REDETERMINATION
PURSUANT TO COURT REMAND
CARPENTER TECHNOLOGY CORP. V. THE UNITED STATES
AND VIRAJ IMPOEXPO LTD., V. UNITED STATES
Consol. Court No. 00-09-00447

SUMMARY

The Department of Commerce ("Commerce" or "the Department") prepared these results of redetermination pursuant to the Remand Opinion of the U.S. Court of International Trade ("the Court") in CARPENTER TECHNOLOGY CORP. V. THE UNITED STATES, Slip Op. 02-77 (July 30, 2002) ("Remand Opinion"). This Remand Opinion pertains to Commerce's decisions to match Viraj Impoexpo Ltd.'s ("Viraj") U.S. and third-country sales of stainless steel bar according to size ranges and to assign the "all others" rate (established in the LTFV Investigation[1]) to U.S. sales that did not have an identical match. See Stainless Steel Bar from India; Notice of Final Results of Administrative Review and New Shipper Review and Partial Rescission of Administrative Review, 65 FR 48965 (August 10, 2000) and accompanying Issues and Decision Memorandum ("Final Results").

As requested by the Court, Commerce reviewed the record evidence regarding Viraj's cost data and its matching methodology used for price comparisons. For the reasons discussed below, the Department concluded that the matching methodology was a reasonable "facts available" approximation of variable cost of manufacturing ("VCOM") data. Therefore, we have not amended the Final Results with respect to the matching methodology.

In addition, Commerce reconsidered its application of the LTFV investigation "all others" rate and, pursuant to the Court's instructions, we are not applying this rate to Viraj, a fully cooperative respondent, because it contains a company-specific rate based entirely on adverse facts available. Therefore, as facts otherwise available, we are using the weighted-average antidumping duty rate calculated for Viraj's matched sales for the unmatched U.S. sales.

If the Court approves these Results of Redetermination on Remand, the antidumping duty rate for Viraj will be 0.19 percent, a *de minimis* rate.

BACKGROUND

The Court sustained Commerce's determination that Viraj acted to the best of its ability

[1]Stainless Steel Bar from India; Notice of Final Determination of Sales at Less Than Fair Value, 59 FR 66915 (December 28, 1994) ("LTFV investigation")

to comply with the Department's request for information regarding its home market sales of the foreign like product (Remand Opinion at 11). In the Final Results, and in accordance with 19 U.S.C § 1677b(a)(1)(C), Commerce calculated Viraj's antidumping duty margin using third country sales data for normal value because Viraj's home market sales information was incomplete. Commerce made all statutorily mandated adjustments to normal value and, to the extent possible, all other adjustments it customarily makes, with the exception of those dependent upon VCOM data. Commerce was unable to make adjustments for differences in merchandise because, although Viraj cooperated to the best of its ability, it did not report VCOM data in its third country and U.S. sales databases. See 19 U.S.C. § 1677b(a)(6)(C) and 19 CFR § 351.411. Therefore, Commerce relied on facts otherwise available to account for these differences. In doing so, Commerce matched U.S. sales to third country sales according to size ranges (20 millimeters or less and greater than 20 millimeters) ("banding") for price comparison purposes. Where banding did not result in an identical match, Commerce applied the "all others" rate of 12.45 percent calculated in the LTFV investigation. The "all others" rate was calculated in accordance with the Tariff Act of 1930, as amended, pre-URAA ("the Act").

The Court remanded the use of banding to Commerce for further explanation. First, the Court pointed to the Decision Memorandum where the Department states,

> In the one instance in which the third-country data is lacking, namely the reporting of useable VCOMs, we have, as facts available, banded the company's sales of different stainless steel bar sizes *in order to obtain more identical matches*. Remand Opinion at 17 (emphasis added)

The Court found that the above statement suggests that banding may have been results-oriented. However, the Court did not find Commerce's matching methodology unreasonable or inconsistent with law, stating that, "Carpenter's argument does not demonstrate that Commerce's method of accounting for the absence of VCOM information for matching purposes was *per se* unreasonable and therefore not in accordance with law." See Remand Opinion at 11. Furthermore, the Court recognized the Department's broad authority to determine and apply a model-matching methodology to determine a relevant "foreign like product" under 19 U.S.C. § 1677b and 1677(16). See *Koyo Seiko v. United States*, 66 F.3d 1206, 1209-10 (Fed. Cir. 1995) ("Congress has implicitly delegated authority to Commerce to determine and apply a model-match methodology necessary to yield 'such or similar' merchandise, especially when employing facts otherwise available."); see 19 U.S.C. 1677(e). However, the Court pointed to Carpenter Technology Corp's ("Carpenter") brief that highlights the apparent disparate treatment between Viraj and another respondent, Panchmahal Steel, Ltd. The Court found that this "disparity" and Commerce's above statement necessitate a further explanation from Commerce of its rationale for banding Viraj's sales.

The second issue remanded to the Department relates to the "all others" rate applied to Viraj's unmatched U.S. sales. The Court found that Commerce's use of a pre-URAA weighted-average "all others" rate that contained one margin based entirely on adverse facts available did

not constitute non-adverse facts available. As such, the Court concluded that Commerce could not apply this "all others" rate to Viraj, a cooperative respondent. See 19 U.S.C § 1677e(b) (limiting the use of adverse facts available to uncooperative respondents).

The Draft Redetermination Pursuant to Court Remand ("Draft & Results") was released to the parties on September 5, 2002. Comments on the Draft & Results were received from Carpenter on September 13, 2002, and Viraj submitted rebuttal comments on September 18, 2002.

ANALYSIS

Matching Methodology

Unfortunately, the Department's narrative explanation of banding raised undue concern regarding the Department's intentions. Commerce's decision to employ banding as facts otherwise available was not results-oriented. To the contrary, the facts of the record support the Department's conclusion that banding is a reasonable alternative to the difference in merchandise analysis. Specifically, Viraj's direct material costs evidence cost differences between two size ranges. See Viraj's September 23, 1999, supplemental questionnaire response at 124-130. Commerce used banding according to these two size ranges in the absence of VCOM data. Therefore, where VCOM data was not available due to confusion over reporting requirements, rather than lack of cooperation, the use of banding as non-adverse facts otherwise available for Viraj was reasonable.[2]

In addition, Commerce reviewed the record evidence with respect to the "disparate" treatment between Viraj and Panchmahal. Based on this review, Commerce concluded that such "disparity" is attributable to Panchmahal's failure to cooperate (*i.e.*, Panchmahal's refusal to provide information in the manner in which it was requested by the Department).[3] Furthermore, the Department noted that Panchmahal never reported cost data that took size into account for its comparison market, thus precluding the Department from banding its sales or deriving any information to make differences in merchandise adjustments to normal value. Unlike Panchmahal and as affirmed by this Court, Viraj was a cooperative respondent.

For the reasons discussed above, we determine that the evidence on the record of this proceeding supports Commerce's decision to employ banding as facts otherwise available and we have not revised our calculations in this regard.

---

[2]As discussed in Comment 4 of the Final Results. See also Remand Opinion at 8-11 sustaining Commerce's finding that Viraj was a cooperative respondent entitled to non-adverse facts available.

[3]See Comment 1 of the Final Results for a detailed discussion of Panchmahal's failure to cooperate.

Application of pre-URAA "All others" Rate

The LTFV investigation "all others" rate included a company-specific antidumping duty rate that was determined entirely under section 776 of the Act (pursuant to the Pre-URAA all other's rate calculation) and, therefore, pursuant to the Court's opinion, the "all others" rate is not applicable to Viraj. Court Opinion at 21. Therefore, where Viraj's U.S. sales did not have an identical match under banding, we have used the weighted-average of the dumping margin calculated for Viraj's matched sales, as facts otherwise available. See 19 U.S.C. § 1677e(a). This weighted-average may be used as a reasonable approximation of dumping attributable to Viraj's unmatched sales because it is based on Viraj's own sales data and the Department has found no facts on the record to suggest that such a use would be distortive. Moreover, it is consistent with Department practice. See Porcelain-on-steel Cook Ware from Mexico; Final Results of Antidumping Duty Administrative Review, 58 FR 423327, 43329 (August 16, 1993).

COMMENTS

Carpenter submitted comments regarding the Department's disparate treatment of Viraj and Panchmahal, the Department's banding methodology, and the Department's selection of facts otherwise available for Viraj's unmatched sales. Viraj responded to arguments regarding the disparate treatment and use of facts otherwise available in its rebuttal comments.

Comment 1: The Use of Banding

Carpenter argues that the Department should not have employed banding as facts otherwise available because to do so unfairly treated Viraj more favorably than Panchmahal despite similarities in the deficiencies of the two companies' responses. Carpenter cites to a previous determination by the Department to argue that banding is against Department practice.[4]

Respondents did not comment on this issue.

Department's Position:

The Department disagrees with Carpenter. As discussed in the "Analysis" section above, Viraj, unlike Panchmahal, cooperated to the best of its ability. Thus, while the deficiencies may relate to similar cost information, the Department determined that the reasons for the deficiencies were different. (*i.e.*, Viraj was confused as to the reporting requirements while Panchmahal simply refused to report the requested data. See Final Results at 4-7, 11-13.) The Act clearly authorizes the Department to treat respondents differently based on their level of cooperation. See 19 U.S.C. 1677e(b). As such, the "disparate" treatment of Viraj and Panchmahal does not

[4] Carpenter cites to Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar From Germany, 67 Fed. Reg. 3159 (January 23, 2002) and accompanying Issues and Decision Memorandum at Comment 2 ("Stainless Steel Bar From Germany").

violate the statute. See also Comment 2, below.

The Department also disagrees with Carpenter in so far as it cites Stainless Steel Bar From Germany to argue that banding, as facts otherwise available, violates Department practice. Stainless Steel Bar From Germany was not a case in which the Department was discussing the appropriateness of banding as facts otherwise available and as such is inapposite to this redetermination.[5]

For the reasons discussed above, the Department finds that its decision to employ banding was supported by substantial evidence and otherwise in accordance with law.

Comment 2: The Treatment of Viraj and Panchmahal

Carpenter argues that Commerce failed, in its Draft & Results, to respond to the Court's request for a clarification of the disparate treatment between Viraj and Panchmahal because Commerce did not address the technical differences between their data submissions. According to Carpenter, attributing the disparate treatment to Panchmahal's failure to cooperate and Viraj's cooperativeness is insufficient. Citing the Court's statement that, "it was incumbent upon Commerce to apply its rationale to all respondents similarly situated,"[6] and the Department's acknowledgment of both respondents' failure to provide complete cost data according to size, Carpenter concluded that Commerce must treat Viraj as it treated Panchmahal (*i.e.*, it may not "reward" Viraj while penalizing Panchmahal) by applying an adverse inference to the facts otherwise available used in Viraj's margin calculation. Carpenter believes that matching Viraj's sales according to exact-size is an appropriate adverse inference.

Viraj distinguishes itself from Panchmahal in stating that Panchmahal failed to provide an electronic file containing its cost information, thus limiting the Department's ability to analyze Panchmahal's data. In addition, Viraj contends that Panchmahal's failure to provide requested information warranted the use of adverse facts available while Viraj's failure to provide complete cost information did not because Viraj acted to the best of its ability in complying with the Department's request for information. Therefore, Viraj concludes, the Department's remand redetermination on this issue is correct.

---

[5] In Stainless Steel Bar From Germany the Department was discussing the appropriateness of adopting a methodology similar to banding as standard practice. The Department rejected banding as less-preferable to the standard practice of matching according to "exact size." Id at Comment 2. The Department's discussion of what is a better standard practice does not speak to what is reasonable in a situation, such as the current remand redetermination, where data is missing from the record and a respondent cooperated to the best of its ability. While banding many not be a preferable standard practice, it is an entirely reasonable choice of facts otherwise available.

[6] See, the Remand Opinion at 13.

Department's Position

We agree with Viraj with respect to its characterization of the pertinent differences between the two companies' data, as discussed in Comment 1 above. More specifically, and as discussed both above and in the Final Results, Viraj's lack of data was due, *inter alia*, to confusion over reporting requirements while Panchmahal simply refused to provide the requested data. According to 19 U.S.C. § 1677e(b), the Department's application of adverse inferences in selecting facts otherwise available to calculate a dumping margin is limited to non-cooperative respondents. Therefore, the application of adverse inferences against Viraj, a cooperative respondent, would have been a clear violation of law, while for Panchmahal it was not.

Comment 3: Unmatched Sales and Facts Otherwise Available

Carpenter argues that Commerce must use the 3.87 percent antidumping duty margin calculated for Grand Foundry, the sole respondent in the LTFV investigation, for Viraj's unmatched sales. Citing, among other cases, Smith Corona Corp. v. United States, 16 CIT 562, 566, 796 F. Supp. 1532, 1536 (CIT 1992) ("Smith Corona"), Carpenter contends that the Department's use of the weighted-average margin calculated for Viraj's matched sales inappropriately rewards Viraj for failing to submit data requested by the Department. Carpenter states that the Court, in Smith Corona, did not allow the use of a petition rate because it was lower than the rate based on the respondent's record data. Similarly, Carpenter argues, the Departments' calculated rate of 0.19 percent is inappropriate and unfairly rewards Viraj because Viraj's own data on the record yields a higher rate.

Viraj contends that Department precedent does not support using the Grand Foundry rate from 1994 for its unmatched sales. Furthermore, Viraj argues that the weighted-average rate using its own sales and cost data from the instant review, or the most recent dumping rate calculated for Viraj preceding this review, are more appropriate than the Grand Foundry rate because they are more contemporaneous and specific to Viraj. Viraj also argues that the Grand Foundry rate is inappropriate because it was calculated with adjustments for duty drawback that were not made in the instant review.

Department's Position

We disagree with Carpenter that the Department may not use, as facts otherwise available, the weighted-average margin calculated for Viraj's matched sales for those sales that do not have a match. As discussed above in the "Analysis" section, the Department believes that applying the weighted-average margin calculated for Viraj's matched sales is reasonable because it is based on Viraj's own data, consistent with Department practice, and there is no evidence on the record that it is distortive. (*Supra* at pg. 4)

Carpenter's principal argument is that the weighted-average methodology unfairly rewards Viraj for the lack of data. However, such an argument is premised on Viraj's lack of

cooperation. As discussed above and as affirmed by this Court, Viraj cooperated to the best of its ability. Carpenter's reliance on Smith Corona is equally misplaced because the respondent in Smith Corona failed to fully participate in the investigation. Smith Corona, 796 F. Supp. 1532, 1536-1537.

For the reasons discussed above, the Department's use of a weighted-average of Viraj's matched-sales for Viraj's unmatched sales is supported by substantial evidence and otherwise in accordance with law.

RESULTS OF REDETERMINATION

Based on the analysis described above, the Department determines, on remand, that: (1) in light of the evidence on the record of this proceeding regarding Viraj's cost data, the Department was justified in its use of banding; and (2) the appropriate facts otherwise available rate for Viraj's unmatched sales is the weighted-average margin of its banded, matched sales. Accordingly, we have revised the antidumping duty margin for Viraj. Viraj's margin is now 0.19 percent, which is *de minimis*.

_____

Faryar Shirzad
Assistant Secretary for
Import Administration

_____

Date