

**Final Results of Redetermination Pursuant to
*Stanley Works (Langfang) Fastening Systems Co., Ltd. and the Stanley Works/Stanley
Fastening Systems, LP v. United States*
Partial Remand Order (Ct. Int'l Trade 2015)
(February 18, 2015)**

I. SUMMARY

The U.S. Department of Commerce (“Department”) prepared these final results of redetermination pursuant to the partial remand order of the U.S. Court of International Trade (“CIT” or “Court”) in *Stanley Works (Langfang) Fastening Systems Co., Ltd. and the Stanley Works/Stanley Fastening Systems, LP v. United States*, Consol. Ct. No. 11-00102 (Ct. Int'l Trade February 18, 2015) (“Stanley”).¹

On March 30, 2015, the Department issued the draft results of redetermination to interested parties for comment. On April 3, 2015, Stanley² and Petitioner³ submitted comments on the draft results of redetermination.

In accordance with the Court’s instructions in *Stanley* and the Department’s request for a voluntary remand, the Department reconsidered its evaluation of the surrogate financial ratios in the *Nails ARI Final Results*.⁴ Specifically, the Department continues to find that Sundram Fasteners Ltd.’s (“Sundram”) surrogate financial ratios are not aberrational. However, our reasoning for such has been modified based on a further assessment of the facts on the record.

II. BACKGROUND

On September 3, 2013, the CIT remanded Commerce’s original final determination in the *Nails ARI Final Results*, to reconsider among other issues, its evaluation of the surrogate

¹ The Department issued its original final remand results on March 5, 2015. As explained further below, in “II.Background,” this partial remand is a result of a request for a voluntary remand to reexamine one issue.

² Stanley Works (Langfang) Fastening Systems Co., Ltd. and the Stanley Works/Stanley Fastening Systems (Collectively known as “Stanley”).

³ Mid Continent Nail Corporation (“Petitioner”).

⁴ See Certain Steel Nails From the People’s Republic of China: Final Results of the First Antidumping Duty Administrative Review, 76 FR 16379 (March 23, 2011) (“Final Results”).

financial ratios.⁵ Specifically, the Court granted the Department’s request for a partial voluntary remand to review the financial statements in light of, and in accordance with, its refined practice that it had explained in the Nails AR2 Final Results regarding whether it is more reasonable to consider a company a producer of “identical” merchandise or “comparable” merchandise.⁶ In our first final redetermination filed with the Court, the Department determined that there were no financial statements on the record from producers of identical merchandise.⁷ Therefore, the Department resorted to the use of financial statements from producers of comparable merchandise. The Department found that Bansidhar Granites Private Limited (“Bansidhar”), Nasco Steels Private Ltd. (“Nasco”), and Sundram were all producers of comparable merchandise, and thus were all appropriate to use for calculating the surrogate financial ratios.⁸ In response to an argument by Stanley with regard to Sundram, the Department found that Sundram’s financial ratios were appropriate because, among other things, they were not aberrational.⁹

In its comments to the Court, Stanley alleged that the Department used the incorrect overhead ratio for Nasco when comparing its overhead ratio to Sundram’s, for purposes of showing that Sundram’s overhead ratio was not aberrational. Specifically, Stanley stated that the Department compared Sundram’s overhead ratio to the overhead ratio calculated for Nasco from the *Final Results*, rather than the *Amended Final Results*,¹⁰ where the Department corrected its overhead ratio.

⁵ *Stanley Works (Langfang) Fastening Systems Co. v. United States*, 964 F. Supp. 2d 1311 (Ct. Int’l Trade 2013).

⁶ *Id.* at 1335-36.

⁷ See *Final Results of Redetermination Pursuant to Stanley Works (Langfang) Fastening Systems Co., Ltd. and the Stanley Words/Stanley Fastening Systems, LP v. United States*, Slip Op. 13-118 (Ct. Int’l Trade 2013) (dated March 5, 2014) (“First Final Remand”) available at <http://enforcement.trade.gov/remands/13-118.pdf>.

⁸ *Id.* at 3-5.

⁹ *Id.* at 13.

¹⁰ See *Certain Steel Nails From the People’s Republic of China: Amended Final Results of the First Antidumping Duty Administrative Review*, 76 FR 23279 (April 26, 2011) (“Amended Final Results”) at 23280; see also *First*

Based on this alleged error, the Department requested a partial voluntary remand to review Sundram's financial statement, in particular its overhead, in light of Nasco's actual overhead calculated in the *Amended Final Results*, to determine whether Sundram's experience is or is not aberrational.

III. ANALYSIS

We agree with Stanley that we based our analysis in the *First Final Remand* (comparing Sundram's overhead ratio to Nasco's overhead ratio), using the uncorrected/unrevised overhead figure for Nasco from the *Final Results* (29.29 percent), rather than the *Amended Final Results* (3.68 percent). In addition, in making this correction, we discovered that for Sundram, we also used an incorrect overhead ratio in our analysis. The overhead ratio we used for Sundram in the final redetermination was based on a calculation that a party had proffered (40.14 percent), as opposed to what was actually used in the *First Final Remand* (25.44 percent). However, it must be noted that the Department did not use the incorrect overhead ratios for calculation purposes; the calculations are correct. Rather, the Department only referred to the incorrect overhead percentages when comparing the financial ratios for purposes of explaining why we did not find Sundram's overhead ratio to be aberrational. In any event, the rest of our analysis (below) is based on the actual figures used in the *First Final Remand* calculations.

Regarding Stanley's claim that Sundram's financial ratios, in particular its overhead, are aberrational, as an initial matter, we highlight the fact that the process of constructing normal value for a producer in a non-market economy country using surrogate values is difficult and necessarily imprecise.¹¹ Furthermore, Stanley's claim regarding aberrational values is made with the backdrop of comparing a limited number of companies that produce comparable, albeit,

Final Remand at 13.

¹¹ See *Nation Ford Chem. Co. v. United States*, 166 F.3d. 1373, 1377 (Fed. Cir. 1999).

different merchandise (*e.g.*, bolts, hinges, and fasteners). Thus, given the array of different products produced, it is reasonable to expect variation amongst the companies' production experiences, and hence, their financial ratios.¹² In addition, there is no information to indicate that one company's ratios are aberrationally high, or for that matter, that the other companies' are aberrationally low. Moreover, the fact that the financial ratios are different is why we attempt to use as many financial ratios as possible, so as to normalize any inherent variations therein.

Lastly, there is nothing within Sundram's financial statements that indicates, or that even provides the Department with a reason to believe that, the statements were "abberational" in and of themselves (*e.g.*, no "extraordinary" items found within the financial statement). The only argument Stanley submits in support of its allegation that Sundram's overhead ratio is aberrational is that it happens to be higher in comparison to the other overhead ratios of comparable producers on record.¹³ But, as explained above, the Department still does not find this argument, alone, to be persuasive. Thus, we continue to find that Sundram's financial ratios are not aberrational, given the above discussion.

IV. COMMENTS FROM INTERESTED PARTIES

Whether Sundram's Overhead Ratio is Aberrational.

Stanley's Comments

- The issue is not whether the financial statements are aberrational, but whether the surrogate values derived from them are aberrational and distortive, which they are.

¹² In the *First Final Remand*, the Department also noted the difficulty of comparing the production experiences of comparable merchandise producers, specifically with regard to production volumes. There, the Department noted that the comparison was difficult because the production volumes of each comparable producer were reported in differing units of measurement. See *First Final Remand* at 4. This difficulty is similarly apparent when comparing the overhead ratios that are derived from these differing production experiences.

¹³ However, even then, Sundram's OH is not 10 times higher, as Stanley claims, but rather is 6.9 times higher.

- Three producers on the record manufacture nails while Sundram does not. There is no “array of different products,” amongst the three companies as Commerce suggests.
- The overhead ratios of the three companies on the record (one of which Commerce found not be an identical or comparable producer) that produce nails are very similar to each other (with no real variation), demonstrating that manufacturing nails in India typically requires an overhead of about four percent.
- In contrast, Sundram does not produce any nails, and has aberrational and distortive ratios, compared to the other three nails companies (*i.e.*, overhead ratio, selling general and administrative and profit ratios are several times higher).
- Confronted with this “colorable claim” that the data are aberrational, the burden is on Commerce to provide a reasoned explanation as to why such data are reliable and non-distortive. *See Dorbest.*¹⁴

Petitioner’s Comments

- The overhead ratio of Sundram as compared to that of Nasco comprises a reasonable variation, such that one cannot be characterized as aberrational.
- Sundram provides the most ideal surrogate company from which to derive financial ratios for the lone respondent due to their nearly identical production processes.

Department’s Position:

The premise of Stanley’s arguments is flawed. Stanley’s arguments appear to be focused on whether a company should be considered a producer of identical or comparable merchandise rather than whether a company’s overhead is aberrational. However, the issue of which

¹⁴ *See Dorbest Ltd. v. United States*, 462 F. Supp. 2d 1262, 1287-88 (CIT 2006) (“Dorbest”); *see also Blue Field (Sichuan) Food Industrial Co., Ltd. v. United States*, 949 F. Supp. 2d 1311, 1327 (CIT 2013).

producers are comparable and which are identical is not within the scope of this remand.

Stanley, thus, appears to attempt to improperly reintroduce this issue through the pretense of a challenge to Sundram's overhead.

Foremost, Stanley argues that the surrogate value derived from the three surrogate financial statements is aberrational. To support this argument, Stanley relies on the fact that the product mix of the companies on which we are basing financial ratio information and on the magnitude of difference between Sundram's overhead ratio as compared to the other companies' overhead ratios. Stanley's argument is unsubstantiated.

With respect to the product mix, Stanley argues that the other surrogate companies produce some nails while Sundram does not produce any nails. Stanley is essentially arguing that the other surrogate companies are producers of identical merchandise and, as a result, their financial information is more typical of nails producers. As an initial matter, the remand is limited to Commerce to "reexamine[ing] the manufacturing overhead ratios," not reexamining whether the companies are producers of identical or comparable merchandise.¹⁵ In any event, this issue is addressed in the *First Final Remand* and Stanley has not raised any arguments here that were unaddressed in that redetermination – *i.e.*, most of what the companies produce is not nails and as a result they are producers of comparable merchandise rather than identical merchandise, similar to Sundram.¹⁶ Stanley claims that the two other producers of comparable merchandise are "typical" nail producers, yet, Stanley fails to point to any record evidence as to why they should be considered "typical" and fails to address the fact that a minority of their production is devoted to nails.¹⁷

¹⁵ Partial Remand Order, February 18, 2015.

¹⁶ See *First Final Remand* at 3-4.

¹⁷ *Id.*, at 4-5.

With respect to the Stanley’s argument regarding the magnitude of difference of the overhead ratios, we fully address why we do not find Sundram’s overhead to be aberrational – *i.e.*, there is a limited number of financial statements on the record from producers of comparable merchandise who have differing product mixes that will inherently have variations in the overhead, thereby making a comparison of the three on its own not persuasive. *See* discussion *supra* at 3-4. Thus, the differences alone do not provide evidence of an aberration.

Stanley’s argument that manufacturing nails in India typically requires an overhead of about four percent is based merely on the overhead ratios of Nasco and Bansidhar. However, the overhead ratios of two producers, both of which primarily produce goods other than nails, is not a sufficient evidentiary basis to demonstrate the overhead that “typical” nail producers require. Therefore, the evidence does not support a clear finding that manufacturing nails in India typically requires an overhead of about four percent.

With regard to Stanley’s arguments about SGA and profit ratios, these arguments are not within the scope of this limited remand, because as discussed above, the remand order is limited to Commerce reexamining the overhead ratios. The time to raise such arguments would have been in the prior remand, but concerns about SG&A and Profit being aberrational were not raised. As such, this argument is not properly before the Department and thus will not be addressed.

Finally, Stanley’s reliance on *Dorbest* and *Blue Field* is misguided, as Stanley cites to *Dorbest* and *Blue Field* to suggest that once a colorable claim is before the Department that certain data are aberrational, the Department must provide a reasoned explanation as to why it finds the data reliable and non-distortive. Merely pointing to the differences in the overhead ratios of the Indian producers does not present a colorable claim that Sundram’s overhead ratio is

aberrational. In this regard, Stanley fails to appreciate that the burden is on the interested party to supply the Department with evidence to support its claim. In any event, the Department has fully addressed Stanley's argument above. Thus, the Department has provided a reasoned explanation addressing Stanley's argument satisfying both *Dorbest* and *Blue Field*.

V. FINAL RESULTS OF REDETERMINATION

Pursuant to the Court's order and based on the analysis of the data available on the record, the Department continues to find that Sundram's surrogate financial ratios are not aberrational. Based upon this finding, the Department determines that it is appropriate to continue to use Sundram's financial statements for surrogate valuation purposes and thus the results of the *First Final Remand* remain unchanged.

Re file
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

15 APRIL 2015
Date