

DEPARTMENT OF COMMERCE**International Trade Administration**

[A-570-929]

Small Diameter Graphite Electrodes From the People's Republic of China: Extension of Time Limit for the Final Results of the First Administrative Review of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* June 21, 2011.

FOR FURTHER INFORMATION CONTACT: Frances Veith or Lindsey Novom, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482-4295 or (202) 482-5256, respectively.

SUPPLEMENTARY INFORMATION:**Background**

On March 30, 2010, the Department of Commerce ("the Department") initiated the administrative review of the antidumping duty order on small diameter graphite electrodes from the People's Republic of China ("PRC") for the period August 21, 2008, through January 31, 2010. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 75 FR 15679 (March 30, 2010). The preliminary results of this review were published on March 7, 2011. *See Small Diameter Graphite Electrodes From the People's Republic of China: Preliminary Results of the First Administrative Review of the Antidumping Duty Order; Partial Rescission of Administrative Review; and Intent To Rescind Administrative Review, in Part*, 76 FR 12325 (March 7, 2011). The final results of this review are currently due by July 5, 2011.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department to make a final determination in an administrative review within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the 120-day period to 180 days for the final results.

Extension of Time Limit of Final Results

We determine that it is not practicable to complete the final results of this

review within the original time limit because the Department requires additional time to analyze issues raised in post-preliminary factual submissions concerning respondents' U.S. sales databases, case briefs, and rebuttal briefs. Therefore, the Department is extending the time limit for completion of the final results by 60 days. An extension of 60 days from the current deadline of July 5, 2011, would result in a new deadline of September 3, 2011. However, since September 3, 2011, falls on a Saturday, a non-business day, the final results will now be due no later than September 6, 2011, the next business day. *See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

We are issuing and publishing this notice in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: June 14, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

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DEPARTMENT OF COMMERCE**International Trade Administration****Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor**

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Announcement for change in methodology.

SUMMARY: This notice addresses the methodology used by the Department of Commerce ("the Department") to value the cost of labor in non-market economy ("NME") countries. After reviewing all comments received on the Department's interim, industry-specific wage calculation methodology that is currently applied in NME antidumping proceedings, the Department has determined that the *single surrogate-country* approach is best. In addition, the Department has decided to use International Labor Organization ("ILO") Yearbook Chapter 6A as its primary source of labor cost data in NME antidumping proceedings.

FOR FURTHER INFORMATION CONTACT:

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Antidumping and Countervailing Duty Operations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:**Background**

Section 733(c) of the Tariff Act of 1930, as amended ("the Act"), provides that the Department will value the factors of production ("FOP") in NME cases using the best available information regarding the value of such factors in a market economy ("ME") country or countries considered to be appropriate by the administering authority. The Act requires that when valuing FOP, the Department utilize, to the extent possible, the prices or costs of factors of production in one or more ME countries that are (1) At a comparable level of economic development, and (2) significant producers of comparable merchandise. *See* section 773(c)(4) of the Act.

Previously, the Department used regression-based wages that captured the worldwide relationship between *per capita* Gross National Income ("GNI") and hourly manufacturing wages pursuant to 19 CFR 351.408(c)(3).¹ However, on May 14, 2010, the Court of Appeals for the Federal Circuit ("CAFC"), in *Dorbest Ltd. v. United States*, 604 F.3d 1363, 1372 (Fed. Cir. 2010) ("*Dorbest*"), invalidated 19 CFR 351.408(c)(3). As a consequence of the CAFC's ruling in *Dorbest*, the Department no longer relies on the wage rate methodology described in its regulations.

In July 2010, the Department adopted an interim wage calculation methodology that averages wages across countries that are both economically comparable and significant producers of merchandise comparable to the subject merchandise.² In October 2010, the Department modified this interim methodology to limit the averaging to industry-specific wage rates.³

¹ The Department's regulations at 19 CFR 351.408(c)(3) provided that: For labor, the Secretary will use regression-based rates reflective of the observed relationship between wages and national income in market economy countries. The Secretary will calculate the wage rate to be applied in nonmarket economy proceedings each year. The calculation will be based on current data, and will be made available to the public.

² *See Certain Woven Electric Blankets From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 38459 (July 2, 2010) ("*Blankets From the PRC*") and accompanying Issues and Decision Memorandum at Comment 13.

³ Between July 2010 and October 2010, the Department implemented an interim wage rate methodology that reflected a simple average of national wage rates from countries found to meet

On February 18, 2011, the Department published a notice in the **Federal Register** requesting comment on the means by which it can best capture all relevant costs in its wage rate calculation in NME antidumping proceedings,⁴ in response to concerns about labor cost undercounting and the interim methodology. As part of this request, the Department invited comments on (1) The labor cost calculation methodology and (2) labor cost data sources.

The Department subsequently received comment from the following parties: (1) Armstrong World Industries (“Armstrong”);⁵ (2) Southern Shrimp Alliance; (3) Domestic Producers;⁶ (4) Domestic Interested Parties;⁷ (5) Ministry of Commerce of the People’s Republic of China (“MOFCOM”); and (6) Vietnam Association of Seafood Exporters and Producers (“VASEP”).

Statement of Policy

Based on the submissions the Department received in response to its request for comment, the Department has revised its labor cost calculation methodology in NME antidumping proceedings initiated on or after the date of publication of this **Federal Register** notice, the Department will base labor cost on ILO Chapter 6A data applicable to the primary surrogate country, rather

than the Chapter 5B it currently uses. For ongoing NME proceedings, the Department expects to consider on a case-by-case basis whether it is feasible to implement the new labor methodology within statutory deadlines.

A. Single Surrogate Country Wage Rate

Due to the variability in wage rates among economically comparable MEs, the Department has tried to include wage data from as many countries as possible that were also economically comparable to the NME and significant producers of comparable merchandise, within the meaning of section 773(c)(4) of the Act. Following the Federal Circuit’s decision in *Dorbest*, the Department attempted to balance its desire for multiple data points with the statutory requirements that FOP data be from countries that are both economically comparable and significant producers. *See* section 773(c)(4)(A) and (B) of the Act. While the amount of available data was more constrained as a result of the *Dorbest* decision, the Department determined that the industry-specific interim methodology still provided the best available wage rate because it allowed for multiple data points, and adhered to the constraints set forth in the statute. Under this methodology, the Department considered countries that exported comparable merchandise to be “significant producers.” However, in *Shandong Rongxin*, the U.S. Court of International Trade (“CIT”) found the Department’s sole reliance on exports alone to define “significant producers” impermissible and unsupported.⁸

The Department has carefully considered the “significant producer” prong of the statute (section 773(c)(4)(B) of the Act) in light of the CIT’s decision in *Shandong Rongxin*, where the court imposed an even further restriction on the “significant producer” definition. Upon careful examination of our options in light of *Shandong Rongxin*, we consider that any alternative definition for “significant producer” that would also be compliant with the court’s decision would unduly restrict the number of countries from which the Department could source wage data. We therefore find that the base for an average wage calculation would be so limited that there would be little, if any, benefit to relying on an average of wages from multiple countries for purposes of minimizing the variability that occurs in wages across countries. Therefore, in light of both the Federal Circuit’s

decision in *Dorbest*, and the CIT’s recent decision in *Shandong Rongxin*, we find that relying on multiple countries to calculate the wage rate is no longer the best approach for calculating the labor value.

Accordingly, the Department finds that using the data on industry-specific wages from the primary surrogate country is the best approach for valuing the labor input in NME antidumping duty proceedings. It is fully consistent with how the Department values all other FOPs, and it results in the use of a uniform basis for FOP valuation—a single surrogate.

B. ILO Chapter 6A Data Source

The Department currently uses ILO Chapter 5B data in its NME labor input cost calculations. Unlike Chapter 6A data that reflects all costs related to labor including wages, benefits, housing, training, *etc.*, Chapter 5B data reflects only direct compensation and bonuses. The Department also adjusts, when possible, the calculated factory overhead ratio to reflect all indirect labor costs (*e.g.*, employee pension benefits, worker training) itemized in the company’s financial statement.⁹ While the Department’s ability to identify and adjust for indirect labor costs depends on the information available on the record of the specific proceeding, when the Department is able to make the necessary adjustments, both direct and indirect labor costs are accounted for. *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61721 (October 19, 2006).

When indirect labor costs items are not itemized and not (by definition) reflected in Chapter 5B data, a concern with under-counting arises. While there are some cases in which available information permits the Department to make adjustments that ensure a full and complete accounting of all direct and indirect labor costs, there are many other cases in which data constraints preclude such adjustments. For this reason, the Department has decided to change to the use of Chapter 6A data, on the rebuttable presumption that Chapter 6A data better accounts for all direct and indirect labor costs. In their comments, MOFCOM and VASEP argue that use of ILO Chapter 6A would result in overstating labor costs. To address this concern, the Department will adjust

both criteria under section 733(c)(4) of the Act. Industry-specific data, if available, are now the presumptive surrogate data used in the Department’s calculations. *See Certain New Pneumatic Off-the-Road-Tires From the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 75 FR 64259 (October 19, 2010) (“*Tires From the PRC*”); *See also Certain Activated Carbon From the People’s Republic of China: Final Results and Partial Rescission of Second Antidumping Duty Administrative Review*, 75 FR 70208 (November 18, 2010) (“*Activated Carbon Final*”) and accompanying Issues and Decision Memorandum at Comment 4f.

⁴ *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor; Request for Comment*, 76 FR 9544 (February 18, 2011).

⁵ Armstrong is a domestic manufacturer of floors, ceilings, and cabinets.

⁶ American Honey Producers Association, American Spring Wire Corp., Christopher Ranch, LLC, Council Tool Company, Inc., DAK Americas, LLC, East Jordan Iron Works, Inc., The Garlic Company, Insteel Wire Products Company, Neenah Foundry Company, Nashville Wire Products, Inc., Norit Americas Inc., SGL Carbon LLC, Sioux Honey Association, Superior SSW Holding Co., Inc., Sumiden Wire Products Corp., U.S. Foundry & Manufacturing Co., Valley Garlic, and Vessey and Company.

⁷ American Furniture Manufacturers Committee for Legal Trade and its individual members; the Polyethylene Retail Carrier Bag Committee and its individual members; the Laminated Woven Sacks Committee and its individual members; U.S. Magnesium LLC; and Bridgestone Americas, Inc. and Bridgestone Americas Tire Operations, LLC.

⁸ *See Shandong Rongxin Import & Export Co., Ltd. v. United States*, Slip Op. 11–45 (April 21, 2011) (“*Shandong Rongxin*”).

⁹ *See Folding Metal Tables and Chairs From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 2905 (January 18, 2006) and accompanying Issues and Decision Memorandum, at Comment 1.

the surrogate financial ratios when the available record information—in the form of itemized indirect labor costs—demonstrates that labor costs are overstated. The Department notes that the use of a single surrogate country for labor input valuation purposes renders moot concerns expressed by MOFCOM and VASEP that ILO Chapter 6A data is only available for a limited number of countries.

Calculation of Labor Surrogate Value

Pursuant to the comments received and the Department's analysis thereof, the Department will value the NME respondent's labor input using industry-specific labor costs prevailing in the primary surrogate country, as reported in Chapter 6A of the ILO Yearbook of Labor Statistics. The following explains this single country wage rate methodology in more detail.

The ILO collects labor cost data by country and industry, which is reported on the basis of the United Nations' International Standard Classification of All Economic Activities ("ISIC").¹⁰ The industry-specific data is revised periodically, and not all revisions report data for all industries. The Department will make every attempt to identify and review relevant industry-specific wages in the primary surrogate country that are as contemporaneous as possible with the period of investigation. To determine the most appropriate labor cost data to use, the Department applies a number of filters.¹¹ The Department

¹⁰ The ISIC identifies different industry classifications. The ISIC provides industry classifications by section (*i.e.*, A—Agriculture, hunting, and forestry), then at the two-digit division level (*i.e.*, 01A—Agriculture, hunting, and related service activities), then further sub-detail at the three-digit major group level (*i.e.*, 011—Growing of crops; market gardening; horticulture), and sometimes a four-digit group level (*i.e.*, 0111—Growing of cereals and other crops, *nec.*). There are explanatory notes at the two-digit division level, three-digit major group level, and four-digit group level that provide a detailed list of the industries covered in and excluded from each classification. The ISIC also has different revisions of this classification system: Rev. 2 (1968); Rev. 3 (1989); Rev. 3.1 (2002); and Rev. 4 (2008).

¹¹ The Department sorts the ILO data based on data parameters in the following order:

1. "Sub-classification," *i.e.*, If there is no industry-specific data available for the surrogate country within the primary data source, *i.e.*, ILO Chapter 6A data, the Department will then look to national data for the surrogate country for calculating the wage rate;

2. "Type of Data," *i.e.*, reported under categories compensation of employees and labor cost. We use labor cost data if available and compensation of employees where labor cost data are not available;

3. "Contemporaneity," *i.e.*, the Department uses the most recent earnings/wage rate data point available;

4. The unit of time for which the wage is reported. The Department selects from the following categories in the following hierarchy: (1)

inflates the selected earnings data to the year that covers the majority of the period of the proceeding using the relevant Consumer Price Index.¹² Next, the Department converts the inflation-adjusted hourly wage rate data for the surrogate country, which is denominated in that country's national currency, to U.S. dollars using annual exchange rates¹³ as reported by the International Monetary Fund ("IMF")'s *International Financial Statistics* ("IFS") for the year that covers the majority of the period of investigation or review. The Department will then use this hourly earnings rate, denominated in U.S. dollars, to value the NME respondent's cost of labor for that proceeding.

Finally, the Department will determine whether the facts and information available on the record warrant and permit an adjustment to the surrogate financial statements on a case-by-case basis. If there is evidence submitted on the record by interested parties demonstrating that the NME respondent's cost of labor is overstated, the Department will make the appropriate adjustments to the surrogate financial statements subject to the available information on the record. Specifically, when the surrogate financial statements include disaggregated overhead and selling, general and administrative expense items that are already included in the ILO's definition of Chapter 6A data, the Department will remove these identifiable costs items.

Implementation

The approach detailed above will be applied to ongoing administrative NME proceedings where the statutory deadlines permit.

Dated: June 10, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

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per hour; (2) per day; (3) per week; or (4) per month. Where data is not available on a per-hour basis, the Department converts that data to an hourly basis based on the premise that there are 8 working hours per day, 5.5 working days a week and 24 working days per month.

¹² See <http://www.imfstatistics.org/imf>.

¹³ The exchange rate for each country is obtained from the IMF's IFS database by selecting: (1) "Economic Concept View"; (2) "Country Exchange Rates"; (3) "National Currency per US\$ (Per Avg)"; and (4) "RF.ZF NC/US\$, Period Average."

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Draft NOAA Scientific Integrity Policy and Handbook; Availability

AGENCY: Office of Oceanic and Atmospheric Research (OAR) National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Draft NOAA Scientific Integrity Policy and Handbook for Public Review.

SUMMARY: NOAA's draft scientific integrity policy is available for public review and comment until August 20, 2011. The draft incorporates the principles of scientific integrity contained in the President's March 9, 2009, memorandum and Office of Science and Technology Policy (OSTP) director, John Holdren's December 17, 2010, memorandum on scientific integrity, and addresses how NOAA ensures quality science in its methods, review, and other aspects. NOAA also seeks comments on the accompanying handbook that outlines procedures to respond to allegations of misconduct.

ADDRESSES: Both draft documents can be found electronically at: <http://www.noaa.gov/scientificintegrity>. Those without computer access can call 301-734-1186 to request a copy of the draft policy and handbook and instructions for returning written comments by U.S. Postal Service.

FOR FURTHER INFORMATION CONTACT: The NOAA Scientific Integrity team at integrity.noaa@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

The Presidential Memorandum on Scientific Integrity dated March 9, 2009, and the Office of Science and Technology Policy 2010 guidance memorandum on scientific integrity call for ensuring the highest level of integrity in all aspects of the executive branch's involvement with scientific and technological processes.

The draft NOAA policy:

- Lays out formal guidance with a "Code of Conduct";
- Creates the conditions for enabling first-rate science and guarding against attempts to undermine or discredit it;
- States the key role of science in informing policy;
- Encourages scientists to publish data and findings to advance science, their careers, and NOAA's reputation for reliable science;
- Encourages NOAA scientists to be leaders in the scientific community;