

FINAL REMAND DETERMINATION

NTN Corp., et al, v. United States,
Court No. 00-09-00443, Slip Op. 04-11

Summary

This remand determination is submitted in accordance with the order of the U.S. Court of International Trade of February 3, 2004 (Slip Op. 04-11). It involves challenges to the determinations of the U.S. Department of Commerce in the administrative reviews of the antidumping duty orders on antifriction bearings and parts thereof from Japan concerning the period of review from May 1, 1998, through April 30, 1999. In accordance with the court's instructions, we have conducted the arm's-length test for two of NTN Corporation's affiliated resellers and we have recalculated the antidumping duty margin applicable to NTN Corporation to account for the results of that test. The changes to our calculations with respect to NTN Corporation resulted in weighted-average margins for the period May 1, 1997, through April 30, 1998, of 4.71 percent for ball bearings, 3.50 for cylindrical roller bearings, and 2.78 for spherical plain bearings.

Background

On February 3, 2004 , the U.S. Court of International Trade (the Court) issued an order in NTN Corp., et al, v. United States, Court No. 00-09-00443, Slip Op. 04-11 (February 3, 2004) (NTN), remanding to the Department of Commerce (the Department) the final results in (Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom: Final Results of Antidumping Duty

Administrative Reviews and Revocation of Orders in Part, 65 FR 49219 (August 11, 2000) (AFBs 10)). In NTN, the Court directed the Department to make the following changes to its determination in AFBs 10: 1) apply the arm's-length test to the sales prices of certain affiliated resellers to determine whether the sales prices were comparable to the price at which NTN Corporation (NTN) sold the subject merchandise to unaffiliated parties; 2) explain how the record supports its decision to recalculate NTN's home-market indirect selling expenses without regard to level of trade; 3) clarify the reasoning for its treatment of affiliated-party inputs, apply the major-input rule to NTN where appropriate, and open the record for additional information, if found necessary. The remand affects NTN with respect to the administrative reviews of the antidumping duty orders on ball bearings (BBs), cylindrical roller bearings (CRBs), and spherical plain bearings (SPBs) from Japan for the period May 1, 1998, through April 30, 1999.

On April 1, 2004, we released our draft results of redetermination to interested parties for comment. We received no comments from any party.

Discussion

Arm's-Length Test

Our regulations at 19 C.F.R. 351.403(c) state that we may use sales prices to affiliated resellers if we are "satisfied that the price is comparable to the price at which the exporter or producer sold the foreign like product to a person who is not affiliated with the seller." If these transactions are not made at arm's-length prices and a respondent does not provide downstream sales data from its affiliates, the Department may apply adverse facts available if the respondent did not act to the best of its ability. See 19 U.S.C. 1677e(b). In AFBs 10, although we applied the arm's-length test to some of

NTN's affiliated resellers, we did not test the sales to certain other affiliated resellers before applying adverse facts available to NTN's home-market sales to these certain affiliated resellers on the grounds that NTN did not act to the best of its ability in not reporting the downstream sales by these affiliated resellers. See AFBs 10 and accompanying Issues and Decision Memorandum at 7. Therefore, we should have tested NTN's sales to these affiliated parties and, if we found the sales to be made at arm's-length prices, use those sales as the basis of normal value. Only if the sales to the affiliated parties were not made at arm's-length prices should we have applied adverse facts available for NTN's failure to report the downstream sales. Therefore, we requested that the Court remand this issue so that we could do this.

We have tested the sales to these certain affiliates and found that some of the sales were made at arm's-length prices while others were not. Where the sales were made at arm's-length prices, we used those sales as the basis for normal value where appropriate and did not use any adverse inferences. Where the sales were not made at arm's-length prices, we continued to use adverse facts available with respect to those sales in the same fashion as we did in AFBs 10. See draft results analysis memorandum for NTN dated April 1, 2004, and the accompanying calculations.

We received no comment on this issue.

Indirect Selling Expenses

In AFBs 10, we recalculated NTN's home-market and U.S. indirect selling expenses without regard to level of trade. The Court upheld our recalculation of NTN's U.S. indirect selling expenses on the grounds that "NTN's allocation methodology does not reasonably quantify the United States indirect selling expenses incurred at each LOT to support such an adjustment." NTN, Slip Op. 04-11, *52.

The Court instructed us, however, to articulate how the record supports our decision to recalculate NTN's home-market indirect selling expenses without regard to level of trade.

In AFBs 10, NTN reported home-market indirect selling expenses on a level-of-trade-specific basis. The record reflects, however, that NTN's methodology for allocating home-market expenses to each of its levels of trade does not bear any relationship to the manner in which NTN Japan incurs the expenses in question at each of the levels of trade.

For example, during the underlying review, NTN told us that [* * *] and that “{t}his explains the fact that [* * *]” See NTN's July 30, 1999, section A response at page A-11. It is clear from NTN's calculation worksheets in Exhibit B-4 of NTN's September 3, 1999, section B response, however, that NTN simply allocated expenses incurred at each cost center to each level of trade by the value of sales to each level of trade within the cost center. For example, NTN's technical service expenses for cost center [* * *] were [* * *] yen. NTN calculated the amount of technical service expense attributable to [* * *] sales by multiplying the total expense figure by the ratio of [* * *] sales to total sales ([* * *]). Thus, within each cost center, NTN attributed exactly the same amount of technical service expense to each level of trade. To calculate the overall technical service expense for [* * *] sales, NTN simply aggregated the expenses allocated within each cost center and divided the sum by the total sales. Although the overall percentage for technical service expenses for [* * *] sales is higher than that for [* * *], it is clear that this is simply a matter of the mix of sales at the various cost centers and not a result of how the expenses are actually incurred. See Exhibit B-4 of NTN's September 3, 1999, section B response.

Furthermore, we observe that these differences in technical service expense (expressed as a

percentage of sales value) are very small, particularly between [* * *] and [* * *] sales ([* * *] percent versus [* * *] percent). Thus, although NTN quantified a different technical service expense between the levels of trade, it is clear from the record that it is not a result of how this expense is actually incurred, given NTN's statement that technical services are provided more for [* * *]customers than for the other levels of trade.

In fact, despite the differences in selling functions NTN described in its July 30, 1999, section A response, NTN calculated all indirect selling expenses in precisely the same manner as it did technical service expenses. See Exhibit B-4 of NTN's September 3, 1999, section B response. Accordingly, a review of the record in AFBs 10 demonstrates that NTN's allocation methodology does not reasonably quantify the home-market indirect selling expenses incurred at each level of trade. Therefore, in AFBs 10 we recalculated NTN's home-market indirect selling expenses without regard to level of trade.

We received no comment on this issue.

Affiliated-Party Inputs

We had asked for a remand because it did not appear that we distinguished between major and minor inputs and we wished to clarify the reasons for our treatment of certain inputs. Pursuant to the Court's instruction, we have reviewed the record and found that we have distinguished between major and minor inputs properly.

Our supplemental questionnaire dated October 21, 1999, at page 10, asked NTN to

“...resubmit {its} COP and CV databases to base the cost of manufacture (COM) of models incorporating affiliated-party inputs on the highest of transfer price, market price, or the affiliate's cost of production for major inputs (i.e., steel, inner or outer rings, rolling elements, cages). For minor inputs (e.g., seals, shields), please base the COM of models incorporating affiliated-party inputs on the higher of transfer price or

market price. If there is no market price for a minor affiliated-party input, please base the COM on the higher of transfer price or the affiliate's cost of production for the input. You may, if you wish, submit a database with only those models which incorporate affiliated-party inputs."

On November 12, 1999, NTN submitted its supplemental response stating that, "in order to comply with the ITA's request, NTN provides a database with only those models which incorporate affiliated-party inputs, in addition to a printout entitled 'COP and CV Addon.'" See NTN's November 12, 1999, supplemental response at page 24. NTN also submitted a database with a variable that would adjust its reported costs to comply with our instruction. We used this variable to adjust NTN's reported costs to calculate NTN's margins in AFBs 10. See our March 22, 2000, preliminary analysis memorandum at page 10.

NTN stated that it complied with our instruction and we are aware of no evidence that suggests that NTN did not report the adjustments correctly. Because our instruction to NTN was to use different methodologies depending on whether the input was a minor or major input, because NTN followed our instruction, and because we used the data NTN submitted, the record demonstrates that we distinguished between major and minor affiliated-party inputs properly. Therefore, it is not necessary for us to re-open the administrative record.

We received no comment on this issue.

Final Results of Redetermination

In accordance with the remand order, we have recalculated the antidumping duty margins

for NTN as directed by the Court. The recalculated weighted-average percentage dumping margins for the period May 1, 1998, through April 30, 1999, for BBs, CRBs, and SPBs are as follows:

<u>Company</u>	<u>BBs</u>	<u>CRBs</u>	<u>SPBs</u>
NTN Corporation			
Original	6.14	3.49	2.78
Revised	4.71	3.50	2.78

These final results of redetermination are pursuant to the remand order of the Court of International Trade in NTN Corp., et al. v. United States, Court No. 00-09-00443, Slip Op. 04-11 (CIT February 3, 2004).

James Jochum
Assistant Secretary for
Import Administration

Date