

Jiangsu Zhongji Lamination Materials Co. (HK), Ltd., Jiangsu Zhongji Lamination Materials, Co., Ltd., Jiangsu Zhongji Lamination Materials Stock Co., Ltd., and Jiangsu Huafeng Aluminum Industry Co., Ltd. v. United States
Court No. 18-00091 Slip Op. 19-111
(CIT August 15, 2019)

**FINAL RESULTS OF REDETERMINATION
PURSUANT TO COURT REMAND**

I. SUMMARY

The Department of Commerce (Commerce) has prepared these final results of redetermination pursuant to the *Remand Order* of the U.S. Court of International Trade (the Court) issued on August 15, 2019.¹ This action arises from the results of the *Final Determination* and *Amended Final Determination* in aluminum foil from the People's Republic of China (China).² On August 15, 2019, the Court sustained Commerce on the following issues: (1) the selection of South Africa, rather than Bulgaria, as the source of surrogate values (SVs);³ (2) the selection of international freight values used by Commerce in the *Final Determination*;⁴

¹ See *Jiangsu Zhongji Lamination Materials Co. (HK), Ltd., Jiangsu Zhongji Lamination Materials, Co., Ltd., Jiangsu Zhongji Lamination Materials Stock Co., Ltd., and Jiangsu Huafeng Aluminum Industry Co., Ltd. v. United States*, Court No. 18-00091, Slip Op. 19-111 (CIT August 15, 2019) (*Remand Order*).

² See *Certain Aluminum Foil from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 9282 (March 5, 2018) (*Final Determination*), and accompanying Issues and Decision Memorandum (IDM); see also *Certain Aluminum Foil from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 83 FR 17362 (April 19, 2018) (*Amended Final Determination*).

³ See *Remand Order* at 14-22.

⁴ *Id.* at 24-26.

(3) Commerce’s valuation of Zhongji’s⁵ scrap;⁶ and (4) Commerce’s decision to defer issuance of its *Preliminary Determination*.⁷ Furthermore, the Court found that Zhongji’s arguments about the broader legitimacy of the irrevocable value-added tax (VAT) adjustment were not properly raised during the administrative proceeding.⁸

Nonetheless, Commerce requested a voluntary remand to reconsider the price on which it based its VAT adjustment applied in the *Final Determination* and *Amended Final Determination*,⁹ in light of modifications to Commerce’s practice following the holding of the Court in *Fine Furniture I*.¹⁰ The Court granted Commerce’s request for a voluntary remand to recalculate its VAT adjustment using the “correct sale price.”¹¹ In accordance with the *Remand Order*, Commerce has recalculated Zhongji’s VAT adjustment.

⁵ Jiangsu Zhongji Lamination Materials Co. (HK), Ltd. (Zhongji HK); Jiangsu Zhongji Lamination Materials, Co., Ltd. (Zhongji Lamination Materials); Jiangsu Zhongji Lamination Materials Stock Co., Ltd. (Zhongji Lamination Materials Stock); and Jiangsu Huafeng Aluminum Industry Co., Ltd. (Jiangsu Huafeng Aluminum) (collectively, Zhongji).

⁶ See *Remand Order* at 22-23.

⁷ *Id.* at 28-30. Commerce published the *Preliminary Determination* on November 2, 2017. See *Antidumping Duty Investigation of Certain Aluminum Foil from the People’s Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination* 82 FR 50858 (November 2, 2017) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum. Commerce issued a deferral notice on October 12, 2017. See *Certain Aluminum Foil from the People’s Republic of China: Deferral of Preliminary Determination of the Less Than Fair Value Investigation*, 82 FR 47481 (October 12, 2017); see also *Certain Aluminum Foil from the People’s Republic of China: Deferral of Preliminary Determination of the Less Than Fair Value Investigation – Correction Notice*, 82 FR 48485 (October 18, 2017).

⁸ See *Remand Order* at 28 n.7.

⁹ *Id.* at 26-28.

¹⁰ See *Fine Furniture (Shanghai) Limited, et al. v. United States*, Court No. 14-00135, Slip Op. 16-85 (CIT September 9, 2016) (*Fine Furniture I*).

¹¹ See *Remand Order* at 27, citing *Fine Furniture (Shanghai) Limited, et al. v. United States*, Court No. 14-00135, Slip Op. 18-68 (CIT June 12, 2018) (*Fine Furniture II*).

On October 15, 2019, we released our Draft Results of Redetermination to interested parties.¹² On October 22, 2019, Zhongji provided comments.¹³ No other interested parties submitted comments. We respond to Zhongji's comments below. After considering these comments and analyzing the record, for purposes of these final results of redetermination, Commerce continues to apply the methodology employed in the Draft Results of Redetermination. Based upon the results of our analyses, the margin calculation in these final remand results continues to be 48.30 percent.

II. REMANDED ISSUE

A. Legal Framework

Pursuant to section 772(c)(2)(B) of the Tariff Act of 1930, as amended (the Act), Commerce shall reduce the export price and constructed export price of subject merchandise by “the amount... of any export tax, duty, or other charge imposed by the exporting country on the exportation of the subject merchandise to the United States...”¹⁴

B. Background

In the *Final Determination* and *Amended Final Determination*, Commerce based its calculation of Zhongji's VAT adjustment on the U.S. price of Zhongji's merchandise on resale by Zhongji HK, instead of the price at which Zhongji Lamination Materials, Zhongji Lamination

¹² See *Jiangsu Zhongji Lamination Materials Co. (HK), Ltd., Jiangsu Zhongji Lamination Materials, Co., Ltd., Jiangsu Zhongji Lamination Materials Stock Co., Ltd., and Jiangsu Huafeng Aluminum Industry Co., Ltd. v. United States*, Court No. 18-00091, Slip Op. 19-111 (CIT August 15, 2019), dated October 15, 2019. (Draft Results of Redetermination).

¹³ See Zhongji's Letter, “Certain Aluminum Foil from the People's of China: Comments of Jiangsu Zhongji Lamination Materials Co., (HK) Ltd. et al. on Draft Remand Results of Redetermination Pursuant to Court Order (Ct. No., 18-00091),” dated October 22, 2019 (Zhongji Draft Comments),

¹⁴ See Section 772(c)(2)(B) of the Act; see also *Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings*, 77 FR 36481 (June 19, 2012) (*Methodological Changes*).

Materials Stock, and Jiangsu Huafeng Aluminum (collectively, Jiangsu Zhongji) sold the merchandise to Zhongji HK.¹⁵

In *Fine Furniture I*, litigation arising of the first antidumping duty administrative review of multilayered hardwood flooring, the Court found that Commerce failed to reconcile the deduction for irrecoverable VAT that Commerce calculated with the amounts of irrecoverable VAT that were actually incurred upon exportation, and Commerce's calculation was not supported by substantial evidence on the record, remanding the case for reconsideration.¹⁶ On remand, Commerce modified its VAT calculations and found that the transfer price to respondent's affiliate was the actual base value from which irrecoverable VAT was calculated, because it was more appropriate to focus on achieving tax neutrality generally, rather than determining what taxes the Government of China should have imposed.¹⁷ Commerce's new VAT adjustment methodology was subsequently affirmed by this Court in *Fine Furniture II*.¹⁸ The fact pattern in *Fine Furniture* was similar to that in this case, as the respondent had a similar selling structure and certified that China used its transfer price to its affiliated, offshore reseller as the basis to collect VAT.¹⁹

In accordance with Commerce's revised VAT adjustment calculation methodology, on February 25, 2019, the United States requested a voluntary remand concerning its calculation of the VAT adjustment.²⁰

¹⁵ See *Final Determination* IDM at Comment 4; see also Zhongji's Letter, "Certain Aluminum Foil from the People's Republic of China: Section C & D Questionnaire Response of Zhongji HK and its Affiliated Customers," dated July 6, 2017 (Zhongji Section C & D Response), at C-39 and Exhibit C-6.

¹⁶ See *Fine Furniture I* at 1358-59.

¹⁷ See *Fine Furniture II* at 1288-89 (citing *Fine Furniture (Shanghai)*, CIT No. 14-135, ECF Doc. 338-1 at 8).

¹⁸ *Id.*

¹⁹ See *Remand Order* at 27.

²⁰ *Id.* at 27, citing Commerce's February 25, 2019 56.2 Opposition Brief at 39-40.

C. Analysis

On remand, in accordance with the *Remand Order*, we have reconsidered our calculation of Zhongji's VAT adjustment and, consistent with *Fine Furniture II*, we revised this calculation based on the price at which Jiangsu Zhongji sold the merchandise to Zhongji HK, its affiliated sales company.

VAT is an indirect, *ad valorem*, consumption tax imposed on the purchase (sale) of goods. It is levied on the purchase (sale) price of the good, *i.e.*, it is paid by the buyer and collected by the seller. For example, if the purchase price is \$100 and the VAT rate is 15 percent, the buyer pays \$115 to the seller, which consists of \$100 for the good and \$15 in VAT. VAT is typically imposed at every stage of production. Thus, under a typical VAT system, firms: (1) pay VAT on their purchases of production inputs and raw materials (input VAT) as well as; (2) collect VAT on sales of their output (output VAT).

Firms calculate input VAT and output VAT for tax purposes on a company-wide (not transaction-specific) basis, *i.e.*, in the case of input VAT, on the basis of all input purchases regardless of whether used in the production of goods for export or domestic consumption, and in the case of output VAT, on the basis of all sales to all markets, foreign and domestic. Thus, a firm might pay the equivalent of \$60 million in total input VAT across all input purchases and collect \$100 million in total output VAT across all sales. In this situation, however, the firm would remit to the government only \$40 million of the \$100 million in output VAT collected on its sales, because of a \$60 million credit for input VAT paid that the firm can claim against output VAT.²¹ As a result, the firm bears no "VAT burden (cost);" the firm, through the credit, is refunded or recovers all of the \$60 million in input VAT it paid, and the \$40 million

²¹ The credit, if not exhausted in the current period, can be carried forward.

remittance to the government is simply a transfer to the government of VAT paid by (collected from) the buyer, with the firm acting only as an intermediary. Thus, the cost of output VAT falls on the buyer of the good, not on the firm.

This would describe the situation under Chinese law, except that producers in China, in most cases, do not recover (*i.e.*, are not refunded) the total input VAT they paid. Instead, Chinese tax law requires a reduction in, or offset to, the input VAT that can be credited against output VAT.²² The formula for this reduction/offset is provided in Article 5 of the 2012 Chinese government tax regulation, Circular on Value-Added Tax and Consumption Tax Policies on Exported Goods and Services (VAT Circular Memo):²³

$$\text{Reduction/Offset} = (P - c) \times (T1 - T2),$$

where,

P = (VAT-free) FOB value of export sales;

c = value of bonded (duty- and VAT-free) imports of inputs used in the production of goods for export;

T1 = VAT rate; and

T2 = refund rate specific to the export good.

Using the example above, if P = \$200 million, c = 0, T1 = 17% and T2 = 10%, then the reduction/offset = (\$200 million - \$0) x (17% - 10%) = \$200 million x 7% = \$14 million.

Chinese law then requires that the firm in this example calculate creditable input VAT by subtracting the \$14 million from total input VAT, as specified in Article 5.1(1) of the 2012 VAT Circular Memo:

$$\text{Creditable input VAT} = \text{Total input VAT} - \text{Reduction/Offset}$$

²² We have placed the 2012 PRC Circular Governing the VAT offset on the record of this proceeding. *See* Memorandum, “*Jiangsu Zhongji Lamination Materials Co. (HK), Ltd., Jiangsu Zhongji Lamination Materials, Co., Ltd., Jiangsu Zhongji Lamination Materials Stock Co., Ltd., and Jiangsu Huafeng Aluminum Industry Co., Ltd. v. United States*, Court No. 18-00091, Slip Op. 19-111 (CIT August 15, 2019) -- Placing Document on the Record of this Redetermination,” dated October 2, 2019.

²³ *See* VAT Circular Memo attachment.

Using again the example above, the firm can credit only \$60 million – \$14 million = \$46 million of the \$60 million in input VAT against output VAT. Since the \$14 million is not creditable (legally recoverable), it is not refunded to the firm. Thus, the firm incurs a cost equal to \$14 million, which is calculated on the basis of FOB export value at the *ad valorem* rate of T1 – T2. This cost, therefore, functions as an “export tax, duty, or other charge,” because the firm does not incur it but for exportation of the subject merchandise, and under Chinese law must be recorded as a cost of exported goods.²⁴ It is for this “export tax, duty, or other charge” that Commerce makes a downward adjustment to U.S. price under section 772(c) of the Act.²⁵

It is important to note that, under Chinese law, the reduction/offset described above is defined in terms of, and applies to, total (company-wide) input VAT across purchases of all inputs, whether used in the production of goods for export or domestic consumption.²⁶ The reduction/offset does not distinguish the VAT treatment of export sales from the VAT treatment of domestic sales from an input VAT recovery standpoint for the simple reason that such treatment under Chinese law applies to the company as a whole, not specific markets or sales. At the same time, however, the reduction/offset is calculated on the basis of the FOB value of exported goods, so it can be thought of as a tax on the company (*i.e.*, a reduction in the input VAT credit) that the company would not incur but for the export sales it makes, a tax fully

²⁴ Article 5(3) of the 2012 VAT Circular Memo states: “Where the tax refund rate is lower than the applicable tax rate, the corresponding differential sum calculated shall be included into the cost of exported goods and services.”

²⁵ Because the \$14 million is the amount of input VAT that is not refunded to the firm, it is sometimes referred to as “irrecoverable input VAT.” However, that phrase is perhaps misleading because the \$14 million is not a fraction or percentage of the VAT the firm paid on purchases of inputs used in the production of exports. If that were the case, the value of production inputs, not FOB export value, would appear somewhere in the formula in Article 5 of the 2012 VAT Circular Memo as the tax basis for the calculation. The value of production inputs does not appear in the formula. Instead, as explained above, the \$14 million is simply a cost imposed on firms that is tied to export sales, as evidenced by the formula’s reliance on the FOB export value as the tax basis for the calculation. The \$14 million is a reduction in or offset to what is essentially a tax credit, and it is calculated based on and is proportional to the value of a company’s export sales. Thus, “irrecoverable input VAT” is in fact, despite its name, an export tax within the meaning of section 772(c)(2)(B) of the Act.

²⁶ See, e.g., Article 5(1) of the 2012 VAT Circular Memo.

allocable to export sales because the firm under Chinese law must book it as a cost of exported goods.

In its July 6, 2017 response to sections C and D of Commerce’s questionnaire, Zhongji calculated and reported its VAT adjustment within the variable VATTAXU in its U.S. sales database.²⁷ With regard to the variable VATTAXU, Zhongji indicated:

The VAT refund rate for exports of the subject merchandise is 15% during the period of investigation (POI), while the VAT paid by the manufacturer Jiangsu Zhongji is 17% for purchases of inputs used to produce the subject merchandise. The respondent has reported in the Column titled VATTAXU the difference (*i.e.* non-refundable VAT) according to the formula: the unit price sold by Jiangsu Zhongji to Zhongji HK * (17%-15%), because Jiangsu Zhongji is the exporter of the subject merchandise in China and also the payer of the VAT during the POI.²⁸

In other words, the VAT rebate that Zhongji receives is based on the price from Jiangsu Zhongji to Zhongji HK rather than on the U.S. price to the first unrelated U.S. customer. Accordingly, Zhongji calculates its VAT adjustment using the price to Zhongji HK. Moreover, as the Court explained in its holding, Jiangsu Zhongji pays “no VAT on the markup between itself and Zhongji HK and adds no inputs at that phase”²⁹ which means the Chinese government bases its final assessment of Zhongji’s VAT on its selling price to Zhongji HK.

Finally, and as explained above, in *Fine Furniture II*, Commerce determined that a goal in determining a VAT adjustment was achieving tax neutrality and achieving a tax-neutral dumping margin required Commerce to base the VAT calculation on the sale by the producer to the affiliated reseller.³⁰ In this case, the same holds true. As noted in *Methodological Changes*, “deducting internal NME {*non-market economy*} tax transactions from export price or

²⁷ See Zhongji Section C & D Response at C-39 and Exhibit C-6.

²⁸ *Id.* at C-39.

²⁹ See *Remand Order* at 26.

³⁰ See *Fine Furniture II* at 1282-1288.

constructed export price is consistent with the Department’s longstanding policy, which is consistent with the intent of the statute, that dumping comparisons be tax-neutral.”³¹ Consistent with our redetermination in *Fine Furniture II*, we, thus, find in this instant redetermination that the price from Jiangsu Zhongji to Zhongji HK represents the appropriate basis for the calculation of the VAT adjustment.³²

Based on the foregoing, we have used the information provided by Zhongji in the variable VATTAXU to represent the VAT adjustment.³³

D. Interested Party Comments on Draft Results of Redetermination

On October 15, 2019, we released our Draft Results of Redetermination to interested parties.³⁴ On October 22, 2019, Zhongji provided comments.³⁵ No other interested party submitted comments.

Issue 1: Calculation of the VAT Adjustment

Zhongji’s Comments:

In the *Remand Order*, the Court directed Commerce “...to recalculate its VAT adjustment using the correct sales price.”³⁶ Commerce’s Draft Remand Results of Redetermination comply with the Court’s Remand Order, and Commerce should continue to use

³¹ See *Methodological Changes* at 36483; see also *Antidumping Duties, Countervailing Duties*, 62 FR 27296, 27369 (citing Statement of Administrative Action accompanying Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol. 1 at 827 (1994), reprinted in 1994 U.S.C.C.A.N. 3773, 4172).

³² See *Fine Furniture II* at 1282-1288

³³ See Memorandum, “Draft Determination Calculation for *Jiangsu Zhongji Lamination Materials Co. (HK), Ltd., Jiangsu Zhongji Lamination Materials, Co., Ltd., Jiangsu Zhongji Lamination Materials Stock Co., Ltd., and Jiangsu Huafeng Aluminum Industry Co., Ltd. v. United States* Court No., 18-00091 Slip. Op. 19-111—Analysis for Zhongji in the Draft Redetermination (Draft Analysis Memorandum),” dated October 15, 2019, unchanged for these final results of redetermination.

³⁴ See Draft Results of Redetermination.

³⁵ See Zhongji Draft Comments.

³⁶ *Id.* at 2, citing *Remand Order* at 32.

the methodology employed in the Draft Results of Redetermination in the Final Results of Redetermination.³⁷

Commerce's Position:

We agree with Zhongji.³⁸ In these final results of redetermination, we have continued to employ the same methodology as that which we employed in the Draft Results of Redetermination.

III. FINAL RESULTS OF REDETERMINATION

In accordance with the *Remand Order*, and consistent with the instructions of the Court, Commerce has based its calculation of the VAT adjustment on Jiangsu Zhongji's sale to its affiliated reseller, Zhongji HK. Based on these changes, the estimated weighted-average dumping margin for the POI for Zhongji has changed from 48.64 percent to 48.30 percent. Upon a final and conclusive decision in this litigation, Commerce will instruct U.S. Customs and Border Protection to collect cash deposits consistent with the final results of redetermination.

11/12/2019

X 

Signed by: JEFFREY KESSLER
Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

³⁷ *Id.* at 2.

³⁸ Regarding Zhongji's footnote about challenging VAT in future proceedings, for this investigation, the Court has found that Zhongji's arguments about the broader legitimacy of the irrevocable VAT adjustment were not properly raised during the administrative proceeding. *See Remand Order* at 28 n.7.