

Notices

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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.

UNITED STATES COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, December 11, 1998, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, N.W., Room 540, Washington, DC 20425.

STATUS:

Agenda

- I. Approval of Agenda
- II. Approval of Minutes of November 13, 1998 Meeting
- III. Announcements
- IV. Staff Director's Report
- V. State Advisory Committee Appointments for Michigan
- IV. Future Agenda Items.

CONTACT PERSON FOR FURTHER

INFORMATION: Barbara Brooks, Press and Communications (202) 376-8312.

Stephanie Y. Moore,

General Counsel.

[FR Doc. 98-32331 Filed 12-1-98; 2:14 pm]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-583-830]

Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils From Taiwan

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

ACTION: Amended preliminary determination of antidumping duty investigation.

SUMMARY: On November 4, 1998, the Department of Commerce ("the Department") published the preliminary

determination of its antidumping duty investigation of stainless steel plate in coils ("SSPC") from Taiwan. This investigation covers two respondents, Yieh United Steel Corporation ("YUSCO") and Ta Chen Stainless Steel Pipe, Ltd. ("Ta Chen").

YUSCO submitted a ministerial error allegation on November 6, 1998 with respect to the preliminary determination published on November 4, 1998. On November 10, 1998, petitioners (Armco, Inc.; J&L Specialty Steel, Inc.; Lukens, Inc.; North American Stainless; the United Steelworkers of America, AFL-CIO/CLC; the Butler Armco Independent Union; and Zanesville Armco Independent Organization, Inc.) submitted ministerial error allegations with respect to the middleman dumping portion of the preliminary determination. Based on the correction of certain ministerial errors made in the preliminary determination, we are amending our preliminary determination. (See 19 CFR 351.224(e).)

EFFECTIVE DATE: December 3, 1998.

FOR FURTHER INFORMATION CONTACT:

Joanna Gabryszewski, Rebecca Trainor, or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-0780, (202) 482-0666 or (202) 482-3020, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all references to the Department's regulations are to the regulations set forth at 19 CFR part 351.

Significant Ministerial Errors

We are amending the preliminary determination of sales at less than fair value for SSPC from Taiwan to reflect the correction of significant ministerial errors made in the margin calculations regarding both YUSCO and Ta Chen in that determination, pursuant to 19 CFR 224(g)(1) and (2). A significant ministerial error is defined as a correction which, singly or in combination with other errors, (1)

would result in a change of at least 5 absolute percentage points in, but not less than 25 percent of, the weighted average dumping margin calculated in the original (erroneous) preliminary determination; or (2) would result in a difference between a weighted-average dumping margin of zero or *de minimis* and a weighted-average dumping margin of greater than *de minimis* or vice versa. We are publishing this amendment to the preliminary determination pursuant to 19 CFR 351.224(e).

Scope of the Investigation

For purposes of these investigations, the product covered is certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (e.g., cold-rolled, polished, etc.) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of this investigation are the following: (1) plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars.

The merchandise subject to this investigation is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.05, 7219.12.00.20, 7219.12.00.25, 7219.12.00.50, 7219.12.00.55, 7219.12.00.65, 7219.12.00.70, 7219.12.00.80, 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the

merchandise under investigation is dispositive.

Period of Investigation

The period of investigation ("POI") is January 1, 1997 through December 31, 1997.

Background

On November 4, 1998, the Department published in the **Federal Register** its notice of preliminary determination of the antidumping duty investigation of SSPC from Taiwan (*Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from Taiwan* (63 FR 59524 (November 4, 1998)). We preliminarily calculated a dumping margin of 67.68 percent based on YUSCO's sales. In addition, after initiating a middleman dumping investigation, we preliminarily determined that Ta Chen had not engaged in middleman dumping. (See *Memorandum to the File: Analysis for the Preliminary Determination of SSPC from Taiwan: Middleman Dumping Investigation: Ta Chen* (October 27, 1998).)

YUSCO

On November 6, 1998, YUSCO submitted timely written allegations that the Department made a ministerial error which resulted in a change of at least 5 absolute percentage points in, but not less than 25 percent of, the weighted average margin calculated in the preliminary determination. YUSCO alleged that the Department erred by failing to convert U.S. movement expenses reported in New Taiwan Dollars (NTD) into U.S. dollars.

We agree with YUSCO that we inadvertently failed to convert U.S. movement expenses, reported by YUSCO in NTD, into U.S. dollars. Because the ministerial error is significant, as defined in 19 CFR 351.224(g), we are amending our preliminary determination. YUSCO's amended rate is *de minimis*. We have set YUSCO's cash deposit rate at zero. (See "Suspension of Liquidation" section, below.)

Ta Chen

On August 11, 1998, petitioners alleged that Ta Chen Stainless Steel Pipe, Ltd. and/or its affiliated U.S. importer, Ta Chen International (collectively Ta Chen), were reselling subject merchandise in the United States at prices less than Ta Chen's cost of acquisition and related selling and movement expenses. In our preliminary determination, we preliminarily found that Ta Chen had not engaged in middleman dumping because the

portion of below-acquisition-cost sales was not substantial. (63 FR at 59526)(November 4, 1998).)

On November 10, 1998, petitioners alleged that the Department's computer program, upon which it based its preliminary determination that Ta Chen was not engaging in middleman dumping during the POI, contained a number of clerical errors. On November 17, 1998, Ta Chen filed a response to the petitioners' comments. In accordance with section 351.224(c)(3) of the Department's regulations, we do not consider replies to ministerial error comments submitted in connection with a preliminary determination. Therefore, we have returned Ta Chen's rebuttal comments and have not considered them for this amended preliminary determination. (See 19 CFR 351.224(c).)

First, petitioners claim that the Department omitted the following U.S. selling expenses from the analysis: bank fees incurred in Taiwan and the United States; imputed credit expenses; and certain indirect selling expenses. Petitioners argue that these expenses should be deducted from Ta Chen's U.S. price in accordance with *Fuel Ethanol from Brazil; Final Determination of Sales at Less Than Fair Value*, 51 FR 5572, 5573 (February 14, 1986) (*Fuel Ethanol*). Because these were actual costs incurred, we intended to deduct these costs. Thus, we agree that we committed a ministerial error in not deducting bank fees and indirect selling expenses from U.S. price. We have deducted these expenses for this amended preliminary determination. There was no ministerial error in not deducting imputed credit, however, because only *actual* selling expenses should be deducted in the middleman dumping analysis. See *Mitsui & Co., Ltd. v. the United States*, Slip Op. 97-49 (April 22, 1997) (*Mitsui Remand Determination*). We stated that:

"[imputed credit expenses and inventory carrying costs] represent opportunity costs, not actual expenses to the company. In analyzing whether prices are above or below the cost of production, it is the Department's practice to base its calculation on actual costs rather than imputed expenses." (*Mitsui Remand Determination* at 10.)

Second, petitioners argue that the Department inadvertently based the middleman dumping analysis on only a portion of Ta Chen's resales by deleting from the database any resale where the quantity was reported on a theoretical basis, *i.e.*, for sheet. Petitioners claim that all reported resales are of subject merchandise regardless of whether it was resold as a coil or as sheet, because the product imported was stainless steel sheet in coil, *i.e.*, subject merchandise.

Petitioners argue that, since Ta Chen provided the data for these sales, converting them from theoretical to actual, it is not necessary to eliminate any sales from the database.

We agree with petitioners in part. YUSCO reported its sales on an actual gauge basis, while Ta Chen reported its sales on a nominal (theoretical) gauge basis. Ta Chen included a variable in its database that provided the actual gauge of the merchandise it purchased from its supplier, YUSCO. Ta Chen reported some sales of merchandise for which no corresponding YUSCO sale was reported, because the actual gauge was less than 4.75 mm. In the preliminary determination, we intended to remove only these sales. In doing so, we inadvertently identified these sales by weight rather than by gauge—that is, we removed from the database sales that Ta Chen made on a nominal weight basis. For this amended preliminary determination, we identified these sales by gauge, and have only removed those sales that have an actual gauge of less than 4.75 mm.¹

Third, petitioners claim that the Department made a ministerial error by converting Ta Chen's acquisition price to U.S. dollars based on the date of Ta Chen's sale to the first unaffiliated U.S. customer, instead of the date of YUSCO's invoice to Ta Chen. We disagree that this was a ministerial error. In accordance with our longstanding practice, we intentionally based currency conversions on the date of sale. See 19 CFR 351.415(a) (Currency Conversion).

Fourth, petitioners claim that the Department incorrectly calculated the percentage of Ta Chen's U.S. sales that are below the acquisition cost, because we miscalculated the total U.S. sales value and the total value of sales below acquisition cost.

We agree with petitioners, and have corrected this ministerial error. In our preliminary calculations, we intended to calculate total below-acquisition-cost value and total U.S. sales value by multiplying per unit prices by their corresponding quantities, and then summing these values. Instead, for both calculations, we first summed per unit

¹ We note that we requested that YUSCO report all sales of merchandise that nominally fit the gauge included in the scope of the investigation, *i.e.*, with gauge greater than or equal to 4.75 mm. However, YUSCO had reported sales only on an actual basis as of the time of the preliminary determination, *i.e.*, it reported sales of merchandise with an *actual* gauge of greater than or equal to 4.75 mm. We intended to include in our preliminary analysis only Ta Chen's resales corresponding to merchandise reported by YUSCO. By letter to YUSCO of November 6, 1998, we have reiterated our request for data based on the nominal gauge.

values and their corresponding quantities, and then we multiplied the total value by the total quantity. After making the appropriate correction, we divided the total value of below-acquisition-cost sales by the total value of all sales, as we did in the *Preliminary Determination*, to arrive at the ratio of the below-acquisition-cost-sales value to the value of all sales to the United States. See the *Analysis Memorandum for the Amended Preliminary Determination (Amended Preliminary Memo)* on file in room B-099 of the Commerce Department.

As a result of the correction of these ministerial errors, we have determined that Ta Chen sold subject merchandise at a loss because Ta Chen's prices were, after the deduction of all costs incurred in selling the merchandise in the United States, lower than its costs of acquisition from YUSCO, an unaffiliated producer during the POI. See *Amended Preliminary Memo*.

In accordance with the methodology we used in *Mitsui Remand Determination*, we determined whether a substantial portion of Ta Chen's U.S. sales were below acquisition costs by comparing the total value of stainless steel plate sold below acquisition cost to the total value of all stainless steel plate sales made by Ta Chen during the POI. We first identified sales below acquisition cost by comparing Ta Chen's resale price for stainless steel plate sold during the POI to its acquisition cost for this merchandise. We used YUSCO's invoice price to Ta Chen as the acquisition cost. We based the U.S. resale prices on Ta Chen's sales to unaffiliated customers in the United States. From that starting price we deducted discounts, movement expenses (freight, insurance, U.S. duties, and brokerage and handling fees), and the actual selling expenses incurred by Ta Chen (commissions, warehousing charges, bank charges, and indirect selling expenses), where applicable. We then compared that price, after deductions, to the acquisition cost.

Based on these amended findings, we preliminarily determine that Ta Chen made a substantial portion of its sales below acquisition cost, because 34.7 percent of Ta Chen's resales to the United States were at prices below its acquisition cost. As a result of this finding, we have examined whether Ta Chen's U.S. prices were substantially below its acquisition costs from YUSCO to determine whether Ta Chen engaged in middleman dumping during the POI.

As we stated in the *Preliminary Determination*, Congress has left to the Department the discretion to devise a

methodology which would accurately capture middleman dumping. See S. Rep. No. 249, 96th Cong., 1st Sess. at 94 (1979). We have considered the methodology used in *Fuel Ethanol*, and have concluded that, given the facts before us for this amended preliminary determination, the methodology described below is the appropriate one for purposes of this amended preliminary determination. To determine the magnitude of the losses incurred by Ta Chen in selling YUSCO's subject merchandise to the United States during the POI, we divided the amount of losses by the total sales value of all sales. By "amount of losses" we mean the sum of the cost less the adjusted sales price of each below-acquisition-cost sale, multiplied by the respective quantity of each sale. By "total sales value" we mean the sum of the sales price of each sale (whether or not below acquisition cost) multiplied by its respective quantity. Based upon this calculation, we have determined that Ta Chen's losses on U.S. sales of subject merchandise during the POI are 3.00 percent, which we deem to be substantial. Therefore, we preliminarily find that Ta Chen engaged in middleman dumping during the POI.

Where a producer sells through an unaffiliated trading company and has knowledge of the ultimate destination of its merchandise, we normally focus only on the producer's sales to determine the margin of dumping. However, as we stated in our *Preliminary Determination*, very infrequently, a producer may sell to an unaffiliated trading company which, in turn, sells the producer's merchandise at prices below the trading company's acquisition costs, thereby engaging in middleman dumping. Where we find middleman dumping in an investigation, as here, we must calculate a cash deposit rate that reflects that middleman dumping. Additionally, any dumping which occurs from the producer to the trading company must be included in the margin calculation to capture the full amount of the dumping. Therefore, we have assigned a cash deposit rate of 3.08 percent to sales produced by YUSCO and sold to the United States through Ta Chen. This reflects YUSCO's margin on U.S. sales to Ta Chen as well as Ta Chen's losses on sales to the United States.

Amended Preliminary Determination

As a result of our corrections of ministerial errors, we have determined the following amended weighted-average dumping margins apply.

Manufacturer/exporter	Margin percentage
YUSCO/Ta Chen	3.08
All Others	3.08

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the U.S. price, as indicated in the chart above. These suspension-of-liquidation instructions will remain in effect until further notice.

This amended preliminary determination and notice are in accordance with section 703(d)(2) of the Act (19 CFR 351.224).

Dated: November 27, 1998.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98-32212 Filed 12-2-98; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent to Grant Exclusive Patent License; Photonics Components International L.L.C.

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of a prospective license to Photonics Components International L.L.C. to the Government owned invention described in U.S. Patent 4,763,272 entitled "AUTOMATED AND COMPUTER CONTROLLED PRECISION METHOD OF FUSED ELONGATED OPTICAL FIBER COUPLER FABRICATION", U.S. Patent 5,121,453 entitled "POLARIZATION INDEPENDENT NARROW CHANNEL WAVELENGTH DIVISION MULTIPLEXING FIBER COUPLER AND METHOD FOR PRODUCING SAME", and U.S. Patent 5,652,819 entitled "METHOD FOR TUNING FIBER OPTIC COUPLERS AND MULTIPLEXERS."

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than February 1, 1999.