing non-identical models, without placing prices in each market on a common basis, expressed per unit of weight,

as has been our approach, in this order, consistently since February, 1996. We continue to find that converting pricing and costs to a per-kilogram basis is the most effective means of permitting precise comparisons where the models compared, and the costs involved, include units of differing weights. The prices used as a result are reasonable and are attributable to similar subject merchandise. See section 351.401(c). Accordingly, for these final results, we have continued to calculate prices and costs on a per-kilogram basis.

#### 19. Imputed Costs in CEP Profit

Viraj argues that in the CEP profit calculation, imputed costs should be considered in determining the CEP profit, in both profit and cost. In rebuttal, petitioners argue that the Department has expressly rejected this argument, and cite the Issues and Decision Memorandum accompanying Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews and Revocation of Orders in Part, 66 FR 36551 (July 12, 2001) (AFBs), where, petitioners note, the Department stated concerning imputed profit, “we have established a practice of not including them in the calculation of total actual profit.”

Department’s Position: We agree with petitioners. The Department’s practice of calculating the CEP profit ratio without imputed expenses is well established. See AFBs. Accordingly, for these final results, we have continued to define the CEP profit ratio without including imputed expenses.

Recommendation

Based upon our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of review and the final weighted-average dumping margin for the reviewed firms in the Federal Register.

Agree\_\_\_\_ Disagree\_\_\_\_

---

Faryar Shirzad  
Assistant Secretary  
for Import Administration

---

(Date)