

MEMORANDUM TO: Joseph A. Spetrini  
Acting Assistant Secretary  
for Import Administration

FROM: Holly A. Kuga  
Acting Deputy Assistant Secretary  
for Import Administration  
Group II

DATE: April 18, 2003

SUBJECT: Issues and Decision Memorandum for the Final Determination of the  
Antidumping Duty Investigation of Lawn and Garden Steel Fence Posts  
from the People's Republic of China

**Summary**

We have analyzed the comments in the case and rebuttal briefs submitted by interested parties in the antidumping duty investigation of steel fence posts from the People's Republic of China (PRC). As a result of our analysis, we have made changes in the margin calculations. We recommend that you approve the positions we have developed in the Discussion of the Issues section of this memorandum. Below is a complete list of the issues in this investigation for which we received comments from the parties:

- Comment 1: Department's Acceptance of New Information
- Comment 2: Use of BaoSteel's Market Economy Steel Value
- Comment 3: Surrogate Value Selection for Steel Coil and Packing Materials
- Comment 4: Surrogate Value Selection for Powder Coating, Coal, and Hydrochloric Acid
- Comment 5: Surrogate Value Selection for Brokerage and Handling
- Comment 6: Surrogate Value Selection for Labor
- Comment 7: Exclusion of Labor Costs from Calculation of Surrogate Overhead and Selling, General and Administrative Expense (SG&A) Ratios
- Comment 8: Use of Gross, Rather Than Net, Material Costs in the Calculation of Surrogate Overhead and SG&A Ratios

## **Background**

On December 4, 2002, the Department of Commerce (the Department) published the preliminary determination in the antidumping duty investigation of steel fence posts from the PRC. The period of investigation (POI) is October 1, 2001, through March 31, 2002. We invited parties to comment on the preliminary determination.

## **Discussion of the Issues**

### **Comment 1: Department's Acceptance of New Information**

In its case brief, the petitioner<sup>1</sup> submitted new information in an untimely manner regarding: 1) duties and tariffs on imports of steel; and, 2) the calculation of ratios for factory overhead, SG&A, and profit. Subsequently, the Department rejected the new factual information contained in this case brief, and allowed the petitioner to resubmit its brief with the new factual information redacted. (See Letter from the Department to Steel City Corporation dated March 17, 2003). On March 18, 2003, the Department accepted the petitioner's redacted case brief.

In its rebuttal brief, respondent Shanghai BaoSteel International Economic and Trading Co., Ltd. (BaoSteel) claims that the petitioner's redacted case brief still included untimely new factual information. According to BaoSteel, the petitioner only complied partially with the Department's March 17, 2003, request. Specifically, BaoSteel claims that the information regarding certain antidumping and anti-subsidy determinations issued by the Department and the European Commission (EC), as well as information regarding duties and tariffs on imports of steel, and the calculation of ratios for factory overhead, profit and SG&A, still constituted new information that was not submitted on the record prior to the March 3, 2003, the deadline for new factual information. BaoSteel acknowledges that this information is publicly available, however, it contends that by not placing the information on the record prior to filing its case brief, the petitioner did not give interested parties the opportunity to comment on the information. According to Baosteel, "the mere fact that such information exists in the public domain does not require the Department to consider the publicly available information, particularly if such information is not timely submitted on the record to give parties the opportunity to comment."<sup>2</sup>

BaoSteel argues that the courts have upheld the Department's rejection of untimely factual information on several occasions, including opinions addressing the Coalition for Preservation of American Brake Drum and Rotor Aftermarket Manufacturers v. United States, 44 F. Supp. 2d 229 (1999), and Emerson Power Transmission Corporation v. United States, 19 CIT 1154 (1995). BaoSteel also

---

<sup>1</sup> The petitioner in this investigation is Steel City Corporation.

<sup>2</sup> See BaoSteel's case brief at page 3.

notes that when parties submit untimely new factual information in case briefs, the Department has rejected the entire case brief. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From Kazakhstan, 66 FR 50397 (October 3, 2001); Sulfanilic Acid From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 66 FR 15837 (March 21, 2001); and Sparklers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 65 FR 43293 (July 1, 2000).

BaoSteel requests that the Department reject the remaining new information in the petitioner's redacted case brief. Alternatively, BaoSteel requests that the Department note in its final determination that the new factual information and cites to other cases presented by the petitioner has limited probative value because the factual details of those cases (e.g., information from the EC dumping case) are not in the record of this case.

### **Department's Position**

We disagree with BaoSteel that the petitioner did not comply with the directions in our March 17, 2003, letter regarding the redacting of new information from its case brief. We note that on March 17, 2003, Department officials spoke with the petitioner regarding its case brief and advised it on how to redact the new factual information and resubmit its case brief. (See Memo to the File from Constance Handley (March 17, 2003)). The information provided by the petitioner in its redacted case brief, merely cited the existence of Chinese safeguard tariffs and EC case citations that provided limited support for the legal arguments asserted by the petitioner and contained no new factual information. In addition, the revised form of the petitioner's case brief provided BaoSteel sufficient notice and an opportunity to respond to the petitioner's arguments through rebuttal briefs. As a consequence, for this final determination, we have considered the petitioner's revised case brief submitted on March 18, 2003.

### **Comment 2: Use of BaoSteel's Market Economy Steel Input Value**

In its case brief, the petitioner argues that the Department should disregard the market economy price of the hot-rolled steel input purchased by Hangzhou Hongyuan Sporting Goods Company, Ltd. (Hongyuan)<sup>3</sup> because it represents a distorted price. The petitioner contends that the market price used by the Department in the preliminary determination was distorted because the United States has an antidumping order in effect on the specific producer of the market economy input in country X.<sup>4</sup> According to the petitioner, the EC also has antidumping measures in place on hot-rolled steel from country X and has calculated a company-specific margin for the producer of Hongyuan's market economy input. Further, the petitioner contends that the EC also has anti-subsidy measures in place for

---

<sup>3</sup> Hongyuan was the producer of the subject merchandise sold by Shanghai BaoSteel International Economic and Trading Co., Ltd. (BaoSteel) during the POI.

<sup>4</sup> For the purposes of this public memorandum, we refer to "country X" because the source country of the market economy input is proprietary.

an affiliate of the manufacturer of the hot-rolled steel purchased by Hongyuan. The petitioner notes that these companies were collapsed by the Department in a previous case. Therefore, it contends that the subsidies found by the EC should be considered to apply to Hongyuan's supplier as well as its affiliate.

In addition, the petitioner notes that the PRC has safeguard tariffs on hot-rolled sheets and coils from country X, and that the PRC recently announced that it has raised the tariffs on imports of hot-rolled sheets from country X.<sup>5</sup> Due to the above stated trade actions, the petitioner argues that there is further reason to believe or suspect that the prices of hot-rolled steel are distorted by subsidies or dumping, and cannot be used in this final determination. The petitioner cites to several cases in which the Department has rejected the use of market economy input prices when there is reason to believe or suspect that those prices are distorted. See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1999- 2000 Administrative Review, Partial Rescission of Review, and Determination Not To Revoke Order in Part, (TRBs), 66 FR 57420 (November 15, 2001); Folding Metal Tables and Chairs From the People's Republic of China (Tables and Chairs), 67 FR 20090 (April 24, 2002); and Certain Automotive Replacement Glass Windshields From the People's Republic of China (ARG), 67 FR 6482 (February 12, 2002).

Furthermore, the petitioner contends that Hongyuan, the producer of the steel fence posts sold by BaoSteel, obtained hot-rolled steel at a distorted price because the trading company which sold the market economy input in question, company A, has a direct relationship through ownership and control with BaoSteel's end customer, company B.<sup>6</sup> The petitioner alleges that company A and company B are affiliated "through an intricate web of company relationships"<sup>7</sup> and that this relationship led to sales at distorted prices for hot-rolled steel provided to Hongyuan during the POI. The petitioner provided documentation regarding this alleged relationship in its January 15, 2003, submission, demonstrating that an internet search revealed that the address, phone number, and fax number of company A were the same as the address, phone number, and fax number of an affiliate of company B. The petitioner then linked company B to its affiliate through internet searches showing the corporate structure of company B.

Finally, the petitioner claims that the Department's verification report gives evidence of a relationship based on the fact that Hongyuan's company officials stated that company B recommended that it purchase hot-rolled steel from company A.<sup>8</sup> The petitioner also notes that the Department's verifiers obtained the business licences of company A and its alleged affiliate with the same address. The

---

<sup>5</sup> See petitioner's case brief at pages 2-4.

<sup>6</sup> For the purposes of this public memorandum, we refer to Hongyuan's supplier of hot-rolled steel as "company A" and BaoSteel's end customer as "company B" because the names of these companies are proprietary.

<sup>7</sup> See Petitioner's case brief at page 4.

<sup>8</sup> See Memorandum from Salim Bhabrawala and Tisha Loeper-Viti to Gary Taverman Re: Verification of Sales and Factors of Production Data Submitted by Shanghai BaoSteel International Economic and Trading Co., Ltd. (BaoSteel Verification Report) at pages 9-10 (Feb. 20, 2003).

petitioner acknowledges that these licences showed that both company A's and the alleged affiliate of company B's offices were located next to one another, and that both companies had no common shareholders. However, the petitioner contends that none of these documents provide conclusive evidence that there is no relationships between company A and the alleged affiliate of company B because the business licences do not reveal company relationships. The petitioner also argues that lack of common shareholders does not prove that there is no relationship between company A, the alleged affiliate of company B, and in turn, company B itself. Finally, the petitioner points out that no explanation was provided by BaoSteel for the fact that company A and company B's affiliate had the same phone and fax numbers.

For all of the above reasons, the petitioner argues that the Department should find that the market economy input price for Hongyuan's hot-rolled steel is distorted and should not be used in the final determination.

In its rebuttal brief, BaoSteel argues that the Department should continue to use Hongyuan's actual market economy prices to value the hot-rolled steel coil input because the petitioner has failed to "identify any record evidence or credible legal basis to rebut the regulatory presumption in favor of using market economy prices."<sup>9</sup> BaoSteel contends that the petitioner's revised case brief incorrectly asserted that steel from country X is dumped or subsidized in this case because it has been dumped or subsidized in other cases. BaoSteel urges the Department to recognize that the findings in one dumping case cannot be directly applicable to another dumping case, and affirms that even if "the Department has the same respondent in cases involving different subject merchandise, the differences in the periods of investigation may affect the evaluation of corporate structure, sales data and cost data."<sup>10</sup> BaoSteel also contends that citations to past cases cannot be a "*per se*" finding in current investigations due to the differences in past and present factual circumstances. For example, BaoSteel contends that dumping determinations by the EC are not comparable to dumping findings by the Department.

BaoSteel also argues that the petitioner's citations of TRBs, Tables and Chairs, and ARG, as justification for not using market economy prices when it has reason to believe or suspect that market economy input prices are distorted by subsidies or dumping, is flawed. BaoSteel notes that within these cases, the Department has stated its practice was to "disregard market economy prices for imported inputs as dumped only when the importing country has an antidumping duty order in effect for the products in question."<sup>11</sup> Therefore, BaoSteel contends that the petitioner does not identify any final findings or orders issued by the PRC against hot-rolled steel from country X. BaoSteel also notes that the existence of a dumping finding by the United States or EC on steel from country X does not show

---

<sup>9</sup> See BaoSteel's case brief at page 2.

<sup>10</sup> See *id.* at page 4.

<sup>11</sup> See BaoSteel's case brief at page 6; see also Tables and Chairs, 67 FR 20090 (April 24, 2002), and accompanying Issues and Decision Memorandum at Comment 4.

evidence that there is dumping of steel from country X in the PRC.<sup>12</sup>

Further, BaoSteel also argues that the petitioner misunderstands the legal standards distinguishing a safeguard action from an antidumping action. According to BaoSteel, a safeguard action in the PRC is taken against fairly traded imports, while dumping cases are brought against unfairly traded imports, (*i.e.*, the cause of any price declines in a safeguard investigation must be shown to be by reasons of increased imports rather than unfairly traded imports). BaoSteel cites Certain Helical Spring Lock Washers From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 67 FR 69717 (Nov. 19, 2002) (Lock Washers) and the accompanying Issues and Decision Memorandum at Comment 4, where the Department stated that “while the PRC may have taken provisional safeguard measures against imports of steel including {steel wire rod}, this does not mean that the PRC has made a finding of dumping.”

Finally, BaoSteel argues that the petitioner has failed to identify any evidence indicating a relationship through company B’s affiliate, between BaoSteel and its customer (company B), or Hongyuan and its supplier (company A). BaoSteel notes that the petitioner’s arguments about the affiliation between company A and company B are factually flawed because the Department verified the business licences of company A and the alleged affiliate to company B. The Department noted that these companies did not have the same address, but were located in different office suites in the same building.<sup>13</sup> BaoSteel notes that geographical or physical proximity cannot make companies “affiliates” according to the Department’s standards. BaoSteel also contends that the Department verified that company A and Company B’s alleged affiliate did not have any common shareholders during the POI.<sup>14</sup> The lack of common shareholders is evidence that there is no relationship between company A and the alleged affiliate of company B, and in turn, there is no relationship between company A and company B.

BaoSteel finally points to the fact that the phone and fax numbers listed in the website provided by the petitioner in its January 15, 2003, submission, are incorrect. BaoSteel notes that the website of the alleged affiliate of company B shows that the phone and fax numbers of the company are different than the information provided by petitioner in its January 15, 2003, submission. BaoSteel contends that the website of a company itself is more reliable than the secondary source of information provided by the petitioner. BaoSteel reiterates that there is no factual information on the record that would indicate any direct relationship between company A and company B, and therefore, there is no relationship between Hongyuan and BaoSteel’s end customer.

## **Department’s Position**

After careful review of the arguments summarized above, we agree with respondent BaoSteel that the

---

<sup>12</sup> See BaoSteel’s case brief at page 6.

<sup>13</sup> See BaoSteel Verification Report at page 10.

<sup>14</sup> See *id.* at page 11.

market economy prices its producer Hongyuan paid for hot-rolled steel coils from country X are not distorted nor is there any reason to believe or suspect that those prices are distorted by dumping or subsidies.

With regard to the petitioner's argument concerning dumping, BaoSteel correctly notes that the cases cited by the petitioner, including TRBs, Tables and Chairs, and ARG, show that the Department only disregards market economy prices for dumped imported inputs when the importing country has an antidumping duty order in effect for the products in question. In the review of TRBs, we concluded that the "believe or suspect" standard is met when the importing country has a dumping finding on the input in question.<sup>15</sup> Moreover, because dumping analyses typically compare the prices of imports in the investigating country with the home market prices in the country being investigated, dumping findings are market specific. Thus, we do not agree that U.S. (or other third country) antidumping findings provide a basis to believe or suspect that import prices into the surrogate country are dumped.

The Department has explained in several cases its interpretation of the language from the Omnibus Trade and Competitiveness Act of 1988 (Conference Report) regarding the use of dumped and subsidized prices to value NME inputs. See Conference Report, H.R. Conf. Rep. No. 100-576 at 590-91. (See Notice of Final Determination of Sales at Less Than Fair Value: Certain Circular Welded Carbon-Quality Steel Pipe from the People's Republic of China, 67 FR 36570 (May 24, 2000) and the accompanying Issues and Decision Memorandum, (May 24, 2002) at Comment 1; TRBs and the accompanying Issues and Decision Memorandum at Comment 1; ARG and the accompanying Issues and Decision Memorandum at Comments 1 - 5; and Tables and Chairs and the accompanying Issues and Decision Memorandum at Comments 1, 2, and 4.)

Regarding allegedly dumped prices, the Department will reject the value only when the importing country (the country in which the input is to be valued) has an antidumping finding in place. In Tables and Chairs at Comment 4 the Department stated, "we will disregard market economy prices for imported inputs as dumped only when the importing country has an antidumping duty order in effect for the products in question . . . dumping is specific to competitive conditions in particular markets and cannot be assumed to apply globally." Under this standard, the information presented by the petitioner is not sufficient for us to reject the prices paid by Hongyuan for its imported hot-rolled steel because there is no evidence that the PRC has an antidumping order in place against hot-rolled steel.

With respect to the petitioner's claim that the EC has imposed anti-subsidy measures on hot-rolled steel from country X, we agree with the respondent that the information presented by the petitioner does not provide the Department with a reason to believe or suspect that Hongyuan's input prices may be distorted by subsidies. In this case, the specific producer from country X who supplied hot-rolled steel to Hongyuan for the production of fence posts during the POI, received a *de minimis* subsidy rate in the EC's definitive anti-subsidy measure of hot-rolled steel coils from country X.

---

<sup>15</sup> See TRBs, and the accompanying Issues and Decision Memorandum, at comment 1.

We also disagree with petitioner's argument that subsidies to company B should be attributed to company A, the *de minimis* company in the EC's finding and Hongyuan's market input supplier, because these two companies had been collapsed by the Department in a previous antidumping duty case. The Department's decision to collapse these two companies was in the context of an entirely different proceeding, based on information covering a different time period. Moreover, the standard for determining whether one company's subsidies should be attributed to another company is not the same as that for collapsing two entities in an antidumping duty case. See 19 CFR 351.525(b)6(ii) and 351.401(f). There is no information on the record of this proceeding that would either permit us to make such a determination or that would lead us to conclude that company B's subsidies should be attributed to company A. It is also noteworthy that the EC in its investigation did not collapse the two companies for purposes of its subsidy finding.

The petitioner also argues that the PRC has safeguard tariffs on imports of hot-rolled steel from country X. The Department notes that there is a clear distinction between antidumping and anti-subsidy trade actions and safeguard trade actions. As discussed in Lock Washers, while the PRC may have taken provisional safeguard measures against imports of steel from country X, including hot-rolled steel, this does not mean that the PRC has made a finding of dumping. At most, it would mean that PRC producers of hot-rolled steel are suffering serious injury.

With respect to the petitioner's argument that Hongyuan obtained hot-rolled steel coils at a distorted price because company A has a direct relationship through ownership and control with company B "through an intricate web of company relationships," we find that record evidence does not demonstrate the existence of this alleged relationship. At verification, the Department analyzed several documents and found there was no indication of affiliation between company A and company B or any of its affiliates. See BaoSteel Verification Report at page 10. The Department first obtained the business licences of company A and the alleged affiliate of company B, and noted that the addresses of both companies were different. See id. at pages 5-6 of Verification Exhibit 11. The Department then reviewed the shareholders lists of company A and the alleged affiliate of company B, and found that the two companies had no common shareholders. See id. at pages 1-4 of Verification Exhibit 11. The Department then asked company officials to provide all documentation showing the history of the relationship between Hongyuan and company A. The Department's verifiers noted nothing within these documents to indicate any type of affiliation via common ownership or control. Finally, the Department's verifiers reviewed Hongyuan's sales contract with company A which was in effect during the POI, and examined the correspondence file between Hongyuan and company A. See BaoSteel Verification Report at pages 9-10. Again, throughout each of these procedures, the Department did not find any evidence showing affiliation or direct relationship between company A and company B, or any evidence that Hongyuan was purchasing hot-rolled steel at distorted prices due to any type of affiliated relationship with another company. With regard to the petitioner's contention that company A and company B's affiliate have the same phone number, we note that the information from company B's affiliate's own website, which was submitted by the petitioner in its January 15, 2003, submission, shows that company B's affiliate does not have the same phone and fax number as company A.

Therefore, because: 1) there is no PRC antidumping duty order in place against the hot-rolled steel

input used by Hongyuan; 2) in the EC anti-subsidy case, the producer of the hot-rolled steel input in question was found not to be subsidized; and 3) there is no record evidence demonstrating any relationship between company A and company B or any of its affiliates that would indicate that hot-rolled steel is being obtained by Hongyuan may have been subsidized, we have continued to use the price Hongyuan actually paid to value the hot-rolled steel input for this company.

### **Comment 3: Surrogate Value Selection for Hot-Rolled Steel Coil and Packing Materials**

Hebei Metals & Mineral Import and Export Corporation (Hebei) and China Nanyang Import & Export Corporation (Nanyang) contend that the surrogate values from the Monthly Statistics of Foreign Trade of India (MSFTI), used by the Department in the preliminary determination, are not as contemporaneous as the values from the MSFTI<sup>16</sup> they put forth in their second surrogate value submission for the following inputs: steel coil, steel screws, nails, wood pallets, wood, plastic sheet/strips, foam, plastic twine, and steel pallets. See Hebei and Nanyang's 2<sup>nd</sup> Surrogate Value Data Submission at Exhibits 1, 2, and 5-12 (Jan. 21, 2003) (2<sup>nd</sup> Surrogate Value Submission). Hebei and Nanyang note that the surrogate values used by the Department in the preliminary determination covered the months of April through December 2001, encompassing months outside of the October 2001 through March 2002, POI. They argue that the data they submitted in their second surrogate value submission is fully contemporaneous and as such should be used by the Department to value the previously mentioned inputs in the final determination. In addition, Hebei and Nanyang argue that in the past when the Department has been faced with one set of surrogate value data that includes months inside and outside of the POI, and another set of data that is fully contemporaneous, the Department has used the latter. See Silicomanganese from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, 65 FR 31514 (May 18, 2000) and accompanying Issues and Decision Memorandum at Comment 1.

The petitioner stated that it agrees that contemporaneous data can be more accurate than older data, providing it is not found to be aberrational.

### **Department's Position**

We agree with Hebei and Nanyang, and have updated the surrogate values for steel coil and packing materials using more contemporaneous data from the same source utilized in the preliminary determination (i.e., the MSFTI). When dealing with a NME country, section 773(c)(1) of the Act directs the Department to use the best available information on the record to value factors of production. When the Department has more than one surrogate value to choose from, its practice is to evaluate each surrogate value based upon its quality and contemporaneity in an attempt to find the best available information. See Ferrovanadium from the People's Republic of China: Notice of Final

---

<sup>16</sup> The source of Hebei's and Nanyang's data is the World Trade Atlas (WTA), which compiles in electronic form, the same import statistics published by the Directorate General of Commercial Intelligence & Statistics that are used in the Monthly Statistics of the Foreign Trade of India (MSFTI).

Determination of Sales at Less Than Fair Value, 67 FR 71137 (Nov. 29, 2002) and accompanying Issues and Decision Memorandum at Comment 5. There is no dispute that one source of data is qualitatively better than another. Therefore, we agree that the surrogate value data from this source that is most contemporaneous with the POI is preferable. In examining the surrogate values, we agree with Hebei and Nanyang that for the inputs in question, the values from the MSFTI used by the Department in the preliminary determination only partially cover the POI and include months outside of the POI. In comparison, the surrogate values they submitted in their second surrogate data submission is fully contemporaneous and does not encompass months outside of the POI. We examined the contemporaneous data and found that the values were based on a significant volume of imports from various market economy countries, and did not appear aberrational. Therefore, in keeping with the Department's practice of using the best available information on the record to value factors of production, in the final determination the Department has valued the previously mentioned inputs using the fully contemporaneous data submitted by Hebei and Nanyang in their second surrogate value submission.

#### **Comment 4: Surrogate Value Selection for Powder Coating, Coal, and Hydrochloric Acid**

Hebei and Nanyang argue that the Department should value coal, hydrochloric acid, and powder coating using domestic Indian prices as opposed to the import prices the Department used in the preliminary determination. They contend that the Department has previously stated a preference for using domestic rather than import prices from the surrogate country to value factors of production, although they concede that this preference is not unconditional. See Pure Magnesium From the People's Republic of China: Final Results of Antidumping Duty New Shipper Administrative Review, 63 Fed. Reg. 3085, 3087 (Jan. 21, 1998) (Magnesium from Russia). They, therefore, argue that the Department should use the domestic Indian prices they submitted in their two surrogate data submissions to value powder coating, coal, and hydrochloric acid. They argue that the domestic data they submitted prior to the preliminary determination for powder coating and coal was contemporaneous and that the Department rejected the data without explanation. Similarly, they note that for hydrochloric acid, they submitted contemporaneous domestic data from Chemical Weekly after the preliminary determination.

Hebei and Nanyang also claim that the domestic Indian prices they submitted are more representative of the production experience of the Chinese producer than the import prices used by the Department in the preliminary determination. They argue that the record indicates that the Chinese producers under investigation sourced powder coating, coal, and hydrochloric acid domestically, presumably because as in India, the domestic price is cheaper than the import price.

Hebei and Nanyang cite to the U.S. Court of International Trade's (the Court) decision in Yantai Oriental Juice Co., et al. v. United States and Coloma Frozen Foods, Inc., et al., Slip Op. 02-56 at 21, (June 2002) (Yantai Oriental) where the Court examined the use of MSFTI versus the use of the TERI Energy Data Directory & Yearbook 2000/2001 (TERI Data Directory) for the purpose of valuing steam coal. Hebei and Nanyang also note that the TERI Data Directory data at issue in Yantai Oriental is identical to the data they submitted in this case. In Yantai Oriental, the Court stated that domestic prices should be used for surrogate value purposes unless: 1) there is evidence that the domestic price

is distorted such that the use of import data is preferred; and 2) the use of imported surrogate values would better approximate the cost incurred by the Indian producers. Hebei and Nanyang argue that there is no evidence that the domestic prices for powder coating, steam coal, and hydrochloric acid are distorted, and that the domestic prices better approximate the costs incurred by the Indian producers.

Finally, Hebei and Nanyang note that the Department has previously found the prices for hydrochloric acid from the MSFTI to be aberrational when compared to a price for a similar product. See Lock Washers at Comment 6. They argue that the Department should therefore use domestic Indian prices from Chemical Weekly to value hydrochloric acid. In addition, they argue that the Department should follow its past practice and deduct excise taxes from the Chemical Weekly prices.

The petitioner argues that if domestic prices are based solely upon a few sample invoices or quotes, the Department should not use them, even if they are contemporaneous.

### **Department Position**

With respect to coal, we disagree with Hebei and Nanyang's argument that the Department should use steam coal prices from the TERI Data Directory as a basis for calculating a surrogate value. The HTSUS category used by the Department to value coal in its preliminary determination represents an "others" basket of coal products which is exclusive of higher value coal products (i.e., anthracite, bituminous metallurgical coal). Unlike the respondents in the case that led to the Court's decision in Yantai Oriental,<sup>17</sup> the respondents in this case did not put information on the record to indicate specifically that steam coal, which is suitable for use in boilers generating steam and most often used for electricity generation, was used in the production process. They also did not demonstrate the "useful heat value" (UHV) of the coal used in the production process, or that the coal was used for the generation of steam. In the instant case, coal was used by all three respondents for the generation of heat to aid in the drying of coating materials. The verification of all three respondents did not provide any insight on the specific type of coal used for this process.

The Department also notes that the "others" basket of coal products used in the preliminary determination represented a contemporaneous period average price that is free of taxes and duties. Therefore, for the final determination, we reject Hebei and Nanyang's argument that we should value coal using steam coal prices from the TERI Data Directory, and we have continued to value coal using the MSFTI data the Department used in the preliminary determination.

With respect to hydrochloric acid, we agree with Hebei and Nanyang that the price from the MSFTI for hydrochloric acid is aberrational when compared to a suitable benchmark, and that the prices from

---

<sup>17</sup> See Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China: Final Results of 1999-2001 Administrative Review and Partial Rescission of Review, 67 Fed. Reg. 68987, (Nov. 14, 2002) and accompanying Issues and Decision Memorandum at Comment 1.

Chemical Weekly are more appropriate for calculating a surrogate value. We examined Indonesian<sup>18</sup> import prices from the World Trade Atlas for the calendar year 2001. See Memo to the File from Christopher C. Welty, concerning surrogate value information (Apr. 11, 2003). As was previously found by the Department in Lock Washers, we have determined that the price for hydrochloric acid from the MSFTI is aberrational. The price for hydrochloric acid from the MSFTI that the Department used in the preliminary determination is \$2.37/kg. According to the World Trade Atlas, the annual average unit value of hydrochloric acid imported into Indonesia, a country on the list of possible surrogate countries in the present investigation, was \$0.10/kg during 2001. See Memo to the File. The MSFTI price is 24 times the price found in a comparable economy, and is in excess of levels the Department has previously found to be aberrational for hydrochloric acid. See Lock Washers at Comment 6. Therefore, in the final determination, we have valued hydrochloric acid using the data submitted by Hebei and Nanyang from Chemical Weekly. In addition, we agree that it is the Department's practice to use tax-exclusive prices to value factors of production and have therefore deducted a 16 percent excise tax, as listed in the 2001 - 2002 Easy Reference Customs Tariff book, from the Chemical Weekly price to arrive at the tax exclusive domestic price we used in the surrogate value calculation. See Memo to the File from Christopher C. Welty, concerning surrogate value information (Apr. 2, 2003).

We disagree with Hebei and Nanyang that the price from Chemical Weekly is the appropriate basis for calculating a surrogate value for powder coating. Because the \$1.52/kg price for powder coating from Chemical Weekly and the \$2.67/kg price for powder coating from the MSFTI were significantly different, we compared the two values to Indonesian import prices of powder coating gathered from the World Trade Atlas. We found that for the year 2001, Indonesian import prices for powder coating averaged 2.32/kg, which is comparable to the MSFTI price, but significantly higher than the value Chemical Weekly. See Memo to the File. Therefore, because the Chemical Weekly prices appear aberrational when compared to both MSFTI and Indonesian import prices, and because the MSFTI prices are comparable to the Indonesian import prices, in the final determination we have valued powder coating using the same MSFTI prices the Department used in the preliminary determination.

#### **Comment 5: Surrogate Value Selection for Brokerage and Handling**

Hebei and Nanyang argue that in the final determination, the Department should value brokerage and handling using the data they provided in their second surrogate value data submission. They argue that the data they submitted, which was taken from the public questionnaire response submitted in the antidumping investigation of Certain Hot-Rolled Carbon Steel Flat Products from India, 66 FR 50406 (Oct. 3, 2001) (Hot-Rolled), is a more contemporaneous and representative surrogate value than the data used by the Department in the preliminary determination. See 2<sup>nd</sup> Surrogate Value Submission in Lawn and Garen Fence Posts from China, Grunfeld, Desiderio et. al. (Jan. 21, 2003). They argue that

---

<sup>18</sup> The Department's Office of Policy initially identified five countries that are at a level of economic development comparable to the PRC in terms of per capita GNP and the national distribution of labor. One of those countries is Indonesia. See the Memorandum from Jeffrey May to Gary Taverman (August 15, 2002).

this data is more contemporaneous than the data used by the Department in the preliminary determination because while the brokerage and handling data used by the Department was for expenses incurred for a single shipment on February 25, 1999, their submitted data represents expenses incurred on shipments during a period from October 1, 1999, to September 30, 2000. They also argue that the data used in Hot-Rolled is more representative because it covers a company's shipments over an entire year, whereas the data used by the Department in the preliminary determination is for a single shipment. Finally, Hebei and Nanyang argue that the Department has used their submitted brokerage and handling value in a number of recent cases. See, e.g., Administrative Review of Freshwater Crawfish Tail Meat from the People's Republic of China, 67 Fed. Reg. 63877 (Oct. 16, 2002) and accompanying Factors Valuation Memo for the Preliminary Results, at 5, 6, and Exhibit 9; See Antidumping Duty Investigation of Certain Ball Bearings and Parts Thereof from the People's Republic of China, 68 Fed. Reg. 10685 (Mar. 6, 2003) (Ball Bearings) and accompanying Issues and Decision Memorandum, at Comment 47.

The petitioner stated that it agrees that contemporaneous data can be more accurate than older data, however, it must be examined for accuracy before it is used.

### **Department's Position**

We agree with Hebei and Nanyang regarding the use of more contemporaneous and representative surrogate data for brokerage and handling. The brokerage and handling data taken from the antidumping investigation of Hot-Rolled is more contemporaneous and representative than the data the Department used in the preliminary determination. The value is more contemporaneous because it covers shipments between October 1, 1999, and September 30, 2000, as compared to a single shipment of a single steel product from February 25, 1999. Finally, as Hebei and Nanyang note, this value has been used in the past by the Department. Therefore, given the Department's preference for using the best available information in valuing factors of production, in the final determination the Department has used the brokerage and handling value submitted by Hebei and Nanyang in their second surrogate value submission. See 2<sup>nd</sup> Surrogate Value Submission at Exhibit 4.

### **Comment 6: Surrogate Value Selection for Labor**

Hebei and Nanyang note that in the preliminary determination, the Department valued labor in the PRC at \$ 0.84 per hour using the wage rate regression calculation posted on the Department's website. They also note that the Department's website was found to be incorrect and has since been updated. They therefore argue that in the final determination, the Department should use the updated wage rate for the PRC of \$ 0.83 per hour now posted on the Department's website.

The petitioner had no comment on this issue.

### **Department's Position**

We agree with Hebei and Nanyang that the Department should use the corrected labor rate for the PRC in the final determination. Therefore, for the final determination the Department has valued labor in the PRC, for all three respondents, at \$ 0.83 per hour as found on the Department's website. See Expected Wages of Selected Non-Market Economy Countries, Corrected 2000 Income Data (Revised Sept. 2002) <http://ia.ita.doc.gov/wages/corrected00wages/corrected00wages.htm>.

### **Comment 7: Exclusion of Labor Costs from Calculation of Surrogate Overhead and SG&A Ratios**

The petitioner argues that the Department erred in its inclusion of labor costs in the denominator of its surrogate overhead and SG&A ratio calculation. Citing Ball Bearings at Comment 1, the petitioners state that it is the Department's policy to exclude labor costs from overhead and SG&A ratio calculations due to the fact that corporate financial statements do not provide sufficient information regarding labor expenses to determine that they should be included in such a calculation. The petitioner recognizes that, were the Department to do this, it would have to apply the recalculated ratios to a cost exclusive of labor.

Respondents Hebei and Nanyang argue that the Department should not exclude labor costs from its calculation of surrogate overhead and SG&A ratios. Citing the Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars from Moldova 66 FR 33525 (June 22, 2001) (Rebar from Moldova) and the accompanying Issues and Decision Memorandum at Comment 9 and ARG and the accompanying Issues and Decision Memorandum at Comment 10, they state that it is the Department's standard policy to include labor costs in these calculations, and that the determination in the case of Ball Bearings represents an exception to a well-established policy. They also state that the exclusion of labor costs would be distortive and would produce less accurate and relevant surrogate ratios.

Respondent Baosteel also argues that the Department should not exclude labor costs from its calculation of surrogate overhead and SG&A ratios. BaoSteel states that the exclusion of labor, a major cost of production, from the denominator of the surrogate overhead and SG&A ratios would result in disproportionately large surrogate value ratios. BaoSteel also argues that the petitioner misstated the Department's standard practice, which is actually to include labor costs in the surrogate ratio denominators, not the opposite.

### **Department's Position**

We agree with the respondents that it is appropriate to include labor costs in the denominator of overhead and SG&A surrogate ratios. In this case, as labor is included in the surrogate value cost buildup, it would be distortive to exclude labor from the surrogate ratio calculations as the petitioner has requested. Simply removing labor from the cost to which the ratio is applied would not completely remove this distortion. As cited by the respondents, the Department stated in the case of Rebar from Moldova, Decision Memorandum for the Final Determination

(June 22, 2001):

The sum of materials, labor, and energy is, in general, a good proxy for the overall scale of operation, and we believe that the factory overhead and SG&A tend to be more a function of the overall scale of the operations rather than a function of the material and energy alone.

In the case of Ball Bearings, labor costs were excluded from this calculation due to case-specific issues, which were not briefed by the parties or commented on by the Department. See Ball Bearings at Comment 1. This methodology stands as an exception to the Department's general practice as stated in the case of Rebar from Moldova. We do not find any compelling circumstances in the present case to justify a variance from our standard methodology, and thus we have retained labor as component of the denominator in our calculation of overhead and SG&A surrogate value ratios.

### **Comment 8: Use of Gross, Rather Than Net, Material Costs in the Calculation of Surrogate Overhead and SG&A Ratios**

The petitioner argues that the Department should use Surya Roshni Ltd.'s reported net materials cost rather than the company's gross materials cost in the calculation of surrogate overhead and SG&A ratios. The petitioner states that the gross materials cost used by the Department in the preliminary determination is inclusive of internal material transfers. As internal transfers are already included in the revenue side of this calculation, to use a material cost also inclusive of internal material transfers results in distortive double-counting according to the petitioner.

Respondents Hebei and Nanyang argue that the Department should not adjust its surrogate overhead and SG&A ratio calculations for the use of gross rather than net materials cost. They state that the petitioners have not persuasively argued what "internal materials transfers" might represent if they are not part of the direct materials costs. Also, the respondents state that there is no precedent for the Department to exclude a portion of the raw materials cost based on a designation such as "internal consumption."

Respondent Shanghai Baosteel argues that the petitioner has pointed to no record evidence that the use of gross, rather than net, materials costs results in double-counting. BaoSteel cites Pure Magnesium and Alloy Magnesium from the Russian Federation (Magnesium from Russia), 60 FR 16440 (March 30, 1995) and the accompanying Issues and Decision Memorandum at Comment 6, to support its ascertain that the department "has rejected item-by-item evaluation of overhead components in the past."

### **Department's Position**

We agree with the petitioners that "internal consumption" represents materials consumed outside of the normal production process of the goods sold by a company. "Internal consumption," insofar as it represents the use of raw materials to produce internal assets rather than finished products for sale, should not be applied to the cost of goods sold. Only those materials consumed in the production of

finished goods should be included in the cost of goods sold. Likewise, if the material costs were increased to include internal transfers between factories or cost centers, only the net material cost figure would avoid double-counting material costs in the denominator of the financial ratios.

We also note that in Magnesium from Russia, the Department rejected an “item-by-item” evaluation of overhead components in the context of replacing values from the surrogate company’s financial statement with values from the petitioner’s own experience. In this case, we are calculating surrogate ratios using an adjustment which the surrogate company itself required in its financial statement. Therefore, we will recalculate our current SG&A and overhead surrogate ratios using Surya Roshni’s raw materials cost, netting out internal transfers.

Agree\_\_\_\_\_

Disagree\_\_\_\_\_

Let’s Discuss\_\_\_\_\_

\_\_\_\_\_  
Joseph A. Spetrini  
Acting Assistant Secretary  
for Import Administration

\_\_\_\_\_  
Date