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FINAL REMAND DETERMINATION
Paul Müller Industrie GmbH & Co. v. United States
Consol. Court No. 04-00522, slip op. 06-80 (CIT May 26, 2006)

Summary

This remand determination, submitted in accordance with the order of the U.S. Court of International Trade (the Court) of May 26, 2006 (Slip Op. 06-80), concerns the determination of the U.S. Department of Commerce (the Department) for Paul Müller Industrie GmbH & Co. (Paul Müller) in the administrative review of the antidumping duty order on ball bearings and parts thereof from Germany (Antifriction Bearings and Parts Thereof From France, Germany, Italy, Japan, Singapore, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Rescission of Administrative Reviews in Part, and Determination To Revoke Order in Part, 69 FR 55574 (September 15, 2004) (Final Results)) covering the period of review from May 1, 2002, through April 30, 2003. The Final Results were amended in Ball Bearings and Parts Thereof from Germany; Amended Final Results of Antidumping Duty Administrative Review, 69 FR 63507 (November 2, 2004) (Amended Final)).

In accordance with the Court's order, the Department has corrected a ministerial error involving the billing adjustment reported by Paul Müller for one home-market transaction and recalculated Paul Müller's antidumping margin accordingly. The Department has also explained its treatment of Paul Müller's inventory carrying costs and made a change to the calculations of home-market and U.S. inventory carrying costs to ensure that they are on a consistent basis. The changes to our calculations with respect to Paul Müller resulted in a change in the

weighted-average margin for ball bearings from 0.44 percent to 0.46 percent.

On July 13, 2006, we released the draft results of redetermination and invited interested parties to comment. We received comments from the petitioner, Timken U.S. Corporation (Timken).

Discussion

I. The Department's correction of a ministerial error regarding Paul Müller's home-market billing adjustments

The Court granted the Department's request for remand to correct a billing adjustment in the margin calculations. While we intended to correct one observation for our verification finding, for the Final Results we inadvertently changed the billing-adjustment values for all observations with the same invoice number. We have now changed our calculations to correct this error. We received no comments regarding this correction.

II. The Department's treatment of Paul Müller's inventory carrying cost

The Court remanded for further explanation the Department's calculation of Paul Müller's inventory carrying costs in both its home and U.S. markets and to address a claim by Timken that the Department's treatment of Paul Müller's home-market and U.S. inventory carrying costs was inconsistent.

Timken alleged that Paul Müller's reported home-market and U.S. inventory carrying costs reflected different methodologies for allocating these costs to individual sales. Timken claimed that Paul Müller applied an interest factor (which the respondent calculated using its short-term interest rate and average inventory carrying period) to the entered value for U.S. sales whereas for home-market sales it applied the interest factor to the average ratio between costs of goods sold and the gross unit price. Timken argued that Paul Müller's inconsistent treatment (which the

Department accepted in the Final Results) results in the allocation of U.S. imputed expenses on the basis of affiliated-party prices and the allocation of home-market imputed expenses on the basis of arm's-length prices.

Although the antidumping statute does not mandate a particular methodology for calculating inventory carrying cost, the Department generally prefers to use the reported per-unit total cost of manufacturing as inventory value:

Inventory carrying cost measures the imputed interest expense of carrying merchandise in inventory and is calculated by multiplying the inventory carrying period by the daily interest rate by the inventory value. Regarding the inventory value, because companies typically value their inventory on a cost basis, the Department prefers to use the reported per-unit, total cost of manufacture (COM) as the inventory value.

See Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars From the Republic of Korea, 66 FR 22526 (June 22, 2001), and accompanying Issues and Decision Memo at Comment 4. In certain limited circumstances, the Department has accepted other methodologies for the calculation of inventory carrying costs:

Although the Department's preferred ICC (inventory carrying cost) methodology is based on cost, we recognize that a respondent's accounting system used in the ordinary course of business may not readily yield the necessary information. Therefore, we allow the alternative methodology based on sales turnover and gross unit price, as long as it is reasonable and calculated on a consistent basis.

With respect to home-market inventory carrying costs, we find that Paul Müller valued its inventory based on its own cost of goods sold. By adjusting its short-term interest factor by the ratio between costs of goods sold and the gross unit price it derived an adjusted interest-rate factor which it applied to gross unit price to derive a per-unit inventory carrying cost on a model-specific basis.

With respect to its U.S. sales, Paul Müller applied its interest-rate factor to the entered value of each model which represents the transfer price to its U.S. affiliate. Although we accepted Paul Müller's methodology as reasonable for our Final Results, we have reviewed the record and determined that the record contains information which allows us to calculate inventory carrying costs on a consistent basis for both markets. This information reflects the cost of manufacture for bearings sold to the United States and in the home market. As a result, we have recalculated the interest factors for Paul Müller's U.S. and home-market inventory carrying costs to reflect the respective cost of producing each model on a per-unit cost.

Comments Received

Petitioner's Comment: Timken argues that, although the Department has modified its home-market inventory carrying cost calculation to reflect the respective cost of producing each model on a per-unit cost, it still needs to account for the U.S. inventory carrying costs incurred on an ex-factory basis, just as it has done for the home-market side. Timken suggests that the sum of the time in inventory in the home market, the time on the water (i.e., transit time), and the time in inventory in the United States would be a more accurate approach for determining U.S. time in inventory to arrive at the inventory carrying costs for Paul Müller's U.S. affiliate. In addition, Timken suggests, another approach in the calculation of inventory carrying cost would be to consider entered value as the cost of the goods upon entry to the United States.

Department's Position: It has been our longstanding practice to treat in-transit inventory carrying costs as indirect selling expenses relating to the sale to the affiliate and, consequently, not associated with U.S. economic activity or related to the resale of the merchandise. See, e.g., Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Final Results of Antidumping Duty

Administrative Review, 63 FR 67855 (December 9, 1998) at 67856. With regard to Timken's suggestion that we should consider the time in inventory in the home market in the buildup of inventory carrying costs for sales to the U.S. market, consistent with our longstanding practice, both in-transit inventory carrying cost and time in inventory in the home market have no association with U.S. economic activity nor relationship to the resale of the merchandise (see 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 Review, 63 FR 33320 (June 18, 1998), at page 33344, Comment 1). Furthermore, in Color Picture Tubes from Japan (see Color Picture Tubes from Japan: Final Results of Antidumping Duty administrative Review, 62 FR 34201 (June 25, 1997), at 34207, Comment 6), the Department has stated that "the CEP is now calculated to be, as closely as possible, a price corresponding to a price between non-affiliated exporters and producers." The Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H. R. Doc. 103-316, at 823 (1994) (SAA). Section 351.402(b) of the Department's regulations codifies this principle, stating that it will not make an adjustment under section 772(d) of the Tariff Act of 1930, as amended (the Act), for expenses related solely to the sales to an affiliated importer in the United States. Therefore, consistent with section 772(d) of the Act and the SAA, the Department deducts only those expenses representing activities undertaken to make the sale to the unaffiliated customer in the United States. In all of these instances, the Department stated that it is clear from the SAA that under section 772(d) of the Act it should deduct from CEP only those expenses associated with commercial activity in the United States which related to the resale to an unaffiliated purchaser. The adjustment that Timken seeks relates to expenses related solely to the sale to Paul Müller's affiliated importer. Consistent with the regulations and the SAA, we have

not made such an adjustment.

Finally, we disagree with Timken's suggestion that we should consider the entered value as the cost of the goods upon entry to the United States. We have determined that there is sufficient information on the record that allows us to calculate certain cost factors which reflect the respective cost in the two markets of producing each model on a per-unit basis in a more consistent manner.

Final Results of Redetermination

In accordance with the remand order, we have recalculated the antidumping duty margin for Paul Müller. As a result, the weighted-average percentage margin for the period May 1, 2002, through April 30, 2003, for Paul Müller changed from 0.44 percent to 0.46 percent.

These final results of redetermination are pursuant to the remand order of the CIT in Paul Müller Industrie GmbH & Co., v. United States, Court No. 04-00522, Slip Op. 06-80 (May 26, 2006).

David M. Spooner
Assistant Secretary
for Import Administration

Date