



(BILLING CODE 3510-P)

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-806]

Silicon Metal from the People's Republic of China: Notice of Court Decision Not in Harmony with Final Results of Administrative Review and Notice of Amended Final Results of Administrative Review

SUMMARY: On September 5, 2012, the United States Court of International Trade (“CIT”) sustained the Department of Commerce's (“Department”) results of redetermination, which reclassified certain line items in the surrogate financial statement used to calculate surrogate financial ratios in the 2007-2008 administrative review of silicon metal from the People's Republic of China (“PRC”)¹, pursuant to the CIT's remand order in *Globe Metallurgical Inc. v. United States*, 781 F. Supp. 2d 1340 (CIT 2011) (“*Globe*”).² Consistent with the decision of the United States Court of Appeals for the Federal Circuit (“CAFC”) in *Timken*,³ as clarified by *Diamond Sawblades*,⁴ the Department is notifying the public that the final judgment in this case is not in harmony with the Department's final results of administrative review and is amending its final results of administrative review of the antidumping duty order on silicon metal from the PRC for the 2007-2008 period of review (“POR”).⁵

EFFECTIVE DATE: September 17, 2012.

FOR FURTHER INFORMATION CONTACT: Toni Dach, Office 9, Import Administration,

¹ See *Silicon Metal from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 75 FR 1592 (January 12, 2010) (“*Final Results*”) (review covering the period June 1, 2007, through May 31, 2008).

² See September 6, 2011, “Final Results of Remand Redetermination Pursuant To Remand Order” (“*Redetermination*”); *Globe Metallurgical Inc. v. United States*, Slip Op. 12-114, Court No. 10-00032 (September 5, 2012).

³ *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (“*Timken*”).

⁴ *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (“*Diamond Sawblades*”).

⁵ See *Final Results*.

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SUPPLEMENTARY INFORMATION: On January 12, 2010, the Department issued its final results of administrative review in the 2007-2008 administrative review of silicon metal from the PRC.⁶ In the *Final Results*, the Department excluded miscellaneous receipts and profit on the sale of a fixed asset from its calculation of selling, general, and administrative expenses (“SG&A”) in the surrogate financial ratios.⁷

In *Globe*, the CIT remanded the *Final Results* to the Department to reconsider its exclusion of miscellaneous receipts and profit on sale of a fixed asset from SG&A.⁸ The Department then issued a remand redetermination finding that, while profit on the sale of a fixed asset should continue to be excluded from our calculation of SG&A, income from miscellaneous receipts should offset SG&A expenses, as the Department could not determine whether this income was related to the primary operations of the surrogate company.⁹ In its Redetermination, the Department also determined that profit on the sale of a fixed asset should be excluded from the profit calculation, as it is excluded from SG&A.¹⁰ As a result, the antidumping duty margin for the respondent Jiangxi Gangyuan Silicon Industry Co., Ltd. (“Jiangxi Gangyuan”) changed from 50.02% to 48.64%. The antidumping duty margin for the respondent Shanghai Jinneng International Trade Co., Ltd. (“Shanghai Jinneng”) changed from 23.16% to 21.97%.

On September 5, 2012, the CIT sustained the Department’s Redetermination and entered

⁶ *Id.*

⁷ See Memorandum from Bobby Wong, Senior Analyst; Through Scot T. Fullerton, Program Manager; To James C. Doyle, Director, Office 9; Regarding: Silicon Metal from the People’s Republic of China: Allegations of Ministerial Errors in the Final Results, dated February 26, 2010.

⁸ See *Globe*, 781 F. Supp. 2d at 1357.

⁹ See Redetermination.

¹⁰ See *id.* at 5.

judgment accordingly.¹¹

Timken Notice

In its decision in *Timken*, 893 F.2d at 341, as clarified by *Diamond Sawblades*, the CAFC has held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (“the Act”), the Department must publish a notice of a court decision that is not “in harmony” with a Department determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT’s September 5, 2012, judgment sustaining the Department’s remand redetermination continuing to exclude profit on the sale of a fixed asset from SG&A, excluding profit on the sale of a fixed asset from the profit calculation, and including miscellaneous receipts as an offset to SG&A, constitutes a final decision of that court that is not in harmony with the Department’s *Final Results*. This notice is published in fulfillment of the publication requirements of *Timken*. Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal, or if appealed, pending a final and conclusive court decision.

Amended Final Results

Because there is now a final court decision with respect to the *Final Results*, the Department amends its *Final Results*. The Department finds the following revised margins to exist:

¹¹ See *Globe Metallurgical Inc. v. United States*, Ct. No. 10-00032, Slip Op. 12-114 (Sept. 5, 2011) (“*Globe II*”).

Silicon Metal from the PRC	
Exporter	Weighted-Average Margin (Percent)
Jiangxi Gangyuan Silicon Industry Co., Ltd.	48.64%
Shanghai Jinneng International Trade Co., Ltd.	21.97%

The cash deposit rate will remain the company-specific rate established for Shanghai Jinneng for the most recent period during which each respondent was reviewed.¹² For Jiangxi Gangyuan, the cash deposit rate will be the rate listed above and the Department will instruct U.S. Customs and Border Protection accordingly.

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Paul Piquado
Assistant Secretary
for Import Administration

September 12, 2012
(date)

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¹² See *Silicon Metal from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 54563 (September 5, 2012).