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MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

FROM: Gary Taverman
Senior Advisor
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the
Antidumping Administrative Review and Final Determination of
No Shipments - Certain Cut-to-Length Carbon Steel Plate from the
People's Republic of China

SUMMARY

The Department of Commerce (the “Department”) has analyzed the case briefs submitted by Nucor Corporation (“Petitioner”) in the above-referenced review. After conducting our analysis, we recommend making no changes to the Preliminary Results of review and recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum.

Background

On August 9, 2012, the Department published in the Federal Register the Preliminary Results of the administrative review of certain cut-to-length carbon steel plate (“CTL plate”) from the People’s Republic of China (“PRC”).¹ In the Preliminary Results, we determined that neither Baosteel nor Hunan Valin had shipments of subject merchandise during the period of review (“POR”). We also determined that neither Anshan nor Liaoning established eligibility for a separate rate. Therefore, we treated them as part of the PRC-wide entity. We invited parties to comment on our Preliminary Results. On September 10, 2012, Petitioner submitted case briefs regarding the Department’s Preliminary Results. No other parties commented on the Preliminary Results.

¹ See Certain Cut-to-Length Carbon Steel Plate from the People’s Republic of China: Preliminary Results of Antidumping Administrative Review and Preliminary Determination of No Shipments, 77 FR 47593 (August 9, 2012) (“Preliminary Results”). The companies included in the review are as follows: Bao/Baoshan International Trade Corp./Bao Steel Metals Trading Corp. (“Baosteel”), Hunan Valin Xiangtan Iron & Steel Co., Ltd. (“Hunan Valin”), Anshan Iron & Steel Group (“Anshan”), and China Metallurgical Import and Export Liaoning Company (“Liaoning”).



DISCUSSION OF THE ISSUES:

Comment 1: Whether Anshan and Liaoning Should be Treated as Part of the PRC-wide Entity

Petitioner's Argument:

- While agreeing with our determination to treat Liaoning and Anshan as part of the PRC-wide entity, Petitioner argues that because both Anshan and Liaoning failed to participate in this proceeding, we should apply as total adverse facts available (“AFA”) a margin higher than the PRC-wide rate.

Department's Position:

We disagree with Petitioner. Because Anshan and Liaoning each failed to establish separate rate status, we will continue to treat each company as part of the PRC-wide entity. However, we do not find it appropriate to apply as AFA to these companies a rate higher than the PRC-wide rate. The Department begins with a rebuttable presumption that all entities within the PRC are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. When a company fails to rebut this presumption by submitting information regarding its separate rate eligibility, it is the Department's long-standing practice to consider the company to be part of the PRC-wide entity and assign the PRC-wide rate to that company.² Petitioner does not cite any precedent where the Department has applied as AFA a rate higher than the PRC-wide rate to a company that is a member of the PRC-wide entity. Petitioner has failed to cite any reason why Anshan and Liaoning should receive an AFA rate higher than the PRC-wide rate other than to note that, in addition to failing to establish the absence of government control, both respondents failed to participate in this proceeding. We find this reason to be insufficient grounds to change our practice concerning the treatment of companies that are part of the PRC-wide entity.

Comment 2: Whether Hunan Valin Should be Treated as Part of the PRC-wide Entity

Petitioner's Argument:

- Because Hunan Valin has not demonstrated the absence of de jure or de facto government control in Hot-Rolled Steel,³ and because CTL plate is a similar product to hot rolled steel, we should reconcile the separate rate determinations in both proceedings and include Hunan Valin as part of the PRC-wide entity for this CTL plate review.

² See, e.g., Wooden Bedroom Furniture from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind Review in Part, 76 FR 7534 (February 10, 2011); unchanged in Wooden Bedroom Furniture From the People's Republic of China: Final Results and Final Rescission in Part, 76 FR 49729 (August 11, 2011); see also Fresh Garlic From the People's Republic of China: Partial Preliminary Results, Rescission of, and Intent To Rescind, in Part, the 2009-2010 Administrative Review, 76 FR 65172 (October 20, 2011); unchanged in Fresh Garlic From the People's Republic of China: Partial Final Results and Partial Final Rescission of the 2009-2010 Administrative Review, 77 FR 11486 (February 27, 2012).

³ See Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China: Preliminary Results of 2010-2011 Antidumping Duty Administrative Review and Intent to Rescind in Part, 77 FR 45576 (August 1, 2012) (“Hot-Rolled Steel”).

Department's Position:

We disagree with Petitioner. Each proceeding stands on its own and thus, the Department must evaluate the evidence on that particular record.⁴ We further note that even if we were to consider the facts in Hot-Rolled Steel, the record in that proceeding contained no information concerning Hunan Valin's eligibility for a separate rate in Hot-Rolled Steel.⁵ In contrast, the facts in this proceeding resulted in that Hunan Valin receiving a separate rate in the last completed segment of the proceeding in which it participated.⁶ Petitioner has placed no information on this record and we can find no information on this record that would call Hunan Valin's separate rate status into question. Concerning Hunan Valin's no-shipment claim in this review, no party has submitted any information and the Department has not found any information from its queries to U.S. Customs and Border Protection ("CBP") that contradicts Hunan Valin's no-shipment claim.

Comment 3: Whether the Department Should Continue to Review Baosteel and Hunan Valin's POR Shipments

Petitioner's Argument:

- Despite Baosteel and Hunan Valin's claims of no shipments, it is possible that these companies could have exported subject merchandise to the United States during the POR. In its CBP instructions, the Department should request that CBP notify us of any entries of subject merchandise by Baosteel's and Hunan Valin, at which time the Department should further review the entries.

Department's Position:

We disagree with Petitioner. The U.S. Court of International Trade ("CIT") has stated that "it is a basic rule of administrative law that {the Department} must base its determinations on information in the administrative record at the time the determination is made."⁷ Further, the CIT has stated that "{t}he case law of this court is very clear that the administrative record 'is limited to the information that was presented to or obtained by the agency making the determination during the particular review proceeding for which section 1516 authorizes judicial review.'"⁸

The evidence on the administrative record is as follows: the Department has made requests to CBP for information concerning shipments by Baosteel or Hunan Valin and has received all data

⁴ See, e.g., Folding Metal Tables and Chairs From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review, and Revocation of the Order in Part, 76 FR 66036 (October 25, 2011). While this practice discusses each segment as standing on its own, we find this practice equally applicable to each proceeding.

⁵ The only information in that proceeding concerning Hunan Valin was that it filed a no shipment letter. See Hot-Rolled Steel, 77 FR at 45578.

⁶ See Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China: Final Results of the 2007-2008 Administrative Review of the Antidumping Duty Order, 75 FR 8301 (February 24, 2010), and accompanying Issues and Decision memorandum at Comment 1.

⁷ See Dupont Teijin Films USA, LP v. United States, 28 CIT 869, 905-06 (June 18, 2004).

⁸ See Neueg Fertigung v. United States, 16 CIT 724, 726-27, 797 F. Supp. 1020, 1022 (August 20, 1992).

from the POR that the Department normally relies on to issue its determination of no shipments.⁹ Baosteel and Hunan Valin have filed no-shipment certifications, and CBP did not find any transactions that are contradictory to our preliminary determination of no-shipments.¹⁰ In its case brief Petitioner does not point to any record evidence that suggests that Baosteel and Hunan Valin have made shipments of subject merchandise during the POR. Therefore, based on the evidence on this administrative record, the Department finds that neither Baosteel nor Hunan Valin made shipments during the POR.

We further note that our instructions to CBP are such that if CBP finds any shipments of subject merchandise made during the POR exported by Baosteel or Hunan Valin CBP will liquidate those entries at the PRC-wide rate.¹¹ Asking CBP to inform the Department about those shipments is unnecessary because they will already be liquidated at the PRC-wide rate. Meanwhile, if subject merchandise has been mislabeled or improperly entered into the United States, it is a matter of customs fraud, and at its discretion, CBP could impose additional penalties.

Recommendation:

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of review in the Federal Register.

Agree _____ Disagree _____

Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

Date

⁹ See also Instructions from the Department to CBP, Re: No Shipments Inquiry for Certain Cut to Length Carbon Steel Plate from the People’s Republic of China Exported by Baoshan or Hunan Valin XiangTan Iron & Steel Co., Ltd., Message number 2081304, dated March 21, 2012 (“CBP Inquiry”) available at the following URL: <http://addcvd.cbp.gov/index.asp?ac=home>.

¹⁰ See Letter from Baosteel to the Department of Commerce, Re: No Sales Certification, dated January 24, 2012. See also Letter from Hunan Valin to the Department of Commerce, Re: No Shipment Letter, dated February 28, 2012. See also Instructions from the Department to CBP, Re: No Shipments Inquiry for Certain Cut to Length Carbon Steel Plate from the People’s Republic of China Exported by Baoshan or Hunan Valin XiangTan Iron & Steel Co., Ltd., Message number 2081304, dated March 21, 2012 available at the following URL: <http://addcvd.cbp.gov/index.asp?ac=home>.

¹¹ For a full discussion of this practice, see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties, 76 FR 65694 (October 24, 2011).