Globe Metallurgical Inc. v. United States
Consol. Court No. 10-00032 (CIT June 21, 2011)

FINAL RESULTS OF REDETERMINATION PURSUANT TO REMAND

SUMMARY

The Department of Commerce ("the Department") has prepared these final results of redetermination pursuant to the decision of the U.S. Court of International Trade ("CIT" or the "Court"), issued on June 21, 2011.[1] The CIT's *Remand Order* concerns the 2007-2008 administrative review of *Silicon Metal from the People's Republic of China.*[2] The CIT's *Remand Order* remands the Department's categorization of certain surrogate financial statement line items to the Department for further consideration.[3]

On August 5, 2011, the Department released its *Draft Remand Results*, further explaining its determination to categorize profit on the sale of a fixed asset in the financial statement of FACOR Alloys Limited ("FACOR") as an excluded item from our calculation of selling, general, and administrative expenses ("SG&A"), and addressed the arguments of Shanghai Jinneng International Trade Co., Ltd. ("Jinneng") and Jiangxi Gangyuan Silicon Industry Co., Ltd. ("Gangyuan") (together, "Respondents") on this matter.[4] In accordance with the Department's past practice, we have continued to treat profit on the sale of fixed assets as an excluded item.[5] The Department also reexamined our practice regarding the treatment of

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[1] *See Globe Metallurgical Inc. v. United States*, Slip Op. 11-72, Court No. 10-00032 (June 21, 2011) ("*Remand Order*").
[2] *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).
[3] *See Remand Order* at 33.
[4] *See* "Draft Results of Redetermination Pursuant to Remand," August 5, 2010 ("*Draft Remand Results*").
[5] *See, e.g., Notice of Final Results of Antidumping Duty Administrative Review and Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products From Canada,* 69 FR 75921 (December 20, 2004) and accompanying Issues and Decision Memorandum at Comment 9 ("*Softwood*

miscellaneous receipts in the calculation of surrogate financial ratios and included the miscellaneous receipts as an offset in our calculation of FACOR's SG&A.

Based on the comments received from Respondents and rebuttal comments received from Globe Metallurgical Inc. ("Petitioner") on the *Draft Remand Results*, and consistent with the Court's instructions, we have clarified the Department's determination to exclude profit on the sale of fixed assets from FACOR's SG&A calculation, and addressed Respondents' arguments that the Department should also exclude FACOR's profit on the sale of fixed assets from our profit calculation. In responding to the *Remand Order* and reassessing the record evidence, we find that the Department's practice and the record of the administrative review of silicon metal from the People's Republic of China ("PRC") support the exclusion of FACOR's profit on the sale of a fixed asset from our calculation of SG&A, as well as the exclusion of the profit on the sale of a fixed asset from our calculation of profit.

BACKGROUND

In the underlying 2007-2008 administrative review, the Department utilized the financial statement of FACOR and three other companies to calculate the surrogate financial ratios for the final results.[6] Subsequent to the *Final Results*, Respondents alleged that the Department had committed ministerial errors by excluding FACOR's profit on the sale of a power plant and miscellaneous receipts from the calculation of SG&A. In responding to the ministerial error allegations, the Department stated that the exclusion of profit from the sale of a power plant and

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Lumber from Canada 2002-2003"); *Certain Steel Concrete Reinforcing Bars from Turkey*, 70 FR 67665 (November 8, 2005) and accompanying Issues and Decision Memorandum at Comment 25 ("*Reinforcing Bars from Turkey*").

[6] *See Final Results* at Comment 4.

miscellaneous receipts were methodological choices, not inadvertent errors, and therefore did not amend the final results.[7]

Petitioner and Respondents both initiated actions at the CIT challenging the *Final Results*. These cases were consolidated at the CIT. Petitioner challenged the Department's decision not to reduce Respondents' export prices by the amount of export tax and value added tax; the Department's selection of a surrogate value for the Respondents' coal input; and the Department's reliance on all sales invoiced during the period of review ("POR") rather than all sales entered during the POR. The Court sustained the Department's determination on each of these counts.

Respondents challenged the Department's decision to include FACOR in its calculation of the surrogate financial ratios, arguing that it is a "sick" company. The Court sustained the Department on this count. Alternatively, Respondents challenged the Department's classification of the sale of a surplus power plant and miscellaneous income as excluded items in our calculation of FACOR's SG&A. Respondents argued that the Department's practice instructs us to place the profits on the sale of a fixed asset and miscellaneous receipts into our calculation of SG&A, providing an offset to the expenses incurred in this category.[8] Respondents then argued that, if both the profit from the sale of a fixed asset and the miscellaneous receipts were treated as offsets to SG&A, FACOR's SG&A ratio would be negative, and FACOR would have been excluded from the calculation of surrogate financial ratios.[9] In contrast, Petitioner argued that the Department appropriately excluded these line-

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[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 ("Ministerial Error Memo").

[8] *See Globe Metallurgical v. United States*, Court No. 10-00032, Defendant-Intervenors' Rule 56.2 Motion for Judgment Upon the Agency Record and Memorandum in Support Thereof, dated June 23, 2010 at 9-14 ("Respondents' Brief").

[9] *Id.* at 14.

items from our calculation of SG&A.[10] The Court remanded the Department's determination to exclude these line items from our calculation of SG&A back to the Department for further consideration and to address Respondents' arguments on this issue, without ruling on the merits of Respondents' claims.[11]

On August 5, 2011, the Department released its *Draft Remand Results*. In accordance with the Court's instructions, and after careful examination of the record, the Department determined to exclude from SG&A FACOR's profit on the sale of fixed assets. The Department clarified that FACOR's sale of a captive power plant is a non-routine transaction under the test employed by the Department in *Softwood Lumber from Canada 2002-2003*,[12] and further clarified in *Softwood Lumber from Canada 2003-2004*[13]and *Concrete Reinforcing Bars from Turkey*.[14] The Department explained in the *Draft Remand Results* that FACOR's sale of its captive power plant was non-routine in nature, significant, and unrelated to the general operations of the company, generating non-recurring income unrepresentative of the typical operations of the company.[15]

In the *Draft Remand Results*, upon reexamination of the record, we determined the Department's decision in the *Final Results* to exclude miscellaneous receipts from FACOR's SG&A was in error. There is no evidence in FACOR's financial statement that its miscellaneous receipts were unrelated to the general operations of the company.[16]

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[10] *See Globe Metallurgical v. United States*, Court No. 10-00032, Plaintiff's Response to Defendant-Intervenors' Motion for Judgment Upon the Agency Record, dated December 14, 2010 at 3-5 ("Petitioner's Brief").
[11] *See Remand Order* at 32.
[12] *See Softwood Lumber from Canada 2002-2003* at Comment 9.
[13] *See Notice of Final Results of Antidumping Duty Administrative Review: Certain Softwood Lumber Products From Canada*, 70 FR 73437 (December 12, 2005) and accompanying Issues and Decision Memorandum at Comment 8 ("*Softwood Lumber from Canada 2003-2004*").
[14] *See Reinforcing Bars from Turkey* at Comment 25.
[15] *See Draft Remand Results* at 3-8.
[16] *Id.* at 8-11.

On August 12, 2011, Respondents submitted comments on the *Draft Remand Results*, and on August 17, 2011, Petitioner submitted rebuttal comments, which are summarized below.

After considering the comments received from the parties, for these final results of remand redetermination, the Department has continued to exclude from SG&A FACOR's profit on the sale of fixed assets, as discussed in detail below.

In addition, pursuant to comments made by Respondents regarding the *Draft Remand Results*, we have determined that profit on the sale of a fixed asset should also be excluded from the profit calculation, as it is excluded from SG&A. Where we deny an offset to SG&A, we will also remove that item from profit.

As in the *Draft Remand Results*, the Department has continued to include FACOR's miscellaneous receipts as an offset to SG&A.

Analysis

A. Profit on Sale of a Fixed Asset

The Department excluded FACOR's profit on the sale of the power plant from the calculation of SG&A on the basis that this was a non routine transaction that did not relate to the general operations of the company. As the Department stated in its Ministerial Error Memo, "the Auditor's report notes that FACOR sold a 'surplus captive power plant (Heavy Fuel Based)' during the 2007-2008 period, which appears to be a 'non-routine' transaction in the operation of the company."[17] The Department has a long-standing practice of excluding large "non-routine" transactions from our calculation of SG&A.[18] As the Department articulated in *Softwood Lumber from Canada 2002-2003*, the Department excludes from our calculation of SG&A gains and losses from the sale of fixed assets where "{t}he resulting gain or loss generates non-

[17] *See* Ministerial Error Memo at 3, *citing* FACOR's Annexure to Auditor's Report at 24, item i.c.
[18] *See, e.g., Reinforcing Bars from Turkey* at Comment 25.

recurring income or losses that are not part of a company's normal business operation and are unrelated to the general production operations of the company."[19] *Softwood Lumber from Canada 2002-2003* also sets forth factors to consider in determining whether the sale of a fixed asset is routine or non-routine. For example, the Department will examine the nature of the sale, the significance of the sale, and the relationship of an activity to the general operations of a company.[20]

With respect to the nature of FACOR's sale of a captive power plant, this transaction is clearly a sale that results in non-recurring income separate from the production operations of the company. First, FACOR's financial statement reflects a large change in the profit realized from the sale of fixed assets from the 2006-2007 accounting period to the 2007-2008 accounting period.[21] The Auditor's note states that "{t}he company has not disposed off any major part of fixed assets during the year except the surplus captive power plant…"[22] This note explains the observed year-over-year change in profit from the sale of fixed assets. The change in profit from the sale of fixed assets and the explanation provided in the Auditor's note demonstrate that the transaction is of a type that does not happen at regular intervals. Therefore, FACOR's sale of a captive power plant is plainly non-routine in nature.[23]

Second, regarding the significance of the transaction, Respondents argued that this transaction is insignificant, "amounting to less than 2.2% of FACOR's total revenue during the period."[24] However, as Petitioner has correctly noted, the captive power plant FACOR sold during the 2007-2008 period represents "more than one half the total value of the company's

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[19] *See Softwood Lumber from Canada 2002-2003* at Comment 9.
[20] *Id.; see also Reinforcing Bars from Turkey* at Comment 25. *See also Draft Remand Results* at 4-5.
[21] *See* FACOR financial statement at 34 Schedule I.
[22] *Id.* at 24.
[23] *See Draft Remand Results* at 5.
[24] *See* Respondents' Brief at 11.

fixed assets at the beginning of the 2007-08 fiscal year."[25] The disposal of an asset representing 50 percent of the total value of a company's fixed assets is a significant transaction. Therefore, we find that FACOR's sale of its captive power plant is significant.[26]

Finally, with respect to the relationship of FACOR's sale of its power production facilities to its general business operations, we note that FACOR is in the business of producing and selling ferroalloys, not power plants, a point noted by Respondents when they state that "the sale of the asset did not affect FACOR's ability to produce ferroalloys, which is its ongoing business."[27] In other cases where companies have disposed of assets not directly related to their primary business line, and their primary business line has continued to operate uninhibited, the Department has excluded the profits from these sales as "non-routine."[28]

The Department also clarifies several additional points with regard to the circumstances of FACOR's sale of a power plant and whether that transaction was non-routine. First, whether ferroalloy producers may routinely *own* a power facility is not dispositive of whether the ferroalloy producer's *sale* of a power facility is routine. As noted above, in considering whether such a sale is routine, the Department examines the criteria identified in *Softwood Lumber from Canada 2002-2003* by examining the nature, significance, and relationship of an asset sale to the general operations of a company. Here, these factors demonstrate that the sale of the power plant is non-routine.[29]

[25] *See* Petitioner's Brief at 5.
[26] *See Draft Remand Results* at 6.
[27] *See* Respondents' Brief at 11.
[28] *See Softwood Lumber from Canada 2002-2003* at Comment 9; *see also Softwood Lumber from Canada 2003-2004* at Comment 8; *see also Reinforcing Bars from Turkey* at Comment 25 (considering whether the sale of a shipping vessel was routine, the Department stated, "ICDAS is in the business of manufacturing and selling merchandise and services, not selling shipping vessels" and did not include the sale in its SG&A calculation).
[29] *See Draft Remand Results* at 6-7.

Respondents argued that the power plant was "surplus," but the Department's standard for determining whether a transaction is routine does not consider whether an asset is surplus.[30] Whether an asset is surplus is not determinative of the nature of the transaction to dispose of the asset, the significance of the sale of the asset to the company, or the relationship of the asset to the general operations of the company. In fact, the sale of surplus assets can occur at irregular intervals, generating non-recurring income that is separate from the general operations of the company, as in this case.[31] For the reasons discussed above, it is clear from the FACOR's financial statement that the sale of the power plant, regardless of whether the asset was surplus, is a non-routine transaction.[32]

In sum, after examining FACOR's sale of its power production facility in light of the Department's practice regarding the non-routine disposal of a fixed asset, we find that FACOR's sale of its power plant was non-routine in nature, significance, and in relationship to the general operations of the company. Consistent with *Softwood Lumber from Canada 2003-2004* and *Reinforcing Bar from Turkey*, we find that it is appropriate to exclude this gain from our calculation of SG&A.

Respondents' Comments:

Respondents argue that the Department incorrectly categorized FACOR's sale of a power plant as a non-routine transaction. Respondents assert that the Department's normal practice for determining whether the sale of an asset is non-routine reveals that FACOR's sale of a power plant is a routine transaction, as the sale of this power plant is simply the routine replacement of

[30] *See* Respondents' Brief at 11.
[31] *See Softwood Lumber from Canada 2002-2003* at Comment 9.
[32] *See Draft Remand Results* at 7.

production machinery or equipment.[33] Respondents argue that the Department's definition of non-routine in this case is inconsistent with its past practice. Respondents assert that the Department erroneously asserts that the "large change" in profit from the sale of fixed assets from the previous period to the current period is indicative of a transaction that does not happen at regular intervals. Respondents claim that fixed assets are only periodically sold, and the sale in one year of a large fixed asset and the resultant change in profit from the sale of fixed assets is immaterial to the determination of whether FACOR's sale of a power plant is a routine transaction.[34] Respondents also assert that because ferroalloy producers routinely own power plants due to the energy intensity of ferroalloy production, the ownership of a power plant, and the profits and losses associated with its attendant occasional replacement, is routine.[35]

Furthermore, Respondents argue that *Softwood Lumber from Canada 2003-2004* dictates that any transaction that does not alter the operations of the company in its primary line of business is routine as the transaction is insignificant in form. Respondents assert that in *Softwood Lumber from Canada 2003-2004*, the Department indicated that if a respondent sells equipment (even large equipment), restructures its existing operations, or improves its operations, all of the resulting gains or losses are routine. Only where a respondent is selling a production facility would it be considered a non-routine transaction that is significant in form. In the case of FACOR, Respondents argue that it sold a power plant, which provided energy for its ferroalloy production activities, and that this transaction is akin to the routine transaction described in *Softwood Lumber from Canada 2003-2004*, not the non-routine transaction of

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[33] *See* Silicon Metal from the People's Republic of China: Comments on Draft Remand, dated Aug. 12, 2011 ("Respondents' Comments") at 2-3, citing *Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 75 FR 6627 (February 10, 2010) and accompanying Issues and Decision Memorandum at Comment 8 ("*SSSS from Mexico*"); and *Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 75 FR 70901 (November 19, 2010) and accompanying Issues and Decision Memorandum at Comment 3 ("*PET Film from Korea*").
[34] *See* Respondents' Comments at 2-3.
[35] *Id.* at 7.

selling a production facility. Respondents assert that the insignificance of FACOR's sale of its power plant is evident in the fact that this sale did not impact FACOR as a going concern, did not alter its material inputs or energy consumption, and did not alter its ferrochrome production capacity.

Respondents also argue that FACOR's sale of its power plant is not significant in value as the profit on the sale of this asset only represented 2.2% of total revenue. Respondents argue that this is consistent with the percentage of the total revenue of an asset the sale of which the Department considered routine in the *Chlorinated Isos Prelim*.[36] Respondents argue that the value of the power plant as a percentage of the total value of FACOR's fixed assets is misleading because the costs and depreciation of a fixed asset may not reflect its market value, leading to an item with a high book value being sold for little to no profit.[37] Respondents further argue that the surplus nature of the power plant sold by FACOR indicates that its sale was insignificant to the company and its operations.[38]

Finally, Respondents argue that the Department's assertion that because FACOR's sale of its power plant did not impact its ability to produce ferroalloys, the sale of the power plant was not related to the general operations of the company is erroneous. Respondents assert that in *SSSS from Mexico* the Department claimed that an asset sale is routine if the respondent continues to produce its primary product after the change is made.[39] Respondents also assert that the facts of this case are distinct from *Concrete Reinforcing Bar from Turkey* in that the power plant sold by FACOR is directly related to the manufacture of ferroalloys while the shipping vessel sold by a respondent in *Concrete Reinforcing Bar from Turkey* was ancillary to the

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[36] *See Chlorinated Isocyanurates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 73 FR 24943 (May 6, 2008) ("*Chlorinated Isos Prelim*").
[37] *See* Respondents' Comments at 4-6.
[38] *See* Respondents' Comments at 7.
[39] *See* Respondents' Comments at 4.

respondent's production of rebar.[40] Respondents additionally argue that there is no requirement of evidence of new power-generation facilities to show that the sale of the power plant is routine, arguing that in *Softwood Lumber from Canada 2003-2004* the Department explained that the costs of a fixed asset is realized through depreciation over the course of the asset's useful life, while the profits or losses on the sale of fixed assets are accounted for in SG&A when the fixed asset is sold. In addition, Respondents argue that there is no requirement that a dollar-for-dollar accounting of all profits on the sale of fixed assets be accounted for in corresponding fixed asset investment. Respondents conclude that, should the Department include the profit from the sale of the power plant as an offset to SG&A, FACOR's SG&A becomes negative, and the Department should thus exclude FACOR from the calculation of surrogate financial ratios.

Petitioner's Comments:

Petitioner argues that the Department properly excluded profits on the sale of a fixed asset from its calculation of SG&A for FACOR, as FACOR's sale of a power plant is clearly a non-routine transaction. Petitioner asserts that the large change in profit from the sale of fixed assets resulting from FACOR's sale of a surplus power plant is indeed indicative of a non-routine transaction. Routine disposals of fixed assets create a "regular pattern of profits from such sales," making the large spike in FACOR's profits from the sale of fixed assets indicative of a non-routine transaction, according to Petitioner.[41]

Petitioner also argues that there is no evidence in FACOR's financial statements that the company ever used the power generated by the power plant it sold in its production of ferroalloys, making the power plant unrelated to the general operations of the company. Hence, the sale of the power plant had no impact on FACOR's consumption of energy because FACOR

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[40] *See* Respondents' Comments at 6-7.
[41] *See* "Silicon Metal From the People's Republic of China; 2007-08 Administrative Review; Remand; Rebuttal Comments on Draft Results of Redetermination," dated Aug. 17, 2011 ("Petitioner's Rebuttal Comments") at 2.

was purchasing the energy it used in its production of ferroalloys rather than generating this energy itself, according to Petitioner.[42] Further, Petitioner argues that the Department's practice with regard to the sale of fixed assets is to consider the sale of a fixed asset non-routine where the primary business functions of the company continue uninhibited after the sale of the asset, as the continued operation of the company's primary business line is indicative that the asset was not related to the general operations of the company.[43]

Finally, Petitioner argues that even the depreciated value of FACOR's power plant represented 40 percent of the company's fixed assets value, making the transaction significant in value.[44] Petitioner also argues that the sale of the power plant is not insignificant because it did not impact FACOR's consumption of purchase energy, because, as noted above, Petitioner alleges that there is no evidence that FACOR ever used the power plant in the production of ferroalloys. Therefore, Petitioner argues, it is disingenuous to argue that the sale of the power plant was insignificant on the basis that it did not impact the consumption of energy, as there is no evidence that the power plant ever supplied energy to FACOR that would offset its purchases of energy.[45] Petitioner further asserts that the Department has no requirement that the sale of a fixed asset impact the status of a company as a going concern to be considered significant.[46]

Department's Position:

The Department continues to find that FACOR's sale of its power plant is a non-routine transaction, and the profits from the sale of this fixed asset should not be included in our calculation of SG&A. As discussed above, in determining whether the sale of a fixed asset is routine, the Department considers the nature of the sale, the significance of the sale, and the

[42] *See* Petitioner's Rebuttal Comments at 2-3.
[43] *Id.* at 4.
[44] *Id.* at 3-4.
[45] See Petitioner's Comments at 4.
[46] *Id.*

relationship of an activity to the general operations of a company.[47] With respect to the nature of the sales transaction, the Department disagrees with Respondents that our standard test for determining whether a sale is a routine transaction would reveal FACOR's sale of a power plant to be routine in nature. A functioning power plant is a type of production facility, and therefore, its sale is more similar to the sale of an ongoing business line (such as the Kraft pulp mill in *Softwood Lumber from Canada 2002-2003*[48] or the shipping line in *Concrete Reinforcing Bar from Turkey*[49]) than the routine disposition of equipment or machinery. Since FACOR's primary business activity is the production and sale of ferrochrome, its sale of a power-producing facility is non-routine in nature, and unrelated to its general operations. This is consistent with the determinations cited by Respondents. In *SSSS from Mexico*, the Department excluded profits on the sale of an entire warehouse from SG&A, stating that the sale of its warehouse "does not support a company's general operations."[50] Likewise, in *PET Film from Korea*, the Department excluded profits on the sale of land, because selling land was not part of its normal business operations.[51] As noted above, FACOR is in the business of producing and selling ferroalloys, not power plants. The Department's treatment of the sale of the power plant as non-routine is consistent with past practice.

Further, in its *Draft Remand Results*, the Department cited to the large change in profit on the sale of the fixed asset between the prior and current period merely as supporting evidence that FACOR's sale of a power plant was an unusual, non-routine transaction. Slight fluctuations in the profits and losses realized by companies from year to year are to be expected, however, in this case, FACOR's profits on the sales of fixed assets increased over 1000% year-over-year

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[47] *See Softwood Lumber from Canada 2002-2003* at Comment 9.
[48] *See Softwood Lumber from Canada 2002-20003* at Comment 9.
[49] *See Concrete Reinforcing Bar from Turkey* at Comment 25.
[50] *See SSSS from Mexico* at Comment 8.
[51] *See PET Film from Korea* at Comment 3.

(from the 2006-2007 accounting period to the 2007-2008 accounting period). This sizeable increase in profits on the sale of fixed assets is indicative of an unusual transaction, and FACOR's financial statements show that the unusual transaction accounting for this change is the company's sale of an entire power plant in the current period. Contrary to the Respondents' argument, the consideration of the change in profit was but one part of the evidence which the Department considered in its determination that the sale of the power plant is non-routine.

Second, with respect to the significance of FACOR's sale of its power plant, we continue to find that FACOR's sale of a power plant was a significant transaction in both form and value. We disagree with Respondents' interpretation of *Softwood Lumber from Canada 2003-2004* as requiring that only the sale of a production facility can be categorized as non-routine. For instance, in *Reinforcing Bars from Turkey*,[52] the Department excluded the profit from the sale of shipping vessels from SG&A, and in *SSSS from Mexico*, the Department excluded the profit from the sale of a warehouse, which are not production facilities.[53] Moreover, an entire power plant is a type of production facility. The Department does not require a demonstrable change in the operations of the company to consider the sale of a plant or facility to be significant in form. The primary business lines of respondents whose asset sales were determined to be non-routine in *Softwood Lumber from Canada 2002-2003*, *Softwood Lumber from Canada 2003-2004*, and *Concrete Reinforcing Bar from Turkey* all continued with no minor changes after the non-routine sales of fixed assets, as is the case of FACOR.

FACOR's sale of a power plant was also significant in value. As Petitioner has noted, FACOR's power plant accounted for over 50 percent of the book value of its fixed assets, and even when considering the accumulated depreciation of the power plant, the power plant in

[52] *See Reinforcing Bars from Turkey* at Comment 25.
[53] *See SSSS from Mexico* at Comment 8.

question still represented over 40 percent of the company's total fixed assets, calculated on the same basis. Moreover, the Department has not determined that the significance of a transaction must be determined by examining its proportion of total revenue, nor has the Department set a lower limit for the percentage of total revenue that an asset sale must reflect in order for the sale to be considered non-routine. Although Respondents rely on *Chlorinated Isos Prelim*[54] in support of their argument that the Department should consider the sale to be not significant, in *Chlorinated Isos Prelim*, the Department did not explain why it determined to treat the profits from the sale of a fixed asset as an offset to SG&A. This issue was also not discussed in the final results.[55] Therefore, this determination does not support Respondents' contention that, where a sale of a fixed asset results is a small percentage of total revenue, the Department must treat the sale as routine.

The Department also continues to find that the sale of a surplus asset may also be significant. The simple fact of a company stating that it has excess capacity does not preclude a transaction from being considered significant. A surplus asset is one that is no longer needed by the company, not necessarily an asset that is insignificant to the company in terms of its productive capacity and value, or one that a company routinely sells.

With respect to the relationship of FACOR's sale of its power plant to its general operations, we continue to find that the sale of the power plant was not related to the general operations of FACOR. Again, a power plant is a production facility, and whether or not the products and services produced by the production facility are used in the manufacture or sale of the company's primary product, the sale of a production facility remains outside the scope of the

[54] *See* Respondents' Comments at 5-6, *citing Chlorinated Isos Prelim.*
[55] *See Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 73 FR 52645 (Sept. 8, 2008). Respondents also cite to the surrogate value memorandum on the record of the chlorinated isocyanurates administrative review; however, this memorandum is not on the record of this proceeding.

company's primary, general business. We continue to find that whether or not power plants are commonly owned by ferroalloy producers is not determinative of whether the sale of a power plant is routine or not.

Many categories of businesses are likely to possess certain manufacturing facilities that are not directly related to their primary business line – whether the "side" line be the production of Kraft pulp or the provision of shipping. The commonality between these examples and a power plant is that each of these facilities generates output of a product or service – paper, transport, or power – that is outside the scope of the company's primary business line. These unrelated goods and services may be employed in the manufacture of the company's own products – such as the shipping services the respondent provided for its own inputs and outputs instead of contracting a shipping company in *Concrete Reinforcing Bars from Turkey* – or they may be sold for profit to customers. The way the outputs of a productive manufacturing facility are employed by a specific company are not determinative of whether the sale of the asset is routine.[56]

Additionally, with respect to Respondents' argument that there is no need for a company to account for its profits on the sale of a fixed asset dollar-for-dollar with continued investment in that production capacity, we agree with this statement in part. The Department did not intend to imply that a one-for-one accounting of a company's profits from the sale of its fixed assets with new investment in fixed assets. However, costs normally are incurred in the preparation of an asset for sale and continued investment in asset classes. These costs are not reflected here, making FACOR's profit on the sale of a fixed asset stand out as a non-routine transaction. Respondents are correct to note that additional investment in the item in question may have

[56] *See, i.e., Softwood Lumber from Canada 2002-2003* at Comment 9; *Softwood Lumber from Canada 2003-2004* at Comment 8; *Concrete Reinforcing Bars from Turkey* at Comment 25.

occurred outside of the current period, and the Department adds that costs incurred in preparing the power plant for sale may also have been incurred outside the current period. However, this fact is one of the reasons why we exclude profits and losses on the non-routine sale of fixed assets from our calculation of SG&A. As we stated in *Softwood Lumber from Canada 2003-2004*:

> Sometimes the shut-down and sale occur in the same accounting period; sometimes they do not. When both occur within the same accounting period, the shut-down costs are typically matched with the gain or loss on the sale of the production facility and the net is reported. When they do not occur in the same accounting year, companies normally report the costs immediately through an accrual, but report the gain in the subsequent year when the sale takes place. In such a case, if the Department included the shut-down costs as a component of the per-unit costs, not only would it result in a significant increase to the per-unit cost, but it would not reflect the offsetting revenues from the subsequent sale. Conversely, if the subsequent sale occurs in the POR the true cost to the company in supporting its operations would be understated.[57]

The costs associated with disposing of an entire plant or facility may occur within the same period or different periods than that where the revenue is received from selling the same assets. Because of the nature of the non-market economy calculation, where we often do not rely on a surrogate manufacturer's financial statements from one POR to the next in calculating surrogate financial ratios, it is particularly important that we exclude from our calculations gains or losses on large asset dispositions (*i.e.*, sales of entire plants or facilities).

For the foregoing reasons, the Department continues to find that FACOR's sale of its power plant is a large non-routine transaction that does not relate to its general operations. The Department's practice is to exclude the profits or losses from the non-routine sale of fixed assets from our calculation of SG&A. Consistent with our practice, we have excluded FACOR's reported profit on the sale of its power plant from our calculation of SG&A in this case.

[57] *See Softwood Lumber from Canada 2003-2004* at Comment 8.

B. Treatment of Profit on Sale of a Fixed Asset With Respect to the Profit Ratio

Respondents' Comments:

Respondents argue that the Department cannot find FACOR's asset sale to be non-routine for the purposes of calculating SG&A, and routine for the purposes of calculating profit. However, Respondents allege that the Department has done precisely this by not excluding the profit on the sale of a fixed asset from the profit calculation while simultaneously excluding this line item from SG&A. Respondents argue that the Department must either find FACOR's asset sale to be routine for both SG&A and profit, or non-routine for both SG&A and profit.[58]

Petitioner's Comments:

Petitioner argues that the Department did not make a finding that the sale of the asset was non-routine for purposes of the profit calculation, only for purposes of the SG&A calculation. Petitioner argues that it is the Department's practice to include all income and expense items in the calculation of the surrogate profit ratio, and the Department properly followed that practice in this case by not excluding FACOR's profit on the sale of a fixed asset from the profit calculation. Petitioner argues that, because the profit calculation takes into account all income and expenses, such as the company's manufacturing costs, the profit on the sale of the fixed asset should be included in the profit calculation. Petitioner asserts that the Department's practice is not to analyze each line item contained in the profit calculation, and that the Department should continue to follow its past practice and not exclude profit on the sale of a fixed asset from the profit calculation.

Department's Position:

We agree with Respondents that it is inconsistent for the Department to deny an offset to SG&A because a line item is determined to be unrelated to the company's general operations,

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[58] See Respondents' Comments at 8-10.

but continue to include that line item in the profit calculation. We agree with Petitioner that, in past cases, we have not excluded the profit from non-routine sales of fixed assets from the profit calculation, where we have excluded the profit from SG&A. However, upon examination of the facts of this case, we have determined that it is logically consistent to make the same adjustment to the profit calculation that we made for SG&A. Here, we are able to determine, from the face of FACOR's financial statement, that the sale of the power plant was a non-routine transaction that is unrelated to the company's general operations, and based on our well-established practice, we determined that the profit from this sale should be excluded from SG&A. Likewise, we were able to exclude the profit from this same sale from the profit calculation. Therefore, in instances where we can identify, from the face of the financial statement, line items that should be excluded as offsets to SG&A, we will also remove those line items from profit. We agree with Petitioner that the profit calculation includes a company's income and expenses, but we disagree that profit from a sale which we consider to be unrelated to its general operations should be included in the profit calculation. We do not find that there is a reasonable basis to treat the profit differently in the profit calculation and in SG&A, and since we have excluded FACOR's profit on the sale of its power plant from our calculation of SG&A, as it represents a transaction that is unrelated to the general operations of the company, we are also excluding the profit on the sale of its power plant from our calculation of profit.

C. Miscellaneous Receipts

The Department reexamined the practice set forth in *OTR Tires from the PRC*[59] and the available information in this case regarding FACOR's miscellaneous receipts. In *OTR Tires*

[59] *See Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008) and accompanying Issues and Decision Memorandum at Comment 18.B ("*OTR Tires from the PRC*").

from the PRC, the Department explained that a determination of the possible nature of the activity generating miscellaneous income is necessary to see if a relationship exists between the activity and the general operations of the company.[60] There, the Department was able to identify, for certain miscellaneous income items, how these items in the surrogate company's financial statement related to the company's general operations. Based on specific information available in the financial statement, the Department found that certain items should be excluded from the calculation because they did not relate to general operations of the company. However, for other items, such as residual miscellaneous income, the Department included them in the calculation as a SG&A offset because the Department found no evidence indicating the income was not related to the company's general operations.[61]

Like in *OTR Tires from the PRC*, there is no information in FACOR's financial statement to indicate that FACOR's miscellaneous receipts are not related to the general operations of the company. Accordingly, the Department has revised our calculation regarding FACOR's miscellaneous income as an offset to SG&A, consistent with *OTR Tires from the PRC*.[62]

Neither Respondents nor Petitioner commented on this issue.

FINAL RESULTS OF REDETERMINATION

Pursuant to the CIT's *Remand Order*, based on the information on the record of the underlying administrative segment and the analysis of the parties' arguments, the Department has explained its decision to categorize profit on the sale of a fixed asset as an excluded item and revised its treatment of miscellaneous receipts in our calculation of selling, general, and administrative expenses and profits on the sale of a fixed asset in our calculation of profit. We have recalculated the normal values to reflect this change and as a result of this redetermination,

[60] *See OTR Tires from the PRC* at Comment 18.B.
[61] *Id.; see also Draft Remand Results* at 9-10.
[62] *See Draft Remand Results* at 10.

the antidumping duty margin for sales of silicon metal is 21.97% for Jinneng and 48.64% for Gangyuan.

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Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

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Date