

This administrative review and this notice are in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.213 and 351.221(b)(4).

Dated: March 2, 2009.

**Ronald K. Lorentzen,**

Acting Assistant Secretary for Import Administration.

[FR Doc. E9-4911 Filed 3-6-09; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-588-846]

#### Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products From Japan: Preliminary Results of Antidumping Duty Administrative Review

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

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain hot-rolled flat-rolled carbon quality steel products (hot-rolled steel) from Japan. The United States Steel Corporation (Petitioner) requested administrative reviews of JFE Steel Corporation (JFE), Nippon Steel Corporation (Nippon), and Kobe Steel, Ltd. (Kobe). This review covers exports of subject merchandise to the United States during the period June 1, 2007 through May 31, 2008.

We preliminarily determine that, in accordance with sections 776(a) and (b) of the Tariff Act of 1930, as amended (the Act), adverse facts available (AFA) should be applied to JFE, Nippon, and Kobe for not cooperating with the Department in this administrative review. The antidumping margins assigned to these companies are listed in the *Preliminary Results of Review* section of this notice. Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** March 9, 2009.

**FOR FURTHER INFORMATION CONTACT:** Martha Douthit, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-5050.

#### Background

On June 29, 1999, the Department published the antidumping duty order on hot-rolled steel from Japan in the *Federal Register*. See *Antidumping Duty Order: Certain Hot-Rolled Flat-Rolled*

*Carbon-Quality Steel Products from Japan*, 64 FR 34778 (June 29, 1999).

On June 9, 2008, the Department published a notice of opportunity to request an administrative review of this order. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request Administrative Review*, 73 FR 32557 (June 9, 2008). The Department received a timely request for a review from Petitioner, covering JFE, Nippon, and Kobe. On July 30, 2008, the Department published its initiation notice for the administrative review of these companies under the antidumping order on hot-rolled steel from Japan. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews, and Request for Revocation in Part, and Deferral of Administrative Review*, 73 FR 44220 (July 30, 2008).

The Department issued Sections A through E of its original questionnaire to JFE, Nippon, and Kobe.<sup>1</sup> The deadlines to submit responses to the Department's questionnaire were September 1, 2008 for Section A, and September 17, 2008 for Sections B through E, for JFE and Nippon, and October 14, 2008 for Section A, and October 30, 2008 for Sections B through E for Kobe.

On August 12, 2008, JFE Corporation submitted a letter stating that, effective April 1, 2003, Kawasaki Steel Corporation had changed its name to JFE as part of a merger with NKK Corporation.<sup>2</sup> On August 19, 2008, Nippon submitted a letter stating that it would not be submitting a response to the Department's questionnaire. Neither JFE, Nippon, nor Kobe submitted any response to the Department's questionnaire.

#### Scope of the Order

The merchandise covered by this order consists of certain hot-rolled flat-rolled carbon-quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor

<sup>1</sup> Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production (COP) of the foreign like product and the constructed value (CV) of the merchandise under investigation. Section E requests information on further manufacturing.

<sup>2</sup> The Department has not previously determined whether JFE is a successor to Kawasaki Steel Corporation or NKK Corporation nor has it been requested to do so in this review.

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 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 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 order.

Specifically included in this scope 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 and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, 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 investigation, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or  
1.50 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  
0.012 percent of boron, or  
0.10 percent of molybdenum, or  
0.10 percent of niobium, or  
0.41 percent of titanium, 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 order unless otherwise excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this order:

- Alloy hot-rolled steel products in which at least one of the chemical

elements exceeds those listed above (including e.g., ASTM specifications A543, A387, A514, A517, and A506).

- SAE/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 1.50 percent.
- ASTM specifications A710 and A736.

- USS abrasion-resistant steels (USS AR 400, USS AR 500).
- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10–0.14% .....	0.90% Max .....	0.025% Max .....	0.005% Max .....	0.30–0.50% .....	0.50–0.70% .....	0.20–0.40% .....	0.20% Max.

Width = 44.80 inches maximum; Thickness = 0.063–0.198 inches; Yield Strength = 50,000 ksi minimum; Tensile Strength = 70,000–88,000 psi.

Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	Mo
0.10–0.16% .....	0.70–0.90% .....	0.025% Max .....	0.006% Max .....	0.30–0.50% .....	0.50–0.70% .....	0.25% Max .....	0.20% Max .....	0.21% Max.

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum; Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	V (wt.)	Cb
0.10–0.14% .....	1.30–1.80%	0.025% Max	0.005% Max	0.30–0.50%	0.50–0.70%	0.20–0.40%	0.20% Max ..	0.10% Max ..	0.08% Max

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum; Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	Nb	Ca	Al
0.15% Max	1.40% Max	0.025% Max	0.010% Max	0.50% Max	1.00% Max	0.50% Max	0.20% Max	0.005% Min	Treated .....	0.01–0.07%

Width = 39.37 inches; Thickness = 0.181 inches maximum; Yield Strength = 70,000 psi minimum for thicknesses 0.148 inches and 65,000 psi minimum for thicknesses > 0.148 inches; Tensile Strength = 80,000 psi minimum.

Hot-rolled dual phase steel, phase-hardened, primarily with a ferritic-martensitic microstructure, contains 0.9 percent up to and including 1.5 percent silicon by weight, further characterized by either (i) tensile strength between 540 N/mm<sup>2</sup> and 640 N/mm<sup>2</sup> and an elongation percentage 26 percent for thicknesses of 2 mm and above, or (ii) a tensile strength between 590 N/mm<sup>2</sup> and 690 N/mm<sup>2</sup> and an elongation percentage 25 percent for thicknesses of 2mm and above.

Hot-rolled bearing quality steel, SAE grade 1050, in coils, with an inclusion rating of 1.0 maximum per ASTM E 45, Method A, with excellent surface quality and chemistry restrictions as follows: 0.012 percent maximum phosphorus, 0.015 percent maximum sulfur, and 0.20 percent maximum residuals including 0.15 percent maximum chromium. Grade ASTM A570–50 hot-rolled steel sheet in coils or cut lengths, width of 74 inches (nominal, within ASTM tolerances), thickness of 11 gauge (0.119 inch

nominal), mill edge and skin passed, with a minimum copper content of 0.20%.

The merchandise subject to this order 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, 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 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, 7211.19.75.90, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Certain hot-rolled flat-rolled carbon-quality steel covered by this order,

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. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise is dispositive.

**Analysis**

*Application of Facts Available*

Sections 776(a)(1) and (2) of the Act provide that, if necessary information is not available on the record, or 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 in a timely matter or in the form or manner requested subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the administering authority shall, subject to section 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

JFE, Nippon, and Kobe did not respond to the Department's questionnaire. Thus, the information necessary for the Department to conduct its analysis is not available in the record. *See* Section 776(a)(1) of the Act. Also, JFE's, Nippon's, and Kobe's failure to respond to the Department's questionnaire constitutes a refusal to provide the Department with information necessary to conduct its antidumping analysis. *See* Sections 776(a), (2)(A), and (B) of the Act. As JFE, Nippon, and Kobe have withheld necessary information that has been requested by the Department, the Department shall, pursuant to sections 776(a)(1), (2)(A), and (2)(B) of the Act, use facts otherwise available to reach the applicable determination. JFE, Nippon, and Kobe have not submitted any requested information regarding this review; therefore sections 782(d) and (e) of the Act are not applicable. *See e.g., Carbazole Violet Pigment 23 from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 52007 (September 8, 2008) (CVP-23) (unchanged in the final results).

Section 776(b) of the Act provides that, if the Department finds that an interested party has failed to comply by not acting to the best of its ability to comply with a request of information, the Department may use an adverse inference in selecting from among the facts otherwise available. Because JFE, Nippon, and Kobe did not respond to the Department's questionnaire, the Department finds that these companies have failed to cooperate by not acting to the best of their ability to comply with the Department's request for information. JFE, Nippon, and Kobe did not request additional time to respond to the questionnaire. Further, Nippon affirmatively stated on the record that it would not submit a response. By withholding the requested information, JFE, Nippon, and Kobe prevented the Department from conducting any company-specific analysis or calculating dumping margins for the POR. Therefore, pursuant to section 776(b) of the Act, the Department may

preliminarily determine that an inference that is adverse to the interests of JFE, Nippon, and Kobe is warranted. Section 776(b) of the Act also provides that an adverse inference may include reliance on information derived from the petition, the final determination in the investigation segment of the proceeding, a previous review under section 751 of the Act or a determination under section 753 of the Act, or any other information placed on the record.

The Department's practice, when selecting an adverse facts available rate from among the possible sources of information, has been to ensure that the margin is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner." *See e.g., Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998). Additionally, the Department's practice has been to assign the highest margin determined for any party in the less-than-fair-value (LTFV) investigation, or in any administrative review of a specific order, to respondents who have failed to cooperate with the Department. *See e.g., CVP-23*.

The Department is assigning JFE, Nippon, and Kobe an AFA rate of 40.26 percent *ad valorem*, the margin calculated in the section 129 redetermination of the original LTFV investigation using information provided by Kawasaki Steel Corporation (Kawasaki), and the highest rate determined for any party in any segment of this case. *See Notice of Determination Under Section 129 of the Uruguay Round Agreements Act: Antidumping Measures on Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan*, 67 FR 71936, 71939 (December 3, 2002) (*HR from Japan 129*).

Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate "secondary information" used for facts available by reviewing independent sources reasonably at its disposal. Secondary information is information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise. Information from a prior segment of the proceeding, such as that used here, constitutes secondary information. *See e.g., CVP-23*. To "corroborate" means that the Department will satisfy itself that the

secondary information to be used has probative value. *See id.* To the extent practicable, the Department will examine the reliability and relevance of the information to be used. Unlike other types of information, such as input costs or selling expenses, there are no independent sources from which the Department can derive calculated dumping margins. The only source for dumping margins is administrative determinations. In an administrative review, if the Department chooses as AFA a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that period. *Id.*

In making a determination as to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin as "best information available" (the predecessor to "facts available") since the margin was based on another company's uncharacteristic business expense that resulted in an unusually high dumping margin. Similarly, the Department does not apply a margin that has been discredited. *See D&L Supply Co. v. United States*, 113 F.3d 1220, 1224 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated). None of these unusual circumstances is present here, and there is no evidence indicating that the margin used as facts available in this review is not appropriate.

Absent any other information, we find the calculated rate from the investigation, as modified by *HR from Japan 129*, to be appropriate in this case and the requirements of section 776(c) of the Act are satisfied.

#### Preliminary Results of Review

We preliminarily determine that the following dumping margins exist:

Manufacturer/exporter	Margin (percent)
JFE Steel Corporation .....	40.26
Nippon Steel Corporation .....	40.26
Kobe Steel, Ltd. ....	40.26

### Duty Assessment

Upon publication of the final results of this review, the Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. For the period June 1, 2007 through May 31, 2008, we preliminarily determine the antidumping duty margin to be 40.26 percent for JFE, Nippon, and Kobe. If these preliminary results are adopted in our final results of this review, the Department will instruct CBP to assess antidumping duties on all appropriate entries. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after the date of publication of the final results of this review.

The Department clarified its "automatic assessment" regulation on May 6, 2003. See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*). This clarification applies to entries of subject merchandise during the POR produced by any company included in the final results of review for which the reviewed company did not know that the merchandise it sold to the intermediary (e.g., a reseller, trading company, or exporter) was destined for the United States. In such instances, the Department will instruct CBP to liquidate un-reviewed entries at the all-others rate if there is no rate for the intermediary involved in the transaction. See *Assessment Policy Notice* for a full discussion of this clarification.

### Cash Deposit Requirements

The following cash deposit rates will be effective with respect to all shipments of hot-rolled steel from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided for by section 751(a)(1) of the Act: (1) For JFE, Nippon, and Kobe, the cash deposit rate will be the rate established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will be the company-specific rate established for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the 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 subject merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered by this review, a prior review, or the LTFV investigation, the cash

deposit rate shall be the all-others rate established in the section 129 redetermination of the LTFV investigation, which is 22.92 percent. See *HR from Japan 129*. These deposit rates, when imposed, shall remain in effect until further notice.

### Public Comment

Pursuant to section 351.309 of the Department's regulations, interested parties may submit written comments in response to these preliminary results. Unless the deadline is extended by the Department, case briefs are to be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, are to be submitted no later than five days after the time limit for filing case briefs. Parties who submit arguments in this proceeding are requested to submit with the argument: (1) A statement of the issues, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with section 351.303(f) of the Department's regulations.

Also, pursuant to section 351.310(c) of the Department's regulations, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Department specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs. Parties will be notified of the time and location.

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief, no later than 120 days after publication of these preliminary results, unless extended. See section 351.213(h) of the Department's regulations.

### Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under section 351.402(f) of the Department's regulations 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.

These preliminary results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 2, 2009.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E9-4908 Filed 3-6-09; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

A-351-825

#### Stainless Steel Bar From Brazil: Preliminary Results of Antidumping Duty Administrative Review

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

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain stainless steel bar from Brazil. This review covers one producer/exporter of the subject merchandise, Villares Metals S.A. (VMSA). The period of review (POR) is February 1, 2007, through January 31, 2008.

The Department has preliminarily determined that VMSA made U.S. sales at prices less than normal value. If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Interested parties are invited to comment on these preliminary results of review. We intend to issue the final results of review no later than 120 days from the publication date of this notice.

**EFFECTIVE DATE:** March 9, 2009.

**FOR FURTHER INFORMATION CONTACT:** Catherine Cartsos or Minoo Hatten, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482-5287 or (202) 482-1690, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

On February 21, 1995, the Department published in the **Federal Register** an antidumping duty order on certain stainless steel bar from Brazil. See *Antidumping Duty Orders: Stainless Steel Bar from Brazil, India and Japan*, 60 FR 9661 (February 21, 1995). On February 4, 2008, the Department published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" of the order. See *Antidumping or Countervailing*