

*Globe Metallurgical, Inc. and SIMCALA, Inc. v. United States and
Bratsk Aluminum Smelter and Rual Trade Limited*
Slip Op. 04-123 (CIT September 24, 2004)

FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND

SUMMARY

The Department of Commerce (“the Department”) has prepared these results of redetermination pursuant to the remand order of the Court of International Trade (“the Court”) in *Globe Metallurgical, Inc. and SIMCALA, Inc. v. United States and Bratsk Aluminum Smelter and Rual Trade Limited*, Slip Op. 04-123 (CIT September 24, 2004). In accordance with the Court’s instructions, the Department has re-examined the remanded issues of the Final Determination. See Notice of Final Determination of Sales at Less Than Fair Value: Silicon Metal From the Russian Federation, 68 FR 6885 (February 11, 2003) (“Final Determination”), as amended by Notice of Amended Final Determination of Sales at Less Than Fair Value: Silicon Metal From the Russian Federation, 68 FR 12037 (March 13, 2003). Specifically, the Department has revised in part our treatment of recycled silicon metal fines.

BACKGROUND

On February 11, 2003, the Department published its Final Determination, covering the period of investigation (“POI”) July 1, 2001 through December 31, 2001. The investigation involved Globe Metallurgical, Inc. and SIMCALA, Inc. (collectively “Petitioners”); Bratsk Aluminum Smelter and Rual Trade Limited (collectively, “Bratsk”); and SUAL Holding, ZAO

Kremny (“Kremny”), SUAL-Kremny-Ural Ltd. (“SKU”), and Pultwen Limited. The Department calculated individual antidumping margins for the exporting entities Bratsk and Kremny/SKU.

Petitioners and respondent Bratsk contested various aspects of the Final Determination.

On September 24, 2004, the Court issued its opinion and remanded to the Department two aspects of its Final Determination for reconsideration: (1) with respect to the Department’s decision not to use Russian values to value the factors of production and other expenses, the Court ordered the Department to either use Russian post-non-market economy (“NME”) values or explain why market economy Russian values are not the best available information; and (2) with respect to the Department’s treatment of silicon metal fines, the Court granted the Department’s request to explain its exclusion of recycled silicon metal fines from the factor-of-production cost analysis.

On November 30, 2004, the Department issued its draft remand results to interested parties. See Draft Results of Redetermination Pursuant to Court Remand (“Draft Results”). On December 7, 2004, Petitioners submitted comments on the Draft Results. As a result of comments received, the Department has made changes to its Draft Results.

I. USE OF POST-NME RUSSIAN VALUES

Since the Court issued its opinion on September 24, 2004, Bratsk has entered a notice of voluntarily dismissal of its challenge of the Department’s Final Determination before the Court. Consequently, because the sole party challenging the Department’s determination not to rely on Russian market economy values to value the factors of production in the Final Determination has

withdrawn, this issue is moot. Accordingly, the Department continues to reject the usage of Russian post-NME prices to value respondents' factors of production.

II. TREATMENT OF RECYCLED SILICON METAL FINES

In the Final Determination the Department determined that silicon metal fines zero to five millimeters should be included in the Russian producers' total production quantity used to calculate the per-unit factors of production.¹ However, in its Final Determination, the Department did not address the appropriateness of an adjustment to respondents' reported factors of production for the consumption of recycled silicon metal fines. In its redetermination on remand, the Department finds that to the extent that silicon metal fines are included in the producers' production quantity, the usage of these silicon metal fines in the production of the subject merchandise should be valued and included in the calculation of normal value.² As discussed in more detail below, we determine that such an adjustment is necessary for Bratsk and Kremny.

A. Production of Silicon Metal Fines 0-5 mm

According to the Petitioners, in the production of silicon metal, after the molten silicon metal is refined or tapped, it is "poured into large flat iron molds or onto beds of silicon metal

¹The exporting entity Kremny/SKU produced the subject merchandise at two facilities: Kremny and SKU. Although the Petitioners' comments with respect to this issue are limited to silicon metal production at Bratsk and Kremny, we have also extended our analysis to include SKU.

²Note that for purposes of this remand determination, the Department is defining silicon metal fines as silicon metal sized zero to five millimeters.

finer.” See Silicon Metal from the Russian Federation: Antidumping Petition, dated March 7, 2002, at 13. The resulting ingot or billet is then crushed to the desired lump size. See id.; see also Bratsk’s Section D Questionnaire Response, dated June 17, 2002, at 3. The record for each of the three Russian producers demonstrates that each produces silicon metal sized zero to five millimeters in its normal production operations. Kremny reported that during the POI it produced approximately [] metric tons of silicon metal fines zero to five millimeters.³ See Kremny/SKU’s July 19, 2002 Supplemental Questionnaire Response at Exhibit-5; and Kremny/SKU’s August 13, 2002 Supplemental Questionnaire Response at 13. In Kremny’s normal recordkeeping system silicon metal sized zero to five millimeters is [

]. See Kremny/SKU’s July 19, 2002 Supplemental Questionnaire Response at 10.

During the POI Kremny “stopped recording the production of silicon metal sized 0-5 mm separately from the larger sizes of silicon metal because Kremny considers silicon 0-5 mm to be a finished product.” See Memorandum from Carrie Blozy and Catherine Bertrand, Case Analysts, AD/CVD Enforcement Group III/Office 9, for the File regarding Verification of Factors of Production for ZAO Kremny (“Kremny”) in the Antidumping Duty Investigation of Silicon Metal from the Russian Federation (“Kremny Factors Verification Report”), dated December 4, 2002, at 14. SKU reported that it produced [] metric tons of silicon metal zero to five millimeters during the POI. See Kremny/SKU’s July 19, 2002 Supplemental Questionnaire Response at

³ The total quantity of fines produced is the sum of the monthly production quantities for [], plus the sum of the monthly quantities for [] based on deliveries to the Finished Goods Department.

Exhibit-6. However, because SKU

[

]. See Kremny/SKU's

July 19, 2002 Supplemental Questionnaire Response at 11. In its narrative responses Bratsk reported that the production figure used to calculate its factors of production did not include "fines". See Bratsk's September 4, 2002 Section D Supplemental Questionnaire Response at 4. Bratsk did not provide an explanation of how it defines fines. Nevertheless, the record indicates that Bratsk produced [] metric tons of silicon metal zero to five millimeters during the POI and that these were included in Bratsk's production figure. See Memorandum from Cheryl Werner, Case Analyst, AD/CVD Enforcement Group III/Office 9 and James C. Doyle, Program Manager, AD/CVD Enforcement Group III/Office 9, for the File regarding Verification of Factors of Production for Bratsk Aluminum Smelter ("BAS") in the Antidumping Duty Investigation of Silicon Metal from the Russian Federation ("Bratsk Factors Verification Report"), dated December 5, 2002, at Exhibit 5.

B. Sale of Silicon Metal Fines 0-5 MM

All of the Russian producers indicated that they sold silicon metal sized zero to five millimeters during the POI. Kremny and SKU reported that they sold [] and [] metric tons, respectively. See Kremny/SKU's August 13, 2002 Supplemental Questionnaire Response at 13; and Kremny/SKU's July 19, 2002 Supplemental Questionnaire Response at Exhibit 13. Although Bratsk reported that it made sales of silicon metal sized zero to five

millimeters, it does not appear that Bratsk provided the Department with its total sales volume of silicon metal sized zero to five millimeters during the POI. However, based on information collected by the Department during verification, we know that Bratsk made sales of at least [] metric tons of silicon metal sized zero to five millimeters. See Bratsk Factors Verification Report at 10-11 and Verification Exhibit 10.

C. Reuse of Silicon Metal Fines 0-5 MM in the Production of Silicon Metal

The record with respect to the Russian producers' reuse of silicon metal sized zero to five millimeters is mixed. In its narrative questionnaire response, Kremny reported that it reused [] metric tons of silicon metal sized zero to five millimeters in its production process. See Kremny/SKU's August 13, 2002 Supplemental Questionnaire Response at 13. Kremny provided no information detailing how the recycled silicon metal was reused or what documents it relied on to determine its use of silicon metal sized zero to five millimeters. In addition to valuing each of Kremny's reported factors of production, in the Final Determination, the Department determined to value Kremny's use of the following materials:

[]
]. See Final Determination and accompanying Issues and Decision Memorandum at Comment 12; and Analysis Memorandum of ZAO Kremny/Sual-Kremny-Ural Ltd. and Pultwen Ltd: Final Determination in the Less Than Fair Value Investigation of Silicon Metal from the Russian Federation (February 3, 2003).

SKU reported that it reused [] metric tons of silicon metal sized zero to five millimeters in the production process. SKU indicated that it reused

[

]. See Kremny/SKU's July 19, 2002 Supplemental Questionnaire Response at 18-19.

With respect to Bratsk, the only evidence on the record indicating its reuse of silicon metal sized zero to five millimeters in the production of silicon metal concerns silicon metal finished material Bratsk pertained to use to line the mold. Bratsk reported that a small amount of finished materials "is added to the mold to prevent the molten silicon metal from sticking to the mold." See Bratsk Factors Verification Report at 11. However, the information on the record does not indicate the total quantity of silicon metal reused during the POI by Bratsk in the production of silicon metal, the size range of the silicon metal so used, or whether the reused silicon metal represented 'fines.'

D. Treatment of Silicon Metal Fines 0-5 mm in Final Determination

In the Final Determination, the Department agreed not to adjust Bratsk or Kremny's subject merchandise production figure, which is used as the denominator for each of the individual factors of production usage rates, to remove the production of silicon metal zero to five millimeters. With respect to SKU, as noted above, in its normal accounting system SKU treats silicon metal zero to five millimeters as a byproduct. In reporting its factors of production to the Department, SKU excluded this quantity from its production figure. Because no party contested the reporting of SKU's production quantity, the Department made no adjustments to SKU's reported production figure in the final determination.

E. Analysis

Valuation of Silicon Metal Fines

No party in this investigation submitted a surrogate value for silicon metal sized zero to five millimeters. In the Preliminary Determination and Final Determination, the Department valued certain silicon metal byproducts reported by SKU, including silicon 0-5 mm, using a South African domestic price for quartzite fines. See Notice of Preliminary Determination of Sales at Not Less Than Fair Value and Postponement of Final Determination: Silicon Metal from the Russian Federation (“Preliminary Determination”), 67 FR 59253, 59263 (September 20, 2002). In the Draft Results, the Department also determined to value recycled silicon metal sized zero to five millimeters using the surrogate value for quartzite fines to be consistent with its valuation of silicon metal byproducts in the Preliminary Determination and the Final Determination. See Draft Results at 11. None of the respondents commented on the Department’s Draft Results nor rebutted Petitioners’ suggestions that we should use Kremny and Bratsk’s surrogate-valued cost of manufacture as the surrogate value for silicon metal fines. For the reasons discussed below, the Department has determined that quartzite fines are not an appropriate surrogate value for silicon metal fines. Instead, the Department has determined to rely on each producer’s surrogate-valued cost of manufacture.

Regarding the use of quartzite fines to value silicon metal fines, upon further analysis, the

represents the best available information to value silicon metal sized zero to five millimeters or the silicon metal byproducts reported by SKU. The Department recognizes that the use of a producer's own cost of manufacture as a surrogate value is unusual. Our practice is to value factors-of-production using surrogate prices. However, because of the particular circumstances in this case (i.e., parties submitted no surrogate values for silicon metal fines and the administrative record is closed), the Department is compelled to use such data as the best information available.

Treatment of Silicon Metal Fines

Kremny

Based on the record evidence with respect to Kremny's production, sale, and reuse of silicon metal sized zero to five millimeters, it is clear that

[
]. Kremny produced approximately [] metric tons; sold [] metric tons; and reused [] metric tons of silicon metal sized zero to five millimeters during the POI. See Kremny/SKU's August 13, 2002 Supplemental Questionnaire Response at 13; and Kremny/SKU's July 19, 2002 Supplemental Questionnaire Response at Exhibit-5. Based on these facts, any recycled silicon metal sized zero to five millimeters used in the production of silicon metal should be valued and included in Kremny's build-up of normal value.

After an examination of the record evidence, the Department determines that in the Final Determination it did not account for Kremny's consumption of silicon metal sized zero to five millimeters that was consumed by Kremny in its production of silicon metal. In its narrative

questionnaire response, Kremny reported that it consumed [] metric tons of silicon metal sized zero to five millimeters during the POI. However, in its factor-of-production dataset, Kremny did not include its consumption of silicon metal sized zero to five millimeters in the production of silicon metal. Moreover, the “Movement in Accordance with Balance Accounts” ledger from which the Department determined the usage of additional direct and indirect inputs does not appear to include any material that could reasonably represent the use of silicon metal sized zero to five millimeters. Accordingly, the Department finds that it is appropriate to value Kremny’s consumption of silicon metal sized zero to five millimeters. To calculate a per-unit consumption rate, we divided Kremny’s reported consumption of silicon metal sized zero to five millimeters by the total production of silicon metal by Kremny. As explained above, to value Kremny’s consumption of silicon metal sized zero to five millimeters, we have used Kremny’s calculated cost of manufacture for silicon metal. We have recalculated Kremny’s margin accordingly.

SKU

Because SKU did not include the production of silicon metal sized zero to five millimeters in the production figure used to calculate the per-unit factors of production and instead treated it as a byproduct, no costs have been allocated to silicon metal sized zero to five millimeters. For purposes of this investigation, the Department granted SKU a byproduct offset for the sale and reuse of silicon metal fines. See Preliminary Determination at 59263. As explained in the Preliminary Determination, it is the Department’s practice to grant byproduct offsets for recoveries/byproducts which are sold or re-entered into the production process. See Final

Determination of Sales at Less Than Fair Value: Bulk Aspirin from the People's Republic of China, 65 FR 33805 (May 25, 2000) and accompanying Issues and Decision Memorandum at Comment 13 and Notice of Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Steel Concrete Reinforcing Bars From The People's Republic of China, 66 FR 33522 (June 22, 2001) and accompanying Issues and Decision Memorandum at Comment 5. Accordingly, based on SKU's treatment of silicon metal sized zero to five millimeters, the Department determines that SKU's use of recycled silicon metal sized zero to five millimeters used in the production of silicon metal should not be included in the calculation of normal value because it represents the reuse of a byproduct and no costs have been allocated to SKU's silicon metal sized zero to five millimeters.

As explained above, the Department has determined to change the surrogate value used to value SKU's byproduct silicon metal fines, for which the Department granted an offset in the Final Determination. Therefore, for purposes of these remand results, the Department has used SKU's calculated cost of manufacture as the surrogate value for SKU's reported silicon metal byproduct silicon (0-5 mm).

Bratsk

As explained above, Bratsk included silicon metal sized zero to five millimeters in the production figure used to calculate the factors of production usage rates. Moreover, there is record evidence suggesting that Bratsk reused silicon metal. Based on a comparison of the total production of silicon metal sized zero to five millimeters to the volume of sales of silicon metal sized zero to five millimeters (i.e., [] metric tons produced to [] sold), the

Department finds that there is substantial evidence to suggest that Bratsk included the usage of any recycled silicon metal sized zero to five millimeters in its production figure, and that recycled silicon metal sized zero to five millimeters used in the production of silicon metal should be valued.

Although we know that Bratsk reuses at least some silicon metal, there is no information on its usage amount of silicon metal sized zero to five millimeters in the production of silicon metal. Section 776(a) of the Tariff Act of 1930 (“the Act”) provides that if information is requested and not on the record, the Department may use facts available to fill the gap of information on the record. Accordingly, the Department must resort to the use of facts available to determine Bratsk’s usage of recycled silicon metal sized zero to five millimeters in its production of silicon metal.

As an initial matter, we note that Bratsk was fully cooperative during the proceeding and the Department found no evidence to suggest that Bratsk did not fully report all of its material inputs used in the production of silicon metal. Although section 776(b) of the Act allows the Department to apply an adverse inference, this is only if the Department determines that a respondent did not act to the best of its ability in providing information. It is clear that the manner in which Bratsk uses silicon metal (i.e., to line the molds) is as an indirect input into the production of silicon metal. In its Final Determination the Department determined to value certain indirect inputs used by Kremny directly “because we have no appropriate factory overhead surrogate figure that would normally include these indirect items.” See Final Determination and accompanying Issues and Decision Memorandum at Comment 12. During the course of the investigation, the Department did not request that the respondents provided

information on their usage of indirect materials. Thus, because Bratsk fully responded to the Department’s requests for information, we find that non-adverse facts available should be applied to Bratsk.

As non-adverse facts available, to value recycled silicon metal sized zero to five millimeters, the Department has assumed that the difference between the production of silicon metal sized zero to five millimeters and the reported sales of silicon metal sized zero to five millimeters represents the amount of silicon metal sized zero to five millimeters reused by Bratsk in the production of silicon metal. The Department has calculated a per-unit rate by dividing this quantity by Bratsk’s total production of silicon metal.

Regarding the surrogate value for silicon metal sized zero to five millimeters, we have determined to use Bratsk’s cost of manufacture for silicon metal to value Bratsk’s use of silicon metal sized zero to five millimeters. Therefore, we applied Bratsk’s cost of manufacture to value Bratsk’s consumption of silicon metal fines zero to five millimeters. We recalculated Bratsk’s margin accordingly.

WEIGHTED-AVERAGE DUMPING MARGIN

As a result of this redetermination, the Department has recalculated the dumping margin for Bratsk and Kremny/SKU. The weighted-average dumping margins are as follows:

Manufacturer/exporter	Weighted-average margin (percent)	
	Determination on Remand	Final

Bratsk Aluminum Smelter.....	87.08.....	79.42
ZAO Kremny/Sual-Kremny-Ural.Ltd.	56.20.....	56.11
Russia-Wide Rate	79.42.....	79.42

Upon a final and conclusive court decision affirming this remand redetermination, the Department will publish notice of its amended final determination in the Federal Register and instruct U.S. Customs and Border Protection to collect duties in accordance with the determination.

COMMENTS

1. The Department Did Not Capture the Cost of Recycled Fines in the Normal Value for Kremny.

Petitioners claim that the Department’s conclusion in its Draft Results that the Department already captured Kremny’s consumption of recycled silicon metal fines is wrong. Petitioners argue that the “other materials” for which Kremny failed to report factors of production and the Department valued in the Final Determination do not include silicon metal fines. Petitioners also reject the Department’s conclusion that Kremny’s “Movement in Accordance with Balance Accounts” ledger necessarily reflects the consumption of all inputs including silicon metal fines. Petitioners maintain that because Kremny maintained separate inventory records for finished silicon metal, no conclusions can be drawn as to Kremny’s

consumption of silicon metal fines from the “Movement in Accordance with Balance Accounts” ledger. Petitioners propose that the Department value Kremny’s reported consumption of silicon metals fines at ([]MT).

Department’s Position

We agree with Petitioners and have determined to value Kremny’s reported consumption of silicon metal sized zero to five millimeters in our calculation of Kremny’s normal value. After reviewing the record, we have found no evidence that suggests that in the Final Determination the Department accounted for Kremny’s consumption of silicon metal sized zero to five millimeters in its production of silicon metal. Neither Kremny’s factor-of-production dataset nor Kremny’s “Movement in Accordance with Balance Accounts” ledger appears to include silicon metal sized zero to five millimeters. Therefore, the Department finds that it did not value Kremny’s consumption of silicon metal sized zero to five millimeters in its Final Determination. We have relied on Kremny’s reported consumption of silicon metal sized zero to five millimeters.

2. The Department Improperly Used a Surrogate Value For Quartzite Fines to Value Silicon Metal Fines

Petitioners argue that based on the Department’s determination to include silicon metal fines produced by Bratsk and Kremny in the production volumes used to calculate their factors of production, the Department cannot value the fines (when recycled back into the production process) using a value that represents a tiny fraction of the cost determined for those fines.

Citing *Union Camp v. United States*, 941 F. Supp. 108, 112-15 (Ct. Int'l Trade 1996), Petitioners claim that the Department cannot value silicon metal fines with an input that is not comparable to silicon metal fines in terms of value, composition, and use. Petitioners state that silicon metal fines are not remotely comparable to quartzite fines in terms of value, composition, or use. Petitioners note that quartzite contains significantly less silicon than finished silicon metal. Also, Petitioners explain that quartzite or quartzite fines are completely unsuitable for use in place of silicon metal or silicon metal fines in any normal application. Finally, Petitioners maintain that, both in terms of cost of manufacture and market value, silicon metal is far more costly and valuable than unprocessed mineral quartzite that is fed into the silicon metal production process. With respect to the Department's use of quartzite fines to value certain silicon metal byproducts in the Final Determination, Petitioners argue that the Department did not allocate surrogate-valued costs to these items and that, in any event, Kremny could have (but did not) challenged the Department's valuation of certain of SKU's reported byproducts using this value. Petitioners suggest that the Department rely on the surrogate-valued cost of manufacture that the Department determined for Kremny and Bratsk to value the silicon metal fines recycled by Kremny and Bratsk.

Department's Position

We agree with Petitioners. As explained above, in Part E, because of the difference in composition, use, and value between silicon metal, we determine that it is not appropriate to value silicon metal sized zero to five millimeters with quartzite fines. We also agree with that Petitioners that the use of Kremny's and Bratsk surrogate-valued cost of manufacture of silicon

metal represents the best available information to value their use silicon metal sized zero to five millimeters in the production of silicon metal.

Because the Department has determined that the surrogate value for quartzite fines is inappropriate to value silicon metal sized zero to five millimeters, we also find that this value is inappropriate to value SKU's byproduct silicon metal fines. Therefore, for purposes of these remand results, the Department has changed its valuation of SKU's byproduct silicon metal fines to be consistent with its valuation of Kremny and Bratsk's recycled silicon metal fines.

Barbara E. Tillman
Acting Assistant Secretary
for Import Administration

Date