

Carpenter Technology, Corp. v. United States and Viraj Group
Slip Op. 04-103 (CIT August 16, 2004)

FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND

SUMMARY

The Department of Commerce (“the Department”) has prepared these final results of redetermination pursuant to the remand order of the Court of International Trade (“the Court”) in Viraj Group, Ltd. v. United States of America and Carpenter Technology, Corp., et al., Slip Op. 04-103 (CIT August 16, 2004) (“2004 Remand”). In accordance with the Court’s instructions, we have re-examined the remanded issue in Stainless Steel Wire Rods from India: Final Results of Antidumping Duty Administration Review, 67 FR 37391 (May 29, 2002). Specifically, we have followed the Court’s instructions by calculating separate duty margins for Viraj Forgings Limited (“VFL”) and Viraj Impoexpo Limited (“VIL”).

BACKGROUND

On May 29, 2002, the Department published Stainless Steel Wire Rods from India; Final Results of Antidumping Duty Administration Review, 67 FR 37391 (“Final Results”), covering the period of review (“POR”) December 1, 1999 - November 30, 2000. This administrative review involved one Indian producer/exporter, Viraj Group, Ltd., (“Viraj”), which consisted of the following four companies during the POR: VFL, VIL, Viraj USA Limited, and Viraj Alloys Limited (“VAL”). In its Final Results the Department collapsed VFL, VIL, and VAL. See Final Results and accompanying Issues and Decision Memorandum at Comment 1 and Collapsing

Memorandum of the Viraj Group, Limited, dated December 31, 2001 (“Collapsing Memo”).

Carpenter Technology Corporation (“Petitioner”) contested the collapsing of these companies.

On August 16, 2004, the Court issued a decision remanding one aspect of the Final Results, the collapsing of three of the Viraj companies. In its decision the Court stated

In the absence of evidence to the contrary, the court assumes the subcontracts for rolling to have been arm’s length and lawfully-binding that made any price or production manipulation by and between VIL and/or VFL during the period of review less likely than if those three affiliated enterprises were involved in the manufacture and sale of the subject merchandise exclusively within their own facilities.

2004 Remand at 10. The Court ordered the Department “in the absence of any agency showing herein that dispels this logic based upon substantial evidence on the record,” to calculate and impose individual antidumping-duty margins upon VFL and VIL in the manner of the approach taken by the agency, and affirmed by the Court, in Viraj Group, Ltd. v. United States, 162 F.Supp.2d 656 (CIT 2001) (“Viraj I”). On February 8, 2005, the Department released the draft remand results to interested parties for comment. We received comments from Viraj and Petitioner on February 11, 2005.

DISCUSSION

Although we disagree with the Court’s order, we have, as instructed, uncollapsed VFL, VIL, and VAL and calculated separate antidumping-duty margins for VFL and VIL in the manner of the approach taken in Viraj I. As demonstrated by record evidence, only VFL and VIL made sales to the United States during the POR. Therefore, we have not included VAL’s sales or cost data in our margin analyses for VFL and VIL. As VFL and VIL did not make sales to the home market during the POR, we have based normal value,

in part, on sales by VFL and VIL, respectively, during the POR to the largest third-country market.

On November 13, 2001, Viraj reported third-country sales databases for VFL and VIL, which we have relied upon in our remand. On September 28, 2004, VFL and VIL each reported a separate cost database, per our supplemental questionnaire instructions, which we used in these remand results. To calculate the cost of production and constructed value, consistent with Viraj I, we applied the major input rule to VFL's and VIL's purchases of billets from VAL. In accordance with 19 CFR 351.407(b), the Department will determine the value of a major input from an affiliated party at the higher of the transfer price, market price, or cost of production. Also, to value annealing services provided by VFL to VIL and pickling services provided by VIL to VFL, we applied the higher of the cost of production or the transfer price. For annealing services provided by VFL to VIL, we have relied on the cost of the annealing services, which includes an amount for profit. For pickling services provided by VIL to VFL, we have relied on the transfer price of these services.

Furthermore, we have continued to deny a duty drawback adjustment to the cost of raw materials and have not made any adjustments for the thickness of the wire rods as requested by Petitioner in its December 21, 2004, submission. Petitioner's request exceeds the Court's directive, and the information used to deny the adjustments in the final results was verified and there is no additional information in the September 28, 2004, response which indicates that making these adjustments is now necessary.

In the December 21, 2004, submission, Petitioner stated that it does not believe the Court meant to separate VIL and VFL but that it meant to only separate VAL from those two companies. See December 21, 2004, submission at 3. We disagree. The Court specifically directed the Department to calculate and impose “individual antidumping-duty margins” upon VIL and VFL. See 2004 Remand at 10. Had the Court meant that the Department should only uncollapse VAL from VIL/VFL it would not have ordered us to calculate two individual margins for these companies. Additionally, the Court ordered the Department to calculate these individual margins in the manner we did in a previous segment of these proceedings, Viraj I. In that case, the Department did not collapse any of the Viraj companies, and it calculated an individual antidumping-duty margin for the single company that exported to the United States.

As discussed above, we have calculated individual antidumping-duty margins for VFL and VIL; however, the Department respectfully disagrees with the Court’s opinion to uncollapse the three Viraj companies. We found, through the responses and verification, that VAL, VFL, and VIL are affiliated, can retool without a significant restructuring of their manufacturing priorities, and present a significant potential for manipulation. Given that the companies’ operations are intertwined and that they share directors, facilities and information, and based on statements by Viraj that the companies operate as one, there exists a significant potential, through their sales and production operations, of manipulating prices or affecting production decisions. See Final Results. Although the Court focused on the subcontracting arrangement and considered the factual scenario unchanged from Viraj I, the Department, however, found the two segments

distinguishable. In the previous segment, VAL merely served as a supplier, whereas in this segment, VAL (as well as VIL and VFL) produced subject merchandise. While the Court focused upon the arm's-length nature of the subcontracts, the subcontractor did not hold title to the SSWR. VAL, VIL, and VFL hold title to the wire rod. Thus, the record demonstrated that "each have production facilities for some similar or identical merchandise that would not require substantial retooling." See Collapsing Memo at 3.

Furthermore, in a recent case with a similar fact pattern, the Department collapsed the producer/exporter with an affiliated processor. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From Brazil, 69 FR 76910 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 5. Additionally, in the Stainless Steel Bars from India case, in which Viraj is also a respondent, the Department has continued to find it proper to collapse the companies of Viraj after the issue was remanded to us for reconsideration. See Slater Steels Corp. v. United States, 316 F.Supp.2d, 1368 (CIT 2004) and subsequent Results of Redetermination Pursuant to Court Remand.

WEIGHTED-AVERAGE DUMPING MARGIN

As a result of this redetermination, we have recalculated the anti-dumping duty margins for VFL and VIL. The weighted-average dumping margins are as follows:

Manufacturer/exporter	Weighted-average margin
Viraj Forgings Limited	1.29 %
Viraj Impoexpo Limited	3.77 %

Upon a final and conclusive court decision affirming this remand redetermination, the Department will publish notice of its amended final results in the Federal Register and instruct U.S. Customs and Border Protection to collect duties in accordance with the determination.

COMMENTS

Comment 1: Conversion of Normal Value to U.S. Dollars on the Date of U.S. Sale

Petitioner argues that the Department should revise its programming language to convert normal value to U.S. dollars on the date of the U.S. sale, as currency conversion on the date of U.S. sale is the Department's standard practice. Petitioner contends that the Department improperly converted comparison market sales denominated in both U.S. dollars and Deutsche marks to rupees on the date of the comparison market sale, and argue that this should be corrected in the programs for VFL and VIL.

Viraj did not comment on this issue.

Department's Position: The Department agrees with Petitioner that it is the Department's practice to convert normal value to U.S. dollars on the date of the U.S. sale. See 19 CFR 351.415(a). The Department has corrected this error in the programs of VFL and VIL.

Comment2: Annealing and Pickling Service Cost Are Impermissibly Double

Counted or Overstated

Viraj argues that the Department double counted or overstated annealing and pickling service costs. Viraj argues that the Department inadvertently did not account for the fact that Viraj's cost build up is already based on the cost of production of the service

provider plus the addition of a reasonable profit margin. Viraj notes that for VIL, the average cost (plus profit) of the annealing service exceeds the transfer price.

Petitioner did not comment on this issue.

Department's Position: We agree with Viraj that we overstated the annealing and pickling service costs. Viraj reported that Respondents' pickling and annealing services were provided by an affiliated party (i.e., VIL pickled VFL's merchandise and VFL annealed VIL's merchandise). Accordingly, to value the cost of these services in VIL and VFL's margin calculation, we applied the higher of the cost of production or the transfer price of the service. In our draft remand, we relied on the cost of production for these services as reported in Viraj's January 27, 2005, submission. However, as noted by Viraj, the cost of the annealing and pickling service reported in the cost databases for VIL and VFL included an amount for profit. This additional profit was not included in the Department's analysis in the draft remand results, resulting in an overstatement of the annealing and pickling service cost.

For purposes of the final remand results, to value pickling and annealing services, the Department has relied on the higher of the cost of production (plus profit as reported by Viraj in its September 27, 2004, submission) or the transfer price. Consequently, for VIL, we relied on the actual cost of production (plus profit) for the annealing service reported in VIL's cost database because it was higher than the transfer price. For VFL, we relied on the transfer price for the pickling service.

Comment 3: Total Quantity of VIL's U.S. Sales

Viraj argues that in VIL's margin calculation programs the total quantity and value of U.S. sales exceeded the actual quantity and value sold by VIL during the POR. Viraj argues that the quantity sold by VIL should be corrected and the total PUDD (potential uncollected dumping duty) and weighted-average margin for VIL should also be corrected.

Petitioner did not comment on this issue.

Department's Position: The Department agrees with Viraj that an inadvertent error was made in the U.S. sales quantity for VIL resulting in a double counting of one U.S. sale. The Department has corrected this error in the margin calculation program for VIL.

Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

Date