

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-860]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Steel Concrete Reinforcing Bars From the People's Republic of China

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

EFFECTIVE DATE: January 30, 2001.

FOR FURTHER INFORMATION CONTACT: Magd Zalok or Charles Riggall at (202) 482-4162 or (202) 482-0650, respectively; AD/CVD Enforcement, Office 5, Group II, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (the Department) regulations refer to the regulations codified at 19 CFR part 351 (April 2000).

Preliminary Determination

We preliminarily determine that steel concrete reinforcing bar (rebar) from the People's Republic of China (PRC) is being sold in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the Suspension of Liquidation section of this notice.

Case History

This investigation was initiated on July 18, 2000.¹ See *Initiation of Antidumping Duty Investigations: Steel Concrete Reinforcing Bars from Austria, Belarus, Indonesia, Japan, Latvia, Moldova, the People's Republic of China, Poland, the Republic of Korea, the Russian Federation, Ukraine, and Venezuela*, 65 FR 45754 (July 25, 2000) (*Initiation Notice*). Since the initiation

¹ The petitioner in these investigations is the Rebar Trade Action Coalition (RTAC), and its individual members, AmeriSteel, Auburn Steel Co., Inc., Birmingham Steel Corp., Border Steel, Inc., Marion Steel Company, Riverview Steel, and Nucor Steel and CMC Steel Group. (Auburn Steel was not a petitioner in the Indonesia case).

of this investigation, the following events have occurred.

In the petition, filed on June 28, 2000, the petitioner alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of rebar from the PRC. On August 30, 2000, the Department preliminarily determined that critical circumstances exist with respect to exports of rebar from the PRC. See *Memorandum to Holly A. Kuga Re: Preliminary Affirmative Determinations of Critical Circumstances* (August 30, 2000); see also *Preliminary Determinations of Critical Circumstances: Steel Concrete Reinforcing Bars From the People's Republic of China and Poland*, 65 FR 54228 (September 7, 2000).

On August 14, 2000, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that a regional industry in the United States is materially injured or threatened with material injury by reason of imports from Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland, and Ukraine of certain steel concrete reinforcing bars. See *Certain Steel Concrete Reinforcing Bars From Austria, Belarus, China, Indonesia, Japan, Korea, Latvia, Moldova, Poland, Russia, Ukraine, and Venezuela*, 65 FR 51329 (August 23, 2000). With respect to subject imports from Austria, Russia, and Venezuela, the ITC determined that imports from these countries during the period of investigation (POI) were negligible and, therefore, these investigations were terminated. The ITC also determined that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, by reason of subject imports from Japan. *Id.*

On August 18, 2000, we issued the antidumping questionnaire to the Chinese Ministry of Foreign Trade & Economic Cooperation (MOFTEC) with a letter requesting that it forward the questionnaire to all exporters of rebar who had shipments during the POI.² In

² 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. In NME cases, Section D requests information on factors of production.

addition, on August 18, 2000, we sent the questionnaire to the Chinese exporter/producer Laiwu Steel Group, Ltd. (Laiwu), which had contacted us through counsel, with instructions to complete and return the questionnaire by the given deadline. We received a response only from Laiwu. Subsequently, we issued supplemental questionnaires to, and received responses from Laiwu.

On September 13, 2000, we invited interested parties to provide comments on the surrogate country selection and publicly available information for valuing the factors of production. We received comments from the petitioner between October 16 and November 13, 2000, and from Laiwu on October 23, 2000.

On November 9, 2000, the petitioner requested a postponement of the preliminary determination in this investigation. On November 21, 2000, the Department published a **Federal Register** notice postponing the deadline for the preliminary determination until January 16, 2001. See *Notice of Postponement of Preliminary Antidumping Duty Determinations: Steel Concrete Reinforcing Bars from Belarus, Indonesia, Latvia, Moldova, the People's Republic of China, Poland, the Republic of Korea and Ukraine*, 65 FR 69909 (November 21, 2000).

Postponement of Final Determination

Pursuant to section 735(a)(2) of the Act, on December 28, 2000, Laiwu requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination. In its request, Laiwu also requested that the Department extend by 60 days the application of the provisional measures prescribed under paragraphs (1) and (2) of section 773(d) of the Act. In accordance with 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) the requesting exporters account for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the respondent's request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

Period of Investigation

The POI is October 1, 1999, through March 31, 2000. This period

Section E requests information on further manufacturing.

corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, June 2000).

Scope of Investigation

For purposes of these investigations, the product covered is all rebar sold in straight lengths, currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 7214.20.00 or any other tariff item number. Specifically excluded are plain rounds (*i.e.*, non-deformed or smooth bars) and rebar that has been further processed through bending or coating. HTSUS subheadings are provided for convenience and Customs purposes. The written description of the scope of this proceeding is dispositive.

Non-market Economy Status for the People's Republic of China

The Department has treated the PRC as a non-market economy (NME) country in all past antidumping investigations (*see, e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China*, 65 FR 33805 (May 25, 2000), and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China*, 65 FR 19873 (April 13, 2000)). A designation as a NME remains in effect until it is revoked by the Department (*see* section 771(18)(C) of the Act). The respondent in this investigation has not requested a revocation of the PRC's NME status. We have, therefore, preliminarily determined to continue to treat the PRC as a NME. When the Department is investigating imports from a NME, section 773(c)(1) of the Act directs us to base the normal value (NV) on the NME producer's factors of production, valued in a comparable market economy that is a significant producer of comparable merchandise. The sources of individual factor prices are discussed under the Normal Value section, below.

Separate Rates

It is the Department's policy to assign all exporters of merchandise subject to investigation in a NME country a single rate, unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Laiwu, the only responding company that has submitted a questionnaire response, has provided the requested company-specific separate rates information and has stated that there is no element of government ownership or control. In its questionnaire response, Laiwu states that it is an independent company "owned by all the people" and

controlled by the general assembly of workers and employees. Laiwu further claims that it does not maintain any corporate relationship with the central, provincial, and local government in terms of production, management, and operations. As stated in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*), and *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol*, 60 FR 22545 (May 8, 1995) (*Furfuryl Alcohol*), ownership of a company by "all the people" does not require the application of a single rate. The Department's separate rate test is not concerned, in general, with macroeconomic/border-type controls (*e.g.*, export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent dumping. Rather, the test focuses on controls over the export-related investment, pricing, and output decision-making process at the individual firm level. *See Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value*, 62 FR 61754, 61757 (November 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997); and *Honey from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 60 FR 14725, 14726 (March 20, 1995).

To establish whether a firm is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), and amplified in *Silicon Carbide*. Under this test, the Department assigns separate rates in NME cases only if an exporter can affirmatively demonstrate the absence of both (1) *de jure* and (2) *de facto* governmental control over export activities. *See Silicon Carbide* and *Furfuryl Alcohol*.

1. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal

measures by the government decentralizing control of companies.

Laiwu has placed on the record a number of documents to demonstrate absence of *de jure* control, including the "Foreign Trade Law of the People's Republic of China," promulgated on May 12, 1994, the "Law of the People's Republic of China on Industrial Enterprises Owned By the Whole People," adopted on April 13, 1988, and the "Regulations for Transformation of Operational Mechanism of State-Owned Enterprises," effective as of July 23, 1992. In prior cases, the Department has analyzed these laws and found that they establish an absence of *de jure* control. *See, e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China*, 60 FR 54472 (October 24, 1995). We have no new information in this proceeding which would cause us to reconsider this determination.

As stated in previous cases, there is some evidence that the provisions of the above-cited 1988 Law and 1992 Regulations regarding enterprise autonomy have not been implemented uniformly among different sectors and/or jurisdictions in the PRC, (*see* "PRC Government Findings on Enterprise Autonomy," in Foreign Broadcast Information Service-China-93-133 (July 14, 1993)). Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

2. Absence of De Facto Control

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.

Laiwu asserted the following: (1) It establishes its own export prices independently of the government and without the approval of a government authority; (2) it negotiates contracts, without guidance from any

governmental entities or organizations; (3) it makes its own personnel decisions including the selection of management; and (4) it retains the proceeds of its export sales, and utilizes profits according to its business needs.

Based on the information provided, we preliminarily determine that Laiwu has met the criteria for the application of separate rates. We will examine this matter further at verification.

Since Laiwu is the only responding producer/exporter, we preliminarily determine, as facts available, that all other non-responsive producers/exporters have not met the criteria for application of separate rates.

The People's Republic of China-Wide Rate and Use of Facts Otherwise Available

All exporters were given the opportunity to respond to the Department's questionnaire. As explained above, we received a timely response from only Laiwu, for which we have calculated a company-specific rate. Our review of U.S. import statistics from the PRC, however, reveals that Laiwu did not account for all imports into the United States from the PRC. For this reason, we preliminarily determine that some PRC exporters of steel concrete reinforcing bars failed to respond to our questionnaire. In accordance with our standard practice, as adverse facts available, we are assigning as the PRC-wide rate the higher of: (1) The highest margin stated in the notice of initiation; or (2) the margin calculated for Laiwu (see, e.g., *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products From The People's Republic of China* 64 FR 34660 (May 31, 2000)). In this case, the preliminary adverse facts available margin is 59.98 percent, which is the highest margin stated in the notice of initiation.

Section 776(b) of the Act states that an adverse inference may include reliance on information derived from the petition. See also SAA at 829-831. Section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.

The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value (see SAA at 870). The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official

import statistics and customs data, and information obtained from interested parties during the particular investigation (see SAA at 870).

In order to determine the probative value of the margins in the petitions for use as adverse facts available for purposes of this determination, we examined evidence supporting the calculations in the petitions. In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the (EP) and normal value (NV) calculations on which the margins in the petitions were based. Our review of the EP and NV calculations indicated that the information in the petitions has probative value, as certain information included in the margin calculations in the petitions is from public sources concurrent, for the most part, with the POI. For purposes of the preliminary determination, we attempted to further corroborate the information in the petition. We re-examined the EP and NV data which formed the basis for the highest margin in the petition in light of information obtained during the investigation and, to the extent practicable, found that it has probative value (see the January 16, 2001, memoranda to the file regarding *Corroboration of the Petition Data for the People's Republic of China* on file in the Central Records Unit, Room B-099, of the Main Commerce Department building).

Fair Value Comparisons

To determine whether sales of rebar from the PRC were made in the United States at less than fair value, we compared export price (EP) to NV based on a NME analysis, as described below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs.

Export Price

We used EP methodology in accordance with section 772(a) of the Act, because Laiwu sold the subject merchandise directly to unaffiliated customers in the United States prior to importation, and constructed export price (CEP) methodology was not otherwise appropriate. We calculated EP based on packed free-on-board (FOB) or, where appropriate, cost and freight (C&F) prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for inland freight from the plant/warehouse to the port of embarkation, insurance, brokerage and handling in China, ocean freight and marine insurance. Because certain domestic charges such as those

for inland freight, insurance, brokerage and handling, and ocean freight were provided by NME companies, we based those charges on surrogate rates from India. (See *Memorandum from the Team to the File*, dated January 16, 2001 (*Surrogate Value Memorandum*).)

Normal Value

1. Surrogate Country

Section 773(c)(4) of the Act requires the Department to value the NME producer's factors of production, to the extent possible, in one or more market economy countries that: (1) Are at a level of economic development comparable to that of the NME country; and (2) are significant producers of comparable merchandise. The Department initially determined that India, Pakistan, Indonesia, Sri Lanka, and Philippines were the countries most comparable to the PRC in terms of overall economic development (see the August 31, 2000, memorandum, *Antidumping Duty Investigation of Steel Concrete Reinforcing Bars (Rebar) from the People's Republic of China (PRC): Nonmarket Economy Status and Surrogate Country Selection*).

Because of a lack of the necessary factor price information from the other potential surrogate countries that are significant producers of comparable products to the subject merchandise, we have relied, where possible, on information from India, the source of the most complete information from among the potential surrogate countries. Accordingly, we have calculated NV by applying Indian values to Laiwu's factors of production for virtually all factors. See *Surrogate Value Memorandum*.

2. Factors of Production

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by Laiwu for the POI. To calculate NV, the reported per-unit factor quantities were multiplied by publicly available Indian surrogate values.

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. We added to Indian surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F. 3d 1401 (Fed. Cir.

1997). Where a producer did not report the distance between the material supplier and the factory, we used as facts available the longest distance reported, *i.e.*, the distance between the PRC seaport and the producer's location. For those values not contemporaneous with the POI, we adjusted for inflation using wholesale price indices published in the International Monetary Fund's International Financial Statistics.

We valued material inputs and packing materials (*e.g.*, where appropriate, coal, iron ore, limestone, white ash, permanganese, aluminum manganese, ferro-silicon, silico-calcium, aluminum, steel strip, and wire rod) by Harmonized Tariff Schedule (HTS) number, using primarily imports statistics from the Monthly Statistics of the Foreign Trade of India and the United Nations Commodity Trade Statistics. Where a material input was purchased in a market-economy currency from a market-economy supplier, we valued such a material input at the actual purchase price in accordance with section 351.408 (c)(1) of the Department's regulations.

We valued labor using the method described in 19 CFR 351.408(c)(3).

To value electricity, we used the 1997 electricity rates, as adjusted for inflation, for India as reported in the publication Energy Prices and Taxes, 4th quarter 1999.

We based our calculation of factory overhead, selling, general and administrative (SG&A) expenses, and profit on the 1999/2000 financial statements of The TATA Iron and Steel Company Limited, an Indian producer of products comparable to the subject merchandise.

To value truck freight rates, we used freight costs based on price quotes obtained by the Department in November 1999 from trucking companies in India. For rail transportation, we valued rail rates using information published by the Indian Railway Conference Association in June 1998, as adjusted for inflation.

For brokerage and handling, we used the recent publicly available source which is the public version of a U.S. sales listing reported in the questionnaire response submitted by Viraj Impoexpo in the *New Shipper Review of Stainless Steel Wire Rod from India*, 63 FR 48184 (September 9, 1998).

For a complete analysis of surrogate values, see *Surrogate Value Memorandum*.

Verification

In accordance with section 782(i) of the Act, we intend to verify all

information relied upon in making our final determination.

Final Critical Circumstances Determination

We will make a final determination concerning critical circumstances for the PRC when we make our final determination regarding sales at LTFV in this investigation, which will be no later than 135 days after the publication of this notice in the **Federal Register**.

Suspension of Liquidation

Because of our preliminary affirmative critical circumstances findings, we are directing the Customs Service to suspend liquidation of all unliquidated entries of rebar from the PRC entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days prior to the date on which this notice is published in the **Federal Register**. We are instructing the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

The weighted-average dumping margins are provided below:

Manufacturer/exporter	Margin (percent)
Laiwu Steel Group, Ltd	20.89
PRC-Wide Rate	59.98

The China-wide rate applies to all entries of the subject merchandise except for entries from the exporter/factory that is identified above.

Disclosure

The Department will disclose calculations performed within five days of this determination to the parties of the proceedings in this investigation in accordance with 19 CFR 351.224(b).

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our sales at LTFV and our affirmative critical circumstances preliminary determinations. If our final antidumping determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. In the event that the Department receives requests for hearings from parties to more than one rebar case, the Department may schedule a single hearing to encompass all the cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

As noted above, the final determination for the PRC will be issued no later than 135 days after the date of the publication of the preliminary determination.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: January 16, 2001.

Troy H. Cribb,

Assistant Secretary for Import Administration.

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