

Hangzhou Yingqing Material Co. v. United States

Consol. Court No. 14-133, Slip Op. 16-118 (CIT December 21, 2016)

FINAL RESULTS OF REDETERMINATION
PURSUANT TO COURT REMAND

A. SUMMARY

The Department of Commerce (the Department) has prepared these final results of redetermination pursuant to the decision and remand order of the Court of International Trade (CIT or Court) in *Hangzhou Yingqing Material Co. v. United States*, Consol Court No. 14-133, Slip Op. 16-118 (CIT December 21, 2016) (*Remand Opinion and Order*). These final remand results concern *Steel Wire Garment Hangers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review, 2011-2012*, 79 FR 31298 (June 2, 2014) (*AR4/NSR Final Results*), and accompanying Issues and Decision Memorandum (IDM).¹ In the *Remand Opinion and Order*, the CIT remanded the *AR4/NSR Final Results* for the Department to reconsider the allocation of labor costs in the surrogate financial ratios calculations² and “reconsider its refusal to deduct the expense of obtaining a letter of credit in light of the information on the record from the World Bank,” for the valuation of brokerage and handling (B&H).³

As set forth in detail below, pursuant to the CIT’s *Remand Opinion and Order*, we have reconsidered the allocation of labor costs and the valuation of B&H. Consequently, for the purposes of these final results on remand, the Department has made changes to the combination

¹ The AR4/NSR Final Results and accompanying IDM pertain to the both the fourth administrative review of steel wire garment hangers from the People’s Republic of China and the aligned new shipper review of Hangzhou Yingqing Material Co. Ltd. As only Hangzhou Yingqing Material Co. Ltd. challenged the *AR4/NSR Final Results*, the results of this remand only pertain to Hangzhou Yingqing Material Co. Ltd.

² See *Remand Opinion and Order* at 21.

³ *Id.* at 23.

rate⁴ weighted-average dumping margin assigned⁵ in *AR 4/NSR Final Results* to the exporter-producer combination Hangzhou Yingqing Material Co. Ltd.⁶ and Hangzhou Qingqing Mechanical Co. Ltd.⁷

We released our draft remand results for comment by parties on February 28, 2017.⁸ We received one comment from Petitioner, M&B Metal Products Company, Inc., stating that it “support(s) the Department’s Remand Redetermination and urge(s) the Department to issue the Draft Results as its final determination in this proceeding.”⁹ We received no other comments. Therefore, we have made no changes to the determinations made in the Draft Remand Results.

B. REMANDED ISSUES

1. Allocation of Labor Costs

Background

On June 2, 2014, the Department published the *AR4/NSR Final Results*, which covered Shanghai Wells Hanger Co., Ltd, the People’s Republic of China (PRC) wide entity, and Yingqing.¹⁰ The period of review (POR) covers October 1, 2011, through September 31, 2012. In the *AR4/NSR Final Results*, the Department determined normal value pursuant to section 773(c) of the Tariff Act of 1930, as amended, (the Act), and selected Thailand as the primary surrogate country, consistent with section 773(c)(4) of the Act. In the *AR4/NSR Preliminary*

⁴ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296 (May 19, 1997).

⁵ For a description of our practice see *Import Administration Policy Bulletin 03.2: Combination Rates in New Shipper Reviews* (March 4, 2003).

⁶ Yingqing or respondent.

⁷ Qingqing.

⁸ Letter to Interested Parties “Re: Draft Remand Determination in the Antidumping Duty Administrative Review of Steel Wire Garment Hangers from the People’s Republic of China; 10/01/2011-9/30/2012” (February 28, 2017).

⁹ See Letter to the Secretary of Commerce from M&B Metal Products Company, Inc. “Re: Fourth Administrative Review and New Shipper Review of Steel Wire Garment Hangers from China: Comments on Draft Remand Redetermination,” (March 6, 2017).

¹⁰ See *Steel Wire Garment Hangers from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review, 2011-2012*, 79 FR 31298 (June 2, 2014) (*AR4/NSR Final Results*) and accompanying Final Decision memorandum (IDM).

Results, the Department valued respondent's financial ratios for overhead (OH), selling and general administrative expenses (SG&A), and profit using two 2011 financial statements from companies in the Philippines, APO Industries, Inc., and Sterling Steel Incorporated.¹¹

Additionally, the Department valued labor using industry-specific 2007 Industrial Census data published by Thailand's National Statistics Office (2007 Thai NSO Data), adjusting the Thai labor cost to the POR using the consumer price index, as published by the International Monetary Fund's International Financial Statistics.¹² The Department determined that the 2007 Thai NSO Data were reflective of "all costs related to manufacturing labor including wages, benefits, housing, training, etc."¹³ In the *AR4/NSR Final Results*, the Department valued Yingqing's financial ratios for OH, SG&A, and profit using the 2012 Thai financial statements of LS Industries Co., Ltd.(LSI), which were placed on the record after the *AR4/NSR Preliminary Results*, as these financial statements were "the best available information on the record to value surrogate financial ratios."¹⁴ Additionally, the Department continued to value labor using the 2007 Thai NSO Data.¹⁵

Yingqing did not challenge the Department's valuation of labor using the 2007 Thai NSO Data. However, Yingqing argued that use of the 2007 Thai NSO data for the surrogate value of labor and use of surrogate financial ratios must avoid double counting the labor cost.¹⁶ Yingqing

¹¹ See *Steel Wire Garment Hangers from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review, 2011-2012*, 78 FR 70271 (November 25, 2013) (*AR4/NSR Preliminary Results*) and accompanying Preliminary Decision Memorandum (PDM).

¹² See "Fourth Administrative Review and New Shipper Review of Steel Wire Garment Hangers from the People's Republic of China: Surrogate Values for the Preliminary Results" (November 18, 2013) (*AR4/NSR Prelim SV Memo*).

¹³ See *AR4/NSR Preliminary Results PDM* at 26.

¹⁴ See *AR4/NSR Final Results*; see also "Fourth Administrative Review and New Shipper Review of Steel Wire Garment Hangers from the People's Republic of China: Surrogate Values for the Final Results" (May 27, 2014) (*AR4 Final SV Memo*) at 2.

¹⁵ See *AR4/NSR Prelim SV Memo* at 6 and 7.

¹⁶ *Remand Opinion and Order* at 19.

argued that the Department acted contrary to its labor methodology by not making such adjustments to avoid double counting, because the financial statements of LSI contain itemized labor costs.¹⁷ Yingqing further claimed that, in this case, the Department departed from its prior practice in the *AR4 Nails Final* by failing to adjust the surrogate financial ratios sourced from the same set of financial statements in the same way.¹⁸

In the *Remand Opinion and Order*, the Court held that the Department’s “finding that ‘there {was} nothing on the record to suggest that labor costs are overstated’ is unreasonable.”¹⁹ Specifically, the Court pointed to the LSI financial statements as identifying items such as “Employee welfare cost” and “Subsidy of Social Security Fund and Workmen Compensation Fund” as administrative costs.²⁰ The Court explained that, in *AR4 Nails Final*, the Department identified these same expenses in LSI’s 2012 financial statements and treated them as labor expenses, recognized that the 2007 NSO data covered employer contributions to social security, and adjusted the surrogate financial statements to avoid double counting labor costs.²¹ The Court stated that the Department did not adequately explain why it departed from its decision in *AR4 Nails Final*, where the Department also used the 2007 Thai NSO Data to value labor and the 2012 LSI financial statements to value surrogate financial ratios.²² Consequently, the Court remanded the allocation of labor costs in *AR4/NSR Final Results* to the Department for further consideration, as it “has not adequately explained why it departed from its prior practice in {the

¹⁷ See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (*Labor Methodologies*).

¹⁸ See *Remand Opinion and Order* at 19 and 20.

¹⁹ *Id.* at 20.

²⁰ *Id.* at 20 and 21.

²¹ See *Certain Steel Nails from the People’s Republic of China: Final Results of the Fourth Antidumping Duty Administrative Review*, 79 FR 19316 (April 8, 2014) and accompanying Issues and Decision Memorandum (*AR4 Nails Final*).

²² See *Remand Order and Opinion at 20 and 21.*; see also *AR4 Nails Final*.

AR4 Nails Final} and failed to adjust the financial ratios based on the same or similar record information.”²³

Analysis

In accordance with the *Remand Opinion and Order*, the Department has reconsidered its calculation of the surrogate financial ratios with respect to the proper allocation of labor cost line items in LSI’s 2012 financial statements, and for the reasons set forth below, in these final remand results, the Department continues to find that the surrogate financial ratios should not be adjusted.

Pursuant to 19 CFR 351.408(c)(4), the Department normally will value OH, SG&A, and profit using “nonproprietary information gathered from producers of identical or comparable merchandise in the surrogate country.”²⁴ Additionally, the Department weighs the available information with respect to each input value and, on a case-by-case basis, makes a product-specific determination as to what constitutes the “best” available surrogate value for each input.²⁵ In the *AR4/NSR Final Results*, the Department determined that the 2012 financial statements of LSI represented the best available information on the record to calculate surrogate financial ratios.²⁶ When calculating the surrogate SG&A ratio, the Department treated “Employees Welfare Cost,” and “Subsidy of Social Security Fund and Workmen Compensation Fund” as SG&A expenses, mirroring the manner in which LSI treated these expenses in its own financial statements.²⁷ Specifically, in LSI’s financial statements, these expenses were classified in the

²³ See *Remand Opinion and Order* at 21.

²⁴ 19 CFR 351.408(c)(4).

²⁵ See *Certain Preserved Mushrooms from the People’s Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review*, 71 FR 40477 (July 17, 2006) and accompanying Issues and Decision Memorandum at Comment 1.

²⁶ See *AR4 Final SV Memo* at 2.

²⁷ See “Steel Wire Garment Hangers from the People’s Republic of China: Issues and Decision Memorandum for the Final Results of the Fourth Antidumping Duty Administrative Review and New Shipper Review” (May 27, 2014) at 20 (Final IDM); see also Letter to the Secretary of Commerce from Fabriclean Supply Inc. “Re: Post

portion of LSI's financial statements entitled "Details of Selling Expenses and Administration Costs," which covers selling expenses and administration costs, rather than expenses that pertain specifically to the production of merchandise. Additionally, in LSI's own financial statements, these expenses were distinctly separated from "Direct Wages" and "Outsourced Wage," which were classified under the portion of LSI's financial statements that covers "Details of Cost of Sales,"²⁸ (which covers expenses specifically pertaining to production). Further, while "it is the Department's longstanding practice to avoid double counting costs where the requisite data are available to do so,"²⁹ the Department determined that respondent's surrogate financial ratios should not be adjusted, as there was no record evidence to suggest that double counting of labor costs had occurred.³⁰ Furthermore, the Department followed its practice to classify expenses in its financial ratio calculations as they are allocated within the surrogate company's own financial statements.³¹

In the *Chlor Isos Second Remand Opinion and Order*, the Court remanded the Department's allocation of labor when calculating surrogate financial ratios.³² In the *Chlor Isos Second Remand Opinion and Order*, the Court asked the Department to reconsider its allocation of labor expenses listed as SG&A expenses within the financial statements, as notes accompanying the financial statements indicated that some of these expenses had been applied to

Preliminary Results Surrogate Value Information: Steel Wire Garment Hangers from the People's Republic of China", (January 6, 2014) at Attachment 4.

²⁸ See Letter to the Secretary of Commerce from Fabriclean Supply Inc. "Post preliminary Surrogate Value Information: Steel Wire Garment Hangers from the People's Republic of China" (January 6, 2014) at Attachment 4.

²⁹ See *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 56158 (September 12, 2011), and accompanying Issues and Decision Memorandum at Comment 5.B., citing *Certain Tissue Paper Products from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review*, 72 FR 58642 (October 16, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

³⁰ See AR4/NSR Final Results at Comment 7.

³¹ See Final IDM at 20.

³² See *Clearon Corp. v. United States*, Slip Op. 15-91, Consolidated Court No. 13-00073 (Ct. Intl Trade August 20, 2015) (remanding first remand results) (*Chlor Isos Second Remand Opinion and Order*).

all employees (*i.e.*, employees involved in production and other employees).³³ Consistent with the *Chlor Isos Second Remand Opinion and Order*, the Department reallocated a portion of the retirement benefits expense listed within the financial statements as an SG&A expense, as per the notes accompanying the financial statements.³⁴ The Department's current practice is explained in the Second Chlor Isos Remand Results, in which the Department reallocated a portion of retirement benefits expenses that had been listed in the financial statements as SG&A expenses, to direct labor expenses (under cost of sales). This had the effect of increasing the denominator of its surrogate financial ratio calculation to avoid double counting the labor included in the ILO's wage rate, while maintaining a portion of the retirement benefits expenses for administrative employees (under operating expenses) as SG&A.³⁵ However, the Department continued to treat other expenses as SG&A, such as "employee benefits," because these expenses did not have specific notes within the financial statements indicating that that these expenses apply to all employees.³⁶ Accordingly, absent such information, the Department followed the classification of expenses in the financial statements as "Operating Expenses" and treated them as SG&A expenses.³⁷ The Court affirmed the Department's treatment of these expenses on November 23, 2016,³⁸ stating that "substantial evidence on the record supports Commerce's determination."³⁹

Pursuant to the Department's *Labor Methodologies*, "when the surrogate financial statements include disaggregated overhead and selling, general and administrative expense items that are already included in the {labor value}, the Department will remove these identifiable cost

³³ *Id.*

³⁴ <http://ia.ita.doc.gov/remands/15-91.pdf> (March 21, 2016) (Second Chlor Isos Remand Results).

³⁵ *Id.*

³⁶ *Id.*

³⁷ See *Labor Methodologies*; see also *Clearon 2016*, at 24-26.

³⁸ See *Clearon 2016*.

³⁹ *Id.*

items.”⁴⁰ Additionally, *Labor Methodologies* states that if there is evidence on the record that demonstrates that labor costs are overstated, appropriate adjustments will be made to the surrogate financial statements.⁴¹ In LSI’s financial statements, Employee Welfare costs and Subsidy of Social Security Fund and Workmen Compensation Fund are categorized as Selling Expenses and Administration Costs.⁴² There is no information on the record indicating that these expenses apply to production labor, which is categorized as an element of Cost of Sales in LSI’s financial statements.

Furthermore, it is the Department’s practice to treat labor expenses in the same manner as they are classified on the surrogate financial statements when calculating surrogate financial ratios.⁴³ Although the Second Chlor Isos Remand Results references a different surrogate country and company,⁴⁴ the facts are similar to this case. In both proceedings, the Department had to consider the proper allocation of labor expenses listed as SG&A expenses within the financial statements when calculating surrogate financial ratios, consistent with the record evidence and the Department’s practice. The Department’s practice to treat expenses as they are listed within the financial statements, if no other evidence exists for alternative treatment, was affirmed by the Court’s Opinion in *Clearon 2016*.⁴⁵ Therefore, the Department finds the *Clearon 2016* decision instructive. While the expenses at issue in this final remand redetermination are not exactly the same as the retirement benefits expense that the Department

⁴⁰ See *Labor Methodologies*.

⁴¹ *Id.*

⁴² See Letter to the Secretary of Commerce from Fabriclean Supply Inc. “Post preliminary Surrogate Value Information: Steel Wire Garment Hangers from the People’s Republic of China” (January 6, 2014) at Attachment 4.

⁴³ See *Certain Steel Threaded Rod From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 79 FR 232 (December 3, 2014) (AR4 Steel Threaded Rod) and accompanying Issues and Decision Memorandum at Comment 3.

⁴⁴ See Second Chlor Isos Remand Results.

⁴⁵ See *Clearon Corp. v. United States*, Consol. Court No. 13-00073, Slip Op. 16-110 (Ct. Intl Trade November 23, 2016) (sustaining the Department’s Second Remand Results) (*Clearon 2016*) (on appeal at the CAFC).

considered in the Second Chlor Isos Remand Results, they are similar as they are classified as SG&A expenses within the financial statements used to calculate surrogate financial ratios.⁴⁶ Moreover, in the Chlor Isos Remand Results, there was a note in the financial statements explaining that the expenses at issue applied to all employees, whereas there is no such note in LSI's financial statements. Accordingly, consistent with its practice, and *Clearon 2016*, because these costs are classified as SG&A expenses in LSI's 2012 financial statements, and there are no notes indicating that the Department should treat those expenses as anything other than SG&A, the Department finds it appropriate to treat them as SG&A expenses.

In the *Remand Opinion and Order* of this proceeding, the Court also asks the Department to explain its variances in treatment of these labor expenses in the *AR4 Nails Final* to the instant *AR4/NSR Final Results*.⁴⁷ Although the same expenses were treated differently in the *AR4 Nails Final*, the *AR4 Nails Final* decision predated both the *AR4/NSR Final Results* and the *Chlor Isos Second Remand Opinion and Order*. Also, since the *AR4 Nails Final*, the Department has followed the approach upheld by the CIT in *Clearon 2016*.⁴⁸ Additionally, in *Labor Methodologies*, the Department states that it “will determine whether the facts and information available on the record warrant and permit an adjustment to the surrogate financial statements on a case-by-case basis.”⁴⁹ Thus, *Labor Methodologies* recognizes that adjustments will be considered on a case-by-case basis, “subject to the available information on the record.”⁵⁰ As the record of this specific proceeding does not include any additional information that would indicate that such an adjustment is warranted, the Department is not making such an adjustment.

⁴⁶ See Second Chlor Isos Remand Results.

⁴⁷ See *Remand Opinion and Order* at 21.

⁴⁸ See *AR4 Steel Threaded Rod* and accompanying Issues and Decision Memorandum at Comment 3

⁴⁹ See *Labor Methodologies*.

⁵⁰ *Id.*

Moreover, its practice is to treat expenses as they are classified within the surrogate financial statements, a practice that was affirmed by the Court.⁵¹ Thus, consistent with the *Remand Opinion and Order*, the Department has reconsidered this issue and finds it appropriate to continue to treat these expenses as SG&A expenses.

2. Valuation of B&H Costs

Background

For the *AR4/NSR Preliminary Results* and the *AR4/NSR Final Results*, the Department used the World Bank's publication *Doing Business 2013: Thailand* (Doing Business) to value B&H costs.⁵² As the data used in the Doing Business report were current as of June 1, 2012, the Department did not inflate this surrogate value.⁵³ Additionally, while Yingqing claimed that it did not use a letter of credit, the Department did not adjust the surrogate value for B&H for the value of obtaining a letter of credit in Thailand, citing a lack of evidence on the record that would support such a decision.⁵⁴ Specifically, the Department explained that the cost associated with obtaining a letter of credit was not identified on the record and that the Department does not have the ability to determine such costs.⁵⁵

The Court affirmed the Department's use of the Doing Business report,⁵⁶ but found it unreasonable that the Department did not deduct the cost of obtaining a letter of credit from respondent's B&H costs, as there was evidence on the record quantifying letter of credit costs.⁵⁷

⁵¹ See *Clearon 2016*; see also *Labor Methodologies*.

⁵² See *AR4/NSR Prelim SV Memo* at 9 and 10.

⁵³ *Id.*

⁵⁴ See *Final IDM* at Comment 5.

⁵⁵ See *AR4/NSR Final Results IDM* at 18 and 19.

⁵⁶ *Remand Opinion and Order* at 21.

⁵⁷ *Id.* at 22.

Analysis

In accordance with the *Remand Opinion and Order*, and for the reasons set forth below, for this final remand redetermination, the Department is deducting the cost of obtaining a letter of credit⁵⁸ from the total amount of B&H expenses.

After reexamining the record evidence, the Department finds that there is, in fact, information to value the cost associated with obtaining letters of credit in Thailand. Specifically, an e-mail from an official of the World Bank's Doing Business Unit, International Finance Corporation, identifies the cost associated with obtaining a letter of credit as \$60 for the Doing Business report regarding Thailand overlapping with the POR, and that letter of credit expenses were included in the total B&H expense buildup.⁵⁹ Thus, there is record evidence that demonstrates such expenses were included in the B&H costs from the Doing Business report.

Additionally, Yingqing had stated in a supplemental questionnaire that a letter of credit was not used during the sale of its merchandise.⁶⁰ Yingqing reiterated that it had not used a letter of credit during the POR in its post-preliminary surrogate value submission.⁶¹ In other administrative reviews, such as *Citric Acid and Certain Citrate Salts Final*,⁶² the Department has followed the practice of deducting a letter of credit where evidence on the record exists that would support such a deduction. After reevaluating the record and further considering the Department's practice, the Department will deduct the letter of credit expense from the B&H

⁵⁸ See Letter to the Secretary of Commerce from Hangzhou Yingqing Material Co. Ltd. and Hangzhou Qingqing Mechanical Co. Ltd. "Steel Wire Garment Hangers from China: Surrogate Values for Final Results" at Exhibit 38 (January 6, 2014).

⁵⁹ *Id.*

⁶⁰ See Letter to the Secretary of Commerce from Hangzhou Yingqing Material Co. Ltd. and Hangzhou Qingqing Mechanical Co. Ltd. "Re: Steel Wire Garment Hangers from China: Supplemental Section A Questionnaire Response" (February 8, 2013) at 9.

⁶¹ See Yingqing's Post-Prelim SV Submission at 4.

⁶² See *Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 77323 (December 14, 2015) (*Citric Acid and Certain Citrate Salts Final*) and accompanying IDM at Comment 7.

expenses, as Yingqing did not incur this cost. This change will alter Yingqing's surrogate B&H expenses from \$0.0385 per kilogram to \$0.0325 per kilogram.⁶³

C. RESULTS OF FINAL REDETERMINATION

No parties disagreed with the Department's draft results on remand. As a result, the Department has made no changes to the draft results. Specifically, per the Court's remand order, the Department has reconsidered its allocation of labor costs and, in doing so, provided further explanations concerning the departure from its decision in the *AR4 Nails Final*. Thus, in this final redetermination, the Department has continued not to adjust the financial ratios. Pursuant to the Court's remand, the Department also reconsidered its valuation of the B&H costs for Yingqing. In these final results of redetermination, the Department has deducted the cost of obtaining a letter of credit from the total amount of B&H expenses. Accordingly, the Department has revised the combination rate weighted-average dumping margin for Yingqing (exporter) and Qingqing (producer) from 40.99 percent to 40.39 percent.⁶⁴

3/15/2017

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Signed by: RONALD LORENTZEN

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

⁶³ See "Remand Redetermination Results Analysis Memorandum for Hangzhou Yingqing Material Co. Ltd. in the Antidumping Duty New Shipper Review of Steel Wire Garment Hangers from the People's Republic of China" dated concurrently with this document.

⁶⁴ *Id.*