Decisions of the United States
Court of International Trade

Slip Op. 06–101

HENRY H. WOOTEN, III Plaintiff, v. UNITED STATES, SECRETARY OF AGRICULTURE, Defendant.

Before: WALLACH, Judge
Court No.: 05–00208

[Defendant's Motion to Dismiss is Granted and Plaintiff's Motion for Summary Judgment is Denied.]

Dated: July 6, 2006

*Miller & Chevalier Chartered*, (*Daniel P. Wendt*, and *Elizabeth Puskar*) for Plaintiff.
*Peter D. Keisler*, Assistant Attorney General; *David M. Cohen*, Director; *Patricia M. McCarthy*, Assistant Director; *Delfa Castillo*, Trial Attorney, U.S. Department of Justice, Civil Division, Commercial Litigation Branch; and *Jeffrey Kahn*, Attorney-Advisor, Office of the General Counsel, International Affairs & Commodity Programs Division, U.S. Department of Agriculture, of Counsel, for Defendant.

***OPINION***

**Wallach, Judge:**

## I
## Introduction

This matter comes before the court on Defendant's Motion to Dismiss ("Defendant's Motion") filed on January 18, 2006, and Plaintiff's Motion for Judgment Upon Agency Record ("Plaintiff's Motion") filed on February 22, 2006. Plaintiff has failed to establish the facts necessary to warrant his eligibility for trade adjustment assistance benefits. Defendant's Motion is granted and Plaintiff's Motion is denied. This court has jurisdiction pursuant to 19 U.S.C. § 2395 (2004).

## II
## Background

On November 25, 2003, the Foreign Agriculture Service ("FAS") approved the Catfish Farmers of America's petition for certification for eligibility for trade adjustment assistance for catfish producers in the states of Alabama, Arkansas, Florida, Georgia, Idaho, Illinois, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Nevada, North Carolina, Ohio, Oklahoma, South Carolina, Texas, and Utah. *See Trade Adjustment Assistance for Farmers*, 68 Fed. Reg. 66,072 (Nov. 25, 2003). On January 23, 2004, Plaintiff Henry Wooten, a catfish farmer from Arkansas, submitted his application for TAA benefits and also attended the requisite training required under the TAA program. Plaintiff's Opposition at 3. The U.S. Department of Agriculture ("Defendant" or "Agriculture") denied Plaintiff's application for trade adjustment assistance ("TAA") because his net fishing income did not decline from 2001 to 2002. Specifically, Agriculture found that since Plaintiff's fishing enterprise lost less money in 2002 than in 2001 he was ineligible for TAA benefits. Defendant's Motion at 6–7. Plaintiff filed a Summons and Complaint challenging Defendant's determination.

## III
## Arguments

Defendant argues that Plaintiff has failed to state a claim upon which relief may be granted and that this matter should be dismissed. Defendant says that Plaintiff has not alleged facts sufficient to warrant eligibility for TAA benefits because Plaintiff's net fishing income did not decline in 2002 as compared to 2001 as required by the statute.

Plaintiff argues that Agriculture's regulations are arbitrary and capricious because they do not give discretion to Agriculture to distribute TAA benefits to those fisherman that are experiencing economic hardship although they did not suffer a decline in net fishing income. Plaintiff also claims that Agriculture has unreasonably defined net farm income to include net farm loss contrary to Congressional intent.

## IV
## Applicable Legal Standard

### A
### Motion to Dismiss

When reviewing a motion to dismiss, a court must decide whether all factual allegations taken as true and construed in the light most favorable to the plaintiff are sufficient to state a legal claim. *See Degussa Canada Ltd. v. United States*, 889 F. Supp. 1543, 1545 (CIT

1995) (citing *Halperin Shipping Co., v. United States*, 13 CIT 465, 466 (1989)). Dismissal of a complaint is appropriate when it appears that plaintiff can prove no set of facts which would entitle him to legal or equitable relief. *See Constant v. Advanced Micro-Devices, Inc.*, 848 F.2d 1560, 1565 (Fed. Cir. 1988) (citing *Conley v. Gibson*, 355 U.S. 41, 45–46 (1957).

### B
### Motion for Summary Judgment

This court has jurisdiction to affirm or remand the actions of the Secretary of Agriculture "in whole or in part." 19 U.S.C. § 2395(c) (2004). The Department of Agriculture's determination regarding certification of eligibility for TAA will be upheld if it is supported by substantial evidence and otherwise in accordance with law. 19 U.S.C. § 2395(b); *see Van Trinh v. U.S. Sec'y of Agric.*, 395 F. Supp. 2d 1259, 1265 (CIT 2005); *see also Former Employees of Swiss Indus. Abrasives v. United States*, 17 CIT 945, 947, 830 F. Supp. 637, 639 (1993). 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." *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 477 (1951) (quoting *Consol. Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)). Courts have found that substantial evidence "is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the [same] evidence does not prevent an administrative agency's finding from being supported by substantial evidence." *Consolo v. Fed. Mar. Comm'n*, 383 U.S. 607, 620 (1966) (citations omitted). The scope of review of the agency's actions is limited to the administrative record. *Defenders of Wildlife v. Hogarth*, 25 CIT 1309, 1315, 177 F. Supp. 2d 1336, 1342–43 (2001). In addition, the Administrative Procedures Act ("APA") provides that agency determinations shall be held invalid if they are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706 (2004).

## V
## Discussion

### A
### Plaintiff Has Not Stated a Claim Upon Which Relief May be Granted

Defendant claims that since Plaintiff did not have a decrease in net farm income from 2001 to 2002, Plaintiff's Amended Complaint does not allege facts sufficient to warrant eligibility for TAA benefits and consequently fails to state a claim upon which relief may be granted. Defendant's Motion at 9. Specifically, Defendant argues that Plaintiff never submitted verifiable net fishing income during the application review period and only provided the requisite docu-

mentation after the court granted his motion to supplement the record. *Id.* at 10. Defendant further asserts that Plaintiff's income documentation indicates that he did not suffer a larger loss in 2002 than he did in 2001, and accordingly failed to qualify for TAA benefits. *Id.* at 10–11; Defendant's Reply at 1. Since, Plaintiff failed to provide proof of his qualification for TAA cash payments, Defendant argues that Plaintiff's Amended Complaint does not state a claim upon which relief can be granted and thus should be dismissed. *Id.* at 15. Furthermore, Defendant requests that if the court does not grant its motion to dismiss, that it affirm Agriculture's determination denying Plaintiff's application for TAA benefits. Defendant's Response at 1.

Plaintiff asserts that although he suffered a larger loss in fishing income in 2001 as compared to 2002, he is still enduring economic hardship and should qualify for TAA benefits. Plaintiff's Motion at 1–2. Plaintiff admits, however, that "under Agriculture's regulations implementing the TAA for Farmers program and the current administrative record, as supplemented, Mr. Wooten cannot show that his net farm income (as defined by regulation to included net farm losses) in 2002 was less than his net farm income in 2001." *Id.* at 5.

The TAA statute at 19 U.S.C. § 2401e(a)(1) articulates the basic qualifying requirements which must be met by petitioners prior to receiving TAA benefits. One of the primary conditions for the grant of TAA is that "[t]he producer's net farm income (as determined by the Secretary) for the most recent year is less than the producer's net farm income for the latest year in which no adjustment assistance was received by the producer under this part." 19 U.S.C. § 2401e(a)(1)(C). Agriculture's regulations define "net fishing income" as "net profit or loss, excluding payments . . . reported to the Internal Revenue Service for the tax year that most closely corresponds with the marketing year under consideration." 7 C.F.R. § 1580.102. Agriculture's regulations require a producer to submit a certification that "net farm or fishing income was less than during the producer's pre-adjustment year." 7 C.F.R. § 1580.301(e)(4).

In this instance, Plaintiff originally failed to provide the required certification but was permitted to supplement the record during the course of this litigation. *See Wooten v. United States Sec'y of Agric.*, Slip Op. 06–14, 414 F. Supp. 2d 1313 (CIT 2006). As Defendant correctly asserts, Plaintiff, despite that supplementation, still fails to demonstrate that his income declined between 2001 and 2002. Plaintiff himself admits that he cannot demonstrate that his net fishing income (using the current definition to include net fishing losses) was less in 2002 than in 2001. Plaintiff's Response at 5. In fact, his reported net loss was ($86,470) in 2002, as compared to a net loss in 2001 of ($125,671), an actual increase in income of $39,201. Plaintiff's Response at 2. Taking all the allegations in Plaintiff's Amended Complaint in the light most favorable to him, he continues to be in-

eligible for TAA cash benefits pursuant to 19 U.S.C. § 2401e because there was no decrease in income between 2001 and 2002. *Degussa Canada Ltd.*, 889 F. Supp. at 1545. As a result, unless Defendant's application of the statute is not in accordance with law, this matter must be dismissed for failure to state a claim upon which relief may be granted.

### B
### The Department of Agriculture's Definition of Net Fishing Income is in Accordance with Law

Plaintiff argues that Agriculture's definition of net farm income is arbitrary, capricious, and contrary to Congressional intent. Plaintiff's Motion at 1, 5. Plaintiff asserts that under Agriculture's current definition of net farm income, his income in 2002 is "deemed to be greater" than his income in 2001 because "his net farm losses were smaller in 2002 than in 2001." *Id.* at 6. Plaintiff contends that Agriculture should set net fishing income to zero in those cases when a fisherman has net losses in consecutive years, and also waive the requirement that he must certify that his net fishing income was less than during the pre-adjustment year. *Id.* at 6–7. According to Plaintiff, failure to modify the definition and certification requirements is contrary to Congress' intent to provide TAA allowances to farmers in adversely affected industries. *Id.* at 7.

Defendant argues that given the standard of review articulated by the Supreme Court in *Chevron U.S.A. Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837 (1984), and Congress' specific grant of authority to Agriculture to define net fishing income, Agriculture's regulation and its determinations made thereof are in accordance with law. Defendant's Response at 5–6. Defendant further counters that if Plaintiff's interpretation of net fishing income is adopted by Agriculture, then it would actually preclude him from receiving benefits because if a producer's "income was deemed zero in both years, there would be *no reduction* in income between the two years." Defendant's Reply at 5–6 (emphasis in original). Finally, Defendant asserts that because Congress left the definition of net fishing income solely to the discretion of the Secretary of Agriculture, its decision to include net profit or loss in the definition is also in accordance with Congressional intent. Defendant's Response at 16–17.

In determining whether or not an agency properly interpreted and implemented a statute, courts undertake the two-step analysis prescribed by *Chevron*. The first step in this analysis is whether Congress has directly spoken on the issue in the text of the statute applying the canons of statutory construction and examining the legislative history accompanying the statute. *Id.* at 842; *see also Floral Trade Council v. United States*, 23 CIT 20, 22 n. 6, 41 F. Supp. 2d 319, 323 n. 6 (1999). If the statute is silent or ambiguous, then the court takes the second step and examines whether or not the agen-

cy's interpretation is permissible. *Id.* at 843. A permissible interpretation of the statute is one that is reasonable and rational. *See Fujitsu Gen. Ltd. v. United States*, 88 F.3d 1034, 1038 (Fed. Cir. 1996); *see also Steen v. United States*, 395 F. Supp. 2d 1345, 1349 (CIT 2005). However, the court may not substitute its judgment for that of the agency's. *See Koyo Seiko Co. v. United States*, 36 F.3d 1565, 1570 (Fed. Cir. 1994) (holding that "a court must defer to an agency's reasonable interpretation of a statute even if the court might have preferred another").

In this matter, Agriculture's definition of "net fishing income" is reasonable and Congressional intent is clear. Congress clearly stated in 19 U.S.C. § 2401e(a)(1)(C) that "net farm income" shall be determined by the Secretary, precluding any need to go beyond the plain meaning of the statute to discern Congressional intent. *See Steen* 395 F. Supp.2d at 1349–50. Congress intended to give Defendant considerable discretion on this issue; that discretion has been reasonably and rationally exercised. The terms "net farm" and "net fishing" income are used by the Secretary of Agriculture to identify those producers who have been harmed by import competition for the specific purpose of determining who is eligible for TAA benefits. *See* 19 U.S.C. § 2401e(a)(1). The Secretary defined "net farm" and "net fishing" income as follows in its regulations:

> *Net Farm Income* means net farm profit or loss, excluding payments under this part, reported to the Internal Revenue Service for the tax year that most closely corresponds with the marketing year under consideration.
>
> *Net Fishing Income* means net profit or loss, excluding payments under this part, reported to the Internal Revenue Service for the tax year that most closely corresponds with the marketing year under consideration.

7 C.F.R. § 1580.102 (2004). The definitions are in accordance with Congressional intent. *See generally Steen*, 395 F. Supp.2d at 1349–51 (discussing the legislative history of 19 U.S.C. §§ 2401a - 2401e).

This court has stated in *Viet Do v. U.S. Sec'y of Ag.*, 427 F. Supp. 2d 1224 (CIT 2006), *Cabana v. U.S. Sec'y of Agric.*, 427 F. Supp. 2d 1232 (CIT 2006), and *Steen v. United States*, 395 F. Supp.2d 1345 (CIT 2005), that the definition of "net farm" and "net fishing" income is in accordance with the statutory language of 19 U.S.C. § 2401e. Plaintiff here urges an interpretation of the statute that would define "net fishing income" to not include net fishing losses (and instead set "net fishing income" to zero in instances where a fisherman has net losses. Plaintiff's Motion at 6. Agriculture's regulations permissibly construe the statutory language granting the Secretary the authority to define "net farm" and "net fishing" income and were pro-

mulgated following formal notice and comment procedures.[1] *See Chevron* 467 U.S. at 843; *see Steen*, 395 F. Supp.2d at 1350.

In this case, although the application of the regulation to Mr. Wooten results in denial of TAA benefits to Mr. Wooten, the determination itself does not violate the applicable statute or regulations. As a result, Defendant's determination that Plaintiff does not qualify to TAA benefits pursuant to 19 U.S.C. § 2401e is in accordance with law and supported by substantial evidence.

## V
## Conclusion

For the reasons stated above, Defendant's Motion is granted and Plaintiff's Motion is denied.

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[1] The Foreign Agricultural Service ("FAS") proposed "Part 1580 - Trade Adjustment Assistance for Farmers," a rule to implement the Chapter 6 of Title II of the Trade Act of 1974, as amended by the Trade Act of 2002. Trade Adjustment Assistance for Farmers, 68 Fed. Reg. 39,478 (July 2, 2003). Under the proposed rule, a group of agricultural commodity producers could petition the FAS for TAA. *Id.* at 39,479. If the FAS Administrator determined that "the national average price in the most recent marketing year for the commodity produced by the group is equal to or less than 80 percent of the average of the national average prices in the preceding 5 marketing years and [whether] increases in imports of that commodity contributed importantly to the decline in price," it would certify the group as eligible for TAA. *Id.* Upon certification, individual producers of the certified commodity could petition the FSA to receive basic information and technical assistance, and subject to additional eligibility requirements, cash payments. *Id.* The additional eligibility requirements included a "certification that [the individual producers'] net farm income is less than that for the latest year in which no adjustment assistance was received." *Id.* at 39,481 (quoting proposed 7 C.F.R. § 1580.301(e)(4)).

After inviting comments on the proposed rule, the final rule addressed respondents' comment regarding the net income requirement. Trade Adjustment Assistance for Farmers, 68 Fed. Reg. 50,048 (August 20, 2003). Three respondents were concerned that "producers managing diversified farms might not qualify for adjustment assistance payments due to higher earnings from sales of other commodities." *Id.* at 50,049. The FAS countered that TAA's purpose was limited to providing assistance to those producers facing "economic hardship." *Id.* Furthermore, the FAS emphasized that the TAA payments would be excluded from consideration when it determined whether a producer was eligible in subsequent qualifying years. *Id.* After consideration of respondents' comments, FAS continued to define net farm and fishing income as overall income, that is, the income derived from all of an individual producer's catch. To date, the FAS has not published an amendment that changes this definition. *See, e.g.*, Trade Adjustment Assistance for Farmers, 68 Fed. Reg. 62,731 (November 6, 2003).

Slip Op. 06–102

CARPENTER TECHNOLOGY CORPORATION, Plaintiff, v. UNITED STATES, Defendant, -and- VIRAJ GROUP, Intervenor-Defendant.

Court No. 02–00448

*Memorandum*

[Final results of ITA redetermination pursuant to court remand affirmed.]

Dated: July 7, 2006

*Collier Shannon Scott, PLLC* (*Robin H. Gilbert*) for the plaintiff.

*Peter D. Keisler*, Assistant Attorney General; *David M. Cohen*, Director, and *Patricia M. McCarthy*, Assistant Director, Commercial Litigation Branch, Civil Division, U.S. Department of Justice (*Michael Panzera*); and Office of Chief Counsel for Import Administration, U.S. Department of Commerce (*Ada E. Bosque*), of counsel, for the defendant.

AQUILINO, Senior Judge: As pointed out in this court's slip opinion 04–103, 28 CIT ___ , ___ , 344 F.Supp.2d 750, 751 (2004), filed herein, this is another case contesting a determination of the International Trade Administration, U.S. Department of Commerce ("ITA") to group or not to group ("collapse") together Indian enterprises for purposes of enforcement of its *Antidumping Duty Order: Certain Stainless Steel Wire Rods from India*, 58 Fed.Reg. 63,335 (Dec. 1, 1993). That opinion resulted in an order of remand to the ITA

> for calculation and imposition of individual antidumping-duty margins upon Viraj Impoexpo, Ltd. and Viraj Forgings, Ltd. in the manner of the approach taken by the agency, and affirmed by the court, in *Viraj Group, Ltd. v. United States*, 25 CIT 1017, 162 F.Supp.2d 656 (2001).

28 CIT at ___ , 344 F.Supp.2d at 755.

In response, the defendant has filed the agency's *Final Results of Redetermination Pursuant to Court Remand* (Feb. 18, 200[5]), to wit, weighted-average margins of 3.77 percent for Viraj Impoexpo, Ltd. ("VIL") and 1.29 percent for Viraj Forgings, Ltd. ("VFL"). Those *Final Results* report ITA receipt of a submission from the petitioner/plaintiff Carpenter that

> it does not believe the Court meant to separate VIL and VFL but that it meant to only separate VAL [Viraj Alloys, Ltd.] from those two companies. . . . We disagree.

*Final Results*, p. 4 (citation omitted). Suffice it to confirm that the plaintiff, not the defendant, read slip opinion 04–103 correctly.

Nonetheless, counsel have since filed Plaintiff's Comments in Support of Agency's Final Results of Redetermination Pursuant to Court Remand, the bottom line of which is a request that the court "affirm" those results. But they also request that the court

> reject Commerce's attempts to re-argue the issues in this case. Commerce has not only continued to disagree with the Court on the collapsing issue, but has not been fully forthcoming in its presentation of the issue. In particular, on page five of its Remand Results, Commerce argues that collapsing was appropriate in this case because "the Department has continued to find it proper to collapse the companies of Viraj after the issue was remanded to us for reconsideration." *Id.*, citing *Slater Steels Corp. v. United States*, 316 F.Supp.2d 1368 (Ct. Int'l Trade 2004). Given Commerce's citation of the *Slater Steels* case as support for its argument that collapsing is still appropriate, it was incumbent on Commerce to update the Court as to the status of the *Slater Steels* litigation, and report that the agency's decision to continue to collapse the Viraj Group companies had been found unlawful. . . . In Slip Op. 05–23, the *Slater Steels* Court "remanded to Commerce for calculation and imposition of individual antidumping margins upon VAL, VIL, and VFL." *Slater Steels Corp. v. United States*, Slip Op. 05–23 at 15 (Ct. Int'l Trade Feb. 17, 2005). Thus, contrary to Commerce's argument in the Remand Results that it was justified in its position in favor of collapsing the Viraj Group companies, the findings in *Slater Steels* lend yet further support to this Court's findings in the present case.

Plaintiff's Comments in Support of Agency's Final Results, pp. 1–2 (footnote omitted). This has engendered a retort by the defendant that the Court of Appeals for the Federal Circuit ("CAFC")

> has expressly indicated that it is entirely appropriate for Commerce to note its disagreement with a Court's conclusion notwithstanding its compliance with an order directing certain actions pursuant to remand[1]

and that,

> contrary to Carpenter's insinuation, litigation in *Slater Steels* has not concluded. The agency simply referred to *Slater Steels* in the context of *preserving our objections* to th[is] Court's opinion and order.[2]

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[1] Defendant's Response to Plaintiff's Comments in Support of Agency's Final Results of Redetermination Pursuant to Court Remand, second page, citing *Viraj Group, Ltd. v. United States*, 343 F.3d 1371, 1376 (Fed.Cir. 2003).

[2] *Id.*, third page (emphasis in original).

Indeed, the defendant subsequently docketed an appeal from the final judgment entered in *Slater Steels*, No. 06–1159 (Fed.Cir. Dec. 29, 2005), although it recently apparently moved voluntarily to dismiss that appeal, which motion was granted by the CAFC on May 17, 2006.

Whatever the precise significance of that dismissal may be given the Viraj Group's own, continuing appeal in *Slater Steels*, No. 06–1158 (Fed.Cir.), in this case the intervenor-defendant Viraj Group has taken no position on the *Final Results* at bar. Since the plaintiff and the defendant are now in agreement thereon and the CAFC tends to "[w]eigh[ ] heavily" consent among otherwise-adverse parties in a case like this[3], judgment affirming those *Final Results* will now be entered.

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[3] *See, e.g., Ugine and ALZ Belgium v. United States*, ____ F.3d ____, 2006 WL 1642648, at *7 (Fed.Cir. June 15, 2006).