

Fuyao Glass Industry Group Co. v. United States
Slip Op. 06-21 (CIT February 15, 2006)

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 (“Court”) in Fuyao Glass Industry Group Co., Ltd. v. United States, Consol. Court No. 02-00282, 2006 Ct. Int’l Trade Lexis 21, Slip Op. 2006-21 (CIT February 15, 2006) (“Fuyao Glass III”). The Court remanded the Department’s findings with regard to its treatment of market economy inputs. The Department has fully complied with the Court’s remand order and has prepared these remand results in accordance with the Court’s instructions, though we respectfully do so under protest. See Viraj Group v. United States, 343 F.3d 1371, 1376 (Fed. Cir. 2003).

BACKGROUND

On February 12, 2002, the Department published the Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From the People’s Republic of China, 67 Fed. Reg. 6482 (February 12, 2002) (“Final Determination”), and accompanying Issues and Decisions Memorandum (“Decision Memo”), as amended at 67 Fed. Reg. 11670 (March 15, 2002), covering the period of investigation (“POI”), July 1, 2000, through December 31, 2000. In its Final Determination, the Department determined to disregard market economy float glass prices from Thailand, Indonesia and Korea because it had “reason to believe or suspect [these prices] are distorted by subsidies.” Decision Memo at Comments 1, 2 and 4.

Plaintiffs, Fuyao Glass Industry Group Co., Ltd. (“Fuyao”) and Xinyi Automotive Glass Co., Ltd. (“Xinyi”), contested several aspects of the Final Determination, including the Department’s decision to disregard certain market economy inputs.

On December 18, 2003, in addition to remanding several of the contested issues, the Court remanded the Department’s decision to disregard market inputs from Thailand, Indonesia and Korea. Fuyao Glass Industry Group Co., Ltd. v. United States, 2003 Ct. Int’l Trade Lexis 171; Slip Op. 2003-169 (December 18, 2003) (“Fuyao Glass I”). The Court ordered the Department to provide specific and objective evidence to support its conclusion that it had a reason to believe or suspect that float glass inputs from Thailand, Indonesia and Korea are subsidized. See Fuyao Glass I, 2003 Ct. Int’l Trade Lexis at 37. The Court further found that, because the Department stated that it had reason to believe or suspect that prices “are” subsidized in its Final Determination, it held itself to a higher standard than contemplated by the legislative history, and that to support its conclusion regarding subsidization of inputs, it needed to point to evidence to satisfy this more exact standard. Id. at 30, footnote 16.

On March 17, 2004, the Department issued its Final Results of Redetermination pursuant to the Court’s order. On remand, the Department disagreed that it held itself to a heightened standard, or that it must now find prices are in fact subsidized in order to support its decision. The Department further explained that because the record evidence demonstrates that Thailand, Indonesia, and Korea maintain broad, non-industry specific subsidies, the decision to disregard inputs from these countries was supported by substantial evidence.

On January 25, 2005, the Court again remanded three of the contested issues, including the Department’s decision regarding float glass inputs. See Fuyao Glass v. United States, 2005

Ct. Int'l Trade Lexis 29, Slip Op. 2005-6 (January 25, 2005) ("Fuyao Glass II"). With respect to the "reason to believe or suspect" standard employed, the Court concluded that it would base its decision on whether there was "particular and objective" evidence to support the Department's determination that prices "were" subsidized. See Fuyao Glass II, 2005 Ct. Int'l Trade Lexis at 11-13. The Court found that the record evidence supported the Department's decision to disregard market inputs from Thailand, but not inputs from Korea or Indonesia. Id. at 24. On remand, the Department was ordered to "concur with the Court's conclusion or, if it continues to find that it has reason to believe or suspect these prices were subsidized, it must re-open the record to provide . . . additional evidence to support its conclusion . . ." Id.

In its second remand results, the Department reiterated that its use of the word "are" was not intended to employ a more stringent standard than found in applicable law in determining whether it had reason to believe prices of float glass may have been subsidized, and further explained that when applying the "may" standard, the record supports its conclusion. Final Results of Redetermination Pursuant to Court Remand, June 9, 2005, p. 8-9. The Department declined to re-open the administrative record, explaining that to do so would be tantamount to a formal investigation, which is not contemplated by legislative history. Id. at 13-14. While the Department believed its decision to be supported by the record, the Department recalculated the plaintiffs' normal value using the actual input prices that plaintiffs paid to their suppliers from Korea and Indonesia, pursuant to the Court's order, though it did so under respectful protest. Id. at 14.

The Court issued its most recent order on February 15, 2006, remanding the Department's decision regarding certain market economy inputs once again. See Fuyao Glass III. In its

remand to the Department, the Court concluded with respect to the standard applied in the Department's analysis, that the Department must conduct its analysis "in accordance with the Court's finding with respect to the use of the word 'are' rather than 'may be' when applying its subsidized price methodology." The Court has further directed the Department to either (1) "actually concur with the court's substantial evidence conclusions or [(2)] re-open the record." Fuyao Glass III, Slip Op. p. 7.

REMAND REDETERMINATION

As the Court noted, the Department's decision to recalculate normal value using the actual prices paid was intended as a "good faith effort to bring this matter to a more speedy conclusion." Fuyao Glass III, Slip Op. p. 7. In these remand results, as more fully set forth below, the Department has fully complied with the Court's instructions and has calculated the plaintiffs'¹ normal value using the purchase prices paid by plaintiffs to the market-economy suppliers from Korea and Indonesia, though it has respectfully done so under protest. See Viraj Group v. United States, 343 F.3d 1371, 1376 (Fed. Cir. 2003).

The "Reason to Believe or Suspect" Standard

The Department has been specifically directed by this Court to conduct its analysis based on whether it had a reason to believe prices "are" subsidized and to explicitly state that it is using this heightened standard. See Fuyao Glass III, Slip Op. p. 9. Therefore, in accordance with the

¹ See Memorandum for the File: Analysis for the Redetermination Pursuant to the Second Remand of Automotive Replacement Glass ("ARG") Windshields from the People's Republic of China: Fuyao Glass Industry Group Co., Ltd. ("Fuyao"), April 1, 2005; Memorandum for the File: Analysis for the Redetermination Pursuant to the Second Remand of Automotive Replacement Glass ("ARG") Windshields from the People's Republic of China: Xinyi Automobile Glass (Shenzhen) Co., Ltd. ("Xinyi"), April 1, 2005. Although the Court's remand only directs us to apply our results to Fuyao, we find that these Remand Results are equally applicable to Xinyi, and will thus apply our results to both plaintiffs. See Fuyao Glass I, fn. 11.

Court's instructions, the Department conducts its analysis in these remand results based on whether substantial record evidence supports a reason to believe or suspect prices "are" subsidized.

Remand Results

For these remand results, the Court has directed the Department to choose between either prescribed course of action: (1) concur in the Court's substantial evidence conclusions or (2) re-open the record to provide, if possible, additional evidence to support its conclusion that the prices plaintiffs paid to its suppliers were subsidized. Fuyao Glass III, Slip Op. p. 7.

The Department has determined not to re-open the administrative record. Pursuant to the statute, and under the guidance of the legislative history, the Department is to base its findings on information generally available at the time. Because the record evidence already contains a large amount of information that was generally available at the time the Department made its determination, unless the Department were to conduct what would be tantamount to a formal investigation, the Department does not believe that searching for additional evidence would produce more specific information than that already on the administrative record. Therefore, in these remand results, the Department has followed the Court's first directive, which is to follow the Court's substantial evidence conclusions.

This Court has concluded that it does not find the Department's determination, that prices from Korea and Indonesia "are" subsidized, is supported by substantial record evidence. See Fuyao Glass III, Slip Op. p. 14-15. Pursuant to this Court's ruling, and under respectful protest, the Department concurs that the record evidence does not contain substantial evidence to support a conclusion that prices from Korea and Indonesia "are" subsidized. See Viraj Group v. United

States, 343 F.3d 1371, 1376 (Fed. Cir. 2003). Because this Court has found that the evidence on the record does not support the Department's determination to disregard prices from Korea and Indonesia, in these remand results, the Department has determined to calculate the dumping margin for Fuyao and Xinyi based upon prices the plaintiffs actually paid to suppliers located in Korea and Indonesia.

On May 5, 2006, the Department released its draft results pursuant to the CIT's remand order ("Draft Results") to Respondents and Petitioners. On May 5, 2006, the Department received one comment on the Draft Results from Fuyao. The Department has addressed Fuyao's comment below.

Comment 1:

Respondent Fuyao's Comment: Fuyao argues that the Department incorrectly stated that Fuyao's weighted-average margin was 4.05%, when in the Final Results of Redetermination Pursuant to the second Court Remand, the Department determined that Fuyao's weighted-average margin was 0.0%. Therefore, for this final redetermination, Fuyao argues that the Department should correct its inadvertent error and revise Fuyao's weighted-average margin to 0.0%.

Department's Position: The Department agrees that it mis-stated Fuyao's margin in the draft results, and that Fuyao's weighted-average margin is 0.0%, not 4.05%. See Final Results of Redetermination Pursuant to Court Remand, dated June 9, 2005. We have corrected this error in these Final Remand Results.

FINAL OF REDETERMINATION

For these final results, the weighted-average margins for Fuyao and Xinyi for the period July 1, 2000, through December 31, 2000, are 0.0% and 0.0%, respectively.

These final results pursuant to remand are being issued in accordance with the order of the Court in Fuyao Glass III.

David M. Spooner
Assistant Secretary
for Import Administration

Date