

These administrative reviews and this notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 CFR 351.213 and 19 CFR 351.221(b)(5).

Date: February 4, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99-3693 Filed 2-12-99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-840]

Manganese Metal From the People's Republic of China; Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of the administrative review of the antidumping duty order on manganese metal from the People's Republic of China.

SUMMARY: On March 13, 1998, the Department of Commerce published (62 FR 12440) the final results and partial rescission of the administrative review of the antidumping duty order on manganese metal from the People's Republic of China. The review covered the period June 14, 1995 through January 31, 1997. Subsequent to the publication of the final results, we received comments from both petitioners and respondents alleging various ministerial errors. After analyzing the comments submitted, we are amending our final results to correct certain ministerial errors. This amendment to the final results is published in accordance with 19 CFR 353.28(c).

EFFECTIVE DATE: February 16, 1999.

FOR FURTHER INFORMATION CONTACT: Gregory Campbell or Cynthia Thirumalai; Antidumping/Countervailing Duty Enforcement, Group I, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce; 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone numbers (202) 482-2239 or (202) 482-4087, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930 ("the Act"), as amended, are references to the

provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). Additionally, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR 353 (April 1997).

SUPPLEMENTARY INFORMATION:

Background

On March 13, 1998, the Department of Commerce ("the Department") published in the **Federal Register** the final results and partial rescission of the administrative review of the antidumping duty order covering the period of June 14, 1995 through January 31, 1997 on manganese metal from the People's Republic of China ("PRC"). See Manganese Metal from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 63 FR 12440 (March 13, 1998) ("Final Results of Review"). Subsequently, the following parties submitted ministerial error allegations: Elkem Metals Company and Kerr-McGee Chemical Corporation (together comprising the "petitioners"), and China Hunan International Economic Development Corporation ("HIED") and China Metallurgical Import & Export Hunan Corporation/Hunan Nonferrous Metals Import & Export Associated Corporation ("CMIECHN/CNIECHN") (together comprising the "respondents").

On April 9, 1998 the petitioners filed a summons with the Court of International Trade ("CIT"), and in a subsequent complaint dated May 11, 1998 challenged the Department's final results of the administrative review. The Department, therefore, suspended any action on the ministerial error allegations until the CIT issued, on November 4, 1998, an order of dismissal of the petitioners' complaint.

A summary of each allegation along with the Department's response is included below. We are hereby amending our final results, pursuant to 19 CFR 353.28(c), to reflect the correction of those errors which are clerical in nature.

Analysis of Comments Received

Allegation 1: The petitioners argue that the Department erred in its calculation of the value of Factors A and K.¹ In order to adjust the factor prices

¹ A key to the naming convention for business proprietary factors of production is included as Exhibit J of the Memorandum to the File: Calculations for the Final Results of Review (March 9, 1998) ("Calculation Memorandum"). A public version of this document is available in the Department's Central Records Unit, Room B-099.

to a period contemporaneous with the period of review ("POR"), the Department multiplied each surrogate value by the change in world-traded prices between 1993, the period for which the surrogate value is quoted, and the Japanese fiscal year 1995. (As explained in the Final Results of Review, we used as a proxy for world-traded ore prices the annual contract price in Japan of high-grade manganese ore.) The petitioners note that the record contains world-traded ore prices for 1996 as well. The petitioners argue that, because the POR is June 14, 1995 through January 31, 1997, the Department should have used an average of the 1995 and 1996 world-traded prices, as this would be more representative of the prices in effect throughout the duration of the POR.

The respondents counter that the petitioners' argument involves a deliberate choice by the Department about methodology and, therefore, does not properly fall within the definition of ministerial error. The respondents further note that the petitioners themselves in their submission acknowledge that this point is methodological in nature.

Department's Position: We agree with the respondents. The petitioners' argument involves a methodological decision by the Department and, as such, does not constitute a ministerial error. This methodology is clearly identified in the Final Results of Review and in the Calculation Memorandum. Thus, no revision has been made.

Allegation 2: The petitioners argue that the Department's choice of a surrogate ore from "Producer X" for valuing Factor B is inferior to the petitioners' proposed surrogate from Sandur Manganese & Iron Ores Ltd. based on a comparison of the manganese-to-iron ratios of the two.

The respondents counter that the petitioners' argument involves a deliberate choice by the Department about methodology and, therefore, does not properly fall within the definition of ministerial error.

Department's Position: We agree with the respondents. The Department's choice of any one surrogate value over alternative values does not represent a ministerial error. The selection of appropriate surrogate values for manganese ore in this case has been a highly contentious issue. During the course of the administrative review, the Department considered all of the arguments presented by the parties, in favor of and opposed to each ore surrogate alternative. Our reasons for choosing the ore from "Producer X" to value Factor B have been clearly

enunciated in the Final Results of Review. Therefore, no revision to this calculation has been made.

Allegation 3: The petitioners argue that the Department, in its calculation of the surrogate value for Factor K, has assigned to that factor an incorrect average manganese content. According to the petitioners, documents on the file indicate that the correct content is much lower.

The respondents offer no comment.

Department's Position: We agree with the petitioners. The Department misinterpreted the reported manganese dioxide content of Factor K as its manganese content. We have revised this calculation accordingly.

Allegation 4: The petitioners argue that the Department has identified incorrectly the mode of transportation used in one of the shipments of Factor J. According to the petitioners, verified information on the record indicates that the correct mode is by train rather than by truck.

The respondents argue the petitioners are wrong because the Department verified that two modes of transportation are used to supply Factor J.

Department's Position: We agree with the petitioners. In the calculation of the weighted-average freight cost for all of the suppliers of Factor J, the Department inadvertently listed one shipment as being transported by truck rather than by train. The freight calculation has therefore been revised to reflect the correct mode of transportation.

Allegation 5: The petitioners argue that the Department's computed unit consumption value for Factor O is incorrect based on verified information contained in the record.

The respondents agree with the petitioners that the Department erred in its calculation; however, what the respondents argue to be the correct value is different from that of the petitioners. The respondents contend that the value for Factor O should be the value verified by the Department.

Department's Position: We disagree with both the petitioners and the respondents. We have reexamined our calculation for Factor O and have confirmed that it is correct. The value put forward by the respondents is the verified weight of a single unit of Factor O, rather than the amount of Factor O consumed in the production of one metric ton of manganese metal (*i.e.*, Factor O unit consumption). Therefore, the respondents' figure does not represent the unit consumption of Factor O, unit consumption being the

goal of the particular calculation in question. The difference between our figure and the petitioners' figure appears to be only the result of rounding numbers in the intermediate calculations to a different decimal place. Consequently, no revision to this calculation has been made.

Allegation 6: The petitioners allege that the Department mistakenly has included a by-product credit in the factors of production of certain manganese metal powder manufacturers even though the record indicates that no by-products are generated in the powder production process.

The respondents counter that, because manganese metal flake is an input into powder production and the Department did not account for the by-product in the flake-production stage, it must therefore take it into account at the powder-producing stage.

Department's Position: We disagree with both the petitioners and the respondents. The record indicates that a by-product is generated during production of flake, but not during the production of manganese metal powder. Accordingly, we have included a by-product credit when calculating the flake cost of production. However, flake is also used as an input into powder production. To value the flake input into powder production, we have used the calculated cost of direct materials, direct labor, and direct electricity of flake manufacture, inclusive of the by-product credit assigned to the flake producer. Therefore, no revision to the calculation is necessary.

Allegation 7: The petitioners note that, in the Department's weighted-average dumping margin calculation for these final results, the Department used the U.S. gross unit price, whereas in past proceedings the Department has used U.S. net unit price.

The respondents counter that the petitioners' point is of a methodological nature and does not represent a clerical error.

Department's Position: The petitioners are correct that the Department erred in this calculation. The Department intended to calculate the dumping margin by dividing the U.S. net total value into the total amount of duty due. The error was the result of misdirected cell references in our calculation spreadsheet. The dumping margin calculation has been revised accordingly.

Allegation 8: The petitioners contend that the Department should have included adjustments for bank charges and inspection fees.

The respondents counter that the petitioners' point is of a methodological nature and does not represent a clerical error.

Department's Position: As explained in Comment 13 in the Notice of Final Determination of Sales at Less Than Fair Value: Manganese Metal from the People's Republic of China, 60 FR 56045, 56052 (November 6, 1995), and in the Calculation Memorandum, the Department's established policy in non-market-economy cases is not to make circumstance-of-sale adjustments. These bank charges and inspection fees are selling expenses. Therefore, this omission was intentional on the part of the Department and, as such, does not represent a ministerial error. Consequently, no revision is necessary.

Allegation 9: The respondents allege that, in its calculation of the value of Factor B, the Department used the lower of the reported range of manganese contents rather than the average for the reported range of the surrogate value.

The petitioners had no comment.

Department's Position: We agree with the respondents. The Department inadvertently used the reported minimum rather than the reported average content. The value for Factor B has therefore been recalculated using the reported average manganese content.

Allegation 10: The respondents argue that the Department erred in its adjustment for the chemical composition of Factor C in that it divided rather than multiplied the factor price by its chemical content.

The petitioners counter that the Department's calculation is correct based on verified information on record.

Department's Position: We agree with the petitioners. We have reviewed our calculation for the chemical composition of Factor C and have confirmed it is correct. No revision is necessary.

Amended Final Results of Review

As a result of our analysis of the ministerial error allegations received, we are amending margins we published in the final results. We hereby determine the following weighted-average margins exist for the period June 14, 1995 through January 31, 1997:

| Manufacturer/exporter | Margin (percent) |
|-----------------------|------------------|
| HIED | 3.28 |
| CMIECHN/CNIECHN | 1.94 |
| CEIEC* | 11.77 |
| Minmetals* | 5.88 |

| Manufacturer/exporter | Margin (percent) |
|-----------------------|------------------|
| PRC-wide | 143.32 |

*CEIEC and Minmetals reported that they had no sales to the United States during the POR. The rate for each of these companies will therefore remain unchanged from that determined in Notice of Amended Final Determination and Antidumping Duty Order: Manganese Metal from the People's Republic of China, 61 FR 4415 (February 6, 1996) ("LTFV Investigation").

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between export price ("EP") and normal value ("NV") may vary from the percentages stated above. We have calculated exporter/importer-specific duty assessment rates based on the ratio of the total amount of duties calculated for the examined sales made during the POR to the total value of subject merchandise entered during the POR. In order to estimate entered value, we subtracted international movement expenses (e.g., international freight and marine insurance) from the gross sales value. This rate will be assessed uniformly on all entries of that particular importer made during the POR. The Department will issue appraisal instructions directly to the Customs Service.

The following amended cash deposit requirements will be effective upon publication of this notice of amended final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) for the companies named above that have separate rates and were reviewed (i.e., HIED and CMIECHN/CNIECHN), the cash deposit rates will be the rates listed above specifically for those firms; (2) for companies which established their eligibility for a separate rate in the LTFV Investigation but were found not to have exported subject merchandise to the United States during the POR (i.e., CEIEC and Minmetals), the cash deposit rates continue to be the currently applicable rates of 11.77% and 5.88%, respectively; (3) for all other PRC exporters, all of which were found not to be entitled to a separate rate, the cash deposit rate will continue to be 143.32%; and (4) for non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements will remain in effect until publication of

the final results of the next administrative review.

This notice serves as a reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders ("APOs") of their responsibility concerning disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review is in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22. This amendment to the final results is published in accordance with 19 CFR 353.28(c).

Dated: February 8, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

Rutgers, The State University of New Jersey; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 98-059. *Applicant:* Rutgers, The State University of New Jersey, Piscataway, NJ 08854. *Instrument:* Current Meter, Model RCM-9. *Manufacturer:* Aanderaa Instruments A/S, Norway. *Intended Use:* See notice at 63 FR 69263, December 16, 1998.

Comments: None Received. *Decision:* Denied. *Reasons:* The applicant submitted a memorandum (dated September 9, 1998) to the Procurement and Contracting Office of the University (Rutgers) titled "Justification for Purchasing RCM 9 Current Meter from Aanderaa Instrument A/S." The memorandum states that a search of the market located only two instruments capable of making the measurements required for the intended research on nitrogen flux through an ocean-estuary boundary. One instrument is made by Aanderaa Instruments A/S in Nesttun, Norway (Model RCM 9), and the other by InterOcean Systems Inc. (Model S4) in San Diego, CA.

The memo presents a table itemizing the prices for five sensors quoted by each vendor. The total price listed for the foreign model (RCM 9) is \$11,558 and the price for the US model (S4) is \$27,660. The applicant notes that "* * * the S4 has higher accuracy and resolution than RCM 9, which is the major contributor to the high price." The applicant states that the admitted performance superiority offered by the domestic product is beyond that required for its work and then indicates that its decision to purchase the foreign article was based on "cost-efficiency." To quote:

In our study, the accuracy provided by RCM 9 is sufficient. For example, the S4 will be able to measure the current velocity every half second, but the RCM 9 can only measure the current velocity every minute. Our study will focus on the variation over a tidal cycle, which is over 12.4 hours (744 minutes). Measurement of the current velocity every minute is more than sufficient to resolve the tidal variation. Therefore, we decided to purchase the RCM 9 based on accuracy/resolution and cost-efficiency.

Pursuant to 19 CFR p 301.2(s), cost is explicitly disallowed as a consideration for duty exemption of a scientific instrument. Duty-free entry is allowed only "* * * if no instrument or apparatus of equivalent scientific value for the purposes for which the instrument is intended to be used is being manufactured in the United States" [19 CFR p 301.1(b)(2) and (3)].

Pursuant to 19 CFR p 301.2(s):

"Pertinent" specifications are those specifications necessary for the accomplishment of the specific scientific research and/or science-related educational purposes described by the applicant. Specifications or features (even guaranteed) which afford greater convenience, satisfy personal preferences, accommodate institutional commitments or limitations, or assure lower costs of acquisition, installation, operation servicing or maintenance are not pertinent.