

FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND

CC Metals and Alloys, LLC, and Globe Specialty Metals, Inc., v. United States
Court No. 14-00202, Slip Op. 16-3 (CIT January 12, 2016)

I. SUMMARY

The Department of Commerce (the “Department”) has prepared these final results of redetermination pursuant to the remand order of the Court of International Trade (“CIT” or “Court”) in CC Metals and Alloys, LLC, and Globe Specialty Metals, Inc., v. United States, Court No. 14-00202, Slip Op. 16-3 (January 12, 2016) (“Remand Opinion and Order”). These final remand results concern Ferrosilicon from the Russian Federation: Final Determination of Sales at Not Less Than Fair Value, 79 FR 44393 (July 31, 2014) (“Final Determination”). On remand, the CIT ordered the Department to further consider its treatment of home market warehousing expenses and revenue.¹ Specifically, the Court ordered that the Department must consider whether the proper warehousing expenses were deducted from the normal value, as stipulated in the Department’s regulations and Preamble.² The Court also ordered the Department to consider Petitioners’ contention that the Department miscalculated the short-term interest rates used for the calculation of home market imputed credit expenses.³ The Department released the draft remand results of redetermination on February 29, 2016, and solicited comments from interested parties, which interested parties filed on March 9, 2016.

¹ See Remand Opinion and Order at 12-14.

² See Antidumping Duties; Countervailing Duties, 62 FR 27296, 27345 (May 19, 1997) (“Preamble”).

³ See Remand Opinion and Order at 14-19.

As explained below, pursuant to the CIT's Remand Opinion and Order, and in light of comments received on our draft remand results, in these final remand results we have reviewed the record and considered arguments regarding our treatment of home market warehousing and home market imputed credit expenses in the Final Determination. Consequently, in these final remand results the Department has further clarified our treatment of home market warehousing expenses and revenue as applied in the Final Determination. Additionally, we have reconsidered our calculation of the home market imputed credit expenses that were based upon using a simple-average short-term interest rate, rather than a weighted-average short-term interest rate. In light of party comments, the Department has made a correction for a clerical error in these final remand results. In addition, as a consequence of our reconsideration of the short-term interest rate for home market imputed credit expenses, we have also reconsidered our calculation of the home market inventory carrying costs that were based upon using a simple-average short-term interest rate, rather than a weighted-average short-term interest rate. The revised margin calculation incorporating these changes is de minimis, with no change to our Final Determination wherein the Department terminated the investigation because sales were not made at less than fair value.

II. BACKGROUND

On July 19, 2013, the Department received an antidumping duty ("AD") petition concerning imports of ferrosilicon from Russia filed in proper form on behalf of Globe Specialty Metals, Inc.; CC Metals and Alloys, LLC; the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union; and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of

America (collectively, “Petitioners”).⁴ On August 8, 2013, the Department initiated an AD investigation on ferrosilicon from Russia.⁵ On September 5, 2013, in accordance with section 777A(c)(2) of the Tariff Act of 1930, as amended (the Act), the Department limited the number of respondents selected for individual examination in the AD investigation of ferrosilicon from Russia to one exporter, RFA International, LP (“RFAI”), which accounted for virtually all exports of Russian ferrosilicon to the United States during the POI.⁶ Based on information provided in RFAI’s questionnaire responses, we found that RFAI and the CHEMK Industrial Group (“CHEMK”), the producing entity in Russia, comprise a single entity.⁷ On March 11, 2014, the Department published in the Federal Register the Preliminary Determination of sales at not less than fair value in the AD investigation of ferrosilicon from Russia.⁸ We conducted verification of RFAI and CHEMK between March 24, and April 17, 2014.⁹ On June 10, 2014, RFAI and Petitioners filed case briefs. On June 20, 2014, RFAI filed its rebuttal brief. On July 3, 2014, Petitioners re-filed their rebuttal brief.¹⁰ On July 31, 2014, we issued our Final Determination of sales at not less than fair value. For the Final Determination, we calculated a

⁴ See “Petitions for the Imposition of Antidumping Duties on Ferrosilicon from Russia and Venezuela,” filed on July 19, 2013 (“Petitions”).

⁵ See Ferrosilicon from the Russian Federation and Venezuela: Initiation of Antidumping Duty Investigations, 78 FR 49471 (August 14, 2013) (“Initiation Notice”).

⁶ See Memorandum to James C. Doyle, Director, Office 9, Antidumping and Countervailing Duty Operations, from Irene Gorelik, Analyst, Re: “Selection of Respondents for the Antidumping Duty Investigation of Ferrosilicon from the Russian Federation (“Russia”)” (September 5, 2013).

⁷ See Ferrosilicon from the Russian Federation: Preliminary Determination of Sales at Not Less Than Fair Value, 79 FR 13620 (March 11, 2014) (“Preliminary Determination”) and accompanying Preliminary Decision Memorandum.

⁸ See Preliminary Determination.

⁹ See Memorandum to the File through Catherine Bertrand, Program Manager, from Irene Gorelik, Senior Analyst, “Verification of Home Market Sales of Chelyabinsk Electrometallurgical Integrated Plant Joint Stock Company (“CHEMK”) and RFA International, LP,” dated May 22, 2014 (“HM Verification Report”); Memorandum to the File through Catherine Bertrand, Program Manager, from Irene Gorelik, Senior Analyst, “Verification of Russia Ferro-Alloys Inc. in the Antidumping Duty Investigation of Ferrosilicon from the Russian Federation,” dated May 23, 2014 (“CEP Verification Report”); see also Memorandum to the File, “Verification of the Cost Response of RFA International, LP in the Antidumping Duty Investigation of Ferrosilicon from the Russian Federation,” dated April 23, 2014 (“Cost Verification Report”).

¹⁰ Pursuant to 19 CFR 351.309(d)(2) and 351.104(a)(2)(ii), the Department removed Petitioners’ original June 20, 2014, rebuttal brief from the record and allowed Petitioners to file a redacted version to comply with our regulations.

weighted-average margin of 0.00 percent, or de minimis, for RFAI, thus resulting in a negative less than fair value determination.

A. Home Market Warehousing Expenses

In the Section B portion of the Department's market economy ("ME") questionnaire, we direct respondents to report warehousing expenses under "Field 24.0: Warehousing Expense."

This field of the questionnaire directs respondents to:

report the unit cost of warehousing. The cost of warehousing reported in this field should include only expenses incurred at a distribution warehouse not located at the factory that produced the merchandise, less any reimbursement received from the customer.¹¹

In its Section B questionnaire response, CHEMK reported home market warehousing expenses under variable name WAREHSH, wherein CHEMK specified that, "some home market sales were sourced from a single *off-site* warehouse used by CHEMK to store ferrosilicon prior to shipment to the customer."¹² CHEMK further confirmed that its reported home market warehousing expense:

refers to warehousing at the external warehouse only. Warehousing revenue refers to the revenue for warehousing overall. Warehousing expense is not quantified for warehousing that occurs at the manufacturing facility. The Department does not allow respondents to report warehousing expense incurred at the manufacturing plant.¹³

With respect to home market warehousing revenue, CHEMK reported that "this revenue is charged to customers in connection with the post-sale storage of ferrosilicon at either CHEMK's plant or off-site warehouse after invoicing and after title has transferred from CHEMK to the

¹¹ See, e.g., Letter from the Department, to RFA International, LP, re; ME questionnaire, dated September 5, 2013, at page B-19.

¹² See RFA International, LP's ("RFAI") Section B Questionnaire Response dated November 20, 2013, at B-28-29 (emphasis added).

¹³ See RFAI Supplemental Questionnaire Response dated March 14, 2014, at page 5.

customer.”¹⁴ In the Preliminary Determination, based on this information and our practice, we capped off-site warehousing revenue by the reported off-site warehousing expenses.¹⁵ We made no changes to this calculation in the Final Determination.¹⁶

B. Home Market Imputed Credit Expense

In its original Section B questionnaire response, RFAI reported that it had no short-term borrowing during the POI, thus RFAI reported that it “obtained data from several Russian commercial banks on their short-term lending rates during the POI” as a short-term interest rate applied to the home market credit expense calculation.¹⁷ In the same questionnaire response, RFAI also reported the existence of the factoring receivables.¹⁸ In the Preliminary Determination, we adjusted RFAI’s reported credit expenses using the Russian Central Bank’s Overnight Credit Rate for the periods overlapping the period of investigation. In the Preliminary Determination, we applied the weighted-average of these bank rates to the home market credit expense calculation.¹⁹ Subsequently, at verification, CHEMK presented, as a minor correction, the reported short-term interest rates for factoring arrangements.²⁰ CHEMK stated at verification that while it previously failed to consider the factoring of receivables as a source of short-term

¹⁴ See RFAI Supplemental Questionnaire Response dated February 6, 2014, at page 21.

¹⁵ See Memorandum to the File, through Catherine Bertrand, Program Manager, Office V, from Irene Gorelik, Senior Analyst, re; “Calculations Performed for RF A International LP (‘RFAI’) for the Preliminary Determination in the Antidumping Duty Investigation of Ferrosilicon from the Russian Federation (‘Russia’),” dated March 4, 2014 (“RFAI Prelim Analysis Memo”), at page 5 and Exhibit 1. Exhibit 1 is the comparison market SAS program log, where at lines 87752 and 87753 we incorporated only off-site warehousing expenses and revenue, as follows:
87752 FREIGHT2 = WAREHSH - WHREVVH;
87753 IF FREIGHT2 < 0 THEN FREIGHT2 = 0;

¹⁶ See Memorandum to the File, through Catherine Bertrand, Program Manager, from Irene Gorelik, Senior Analyst, “Calculations Performed for RFA International LP (‘RFAI’) for the Final Determination in the Antidumping Duty Investigation of Ferrosilicon from the Russian Federation (‘Russia’),” (“Final Analysis Memo”) dated July 24, 2014, at page 25 of Attachment 1.

¹⁷ See RFAI Section B Questionnaire Response, dated November 20, 2013 at page B-33. We note that the calculation for these Russian bank interest rates were weight-averaged in the calculation worksheet at Exhibit B-10 of this questionnaire response.

¹⁸ Id., at page B-37.

¹⁹ See RFAI Prelim Analysis Memo at page 3 and Exhibit 4. See also Footnote 17 above.

²⁰ See HM Verification Report at Exhibit 11 at page 3 and Attachment 13.

borrowing rates, these rates should be applied to the imputed home market credit expense calculation rather than those applied in the Preliminary Determination.²¹ The Department accepted these short-term interest rates at verification and incorporated them, as presented in the minor corrections submission, into the home market imputed credit expense calculation.²² We did not make any adjustments to the post-verification revised data in the Final Determination; thus, the home market credit expenses were calculated with the simple average short-term interest rate, as presented at verification, rather than a weighted-average.²³ This same simple average short-term interest rate was also applied to home market imputed inventory carrying costs.²⁴

III. Remand Opinion and Order

In its Remand Opinion and Order, the Court upheld Petitioners' challenge to the Department's deduction of CHEMK's warehousing expense as inconsistent with the regulation and Preamble.²⁵ In particular, the Court noted that the Department found that "CHEMK's on-site warehousing 'qualif{ies}...as a movement-related expense, because the Preamble states that the Department will deduct all movement expense (including all warehousing) that the producer incurred after the goods left the production facility.'"²⁶ The Court noted the Government's argument that there is a distinction between pre-sale and post-sale warehousing expenses, but

²¹ Id.

²² See Memorandum to the File, from Robert Palmer, Analyst, re: "Home Market Sales Database for RFA International, LP in the Antidumping Investigation of Ferrosilicon from the Russian Federation," dated April 28, 2014.

²³ See HM Verification Report at Exhibit 11 at page 3 and Attachment 13. See also Final Analysis Memo at page 7.

²⁴ See Final Analysis Memo at pages 7-8. Pursuant to our practice, imputed expenses (i.e., credit expenses and inventory carrying costs) are both calculated using short-term borrowing rates. See, e.g., the Department's Questionnaire to RFAI dated September 5, 2013, at Appendix I: Glossary of Terms, page 10, under "Imputed Expenses" or page 11 under "Inventory Carrying Costs." See also e.g., Notice of Final Results of Antidumping Duty Administrative Review: Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Brazil, 70 FR 7243 (February 11, 2005) and accompanying Issues and Decision Memorandum at Comment 3, where the Department applied a weighted average short-term borrowing rate to both inventory carrying costs and credit expenses.

²⁵ See Remand Opinion and Order at 12-14.

²⁶ Id., at 13 (citing Final Determination and accompanying Issues and Decision Memorandum at 26).

found this to be post hoc rationalization and remanded the issue to the Department for further consideration.²⁷

The Court also upheld Petitioners' claim that the Department erred in its calculation of CHEMK's imputed credit expenses by using a simple-average short-term interest rate, rather than a weighted-average short-term interest rate.²⁸ The Court held that, because the Department reached this decision for the first time in the Final Determination, it did not have the opportunity to consider Petitioners' argument that Commerce's calculation was inconsistent with Policy Bulletin 98.2, and remanded the issue to the Department for further consideration.²⁹

IV. ANALYSIS

A. Treatment of Home Market Warehousing

In accordance with the Remand Opinion and Order, we have considered the evidence on the record regarding CHEMK's reported warehousing expenses and revenue. For the reasons explained below, we find that a clarification is required with respect to our treatment of home market warehousing expenses and revenue in the home market calculation program vis-à-vis our discussion of the issue in the Issues and Decision Memorandum at Comment 6.

Section 773(a)(6)(B)(ii) of the Act directs the Department to adjust normal value by deducting movement expenses. Pursuant to 19 CFR 351.401(e), movement expenses include any transportation and other associated expenses, including warehousing, that are incurred by the seller after the merchandise leaves the original place of shipment, normally considered to be the production facility. The Preamble further provides that "the Department will deduct all movement expenses (including all warehousing) that the producer incurred after the goods left

²⁷ See Remand Opinion and Order at 14.

²⁸ Id. at 18-19.

²⁹ Id.

the production facility.”³⁰ In determining the amount of the deduction, pursuant to our practice, we will cap warehousing revenue by warehousing expenses because “we find that it would be inappropriate to increase the gross unit price for subject merchandise as a result of profits earned on the provision or sale of services (such as freight or warehousing); such profits should be attributable to the sale of the service, but not to the subject merchandise.”³¹

As discussed in Section II.A. above, on behalf of its customers CHEMK stored ferrosilicon after the sale for delivery at a later date at two locations: either on-site at its plant or at an unaffiliated off-site warehouse.³² CHEMK’s questionnaire response demonstrates that it only reported home market warehousing expenses for its off-site warehousing.³³ At the same time, CHEMK reported home market warehousing revenue for both its on-site and off-site warehousing.³⁴ The Department also verified: 1) that the reported warehousing expenses were incurred at an off-site location where CHEMK rented space for storing sold merchandise, and 2) the reported warehousing expense calculation.³⁵ Thus, the record shows that CHEMK rented space at an off-site unaffiliated warehouse where it stored merchandise, the per-unit expense for which is reflected in RFAI’s Section B database as variable “WAREHSH.”³⁶

Making no changes from the Preliminary Determination regarding home market warehousing, in the Final Determination our comparison market SAS program demonstrates that we did not deduct any on-site warehousing expenses as movement expenses from normal value, simply because those expenses were properly not reported by CHEMK. The Department only

³⁰ See Preamble, 62 FR at 27345.

³¹ See Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review, 74 FR 40167 (August 11, 2009) (“OJ from Brazil 2009”) and accompanying Issues and Decision Memorandum at Comment 3.

³² See, e.g., HM Verification Report at pages 18, 23-24. The various issues presented for the Final Determination were inordinately complex, and our narrative discussions for some issues overlapped and were, at times, convoluted.

³³ Id.; see also, RFAI Supplemental Questionnaire Response, dated March 14, 2014, at page 5.

³⁴ See RFAI Supplemental Questionnaire Response, dated February 6, 2014, at page 21.

³⁵ See, e.g., HM Verification Report at pages 23-24 and Exhibit 20.

³⁶ See RFAI Section B Questionnaire Response, dated November 20, 2013, at page B-28.

deducted the off-site warehousing expense data that CHEMK reported, plainly visible in the comparison market SAS program, which demonstrates that the warehousing expenses (reported under variable “WAREHSH”), less the reported warehouse revenue, were deducted from the home market gross unit price.³⁷ This calculation string was expressed as: $FREIGHT2 = WAREHSH - WHREVVH$.³⁸ Thus, the calculation demonstrates that the Department properly deducted the only warehousing expenses that CHEMK reported: off-site warehousing expenses.

The calculation also demonstrates that we disallowed any reported revenue earned from on-site warehousing, the expense for which is properly not reported, expressed as: $IF FREIGHT2 < 0 THEN FREIGHT2 = 0$.³⁹ Specifically, where the revenue exceeded the expense, which mathematically occurs when on-site warehousing revenue was reported with no corresponding on-site warehousing expense reported, we properly disallowed the inclusion of on-site warehousing revenue.⁴⁰ Moreover, consistent with our practice, we did not treat CHEMK’s reported off-site warehousing revenue as an addition to the home market gross unit price, pursuant 19 CFR 351.401(c).⁴¹ Rather, the Department followed its normal practice by treating this off-site warehousing revenue as an offset to warehousing costs where the revenue exceeds the expenses.⁴² In other words, we capped revenue earned from the off-site warehouse

³⁷ See Final Analysis Memo, at page 25 of Attachment 1.

³⁸ Id.

³⁹ Id.

⁴⁰ Id.

⁴¹ See Final Determination and accompanying Issues and Decision Memorandum at Comment 6, (where we stated that “we find that it would be inappropriate to increase the gross unit price for subject merchandise as a result of profits earned on the provision or sale of services (such as freight or warehousing); such profits should be attributable to the sale of the service, but not to the subject merchandise.”); see also OJ from Brazil 2009 and accompanying Issues and Decision Memorandum at Comment 3.

⁴² See, e.g., Certain Uncoated Paper from Brazil: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 80 FR 52029 (August 27, 2015) and accompanying Preliminary Decision Memorandum at Section E. See also Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review, 77 FR 61738 (October 11, 2012) and accompanying Issues and Decision Memorandum at Comment 3; Multilayered Wood Flooring from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 76 FR 64318 (October 18, 2011) and accompanying Issues and Decision Memorandum at Comment 39 (explaining that where freight revenue earned by a respondent exceeds the

expenses and where the off-site warehousing revenue exceeded the corresponding expense. We refer to this as a “capping exercise,” or “zeroing out” the reported on-site warehousing revenue – meaning the on-site warehousing revenue had no impact on the margin calculation.

Despite the record information and the calculations accompanying the Final Determination described above, the Department misstated its treatment of the on-site warehousing expenses and revenue in the Issues and Decision Memorandum in the Final Determination.⁴³ However, as demonstrated above, contrary to our misstatements in the Issues and Decision Memorandum at Comment 6, the Department did not, in actuality, make any adjustments for CHEMK’s reported on-site warehousing revenue. While our narrative discussion in the Final Determination incorrectly implied that we incorporated on-site warehousing expenses and/or revenue, our calculations demonstrate the opposite. As such, our discussion should have reflected, in narrative form, the actual calculation of warehousing in the comparison market SAS program: or, that any on-site warehousing revenue was excluded in the margin calculation through our capping exercise because there is, properly, no corresponding on-site warehousing expense reported for that revenue. Thus, ultimately there is no error or violation of our regulations or Preamble in our treatment of home market warehousing in the Final Determination.

Notwithstanding the above, as discussed below, Petitioners continue to argue that the Department has improperly included on-site warehousing revenue in the capping exercise with

freight charge incurred for the same type of activity, the Department will cap freight revenue at the corresponding amount of freight charges incurred because it is inappropriate to increase gross unit selling price for subject merchandise as a result of profit earned on the sale of services).

⁴³ See Final Determination and accompanying Issues and Decision Memorandum at Comment 6 (where we misstated that “we find that on-site warehousing does qualify, in this case, as a movement-related expense... Thus, because we find that the on-site warehousing is relevant as a movement deduction, we added the revenue generated from the activity to normal value and capped the revenue at the level of total expenses consistent with our practice.”). The calculations performed at the Preliminary Determination unchanged in the Final Determination demonstrate that we did not account for any on-site warehousing expenses (as they were not reported) and that we excluded on-site warehousing revenue”).

off-site warehousing expenses. As we explained above, the reported warehousing expense variable under variable “WAREHSH” contains only one type of expense: off-site warehousing. However, the warehousing revenue variable under variable “WHREVVH” may contain, depending on the sale, two types of revenue: on-site and/or off-site warehousing revenue. The Department acknowledges that the record does not indicate which portion of the values reported in WHREVVH corresponds exactly to the off-site warehousing expenses in WAREHSH. Although we continue to find that our capping exercise or zeroing out of the on-site warehousing revenue in the Final Determination properly excludes this figure from the margin calculation, in these final remand results we are placing on the record an alternative approach which would also accomplish the goal of removing on-site warehousing revenue from the margin calculation.⁴⁴ To be clear, we have not adopted this alternative approach; rather, we are including it only for the purpose of establishing that this is an insignificant change from our Final Determination. Under this alternative approach, rather than capping or zeroing out the reported on-site warehousing revenue, the Department has removed all warehousing revenue – both on-site and off-site – from the margin calculation. In other words, because there is no information on the record to determine what portion of the values reported in WHREVVH correspond exactly to the off-site warehousing expenses reported in WAREHSH, we have removed the WHREVVH variable altogether. Instead, in the alternate program, we only deducted the off-site warehousing expenses, entirely reported under WAREHSH, from the gross unit price, pursuant to our practice with no capping of any part of the warehousing revenue variable. The alternate margin calculation results demonstrate that this exclusion of WHREVVH variable from the alternate

⁴⁴ See Memorandum to the File, through Catherine Bertrand, Program Manager, Office V, from Irene Gorelik, Senior Analyst, Office V, re: “Final Remand Redetermination Calculation for RFA International LP (“RFAI”) in the Antidumping Duty Investigation of Ferrosilicon from the Russian Federation (“Russia”),” (“Final Remand Calculation Memo”), dated concurrently with this final results of remand redetermination.

program had no effect on the margin calculation, because the dumping margin, absent WHREVVH, remains de minimis. Given that there is no significant change under this alternative approach, we continue to find that our Final Determination properly addressed warehousing expense and revenue to the extent necessary.

Finally, the distinction of “pre-sale” warehousing and “post-sale” warehousing is not relevant to our actual treatment of warehousing expenses in this case because the existence of the off-site warehousing was an actual expense incurred for specific home market sales of ferrosilicon. In fact, in Shrimp from Thailand, the Department determined that the “expenses at issue are warehousing expenses associated with storing subject merchandise prior to sale, and thus they fall squarely into the types of expenses characterized as movement expenses under 19 CFR 351.401(e)(2),” regardless of when title may pass to the unaffiliated customer.⁴⁵ Here, we find that the off-site warehousing expenses are directly tied to home market sales, which is evident from the sales documentation on the record.⁴⁶ Thus, we find that, as in Shrimp from Thailand, the off-site warehousing expenses fall squarely into the types of expenses defined under 19 CFR 351.401(e)(2), whether incurred before or after the sale or when title passes to the unaffiliated customer.

In sum, contrary to our misstatement in the Final Determination, as explained above, the actual calculation of home market warehousing expenses and treatment of warehousing revenue are not in violation of our regulations, policy, or practice. Consequently, per the Court’s Remand Opinion and Order, we have clarified how we accounted for home market warehousing

⁴⁵ See Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 73 FR 50933 (August 29, 2008) (“Shrimp from Thailand”) and accompanying Issues and Decision Memorandum at Comment 2, where we stated that “*we also disagree with the petitioner that it is relevant that title may pass to the unaffiliated customer at the warehouse location...*” (emphasis added).

⁴⁶ See HM Verification Report at pages 18, 24-25 and Exhibits 11, 21, and 36.

expenses and revenue in the Final Determination and find that any revisions would be inappropriate and incorrect.

B. Home Market Imputed Credit Expense

In accordance with the Remand Opinion and Order, we have considered the evidence on the record regarding our calculation of the home market imputed credit expenses. For the reasons explained below, we find that the Department inadvertently applied a simple average of the short-term interest rates, rather than a weighted-average of the short-term interest rates to the credit expense calculation.⁴⁷ We have corrected this calculation in these final remand results. In addition, in light of party comments, we have made two additional corrections discussed below.

The Department calculates the weighted-average interest rate used to compute credit expenses based on the weighted-average interest rate paid by the company for short-term loans in the currency of the sale.⁴⁸ Policy Bulletin 98.2 also states that “in cases where the respondent (the seller) has short-term borrowings in the same currency as that of the transaction, we use the respondent’s own weighted-average short-term borrowing rate realized in that currency to quantify the credit expenses incurred.”⁴⁹

As we stated in the Final Determination, CHEMK’s pre-verification minor corrections exhibit provides the contract with the bank showing applicable rates for specific time periods,⁵⁰ which we verified within the reconciliation of each sales observation selected for “sales trace.”⁵¹ In reviewing the payment details of each sales trace where factoring occurred, the factoring

⁴⁷ While Petitioners did not file any ministerial error allegations after the Final Determination, we determine that it is appropriate to revise our calculation to comply with our regulations, policy and practice.

⁴⁸ See, e.g., Welded Carbon Steel Standard Pipe and Tube Products From Turkey: Final Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 79665 (December 31, 2013) and accompanying Issues and Decision Memorandum at Comment 3.

⁴⁹ See Policy Bulletin 98.2: Imputed credit expenses and interest rates, (“Policy Bulletin 98.2”) dated February 23, 1998, found at: HYPERLINK “<http://enforcement.trade.gov/policy/bull98-2.htm>.”

⁵⁰ See HM Verification Report at Exhibit 11 Attachment 13.

⁵¹ Id., at pages 16-17.

arrangement was included with the payment documentation for the sales traces.⁵² Consequently, we applied these short-term interest rates from factoring receivables to the home market imputed credit expense calculation. However, in reviewing the record, we note that the applied rates, as verified, were simple-averaged.⁵³ The Department did not re-calculate these rates as a weighted-average, and thus, inadvertently applied the simple average to the imputed credit expense calculation in the Final Determination. Consequently, to comply with our policy and practice, in these final remand results, the Department has revised the home market imputed credit expense calculation by applying a weighted-average short-term interest rate from the individual rates we verified.⁵⁴

In addition, as discussed below, we agree with RFAI that we made an error in the revised calculation of the weighted-average short-term interest rate caused by incorrect decimal point placement.⁵⁵ We have corrected the error and applied the resulting weighted-average short-term interest rate to the imputed credit expense calculation in the home market SAS program.⁵⁶ Furthermore, as discussed below, as a consequence of our reconsideration of the short-term interest rate for home market imputed credit expenses, we have also reconsidered our calculation of the home market inventory carrying costs that were based upon using a simple-average short-term interest rate, rather than a weighted-average short-term interest rate. In particular, because it is our practice to apply a short-term interest rate to imputed expenses (i.e., home market imputed credit expenses and home market inventory carrying costs), we have also applied the weighted-average short-term interest rate to both in these final remand results.⁵⁷

⁵² Id., at 16-17, Exhibit 11-Attachment 13 and Exhibits 34-39.

⁵³ Id., at Exhibit 26, page 1.

⁵⁴ See Final Remand Calculation Memo.

⁵⁵ Id.

⁵⁶ Id.

⁵⁷ See, e.g., Final Analysis Memo at pages 7-8, and footnote 24 above.

V. INTERESTED PARTY COMMENTS ON DRAFT REMAND RESULTS

On February 29, 2016, the Department released the draft remand results of redetermination and accompanying data to all interested parties.⁵⁸ We invited interested parties to comment on the draft remand results by February 7, 2016. On March 3, 2016, we extended the comment deadline to March 9, 2016, following Petitioners' extension request dated March 3, 2016. RFAI and Petitioners filed timely comments on March 9, 2016.

Issue 1: Home Market Warehousing

Petitioners' Comments:

- The Department did not comply with the Court's Remand Opinion and Order because it provided only clarification of its Final Determination without making any changes to the margin calculation regarding home market warehousing expenses.
- By capping CHEMK's on-site warehousing revenue, the Department removed that revenue from normal value. Doing so was erroneous, because on-site warehousing is not a deductible movement expense.
- Contrary to its statements in the draft remand results, the Department included all warehousing revenue and expenses (both on-site and off-site) in the warehousing expense calculation. The Department used the warehousing revenue and expense variables, without distinction between on-site and off-site warehousing, in its margin program.
- Instead of zeroing out on-site warehousing revenue, the Department should have treated it as a miscellaneous revenue item, and included it in normal value, just as it treated the revenue CHEMK received for "sizing" as an addition to gross unit price.

⁵⁸ See Letter to All Interested Parties, re; "Remand Redetermination for RFA International LP ("RFAI") in the Antidumping Duty Investigation of Ferrosilicon from the Russian Federation ("Russia")," dated February 29, 2016.

RFAI's Comments:

- The Department has complied with the Court's order to explain the apparent inconsistency with respect to on-site warehousing expenses. The Department's draft remand results adequately addresses the Court's concern regarding the consistency of treating on-site warehousing as a movement expense pursuant to the Department's regulations that normally only allow for the deduction of warehousing expenses incurred after the merchandise has left the production facility.
- The Department's treatment of on-site warehousing expenses in this case is supported by substantial evidence on the record and by longstanding Department practice. Therefore, the Department's remand determination is adequate and should be ultimately accepted by the Court.

Department's Position

The Department agrees with RFAI with respect to the substantial evidence on the record supporting our treatment of off-site warehousing expenses, which are the only home market warehousing expenses that RFAI reported. The Department clarified its treatment of home market warehousing expenses in the margin calculation programs in comparison with our unclear description in the Final Determination. We find that this clarification complies with the Court's Remand Opinion and Order.

The Department disagrees with Petitioners' arguments related to our draft warehousing-related adjustments. First, while Petitioners argue that the Department did not comply with the Remand Opinion and Order because we only provided a clarification, rather than a revision to our calculations, we note the Court remanded this issue "to Commerce for further

consideration”⁵⁹ and not an absolute recalculation of the margin programs. Because we have explained that our treatment of warehousing-related movement expenses/revenues is in accordance with policy and practice, despite the apparent contradiction in our explanation in the Issues and Decision Memorandum at Comment 6, the Court did not require any revision to our calculations in this regard, and as such we have complied with the Court’s Remand Opinion and Order.

We further disagree with Petitioners’ mischaracterization of our treatment of on-site warehousing revenue in the home market program. As an initial matter, 55 percent of the home market sales volume does not have any warehousing expenses or revenue reported.⁶⁰ Additionally, for 14 percent of the home market sales volume, CHEMK reported only warehousing expenses (off-site only as the record shows), with no warehousing revenue, which we properly deducted under 19 CFR 351.401(e)(2).⁶¹ Thus, when combining the home market sales that have either no warehousing-related data reported at all, or only warehousing expenses reported, the vast majority (69 percent) of home market sales are unaffected by the warehousing revenue adjustments at issue.

Finally, we continue to disagree with Petitioners’ argument that the Department should have treated on-site warehousing revenue as a miscellaneous revenue item, as it treated the

⁵⁹ See Remand Opinion and Order at pages 13-14 (“Commerce’s application of its regulation therefore appears inconsistent with both the regulation and the Preamble...the court therefore must remand this issue to Commerce for further consideration.”).

⁶⁰ Because the specific details of the percentage of home market sales that included any warehousing expenses or revenue are business proprietary information, we discussed the statistics in the Final Remand Calculation Memo.

⁶¹ See Final Remand Calculation Memo.

revenue CHEMK received for “sizing” as an addition to gross unit price.⁶² As an initial matter, we note that the Court did not: 1) address our treatment of “sizing” revenue, 2) require us to compare warehousing revenue to “sizing” revenue or 3) require us to treat on-site warehousing revenue in the same manner as “sizing” revenue. In any event, in the Final Determination, we treated “sizing” as a non-movement-related activity. Further, we found that “sizing” is charged to the customer and paid by the customer associated with the sale of ferrosilicon. Thus, we treated sizing as an offset to cost because we considered it to be a step in the manufacturing process, rather than a service or expense for finished merchandise. As a result, we treated sizing revenue as a miscellaneous revenue item and included it as an addition to gross unit price pursuant to 19 CFR 351.102(b).⁶³ Here, it would be inappropriate to increase the gross unit price for subject merchandise as a result of profits earned on the provision or sale of services (such as on-site warehousing services); such profits should be attributable to the sale of the service, not to the subject merchandise.⁶⁴ Thus, on-site warehousing revenue does not fall under any of the categories of upward adjustments provided for in section 773(a)(6) of the Act, and Petitioners did not cite to any statutory provision, practice, or policy under which the on-site warehousing revenue qualifies as an upward adjustment. Thus, we disagree with Petitioners’ argument that on-site warehousing revenue qualifies as an upward adjustment to the normal value. It is the

⁶² As we stated in the Final Determination “[s]izing occurs when a customer changes the lump size it requested from RFAI whereas warehousing generally refers to the post-sale storage CHEMK provided to certain customers after invoicing.” See Final Determination and accompanying Issues and Decision Memorandum at Comment “Sizing” revenue refers to the revenue that CHEMK received from its customers, based on a mutually agreed upon contract, where the customer agreed to pay for this “sizing” fee, which was not a physical activity related to altering the merchandise, but a convenience fee.

⁶³ See Final Determination and accompanying Issues and Decision Memorandum at Comment 6, page 25, where we stated that “consistent with our practice, we will treat the revenue generated from this non-movement related activity as a price adjustment to gross unit home market price for the final determination pursuant to 19 CFR 351.102(b).”

⁶⁴ See OJ from Brazil 2009; see also Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination, 77 FR 63291 (October 16, 2012) and accompanying Issues and Decision Memorandum at Comment 6.

Department's discretion to deny upward adjustments that are not provided for in the statute.⁶⁵

As stated above, in these final remand results we have clarified our calculation of warehousing expenses and revenue in the Final Determination, per the Court's Remand Opinion and Order. We have also further demonstrated that an alternative approach in which we exclude the warehousing revenue altogether from any movement-related calculations results in no change to the margin.

Issue 2: Home Market Imputed Credit Expenses

Petitioners' Comments:

- The Department calculated the weighted-average interest rate for only a small subset of the total factoring transactions using only the number of days outstanding for each transaction as the weighting factor. Instead, the Department should calculate the weighted-average short-term interest rate to include the number of days of outstanding credit and the amount of money borrowed as weighting factors for the weighted average short term interest rate.
- The number of short-term interest rates from factoring arrangements is too few to be considered representative of all HM sales that had factoring arrangements.
- While the Court did not explicitly require the Department to do so, the Department should also apply the weighted-average short-term interest rate to HM inventory carrying costs.

RFAI's Comments:

- The Department made a clerical error in its calculation of the weighted average short-term interest rate due to decimal point placement for five out of six individual interest rates used to calculate the weighted-average short-term interest rate.

⁶⁵ See, e.g., Certain Polyethylene Terephthalate Resin from India: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, 81 FR 13327 (March 14, 2016) and accompanying Issues and Decision Memorandum at Comment 13E.

Department's Position:

The Department agrees with RFAI that we made an error in the revised calculation of the weighted-average short-term interest rate caused by incorrect decimal point placement. We have corrected the error and applied the resulting weighted-average short-term interest rate to the imputed credit expense calculation in the home market SAS program.⁶⁶

In their comments regarding the draft remand results, Petitioners argue that the Department should apply the weighted-average short-term interest rate to both home market credit expense and home market inventory carrying costs.⁶⁷ While the Court did not address the calculation of home market inventory carrying costs in the Remand Opinion and Order, for the final remand redetermination, as discussed above, we have applied the weighted-average short term interest rate within the margin calculation programs, as appropriate, which includes both home market imputed expenses and home market inventory carrying costs.⁶⁸

However, we disagree with Petitioners' argument regarding the subset of short-term interest rates from factoring arrangements of sales used to calculate the weighted average short-term interest rate. While Petitioners argue that the subset of short-term interest rates is not representative, the Court affirmed the Department's use of these short term interest rates from factoring arrangements, absent any caveats regarding the quantity of data points used to calculate the weighted-average short term interest rate.⁶⁹ The Court acknowledged Petitioners' argument regarding the subset of transactions used, but only required the Department to examine and

⁶⁶ See Final Remand Calculation Memo.

⁶⁷ See Letter from Petitioners, re: "Comments on the Draft Remand," dated March 9, 2016, at page 7 ("The Court did not address Plaintiffs' broader argument that under the policy bulletin and established Department practice, the interest rate to be used to calculate imputed credit expenses and inventory carrying costs is the weighted-average of all of the Respondent's short-term borrowing in the currency of the transaction.").

⁶⁸ See Final Remand Calculation Memo.

⁶⁹ See Remand Opinion and Order at 18, where the Court stated that "Commerce's decision here to use CHEMK's factoring arrangements to derive an interest rate for RFAI's imputed credit costs therefore reflects the routine and reasonable application of its past practice."

address whether the applied short-term interest rates in the credit expenses were calculated incorrectly using a simple average rather than a weighted average.⁷⁰ Thus, Petitioners' argument regarding this issue is not within the scope of the Court's Remand Opinion and Order.

Finally, we disagree with Petitioners' argument regarding the calculation method used for weight-averaging the individual short-term interest rates. In the draft remand results, the Department weight-averaged the short-term interest rates using the number of days of outstanding credit as the weighting factor. Petitioners argue that the Department should have also included the borrowed value as an additional weighting factor. However, Petitioners do not cite to any practice, precedent or policy in support of their argument. Policy Bulletin 98.2 does not provide instruction for the calculation method of weight-averaging short term interest rates. Policy Bulletin 98.2 only states that where the respondent has short-term borrowings in the same currency as that of the transaction, we use the respondent's own weighted-average short-term borrowing rate realized in that currency to quantify the credit expenses incurred.⁷¹ Because we did not weight-average the short-term interest rates from factoring arrangements, in the draft remand results we followed the calculation method as provided by RFAI during the investigation, which used only the number of credit days as the weighting factor.⁷² This method is also consistent with our practice, as noted in Welded Carbon from Turkey, where we stated that:

the Department calculates the weighted-average interest rate used to compute credit expenses based on the weighted-average interest rate paid by the company for short-term loans in the currency of the sale. The purpose of this calculation is to calculate the opportunity cost to the company of not having the funds for the

⁷⁰ See Remand Opinion and Order at 18-19.

⁷¹ See Policy Bulletin 98.2.

⁷² See RFAI's Questionnaire Response, dated November 20, 2013, at Exhibit B-10.

period over which the company must finance the receivable.⁷³


As noted above, our stated practice contemplates only the rate and the loan term, not the value of borrowing, in the calculation of a weighted-average short-term interest rate. We further note that Petitioners did not object to this calculation method, as properly reported by RFAI, during the investigation.⁷⁴ Consequently, we have not revised the weight-averaging method applied in the draft remand results because it is supported by substantial evidence, is consistent with our practice, and within the Department's discretion under Policy Bulletin 98.2.

⁷³ See, e.g., Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 79665 (December 31, 2013) and accompanying Issues and Decision Memorandum at Comment 3.

⁷⁴ Indeed, Petitioners only objected to the originally-reported Russian bank short-term interest rates themselves, not RFAI's calculation of the weighted-average short-term interest rate using only number of days as weighting factor. See Letter from Petitioners, re: "Deficiency comments," dated December 2, 2013, at 4 and Exhibit 1.

VI. FINAL RESULTS OF REDETERMINATION

We have implemented the changes discussed above with respect to the short term interest rate used for home market imputed credit expenses and home market inventory carrying costs, and provided a clarification with respect to our treatment of home market warehousing expenses and revenue. In the Final Determination, we calculated a 0.00 percent weighted-average margin for RFAI, thus resulting in a negative less than fair value determination and termination of the investigation.⁷⁶ Our recalculations, per above, result in no change to the calculated weighted-average dumping margin. Thus, we continue to calculate a 0.00 percent (de minimis) weighted-average dumping margin for RFAI, appropriately applying the same comparison method as in the Final Determination, which continues to result in a negative less than fair value determination.⁷⁷



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

11 May 2016

Date

⁷⁶ See Final Determination, 79 FR at 44394 and accompanying Issues and Decision Memorandum at pages 42-43.

⁷⁷ Id., at 42-43, where we stated that “based on the dumping margin calculations performed for the final determination, the Department continues to find that there is no meaningful difference in the final weighted average dumping margins between the comparison methods. Thus, we will continue to use the average-to-average method for all U.S. sales in making comparisons of CEP and normal value for RFAI in this final determination.”