

review covers the period June 1, 2005, through May 31, 2006. The preliminary results of review are currently due no later than March 2, 2007.

#### **Extension of Time Limit for Preliminary Results of Review**

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), the Department shall make a preliminary determination in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend that 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period.

The Department finds that it is not practicable to complete the preliminary results of the administrative review of folding metal tables and chairs from the PRC within this time limit. Specifically, due to complex issues related to the selection of surrogate values, we find that additional time is needed to complete these preliminary results. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for completion of the preliminary results of this review by 90 days until May 31, 2007.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: March 1, 2007.

**Stephen J. Claeys,**

*Deputy Assistant Secretary for Import Administration.*

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## **DEPARTMENT OF COMMERCE**

### **International Trade Administration**

**[A-533-809]**

#### **Certain Forged Stainless Steel Flanges From India; Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission and Intent To Rescind**

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

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain forged stainless steel flanges (stainless steel flanges) from India manufactured by Echjay Forgings Ltd. (Echjay),

Rollwell Forge, Ltd. (Rollwell), and Shree Ganesh Forgings, Ltd. (Shree Ganesh). The period of review (POR) covers February 1, 2005, through January 31, 2006. We preliminarily determine that Echjay did not sell subject merchandise in the United States at less than normal value (NV) during the POR. In addition, we preliminarily determine to apply an adverse facts available (AFA) rate to Rollwell's sales. We also preliminarily determine that Shree Ganesh had no entries of subject merchandise during the POR.

We invite interested parties to comment on these preliminary results. Parties who submit argument in these proceedings are requested to submit with the argument (1) a statement of the issues and (2) a brief summary of the argument.

**EFFECTIVE DATE:** March 7, 2007.

**FOR FURTHER INFORMATION CONTACT:** Fred Baker or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-2924 or (202) 482-0649, respectively.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On February 9, 1994, the Department published the antidumping duty order on stainless steel flanges from India. *See Amended Final Determination and Antidumping Duty Order; Certain Forged Stainless Steel Flanges from India*, 59 FR 5994 (February 9, 1994) (*Amended Final Determination*). On February 1, 2006, the Department published the *Notice of Opportunity to Request Administrative Review* for this order covering the POR. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 71 FR 5239 (February 1, 2006). On February 28, 2006, we received requests for an administrative review for the period February 1, 2005, through January 31, 2006, from Echjay and Shree Ganesh. We also received requests for a new shipper review and, failing that, an administrative review,<sup>1</sup> from Kunj

<sup>1</sup> On April 6, 2006, the Department published a notice initiating new shipper reviews of Kunj, Micro, Pradeep, and Rollwell. *See Stainless Steel Flanges from India: Notice of Initiation of Antidumping Duty New Shipper Reviews*, 71 FR 17439 (April 6, 2006). On September 29, 2006, we rescinded the new shipper reviews with respect to Micro, Pradeep, and Rollwell. *See Certain Forged Stainless Steel Flanges from India: Notice of Partial*

Forgings Pvt. Ltd. (Kunj), Micro Forge (India) Ltd. (Micro), Pradeep Metals Limited (Pradeep), and Rollwell Forge, Ltd. (Rollwell). On April 5, 2006, we initiated administrative reviews of the six companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Administrative Reviews*, 71 FR 17077 (April 5, 2006).

On November 1, 2006, we extended the time limit for the preliminary results of this administrative review to February 28, 2007. *See Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review: Certain Forged Stainless Steel Flanges from India*, 71 FR 64245 (November 1, 2006).

##### **Echjay**

On April 5, 2006, the Department issued its initial questionnaire to Echjay. Echjay submitted its section A response on May 8, 2006, and its section B and C responses on May 30, 2006. The Department issued a supplemental questionnaire on November 1, 2006, to which Echjay responded on November 15, 2006. On December 27, 2006, Echjay submitted audited financial statements, revised section B and C data and calculations for fields that changed as a result of changes in the financial statement. On February 27, 2007, Echjay submitted a sales reconciliation.

On December 21, 2006, Echjay requested revocation on the basis it had three years of zero or *de minimis* margins. Echjay also submitted the required certifications pursuant to 19 CFR 351.222. However, this request was filed nearly ten months after the deadline for filing such requests under 19 CFR 351.222(e)(1). This delay prevented the Department from timely notifying interested parties of Echjay's possible revocation, as well as planning and conducting verification, both of which are required by 19 CFR 351.222(f). The Department will not therefore entertain this request in this review.

##### **Rollwell**

The Department sent its questionnaires to Rollwell on April 5, 2006. Rollwell submitted its response to the section A questionnaire on May 8, 2006. It submitted its responses to sections B and C on May 31, 2006. The Department issued a supplemental section A, B, and C questionnaire to Rollwell on November 1, 2006. Rollwell submitted its response to that supplemental questionnaire on

*Rescission of New Shipper Reviews*, 71 FR 57468 (September 29, 2006).

November 21, 2006. Rollwell also submitted a revised sales listings on December 14, 2006. On February 2, 2007, the Department issued a second supplemental questionnaire to Rollwell to which Rollwell submitted its response on February 12, 2007.

### Scope of the Order

The products covered by this order are certain forged stainless steel flanges, both finished and not finished, generally manufactured to specification ASTM A-182, and made in alloys such as 304, 304L, 316, and 316L. The scope includes five general types of flanges. They are weld-neck, used for butt-weld line connection; threaded, used for threaded line connections; slip-on and lap joint, used with stub-ends/butt-weld line connections; socket weld, used to fit pipe into a machined recession; and blind, used to seal off a line. The sizes of the flanges within the scope range generally from one to six inches; however, all sizes of the above-described merchandise are included in the scope. Specifically excluded from the scope of this order are cast stainless steel flanges. Cast stainless steel flanges generally are manufactured to specification ASTM A-351. The flanges subject to this order are currently classifiable under subheadings 7307.21.1000 and 7307.21.5000 of the Harmonized Tariff Schedule (HTS). Although the HTS subheading is provided for convenience and customs purposes, the written description of the merchandise under review is dispositive of whether or not the merchandise is covered by the scope of the order.

### Intent To Rescind and Partial Rescission of the Administrative Review

As previously stated, in their requests for review Kunj, Micro, Pradeep, and Rollwell requested a new shipper review, and failing that, an administrative review. Subsequent to initiating the new shipper reviews the Department conducted a data query of entry information from U.S. Customs and Border Protection (CBP). We determined, based on our review of those data, that Micro and Pradeep<sup>2</sup> had no entries during the POR, and therefore do not qualify for an administrative review for the period February 1, 2005, through January 31, 2006. *See* Memorandum to the File dated August 23, 2006. We gave interested parties an

opportunity to comment on this determination and received no comments. We are therefore rescinding the administrative review with respect to Micro and Pradeep.<sup>3</sup>

With respect to Kunj, we determined that Kunj qualifies for a new shipper review for the period February 1, 2005, through January 31, 2006. *See id.* Therefore, since we are conducting a new shipper review of Kunj for the period covered by this administrative review, we are rescinding the administrative review for Kunj pursuant to 19 CFR 351.214(j).

With respect to Rollwell, we determined that Rollwell does not qualify for a new shipper review for the period February 1, 2005, through January 31, 2006, but does qualify for an administrative review for the same period. *See id.*

With respect to Shree Ganesh, this company submitted a section C response in which it claimed it had shipments to the United States during the POR. However, our data query showed no entries from this company during the POR. *See* Memorandum to the File dated June 30, 2006, titled "U.S. Entry Documents—Stainless Steel Flanges from India." We are therefore issuing this notice as an intent to rescind the administrative review of Shree Ganesh based on the fact that the company had no entries during the POR of subject merchandise. We invite comments from interested parties on this intent to rescind.

### Rollwell

#### Use of Adverse Facts Available

In accordance with sections 776(a)(1) and (2) of the Tariff Act of 1930, as amended (the Tariff Act), the Department has determined that the use of AFA is appropriate for purposes of determining the preliminary dumping margin for the subject merchandise sold by Rollwell. Pursuant to sections 776(a)(1) and (2) of the Tariff Act the Department shall (with certain exceptions not applicable here) use the facts otherwise available in reaching applicable determinations under this subtitle if an interested party (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to

subsections (c)(1) and (e) of section 782 of the Tariff Act; (C) significantly impedes a proceeding under this subtitle; or (D) provides such information but the information cannot be verified as provided in section 782(i). *See* Tariff Act section 776(a)(2).

Moreover, section 776(b) of the Tariff Act provides, in relevant part, that:

If the administering authority finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission (as the case may be), in reaching the applicable determination under this subtitle, may use an inference that is adverse to the interests of the party in selecting from among the facts otherwise available. *Id.*

As described below, we find that Rollwell has significantly impeded this proceeding by failing to provide usable data upon which we can calculate an antidumping margin. Moreover, we find that Rollwell has failed to cooperate to the best of its ability. We therefore determine that the use of AFA is appropriate for these preliminary results. However, because of the unusual circumstances of this review with respect to Rollwell (notably the length of time it took to ascertain the appropriate U.S. sales to analyze), we have also determined to issue Rollwell another supplemental questionnaire to provide it with yet another opportunity to correct numerous deficiencies in its responses. Based on its response to this supplemental questionnaire, we will consider calculating a margin for Rollwell for the final results of review.

As previously stated, the Department sent standard section A, B, and C questionnaires to Rollwell on April 5, 2006. Rollwell submitted its response to the section A questionnaire on May 8, 2006. Rollwell submitted its responses to sections B and C on May 30, 2006. However, the Department found serious deficiencies in all three of these responses, and also found reason to question whether Rollwell had reported all of its U.S. sales, and whether any of those it did report were actual consumption entries during the POR. Therefore the Department sent a supplemental section A, B, and C questionnaire to Rollwell on November 1, 2006. Rollwell submitted its response to this supplemental questionnaire on November 21, 2006. However, upon examining Rollwell's response, the Department again found that there were grounds to question whether Rollwell had consumption entries during the POR that would qualify Rollwell for an administrative review. The Department accordingly made a telephonic inquiry

<sup>2</sup> Micro and Pradeep are the subjects of a semi-annual new shipper review for the period February 1, 2006, through July 31, 2006. *See Stainless Steel Flanges from India: Notice of Initiation of Antidumping Duty New Shipper Reviews*, 71 FR 59081 (October 6, 2006).

<sup>3</sup> As previously indicated, we rescinded the new shipper reviews with respect to Micro, Pradeep, and Rollwell for the period February 1, 2005, through July 31, 2006. *See Certain Forged Stainless Steel Flanges from India: Notice of Partial Rescission of New Shipper Reviews*, 71 FR 57468 (September 29, 2006).

to Rollwell's counsel to discuss the likelihood of any additional U.S. sales. In response, Rollwell submitted a revised U.S. sales listing on December 14, 2006. The Department found there were reviewable U.S. sales in this listing which Rollwell had not reported earlier, but also found substantial discrepancies in the submission with respect to reported cost data. The Department issued a supplemental questionnaire on February 2, 2007, including a request that Rollwell respond to section D of the April 5, 2006, questionnaire. Rollwell submitted its response on February 12, 2007.

Upon reviewing the various submissions Rollwell has made during the POR, the Department has determined that the deficiencies in Rollwell's submitted data (described below) are so pervasive that the Department cannot rely upon Rollwell's data to calculate a margin. Furthermore, by repeatedly providing deficient responses Rollwell has failed to act to the best of its ability in responding to the Department's requests for information.

Rollwell had two shipments of subject flanges that entered the United States during the POR. Rollwell sold both of these shipments prior to the POR, but the shipments entered U.S. Customs territory during the POR. However, Rollwell did not report these U.S. sales until it made its December 14, 2006, submission, after the Department had prompted it a second time to search among its records for any U.S. shipments it may have had that would qualify for review. Furthermore, Rollwell did not report the home market sales contemporaneous with the U.S. sales until it responded to the Department's second supplemental questionnaire issued February 2, 2007. The Department had previously stated the need to report any contemporaneous home market sales in its original April 5, 2006, questionnaire and again in its November 1, 2006, supplemental questionnaire. Furthermore, the Department found Rollwell's allocation method for the costs it reported on its home market and U.S. sales listings to be inadequate because it was dependent upon estimated data rather than actual data. This inadequacy made it impossible for us to rely upon these costs in performing the twenty percent difference-in-merchandise test for purposes of determining the most suitable home market match for U.S. sales. Furthermore, when Rollwell submitted its section D response we found its reported raw material costs to be aberrational. Moreover, Rollwell did not submit a home market sales

reconciliation, as requested in the April 5, 2006, questionnaire and again in the February 2, 2007, supplemental questionnaire. Thus, it has withheld information requested by the Department. See section 776(a)(2)(A) of the Tariff Act. For further examples and more specific information about the deficiencies, see Corroboration Memorandum, February 28, 2007.

In light of the foregoing deficiencies, the Department preliminarily determines that necessary information is not available on the record to serve as the basis for the calculation of Rollwell's margin. See section 776(a)(1) of the Tariff Act. We also determine that Rollwell withheld requested information and has significantly impeded this proceeding. See section 776(a)(2)(A) and (C) of the Tariff Act. As a result, we are basing Rollwell's margin on the facts otherwise available, in accordance with sections 776(a)(1) and (2)(A) and (C) of the Tariff Act. See, e.g., *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). See also *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 (Aug. 30, 2002); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products From Brazil*, 65 FR 5554, 5567 (Feb. 4, 2000); *Static Random Access Memory Semiconductors from Taiwan: Final Determination of Sales at Less than Fair Value*, 63 FR 8909 (Feb. 23, 1998).

If the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of the party as the facts otherwise available. See section 776(b) of the Tariff Act. 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 (SAA)* accompanying the Uruguay Round Agreement Act, H. Doc. No. 316, 103d Cong., 2nd Session, Vol. 1 (1994) at 870. In determining whether a respondent has failed to cooperate to the best of its ability, the Department need not make a determination regarding the willfulness of a respondent's conduct. See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1379–1384 (Fed. Cir. 2003).

Furthermore, "affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference."

*Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27340 (May 19, 1997).

In determining whether a party failed to cooperate to the best of its ability, the Department considers whether a party could comply with the request for information, and whether a party paid insufficient attention to its statutory duties. See *Pacific Giant Inc. v. United States*, 223 F. Supp 2d 1336, 1342–43 (CIT 2002). Furthermore, the Department also considers the accuracy and completeness of submitted information, and whether the respondent has hindered the calculation of accurate dumping margins. See *Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review*, 62 FR 53808, 53819–53820 (October 16, 1997). The Department determines that Rollwell could comply with its requests for information but failed to do so, thereby failing to act to the best of its ability. Here, the Department finds that Rollwell has failed to provide relevant U.S. and home market sales until after it was prompted twice to do so following issuance of the original questionnaire, and has hindered the calculation of accurate dumping margins by failing to provide usable cost data in its sales listings and section D response.

Under the statutory scheme, adverse inferences may include reliance on: Information derived from (1) the petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any other information placed on the record. See section 776(b) of the Tariff Act. The SAA authorizes the Department to consider the extent to which a party may benefit from its own lack of cooperation. *Id.* The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse to induce the respondents to provide the Department with complete and accurate information in a timely manner. See *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, 55796 (Aug. 30, 2002). Because entries into the United States by Rollwell are currently subject to the "All Others" cash deposit rate of 162.14 percent, the Department determines that assigning the highest margin from the original petition and investigation in

this case, 210.00 percent, as AFA will prevent Rollwell from benefitting from its failure to cooperate with the Department's requests for information. *See Amended Final Determination*. Furthermore, a lower rate would effectively reward Rollwell for not cooperating by not acting to the best of its ability.

Section 776(c) of the Tariff Act provides that when the Department relies on the facts otherwise available and relies on "secondary information," the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The SAA states that "corroborate" means to determine that the information used has probative value. *See SAA at 870*. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used.

To assess the reliability of the petition margin in accordance with section 776(c) of the Tariff Act, to the extent practicable, we examined the key elements of the calculations of export price and normal value upon which the margins in the petition were based. (For discussion of "reliance on secondary information," standard under section 776(c) of the Tariff Act, please see Corroboration Memorandum.) The U.S. prices in the petition were based upon quotes to U.S. customers, most of which were obtained through market research. *See Petition for the Imposition of Antidumping Duties*, December 29, 1993. The Department was able to corroborate the U.S. price in the petition which was used as the basis of the 210.00 percent rate by comparing this price to publicly available information based on IM-145 import statistics from the U.S. International Trade Commission's Web site via Dataweb for HTS numbers 7307215000 and 7307211000. The NVs in the petition were based on actual price quotations obtained through market research. At present, the Department is not aware of other independent sources of information at its disposal which would enable it to corroborate the margin calculations in the petition further.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances which would render a margin not relevant. The implementing regulation for section 776 of the Tariff Act, codified at 19 CFR 351.308(d), states, "{t}he fact that corroboration may not be practicable in a given circumstance will not prevent the Secretary from applying an adverse

inference as appropriate and using the secondary information in question." Additionally, the SAA at 870 states specifically that, where "corroboration may not be practicable in a given circumstance," the Department may nevertheless apply an adverse inference. The SAA at 869 emphasizes that the Department need not prove that the facts available are the best alternative information.

Where circumstances indicate that the selected margin is not appropriate as AFA the Department will disregard the margin and determine an appropriate margin. *See Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996) (the Department disregarded the highest dumping margin as best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin).

The rate to which Rollwell's entries are currently subject is 162.14 percent. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner." *See Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55796 (August 30, 2002). Accordingly, the Department will apply a 210 percent AFA rate, a rate which the Department finds is sufficiently adverse to encourage Rollwell to provide the Department with complete and accurate information. Furthermore, the Department is not aware of any circumstances which would render this rate inappropriate. In fact, other Indian manufacturers currently have a 210 percent margin under this order. *See e.g., Certain Forged Stainless Steel Flanges from India: Notice of Final Results of Antidumping Duty Administrative Review*, 71 FR 29314, (May 22, 2006).

Therefore, based on the Department's efforts described above to corroborate information contained in the petition, and in accordance with section 776(c) of the Tariff Act which discusses facts available and corroboration, the Department considers the margins in the petition to be corroborated to the extent practicable for purposes of this preliminary determination. *See Certain Cut-to-Length Carbon Steel Plate from Mexico: Final Results of Antidumping*

*Duty Administrative Review*, 64 FR 76, 84 (January 4, 1999).

#### Date of Sale

In determining the appropriate date of sale, the Department normally uses the date of invoice as the date of sale. *See* 19 CFR 351.401(i); *see also Allied Tube and Conduit Corp. v. United States*, 132 F. Supp. 2d 1087 (CIT 2001). Moreover, the preamble to the Department's regulations expresses a strong preference for the Department to choose a single date of sale across the full POR. *See Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27349 (May 19, 1997). For these preliminary results, the Department will use the invoice date as the appropriate date of sale for the POR for Echjay, because this date best represents the date upon which the material terms of sale are set.

#### Normal Value Comparisons

To determine whether sales of subject merchandise to the United States by Echjay were made at less than NV, we compared constructed export price (CEP) to the NV (as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this notice, below). In accordance with section 777A(d)(2) of the Tariff Act, the Department calculated monthly weighted-average prices for NV and compared these to the prices of individual EP or CEP transactions.

#### Product Comparisons

In accordance with section 771(16) of the Tariff Act, the Department considered all products described by the Scope of the Order section, above, produced and sold by Echjay in the home market to be foreign like products for purposes of determining appropriate comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's questionnaire. Where there were no sales of identical or similar merchandise in the home market suitable for comparing to U.S. sales, the Department compared these sales to constructed value (CV), pursuant to sections 773(a)(4) and 773(e) of the Tariff Act.

#### Export Price and Constructed Export Price

In accordance with section 772(a) of the Tariff Act, EP is defined as the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or

exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States, or to an unaffiliated purchaser for exportation to the United States, as adjusted under section 772(c) of the Tariff Act. In accordance with section 772(b) of the Tariff Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d).

Based on the record evidence, the Department preliminarily determines that Echjay's U.S. sales, all of which were through its U.S. affiliate Echjay U.S.A., Inc., to unaffiliated customers in the United States were made in the United States within the meaning of section 772(b) of the Tariff Act and thus are properly classified as CEP sales.

The Department calculated CEP based on the prices charged to the first unaffiliated customer in the United States. The Department based CEP on the packed CIF duty paid prices to the first unaffiliated purchasers in the United States. The Department made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Tariff Act, including foreign inland freight, foreign brokerage and handling, ocean freight, and marine insurance. The Department also deducted those selling expenses incurred in selling the subject merchandise in the United States, including direct selling expenses (e.g., bank commissions and charges, documentation fees) and imputed credit. In accordance with section 772(d)(3) of the Tariff Act, the Department deducted an amount for profit allocated to the expenses deducted pursuant to sections 772(d)(1) and (2) of the Tariff Act. *See* Analysis Memorandum for more details.

#### Duty Drawback

Section 772(c)(1)(B) of the Tariff Act provides that EP or CEP shall be increased by among other things, "the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States." The Department determines that an adjustment to U.S. price for claimed duty drawback is appropriate when a company can demonstrate that there is (i) a sufficient link between the import duty and the rebate, and (ii) sufficient imports of the

imported material inputs to account for the duty drawback received for the export of the manufactured product (the so-called "two-prong test"). *See Rajinder Pipes, Ltd. v. United States*, 70 F. Supp. 2d 1350, 1358 (Ct. Int'l Trade 1999).

Echjay claimed it received duty drawback from the Indian government which it books in an "Export Incentives Ledger." *See* Echjay's Section C Response at Annexure I. The Department finds that Echjay has not provided substantial evidence on the record to meet the requirement of the first prong of the two-prong test, to wit, to establish the necessary link between the import duty and the reported rebate for duty drawback. Even if Echjay provided evidence demonstrating that it received duty drawback in the form of certificates issued by the Government of India and recorded them in a particular category of the ledger, Echjay has failed to establish the sufficient link between the import duty paid and the rebate given by the Government of India. Echjay's response suggests that much of the duty drawback certificate program has no bearing on home market import duties of any kind. Therefore, the Department is denying a duty drawback credit for the preliminary results of this review.

#### Normal Value

In determining NV, the statute requires the Department to determine the price at which the foreign like product is first sold (or, in the absence of a sale, offered for sale) for consumption in the exporting country in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as the export price or constructed export price. In order to determine whether there is sufficient volume of sales in the home market to serve as a viable basis for calculating NV (i.e., the aggregate volume of home market sales of the foreign like product during the POR is equal to or greater than five percent of the aggregate volume of U.S. sales of subject merchandise during the POR), the Department compared the volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise. The Department found no reason to determine that quantity was not the appropriate basis for these comparisons, so value was not used. *See* section 773(a)(1)(C) of the Tariff Act; *see also* 19 CFR 351.404(b)(2). Therefore, the Department based NV for Echjay on home market sales to unaffiliated

purchasers made in the usual quantities and in the ordinary course of trade.

The Department based its comparisons of the volume of U.S. sales to the volume of home market and third country sales on reported stainless steel flange weight, rather than on number of pieces. The record demonstrates that there can be large differences between the weight (and corresponding cost and price) of stainless steel flanges based on relative sizes, so comparisons of aggregate data would be distorted for these products if volume comparisons were based on the number of pieces.

#### Price-to-Price Comparisons

The statute requires the Department to determine whether subject merchandise is being, or is likely to be, sold at less than fair value by making a fair comparison between the EP or CEP and NV under section 773 of the Tariff Act. For Echjay, the Department compared its U.S. sales with contemporaneous sales of the foreign like product in India. As noted, the Department considered stainless steel flanges identical based on the following five criteria: Grade; type; size; pressure rating; and finish. The Department used a 20 percent difference-in-merchandise (difmer) cost deviation cap as the maximum difference in cost allowable for similar merchandise, which we calculated as the absolute value of the difference between the U.S. and comparison market variable costs of manufacturing divided by the total cost of manufacturing of the U.S. product. The Department made adjustments for differences in packing costs between the two markets and for movement expenses in accordance with sections 773(a)(6)(A) and (B) of the Tariff Act. The Department adjusted for differences in the circumstances of sale (COS) pursuant to section 773(a)(6)(C)(iii) of the Tariff Act and 19 CFR 351.410. Finally, for Echjay the Department made adjustments in accordance with 19 CFR 351.410(e) for indirect selling expenses incurred in the home market or United States where commissions were granted on sales in one market but not in the other (the "commission offset").

#### Constructed Value

In accordance with section 773(a)(4) of the Tariff Act, the Department bases NV on CV if it is unable to find a contemporaneous comparison market match for the U.S. sale. Where the Department based NV on CV, CV is calculated based on the cost of materials and fabrication employed in producing the subject merchandise, SG&A, and profit. In accordance with section 772(e)(2)(A) of the Tariff Act, the

Department bases SG&A expenses and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. For selling expenses, the Department uses the weighted-average comparison market selling expenses. Where appropriate, the Department has made COS adjustments to CV in accordance with section 773(a)(8) of the Tariff Act and 19 CFR 351.410. For comparisons to EP, the Department has made COS adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses.

#### Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Tariff Act, to the extent practicable, the Department determines NV based on sales in the home market at the same level of trade (LOT) as EP or the CEP. The NV LOT is that of the starting-price sales in the home market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For CEP, it is the level of the constructed sale from the exporter to an affiliated importer after the deductions required under section 772(d) of the Tariff Act.

To determine whether NV sales are at a different LOT than EP or CEP, the Department examines stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer, for example channels of distribution processing, packing and shipping. If the comparison-market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, the Department makes a LOT adjustment under section 773(a)(7)(A) of the Tariff Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, the Department adjusts NV under section 773(a)(7)(B) of the Tariff Act (the CEP-offset provision). See *Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732–33 (November 19, 1997).

In implementing these principles in this review, the Department obtained information from Echjay about the marketing stages involved in its U.S.

and home market sales, including a description of the selling activities in the respective markets. In identifying levels of trade for CEP, the Department considered only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Tariff Act. See *Micron Technology v. United States*, 243 F.3d 1301, 1314 (Fed. Cir. 2001). Generally, if the reported levels of trade are the same in the home and U.S. markets, the functions and activities of the seller should be similar. Conversely, if a party reports differences in levels of trade, the functions and activities should be dissimilar.

Echjay reported one channel of distribution and one LOT in the home market, contending that home market sales to distributors and wholesalers were made at the same level of trade and involved the same selling activities. See Echjay's Section A Response at 13–15. In fact, all merchandise for both Echjay was sold in the home market on *ex works* terms. See, e.g., Echjay's Section B Response at 7. After examining the record evidence provided, the Department preliminarily determines that a single LOT exists for Echjay in the home market.

The record evidence supports a finding that in both markets and in all channels of distribution, Echjay performs essentially the same level of selling activities such as order processing, shipping and invoicing of sales, and processing of payments. Thus, with respect to selling functions for sales, marketing support, freight, and delivery, we find them to be similar. Based on our analysis of the selling functions performed on CEP sales in the United States and of sales in the home market, the Department determines that the CEP and the starting price of home market sales represent the same stage in the marketing process and are thus at the same LOT. Accordingly, the Department preliminarily finds that no level of trade adjustment or CEP offset is appropriate for Echjay.

#### Currency Conversions

The Department made currency conversions into U.S. dollars in accordance with section 773(a) of the Tariff Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank of the United States.

#### Preliminary Results of Review

As a result of our review the Department preliminarily finds the following weighted-average dumping margins exist for the period February 1, 2005, through January 31, 2006:

Manufacturer/exporter	Margin (percent)
Echjay Forgings, Pvt. Ltd. ....	0.06
Rollwell Forge, Ltd. ....	210.00

The Department will disclose calculations performed within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of the preliminary results. See CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date per 19 CFR 351.310(d).

Interested parties may submit case briefs or written comments no later than 30 days after the date of publication of these preliminary results of review. Pursuant to 19 CFR 309(d), rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed no later than 5 days after the time limit for filing the case briefs. Parties who submit argument in these proceedings are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Further, the Department requests parties submitting written comments to provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue final results of this administrative review, including the results of our analysis of the issues raised in any such written comments or at a hearing, within 120 days of publication of these preliminary results.

#### Assessment Rates

Upon completion of this administrative review, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review.

The Department clarified its "automatic assessment" regulation on May 6, 2003. See *Notice of Policy Concerning Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment-Policy Notice*). This clarification will apply to entries of subject merchandise during the POR produced by Echjay and Rollwell for which Echjay and Rollwell, respectively, did not know that the merchandise it sold to an intermediary (e.g., a reseller, trading company, or exporter) was destined for the United States. In such instances, we will

instruct CBP to liquidate unreviewed entries at the 162.14 percent all-others rate established in the original less than fair value (LTFV) investigation, if there is no rate for the intermediary involved in the transaction. See the Assessment-Policy Notice for a full discussion of this clarification.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption 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 rate for the reviewed company will be the rate established in the final results of the administrative review (except that no deposit will be required if the rate is zero or *de minimis*, i.e., less than 0.5 percent); (2) if the exporter is not a firm covered in this review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be that established for the most recent period for the manufacturer of the merchandise; and (3) if neither the exporter nor the manufacturer is a firm covered in this review, any previous reviews, or the LTFV investigation, the cash deposit rate will be 162.14 percent, the "all others" rate established in the LTFV investigation. See *Amended Final Determination and Antidumping Duty Order; Certain Forged Stainless Steel Flanges from India*, 59 FR 5994 (February 9, 1994) (*Amended Final Determination*).

#### Notification to Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) 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 double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act and 19 CFR 351.221(b)(4).

Dated: February 28, 2007.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

A-570-848

#### Freshwater Crawfish Tail Meat from the People's Republic of China: Preliminary Notice of Intent to Rescind New Shipper Reviews

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

**SUMMARY:** The Department of Commerce ("the Department") is conducting new shipper reviews of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China ("PRC") in response to requests from Nanjing Merry Trading Co., Ltd. ("Nanjing Merry"), Leping Lotai Foods Co., Ltd. ("Leping Lotai"), Weishan Hongrun Aquatic Food Co., Ltd. ("Weishan Hongrun"), and Shanghai Strong International Trading Co., Ltd. ("Shanghai Strong"). The period of review ("POR") is September 1, 2005, through February 28, 2006. Because the sale(s) made by Weishan Hongrun were not bona fide, and neither Leping Lotai, Nanjing Merry, nor Shanghai Strong have demonstrated that they qualify for a separate rate, we have preliminarily determined that each of these new shipper reviews should be rescinded. Interested parties are invited to comment on this preliminary notice of intent to rescind.

**EFFECTIVE DATE:** March 7, 2007.

**FOR FURTHER INFORMATION CONTACT:** Scot Fullerton or P. Lee Smith, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-1386 or (202) 482-1655, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

Pursuant to section 751(a)(2)(B) of the Tariff Act of 1930, as amended ("the Act"), and in accordance with 19 CFR 351.214(c), the Department received timely requests for new shipper reviews from Shanghai Strong on March 24, 2006, from Nanjing Merry and Leping Lotai on March 27, 2006, and from Weishan Hongrun on March 31, 2006. See *Notice of Amendment to Final Determination of Sales at Less than Fair Value and Antidumping Duty Order: Freshwater Crawfish Tail Meat from the People's Republic of China*, 62 FR 48218 (September 15, 1997).

The Department determined that the requests made by Nanjing Merry, Leping

Lotai, and Weishan Hongrun met the requirements stated in section 351.214 of the Department's regulations. On May 5, 2006, the Department published its initiation of these new shipper reviews for the period September 1, 2005, through February 28, 2006. See *Freshwater Crawfish Tail Meat From the People's Republic of China: Initiation of Antidumping Duty New Shipper Reviews*, 71 FR 26453 (May 5, 2006) ("May 5, 2006, Initiation Notice"). On May 1, 2006, pursuant to 19 CFR 351.302(b), the Department extended the time limit to initiate the new shipper review of Shanghai Strong by 30 days in order to provide the respondent with an opportunity to explain certain information in the entry documentation. On May 31, 2006, the Department determined that Shanghai Strong's request also met the requirements stated in section 351.214 of the Department's regulations, and published its initiation of this new shipper review. See *Freshwater Crawfish Tail Meat From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review*, 71 FR 30866 (May 31, 2006) ("May 31, 2006, Initiation Notice").

The Department received section A questionnaire responses from Leping Lotai on June 3, 2006; Weishan Hongrun on June 5, 2006; Nanjing Merry on June 6, 2006; and from Shanghai Strong on June 15, 2006. The Department issued a supplemental section A questionnaire to Leping Lotai on June 16, 2006, and received a response on June 28, 2006. The Department also received section C and D questionnaire responses from Weishan Hongrun on June 22, 2006; from Leping Lotai and Nanjing Merry on June 27, 2006; and from Shanghai Strong on June 30, 2006.

On July 7, 2006, the Department issued a supplemental section A questionnaire to Shanghai Strong, and received a response from the company on July 20, 2006. On July 26, 2006, the Department issued a supplemental section A, C, and D questionnaire to Nanjing Merry, and received the company's response on August 22, 2006. On August 1, 2006, the Department issued a supplemental section C and D questionnaire to Shanghai Strong and Leping Lotai, to which both companies submitted a response on August 10, 2006. Additionally, on August 4, 2006, the Department issued a supplemental section A, C and D questionnaire to Weishan Hongrun, to which both companies submitted responses on September 1, 2006.

On September 25, 2006, Nanjing Merry submitted a letter in which it stated it would no longer participate in