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November 7, 2014

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

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

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

Summary

In response to requests from interested parties, the Department of Commerce ("Department") is conducting an administrative review of the antidumping duty order on certain cut-to-length carbon steel plate ("CTL plate") from the People's Republic of China ("PRC") for the period of review ("POR") November 1, 2012, through October 31, 2013. This review covers two companies.¹ The Department preliminarily finds that one of those companies, Hunan Valin, had no shipments during the POR. The other company, Zhengzhou Shangdao, did not respond to the Department's questionnaire. Thus, the Department preliminarily finds Zhengzhou Shangdao is not eligible for a separate rate and is part of the PRC-wide entity. We based the dumping margin for the PRC-wide entity, including Zhengzhou Shangdao, on adverse facts available ("AFA").

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

¹ See [Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part](#), 78 FR 79392 (December 30, 2013) ("[Initiation Notice](#)"). The companies under review are: Hunan Valin Xiangtan Iron & Steel Co., Ltd. ("Hunan Valin") and Zhengzhou Shangdao Iron & Steel Co. ("Zhengzhou Shangdao").



Background

On November 1, 2013, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on CTL plate from the PRC.² On December 2, 2013, Nucor Corporation (“Petitioner”) requested a review of two companies (*i.e.*, Hunan Valin and Zhengzhou Shangdao).³ On December 30, 2013, the Department initiated a review of these two companies.⁴

On January 6, 2014, the Department sent the antidumping duty questionnaire to Hunan Valin and Zhengzhou Shangdao.⁵ On January 14, 2014, Hunan Valin submitted a letter stating that it had no exports or sales of subject merchandise to the United States during the POR.⁶ Although Zhengzhou Shangdao received the Department’s antidumping duty questionnaire,⁷ it did not respond to any section of the questionnaire, nor did it provide a separate rate application or statement of no-shipments.

On May 5, 2014, the Department sent a request to CBP to provide any information that it might have regarding any imports of subject merchandise from Hunan Valin during the POR.⁸ The Department received no information from CBP that there were imports of Hunan Valin’s subject merchandise during the POR. In addition, the Department conducted its own CBP data query, which indicated that there were no entries of subject merchandise from Hunan Valin during the POR.⁹ The Department invited interested parties to comment on the results of the CBP data query; however, no parties filed comments. On July 9, 2014, the Petitioner filed comments for consideration in the preliminary results of this review.¹⁰

Scope of the Order

The product covered by the order is certain cut-to-length carbon steel plate from the PRC. Included in this description is hot-rolled iron and non-alloy steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters (“mm”) but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and

² See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review, 78 FR 65612 (November 1, 2013).

³ See Letter from Petitioner to the Department of Commerce, Re: “Certain Cut-to-Length Carbon Steel Plate from the People’s Republic of China: Request for Administrative Review,” dated December 2, 2013.

⁴ See Initiation Notice.

⁵ See Letter from the Department to Zhengzhou Shangdao dated January 6, 2014; see also Letter from the Department to Hunan Valin dated January 6, 2014.

⁶ See Letter from Hunan Valin to the Department of Commerce, Re: “Certain Cut-to-Length Carbon Steel Plate from the People’s Republic of China: Notice of Appearance,” dated January 14, 2014 (“Hunan Valin No Shipment Certification”).

⁷ See Memorandum from Jonathan Hill to the File, Re: “Antidumping Duty Questionnaire Delivery Confirmation: Zhengzhou Shangdao Iron & Steel Co.,” dated April 10, 2014.

⁸ See CBP Message Number 4125301 dated May 5, 2014 (“CBP No Shipment Inquiry”).

⁹ See Memorandum from Patrick O’Connor to the File, Re: “Antidumping Duty Administrative Review of Certain Cut-to-Length Carbon Steel Plate from the People’s Republic of China,” dated June 20, 2014 (“CBP Query Results Letter”).

¹⁰ See Letter from Petitioner to the Department, Re: “Certain Cut-to-Length Carbon Steel Plate from the People’s Republic of China: Pre-Preliminary Comments,” dated July 9, 2014 (“Petitioner’s Pre-Prelim Comments”).

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

DISCUSSION OF THE METHODOLOGY

Preliminary Determination of No Shipments

Hunan Valin submitted a timely-filed certification that it had no shipments of subject merchandise during the POR,¹¹ and U.S. import data did not show any POR entries of Hunan Valin’s subject merchandise.¹² In addition, CBP did not provide any evidence that is contradictory to Hunan Valin’s claim of no shipments in response to our no shipment inquiry asking CBP for such information.¹³

Thus, given that Hunan Valin certified that it made no shipments of subject merchandise to the United States during the POR and CBP information does not call this claim into question, we preliminarily determine that Hunan Valin did not have any reviewable transactions during the POR. In addition, consistent with its refinement to its assessment practice in non-market economy (“NME”) cases, the Department finds that it is not appropriate to rescind the review with respect to Hunan Valin in these circumstances but, rather, to complete the review with respect to Hunan Valin and issue appropriate instructions to CBP based on the final results of the review.¹⁴

Separate Rates

As noted in the background section above, although Zhengzhou Shangdao received the Department’s antidumping duty questionnaire, it did not respond to any section of the questionnaire, nor did it provide a separate rate application or statement of no-shipments.

¹¹ See Hunan Valin No Shipment Certification

¹² See CBP Query Results Letter.

¹³ See CBP No Shipment Inquiry.

¹⁴ See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties, 76 FR 65694 (October 24, 2011).

Since Zhengzhou Shangdao did not respond to the questionnaire and did not provide separate rate information, it has not established its eligibility for separate rate status. Thus, we are preliminarily treating Zhengzhou Shangdao as part of the PRC-wide entity.

Application of Adverse Facts Available

Section 776(a)(2) of the Act provides, among other things, that, if an interested party withholds information that has been requested by the Department, or significantly impedes a proceeding, the Department shall use facts otherwise available in reaching the applicable determination. As noted above, the PRC-wide entity, which includes Zhengzhou Shangdao, withheld information requested by the Department (i.e., the information requested by the Department in the questionnaire that it issued to Zhengzhou Shangdao). Moreover, this failure to provide requested information significantly impeded the proceeding. As a result, pursuant to section 776(a)(2)(A) and (C) of the Act, we find it appropriate to base the dumping margin for the PRC-wide entity on facts available.¹⁵

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information.¹⁶ Because the PRC-wide entity, including Zhengzhou Shangdao, did not respond to the Department's request for information, the Department concludes that the PRC-wide entity refused to cooperate. Thus, we find that the PRC-wide entity failed to cooperate to the best of its ability. Therefore, the Department preliminarily finds that when selecting a dumping margin for the PRC-wide entity from among the facts otherwise available, it is appropriate to employ an adverse inference.

Section 776(b) of the Act and 19 CFR 351.308(c)(1) provide that the Department's adverse inference "may include reliance on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any other information placed on the record." In selecting a rate for use as AFA, the Department selects a rate that is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner."¹⁷ Furthermore, it is the Department's practice to ensure "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."¹⁸ In implementing this principle, the Department's practice is to select "the highest rate on the record

¹⁵ See Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam, 68 FR 4986, 4991-4992 (January 31, 2003), unchanged in Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 68 FR 37116, 37120 (June 23, 2003).

¹⁶ See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon-Quality Steel Products From the Russian Federation, 65 FR 5510, 5518 (February 4, 2000); see also "Statement of Administrative Action," accompanying the URAA, H.R. Rep. No. 103-316, 870 (1994) ("SAA").

¹⁷ See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan, 63 FR 8909, 8932 (February 23, 1998).

¹⁸ See SAA at 870; Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review, 70 FR 69937, 69939 (November 18, 2005).

of the proceeding”¹⁹ that can be corroborated, to the extent practicable.²⁰ The highest dumping margin on the record of this proceeding is 128.59 percent, which is a dumping margin calculated for a respondent in the underlying investigation.²¹

Corroboration of Secondary Information Used as AFA

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.²²

“Corroborate” means that the Department will satisfy itself that the secondary information to be used has probative value.²³ To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used.²⁴ Independent sources used to corroborate such information may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation or review.²⁵

The highest dumping margin on the record of this proceeding, 128.59 percent, is based on data submitted by the respondents in the less than fair value (“LTFV”) investigation in this proceeding. As the only source for calculated margins is administrative determinations, it is not necessary to question the reliability of a calculated dumping margin from a prior segment of a proceeding. Furthermore, the calculation of this margin was subject to comment from interested parties in the LTFV investigation.

As for the relevance of the 128.59 percent rate, this rate is the rate currently applicable to the PRC-wide entity. Moreover, no information has been presented in the current review that calls into question the relevance of this rate. Petitioner contends that the Department should increase the dumping margin assigned to Zhengzhou Shangdao beyond 128.59 percent

¹⁹ See Certain Frozen Warmwater Shrimp from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 73 FR 39940, 39942 (July 11, 2008).

²⁰ See Fujian Lianfu Forestry Co., Ltd. v. United States, 638 F. Supp. 2d 1325, 1336 (Ct. Int’l Trade 2009).

²¹ See Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the People’s Republic of China, 62 FR 61964, 61966 (November 20, 1997).

²² See SAA at 870.

²³ Id.

²⁴ See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished From Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter, and Components Thereof, From Japan: Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 61 FR 57391, 57392 (November 6, 1996), unchanged in Tapered Roller Bearings and Parts Thereof, Finished and Unfinished From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan: Final Results of Antidumping Duty Administrative Reviews and Termination in Part, 62 FR 11825, 11826 (March 13, 1997).

²⁵ See Notice of Preliminary Determination of Sales at Less Than Fair Value: High and Ultra-High Voltage Ceramic Station Post Insulators from Japan, 68 FR 35627, 35628-35629 (June 16, 2003), unchanged in Notice of Final Determination of Sales at Less Than Fair Value: High and Ultra-High Voltage Ceramic Station Post Insulators from Japan, 68 FR 62560-62561 (November 5, 2003); Notice of Final Determination of Sales at Less Than Fair Value: Live Swine From Canada, 70 FR 12181, 12183-84 (March 11, 2005).

because the PRC-wide rate of 128.59 percent is not sufficient to induce cooperation, given that Zhengzhou Shangdao continued to ship significant amounts of CTL plate and yet did not cooperate by participating in this administrative review.²⁶ However, this argument does not address the relevance of the 128.59 percent rate to the PRC-wide entity as a whole. Moreover, Petitioner's argument relies solely upon its claim that Zhengzhou Shangdao continued to export significant amounts of subject merchandise to the United States during the POR. Yet Petitioner did not place any evidence on the record to support this claim. Further, although Petitioner urges the Department to increase Zhengzhou Shangdao's cash deposit rate beyond the PRC-wide rate of 128.59 percent, Zhengzhou Shangdao is not entitled to a separate rate apart from the PRC-wide rate for the reasons explained above. Thus, it would not be appropriate to assign Zhengzhou Shangdao its own rate as requested by Petitioner.

As there is no information on the record of this review that demonstrates that this rate is not relevant to the PRC-wide entity, and, as discussed above, we find this rate reliable, we have corroborated the 128.59 percent rate to the extent practicable.²⁷ Thus, consistent with the statute, court precedent, and the Department's practice, we are continuing to apply a rate of 128.59 percent to the PRC-wide entity, including Zhengzhou Shangdao, for these preliminary results of review.

Duty Evasion

Petitioner argues that because Zhengzhou Shangdao continued to export significant amounts of subject merchandise during the POR despite the antidumping duty rate in effect for the PRC-wide entity, it could be evading the Order by undervaluing its entries or misreporting entry types. Petitioner urges the Department to obtain CBP data with respect to Zhengzhou Shangdao's POR entries, to ensure that it not evading the Order.²⁸

We have not obtained CBP data as requested by Petitioner. As noted above, Petitioner did not place any evidence on the record to support its claim that Zhengzhou Shangdao continued to export significant amounts of subject merchandise to the United States during the POR. Therefore, we do not believe that there is a basis for obtaining new factual information at this stage in the review.

²⁶ See Petitioner's Pre-Prelim Comments.

²⁷ See Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China, 62 FR 61964, 61966 (November 20, 1997) unchanged in Amended Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China, 63 FR 1821 (January 8, 1998)

²⁸ See Petitioner's Pre-Prelim Comments.

RECOMMENDATION

We recommend applying the above methodology for the preliminary results of review.

Agree

Disagree

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement & Compliance

(Date)