

selection within 20 days of publication of this notice. The Department invites comments regarding the CBP data and respondent selection within 10 days of publication of this **Federal Register** notice.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Instructions for filing such applications may be found on the Department's website at <http://ia.ita.doc.gov/apo>.

This initiation and notice are in accordance with section 751(a)(1) of the Act and 19 CFR 351.221(c)(1)(i).

Dated: March 31, 2008.

**Stephen J. Claeys,**

*Deputy Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

(A-549-817)

#### Initiation of Antidumping Duty Changed Circumstances Review: Certain Hot-Rolled Carbon Steel Flat Products from Thailand

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

**SUMMARY:** In accordance with section 751(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216(b), United States Steel Corporation (petitioner) filed a request for the Department of Commerce (the Department) to initiate a changed circumstances review of the antidumping duty order on certain hot-rolled carbon steel flat products (hot-rolled steel) from Thailand. Petitioner alleges that Sahaviriya Steel Industries Public Company Limited (SSI), a Thai hot-rolled steel producer previously revoked from the antidumping duty order, has resumed sales at prices below normal value (NV). Petitioner notes that SSI agreed in writing to reinstatement in the antidumping duty order if it was found to have resumed dumping, and contends that SSI violated this agreement by selling hot-rolled steel at less than NV in the United States subsequent to its revocation from the order. Therefore, petitioner requests that the Department reinstate the antidumping duty order with respect to SSI.

The Department finds the information submitted by petitioner sufficient to warrant initiation of a changed circumstances review of the

antidumping duty order on hot-rolled steel from Thailand with respect to SSI. In this changed circumstances review, we will determine whether SSI sold hot-rolled steel at less than NV subsequent to its revocation from the order. If we determine in this changed circumstances review that SSI sold hot-rolled steel at less than NV and resumed dumping, we will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of hot-rolled steel manufactured and exported by SSI.

**EFFECTIVE DATE:** April 7, 2008.

#### FOR FURTHER INFORMATION CONTACT:

Stephen Bailey or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482-0193 and (202) 482-3019, 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*). In November of 2004, in the course of the 2003 - 2004 administrative review, SSI requested revocation of the *Hot-Rolled Steel Order* with respect to its sales of subject merchandise. *See Certain Hot-Rolled Carbon Steel Flat Products From Thailand; Preliminary Results of Antidumping Duty Administrative Review and Intent to Revoke and Rescind in Part*, 70 FR 73197 (December 9, 2005).

In its revocation request, SSI agreed to immediate reinstatement in the *Hot-Rolled Steel Order*, so long as any producer or reseller is subject to the order, should the Department determine that SSI "sold the subject merchandise at less than normal value." *See* SSI's November 30, 2004, letter to the Department requesting revocation. On May 17, 2006, the Department revoked the antidumping duty order with respect to SSI after having determined that SSI sold the merchandise at not less than normal value for a period of at least three consecutive years.<sup>1</sup> *See Certain*

<sup>1</sup> The three administrative reviews forming the basis of the revocation are: 1) the May 3, 2001, through October 31, 2002, review, *Certain Hot-Rolled Carbon Steel Flat Products From Thailand: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 69 FR 19388 (April 13, 2004) (first administrative review); 2) the November 1, 2002 through October 31, 2003, review, *Certain Hot-Rolled Carbon Steel Flat*

*Hot-Rolled Carbon Steel Flat Products from Thailand: Final Results of Antidumping Duty Administrative Review, Partial Revocation of Antidumping Duty Order and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 28659 (May 17, 2006) (Revocation).

On November 8, 2006, petitioner submitted an allegation arguing that SSI has resumed dumping hot-rolled steel in the United States since revocation from the *Hot-Rolled Steel Order*, and requested a changed circumstances review. *See* Petitioner's November 8, 2006, letter to the Department. Petitioner requested that the Department reinstate the *Hot-Rolled Steel Order* with respect to SSI's exports to the United States of hot-rolled steel produced by SSI. Petitioner used constructed value (CV) as normal value (NV) claiming it could not find home market prices of hot-rolled steel for SSI.

The Department requested additional information from petitioner on December 1, 2006, December 22, 2006, February 1, 2007, and December 11, 2007. Petitioner filed responses to the Department's request for additional information on December 5, 2006, January 12, 2007, February 26, 2007, and January 29, 2008, respectively.

In its February 1, 2007, request for additional information, the Department requested that petitioner update its U.S., home market, and cost data for SSI for the period October 1, 2005 through September 30, 2006. *See* the Department's February 1, 2007, request for additional information at question 1. In its February 26, 2007, response, petitioner updated its request by using the time period October 1, 2005, through September 30, 2006, for its margin analysis as requested by the Department. Petitioner also utilized a Kim Eng Live (Kelve) Market Analysis report dated February 14, 2007, to value slab for use in CV because it could not find home market or third country prices for hot-rolled steel for the period October 1, 2005, through September 30, 2006, to use as the basis for NV. *See* Exhibit 2, pages 1-4 of petitioner's February 26, 2007, submission.

On May 11, 2007, the Department met with petitioner to discuss its request for a changed circumstances review for SSI. On September 27, 2007, petitioner

*Products from Thailand: Rescission of Antidumping Duty Administrative Review*, 69 FR 18349 (April 7, 2004) (second administrative review); and 3) the November 1, 2003, through October 31, 2004, review, *Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Final Results of Antidumping Duty Administrative Review, Partial Revocation of Antidumping Duty Order and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 28659, (May 17, 2006).

submitted slab cost data for SSI from two sources independent of Kelive Market Analysis. On November 20, 2007, the Department released to parties information regarding its inquiries into petitioner's use of slab cost from a February 14, 2007, Kim Eng Live (Kelve) Market Analysis. See the Department's November 20, 2007, Memorandum to the File and accompanying email attachments.

On December 11, 2007, the Department requested that petitioner update its changed circumstances review request to use more contemporaneous information for its margin analysis (*i.e.*, July 1, 2006, through June 30, 2007). Additionally, the Department requested that petitioner update its request for the October 1, 2005, through September 30, 2006, period using the two sources of data provided in its September 27, 2007, submission to value steel slab. See the Department's December 11, 2007, request for additional information at question 1. In its January 29, 2008, response, petitioner updated its review request pursuant to the requests of the Department. On March 5, 2008, petitioner explained that it could not locate home market or third country prices for hot-rolled steel for the period July 1, 2006, through June 30, 2007, to use as the basis for NV.

On January 17, 2007, February 22, 2007, and February 5, 2008, SSI submitted letters to the Department requesting that it be granted an Administrative Protective Order (APO) in order to have access to proprietary information submitted by petitioner. On February 16, 2007, March 2, 2007, and February 14, 2008, respectively, the Department responded to these requests, explaining, in part, that the Department could not grant APO access pursuant to 19 C.F.R. 351.104(a) to SSI because a changed circumstances review had not been initiated. See the Department's February 16, 2007, March 2, 2007, and February 14, 2008, letters to SSI.

On December 12, 2006, January 4, 2007, January 17, 2007, March 7, 2007, March 28, 2007, April 5, 2007, April 10, 2007, November 28, 2007, February 12, 2008, and March 21, 2008, SSI filed letters contesting petitioner's request for a changed circumstances review. SSI asserts that section 751(b) of the Act, the statutory provision governing changed circumstance reviews, does not cover reinstatement of a revoked company into an antidumping duty order. SSI argues that a changed circumstances review of affirmative dumping or injury determinations is allowed, but that the statute does not mention the reinstatement of a previously revoked

company. SSI maintains that once an antidumping duty order is revoked, whether in whole or in part, the underlying injury and dumping determinations no longer apply to the merchandise that has been revoked, and that the Department relinquishes jurisdiction over the merchandise covered.

SSI argues that section 751(b) of the Act grants authority to the Department and the International Trade Commission (ITC) to conduct changed circumstance reviews of a final affirmative determination that resulted in an antidumping duty order provided there are sufficient changed circumstances to warrant a review of such determination. Citing 19 USC 1673, SSI argues that the only two affirmative final determinations that result in an antidumping order are: (1) a final dumping determination by the Department in a less-than-fair value investigation, and (2) a final injury determination by the ITC. SSI contends that the statute does not grant authority to the Department to review a determination to revoke an order, in addition to a final affirmative determination that resulted in an order. SSI further argues that section 751(d)(1) of the Act is the only other section of the statute referencing section 751(b), but that it too fails to mention reinstatement of an order.

SSI argues that the Court of International Trade's (CIT's) decision in *Asahi Chemical Industry Co., Ltd. v. United States*, 727 F. Supp. 625 (CIT 1989) (*Asahi*), prevents the Department from reinstating an order against merchandise that was previously revoked. SSI contends that the CIT in *Asahi* determined that revocation of the order renders the order non-operative and that it cannot be reinstated because of the necessity of an ITC injury finding to accompany the dumping determination by the Department. See *Asahi*, 727 F. Supp. at 628. SSI contends that the Department regulation in affect now is essentially the same regulation in affect at the time of *Asahi*, in that both regulations require immediate reinstatement of the order if it resumes dumping. SSI further contends that the CIT determined that the Department may not condition a party's exclusion from an antidumping duty order on its agreement to be brought within the order, as only the statute provides the authority to impose duties. See *Chang Tieh Ind. Co. V. United States*, 850 F. Supp. 141, 149 (Ct. Int'l Trade 1993).

SSI maintains that in previous cases, rather than reinstating the original antidumping duty order with respect to revoked companies, the Department

initiated a new investigation against the companies in question. See *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Orange Juice from Brazil*, 71 FR 2183 (January 13, 2006) (*Orange Juice from Brazil*), and *Final Determination; Antidumping Duty Investigation of Pads for Woodwind Instruments from Italy Manufactured by Music Center s.n.c. di Luciano Pisoni and Luciem s.n.c. di Danilo Pisoni & C.*, 58 FR 42295 (August 9, 1993).

SSI argues that the Department's regulations do not specify the circumstances under which it will consider reinstatement, nor the type of investigation that will precede reinstatement. SSI contends that the new regulation, similar to the regulation in effect at the time of the *Asahi* case, remains silent on the interrelationship between reinstatement and the existing framework for imposing duties and that the problems raised in *Asahi* still exist in the current "reinstatement" regulations.

SSI argues that since the statute does not address reinstatement of a company into an antidumping duty order, as a matter of law, the only way SSI's exports may be subject to antidumping duties would be if the Department initiated a new investigation that leads to an antidumping determination by the Department and an injury determination by the ITC.

SSI contends that, should the Department determine that it possesses the legal authority to conduct a changed circumstances review, it must impose a rigorous evidentiary standard. SSI argues that the statute and regulations require the Department to find that the request "shows changed circumstances sufficient to warrant a review," and "whether the continued application of the antidumping duty order is otherwise necessary to offset dumping"; *i.e.*, the Department must find proof that the company involved is engaging in a pattern of dumping and that dumping is likely in the future.

Additionally, in its January 4, 2007, comments, SSI argues that the Department's regulations require a party to certify that it will not dump after revocation of the antidumping duty order. SSI notes that revocation occurred with the publication of the revocation notice in the **Federal Register** on May 17, 2006, five months after the December 2005 shipment listed in petitioner's November 8, 2006, and revised February 26, 2007, submissions. Therefore, SSI argues that it is not bound by the certification as it did not apply to the sale in question. SSI further

notes that the preliminary decision was made after the sale in question was shipped and had no effect on SSI's decision to sell in the United States.

SSI argues that the CIT's decision in *Sebacic Acid from China* (USITC 3775 May 2005) does not support petitioner because the case sunsetted immediately following the final results and was never tested in court. SSI also contends that in *Silicon Metal from Brazil*, the Department postponed initiating a changed circumstances review in order to allow the case to sunset. See *Silicon Metal from Brazil: Revocation of Antidumping Duty Order*, 71 FR 76635 (December 21, 2006) (*Silicon Metal from Brazil*).

SSI also maintains that the Department has passed the 45-day deadline mandated in the regulations for initiating a changed circumstances review and therefore cannot do so now. SSI further contends that the Department could have reversed its decision in the preliminary results that led to the revocation, resulting in the December 2005 sale being reviewed in a subsequent review process and not escaping review as petitioner claims. SSI explains that if the Department had denied SSI's revocation request for the final results of the 03-04 administrative review, and in turn conducted an administrative review for the 04-05 period for SSI, the December 2005 entry would have been captured in the review process.

In its January 17, 2007 comments, SSI argues that the plain language of the statute refers to a party certifying not to dump after the revocation, with no mention of dumping after the effective date of revocation. SSI notes that the statute speaks to the facts of the case as they existed at the time of sale, not at time of the revocation, which occurred in May of 2006.

#### Rebuttal Comments

On December 21, 2006, January 12, 2007, March 23, 2007, April 2, 2007, and April 9, 2007, petitioner filed rebuttal comments to SSI's comments. Petitioner argues that in *Sebacic Acid from China*, the Department rejected arguments similar to SSI's contentions regarding the Department's legal authority to reinstate the order. See *Sebacic Acid from the People's Republic of China: Final Results of Antidumping Duty Changed Circumstances Review and Reinstatement of the Antidumping Duty Order*, 70 FR 16218 (March 30, 2005) (*Sebacic Acid from China*). Petitioner also argues that SSI's contention, that the Department impose a rigorous evidentiary standard for initiation for a changed circumstances

review, is incorrect. Petitioner claims that the Department should not impose a higher standard for a respondent with a prior history of dumping than it would for a respondent without a prior history of dumping. Petitioner maintains that the standard for initiation of a changed circumstances review should be lower than that for an investigation. However, regardless of the standard, petitioner claims that it has demonstrated that SSI has resumed dumping.

Petitioner argues that SSI's claim, that reinstatement of an order requires petitioner to establish that the reinstatement be necessary to "otherwise offset dumping," is incorrect. Petitioner maintains that the requirement of "otherwise necessary to offset dumping" only appears as a caveat in the Department's regulations regarding partial revocation of an antidumping duty order, with no similar requirement in an initiation for a changed circumstances review.

#### Allegation of Resumed Dumping

On December 1, 2006, the Department sent a letter to petitioner requesting additional information concerning the U.S., home market, and cost data provided by petitioner in its November 8, 2006, submission. Petitioner provided its response on December 5, 2006. On December 22, 2006, the Department requested additional information from petitioner concerning its submissions of November 8, 2006, and December 5, 2006. Petitioner submitted its response to our second request for additional information on January 12, 2007. Initially, the Department instructed petitioner to base its allegation on sales and cost information for the period October 1, 2005, through September 30, 2006, which petitioner did in its February 26, 2007, submission. Finally, on December 11, 2007, the Department instructed petitioner to base its allegation on sales and cost information for the period July 1, 2006, through June 30, 2007 (*i.e.*, the POR), which petitioner did in its January 29, 2008, response.

In its January 29, 2008, submission, petitioner provided price quotes concerning SSI's sales activity in the U.S. and cost information for its NV (CV) calculation, and argued that SSI had sold hot-rolled steel at less than NV during the period July 1, 2006, through June 30, 2007. The allegation of resumed dumping upon which the Department has based its decision to initiate a changed circumstances review is detailed below. The sources of data for the deductions and adjustments relating to NV and U.S. price are discussed in greater detail in the

*Changed Circumstances Review Initiation Checklist* dated concurrently with this notice. Should the need arise to use any of this information as facts available under section 776 of the Act, we may reexamine the information and revise the margin calculation, if appropriate.

#### 1. Export Price (EP)

Petitioner based its calculation of U.S. price upon import statistics obtained from the United States Department of Commerce, Bureau of Census IM-145 import data for 14 different HTS numbers of hot-rolled steel commonly sold in the United States, depending on the source and the time period used. See Attachment II of the *Changed Circumstances Review Initiation Checklist*, dated March 21, 2008, for the margin ranges. Petitioner obtained and compared bill of lading summaries from Trade Intelligence PIERS, which is specific to SSI, with quantities from IM-145 data in order to isolate those specific shipments of subject merchandise from SSI. Petitioner divided the entered value by the reported quantity and made no adjustments.

#### 2. Normal Value

##### *Normal Value (NV)*

The petitioner was unable to obtain SSI's home market or third country prices for the proposed 05-06 and 06-07 PORs. See petitioner's February 26, 2007, and March 5, 2008, submissions. Therefore, the petitioner based normal value for sales made by SSI in the United States during the proposed PORs on CV.

#### 3. Constructed Value

##### *Price-to-Constructed Value Comparisons*

Because petitioner could not obtain home market or third country pricing information for SSI, petitioner calculated normal value based on a constructed value and provided a comparison of U.S. price to CV. See Exhibit 2 pages 1-4 of petitioner's February 26, 2007, submission for the 05-06 period and pages 2-5 of petitioner's March 5, 2008, submission for the 06-07 period. Pursuant to section 773(e) of the Act, CV consists of the cost of manufacturing (COM), selling, general, and administrative (SG&A), financial expenses, packing expenses, and profit. Petitioner calculated COM based on its own production experience, adjusted for known differences between costs incurred to produce hot-rolled carbon steel flat products in the United States

and in Thailand. Petitioner calculated the COM as the sum of raw materials, direct labor, electricity, natural gas, manufacturing overhead, and depreciation expenses.

To calculate SG&A, petitioner relied upon the amounts reported in SSI's 2006 calendar year unconsolidated financial statements. To calculate interest expense, petitioner relied upon the amounts reported in the 2006 calendar year consolidated financial statements of SSI. For packing cost, petitioner did not include any amount. Consistent with section 773(e)(2) of the Act, petitioner included in CV an amount for profit. For profit, petitioner relied upon the amounts reported in SSI's 2006 calendar year unconsolidated financial statements. *See* the Initiation Checklist.

#### 4. Alleged Margins of Dumping

Based upon the information summarized above, petitioner argues that SSI has resumed dumping hot-rolled steel. Depending upon the HTS number of the hot-rolled steel, petitioner estimates margins of 2.91 percent to 19.64 percent using the first source of data provided by petitioner, and 2.00 percent to 23.89 percent using the second source of data provided by petitioner, for the 05–06 period. Estimated dumping margins range from 0.60 percent to 26.24 percent using the first source of data provided by petitioner, and 0.78 percent to 28.22 percent for the second source of data provided by petitioner, for the 06–07 period. *See Changed Circumstances Review Initiation Checklist*, dated March 21, 2008, for the first and second sources of data used to value SSI's steel slab.

#### Scope of the Review

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 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).
- 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 currently 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.

#### Initiation of Changed Circumstances Review

We find petitioner has provided sufficient evidence to initiate a changed circumstances review in which we will determine whether SSI has resumed dumping sufficient to warrant reinstatement within the order of hot-rolled steel from Thailand. *See Changed*

*Circumstances Review Initiation Checklist*, dated March 21, 2008. SSI argues that in *Asahi* the CIT ruled that the Department is not permitted by the statute to reinstate a revoked order without a new injury finding by the ITC. SSI also contends that the Department has no authority to reinstate a revoked order, and has further argued that the statutory provision governing changed circumstance reviews does not cover an attempt to reinstate a revoked company into an antidumping duty order. For the reasons outlined below, we disagree with SSI.

Pursuant to section 751(b) of the Act, the Department will conduct a changed circumstances review upon receipt of a request "from an interested party for review of an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order." Petitioner's allegation, with supporting documentation, that SSI has resumed dumping hot-rolled steel subsequent to its revocation from the order is an appropriate basis for a changed circumstances review.

The Department's authority to reinstate a revoked company into an antidumping duty order derives from sections 751(b) and (d) of the Act and 19 CFR 351.222(b) and (e). In particular, the Department's authority to partially revoke an order is expressed in section 751(d) of the Act. The statute, however, provides no detailed description of the criteria, procedures or conditions relating to the Department's exercise of this authority. Accordingly, the Department has issued regulations setting forth in detail how the Department will exercise the authority granted to it under the statute. In particular, the Department has reasonably interpreted the authority to partially revoke the antidumping duty order with respect to a particular company it finds to be no longer dumping to include the authority to impose a condition that the partial revocation may be withdrawn (*i.e.*, the company may be reinstated) if dumping is resumed during a time in which an antidumping order continues to exist. To interpret the statute otherwise would permit the Department to abdicate its responsibility to ensure that injurious dumping is remedied by imposition of offsetting antidumping duties. Therefore, our determination to conduct this changed circumstances review to determine whether SSI should be reinstated under the *Hot-Rolled Steel Order* is supported by the statute and regulations. Additionally, as noted by the petitioner, conducting a changed circumstances review pursuant to section 751(b) of the Act to determine

whether to reinstate a company previously revoked from an antidumping duty order is consistent with the agency's practice. *See Sebacic Acid from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Reinstatement of the Antidumping Order*, 70 FR 16218 (March 30, 2005).

Moreover, we find that SSI's reliance on *Asahi*, to support its assertion that the Department lacks legal authority to reinstate a company in an antidumping duty order, is misplaced. The CIT in *Asahi* was reviewing an earlier regulation (19 CFR 353.54(e)(1988)), which stated:

Before the Secretary may tentatively revoke a Finding or an Order or terminate a suspended investigation pursuant to paragraph (a) of this section, the parties who are subject to the revocation or the termination must agree in writing to an immediate suspension of liquidation and reinstatement of the Finding or Order or continuation of the investigation, as appropriate, if circumstances which indicate that the merchandise thereafter imported into the United States is being sold at less than fair value. Opportunity for interested parties to present views with respect to the tentative revocation will be provided.

19 CFR 353.54(e)(1988).

The CIT in *Asahi* acknowledged that the purpose of the 1988 regulation was to discourage the resumption of dumping after revocation, and that there were policy concerns about having to undertake an entirely new investigation. *See Asahi*, 727 F. Supp. at 628. The CIT found that the old regulation was so ambiguous as to make the standard of reinstatement conjectural. *Id.* However, the CIT did not address whether reinstatement could be accomplished through an amendment to 19 CFR 353.54, or through a new regulatory provision. *Id.*

We find that our current regulation governing reinstatement (as did the earlier 1988 regulation) addresses the concerns enumerated by the CIT in *Asahi*. This regulation places exporters and producers which the Department has previously found to be dumping on notice that they are subject to immediate reinstatement once they are revoked from an order, if the Secretary later concludes they have resumed dumping. 19 CFR 351.222(b)(2)(i)(B) and (e). Indeed, revoked companies agree in writing to immediate reinstatement upon a finding of resumed dumping. 19 CFR 351.222(b)(2)(i)(B) and 351.222(e)(1). The present regulation

makes clear that reinstatement can only occur as long as any exporter or producer is subject to the order. Several other companies remain subject to the antidumping duty order on hot-rolled steel from Thailand. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 72 FR 73315 (December 27, 2007). Thus, the ITC's determination that subject merchandise sold at less than NV is injurious to the domestic industry continues to support application of antidumping duties to subject merchandise sold at less than NV. *See Hot-Rolled Steel Order*.

Moreover, any guidance provided by *Asahi* must be read in light of general principles of administrative law. One such basic principle of administrative law is that an administering agency must abide by its own rules to safeguard expectations. Thus, section 351.222(b)(2)(i)(B) of the Department's regulations suggests that a partial revocation determination is not a dispositive administrative pronouncement. Such a conclusion logically follows from the terms of the regulation, which directs the Department to rescind its partial revocation determination and to reinstate the revoked company under the existing antidumping duty order. In the instant case, the order on hot-rolled steel from Thailand has not been revoked. The Department's partial revocation with respect to SSI was expressly conditioned upon the possibility of reinstatement should dumping resume. The Department's regulation is reasonable because it imposes a reasonable condition upon partial revocation which is limited to circumstances under which the statute authorizes the Department to impose antidumping duties to remedy injurious dumping of subject merchandise.

SSI's claim that the Department's reinstatement regulation has no statutory authority is without merit. Specifically, SSI implies that the Act requires an injury determination by the ITC prior to the imposition of an order, and that, because the order on hot-rolled steel from Thailand has been partially revoked as to SSI, a new petition must be filed with respect to SSI, and separate affirmative determinations must be made by the ITC and the Department concerning injury and dumping. We disagree. In the instant case, the Department made its final determination of dumping and the ITC made its final injury determination. *See Hot-Rolled Steel Order*. Additionally, the antidumping duty order on hot-rolled steel from Thailand remains in place. Therefore, the ITC has found that dumping of hot-rolled steel

from Thailand causes material injury to the domestic industry; that finding was undisturbed by the partial revocation of SSI. Further, that revocation was premised on the absence of dumping rather than the absence of injury and was expressly conditioned on the possibility of reinstatement should dumping resume.

The partial revocation of the order with respect to SSI did not nullify the validity of the underlying injury and less than fair value determinations that resulted in the issuance of an antidumping duty order which remains in force, particularly when the partial revocation is the result of behavior subsequent to those earlier determinations. The ITC's injury determination, furthermore, does not examine the injury caused by discrete companies, but rather the injury caused by all dumped exports originating in a particular exporting country. Even if one or more exporters in that country may have been revoked from the order on the basis of absence of dumping, all dumped exports of subject merchandise from that country continue to cause or threaten material injury, pursuant to the ITC's affirmative injury determination. Thus, unless all exporters are revoked from the order, the order continues to exist, as does the potential for reinstatement. SSI itself agreed to such a reinstatement as a condition of its partial revocation, if the Department were to conclude that it has sold the merchandise at below NV. Specifically, SSI filed a certification from a company official pursuant to the Department's regulations that it agreed to the immediate reinstatement in the order, so long as any exporter or producer is subject to the order, if the Secretary concludes that, subsequent to the revocation, it sold hot-rolled steel at less than NV. Thus, a new injury finding specific to SSI is neither necessary nor appropriate for reinstatement pursuant to 19 CFR 351.222(h)(2)(i)(B).

The standard for initiation of a changed circumstances review under 751(b) of the Act is whether a request from an interested party for a review of a final affirmative determination that resulted in an antidumping duty order, a suspension agreement, or a final affirmative determination shows changed circumstances sufficient to warrant a review of such determination or agreement. The information submitted by petitioner in its letters of November 8, 2006, December 5, 2006, January 12, 2007, and February 26, 2007, September 27, 2007, and January 29, 2008, concerning SSI's COP and U.S. sales activity, suggest SSI may have resumed dumping subsequent to SSI's

revocation from the order. Depending on the source of data used to value SSI's steel slab prices, petitioner alleges underselling of hot-rolled steel by SSI in the United States at prices between 2.00 and 23.89 percent below NV during the 05–06 period, and 0.60 percent and 28.22 percent below NV during the 06–07 period. The Department finds that the petitioner's changed circumstances request, which suggests a resumption of dumping, satisfies that standard for initiating.

Based on the foregoing, we find that petitioner has provided sufficient evidence to initiate a changed circumstances review to examine SSI's pricing and determine whether SSI has resumed dumping sufficient to reinstate the company within the order of hot-rolled steel from Thailand.

For purposes of this initiation, the evidence provided by petitioner indicates that SSI may have resumed dumping in not just one, but two periods. This evidence further supports the Department's determination to initiate a review to determine whether in fact SSI has resumed dumping.

#### **Period of Changed Circumstances Review**

The Department expects to request data from SSI for the July 1, 2006, through June 30, 2007 period in order to determine whether SSI has resumed dumping sufficient to warrant reinstatement within the order of hot-rolled steel from Thailand.

#### **Public Comment**

The Department will publish in the **Federal Register** a notice of preliminary results of changed circumstances review in accordance with 19 CFR 351.221(b)(4) and 351.221(c)(3)(i), which will set forth the Department's preliminary factual and legal conclusions. Pursuant to 19 CFR 351.221(b)(4)(ii), interested parties will have an opportunity to comment on the preliminary results. The Department will issue its final results of review in accordance with the time limits set forth in 19 CFR 351.216(e).

This notice is published in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b) of the Department's regulations.

Dated: March 28, 2008.

**David M. Spooner,**  
*Assistant Secretary for Import Administration.*

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## **DEPARTMENT OF COMMERCE**

### **INTERNATIONAL TRADE ADMINISTRATION**

(C–580–851)

#### **Dynamic Random Access Memory Semiconductors from the Republic of Korea: Extension of Time Limit for Preliminary Results of the Countervailing Duty Administrative Review**

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

**EFFECTIVE DATE:** April 7, 2008.

**FOR FURTHER INFORMATION CONTACT:** Shane Subler at (202) 482–0189 or David Neubacher at (202) 482–5823; AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On September 25, 2007, the Department published a notice of initiation of administrative review of the countervailing duty order on dynamic random access memory semiconductors from the Republic of Korea, covering the period January 1, 2006 through December 31, 2006. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 72 FR 54428 (September 25, 2007). On December 14, 2007, the petitioner alleged that Hynix Semiconductor, Inc., received new subsidies.

##### **Statutory Time Limits**

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (“the Act”), requires the Department of Commerce (“the Department”) to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and the final results of review within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

##### **Extension of Time Limits for Preliminary Results**

This administrative review is extraordinarily complicated due to the complexity of the countervailable