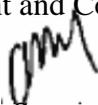




A-570-849
Administrative Review
11/01/2014 - 10/31/2015
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August 05, 2016

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 the Preliminary Results of the
Antidumping Duty Administrative Review of 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 (“AD”) order on certain cut-to-length carbon steel plate (“CTL plate”) from the People’s Republic of China (“PRC”) covering the period of review (“POR”) November 1, 2014, through October 31, 2015. The Department initiated this review with respect to 16 companies¹ but is now rescinding the review of 14 of these companies based on timely withdrawals of all requests to review those companies. With regard to the remaining two companies, the Department preliminarily finds that one company made no shipments of subject merchandise during the POR, and the other company has not demonstrated its eligibility for separate rate status, and, thus, is part of the PRC-wide entity.

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”) and 19 CFR 351.213(h).

¹ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 81 FR 736 (January 7, 2016) (“Initiation Notice”).



BACKGROUND

On November 3, 2015, the Department published a notice of opportunity to request an administrative review of the AD order on CTL plate from the PRC.² On November 30, 2015, Hunan Valin Xiangtan Iron and Steel Co., Ltd. (“Hunan Valin”) requested an administrative review of subject merchandise that it exported during the POR, and Nucor Corporation (“Petitioner”) requested an administrative review of subject merchandise exported by 16 companies, including Hunan Valin. On January 7, 2016, the Department initiated the requested review.³

On January 15, 2016, one respondent, Wuyang Iron & Steel Co., Ltd. (“Wuyang Steel”) submitted a letter to the Department stating that it had no exports, sales, or entries of the subject merchandise to the United States during the POR.⁴ On January 27, 2016, Petitioner commented on Wuyang Steel’s No Shipment Letter.⁵

On January 21, 2016, the Department placed on the record CBP data which it requested (“CBP Query Data”) for any entries of subject merchandise during the POR from companies for which the instant review was initiated.⁶ On February 5, 2016, Petitioner commented on the CBP Query Data.⁷

On February 12, 2016, the Department issued its AD questionnaire to Hunan Valin.⁸ On March 14, 2016, Hunan Valin notified the Department that it would not respond to the AD questionnaire.⁹ On March 24, 2016, Petitioner filed comments regarding Hunan Valin’s Non-Participation Letter.¹⁰ On April 29, 2016, Petitioner placed additional comments on the record regarding Hunan Valin.¹¹

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 80 FR 67706 (November 3, 2015).

³ See *Initiation Notice*.

⁴ See Letter from Wuyang Steel to the Secretary of Commerce “*Administrative Review of Certain Cut-to-Length Carbon Steel Plate from China: Wuyang Iron & Steel’s No Shipment Certification*,” dated January 15, 2016 (“Wuyang No Shipment Letter”).

⁵ See Letter from Petitioner to the Secretary of Commerce “*Certain Cut-to-Length Carbon Steel from the People’s Republic of China: Comments on No Shipment Letter*,” dated January 27, 2016 (“Petitioner’s No Shipment Comments”).

⁶ See Letter from Howard Smith, Program Manager, AD/CVD Operations, Office IV, Enforcement & Compliance to interested parties dated January 21, 2016 (“CBP Query Data”).

⁷ See Letter from Petitioner to the Secretary of Commerce “*Certain Cut-to-Length Carbon Steel from the People’s Republic of China: Comments on Results of CBP Results*,” dated February 5, 2016 (“Petitioner’s CBP Comments”).

⁸ See Letter from Howard Smith, Program Manager, AD/CVD Operation, Office IV to Hunan Valin dated February 12, 2016 (“AD questionnaire”).

⁹ See Letter from Hunan Valin to the Secretary of Commerce “*Certain Cut-to-Length Carbon Steel Plate from The People’s Republic of China*; Hunan Valin Xiangtan Iron and Steel Co., Ltd.’s Letter Regarding Participation in Review,” dated March 14, 2016 (“Hunan Valin Non-Participation Letter”).

¹⁰ See Letter from SSAB Enterprises LLC and Petitioner to the Secretary of Commerce “*Certain Cut-To Length Carbon Steel Plate from the People’s Republic of China: Comments on Hunan Valin’s Withdrawal*,” dated March 24, 2016 (“Petitioner’s Comments on Withdrawal”).

¹¹ See Letter from SSAB Enterprises LLC and Petitioner to the Secretary of Commerce “*Certain Cut-To Length Carbon Steel Plate from the People’s Republic of China: Request to Suspend Hunan Valin’s Type 01 Entries*,” dated April 29, 2016 (“Petitioner’s Suspension Request”).

On April 6, 2016, Petitioner timely withdrew its request to review 14 or the 16 companies for which the Department initiated the review.¹² Petitioner did not withdraw its request to review Hunan Valin and Wuyang Steel.

The Department has exercised its discretion to toll all administrative deadlines due to the closure of the Federal Government because of Snowstorm “Jonas”. Thus, all of the deadlines in this segment of the proceeding have been extended by four business days. The revised deadline for the preliminary results of review is now August 5, 2016.¹³

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 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.

PARTIAL RESCISSION

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if a party that requested the review withdraws its request within 90 days of the date of publication of the notice of initiation of the requested review. Nucor Corporation (“Petitioner”), the only party to request a review of 15 of the companies for which the review was initiated, withdrew its request for an administrative review of 14 of these companies within 90 days of the date of publication of *Initiation Notice*.¹⁴ Accordingly, the Department is

¹² See Letter from Petitioner to the Secretary of Commerce “*Certain Cut-To-Length Carbon Steel Plate from the People’s Republic of China: Withdrawal of Request for Administrative Review*,” dated April 6, 2016.

¹³ See Memorandum to the Record from Ron Lorentzen, Acting Assistant Secretary for Enforcement & Compliance, regarding “Tolling of Administrative Deadlines as a Result of the Government Closure during Snowstorm Jonas,” dated January 27, 2016.

¹⁴ See Letter from Petitioner to the Secretary of Commerce “*Certain Cut-To-Length Carbon Steel Plate from the People’s Republic of China: Withdrawal of Request for Administrative Review*,” dated April 6, 2016.

rescinding this review, in part, with respect to 14 of the 16 companies under review, in accordance with 19 CFR 351.213(d)(1).¹⁵ Hunan Valin and Wuyang Steel remain under review.

DISCUSSION OF THE METHODOLOGY

Non-Market Economy Country Status

The Department considers the PRC to be a non-market economy (“NME”) country.¹⁶ In accordance with section 771(18)(C)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by the administering authority.¹⁷ None of the parties to this proceeding contested NME treatment for the PRC. Therefore, for the preliminary results of this review, we treated the PRC as an NME country and applied our current NME methodology in accordance with section 773(c) of the Act.

Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the NME country are subject to government control and, thus, should be assigned a single weighted-average dumping margin. It is the Department’s policy to assign all exporters of merchandise subject to an administrative review involving an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. In the *Initiation Notice*, we informed parties that all firms for which the review was initiated that wished to qualify for separate rate status must complete, as appropriate, either a separate rate application or certification.¹⁸ We also informed parties that exporters and producers who submit a separate-rate status application or certification and subsequently are selected as mandatory respondents, would no longer be eligible for separate rate status unless they responded to all parts of the questionnaire as mandatory respondents.¹⁹

As noted above, Hunan Valin did not respond to the AD questionnaire. As such, it has not established its eligibility for separate rate status and continues to be part of the PRC-wide entity. Because no party requested a review of the PRC-wide entity, the entity is not under review and the entity’s rate is not subject to change.²⁰ Therefore, if our determination is unchanged in the

¹⁵ See the accompanying *Federal Register* notice for a list of these 14 companies.

¹⁶ See, e.g., *Fresh Garlic from the People’s Republic of China: Preliminary Results of the 2009-2010 Antidumping Duty Administrative Review*, 76 FR 76375 (December 7, 2011), unchanged in *Fresh Garlic from the People’s Republic of China: Final Results of the 2009-2010 Administrative Review of the Antidumping Duty Order*, 77 FR 34346 (June 11, 2012).

¹⁷ See *Brake Rotors from the People’s Republic of China: Preliminary Results and Partial Rescission of the 2004-2005 Administrative Review and Preliminary Notice of Intent To Rescind the 2004-2005 New Shipper Review*, 71 FR 26736 (May 8, 2006), unchanged in *Brake Rotors from the People’s Republic of China: Final Results and Partial Rescission of the 2005-2005 Administrative Review and Notice of Rescission of 2004-2005 New Shipper Review*, 71 FR 66304 (November 14, 2006).

¹⁸ See *Initiation Notice*, 81 FR at 737.

¹⁹ *Id.*

²⁰ See *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963 (November 4, 2013).

final results, Hunan Valin's entries will be liquidated at the rate previously established for the PRC-wide entity, which is 128.59 percent.²¹

Preliminary Determination of No Shipments

Wuyang Steel submitted a timely-filed certification that it had no exports, sales, or entries of subject merchandise during the POR, and the results of the Department's CBP query did not show any POR entries of Wuyang Steel's subject merchandise.²² In addition, CBP did not identify any entries of subject merchandise from Wuyang Steel during the POR in response to our no shipment inquiry asking CBP for such information.²³

Petitioner states that certain data call into question Wuyang Steel's claim that it did not ship subject merchandise to the United States during the POR.²⁴ Petitioner notes that given the rapid increase in U.S. imports of Chinese CTL plate despite high AD duties of 128.59 percent for the PRC-wide entity (*i.e.*, a 33 percent increase in 2015 from 2014 based on data from the Steel Import and Monitoring Analysis System ("SIMA")), a decreasing average unit value of U.S. imports of CTL plate from the PRC (*i.e.*, 39 percent decrease in 2015 from 2014), and Wuyang Steel's documented history of circumventing this order,²⁵ the Department should request that Wuyang Steel provide its 7501 entry packets and mill test certificates for each shipment of CTL plate during the POR to ensure that Wuyang Steel has not shipped any subject merchandise during the POR. While Petitioner concludes that such concerns warrant further investigation of Wuyang Steel's no shipments claim, for the reasons explained below in the section "*Allegation of Duty Evasion*" we have not requested additional information from Wuyang Steel.

Additionally, even though Petitioner argues that the data from its secondary source show POR shipments which may be subject merchandise, when determining whether entries were made, the Department's practice is to use CBP data because they are a primary, as opposed to a secondary, source, which may be prone to errors in the data collection and aggregation process. Moreover, the Department weighs CBP data more heavily because they contain the actual entry information for shipments. The data that Petitioner put on the record reflect secondary information, derived from shipping manifests, and are not necessarily a representation of products that have entered for consumption. Also, the data from the secondary sources which Petitioner cited in its claim that purportedly call into question Wuyang Steel's claim of no shipments of subject merchandise during the POR do not clearly indicate that the merchandise is subject merchandise.²⁶ For example, the description of the imported products in Petitioner's SIMA query includes "Alloy Steel Plate" and there is no way

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 (November 20, 1997).

²² See Wuyang No Shipment Letter; see also CBP Query Data.

²³ See CBP Message Number 6155301 dated June 3, 2016.

²⁴ See generally Petitioner's No Shipment Comments; see also BPI Memorandum at Notes 1 and 2.

²⁵ See *Affirmative Final Determination of Circumvention of the Antidumping Duty Order on Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China*, 76 FR 50996 (August 17, 2011) (affirmative final determination of circumvention of the AD order); see also BPI Memorandum at Note 1.

²⁶ See Petitioner's No Shipment Comments at Exhibit 1; see also BPI Memorandum at Note 2.

to determine what quantities of subject CTL plate, if any, may be reflected in this query.²⁷ Thus, we find that the CBP data are a more reliable source.

Given that Wuyang Steel certified that it made no shipments of subject merchandise to the United States during the POR and there is no CBP information calling this claim into question, we preliminarily determine that Wuyang Steel did not have any reviewable transactions during the POR. However, consistent with our practice in NME cases, the Department finds that it is not appropriate to rescind the review with respect to Wuyang Steel in these circumstances but, rather, to complete the review with respect to Wuyang Steel and issue appropriate instructions to CBP based on the final results of the review.²⁸

Allegation of Duty Evasion

Petitioner placed documentation on the record from SIMA demonstrating that approximately 60,000 tons of CTL plate from China were shipped to the United States during 2015, despite antidumping duties of 128.59 percent for the PRC-wide entity.²⁹ Petitioner also provided secondary information from a third-party subscription service and claimed that the CBP Query Data results are incorrect with regard to Hunan Valin's shipments of CTL plate during the POR and Wuyang Steel's no shipments claim.³⁰ Petitioner argues that the record information suggests that both companies under review could be evading the order by misreporting entry types, and given that certain PRC exporters have a history of circumventing the order, Petitioner urges the Department to obtain CBP entry documents with respect to the entries of CTL plate of Hunan Valin and Wuyang Steel, to determine whether these companies misclassified subject merchandise entries as non-subject merchandise entries.

Furthermore, Petitioner urges the Department to request that CBP suspend the liquidation of Hunan Valin's plate that entered into the United States and was reported as non-subject merchandise during the POR.³¹ Should the Department determine that such entries are in fact subject merchandise, the Department should use the data to calculate the AD margin to take such misclassifications into account in accordance with Department precedent. Petitioner relies upon *Shrimp from the PRC 12-13* and *Hubbell* to support its request that the Department instruct CBP to suspend Hunan Valin's entries in question during the POR.

As an initial matter, it is important to note that while the Department has the legal authority to direct CBP to suspend liquidation of entries that are subject to an AD and/or countervailing duty (CVD) order or investigation, the entries in question have not been declared as subject to an AD

²⁷ See Petitioner's No Shipment Comments at Exhibit 1.

²⁸ See *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011).

²⁹ See Petitioner's No Shipment Comments at Exhibit 2.

³⁰ See Petitioner's CBP Comments at Exhibits 4 and 5; see also BPI Memorandum at Note 3.

³¹ See Petitioner's Suspension Request where Petitioner's cite *Certain Frozen Warmwater Shrimp from Brazil: Notice of Rescission of Antidumping Duty Administrative Review*, 73 FR 33976 (June 16, 2008) ("*Shrimp from Brazil*"); *Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 2012-2013*, 79 FR 57872 (September 26, 2014) ("*Shrimp from the PRC 12-13*"); and *Hubbell Power Systems, Inc. v. United States*, 884 F. Supp. 2d 1283, (Court of International Trade 2012) ("*Hubbell*").

