

FINAL RESULTS OF REDETERMINATION
SKF USA Inc., SKF France S.A., and Sarma v. United States
Court No. 03-00490, Slip Op. 05-104

Summary

This remand determination is submitted in accordance with the order of the U.S. Court of International Trade (the Court) of August 24, 2005 (Slip Op. 05-104) (Court's Order), and involves a challenge by the plaintiffs to the determination of the U.S. Department of Commerce (the Department) in the administrative review of the antidumping duty order on ball bearings and parts thereof from France (Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, Singapore: Final Results of Antidumping Duty Administrative Reviews, Rescission of Administrative Review in Part, and Determination Not to Revoke Order in Part, 68 FR 35623 (June 18, 2003) (AFBs 13)). The period of review is May 1, 2001, through April 30, 2002. In accordance with the Court's order, we have reconsidered our partial adverse facts-available determination for SKF/Sarma by reopening the record to allow the firm to supply supporting information and by re-calculating Plaintiffs' margin using Plaintiffs' own information. The change to our calculations with respect to SKF and Sarma resulted in a change in the weighted-average margin for this period from 6.70 percent to 6.19 percent.

Background

On August 24, 2005, the Court ruled that the Department's determination that SKF was unable to provide information to support Sarma's sales totals at its February 2003 verification, thereby necessitating the use by the Department of partial facts available, was unsupported by substantial evidence.

In the Department's March 7, 2003, report of its February 2003 verification of SKF, the Department found that SKF was not prepared to demonstrate the segregation or "split" between markets (United States, home market, and third countries) and products (ball bearings and spherical plain bearings) for Sarma's quantity and value information. The Department indicated in its report that this was because SKF did not keep the supporting documentation at the SKF sales office in Paris where the February 2003 verification took place but at Sarma's facilities in St. Vallier located in southern France. During the administrative review, parties submitted argument and comments as to how the Department should treat the factual findings from verification. In particular, in its administrative case brief, SKF disagreed that it had not provided the Department with sufficient information to verify quantity and value and disagreed further that the application of adverse facts available was appropriate. See SKF Case Brief, pp. 4-6, March 18, 2003, Pub. Doc. No. 74; SKF Rebuttal Brief, March 25, 2003, Pub. Doc. No. 76. The Department considered these arguments and, because it determined that Sarma did not provide the requested information during verification and that SKF did not offer any information to confirm that it had reported Sarma's sales accurately, the Department applied adverse facts available to Sarma's U.S. sales. AFBs 13, 68 FR at 35625, and accompanying Issues and Decision Memorandum in response to Comment 25.

During the litigation following the completion of the administrative review, SKF argued that it did not refuse to provide supporting documentation at verification but that the Department had rejected offers by SKF and Sarma to provide evidence for the verification of Sarma's reported sales information. Although this issue was addressed fully on the record of the administrative review, SKF submitted three extra-record, sworn affidavits signed by two Sarma employees and SKF's business consultant with its brief attesting that SKF made certain offers of information

during the February 2003 verification but that the Department's verifiers did not accept these offers.

Upon reviewing the affidavits, the Court ordered limited discovery and a hearing to determine whether the Department's verifiers had acted in bad faith or were untruthful in their statements in the verification report or in the Department's final results of review. See Court Transcript, September 10, 2004, pp. 3-4, 14-16. The Department and its verifiers cooperated fully with this order. The verifiers were made available for depositions and a full-day hearing before the Court. After discovery, a court hearing, and two post-hearing briefs, the Court issued its opinion on August 24, 2005.

In its opinion, the Court ruled that SKF did not refuse to provide supporting documentation at verification. The Court found that the Department's decision to apply partial adverse facts available based on Sarma's alleged refusal and failure to provide supporting documentation was unsupported by substantial evidence. The Court's finding is based, at least in part, on the fact that SKF was able to send facsimile copies of some supporting documentation to the Court during the hearing on November 19, 2004. Court's Order, pp. 6-7. Moreover, the Court ruled that the Department's "announcement of its decision to use partial adverse facts available for the first time in the Final Results, and to offer no opportunity for SKF to respond, correct, or clarify while finding SKF had not cooperated to the best of its ability, is unsupported by substantial evidence and not in accordance with law." Court's Order, p. 17.

The Court remanded this case to the Department to re-evaluate and re-examine its decision by providing evidentiary support for applying partial adverse facts available unrelated to SKF's alleged failure to offer evidence at verification or, in the alternative, the Court instructed the Department to reopen the record in this case to provide Plaintiffs the opportunity to supply

supporting information and re-calculate Plaintiffs' margin using Plaintiffs' own information.

Court's Order, p. 17.

Discussion

We have complied fully with the Court's order though, for the reasons set forth below, we do so respectfully under protest. In its remand order, the Court provided the Department with the option of supporting its adverse facts-available determination with "evidentiary support unrelated to Plaintiffs alleged failure to offer evidence at verification." Court's Order. Because our adverse facts-available determination was based solely on Sarma's failure at the February 2003 verification, we did not pursue the first option in the Court's order.

Accordingly, pursuant to the Court's order, we have reopened the record and conducted a second verification, this time at Sarma's premises in St. Vallier, France, on September 28 and 29, 2005. At that verification, we provided Sarma with a second opportunity to submit documentation to support its reported quantity and value information. Although it took the Department two days and several steps to verify Sarma's quantity and value information, the end results were successful in that Sarma was able to produce sufficient documentation to support its questionnaire response. See November 9, 2005, Verification Report. Based on the results of our second verification, we have re-calculated SKF's margin using the firm's own data instead of applying partial adverse facts available to Sarma's U.S. sales.

Since the initiation of the Court proceeding, the Department has not had the opportunity, as an agency, to address the proceedings that have transpired before the Court. The Department has reviewed all the proceedings that have taken place before the Court and during the Court-ordered discovery. Although we have complied fully with the Court's Order, for reasons set forth below, we respectfully disagree with the conclusions of the Court in its opinion.

During the Administrative Review

The Department respectfully disagrees with the Court's conclusion that the extra-record affidavits SKF submitted with its brief to the Court was the first time SKF had an opportunity to obtain relief concerning its failures at verification. The Department's March 2003 verification report explained that SKF had not supported the quantity and value information concerning Sarma's sales. Verification Report-SKF, March 7, 2003, Pub. Doc. No. 69. SKF had an opportunity to comment on the implications of that statement of fact through the Department's briefing process as outlined in its regulations and in the notice of preliminary results of review. See 19 CFR 351.309 and Ball Bearings and Parts Thereof From France, Germany, Italy, and Singapore: Preliminary Results of Antidumping Duty Administrative Reviews, Partial Rescission of Administrative Reviews, and Notice of Intent to Revoke Order In Part, 68 FR 6404 (February 7, 2003).

In fact, SKF/Sarma did comment on these findings in both the SKF case and rebuttal briefs before the Department. In its case brief, SKF disagreed that it was not prepared to demonstrate quantity and value and argued that the information it submitted was sufficiently detailed. SKF Case Brief, pp. 5-6, March 18, 2003, Pub. Doc. No. 74. Further, SKF had the opportunity to respond to the petitioners' argument that the Department should apply adverse facts available as a result of SKF's lack of preparedness at the verification. Specifically, in response, SKF alleged that it made alternative suggestions as to how the Department might verify quantity and value. SKF Rebuttal Brief, pp. 4-5, March 25, 2003, Pub. Doc. No. 76.

The Department considered these arguments fully and addressed them in its final results of review but found that, "{c}ontrary to SKF France's assertions, it did not offer any suggestions or alternatives regarding requested documents that would have confirmed that Sarma's sales were

reported to the Department accurately.” AFBs 13 at Comment 25. In the Department’s view, it had considered this matter fully and addressed it during the normal course of its administrative proceeding.

Ms. Landrum’s Alleged Offers at the February 2003 Verification

At the center of this litigation are the questions of whether SKF/Sarma offered information to the Department’s verifiers and, if so, whether the information would have supported Sarma’s designation of sales to report and sales it did not report to the Department in its questionnaire response. We take this opportunity to review these questions.

During both the February 2003 and September 2005 verifications, Sarma presented the Department with the same package of information concerning its quantity and value figures to support its methodology of distinguishing between sales to report and sales Sarma did not report to the Department. February 2003 Verification Exhibit 7; September 2005 Verification Exhibit 7A (i.e., Defendant’s Exhibit A). During the Court hearing, the Department’s lead verifier, Mr. Schauer, also referred to Defendant’s Exhibit A when he testified that at the first verification he asked to see documentation that supported several line items he had selected from a list in Sarma’s quantity and value verification exhibit. SKF USA Inc. v. United States, Hearing Transcript, Court of International Trade, November 19, 2004, at 28:19-31, 11 (Hearing Tr.).

During her depositions and during the Court hearing, Ms. Landrum testified that, during the February 2003 verification, she recalled being asked to demonstrate the split between sales. Hearing Tr. at 61:16-20; 101:20-22 (Landrum); Landrum Dep. at 40:25-41:20. Ms. Landrum testified that, in response to this request, she made two offers of information. The first offer she said she made was “to list all the home market and US sales that had been reported, and Tom {Schauer} could pick invoices at random. We could get invoice copies, and then he could check

to see that the market was reported correctly, and he could also check to see that the product was reported correctly.” Hearing Tr. at 62:14-19 (Landrum). She said her second suggestion was “to examine a journal listing, which was a listing of all sales in December . . .” Hearing Tr. at 63:2-4 (Landrum), *id.*

At the time of the Court hearing, Mr. Schauer did not recall Ms. Landrum making these offers but testified hypothetically that they would not have been sufficient for him to verify the accuracy of Sarma’s quantity and value figures. Hearing Tr. at 181:8-182:1. The Department agrees with Mr. Schauer’s assessment as to the sufficiency of the offers to which Ms. Landrum testified.

In fact, neither of the offers which Ms. Landrum testified she made at verification would have been sufficient to verify the accuracy of the quantity and value figures Sarma submitted to the Department. The first alleged offer was described as listing all the home-market and U.S. sales that SKF and Sarma had reported and having the Department’s verifiers select invoices for those sales randomly. This is essentially what the Department does when performing the sales traces at a verification, which is a separate verification procedure (see, *e.g.*, March 2003 verification report at Verification Exhibit 8). This procedure would have allowed us to determine whether individual sales which Sarma reported were classified properly as home-market or U.S. sales. It would not have allowed us, however, to determine whether any sales which Sarma did not report in its databases had been excluded inappropriately. For example, if Sarma had any sales to the United States or home market which it did not report but which it should have reported, there would have been no way for us to ascertain this from the list of sales Sarma did report. Under this described offer, our examination would have been limited to the universe of reported sales. Thus, we would not be able to verify whether the quantity and value of sales had

been under-reported. This alleged suggestion would not have permitted us to determine the accuracy of the family-grouping totals reported in Sarma's verification exhibit.

The other described offer was to use the sales journal for one month (December 2001) to verify the sales quantities and values. First, such an offer would not have permitted the Department to verify the information for other months and, if there had been any problems with the December 2001 information or Sarma's methodology for deciding which sales to report, the Department would have wanted to review similar worksheets and supporting information for other months of the period of review. We cannot know at this point whether any questions would have arisen.

Second, and more significantly, the worksheets Sarma presented at the February 2003 verification indicated a methodology by which it segregated sales by market and by product group (which it used to distinguish between covered and non-covered sales). These worksheets did not segregate these sales on a monthly basis, however, thus making it impossible to tie the sales ledger for a single month to Sarma's worksheets.

When we specify a month in our verification outline for which a respondent must be ready to present supporting documentation for its reported sales, the purpose is not just to verify that month and take for granted that the respondent reported its sales for the rest of the period of review properly. Rather, the purpose of selecting this month is to limit the amount of source documents a respondent has to have on hand when we are verifying its quantity and value information. We examine these source documents only after a respondent has demonstrated its methodology for segregating its quantity and value figures between its sales of covered and non-covered merchandise.

To illustrate how this works, let us examine what happened at the September 2005

verification and what should have happened at the February 2003 verification. Generally, the product-group quantity and value figures in Sarma's worksheets represent multiple sales transactions rather than individual sales transactions. Had Sarma been able to provide support for its worksheets (e.g., provide lists of invoices which aggregate to the totals listed in Sarma's worksheets), we would have been able to select specific invoices. The purpose of selecting these invoices would be to support the invoice lists, which is a necessary step for supporting the worksheets. At the February 2003 verification, however, Sarma did not have the invoice lists which would have allowed the Department's verifiers to make those selections. As a result, the offer Ms. Landrum explained to the Court she made would still not have supported the accuracy of Sarma's designation of sales to report and sales it did not report.

We were able to examine information supporting the selected line items at the September 2005 verification. In doing so, we were able to see what was necessary to verify the figures concerning Sarma's sales information. The process of obtaining sufficient information to support the accuracy of these line items was much more complicated than simply obtaining a list of invoices and having copies of those invoices transmitted by facsimile machine. As we explain in our November 2005 verification report, it took the following steps to verify the accuracy of the line items presented in Sarma's verification worksheets:

Our verification of Sarma's segregation of sales involved the following steps:

1. After examining the totals on page 1335, we inquired into the significance of pages 1336-1342 of the prepared package. These pages are worksheets which list products by family groupings. We noticed that the numbers on each of pages 1336-1342 did not add up to the total at the end of each list. Sarma officials explained that these pages correspond to the product division totals on page 1335 but represent only the last page of a list of totals of family groupings.
2. Because the "TOTAL" figures on pages 1336 through 1342 reflect additional line items not in the pre-prepared Exhibit 7A, we requested to see entire printouts

for the entire list of family grouping totals for divisions PRT 00, 08, 01 and 09. When asked, Sarma provided printouts of the entire listing of totals for these divisions. An example of an entire printout is included for PRT 08 and is attached as pages 1384-1385 of Exhibit 7C (pages 1385 and 1340 are copies of the same last page).

3. We then learned that the line items contained in the printouts of total sales by family grouping represent the total sale for each family grouping, not individual sales. In order to trace those figures to specification information about the actual products associated with those sales values, we learned that, in addition to maintaining product codes, Sarma also maintained sales family codes (not related to bearing families as reported in our antidumping questionnaire) which Sarma uses in its own books and records.

4. We then asked Sarma to provide a list of descriptions associated with these codes; they are attached as Exhibit 7B.

5. As described below, we selected line items from family groupings from each division and asked Sarma to provide us with supporting documentation:

(A) PRT 08 Division, Exhibit 7C

Using the printout at pages 1384-1385 of Exhibit 7C, we requested information for Reference Article [* * *] which, according to Exhibit 7B, was a code which Sarma had determined might contain merchandise considered to be the foreign like product. Sarma personnel also explained that the codes in Exhibit 7B suggest groupings of products but are not any more specific about the products within those groups. For example, we were told that the designation of [* * *] refers to a Sarma-based family of rods but not to specific types of rods. Therefore, more specific information to understand the sales values at pages 1384-1385 of Exhibit 7C and page 1340 of Exhibit 7A was necessary.

Sarma presented page 1378 of Exhibit 7C in which we learned that ten different article numbers with their associated quantities and values comprised the total [* * *] category [* * *] summarized on page 1384.

To examine the appropriateness of its removal of the sales value of products within the [* * *] category from its reported Q&V figures, we selected the line-item [* * *] with a quantity of [* * *] units and a value of Euro [* * *]. See Exhibit 7C, p. 1378. This item is identified as Article number [* * *], has a quantity of [* * *], and indicates a value of Euro [* * *]. We requested the invoice(s) associated with this article to verify the information in the printout.

The morning of the second day, Sarma presented a single invoice which corresponded to the correct Article number, but the invoice did not provide the

correct quantity and value. See Exhibit 7C, p. 1395. Sarma officials explained that this line item actually represents several invoices. We then asked to see all invoices to support Article number [* * *].

In the afternoon of the second day, Sarma provided us with the requested invoices to support the quantity and value listed under the selected line item. See Exhibit 7C, pages 2700-2717. We received ten invoices (pages 1395-1396, 2700-2717) which reflect the accumulated sales quantity of [* * *] units and the total price of Euro [* * *]. See Exhibit 7C.

Pages 1398-1399 of Exhibit 7C contain the technical specifications which satisfied us that this model and sales in the home market thereof were not of ball bearings.

(B) PRT 00, 01, and 09 Divisions

Exhibits 7D, 7E, and 7F reflect similar examinations of technical and home-market sales volume and value of merchandise Sarma chose to report in or exclude from its home-market database based on the technical specifications. In some examples line-items of the printout may have reflected one invoice; in others, as many as 27 invoices were necessary to verify the sales value excluded from Sarma's reported home-market Q&V figures (see Exhibit 7D and attached invoices).

For the PRT 00 Division, we requested to see support for the [* * *] family grouping. The Sarma product specialist explained that this grouping represents rods but does not refer to a specific product. We were then provided with a printout of a list of sales comprising the [* * *] total. See Exhibit 7A, p. 1336, and Exhibit 7D, p. 1376.

We requested to see support for a single line item from the [* * *] family grouping, Article number [* * *], with a quantity of [* * *]. See Exhibit 7D, p. 1376.

Sarma presented us with a single invoice to support this item (Exhibit 7D, p. 1392). We examined this invoice and found no discrepancies.

See November 2005 verification report, pp.4-5

In sum, the verification of these selected line items required numerous steps and several of Sarma's personnel to be present before they could demonstrate how Sarma had compiled the information.

The only offers even claimed to have actually occurred during the February 2003 verification were the offers to which Ms. Landrum testified. It is clear to the Department that, if Ms. Landrum made these offers, they were not remotely sufficient to support the line items the Department selected in Sarma's verification worksheet. One of the offers would have limited the Department's examinations only to sales reported by Sarma, thus precluding the Department from ensuring that Sarma reported all sales which it should have reported. The other offer would have limited the Department's examination to one month which would not have demonstrated the accuracy of Sarma's reporting for the other months of the period of review or the methodology Sarma used to split the sales between covered and non-covered merchandise. It is for these reasons that the Department stated in response to Sarma's claim that it had made offers to verify the information that SKF "did not offer any suggestions or alternatives regarding requested documents that would have confirmed that Sarma's sales were reported to the Department accurately." AFBs 13 at Comment 25. This was and is a true statement, regardless of whether the two offers were made in 2003.

The Department finds further that it would not have been unusual or inappropriate for a Department verifier not to accept these claimed offers because they did not provide any information with respect to the totals the Department verifiers sought to verify. Even if Ms. Landrum made the offers at issue and even if the Department's verifiers accepted them for the record at verification, the end result for Sarma would have been no different because its quantity and value information would have remained unverified at the close of the February 2003 verification.

The Court's Verification Test

Additionally, during the hearing, the Court conducted a "verification test" in which it

asked a Sarma employee to fax supporting documentation from the selected line items. Hearing Tr. 10:14-11:14. During this exercise, Mr. Schauer selected several line-item totals from Sarma's quantity and value verification worksheet. Hearing Tr. 27:22-31:11 (Mr. Schauer referring to Defendant's Exhibit A, also on the Department's record as Sarma's 2003 Verification Exhibit 7). A Sarma employee was then able to contact her office by telephone and produce one invoice from each of the selected family-code totals. The Court indicated that this test helped to bolster the credibility of Ms. Landrum's alleged offers as well as Sarma's "willingness and ability" to provide source documentation. Court's Order, pp. 9-10.

Mr. Schauer's testimony reflects that a single invoice indicating that it belongs in the line-item total was along the lines of what he had tried to verify at the actual February 2003 verification but that a single invoice would not have been sufficient by itself. Hearing Tr. at 197:16-23. The Department agrees with Mr. Schauer's testimony that one invoice is not sufficient to demonstrate that the totals presented in each line item were accurate.

Sarma personnel were directed by the Court specifically to produce documentation to support the line items Mr. Schauer selected. Hearing Tr. at 36:7-11; 39:17-19. All Sarma was able to provide in Court, however, were single invoices for each line item. These single invoices Sarma transmitted to the Court during the hearing indicated the quantity and value of one sale, but there were no other pieces of tying information to support Sarma's claim that the total figure selected from the lists of family groupings represented an appropriate designation of the bearing as within or outside the scope of the order (the so-called "split" in earlier discussions during this proceeding). Rather, the Sarma employee simply presented one invoice that matched the family code on the computer print-out contained in Sarma's verification exhibit (i.e., Defendant's Exhibit A).

In its opinion the Court appears to indicate that the ability of Sarma personnel to obtain a limited amount of documentation during the Court hearing speaks to its willingness and its ability to provide sufficient documentation during the February 2003 verification. See Court's Order, pp. 9-10. The Department disagrees. Now that the Department has seen the numerous steps required to verify the selected items, it is clear that the task was much more complicated than faxing a few invoices from a remote location. The Department finds that the fact that both the documentation submitted in Court and Ms. Landrum's claimed offers would have been insufficient calls into question Sarma's preparedness, ability, and willingness to provide the requisite documentation during the February 2003 verification.

As demonstrated above, the record we have developed on remand demonstrates that numerous steps were necessary to trace the accuracy of the Sarma figures from the audited financial statements to the actual sales and technical-specification documents. As the Department described in its November 2005 report of the verification it conducted in response to the Court's order, to understand the line-items in Sarma's worksheets, review of the technical specifications and Sarma's own internal coding system was necessary. For instance, the page Sarma presented to the Department's case analyst in the courtroom was similar to the summary pages Sarma presented to the Department's verifiers in September 2005. See step 1 on page 4 of the November 2005 verification report and accompanying exhibits. Those summary pages did not tie to supporting documents or even individual invoices. As the Department learned during the two-day verification, Sarma uses internal product and sales codes as references in its worksheets that are not the same as the product codes the Department uses or requires the respondents to use in the questionnaire responses and sales databases. Understanding these various codes is critical to reviewing Sarma's methodology for splitting its sales between those it should report to the

Department and those which it does not need to report to the Department. Yet nowhere on the record until the September 2005 verification was such information available to the Department.

As the Department recounts in its November 2005 verification report, additional steps involving examination of several types of documents, often in multiples, were necessary to achieve the quantity and value figures Sarma was claiming as within or outside the scope of the review. See pages 4-6 of the November 2005 verification report and Exhibits 7A-7F. Nowhere on the record of the review or in the documentation presented before the Court was there any indication of preparation by SKF or Sarma personnel to provide such information during the February 2003 verification.

After examining all the evidence on the record and before the Court, the Department finds that its initial finding from its February 2003 verification that “SKF was not prepared to demonstrate the segregation between markets and subject products for Sarma” remains correct and accurate. Furthermore, even when accepting the facts in a light most favorable to SKF by assuming the alleged offers were made at the verification, the evidence still supports the Department’s initial finding that, during the February 2003 verification, SKF “did not offer any suggestions or alternatives regarding requested documents that would have confirmed that Sarma’s sales were reported to the Department accurately.” AFBs 13 at Comment 25 (emphasis added).

The Verifiers’ Statements During the Review and Court Proceeding

In the administrative record developed during the review and throughout the Court proceeding, the statements by the verifiers about the facts surrounding the February 2003 verification have been consistent. The verifiers have maintained repeatedly that SKF did not offer any evidence to demonstrate that it had reported Sarma’s quantity and value information

accurately. The fact that the Department verifiers could not recall whether Ms. Landrum made the offers to which she testified does not cause their recollections or statements to be inconsistent because, as the Department stated in its final results shortly after the verification, these offers would not have “confirmed that Sarma’s sales were reported to the Department accurately.” AFBs 13 at Comment 25.

With respect to the February 2003 verification, from the Department’s review of the facts, the verifiers in this case performed their duties professionally and followed standard verification procedures. Moreover, the Department does not find it at all unusual that two years after a verification a verifier would not be able to recall specific details of a verification such as exactly with which company personnel he spoke when making requests for information or exactly which company representative responded to the inquiry. For this reason, we disagree strongly with the insinuation in the Court’s Order at footnote 3 that our verifiers may have acted in bad faith.

Deficient Submissions

Finally, we respectfully disagree with the Court’s conclusion that we should have provided SKF with an opportunity to remedy its verification failure. Verification is a spot-check of the information and the methodology a respondent has used to present its data to the Department in response to questionnaires the Department issues in its proceedings. We notify parties in our original and supplemental questionnaires that all information is subject to verification and, consistent with our practice, in this review we informed SKF in our questionnaires (see, e.g., Pub. Doc. No. 39) and in our verification outline of January 24, 2003 (Pub. Doc. No. 51), of the obligation of the parties to be prepared to support their submission of information at verification.

The provision on which the Court relies is section 782(d) of the Tariff Act of 1930, as amended (the Act), and is entitled “Deficient Submissions.” This section directs the Department

to permit parties to remedy or explain a deficiency contained in response to a request for information. The Department's verification of those responses is not an opportunity to remedy flawed submissions, however, as its purpose is simply to verify the accuracy of the information the party has submitted. See also section 782(i) of the Act and 19 CFR 351.307.

Therefore, the Department does not find that the statute requires it to have provided SKF an opportunity to remedy its February 2003 verification failure prior to applying adverse facts available to Sarma's U.S. sales.

Comments

On December 2, 2005, we released a copy of our draft results of redetermination for comments. We received comments from SKF.

SKF argues that the Department mischaracterized the testimony of several witnesses, including that of Ms. Landrum, "in order to assert (1) the alleged insufficiency of the information that was originally offered by SKF in order to support its quantity and value and (2) that the verifiers properly concluded that SKF had not provided support for Sarma's quantity and value." SKF argues that the alleged insufficiency of any offers to provide documentary support has already been dismissed by the Court as not relevant to the central issue of whether the Department had sufficient evidentiary support for its decision to apply adverse facts available. SKF disagrees that it could not have sufficiently supported its quantity and value at the original verification. SKF does not dispute that the Department held a thorough verification in September 2005 but argues that this fact does not lead to the conclusion that SKF could not have supported its quantity and value information at the original verification.

SKF also disputes the Department's statement that it has not had the opportunity since the initiation of the Court proceeding to address the proceedings before the Court. SKF argues that

the Department was represented by the U.S. Department of Justice throughout all the Court proceedings, that the Department had an attorney from its own Office of Chief Counsel present at depositions and hearings, and that the Department had “numerous opportunities to address the proceedings and to make the same arguments to the Court prior to issuance of the Court’s opinion that it makes now in the draft remand results.”

Finally, SKF concurs with the Department’s draft remand results insofar as they conclude that the use of adverse facts available is unwarranted and also agrees with the Department’s decision to recalculate SKF’s margin using SKF’s own information. SKF does not dispute the correctness of the Department’s recalculation.

Department’s Position: In light of the steps we took to verify that SKF’s data was supported by source documents (see pages 9 through 11 of this redetermination), we do not agree that we have mischaracterized the testimony of SKF’s witnesses. Moreover, the Department finds that the issue of whether Ms. Landrum’s offers were sufficient to verify the figures presented in Sarma’s quantity and value verification exhibit is relevant to this case. The Court’s finding is based in part on the presumption that certain offers were made by SKF’s representatives during the course of the first verification. See Court’s Order, at 9-11. Therefore, the fact that no witness testified to making any offers which would have served to verify the figures presented in Sarma’s quantity and value exhibit is highly relevant to whether the Department’s finding that SKF did not offer any information that “would have confirmed that Sarma’s sales were reported to the Department accurately” is supported by substantial evidence. AFBs 13 at Comment 25.

The Department disagrees further with SKF’s assertion that the sufficiency of the offers testified to is irrelevant to whether SKF was adequately prepared during the first verification. The only offers testified to having occurred during the first verification were those to which Ms.

Landrum testified. The offers to which Ms. Landrum testified involved having the verifiers select random invoices from two different lists. Our description of the documents we reviewed at the two-day verification in September 2005 makes clear that review of individual invoices for certain line items would not have been sufficient to verify the totals presented in the verification exhibit. Additionally, at the September 2005 verification, we learned that the information necessary to verify Sarma's quantity and value would not have been as simple a process as faxing a few documents from a remote location. There is no record evidence to suggest other types of offers were made during the February 2003 verification. The fact that the offers to which Ms. Landrum testified would not have been sufficient, and the fact that these were the only offers SKF personnel testified to making, only supports the Department's initial finding that, in fact, SKF officials were not prepared to support the data in question adequately.

While we agree that we conducted a "thorough" verification in September of 2005, we disagree with any insinuation that our most recent verification of SKF was somehow out of the ordinary or otherwise different than a verification that would have been conducted had SKF provided the correct information during the February 2003 verification. In both verifications, the Department was simply trying to understand how SKF arrived at certain numbers that SKF presented to the Department in its verification exhibit. In our history of conducting verifications in antidumping cases, we have held to a practice of a thorough and complete examination of source documents before reaching the conclusion that a respondent's data is supported by source information and, therefore, accurate. In our February 2003 verification effort, we did not have that opportunity with respect to Sarma's quantity and value information. Even if Ms. Landrum's offers were made at the first verification, as we have explained in the body of the remand, these offers would not have provided us with adequate information to verify the accuracy of the

numbers presented in SKF's quantity and value verification exhibit. Moreover, had sufficient offers been made in February 2003, the process for verifying the information would have been no different than it was in September of 2005 as, in both instances, the Department sought the source documentation to support the same exhibit Sarma presented.

While the Court may have been satisfied with SKF's support of its data in the hearing and viewed SKF's ability to fax a few documents as evidence of its willingness and ability to cooperate, upon a full and thorough review of the entire record, the Department respectfully disagrees that, in this instance, faxing a few randomly selected invoices with no apparent tie to the total figures presented in the verification exhibit would have been at all sufficient to verify Sarma's quantity and value information. Further, the Department respectfully disagrees that offers of insufficient information indicates willingness or an ability to cooperate.

Finally, we dispute SKF's statement that we have had the opportunity to address the proceedings that have transpired before the Court. While the Department does not dispute that it has had legal representation at all Court proceedings, legal counsel may only provide legal arguments defending the Department's decisions. The Department's legal counsel may not make findings on behalf of the agency. Therefore, this remand determination is the first time the Department as an agency has had the opportunity to address the findings of this Court directly.

Final Results of Redetermination

In accordance with the Court's order, we have recalculated the antidumping duty margin for sales by SKF and Sarma to the United States after opening the record to allow SKF/Sarma to supply information to support its questionnaire response. As a result, the weighted-average percentage margin for the period May 1, 2001, through April 30, 2002, for ball bearings and parts thereof from France changed for SKF from 6.70 percent to 6.19 percent.

These final results of redetermination are pursuant to the remand of the Court in *SKF USA Inc., SKF France S.A., and Sarma, v. United States*, Court No. 03-00490, Slip Op. 05-104 (August 24, 2005).

Stephen J. Claeys
Acting Assistant Secretary
for Import Administration

Date