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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-042]

Antidumping Duty Investigation of Stainless Steel Sheet and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

DATES: Effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*.]

SUMMARY: The Department of Commerce (the Department) determines that imports of stainless steel sheet and strip (stainless sheet and strip) 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). The period of investigation (POI) is July 1, 2015, through December 31, 2015. The final weighted-average dumping margins for the investigation on stainless sheet and strip from the PRC are listed below in the "Final Determination" section of this notice. We continue to find that critical circumstances exist for the PRC-wide entity and the separate rate companies that were not selected for individual examination.

FOR FURTHER INFORMATION CONTACT: Alexander Cipolla, or Kathryn Wallace, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4956 or (202) 482-6251 respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 19, 2016, the Department published its affirmative preliminary determination that stainless sheet and strip from the PRC is being, or is likely to be, sold in the United States at less than fair value, as provided by section 733 of the Tariff Act of 1930, as amended (the Act).¹ The following events occurred since the *Preliminary Determination*. On October 21, 2016, the Department issued a postponement of the Final Determination.² We invited interested party comments on the *Preliminary Determination* in this investigation. On November 2, 2016, mandatory respondent, Shanxi Taigang Stainless Steel Co., Ltd (Taigang) submitted a case brief. On November 14, 2016, Petitioners filed a rebuttal case brief.³ On January 17, 2017, the Department held hearing with respect to this investigation. For a complete discussion of the issues raised in the case and rebuttal briefs, *see* the Issues and Decision Memorandum.⁴

Period of Investigation

The POI is July 1, 2015, through December 31, 2015. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition.⁵

¹ *See Stainless Steel Sheet and Strip From the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances*, 81 FR 64135 (September 19, 2016) (*Preliminary Determination*) and the accompanying Preliminary Determination Memorandum.

² *See Stainless Steel Sheet and Strip from the People's Republic of China: Postponement of Final Determination of Sales at Less Than Fair Value Investigation*, 81 FR 72776 (October 21, 2016).

³ Petitioners are AK Steel Corporation, Allegheny Ludlum, LLC d/b/a ATI Flat Rolled Products, North American Stainless, and Outokumpu Stainless USA, LLC.

⁴ *See* Memorandum from Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, regarding "Decision Memorandum for the Final Determination in the Antidumping Duty Investigation of Stainless Steel Sheet and Strip from the People's Republic of China," (February 1, 2017) (Issues and Decision Memorandum), which is hereby adopted by this notice.

⁵ *See* 19 CFR 351.204(b)(1).

Scope of the Investigation

The product covered by this investigation is stainless sheet and strip. For a complete description of the scope of this investigation, *see* Appendix I.

Final Affirmative Determination of Critical Circumstances

We continue to find that critical circumstances exist for the PRC-wide entity and non-selected respondents eligible for a separate rate, in accordance with section 735(a)(3) of the Act and 19 CFR 351.206. For a full description of the methodology and results of our analysis, *see* the *Preliminary Determination*, unchanged in the Issues and Decision Memorandum.

Separate Rates

In the *Preliminary Determination*, we found that evidence provided by Taiyuan Ridetaixing Precision Stainless Steel Incorporated Co., Ltd. (Ridetaixing), and Zhangjiagang Pohang Stainless Steel Co., Ltd. (ZPSS) supported finding an absence of both *de jure* and *de facto* government control, and, therefore, we preliminarily granted a separate rate to each of these companies.⁶ In addition, in the *Preliminary Determination*, we found Tiancheng Stainless Steel Products Co., Ltd. (Tiancheng), Taigang and Tianjin Taigang Daming Metal Product Co., Ltd. (Daming) to be ineligible for a separate rate.⁷ For the final determination, we continue to find that Ridetaixing and ZPSS are eligible for separate rates.

With respect to Taigang, we determined in the *Preliminary Determination* that it failed to demonstrate an absence of *de facto* government control, and, thus, the Department did not grant Taigang a separate rate. For this final determination, we continue to find, based on record evidence, that Taigang failed to demonstrate an absence of *de facto* government control, and we

⁶ *See* Preliminary Decision Memorandum at 10-13.

⁷ *Id.* at 12.

are, therefore, not granting Taigang a separate rate. For further discussion of this issue, see the *Issues and Decision Memorandum* at Issue 5.

We have looked to sections 735(c)(5)(A)-(B) of the Act for guidance in determining the rate applicable to separate rate respondents not selected for individual examination. Under section 735(c)(5)(A) of the Act, the rate for all other companies that have not been individually examined is normally an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely on the basis of facts available. In this investigation, both exporters selected for individual examination have been found to be part of the PRC-wide entity, which is receiving an antidumping duty rate based entirely on facts otherwise available with an adverse inference. Therefore, looking to section 735(c)(5)(B) of the Act, the Department is using “any reasonable method” to determine the rate for exporters that are not being individually examined and found to be entitled to a separate rate, as we did in the *Preliminary Determination*. As such, we continue to assign the simple average of the two petition rates (*i.e.*, 63.86 percent) to the separate rate applicants not individually examined.⁸

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the *Issues and Decision Memorandum* accompanying this notice, which is hereby adopted by this notice. A list of the issues which the parties raised and to which the Department responded in the memorandum appears in Appendix II of this notice. The *Issues and Decision Memorandum* is a public document and is on file electronically *via* Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System

⁸ See *Preliminary Determination*.

(ACCESS). ACCESS is available to registered users at <http://access.trade.gov> and is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>. The signed and electronic versions of the memorandum are identical in content.

Changes Since the Preliminary Determination

Based on our review and analysis of the comments received from parties, we made certain changes to the separate rate and PRC-wide entity cash deposit rates since the *Preliminary Determination*. For a discussion of these changes, see the *Issues and Decision Memorandum*, dated concurrently with this notice.⁹

PRC-Wide Rate

In our *Preliminary Determination*, we found that the PRC-wide entity, which includes Taigang, Daming, and other PRC exporters and/or producers that did not respond to the Department's requests for information, failed to provide necessary information, withheld information requested by the Department, failed to provide information in a timely manner, and significantly impeded this proceeding by not submitting the requested information. As a result, we preliminarily determined to calculate the PRC-wide rate on the basis of adverse facts available (AFA), pursuant to sections 776(a)-(b) of the Act. As AFA, we determined to use the highest petition margin (76.64 percent) and corroborated that margin. For this final determination, we continue to rely on AFA in determining the rate for the PRC-wide entity and to select 76.64 percent as the dumping margin for the PRC-wide entity.

⁹ See *Issues and Decision Memorandum*, dated concurrently with this memorandum.

Combination Rates

In the *Initiation Notice*, the Department stated that it would calculate combination rates for the respondents that are eligible for a separate rate in this investigation.¹⁰ Policy Bulletin 05.1 describes this practice.¹¹

Final Determination

The Department determines that imports of stainless sheet and strip from the PRC is being, or is likely to be, sold in the United States at LTFV as provided in section 735 of the Act and determines that the estimated final weighted-average dumping margins are as follows:

Exporter	Producer	Weighted-Average Dumpin Margin (%)	Cash Deposit (%)
Taiyuan Ridetaixing Precision Stainless Steel Incorporated Co., Ltd.	Taiyuan Ridetaixing Precision Stainless Steel Incorporated Co., Ltd.	63.86	45.26
Zhangjiagang Pohang Stainless Steel Co., Ltd.	Zhangjiagang Pohang Stainless Steel Co., Ltd.	63.86	45.26
PRC-Wide Entity	PRC-Wide Entity	76.64	58.04

Disclosure

We intend to disclose to parties the calculations performed in this proceeding within five days of any public announcement of this notice in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

As noted above, for this final determination, the Department found that critical circumstances exist with respect to imports of the subject merchandise from the PRC-wide entity

¹⁰ See *Stainless Steel Sheet and Strip from the People's Republic of China: Initiation of Antidumping Duty Investigation*, 81 FR 12711 (March 10, 2016) (*Initiation Notice*).

¹¹ See Enforcement and Compliance Policy Bulletin No. 05.1 "Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries," (April 5, 2005) (Policy Bulletin 05.1), available on the Department's Website at <http://enforcement.trade.gov/policy/bull05-1.pdf>.

and the non-selected separate rate respondents. Therefore, in accordance with section 735(c)(4)(A) of the Act, we will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all imports of the merchandise subject to the investigation, that were entered or withdrawn from warehouse, for consumption on or after June 21, 2016, 90 days prior to publication of the *Preliminary Determination* in the *Federal Register*, and require a cash deposit for such entries as noted below.

Pursuant to 19 CFR 351.205(d) and section 735(c)(1)(B)(ii) of the Act, we will instruct CBP to require a cash deposit¹² for all suspended entries at an *ad valorem* rate equal to the weighted-average amount by which normal value exceeds U.S. price, as follows: (1) the cash deposit rate for the exporter/producer combination listed in the table above will be the dumping margin identified for that combination in the table adjusted, where appropriate,¹³ for export subsidies and estimated domestic subsidy pass-through;¹⁴ (2) for all combinations of PRC exporters/producers of merchandise under consideration that have not received their own separate rate above, the cash-deposit rate will be the dumping margin established for the PRC-wide entity, which will be adjusted, where appropriate for export subsidies and estimated domestic subsidy pass-through; and (3) for all non-PRC exporters of the merchandise under consideration which have not received their own separate rate above, the cash-deposit rate will be the cash deposit rate applicable to the PRC exporter/producer combination that supplied that

¹² See *Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations*, 76 FR 61042 (October 3, 2011).

¹³ If the ITC makes an affirmative final determination, we will adjust the cash deposit rates by deducting applicable final export subsidy and domestic pass-through rates from the final dumping margins.

¹⁴ See sections 772(c)(1)(C) and 777A(f) of the Act, respectively. Unlike in administrative reviews, the Department makes an adjustment for export subsidies in investigations not in the margin-calculation program, but to the cash-deposit rate. See *Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India*, 71 FR 45012 (August 8, 2006), and accompanying Issues and Decision memorandum at Comment 1.

non-PRC exporter. These suspension of liquidation and cash deposit instructions will remain in effect until further notice.

The cash deposit rates were adjusted by the countervailing duty attributable to export subsidies. Pursuant to 777A(f) of the Act, we are also adjusting final cash deposit rates for estimated domestic subsidy pass-through, where appropriate.¹⁵

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of the final affirmative determination of sales at less than fair value. Because the final determination in this proceeding is affirmative, the ITC will make its final determination, in accordance with section 735(b)(2) of the Act, as to whether the domestic industry in the United States is materially injured, threatened with material injury, or the establishment of an industry in the United States is materially retarded by reason of imports of passenger tires from the PRC, no later than 45 days after our final determination. If the ITC determines that material injury, threat of material injury, or material retardation does not exist, this proceeding will be terminated and all cash deposits posted will be refunded or canceled. If the ITC determines that such injury or material retardation does exist, then 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 Administrative Protective Orders

In the event the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in

¹⁵ *Id.* at Issue 2.

accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction. This determination and notice are issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: January 1, 2017

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is stainless steel sheet and strip, whether in coils or straight lengths. 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 sheet and strip is a flat-rolled product with a width that is greater than 9.5 mm and with a thickness of 0.3048 mm and greater but less than 4.75 mm, and that is annealed or otherwise heat treated, and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, annealed, tempered, polished, aluminized, coated, painted, varnished, trimmed, cut, punched, or slit, *etc.*) provided that it maintains the specific dimensions of sheet and strip set forth above following such processing. The products described include products regardless of shape, and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been “worked after rolling” (*e.g.*, products which have been beveled or rounded at the edges).

For purposes of the width and thickness requirements referenced above: (1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above; and (2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, *etc.*), the measurement at its greatest width or thickness applies.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded.

Subject merchandise includes stainless steel sheet and strip that has been further processed in a third country, including but not limited to cold-rolling, annealing, tempering, polishing, aluminizing, coating, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the stainless steel sheet and strip.

Excluded from the scope of this investigation are the following: (1) sheet and strip that is not annealed or otherwise heat treated and not pickled or otherwise descaled; (2) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more); and (3) flat wire (*i.e.*, cold-rolled sections, with a mill edge, rectangular in shape, of a width of not more than 9.5 mm).

The products under investigation are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.13.0081, 7219.14.0030, 7219.14.0065, 7219.14.0090, 7219.23.0030, 7219.23.0060, 7219.24.0030, 7219.24.0060, 7219.32.0005, 7219.32.0020, 7219.32.0025, 7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.32.0045, 7219.32.0060, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044, 7219.33.0045, 7219.33.0070, 7219.33.0080, 7219.34.0005,

7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.34.0050, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.35.0050, 7219.90.0010, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.12.1000, 7220.12.5000, 7220.20.1010, 7220.20.1015, 7220.20.1060, 7220.20.1080, 7220.20.6005, 7220.20.6010, 7220.20.6015, 7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015, 7220.20.7060, 7220.20.7080, 7220.90.0010, 7220.90.0015, 7220.90.0060, and 7220.90.0080. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Appendix II

Outline of the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope Comments
- IV. Scope of the Investigation
- V. Use of Adverse Facts Available
- VI. Critical Circumstances
- VII. Separate Rates
- VIII. Combination Rates
- IX. PRC-Wide Rate
- X. Adjustment under Section 777A(F) of the Act
- XI. Adjustment to Cash Deposit Rate for Export Subsidies
- XII. Discussion of the Issues
- XIII. Recommendation

List of Topics Discussed in the Issues and Decision Memorandum

- Issue 1: Whether the Department's Investigation and Decision Not to Verify Taigang Were Lawful
 - Issue 2: Whether the Department Should Apply a Double-Remedy Adjustment for Domestic Subsidies Countervailed in the Accompanying CVD Investigation
 - Issue 3: Whether the Department has the Statutory Authority to Issue a Country-Wide "PRC-Entity" AD Rate, and Whether the Department has Justification for Applying FA or AFA to Taigang
 - Issue 4: Whether the Department's Presumption of PRC Government Control is Outdated
 - Issue 5: Whether Taigang's Export Activities Are Controlled by the Chinese Government
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