



A-570-047
Administrative Review
POR: 3/1/2018 – 2/28/2019
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March 27, 2020

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Results of the
Antidumping Duty Administrative Review of Certain Carbon and
Alloy Steel Cut-To-Length Plate from the People’s Republic of
China; 2018-2019

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on certain carbon and alloy steel cut-to-length plate (CTL plate) from the People’s Republic of China (China). The period of review (POR) is March 1, 2018 through February 28, 2019. The review covers one producer/exporter of subject merchandise, Jiangsu Tiangong Tools Company LTD (TG Tools). As discussed below, Commerce preliminarily determines that TG Tools did not have a *bona fide* sale during the POR. As such, Commerce is preliminarily rescinding the administrative review.

II. BACKGROUND

On March 20, 2017, Commerce published in the *Federal Register* the AD order on CTL plate from China.¹ On May 29, 2019, Commerce initiated an administrative review with respect to TG Tools.² We issued the standard non-market economy AD questionnaire to TG Tools on May 29, 2019.³

Between June and December 2019, TG Tools submitted timely responses to Commerce’s original and supplemental sections A, C, D questionnaires, as well as to an initial and

¹ See *Certain Carbon and Alloy Steel Cut-to-Length Plate from the People’s Republic of China: Antidumping Duty Order*, 82 FR 14349 (March 20, 2017) (*Order*).

² See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 24743 (May 29, 2019).

³ See Commerce’s Letter, “Antidumping Duty Non-Market Economy Questionnaire,” dated May 29, 2019.

supplemental questionnaire requesting information from TG Tools' importer.⁴ We received timely comments from ArcelorMittal USA LLC (the petitioner) regarding TG Tool's initial questionnaire responses and importer questionnaire response.⁵

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), Commerce determined that it was not practicable to complete the preliminary results of this review within the 245 days and extended the preliminary results by 117 days. The revised deadline for these preliminary results is March 27, 2020.

In March 2020, we also received timely pre-preliminary results comments from the petitioner and TG Tools.⁶

III. SCOPE OF THE ORDER

The products covered by this order are certain carbon and alloy steel hot-rolled or forged flat plate products not in coils, whether or not painted, varnished, or coated with plastics or other non-metallic substances (cut-to-length plate). Subject merchandise includes plate that is produced by being cut-to-length from coils or from other discrete length plate and plate that is rolled or forged into a discrete length. The products covered include (1) universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a thickness of not less than 4 mm, which are not in coils and without patterns in relief), and (2) hot-rolled or forged flat steel products of a thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are not in coils, whether or not with patterns in relief. The covered products described above may be rectangular, square, circular or other shapes and include products of either rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been "worked after rolling" (*e.g.*, products which have been beveled or rounded at the edges).

⁴ See TG Tools' June 26, 2019 Section A Questionnaire Response; TG Tools' July 12, 2019 Section C Questionnaire Response; TG Tools' July 10, 2019 Section D Questionnaire Response; *see also* TG Tools' Letter, "Administrative Review of the Antidumping Duty Order on Cut-To-Length Plate: Response to the Importer-Specific Questionnaire," dated November 1, 2019; and TG Tools' Letter, "Administrative Review of the Antidumping Duty Order on Cut-To-Length Plate: Response to the Supplemental Importer-Specific Questionnaire," dated December 27, 2019.

⁵ See Petitioner's Letter, "Administrative Review of Carbon and Alloy Steel Cut-To-Length Plate from the People's Republic of China – Petitioner's Comments on TG Tools' Section A Questionnaire Response," dated July 17, 2019 (Petitioner's July 17, 2019 Comments); Petitioner's Letter, "Administrative Review of Carbon and Alloy Steel Cut-To-Length Plate from the People's Republic of China – Petitioner's Comments on TG Tools' Section C Questionnaire Response," dated July 29, 2019 (Petitioner's July 29, 2019 Comments); Petitioner's Letter, "Carbon And Alloy Steel Cut-to-Plate from People's Republic of China – Petitioner's Comments on TG Tools' Section D Questionnaire Response," dated August 7, 2019; and Petitioner's Letter, "Administrative Review of the Antidumping Duty Order on Carbon and Alloy Steel Cut-to-Length Plate from the People's Republic of China - Petitioner's Comments on TG Tools' Importer Questionnaire Response," dated November 19, 2019 (Petitioner's November 19, 2019 Comments).

⁶ See Petitioner's Letter, "Certain Carbon and Alloy Steel Cut-To-Length Steel Plate from the People's Republic of China – Petitioner's Pre-Preliminary Results Comments and Rebuttal to TG Tools' Final Surrogate Value Submission," dated March 6, 2020; and TG Tools' Letter, "Administrative Review of the Antidumping Duty Order on Cut-To-Length Plate: Pre-Preliminary Results Comments," dated March 16, 2020.

For purposes of the width and thickness requirements referenced above, the following rules apply:

(1) except where otherwise stated where the nominal and actual thickness or width measurements vary, a product from a given subject country is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above unless the product is already covered by an existing order (*e.g., Notice of the Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China*, 66 FR 59561 (November 29, 2001)); and

(2) where the width and thickness vary for a specific product (*e.g., the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.*), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this order are products in which: (1) iron predominates, by weight, over each of the other contained elements; and (2) the carbon content is 2 percent or less by weight.

Subject merchandise includes cut-to-length plate that has been further processed in the subject country or a third country, including but not limited to pickling, oiling, levelling, annealing, tempering, temper rolling, skin passing, painting, varnishing, trimming, cutting, punching, beveling, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the order if performed in the country of manufacture of the cut-to-length plate.

All products that meet the written physical description, are within the scope of this order unless specifically excluded or covered by the scope of an existing order. The following products are outside of, and/or specifically excluded from, the scope of this order:

- (1) products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances;
- (2) military grade armor plate certified to one of the following specifications or to a specification that references and incorporates one of the following specifications:
 - MIL-A-12560,
 - MIL-DTL-12560H,
 - MIL-DTL-12560J,
 - MIL-DTL-12560K,
 - MIL-DTL-32332,
 - MIL-A-46100D,
 - MIL-DTL-46100-E,
 - MIL-46177C,
 - MIL-S-16216K Grade HY80,

- MIL-S-16216K Grade HY100,
- MIL-S-24645A HSLA-80;
- MIL-S-24645A HSLA-100,
- T9074-BD-GIB-010/0300 Grade HY80,
- T9074-BD-GIB-010/0300 Grade HY100,
- T9074-BD-GIB-010/0300 Grade HSLA80,
- T9074-BD-GIB-010/0300 Grade HSLA100, and
- T9074-BD-GIB-010/0300 Mod. Grade HSLA115,

except that any cut-to-length plate certified to one of the above specifications, or to a military grade armor specification that references and incorporates one of the above specifications, will not be excluded from the scope if it is also dual- or multiple-certified to any other non-armor specification that otherwise would fall within the scope of this order;

- (3) stainless steel plate, containing 10.5 percent or more of chromium by weight and not more than 1.2 percent of carbon by weight;
- (4) CTL plate meeting the requirements of ASTM A-829, Grade E 4340 that are over 305 mm in actual thickness;
- (5) Alloy forged and rolled CTL plate greater than or equal to 152.4 mm in actual thickness meeting each of the following requirements:

(a) Electric furnace melted, ladle refined & vacuum degassed and having a chemical composition (expressed in weight percentages):

- Carbon 0.23-0.28,
- Silicon 0.05-0.20,
- Manganese 1.20-1.60,
- Nickel not greater than 1.0,
- Sulfur not greater than 0.007,
- Phosphorus not greater than 0.020,
- Chromium 1.0-2.5,
- Molybdenum 0.35-0.80,
- Boron 0.002-0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm;

(b) With a Brinell hardness measured in all parts of the product including mid thickness falling within one of the following ranges:

- (i) 270-300 HBW,
- (ii) 290-320 HBW, or
- (iii) 320-350HBW;

(c) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.5, B not exceeding 1.0, C not exceeding 0.5, D not exceeding 1.5; and

(d) Conforming to ASTM A578-S9 ultrasonic testing requirements with acceptance criteria 2 mm flat bottom hole;

(6) Alloy forged and rolled steel CTL plate over 407 mm in actual thickness and meeting the following requirements:

(a) Made from Electric Arc Furnace melted, Ladle refined & vacuum degassed, alloy steel with the following chemical composition (expressed in weight percentages):

- Carbon 0.23-0.28,
- Silicon 0.05-0.15,
- Manganese 1.20-1.50,
- Nickel not greater than 0.4,
- Sulfur not greater than 0.010,
- Phosphorus not greater than 0.020,
- Chromium 1.20-1.50,
- Molybdenum 0.35-0.55,
- Boron 0.002-0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm;

(b) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.5, B not exceeding 1.5, C not exceeding 1.0, D not exceeding 1.5;

(c) Having the following mechanical properties:

(i) With a Brinell hardness not more than 237 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 75ksi min and UTS 95ksi or more, Elongation of 18% or more and Reduction of area 35% or more; having charpy V at -75 degrees F in the longitudinal direction equal or greater than 15 ft. lbs (single value) and equal or greater than 20 ft. lbs (average of 3 specimens) and conforming to the requirements of NACE MR01-75; or

(ii) With a Brinell hardness not less than 240 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 90 ksi min and UTS 110 ksi or more, Elongation of 15% or more and Reduction of area 30% or

more; having charpy V at -40 degrees F in the longitudinal direction equal or greater than 21 ft. lbs (single value) and equal or greater than 31 ft. lbs (average of 3 specimens);

(d) Conforming to ASTM A578-S9 ultrasonic testing requirements with acceptance criteria 3.2 mm flat bottom hole; and

(e) Conforming to magnetic particle inspection in accordance with AMS 2301;

(7) Alloy forged and rolled steel CTL plate over 407 mm in actual thickness and meeting the following requirements:

(a) Made from Electric Arc Furnace melted, ladle refined & vacuum degassed, alloy steel with the following chemical composition (expressed in weight percentages):

- Carbon 0.25-0.30,
- Silicon not greater than 0.25,
- Manganese not greater than 0.50,
- Nickel 3.0-3.5,
- Sulfur not greater than 0.010,
- Phosphorus not greater than 0.020,
- Chromium 1.0-1.5,
- Molybdenum 0.6-0.9,
- Vanadium 0.08 to 0.12
- Boron 0.002-0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm.

(b) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.0(t) and 0.5(h), B not exceeding 1.5(t) and 1.0(h), C not exceeding 1.0(t) and 0.5(h), and D not exceeding 1.5(t) and 1.0(h);

(c) Having the following mechanical properties: A Brinell hardness not less than 350 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 145ksi or more and UTS 160ksi or more, Elongation of 15% or more and Reduction of area 35% or more; having charpy V at -40 degrees F in the transverse direction equal or greater than 20 ft. lbs (single value) and equal or greater than 25 ft. lbs (average of 3 specimens);

(d) Conforming to ASTM A578-S9 ultrasonic testing requirements with acceptance criteria 3.2 mm flat bottom hole; and

(e) Conforming to magnetic particle inspection in accordance with AMS 2301.

Excluded from the scope of the antidumping duty order on cut-to-length plate from the People's Republic of China are any products covered by the existing antidumping duty order on certain cut-to-length carbon steel plate from the People's Republic of China. *See Suspension Agreement on Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China; Termination of Suspension Agreement and Notice of Antidumping Duty Order*, 68 Fed. Reg. 60,081 (Dep't Commerce Oct. 21, 2003), as amended, *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 Fed. Reg. 50,996, 50,996-97 (Dep't of Commerce Aug. 17, 2011). On August 17, 2011, the U.S. Department of Commerce found that the order covered all imports of certain cut-to-length carbon steel plate products with 0.0008 percent or more boron, by weight, from China not meeting all of the following requirements: aluminum level of 0.02 percent or greater, by weight; a ratio of 3.4 to 1 or greater, by weight, of titanium to nitrogen; and a hardenability test (*i.e.*, Jominy test) result indicating a boron factor of 1.8 or greater.

The products subject to the order are 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, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7225.40.1110, 7225.40.1180, 7225.40.3005, 7225.40.3050, 7226.20.0000, and 7226.91.5000. The products subject to the order may also enter under the following HTSUS item numbers: 7208.40.6060, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.19.1500, 7211.19.2000, 7211.19.4500, 7211.19.6000, 7211.19.7590, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7214.10.0000, 7214.30.0010, 7214.30.0080, 7214.91.0015, 7214.91.0060, 7214.91.0090, 7225.11.0000, 7225.19.0000, 7225.40.5110, 7225.40.5130, 7225.40.5160, 7225.40.7000, 7225.99.0010, 7225.99.0090, 7226.11.1000, 7226.11.9060, 7226.19.1000, 7226.19.9000, 7226.91.0500, 7226.91.1530, 7226.91.1560, 7226.91.2530, 7226.91.2560, 7226.91.7000, 7226.91.8000, and 7226.99.0180.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the order is dispositive.

IV. DISCUSSION OF THE METHODOLOGY

The sole issue addressed in these preliminary results is whether TG Tools made a reviewable sale during the POR. In this administrative review, the petitioner alleged that TG Tools' single sale of subject merchandise to the United States during the POR is non-*bona fide*. Specifically, petitioners alleged that TG Tools' sale was not of normal commercial quantities and pricing, and the timing of the sale was questionable.⁷ To address this issue we conducted a *bona fide* sales analysis.

When a respondent makes a single sale during the POR, it is appropriate for Commerce to evaluate whether the sale is commercially reasonable or typical of normal business practices and, therefore, *bona fide* for purposes of the AD law, in order to ensure that the respondent does not

⁷ See Petitioner's July 17, 2019 Comments at 2, 4-7; *see also* Petitioner's July 29, 2019 Comments; and Petitioner's November 19, 2019 Comments.

unfairly benefit from an atypical sale and obtain a lower dumping margin than the respondent's usual commercial practice would dictate.⁸ While Commerce routinely conducts a *bona fide* sales analysis in new shipper reviews using a "totality of the circumstances" test based on the criteria enumerated in section 751(a)(2)(B)(iv) of the Act, we have also looked to section 751(a)(2)(B)(iv) of the Act as guidance for conducting a *bona fides* analysis in administrative reviews.⁹ Further, the Court of International Trade has held that Commerce has the authority to conduct *bona fides* analyses in the context of an administrative review.¹⁰ Therefore, in this review, we have used as guidance for this examination the criteria laid out in section 751(a)(2)(B)(iv) of the Act to determine whether TG Tools' sole sale during the POR is a *bona fide* sale.

In evaluating whether a sale is commercially reasonable or typical of normal business practices and, therefore, *bona fide*, Commerce considers: (1) the price of the sale, (2) whether the sale was made in commercial quantities; (3) the timing of the sale; (4) the expenses arising from the transaction; (5) whether the goods were resold at a profit; (6) whether the transaction was made on an arm's-length basis; and (7) any other factor that Commerce considers to be relevant to whether the sale at issue is likely to be typical of those the exporter or producer will make after the completion of the review.¹¹ Accordingly, Commerce considers a number of factors in its *bona fides* analysis, "all of which may speak to the commercial realities surrounding an alleged sale of subject merchandise."¹² Finally, where Commerce finds that a sale is not *bona fide*, Commerce will exclude the sale from its dumping margin calculations.¹³ Where an administrative review is based upon a single sale, exclusion of that sale as non-*bona fide* necessarily will result in Commerce's rescinding the review.¹⁴

Based on the totality of the circumstances surrounding the single sale reported by TG Tools in this administrative review, we preliminarily determine that the sale is not a *bona fide* sale. In particular, Commerce preliminarily finds a number of relevant factors, including, but not limited to, the sale price and quantity, the profitability of the resold subject merchandise, and the importer/exporter experience and likelihood that the sale is atypical of a sale likely to be made in

⁸ See *Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d 1333, 1344 (CIT 2005) (citing *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review*, 67 FR 11283 (March 13, 2002)).

⁹ See *Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation: Final Results and Rescission of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 38948 (August 8, 2019), and accompanying Issues and Decision Memorandum (IDM) at Comment 1.

¹⁰ See, e.g., *Evonik Rexim (Nanning) Pharm. Co. v. United States*, 253 F. Supp. 3d 1364, 1370-71 (CIT 2017) (sustaining Commerce's application of the totality of the circumstances test and partial rescission of an administrative review); and *Windmill Int'l Pte., Ltd. v. United States*, 193 F. Supp. 2d 1303, 1306-1307 (CIT 2002).

¹¹ See *Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States*, 366 F. Supp. 2d 1246, 1249-50 (CIT 2005) (TTPC). Although section 751(a)(2)(B)(iv) of the Act, by its express terms, only applies to new shipper reviews, the factors listed in that provision overlap with the factors we examine in administrative reviews, as well.

¹² See *Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d 1333, 1342 (CIT 2005) (citing *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review*, 67 FR 11283 (March 13, 2002), and accompanying IDM at New Shipper Review of Clipper Manufacturing Ltd.).

¹³ See TTPC, 366 F. Supp. 2d at 1249.

¹⁴ *Id.*; see also, e.g., *Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission of Administrative Review, in Part; 2015-2016*, 82 FR 47474 (October 12, 2017).

the future. Because our analysis involves the discussion of business proprietary information, we have included a full discussion of our preliminary analysis in a separate memorandum.¹⁵

Because we preliminarily find that this single POR sale is not a *bona fide* sale, we cannot rely on this sale to calculate a dumping margin in this administrative review. Given the determination that there was no *bona fide* sale during the POR, there is no sale upon which we can base this review. Accordingly, Commerce is preliminarily rescinding this administrative review with respect to TG Tools.

V. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

Agree

Disagree

3/27/2020

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

¹⁵ See Memorandum, “Administrative Review of Certain Carbon and Alloy Steel Cut-To-Length from the People’s Republic of China: Analysis of the *Bona Fides* of TG Tools’ Sale,” dated concurrently with this memorandum.