

Globe Metallurgical Inc. v. United States, et al.
Consol. Court No. 07-00386; Slip Op. 08-105 (Ct. Int’l Trade 2008)

FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND

SUMMARY

The U.S. Department of Commerce (“Department”) has prepared these final results of redetermination pursuant to the remand order of the U.S. Court of International Trade (the “Court”) in *Globe Metallurgical Inc. v. United States, et al.*, Consol. Court No. 07-00386; Slip Op. 08-105 (CIT October 1, 2008) (“*Remand Order*”). The Court’s opinion and remand order concerned the Department’s results in *Silicon Metal from the People’s Republic of China: Notice of Final Results of 2005/2006 New Shipper Reviews*, 72 Fed. Reg. 58,641 (October 16, 2007) (“*Final Results*”) and accompanying Issues and Decision Memorandum (“*I&D Memo*”). The Court remanded the valuation of the by-product silica fume to the Department and directed the Department “to obtain better information for valuing silica fume or to use information on the record that relates specifically to the by-product silica fume.” *See Remand Order* at 14.

On October 9, 2008, we reopened the record to allow interested parties an opportunity to provide additional information for use in valuing silica fume. Globe Metallurgical Inc. (“Petitioner”), and Jiangxi Gangyuan Silicon Industry Co., Ltd. (“Jiangxi Gangyuan”), Shanghai Jinneng International Trade Co., Ltd. (“Shanghai Jinneng”), and Datong Jinneng Industrial Silicon Co. (“Datong Jinneng”) (collectively, “Respondents”) submitted comments on October 16, 2008, and both Petitioner and Respondents submitted rebuttal comments on October 24, 2008. The Department summarized and addressed these comments in its December 23, 2008 Draft Results of Redetermination Pursuant to Court Remand (“*Draft Remand Results*”), as further discussed below. *See Draft Remand Results* at 6-10.

On December 23, 2008, the Department released its *Draft Remand Results* using a revised surrogate value for silica fume based on a subset of World Trade Atlas (“WTA”) Indian import statistics for silicon dioxide from silicon metal or ferrosilicon producing countries. On January 9, 2009, the Department received comments on the *Draft Remand Results* from Petitioner. On January 14, 2009, the Department received rebuttal comments from Respondents.

Based on the comments received by interested parties, and consistent with the Court’s remand instructions, the Department has revised, as appropriate, the surrogate value component of Respondents’ margin calculation as further discussed below. As a result of the Department’s remanded redetermination, the Department has calculated the following margins:

Shanghai Jinneng: 50.41%

Jiangxi Gangyuan: 71.57%

1. Surrogate Valuation of the By-Product Silica Fume

In the *Final Results*, the Department used WTA Indian import statistics for silicon dioxide to derive an average unit value (“AUV”) of approximately \$1700/MT as the surrogate value for silica fume, a by-product produced from silicon metal or ferrosilicon production, which consists mainly of silicon dioxide. *See I&D Memo* at Comment 5. In accordance with the Court’s instructions on remand, as the Court expressly gave the Department the opportunity to obtain better information to value silica fume, we reopened the record to allow all interested parties an opportunity to provide new surrogate value information for the Department to use in valuing silica fume. Petitioner and Respondents both submitted comments and rebuttal comments, which as noted above, are addressed in the *Draft Remand Results*. *See Draft Remand Results* at 6-10. The Department also conducted its own extensive search to try to locate new

sources of surrogate values for the silica fume. However, we were unable to find alternative, reliable sources. After careful consideration of the reliability and accuracy of all available options, the Department revised the surrogate value for silica fume to approximately \$780/MT, by applying Respondents' recommendation that the Department adjust WTA Indian import data for silicon dioxide to include only entries under Harmonized Tariff Schedule ("HTS") 2811.22.00 from the countries identified as silicon metal or ferrosilicon producers by the U.S. Geological Survey ("USGS") 2005 Minerals Yearbook for Ferroalloys. *See* Respondents' October 16, 2008, submission at 3, Exhibit 1. Though the USGS identified 31 countries as producers of silicon metal or ferrosilicon, the Department adjusted the WTA data to exclude two groups of countries: first, the Department excluded countries that it has previously determined to be non-market economies; second, the Department further adjusted the list to exclude countries not covered by the USGS list of producers of silicon metal or ferrosilicon. Following these adjustments, the Department was left with a list of 13 countries identified by the USGS as silicon metal or ferrosilicon producers (*i.e.*, Brazil, Spain, Iran, Egypt, South Africa, Australia, Norway, France, Sweden, United States, Italy, Canada, and North Korea). Thus, based on the adjustments made to the original WTA Indian import data relied upon in the *Final Results* covering a basket tariff category of products from 25 countries, the revised WTA Indian import data relied upon in this redetermination pursuant to remand are limited to WTA data covering imports to India from 13 countries identified by the USGS as producers of silicon metal or ferrosilicon. It is not disputed by any interested party that silica fume is produced as a by-product from silicon metal or ferrosilicon production. *Id.*; *see also* Petitioner's June 26, 2007, submission at 5, 6.

Interested Party Comments:

Petitioner asserts that the Court instructed the Department to use a product-specific surrogate value, and that the Department has not done so. Petitioner argues that including silicon dioxide imports from all countries identified by USGS as producers of silicon metal or ferrosilicon is still too broad. Petitioner argues that the Department's adjusted WTA data distorts the AUV calculation by capturing many high-end products, as shown by either the import composition descriptions of silicon dioxide entries appearing in Infodrive data or based on the AUVs derived from WTA data, broken down by country. Petitioner maintains that the Department should use Infodrive data, as the Department has used Infodrive data in the past to either reject entire¹ or a certain portion² of basket categories. Therefore, Petitioner contends that the Department should either use a smaller subset of WTA data that both Infodrive data and WTA AUVs show to consist entirely or almost entirely of silica fume. If the Department rejects the use of Infodrive data, Petitioner recommends using a subset of WTA data that excludes any country with an AUV that exceeds the highest product-specific value for silica fume during the period of review ("POR") on the record. Finally, Petitioner notes that the Department mistakenly used the same exchange rate for both Shanghai Jinneng and Jiangxi Gangyuan based on the exchange rate for U.S. Dollars from Indian Rupees for Shanghai Jinneng's date of sale, when a separate exchange rate should have been applied to Jiangxi Gangyuan, based on its date

¹ See Final Results of Redetermination Pursuant to Court Remand, *Dorbest Limited v. United States*, Court No. 05-00003, Slip Op. 06-160, at 49-52 (May 25, 2007) ("*Dorbest II*"); see also *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Second Administrative Review*, 72 Fed. Reg. 13,242 (March 21, 2007), and accompanying Issues and Decision Memorandum at Comment 8D ("*Frozen Fish Fillets*").

² See *Lightweight Thermal Paper From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 Fed. Reg. 57,329 (October 2, 2008), and accompanying Issues and Decision Memorandum at Comment 9 ("*Lightweight Thermal Paper*"); see also *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China*, 70 Fed. Reg. 24,502 (May 10, 2005), and accompanying Issues and Decision Memorandum at Comment 1 ("*Chlorinated Isos*").

of sale. *See* Petitioner's January 9, 2009, submission.

Respondents assert that the revised surrogate value used by the Department in the *Draft Remand Results*, approximately \$780/MT, is reasonable as it is well within the range of \$290/MT to \$1100/MT, which covers all values for silica fume on the record. Respondents argue that while the value the Department used may include some non-silica fume products, the revised methodology better relates to the specific by-product, silica fume, and is consistent with the Court's *Remand Order* and judicial precedent. Respondents also note that despite the Department's stated concerns with respect to the Infodrive data on the record of this review, Petitioner did not address the Department's concerns regarding the Infodrive data and that Petitioner's proposed methodology using Infodrive is contrary to the Department's practice with respect to Infodrive data. Respondents assert that, as explained in *Lightweight Thermal Paper*, the Department only considers Infodrive data when the following conditions have been satisfied: 1) there is direct and substantial evidence from Infodrive reflecting the imports from a particular country; 2) a significant portion of the overall imports under the relevant HTS category is represented by the Infodrive data; and 3) distortions of the AUV in question can be demonstrated by the Infodrive data. Respondents assert that these conditions are not met in this case. *See* Respondents' January 14, 2009, submission.

Department's Position

After reopening the record on remand and considering all interested parties' comments and evidence on the record, both prior to and subsequent to the release of the *Draft Remand Results*, we continue to be left with imperfect options. In accordance with its general practice for non-market economy ("NME") cases, the Department continues to prefer to use surrogate values

that are publicly available, representative of broad market averages, contemporaneous with the POR, specific to the item in question, and exclusive of taxes on exports. In the instant case, the Court determined that the use of unadjusted WTA data for HTS 2811.22.00 (silicon dioxide) to value silica fume was not supported by substantial evidence, as the Court found that the “data for the broader category of silicon dioxide captures too many products that are not the by-product silica fume.” *See Remand Order* at 14. Based on the Court’s instruction and the scarcity of reliable data options available on the record, we are compelled to depart from our normal practice of reliance upon unadjusted WTA data in order to satisfy the Court’s instruction that we find an alternative value that better relates to silica fume. The Department has conducted an exhaustive analysis of the available options based on record evidence and determined that, in this instance, the best available information on the record for valuing silica fume is derived from WTA data for silicon dioxide imports, adjusted to include only entries into India from countries identified by the USGS 2005 Minerals Yearbook for Ferroalloys as producers of silicon metal or ferrosilicon, and excluding data from countries that the Department has determined to be NMEs and/or countries that are not covered by the USGS list. *See* Respondents’ October 16, 2008, submission at 3, Exhibit 1. This determination is consistent with our *Draft Remand Results*.

By adjusting the WTA data to include imports only from countries identified by the USGS as producers of silicon metal or ferrosilicon, the Department has adjusted the WTA data such that the information relied upon in the valuation of silica fume relates more specifically to silica fume than the unadjusted WTA data. The Department has, in limited instances, made similar adjustments. As explained in the *Draft Remand Results*, in the investigation of chlorinated isocyanurates from the People’s Republic of China, for example, in valuing the input

for cyanuric acid, the Department “considered only information from countries which produced cyanuric acid as per the Directory of Chemical Producers, eliminating from consideration data from countries which produced cyanuric chloride, in an effort to increase the likelihood that the data used in the calculation reflected cyanuric acid.” *See Chlorinated Isos*, 70 Fed. Reg. 24,502 at Comment 1, fn. 25; *see also Draft Remand Results* at 9, 10. In accordance with the Court’s instruction that we “obtain better information for valuing silica fume or . . . use information on the record that relates specifically to the by-product silica fume,”³ we find that the use of the revised surrogate value is supported by our practice in *Chlorinated Isos* and substantial evidence supporting the reliability of the USGS and WTA data.

With respect to Petitioner’s recommendation to further exclude from the USGS data seven countries for which Infodrive data shows that the silicon dioxide imports are not entirely or almost entirely silica fume, we disagree. As the Department explained in its *Final Results*, and in its *Draft Remand Results*, a comparison of WTA data and Infodrive data for imports into India under HTS 2811.22.00 demonstrates that there are significant and, to date, unresolved discrepancies between the two data sets that render the Infodrive data unusable. For example, for the WTA data covering Indian imports from 13 silicon metal or ferrosilicon producing countries used in the calculation of surrogate value in this remand, WTA reports 4437 MT of silicon dioxide, whereas Infodrive reports 6554 MT, of which an unknown amount are non-customs duty entries. *See* Petitioner’s January 9, 2009, submission at Exhibit 1. As we have stated, because the data sets are not consistent and because we know that an unknown number of the Infodrive entries were not subject to customs duties, the Department has found Infodrive to be unreliable as a corroborative tool in this case and we cannot make definitive assessments of

³ *See Remand Order* at 14

the import composition of the WTA data based on information derived from Infodrive. *See I&D Memo* at Comment 5; *see also Draft Remand Results* at 7-8. We note that although Petitioner continues to suggest the use of Infodrive, Petitioner has not resolved or addressed the concerns raised by the Department concerning Infodrive's reliability.

With respect to the cases cited by Petitioner where the Department relied upon Infodrive data, even though the Infodrive data did not match exactly with the WTA data and/or the official import data, to reject certain HTS categories in whole or in part, the Department relied upon Infodrive data based on the specific circumstances present in those cases. For example, in three of the four cases cited by Petitioner (*i.e.*, *Dorbest II*, *Lightweight Thermal Paper*, and *Chlorinated Isos*), the volume of imports in the Infodrive data accounted for a significant percentage of the WTA data or the overall import data. *See Dorbest II* at 49-52 (for the input in question, the Infodrive data accounted for 80.74% of the relevant HTS category); *Lightweight Thermal Paper* at Comment 9 (for the input in question, the Infodrive data represented 88% of relevant imports); *Chlorinated Isos* at Comment 1 (the Infodrive data matched 50% of the official data and, as explained above, the Department applied the same rationale used in this case to restrict the WTA data to a subset of entries from countries that were producers of the specific input in question). In the instant case, as noted in the *Final Results* and *Draft Remand Results*, we are unable to determine what percentage of the total import data is captured by the Infodrive data, when compared to the WTA data. *See I&D Memo* at Comment 5; *see also Draft Remand Results* at 7-8. Moreover, in *Frozen Fish Fillets*, while a specific percentage comparison of Infodrive to official import data was not provided, the Department had alternative, viable options other than individual price quotes and Infodrive data for use in valuing the input in question.

The Department used a contemporaneous value for the input in question from the financial statement of a similar Indian producer that the Department had found to be reliable in the original investigation. *See Frozen Fish Fillets* at Comment 8D. Thus, given the circumstances present in the instant case, the Department is simply applying its regular practice with respect to Infodrive, and finds the Infodrive data unusable in this case, for the reasons noted in the *Final Results* and the *Draft Remand Results*.

Finally, with respect to Petitioner's argument that the Department should further exclude imports from five countries because they have high AUVs according to the Infodrive data, we also disagree. Given the Department's stated concerns regarding Infodrive, we do not consider the highest product-specific POR value for silica fume appearing in Infodrive to be a reliable benchmark for use in excluding any particular country. In addition, we disagree, as a matter of practice, with the general idea of excluding entries from a country solely because the value or the AUV for that country exceeds an arbitrary "value" established by an interested party as being "too high", or "too low" for that matter. It is the Department's practice to select surrogate values based on objective criteria, such as countries identified by the USGS as producers of silicon metal or ferrosilicon. We again note that there is no single surrogate value option offered by any interested party that guarantees a perfect match with the silica fume sold by Respondents. However, neither the statute nor the Court's instructions require that the Department demonstrate that each entry into India provides a perfect match for the silica fume sold by each respondent. Rather, the Court required that the Department select a value based on "better information" than that used in the *Final Results*. By limiting the WTA data to entries from countries identified by the USGS as producers of silicon metal or ferrosilicon, minus those countries identified as NMEs

and those not covered by the WTA data, we have complied with the Court's *Remand Order* and our redetermination pursuant to remand is supported by substantial evidence.

As for the use of company-specific exchange rates, we agree with Petitioner, and have used the appropriate exchange rate in the calculation for Jiangxi Gangyuan for purposes of these final results of redetermination. See "Analysis Memorandum for the Final Results of the Redetermination of the Silica Fume By-product Valuation Remand for Antidumping Duty New Shipper Review of Silicon Metal from the People's Republic of China for Jiangxi Gangyuan Silicon Industry Co., Ltd.," dated February 2, 2009.

2. Exclusion of North Korea in Surrogate Value Calculation

In the *Draft Remand Results*, the Department included entries into India of silicon dioxide from North Korea in the surrogate value calculation.

Interested Party Comments:

Petitioner states that the Department should exclude Indian imports from North Korea because North Korea is an NME. Petitioner argues that the Department has an established practice of excluding imports from North Korea, as demonstrated in at least two recent determinations.⁴ See Petitioner's January 9, 2009 submission at 10. Respondents did not comment on this issue.

Department's Position

We disagree with Petitioner. While the Department excluded imports from North Korea in *Helical Spring Lock Washers*, we subsequently determined to include import data from

⁴ See *Helical Spring Lock Washers From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 73 Fed. Reg. 4,175 (January 24, 2008), and accompanying Issues and Decision Memorandum at Comment 1 ("*Helical Spring Lock Washers*"); see also *Notice of Antidumping Duty Order: Certain Steel Nails From the People's Republic of China*, 73 Fed. Reg. 44,961, 44,962 (August 1, 2008) ("*Nails*").

countries the Department has not determined are NMEs, such as North Korea. *See Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 Fed. Reg. 40,485 (July 15, 2008), and accompanying Issues and Decision Memorandum at Comment 9 (“*Tires*”)⁵. Although we subsequently excluded data from North Korea in *Nails*, the Department explained that this exclusion was a “methodological error” that could not be corrected under 19 C.F.R. § 351.224(f), which provides for the correction of ministerial errors. *Nails*, 73 Fed Reg. at 44,962. We seek to avoid a similar error here. Accordingly, we have determined it appropriate to apply the Department’s current practice to include WTA data from North Korea in the calculation of the surrogate value for silica fume, as the Department has not determined that North Korea is an NME.

⁵ “Furthermore, we do not include North Korea in the list of NME countries and, thus, its exclusion as an NME country is unwarranted. The Department has not made any determination designating North Korea as an NME country for AD purposes.” *Tires*, 73 Fed. Reg. at 40,485 at Comment 9.

CONCLUSION

Pursuant to the Court's *Remand Order*, based on the analysis of interested party comments and information on the record of the underlying administrative segment and this redetermination pursuant to remand, The Department has determined that the best available information on the record for valuing the by-product silica fume is derived from WTA data, adjusted to include only entries into India from silicon metal and ferrosilicon producing countries, as identified by USGS. We have recalculated the normal value to reflect this change and, as a result of this redetermination, the antidumping duty margin for sales of silicon metal is 50.41% for Shanghai Jinneng and 71.57% for Jiangxi Gangyuan.

Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

Date