

June 24, 2005

VIA HAND DELIVERY

The Honorable Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration
U.S. Department of Commerce
Attn: Import Administration
Central Records Unit, Room 1870
Pennsylvania Avenue and 14th Street, N.W.
Washington, D.C. 20230

PUBLIC DOCUMENT

Attention: Lawrence Norton
Anthony Hill

Re: Valuation of Market Economy Input Prices

Dear Assistant Secretary :

On behalf of domestic interested parties, Anvil International, Inc. and Ward Manufacturing, Inc., we respond to the Department's invitation to comment on modifications to its NME practice regarding the valuation of factor of production inputs.

This document does not contain business proprietary information. An original, signed document and six copies of the comments are submitted in accordance with the Department's instructions. Domestic interested parties have also filed an electronic copy of the comments via e-mail to webmaster-support@ita.doc.gov, as provided in the Department's request for comments.

I. MARKET ECONOMY INPUTS SHOULD ORDINARILY BE USED TO VALUE INPUTS FROM MARKET SUPPLIERS. SURROGATE COUNTRY IMPORT DATA, AND OTHER BROAD-BASED MARKET VALUES, SHOULD ORDINARILY BE USED TO VALUE INPUTS FROM NME SUPPLIERS

In its invitation for comments, the Department stated its current practice regarding the use of prices a nonmarket economy (“NME”) producer pays for inputs obtained from market-economy suppliers in valuing the factors of production, as follows:

Where an NME producer purchases inputs from market economy suppliers and pays in a market-economy currency, the Department uses the actual price paid for these inputs, where possible. (citation omitted). Where a portion of the factor input is purchased from a market economy supplier and the remainder from a nonmarket economy supplier, the Department will normally value the factor using the price paid to the market-economy supplier.

Notice of Request for Comments, *Market Economy Inputs Practice In Antidumping Proceedings Involving Non-Market Economy Countries*, 70 Fed. Reg. 30,418 (May 26, 2005). *See also*, 19 C.F.R. § 351.408(c)(1). Domestic interested parties propose that the Department revise its current practice, such that the Department ordinarily use the price NME producers pay to market-economy suppliers – to value purchases of inputs from market-economy suppliers – but not to value purchases of inputs from NME suppliers. Our proposal thus corresponds to the first approach set out in the Appendix to the Department’s Request for Comments. *See*, 70 Fed. Reg. at 30,419.

A. Statutory and Regulatory Standards for Valuing the Factors of Production

In *China Nat’l Mach. Imp. & Exp v. United States*, the Court of International Trade (“CIT”) addressed statutory and regulatory standards for valuing the factors of production, stating that:

nothing in the antidumping duty statute directs Commerce to employ actual prices paid to a market economy supplier by an NME producer in NV calculations. Under the antidumping duty statute “Commerce’s duty {is} to determine margins as accurately as possible and to use the best information available to it in doing so.” *Lasko*, 43 F.3d at 1443; *Allied-Signal Aerospace Co. v. United States*, 996 F. 2d 1185, 1190 (Fed. Cir. 1993); *Rhone Poulenc, Inc. v. United States*, 899 F. 2d 1185, 1191 (Fed. Cir. 1990). Commerce has especially “wide discretion in the valuation of factors of production.” *Nation Ford Chem. Co. v. United States*, 166 F. 3d 1373, 1377 (Fed. Cir. 1999). The statute “simply does not say – anywhere – that the factors of production must be ascertained in a single fashion.” *Lasko*, 43 F.3d at 1446; *Shakeproof Assembly Components, Div. of Illinois Tool Works, Inc. v. United States*, 102 F.Supp. 2d 486, 491, 24 Ct. Int’l Trade 485 (2000), *aff’d* 268 F. 3d 1376 (2001). Commerce’s methodology in selecting values for factors of production will be upheld, as long as such methodology does not contravene “the purpose of the statute {which is} to construct the product’s normal value as it would have been if the NME country were a market economy country.” *Rhodia, Inc. v. United States*, 25 CIT ___, ___ 185 F. Supp. 2d 1343, 1351 (2001). . . . Moreover, nothing in the applicable regulations compels Commerce to choose actual prices over surrogate values.

China Nat’l Mach. Imp. & Exp v. United States, 264 F. Supp 1229, 1236-7 (CIT 2003).

The courts have approved of the Department’s use of market prices in combination with surrogate country information for valuing the factors of production, stating:

As the *Tianjin* Court noted, “nothing in the Tariff act of 1930 . . . or its legislative history mandate that Commerce must derive foreign market values exclusively from either actual prices paid by the nonmarket economy, or from surrogate based values.” 16 C.I.T at 940, 806 F. Supp at 1018. As such, “Commerce may use evidence of prices paid by the nonmarket economy country to market-economy suppliers in combination with surrogate country information when valuing factors of production.” *Id.*

Shakeproof Assembly Components, Div. of Illinois Tool Works, Inc. v. United States, 102 F.Supp. 2d 486, 492 (CIT 2000).

B. The Prices a Particular NME Producer Pays Market-economy Suppliers Do Not Provide the Best Information to Value Inputs from NME Suppliers

The prices a particular NME producer pays market-economy suppliers do not provide the best information to value inputs the NME producer purchases from NME suppliers, because of the small volume of trade represented by an individual producer's purchases. The price that a particular NME producer pays market-economy suppliers is generally no better at estimating the market value in the NME than the price other NME producers pay market suppliers. The prices that other NME producers, many of which do not produce the subject merchandise, pay market suppliers cannot however ordinarily be obtained. The average price that all purchasers in a surrogate country pay for imports into the surrogate country is however generally available in the form of surrogate country import data. Surrogate country import data provide a much more robust measure of the market value of inputs in the NME than the prices the particular NME producer of the subject merchandise pays market suppliers, because of the large volume of trade typically represented by government import data. Other broad measures of market values, such as government or industry surveys, may also provide a more robust measure than an individual NME producer's market prices.

Additionally, unlike prices paid by respondent producers in the NME, import data and other broad-based measures are ordinarily publicly available. The valuation of the factors of production is more transparent when based on public information than upon the business proprietary information of an individual NME producer. Thus, "Commerce has a preference for using import statistics to value material inputs because they are 'publicly available information' and do not include domestic taxes or subsidies. *See, Hand Tools Final Results*, 60 Fed Reg. at

49,252." *Shanghai Foreign Trade Enters. Co. v. United States*, 318 F. Supp. 2d 1339, 1350 (CIT 2004).

C. The Presumption That Market Prices Are the Best Information to Value Inputs from Market Suppliers and That Import Data Are the Best Information to Value Inputs from NME Suppliers Should Be Rebuttable

Domestic interested parties accordingly propose that the Department establish a rebuttable presumption that the prices the individual NME producer pays market-economy suppliers are the best information to value that NME producer's purchases of the input from market-economy suppliers; and that surrogate country data are the best information to value the NME producer's purchases of the input from NME suppliers. The individual NME producer's market prices should not however be used in every instance to value inputs from market suppliers; and surrogate country import data should not be used in every instance to value inputs from NME suppliers. This generally comports with the Department's current practice.

As to the individual NME producer's market purchases, the Department will not use the prices at which a NME producer purchases inputs from market suppliers to value an input when such purchases were not at arms-length, or when there is reason to believe that the goods were dumped or subsidized.¹ As to surrogate country import data, the CIT has stated:

if the import statistics are based on a small quantity of imports for the period of investigation, the Commerce practice is to determine if the price for those imports is aberrational. See *Shakeproof Assembly Components Div. of Ill Tool Works, Inc. v. United States*, 23 CIT 479, 485, 59 F. Supp. 2d 1354, 1360 (1999). If the price is aberrational, Commerce will consider the statistics unreliable and use a different source. See *Final Determination of Sales at Less Than Fair Value*:

¹ See, e.g. the Department's Request for Comments, which states "the Department also declines to accept prices when it believes that the transaction was not conducted at arm's length. Finally, the Department does not accept prices of goods sold when it has reason to believe or suspect that the goods may be dumped or subsidized." See, 70 Fed. Reg. 30,418 (May 26, 2005).

Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China, 62 Fed. Reg. 61,964, 61,981 (Nov. 20, 1997) ("For pig iron, we were unable to use the Indian Monthly Statistics as we determined that the import price was aberrational because the Indian data was based on a very small quantity)

Shanghai Foreign Trade Enters. Co. v. United States, 318 F. Supp. 2d 1339, 1350-51 (CIT 2004). Import data likewise may not be the best information for valuation if the import category does not accurately reflect the type of input used by the NME producer of the subject merchandise.

When the NME producer purchases inputs from both market-economy suppliers and NME suppliers the Department should be given the latitude to evaluate all factors regarding the valuation of factor inputs on a case-by-case basis, rather than being compelled to use the prices an individual NME producer paid to market suppliers to value the entire quantity of an input used by the NME producer.

Conclusion

For the foregoing reasons domestic interested parties Anvil International, Inc. and Ward Manufacturing, Inc. request that the Department revise its practice regarding the valuation of factor of production inputs to establish a rebuttable presumption that market-economy inputs are the best information to value inputs a NME producer's purchases from market suppliers; and that surrogate country import data, and other broad-based market values, are the best information to value inputs the NME producer's purchases from NME suppliers.

Respectfully submitted,

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