

Notices

Federal Register

Vol. 74, No. 17

Wednesday, January 28, 2009

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request; Correction

January 23, 2009.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), OIRA_Submission@OMB.EOP.GOV or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720-8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to

the collection of information unless it displays a currently valid OMB control number.

The following notice that was published in the **Federal Register** on Friday, January 23, 2009 (Volume 74, No. 14, page 4134) contained an error in the OMB Control Number. The correct OMB Control Number should be 0579-0281, this number replaces 0579-New that was originally published in the notice.

Animal and Plant Health Inspection Service

Title: Treatment of Fruits and Vegetables.

OMB Control Number: 0579-0281.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E9-1812 Filed 1-27-09; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF COMMERCE

International Trade Administration

A-570-930

Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value

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

EFFECTIVE DATE: January 28, 2009.

SUMMARY: The Department of Commerce (the Department) has determined that circular welded austenitic stainless pressure pipe from the People's Republic of China (PRC) is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The final dumping margins for this investigation are listed in the "Final Determination Margins" section of this notice.

FOR FURTHER INFORMATION CONTACT: Melissa Blackledge or Howard Smith; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3518 and (202) 482-5193, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 5, 2008, the Department published in the **Federal Register** its preliminary determination that circular welded austenitic stainless pressure pipe from the PRC is being, or is likely to be, sold in the United States at LTFV, as provided in the Act. *See Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 73 FR 51788 (September 5, 2008) (*Preliminary Determination*). For the *Preliminary Determination*, the Department calculated a 22.03 percent dumping margin for mandatory respondent Winner Machinery Enterprise Co., Ltd. (Winner) and assigned that dumping margin to the PRC-wide entity and Zhejiang Jiuli Hi-Tech Metals Co., Ltd. (Jiuli), a separate rate applicant.

The Department began its verification of Winner's information on September 22, 2008. The verification was scheduled for September 22, 2008 through September 26, 2008. On September 25, 2008, Winner terminated verification, requested that the verifiers not take copies of any of the documents that were reviewed or presented at verification, and submitted a letter to the Department stating that Winner "hereby withdraws from this antidumping investigation and does not wish to further participate." *See* Winner's September 25, 2008 letter to the Department. The Department documented the events that occurred at verification in a memorandum to the file dated October 3, 2008.

Petitioners¹ and Winner submitted case briefs on October 22, 2008, and rebuttal briefs on October 27, 2008.

Winner filed submissions containing new factual information on October 16, 2008, November 28, 2008, and December 2, 2008. The Department rejected Winner's November 28, 2008, and December 2, 2008 submissions on December 2, 2008 and December 4, 2008, respectively, as untimely filed.

¹ Petitioners in this investigation are Bristol Metals, L.P., Felker Brothers Corp., Marcegaglia USA, Inc., Outokumpu Stainless Pipe Inc., and the United Steel Workers of America (collectively, Petitioners).

Period of Investigation

The period of investigation (POI) is July 1, 2007, through December 31, 2007. This period comprises the two most recently completed fiscal quarters as of the month preceding the month in which the petition was filed (*i.e.*, January 2008). See 19 CFR 351.204(b)(1).

Scope of the Investigation

The merchandise covered by this investigation is circular welded austenitic stainless pressure pipe not greater than 14 inches in outside diameter. This merchandise includes, but is not limited to, the American Society for Testing and Materials (ASTM) A-312 or ASTM A-778 specifications, or comparable domestic or foreign specifications. ASTM A-358 products are only included when they are produced to meet ASTM A-312 or ASTM A-778 specifications, or comparable domestic or foreign specifications. Excluded from the scope are: (1) welded stainless mechanical tubing, meeting ASTM A-554 or comparable domestic or foreign specifications; (2) boiler, heat exchanger, superheater, refining furnace, feedwater heater, and condenser tubing, meeting ASTM A-249, ASTM A-688 or comparable domestic or foreign specifications; and (3) specialized tubing, meeting ASTM A-269, ASTM A-270 or comparable domestic or foreign specifications.

The subject imports are normally classified in subheadings 7306.40.5005; 7306.40.5040, 7306.40.5062, 7306.40.5064, and 7306.40.5085 of the Harmonized Tariff Schedule of the United States (HTSUS). They may also enter under HTSUS subheadings 7306.40.1010; 7306.40.1015; 7306.40.5042, 7306.40.5044, 7306.40.5080, and 7306.40.5090. The HTSUS subheadings are provided for convenience and customs purposes only, the written description of the scope of this investigation is dispositive.

Changes since the Preliminary Determination

We have made the following changes to our analysis and the dumping margins assigned in the *Preliminary Determination*:

1. We considered Winner to be part of the PRC-wide entity, and revised the dumping margin that was assigned to the PRC-wide entity as total adverse facts available (AFA).
2. We assigned Jiuli a separate rate based on an average of the dumping margins used in the initiation of this investigation.

For a detailed discussion of the dumping margin assigned to the PRC-wide entity as AFA, see "Issues and Decision Memorandum for the Final Determination in the Antidumping Duty Investigation of Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China," dated January 21, 2009 (Decision Memorandum) which is hereby adopted by this notice. For a detailed discussion of Jiuli's dumping margin, see the "Separate Rates" section below.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this proceeding, and to which we have responded, are addressed in the Decision Memorandum. Appendix I to this notice contains a list of the issues that are addressed in the Issues and Decision Memorandum. Parties can find a complete discussion of the issues and corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, Room 1117 of the main Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at <http://www.ia.ita.doc.gov/frn>. The paper copy and electronic version are identical in content.

Non-Market Economy Treatment

In the *Preliminary Determination*, the Department considered the PRC to be a non-market economy (NME) country. See *Preliminary Determination*, 73 FR at 51789. 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. See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results of 2001-2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500 (February 14, 2003), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2001-2002 Administrative Review and Partial Rescission of Review*, 68 FR 70488 (December 18, 2003). No party has commented on the Department's classification of the PRC as an NME country. Therefore, for the final determination, we continue to consider the PRC to be an NME country.

Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are

subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an investigation in 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. See *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), as amplified by *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994), and 19 CFR 351.107(d).

In the *Preliminary Determination*, we found that Jiuli and Winner demonstrated their eligibility for separate-rate status. See *Preliminary Determination*, 73 FR at 51792. Since the publication of the *Preliminary Determination*, no parties commented on the separate rate determinations. We continue to find that the evidence placed on the record of this investigation by Jiuli demonstrates both a *de jure* and *de facto* absence of government control with respect to its exports of the merchandise under investigation. Thus, we continue to find that Jiuli is eligible for separate-rate status. However, as explained below, we have determined that it is appropriate to apply total AFA to Winner and deny the company a separate rate.

Normally the dumping margin for separate rate companies is determined based on the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding *de minimis* margins or margins based entirely on AFA. See section 735(c)(5)(A) of the Act. In the *Preliminary Determination* we assigned Jiuli the dumping margin established for Winner, *i.e.*, 22.03 percent. See *Preliminary Determination*, 73 FR at 51792 and 51795. Since Winner is no longer receiving a separate rate, this methodology is not appropriate. In cases where the estimated weighted-average dumping margins for all individually investigated respondents are zero, *de minimis*, or based entirely on AFA, the Department may use any reasonable method to assign a rate to the separate rate companies. See section 735(c)(5)(B) of the Act. In this case, where there are no mandatory respondents receiving a calculated rate, we find that applying the simple average of the initiation rates to Jiuli is both reasonable and reliable for purposes of establishing a separate rate. See *Final Determination of Sales at Less Than Fair Value: Sodium*

Hexametaphosphate From the People's Republic of China, 73 FR 6479 (February 4, 2008) and the accompanying Issues and Decision Memorandum at Comment 2. Therefore, the Department will assign a separate rate to Jiuli using the average of the initiation margins, pursuant to its practice.

The average initiation margin assigned to Jiuli is based on secondary information. According to section 776 (c) of the Act, when the Department relies on secondary information, it shall, to the extent practicable, corroborate that information. During our pre-initiation analysis of the petition, we examined the information used in the petition as the basis of export price and normal value (NV) and, where appropriate, revised the calculations used to derive the petition dumping margins in determining the initiation dumping margins. Also, during our pre-initiation analysis, we examined information from various independent sources provided either in the petition or, based on our requests, in supplements to the petition, which corroborated various elements of the export price and NV information. For this final determination, we compared the average of the initiation margins to Winner's highest CONNUM-specific margin and found that the average of the initiation margins does not exceed this margin. No other information was available for corroboration purposes. Based on the foregoing, we have concluded that the average of the initiation dumping margins is reliable and has probative value and, therefore, we consider this average dumping margin to be corroborated, to the extent practicable.

Section 776(a)(2) of the Act provides that, if an interested party or any other person (A) withholds information that has been requested by the administering authority, (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination. Because Winner withdrew from this proceeding during verification, we determine that the use of facts otherwise available is warranted with respect to Winner. See the Decision Memorandum at Comment 1.

Section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may draw an inference that is adverse to the interests of that party in selecting information from the petition, the final determination from the investigation, a previous administrative review, or any information placed on the record. The Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. 1 (1994) at 870, reflects the Department's practice that it may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate fully." It also instructs the Department to consider, in employing adverse inferences, "the extent to which a party may benefit from its own lack of cooperation." *Id.*

By withdrawing from verification, Winner has failed to cooperate to the best of its ability. Therefore, we find it appropriate to use an inference that is adverse to Winner's interest in selecting from among facts otherwise available. By doing so, we ensure that Winner will not obtain a more favorable rate by failing to cooperate. For a complete discussion of our analysis, see the Decision Memorandum at Comment 1.

Moreover, because Winner withdrew from verification and prevented the Department from verifying its responses with regard to separate rate status, the Department has no basis upon which to grant Winner a separate rate. Thus, although Winner remains a mandatory respondent, the Department, as AFA, is considering Winner to be part of the PRC-wide entity.

The PRC-Wide Rate

In the *Preliminary Determination*, the Department found that certain companies did not respond to our requests for information. See *Preliminary Determination*, 73 FR at 51788. We treated these PRC producers/exporters as part of the PRC-wide entity because they did not demonstrate that they operate free of government control over their export activities. *Id.* No additional information was placed on the record with respect to any of these companies after the *Preliminary Determination*. Moreover, for the reasons noted above, we also consider Winner to be part of the PRC-wide entity.

As noted above, section 776(a)(2) of the Act provides that, if an interested party or any other person withholds information that has been requested by

the administering authority, significantly impedes a proceeding under this title, or provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination. Since companies within the PRC-wide entity withheld information requested by the Department, and Winner, which is part of the PRC-wide entity, did not allow its information to be verified, pursuant to sections 776(a)(2)(A), (C), and (D) of the Act, we determine, as in the *Preliminary Determination*, that the use of facts otherwise available is appropriate to determine the PRC-wide rate.

As stated above, section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation*, 65 FR 5510, 5518 (February 4, 2000). See also SAA at 870 (1994). We determine that, because the PRC-wide entity did not respond to our requests for information, and Winner prevented the Department from verifying its information, the PRC-wide entity has failed to cooperate to the best of its ability. Therefore, the Department finds that, in selecting a dumping margin from among the facts otherwise available, an adverse inference is appropriate for the PRC-wide entity.

In this final determination, we have assigned to the PRC-wide entity the highest CONNUM-specific calculated dumping margin, *i.e.*, 55.21 percent. See Decision Memorandum. No corroboration of this rate is necessary because we are relying on information obtained in the course of this investigation, rather than secondary information.

Since we begin with the presumption that all companies within an NME country are subject to government control, and because only Jiuli has overcome that presumption, we are applying the single antidumping rate (*i.e.*, the PRC-wide entity rate) identified above to all entries of subject merchandise, except for entries from Jiuli. Other than Jiuli, none of the other exporters of subject merchandise from the PRC demonstrated entitlement to a separate rate. See, *e.g.*, *Synthetic Indigo From the People's Republic of China*:

Notice of Final Determination of Sales at Less Than Fair Value, 65 FR 25706 (May 3, 2000).

Combination Rates

In *Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Initiation of Antidumping Duty Investigation*, 73 FR 10221 (February 26, 2008) (*Initiation Notice*), the Department stated that it would calculate combination rates for respondents that are eligible for a separate rate in this investigation. See *Initiation Notice*. This change in practice is described in Policy Bulletin 05.1, available at <http://ia.ita.doc.gov/>. Policy Bulletin 05.1, states:

While continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of "combination rates" because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation.

See Policy Bulletin 05.1, "Separate Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries."

Final Determination Margins

We determine that the following percentage dumping margins exist for the POI:

Manufacturer/Exporter	Margin (Percent)
Zhejiang Jiuli Hi-Tech Metals Co., Ltd. Produced by: Zhejiang Jiuli Hi-Tech Metals Co., Ltd.	10.53%
PRC-Wide Rate	55.21%

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of circular welded austenitic stainless pressure pipe from the PRC, as described in the "Scope of Investigation" section, entered, or withdrawn from warehouse, for consumption on or after September 5, 2008, the date of publication of the *Preliminary Determination* in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average dumping margin amount by which the NV exceeds U.S. price, as follows: (1) The rate for the exporter/producer combination listed in the chart above will be the rate we have determined in this final determination; (2) for all PRC exporters of subject merchandise which have not received their own rate, the cash-deposit rate will be the PRC-wide entity rate; and (3) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash-deposit rate will be the rate applicable to the PRC exporter/producer combination that supplied that non-PRC exporter. These suspension-of-liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our final determination of sales at LTFV. As our final determination is affirmative, in accordance with section 735(b)(2) of the Act, within 45 days the ITC will determine whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess, upon further instruction by the Department, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to the parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: January 21, 2009.

Ronald K. Lorentzen,
Acting Assistant Secretary for Import Administration.

Appendix I

List of Issues

Comment 1: Whether, as Adverse Facts Available for the PRC-Wide Entity, the Department Should Use the Petition, Initiation, or Preliminary Determination Margins, and Whether Those Margins Should be Adjusted Using Thai, Instead of Indian, Surrogate Values

[FR Doc. E9-1827 Filed 1-27-09; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-890]

Amended Final Results of Antidumping Duty Administrative Review: Wooden Bedroom Furniture From the People's Republic of China

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

SUMMARY: On August 20, 2008, the Department of Commerce ("Department") published in the **Federal Register** the final results of the second administrative review and concurrent new shipper review of the antidumping duty order on wooden bedroom furniture from the People's Republic of China ("PRC"). See *Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review*, 73 FR 49162 (August 20, 2008) ("*Final Results*") and accompanying Issues and Decision Memorandum (August 8, 2007) ("*Issues and Decision Memo*"). The period of review ("POR") covered January 1, 2006, through December 31, 2006. We are amending our *Final*