

(7) Prohibit the export of "Schedule 1" chemicals to States not Party to the Convention (15 CFR 742.18(a)(1) and (b)(1)(ii)).

Discussion and Request for Comments

In order to assist in determining whether the legitimate commercial activities and interests of chemical, biotechnology, and pharmaceutical firms in the United States are being significantly harmed by the limitations of the Convention on access to, and production of, "Schedule 1" chemicals, BIS is seeking public comments on any effects that implementation of the Chemical Weapons Convention, through the Chemical Weapons Convention Implementation Act and the Chemical Weapons Convention Regulations, has had on commercial activities involving "Schedule 1" chemicals through calendar year 2006.

Submission of Comments

All comments must be submitted to the address indicated in this notice. The Department requires that all comments be submitted in written form.

The Department encourages interested persons who wish to comment to do so at the earliest possible time. The period for submission of comments will close on December 8, 2006. The Department will consider all comments received before the close of the comment period. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them. All comments submitted in response to this notice will be a matter of public record and will be available for public inspection and copying.

The Office of Administration, Bureau of Industry and Security, U.S. Department of Commerce, displays public comments on the BIS Freedom of Information Act (FOIA) Web site at <http://www.bis.doc.gov/foia>. This office does not maintain a separate public inspection facility. If you have technical difficulties accessing this Web site, please call BIS's Office of Administration, at (202) 482-1093, for assistance.

Dated: November 1, 2006.

Christopher A. Padilla,
Assistant Secretary for Export Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-549-817]

Certain Hot-Rolled Carbon Steel Flat Products From Thailand; Preliminary Results of Antidumping Duty Administrative Review and Rescission in Part

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

SUMMARY: In response to requests from United States Steel Corporation (petitioner), and Nucor Corporation (Nucor), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain hot-rolled carbon steel flat products (hot-rolled steel) from Thailand. This administrative review covers imports of subject merchandise produced and exported by Nakornthai Strip Mill Public Co., Ltd. (NSM), Sahaviriya Steel Industries Public Co., Ltd. (SSI), and G Steel Public Co., Ltd. (G Steel).

We preliminarily determine that sales of subject merchandise by NSM have been made at not less than normal value (NV). In addition, we are preliminarily rescinding this review with respect to G Steel because it reported, and we confirmed, that it did not make shipments of subject merchandise to the United States during the period of review (POR). See *Partial Rescission of Administrative Review* below. Further, on April 28, 2006, the Department rescinded this review with respect to SSI in accordance with 19 CFR 351.213(d)(1) because petitioner and Nucor withdrew their requests for administrative review within the 90-day deadline and no other party requested a review of SSI. See *Partial Rescission of Antidumping Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from Thailand*, 71 FR 25148 (April 28, 2006).

If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on appropriate entries based on the difference between the export price (EP) and the NV. Interested parties are invited to comment on these preliminary results.

DATES: Effective Date: November 8, 2006.

FOR FURTHER INFORMATION CONTACT: Stephen Bailey or Richard Weible, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-0193 or (202) 482-1103, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 29, 2001, the Department published the antidumping duty order on hot-rolled steel from Thailand. See *Notice of Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products From Thailand*, 66 FR 59562 (November 29, 2001) (*Hot-Rolled Steel Order*). On November 1, 2005, the Department published the opportunity to request administrative review of, *inter alia*, hot-rolled steel from Thailand for the period November 1, 2004, through October 31, 2005. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 70 FR 65883 (November 1, 2005).

In accordance with 19 CFR 351.213(b)(1), on November 30, 2005, petitioner and Nucor requested that we conduct an administrative review of SSI's sales of the subject merchandise, while in the same letter petitioner requested that we also review sales of NSM and G Steel. On December 22, 2005, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review covering the period November 1, 2004, through October 31, 2005. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 76024 (December 22, 2005).

On January 3, 2006, the Department issued its antidumping duty questionnaire to NSM, SSI, and G Steel. On January 13, 2006, G Steel submitted a no-shipment certification letter to the Department indicating that it had no sales of subject merchandise during the POR and requested a rescission of the administrative review. NSM submitted its section A questionnaire response (section A response) on February 14, 2006, and its sections B & C questionnaire responses on February 21, 2006 (sections B&C response). On March 7, 2006, the Department informed NSM by telephone that because a below cost allegation had not been made against NSM, and NSM did not participate in any previous administrative review or

the original investigation of the antidumping duty order, NSM was not required to submit a Section D response at that time. See section 773(b)(2)(A)(i)(ii) of the Tariff Act of 1930, as amended (the Act), and § 351.406 of the Department's Regulations. During this same telephone conversation, NSM informed the Department that it still intended to submit a section D response on behalf of NSM and did so on March 7, 2006 (section D response).¹

On March 22, 2006, petitioner and Nucor withdrew their requests for administrative review with respect to SSI. Because petitioner and Nucor withdrew their requests for an administrative review for SSI on March 22, 2006, which was within the 90-day deadline mandated by 19 CFR 351.213(d)(1), and no other party requested a review of SSI, the Department rescinded the administrative review with respect to SSI.² See *Partial Rescission of Antidumping Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from Thailand*, 71 FR 25148 (April 28, 2006).

On March 27, 2006, petitioner and Nucor requested that the Department initiate a sales-below-cost investigation of home market sales made by NSM, which the Department did on April 24, 2006. See the Department's April 24, 2006 Memorandum to the File from Stephen Bailey, Case Analyst, to Richard Weible, Office Director, (Cost Initiation Memorandum).

The Department issued a supplemental sections A through C questionnaire to NSM on April 10, 2006, and received NSM's response (sections A through C supplemental response) on May 1, 2006. The Department issued a second sections A through C supplemental questionnaire on May 23, 2006, and NSM submitted its response (second sections A through C supplemental response) on June 6, 2006. The Department issued a third section C supplemental questionnaire on July 26, 2006, and NSM submitted its response on August 7, 2006 (third section C supplemental response).

On May 11, 2006, David M. Spooner, Assistant Secretary for Import Administration, issued a letter to Jason Ahern, Assistant Commissioner of the Office of Field Operations for United

States Customs and Border Protection (CBP), detailing the Department's concerns regarding the premature liquidation of certain entries that affect the present administrative review. In a letter dated June 8, 2006, Mr. Ahern replied to Mr. Spooner's letter, explaining that the importer of the subject merchandise may file a customs protest, with the entries in question held open until CBP receives liquidation instructions.

The Department issued a supplemental section D questionnaire to NSM on June 5, 2006, and NSM submitted its response on June 30, 2006 (section D supplemental response). The Department issued a second section D supplemental questionnaire on August 9, 2006, and NSM submitted its response on September 1, 2006 (second section D supplemental response). On July 21, 2006, NSM submitted its sales reconciliation.

On August 3, 2006, the Department extended the due date for the preliminary results 60 days from August 2, 2006 until October 1, 2006. See *Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products From Thailand*, 71 FR 44019 (August 3, 2006). On October 6, 2006, the Department extended the due date for the preliminary results by an additional 30 days from October 1, 2006, until October 31, 2006. See *Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products From Thailand*, 71 FR 59073 (October 6, 2006).

On August 15, 2006, NSM submitted a letter to the Department in which it requested that the Department determine whether there is a reviewable entry in the current administrative review.³ In brief, the Department preliminarily finds that NSM has reviewable entry(ies) in the current administrative review. For the Department's analysis of this issue see pages 4–5 of the memorandum Preliminary Results Analysis for Nakornthai Strip Mill Public Company Limited (NSM), from Stephen Bailey, Case Analyst, to the File, dated October 31, 2006 (Sales Analysis Memorandum).

On September 14, 2006, petitioner requested that the Department rescind this administrative review with respect to NSM pursuant to section 351.213(d)(1) of the Department's

regulations. On September 15, 2006, NSM submitted comments regarding petitioner's request for rescission. Additionally, on September 20, 2006, Nucor submitted comments regarding petitioner's request for rescission. For a complete discussion of this issue see *Petitioner's Request for Rescission of NSM* section below. On October 17, 2006, petitioner again submitted a request for the Department to rescind this administrative review with respect to NSM.

Period of Review

The period of review is November 1, 2004, through October 31, 2005.

Scope of the Order

For purposes of this review, the products covered are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (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 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this review.

Specifically included within the scope of this review are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this review, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products in which: (i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements

¹ See the Department's Memorandum to the File dated March 9, 2006.

² On November 30, 2005, pursuant to § 351.213(j), Nucor requested that the Department determine whether SSI absorbed antidumping duties during the POR. Because the Department has rescinded this administrative review with respect to SSI, this issue is moot.

³ The Department notes that NSM made a similar argument in its Section A response at pages A–1 through A–2.

listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.15 percent of vanadium, or 0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this review unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this review:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, e.g., American Society for Testing and Materials (ASTM) specifications A543, A387, A514, A517, A506).
- Society of Automotive Engineers (SAE)/American Iron & Steel Institute (AISI) grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- USS abrasion-resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to this review is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90.

Certain hot-rolled carbon steel flat products covered by this review, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS subheadings are provided for convenience and CBP purposes, the written description of the merchandise under review is dispositive.

Petitioner's Request for Rescission of NSM

In its September 14, 2006, and October 17, 2006, letters to the Department, petitioner requests that the Department rescind this administrative review with respect to NSM. In both requests, petitioner argues that even though the 90-day deadline imposed by 19 CFR 351.213(d)(1) to request a rescission of the administrative review has passed, the Department has yet to issue preliminary results and has not conducted a verification of NSM's submissions. Petitioner maintains that if the administrative review goes forth, the Department will expend valuable resources including analyzing case and rebuttal briefs, conduct a hearing and prepare final results. Additionally, petitioner contends that the Department will expend its resources for a proceeding in which the only party to request the review does not wish it to proceed. Therefore, petitioner argues that it would not be unreasonable to extend the deadline imposed by 19 CFR 351.213(d)(1) and rescind the review.

In response to petitioner's rescission request of September 14, 2006, NSM contends that petitioner did not offer a single legitimate reason or justification for terminating this review and that it would be unreasonable to rescind the review at this late date. NSM argues that petitioner's rescission request came 266 days after initiation, and five and one half months after the 90 days allowed by law under 19 CFR 351.213(d)(1). NSM also contends that the Department had to extend the preliminary results 60 days due to the submission of deficiency comments by petitioner. Further, NSM maintains that the only reason petitioner has chosen to withdraw at such a late date is that

petitioner has determined that NSM would have a *de minimis* margin and petitioner is trying to "game" the system. See page 3 of NSM's September 15, 2006 submission. NSM contends that both it and the Department have committed an enormous amount of time and resources to this administrative review. Citing the preamble to the Department's regulations, NSM maintains that the Department has the ability to deny rescission requests when it determines that a party withdraws its review request "once it ascertains that the results of the review are not likely to be in its favor." See Antidumping Duties; Countervailing Duties Part II, 62 FR 27296, 27317 (May 19, 1997). Additionally, NSM cites *Huaiyang Hongda Dehydrated Vegetable Co. v. United States*, in which the U.S. Court of International Trade (CIT) recognized the interests of a party that had not requested a review but had devoted considerable time and resources. See *Huaiyang Hongda Dehydrated Vegetable Co. v. United States*, Court No. 03-00636, Slip Op. at 15 (Ct Int'l Trade 2004) (*Huaiyang*). In that case, NSM argues, the CIT reasoned that the participation of the respondent amounted to a "sufficient expression of interest in completing the administrative review that its rescission would be unlawful." NSM argues that the same situation exists in the present case as it has already expended an enormous amount of time and resources necessary to fully cooperate with the Department's information requests. In sum, NSM believes that to rescind at this point in the proceeding would violate its right to fundamental fairness and, therefore, contends that the Department should continue with this administrative review.

Section 315.213(d)(1) of the Department's regulations states that the Department will rescind an administrative review if the party that requested the review withdraws the request within 90-days of initiation of the review. The Department may extend this period if it determines that it is reasonable to do so, and will evaluate the resources it has expended in the review in making its "reasonable" determination. While the petitioner's request was received prior to the issuance of the preliminary results and the Department did not conduct verification, the Department issued multiple supplemental questionnaires, initiated a sales below cost investigation, and committed valuable time and resources in conducting this review. Additionally, as a result of both petitioner's and Nucor's supplemental

questionnaire comments, including Nucor's March 10, 2006, comments regarding possible affiliation, the Department determined it was not practicable to complete this review by the August 2, 2006, deadline.⁴

For all of the above reasons, the Department determines that to end the process now would be unreasonable in light of the time and resources already put forth by all parties involved. Therefore, the Department denies petitioner's request because it has already expended considerable resources for this administrative review.

Partial Rescission of Administrative Review

As explained above, on January 13, 2006, G Steel submitted a letter claiming it had no sales to the United States during the POR. The Department conducted a query of U.S. Customs and Border Protection (CBP) data on entries of hot-rolled steel from Thailand made during the POR, and confirmed that G Steel made no entries during this period. Therefore, we are preliminarily rescinding this review with respect to G Steel in accordance with section 351.213(d)(3) of the Department's regulations.

Affiliation

On March 10, 2006, Nucor submitted comments in which it claimed that NSM is affiliated with the Thai conglomerate Siam Cement Group (Siam). Along with its comments Nucor also submitted documentation (*e.g.*, annual reports and internet company profiles) in support of its claim of affiliation between NSM and Siam. Specifically, Nucor argues that affiliation exists between NSM and Siam because Siam (also referred to as Cementhai in the internet profile from *MBendi Information for Africa: Mines and Money 2005* (MBendi) provided in Nucor's attachments) "has a share" in Millennium Steel Public Company Limited (Millennium). See Attachment B at page 1 of Nucor's March 10, 2006, submission. In turn, Millennium owns 99.66 percent of the shares of NTS Steel Group Public Company Limited (NTS), which has the same corporate address as NSM. See Attachment C at page 1 of Nucor's March 10, 2006, submission for ownership percentages; and page 8 of NSM's section A response and Attachment E at page 1 of Nucor's March 10, 2006, submission for

company addresses. Additionally, Mr. Sawasdi Horrungruang is a chairman of Millennium and a director of NSM and was quoted in a publication as saying that NSM is part of the NTS Steel Group. See Exhibit 4 of NSM's section A response; and pages 3 through 5 of Nucor's March 10, 2006, submission. Based on these relationships, Nucor contends that NSM is affiliated with Siam and should be reported to the Department as such by NSM.

Section 771(33) of the Act, explains that the following shall be considered "affiliated" or "affiliated persons":

(A) Member of a family, including brothers and sisters, spouse, ancestors, and lineal descendants;

(B) Any office or directors of an organization and such organization;

(C) Partners;

(D) Employer and employee;

(E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization;

(F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person;

(G) Any person who controls any other person and such other person.

The Department preliminarily finds that NSM and Siam are not affiliated companies within the meaning of section 771(33).

As explained by NSM on pages 8 through 11 of its May 1, 2006, sections A through C supplemental response, NSM is not listed as a related company in the notes to Siam's 2004–2005 Financial Statements. NSM also does not consider Siam to be a related company as demonstrated by Siam's absence from NSM's list of related companies in exhibit 4 of its section A response. Additionally, Siam and NSM do not share common directors or board members, also demonstrated in Siam's 2005 Annual Report contained in exhibit S1A–4 of NSM's May 1, 2006, sections A through C supplemental response. Further, Siam and NSM do not have common shareholders as demonstrated in exhibit S1A–4 of NSM's May 1, 2006, sections A through C supplemental response, nor is there evidence of shared family members, directors, partners, or employees between Siam and Millennium. Absent evidence to the contrary, the Department finds no link and thus no evidence of direct affiliation between NSM and Siam to satisfy the requirements of section 771(33).

With regard to possible indirect affiliation between Siam and NSM through Millennium or NTS, the Department does not have enough information on the record to make a

determination at this time. Pending the publication of these preliminary results, the Department will solicit additional information from NSM regarding the issue of affiliation and make its determination in the final results.

Fair Value Comparisons

To determine whether sales of subject merchandise were made in the United States at less than fair value, we compared the EP to the NV, as described in the "Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated EP and compared these prices to weighted-average normal values or constructed values (CV), as appropriate.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by NSM covered by the descriptions in the "Scope of the Order" section of this notice to be foreign like products for the purpose of determining appropriate product comparisons to NSM's U.S. sales of the subject merchandise.

We have relied on the following eleven criteria to match U.S. sales of the subject merchandise to sales in Thailand of the foreign like product: Paint, quality, carbon, yield strength, thickness, width, cut-to-length vs. coil, temper rolled, pickled, edge trim, and patterns in relief.

Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's January 3, 2006, questionnaire.

Export Price

In accordance with section 772 of the Act, we calculate either an EP or a constructed export price (CEP), depending on the nature of each sale. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold by the foreign exporter or producer before the date of importation to an unaffiliated purchaser in the United States, or to an unaffiliated purchaser for exportation to the United States. We have preliminarily determined that all of NSM's U.S. sales during the POR were EP sales.

We calculated EP based on prices charged to the first unaffiliated U.S. customer. We used the sale invoice date

⁴ The Department notes that it disagrees with NSM's interpretation of *Huayiang*. The Court in *Huayiang* noted that Commerce's determination to rescind an administrative review over the objection of a respondent, which has not filed its own request for a review is not without precedent. Slip op. at 13.

as the date of sale.⁵ We based EP on the packed freight on board (FOB) prices to the first unaffiliated purchasers outside Thailand. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act, including foreign inland freight and foreign brokerage and handling.

Duty Drawback

Section 772(c)(1)(B) of the Act provides that EP shall be increased by "the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States." The Department determines that an adjustment to U.S. price for claimed duty drawback is appropriate when a company can demonstrate that (1) the import duty and the rebate are directly linked to, and dependent upon, one another, and (2) there are sufficient imports of the imported material to account for the duty drawback received for the export of the manufactured product (the "two pronged test"). See *Allied Tube and Conduit Corp. v. United States*, 374 F. Supp. 2d 1257 (2005), and *Rajinder Pipes Ltd. v. United States*, 70 F. Supp. 2d 1350, 1358 (CIT 1999). See also *Certain Welded Carbon Standard Steel Pipes and Tubes from India: Final Results of New Shippers Antidumping Duty Administrative Review*, 62 FR 47632 (September 10, 1997) and *Federal Mogul Corp. v. United States*, 862 F. Supp. 384, 409 (CIT 1994).

During the POR, NSM received duty drawback for its U.S. sales using the tax certificate program, which is based on periodic industrial surveys performed by the Thai National Economic and Social Development Board (NESDB). The Thai Ministry of Finance (MOF), on an industry-wide basis, determines specific duty incidence rates for duty drawback that vary based on product. Under the duty drawback program, MOF links a certain percentage of the FOB value of the goods attributable to import duties incurred in the exported product's manufacture, regardless of product destination. See pages C-29 through 31 of the sections B&C response. When the goods are exported, a tax certificate is issued equivalent to the duty amount collected on the imported material used to manufacture the exported product. NSM provided documentation along with its sections B&C response demonstrating the link between the import duty and the rebate, including the Thai Government list of

rebate amount based on HTSUS number, Tax Certificate, Details of Exported Goods and Request for Tax Certificate, Export Entry Form, and accompanying commercial invoices for all U.S. sales. See exhibit S1C-3 of the sections B&C response.

Consistent with the Department's decision in *Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Good from Korea*, 60 FR 33561 (June 28, 1995) (*OCTG From Korea*), to allow duty drawback even though the respondent could not link the particular exportation of subject merchandise back to a particular imported material, the Department preliminarily determines that NSM uses a methodology consistent with Department practice for applying its duty drawback received upon export of subject merchandise to the United States. MOF's linkage of a certain percentage of the FOB value of the goods attributable to import duties incurred in the exported product's manufacture satisfies the linkage requirement consistent with *OCTG From Korea*, as does the tax certificate issued when the goods are exported, equivalent to the duty amount collected on the imported material used to manufacture the exported product. See *Far East Mach. II v. United States*, 699 F. Supp. 309, 312 (1988). Based on NSM's explanation and the supporting documentation, the Department preliminarily finds a link between the import duty and the rebate granted to NSM, thereby satisfying the first criterion of the Department's two-pronged test for duty drawback.

NSM also meets the second criterion of the Department's two-pronged test for duty drawback. NSM provided its POR purchases of raw material (*i.e.*, scrap and pig iron) in exhibit 3 of its second sections A through C supplemental response. It is clear from this exhibit that the POR amount of NSM's imported raw materials, converted to hot-rolled production in metric tons (MT), exceeds NSM's total exports of hot-rolled steel during the POR.⁶ Accordingly, NSM has satisfied the second criterion of the Department's two-pronged test for duty drawback. Therefore, the Department preliminarily finds that for NSM's U.S. sales, the company uses a methodology consistent with Department practice for applying duty drawback received upon export of subject merchandise to the United States. See *OCTG From Korea*.

⁶ Due to the proprietary nature of the amounts of NSM's purchases of raw materials and NSM's production of hot-rolled steel, a complete discussion of this issue is found at page 10 of the October 31, 2006, Sales Analysis Memorandum.

Normal Value

A. Home Market Viability

To determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared NSM's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Because NSM's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined the home market was viable. See section A response at exhibit 1.

B. Cost of Production Analysis

On April 24, 2006, after a request from petitioner and Nucor, the Department initiated a sales-below-cost investigation of NSM because both petitioner and Nucor provided a reasonable basis to believe or suspect that NSM is selling hot-rolled steel in Thailand at prices below the cost of production (COP). See the Department's Cost Initiation Memorandum. Based on the Department's findings in the Cost Initiation Memorandum there is a reasonable basis to believe or suspect that NSM is selling hot-rolled steel in Thailand at prices below COP, and in accordance with section 773(b)(1) of the Act, we examined whether NSM's sales in the home market were made at prices below the COP.

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP for each model based on the sum of NSM's material and fabrication costs for the foreign like product, plus amounts for selling expenses, general and administrative (G&A) expenses, interest expenses and packing costs.

We relied on the COP information provided by NSM except for the following adjustments. During the POR, NSM purchased scrap from affiliated companies. For scrap purchased from one of these affiliated companies, we applied the major input rule under section 773(f)(3) of the Act and adjusted the reported cost to the higher of transfer price, market price or COP. We adjusted NSM's reported cost by excluding the fiscal year loss on the sale of scrap from NSM's G&A expenses, and including the POR loss on the sale of scrap in cost of manufacturing (COM). In addition, we excluded the offset for sales revenue derived from scrap coils and baby coils from the G&A expense ratio, and included revenue from these sales as an offset to NSM's reported

⁵ See the Department's Sales Analysis Memorandum for a further discussion of this issue.

COM. We also excluded offsets for income from storage and bank charges, penalties, and inland freight charges from the G&A expense ratio because these offsets are related to sales activities. Last, we deducted the scrap recovery value from NSM's cost of goods sold, which is used as the denominator in the calculation of the G&A and financial expense rates. For further discussion of these adjustments, see *Memorandum to Neal Halper, from Oh Ji Young, regarding Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results*, on file in the Department's CRU located in Room B-099 of the main Department of Commerce Building, 14th Street and Constitution Avenue, NW., Washington, DC CRU, dated October 31, 2006.

We compared the weighted-average COP figures to the home market sales prices of the foreign like product, as required under section 773(b) of the Act, to determine whether these sales had been made at prices below COP. On a product-specific basis, we compared COP to home market prices, less any applicable movement charges, billing adjustments, taxes, and discounts and rebates.

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made in substantial quantities within an extended period of time, and whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of NSM's home market sales of a given model were made at prices below the COP, we did not disregard any below-cost sales of that model because we determined that the below-cost sales were not made within an extended period of time in "substantial quantities." Where 20 percent or more of NSM's home market sales of a given model were at prices less than COP, we disregarded the below-cost sales because: (1) They were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act, and (2) based on our comparison of prices to the weighted-average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

Our cost test for NSM revealed that for home market sales of certain models, less than 20 percent of the sales of those

models were made at prices below the COP. We therefore retained all such sales in our analysis and used them as the basis for determining NV. Our cost test also indicated that for certain models, more than 20 percent of the home market sales of those models were sold at prices below COP within an extended period of time and were at prices which would not permit the recovery of all costs within a reasonable period of time. Thus, in accordance with section 773(b)(1) of the Act, we excluded these below-cost sales from our analysis and used the remaining above-cost sales as the basis for determining NV.

C. Price-to-Price Comparisons

We matched all U.S. sales to NV sales. We calculated NV based on prices to unaffiliated customers. We adjusted gross unit price for billing adjustments. We made deductions, where appropriate, for foreign inland freight pursuant to section 773(a)(6)(B) of the Act. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise, pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411, as well as for differences in circumstances of sale (COS) as appropriate, in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

D. Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we based NV on CV if we were unable to find a contemporaneous comparison market match for the U.S. sale. We calculated CV based on the cost of materials and fabrication employed in producing the subject merchandise, selling, general and administrative (SG&A) expenses, interest expense and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses, interest and profit on the amounts NSM incurred and realized in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in Thailand. For selling expenses, we used the weighted-average home market selling expenses. Where appropriate, we made COS adjustments to CV in accordance with section 773(a)(8) of the Act and 19 CFR 351.410 of the Department's regulations.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on

sales in the comparison market at the same level of trade (LOT) as the EP transaction or CEP transaction. The LOT in the comparison market is the LOT of the starting-price sales in the comparison market or, when NV is based on CV, the LOT of the sales from which we derive SG&A expenses and profit. With respect to U.S. price for EP transactions, the LOT is also that of the starting-price sale, which is usually from the exporter to the importer. For CEP, the LOT is that of the constructed sale from the exporter to the importer.

To determine whether comparison market sales are at a different LOT from U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, the Department makes an LOT adjustment in accordance with section 773(a)(7)(A) of the Act. For CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the customer. We analyze whether different selling activities are performed, and whether any price differences (other than those for which other allowances are made under the Act) are shown to be wholly or partly due to a difference in LOT between the CEP and NV. Under section 773(a)(7)(A) of the Act, we make an upward or downward adjustment to NV for LOT if the difference in LOT involves the performance of different selling activities and is demonstrated to affect price comparability, based on a pattern of consistent price differences between sales at different LOTs in the country in which NV is determined. Finally, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP, but the data available do not provide an appropriate basis to determine an LOT adjustment, we reduce NV by the amount of indirect selling expenses incurred in the foreign comparison market on sales of the foreign like product, but by no more than the amount of the indirect selling expenses incurred for CEP sales. See section 773(a)(7)(B) of the Act (the CEP offset provision).

In analyzing differences in selling functions, we determine whether the LOTs identified by the respondent are meaningful. See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27371 (May 19, 1997). If the

claimed LOTs are the same, we expect that the functions and activities of the seller should be similar. Conversely, if a party claims that LOTs are different for different groups of sales, the functions and activities of the seller should be dissimilar. See *Porcelain-on-Steel Cookware from Mexico: Final Results of Administrative Review*, 65 FR 30068 (May 10, 2000). In the present review, NSM did not claim a LOT adjustment. See Sections B&C response at B-25.

NSM claimed one LOT in the U.S. market and one LOT in the home market, with both LOTs involving sales to unaffiliated customers. NSM claimed that all U.S. sales are made to an unaffiliated trading company. NSM reported 2 channels of distribution for home market sales made through its single LOT. The first channel of distribution was sales made through unaffiliated wholesaler/trading companies to unaffiliated end-users. The second channel of distribution was sales made directly to unaffiliated end-users.

Whether made directly to end-users or through wholesalers/distributors, the Department finds that NSM reported similar selling activities for all home market sales. While NSM's direct sales to end-users and downstream sales in the home market involve different channels of distribution, these sales do not appear to involve significant differences in selling functions and therefore we consider these channels to represent one LOT. Additionally, after analyzing the selling functions NSM reported for its EP sales, we find that, apart from commissions paid for U.S. sales and for limited inventory provided on home market sales, the selling functions for NSM's EP sales is the same as the LOT for all sales in the home market. Based upon the above analysis, we preliminarily conclude that the LOT for all EP sales is the same as the LOT for all sales in the home market. Accordingly, because we find the U.S. sales and home market sales to be at the same LOT, no LOT adjustment under section 773(a)(7)(A) of the Act is warranted for NSM. Due to the proprietary nature of the levels of these selling activities, for further analysis, see Sales Analysis Memorandum.

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Preliminary Results of Review

As a result of our review, we preliminarily determine the weighted-average dumping margin for the period November 1, 2004, through October 31, 2005, to be as follows:

| Manufacturer/Exporter | Margin (percent) |
|---|------------------|
| Nakornthai Strip Mill Public Co., Ltd | 0.00 |

The Department will disclose calculations performed in connection with these preliminary results of review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. See 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed no later than 35 days after the date of publication of this notice. See 19 CFR 351.309(d). Parties who submit argument in these proceedings are requested to submit with the argument: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. See 19 CFR 351.309(c). An interested party may request a hearing within 30 days of publication. See section 351.310(c) of the Department's regulations. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs. See 19 CFR 351.310(d). The Department will issue the final results of these preliminary results, including the results of our analysis of the issues raised in any such written comments or at a hearing, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of this review the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), the Department calculates an assessment rate for each importer of the subject merchandise for each respondent. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review.

The Department clarified its "automatic assessment" regulation on May 6, 2003 (68 FR 23954). See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May

6, 2003). This clarification will apply to entries of subject merchandise during the period of review produced by NSM or by any of the companies for which we are rescinding this review and for which NSM or each no-shipment respondent did not know its merchandise would be exported by another company to the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate listed in the final results of review; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the "all others" rate of 3.86 percent, which is the "all others" rate established in the LTFV investigation. See *Hot Rolled Steel Order*. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

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

Dated: October 31, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

A-588-833

Preliminary Results of Antidumping Duty Changed-Circumstances Review and Notice of Intent to Revoke Order in Part: Stainless Steel Bar from Japan

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

SUMMARY: On October 16, 2006, the Department of Commerce (the Department) published a notice of initiation of changed-circumstances review of the antidumping duty order on stainless steel bar from Japan, as described below. See *Initiation of Antidumping Duty Changed-Circumstances Review: Stainless Steel Bar from Japan*, 71 FR 60691 (October 16, 2006) (*Initiation Notice*). In our *Initiation Notice*, we invited interested parties to comment on the request to exclude 21-2N modified valve/stem stainless steel round bar, as described below, from the scope of this order. The Department received no comments.

Absent any comments, the Department preliminarily concludes that producers accounting for substantially all of the production of the domestic like product to which this order pertains lack interest in the relief provided by this order with respect to 21-2N modified valve/stem stainless steel round bar. Therefore, the Department preliminarily concludes that it is appropriate to revoke this order, in part, with respect to unliquidated entries of 21-2N modified valve/stem stainless steel round bar, not subject to the final results of an administrative review, that have been entered for consumption on or after February 1, 2006, based on the fact that the petitioners and domestic interested parties have made an affirmative statement of no interest in the continuation of the order with respect to that merchandise.

EFFECTIVE DATE: November 8, 2006.

FOR FURTHER INFORMATION CONTACT:

Dmitry Vladimirov or Mino Hatten, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution

Avenue, NW, Washington, DC 20230; telephone: (202) 482-0665 or (202) 482-1690.

SUPPLEMENTARY INFORMATION:

Background

The Department published the antidumping duty order on stainless steel bar from Japan on February 21, 1995. See *Notices of Antidumping Duty Orders: Stainless Steel Bar from Brazil, India, and Japan*, 60 FR 9661 (February 21, 1995). On August 28, 2006, TRW Fuji Valve, Inc. (TRW), a U.S. importer, requested that the Department exclude a product to which it referred as 21-2N modified valve/stem stainless steel round bar from the scope of the order. See TRW's letter to the Secretary, dated August 28, 2006. TRW requested that the Department revoke the order in part retroactively to February 1, 2006, the beginning of the anniversary month of the order. On September 18, 2006, the petitioners and domestic interested parties¹ provided a letter attesting to their expressed lack of interest in having this merchandise continue to be subject to the antidumping duty order on stainless steel bar from Japan.

On October 16, 2006, the Department published a notice of initiation of changed-circumstances review of the antidumping duty order on stainless steel bar from Japan. See *Initiation Notice*. In the *Initiation Notice*, the Department indicated that interested parties could submit comments for consideration in the Department's preliminary results no later than 15 days after publication of the initiation of this review and submit responses to those comments no later than 7 days following the submission of comments. The Department received no comments from interested parties.

Scope of the Order

The scope of the order covers stainless steel bar (SSB). The term SSB with respect to the order means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons or other convex polygons. SSB includes cold-finished SSBs that are turned or ground in straight lengths, whether produced from

hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process. Except as specified above, the term does not include stainless steel semi-finished products, cut-length flat-rolled products (*i.e.*, cut-length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections. The SSB subject to this order is currently classifiable under subheadings 7222.10.0005, 7222.10.0050, 7222.20.0005, 7222.20.0045, 7222.20.0075, and 7222.30.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Scope of Changed-Circumstances Review

The product subject to this changed-circumstances review meets the following description: certain valve/stem stainless steel round bar of 21-2N modified grade, having a diameter of 5.7 millimeters (with a tolerance of 0.025 millimeters), in length no greater than 15 meters, having a chemical composition consisting of a minimum of 0.50 percent and a maximum of 0.60 percent of carbon, a minimum of 7.50 percent and a maximum of 9.50 percent of manganese, a maximum of 0.25 percent of silicon, a maximum of 0.04 percent of phosphorus, a maximum of 0.03 percent of sulfur, a minimum of 20.0 percent and a maximum of 22.00 percent of chromium, a minimum of 2.00 percent and a maximum of 3.00 percent of nickel, a minimum of 0.20 percent and a maximum of 0.40 percent of nitrogen, a minimum of 0.85 percent of the combined content of carbon and nitrogen, and a balance minimum of iron, having a maximum core hardness of 385 HB and a maximum surface hardness of 425 HB, with a minimum hardness of 270 HB for annealed material. See TRW's letter to the Secretary, dated August 28, 2006.

Preliminary Results of Review and Intent to Revoke in Part the Antidumping Duty Order

Pursuant to section 751(d)(1) of the Tariff Act of 1930, as amended (the Act),

¹ The petitioners and domestic interested parties include Carpenter Technology Corp., Crucible Specialty Metals Division of Crucible Materials Corp., Electralloy Corp., North American Stainless, Universal Stainless and Alloy Products, Inc., and Valbruna Slater Stainless, Inc.