<u>SLATER STEELS CORPORATION v. UNITED STATES</u>
Consol. Court No. 02-00551
Slip Op. 04-22 (Ct. Int'l Trade March 8, 2004)

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" or "Court") in <u>Slater Steels Corporation v. the United States</u>, Slip Op. 04-22 (Ct. Int'l Trade March 8, 2004) ("<u>Slater Steels II</u>").

In accordance with the CIT's instructions, the Department reconsidered its analysis of the collapsing issue with respect to specific points addressed by the CIT. The Department continues to find, 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 continues to believe 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</u>

India, 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 the 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, the "plaintiffs" and defendant-intervenors, challenged this determination before the CIT arguing that the Department misapplied its collapsing regulation to the Viraj Group.

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 Corporation v. United States, 279 F. Supp. 2d 1370 (CIT 2003) ("Slater Steels") at 15.

Pursuant to the CIT's order in Slater Steels, the Department filed its Final Results of Redetermination Pursuant to Court Remand ("Remand Results"). Upon review of the Remand Results, the CIT again remanded this case to the Department for further review of its collapsing determination, specifically citing certain issues for the Department to examine. See Slater Steels II. The Department released the Draft Redetermination Pursuant to Court Remand ("Draft Remand II") to the parties for comment on April 26, 2004. The plaintiffs filed comments on the Draft Remand II on April 29, 2004 to which the Viraj Group companies responded on May 3, 2004. See infra "Comments."

ANALYSIS

After reviewing the Remand Results, the CIT again remanded this case to the Department with specific issues to address concerning the collapsing decision made in the Final Results and expanded upon in the Remand Results. The CIT's concerns chiefly pertain to the part of the Department's collapsing test that addresses production facilities. See Slater Steels II at 3-5. This portion of the collapsing test provides that the Department "will treat two or more affiliated producers as a single entity where those producers 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). Specifically, the CIT requested that the Department explain: (A) why it did not analyze the "substantial retooling" portion of the collapsing regulation separately from the "manipulation" portion; (B) why it did not analyze the production facilities of each company and why its analysis centered on the products the companies manufacture; (C) why an investment of less than 10 percent of a company's fixed assets does not constitute "substantial retooling" and why this figure is sufficient to make the "substantial retooling" determination; and (D) why it finds it unnecessary to address the relative merits of collapsing and the major input rule as they relate to the facts of this case. See Slater Steels II, at 5, 11, 17 & 19. Each of these points are addressed below under the appropriate headings.

A. Commerce must explain why it did not analyze the "substantial retooling" prong of the collapsing regulation separately from the "manipulation" prong in this case.

The Court stated that the Department's regulation "demands a separate analysis and a separate finding on the issue of 'substantial retooling.'" See Slater Steels II, at 9. The Department fully agrees with the CIT that there are two portions to its collapsing regulation, once the Department has determined that the companies in question are affiliated. See 19 C.F.R. § 351.401(f)(1). The regulation states that the Department will treat "two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities ('substantial retooling' prong)" and the Department concludes "that there is a significant potential for the manipulation of price or production ('manipulation' prong)." Id.

The Department fully complied with this application of the regulation. Specifically, the Department addressed the Viraj Group companies' production facilities in the Final Results and the Remand Results. In the Final Results, the Department stated 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." See Decision Memorandum at Comment 1.

In the Remand Results, the Department expanded further on this statement, as instructed by the Court. In the remand determination, the Department addressed each element of the collapsing analysis separately, in accordance with the Court's order "to reconsider its analysis of the collapsing issue." See Slater Steels at 15. While there were not specific headings introducing each section of the collapsing analysis in the Remand Results, the Department's remand analysis addressed each prong of the collapsing test separately with the following organization. First, the Department explained the purpose and intent of the regulation. See Remand Results at 5-6. Second, and most importantly, the Department analyzed the first part of the collapsing test, or the "substantial retooling" prong as the primary section of the remand determination. See Remand Results at 6-11. Third, the Department analyzed the second part of the collapsing test, or the "manipulation" prong. See Remand Results at 11-12. Finally, the Department responded to various arguments raised by the plaintiffs and the Court, specifically including the issues of: (1) complementary versus overlapping production facilities; (2) the Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from Germany, 67 Fed. Reg. 3159 (January 23, 2002) and accompanying Issues and Decision Memorandum at Comment 15 ("German Bar"); (3) Viraj Group, Ltd. v. United States, 162 F. Supp. 2d 656,671 (Ct. Int'l Trade 2001) ("Viraj CIT"), (4) the major input rule, (5) and the leasing agreement. See Remand Results at 12-16.

The primary section of the remand determination that addressed the substantial retooling analysis focused on the production facilities of each Viraj Group company. See Remand Results at 6-11. The analysis began with the Department's conclusion that "the affiliated 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." See Remand Results at 6. The Department then appropriately analyzed VAL's production facilities and its ability to produce black bar, as well as billets, in its production facility based on substantial record evidence. See Remand Results at 7-9 (citing Viraj's June 29, 2001 questionnaire response at 5, 9, 64 & 175-85; Viraj's November 26, 2001 supplemental questionnaire response at 1,4 & 62-67; Viraj's June 29, 2001 questionnaire response at 93). The Department next examined VIL's production facilities and focused on the substantial record evidence indicating VIL's finishing capabilities of annealing, pickling, and cold-finishing (e.g., polishing and grinding) to produce bright bar. See Remand Results at 8 (citing Viraj's June 29, 2001 questionnaire response at 62); see also Viraj's June 29, 2001 questionnaire response at 5, 9, 17, 81, 188-202, & 219. The Department found that substantial retooling would not be required for VAL to make the *identical* bright bar merchandise using *identical* production facilities as those of VIL. See Remand Results at 9. In other words, the Department found that VAL could add annealing and pickling and cold-finishing capabilities to process its black bar into bright bar without substantial investment. Id. (citing Viraj's June 29, 2001 questionnaire response at 90 & 73). Finally, the Department analyzed all the record evidence concerning VFL's production facilities. See Remand Results at 10-11 (citing Viraj's June 29, 2001 questionnaire response at

62-63, 104 & 108); see also Petitioners' April 8, 2002 case brief at 7. Plaintiffs conceded in their case brief during the review that VFL and VIL have similar production facilities and even requested that "VFL/VIL be considered separately from VAL." See Petitioner's April 8, 2002 case brief at 7. Likewise, the Court recognized "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. Nonetheless, the Department examined the evidence on the record concerning VFL's production facilities and found that VFL had "heating and annealing capabilities" similar to the finishing capacity that VIL has to produce bright bar.[1] See Remand Results at 11-12 (citing Viraj's June 29, 2001 questionnaire response at 62-63). The Department also found that VFL's financial statements indicate that it installed "forgings facilities for rounds/*bars*/rods. . . in December 1999" and that it produced and sold "rounds/*bars*/rods" during the period of review ("POR"). See Viraj's June 29, 2001 questionnaire response at 108. Because all three companies have bar production facilities and because bright bar is the relevant product produced and exported by VIL for consumption in the United States, the Department examined and found that substantial retooling would not be required for all three companies to produce *identical* products using *identical* production facilities.

The Department did not intentionally confuse the analysis of the collapsing test, nor did the Department shift its approach to examine only the "totality of circumstances," as suggested by the Court. Rather the Department's analysis attempted to address each part of the collapsing test, including potential for manipulation, as instructed by the Court. See Slater Steels at 15

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[1] As the issue surrounding VFL's cold-finishing capability was first raised by the plaintiffs after the Department submitted the Remand Results to the Court, the Department discussed the issue in reply to plaintiffs' comments after the Remand Results were submitted. See Plaintiffs' November 25, 2003 comments at 9-11, 16- 19 & 23; see also Defendant's Response to Plaintiffs' Comments at 8-10, 12-13, & 14. This issue is discussed in greater detail below. See infra section B.1.c "VIL/VFL Analysis."

("remanded to Commerce to reconsider its analysis of the collapsing issue"). Indeed all the quotations cited by the Court as evidence that the Department did not discuss both prongs of the collapsing test and instead focused on the manipulation aspect of the collapsing test were intended to address the "manipulation" prong of the collapsing test (Remand Results at 11) as introduced by the previous sentence, "manipulation of production and price" (Remand Results at 11). The discussion before that point solely focused on the "substantial retooling" prong. See Remand Results at 6-11. Moreover, the Department framed the collapsing discussion in the context of the intent and purpose of the regulation, as stated on page 5 of the Remand Results. The Court also stated that the Department's citation of Queen's Flowers De Columbia v. United States, 981 F. Supp. 617, 622 (Ct. Int'l Trade 1997) ("Queen's Flowers") was misplaced, as the "agency's practice on collapsing have changed" since that decision. See Slater Steels II at 9. To the Department's knowledge, Queen's Flowers was the only case before this Court in which this particular collapsing issue was ever examined. Therefore, the Department cited Queen's Flowers to exemplify how this Court has interpreted the policy rationale of the collapsing test in the past and to provide full knowledge of its own precedent regarding the collapsing analysis. See Davis v. Scherer, 468 U.S. 183, 192 n.9 (1984).

The Department's analysis, although inclusive of some evidence that also supported the "manipulation" prong, did NOT intentionally blend the two-pronged test. The evidence cited to support the manipulation factors were intended to support that prong of the collapsing test. Furthermore, the evidence supporting one part of the test is not precluded from being considered by the Department to support another part of the collapsing regulation. Indeed, the Department analyzed the record evidence and made a conclusion based on substantial evidence. See German

Bar (where a limited overlap in production facilities, i.e., the "substantial retooling" prong, constrained the "manipulation" prong). Substantial evidence "is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." Consolo v. Federal Maritime Comm'n, 383 U.S. 607, 619-20, (1966). As the Supreme Court stated in Consolidated Edison Co. v. NLRB, 305 U.S. 197, 229, 83 L. Ed. 126, 59 S. Ct. 206 (1938) and reaffirmed in Universal Camera Corp. v. NLRB, 340 U.S. 474, 477, 95 L. Ed. 456, 71 S. Ct. 456 (1951) "Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."

B. In applying its collapsing regulation, Commerce must explain why it need not analyze the production facilities of each company and why in this case its analysis centered on the products the companies manufacture.

1. Commerce must explain why it need not examine the production facilities of each company involved in collapsing and why it need not address the possibility of shifting production among companies in either direction.

a. *Vice Versa* Interpretation of the Collapsing Regulation

As illustrated above, the Department did analyze information on the record regarding the production facilities at VAL, VIL, and VFL. However, the Department interprets its regulation to require it to focus on whether the production facilities of the producers in question do (or can) *produce* similar or identical merchandise, not on whether the production *facilities* themselves are similar or identical. For example, if two affiliated producers manufactured identical merchandise using entirely different production processes requiring entirely different types of production facilities, we would still find it appropriate to collapse the two if they had "production facilities for similar or identical products that would not require substantial retooling" and the "manipulation" prong were met. In this example, while it may be exorbitantly expensive to retool one factory so that it had the exact same production facilities as the other, absolutely no retooling is necessary for the two producers to "have production facilities for similar or identical products." The Department's regulation does *not* say "have identical production facilities for identical products" or "have similar or identical production facilities for similar or identical products." Thus, the similarity or dissimilarity of the production facilities themselves should not be the entire focus of the "substantial retooling" prong, and it may not be relevant at all.

The CIT stated that the Department's collapsing regulation "appears to require that Commerce examine the production facilities of both (or all) companies and evaluate the possibility that production may be shifted from one company to another and *vice versa*." See Slater Steels II at 11. In support of its conclusion, the CIT cited the Oxford English Dictionary, stating, that "the first dictionary meaning of the word 'either' is 'each of the two.'" Id. However, the Court acknowledged in Slater Steels II that the "secondary" definition in the dictionary it cited "supports the government's position." See Slater Steels II at 11. Further, the Department draws the CIT's attention to the definition in Webster's II New Riverside University Dictionary at 420 (1988), The Random House College Dictionary at 423 (1980), and The American Heritage Dictionary of the English Language at 418 (1976) where the ordering of the two definitions is reversed.[2] The Court stated that it "will give substantial deference to the agency's reasonable interpretation of its own regulation unless it is plainly erroneous and inconsistent with the regulations." See Slater Steels II at 11 (citing Mullins Coal Co. v. United

[2] Further, we note that while Black's Law Dictionary (6th edition) at 516 has the same ordering as the Oxford English Dictionary, it goes on to say that the word 'either' "is often used, however, with reference to more than two, in which case it may mean 'each' or 'any'; but does *not* mean 'all'" {emphasis added}.

Director, 484 U.S. 135, 159 (1987) (citation and internal quotation marks omitted)); see also Thomas Jefferson Univ. v. Shalala, 512 U.S. 504, 512 (1994) ("Thomas Jefferson") at 512. In light of the fact that dictionaries provide differing orders of the definition of the word "either" and recognizing the nature of the corporate relationships with integrated producers, such as the Viraj Group companies, we find that deference is due to our interpretation of the regulation that the possibility of shifting production among companies in both directions is not a requirement for collapsing related entities.

The overarching theme to this whole analysis is the integrated nature of the Viraj Group companies. The production facilities of the group companies converge with respect to bar. As stated numerous times, VAL has production facilities to melt steel and cast billets. See Viraj's June 29, 2001 questionnaire response at 64. Then, it transforms billets into black bar (cutting, heating, flat & bar mill). Id. VIL and VFL have production facilities to transform black bar or forged bar[3] into bright bar (cutting, heating, annealing and pickling, and cold-finishing). Id. at 62-63. Therefore, the question in this case is whether VAL can produce bright bar (i.e., completing the further finishing that turns the black bar into bright bar), the relevant export product to the United States, without substantial retooling. The Department's collapsing analysis accordingly examined the relative production capabilities and facilities from this perspective.

VIL and VFL's production lines consist of annealing and pickling and cold-finishing. Id. The addition of steel melting, billet casting, and black bar equipment would be adding entire lines of integrated production equipment to VIL and VFL's existing facilities. Therefore, if the

[3] VFL's production facilities will be discussed in greater detail below, particularly with respect to cold finishing operations. See infra section B.1.c. "VIL/VFL Analysis."

Department were examining whether VIL or VFL could be billet and black bar producers, they would clearly fail the "substantial retooling" prong of the Department's collapsing regulation. See infra section B.1.b "*Vice Versa* Analysis." Consistent with Certain Porcelain-on-Steel Cookware From Mexico: Final Results of Antidumping Duty Administrative Review, 62 Fed. Reg. 42496, 42498 (August 7, 1997), the addition of "an entire production line of large expensive multistage integrated production equipment...inherently constitute[s] 'substantial retooling.'" As demonstrated below, the investment required to add VAL's line of production to VIL would take 3,476 percent of VIL's assets, clearly substantial retooling. See infra section B.1.b "*Vice Versa* Analysis."

The situation is different when considering VAL's production facilities. The production line consists of melting steel, casting billets, and transforming billets to black bar. See Viraj's June 29, 2001 questionnaire response at 64. The addition of annealing and pickling and cold-finishing capabilities does not require adding entire lines of integrated production equipment to VAL's existing facilities. As demonstrated below, the investment required to add VIL's lines of production to VAL is only 2.8 percent of VAL's assets, not substantial retooling. See infra section C.

The Department has faced this situation with respect to integrated steel producers with affiliates performing the finishing operations in past cases. For instance, in the antidumping duty investigation of certain cold-rolled carbon steel flat products from France, the Department collapsed several integrated producers where the affiliates had finishing operations only. See Notice of Preliminary Determination of Sales at Not Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from France, 67 Fed. Reg. 31204, 31205 & 31206 (May 9, 2002), citing a Memorandum on the Department's official public file,[4] Antidumping Duty Investigation of Certain Cold-Rolled Carbon Steel Flat Products from France: Collapsing, (A-427-822) dated February 26, 2002 at 3 ("Cold-Rolled from France"); see also Notice of Final Determination of Sales at Not Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from France, 67 Fed. Reg. 62114 (October 3, 2002), memorializing the collapsing decision with no objections from either party. In Cold-Rolled from France, there were several affiliated companies that were "either integrated mills" that produced "hot-rolled coils" or were "rolling operations" which obtained "hot-rolled coil from the integrated mills" and cold-rolled it into subject merchandise. Id. The Department found that "it is clear that the named production facilities have the capability to produce similar or identical products." Id. In fact, one of the rolling operators did not even sell the subject merchandise but rather obtained the "hot-rolled coils from affiliates," re-rolled it "into subject merchandise," and consumed "the subject merchandise in the production of non-subject merchandise." Id. Yet, this company was still collapsed with the others. Id. In this case, VAL has production facilities for black bar (compare this to the hot-rolled coil production in Cold-Rolled from France). VIL and VFL have production facilities for bright bar (compare this to the cold-rolling production in Cold-Rolled from France). As discussed in greater detail below, VAL could add the annealing and pickling and cold-finishing operations without substantial retooling in order to make its production facilities *identical* for identical products (i.e., VIL's bright bar equipment). Therefore, the Department's interpretation of its regulation in this case is consistent with that in Cold-Rolled from France.

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[4] The Department normally memorializes its collapsing decisions in decision memoranda placed on the official files. For the Court's reference, the collapsing decision is available on the remand redetermination file. See Collapsing Decision Memorandum to Remand File dated April 20, 2004.

In addition, the Department would like to point out that if the "*vice versa*" interpretation of the regulation had been applied to the companies in Cold-Rolled from France, all of the "rolling operators" would have failed the "substantial retooling" prong of the collapsing regulation because a substantial investment would be required of the rolling operators to add the hot-rolled coil operations.

In another previous case, the Department examined the relationship of an integrated steel producer with a finishing affiliate. See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Korea, 63 Fed. Reg. 40404 (July 29, 1998) ("Wire Rod from Korea"). The question before the Department in Wire Rod from Korea was whether the respondent POSCO/Changwon should be collapsed with the affiliate Dongbang. POSCO/Changwon had production facilities to produce black coil, the input to wire rod, and finished wire rod. See Wire Rod from Korea at 63 Fed. Reg. 40404, 40410. Dongbang only had "the ability to anneal and pickle the black coil purchased from POSCO/Changwon to produce finished" wire rod. Id. The Department acknowledges that the facts of Wire Rod from Korea are not exactly the same as this case in that VAL does not already preform finishing (though it can do so without substantial retooling, as is discussed below). However, the Department draws the Court's attention to this case to further demonstrate that the "*vice versa*" interpretation is not the Department's interpretation of its regulation. If the "*vice versa*" interpretation were applied to the companies in Wire Rod from Korea, Dongbang would fail the "substantial retooling" prong of the regulation because a substantial investment would have been required for Dongbang to add the entire integrated black coil production line to make its facilities equivalent to those of POSCO/Changwon.

As discussed above and consistent with Cold-Rolled from France and Wire Rod from Korea, the Department's interpretation of its regulation does not require that each affiliated company produce the products that the other company produces before finding the potential for manipulation of shifting production priorities. The entire regulation would be rendered largely useless by the "substantial retooling" prong if the potential production shifts had to "go both ways."

The CIT seems to be adopting plaintiffs' view of the collapsing regulation, which is much narrower than the Department's interpretation. As mentioned above, the CIT asked the Department to examine the possibility that production of billets and black bar could be shifted to VIL and VFL from VAL because, under the narrower interpretation, both or all of the affiliates must have production facilities for similar or identical products without substantial retooling of either facility (either meaning "both" or "all"). See Slater Steels II at 11 & 13. While there might be overlaps in production among affiliates involving an integrated production process, one does not expect there to be an exact duplication of the affiliates' production facilities.

Given the facts of this case and the Department's interpretation of its regulation, the relevant question is whether bright bar production can be shifted from VIL or VFL to VAL. So long as VAL can begin producing bright bar without substantial retooling, any company in the Viraj Group is able to take advantage of any different antidumping duty rates that might arise as a result of not collapsing the affiliated companies. The CIT posits a situation where VIL receives a lower dumping margin than VAL when advancing the theory that the Viraj Group companies may not be able to divert production of billet or black bar to VIL without substantial retooling. See Slater Steels II at 12 & 13. As stated above and demonstrated in the analysis below, the

Department finds that substantial retooling would be required for VIL or VFL to add billet and black bar facilities. Accordingly, the Department agrees with the CIT that if VIL or VFL and VAL received significantly different antidumping duty rates and VIL or VFL's rate is lower, it is unlikely that VIL or VFL would retool their production facilities to produce billets and black bar. However, the question of what the individual rates would be without collapsing and whether the rates would be higher for the producers less likely to retool their production facilities are not factors in applying the collapsing regulation. After affiliation has been affirmatively determined, there are only two prongs to the regulation, the "substantial retooling" prong and the "manipulation" prong.

The concern articulated by the CIT appears to overlook the fact that the Department's decision whether or not to collapse two or more producers occurs *before* calculating individual margins because the decision to collapse (or not) dictates the information provided by the respondent early in the proceeding. For example, one of the affiliated producers may sell the foreign like product in the home market but not in the United States, while the second may sell the merchandise in both the United States and third country markets. If the two affiliates are collapsed, then there may be no need to collect third country sales information. On the contrary, if they are not collapsed, then the company that sells only in the home market would not be in the antidumping duty administrative review at all. In this case, if VIL or VFL and VAL are not collapsed, the Department may also need to request additional information that would allow application of the major input rule.

The CIT's intent may be that the Department gather the type of information described above and then determine whether the Viraj Group companies should be collapsed, which is the proper comparison market, and whether and how the major input rule applies. This action, however, would open the Department to charges of being results driven or "margin shopping" (i.e., selecting the comparison market and appropriate costs for the purpose of achieving a desired result). Moreover, this action can impose a tremendous and potentially unnecessary burden on the respondent and the Department. Although necessary in some cases because of changing facts or evolving understanding of the facts, the Department finds it to be preferable to make certain significant decisions (e.g., comparison market, date of sale, product matching characteristics, etc.) as early as possible in the investigation or administrative review.[5]

b. *Vice Versa* Analysis

The Department finds that the "*vice versa*" interpretation of the collapsing regulation conflicts with commercial reality, is inconsistent with Department practice, is not required by the collapsing regulation itself, and contradicts the intent and purpose of the collapsing regulation. Despite these objections to the CIT's interpretation of the "substantial retooling" prong, the Department conducted the following analysis pursuant to the CIT's instructions. The Department stated above that an entire production line would have to be added to VIL or VFL's production lines in order to duplicate the billet and black bar facilities at VAL. To corroborate this statement, the Department has conducted a detailed analysis to determine whether adding the same billet and bar making facilities present at VAL to VIL or VFL would constitute "substantial

[5] In this case, Viraj was required to respond to the full questionnaire response (sections A, B, C, and D) and did so on June 29, 2001. The plaintiff filed comments on this response on August 1, 2001, making no mention of any issue with collapsing the Viraj Group. It was not until January 30, 2002, twenty-nine days before the preliminary results fully-extended deadline and over seven months since Viraj's June 29, 2001 questionnaire response, that the plaintiffs first argued against collapsing. The Department's regulations at 19 C.F.R. § 351.301(d)(3) clearly spell out that "an allegation of purchases of major inputs from an affiliated party at prices below the cost of production...is due within 20 days after a respondent files...the relevant questionnaire response." See 19 C.F.R. § 351.301(d)(3). In addition, "allegations regarding market viability...are due, with all supporting factual information, within 40 days after the date on which the initial questionnaire was transmitted." See 19 C.F.R. § 351.301(d)(1).

retooling" within the meaning of 19 C.F.R. § 351.401(f).

First, the Department examined the record evidence regarding VAL's production facilities. The diagrams contained in the Viraj Group's questionnaire response show that VAL has production facilities for melting steel and casting billets. See Viraj's June 29, 2001 questionnaire response at 63. Specifically, VAL's production facilities with respect to billet making are unique when compared to VFL and VIL in that VAL has an "induction furnace," "AOD converter," "ARC reheating," "ladle-wire injection," and "continuous casting" equipment. Id. at 64. However, in addition to the production facilities related to billet production mentioned above, VAL also has production facilities that overlap with VIL and VFL's production operations because they are related to bar production and *not* billet making (i.e., "cutting," "reheating," and "flat & bar mill" for black bar production). Id. The value of VAL's total production facilities (billets and black bar) is 335,937,034 Rupees[6] (which is the summation of "continues plant processing," "rolls for rolling mills," "plant & mach. - others," and "electrical installation" in VAL's "Schedule of Fixed Assets"). Id. at 90. The Department is unable to reduce the fully loaded asset amount to account for the overlap in similar and identical production facilities because detailed information of the asset chart is not on the record. Nevertheless, the CIT has instructed the Department to examine the possibility of shifting billet and black bar production from VAL to VIL or VFL.

Accordingly, we turn next to VIL and VFL's asset information. VIL's total fixed assets are 24,439,244 Rupees; VFL's total fixed assets are 224,136,383 Rupees. Id. at 73 & 105,

[6]All numerical values cited in this remand redetermination are taken from Viraj's public versions of its questionnaire responses, unless the value was not bracketed as proprietary in the questionnaire response filing.

respectively; see also Viraj's November 26, 2001 questionnaire response at 35. However, these figures include other assets beyond just production machinery, such as office equipment, furniture, and automobiles, among others.[7] Id. at 105; see also Viraj's November 26, 2001 questionnaire response at 35. If those assets are excluded and only "plant & machinery," "electric installation," and "dies and moulds" are included (the same types of assets included in the denominator for VAL, i.e., actual production machinery), VIL's total fixed assets equal 9,663,584 Rupees and VFL's total fixed assets equal 176,286,040 Rupees. See Viraj's June 29, 2001 questionnaire response at 105; see also Viraj's November 26, 2001 questionnaire response at 35. In relative terms, VAL's fully loaded asset value (i.e., assets used for the production of billets and bars) are 190 percent of VFL's production facilities assets and 3,476 percent of VIL's production facilities assets. In other words, VAL's assets related to black bar and billets combined are double that of VFL's assets and 35 times that of VIL's. Therefore, given that VAL's fixed assets are so much greater than VFL or VIL's fixed assets, it is obvious that the capital outlay required for VIL or VFL to add VAL's production operations would be substantial. Accordingly, the Department finds that substantial retooling would be required for VFL and VIL to add billet and black bar production facilities.

Again, the Department does not believe that the relevant question in this case is whether VIL and VFL can add production facilities for billet making. See Remand Results at 13 ("black and bright bar are similar subject merchandise which VAL and VIL produce and sell using similar production facilities (*setting the billet production aside*)" {emphasis added}. As stated in

[7] In the original Remand Results, the Department used the total figure of VIL's assets (i.e., 24,439,244 Rupees). However, as discussed further below, this figure was conservative and overstated the appropriate asset value of VIL's bright bar production machinery. See infra section C.

the Remand Results, "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" {emphasis in original}. See Slater Steels at 9. The CIT stated that "a substantial addition to VIL's facilities may be needed for VIL to produce black bar or billet...VIL may have to add, for instance, induction and refining furnaces and argon oxygen decarburiser converters to produce black bar." Id. The Department is perplexed by the CIT's statement regarding the production facilities necessary to produce black bar because the production facilities listed by the CIT relate to the production of billets, not bar. In the Remand Results, the Department stated that VAL "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 and bar mill' to make black bar or hot-rolled flats." See Remand Results at 8 (citing Viraj's June 29, 2001 questionnaire response at 62-64). Thus, VAL's production facilities that are relevant to this analysis include the "flat and bar mill" and the "reheating" and "cutting" equipment, not the billet production facilities. See Viraj's June 29, 2001 questionnaire response at 64. Therefore, even if the "*vice versa*" interpretation of the regulation were applied to the Viraj Group companies, one would examine the production facilities for bar, not billets, and whether facilities for similar production could be readily established by the other affiliates (i.e., cutting and reheating equipment and flat and bar mill at VAL; heating, cutting, annealing and pickling, and cold-finishing equipment at VIL; and cutting, heating, and annealing and pickling equipment at VFL). Id. at 62-64.

The record with respect to VAL and VFL's production facilities is not detailed enough to quantify the above-described analysis. Specifically, the individual asset values for each piece of machinery are not part of the record. Rather, the record only contains each companies' "Schedule of Fixed Assets," which aggregates the total asset value for all production machinery. Id. at 90 & 105; see also Viraj's November 26, 2001 questionnaire response at 35. This poses a problem with respect to VAL and VFL because they have production facilities for other products besides bar. Regardless, the Department continues to find that its regulation does not require that it find that production may be shifted from one company to another and *vice versa*. As stated above, VIL or VFL's inability to produce billets and black bar or, in *arguendo*, just black bar or just billets, without substantial retooling, undermines or in any way calls into question our determination to collapse the Viraj Group companies. The ability of the Viraj Group companies to shift production of bright bar, without substantial retooling, is sufficient in and of itself to raise concerns about the potential for manipulation.

c. VIL/VFL Analysis

Lastly, as one final point to this section, the Court stated that the Remand Results "are...perfunctory with respect to VFL's production facilities" and that "Commerce does not point to any evidence in the record that VFL has the capability to produce black or bright bar." See Slater Steels II at 14. We again draw the CIT's attention to the fact that the plaintiffs agreed with the Department that VFL should be collapsed with VIL, stating, that "the evidence supports the collapsing of...VIL and VFL into one entity..." See Petitioners' April 8, 2002 case brief at 3. Further, the plaintiffs stated, "VIL and VFL are exporters of record in this review" and that the Department should use an alternative source for normal value, "namely, VIL's and VFL's combined sales to the largest third country." Id. at 5-6 & 15. The plaintiffs also declared that VIL and VFL "anneal and pickle bar" and "cold-finish bar," indicating that VIL and VFL have the same bright bar finishing production facilities. Id. at 6-8. In addition, by asserting that "there is no overlap in production capability between VAL and VIL/VFL," the plaintiffs agreed with the Department's conclusion that VFL and VIL have overlapping production capabilities. Id. at 14. Thus, the Department agreed with the plaintiffs in the Final Results and Remand Results when it found that VIL and VFL should be collapsed and treated as one entity. Therefore, the issue properly before the CIT is whether VIL and VFL, as one entity, should be collapsed with VAL.

Now, however, the CIT, with plaintiffs' guidance, appears to have changed the issue to focus on VFL independently. Nothwithstanding the fact that the proper issue before the Court is whether VIL and VFL together should be collapsed with VAL, in compliance with the CIT's request, the Department further examined the individual production capabilities and facilities at VFL. See Slater Steels II at 14. In the Remand Results, the Department found that VFL has an overlap in production facilities with respect to VIL to make bright bar (i.e., annealing and pickling, cutting, and heating capabilities). See Remand Results at 10. Moreover, the Department found that VFL installed forging facilities for bar during the period and produced and sold "forged rounds/bars/rods." Id. at 10; see also Viraj's June 29, 2001 questionnaire response at 108. The scope of the merchandise under review states that "stainless steel bar...means articles of stainless steel straight lengths that have been hot-rolled, *forged*, turned, cold-drawn, cold-rolled, or otherwise cold finished" {emphasis added}. 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. 18, 1994). Thus, the plaintiffs' statement, upon which the CIT appears to rely, that "VFL does not make any bar products...," is not supported by the record, as evidenced in the discussion above. See Slater

Steels II at 14, citing to Plaintiffs' November 25, 2003 brief at 26.

The CIT further states that "Commerce does not point to any evidence in the record that VFL has the capability to produce black or bright bar." See Slater Steels II at 14. The CIT relies again on the plaintiffs' statement that VFL "may have annealing capabilities to make one intermediate product HRAP [(hot-rolled, annealed, pickled)] bar" but does not have the capability to produce either "VAL's black bar or VIL's bright bar." Id., citing Plaintiffs' November 25, 2003 brief at 26. The Department determines that the cutting, heating, and annealing and pickling at VFL to be a broad *identical* overlap of production facilities with VIL. See Viraj's June 29, 2001 questionnaire response at 62-63. VFL would only have to add some cold-finishing equipment to make its facilities *identical* to those of VIL in order to make *identical* products, not just similar products.[8]

Turning again to VIL's asset chart, we note that VIL's total assets are 24,439,243 Rupees. However, as discussed above, this figure includes assets, not directly applicable to this exercise (e.g., automobiles, furniture, office equipment, etc.). See Viraj's November 26, 2001 questionnaire response at 35. After removing these assets from the total, the asset amount for VIL's production machinery is 9,663,584 Rupees (this figure was derived by summing the values for "plant & machinery," "electrical installation," and "dies and moulds"). Id. During the POR, VFL added over 48,034,566 Rupees worth of "plant & machinery," "electrical installation," and "dies and moulds" See Viraj's June 29, 2001 questionnaire response at 105 ("Addition during the year" at "Schedule of Fixed Assets"). VFL's increased assets during this period were a result

[8] The Department again notes that the collapsing regulation does not require that production facilities be identical (or similar for that matter). Rather, it states that affiliates must "have production facilities for similar or identical *products* that would not require substantial retooling" {emphasis added}. See 19 C.F.R. § 351.401(f)(1).

of adding "forging facilities for rounds/bars/rods." Id. at 108. VFL's "Directors' Report," contained in its audited financial statements, reports that "{d}uring the year, the company made suitable changes in its production facilities and also started production on {s}tainless {s}teel {f}orged {b}ars, which helped increase its production and sales. In comparative terms, exports were higher by 81%..." Id. at 100. The Department makes two conclusions based upon these facts. First, VFL made a large capital investment, adding additional bar-making facilities during the period.[9] Second, since VFL could add just under fifty million Rupees worth of assets during the period, the Department finds that the less than 9,663,584 Rupees worth of assets required to add cold-finishing operations completely *identical* to those at VIL would not constitute substantial retooling for VFL. The Department notes that the 9,663,584 Rupee figure is a conservative estimate because it *includes* overlapped facilities (annealing and pickling, heating, and cutting) and would be lower if the Department had the information on the record to adjust the figure so that only the cold-finishing equipment was included. See Viraj's November 26, 2001 questionnaire response at 35.

Thus, for the reasons mentioned above, the Department continues to find that VFL satisfies the "substantial retooling" prong of the Department's collapsing test. VFL has broad overlapping production facilities with VIL, engages in production of similar merchandise (forged bars), and has the capability to produce *identical* merchandise (bright bars) without substantial retooling. Moreover, during the review proceeding, the plaintiffs agreed with the Department

[9] In comments made after Slater Steels, the plaintiffs admitted that "{t}he largest diameter bright bar is almost certainly sourced from a mix of large rounds produced by VAL and *large heavy bars* which may be from VAL and/or *VFL* or other sources" {emphasis added}. See Plaintiffs' September 2, 2003 comments at 6. Accordingly, as mentioned above, the forged bars are subject merchandise and, further, only must be finished to become large bright bars. Since VFL already has cutting, heating, and annealing and pickling equipment, as VIL has, cold-finishing is the only equipment required at VFL to make its facilities identical to that of VIL's.

that VFL should be collapsed with VIL, as discussed above.

As stated in the Remand Results, the affiliation portion of the collapsing regulation is met. See Remand Results at 6. Further, the CIT agreed that the "manipulation" prong has been met. See Slater Steels II at 5. Because the Department has affirmed its original decision to collapse VIL and VFL based on its substantial retooling analysis above, VIL/VFL meet all portions of the collapsing test. Accordingly, the Department will continue its analysis to collapse VAL with VIL/VFL.

2. Commerce must explain why in this case it focused on the products the companies' manufacture, rather than their production facilities.

The plaintiffs continue to interpret the "substantial retooling" prong of the collapsing regulation to mean that each company involved must have all the same production facilities for all products produced. Such an interpretation of the regulation essentially would render the collapsing regulation overly restrictive and would be inconsistent with its purpose. That is, as viewed through the plaintiffs' interpretation, only when affiliated companies have *all* the same production facilities to produce *all* the same products could the Department collapse the companies. This defies business reality in that it is only one scenario which may give rise to manipulation concerns and the need to collapse affiliated producers. The plaintiffs' interpretation of the collapsing regulation would simply render the entire provision largely useless.

In this case, the Department was simply interpreting its own regulations in an area in which it is typically given substantial deference. See Thomas Jefferson, 512 U.S. at 512 ("We must give substantial deference to an agency's interpretation of its own regulations....The agency's interpretation must be given controlling weight unless it is plainly erroneous or inconsistent with the regulation....This broad deference is all the more warranted when, as here, the regulation concerns a complex and highly technical regulatory program, in which the identification and classification of relevant criteria necessarily require significant expertise and entail the exercise of judgment grounded in policy concerns.") (citations and internal quotation marks omitted)); see also Asociacion Colombiana de Exportadores de Flores v. United States, 903 F.2d 1555, 1559 (Fed. Cir. 1990) (attaching "substantial weight" to the Commerce Department, International Trade Administration's interpretation of its own regulation and explaining that "when the construction of an administrative regulation rather than a statute is in issue, deference is even more clearly in order.") (citations and internal quotation marks omitted)). In this instance, as discussed in greater detail below, the Department's interpretation of its regulation is not "plainly erroneous or inconsistent with the regulation." See Thomas Jefferson, 512 U.S. at 512; see also supra section B.1.a. "*Vice Versa* Interpretation of the Collapsing Regulation." Rather, the Department's interpretation is a reasonable one in a complex field in which it has special and unique expertise. Further, the Department's finding is supported by substantial record evidence. To interpret the regulation, as plaintiffs apparently suggest, to mean that Commerce is required to examine each production facility to ensure that each company has the exact same production facilities for the exact same products would be blatantly in contradiction with the text and the intent of the entire regulation.

As discussed above, the Department finds that production facilities could be completely different among producers making similar or identical products yet require absolutely no retooling for two producers to "have production facilities for similar or identical products." The

Department's regulation does *not* state "have identical production facilities for identical products" or "have similar or identical production facilities for similar or identical products." Thus, as stated above, it does not follow that the Department must examine affiliates' production facilities to find that the companies meet the "substantial retooling" prong of the collapsing regulation. See supra at section B.1.a "*Vice Versa* Interpretation of the Collapsing Regulation."

For example, in Certain Welded Carbon Steel Pipes and Tubes from Thailand: Preliminary Results of Antidumping Duty Administrative Review, 63 Fed. Reg. 16974, 16975 (April 7, 1998), the Department stated that "Thai Tube and Thai Hong are both producers of subject merchandise, and therefore have production facilities for identical products to those produced by Saha Thai. We, therefore, conclude that Thai Tube and Thai Hong could restructure their production priorities to produce the subject merchandise with little or no retooling of their facilities." In the final results of that case, the Department stated that "{a}lthough each producer [Thai Tube and Thai Hong] is affiliated with Saha Thai and each company produces subject merchandise we conclude that the record evidence did not support a finding of significant potential for manipulation of pricing or production. Therefore, we did not collapse Saha Thai with either Thai Tube or Thai Hong." See Certain Welded Carbon Steel Pipes and Tubes from Thailand: Preliminary Results of Antidumping Duty Administrative Review, 63 Fed. Reg. 55578, 55582 & 55583 (October 16, 1998) ("Tubes From Thailand"). Thus, although the Department ultimately determined that Thai Tube and Thai Hong should not be collapsed with Saha Thai because Saha Thai failed the "manipulation" prong of the Department's collapsing test, all three companies met the "substantial retooling" prong of the collapsing test by virtue of the products produced (Thai Tube and Thai Hong remained collapsed).

Despite the finding in Tubes From Thailand,[10] the Court stated that "Commerce must specifically address the question that the companies' production facilities for similar products would not require substantial retooling" and that "{i}t is insufficient for Commerce to declare that, because black and bright bar are similar products under the definition of subject merchandise, their production facilities do not require 'substantial retooling.'" See Slater Steels II at 15 & 16. We respectfully disagree with the Court's characterization of the Department's analysis. The Department clearly discussed the Viraj Group companies' production facilities in detail in the Remand Results. See Remand Results at 6-11. However, the Department will again discuss the production facilities, as instructed by the Court.

The diagrams contained in Viraj's questionnaire response, which, as the Court said, "objectively display the companies' respective production lines" (Slater Steels at 14), show that there are significant or broad overlaps in production facilities for similar or identical bar products across the companies. As discussed above, VIL/VFL has overlapping production for cutting, heating, and annealing and pickling, and with minor retooling, VFL could add cold-finishing equipment. See Viraj's June 29, 2001 questionnaire response at 62-63; see also supra at section B.1.c "VIL/VFL Analysis." VAL has cutting and heating equipment and a flat & bar mill. See Viraj's June 29, 2001 questionnaire response at 64. Accordingly, VAL's flat & bar mill is the only overlapped production facility with respect to bar that is not identical. Moreover, the Department finds that the investment required for VAL to add the production facilities to produce bright bar (i.e., making VAL's facilities *identical* to those of VIL/VFL in order to

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[10] The Court did discuss Tubes from Thailand in Slater Steels II in its explanation of the separate prongs of the collapsing test. However, it focused on the collapsing finding for different companies, not Thai Tube, Thai Hong, and Saha Thai. See Slater Steels II at 7 & 8.

produce *identical* products) would not constitute substantial retooling. See supra section B.1.a "*Vice Versa* Interpretation of the Collapsing Regulation;" see also infra section C.

The Department respectfully disagrees with the Court's statement that the record evidence in this case shows "sparse of [sic] overlap of production facilities" of the Viraj Group companies and that the "production facilities are complementary, with little or no overlap." See Slater Steels II at 12 & 17. This interpretation is not only inconsistent with the finding in Tubes from Thailand but also inconsistent with the finding in Cold Rolled from France, where, as stated above, the Department collapsed cold-rollers with integrated hot-rollers, ultimately stating that "it is clear that the named production facilities have the capability to produce similar or identical products." See Cold Rolled from France at 3. Again, as discussed previously and in the spirit of Cold Rolled from France, VAL and VIL/VFL already "have production facilities for similar or identical products," and VAL can begin producing bright bar without "substantial retooling."

Despite discussing the production facilities in the Remand Results, the Department did focus a portion of its discussion on the products produced by the Viraj Group companies because it was under the impression that the Court was unclear about some record evidence, which is crucial to this collapsing analysis. For instance, the Court stated that "the record shows that VAL produces a semi-finished or intermediate product, steel billet, that is used in the manufacturing of SSBs, the subject merchandise. VAL has the melting and rolling capabilities to produce steel billets, but does not have the finishing capability to produce the subject merchandise" and that "VIL...process{es} billets into SSBs." See Slater Steels at 10 & 11. After stating these facts which are not consistent with the record, the Court then declared that "VAL and VIL (and VFL) do not have 'production facilities for similar or identical products' and cannot produce the subject merchandise on their own without 'substantial retooling' of their facilities." Id. at 11. The Court then went on to explain that the major input rule may be more appropriate in this case because the "cost of steel billet" may be "artificially low" and then cited Viraj CIT where the Department did not collapse the Viraj Group companies because "VIL purchased steel billet from VAL" which was "more like a 'manufacturer and supplier'" relationship. Id. at 12. Thus, given the discussion in Slater Steels, the Department felt it of utmost importance to impress upon the Court that the overwhelming record evidence clearly shows that VAL substantially transforms billets into subject merchandise bar and, therefore, produces stainless steel bar, which is key to the production overlaps between the Viraj Group companies (i.e., VAL is *not* merely an input billet-maker). Thus, as stated in the Remand Results, the facts of this case are considerably different than those in Viraj CIT. See Remand Results at 7 & 14.

Continuing with its discussion of production facilities, the Court cited German Bar, where it says that "section 351.401(f)(1) concentrates not on a firm's product line, but rather on its production facilities." See Slater Steels II at 16, citing German Bar at Comment 15. The Department notes, however, that this statement in German Bar responded to a comment by the petitioners that the respondents could toll out part of their production process to increase the limited overlap in production capability. See German Bar at Comment 15. These are not the facts in the case at hand with respect to the Viraj Group companies.

In this case, the Department found and continues to find substantial evidence that VAL could expand its overlap in production capabilities with VIL/VFL without substantial retooling. Specifically, the record indicates that it would cost only 9,663,584 Rupees or 2.8 percent of its relevant fixed asset value for VAL to supplement its production line to expand the overlap to include production facilities for the bright bar products produced by VIL/VFL. See supra section B.1.a "*Vice Versa* Interpretation of the Collapsing Regulation" and infra at section C. In German Bar, however, the Department found that, for most of the products covered by the proceeding, the respondents would have to make "extensive and expensive infrastructure changes" for a "complete" or "partial retooling" in order to expand the overlap in production capabilities between the affiliated producers in question. See German Bar at Comment 15. Thus, in German Bar, the Department continued to the "manipulation" prong of the collapsing test only for where the production lines produced identical products. Id. The same analytical framework has been applied in this case as that in German Bar. However, the different facts in the two cases led to different results.

As noted above, the Department found in German Bar that substantial retooling would not be necessary for the affiliated respondents to produce identical merchandise for a small portion of the subject merchandise. See German Bar at Comment 15. Accordingly, the Department continued its analysis and examined the "manipulation" prong, stating, "{c}onsidering the limited overlap of production capability and the significant impediments to expanding this overlap, *in concert with* the limited shared board members and the lack of any significant intertwining of operations of the two firms, we do not find that there is a significant potential for the manipulation of price or production" {emphasis added}. See German Bar at Comment 15.

In Slater Steels II, the Court stated that the Remand Results' "confusion relating to the application of the separate prongs is further exposed by Commerce's discussion" of German Bar. See Slater Steels II at 10. The Department stated in the Remand Results that the German Bar respondents were not "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." See Remand Results at 13. As is evidenced in the quote from German Bar above, the limited overlap "in concert with" the corporate impediments ultimately led the Department to conclude that "manipulation" prong of the collapsing test was not met, and thus, the affiliated respondents should not be collapsed. In the Remand Results and here, the Department has not intentionally confused the two prongs of the collapsing analysis.

Citing the plaintiffs' comments, the Court stated that "Commerce's interpretation of section 351.401(f)(1)...render[s] a part of the 'substantial retooling' prong hollow." See Slater Steels II at 15 (citing Plaintiffs' November 25, 2003 comments at 5 & 6). Quite the opposite is true. If the Court's interpretation of the German Bar collapsing analysis (i.e., that facilities must be identical in order to meet the "substantial retooling" prong) were imposed on the Department, it would severely limit the Department's ability to collapse affiliated companies because the entire "substantial retooling" prong would be rendered meaningless. For instance, in Cold Rolled from France, the hot-rollers could not be collapsed with the cold-rollers because the facilities used to produce the hot-rolled and cold-rolled merchandise were not identical. Again, the regulation does not say "have identical production facilities for identical products" or "have similar or identical production facilities for similar or identical products;" rather the regulation states "have production facilities for similar or identical *products* that would not require substantial retooling" {emphasis added}. See 19 C.F.R. § 351.401(f)(1).

C. Commerce must explain why an investment even if worth less than 10 percent of a company's fixed asset value does not constitute "substantial retooling" and why this figure by itself is sufficient to make Commerce's "substantial retooling" determination reasonable.

In the Remand Results, the Department explained that it compared "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)" and concluded 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." Remand Results at 9 (citing Viraj's June 29, 2001 questionnaire response at 90 & 73). In Slater Steels II, the CIT stated, following plaintiffs' arguments, that "an investment that costs less than 10 percent of fixed value of a company's assets, to the extent that cost approaches 10 percent, seems to be a significant outlay." Slater Steels II at 17 (citing Plaintiffs' November 25, 2003 comments at 21 & 22). The plaintiffs' argument is unsupported by the record evidence and is simply wrong.

The Department relies on substantial record evidence to support its finding that VAL's necessary retooling would not be "substantial." In order to calculate the "10 percent" figure described above, the Department turned to the "Schedule of Fixed Assets" located in VAL's and VIL's financial statements. See Viraj's June 29, 2001 questionnaire response at 90; see also Viraj's November 26, 2001 questionnaire response at 35. The Department based the denominator in the calculation on VAL's production machinery assets – "continues plant processing," "rolls for rolling mills," "plant & mach. - others," and "electrical installation." Id. at 90. The total value of these assets is 335,937,034 Rupees. Id. This figure represents VAL's asset value for all of the production machinery shown on the diagrams contained in Viraj's questionnaire response (e.g., “induction,” “AOD converter,” “ARC reheating,” “ladle-wire injection,” “continuous castings,” “cutting,” “reheating,” and “flat & bar mill”). Id. at 64.

In the Remand Results, the Department based the numerator of the calculation on VIL’s total asset value, 24,439,243 Rupees. This figure includes assets not related to VIL’s production machinery – “leasehold land,” “weigh bridge,” “furniture & fixtures,” “fans,” “motor car,” “office equipment,” “computers,” “air conditioners,” “laboratory equipment,” “office buildings,” “elec. weighing scale,” and “factory shed.” See Viraj’s November 26, 2001 questionnaire response at 35. By including these assets and, thus, overstating the numerator of the calculation in the Remand Results, the Department’s calculation of 10 percent was extremely conservative. The only assets related to the actual production of bright bar are “plant & machinery,” “electrical installation,” and “dies and moulds.” Id. The total for these assets is 9,663,584 Rupees. This figure represents VIL’s asset value for all of the production machinery assets shown on the diagrams contained in Viraj’s questionnaire response (i.e., cutting, heating, annealing and pickling, *and* cold-finishing). See Viraj’s June 29, 2001 questionnaire response at 62. Basing the calculation only on VIL’s production-related assets (the numerator) and VAL’s production-related assets (the denominator), we conclude that VAL could add the bright bar finishing operations comparable to those at VIL for 2.88 percent of its current asset value.

The Department concludes that the potential addition of finishing operations to VAL’s production line at a cost of 2.88 percent of its fixed asset value, is not “substantial retooling.” The Department has not articulated a rule stating whether a particular level of capital expenditure is required to find “substantial retooling.” Nonetheless, the CIT instructed the Department to examine why it determines that VAL’s investment in this machinery would not be substantial.

See Slater Steels II at 17. Accordingly, the Department conducted this analysis, as described below, and continues to find that the additional investment required for VAL to add finishing operations is not substantial for VAL.

The Department acknowledges that VAL is a "sick" company under Indian law and reported losses during the year in question. See Viraj's June 29, 2001 questionnaire response at 85 & 88. However, these facts do not preclude VAL from making capital investments. During the year in question, VAL increased its relevant production assets by 5,582,079 Rupees, which is just under two-thirds of the investment required to add bright bar equipment (i.e., 9,663,584 Rupees). Id. at 90 ("Addition during the year" of "continues plant processing," "rolls for rolling mills," "plant & mach. - others," and "electrical installation."). The Department therefore concludes that it would have been possible for VAL to make capital investments during the period and now turns to the information on the record to determine whether in investment of 9,663,584 Rupees or 2.88 percent of VAL's assets would be "substantial" for VAL.

To put the 9,663,584 Rupees figure into perspective, the Department again turns to VAL's financial statements. Given that VAL reported 1,635,750,466 Rupees in sales during the fiscal year, VIL's production machinery asset figure as a percentage of this amount is only 0.6 percent. Id. at 88 & 90. In addition, VAL received 677,622,478 Rupees in "secured loans" from banks, over 70 times the investment required to add finishing operations equivalent to VIL's bright bar equipment. Id. at 89. VAL also received 205,658,081 Rupees in "unsecured loans," over 21 times the investment required to add VIL's bright bar equipment. Id. at 90. Moreover, the "unsecured loans" from the common VAL/VIL/VFL directors alone were 34,322,541 Rupees, over three and a half times the investment required to add VIL's bright bar equipment. Id.

Further, VAL submitted a bank statement to provide proof of payment of its commission expenses. See Viraj's November 26, 2001 questionnaire response at 48. The Department totaled the payment amounts listed on this statement and concludes that VAL spent the entire amount required to add VIL's bright bar equipment on routine expenses in under five days time. Id. Therefore, the Department continues to find that VAL's potential investment of 2.8 percent of its fixed assets, or 9,663,584 Rupees, to add finishing operations to its production line would not be "substantial retooling."

Even though the Department continues to find that the original 10 percent figure was overstated and, thus, extremely conservative, we remain cognizant of the fact that the Court specifically requested that the Department explain "why an investment even if worth less than 10 percent of a company's fixed asset value does not constitute 'substantial retooling.'" See Slater Steels II at 17. Therefore, the Department conducted the same analysis, as described above, using the original numerator from the Remand Results to arrive at the 10 percent figure (i.e., 24,439,243 Rupees). See Viraj's June 29, 2001 questionnaire response at 73; see also Viraj's November 26, 2001 questionnaire response at 35. VIL's total asset figure as a percentage of VAL's reported sales during the fiscal year is only 1.5 percent. See Viraj's June 29, 2001 questionnaire response at 88 & 90. In addition, VAL received 677,622,478 Rupees in "secured loans" from banks, over 27 times the investment required to add all of VIL's assets. Id. at 89. VAL also received 205,658,081 Rupees in "unsecured loans," over 21 times the investment required to add all of VIL's assets. Id. at 90. Moreover, the "unsecured loans" from the common VAL/VIL/VFL directors alone were 34,322,541 Rupees, approximately 10 million Rupees or 220,000 U.S. Dollars *more* than the investment required to add all of VIL's assets. Id. Further, VAL submitted a bank statement to provide proof of payment of its commission expenses. See Viraj's November 26, 2001 questionnaire response at 48. The Department totaled the payment amounts listed on this statement and concludes that VAL spent the entire amount required to add all of VIL's assets in under ten days time on routine expenses. Id. Therefore, the Department continues to find that VAL's potential retooling investment of under 10 percent of its fixed assets, or 24,439,243 Rupees, to add all of VIL's assets would not be "substantial."

The CIT further instructed the Department to address "whether any other consideration, besides the monetary value of the investment, may implicate the substantial retooling question, such as time that may have to be spent or other constraints on the company's finances." See Slater Steels II at 17 & 18. The Department's discussion above sufficiently addresses the CIT's concern with respect to the "company's finances." The record is regretfully absent of specific information to address the CIT's inquiry as to "time that may have to be spent" retooling for VAL. The Department is not aware of any cases where we have considered time as a factor in the context of a "substantial retooling" analysis. Nonetheless, the Department analyzed the available record evidence to address the Court's instruction.

As discussed above and acknowledged by the CIT in Slater Steels II, VFL, a bar producer which is considerably smaller than VAL, installed new production equipment in the form of forging operations. See Slater Steels II at 14. VFL's financial statements indicate that the forging operations were commissioned, expensed, and in operation all within one year. See Viraj's June 29, 2001 questionnaire response at 108 ("commissioned from April...[and]...December 1999"), 105 ("Schedule of Fixed Assets" at "Addition during the year"), and 100 ("{d}uring the year, the company made suitable changes in its production facilities and also started production on Stainless Steel Forged Bars"). We note that the addition of these assets totaled 48,024,566 Rupees, which is over twenty times the value of VIL's bright bar machinery. Based on these fact, the Department finds that the addition of finishing operations is a simpler task that will take significantly less time. Id. at 105, "Schedule of Fixed Assets," "Addition during the year." The Department reasonably and conservatively used VFL's experience as a proxy for that of adding production assets at VAL. Accordingly, the Department finds that VAL could add the bright bar machinery in an amount of time that would not be "substantial."

As stated in the Remand Results, the affiliation portion of the collapsing regulation is met. See Remand Results at 6. Further, the CIT agreed that the "manipulation" prong has been met. See Slater Steels II at 5. Because the Department has affirmed its original decision to collapse VIL/VFL and VAL[11] with respect to the "substantial retooling" prong, all three companies clearly meet all portions of the collapsing test.

D. Commerce must explain why it finds it unnecessary to address the relative merits of collapsing and the major input rule as they relate to the facts of this case.

The CIT agrees with the Department that "{t}here is no question that, when Commerce determines to collapse the companies, the major input rule does not apply because the rule relates to examination of transactions between affiliates and, once the affiliates are treated as one entity, there is no reason or opportunity to examine such transactions." See Slater Steels II at 20. However, the CIT continues to repeat concerns it and plaintiffs raised previously and directs the Department to "examine the relative merits of collapsing *vis a vis* the major input rule as applied

[11] The CIT also pointed to the capital cost to VFL of creating a production facility similar to that of VAL. See Slater Steels II at 18 & 19. For the reasons explained above, the Department finds that VIL/VFL should be collapsed with VAL, and it is irrelevant to our analysis whether VIL/VFL would incur substantial retooling to produce black bar and billets.

or applicable to the facts of this case." See Slater Steels II at 20. As demonstrated above, the Viraj companies meet all portions of the Department's collapsing test. Hence, it follows that the major input rule does not apply. Moreover, unless and until the Department makes the determination not to collapse these companies, we find that it is inappropriate to analyze the facts of this case under the major input rule. An exercise in examining "the relative merits" of two different methods for determining dumping margins opens the Department to charges of "margin shopping," and in the Department's view, cannot be lawful in this situation. Indeed, by the Court's own admission, the opportunity and reason to examine these transactions is non-existent in this situation.

The Court stated that "{i}n the event VIL purchases black bar or billet from VAL, that purchase may have to be examined with scrutiny because of the affiliated nature of companies." See Slater Steels II at 13. These transactions would be examined by the Department and perhaps used under the major input rule *only if* the Department finds that VAL and VIL/VFL should not be collapsed. Until then, the Department finds it unnecessary to examine these transactions, as the Department continues to find that VAL, VIL, and VFL are essentially one entity. In this case, because the companies are collapsed, the actual cost experience at VAL is the cost of production used in the Department's margin analysis.

With respect to the major input rule, the Court also stated that there was "still the question of whether or not there was a leasing arrangement between VIL and VAL" and requested that the Department "address the issue of the leasing arrangements and explain to the court why it changed its position regarding such arrangements in its decision to collapse the Viraj Group companies." Id. at 13 & 21. The Department stated in the Final Results 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" {emphasis added}. See Decision Memorandum at Comment 1. The Department has determined, based on substantial evidence, that VAL and VIL/VFL produce similar or identical products *independently*. Thus, the leasing agreements were not a determinative factor in its decision. See Remand Results at 16. Nonetheless, the Department will address the Court's concerns regarding the leasing arrangement.

VIL's financial statements report: "The Company [VIL] is carrying on a part of its manufacturing activities on plant & machinery of the Bright Bars Unit of Viraj Alloys Limited (VAL), which is under its exclusive use as per a conducting agreement entered into between the Co. [VIL] and VAL. The fixed {a}ssets acquired by the company [VIL] are capitalized at cost including incidental expenses relating to the acquisition and installation." See Viraj's June 29, 2001 questionnaire response at 80.

The CIT states that "there is still a question of whether or not there was a leasing arrangement between VIL and VAL during the period of review, which would have allowed VIL to use VAL's facilities for the production of hot-rolled round bar and billet." See Slater Steels II at 13. As stated in the Remand Results, VAL's audited financial statements report that VAL had "actual production" and "sales" of "billets" and "rounds & bars." See Remand Results at 7, citing to Viraj's June 29, 2001 questionnaire response at 93. VAL produced and sold billets and bars using the facilities described in the objective diagrams in Viraj's questionnaire response. Id. at 64 & 93. If VAL was merely leasing its facilities "exclusively" to VIL for billets and black bar, VAL would not be able to book the production and sales of the billets and bars in its audited financial statements; rather, all of those products would be booked on VIL's audited financial statements.

Given this evidence, the Department is puzzled by the CIT's statement that "{t}he court here will not pass judgement on plaintiffs' assertion, which incidentally elicited no response from the government, that 'the very fact of an affiliate [(VIL)] resorting to operational leasing of another affiliate's [(VAL's)] production/equipment facility is per se evidence that it does not, on its own, have that production capability.'" See Slater Steels II at 21, citing Plaintiffs' November 25, 2003 comments at 14. The Department did not respond to this charge because the evidence shows that VIL does not lease facilities to produce billets and black bars. Therefore, as there are no transactions between VAL and VIL concerning leasing of facilities for billets or black bar, this question is not relevant to the Department's collapsing analysis.

COMMENTS

On April 29, 2004, the plaintiffs filed comments on the Draft Remand II. The plaintiffs assert that the Department's remand analysis is in contradiction to the information on the record and that extensive retooling would be required for the Viraj Group companies to produce each others' products in their existing production facilities. In addition, the plaintiffs assert that the facts of this case do not differ from German Bar and that the facts of Cold-Rolled from France argue directly against the Department's finding in this case.

On May 3, 2004, the Viraj Group companies filed comments asserting that the Department should reject the plaintiffs' assertions.

Department Position:

The Department disagrees with the plaintiffs' assertions. The plaintiffs first implicitly resurrect the "*vice versa*" interpretation of the collapsing regulation by stating that the Department failed to show that any company in the Viraj Group could "produce each others' products." See Plaintiffs' April 29, 2004 comments at 2. The Department exhaustively discussed and rejected the "*vice versa*" interpretation of the collapsing regulation in the Draft Remand II, and concluded that the entire collapsing regulation "would be rendered largely useless by the 'substantial retooling' prong if the potential production shifts had to 'go both ways.'" See Draft Remand II at 15 & 9-17.

The plaintiffs next assert that "Commerce has not shown through record evidence that any Viraj Group company *has* production facilities that would allow it to produce the products made by another company" {emphasis added}. See Plaintiffs' April 29, 2004 comments at 2. This statement illustrates the continued misinterpretation of the collapsing regulation by the plaintiffs, which ultimately renders the "substantial retooling" prong null and void. See Draft Remand II at 9-11, 25-28 & 32. The collapsing regulation does *not* require the Department to find that affiliated producers *already have* production facilities that would allow them "to produce the products made by the other company." Id. at 27. Rather, the regulation requires that the Department find that the companies "have production facilities for similar or identical products without substantial retooling." Id. at 9-11, 25-28 & 32; see also 19 C.F.R. § 351.401(f)(1). While it is true that VAL did not have production facilities that would allow it to produce *identical* products to those produced by VIL (bright bar) during the period of review, VAL did *have* facilities for producing similar products (black bar). See Draft Remand II at 11-12, 17-20, 29-30 & 33-38. Moreover, VAL would not have to make a substantial investment to retool its facilities to have production facilities for *identical* products (bright bar), the relevant export product to the United States. Id. at 11 & 33-38. Therefore, the plaintiffs' statement that "the Department has rendered subsection (f)(1) of its regulation superfluous," is simply not true; in fact, exactly the opposite is true, as explained in the Draft Remand II. See Plaintiffs' April 29, 2004 comments at 2; see also Draft Remand II at 32. Under the plaintiffs' flawed interpretation of the regulation, the facilities for similar or identical products must already *be present* in order to collapse affiliates, and thus, there is no need for the phrase "without substantial retooling" in the collapsing regulation. See Draft Remand II at 32.

The plaintiffs next raise the issue of German Bar with the assertion that "if the facts in the German Bar case do not call for the collapsing of EWK and KEP {the affiliated German Bar companies}, it is not legally possible for the Department to conclude that Indian bar producers failing the same tests in an even more egregious manner should be collapsed." See Plaintiffs' April 29, 2004 comments at 3. The plaintiffs have finally admitted, after numerous comment periods and two remands, that the "same tests" have been applied in both cases, supporting the Department's finding that "the same analytical framework has been applied in this case as that in German Bar." See Draft Remand II at 31. The plaintiffs, however, continue to contend that the facts between these two cases are the same. This assertion is simply not true. As explained in the Draft Remand II, the Department examined the production facilities and products produced by the German companies. See Draft Remand II at 30-32 (citing to German Bar at Comment 15). The Department found that there was a limited overlap in production (i.e., both companies produced bar in certain, limited size ranges) but that "extensive and expensive infrastructure changes" would have to be made for a "complete" or "partial" retooling to add facilities for the non-overlapped size ranges. Id. at 31 (citing to German Bar at Comment 15). The Department, therefore, continued to the "manipulation" prong of the collapsing test in a limited capacity (only where the production lines of the two companies overlapped). Id.

In this case, however, the Department found that there are significant or broad overlaps in production facilities for similar or identical bar *products*. See Draft Remand II at 28-30. The Department then conducted an analysis to discern whether substantial retooling would be needed in order for VAL (black bar producer) to begin producing bright bar, the product the Viraj Group exports to the United States. Id. at 33-38. The Department found that substantial retooling would not be required for VAL to add facilities to produce bright bar. Id. The Department then considered the "manipulation" prong and found that the Viraj Group companies should be collapsed. In summary, the identical analysis was applied in German Bar and here. Because the facts differed in the two cases, the results also differed.

Finally, the plaintiffs refer to the Department's use of Cold-Rolled from France in support the collapsing decision in this case, stating only that the facts of that case "argue directly against the government's position here." See Plaintiffs' April 29, 2004 comments at 3. The Department will not speculate as to why the plaintiffs assert that the facts of Cold-Rolled from France argue against the determination in this case. In the Draft Remand II, the Department explained the similar fact pattern between this case and Cold-Rolled from France in detail. See Draft Remand II at 12-14.

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 continues to believe that its decision to collapse the Viraj Group companies in the Final Results, Remand Results, and this redetermination is supported by substantial evidence and in accordance with the law.

Jeffrey May Acting Assistant Secretary for Import Administration	Date