

Consistent with the decision of the U.S. Court of Appeals for the Federal Circuit in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) ("*Timken*"), the Department will continue to order the suspension of liquidation of the subject merchandise until there is a "conclusive" decision in this case. If the case is not appealed, or if it is affirmed on appeal, the Department will instruct the U.S. Customs Service to revise the cash deposit rate and liquidate all relevant entries covering the subject merchandise for Viraj.

EFFECTIVE DATE: April 28, 2003.

FOR FURTHER INFORMATION CONTACT: Ryan Langan or Cole Kyle, AD/CVD Enforcement Group I, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-2613 or (202) 482-1503, respectively.

SUPPLEMENTARY INFORMATION:

Background

Following publication of the *Final Results*, Carpenter Technology Corp. ("*Carpenter*"), the petitioner in this case, and Viraj, a respondent in this case, filed lawsuits with the CIT challenging the Department's *Final Results*.

In the *Final Results*, in accordance with section 773(a)(1)(C) of the Tariff Act of 1930, as amended effective January 1, 1995 ("the Act") by the Uruguay Round Agreements Act ("URAA"), the Department calculated Viraj's antidumping duty margin using third country sales data for normal value because Viraj's home market sales information was incomplete. In using the third country database, the Department was unable to make adjustments for differences in merchandise because, although Viraj cooperated to the best of its ability, it did not report variable cost of manufacture ("VCOM") data in its third country and U.S. sales databases. See section 773(a)(6)(C) of the Act. Therefore, the Department relied on facts otherwise available to account for these differences. In doing so, the Department matched U.S. sales to third country sales according to size ranges ("banding") for price comparison purposes. Where banding did not result in an identical match, the Department applied the "all others" rate of 12.45 percent calculated in *Stainless Steel Bar from India*; Notice of Final Determination of Sales at Less Than Fair Value, 59 FR 66915 (December 28, 1994) ("*LTFV investigation*"). The "all

others" rate was calculated in accordance with the Tariff Act of 1930, as amended, pre-URAA.

The Court remanded the use of banding to the Department for further explanation. The Court did not find the Department's matching methodology unreasonable or inconsistent with law and recognized the Department's broad authority to determine and apply a model-matching methodology to determine a relevant "foreign like product" under sections 773 and 771(16) of the Act. However, the Court noted the apparent disparate treatment between Viraj and another respondent, Panchmahal Steel, Ltd. The Court found that this "disparity" and the Department's language in its *Issues and Decision Memorandum* necessitated a further explanation from the Department of its rationale for banding Viraj's sales.

Additionally, the Court questioned the Department's use of the "all others" rate applied to Viraj's unmatched U.S. sales. The Court found that the Department's use of a pre-URAA weighted-average "all others" rate that contained one margin based entirely on adverse facts available did not constitute non-adverse facts available. As such, the Court concluded that the Department could not apply this "all others" rate to Viraj, a cooperative respondent. See section 776(b) of the Act.

The *Draft Redetermination Pursuant to Court Remand* ("*Draft Results*") was released to the parties on September 5, 2002. In its *Draft Results*, the Department clarified to the court its use of banding and the dissimilar treatment of Viraj and Panchmahal Steel, Ltd. We also reconsidered our use of the "all others" rate from the *LTFV investigation* as neutral facts otherwise available where Viraj's U.S. sales did not have an identical match under the banding methodology. We modified our application of neutral facts otherwise available in the margin calculations by substituting for the "all others" rate the weighted-average dumping margin from Viraj's matched banded sales in order to conform with the Court's conclusion that the "all others" rate included adverse inferences.

Comments on the *Draft Results* were received from Carpenter on September 13, 2002, and Viraj submitted rebuttal comments on September 18, 2002. On September 30, 2002, the Department responded to the Court's Order of Remand by filing its Final Results of Redetermination pursuant to the Court remand ("*Final Results of Redetermination*"). The Department's

Final Results of Redetermination was identical to the *Draft Results*.

The CIT affirmed the Department's *Final Results of Redetermination* on March 18, 2003. See *Carpenter Technology Corp. v. United States*, Consol. Court No. 00-09-00447, Slip. Op. 03-28 (CIT 2003).

Suspension of Liquidation

The U.S. Court of Appeals for the Federal Circuit ("Federal Circuit"), in *Timken*, held that the Department must publish notice of a decision of the CIT or the Federal Circuit which is not "in harmony" with the Department's *Final Results*. Publication of this notice fulfills that obligation. The Federal Circuit also held that the Department must suspend liquidation of the subject merchandise until there is a "conclusive" decision in the case. Therefore, pursuant to *Timken*, the Department must continue to suspend liquidation pending the expiration of the period to appeal the CIT's May 17, 2003, decision or, if that decision is appealed, pending a final decision by the Federal Circuit. The Department will instruct the Customs Service to revise cash deposit rates and liquidate relevant entries covering the subject merchandise effective April 28, 2003, in the event that the CIT's ruling is not appealed, or if appealed and upheld by the Court of Appeals for the Federal Circuit.

Dated: April 21, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[C-122-815]

Alloy Magnesium from Canada: Final Results of Countervailing Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Countervailing Duty New Shipper Review.

SUMMARY: On January 28, 2003, the Department published the preliminary results of this new shipper review of the countervailing duty order on alloy magnesium from Canada. This new shipper review covers imports of subject merchandise from Magnola Metallurgy, Inc.