

verified data from a respondent in the LTFV investigation. Although this margin is the highest in the range of calculated margins, there is no basis to conclude that it is aberrational or inappropriate as applied to TKS. Accordingly, we preliminarily determine that this rate is an appropriate rate to be applied in this review to exports of the subject merchandise produced by TKS during the 1997–1998 administrative review period as facts otherwise available.

#### **Preliminary Results of Changed Circumstances Review**

Because of the information developed in this changed circumstances review, the Department preliminarily finds that the final results of TKS' 1997–1998 review should be revised from zero to an AFA rate of 59.67 percent.

Pursuant to 19 CFR 351.222, the antidumping order was revoked with respect to TKS prior to the conclusion of the sunset review. This revocation was based in part on TKS receiving zero margins for the 1997–1998, 1998–1999, and 1999–2000 administrative review periods. However, this changed circumstances review preliminarily finds that the 1997–1998 review was flawed, based on TKS' withholding of information as described above, and consequently, an AFA rate should be assigned to TKS for the 1997–1998 review period. Thus, TKS did not have a zero margin in three consecutive administrative reviews. As a result of that preliminary finding, TKS no longer qualifies for revocation. Because of the information developed in this changed circumstances review, the Department preliminarily determines that the revocation of the order with respect to TKS should be rescinded.

Pursuant to section 751(c)(3)(A) of the Act, the Department sunset the order in 2002 because no domestic producer stated an interest in continuing the order. At that time, Goss had ceased production in the United States and was unable to participate as a domestic producer. However, Goss has provided information in this changed circumstances review that its cessation of production at that time was, in large measure, due to TKS' improper actions. Goss contends that "but for" TKS' actions it would have been able to continue production at the time of the sunset review and thus participate in the sunset review which, in turn, may have rendered different results.

We preliminarily find that the changed circumstances review record supports the fact that TKS' actions negatively impacted Goss' position as a domestic producer. Goss' economic

consultant prepared a study identifying up to tens of millions of dollars that Goss may have lost directly or indirectly due to TKS' unfair trade activity. See Volume V, pages 36–43 and Attachments 13 through 20 of Goss' June 9, 2005, submission (resubmitted on June 29, 2005). Consequently, Goss likely suffered lost sales and profit as a result of TKS' improper actions, which, in turn, affected Goss' ability to continue production at the time of the sunset review.

Although we are unable to measure the precise quantitative effect of TKS' unfair trade practices on Goss' operations, the record supports the conclusion that they negatively impacted Goss' position as a domestic producer. While the Department cannot determine with certitude what would have happened, but for TKS' actions, the evidence of TKS' unfair trade practices on the record of this review warrants adverse assumptions. Given TKS' actions in this proceeding, as revealed by the *Goss Int'l* case and the information developed in this review, it is reasonable to make the adverse assumption with respect to TKS that, but for TKS' actions, Goss would have been able to continue production at the time of the sunset review and thus to participate in the sunset review.

Therefore, based on the evidence on the record in this changed circumstances review and the reasonable adverse assumptions that we have determined are appropriate, we also preliminarily determine that, if we continue to find in our final results that an AFA rate should be applied to TKS for the 1997–1998 administrative review and that TKS should not have been revoked from the order, a new sunset review should be initiated following completion of this changed circumstances review. If, in the context of a sunset review, the Department finds a likelihood of continuation or recurrence of dumping, the Department will present this determination to the ITC. See *Asahi Chemical Industry Co., Ltd., Plaintiff v. United States*, 727 F. Supp. 625 (CIT 1989).

#### **Public Comment**

Interested parties are invited to comment on these preliminary results, including comments on how a new sunset review should be conducted, if one were to be initiated upon the completion of this changed circumstances review. Case briefs may be submitted by interested parties not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to the issues raised in the case briefs, may be filed not later than

five days after the deadline for submission of case briefs. Any interested party may request a hearing within 30 days of publication of this notice. If requested, a hearing will be held no later than five days after the deadline for the submission of rebuttal briefs, or the first workday thereafter. Persons interested in attending the hearing should contact the Department for the date and time of the hearing.

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B-099, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. See 19 CFR 351.310(c).

Issues raised in the hearing will be limited to those raised in the respective case briefs. Case briefs from interested parties and rebuttal briefs, limited to the issues raised in the respective case briefs, may be submitted in accordance with a schedule to be determined. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

The Department will publish the final results of this changed circumstances review, which will include the results of its analysis of issues raised in any case or rebuttal briefs.

This notice of preliminary results of changed circumstances review is in accordance with sections 751(b) and 777(i) of the Act and 19 CFR 351.216(d).

Dated: September 6, 2005.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E5-5000 Filed 9-12-05; 8:45 am]

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## **DEPARTMENT OF COMMERCE**

### **International Trade Administration (A-533-810)**

#### **Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India**

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

**SUMMARY:** On March 7, 2005, the Department of Commerce published the

preliminary results of the administrative review of the antidumping duty order on stainless steel bar from India. The period of review is February 1, 2003, through January 31, 2004. We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comment received, we have made certain changes for the final results. The final dumping margin for Chandan Steel, Ltd. is listed below in the "Final Results of the Review" section of this notice.

**EFFECTIVE DATE:** September 13, 2005.

**FOR FURTHER INFORMATION CONTACT:** Scott Holland or Andrew McAllister, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482-1279 and (202) 482-1174, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

Since the publication of the preliminary results of this review (see *Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 10977 (March 7, 2005) ("Preliminary Results")), the following events have occurred:

On March 11, 2005, the Department of Commerce (the "Department") issued a supplemental questionnaire to the respondent in this review, Chandan Steel, Ltd. ("Chandan"). We received Chandan's response on March 21, 2005. On March 28, 2005, the Department received a submission from Chandan attempting to supplement its U.S. sales, and corresponding costs, for a group of stainless steel flat bar ("SSFB") sales made to the United States during the period of review ("POR"). On April 4, 2005, Carpenter Technology Corp., Crucible Specialty Metals Division of Crucible Materials Corp., Electralloy Corp., Slater Steels Corp., Empire Specialty Steel and the United Steelworkers of America ("AFL-CIO/CLC") (collectively, the "petitioners"), argued that Chandan's March 28, 2005, submission should be rejected by the Department on the basis that it was untimely filed. On May 12, 2005, the Department rejected Chandan's March 28, 2005, submission because the information and the data contained in the submission represented untimely filed factual information. See letter from Susan Kuhbach to Peter Koenig, counsel to Chandan Steel Ltd., dated May 12, 2005.

In May and June of 2005, we conducted verification of the sales and

cost of production ("COP") information contained in Chandan's questionnaire responses at the company's production facilities located in Umbergaon, Gujarat, India. The verification report was issued on July 22, 2005. See Memorandum to the File, "Verification of the Sales and Cost Responses of Chandan Steel, Ltd. in the 2003/2004 Antidumping Duty Administrative Review of Stainless Steel Bar from India," ("SCVR") dated July 22, 2005. The report is on file in the Central Records Unit, Room B-099 of the main Department building ("CRU").

On June 1, 2005, the Department published in the **Federal Register** an extension of the time limit for the final results in the antidumping duty administrative review to no later than August 25, 2005, in accordance with 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"). See *Stainless Steel Bar from India: Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review*, 70 FR 31425 (June 1, 2005).

On July 29, 2005, we received a case brief from the petitioners. We did not receive a case or a rebuttal brief from Chandan.

On August 24, 2005, the Department published in the **Federal Register** an extension of the time limit for the final results in the antidumping duty administrative review to no later than September 6, 2005, in accordance with 751(a)(3)(A) of the Act. See *Stainless Steel Bar from India: Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review*, 70 FR 49567 (August 24, 2005).

**Scope of the Order**

Merchandise covered by the order is shipments of stainless steel bar ("SSB"). SSB means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. SSB includes cold-finished SSBs that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut-to-length flat-rolled products (*i.e.*, cut-to-length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the

thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes, and sections.

The SSB subject to these reviews is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

On May 23, 2005, the Department issued a final scope ruling that SSB manufactured in the United Arab Emirates out of stainless steel wire rod from India is not subject to the scope of this proceeding. See Memorandum to Barbara E. Tillman, Antidumping Duty Orders on Stainless Steel Bar from India and Stainless Steel Wire Rod from India: Final Scope Ruling (May 23, 2005).

**Period of Review**

The POR is February 1, 2003, through January 31, 2004.

**Verification**

As provided in section 782(i) of the Act, we conducted verification of the sales and cost information submitted by Chandan. We used standard verification procedures, including an on-site examination of Chandan's production facilities, and an examination of the relevant sales, cost, and financial records.

**Analysis of Comments Received**

The issue raised in the case brief submitted by the petitioners in this review is addressed in the "Issues and Decision Memorandum for the Final Results in the Antidumping Duty Administrative Review of Stainless Steel Bar from India" from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated September 6, 2005 ("*Decision Memorandum*"), which is hereby adopted by this notice. Attached to this notice as an appendix is a description of the issue that the petitioners have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of the issue raised in this review and the corresponding recommendation in this

public memorandum, which is on file in the Department's CRU. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at <http://ia.ita.doc.gov/frn/index.html>. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

#### A. Application of Facts Available

Section 776(a)(1) and (2) of the Act provides that the Department will apply "facts otherwise available" if, *inter alia*, necessary information is not on the record or an interested party (A) withholds information requested by the Department; (B) fails to provide information within the deadlines established, or in the form or manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information which cannot be verified as provided by section 782(i).

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide the party the opportunity to remedy or explain the deficiency within the applicable time limits. If that party submits further deficient information, then, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides further that the Department shall not decline to consider submitted information by an interested party that is necessary to the determination but does not meet all the applicable requirements established by the Department if (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties. Thus, if any one of these criteria is not met, the Department may decline to consider the information at issue in making its determination.

As discussed in the "Background" section above, on March 28, 2005, the Department received a submission from Chandan with additional information and data with respect to sales of SSFB, which is covered under the scope of this order. On May 12, 2005, we determined that the information and data contained

in the submission represented untimely filed factual information; therefore, we rejected this submission. See section 351.302(c)(2) of the Department's regulations. At verification, we verified the quantity of sales of SSFB to the United States. Additionally, we reviewed invoices for two of the sales of SSFB to the United States and confirmed that, according to the product characteristics, these sales should have been reported in Chandan's U.S. sales listing.

In addition, at verification we found numerous errors and omissions with respect to Chandan's sales information contained in its comparison market ("CM") and U.S. sales databases. Specifically, Chandan: (1) failed to report marine insurance expenses on certain U.S. sales and reported all marine insurance expenses in U.S. dollars rather than the currency in which they were incurred (*i.e.*, rupees); (2) misreported foreign inland freight charges and international freight charges for certain U.S. and CM sales; (3) calculated credit expenses in both the U.S. and CM sales listings incorrectly; and (4) misclassified its fumigation expenses incurred on CM sales as indirect selling expenses rather than direct selling expenses in accordance with 19 CFR 351.410(c) of the Department's regulations.

Similarly, in verifying Chandan's cost information, we identified errors and information from Chandan's response that could not be supported. Specifically, Chandan (1) provided revised production quantities during the course of verification which precluded the Department from verifying this information; (2) could not support its billet cost allocation for certain raw materials such as chromium, nickel, and titanium to certain grades of SSB; (3) could not support its allocation of rolling costs; (4) could not support its allocation of costs at the bright bar stage of production; and (5) misreported the scrap value in offsetting its reported rolling and bright bar costs for certain grades of bright bar. See *Decision Memorandum*.

For some of the deficiencies and omissions cited above, the Department finds that the information necessary to calculate an accurate and otherwise reliable margin for Chandan is not available on the record. Furthermore, the Department finds that Chandan failed to provide information requested by the Department in a timely manner and in the form required, significantly impeded the proceeding, and provided unverifiable information pursuant to sections 776(a)(2)(B) and (D) of the Act. Although, in isolation, the

aforementioned deficiencies may not have warranted the application of facts otherwise available, the multitude of missing and incorrect data, in conjunction with Chandan's inability to support much of its submitted cost data at verification and the fact that Chandan submitted the information regarding sales and cost data for SSFB after the established deadline, leads the Department to conclude that Chandan's sales and cost information does not meet the standards for consideration of information as outlined in section 782(e) of the Act. For these reasons, we find that the use of facts otherwise available is necessary for Chandan.

#### B. Adverse Facts Available

According to section 776(b) of the Act, if the Department finds that an interested party fails to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available. See, *e.g.*, *Notice of Final Determination of Sales of Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (August 30, 2002). Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103-316, at 870 (1994) ("SAA"). Furthermore, "affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference." See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997), and *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-1384 (Fed. Cir. 2003) ("*Nippon*").

In determining the appropriate facts available to assign to Chandan, we find that Chandan did not act to the best of its ability in this proceeding, within the meaning of section 776(b) of the Act. See *Nippon* 337 F.3d 1373, 1382-83; see also *Decision Memorandum*. In not reporting its sales and cost data for SSFB at the time it provided its questionnaire responses for other categories of SSB, Chandan did not provide the Department with full and complete answers. With respect to discrepancies in its reporting of sales expenses, we note that Chandan did not put forth its maximum effort, resulting in numerous errors discovered by the Department at verification. With respect to its reporting of costs, although the

Department did not find inherent flaws in Chandan's cost methodology, we find that Chandan did not act to the best of its ability by virtue of its inadequate record keeping. We note that, for each stage of production (*i.e.*, billet, rolling, and bright bar), Chandan failed to retain essential documentation to support its allocation methodologies.

Therefore, we find that an adverse inference is warranted in selecting facts otherwise available. Section 776(b) of the Act further provides that the Department may use as adverse facts available ("AFA"), information derived from: (1) the petition, (2) a final determination in the investigation, (3) any previous review, or (4) any other information placed on the record.

As AFA for Chandan, we have assigned a margin of 19.80 percent. This margin was calculated for Uday Engineering Works in the 2001 antidumping duty new shipper review and represents the highest calculated weighted-average margin determined for any respondent in any segment of this proceeding. *See Stainless Steel Bar from India: Final Results of New Shipper Antidumping Duty Administrative Review*, 67 FR 69721 (November 19, 2002) ("*New Shipper Review Final Results*").

Information from prior segments of the proceeding constitutes secondary information and section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Department's regulations provide that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. *See* 19 CFR 351.308(d).

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as AFA a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. *See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Reviews, Final Partial Rescission of Antidumping Duty Administrative Reviews, and Determination Not to Revoke in Part*, 69

FR 55581 (September 15, 2004), and attached *Issues and Decision Memorandum* at Comment 18.

The highest calculated margin in the history of this proceeding is 19.80 percent. *See New Shipper Review Final Results*. In this review, there are no circumstances indicating that this margin is inappropriate as facts available. There are no calculated margins for any other respondents in this administrative review. Therefore, there is no reason to question the relevance of this margin for Chandan, and for the reasons stated above, we find that the 19.80 percent rate is corroborated to the greatest extent practicable in accordance with section 776(c) of the Act.

#### Final Results of the Review

For the firm listed below, we find that the following percentage margin exists for the period February 1, 2003, through January 31, 2004:

Exporter/Manufacturer	Margin
Chandan Steel, Ltd. ....	19.80

#### Assessment Rates

The Department shall determine, and U.S. Customs and Border Protection ("CBP") shall assess, antidumping duties on all appropriate entries. For Chandan, we will instruct CBP to liquidate entries at the rate indicated above. The Department will issue appropriate assessment instructions directly to the CBP within 15 days of publication of these final results of review.

#### Cash Deposit Rates

The following antidumping duty deposits will be required on all shipments of SSB from India entered, or withdrawn from warehouse, for consumption, effective on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed company will be the rate listed above (except no cash deposit will be required if a company's weighted-average margin is *de minimis*, *i.e.*, less than 0.5 percent); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, the previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the

exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 12.45 percent, the "all others" rate established in the less than fair value investigation. *See Stainless Steel Bar from India: Final Determination of Sales at Less Than Fair Value*, 59 FR 66915 (December 28, 1994). These cash deposit requirements shall remain in effect until publication of the final results of the next administrative review.

#### Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

#### Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders ("APOs") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/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 which is subject to sanction.

We are issuing and publishing these results of review in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 6, 2005.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

#### APPENDIX I

#### Comment in the Issues and Decision Memorandum

*Comment 1: Use of Total Adverse Facts Available for Chandan*  
[FR Doc. E5-4976 Filed 9-12-05; 8:45 am]

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