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July 15, 2013

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Import Administration

FROM: Christian Marsh   
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for Preliminary Results of Antidumping  
Duty Administrative Review: Certain Cut-to-Length Carbon Steel  
Plate from the People's Republic of China

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### Summary

In response to requests from interested parties, the Department of Commerce ("Department") is conducting an administrative review of the antidumping duty order on certain cut-to-length carbon steel plate ("CTL plate") from the People's Republic of China ("PRC") for the period of review ("POR") November 1, 2011, through October 31, 2012. This review covers three companies.<sup>1</sup> The Department preliminarily finds that Hunan Valin had no shipments during the POR. Further, the Department preliminarily finds that the other two respondents, Baosteel and Shanghai Pudong, did not submit adequate no shipment claims and did not establish their eligibility for separate rate status. Thus the Department has treated Baosteel and Shanghai Pudong as part of the PRC-wide entity.

If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. We will issue final results no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act").

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<sup>1</sup> See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 77 FR 77017 (December 31, 2012) ("Initiation Notice"). The companies under review are as follows: Hunan Valin Xiangtan Iron & Steel Co., Ltd. ("Hunan Valin"), Shanghai Pudong Iron and Steel Co. ("Shanghai Pudong"), and the company grouping Bao/Baoshan Iron and Steel Corp., Baoshan International Trade Corp., and Bao Steel Metals Trading Corp. ("Baosteel").



## Background

On November 5, 2012, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on CTL plate from the PRC.<sup>2</sup> On November 30, 2012, Nucor Corporation (“Petitioner”) requested a review of three companies or company groupings (*i.e.*, Hunan Valin, Shanghai Pudong, and Baosteel).<sup>3</sup> On December 21, 2012, the Department initiated a review of these three entities.<sup>4</sup>

On January 17, 2013, the Department notified parties that CBP records indicate that none of the entities for which a review had been initiated had shipped subject merchandise during the POR.<sup>5</sup> On January 24, 2013, Petitioner commented on the results of the Department’s CBP inquiry.<sup>6</sup> On January 29, 2013, the Department sent a request to CBP to provide any information that it might have regarding any imports of subject merchandise from the respondents during the POR. The Department received no information from CBP on imports of subject merchandise from the respondents.

On January 31, 2013, Hunan Valin submitted a letter stating that it had no shipments of subject merchandise to the United States during the POR.<sup>7</sup> On January 28, 2013, the Department received a no shipments letter, purportedly from Baosteel, stating that it had no sales of subject merchandise during the POR.<sup>8</sup> The actual certification of no sales or entries that accompanied the letter was from several companies with “Baosteel” or “Baoshan” in their names and a company with “Shanghai Pudong” as part of its name but none of these names exactly matched the names of the companies for which the Department initiated the review. On February 22, 2013, and March 8, 2013, the Department issued supplemental questionnaires in response to the January 28, 2013, no shipments letter, requesting clarification regarding the names appearing in the no shipments letter. On February 26, 2013, the Department received a response to its February 22, 2013, supplemental questionnaire. On March 20, 2013, the Department received a request to extend the deadline for responding to the March 8, 2013, supplemental questionnaire. The Department did not consider this request because it was untimely.

## Scope of the Order

The product covered by the order is certain cut-to-length carbon steel plate from the PRC. Included in this description is hot-rolled iron and non-alloy steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters

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<sup>2</sup> See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review, 77 FR 66437 (November 5, 2012).

<sup>3</sup> See Letter from Petitioner to the Department of Commerce, Re: Request for Administrative Review, dated November 30, 2012.

<sup>4</sup> See Initiation Notice.

<sup>5</sup> See Memorandum from Patrick O’Connor to the File, Re: Antidumping Duty Administrative Review of Certain Cut-to-Length Carbon Steel Plate from the People’s Republic of China, dated January 17, 2013 (“CBP Query Results Letter”).

<sup>6</sup> See Letter from Petitioner to the Department of Commerce, Re: Comments on CBP Query (“Petitioner’s CBP Comments”), dated January 24, 2013.

<sup>7</sup> See Letter from Hunan Valin to the Department of Commerce, Re: No Shipment Letter, dated January 31, 2013.

<sup>8</sup> See Letter identified as being from the Baosteel/Baoshan companies to the Department of Commerce, Re: No Sales Certification, dated January 28, 2013.

(“mm”) but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns of relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and non-alloy steel flat-rolled products not in coils, of rectangular shape, hot-rolled, neither clad, plated nor coated with metal, whether or not painted, varnished, or covered with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150mm and measures at least twice the thickness. Included as subject merchandise in this order are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been “worked after rolling”) – for example, products which have been beveled or rounded at the edges. This merchandise is currently classified in the Harmonized Tariff Schedule of the United States (“HTSUS”) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7212.40.5000, 7212.50.0000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive. Specifically excluded from subject merchandise within the scope of the order is grade X-70 steel plate.

#### Preliminary Determination of No Shipments for Hunan Valin

Hunan Valin submitted a timely-filed certification that it had no shipments of subject merchandise during the POR and U.S. import data did not show any POR entries of Hunan Valin’s subject merchandise.<sup>9</sup> In addition, CBP did not provide any evidence that is contradictory to Hunan Valin’s claim of no shipments in response to our no shipment inquiry asking CBP for such information.<sup>10</sup>

Prior to Hunan Valin’s no shipments claim, Petitioner argued that the Department should issue a quantity and value (“Q&V”) questionnaire to Hunan Valin because the information on the record was insufficient to conclusively support a finding of no shipments by Hunan Valin (*i.e.*, there was no affirmative response from CBP indicating an absence of entries and no details regarding the parameters of the Department’s inquiry into CBP data). However, Hunan Valin subsequently reported that it made no shipments of the subject merchandise during the POR. Thus, it is not necessary to request quantity and value information from Hunan Valin in a Q&V questionnaire.

Also, in arguing that the Department should send a Q&V questionnaire to Hunan Valin, Petitioner noted that CBP has in the past prematurely liquidated entries of merchandise subject to an antidumping order and respondents and importers routinely err in identifying entries as not subject to an order.<sup>11</sup> However, as noted by the Court of International Trade (“CIT”), “{a}s a threshold matter, because Customs officers have a duty to assure the accuracy of information submitted to that agency by penalizing negligent or fraudulent omissions and/or inaccurate submissions, CBP data are presumptively reliable as evidence of respondent-specific POR entry

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<sup>9</sup> See CBP Query Results Letter.

<sup>10</sup> See CBP Message entitled “NO SHIPMENTS INQUIRY” placed on the record of this review on March 28, 2013.

<sup>11</sup> See Petitioner’s CBP Comments.

volumes.”<sup>12</sup> Here, no record evidence calls into question that presumption or demonstrates that Hunan Valin’s claim of no shipments is not accurate.

Thus, given that Hunan Valin certified that it made no shipments of subject merchandise to the United States during the POR and CBP information does not call this claim into question, we preliminarily determine that Hunan Valin did not have any reviewable transactions during the POR. In addition, the Department finds that consistent with its recently announced refinement to its assessment practice in NME cases, it is appropriate not to rescind the review in part in these circumstances but, rather, to complete the review with respect to Hunan Valin and issue appropriate instructions to CBP based on the final results of the review.<sup>13</sup>

### Treatment of Baosteel and Shanghai Pudong

The Department stated in the Initiation Notice that all companies initiated upon that had no exports, sales, or entries during the POR must notify the Department of this fact within 60 days of publication of the Initiation Notice.<sup>14</sup> The Department initiated this review on four “Baosteel” companies which it treated as a single company grouping in a prior segment of the proceeding and to which it had assigned a single dumping margin separate from the PRC-wide rate.<sup>15</sup> While a no shipments letter was purportedly submitted on behalf of Baosteel, there are differences between the company names listed in the certification of no sales/entries accompanying the letter and the Baosteel company names listed in the Initiation Notice.<sup>16</sup> In addition, the no shipments letter certified no sales/entries on behalf of a company with a name similar to, but not the same as, Shanghai Pudong Iron and Steel Co., a company which is also subject to this review.

Accordingly, we requested, by means of a questionnaire, clarification regarding the identity of the companies for which the no shipments letter was submitted.<sup>17</sup> The companies which filed the no shipments letter responded by claiming that several companies in the “Baosteel” company grouping which were listed in the Initiation Notice do not exist. These companies stated that they assumed that the Department was actually referring to the companies for which they reported no shipments when it listed the names of the companies that do not exist in the

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<sup>12</sup> See Ad Hoc Shrimp Trade Action Comm. v. United States, 791 F. Supp. 2d 1327, 1332 (CIT 2011) (citing Pakfood Pub. Co. v. United States, 753 F. Supp. 2d 1334 (CIT 2011)); cf. A.C. Aukerman Co. v. R.L. Chaides Constr. Co., 960 F.2d 1020, 1037 (CAFC 1992) (“[A] presumption . . . completely vanishes upon the introduction of evidence sufficient to support a finding of the nonexistence of the presumed fact. In other words, the evidence must be sufficient to put the existence of a presumed fact into genuine dispute.” (Citations omitted)).

<sup>13</sup> See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties, 76 FR 65694 (October 24, 2011).

<sup>14</sup> See Initiation Notice, 77 FR at 77017-18.

<sup>15</sup> As stated in the Initiation Notice, Baosteel consisted of Bao, Baoshan Iron and Steel Corp., Baoshan International Trade Corp., and Bao Steel Metals Trading Corp.

<sup>16</sup> See January 28, 2013 submission entitled “No Sales Certification.” The Director of Baoshan’s legal department stated that he was certifying no sales on behalf of Baoshan Iron and Steel Co., Ltd./Shanghai Baosteel International Economic & Trading Co. Ltd./Shanghai Baosteel Metal Trading Co., Ltd./Baosteel Group Corporation/Baosteel Group Shanghai Pudong Iron & Steel Co. Ltd. The Department initiated a review of Shanghai Pudong Iron and Steel Co. and the company grouping Bao/Baoshan Iron and Steel Corp., Baoshan International Trade Corp., and Bao Steel Metals Trading Corp.

<sup>17</sup> See the Department’s February 22, 2013, supplemental questionnaire.

Initiation Notice. Further, the companies which filed the no shipments claim stated that Shanghai Pudong Iron and Steel Co., one of the companies for which the Department initiated this review, had changed its name to Baosteel Group Shanghai Pudong Iron & Steel Co., Ltd. and they reported no shipments for Baosteel Group Shanghai Pudong Iron & Steel Co., Ltd.<sup>18</sup> The Department then sent the companies which submitted the no shipments letter a second questionnaire seeking detailed information and documentation to determine the facts about and relationships between the companies for which the review was initiated and the companies which were claiming no shipments.<sup>19</sup> Rather than submitting a timely response to the questionnaire, five days after the substantive response was due these companies submitted a request to extend the deadline for responding to the questionnaire.<sup>20</sup> The Department did not consider the extension request because it was untimely.

Petitioner agrees with the Department's decision not to consider the extension request, noting that extension requests must be filed before the applicable due date for the response. Given the failure to timely respond to the Department's questions regarding the no shipments claim, Petitioner contends that these companies have withheld information, failed to provide information within deadlines, significantly impeded this proceeding, and failed to cooperate to the best of their ability. Thus, Petitioner believes the Department should resort to adverse facts available ("AFA") under section 776 (b) of the Act. As AFA, Petitioner maintains that the Department should treat these companies as part of the PRC-wide entity.

After examining this matter, we have determined that the record does not contain evidence showing that the no shipment claims apply to the companies for which we initiated the review; hence, the record does not contain an adequate response regarding the existence or non-existence of shipments of subject merchandise during the POR for Baosteel or Shanghai Pudong. While a summary of CBP data placed on the record of this review by the Department indicates that there were no POR shipments of subject merchandise from the companies for which we initiated this review,<sup>21</sup> consistent with Departmental practice we find that a "company's own certification is considered a necessary piece of evidence of no shipments, to be considered along with the CBP data. . . . {W}e cannot use CBP data to corroborate the respondent's information if a respondent does not provide a response with respect to the existence or non-existence of shipments of subject merchandise during the POR."<sup>22</sup> Because

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<sup>18</sup> See February 26, 2013, submission entitled "Revised No Sales /Shipments."

<sup>19</sup> See the Department's March 6, 2013, supplemental questionnaire.

<sup>20</sup> See March 20, 2013, submission entitled "Extension Request."

<sup>21</sup> See CBP Query Results Letter.

<sup>22</sup> See Stainless Steel Sheet and Strip in Coils From Taiwan: Final Results of Antidumping Duty Administrative Review, 75 FR 76700 (December 9, 2010), and accompanying Issues and Decision Memorandum at Comment 1; see also Certain Cut-to-Length Carbon-Quality Steel Plate From the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Rescission of Administrative Review in Part, 75 FR 10207 (March 5, 2010), and accompanying Issues and Decision Memorandum at Comment 2. In Garlic from the PRC, the Department stated the evidentiary burden is on the non-selected respondent to certify that it had no POR shipments or otherwise demonstrate that it had no reviewable transactions during the review period. See Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the 14th Antidumping Duty Administrative Review, 75 FR 34976 (June 21, 2010) ("Garlic from the PRC"), and accompanying Issues and Decision Memorandum at Comment 3, citing Zenith Electronics Corp. v. United States, 988 F.2d 1573, 1583 (CAFC 1993) (stating that the burden of evidentiary production belongs to the party that possesses the necessary information).

