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A-475-829
2nd Administrative Review
AR 3/1/03-2/29/04
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DATE: August 5, 2005

MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

FROM: Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Antidumping Duty
Administrative Review of Stainless Steel Bar from Italy: Final
Results

SUMMARY

We have analyzed the brief and rebuttal brief submitted by interested parties in the second administrative review of the antidumping duty order on stainless steel bar from Italy. As a result of our analysis, we have not made any changes to the preliminary results. We recommend that you approve the position we have developed in the Discussion of Issues section of this memorandum. The only issue discussed in this memorandum is whether to collapse UGITECH S.A. with Trafilerie Bedini S.p.A.

BACKGROUND

On April 7, 2005, the Department of Commerce (“the Department”) published in the Federal Register the preliminary results of the second administrative review of the antidumping duty order on stainless steel bar (“SSB”) from Italy. See Stainless Steel Bar from Italy: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Rescission of Review, 70 FR 17656 (April 7, 2005) (“Preliminary Results”). In the Preliminary Results, we preliminarily rescinded the antidumping duty administrative review with respect to SSB produced and/or exported by UGITECH S.A. (“UGITECH”). We also found UGITECH to be the successor-in-interest to Ugine Savoie-Imphy S.A (“Ugine Savoie”) for antidumping duty cash deposit purposes. The period of review (“POR”) is March 1, 2003, through February 29, 2004.

We invited interested parties to comment on the Preliminary Results. On May 9, 2005,

Carpenter Technology Corp., Crucible Specialty Metals Division of Crucible Materials Corp., Electralloy Corp., Slater Steels Corp., Empire Specialty Steel and the United Steelworkers of America (AFL-CIO/CLC) (collectively, the “petitioners”), filed a case brief. On May 20, 2005, UGITECH filed a rebuttal brief. At the request of the petitioners, a public hearing was held on May 31, 2005.

DISCUSSION OF THE ISSUE

Collapsing of UGITECH and Bedini

Petitioners’ Argument: The petitioners argue that UGITECH and Trafilerie Bedini S.p.A. (“Bedini”) are affiliated producers in Italy. In the original investigation of this proceeding, Bedini was excluded from the antidumping duty order on SSB from Italy (“the order”). See Notice of Amended Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from Italy, 67 FR 8228 (February 22, 2002) (“LTFV Investigation”). The petitioners contend that the fact that UGITECH has ceased shipping SSB to the United States and is instead shipping through Bedini is grounds for bringing Bedini back under the order. Accordingly, the petitioners request that the Department collapse UGITECH and Bedini.

The petitioners highlight two reasons for UGITECH and Bedini to be considered a single entity. *First*, the petitioners assert UGITECH and Bedini maintain an overlap of production operations. Specifically, Bedini’s facility is the only UGITECH-owned facility in Italy that can further process stainless steel wire rod (“SSWR”) or straight length bar supplied by UGITECH into SSB. Since there is only one production facility, neither producer would have to substantially retool its manufacturing facilities to produce stainless steel bar. *Second*, the petitioners contend that UGITECH and Bedini maintain an overlap of selling operations. The petitioners point out that all of UGITECH’s and Bedini’s sales to the United States were made through its U.S. sales affiliate, Ugine Stainless and Alloys, Inc. (“US&A”). Because of the overlap of production and sales operations, the petitioners argue that the Department should collapse UGITECH and Bedini and calculate a weighted-average dumping margin to cover all entries of Italian-origin SSB, whether exported by UGITECH or Bedini.

The petitioners argue that the statute, the regulations, and the Department’s practice require the Department to treat affiliated entities such as UGITECH and Bedini as a single entity. The petitioners cite to AK Steel Corp. v. United States, 22 CIT 1070, 1079-80, 34 F. Supp. 2d 756, 764 (1998, aff’d in part and rev’d in part on other grounds, 203 F. 3d 1330 (Fed. Cir. 2000)) (“AK Steel”); and Queen’s Flower de Colombia v. United States, 21 CIT 968, 971, 974, 981 F. Supp. 617, 622 (1997) (“Queen’s Flower”) and note that the statute does not directly address the issue of whether affiliated parties should be treated as a single entity for the purpose of calculating dumping margins. However, the petitioners argue that in AK Steel and Queen’s Flower, the courts have generally upheld the Department’s authority to collapse affiliated entities. The petitioners contend that, because Bedini is a wholly-owned subsidiary of UGITECH, the parties are affiliated under 19 U.S.C. § 1677(33). The petitioners also contend that the regulatory requirements under 19 C.F.R. § 351.401(f) of the Department’s regulations are met since UGITECH and Bedini have only one production facility in Italy. Moreover, the

petitioners argue that given the fact that Bedini is a wholly-owned subsidiary of UGITECH, the second regulatory requirement, (i.e., that there be significant potential for manipulation), is met. Furthermore, the petitioners note that the courts have recognized the importance of ensuring that the antidumping duty laws are not evaded. See Tung Mung Dev. Co. v. United States, 26 CIT, Slip Op. 02-93 at 19219 F. Supp. 2d 1333 (2002), aff'd, 354 F. 3d 1371 (Fed. Cir. 2004) (“Tung Mung II”); and Mitsubishi Elec. Corp. v. United States, 12 CIT 1025, 1046, 700 F. Supp. 538, 555 (1988), aff'd 898 F. 2d 1577 (Fed. Cir. 1990) (“Mitsubishi”).

Although UGITECH’s production operations in Italy have not changed since the original investigation, the petitioners assert that in the current review, UGITECH changed its selling operations by shipping SSB to the United States through Bedini. Moreover, the petitioners believe that UGITECH is “funneling” SSB through Bedini into the United States to evade antidumping duties. According to the petitioners, UGITECH continues to sell Italian-origin SSB to all countries besides the United States. The petitioners cite to the Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils from the People’s Republic of China, 67 FR 55625 (November 8, 1994) and note that the Department has made clear that companies cannot evade the antidumping duty law by funneling all exports through an excluded company.

The petitioners further argue that Bedini’s exclusion from the order does not prevent the Department, under the statute, the regulations nor case precedent, from collapsing UGITECH and Bedini. According to the petitioners, the Department has stated that an antidumping duty proceeding can resume if it is determined that a foreign manufacturer excluded from the order sells the merchandise produced by other companies. The petitioners cite Jia Farn v. United States, 17 CIT 187, 817 F. Supp. 969, 973-74 (1993) (“Jia Farn”) (citing Steel Wire Strand for Prestressed Concrete from Japan; Final Results of Changed Circumstances Antidumping Duty Administrative Review, 55 FR 28796 (July 13, 1990) (“Steel Wire Strand from Japan”)) and note that the Court found that, although the statute does not directly address the issue of circumvention, it is reasonable for the Department to conduct a changed circumstances review of a previously excluded company to prevent circumvention of the order. See Jia Farn 817 F. Supp. at 975. Therefore, according to the petitioners, the Department has the legal authority to bring Bedini back under the order if Bedini were to export subject merchandise that was produced by UGITECH. Moreover, the petitioners argue that in other proceedings the Department has brought previously excluded companies back under the scope of the order. See Notice of Final Determination of Sales at Less than Fair Value and Antidumping Duty Order: Fresh Atlantic Salmon from Chile, 63 FR 40699 (July 30, 1998); Certain Cased Pencils from the People’s Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 67 FR 48612 (July 25, 2002), and Notice of Amended Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Cased Pencils from the People’s Republic of China, 67 FR 59049 (September 19, 2002); and Notice of Final Results of Changed Circumstances Antidumping Duty Review: Certain Polyester Staple Fiber from the Republic of Korea, 66 FR 30411 (June 6, 2001).

Respondent’s Argument: UGITECH argues that there is no factual basis for continuing the instant review or treating UGITECH and Bedini as a single entity. UGITECH contends that the

Department must rescind the current administrative review because UGITECH did not make shipments of the subject merchandise to the United States during the POR, a fact which the Department verified. See Memorandum to the File “Verification of UGITECH S.A.’s No-Shipment Claim,” (January 13, 2004) (“UGITECH VR”). UGITECH argues that the Department has consistently rescinded administrative reviews when it found that no subject merchandise was shipped to the United States during the review period. See Notice of Final Results and Rescission, in Part, of the Antidumping Administrative Review: Petroleum Wax Candles from the People’s Republic of China, 69 FR 12121 (March 15, 2004) (“Wax Candles from China”); Frozen Concentrated Orange Juice from Brazil; Final Results and Partial Rescission of Antidumping Administrative Review, 67 FR 40913 (June 14, 2002) (“FCOJ from Brazil”); Certain Steel Concrete Reinforcing Bars from Turkey; Rescission of Antidumping Administrative Review, 64 FR 44892 (August 18, 1999); and Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People’s Republic of China; Final Results and Partial Rescission of Antidumping Administrative Reviews, 64 FR 43659 (August 11, 1999).

UGITECH argues that there is no basis in law or fact to bring Bedini back into the order. UGITECH argues that the law states clearly that an excluded company may not be brought back into the scope of an order if it acts in the same capacity as it was when it was excluded from the order. See Jia Farn at 969 and 973. UGITECH states that its Italian production operations have remained virtually unchanged since the original investigation. Moreover, as long as the excluded company continues to export its own merchandise, which it has, it remains excluded from the order. See id. and Steel Wire Strand from Japan.

UGITECH argues that two facts clearly demonstrate that Bedini must continue to be excluded from the order for the POR. *First*, UGITECH contends that since the original investigation, UGITECH-owned production operations in Italy have remained the same. *Second*, UGITECH asserts that only subject merchandise produced by Bedini was sold by Bedini to the United States during the POR. As was the case in the original investigation and continued through the current review period, Bedini purchased SSWR from third parties (including UGITECH), further processed it into subject merchandise, and sold the SSB to customers in the United States. UGITECH contends that the Department has consistently rejected the petitioners’ argument to treat UGITECH and Bedini as a single entity, finding that the mere fact that Bedini toll processes certain material for UGITECH does not provide the legal or factual basis for collapsing the two companies. See Issues and Decision Memorandum for the Antidumping Duty Investigation of Stainless Steel Bar from Italy: Final Determination (January 23, 2002) (“Investigation Decision Memorandum”); and Issues and Decision Memorandum for the 2001-2003 Administrative Review of Stainless Steel Bar from Italy; Final Results, (June 14, 2004) (“First Review Decision Memorandum”). Furthermore, Bedini held title to all Italian-origin subject merchandise it shipped to the United States. UGITECH argues that this tolling arrangement is no different than the tolling arrangement that existed during the original investigation and the first administrative review. See First Review Decision Memorandum. Therefore, UGITECH argues that Bedini acted in the same capacity as it did when it was excluded from the order. See LTFV Investigation. In the absence of a change in circumstances, UGITECH contends that the Department should continue to exclude Bedini from the order.

Department's Position: We agree with UGITECH that the current antidumping duty administrative review should be rescinded. The Department conducted an on-site verification of UGITECH's sales information and confirmed UGITECH's no-shipments claim. During the verification, the Department found no evidence that UGITECH made any sales of Italian-origin SSB to the United States during the POR. See UGITECH VR at 4. Therefore, consistent with the Preliminary Results, and the Department's past practice, because the sole respondent in this review, UGITECH, made no entries, exports or sales of the subject merchandise to the United States during the POR, we are rescinding the current administrative review in accordance with 19 CFR 351.213(d)(3). See Pure Magnesium from Canada: Final Results of the 2002/2003 Antidumping Duty Administrative Review and Partial Rescission of Review, 69 FR 47408 (August 5, 2004); Wax Candles, and FCOJ from Brazil.

Furthermore, we disagree with the petitioners that the Department should assign Bedini a dumping rate in combination with UGITECH. As a result of the Department's original investigation, Bedini was excluded from the order. See LTFV Investigation. In the subsequent administrative review of the order, the Department found that the facts on the record did not warrant collapsing the two companies. See Stainless Steel Bar from Italy: Final Results of Antidumping Duty Administrative Review, 69 FR 32984 (June 14, 2004). In the current review, contrary to the petitioners' assertions, we find that the facts on the record remain the same as in the previous segments of this proceeding and, therefore, find that Bedini should continue to be excluded from the order.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the position above. If this recommendation is accepted, we will publish the final results of this review in the Federal Register.

AGREE _____

DISAGREE _____

Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

Date