

September 13, 2010

MEMORANDUM TO: Ronald Lorentzen
Deputy Assistant Secretary
for Import Administration

FROM: Susan Kuhbach
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results in the
Antidumping Duty Administrative Review of Light-Walled
Rectangular Pipe and Tube from the People's Republic of China

Summary

The Department of Commerce (the "Department") has analyzed the case and rebuttal briefs submitted by interested parties in the above-referenced administrative review ("AR"). As a result of our analysis, we have made changes in the margin calculations for the final results. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this AR for which we received comments from interested parties:

- Comment 1: Whether to Deduct Certain Expenses from U.S. Indirect Selling Expenses
- Comment 2: Whether the Department Should Use Data from the Indian Export Import Data Bank to Value Hot-Rolled Steel Strip
- Comment 3: The Appropriate Surrogate Labor Rate

Background

On May 14, 2010, the Department published its preliminary results for the 2008-2009 AR of light-walled rectangular pipe and tube ("LWR") from the People's Republic of China ("PRC"). See Light-Walled Rectangular Pipe and Tube from the People's Republic of China: Preliminary Results of the 2008-2009 Antidumping Duty Administrative Review, 75 FR 27308 (May 14, 2010) ("Preliminary Results"). We invited interested parties to comment on our Preliminary Results. Case briefs were submitted on June 28, 2010, by the Sun Group Inc. ("respondent"), and rebuttal briefs were submitted on July 6, 2010 by petitioners.¹ We also invited parties to comment on wage rate data that we released after the Preliminary Results in light of Dorbest Limited et al. v. United States, No. 2009-1257, 1266 (Fed. Cir. May 14, 2010) ("Dorbest II"),

¹ "Petitioners" are Atlas Tube, Bull Moose Tube Company and Searing Industries, Inc.

issued by the United States Court of Appeals for the Federal Circuit (“CAFC”). Respondent submitted comments on July 27, 2010.

Margin Calculations

As discussed below, we calculated the constructed export price (“CEP”) and normal value using the same methodology described in the Preliminary Results, except as follows:

1. We excluded FitMAX Inc.’s (“FitMAX”) (the Sun Group’s affiliated U.S. importer) website expenses and delivery expenses from the selling, general and administrative expenses used to calculate the U.S. indirect selling expenses (“ISE”) ratio because those expenses were directly related to non-subject merchandise, (*i.e.*, swimming pools).
2. Since the release of the Preliminary Results, we recalculated the surrogate labor rate used in calculating the Sun Group’s final margin based on data we placed on the record.

For a detailed analysis of respondent’s margin calculations, see Memorandum to the File through Howard Smith, program manager, regarding, “Analysis for the Final Results of the Antidumping Duty Administrative Review of Light-Walled Rectangular Pipe and Tube from the People’s Republic of China: Sun Group Inc.,” dated September 13, 2010 (“Analysis Memorandum”).

Discussion of the Issues

Comment 1: Whether to Deduct Certain Expenses from U.S. Indirect Selling Expenses

- Respondent argues that in the Preliminary Results, the Department should not have included all selling, general, and administrative (“SG&A”) expenses, except commissions, in ISE, and instead should recalculate its ISE ratio to exclude all expenses related exclusively to non-subject merchandise, such as delivery charges, trade shows, website expenses, travel, and bank charges.
- Respondent claims that many of its ISE are not related to sales of subject merchandise. Respondent also asserts that including expenses unrelated to subject merchandise in the ISE ratio is contrary to the Department’s regulations, which require that all direct and ISE be reasonably attributable to the sale of subject merchandise. Respondent alleges that the definition found in 19 CFR 351.402 implies that indirect expenses, like direct expenses, must also relate to the sale. In addition, respondent claims that according to the Statement of Administrative Action,² which provides for the deduction of ISE in calculating CEP, ISE must have some relationship with the sales of subject merchandise. Moreover, respondent contends that the Court of International Trade (“CIT”) upheld the Department in US Steel Corp.,³ wherein the Department argued that expenses not incurred on behalf of the sales of subject merchandise to unaffiliated purchasers in

² See Sun Group’s June 28, 2010 case brief at 7 (citing Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol. 1 (1994) at 823-824 (“Statement of Administrative Action”).

³ See Sun Group’s June 28, 2010 case brief at 6 (citing U.S. Steel Corp. v. United States, Slip Op. 10-3, Court No. 08-00131 (CIT January 11, 2010), (affirming Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Thirteenth Administrative Review, 73 FR 14220 (March 17, 2008) (“US Steel Corp.”).

the United States should be excluded from ISE.

- Respondent alleges that although it submitted documentation demonstrating that all expenses except for telephone, insurance, and taxes were not reasonably attributable to the sale of subject merchandise, in the Preliminary Results the Department ignored this documentation, and allocated all expenses, except commissions, to both subject and non-subject merchandise.
- Respondent argues that the objective of the statute is to assess duties that will eliminate unfair trade practice,⁴ and not to penalize a respondent.⁵ Respondent contends that it is being penalized with a 219.50 percent margin by including ISE related to FitMAX swimming pool business in the ISE ratio.
- Respondent claims that because the sale was not related to FitMAX's normal business operations of selling swimming pools, but was a sale of subject merchandise not intended to be advertised or kept in inventory, the Department should have allocated fixed expenses based on the space the merchandise utilized in the warehouse, or at a minimum based on the amount of time the merchandise was in storage.
- Respondent asks the Department to allow it to correct some indirect selling expense categories in FitMAX's financial statement.
- In rebuttal, petitioners argue that in the Preliminary Results, the Department correctly adjusted respondent's U.S. sales price for FitMAX's ISE, and for the final results the Department should continue to include all of FitMAX's ISE except commissions, in the calculation of the ISE ratio.
- Petitioners contend that the Department's practice is to treat general and administrative expenses of the U.S. affiliated reseller of a foreign producer as well as its selling expenses not directly related to particular sales as ISE.⁶ Petitioners contend that in Stainless Steel Sheet and Strip from Mexico,⁷ the Department clarified that direct expenses are those that result from a direct relationship to a particular sale and ISE as all expenses that are not direct expenses.
- Petitioners claim that the ISE that FitMAX argues are not related to subject merchandise are, in fact, related to FitMAX's general operations and are not directly related to non-subject merchandise. Petitioners allege that these general operating expenses are typical ISE because: 1) they (e.g., rent, salaries, website expenses, bank charges, utilities, depreciation, amortization, and so forth) benefit the company as a whole, 2) are not related to, nor can be tied to, particular sales, and 3) would have incurred regardless of the sale.
- Petitioners contend that US Steel Corp. does not support respondent's arguments because the issue in that case was whether there were expenses incurred in Korea that were related to the commercial activities in the United States, and not whether expenses were related to subject merchandise.
- Petitioners argue that respondent has the burden of proof in providing evidence to support

⁴ See Sun Group's June 28, 2010 brief at 5 (citing Gulf States Tube Div. of Quantex Corp. v. United States, 981 F. Supp. 630, 645 (CIT 1997)).

⁵ See Sun Group's June 28, 2010 brief at 7 (citing NTN Bearing Corp. v. United States, 74 F.3d 1204, 1208 (Fed. Cir. 1995) (recognizing antidumping laws are not punitive).

⁶ See Petitioner's July 6, 2010 rebuttal brief at 3 (citing Aramid Maatschappij V.o.F. and Akzo Fibers Inc. v. United States, 901 F. Supp. 353 (CIT 1995)).

⁷ See Petitioners' July 6, 2010 rebuttal brief at 5 (citing Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of Antidumping Duty Administrative Review, 74 FR 6365 (February 9, 2009) ("Stainless Steel Sheet and Strip from Mexico").

adjusting expenses,⁸ and in this AR the respondent has not met this burden. Petitioners allege, documentation placed on the record by respondent to demonstrate that delivery charges and trade show expenses were related only to non-subject merchandise did not clearly reconcile to the total SG&A reported by FitMAX on March 1, 2010. Petitioners contend there is no information on the record that demonstrates that the bank did not charge FitMAX for the service of cashing the check for the sale of subject merchandise. Petitioners also claim that FitMAX's website does advertise subject merchandise for sale in the United States.

- Petitioners argue that the Department correctly allocated FitMAX's selling expenses over total sales revenue, of both subject and non-subject merchandise, which is consistent with Department practice.⁹ Petitioners contend that there is no basis for allocating fixed expenses based on the period that the subject merchandise that was sold was in the warehouse.

- Petitioners assert that the quantity of subject merchandise sold during the period of review ("POR") is only a portion of the subject merchandise warehoused during the POR. Petitioners argue, because respondent reported no warehousing expenses, the expenses related to the portion of subject merchandise that remains unsold and warehoused by FitMAX not otherwise deducted from CEP should be included in FitMAX's ISE.

Department's Position: We agree, in part, with respondent and have deducted FitMAX's website expenses and delivery expenses, in addition to commissions already deducted in the *Preliminary Results*, from its total SG&A expenses that were used to calculate the ISE ratio.¹⁰ We continue to allocate all other expenses to both subject and non-subject merchandise. We find that there is evidence on the record that demonstrates that FitMAX's website is used exclusively for its sales of non-subject merchandise, and therefore, the website expenses are directly related to its sales of non-subject merchandise.¹¹ Specifically, documents on the record show that the website relates only to swimming pools and not to subject merchandise. Similarly, we find that there is evidence on the record that indicates that FitMAX's delivery charges are directly related to non-subject merchandise.¹² Specifically, the documentation related to delivery expenses demonstrates that the delivery company used by FitMAX does not ship merchandise of the same length as or longer than subject merchandise. In other cases, the Department has excluded expenses from ISE that were related directly to non-subject merchandise. See Notice of Final Results of the Twelfth Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea, 72 Fed. Reg. 13,086 (March 20, 2007) and accompanying Issues and Decision Memorandum at Comment 21 (upheld by the CIT in United States Steel Corporation v. United States, Slip Op. 10-28, Court No. 07-

⁸ See Petitioners' July 6, 2010 rebuttal brief at 7 (citing Allied Tube and Conduit Corp. v. United States, 132 F. Supp. 2d 1087, 1093 (CIT 2001) (citing Fujitsu Gen. Ltd. v. United States, 88 Fed. 3d. 1034, 1040 (Fed. Cir. 1996)); see also Primary Steel Inc. v. United States, 834 F. Supp 1374, 1383 (CIT 1993).

⁹ See Petitioners' July 6, 2010 rebuttal brief at 9 (citing Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Ecuador, 69 FR 76913 (December 23, 2004)).

¹⁰ We deducted the total website and delivery expenses reported in Sun Group's March 1, 2010 response at Exhibit 3. For additional details, see Final Analysis Memorandum for Sun Group Co., Ltd.: Light-Walled Rectangular Pipe and Tube from the People's Republic of China, dated September 13, 2010.

¹¹ See Sun Group's May 10, 2010 response at Exhibit 10.

¹² See Sun Group's June 7, 2010 at Exhibit 2.

00133 (CIT January 11, 2010) (wherein the Department relied upon respondent's calculation of ISE that excluded expenses related to sales of non-subject merchandise).

With respect to adjustments to export price, CEP, or normal value, 19 CFR 351.401(b)(1) states that "the interested party that is in possession of the relevant information has the burden of establishing to the satisfaction of the Secretary the amount and nature of a particular adjustment." With regard to trade show expenses, we find that FitMAX has not demonstrated that the expenses it reported as having been incurred in relation to the trade show for non-subject merchandise are directly related to the trade show. Specifically, many of the expenses FitMAX claims are related to the swimming pool trade show were incurred weeks after the trade show. See Sun Group's June 7, 2010, response at Exhibit 3 and its June 21, 2010, response at 3 and Exhibit 1. With regard to all other ISE which respondent claims are not related to subject merchandise, we find no evidence on the record demonstrating that these expenses are directly related to non-subject merchandise. Respondent either provided no documentation for certain ISE items (e.g., salaries), or did not provide documentation demonstrating that the expense could be traced only to non-subject merchandise. Accordingly, we determine that respondent did not meet this burden in the current AR with respect to identifying the nature of the remaining ISE.

With regard to the actual calculation of the ISE ratio, the Department's standard methodology is to calculate ISE based on expenses incurred and sales revenue recognized (or cost of goods sold) during the same period of time. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From Ecuador, 69 FR 76913 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 26. In other words, actual indirect expenses incurred comprise the numerator of the ISE ratio, while revenue recognized is included in the ratio's denominator. In accordance with Department practice, we will continue to calculate the ISE ratio by dividing total expenses, without commissions, website expenses, and delivery expenses, by total revenue. See Analysis Memorandum.

Comment 2: Whether the Department Should Use Data from the Indian Export Import Data Bank to Value Hot-Rolled Steel Strip

- Respondent argues that the Department should use data from the Indian Export Import Data Bank ("EIDB") instead of the Monthly Trade Statistics of Foreign Trade of India Volume II ("MTS") to value hot-rolled steel strip, the primary input used in producing subject merchandise. Respondent contends that the EIDB data more closely correspond to the period when the respondent produced and shipped the merchandise. Respondent also alleges that both the MTS and EIDB data demonstrate some aberrational values that should be excluded from the surrogate value calculations, regardless which data source is used.
- Respondent argues that the EIDB data: 1) are publicly available and an official source of Indian import data prepared by the Ministry of Commerce of the Indian government, the same agency that prepares the World Trade Atlas ("WTA") data; 2) are for general reference as are the WTA data and the U.S. International Trade Commission's import data; and 3) are not incomplete given that it lacks data from Norway and Turkey (MTS data for the POR include imports from Norway and Turkey) because data from these countries are likely not included since the EIDB data cover a different period than the MTS data. In response to petitioners' claim that the EIDB

data do not correspond to the POR, respondent agrees.

• Respondent argues that although it is Department practice to use surrogate values contemporaneous with the full POR (i.e., January 2008 through July 2009), in the instant AR the Department should reduce the period from which surrogate values are derived to the period during which the subject merchandise was produced and exported, i.e., April 2008 through March 2009, and use EIDB data that correspond to this period. Respondent contends that this is consistent with the purpose of the antidumping statute, which according to the CAFC in Rhone Poulenc, is to calculate the most accurate dumping margin.¹³ Moreover, alleges respondent, this is also consistent with the goal of the statute according to Lasko Metal, which is to determine the cost of producing merchandise in a market economy.¹⁴ Respondent asserts that, according to Shakeproof Assembly, while section 773(c) of the Tariff Act of 1930, as amended (the “Act”) provides guidelines in the application of constructing normal value for non-market economy respondents, the Department has discretion in valuing factors of production.¹⁵ Respondent claims that there is no statutory requirement that the Department use surrogate value data that are contemporaneous with an entire POR. Respondent alleges that an unforeseen devaluation in the rupiah months after it purchased the raw material inputs distorted the surrogate values relied upon in the Preliminary Results. Respondent argues that the Department should use its broad discretion in selecting surrogate values, and consistent with Hand Tools,¹⁶ reject surrogate values that are aberrational by limiting the period from which surrogate values are selected.

• In rebuttal, petitioners argue that the MTS data are a better source because: 1) they are the official Indian government source for Indian import data, 2) it is well established as the preferred source for deriving surrogate values for material inputs in antidumping investigations,¹⁷ and 3) its monthly import data correspond precisely to the POR. The EIDB data, unlike the MTS data, are 1) not an official source of Indian import data, 2) have incomplete and less detailed data, and 3) do not correspond to the POR. Petitioners claim that the EIDB data are not expressly reliable and valid, do not have legal sanctity, are for general reference only, do not contain data that are segregated by month, and do not include information for Norway and Turkey, while the MTS data include imports for these countries. Petitioners allege that respondent did not provide support for its contention that the absence of data from Norway and Turkey may be the result of the data covering a different time period. Petitioners maintain that the EIDB data, which include entries prior to the beginning of the POR and entries at the end of the POR, result in import quantities and values that do not correspond to the POR, rendering them inferior as a data source in this instant AR. Petitioners contend that the CIT has identified coverage of the POR as a

¹³ See Sun Group’s June 28, 2010 brief at 7 (citing Rhone Poulenc, Inc. v. United States, 899 F.2d 1185, 1191 (1990) (“Rhone Poulenc”).

¹⁴ See Sun Group’s June 28, 2010 brief at 15 (citing Lasko Metal Products, Inc. v. United States, 43 F.3d 1442, 1446 (Fed. Cir. 1994) (“Lasko Metal”).

¹⁵ See Sun Group’s June 28, 2010 brief at 2 and 15 (citing Shakeproof Assembly Components v. United States, 268 F.3d 1376, 1382 (Fed Cir. 2001) (“Shakeproof Assembly”).

¹⁶ See Sun Group’s June 28, 2010 brief at 15 (citing Heavy Forged Hand Tools From the People’s Republic of China: Amended Final Results of Antidumping Duty Administrative Reviews, 65 FR 45499, 50500 (August 18, 2000) (“Hand Tools”).

¹⁷ See Petitioners’ July 6, 2010 rebuttal brief at 11 (citing Dorbest Ltd. v. United States, 462 F. Supp 2d 1262, 1277 (CIT 2006)).

criterion for selecting surrogate values.¹⁸

•Petitioners argue that there is no basis for excluding surrogate value data for April 2009 through July 2009, regardless of the fact that there was only one sale and regardless of the 18 percent variation in the exchange rate. Petitioners claim that the established threshold for segmenting the POR is 25 percent. Petitioners contend that the surrogate value data for April 2009 through July 2009 are especially relevant because respondent's only U.S. sale occurred during that time.

Department's Position: We disagree with respondent and have continued to use MTS data to value hot-rolled steel strip. The Department has found MTS, the official Indian government source for Indian import data, to be a reliable source for surrogate value data, unless the values are found to be aberrational. In this AR, the respondent has failed to demonstrate that the surrogate values relied upon by the Department in its Preliminary Results are aberrational. Moreover, the Department has removed inappropriate values from the MTS data. In the calculation of the surrogate value for hot-rolled steel strip in the Preliminary Results, the Department excluded import data from non-market economy countries and countries deemed to maintain broadly available, non-industry-specific subsidies which may benefit all exporters to all export markets (i.e., Indonesia, South Korea, and Thailand). Additionally, we excluded from our calculations imports that were labeled as originating from an unspecified country because we could not determine whether they were from a non-market economy country. See Memorandum to the File through Howard Smith, program manager, regarding "2008-2009 Antidumping Duty Administrative Review of Light-Walled Rectangular Pipe and Tube from the People's Republic of China: Surrogate Values for the Final Results," dated September 13, 2010 ("Surrogate Value Memorandum") at Attachment 1. In selecting surrogate values, we followed the Department's practice of choosing values that are non-export average values, contemporaneous with, or closest in time to, the POR, product-specific, and tax-exclusive.¹⁹ Also, the record shows that the MTS data are contemporaneous with the POR, unlike the EIDB data. Further, as respondent acknowledges, the EIDB data are incomplete. Lastly, it is the Department's practice to use MTS data. See Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 75 FR 7244, 7252 (February 18, 2010), unchanged in Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 41808 (July 19, 2010).

Therefore, we find the best available information on the record from which to calculate surrogate values, is the MTS data. We note that this determination is consistent with the holdings in Lasko, Shakeproof, and Rhone Poulanc.²⁰

¹⁸ See Petitioners' July 6, 2010 rebuttal brief at 12 (citing Polyethylene Retail Carrier Bags Comm. v. United States, Slip-Op 2005-157, 65 (CIT 2005)).

¹⁹ See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam, 69 FR 42672, 42682 (July 16, 2004), unchanged in Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam, 69 FR 71005 (December 8, 2004).

²⁰ See Rhone Poulanc, 899 F.2d 1185, 1191 (holding that the basic purpose of the statute is to determine current margins as accurately as possible); see also Lasko Metal, 43 F.3d 1442, 1446 (finding that the Act requires the

Comment 3: The Appropriate Surrogate Labor Rate

- Respondent argues that the Department should use only the contemporaneous Indian wage data and not labor values from any other countries. Respondent claims that India is both economically comparable and a significant producer of comparable merchandise. Respondent contends that absent using a rule-making procedure and without the benefit of a supporting regulation, the Indian data provides the most accurate labor value.
- Petitioners did not submit comments on this issue.

Department's Position: We disagree with respondent. As a consequence of the CAFC's ruling in Dorbest II, the Department is no longer relying on the regression-based wage rate described in 19 CFR 351.408(c)(3). The Department is continuing to evaluate options for determining labor values in light of the recent CAFC decision. For these final results, we have calculated an hourly wage rate to use in valuing the respondent's reported labor input by averaging earnings and/or wages in countries that are economically comparable to the PRC and that are significant producers of comparable merchandise.

While information from a single surrogate country can reliably be used to value other factors of production, wage data from a single surrogate country do not constitute the best available information for purposes of valuing the labor input due to the variability that exists between wages and Gross National Income ("GNI"). While there is a strong worldwide relationship between wage rates and GNI, too much variation exists among the wage rates of comparable market economies. As a result, we find reliance on wage data from a single country to be unreliable and arbitrary. For example, when examining the most recent wage data, even for countries that are relatively comparable in terms of GNI for purposes of factor valuation (e.g., countries with GNIs between USD 1040 and USD 3,990), the wage rate spans from USD 0.17 to USD 2.26.²¹ Additionally, although both India and Guatemala have GNIs below USD 2860, and both could be considered economically comparable to the PRC, India's observed wage rate is USD 0.49, as compared to Guatemala's observed wage rate of USD 1.31 – over double that of India.²² There are many socio-economic, political and institutional factors, such as labor laws and policies unrelated to the size or strength of an economy, that cause significant variances in wage levels between countries. For this reason, and because labor is not traded internationally, the cross-country variability in labor rates, as a general rule, does not characterize other production inputs or impact other factor prices. Accordingly, the large variance in these wage rates illustrates the arbitrariness of relying on a wage rate from a single country. For these

Department's determinations to be based on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by the administering authority); see also Shakeproof Assembly, 268 F.3d 1376, 1382 (concluding that although the Department has wide discretion in the valuation of FOP, the Department is still required to value the FOP on the best available information, and establish antidumping margins as accurately as possible).

²¹ See "Expected Wages of Selected NME Countries," revised in December 2009, available at <http://ia.ita.doc.gov/wages/index.html>.

²² See "Expected Wages of Selected NME Countries," revised in December 2009, available at <http://ia.ita.doc.gov/wages/index.html>.

reasons, the Department maintains its longstanding position that, even when not employing a regression methodology, more data are still better than less data for purposes of valuing labor. Accordingly, the Department has employed a methodology that relies on a larger number of countries in order to minimize the effects of the variability that exists between wage data of comparable countries.

To achieve a labor value that is based on the best available information for these final results, we have relied on labor data from several countries determined to be both economically comparable to the PRC, and significant producers of comparable merchandise.

First, in order to determine the economically comparable surrogate countries from which to calculate a surrogate wage rate, the Department looked to the Surrogate Country Memo.²³ Early in this review, the Department selected six countries for consideration as the surrogate country for this review. To determine which countries were at comparable levels of economic development to the PRC, the Department placed primary emphasis on GNI. The Department relies on GNI to generate its initial list of countries considered to be economically comparable to the PRC. In this review, the list of potential surrogate countries found to be economically comparable to the PRC included India, the Philippines, Indonesia, Thailand, Ukraine, and Peru. The Department used the high- and low-income countries identified in the Surrogate Country Memo list as “bookends” and then identified all countries in the World Bank’s World Development Report for 2008 with per capita incomes (using the 2008 GNIs from the 2009 Expected Wages of Selected non-market economies countries) that placed them between these “bookends.” This resulted in 43 countries, ranging from India with USD 1040 GNI to Peru with USD 3,990.²⁴

Regarding the second criterion of “significant producer,” the Department identified all countries which have exports of comparable merchandise (defined as HTS 7306.61, which is identified in the scope of this order) between 2007 and 2009.²⁵ After screening for countries that had exports of comparable merchandise, we found that 12 of the 43 countries designated as economically comparable to the PRC are also significant producers. In this case, we have defined a “significant producer” as a country that has exported comparable merchandise from 2007 through 2009. The antidumping statute and regulations are silent in defining a “significant producer,” and the antidumping statute grants the Department discretion to look at various data sources for determining the best available information. See section 773(c) of the Act. Moreover, while the legislative history provides that the “term ‘significant producer’ *includes* any country that is a significant net exporter”,²⁶ it does not preclude reliance on additional or alternative metrics. In practice, the Department has relied on other indices for determining whether a

²³ See Memorandum to Howard Smith From Kelly Parkhill, regarding, “Request for a List of Surrogate Countries for an Administrative Review of Light-Walled Rectangular Pipe and Tube (“LWRP”) from the People’s Republic of China (“PRC”)”, dated January 7, 2010 (“Surrogate Country Memo”).

²⁴ See Memorandum to the File from Melissa Blackledge, regarding “Wage Data,” dated July 22, 2010 (“Wage Data Memo”) at Attachment 1.

²⁵ The export data is obtained from the Global Trade Atlas. See Wage Data Memo at Attachment 1.

²⁶ See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Conf. Rep. No. 576, 590, 100th Cong. 2nd Sess. (1988), reprinted in 134 Cong. Rec. H2031 (daily ed. April 20, 1988) (emphasis added).

country is a significant producer. For example, in Wooden Bedroom Furniture from the PRC²⁷, the Department relied on production data for selecting the primary surrogate country. In this case, we have relied on countries with exports of comparable merchandise as significant producers.

For purposes of valuing wages in this review, the Department determines the following twelve countries to be both economically comparable to the PRC, and significant producers of comparable merchandise: Bolivia, Ecuador, El Salvador, Guatemala, India, Indonesia, Jordan, Nicaragua, Paraguay, Peru, Thailand, and Tunisia.

Third, from the twelve countries that the Department determined were both economically comparable to the PRC and significant producers of comparable merchandise, the Department identified those with the necessary wage data. In doing so, the Department has continued to rely upon ILO Chapter 5B data “earnings”, if available and “wages” if not.²⁸ We used the most recent data within five years of the base year (2007) and adjusted the base year using the relevant Consumer Price Index.²⁹ Of the twelve countries that the Department has determined are both economically comparable and significant producers of comparable merchandise, two countries, *i.e.*, Bolivia and Tunisia were not used in the wage rate valuation because there were no earnings or wage data available. The remaining countries reported either earnings or wage rate data to the ILO within the last five years.³⁰

²⁷ See Wooden Bedroom Furniture From the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative and New Shipper Reviews and Partial Rescission of Review, 74 FR 6372 (February 9, 2009) (unchanged in Wooden Bedroom Furniture from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 41374 (August 17, 2009)).

²⁸ The Department maintains its current preference for “earnings” over “wages” data under Chapter 5B. However, under the previous practice, the Department was typically able to obtain data from somewhere between 50-60+ countries. Given that the current basket now includes 16 countries, the Department found that our long-standing preference for a robust basket outweighs our exclusive preference for “earnings” data. We note that several countries that met the statutory criteria for economic comparability and significant production, such as Indonesia and Thailand, reported only a “wage” rate. Thus, if earnings data are unavailable from the base year (2007) of the previous five years (2002-2006) for certain countries that are economically comparable and significant producers of comparable merchandise, the Department will use “wage” data, if available, from the base year or previous five years. The hierarchy for data suitability described in the 2006 Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments, 71 FR 61716, (October 19, 2006) (“Antidumping Methodologies”) still applies for selecting among multiple data points within the “earnings” or “wage” data. This allows the Department to maintain consistency as much as possible across the basket.

²⁹ Under the Department’s regression analysis, the Department limited the years of data it would analyze to a two-year period. See Antidumping Methodologies, 71 FR at 61720. However, because the overall number of countries being considered in the regression methodology was much larger than the list of countries now being considered in the Department’s calculations, the pool of wage rates from which we could draw from two years-worth of data was still significantly larger than the pool from which we may now draw using five years worth of data (in addition to the base year). The Department believes it is acceptable to review ILO data up to five years prior to the base year as necessary (as we have previously), albeit adjusted using the Consumer Price Index. See Expected Non-Market Economy Wages: Request for Comment on Calculation Methodology, 70 FR 37761, 37762 (June 30, 2005). In this manner, the Department will be able to capture the maximum amount of countries that are significant producers of comparable merchandise, including those countries that choose not to report their data on an annual basis. See also CPI data placed on record, obtained from the International Monetary Fund’s International Financial Statistics.

³⁰ See International Labour Organization’s Yearbook of Labour Statistics.

The Department relied on data from the following countries to arrive at its wage rate in these final results: Ecuador, El Salvador, Guatemala, India, Indonesia, Jordan, Nicaragua, Paraguay, Peru, and Thailand. The Department calculated a simple average of the wage rates from these ten countries. This resulted in a wage rate derived from comparable economies that are also significant producers of the comparable merchandise, consistent with the CAFC's ruling in Dorbest II and the statutory requirements of section 773(c) of the Act. *See* Surrogate Value Memorandum.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of this AR and the final weighted-average dumping margin for the investigated firm in the Federal Register.

Agree ____

Disagree ____

Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

(Date)