

August 8, 2008

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Antidumping Duty
Investigation of Electrolytic Manganese Dioxide from the People's
Republic of China

SUMMARY

We have analyzed the case and rebuttal briefs of Tronox LLC (“Petitioner”) and Guizhou Redstar Developing Import & Export Co., Ltd. (“Redstar”) in this antidumping duty investigation. The period of investigation (“POI”) covers January 1, 2007, through July 30, 2007. As a result of our analysis, we have made changes to the margin calculations. 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 for which we received comments from parties.

- Comment 1: Valuation of Manganese Ore as an Intermediate Input**
- Comment 2: Surrogate Value for Manganese Ore**
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- Comment 5: Electricity Inputs to Steam Production**
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DISCUSSION OF THE ISSUES

Comment 1: Valuation of Manganese Ore as an Intermediate Input

Petitioner contends that the Department should value the input manganese carbonate ore, supplied to Redstar by Redstar's affiliate, Guizhou Songtao Redstar Electrical Mine Industry Co., Ltd. ("Songtao Mine"), as a self-produced input because Redstar and the Songtao Mine are vertically integrated. Petitioner contends that the determination of vertical integration, and whether to value an affiliated supplier's input as self-produced is not based on whether or not the respondent and supplier are separate entities, but rather whether the respondent exercises sufficient control over the supplier such that transactions between the two are not made at arm's length. Petitioner cites Sinopec Sichuan Vinylon Works v. United States, 2006 WL 1550005 at 3-4. Petitioner asserts that vertical integration is indicated by the facts that: (1) Redstar has a majority ownership in, and directly controls, Songtao Mine, (2) Redstar was intimately involved in Songtao Mine's production and pricing decisions, and (3) Redstar consumed all of the manganese carbonate ore produced by Songtao Mine.

Redstar argues that because the record establishes that Redstar and Songtao mine are affiliated, are vertically integrated, and that Redstar has operational control over Songtao Mine, the Department should follow its normal practice and value the inputs consumed by Songtao Mine to produce manganese ore, rather than value the manganese ore directly. Redstar cites Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the People's Republic of China, 68 FR 47538 and accompanying Issues and Decision Memorandum at Comment 1 (August 11, 2003) ("PVA from China")

Department's Position: Because Songtao Mine is an affiliated supplier of Redstar that is not involved in the production or sale/export of subject merchandise and there is no indication that there is significant potential for the manipulation of price or production, we will not collapse the Songtao Mine with the producer/exporter Redstar, and will not value Songtao Mine's inputs to manganese ore production. See Notice of Final Determination of Sales at Less Than Fair Value and Partial Rescission: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 73 FR 15479 (March 24, 2008) and accompanying Issues and Decision Memorandum at Comment 5C ("Fish Fillets"); Notice of Final Determination Of Sales at Less Than Fair Value: Magnesium Metal from the People's Republic of China, 70 FR 9037 (February 24, 2005) and accompanying Issues and Decision Memorandum at Comment 14 ("Magnesium Metal").

In NME cases, the Department must value the producer's factors of production using surrogate values obtained from a comparable market economy country. Section 773(c) of the Act requires the Department to "determine the normal value of the subject merchandise on the basis of the value of the factors of production utilized in producing the merchandise..." in NME cases. The Department's regulations further provide that, in identifying dumping from an NME country, the Department normally will calculate normal value ("NV") by valuing the "nonmarket economy producers' factors of production in a market economy country." See 19 CFR 351.408(a).

Consistent with its regulations and its administrative practice in both NME and market economy determinations, the Department considers a producer's factors of production as those factors purchased by the producer of the merchandise under investigation, or otherwise obtained from other entities. In other words, the Department values only the factors of production that the producer of subject merchandise uses to manufacture the merchandise because it reflects the producer's own production experience. See, e.g., Fish Fillets at Comment 5C; Magnesium Metal at Comment 14; PVA from China at Comment 1.

According to section 351.401(f) of the Department's regulations, the Department will treat "two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the {Department} concludes that there is a significant potential for the manipulation of price or production." See 19 CFR 351.401(f).

Before deciding whether to treat multiple entities as a single entity, the Department must first reach a finding of affiliation. The Department determines affiliation under section 771(33) of the Act, which provides that:

The following persons shall be considered to be "affiliated" or "affiliated persons":

(A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

(B) Any officer or director of an organization and such organization.

(C) Partners.

(D) Employer and employee.

(E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.

(F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

(G) Any person who controls any other person and such other person.

For purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.

The Statement of Administrative Action to the Uruguay Round Agreement Act states the following:

The traditional focus on control through stock ownership fails to address adequate modern business arrangements, which often find one firm "operationally in a position to exercise restraint or direction" over another in the absence of an equity relationship. A company may be in a position to exercise restraint or direction, for example, through corporate or family groupings, franchise or joint venture agreements, debt financing, or close supplier relationships in which the supplier or buyer becomes reliant upon the other.

Based on the record evidence and consistent with section 771(33)(E) and (G) of the Act, we find that the record evidence demonstrates that Redstar and Songtao Mine are affiliated under 771(33)(E and G) of the Act of 1930. First, Redstar has majority ownership of Songtao Mine. See Redstar Section C and D Questionnaire Response (December 28, 2007) at D-9; Memorandum to the File: Verification of the Sales and Factors Response of Redstar in the Antidumping Investigation of Electrolytic Manganese Dioxide from the People's Republic of China (July 24, 2008) at 4 ("Verification Report"). Second, Redstar appears to control Songtao Mine through a majority on Songtao Mine's board of directors. See Verification Report at 4.

A finding of affiliation between a producer and its supplier, however, does not justify a departure from the Department's standard practice of valuing the actual factors of production consumed by the producer of subject merchandise. Affiliation, by itself, does not necessarily imply that a producer's factors obtained from an affiliated supplier are self-produced. See Fish Fillets at Comment 5C; Magnesium Metal at Comment 14; CITIC Trading Company, Ltd. v. United States of America and ABC Coke, et al: Final Results Pursuant to Remand, at <http://ia.ita.doc.gov/remands/03-23.pdf> (June 17, 2003) ("CITIC Trading Company"). Nor does the Department consider control a factor in determining whether the upstream inputs of an affiliated supplier should be valued as the producer's own. While control may be a basis for finding affiliation, it does not necessarily mean the two affiliates should be collapsed and treated as a single entity for purposes of determining the margin of dumping.

Under its collapsing regulation (19 C.F.R. 351.401(f)), the Department may collapse affiliated producers where it finds that a significant potential for manipulation of price or production exists. The regulation addresses the specific situation of affiliated producers. However, the regulation is not exhaustive of the situations that may call for collapsing of affiliated entities, and the Department has developed a practice of collapsing entities that do not qualify as producers. For example, in the past the Department has collapsed producers and affiliated exporters of subject merchandise; and in one case has collapsed a producer with an affiliated processor. See Certain Preserved Mushrooms from the People's Republic of China: Final Results of the Sixth Antidumping Duty New Shipper Review and Final Results and Partial Rescission of the Fourth Antidumping Duty Administrative Review, 69 FR 54635 (September 9, 2004), and accompanying Issues and Decision Memorandum at Comment 1 (The Department collapsed producers of subject merchandise and their affiliated exporters to prevent manipulation of price or production cost as envisioned by 19 CFR 351.401(f)); Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warm Water Shrimp from Brazil, 69 FR 76910 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 5 (the Department collapsed a producer of shrimp with an affiliated processor of shrimp because we concluded that there was a significant potential for the manipulation of price or production). In each of these cases, the Department found a significant potential for manipulation that led it to conclude collapsing was necessary.

In this case, the record evidence is clear that Songtao Mine, a mining company that mines manganese ore, is an affiliated supplier that does not produce subject merchandise nor is it involved in the sale/export of subject merchandise, and thus there is no basis to conclude that significant potential for manipulation of price or production exists in this case. See 19 CFR 351.401(f). Accordingly, even though Redstar and its supplier, Songtao Mine, are affiliated

through shareholdings and common directors, absent a significant potential for manipulation, we find it unnecessary to value upstream inputs that were not used by the actual producer of subject merchandise in normal value calculations because such valuation would not reflect the producer's, Redstar's, own production experience. See Fish Fillets at Comment 5C; Magnesium Metal at Comment 14; CITIC Trading Company. Therefore, for the final determination, we have continued to value Redstar's inputs of manganese ore with a surrogate value.

Comment 2: Surrogate Value of Manganese Carbonate Ore and Manganese Oxide Ore

Petitioner argues that, should the Department not value Redstar's manganese carbonate ore using the inputs to its production, then it should not use the value derived from World Trade Atlas ("WTA") Indian harmonized tariff schedule ("HTS") number 26020090, used in the preliminary determination, because this data consists solely of manganese oxide ore (from Gabon), not manganese carbonate ore. Petitioner asserts that the Department should use one of the two alternate sources already on the record for valuing manganese carbonate ore: WTA Colombian data for HTS 260200000 or a price quote supplied to Petitioner for manganese ore from the Mexican supplier Minera Autlan, S.A.B. de CV, from August 2007.

Redstar argues that the Department should not value either manganese carbonate ore or manganese oxide ore using WTA India statistics. Redstar contends that the statute and administrative precedent require that the Department seek surrogate values that are product-specific to the inputs used by the respondent.¹ Redstar asserts that the Department's verification of Redstar showed that Redstar's manganese carbonate ore is composed of approximately 17 percent manganese. Redstar argues that the WTA India values for manganese ore used by the Department in the preliminary determination is not specific to Redstar's manganese ore because the HTS category used is: (1) for "other manganese ores" less than 30 percent manganese, which is a higher manganese concentration than both Redstar's 17 percent manganese carbonate ore and 25 percent manganese oxide ore, (2) suspect, because all of the ore is from Gabon, which produces only high grade ores of 45 - 50 percent, and (3) aberrational, because the average unit value ("AUV") of ores less than 30 percent is almost three times higher than the AUV of ores over 46 percent.

Redstar contends that, therefore, the Department should use one of the following sources on the record to value its manganese ores: (1) the Manganese Ore India Ltd. ("MOIL") price list for manganese ore, adjusted to 17 percent purity, (2) the MOIL financial statements' cost of production of manganese ore, or (3) the MOIL financial statements' sales of its manganese ore to outside parties.

In rebuttal, Petitioner contends that Redstar's proposed valuation for manganese ores is flawed. Petitioner argues that for manganese oxide ore used by Redstar, the WTA India data is appropriate because: (1) it encompasses manganese oxide ore of the same chemistry as Redstar's, and with a similar level of manganese content, (2) it is official, published data

¹ Redstar cites to: Section 773 of the Act; Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers from China, 69 FR 20594 at Comment 9 (April 16, 2004).

contemporaneous with the POI, and (3) its price is corroborated by a nearly identical price in Eveready Industries India Ltd.'s ("Eveready India") financial statements.

Petitioner argues, alternatively, that if the Department determines not to use WTA India data to value manganese oxide ore, then it should use data put on the record by Petitioner, the MOIL prices for manganese ore, because these prices are for manganese oxide ore and are contemporaneous with the POI.

For the valuation of Redstar's input of manganese carbonate ore, Petitioner contends that the Department should use the sources put forth by Petitioner in its affirmative comments, and not the MOIL pricing data proposed by Redstar.

In rebuttal, Redstar maintains that the Department should not value either manganese ore using Indian WTA statistics. Further, Redstar disagrees with Petitioner that the Department should use Colombian WTA statistics, asserting that the Department should stay with one surrogate country, India, to value inputs. Redstar contends that suitable manganese ore values from India are on the record in the MOIL financial statements and from MOIL's website. Further, these MOIL prices are specific to the manganese content of Redstar's manganese ores..

Department's Position: The Department has determined, for the final determination, to value both Redstar's inputs of manganese ore using the price lists from the MOIL website for the first and second quarter of 2007 put on the record by Petitioner. See Petitioner's May 12, 2008 Submission of Public Information to Value Factors of Production, at Exhibit I; Electrolytic Manganese Dioxide from the People's Republic of China: Surrogate Value Memorandum for the Final Determination (August 8, 2008) ("Final Surrogate Value Memo");

The Department's practice when selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, surrogate values which are publicly available, product-specific, representative of a broad market average, tax-exclusive and contemporaneous with the POR. See Amended Final Results of Antidumping Duty Administrative Review and New Shipper Review: Wooden Bedroom Furniture from the People's Republic of China, 72 FR 46957 (August 22, 2007), and accompanying Issues and Decision Memorandum at Comment 12. Review of the record of this case reveals that none of the surrogate value data proffered by parties in this investigation to value manganese ore meet all of these criteria. We have determined that, of the proposed data, the manganese ore price lists from the MOIL website offer the best available information for valuing Redstar's manganese ore because it is publicly available on the MOIL website, can be made product-specific with regard to manganese content, is representative of a broad market average in that MOIL sells 65 percent of all manganese ore in India, and is contemporaneous with the POI. Additionally, though the MOIL website does not specify, we have no reason to believe that the data is not tax exclusive.

Regarding product specificity, we considered the fact that there is substantial record evidence that indicates that manganese content is a significant price driver of manganese ore. For instance, examination of the price list from MOIL's website shows a general correlation between manganese content and price, with higher ores costing more. Further, because the price list on MOIL's website provides the manganese content of each of the ores listed, use of this source

allows the Department to adjust the surrogate value to match the 17 percent manganese content of Redstar's manganese carbonate ore, as examined at verification. We also considered the fact that the manganese ore from MOIL's price list is identified as manganese oxide ore, rather than manganese carbonate ore. We have determined, however, that because (1) there is no record evidence in this investigation that values of manganese carbonate ore and manganese oxide ore are different from each other, and (2) we find the values provided by Petitioner for manganese carbonate ore deficient, as discussed below, the MOIL price list is the most product-specific surrogate value on the record.

Petitioner provided two surrogate value sources that it claimed were specific to Redstar's manganese carbonate ore. First, Petitioner proffered WTA Colombia HTS 260200000 import statistics, contending that the majority of these imports into Colombia were from Mexico, a manganese carbonate ore producing country. Our analysis of WTA Colombia HTS 260200000 data, however, showed that the vast majority (99 percent) of HTS 260200000 imports into Colombia during the POI were from Brazil. There is no record evidence indicating the type of manganese ore produced in Brazil. Second, Petitioner put on the record a price quote to Petitioner for manganese carbonate ore from a Mexican supplier. We have determined not to use this source because it is not from one of the countries on the list of countries economically comparable to the PRC. See Memorandum to Robert Bolling from Office of Policy: Antidumping Duty Investigation of Electrolytic Manganese Dioxide from the People's Republic of China: Request for a List of Surrogate Countries (December 20, 2007); see also Silicomanganese from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 64 FR 60784, 60786 (November 8, 1999) (unchanged in Final Results) (stating that the Department prefers to stay within one country for factor valuation because it leads to more accurate results than using factors from multiple countries).

We have determined not to use the sales data of manganese ore from MOIL's financial statements because they do not provide manganese content specific values. Likewise, we have determined not to use WTA data from the other countries deemed economically comparable to the PRC: Indonesia, Philippines, Thailand, and Colombia, because they also do not provide manganese content-specific values. We have determined not to use the price list from MOIL's website submitted by Redstar because it was not contemporaneous. Finally, while WTA data from India provide content-specific values for manganese ore, we agree with respondent that the fact that the lowest manganese content ore has an AUV three times higher than the highest manganese content ore renders these data unreliable.

Comment 3: Surrogate Financial Ratio Calculation

Petitioner contends that the Department should use the Financial Statements of MOIL to calculate the financial ratios in this investigation because (1) MOIL is the only Indian EMD producer with operations during the POI, (2) MOIL's financial statements are publicly available, (3) MOIL's 2006-2007 financial statements are contemporaneous with the POI, (4) MOIL earned a profit during the relevant period, and (5) MOIL is at a level of integration similar to Redstar. Petitioner further contends that Eveready India's financial statements are a flawed source because (1) Eveready India's activities were distorted during 2006-2007 because it was in the process of shutting down its operations and had in fact stopped producing EMD before the

POI, (2) Eveready India had a negative profit, and (3) Eveready does not self-produce manganese ore. Finally, Petitioner asserts that, if the Department determines to value manganese ore as an intermediate input, it should use only the EMD divisional data from the MOIL financial statements, as it did in the initiation of this investigation.

Redstar rebuts that the Department should not use the financial statements of MOIL to calculate financial ratios. Redstar contends that (1) MOIL is primarily a manganese ore mining operation, (2) MOIL's EMD production is miniscule, and (3) using its financial statements would violate the Department's mandate to use surrogate values that reflect the operations of the respondent (*i.e.*, a producer of EMD, not a mining company). See Section 773 of the Act. Alternatively, Redstar argues that if the Department does use MOIL's financial statements to calculate surrogate ratios, it should use only the data from MOIL's EMD operations, and average them with surrogate ratios derived from Eveready India's financial statements.

Department's Position: The Department has determined to use the data from the EMD division of the financial statements of MOIL to calculate surrogate financial ratios for the final determination of this investigation. In the preliminary determination, the Department used the fiscal year 2007 financial statements of Eveready India, even though Eveready India experienced a negative profit during the fiscal year 2007, because we determined that Redstar was a non-integrated producer of EMD, and the Eveready India financial statements were the only financial statements on the record from a non-integrated producer. We stated in the preliminary determination, however, that we would continue to seek financial statements from a suitable surrogate company that was both non-integrated and had experienced a profit, for the final determination. No party has placed such financial statements on the record of this investigation, nor has the Department been able to find any through its own research. Because the Department's preference is to not use financial statements with zero or negative profit, if possible, for the final determination, the Department has determined not to use the financial statements of Eveready India. We determined not to use the entire financial statements of MOIL, however, because MOIL has an extensive mining operation, and the costs associated with these operations would not accurately reflect the costs of Redstar. In calculating the surrogate financial ratios from MOIL's financial statements, the Department was able to isolate the overhead experienced by MOIL's EMD division and, to a large extent, isolate the profit from the EMD division. The Department was unable to isolate SG&A for the EMD division, however, and used the entire consolidated financial statements to calculate the SG&A ratio. See Final Surrogate Value Memo.

Comment 4: Steam Consumption

Petitioner contends that Redstar improperly did not report consumption of steam used in the production of EMD that was derived as a by-product from its sulphuric acid production. Petitioner argues that all inputs into production, whether or not paid for by the respondent, are to be valued by the Department in the calculation of NV. Petitioner cites to Pacific Giant , Inc. v. United States, 223 F. Supp.2d 1336, 1346 (Ct. Int'l Trade 2002).

Redstar claims that steam inputs to EMD derived from production of sulphuric acid are a by-product of production, and not reporting it as a by-product adjustment is actually detrimental to Redstar's interest. Redstar maintains that it need not report this steam input.

Petitioner rebuts that steam derived as a by-product from non-subject merchandise production, in this case sulphuric acid, cannot be treated as a by-product of subject merchandise production, and so the Department should include this steam input in its NV calculation. Redstar rebuts by reiterating its affirmative argument, above.

Department's Position: For the final determination, the Department has determined to value the steam from sulphuric acid production consumed in the production of EMD. See Memorandum to the File from Eugene Degan, Electrolytic Manganese Dioxide from the People's Republic of China: Final Determination Analysis Memorandum for Guizhou Redstar Developing Import & Export Co., Ltd. (August 8, 2008) ("Final Analysis Memo"). Section 773(c)(3) of the Act requires the Department to value the quantities of all raw materials employed in producing subject merchandise. Therefore, the Department is required under the Act to value all inputs, including inputs obtained free of charge, such as steam in this case. See Certain Preserved Mushrooms From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review, 71 FR 64930, 64936 (November 6, 2006), unchanged in Final, see Certain Preserved Mushrooms From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review, 71 FR 64930 (November 6, 2006). Additionally, because the steam in question was not generated as a by-product of production of merchandise under investigation, Redstar is not entitled to a by-product adjustment in this case.

Comment 5: Electricity Inputs to Steam Production

Petitioner contends that Redstar incorrectly failed to report electricity used to run pumping stations used in the production of steam. Petitioners contend that this electricity should be added to the total electricity consumed in the production of steam.

Redstar did not comment on this issue.

Department's Position: The Department examined Redstar's steam production and traced steam production materials and costs through Redstar's books and records. See Verification Report at 20. We did not observe the use of the pumping stations described by Petitioner in the production of steam. Accordingly, for the final determination, we will not add additional electricity costs to the FOPs reported by Redstar for the production of steam.

Comment 6: Surrogate Value for Water

Petitioner argues that the Department's use of the Maharashtra Industrial Development Corporation ("MIDC") water tariff schedule, effective June 1, 2003, resulted in two errors in the calculation of the surrogate value for water. Petitioner contends that, first, because these water prices were effective from June 1, 2003, through May 31, 2007, the Department should not have inflated for prices after January 1, 2007 (the start of the POI). Petitioner contends, second, that MIDC published new prices June 1, 2007, and that the Department should have used these new prices to value water for the last month of the POI.

Redstar did not comment on this issue.

Department's Position: For the preliminary determination the Department valued water using MIDC data from June 2003. Because the July 2007 MIDC data put on the record by Petitioner is contemporaneous with the POI, we agree with Petitioner that this data is superior to the June 2003 data, and we will value water using these data for the final determination. However, because this data is contemporaneous with the POI, it is not necessary to average it with the June 2003 data, as suggested by Petitioner. See Final_Surrogate Value Memo.

Comment 7: Surrogate Value Source for Truck Freight

Petitioner contends that, for the final determination, the Department should value truck freight using January 2007 data from the website www.infobanc.com, rather than the pre-POI data from www.inflight.com used in the preliminary determination, because the infobanc data is contemporaneous with the POI.

Redstar did not comment on this issue.

Department's Position: We have determined not to use the submitted infobanc data to value truck freight. We have examined the data from infobanc put on the record by Petitioner, and have also examined the source data on infobanc's website, and could not find any indication of the time period to which this data applies. Therefore, because we cannot determine whether this data is contemporaneous, nor whether and from what date it needs to be inflated or deflated if not contemporaneous, we have determined not to use infobanc data for the final determination.

Comment 8: Grinding Bars and Rings

Petitioner argues that Department practice dictates that the Department must value the grinding bars and rings used by Redstar as direct inputs to production. Petitioner cites Silicon Metal from the People's Republic of China: Notice of Final Results of 2006/2006 New Shipper Reviews, 72 FR 58641 (October 16, 2007), and accompanying Issues and Decision Memorandum at Comment 8.

Redstar rebuts that grinding bars and rings should not be valued as direct inputs, but rather valued as overhead, because (1) they are not directly consumed in production, (2) they are not physically incorporated into the merchandise under investigation, and (3) they are used in production over a long period and many production runs.

Department's Position: The Department has determined not to value Redstar's grinding bars and rings as direct inputs for the final determination, but as overhead items. In Diamond Sawblades the Department stated that it would not value such items as grinding wheels because we did not find any indication that they are replaced so regularly as to represent a direct factor as opposed to being an overhead item. See Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China, 71 FR 29303 (May 22, 2006) and accompanying Issues and Decision Memorandum at Comment 2 ("Diamond Sawblades"). In the

instant case, we likewise find that neither the grinding bars nor rings were replaced so regularly as to represent a direct factor.

Comment 9: Surrogate Value for Coal

Petitioner argues that the Department should value coal using Coal India Ltd. (“CIL”) data using CIL’s for grades B and C coal auctioned off to “non-core” customers using CIL’s e-auction system. Petitioner asserts that the Department used the average price for grade A steam coal for the period September 29, 2003, to June 15, 2004, and inflated it to the POI, for the preliminary determination. Petitioner notes, first, that Redstar’s certificate of analysis for its steam coal, examined at verification, indicates that the coal used by Redstar falls between grades B and C. Second, Petitioner argues that CIL discriminates between “core” sector customers, and “non-core” sector customers, and chemical plants, such as the respondent’s, are considered a non-core sector. Petitioner contends that CIL auctions coals to non-core customers, and the Department should use this data, which is on the record, because: (1) it has the prices actually paid by chemical companies in India, (2) it is an average based on 256 offerings for more than one million tons of coal, (3) it covers every month of the POI, (4) it reflects the prices offered by all CIL subsidiaries, (5) it is a weighted-average price, and (6) it matches the grade of coal actually used by Redstar (*i.e.*, grades B and C).

Redstar did not comment on this issue.

Department’s Position: For the final determination, the Department has determined to continue to value Redstar’s input of coal using data from the 2004/05 TERI Energy Data Directory & Yearbook.

On May 12, 2008, the last day to submit public information to value FOPs in this investigation, Petitioner placed on the record an exhibit consisting of approximately 500 pages (“Exhibit S”). There was no narrative explanation of the significance of this exhibit with that submission. On June 3, 2008, in the submission of its case brief, Petitioner explained for the first time the significance of Exhibit S, and requested that the Department use these 500 pages of data to calculate an average surrogate value for coal. Petitioner’s submissions, however, do not explain, nor is it apparent from the exhibit itself, how or whether it is possible to re-create these data in their original form, in order to check their accuracy. Therefore, because the Department cannot re-create these data to examine them in their original form, we cannot be sure of their accuracy, and we decline to use them for the final determination.

We agree with Petitioner, however, that examination of the certificate of analysis of Redstar’s steam coal at verification showed that Redstar’s steam coal inputs should be valued as grade C, rather than grade A. See Verification Report at VE 12. Therefore, we have valued Redstar’s coal input as grade C for the final determination. See Final Surrogate Value Memo.

Comment 10: Labor Wage Rate

Petitioner argues that the Department should use its revised China labor wage rate of USD 1.06 per hour for the final determination because it is more contemporaneous with the POI, bears the closest relationship to the economic realities in the PRC, and therefore best fulfills the Department's mandate to calculate accurate dumping margins.

Redstar did not comment on this issue.

Department's Position: On May 14, 2008, the Department published in the federal register a notice entitled Corrected 2007 Calculation of Expected Non-Market Economy Wages, 73 FR 27795 (May 14, 2008). The Department stated in this notice that its newly calculated wage rates would be applicable to all cases where the final decision is due after the publication of the notice. Accordingly, for the final determination of the instant investigation, we will apply the newly calculated wage rate for the PRC of USD 1.05 per hour.

Comment 11: Electricity Used for Lighting and Appliances in Workshops

Petitioner states that electricity used for lights and appliances in the factory workshops is properly classified as a production cost and should have been reported as such by Redstar.

Redstar claims that it properly deducted electricity used for lighting and appliances in the workshops from its electricity consumption because it is the Department's policy to only include electricity costs attributable to the production of subject merchandise, and to exclude electricity cost attributable to overhead. Redstar cites Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags from China, 69 FR 34125 (June 18, 2004) ("Bags from China"), and accompanying Issues and Decision Memorandum at Comment 16.

Both parties' rebuttals repeat their affirmative arguments.

Department's Position: We have determined that the electricity used in Redstar's workshops for lights and appliance is properly valued as a direct input into production. While electricity used to power lights and appliances in other buildings may not be attributable to production of the merchandise under investigation, electricity used to power lights and appliances in the actual factory is clearly a direct input. Redstar's citation to Bags from China, stating that the Department was "able to verify the total electricity used by Hang Lung during the POI for subject merchandise and for other purposes" is unavailing, it serves only to demonstrate that the Department recognizes that some electricity is used for production and some "for other purposes." In the instant case, because the electricity is used in the workshops, it is properly attributable to production. Therefore, for the final determination we have included the electricity used for lights and appliances in Redstar's workshops in the calculation of NV.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final determination of sales at less than fair value in the Federal Register.

Agree _____ Disagree _____

David M. Spooner
Assistant Secretary
for Import Administration

(Date)