<u>SLATER STEELS CORPORATION v. UNITED STATES</u>
Consol. Court No. 02-00551
Slip Op. 03-108 (CIT August 21, 2003)

FINAL RESULTS OF REDETERMINATION PURSUANT TO REMAND

SUMMARY

The Department of Commerce ("the Department" or "Commerce") prepared these final results of redetermination pursuant to the remand order of the U.S. Court of International Trade ("CIT") in <u>Slater Steels Corporation v. the United States</u>, Slip Op. 03-108 (Ct. Int'l Trade Aug. 21, 2003) ("<u>Slater Steels</u>").

In accordance with the CIT's instructions, the Department reconsidered its analysis of the collapsing issue. The Department determined, as explained in detail below, that substantial evidence on the record indicates that the affiliated Viraj Group companies have production facilities for similar or identical products that would not require substantial retooling in order to restructure manufacturing priorities. Thus, the Department determined that its decision to collapse the Viraj Group companies is supported by substantial evidence and in accordance with the law, and therefore, the Department did not revise its dumping margin calculations.

BACKGROUND

In the administrative review covering the period of February 1, 2000 through January 31, 2001 ("POR"), the Department determined to collapse the affiliated companies of the Viraj Group pursuant to 19 C.F.R. § 351.401(f)(2000). <u>See</u> <u>Stainless Steel Bar from India; Final Results of Antidumping Duty Administrative Review</u>, 67 Fed. Reg. 45956 (July 11, 2002) and <u>Notice of Amended Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India</u>, 67 Fed. Reg.

53336 (Aug. 15, 2002) ("Final Results") and the accompanying Issues and Decision Memorandum for the Final Results of the Administrative Review of Stainless Steel Bar from India (July 5, 2002) ("Decision Memorandum"); Stainless Steel Bar from India; Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Administrative Review, 67 Fed. Reg. 10377 (Mar. 7, 2002) ("Preliminary Results"). As a collapsed entity, the Viraj Group received a *de minimis* dumping margin in both the Preliminary Results and Final Results.

In the Final Results, the Department determined that the affiliated companies of the Viraj Group should be collapsed and considered one entity pursuant to 19 U.S.C. § 1677(33) and 19 C.F.R. § 351.401(f). Based upon the record evidence, the Department determined that Viraj Alloy, Ltd. ("VAL"); Viraj Impoexpo, Ltd. ("VIL"); and Viraj Forgings, Ltd. ("VFL") "meet the regulations' collapsing requirements." Decision Memorandum at Comment 1. First, the Department specifically found that "VAL and VIL can produce subject merchandise (i.e., similar or identical products) and can continue to do so, independently or under existing leasing agreements, without substantial retooling of their production facilities." Id. Second, the Department also found "a significant potential for the manipulation of price and production among VIL, VAL, and VFL." Id. Slater Steels Corporation, Carpenter Technology Corporation, Electralloy Corporation, and Crucible Specialty Metals Division of Crucible Materials Corporation, collectively, as the "plaintiffs" and defendant-intervenors, challenged this determination before the CIT arguing that the Department misapplied its collapsing regulation to the Viraj Group.

In Slater Steels, the CIT determined that the Department's decision to collapse the Viraj Group companies into one entity was not supported by substantial evidence on this record; therefore, the CIT remanded the Final Results to the Department to reconsider its analysis of the collapsing issue and, if necessary, revise the dumping margin calculation accordingly. Slater Steels at 15.

On September 2, 2003, the plaintiffs filed comments on Slater Steels, which are discussed below. See infra "Comments." On September 22 and October 1, 2003, the Viraj Group companies filed comments in response to the plaintiffs' comments ("Viraj response comments"). Id. The Department released the Draft Redetermination Pursuant to Court Remand ("Draft Remand") to the parties for comment on October 1, 2003. On October 8, 2003, the Department requested an extension to file its remand with the CIT because the interested parties required additional time to comment on the Draft Remand. (The extension to October 28, 2003 was granted by the CIT on October 15, 2003.) On October 9, 2003, the plaintiffs filed comments on the Draft Remand to which the Viraj Group companies responded on October 16, 2003. Id.

ANALYSIS

The issue that the CIT remanded to the Department primarily pertains to the part of the Department's collapsing test that addresses production facilities. See Slater Steels at 10. This portion of the collapsing test states that the affiliated companies being collapsed must be able to produce similar or identical merchandise without substantial retooling of either affiliate's facility. See 19 C.F.R. § 351.401(f)(1).

In the Final Results, the Department determined that "VIL and VAL can produce subject merchandise and have a broad overlap of production capability. . . [and] can maintain this broad overlap of production capability without substantial retooling." See Decision Memorandum at Comment 1. Indeed, the Department stated, "in this case VAL and VIL both produce subject merchandise." Id.

The CIT was unsatisfied with the Department's collapsing determination and found "that Commerce's decision to collapse the Viraj Group companies is unsupported by substantial evidence and that Commerce's explanations for its reasons are inadequate." See Slater Steels at 13. The CIT specifically stated that "the record shows that VAL produces a semi-finished or intermediate product, steel billet, that is used as an input in the production of SSBs, the subject merchandise. VAL . . . does not have the finishing capabilities to produce the subject merchandise." See Slater Steels at 10-11. The CIT also stated that VIL only had the further processing capabilities to process the billets into stainless steel bar. See Slater Steels at 11. In addition, the CIT stated that "VFL does not produce the subject merchandise." See Slater Steels at 11. Therefore, based on this information (primarily derived from a diagram of the Viraj Group's production lines provided in its questionnaire response), the CIT determined that "VAL and VIL (and VFL) do not have 'production facilities for similar or identical products' and cannot produce the subject merchandise without 'substantial retooling' of their facilities." Id. (referencing Viraj's June 29, 2001 questionnaire response at 62-64). Accordingly, the CIT was concerned that "[a]s they lack equivalent production capabilities, the Viraj Group companies do not fit the profile contemplated by the regulation pertaining to collapsing. If the individual companies within the group are treated separately, they cannot divert production to the lowest-margin affiliate." Id.

As requested by the CIT in Slater Steels, the Department reconsidered its analysis of the collapsing issue for the Viraj Group companies with particular attention to second portion of the collapsing test in order to address the CIT's concerns raised in Slater Steels. For the reasons discussed below, the Department determines again, after reviewing the record, that its decision to collapse the Viraj Group companies and, in particular, the second part of the collapsing test is supported by substantial evidence. The Department also maintains that the Viraj Group companies should continue to be collapsed and considered one entity in accordance with the law.

Under the Department's regulations, in order for the Department to consider two or more producers as one entity, or "collapse" them, it must find that: (1) the producers are affiliated pursuant to 19 U.S.C. § 1677(33); (2) the affiliated producers "have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities;" and (3) "there is a significant potential for the manipulation of price or production." See 19 C.F.R. § 351.401(f).

The Department began its redetermination of the collapsing issue by considering the intent and purpose of the collapsing regulation, while also being mindful that the law provides the Department with the discretion to collapse. See AK Steel Corporation, et al. v. United States, 34 F. Supp. 2d 756, 764-65 (Ct. Int'l Trade 1998) aff'd in part, rev'd in part, 203 F.3d 1330 (Fed. Cir. 2000). As this Court recognized in Slater Steels, the policy rationale of the collapsing regulation is to prevent affiliated companies with the same or similar production capabilities from manipulating price or production activities of subject merchandise to the affiliated company with the lowest margin, and thereby circumventing the antidumping law. See Slater Steels at 10; see also Queen's Flowers De Columbia v. United States, 981 F. Supp. 617, 622 (Ct. Int'l Trade 1997). When treated as one collapsed company, all sales and costs must be reported collectively, thereby preventing affiliated companies that meet the collapsing requirements from manipulating production or price so as to circumvent the antidumping duty order. See Antidumping Duties and Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments: Antidumping Duties and Countervailing Duties, 61 Fed.

Reg. 7308, 7330 (Feb. 27, 1996) ("Proposed Rules"). In this case, as is evidenced below, the Department finds that the affiliated companies of the Viraj Group fit the profile envisioned by the collapsing regulations; that is, they are sufficiently intertwined and have similar production capabilities such that if the Department were to assign different margins to each of the Viraj Group companies (e.g., VAL received a 2% margin and VIL/VFL received a 30% margin), they could easily shift production and sell the subject merchandise to the United States through the company with the smallest margin. Indeed, the Viraj Group even conceded this would be possible if the companies were not collapsed. See Viraj's response comments at 2. The fact that the affiliated companies use their production facilities to produce similar or identical products presents the possibility of price or production manipulation, which is the central question of the collapsing regulation. See Queen's Flowers, 981 F. Supp. at 627 (stating that "the central question [of the collapsing analysis is] whether parties are sufficiently related to present the possibility of price [or production] manipulation").

The Department's determination that the affiliated[1] Viraj Group companies, VAL, VIL, and VFL, have the ability to produce similar or identical merchandise with production facilities that would not require substantial retooling in order to restructure manufacturing priorities is supported by substantial evidence on the record in this review. The Department finds that substantial evidence on the record indicates that VAL produced and sold black bar during the POR and has the ability to produce bright bar without substantial retooling of its facilities.

[1]The Viraj Group reported VAL, VIL, and VFL as affiliated companies. See Viraj's June 29, 2001 questionnaire response at 6. The Department agreed in the Preliminary Results, Final Results, and continues to find in the remand redetermination that the Viraj Group companies are affiliated. Preliminary Results, 67 Fed. Reg. at 10378; Decision Memorandum at Comment 1.

The CIT stated in its remand that "VAL produces a semi-finished or intermediate product, steel billet, that is used as an input in the manufacturing of SSBs, the subject merchandise," and that "VAL has the melting and rolling capabilities to produce steel billets, but does *not* have the finishing capability to produce subject merchandise." See Slater Steels at 10-11. However, VAL also manufactures stainless steel hot-rolled bar ("black bar") at its production facility, as is evidenced in the Viraj Group's questionnaire responses and in its reported home market sales database. See Viraj's June 29, 2001 questionnaire response at 5, 9, 64 (referred to as "rounds") & 175-85; Viraj's November 26, 2001 supplemental questionnaire response at 1, 4 & 62-67. The scope of the administrative review remanded to the Department specifically states that "stainless steel bar. . . means articles of stainless steel straight lengths that have been either *hot-rolled*, forged, turned, cold-drawn, cold-rolled, or otherwise cold finished." See Final Results, 67 Fed. Reg. at 45957 (emphasis added); see also Notice of Final Determination of Sales At Less Than Fair Value: Stainless Steel Bar from India, 59 Fed. Reg. 66915 (Dec. 28, 1994). Accordingly, the black bar produced and sold by VAL is subject merchandise as defined by 19 U.S.C. § 1677(25). Therefore, VAL was not only involved in the production of an input (i.e., billets) during the POR, but VAL also produced and sold black bar.

This conclusion is further supported by VAL's financial statements. Specifically, VAL's balance sheet states that it produced and sold, not only billets, but "Rounds & Bars" and "SS Rods/Bars" (i.e., black bar). See Viraj's June 29, 2001 questionnaire response at 93. In fact, VAL's sales of rounds and bars were approximately 80 percent of its sales of billets by quantity. Id.

As noted by the CIT in Slater Steels, VIL was involved in the production and sale of stainless steel cold-rolled bar ("bright bar"). In order to meet the second part of the collapsing test, VAL and

VIL must “have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities.” See 19 C.F.R. § 351.401(f)(1). The Department acknowledges that it previously found that black bar and bright bar products are similar subject merchandise in the original determination. See Original Determination 59 Fed. Reg. 66915 (referencing the Scope section, in which both black bar and bright bar are the “same class or kind of merchandise” and the Product Comparison section, in which the Department “determined that all products covered by this investigation constitute a single category of such or similar merchandise.”). In addition, the Department remains cognizant that the purpose of the collapsing regulation is to prevent shifting of production of similar or identical merchandise between affiliated companies.

Despite the fact that the Department finds that VAL and VIL can produce subject merchandise (i.e., similar or identical products) and can continue to do so without substantial retooling of their production facilities, the CIT determined that some diagrams contained in Viraj’s product brochures, which illustrate Viraj’s production lines, suggest that substantial retooling would be required for VAL and VIL to produce identical or similar merchandise. See Viraj’s June 29, 2001 questionnaire response at 62-64. VAL’s diagram shows that “liquid steel is cast into billets” and then cut and allowed to cool. Id. at 64. VAL then either sells the billets to other affiliated companies (e.g., VFL) to be used as raw material inputs for other products (e.g., flanges) or reheats and processes them through the “flat & bar mill” to make black bar or hot-rolled flats. Id. Then, the black bar can be “further processed to produce stainless steel bright bar” at VIL. Id. at 62. The further processing at VIL involves heating the black bar and then annealing and pickling and polishing or grinding it. Id. at 62.

Based on these diagrams, the Department reaches a different conclusion than reached by the CIT. The Department finds that VAL has the ability to completely stop its production of billets, purchase them on the open market, and process them into black bar using the production facilities it *already* has (i.e., "reheating" and "flat & bar mill"). Moreover, the Department finds that VAL could add annealing and pickling capabilities to process its black bar into bright bar without a substantial capital investment. When the Department compares the fixed assets in the financial statements of VAL (the billet and black bar producer) with the fixed assets in the financial statements of VIL (the bright bar producer), we conclude that VAL could add bright bar finishing operations (e.g., pickling and annealing operations) for less than 10 percent of its current fixed asset value. See Viraj's June 29, 2001 questionnaire response at 90 & 73.

The Department further notes that the plaintiff's assertion that substantial retooling would be required is based on VFL's cost of adding a production facility for "rounds/bars/rods." See Plaintiffs' Complaint (Jan. 21, 2003) at 10. However, because VAL already has production facilities for bar, the Department need only consider the costs to VAL of adding pickling and annealing operations in order for VIL and VAL to produce identical (i.e., bright bar) products. Similarly, VIL has the ability to purchase black bar on the open market, rather than from VAL, and process it into bright bar using the production facilities it already has. Therefore, the Department determines that VAL and VIL have production facilities to make similar or identical products without substantial retooling of VAL's production facility in order to restructure manufacturing priorities.

With respect to VFL, the CIT only mentioned that it "does not produce the subject merchandise." See Slater Steels at 11. The collapsing regulation neither states that the affiliates must currently produce the subject merchandise nor that they must currently be actively producing similar or identical merchandise in order to be collapsed. Rather, they must "have production facilities for similar or identical products" without substantial retooling. See 19 C.F.R. § 351.401(f)(1). The language of the collapsing regulation purposefully affords the Department this flexibility in order to allow it to collapse affiliated companies similarly situated to VFL in order to prevent them from moving production and sales of the subject merchandise from one affiliate (e.g., VIL) to another (e.g., VFL). See Antidumping Duties and Countervailing Duties: Final Rule, 62 Fed. Reg. 27296, 27346 (May 19, 1997) ("Preamble"); Proposed Rules, 61 Fed. Reg. at 7330.

VFL's primary production operation relates to producing stainless steel flanges, and therefore, some of its production machinery is used exclusively for producing flanges. See Viraj's June 29, 2001 questionnaire response at 63. However, as the plaintiffs pointed out in their original case brief, VFL also has production facilities similar to those of VIL. See Petitioners' April 8, 2002 case brief at 7. Specifically, as recognized by the CIT, "VIL. . . has annealing and pickling capabilities" in addition to heating capabilities. See Slater Steels at 11; see also Viraj's June 29, 2001 questionnaire response at 62. Like VIL, VFL also has heating and annealing capabilities. Id. at 63. Moreover, VFL's audited balance sheet states that it installed "forgings facilities for rounds/*bars*/rods...in December 1999" and that it produced and sold forged "rounds/*bars*/rods." Id. at 108 (emphasis added). Additionally, VFL received secured loans for working capital which were "collaterally secured by 2nd charge on the fixed assets of the company and the *personal guarantees* of the. . . directors of the co[mpany]." Id. at 104. These same two directors are also directors and significant shareholders in all three affiliated companies, as discussed further below. Because VFL has similar production facilities to the other affiliated companies and a close, intertwined corporate structural relationship with these companies, we continue to find that VFL could easily switch its production capabilities to produce subject merchandise bar exclusively, without substantial retooling.

The Department's collapsing regulation does not require that production capabilities must be identical or "equivalent." See Slater Steels at 11. In fact, the CIT has specifically allowed for differences between production lines and products. See e.g., Marine Harvest (Chile) S.A. v. United States, 244 F. Supp. 2d 1364, 1367-68 n.8 (Ct. Int'l Trade 2002) (citing that the Department collapsed two affiliated entities even though the "two companies' operations were not identical"); Asociacion Columbiana de Exportadores de Flores, et al. v. United States, 6 F. Supp. 2d 865, 895 (Ct. Int'l Trade 1998)(CIT approved the Department's collapsing decision based on a finding that "all six companies produced carnations using *virtually* the same processes and equipment" (emphasis added)). Rather, the collapsing regulation expresses that producers must have production facilities for similar or identical products that would not require substantial retooling. The regulation emphasizes the "*potential* for the manipulation of price or production." See 19 C.F.R.§ 351.401(f) (emphasis added); Preamble, 62 Fed. Reg. at 27346.

As is evidenced in the questionnaire responses in this case, the Viraj Group is a large, integrated, multinational entity in which two individuals "hold [the] majority of shares, either directly or, along with friends and relatives and their promoted companies." See Viraj's June 29, 2001 questionnaire response at 1; see also Viraj's November 26, 2001 supplemental questionnaire response at 1-2. These same two individuals are also the managing directors of all three affiliates. See Viraj's June 29, 2001 questionnaire response at 8. The selling and production activities for bar during the period of review at VIL and VAL are controlled by these directors. Id. at 4 & 5. Through personal guarantees, these same two individuals also enabled VIL and VFL to secure loans that they may not otherwise have received. Id. at 104; see also Viraj's November 26, 2001 supplemental questionnaire response at 33. In fact, VIL received a loan for working capital which was not only guaranteed by the directors but also by VAL. See Viraj's November 22, 2001 supplemental questionnaire response at 33. In addition, the directors made direct loans to VAL and VFL. See Viraj's June 29, 2001 questionnaire response at 90 & 105. Further, VAL, VIL, and VFL's production facilities are all located in the same city, Thane, India. Id. at 5-6. Moreover, they are positioned "hardly 20 meters away from each other." See Viraj's November 26, 2001 supplemental questionnaire response at 13. Taking into account VAL, VIL, and VFL's corporate structural relationship coupled with the obvious similarities in products and production facilities, the Department finds that these affiliated companies have a "significant potential for the manipulation of price or production."

Unfortunately, the Department's explanations of its collapsing methodology as explained in the Preliminary Results and Final Results raised undue concerns with the CIT. Specifically, the CIT expressed concerns with the Department's Preliminary Results language in which it described Viraj's production facilities as "complementary" versus its language in the Final Results in which it described them as "overlapping." As evidenced in the discussion above, both descriptions are true. Slater Steels at 15. For instance, VAL does "supply VIL with the input hot-rolled bar VIL processes into bright bar." See Preliminary Results, 67 Fed. Reg. at 10378. However, as explained above and in the Final Results, black and bright bar are similar subject merchandise which VAL and VIL produce and sell using similar production facilities (setting the billet production aside). See Decision Memorandum at

Comment 1. The Department's statement that the Viraj Group companies "have a broad overlap of production capability" was included in the <u>Final Results</u> to illustrate the difference between the facts in this case and those in the Department's investigation of stainless steel bar from Germany. <u>See</u> <u>Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from Germany</u>, 67 Fed. Reg. 3159 (January 23, 2002) ("<u>German Bar</u>") and accompanying <u>Issues and Decision Memorandum</u> at Comment 15.

In <u>German Bar</u>, the Department stated that it found that two respondents should not be collapsed because of the *combination* of a "limited overlap" in production capabilities *and* significant corporate structural impediments of the respondents' ability to manipulate pricing and production. The Department stated in <u>German Bar</u> that "there is no information indicating the two companies currently share sales information, are involved in each others' production or pricing decisions, or share facilities or employees" and they "do not share any common managerial employees." <u>See</u> <u>German Bar Decision Memorandum</u> at Comment 15. The facts surrounding this case, as evidenced above, and those in <u>German Bar</u> are significantly different. As mentioned in the <u>Final Results</u>, the <u>Preamble</u> states that "[collapsing] determinations are very much fact-specific in nature, and require a case-by-case analysis." <u>See</u> <u>Decision Memorandum</u> at Comment 1 (citing the <u>Preamble</u>, 62 Fed. Reg. at 27435). Further, as evidenced in <u>German Bar</u>, the collapsing analysis must be made with a keen understanding of all of the facts of the case, taken as a whole, rather than any individual piece of the analysis being the ultimate determinative factor. <u>See</u> <u>German Bar Decision Memorandum</u> at Comment 15.

Despite the intertwined relationship of the Viraj Group companies in this case, we note that the CIT supported its remand determination by referencing <u>Viraj Group, Ltd. v. United States</u>, 162 F.

Supp. 2d 656 (Ct. Int'l Trade 2001) ("Viraj CIT"), a case in which the Department did not collapse VAL and VIL. See Slater Steels at 12. The question before the CIT in that case was whether the Department properly chose not to collapse VAL and VIL for purposes of valuing the steel billet input in the cost of production of stainless steel wire rod. The CIT upheld the Department's decision not to collapse VIL and VAL, agreeing with the Department's conclusion "that the production facilities necessary to manufacture these diverse products were sufficiently different as to require substantial retooling of either facility in order to restructure manufacturing priorities." See Viraj CIT, 162 F. Supp. 2d at 670. The CIT also explained that "the transaction between VAL and VIL is analogous to a sale between [a] manufacturer and supplier." Id. at 671. As described above, however, the relationship between VAL and VIL in this case is sufficiently different than their relationship was in Viraj CIT. As discussed above, both VAL and VIL produce and sell similar subject merchandise (i.e., black bar and bright bar). Thus, the business relationship between VAL and VIL in this case is not simply "limited to that of manufacturer and supplier," and the stainless steel bar that they both produce and sell is not "sufficiently different."

The CIT also raised concerns about the calculation of the Viraj Group's dumping margin. Specifically, by collapsing the Viraj Group, the CIT stated that the Department may have underestimated the cost of the input billets and, thus, underestimated the Viraj Group's cost of production. See Slater Steels at 12. The CIT stated that this is the type of situation the "major input rule" attempts to rectify because, in this case, the value of the input steel billets may be higher using the major input rule. Id.; See also 19 C.F.R. § 351.407(b).

The major input rule explicitly states that the Department normally will determine the value of the major input purchased from an *affiliated person*. See 19 C.F.R. § 351.407(b). Because this provision only applies to transactions between affiliated persons, once the Department decided to collapse and treat the companies as one "person" for the purposes of the antidumping analysis, it is not statutorily required to apply the provision. See AK Steel Corporation, *et al*. v. United States, 226 F.3d 1361, 1376 (Fed. Cir. 2000). In this case, the Department determined that the Viraj Group companies is one entity and, therefore, the major input rule does not apply in this situation. Although the CIT references the major input rule for the cost of the billets, as noted above, VAL produces the billets and then transforms them into black bar at its own facility. See Slater Steels at 12. Thus, with regard to billets, there is no transaction between affiliated parties and VAL's role in VIL's production of the subject merchandise is not merely that of an input supplier. When collapsed, VAL, as well as VIL and VFL, must report their costs of production and sales of subject merchandise to be used in the margin calculations.

Finally, in the Final Results, the Department mentioned the Viraj Group's supposed "leasing agreements" in support of its collapsing conclusion. See Decision Memorandum at Comment 1. However, as correctly recognized by the CIT, the leasing agreements are not part of this administrative record. Rather, Viraj first mentioned the existence of these agreements in its rebuttal brief. See Stainless Steel Bar from India; Rebuttal Brief–Viraj dated April 15, 2002 at 1-3. We note that certain accounts listed in VIL's chart of accounts relate to production facilities located at VAL, which lend credence to Viraj's claim. See Viraj's June 29, 2001 questionnaire response at 39. However, it would be difficult to speculate as to the nature and terms of such leasing agreements. Regardless, as evidenced above, the leasing agreements were not a determinant factor in the Department's collapsing determination in this case.

COMMENTS

On September 2, 2003, the plaintiffs submitted comments on the remand. The plaintiffs provided a suggested application of the "major input rule." Because we have determined to continue to collapse the Viraj Group companies, we did not address the plaintiffs' suggestions with respect to "the major input rule" in the remand redetermination.

On September 22, 2003, the Viraj Group companies submitted comments in response to plaintiffs' comments. The comments briefly rebut the plaintiffs' suggestions with analysis explaining how the Viraj Group companies satisfy the collapsing test. On October 1, 2003, the Viraj Group companies submitted supporting citations for the comments it filed on September 22, 2003. Parties' comments submitted prior to the October 1, 2003, release of the Draft Remand were considered in preparing the Draft Remand and are not addressed below.

On October 9, 2003, the plaintiffs submitted comments regarding the Department's Draft Remand collapsing analysis to which the Viraj Group responded on October 16, 2003. A summary of the parties' comments on the Draft Remand and the Department's position is included below.

Comment:

The plaintiffs assert that the Department misinterpreted the meaning of 19 C.F.R. § 351.401(f)(1) in its Draft Remand results and that there is no substantial evidence on the record to support the Department's collapsing determination.

The plaintiffs contend that the Department's collapsing regulation focuses on "whether the nature of the production processes between the facilities in question is such that the production of a subset of such or similar merchandise at one company could be shifted to its affiliate and vice versa," rather than whether products made by separate affiliated parties fall into the same general like-product category. See Plaintiffs' October 9, 2003 comments at 3. Accordingly, the plaintiffs argue that the Department incorrectly focused its analysis on VIL and VAL's production of similar or identical products. Instead, the plaintiffs argue, the Department should have focused its analysis on "whether the three separate existing production facilities are sufficiently alike to permit shifting manufacturing priorities across the same facilities," as is required by the Department's collapsing regulation. Id. at 4.

The plaintiffs also argue that, despite its efforts to do so, the Department cannot distinguish this case from German Bar. See Plaintiff's October 9, 2003 comments at 5. The plaintiffs contend that if the affiliated respondents in German Bar did not meet the requirements of the Department's collapsing test, then the affiliated Viraj Group companies clearly do not meet those same requirements. Id. at 5-6.

Therefore, the plaintiffs conclude that the Court was correct when it found that the Department's decision to collapse the Viraj Group companies was not supported by substantial evidence on the record and that the Department's Draft Remand collapsing analysis is unsupported by substantial evidence on the record. Id. at 7.

The Viraj Group companies briefly rebut the plaintiffs' arguments explaining that its manufacturing priorities can be shifted from one facility to another, that black and bright bar are similar products, and that German Bar is irrelevant because the collapsing issue in that case involved different sizes of stainless steel bar. See Viraj Group's October 16, 2003 comments at 1-2. The Viraj Group argued that the plaintiffs' argument--claiming that the non-U.S. exporting entities are irrelevant in the collapsing analysis--is flawed because those entities could export the subject merchandise and receive the 'all others' rate. Id. at 2.

Department's Position:

We disagree with the plaintiffs' assertions and find that we interpreted the meaning of 19 C.F.R. § 351.401(f)(1) consistent with the plain language of the regulation, as well as the intent and purposes of the collapsing regulation and correctly focused our collapsing analysis on the Viraj affiliates' production of similar or identical products and on their production facilities.

In the Draft Remand, we discussed in detail the Viraj Group affiliates' production facilities in our collapsing analysis, paying particular attention to the Court's concerns with the diagrams contained in the Viraj Group's questionnaire responses. We found, based on substantial record evidence, that VIL, VAL, and VFL have production facilities for producing identical or similar subject merchandise and that the facilities are sufficiently alike to permit shifting manufacturing priorities across the same facilities without substantial retooling. See Draft Remand at 8-11. Undisputedly, we found that VIL has production facilities to produce bright bar. Id. at 8-9. In addition, we found that VAL "already has the production facilities" to process billets into black bar and that it could add facilities to process black bar into bright bar "for less than 10 percent of its current fixed asset value." Id. at 9. Similarly, we found that VFL had "production facilities similar to those of VIL," pointing to record evidence which demonstrated that VFL added production facilities for "rounds/bars/rods." Id. at 10. Throughout our analysis, we further discussed the Viraj Group affiliates' production facilities in detail using substantial record evidence and, more importantly, consistent with the broader context of the collapsing determination as a whole. The plaintiffs point to no evidence on the record to dispute the Department's analysis.

The plaintiffs also argue that this case is indistinguishable from German Bar with respect to the collapsing determination. However, the plaintiffs point to no record evidence to dispute the Department's findings with respect to the differences between these cases. The plaintiffs simply say that the German respondent with the lesser margin is able to ship stainless steel bar within a certain size range because the respondents were not collapsed. As explained in our analysis, the two German affiliated respondents were not collapsed because of "a *combination* of a 'limited overlap' in production capabilities *and* significant corporate structural impediments of the respondents' ability to manipulate pricing and production." Draft Remand at 13. Because of their inability to shift manufacturing priorities from one affiliate to another due to the nature of their corporate structure and limited overlap in production capabilities, the Department, therefore, did not collapse the affiliated German companies and, thus, they received separate antidumping duty rates. See Draft Remand at 13 (citing German Bar, 67 Fed. Reg. at 3162 and accompanying German Bar Decision Memorandum at Comment 15). However, as specifically discussed in our analysis, the Viraj Group companies have an impenetrable, intertwined corporate structural relationship, coupled with significant overlaps in production capabilities using similar production facilities. See Draft Remand at 8-12. Thus, the collapsing regulation has been applied consistently in these two cases resulting in the Viraj Group companies being treated as one company and receiving one antidumping duty rate, while the German companies were treated as two separate companies, receiving two antidumping duty rates.

In the context of the German Bar argument, the plaintiffs assert that the Department's statements concerning the Viraj Group companies' potential for shifting production from one affiliate to another were moot because VIL was the only affiliate that actually exported the subject merchandise during the POR. When explaining the intent and purpose of the collapsing regulation, we described a hypothetical instance where "if the Department were to assign different margins to each of the Viraj Group companies (e.g., VAL received a 2% margin and VIL/VFL received a 30% margin), they could easily shift production and sell the subject merchandise through the company with the smallest margin." Id. at 6. This example serves to illustrate practically how the collapsing regulation emphasizes the significant potential for manipulation. See 19 C.F.R. § 351.401(f)(1) & (2). Whether VAL actually exported the subject merchandise during the POR is irrelevant with respect to our illustration of the potential for manipulation and, more importantly, the overall intent and purpose of the Department's collapsing regulation. For instance, if VIL received a 30% margin, Viraj could easily shift production priorities and produce and export subject merchandise through VAL, thus, receiving the 'all others' rate of 12.45%. See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from India, 59 Fed. Reg. 66915, 66921 (Dec. 28, 1994).

The plaintiffs' assertions that the Department misinterpreted the collapsing regulation are baseless and unsupported by the record evidence. As we stated previously, "the collapsing analysis must be made with a keen understanding of all of the facts of the case, taken as a whole, rather than any individual piece of the analysis being the ultimate determinative factor." See Draft Remand at 13. Contrary to the plaintiffs' assertions, we found, based on substantial record evidence, that the Viraj Group companies have both a significant potential for manipulation given their intertwined corporate structural relationship and production facilities for similar or identical products that would not require substantial retooling of their facilities in order to restructure manufacturing priorities; thus, the

Department determines that it is appropriate to continue to collapse the Viraj Group companies and treat them as one entity under 19 C.F.R. § 351.401(f).

RESULTS OF REDETERMINATION

Based on the analysis described above, the Department determines, on remand, that the affiliated Viraj Group companies (VAL, VIL, and VFL) have production facilities for similar or identical products that would not require substantial retooling in order to restructure manufacturing priorities. Thus, the Department determines that its decision to collapse the Viraj Group companies in the Final Results is supported by substantial evidence and in accordance with the law.

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James J. Jochum Date
Assistant Secretary
for Import Administration